LSA and the "Pax Americana"

Robert Dingwall

In the United Kingdom, we do not yet celebrate Thanksgiving. I wonder how much longer this cultural exclusion will survive. Our Christmas festivities have been remodeled to give pride of place to the turkey, rather than to the goose beloved of Charles Dickens. Santa Claus, in an outfit from *Harper's Weekly* via Coca-Cola marketing, has displaced St. Nicholas, Archbishop of Myra, as the bringer of seasonal gifts. Our annual reminder of the virtues of democracy, Protestantism, and dangerous fireworks, Guy Fawkes Day, is being transformed into the sanitized Halloween of "trick or treat." On this occasion, however, the understandable desire of U.S. colleagues to get their drafts out before the pumpkin pie goes in the oven means that I can respond to Lynn Mather, David Trubek, and Bryant Garth. I have to admit that I did not even know that Canada had a different Thanksgiving date, but I have also been able to review Joan Brockman's contribution. Mather and Trubek speak passionately to the internationalization of the Law and Society Association but, to an international reader, both also epitomize the real difficulty for even passionate advocates of this agenda in understanding quite what this means for the U.S. law and society community, as Garth and Brockman recognize.

Mather focuses her presidential address on the dangers of "the assumption of universality," the idea that the American experience of law and society provides a basis for understanding the experience of law and society in any national context. By corollary, she criticizes her compatriots for failing to recognize the way in which others' experiences of law and society may be relevant to the understanding of their own country. She rightly celebrates the Association's achievement in its growth from the handful of founders in 1964, who could still fit into Red Schwartz's home in Buffalo for the first conference in 1975, to the 2002 gathering in

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Vancouver, which attracted more than 1,000 participants. Three conferences have been held jointly with the International Sociological Association's Research Committee on the Sociology of Law (RCSL) in European locations. Depending on the venue, even the U.S.-based conferences now regularly seem to attract 10 to 15% of their participants from outside the United States. *Law & Society Review* has extended its reach and will do so yet further under the new publishing arrangements. Despite this, as Mather notes, a measure of social and intellectual exclusion continues to be directed toward international scholars and their work, a phenomenon she compares to the exclusion of women and minorities that has in some degree been acknowledged and addressed by LSA. U.S. scholars are slow to cite work published elsewhere, even from countries that share their legal traditions, to be self-critical about their use of language, and to examine the differences in research agendas. She concludes by calling for a discussion about institutional reform within LSA in response to these concerns. Trubek takes up this challenge in elaborating a program of practical actions that might be taken over the next few years, although he recognizes the potential risks of simply extending the hegemony of U.S. scholarship and stresses the need for many of these to be undertaken in partnership with the RCSL.

Hooray for the Red, White, and Blue!

Trubek's commentary plays with the resonance of "red, white, and blue." If you put this phrase into a Google search, you get about 290,000 hits. The early pages are all fairly harmless U.S. sites. If you restrict the search to U.K. pages, one of the first to come up is the British National Party, a far right organization that many would describe as neo-Nazi. Their "Red, White and Blue 2001" page reports an annual rally, where "the best efforts of the so-called 'Anti-Nazi League' failed to stop over 500 British patriots from all over the kingdom attending an event to celebrate the historical and cultural legacy of the British Isles and the British people, and have some fun in the process!" (British National Party 2001). You will also find Ulster Loyalist sites as well as a number of more innocent celebrations of the Royal Jubilee in 2002. The Union Jack, or the Union Flag of the United Kingdom of Great Britain and Northern Ireland, to give its correct title, is as "red, white, and blue" as the Stars and Stripes. However, the flag is a more problematic symbol of nationhood, and its colors can mark both positive and pathological affirmations of national identity. It is hard to imagine a British academic using the phrase as freely as Trubek because of unease about what precisely it might signal. In

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the words of Gilroy, for example, "There ain't no black in the Union Jack" (1991). The phrase may have other connotations for a French scholar thinking of the Tricoleur and its revolutionary history or a Russian scholar contemplating the recent restoration of the Tsarist flag. All of these flags use the same palette, but the symbolism is capable of being very different.

