cultural studies, feminism, psychoanalysis, political theory, literary studies, and the like. However, geography and law have yet to encounter each other. Despite their apparent openness to intellectual exchange, a sustained dialogue between law and geography has yet to happen. To me, this is as surprising as it is unfortunate. This silence is especially significant given that the two have not only both engaged in a scathing internal critique of the knowledge claims of their respective disciplines, but have also insisted, respectively, on the politics of law or of space. However, they have not fully "externalized" the impetus derived from the internal assault, and have failed to make sense of the politics of law and space. If the critical imagination demands an attention to the multiple and intersecting forms in which power is deployed and contested within capitalist society, this continued disengagement must end.

Legal Boundaries: Law, History, and Critical Inquiry

Rebels are everywhere to be found who no longer wish to obey
the law without knowing whence it comes, what are its uses,
and whether arises the obligation to submit to it, and the rever-
ence with which it is encompassed. The rebels of our day are
criticizing the very foundations of society which have hitherto
been held sacred, and first and foremost among them that fetish,
law.

—Peter Kropotkin (1886, p. 200)

In interpretative terms, the text see nothing, it hears nothing, it
says nothing. It runs scared, scared of its own desire, scared of the
possibility of speech, scared of life. . . . An institution which has
lost the desire to speak, that has abandoned the surface of the
text, that preaches with the emptiness of reason, is a dead in-
stitution, an entombed law, no more than detritus, relic, re-
mains.

—Peter Goodrich (1990, pp. 253–254)

Central to Western law and legal practice is the assertion of legal "clo-
sure," this being the characterization of law as an autonomous, self-
sufficient field that can be marked off, in several important ways, from the
vagaries of social and political life. The closure of law has, however, come
under concerted attack from a number of legal critics who insist that law
be seen for what it is: not only deeply implicated in the messy and
 politicized contingencies of social life but actually constitutive of social
and political relations. It is this "opening" of law, then, that is central to the critical program.

This book is written with a broad sympathy for this critical project. However, my attempt to construct a geographically informed critical legal analysis cuts against the grain, given the centrality of the historical imagination within law. Although the critical historical imagination is incisive and progressive, I shall argue that to ignore the geographically incisive and progressive, I shall argue that to ignore the geographically incisive and progressive, I shall argue that to ignore the compelling aspects of the historical imagination as such. Rather, borrowing from Seja (1989), my concern is with the territoriality of the historical, and the implicit exclusion of the geographical. My intention is not to replace the historical, temporal, and spatial aspects of law with a geographical perspective, but rather, to critically integrate geography into law. Although I will later suggest that geography as a method be made possible partly by developments within human geography itself, I also want to argue that the critical histories of legal theory, despite their apparent obtrusiveness, can also serve as invaluable signposts, directing us to a critical legal geography. Before I start to make these connections, however, let me return to legal closure.

EFFECTING CLOSURE: THE TERRITORY OF LAW

It is always difficult to characterize the "mainstream" of a field such as law, and to do so, as Kelman (1987, p. 11) puts it, as so not to "covertly disparage its adherents, [and] make them sound like a rather compulsive and self-deluding bunch." The problem is also that the common-law legal enterprise is a diverse and dynamic one, and that the concept of the "mainstream" is something of a catch-all. Although significant similarities can be found in the very broadest sense that one can usefully discern a few distinctive propositions of the mainstream assumptions. They also operate negatively, defining what is not. These assumptions all rely, I shall suggest, upon a deeper claim that the autonomy of law—and as a set of norms, practices, and rules—is preserved as an essentially closed system.

Gordon (1981) offers an account of the "aims" of mainstream legal scholarship that provides a useful starting point for my analysis. The prime imperative, he claims, is that of "rationalizing the real" (p. 1018); that is, of demonstrating that legal activity "makes sense," and may be attached to some coherent system of social ordering. Individual legal exercises (such as lawmaking and legal interpretation) are not irrational and random, but are seen as structured by a "deep" logic and rationality. This does not stop lawyers from recognizing that there are certain peculiarly "hard" legal decisions, but it is assumed that answers will not only be forthcoming, but that they will be essentially objective and impersonal. Moreover, law as a whole is perceived as rational and ordered. Roberto Unger (1983) describes this characteristic of law as formalism, meant here not in the narrow sense of the belief in a deductive system through which determine answers to problems of legal interpretation can be derived, but described as:

"a commitment to, and therefore also a belief in the possibility of, a method of legal justification that can be clearly contrasted to open-ended disputes about the basic terms of social life, disputes that people call ideological, philosophical or visionary. Though such conflicts may not be entirely bereft of criteria, they fall far short of the rationality that the formalist claims for legal analysis. The formalism I have in mind characteristically invokes impersonal purposes, policies, and principles as an indispensable component of legal reasoning. (p. 321)"

A second legal aim, according to Gordon (1981), is one of justification. Not only is law presented as rational and reasonable, but it is vindicated as consistent with some conception of the right. It is no accident that the alternatives to law are often presented as some variant of "anarchism" or the naked and brutish prelegal regime of Hobbes. To Unger (1983), this constitutes an objectivism, such that law both expresses and sustains a "defensible scheme of human association" and an "intelligible moral order" (p. 322).

A third, more pragmatic, aim of legal scholarship can also be identified. Legal activities (lawmaking, law applying) are commonly presented as practical, socially useful, and relevant exercises that will help both ordinary citizens and policymakers maneuver through the rights and duties of the public world. Indeed, so complex, unpredictable, and dangerous are the relations of the individual with the collective, that only the certainties of law can provide the requisite road map.

The rule of law, then, appears rational, benign, and necessary. Such claims, in turn, rely upon a fundamentally important separation. Law
must effect closure, and divorce itself from the "value-laden," politicized, and mercurial conditions of social life. The effect is the trapping out of a distinctly legal domain delineated by boundaries that "segregate legal discourse from political rhetoric, poetry, or late night conversations with friends. These boundaries are marked by signs at the borders of the discipline which announce what kinds of appeals will be taken as persuasive" (Peller, 1985, p. 1153).

Closure is vital if the legal vision is to be sustained. Thus, an argument for the essential rationality of law presupposes a critical distance between the vagaries of social life and the higher rationality of legal knowledge. Law as a whole is presented as a self-sustaining and distinct field of knowledge and praxis such that the contingencies of social life and legal discourse in law's terms, if at all. As Cotterell describes it, enter the legal universe. Similarly, the instrumental precondition for its legitimacy (Griffiths, 1985). Similarly, the instrumental efficacy of law rests, it can be argued, on an assumption that "society" has a set of "needs." On this account, law responds to such needs, and "acts" upon society to achieve the required result. Griffiths (1979) refers to this as "instrumentalism," this being the assertion that law is "an autonomous instrument with which an activist legislator can bring about (or prevent) social and economic change" (p. 343).

The closure of law is, of course, expressed in different fashions and to varying degrees by different legal practitioners. The extreme case is that of legal formalism, in which the facts of law are assumed to be objectively knowable through a rigorous and self-sufficient system of legal interpretive procedures. An alternative position is to rejects pure formalism, yet to maintain that "legal culture" is such that statutory interpretation is not open-ended but constrained by the "tradition" of which the judge is a member (Dworkin, 1985).

**THE CRITICAL LEGAL CHALLENGE**

This orthodoxy has not gone unchallenged. A number of legal critics have sought to unravel the claims of legal rationality, normative worth, and efficacy. Such challenges have come from a number of quarters, including Marxism, feminism, and the "law and society" movement. The most extensive and controversial assault, however, has come from critical legal studies (CLS). The central rationale for the critical challenge is straightforward. Critics argue that, far from constituting an autonomous sphere, the legal project is necessarily a social and political project. At the core of critical legal scholarship, then, opposition to legal closure, it being argued that the "drawing of the conceptual boundary of law and the hooting of the flag of legal theory over that terrain is not an innocent act" (Hunt, 1987, p. 12).

Such a position derives from a very specific attitude to law and legal practice. No longer autonomous and objective, law is cast as relational, that is, as acquiring meaning through social action. To this extent, law is viewed as socially constituted and therefore analytically inseparable from social and political relations. Hutchison and Morahan (1984), for example, maintain bluntly that "no distinctive mode of legal reasoning exists to be simply contrasted with political dialogue. Law is simply politics.
dressed in a different garb; it neither operates in a historical vacuum, nor does it exist independently of ideological struggles in society" (p. 206).

Law is seen as social and political both in terms of its effect and its origin. In terms of the former, critical scholars treat legal discourses as discourses of power. This implies much more than the argument that legal decisions structure life chances and determine the allocation of resources. Rather, law is said to structure the very manner in which we experience and understand social life. In general, the claim here is that legal discourses serve to reproduce certain social categories and distinctions between categories of people, places, and events. As Gordon (1986) notes, legal discourses construct roles for us, such as "owner" and "employee," and then teach us how to behave in those roles. Legal discourses define us as discrete individuals, and then prescribe formal channels (contracts, corporations, and so on) through which we can reconnect. Legal discourses, it is claimed, split the world into categories that filter our experience, distinguishing a set of harms that we must accept as the hand of fate or our own fault—such as poverty—from those actions that we may legitimately contest—such as libel or assault in a public place. On the critical account, then, legal discourses do not act as an external structure, but acquire meaning and saliency only in concrete social settings. Legal concepts and social relations are mutually intermeshed. Not only is there no legal concept that exists in isolation from social life, but it becomes increasingly difficult to describe social practices without recognizing the legal relations among the people involved. To Trubek (1984), "[l]aw creates society and society creates law; the relationships are complex and multidirectional . . . [l]aw and society are mutually constituting, then the distinction between law and society breaks down" (p. 609).

But law is also deeply social in a second sense. A "legal mentality" (Unger 1975) suggests, "is no mere invention of philosophers. It is a way of thinking about social life, a mode of consciousness that is bound together with a doctrine and an experience of social life" (p. 75). Law, therefore, is understood as an expression of a pervasive, yet contingent, social vision. Much critical legal energy has gone into demonstrating that

the social vision that animates law is some variant of liberalism. The legal fascination with the individual and the definition of "public" and "private" domains, for example, are all understood as expressive of this conditional social vocabulary.

Critical scholars have several reasons—normative and political—for making these claims. One central argument is that legal closure serves to reify certain conditional and politicized assertions. The presentation of legal knowledge and legal practice as divorced from quotidian human experience and political life offers up law, like the internalized rules of social etiquette or classroom interaction, as uncontroversial and beyond individual control. The effect, the critics argue, is to "freeze" certain highly contentious claims. The contingent and intrinsically political representations and categorizations of legal culture are presented as fixed, natural, and prepolitical (Peller, 1985). A closing down of critical inquiry, it is argued, is not only antidemocratic but politically incapacitating. The result is to inhibit or foreclose debate over alternative schemas of social ordering that extend beyond the reform of existing structures. To the critics, legal choices are not technical and transcendental, but constitute "hard decisions" that are necessarily political in nature and effect. Legal closure not only denies such hard decisions, it also circumscribes the pluralism of the moral landscape. As Singer (1988a) notes,

We differ about which contacts are more significant and what interests are real and what policies are better because we really do disagree about which kinds of social relationships are just, which market arrangements work well, and which exercises of state power illegitimately interfere with another community's power to govern its affairs. These conflicts are not false. It is only if we do not face them that we will be false to ourselves and our ideals. (p. 165)

But, to the critics, political choices are necessarily made within law. Hence, the structuring language of liberalism has come under scrutiny, it being argued that the liberal lexicon can be problematic, even oppressive. Echoing a wider critique (Sandel, 1984), one frequent claim is that the individualist obsession of legal liberalism offers only a "thin"—even barren—model of social life. A liberal suspicion of the collective, Nedelsky

relations to others. Examples include a Rawlsian conception of society as a social contract or a Marxist attention to class struggle. Second, a social vision defines our idea of discursive relevance, positing distinct epistemological criteria of verification. Third, a social vision is nuanced, offering "judgments about how society should be organized and what relationships are good and are to be favored" (p. 627).
(1990) argues, is injurious to sociality to the extent that it enjoins us to treat others with suspicion and circumspection. If, as she argues, true autonomy is developed not by separation, but by our engaged relationship with other people, then the collective must also be seen as the source of the self (cf. Tushnet, 1984, Gabel, 1984).

