Presidential Address

Reflections on the Reach of Law (and Society) Post 9/11: An American Superhero?

Lynn Mather

The film *Spider-Man* depicts a masked red and blue superhero struggling against the forces of evil. Based upon a forty-year-old comic of the same name, the movie has been immensely popular. In early May 2002, the first weekend *Spider-Man* opened, about twenty million Americans saw it, making it the first film ever to make $100 million in just three days (Lyman 2002). Within three weeks, the number of viewers had tripled. When American viewers were asked whether they would recommend the movie to a friend, 95% said yes, and 70% said they would pay to see it a second time (Stein 2002).

Stan Lee, writer and co-creator of *Spider-Man*, proclaimed the character's "worldwide appeal" in a *New York Times* op-ed column. Lee writes, "Spidey's costume is completely user-friendly. Any reader, of any race, in any part of the world, can imagine himself under that costume—and fantasize that he himself is Spider-Man."(Lee 2002:A27).

Hmmm. Is that right? Anthropologist Diana Fox responded to Lee's claim of universal appeal in her letter to the editor in the *New York Times*. Fox writes:

> Does this hold true for girls and women as well? Do "he" and "himself" still apply to girls and women in a postfeminist era? Is Spidey's costume gender-neutral? . . . And anywhere in the world? These days, I'm not so sure that Spidey's all-American costume would appeal to those flocking to the burgeoning number of anti-American rallies around the world protesting America's assumptions of its own "super-hero-ness." (2002:A30)

I am grateful to the 2002 Law and Society Association/Canadian Law and Society Association Program committee and to the Canadian Law and Society Association leadership for showing me firsthand the importance of the themes I address in this article. I thank Hilary Sommerlad for our conversation in Oxford, which encouraged me to tackle this topic. I greatly appreciate the helpful feedback, comments, and suggestions I received from David Engel, Laura Margan, and Barbara Yngvesson. Address correspondence to Lynn Mather, O'Brian Hall, University at Buffalo Law School, State University of New York, Buffalo, NY 14260; e-mail: lmather@buffalo.edu.

Law & Society Review, Volume 37, Number 2 (2003)

Fox concludes, "[y]eah, it's just a comic, but it's the assumption of universality that often gets us into trouble" (2002:A30).

In my talk today, I would like to explore that "assumption of universality" and the ways in which it can "get us into trouble." I would like to do so first in the context of our scholarly community, the Law and Society Association, in order to call attention to the particular place occupied by American sociolegal scholars. International topics in law and society and members from outside the United States are increasingly important in the Law and Society Association, but I'd like to ask, to what extent are their voices heard in our academic discourse?

Similarly, with respect to this year's conference theme, "the reach of law," I would like to explore how particular features of American law are reaching worldwide. And to ask what impact they are having. What happens when legal ideas, actors, and institutions are exported without a self-conscious awareness of the distinctive context that makes them work in the United States but perhaps not abroad?

My thesis is that, in both the academic study of law and society and in the reach of law worldwide, international developments offer tremendous resources and potential for improving our understanding of law and for achieving greater equality and justice but, at the same time, scholars and legal reformers from privileged positions must guard against assumptions of universality.[1]

The Academic Community of Law and Society

I begin by reflecting on the Law and Society Association itself primarily because the organization provides a useful lens through which to explore some of these ideas. But also, I confess, because a Presidential Address represents the conclusion of an intense year of working with the Association. This has been something of an unusual year because of the planning needed for this joint meeting of the Law and Society Association and the Canadian Law and Society Association. I discuss a number of little things about the Association, rather than expounding—as most presidents do—on

[1] Of course it takes a bit of hubris to believe that we might ever escape our cultural and sociolegal domains, as some of the commentators on this address have so eloquently pointed out. Indeed, even in the title of my speech I use "9/11" to refer to September 11, whereas writers from other countries would write this date as "11/9." Or, consider the conference theme of "the reach of law," which, as Rosemary Hunter (2002:1) suggests in her research on Australia, clashes with the inaccessibility of law; the inability of people "to take hold of law and use it for their own purposes." It is not easy to think "outside the box of national scholarship," as Robert Dingwall (2003:311) puts it, for we are inevitably limited by our own knowledge, language, and assumptions. But we must continue to try, since I believe the alternative would clearly be worse.

grand sociolegal themes. I hope, however, to spin those grander themes, web-like, out of the details.

As law and society scholars, we are justifiably proud of the research we have done, the insights we have gained, and the theoretical advances in the field (even as we disagree on the merits of competing theories, methods, and epistemologies). But I want to ask, to what extent are we the *American* Law and Society Association? The question, of course, has particular resonance here in Vancouver.

The Law and Society Association was incorporated in 1964 in Denver, Colorado, as the first scholarly association devoted to the study of law and society. For the past 16 years, it has been administered from Amherst, Massachusetts. But despite its base in the United States, the Association has for some time now aspired to speak beyond American borders. Let me review some of the facts and figures about membership, conferences, and the journal to explore the identity and the international reach of the Association.

Membership

Beginning with a small group of scholars in the mid-1960s from law and the social sciences, the Association has expanded since then in size and in diversity. Most significantly, the percentage of non-U.S. members has increased from 15% of the Association in 1980 to 26% of the Association today.[2] Thus, one in four individual members lives outside of the United States. And one out of five institutional subscribers to the *Law & Society Review* is located outside of the United States. Canadians constitute the largest group of non-U.S. members, followed by scholars from the United Kingdom, Japan, and Australia.[3]

Yet as the prizes just awarded suggest, most of the recognition goes to American scholars. And I even wonder how some of the categories themselves apply outside of the United States. For example, do "best undergraduate paper" and "best graduate paper" mean the same thing to students working in other countries, especially when educational systems and standards vary so enormously throughout the world?[4] Are we, like Stan Lee in *Spider-Man*, assuming a universal standard of academic

[2] Figures on Law and Society Association membership and subscriptions are from the Executive Office reports for the Board of Trustees meetings in 1980 and 2002.

