2013 LSA Presidential Address

The Unbearable Lightness of Rights: On Sociolegal Inquiry in the Global Era

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It has been an enormous honor for me to serve as the president of the Law and Society Association (LSA). Nevertheless, like many of my predecessors, I approached the challenge of choosing a topic for the ritual lunchtime address with a bit of trepidation. It seems that no matter what a president does over the two-year term, what most sociolegal colleagues remember is "the speech." I heard that over and over, as people queried me about my topic and the type of talk I planned. So let me say at the start that it is not my inclination in this context, as many colleagues are finishing their desserts and coffee, to tell all of you that we in the Association need to be doing something new or different. I have already done lots of pushing and pulling in new directions over the last several years in other forums. Instead, I offer some reflections on a prominent intellectual tradition of our scholarship, one that has shaped and expressed the changing character of our Association over the last

This article is based on the presidential address at the annual meeting of the Law and Society Association (LSA) in Boston, Massachusetts, on June 1, 2013. The text includes material that I drafted initially but had to pare away to meet the time constraints of the talk as well as some other text I added later. The title, structure, logic, themes, and style of the article follow exactly the talk, though. I have benefitted enormously from my participation in the LSA. In many ways, the ideas advanced in the address owe a great deal to a very large number of scholars; my very long list of references barely begins to recognize all of the people whose writings and communications have influenced my thinking and commitments. I do wish to extend special thanks to several people who commented on early drafts of the talk: Scott Barclay, Jeffrey Dudas, David Engel, Angelina Godoy, Jon Goldberg-Hiller, Filiz Kahraman, George Lovell, Anna Maria Marshall, Laura Beth Nielsen, Arzoo Osanloo, and Lee Scheingold. Kirstine Taylor was especially helpful in the last phase of essay completion. My long-time colleague Stuart Scheingold passed away before he could read the talk, but his continuing influence and inspiration permeate the address. I also want to acknowledge here the expression of deep gratitude that I publicly voiced at the start of my talk in Boston. I participated as president in the transition from our long-standing LSA staff in Amherst (Ronald Pipkin, Lissa Ganter, Judy Rose, and Mary McClintock) to the new executive office staff in Salt Lake City (Susan Olson, Megan Crowley, Monia Kohler). The good will, humor, resourcefulness, and overall brilliance of both staff groups made the difficult transition hugely successful. I thank them deeply for all that they did for me and have done for LSA.

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Law & Society Review, Volume 48, Number 2 (2014)
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https://doi.org/10.1111/lasr.12075 Published online by Cambridge University Press

50 years, and one that is inseparable from our modes of public engagement. The theme of my remarks today is our intellectual engagement as sociolegal scholars with the theme of *rights*.

Perhaps no topic, short of law itself, has been more central to the sociolegal legacy of scholarly inquiry than that of *rights*. It is worth remembering that Law and Society as an intellectual movement and professional association was born in the era of the U.S. civil rights movement.[1] The first volume of the *Law & Society Review* was published in 1966, when the ink was still drying on the 1964 Civil Rights Act and 1965 Voting Rights Act. In fact, the first special issue of *LSR* in 1967 (Vol. 2, no. 1) was on school desegregation in the United States.

The prevailing mode of inquiry in the early decades was gap studies that demonstrated how promises of rights often fall short in implementation as policy or practice (Gould & Barclay 2012). Empirical analysis often aimed to offer reforms that might close the gap and make law live up to its promises of rights recognition. Then, in the late 1970s, several waves of critical theory—first critical legal studies (Kairys 1998), then critical feminist theory, critical race theory (Crenshaw et al. 1995; Delgado & Stefancic 2001) LatCrit theory (Haney Lopez 1996), and queer theory (Bower 1994; Stychin 1998)—began to interrogate the promises of rights in more analytically ambitious ways that questioned the emancipatory potential of rights and demonstrated the ways that rights conventions often support hierarchy, divert political struggles, and impede as well as advance social justice. Much of this scholarship focused on official case law, but it was soon joined by empirically grounded study and debate focusing on the degree to which legal and political mobilization by rights claiming groups or movements advanced egalitarian social justice or positive social change (Handler 1978; Scheingold 1974). This interest in group-based contestation over rights was paralleled by an explosion of empirical scholarship studying individual disputing over rights and everyday legal consciousness, which included ample attention to rights consciousness. These currents of scholarship regarding both individual disputing and group politics around rights varied widely in epistemology and method, from positive quantitative (Miller & Sarat 1980–81) to qualitative inquiry, including interpretive ethnographic and interview-based study (Ewick & Silbey 1998; Fleury-Steiner & Nielsen 2006; Merry 1990; Sarat 1990). And most of this scholarship in LSA was undertaken by scholars at U.S. institutions who focused on rights in the North American tradition or context.

[1] As Garth and Sterling's classic historical recounting of LSA notes, "Quite a number of the early players were active in writing about the role of law in civil rights . . . the role of courts in protecting new rights associated with the role of the state. . .encouraging the right to counsel . . . (along with) legal services for the poor" in the United States (1998: 461).

https://doi.org/10.1111/lasr.12075 Published online by Cambridge University Press

The lessons of this rich scholarly tradition are many and cannot be fully covered here, but I will summarize a few highlights of what I have learned. I will save for the end my original title, which I abandoned. Instead, I have chosen to title this reflection "The Unbearable Lightness of Rights." This title takes its point of departure, of course, from Milan Kundera's (1984) provocative, controversial, unusual novel *The Unbearable Lightness of Being*. Kundera's novel was set in Czechoslovakia around the time of the Prague Spring in 1968, when a brief, hopeful surge by forces of local resistance was crushed by the Soviet military. I will not offer a detailed analysis of the book, including the author's refutation of Nietzsche, but rather I just draw on its *leitmotif* of lightness and weight to explore the paradoxes of rights that emerge from our scholarship.

In Kundera's scheme, weight, or heaviness, refers to our subjection to enforced social convention—to the myths and routines that promote conformity and restrict freedom. At the extreme, such conventions can be delusional lies that support violent hierarchy and control by the few, in both society and the state, as in the Soviet empire. By contrast, lightness is freedom and flight from such weighty obligations, conventions, and delusionary myths. But lightness and heaviness are not entirely discrete, antithetical forces; rather, they are interdependent and connected in paradoxical ways. Kundera writes that "(T)he heaviest of burdens crushes us, we sink beneath it, it pins us to the ground." At the same time, though, he notes that the "heaviest of burdens is . . . (also) simultaneously an image of life's most intense fulfillment. The heavier the burden, the closer our lives come to the earth, the more real and truthful they become. Conversely, the absolute absence of burden causes man to be lighter than air, to . . . take leave of the earth and . . . become only half real, his movements as free as they are insignificant. What then shall we choose? Weight or lightness?" (1984: 5).

The novel does not side emphatically with either lightness or weight. Rather, it explores the efforts of four characters to struggle among these paradoxical, interrelated modalities in their daily lives, amidst an increasingly trying political context. While all the characters seek lightness to some degree, they are pulled in varying degrees by the weight of tradition and enforced social convention, and in some ways find themselves least free when lightest.

Rights and the Paradoxes of Lightness and Weight

Kundera's fictional narrative parallels how empirical sociolegal scholars have understood rights as a social convention—as lived

https://doi.org/10.1111/lasr.12075 Published online by Cambridge University Press

practices, within social contexts in which rights conventions are enmeshed and constitutive of our identities as subjects. So what have we learned from all this sociolegal inquiry over several decades about rights traditions in the United States?[2] For the sake of brevity, I suggest four key paradoxes, each building on Kundera's concepts of lightness and weight.[3]

Paradox no. 1: What Rights Claims Count?

The first paradox regards the range of possibilities for meaningful claims facilitated by rights talk. In short, how light or heavy is rights as discourse? On the one hand, rights talk is very light in that language is indeterminate, malleable, variable, and polyvalent (Brigham 1996; Glendon 1993; Haskell 1988; McCann 1994; Milner 1989; Minow 1987; Scheingold 1974). Especially important in this regard is the recognition that rights language is not discrete and insular, but rather rights talk as a practice is inextricably interrelated with, contingent on, and transformable by contact with other discursive resources and normative traditions. And it is this contingency and interactive quality that makes rights dynamic, ever open to reconstruction as a discursive resource of aspiration.

This is, for example, the clear implication of Robert Cover's provocative thesis about *jurisgenesis*, about the persistent proliferation of claims about justice and rights that percolate up from communities and movements in civil society (Cover 1983). A key point of much sociolegal scholarship thus has been to demonstrate that such jurisgenetic proliferation of rights routinely emanates out of ordinary social life, often independent of direct influence from lawyers, judges, and state officials. This insight has been demonstrated repeatedly in research on everyday disputing among individuals (Zemans 1983). Perhaps no study has illustrated the dynamism and diversity in rights discourse as well as the recent book by my colleague George Lovell (2012). His research documents hundreds of letters by ordinary Americans to the new Civil Rights Division in the 1939–1941 period. The letters reveal an extraordinary range of rights claims and discourses, often merging moral, religious, and local norms into constructions of rights

[2] At least indirectly, I offer here one type of response to the provocative article by Tom Burke and Jeb Barnes (2009), acknowledging that my theorizing will not provide the type of predictive theory they seek.

