

The Geography of “Moo Ha Ha”:
A Tribute to Keith Aoki’s Role in
Developing Critical Legal Geography

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As I flew from Minnesota to Oregon to participate in this Symposium celebrating Keith Aoki’s life and work, I had an experience that only he might have dreamed up. I was sitting in coach class rereading Keith’s critical geography scholarship and about to buy my prepackaged sandwich that the big corporation, Delta, picks as your “fresh” choice for a set period of time and allows you to buy only via credit card. Suddenly, I saw a familiar face, but

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familiar only in the sense that seeing someone repeatedly in magazines and on television creates a strange sense of intimacy. Steven Tyler from Aerosmith was strolling down the aisle from first class to check on his assistant. I tried to stare without staring at him—in the way that one masters after seven years of living in Los Angeles—while the flight attendant put my credit card in her mobile reader and chatted about how nice he was. She saw “Osofsky” and asked what my nationality was, clearly not meaning the United States, where I was born and have citizenship, but rather where my forebearers lived even if I have never lived there and feel no meaningful connection to there. I replied, “Polish-Russian border.”

This brief series of interactions, which lasted no more than a minute, struck me because they contained so many strands that Keith interwove brilliantly in his work and life. Music and other artistic expression. Globalization and corporate power. Citizenship in a world of shifting maps. Geography and identity. This Tribute is about these themes, with a particular focus on Keith’s contributions to the development and propagation of critical law and geography. It is intended to complement another tribute that I wrote for the *UC Davis Law Review* that focuses on him as a mentor who modeled the importance of being there for people in moments of vulnerability.¹

I continue to miss Keith tremendously in so many ways. This Tribute is my attempt to celebrate Keith’s scholarly contributions by riffing with him—something he valued greatly in artistic creation—about the geography of “moo ha ha,” that is, the spatialization of the ways in which people who have power/property try to maintain it and the complexities of addressing this inequality. Anyone who has had the privilege of sitting in one of Keith’s property classes or reading his comics has been exposed to “moo ha ha.”² In fact, the image portrayed on the cover of the lovely memorial volume that Jamie Boyle prepared³ and reproduced below, shows Keith in a University

¹ Hari M. Osofsky, *Keith Aoki—Darth Remainder, Duck, and Ninja for Social Justice: A Model of Being There for People in Moments of Vulnerability*, 45 U.C. DAVIS L. REV. (forthcoming 2012).

² I am uncertain of the origin of this term, though if Keith were alive, he would surely know it. One source claims, “The ‘Moo-ha-ha’ villain is a term coined by author Steven James in his ‘Novel Writing Intensive’ seminars. The ‘Moo-ha-ha’ villain speaks and acts like the villain from silent films who ties the damsel to the train tracks and awaits the hero’s entrance.” David Roberts, *How to Create the Villain in a Romantic Suspense Novel*, EHOW, http://www.ehow.com/how_7733765_create-villain-romantic-suspense-novel.html#ixzz1qi0DV15i (last visited May. 29, 2012).

³ JAMES BOYLE, KEITH AOKI: 1955–2011: LIFE AS THE ART OF KINDNESS: A REMEMBRANCE (2011).

of Oregon property class jumping up and down on a table and yelling “moo ha-ha!”



I recognize what he is doing in this picture because I was lucky enough to have the opportunity observe Keith in the act during my first year of teaching Property (our one year of overlap at the University of Oregon) on the days in which we co-taught future interests together.

The Tribute begins in Part I by exploring “moo ha ha,” critical legal geography, and their convergence. Part II then analyzes Keith’s interweaving of critical geography, critical race theory, third world approaches to international law, legal realism, postmodernism, and globalization and the ways in which he framed the value of geographical inquiry for legal scholars. Part III concludes by considering the future frontiers for law and geography that Keith’s work inspires for “space invaders”⁴ that build upon his work.

⁴ Keith uses this term in Keith Aoki, *Space Invaders: Critical Geography, the “Third World” in International Law and Critical Race Theory*, 45 VILL. L. REV. 913 (2000), to describe the pioneering work of several scholars working at the intersection of these fields.

I
GEOGRAPHY AND “MOO HA HA”

Geography was the perfect discipline to serve as Keith’s foil. Not only does critical geography provide a rich excavation of the spatialization of power and inequality at the core of Keith’s approach to legal problems, but the discipline’s own story in the United States is rife with the very dynamics that infuse Keith’s work. Starting with the expulsion of Harvard’s geography department in 1948, the discipline was purged from many of this country’s elite institutions in the latter half of the twentieth century. This Part sets the stage for exploring Keith’s contribution to critical legal geography by considering the meaning of “moo ha ha,” providing a brief introduction to critical legal geography, and describing the attacks on geography in the United States.

