

# Where is the Law Living? Juridicity and Methods of Research in the Works of Susan Silbey

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## ■ Résumé

### Où chercher le droit ? Juridicité et méthodes d'enquête dans les travaux de Susan Silbey

Cet article s'intéresse à la conception du droit à l'œuvre dans les travaux de S. Silbey et observe que celle-ci la conduit à refuser de rouvrir la question des « sources sociales » du droit. Or, à partir de quel stade les pratiques observées relèvent plus d'une forme de « droit vivant » agissant au niveau d'un groupe social que de la reproduction du droit de l'État ? Indépendamment même de la question des critères de la « juridicité », peut-on se permettre d'évacuer le problème de savoir quand, précisément, est-ce que l'on bascule d'un côté ou de l'autre ? On peut penser que c'est le dispositif d'enquête lui-même – l'absence d'approche ethnographique – qui empêche S. Silbey de saisir la réciprocité des interrelations entre pratiques sociales et droit formel, et donc de dépasser la seule question de l'expérience quotidienne de ce dernier.

*Ethnographie du droit – Legal Consciousness Studies – Pratiques sociales – Sources du droit – Théories du droit social.*

## ■ Summary

This article highlights the shortcomings of S. Silbey's conception of law in enabling her to fully address the compelling question of the "social sources" of law. However, can we disregard the problem of identifying when, precisely, the practices we observe are not so much the expression of the domination of the State mediated by the rules it forges than a form of "living law" in action at the level of a social group? Independently of the criteria of law, when do we switch to one side or the other? Maybe it is the research methodology itself – the absence of an ethnographic approach – that prevents S. Silbey from describing fully the reciprocity of the interrelationships between social practices and formal law, and thus going beyond the mere question of the daily experience of the latter.

*Ethnography of Law – Legal consciousness studies – Social law theories – Social practices – Sources of law.*

One might have thought that Susan Silbey, in studying ordinary experiences of the law, would revive an old debate in the sociology of law, which opposed the founders of the discipline at the beginning of the 20th century: is there “reciprocity” in the relationships between legal norms and social practices? Such a question has two sides, one more dizzying than the other, which could be roughly summarized as follows: what does law do to individuals taken separately? And, in return, what do individuals taken together do to law? In other words, in rather hackneyed vocabulary, what are *the legal sources of social practices* and what are *the social sources of legal rules*?

However, it is clear that Susan Silbey’s work, while rich in lessons as to the first part of the question, does not intend to deal with the second. Of course, overlooking this point is not an oversight, but a deliberate choice, as we will see later. Nevertheless, this silence—and, more precisely, the silence as to the reasons for this silence—is surprising: would it not be better to further investigate this point?

To try to understand the reasons for it, we turned to the theories and methods of inquiry brought into play in the major work by Susan Silbey and Patricia Ewick, which is also the seminal book<sup>1</sup> of Legal Consciousness Studies: *The Common Place of Law*.<sup>2</sup> As we know, right from the first pages of the book, the study of law is replaced by that of “legality,” which Susan Silbey and Patricia Ewick define as “a social structure actively and constantly produced in what people say and in what they do.”<sup>3</sup> According to the authors, when people mention, invoke or mobilize concepts or legal rules in everyday life—that is to say, outside the presence of legal institutions and legal professionals—“legality” is produced. In everyday life, this legality even occupies a central place, not “as a resource for action in a contentious context”, but “as ‘an interpretative framework’ constructing the meaning of ordinary situations and as a resource in daily life.”<sup>4</sup> Seen in that way, “legality” appears as an *element emerging* from daily social relations, which marks less the strength of law laid down from the outside than its latent presence. With the help of this concept of “legality,” S. Silbey and P. Ewick manage to show to what extent law is “incorporated” into the consciousness of each of us: “rather than being challenged and staged in some rare trial, legality ‘rules’ daily life because its constructions are largely uncontested and habitual,” as Susan Silbey would summarize a few years later.<sup>5</sup>

The scientific contribution of *The Common Place of Law* is indisputably major; it nevertheless proceeds from a very precise conception of the law (I), which it is not forbidden to think is itself confirmed by the methods of investigations retained (II).

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1. Thierry DELPEUCH, Laurence DUMOULIN and Claire DE GALEMBERT, *Sociologie du droit et de la justice*, preface by Jacques Commaille, Paris: Armand Colin, 2014, p. 69.

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

3. *Ibid.*, p. 20.

