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ETHNOGRAPHY  
AND LAW

Eve Darian-Smith

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# Ethnography and Law

*Edited by*

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ASHGATE

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# Series Preface

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*The International Library of Essays in Law and Society* is designed to provide a broad overview of this important field of interdisciplinary inquiry. Titles in the series will provide access to the best existing scholarship on a wide variety of subjects integral to the understanding of how legal institutions work in and through social arrangements. They collect and synthesize research published in the leading journals of the law and society field. Taken together, these volumes show the richness and complexity of inquiry into law's social life.

Each volume is edited by a recognized expert who has selected a range of scholarship designed to illustrate the most important questions, theoretical approaches, and methods in her/his area of expertise. Each has written an introductory essay which both outlines those questions, approaches, and methods and provides a distinctive analysis of the scholarship presented in the book. Each was asked to identify approximately 20 pieces of work for inclusion in their volume. This has necessitated hard choices since law and society inquiry is vibrant and flourishing.

*The International Library of Essays in Law and Society* brings together scholars representing different disciplinary traditions and working in different cultural contexts. Since law and society is itself an international field of inquiry it is appropriate that the editors of the volumes in this series come from many different nations and academic contexts. The work of the editors both charts a tradition and opens up new questions. It is my hope that this work will provide a valuable resource for longtime practitioners of law and society scholarship and newcomers to the field.

AUSTIN SARAT

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# Introduction

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## From Anthropology to Ethnography

Over the past decade, a number of edited volumes, readers, and essays analysing the field of law and anthropology have been published (for example, Starr and Collier, 1989; Conley and O'Barr, 1993; Hirsch and Lazarus-Black, 1994; Rouland, 1994; Collier, 1997; Moore, 2005; Mundy, 2002; Starr and Goodale, 2002; Nader, 2002; Pottage and Mundy, 2004; Darian-Smith, 2004; Goodale, 2005). To varying degrees of emphasis, these publications present classic essays in the anthropology of law as well as a range of contemporary theoretical positions that have preoccupied anthropologists over the past half century (see Moore and Just, Chapters 1 and 2, this volume). In this edited volume I do not attempt to present a history of the subfield of law and anthropology. Instead, since this volume is part of a collection in Law and Society scholarship, and, in keeping with its title, I stress the significance of ethnography rather than the importance of anthropology in an attempt to underscore the interdisciplinarity of sociolegal scholarship. By focusing on ethnography as a methodology, rather than anthropology as a discipline, the aim is to open up conversations about law and culture between scholars from a range of backgrounds who are engaged to varying degrees in ethnography as a genre of investigation. I do this by highlighting what I see as important themes and directions occupying legal ethnographers concerned in a post-realist analysis of law in a variety of cultural settings.

It is true that sociocultural anthropologists have historically led the way in ethnographic explorations of legal practices. And it is also true that most of the essays in this volume are in fact written by anthropologists. Nevertheless, with respect to contemporary ethnography anthropologists no longer occupy a privileged position. Although many of them cling to ethnography as a badge of methodological distinction, other scholars from a range of disciplines are also doing ethnography. However, these ethnographic explorations do not necessarily entail commitments to living for years in faraway places in artificially constructed discrete cultures synchronically represented in separate places and ahistorical times (see Gupta and Ferguson, 1997; Clifford, 1997). Rather, new ethnographies are being forced to engage with what Bill Maurer neatly labels 'ethnographic emergences' (Maurer, 2005; see also Coutin, Chapter 19, this volume). By this Maurer means that ethnographic inquiries must begin to take into account the complexities of interconnected places and cultural perspectives, and appreciate that representations are always limited given the constantly unfolding constitutive relations between object and subject, observers and observed, and the economically, politically and socially advantaged and disadvantaged. According to Maurer:

Representation itself seems to suggest that the one doing the representing occupies a time after the event being described. What happens, however, when the time of the analysis and the time of the object are coincident? When the ends of the analysis and the object are not known, and never can be known, in advance? That indeed there is never an ending point, just a moment frozen for the purposes at hand, whatever they may be? Traditional ethnographic realism might be said to fail when it attempts to capture or fix emergent phenomena of which ethnography forms a part. (Maurer, 2005, p. 3).