It is vital at this point, however, to note that a skepticism toward liberalism need not imply a simple-minded rejection. Although the legal critique can appear irreverent, it is also clear that certain principles of legal concept of the “rule of law,” has been applauded by some radicals (Thompson, 1975). Similarly, the appeal of liberalism to tolerance, autonomy, and meliorism is undoubtedly appealing. Instead of a straightforward, liberal response has been wide departure from a naive acceptance of the fact that, however, the critical response has been to misconstruct it. Indeed, in many senses, contemporary legal critics can be seen as the intellectual heirs of the early modern critics and liberal political theorists. It is no accident, for example, that Unger (1975) chooses to cast himself as a “super-liberal.”

CHALLENGING CLOSURE: CRITICAL LEGAL HISTORIES

For the critics, then, the “closure” of law is the sine qua non of the legal orthodoxy. Without it, the legal world would be shown for what it is: contingent, political, and contestable. Critical legal scholars refuse to accept the given boundaries of law, and insist on “denaturalizing” legal process by pointing to their inconsistencies and indeterminacies. In the discourses, they claim to explore the possibilities for alternative systems of social ordering. If society is in some sense constituted by legal consciousness, the critics argue, then to change consciousness is to change society itself. For Unger (1983), critical practice “begins all over again the fight over the terms of social life. It is the legal-theoretical concomitant to a social theory that sees transformative possibilities built into the very mechanisms of social stabilization” (p. 583).

The critics adopt a number of techniques in this process. The power of the critical onslaught, I think, is that it is able to engage mainstream legal scholarship on two concurrent fronts. Given the institutional pro-

urity of critical legal scholars to the bastions of the law, one line of attack is “internal,” with an attempt at unearthing and contesting legal discourse on its own terms. Critics have borrowed from deconstruction, for example, to argue that the liberal worldview that underpins law is far from coherent, but is beset both by internal contradictions and the associated repression of these contradictions. However, the process of suppression can be turned against legal discourse to reveal the “structures of contradiction” and the “loose ends that exists as traces of resistance and insurrection” (Peltel, 1985, p. 1286) and in so doing, it is argued, reveal the contingency and politics of law (Kennedy, 1976, Tushnet, 1984; Unger, 1975).

Another line of attack, which I wish to dwell upon, is “external.” Rather than focusing on the internal contradictions of legal discourse, the attempt here is to challenge legal closure by situating law: that is, by exploring and challenging its claims concerning law in society. In so doing, the very boundaries that separate law from “society” (and make possible my distinction between “internal” and “external” critique) are made unintelligible. It is significant that the context within which critical scholars situate law is, almost without exception, a historical one.” Gordon (1984), for example, notes that “critical legal writers pay a lot of attention to history. In fact, they have probably devoted more pages to historical description than to anything” (p. 57).

The use of history in critical legal scholarship is powerful, provocative and political but in itself far from novel. Many other critical strands of legal thought have long relied upon the “dilemmas of history.” More generally, the pervasiveness of the historical critique within critical legal theory is not surprising, given its prevalence within modern social theory. For example, the Frankfurt School relies heavily upon an historical imagination which, according to Marcuse (1964),

4This is not to say that critical scholars have nothing to say geographically. As I shall mention later, certain nascent “critical legal geographies” can be recovered from contemporary critical writings. However, such accounts are frequently subordinated to the logic of the historical critique. Also, it should be realized that certain premodern legal scholarship—such as the Upaniṣad of Thomas More—speaks to the power of the geographical imagination.

5The reasons for the centrality of history are ambiguous and complex and cannot be adequately dealt with here (cf. Agnew, 1987; Soja, 1989; Lefebvre, 1991). One factor, according to some, has to do with the material conditions of capitalism (Harvey, 1989). On this account, it is impossible to disentangle the language of social theory from the Enlightenment project and the processes of modernization, the effect of which has been the creation of a specific understanding of space and of time. Modernity, to many, is a historical, not a geographic project, premised on a sense of flux and progress, a destabilizing sense of change, whereby “all that is solid melts into air.” Moreover, modernity has worked,
renders possible the development of concepts which de-stabilize and transcend the closed universe by comprehending it as historical universe. ... The mediation of the past [Critical thought becomes historical consciousness. ... The present discovers the factors which made the facts, which determine the way of life, which established the masters and the slaves, it projects the limits and the alternatives. (pp. 99-100, my emphasis)

It is important to note, however, that history gets deployed in two, sometimes overlapping ways in critical legal scholarship. In both cases, diachronic or historical descriptions and relies upon certain historical claims. First, diachronic or historical development of law has long been important to legal scholarship. In his influential attack on legal positivism, for example, the American scholar Oliver Wendell Holmes said the law not at times but as an event that is the story of a nation's development through many centuries. Consequently, law "cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what axioms and corollaries are, we must know what the book is about, and what it is all about." Holmes, 1891, p. 1, my emphasis.) Similarly, the legal writings of Max Weber, particularly his seminal works on social relationships and the evolution of legal forms, and their relation to changing economic and social structures. Such a backdrop has directed many contemporary critical scholars to explore the importance of such diachronic histories to law. What legal histories, they ask, are invoked by legal scholars, and what effect do they have upon legal closure? Judges and scholars, and what effect do they have upon legal closure? Judges and legal scholars have argued, a lot of time coming up

One central aspect of historically informed critical enquiry is the attempt to identify and unravel the diachronic histories of the orthodoxies. Judges and legal scholars, it can be argued, spend a lot of time coming up

4. Marx put it, as "an essential part of life," as the site of geography has been effaced by technologies in communications and business organization. Both of these forces, we might argue, have led to the romanticization of an historical, as opposed to a geographic, imagination, and the stabilization of space and geography as empty, passive, pre-political, and uninteresting.

5. I am grateful to Joel Bakan for clarifying this difference.

6. It is interesting to note that Holmes has been acclaimed as one of the first legal realists, who, in turn, paved the way for critical legal studies. It is also evident that legal realism continued to rely upon critical historical analyses (Note, 1982).

Legal Boundaries: Law, History, and Critical Inquiry

with such legal histories that serve, ultimately, to undermine closure. Kelman (1987) usefully identifies several such visions in mainstream legal scholarship. For example, the past is frequently cast as a privileged source of normative values. "Originalist" strands of American constitutional legal interpretation are, in Kelman's terms, nostalgic to the extent that they glorify a historical constitutional text or the values of the drafters of that text. An argument concerning the normative worth of law, for example, can be sustained by such a maneuver. By rooting contemporary law in the determine values of "our forefathers," whether inscribed in Magna Carta or the Constitution, law acquires a profound stability. An alternate vision of legal history is a progressive one. Law in this account evolves teleologically, furthering the advancement of humanity. A claim concerning the efficacy of legal reasoning and legal forms is well suited to such an argument. By this account, law evolves to match the changing needs of society. As society improves, law gets better. The writings of such as Cardozo (1924) and Pound (1921) express this telos.

Given their importance, critical scholars have directed much energy to identifying and challenging such legal histories. To the critics, they are both ideological and partial, shoehorning a multiplicity of historical possibilities and legal voices into a univocal and self-serving narrative. At best, the effect is to subjugate the flux of historical contingency to the impenetrable logic of the Law; at worst, history is effaced altogether. One way in which the critics have proceeded, interestingly, is to recover alternative legal histories. A claim, for example, concerning the telos of law (from good to better) can be threatened by such histories. What if, the critics argue, legal history does not reveal a benign narrative? More seriously, what if legal principles of the past now seem as indefensible, such as slavery, are shown to be in some fashion with valued principles of today, such as property? If legal history reveals that the law of the past was underlain not by the impartial rule of law, but by "social" and "political" forces, such as class rule, cynicism, selective enforcement, and corruption, that again intersect with the present?

"We might understand the nineteenth century "historical" school of legal thought—associated with writers such as Jhering and Savigny in Germany, and Maine to Britain—in these terms. The influential Anaé Law of Henry Maine, for example, reflects the nineteenth-century discovery of geographic time, driven largely by developments in the natural sciences. The Principles of Cogitology of Lyell proved especially attractive to Maine, allowing him to celebrate English common law as both ancient and progressive: "From one point of view, it was immaterial custom, presented as eternal and temporarily indivisible, whereas from another it was gradually and imperceptibly being modified in countless individual decisions to fit new social conditions." (Stein, 1980, p. 804)."
Many legal histories are available to the scholar who seeks to make these claims. The critical power of Sprague's (1988) account of the dispossession and dispersal of the Métis of the Manitoba of the 1870s, for example, rests on its insistence of the centrality of law to this "shameful tale" (p. vii). The Métis were not simply oppressed by naked force, it seems, but through due process, and federal and provincial statute. Carson's (1979) account of worker safety legislation in nineteenth-century Britain, and McCormick's (1979) analysis of American antitrust legislation also point to the centrality not of impartial legal norms, but of partial and powerful social factions in the creation and selective nonobservance of ostensibly progressive legislation.

An argument for the instrumental efficacy of law—the essential usefulness of law and legal reasoning to social life—is also threatened by history. Rather than "acting" upon society in an instrumental fashion, critical legal histories can demonstrate that the abstractions of law have been construed in a distinct fashion, or even ignored altogether at different moments (Warner, 1978, ch. 6). "These types of historical criticism are profoundly unsettling to the standard rationalizing modes," Gordon (1981) notes, "because they suggest that the contribution of texts to contexts are as likely to be harmful or futile as beneficent or practical, for reasons that ordinary legal analysis seems to keep beyond its field of vision" (pp. 1023-1024). Alternative histories can also refute the self-claimed status of law as an external and rational arbiter of social life, revealing its deep implication in the formation of cultural meaning. Edward Thompson's (1975) analysis is exemplary here, given its demonstration of the penetration of (often opposing) legal concepts within eighteenth-century English civil society, and its documentation of the implication of such legal forms in the shifting material conditions of the day. It is the cultural symbolism of law, not its external efficacy, that is central to his account, as in those of other legal historians, such as Hall (1969). The unsettling effect of such histories is to demote jurists to "the humiliating status of mere epiphenomena, or at best, of people whose task it is to justify change brought about by forces over which they have little control" (Gordon, 1981, p. 1022).

Other than through the recovery of alternative histories, legal closure has also been challenged by a more general claim concerning the historicity of knowledge and interpretation. It cannot be disputed that the legal system is to some extent "cognitively open" to society. As has been noted, one claim of the legal enterprise is that of its ability to resolve, arbitrate or otherwise make sense of social life. In legal terms, Gordon (1981) notes, "society" supplies various "inputs" to the judicial process. These include the "legal texts" such as cases, statutes, deeds, contracts and so on; the "social context," narrowly defined, but nevertheless present, including the "facts of the case," the "problem" or the "intent" of legislation; and the "normative context" which is, inevitably, used to make sense of legal texts. As I have suggested, these "contexts" are supposedly admitted only on law's terms. For example, many recent Canadian First Nations land claims decisions have shown a resistance or a selective myopia to certain types of "inadmissible" or "irrelevant" Native evidence or arguments (Monet & Skamnu, 1992; Reubsaat, 1989). Indeed, one measure of the adroitness of the legal system is its apparent ability to reconcile the effects of "external" forces (such as legislative shifts, or broader technological or socioeconomic changes) upon legal interpretation, with the claim that these "inputs" in no way challenge the integrity of the legal formation as a whole.