[3] The special role of Canadians in the Law and Society Association in its formative years is seen in membership reports such as the one from 1980, which divided individual membership and institutional subscriptions into three categories: "U.S.," "Canada," and "Foreign."

[4] Given the diversity of undergraduate institutions and expectations, the problem of different standards for student work also exists in the United States. Students from state universities may not have the same opportunities as those in private liberal arts colleges to write long theoretical essays on law and society.

excellence when we award such prizes?[5] Last year, the Association inaugurated its first International Award, which I believe to be an important advance. Indeed, we should think about making this an annual prize. But even so, does having such a prize simply underscore the uncertain place of non-U.S. scholars in the Association?

We know from our work how the construction of categories reflects and reinforces broader patterns of political and social power. Surely the creation of the International Award should not mean that Americans are the only ones eligible for the other prizes.

Conferences

The annual Law and Society Association meetings play a critical role in defining the identity of the Association. Especially in the last decade, this identity has become considerably more international. The first Law and Society Association conference was held in Buffalo, New York, in 1975. According to that conference program, there were exactly 100 participants—including some in this room today. There were also well-known names such as Lon Fuller, E. Adamson Hoebel, and Alan Dershowitz. The group was small enough that Red Schwartz, then dean of the law school,[6] was able to invite them all to his Buffalo home for the concluding reception. Only three of the participants were from outside the United States—one from Australia and two from Canada.

Conferences soon thereafter showed even more diverse participation from outside the United States as scholars from countries such as India, Japan, Britain, and Portugal began to attend the annual meetings. By the time of the Berkeley conference in 1990, the percentage of non-U.S. participants had increased to 9% of the registrants. Since then, we have collaborated with the Research Committee on the Sociology of Law to hold three conferences overseas—in Amsterdam, Glasgow, and Budapest. This meeting in Vancouver represents a different kind of international collaboration, the first joint conference between the Canadian Law and Society Association and the Law and Society Association.[7] About

[5] My comments are not intended to denigrate the outstanding scholarship of today's award winners, but only to encourage us to think about what we are doing as a scholarly association.

[6] Richard "Red" Schwartz was the first editor of the *Law & Society Review* and the second president of the Law and Society Association. Although he did not have a law degree, Red served as dean of the law school at what was then called the State University of New York at Buffalo (now known as the University at Buffalo, The State University of New York).

[7] The Law and Society Association held two previous meetings in Canada—in Toronto in 1982 and 1995. Although both meetings had considerable Canadian participation, they were not jointly sponsored. The Canadian Law and Society Association was founded in 1986. And until 2000, all CLSA meetings were held in conjunction with the Canadian Learned Societies (now referred to as the Congress of the Social Sciences and Humanities).

1,100 individuals are participating in the meeting, nearly 20% of whom are Canadian.

Nevertheless, the planning process for this conference very much reflected the problem of "assumed universality" that I mentioned at the outset. John Sloan Dickey, a scholar of U.S.-Canadian relations, noted that:

> Two ill-founded premises underlie American assumptions about the United States-Canada relationship, namely, our intentions being good, no harm can result, and since the two countries are so similar, what is true for the United States is also true for Canada. (Dickey 1975)[8]

Through this meeting, I trust that we have begun to confront those false and arrogant American assumptions. I also hope that we have inaugurated a collaboration that both associations will want to repeat.

The international diversity of participants in Vancouver has provided us with rich material for conversation during the last few days on such topics as the construction of constitutional rights in different political contexts, legal consciousness, the effectiveness of rights as vehicles for change, and the ways that law constitutes definitions of family. We have compared multiculturalism in the United States with the equally complex and still fragile Canadian experience and examined how indigenous peoples in Canada and the United States have struggled to have voice through and against the laws of their countries.

The *Law & Society Review*

If annual conferences provide one leg of the Association, the *Review* provides the other. The *Law & Society Review* is the premier journal in the field, ranking extremely high in number of citations and various measures of scholarly impact. Now in its thirty-sixth year of publication, the *Review* has reached out to a broad range of authors and readers from its earliest issues. For example, when Marc Galanter stepped down from the editor's role in 1976, he commented that "I think we have moved toward placing law and society concerns in comparative focus and, in a period of increasing American self-absorption, we marked some progress toward making the *Review* more international in coverage and in contributors" (1976:483–84). Yet nearly 20 years later, another *Law & Society Review* editor, Mack O'Barr, lamented, "[w]e still have

[8] John Sloan Dickey was the twelfth President of Dartmouth College. The Dickey Center's Institute on Canada and the United States generously contributed to the planning of this conference through their support for the Program Committee meeting, held in Montreal in October 2001.

https://doi.org/10.1111/1540-5893.3702001 Published online by Cambridge University Press

a great deal to learn about how law works in its broadest social contexts'' (1995:5).

