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HETEROTOPIAS OF THE ENVIRONMENT: LAW'S FORGOTTEN SPACES

Andreas Kotsakis*

'We do not live in a kind of void, inside of which we could place individuals and things'

-M. Foucault

A spatial paradox dominates environmental law. As a discourse employing a host of geographical terms, such as territory and jurisdiction, and advocating the need for spatial transformation as an important component of the required change in individual and collective conduct, it nevertheless refuses to venture beyond the limited Cartesian spatiality of quantifiable, fixed on a map, empirical, 'absolute space'; in environmental discourse, the external landscape to social action, the precarious background to humanity's folly, the empty canvas to which environmental law gives shape.

At first instance, this spatial paradox may be easily attributed to an inherent positivism born from the descent of environmentalism from within the natural sciences and more specifically biology, as well as its later espousal of economic doctrines. At the same time, however, the paradox is equally a product of legal thought itself. The struggle for recognition of environmental law as a separate, autonomous legal field might have left a residue of disciplinary anxiety, which serves to accentuate the requisite 'assertion of legal closure'¹ that all legal fields engage in. This closure appears as foundational for the creation of an autonomous, self-sufficient and clearly delineated legal 'territory' or domain, with its own internal logic, structure and principles that lift it above the fluctuations of politics and the uncertainties of social norms. For a legal field, such as environmental law, not only struggling to establish itself, but always straining to keep at bay the highly value-laden and politically charged social fields of environmentalism and political ecology, the adoption and staunch defence of legalistic characteristics, such as rational structure, formalism and objectivism,² are conditions sine quae non for its constitution.

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¹ Blomley 1994:7

² Blomley 1994:9

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These characteristics enable environmental law to 'survive' by mapping out its legal domain, with an internal discursive structure to guarantee coherence, and by delineating strict boundaries that shelter it to a certain extent from political interests, value judgements and power struggles that take place within environmental discourse. This is especially the case when environmental law touches upon and ventures into highly politicised areas such as international aid and development, demography and population control. When environmental law is under siege, it falls back on its 'fort' of legal rationality and objectivity from which it also mounts 'attacks', aiming to prove law's practicality, social usefulness and necessity. The strong base of the legal domain allows for the 'rest' of social space to be controlled and shaped by legal practices like an empty canvas.

I. The Space of Critical Environmental Law

At the very moment of environmental law's extension into the field of international law, the limitations of the spatial paradox are exposed. Existing spatial arrangements are proving problematic and insufficient, especially since the transboundary aspect of most environmental problems equates success in environmental law with the achievement of global consensus and global impact on the environment. Thus, the effectiveness of environmental law largely depends on its globalisation, but this aim increasingly cannot be reached in the neoliberal economic sense of exporting a single, universal model. A succession of counter-narratives have contested the globalisation of Western environmental ideas and constructions,³ arguing for more pluralist ethics and inclusive practices manifesting geographically as a heterogeneous multiplicity of social and cultural emplacements capable of being adapted according to contextual narratives of locality, identity and difference.⁴ The cartography of the legal domain, with its emphasis on coherence, isolation and fixed space and its association with 'Western metaphysics and its tribe of grids, binaries, hierarchies and oppositions,'⁵ cannot accommodate this heterogeneous mosaic of differently scaled and marked maps, as persons and things resist being arranged according to a fixed Western topology.

³ A small sample of such counter-arguments can be found in Guha 1989; Lohmann 1993; Sachs 1993; Guha and Martinez-Alier 1997; Escobar, Rocheleau et al. 2002; Martínez Alier 2002; Escobar 2004

⁴ For some examples of these new formulations see Agrawal 2005 (India); Neumann 2002 (Africa); Li 2007 (Indonesia); for a more developed proposal of a 'place-based politics of difference' in relation to Latin America and derived from Colombian experience see Escobar 2008. In addition, these nominally anthropological studies are quite interesting from a methodological perspective, as they combine critical theory, regional and local ethnography and practical politics into a rich, transdisciplinary tapestry for examining environmental issues and conflicts.

⁵ Genocchio 1995:35

This introduction is already filled with spatial metaphors, which further attest to the centrality of spatiality within legal thinking. Nevertheless, it is important not to confuse such counter-narratives that seek alternatives to Western modernity -by way of seeking alternatives to environmental government- with the simple attempt to finely balance the brutality of globalisation from above with the romanticism of localisation from below, a binary formulation already under examination, at least within socio-legal circles.⁶ From this narrower socio-legal studies perspective, the engagement with space is a geographical concern about how we can better understand law contextually and 'by reference to its place and relationship to economic, political, and ecological systems.'⁷

Instead, the critical legal project has often been connected with a search precisely for alternative articulations that do not ignore the heterogeneous spatiality of law. It does so by opposing itself to the perceived need for legal closure: 'the drawing of the conceptual boundary of law and the hoisting of the flag of legal theory over the terrain is not an innocent act.'⁸ Once this project ventures into the field of environmental theory and political ecology, this articulating task for critical *environmental* law becomes even more complex: weaken the walls separating the legal domain, situate law in its geographical, historical and social context, while at the same time acknowledging the social and historical construction of nature.⁹ In many ways, the starting point of such a critique would be that environmental law has failed in its objective of raising itself above the ethical, political and cultural fray over nature and the environment. In addition, the spatial paradox of discussing geography while ignoring spatiality has exposed a 'double fault' in environmental law: not only does it consider nature as the 'inert background for the unfolding of the human saga,'¹⁰ but also it has appointed itself as the sole cartographer of the background and arbiter of the lopsided saga. In other words, environmental law must open the gates of the meticulous fort it has built for itself and wander the sprawling streets, or slowly wither away inside.