4. Jérôme PÉLISSE, “A-t-on conscience du droit? Autour des *Legal Consciousness Studies*”, *Genèses*, 59, 2005, p. 123.

5. “Rather than contested and choreographed in the rare trial, legality ‘rules’ everyday life because its constructions are mostly uncontested and habitual” (“Talk of Law: Contested and Conventional Legality”, *DePaul Law Review*, 56, 2007, p. 655). S. Silbey continues: “Law’s constructions and mediations have been gradually sedimented and built up throughout the routines of daily living, just as each day of precipitation adds to the mass of iceberg, some floating visibly above the waterline, the larger mass invisible below.”

## I. The Identification of a “Consciousness of Law”, but what Law?

By focusing on the ways in which actors define themselves and act on a daily basis according to the law (according to the three well-known models: before the law, with the law and up against the law), *The Common Place of Law* is part of the extension of the sociology of law inspired by Max Weber. Like Weber, in fact, it can be said that S. Silbey and P. Ewick take as their starting point the idea that the law “is a causal factor for the explanation of the social activity of agents,”<sup>6</sup> and this is why they are trying to measure the traces of its influence on behavior. The specificity of S. Silbey’s work (and Legal Consciousness Studies in general), is in the fact that this presence of the law is tracked in spaces where, spontaneously, one does not expect to find Law in action, that is to say deep inside individuals: where the law is so “incorporated” that it is no longer perceived as law but as common sense. With “legality,” the question of the “causality of law” is therefore renewed and the Weberian perspective is drawn up to its most radical consequences: law is now understood in its strictly social dimensions, as a phenomenon that “is and acts *in* society... rather than as an autonomous sphere whose relations *with* the social, or even action *on* society, should be examined.”<sup>7</sup>

This research on the presence of law *within society* cannot be confused with the approach followed by all those who for a long time have been interested in so-called “spontaneous,” “living,” “free” or “social” law. In particular, it is clear that Eugen Ehrlich (1862-1922) and Georges Gurvitch (1894-1965), to mention only them, pursue a very different perspective. Unlike S. Silbey, they do not intend to show the extent to which state law is incorporated deep inside individuals, but seek to establish that legal experience does not exhaust itself exclusively in this specific law: the rules of law of the State “constitute only a superficial fringe of total law, a contentious law so to speak,” in the sense that law is “essentially a social reality and, to a very small extent only, a reality to do with the State.”<sup>8</sup> *How people experience (official) law* (the Weberian point of view pushed to its extreme consequences by S. Silbey) and *what people experience as law* (Ehrlich and Gurvitch’s point of view) are two distinct points of view and they must not be confused:<sup>9</sup> the law of the first is not the same as the law of the second.

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6. Claude DIDRY, “Droit, histoire et politique dans la sociologie de Max Weber”, in Michel COUTU and Guy ROCHER (dir.), *La légitimité de l’État et du droit. Autour de Max Weber*, Québec: Les Presses de l’université de Laval, 2006, p. 94.

7. Jérôme PÉLISSE, “Consciences du temps et consciences du droit chez des salariés à 35 heures”, *Droit et Société*, 53, 2003, p. 164.

8. The expression is borrowed from Charles EISENMANN, in his article on Ehrlich: “Ehrlich Eugen - (1862-1922)”, *Encyclopaedia Universalis* [online].

9. These two expressions are from Marc HERTOIGH, “A ‘European’ Conception of Legal Consciousness: Rediscovering Eugen Ehrlich”, *Journal of Law and Society*, 31 (4), 2004, p. 457. It should be noted that this distinction made by M. Hertogh is nothing more than a continuation of the major debate on the criteria of legality, which is found, for example, among all those who have taken an interest in Ehrlich. See for example David NELKEN, “Law in Action or Living Law? Back to the Beginning in Sociology of Law”, *Legal Studies*, 4, 1984, p. 157 (quoted in David NELKEN, *Beyond Law in Context*, Farnham: Ashgate, 2009, p. 29) or Michel VILLEY, “Études récentes sur Ehrlich et le sociologisme juridique”, *Archives de philosophie du droit*, 13, 1968, p. 347.

It would be an error to believe that this divergence is limited to a question of conventional delimitation of the object of the research, which would contrast a broad definition of law (beyond the sole law of the State) with a restricted definition (reduced to the sole law of the State). What is at stake behind this debate, in fact, is determining the specificity of the law, and therefore of the criteria of legality.<sup>10</sup> The matter here is questioning the process through which the fundamental dimensions of the law might be identified rather than drawing the meaningful boundaries for the law. Of course, it is tempting to bring the two points of view together, thinking of Ehrlich and Silbey as the “two sides of the same coin” as Marc Hertogh thinks of doing<sup>11</sup>. But the fact that Susan Silbey does not intend at any time to do so should raise more of an alert: her work focuses its analysis solely on official law, even though it is apprehended in its pure social manifestations thanks to the concept of “legality.”