A major change with the journal in 2003 will be its move away from self-publication and into a contract with an outside publisher. This switch will provide a more efficient and timely publication and, most important, it will allow us to deliver the *Review* electronically to all members and subscribers. Throughout the United States, scholarly societies are turning to large publishing houses in order to reap the benefits of electronic transmission. Faculty want to receive journals online. Readers want to read journals online. And our students regularly remind us, ''If it's not online, it doesn't exist.'' Online distribution will also allow us to increase our foreign subscribers and to increase readership of the *Review* outside of North America.

When we examine the percentage of institutional subscribers to the *Review* from outside the United States, we find a decline from 30% a decade ago to 22% today. The economics of journal publishing have taken a toll on foreign libraries; as U.S. subscription rates have gone up and currencies overseas have gone down in relation to the dollar, libraries abroad have had to make substantial cuts. Yet electronic publishing is transforming the dissemination of the scholarship in journals. Rather than having institutional subscriptions for each library, libraries are banding together to form electronic consortia. Examples of this include the 78 colleges and universities that constitute ''Ohio Link,'' the California Digital Library—the nine universities of the University of California, DEF—the Danish National Consortium, and the Russian Open Consortium—a group of 73 Russian universities.[9] Banding together has strengthened the negotiating power of these colleges and universities as they work with publishers to buy online rights to scholarly journals. But at the same time, the consortia facilitate the ability of publishers such as Blackwell, the *Review*'s new publisher, to distribute materials worldwide.

In addition, foundations are helping publishers in this endeavor by subsidizing the electronic delivery of journals to developing countries. For example, the Soros Foundation is working with EBSCO, a major subscription agent, to subsidize online access to journal content for Eastern European and African universities and the World Bank has granted funds to library consortia in Latin America for the purchase of online content. In both cases, there is very little chance of the universities involved being able to afford a full-rate subscription, so these programs make the *Law & Society Review* available to readers who would not otherwise be able to use the journal. Rather than purchasing

[9] Information provided by Blackwell Publishing.

https://doi.org/10.1111/1540-5893.3702001 Published online by Cambridge University Press

journals and maintaining space to make them accessible, universities overseas, especially in developing countries, are turning to computers for access. Typically this is more affordable and more reliable (since mail delivery to many of these countries is slow and unpredictable).

Is this shift to electronic transmission of scholarly information through journals simply reinforcing Anglo-American—or perhaps Western—domination of the academy due to the greater technological sophistication that these countries have for distribution? And thus is the technology strengthening the hegemony of Western ideas and paradigms, including that of law and society research?

Or, as some have argued, has a new window been opened to *resist* that hegemony, to empower all those who have access to a mouse, regardless of their institutional or geographic location? I'm referring here to possible changes in power relations in scholarship as a consequence of online publishing. In particular, more and more convention papers and non-peer-reviewed works are distributed online. This has been the case in the hard sciences for some time, and just now the social sciences are catching up. This electronic distribution reduces the power of editors to decide what scholars can read. As one historian put it,

> Electronic publication holds out the promise of changing not just the forms of production but also the power relations involved in producing journals. It feeds a democratizing impulse to challenge the gatekeeping roles of journals, editors, and editorial boards. (Grossberg 1997)

A second type of change in power relations centers on the relation between the reader and the text when material is accessed online. Differences among texts are flattened by their presentation on the Web. Even the most revered scholarship looks physically much like any old drivel.[10] And further, the reader is empowered by the ease of cutting and pasting and rearranging what was seen before as a canonical text. This, of course, is something we all know from the increase in plagiarism by students as they cut and paste from the Web to create their papers.

Thus, although this globalizing online trend could be seen to illustrate increased domination by Western academics, it also could provide what one author calls "a site of resistance" on the Web (Snyder 1996:77, cited in Bruns 1999).

[10] Publishers are currently struggling to create their own unique look for online publications. And indeed, all of the publishers contacted about online publishing of the *Law & Society Review* emphasized how they would create unique and distinctive pages for us with the *LSR* logo prominently displayed. But after the first page, all subsequent pages in electronic journals from the same publisher look pretty much alike.

https://doi.org/10.1111/1540-5893.3702001 Published online by Cambridge University Press

Assumptions of Universality in the Law and Society Association and in the Reach of Law

What are the implications of these changes in the *Law & Society Review* and in the internationalization of the membership and the meetings? My thoughts about the Association echo many of those that emerge from our conference theme, "the reach of law." Both reflect the problem of assuming a universal, one-size-fits-all approach. American scholars in law and society are often unaware of the taken-for-granted, yet quintessentially American, perspectives that shape their work. Similarly, law and society research on the reach of law has revealed the particularly American slant to ways in which lawyers and international legal institutions frame issues and handle conflicts. To explicate these points, I turn the analytical tools of our trade on the Association and examine it through five different lenses: the social, ideological, linguistic, institutional, and cultural. For each lens, I also draw on sociolegal research about law itself to explore the problem of assumed universality.

Social Practices

The Law and Society Association is a social entity. It is a group of scholars, some established and others still in graduate school, who interact over their shared interest in law in its social and political contexts. Clearly the identity of the individual members affects the nature of interactions at conferences. But it is always an open question whether new or different voices can change established social practices. For example, in planning this meeting, the program committee struggled with the different styles Americans and Canadians have for attending panels. Do you, as Americans often do, graze the panels? That is, do you go to hear a paper given on one panel, slip out and catch the middle of another, and then perhaps try to squeeze in the tail end of the discussion on a third panel? An American colleague confided, "I love that style. You can take in so much of the conference that way." But Canadians on the Program Committee saw this practice to be abhorrent and rude: "You don't just get up in the middle of a panel and leave, even if the papers do bore you." Now, has the American hegemony been tamed while we have been here in Vancouver? I suspect not.

