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Making law, making place: lawyers and the production of space

Deborah G. Martin,^{1*} Alexander W. Scherr²
and Christopher City¹

¹School of Geography, Clark University, Worcester, MA 01610-1477, USA

²University of Georgia School of Law, Athens, GA 30602, USA

Abstract: In this paper, we develop a conceptual framework for theorizing the role of lawyers in legal geography research to foster better understandings of the processes and the people co-constituting space and law. We argue that the practice of law is missing from existing legal geography scholarship. Adding insights from legal studies and geography, we propose an agenda for research that places lawyers at the center of analyses of legal (and political) claims-making, particularly place-claims in land-use disputes. We illustrate our call with an example from a study of conflict over a manufactured housing park in Georgia.

Key words: cause lawyering, lawyers, legal geography, legal studies, place.

I Introduction

[T]he first thing I did was go and explain to them that I wasn't their attorney. And I had a UGA law student with me that got so scared because we had 450 people on this grassy lawn, that were stampeding, basically and were yelling at me, about how inappropriate this was, and this poor law student backed up against the car, had her hand on the door, she was ready to get in and go, because they were so angry, they didn't understand how it was that anyone could have bought the land out from underneath them.¹

As you can imagine, I wanted the lawyers on the jury. I wanted property owners and I wanted lawyers. I wanted people who could make the distinction between property rights

... And I wanted some folks who understood that a property owner has the right to sell his property legally, fairly, following the rules of law and understanding the contract but who wouldn't find it offensive that he sold and made money. Because that always seemed to me to be the feel that was coming from the press.²

Lawyers interpret and enact the law in socio-spatial contexts that can reinforce or alter spatial norms. The quotes above come from interviews with attorneys on opposite sides of a dispute over a manufactured housing park near Athens, Georgia. The language shows how intensely lawyers engaged with the conflict, from initial meetings with dispossessed tenants, to the courtroom, to the creation of a new park. Shortly after the

*Author for correspondence. Email: demartin@clarku.edu

meeting described by the first speaker, she agreed to represent a group of tenants in the park who were evicted when the park's owners sold the park's land to developers. The second speaker served as lawyer for the defendant – a family-owned business that sold the park for residential development. As we elaborate below, these lawyers' descriptions of their work are suggestive of the role that lawyers play in shaping legalized conflict.

In this paper, we develop a conceptual framework for theorizing the role of lawyers in legal geography research on the processes and the people co-constituting space and law. Legal geographers have sought to understand the role of the law in social activism (see, for example, Chouinard, 1994; Delaney, 1994; Blomley, 2004) or on the interpretations given to the law by other actors, such as judges (Clark, 1985), police (Herbert, 1997; 2006), or government officials (Lake and Johns, 1990). However, they have largely overlooked the role of lawyers and law practice. To be sure, legal studies recognizes the role of 'cause lawyers' in activism; but legal geography scholarship has, to date, failed to explore the practices of lawyers in the enmeshment of law and space. This lacuna weakens the explanatory power of legal geography, leaving it to focus primarily on legal decisions after they are made (such as in Ford, 2001b; Forest, 2004), the inherent spatialities evident in existing law (see Hatcher, 2003; Jackson and Wightman, 2003; Blomley, 2004), or the spatial implications of the decisions of a limited set of legal actors, although, curiously, not lawyers (as in Clark, 1985; Lake and Johns, 1990; Blomley, 1993; Belina and Helms, 2003). A legal geography sensitive to the *practice* of law can examine the active interpretation of spatial meaning through lawyer-client relations, negotiation, persuasive argument, and planning.

In particular, we theorize a set of specific activities for lawyers in weaving together law practice and spatial meaning. We iden-

tify at least four kinds of activity: lawyers *translate* meaning from one form to another;³ lawyers *transform* meaning by incorporating both societal norms and personal values; lawyers *act as agents*, introducing both role separation (a lawyer's separate personality and networks) and transactional cost into potential resolutions; and finally, lawyers *exert power*, altering existing social relations and mediating both coercive and consensual processes that affect a given conflict. We do not treat these four kinds of engagement in full here; rather, we suggest methodologies for appraising their presence and examining their effects.

We first outline the case study which illustrates our discussion. We then review scholarship in legal geography and argue that the role of lawyers has been under-examined in this literature. We illustrate how this potential line of inquiry connects to existing research strands in legal geography dealing with the roles of agency, structure, urban contestations, and property law (Chouinard, 1994; Blomley *et al.*, 2001; Holder and Harrison, 2003; Blomley, 2004). In the following section, we discuss how legal studies literature suggests why studying lawyers' practices can elucidate processes that involve legal claims or invocations of the law. We review other geographical literatures that illuminate the role of lawyers in law-making and place-making. We then suggest methodologies for examining lawyers' activities as possible avenues of inquiry for future scholarship. Finally, we illustrate how these methodologies might function within the context of the housing dispute with which we opened this paper.

II Case study

The first two co-authors conducted a small pilot study in Athens, Georgia, to examine the structuring of legal interests in manufactured homes, and how this structuring influences the spatial dynamics of manufactured-home living.⁴ Part of the study

investigated a manufactured-home park in Athens called Garden Springs. This park had been sold to a developer who evicted the existing residents (about 500 people) to make way for the construction of new 'stick-built' housing – an upscale student-orientated apartment complex (Aued, 2007). The park had provided increasingly rare affordable housing options in the county and one of the few communities for predominantly Hispanic immigrants near Athens. After the eviction began, a number of the residents found that they could not move their homes because county regulations prohibited the relocation of manufactured homes over a certain age. A large public outcry followed both the sale and the later eviction of residents. Some park residents formed an organization (People of Hope), supported by other community groups (Reid, 2003).