At one level, obviously, this simply echoes Mather's point about the way in which the choice of language to describe law and legal systems embeds a particular set of assumptions. At another, however, it illustrates the problems that even an international scholar as seasoned as Trubek can still have in thinking outside the box of national scholarship. As we explore both articles, we can see more central examples; Brockman adds others. Mather comes from political science and understandably notes the way in which law is increasingly being used to achieve political ends. Her generally positive view of this phenomenon is, though, a distinctively American way of thinking about the issue. In contrast to many West European democracies, law has, historically, been central to the U.S. political system. To some extent, it has become a means of compensating for the weaknesses of electoral politics and the disconnection between parties and voters. Americans have often seen law as their protection against politicians. In Europe, the tradition is different. Politics has been the means by which we have liberated ourselves from harsh, oppressive, and unjust laws administered in the interests of an elite by judges who were members of that elite. We may be forgiven for worrying about the consequences of importing U.S. styles of thinking and litigating into an environment where legal professions are drawn from a relatively narrow social background and where judicial accountability remains uncertain. Human rights jurisdiction may be too powerful a weapon to put into the hands of the judiciary. It may also contribute to the continuing decline of democratic politics. Why should citizens invest effort in persuasion and debate with each other when they can achieve their goals by persuading a handful of elderly men that their cause should be upheld? Only an American could imagine that "speaking law to power" or "exporting the rule of law" is an unproblematic good.

In a way, Mather's opening discussion of *Spider-Man* rings truer than she might have intended. The superhero exemplifies the individualism that is so dear to U.S. culture and the legal processes to which it has given birth. A world where law is so central is understandably attractive to lawyers. It is entirely clear why they should advocate it and construct an elaborate professional mystery about it. "Democracy and the rule of law" have become as interdependent as "motherhood and apple pie," although the last U.S. presidential elections should have compelled

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some revision of that particular assumption. As Garth also notes, law and society studies are potentially a vehicle for this project of professional imperialism, different in detail from the international arena of high-end law that he has studied in collaboration with Yves Dezalay, but no less imperialist. At one level, we can all echo Mather's recognition of law as a transnational resource for improving the status of women or regulating the consumption of tobacco. At another, however, we may question whether the use of international legal instruments does not create more problems than it solves. Does the imposition of a better life for women as an American would define this actually affect the status of Third World women, or does it fuel traditionalist male resentments and mistrust of the West? Would more be achieved by a slower process of education, persuasion, and economic change?

Both Mather and Trubek acknowledge the risk that the internationalization of LSA becomes another form of U.S. hegemony. However, both see this mainly as an institutional problem rather than as an intellectual one, in a broad sense. Obviously, both stress the virtues of comparative work and the understanding of different ways of dealing with law and society issues. Yet the examples that both give reflect the issues that Americans currently find important—discrimination, family law, migration. This is comparative work from a U.S. agenda. It does not, for instance, problematize the assumption of law's pre-eminence as a mode of resolving disputes or ordering society. Garth addresses this more directly, when he questions the dominance of liberal legalism and calls for a more critical analysis of the way in which this continues to promote the sectional interests of lawyers, albeit of a different political persuasion. One of the lessons that we might profitably derive from the sociology of science, for example, is its stress on symmetry, that "truth" and "error" in science need to be explained in the same terms. In the same way, social scientists need to recognize that, for example, the idealism of nongovernmental organizations (NGOs) does not automatically make them into vehicles for the public good. Just like corporations, NGOs compete for market share, resources, legitimacy, and so on. All of these may influence their self-presentation and mission in advancing their own interests rather than those they purport to represent. Similarly, public interest lawyering does not cease to be professional imperialism just because idealistic people do it. Of course, we must concede immediately that such an observation is good news for the imperialistic projects of sociology, political science, economics, and so on! Nevertheless, it confirms Mather's quote from John Sloan Dickey that good intentions are not enough to avoid harm.

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The Road to…Where?

The eighteenth-century English wit and scholar Samuel Johnson almost certainly did not coin the phrase about the road to hell being paved with good intentions. The mystery of its origins should not, however, prevent us from taking note of the sentiments. A more internationalist LSA risks becoming a liberal version of the Pax Americana, a term which itself is quite a tribute to the resilience of classical learning among Western elites. Such a movement by LSA may also compromise some of the Association's distinctive virtues. I have always appreciated the warmth of the welcome extended to international scholars by LSA. Many of us have benefited from countless small acts of kindness and generosity. However, I am not sure that I come to LSA to attend an international meeting so much as to get a handle on that strange tribe known to anthropologists as the Nacirema. LSA meetings draw the largest, most dynamic, and most interdisciplinary community of scholars in this field anywhere. As such, if you want to know where the intellectual and empirical leading edge is, then it is more likely to be on show here than anywhere else. However, that community has its home and its own domain assumptions that are difficult fully to understand without some direct experience. LSA meetings are a window on the world that produces most of the content of most of the top English-language journals. Through the conventional tools of ethnography—informal interviews and participant observation—we outsiders may be able to learn enough about that world to make better sense of its artifacts. In the process, we may be able to contribute to some mutual enlightenment through the questions we ask as strangers or the tales that we tell about life in our own worlds. However, I am not sure how far this takes us toward universals, so much as a better understanding of particulars.

