Law & Society REVIEW

Commentary

The Two Faces of Law and Inequality: From Critique to the Promise of Situated, Pragmatic Policy

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Over the course of my career, I have navigated a research agenda that moves between scholarly and policy-oriented research. Building on this experience, I argue that it is time for law and society scholars to take seriously a commitment to engaged scholarship that speaks to a wider audience of stakeholders and policymakers. Three themes frame my proposal to get back in the game of advocacy and policy. First, I consider why we need to rekindle this commitment at this historical moment: inequalities in wealth, income, and social mobility and the rise of mass incarceration and its collateral consequences diminish the foundation required for effective democratic governance to thrive. Second, what our scholarship has to say is key to the framing of pragmatic policy: law and society's focus on law in action and the culture of law are key to understanding the ways in which most policies tend to deliver unintended consequences. Finally, we need to consider how to go about the next step to make our work visible to a wider audience of stakeholders?

Echoing my predecessors, this moment is both a tremendous honor and more than a bit intimidating. The Law & Society Association (LSA) has been my intellectual home since the beginning of my career; I thank all of you for the honor of serving you as president and, earlier, as editor of *Law & Society Review*.

Thank you for your time and for the privilege of sharing these thoughts with you.

Many colleagues read earlier versions of this talk. Kitty Calavita, Valerie Jenness, Bryant Garth, Frank Munger, and Susan Silbey read and commented on multiple drafts; I thank each of you for your comments here and support over many years. Nick Branic, Catherine Fisk, Charis Kubrin, Sandra Levitsky, Nancy Mullane, Joyce Plotnikoff, Bryan Sykes, and Anjuli Verma also provided invaluable suggestions; my sincere thanks to each of you. I thank Sarah Bach for her careful research assistance and Dani McClellan for her always careful editing. Over many years, I have come to appreciate the incredible generosity among law and society scholars. In writing this talk, I have been made aware of how much I have learned from our vibrant criminology, law and society community at UC Irvine; thank you for all the ways you have stimulated my thinking in unanticipated directions. As President, one gets a close up view of what goes on behind the scenes at the Executive Office; Susan Olson and her team, Kris Monty, Megan Crowley and Heather Haley work tirelessly to make LSA what it is. Thank you for your support during my term as President. Please direct all correspondence to Carroll Seron, University of California, Irvine School of Social Ecology, Irvine, CA 92697; e-mail: seron@uci.edu.

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Over the course of my career, I have navigated a research agenda that moves between scholarly and policy-oriented research; in some instances my audience has been scholars. But, I have also found that some of my most rewarding research projects have been for an audience of practitioners, including judges, magistrates, commissioners of civilian complaint review boards, or legal services advocates. For example, I was asked to conduct a study for the Legal Aid Society Community Law Office in Spanish Harlem (Seron et al. 2001). My charge was to conduct a randomized experiment to test whether the presence of a lawyer made a significant difference for eligible clients facing eviction proceedings in Manhattan's Housing Court. In developing the design, my colleagues and I explained to the legal aid attorneys that our task was to report the findings, regardless of the outcome. After much debate around our responsibility and the ethical challenges of a randomized experiment, our findings convincingly showed that lawyers do make a significant *positive* difference. To my surprise and delight, the article has been widely used by public interest lawyers who continue to chip away at the challenges facing low-income individuals with legal troubles. Although narrowly focused, the project remains a highlight for me because it made a concrete contribution to an issue of social justice that I care about and it continues to be relevant to stakeholders. This is just one example of the kind of work we can—and should—do as law and society scholars that resonates with the mission of the LSA.

At our fiftieth anniversary celebration in 2014, we were reminded that the LSA emerged at a high point of the Civil Rights Movement when scholars believed that socio-legal scholarship could improve social policy and facilitate advocacy. "Over time, some of the early enthusiasm dampened and critique of activism emerged. Nonetheless, LSA still announces its mission as "*Analyzing legal practice, envisioning social justice*" (Trubek 2014). Since LSA's founding, our scholarly tent has grown in significant ways. Today, our membership includes scholars from around the world; there is an active group of law and society scholars from the humanities and related disciplines. Against this expansive backdrop, there has also been a trend toward multiple, specialized fields of inquiry and related associations. With my colleagues Susan Coutin and Pauline White Meeusen (Seron et al. 2013), we have tried to sort out what constitutes the "canon" of law and society. Briefly, it is a difficult question to answer as the very definition of "canon" can itself raise challenges; for example, scholars from Latin America, Africa, and Asia pose what has been described as a "counter-mapping" to the American-European paradigm. Despite these challenges and differences, we trace a

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shared commitment to looking beyond law's formal claims through an interdisciplinary lens.

In my comments today, I do, however, begin with a quite American version of our commitment to analyzing legal practice, advancing theoretical and empirical understandings of the structure and workings of law, and envisioning and pursuing social justice. In the conclusion, I reflect on the limitations of my own stance.

Although this has been a lifelong commitment for many of us, my argument is all the more pressing today in the face of growing inequalities in wealth, social mobility, and opportunity in both the Global North and South. For example, Forbes reports that in 2015 there are now 1,826 billionaires globally: 541 are in the United States and, of those, 131 are in my home state of California. As Forbes notes, "California is still the place to go to strike gold;" the combined wealth of California's billionaires alone exceeds the GDP of 49 countries, including Argentina, Poland, and Taiwan (Savchuk 2015). In the United States, this staggering inequality in wealth coincides with equally staggering levels of mass incarceration, including in California, which have directly affected the life chances of millions of families, disproportionately African Americans and other minorities (Travis et al. 2014). Across the social sciences, there is much debate about whether the causes of these trends in inequality are inevitable—the result of unmanageable macroeconomic, social, and technological forces—or whether they are fixable—the product of political decisions that translate into policies, laws, and regulations, which in turn shape economic and technological forces, the claim of Hacker and Pierson (2010: 2014) and Stiglitz (2012a, 2012b) among others. I am in good company in beginning with the premise that our current dilemma is the product of political decisions.