Legal reasoning presupposes that the meaning of the various "inputs" to the legal process is—more or less—unproblematic. However, in that many of the inputs that the court must deal with—previous decisions, statutes, constitutional documents—predate the time period of any court, a problem of historical relativism emerges. To Gordon (1981), legal texts are inevitably "longitudinal." What if the meaning of a document such as the U.S. Constitution is specific to the conceptual universe of the drafters? In that our conceptual universe is now two hundred years distant, how can we know what they meant?

This dilemma, at an immediate level, is something that mainstream legal scholarship has always had to deal with. Take, for example, the interpretation of a statute such as the Shops Act (1950), which restricts the Sunday sale of many goods in England and Wales, except a specified list of goods such as refreshments and "essentials." Given the profound transformation of the retail landscape over the last forty years, contemporary courts have faced the dilemma of relating contemporary consumer goods—such as rented video tapes—with the legal text. One common response is a form of "intentionalism," with the attempt at mimicking the interpretation that one imagines the drafter of the statute would have adopted had they faced contemporary contingencies (Blonley, 1987). A more general response is to adopt a timeless view of law. This ahistoricist position posits the existence of certain transcendental principles and rules that—immutable and immanent—transcend the play of history. Those who argue for the essential rationality of law, as well as its normative worth, can be reassured by such a claim. If "freedom and fulfillment are
the children of reason," it becomes, on this account, "our highest responsibility to save them from the chaotic contingency of history" (Hutchinson, 1988, p. 31). However, critics argue that such strategies merely defer the problem. These "contexts" cannot be found, with the angels, packed tightly on the head of a formalist pin, but necessarily exist in history. The very historicity of such contexts radically undermines claims of legal rationality, normative worth, and efficacy, and ultimately legal closure itself. Cohen and Hutchinson (1990, pp. 20–21), for example, argue that "while law is embedded in historical contexts and political circumstances, its organization and interpretation possesses an important, if not total, independence from them." They insist, however, that "to talk of law without politics or history is nonsensical. All lawyers must concede that what they do takes place in historical circumstances and has political consequences. . . . [A]ll legal activity occurs within a particular historical context." To Allan Hutchinson (1988) any act of interpretation is, of necessity, historically contingent:

Philosophy is grounded in historical circumstance. Theories are produced in specific socio-historical situations and help to generate a particular version of history. . . . Human reason and language . . . cannot divest themselves of their history so as to reach an ahistorical or metalinguistic truth. . . . [P]hilosophy can never attain that cherished independence from contingent considerations; it is destined to live and die, flourish and perish at the hands of historical circumstance. (pp. 31–32)

Critical legal scholarship, then, has devoted considerable effort to turning what Gordon (1981) terms the "dilemma of history," or the problematic historical situation of legal contexts, against the self-assured closure of the mainstream. Critical scholars either write their own critical histories or rely on the work of others (many of whom might not have any critical intent) to make this argument. The contemporary interpretation of a document such as the US Constitution, for example, has been a subject of heated debate among both mainstream and radical American scholars. The dilemma, the critics argue, is that many eighteenth century practices contained in the Constitution—such as the death penalty—come freighted with historically specific meanings. Moreover, no metaposition exists from which a mod-

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9Not are only such claims implicit in much legal practice, but certain academic schools of legal thought, such as the law and economics movement, are expressive of the quest for timeless standards.  

10Even those legal histories written without critical intent, such as those of Gierke (1900/1958) and Maitland (1908/1963) can have a similar effect, and are accordingly cited by critical legal analysts. Pauline Mair's (1970) account of popular uprisings in eighteenth century America, for example, discloses that urban street disturbances "carried different connotations for the American Revolutionaries than they do today." This in part reflected the traditional use of institutions such as the "hue and cry" and the purse committee which marshaled the energies of the local community. This made the boundary between the legal and the extralegal use of force ambiguous, especially given the fact that many riots and uprisings were in pursuit of clearly defined community goals and involved a wide spectrum of local society.
The reconstruction of past legal cultures has other important critical effects, however. Not only do such histories demonstrate radically different ways of thinking about law, but they can also show the coherence and plausibility of such legal understandings for people at specific historical junctures. In so doing, we are reminded "how unlikely it is that things we may take for granted will always be so, because we can so readily see that things once taken for granted have hardly proved indispensable" (Kelman 1987, p. 214). As Gordon (1984) notes, moreover, "Such work can have a real political edge to it, as when the historian takes a set of ruling ideological conceptions that his [sic] own time condemns as cruel or mistaken—legal rationalizations of slavery, for instance...—enters into their world with [provisional] sympathy, and then shows how much sense those conceptions make on their own terms. The ways in which well-meaning gentlemen justified their social order...as just and efficient may look uncomfortably familiar" (pp. 99–100).

This is important. One central problem in any project of social change is that of conceiving of other possible systems of social ordering that are as constitutive of social life and social understanding as the critics claim, then there is no apparent position to which one can remove oneself in order to conceive of legal alternatives. However, legal histories, to the critics, are histories of difference, reminding us of the contingency of our own legal culture (reminding us that it is, indeed, a culture). Legal histories tell us "that the difficulties we have in imagining forms of social life different from and better that those we are accustomed to may be due to the limits on our conceptions of reality rather than to limits inherent in reality itself" (Gordon, 1984, p. 100, my emphasis). Of particular interest here are those accounts that describe certain historicicolegal transitions; for example, those that track the eclipse of community-based systems of conflict resolution by emergent formalized legal forms (Langum, 1987; Mann, 1987; Musselwhite, 1986). A critical reading of such accounts would note not only the past existence of coherent, structured, and normatively valued alternatives to modern law; but would also reveal the contingent social and political struggles associated with the accommodation of modern systems of legal ordering. Critical legal histories, in other words, can reveal legal alternatives that may allow us to begin to imagine our way out of Unger's (1975) liberal "prison house."

Critical legal histories can also be written, as it were, backward. Here

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1See, for example, David Brion Davis's (1992) discussion of the rationalization of the link between slavery, rape, and the law in nineteenth century Maryland and Missouri.
The final step in the reclamation of the whole self, the last stage in this historical process (pp. 1570-1571). Such critical legal histories continue to be written. Another account that uses the "dilemma of history" is to be written. Another account that uses the "dilemma of history" is to be written. Another account that uses the "dilemma of history" is to be written. Another account that uses the "dilemma of history" is to be written. Another account that uses the "dilemma of history" is to be written. Another account that uses the "dilemma of history" is to be written. Another account that uses the "dilemma of history" is to be written. Another account that uses the "dilemma of history" is to be written.

Legal Boundaries: Law, History, and Critical Inquiry

Though the critical legal project is undeniable potent and provocative, I will be arguing that its potential is foreshortened by its exclusive attention to the histories of social life. In deploying history to argue against the closure of the legal system, legal scholars fail to recognize the profound importance of space in the regulation of social life and the subversive potential of what might be called a geographic critique. If social and political life occurs in time and space, it seems curiously restrictive to focus on the latter. This is doubly strange given the purportedly inter-disciplinary nature of much recent legal scholarship, and its opposition to the narrow truth claims of legal practice and scholarship. Also, if it is the politics of space that has emerged as central to contemporary life, as many commentators have noted (Jameson, 1984; Soja, 1989), this silence is increasingly curious, given the purported postmodern nature of recent legal scholarship. The geographies of legal theory appear to be like the dog that barked in the night. The striking thing, as Sherlock Holmes noted, is the silence.

That silence is not a function of the potential of the geographic imagination within critical legal enquiry, but of its institutional exclusion. Ed Soja (1989) has argued that the importance of a historical imagination within social theory has served to limit critical geographic enquiry. In law, this is undoubtedly so. In general, if geography emerges at all within law, it is as a passive and rather uninteresting surface upon which differences are inscribed. To some extent, then, I have to look elsewhere for assistance in my project. In the next chapter I will begin to see what geographers might have to say about law. However, I am also stubborn enough to want to try and turn an apparent obstacle to my advantage. Is it possible that the manner in which history is used against legal closure—in both synchronic and diachronic forms—may serve as a conceptual basis for a critical legal geography? If we assume that law is both temporal and spatial, then might not legal geographies—representations of the spaces of social and political life—be as vital to the legal project as its construction of contingent histories? Moreover, could an exploration of the spatiality, as well as the historicity, of law prove insightful in the con-
construction of a legal critique? As with the “vertical differences” revealed by legal history, the multiple and heterogeneous ways in which law is understood “horizontally,” in the diverse spatial settings of social life, could also prove critically potent. Might the very histories of critical legal enquiry function less as an obstacle than as a blueprint for the construction of a critical legal geography?

Law and the Geographic Imagination

Space and time are always and everywhere social. Society is always and everywhere spatial and temporal. Easy enough concepts, perhaps, but the implications are only now being thought through.

—Nigel Thrift (1983, p. 49)

It may be time to move our activity into places and spaces in the social environment we have not previously considered in order to reassess the relationship between law and society.

—Susan S. Silber and Austin Sarat (1987, p. 166)

Just as legal writers seem indifferent to space, so geographers appear blasé about law. At first glance, there seems to be no geographic literature that directly addresses the subject. This is surprising, given geography’s shifting institutional focus, coupled with its long-standing propensity to trespass intellectual boundaries. Geography has long been hyphenated into specialties—the geographies of health, the economy, culture, politics, or society, for example—to say nothing of its divide into “human” and “physical” domains. The legal silence is even more striking within a “critical” geographic scholarship that professes a sensitivity to issues of power and politics. Legal questions, it seems, are beyond the ken of geographers. Any attempt to address legal questions means, to borrow a
phrase, that “we are playing on another discipline’s turf by another discipline’s rules” (Able, 1987, p. 517).

Given my earlier argument, such a silence speaks less of the intrinsic worth of such an exchange than of the pervasive power of legal closure and the jealous defense of legal borders (Blomley, 1989b). Legal culture, I have argued, is based upon “an authoritarian monologue of initiation. It is a culture confined within the parameters of a professionalized and esoteric language, in turn supported by a jurisprudence of legal univocality within which the institutional meaning of law is always given and merely remains to be said” (Goodrich, 1987, p. 97). Under such conditions, it seems hardly surprising that geographers have been reluctant to comment on law. Besides limiting the range of critical enquiry within both disciplines, this timidity serves to sustain legal univocality and closure.

A careful reading, however, reveals that the silence is not absolute. Although sparse and systematized, legal geographies can be pieced together. An older literature, concerned with mapping the regional diversity of law, tends toward an account of space (or the regional–geographic environment) as a vital structuring agent of law. A more recent literature inverts the relation, theorizing law as an external variable that affects spatial configurations.

I shall keep this law–space division as both an organizing device and as a basis for critique. I shall argue that the law–space bifurcation, central to both literatures, is meaningful only with reference to a specific and, to my mind, problematic set of assumptions concerning law, society, and space, many of which we have already encountered. The slam of the “closing” legal door, it seems, echoes even through the corridors of the geographic academy.

As in legal studies, however, these orthodox geographies have been challenged over the last ten years by the tentative emergence of an alternative. Scholars—both in geography and beyond—have begun to transcend the causality of the orthodoxy by arguing for the imbrication of the legal, the spatial, and the social. This literature must be seen as part of a much broader shift in theoretical human geography that has drawn attention to several questions, including the space/society dialectic, the locality as a mediating structure, the relation between geography and knowledge, and the links between space and power. Although this legal–geographic reorientation is still in its infancy, it stands in radical opposition to the orthodox formulations of law and geography, and offers suggestive insights that can be used in the future construction of a critical legal geography.

