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Law & Society Review at Fifty: A Debate on the Future of Publishing by the Law & Society Association¹

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This contribution presents a series of statements on the future of publishing by the *Law & Society Review* and the Law & Society Association generally. Framed by the first author's introductory and concluding comments are contributions by Halliday, Liu, Morrill, Seron, and Silbey. This debate, based on a LSR 50th anniversary panel held at the 2016 Annual Meeting of the LSA, is intended to open up a broader conversation among members of the Association. Positions by individual contributors can only be linked to them and not to the group of contributors.

Introduction to Reflections by Morrill, Liu, Silbey, Halliday, and Seron

By Joachim J. Savelsberg, Co-Editor, University of Minnesota

The year 2016 witnesses the 50th anniversary of the *Law & Society Review*, and the occasion warrants celebration. Introducing Volume 50, Timothy Johnson, my co-editor of the past 3 years, and I used our editorial comments to spell out some of the reasons (Johnson and Savelsberg 2016). They include the massive increase in submissions in recent decades and years to almost one per day by the early 2010s. Such flow of submissions is indicative of the journal's prestige, its recognition as the prime outlet for socio-legal scholarship. Importantly, many of those who submit are young scholars.

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¹ Inclusion of this set of reflections in the LSR did not affect chances of acceptance of submitted papers. It is justified by the availability of pages after the editorial decision process was concluded. It was demanded by the importance of these reflections for the future of the journal and publishing practice of the Law & Society Association. References for this introduction and for all five contributions are listed at the end of the collection.

For them publishing in the LSR is obviously an important step toward building a reputation in the field of socio-legal study, gaining access to academic positions and earning tenure. Prestige is also reflected in the impact factor, which is higher than that of any other socio-legal studies journal. I see further reason for celebration in the global nature of the journal's content. Our recent editorial introduction presents the impressive list of research sites in the Americas, Africa, Asia, Europe, and Australia which authors have investigated in recent years.

It was with such celebratory intent that I organized, for the 2016 Annual Meetings of the Law & Society Association, a distinguished panel, consisting of three presenters: Calvin Morrill, Sida Liu, and Susan Silbey, and two discussants: Terry Halliday and Carroll Seron. The event, however, was not just about celebration. Panelists were also asked to critically reflect about the present state and future development of the journal specifically and publishing efforts of the LSA in general. Such reflection is warranted for any institution that seeks to maintain its standing in a constantly shifting institutional and socio-political environment. I thus asked the panelists to address several issues regarding the nature of scholarly work, inspired by Randall Collins' (1998) seminal work on the nature of intellectual change:

1. Socio-legal studies are one area of scholarly production. The nature of that production has changed since the LSR was founded 50 years ago. How, in your mind, has it changed, beyond the massive growth in contributions?
2. The nature of socio-legal scholarly networks has changed. What was a rather intimate circle of scholars, *Gemeinschaft*-like, engaging in face to face interaction, coordinating the production for the early volumes of the LSR, has become *Gesellschaft*, a much larger group of contributors, with only limited face-to-face familiarity but instead substantial disciplinary, substantive, and methodological differentiation.
3. The institutions within which knowledge is produced and disseminated have changed, and the socio-political-economic environment has undergone dramatic transformation. What changes are relevant in our context, and what are the consequences for the LSR?
 - 3a Regarding the institutional context, consider, for example, the increase in the number of socio-legal journals, each with its own place in the social ecology of specialized outlets. At the same time, socio-legal studies have only rarely generated their own academic units. This situation differs from that of neighboring fields such as criminology and criminal justice studies, where the development of

specialized departments and colleges did take place and impacted the nature of scholarly production (Savelsberg and Flood 2004, 2011, Savelsberg, Cleveland, and King 2004). But then criminology and criminal justice studies contribute substantially to socio-legal scholarship as a perusal of recent LSR volumes shows.

- 3b The socio-political-economic environment has also changed during the past half century. Which of those changes have a bearing on scholarly institutions in our field? Consider, for example, the decline of social movements that inspired early socio-legal scholars, challenges to the welfare state, the end of the Cold War, new threats to global stability, intensified globalization, and the emergence and strengthening of new international legal institutions.
4. What practical consequences might be deduced from such analysis: for the LSA, for the work of LSR editors, for publishing practices of the Law & Society Association?

Each contributor to the 50th anniversary panel focuses on different aspects of this set of questions. Calvin Morrill provides us with a most helpful empirical baseline, resulting from a content analysis of LSR contributions in recent decades. Sida Liu highlights the merits of theory contributions in socio-legal scholarship and demands that their position be strengthened. Susan Silbey's comparative observations on science studies and socio-legal studies lead her to some provocative conclusions and demands for future socio-legal scholarship. In their responses Terry Halliday and Carroll Seron add their own positions to the mix of voices. Halliday urges us to widen our vistas, "to go well beyond LSR as it now exists," and he outlines new directions in which LSR and LSA might travel during a second half century. Seron draws on her recent experience as LSR editor and LSA president to raise new questions and suggest answers.