My wish for this volume is that by helping to open up the conversation on law and ethnography, anthropologists and others who engage in ethnographic research may learn from a range of ideas and perspectives that force them to see the larger-scale structural, institutional and transnational processes that frame anthropologists' typical foci on localized sites and small-scale communities. Likewise, scholars who normally pay no attention to the close reading of legal meaning at the level of collective discourse and individual interaction may begin to see the value of ethnography in analysing emerging legalities across a range of cultural contexts, social practices, spatial relationships and political landscapes. My belief is that if sociolegal scholarship is to be relevant in the 'globalized' world – however that term is used – it is vital that Western scholars leave behind their intellectual pretensions, acknowledge the limits and deficiencies of disciplines, and open themselves up to new cultural understandings, new analytical questions and new theoretical explorations. Furthermore, I suggest that ethnographic inquiry presents a unique opportunity in this endeavour because, at its most basic level, ethnography involves one person listening to another. Even if such listening is partial, biased and ultimately limited as a mode of investigation, it does foreground and acknowledge the existence of multiple perspectives and positions. This is a small step in the right direction.

The analysis of law as a cultural product and a constitutive element within the unfolding complexities of social interaction is a relatively recent phenomenon in Euro-American academic circles. Beginning with the Enlightenment and the rise of modern nation-states in the eighteenth and nineteenth centuries, philosophers such as Montesquieu, Voltaire, and other social theorists became fascinated by the functioning and particularities of Western bureaucratic law (Darian-Smith, 2004). In turn, subsequent colonial agendas throughout the nineteenth and twentieth centuries fostered an interest within anthropology to comparatively study how legal processes functioned in non-Western, 'primitive' societies. Some of these studies were driven by a well-intentioned European intellectual curiosity about the native Other. Most, however, were driven by an explicit desire to understand how best to transplant Western legal logics on colonial objects for political, military and, above all, economic gain.

Sally Merry, a leading legal anthropologist, is the editor of a volume in this series on colonial and postcolonial law, so I will not dwell on the topic here (see also Darian-Smith and Fitzpatrick, 1999). However, I do stress that it is vital to appreciate and always keep in mind the backdrop of colonial history that informs legal ethnographic scholarship, as well as the implicit and explicit biases evident in most of the literature up until the 1960s. These biases sustained a social evolutionary model of Western superiority and non-Western inferiority with regards to law. Moreover, these biases underpinned the presumption by European scholars that the modern state legal system was the central pivot around which customary or informal legal processes as practised by 'natives' circulated and were negotiated. Indeed, until relatively recently it was impossible to think that Western law would adapt to, or be influenced in any way by, indigenous legal customs that were largely oral and uncoded. In short, even when exoticized peoples were considered sufficiently sophisticated to actually have a legal system (which was often not the case), their system was inevitably considered substandard and at best derivative of colonial regimes and governments. Unfortunately, in many cases these biases persist to this day (see López, 1996; Sierra, 1995; Darian-Smith, 2003), and in some instances they have become internalized by postcolonial subjects who continue to view themselves as second-class citizens.

Foregrounding the colonial legacy embedded in ethnographic inquiries of law provides a point of departure for organizing the contents of this volume. I have specifically selected essays that take a critical approach with respect to the enduring modernist and colonial assumptions of earlier decades.<sup>1</sup> Explicitly and implicitly, the authors engage with postmodernist understandings of law that challenge the nation-state as a 'natural' cultural and political frame. They assume as a backdrop to their localized investigations the forces of globalization and its transnational and subnational impacts on the everyday understandings and experiences of law by ordinary people. And of particular significance for ethnographic inquiry, the authors all question to varying degrees the subject-object relationship of conventional ethnography which implies the superiority of the observer vis-à-vis the observed. In short, a concern with power, and the emerging, shifting, refractory and disintegrating relations of power between peoples, places, races, economies, states and nations thread together this collection of essays (see Silbey, Chapter 3). Taken as a whole, the essays represent new methodologies, new themes, new conceptions and new questions for understanding the possibilities and limitations of ethnographic analyses of 'the rule of law' in the early years of the twenty-first century.