Law and society scholars study those political decisions that translate into policy, law, and regulation, whether in the area of policing (Epp et al. 2014), courts (Ward et al. 2009), schools (Morrill et al. 2010), hospitals (Heimer 1999), science labs (Huising and Silbey 2011), pharmacy counters (Chiarello 2014), or any of the myriad sites where law and society meet. We bring a collective expertise that has "discovered" a legal culture that reveals "the hierarchies of a law that is expected to be equal, the normalcy of what should have been unexpected, the ways in which legality is contingent on time and place, and yet [there remains] the recurring power of law as an institution in society" (Seron and Silbey 2004: 51).

The well-documented role of culture in sustaining legal power is often overlooked in advocacy and policymaking

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arenas, even as analyses of legal culture explain why policies, rules, and regulations fail to live up to the "law on the books"—or, why we so often find unintended consequences of promising beginnings. In part, audiences may overlook the cultural account of the persistence of legal power because it is a complex argument. But, perhaps more to the point, our maps of the cultural power of law are overlooked because we have retreated from the public arena. Given the stakes at this historical moment, we need to be part of the advocacy and policymaking process.

As advocacy and policy have become such loaded terms for socio-legal scholars, let me be clear about what I do, and do not, mean. Our scholarship may suggest reasons to indict the whole system and start from scratch, but that is not practical—and we need to be practical if we are to be effective. Piketty (2014), in his tour de force on the implications of wealth accumulation, advocates for "pragmatic" policies that may not solve all problems but promise to ameliorate or avoid crises.

This is the spirit in which I invite you to take the role of pragmatic policy seriously. Laws and regulations may have little prospect of undoing the root causes of economic, racial, ethnic, or gender inequalities in the contemporary politics of the United States, or beyond, but there is a lot of room for pragmatic relief from these inequalities. Importantly, I do not mean that we should frame our scholarship to "fit" the policymakers' question. Often, we share a frustration by the way in which policy is framed when, for example, efficiency or effectiveness of service delivery are taken at face value through a focus on cost benefit analyses or similar metrics (Albiston and Sandefur 2013: 111). Rather, the challenge is to deploy our understandings of socio-legal theory and rigorous methodology to explain our work to a broader audience.

How then do we explain the sociology of legal culture, not just to each other, but to those who debate and write policy, rules, and regulations? We are being encouraged to move in that direction. On my campus and I am sure on many of yours, there is a call for translational science—a commitment to explaining our work to a wider audience and making our findings visible, thereby potentially influencing policy responses to challenges facing society. Our findings about the role of law, alternative policies, and regulations are useful and relevant to advocacy and policymaking. That alone is necessary, but not sufficient. The challenge is to make our work visible and influential for a wider audience of stakeholders, including legal advocates, bureaucrats, policymakers, and the general public (Hillsman 2015).

Three themes frame my proposal to get back in the game of advocacy and policy. First, I consider why we need to rekindle this commitment at this historical moment: inequalities in wealth, income, and social mobility and the rise of mass incarceration and its collateral consequences diminish the foundation that is essential for effective democratic governance to thrive. Second, what our scholarship has to say is key to the framing of pragmatic policy: while our message is complicated, the focus on law in action is key to understanding the ways in which most policies deliver unintended consequences. And finally, we need to consider how to go about the next step to make our work visible to a wider audience of stakeholders.

Advocacy and Policy: *Why* Now?

For the last several years, scholars across the social sciences have documented a disturbing trend of growing economic inequality both within the United States and beyond (Munger 2004). The United States has the dubious distinction of being the world leader, but is by no means alone (McCall and Percheski 2010). While differences in data sources and measurement make comparison across countries difficult, the overall picture in both Northern and Southern Europe is one of increasing monetary inequalities (ibid: 333). In part these inequalities are associated with the persistent overrepresentation of women in the bottom 50% of wage earners across most countries, although the gap is somewhat smaller in Northern Europe (Piketty 2014: 256). Together, research shows a common thread of growing inequality within countries that is further exacerbated by a stalled revolution to secure equity and fairness in earnings between men and women.

In many respects the great recession moved a conversation among academics that was on the "periphery to the center of political debate" (Cashin 2014: 99; Hacker and Pierson 2010: 153). Occupy Wall Street, which started at Zuccotti Park in lower Manhattan and quickly spread across Europe and beyond, brought further attention to the concentration of wealth among the top one percent. Research corroborates the Occupy protesters and shows that the top 1% in the United States and abroad is "extraordinarily privileged" to both protect their wealth and to exert disproportionate political influence (also see Hacker and Pierson 2010: 2014; Keister 2014: 348).

I would, however, like to take us back to a moment when LSA was founded, with the hope that through the marriage of law and social science we could construct pathways to ameliorate the chasm between the haves and the have nots (Galanter 1974).