We interviewed three lawyers who became involved in the conflict: one hired by the former park owners after they were sued by some of the tenants; and two others who represented the resident community and People of Hope. One of these two was a public-interest lawyer, who subsequently enlisted the other, a partner at a high-profile Atlanta law firm, who worked pro bono. All three lawyers were elite agents, as described in regime theory (Logan and Molotch, 1987): they had extensive connections to other lawyers, state and county officials, or non-profit groups with resources that could help both the owners and People of Hope.

Our study sought to determine how the unique legal dimensions of manufactured-housing ownership constituted a given resident's sense of identity and neighborhood. However, and especially with the People of Hope, we came to see that lawyers' actions had a strong shaping influence over this interaction, and began to articulate how lawyers and lawyering influenced the construction of space. We next describe how existing literature addresses this topic.

III Legal geography: where are all the lawyers?

1 The enmeshment of space and law

Legal geography as a subfield has received steady, albeit not voluminous, attention over the last 20 or so years. During this time, legal scholars and geographers have sought to define the field and identify its core questions (Blacksell *et al.*, 1986; Clark, 1989; Blomley and Clark, 1990; Blomley, 1993; Chouinard, 1994; Forest, 2000; Blomley *et al.*, 2001; Holder and Harrison, 2003). These synthesizing accounts suggest that legal geography, like both of its umbrella disciplines, is both broad-ranging and diverse.

As a subdiscipline, legal geography argues that law and space must be viewed as complementary and overlapping spheres. Although law and space have distinct concepts and material manifestations, one cannot easily disengage one from the other (Delaney *et al.*, 2001; Mustafa, 2001). Law is seen not as distinct but rather as *enmeshed with space*. Blomley *et al.* (2001: xix) demonstrate this enmeshment when they ask: '[i]s a state a legal or spatial entity? Is eviction a legal or spatial state of affairs?' Legal geography examines how space shapes or modifies the law's effects, and in turn how the law shapes spatial relations (Clark, 1989; Blomley, 1994; 2004; Platt, 1996; Mitchell, 1997; Blomley *et al.*, 2001; Holder and Harrison, 2003). Legal geography has largely earned its status as a subdiscipline by exploring this nexus of 'law, space and society' (Delaney *et al.*, 2001; see also Platt, 1996).

To understand how law and geography are enmeshed, one must recognize that both are 'produced' and are constituted through (and help to constitute) social structures and social action. Human geography now accepts the idea that space is produced (derived predominantly from Henri Lefebvre, 1991 [1974]), as does the subdiscipline of legal geography. More than a mere backdrop for

social worlds, space forms a part of social relations. To quote Doreen Massey (1984: 4), '[t]he spatial [is both] an outcome [and] part of the explanation' for social processes. The idea that space was something that could exist independently of social relations gave way to the idea that social practices constructed space, and space in turn would influence those practices (Blomley, 2003). Similarly, many scholars had come to accept that central aspects of the law are socially produced (Blomley, 2003). This view is an outgrowth of critical legal studies literature, which sees the law as an institution consisting of social practices created and applied to govern the behavior of individuals, groups, and institutions (Clark, 1989; Chouinard, 1994).

To analyze the enmeshment of law and space, some have examined the differentiation of law in spatial terms. For Nicholas Blomley (1994; 2003), the variability in the expression, application, interpretation, and enforcement of laws across jurisdictions powerfully contradicted the widely held notion of law as aspatial and universalizing (see also Chouinard, 1994). Similarly, the legal geography literature on racial segregation and local parochialisms elucidates how the general notion of equality and equal opportunity is unevenly administered across jurisdictional territories (Delaney, 1994; Ford, 2001a). These studies examine space as enabling differences in legal regimes by providing 'natural' boundaries that have been justified as separate territorial or jurisdictional identities (Ford, 2001a; 2001b; Blomley, 2003). Legal geography literature critiques both of these justifications (Delaney, 1994; Ford, 2001a; 2001b; Blomley, 2003).

Others have studied the enmeshment of law and space by exploring how law helps to define and distinguish space (Blomley, 2004). Law and legal practices can create and define spatial meaning, for example through the production of boundaries (Delaney, 1994; Ford, 2001a; 2001b; Cooper, 2001). The notion of territorial jurisdiction forms the legal basis of governance structures at

several scales. At the same time, the idea of jurisdiction may also construct social identity by encouraging people to behave and think of themselves in certain ways (Ford, 2001b; Cooper, 2001; Poindexter, 2003; Hatcher, 2003). David Delaney (1994) and Richard Ford (2001a) demonstrate how the practices of courts in construing racial segregation as an intralocal rather than regional problem helps to perpetuate historic racial segregation by fixing it within political boundaries, such as central cities, thereby excluding surrounding suburban municipalities from responsibilities for remediation. Similarly, Georgette Poindexter (2003) and Laura Hatcher (2003) examine conflicts over environmental protection when suburban towns oppose regulations that limit individual real property rights. Geographers have also explored the effects of law in the production of space in, for example, the effects of police practices on urban communities (Belina and Helms, 2003; Mitchell, 2003), the redefinition of urban spaces through legal discourses of rights and citizenship (Mitchell, 2003; Purcell, 2003), and the role of property law in gentrification (Blomley, 2004).

