
Sally Engle Merry: A Deeply Appreciative Remembrance

Michael McCann

Sally Merry was a brilliant intellectual, a prolific researcher, and a generous, gentle person. Her passing is a great professional and personal loss, and I am deeply saddened.

As I look back, what strikes me is how much my own trajectory of research interests and analytical development paralleled and drew on Sally's work. I do not know how much I was directly "following" her lead, but we were moving in similar directions and aware of each other's momentum, although I was often a few steps behind in time. My earliest published work involved theoretical inquiries into official liberal legal ideology, a variant of Marxist-oriented critical legal studies, and the cultural implications of national public interest legal reform movements (McCann 1986). By the mid-1980s, Sally and I each were studying legal knowledge and practices of ordinary, working-class and low-income people. We both were committed to analysis of how ideological, institutional, and instrumental power shaped the contexts of subject experience and contingent agency in legal disputing. Her primary focus was on *individual* disputing practices, while I tended to focus on how law shaped and was mobilized in *group* political struggles, including those of social movements. Moreover, Sally was trained as a cultural anthropologist specializing in ethnographic methods, while I was a qualitative political scientist educated in ordinary language analysis and critical theory who transitioned to quasi-ethnographic interview and archival research. As such, Sally had the advantage of working in a tradition that validated her empirical and interpretive methods, so I looked to her work—and that of other constructivist scholars—as a model of research to inform and justify an approach that was unconventional in my primary discipline.

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The earliest publication by Sally that I remember reading was her essay on “everyday understandings of law in working class America” (1986). The article developed a critical cultural approach to “legal ideology” that rejected the top-down, mechanical view of some Marxist scholars positing that ordinary working-class people accept and internalize the ideas of prevailing elites. Rather, Sally argued, legal understanding by most ordinary people is “a negotiated, constructed reality developed in local social settings through repeated interactions, not a faithful replica of the dominant ideology” (1986: 255). This position resonated with me, as I had already begun to articulate a similar standpoint in my first book and was developing it further in a study of low-wage working women’s struggles for pay equity, culminating in my second book that was nearly finished when her path breaking book, *Getting Justice and Getting Even* (Merry 1990), appeared in 1990. Merry’s ideas about “legal consciousness” in that latter book paralleled and helped me to refine my own findings about the contingent “rights consciousness” that developed among working women through ongoing workplace disputes and struggles. Many scholars, especially Sally’s colleagues in the Amherst Seminar, were developing and using the legal consciousness framework, but Merry’s version was closest to my own, and reading her work late in my book’s development helped me to crystallize my analysis.

I later learned that Sally provided a review of my manuscript on gender-based pay equity, *Rights at Work* (McCann 1994), for University of Chicago Press in the same series where she had published, and then offered a lovely blurb endorsing my research. I very much appreciated that an established sociolegal scholar supported the efforts of a relative unknown like me; that began a long period of intellectual engagement and mutual support between us. Sally and I did not always agree, as when she energetically rebutted a mildly critical essay that I wrote on “everyday resistance” scholarship by members of the Amherst Seminar. Such occasional clashes actually seemed to bolster mutual esteem and deepen our respective understandings, however. In my experience, Sally always was respectful and generous to those who disagreed with her.

I later learned much from Sally’s highly influential early essay on “legal pluralism” (1988), which was one of my earliest sophisticated encounters with the subject. That was important because soon I began mentoring a host of international graduate students working on colonial and postcolonial law and politics. This gave me even more reason for excitement about the publication of Merry’s next book, *Colonizing Hawaii* (2000). I regularly assigned the monumental volume on Hawaii in graduate classes for years, and I lectured on the book when assigning her later work on

gender violence and disputing in undergraduate classes. At the same time, in the late 1990s I was already well into my own research on proletarianized Filipino workers conscripted by West Coast extraction industries following US conquest and colonial rule of the Philippines. Merry's analysis of law, capitalism, and race in the colonization of Hawaii was very helpful for me, in part because of the interrelated, concurrent colonial projects and the fact that a significant number of Filipino workers were recruited for plantation work in Hawaii during the period. That said, the US subjugation of the Philippines was far more brutal than in Hawaii, requiring a long, murderous US campaign to subdue resistance; a half million or more Filipinos died in the struggles. The primary subjects whom I studied were exploited male workers struggling to survive and change conditions in the brutal American racial capitalist order. Their struggles paralleled in some ways those in Hawaii, but Merry's study focused on the violence experienced by women at the hands of men largely as a result of capitalist transformation. Still, I found in Merry's tome the shape of a study on transnational legal transformation that gave me confidence in my own parallel, highly ambitious, but quite different book. Of course, Merry's trademark theoretical focus on legal culture, law's power as both discourse and violence, the legal construction of subjectivity, contextual contingency...and much more provided clear cues and support for my own analysis.

