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On the Emerging Maturity of Law and Society
An Introduction

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Introduction

On the occasion of its fiftieth anniversary, the Law and Society Association initiated the *Project on the Second Half Century*. Representing a relatively young field of scholarship – at least compared to its constituent disciplines – the Association paused to look back to its origins, mark its progress and chart a path forward. These soundings entailed, among other things: soliciting proposals from junior scholars about directions the field might take in the next fifty years; organizing a series of 50th Anniversary Roundtables at LSA's 2014 meetings; and posting a selective sample of essays, presidential addresses and journal articles published over the last 50 years reviewing and reflecting on the field of law and society. That sample included 73 pieces, on average about one and a half reviews for every year of the Association's existence.

This level of self-scrutiny may reflect the precariousness and uncertainty that mark the life of an interdisciplinary field committed to inclusiveness. From the beginning law and society was a "big tent" field. According to Garth and Sterling (1998) the Law and Society Association was founded when legal realists challenged legal formalism. The realist challenge was based on the insistence that, given the indeterminacy of law, legal knowledge must go beyond doctrine and include empirical studies of law in

action. This challenge within the legal academy coincided with the work of a small group of sociologists who, marginalized by orthodox sociology's drift toward quantitative approaches and "by the precarious position of law within sociology," defected from the American Sociological Association and established the Law and Society Association (Garth and Sterling 1998). The marriage of legal realists and social scientists brought together two groups at odds with the orthodoxy of their respective home disciplines and intent on constructing an interdisciplinary study of law and society.

Since that time, the field has grown to encompass an array of disciplines, methods, perspectives and purposes. The initial coupling of social scientists and law professors has expanded to include all species of social science disciplines, as well as several humanistic fields such as literature, film and history. The initial work of producing empirical studies of law in action has enlarged to include interpretive and hermeneutic analysis of texts and culture. The institutional landscape has also enlarged. The Law and Society Association is now only one of a number of professional associations studying law and society, including Empirical Legal Studies, Law, Culture and Humanities, and various sections of disciplinary associations in sociology, political science, psychology, and anthropology. As a consequence of this set of developments law and society is a scholarly field that struggles to maintain its openness while simultaneously forestalling the dual dangers of institutional fracture and intellectual incoherence. Given what appears to be an acceleration of both the growth and diversity of the field in the past decades, some socio-legal scholars have expressed concern that the field has lost its intellectual grounding and direction. Writing in 2004, Sarat observed that law and society is organized around neither a central insight nor an agreed-upon paradigm, concluding,

“There is no longer a clear center of gravity nor a reasonably clear set of boundaries” (8).

Others have noted that the pursuit of manifold projects under the banner of “law and society” not only impedes the development of a coherent identity, but also limits the accumulation and refinement of knowledge about the law. “Law and society scholars,” Robert Ellickson (1995: 118) wrote, “have been handicapped because they do not agree on, and often don’t show much interest in developing basic theoretical building blocks.” Lacking a common core of theoretical assumptions and methods, research in the field appears to some as eclectic and non-cumulative.

The virtue of eclecticism

Unlike the model of disciplinary knowledge formation described by Thomas Kuhn (1970), in which there are periodic “revolutions” displacing old orthodoxies with a new paradigm, law and society scholarship seems to have developed through a process of expansion, diversification and accretion. Rather than initiating radical paradigm shifts, each new generation of law and society scholars reads the classics; each publication rehearses the approaches it will amend, reject or debunk; and every few years or so we write retrospective assessments of the field. The result is what Seron and Silbey (2004) have characterized as an ongoing sedimented canon. However, it is not necessarily the case that this sedimentation has stunted our capacity to better understand the law in society and to be receptive to new approaches.

To some, the multidisciplinarity of the field is fertile ground for intellectual creativity, flexibility and innovation (Sarat 2004). Since scholars can only appraise the work of others in their own or a closely related field, most uni-disciplinary fields are insulated from other ways of knowing. By

contrast, to the extent that scholarship is produced in "chains of overlapping neighborhoods," even the "most widely separated branches" are affected by and come to rely on each other's work (Polanyi 1966). Susan Silbey (2000) claims that this model of "overlapping neighborhoods" is precisely why socio-legal studies was among the earliest fields to develop a cultural approach to the study of social institutions.