A. Defining “Moo Ha Ha”

Keith Aoki’s Images of “Moo Ha Ha” on Day 1 of Property



When I first taught Property, Keith generously gave me all of his notes and presentations. I was too new at the time to understand fully how unusual they were. I would be very surprised if any other Property Law professor in the country has a series of slides on the first day of class with the above images on them, accompanied by the text “moo ha ha,” as a significant portion of his or her lecture.

As these images that Keith collected from the public domain convey better than any of my words can, Keith was deeply—but playfully—concerned with greed and inequality. His images of “moo ha ha” were not simply the villains of comic book and movie lore, but

also ones of capitalism gone awry and greedy people who snatched more than their share of available property. From day one of his Property class, Keith highlighted for his students, punctuated by his energetic jumping on tables, problematic power dynamics that he saw at the core of the property law that he was teaching them. His art in this context—the pictures and table jumping—showed these themes much more effectively than telling about them would have, just as his scholarly comics did in other contexts.

Keith’s exposition of “moo ha ha” was not confined to the classroom, though it generally had other names in his scholarship and mentoring. His work on each of the themes highlighted in this memorial Symposium—intellectual property and copyright law; Asian American jurisprudence; and local government, geography, and immigration law and policy—consistently grappled with power, inequality, and property. He illustrated ways in which people who have property assert power, exclude others, and work to maintain power. He challenged the assumptions that came along with those moves, and proposed possibilities for the law to move forward more equitably.⁵

These concerns about power and inequality infused all of Keith’s professional life. As I discuss in more depth in my other memorial essay, Keith viewed himself as a “ninja,” moving through the shadows to help others in need. He helped those with less power navigate hierarchy more effectively, and stood up for vulnerable people and against those he saw as misusing or abusing power. For those lucky enough to be mentored by him, which is an extraordinarily long list, Keith would dissect power dynamics and help them avoid potential pitfalls.⁶

B. Defining Critical Geography

Critical geography served as an important tool in Keith’s dissection of “moo ha ha.” Beginning very early in his work, Keith began mapping spatial relationships and drawing from the discipline of

⁵ See, e.g., Steven W. Bender, *En Paz Descanse: Remembering Keith Aoki’s Contributions Toward Latina/o Equality*, 90 OR. L. REV. 1265 (2012); Robert Chang, *Centering the Immigrant in the Inter/National Imagination (Part III): Aoki, Rawls, and Immigration*, 90 OR. L. REV. 1319 (2012); Margaret Chon, *Law Professor as Artist: Themes and Variations in Keith Aoki’s Intellectual Property Scholarship*, 90 OR. L. REV. 1251 (2012).

⁶ See Osofsky, *supra* note 1. As noted in that essay, Keith used the term “ninja” playfully with clear awareness of its complex, racialized connotations.

geography as a tool in doing so. Twenty-three of his numerous articles and essays—that I have been rereading and relearning from (in addition to my treasure trove of Keith e-mails) as I have attempted to process losing him—refer to geographic concepts in text or footnotes.

Critical geography focuses on understanding flows of power and capital and their interconnection with place and space. It is one piece of the discipline of geography, a ranging discipline which—like history—covers a wide variety of subjects that might also be treated in other disciplines. While history uses the vector of time to unify its treatment of these diverse topics, geography uses the vector of space to do so. Geography, as it considers both physical (hard science) and human (social science), maps interactions among place, space, and scale.⁷

Critical geography primarily focuses on human geography topics. Its analysis, not unlike critical analysis in other fields, interrogates and deconstructs core concepts in order to understand power relationships. A rich literature, which Keith drew from and contributed to, treats our maps—both cartographic ones in the traditional sense and conceptual ones—as simultaneously being social constructed and helping to construct society. Scholars debate what core ideas like “space,” “place,” and “scale” are, and explore how different understandings of them shape unequal power and possibilities for progress.⁸

Although law and geography is still an underdeveloped intersection as compared to law and economics or law and political science, interdisciplinary work in this area has grown rapidly over the last thirty years. Critical legal geography scholarship, in particular, has blossomed over the past two decades since the pioneering work of the mid-1990s. Keith was a contributor to that initial growth period and the developments that followed. He participated in a 1996 *Stanford Law Review* symposium organized by Richard Thompson Ford entitled, *Surveying Law and Borders*, and also addressed geographic issues in earlier pieces that drew less explicitly from the discipline.⁹

⁷ Keith provides a helpful description of critical geography in *Space Invaders*, discussed *supra* note 4.

⁸ *See id.* The relationship between critical scholarship and progress is complex. While critical work often challenges the progress narrative, it also at times proposes ways forward. Keith and I would often debate the contours of this relationship.