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Now, this is a particularly American story because, like the founding of LSA, it is closely tied to the aspirations of the civil rights movement. As a scholarly community, the founders of LSA were activists in shaping key legislative and legal strategies (Garth and Sterling 1998: 400–401), such as Title VII of the Civil Rights Act of 1964, the Fair Housing Act of 1968 (FHA), and the Voting Rights Act of 1965 (VRA).[1]

A body of rich and rigorous scholarship by a new generation of scholars asks the question: what is the impact of these legislative and legal victories on employment, voting, and housing fifty years down the road? Equally, law and society scholars and criminologists have documented the "backlash against the Civil Rights Movement" (Alexander 2010: 11), as measured in trends toward "mass incarceration" (Garland 2001) of minorities, particularly African American men, and its multiple collateral consequences. As the discussion that follows makes clear, efforts to explain these perhaps obvious sources of inequality—employment, housing, and voting—have revealed new conceptual challenges, particularly the limitation of policy mechanisms to reduce structural inequalities.[2]

Employment

Law and society scholars have shown that organizational mechanisms to meet the requirements of Title VII may be best understood as "symbolic" (Edelman 1992). In a series of articles, Edelman and coworkers (Best et al. 2011; Krieger, Hamilton, and Kahn 2015) develop a neo-institutional theory of law and organizations to argue, among other things, that in employment discrimination cases, judges, including liberal

[1] There is a general consensus that Title VII had some positive impact on employment patterns for women and minorities, but that it was not as effective as the Voting Rights Act in ameliorating patterns of discrimination and racism; by contrast, there is an equally strong consensus that the Fair Housing Act was a failure (for a review, see Pedrina and Stryker 2014). In my discussion here, I consider the impact of the CRM on employment, housing and voting but there are important histories of the CRM that present an equally important critical lens that remind us of the ways in which law affects the lives of people. There is an enormous body of scholarship on the history of the civil rights movement and the role of courts in that process. See for example, Kenneth and Gaby (2015); Klarman (2004); Morris (1984); Rosenberg (1991).

[2] In my comments I focus on the impact of these legislative achievements for minorities. We should not lose sight, however, of equally important research that opened doors for women in the aftermath of the second wave women's movement. While a wide range of research shows that white women have made greater gains in employment than their minority, male and female, counterparts, much remains to be accomplished to reach full parity and equality (see e.g., Gornick and Jantii 2014).

judges, tend to defer to employers who can show that their organizations have various antidiscrimination policies on the books, regardless of the adequacy of those policies to actually ameliorate discrimination.[3] Their work and that of others (Dobbin and Sutton 1998; Kalev and Dobbin 2006; Kalev, Dobbin, and Kelly 2006) challenge the claim that organizational compliance structures are adequate to address individuals' claims of workplace discrimination.

Turning to broader trends in employment shows that in the United States beginning in 1960 through 1972 there were widespread and significant gains for African Americans and, particularly for African-American men. Between 1972 and 1980, this pattern continued for black men, black women, and white women. After 1980, however, there was a significant decline in gains for black men and black women, while gains for white women continued through 2000. Together, these patterns suggest a "Golden Era" in workplace integration between blacks and whites from 1972 to 1980; by 1980, with the election of Reagan these gains came to an abrupt halt (Stainback and Tomaskovic-Devey 2012).[4]

An analysis of black–white employment integration is incomplete without also weighing the impact of a policy move to impose harsher penalties for various crimes, particularly drugs (Provine 2006). A policy move toward increasing the criminalization of petty crimes and its impact on incarceration eroded many of the gains that had been made toward racial workplace integration, particularly for black men (Western and Pettit 2010). Indeed, Pettit and Sykes demonstrate that, by omitting inmates, "conventional labor force statistics significantly overestimate the labor force involvement of African-American men, and young black men in particular" (2015: 600). Whether at the level of the individual who files a claim of discrimination or at the level of broader trends toward workplace integration, there is good reason to be somewhat cynical about the power of law, regulation, and policy to ameliorate workplace segregation or to "extinguish cultural stereotypes" of suitable prospects to hire (also see Pager 2008; Stainback and Tomaskovic-Devey 2012: 293).

[3] To foreshadow points in the conclusion in their 2015 article, Krieger et al. take up the question of policy implications of their findings and speak to judges and defense lawyers—an important recognition of the ways in which our scholarship can make contributions to pragmatic policy.

[4] The pattern for white women is different and shows that gains continued to be made even during the Reagan administration and beyond (Stainback and Tomaskovic-Devey 2012).

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Housing

Over the last several decades, surveys of Americans show greater tolerance for blacks and other ethnic minorities; yet, we continue to live in "hypersegregated" cities and communities (also see Massey 2007; Massey and Denton 1993). Despite these stalled patterns many of us have assumed, however, that the worst features of resistance to housing integration, including harassment, and cross and house burnings, were put to rest. In her important book, Bell (2013) sheds light on what she refers to as the "tolerance-violence paradox." Through careful reading of cases, Bell shows that the contours of "move-in violence" have shifted from group or mob based violence often accompanied by massive protests of the precivil rights era to violent acts that tend to be performed by a lone individual. Bell's work reminds us that stereotypes of African Americans and claims about their impact on neighborhood values remain prime motivators for those who engage in violence to challenge integration.

