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A prison around your ankle and a border in every street Theorising law, space and the subject

On 19 June 2015, Britain's High Court ordered that the electronic monitoring tag worn by 'DD', a 'terrorism-related activity' suspect, be removed due to the disproportionate effect the tag was having on DD's mental health and on the everyday life of his family.¹ DD is a refugee who suffers from post-traumatic stress disorder from the extreme violence he lived through in Somalia. While 'wearing' the unremovable tag around his ankle, DD was restricted in his movement and activities. He was forbidden from being in the same room as a wide range of common devices such as mobile phones unless they were switched off, and he required Home Office permission to meet with friends. Unable to engage in normal social interaction, DD's children felt humiliated and distressed and fell behind at school. DD was required to keep the tag charged, which meant sitting himself with his tag connected to a mains socket for extended periods every day. Suffering from a psychotic illness, DD believed that the tag contained a bomb that could be detonated by MI5 at any moment. During the three years he 'wore' the ankle tag, DD developed severe insomnia and suicidal feelings, banging his head against the wall or floor and hearing voices in his head, ultimately leading to the High Court decision that the tag be removed on human rights grounds. Although he was ostensibly living at home with his family, able to leave his house to go to work and other 'normal' activities, there was no escape for DD. He had a prison around his ankle.

Just a few weeks after the High Court's DD decision, the British government announced that it would pass laws introducing possible prison sentences for landlords who fail to check their tenants' visas, and making it easier for landlords to evict tenants without the so-called 'right to rent' (Bate and Ota, 2016: 3). As part of her efforts to convince poor African migrants that "our streets are not paved with gold" (Dahan, 2015), then Home Secretary Theresa May made the announcement as an intensification of the 'hostile environment' for irregular migrants which she had already begun creating. The Immigration Act 2014 had introduced a host of measures to restrict access to essential services for irregular migrants living in Britain (Bate and Ota, 2016). The Immigration Act 2016 (which is now in force) bolstered this hostile environment by creating the new offence of leasing premises to a migrant without a valid visa.² Landlords who commit the offence are liable for a fine and/or up to 5 years in prison.³ The new provision passed despite the Residential Landlord Association, migrant rights groups and various charities opposing it. As the Church of England put it, the new Act creates a border in every street (Robinson, 2014).

Like the 'prison walls' that surrounded DD, the 'borders' produced by the right to rent requirement are both invisible and real, intermittent and permanent; these 'walls' and 'borders' attach to individuals subjects wherever they go, and are internal to the community/nation space that the subject has already entered. In this piece, I explore how space, the subject and the connection between them can be theorised in the context of landscapes such as these - prisons around ankles and borders on every street. Discussing the case studies of DD and the right to rent, I seek to make explicit the spatiality of law's production of subjects, in turn showing the varied and ever-evolving ways through which law produces material boundaries. Bringing together and building on legal geography, critical race theory and critical disability studies, I put forward the concept of 'taking space

¹ DD v Secretary of State for the Home Department [2015] EWHC 1681 (Admin).

² Section 39 of the Immigration Act 2016 amends the Immigration Act 2014, inserting s33A which creates the offence. Note that at the time of writing, this provision is in force for England

³ Immigration Act 2014 s33C.

with you' as a way to understand landscapes such as those produced by electronic tags and internal borders. What emerges is a picture of both space and the subject that is far more dynamic, blurred and contingent than law would have us believe.

Theorising Law, Space and the Subject

The liberal democratic state, and the law it creates, are underpinned and legitimised by notions of universality and neutrality - theoretically, state law delivers justice to all subjects on an equal basis, free of any political agenda. Critical race and feminist theorists have long noted the flaws in this theorisation, demonstrating ways in which law operates unevenly depending on who you are (Bell 1970; McKinnon 1983). More recently, legal geography has also demonstrated ways in which law operates unevenly depending on *where* you are (Blomley 1994). Coming from a variety of perspectives and with subject matter ranging from clear geopolitical conflicts such as the Israeli planning laws used to destroy Palestinian homes in Jerusalem (Braverman 2007), to seemingly mundane issues such as the hidden politics of English hedgerow maintenance (Holder 1999), legal geography explores the effects of law on physical space and the effects which physical space in turn has on the subjects who live and move through it. By exploring the materiality of particular places, legal geography exposes some of the differential material effects of law; the uneven ways in which law shapes landscapes. As I have discussed elsewhere, legal geography tends to use case studies to show how physical space – whether an area, a city or a border – has social meaning and effects, some of which are violent (Keenan 2015). Waldron's discussion of the prohibition of sleeping in public, for example, explains how this law, though framed as universal, in practice affects homeless people disproportionately and makes the city a hostile and dangerous place for them (see Waldron 1997). Legal geography, consistent with other bodies of critical legal theory, shows law's uneven effects on different categories of subjects.

In an attempt to move beyond the law/space binary which legal geography tends to take as its analytical starting point, some theorists have used neologisms to demonstrate the inextricable connection between the two. David Delaney's 'nomosphere' (2010), Nicole Graham's 'lawscape' (2011) and Andreas Philippopoulos-Mihalopoulos' 'lawscape' and 'atmosphere' (2007, 2015) each achieve new ways of theorising law, space and the subject, each from distinct perspectives. As Bennett and Layard point out, there is also a long history of scholarship preceding what is now known as legal geography that shows how legal rules, practices and governance produce landscapes and places (eg Harvey 1981, Lefebvre 1991, McAuslan 1980) (Bennett and Layard 2015: 408). Work by scholars who may not define themselves as 'legal geographers' also continues to be relevant to understanding the connection between law, space and the subject. For example critical migration law scholars (see Dembour 2015, El-Enany 2015) demonstrate the disjuncture between the way in which law constructs the relationship between space and the subject, and the actual lived relationship that people have with the places they reside.