Similarly, as more women began attending Law and Society Association meetings, they sometimes struggled to have their voices heard. The 1985 conference in San Diego will be remembered for its unique participatory discussion of the significance of feminist

https://doi.org/10.1111/1540-5893.3702001 Published online by Cambridge University Press

scholarship for theory and research in law and society.[11] Today, do scholars of color feel welcome in what is largely a white organization? We value diversity, but do we make the changes necessary for racial and ethnic minorities to feel like this is their organization? The diversity survey this year, and the Change breakfast earlier in this conference, are significant efforts in that direction.[12] But it remains to be seen how well these will help in creating space for minority scholars of law and society and in redistributing power within the organization.

Research on law as a social process has similarly examined the importance of the social identity of legal elites. What, for example, have been the consequences of centuries of excluding women and minorities from key legal positions in the United States? Have the dramatic changes over the last few decades in the social composition of the bar and courts led to a redistribution of power? Have women changed the law? Are women, to use Joan Brockman's (2001) phrase from the title of her book, "fitting or breaking the mould"? Studies of women in the legal profession in Canada, the United States, and the United Kingdom show the substantial structural barriers facing women lawyers (Brockman 2001; Hagan & Kay 1995; Sommerlad & Sanderson 1998; Schultz & Shaw 2002). Similar research by Wilkins (1998) on race demonstrates the power of the American legal profession to ignore or "bleach out" (Levinson 1993) the voices of black lawyers. The social processes within the legal profession, like those in the Law and Society Association, operate to reinforce particular voices and to silence others. One-size-fits-all often means an ill-fitting set of clothes for those of a different gender, color, or nationality.

Ideas and Citations

Power emerges not only through social processes but also through theoretical concepts and ideas. As Thomas Kuhn

[11] The 1985 discussion was organized by Rick Abel and Dirk Hartog, and conference participants were asked in advance to read selections from Gilligan (1982) and from feminist legal scholars (Marcus et al. 1985). Rather than following the usual format of distinct organized panels, this experimental plenary session asked all conference participants to become involved in small-group discussions about feminist discourse, moral reasoning, and the law.

[12] Interest in expanding the racial diversity of the association has been a long-standing concern of Law and Society Association officers and trustees (see, for example, Levine 1990). But this concern has been voiced more effectively than it has been acted upon. In 2001, the Board of Trustees approved the recommendation of the Diversity Committee to ascertain the racial, ethnic, and national identity of all Association members. The first survey was distributed in fall 2001 and was designed to provide a baseline profile of the membership. Another committee recommendation was to host a social occasion at the meetings to bring minority participants together. The Change breakfast held in Vancouver this year began a conversation among many participants interested in strengthening the role of minority scholars in the Association.

https://doi.org/10.1111/1540-5893.3702001 Published online by Cambridge University Press

proposed, a "scientific paradigm consists of 100 scientists who attend the same conferences, read the same papers and cite each others' work" (cited in Winter 1992:797). What happens when 25 of those 100 scientists come from outside of the United States? Do they help constitute the paradigm, and are they able to alter it? Or are they marginalized because of the social hierarchy of scholars within this Association? Again, the experience especially with minorities suggests the difficulties of having one's voice heard. Alfonso Morales and others have pointed out how recognition is linked to social practices. As Morales says, "[s]ocial and professional dynamics have acted to limit dialog and access to some practices and interpretive communities" (1998:510).

Paradigms (as well as careers) are constructed through scholarly citations, and I am concerned in law and society scholarship about the infrequency of citations to writers from outside the United States. While language differences pose some problems, there is no reason for American scholars to ignore the work of Canadians, British, or Australians, or the research published in English in Asia or Europe.[13] Editor Rick Abel made this point nearly 25 years ago, in his introduction to a special issue of the *Review* on European sociology of law. Abel wrote,

> Communication between American and European students of law in society is very largely a one-way street. Europeans are generally knowledgeable about American scholarship; Americans are woefully ignorant of European scholarship . . . American scholarship suffers from its parochialism and isolation. (1978:489)

Who cites whom also matters for the development of legal paradigms and legal rules. Particularly in the common law, law emerges through citations to previous cases. As Friedman et al. (1981) and Baum and Canon (1981) demonstrated some time ago, patterns of judicial citations for state supreme courts reveal hierarchies among state courts and can also help explain the innovation and diffusion of legal ideas throughout the United States. The reach of law goes beyond individual borders in terms of legal citations. Courts in common law countries frequently cite precedents from one another, yet they are also not shy about rejecting precedents with which they disagree. Jamie Cassels (1993) shows how tort law on liability was applied differently in the case of the Bhopal disaster by courts in India and in the United States. The Indian Supreme Court rejected the English precedent, writing,

[13] The lack of citation to *non*-English language scholarship raises an even more serious and difficult problem. The Canadian expectation of using both English and French is a useful reminder for Americans of the nonuniversality of English. See, for example, Rod Macdonald's (2002) new book, *Lessons of Everyday Law*—or *Le Droit du Quotidien*—which presents both French and English (and not identical) text.

https://doi.org/10.1111/1540-5893.3702001 Published online by Cambridge University Press

"[w]e no longer need the crutches of a foreign legal order" (quoted in Cassels 1993:185). Indeed, one of the great virtues of the common law has been the way in which judges have selectively applied its ostensibly universal or "common" principles.

