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Authors

Coutin, SCB
Yngvesson, B

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SYMPOSIUM

Susan Coutin

University of California, Irvine

Barbara Yngvesson

Hampshire College

Technologies of Knowledge Production: Law, Ethnography, and the Limits of Explanation

This special issue examines thresholds of explanation within two technologies of knowledge production: ethnography and law. As a mode of inquiry, ethnography has become increasingly expansive. Some have termed this development “multi-sited” in that ethnography no longer appears to be confined to particular geographic or institutional spaces (Darian-Smith 2004; Marcus 1995; Merry 2006). Others have pointed out that when anthropologists analyze bureaucratic practices, the distance that once existed (or was imagined to exist) between ethnographers and ethnographic subjects has disappeared (Holmes and Marcus 2005, 2006; Maurer 2005; Riles 2006). These shifts are not the ones anticipated by the 1980s’ turn to the humanities, which questioned the authority of ethnographic truth claims and seemed to prefigure a break between “science” and “ethnography.” Instead, the field appears to be imploding outward as the rigor of fieldwork is trained both on processes that span borders, and on the inner workings of academia itself. There is no longer supposed to be a space beyond the ethnographic.

At the same time, the anthropology of law has been reinvented. In addition to examining the nature of legal norms and the workings of particular legal institutions in varied social settings, scholars now consider law itself as a technology with its own techniques, aesthetics, and products. Science and technology studies have infused the ethnography of law such that scholars attend to the construction of legal truth, the temporality of adjudication, the documentation produced by law, and the technocratic knowledge developed by legal practitioners (Brenneis 1994; Maurer 2005; Riles 2004, 2006). Significantly, the evaporation of the distance between ethnographers and their subjects has occurred in the case of law as well, as lawyers, legal scholars, and ethnographers find themselves moving in overlapping circles (Riles 2006).

This understanding of law (and of ethnography) as forms of technocratic knowledge points to the limits and the potentials of the anthropology of law. As technologies in Heidegger’s (1993) sense of the term, law and ethnography each reveals thresholds at which disclosure and concealment come together. These thresholds are revealed

through what Heidegger calls “enframing,” a form of explanation that brings forth objects and knowledge that were both already there, and yet (without technology) not in existence. Enframing entails ordering, creating, unveiling, but also blocking, particularly of those sorts of meanings that lie beyond the technological. Enframing thus entails a dual movement, a “coming to presence and withdrawal into absence” (Krell in Heidegger 1993:309). Significantly, in such movement, cause does not necessarily precede end, but in addition, “the end that determines the kind of means to be used may also be considered a cause” (Heidegger 1993:313). Furthermore, the agency of the individual that employs technology is unclear: “When man, in his way, from within unconcealment reveals that which presences, he merely responds to the call of unconcealment, even when he contradicts it” (p. 324).

As thresholds, law and ethnography are both bounded and limitless. They are bounded in that, as technologies, each closes off other ways of knowing or revealing. They are limitless in that their potential for revealing truth can be directed toward a seemingly endless array of problems and projects. Further, the truths that they reveal are both already there—merely uncovered or made visible by particular techniques—and also new creations, brought into being through technology itself. These truths are both all encompassing (when viewed from the enframings of law or ethnography) and intrinsically incomplete in that their partialities or gaps are exposed by the nontechnological. Ethnographic and legal truths therefore shimmer. As Heidegger writes: “Freedom is that which conceals in a way that opens to light, in which clearing shimmers the veil that hides the essential occurrence of all truth and lets the veil appear as what veils” (p. 330). It is at the limits of law and the limits of ethnography that this threshold or clearing becomes visible.

The essays in this symposium are located at these limits. Carol Greenhouse analyzes shifting understandings of race, biography, and persons in the wake of debates over the U.S. Civil Rights Act of 1990. Robin Conley examines the temporal complexity of gender identification in adjudicating a fraud charge against a transsexual defendant. Justin Richland considers the multiple accountings of tradition within Hopi jurisprudence. Lindsey Richland explores the relationship between local and unlocatable processes within studies of cognition. Barbara Yngvesson and Susan Coutin discuss the ways that ethnography and law select among multiple possible accounts and thus retroactively find truth. The essays range from detailed analyses of single cases, to ethnographies of scientific inquiry, to readings of historical shifts in the constitution of persons as legal beings. While their scope and subject matter vary, each essay examines the limits of law and of ethnography as technologies—their demand for an unachievable specificity, their temporal and spatial boundedness, their need for yet resistance to closure. At the same time, by considering these limitations, these essays also suggest the productive potential of both law and ethnography.