> I surmise that this theoretical advance in understanding the cultural dimensions of law, and theorizing about culture itself, may have happened because of the intense, perhaps difficult but nonetheless intersecting, conversations concerning particular legal phenomena among lawyers, psychologists, anthropologists, historians, political scientists, economists, and sociologists. In other words, while multidisciplinarity may make sociolegal studies a "fuzzy set," it seems to me … that this is a lively and challenging field. Despite the softness in its borders, or perhaps because of those porous boundaries, sociolegal scholarship has produced a body of durable and sound observations about the way the law works. (p. 871)

Put somewhat differently, the fruitfulness of interdisciplinarity lies in mutual exposure and willingness to borrow from our intellectual "neighbors" as we pursue a common project of producing a better understanding of law and society. Yet this borrowing also creates the perception that the field is boundaryless and incoherent. Knowledge emerges in fits and starts as scholars explore the empty spaces between disciplinary frontiers, appropriating and recontextualizing what has been "borrowed." Such a process entails not only a skepticism of our own claims to knowledge but awareness that any way of knowing is always relational and opposed to some other way.

The irony in this process, as Andrew Abbott notes, is that "[t]his perpetual recontextualization forces each newly triumphant position to recognize that it has omitted central matters of concern or that … it is itself now representing what it thought it had defeated" (2001: 18). This irony, and the burden that it imposes, constitute the most often overlooked value of interdisciplinarity. According to Abbott, disciplines correct each other's absurdities. The more we confront others' ways of knowing, the more we confront the deficiencies in our own.

Of course, this begs the question of what interdisciplinarity means or does. If it is merely the juxtaposition of disciplinary perspectives, the boundary crossing which Abbott imagines may not happen at all. If it is a kind of aggregation and accumulation of new questions that require scholars to leave, if only temporarily, their disciplinary homes then Abbott's imagining is more likely to be realized in practice. In law and society interdisciplinarity takes both (and other) forms.

If we were to trace the body of socio-legal research over the past fifty years, we can discern a trajectory that is not a linear building up of knowledge but a process of serial appropriation and recontextualization. Thirty years ago, for instance, there was scant reference to the role of narrative in social studies of law. With some "genre blurring," empirical and social-scientifically leaning scholars borrowed the concept of narrative from their more interpretive and textually oriented colleagues and conducted studies of how narratives work in legal settings and relationships (Engel and Munger 2003; Ewick and Silbey 1998; Fleury-Steiner 2002; Sarat 1993). As with most fruitful cross-disciplinary borrowings, the flow of concepts was not one way. The more literary and humanistic studies of narrative "moved away from the predominantly semiotic concerns on one hand and objects

of inquiry (literary fictional narrative – novels) on the other … to human activities and meaning that may only problematically be labeled texts" (Kreiswirth 1992: 632). In law and society this process of borrowing ended up producing a rich body of research about narrative as something that occurs in social interaction and about social interaction as something that is constituted by narrative.

In his essay, Osagie Obasogie (chapter 22) expressly recommends this program of "borrowing from our neighbors" as a way to enhance our understanding of law and race in a post-racial society. Calling for the integration of critical race theory with empirical methods, he writes, "the problems and shortcomings that each approach contains individually can be productively addressed by incorporating each other's strengths" (p. 348). He goes on to emphasize that the approach is not intended to

> simply supplement the weaknesses of empirical research with critical race theory or to fend off critical race theory's critics by bringing in empirical methods. Instead, the goal is for an interpenetrative engagement that encourages new ways to think about and measure race so as to effectively capture and respond to the many racial challenges that we face now and in the years to come. Law and Society can and should be the vanguard of this movement.

What these examples suggest is that although law and society research may have expansive, porous and motile boundaries, it has remained committed to a program of scholarship and knowledge creation that might be called "principled eclecticism" (Ewick 2008). And while the field may have lost the center of gravity that defined its original legal realist project, this principled eclecticism has produced certain conjunctures – or densities – in the

research foci, methods and theoretical approaches in law and society over the course of the past fifty years.

One goal of this volume of essays is to demonstrate how the very eclecticism of law and society has generated a vibrant body of scholarship about the meaning and life of law. Fifty years after the founding of the field, our understanding of law is very much informed by earlier efforts to do the same. Morrill and Mayo (chapter 2 in this volume) identify three “eras” of the law and society research canon. Although the boundaries overlap and some questions persist, their history of the canon suggests a trajectory or a movement toward an increasingly critical, complex and sophisticated understanding of law and society.