### **What is Ethnography?**

Traditionally, ethnographers focused on knowing exotic others in faraway places and their mode of investigation was inherently tied to the colonialist agenda of European territorial expansion and domination of 'savage' peoples (Asad, 1973; Fabian, 1983; Stoler, 1992; Clifford, 1997). There was the presumption of a discrete bounded community, spatially isolated from others, unchanging through time and willing to disclose intimate cultural secrets to the neutrally positioned observing Westerner (Kuper, 1997; Stocking, 1985). Bronislaw Malinowski's research in the Trobriand Islands in the early years of the twentieth century established the disciplinary norms or model for the fieldwork experience (Malinowski, 1922).<sup>2</sup> Typically, this involved face-to-face interviews and participant observation in one single place over a lengthy period of time.

Today, however, this idealized notion of ethnographic inquiry no longer holds up against the realities of a global political economy and the realization that no community exists (if it

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<sup>1</sup> I had a tough time selecting essays for this collection since there are many that would have been appropriate. Unfortunately, book abstracts and book chapters were not available for publication purposes.

<sup>2</sup> According to the definition provided by the American Anthropological Association, 'ethnography':

...refers to the description of cultural systems or an aspect of culture based on fieldwork in which the investigator is immersed in the ongoing everyday activities of the designated community for the purpose of describing the social context, relationships and processes relevant to the topic under consideration. Ethnographic inquiry focuses attention on beliefs, values, rituals, customs, and behaviors of individuals interacting with socioeconomic, religious, political and geographic environments. Ethnographic analysis is inductive and builds upon the perspectives of the people studied. Ethnography emphasizes the study of persons and communities, in both international and domestic arenas, and involves short or long-term relationships between the researcher and research participants. ([www.aaanet.org/stmts/irb.htm](http://www.aaanet.org/stmts/irb.htm))

ever did) in splendid isolation (see Comaroff and Comaroff, 1992). As Clifford observes, field sites are no longer obvious ‘because locations are multiple, conjunctural, and cross-cutting, [and] there can be no guarantee of shared perspective, experience, or solidarity’ even within one’s ostensibly ‘native’ community (Clifford, 1997, p. 87). Moreover, ‘[d]ecolonization has transformed field sites not merely by making it difficult, if not impossible, to move across national borders but by affecting a whole host of mechanisms, from the location of archives to the granting of visas and research clearances’ (Gupta and Ferguson, 1997, p. 10). And perhaps more significantly still, with the participation of native peoples in the construction of academic knowledge there is now a growing force among non-Western scholars to actively resist being the object of eurocentric observation (see Smith, 1999; Di Leonardo, 1998; Miheusuh and Wilson, 2004).

In order to make ethnography relevant and appropriate for studying the social complexities of our postcolonial and neo-imperial late capitalist world, Marcus and Fischer suggest implementing ‘multilocal’ fieldwork in which the ethnographer is ‘mobile, covering a network of sites that encompass a process, which is in fact the object of study’ (Marcus and Fischer, 1986, p. 94; see also Marcus, 1995; Burawoy *et al.*, 2000). Clifford envisions an ethnography of the future ‘in which fieldwork remains a necessary but no longer privileged method’ (1997, p. 63), Kuklick calls for ‘new modes of representation’ (1997, p. 64), and Appadurai calls for ‘cosmopolitan ethnography’, highlighting the ‘need to incorporate the complexities of expressive representation (film, novels, travel accounts) into our ethnographies, not only as technical adjuncts but as primary material with which to construct and interrogate our own representation’ (1996, pp. 63–64). In a similar vein, Thomas proposes combining ‘nuanced firsthand knowledge of particular localities with the interpretation of a broader range of “secondary” ethnographic or “primary” historical descriptions’ (1991, p. 316). Kim Scheppele, a sociologist, neatly summarizes this last point by noting that good ethnography is about ‘looking particularly and thinking generally’ (2004, p. 402).