Legal geographers have observed that legal and non-legal understandings of space diverge in ways that are significant for social ordering. For legal geographers, the ways in which the law recognizes certain property interests and narratives about land, and not others, evidences the role of social relations in the law (Jackson and Wightman, 2003; Blomley, 2004). Nicholas Blomley (2004), Nick Jackson and John Wightman (2003), and Sarah Whatmore (2003) have all, in various ways, examined the tension between individuals' private property rights on the one hand and alternate ownership claims based on labor, self-investment, or collective claims on the other. Georgette Poindexter (2003) addresses the contentious balance between individual property interests (which she refers to as the 'idolatry' of private property) and collective interests in land. In these ways, legal geography has illustrated

and is supported by the notion that the law is a socially constructed institution, that is produced within space and helps to produce space (Blomley, 2003).

2 *Producing space and law*

Recognition of the produced and therefore contingent nature of law and geography raises questions about *how* the production occurs: who, or what, is in charge? Much of legal geography looks at the outcomes of legal process, such as statutory law, judicial rules, judicial decisions, even pleadings. These analyses focus on the framing of geographical concepts in these 'official' legal records (Chouinard, 1994). However, in focusing on outcomes, legal geography can overlook questions about the process of legalization itself, such as: how do individuals or groups make claims in legal ways? How do they invoke the law?⁵ Much of the existing literature implies the raising and contesting of claims, but it does not trace this process through in detail so as to understand the shaping influence of various actors.

In contemporary legal thought, law-making encompasses legal creation, interpretation and application by a variety of actors, such as legislators, lawyers, judges, police, public officials, and everyday citizens. Thus, multiple legal actors can be seen as performing the production of law in various degrees, and in relation to each other (Clark, 1985; Scherr, 2002). Legal geography has been selective in studying these actors within a legal and spatial framework, and in assessing their impact on that framework. In assessing spatial differentiation, some have highlighted the crucial role of certain actors in the production of law and space, such as judges (Clark, 1985; Whatmore, 2003), police (Herbert, 1997; 2006), property owners and local officials (Blomley, 1994; 2004; Belina and Helms, 2003). Gordon Clark (1985), for example, examined how judges influence the way in which municipal laws are interpreted and enforced. Blomley (1994) makes a similar

point about police and local licensing officials for retail establishments.

Indeed, the role of the police dominates inquiry into the power of individuals to interpret and enact certain laws (Herbert, 1997; 2006; Saunders, 1999; Belina and Helms, 2003; Mitchell, 2003). Herbert (2006) shows that police construct notions of their communities through routinized procedures, quite separate from residents' experiences of the same events and places. Further, police procedures involve them in considerable spatial interpretation. For example, Bernd Belina and Gesa Helms (2003) and Phil Hubbard (2004) analyze the effects of 'zero tolerance' policing (ZTP), which targets nuisances such as panhandling or homelessness in an effort to maintain order and enhance tourist and middle-class residential consumption of city spaces. Don Mitchell (1997; 2003) examines how such policing and other 'quality of life' laws shape a landscape that creates uneven citizenship, where some members of society are freer to move through and use space than others. Belina and Helms (2003) point out, however, that such policing requires a series of actions (what they call 'regulative practices') on the part of police and other local officials: 'the police ... the Town Clerk's Office ... and the state attorney ... have to work together' (Belina and Helms, 2003: 1855). They situate these regulative practices in a political economy of urban entrepreneurialism (cf. Harvey, 1989), and examine the decision-making processes of place-marketing that inform them.

Lawyers remain largely unseen in these accounts of legal interpretation and enactment. Yet the role that they (and institutional organizations, if any) may play in working with clients is undoubtedly important. Vera Chouinard (2000) investigated how the funding structure of legal clinics, their relationships to regulatory bodies, and populations that they served influenced their role and effectiveness. Her research reinforces

the crucial point that agents and institutional structures produce laws across space. Chouinard (2000) focused on legal clinics rather than individual lawyers, however, and thus does not fully unpack the particular role of lawyers in law-making.

By virtue of training and status, lawyers play a specific role in the enmeshment of space and law. Legal scholars note myriad ways in which lawyers may participate in public policy and in engaging with clients. For example, Scott Cummings (2006) found that lawyers working with community groups, developers, and municipalities over public-private developments play a large role in mediating disputes, rather than merely or solely representing adversaries in formal litigation. We see lawyers as 'professionals', not unlike elected and appointed officials, business leaders, and corporate executives, who wield influence and authority in the everyday business of policy-making (Elkin, 1987; Logan and Molotch, 1987; Stone, 1989; Boyle, 1999; Short, 1999). But existing analyses tend to focus more on judges (Clark, 1985; Delaney, 1994) and other policy-makers and implementers, such as government staff (Lake and Johns, 1990; Holifield, 2004), and less on lawyers. We suggest that the role that lawyers play in framing and bringing claims deserves separate study, to elucidate how they further the enmeshment of law and space. We turn next to that role.

IV Lawyers, law-making, and place

1 Understanding lawyers and social change

Legal scholarship on lawyers' practices – how lawyers undertake to represent their clients – suggests how lawyers both create the law and enact client values (Frank, 1933; 1947; Llewellyn, 1946; 1960; Bradway, 1958; Bellow and Moulton, 1978; Menkel-Meadow, 1984; Southworth, 1996; Uphoff and Wood, 1998; Scherr, 2002). We draw on two distinct strands of legal scholarship: the study of social activism by lawyers, or 'cause

lawyering'; and studies of lawyering using social science methodology.