LEGAL REGIONS

One important—and long-lived—way in which law has been geographically conceived is as discontinuous and regionalized. In what can be termed a regional approach, the spatial diversity of law and legal systems is mapped out and then analyzed in terms of the “underlying” geography of the physical and human environment. As early as the sixteenth century, the jurist Jean Bodin sought a systematic appraisal of law and legislation in these terms. Pursuing his goal “to arrange the laws and govern the state,” he sought “to collect all the laws of all the most famous commonwealths, to compare them and derive the best variety” (Bodin, quoted in Franklin, 1963, p. 69). The result was an exhaustive comparison of European legal systems, with a classification of the specific characteristics to which they were adapted. Climate and physical geography were assumed to be determining influences, although Bodin held that their effects could be moderated by “training.” A similar regionalization was adopted by later scholars, including Montesquieu who, in attempting the balance of individual freedom and civic coercion that occupied the minds of Hobbes, Rousseau, and other modern political philosophers, rejected any transcendental solution that ignored the geographically and historically specific conditions extant within any country.1

However, it was not until the development of comparative law and the sociology of law in the earlier years of this century that legal scholarship developed a more systematic interest in regional geographic questions. The comparative lawyer John Wigmore was perhaps the most influential worker in this regard. Alerted to the geographic diversity of legal systems by his detailed study of Japanese law, he produced a three-volume regional survey entitled A Panorama of the World’s Legal Systems in 1928, followed by his Kaleidoscope of Justice in 1940. In explaining the spatial variability of law, “contiguity,” “distribution,” climate, and local resources were all identified as factors, although law-environment relationships were often simply left as descriptive.2 He suggested that “the influence of

1 [Laws] should be adapted in such a manner to the people for whom they are framed. . . . They should be in relation to the nature and principle of each government. . . . They should be in relation to the climate of each country, to the quality of its soil, to its situation and extent, to the principal occupation of the natives, whether husbandman, huntman, or shepherd; they should have relation to the degree of liberty which the constitution will bear; to the religion of the inhabitants, to their inclinations, riches, numbers, commerce, manners, and customs. In fine, they have relations to each other, as also to their origin, to the intent of the legislator, and to the order of things on which they are established; in all of which different lights they ought to be considered” (Montesquieu, 1748/1949, pp. 6–7).

2 Wigmore admitted that the task of identifying a “geographical influence” is difficult. If we
geography" has been twofold—"immediately, through natural features, and mediatley, through race and race traits" (1929, p. 115).

With Albert Kocourek, Wigmore edited a three-volume collection on the evolution of law. One volume, dealing with "formative influences of legal development" (1918), included papers written by sociologists and geographers, and is perhaps the definitive summary of the regional field. Authors generally accept the importance of the natural environment in explaining geographical differences in legal evolution as given. Picard, for example, suggests the legal significance of climate, distance from the sea, the quality of the soil, and the wooded or cleared nature of the earth's surface: "All these and other variations of land and of atmosphere show their traces in the jural system... Brazil and Russia, because they are different geographic regions, will therefore have many differences of law" (1918, p. 170).

It is easy to caricature these arguments. And, indeed, some legal regionalists seem reluctant to overstress the link. Noting that law will be influenced by the social structure of a particular society, which will in turn be "conditioned" by its external environment, Randall, for example, provides only the loosest of links and the broadest definitions of "environment" (noting wryly, for example, that the "maritime law of Peru and Switzerland will be rudimentary," [1918, p. 203]).

Nevertheless, despite such "possibilist" variants, there does seem an overarching assumption that an invariant ("natural") bond between a people (or, on occasion, a "race"), the "land," and a set of legal institutions predominates. Such a link is made by the geographer Ellen Semple, for example, in her account of the "land bond" that characterizes diverse human societies. Every social collectivity, she argues, includes two ideas, a people and its land, the first unthinkable without the other (1918, p. 216). The relations between a people and their "soil" deepen and intensify with social "advancement," she argues, as permanent settlement and intensive use reveal the "possibilities of every foot of ground, of every geographic advantage" (p. 223). Two points seem clear from Semple's account. First, the deepening "land bond" seems to signify the entrenchment of private property. Even the land bond in premodern societies is described less in the language of a symbolic attachment (which might make the very idea of alienation incomprehensible) than in terms of control and possession. Second, the continually evokes naturalistic analogies—referring, for example to the "fibres of the land which become woven into the whole fabric of the nation's life"—to suggest that this process is not only inexorable, but of the order of things. "These are the geographic elements constituting the soil in which empires are rooted; they rise in the sap of the nation" (p. 223).

Another conceptually similar link between geography and law is made by those several authors in the Kocourek and Wigmore collection who emphasize the "racial factor." Picard claims that "race dominates over climatology" (1918, p. 170), insisting that the "diversity of race has influenced indelibly the generation of law" (p. 167). Race, of course, is assumed as a given—any notion of a common humanity or world law is dismissed as hopelessly utopian. Law is an "ethnic instinct," Picard asserts, "[a]n ethnic group creates and develops its Law in the same way as it itself grows. The immutable soul of the races... weaves for itself its own destiny" (p. 167).2

2 Other contributors take the argument further, embedding notions of race in naturalistic claims concerning land and nature. Kuhlenbeck (1918), for example, celebrates the "thoroughbred race reared from superior materials" (p. 356), eulogizing Roman law, and the "Aryan" genetics that begot it. Again, as with Semple, such a relation is assumed to be given, natural, and geographically rooted. "Race lifts a man above himself," he claims, "... because he soars heavenward like some strong and stately tree, nourished by thousands and thousands of roots—no solitary individual, but the living sum of unaided souls striving for the same goal" (p. 356).

3 Blackwell, Watkins, and Economides (1986) note that the developing literature on the sociology of law of the 1930s also made passing reference to geography. Eugene Ehrlich, in his influential account of the "living law," refers approvingly to the writings of geographers Friedrich Ratzel, Jean Brunhes, and Frédéric Le Play in their attention to space and "the local conditions of social life" (1936, p. 306).

French geographers also appear to have formed a "regional-legal" school. Both Deserteaux (1947) and David (1948), for example, make the case for a regional-geographic analysis of law. Deserteaux maps the legal systems of Western Europe, noting both the essential similarities and differences of varying European legal systems. Legal diversity is explained in terms of variations in the development of concepts of the individual and the community, themselves bound up in the different historical experiences of sedentary Mediterranean populations as opposed to the nomadic populations of the North. Schneider (1992) identifies a similar interest in interwar Germany.

In his plea, written for a legal audience, for a recognition of geographic factors on the development of legal systems, Groosfeld (1984) proves that the determinism of the regional sensibility is not dead. He is uncompromising concerning the determinate and decisive effect of geography, noting that "geography is fate... not only for a country but also its culture and the law" (pp. 1512-1513) and claiming, in a study of U.S. common law, that "geography alone" is decisive, being "stronger than legal culture and history" (p. 1518).
IMPACT ANALYSIS

While the regional school sought to explain law and legal variation in terms of the structuring effect of geography, an influential paper by Derwent Whittlesey in 1935 was to invert this relation, by exploring the "impress of effective central authority upon the landscape." Now it was "law" that was seen as "modifying" space. While noting, in passing, that law may be modified or abandoned "when it conflicts too stridently with its new-found environment" (p. 95), the central thrust of his argument is clear-cut: "Examples of cultural impress of effective central authority upon the landscape can be multiplied indefinitely. . . . Each [case] deserves more detailed study. Phenomena engendered by political forces should have a recognized place as elements in the geographic structure of every region" (p. 97). For Whittlesey, the effect of law upon "landscape" modification includes such things as the impact of tariffs upon the creation of special manufacturing districts and agricultural regions, or the impressive centralisation of power in the capital cities. Inspired by adoption of specific forms of landholding in overseas colonies. Inspired by adoption of specific forms of landholding in overseas colonies. Inspired by adoption of specific forms of landholding in overseas colonies. Inspired by adoption of specific forms of landholding in overseas colonies. Inspired by adoption of specific forms of landholding in overseas colonies. Inspired by adoption of specific forms of landholding in overseas colonies. Inspired by adoption of specific forms of landholding in overseas colonies. Inspired by adoption of specific forms of landholding in overseas colonies. Inspired by adoption of specific forms of landholding in overseas colonies.

Whittlesey is useful to the extent that his argument of the impress of law upon space presages many contemporary debates on law and geography. For, to the extent that there is an orthodoxy among those contemporary geographers who concern themselves with law, it is best characterized, following Clark (1989d), as that of "impact analysis," this being the attempt to track the effect of a given law or ruling has on some aspect of society, such as changes in urban land use. Conversely, the regional literature reads from space to law. At an extreme, variable environmental factors, such as climate or migratory propensities, are assumed to "call up" certain legal forms. Montesquieu can even argue that revolution will occur if the "laws of climate" are ignored and an "inappropriate" law foisted on a population.

However, despite the different causality that both regional and impact analyses ascribe to legal, social, and geographic variables, they seem, ultimately, to be saying the same thing: that although law and space can be combined in various ways, they are analytically divisible. The impact literature appears to place law in a detached, social realm from where it can "act" upon space. We find Stiglaufer (1987), for example, analyzing "space-related laws" in Austria (regulating, for example, air pollution and regional planning), with the assumption that there are two discrete realms, one legal, the other somehow uniquely spatial (cf. Tucker, 1985). The task of the geographer, by this account, is confined to tracking the immediate effect of law upon a spatial configuration; law itself is accepted as a given. Similarly, regional writers such as Semple and Picard tend to naturalize general nonvariable legal principles. Petrucci (1918), for example, claims, uncompromisingly, that "property is a fact of nature antecedent to all legal organization. . . . Property is the result of a tendency all
the more instinctive as it has its origin in the very nature of man" (p. 288). Thus, although one might at first think that regional writers would present law as social, by virtue of its geography, the effect is quite the reverse. In that the geographic "environment" is cast as removed from social life, the effect is to locate legal principles—as such property—in an immutatable and often naturalized domain beyond the contingencies of social life. In both literatures, then, a discrete and uniquely legal sphere is carved off from a social realm. In both cases, the effect is to create a divide between the historical or spatial contingencies of social life and certain nonconditional and asocial legal principles.

Such a carving off of the legal replicates many of the principles and attendant problems of legal complex identified in Chapter 1. However, it receives a different inflection by virtue of the "geography" of closure. For example, the regional literature frequently submerges society and law beneath the suffocating effects of geographical environment. To summon up land, soil, and race is to evoke the immutable longue durée, as well as to cast law as natural. Things, by this account, could not be otherwise: opposition, resistance, and reform are useless if they do not conform to environmental or racial dictates. Not only is a conservative legal history constructed—that of the timelessness of law—but also, by rooting such an account in the apparent fixity of place, a doubly powerful historical geography is mapped. Both regional and impact analyses, then, can become equally conservative by placing law beyond social practice. In both cases, this is achieved by constraining absolute categories, whether that be law or space. As we shall see, such claims have not gone unchallenged. As with the critical legal challenge to the orthodox law–society conceptualization, recent scholarship on law and geography has challenged the separability of law and space. Drawing on a recent reconceptualization of space within social theory, theorists have recast both as deeply implicated in social relations. Rather than bifurcating these categories, scholars have explored the complex recursive relations within and between law, space, and society. Gordon Clark notes the problem with a simple law–space bifurcation: "However appealing this stance might be in the sense that it holds in abeyancelarger social issues, it is too simple. The links between law and society, between law and geography, are indissoluble since as law is drawn from society it also reproduces society. And as law is structured by context, it structures context" (1989d, p. 329).

Further, both regional and impact analyses seem to assume that legal interpretation is either unproblematic or irrelevant. The regional literature—given its emphasis—devotes little direct attention to questions of legal interpretation. Impact analysts seem to assume that legal interpretation can be approached via a "conversational" account of meaning and the text, which "assigns meaning in the light of the motives and purposes and concerns it supposes the speaker to have, and . . . reports its conclusions as statements about his [sic] intentions; in saying what he did" (Dworkin, 1986, p. 50). Textual meaning from this perspective is monologic, with the assumption that there is only one correct interpretation of a text or a law. Disputes over textual meaning can be reduced to differences of preference between rational, independent subjects. Again, the effect is to present the legal enterprise as rational and politically disinterested.