Interestingly, now courts are even citing cases from different countries for authority for interpreting constitutional clauses. The Australian High Court, for example, cited the U.S. Supreme Court in a 1992 case examining a conflict between free speech rights and Australian legislative restrictions on political advertising (Rosenberg & Williams 1998). And in areas of gender and race discrimination, constitutional courts sometimes look to courts elsewhere for ideas and concepts even as they articulate them based upon their own constitutional texts.[14]

Language

Questions about what language to use in expressing ideas are crucial political ones, for both law and scholars of law. One of the most famous debates in anthropology of law during the 1960s centered on the question, "What is a suitable language in which to describe another people's legal system?" (Moore 1969:340; and see Nader 1969). If you use the native terms and categories, then have you foreclosed the possibility of comparative analysis? But if you use the English terms, then haven't you simply entrenched an Anglo-American legal vocabulary and imposed foreign concepts onto an indigenous system? Similar debates exist in the literature today, for example, over how best to develop a comparative study of the institutional performance of courts—whether through aggregate quantitative analysis (Tate & Haynie 1993, 1994) or through ethnographic and historical work (Gillman 1994). The choice of one discourse over the other not only affects the development of the field but also reinforces the power of those who speak that language.

The language of law also provides a key resource for those seeking change in law. By expanding legal categories beyond their conventionally accepted meanings, petitioners may succeed in creating new law (Mather & Yngvesson 1980–81). Civil rights law in the United States, for example, has expanded from a ban on sex discrimination by employers to a ban on sexual harassment, as

[14] Joan Brockman (2003) comments that it would be noteworthy if the U.S. Supreme Court were to cite an Australian or Canadian case. But while reviewing my copyedited manuscript, I was surprised to learn that "almost all of the current Justices have relied on foreign precedents or practices to support their rulings," and indeed that "Chief Justice Rehnquist stated in 1989 that 'now that constitutional law is solidly grounded in so many [foreign] countries, it is time that the United States courts begin looking to the decisions of other constitutional courts to aid in their own deliberative process'" (Yoshino 2003:H4).

https://doi.org/10.1111/1540-5893.3702001 Published online by Cambridge University Press

women argued that harassment in the workplace was in fact a type of discrimination (MacKinnon 1979). Recent litigation using the same clause of the Civil Rights Act (Title VII) has expanded the language even further to include same-sex harassment. International treaties also illustrate how legal language has provided new vehicles for political change. As examples of this, consider the move to extradite former Chilean President Augusto Pinochet from Britain back to Chile, or the move to expand international human rights law to include violence against women, or to define mass rape in Bosnia as a war crime. Common to all of these illustrations is the fact that those seeking legal change lack significant social or political power and are attempting to use law to trump politics. That is, they are "speaking law to power" (Abel 1998:69).

Institutional Structures

The creation of new institutional structures provides yet another way to challenge hegemonic power.[15] For example, international legal tribunals hear claims, define violations, and impose penalties. By using international organizations, "transnational advocacy networks" (Keck & Sikkink 1998) such as human rights advocates, environmental activists, and women's groups mobilize support for their cause, disseminate information, call attention to problems, pressure governments to be accountable, and lobby for policy change. Keck and Sikkink argue that transnational advocacy networks are "communicative structures" and that they "must also be understood as political spaces, in which differently situated actors negotiate—formally or informally—the social, cultural, and political meanings of their joint enterprise" (1998:3). Networks protesting violence against women have effectively taken advantage of various regional and international agreements to press their claims. Kobkun Rayanakorn (2002), one of the panelists at the Symposium on the Reach of Law in the Pacific Rim, shows how local groups have used international and national legal protections such as CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) to address the trafficking of women and children in the Greater Mekong Subregion. CEDAW has raised awareness of women's

[15] Joel Handler (1992) provocatively challenges postmodern scholars for their overemphasis on discourse without successfully connecting discourse to institutional power. In response, McCann (1992) and Winter (1992) elaborate the connections between structure and narrative, between institutions and discourse. Here I begin to develop similar connections (see also Mather 1998). In her Presidential Address, Calavita (2002) argues that bridging the divide between agency and structure remains the basic challenge of law and society scholarship.

problems and created some accountability among states, yet it is limited by social attitudes, cultural norms, and lack of enforcement.

The World Health Organization (WHO) is similarly providing the institutional space for debates over tobacco regulation. Public health representatives and lawyers from the United States and other countries have taken their global network of antismoking advocates to this new forum. The WHO Tobacco-Free Initiative, "Towards Health With Justice: Litigation and Public Inquiries and Tools for Tobacco Control," draws directly on the American experience to argue for the use of law and litigation to address the health problems from tobacco.[16] A quite different world arena, the International Criminal Court (ICC), is opening without the participation of the United States. Despite the efforts of many Americans over the years to develop this organization, the first international court established in more than fifty years, changing domestic politics have led to America's withdrawal.

The examples of the ICC and tobacco control in WHO clearly illustrate Yves Dezalay and Bryant Garth's (2002) powerful thesis about the "internationalization of palace wars." That is, international legal strategies "reshape and redefine the national fields of state power" according to the domestic agendas of the nations involved (Dezalay & Garth 2002:8). But at the same time, such strategies may also lead to new spaces that dislodge, however slightly, the power relations in and among those nations.

A similar point about the potential for new structures to challenge hierarchy could be made in the context of the Law and Society Association, particularly in its early history. There was competition between law and the social sciences during the 1960s in terms of which field could best address the tumultuous issues of racial discrimination, poverty, and crime in the United States. The competition, Garth and Sterling (1998) suggest, arose over claims to expertise and funding and provided fertile ground for the development of the law and society field. Intellectual currents within anthropology, political science, and sociology also encouraged this new field. The Law and Society Association thus allowed social scientists and law academics who were disaffected with their own scholarly associations to express and exchange views in their own new space.