In his exhaustive study of housing patterns more generally, Sharkey (2013) asks, how did the children of the civil rights movement fare? Did the HRA alter their life chances to live in more integrated neighborhoods to provide children with what all parents want—good schools, safe places to play, and opportunities to thrive in the next generation (also see Massey 2015). Sharkey corroborates Wilson's earlier work (1987), which shows that a trend toward housing integration during the 1960s—when, in response to a relatively strong policy commitment to affirmative action, the black middle class grew and its beneficiaries enjoyed the opportunity to move to the suburbs to escape the perils of deindustrialization—was somewhat exceptional to the decades before and after. Sharkey argues, however, that our current challenge is not just one of hypersegregation "*but that the same families have experienced the consequences of life in the most disadvantaged environments over multiple generations*" (p. 26; italics in original). Time and place matter: "African Americans are not able to translate economic resources to spatial advantage to the same degree" as their white counterparts (Sharkey 2013: 115), with attendant consequences for, among other factors, educational opportunity, social mobility, and good health over the life course.

As stark as these findings on housing integration are, research by criminologists and socio-legal scholars suggests that the picture may actually be even bleaker. We draw our findings on housing patterns based on government efforts to collect data for those living in households, which does not, therefore, take into account the expansion of the criminal justice system since

the 1970s and its impact on where large proportions of blacks, particularly young black men, reside for long periods of time (Pettit and Sykes 2015). Not only does time spent in prison have consequences for securing a job postrelease (Pager 2008; Pager, Western, and Sugie 2009), voting (Manza and Uggen 2006), and jury service (Binnal 2009), but it also excludes one from being counted by federally sponsored surveys of the American population, which leads to under-reporting of just how "hypersegregated" American society has become.

Voting

Pedrina and Stryker (2014) persuasively argue that what distinguishes the VRA from Title VII and HRA is the statute's language, which took account of "group-based effects" by relying on "an effects-based test and statistical 'trigger' to *legally define* voting discrimination" (p. 22; emphasis in original). Further, as we were recently reminded in *Shelby v. Holder* (2013), Sections 4(c) and 5 required the Attorney General to "preclear" any proposed changes in voting procedures in designated states and cities. In the case of voting, then, and in contrast to other achievements of the civil rights movement, legislation to extend voting rights to African Americans took account of what we all seek to teach our undergraduates in an introductory sociology or law and society class: inequalities are embedded in structural and systemic processes. Despite the achievements of the VRA, research by criminologists reminds us that state-level laws that place limits on whether current or former felons may vote have had practical consequences for the outcome of elections not to mention the commitment to civic engagement to protect the fragility of democratic and egalitarian values (also see Burch 2011; Manza and Uggen 2006).

A recurrent theme across these studies documents a major political shift after 1980, an attendant diminution in any commitment to reform, and an expansion of incarceration and its consequences for individuals and their families. It's fair to speculate that it became incredibly hard to *find* interested policymakers who share a political agenda and take seriously the ways in which socio-legal scholarship may inform agenda setting.[5]

[5] In this regard, Haltom and McCann (2009) present the challenges that law and society scholars have confronted in challenging the basic premises of the tort reform movement which claims steep increases in case filings of frivolous law suits when closer scrutiny suggests otherwise.

The dramatic shift in the political landscape over the last several decades coupled with findings explaining the limited impact of law, policy, and regulation to ameliorate inequality and racial segregation capture a very disheartening picture of how far, or how little, we have come. As socio-legal scholars we are ever mindful of the symbolic power of law's promise to insure an equal and equitable society as well as law's role in reproducing those very inequalities. Political scientists remind us that policies are crafted through the art of the possible—and, what has been possible has been woefully inadequate.

One might argue that there's little reason to have hope that our scholarship can effectively confront these problems. Yet to be cynical about the power of interdisciplinary law and social science scholarship is to concede ground to the trend of growing inequalities in employment and residential opportunities, the consequences of incarceration, and its collateral pernicious consequences for future generations (Nichol 2000). To be silent is to accept the often-overlooked collective voice of citizens who continue to challenge the politics of the status quo (see e.g., McCall 2013).

What our scholarship has to say to advocacy and policy stakeholders

There are many examples of our collective expertise that I might point to, but let me share a few that are close to my own research, including policing, access to justice, the professions of law, and regulation.

Policing

The events of the last year or so in Ferguson, New York City, Cleveland, Baltimore, and other cities have raised the temperature of debate about policing in the United States to a new level. In May 2015, I was asked to share my research on police misconduct (Seron et al. 2004; Seron et al. 2006) with a group of sheriffs at the LA County Jail; I was invited because the findings from my research show that even in the face of excessive misuse of force, officers' use of obscenity and ethnic or racial slurs remain highly salient in citizen evaluations of the seriousness of misconduct and appropriate level of punishment. I was quite nervous about speaking to a group of officers about police misconduct, though it prepared me for today; we nonetheless enjoyed a remarkably candid and open conversation about the ways in which language matters.

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While there is public debate about the causes and consequences of police profiling of black and other minority communities, *Pulled Over* by Epp, Maynard-Moody, and Haider-Markel (2014) makes a gesture typical of one thread of law and society scholarship and argues that the causes of disparities and outcomes for white–black police encounters are institutional, structural, and cultural. In describing the "rules," they show that guidelines for "investigatory stops" give officers wide latitude to make discretionary decisions to stop a vehicle for probable cause; by contrast, traffic stop guidelines outline specific types of driving violations. Further, their findings show that discretionary "investigatory stops" are institutionalized through practice and training that become part of the regular, day-to-day, taken-for-granted culture of police work. Drawn from a sophisticated survey that is complemented by rich and open-ended stories from respondents, their findings show that the race of the driver predicts investigatory stops and, captured in powerful words by those affected, the multiple forms of intrusion and verbal hostility that too often follow. In marked contrast, they find that the race of the driver has no predictive value in explaining traffic-safety stops nor are there notable differences in the way that respondents describe these stops beyond being caught for the aggravating mistake (p. 113). Not only do investigatory stops impose "substantial" and "unrecognized" costs on African Americans, the benefits of this practice in terms of reducing crime are modest at best. Based on this careful analysis of the culture and institution of policing and its consequences, they propose that all police departments should take steps to end the practice of investigatory stops, implement oversight practices to enforce the new practice, and rewrite guidelines to prohibit stops except in those instances where there is *clear* probable cause that a crime has been committed. In view of the complex linkages between policing, courts, and incarceration, they acknowledge that this is a modest, if pragmatic, policy proposal. Derived from systematic and rigorous analysis of data, the proposed policy may persuade even skeptical police chiefs.