A final problem comes to mind. In assessing the effects of law, both impact analyses and regional accounts frequently characterize law in narrowly instrumental terms. The rationale for Bodin's geographic excursion, for example, was to find examples that could help him "arrange the laws" so as to govern. It is the "impact" perspective, especially, that tends to consider law as an efficacious tool for practical social intervention, conforming to what Moore (1973) termed a "social engineering" model of law. According to this account, "social arrangements are susceptible to conscious human control. . . . In such formulations 'the law' is a short term for a very complex aggregation of principles. . . . The complex 'law,' thus condensed into one term, is abstracted from the social context in

7Perhaps this position concerning interpretation derives not only from geography's aspirations to positive science. Following Coase (1984), it may also relate to geography's appropriation of the idea of landscape, of the comprehensive view from above, concretized in the discipline's long love affair with the map and with the techniques of aerial photographic interpretation, remote sensing, and geographic information systems. To that extent, both the techniques of Brunelleschi—scholar of linear perspective—and those of the geographer share a sense of dispassionate observation and of the individual appropriation of an objective environment. Such a "way of seeing," in excluding the subject, not only denies alternative interpretations of space but also denies the saliency of interpretation itself as a question. I will return to this theme later.

There is another question that the silence toward interpretation raises. While both impact and regional analyses are silent concerning the nature of interpretation, they also rarely articulate the standards and assumptions concerning society and power that they draw upon. As Clark (1989a) argues with reference to impact analyses, the social vision that is implicitly drawn upon is often a conservative one (premised on market solutions); that fails to account for the complex and contested nature of law itself, and elevates the social scientist to the position of moral arbiter.
which it exists, and is spoken of as if it were an entity capable of controlling that context" (p. 719).

An exclusive attention to law as an external imperative is limiting, ignoring as it does the power of law not only to command but to redefine, to empower, to constitute, to divide, to foreclose, to obfuscate. To Feeley (1976), law can be both definitional (for example, by stating the terms of reference of contractual agreements), status conferring (by designating certain social roles, such as the public official), and facilitating (by empowering certain individuals or groups). This process of empowerment and facilitation, of course, is far from disinterested, as critical legal historians have noted (Chambliss, 1969; Chambliss & Sedman, 1982; Hall, 1969; Sugarman, 1983; Thompson, 1975; Tigar & Levy, 1977).

CRITICAL LEGAL GEOGRAPHIES

Given these shortcomings, it is heartening to note that the hesitant emergence, over the last few years, of a loosely organized corpus of geographical writing that, in its refusal to adopt either an impact-analytical or regional posture, and its attempt to retheorize law as social and spatial, begins to provide us with an alternative reading of the law-space relation. Much of this work is deservedly skeptical of existing legal structures and much critical social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody. It also, to a lesser degree, seeks the various social relations they embody.

To date, however, this literature has not been systematically reviewed, nor has it been set against either the larger social theoretic literature of which it is a constituent part or debates within law. For it should certainly be read in relation to legal theory. Although it shares common theoretical positions and a marginal interdisciplinary location, it both departs from and, to some extent, extends the historical critique in valuable ways. Its job is harder, however, given the fragmented intellectual status accorded the geographic imagination, yet immensely suggestive, given the specific infusion that can be brought to bear on otherwise neglected questions of space and power. This is not

Several extended conference sessions have been organized around the theme, ranging from meetings hosted by the Canadian Law and Society Association in Windsor, Ontario in 1988 to discussions at the Institute of British Geographers conference in Swansea, Wales in 1992. The journal Urban Geography has taken a lead role, with a special double issue in 1990, and a recently inaugurated series entitled Legal Geography.

Law and the Geographic Imagination

say that it has no weaknesses and it is here, perhaps, that legal theory can inform a critical geography.

Although there are many differences between those 1 will group together (many, indeed, might be surprised to find themselves labeled geographers!), there is common ground. They depart, significantly, from the assumptions of both the impact analysis and the regional literature, without necessarily abandoning an attention to the regionalization of law, or a concern with the effect of legal practice on space. Rather than seeking to bridge the gap between law and space, the argument here is that there is no gap to bridge. Any perceived divide is merely a function of an institutional categorization.7

This reorientation of thought within human geography has its precedent. In much the same way that geographers such as Ellen Semple and Dervent Whitley prefigured regional and impact analyses, so it was Peter Kropotkin, the nineteenth century anarchist/geographer, who foreshadowed these contemporary "critical legal geographies." While often characterized as a political activist who abandoned geography, Kropotkin "did not abandon his geography to become an anarchist... Rather, he set out to expand the range of geographic inquiry to encompass social critique" (Brockart, 1981, p. 135). Indeed, a geographic imagination is central to his anarchism. One recurrent theme, for example, is that of the essential connectivity of social life. Defying a statist nationalism, he insists on the "immense likeness which exists among the labouring classes of all nationalities." And here a "political geography" comes in: "It is the task of geography to bring this truth, in all its full light, into the midst of the lies accumulated by ignorance, presumption and egoism" (Kropotkin, 1885, p. 942).

Kropotkin's political and intellectual energies were devoted to an understanding of human interdependence and the ties between community and environment. He proved a powerful critic of authoritarianism, seeing the atrophy of community life as a function of the

7Interestingly, we can find an echo of this geographic reorientation in the literature on the sociology of law (Garner, 1991). Nolken (1986) comments that the subdiscipline has been characterized by an "increasing rejection of a starting point that juxtaposes 'law and society'—however there are conceptualized—and then investigates the way they 'influence' or 'affect' each other" (p. 324). This has been evidenced by a reassessment of both the exact relationship between "law" and "society" and, second, by a revaluation of what exactly is meant by "law and society." Research has moved away from "impact analysis" (assessing, for example, the "gap" between the "law in action" and the "law in books") to a more complex recognition of the interrelation of law and social practice. Further, law itself is increasingly seen less as an instrumental "system" of commands than as a complex set of social and political discourses (Goodrich, 1978).
modernist centralization of political and economic power. Escalving the revolutionary blueprint, he sought to create a profoundly participatory politics of everyday life and advocated a radical and thoroughgoing decentralization of social, economic, and political life.

The depth, and the conjunction, of his political and historiographic imagination is perhaps nowhere more evident than in his writings on law, locality, and the state. His essay on the European state (1903/1946) provides a nuanced and powerful account of law and the historical geography of power that departs radically from impact analyses and the regional account of his day. Both the state and law, to Kropotkin, are profoundly geographic. As a centralized institution, the state is a recent creation. The history of humanity, according to Kropotkin, has been a radically decentralized one of village life, common ownership, and local knowledge. The end of the Dark Ages that a centralization of powers began to occur. Law, Kropotkin insists, was central to this transformation. The system of customary law, previously a body of communal knowledge, became vested in an elite who turned what had been a locally responsive system of regulation into a formalized system of precedent.

"[T]he knowledge of customary law," he argued, "did far more to constitute [centralized] authority than the power of the sword" (1903/1946, p. 17).

However, the trajectory of centralization was challenged in the twelfth century with "the revolution of the commune." The growth of European urban free towns and urban communities constituted, in Kropotkin's terms, the recovery of the free spaces of the village community. However, it also marked an extension of the decentralized spirit, leading to an unparalleled flowering of the arts and of industry, liberation from poverty and exploitation, and an intense sense of local community. He is, however, not naive concerning the communes, readily admiring to an inevitable necessity of renewal, claiming, moreover, that an inevitable conflict with the commune, in admitting opposition, simply embodied the struggles that are an inevitable part of the fabric of social life.

Such free spaces, however, could not survive, in that they stood for everything that the centralized state opposed: "The State, by its very essence, cannot tolerate free federation because the latter represents that

18Black misery, depression, the uncertainty of to-morrow... which characterize our modern cities, were unknown in these "sores sprang up... in the middle of the feudal desert." In those cities, under the shelter of their liberties acquired under the impulse of free agreement and free initiative, a whole new civilization grew up and attainted such expansion, that the like has not since been seen" (Kropotkin, 1903/1946, p. 23).

nightmare of the legist: "The State within the State." The State... only deals with subjects. The State and its prop, the Church, arrogate to themselves alone the right of being the connecting link between men... Consequently the State must perform annulling cities based in direct union between citizens" (p. 31).\(^{18}\)

The dissolution of the autonomous commune into a mere aggregation of liberal subjects was effected by forces both internal and external to the commune. On the one hand, centralised royal power emerged to challenge the free cities. Such a force, Kropotkin is quick to point out, had its geography: "[I]t was never in one of the free cities, which had their noisy forum, their Tarpeian rock, or their river for the tyrants, that royal power succeeded in constituting itself: it was always in the country, in the village" (1903/1946, p. 26). Yet the free city might have had the power to resist royal central power had it not lost its radical sense of liberty, with the emergence of internal authoritarian structures and divisions. Power became personal, as opposed to communal; communal economic enterprise became communes, both of which "killed the free city" (p. 27). Such a transformation, moreover, had a lot to do with the penetration of new legal relations, marking the demise of a communal sense of shared obligation and the rise of Roman law which, along with the church, celebrated "discipline, organization and pyramidal authority" (pp. 28–29).

Put simply, "[T]he cities had to die, because the ideas of men had themselves changed, perveted by the teaching of canonical and Roman law" (original emphasis, p. 20).

While I could quibble with Kropotkin's historical details and his localist optimism, I cannot doubt his sense of geographic and political engagement. He draws a nuanced and subtle account of law, geography, and power. His account of the manner in which space and geographic scale are shot through with power, and his attention to the locale as constitutive of political action and as a terrain of struggle within the interstices of centralized state law are deeply geographical. In the seriousness with which he addresses law and the constitutive power of legal discourse and his recognition of the historico-geographic diversity of legal possibilities, his account is also legally sophisticated. Its critical historical

\(^{18}\)Elsewhere, he notes that the state "demands personal and direct submission of its subjects without intermediate agents... [A]s soon as the State began to constitute itself... it set to work to destroy all bonds of union that existed among citizens, both in towns and in villages... Customary law naturally pertains to local life and Roman law to centralization of power. The two cannot live side by side and the one must kill the other (Kropotkin, 1903/1946, p. 30). This sense observation of the geography of liberalism has been reiterated, in an American context, by the legal thinker Gerald Fenig (1989). I will come back to this theme, and its complexities, in Chapter 4.
geography is both a reminder of the conditional and contingent nature of power, and a celebration of the “free spaces” that can be opened up to challenge the “iron cage” of legal rationalization.

TENTATIVE BEGINNINGS

A number of recent writers, the unwitting heirs to Kropotkin, have begun to rethink the law–space relation. The most immediate characteristic of these geographies is their refusal to accept law either as merely given or as the unproblematic outcome of external forces. Echoing the claims of critical legal scholarship, this emerging literature sees law as inextricably implicated within a given social formation. Far from reflecting a social consensus or balance, it is argued, law cannot be divorced from material interests or social struggles over meaning. The specific theorization of this link, of course, varies widely. We can contrast the writings of Johnston (1990), in which law is defined in essentially functional terms, with the more cautious comments of Blomley and Clark (1990) who, while recognizing the instrumental nature of law, also point to the importance of law as a normative ideal and a social arena within which contesting and potentially emancipatory social visions can be articulated. However, in both cases, there is no attempt to regard law either in abstract or in pluralistic terms.

As well as understanding law—in the manner of the critical legal thinkers—as deeply implicated in social and political structures, many of these writers devote a heightened attention to the production of meaning and the elusiveness of interpretive determinacy. To some extent, this reflects an engagement with the literature on the politics of interpretation. Some literary theorists (Eagleton, 1983, 1984; Mitchell, 1983) and geographers (Clark, 1985) have argued for the fluidity of meaning and the elusiveness of interpretive determinacy. From this perspective, interpretation is seen not as some asocially transcendental process, but as deeply contextual. To Fish (1983), any legal discourse has meaning only to the extent that it relates to and derives from some specific structure of norms.