Since the mid-twentieth century, legal scholars have focused increasingly on the activities of lawyers as agents in the development of law and the solution of legal problems. The legal realists articulated a view of law as the product of habitual, disciplined practices of lawyers and judges, rather than purely as a set of evolving doctrines (Llewellyn, 1946; 1960; Frank, 1933; 1947). Scholars have increasingly focused on lawyers as 'problem-solvers': agents who mediate legal rules into the pragmatic dimensions of client concerns, serving client goals in both disputes and transactions (see, for example, Menkel-Meadow, 1984; MacCrate, 1992). This literature has assessed the lawyer's role both as a function of intellectual or moral capacity (Nussbaum, 1990; Kronman, 1993) and as a function of behaviors, specifically the set of activities known collectively as the 'lawyering process' (Bradway, 1958; Bellow and Moulton, 1978; see also, generally, Scherr, 2002). Further, other scholars note that some lawyers take an explicit advocacy role in their work, a practice known as 'cause lawyering' (McCann, 2004; Sarat and Scheingold, 2006). Cause lawyers ally themselves and identify with the concerns of their clients as part of a social justice agenda (Rostain, 2004; Sarat and Scheingold, 2006). Yet another strand of scholarship focuses on lawyer activities in contextual terms, and specifically legal results 'in the shadow of the law', a phrase that denotes the complex interaction of formal legal rules and processes with informal, consensual outcomes (Mnookin and Kornhauser, 1979).

Critical legal theorists have stressed the lawyer's subjectivity, and in particular the extent to which a lawyer's personal values and commitments alter the values that their clients bring to them for advocacy (Scherr, 2002). Much of this critique has centered on the role of narrative in law practice, especially on the filtering of client narratives by

lawyers in the processes of advocacy and planning (Alfieri, 1991; Mansfield, 1995; Miller, 1995; Baron and Epstein, 1997; Espinoza, 1997; Mitchell, 1999). Indeed, some cause-lawyering literature suggests that activist lawyers may help to alter activist organizations by suggesting particular strategies and tactics (McCann, 2004; Jones, 2006). Jones (2006) suggests that activist lawyers may help to define the very purpose and scope of an organization. This focus on cause lawyers suggests a broader question about any lawyer: how do lawyers respond to or shape activist discourse, whether or not they adhere to the particular activist cause?

A separate strand of scholarship has focused on the theoretical and behavioral dimensions of lawyering, and in particular on the relationship between lawyer and client, seeking to delineate the power a lawyer exerts in addressing a client's problem (Scherr, 2002, citing Binder and Price, 1977; see also Binder *et al.*, 1991; 2004). One prevailing scholarly view argues that lawyers should engage in 'client-centered' representation, in which the lawyer advances solely the client's interests and values, and minimizes the distortions which the lawyer's values might impose. A separate strand of clinical scholarship has focused on the mechanics of legal problem-solving, describing theoretically the process through which lawyers translate initial client concerns into effective solutions (Aaronson, 1998; Scherr, 2002; Krieger and Neumann, 2003).

More empirical assessments of legal problem-solving have focused quite narrowly on particular lawyering activities, such as lawyer-client conversations, including initial client interviews (Felstiner and Sarat, 1992; Smith, 1995; Sarat and Felstiner, 1988; 1989), or formal legal argumentation (Amsterdam and Hertz, 1992; Amsterdam, 1994). Others have focused more broadly on 'lawyer-client decision-making' (Sarat and Felstiner, 1986; Cunningham, 1992; Merry, 1992; Southworth, 1996; Uphoff and Wood, 1998). The methodologies of these studies include

both quantitative assessment of group behaviors on the one hand (eg, Southworth, 1996) and sociolinguistic studies of discourse, opinion, or culture on the other (Merry, 1992; Amsterdam, 1994; Southworth, 1996). Only a handful of these examinations of lawyering have focused on a particular context or setting: lawyer-client conversations in civil rights and poverty practice (Southworth, 1996); or lawyer-client decision-making in criminal defense practice (Uphoff and Wood, 1998).

These various strands of scholarship leave several unexplored areas. Work on cause lawyering does not focus on the integration of movement narratives with legal ones (but see Jones, 2006, for lawyer's influences on organizational narratives), nor on organizations working with lawyers who do not consider themselves to be cause lawyers. While some scholars have presented non-empirical depictions of the balance of power between lawyers and client communities, none has engaged in empirical research on the same topic (Alfieri, 1991; Lopez, 1992; White, 1988; Piomelli, 2000). Few scholars have explored how the actions and judgments of lawyers and clients in a particular dispute have produced outcomes that either vary from or harmonize with the mandates of formally expressed legal rules. Finally, no empirical work applying a geographic focus or using geographical methods has explored the relationships between lawyers, clients, and the cultural construction of space or landscape (but see Martin and Scherr, 2005, on the awareness of landscapes by law students).

David Delaney (1994: 471) suggests that 'actors such as lawyers and judges make claims about geographical change and the spatiality of power in order to effect geographical change and the spatiality of power'. Lawyers may not always intend to create new spatialities, but as geographically embedded actors their work is often implicitly spatial. Paying attention to lawyers' practices in explicitly spatial disputes allows us to examine their role in place-making.

