

## Innovation in Legal Anthropology: an LSR Retrospective

Deepa Das Acevedo & Anna Offit

### Abstract

This Virtual Special Issue celebrates cutting-edge anthropological studies of law that have found a home in the *Law and Society Review*. The goal of this selective curation of articles is to acknowledge the *LSR*'s role in fostering innovative anthropological scholarship on an array of legal subjects, and to inspire a new generation of contributors and reviewers alike to view the journal as an important venue for innovation in the anthropological study of law.

### Introduction

Cultural anthropologists who have taken up legal actors and processes as their subjects of study have long been integral to the law and society universe and to the *LSR* itself. Before the Law and Society Association's establishment in 1964, funding for the Center for Law and Society at Berkeley brought numerous social scientists—including anthropologists, like Laura Nader (Tomlins 2000: 957)—into the field's foundational orbit. In the years since, distinguished cultural anthropologists have continued to leave a profound imprint on the field as leaders of the Association (Carol Greenhouse) and as Editors of the *LSR* (Susan Silbey, William O'Barr).

Notwithstanding this history of collaboration and despite the growing ranks of anthropologists within the Society's membership, legal anthropologists have filled comparatively few pages of the *Law and Society Review* since its inception (Morrill 2016). Perhaps this is because anthropologists constitute a relatively small community within law-and-society's "big tent"—or, perhaps, it is because anthropologists working on legal subjects have sought the audiences of other interdisciplinary and specialty journals like *Law & Social Inquiry* and the *Political and Legal Anthropology Review*. Yet, at a time when a growing number of anthropologists are finding professional homes in law schools and research opportunities within the Association's many networks, the *LSR* is an ideal venue to both model and facilitate the value of anthropological approaches to the study of law. To that end, this Virtual Special Issue acknowledges the journal's role in fostering this scholarship *and* encourages researchers at the intersection of legal and anthropological research to contribute their time and labor as authors, readers, and peer-reviewers of future scholarship.

As legal scholars and cultural anthropologists ourselves, it a privilege for us to guest edit this Virtual Issue. Anna Offit has extensively studied juries and prosecutorial ethics in the United States and Norway (Offit 2019a; Offit 2019b), while Deepa Das Acevedo has for some time now researched secularism and judicial authority in India (Das Acevedo 2013; Das Acevedo 2018). Both of us have applied ethnographic research to the study of legal processes, theory, and doctrine, in domestic and comparative contexts. Our publications reflect our sustained commitment to translating key insights from anthropology to the study of law—and vice versa (Offit 2017; Offit *forthcoming* 2021; Das

Acevedo 2016; Das Acevedo *forthcoming* 2021). It is this commitment, in our view, that also animates the *LSR*'s vital and continued contribution to the field of legal anthropology.

The six articles featured in this Virtual Issue were published between 2004 and 2018. They either exemplify new directions in legal anthropology or represent innovations by law and society scholars that speak to the core concerns of legal anthropology. Individually, the articles embody a wide range of thematic, theoretical, and methodological approaches. Collectively, they demonstrate that law-and-society scholars and anthropologists of law have much to gain from continued engagement with one another. To emphasize the diversity and creativity of recent anthropological contributions to the *LSR*, we sort the articles into three pairs.

### *New Avenues in Linguistic Anthropological Approaches to Law*

Two of the articles in this collection signal important new avenues in the linguistic anthropological study of law, which has largely focused on language use in Anglo-American courtrooms or classrooms (see, e.g., Matoesian 2001; Mertz 2010). In "Talking Tradition, Talking Law," Justin Richland (2005) brings now-classic methodological and theoretical approaches in courtroom language analysis to bear on the decidedly understudied topic of indigenous courtroom practices. In doing so, he draws some of legal anthropology's earliest focal points (indigenous law traditions) into conversation with some of its most widely recognized empirical innovations (the study of courtroom discourse in real time) while adding a distinctly modern twist. Rather than indulging in the collection of "trouble cases" or broadly reflecting on the effects of Anglophone juridical discourses on indigenous populations, Richland presents the microdetails of sociolegal interactions as important tools for understanding postcolonial legal contexts in their *own* right. In the process, "Talking Tradition, Talking Law" expands the scope of courtroom analysis and makes a powerful, early contribution to the project of decolonizing anthropology.