⁹ For some of that pioneering work, see NICHOLAS K. BLOMLEY, *LAW, SPACE, AND THE GEOGRAPHIES OF POWER* (1994); DAVID DELANEY, *RACE, PLACE, AND THE LAW, 1836–1948* (1998); Keith Aoki, *(Intellectual) Property and Sovereignty: Notes Toward a*

Beginning with that work in the 1990s, critical law and geography has become a dominant stream in the development of this interdisciplinary intersection. A wide range of law and geography scholars, including Keith and his mentees, have been exploring the ways in which geographic assumptions and unequal spatialization of power constitute and are constituted by law, often building upon this earlier law and geography work and Foucault’s relatively brief commentary on the value of space.¹⁰ Law and geography anthologies

Cultural Geography of Authorship, 48 STAN. L. REV. 1293, 1318–19 (1996) [hereinafter Aoki, (*Intellectual*) *Property and Sovereignty*]; Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1857–60, 1887–92 (1994); Symposium, *Surveying Law and Borders*, 48 STAN. L. REV. 1037 (1996). For earlier work by Keith Aoki that addressed geographic topics without drawing explicitly from the discipline, see Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 FORDHAM URB. L.J. 699 (1993) [hereinafter Aoki, *Race, Space, and Place*].

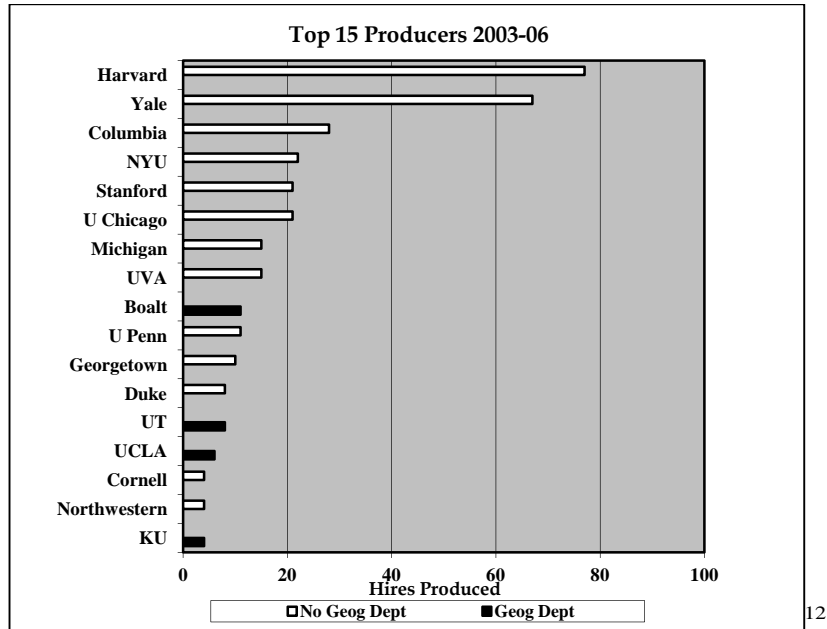
¹⁰ See, e.g., DAVID DELANEY, NOMOSPHERIC INVESTIGATION: THE SPATIAL, THE LEGAL AND THE PRAGMATICS OF WORLD-MAKING 31–33 (2010); DON MITCHELL, THE RIGHT TO THE CITY: SOCIAL JUSTICE AND THE FIGHT FOR PUBLIC SPACE (2003); Aoki, *supra* note 4; Paul Schiff Berman, *The Globalization of Jurisdiction*, 151 U. PA. L. REV. 311 (2002); Sarah Blandy & David Sibley, *Law, Boundaries and the Production of Space*, 19 SOC. & LEGAL STUD. 275 (2010); Nicholas Blomley, *How to Turn a Beggar into a Bus Stop: Law, Traffic and the “Function of Place,”* 44 URB. STUD. 1697 (2007); Nicholas Blomley, *Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid*, 93 ANNALS ASS’N AM. GEOGRAPHERS 121 (2003); Nicholas Blomley, *Simplification Is Complicated: Property, Nature, and the Rivers of Law*, 40 ENV. & PLAN. A 1825 (2008); Nicholas Blomley, *The Borrowed View: Privacy, Propriety, and the Entanglements of Property*, 30 LAW & SOC. INQUIRY 617 (2005); Nicholas Blomley, *Un-Real Estate: Proprietary Space and Public Gardening*, 36 ANTIPODE 614 (2004); Chris Butler, *Critical Legal Studies and the Politics of Space*, 18 SOC. & LEGAL STUD. 313 (2009); David Delaney, *Geographies of Judgment: The Doctrine of Changed Conditions and the Geopolitics of Race*, 83 ANNALS ASS’N AM. GEOGRAPHERS 48 (1993); David Delaney, *Making Nature/Marking Humans: Law as a Site of (Cultural) Production*, 91 ANNALS ASS’N AM. GEOGRAPHERS 487 (2001); David Delaney, *Trading Displacements: Or Evictions in the Nomosphere*, 22 ENV. & PLAN. D: SOC’Y & SPACE 847 (2004); Allan Erbsen, *Constitutional Spaces*, 95 MINN. L. REV. 1168 (2011); Richard Thompson Ford, *Geography and Sovereignty: Jurisdictional Formation and Racial Segregation*, 49 STAN. L. REV. 1365 (1997); Richard T. Ford, *Law’s Territory (A History of Jurisdiction)*, 97 MICH. L. REV. 843 (1999); Benjamin Forest, *The Legal (De)construction of Geography: Race and Political Community in Supreme Court Redistricting Decisions*, 5 SOC. & CULTURAL GEOGRAPHY 55 (2004); Nicolas Howe, *Thou Shalt Not Misinterpret: Landscape as Legal Performance*, 98 ANNALS ASS’N AM. GEOGRAPHERS 435 (2008); Ron Levi, *Gated Communities in Law’s Gaze: Material Forms and the Protection of a Social Body in Legal Adjudication*, 34 LAW & SOC. INQUIRY 635 (2009); Deborah G. Martin et al., *Making Law, Making Place: Lawyers and the Production of Space*, 34 PROGRESS IN HUM. GEOGRAPHY 175 (2010); Reginald Oh, *Re-Mapping Equal Protection Jurisprudence: A Legal Geography of Race and Affirmative Action*, 53 AM. U. L. REV. 1305 (2004); Hari M. Osofsky, *Diagonal Federalism and Climate Change: Implications for the Obama Administration*, 62 ALA. L. REV. 237 (2011); Hari M. Osofsky, *Is Climate Change “International”?: Litigation’s Diagonal Regulatory Role*, 49 VA. J. INT’L L. 585

