

Article

A Law and Geography Perspective on the New Haven School

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I. INTRODUCTION

In his reflections on the twenty-fifth anniversary of the founding of the *Yale Journal of International Law*, Michael Reisman described the journal's origins. In 1974, a group of dedicated graduate and J.D. students, who self-identified as members of the New Haven School, began the process of establishing the journal in the face of resistance from the law school administration.¹ After work "[i]n secrecy, in the bowels of the international law library, usually working at night in a setting that must have seemed increasingly like an underground bunker,"² the students published their first issue and then continued without support from the Yale Law School for almost ten years.

During this period of struggle and eventual emergence for the journal, both the discipline of geography and the New Haven School faced their own issues of identity and resistance. Geography engages the interrelationship of place, space, and scale over time. As I discuss in more depth in Section III.B, the core terms of that description—which legal scholarship often uses without clear definition—have contested and multiple meanings within the discipline, particularly in its scholarly literature of the past thirty years. Like history, which treats a range of topics that often would be contained in multiple disciplines through the vector of time, geography unifies a diverse set of issues through focusing on spatiality. In so doing, it cuts across many of the academy's traditional divides—most notably the disciplinary boundaries between the hard sciences, social sciences, and humanities. This interdisciplinary scope has been one of geography's greatest strengths and vulnerabilities.³

In the mid-twentieth century, geography occupied a marginal place in U.S. academia. The dominance of the progress narrative in modernist thought valorized history's focus on time while devaluing geography's study of space.⁴ Moreover, geography in the U.S. academy remained largely outside the raging debates of the time regarding scientific naturalism and other theoretical issues.⁵ Its work in the 1920s through 1950s focused largely on details rather than overarching theories and on smaller-scale—and particularly

1. W. Michael Reisman, *The Vision and Mission of The Yale Journal of International Law*, 25 YALE J. INT'L L. 263, 263 (2000).

2. *Id.* at 264.

3. See Alexander B. Murphy, *Geography's Place in Higher Education in the United States*, 31 J. GEOGRAPHY IN HIGHER EDUC. 121, 122-23 (2007) (discussing geography's vulnerabilities in the mid-twentieth century).

4. See MICHEL FOUCAULT, *Questions on Geography*, in POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS 1972-1977, at 63-77 (Colin Gordon ed., 1980); EDWARD W. SOJA, *POSTMODERN GEOGRAPHIES: THE REASSERTION OF SPACE IN CRITICAL SOCIAL THEORY* 3-4, 31-35 (1989); Michel Foucault, *Of Other Spaces*, 16 DIACRITICS 22 (Jay Miskowicz trans., 1986). The progress narrative arguably began in the pre-modern period. See STEPHEN M. FELDMAN, *AMERICAN LEGAL THOUGHT FROM PREMODERNISM TO POSTMODERNISM: AN INTELLECTUAL VOYAGE* 13 (2000).

5. SOJA, *supra* note 4, at 35-38. Edward Purcell's thoughtful analysis of scientific naturalism and democracy, for example, does not discuss the discipline of geography. See EDWARD A. PURCELL, JR., *THE CRISIS OF DEMOCRATIC THEORY: SCIENTIFIC NATURALISM & THE PROBLEM OF VALUE* (1973).

regional—projects.⁶ It also continued to assert its value as a bridge between the physical and social sciences at a time when those disciplinary divisions were increasingly entrenched.⁷ The discipline’s accompanying institutional weaknesses proved disastrous. Beginning with Harvard in 1948, many elite U.S. universities eliminated their geography departments in a purge that continued through the mid-1980s.⁸ Some geographers questioned at the time whether the discipline would survive in this country.⁹

As postmodernism—broadly defined¹⁰—with its focus on spatiality began to replace the progress narrative in the late 1960s and early 1970s,¹¹ geography experienced an intellectual rebirth in the United States. The “new geography” increasingly engaged the complexities of place, space, and scale and built upon technological advances. Despite these conceptual developments, however, the discipline’s movement back into the elite institutions that help to structure academic discourse has been slow. Dartmouth remains the only Ivy League School with a department¹² and it is unclear whether Harvard’s new Center for Geographical Analysis will broaden beyond its current quantitative approach to “spatial analysis and geographic information.”¹³

The New Haven School has experienced its own travails. This School, pioneered by Myres McDougal and Harold Lasswell, proposes “a contextual,

6. Alexander Murphy provides an interesting schema of geographic thought in the twentieth century that shows its movement away from nomothetic goals and larger-scale projects in the first half of the century. *See, e.g.*, Alexander B. Murphy, Professor, University of Oregon, Class Lecture in Geography 620: Theory and Practice of Geography (Mar. 5, 2007) (discussing mid-twentieth century transitions in geography illustrated by this schema) [hereinafter Murphy Lecture]. Although some larger-scale systematic work was certainly still taking place in the period from the 1920s through 1950s, scholarship took a notable regional turn. *See* Geoffrey J. Martin, *Geography, Geographers and Yale University*, in *GEOGRAPHY IN NEW ENGLAND* 2, 7 (John. E. Harmon & Timothy J. Rickard eds., 1988) (“American geography passed through distinct stages [including] . . . field and region (1925-1957) . . .”).

7. DAVID N. LIVINGSTONE, *THE GEOGRAPHICAL TRADITION 190-92* (1992).

8. William A. Koelsch, *Academic Geography, American Style: An Institutional Perspective*, in *GEOGRAPHY: DISCIPLINE, PROFESSION AND SUBJECT SINCE 1870: AN INTERNATIONAL SURVEY* 245, 269-270 (Gary S. Dunbar ed., 2001).

9. *See* Thomas J. Wilbanks & Michael Libbee, *Avoiding the Demise of Geography in the United States*, 31 *PROF. GEOGRAPHER* 1, 1 (1979).

10. The definition of postmodernism, not to mention postmodernism versus postmodernity, has been a subject of substantial academic debate, which is beyond the scope of this Article. I choose to define postmodernism broadly to encompass the transition to a “new mood or aesthetic in intellectual thought,” GARY MINDA, *POSTMODERN LEGAL MOVEMENTS: LAW AND JURISPRUDENCE AT CENTURY’S END* 3 (1995), that embraces “ephemerality, fragmentation, discontinuity, and the chaotic,” DAVID HARVEY, *THE CONDITION OF POSTMODERNITY: AN ENQUIRY INTO THE ORIGINS OF CULTURAL CHANGE* 44 (2005). *See also* FELDMAN, *supra* note 4, at 28-29, 38-48; SOJA, *supra* note 4, at 15-16, 60-64. For a thoughtful law and geography approach to the transition from modernism and postmodernism in architecture and urban planning, see Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 *FORDHAM URB. L.J.* 699 (1993).

11. This dating is also controversial. Although postmodern legal scholarship blossomed in the late 1980s and 1990s, *see* MINDA, *supra* note 10, at 191, I choose to use the earlier date to indicate the moment at which postmodernism’s ideas and approach first began to permeate intellectual discourse, *see* HARVEY, *supra* note 10, at 38; SOJA, *supra* note 4, at 15-16.

12. Department of Geography, Dartmouth College, About the Department, <http://www.dartmouth.edu/~geog/aboutdept/dept.html> (last visited Apr. 27, 2007) (stating that the department currently only grants a Bachelor of Arts degree).

13. Center for Geographical Analysis, Harvard University, <http://www.gis.harvard.edu/icb/icb.do> (last visited Apr. 27, 2007); *see also* Murphy, *supra* note 3, at 130-34.

policy-oriented jurisprudence, postulating as its overriding goal the dignity of men and women in an increasingly universal public order.”¹⁴ In a collaborative project that began in the late 1930s and has involved many prominent “associates” over the years—most notably, Michael Reisman—McDougal and Lasswell worked:

to formulate and recommend appropriate general theory and intellectual procedures for such a jurisprudence and to test preliminary formulations by their application to important contemporary problems. [Their] objectives included both the developing of a comprehensive framework of inquiry which would permit full advantage to be taken of expanding knowledge in the social and behavioral sciences and the encouragement of the use of such a framework, flexibly and creatively, in specific inquiries designed to further progress toward a public order more completely embodying and protecting the postulated values.¹⁵

From its inception, the School has faced attacks from scholars ranging from liberal internationalists to critical legal theorists. The School has been accused of abandoning the constraints provided by formal legal rules, favoring elites, paying insufficient attention to the complexities of the “third world” and problems of inequality, writing in an inaccessible fashion, and serving as apologists for U.S. foreign policy.¹⁶ Some of this criticism may have resulted from the School’s attempt to bridge multiple conceptual streams. Prior to their collaborative work, both McDougal and Lasswell were steeped in the fight over scientific naturalism and empiricism—Lasswell as a leading political scientist who drew from psychology to argue for “influence and the influential” as at the core of politics, and McDougal as a student of the Yale Law School’s increasingly beleaguered legal realists. Their collaborative effort both flowed from and reacted to that context, leaving many uncertainties about how they should be situated.¹⁷

Moreover, despite the New Haven School arguably containing both modern and postmodern elements, it has not embraced either world fully. Its efforts at a scientific, large-scale model and articulation of dichotomies between totalitarian and non-totalitarian regimes reflects its modernist roots in the inter-war, World War II, and Cold War periods. And yet the School’s pluralist vision of interpenetrating communities creating effective power—

14. MYRES S. MCDUGAL & ASSOCIATES, *STUDIES IN WORLD PUBLIC ORDER* ix (New Haven Press 1987) (1960).

15. *Id.*; accord LAURA A. KALMAN, *LEGAL REALISM AT YALE, 1927-1960*, at 177-78 (1986); 1 HAROLD D. LASSWELL & MYRES S. MCDUGAL, *JURISPRUDENCE FOR A FREE SOCIETY: STUDIES IN LAW, SCIENCE AND POLICY* xxix (1992) [hereinafter LASSWELL & MCDUGAL, *JURISPRUDENCE FOR A FREE SOCIETY*].

16. For an example of the debate, see Proceedings of the 79th Annual Meeting, *McDougal’s Jurisprudence: Utility, Influence, Controversy*, 79 AM. SOC’Y INT’L L. PROC. 266 (1985). See also B.S. CHIMNI, *INTERNATIONAL LAW AND WORLD ORDER: A CRITIQUE OF CONTEMPORARY APPROACHES* 73-145 (1993).

17. PURCELL, *supra* note 5, at 95-96, 114, 176; see also KALMAN, *supra* note 15, at 182 (“McDougal and Lasswell’s proposals can be interpreted either as a reaction against realism or an attempt to extend it.”); ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S*, at 265 (1983) (“The Lasswell-McDougal article . . . marked the clear beginning of the post-Realist period.”).

also a response to the multipolar inter-war period and the limitations of international law and institutions¹⁸—has a postmodern character.¹⁹

These historical parallels—and disconnects—make this Conference a particularly appropriate place for a law and geography perspective on what a “new” New Haven School might look like. Although the “present” New Haven School draws deeply from social sciences and its key monographs are replete with geographical analysis, it does not appear to interact with the discipline directly. A future version of the New Haven School might benefit from a deeper engagement. As an increasing body of geography scholarship interrogates concepts—such as place, space, and scale—at the core of the School’s vision, the School’s analysis should interact with that literature.²⁰ Furthermore, an embrace of the ambiguities in its core geographic ideas would help the School address the concerns of some of its critics—though probably not the positivists—by further situating the School’s internal and external analyses. This inclusion not only would build upon the existing conceptual approach of the New Haven School, but also would help to establish the Yale Law School’s leadership role regarding an emerging conceptual approach.

Part II presents barriers to past interaction between the New Haven School and geography. It examines the limited interaction between law and geography, both in U.S. academia generally and in the more specific context of Yale University. Part III builds upon that historical context to explore how the School might thicken its geographic analysis. It analyzes the School’s approach to geographical ideas, the definitional ambiguities surrounding those terms in the current geography literature, and the possibilities posed by a “deeper” geography. The piece concludes by reflecting upon the broader implications of the New Haven School case example for interdisciplinary collaboration between international law and geography.