Some of the most insightful and reflexive work on law, space and the subject has come from critical race scholars. Sherene Razack's analysis of the murder trial of Aboriginal sex worker Pamela George suggests that in the Canadian context, law attaches spaces of violence to Aboriginal subjects wherever they move (2002). George was killed in 1995 by two white male college students on an end of term drinking spree. The men enticed George into their car and then drove her to an isolated area outside the city where they beat her and left her to die. Analysing the police investigation and the trial transcript, Razack demonstrates how George was seen 'to belong to a space of prostitution and Aboriginality, in which violence routinely occurs' while the men who killed her were seen as belonging to a space of white middle-class respectability (ibid 124). Even posthumously,

George remained conceptually and practically attached to a space in which violence is normalised.

In her book on inquests and inquiries into Aboriginal deaths in custody, Razack deepens her analysis of the spatiality which law constructs for racialised bodies (Razack 2015). Discussing the inquiry into the death of Frank Paul, an Aboriginal man who died of hyperthermia due to acute alcohol toxication after police left him in a Vancouver alleyway in December 1998, Razack engages with Samira Kawash to describe how Paul came to embody a specific Aboriginal homelessness and placelessness which meant that he needed to be constantly removed from the public spaces of the settler state (ibid 43-45). Razack argues that Paul was constructed by police as belonging to an 'alien' world which needed to be expunged from the Canadian state (ibid 44). Analysing the inquest into the death in custody of Paul Alphonse, who was stomped on so hard that a boot print was left on his chest, Razack argues that police and other settlers view the Indigenous body as 'the frontier, the site on which a savage war is fought... considered as bestial, close to nature, and a threat, the Indigenous body must be violated if the border between wilderness and civilisation is to be maintained' (ibid 84). Razack argues that the racial/proprietary line between Indigenous and settler is marked out spatially - 'it is not only that Indigenous peoples must be confined to reserves, but their own necessary incursions into settler spaces... must also be policed and constrained' (ibid 167). In each of these cases, Razack demonstrates that within the broader space of a settler colonial state, the Indigenous subject takes a space of racialised violence with him or her - whether it is to alleyways, city outskirts or rural areas. This space of racialised violence, Razack argues, is in turn constitutive of white settler space. Discussing the spatiality of settler colonialism in Australia, Suvendrini and Pugliese similarly argue that foundational and ongoing white violence against Indigenous bodies - violence minimised and justified by Australian law - constructs national space today (2011).

Feminist scholarship emphasising the importance of the public/private spatial divide also productively complicates the relationship between law, space and the subject. Carol Sanger explains how the introduction of the motor car in the United States in the early 1900s failed in its promise to increase the free and safe movement of women through public space (2001). Although cars increased women's mobility in the physical sense of enabling women with cars to go further and faster in a vehicle that insulated them from direct contact with the outside, the car also increased women's domestic duties because they became responsible for the delivery of children, husbands and goods (ibid 36). The layout of modern cities and the gendered division of labour that it supports - with women being responsible for domestic life in the suburbs and men performing paid work in the city - is dependent on the existence of the car (ibid 35).⁴ The car also became a site where rape and other violence against women was an increased danger (ibid 37). So while the car offered women a newfound mobility that could take them greater physical distances, in a shorter period of time and with a kind of new safety and social acceptance, it also worsened both the gendered division of labour and the gendered vulnerability to violence in an enclosed space with male acquaintances. Women could move further and faster, but their space of gendered violence and oppression went with them. And the gendered, mobile space of the car in turn contributed to the construction of the city space, including its various spaces of sexual violence. Indeed, the murder of Pamela George discussed above is demonstrative of the mobile space of sexual violence against women facilitated by cars.

⁴ This argument is consistent with feminist geographers who have pointed out the spatial construction of masculine city and feminine domestic home (see Massey 1994, McDowell 2011).

In the cases discussed by Razack and Sanger, law was productive of subjects who were mobile, but always spatialised in a particular way despite their physical location. So the woman in the car could move from place to place but would take her gendered space with her, including her vulnerability to being sexually assaulted; and the Indigenous subject could move out of reserves and out of racialised parts of the city, but a space of violence always went with him or her. The movement of this conceptual and social space attached to the subject has physical effects.

Understanding dynamic space: 'We don't cross borders, borders cross us'

Legal geography, critical race and feminist engagements with law and space suggest an understanding of space as consisting of multiple, dynamic realities; realities which affect different subjects in different ways. Geographer Doreen Massey's work on space and place offers a theorisation which accounts for these differences. Instead of thinking of places as bounded areas, Massey imagines them as 'articulated moments in networks of social relations and understandings', where most of those relations and understandings are constructed on a scale that extends much further than what for that moment is defined as the place itself (Massey 1993: 66). This is place as a collision or intersection within multiple networked systems rather than as a discrete and permanent site – it is a *moment* because it is temporary rather than permanent, and it is *articulated* because it is only when that moment is named as place that it acquires meaning as place. Because the same moment will be experienced and articulated differently by different subjects, this understanding of place also accounts for the same place having mismatched and even contrasting meanings for different subjects. The place that is 'the British Border' at Heathrow Terminal 4 airport on any given day, for example, is a familiar workplace for UK Border Agency officers, a congested but still fast-moving queue for EU-passport holders, and a very physical barrier - a place of life and death - for a refugee who has just landed with the hope of being granted asylum. The meaning attached to place is always temporary and subjective.