highlight critical themes and critical law and geography scholars have played a lead public role in, for example, establishing a Legal Geography Collaborative Research Network with the Law and Society Association.¹¹ Many of the law-based scholars producing this work were deeply influenced by Keith, as he mentored them or provided comments on their work.

(2009); Hari M Osofsky, *The Geography of Climate Change Litigation Part II: Narratives of Massachusetts v. EPA*, 8 CHI. J. INT'L L. 573 (2008); Hari M. Osofsky, *The Geography of Climate Change Litigation: Implications for Transnational Regulatory Governance*, 83 WASH. U. L.Q. 1789 (2005); Robert R.M. Verchick, *Critical Space Theory: Keeping Local Geography in American and European Environmental Law*, 73 TUL. L. REV. 739 (1999); Robert R.M. Verchick, *Feathers or Gold? A Civic Economics for Environmental Law*, 25 HARV. ENVTL. L. REV. 95 (2001); A. White, *Geographies of Asylum, Legal Knowledge and Legal Practices*, 21 POL. GEOGRAPHY 1055 (2002).

¹¹ See LAW AND GEOGRAPHY (Jane Holder & Carolyn Harrison eds., 2003); David Delaney et al., *Preface: Where Is Law?*, in THE LEGAL GEOGRAPHIES READER: LAW, POWER AND SPACE at xiii, xxi (Nicholas Blomley, David Delaney & Richard T. Ford eds., 2001); Collaborative Research Networks, LAW & SOC'Y ASS'N, <http://www.lawandsociety.org/CRN/crn5.htm#35> (last visited May 29, 2012). An additional edited volume on law and geography was published in 2006, but it includes only one geographer and one law professor among its contributors and focuses narrowly on issues of landscape, identity, and regulation rather than attempting to provide sweeping coverage of the field as the other two cited above do. See THE GEOGRAPHY OF LAW: LANDSCAPE, IDENTITY AND REGULATION (William Taylor ed., 2006).

C. “Moo Ha Ha” and the Barriers to Critical Legal Geography



12

The comparatively slow emergence of law and geography likely stemmed in part from the “moo ha ha” story of the discipline itself in the United States. Keith helped me to unpack this story in an article that I prepared for my first time presenting at Yale since graduating from there. I was very intimidated by the prospect, and Keith used his capacious knowledge of the history of thought to mentor me through understanding not just very complex works from geography, but how the transition from modernism to postmodernism and interactions with scientific naturalism influenced this narrative.¹³ During that period, inspired by Keith, I would often rise before dawn to try to make my way through the stacks of books that Keith insisted were essential reading to understanding the intellectual pathways of the twentieth century. Each time I returned to Keith, whether in person or via e-mail, he always made time to discuss the latest readings enthusiastically and suggest new intellectual terrain.¹⁴ The process of writing this article was one of many times where Keith’s

¹² Reproduced from Hari M. Osofsky, *A Law and Geography Perspective on the New Haven School*, 32 *YALE J. INT’L L.* 421 (2007).

¹³ For a longer exploration of these issues, see *id.*

¹⁴ For an example of one of those e-mail interchanges, see Osofsky, *supra* note 1.

knowledge, energy, and generosity pushed me to go deeper and provided me with some of the most intellectually generative experiences that I have ever had.