Throughout its analysis, this Article plays with the interaction between time, space, place, and scale, but it does not formally engage their complexity except in Section III.B. Rather than continuously redefining the terms at each point they come up, I follow the conceptual approach of a number of postmodern geographers and encourage a non-linear reading of this Article.²¹ Such an approach not only allows each reader to engage the piece from his or her own background and perspective—which respects the New Haven School’s insight into the need for internal self-reflection discussed in

18. See Andrew Willard, Experiential Learning Coordinator, Univ. of Iowa, Remarks at *The Yale Journal of International Law* Fifth Annual Young Scholars Conference (Mar. 10, 2007).

19. For analyses of the transition from modernism to postmodernism in law, see FELDMAN, *supra* note 4; and MINDA, *supra* note 10.

20. See, e.g., Keith Aoki, *Space Invaders: Critical Geography, the “Third World” in International Law and Critical Race Theory*, 45 VILL. L. REV. 913 (2000); Matthew R. Auer, *Geography, Domestic Politics and Environmental Diplomacy: A Case from the Baltic Sea Region*, 11 GEO. INT’L ENVTL. L. REV. 77 (1998); Paul Schiff Berman, *The Globalization of Jurisdiction*, 151 U. PA. L. REV. 311 (2002); Richard T. Ford, *Law’s Territory (A History of Jurisdiction)*, 97 MICH. L. REV. 843 (1999); Hari M. Osofsky, *The Geography of Climate Change Litigation: Implications for Transnational Regulatory Governance*, 83 WASH. U. L.Q. 1789 (2005); Kal Raustiala, *The Geography of Justice*, 73 FORDHAM L. REV. 2501 (2005); Robert R.M. Verchick, *Critical Space Theory: Keeping Local Geography in American and European Environmental Law*, 73 TUL. L. REV. 739 (1999).

21. See, e.g., *infra* note 27 (providing an example of a nonlinear biography that helped to inspire the format of the piece).

Subsection III.C.1—but also illustrates the dangers of an over-emphasis on time not grounded in spatial conceptions.

II. FROM THE PAST: BARRIERS TO INTERDISCIPLINARY INTERCHANGE

Although the New Haven School's interdisciplinary approach and discussion of geographic issues²² might have provided the basis for rich interactions with geography, an examination of the state of geography as the New Haven School was developing exposes the massive barriers to such an interchange. Geography was under siege as a discipline in U.S. universities in the mid-twentieth century and in a period of its intellectual development that Edward Soja has described as “theoretically inert.”²³ This siege has limited the educational exposure of current law professors to geography. A recent article by Mark Bjelland indicates that 93% of liberal arts institutions lack degree-granting geography programs.²⁴ Moreover, this rather compelling number occurs in the larger context of a public-private split; 66% of public doctoral/research universities grant undergraduate geography degrees, while only 19% of private doctoral/research universities grant them.²⁵ These numbers make it unlikely that many of the current and new generation of law professors received undergraduate training in geography.

The lack of overlap between universities with geography departments and those with law schools that are top producers of new law teachers is even more striking. Only four of the fifteen universities that Brian Leiter's analysis of Larry Solum's data ranks as top producers have geography departments. As summarized in the chart below, those four schools—all public institutions—provided only twenty-nine of the 332 new tenure-track law professors coming from “top producers” in 2003-06.²⁶

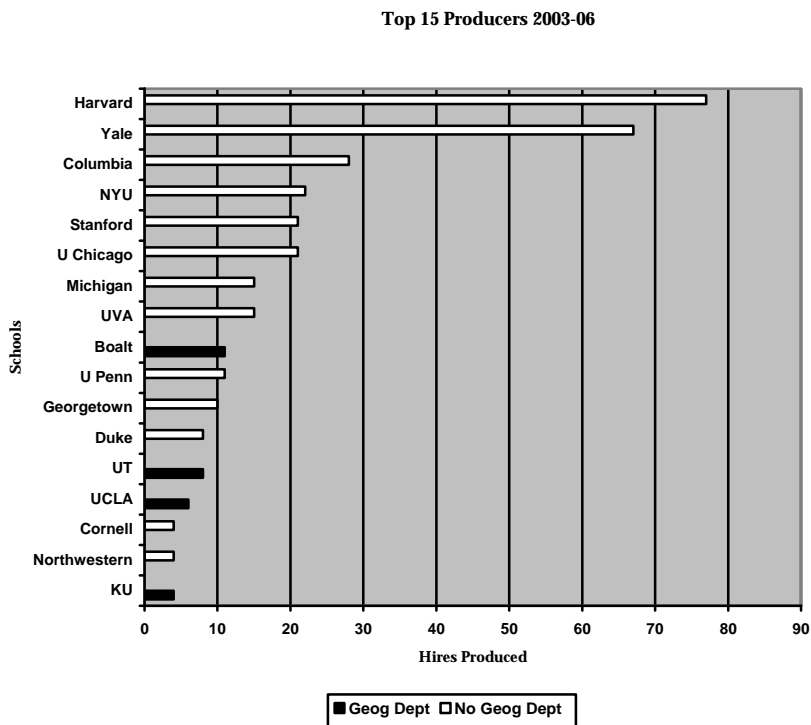
22. See *infra* Section III.A.

23. SOJA, *supra* note 4, at 16. Geography scholarship at that time largely built from Richard Hartshorne's regional approach, see Richard Hartshorne, *The Character of Regional Geography*, in *THE NATURE OF GEOGRAPHY: A CRITICAL SURVEY OF CURRENT THOUGHT IN LIGHT OF THE PAST* (1939), and Carl Sauer's morphologic approaches, see Carl O. Sauer, *The Morphology of Landscape*, *U.C. PUBLICATIONS IN GEOGRAPHY* 2, 19 (1925). See also Murphy Lecture, *supra* note 6.

24. Mark D. Bjelland, *A Place for Geography in the Liberal Arts College?*, 56 *PROF. GEOGRAPHER* 326, 326 (2004).

25. *Id.* at 328.

26. See Brian Leiter's Law School Reports, http://leiterlawschool.typepad.com/leiter/2006/05/top_producers_o.html (May 19, 2006).



This Part explores the historical basis for the limited interaction between law and geography before the 1980s that made the New Haven School's direct incorporation of geography unlikely. Rather than providing a traditional history, it focuses on two different spatio-temporal intersections.²⁷ It begins with a contextualized, national-scale account of the assault on U.S. academic geography in the mid-to-late twentieth century, and then uses the specific example of the development of law and of geography at Yale University over a longer span of time to illustrate the improbability of the New Haven School embracing geography directly.

A. *The Attack on (and Gradual Re-Embrace of?) Academic Geography in the United States*

The above statistics on the marginal status of geography in the United States are the result of an academic murder mystery story: the elimination of U.S. geography departments at many elite universities between 1948 and 1987. Although the story has its share of colorful characters, geography departments' consistent difficulty in asserting their value during this period appears to stem from underlying weaknesses. This Section situates the assault on U.S. academic geography within the broader context of intellectual and institutional developments in U.S. universities as a basis for understanding the limited interaction between law and geography before the 1980s.²⁸

27. For an example of a biography that plays with spatio-temporal relationships, see EDWARD W. SOJA, *THIRDSPEACE: JOURNEYS TO LOS ANGELES AND OTHER REAL-AND-IMAGINED PLACES* 26-52 (1996).

28. See Hari M. Osofsky, Alexander Murphy & Keith Aoki, *Why International Law Needs Geography*, July 9, 2006 (unpublished manuscript, on file with author). The limited pre-1980s scholarship includes works by Francis C. Murphy, Rutherford C. Platt, Hans Weigert, John Henry Wigmore, and Gilbert White. See, e.g., FRANCIS C. MURPHY, *REGULATING FLOOD-PLAIN DEVELOPMENT* (1958); RUTHERFORD C. PLATT, *LAND-USE CONTROLS: INTERFACE OF LAW AND GEOGRAPHY* (1976); HANS WEIGERT, *GENERALS AND GEOGRAPHERS: THE TWILIGHT OF GEOPOLITICS* (1942); JOHN HENRY WIGMORE, *A PANORAMA OF THE WORLD'S LEGAL SYSTEMS* (1928); GILBERT FOWLER WHITE, *HUMAN ADJUSTMENT TO FLOODS* (1945).

1. *Origins of U.S. Academic Geography*

Geography has ancient historical origins that trace to Greece, Rome, North Africa, and Southwest Asia.²⁹ The growth of geographical thought in fifteenth and sixteenth century Europe, which built on those traditions, was deeply intertwined with the colonial project.³⁰ Three key Enlightenment figures—Immanuel Kant, Alexander von Humboldt, and Carl Ritter—developed geography as a science of space, which proved crucial to its inclusion as a discipline in modern universities, including those in the United States.³¹

Geography had more of a presence in the early years of elite U.S. educational institutions than did law. Harvard first offered a course related to the subject in 1642,³² and beginning in the 1770s, sophomores at Yale were required to read *New Geographical, Historical and Commercial Grammar* by William Guthrie.³³ In contrast, although the first “law professor” was appointed in 1779, most legal education took place in private, proprietary schools.³⁴ These law schools began to affiliate with universities in the 1820s, but that status remained shaky through the middle of the nineteenth century.³⁵ In that same period, geography fell out of U.S. university curricula and primarily retained its university presence as an admissions requirement at some schools.³⁶ Its reentry came through the mid-nineteenth century emergence of “physical geography” and 1870 decisions by Harvard and the University of Michigan to add it as an admissions requirement.³⁷

Both law and geography managed to establish their place in U.S. universities by the late-nineteenth century and were included in their modern

29. For a tracing of this history, see GEOFFREY J. MARTIN, *ALL POSSIBLE WORLDS: A HISTORY OF GEOGRAPHICAL IDEAS* (2005); J. OLIVER THOMSON, *HISTORY OF ANCIENT GEOGRAPHY* (1948); NAFIS AHMAN, *MUSLIM CONTRIBUTION TO GEOGRAPHY* (1947); and Osofsky, Murphy & Aoki, *supra* note 28, at 6.

30. See LIVINGSTONE, *supra* note 7, at 158-62; Osofsky, Murphy & Aoki, *supra* note 28, at 7.

31. These thinkers might not have used this terminology to describe their work, but later scholars have characterized it as such. See Richard Hartshorne, *The Concept of Geography as a Science of Space, from Kant and Humboldt to Hettner*, 48 *ANNALS ASS'N AM. GEOGRAPHERS* 97 (1958); see also Charles W.J. Withers & David N. Livingstone, *Introduction to GEOGRAPHY AND ENLIGHTENMENT* 1, 1 (Charles W.J. Withers & David N. Livingstone eds., 1999); Osofsky, Murphy & Aoki, *supra* note 28, at 7. For examples of this early work, see the thirty-volume set, *ALEXANDER VON HUMBOLDT, VOYAGE AUX RÉGIONS EQUINOXIALES DU NOUVEAU CONTINENT* (Theatrum Orbis Terrarum, Da Capo Press 1971-1973) (1805-1834), or the nineteen-volume set, *CARL RITTER, DIE ERDKUNDE IM VERHÄLTNISS ZUR NATUR UND ZUR GESCHICHTE DES MENSCHEN* (Berlin, G. Reimer 1822-1859).

32. See Geoffrey J. Martin, *The Emergence and Development of Geographic Thought in New England*, 74 *ECON. GEOGRAPHY* 1, 5-6 (1998) (special issue for the 1998 Annual Meeting of the Association of American Geographers).

33. *Id.* at 6.

34. See John H. Langbein, *Blackstone, Litchfield, and Yale: The Founding of the Yale Law School*, in *HISTORY OF THE YALE LAW SCHOOL: THE TRICENTENNIAL LECTURES* 17, 17-32 (Anthony T. Kronman ed., 2004); STEVENS, *supra* note 17, at 3-5.