Law in context

According to Morrill and Mayo, from the mid-1960s until the 1980s there was a rough consensus about the methods and purposes of law and society research. For the most part, these involved the effort to understand how the law is shaped by its social and political context. Further, there was general agreement that this knowledge would be used to promote liberal reforms. During this period, Morrill and Mayo write, “Echoes of legal realism [could] be heard in the pursuit of law-in-context, sharpened by a more developed set of social scientific tools against a backdrop of dramatic social-institution contestation and change” (p. 20).

Underlying these efforts were two assumptions about the law. The first assumption was that, while the law was not autonomous from society, it was conceptually distinct from society. Most scholars during this early period assumed what has been called a “law first” perspective as they studied law in action. The second was that most scholars were committed to a liberal reformist project with roots in

the New Deal. Although there was some disagreement about the capacity of social scientific knowledge to deliver useful knowledge for improving law, few disputed the worthiness of the goal.

Subsequent changes in the logic of governance rendered social scientific knowledge in service to social reform less and less relevant (Sarat 2004; Sarat and Simon 2003). Whereas in the 1960s and 1970s social liberalism fused law, social science and government, by the 1980s law and society scholarship had lost its connection to prevailing strategies of governing. The sorts of knowledge generated by law and society scholars were no longer as useful in a state in which the social had receded as a terrain of governmental intervention. No longer tied to the project of governance and increasingly skeptical about the possibilities of law as an instrument of social amelioration, scholars pursued issues, asked questions, and employed methods that were more critical of the state, more imaginative about the work of law beyond the state, and more attuned to the processes through which law produces inequality and practices violence.

The Decentering Era

During this more critical era – what Morrill and Mayo refer to as the Decentering Era – some scholars abandoned the law-first perspective for a constitutive perspective. During this period, scholars turned away from a near-exclusive focus on formal legal institutions to the everyday settings in which law circulates. Scholars came to realize that law does not simply act on the world; it helps to construct the very world on which it acts. A cornerstone insight of this period is that law and society are constituted by one another. Coinciding with the cultural turn in the social sciences, much work during the 1990s concerned legal

consciousness, legal ideology, and everyday resistance to law's power.

If the focus during the law-in-context era was on what law *does* (or might do if suitably informed by social science), the focus during this period was on what law *means* and how meaning itself is a form of power. Methods diversified to include narrative analysis, qualitative methods, and ethnography. Similarly subjects of analysis also expanded to include film, novels, and the stories of ordinary citizens. Reflecting the turn away from formal legal institutions and texts, the very concept of law was problematized. While some critics argued that such a conceptual move denied the field a defining or uniting feature (Handler 1992), others championed the shift, claiming it exposed the very processes that constituted law's power: ideology, hegemony, language and discourse.

The Global Era

We are currently in what Morrill and Mayo refer to as the Global Era of law and society research. The field has begun focusing on transnational legalities, post-nationalism, and the pluralities of law. As befits the historical diversity and eclecticism of the field, the essays in this volume represent a wide range of topics, methods and perspectives. Some perennial questions and debates are reframed; theories are refined; concepts are borrowed and recontextualized in a vastly different world where law, power and personhood have been reconfigured and reimagined. The chapters by Eve Darian-Smith, Heinz Klug, Julieta Lemaitre, and Renisa Mawani reflect the new attention to global phenomena, but in many of the other chapters where those phenomena are not the explicit focus, attention to global issues makes an appearance.

If there is a “density” or conjuncture to this period it lies in an analytic attention to processes rather than to entities, to engagements rather than encounters, to networks rather than actors. In many ways this shift grows out of the constitutive theory of law that emerged earlier in the development of the field. At its heart, a constitutive theory posits a process of dynamic, ongoing mutual construction. It commits us to examine and explain process and change. Yet when we write or speak of law (or regulation, or rights) we have often lapsed into a language, not of relationships and transactions, but of entities. We may contend that these entities are a product of interactions, but often attribute to them an ontological integrity that pre-exists the relationships.

