Embodied trials: Tracing the consolidation of legal power across the spaces of the courtroom

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Abstract

In situ explorations of courtrooms remain elusive across the bourgeoning field of legal geographies, despite providing an opportune site for examining how the law is differentially constructed, channelled and amplified across various socio-spatial settings. This paper, turning to Cambridge Crown Court, explores this dynamic relationship between the law and space. Mobilising feminist courtroom ethnographies which attune to the oscillation of affective intensities across human and non-human networks spanning the spaces of the courtroom, the paper illuminates the opaque and often fleeting moments within which legal authority is spatially consolidated. Particular attention is paid to questions of race which, despite being largely overlooked within existing scholarship, provide a critical avenue through which legal geographers can further expose the law's operations as a mechanism of embodied exclusion, striated by the geographies of power and politics of difference. With such insight, the paper further elucidates how the law is neither placeless, ageographic nor administered from nowhere, but profoundly spatial, distorted and processual.

Key words:

Legal geography, courtroom ethnography, feminist methodology, affect, geographies of power

Introduction

> "Is there anyone who has not, at least once, walked into a room and 'felt the atmosphere'?" (Brennan, 2004: 1)

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Passing through the doors of Cambridge's Crown Court [Fig.1], an atmospheric perturbation registering at the fringes of palpability begins spherically enveloping me. The convivial laughter of two white male security guards – one slightly shorter leaning against a metal detector whilst the other stands upright behind him – instantaneously folds into sudden silence. 'Why are you here?' the shorter guard asks as he ruffles through my backpack. 'Public gallery' I respond, my heart now rhythmically pounding with increasing intensity as this atmospheric pocket of certain uncertainty continues enveloping me. Confirming that my bag contains nothing considered prohibited, the shorter guard ushers me through the metal detector. 'You're clean' he bluntly notes 'courtrooms are upstairs.' I swiftly grab my bag and begin to pace up the steps, my sense of place entirely destabilised by this affective encounter. To "try and eliminate the tension caused by your own arrival" – this is, as Sarah Ahmed (2014a: np) reminds us, the ever-present quandary that stalks the quotidian experiences of people of colour (Field notes 2 May 2023: Vignette.1).

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> "Becoming a stranger can mean being questioned, turned into a question, asked to debate your existence, to explain yourself. Questions can pile up, becoming a mountain… some more than others are *called upon to explain themselves*" (Ahmed, 2023: 143, emphasis original)