35. See STEVENS, *supra* note 17, at 5-8.

36. See Koelsch, *supra* note 8, at 245. Scholarly debate exists over the significance of these early developments for geography’s eventual departmental status. See William Warntz, *Geographia Generalis and the Earliest Development of American Academic Geography*, in *THE ORIGINS OF ACADEMIC GEOGRAPHY IN THE UNITED STATES* 245 (Brian W. Blouet & Teresa L. Stitcher eds., 1981).

37. Koelsch, *supra* note 8, at 247-48.

disciplinary matrix.³⁸ The University of Chicago established the first independent geography department capable of granting Ph.D. degrees in 1903³⁹ and the Association of American Geographers (AAG) was founded in 1904.⁴⁰ Christopher Columbus Langdell's deanship at Harvard from 1870 until 1885 began a transformation of legal education and established law "finally and irrevocably, as an appropriate study for university education"⁴¹ and the American Association of Law Schools (AALS) was founded in 1900.⁴²

Geography's university and professional presence grew rapidly in the first half of the twentieth century, in part fueled by World War I.⁴³ One measure of this development is that while the college population rose 100% from 1900 to 1948, the number of students taking college-level geography courses rose 1000%.⁴⁴ The number of lawyers and law schools also experienced massive growth during this period; from 1921 to 1928 alone, the number of law schools grew from 142 to 173.⁴⁵

Despite this relatively parallel growth in student interest, geography and law came to occupy very different places in the U.S. academy over the first half of the twentieth century. In addition to belonging in both of the increasingly balkanized social and natural sciences, geography made intellectual choices that marginalized it. At the end of the nineteenth and beginning of the twentieth century, many leading U.S. geographers had embraced environmental determinism, which argues that the physical environment controls socio-cultural development.⁴⁶ As environmental determinism came under attack in the 1920s and 1930s, the discipline turned to regional and morphological approaches, which became devalued in broader mid-century U.S. academic discourse.⁴⁷ In contrast, law schools were at the center of the intellectual and policy firestorms of the early-to-mid twentieth century through their debates over conceptualism versus realism⁴⁸ and over U.S. isolationism and emerging international institutions.⁴⁹ McDougal and

38. Murphy, *supra* note 3, at 122. See generally Paul P. Abrahams, *Academic Geography in America: An Overview*, 3 REV. IN AM. HIST. 45 (1975) (providing an overview of U.S. academic geography from 1869 through the 1960s); STEVENS, *supra* note 17 (providing a history of U.S. legal education from the 1850s through the 1980s).

39. See Koelsch, *supra* note 8, at 251; William D. Pattison, *Rollin Salisbury and the Establishment of Geography at the University of Chicago*, in THE ORIGINS OF ACADEMIC GEOGRAPHY IN THE UNITED STATES, *supra* note 36, at 151.

40. Koelsch, *supra* note 8, at 252.

41. STEVENS, *supra* note 17, at 36.

42. *Id.* at 38.

43. See Koelsch, *supra* note 8, at 256; see also William A. Koelsch, *East and Midwest in American Academic Geography: Two Prosopographic Notes*, 53 PROF. GEOGRAPHER 97 (2001).

44. Murphy, *supra* note 3, at 122 (citing J.S. BRUBACHER & R. WILLIS, *HIGHER EDUCATION IN TRANSITION: A HISTORY OF AMERICAN COLLEGES AND UNIVERSITIES, 1936-1968* (1968)).

45. See STEVENS, *supra* note 17, at 132, 173.

46. See, e.g., ELLEN CHURCHILL SEMPLE, *INFLUENCES OF GEOGRAPHIC ENVIRONMENT* (1911).

47. See *supra* note 23. Geography's focus on regionalism and description was not particularly unusual for disciplines at the time, but it moved beyond that emphasis less quickly. Interview with Alexander Murphy, Professor of Geography, University of Oregon, in Eugene, Or. (Mar. 26, 2007).

48. See PURCELL, *supra* note 5, at 74-94, 139-178.

49. Compare MANLEY O. HUDSON, *PROGRESS IN INTERNATIONAL ORGANIZATION* 2 (1932), with Senator William E. Borah, *The League of Nations*, Speech Delivered in the United States Senate (Nov. 19, 1919), as reprinted in 58 CONG. REC. 8781-84 (1919). See generally STEVENS, *supra* note 17, at xiii (discussing the "centrality of law in American life" and the core role of law schools).

Lasswell themselves were both ensconced in this dialogue⁵⁰ and their first collaborative piece proposed a massive reform of legal education.⁵¹

Geography's isolation provided the seeds for the disastrous institutional developments it faced throughout much of the second half of the twentieth century, a period in which law continued to assert a dominant place in elite universities. It also made interdisciplinary interaction with law less likely. As universities established collaborations among the social sciences, and often with law, during the 1920s and 1930s, geography was largely left out.⁵²

2. "Academic War" and Departmental Eliminations

In 1948, geography suffered what has been characterized as a "terrible blow" . . . from which "it has never completely recovered."⁵³ Not only did Harvard eliminate its geography department, but its President, James Conant, issued a directive stating that "geography is not a university subject."⁵⁴ This moment began what the *Harvard Crimson* termed an "academic war over the field of geography."⁵⁵

Although Yale began to re-establish its geography program in 1945 and announced that it was adding a department in 1949,⁵⁶ a year after this "war" began, Harvard's decision appears to have signaled that elite research universities did not require geography departments. That rejection paved the way for waves of closures of geography departments in elite institutions in the decades that followed.⁵⁷ While total enrollments in geography courses in the United States increased by more than 18% between 1952 and 1957,⁵⁸ the University of Pennsylvania, Stanford, and Yale all closed their departments in the mid-1960s. This trend continued for twenty more years, even as the beginnings of a postmodern turn emerged in the U.S. academy.⁵⁹ Geography experienced a net loss of thirty-two departments from 1970 to 1976, and in the mid-1980s, Columbia, Northwestern, and the University of Chicago all closed their departments.⁶⁰

50. See *supra* note 17 and accompanying text.

51. See *infra* note 117 and accompanying text; see also STEVENS, *supra* note 17, at 264-70.

52. See, e.g., *infra* note 115 and accompanying text (noting a broader interdisciplinary trend of which geography was not a part).

53. Neil Smith, "Academic War Over the Field of Geography": *The Elimination of Geography at Harvard, 1947-1951*, 77 ANNALS OF THE ASS'N OF AM. GEOGRAPHERS 155, 155 (1987) (quoting Interview with Jean Gottman in College Park, Md. (Mar. 23, 1982)).

54. *Id.* at 159 (quoting Letter from Derwent Whittlesey to George Cressey (Apr. 16, 1948) (on file with the Harvard University Archives) and Letter from Kirk Bryan to Isaiah Bowman (Mar. 16, 1948) (on file with John Hopkins University Records)).

55. *Id.* at 155 (quoting *Off the Map*, HARVARD CRIMSON, 1951).

56. *Id.* at 170; Martin, *supra* note 6, at 5. For an in-depth discussion of Yale, see *infra* Section II.B.

57. See Murphy, *supra* note 3, at 124; see also *infra* notes 59-60 & 65-68 and accompanying text.

58. *Status and Trends of Geography in the United States 1952-1957*, 1a PROF. GEOGRAPHER, Jan. 1959, at 1, 1.

59. See FELDMAN, *supra* note 4, at 137-88.

60. Murphy, *supra* note 3, at 124; see also L. Dee Fink, *The Changing Location of Academic Geographers in the United States*, 31 PROF. GEOGRAPHER 217, 225 (1979) (discussing the decrease in the number of geographers in the U.S. academy); cf. Melvin G. Marcus, *Coming Full Circle: Physical Geographer in the Twentieth Century*, 69 ANNALS OF THE ASS'N OF AM. GEOGRAPHERS 521 (1979) (describing the evolving role of physical geography in the broader discipline).

Law's trajectory, meanwhile, could hardly have appeared more different from geography's during this period. In 1948, the year geography was eliminated at Harvard, the AALS made a major step towards standardizing legal education by requiring every school to have a full time dean. This institutional development occurred against a backdrop of a growing interest in law and legal education in the United States during the post-War period.⁶¹ Throughout the 1960s, as the elimination of geography departments continued, the legal academy was embroiled in the political and intellectual tumult of that period. Like their counterparts at a myriad of educational institutions around the United States, groups of students at elite law schools—a number of whom became postmodern legal scholars or political leaders in the decades that followed—pushed for a rethinking of law and legal education.⁶² On a conceptual level, influential pieces by Ronald Coase and Charles Reich in the early-to-mid 1960s signaled a new jurisprudential turn towards engaging the law and culture intersection.⁶³ On a professional level, these events only seemed to spur interest in law; LSAT takers doubled from 1968-69 to 1971-72.⁶⁴

Each individual closure of a geography department was driven by reasons grounded in institutional context, but also reflected broader weaknesses in the discipline. For example, accounts of the dramatic elimination of the department at Harvard often focus on homophobia directed at the departmental leader, Derwent Whittlesey; the hostility of key administrative figures at Harvard;⁶⁵ or “the desire of Geology to obtain the extra funds and positions that would result.”⁶⁶ Part of why the key figures were able to have such an influence, however, was the vulnerability of the department; Neil Smith notes that geography was endangered at Harvard, for example, because of the “lack of clear intellectual terrain and set of goals” and “the alleged low caliber of geographical scholarship.”⁶⁷ As Saul Cohen explained in 1988:

[W]hether we speak of the elimination of Geography at Harvard nearly four decades ago (1947-51), or in recent years at Michigan, Northwestern, Chicago and now Columbia, many of the issues raised in the course of events at Harvard were repeated in different forms at these other universities. We must be mindful of these experiences, as we seek ways of strengthening the position of Geography in American universities.⁶⁸

61. See STEVENS, *supra* note 4, at 206-07.

62. For a discussion of these developments at the Yale Law School, see LAURA A. KALMAN, *YALE LAW SCHOOL AND THE SIXTIES: REVOLT AND REVERBERATIONS* 98-139 (2005).

63. See MINDA, *supra* note 10, at 68-77. Minda, drawing from Bruce Ackerman's work, also argues that the mid-1950s decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), played a part in this turn as well. See *id.*; see also FELDMAN, *supra* note 4, at 123-36.

64. See STEVENS, *supra* note 17, at 235-36.

65. See Andrew F. Burghardt, *On “Academic War Over the Field of Geography,” The Elimination of Geography at Harvard, 1947-1951*, 78 ANNALS OF THE ASS'N OF AM. GEOGRAPHERS 144, 144 (1988) (responding to Smith, *supra* note 53); Smith, *supra* note 53, at 155-56; see also Geoffrey J. Martin, *On Whittlesey, Bowman and Harvard*, 78 ANNALS OF THE ASS'N OF AM. GEOGRAPHERS 152 (1988) (providing an account of Whittlesey and Bowman).

66. See Burghardt, *supra* note 65, at 144.

67. Smith, *supra* note 53, at 167.

68. Saul B. Cohen, *Reflections on the Elimination of Geography at Harvard, 1947-51*, 78 ANNALS OF THE ASS'N OF AM. GEOGRAPHERS 148, 148 (1988).