Socio-legal scholars have thus been employing what Dewey and Bentley (1949) called a substantialist, as opposed to a relational, perspective. This newer socio-legal work challenges this tendency – and reinvigorates the constitutive theory of law – by focusing on what Mawani calls the “travels” of law: “Focusing on the movements of law changes the terms of analysis from fixed points to shifting geographies and temporalities” (pp. 429–430). Similarly, in a 50th Anniversary Roundtable discussion, Henrik Hartog wrote that “To study the ‘social’ … in the 1970s meant focusing on those who ‘belonged’ to a jurisdiction” – as if those persons and their jurisdictions existed outside of or prior to their mutual belonging. Hartog goes on to observe, “By contrast, the modal subject today is the traveler, the tourist, the sojourner, the global and mobile corporation, the migrant.”

Whereas the “cultural turn” epitomized the field in the 1980s and 1990s, this current period might be characterized in terms of a “spatial turn” (Darian-Smith chapter 23). Ironically, this requires a rejection of conventional notions of space. In Western thought, dating

from Bacon and Descartes, space has been understood to be a void that contains objects. More recent theorists reject this “pre-social” understanding of space and claim that social space is “a condensation of the social relations of its production” (Shields 1991). As Nick Blomley has observed, “The spatially defined environments in which we move … can serve to reflect and reinforce social relations of power through complex and layered spatial processes and practices that code, exclude, enable, stage, locate and so on” (2003:131). Space has the capacity then to constitute that which it contains. Rather than focus on, or think about, the boundaries of things (persons, citizens, jurisdiction or states), we are now invited to imagine the “things of boundaries” (Abbott 1995). How might our drawing of boundaries (and enactment of boundaries) produce that which they seem to only contain?

Of course, historically the boundaries of law were coterminous with the sovereign state. As national boundaries fade in a post-national or transnational world, the things they historically defined (law, rights or citizenship, for instance) are also reconfigured. These reconfigurations challenge how we imagine and study law, identity and power. In a post-national world of multiple overlapping legalities, what defines the legal? What is the source of its legitimacy and force? How are we to limit and account for law’s violence (Lemaitre, chapter 28; Mawani, chapter 27)? “Does the move to networks, connections and travels blunt the analyses of law as violence, command and force?” (Mawani p. 429).

Finally, in such a world, what is the fate of law? In *Tort, Custom, and Karma: Globalization and Legal Consciousness in Thailand*, Engel and Engel (2011) ask, “what happens to law in the lives of ordinary people when a society undergoes rapid change, economic development, and integration into global markets?” Their analysis depicts a

situation of inter-legality, where both state law and customary law are increasingly irrelevant and – at least in the case of state law – illegitimate way of ordering social relationships. They conclude that, in an age of neoliberal governance and globalization, “the inactivity of law in the lives and consciousness of ordinary people may be its most important feature.”

By problematizing boundaries and entities the spatial turn in socio-legal studies may lead us to rethink our most fundamental ontologies. Among these is perhaps the most fundamental: what it means to be human. As a number of essays in this volume suggest, we not only live in a post-national world, in many ways we live in a post-human (beyond human) world where the divide between human and non-human (animals, technology) is blurred. In a world of new technologies and sensibilities we must acknowledge the many ways of “being in the world.” In doing so, we must also reimagine what laws role is in constituting these ways of being. “What might a ‘posthumanist’ framework that does not attempt to make liberal subjects of non-human animals look like?” Irus Braverman asks (p. 320).

Such questions are part of an ongoing examination of whether in a world of multiple and alternative forms of personhood there are universal human rights and how they are to be defined and achieved. As Klug points out, the international human rights movement contains multiple paradoxes, chief among them the idea that claims to human rights often rest on assumptions about some transcendent, or universal, principles and norms that trump local cultures or local legal systems. These universals often seem opposed to the integrity and distinctiveness of local legal cultures. This paradox is described by Jane Collier.

> Today, indigenous peoples who demand political autonomy are usually appealing to universal human rights in order to claim a right to self-determination. But even as they appeal to the Western discourse of universal human rights to claim self-determination, they simultaneously reject the claim of human rights to be a universal discourse. They assert instead their right to develop their own culturally distinct political and legal traditions. In Chiapas, at least, many people regard this tension between universalism and relativism as a productive one. They do not want it resolved in favour of either position.” (2002:63, cited by Klug, p. 294).

Klug suggests that one way out of this paradox or impasse is to recognize that that the universal is not opposed to the local; it finds expression in the local.

> If in the twentieth century human rights and civil rights were understood to be distinct arenas of rights, based on a notion that domestic constitutional and statutory rights were only tangentially related to the realm of international human rights, today there is growing recognition of the interconnections between normative orders, law and the implementation of human rights from the Universal Declaration through regional and national documents and institutions to the local contexts in which conflicts and claims play out (p. 293).