[3] At the outset, I must recognize that I do not claim that my use of these terms is entirely consistent either with Kundera's novel or in my own discussion. Nor do I insist that these simple, vague, malleable concepts are strong analytical tools for social scientific explanation. Instead, I am intrigued by the intrinsic paradoxes, ironies, and puzzles of rights practice that these polyvalent metaphors help to explore.

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entitlement. Lovell documents how inherently light, volatile, and malleable rights talk can be. Scholarship on group mobilization around rights likewise has documented the ways that "novel rights claims," as Francesca Polletta (2000) labels them, frequently emerge from and animate social movements.

The lightness that permits such novelty to claimants also arguably signals a lack of weight as social power, however. Ronald Dworkin's (1978) famous claim that rights often "trump" other types of claims and values thus deserves qualification because rights in practice are far more limited in their inherent influence. After all, specific claims of rights are often met with opposing interpretations of that same right. Consider the long-standing, highly variable contests over the reach of freedom secured by property rights, or free speech rights, or rights against workplace discrimination. Moreover, claims of particular rights are often limited by claims of other rights, as when business owners claim property rights to hire whom they please as a limit on affirmative action for racial minorities or women. Finally, rights claims generally are often challenged by other social values, including democratic rule of the sovereign people, economic efficiency, or religious beliefs (Goldberg-Hiller 2004). In short, rights are never absolutes; rather, they simply confer authority to claims of entitlement whose restriction, modification, or denial is potentially subject to official legal procedures that assess and adjudicate the merits of competing claims (Stone 2010: 35).

And, hence, we shift toward the other hand of the analytical legacy. In short, the historical process of accumulated official actions legislating or adjudicating rights and their principled logics imposes weighty constraints on new rights claims. As historical contests over rights become settled for periods of time, dominant groups and their official representatives routinely police the boundaries of prevailing rights constructions to sustain status quo relationships, limiting the possibilities of practical rights claiming to the terms of what is legally permissible. And it is this enforced, institutionally embedded "common sense" of rights discourse that works, as John Brigham (1996) has put it, to "constitute citizen interests" and identities in routine ways. Rights become embedded in bounded, normalized discursive practices.[4]

This insight is central to much sociolegal scholarship. For example, Scheingold's myth of rights is not just a "figment of our imagination," but, as he says on his opening page of *The Politics of Rights,* it is "real" and material, enforced by dominant groups and institutions (1974: 3). A similar understanding is expressed in

[4] On the implications of emphasizing rights as talk versus as a regulatory discourse, see McClure (1995).

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Robert Cover's (1983, 1986) argument that judges "kill" off far more than affirm visions of rights that bubble up from below, and that coordinated state "violence" necessarily enforces these narrow, select, traditionally bound constructions of rights on subjects. Law is words, but what makes words into law is the jurispathic violence that narrows the range of acceptable appropriations of rights talk in institutional practice and then systematically obscures or "forgets" the legal violence to both novel ideas and vulnerable bodies in the name of those circumscribed official norms. Cover's concepts of jurisgenesis and jurispathy together capture the interrelated lightness and heaviness of rights as convention.

Of course, judges are neither independent actors nor even primary sources of these constraints on meaningful, actionable rights constructions (McCann & Lovell, 2014). The webs of instrumental, institutional, and ideological power that delimit rights and contestation over rights are complex, diffuse, and interdependent. For one thing, other, nonjudicial state actors kill off rights claims in similar fashion. Lovell's (2012) aforementioned study is entitled *This Is Not Civil Rights*, because this is precisely what most administrative officials declared in denying appeals to rights by citizens in the pre-civil rights era. Equally important, organized social groups, including especially corporate actors, effectively neutralize many novel rights claims. In contests over basic rights, copious studies document, the "haves" usually "come out ahead" (Galanter 1974), or at least prevail until circumstances force or permit concessions to specific claims (Bell 1980). Scholars who focus on rights "counter mobilization" (Dudas 2005; Milner & Goldberg-Hiller 2003; Scheingold 1974) in particular have demonstrated how dominant groups stigmatize rights claims by marginalized groups—African-Americans, indigenous peoples, women, LGBT advocates, among others—as "special rights" that violate the principle of equal treatment or are otherwise rejected as alien to prevailing standards and values.[5]

Understood this way, rights constructions ensure order less because they dupe or brainwash ordinary people than because they are harnessed to constellations of group power, institutional arrangements, and state force supporting traditional constructions of rights that are difficult or costly for most people, and especially subaltern or disadvantaged groups, to challenge and change. And such practical understandings of ordinary persons about the difficulties or costs of challenging the status quo order then often ossify into resignation and routine. As Scheingold put it, "we learn to adapt—to endure . . . and to despair" as we yield to the perception

[5] For a particularly dark story about how dominant groups crushed workers claiming their rights in one episode, see Brisbin (2002).

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that "the existing order is inevitable" (1974: 132). The status quo is inevitable less because most people, and especially those who are marginalized or oppressed, cannot imagine an alternative order than because they cannot perceive realistic ways to realize those alternatives without risking great loss, perhaps even death. Again, rights are light as talk, but they are often weighty as institutionalized cultural practices.

Paradox no. 2: The Contradictory Promise of Individual Freedom

One specific implication of the previous paradox is that, while basic, widely recognized rights long have been associated with the promise of freedom, that freedom is highly limited and limiting (Rose 1999). Indeed, more than a few sociolegal scholars have contended that the rhetoric of rights-based freedom in practice works as a weighty ideological force, not unlike what Kundera calls *kitsch* in the novel, that supports, legitimates, and authorizes deference to status quo hierarchies of wealth and influence. After all, the core rights enforced by dominant groups in the Western legal tradition have secured property, contracts, and other aggregations of unequal "private" power while individualizing subjects in ways that impede collective challenge to hierarchy in public life (McCann 1984, 1989). The entire apparatus of law, however liberal in pretense, supports a highly unequal social order, which makes some rights bearers far more free than the great many others. This logic was brilliantly outlined by the great German philosopher, who identified citizen rights as a "political lion's skin," an empty, abstract promise that held little power for emancipation from alienated, hierarchical market relations (Marx 1978; see Brown 1995; Goluboff 2007).

Moreover, classic liberal and neoliberal rights define mostly procedural rights that place selective limitations on arbitrary violence by discrete actors but do not limit routinized systemic violence—financial penalties, incarceration, solitary confinement, and the like[6]—and require few positive mandates for social equality and redistribution of power.[7] The latter point was nicely captured

[6] One set of important examples include the due process rights revolution of the 1960s, which increased procedural restrictions on arbitrary police action but ended up empowering and legitimating police action and punishment in the mass incarceration state. See Murakawa and Beckett (2010). The Supreme Court's jurisprudence on capital punishment is a related example. The high court has ruled repeatedly on procedural questions reducing juror discretion in capital cases and involving the technologies of execution, but the Court has refused to consider seriously challenges to state killing as substantive manifestations of "cruel and unusual punishment" (Dayan 2011; McCann & Johnson 2009).

[7] For example, U.S. courts protect a women's right to choose abortion but do not mandate state funding to make that right available for all women. The SCOTUS likewise

https://doi.org/10.1111/lasr.12075 Published online by Cambridge University Press

in Nancy MacLean's (2006) book on struggles for substantive rights against workplace discrimination; in short, the negative rights-based logic of individual *Freedom Is Not Enough* to redress centuries of exclusion and exploitation of African-Americans, Native Americans, Mexican-Americans, women, and other groups. In this perspective, rights discourse is a limited, arguably illusory promise of individualistic freedom that normalizes and naturalizes the historically evolved status quo enforced by the legal and political establishment.

Stuart Scheingold's (1974) classic argument about the "myth of rights" as an individualizing ideology that binds us to the status quo of inegalitarian liberal society owes much to this vision. Scholars following Foucault have recognized in different but complementary terms how the conferral of rights status works as a regulatory discourse that constructs disciplined subjects who internalize imperatives of rational self-governance. Rights and freedom again go hand in hand in this account, and they together often do provide nonconformists and even dissidents limited protections from compelled obedience to arbitrary power and violence. Rights do cut multiple ways. But, overall, the "power of freedom" (Rose 1999) that rights confer imposes a substantial burden of socially defined individual responsibility, a relentless weight that constructs subjects tethered to predetermined tracks of privatized deference to hierarchy. "While rights may operate as an indisputable force of emancipation at one moment in history," Wendy Brown (1995) has argued in an influential essay, "they may become at another time a regulatory discourse—a means of obstructing or co-opting more radical demands or simply the most hollow of empty promises."[8]

Kristin Bumiller's classic study of the dilemmas faced by minority citizens and women who experience injury well illustrates these dynamics. Her interviews reveal how claiming rights against race or sex discrimination individualizes the subject as a victim, discourages agency, and increases the sense of injury. "Individualization

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refused to recognize a substantive right to welfare subsidy or minimum income as a matter of due process or "new property" (McCann 1984). Or consider the individualistic terms of antidiscrimination rights that U.S. courts have supported while virtually abolishing remedies for claims of unequal impact of employer hiring, promotion, and wage policies (McCann 1994; McCann & Lovell, 2014).

