The Handbook of Law and Society

Edited by Austin Sarat and Patricia Ewick
The Handbook of Law and Society
Wiley Handbooks in Criminology and Criminal Justice

Series Editor: Charles F. Wellford, University of Maryland College Park.

The handbooks in this series will be comprehensive, academic reference works on leading topics in criminology and criminal justice.

The Handbook of Law and Society
Edited by Austin Sarat and Patricia Ewick
Contents

Notes on Contributors viii

On the Emerging Maturity of Law and Society: An Introduction xiii
Patricia Ewick and Austin Sarat

Part I Setting the Stage 1
1 What is Law and Society?: Definitional Disputes 3
Susan M. Sterett
2 Charting the “Classics” in Law and Society: The Development of the Field over the Past Half-Century 18
Calvin Morrill and Kelsey Mayo

Part II Approaches to the Study of Law as a Social Phenomenon 37
3 Mapping a Cultural Studies of Law 39
Naomi Mezey
4 Approaches to the Study of Law as a Social Phenomenon: Legal History 56
Kunal M. Parker
5 Legal Ethnographies and Ethnographic Law 71
Susan Bibler Coutin and Véronique Fortin
6 Just a Thought?: Instantiations and Constructions of Procedural Justice 85
Mary R. Rose

Part III Institutional Processes and Actors 103
7 Lawyers and the Legal Profession 105
Ronit Dinovitzer and Bryant Garth
## Contents

8 Courts and Judges: The Legitimacy Imperative and the Importance of Appearances
*Keith J. Bybee and Angela G. Narasimhan*
118

9 Jurors and Juries
*Nancy S. Marder*
134

10 Upside Down and Inside Out: Regulators and Regulatory Processes in Contemporary Perspective
*Bronwen Morgan*
150

11 Using Public Law to Shape Private Organizations
*Cary Coglianese and Jennifer Nash*
168

12 Police and Policing
*Jennifer D. Wood*
183

**Part IV**  Domains of Legal Policy

13 Domains of Policy: Law and Society Research on the Family
*Annie Bunting*
199

14 Domains of Policy: Law and Society Perspectives on Antidiscrimination Law
*Donna E. Young*
212

15 Domains of Policy: Law and Society Perspectives on Punishment and Social Control
*Keramet Reiter*
228

16 Welfare Law
*Vicki Lens*
244

17 Immigration Law and Immigrants’ Lived Experiences
*Leisy J. Abrego*
258

18 The Return of Religion: The Rise, Decline, and Possible Resurrection of Legal Secularism
*Nomi Maya Stolzenberg*
274

19 Human Rights
*Heinz Klug*
291

20 More-than-Human Legalities: Advocating an “Animal Turn” in Law and Society
*Irus Braverman*
307

21 Law and Disability
*Katharina Heyer*
322
## Contents

### Part V  How Does Law Matter?  337

22  The Constitution of Identity: Law and Race  339  
   Osagie K. Obasogie

23  The Constitution of Identity: New Modalities of Nationality, Citizenship, Belonging and Being  351  
   Eve Darian-Smith

24  The Past, Present, and Future of Rights Scholarship  367  
   Jeffrey R. Dudas, Jonathan Goldberg-Hiller and Michael W. McCann

25  Law and Social Movements: Old Debates and New Directions  382  
   Sandra R. Levitsky

26  The Rule of Law and Economic Development: Global Scripts, Vernacular Translations  399  
   Ritu Birla

27  Law and Colonialism: Legacies and Lineages  417  
   Renisa Mawani

28  Law and Globalism: Law without the State as Law without Violence  433  
   Julieta Lemaitre

Index  446
Notes on Contributors

**Leisy J. Abrego** is Assistant Professor of Chicana/o Studies at the University of California, Los Angeles. Her work examines the consequences of US immigration laws in the intimate lives of immigrants and their families. She is the author of *Sacrificing Families: Navigating Laws, Labor, and Love Across Borders* (2014).

**Ritu Birla** is Associate Professor of History at the University of Toronto, and Director of the Centre for South Asian Studies, Munk School of Global Affairs, University of Toronto.


**Annie Bunting** is an Associate Professor in the Law & Society program at York University in Toronto, teaching in the areas of legal pluralism and human rights. She has published articles in *Social and Legal Studies, Journal of Law and Society, and Canadian Journal of Women & the Law*, and chapters in various book collections. She has served on the editorial boards of *Law & Social Inquiry* and the *Muslim World Journal of Human Rights*. She has recently directed an international research collaboration on forced marriage in conflict situations (in five countries) with historians of slavery and women's human rights scholars (2010–14), and has a book forthcoming with UBC Press titled *Contemporary Slavery and Human Rights* (co-edited with Joel Quirk), and a second in the works titled *Marriage by Force? Contestations over Coercion and Consent*.