The attention to process, networks, and engagement reminds us that the global denotes a way of engaging space, of moving (or not moving) across space. To capture the distinction, anthropologist Anna Lowenhaupt Tsing (2005) has suggested that we adopt the metaphor of “friction” rather than that of movement in thinking about globalization. Whereas conventional discourse of globalization inflects the notion of mobility (i.e. capital

flows freely) the idea of ”friction” reminds us that movement of any sort can only occur with engagement.

Ritu Birlu offers an example of how such universal scripts of the global are dependent upon the local: “Cell phone banking in Africa and India, for example, capitalizes on the power of personalized networks of trust (wherein formal institutions like banks are suspect) to give birth to credit and banking where none existed before” (Birlu (p. 411)). For Tsing the “universal” is “an aspiration, an always unfinished achievement, rather than the confirmation of a pre-formed law. Then it is possible to notice that universal aspirations must travel across distances and differences, and we can take this travel as an ethnographic object” (2005: 7).

Rather than conceive of the local and the global as two opposable entities, scholars are recognizing that the idea of scale operates ideologically by shaping our apprehension of the *same process* from different perspectives. In other words, to speak of scale of social action is to delimit the context within which phenomena are perceived and understood. It is also, as its cartographic metaphor suggests, to represent events at a certain level of visibility. In short, what can be seen at one scalar resolution disappears at another. Moreover, the scale of social action is strategically produced and negotiated by actors. Thirty years ago, Boaventura de Sousa Santos observed: “Power represents social and physical reality on a scale chosen for its capacity to create those phenomena that maximize the conditions for the reproduction of power” (1987).

Recognizing the ideological effects of scale has shaped socio-legal research itself. In the introduction to *Laws and Societies in Global Contexts* (2013), Eve Darian-Smith describes what a globalized socio-legal scholarship looks like.

> I urge us to move away from the obvious global legal exchanges and material trappings and learn to appreciate that all classes and races of people – many of whom may never have flown in an airplane and may not be explicitly linked with a wider world – nonetheless still feature in a global sociolegal perspective. One does not have to hold an investment portfolio, drink Coca-Cola, or access the Internet to be analytically and ethically relevant (see Santos and Rodriguez-Gavarito 2005). (12)

According to Morrill and Mayo, contemporary socio-legal research conforms to Darian-Smith's vision. Between 2011 and 2013 a majority of articles published in *Law and Society Review* focused on comparative or global legal dynamics. Only four of the twenty most cited works in *Law and Society Review* since 1990 focused on the US legal system, and two of these contextualized the US case within a transnational dynamic. A global perspective, while it requires a decentering of the nation-state, does not mean overlooking the meaning and role of the nation-state in the contemporary world. Globalization produces new subjects, products and practices (legal and otherwise), many of which move quickly and effortlessly across sovereign, cultural, and economic borders, but it also defines the lives of persons who will never move – who are "localized" as a result of these processes (Abrego chapter 17).

How in a world of dynamic process does the world come to appear more or less stable, only periodically upset by transformation? What kind of work – material, ideological, cultural – does it take to achieve that illusion of a world comprising more or less stable entities? Or a world where the "universal" sits beyond the local and practical? These are some of the thorny methodological, theoretical and political challenges that law and society research is confronting.

In sum, the fragmentation of the field of law and society has opened up new arenas of inquiry and the impact of those new arenas is to lead researchers to ask new questions but also to revisit and reconfigure older ones. Moreover, few of our traditional areas of inquiry have disappeared. What this means is that as law and society develops the map of knowledge both broadens and deepens. Thus, from the perspective of any particular scholar, law and society work may seem incoherent and amorphous. Yet, taking a broader view, it also means that the field has matured. Taken together, the work that follows gives testimony to that maturity.