Place, for Massey, is thus a point or moment within the much larger and ever-evolving dimension of space. As Massey argues, space is not 'already there', but is constituted through interactions on an ongoing basis (Massey 2006: 9). As it is the product of interactions, space is necessarily multiplicitous rather than unitary, and as interactions are themselves processes rather than conclusions, space is always under construction, it is never finished or closed (ibid). As Massey puts it, space is 'a simultaneity of stories so far' (ibid). On this understanding, space and place are intimately connected to the subjects who move in and through them, and to the modes of regulation and norms of behaviour, such as those articulated and enacted through law. Space is constantly produced and reproduced in part by the subjects who move through it.

This understanding of space and place allows for spatial entities such as nation-states and prisons to be understood beyond their bounded physical landmass. Nation-state borders, as Etienne Balibar has argued, are not simple lines of demarcation, but complex institutions (2002: 84-85). Bridget Anderson, Nandita Sharma and Cynthia Wright argue that borders are the mark of a relationship based on deep divisions and inequalities between people (2009: 6). Borders, they argue, 'follow people and surround them as they try to access paid labour, welfare benefits, health, labour protections, education, civil associations, and justice' (ibid). Or as Sydney activist group Cross Border Collective put it,

'we don't cross borders, borders cross us'.⁵ Border control regimes today operate upon particular individuals in physical locations far from the physical perimeters of nation-states. This idea of the border as an institution rather than a line calls for a complication of any idea of the nation-state as a bounded physical entity. Inderpal Grewal has powerfully argued for an understanding of 21st century 'America' as a nationalist discourse, one that produces different kinds of agency and diverse subjects, both inside and outside the territorial bounds of the US (2005: 2). Although this discourse of America is a nationalist one, it is produced through and productive of cultural, political and economic practices that are transnational, evolving through networks which reach well beyond the boundaries of the nation-state (ibid 198). Grewal argues that the meaning of being an American is not defined through legal citizenship but rather through participation in consumer citizenship – cultural inclusion through consumptive participation in the free market capitalist economy (ibid 8-10). As well as complicating the idea of the place that is America today, Grewal's analysis demonstrates that the realities of both identity production and space-subject connection are far more complicated than is assumed in laws relating to citizenship and migration.

Thinking through the related production of subjectivities through space and law goes some way to understanding the landscape of electronic tags and borders on every street. The surveillance and visa-checking measures imposed by law not only shape the space in and through which legal subjects live, they also produce new categories of subjects: subjects who experience prison boundaries and nation-state borders no matter their physical location. Massey's understanding of place as articulated moment - a moment which will be experienced differently by different subjects - helps explain how what is to most people a relatively inconspicuous plastic ankle tag is to DD a mobile prison, and what is to most people a house for rent is to an irregular migrant in England today a national border. This spatialisation of subjects can make those subjects vulnerable to particular kinds of violence (eg. physical incarceration, deportation, police brutality). Balibar's and Anderson et al's theorisations of borders as complex institutions and Grewal's theorisation of transnational America help in understanding the on-going production of space and subjectivities through political and legal processes. But if subjectivities are produced through space and law, how can we understand the boundaries of the subject? Where does the subject end and space begin?

The space you take with you

In addressing the question of where the subject ends and space begins, I have previously argued that it is useful to examine property as a particularly intimate relation between space and the subject, a relation in which the separation between space and subject can become blurred. Specifically, I have argued that property can be understood as a spatially contingent relation of belonging which is constitutive of the subject (Keenan 2015). As well as property ownership, belonging can signify membership of a community, a relationship to place, and/or a behaviour or identity that 'fits' (Cooper 1998). Nira Yuval-Davis et al

⁵ Cross Border Collective, Sydney (<http://www.crossbordersydney.org>, accessed 16 March 2017). The notion of "We didn't cross the border, the border crossed us" has long been present in Chicana feminist historiography, including Gloria Anzaldúa's *Borderlands/La Frontera: The New Mestiza* (1987): Roberto D Hernandez, 'Sonic Geographies and Anti-Border Musics: "We Didn't Cross the Border, The Border Crossed Us"' in *Performing the US Latina and Latino Borderlands* edited by Arturo J. Aldama, Chela Sandoval, Peter J. García, Indiana University Press 2012: 245.

describe belonging as being about emotional attachment, about feeling safe and/or 'at home' (Kannabiran, Vieten and Yuval-Davis 2006). Belonging connotes a sense of emotional, social and spatial propriety. Davina Cooper considers belonging in two ways: firstly the relationship whereby an object, space, or rights over it belong to a subject ('subject-object'), and secondly the constitutive relationship of part to whole whereby attributes, qualities or characteristics belong to a thing or a subject ('part-whole') (2007: 629). Both types of belonging implicate social relations and networks that extend beyond the immediate subject and object of property; property is instead understood as 'a set of networked relations in which the subject is embedded' (ibid 636). In order to constitute property, I argue that the set of networked relations to which Cooper refers, must not only include one of belonging, but also be structured in such a way that the relation of belonging is conceptually, socially and physically supported or 'held up' by space (Keenan 2015). Whether the relation of belonging is one of ownership (subject-object belonging), or of membership (part-whole belonging), space must hold up the relation in order for it to constitute property. Indeed, I argue that ownership and membership overlap. Drawing on Margaret Davies (1999) and Cheryl Harris (1993), I argue that 'having' and 'being' are intimately related and overlapping issues.