[8] Brown continues: "The paradox is . . . expressed well *in* the irony that rights sought by politically defined *group* are conferred on depoliticized *individuals:* at the moment a particular 'we' succeeds in obtaining rights, it loses its we-ness and dissolves into individuals . . . When does identity articulated through rights become production and regulation of identity through law and bureaucracy" (1995: 87). Kirstie McClure offers a different interpretation of Foucault that grants greater possibilities for "taking liberties" with rights (1995). Patricia Williams similarly recognizes how individualized subjects are at once both subjects of rights and agents who can reconstruct rights for struggle and change in prevailing relations (1992: 227). On the complex indeterminacy of rights "subjectivity," see Merry (2003).

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becomes a process of control—a mark of difference or a badge of stigma" (1990: 69; see also Brown 1995). David Engel's (1984) well-known study of Sander County shows convincingly how the pervasively enforced norm of "individual responsibility" discouraged adversarial rights claiming and enforced deference to community norms; respect for rights-bearing individuals ironically is won and sustained by forfeiting adversarial claims of rights. A book-length study that I conducted with William Haltom (2004) regarding the nationwide obsession with excessive rights claiming over personal injuries offered evidence that the same "common sense" ethic of individual responsibility was normalized through a complex mix of corporate advocacy and mass media practices. And John Gilliom (2001) likewise demonstrates how intensive state institutional surveillance forces welfare mothers to maintain, often by deception, appearances of morally "responsible," disciplined behavior to obtain the meager state support to which women are rightfully entitled.[9] In all these ways, the freedom conferred by basic rights is directly a product of complex regulatory mechanisms of responsibilization that weigh heavily on subjects.

Paradox no. 3: Who Can Claim Rights?

Rights not only confer a limited, paradoxical promise of freedom to citizens, but they are grounded in criteria that dominant groups use to justify exclusion of many persons and other entities from even this mixed promise of entitlement. This may seem counterintuitive, as rights are often hailed as a force of inclusive membership entitlement in the polity, and historically there is an element of truth to this claim. However, at every point in North American history, the standard of rights qualification also has been deployed as a normative force denying many people from even basic recognition and status as full citizens, i.e., as deserving the core "right to claim rights." It is relevant to recognize that Western nation states originally constructed rights as part of a bargain for ruling authority with dominant social groups. Specifically, as Charles Tilly (1985, 1992) has contended, modern nation states initially consolidated their power to make war, reduce or eliminate rivals, and extract resources by making deals with some established or potential rival groups. In developing capitalist regimes, states offered protections for bourgeois property rights to owning classes in return for the latter's support as clients of state rulers, revenue contribution through taxation (and plunder of others), and partici-

[9] In short, welfare mothers are "forced to be free." The responsibilizing rights paradigm that dominates American society advances "a hyper-individualistic image of social life that is both inaccurate and destructive," Gilliom (2001: 8) argues.

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pation in policing for security. In the United States, the initial group extended recognition as rights bearers were white, property-owning males who contracted as subjects in the new political economy. The historical social contract securing rights status for citizens thus was exclusionary on the basis of race and gender, among other criteria, at its very core (Lovell & McCann 2004; Mills 2008; Pateman 1988).

These dominant groups who allied with the state became both the key actors and the normalized, unquestioned standard adjudicating entry for other groups seeking inclusion in the community of rights bearers over time.[10] The previously discussed premise that rights-bearing subjects must be disciplined, rational, and conventional to deserve rights has provided a justifying, even motivating logic for denying rights to select categories of people because they are allegedly incapable of, or resistant to, demonstrating such responsible self-governance. The liberal society of rights-bearing subjects thus did not abolish status and tribal distinctions; rather, the new order transformed status into individual terms of merit and character that have sustained hierarchies of lawful power and authority distinguishing *between* relative insiders and outsiders as well as *among* insiders to the community (Shklar 1989; Smith 1997; Stychin 1998). Dominant groups in North America—for several generations, white, mostly propertied males—interpreted those terms of discipline in different and often shifting ways over time, constructing ideas about race, ethnicity, gender, sexuality, family, education, and a host of other markers to determine the boundaries between deserving subjects entitled to rights and undeserving outsiders accorded few or no rights.[11]

This key point was well recognized by Dr. Martin Luther King, in his famous "Letter from a Birmingham Jail." King wrote that "We hold these truths to be self-evident, that all men are endowed by their creator with inalienable rights. That's a beautiful creed." As such, King celebrated rights, our creed, as an aspirational concept. Indeed, King appropriated rights claims to challenge not just the many manifestations of racial apartheid in the United States, but also the poverty and the deprivations it imposes on many. But it is vital to read what he said next: "America has never lived up to it" (King 1964). In short, his wise words suggest that it is not the language of rights so much as the larger institutional and ideological structures of

[10] It is tempting to label this historical baseline for rights qualification as the "unbearable whiteness of being" in America. See Mills (2008); Haney Lopez (1996).

[11] As Foucault (1978) and Agamben (1998) have alerted us, the flip side of the "biopolitics" that regulate deserving, rights-bearing citizens in the name of health and welfare is deprivation for those rightsless persons left to their own devices to sustain "mere life."

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exclusionary power and privilege, of "America," that most constrain who is respected as rights-bearing subjects and what rights structure our social lives. Again, recognition as a deserving rights-bearing subject requires the construction of subjectivities that fit, confirm, serve, and sustain dominant social relationships. And hence the history of struggles by various groups—indigenous peoples, people of color, women, immigrants, people with disabilities, LGBT persons, and other groups—to demand recognition of qualities ostensibly that match the baseline of rational, disciplined subjects.

Much historical sociolegal scholarship has documented these struggles over who can claim basic rights as well as the substantive reach of those rights. Sociolegal scholars have also interrogated the plight of those who intrinsically remain qualified for only limited rights status, like undocumented immigrants or children or the mentally ill, or from whom rights have been withdrawn, such as criminals and political subversives.[12] For these beings, failure to live up to the responsibilizing demands of freedom, as defined by dominant groups, threatens to doom subjects to forfeiture of rights and subjection to harsh forms of paternalistic control, repressively punitive law by the criminal justice system, or what Biehl (2005) calls "social abandonment" (see also Cover 1986).

But perhaps the most unique contribution of sociolegal scholarship has been in exploring the many ways that people who are formally recognized as deserving rights as citizens remain relatively rightsless in varying degrees in many spaces or dimensions of modern social life. Long-standing prejudices, assumptions, and stigmas about undeserving, untrustworthy character or lack of merit continue to disqualify or reduce the respect and freedom that rights are assumed to confer broadly. Again, studies demonstrating the gap between the promise and fulfillment of rights led the way, followed by many scores of studies exploring variations in rights consciousness, rights claiming, and the ways that rights do or do not matter in widely varying ways for differently situated and socially constructed subjects. Sociolegal studies of local community hostility toward "outsiders" in Engel's (1984) narrative, of poor welfare mothers (Gilliom 2001), of contemporary Native Americans resentfully relegated to un-American status (Dudas 2005), of disabled and mentally ill persons (Engel & Munger 2003; Failer 2001), of abused women who fail to qualify as "good victims" (Merry 2003), of people designated as "fat" (Kirkland 2008), and of many

[12] Of course, the walls of rights exclusion facilitated by the prevailing subject-centered conception of rights are even higher, when one considers nonhuman animals (Silverstein 1996; Rasmussen 2011–2012), natural resources (Stone 2010) and the like. A fascinating exploration of questions about who qualifies for rights is featured in the *Star Trek: Second Generation* episode, "The Measure of a Man," inspired by an essay by Martin Luther King. See Carter and McCann (2012).

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more subjects demonstrate this point about the exclusionary workings of rights in practice. All in all, rights remain unbearably light as sources of justice because many members of dominant groups in and beyond the state find that granting full respect to others as equals often is simply unbearable.

Paradox no. 4. Rights as a Potential Resource for Social Justice

The hope that rights can advance social justice and inclusive recognition returns us to the first paradox—that the inherent lightness of rights as talk has invited one of the most persistent critiques of rights. In short, if rights are so light and supple, they must also mean very little and carry little weight as a challenge to the status quo; they are merely the superficial "um" and "ah" of social and political banter, mere talk rather than action with sufficient material consequence to compel respect. Such was the gist of Jeremy Bentham's challenge that human rights is "nonsense on stilts," of many critical legal theorists' challenges about indeterminacy of rights, and of some positivist empirical scholars assertions that rights are "just words" (Bartholomew & Hunt 1990; Horwitz 1988; McCann & Scheingold 2014; Rosenberg 1991; Tushnet 1984; Waldron 1987).