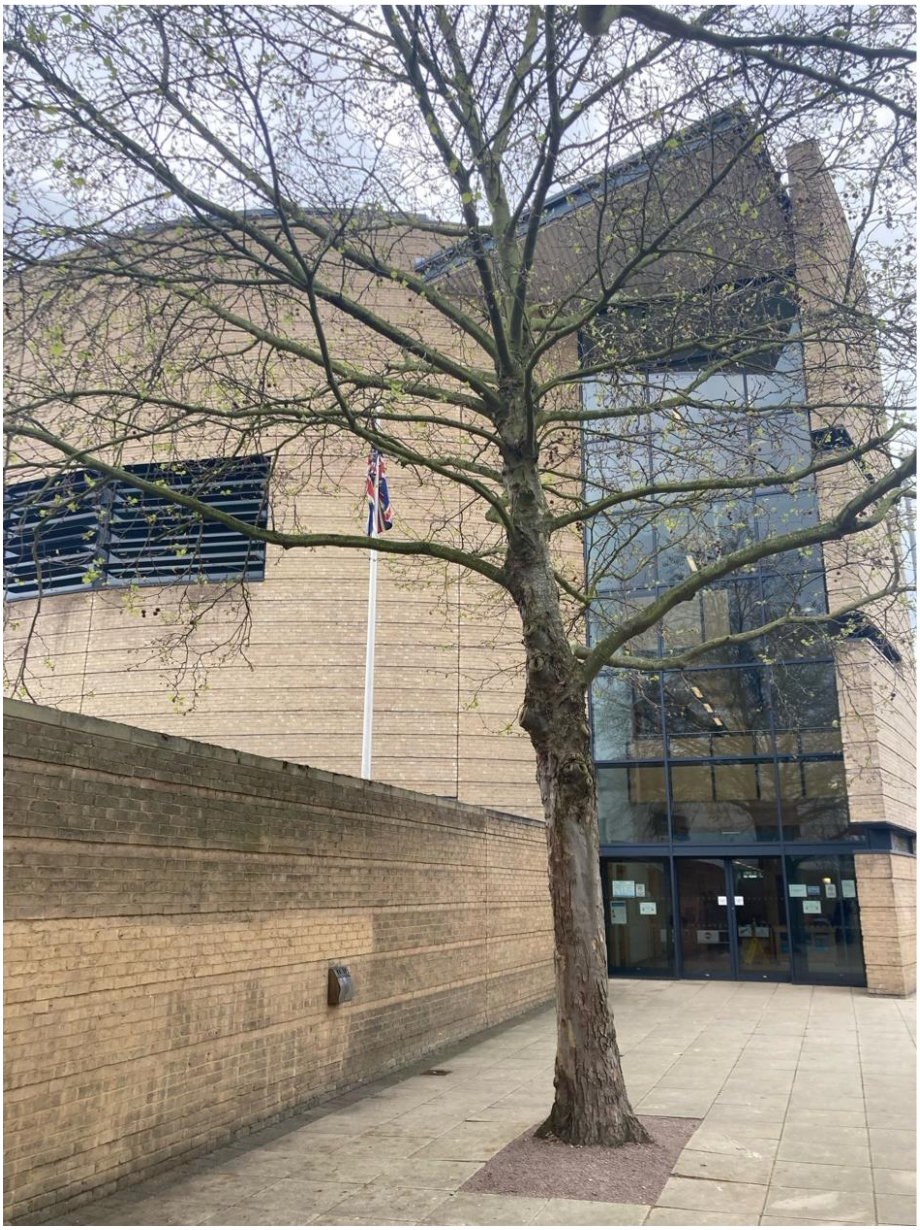

Figure 1: The entrance of Cambridge Crown Court. Source: Author.

Leaving Cambridge Crown Court after three hours of courtroom ethnography, I cogitated upon the vignette above, conjuring my disorienting experience of first stepping into the judicial building and passing into *"*a whole different world*"* (Mulcahy and Rowden, 2019: xx). The metal detectors, bag checks and foreboding security guards all illuminating a "complex spatiality at work" (Jeffrey, 2019: 565); a spatiality which, particularly in the case of racialised bodies, routinely foments feelings of anxiety and alienation (Tolia-Kelly, 2016). Yet Cambridge Crown Court cannot be

reduced to the abject securitisation of its entrance area for this marks but one judicial ecology (Mehmood and Cousins, 2022) within a larger, tentacular "node of relations" (Jenkins, 2002: 232) which undergirds the geographic spatiality of the entire courthouse.

This paper is a product of these preliminary reflections. Working in dialogue with geolegal scholarship which "foregrounds the material and embodied nature of trials" (Jeffrey and Jakala, 2014: 562), this paper examines how the spatiality of Cambridge Crown Court is elemental to the processual consolidation of legal authority (Blomley, 1994; Delaney, 2016). Methodologically, the paper mobilises feminist courtroom ethnographies which attune to "the 'unwritten'... unscripted... embodied... unrecorded [and] momentary ways in which power works through the courtroom" (Faria *et al.,* 2020: 1103), revealing how courtrooms "are dense spaces through which legal subjects, spaces, and instruments are performed, created, disciplined and managed" (ibid: 1095). The paper, then, in line with the growing field of legal geographies (Blomley and Delaney, 2001; Delaney, 2015; Philippopoulos-Mihalopoulos, 2007), seeks to place further pressure on diffusionist, ageographic bodies of doctrinal law which continue to contend that "the law is placeless – objective and administered from nowhere" (Gill and Hynes, 2021: 569). In doing so, the paper illuminates how the "law acts as a mechanism of embodied exclusion, marginalisation and discipline" (Jeffrey, 2020: 1006), thus further elucidating how the law and space are mutually co-constitutive.

Feminist Courtroom Methodologies

> "The legal geographer is a detective... tracing the manifestations of law upon space – and in turn the ways in which law is limited, masked, channelled or amplified in certain spatio-material settings" (Bennett and Layard, 2015: 414)