While Cheryl Harris argues that whiteness is property in an ownership sense (whiteness as an object that the white subject owns), it can also be understood as property in the membership sense: whiteness as a social category of which the white subject is a part. Whiteness is a relation of belonging; white people can enjoy the privileges of whiteness because they *belong to* the various social relations and networks that constitute whiteness. As sociologists such as Ruth Frankenberg have shown, those relations and networks are complex and far-reaching. Whiteness, like all identity categories, is socially constructed through historically specific fusions of political, economic and other forces (1993). And whiteness in turn 'constructs daily practices and worldviews in complex relations with material life' (Frankenberg 1993: 228). That is, whiteness is productive of subjectivities. Understanding property as belonging helps to illuminate how a subject's location within and relationship to physical and social space can affect who that subject is. Belonging is a material relation that connects and can even blur space and the subject such that it can be difficult to determine where one ends and the other begins.

In her work on phenomenology, Sara Ahmed explores the way particular bodies come to be orientated in space, and how space takes shape through having bodies 'extended into it' in particular ways (2007: 11). Looking specifically at race and sexuality, Ahmed argues that these characteristics which are generally described as bodily properties are better understood as spatial orientations. For Ahmed, spaces become contoured by being repetitively oriented around some bodies more than others:

What is repeated is a very style of embodiment, a way of inhabiting space, which claims space by the accumulation of gestures of 'sinking' into that space. If whiteness allows bodies to move with comfort through space, and to inhabit the world as if it were home, then those bodies take up more space.

(Ahmed 2007: 159)

The subject is thus produced as 'white' through the shaping of space. Ahmed argues that 'we do not acquire our orientations just because we find things here or there. Rather certain objects are available to us because of lines that we have already taken' (2007: 21). So although subjects such as the Aboriginal subjects discussed by Razack seem to 'take space with them', they do not do this in the sense that they pick up an original or essential space and carry it with them across from one location to another. Rather, subjects exist in

and are constituted by space – combining with space such that they cannot be easily separated from it, conceptually or materially. Who subjects are, what is materially within their reach, and their vulnerability to violence is therefore constantly (re)determined by where they have been and what has happened around them.

If we conceptualise the ongoing (re)constitution of the space-subject connection which Razack and Ahmed describe as ‘taking space with you’, the questions that then arise are, firstly, what constitutes ‘the space you take with you’ and secondly, how does this ‘taking’ happen? Merleau-Ponty’s *Phenomenology of Perception* offers answers to both questions in his description of the body in motion as inseparable from its previous position in time and space (2010: 162). The body here-now is in a live relation with the body there-then; they cannot be disconnected. Merleau-Ponty writes of the body rather than the subject, but his writing offers a useful way to understand the subject as an embodied and spatial being. For Merleau-Ponty, the body is both the essential mechanism for perceiving space and time, and itself a part of space and time: ‘I am not in space and time, nor do I conceive space and time; I belong to them, my body combines with them and includes them’ (ibid). The body thus takes space with it because it is itself part of space (Keenan 2015: 160). The body *belongs to*, *combines with* and *includes* time and space. The body thus necessarily takes space with it, and is necessarily more than a closed, complete physical entity. For Merleau-Ponty, the space the body takes with it is constituted by where and when the body has come from. The taking of space happens not as a matter of agency but as a matter of spatial structure.

Critical disability scholar Margaret Shildrick argues that Merleau-Ponty’s account of embodiment is ‘effectively coincident with the emergence of the subject’ (Shildrick 2015: 14). That is, the body appears in Merleau-Ponty’s writing as and with the body. This account, Shildrick continues, ‘relies on a sense of both the intercorporeality of our everyday engagements with others... and of the environment itself shaping intentional action’ (ibid). As subjects, we are shaped by our physical interactions with other subjects and with the broader spaces in which we live. Through those physical interactions, we in turn shape those spaces, making them more likely to accommodate us and others materially similar to us. The shaping of space is a political issue, as the kind of space each subject takes with her helps determine not only her access to resources but also her vulnerability to violence. Engaging with Donna Haraway’s provocation ‘why should our bodies end at the skin?’ from her classic *Cyborg Manifesto* (Haraway 1991), Shildrick points out both the impossibility of limiting ‘the human/machine interface’ of conventional prostheses (such as medically produced prosthetic limbs used by people with disabilities) to their intended function, and the contingent and relational process of assemblage in the Deleuzian sense (Shildrick 2015: 21). The embodied subject extends past the bounds of the skin, making, unmaking and varying herself as she moves through life as a hybrid of organic and non-organic components. This reality debunks liberal conceptualisations of subjects as fully bounded bodies, separate and distinct from each other and from their environments.