I will add my own voice to the partially conflicting positions in a postscript to this exchange, supplementing it by voices from the audience, especially Lauren Edelman, Malcolm Feeley, Bert Kritzer, and Joe Sanders. But here are, first and foremost, the voices of the five distinguished members of the 50th anniversary panel who warrant no further introduction:

Change Disguised as Continuity in Studying Law and Society? Evidence from the *Law & Society Review*, 1966–2015

By Calvin Morrill, University of California, Berkeley

In 2000, Susan Silbey noted that the regular, quarterly appearance of the 34 *Law & Society Review* volumes to that year

signaled “change disguised as continuity” (2000: 861). She made this claim on the occasion of her last issue as *LSR* Editor and in a brief report of a collaborative content analysis of those 34 volumes. Among the changes she reported were “numbers of authors per article, more citations, and more acknowledgements to the contributions and suggestions of others,” suggesting a “more interactive community” (Silbey 2000: 860–861). She also reported increasing methodological and authorial gender diversity coupled with the enduring dominance of sociologists, political scientists, and law professors (Silbey 2000: 864–867).

Rick Abel (2010) more recently reported on the first and last 13 years of the *LSR*, ending in 2009. He qualitatively tracked the tendency during the first 13 years to study the impacts of law on social behavior and the behavior of legal institutions, such as courts and police. In the last 13 years, he detected a cultural turn towards legal narrativity, an inequality turn toward legal mobilization by subordinated groups, and a legal pluralism turn (Abel 2010: 13). Silbey and Abel piqued my curiosity about how *LSR* authors over the years positioned law vis-à-vis society, and what this tells us about how the field, through the journal, has conceptualized *law* and *society*. My evidence comes from a ten percent systematic random sample ($n = 133$) of 1,326 research articles published in the *LSR*, 1966–2015.² Some of what I found parallels Silbey and Abel, and some does not, but my intent is not confirmation, only exploration and provocation.

During the first 13 years of the journal (1966–1979), authors drew the boundaries between law and society with relatively bright lines. The majority of articles in this period defined law as formal legal institutions, focusing on courts, police, juries, and judges. U.S. criminal justice loomed large, although civil litigation figured nearly as prominently. A handful of pieces focused on legislation and the legal profession. Theoretically, “society” appeared as everything falling outside the parameters of legal institutions, most often as ascriptive variables in predictive frameworks or arguments about the constraints on law posed by geographic (e.g., city, occasionally country) and historical contexts. Half the articles in this period use features of society to explain legal institutions as a dependent variable. Approximately one-third treat law as an independent variable, often attempting to explain individual-level change or constraint, such as the propensity to litigate or commit crime. The remaining pieces view law and society in feedback loops very close to the structural functionalism of the day. Interestingly, a little more than half the

² Within the sample, 35 articles are from 1966 to 1979, 51 from 1980 to 1999, and 47 from 2000 to 2015.

empirical articles use only quantitative methods (e.g., surveys, experiments, multivariate analyses of institutional data sets), one-third only use qualitative methods (e.g., in-depth interviews, historical analyses, ethnographic observation), and a little less than one tenth use mixed, qualitative/quantitative methods. Parallel to Silbey's (2000: 863) findings, one-tenth of the articles constitute what I would call "long-form" theoretical essays without empirical data.

The next two decades (1980s and 1990s) witnessed shifts consistent with what Abel (2011) found. Authors "decentered" law, treating it as cultural practices apart from or in the margins of formal legal institutions and in interplay with other normative systems (Morrill and Mayo 2015). The ascent of cultural and pluralistic theoretical turns blurred the distinctions between "formal" and "informal" legal institutions, and between law and society. This period witnessed a decline of articles treating law as either dependent or independent variables to about half of those published, and a dramatic rise in articles demonstrating, as Edelman (2004: 189) put it, "the endogeneity of law...the idea that the meaning of law is constructed within the social (and economic) realms that it seeks to regulate." At the same time, this period experienced an upsurge in articles focused on law and social change, social movements, and social inequality. Perhaps owing to the cultural turn, legal pluralism and the complexities of studying change, this period also witnessed a methodological shift toward using only qualitative methods (two-thirds of articles published), only quantitative methods (one-quarter), and a smattering using mixed, qualitative/quantitative methods. Again parallel to Silbey (2000: 863), the proportion of articles during this period constituting long-form theoretical essays checked in at one-tenth of the pieces published. With regard to authors, approximately one-third were women (consistent with Silbey 2000: 867) and less than one-fifth were affiliated with universities outside the U.S. Just over half the authors counted their primary academic affiliations as sociology, law, or political science, followed by criminal justice, anthropology, and other disciplinary and interdisciplinary scholars.