Although I have been previously been critical of the narrow range of voices heard at LSA meetings, it should be acknowledged that part of their virtue is the extent to which they demonstrate the independence that the power, wealth, and cultural traditions of U.S. higher education can bring to scholars. Even if this is only a reality in a handful of particularly well-endowed institutions, it sets a benchmark by which others expect to be judged. Mather and Brockman have both drawn on Campbell and Wiles's (1976) discussion of the state of law and society scholarship in the United Kingdom during the early 1970s. This was a contentious analysis at the time and, in retrospect, both authors would probably concede that it was somewhat unfair to the work that the Oxford Centre actually produced during the 1970s

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and 1980s. Many commentators would think there was a certain irony in Campbell's apparent shift from an advocate for a critical sociology of law to his current position as a perceived high priest of neoliberalism, leading the charge in the United Kingdom toward a U.S. Ivy League model for student fees.[1] At the core of this, however, is a continuing concern for the independence of thought and scholarship, which cannot be achieved by over-reliance on state funding. This is where Campbell and Wiles were truly prescient. Sociolegal studies have prospered in the United Kingdom by taking root in law schools, which are rich enough to support the critical versions of black-letter scholarship, reform by armchair commentary. However, since the restructuring of the Oxford Centre at the end of the 1980s, the United Kingdom has failed to produce a substantial body of independent empirical work. Research of this kind is too costly, even for law schools, which, in any case, lack the culture and skills to train empirical scholars. As I noted in response to Kitty Calavita's 2001 address, the result is that there is not much other than policy-driven work in pursuit of government or foundation agendas (Dingwall 2002). Part of the international importance of LSA is the way in which it sets a standard for unsponsored social inquiry that both challenges others and provides an opportunity for such work to be presented and debated. We Brits may need to exert a degree of ingenuity to extract the news unwelcome to our funders from the work they have paid for, but LSA offers an environment in which that can be exposed and discussed. An LSA that can resist the seductions of imperialism can be an important support for diversity in the international law and society community.

I have been privileged to serve LSA in a number of capacities, including a recent term of office as a trustee. On the whole, I think that my contributions have been treated with respect, even when they have seemed a little eccentric because they do not share the domain assumptions of my U.S. colleagues. However, I have never entertained the thought that it would be appropriate to seek office

[1] The U.K. government has conceded that the British university system is in a situation of funding crisis as a result of a generation of underinvestment by its predecessors. However, the government is reluctant to make the commitment of public funding that would be necessary to remedy this. Its preferred response has been to increase the proportion of university costs paid by students and their parents. Some university presidents, including Campbell, have argued in favor of moving to a situation where university fees would be more or less completely deregulated—at present they are set nationally by the government—and universities would be allowed to charge what the market would bear. Access and diversity concerns would be addressed by scholarships funded by either endowment income, which is quite small in the United Kingdom relative to the United States, or redistribution from the fee income raised from more affluent students. This is a highly contentious position in a country with a strong tradition of free or low-cost higher education, from which most members of the present government and current university presidents have benefited.

any more than I would expect a U.S. scholar to be elected to lead the U.K. Socio-Legal Studies Association. The "red, white, and blue ceiling" presents rather different issues from the exclusion of women, people of color, or other minorities. Clearly, it is not acceptable that U.S. citizens should be the subject of exclusion by virtue of irrelevant attributes, or that discrimination should exist among international participants in LSA on the same grounds. However, I am not entirely persuaded that the role of international members in LSA should extend beyond that of non–executive directors, who may help to contribute to the good governance and corporate sensibility of a company but who would not expect to determine its strategy and direction. (There may be an exception in relation to *Law & Society Review*, where new editorial office technology would make an offshore base entirely practicable and where LSA might want to signal its openness to the best scholarship from wherever it originates.)

An overinclusive LSA could be more dangerous than an underinclusive one. The biggest risk of the latter is that LSA loses some of the governance benefits of greater diversity, and of the former that the U.S. cultural hegemony noted in my opening permeates yet further into the civic life of the rest of the planet. It would be ironic if a community that has so many evident reservations about the Bellum Americanum became an agent of the Pax Americana.

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