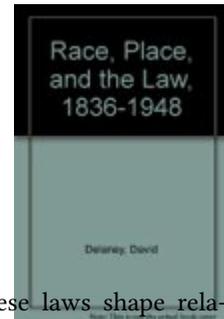


# H-Net Reviews

in the Humanities & Social Sciences

David Delaney. *Race, Place, and the Law, 1836-1948*. Austin: University of Texas Press, 1998. x + 229 pp. \$25.00 (paper), ISBN 978-0-292-71597-4; \$35.00 (cloth), ISBN 978-0-292-71596-7.

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*Race, Place and the Law* is a multidisciplinary study of racial segregation in the United States that draws on the fields of cultural geography, critical legal studies, and history. While events that Delaney examines are familiar to students of racial segregation in America, *Race, Place, and the Law* is an important book in the newly developing field of “legal geography” and an excellent introduction to the fields of cultural geography and legal studies. Delaney’s goal is to show that conceptions of “space,” “place,” or “geography” were central to the “historical construction of race” (p. 3). Through a historical analysis of racial segregation in the 1800s and 1900s, and a legal analysis of important cases in the field of race during the past two centuries, Delaney makes a strong case for the intimate connection of the two.

Over the last decade, several legal scholars and geographers have worked to connect the two closely related fields. Nicholas Blomley, in his 1994 book, *Law, Space and the Geographies of Power* (New York: Guilford Press, 1994), called for a closer analysis of the intersection of legal institutions and cultural and physical landscapes. In Chapter One of *Race, Place, and the Law*, Delaney provides a concise but thorough introduction to the basic principles of cultural geography and legal analysis. Delaney defines important terms such as “geographies of experience” (the connection between the experiences of an individual and the landscapes in which these events occur), “geographies of power” (the way that power relations are expressed spatially), and “geopolitics” (“social and political actions oriented towards reshaping the spatial conditions of social life”) in a manner that is concise and generally accessible to those not in the field (p. 10).

Delaney argues that laws create “legal landscapes” that give “legal meaning to determinable segments of

the physical world” (p. 13). These laws shape relations between society by demarcating concepts such as “public” and “private.” Lawyers influence this landscape through legal argument. Finally, Delaney introduces the debates among legal scholars over the role of law, providing a cursory but useful examination of the competing philosophies of “conventional” and “critical” legal scholars. While conventional legal scholars argue that appropriate legal decisions are developed through an apolitical, objective assessment of the relevant precedents, critical legal scholars, with whom Delaney identifies, argue that politics and ideology shape the interpretation of the law and are intimately related to legal decisions.

One concern of geographers is that legal scholars, when they have been aware of the importance of space in shaping legal relations, have used cultural geography to reinforce existing conceptions of the role of law in society. Delaney argues that this narrow view of the interaction of geography and law fails to reveal the deeper connections between these fields. In structuring the book, Delaney has attempted to avoid privileging either discipline by contrasting the subjects in couplets of chapters. Chapters Two and Four examine the history of spatial relations between blacks and whites in the 1800s and 1900s, respectively, and Chapters Three, Five, and Six examine the way that existing landscapes (cultural and physical) shaped the law and were shaped by the law during the last two centuries.

Chapter Two discusses the geography of slavery and Reconstruction. Delaney uses diaries and secondary sources to draw a picture of the relations between blacks and whites in the South during the 1800s. The chapter first describes the spatial relations of the plantation, and examines the relationship of the big house to the slave

quarters and other structures on the plantation. He argues that the Plantation, with its interconnected spaces that shaped the social relations of slaves and their masters, was similar to a state. Throughout the antebellum years, Delaney argues, southern elites worked to create uniformity between these autonomous locales to reinforce the authority of the slave system. Delaney also examines the role of “slave codes” in regulating the treatment of slaves outside of the plantation, and the way that they controlled the relationship of slaves to people (black and white) other than their master. All of this information supports Delaney’s argument that spaces and the lines demarcating them were central to conceptions of slavery.