Access to Justice

A hallmark of law and society scholarship has been a focus on the types of legal troubles citizens experience and the ways in which they seek remedies for those troubles.[6] For those who do

[6] In Calavita's and Jennesss (2014) recent book, *Appealing to Justice*, their findings raise important challenges to a long held finding in law and society scholarship that most claims are "lumped." In the context of prisoners' grievances, they show that prisoners continue to file claims concerning their conditions of confinement despite the high odds of losing.

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not "lump" or settle their dispute (Felstiner et al. 1980), our scholarship has shown that citizens encounter courts and administrative agencies that are "locally shaped and culturally entwined in place and setting" organized around legal teams and administrators that collaborate and negotiate to close the docket (Seron and Silbey 2004: 39). A recurring theme from this line of research has shown that, to borrow Malcom Feeley's (1979) phrase, "the process is the punishment." In complex, if unintended, ways, local legal institutions are often structurally complicit in reproducing inequalities of gender, race, and class (for a review see Sandefur 2008).

Among citizens' legal needs, housing tops the list (Sandefur 2008: 340); for low-income individuals housing troubles often translate into eviction and homelessness (Desmond 2012a; also see Desmond 2012b; Seron et al. 2001). Recent research has taken a structural and cultural approach to explaining whether the rules and practices of eviction have differential effects in poor and wealthier neighborhoods. Residents of poor, urban neighborhoods experience higher rates of residential mobility than their wealthier counterparts. In an insightful study, Desmond (2012a) asks whether eviction is a mechanism in an explanation of residential mobility? Succinctly, his findings show that "in poor black neighborhoods, eviction is to women what incarceration is to men: a typical but severely consequential occurrence contributing to the reproduction of urban poverty" (p. 88). Using court data and a household survey of Milwaukee, Desmond's findings show that in predominantly black neighborhoods women are more likely to be evicted than men and that the overall level of eviction is higher than it is for men or women in predominantly white neighborhoods. Through ethnographic data, Desmond movingly delineates the complex ways in which racial hierarchies are systematically reproduced in interactions between often-white landlords and their black female renters when something happens and the rent cannot be paid or the landlord fails to make a repair. Policy makers have focused on "neighborhood dissatisfaction, gentrification, and slum clearance" (2012: 90) in explanations of residential mobility in poor neighborhoods; Desmond's findings add a fourth mechanism: systemic eviction and the role of courts and administrative agencies in that outcome. Desmond concludes with two messages to policy makers: as a stop gap measure, a policy of providing representation in a housing dispute for poor people can makes the difference between a roof and homelessness; longer term, of course, "the most powerful and effective

eviction-prevention policies [will be] tried-and-true affordable housing initiatives" (p. 123).

The Professions of Law

Perhaps not surprisingly, the legal profession has been the subject of a significant body of scholarship (Levitsky et al. 2015). An important thread in this work has focused on, for example, the changing gender and racial composition of the legal profession and attendant mobility patterns.[7]

While questions remain to be answered about the status of women and minorities in the professions of law, for my purposes here I would like to turn this question around and point to a small, but important, body of emerging work that has asked, what are the consequences of affirmative action for social justice?

> How does "leveling the playing field affect those who are subject to the coercive power of the state," in, for example, sentencing outcomes?
>
> (King et al. 2010: 27)

Among those who examine racial disparities in sentencing, there has been contentious debate about whether and to what extent the racial and ethnic composition of the state or county in which the case is decided is a significant factor. Borrowing from research on workplace stratification that shows that, among other factors, wage gaps decrease as the proportion of women increases, King and coworkers ask whether disparities in sentencing may be a function of the proportion of available minority attorneys in a community. After controlling for a range

[7] Indeed, Levitsky and coworkers (2015) have shown that the *Law & Society Review* has devoted significant space to research on the legal profession.Complementing broader patterns of stratification in American society in the aftermath of the CRM and the women's movement this scholarship reveals the ways in which integration is stalled, particularly at the pinnacle, where lawyers of course are positioned to be most influential. On balance, there has been much more research on the status of women compared with that of minorities reflecting, in many respects, their relative success to that of minority men and women.Reflecting the significant change in the gender composition of the legal profession and its attendant impact on the composition of the judicial bench, political scientists have examined whether the presence of women [and minorities] makes a difference in the outcome of cases. Here, the evidence suggests that the presence of women on state supreme courts tends to favor women's issues in cases involving, for example, "child support, sex discrimination, sexual assault, birth control, and property settlement on divorce" (Kay and Gorman 2008: 321–322). At the federal appellate level, studies have shown that women are more likely to be persuaded by the issues facing female plaintiffs in employment cases involving sex discrimination (ibid.) Beyond their own positions on cases, findings also suggest that women's presence on an appellate panel may influence their male colleagues to rule in favor of the plaintiff in discrimination and other employment law cases.