The patterns in the most recent period (2000–2015) reproduced many of the themes from the previous two decades with two shifts: the percentage of articles focused on non-U.S. comparative, transnational, and global contexts reached nearly sixty percent, and an increasing number of pieces examined either authoritarian or transnational legal regimes. How authors theoretically positioned law and society continued to stress mutually constitutive dynamics as in the previous two decades. Methodological diversity returned with 75 percent of articles using only quantitative or

qualitative methods, fifteen percent using mixed methods, and 10 percent as long-form theoretical essays. Women held steady at one-third of the authors, one-third of all authors held affiliations outside the U.S., and the primary affiliations of authors remained law (one-third of all authors), political science (one-quarter), and sociology (one-fifth).

My exploration points to both change and continuity in the *LSR* over the past 50 years. The journal faithfully appears in our inboxes quarterly and there is more than a little continuity in the professional and social identities of authors. But the theoretical and empirical bright lines drawn between law and society during its first two decades have been replaced by more dynamic and fuzzy notions. This latter development is ironic given Liu's (2016) observations about the consequences and dominance of what I would call "short-form" theory in *LSR* empirical articles, sandwiched between introductory and methods sections. He laments how other journals, such as the *Annual Review of Law and Social Science* or *Law & Social Inquiry*, have become much friendlier venues for long-form theory. My brief dive into *LSR* reveals remarkable continuity across the last five decades in the number of articles devoted to long-form theory (parallel to what Silbey found in the first 34 volumes). Yet I would concur with Liu that this is an important moment for the *LSR* to welcome more long-form theory as the field continues moving into empirical contexts not previously or regularly studied, using new methods, and becoming more internationalized with increasing numbers of authors drawn from outside the U.S. In these developments are increasingly generative, even unexpected, interactions between theory, data, and inference. Perhaps more important, the key issue for the future of the field and *LSR* will not be the form that theory about law and society takes, but its insight.

Preserving Theory as a Form of Sociolegal Writing

By Sida Liu, University of Toronto

Marc Galanter's (1974) "Why the 'Haves' Come Out Ahead," one of the most influential law and society articles, had a hard time getting published in the early 1970s. The paper had been rejected by many law reviews and social science journals before Galanter, as the editor of the *Law & Society Review* (*LSR*), included it in a special issue in 1974. Every time I taught this seminal essay in my class, I could not help but wondering—would it pass the peer-review process and be published in today's *LSR*? Probably not. After all, it was merely a set of theoretical speculations without the support of any empirical data.

Galanter's essay is the most cited LSR article of all time—according to Google Scholar, it has been cited for nearly 4,000 times by June 2016. As a matter of fact, the five most cited LSR articles are all theoretical essays: Felstiner, Abel, and Sarat (1980–) on the transformation of disputes, Merry (1988) on legal pluralism, Teubner (1983) on the substantive and reflexive elements in modern law, and Moore (1973) on the semiautonomous social field in addition to Galanter (1974). However, this form of sociolegal writing has largely disappeared from the LSR in the early twenty-first century. When Susan S. Silbey was the LSR editor, she analyzed the first 34 volumes of LSR from 1966 to 2000 and noted that “[t]he desire for a distinctive paradigm for law and society research or a ‘coherent theory’ . . . is less often heard today” (Silbey 2000: 870). A decade later, Richard L. Abel read more than 300 LSR articles from 1996 to 2009 and concluded that they “identified little pure theory” (2010: 11). Instead, recent theoretical essays were mostly published in the *Annual Review of Law and Social Science* (ARLSS), *Law & Social Inquiry* (LSI), and other sociolegal journals (e.g., Halliday 2009; Liu 2015; Silbey 2005).

Why is this happening? Is it because contemporary sociolegal scholars cannot produce first-rate theoretical articles deserved to be published in the LSR, the gold standard of law and society research? Or is it because the LSR's editorial and review process has become so institutionalized that it is impossible for theoretical “speculations” like Galanter's (1974) essay to “come out ahead”? To be sure, there are still many LSR articles that make solid theoretical contributions with empirical data, but the value of theory writing has been less appreciated than in the earlier years of the journal. Most theoretical discussions in today's LSR articles are restricted to no more than a few pages, squeezed between the introduction and the long empirical sections.

Some might argue that this only reflects an emerging division of labor between the LSR and other sociolegal journals. For instance, the LSI often publishes longer articles and more comparative or historical studies than the LSR does. And the launch of the ARLSS in 2005 has provided a nice platform for review essays on various law and society topics, which often take the form of theory building or synthesis. Outside the United States, sociolegal journals are also proliferating in Europe, Asia, and other parts of the world. It is a vastly different situation from the 1960s to 1970s, when the LSR was the only journal in the field.