Clearly, contemporary ethnography involves a range of methods and forms. And among legal ethnographies, these may include such things as multi-sited field sites, archival records, court documents, legal biographies, Internet communications, the words of songs, novels, films, e-governance applications, international banking practices and so on. And, as scholars outside anthropology increasingly come to practice ethnography, a loosening up of conventional requirements takes place, as well as the foregrounding of a critical approach that seeks to avoid the implied assumptions of single-site fieldwork.<sup>3</sup>

## Subjects and Objects

More and more sociolegal scholars are engaging in ethnography as evidenced by the increasing presence of ethnographic research over the past decade in leading law and society journals such as the *Law and Society Review*, *Social and Legal Studies* and *Law and Social Inquiry*. That being said, the ethnographic study of law, be it explicitly comparative or otherwise,

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<sup>3</sup> However, as Gupta and Ferguson note, ‘At the same time, however, in a defensive response to challenges to its “turf” from other disciplines, anthropology has come to lean more heavily than ever on a methodological commitment to spend long periods of time in one localized setting’ (1997, p. 4).

offers particular problems in the current age of transnational law, legal pluralism and emerging legalities (Merry, 1992). In trying to understand the complex relations between cultures and laws, the ethnographer has to know what 'culture' he or she is talking about and be clear as to the relevant laws and legal contexts that apply. For instance, as policies of multiculturalism and the management of cultural diversity become increasingly important for state legitimacy and stability, who dictates what culture exists where (see Navaro-Yashin, 2003; French, 2004; Mahabir, 2004)? How does one locate the Other and the divides of cultural differentiation that historically demarcate us from them? Is it necessary to establish 'authenticity' with respect to cultural identity? What law constructs cultural difference and in what ways is it mobilized? In short, by and for whom, and under what legal conditions, is 'culture' constituted? (see Coombe, Chapter 4; Comaroff and Comaroff, Chapter 15).

Similarly, by and for whom, and under what cultural conditions, is 'law' constituted? In localized contexts what do we mean by law, and how do we recognize and talk about shared legal experiences? What are the contemporary constructions of legal pluralism inside and outside the nation-state system? Is international law conceptualized and applied in the same way in one part of the world as in another? Is some form of legal consciousness universal or is it on the decline in certain cultural contexts, particularly where there are competing systems of meaning and, in many cases, a rearticulation of the importance of religion (see French, Chapter 10; Engel, Chapter 11)?

Identifying the subjects and objects of study in contemporary law and society research is increasingly tricky. No less complicated is the growing range of methodological approaches in doing legal ethnography (see Merry, Chapter 5). While multi-sited ethnography is one small step towards engaging with the spatial complexities of globalization that operate in the most localized of cases, a more primary set of questions relating to the actual communications between the observer and the observed in our contemporary period of 'postmodern colonialism' must first be addressed. What role does the ethnographer play, and what ethics are deployed, in the enduring power differentials between the developed and developing worlds existing at both subnational and transnational levels (see Rosga, 2005)? As Susan Coutin and Susan Hirsch discuss in their essay on the naming of certain political activities as 'resistance', and the differences such naming had for the dissident communities they worked with in Argentina, Kenya and the United States, ethnographers need to be 'more politically attuned' to the 'politics of fieldwork'. This sensitivity is necessary in order to more accurately present what is happening in any one site. But much more importantly, as Coutin and Hirsch point out, it is also necessary for the safety of one's informants and thus for the production of 'ethically responsible social science' (see Chapter 7).

Sensitivity to the impact of the ethnographer's presence in specific cultural and legal settings is one thing. Sensitivity to the fact that certain words and forms of knowledge may mean different things in different places is another. Annelise Riles takes this critical perspective one step further when she argues that ethnographers often fail to see the sites of knowledge production at all, let alone be (in)sensitive to them. In Riles' analysis of the Bank of Japan (Chapter 8), she argues for the 'unwinding' of ethnographic knowledge in order to make clear its intimate relationship to the analytical categories and assumptions of modern bureaucracies, technocracies, and law (see also Maurer, 2005; Strathern, Chapter 14, this volume). Only by 'unwinding' our own eurocentric positions can new modes of intimacy and expression, such as the relationship between mothers and sons in Japan, (see Riles, Chapter 8) or the need to

care and be cared for (see Borneman, Chapter 9) be appreciated. This important point, that often as ethnographers we cannot even see or hear what we seek to understand, is taken in a slightly different direction by Lee Monaghan who, in Chapter 6, calls for an ‘embodied ethnography’ in sociolegal research. By this he means we must not only see and hear, but also feel our bodily presence as ethnographers, as well as ‘attend to the social dimensions of the body’ of those we study engaging in the criminal justice system and other legal institutions (p. 146).