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Part I
Setting the Stage

1
What is Law and Society?
Definitional Disputes

Susan M. Sterett

Introduction: Law as Authority, Law as Field

Jerome Frank, the legal realist lawyer who worked for the Roosevelt administration in the United States in the 1930s, wrote *Law and the Modern Mind* (Frank 2009[1930]) just before the United States New Deal. In it he scrutinized the longing for law as a clear, final, authoritative statement. Frank acknowledged that laypeople found the law "uncertain, indefinite and subject to incalculable changes," and the uncertainty contributed to most people's disenchantment with law. He wondered why people would expect anything different. Why was finding uncertainty even a criticism of law and lawyers? Frank scrutinized the longing for finality through a psychoanalytic lens, and argued that it was a longing for a father who acted as a final authority against the "reasonless, limitless and indeterminate aspects of life." He argued that the belief in authority persisted despite our repeatedly finding that there was seldom a stopping point in legal argument. Legal judgments may stop a story, but they are not the end of law. The stopping points can have dramatic consequences for people, whether in deportations, dissolution of marriages, formation of companies, or imprisonment and death. Actors recontextualize legal orders, giving them new meanings. The futility of the search for clear authority or an end to

legal argument that Frank found ordinary took on a more ominous tone with the rise of fascism.

An alternative to the longing for authority Frank analyzed is law as a semi-autonomous field intertwined with all the other ways that people and institutions constitute meaning. The legal anthropologist Sally Falk Moore led us to think of a field as a site of research that allows us to see both the presence and the absence of law; entering a "semi-autonomous field" allowed one to analyze how laws were produced and gained authority through relationships (Moore 1978). She acknowledged that analyzing law as relational meant that law was not necessarily sharply distinguished from everything else, a point she presciently noted was one that required discovering "again and again." The fixed point necessary to enter a field can be a court, or an organizational field, or a workplace. Fixed points are sites for tracing legal fields of power, however, rather than final authority. Mapping connections is both the task that law and society scholars set for themselves and a source of frustration. It does not demarcate a sharply defined legal field and calls into question how such a field gets created when it does. It follows the decentered approach to law that Morrill and Mayo next argue is a distinctive contribution of law and society scholarship.

The rest of this chapter will rely upon the tension of *law as authority* and *law as a field* across other tensions in representing law. Law is what all of us do with what we see is the law, and law is the word of officials in a hierarchy. Law is both general and law is a way of entering particular policy fields. Law is punitive and productive. Law tells stories about texts, creating itself as a field of professional expertise by taking away the particular identities of those who come before the law, and law tells stories about lives with multiple particularities. Law promises justice, a promise often disappointed, and yet supranational forums

and claims to justice beyond the state increasingly play a part in governing. People claim justice to hold power accountable; states organize appeals both to enforce rights and serve central states' own purposes by checking that lower level bureaucratic officials are adhering to central state policies. Throughout, the significance of a decentered and globalized approach to law that Morrill and Mayo find in the next chapter will color descriptions of alternative perspectives.

Frank's reflections are part of the heritage that law and society scholars claim in the United States, reaching back through sociological jurisprudence and legal realism in the early twentieth century and forward through reformist political claims for domestic politics. The approach both critiques and recognizes domination and pluralism cross-nationally. That origins story for law and society scholarship has a particular United States cast; the constitutionalism of the United States, in which law is an instrument of the state and high-level judicial officials have long been charged with engaging elite political issues, has framed law and society for the United States. The insight that, whatever it is, law is not a final order from a solitary father is central across multiple fields within law and society scholarship. In other countries, the story law has told itself is more self-referential, with high-level legal officials divorced from the other apparatus of the state. Integrating lawyers and legal officials into the apparatus of the state demotes lawyers from people trained in the law who were responsible for articulating right principles, itself worth mourning. The belief in law as order that controls the world is itself a claim to analyze. The image of an authority is an effect that the images, stories and sounds of justice produce. Our image of law can still rest in "the form of the modern state" and "disembodied rationality," despite

the pluralism of law experienced across communities and international institutions (Buchanan 2010).

Calvin Morrill and Kelsey Mayo's chapter in this collection delineates iconic work by citation counts. They recognize that citation counts result in an emphasis on work by white male scholars at elite universities in the United States. That counters the decentered approach to law, which has had a history of undermining authoritative claims when gathering information about what law does can be a matter of life and death. For example, the anti-lynching activist Ida B. Wells-Barnett, discussed further below, painstakingly gathered information about the circumstances of lynching to counter the dominant narrative blaming it on African-American men themselves (Sterett 1994). Therefore, this chapter will complement Morrill and Mayo's practice by focusing on newer work and work that falls outside the iconic status marked by citation counts. In relying on exemplars, it is easy to miss what the biologist, baseball fan and popular science writer Stephen Jay Gould called "the spread of excellence," a concept that will inform the examples and citations used in the rest of this essay. In baseball, Gould argued, all players got better as they stopped drinking and trained more. Gould argued that when we use exemplars to represent a class, we miss the variance. All the members of a group can shift over time toward excellence, and the rich diversity is not evident when we focus on an individual. People learn from each other, particularly if we try to teach good practice. Improving inclusion changes practice; in baseball, more people learned to play well, and including players who weren't white made for better players and a better game. That's the end of the baseball metaphor in this chapter: the point is that we can learn through recognizing widespread excellence. Feminist and critical race scholarship has demonstrated that institutions look different from the standpoints of people with different life