⁶ See Lee and Stokes 2009 and the rest of the special issue on globalisation and localisation of the *Journal of Law and Society*, 36(1).

⁷ Holder and Harisson 2003:3

⁸ Blomley 1994:11

⁹ 'Every generation writes its own description of the natural order, which generally reveals as much about human society and its changing concerns as it does about nature.' (Worster 1994:292) This 'inter-generational', historical aspect can be extended to the present, 'intra-generational' social sphere. See Cronon 1995; Hannigan 1995 For a Foucaultian perspective Darier 1999

¹⁰ Escobar 2008:29

Twenty-five years ago, Lyster discussed the danger of 'sleeping treaties' in *International Wildlife Law*.¹¹ Ignoring the spatial turn in social theory today entails ignoring a host of narratives regarding the deficiencies and injustices of environmental law as an instrument for the arrangement of the socionatural world according to Western modernity. This will result in a sleeping field, starving itself to death on account of its irrelevance. Therefore, instead of an analysis that focuses on constructing a coherent internal structure, indeed an analysis that is always 'self-conscious' and that seeks to rectify the inadequacy of the boundaries of environmental law as an autonomous legal field; instead of such an analysis, and in an attempt to construct a porous relationship between law and society, I propose here an analysis that allows and encourages environmental law to internalise dispersion, discontinuity and difference.

In this task set out for critical environmental law, the often overlooked Foucaultian geography, and more specifically the concept of heterotopia with its spatiality of difference, can make a productive contribution. The following section discusses the concept of heterotopia, linking it with Foucault's work and clarifying some difficulties encountered in its application to the legal and environmental fields. The final section applies this heterotopology to three specific spaces that have, at times, enjoyed increased attention as the defining sites for the implementation of environmental law, namely the natural reserve of Western environmentalism, the local community of participatory development and the ethno-botanical institution encouraged within the biodiversity discourse.

II. Finding Heterotopias

Understanding space as the product of constantly reformulating relations amongst sites,¹² Foucault distinguishes both heterotopias and utopias as 'sites... that have the curious property of being in relation with all the other sites, but in such a way as to suspect, neutralise, or invert the set of relations that they happen to designate, mirror or reflect'.¹³ However, heterotopias are the dark underbelly of utopias. Utopias, 'sites with no real place',¹⁴ reflect, mirror, accentuate, designate and ultimately justify choices, preferences, laws and society itself in their ideal, perfected and flawless forms. They represent totality, completion, coherence, and in some ways efficacy and certainty of purpose. On the other hand, heterotopias are real, 'lived in' places that

¹¹ Lyster 1985

¹² Foucault 1986:23

¹³ Foucault 1986:24

¹⁴ Foucault 1986:24

function as 'counter-sites, a kind of effectively enacted utopia in which ... other real sites ... are simultaneously represented, contested and inverted.'¹⁵ Armed with this peculiar spatial function, heterotopias expose and oppose, invert and divert, disassemble and upset legal and political choices by casting their preferred spaces in a different 'light'. They represent dispersion, uncertainty, discontinuity, difference and, ultimately, impossibility. Foucault briefly examines a number of places that can qualify as heterotopias: parents' bed, garden tent, boarding school, rest home, psychiatric hospital, cemetery, theatre, museum, festival, and the heterotopia *par excellence* of the ship. 'Heterotopology' then becomes a general 'systematic description of these different spaces, of these other places',¹⁶ 'finding out where, how and for whom difference erupts and maintains itself'.¹⁷

The concept enjoyed only a brief surge of interest in the early 90s¹⁸ as part of a rather marginally successful postmodern programme in geography. Its resurrection, therefore, might initially appear a strange choice for constructing a critical enquiry into environmental law. The interest in locating and enacting heterotopias, especially by geographers and architects, is anchored in Foucault's often quoted declaration: 'The present epoch will perhaps be above all the epoch of space. We are in the epoch of simultaneity: we are in the epoch of juxtaposition, the epoch of the near and far, of the side-by-side, of the dispersed'.¹⁹ In the end, however, the application of heterotopia did not result in any appreciable or sustained body of research in geography. Two factors seem to affect this 'hesitant' development and patchy history of heterotopias within geography and social theory more generally. First, while widely considered a radical and insightful historian,²⁰ Foucault's contributions to geography have received far less attention and only within a limited group of Anglo-Saxon geographers.²¹ Secondly, the concept itself enjoys a fairly unique and questionable status within Foucault's oeuvre, in that the text outlining the concept – essentially the notes for a lecture given in 1967 – was never reviewed for publication and was first seen at a Berlin exhibition in 1984. The interest in the concept arose after its English translation and eventual publication in *Diacritics* in 1986.

¹⁵ Foucault 1986:24

¹⁶ Foucault 1986:24

¹⁷ Saldanha 2008:2081

¹⁸ The widest use of the concept of heterotopia can be found in the work of Edward Soja, see Soja 1989; Soja 1995; Soja 1996 . For other applications, less tied to postmodernism, see Gregory 1994; Hetherington 1997; Hook and Vrdoljak 2002 .