Each of the above ethnographers is, to varying degrees, calling for a greater appreciation of individual human experiences as they play out in body and mind. The significance of the sensory dimensions of legal meaning – what some scholars call ‘legal aesthetics’ or the ‘primordial stuff of legal consciousness’ – highlights the often overlooked levels of legal experience that are far removed from the courtroom and the lawyer’s office (Darian-Smith, 2004, p. 559; Milner and Goldberg-Hiller, 2002, p. 361; see also Bently and Flynn, 1996; Douzinas and Nead, 1999; Gearey, 2001; Kenyon and Rush, 2004). Clearly, doctrine and procedure are no longer sufficient to comprehend how individuals actually experience legal meaning through the ‘trivial details’ of their everyday worlds (see Reichman, 2005).

Analogous to the shift towards the foregrounding of human experience by some sociolegal scholars, over the past decade there has been an increasing academic interest in the narratives, rhetoric and images of law that generate, structure and shape our systems of knowledge (see, for example, Conley and O’Barr, 1990; French, 1996; Mertz, 1992, 2000; Feldman, 2000; Sarat *et al.*, 2005). In particular, important research has engaged with the narration and shaping of women’s knowledge (see Hirsch, 1998; Griffiths, 2001). Bernard Hibbitts, a law professor, has written an excellent essay about how law, in societies with little or no experience with formal writing, is communicated and constituted by means of the senses (Hibbitts, 1992; see also Hibbitts, 1994). Hibbitts’ essay is very applicable to understanding the narration of legal meaning through mass mediated images in today’s contemporary Western world (see Sarat, Chapter 12), as well as the power of aural forms of legal expression via the stories we tell others and, more importantly, ourselves (see Ewick and Silbey, Chapter 13).

## States and Peoples

Taking a step back from the level of individual’s face-to-face interaction refocuses attention on to the shifting constructions of legal subjectivity vis-à-vis the state. The conventional frame of legal analysis – the geopolitical territory of the nation-state – can no longer be taken for granted given the increasing challenges to the legitimacy of national sovereignty by subnational and international forces and a global political economy (see Greenhouse *et al.*, 2002; Perry and Maurer, 2003). These challenges generate new pressures on individuals and new articulations of the self within the collectivity. As Iris Jean-Klein points out in her essay on Palestine (Chapter 16), violence within and against state systems is generating new forms of intimacy and power dynamics within the Palestinian family. In Chapter 15 John and Jean Comaroff move beyond the family in their examination of the contradictions and limitations of modernist state-building in South Africa. They focus on the clash between Enlightenment assumptions of ‘One Law for One Nation’ and the polycultural realities of the South African post-colony, arguing that the clash is generating a new composite form of Afro-modernity.

Related to the implicit Enlightenment assumptions built into attempts to create modern democratic nations is the assumption of universalism in human rights discourse. Grappling with this difficulty preoccupies legal ethnographers who study the impact of human rights practices and the mobilization of human rights discourse in defence of the state, as well as in defence of minority ethnic groups, indigenous peoples, women and the oppressed in general. In what ways, these scholars ask, may these assumptions force a rearticulation of self-identity that may not represent the context of a person's experienced reality (see Wilson, 1997)? As Marilyn Strathern argues in Chapter 14, not only can a universalized human rights doctrine be inappropriate to the specifics of local arenas, but as a dominant discourse it has the power to obfuscate alternative ways of understanding how people characterize their relations to others as well as how they imagine themselves.