Kobayashi (1990), for example, has explored the manner in which “taken-for-granted” hegemonic “truths” concerning ethnicity were embodied in Canadian wartime legislation directed against Japanese-Canadians. Thus, far from a neutral or empty category, legal discourse is seen as itself a means by which racism is constructed. Similarly, Emel (1990) notes the centrality of the logic of the market to U.S. water law. As a consequence, the normative vision deployed has been that of wealth maximization, with “no room for the rascous, the mysterious, the sacred” (p. 543).

That structure, however, “is not abstract and independent but social; and therefore it is not a single structure with a privileged relationship to the process of communication, but a structure that changes when one situation, with its assumed background of practices, purposes, and goals, has given way to another” (p. 318). These arguments, best characterized as a “hermeneutics of suspicion,” challenge conventional conversational analyses with their assumptions of objective textual meaning, originating in the intention of some autonomous author or legislative framers. To proponents of the “interpretive turn,” meaning is not found, but made, remade, and contested. To that extent, the interpretive process is necessarily a political one, defined not in terms of objective “truths” but with reference to specific assumptions and a given context and power structure (Goodrich, 1987). Deconstructionists, working on the writing of writers such as Derrida, Heidegger, and others, go even further, alerting us, as Ryan (1982) puts it, to “gestures of exclusion” (p. 3) as practiced within a legal discourse, pointing to the process in which supposedly determinate and stable meanings are in fact situated within an open seriality of unstable displacement (Norris, 1988).

Such poststructuralist analyses are, of course, also common currency among critical legal writers. What seems to distinguish geographic discussions of legal interpretation, perhaps, is a coupling of these theoretical claims with a peculiarly geographic awareness of the radical particularity and heterogeneity of social life itself. Knowledge (both formal and informal) is unevenly distributed in space (Johnston, 1986; Thrift, 1985), as are ways of conceiving the world. Similarly, the context that provides the basis for interpretation is a spatial, as well as a historical one. Put in reverse, a claim about the objective determinacy of law is not simply a claim about the stability of history, as I noted earlier, but can also be understood as a conditional representation of the geography of social life, whereby the geographic diversity of experience and legal understanding is totaled into one universal and placless vision.

One geographer who has most powerfully combined an attention to the ambiguity of legal meaning with a recognition of the spatiality of social life is Gordon Clark, whose influence is felt throughout the law and geography literature. Clark’s account of law and legal interpretation is complex and subtle, drawing upon and, in turn, contributing to debates within legal theory and social theory. His central thrust, as it has emerged from his extensive writings (eg. 1985, 1989a, 1989b, 1989c, 1989d, 1990, 1992, 1993), is a critical one. Essentially, he deploys a pragmatic geographic sensitivity against many “foundational” accounts of law, including liberalism, the law and economics literature, and legal formalism. Such
interpretive accounts, which treat legal disputes as problems of translation, are seen to be at best, naïve, and at worst, deeply conservative in their implicit characterization of society as integrated and consensual.

The problem with these foundational strategies, Clark insists, is that they efface the moral pluralism and heterogeneity of social life. They posit a determinate "reality" upon which interpretation can be founded. For Clark, such a reality is as implausible as it is undesirable. Society is not consensual, but is continually contested. Legal obligations and rights are understood in radically different ways by groups at different social and spatial locations:

There is a theory of transcendental adjudication. . . . In contrast, my interpretive perspective allows for different experience (therefore different realities), different ways of knowing the world (therefore contested facts) and, inevitably, different interpretations of inherited statutes and common law doctrine (conflict over the application of statute and law). In this kind of world, pluralism is an inevitable way of life. (Clark, 1995b, p. 217)

In its attention to the politics of law and the complexities of legal interpretation, then, a legal geography seems to share common ground with critical legal scholarship. Its interdisciplinary location reveals other similarities. As critical legal scholars have challenged the soi-disant objectivity of the central building block of their discipline, arguing that law is, first and foremost, socially constituted and politically charged, so critical geographers have argued for space as fundamentally social. As with the legal mainstream, one orthodox account of space is as an external and prepolitical given. The influential "spatial science" perspective within geography, for example, treats space as an objective causal variable, acting upon the organization and behavior of individuals. Recent geographic scholarship, however, has adopted what might be regarded as a relational view of space. Drawing on those such as Lefebvre (1991), some theorists regard space as both socially produced and as socially constitutive, and as deeply implicated in power relations (Massey, 1992).

One important elaboration of this claim has been through an exploration of the way in which political consciousness and social action are constituted in concrete localized spatial settings. Such an interest derives from a renewed theoretical concern with the localized settings of social and political life. The locality is no longer compositionally derived from macrosocial structures, but is seen as both the medium and the outcome of social action (Agnew, 1987; Collins, 1981; Thrift, 1983). This has led to a renewed interest in the region, yet in a way that departs from a traditional regional geography— influential to writers such as Ellen Sexton—in its account of both time and space (Gilbert, 1988; Padtup, 1988; Thrift, 1990). While both "regional geographies" are historical, only a reconstructed regional geography seeks to move away from an additive notion of time, where the region represents the "geologic" accretion of social processes, to an attention to the manner in which local human agency responds to and modifies such social forces. The effect is to make the region more intriguing, more important, and more politically consequential (Entreniken, 1991; Marston, 1988; Purvis, 1990).

In geography's exploration of the space—society link, we can hear an echo of the relational critique of legal closure. The parallels with critical legal writing do not end there, however. It was the assumed objectivity and reified status of law, it will be remembered, that made it all the harder to argue for the politics of law. Similarly, critical geographers have been forced to confront and decode a space which, like law, is presented as prepolitical; removed from the web of social relations, it appears "as innocent, as free of traps or secret places" (Lefebvre, 1991, p. 28). This has a bearing not only on social practice, but on theory. Soja (1989) argues that the prevalence of an "absolute" conception of space, in tandem with the overbearing centrality of the historical imagination, has impoverished social theory and served to retard the construction of a critical geography. Objective space, he claims, has tended to imbue all things spatial with a lingering sense of primordiality and physical composition, an aura of objectivity, inevitability and refutation" (1989, p. 79). The effect is to obscure a critical attention to the spatial. Much recent critical geographic scholarship, however, echoes Lefebvre's assertion:

Space is not a scientific object removed from ideology or politics; it has always been political and strategic. If space has an air of neutrality and indifference with regard to its contents and thus seems to be "purely" formal, the episteme of rational abstraction, it is precisely because it has already been occupied and used, and has already been the focus of past processes . . . Space has been shaped and moulded from historical and natural elements, but this has been a political process. Space is political and ideological. It is a product literally filled with ideologies. (1979, p. 31)

In the construction of such "political geographies," the work of Foucault (1979, 1980, 1984, 1986) has been especially influential. The imaginative geographies of Foucault are bound up in his account of power, an account that eschews a Leviathan-like top-down account of sovereignty for a profoundly localized account of the capillary and rela-
tional aspects of power as a strategic relation. The "spaces" of Foucault, at once material and metaphoric, are complex and subtle. Foucault's account is spatial, moreover, to the extent that the structures of domination are explored less through a conventional account of consciousness and ideology and more through an analysis of spatial tactics and strategies of power. In this he is critical of two alternative geographies. On the one hand, he is dismissive of the disciplinary treatment of space as a natural pregiven or as a passive field for the "expansion of peoples, of a culture, a language or a State" (1980, p. 159). He also becomes the deflation of space within philosophy, whereby space was reduced to "the dead, the fixed, the inert" (1980, p. 150), that occurred at just the moment when a "politics of space," premised on technology and surveillance, was beginning to be deployed by the powerful. He seeks to counter this—indeed it appears as a political necessity—and in its place calls for a "a whole history . . . of space—which would at the same time be the history of power . . . from the great strategies of geo-politics to the little tactics of the habitat" (1980, p. 149):

Once knowledge can be analysed in terms of region, domain, implantation, displacement, transposition, one is able to capture the process by which knowledge functions as form of power and disseminates the effects of power . . . Endeavouring . . . to decipher discourse through the use of spatial, strategic metaphors enables one to grasprecisely the points at which discourses are transformed in, through and on the basis of the relations of power. (1980, pp. 69-70)14

In its relation to the broader discipline, critical geographic inquiry, then, reveals certain parallels with critical legal analyses. By drawing on

13For Foucault (1979), power relations must be seen as dispersed: they "go right down into the depths of society . . . They define immemorable points of confrontation, focal points of instability, each of which has its own risks of conflict, of struggle, and of an at least temporary inversion of the power relations" (p. 27). Power, he argues, must be seen both as a "normalizing and punitive . . . in the thinking of the mechanisms of power, I am talking . . . of an epiphenomenon of existence, the point where power reaches into the very grain of individuals, touches their bodies and sets in motion their actions and attitudes, their discourses, learning processes and everyday lives" (1980, p. 39).

14This is not only Foucault who has addressed these questions, of course. For Giddens (1986), the power-space relation is also central. Power is not simply to be seen as a constraining force "grinding out bodies," but is also facilitative. The exercise of power, he argues, involves the deployment of social resources—both allocative and authoritative. Space is vital to the deployment of both sets of resources given the phenomenon of time-space distanciation, or the "stretching" of a society in time and space. (1980). This is enduring (although not irreducible) by various authoritative resources, such as communications technology, and the deployment of allocative resources such as the cash economy (cf. Mann, 1988).
be sees the legal world as one of "different legal spaces superimposed, interpenetrated, and mixed in our minds as much as in our actions. . . . Our legal life is constituted by an intersection of different legal orders, that is, by interlegality" (pp. 297–298, original emphasis). The production and deployment of such spaces—deciding, for example, to locate a legal dispute within a local or a national context—is, he argues, politically significant: "The choices made within each of them promote the expression of certain types of interests and disputes and suppress that of others" (p. 297). Of special significance is an emergent "lex mercatoria, an international legal space" (p. 287), whose behavior is regulated by interstate contractual and regulatory agreements established by multinational agencies, corporations, and banks. Thus, "transnational capital has . . . created a transnational legal space, a supra-state legality" (p. 287).

Most attention, however, has been centered on the locality and the "local legal culture." The attention here, however, is not that of the inscription of the "effects" of law upon space as a passive surface. Rather, the assumption here is that, although legal practice may affect social life within a locality, law itself is not simply imposed upon a local setting, but is instead interpreted in and through that setting. Law is, as it were, produced in such spaces; those spaces, in turn, are partly constituted by legal norms. Either way, law cannot be detached from the particular places in which it acquires meaning and saliency.