How to position the LSR in this new ecology of sociolegal journals? With the increasing dominance of quantitative indicators such as citation counts and impact factors, it is easy to forget that the mission of a premier journal in an academic field is not

only to publish research that presents new data on old questions or long-standing debates, but also to publish innovative work that sets theoretical agendas and has the potential of shaping future directions of the field, with or without the complement of empirical data. The five most cited LSR articles mentioned above all belong to the second category. Theory as a form of sociolegal writing must be preserved, not only in the LSR, but also in law and society research as an academic field. And to maintain its leading position in the ecology of sociolegal journals, the LSR should not give away the privilege of publishing innovative theoretical essays like Galanter (1974) to its younger but rapidly developing competitors. Publishing high-quality theory with wider audiences would also help strengthen the status and impact of the LSR in the broader fields of both the social sciences and the legal academy.

Finally, as the flagship journal of the Law & Society Association (LSA), the LSR should also reflect the shifting interests of the Association's membership. Unlike the 1960s, when the LSA was founded as the intellectual home of a small group of progressive U.S. scholars who started a law and society movement, one third of today's LSA members are not based in the United States. Although the LSR has published many empirical articles on non-U.S. topics in recent years, the theoretical "canon" of law and society remains stubbornly U.S.-centric (Seron, Coutin, and Meeusen 2013). To diversify the field's theoretical core and better reflect the scholarly interests of LSA's new constituency, more attention needs to be paid to sociolegal theories originating from research on other parts of the world. To this extent, my argument for preserving theory in the LSR is not a retrospective call for returning to sociolegal classics, but a progressive call for a more diverse, cosmopolitan, and exciting theoretical landscape of future law and society research.

LSR @ 50: Where are We Now?

By Susan S. Silbey, Massachusetts Institute of Technology

Several years ago, I decided that I wanted to study science the way I had been studying law. To include scientists in my purview—to see what role law plays in their work. Law and science are the two most powerful institutions in modern society; what happens when they come face to face? But, I did not want to focus on courts, expert witnessing, or intellectual property; those are popular subjects, taking a law first perspective. I wanted to look at the routine, tacit work habits in laboratories, which I took

to be analogous to the streets, homes, and shops in which I had been tracking the role of law in everyday life.

I have been looking at laboratory science to see how new environmental health and safety regimes may be or may not be penetrating into the very heart of science, the laboratory, transforming, or not transforming the way science is done.

When I thought about doing such a project, it was an unformed intuition. So, I went to the annual meeting of the Society for the Social Studies of Science to see what the field was like. I heard many papers about policy and regulation, about occupation and profession, and papers about social theory, but not many faces I saw at sociology meetings, nor at law and society meetings. If I did not know many people, I found the debates and the conversations on the panels entirely familiar. I heard similar linguistic tropes, theoretical concepts, and observations about the doing of science that were very much like the language and concepts used by socio-legal scholars studying legal work.

Speakers Claimed That.

1. Science cannot be understood by simply reading scientific papers; there is a thick body of unspoken tacit knowledge that circulates among scientists. Science studies would reveal that tacit knowledge filling the gap between science in books and science in action. Socio-legal scholars also talk about the tacit knowledge and unspoken legal actions: what is done in the name of the law cannot be understood by simply reading the texts.
2. Although it had long been clear that science and technology impact society, science studies were exploring the reverse: the ways in which social forces constitute not only the context, organization, and dissemination of science but the very content and substance of scientific knowledge itself. Socio-legal scholarship shows how social relations are not only shaped by, or fail to be shaped by the law, but just like science, the law itself—its content and substance—is invented and importantly reproduced outside formal legal activities.
3. Science polices its boundaries to retain professional jurisdiction. This is also not a particularly unique observation about science. Social organizations and groups are always governing their boundaries, as fundamental research in organizations, deviance, and professions and especially law has shown. Yet, the discussions treated the observations and notion of professional boundaries as somehow unique.
4. Across the panels and papers, I heard that science was a social construction, that science and society were mutually constituted,

co-produced was the phrase used. But, this observation is true for every social practice. Isn't that what sociology has been telling us for almost two centuries now? And yet, I rarely heard at the conference fifteen plus years ago the cross referencing and connections—theorizing—across the contingent practices, constraints, and resources that constitute social construction whether it is construction of science, law, economics, or expertise. What I observed was a common theoretical toolkit used to analyze science, but also used to analyze law, management, regulation, families, gender, race, whatever. What I did not see was prominent acknowledgement of this shared terrain.

A recent paper by Diana Crane included an analysis of the overlapping frameworks of several social science disciplines and interdisciplinary fields. In her analysis, science studies share very little with other fields, narrowly and inwardly focused, in effect confirming my observations from the field. What is even more notable, however, and particularly relevant to us is that socio-legal scholarship, or law and society scholarship, appears not at all in her analysis.

What can we take away as lessons for the socio in socio-legal? Are we even more insular than science studies, less relevant, out of touch with our colleagues in other fields? I think there are four lessons here. I offer them as provocations for discussion, without great confidence that I have worked out all the links.