[16] The WHO (2002), report begins, "Used properly, the law can help transform the paradigms of tobacco control, awaken public outrage, strengthen public policies and redress injuries" (http://www.who.int/en). This argument directly reflects the views of tobacco control advocates in the United States who spearheaded the litigation against cigarette manufacturers during the 1990s (Daynard 1988). For contrasting analyses of the effects of antitobacco litigation on public policy, compare Mather (1998) and Derthick (2002).

https://doi.org/10.1111/1540-5893.3702001 Published online by Cambridge University Press

Scholars and legal reformers outside the United States with a concern for law also played important roles in the early years of the Association. But the strongly American set of academic practices, ideas, and discourse has, as I have suggested, operated at times to limit the participation. A crucial institutional question for the Association now is to consider how internationalization—through the significant non-U.S. membership in the Association, the new online dissemination of the *Review*, and the global political environment, particularly post 9/11—can or should alter the current Law and Society Association structure. For example, we might think about how to expand the international Collaborative Research Networks (CRNs) as a way of responding to (and encouraging) the increasingly important cross-national sociolegal dialogues over gender, race, poverty, and violence. CRNs now exist to address labor rights, cause lawyering, citizenship and immigration, and constitutional ethnography, to name a few. But many Law and Society Association members are not quite sure what the networks are, how one can join, or how to create new networks. A major argument for the CRNs is that, through the new and smaller spaces they provide, scholars from outside the United States and scholars of color may both be able contribute more effectively than at present to defining the nature of law and society work.[17]

Law and society research looks slightly different in other countries in part because the relation between law academics to social science varies from place to place. There was a fascinating study in the *Review* some years ago by Colin Campbell and Paul Wiles (1976), which described the bifurcation of the law and society field in Great Britain between "sociology of law" and "socio-legal studies." Although those phrases are indistinguishable to most Americans in the field, they resonated differently in Britain at the time, with the term *socio-legal studies* oriented more toward policy concerns and less toward theory-building (Campbell & Wiles 1976). The fact that there is no "one-size-fits-all" law and society paradigm will become even more apparent as the diversity of law and society scholars increases, I suspect.

Cultural Image and Practice

Finally, consider the cultural aspects of law and sociolegal work. Law works through its cultural practices and images, as well as

[17] I am drawing here on my own very rewarding participation in a transnational group of scholars on Women in the Legal Profession. The meetings of this network through the Working Group on the Legal Profession (part of the Research Committee on the Sociology of Law)—and in Budapest as a CRN of the Law and Society Association—created a rich dialogue over several years' time and resulted in a forthcoming book that reflects scholarship from a number of different countries (Schultz & Shaw 2002).

through its institutional forms and social processes. The example of tobacco litigation reveals an image of law reaching worldwide through networks of lawyers acting as policy entrepreneurs and working with other tobacco control advocates. The image of Perry Mason has given way to one of an attorney general filing suit on behalf of an entire state or a wealthy plaintiff lawyer filing a class action against the gun industry, lead paint manufacturers, or the Roman Catholic Church. Sarat and Scheingold's volume (1998) examines the political commitments, personal motivations, and various tactics of cause lawyers. But, in contrast to aggressive lawyering, the United States is also exporting a contrary image of law, namely that of alternative dispute resolution (ADR). Policymakers in the United Kingdom, for example, have reexamined their family law system and explored divorce mediation as a way to reduce legal aid costs and adversarial conflicts. And ADR approaches for managing conflicts have been imposed as a condition for foreign aid or capital investment in Africa and elsewhere (Nader & Grande 2002; Goodale 2002; cf. Milner 2002).

The contrasting images of adversarial legalism (Kagan 2001) and ADR suggest tension over the image of law that the U.S. seeks to export. What about the cultural image of the Law and Society Association? That is similarly contested. In one sense, we reconstitute the Law and Society Association image every year with our conferences. Our recent meetings in Miami and Budapest, and now in Vancouver, have strengthened the international face of the Association. Next year's meeting in Pittsburgh will reaffirm the Association's American roots and call attention to historic ethnic and class struggles that have occurred there through (and without) law. Since we define ourselves through the cities of our meetings, the Law and Society Association Trustees often have vigorous debate over place as we argue about where to go in future years—Havana? San Antonio? Berlin? Las Vegas? The newly designed cover for the *Review* provides yet another way for us to affirm a more contemporary—and perhaps international—image.[18]

Conclusion

In sum, I see some similar dynamics in the Law and Society Association and in sociolegal scholarship about the reach of law. Both reflect an uneasy tension over the role of red-white-and-blue in an international community, a tension that all too often displays

[18] We also define ourselves by the annual Fred Du Bow Fun Run and its colorful T-shirts, as a reminder that we are not an Association constituted by navy blue blazers or gray suits and ties.

https://doi.org/10.1111/1540-5893.3702001 Published online by Cambridge University Press

a dangerous "assumed universality" of American superiority. And even worse, what emerges from the United States reflects its own political conflicts over class, race, and ethnicity. The attacks of 9/11 put this problem in stark relief. Unless we self-consciously examine this problem, we risk our own lives as well as our ability as scholars to do our best work and to contribute to solutions. Carol Greenhouse, in her Presidential Address, reminded us that violence provides a powerful "reason to communicate . . . as colleagues" (1998:6). "The events of 9/11," Carroll Seron wrote, have made our responsibility for teaching skills of critical thinking and analysis "clearer, more difficult, and more important" (2002:23).