Courtroom ethnographies remain elusive across legal geographies. In fact, as the politico-legal geographers Nick Gill and Jo Hynes (2021) recently revealed, geographers have spent little time within courtrooms. This is, of course, not particularly surprising if we recall the dominance of discursive methods across human geography and their pervasive assumptions that knowledge/subjects can be 'accessed' through a solitary focus on semiotics, linguistics and

representation (Lorimer, 2005; McCormack, 2008; Sexton *et al.,* 2017; Willink, 2023). However, given legal geographers claim to have moved beyond narrow conceptions of the law as a mere textual practice structured around morally sound constitutions, towards more nuanced understandings of the law as a conditional accomplishment – that is, something which is protean, in motion and thus always somehow 'worlded' rather than "objective, a-spatial [and].. simply respon[sive] to existing territorial constructs" (Gorman, 2017a: 37) – we should be critical of the positional primacy that disembodied social constructionist approaches have assumed. Not least because the *vitality* of judicial buildings – "the affective, intimate, and bodily politics of courtroom subjects, spaces, and moments" (Faria *et al.,* 2020: 1095) which can only be grasped by listening to the same sounds, dwelling within the same spaces, and immersing oneself within the same judicial atmospheres as litigants – remains incommensurable with distantial representational approaches. What matters within the courtroom, then, are not the representations of any given event, but their actual unfolding (Saldanha, 2007): the often imperceptible undercurrents and affectual intensities which circulate across the courthouse.

Foregrounding these embodied intimacies of the courtroom, I sensitised my body towards "the felt, visceral, immediate, sensed, embodied [and] excessive" (Bens, 2018: 337) affectual intensities which oscillated across Cambridge Crown Court. This involved multi-sensorially attuning to, inter alia, the changing volumetrics and fluctuating levels of fervour that judges, barristers and defendants spoke with (Gallagher and Prior, 2014; Jackman and Squire, 2021). Such circumstantial attunements – relying on my body as a conduit for the reception of affectual intensities; an open-ended instrument of research (Longhurst *et al.,* 2008) – drew inspiration from recent work across feminist ethnographies which call for an incessant and reflexive sensitivity towards the affectively freighted excess of research encounters as these intersect with the stratified geographies of power (Bondi, 2014; Klosterkamp, 2022).

These multi-sensorial attunements were recorded in the form of more-than-visual scratch-notes – "mnemonic keys, shorthand scribblings and segments of important dialogue" (Gorman, 2017b: 224) – which are embedded within my discussion in the form of one vignette, similar to the one with which the introduction began. I recognise the use of one vignette as a limitation and reflect on this in my conclusion. Notwithstanding, the vignette provides a dense ethnographic description

illuminating how all kinds of different bodies – both human and nonhuman – perform within the inner landscapes of the courtroom (Bens, 2018). Indeed, writing *à la* vignettes which seek to evoke resonance rather than validation reveal how we come into contact with others within the field (Ahmed, 2014b; Vannini, 2015), transparently evoking first:

> "affectual encounters in the research process through our writing... second... [the] resonance between different bodies and objects through our writing; and third, through this resonance... hidden and perpetuating power relations" (Militz *et al.,* 2020: 430)

Results and Discussion

I am sitting in the public gallery of courtroom 1. A black male defendant stands locked in the dock, entirely isolated from everyone else. He is currently positioned beyond my sightline from the public gallery, though I can distinctly recall his all-red tracksuit from when he entered the witness box earlier. 'You have been to prison before, haven't you?' the prosecution barrister asks, immediately following up with a set of polemical questions that leave little time for response. 'What is your line of work, how is it that you are able to afford such a nice car.' A thick, viscous atmospheric tension begins to leak out spatially across the courtroom. 'You're just a run-off-the-mill local criminal making up his account as he goes along.' The defendant interjects with vocal fervour, no longer able to passively absorb this verbal onslaught. 'That's not true!' The judge interposes this sudden outburst, interrupting the tempered defendant: 'I do not want to make myself clear again, you are only here to answer the questions that you are asked.' The judge then proceeds to turn to the jury, assuring them that the 'the prosecution barrister was not making racial assumptions.' I observe the judge as he does so and contemplate upon how, from such an elevated position, backed by the royal coat of arms emblem, positing such a fallacious remark and in doing so, entirely re-diverting the direction of legal proceedings, must be a relatively easy task. Yet as the only other body of colour in the room, detecting the palpitating intensities of atmospheric racism was hardly a conceptual leap, even from the detached position of the public gallery. (Field notes 2 May 2023: Vignette.2).

