

Legal Consciousness Studies as a Laboratory of a Renewed System of Knowledge About Law

Presentation of the Special Report

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Legal Consciousness Studies (LCS)¹ constitutes an important current of research in the contemporary history of Socio-Legal Studies² in the United States. We would not have the pretension to introduce it to readers of *Droit et Société*. Besides, there are already several articles devoted to this current in the journal,³ or in other publications.⁴ The European literature is rich with analyses and commentaries devoted to or referencing it.⁵ More specifically, the considerable interest that Legal Consciousness Studies enjoys in France is inscribed in a tradition of exchanges, going back several decades, between sociologists of law and members of the Law and Society Association,

* We particularly want to thank the referees for their extremely valuable remarks and comments on early drafts of all the dossier's articles.

1. We use the concept Legal Consciousness Studies here in the continuation of how the movement has been, since the mid-2000s, presented in France by sociologists of law. We are not suggesting that works of Legal Consciousness in the United States cover the same epistemic range as more institutionalized movements such as gender studies or even science and technology studies, which is questioned later (see V. Lucas MONTEIL and Alice ROMERIO, "Des disciplines aux 'studies.' Savoirs, trajectoires, politiques," *Revue d'anthropologie des connaissances*, 11 (3), 2017, p. 231-244. Furthermore, the interdisciplinary constitution of this movement, much like its deeply critical dimension, its seniority, and the strategic positioning of its members within the Law and Society Association, appear to us to plead for the granting of such a label. The article that opens this dossier, "After Legal Consciousness..." seems to us, in this regard, to testify to Susan Silbey's strong commitment, from the very first issue of the *Annual Review of Law and Social Sciences*, published in 2005, to reaffirm the pertinence of analytical frameworks of a movement called to persist in the international landscape.

2. As Susan Silbey highlights in the article that opens this dossier, the term "socio-legal studies," initially more frequently used in Europe, is today equally common in the United States. We utilize it, like this author, interchangeably with "Law and Society movement," in both French and in English.

3. V. Mauricio GARCÍA-VILLEGAS, "Symbolic Power Without Symbolic Violence? Critical Comments on Legal Consciousness Studies in the USA," *Droit et Société*, 53, 2003, p. 137-163 or Jérôme PÉLISSE, "Consciences du temps et consciences du droit chez des salariés à 35 heures," *Droit et Société*, 53, 2003, p. 163-186.

4. See, for example, Jérôme PÉLISSE, "A-t-on conscience du droit? Autour des *Legal Consciousness Studies*," *Genèses*, 59, 2005, p. 114-130; ID., "Les *Legal Consciousness Studies*: une sociologisation domestiquée des *Critical Legal Studies*?" in Hourya BENTOUHAMI, Ninon GRANGÉ, Anne KUPIEC and Julie SAADA (dir.), *Le souci du droit. Où en est la théorie critique?*, Paris: Sens & Tonka, coll. « Théorie critique », 2010, p. 1-15.

5. We are thinking particularly about an article testifying to the growing European interest in the current of Legal Consciousness Studies: Marc HERTOIGH, "A 'European' Conception of Legal Consciousness: Rediscovering Eugen Ehrlich," *Journal of Law and Society*, 31 (4), 2004, p. 457-481.

notably with Susan Silbey, who is one of its major figures and whose œuvre is at the center of the project that the present special report reproduces.

I. Legal Consciousness Studies: Putting Research on Law to the Test

Our goal is not to publicize this program of research. It has already been done, superbly, in the article in this same dossier, by Vincent-Arnaud Chappe, Anna Egea, and Jérôme Péglise, on the reception in France of Susan Silbey's work. In this contribution, the authors have methodically engaged in an observation of the form and scope of the interest in these works by French researchers, notably sociologists, for several years. A different approach has gradually been imposed upon us. It is situated in the extension of this interest initially paid by French sociologists eager to stand out from a context where the sociology of law had essentially become a sociology of law of the State. Our own approach developed from the conviction that this research program and, more precisely, the work of one of its most eminent representatives, could be granted the status of *test*⁶ for our multifaceted collective.