If, in our local communities and in the world, we are to resolve conflicts through law and not through violence, then law and society scholars have a critical role to play. Our expertise lies in understanding the ways in which law is constituted by social, economic, and political forces. We know how to analyze the impact of law through its discourse, social practices, and institutions. And we excel at investigating law in context. But, to produce really good sociolegal work, we must critically examine our own scholarly practices. For it is through those everyday routines, taken-for-granted assumptions, and accepted discourses that we inadvertently create an American superhero of law and society.

As individual scholars, we should think about how our work reflects our own particular place in the world. The questions we ask, the language we use, and the paradigms we construct will be strengthened by such reflection. The Association should self-consciously consider how it promotes a particular kind of American hegemony over sociolegal academic life when it ignores law and society scholars from outside the United States (and those from less privileged positions within the United States). Strengthening and expanding the CRNs may provide an organizational vehicle for breaking down such hegemony and improving sociolegal scholarship across disciplines and across nations. The emerging transnational advocacy networks have facilitated information sharing and communication and have become a new and potent political force in the world. What is interesting about such decentralized activities is their potential for mobilizing highly disparate groups, encouraging the exchange of diverse views, and challenging power.

A strength of law and society has been its inclusivity and openness to new perspectives, whether disciplinary, theoretical, or methodological. I think we should tap into that tradition of openness as we explore new ways to both respond and listen to sociolegal scholars from outside the United States. Having scholarly meetings such as this one, which required mutual collaboration between two different law and society associations, is one small step in that direction.

https://doi.org/10.1111/1540-5893.3702001 Published online by Cambridge University Press

References

Abel, Richard L. (1978) "From the Editor," 12 *Law & Society Rev.* 489–97.

Abel, Richard L. (1998) "Speaking Law to Power," in A. Sarat, & S. Scheingold, eds. *Cause Lawyering: Political Commitments and Professional Responsibilities*. New York: Oxford Univ. Press.

Baum, Lawrence, & Bradley C. Canon (1981) "Patterns of Adoption of Tort Law Innovations: An Application of Diffusion Theory to Judicial Doctrines," 75 *American Political Science Rev.* 975–87.

Brockman, Joan (2001) *Gender in the Legal Profession: Fitting or Breaking the Mould*. Vancouver: Univ. of British Columbia Press.

Brockman, Joan (2003) "The Impact of Institutional Structure and Power on Law and Society: Is it Time for Reawakening?," 37 *Law & Society Rev.* 277–287.

Bruns, Axel (1999) "Invading the Ivory Tower: Hypertext and the New Dilettante Scholars," *M/C: A Journal of Media and Culture*. http://www.uq.edu.au/mc/9903/ivory.html.

Calavita, Kitty (2002) "Engaged Research, 'Goose Bumps,' and the Role of the Public Intellectual," 36 *Law & Society Rev.* 5–20.

Campbell, Colin M., & Paul Wiles (1976) "The Study of Law in Society in Britain," 10 *Law & Society Rev.* 547–78.

Cassels, Jamie (1993) *The Uncertain Promise of Law*. Toronto: Univ. of Toronto Press.

Daynard, Richard A. (1988) "Tobacco Liability Litigation as a Cancer Control Strategy," 80 *J. of the National Cancer Institute* 9–13.

Derthick, Martha (2002) *Up in Smoke: From Legislation to Litigation in Tobacco Politics*. Washington, DC: Congressional Quarterly.

Dezalay, Yves, & Bryant G. Garth (2002) *The Internationalization of Palace Wars: Lawyers, Economist, and the Context to Transform Latin American States*. Chicago: Univ. of Chicago Press.

Dickey, John Sloan (1975) http://www.dartmouth.edu/~dickey/dickey_can_us.html.

Dingwall, Robert (2003) "LSA and the 'Pax Americana,'" 37 *Law & Society Rev.* 309–315.

Fox, Diana (2002) "Letter to the Editor," *New York Times*, 8 May, p. A30.

Friedman, Lawrence M., Robert A. Kagan, Bliss Cartwright, & Stanton Wheeler (1981) "State Supreme Courts: A Century of Style and Citation," 33 *Stanford Law Rev.* 773–818.

Galanter, Marc (1976) "From the Editor," 10 *Law & Society Rev.* 483–88.

Garth, Bryant, & Joyce Sterling (1998) "From Legal Realism to Law and Society: Reshaping Law for the Last Stages of the Social Activist State," 32 *Law & Society Rev.* 409–71.

Gilligan, Carol (1982) *In a Different Voice: Psychological Theory and Women's Development*. Cambridge: Harvard Univ. Press.

Gillman, Howard (1994) "On Constructing a Science of Comparative Judicial Politics: Tate & Haynie's 'Authoritarianism and the Functions of Courts,'" 28 *Law & Society Rev.* 355–76.

Goodale, Mark (2002) "The Globalization of Sympathetic Law and Its Consequences," 27 *Law & Social Inquiry* 595–608.

Greenhouse, Carol J. (1998) "Tuning to a Key of Gladness," 32 *Law & Society Rev.* 5–21.

Grossberg, Michael (1997) "Historical Journals in the 21st Century," *Perspectives Online*.

Hagan, John, & Fiona Kay (1995) *Gender in Practice: A Study of Lawyers' Lives*. New York: Oxford Univ. Press.

Handler, Joel F. (1992) "Postmodernism, Protest, and the New Social Movements," 26 *Law & Society Rev.* 697–731.