experiences (see for example Delgado and Stefancic 2013). That insight has illuminated the decentered approach that is at the heart of much law and society scholarship, giving all the more reason to illuminate central concepts with examples from multiple supranational and domestic institutions, from colonial state/societies, and from a variety of fields. Turning to a wide range of imaginative scholarship transforms what we know. This chapter attempts to recognize the rich variety of scholarship, complementing other chapters by leaving many iconic works to the next chapter and to the exemplary scholars who themselves follow in this collection. A sometimes globalized and sometimes decentered socio-legal approach to law and legality can what law does in a world that enacts law through both networked, dispersed power and central appellate courts, through production of family, and through brutal force. The knowledge the scholars in the subsequent chapters have developed informs this chapter even if not cited.

The next two sections will contrast analyses of law as what people do with analyses that focus on officials who claim professional expertise and responsibilities. Law circulates at multiple levels, and multiple perspectives bring meanings into focus.

What We Do with Law

Race, class and the bureaucratic state have been at the heart of law and society scholarship. In nineteenth-century England, what we might think of as legal claims were often governed by special jurisdiction courts, charged with settling claims ‘without the law’ because the law itself was so impossible and hostile to labor claims (Arthurs 1985). Specialized tribunals gave some hope that labor law would favor working men’s claims; the ordinary courts never

would. Jerome Frank had been educated and then practiced in Chicago, home of intellectual ferment concerning what law could do in the world, particularly for immigrants, low-wage workers and women, and home of the philosophy of pragmatism so central to reform in the United States. Women including Grace Abbott, Florence Kelley and Sophinisba Breckinridge had all known Roscoe Pound, the once-midwestern founder of sociological jurisprudence and later intellectual enemy of Jerome Frank. The women who had been excluded from legal practice had an orientation to law that came from their work in communities: Florence Kelley wanted to see that the garbage was picked up in poor neighborhoods in Chicago. In the same era, Ida B. Wells-Barnett denounced the legal accounts of why African-American men were lynched: far from the rape that provided the standard account, Wells argued that African-American men were murdered for competing economically with white people, or for consensual sexual affairs with white women. The problems and promise of constitutions in political reform and accountability in the early twentieth century were the subject of fertile global exchange. The lay legal knowledge of those excluded from the majestic pronouncements of the law is central to socio-legal perspectives on law. The claim to rights that people make who have been excluded upends the official stories that law tells about justice, a central insight from critical race theory and long a part of feminist theorizing. The tie between socio-legal scholarship, the administrative state and race and gender reaches well beyond the United States; women's work often engaged local administrative states and well-being (Sevenhuijsen 1998).

Elite law from appellate courts always invited questions that would decenter law as well as turn scrutiny upon what the law claims for itself. The United States Supreme Court could say that racial segregation was wrong; that told us

little about what the Court changed, and in the United States *Brown v. Board of Education* (1954, 1955) made the impact of law a center of attention in the United States. Impact questions what happened after the Court decided, and it immediately leads to asking ask what happens *before* an appellate court decision. However judges might vote, they can only vote on the cases that come before them, and differential resources shape what is there. People mobilize claims, and the law organizes those claims. A constitutive approach to law embeds the law within the world in which it works. Most people's concerns do not make it before the courts, and in turn the reach of law is both limited and extended through informalism, or establishing institutions such as mediation and neighborhood courts to handle what the official legal system often treats as unimportant.

What do we do with law when there is no sovereign, and the state-centered model does not capture law? What do we do in a post-professional world, where the multiple requirements of law are the responsibility of many laypeople to implement, not limited to professionals? The central places that do claim to authoritatively issue the law – the Supreme Courts, the supranational courts, the treatises synthesizing the law – themselves are subject to contextualization, the process a dialogue that happens at a particular place and time, and the institutions' claims to truth making themselves subject to inquiry concerning what makes a claim true.