### **Spaces and Times**

The globalized political economy is not only forcing new articulations of identity and self within and against modernist legal frames and state institutions, but is also forcing new legal relations between peoples, spaces, and times (see Cooper, 1998; Blomley *et al.*, 2001; Sarat *et al.*, 2003; Darian-Smith, 2004). A few scholars (for example, Engel, 1987; Greenhouse, 1996) have explored how different conceptions of time shape different normative frames of meaning. A larger number are involved in examining the spatial dimensions of law and contributing to a more nuanced understanding of how legal practices shape people's relations to their home, family, ethnicity, country and sense of humanity as in the case of refugees and immigrants who become non-citizens or illegal when physically displaced (see Kelly, Chapter 18, this volume; also Malkki, 1995; Shamir, 1996; Navaro-Yashin, 2003; Coutin, 2000; Rosen-Zvi, 2004). These forms of spatial displacement do not only occur on the periphery of state borders. In many countries indigenous peoples face constant legal battles in their efforts to secure recognition, land rights and a sense of identity and integrity. For instance, in Chapter 21 Renisa Mawani focuses on the rights of aboriginal peoples to land in British Columbia, and the colonial court system's shifting determination over time of aboriginal peoples as either 'authentic' Indians, and hence entitled, or merely 'squatters'. In contrast to the legal decisions being made with respect to native sovereignty and title, Nicholas Blomley's essay on gardens and gardening in residential Vancouver (Chapter 20) appears relatively benign but, as he points out, gardens and the properties they occupy embody both notions of individual privacy and civic engagement and are important for visualizing and shaping our political and social imaginaries. This point is essential for appreciating the wide range of political and social possibilities imagined by people occupying vastly different spatial landscapes and spatially organized communities.

### **Concluding Thoughts**

Blomley's concern with rather mundane household gardens and gardeners in a Vancouver suburb highlights an important theme that runs throughout the essays in this volume. Blomley, a geographer, is attentive to what usually goes unnoticed or unseen – what is hidden from

view. How many of us look at our neighbour's garden and appreciate it as visual code for the legal, political and social obligations of property ownership?

Blomley and other authors in this volume underscore the fact that legal ethnographers from a variety of disciplinary backgrounds are in a unique position to place themselves in new kinds of field sites, listen to and observe the life experiences and world-views of others, and begin to see with different eyes, hear with different ears, and feel with a new sensitivity. This sensitivity is relevant to both the observer and observed. Ethnographers are unique in sociolegal scholarship because they are involved in an intrinsically personalized comparative project between themselves and the object of their research. Being aware of one's own presence and its effect on others is an important part of what ethnographers do. As a consequence, ethnographers, perhaps more than other scholars, cannot totally ignore their engagement in the production of knowledge, the ethics of participation and the enduring power differentials between developed and developing worlds. What I have urged us to consider here is that it is equally important for legal ethnographers to pay attention to the sensory dimensions of legal meaning and the 'ethnographic emergences' that expose the ways in which legal practices are experienced by ordinary people in different cultural settings. This ability to appreciate the unexpected is vital if we are ever going to fully grasp the significance that law does not, and cannot, mean the same thing to all.

## References

- Appadurai, Arjun (1996), *Modernity at Large: Cultural Dimensions of Globalization*, Minneapolis, MN: University of Minnesota Press.
- Asad, Talal (ed.) (1973), *Anthropology and the Colonial Encounter*, New York: Humanities Press.
- Bently, Lionel and Flynn, Leo (eds) (1996), *Law and the Senses: Sensational Jurisprudence*, London and Chicago, IL: Pluto Press.
- Blomley, Nicholas K. (1994), *Law, Space, and the Geographies of Power*, New York and London: The Guildford Press.
- Blomley, Nicholas K., Delaney, David and Ford, Richard T. (2001), *The Legal Geographies Reader*, Oxford: Blackwell.
- Burawoy, Michael *et al.* (2000), *Global Ethnography: Forces, Connections, and Imaginations in a Postmodern World*, Berkeley, CA: University of California Press.
- Clifford, James (1997), *Routes: Travel and Translation in the Late Twentieth Century*, Cambridge, MA: Harvard University Press.
- Collier, Jane (1997), 'The Waxing and Waning of "Subfields" in North American Sociocultural Anthropology', in Akhil Gupta and James Ferguson (eds), *Anthropological Foundations*, Berkeley, CA: University of California Press, pp. 117–30.
- Comaroff, John L. and Comaroff, Jean (1992), *Ethnography and the Historical Imagination: The Cultural Logic of Dispute in an African Context*, Chicago, IL: University of Chicago Press.
- Conley, John M. and O'Barr, William M. (1990), *Rules versus Relationships: The Ethnography of Legal Discourse*, Chicago, IL: University of Chicago Press.
- Conley, John M. and O'Barr, William M. (1993), 'Legal Anthropology Comes Home: A Brief History of the Ethnographic Study of Law', *Loyola of Los Angeles Law Review*, 27, pp. 41–64.
- Cooper, Davina (1998), *Governing Out of Order – Space, Law, and the Politics of Belonging*, New York: New York University Press.
- Coutin, Susan Bibler (2000), *Legalizing Moves: Salvadoran Immigrants' Struggle for U.S. Residency*, Ann Arbor, MI: University of Michigan Press.