¹⁹ Foucault 1986:22

²⁰ Veyne 1997

²¹ For more on the notion of Foucault as a 'geographer' see Philo 1992 , as well as Elden 2001; Crampton and Elden 2007

While heterotopias are merely one single tool in Foucault's famous 'toolbox', they cannot be viewed in isolation. It is important that one takes into consideration a number of different texts and sources, for otherwise, the tool might prove to be blunt and ineffective.²² There are in effect three variations of the concept of heterotopia in Foucault's work, along with some inevitable and crucial variations created by the English translations. The first brief mention of heterotopia can be found in the preface of *The Order of Things*,²³ referring to discursive or textual spaces. The starting point of these particular discursive heterotopias is the disorder and the impossibility engineered by a strange classification of animals described by Borges. The second manifestation appeared towards the end of the same year (1966) in a radio broadcast, part of a series titled *Utopie et Littérature*.²⁴ Here Foucault first discusses the possibility of examining a range of different, other spaces created by society to counteract and subvert the dominant classifications. The starting point for these heterotopias that refer to actual social spaces is the temporal and spatial subversive effect created by a variety of children games, through which different interpretations of everyday places and objects of 'adult society' are created. Finally, the third manifestation of heterotopia is also the better known and more widely employed in analyses. The lecture was given to a group of architects in 1967, eventually translated and published into English as 'Of Other Spaces' in 1986.²⁵ This is the text that most analyses of heterotopia draw upon.

It has been suggested that Foucault was never fully satisfied with the analytics of space represented by heterotopology, and largely abandoned it in favour of the geography of knowledge/power presented through the Panopticon of *Discipline and Punish*.²⁶ Evidence for this rejection is the fact that Foucault only agreed to the publication of the heterotopias lecture – without reworking it for publication- as accompanying text to an exhibition and only as late as 1984, seventeen years after the actual lecture and shortly before his death.²⁷ However, to follow Foucault and abandon heterotopias would constitute essentially a rejection of Foucault's work, which he always understood as 'preparing a labyrinth into which I can venture... opening up underground passages, forcing it to go far from itself, finding overhangs that reduce and deform

²² This is the realisation of Peter Johnson's informative analysis of heterotopias, parts of which are adapted for this chapter. See Johnson 2006

²³ Foucault 2002b - original French publication 1966.

²⁴ The radio broadcast from 1966 can be found online at:

<http://foucault.info/documents/heteroTopia/foucault.espacesAutres.fr.mp3>

²⁵ Foucault 1967

²⁶ Philo 1992; Saldanha 2008

²⁷ Johnson 2006:76

its itinerary.²⁸ For it is indeed the case that the attempt to construct a more complete picture of heterotopia as an analytical tool for critical environmental law can lead to the articulation of a subversive critique against established notions of legal implementation and its social effects.

i. Impossible Discourse and Impossible Spatiality

At first instance, one could distinguish between the heterotopia of the preface in *Order of Things* and the subsequent heterotopias lecture on the basis that the former refers to discursive heterotopias, while the latter refers to real places. But this distinction would not be precise enough. More careful examination supports the notion that the preface constructs the origins of heterotopology, which are then to complement the more specialised lecture. In that sense, the heterotopic origins lie at the intersection between discourse and space.

The starting point is Borges' quotation of a Chinese taxonomy of animals (in itself a challenge to Western rationality) as well as the usual kind of animal knowledge that supports the project of environmental law:

'Animals are divided into: (a) belonging to the emperor, (b) embalmed, (c) tame, (d) sucking pigs, (e) sirens, (f) fabulous, (g) stray dogs, (h) included in the present classification, (i) frenzied, (j) innumerable, (k) drawn with a very fine camelhair brush, (l) et cetera, (m) having just broken the water pitcher, (n) that from a long way off look like flies.'²⁹

For Foucault, the Chinese encyclopaedia becomes a symbol of sheer impossibility of perceiving and integrating such an 'absolutely other' system of thought. 'What is impossible is not the propinquity of the things listed, but the very site on which their propinquity would be possible'.³⁰ The juxtaposition of real and imaginary animals engenders a disorder 'in which fragments of a large number of possible orders glitter separately in the dimension, without law or geometry'.³¹

This incommensurable system of classifying animals represents a primary example of a discursive heterotopia. This function, however, is only *possible* through its *impossible* spatiality, the simple observation that it is 'impossible to imagine a coherent space that would contain such a

²⁸ Foucault 2002a:19

²⁹ Foucault 2002b:xvi

³⁰ Foucault 2002b:xvii

³¹ Foucault 2002b:xix

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classificatory scheme'.³² It is impossible to find a location common to all these fragmented and different 'orders', a *topos* that would hold all these proposed animal types and forms. If this paradoxical encyclopaedic listing constitutes a discursive heterotopia, it suggests that heterotopias can be different and 'other' spaces, lying outside the coherence that *both* discursive and spatial systems strive for. To take this interpretation further: a heterotopia challenges the discursive and spatial systems (such as law or geography) of Western modernity through its becoming 'a sort of compass [with which] to redraw maps and to rediscover the logic of those forms that remain hidden behind the tabular forms of modernity'.³³