Key to the production of both legal and ethnographic truth, as Greenhouse points out, is the rendering of the specific as general. In the case of civil rights law, Topeka, Kansas, where the plaintiffs in the landmark case *Brown v. the Board of Education* were located, was seen as “merely an instance of national life” (Greenhouse p. 82). Later, when neoliberal politics redefined rights as “private,” law’s capacity

to generalize was disabled. Particular differences in individuals' educational or other achievements were placed beyond the scope of law, and seen merely as *instances*, not as *instances of* racial discrimination or other broader patterns. L. Richland also draws attention to ways that, within cognitive psychology, cognition is construed as both localized and as unlocatable. Cognition is localized in that it is believed to occur in particular regions of the brain and that it can be measured by carefully designed experiments which work to "locate" cognition. In this research, cognition is understood to be co-extensive in time and space with observable physiological processes. At the same time, cognition is unlocatable in that it is imagined to be an abstract sequence of mental activities. In this approach, the experiment is less focused on details of place and time than on the cognitive process involved. L. Richland notes that "psychological studies are not so unlike ethnography in its complicated relationships between the space and time of localities, or 'site' and derivations of general processes, or theoretically 'unlocatable' knowledge" (p. 52).

Specificity and the transcendent also figure in J. Richland's analysis of legal renderings of tradition among the Hopi. On the one hand, *navoti* (knowledge/information/teachings) is transcendent, collective knowledge held by the Hopi as a group. On the other hand, *navoti* is communicated through specific interactions between individuals, such as a mother and a daughter. J. Richland highlights the tensions that this complex way of knowing gives rise to when it is introduced as evidence in a Hopi court that draws largely on Anglo-American legal procedures. As specific communications from one individual to another, *navoti* appears to be hearsay and is therefore inadmissible. At the same time, as Hopi courts are mandated to decide cases according to Hopi custom and tradition, *navoti* is the basis for deciding cases and it must be introduced. This tension, J. Richland argues, arises not only within Hopi judges' efforts to discern *navoti*, but also within ethnographers' engagement with its "Others."

Closely related to this movement, tension, or transformation between the specific and the general are the ways that these technologies create (or prevent) particular subjectivities. Conley highlights the differences between law's demand for persons who are coherent and consistent over time, and individuals' own senses of self, which may be more fluid and disjunctive but which cannot be narrated legally as such and still deemed credible. She suggests that like law, ethnography attempts to create coherent persons, but that within ethnography there is greater potential to present identity as fractured and inconsistent. Greenhouse points out that the *Brown* decision created "a new form of personhood forged out of the elements of federal citizenship" (p. 81). Within this new form of personhood, biography and the potential of individual persons were linked to the nation and its own moral economy. Race was seen as an analytic category, and thus was capable of being deployed in the assessment of differential access to educational and other resources. In contrast, in the debates over (and veto of) the Civil Rights Act of 1990, race became an attribute of a person rather than a social analytic, and therefore was deemed to be a private matter. This transformation not only redefined race but also persons themselves, defusing the challenges that accounts of individual lives could pose to racialized structures. Note that this movement between race as an analytic category and a personal attribute

resembles the ambiguity that L. Richland identifies in the “research subject” who participates in a psychological experiment. Such subjects are unique individuals who are counted in order to determine sample size (crucial for statistical power) and whose characteristics are significant in that participants must be roughly similar for an experiment to work. This similarity permits participants to be “collapsed” into a single category for purposes of data analysis, a move that makes it possible to derive evidence of human cognition from subjects’ responses. Research participants are simultaneously individual persons and abstract representations.