of typical factors in sentencing scholarship, their findings show rather unequivocally that "racial diversity in the bar results in less racial disparity in criminal sentencing" and lends support to the claim that "substantive representation—having more persons of color making decisions in criminal courts (the justice system)—can minimize racial disparities in criminal courts" (p. 26).[8]

Mindful that lawyers are by no means the only actors in sentencing decisions, King and coworkers suggest that future research might build from this finding to specify the "court context," a theme that is taken up by Ward, Farrell, and Rousseau (2009) as they return to a foundational theme in law and society scholarship, the culture of the courtroom workgroup. Here, they add a twist, however, to ask does the racial composition of the courtroom workgroup—for these purposes judge and prosecutor—play a role in federal sentencing decisions? While increasing the racial and ethnic diversity among legal decision makers is inherently valuable for the legitimacy of the institution, there is also an expectation that it will enhance substantive outcomes that are revealed in reduced racial disparities. The research on the racial identity of a judge on sentencing outcomes reveals mixed findings, but they add to this puzzle by factoring in the race of the prosecution. Ward et al.'s work demonstrates the challenges of empirically testing this proposition. Nonetheless, their findings corroborate prior research that has shown no relationship between black judge representation and sentencing outcomes; conversely, their findings do show that with increased black representation among prosecutors, and to a lesser degree among judges, there is a decrease in racial disparity in sentencing outcomes.

Regulation and Legal Mobilization

If we accept a basic premise of our collective expertise that law is a process of interpretation and contingency, how do we build from that to ask: under what circumstance does law make a difference? Barnes and Burke provide one example by conceptualizing and measuring a process that includes "understandings of

[8] This leaves open the question of whether the race of an officer or the racial composition of a police force affects police-civilian encounters. For a summary of this research, see the National Research Council's report on *Fairness and Effective in Policing: The Evidence* (2004). The NRC report finds that research shows that there is no significant race or gender effect in an explanation of police-citizen encounters. A more recent study in Cincinnati, OH suggests that, based on an observational study, that there are significant differences between White and African-American officers in the decision to arrest (Brown and Frank 2006). Whether and to what extent the findings by Brown and Frank is replicated in other cities remains a question ripe for analysis.

law, organizational practices, *and* tangible outcomes" (2012: 176; emphasis added). They select a very specific and observable area of regulation, the Americans with Disabilities Act (ADA's) provisions on access and specifically wheelchair access. It is their attempt to take seriously the question of "tangible outcome," or degrees of actual accessibility, that makes their work important for the pragmatics of policy. To explain whether this regulatory provision makes a difference in access, they move beyond law and society and neo-institutional theories of organizations to take seriously law and economics' focus on compliance. Their empirical case shows that explaining outcomes requires a complex conceptual lens that moves from "commitment" to embrace the law's meaning and goals to "professionalization" by creating procedures and policies to guide implementation to "routinization" of the law in the day-to-day operations of an organization (p. 171). Their findings may not be what policy makers would like to hear because they show that the outcome—wheelchair access—is dependent on a complex chain of priorities; though they find that in some instances "an emphasis on deterrence and punishment... is likely important," more typically change on the ground takes a combination of commitment, professionalization, and routinization backed up by line items in the budget.

Barnes and Burke's comparative case study of ADA adoption of wheelchair access regulations also shows that agency, individuals in key locales within organizations who take the goals and meaning of the rule seriously, is necessary but not sufficient in an explanation of outcome. The role of agency is also highlighted in Heimer and Gazley's (2012) study of HIV clinics at multiple sites in the United States and abroad. Their unit of analysis is the regulatory encounter, or the point at which regulators conduct site visits of HIV clinics, a site, they explain, that oozes with legal indeterminacy and oversight by multiple agencies. Through participant observation and interviews at clinics in the United States and abroad, their research challenges findings that show that at this basic level, regulations are synonymous with ritualism or ceremonialism. Rather, they find that when regulators are able to establish trust with regulatees they are "willing to perform together" and to engage in an "improv performance" that encourages both parties to negotiate and collaborate to gain knowledge about a clinic's compliance with those rules. There are at least two levers embedded in this study that can inform policy. First, where trust is available, enforcement can be performed in a meaningful way. Second, and perhaps more challenging, trust between regulators and regulatees are more difficult to establish across "cultural"—and, I would infer class, divides.

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I read each of these studies, and there are of course many others I could point to, as examples of *engaged scholarship* because, if in different ways, each example moves the conversation beyond a critique of the limits of law to suggest mechanisms for policies on the ground. In keeping a promise to tease out a situated, pragmatic policy, they share a number of common characteristics.

First, each of these studies is deeply and richly interdisciplinary, drawing upon a range of scholarship across the social sciences; these studies remind us that it is important, indeed essential, to avoid being swept into the vortex of ever-narrower specialization within the social sciences or the law.

Second, each of these studies deploys sophisticated and incredibly careful methodologies, often combining quantitative and qualitative work, that meet a "gold standard" of transparency; that is, we are told *how* the researchers reached their respective conclusions. In so doing, these counterintuitive findings enjoy a persuasive resonance because we can imagine replicating the study and getting the same results.

Third, as C. Wright Mills (1959) taught us decades ago: language matters. Each of these examples, and you will have to trust me on this if you have not read them, are carefully written, avoiding the pitfalls of jargon without compromising sophistication.