2 Lawyers and claims-making about place and identity

Place claims represent ideals about land use and how spatial processes should unfold (Purcell, 2001; Martin, 2004). Embedded in such claims are people's attachments to, and identification with, specific places (Agnew, 1987; Martin, 2004). John Davis (1991) posits a place identity based on relations of individuals to property, whether they be landlords, tenants, or owner-occupiers. Although the concept of 'property' certainly formalizes the notion of place attachment in the law, Nicholas Blomley (2004) demonstrates quite convincingly that some place identities and attachments develop outside the (western) legal notion of property. His description of Aboriginal community place claims in Vancouver clearly fall outside a legalized notion of property, and find roots in a non-western, non-legal conception of place. While enmeshed, therefore, place identity and law are also distinct.

The discontinuity between place identity and legal regulation of place come into focus in community land disputes, which often go to law to find a remedy. Concerns for permanence, home, and land underlie these disputes, but are not fully contained by the law. Lawyers must thus find ways to narrate these interests in terms that the law can recognize. The incompatibility in the discourses of place and law represents one of the central features of the law-space nexus.

Blomley (2004) demonstrates the importance of this incompatibility. Blomley described how members of Vancouver neighborhood tried to derail several gentrification projects. This community resistance expressed a value in community space and neighborhood, and sought a right for the community to remain in place. The gentrifying forces emphasized economic advancement and urban growth (hallmarks of urban regime discourse; see Wilson and Wouters, 2003). Tracing a series of conflicts, Blomley reveals the power of community concerns, while at the same time stressing the limits on the strictly legal force of

those concerns. Blomley argues that the law rarely recognizes narratives rooted in community claims to property (Blomley, 2004). He argues that traditional property law does not recognize or have any discourse to express community interests in property. In his view, the law sees land ownership as fundamentally contradictory to community interests in property (Blomley, 2004). Blomley locates land and land ownership not only in space but also within a set of social relations. In his view, land ownership implies a degree of social reciprocity with those located nearby or those with alternate ownership claims to the land (see also Jackson and Wightman, 2003).⁶ He contends that legalizing property relations mutes or even erases the social component of property relations.

Quite often communities may claim interests, such as communal interests in property, to which the law does not afford the status of a 'right', and therefore does not recognize (Blomley, 2004).⁷ Nonetheless, communities try to use the law to represent their concerns (Blomley, 2004), leading to a disconnect between the interest being asserted and the law. How do ideas about community and place get translated into legal rhetoric and formal legal action? Blomley's critique aims at dominant legal narratives as expressed in legal texts, such as judicial decisions. But he does not trace the effects of lawyers on the enmeshment between community discourses about place and the law.

Scholarly research has not recognized the effects that lawyers may have on place-framing and land-use policy. How do lawyers involved in land-use conflicts understand and enact the place frames of their clients in their problem-solving? How do they conceptualize their own understandings of land in light of community place frames, the land-use conflict and the relevant law? What happens to community interests in the transition from geographic discourse about place and community to legal discourse of rights, processes, and remedies? What is lost or gained or altered in translation? Do lawyers

and their clients remain bound by traditional legal regimes, or do they escape them through solutions that negotiate the discontinuity between those regimes and community place frames? We view lawyers as playing a critical, and largely unexamined, role in mediating between community concerns about geography, land use, and development and the legal structures through which these concerns are so often addressed.

V Studying lawyers at the intersection of law-making and spatial identity

We have sought a framework with which to observe and assess how the practices of lawyers operate within the claims of parties to a particular dispute. How might lawyers act to affect an opportunity or a conflict? Can we develop a methodology for observing and assessing those actions? Without limiting our answers, we suggest four dimensions of lawyers' activities that can produce useful bases for observation. In this section, we describe those dimensions in general terms, and in relation to the space-law nexus. In the next, we suggest methodologies for observing and assessing those dimensions, providing specific examples from our case study as illustrations.

First, lawyers *translate* meaning from one form to another. Lawyers interview and investigate clients and other participants (including opponents, collaborators, witnesses, and the like). Through this process, they gather data which both grounds their subsequent assertions and shapes their decisions about how to pursue solutions. This translation may narrow the meaning of the original data, limiting it to what particular legal rules or processes recognize as useable.⁸ At the same time, the lawyer may also generalize that meaning, abstracting it to more generally legal or even sociopolitical contexts.⁹ A lawyer may also recast a client's stated concerns in different terms for different audiences, using different language to relay those concerns to (for example) an opponent in negotiation,

a bureaucrat in a license application, or a jury. The process of translation requires the lawyer to preserve certain parts of the original meaning. But a lawyer's translation may also alter the stress or weight of the original concern, with the instrumental goal of achieving a desired outcome in a specific forum or process.

Thus, second, lawyers may not only translate, but also *transform*, the meaning of the conflict. Some portion of this involves material 'lost in translation' – errors or distortions resulting from the lawyer's inaccurate translation of the original meaning.¹⁰ But, in at least two ways, this transformation may also affirmatively add new meaning. (1) A lawyer characteristically assesses how legal rules and processes affect the concerns at play. This assessment carries spatial assumptions and norms, such as conceptualizing school segregation claims as limited by or fixed within jurisdictional boundaries (Delaney, 1994). Those rules and processes may harmonize with a client's original concern, but they may differ and even conflict, requiring recasting of client concerns to produce the desired outcomes. The lawyer will thus have added meanings embedded in the societal norms underlying law and legal process. (2) A lawyer may introduce the lawyer's own values into a conflict. While legal ethics constrain a lawyer's ability to introduce their own values, they by no means prohibit it. It seems plausible to expect that lawyers will filter information through the lens of their own values, values grounded in the spatialities of lawyers' lives.