Hunter, Rosemary (2002) "The Reach and the Grasp of Law." Presented at the joint Canadian Law and Society Association and Law and Society Association meeting, Vancouver, Canada (June).

https://doi.org/10.1111/1540-5893.3702001 Published online by Cambridge University Press

Kagan, Robert A. (2001) *Adversarial Legalism: The American Way of Law*. Cambridge: Harvard Univ. Press.
Keck, Margaret E., & Kathryn Sikkink (1998) *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca: Cornell Univ. Press.
Lee, Stan (2002) "That's My Spidey," *New York Times*, 3 May, p. A27.
Levine, Felice J. (1990) "Goose Bumps and 'The Search for Signs of Intelligent Life' in Sociolegal Studies: After Twenty-five Years," 24 *Law & Society Rev.* 7–33.
Levinson, Sanford (1993) "Identifying the Jewish Lawyer: Reflections of the Construction of Professional Identity," 14 *Cardozo Law Rev.* 1577–612.
Lyman, Rick (2002) "Not Bad, Clones, But Watch Spidey's Legs," *New York Times*, 20 May, p. B1.
Macdonald, Roderick A. (2002) *Lessons of Everyday Law (Le Droit du Quotidien)*. Montreal and Kingston: McGill-Queen's University Press.
MacKinnon, Catharine (1979) *Sexual Harassment of Working Women: A Case of Sex Discrimination*. New Haven: Yale Univ. Press.
Marcus, Isabel, Paul J. Spiegelman, Ellen Carol DuBois, Mary C. Dunlap, Carol J. Gilligan, Catharine A. MacKinnon, & Carrie J. Menkel-Meadow (1985) "Feminist Discourse, Moral Values, and the Law—a Conversation," 34 *Buffalo Law Rev.* 11–87.
Mather, Lynn (1998) "Theorizing About Trial Courts: Lawyers, Policymaking, and Tobacco Litigation," 23 *Law & Social Inquiry* 897–940.
Mather, Lynn, & Barbara Yngvesson (1980–81) "Language, Audience and the Transformation of Disputes," 15 *Law & Society Rev.* 775–822.
McCann, Michael W. (1992) "Resistance, Reconstruction, and Romance in Legal Scholarship," 26 *Law & Society Rev.* 733–49.
Milner, Neal (2002) "Illusions and Delusions about Conflict Management—In Africa and Elsewhere," 27 *Law & Social Inquiry* 621–29.
Moore, Sally Falk (1969) "Introduction," in L. Nader, ed., *Law in Culture and Society*. Chicago: Aldine.
Morales, Antonio (1998) "Pragmatism's Mundanity: Epistemic Foundations for Practicing Sociolegal Science," 32 *Law & Society Rev.* 493–514.
Nader, Laura (1969) "Introduction," in L. Nader, ed., *Law in Culture and Society*. Chicago: Aldine.
Nader, Laura, & Elizabeth Grande (2002) "Current Illusions and Delusions about Conflict Management—In Africa and Elsewhere," 27 *Law & Social Inquiry* 573–94.
O'Barr, William M. (1995) "From the Editor," 29 *Law & Society Rev.* 5–9.
Rayanakorn, Kobkun (2002) "Women and the Law in the Greater Mekong Subregion." Presented at Symposium on "The Reach of Law in the Pacific Rim," University of British Columbia, Vancouver, BC.
Rosenberg, Gerald N., & John M. Williams (1998) "Do Not Go Gently into that Good Right: The First Amendment in the High Court of Australia," 1997, *The Supreme Court Rev.* 439–95.
Sarat, Austin, & Stuart Scheingold, eds. (1998) *Cause Lawyering: Political Commitment and Professional Responsibilities*. New York: Oxford Univ. Press.
Schultz, Ulrike, & Gisela Shaw (2002) *Women in the World's Legal Professions*. Oxford, England: Hart Publishing.
Seron, Carroll (2002) "The Teacher-Scholar," 36 *Law & Society Rev.* 21–27.
Sommerlad, Hilary, & Peter Sanderson (1998) *Gender, Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status*. Hampshire, England: Dartmouth Publishing.
Stein, Joel (2002) "Biggest Summer," *Time*, 20 May, p. 70.
Snyder, Ilana (1996) *Hypertext: The Electronic Labyrinth*. Cartlon South, Australia: Melbourne University Press.

Tate, C. Neal, & Stacia L. Haynie (1993) "Authoritarianism and the Functions of Courts: A Time Series Analysis of the Philippine Supreme Court, 1961–1987," 27 *Law & Society Rev.* 707–40.

Tate, C. Neal, & Stacia L. Haynie (1994) "Building a Scientific Comparative Judicial Politics and Arousing the Dragons of Antiscientism," 28 *Law & Society Rev.* 377–94.

Wilkins, David (1998) "Fragmenting Professionalism: Racial Identity and the Ideology of Bleached-Out Lawyering," 5 *International J. of the Legal Profession* 141–73.

Winter, Steven L. (1992) "For What It's Worth," 26 *Law & Society Rev.* 789–818.

World Health Organization (2002) "Towards Health with Justice: Litigation and Public Inquiries as Tools for Tobacco Control," http://www.who.int/en

Yoshino, Kenji (2003) "Law of the Bedroom," *Boston Sunday Globe*, 23 March, p. H4.

https://doi.org/10.1111/1540-5893.3702001 Published online by Cambridge University Press

https://doi.org/10.1111/1540-5893.3702001 Published online by Cambridge University Press