This, of course, is not the prerogative of geography. There is an interesting, although undeveloped, similarity to the writings of "legal pluralists" (Belley, 1991; Ellickson, 1986; Galanter, 1981; Griffiths, 1979; Moore, 1973; Pue, 1990; Santos, 1987). This school defines itself in opposition to what Galanter (1981) terms "legal centralism," defined as "the view that . . . justice . . . is a product that is produced—or at least distributed—exclusively by the state" (p. 1). "Law," to the pluralists, is altogether more ambiguous and diffuse, existing in partial autonomy from the state:

Just as health is not found primarily in hospitals or knowledge in schools, so justice is not primarily to be found in official justice-dispensing institutions. People experience justice (and injustice) not only (or usually) in forms approved by the state but at the primary institutional locations of their activity—home, neighborhood, workplace. . . . This notion of official law as a comprehensive monolith—and indeed as a system—are not descriptions of it but rather parts of its historic ideology. Legal regulation in modern societies . . . has a more uneven, patchwork character. (Galanter, 1981, pp. 17, 21)

Such analyses again run contrary to the claims of mainstream legal practice. Rather than it being somehow external to social practice, law (albeit informal) is central to social life. The legal pluralist literature, in fact, demonstrates that the internal/external category is in many senses unmitigable. In one sense, there is no external domain from which such legal knowledge could itself emanate.16

While many historical accounts can be drawn upon in recognizing the pluralism of law (cf. Arthurs, 1985; Reid, 1980; Swainger, 1991), researchers have also drawn upon a revived interest in the locality, noted above, to uncover the spatial diversity of legal knowledge. One line of enquiry explores the interpretative practices of local legal agencies (such as a pollution agency, or the police). Legal meaning emerges from these studies as place-specific, structured by the complex milieu within which the agency is located (Blacksell, Economides, & Watkins, 1991; Duncan, Goodwin, & Halford, 1988; Gardiner, 1969; Sharpe & Newton, 1984; Shover, Lyonwelder, Groce, & Clelland, 1984). My own studies of retail regulatory law in Bristol (1987, 1989a) suggest a surprising degree of "local legal knowledge" amongst local enforcement authorities, with legal interpretation shaped both by the contingencies of local political imperatives and a historically rooted legal "common sense," based on a delicate set of informal accommodations between the local state and local retail capital. There is a contingency to such local knowledges, however, given the incursions of "nonlocal" legal authorities, such as higher courts (cf. Lake & Johns, 1990).

We can also find a developing interest focused less on the individual case than on a more general claim concerning law and the spatiality of political life. A telling example of this is given by Andrew Kirby (1990) in his discussion of attempts by American municipalities to ban handguns within their jurisdictions. Contrary to many accounts, he argues, local politics has not been destroyed by the forces of modernity and an overweening central state apparatus. Although the local importance of formal party politics may have declined, he suggests the continuation of "an inchoate consciousness that communities can take legally sanctioned steps to determine the collective quality of life, and can indeed interact freely with other communities in order to do so" (p. 482). More generally, he sees issues such as gun control or abortion as "part of a long-rehearsed dialectical struggle over the direction of public life and, more important, the locus of procedural power" (p. 481). Such a tension derives from the

16The comments of Michel Foucault on the misconceived "top-down" model of power, state, and law echo those, to an extent, of the legal pluralists; see Turkel (1990, p. 190).
very spatiality of society. While it was the very spatial diversity of social practice (and, one can add, legal meaning) that served to prompt a centralization of authority, this has not entailed the demise of local politics. Rather, the continued significance of the locality as a vital site of social and political identity has ensured that such a politics persists (Emel & Brooks, 1989; Heller, 1986; Shelley & Reynolds, 1989).

If this is so, social struggles in and around law that center on the locality would seem to take on an added salency. Such struggles would seem not only to be locally expressed, but also structured by the specific settings within which they occur. Similarly, it is not abstract notions of law that would seem to be at issue; rather, these conflicts often reflect—and are mediated by—locally specific definitions and disputations of legal (and thus social) relations (Mitchell, 1992). Chouriair (1989, 1992), for example, has analyzed struggles over community legal aid clinics in Ontario in her exploration of the process of state formation. Locally constituted conflicts over law and its administration are critical to this process, she argues. Struggles over the form and substance of legal relations may serve to advance working-class capacities to contest capitalism and the capitalist state. Some of those writing on legal pluralism have also given attention to the progressive potential of informal law (Cain, 1988; Fitzpatrick, 1988; Henry, 1989; McCorry & Morrissey, 1989). In a "thick" reading of justice in a Rio de Janeiro favela, Santos (1977) provides an account of the complex relation between the locally embedded rhetorical and practice of informal dispute resolution and justice, on the one hand, and, the "asphalt law" of the state (so named to distinguish it from that in force in the unpaved streets of the favela), on the other. Favela law, he says, is distinct in its emphasis on "informality, subtlety and flexibility" (p. 89) based on its selective borrowing and occasional inversion of "asphalt legality." In its ability to carve out a nonprofessional, accessible, participatory, and consensual legal space, Santos argues, favela law can perhaps provide the basis for an alternate and more humane socialist legality.12

These legal geographies treat the legal places of "everyday life" as politically significant. They seem to recognize, with Kaplan and Ross (1987), that "[t]he law is the myriad of the urge ordinary, in the space where the dominant relations of production are tirelessly and relentlessly repro-

12A useful comparison can be drawn with the work of Antonio Azevedo de Cueva (1987). In his study of various low-income settlements in Mexico City, he documents the spatial heterogeneity of "social representations relating to the control of land" (p. 524). The consequence is a diversity that cannot easily be predicted by the orthodox models of social enquiry: "Proving that law works differently in different places poses, rather than solves a sociological problem" (p. 539).

13Critical legal scholarship, in its attention to "interstitial freedom," also sees political potential in the quotidian. Kennedy uses the analogy of the bank teller: even while apparently locked into the authoritarian structures of the workplace, there is room for resistance:

What do you make of the fact that as we tellers stand there I'm talking out of the side of my mouth to you, virtually the whole time, and I suddenly put on my sweet face when a customer comes but the instant she just looks away to put her cheekbook back in her purse, already I'm talking out of the side of my mouth . . . I believe much more in the clandestine, implicit networks of relatedness . . . And that the freedom that's expressed when the two people talk to each other out of the sides of their mouths, which is a conspiratorial freedom, it's not that's the essence of freedom; it can exist in fifty thousand different intensities. Graffiti in the bathroom." (Gabel & Kennedy, 1984, p. 24)

14There is another danger with the analyses of those such as Santos (1977, 1987) and Chouriair (1989, 1992) perhaps, given that the "spaces" of political struggle can reveal as much as they conceal. Although they can illustrate the political uses to which space can be put by the powerful and the disempowered alike, there is the ever-present danger that
Whatever its emancipatory potential, an attention to local legalities has some intriguing implications for critical legal theory. While broadly sympathetic, a number of commentators have noted a significant tension in the critical project. Although avowedly interested in the normativizing power of legal discourse, critical scholarship continues to center on "mandarins." This is, on the written record, legal decisions of the courts. Although critics would argue that they do so in a radically different way than traditional scholarship, and have indeed argued that doctrinal analysis is a form of empirical scholarship (Trubek, 1984), the ironic result, some have argued, is to sustain the very law/society divide against which the critics rail (Bakan, 1990). A doctrinal focus, it is felt, fails to provide "a narrative context that would at least supply subjects and axioms to the narrative to show that it is human beings with reasons and motives, not disembodied spirits, who drive the manufacture of legal concepts" (Gordon, 1984, p. 119).

This has engendered some interesting, if nascent, geographical claims within legal theory. A number of critical scholars have recognized that the critical project has gone beyond doctrine, to an exploration of the manner in which legal consciousness structures daily life, if it is to document the constituent power of law upon social consciousness, and to sustain the critical claim that a transformation of that legal consciousness can have a progressive bearing upon social life. Legal forms are not simply to be found in the rarified world of the Supreme Court. For Gordon (1984, p. 124) they are also "manufactured, reproduced, and modified for special purposes by everyone, at every level, all the time. Critics are not going to get this insight across if they don't switch their focus." (p. 121). "We'll never understand the power that legal forms hold over our minds," he argues, "unless we see them at work up close, in the most ordinary settings...[such as] the field levels of lower-order officials, practitioners, or private lawmakers" (p. 122).

Law and the Geographic Imagination

To some extent, an attention to such microcontexts and a resistance to the grand narrative has long been part of the critical tradition. Indeed, to some, the critical challenge to law rests on just such an hostility. In place of an Enlightenment conception of law as a totality and a unity, "postmodern" legal scholarship "denies totality by focusing on the social construction of the plurality and the radical particularity of social life. It denies unity, emphasizing instead the diversity of the micro-constituents of social life" (Hunt, 1990, p. 518; cf. Wickham, 1990). Boyle (1985) also calls for a "local critique," which he characterizes both as the study of particular localities and their associated discourses (such as law schools or workplaces) and the construction of "local" theory, defined as partial, nonprivileged, and modest accounts of social life. Both such "partial, local maps" (p. 780) serve as mediating devices by which the ever-present tension between subjectivist and structuralist theory can be temporarily resolved. They serve "to reweight the balance between subject and structure, to capture momentarily our experience of the world in such a way as to permit us to act in it" (p. 777).

Although such arguments aren't necessarily geographic, the tendency is in that direction. To the extent that recent geographic scholarship has similarly rediscovered the political and analytic importance of such local settings, the potential exists for an instructive exchange.

LAW AS GEOGRAPHY

These critical geographies are powerful and compelling. They seek to reconstruct the law-space nexus so as to accord proper recognition to both and to affirm the complex interplay of the two, evaluating the manner in which legal practice serves to produce space yet, in turn, is shaped by a sociospatial context. The "geography" of law emerges as much more than the crude confrontation of "law" and "space." In interweaving law construction of meaning and its relationship to action at all levels. In labor law, for example, we need studies that go beyond the analysis of texts to investigate the social construction of meaning through law in law firms, board rooms, union halls, and on the shop floor" (p. 613). Kennedy is also opposed to "abstract bullshit" in his demand that "what we need is small-scale, microphenomenological evocation of real experiences in complex contextualized ways" (Gabel & Kennedy, 1984, p. 3).

An example (albeit fairly modest) of the use of the local critique is provided by Unger (1975) in his Knowledge and Politics. Such local critiques are, of course, widespread within postmodern thought. Philip Cooke (1996) provides a useful summary of this "local" tendency, though he perhaps tends to elide the material and metaphorical reflections of the concept.

attention is displaced from the relation between the two to the territory in which that relation is expressed. This claim, in which space becomes "feminized," is one that Marxists have made of geographic studies (see, for example, Ellen Harris, 1980). Although this argument can be overstated, I do not think that it should be summarily dismissed. For another perspective on the "slippery politics" of space, see Wignley (1992).

20The danger of reifying and reproducing this distinction (through, for example, the supposed distinction between the "law in action" and "the law in books") is something that has also been at issue in the "law and society" movement (Sargent, 1991; Silbey & Sarat, 1987).

21David Trubek (1984), for example, advocates extending critical legal analysis beyond doctrine: "The project of critical understanding must be extended to studies of the
and space, rather than treating them in terms of the "effect" of one upon another, we change the theoretical and the political terrain in suggestive and provocative ways. However, this is still a new and rather hesitant literature that poses as many questions as it addresses. More specifically two issues that would seem central to a critical legal geography—that of legal/spatial representation, and the critical edge of geographic enquiry—need further enunciation. While there is much that legal theory can learn from a critical human geography, I think it is here that the critical legal histories explored in Chapter 1 can prove instructive.

I have already noted that the judicial representation of history is a central consideration of critical legal enquiry. Given the social and political significance of space, the representation of both space and time must be explored. To Harvey (1989, p. 205), "[H]ow we represent space and time in theory matters, because it affects how we and others interpret and then act with respect to the world." The politics of space, in other words, extends beyond its strategic use, or the localization of conflicts in and around space. The manner in which space is represented carries a political charge. This point is elaborated upon by Lefebvre (1991), who distinguishes hegemonic "representations of space," "tied to the relations of production and to the "order" which those relations impose," from "representational spaces," "linked to the clandestine or underground side of social life" (p. 33). Either way, such complex representations are not objective, but politically implicated. "What is an ideology" he asks, "without a space to which it refers, a space which it describes, whose vocabulary and links it makes use of, and whose code it embodies?" (p. 44).

This point has been developed by some intriguing work within human geography, including Dennis Cosgrove's (1984) historical account of landscape as a "way of seeing," bound up in the evolution of capitalist social relations, and Allan Pred's (1990) discussion of the normalizing and subversive politics of street naming in nineteenth century Stockholm.