While Shildrick’s analysis is concerned with the normative standards used to judge particular bodies and subjects as less whole or complete than others because of disability, her analysis is also useful in understanding the inseparability of subjects and spaces more broadly. Critical disability scholars such as Shildrick show that embodied subjects are hybrids - combining with, separating from and being both enabled and obstructed by biomedical prosthetics and physical environments (Pothier and Devlin 2006, Goodley 2007). This hybridity is not only true for subjects whose bodies are ‘disabled’ - anyone who has taken medication, had a tooth cavity filled or ascended via an elevator is, to some extent, a cyborg: embodied subjects who combine with technology in such ways are each

'unnatural' to some extent. There is no purely organic, bounded embodied subject who lives in isolation from others and from the space in which it exists.

Nor is the hybridity of the embodied subject limited to issues of ability. Race, gender and other markers of belonging are also materialised, on an individual level, through intimate interactions between the body and that beyond it. Living in a particular place, wearing particular kinds of clothing or consuming particular kinds of food can operate as signifiers of racial difference, even though they are not part of the body (Lentin 2008). Structures of oppression such as able-ism, racism and sexism operate spatially. As Sara Ahmed argues, racism can operate as an obstructive 'brick wall' built up by history, a wall that can appear in different places and times, but only in front of particular subjects (2012). The interaction between the subject and the 'brick wall' - the process of coming up against the 'brick wall' racialises (or in other contexts, disables or genders) the subject. The 'brick wall' of racism is a space that many subjects take with them as they move, whether the journey is across the world or across the road. While race is a social construct originating in European colonial thought (Augstein 1996), it is also a structure of oppression that is reproduced on an everyday level by laws and norms that restrict the physical spaces particular subjects can safely occupy. The category of race and the racist environments that maintain it are produced through the repeated operation of 'brick walls' which hinder the paths of particular subjects and let them know they do not belong. Embodiment or, *the kind of space you take with you*, is produced through the subject's interactions with the material and social world. Taking space with you can thus best be understood as the process that every embodied subject goes through as she moves through life, combining and connecting with, enabled, obstructed, and to an extent defined by the heterogenous multiplicity beyond the skin.

Below, I explore the process of taking space with you in the context of electronic tags and the 'right to rent' requirement set out in the Immigration Acts of 2014 and 2016.

DD v Secretary of State for the Home Department

A new kind of penal subject

The electronic tag is a technology which encapsulates the material way in which law can combine space and the subject, producing bespoke landscapes of regulation for tagged subjects wherever they may travel, and in turn constructing the hybrid subject. While prosthetic limbs combine with bodies to enable those bodies to do what they otherwise cannot, electronic tags combine with bodies to prevent them from doing what they otherwise could. Electronic monitoring technology such as tags is defined by Nellis and Rossell as 'a form of remote surveillance control, a means of flexibly regulating the spatial and temporal schedules of an offender's life' (2011, cited in Nellis, Beyens and Kaminsky 2013: 4-5). Originating in the US in the 1980s, electronic monitoring is now used in over 30 countries worldwide (ibid 1). First introduced in Britain in 1988, electronic tagging was seen as a way to reduce prison numbers while still punishing the offender, and to cut public costs involved in the criminal justice system by introducing a scheme that would be maintained by private providers (Mair and Nellis 2013: 65). According to criminologists Nellis, Beyens and Kaminsky, the intended effect of monitoring is to remind the offender that he is being watched, 'and that his compliance with the spatial and temporal regulations that the court or prison has imposed on him will be relayed to a judicial or penal authority, with the possibility that he may be 'breached' and subject to a more severe penalty' (2013: 5). While the ankle tag is the physical element that attaches to the subject, the electronic monitoring process involves a range of different technologies and apparatuses including charge points and central monitoring centres. The subject is made

aware that the tag and related technology will be used to monitor his location at all times, so positioning relative to any zones that he is either confined to or prohibited from entering can be enforced upon him without putting up any physical barriers, or changing the space for other subjects.

Because those who are subject to electronic monitoring experience a level of punitive surveillance that is distinct from both probation and community service, Nellis, Beyens and Kaminsky argue that electronic monitoring 'has created a new category of penal subject' (2013: 1). The electronically tagged subject is not a prisoner in the traditional sense because he is not physically incarcerated in an institutional building dedicated to the confinement of those who have been convicted or charged with a crime. Indeed the physical tag itself is fairly innocuous as an object. In DD's case, the tag was 'slightly larger than a sports watch... mounted on a single band of soft material which can allow a sock to be worn beneath it but is small enough so that it cannot slip off the foot... it is waterproof' (DD at [26]). But the physical tag attached to the subject's ankle, in combination with the subject's knowledge of the physical areas to which he is confined at particular times *and* of the constant monitoring of his location through the tag means that the subject is spatially confined and subjectively disciplined and punished. In these ways, the tagged subject is spatialised as a prisoner despite his location outside of prison. He becomes a hybrid of his organic body and the networked inorganic material which is attached to him, his body extending past the skin and his consequent position and capabilities in the world defining his subjectivity.

To continue the Supreme Court's description in DD, the tag

transmits a signal which can be picked up by a monitoring box which should be kept on an immovable item in the appellant's residence. Outside the residence the tag records its location. At all times the information is relayed to the monitoring company. Thus it can indicate, for example, if the appellant were to enter any area which he was prohibited from entering. In order to comply with the obligation to keep the tag charged, the appellant must attach it to a charging unit which is connected to a mains socket.