First and foremost, this test permitted, innovatively, to benefit from the assumed diversity of the composition of a working group that met over the course of more than eighteen months and whose members came from *different disciplines* (law, sociology, political science, anthropology, etc.; sometimes based on ethnographic approaches), but also from *different specializations* (for example, in the domain of relationships between law, sciences, and technologies, and the domain of law of culture and heritage, sociology of law, or the sociology of sciences and technologies....)⁷

From these different competencies and areas of interest, how did we arrive at a convergence of views on law and initiate the early stages of an interdisciplinarity? We had a keen awareness that such interdisciplinarity was not an issue for our group nor for all research on law. Legal Consciousness offers us the opportunity to gather and to undertake the construction of a common edifice intended to be shared by researchers on law in general. It also enabled members of our collective to engage in several innovative discussions on certain fundamental aspects of a specific legal knowledge.

Legal Consciousness was effectively inscribed in the practices and visions of the production of knowledge on law that existed, in France, in the rupture with prevailing

6. Here, we use the word "test" [*épreuve*] in the sense of an experimental pooling of diverse competencies on our subject. It is thus not a reference to its use in "pragmatic sociology" as a "sociology of proofs," although this sociology could have been a source, among others, of inspiration for our analyses.

7. Participants in the monthly meetings of the "Silbey Seminar," so named out of convenience, included not only Jacques Commaille (sociologist, Institut des Sciences Sociales du Politique - ISP) and Stéphanie Lacour (jurist, ISP) but also Virginie Albe (science education, ISP), Brigitte Frotié (sociologist, ISP), Cléa Hance (jurist, ISP), Nicole Kerchen (jurist, ISP), Isabelle de Lamberterie (jurist, ISP), Daniela Piana (political scientist, Università di Bologna), Emilia Schijman (anthropologist-sociologist, Centre Maurice Halbwachs), Diana Villegas (jurist, Université Panthéon-Assas-Paris II), Noé Wagener (jurist, Université de Rouen), and Anne Wyvekens (jurist-sociologist, ISP). The group's work led to a day-long workshop at the Institute for Advanced Study of Paris, on June 9, 2017, during which we were able to expand our reflection to include the contributions of Mauricio Garcia Villegas (jurist and sociologist, National University of Colombia), Liora Israël (sociologist, EHESS, Centre Maurice Halbwachs), Jérôme Péglise (sociologist, Centre de sociologie des Organisations, Sciences Po Paris), Vincent-Arnaud Chappe (sociologist, Centre de Sociologie de l'Innovation, École des Mines), Julie Ringelheim (jurist, Université Catholique de Louvain), and Jean De Munck (sociologist and jurist, Université Catholique de Louvain).

approaches. The fundamental perspective of this current is contrary to what has long been characterized—in the eyes of jurists⁸ as well as sociologists⁹—in French sociology of law, a sociology strongly dependent on the legal universe and conceived, on this basis, as social engineering in the service of improving law, almost exclusively law of the State.

Furthermore, legal scholars very quickly grasped the heuristic function likely to be filled by this current. It justifies their aspiration to surpass the production of dogmatic-doctrinal knowledge¹⁰ responding to the popular canons of legal formalism. This approach encourages them to research, beyond texts, legal institutions, and technical aspects of their implementation, the influence of actors, their strategies, their values, and their interests. It opens their horizon to examining the economy of relations with other normativities, the influence of institutional, cultural, economic, political, and social contexts, and, more largely, of other forms of regulation.

Finally, scholars from the domain of Science and Technology Studies (STS) have seized this object to highlight analogous approaches to law and those from studies of science and technology. What emerged was the same result of a process of desacralization of the subjects studied, “Law” and “Science.” Facing the *a priori* institution of a “Truth” of the order of the “already there” or to establish, the research demonstrated the common evidence of a social construction in which multiple external factors interfere with what is sometimes presented as a dynamic intrinsic to knowledge. This is how, in a way analogous to the deconstruction by Legal Consciousness Studies of the representation of a monolithic and transcendent law, the Science and Technology Studies scholars have, in a comparable space of time, underscored the extreme diversity of scientific practices, their *situated* and *contingent* nature, contributing to the rupture with the representation of an “essence of science.”¹¹

II. Four Ruptures in the Knowledge Regime on Law

Far from a simple, unexpected show of serendipity in the social sciences, this dynamic of knowledge production, this optimization of differences in view of establishing convergences, was only possible thanks to a permanent interaction with the chosen object: the work of Susan Silbey, eminent representative of Legal Consciousness Studies. Susan Silbey’s publications have progressively motivated us to inscribe our own work in a new regime of knowledge production. We have been sensitive to what she advocated or authorized, including ruptures with certain schemas dedicated to knowledge about law.