Regarding this particular story, geography's ancient origins and crucial Enlightenment role provided it with a place at elite U.S. universities far before the birth of U.S. law schools.¹⁵ As the modern disciplinary matrix was being established by the early twentieth century, though, both were included.¹⁶ However, due to a variety of factors, elite U.S. universities began purging their geography departments throughout the latter half of the twentieth century. These departmental eliminations dealt a serious blow to the discipline in this country and to the possibilities for law and geography developing here during a period in which law and economics and law and political science began their ascendancy.¹⁷

The first departmental elimination at Harvard in 1948, well before Keith attended law school there, is rife with complex power dynamics. Accounts have focused on homophobia directed at the geography department head, the desire of geology to obtain extra funds and positions, and the hostility of Harvard's key administrators.¹⁸ Weaknesses in geography scholarship at the time

¹⁵ For discussions of the history of the discipline of geography, see NAFIS AHMAN, *MUSLIM CONTRIBUTION TO GEOGRAPHY* (1947); GEOFFREY J. MARTIN, *ALL POSSIBLE WORLDS: A HISTORY OF GEOGRAPHICAL IDEAS* (2005); J. OLIVER THOMSON, *HISTORY OF ANCIENT GEOGRAPHY* (1948); Richard Hartshorne, *The Concept of Geography as a Science of Space, from Kant and Humboldt to Hettner*, 48 *ANNALS ASS'N AM. GEOGRAPHERS* 97 (1958); see also Charles W.J. Withers & David N. Livingstone, *Introduction to GEOGRAPHY AND ENLIGHTENMENT* 1, 1 (Charles W.J. Withers & David N. Livingstone eds., 1999); Geoffrey J. Martin, *The Emergence and Development of Geographic Thought in New England*, 74 *ECON. GEOGRAPHY* 1, 5–6 (1998). For analyses of the emergence of U.S. law schools, see John H. Langbein, *Blackstone, Litchfield, and Yale: The Founding of the Yale Law School*, in *HISTORY OF THE YALE LAW SCHOOL: THE TRICENTENNIAL LECTURES* 17, 17–32 (Anthony T. Kronman ed., 2004).

¹⁶ See ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (1983); Paul P. Abrahams, *Academic Geography in America: An Overview*, 3 *REV. AM. HIST.* 45 (1975). Geography did go through some shakier periods in the nineteenth century before being firmly established in that modern disciplinary matrix. William A. Koelsch, *Academic Geography, American Style: An Institutional Perspective*, in *GEOGRAPHY: DISCIPLINE, PROFESSION AND SUBJECT SINCE 1870: AN INTERNATIONAL SURVEY* 245, 269–70 (Gary S. Dunbar ed., 2001); cf. William Warntz, *Geographia Generalis and the Earliest Development of American Academic Geography*, in *THE ORIGINS OF ACADEMIC GEOGRAPHY IN THE UNITED STATES* 245 (Brian W. Blouet & Teresa L. Stitche eds., 1981) (discussing debates over how these early developments affected geography's eventual departmental status).

¹⁷ See *infra* notes 18–22 and accompanying text.

¹⁸ See Andrew F. Burghardt, *On "Academic War over the Field of Geography," The Elimination of Geography at Harvard, 1947–1951*, 78 *ANNALS ASS'N AM. GEOGRAPHERS*

helped make these departments around the country vulnerable to such attacks,¹⁹ but one can almost picture a Keith-style comic depicting Harvard President James Conant as saying “moo ha ha” after issuing his directive stating that “geography is not a university subject”²⁰ despite the subject’s long inclusion at major universities around the world. The elimination and his declaration began what the *Harvard Crimson* described as an “academic war over the field of geography,” as numerous universities throughout the United States began to cut their departments.²¹ When numerous other departmental eliminations followed, some geographers worried that the discipline would not survive in this country.²²

However, both the discipline and thought evolved in ways that allowed for a resurgence of geography and set the stage for critical legal geography. The discipline’s “quantitative revolution” in the late 1950s and early 1960s and an emerging critical/radical geography in the late 1960s and 1970s helped to revitalize the field.²³ These critical geographic explorations of place and space in the late 1960s and early 1970s, as Keith helped me to understand, paralleled the beginning of a broader intellectual transition from modernism to postmodernism. Specifically, the focus on space in postmodernism, as opposed to the progress narrative of modernism, helped people to understand the value of a discipline focused on spatiality at the same time as that discipline entered a new intellectual phase compatible with that transition.²⁴ Keith’s scholarship includes a law and

144, 144 (1988) (reviewing Smith, *infra*); Geoffrey J. Martin, *On Whittlesey, Bowman and Harvard*, 78 ANNALS ASS’N AM. GEOGRAPHERS 152 (1988); Neil Smith, “Academic War over the Field of Geography”: *The Elimination of Geography at Harvard, 1947–1951*, 77 ANNALS ASS’N AM. GEOGRAPHERS 155, 155 (1987).