The assault on geography induced a period of crisis and introspection in U.S. academic geography that proved critical to its late twentieth century blossoming at a moment at which law was emerging from the tumult of the 1960s. A “quantitative revolution” occurred in geography in the late 50s and early 60s that signaled a return to more nomothetic goals; by the late 1960s and 1970s, a second generation of quantitative approaches and an emerging critical/radical geography provided the roots for geography’s resurgence. These developments, together with the spatial turn occurring across disciplines in this period, allowed for the fuller emergence of law and geography as an interdisciplinary intersection.⁶⁹

3. *The “New” Geography and Its Collaboration with Law*

In the mid 1980s, interactions between law and geography became more frequent. As geographers inquired into how and why geographical context matters,⁷⁰ legal scholars explored the implications of “law and economics, critical legal studies, feminist legal theory, law and literature, and critical race theory” during this period.⁷¹ Over the next ten years, a number of compilations were published that explored the relationship between law and the changing physical environment; their emphasis broadened over time into questions of land-use and local government.⁷² More relevant to international law, geography scholars in that period also began to engage more deeply in analyses of the nation-state as a political and territorial construct.⁷³

Developments in the mid-1990s signaled the emergence of a recognized interdisciplinary intersection. Nicholas Blomley’s 1994 book, *Law, Space and the Geographies of Power*, provided a more comprehensive assessment of how the disciplines might interact. Richard Ford brought geography prominently into legal scholarship by organizing a 1996 *Stanford Law Review* symposium on *Surveying Law and Borders*.⁷⁴ Concomitantly, the pace of law and geography scholarship accelerated and its scope widened. For example, a number of works from that period engaged problems of social justice and race

69. See Richard L. Morrill, *Recollections of the “Quantitative Revolution’s” Early Years: The University of Washington 1955-65*, in RECOLLECTIONS OF A REVOLUTION: GEOGRAPHY AS A SPATIAL SCIENCE 57 (1984); William D. Pattison, *The Four Traditions of Geography*, 63 J. GEOGRAPHY 211 (1964); SOJA, *supra* note 4, at 39-65; Osofsky, Murphy & Aoki, *supra* note 28.

70. See R. J. JOHNSON, *GEOGRAPHY & GEOGRAPHERS: ANGLO-AMERICAN HUMAN GEOGRAPHY SINCE 1945* (5th ed. 2004); Osofsky, Murphy & Aoki, *supra* note 28.

71. See MINDA, *supra* note 10, at 1.

72. See, e.g., GORDON L. CLARK, *JUDGES AND THE CITIES: INTERPRETING LOCAL AUTONOMY* (1985); *GEOGRAPHY, ENVIRONMENT, AND AMERICAN LAW* (Gary L. Thompson, Fred M. Shelley & Chand Wije eds., 1997); OLEN PAUL MATTHEWS, *WATER RESOURCES: GEOGRAPHY AND LAW* (1984); RUTHERFORD H. PLATT, *LAND USE AND SOCIETY: GEOGRAPHY, LAW, AND PUBLIC POLICY* (1996); JAMES L. WESCOAT, *INTEGRATED WATER DEVELOPMENT: WATER USE AND CONSERVATION PRACTICE IN WESTERN COLORADO* (1984); Alexander B. Murphy, *Planning for Places in an Issue-Based Legal Environment: The Challenge of Coherence*, 15 URB. GEOGRAPHY 4 (1994).

73. See, e.g., GORDON L. CLARK & MICHAEL DEAR, *STATE APPARATUS: STRUCTURES AND LANGUAGE OF LEGITIMACY* (1984); Alexander B. Murphy, *International Law and the Sovereign State System: Challenges to the Status Quo*, in REORDERING THE WORLD: GEOPOLITICAL PERSPECTIVES ON THE TWENTY-FIRST CENTURY 209 (George J. Demko & William B. Woods eds., 1994).

74. Symposium, *Surveying Law and Borders*, 48 STAN. L. REV. 1037 (1996).

at various scales.⁷⁵ Since 2000, two compilations have been published, *The Legal Geographies Reader* and *Law and Geography*, that provide an introduction to the relevance of geography for many substantive areas of the law.⁷⁶

As the intersection formed more solidly in the mid-1990s, international law and geography scholarship blossomed. An important piece of that development included legal scholars—often with critical perspectives that drew from Foucault—using new approaches in geography to inform their analyses.⁷⁷ The pace of such work has accelerated in the twenty-first century and interest in international law and geography only seems to grow.⁷⁸ For instance, this Conference includes two pieces with law and geography dimensions and the international law and geography roundtables I have organized at various conferences during the 2006-07 academic year have been well-attended with lively discussion. These developments fit within broader trends in legal education over the past twenty-five years towards incorporating interdisciplinary approaches and engaging globalization.⁷⁹

The intellectual growth in geography has been accompanied by some indicia of greater acceptance by U.S. universities.⁸⁰ After a peak in the number of students earning geography degrees in the early 1970s and decline throughout the 1980s, the numbers rose again in the early 1990s, with a record 4401 U.S. students earning geography bachelors degrees in 1994.⁸¹ U.S. students earning graduate degrees in geography grew over the course of the 1990s as well; in 2001, 726 master's degrees and 201 doctorates were awarded.⁸² Moreover, at institutions where geography has a substantial presence, departments have been expanding in terms of tenure-track faculty and students enrolled, and the number of new departments under consideration is rising.⁸³ When Harvard opened its Center for Geographic Analysis in 2006, its president, Lawrence Summers, explicitly acknowledged

75. See, e.g., DAVID DELANEY, *RACE, PLACE, AND THE LAW, 1836-1948* (1998); DON MITCHELL, *THE RIGHT TO THE CITY: SOCIAL JUSTICE AND THE FIGHT FOR PUBLIC SPACE* (2003); Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1857-60, 1887-92 (1994).

76. LAW AND GEOGRAPHY (Jane Holder & Carolyn Harrison eds., 2003); THE LEGAL GEOGRAPHIES READER: LAW, POWER AND SPACE (Nicholas Blomley, David Delaney & Richard T. Ford eds., 2001).

77. See, e.g., Auer, *supra* note 20; Ford, *supra* note 20; Verchick, *supra* note 20.

78. See, e.g., Aoki, *supra* note 20; Berman, *supra* note 20; Osofsky, *supra* note 20. Other scholarship engaged geographic ideas without directly discussing the geography literature. See, e.g., Raustiala, *supra* note 20.

79. See N. William Hines, AALS President's Message, Ten Major Changes in Legal Education over the Past 25 Years, http://www.aals.org/services_newsletter_presAug05.php (August 2005).

80. Alexander Murphy has attributed this growth to both departmental strategies and wider forces. He notes that the forces probably include "(1) a heightened general sense that geography is relevant to the issues of the day; (2) a greater awareness and appreciation of geography among scholars in other disciplines; (3) an explosion of interest in GIScience and GIS; (4) an expanding job market for individuals with geographic training; and (5) the emergence of a more analytically sophisticated geography in some primary and secondary schools." Murphy, *supra* note 3, at 128.

81. Kavita Pandit, *Geography's Human Resources over the Past Half-Century*, 56 PROF. GEOGRAPHER 12 (2004).

82. See *id.* at 13.

83. See Murphy, *supra* note 3, at 126.

this step as a reversal of its 1948 decision and as “embracing the new geography.”⁸⁴

This institutional development, however, is not uniform and tone-setting. Elite universities still predominantly have law schools but not geography departments, which limits possibilities for interchange. Mark Bjelland has noted in the context of liberal arts institutions:

There are signs of renewed interest in geography, but growth and stability are hindered by the lack of formal departments. Geography can and should thrive in the liberal arts setting, yet it seems that the renaissance of geography witnessed elsewhere is hindered by the institutional priorities and departmental configurations that marginalized geography in the middle decades of the 20th century.⁸⁵

In addition, Alexander Murphy has indicated that it remains unclear whether institutions only embracing the technological parts of the discipline like GIS/GIScience will manifest a broader investment in geography.⁸⁶ Hence, although the trends have been more positive for geography in the last fifteen years,⁸⁷ significant institutional barriers to law and geography collaborations likely will continue to exist in the near-term.

B. *The Development of Geography and of Law at Yale*

At first blush, despite the very limited law and geography scholarship before the 1980s, Yale University might have been an unusually fertile site for such an interaction. The Yale Law School, from very early on in its history, put a strong emphasis on interdisciplinary interaction with the social sciences, an interaction that infuses the New Haven School’s analysis. The Yale Geology Department “developed an intellectual strength in human geography unmatched in North America at that time” in the early years of the twentieth century,⁸⁸ a time period in which the Yale Law School had already declared its commitment to interdisciplinarity.⁸⁹ The final phase of Yale’s geography department occurred at the height of McDougal and Lasswell’s joint work and the early part of Reisman’s collaboration with them on New Haven School projects.

A closer examination of the juxtaposed histories of geography and law at Yale, however, suggests continuous mismatches. According to Geoffrey Martin, “Yale remains the only institution in the country to have experienced four distinct stages of geographic growth. Continuity was not a characteristic of this enterprise.”⁹⁰ At each point at which either the geography program or the law school might have been primed for such interaction, the other was in a phase of existence which made the emergence of law and geography at Yale unlikely. Most significantly, despite the Yale Law School’s late nineteenth

84. See Elizabeth Gehrman, *Geography Center Launched*, HARV. UNIV. GAZETTE, May 11, 2006, available at <http://www.news.harvard.edu/gazette/2006/05.11/05-geography.html>.

85. Bjelland, *supra* note 24, at 326.

86. Murphy, *supra* note 3, at 128.

87. See generally *id.* (analyzing trends in the development of geography departments).

88. Martin, *supra* note 6, at 4.

89. See *infra* notes 100-101 and accompanying text.

90. Martin, *supra* note 32, at 8.

century commitment to interdisciplinarity, its significant socio-legal scholarship occurred after the peak of geography at Yale in the early twentieth century. This Section explores these historical disconnects.⁹¹

1. *The Early Years*

The first stage of geography at Yale started at around the time the university began, as discussed above, with coursework and the acquisition of globes and an orrery. From the 1770s through 1825, various geography texts were required reading for freshmen and/or sophomores.⁹² However, “[i]n 1825 geography was removed from the curriculum, without any seeming logic to the abandonment,”⁹³ a move by Yale College that William Warntz has attempted to explain as part of a broader trend in the Ivy League.⁹⁴

During this phase of the geography program’s history, Yale College did not yet have a law school, but President Ezra Stiles stated in 1777 that: “It is scarcely possible to enslave a Republic where the Body of the People are Civilians, well instructed in their Laws, Rights and Liberties.”⁹⁵ A little over twenty years after Stiles’ remark and during the latter part of this first phase of geography, Seth Staples began the proprietary law school in his law office in New Haven that eventually affiliated with Yale and transformed into the Yale Law School. He was soon joined by his former student, Samuel Hitchcock, and his former teacher, David Daggett, who are also credited as founders of the Yale Law School. Of these three founders, only Daggett eventually became a professor at Yale, giving some lectures on what would now be called public law and government; however, he was appointed in 1826, after geography had been removed from the curriculum for the first time.⁹⁶

91. My exposition is limited by the currently available scholarly material, especially with respect to Yale’s geography program. I plan to engage in future archival research on whether such interactions existed but have not been previously reported. Such a project, however, is beyond the scope of this Article. The most detailed scholarly analyses available on the development of geography at Yale are a brief book chapter and a section of an article by Geoffrey Martin. Neither of them, unfortunately, provides much detail on what geographers were studying at Yale during the period in which McDougal and Lasswell were collaborating. See Martin, *supra* note 32; Martin, *supra* note 6. The materials on the Yale Law School are more extensive. Although a complete history of the Yale Law School does not yet exist, Anthony Kronman’s edited book on the subject, as well as Laura Kalman’s more specifically targeted books, provide detailed background on that institution’s development at relevant time periods. See HISTORY OF THE YALE LAW SCHOOL, *supra* note 34; KALMAN, *supra* note 15; KALMAN, *supra* note 62. In addition, multiple accounts exist of the collaboration between McDougal and Lasswell and the development of the New Haven School. See 1 LASSWELL & MCDUGAL, JURISPRUDENCE FOR A FREE SOCIETY, *supra* note 15, at xxi-xxxvii; see also KALMAN, *supra* note 15, at 177-78; Richard A. Falk, *Casting the Spell: The New Haven School of International Law*, 104 YALE L.J. 1991 (1995) (book review); W. Michael Reisman, *Myres S. McDougal: Architect of a Jurisprudence for a Free Society*, 66 MISS. L.J. 15 (1996).

92. See Martin, *supra* note 32, at 6.

93. *Id.*

94. Martin, *supra* note 6, at 2 (citing WILLIAM WARNTZ, GEOGRAPHY NOW AND THEN (1964)).

95. STEVENS, *supra* note 17, at 4 (quoting 2 ANTON-HERMANN CHROUST, THE RISE OF THE LEGAL PROFESSION IN AMERICA 189 (1965)).