The vignette above underscores how the architectural spatiality of the courtroom – be that the raising of a judge's bench or the installation of a barrier – has the potential to demarcate insiders and outsiders, empowered and alienated participants (Mulcahy, 2010). Indeed the dock – a spatial configuration that the criminologist Meredith Rossner (2016: 3) likens to a contrived device which renders the accused a "monkey in a zoo" – served as a pocket of abject disempowerment within the courtroom; a "carceral space within a carceral space" (Russell *et al.,* 2022: 161) which isolated and disciplined the accused when he was perceived by the judge to have deviated from the standards of civility, comportment and decorum that were expected of him: *"I do not want to make myself clear again, you are only here to answer the questions that you are asked" (Vig.2).*

This belligerent command is significant, not least because it clarifies how despite taking on the appearance of insularity by operating as an exclusionary, almost otherworldly pocket within the courtroom (The Guardian, 1966; Rossner *et al.,* 2017), the dock was not entirely without relation to the rest of the courtroom, nor did it simply effectuate a static impression that the defendant needed to be segregated from others because they were dangerous (Mulcahy, 2013). Rather, the dock's pathologization of the defendant as a delinquent aberration was a dynamic and emergent achievement; one that was processually reinstated throughout the trial in ways that were relational to the consolidation of the judge's position of "independence, separation, and authority" (Rosenbloom, 1998: 487). Nuancing, then, productive yet still routinely discrete critiques levelled towards the judge's bench as a site where judicial authority is consolidated (Graham, 2003) and the dock as a place which effaces the defendant's rights to presumed innocence and dignified treatment (Rossner *et al.,* 2017), the vignette illuminates the courtroom's *fluid constellations of power* by way of a "relational understanding of space" (Schliehe and Jeffrey, 2023: 12). One which sees the judge bench's augmentation of an autocratic positional authority and the dock's degradation of the defendant as intrinsically relational and co-constitutive. If then, the processual consolidation of legal authority is predicated upon these relational constellations through which hierarchical geometries of power spatially oscillate, how might we connect these local constellations to extralocal spatialities, forces and ideologies?

Recent feminist geolegal scholarship has contended that the spatiality of legal authority is intrinsically kaleidoscopic, polynucleated and multi-scalar (Calkin *et al.,* 2022; Cuomo and

Brickell, 2019). The legal geographer Jayme Walenta's (2020) work is perhaps a touchstone within this growing body of work, as she elucidates how even something like the "self-confidence of wealthy white masculinity" (Faria *et al.*, 2020: 1104) operationalised by American male judges remains intimately embedded within, and thus can hardly be disentangled from, broader national structures historically built on those very privileges. For feminist geolegal scholars, then, the courtroom can no longer be considered a bounded, circumscribed entity:

> "our work rethinks and extends the very boundaries of the courtroom itself to be far more geographically expansive... we view the courtroom as a site where the ruling relations of the law and society are coordinated and manifest, all the while noting that those ruling relations originate from and are managed extralocally. This scalar work is central to a feminist perspective—one always attentive to the 'global intimacies' of power" (Faria *et al.,* 2020: 1098)

Within the courtroom, the law is thus concurrently projected *locally* – through fractal courtroom assemblages which comprise of human bodies and non-human configurations such as the dock – and *extralocally* – as these intra-courtroom assemblages remain embedded within, and reproductive of, larger politico-economic systems (Mountz and Hyndman, 2006). These multi-scalar attunements to the entanglements "between law, space and the workings of power across intimate and global scales" (Brickell and Cuomo, 2019: 105) provide us with an apt heuristic lens for further unpacking the vignette above. Consider here, for instance, the vignette's evocation of the judge's elevated bench which we might conceive of as a kind of citadel of truth: *"I observe the judge... and contemplate upon how, from such an elevated position, backed by the royal coat of arms emblem... entirely re-diverting the direction of legal proceedings, must be a relatively easy task" (Vig.2).*

Indeed, as the socio-legal theorist Linda Mulcahy (2007: 385) notes, "[w]hen a royal coat of arms is placed behind a judge's chair it makes clear that the full authority of the state and legitimate force is behind the judge." Consistent with Mulcahy's (2007) axiom and wider feminist geolegal perspectives which reject hermetic moves towards conceptualising the locality of judicial courtscapes in isolation (Mohr, 2005; DesBaillets, 2018; Gorman, 2019), the vignette illustrates

how a modality of judgecraft that was embedded within the local spatiality of the courtroom was also concomitantly operationalising extralocal geometries of sovereign power (McDougall, 2016; Wettergren and Bergman-Blix, 2016). Indeed, these were extralocal power geometries tied to a progressively enclosing and increasingly exclusionary English court system that continues to incessantly privilege "the court's (and judge's) formal structures, spaces and practices [which exert] control over behaviour and access, disempowering" (Walenta, 2020: 134) defendants through commands such as "when to speak and when to be quiet" (Carlen, 1976: 53): *"I do not want to make myself clear again, you are only here to answer the questions that you are asked" (Vig.2).*