¹⁹ See Saul B. Cohen, *Reflections on the Elimination of Geography at Harvard, 1947–51*, 78 ANNALS ASS’N AM. GEOGRAPHERS 148, 148 (1988); Smith, *supra* note 18, at 167.

²⁰ Smith, *supra* note 18, at 159 (quoting Letter from Derwent Whittlesey to George Cressey (Apr. 16, 1948) (on file with the Harvard University Archives) and Letter from Kirk Bryan to Isaiah Bowman (Mar. 16, 1948) (on file with Johns Hopkins University Records)).

²¹ *Id.* at 155 (quoting *Off the Map*, HARVARD CRIMSON (1951)).

²² See Thomas J. Wilbanks & Michael Libbee, *Avoiding the Demise of Geography in the United States*, 31 PROF. GEOGRAPHER 1, 1 (1979).

²³ See Richard L. Morrill, *Recollections of the ‘Quantitative Revolution’s’ Early Years: The University of Washington 1955–65*, in RECOLLECTIONS OF A REVOLUTION: GEOGRAPHY AS A SPATIAL SCIENCE 57 (1984); EDWARD W. SOJA, POSTMODERN GEOGRAPHIES: THE REASSERTION OF SPACE IN CRITICAL SOCIAL THEORY 39–65 (1989); William D. Pattison, *The Four Traditions of Geography*, 63 J. GEOGRAPHY 211 (1964).

²⁴ A detailed exploration of the complex debates over the definition of postmodernism and postmodernity is beyond the scope of this Tribute. I define it here broadly and

geography analysis of this intellectual transition from modernism to postmodernism in the context of architecture and urban planning.²⁵

But even as geography's resurgence continues, the aftermath of that purge remains. Today, Dartmouth College is the only Ivy League school with a geography department, one that does not grant Ph.D. degrees.²⁶ Leading public and land grant universities, particularly in the Midwest and West, have been the main category of schools that resisted this trend and maintained their departments; only five of the top twenty law schools as of the 2013 *U.S. News & World Report* rankings—all public law schools in those two regions—have geography departments.²⁷ While Harvard created a Center for Geographical Analysis in 2007 with claims of reversing its history, the Center has a relatively limited scope, focused largely on GIS, and no departmental status.²⁸ This dearth of geography departments has limited the exposure of many law professors, who tend to be educated at elite schools without geography departments, to the discipline Keith's efforts were particularly critical in that context; he mentored law professors trying to understand geography and fostered interdisciplinary interchange.

II

KEITH AOKI'S INTERWEAVING OF CRITICAL GEOGRAPHY, CRITICAL RACE THEORY, THIRD WORLD APPROACHES TO INTERNATIONAL

inclusively, with a focus on its embrace of “ephemerality, fragmentation, discontinuity, and the chaotic.” DAVID HARVEY, *THE CONDITION OF POSTMODERNITY: AN ENQUIRY INTO THE ORIGINS OF CULTURAL CHANGE* 44 (2005); see also STEPHEN M. FELDMAN, *AMERICAN LEGAL THOUGHT FROM PREMODERNISM TO POSTMODERNISM: AN INTELLECTUAL VOYAGE* 28–29, 38–48 (2000); Michel Foucault, *Of Other Spaces*, 16 *DIACRITICS* 22 (Jay Miskowiec trans., 1986); GARY MINDA, *POSTMODERN LEGAL MOVEMENTS: LAW AND JURISPRUDENCE AT CENTURY'S END* 3 (1995); SOJA, *supra* note 23, at 15–16, 60–64. In terms of timing, while postmodernism did not fully entrench itself in legal scholarship until the 1980s and 1990s, see MINDA, *supra*, at 191—as critical legal geography also began to blossom—postmodernism's concepts first began permeating the intellectual discourse earlier.

²⁵ Aoki, *Race, Place, and Space*, *supra* note 9.

²⁶ See *About the Department*, DEP'T OF GEOGRAPHY: DARTMOUTH COLL., <http://www.dartmouth.edu/~geog/aboutdept/dept.html> (last visited May 29, 2012).

²⁷ Those schools are University of California–Berkeley, UCLA, University of Texas, University of Minnesota, and University of Washington. For the 2013 rankings, see *Best Law School Rankings*, U.S. NEWS & WORLD REP. (2012), <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings>.

²⁸ *Center for Geographical Analysis*, HARVARD UNIV., <http://www.gis.harvard.edu/icb/icb.do>; see also Alexander B. Murphy, *Geography's Place in Higher Education in the United States*, 31 *J. GEOGRAPHY HIGHER EDUC.* 121, 130–34 (2007).

LAW, POSTMODERNISM, AND GLOBALIZATION (SPACE, PLACE,
SCALE, LAW, POWER, AND INEQUALITY)

Keith Aoki,
*(Intellectual) Property
and Sovereignty:
Notes Towards a
Cultural Geography of
Authorship*, 48 STAN. L.
REV. 1293 (1996).