But rights, sometimes, can gain weight as a resource for egalitarian challenge and transformation when they animate organized collective challenge by exploited, excluded, needy, or righteous persons. This is the central point we came to identify with what Scheingold (1974) called the "politics of rights." At least two endeavors are necessary to add weight to rights claims that contest prevailing arrangements and open up possibilities for social justice to individuals and groups. The first of these has to do with constructions of rights themselves. Sometimes, of course, injustice follows from failure of settled rights to govern social practice, so struggles are simply aimed at reconciling promise and practice. But, quite often, rights must be reconstructed to fit new situations, aspirations, or claimants, and often joined to transformational visions of justice. In this regard, the polyvocality and indeterminacy of rights as (light) language can pose a "potential problem for, rather than a necessary product of, sovereignty" and regulatory discipline (McClure 1995: 164). In contexts where liberal rights talk is a dominant discourse, this reconstruction often entails turning some elements of rights, those offering a modest democratic and inclusionary nod to equality for all, against other elements, especially those more market-oriented, proprietarian elements protecting private power and social hierarchy as well as limits on state action.

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This is the argument of Wendy Brown about the potential of rights as a limited but essential moderating force on unequal power in the neoliberal age (2003). It is important, though, that Brown further contends that liberal norms of equal respect alone do not go far enough, so they must be supplemented by ideas and values—such as care, fairness, mercy, or social justice—beyond liberalism to make rights serve more democratic ends.[13] Critical race scholar Patricia Williams (1992), in one of my favorite texts, imagines the challenge differently—as a process of alchemy, where the liberal principle of equal respect for interdependence actually can transform the proprietarian tradition of rights:

> The task . . ., then, is not to discard rights but to see through or past them so . . . that property regains its ancient connotation of being a reflection of the universal self. The task is to expand private property rights into a conception of civil rights, into the right to expect civility from other . . . Society must give them away . . . Give to all of society's objects and untouchables rights of privacy, integrity, and self assertion; give them distance and respect. (1991: 164)

Sociolegal scholars have demonstrated that simply constructing compelling rights claims and justifying standing as rights claimants is hardly enough, though. Discursive reconstructions of rights must be supported by material organizational power that poses an instrumental *counterweight* to status quo institutionalized hierarchies. This means, of course, that rights claimants must mobilize material resources and support networks—money, advocacy organizations, allies in other groups and the state, and experts, including lawyers. This mobilization of political and legal resources, whether by defiant individuals or groups, is how rights are made real, as Epp (2009) aptly puts it. Or, continuing my central metaphor, the issue is how rights sometimes help make social justice advocates into political *heavyweights*. To paraphrase A. Philip Randolph, "Rights are never given, they must be won, again and again" (Anderson 1973: v).

Whether as individuals or activist groups, those who challenge the status quo on behalf of new rights cannot just will their way to change, of course. Also required in most cases are changes in power relations beyond the control of rights claimants (Bell 1980). Indeed, advances in new rights claims usually require broad, often unexpected ruptures that render dominant groups, relationships, and practices vulnerable to challenge. And such fissures or faults in

[13] Martin Luther King, Jr. agreed that empowerment required looking beyond liberal rights: ". . . the black revolution is much more than a struggle for the rights of Negroes. It is forcing America to face all its interrelated flaws—racism, poverty, militarism, and materialism. . . It reveals systemic rather than superficial flaws and suggests that radical reconstruction of society itself is the real issue to be faced" (1968: 315).

https://doi.org/10.1111/lasr.12075 Published online by Cambridge University Press

structures of subjugation often generate new "unruly" subjectivities and rights claims capable of challenging, perhaps even transforming, rather than being singularly produced by, power (McClure 1995: 187). My own work has drawn on social movement theory to explore how a host of broad social changes opened cracks in the prevailing patriarchal power structure to support a momentary challenge from gender-based pay equity activists in the 1980s (McCann 1994; see also Albiston 2010; Stryker 2007). Such opportunities and cracks are critical to change, but they are often small, short lived, and contradictory, severely limiting the possibilities for dramatic change, except in extraordinary moments.

Summary

All in all, then, rights as social practice are fraught with paradox and irony. Hence, the dominant lesson that we can take from decades of sociolegal study in the United States: what rights mean and how they do or do not matter as practices varies with the specific contexts in which they are embedded. Rights are contingent, at once unbearably light and fundamentally heavy in varying relationships.[14] And studying these variations of rights practice has defined a key theoretical and empirical challenge for a generation of scholars in the Law and Society Association.

Rights, Globalism, and the Current Law and Society Association

The bulk of the scholarly inquiry focused on rights that I just labored to distill loomed large in the LSA from the late 1970s into the 1990s, what we might call the second, post-realist generation of sociolegal scholarship. And, again, I underline that most of it was by scholars employed in U.S. academic institutions, studying rights practices and struggles in the United States.

At the same time, though, of course, politics around the world was increasingly marked by struggles over basic rights. Sometimes the rights at stake were national or local in origin, often in the process of being written into or interpreted in relationship to new constitutions. Sometimes the focus was international human rights. And increasingly, struggles involved some mix or clash among these

[14] This statement is one of many reasons why most scholars of rights cannot or do not address the provocative challenge by Burke and Barnes to develop an "empirical theory of rights" (2009). Most sociolegal scholars confirm that rights are a resource of power, but they are not easily or productively reduced to a discrete causal variable. One way to put this is that the latter sidesteps the types of power that right imposes on and sometimes is mobilized by subjects.

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plural legal norms. Not surprisingly, this politics of rights generated much attention from international intellectuals and scholars outside the United States.

Milan Kundera, author of the book on which this talk draws, was one such engaged intellectual. Kundera staked out a quite well-known critical view about the proliferation of rights politics during 1970s, one that echoed critical scholars on the Left and Right in the United States. In his 1990 book, *Immortality*, Kundera scorned the faddish popularity of rights, which had become a light veil for selfish desire.

> . . . (T)he more the fight for human rights gains in popularity, the more it loses any concrete content, becoming a kind of universal stance of everyone toward everything, a kind of energy that turns all human desires into rights . . .The world has become man's right and everything in it has become a right. . . (1990: 140)

This dismissive critique in turn led to a bitter debate with a fellow Czech author, poet, and dissident about the meaning of the Prague spring and the value of collective protest at that historical moment (West 2009). The other figure, of course, was Vaclav Havel (1994), who became a leader in the Czech resistance and eventually a widely celebrated advocate of human rights. Havel knew well the lightness and insubstantiality conveyed by rights talk. In a 1994 speech, he addressed in his own way the lightness of rights:

> The idea of human rights and freedoms must be an integral part of any meaningful world order. Yet, I think it must be anchored in a different place, and in a different way, than has been the case so far. If it is to be more than just a slogan mocked by half the world, it cannot be expressed in the language of departing era, and it must not be mere froth floating on the subsiding waters of faith in a purely scientific relationship to the world. (Havel 1994)

But Havel rejected Kundera's position as cynical and resigned. Havel instead recognized how rights as symbols can gain positive weight through collective action. And that was what he did—he spoke up and put his life on the line, protesting and leading political opposition that exploited the cracks and fissures of vulnerable institutional power that he perceived around him (West 2009).

I do not know how many U.S. sociolegal scholars were attentive to this clash in central Europe during the early 1970s. But I do know that a host of scholars who identified with the LSA, most of them anthropologists or law professors, did focus their research on disputing practices in many places far beyond the United States—in Asia, Latin America, Europe, and Africa. These U.S.-based pioneers of international sociolegal study included: Laura Nader, Sally Falk

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Moore, Red Schwartz, Rick Abel, Marc Galanter, David Trubek, Stewart Macauley, David Engel, and Barbara Yngvesson, to name just a few. These U.S.-based scholars in turn connected with and drew attention to brilliant activist intellectuals from outside the United States whose research on disputing was joined to deep commitments to human rights. There were, again, many key figures from abroad—including Upendra Baxi, Neelan Tiruchelvam, Masaji Chiba, Boa Santos, John and Valerie Braithwaite, Keebet and Franz von Benda-Beckmann—who were brought into contact with the LSA.

For a long while, however, most of us scholars who focused on rights in the United States pursued our research largely independent of that international scholarship. This is curious because some of the most influential U.S.-based architects of the disputing paradigm directly linked their research within the United States to research beyond the United States in productive ways. Still, many of us read Marc Galanter on "Why the Haves Come Out Ahead" (1974) but did not read his parallel work on disputing in India (1989); we read David Engel's "Oven Bird's Song" (1984) but not his research on disputing in Thailand (1975); we read Scheingold's *Politics of Rights* (1974) but not his groundbreaking study of how the European Court of Justice contributed to development of transnational rights (1965); we read Rick Abel's copious writings on the legal profession and torts in the United States, among other topics, but did not read his work on Dutch colonial legal inheritance and, especially, South Africa (1995).

Eventually, though, many of us who began as narrowly insular U.S.-based scholars of rights discovered these connections, expanded our horizons, and shifted our interests in rights outward beyond the United States, where human rights is often the leading discourse of aspiration and struggle. I underline as especially influential for these transitions our increasing interactions with Canadian scholars, who helped many of us to recognize our narrow, parochial, sometimes imperial inclinations.