Returning to Greenhouse’s essay, it is important to note that law was not the only arena within which challenges were posed. Within literature, other accountings linked race and society in ways that had been envisioned neither by the proponents of *Brown* nor by the opponents of the Civil Rights Act: “What *is* certain is that a life story is not one that can be limited to the skin-bound individual. It is not the individual who ‘has’ race, but the society as a whole” (p. 88). Neither personal attribute nor just a social analytic, in the novel *The Bluest Eye*, race became inescapable, the “condition of consciousness and social transformation—the scale for judging justice itself” (p. 88).

The essay by Yngvesson and Coutin also challenges conventional understandings of persons and subjects. Conventionally, adoption has been thought of as “like” birth, and immigrants are “like” native-born citizens. By juxtaposing the journeys entailed in deportation and transnational adoption, Yngvesson and Coutin suggest that in fact, adoption and immigration are key to the construction of the “natural” child and the citizen by birth: “if ‘natural’ children and citizens can be alienated through adoption or emigration, then both kinship and citizenship are potentially ephemeral and in need of the anchoring provided by adoptions and emigrations” (p. 68). In a similar vein, Conley discusses the relationship between transexuality and heterosexuality. Litigation regarding transexuality, she suggests, exposes the instability of heterosexuality. At the limits of law, then, the presumptions that undergird the social world slip into their antithesis, allowing for both concealment and revelation.

Just as the relationship between “adoptees” and “natural children” or “transsexuals” and “heterosexuality” invert conventional understandings, so too do the temporal movements within these essays expose and challenge standard renderings of temporality. Greenhouse points out that the proponents of *Brown* performed a doubling of time, according to which they held out the prospect of two possible futures, one positive and one negative, and asked the court to choose the stance that would lead to the positive scenario. *Brown* relied on a notion of temporal *progress*, suggesting that national well-being could improve over time. The opponents of the Civil Rights Act relied on a similar linear notion of progress but argued that legally, racial equality had already been achieved. Conley and J. Richland also note ways that law proceeds linearly, from assumptions that individual identities originate in the past and continue into the present to the notion of precedent, which relies on reference to a past decision as a guide toward present and future action. In contrast to these linear notions of time, both Greenhouse and J. Richland also draw attention to notions of time as unchanging or transcendent. Greenhouse points out that within the novel *The*

Bluest Eye, “Morrison’s temporality explodes the notion of the *passage* of time since nothing is ever over” (p. 87, see also Coutin 2001), while J. Richland suggests that to the Hopi, *navoti* is both a transcendent form of knowledge about the workings of the world and also something that is experienced by particular individuals over time. This nontechnological rendering of time creates a “chronotope,” a time-space envelope according to which current moments and the discursive events reported in these moments share a common time and space.

Such time-space envelopes are also operative within forms of retroactivity that are intrinsic and yet seemingly impossible within the terms of both law and ethnography. Legal verdicts, for instance, select between alternative possible definitions of preceding events, but once the selection is made, the event in question is defined as having always already been as it is now defined legally. Thus a guilty verdict in a murder trial *finds* that a defendant committed a murder because presumably the defendant was already a murderer prior to the verdict. Yngvesson and Coutin point to the ways that a judicial ruling on political asylum or adoption retroactively instantiates the identities (or nonidentities) authorized by the ruling, while Conley draws attention to the way that identities are reinterpreted in court and in a genetics lab as having already been as they are imagined to be in the present moment. Though quite different in their valences, these notions of time as something that does not exactly *pass* challenge official renderings of the temporal.