This heterotopic potential for redrawing the maps of modernity can be very productive in environmental law's task of engaging with its own multiple spatiality of difference, as set out in the opening section of this chapter. Being very close to Massey's proposition that 'we understand space as the sphere of the possibility of the existence of multiplicity in the sense of contemporaneous plurality',³⁴ the examination of heterotopic spaces serves to bring forth the possibility that many different environmental constructions can and –more importantly- have already multiplied side by side within 'this sphere of co-existing heterogeneity'.³⁵ In this sense, heterotopia constitutes a place contingent on difference; a place produced by social practices so as to illustrate a necessary contemporaneous heterogeneity. Environmental law has encountered its own particular 'Chinese encyclopedia' in the politics of place and difference, the indigenous struggles for territory, the issue of environmental justice, the biopiracy narrative and other categories of social action that the orthodox international environmental law of treaties, states and jurisdiction finds it impossible to adequately incorporate. The effect of creating and accepting difference makes heterotopia a productive tool for engaging with the impossible spatiality of these concurrently 'place-based' and transnational discourses. Consequently, the identification of such environmental heterotopias can be seen to expose the spatial ignorance of environmental law; an ignorance that is anchored by the necessity of a coherent and value-neutral legal discourse as separate from the rest of social practices – and usher in a spatiality of co-existing difference that serves to end this legal isolation. The preface of *Order of Things* illustrates that the displacing effect of these different spaces that can be identified as environmental heterotopias can arise from the dual impossibility of forcing the legal domain to hold too many contradictory elements (ecology and development, utilisation and stewardship

³² Genocchio 1995:40

³³ Bonazzi 2002:43

³⁴ Massey 2005:9

³⁵ Massey 2005:9

etc.), as well as of finding one single real place that can adequately represent this mixture. As the internationalist and globalist pressures of environmental law strip it off its spatiality to the point that legal closure becomes a hollow structure pursuing imaginary utopias, heterotopias *remember* the impact of environmental laws on the ground and the material practices that shape alternative environmental subjectivities.

ii. Subversion and Counter-Spaces

Heterotopias are imperfect and deviating mirrors; they cannot function in the manner accomplished by utopias, embodying untroubled, and unreal, images; instead they expose memories of imposed orderings and subvert the language used to identify them. They are called 'effectively enacted utopias',³⁶ or, alternatively, 'localised utopias', as in the 1966 radio broadcast. This primary subversive function is given more emphasis in that radio broadcast by Foucault, where he states that heterotopias are something 'that children know very well', going on to list a number of places where children's games take place: the garden, the attic, on or around the parents' bed etc. In this way, 'the children's inventive play produces a different space that at the same time mirrors what is around them. The space reflects and contests simultaneously'.³⁷ The covers of the bed are sheets made out of wool, but they can also represent the blue sky. The garden can be a dark forest in which to hide. The children's discourse produces a different space that is at the same time real and unreal, but usually fantastical, contesting the parents' more mundane reading and everyday use of the same space. The subversive fun lasts until the parents come home and restore logical coherence. With this example, heterotopias illustrate that other, different places are not only possible, but their unforeseen and subversive effects necessary - for the sanity of both parents and children.

In the lecture, this elementary example of heterotopia disappears and is replaced by the mirror, perhaps in some ways lessening the political and subversive heterotopic impact. This may be attributed to the fact that the mirror illustrates more clearly the confusion that heterotopia engenders. For heterotopia is a dual place (or object), encompassing two interconnected conceptions of space: the mirror itself – a real place inside reality; and the virtual space created on the outside of real space. Nevertheless, the example of the children's play implies the existence of certain agency in the setting of heterotopias, whereas the more oft-quoted lecture resorts from the outset to the obscure and difficult totality of 'Society' as both the creator and

³⁶ Foucault 1986:24

³⁷ Johnson 2006:76

the focus of the oppositional relation with heterotopia. This hypothesised societal whole that heterotopia is thought to contest, has been associated with the simplistic conception of fixed space that heterotopology seeks to overcome, leading to the characterisations of 'problematic geographical structuralism'³⁸ or 'myopic sociological functionalism'³⁹ that underpin the criticisms of attempts to analyse the spatialisation posited by heterotopia.

This is especially pertinent to the application of the concept to environmental matters. What is the virtual whole that environmental heterotopias are neutralising, subverting, opposing? The example of the children's games can be used as a metaphor describing a principle of plurality or multiplicity that must characterise environmental law, but it also hides the danger of the paternalistic binary between 'parents' as the legal centre and 'children' as the social periphery of resistance (or even more detrimental and near-offensive the North as parents and the South as children) – precisely what the spatial turn seeks to avoid and a return to world arrangements according to the grids and hierarchies of modernity. Are these heterotopias simple indications of opposition to legal environmental discourses or to economic globalisation; are they indications of the fragmentation of international (environmental) law; a more complex challenge to the predominance of the Western modernity; sites for the formulation of alternative governmental rationalities through a resistance to their spatialising effects; or indeed all of the above? To further analyse the role of these 'counter-spaces', the analysis shifts to more concrete examples of places where the 'mapping' of environmental law has been concentrated.

III. Enacting Heterotopias

The natural reserve is a symbol of the American invention of wilderness, of primal, 'untapped' nature with intrinsic, aesthetic and utilitarian values. The local community is the site of a tightly local group, possessing shared beliefs and value systems, emphasizing the shift to participatory schemes of environmental government. The ethno-botanical institutions⁴⁰ are spaces where the economic and cultural restoration of problematic Southern states and communities takes place.