**Keith J. Bybee** is Paul E. and Hon. Joanne F. Alper ’72 Judiciary Studies Professor at Syracuse University College of Law and Professor of Political Science at SU’s Maxwell School. His latest book is *All Judges Are Political – Except When They Are Not: Acceptable Hypocrisies and the Rule of Law*. 
Cary Coglianese is the Edward B. Shils Professor of Law and Professor of Political Science, and Director of the Penn Program on Regulation, at the University of Pennsylvania Law School. A specialist in regulation and regulatory processes, his most recent co-edited book is Does Regulation Kill Jobs? He founded RegBlog.org.

Susan Bibler Coutin is Professor in the Departments of Criminology, Law and Society and Anthropology at the University of California, Irvine. She is the author of The Culture of Protest (1993), Legalizing Moves (2000), and Nations of Emigrants (2007).

Eve Darian-Smith is Professor and Chair in Global Studies, University of California Santa Barbara. Her books include Bridging Divides: The Channel Tunnel and English Legal Identity in the New Europe (winner of the LSA Book Prize), Laws of the Postcolonial, Religion, Race, Rights: Landmarks in the History of Modern Anglo-American Law, and Laws and Societies in Global Contexts: Contemporary Approaches (2013).

Ronit Dinovitzer is Associate Professor of Sociology at the University of Toronto and Faculty Fellow at the American Bar Foundation. Her latest article, with Sally Gunz and Hugh Gunz in the American Business Law Journal, is entitled “Reconsidering lawyer autonomy: The nexus between firm, lawyer and client in large commercial practice.”

Jeffrey R. Dudas is Associate Professor of Political Science, Affiliate Faculty of American Studies, and 2014–2015 Faculty Fellow at the Humanities Institute at the University of Connecticut.

Véronique Fortin is a PhD candidate in Criminology, Law and Society (UC Irvine). She has a law degree (McGill) and a Master’s in Sociology of Law (Oñati IISJ). Her research interests focus on the legal and spatial tactics deployed to police protesters and the homeless in Montreal, Québec, Canada.

Bryant Garth is Chancellor’s Professor at the University California Irvine School of Law. His scholarship focuses on the legal profession, the sociology of law, and globalization. His books include Dealing in Virtue (1996), The Internationalization of Palace Wars (2002) and Asian Legal Revivals (2010) (all co-authored with Yves Dezalay).

Jonathan Goldberg-Hiller is Professor of Political Science and Affiliate Faculty of Public Policy at the University of Hawai‘i at Manoa, and a past co-editor of the Law and Society Review.

Katharina Heyer is Associate Professor of Political Science at the University of Hawai‘i at Manoa. Her research focuses on disability rights activism in the United States and other countries. Her book Rights Enabled: The Disability Revolution is forthcoming from the University of Michigan Press.

Heinz Klug is Evjue Bascom Professor of Law, University of Wisconsin Law School and an Honorary Senior Research Associate in the School of Law, University of the Witwatersrand. His research focuses on constitutional transitions and human rights. His books include Constituting Democracy: Law, Globalism and South Africa’s Political Reconstruction (2000) and The Constitution of South Africa: A Contextual Analysis (2010).
Julieta Lemaitre LLB, MA, SJD is Associate Professor of Law at Universidad de los Andes, Bogotá, Colombia. Her areas of research are law and violence, law and social movements and sexual and reproductive rights. Recent publications focus on legal mobilization in violent contexts and on conservative Catholic activism against sexual and reproductive rights in Latin America.

Vicki Lens MSW, J.D., PhD is currently an Associate Professor at the Columbia University School of Social Work. Her research interests include welfare reform, administrative justice, and socio-legal studies, where she uses ethnographic and other methods to study legal settings, including the welfare fair hearing system and family court.

Sandra R. Levitsky is an Assistant Professor at the University of Michigan. Her recent book, *Caring for Our Own: Why There Is No Political Demand for New American Social Welfare Rights*, examines how contemporary social welfare problems are changing American views about what types of social welfare needs ought to be protected as “rights” or “entitlements” by the state.

Nancy S. Marder is Professor of Law and Director of the Justice John Paul Stevens Jury Center at Chicago-Kent College of Law. She teaches and writes about juries, judges, and trials. She publishes on these topics in law reviews and books and is the author of *The Jury Process*.

Renisa Mawani is Associate Professor of Sociology and Chair of the Law and Society Minor at the University of British Columbia. She is the author of *Colonial Proximities* (2009) and co-author (with Iza Hussin) of “The travels of law: Indian Ocean itineraries” in *Law and History Review*.

Kelsey Mayo is a PhD candidate in the Jurisprudence & Social Policy Program in the School of law at the University of California, Berkeley. A Spencer / National Academy of Education Dissertation Fellow, she studies education law from a socio-logical perspective, with a current focus on school choice and charter school legal environments.

Michael W. McCann is the Gordon Hirabayashi Professor for the Advancement of Citizenship in the Department of Political Science, adjunct faculty in Law, Societies, and Justice, and the past (founding) director of the center for Comparative Law and Society Studies (CLASS), all at the University of Washington. In addition, Michael is a past president of the *Law and Society Association* (2011–2013).

Naomi Mezey is a Professor of Law at Georgetown University Law Center. In addition to a JD from Stanford Law School, Professor Mezey holds a Master’s degree in American Studies from the University of Minnesota. Her scholarship focuses on national and cultural identity, legal theory, cultural property, feminism, and film.