(at [26]-[27])

The set of networked relations in which the tagged subject is embedded burdens him with a disabling property - the tag and its wider technology dictate where the subject belongs and the suspect/offender group to which he belongs. The body of the subject combines with the tag, becoming a hybrid, his existence as a tagged subject an assemblage of actions (both his own and others'), rules, systems, negotiations, tests, technicians, beliefs and expectations. Like Shildrik's description of the Paralympic athlete's body, the body of the tagged subject neither ends at the skin, nor expresses solely his incorporation of the tag - his tagged body can only be understood in terms of its permeability and of the ongoing process involved with producing it (Shildrik 2015: 20). Echoing Balibar's and Anderson et al's understanding of the border, the 'walls' that confine the tagged subject are not simple lines of territorial demarcation, but complex institutions. Those institutions are productive of both a space of confinement and regulation, and a surveilled and punished subjectivity. Like Ahmed's 'brick walls' which block the path of racialised subjects (while white subjects walking the same path continue smoothly on) are not made of actual bricks. Nonetheless, the walls that confine the tagged subject prevent that subject from going to particular places and from being and thinking in particular ways. These walls are produced through that subject's own embodied subjectivity.

The 'new kind of penal subject' produced by tags is one which invokes, to a remarkable degree, the subject's own mentality in his spatial confinement. The tagged subject exists in and is constituted by the space of the tag and its network - what is around his ankle and in his head determines what is materially within his reach, his vulnerability to actual imprisonment, deportation or other state sanction and, to a significant extent, who he is. While he wears the tag, no matter his physical location, he is always in a particular place in Massey's sense - in an articulated moment, an intersection within multiple networked systems rather than a discrete and permanent site. For DD, the tag and its associated Terrorism Prevention and Investigation Measures notices ('TPIM') requirements of regularly charging at a mains point and having very limited access to electronic communication devices in his home contributed to his growing psychosis and acute paranoia. He and his family became socially isolated because of the limitations on DD's movement, all communication from their home, and their feelings of humiliation and sadness at the TPIM. DD was obsessively worried about not properly charging the tag and about inadvertently damaging it. While DD's severe insomnia, self-harm and suicidal feelings were extreme, his belief that the tag was there to punish him, that it contained a camera and a bomb and that voices and noises emanated from it are an extension to a psychotic level of the compliant mentality which the tag is designed to create. Indeed, without the subject's own knowledge that he is constantly being monitored and will be punished if he breaches his spatial boundaries, the tags would not work. Whereas walls constrain the incarcerated prisoner and the panopticon invokes the incarcerated prisoner's own mentality in controlling what he does, the tagged subject's mind and body constrain his behaviour and location.

The use of electronic tags for the monitoring of terrorist suspects in Britain was introduced in 2005 pursuant to the Prevention of Terrorism Act (ibid 73). Under the 2005 Act, the Secretary of State could make an individual subject to a Control Order if he had 'reasonable grounds for suspecting' that that individual is or had been involved in terrorism-related activity (s2(1)(a)). Control Orders were thus grantable upon a standard of proof lower than both the criminal 'beyond reasonable doubt' and the civil 'balance of probabilities', and allowed restrictions to be placed upon the movement, activities, social relations, and life choices of the controlled person, who could be required to wear an electronic tag at all times (Zedner 2007).⁶ Control Orders were criticised for damaging the basic presumptions of criminal procedure, and for imposing considerable psychological burdens on those subject to them (Ibid). Lucia Zedner noted that many individuals subject to Control Orders had poor mental health histories, and that

Control Orders leave their subjects unable to know the evidence against them; subject to extensive and indefinite restrictions upon their liberty and their quality of life; and powerless to challenge the grounds for their imposition. Coupled to these burdens is the knowledge that, in some cases at least, attempts are being made to return them to countries where they may face prosecution or risk human rights violations, including torture or even death.

(2007: 181)

Control Orders were replaced by TPIMs, in 2011. While TPIMs were intended to address some of the civil liberties concerns raised in relation to Control Orders, their restrictive

⁶ This discussion relates to non-derogating Control Orders. Under the 2005 Act the Secretary of State could also make derogating Control orders, which required the civil standard of proof and effected a deprivation of liberty on the controlled subject: see Zedner 2007.

measures and low standard of proof remain (Walker and Horne 2012). Significantly, TPIMs can still require subjects to wear an electronic tag at all times, and can still restrict the possession and/or use of electronic devices such as mobile phones. It was pursuant to the 2011 Act that, in October 2012, DD was placed on a TPIM.

Weighed down by history

How did DD arrive in his position of suffering psychosis and paranoia from a TPIM tag around his ankle? Born in Somalia in 1976, DD came to Britain in 2003 and was granted refugee status. As set out by the Supreme Court, DD 'had when 14 or 15 experienced the murder of his uncle, aunt and two cousins and their bodies had been left to rot in his family home since the warlords responsible for their murder would not permit them to be buried' (at [42]). He left Somalia and returned in 2003, after which 'His father, older brother and brother in law were murdered in front of him and he was kidnapped and held for ransom by the militia men who had been responsible for some two weeks' (at [42]). Upon his release he came to Britain. 'Following the deaths of his brother and mother in 2007', the court continues, 'his mood lowered and he began to hear noises and voices associated with his experiences' (at [42]). In 2008 DD was arrested and charged with two offences under the Terrorism Act 2006, one relating to the dissemination of terrorist publications and one relating to receiving money knowing or having reasonable grounds to suspect it would be used to terrorism (at [13]). He was acquitted in 2009 (at [18]), but was put on a TPIM in 2012 (at [1]) because the Security Service assessed that despite his acquittal, that DD was 'a supporter of the Somali based terrorist organisation Al-Shabaab and had...been involved in sending funds and equipment to support its activities and radicalising, recruiting, assisting and funding individuals to travel to Somalia for terrorist related activity. He had contributed to, indeed had been involved in setting up, extremist websites. He raised money for Al-Shabaab and intended to travel to Somalia for terrorist related activity purposes' (at [8]).