8. In reference to his “legislative sociology,” see, for example, Jean CARBONNIER, *Sociologie juridique*, Paris : PUF, 1978.

9. Jacques COMMAILLE, “Sociologie juridique”, in Denis ALLAND and Stéphane RIALS (dir.), *Dictionnaire de la culture juridique*, Paris: Lamy-PUF, 2003, p. 1423-1427; Brian Z. TAMAHANA, “An Analytical Map of Social Scientific Approaches to the Concept of Law”, *Oxford Journal of Legal Studies*, 15 (4), 1995, p. 501-535.

10. V. Antoine JEAMMAUD, “Une typologie des activités savantes prenant le droit pour objet,” *Sciences de l’homme et de la société*, 54, 1999, p. 15 or even, *ibid.*, “La part de la recherche dans l’enseignement du droit,” *Jurisprudence. Revue Critique*, 1, 2010, p. 181-213.

11. Dominique PESTRE, *Introduction aux Science Studies*, Paris: La Découverte, coll. “Repères”, 2006, p. 6.

One of these ruptures is illustrated by what one might consider, after reading the book of reference on this movement,¹² as an element of a paradigmatic revolution in the research on law. *It is nothing less than the rupture with a causal vision of the relationship between Law and Society.* This causal relationship led not only to envisioning the two terms as coming from distinct spaces, potentially autonomous, but also to posing the question of their relationships in terms of effectiveness or of diverse forms of reciprocal influences between the legal and the social. This conception is substituted with one following “the legal phenomena [are] constitutive elements of the social reality rather than [...] elements encased in institutional systems destined to act on this reality.”¹³ In this perspective, law can no longer be studied as a phenomenon separate from society—it becomes essential to shift away “from the study of law *and* society to the study of law *in* society.”¹⁴ This observation was already sketched out by Stuart Scheingold¹⁵ through the idea of the “myth of law.” The occupants of the constitutive paradigm¹⁶ came to clarify it. The analyses dealt with social usages of law and the “consciousness of the law” that the study reveals would nevertheless provide a degree of further refinement to this perspective. In effect, they justify a new approach of defined legality, as Susan Silbey emphasizes: “Legality is pattern in relationships that is enacted daily in the interpretive schemas people invoke to make sense of their own and others’ actions in the human and material resources, capacities, and assets that make action possible.”¹⁷

A new possibility stemmed from this first rupture. *The law, the life of the law could be approached, not only through a comprehensive study, that of a law that would impose itself de facto on society and on its members, but also from what the citizens do, think, indeed, in certain cases, ignore about the law.* We see, even in the contents of the dossier, how such a vision, opposed to a top-down approach, offers opportunities of returning to and reexamining traditions of legal thought or on legal thinking that was constantly marginalized, such as, “living law”¹⁸ of Eugen Ehrlich and the “social law”¹⁹ of Georges Gurvitch when he relativized the “legal monism

12. Patricia EWICK and Susan S. SILBEY, *The Common Place of Law. Stories from Everyday Life*, Chicago: University of Chicago Press, 1998.

13. Jérôme PÉLISSE, “Conscience du temps et consciences du droit chez des salariés à 35 heures,” *op. cit.*, p. 164.

14. Susan S. SILBEY, “After Legal Consciousness”, *Annual Review of Law and Social Science*, 1, 2005, p. 323-368, here p. 328. See the translation of the text in this issue, p. 571-626, here p. 577.

15. Stuart A. SCHEINGOLD, *The Politics of Rights: Lawyers, Public Policy, and Political Change*, New Haven: Yale University Press, 1974.

16. See, notably, Alan HUNT, *Explorations in Law and Society. Toward a Constitutive Theory of Law*, New York: Routledge, 1993, as well as Sally Engle MERRY, *Getting Justice and Getting Even. Legal Consciousness among Working Class Americans*, Chicago: University of Chicago Press, 1990; Michael MCCANN, “On Legal Rights Consciousness: A Challenging Analytical Tradition”, preface to Benjamin FLEURY-STEINER and Laura BETH NIELSEN (eds.), *The New Civil Rights Research: A Constitutive Approach*, Aldershot: Ashgate, 2006.