No doubt the point is to focus on what might be one side of the coin is the mark of S. Silbey’s adherence to the two major criticisms, which have always been opposed to Ehrlich and Gurvitch (and who explain why those two great doctrinal projects are commonly qualified as “failures”): first, Ehrlich’s living law, just like Gurvitch’s social law, by erasing the state, renders them unable to disentangle the *quid* that identifies and distinguishes the legal norms from other social norms; second, and consequently, these two theories, again by erasing the state, offer the law of the state a social foothold at little cost, serving up legitimacy on a plate for its truly hegemonic force—unless they are, on the contrary, a somewhat cheap ideological means of challenging the State itself.<sup>12</sup> On the first point, we remember in particular Kelsen’s attack against Ehrlich:<sup>13</sup> if one does not distinguish between the rules according to which one must wear a white tie at a ball, a swimsuit when bathing and a uniform when one is a serving agent of the state, then one loses sight of the very criterion of legality. In this case, indeed, the irreducible specificity of the third of these rules, which is not only effective (as are the other two), but which is, moreover, valid in a given legal order, is obscured.<sup>14</sup>

But these two criticisms, which are almost systematically made against Ehrlich and Gurvitch, may misunderstand the very meaning of the approach they have taken. The two authors do indeed call “law” some norms which, however, are not

10. On this question of the boundaries of juridicity, see the very extensive article by Baudoin DUPRET, “Legal Pluralism, Plurality of Laws and Legal Practices: Theories, Critiques, and Praxiological Re-specification”, *European Journal of Legal Studies*, 1 (1), 2007, p. 1.

11. Marc HERTOGH, “A ‘European’ Conception of Legal Consciousness: Rediscovering Eugen Ehrlich”, *op. cit.*, p. 480.

12. “Legal pluralism, whereas it militates for the recognition of all diffused normativities, ignores the fact that there is no possibility of recognizing any normativity as law without an authority having the right to say what is right and the capacity to interpret it as law, meaning that militancy against state law would necessarily mean militancy in favour of any such other authority”, Baudoin DUPRET, “Legal Pluralism, Plurality of Laws and Legal Practices: Theories, Critiques, and Praxiological Re-specification”, *op. cit.*, p. 12, our translation.

13. This attack contributed to spreading the deep-rooted but largely false idea that Hans Kelsen was an enemy of the sociology of law (for a critique of this idea, see Renato TREVES, “Hans Kelsen et la sociologie du droit”, *Droit et Société*, 1, 1985, p. 15).

14. Hans KELSEN, “Zur Soziologie des Rechtes. Kritische Betrachtungen”, *Archiv für Sozialwissenschaft und Sozialpolitik*, 34, 1912, p. 614, quoted in *Hans Kelsen, Werke. Band 3. Veröffentlichte Schriften 1911-1917*, Tübingen: Mohr Siebeck, 2010, p. 86.

recognized by the legal system. At least as important is their work on the interrelationships between, on the one hand, the multiple forms of experience of justice at the level of social groups and, on the other hand, the legal rules of the State: the latter constantly *recover* the former (and divert them to their benefit), but without this being incompatible with the fact that the former *work* from within the latter. In other words, social law and State law are not detached from each other, they are constantly intertwined: “the relationship here is not unilateral, but reciprocal and bilateral.”<sup>15</sup> It seems to us that it is this interweaving that is at the heart of the last chapter of Ehrlich’s *Grundlegung der Soziologie des Rechts*<sup>16</sup> and the broad Gurvitchian typology of more or less state-regulated forms of social law<sup>17</sup>. It can be found in particular in Gurvitch’s criticism of Weber, which could also have been aimed at S. Silbey:<sup>18</sup> “Max Weber, in asking himself what are the chances of effective social conduct realizing pre-set rigid legal rules developed in a coherent system, does not notice that under these rigid rules there are flexible rules found *ad hoc*, that under them there are living collective beliefs conferring actual efficiency to the law and manifesting themselves in ‘normative facts,’ spontaneous sources of the positivity of the law, its validity, ‘sources of sources’ included in a perpetual dynamic and shaping the actual life of the law.”<sup>19</sup> The social sources of the legal system do not eliminate the State’s power relationships—more than any other, Gurvitch was aware of these power relationships that pervade the law—but nonetheless, the law cannot be reduced to a univocal tool of State domination. Otherwise it would be necessary to disregard what François Ost may qualify of “the deep layers of legality.”<sup>20</sup> The analysis must be more refined, and the famous theory of “depth levels” (which Gurvitch began to develop in his major works on legal sociology) is precisely the expression of that necessary refinement.