Heather Hlavka and Sameena Mulla's (2018) article, "'That's How She Talks,'" also builds on the linguistic anthropological tradition of examining courtroom exchanges, but in a very different way. Rather than taking up the study of face-to-face interaction in "other" types of courtrooms, Hlavka and Mulla stay in the Anglophone adversarial venue of this genre's exemplars while focusing on a new type of exchange: the animated text message. In their description, the text message has unique evidentiary character due to its status as both written and re-animated by multiple "principals" in the courtroom, including the litigating parties, witnesses, jurors, and attorneys. In this manner, and unlike other forms of hearsay, attorneys can actively re-inscribe patriarchal and stereotypical interpretations onto a victim-witness's text message. Importantly, Hlavka and Mulla's analysis underscores the extent to which technologically-mediated forms of language use not only demand new and flexible theorization, but also demand a re-thinking of rules of evidence that were originally designed to protect the victims of sex crimes.

### *Diffuse or Multilayered Legal Networks*

One of the most prominent shifts in the anthropology of law has been the move away "away from the 'limited... analytic dichotomies' of the preceding decades in favor of a macroscopic perspective that viewed law as a central locus of change 'within world historical time'" (Goodale

2017, 54). The next pair of articles in this Virtual Issue represent two distinct approaches to the task of situating legal anthropology within diffuse or multilayered networks that exist outside the courtroom or classroom.

In “Legal Autonomy as Political Engagement,” Fernanda Pirie (2006) starts from Moore’s concept of the “semi-autonomous social field” (1973) in order to argue that legal autonomy is itself a productive topic of anthropological inquiry. Rather than focusing on local legal worlds merely for the degree to which they shed light on wider forces, Pirie asks how and why “such legal autonomy is pursued and achieved within the modern world” (2006, 78). She does so by examining how a village in Ladakh, India, retains autonomy over dispute resolution, and argues that this is achieved through neither withdrawal nor through clear-cut resistance, but through active engagement framed as deference and distance. Amidst growing efforts to construct the nation-state as an autonomous field with respect to the forces and institutions of globalization, Pirie’s insight extends far beyond the Ladakhi village in which it is situated.

At the other end of the spectrum, Matthew Canfield’s article, “Disputing the Global Land Grab” (2018), focuses on massive, international systems of collaborative governance. However, like Pirie, Canfield suggests that anthropologists have emphasized—perhaps overemphasized—*vertical* diffusion in their study of law and power. By contrast, Canfield draws on the burgeoning anthropological study of metrics and frameworks (see, e.g., Merry 2016) to explore how power works *across* global governance networks. In particular, he asks how collaborative governance, defined by “the inclusion of state and nonstate ‘stakeholders’ in inclusive and participatory processes that aim to cultivate voluntary compliance,” produces results that few if any of the participants recognize as their own (2018, 995).

### *Interdisciplinary Insights for the Anthropological Study of Law*

Our final pairing consists of two pieces by non-anthropologists that we selected for their special relevance to the development of an innovative and adaptable anthropology of law. In “Thinking Inside the Box” (2004), legal historian Kunal Parker takes up anthropology’s long encounter with academic history—particularly through the work of Bernard Cohn and John and Jean Comaroff—as part of a forum on Sally Engle Merry’s *Colonizing Hawai’i* (2000). Parker observes that a crucial difference between historians and anthropologists is their attitudes towards their sources: historians view the archive as finite and (in different ways, to different extents) exhaustible, while anthropologists view the field and its range of insights as infinite. He acknowledges that, for many historians, “simply bringing to light the sources... becomes enough” and generally agrees that this attitude, stemming from the fantasy of exhausting the archive, is responsible for historians’ “document fetishism and their corresponding theoretical naïveté” (2004, 852). However, he cautions that anthropologists too may be likely to fall prey to this fantasy—a warning that is all the more relevant as anthropologists of law engage deeply with archives, whether they be policy briefs or court opinions.

Kim Lane Scheppele’s piece from the same volume introduces a special issue on the theme of “Constitutional Ethnography” (2004). In Scheppele’s view, constitutional ethnography is explicitly theoretical—and, one might add, lends itself to the drawing of normative implications. She writes: “the urgent issue in constitutional studies typically is to know whether the experiences of some

constitutional settings are helpful for understanding others” and goes on to note that this can only be achieved “by identifying the *mechanisms* through which governance is accomplished and the *strategies* through which governance is attempted, experienced, resisted and revised” (2004, 390-91). Although trained as a sociologist, Scheppele’s arguments and sentiments are equally persuasive for anthropologists, alongside whom—including, again, John and Jean Comaroff—she argues for a mixed-methods approach that is committed “to collecting *whole specimens* of social life” (2004, 397).