Third, lawyers *act as agents*, introducing both role separation and transactional cost into potential resolutions. 'Role separation' refers to the notion that lawyer and client exist within different networks of concerns, relationships and motivational realities. During the period of their work together, these networks overlap, but they may not entirely (or even partially) align. A lawyer will have commitments and concerns separate

from the client's.¹¹ Considering the relationships, networks, and motivations of lawyers requires geographical sensitivities as well. These relations are inherently spatial, affecting how lawyers interpret and enact a client's claims. Separately, the lawyer's role as agent introduces increased transactional costs, not only those inherent in the use of legal process, but also (and most directly) those associated with paying the lawyer and drawing an unfamiliar third party into the problem. These costs include both money and delay, and can have a significant impact on the parties' choices.

Fourth, and finally, lawyers *exert power*, altering existing social relations and mediating both coercive and consensual processes that affect a given conflict. At a minimum, the very presence of lawyers in a case alters its power dynamics. As a member of a community elite, a lawyer's status and access seems likely to alter the existing social dynamics between other participants. More critically, a lawyer intends to exert power, through conscious, planned interventions, towards an outcome desired by one or more participants. Studying these interventions means focusing on the lawyer's strategic choices, including (among other things) their assessments of the influence of the law and their judgments about which processes to use, whether consensual (eg, through negotiation or mediation) or coercive (eg, through litigation).

We have described four related dimensions of a lawyer's engagement in a conflict: translation; transformation; agency; and the exertion of power. If these dimensions have value, they should provide an analytical framework within which to describe and assess how the practices of lawyers might affect and influence the constitution of space. The next section specifies the methodologies that might permit the observation of these dimensions, with illustrations drawn from our study of manufactured housing communities.

VI Observing lawyers: methodologies for assessing lawyering in action

In this section, we propose several methodologies for observing and assessing the activities of lawyers. We draw on our work in our pilot study of home ownership in manufactured housing by immigrant residents to illustrate different ways in which these methodologies might be applied.

1 Identifying the case

This initial step would require the researcher to define a case and problem statement (or 'frame') in social science research. In a land-use controversy, this would mean gathering information about the particular land at issue, and assessing the land's current use both through observation and through research into its legal status (eg, assessment of zoning, private deeds). Identification would also include descriptions of the controversy itself, both through interviews with participants as well as through other documentary sources, such as local media. This step would further include an exploration of the conceptual framework with which the participants evaluated and planned their activities for that controversy. For lawyers, this conceptual framework would require an in-depth assessment of the relevant law and legal processes (local, state, and federal) that governed the relations between the parties to the dispute.

In our case study, the lawyer for the landowner reviewed property law and conceptualized the conflict as one about property sale and transfer. In defining the problem this way, she rejected the relevance of the residents' claims rooted in community, claims minimized by property law (Blomley, 2004). By contrast, the lawyers for residents talked to their clients about their community identity and fears about losing that as well as their homes. They conceptualized the conflict as about creating a home and a neighborhood. At the same time, they also formulated more traditional legal claims against the landowner, rooted in contract and property law.

Finally, the researchers might also conduct interviews to establish a context involving activities in similar conflicts at the same scale and in the same community. Interviews with participants in other similar disputes would permit conclusions about general practices within that community for the handling of similar problems. Interviews with professional players in similar disputes (including both other lawyers and governmental actors) could serve to establish a baseline of community practice from which to assess how activity in relation to a particular case both embodied and diverged from those settled practices.

2 *Lawyers and translation*

Observing the process of lawyer translation requires both interview sources and documentary sources such as legal pleadings, public testimony, and press accounts. The research protocol would require interviews with or public data about both clients and lawyers. Questions would focus on identifying client goals and concerns both directly from them and from their lawyers. The resulting transcripts or documents could be coded both for desired outcomes and for descriptions of underlying interests. Researchers would compare statements by clients and lawyers in interviews and in other forums, including press accounts, court filings, and public testimony. Analysis would focus on the degree of consistency and similarity between client and lawyer statements, with care taken to note both rhetorical and substantive differences. Researchers might further assess the influence of context, audience, and other factors on the divergence between lawyer and client expression of concern. Where appropriate, it might also serve useful purposes to (re-)interview both lawyer and client for commentary on the degree of similarity and difference between the two. Doing so would highlight where lawyers translate, and where they transform.

3 *Lawyers and transformation*

Observing the process of lawyer transformation would also require interviews of both lawyer and client, and the collection of documentary sources containing descriptions of lawyer statements and activities (including submissions by lawyers). To some extent, the assessment of transformation would build on the analysis of inconsistencies of the lawyers' translations of clients' concerns. This re-analysis would ask whether failures of translation had fundamentally altered the content of the client's expressed concerns, or had instead reflected a thinner (or richer) expression of the same concerns. In addition to this re-analysis, however, one could also gather information from lawyer, client, and other sources about the proposed and actual outcomes of the lawyer's intervention. Assessing interviews with clients would identify their initial goals and preferences. Assessing both lawyer statements and the actual outcomes of the lawyers' work would permit a comparison not just of rhetoric but also solutions. Finally, researchers would assess the differences between expressed goals and actual outcomes.

In our manufactured housing study, translation and transformation were most evident in the strategies of the residents' lawyers. The lawyer for the former park owners seemed to focus primarily on traditional on traditional legal formulations, including property law, landlord-tenant law, consumer protection law, immigration law, and motor vehicle law.¹² According to the lawyer for the former park owners, after reviewing the case, her thought was:

And I'm going, under what theory do you have a claim? I could sort of get, not legally but emotionally ... That's what gets to me is the misunderstanding. They wanted these men punished, they wanted this family punished for something, and the only thing I can think is the betrayal of selling the property.