96. See Langbein, *supra* note 34, at 32-34.

2. *Towards Institutionalization*

Geography's second phase at Yale occurred in the latter half of the nineteenth century and was focused in three scholars. Daniel Coit Gilman served as an assistant librarian and librarian at Yale from 1856 through 1865, wrote numerous geographical articles, and taught geography at Yale Sheffield Scientific School through 1872. Francis Walker, a professor in political economy and history, taught and wrote on topics in regional and statistical geography from 1872 through 1881. Finally, from 1864 until his retirement in 1903, William H. Brewer served as a chair of Agriculture at the Sheffield Scientific School, and lectured and wrote on physical geography topics. These three scholars together maintained physical geography as part of the Yale College curriculum and laid the groundwork for future institutional developments in geography at Yale.⁹⁷

The Yale Law School became an established part of Yale College and developed its interdisciplinary focus during the period between the second and third phases of the geography program. Although Yale College first began to have a listing for law students in 1824—which is the date given in the official version for when the law school began its affiliation with Yale, as well as the year of geography's first elimination—the law school's institutional status remained extremely shaky for the next forty-five years, including two “brush[es] with extinction”⁹⁸ in 1845 and 1869.⁹⁹ Following that second crisis in 1869, the law school not only developed a philanthropic base and enlarged its faculty but also established its distinctive commitment to interdisciplinarity. Yale President Woolsey, who lectured in international law at the Yale Law School, delivered an address in 1874 establishing that focus for the law school, a bold pronouncement at a moment in which the law school's ability to realize that vision was limited.¹⁰⁰

This still-conceptual commitment provided an ethos at the Yale Law School which helped to foster later interdisciplinary scholarship like that of the Legal Realists and the New Haven School proponents. As such, it had the potential to encourage interaction with geography. John Langbein, for example, has noted, “[o]ne important consequence of the Yale Law School's undertaking to tie itself more to the University's other disciplines was to encourage the study of public law and especially of international law at precisely the time when the emphasis on private law was reaching its zenith at Columbia and Harvard.”¹⁰¹

97. See Martin, *supra* note 32, at 7; Martin, *supra* note 6, at 3-4.

98. John H. Langbein, *Law School in a University: Yale's Distinctive Path in the Later Nineteenth Century*, in *HISTORY OF THE YALE LAW SCHOOL*, *supra* note 32, at 53, 58.

99. This history is somewhat contested, but these broader debates are beyond the scope of this Article. I draw here from John Langbein's account. See Langbein, *supra* note 32, at 34-35; Langbein, *supra* note 98, at 56-60.

100. See Langbein, *supra* note 98, at 63-68.

101. *Id.* at 67.

3. *Conceptual Blossoming*

The third phase of geography, which was its high point at Yale, centered on Herbert E. Gregory serving as chair of the Geology Department from sometime around the beginning of the twentieth century through 1915. He created a geography wing within the Geology Department and hired eight geographers between 1903 and 1908.¹⁰² Their extensive scholarship during this period involved a range of topics in human geography,¹⁰³ some of which had potential relevance for international law. For example, they wrote books exploring the intertwined geography of natural resources and trade¹⁰⁴ and analyzing commercial and industrial geography.¹⁰⁵

Several of the earliest geography doctorates in the field were written at Yale during this period, including the first in the United States by a woman. Once Gregory became ill and resigned his chair in 1915, however, the geography wing of the department was terminated and the scholars dispersed. Gregory described Yale's rejection of geography at that time in a way that reflects the broader struggle of the discipline to serve as a bridge between the natural and social sciences:

Yale college[sic] is a particularly unfavorable field for the development of geography, for the departments of history and economics seem to be organized on the theory that there is no such thing as Nature and that Man is the whole show. Sometimes I feel very much discouraged that geographical work is not more highly thought of by my colleagues¹⁰⁶

One of its geographers, Ellsworth Huntington, who was a leading proponent of environmental determinism, returned as a research associate at a salary less than he paid his secretary in 1919. Huntington was Yale's sole geographer from 1919 through 1943¹⁰⁷—a crucial period for the New Haven School—and continued to write monographs based on environmental determinism as the discipline increasingly rejected this approach and turned elsewhere.¹⁰⁸

Huntington was not, however, the only Yale professor whose work drew heavily from the geography literature during this period. Nicholas John Spykman, an international relations professor at Yale from 1928 until his death in 1943, published two books on geostrategy in the mid-1940s, *America's Strategy in World Politics: The United States and the Balance of Power*¹⁰⁹ and *The Geography of the Peace*,¹¹⁰ which produced strong positive and negative reactions. His work was deeply influenced by pioneering British

102. See Martin, *supra* note 32, at 7-8.

103. See Martin, *supra* note 6, at 4-5.

104. See HERBERT ERNEST GREGORY, ALBERT GALLOWAY KELLER & AVARD LONGLEY BISHOP, *PHYSICAL AND COMMERCIAL GEOGRAPHY: A STUDY OF CERTAIN CONTROLLING CONDITIONS OF COMMERCE* (1910).

105. See ALBERT GALLOWAY KELLER & AVARD LONGLEY BISHOP, *COMMERCIAL AND INDUSTRIAL GEOGRAPHY* (1912).

106. Martin, *supra* note 6, at 5.

107. See Martin, *supra* note 32, at 7-8; Martin, *supra* note 6, at 4-5.

108. See ELLSWORTH HUNTINGTON & FRANK E. WILLIAMS, *BUSINESS GEOGRAPHY* (1922); ELLSWORTH HUNTINGTON, *THE HUMAN HABITAT* (1927).

109. NICHOLAS JOHN SPYKMAN, *AMERICA'S STRATEGY IN WORLD POLITICS: THE UNITED STATES AND THE BALANCE OF POWER* (1942).

110. NICHOLAS JOHN SPYKMAN, *THE GEOGRAPHY OF THE PEACE* (1944).

geographer Halford MacKinder, and his teaching and scholarship consistently emphasized the importance of geography.¹¹¹

During the early twentieth century high point of the geography program, the law school had not yet realized its interdisciplinary potential. Despite its late nineteenth century conceptual commitment, the turning point for the law school did not come until the Yale Presidency of James R. Angell, which began in 1921, a few years after the collapse of Yale's dynamic human geography program within the Geology Department. Angell "actively encouraged the school to expand its range beyond narrow professional training by means of novel interdisciplinary enterprises."¹¹² The Yale Law School engaged in dynamic faculty hiring in the 1920s and 1930s,¹¹³ and "after 1928 the headquarters of legal realism shifted from Columbia to Yale."¹¹⁴ At the same time, thirteen years after Gregory's resignation, the Yale Institute of Human Relations—which brought together faculty focused on economics, law, medicine, psychology, psychiatry, sociology (but not geography)—was founded, which was in line with a broader interdisciplinary trend in U.S. universities.¹¹⁵

Most significantly for the New Haven School, both Myres McDougal and Harold Lasswell became professors at Yale in the 1930s, though the partisan politics of the emerging Cold War threatened Lasswell's hire.¹¹⁶ Their first collaborative publication, which provided a rethinking of legal education and beginnings of the schema undergirding the New Haven School, was published in 1943¹¹⁷—the same year as Spykman's first book and his early death from cancer—just as geography was about to be institutionally revitalized at Yale.

4. *The Last Resurgence of Geography and the Beginning of the New Haven School*

The final stage of geography at Yale—the only one which overlapped with the work of McDougal, Lasswell, Reisman, and Willard—appears to have been more limited than the third one. Yale hired Stephen B. Jones into the Yale Institute of International Studies in 1943 and then gave him the title of Associate Professor of Geography in 1945. Jones was promoted to full

111. See Edgar S. Furniss, Jr., *The Contribution of Nicholas John Spykman to the Study of International Politics*, 4 *WORLD POL.* 382, 382 (1952); Nicholas J. Spykman & Abbie A. Rollins, *Geographic Objectives in Foreign Policy, I*, 33 *AM. POL. SCI. REV.* 391 (1939); Nicholas J. Spykman & Abbie A. Rollins, *Geographic Objectives in Foreign Policy, II*, 33 *AM. POL. SCI. REV.* 591 (1939); Nicholas J. Spykman, *Geography and Foreign Policy, I*, 32 *AM. POL. SCI. REV.* 28 (1938); Nicholas J. Spykman, *Geography and Foreign Policy, II*, 32 *AM. POL. SCI. REV.* 213 (1938); Frederick J. Teggart, *In Memoriam: Nicholas John Spykman, 1893-1943*, 49 *AM. J. SOC.* 60 (1943).

112. Robert W. Gordon, *Professors and Policymakers: Yale Law School Faculty in the New Deal and After*, in *HISTORY OF THE YALE LAW SCHOOL*, *supra* note 32, at 75, 84.

113. *Id.* at 84-104.

114. KALMAN, *supra* note 15, at 75.

115. See PURCELL, *supra* note 5, at 86; *Yale's Institute*, *TIME*, Feb. 25, 1929, available at <http://www.time.com/time/magazine/article/0,9171,880502,00.html>.

116. Gaddis Smith, *Politics and the Law School: The View from Woodbridge Hall, 1921-1963*, in *HISTORY OF THE YALE LAW SCHOOL*, *supra* note 32, at 138, 145-46.

117. Harold D. Lasswell & Myres S. McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 *YALE L.J.* 203 (1943).

professor in 1948 and named chair of the Geography Department,¹¹⁸ and Yale announced the launch of the department in 1949.¹¹⁹ Jones and the other geographers in the department were tied to area studies at Yale. As those area studies became less popular, the then department chair, Karl Pelzer, was also chairing the Committee on Southeast Asian Studies and did not reorient the department towards a more systematic focus.¹²⁰

Geography's situation weakened further under Alfred Whitney Griswold's presidency at Yale, during which the Yale Institute for International Studies moved to Princeton. The geography department was eliminated in 1967, during Kingman Brewster's presidency.¹²¹ Martin attributes geography's final elimination to a range of factors: (1) "[t]he faculty members representing geography did not develop a reputation for publication"; (2) they "accepted the role of geography as a synthetic subject, not as an independent discipline"; (3) their close ties to area studies left them without a "disciplinal haven" when that "commitment failed"; (4) the Yale campus had a perception that "the performance of the geographic profession was lacking"; and (5) they no longer offered a doctorate and did little to refute characterizations of "gut geography courses."¹²²

Several key pieces articulating the approach of the New Haven School were produced by McDougal, Lasswell, and Reisman during this final period of geography at Yale.¹²³ Reisman, who joined the Yale Law School faculty after completing his J.S.D. there in 1965—just two years before geography's final elimination—verifies that all three of them had been exposed to the discipline. As noted by Reisman, Lasswell's 1935 *World Politics and Personal Insecurity* shows awareness of contemporary geography scholarship.¹²⁴ Moreover, in 1965, McDougal handed Reisman a stack of papers written by Spykman to read and talked about their importance.¹²⁵ Yet despite this awareness and the New Haven School's thoughtful geographical analysis, discussed in detail in Section III.A, its interdisciplinary approach focuses on political science, sociology, psychology, and anthropology.

118. See Martin, *supra* note 32, at 8; Martin, *supra* note 6, at 5.

119. Smith, *supra* note 53, at 170.

120. Martin, *supra* note 6, at 6-7.

121. *Id.*

122. *Id.* at 8.

123. See, e.g., Myres S. McDougal & Harold D. Lasswell, *The Identification and Appraisal of Diverse Systems of Public Order*, 53 AM. J. INT'L L. 1 (1959) [hereinafter McDougal & Lasswell, *Identification and Appraisal*]; Myres S. McDougal, Harold D. Lasswell & W. Michael Reisman, *The World Constitutive Process of Authoritative Decision*, 19 J. LEGAL EDUC. 253 (1967); Myres S. McDougal, Harold D. Lasswell & W. Michael Reisman, *Theories About International Law: Prologue to a Configurative Jurisprudence*, 8 VA. J. INT'L L. 188 (1968). For an account of the New Haven School approach and its relationship to legal realism at Yale, see KALMAN, *supra* note 15, at 176-87; Robert Stevens, *History of the Yale Law School: Provenance and Perspective*, in HISTORY OF THE YALE LAW SCHOOL, *supra* note 34, at 13-14.