- Darian-Smith, Eve (2003), *New Capitalists: Law, Politics and Identity Surrounding Casino Gaming on Native American Land, Case Studies in Contemporary Social Issues*, Belmont, CA: Wadsworth.
- Darian-Smith, Eve (2004), 'Ethnographies of Law', in Austin Sarat (ed.), *Blackwell Companion to Law and Society*, Oxford: Blackwell, pp. 545–68.
- Darian-Smith, Eve and Fitzpatrick, Peter (eds) (1999), *The Laws of the Postcolonial*, Ann Arbor, MI: University of Michigan Press.
- Di Leonardo, Micaela (1998), *Exotics at Home: Anthropologies, Others, American Modernity*, Chicago: University of Chicago Press.
- Douzinas, Costas and Nead, Lynda (eds) (1999), *Law and the Image: The Authority of Art and the Aesthetics of Law*, Chicago, IL: University of Chicago Press.
- Engel, David M. (1987), 'Law, Time, and Community', *Law and Society Review*, **21**, p. 605.
- Ewick, Patricia and Silbey, Susan (1998), *The Common Place of Law: Stories from Everyday Life*, Chicago: University of Chicago Press.
- Fabian, Johannes (1983), *Time and the Other: How Anthropology Makes Its Objects*, New York: Colombia University Press.
- Feldman, Alice (2000), 'Othering Knowledge and Unknowing Law: Oppositional Narratives in the Struggle for American Indian Religious Freedom', *Social and Legal Studies*, **9**(4), pp. 557–82.
- French, Jan Hoffman (2004), 'Mestizaje and Law Making in Indigenous Identity Formation in Northeastern Brazil: "After the Conflict Came the History"', *American Anthropologist*, **106**(4), pp. 663–74.
- French, Rebecca R. (1996), 'Of Narrative in Law and Anthropology', *Law & Society Review*, **30**(2), pp. 417–36.
- Gearey, Adam (2001), *Law and Aesthetics*, Oxford and Portland, OR: Hart Publishing.
- Goodale, Mark (2005), 'Traversing Boundaries: New Anthropologies of Law', *American Anthropologist*, **3**(107), pp. 505–508.
- Greenhouse, Carol (1996), *A Moment's Notice: Time Politics Across Cultures*, Ithaca, NY: Cornell University Press.
- Greenhouse, Carol J., Warren, Kay and Mertz, Elizabeth (eds) (2002), *Ethnography in Unstable Places*, Durham, NC: Duke University Press, pp. 249–75.
- Griffiths, Anne (2001), 'Remaking Law: Gender, Ethnography, and Legal Discourse', *Law and Society Review*, **35**(2), pp. 495–509.
- Gupta, Akhil and Ferguson, James (eds) (1997), *Anthropological Locations*, Berkeley, CA: University of California Press.
- Hibbitts, Bernard (1992), 'Coming to Our Senses: Communication and Legal Expression in Performance Cultures', *Emory Law Journal*, **41**(4), pp. 874–960.
- Hibbitts, Bernard (1994), 'Making Sense of Metaphors: Visuality, Aurality, and the Reconfiguration of American Legal Discourse', *Cardozo Law Review*, **16**, pp. 229–356.
- Hirsch, Susan (1998), *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court*, Chicago, IL: University of Chicago Press.
- Hirsch, Susan and Lazarus-Black, Mindie (eds) (1994), *Contested States: Law, Hegemony and Resistance*, New York: Routledge.
- Kenyon, Andrew and Rush, Peter (eds) (2004), 'An Aesthetics of Law and Culture', *Studies in Law, Politics and Society*, **34**, Special Issue.
- Kuklick, Henrika (1997), 'After Ismael: The Fieldwork Tradition and Its Future', in Akhil Gupta and James Ferguson (eds), *Anthropological Locations*, Berkeley, CA: University of California Press, pp. 47–65.
- Kuper, Adam (1997), *Anthropology and Anthropologists: The Modern British School* (3rd edn), London and New York: Routledge.