Finally, and I certainly do not mean to fault these wonderful authors, their scholarship is relevant and useful to policy makers, but it is less clear that it has been visible or had an impact on policy making.

So, we are left with the challenge: How do we explain our research findings not just within our own community of sociolegal scholars, but to those who think about and write policy, rules, and regulations in the multiple sites where law and society meet? If we do not take the plunge to derive "pragmatic policy" from our research, others certainly will—and they often do not appreciate or understand the complexity entailed in teasing out policies and practices that have some promise of ameliorating or avoiding unintended consequences.

How We Might Engage with Stakeholders

Last year, Nicholas Kristoff wrote an op-ed entitled, "Professors, We Need You!" (2014). It's a bit of a nostalgia piece for the "good old days" when university professors were proud to be public intellectuals and more deeply engaged by the pressing issues of the day. Nonetheless, there are a number of important takeaway messages. Many academics frown on public comment, finding it a bit beneath them, he writes; we have all certainly heard this in our own corridors. Academic culture tends to use too much jargon and to "glorify arcane unintelligibility while disdaining impact and

audience." He concludes by saying, "professors, do not cloister yourselves like medieval monks—we need you!"

In my closing remarks, I would like to make three points. First, I suggest that there are in fact ways in which scholarship that can have cloistered origins may find its way into public debate and policy. Second, I take up Kristoff's challenge to propose some preliminary thoughts toward how we might take seriously the importance of audience and impact. Finally, and in closing, I critique my own position: I have focused on the laws, rules, and policies that motivated my career and commitment to socio-legal scholarship. But, we have much to learn from our law and society colleagues who take their scholarship beyond U.S. borders; in doing so we may begin to reframe *how* to think about the breadth of policies and rights that will be fundamental for a vibrant democratic polity going forward.

The Value of Cloistered Scholarship

In some instances, research that is visible and impactful may have obscure origins. At the 2014 LSA meeting, I was reminded of this while listening to Wendy Manning describe her work for the American Sociological Association's *amicus* brief in anticipation of the Supreme Court's decision to hear arguments on the Defense of Marriage Act (*Windsor v. U.S.)* and California's voter approved Proposition 8 (*Hollingsworth v. Perry*). Manning and coworkers reviewed research published between 2002 and 2012 to assess whether child well-being varied for children raised in same-sex and different-sex parent households. Based on a systematic review of the research, they concluded that there is a "clear consensus in the social science literature indicating that American children living within same-sex parent households fare just as well as those children residing within different-sex parent households over a wide array of well-being measures" (Manning, Fettro, and Lamidi 2014: 485).

Last year, then Attorney General Eric Holder (2014) announced reforms in criminal sentencing that rested, in many respects, on the cumulative evidence of cloistered research. In staking out this position, he referenced the evidence that shows that longer prison terms and higher incarceration rates do not reduce levels of crime. To quote him, "statistics have shown—and all of us have seen—that high incarceration rates and longer-than-necessary prison terms have not played a significant role in materially improving public safety, reducing crime, or strengthening communities." To be sure, this was perhaps too little, later in the game than we would like. But, I flag it here because it was the work that some here today did

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that gave him political leverage to propose these reforms, particularly around nonviolent drug offenses.

In each of these instances, one study, taken alone, would be insufficient to make broader claims about high stakes, politically controversial issues. Rather it is the cumulative evidence, replicated across multiple studies organized around a collective enterprise among scholars that lay the foundation for persuasion and impact. It is normal science in dialogue with itself that produces cumulative and strong findings over time (Kuhn 1962). These are, then, instances when research may have significant policy consequences though that may not have been the intention of its authors.

The engaged research, I have discussed earlier may not as easily lend itself to one or another of these paths to the public arena. How then to move our research from the scholarly journal to a broader public?

Audience and Impact

As faculty, there are many competing demands on our time; this is particularly true for newly minted scholars beginning their careers. Even if we have the time, however, we have not been trained to speak to journalists or the public about our work or to translate the complexity and subtlety of our research to a broader audience. How do we build from a scholarly foundation organized around rigorous standards of peer review to speak to a broader audience and practical impact? Here, I propose some preliminary suggestions, but with the expectation and hope that others will take up the challenge.

Last year, LSA took a step in this direction when we decided to become a cosponsor of the Life of the Law (LOTL), a project initiated by the Open Society Institute. LOTL just received a two-year grant from the National Science Foundation to support its efforts to bring social science and law to a wider audience—one might say, to aid us in doing translational science. LSA's seed money no doubt helped in securing the NSF funds. As many of you know on May 20, the House passed America Competes (Reauthorization Act of 2015), which proposes to dramatically cut funding social and behavioral science, including law and social science; we can only hope that the Senate is wiser. Whatever the outcome of NSF funding, efforts like LOTL become all that much more important in a context where elected officials do not grasp, understand, or appreciate the value of social scientific research.