124. HAROLD D. LASSWELL, *WORLD POLITICS AND PERSONAL INSECURITY* (1935); E-mail from W. Michael Reisman, Myres McDougal Professor of International Law, Yale Law School, to Hari Osofsky, Assistant Professor, University of Oregon Law School (Feb. 26, 2007, 08:17 EST) (on file with author).

125. E-mail from Cina Santos, Senior Administrative Assistant, Yale Law School, to Author (Mar. 26, 2007, 09:34 EST) (on file with author).

III. TO THE FUTURE: A “NEW” NEW HAVEN SCHOOL APPROACH TO GEOGRAPHY

The end point of the previous Part’s historical analysis provides the beginning of this Part’s conceptual analysis. Namely, this Part moves from the past to the future by considering three main issues. First, how does the New Haven School literature use geographic concepts in its analysis? Second, what are the ways in which the current geography literature analyzes these concepts and how might its approach change the questions that the New Haven School asks about them? Finally, if the New Haven School interrogated geographic questions more deeply, how might its internal and external analysis evolve?

A. *The New Haven School’s Analysis of Geographic Concepts*

This Section explores the “present”—the New Haven School’s approach to geographical ideas. In so doing, it does not attempt to be comprehensive. Given how prolific many of the New Haven School collaborators are and the infusion of geographic ideas in their analysis, simply listing all of the references to geography would itself fill at least one volume. Rather, this Section focuses on three consistent geographic constructs that run through many of the major works of the New Haven School: world community, territorial units, and constitutive arenas.

1. *World Community*

At the core of the School’s interdisciplinary approach is a vision of law as “a process of authoritative decision by which the members of a community clarify and secure their common interests.”¹²⁶ This process of decision occurs at multiple scales, including the global one, which underlies the process of international lawmaking. *The World Community: A Planetary Social Process*, which was published by McDougal, Reisman, and Andrew Willard after Lasswell’s death, is arguably the piece from the School that most deeply engages the geographic character of international law. It begins in the following fashion: “The specialized process of interaction commonly designated international law is part of a larger world social process that comprehends all the interpenetrating and interstimulating communities on the planet. In the aggregate, these lesser communities comprise a planetary community.”¹²⁷

As discussed in more depth in Subsection III.B.2, the New Haven School has a thoughtful analysis of the import of scale, but does not fundamentally define or interrogate what scale is. In particular, its vision of world community engages scale in two senses. First, the “world” is a relevant level worthy of focus. In order to understand international lawmaking, we have to grapple with interactions happening at a planetary level. Second, the “world” scale is inherently multiscale. A theory of community at a planetary

126. 1 LASSWELL & MCDUGAL, JURISPRUDENCE FOR A FREE SOCIETY, *supra* note 15, at xxi.

127. Myres S. McDougal, W. Michael Reisman & Andrew R. Willard, *The World Community: A Planetary Social Process*, 21 U.C. DAVIS L. REV. 807, 808 (1988).

level requires an understanding of how the many communities that exist within and across multiple levels interact.

Throughout the New Haven School scholarship, from its earliest articles to the two-volume *Jurisprudence for a Free Society: Studies in Law, Science and Policy* that is the culmination of decades of collaboration between McDougal and Lasswell, its proponents recognize these issues of scale as a crucial vector and acknowledge the geographic dimensions of their theory. For instance, in *Jurisprudence for a Free Society*, McDougal and Lasswell note in their analysis of the global community process that:

The spatial, temporal, institutional, and crisis dimensions of the interactions of human beings in the shaping and sharing of values are increasingly transnational in fact, and increasingly recognized by individuals as such. With the practical annihilation of distance, and with the new access to outer space and the celestial bodies, the geographic ramifications of interaction are being constantly extended and are in constant flux.¹²⁸

The New Haven School does not simply articulate a geographic perspective, of course, but one through which power becomes law. In its third paragraph, *The World Community* directly ties the idea of international and world community into its core construct of authoritative decisionmaking. It explains:

It is the fact of an interdependent world community that makes some system of international law inescapable. It is, further, this most comprehensive social process that comprises the events which give rise to claims to authoritative decision; which affects the kinds of authoritative decisions taken; and upon which authoritative decision has impact. Effective power in community process builds upon many other values and authoritative decision is a component of effective power. Without adequate orientation in this largest community process, both rational decision and realistic inquiry about decision are impossible.¹²⁹

In other words, a simultaneous orientation in the two senses of scale as relevant described above—(1) the importance of the “planetary” or “world” scale, and (2) the underlying multiscalar interactions—grounds any approach to international law. Authoritative decision grounded in effective power must take these scalar considerations into account.

As noted in the Introduction, this approach to scale underlies their move from theory to policy.¹³⁰ The New Haven School does not simply aim to describe the process of authoritative decisionmaking in the world of theory.¹³¹ Its proponents have been and continue to be deeply involved in policymaking. Despite its technical language—which likely stems largely from Lasswell’s political science and psychology work that predates his collaboration with McDougal—the New Haven School aims to be a practical theory that creates tools for policy.

128. 1 LASSWELL & MCDUGAL, *JURISPRUDENCE FOR A FREE SOCIETY*, *supra* note 15, at 144-45. For examples from earlier pieces, see McDougal & Lasswell, *Identification and Appraisal*, *supra* note 123, at 6-7; and McDougal, Lasswell & Reisman, *Theories About International Law*, *supra* note 123, at 201.

129. McDougal, Reisman & Willard, *supra* note 127, at 813.

130. *See supra* notes 14-20 and accompanying text.

131. *Id.*

The complex scalar dynamics described above provide the New Haven School's justification for its scientific approach to engaging international legal and policy problems. *The World Community*, like other key texts, explains that the difficulty of understanding the process of authoritative decisionmaking requires a systematic approach:

Given the sheer scale and complexity of the planetary social process, even an effort toward detailed description could overwhelm utility. Scholars as well as decision makers need to develop a comprehensive, yet convenient and economic, method that permits them to make adequate particular reference to the global community process in order to discharge effectively the intellectual tasks of inquiry and decision.¹³²

The New Haven School approach responds to that problem by providing a “theory and tools to constantly update the details of the world community process, or to develop richer detail as particular controversies may require” and “to summarize some of the major trends in world community process, the conditions that account for the trends, and likely future trends.”¹³³ By using their method to understand the interactions across levels and at a planetary level, we can, in their view, comprehend international lawmaking and strive to make it better.

2. *Territorial Units*

Although their analysis focuses on decisionmaking by the world community, the New Haven School scholarship acknowledges the conception of territorial space—and, in particular, the space of the nation-state—that undergirds current politico-legal arrangements. Their use of “nation state” and “territory,” as discussed further in Subsection III.B.1, assumes that these terms have understood meanings. McDougal, Reisman, and Willard note, for example, that:

Since the emergence of nation states in the wake of feudalism and the vanished Roman Empire of the West, the politics of Western Europe have been dominated by the conflicts and accommodations of the nation-state system With the rapid fragmentation of bodies politic that has taken place since World War II, the nation state, frequently with a scanty resource base, often more closely resembles the land-poor city state of an earlier epoch than a large-scale national unit. Nonetheless, the nation state has come to be viewed as the dominant category of participation in the world community.¹³⁴

The New Haven School scholarship thus acknowledges the continuing treatment of the nation-state as the primary subject and object of international law,¹³⁵ but has a more pluralist approach¹³⁶ that views that traditional model as

132. McDougal, Reisman & Willard, *supra* note 127, at 813.

133. *Id.* at 815.

134. *Id.* at 819-20.

135. A current articulation of that still-dominant vision can be found, for example, in IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 289-99 (5th ed. 1998). For additional perspectives on state sovereignty, see *THE FLUID STATE: INTERNATIONAL LAW AND NATIONAL LEGAL SYSTEMS* (Hilary Charlesworth et al. eds., 2005); Keith Aoki, *(Intellectual) Property and Sovereignty: Notes Toward a Cultural Geography of Authorship*, 48 *STAN. L. REV.* 1293, 1318-19 (1996); Becky Mansfield, *Beyond Rescaling: Reintegrating the “National” as a Dimension of Scalar Relations*, 29 *PROGRESS IN HUM. GEOGRAPHY* 458 (2005); Alexander B. Murphy, *The Sovereign State System as Political-Territorial Ideal: Historical and Contemporary Considerations*, in *STATE SOVEREIGNTY AS*

only one piece of the authoritative decisionmaking puzzle. It treats nation-states as one of seven types of participants that play “value shaping” and “value sharing” roles,¹³⁷ and as number two on the list after “individual human beings.”¹³⁸ The other five participants in the list (which lays the groundwork for many of the contemporary models of international legal decisionmaking¹³⁹) include intergovernmental and transnational organizations; transnational political parties and orders; transnational pressure groups and gangs; transnational private or official associations oriented towards values other than power; and civilizations and folk cultures.¹⁴⁰

In its analysis of trends of participation among these participants, *The World Community* provides an analysis grounded in changing conceptions of the human relationship to territory. The piece uses the first trend of “extraordinary demographic explosion” to argue that “territorial elites” have become more aware of each other and that “non-governmental and non-territorially based elites have increased in number and kind.”¹⁴¹ Similarly, the second trend of “increasing internationalization of the composition of the diverse groups that participate in the world community process” engages the transition from “fixed territorial bases” to “major actors in the world community process . . . composed of individuals recruited from many territorial communities.”¹⁴² That analysis leads to *The World Community*’s exposition of a third trend, which it calls the “irredenticization of participation. An irredentum is a group whose practices have more in common with a group territorially based elsewhere than with the inhabitants of the territorial community in which the irredentum is physically located.”¹⁴³

Although legal commentators sometimes rely upon trends like this to claim the decreasing importance of geographical ties,¹⁴⁴ and the New Haven School’s analysis could be read superficially to support this argument, their approach does not suggest that geography itself—or the dynamics of territory and place in particular—has become less important. To the contrary, as

SOCIAL CONSTRUCT 81 (Thomas J. Biersteker & Cynthia Weber eds., 1996); and Antonio F. Perez, Review Essay, *Who Killed Sovereignty? Or: Changing Norms Concerning Sovereignty in International Law*, 14 WIS. INT’L L.J. 463 (1996); and Osofsky, *supra* note 20.

136. For analysis of different approaches to legal pluralism and their implications, see Robert M. Cover, *The Supreme Court 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983); Sally Engle Merry, *Legal Pluralism*, 22 LAW & SOC’Y REV. 869 (1988); and Dalia Tsuk, *The New Deal Origins of American Legal Pluralism*, 29 FLA. ST. U. L. REV. 189 (2001). See also Paul Schiff Berman, *Global Legal Pluralism* (Apr. 1, 2007) (unpublished draft manuscript, on file with author); Ralf Michaels, *The Re-State-Ment of Non-State Law: The State, Choice of Law, and the Challenge from Global Legal Pluralism*, 51 WAYNE L. REV. 1209 (2005). For an exploration of the concept of micro-law, see W. MICHAEL REISMAN, *LAW IN BRIEF ENCOUNTERS* (1999).

137. McDougal, Reisman & Willard, *supra* note 127, at 807.

138. *Id.*

139. For example, transgovernmentalism engages in depth the role of many of the transnational participants that this model identifies. See ANNE-MARIE SLAUGHTER, *A NEW WORLD ORDER* (2004); Kal Raustiala, *The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law*, 43 VA. J. INT’L L. 1 (2002); Anne-Marie Slaughter, *Global Government Networks, Global Information Agencies, and Disaggregated Democracy*, 24 MICH. J. INT’L L. 1041 (2003).

140. McDougal, Reisman & Willard, *supra* note 127, at 807.

141. *Id.* at 831.

142. *Id.* at 831-32.