Multiple renderings of time create a certain openness within the knowledge produced through law, ethnography, and other technologies. L. Richland draws attention to the contrast between on the one hand, cognitive psychologists who distinguish between abstract cognitive processes and localized activities within the brain, and on the other, researchers who insist that understanding cognition requires examining how these are instantiated within the brain. The dialogue between these researchers raises questions about whether closure is possible, about whether it can be said that there “is” an abstract process of cognition anymore than “identity,” “law,” or “tradition” can exist apart from their instantiations. This openness produces an *excess* in that products of technology are also products of *something else*, the element of bringing forth that is aesthetic or mysterious, that “cannot explain (and so enframe)” (Krell, in Heidegger 1993:309; see also Yngvesson and Mahoney 2000:81–82). Greenhouse draws attention to this excess when she points out that “ethical responsibility vastly exceeds explanation” (p. 87), and that self and stereotype are incommensurable (p. 88). By working along the text of Morrison’s novel, the *Brown* decision, Clarence Thomas’s dissent in an affirmative action case, and the debates over the Civil Rights Act, Greenhouse encounters the limits of law, the threshold where explanation conceals as much as it reveals, the “justice that will not come from legal remedies, yet cannot come without them” (p. 88). At this threshold (which is moment as much as place), identities are both coherent and disjunctive, traditions transcend and yet are realized through individuals’ experiences, knowledge is both localized and unlocatable, single particles exist in multiple places, and life and death are indistinguishable.

There is an element of the irrational within technologies of knowledge production, an element that is necessary and yet incompatible with the enframing that is the essence

of technology (Heidegger 1993:331). Drawing on Ellison (1964:313), Greenhouse (p. 90) describes this incompatibility as a “zone of nonmeeting.” It is “that blind spot in our knowledge of society where Marx cries out for Freud and Freud for Marx, but where approaching, both grow wary and shout insults lest they actually meet.” It is at this blind spot that those who are entangled in the enframing that is at the heart of technological may find themselves “unexpectedly taken into a freeing claim” (Heidegger 1993:331), revealing truths that are both painful and profound. These truths take shape as much in the timeliness of particular forms of work as in the explanations they offer. Perhaps, as both Heidegger and the essays that are part of this symposium suggest, it is through a questioning that is not exactly inquiry that explanation is pushed to its outer limits.

Note

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References Cited

- Brenneis, Donald
 1994 Discourse and Discipline at the National Research Council: A Bureaucratic Bildungsroman. *Cultural Anthropology* 9(1):23–36.
- Coutin, Susan Bibler
 2001 The Oppressed, the Suspect, and the Citizen: Subjectivity in Competing Accounts of Political Violence. *Law and Social Inquiry* 26(1):63–94.
- Darian-Smith, Eve
 2004 Ethnographies of Law. In *The Blackwell Companion to Law and Society*. Austin Sarat, ed. Pp. 545–568. Malden, MA: Blackwell.
- Ellison, Ralph
 1964 *Shadow and Act*. New York: Random House.
- Heidegger, Martin
 1993[1977] Basic Writings: From Being and Time (1927) to the Task of Thinking (1964). David Ferrell Krell, ed. San Francisco: Harper.
- Holmes, Douglas R., and George E. Marcus
 2005 Cultures of Expertise and the Management of Globalization: Toward the Re-functioning of Ethnography. In *Global Assemblages: Technology, Politics, and Ethics as Anthropological Problems*. Aihwa Ong and Stephen J. Collier, eds. Pp. 235–252. Oxford: Blackwell.
- 2006 Fast Capitalism: Para-Ethnography and the Rise of the Symbolic Analyst. In *Frontiers of Capital: Ethnographic Reflections on the New Economy*. Greg Downey and Milissa Fisher, eds. Pp. 33–57. Durham, NC: Duke University Press.
- Marcus, George E.
 1995 Ethnography in/of the World System: The Emergence of Multi-Sited Ethnography. *Annual Reviews* 24:95–117.
- Maurer, Bill
 2005 *Mutual Life, Limited: Islamic Banking, Alternative Currencies, Lateral Reason*. Princeton, NJ: Princeton University Press.

Merry, Sally Engle

2006 *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago: University of Chicago Press.

Riles, Annelise

2004 *Real Time: Unwinding Technocratic and Anthropological Knowledge*. *American Ethnologist* 31(3):392–405.

Riles, Annelise

2006 *Anthropology, Human Rights, and Legal Knowledge: Culture in the Iron Cage*. *American Anthropologist* 108(1):52–65.

Yngvesson, Barbara, and Maureen A. Mahoney

2000 'As One Should, Ought and Wants to Be': Belonging and Authenticity in Identity Narratives. *Theory, Culture, & Society* 17(6):77–110.