³⁸ Saldanha 2008:2084

³⁹ Genocchio 1995:36

⁴⁰ This term is used here as generally descriptive of local and national institutions, organised in the South since the early 1990s, that seek to sustainably utilise biological and genetic resources themselves, as well as traditional and indigenous knowledge regarding their use and conservation, to achieve sustainable development and local empowerment through market participation, as defined in legal and policy documents, such as the Biodiversity Convention, Agenda 21 and the Bonn Guidelines on access to genetic resources and fair and equitable sharing of benefits arising out of their utilisation. The prototype was a private institution, the Instituto Nacional de Biodiversidad (INBio) of Costa Rica with a somewhat limited remit regarding taxonomy and prospecting licenses, but most Southern states now have designated public agencies, such as the Council for the Management of Genetic Patrimony (CGEN) of Brazil, for the management of these physical and knowledge resources in their entirety. For more information on their development and operation see McManis 2007

By placing people and things, by demarcating and dividing the sites of their everyday lives, by transforming the space of their collective social action, the environment will be healthy and wholesome again tomorrow. In this utopian promise, the environment is the fixed and homogeneous space of the neutral canvas and the Western map; a unified and quantifiable totality which environmental law attempts to arrange and govern.

Environmental heterotopias first and foremost disturb this utopian fixation of environmental legal practices. Heterotopias are social formations that counteract the abstraction of legal utopias that drives environmental discourse. They are located both outside and inside the global space assumed by environmental law. They contest both the legal practices that are supposed to emerge within legal discourse, as well as the spatialisation that these practices seek to disseminate. Eschewing the 'task' of the utopian embodiment of environmental ideals, heterotopias are places that both reflect and contest, subvert and alter environmental and legal narratives, ethics, aesthetics, or norms regarding the correct individual and collective conduct towards the environment. Viewed from this heterotopic perspective, both their formal 'appointment' as exemplary governable spaces *and* their discreet 'abandonment', once the narrative they supposedly embody falls out of favour, are events that point to historical shifts in the ways societies expect law to address environmental issues. Environmental heterotopias remember the forgotten spatialisations that did not function as planned, but are also real places illustrating this failure to their inhabitants and visitors on a daily basis. A failed *place* is harder to hide than a failed legal agreement. The establishment of such different trajectories can then become the compass for redrawing the grids and tables of modernity.

In order to enact fully this heterotopology, one first has to locate difference, dispersion and overall 'strangeness'⁴¹ of certain sites that exist both outside and within the society that environmental law is addressing. Foucault offers six observable traits that characterise heterotopias. These principles will assist in analysing the heterotopic functions of some common places of environmental discourse.

i. Natural reserve: distanced crisis and ritual purification

The setting aside of natural reserves, the 'walled-off' protected areas and the designation of official wildlife parks, widely considered a primary indicator of social awareness and concern over environmental issues, has already been a staple objective of environmental law. Early

⁴¹ Genocchio 1995:38
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environmental discourse, from Rachel Carson's *Silent Spring* to UNESCO's *World Heritage Convention* sought to transform the previously empty, value-neutral physical space into an aesthetically pleasing and thus intrinsically valuable landscape. This new landscape imposed a preservation mandate that was rooted in the aesthetic sensibilities of Western modernity. Once designated, these sites assume a privileged status, reserved for endangered nature, which is allowed to 'run wild' and reacquire its 'pristine' character within the borders of these areas. They constitute crisis heterotopias, ensuring that this rejuvenation 'takes place elsewhere',⁴² so as to not interfere with continued urban development and its by-products, such as pollution and overpopulation. By providing this 'guarantee' of an outside buffer-space against complete degradation, the landscape of a protected area becomes a horizon that allows for sustained development and continued urban living, while maintaining a reserve to be used for future restoration.

This heterotopia reflects the simplistic character of the early spatialisation proposed by environmental law, which erects a barrier between the outside space of nature and the inside space of humanity. The environment was descending rapidly into a state of crisis due to destructive social practices, and the proposed solution was to lock it away, to prohibit interaction with the rest of society until that crisis state is surpassed. In a social context, similar places, according to Foucault, were the boarding schools (for girls) and the military service (for boys). Any ecologist would be quick to point out that this isolation of the protected areas is no longer considered the best policy. This refers precisely to the first principle of heterotopology as outlined by Foucault: the replacement of crisis heterotopias by heterotopias of deviation, which alters the perception of the crisis, turning it instead into a problem of deviation from normal conduct. This is the case with the heterotopias of the local community and the botanical institution, which will be analysed below.

Another principle that can be observed in the function of the protected area is the link to slices in time or 'heterochronies'.⁴³ As an attempt to recapture the utopian wilderness aspect of nature, the heterotopia of the protected area is the de facto extension of the natural history museum and the botanical garden, the precedents of environmentalism in Western culture of the 19th century. The natural reserve is an attempt to manage 'a sort of perpetual and indefinite accumulation of time in an immobile place'.⁴⁴ It appears as though environmental discourse suggests that there

⁴² Foucault 1986:24

⁴³ Foucault 1986:26

⁴⁴ Foucault 1986:26

should be one space for natural history to unfold, and another, separate one, for human history to do the same.