17. Patricia EWICK and Susan S. SILBEY, *The Common Place of Law. Stories from Everyday Life*, *op. cit.*, p. 31-32.

18. Eugen EHRlich, *The Fundamental Principles of the Sociology of Law*, New York: Russell & Russell, 1975, cited by Brian Z. TAMAHANA, “An Analytical Map of Social Scientific Approaches to the Concept of Law,” *op. cit.*

19. Noé WAGENER, « Droit social », in Marie CORNU, Fabienne ORSI, and Judith ROCHFELD (dir.), *Dictionnaire des biens communs*, Paris : PUF, coll. “Quadrige,” 2017, p 33-439.

of the state” to draw attention to a law “connected to the society,” “immersed in the society.”²⁰

This choice to invert the way of looking at law broke, finally, with time-tested research methods. It carried the seed of *the exigency of new empirical designs in the research process*. Confronting the observation of law with what it becomes in society requires several sideways steps. It is not only about departing from classic legal formalism, purely rhetorical approaches on the meaning of the law, the procedures of its elaboration and of its implementation. As Susan Silbey reminds us, it is important to differentiate the very globalizing investigative methods on “citizen attitudes, knowledge, and use of law” and “ethnographic methods of extensive observation and intensive interviewing to study disputes, disputing behavior, and the recourse to law”²¹ that had, until then, mobilized American sociologists of law and did not focused on legality in daily life but only on pathological demonstrations of law.

How do we grasp the complexity of the forms of material and mental appropriations of law in the multiple ways by which individuals think and think of themselves in society, in the immense diversity of practices where law is the object in different situations, inspired by social and cultural dispositions, strategies, situations? As we will see, there is a considerable challenge in the choice of methods. The approximately 430 interviews conducted by Patricia Ewick and Susan Silbey²² for their research are not completely sufficient. Despite the size of the investment that such a number represents, it is not fully adequate to exhaust the meaning of the complex reality of the life of law that is also done with “legal competencies of social actors,” “manipulative strategies of social subjects,”²³ and collective mobilizations.

Quite logically, these three steps introduce a final rupture. Much like the unveiling of the reality of “Science” involved the reconsideration of the monopoly of perspective enjoyed by those who do science on what they do, *a rupture with the idea of a possible monopoly of knowledge of law* establishes itself clearly. Of course, there is no question of a sort of indifferentiation of competencies but of a complementarity that goes beyond from the sharing usually practiced between internal and external approaches of law²⁴ and enables the edification of a third way. This functions all the best so that the concern of constant affirmation, as a preliminary, of proper disciplinary

20. Jean-Guy BELLEY, “Georges Gurvitch et les professionnels de la pensée juridique », *Droit et Société*, 4, 1986, p. 353-370; *ibid.*, “Le ‘droit social’ de Gurvitch: trop beau pour être vrai?,” *Droit et Société*, 88, 2014, p. 731-746.

21. Susan S. SILBEY, “After Legal Consciousness,” *op. cit.*, especially p. 338.

22. Patricia EWICK and Susan S. SILBEY, *The Common Place of Law. Stories from Everyday Life*, *op. cit.*

23. Simona CERUTTI, “Normes et pratiques, ou de la légitimité de leur opposition,” in Bernard LEPETIT (dir.), *Les formes de l'expérience. Une autre histoire sociale*, Paris: Albin Michel, 1995, p. 130, 131.

24. On this “internal-external approach” debate: François OST and Michel VAN DE KERCHOVE, “De la scène au balcon. D'où vient la science du droit?,” in François CHAZEL and Jacques COMMAILLE (dir.), *Normes juridiques et régulation sociale*, Paris: LGDJ, coll. “Droit et Société,” 1991, p. 67-80; Pierre BOURDIEU, “Les juristes, gardiens de l'hypocrisie collective,” François CHAZEL and Jacques COMMAILLE (dir.), *Normes juridiques et régulation sociale*, *op. cit.*, p. 95-99; André-Jean ARNAUD, “La valeur heuristique de la distinction interne/externe comme grande dichotomie pour la connaissance du droit: éléments d'une démystification,” *Droit et Société*, 2, 1986, p.139-141, and, more recently, Évelyne SERVERIN, “Points de vue sur le droit et processus de production des connaissances,” *RIEJ*, 59, 2007, p. 73-91.

identities erasing themselves to the benefit of pursuing a common objective: producing original knowledge. That is how, conscious of the heuristic function of Susan Silbey's approach, it very quickly appeared to us that there was no sense in questioning, as is often the case in France,²⁵ the fact of knowing that if she were a jurist, sociologist, or political scientist, in the same fashion, of asking, compulsively, from which realms of knowledge we interceded in the rich debates that united our group.