Al-Shabaab, which had become a proscribed terrorist organisation in Britain in 2010, emerged in 2006 out of the latest wave of violence and unrest that has plagued Somalia since Italian and British colonialism (Gartenstein-Ross 2009). It was earlier formations of violence and unrest that forced DD to leave Somalia in 2003, and which remain with him today in what has been diagnosed as PTSD. Ahmed writes that our spatial orientations and what is materially within our reach do not happen by chance, but as a result of 'lines we have already taken' (2007: 21). In DD's case, those lines include the complex post-colonial conflicts in Somalia, where he encountered extreme and enduring violence at close proximity and on multiple occasions, and from which he attempted to flee. Though not convicted of any offence, DD's historical trajectories and encounters with law have positioned him as belonging to a space of violence, constant suspicion and pre-crime, embodying a threat that must be pre-emptively stopped and punished. Through the tag, law has produced a landscape in which the subject is physically, psychically and juridically inseparable from his surrounding space. Combining with the tag, DD's body is literally weighed down by his history. Until the Supreme Court decision ordering it be removed, the tag and its associated processes combined with DD's body to form a hybrid which took a space of imprisonment - complete with 'walls', state sideline and surveillance - with him wherever he went.

The Immigration Acts 2014 and 2016

A new kind of bordered landscape

While electronic tags create a landscape in which 'brick walls' exist for particular subjects by physically attaching a networked device to the bodies of those subjects, the Immigration Act 2016 (building on the Immigration Act 2014) creates a landscape in which 'brick walls' exist for particular subjects by creating administrative barriers. As part of the government's plan to create a 'hostile environment' for irregular migrants in Britain, the Immigration Acts of 2014 and 2016 introduce a scheme of regulation which creates a landscape in which a subject's immigration status acts as a physical barrier to safe housing and other basic needs. Whereas electronic tags produce landscapes in which subjects take space with them wherever they may travel by physically attaching to bodies within networks of electronic surveillance and associated rules, the Immigration Acts achieve similar results by introducing regulations on the behaviour of those with the private property power to spatially exclude, i.e. landlords. To use Andreas Philippopoulos-Mihalopoulos' terms, 'the lawscape emanates from every body... human, natural, artificial bodies come together in determining and being determined by the law' (2015: 69). The particular 'lawscape' of the Immigration Act's brick walls emanates only from particular racialised bodies: they take the space of the border (or for Ahmed, the 'brick wall' of racism) with them wherever they move. While a subject's visa status has traditionally been checked at the border, the Acts introduce a range of 'in-country' immigration status checks, meaning that those who provide not only housing but also banking services, drivers' licences and marriage will be required to check the immigration status of applicants before providing them with the relevant service/access. Should landlords and other providers fail to check applicants' visa statuses or should they provide housing to a subject without a valid visa, they will be liable for a civil penalty (Immigration Act 2016 s39).

Human rights group Liberty describes the new immigration checks as 'gateway requirements' for access to basic services (Robinson 2014), the Asylum Support Appeals Project described them as 'hurdles' (2017), and the Church of England predicted they would create 'a border in every street' (Schatzberger 2015: 399). The in-country 'gateways', 'hurdles' and 'borders' that these groups refer to are, like Sara Ahmed's 'brick walls', not simply metaphorical. For subjects who have had their claims for asylum rejected, who have overstayed their visas or who for other reasons do not have either EU citizenship or a valid British visa, these regulations constitute material barriers to physical spaces. These barriers exist only for particular subjects, so like electronic tags, the Act produces landscapes of bespoke regulation not by building physical walls but by ensuring that particular subjects are out of place and vulnerable to potential deportation no matter their physical location.

Many predicted that landlords will simply opt to rent to tenants with "British-sounding names" so as to avoid the risk of contravention and the need to perform extra paperwork, and a 2017 report into the effect of the Act confirms this to be the case (Patel and Peel 2017). As well as creating a 'hostile environment' for irregular migrants, the combining of private property and border controls reproduces a national space in which all non-white subjects seeking rental accommodation are liable to be spatialised as aliens, taking a space of exclusion and vulnerability with them wherever they go. In a direct application of Ahmed (2007) above, 'whiteness allows bodies to move with comfort through space, and to inhabit the world as if it were home' and British space in turn becomes contoured around white bodies. Those who come up against the 'brick wall' of right to rent cannot move with comfort through space; instead they are delayed and halted in their attempts to inhabit the world as home. This interaction embodies the delayed/halted subject as racially other. Every halting interaction a subject has with the internal British border produced by the Immigration Acts positions the subject as outside the (white) British space of belonging. The space that the irregular migrant - and those who resemble her - takes with her as she travels within Britain is a process of constant negotiation with borders. This

process not only determines the subject's identity but also literally restrict the physical spaces in which she can safely exist. Her body does not end at the skin because a border appears before her, in every street. As Jon Burnett argues, the aim of the Immigration Act is to make life intolerable for undocumented migrants so as to force them to leave - their destitution is used as a government tool of deportation (2016: 8). Like electronic tags, the embodied subjectivity produced by the right to rent requirements becomes a key component in the subject's spatial confinement.