143. *Id.* at 832.

144. See, e.g., Christopher D. Stone, *Locale and Legitimacy in International Environmental Law*, 48 STAN. L. REV. 1279 (1996) (arguing that geographic ties have become less important).

becomes clear in their analysis of constitutive arenas discussed below, they are trying to map a complex and ever-shifting geography and its implications for authoritative decisionmaking.

The New Haven School approach, as articulated in *Jurisprudence for a Free Society* and the works that precede it, provides a means for engaging the transforming dynamics among space, time, institutions, and crisis.¹⁴⁵ McDougal, Lasswell, and Reisman explain in *Theories about International Law: A Prologue to a Configurative Jurisprudence* that

it is overwhelmingly evident from the review of past jurisprudence that unless the context embraces all persons and groups who are in continuing interaction with one another, such a jurisprudence, by confirming the parochialism of one territorial civilization, or of one segment of human society, will contribute to the rigidities of outlook and operational routine that endanger the realization of global public orders aspiring toward either minimum or optimum levels.¹⁴⁶

Territory and place still matter deeply, according to the New Haven School proponents, but they have to be put into a simultaneously global and pluralist context.

3. *Constitutive Arenas*

Interactions in constitutive arenas form a core mechanism of the world community process among the many participants described above. They establish an arena, whether military or civil, by developing “a common body of prescriptions adhered to with enough regularity to be accepted with confidence.”¹⁴⁷ The concept of an arena allows the New Haven School approach to frame the complex set of relationships among the multiple relevant actors.

In its explication of this idea, the School dances among ideas of scale, territory, and place, without fully engaging the complexity of each geographic construct, as discussed more in Section III.B. As McDougal and Lasswell note in *Jurisprudence for a Free Society*:

Since any stable context in which the power process is carried on is an arena, it is possible to identify a vast network of organized and unorganized arenas at the sub-national as well as the national and transnational levels. Moreover, the arenas may be pluralistically oriented rather than primarily territorial. However, since the overriding decision arenas emphasize territoriality, pluralistic situations are not able to overlook the importance of location.¹⁴⁸

The New Haven School thus does not attempt to escape territory or place, but rather to include it in another spatial arrangement. The arena provides a space for engaging relationships across scale and with varying ties to place.

145. See *supra* note 128 and accompanying text.

146. McDougal, Lasswell & Reisman, *Theories About International Law*, *supra* note 123, at 296-97.

147. 1 LASSWELL & MCDUGAL, *JURISPRUDENCE FOR A FREE SOCIETY*, *supra* note 15, at 426. For an earlier discussion of the key questions that they believe should be asked about these arenas, see McDougal & Lasswell, *Identification and Appraisal*, *supra* note 123, at 19-20.

148. 1 LASSWELL & MCDUGAL, *JURISPRUDENCE FOR A FREE SOCIETY*, *supra* note 15, at 428-29; accord McDougal, Lasswell & Reisman, *Theories About International Law*, *supra* note 123, at 193.

The concept of the arena, then, serves as a key mechanism for authoritative decisionmaking in the world community. It solves the scalar quandary posed in the idea of the world community by unifying the world level with the multiscale interpenetrating communities. International law that actually represents effective power can exist in the New Haven School vision through a construct that encompasses its multidimensional geographic worldview.

B. *The Need to Engage Definitional Ambiguities*

As explored in detail in the previous Part, the New Haven School provides an extensive geographical analysis without apparent direct interaction with the discipline of geography. The question that remains is whether that omission matters for the future: Does the way in which the geography literature engages relevant issues have the potential to enhance the New Haven School's analysis of geography and vice-versa? Or, put alternatively, is there a reason for this already interdisciplinary approach to add another discipline into the mix?

This Section argues that the answer to those questions is "yes," particularly with respect to emerging scholarship from the discipline of geography. Even if the beleaguered geography in the years following Harvard's departmental expulsion at times struggled to define itself, the resulting disciplinary introspection in the context of larger intellectual trends has paved the way for exciting ideas that represent not only a "new" geography¹⁴⁹ but also might form part of a "new" New Haven School approach.

In particular, many of geography's central concepts have complex and even multiple meanings, which the scholarly literature of the past thirty years has explored in new and nuanced ways. This interrogation of geographical ideas could supplement the New Haven School's approach to framing its notions of interpenetrating communities and of authoritative decisionmaking.

1. *Place, Space, and Interpenetrating Communities*

Beginning in the early 1970s, a substantial literature has explored the definition of and relationship between "place" and "space." Humanist geographer Yi-Fu Tuan explains in his foundational book, *Space and Place: The Perspective of Experience*, that:

In experience, the meaning of space often merges with that of place. "Space" is more abstract than "place." What begins as undifferentiated space becomes place as we get to know it better and endow it with value. Architects talk about the spatial qualities of place; they can equally well speak of the locational (place) qualities of space. The ideas "space" and "place" require each other for definition. From the security and stability of place we are aware of the openness, freedom, and threat of space, and vice versa. Furthermore, if

149. See *supra* note 13 and accompanying text.

we think of space as that which allows movement, then place is pause; each pause in movement makes it possible for location to be transformed into place.¹⁵⁰

Similarly, John Agnew and James Duncan have noted, “[p]lace is a difficult word. *The Oxford English Dictionary* gives over three and one-half pages to it. It can mean ‘a portion of space in which people dwell together,’ but it can also mean ‘rank’ in a list . . . temporal ordering . . . or ‘position’ in a social order. . . .”¹⁵¹ More recently, Doreen Massey devoted an entire book, *For Space*, to a broad exploration of the term “space” in the context of globalization.¹⁵²

The New Haven School’s use of “space,” “territory,” and “location” does not fully engage the issues with which recent geography scholarship struggles. Rather, it relies on “place” and “space” as accepted conceptual categories, as evidenced in some of the excerpts above. For example, in its explanation that arenas can be primarily territorial or more pluralistic, *Jurisprudence for a Free Society* assumes that territoriality is an important part of what gives location importance.¹⁵³

The issue here is not a lack of nuance in the New Haven School’s analysis of territory, but instead that the idea of “location” or “boundary” means something relatively definable. For instance, *The World Community* acknowledges that “the congruence of political boundaries with kinship, linguistic, economic, regional, religious, customary, and other boundaries is the exception rather than the rule.”¹⁵⁴ It explores the importance of the dynamic between those different kinds of boundaries.¹⁵⁵ However, that discussion does not seem to question what a boundary is. The New Haven School literature’s treatment of “space” and “spatiality” is similar. It uses spatiality as part of a list of dimensions that also includes time, institutions, and crisis, and in doing so, appears to assume that the concept of “spatiality” has a specific meaning.¹⁵⁶

A deeper engagement of the complexity of terms like “place,” “space,” and “territory” would have a number of implications for its ideas of world community and how decisions are made in constitutive arenas. For instance, where are the interpenetrating communities—both in physical and identity terms—and how does that impact their role in the constitutive process? How have the different kinds of boundaries evolved and how does that impact dynamics around effective power? Do “nation-state” and “international law” mean different things depending on the community at issue and how should

150. YI-FU TUAN, *SPACE AND PLACE: THE PERSPECTIVE OF EXPERIENCE* 6 (1977). For other definitions of the concept of “space,” see Helen Couclelis, *Location, Place, Region, and Space*, in *GEOGRAPHY’S INNER WORLDS: PERVERSIVE THEMES IN CONTEMPORARY AMERICAN GEOGRAPHY* 215, 215 (Ronald F. Abler et al. eds., 1992); and Michael R. Curry, *On Space and Spatial Practice in Contemporary Geography*, in *CONCEPTS IN HUMAN GEOGRAPHY* 3, 3 (Carville Earle et al. eds., 1995).

151. John A. Agnew & James S. Duncan, *Introduction to THE POWER OF PLACE: BRINGING TOGETHER GEOGRAPHICAL AND SOCIOLOGICAL IMAGINATIONS* 1, 1 (John A. Agnew & James S. Duncan eds., 1989).

152. DOREEN MASSEY, *FOR SPACE* (2005).

153. See *supra* note 148 and accompanying text.

154. McDougal, Reisman & Willard, *supra* note 127, at 820.

155. See *id.* at 820-21.

156. See *supra* note 128 and accompanying text.

those conceptual variations be integrated into the model of authoritative decisionmaking?

As explored more concretely in Section III.C, these kinds of questions have implications for how the New Haven School conducts its phase analysis of “the envioning social process, the effective power process, and the constitutive process” by providing a clearer geographic lens through which to analyze the data.¹⁵⁷ Although the School may already concern itself with some of these questions, interrogating these geographic terms ensures that a thicker version of the “where” issues get incorporated more directly.

2. *Scaling Authoritative Decisionmaking*

Place and space are not, however, the only central geographic terms with contested meanings upon which the New Haven School relies. As discussed in Subsection III.A.1, its theory of authoritative decisionmaking at an international level relies on focusing on one level while recognizing that interaction is occurring within and across levels. In this analysis of scale, like in its analysis of space and place, the New Haven School pieces assume that “scale” has meaning. From its use of the term, it appears that scale perhaps might be defined as “level of governance,” a definition I have relied upon before in my own law and geography work.¹⁵⁸

The current geography literature, however, does not presume such a meaning. Neil Brenner’s recent book, *New State Spaces: Urban Governance and the Rescaling of Statehood*, summarizes the various definitions scale has been given in recent scholarship: (1) a “nested hierarchy of bounded spaces of differing size”; (2) “the level of geographical resolution at which a given phenomenon is thought of, acted on or studied”; (3) the “geographical organizer and expression of collective social action”; and (4) the “geographical resolution of contradictory processes of competition and cooperation.”¹⁵⁹ He then adds that his analysis is “broadly compatible” with these definitions “but emphasizes, above all, the *hierarchization* of spaces in relation to one another.”¹⁶⁰ Similarly, a series of articles in *Progress in Human Geography* in 2000 and 2001 debated the way in which scalar analysis might be conducted.¹⁶¹

An exploration of how these different variations on the meaning of “scale” might interact with the theoretical structure of the New Haven School has the potential to change the way in which authoritative decisionmaking might operate. For instance, if one considers the various definitions that Neil

157. W. Michael Reisman, *A New Haven School Look at Sanctions*, 95 AM. SOC’Y INT’L L. PROC. 27, 27 (2001).

158. See Osofsky, *supra* note 20.

159. NEIL BRENNER, *NEW STATE SPACES: URBAN GOVERNANCE AND THE RESCALING OF STATEHOOD* 9 (2004) (internal quotations omitted).

160. *Id.*

161. Compare Sallie A. Marston, *The Social Construction of Scale*, 24 PROGRESS IN HUM. GEOGRAPHY 219 (2000), with Neil Brenner, *The Limits to Scale? Methodological Reflections on Scalar Structuration*, 25 PROGRESS IN HUM. GEOGRAPHY 591 (2001), and with Sallie A. Marston & Neil Smith, *States, Scales and Households: Limits to Scale Thinking? A Response to Brenner*, 25 PROGRESS IN HUM. GEOGRAPHY 615 (2001).

Brenner's *New State Spaces* poses,¹⁶² the question of whether the scales should be viewed hierarchically has an impact on a vision of "world community." Is the world scale hierarchically above other scales because it is the largest? Or, is the nation-state scale hierarchically above the other scales because of its formal role as the primary subject and object of international law? If there is no hierarchy among scales, do the interpenetrating communities create a pluralist order despite the role of the nation-state?

Alternatively, if the key role of scale is to serve as the "geographical organizer and expression of collective social action"¹⁶³ is the vision that the New Haven School presents itself a type of social action? Does the act of choosing how one thinks scale is ordered itself serve as a form of spatial ordering? How does modeling authoritative decisionmaking in this way impact the distribution of effective power? Again, like with the concepts of "place" and "space," as discussed in more depth in Section III.C, asking the questions under the questions ensures that the geographic issues are fully explored through the New Haven School analysis.