1. Over 50 years, socio-legal and science studies scholars created lively exchanges across the disciplines. Although I frequently hear conference speakers preface their remarks with a disciplinary positioning, “As a geographer, I am interested in how the law is a feature in organizing physical space,” or “As a psychologist, I am interested in how people think about law,” or “As a political scientist. . .” and so on. These positioning phrases are not only part of a legitimating practice, a means of shutting down criticisms or frameworks that the author does not want to address, but perhaps more importantly, they are lessons in how to look at the subject from a different perspective. By listening to each other in this multidisciplinary collective, the psychologists, geographers, and lawyers had to speak *across* the disciplinary divides, even if they also spoke *from* their disciplines. They worked in the cross hairs of their different disciplinary lenses and produced, I think much before it happened in most of the disciplines, an important insight: the “site” or “field” of social action matters to the meaning and organization of that action, whether that field is legal, or scientific.
2. A second lesson is clearly not to lose touch with the disciplines. As the biologist Joseph Schwab wrote, “Disciplines center around principles and methods of inquiry appropriate to particular subject matters, by establishing grounds for judging how

appropriately problems are posed and refined.” We do not study consumer behavior with microscopes and we do not ask atoms to describe a recent interaction. We also do not study law in practice by ignoring the legal texts.

3. The obverse lesson is not to get buried in one’s own discipline. Marc Jacobs warned cultural sociologists recently that “it is one thing to criticize the hegemonic limitations of established disciplines; it is [yet] another to indulge in in-discipline,” inward focus, and “lack of scholarly rigor.”

So, how does the interdisciplinary field move on, how does it prevent sclerosis?

4. To take very seriously what we have been doing in socio-legal scholarship and make it more scientific. Science is not a kind of knowledge but a way of making knowledge claims in ways that the audience can assess for empirical validity and reliability. Thus, all our diverse ways of making knowledge must be made more transparent.

Vistas for LSR Beyond 50

By **Terence Halliday**, American Bar Foundation

Celebration of LSR’s half-century of notable accomplishment offers an occasion not only for well-deserved applause but also a moment for new imaginings. I shall provoke such imaginings in two steps. First, I urge us all to widen our vistas, to go well beyond LSR as it now exists and even LSA as it is now composed. Second, I outline four directions in which LSR as a journal, and LSA as an association, might advance in our collective enterprise of creating first-class research and theory in law’s engagement with other disciplines and the world of affairs which law invariably penetrates.

Widening the Frame

Rather than beginning with LSR, let us begin with the sea in which it swims. There are several such ecological spaces.

1. Associational—Abstractly, we can ask how does or how should LSR reflect the full breadth of LSA membership interests? Should this journal mirror the distribution of topics and disciplines and methodologies that constitute LSA as it currently exists? Empirically, we might undertake a kind of content analysis to compare the contents of LSR in its widest sense to two

populations that suggest a profile of LSA topics and methods. On the one hand, we might compare the contents of the journal with those of the annual meeting program. On the other, we might compare LSR topical contents to those of Collaborative Research Networks (CRNs). In either case, or in all these cases, we would be asking, in effect, whether LSR in the future does or should reflect LSA as it now is or whether LSR might act as a provocateur or trend-setter to further invigorate LSA as a scholarly community.

2. Disciplinary—If LSR mirrors the distribution of current disciplines, topics, and methods that constitute the association, does it thereby reinforce what might be seen as a retreat from the full disciplinary mix of the heterogeneous university in the United States and elsewhere? Let us imagine the entirety of a major research university as a physical space with law centered physically at its cross-roads. We plot the entirety of the university as an ecology in which law as a sociolegal institution occupies a central pivot surrounded by faculties of hard sciences, fine arts (imagine visual and dramatic arts), humanities (imagine philosophy, literature), religion, biological sciences, the professional schools of medicine, architecture, engineering, social work, not to mention social sciences little represented in LSA. Where are the lost opportunities, the missed connections, the unexplored connections? And if we widen our horizons so expansively, can LSR serve as a catalyst, stimulus, crucible?
3. Genres—What genres of scholarly writing does LSR publish at the 50-year mark? Certainly high quality normal science. Is it time to re-examine or to consider *de novo* whether the intellectual advance of our field requires LSR to diversify its mix of genres. Think of a *theory* article. As Liu argues above, a piece of pure theory can spark exciting research for decades. Think of the *essay*. A fine essay is a singular art form. At once readable and evocative, an outstanding essay can seize imaginations in ways few other genres manage to do. Think of synthetic *reviews of literature*. A first-rate review can re-orient a field, provide a springboard for renewed endeavor, offer a reference point that enables speculative ventures in new directions. Think of *review essays*. The best of these can be original contributions in themselves. They leverage dramatically a breakthrough book or launch it into a far higher orbit. They reset agendas. They stimulate fertile debates by juxtaposing complementary and conflicting major works. LSR now publishes none or few of these genres that together create the mix of literary forms necessary to fertilize a flowering scholarly field. Is it now time for LSR to re-appraise whether it can afford to cede all these genres to other present or future publishing outlets? And/or should LSA as

LSR's associational parent be imagining other publication channels to serve as magnets that attract the intellectual fullness and totality of scholarly genres inside our movement rather than inciting them to go elsewhere?