Colonizing Hawaii (2000) deservedly won the J. Willard Hurst award from Law and Society Association. Her next major book, *Human Rights and Gender Violence* (2006), was a slimmer but no less theoretically ambitious work. The book became another staple of my teaching, in nearly every graduate course, as I increasingly mentored students working on gender violence and other human rights struggles. These students, most but not all women, found her analysis informative, insightful, inspiring; her ideas influenced many subsequent dissertations. That book, which connected local cultural traditions and struggle to global human rights "vernacularization," was formative for me, as I continued to teach and research on those topics more regularly. I thus was hardly surprised when in 2007 Sally was awarded the Kalven Prize for Contributions to Law and Society Scholarship, just one of her many major awards.

My very favorite article by Sally, "Rights Talk and the Experience of Law," was based on the Hawaii research and published in 2003, a period between the two books (Merry 2003). The essay creatively documents how women are culturally situated in different, competing "subjectivities." As such, their inclination to take action as rights bearing agents against violent abusers had to compete with or find support from their other roles—as spouses,

mothers, daughters, friends, church members, and so on. Merry thus drew on rich interviews to show how women's experience of violence and choices about possible legal action are mediated by their connective social networks as well as their experiences, direct or indirect, with the official legal system. One of Merry's most interesting insights is that rights claiming by women could reverse traditional gendered subjectivities—potentially empowering women as agents while shackling men literally and figuratively as dependent wards of the state. I still teach the article every year in a large undergraduate lecture course, and students always find it powerfully edifying.

One obvious intellectual and political interest that Sally and I, like many sociolegal scholars, shared was the topic of *rights*, including human rights. We each were founding members (with Stuart Scheingold, Neal Milner, others) in the short-lived “rights suck” consortium. We all found ourselves deeply uneasy about liberal rights discourse and its implications for both securing and challenging hegemonic order. The group discussions were both animated and depressing, not least because we all shared deep ambivalence; that is probably why we never put together the book we planned. But the deliberations were very valuable to me because they provided an opportunity and incentive to connect critical race theory with ideas about legal culture, consciousness, and disputing developed by sociolegal scholars, including Sally. Some of those ideas were outlined in my LSA Presidential speech, “The Unbearable Lightness of Rights,” for which Sally wrote a thoughtful response in the *Law and Society Review* (McCann 2014).

Again, all of this intellectual engagement fed into my slowly developing book—started in 1996, dropped while researching and writing another book about tort reform, but resumed in 2010 with George Lovell—on struggles by Filipino workers to unionize, advance rights claims, and effect radical transformation in the US and the Philippine homeland. That recently published book, *Union by Law* (2020), was written in the last years of the Obama administration and early years of the Trump administration. It was not until Sally wrote a wonderful, highly positive, and elegant blurb that we learned she once again had been the source of a long, detailed, highly helpful anonymous review of the manuscript for the press. I never had much opportunity to discuss the book directly with her, although I did write her a short, appreciative email 2 months before her passing.

Quite independently, just several years earlier I had provided the press a review and blurb for her book, *The Seductions of Quantification* (2016). She said she found my review very helpful, not least in that I urged her to develop and make more transparent her implicit argument about contextualized, experience-based,

ethnographic knowledge that contrasts with abstract statistical indicators. We discussed her book several times, and we ended up indirectly covering much the same terrain in our semiannual discussions of research proposals for the ABF Wheeler Research Committee. Very often, Sally and I offered parallel critical insights and constructive suggestions in response to research proposals, even if our specific articulations were a bit different; we often took turns developing or clarifying each other's points. Intellectual exchanges in the committee work were always exciting and gratifying to me, but the chance to interact with Sally was especially meaningful. We already greatly miss her, including her work as chair, on the committee.

The preceding narrative aims to provide just a glimpse of the enormous intellectual impact that Sally's prolific research had on me over many years. But she meant much more still. I was pleased and honored to participate in many conference panels and events with her; I learned a great deal from hearing her presentations and responses, especially in my early years at sociolegal conferences. When I became LSA president (2011–13), Sally was generous with advice and support, drawing on her own experiences in the association. She also was extremely generous in meeting with graduate students whom I introduced to her. I can think of at least half a dozen graduate students who were inspired by meeting with her and whose dissertations were all the better for it; she made me a better mentor by her availability. Sally's generosity extended further. She offered me and my wife her Manhattan apartment several times during my year at Princeton's LAPA program, in 2011; we very deeply appreciated that good will to share her place with us while she was away.

Living on different coasts, Sally and I did not regularly interact directly in person; our relationship was mostly professional and distant. Moreover, I have read only about half of the books that Sally wrote and perhaps 20 percent of her published articles and chapters. But that was more than enough to make a big impact. It is difficult to imagine my own intellectual odyssey without Sally's extraordinary inspiration, brilliance, encouragement, and example. Again, she was a major force in many ways, among the very most important, influential, and beloved scholars in the sociolegal tradition.

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