My key point is that the convergence of these interrelated developments in rights scholarship has been both a product and producer of *internationalization* in the LSA over the last 20 years. By reaching out to, and welcoming in, scholars from around world to an unprecedented degree, the Association has become quite different in identity, mission, and practice. It is probably ill advised to identify a critical moment in this transformation, but I would pinpoint as pivotal the publication of the *Law & Society Review* special issue on Southeast Asia in 1994 (Vol. 28: 3). In that same year, the annual meeting keynote address was delivered by president Sally Merry, a leading scholar whose research agenda was shifting from ordinary disputing among working class people in the United

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States to disputing over gender violence and women's rights beyond the U.S. mainland, first in colonial and post-colonial Hawaii, and then in Asia and other regions outside of the United States (Merry 1995, 2006). Merry invited Boa Santos to deliver the 1995 address (Santos 1995), and other presidents—including Susan Silbey (1997), David Engel (1999), and Frank Munger (2001)—focused their addresses in subsequent years on scholarship that merged attention to legal practices and human rights within and beyond the United States.

I offer two crude indicators of this transformation. First, in 1989, the initial year for which we have good data, less than 15% of LSA membership was from outside the United States. In 2011, the absolute number of non-U.S. members increased by 2.5 times, and the percentage of members who identified themselves as non-U.S. grew to over 35%.[15] This does not count the jointly sponsored international meetings. And the numbers continue to increase. The other crude indicator underlines the role of rights research in this period: in the last 13 years of *LSR* volumes, LEXIS/NEXIS lists the concept of rights has been mentioned 544 articles, which is nearly all. Of those, 162 articles, around one-third, explicitly mention international human rights.[16]

So what has the research about rights around the globe demonstrated? Well, as evidenced by the debate between Kundera and Havel, many of the same insights about the paradoxes, ironies, and contradictions of rights that emerged from study in the United States show up in the politics of rights in the rest of the world. However, there are important differences regarding the range of active players and institutional context. I briefly mention two.

The Global Lightness and Heaviness of Rights

My first point is that globalization has revealed that rights are both lighter and heavier than we might have previously imagined. To a large extent, of course, traditions of rights were introduced through European and American colonial intervention throughout much of the world, especially in the Global South. Diverse traditions of rights were transported by merchants and missionaries alike, as powerful foreign agents negotiated deals offering unequal benefits backed by force to local elites, who in turn fortified their shared rule over colonial subjects, to some extent replicating the construction of institutionalized rights within northern nation

[15] These data were culled from a variety of admittedly inconsistent reports from the LSA office.

[16] I conducted simple, crude word searches in LEXIS/NEXIS several dates in April 2013.

https://doi.org/10.1111/lasr.12075 Published online by Cambridge University Press

states in the early capitalist era (Comaroff 1996; Merry 2000). These initial movements of rights discourse often were heavily supported by material force, violent harm, and institutional transformation.

Such initial flows of rights have continued in the global era as new forms of colonial force securing the ideological as well as institutional power of the North (Silbey 1997). Iza Hussin's (2012) research draws the parallel in provocative fashion. She traces how the first "circulation" of English administrative and criminal law throughout the British empire in the nineteenth century was followed by circulation of newer but related ideas about "the rule of law" and, importantly, subject rights in the later twentieth century. Studies of rights construction in both earlier and contemporary eras frequently use images of "travel" to convey this lightness in the more recent period. I think of Katharina Heyer's (2000, 2002) splendid work on disability rights in Asia, the United States, and Europe over recent decades. Other scholars (Epp 1998) use similar images to capture how rights move, whether through networks of rights activists, proselytizing lawyers and legal reformers, formal education in internationally oriented law schools, or state actors aiming to elevate their status in global economic exchanges, among others. Much of the contemporary flow is still from North to South, but there are many points of mutual influence in various contact zones.

That rights talk travels easily is not the only important aspect of its lightness. Moreover, the discursive indeterminacy and malleability of rights discourse facilitates routine contact and common merger with diverse local traditions, norms, and constellations of institutional practice and power. This blending or mixing of transnational and local rights constructs has been the theme of many different studies. For example, scholars have demonstrated that some non-Western nations, like China or Japan (Feldman 2000), have their own traditions of rights-like conventions that not only parallel Western liberal conventions, but which make connection with Western-derived international human rights quite feasible. In this regard, I think especially of Arzoo Osanloo's (2009) fine work demonstrating that, in Iran, new hybrid constructions of women's rights have blended elements of Islamic Sharia law and international human rights.

Osanloo's research confirms that, despite the claims to universalism at the heart of human rights discourse, the global proliferation of rights talk has not produced normative uniformity. Rather, as Boaventura Santos speculated years ago, we are witnessing a multiplication of rights constructions as international, national, and local norms collide, merge, and produce new hybrid meanings in different contexts (Santos 2002). Mark Goodale has recognized this as the "intriguing aspect of current transnational legality: its pro-

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duction of normative pluralism—and a new source of social resistance—through universalist (and thus homogenizing) discourses of human rights" (2007: 135). Rights have never been lighter, it seems, as the possibilities of "glocalized" rights hybrids multiply. And such transformations in rights can be weighty. Santos' study of the World Social Forum, for example, illustrates how some of these hybrid rights constructions express a "subaltern cosmopolitan legality" that directly challenges neoliberal globalization (2005: 44–58).

But most scholarship also shows that these flows of rights are not frictionless or easy. Many scholars have demonstrated the complexities and problems of what Sally Merry calls "translations" among international rights and national or local norms. Merry (2006) explores a variety of contradictions or conundrums in which the very lightness of rights reconstruction often limits or denies rights transformative power. This lightness of meaning in many contexts is paradoxically also a product of the weight that rights carry from outside of local cultures, especially their often perceived alien status in the South as modes of new colonial imposition from the North. David Engel's (2012) marvelous study of personal injury in Thailand provides a powerful warning in this regard. While increasing numbers of cosmopolitan elite activists embrace and advocate human rights, Engel shows, these rights discourses often are implicated in global forces that decimate cultural traditions long connecting ordinary people in rural areas while offering few meaningful new resources for practical activity and relationships.

Finally, whatever their promises of formal equality and individual freedom, in practice human rights often deliver little beyond the limits of neoliberal civil and political rights (Barzilai 2005). Such rights can be empowering in valuable ways, especially in challenging excessive state violence. But they offer thin, or light, challenges to global market imperatives that increase economic and political inequality and new forms of subjugation. Indeed, rights-based agendas enforced by powerful global corporate and political actors routinely accelerate market logics that reduce local control and support increasing hierarchy. This is the thrust of Harri Englund's (2006) devastating analysis regarding how discourses of human rights and liberal freedom impede struggles against poverty and injustice in emerging African democracies. Human rights "abstractions" occlude rather than address social differences, and hence "foster elitism and undermine substantive democratization," Englund concludes (2006: 9). My colleague Angelina Godoy's (2013) book makes a similar point about free trade agreements and the limits of human rights to challenge exploitation of Central American communities by multinational pharmaceutical compa-

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nies. Rights in these accounts are not only too light to deliver on justice and empowerment: as in the United States, rights can divert from justice and even be destructive.[17]

The Radical Differences of Institutional Context

The second important point that these studies help us to understand is that institutional structures of power and authority around the world, and especially in the global South, are often very different from those in the United States. Much sociolegal scholarship thus focuses attention to the interplay of three types of organizational factors that shape the potential for rights advocacy: First, available institutional structures for adjudicating disputes over rights, especially at the nation state level but also at transnational or international levels; second, indigenous social movement organizations and what Epp (1998; Simmons 2009) has called their available legal "support structures;" and third, international nongovernmental organizations (NGOs) and movement allies.

Sometimes, social movements, transnational NGOs, global pressure, and local governments converge in supporting novel rights claims challenging an injurious status quo. Rights campaigns proved transformative in Heinz Klug's study of struggles over antiretroviral medicines to combat HIV/AIDS in South Africa (2005), and in Cesar Rodriguez-Garavito's (2005) study of campaigns for workers' rights against Nike apparel sweatshops in Mexico. Likewise, as my colleague Rachel Cichowski (2007) and others have demonstrated, the development of transnational judicial institutions has catalyzed a vibrant civic culture of rights activism at local, national, and transnational levels throughout the European Union.

More often, however, state elites are captured by neoliberal incentive structures and network allegiances, and thus offer more opposition than support to subaltern groups who are pressing policies, relationships, and control wedded to alternative conceptions of social or community rights. This again is illustrated by Godoy's (2013) study, where state elites sided with global corporate forces against local communities. Often, state actors simply lack the resolve to deliver on rights, including those rights that their own official lawmakers mandate, to reform traditional hierarchical arrangements, and to recognize citizen entitlements. This is the story that Bernadette Atuahene 2014) offers about the limited fulfillment of legally authorized restitution and recognition to dispossessed peoples in urban areas of South Africa whose property had been taken during the colonial and apartheid eras.

[17] It should be noted, though, that Godoy (2013) also suggests that the power of liberal rights to challenge arbitrary state violence should not be overlooked, and in some ways remains a valuable resource in the Global South.

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In many other contexts, by contrast, state institutions are insufficiently developed to adjudicate or administer rights claims of citizens. For example, Mark Massoud (2013) shows how human rights add up to an empty promise for people lacking key resources and institutional support in contemporary war-torn Sudan. Similarly, many challenges and disputes over rights in the global era of multinational capital require transnational or regional adjudicatory or policy institutions that have not yet developed. On the other hand, however, Milli Lake 2014) has shown how undeveloped state institutions in the Republic of Congo have actually created opportunities for human rights activists to prosecute widespread gender violence.