4. Issues—Most expansively, what happens when we widen the potential catchment area of LSR and LSA publishing outlets to the entire world of affairs? Many of us make the case for the salience of law—our point of commonality—for most any issue that captures the world's headlines and media channels. If we cast our minds and expanded our bounds across the entire landscape of issues, where does LSR address practice and policy, behavior and thought, and where does it not? Migration, nuclear proliferation, international relations/diplomacy, refugees, war, racial conflict, inequality, climate change, religious leaders, antidemocratic turns, international trade agreements, religious conflicts, terrorism, breakup of the European Union, rise of European fascism, financial instability, reshaping of Middle East, rule of law, surveillance and privacy, global governance, implosion in China, discrimination against women, the costs of globalization, economic development, corruption? Not to mention—love, beauty, discovery, family, isolation, alienation, progress. Given the scope of “law” and “society,” would it spark new conjunctions if our vistas widened for LSR and LSA to these most expansive of horizons?

Four Directions

We might then imagine four postures of LSR which would take the journal and LSA in different directions.

1. The *reactive* posture positions LSR as the recipient and arbitrator of whatever manuscripts flow toward it. What LSR publishes is thus some amalgam of what its putative contributors believe is its niche, whether of topics, methods or genres, together with the judgments its editors make about fit and quality.
2. The *reflective* posture might be more purposeful, that is, deliberately pressing LSR towards a broad representation of the diversity of topics, methods, genres that can be observed in LSA as a whole. This would require LSA's leaders and LSR's editors to assay the evolving composition of LSA's membership and scholarship and periodically inquire as to the goodness of fit between the contents of the journal and the contours of member scholarship.
3. An *expansive* posture would press LSR beyond its current contents and LSA membership to the wider worlds of interdisciplinary possibility when we use the entire ecology of the university

as the intellectual landscape and empower LSR to proactively reach toward territory unexplored or unmapped.

4. A *pragmatic* posture would serve as contextual check on how much LSR has become dissociated from great issues of the day—economic, political, cultural, moral, spiritual, emotional, and the like. This is not a call to stray from the empirical-theoretical core of our enterprise and head off toward policy prescriptions. It is rather to imagine the vastness of possibility for our sociolegal enterprise when encountering great issues of our time.

But then, perhaps it is not LSR at 50 that should be our site of debate. Perhaps it is LSA at 52 that should impel us into appraising its portfolio of publications, old and new, and how adequately they give voice to members and insight to expansive audiences. In the meantime, we celebrate the distinction of LSR for the last half century and eagerly anticipate its intellectual leadership in the half century ahead.

Reflections on LSR at 50

By **Carroll Seron**, University of California, Irvine

It has been argued that the nature of scholarship is reflective of the networks in which scholars interact (and which contribute to the affective energy needed for scholarly production), that the networks are partly contingent on the institutions that grant scholars the autonomy to engage in scholarly thought, and that these institutions depend on a socio-political-economic environment that is willing and able to support them (Randall Collins in his *Sociology of Philosophies*). What does that mean for our small area of scholarship?

In weighing the role of L&SR, it is important to factor in other critical factors in building a discipline, particularly **institutional** moorings such as the role of NSF and specifically L&SS funding. For those who have sat on the panel, it is clear that L&S is a **sub-field**, in competition today with criminology, law & economics, psychology & law, political science, anthropology & sociology.

In an article with Susan Silbey on the L&S canon, we emphasized the importance of weighing the institutionalization of knowledge production. We note the shift in support from the Russell Sage and Ford foundations (in funding pre- and post-doctoral fellows at centers for the study of law & society at key universities such as the University of California at Berkeley, Northwestern, Wisconsin) to the National Science Foundation; the rise of professional association, here especially the Law & Society Association, of journals, especially the LSR. While it has often been noted that

L&S was a “social movement” before it was a discipline, there was also an important intellectual goal: a bold interdisciplinary endeavor with aspirations to bring all of the social science disciplines—sociology, political science, anthropology, economics, psychology, and history—under *one* tent to explain the formal and informal institutions of law as it is lived on the ground.

From an early point in L&S, Susan Silbey and I demonstrated that there tended to be a congruence between substantive domains of law and disciplines (Seron and Silbey 2009). Examples are psychologists studying jury decisionmaking; political scientists investigating courts and judicial decisionmaking; anthropologists examining legal pluralism; and sociologists focusing much of their interest on the legal profession.