The choice to work on such an object—the work of Susan Silbey for what it tells us about legal consciousness—had the goal of *proving* certain attributes of a regime of knowledge production to which we were not completely severed, notably epistemologically.

We still have to present the different facets of the operationalization of this *test*.

III. The General Economy of the Dossier

We first thought it helpful to commission the translation of Susan Silbey's article "After Legal Consciousness." This translation, which opens our dossier, is both a synthesis of the main approaches of this current of research and a testimony of Susan Silbey's reactions to the reception of her works in North America. The translation was also undertaken to reframe the movement that it sought to launch, as well as an interesting sociological testimony of an important actor in contemporary American research on law, a noted author, participant in associations as well as a number of co-written publications, facilitator of research notably, from her former perch as head of the Department of Anthropology at Massachusetts Institute of Technology (MIT).²⁶ Our critical analysis accompanies this work of translation, which was executed, in part, by a workshop composed of students²⁷ in the Department of Social Sciences at the Ecole Normale Supérieure of Paris-Saclay under the supervision of two faculty members—Caroline Vincensini and Laure de Verdalle—assisted by members of the Silbey seminar.²⁸ In fact, a similar project was undertaken, some years prior, under similar conditions.²⁹ Of course, this work stimulated a lot of reflection about the difficulty of transposing certain concepts or manners of

25. And not uniquely in the field of sociological studies, because, as Olivier Leclerc demonstrates, it is a question that one also often posed regarding the works of Sheila Jasanoff in STS. In this sense, see Sheila JASANOFF, *Le droit et la science en action*, translated and presented by Olivier Leclerc, Paris: Dalloz, coll. "Rivages du droit", 2013, particularly p. 10.

26. We do not overlook that behind an œuvre there is a person with her own personal history, ethnical or political inclinations, strategies, etc. This dimension deserves to be mined further, which we had hoped to do if circumstances had not intervened. Nonetheless, Susan Silbey's response to our analyses, which concludes this dossier, offers some elements of public interest.

27. These students contributed to the translation: Eloïse Alluyn-Fride, Augustin Ayoub, Paul Babin, Sofiane Bouarif, Valentin Barbet, David Colla, Adrian Jean-Baptiste, Alice Leuleu, Benjamin Péron, Clément Ramos, Ruby Schultz, and Constant Thiard.

28. Brigitte Froitié, Isabelle de Lamberterie, Cléa Hance, Stéphanie Lacour, Jacques Commaille, Anne Wyvekens, Virginie Albe, Emilia Schijman, Daniela Piana, and Noé Wagener contributed to the translation in their seminar.

29. Liora Israël and Jérôme Pélisse led a team of students from ENS de Cachan that translated a chapter of Patricia Ewick and Susan Silbey's masterpiece. See their article: "Quelques éléments sur les conditions d'une 'importation' (Note liminaire à la traduction du texte de Susan Silbey et Patricia Ewick)," *Terrains & travaux*, 6, 1, 2004, p. 101-111.

thinking and, more generally, about the difficulty of importing analyses inspired by a culture with different perspectives on the world vis-à-vis the country of reception. Pondering such difficulties faced in 2004 with the prior translation, Liora Israël and Jérôme Pélisse had to return to “the very epistemology of the social sciences. Are they not inseparable from the outputs and analyses of the societies from which they are originate and which they study?”³⁰

Our work unfurled over a long duration, which could have been a hindrance had the technical assistance from which benefitted throughout the course of our collective research had not permitted us to pool, online, all the resources that we were exploring, which included articles written by Susan Silbey, our reading notes, and complete records of our exchanges. The reciprocal appropriation of initially distinct vocabularies and concepts as well as varied methods and intellectual approaches was a real challenge for the interdisciplinary research that was indispensable for the creation of a common object. These organizational and theoretical assets contributed immensely and deserve to be highlighted.