All right, enough. I obviously cannot fully address the complexities and challenges that the manifold scholarship in recent years has demonstrated about struggles over rights around the world. Again and again, though, we see how the unbearable lightness of rights is rife with paradoxes that magnify in most international contexts the limitations and challenges we know in North America. The possibilities continue to multiply, but those promises are often resisted or co-opted by the weighty realities of instrumental, institutional, and ideological power.

Back in the United States-LSA: Transforming Who We Are and What We Do

The project of internationalizing sociolegal study of rights, of looking outward and welcoming in, has not simply been a linear process of multiplying cases, adding knowledge, increasing dialogue, and expanding the comparative purview of analyzing rights, however. At the same time, these developments have qualitatively transformed how we understand the traditions of rights development and struggle *within* the United States, the national home of LSA.[18]

For one thing, we have learned that both the popular faith in rights and the contentious politics of rights are not markers of U.S. exceptionalism; instead, rights are all over . . . on a global scale. Moreover, learning about rights practices beyond the United States has compelled many of us to rethink how global forces and international engagements have, from our very origins, shaped American traditions of rights. The forces of the world beyond our borders are an important part of the context that we must study to understand the constraints, pressures, and possibilities of rights in our

[18] I thank Jon Goldberg-Hiller for urging me to develop this line of thought.

https://doi.org/10.1111/lasr.12075 Published online by Cambridge University Press

tradition. We have learned that all of us must bring to the study of the rights practices and struggles in the United States the same focus on international and global factors as we bring to any other site.

After all, the United States fought against European colonial power in order to secure its core constitutional rights, if initially only for white, property-owning men. At the same time, experiences as an expanding post-colonial settler nation, then colonial power, and then imperial international economic, military, and cultural force at every point shaped the development of rights. Ceaseless encounters with peoples from outside of our borders—from imported slaves to dispossessed and murdered First Peoples in the West to steady waves of immigrants from all over the globe—have forced ongoing reconstructions of the American community, renegotiations of citizenship rights to have rights, and the terms of those specific rights. The burst of new studies over a decade ago demonstrating how WWII and the Cold War powerfully influenced the U.S. civil rights movement is one example of this understanding (Dudziak 2011). Ongoing studies about how the Global War on Terror has redefined the reach and meaning of civil liberties in the United States offer other examples. And by analyzing American traditions of rights in a global context, such studies more deeply politicize our understanding of rights by focusing us on questions of power, and of the clash of hegemonic and counter hegemonic forces within the United States as well as throughout the world.

In short, recent transformations in our Association underline that the familiar American academic convention of distinguishing between U.S.-focused sociolegal scholars and comparative or international scholars is wrongheaded and archaic. This recognition has altered both teaching and research for many of us. My own courses on the politics of rights are far less U.S.-centered now than 15 years ago, and they enlist large numbers of international students. My present National Science Foundation-funded research, with colleague George Lovell (in press), represents a departure as well. We focus on how the U.S. military invasion and then colonial rule fundamentally shaped the course of social, political, and legal development in the Philippines over the last century in ways that undercut possibilities for democracy and social justice. At the same time, however, we emphasize how the struggles of immigrant Filipino workers importantly contested and shaped the development of U.S. law, including immigrant and citizenship rights, workers' rights, free speech rights, and civil rights. It is a story that demonstrates the abundant lightness of defiant transnational rights reconstruction, but also how the tragic weight of struggles for rights took a heavy toll on labor activists, including the murder of two young union leaders, who demanded human rights for working people

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both in the Philippines and on the U.S. mainland. The historical drama was as heavy as the Prague Spring described by Milan Kundera, but the commitment to radical human rights that animated the young Filipino activists was as inspiring as for the political idealist Vaclav Havel.

Conclusion

I conclude by suggesting that the related internationalization of sociolegal scholarship on rights has changed more than just intellectual study and teaching for many of us in LSA. It has transformed us in more foundational ways. I offer three quick points.

First, internationalizing and globalizing our scholarship about rights is more than an academic exercise, a new fad in the academic asylum. Rather, it is a foundational dimension of our engagement with the world. Our scholarship and teaching about rights affirms that rights matter, thus adding weighty significance to rights-based aspiration (Munger 2001). It is relevant in this regard that, a dozen or so years ago, I was a member of a group of well-known sociolegal scholars, many of whom are in the room today, who planned a book of essays on rights as practice. Our informal title, before we abandoned the project, was "Rights Suck." In fact, that was my original title for this talk. I think we in the group knew why we chose that label, but also why it was wrong headed. We study rights because, whatever their limits, their lightness, and their paradoxical heaviness, they can and often do matter in struggles for social justice, especially given the limited availability of alternative normative discourses. And, I suspect that such qualified commitment is shared by many of you in this room.

Second, our increased sensitivity to the contingency and complexities of global interdependence also provides much reason for humility, especially in encounters by those of us from the Global North with those in the South. The more we in the privileged North learn about practices and struggles around the world, the more wary we should become about our own narrow local assumptions and commitments, which can be unwittingly complicit in imperialism, neocolonialism, or just stupidity (Silbey 1997). As this year's International Prize winner, David Nelken, has demonstrated at length, comparative analysis of different geographic and historical contexts demands sensitivity to the interconnected components of sociolegal organization, and the ways that legal transfers, including translations of new rights, can wreak havoc and divert as well as serve justice. Again, we need to reduce the lightness of our abstractions with the weight of attention to institutional complexity and grounded experience in multiple contexts.

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Finally, for those of us in the United States, a global sensitivity should highlight for ourselves, our fellow citizens, our students, and especially elite power wielders, just how narrow our rights traditions are in the United States, and how Americans' fidelity to those inherited ideas leads us to ignore and foreclose what Milan Kundera calls "unrealized possibilities" for reconstructing our community and its influence in the world. Indeed, this is what Boaventura Santos has called critical theory: the inquiry into the "possibilities . . . that exist beyond what is empirically given" (quoted in Munger 2001: 9). In this regard, a major contribution of sociolegal scholars is to direct attention to novel ideas about rights and justice taken seriously elsewhere but ignored, misunderstood, or undervalued in our own legal establishment.

And that is my parting exhortation. By framing our inquiries regarding rights in comparative international and global perspective, we are better able, as Patricia Williams put it so beautifully, to "give" to "ourselves" the promise of human rights as social rights, as recognition of our interdependence and common vulnerability, of demands for mutual respect, of sublimation of power as interest into solidarity animated by social justice (1991: 164; see also Fineman 2008). That is the alchemical normative quest of mobilizing reconstructed rights discourses that demands scholarly attention and support. And such engagement with rights should be and will be one of the nobler legacies of the LSA for decades to come. Thank you.

References

Abel, Richard L. (1995) *Politics by Other Means: Law in the Struggle against Apartheid, 1980–1994*. New York: Routledge.

Agamben, Giorgio (1998) *Homo Sacer: Sovereign Power and Bare Life*. (Daniel Heller-Roazen, Trans). Palo Alto, CA: Stanford Univ. Press.

Albiston, Catherine (2010) *Institutional Inequality and the Mobilization of the Family and Medical Leave Act: Rights on Leave*. New York, NY: Cambridge Univ. Press.

Anderson, Pervis (1973) *A. Philip Randolph: A Biographical Portrait*. Berkeley, CA: Univ. of California Press.

Atuahene, Bernadette (2014) *Dignity Restoration: South Africa's Post-Apartheid Attempt to Remedy Land Dispossession*. New York, NY: Oxford Univ. Press. Forthcoming.

Bartholomew, Amy, & Alan Hunt (1990) "What's Wrong with Rights?," 9 *Law & Inequality* 501–58.

Barzilai, Gad (2005) *Communities and Law: Politics and Cultures of Legal Identities*. Ann Arbor, MI: Univ. of Michigan Press.

Bell, Derrick (1980) "Brown vs. Board of Education and the Interest Convergence Dilemma," 93 *Harvard Law Rev.* 518–33.

Biehl, Joao (2005) *Vita: Life in a Zone of Social Abandonment*. Berkeley, CA: Univ. of California Press.

Bower, Lisa (1994) "Queer Acts and the Politics of Direct Address: Rethinking Law, Culture, and Community," 28 *Law & Society Rev.* 1009–33.

https://doi.org/10.1111/lasr.12075 Published online by Cambridge University Press

Brigham, John (1996) *The Constitution of Interests: Beyond the Politics of Rights*. New York, NY: New York Univ. Press.

Brisbin, Richard A., Jr (2002) *A Strike like No Other Strike: Law and Resistance during the Pittson Coal Strike of 1989–1990*. Baltimore, MD: Johns Hopkins Univ. Press.

Brown, Wendy (1995) "Rights and Identity in Late Modernity: Revisiting the 'Jewish Question'," in Sarat, Austin, & Thomas R. Kearns, eds., *Identities, Politics, and Rights*. Ann Arbor, MI: Univ. of Michigan Press.

——— (2003) "Neoliberalism and the End of Liberal Democracy," 7 *Theory & Event* 1–43.