Across these studies we nonetheless identified a common theme: the role of cultural context in constituting legal processes; at a time when the sociology of culture and neo-institutionalism were enjoying a heyday, we anticipated that the work of L&S scholars might serve as a model for other disciplines to borrow—but alas that has not happened. Why has this not happened? One reason is the fact that, in some respects, we have become somewhat marginalized in the broader debates within and across the social sciences.

I thus turn to one of Joachim’s questions for us: The nature of socio-legal networks has changed. What was a rather intimate circle of scholars, *Gemeinschaft* like, engaging in face to face interaction, coordinating the production going into the early volumes of the LSR (look at the early issues) has become *Gesellschaft*. I’m not sure I would agree. To be sure, we are a bigger tent. But, have we become cosmopolitans? We might ask, did LSR publish articles derived from interdisciplinary theories of law in society, or a series of articles from different disciplinary perspectives capturing varying emphases over time as Cal suggests, thus supporting an interdisciplinary journal? In a more recent article with Susan Coutin and Pauline Meeusen, we once again return to this question of the canon and find that this broadly conceived interdisciplinary project has further morphed into a series of subfields such as law & psychology, law & economics, law & humanities (Seron et al. 2013). Each of these has its own journals and professional meetings. We too note the turn toward the global, as described by Calvin Morrill.

But, to return to Sida’s question: why the paucity of theory? What was put on the table as LSA’s ambition was swamped by politics, the social movement side of LSA; by, I would argue, the influence of concerns that emerged within the legal academy, such as Critical Legal Studies, Critical Race Theory, Feminist Jurisprudence, to which L&S was responsive—rather than setting the agenda. And, I am not

sure how to explain the impact, but we must also weigh the internationalization of law & society, at least as a professional association.

And, we must acknowledge significant institutional changes in higher education. The pressures of academic production have been ratcheted up to a level that does not encourage the time it takes to read widely, reflect, and pause before entering the publishing cue—and, this all begins in graduate school itself where one is expected to have top tier publications prior to entering the job market. I saw this very clearly when I was editor of L&SR: a significant proportion of article submissions were from graduate students. With this pressure, some of our strongest scholarly interventions may appear in disciplinary journals, a point made by Sida—and, for the reasons Sida suggests.

Let me close by posing a few somewhat provocative points: There are some fundamental epistemological differences between humanistic and social science theories and methods. When this experiment was launched 50 years ago, my reading of that history suggests that we were pretty comfortable in saying we approach knowledge production about law through a social science lens, broadly construed to be sure. It is much less clear to me today that we, as a field, would agree on that fundamental point. Yet, without this consensus it is difficult, very difficult indeed, to stake a claim on our role in the production of knowledge about law.

Postscript: Where to Go?

By Joachim J. Savelsberg, University of Minnesota

As an outgoing co-editor of the *Law & Society Review*, I welcome the provocative thoughts of the five panelists. Thinking about publishing practice from a distance is a luxury not granted those who do the daily work of journal editing. Especially in light of the volume of submissions, they are busy managing the flow, securing reviews, providing authors with feedback, and making decisions. The quality of many submissions impresses on them the benefits of the market of ideas and scholarly production—as opposed to what might be called a centrally planned economy of journal publishing (where editors lay out what ought to be published and then seek to steer production accordingly). Often enough editors are especially impressed by the work of young colleagues, graduate students who hope to publish insights from their doctoral dissertation work and junior professors who seek to secure tenure. Providing them with feedback to make already impressive manuscripts even better is among the more rewarding aspects of the editors' work. Remember also that the collective output of these scholars reflects the advising efforts of the senior

colleagues within our scholarly community. If we wanted other scholarship, we should inspire and guide our advisees through different doctoral dissertation projects. It is in the realm of advising where crucial decisions are made of which the ensemble of submissions to the LSR is one reflection.

In the following I draw on some statements made during the question and answer period of our anniversary panel. I contrast them with demands made by panelists and draw conclusions.

Questions and Answers

Questions and comments concerned the selection of the panel, the role of editors, the character of the LSR and the role of theory contributions.

Fascinating and provocative as the presentations were, the composition of the panel was far from a representative sample of LSA membership as former editor Bert Kritzer critically commented. He is right, and we ought to be appropriately cautious with our conclusions. Indeed, all panelists are sociologists, with the (partial) exceptions of Susan Silbey. Also, most are members of the “old guard,” with Sida Liu as the notable exception. How would colleagues from other disciplines and how would younger cohorts chime in? We hope that the panel will ignite a public discussion within LSA in which other segments of the Association will participate.

What about the role of editors? Joe Sanders, a former LSR editor himself, referred to editors as umpires, judges who evaluate the quality of submissions to then arrive at decisions. There is some wisdom to that statement. Yet, editors, by necessity, also set policies that favor some papers over other. There is, after all, no perfect consensus over quality of scholarly work. Max Weber, who famously propagated value-neutrality of scholarship was the first to concede that decisions on themes and method are always value driven. Nevertheless, I too am skeptical toward the idea that individual editors overrule the wisdom that emanates from the collective endeavor in which all of us are engaged.