The following four contributions were originally written as questions addressed to Susan Silbey, whom we expected to meet in Paris for some of our collective work sessions. S. Silbey will elaborate on the reasons that our face-to-face meetings transformed into epistolary exchanges. Her text is available in this dossier, in English, as well as its translation by Cléa Hance, Stéphanie Lacour, Cyril Le Roy and Anne Wyvekens.

We present these four texts as interdisciplinary interrogations born of the richness of Susan Silbey’s analysis. By focusing on the author’s history, methods, epistemological choices, and research fields, at the heart of Legal Consciousness Studies, we have tested our knowledge of an engaged and original American literature whose boldness has legitimately kindled, in each of the authors of this dossier, the desire to discuss, share, and develop collectively in a new interdisciplinary regime of knowledge production regarding law.

The first text, written by Anne Wyvekens, resituates this trend in the social history of American socio-legal studies, whether institutional (Law and Society Association, Amherst Seminar on Legal Ideology and Legal Process) or from a current of research (from Sociological Jurisprudence and Legal Realism to Critical Legal Studies). She shows both the audience for and the critiques of the LCS movement and the sociological reflections that it has generated regarding the place and status of its authors (on the “dominated” side), and their relationship to political activism. Opening the dialog with the author, Anne Wyvekens questions the research perspectives that this analysis bring to light, even as the context in which the œuvre unfolds and that it seeks, likewise, to connect with the academic universe and the American political field. As observer and actor, Susan Silbey places herself at the heart of the evolution of sociolegal studies. This return to the history of LCS unquestionably enables one to measure modernity.

In their co-written contribution, Daniela Piana, Emilia Schijman, and Noé Wagener explore the Susan Silbey’s epistemological and methodological positions in

30. *Ibid.*, p. 111.

terms of the reflections that they elicit from them. In the classic alternative between “legal sources of social practices” and the “social sources of legal rules,” the LCS have, it seems, privileged an approach that values, nevertheless, everything “the Law” institutes as being “incorporated” in the consciousness of the ordinary citizens interviewed. Eugen Ehrlich’s “living law” and Georges Gurvitch’s “social law” constitute, in this respect, different approaches. For the authors, the orientation is inseparable from the methodological options adopted, the interview, whose limits they demonstrate. On the contrary, an ethnographic approach would have enabled the delineate the representations of law from the social actors concerned in *contexts*, following social dispositions, of “fields” of action, etc. The approach could have equally contributed to the demonstration by which these social actors were also susceptible of being *actors of the law*, of acting on the law, and of being one of the possible *sources*. Far from having regrets, the actors underscore, above all, how much the LCS approach opens more general perspectives for social science scholarship on law and normativities, by questioning anew the micro and macro levels trade economy and their articulation in the well-tooled social science framework on the State of law.

Virginie Albe and Stéphanie Lacour center their reflection on a contrast between Legal Consciousness and the analyses from Science and Technology Studies (STS). For several years, Susan Silbey has researched demonstrations of law in research laboratories. Building on the complementarity of their disciplinary approaches as well as the parallels existing between the conditions of emergence, the theoretical and methodological options, and the ideological roots of these two movements, the authors examine the missed encounter between LCS and STS. Like the other authors of this dossier, their point of view is nevertheless more prospective than nostalgic. According to them, bringing together these two research movements would enable more effective study of the interactions between rights, sciences, and technologies. Building on the successes and (relative) failures of these two movements, it would be possible to map both an approach truly critical of the normativities at work in the production of knowledge and the scientific and technological artifacts, an approach that takes seriously not only the communities and the locations in which they are deployed, but also the internal norms that sometimes constrain them.

Jacques Commaille, finally, makes the choice to situate himself fully in the register of the controversy. He returns to the observation made from a dissonance between the empirical studies and the theoretical framework³¹ mobilized by LCS. Reading Susan Silbey’s observations pulled from completed interviews, notably allowing glimpses into the capacity for resistance on the part of ordinary citizens, he questions the formulation of a general observation that remains one of a *legal hegemony* that would impose itself massively. Such a position leads Susan Silbey to solicit European theories that exclusively value this idea of hegemony and systems of domination. These theories are logically associated with fidelity to the theory of “false consciousness,” in the measure where the hegemony and the domination “are not only

31. Mauricio GARCÍA VILLEGAS, “On Pierre Bourdieu’s Legal Thought,” *Droit et Société*, 56-57, 2004, p. 57-70.

tolerated but embraced by subordinate populations.”³² The consequence is that other theories precisely founded on the thesis that social actors do have a capacity of resistance, and are able to appropriate the law as a mode of resistance or as a support of engagement in the conflict are not really taken into account.