Keith Aoki, *Space
Invaders: Critical
Geography, The 'Third
World' in International
Law and Critical Race
Theory*, 45 VILL. L. REV.
913 (2000).

From Keith Aoki's exposition of visions of property on day one of his course:

"[t]hat sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe." --Sir William Blackstone, 1766

It would be impossible to capture all of Keith's geography contributions in one essay. As noted above, he refers to geographic concepts in text or footnotes in more publications than many scholars produce in a whole career. Like all of Keith's scholarship, each of these pieces is rich and textured, pulling from multiple, complicated conceptual streams and areas of law simultaneously. I continue to be staggered by Keith's capacity to understand and interweave ideas in his mental "blender," as he termed it in one e-mail to me.²⁹ In recognition of these limitations, this Part focuses on two pieces in which Keith went deepest in explaining how he thought critical geography should interface with law, "(Intellectual) Property and Sovereignty: Notes Toward a Cultural Geography of Authorship"³⁰ and "Space Invaders: Critical Geography, The 'Third World' in International Law and Critical Race Theory."³¹ In each of them, Keith explores the intersection of power, inequality, and law, especially with respect to sovereignty and property (depicted in the above image drawn from Keith's property slides).

"(Intellectual) Property and Sovereignty: Notes Toward a Cultural Geography of Authorship" was one of Keith's first major pieces drawing directly from the discipline of geography. It was written at a time when critical law and geography was first emerging and formed

²⁹ For that e-mail, see Osofsky, *supra* note 1.

³⁰ Aoki, *(Intellectual) Property and Sovereignty*, *supra* note 9.

³¹ Aoki, *supra* note 4.

a part of that beginning. When the 1996 *Stanford Law Review* symposium in which this piece appeared was published, only a handful of law and geography scholars had begun to imagine how critical geography could be brought to bear on legal questions and how law might influence mapping of power and inequality. This symposium issue, including Keith's contribution to it, was a path-breaking effort to explore the contours of this stream of law and geography.³²

Beyond its role in shaping the field, the piece has personal significance to me. When Keith showed it to me, modestly noting it might be useful to the thinking I was doing on sovereignty in a climate change litigation context, it opened a whole disciplinary pathway to me that I had not previously known existed. Because I went to Yale University for both college and law school, long after it expelled geography, I was never exposed to the discipline beyond the dry maps of my secondary education. After I read this piece and told Keith it was the most interesting work I had ever read on mapping, he handed me a pile of books that Alec Murphy (a geographer at the University of Oregon who is now my dissertation advisor) had introduced him to and I quickly realized that since college I had been trying to construct a discipline that already existed. All of my scholarship since rests on a foundation that has this article as its cornerstone. Moreover, Keith has provided similar mentoring—directly and through those he has mentored—to many other law professors who have contributed and are contributing to the critical legal geography literature.

Like most of what Keith wrote, this article simultaneously adds to many areas of scholarship, not just critical geography. As Lydia Pallas Loren eloquently captured in her presentation at this memorial Symposium, for example, this piece is also an important work in intellectual property.³³ However, given the focus of this Tribute, I will concentrate on what it did for the nascent efforts to intertwine critical literatures in law and geography.

Substantively, the article weaves together a history and mapping of property and sovereignty, and of public and private, to demonstrate that the treatment of authorship under law is problematic and to argue for a reimagining of legal regulation of digital information. In so doing,

³² See sources cited *supra* note 9.

³³ See Lydia Pallas Loren, *The Bridge and Playful Thunder of Keith Aoki*, 90 OR. L. REV. 1217 (2012).

it models how spatializing and mapping legal stories—through a legal story with a scope and sweep that only Keith could master—can help frame a way forward to privilege “moo ha ha” less in law. It provides a map for how others could similarly employ critical geography to help understand and address power and inequality in law.³⁴

While “(Intellectual) Property and Sovereignty: Notes Toward a Cultural Geography of Authorship” shows the value of law and geography in a specific substantive context, “Space Invaders: Critical Geography, The ‘Third World’ in International Law and Critical Race Theory” provides a map of how critical geography could be intertwined with other critical approaches. This article is an extraordinary piece that brings together critical geography, Third World Approaches to International Law (TWAAIL), and critical race theory while, in typical Keith fashion, paying homage to the contributions of other people rather than his own important ones. He maps what legal scholars have to add to “legal articulations of place and analyses of the contemporary political economy of space.”³⁵

Specifically, the article focuses on two ways in which critical legal scholars are supplementing critical geographic understandings of law, race, power, and inequality. It explains,

First, critical legal scholars such as Ford, Calmore, Thomas, Iglesias, MacFarlane and Farley bring a sense of the nuance of the law, how there are places of unexpected indeterminacy and “give” in legal doctrine that may be exploited. This corrects and supplements the project of critical geography, which tends to overestimate the fixedness of legal doctrine, considering the legal rules in force as another input to the creation and shaping of space.