Yet if the courtroom operates as a kind of transversal, oscillating, trans-scalar geography tightly wed to extralocal ideologies which constantly extend "the spatialities of the courtroom far beyond its physical bounds" (Faria *et al.,* 2020: 1104), where might the politics of difference be located within such a discussion? Indeed, to invoke the British-Australian feminist writer Sarah Ahmed (2010: 41), how are the experiential dimensions of courtrooms shaped by our bodily "angle[s] of arrival"? Somewhat disturbingly, legal geographies has given little attention to the differentiation between racialised bodies within the spaces of the courtroom despite the fact that "at every stage of the legal process, ethnic minorities, particularly Afro-Caribbean communities, are disproportionately impacted, in the streets, during the arrest, in the courtroom and in prisons" (Grey, 2023: np). This is a significant omission not least because as the legal geographer Alex Jeffrey (2020: 1006) notes, foregrounding "fleshy, vital and dynamic bodies... [opens up the potential] to defy images of law as an abstract, disembodied and immutable enactment of authority". The next section thus begins to explore pervasively overlooked questions of race, responding to Walenta's (2020: 136) recent call for legal geographers to take seriously "how legal power and authority reflect and intersect with different bodies." To do so I hold Sarah Ahmed's (2014a) conceptualisation of whiteness as an atmospheric force, in heuristic dialogue with Arun Saldanha's (2007) new materialist theorisation of race, to further unpack the vignette's elicitation of the intersections between court space and legal authority as they intersect with questions of racial difference. As Sarah Ahmed (2014a) notes, whiteness is routinely:

> "experienced as an atmosphere... you encounter it like a wall that is at once palpable and tangible but also hard to grasp or reach... you can feel surrounded by what you are not... [and] your relation to the world becomes a crisis." (Ahmed, 2014a: np)

Ontologically feeling like aberrant "matter out of place" (Hall, 2003 [1997]: 236) is thus profoundly affective; it involves sudden amplifications and de/re-stabilisations of affective intensities across time and space. Here, discomfort is inextricably entwined with the atmospheric, spatial and yet often diffuse operations of racial power: a space can become so viscerally discomposing that it becomes unbearable to stay, yet the circulation of these affects is always positionally contingent: "an atmosphere that is light for some might be heavy for others" (Ahmed, 2014a: np). Thus, when spaces seal up through a kind of visceral enclosure, evoking for people of colour an abject feeling of being "surrounded by an atmosphere of certain uncertainty" (Fanon, 1986 [1952]: 110), there is also a relational reaffirmation of whiteness at stake. Critically, for racialised bodies, these affective disturbances are hardly in short supply, for there is always "a history at stake, or a timing, often experienced as a *having been here before*" (Ahmed, 2014a: np, emphasis original). The cultural geographer Arun Saldanha's (2007), exploration of *viscosity* provides us with a productive heuristic lens through which these spatio-corporeal tensions can be taken further. As Saldanha (2007) notes, white bodies tend to stick together and conglomerate producing highly viscous, sticky collectivities, and it is through these collectivities that something of a socio-spatial impermeability, oriented towards the privileging of white bodies, is processually constructed across space-time.

Whilst attention to these abject forms of racialised power within spaces such as the courtroom remain "almost nonexistent in scholarship on the law" (Faria *et al.,* 2020: 1096), it is within these postcolonial theoretical insights where we find the potential to open up a conception of judicial buildings as intrinsically racialised spaces that incessantly privilege "whiteness... white supremacy and anti-Black racism" (Eaves, 2016: 23). Consider, for instance, the following excerpts from the vignette above which evoke the white prosecution barrister's iniquitous verbal attack on the black defendant – *"You're just a run-off-the-mill local criminal making up his account as he goes along" (Vig.2)* – and the white judge's silencing of the defendant – *"I do not want to make myself clear again, you are only here to answer the questions that you are asked" (Vig.2).* Here, one cannot

resist the sense that the courtroom is a site where institutionally backed white male bodies tend to *stick* together in highly exclusionary and disempowering ways (Ahmed, 2014a; Saldanha, 2007). To be sure, I am not suggesting here "that surveillance and discipline in the courtroom are inappropriate per se" (Mulcahy, 2007: 387). Rather, in line with feminist conceptualisations of power as something which dynamically oscillates through scales of the local and extralocal, I understand the viscous, enveloping atmospheres of whiteness which I detected – *"as the only other body of colour in the room, detecting the palpitating intensities of atmospheric racism was hardly a conceptual leap" (Vig.2)* – to mark a localised racialisation of judicial space which simply cannot be disentangled from an "institutionally racist" (Siddique, 2022: np), old Anglo-Saxon English judicial system (Feagin, 2013).