This attorney did not transform her clients' positions much if at all, stating them primarily in terms of the right to sell property and to enter into (and enforce) contracts. Her rhetoric in court, to the media and in the interview made repeated reference to those traditional legal structures under which there was no legal remedy for the residents. She construed the conflict in terms of legal abstractions, in legitimate service to her clients' interests. Those residents who bought the old mobile homes for low prices, she said, had received 'the benefit of the bargain' and had no legally protected control (or right of property) to prevent its sale.

By contrast, the residents' lawyers engaged in both translation and transformation, at least when viewed from a legal perspective. These lawyers translated the residents' desire to stay in place into relatively weak legal defenses based on contract and property rights. These defenses did not alter the residents' legal position in any sense, even though they represented a slim reed on which to rest the residents' expectations of tenure security. (Indeed, from the residents' point of view, it would be reasonable to describe even this standard legal behavior as 'transformative', in the sense that it altered the client's powerful desire for security and stability into unstable and insecure legal claims.¹³) At the same time, the residents' lawyers worked with them to create an association that would buy land and form a new mobile-home park where, in the words of both lawyers in an interview, the land 'could not be sold out from under them'. This activity transformed the client's existing relation to the land from one dependent on weak contracts with the former owners to one in which residents held both ownership interests and contractual relations with each other. It required transformative work by the lawyers to enact the client's strong expectations of security and stability in their relationships to each other and to the land.

4 Lawyers as agents

Assessing lawyer agency includes many of the same sources as those for assessing translation and transformation, while permitting other points of observation. To assess role separation, for example, researchers might interview both government and private attorneys, focusing on the social interactions pursued by a lawyer in representing a client or a set of concerns. So described, researchers would then ask questions that would assess: whether the lawyer had contact with actors which the client could not have contacted; what decisions or consequences resulted from that contact; how those outcomes might diverge from what the client alone might have obtained. Such questions should permit conclusions about the impact of the lawyer's personal and professional network on a particular case, and highlight whether the lawyer's status had an influence on the outcome of the dispute.

To assess transactions costs, researchers would formulate interview questions designed to elicit insight from both lawyer and client into the role that the cost of representation played in the case. Researchers would assess these answers within a more general framework for the types of law practices involved. For example, what differences existed between lawyers working in fee-paid practices, salaried governmental or non-profit lawyers, and lawyers working for no fee ('pro bono'). Researchers could further correlate these practice consequences with differences in problem handling and expressed levels of satisfaction with the outcome.

In our case, the residents' lawyers were independently connected through networks unrelated to the manufactured-housing park. These networks permitted one lawyer – a community service lawyer – to identify another with the resources of a high-profile Atlanta law firm, including the ability to assign associates to the case at no charge. The resulting lack of transaction costs

strongly influenced the extent of the ensuing litigation, as well as the capacity to develop a new park, providing a demonstration not only of the agency (primarily in terms of networks) of the lawyers, but also of their power.

Separately, the community service lawyer herself enacted a notably different conception of her role. By enlisting the private firm, she ensured that her clients received appropriate representation in court. At the same time, she conceived of herself as a 'community development' lawyer, a conception that strongly influenced the group's ability to organize around the purchase of an alternate plot of land on which to recreate a community. As part of this self-conception, this lawyer sought to represent the collective interests of an entire group, and to assert community building as her dominant function. Coupled with the lack of any billing for her work, her conception of her role as a community organizer had a significant impact on the overall shape of strategy for the group.

5 Lawyer exercise of power

Researchers observing the exercise of power by lawyers in disputes would again rely primarily on interview sources. Here, however, researchers would focus on statements by clients, lawyers, and other actors about both the perceived and actual influence of lawyering on the outcome. To assess perceived power, researchers would code interviews for various indicators, including: lawyer personal reputation; respective resources of firms; lawyer familiarity and expertise with similar types of problems; or a lawyer's social or professional connections with influential or authoritative decision-makers.

By contrast, the assessment of enacted power would require in-depth conversations with both lawyers and clients about strategy. Researchers would collect independent documentary and other sources to identify actual lawyer behavior and to verify results. Researchers would inquire about the client's desired goals and preferred means for implementing them. They would also inquire

about the lawyer's assessment of the likely strength of the client's claims, and the range of available processes (formal and informal) for maximizing the likelihood of achieving the client's desired goals. Analysis of these sources would include: a correlation of stated goals with actual outcomes; a comparison of stated strategies with actual lawyer behavior; an assessment (to the extent possible) of causal connections between lawyering choices and practical outcomes; and coding for statements of satisfaction (or otherwise) both with outcomes and with the lawyer's performance.

The residents' attorneys in our case provide a particular illustration of power, one grounded in cause lawyering (McCann, 2004; Sarat and Scheingold, 2006). In this illustration, these lawyers exert power with an expressed goal of fostering a more affirmative solution to the underlying problem. Moreover, a team consisting of a non-profit funded attorney working with a high-profile commercial law firm permitted a strategic flexibility that would have been lacking for either part of the team acting alone. The presence of the firm permitted the allocation of resources for a litigation strategy, along with developed expertise in the law of real estate transactions; while the presence of the non-profit lawyer permitted the use of expertise in community-building and in familiarity with the needs of low-income groups.