The producers of LOTL podcasts love law and society precisely for the ways in which we push the listener to think about legal matters differently. Over the last several years, the editors and producers of LOTL have held multiple workshops for LSA

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attendees to pick up some tips on talking to the media.[9] By last count, LOTL had over 90,000 downloads of biweekly podcasts per month! That's a pretty impressive "impact factor" compared with many of our journal publications. I invite you to check out these podcasts and perhaps revise your notion of what constitutes an "impact factor" in tenure or promotion decisions. Let's also remind our colleagues that these forms of impact should be taken seriously in the tenure and promotion process. I am very proud of the LSA Board's decision to embrace this effort at translational science. To the best of my knowledge, LSA is taking the lead and providing a model for other learned societies. LOTL is a work in progress and open to our suggestions through LSA Trustee and Editorial representation on their Board. I am not sure what the next mode of communication will be, but you may get a hint from your students, your children, and your grandchildren. *How* we communicate is as important as *what* we communicate.[10]

We also need to rethink how we relate to nonscholarly audiences.[11] The American political landscape, the one I know best, is, as evidence from multiple sources makes clear, incredibly polarized. Without compromising our scholarly commitment to "speak truth to power," it's time to build bridges to policymakers and a wider array of interest groups where the results of our research may inform the writing *and* implementation of policy. We can actually learn *how* to build these bridges as several decades of research has shown that *networks* and *fields* are incredibly important for the cultivation of social capital. I realize that building those networks takes time, and trial and error, and that it is not necessarily recognized as an important contribution when tenure and promotion decisions are on the table. For those of you who have not had the opportunity to share your work with a wider audience, it is a humbling, challenging, and incredibly gratifying experience. And, again, as we write tenure letters, we might begin to comment on

[9] At its upcoming meeting in September 2015 the American Political Science Association will be holding a one-day workshop for members entitled "Political Science and the Public Arena: Communication Strategies for Scholars." In a similar vein, the American Sociological Association will hold a "Social Media Pre-Conference" at its 2015 meeting in Chicago. The challenge I raise here is, it appears, being felt among other disciplinary communities as well.

[10] Kitty Calavita, who read an early draft of my talk suggested that LSA might consider creating an award for contributions to engaged scholarship, or perhaps policy relevant research—an award that many other scholarly associations give. LSA might, as Kitty suggested, give this award on an ad hoc basis. I leave it to my successors to think about this suggestion.

[11] We might also join others in the Scholars Strategy Network, a website committed to "research to improve policy and enhance democracy." See Available at: http://www.scholarsstrategynetwork.org (accessed 6/9/2015). I thank Bryan Sykes for bringing this to my attention.

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the degree to which a scholar's work is engaged by a commitment to translational law and social science, broadly conceived.

Laws, Policies, or Rights?

In a recent article, Levitsky and coworkers (2015) remind us that at its founding 50 years ago, law and society scholarship cast a much broader net around our field, particularly with its concern to explain the potential impact of emergent distributive policies of the 1960s. But, they show, over the last several decades, law and society scholars have conceded the study of rights embedded in distributive policies, such as taxation, health, and welfare, to the emergent field of policy analysis. As measured by systematic analysis of articles appearing in *Law & Society Review*, they show that the first generation of law and society scholars devoted significant space and energy to distributive policy, but that for various reasons the concept of "policy" dropped off our collective radar screen. In conceding this terrain, much of the academic and public debate around distributive policies is analyzed through the lens of the relatively new field of policy analysis, including cost-benefit analysis and other narrow metrics of policy evaluation.

We require a much more robust vision of rights to include, for example, decent housing, income, and health. Our legal tradition of liberal legalism creates blinders that make it difficult to see beyond the rights we take for granted—even as we recognize that they are hardly secure. In struggling with this talk today, I have come to appreciate, again, the ways in which my intellectual biography is, in many respects, limited and parochial, particularly in light of the issues that originally motivated my research career.

It is in this spirit that I note how much we have to learn from scholars who examine the struggle for rights in very different political and legal traditions and contexts. We can lift the blinders through explicit and implicit comparative research. There are many examples, but in closing let me just highlight a few. Chua's (2012) study of gay collective action in Singapore situates the study of rights in a repressive state where activists, she finds, engage in various forms of "dancing pragmatic resistance" or a balancing act "between 'pushing boundaries' and 'toeing the line'" (p. 723). Her findings highlight two themes that speak back to those of us in more liberal democracies: while law "offers hope as a source of contestation," it also matters as a source of limitation, discipline, and oppression to, in this case, the right to sexual expression.

Law's power to oppress is profoundly in evidence in Massoud's recent book, *Law's Fragile State* (2013). Massoud's close

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reading of "legal politics" in war-torn, postcolonial Sudan takes us to the brink of our aspirations and ideals about whether law may serve to liberate the poor in the aftermath of decades of autocratic rule. Much more than the hope and aspiration of law's promise is needed, Massoud argues, when basic services, from health clinics to schools to clean water and electricity, are absent. Indeed, Massoud suggests that a strategy of legal empowerment really only contributes in Sudan by providing jobs to workers in the program, certificates to graduates, and meals to participants—hardly empowering through rights. Sudan's story is hard to swallow for those of us who have long held to the promise that law, policy, and the struggle for rights may open pathways for alleviating poverty and oppression.

Engaged research shows that a rights strategy might not be the best social policy in particular social contexts. But consider whether there are contexts where we may have given up on rights too soon, and we might ask: what if we had stayed at the table in the 1980s and beyond to theorize housing, health, education, or environmental security as *rights* necessary to participate and shape the body politic and the inevitable paradox of the rule of law? What if we had taken a cue from the founding generation of law and society and stayed at the table to theorize and demonstrate empirically the ways in which a more robust framework for the analysis of rights is foundational? Is it possible that at this point we could report very different findings around fundamental levers of structural inequality, from employment to housing to participation in governance? Would we have been able to place obstacles in the path of mass incarceration and its collateral consequences? While it is late in the game, it is never too late. Let us be committed, not just to relevant and useful research, but also to visibility and impact as core elements of our scholarly agenda.

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