- López, Ian F. Haney (1996), *White by Law: The Legal Consciousness of Race*, New York: New York University Press.
- Mahabir, Cynthia (2004), 'Adjudicating Pluralism: The Hijab, Law, and Social Change in Post-colonial Trinidad', *Social and Legal Studies*, **13**(4), pp. 435–52.
- Malinowski, Bronislaw (1922), *Argonauts of the Western Pacific*, London: Routledge and Kegan Paul.
- Malkki, Liisa (1995), 'Refugees and Exile: From Refugee Studies to the Natural Order of Things', *Annual Review of Anthropology*, **24**, pp. 495–523.
- Marcus, George E. (1995), 'Ethnography in/of the World-System: The Emergence of Multi-Sited Ethnography', *Annual Review of Anthropology*, **24**, pp. 95–117.
- Marcus, George E. and Fischer, Michael M.J. (1986), *Anthropology as Cultural Critique: An Experimental Moment in the Human Sciences*, Chicago, IL: University of Chicago Press.
- Maurer, Bill (2005), 'Introduction to "Ethnographic Emergences"', *American Anthropologist*, **107**(1), pp. 1–4.
- Merry, Sally E. (1992), 'Anthropology, Law, and Transnational Processes', *Annual Review of Anthropology*, **21**, pp. 357–79.
- Mertz, Elizabeth (1992), 'Language, Law, and Social Meanings: Linguistic/Anthropological Contributions to the Study of Law', *Law and Society Review*, **26**(2), pp. 413–45.
- Mertz, Elizabeth (2000), 'Teaching Lawyers the Language of Law: Legal and Anthropological Translations', *John Marshall Law Review*, **34**(1), pp. 91–117.
- Mihesuah, Devon A. and Wilson, Angela Calendar (eds) (2004), *Indigenizing the Academy: Transforming Scholarship and Empowering Communities*, *Contemporary Indigenous Issues Series*, Lincoln, NE: Bison Books.
- Milner, Neal and Goldberg-Hiller, Jonathan (2002), 'Reimagining Rights: Tunnels, Nations, Spaces', *Law and Social Inquiry*, **27**, pp. 339–68.
- Moore, Sally Falk (ed.) (2005), *Law and Anthropology: A Reader*, Malden, MA and Oxford: Blackwell.
- Mundy, Martha (ed.) (2002), *Law and Anthropology*, Aldershot: Ashgate/Dartmouth.
- Nader, Laura (2002), *The Life of the Law: Anthropological Projects*, Berkeley, CA: University of California Press.
- Navaro-Yashin, Yael (2003), 'Legal/Illegal Counterpoints: Subjecthood and Subjectivity in an Unrecognized State', in Richard Ashby Wilson and Jon P. Mitchell (eds), *Human Rights in Global Perspective: Anthropological Studies of Rights, Claims and Entitlements*, London: Routledge.
- Perry, Richard and Maurer, Bill (eds) (2003), *Globalization Under Construction. Governmentality, Law, and Identity*, Minneapolis, MN: University of Minnesota Press.
- Pottage, Alain and Mundy, Martha (2004), *Law, Anthropology, and the Constitution of the Social*, Cambridge: Cambridge University Press.
- Reichman, Ravit (2005), 'Making a Mess of Things: The Trifles of Legal Pleasure', *Law, Culture, and the Humanities*, **1**, pp. 14–34.
- Rosen-Zvi, Issachar (2004), *Taking Space Seriously: Law, Space and Society in Contemporary Israel*, Aldershot: Ashgate.
- Rosga, AnnJanette (2005), 'The Traffic in Children: The Funding of Translation and the Translation of Funding', *PoLAR: Political and Legal Anthropology Review*, **28**(2), pp. 258–81.
- Roulund, Norbert (1994), *Legal Anthropology*, trans. Philippe G. Planel, Palo Alto, CA: Stanford University Press.
- Sarat, Austin, Douglas, Lawrence and Umphrey Martha (eds) (2003), *The Place of Law*, Ann Arbor, MI: University of Michigan Press.
- Sarat, Austin, Douglas, Lawrence and Umphrey, Martha (eds) (2005), *Law on the Screen*, Palo Alto, CA: Stanford University Press.