Second, critical legal scholars bring a consciousness of how race within the United States occupies an important, but contentious, social place. This critical awareness of the fluidity of race, when combined with the emerging critique of the macro and micro global political economies of space, challenges us to analyze both maps of the globe and maps of urban regions within the United States. Through revealing new lenses in areas such as local government law, access to housing, investment patterns in urban areas and redevelopment within and without the United States, the means whereby “race-ed” bodies are produced in segregated spaces in turn become manufactories for the media spectacle of “black criminality.”³⁶

³⁴ See Aoki, *(Intellectual) Property and Sovereignty*, *supra* note 9.

³⁵ Aoki, *supra* note 4, at 939.

³⁶ *Id.* (internal footnotes omitted).

This second article's focus on showing what critical legal scholars have to add reinforces a theme that runs across Keith's law and geography scholarship. As they interweave substantive areas and enormously difficult conceptual concepts easily and articulately, his articles illuminate how these disciplines can learn from one another and in the process address the problems of law, power, and inequality that Keith tried to address in his work and life. Keith showed how place and space operated and, in the process, he captured the complex relationship between local and international in our postmodern (and at times perhaps even post-postmodern?), globalizing world. He demonstrated the way in which geography shapes and is shaped by law.

These are novel and important intellectual contributions grounded in deeply practical problems. Keith fused legal scholarship, art, and "ninja" efforts to make the legal academy and broader world better (even as he insisted that he was a crit who denied the progress narrative).³⁷

III

FUTURE FRONTIERS FOR LAW AND GEOGRAPHY

Keith's law and geography work has already had a deep influence on many scholars. He was one of the pioneers—something he'd modestly disclaim. On a personal level, as discussed above, Keith quite literally introduced me to geography within my first weeks at the University of Oregon (which is why I started the geography Ph.D. on the side) and mentored me intellectually in ways that have shaped everything I have written since. For all that, what I most valued about Keith—which is not the focus of this intellectual Tribute, but I have to at least briefly acknowledge here—was the way he was there for me (and so many others) at the critical moments in my life and career from the moment I met him. He showed me through doing how to be "ninja" for social justice and inclusion in the academy.

When I look to the future path forward from Keith's law and geography contribution, I particularly reflect on three themes. First, as law and geography scholarship continues to develop—especially along three streams, environmental/land use, critical, and GIS—a vision of this interdisciplinary intersection that integrates critical and noncritical themes is needed. The seeds of such a vision exist in both

³⁷ I discuss Keith's broader role in my life and that of others in more depth in Osofsky, *supra* note 1.

Keith's scholarship and the way in which he approached critical thinking. Keith was always someone who believed in "open tents" that included a diversity of perspectives and people, including in the critical race context, and his depictions of geography reinforce the breadth of possible interactions between the disciplines. I am continuing in my current work to try to build on Keith's vision and find an inclusive definition of law and geography that can acknowledge both the unique contributions of a critical approach and the commonalities across law and geography work.³⁸

Second, more scholarship is needed to continue the mapping that Keith modeled in a variety of substantive contexts. Keith's law and geography work, because he was such a Renaissance scholar, showed how critical spatialization could bring insights to so many types of legal problems. The scholars that he mentored either directly or through the wonderful maps that his scholarship provides are continuing to bring that analysis to bear on new terrain as they try to address power, inequality, law, and geography in emerging contexts. For me, that terrain is the nexus of those concerns with climate change and, increasingly, energy.³⁹

Finally, Keith began and made much progress on the project of translating critical geographic concepts for law faculties. Because these professors are unlikely to have been exposed to university-level geography, they often query its value for legal analysis. To this day, I have to struggle in my work to make sure that the way in which I use geographic ideas does not come across as jargon and to answer questions in presentations about why law professors should value geography. Keith not only forwarded this project by both stating and modeling in the two pieces described above and so many others the salience of geography for law, but also spent many hours mentoring those curious about the interdisciplinary intersection. He has left a legacy of scholars interested in carrying this project forward, with an emphasis on how geography can help unearth power dynamics and inequality and serve as a force for needed innovation.

At both the Davis and University of Oregon memorial gatherings in honor of Keith, I had people climb onto their tables at the end and yell "moo ha ha." I hope that we all continue to do so, whether physically or symbolically. Keith's life and work left the world so

³⁸ See Hari M. Osofsky, *Towards a Holistic Vision of Law and Geography?: Possibilities for Bridging the Gap Between Critical and Non-Critical Scholarship* (draft manuscript on file with author).

³⁹ See sources *supra* note 10.

much richer through both the person that he was and the deep value commitments that he expressed thoughtfully, passionately, and playfully—sometimes all three at once. His warmth and energy imbued his writing and the ways in which he was there for others. I will always miss having Keith here with us in person, but take comfort in the many ways in which we can continue his legacy both intellectually and as human beings.