Thirdly, 'heterotopias always presuppose a system of opening and closing that both isolates them and makes them penetrable [...] the heterotopic site is not freely accessible like a public place'.⁴⁵ Access here is not necessarily meant in the strict legal sense, but such a system does exist in all the spaces examined in this chapter. The protected area represents a dual, physical as well as conceptual, 'walling-off' of nature from humanity. To enter the natural reserve, one needs to have embraced a specific ethics, to speak a certain truthful discourse: environmental scientists are allowed in the Alaska national park, but resource economists prospecting for oil are not so welcome. Agro-tourists interested in organic produce or wine are welcomed in the Tuscan heartland around Florence, while tourists that require unsophisticated pleasures such as beer, bars and pools are frowned upon. The (post)colonial safari is alive and well around the Kenyan wildlife parks, while poaching bans are actively enforced. Such places cannot accommodate false and inappropriate discourses.

The spatial function of the protected area is similar to the example of the Muslim hamam cited by Foucault: 'one must have a certain permission and make certain gestures'.⁴⁶ As the purification sought in a hamam is partly hygienic and partly religious, the ecological restoration occurring in the nature reserve is borne partly of necessity due to environmental crisis, and partly because of ethical reasons – the aesthetic value and beauty of nature as a counterpoint to the alienation of modern, urban life.

The primacy of such crisis heterotopias has been subsequently contested by the idea that preservation should be paired with the sustainable utilisation of natural resources, by the notion of sustainable development, as well as by the renewed focus on local and indigenous communities. These new principles transformed the contrived wilderness of the nature reserve into a much more crowded place – a different heterotopia signalling a different period in environmental history.

⁴⁵ Foucault 1986:26

⁴⁶ Foucault 1986:26

ii. Community: required deviation and the 'otherness' prison

The increased prominence of the local and indigenous community due to legal instruments, such as the Biodiversity Convention and Agenda 21, is another spatial transformation engineered by environmental law in order to remove some of the limitations of the focus on protected areas. The wild and empty space of the protected area was no longer sufficient to arrest environmental catastrophe. The participation of adjacent communities, previously ignored or considered a contributor to environmental degradation, became an essential element of sustainable development, also giving rise to the stakeholder narrative. For the developing world, this localisation was linked to issues of empowerment and poverty reduction, through the recognition of land claims and the protection of traditional and indigenous lifestyles and their local knowledge. The new paradigm supported the notion that local populations were to be given incentives in order to protect the environment, to participate in environmental governance, instead of being forced to remain outside the borders of the protected areas. The primary incentive was economic: the promise of sustainable development.

According to this narrative, the local community is a site of inclusion into national society, into the market, into the global economic development, into environmental ideals of resource management.⁴⁷ As well as a beneficiary of the social goods of sustainable development, it is also an owner and an 'author' of alternative, traditional or environmental, knowledge that should be integrated into the mainstream of techno-scientific environmental knowledge. There are certain spatial requirements for this 'idiom of inclusion'⁴⁸ to be materialised. Within the context of fixed and absolute space, these localities generally have to be divided in small geographical units, with a homogeneous internal structure and shared social norms,⁴⁹ small dots on the grand map. This is even more pronounced if the community happens to belong to a recognised indigenous group. For environmental law, the inclusion of these communities adds legitimacy to institutions and measures, incorporating ecological with social justice.

The perspective changes radically once these communities are viewed as heterotopias, as real places that carry the burden of implementing the privileged texts of environmental law. They are expected to perform the role of utopia, to become places that are stable, harmonious, long-lasting, the rural or indigenous character hiding wisdom and balance, defined in opposition to the modern dystopia of the urban, the developed, the West. Instead, they only reflect a nostalgic

⁴⁷ Brosius, Lowenhaupt Tsing et al. 2005

⁴⁸ Hayden 2003

⁴⁹ Agrawal and Gibson 1999 , Li 2005

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slice of time, a 'heterochrony' of difference and otherness that becomes a fixed image of how societies view them. Instead of the indefinite accumulation of time sought in the designation of the protected area, local communities are places where time has strangely stopped building up; they are refused the right to 'accumulate time', to evolve, to join other social groupings or networks. Rural populations have to maintain their authenticity and indigenous populations have to maintain their 'contrived ethnicity',⁵⁰ constituting an ephemeral festival, a spatial and temporal prison with a very strict system of compulsory entry.

This can lead to bizarre and irrational outcomes, much alike the discontinuous and incongruous classification of the Chinese encyclopaedia. Writing on the US government funded ICBG⁵¹ genetic research programme, Hayden finds a monolithic commitment, from the part of US National Institutes of Health (NIH) that run the programme, to 'the territorialised local community as the bundled-together source of (semi-)raw material and destination for future benefits'.⁵² Once the Mexico-based research programme decided to move away from this restricted conception of community (precisely because the utopian model of the clearly delineated community did not constitute an actual real location in Mexico due to the history between indigenous and Hispanic peoples) and adopt different ideas of plant sample collection from alternative sources, discontent arose at the NIH for 'breaking the link among people, plants and benefits'.⁵³ These communities have to constitute observable and verifiable spatial units and beneficiaries of quantifiable social goods from sustainable development. When they expose and subvert the imposition of this fixed and external 'otherness', when they dislocate themselves from their supposed tight tribal structure and shared belief system, these communities end up neutralising the legitimacy sought by environmental law and its adoption of sustainable development. There is no colony to receive the teachings of the Christian missionary.