### *Conclusion*

The articles by Richland, Hlavka & Mulla, Pirie, and Canfield represent just a fraction of the anthropological pieces published in the *LSR* over the course of its history. Even so, they demonstrate the extent to which the journal has been a productive forum for anthropologists of law, notwithstanding institutional changes and the pressures of academic production that have driven much law-and-society scholarship into disciplinary journals (Seron 2016). As examples of an anthropological approach to law, these articles offer much-needed nuance and texture to concepts like legality, agency, and collaboration that circulate in contemporary public life and across the academy.

We suspect that the final two pieces in this Virtual Special Issue, by Parker and Scheppele, offer a good indication as to why the *Review* continues to offer this kind of welcoming venue for legal anthropology. Both Parker and Scheppele demonstrate an extensive familiarity with the methods, theories, and idiosyncrasies of anthropology, and yet, they are able to speak without the encumbrances of disciplinary battles (or at least, to speak only with the encumbrances of *other* disciplinary battles). As such, their pieces specifically engage with anthropologists by encouraging them to think beyond the disciplinary boundaries that can silo their work. While the articles by Richland, Hlavka & Mulla, Pirie, and Canfield are in no explicit sense *responses* to this invitation, they exemplify the kind of genre-expanding scholarship that is possible when one is encouraged to translate the languages of distinct disciplinary audiences for one another.

Indeed, a powerful innovation—and contribution—of the *LSR* as a forum for scholarly exchange is its demonstration of the mutual intelligibility of anthropology and law. Anthropological theories and methods do not and should not exist for anthropologists alone; ensuring that they are accessible to a wider audience is a significant and worthy commitment at a time when legal practitioners, including judges, have demonstrated a special receptiveness to ethnographic insights (Wilson 2016). As the *Law and Society Review* advances into its sixth decade, we invite legal anthropologists and their cross-disciplinary colleagues to view the journal as a home for new and exciting developments in the anthropological study of law.

### **References**

- Deepa Das Acevedo, “From Mythic Saviors to #MeToo at the Indian Supreme Court,” *Asian Journal of Law And Society* (forthcoming 2021).
- Deepa Das Acevedo, “Gods’ Homes, Men’s Courts, Women’s Rights,” *International Journal of Constitutional Law* 16(2): 552–73 (2018)

- Deepa Das Acevedo, "Temples, Courts, and Dynamic Equilibrium in the Indian Constitution," *American Journal of Comparative Law* 64(3): 555–82 (2016)
- Deepa Das Acevedo, "Secularism in the Indian Context," *Law & Social Inquiry* 38(1): 138–67 (2013).
- Mark Goodale, *Anthropology and Law: A Critical Introduction* (New York: NYU Press, 2017)
- Gregory M. Matoesian. *Law and the Language of Identity: Discourse in the William Kennedy Smith Rape Trial* (New York: Oxford University Press, 2001).
- Sally Engle Merry, *Colonizing Hawai'i: The Cultural Power of Law* (Princeton: Princeton University Press, 2000)
- Sally Engle Merry, *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking* (Chicago: The University of Chicago Press, 2016)
- Elizabeth Mertz, *The Language of Law School: Learning to "Think Like a Lawyer"* (Oxford: Oxford University Press, 2010)
- Sally Falk Moore "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Area of Study," *Law & Society Review* 7(4): 719–46 (1973).
- Calvin Morrill, "Change Disguised as Continuity in Studying Law and Society? Evidence from the Law & Society Review, 1966–2015," *Law & Society Review* 50(4): 1019–22 (2016)
- Anna Offit, "Race-Conscious Jury Selection," *Ohio State Law Journal* 82(1) (forthcoming 2021).
- Anna Offit, "Prosecuting in the Shadow of the Jury," *Northwestern University Law Review* 113(5): 1071–1120 (2019)
- Anna Offit, "The Jury is Out: An Ethnographic Study of Lay Participation in the Norwegian Legal System," *PoLAR: Political and Legal Anthropology Review* 41(2): 231–46 (2018).
- Anna Offit, "With Jurors in Mind: An Ethnographic Study of Prosecutors' Narratives," *Law, Culture, and the Humanities Journal* (2017) <https://doi.org/10.1177/1743872117717426>
- Simon Roberts, "Do We Need an Anthropology of Law?" *RAIN* 25: 4+6–7 (1978)
- Carroll Seron, "Reflections on LSR at 50," *Law & Society Review* 50(4): 1030–32 (2016)
- Christopher Tomlins, "Framing the Field of Law's Disciplinary Encounters: A Historical Narrative," *Law & Society Review* 34(4): 911–72 (2000).
- Richard Wilson, "Expert Evidence on Trial: Social researchers in the international criminal courtroom," *American Ethnologist* 43 (4): 730–44 (2016).