Bumiller, Kristin (1990) *The Civil Rights Society: The Social Construction of Victims*. Baltimore, MD: Johns Hopkins Press.

Burke, Thomas F., & Jeb Barnes (2009) "Is There an Empirical Literature on Rights?," 48 *Studies in Law, Society, and Politics* 69–91.

Carter, Lief, & Michael McCann (2012) "Measuring Humanity: Rights in the 24th Century," in Robson, Peter, & Jessica Silbey, eds., *Law and Justice on the Small Screen*. Oxford, UK: Hart Publishing.

Cichowski, Rachel A. (2007) *The European Court and Civil Society: Litigation, Mobilization, and Governance*. New York, NY: Cambridge Univ. Press.

Comaroff, John (1996) "The Discourse of Rights in Colonial South Africa: Subjectivity, Sovereignty, Modernity," in Sarat, Austin, & Thomas R. Kearns, eds., *Identities, Politics, and Rights*. Ann Arbor, MI: Univ. of Michigan Press.

Cover, Robert (1983) The Supreme Court Term, Forward: Nomos and Narrative. Faculty Scholarship Series Paper #2705. Available at: http://digitalcommons.law.yale.edu/fss_papers/2705/ (Accessed 21 March 2014).

——— (1986) "Violence and the Word," 95 *Yale Law J.* 1601–29.

Crenshaw, Kimberlé, et al., ed. (1995) *Critical Race Theory: The Key Writings That Formed the Movement*. New York, NY: New Press.

Dayan, Colin (2011) *The Law is a White Dog*. Princeton, NJ: Princeton Univ. Press.

Delgado, Richard, & Jean Stefancic (2001) *Critical Race Theory: An Introduction*, 2nd ed. New York, NY: New York Univ. Press.

Dudas, Jeffrey (2005) "In the Name of Equal Rights: 'Special' Rights and the Politics of Resentment in Post-Civil Rights America," 39 *Law & Society Rev*. 723–57.

Dudziak, Mary (2011) *Cold War Civil Rights: Race and the Image of American Democracy*, 2nd ed. Princeton, NJ: Princeton Univ. Press.

Dworkin, Ronald (1978) *Taking Rights Seriously*. Cambridge, MA: Harvard Univ. Press.

Engel, David (1975) *Law and Kingship in Thailand during the Reign of King Chulalongkorn*. Ann Arbor, MI: Univ. of Michigan Center for South and Southeast Asian Studies.

——— (1984) "The Oven Bird's Song: Insiders, Outsiders, and Personal Injuries in An American Community," 18 *Law & Society Rev.* 551–82.

——— (1999) "Making Connections: Law and Society Researchers and Their Subjects," 33 *Law & Society Rev.* 3–16.

——— (2012) "Vertical and Horizontal Perspectives on Rights Consciousness," 19 *Indiana J. of Global Legal Studies* 423–55.

———, & Frank W. Munger (2003) *Rights of Inclusion: Life Stories of Identity, Disability, and Law*. Chicago, IL: Univ. of Chicago Press.

Englund, Harri (2006) *Prisoners of Freedom: Human Rights and the African Poor*. Berkeley, CA: Univ. of California Press.

Epp, Charles R. (1998) *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago, IL: Univ. of Chicago Press.

——— (2009) *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State*. Chicago, IL: Univ. of Chicago Press.

Ewick, Patricia, & Susan Silbey (1998) *The Common Place of Law*. Chicago, IL: Univ. of Chicago Press.

https://doi.org/10.1111/lasr.12075 Published online by Cambridge University Press

Failer, Judith (2001) *Who Qualifies for Rights? Homelessness, Mental Illness, and Civil Commitment*. Ithaca, NY: Cornell Univ. Press.
Feldman, Eric A. (2000) *The Ritual of Rights in Japan: Law, Society, and Health Policy*. New York, NY: Cambridge Univ. Press.
Fineman, Martha Albertson (2008) "The Vulnerable Subject: Anchoring Equality in the Human Condition," 20 *Yale J. of Law & Feminism* 1–24.
Fleury-Steiner, Benjamin, & Laura Beth Nielsen, eds. (2006) *The New Civil Rights Research: A Constitutive Approach*. Burlington, VT: Ashgate.
Foucault, Michel (1978) *The History of Sexuality, Volume One: An Introduction*. New York: Random House.
Fraser, Nancy (2000) "Rethinking Recognition," 3 *New Left Rev.* 107–20.
Galanter, Marc (1974) "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," 9 *Law & Society Rev.* 95–151.
——— (1989) *Law and Society in Modern India*. New York, NY: Oxford Univ. Press.
Garth, Bryant, & Joyce Sterling (1998) "From Legal Realism to Law and Society: Reshaping Law for the Last Stages of the Social Activist State," 32 *Law & Society Rev.* 409–72.
Gilliom, John (2001) *Overseers of the Poor: Surveillance, Resistance and the Limits of Privacy*. Chicago, IL: Univ. of Chicago Press.
Glendon, Mary Ann (1993) *Rights Talk: The Impoverishment of Political Discourse*. New York, NY: Free Press.
Godoy, Angelina (2013) *Of Medicines and Market: Intellectual Property and Human Rights in the Free Trade Era*. Stanford, CA: Stanford Univ. Press.
Goldberg-Hiller, Jon (2004) *The Limits to Union: Same-Sex Marriage and the Politics of Civil Rights*. Ann Arbor, MI: Univ. of Michigan Press.
Goluboff, Risa L. (2007) *The Lost Promise of Civil Rights*. New York, NY: Cambridge Univ. Press.
Goodale, Mark (2007) "The Power of Rights: Tracking Empires of Law and New Forms of Social Resistance," in Goodale, Mark, & Sally Engle Merry, eds., *The Practice of Human Rights*. New York, NY: Cambridge Univ. Press.
Gould, Jon, & Scott Barclay (2012) "Mind the Gap: The Place of Gap Studies in Sociolegal Scholarship," 8 *Annual Rev. of Law and Social Science* 323–35. Available at: http://www.annualreviews.org/doi/abs/10.1146/annurev-lawsocsci-102811-173833 (accessed 21 March 2014).
Haltom, William, & Michael McCann (2004) *Distorting the Law: Politics, Media, and the Litigation Crisis*. Chicago, IL: Univ. of Chicago Press.
Handler, Joel F. (1978) *Social Movements and the Legal System: A Theory of Law Reform and Social Change*. New York, NY: Academic Press.
Haskell, Thomas (1988) "The Curious Persistence of Rights in the Age of Interpretation," in Thelen, David, ed., *The Constitution and American Life*. Ithaca, NY: Cornell Univ. Press.
Havel, Vaclav (1994) "Acceptance Speech," National Constitution Center. Available at: http://constitutioncenter.org/libertymedal/recipient_1994_speech.html (accessed 20 October 2013).
Heyer, Katherina (2000) "From Welfare to Rights—Japanese Disability Law," 1 *Asia-Pacific Law and Policy J.* 1–21.
——— (2002) "The ADA on the Road: Disability Rights in Germany," 27 *Law and Social Inquiry* 723–62.
Horwitz, Morton (1988) "Rights," 23 *Harvard Civil Rights-Civil Liberties Rev.* 393–406.
Hussin, Iza (2012) "Circulations of Law: Colonial Precedents, Contemporary Questions," 2 *Oñati Socio-Legal Series* 18–32.
Kairys, David, ed. (1998) *The Politics of Law: A Progressive Critique*, 3rd ed. New York, NY: Basic Books.
King, Martin Luther, Jr (1964) "Letter from Birmingham Jail," in King, Martin Luther, Jr, ed., *Why We Can't Wait*. New York: New American Library (Harper & Row).

https://doi.org/10.1111/lasr.12075 Published online by Cambridge University Press

——— (1968) *A Testament of Hope*. New York: Harper Collins Publishers.

Kirkland, Anna (2008) *Fat Rights: Dilemmas of Difference and Personhood*. New York, NY: New York Univ. Press.

Klug, Heinz (2005) "Campaigning for Life: Building a New Transnational Solidarity in the Face of HIV/AIDS and TRIPS," in Santos, Boaventura de Sousa, & Cesar Rodriguez-Garavito, eds., *Law and Globalization from Below*. New York, NY: Cambridge Univ. Press.

Kundera, Milan (1984) *The Unbearable Lightness of Being*. (Michael Henry Heim, Trans.). New York, NY: Harper & Row.

——— (1990) *Immortality*. (Peter Kussi, Trans.). New York, NY: Harper Collins.

Lake, Milli (2014) "Organizing Hypocrisy: Providing Legal Accountability for Human Rights Violations in Areas of Limited Statehood," 58 *International Studies Quarterly* Forthcoming.

Lopez, Ian Haney (1996) *White by Law: The Legal Construction of Race*. New York: NYU Press.

Lovell, George (2012) *This Is Not Civil Rights: Discovering Rights Talk in 1939 America*. New York, NY: Cambridge Univ. Press.

———, & Michael McCann (2004) "A Tangled Legacy: Federal Courts and the Politics of Democratic Inclusion," in Wolbrecht, Christina, & Rodney Hero, with Peri E. Arnold & Alvin Tillery (Eds.), *The Politics of Democratic Inclusion*. Philadelphia, PA: Temple Univ. Press.