In direct contrast to the crisis aspect of the natural reserve, local and indigenous communities may thus be regarded as heterotopias of deviation, i.e. places 'in which individuals whose behaviour is deviant in relation to required mean or norm are placed'.⁵⁴ This is a necessary deviation, to be attended to and studied, but never fully rectified, much like the situation in a prison or a rest home. Environmental law requires a sacrifice in order to grant inclusion into the

⁵⁰ Wilder 1997

⁵¹ The long standing International Cooperative Biodiversity Groups Programme (<http://www.icbg.org/>) was initiated in 1992 and represents a major US alternative proposal for biodiversity conservation and utilisation after the rejection the Biodiversity Convention.

⁵² Hayden 2003:362

⁵³ Hayden 2003:366

⁵⁴ Foucault 1986:25

legal domain, but the sacrifice ensures permanent exclusion. The meaning of the revalorisation of community in environmental discourse is quite clear: through the legal practice and process, we are going to protect you and include you, if you maintain your rural/indigenous character. You will no longer be on the outside. But once a community ceases to conform to the utopian ideal and fixed image imposed from above, no method of integration is available. By uncovering this process of marginalisation by inclusion (by way of a closely monitored system of entry), this environmental heterotopia illustrates the possibility of a place that is both inside and outside spatial and discursive orderings.

iii. Ethno-botanical institution: understanding environmental deviation

The incompatible requirements of the empty protected area and the lived in community are addressed in a third space, the ethno-botanical institution, much favoured in recent times and especially in biodiversity discourse. These institutions that have spread around the South are heterotopias 'capable of juxtaposing in a single real place several spaces that are in themselves incompatible', much like Foucault's example of the theatre as heterotopia.⁵⁵ First, nature was to be left alone; then it had to be managed and protected by people in close proximity. Then, the aesthetics of the landscape had to be meshed with the rhetoric of sustainable development and ideas of social justice. One 'stage' where this hybridisation takes place is the ethno-botanical institution.

These institutions began being established in the South on the eve of the Biodiversity Convention's designation of biodiversity as a national resource and abandonment of the common heritage doctrine.⁵⁶ Arguably their idea and set-up descend from the prototype that is the market-oriented, private INBio of Costa Rica, a brainchild of American conservation biology⁵⁷ and arguably the first of its kind.⁵⁸ Such institutions, even under their more recent and successful guise as public agencies, are information nodes, acting as 'clearing houses' of knowledge, licenses, contracts, policy and, ultimately, conduct towards the environment in order to bring into being locally-informed sustainable development models.⁵⁹ Their spatial role is that of a conduit: they gather and relate local and traditional environmental knowledge to global

⁵⁵ Foucault 1986:25

⁵⁶ CBD, preamble and art. 3.

⁵⁷ Through Daniel Janzen and Paul Ehrlich.

⁵⁸ Takacs 1996:288-308

⁵⁹ Gamez 2007

scientific discourse, while at the same time disseminate the tenets of global environmentalism to even more localities.

From the heterotopic perspective, these ethno-botanical institutions are relatively recent additions to the spatialisation effected by environmental law. The objective is precisely to merge together spaces that are considered incompatible. In contrast to the previous fixations with protected areas and local communities, these are instead 'active' sites, their hybridising spatial properties putting forward various projects of ecological, cultural and economic restoration, through the training of environmental behaviour. They do not constitute passive receptacles of the mandates of the privileged texts of environmental law agreed and passed elsewhere, but instead rely on the social construction of norms that contain elements of multiple sources and spaces; a multiplicity of 'people, plants and justice'.⁶⁰

The crisis aspect of the protected area has been almost fully co-opted by the possibilities opened by these institutions, whose emergence in some ways complements the role of the local communities examined above. There is considerable overlap between the two spaces as regards the participation of the same persons and the arrangement of similar resources. In the case of the ethno-botanical institution, the point is made even more forcefully that their involvement in environmental government goes beyond reproducing or forcefully imposing binding standards and prohibitions. It embraces and seeks to 'understand' any deviation from the norms of environmental law and policy as set out by biology and economics, while the heterotopia of community simply sought to contain it in a fixed time and place. It forms part of a process of alternative and diversified making of environmental subjects in a Southern, decentralised setting of 'intimate government'.⁶¹ While both constitute deviation heterotopias, the function of botanical institution appears similar to that of a psychiatric hospital – rather than the communal prison of contrived ethnicity. The romanticised but ultimately incomprehensible indigenous 'monster' existing outside the space and law of modernity is recast as an 'individual to be corrected',⁶² within a more conventional setting where 'deviant behaviours are established in the very moment of their analysis'.⁶³ And these 'patients' are allowed to roam and formulate their own 'games' and interactions, assisted in their self-formulation as environmental subjects; while

⁶⁰ Zerner 2000

⁶¹ For a more detailed analysis of this process in relation to forest councils of Kumaon, India see Agrawal 2005:164-200

⁶² This description of a progressive shift in perception borrows from the categorisation of individuals and definition of 'abnormality' found Foucault 2000 and in more depth in Foucault 2003. This is prompted by Foucault's use of the term 'heterotopias of deviation', which points to his early to mid 70s work on disciplinary power.