C. *Implications of a "Deeper" Engagement of Geography*

This Section situates the geographic issues raised in the last two Sections in time, or more specifically, in the timeline of the New Haven School analysis. It examines the potential influence of such questions at the two main stages of the School's inquiry: the preliminary "internal" process of self-reflection and the primary "external" examination of law/policy issues.

1. *Internal Analysis*

Because of its commitment to scientific inquiry, New Haven School analysis always begins by contextualizing the person engaging in the inquiry.¹⁶⁴ Geography's earlier academic periods, described above, combined with the fact that many elite U.S. universities lacked geography departments during the conceptual developments of the last fifty years, likely have left an impression with many legal academics that geography primarily focuses on dry map memorization. Geography's current complex engagement of place, space, and scale across disciplines has much to offer lawyers and legal academics, but it has not been well-publicized to that community, evidenced by the slow development of law and geography as a recognized interdisciplinary intersection.

As those trained in the School's theory and methods move outward and create new variations, the tendency of the current and upcoming generation of U.S. elites to take a "thin" approach to geographic issues is an important part of that context. The decline of geography in these schools over the past two generations has profound implications for the knowledge set of and questions asked by the people being educated there, including those now discussing the possibility of a "new" New Haven School. Until Yale University and other

162. See BRENNER, *supra* note 159, at 9.

163. *Id.*

164. See Reisman, *supra* note 157, at 27.

elite institutions continue the process begun by Harvard University of re-acknowledging geography, their students may graduate with far less exposure to the discipline's evolving insights than the New Haven School founders had. Part of deepening the School's geographic approach involves consciously engaging this gap.

For instance, an examination of my own observational viewpoint and its geography—an inquiry that the New Haven School demands—reflects the dangers of geography's demise at these institutions. I attended Yale College from 1989 to 1993 and the Yale Law School from 1995 to 1998 without taking a course in geography. As an undergraduate, I pursued a double-major in philosophy and studies in the environment, because I wanted to understand the intertwinement of the physical, sociopolitical, and conceptual worlds; in a sense, I was trying to create a non-existent geography major. At the Yale Law School, I focused my studies largely on international law and was steeped, consciously and unconsciously, in the New Haven School. My courses included two semesters of Public Order of the World Community with Michael Reisman, and two of the three papers I published in law school were written with him. My international and comparative law analysis benefited greatly from these encounters with Michael Reisman and the New Haven School, as well as those with Harold Koh, Daniel Esty, Paul Kahn, Judith Resnik, Drew Days, Hugh Scogin, Paul Dubinsky, Greg Fox, and Ron Slye.

My early scholarship focused primarily on issues emerging through litigation at transnational environmental intersections—an area steeped in geographic issues—and yet I had little conception of this disciplinary approach until an encounter with my colleague Keith Aoki, which resulted in large part from my coming to a public institution where geography is present. After this introduction to geography's potential contribution, I realized that its ideas were critical to almost everything I analyze. Reading geography scholarship often makes me feel as if I have “come home” intellectually at long last. I began a Ph.D. in geography at the University of Oregon—where I am an assistant professor—this past academic year.

Although I readily acknowledge my own responsibility for this ignorance—as time passes, for example, I have a clearer sense of how much more I have to learn from those who taught me at Yale—I fear that I am not atypical. When I presented some of my new law and geography ideas in 2006 to the Junior International Law Scholars Roundtable, who arguably represent an emerging generation of international law scholars, very few of them had substantial background in geography; Paul Schiff Berman and Christopher Borgen, both of whom participated in this Conference, serve as notable exceptions. This group of “new” scholars stressed the need for a basic piece on the relevance of geography for international law. Their reactions and encouragement helped spur me to engage in this project, as well as the broader one of articulating why international law needs geography. My presentations to other legal scholars have elicited similar responses, mostly encouraging and sometimes hostile.

I provide this personal reflection not simply to express that law professors' ties to places may have deprived them of basic geographic

education, but to argue that this type of analysis—when done fully—makes the New Haven School approach more pluralist. We are all the products of multiple intersections of place and space across scale and over time, each of which has interacted with effective power in different ways. For example, I am deeply shaped by the fact that I never felt “from” anywhere because I was born in Philadelphia, lived in Boston for a year, mostly grew up in Topeka, and went to high school in New Orleans, where my parents still live. I attended the same elite Northeastern institution twice, but my two experiences were very different, in part because the first time I was “from” New Orleans and the second time I was “from” Yale. As a white woman who has worked on issues of environmental justice with communities of color in racially-diverse large cities and now lives in Eugene, Oregon, a city with quite a different demography, I have a particular perspective on the intersection of race, class, and power.

The above describes only a fraction of the ways in which geography interacts with my observational perspective, but it illustrates an ongoing dilemma for the New Haven School. Some of the New Haven School’s critics, particularly those who self-identify with the second generation of Third World Approaches to International Law (TWAIL II), have pushed the New Haven School proponents to view this internal stage as potentially transformative. Antony Anghie and B.S. Chimni have written, for example: “[W]e welcome the point, made by Wiessner and Willard, that self-reflection, ‘clarification of the observer’s standpoint’ is an important aspect of the Policy approach, as this might lead to a more open version of the New Haven school.”¹⁶⁵ If the School takes self-reflection seriously in a geographic sense, each of its recommendations about the “external” would be clearly situated in the “where” of the observer’s identity,¹⁶⁶ which might facilitate further dialogue between the New Haven School and TWAIL scholars as TWAIL moves into its third variation.¹⁶⁷

2. *External Analysis*

Such an engagement also has the potential to reframe the second and primary step of the New Haven School approach, which focuses externally. As illustrated by the above analysis of world community, territorial units, and constitutive arenas, the New Haven School’s empirical analysis of context—which identifies “the environing social process, the effective power process, and the constitutive process”—relies on a particular geographical perspective. Without changing the steps that the New Haven School goes through, a more nuanced exploration of geographic concepts might influence the way in which a problem is viewed.

165. Antony Anghie & B.S. Chimni, *Third World Approaches to International Law and Individual Responsibility in Internal Conflicts*, 2 CHINESE J. INT’L L. 77, 99 (2003) (internal citation omitted).

166. For an example of how asking the “where” question might change narratives, see Reginald Oh, *Re-Mapping Equal Protection Jurisprudence: A Legal Geography of Race and Affirmative Action*, 53 AM. U. L. REV. 1305 (2004).

167. See The Third World and International Law Conference: TWAIL III, Albany Law School (Apr. 20-21, 2007), <http://www.albanylaw.edu/twail> [hereinafter TWAIL III].

An examination of the evolving controversy over the School's central value of human dignity more specifically illustrates potential implications of this "deeper" geographic approach. Critics of the New Haven School who focus on equity issues, such as Richard Falk and B.S. Chimni, have repeatedly raised the concern that the view of law as "authoritative decisionmaking" based in "effective power" strips "third world" countries of the protection of sovereignty, one of the few bulwarks against superior force. They have claimed that the method for determining shared values does not adequately consider the perspective of people outside of the West, and that many countries are lumped together who represent a multiplicity of models.¹⁶⁸

The New Haven School rejoinder has tended to be two-fold. First, its proponents have claimed that the School's scientific approach could be used to reach a variety of policy outcomes. Its power derives from providing a systematic way of engaging the complexities posed by the ever-evolving public order of the world community. Second, they have argued that the concern with totalitarianism is justified. Human dignity is a broadly shared value and sovereignty should not protect oppressive states.¹⁶⁹

Beginning in the early-to-mid 1990s, TWAIL II scholarship began to emerge—some of which draws from geography explicitly—and provided a reengagement of this issue. After witnessing years of failure to achieve justice and equity through international institutions, TWAIL II was more skeptical of positivism than was TWAIL I. These scholars still expressed concerns about the New Haven School approach, however, and in particular, its framing of "human dignity," but also noted possibilities for convergence. In so doing, they tied together the internal and external phases:

[T]he notions of "human dignity" and "world public order" that the New Haven school would look to in offering guidance are themselves shaped by considerations of power. These considerations often possess a North-South dimension, much as they would be shaped by considerations of gender. There has been a marked disparity between the extraordinarily comprehensive methodology proposed by the New Haven school and the somewhat narrow, US oriented proposals that have emerged from such an inquiry.¹⁷⁰

Anghie and Chimni then made the point, quoted above, about the role that the internal phases might play in the transformation of the New Haven School analysis.¹⁷¹

An important moment for potential synergy exists because the TWAIL III conference also took place this spring.¹⁷² Realistically, however, many of the New Haven School proponents and the TWAIL III scholars—who themselves represent a diverse set of perspectives and approaches¹⁷³—likely

168. For summaries of these critiques, see *McDougal's Jurisprudence: Utility, Influence, Controversy*, *supra* note 16.

169. For an example of such an interchange, see *id.*

170. Anghie & Chimni, *supra* note 165, at 99.

171. *See id.*

172. *See* TWAIL III, *supra* note 167. The overlap among scholars who attended *The Yale Journal of International Law* Fifth Annual Young Scholars Conference (Mar. 10, 2007) and those who participated in TWAIL III, was, however, relatively limited.

173. Although the conference is called TWAIL III, it explicitly included "but [was] not restricted to critical race theory, blackcrit, TWAIL, NAIL, feminist approaches to international law and LatCrit theory." *Id.*

will remain divided on core issues: what “human dignity” means, how to characterize the New Haven School’s approach to it, and what future approaches to this idea should look like.¹⁷⁴ The discipline of geography will not be able to resolve this impasse or other debates between the New Haven School and its critics, which often reflect deeply-entrenched political differences. But geographical examination does provide an additional, and potentially helpful, lens through which to reengage this controversy. Its focus on the nuanced dynamics between place and space would help to ground the debates over “human dignity” in the subtleties of how locational factors influence the way in which that concept is understood and valued. Similarly, depending on one’s version of scale and how ideas of “human dignity” vary at different scales and in the interaction among scales, the “global” version of that concept and its meaning may look different. When applied to particular future circumstances in which the New Haven School scholars advocate for action to promote “human dignity” and TWAIL scholars oppose it, this “deeper” analysis might assist a search for common ground. Simply put, the emerging geography literature has the potential to contextualize both the internal and external analyses further, a development that would be valuable for future New Haven School projects.

IV. CONCLUDING REFLECTIONS

This piece focuses on the specific example of the New Haven School, but its call for a greater engagement of geography has broader implications. Because international legal problems are enmeshed with geographic concepts, drawing from the geography literature can reveal nuance missing in traditional accounts. Although a full exploration of international law and geography is beyond the scope of this paper, the example of the New Haven School is instructive.

I was asked in a faculty workshop on another international law and geography article why I am so interested in space if I am still grappling with what it means. That question caused me to reflect more broadly on the value of engaging geography. A detailed answer is beyond the scope of this Article,¹⁷⁵ but at least some acknowledgment of this issue is necessary in two senses. First, during geography’s absence at many elite institutions, and particularly since the spatial turn discussed above, scholars in many other disciplines have grappled with some of its core ideas. Although this development could be used to devalue geography, I think it instead reinforces geography as a counterpoint to history. Second, the complexity of geography’s core concepts and its somewhat unwieldy cross-cutting quality as a discipline are not entirely unique. Especially since the advent of postmodernism, disciplines tend to contain at least strains of thought interrogating their core ideas. Just as interdisciplinary inquiry more generally thickens our perspective on legal problems, law and geography analysis allows us to understand the geographic ideas that we use more completely.

174. The lack of overlap among participants in the two conferences is, at least in part, indicative of these differences. *See supra* note 172.

175. I am co-authoring an article on these issues. *See* Osofsky, Murphy & Aoki, *supra* note 28.

As this Conference looks to the future of the New Haven School of International Law, this piece's analysis of the School's relationship to geography serves as an example of the ways in which ideas can move inside and outside the boundaries of elite institutions, and how such moves might influence the development of thought. If Summers is right that geography "is increasingly at the center of a very wide range of intellectual concerns,"¹⁷⁶ this discipline's insights should play a role in shaping the contours of the New Haven School and international law more broadly.

176. Gerhman, *supra* note 84.