MacLean, Nancy (2006) *Freedom Is Not Enough: The Opening of the American Workplace*. Cambridge, MA: Harvard Univ. Press.

Marx, Karl (1978) "On the Jewish Question," in Tucker, Robert, ed., *The Marx-Engels Reader*, 2nd ed. New York: Norton.

Massoud, Mark Fathi (2013) *Law's Fragile State: Colonial, Authoritarian, and Humanitarian Legacies in Sudan*. New York, NY: Cambridge Univ. Press.

McCann, Michael (1984) "Resurrection and Reform: Perspectives on Property in the American Constitutional Tradition," 13 *Politics and Society* 143–76.

——— (1989) "Equal Protection for Social Inequality: Race and Class in American Constitutional Ideology," in McCann, Michael W., & Gerald L. Houseman, eds., *Judging the Constitution: Critical Essays on Judicial Lawmaking*. Boston, MA: Little, Brown.

——— (1994) *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago, IL: Univ. of Chicago Press.

———, & David Johnson (2009) "Rocked but Still Rolling: The Enduring Institution of Capital Punishment in Historical and Comparative Perspective," in Sarat, Austin, & Charles Ogletree, eds., *Where Are We on the Road to Abolition?* New York, NY: New York Univ. Press.

———, & George Lovell (2014). A Union by Law: Filipino Cannery Workers and the Transnational Struggle for Human Rights. Funded by NSF grant #SES-1060698. Presented at the Annual Meetings of the Midwest Political Science Association, Chicago, IL, April 4, 2014.

———, & Stuart Scheingold (2014) "Rights: Legal Aspects," in Smelser, Neil J., & Paul, B. Baltes, ed., 2nd ed. *International Encyclopedia of the Social & Behavioral Sciences*. London, UK: Elsevier Forthcoming.

McClure, Kirstie M. (1995) "Taking Liberties in Foucault's Triangle: Sovereignty, Discipline, Governmentality, and the Subject of Rights," in Sarat, Austin, & Thomas R. Kearns, eds., *Identities, Politics, and Rights*. Ann Arbor, MI: Univ. of Michigan Press.

Merry, Sally Engle (1990) *Getting Justice and Getting Even: Legal Consciousness among Ordinary Americans*. Chicago, IL: Univ. of Chicago Press.

——— (1995) "Resistance and the Cultural Power of Law," 29 *Law & Society Rev.* 11–26.

——— (2000) *Colonizing Hawaii: The Cultural Power of Law*. Princeton, NJ: Princeton Univ. Press.

https://doi.org/10.1111/lasr.12075 Published online by Cambridge University Press

——— (2003) "Rights Talk and the Experience of Law: Implementing Women's Human Rights to Protection from Violence," 25 *Human Rights Q.* 243–81.
——— (2006) *Human Rights and Gender Violence*. Princeton, NJ: Princeton Univ. Press.
Miller, Richard, & Austin Sarat (1980–81) "Grievances, Claims, & Disputes: Assessing the Adversary Culture," 15 *Law & Society Rev.* 525–66.
Mills, Charles (2008) "Racial Liberalism," *Proceedings of the Modern Language Association* 1380–97. Available at: http://www.havenscenter.org/files/Mills-Racial%20Liberalism.pdf (accessed 30 March 2014).
Milner, Neal (1989) "The Denigration of Rights and the Persistence of Rights Talk: A Cultural Portrait," 14 *Law & Social Inquiry* 631–75.
———, & Jon Goldberg-Hiller (2003) "Rights As Excess: Understanding the Politics of Special Rights," 28 *Law & Social Inquiry* 1075–125.
Minow, Martha (1987) "Interpreting Rights: An Essay for Robert Cover," 96 *Yale Law J.* 1860–915.
Munger, Frank (2001) "Inquiry and Activism in Law and Society," 35 *Law & Society Rev.* 7–20.
Murakawa, Naomi, & Katherine Beckett (2010) "The Penology of Racial Innocence," 44 *Law & Society Rev.* 695–730.
Osanloo, Arzoo (2009) *The Politics of Women's Rights in Iran*. Princeton, NJ: Princeton Univ. Press.
Pateman, Carole (1988) *The Sexual Contract*. Palo Alto, CA: Stanford Univ. Press.
Polletta, Francesca (2000) "The Structural Context of Novel Rights Claims: Rights Innovation in the Southern Civil Rights Movement, 1961–1966," 34 *Law & Society Rev.* 367–406.
Rasmussen, Claire (2011–2012) "Are Animal Rights Dead Meat?," 41 *Southwestern Law Rev.* 253–64.
Rodriguez-Garavito, Cesar A. (2005) "Nike's Law: The Anti-Sweatshop Movement, Transnational Corporations, and the Struggle over International Labor Rights in the Americas," in Santos, Boaventura de Sousa, & Cesar Rodriguez-Garavatio, eds., *Law and Globalization from Below: Towards A Cosmopolitan Legality*. New York, NY: Cambridge Univ. Press.
Rose, Nicholas (1999) *The Powers of Freedom: Reframing Political Thought*. Cambridge, MA: Cambridge Univ. Press.
Rosenberg, Gerald (1991) *The Hollow Hope: Can Courts Bring About Social Change?* Chicago, IL: Univ. of Chicago Press.
Santos, Boaventura de Sousa (1995) "Three Metaphors for A New Conception of Law: The Frontier, the Baroque, and the South," 29 *Law & Society Rev.* 569–84.
——— (2002) *Towards A New Legal Common Sense*. London: Elsevier.
——— (2005) "Beyond Neoliberal Governance: The World Social Forum and Subaltern Cosmopolitan Politics and Legality," in Santos, Boaventura de Sousa, & Cesar Rodriguez-Garavito, eds., *Law and Globalization from Below: Towards a Cosmopolitan Legality*. New York, NY: Cambridge Univ. Press.
Sarat, Austin (1990) " '. . . The Law Is All Over': Power, Resistance and the Legal Consciousness of the Welfare Poor," 2 *Yale J. of Law & the Humanities* 343–80. Available at: http://digitalcommons.law.yale.edu/yjlh/vol2/iss2/6http://digitalcommons.law.yale.edu/yjlh/ (accessed 31 March 2014).
Scheingold, Stuart A. (1965) *The Rule of Law in European Integration*. New Haven: Yale Univ. Press.
——— (1974) *The Politics of Rights: Lawyers, Public Policy, and Social Change*. New Haven, CT: Yale Univ. Press.
Shklar, Judith. (1989) *American Citizenship: The Quest for Inclusion. The Tanner Lectures on Human Values*. Salt Lake, UT: Univ. of Utah.
Silbey, Susan (1997) " 'Let Them Eat Cake': Globalization, Postmodern Colonialism, and the Possibilities of Justice," 31 *Law & Society Rev.* 207–35.

https://doi.org/10.1111/lasr.12075 Published online by Cambridge University Press

Silverstein, Helena (1996) *Unleashing Rights: Law, Meaning, and the Animal Rights Movement*. Ann Arbor, MI: Univ. of Michigan Press.

Simmons, Beth (2009) *Mobilizing for Human Rights*. New York, NY: Cambridge Univ. Press.

Smith, Rogers (1997) *Civic Ideals: Conflicting Visions of Citizenship in U.S. History*. New Haven, CT: Yale Univ. Press.

Stone, Christopher (2010) *Should Trees Have Standing? Law, Morality, and the Environment*, 3rd ed. New York, NY: Oxford Univ. Press.

Stryker, Robin (2007) "Half Empty, Half Full, or Neither: Law, Inequality, and Social Change in Capitalist Democracies," 3 *Annual Rev. of Law and Social Science* 69–97.

Stychin, Carl (1998) *A Nation By Rights: National Cultures, Sexual Identity Politics, and the Discourse of Rights*. Philadelphia, PA: Temple Univ. Press.

Tilly, Charles (1985) "War Making and State Making as Organized Crime," in Evans, Peter, Dietrich Rueschemeyer, & Theda Skocpol, eds., *Bringing the State Back In*. New York, NY: Cambridge Univ. Press.

——— (1992) "Where Do Rights Come From?," Mjoset, Lars, ed., *Contributions to the Comparative Study of Development (Vol. 2: Proceedings Form the Vilhelm Aubert Memorial Symposium)*. Oslo: Institute for Social Research.

Tushnet, Mark (1984) "Essay on Rights," 62 *Texas Law Rev.* 1363–403.

Waldron, Jeremy, ed. (1987) *Nonsense Upon Stilts: Bentham, Burke, and Marx on the Rights of Man*. London, UK: Metheun.

West, Tim (2009) "Destiny as Alibi: Milan Kundera, Vaclav Havel, and the 'Czech Question' after 1968," 87 *The Slavonic and East European Rev.* 401–28.

Williams, Patricia (1992) *The Alchemy of Race and Rights*. Cambridge, MA: Harvard Univ. Press.

Zemans, Frances Kahn. (1983) "Legal Mobilization: The Neglected Role of Law in the Political System," 77 *American Political Science Rev.* 690–703.

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https://doi.org/10.1111/lasr.12075 Published online by Cambridge University Press