These combined and distinctive forms of power at the least enabled and at the most empowered a more diverse set of outcomes for the residents. The lawyers brought in a housing specialist to educate the residents on housing law. They helped residents with the legal aspects of acquiring a new park and establishing a community-based management structure. Finally, they helped lobby for changes to the county regulations that had prevented the manufactured homes from being mobilized. The attorneys' actions were structured by the law throughout, but they were also founded in a more creative and productive conceptualization of the conflict.

In socio-legal terms, these lawyers construed their role as cause lawyers (McCann, 2004; Sarat and Scheingold, 2006). Through the assistance of the lawyers, People of Hope was able to establish a community park and in so doing to provide its members with a sense of place and community. It is worth noting that the spatialities of the old park imperfectly represented the new: the new park is much farther from downtown Athens (and associated jobs and transportation) than the one the residents were forced to abandon.

VII Summary and conclusion

In this paper, we have argued that legal geography needs to expand its analytical lens to focus on lawyers and their roles in claims-making that produces and reproduces spatial form and processes. To do so, we have presented a conceptual framework that integrates lawyers into existing legal geography scholarship. Further, we show how this framework can be implemented methodologically in studies of place claims and land-use conflicts, drawing upon some of our new research to provide a tiny snapshot of evidence about lawyers' enmeshments in space and law.

Our empirical case of disputes over a manufactured housing residential community provides an illustration of and opening for further research. It reveals the place-making that can occur in these conflicts, and the lawyers' roles in creating new spaces and spatial processes, as with the new People of Hope residential community in Athens. Moreover, it offers an example of how studying the *strategic practices of parties* permits a more fine-grained picture of the process of creating space through the making of law. We anticipate that further studies will find a creative constitution between place claims and law, mediated through local and regional laws and multiply situated agents (lawyers among them) working in formal and informal networks in struggles over law, land, and community.

Scholarly attention to lawyers, along with the communities in and for which they

practice, will help to illuminate the outcomes of socio-legal disputes over land and environment. We anticipate that a variety of research questions can be addressed in a research agenda focusing on lawyers and place claims, such as: when and why are space claims legalized, and what is the role of lawyers in activating these claims? How are place-based community disputes articulated in legal forms, both in public policy arenas such as hearings, and more formal legal administrative settings such as litigation? How do lawyers understand, work with, and integrate narratives from clients, especially place-based community concerns, with narratives from legal rules? To what degree do lawyers vary from, remain faithful to, or transform both client narratives and dominant legal narratives? The framework of legal geography, combined with insights from separate socio-legal and geographical scholarship, provides a conceptual framework ripe for investigating lawyers as unexamined agents of the mutual enmeshment of space and law. Research on lawyers will considerably expand the insights of legal geography by providing more explicit and complete understandings of the places that are produced in law and actively constituted through law, by lawyers, communities, and institutions.

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Notes

1. Research interview with co-authors, summer 2005.
2. Research interview with co-authors, summer 2005.
3. By translation, we mean the process by which lawyers interpret and reconstitute their client's claims and concerns into the language of the law

- (for a discussion, see Cunningham, 1992). This is not merely a matter of using the appropriate terminology, but may also include reconceptualizing 'lay' claims as legal ones. We acknowledge that translation is not a simple process, but fraught with constant meaning making and remaking, with multiple and co-existing understandings (as with any interpretation and re-presentation, as described in Fisher and Marcus, 1999 [1986]).
4. 'Manufactured home' is the preferred term for 'mobile homes' among suppliers and many residents.
 5. Of course, the process of claims-making even by nominally individual actors must always be seen as situated relative to existing legal structures (statutes, common law), to legal communities (bar associations, the judiciary, the police, etc), and to extralegal influences (other social pressures, social organizations, etc).
 6. Nick Jackson and John Wightman (2003) identify two notions of property ownership: the liberal ownership model and the contextual interests model. The liberal model, which is the dominant model of ownership in the USA, is based on the right of a land owner to exclude others from entering his or her property (Jackson and Wightman, 2003). By making land fungible, the law helps to create the featureless, context-free landscape that is a critical assumption of the neoclassical model of urban location theory (eg, Alonso, 1960). For Jackson and Wightman (2003), the opposite of the liberal ownership model is the contextual interests model, which is based on the notion of social reciprocity (Jackson and Wightman, 2003).
 7. Similarly, Sarah Whatmore (2003) has argued that the biophysical world has proven resistant to being contained within the 'grid-like surface' of property law.
 8. For example, a litigator typically assesses the pool of information developed through investigation to focus primarily on those facts which the rules of evidence permit to be introduced at a later trial.
 9. For example, a lawyer may translate a fired employee's personal sense of grievance into a broader claim for 'wrongful discharge' recognized by contract law or alternately a claim against 'employment discrimination' recognized by anti-discrimination law.
 10. Meaning can also be 'gained in translation', in the sense that a careful lawyer's investigation of underlying facts and careful development of the client's story may elicit a wider range of data supporting and expressing the client's concerns than had previously existed.
 11. This role separation may not have just negative value for the client. Indeed, it seems plausible to suggest that clients could see the role separation positively, to the extent that it provides the client with access to elite decision-makers that the client might otherwise have little chance to influence.
 12. In Georgia, manufactured homes are legally considered to be vehicles.
 13. As noted in the text, the distinction between 'translation' and 'transformation' does depend to some extent on point of view. What might seem like minimal loss of content (translation) to a lawyer could seem like a severe alteration in content (transformation) to a client. Moreover, this case presents a particularly difficult version of that disparity in view, where the client's strongly felt desires and values are not matched by equally strong legal claims or defenses. A full discussion of these issues is beyond the scope of this brief methodological overview.

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