⁶³ Foucault 1986:25

simultaneously being 'trained' to participate in the normativity of a global society of markets and development.

In terms of taking into account multiplicity and heterogeneity (as outlined in the previous sections), there is little doubt that such institutions do represent a break in environmental law's spatial arrangements. In contrast to past environmental and developmental interventions, the botanical institution is not a remote centralising institution located in a distant country or a conference of the parties of an international treaty, but is located near the areas in the South that have been problematised especially by the concept of biodiversity. Thus, the overall legitimacy of a legal domain that can create and delegate authority to such institutions is ultimately raised, precisely because of this acknowledgement of spatial difference and engagement with local adaptation.

Nevertheless, this proximity raises the important and controversial issue of incentivising environmental protection through the promise of development, which relates to the 'system of opening and closing' of these heterotopias. The 'gates' of the botanical institution are presented as holding the promise of development; thus the power that is exercised by such institutions is increased by virtue of becoming a 'gateway' to a better life. The 'permissions and gestures' required to enter are eagerly performed by individuals and communities wanting to escape marginalisation and poverty. Irrespective of the gap between expectations and realities, 'the will to improve'⁶⁴ is a constant and 'stubborn' rationality for shaping environmental subjectivities and practices. But of course such an opening always 'hides curious exclusions': entering those sites is 'only an illusion: we think we enter where we are, by the very fact that we enter, excluded'.⁶⁵ A step forward in the recognition of the politics of place⁶⁶ no doubt; but restrictions still exist. Botanical institutions secure the participation of stakeholders in conservation and development activities, not right holders or property owners, and of providers of raw material for a global industry of biotechnology.⁶⁷ Agreeing to 'enter' these botanical institutions is an acknowledgement of a poverty-stricken Southern identity and a submission to a constant analysis of that identity. On the other hand, these sites engender possibilities and pluralities in ways rejected by the processes of designating protected areas and of recognising local and indigenous

⁶⁴ Li 2007

⁶⁵ Foucault 1986:26

⁶⁶ Defined as 'engagement with and experience of a particular location with some measure of groundness (however unstable), boundaries (however permeable), and connections to everyday life, even if its identity is constructed and never fixed.' Escobar 2008:30.

⁶⁷ For a critique of such arrangements see Shiva, Anderson et al. 1991; Delgado 2002; Coombe 2003; Hayden 2003

communities, especially when viewed in isolation from each other. If these knowledge clearing houses are in fact fully fledged counter spaces at the heart of the legal domain, permitting 'acts of counterwork by locals,'⁶⁸ then the question (which cannot be answered here) becomes: are they producing alternative modernities (adaptions of Western modernity to Southern conditions) or alternatives *to* Western modernity itself?⁶⁹

Conclusions

This chapter presented a heterotopic overview of the three spaces of the natural reserve, the local community and the botanical institution, all of which are much discussed in environmental law. The list of sites and objects that can be subjected to this form of spatial analysis is potentially large. Thus, one could also investigate the ephemeral festivals of self-congratulation that are the conferences of the parties; the transboundary but also local networks of farmers' associations and other similar movements; seed and gene banks; natural history museums; botanical gardens; those most prized urban parks; farms (organic versus industrial); whaling ships and so on. While this chapter included a presentation of the theoretical framework, thus leaving little room for detailed analysis, the application of heterotopology arguably yields more insights if applied to specific places as opposed to spatial categories.⁷⁰ Finally, it is obvious from the above that heterotopology is a method of analysis suited to the particular spatial turn required of environmental law. These caveats aside, the concept of heterotopia can produce a critique of the illusions and fixations of environmental law, in particular in its international manifestation.

There is one last trait of heterotopias that has not been included in the above discussion of the three places. By maintaining an outside/inside spatial distinction, the aim of all three heterotopias is to compensate for the environmentally problematic and already globalised product of development: the urban space of the modern city. From the perspective of modernity, the objective is always to construct a different space, 'as perfect, as meticulous, as well arranged as ours is messy, ill constructed, and jumbled'.⁷¹ When that utopian dream is suspended, one is left with the very real counter space of heterotopia. Instead of the West's addressing its past failures through environmental law, it is forever projecting them onto new localities, spaces and sites.

⁶⁸ Escobar 2008:10

⁶⁹ This distinction is phrased in more detail in Escobar 2008:156-199

⁷⁰ For examples, see Heyd 1999; Hook and Vrdojak 2002

⁷¹ Foucault 1986 , 27.

One of the starting points in *Of Other Spaces* is the realisation that space *itself* has a history that cannot be disregarded. Environmentalism in general exhibits a profound dislike for historical arguments, especially if they relate to the history of environmental concepts and movements themselves. The impending ecological crisis calls for solutions, not introspection. This chapter contests this belief by showing, through the comparison between the different spatial uses of three places, that a historical examination of environmental ideas is also an important component of critical environmental law. This short and site-specific spatial history nevertheless uncovers the illusions of official policies, forgotten other places that subvert their utopian beginnings and remnants of failed law that no one wants to engage with. Instead of the impenetrable fort of law ruling over space, law becomes another part of a heterogeneous space 'in which we live, which draws us out of ourselves, in which the erosion of our lives, our time and our history occurs'.⁷²

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⁷² Foucault 1986 , 23.
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