We might recall here, for example, how the English legal system comprises of less than 10% of court judges who are black, indigenous and/or people of colour (Clear, 2022); is characterised by an arrest rate which is 2.4 times higher for black diasporans than for white people (Gov.UK, 2023), and is denoted by incarceration statistics which disproportionately consist of people from black, Asian and minority ethnic backgrounds (Prison Reform Trust, 2023). At what point does it become unreasonable to ask whether this is a system which continues to propagate achievements of autocratic power contingent upon the disproportionate incarceration of racialised bodies (Benier and Fay-Ramirez, 2018; Warde, 2013)? "Our judges" writes the barrister Keir Monteith KC (2023: np) "are presiding over a justice system where racial bias is prevalent." Thus by means dissimilar from, and indeed, certainly something which should be dialogically considered alongside, the legal geographer Francesca Moore's (2018) discussion of a gendered Victorian present, I argue the field of legal geographies must begin working through these questions of a trans-scalar colonial present (Gregory, 2004; Gilmore, 2007; McKittrick, 2011) which stalks our contemporary legal juncture.

Conclusion

Mobilising feminist courtroom methodologies, this paper has uncovered how Cambridge Crown Court's courtroom 1 is a transmutational lawscape; one where legal authority is processually achieved both *locally*, through architectural configurations such as the dock and its fluid interactions with human bodies, and *extralocally,* as these kaleidoscopic constellations remain tightly wed to broader global intimate geographies of sovereignty. Paying particular attention to

the concept of race, the paper has also illuminated the intersections between racial difference, court space and the consolidation of legal authority, contending that the atmospheric circulation of whiteness is central to violent processes of racialisation within the courtroom.

Yet by way of word constraints, my engagements remain preliminary, situated within one vignette describing only one trial within courtroom 1 of Cambridge Crown Court. I thus call for legal geographies to further explore how achievements of legal authority across lawscapes such as – but not limited to – the courtroom operate through the encoding of particular bodies as aberrant matter out of place. "That modernity is anti-black is evident" writes the black studies scholar Dhanveer Singh Brar (2021: 79). Yet how this oppressive interface between coloniality, the law and space operates, how it is negotiated and how it is potentially reworked within spaces such as the courtroom remains undertheorised. Future work, then, might consider the following question: is it merely the case that racialised bodies are disproportionately represented within courtrooms, and then condemned to prison complexes in ways that gesture towards a colonial present? Or might this confluence be more complex? We might consider here, the postcolonial literary critic Homi Bhabha's (1984) elucidation of the ways in which coloniality always contains interstitial fractures where hegemonic power geometries are destabilised, even when they appear entirely domineering "because the colonial relationship is always ambivalent, it generates the seeds of its own destruction" (Ashcroft *et al.,* 1998: 13). How might these ambivalences play out, then, within the spaces of the courtroom?

It is important to note here that there has been a pervasive tendency across canonical fields of human geography to depict blackness "as silent, suffering, and perpetually violated" (McKittrick, 2013: 9) – entirely "devoid of spatial agency" (Moulton and Salo, 2022: 161). The result is an obfuscation of ambivalence – a displacement of complexity with totalising narratives of lack. Indeed, these are epistemically violent manoeuvres which legal geographers cannot afford to engage in when attending to underexplored questions of race within places such as the courthouse. Perhaps the courtroom is a constrained, ostensibly asphyxiated judicial ecology where the imposition of whiteness "has a simply facticity which leaves it not really amenable to debate" (Gilroy, 1999: 57). But is this necessarily incommensurable with the possibilities of legal power being disrupted and perhaps even subverted, even if only momentarily, within such spaces? Are

courtrooms really abject sites solely characterised by the univocal imposition of autocratic power, or might they concomitantly operate as generative sites for all kind of countervailing forces and alternative lines of flight? If so, how might legal geographers mobilise a position of "critical openness" (McCormack, 2014: 10) attuned to the possibilities of what the literary critic Jenny Sharpe (2003: xxi) has called the "crevices of power"?

Acknowledgements

I would like to thank Alex Jeffrey and Francesca Moore who co-taught, in an extremely compelling manner, one of my final year undergraduate modules at the University of Cambridge entitled "Legal Geographies," from which this paper stems.

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