Both the material and symbolic geographies of society and capitalism demand our attention (Pred & Watts, 1992; Schein, 1993). The evolution in Thailand of legal discourse remains elusive, however, if only because of the reified manner in which both law and space are, individually, presented. We have to think our way out of some deeply inscribed "legal maps." Determining the precise nature of their connection is also difficult. This is a point that Joel Bakan and I (Blomley & Bakan, 1992; Bakan & Blomley, 1992) have tried to grapple with in the context of Canadian and U.S. worker safety law. We have suggested that judges and other legal actors not only construct abstract distinctions—between the public and the private, for example—but also map out material spaces, such that certain places ("workplace," "home," "street") and certain people ("employee," "citizen") are encoded in different and distinct ways. These two categories intersect, we argued, such that the latter can make the former concrete, and hence efficacious—linking the private domain to a material site, such as the workplace. This is a point that Kay Anderson (1987) has developed in her exploration of the intersection of Vancouver. David Delaney's (1993) study of prewar U.S. decisions concerning racially restrictive covenants emphasises the judicial significance and relational identity. In other words, in these cases social relations were constituted simultaneously both spatially and legally. Legal and spatial interpretation, and therefore, legal creation and geographical construction, are fused" (p. 63).

So how is law mapped? One important way in which space appears in law, ironically, is at an absence. In much the way that time is eclipsed by supposedly immutable, ahistorical legal truths, so the spatial diversity of legal possibilities and meanings is erased by the assumed uniformity of legal norms and the apathty of legal knowledge, so central to legal decision making and the "rule of law." Western legal reasoning is celebrated as utopic, divorced from the specificities and bonds of place and community. This is at the center of Wes Pue's (1990) trenchant critique: legal relations and obligations, he argues, are frequently thought of by courts and other legal agencies as existing in a purely conceptual space, with little recognition of the spatiality and diversity of material circumstance. According to the orthodoxy, "law... cannot be customised to fit such circumstances as might actually arise; 'general principles' must outweigh specific considerations.... This juridical 'common sense,' however, piles abstraction on abstraction. It is geographical nonsense—anti geography" (pp. 567-568). One remarkable treatment of this "disappearance" of space is that of Engel (1990), in his account of legal evolution in Thailand. The process, as he casts it, was one in which an aspatial and individualized modern grid of legal interpretation and obligation was forcibly imposed upon a traditionally variegated, contextual, and deeply local legal map. Whereas previously "who one was could not be separated conceptually from where one was" (p. 339), now "local variation was... viewed as a derogation of the royal authority rather than its source of legitimacy" (p. 340).

While a hostility to spatial difference does seem to characterize legal
interpretation, this should not allow us to ignore the multiple geographies of legal discourse. Embedded within law are a rich and complex set of "maps" of social life. Legal categories are used to construct and differentiate material spaces which, in turn, acquire a legal potency that has a direct bearing on those using and transiting such spaces. In large part, these maps have not been documented in critical scholarship. This is not because they are absent, but because no one has looked for them. A few intriguing studies, however, have begun to identify the cartographies of law (e.g., Fyfe, 1993). Paul Carter's (1988) "spatial history" of the European settlement of Australia, for example, avoids an orthodox account of exploration and colonization by focusing on the "construction" of the Australian landscape, placing great weight on the process by which Europeans named (and thus both created and occupied) parts of their landscape. In an intriguing aside, he contrasts the European and the Aboriginal experience. Early European explorers contrast the Australian "wilderness," culturally adept at the "trading" of space (rivers, mountains, capes, bays) complained that indigenous cultures seemed to lack either the language or the mental constructs to classify and name the landscape. To the dominant society, such a "spatial deficiency" was quickly seen as a legal deficiency:

Seeing that [the Aborigine] did not classify it, did not distinguish it from other places, seeing that he [sic] did not seem to know "it" as a "place," could he be said to understand the notion of possession at all? And, if his grasp of it were so tenuous, then it was hardly a crime to take possession of it. The Whites did not, in this sense, possess the Aborigine's country. . . . They possessed a country of which the Aborigine was unaware . . . Logically then, possession could go ahead without consultation. (p. 64)

Of course, the different geographies of the two societies was less a function of analytical or linguistic differences than of radically opposed cultural conceptions of place, as the institution of the "songline," described by Bruce Chatwin (1987), suggests. In this sense, "white maps" did not recover a naturalized set of legal spaces from the presocial terrain. Rather, they imposed an alien (and illegally charged) cartography upon a pre-existent and coherent set of spatial understandings.

The geographies of possession are central to the accounts of two other authors (again, neither of whom is a "professional geographer"). While Jeremy Waldron (1991) and Peter Goodrich (1990) differ in their style and treatment, both consider spatial representation as central. Waldron begins his discussion of homelessness with some deceptively simple truisms:

Everything that is done has to be done somewhere. No one is free to perform an action unless there is somewhere he [sic] is free to perform it. Since we have embodied beings, we always have a location. Moreover, though everyone has to be somewhere, a person cannot always choose any location he likes. . . . One of the functions of property rules . . . is to provide a way of determining who is allowed to be where. For the purposes of these rules, a country is divided up into spatially defined regions. . . . The rules of property give us a way of determining, in the case of each place, who is allowed to be in that place and who is not. (1991, p. 296)

The privatization of space is of special significance to America's homeless who are characterized, by Waldron, as those people excluded from any place governed by a private property rule. As a consequence, "collective property"—streets, subways, parks, and so on—provides the only legal space in which the homeless can exercise their freedoms. To Waldron, "freedom" constitutes much more than a right of access: it must also include the freedom to perform certain actions in certain places, of which the most primal are physical actions such as eating, sleeping, urinating, defecating, making love, or washing. Such positive freedoms, however, have been eroded by a series of restrictions on the use of public space, such as "antisleeping ordinances," restricting sleeping in streets or parks (see Acs, 1989), or the removal of washrooms from parks. Although impartial in appearance, the effect is unjust and invidious. The geographies of liberalism, to Waldron, structure the conscious oppression of the homeless: "Since private places and public places between them exhaust all the places that there are, there is nowhere that these actions [such as sleeping] can be performed by the homeless person. And since freedom to perform a concrete action requires freedom to perform it at some place, it follows that the homeless person does not have the freedom to perform them" (p. 315).

Goodrich (1990) is also interested in the legal regulation of behavior in public space—specifically with the reasoning of an English court concerning the actions of two gay men at a bus stop, late at night on Oxford Street. The kisses and caresses of the two men were held by the court to be "offensive conduct conducive to a breach of the peace." Hardly an unusual decision—the courts continually deal with such "public order" offences. However, Goodrich uses the case as a point of entry for an extended discussion of the "geography" and "cartography" (his terms) of the decision. The ruling, he suggests, relies upon a "double geography" of street and body, "the geography of eros and the geography of public space" (p. 251). In both cases, the judges are engaged in "a projection, . . . a particular gaze, literally a throwing of vision towards a space" (p. 246) that
serves to delineate certain spaces. To the extent that the decision centers on public space, it is concerned with "the demarcation and regulation of inhabited space as a geography" (p. 234). The vital site in this landscape is the body, which is coded by the court as dangerously erotic by virtue of its presence within the visible sphere of the public space. To Goodrich, the "offending" and "offensive" body "is not something already there, something natural; it is a product or projection of the legal gaze and its map of the body, its human geography. . . . The objectionable transpires to be as much the erotic effect of the legal gaze . . . as of any object of behaviour. . . . It is the judicial eye that places these actions." (pp. 246, 247).

THE GEOGRAPHIES OF OPPOSITION

Other than a mapping of the geographies of legal discourse, there is at least one further question that must be central to a critical legal geography. An exclusive attention to the oppressive aspects of a legal regime or of legal closure—although essential—is insufficient without an analytical opposition to such oppression. The powerful geographies of law must be not only documented, but contested. In doing so, perhaps we can again learn from the way in which the "dilemma of history" is deployed by critical legal writers. Not only does the diversity of legal knowledge across space, as well as time, constitute an implicit affront to any assertion of a unitary Legal Knowledge (indeed, to Law as a category at all), but it also provides a means by which we can demonstrate law's contingency. Indeed, Poe (1990) argues that a geographically informed legal studies, in its insistence that legal knowledge is spatially specific, is, by definition, "insurrectionist."3 The "horizontal" diversity of law, in other words, can be used to contest the closure of the legal map. Such alternative legalities can occupy the same jurisdictional space (such as conterminous systems of native justice) or they can be adjacent (such as the legal systems of the third world) (Chambers, 1990; Fitzpatrick, 1990; Munsellwhite, 1986). It is this that gives a political punch to Clifford Geertz's (1983) anthropol- ogy of comparative law. Arguing that law must be seen as a form of "local knowledge" (p. 215), he suggests that a comparison of Western law with

3It is, I think, entirely appropriate that a legal historian such as Woe Poe can recognize the power of the geographic imagination. It serves as a vehicle for the desire of an historical analysis within critical legal enquiry is at once a problem and a solution. Geographers have spent much too much time besmirching the historical imagination as an obstacle to the development of a geographically informed critical theory.

that of other legal cultures—such as Balinese or Islamic laws—"can help both to free us from misleading representations of own way of rendering matters judicable . . . and force into our reluctant consciousness dis- accordant views of how this is to be done . . . which, if no less dogmatic than ours, are no less logical either" (pp. 181-182). The shock occasioned by the recognition that the "world is a various place" (p. 254) is, perhaps even more profound than Geertz implies, given that we need not look abroad to find legal difference. Indeed, a recogni- tion of the "local legal culture" identified above reveals supposedly seamless systems of national law as a patchwork of diverse and often opposed legal spaces. The destabilizing power of such local legalities is tellingly realized by Matthews and Phyne (1988), who contrast the pervasively "Hobbesian" view of national Canadian fisheries regulation—with the assumption that without legal restrictions, resource use would dissolve into the war of all against all—with the "local legal knowledge" of Newfoundland fishing communities—premiumed upon a complex system of access rights, amounting to the informal regulation of the "commons." Local legal cultures closer to "home" are doubly unsettling. Such alter- natives—like the legal histories of the oldies—raise unsettling questions concerning the status and universality of the orthodox legal account. Kobayashi (1990, 1991) takes the critical bite further. She not only documents the explicit geographies of Canadian wartime legislation, in which geographic expulsion, restrictions on mobility and spatial exclusion were all used to restrict the "geographic rights" of certain Japanese- Canadian citizens, but goes on to attempt a critical reading that refuses to accept as given the racism that underpins such laws. The task, as she sees it, is deeply geographical. In situating law, its claim to higher truth and 'innocence' is rendered contingent, conditional and deeply political:

If geographers are to see "law's landscape" as that created by legal institu- tions, they should be able to see law in the landscape and thereby to situate racism as the product of diverse social actions . . . The culpability of law can be examined in a number of contexts, some more explicit than others, . . . where the law has been used through direct action, interpretation, silence and complicity. The law has been wielded as an instrument to create a common sense justification of racial difference, to reinforce common sense notions already deeply embedded within a cultural system of values . . . and to form new social constructions. (1990, pp. 450-451)

While I began this theoretical section pessimistically, I hope that the vigorous comments of Kobayashi allow me to end with some optimism. The task of constructing a critical legal geography, despite the historically
of legal studies and the silence of geography, is not hopeless. As we have
seen, despite an apparent divide and mutual ignorance, both critical geo-
graphic and critical legal enquiry share a surprising number of political
and theoretical features. With that in mind, perhaps we can draw on both
a critical geographic imagination and a theoretically informed legal sensi-
ability in the hope that, in combination, they can provide one useful route
forward. As the very least, the critical histories of law can offer a model
for a spatially informed legal critique, given their sensitivity to legal
heterogeneity and the representational strategies of legal discourse. Simi-
larly, the critical geographies of law can direct attention to the
power/space nexus, absent from the legal account.

II

PLACES, MOVEMENTS,
AND THE
GEOGRAPHY OF WORK