Bronwen Morgan is Professor of Law at UNSW Australia Law School. Her research focuses on transformations of the regulatory state in both national-comparative and transnational contexts, on the interaction between regulation and rights, and on the relationship between social activism and social enterprise in the context of climate change.
Calvin Morrill is Associate Dean for Jurisprudence and Social Policy, Stefan A. Riesenfeld Professor of Law, and Professor of Sociology at the University of California, Berkeley. He studies social conflict in organizations and fields, and is completing a book with Michael Musheno entitled, *Youth Conflict: Culture and Control in an Urban High School*.

Angela G. Narasimhan is Assistant Professor of Political Science at Keuka College. She holds a PhD from Syracuse University, as well as degrees from Babes-Bolyai University in Cluj-Napoca, Romania and Central European University in Budapest, Hungary. Her most recent work on judicial globalization has been published in *Studies in Law, Politics, and Society*.

Jennifer Nash is Executive Director of the Regulatory Policy Program at Harvard Kennedy School, where she is also Associate Director of the Mossavar-Rahmani Center for Business and Government. Her research examines the role of management-based strategies and voluntary programs in achieving policy goals.

Osagie K. Obasogie is a Professor of Law at the University of California Hastings with a joint appointment at University of California, San Francisco Department of Social and Behavioral Sciences. His areas of research include race, law and society, Constitutional law, bioethics, and reproductive and genetic technologies.

Kunal M. Parker is a Professor of Law and Dean's Distinguished Scholar at the University of Miami School of Law. His first book, *Common Law, History, and Democracy in America, 1790–1900: Legal Thought Before Modernism*, was published by Cambridge University Press in 2011. He is currently completing a book on the history on the history of US immigration and citizenship law.

Keramet Reiter is an Assistant Professor in the Department of Criminology, Law & Society and at the School of Law at the University of California Irvine. She studies prisons, prisoners’ rights, and the impact of prison and punishment policies on individuals, communities, and legal systems.

Mary R. Rose PhD is Associate Professor of Sociology at the University of Texas at Austin. She researches lay participation in legal systems, especially through jury service and jury decision making. She also studies people’s perceptions of the legal system and the social psychology of justice.

Susan M. Sterett is a Professor in the Center for Public Administration and Policy and Director of the Metropolitan Institute at Virginia Tech. She is the editor of *Sociolegal Studies and Disaster* (2013) in the Oñati Series. She is also the author of *Public Pensions: Gender and Civic Service in the States, 1850s–1937* (2003) and *Creating Constitutionalism?* (1997).

Nomi Maya Stolzenberg holds the Nathan and Lilly Shapell Chair in Law at University of Southern California Gould School of Law, where she directs USC’s Program on Religious Accommodation and co-directs the Center for Law, History and Culture. Her publications include ‘‘He drew a circle that shut me out’: Assimilation,

**Jennifer D. Wood** is an Associate Professor in the Criminal Justice Department at Temple University. She was previously a Fellow for the Regulatory Institutions Network (RegNet), Australian National University. She is co-author, with Clifford Shearing, of *Imagining Security* (2007), and co-editor, with Benoît Dupont, of *Democracy, Society and the Governance of Security* (2006).

**Donna E. Young** teaches at Albany Law School where she specializes in civil rights, labor, employment and criminal law, feminist jurisprudence and critical race theory. She received her BSc from the University of Toronto, LL.B from Osgoode Hall Law School and Associateship-in-Law and LL.M from Columbia Law School.
On the Emerging Maturity of Law and Society

*An Introduction*

Patricia Ewick and Austin Sarat

**Introduction**

On the occasion of its fiftieth anniversary, the Law and Society Association initiated the *Project on the Second Half Century*. Representing a relatively young field of scholarship – at least compared to its constituent disciplines – the Association paused to look back to its origins, mark its progress and chart a path forward. These soundings entailed, among other things: soliciting proposals from junior scholars about directions the field might take in the next fifty years; organizing a series of 50th Anniversary Roundtables at LSA’s 2014 meetings; and posting a selective sample of essays, presidential addresses and journal articles published over the last 50 years reviewing and reflecting on the field of law and society. That sample included 73 pieces, on average about one and a half reviews for every year of the Association’s existence.

This level of self-scrutiny may reflect the precariousness and uncertainty that mark the life of an interdisciplinary field committed to inclusiveness. From the beginning law and society was a “big tent” field. According to Garth and Sterling (1998) the Law and Society Association was founded when legal realists challenged legal formalism. The realist challenge was based on the insistence that, given the indeterminacy of law, legal knowledge must go beyond doctrine and include empirical studies of law in action. This challenge within the legal academy coincided with the work of a small group of sociologists who, marginalized by orthodox sociology’s drift toward quantitative approaches and “by the precarious position of law within sociology,” defected from the American Sociological Association and established the Law and Society Association (Garth and Sterling 1998). The marriage of legal realists and social scientists brought together two groups at odds with the orthodoxy of their respective home disciplines and intent on constructing an interdisciplinary study of law and society.