Weighed down by history II

Race is, as Stuart Hall argued, a floating signifier: it is not a biological truth but rather a discursive system of human classification, a system in which meanings can change over time (1997). Understanding how particular subjects have come to be embodied as white or non-white requires an understanding of the historical production of Britain as a spatial entity. This is a particularly complex history because, as Kojo Koram has argued, Britain 'has never really existed as a nation, it has only really functioned as an empire' (Koram 2016); an empire which sought to extend its borders to encompass as much of the world as possible. As Nadine El-Enany sets out, British immigration law has long coincided with the crumbling of empire, operating as a 'brick wall' for particular subjects, and producing categories of race in the process (El-Enany forthcoming). In an attempt to keep the empire together, the British Nationality Act 1948 was passed, granting British citizenship to all nationals of Commonwealth countries and British colonies - meaning that there were some 600 million British citizens (ibid). As El-Enany explains, when dark-skinned British citizens began arriving in Britain throughout the 1950s and 60s, increasingly restrictive immigration legislation was passed to limit their presence. The Immigration Act 1971 restricted the right to enter and remain in Britain to those whose parents or grandparents were born in Britain (ibid). While not framed in explicitly racist language, the law had explicitly racist motives. It effectively made it more difficult for non-white British subjects to come to Britain, and this was its intended effect: coming on the heels of white supremacist Enoch Powell's 1968 'rivers of blood' speech, and growing racist and xenophobic sentiment among British voters (ibid, see also Gilroy 1987). Unless they had the requisite bloodline to Britain stretching back to a time when the motherland was overwhelmingly Anglo-Celtic, citizens of Britain's remaining colonies and those of Commonwealth countries had to apply for permission to be cleared to enter Britain.

The 1971 Act thus constructed an initial 'brick wall' for some British subjects, creating them as a racial category in the process. This wall operated at or before the point of entry into the actual British landmass. As Gina Clayton argues, the entry clearance system is part of the government's plan to create a bureaucratic 'security ring' around Britain (Clayton 2012: 211). Entry clearance requirements impose an administrative border on subjects born in particular places, a border that extends all the way into their home states and areas they might pass through on the journey to Britain. The extension of the border well outside territorial boundaries of the nation-state has been referred to as the 'external border' (Van Houtum 2010). The operation of the British external border in Calais under the Sangette Protocol⁷ for example enables British border officers to prevent people from coming to Britain well before they reach British territory. The external borders of Britain and other EU countries are policed by FRONTEX, which effectively enforces EU borders in locations across the world but most notably in the Mediterranean and along the northern and

⁷ The Sangette Protocol was agreed in 1991 between Britain and France.

western African coast where boats might attempt to enter EU territorial waters. Tens of thousands of people have died trying to cross the EU's external borders (ibid: 968).

While the 1971 Act and provisions such as the Sangette Protocol produce an 'external border' for Britain, the new Immigration Acts produce 'internal borders', but they follow the same logic of ensuring the British islands remain dominated by those with Anglo-Celtic roots. Subjects whose parents and grandparents faced the 'brick wall' of entry clearance requirements must now also expect to come up against brick walls when trying to rent a home or access other services within Britain. Echoing Balibar's and Anderson et al's understanding of the border, borders are complex institutions that follow particular subjects. The subject *belongs to*, *combines with* and *includes* time and space - in this instance, the time of colonial history and the spatial reality of the border, which travel with her as she looks for a home, along every British street.

Conclusion

In this article, I have developed the idea of 'taking space with you' in the contexts of electronic surveillance tags and the Immigration Acts of 2014 and 2016. I have argued that there is a complex and intimate relationship between law, space and the subject, a relationship that cannot be understood on the law's own terms or through liberal frameworks of individual subjects whose bodies end at the skin. To begin to understand the landscape of electronic tagging and the 'right to rent' rules requires thinking through the historically produced networks and hybridity which define and limit subjects and spaces. Legal geography demonstrates connections between law and space, and critical race theory and critical disability studies provide theoretical frameworks to understand the intimate, constitutive relationship between space and the subject. In particular, Margaret Shildrik's discussion of embodied subjects as hybrids and Sara Ahmed's description of 'brick walls' which block the paths of racialised subjects helps to illuminate the complex ways in which law constructs subjects today, subjects who take space with them as their bodies combine and connect with that beyond the skin in a multiple ways.

The space that DD - a Somali refugee suspected of involvement with terrorism - took with him while the TPIM demanded that he wear an electronic tag confined him to a particular physical and social space, one that was inescapable and which drove him to psychosis. 'Brick walls' appeared before him - and to an extent, before his family - while the rest of the world went on around him. Electronic tags create a landscape in which 'brick walls' exist for particular subjects by physically attaching a networked device to the bodies of those subjects. While the barriers put in place by the 2014 and 2016 Immigration Acts do not operate directly upon the body in the way that electronic tags do, they produce a similarly spatialised subject, one who encounters a border in every street. As technology and bureaucracy continue to grow, theorists grappling with law must take seriously the complex materiality of 'identity' and belonging, the on-going weight of history and the spatiality of the subject. For while these landscapes are oppressive and dangerous, the dynamic multiplicity of space means that it is possible to reshape 'Britain' such that the subjects of empire and their children can finally leave the resilient and sticky space of colonially built brick walls behind.

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