Susan Silbey wanted to respond at length to these four notes of commentary and critical interrogation, as well as, more generally, to this endeavor of critical analysis. The dossier ends with this detailed response. After returning to her research position having the law as object, engaging in a work of defining this object and considering that it belonged first to a cultural approach, Susan Silbey reflects upon her definition of “legality,” which is inspired by a privileged reference to the social actors. Her rich commentary represents an exceptional work of reflexivity on the part of the scholar, both on her intellectual path and on her *œuvre*. In justifying its specific place, she resituates Legal Consciousness Studies in a contemporary history of Law and Society Association’s works in the United States. Noting the influence of the scholar as a social subject on her own *œuvre*, she inscribes her own writing in a personal and professional trajectory that has been enriched over the years by professional and amiable influences.

This work of reflexivity continues in the responses to questions posed in the earlier footnotes, where Silbey references, for example, her research on the place of law in laboratories, remembering, in passing, that law, like science, is a *social institution*. Faced with questions about the adequacy of her empirical data and the theories that she mobilizes, she mentions notably the importance of taking into account in this discussion of the cultural specificities of American society with respect to European societies. Her wholehearted commitment in the dynamic of this discussion results in her reaffirming, strongly, the necessity of constructing a veritable *theory of legality*, a legality seized as a “field of power,” a theory nourished from the keen awareness of the existence in this domain of fundamental contradictions, whose very analysis is prone to giving them a heuristic function. Finally, how can one not be sensitive to the fact that the development of such thinking, of which we have here a superb expression, is crisscrossed with constant apprehension about competing with the realization of a democratic ideal,³³ justifying this spirited willingness to borrow new ways of laying bare the law?

IV. Potentialities of a Renewed Knowledge Regime

The generous engagement of Susan Silbey has driven our project and its attempt to make Legal Consciousness Studies, and especially the analysis of our colleague’s writing, the point of departure for our reflections. This engagement has dedicated its status of *test [épreuve]* for the purpose of creating an upside from our differences in order to think about a renewed regime of knowledge production on law. From this stimulating experience, we reap two important lessons. First, dialog. We have

32. Susan S. SILBEY, “After Legal Consciousness”, *op. cit.*, p. 328.

33. Being especially sensitive, in her research orientations and beyond, to the issue of equality, both in general among citizens and in terms of the equality denied women, the issue for which she is notably engaged in defending the status of feminine students and colleagues in the context of the American university.

the means of fostering, with other research focusing on law as its object, more than a form of deference, that the enrichment of our works can provide. This object, law, incidentally offers the social sciences the opportunity to mobilize new knowledge heuristically on all the transformations of our societies.

The first lesson concerns the form of a shift in the position often adopted in front of American production: this shift consists of placing the production at the summit of excellence in the framework of an implicit hierarchy of research on law; the success in the European space, in terms of notoriety or in terms of... career, passing simply by the act of furnishing the test of erudite knowledge of this production and of the company of its authors. Following other works of the same type, the approach that we have taken—engaging in dialogue with one of the figures of this American research on law and discussing her works—offers rich possibilities for contributing to the implementation of a renewed knowledge regime about law.

We have steered this work through a process analogous to sociologists who disrupt the siloing of a specialized sociology, in order to rediscover the position of founding figures for whom law was a privileged analyzer of societal transformations. What united us, beyond the differences of discipline and specialty, and thanks to the synergies that these differences suggested, was the certitude that those who partook in this experience, it is also the overtaking of an approach limiting its horizon to a search for meaning in itself and for oneself.

There are parallels to the evolution of knowledge of science and technology. Linking law and domination underscores the importance of law's political dimension as it reexamines itself and its scale. They seemed to go further. Law has become a potentially strong heuristic *entrée* into another type of research of meaning at more general levels: what concerns the construction of knowledge, including the social sciences; this concerns the construction of power, the forms of establishing the domination or even the processes of structuring societies, their regulation regimes. By this entry—law—it is a veritable exploration of the forms of knowledge mobilization that we seek to stimulate.

■ About the authors

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— *Des nanotechnologies aux technologies émergentes. La régulation en perspectives* (dir.), Bruxelles : Larcier, 2013.