Malcolm Feeley followed his discussion comments on the current character of the journal with an e-mail, from which I here quote some segments. He emphatically stresses the value of the LSR in its current form (to the enjoyment of recent editors), warning sternly against major changes: “[G]iven the large numbers of submissions, we owe it to our audience and those who submit to devote the pages to what comes in over the transom. To do otherwise in my view borders on the irresponsible for a publication supported by an Association (say, as opposed to a wholly proprietary journal such as *Punishment & Society*) or a journal sponsored by an organization

(e.g., *Law and Social Inquiry*). While all of these journals exist to undertake the same mission—promote new knowledge by publishing the best research, they differ on the margins and these margins allow different approaches at times.”

Malcolm Feely directly addresses Terry Halliday’s comments: “I appreciate Terry’s comments about essays, reflections, synthetic reviews and the like, and in fact a division of labor has emerged that permits this. Whether the balance and mix is correct, I have no idea. But I do feel that a mixed format for the LSR does not make sense.” I will return to Malcolm’s comments again in a moment.

A more specific aspect of the discussion concerns Sida Liu’s proposition that the journal provides more space for theoretical work. As co-editors, Tim Johnson and I had decided to privilege work that simultaneously involves theory *and* empirical research—without intending to exclude purely theoretical or empiricist pieces. Sida cites impressive articles that do not engage in empirical analysis but had great impact in the field. That point is well taken. I would contrast this observation though with sets of empirically oriented but theoretically inspired works, that had massive impact on the field of socio-legal scholarship. I think of work by colleagues such as Lauren Edelman, Terry Halliday, Sally Merry, Tom Tyler, and Susan Silbey. In this spirit, Lauren Edelman warned against too stark a juxtaposition of empirical versus theoretical work. She followed up on her discussion comment with a personal communication from which I quote: “In response to Sida Liu’s argument that LSR should devote more space to theory pieces as opposed to empirical pieces, I would argue that this is a false dichotomy. Many (although certainly not all) empirical articles are also theory pieces. Such hybrid theory/empirical studies ideally posit a theoretical argument that is derived from existing theory or an elaboration of existing theory, offer a well-designed empirical test of that theoretical argument, and report the results and implications for theory. In general, I think such hybrid pieces are of greater value than articles that are purely theoretical. I do agree with Sida that there should be a place in LSR for purely theoretical articles, especially when they advance novel theoretical arguments, but I think it is a mistake to portray all empirical articles as a-theoretical.” Maybe the latter is not what Sida Liu intended to do, but Lauren Edelman’s thoughts are worth noting.

Where to Go from Here?

Encountering simultaneously strong arguments for preserving the LSR in its current state and calls for change, where do we turn? Gratefully, the conflict is not as stark as it might appear at first glance. Critics of those panelists who demand change do not

plead for the status quo, even if they strongly defend the LSR in its current shape.

Options lie indeed in innovative publication endeavors beyond the LSR but within reach of the LSA. Other scholarly associations have been following such a path for some time. The ASA split off its book review program into a separate journal, *Contemporary Sociology*, decades ago. CS does not just publish book reviews but also symposia on specific fields of literature. ASA later created a magazine-type journal, *Contexts*, for sociological research to reach a broader public. The American Society of Criminology created a separate journal that addresses policy issues, entitled *Criminology and Public Policy*. Malcolm Feeley, in his comments, reports how the “American Political Science Association has a robust secondary journal, PS [*Political Science & Politics*] . . . It regularly publishes symposia on methods, the ‘state of this or that field,’ and hot topics (what do the best appropriate researchers have to say about candidates like Trump and Sanders, etc.) . . . Perhaps it is time to transform the LSA’s quarterly electronic Newsletter into a more robust quasi-journal, and publish both on-line and hard copy, and use some of the space for book reviews, review essays, state of the field essays, and ways to the future think pieces.” The LSA has begun reaching out to a wider public through its support of *Life of the Law*. But much more can be done.

The debate has begun. We should want to preserve the riches we have *and* provide new avenues for new demands, while simultaneously respecting the ecology of journal publications (not double up on what, say, the *Annual Review of Law and Social Science* already does well). The LSA will have to find the right forum within which new initiatives can be advanced. Doing so may have the side benefit of winning over as permanent LSA members some of the many colleagues who currently have just fleeting encounters with the Association on the occasion of annual meetings. Most importantly, innovative efforts may enhance both intellectual stimulation and relevance for practice. But, again, despite demands for innovation, from the perspective of this outgoing LSR—(co-)editor, the impressive strengths of the current *Law & Society Review* must be preserved. The desire to celebrate its 50th anniversary motivated this debate on continuity and change.

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