In examining the spatial relations of Reconstruction, Delaney notes the significant impact of emancipation on the perceptions of former slaves. Many freedmen viewed the move off the plantation as an important manifestation of new found freedom, even though most continued to work the same land they had as slaves. The acceleration in urbanization among blacks further increased social and economic mobility but also raised concerns among whites. Delaney chronicles the contested nature of Reconstruction, as former slaveholders fought to recreate the antebellum landscape of power through “black codes” that restricted the movements of freed blacks and tied them to the land. He also makes the important point that debates over black mobility and the attempt to limit black access to certain spaces were central to the rise of the Redeemers in many states. While much of this information is familiar to historians, Delaney’s analysis provides a useful theoretical framework for understanding the role of space in shaping Southern race relations.

Chapter Three moves from history to a close textual analysis of several important legal cases regarding slavery and civil rights during the 1800s. This examination focuses on the relationship between physical geography (e.g. state lines) and legal geography (legal categories) in shaping relations between blacks and whites. Delaney discusses three important cases in the law of slavery, beginning with the *Aves* (1836) case, where the Massachusetts Supreme Court ruled that a slave brought to the state by his master gained his freedom under Massachusetts Law. The court refused to recognize the claims of the owner under the law of the state of Louisiana, and rejected the doctrine of “comity” (the obligation of one state to abide by the laws of another). Delaney then focuses on the *Prigg* (1837) case, in which the U.S. Supreme Court ruled that the State of Pennsylvania was obligated to recognize a slaveholder’s right to recapture a fugitive

slave even when the capture violated the laws of Pennsylvania. He argues that the *Prigg* decision “nationalized” the law of recapture, and superseded the spatial distinctions created by states. Finally, Delaney examines the *Dred Scott* case, and argues that the Supreme Court in its opinion “localized” the right to freedom, by restricting the rights of free blacks to only those states that specifically granted such rights. Each of these cases, Delaney argues, reveals how conceptions of space (i.e. the rights of states and territories within the federal system) shaped the legal arguments over slavery, and how geographies of power were created by legal decisions that altered the landscape of slavery.

Delaney’s shorter analysis of post-Civil War case law focuses on the debates over the extent of influence of the Civil War amendments. Examining the *Slaughterhouse Cases* and the *Civil Rights Cases*, Delaney argues that, despite the attempts of civil rights activists to “nationalize” the rights of blacks, southern segregationists were successful in protecting “states rights” by arguing that the right to exclude was the purview of local authorities. Again, these debates centered on the appropriate categories (both legal and spatial) that determined the rights of blacks in southern society. Distinctions between “public” and “private” space shaped the arguments to the court and the opinions determining the rights of blacks.

In Chapter Four, Delaney returns to historical synthesis in his examination of the development of Jim Crow laws in the South during the period 1890 to 1915. Delaney explains the shaping of the color line through the rise of legal restrictions on black mobility. He argues that geography was central to the creation of Jim Crow society. “The spatiality of Jim Crow involved the assignment of legal meaning to determinable segments of the physical world” (p. 96). In spaces such as schools, parks, and trains, whites attempted to restrict the mobility of blacks. Using the works of George Fredrickson, C. Vann Woodward and other historians, Delaney explains the shift from “custom” to “law” in shaping the race relations of the South. In response to increasing economic and social mobility among blacks, white supremacists passed laws to limit the mobility among blacks. Delaney notes the irony that, in constructing a formal legal system of segregation, white supremacists opened the door to legal assaults on the Jim Crow order. He argues that by the turn of the century all the parties viewed the law as central to shaping race relations in the South, and he concludes with a detailed analysis of the rise of segregation ordinances in Louisville, Kentucky and Baltimore, Maryland. Delaney’s analysis of the rise of Jim Crow is

less thorough than his similar examination of the geography of Slavery, but that is in part because so much of this information has been provided by historians. The purpose of this chapter is to set up Delaney's analysis of an early legal assault on segregation laws, the Buchanan case, which he discusses in detail in Chapter Five.