Skepticism that courts or final orders captured all that there was to know about law and what people do with it moved us into disputes, or generators of legal orders. Where it's personally or organizationally costly to make legal claims, people don't. In regulatory politics, legal claims have been built into the ordinary practice of regulation in the United States, contributing to the adversarial legalism, or reliance on rules and the threat of

litigation that Robert Kagan and his colleagues have found in the American regulatory system. Worries that a focus on rules detracts from achieving goals have led to a corporatist resolution, which would require state officials to negotiate practices with businesses, leaving rule enforcement in the background.

Taking law to be a circulating set of arguments, as Frank argued, is a flexible framework particularly suited to a world where rule-of-law claims have moved outward and across levels of governance. Aspiration to law persists alongside skepticism concerning what it can accomplish. In 2013, it was a rallying cry in states from Ukraine to Egypt, with multiple legal orders deployed even in the most troubled territories, picking up the claim for the rule of law that has organized political claims in countries from England to Argentina since World War II. The rule-of-law claims are housed in street politics and in arguments for an independent judiciary, and in the part courts have played in the disruption and affirmation of regimes around the world. Legal processes and claims to due process provided a framework for management of justice claims in the early twentieth century, and they do in the early twenty-first century as minors claim statutory rights to due process on the border between the United States and Mexico. The very flexibility of rule-of-law aspirations and meanings allows analysis of how a legal field works in a country and transnationally. Authoritarian regimes claim to govern by law, playing on and distinguishing what they do from Western rule of law while also laying themselves open to critiques for punishing lawyers and ignoring their own constitutions.

Across regimes, legal complexity has grown. Law circulates as claims to authority rather than emerging from one institution. First, the documents claiming legal authority proliferate: any one case can be governed by laws on

immigration, on family, on privacy, on social welfare benefits. Legal documents claiming authority include bureaucratic orders, court decisions, rules, and comments on potential rules, all of which have proliferated since Jerome Frank wrote. An immigration official at an airport or on a border can have the final word, or a case can make its way to an administrative tribunal, a domestic court, and a supranational court. In claims to hold military officials accountable after human rights abuses, advocates can try to figure out whether the best place to take a case is domestically, abroad or in a supranational venue, or whether to avoid the law and find other methods of accountability. Second, the multiple legal venues and documents produced are matched by the multiplicity of the legal frameworks to which the official orders and documents refer. Finally, learning what the law requires and how to accomplish it circulates in electronic media accessible to organizations and people who would never have had access to a law library at the height of the modern claim that law was professional knowledge housed in written tomes available to professionals. Together, the complexity in early twenty-first century law, the availability alongside the frequent incomprehensibility of legal systems, and the declining availability of legal professionals to ordinary citizens' claims make law and society scholarship's decentered approach crucial for illuminating changes in governing through law.

What we all do with law illuminates complexity, because it enters not via how law demarcates the world but via how we do. Officials may be charged with a particular area to administer, but can also find themselves caught in cross-cutting mandates.

Tracing what officials do with law

Tracking officials generally agreed upon to be legal officials when they are working in their legal capacity delimits law. The circularity of delimiting law by saying it's what an official does when being official is evident, and it brings home Sally Falk Moore's point that mapping a field will quickly bring law into conversation with everything else. The judges, the jurors, the lawyers, the prison guards, and the parole officers are all part of the legal apparatus (Kenney 2013). Entering law and society through them sheds light on aspirations to legality, on its institutionalization, on the organization of work, which, after all, is what guarding in prisons or making legal arguments is. What that means for the lawyers, the guards, the parole officers, and not just for those who stand before the law, brings law and society scholarship to the sociology of work.

Legal work claims a distinctive knowledge with an uncertain link to justice; it is also work. Sociology of lawyering has answered who holds the jobs, what that means for incomes, whether they like their work, and what they do (Seron 1996). How we learn is gendered and raced, both through formal legal training and through inclusion and exclusion in legal work. Women and men of color experience an education in which their points of view are much less likely to be recognized. Once in practice, people drop out and are excluded from practices by gender and race. Exclusion means that the profession does not descriptively represent citizenry, nor does the profession offer the social mobility it claims.

If lawyers are the agents of justice, doing work for the public good is central to the profession's self-understanding. That responsibility was once taken to mean lawyering for those who could not otherwise get access to law, and the contests over what pro bono meant included how service blended case-level work, work for rule change,