Delaney's description of the Buchanan case, in which the lawyers for the NAACP attacked the Louisville ordinance that divided the city into racially segregated areas, is extremely detailed, perhaps overly specific, but it serves Delaney's purpose of showing the intimate relation of spatial perceptions to legal decisions. Delaney asserts that legal arguments are "maps of meaning" that attorneys and judges use to create coherent legal decisions. The shape of these maps is determined by the legal philosophy of the advocate, and of course, the goals of his or her client. To support his thesis, Delaney details the arguments of the plaintiffs and defendants in the Buchanan case and explains the way they tried to shape geographies of power, more specifically the spaces that blacks and whites could legally occupy. The legal arguments on the segregation statute centered on the "reasonableness" of the ordinance with regard to its restrictions on the right to dispose of property.

Through a review of the legal briefs, Delaney shows how the attorneys presented extremely different stories of geographical change in Louisville neighborhoods and made widely varying assertions about the future consequences of racial change in the city. Supporters of the ordinance argued that racial equality was impossible and that the ordinance only supported the "natural" state of affairs by maintaining the separation of the races. Opponents of the ordinance argued that neighborhood transition was inevitable as the economic situation of blacks and whites improved and the law unreasonably restricted the mobility of blacks and whites by imposing limits on the rights to sell and buy property. The attorneys also presented competing views of the legal landscape applicable to the case, drawing on different "maps of power" and seeking to create legal categories to support their interpretation of the role of the state in race relations. The Supreme Court of the United States accepted the arguments of the ordinance's opponents and struck down the ordinance as unconstitutional.

While some cities continued to pass segregation ordinances after the Buchanan decision, in most areas pro-segregation forces used a more "private" method to restrict black mobility. In Chapter Six, Delaney examines the subsequent legal battles over Restrictive Covenants

(provisions in property contracts that prohibited sale to blacks) in the years following the Buchanan case. These covenants attempted to "localize" the law of segregation and shield these discriminatory activities from the purview of the courts. For years courts upheld these restrictions as valid, but in 1948 the Supreme Court declared them unenforceable. Delaney examines the legal assault on these covenants, focusing in particular on the doctrine of "changed conditions," a legal theory that asserted that covenants were no longer valid where the neighborhood conditions (read, geography) had changed so much as to make them worthless. The acceptance of this "spatial" theory influenced legal arguments about these covenants, and pushed advocates to create vastly different neighborhood geographies to support their position. In this context, the judicial definitions of abstract terms like "neighborhood" and "community" became increasingly important in determining whether conditions had changed. Courts focused on the existence of neighborhood "boundaries" and asked how or whether they had changed enough to warrant enforcement of the covenant, and advocates battled over the techniques used to determine these facts. In reality, Delaney argues, legal institutions created these boundaries through the interaction of lawyers and judges.

The field of legal geography is so new that it is difficult to place this book within the context of the discipline. I found this book an excellent attempt to merge these two fields. My criticisms of the work relate more to issues that the book raised but did not explore than to specific structural flaws. The examination of the role of law and geography in shaping race relations would be much improved by a more developed use of primary sources to understand how individuals and communities experienced these processes. Delaney attempts to inject this perspective at times, and his use of biography enhances his analysis, but it reveals the gaps in the story that need to be filled by narrative.

Secondly, while Delaney discusses the importance of geopolitics in creating geographies of power, he could investigate more deeply the specific relations between blacks and whites that were shaped by legal arguments and landscapes. This type of analysis has been done by other academics—George Fredrickson's work is an excellent example—and Delaney relies heavily on these secondary sources. However, to give a fuller picture of the intersection of law and geography, Delaney would need to examine the primary sources himself. Delaney paints a broad picture in his historical analysis of race relations, but he does not devote much attention to the daily ex-

periences of individuals in the process. While Delaney attempts to balance the two fields, his analysis in the end privileges law over geography by providing a deeper interpretation of the interaction of law and geography than of the way that the shaping of landscapes actually affects people's lives. However, these are minor criticisms of a

challenging and interesting book.

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