15. Georges GURVITCH, *Éléments de sociologie juridique*, Paris: Aubier, 1940, p. 24.

16. See chapter XXI: “Methoden der Soziologie des Rechts. II. Die Erforschung des lebenden Rechts”, *Grundlegung der Soziologie des Rechts*, Berlin: Duncker & Humblot, 1913, p. 393 and following.

17. See Georges GURVITCH, *L’idée du droit social. Notion et système du droit social. Histoire doctrinale depuis le XVII<sup>e</sup> siècle jusqu’à la fin du XIX<sup>e</sup> siècle*, Paris: Vrin, 1932, and in particular chap. II. The complexity of this typology has been mocked even though it is only the consequence of its great precision: Gurvitch distinguishes “pure and independent social law,” which is deaf to society and its groups – and which Gurvitch conceives as law through a concept he forges, that of “normative fact”, whose ambition to express the social order of community life is a strong reminder of Hauriou’s “institution,” of “pure social law, but subject to the protection of State law,” of “social law annexed by the State, but autonomous” and of “social law condensed into State law order.” This is the major historical contribution of social law that is finally at stake here: it calls for the in-depth reconstruction of the theory of the sources of law.

18. It should be noted, in this regard, that Susan Silbey takes a few steps in the direction of this criticism in her 2007 article, “Talk of Law: Contested and Conventional Legality”, *op. cit.*, p. 639, where she mobilizes *The Cheyenne Way* by Karl Nickerson Llewellyn and Edward Adamson Hoebel (French translation by Louis ASSIER-ANDRIEU, *Conflit et jurisprudence dans la science primitive du droit*, Bruxelles: Bruylant, Paris: LGDJ, coll. “La pensée juridique”, 1999).

19. Georges GURVITCH, *Éléments de sociologie juridique*, *op. cit.*, p. 22.

20. François OST, “Conclusions générales”, in Isabelle HACHEZ, Yves CARTUYVELS, Hugues DUMONT, Philippe GÉRARD, François OST and Michel VAN DE KERCHOVE (dir.), *Les sources du droit revisitées. Vol. 4: Théorie des sources du droit*, Limal: Bruxelles, Anthemis: Université Saint-Louis, 2012, p. 920. This expression recalls the wording “deep sources of the law,” which is repetetly echoed by Louis Le Fur in the between the two world war period.

In light of the foregoing, reading Susan Silbey's work raises a particularly important question: from what point can we consider that the "legal consciousness" identified by Susan Silbey reveals less the ultimate mark of the social incorporation of the law of the state deep inside individuals than that of Ehrlich's "living law?" When, precisely, can we consider that the symbolic violence of the state mediated by the concepts and rules of law has been so diluted in individuals that it has actually evaporated? *When, in short, can we consider that what we observe is no longer the domination of the state in action, but it offers an expression to the idea of justice concretized on the level of a social group?*

Max Weber himself wrote that "once the law has become 'familiar', it may happen that the original meaning, intended by its authors in a more or less unequivocal way, falls entirely into oblivion or disappears as a result of a change of meaning [...]"<sup>21</sup> In such a case, must we then necessarily continue to see in the residues of the law dispersed into social practices the strength of domination of the law? More precisely, to *what extent* may we endorse such a view?

The example of the appropriation practices of snow-cleared parking spaces in the neighborhoods of certain American cities—the practice consisting into keeping reserved a parking space, once a person has cleared it and marked it with a chair to keep on hold the space thus released—seems to us to crystallize this interrogation. Should we really strive to see in this example, as S. Silbey does, the ultimate mark of the social incorporation of the major categories of official law, a "durable residue of that formal, professional legal practice,"<sup>22</sup> an "illustration of this deeply sedimented, hegemonic law?"<sup>23</sup> There is something of that, no doubt; but is the entire story we can tell? Have we fully described what is happening by sticking to that? At some point, should S. Silbey's "legal fact"<sup>24</sup> not call for the question of "normative fact," as conceived by Gurvitch<sup>25</sup>, to be reopened?

## II. Observe "Legal Consciousnesses", but According to which Method?

What would happen if we changed the focus of empirical observation? How can one observe both sides of legal experience, namely how state law guides social activity and the normative facts that emerge from the groups? How to build a careful approach

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21. Max WEBER, "Essai sur quelques catégories de la sociologie compréhensive", traduit par J. Freund dans *Essais sur la théorie de la science*, Paris: Agora-Plon, 1992, p. 361-362, quoted by Claude Claude DIDRY, "Droit, histoire et politique dans la sociologie de Max Weber", *op. cit.*, p. 95. As Claude Didry explains, "the notion of familiarity applied to the law seems to be strongly associated in Weberian thinking with the reappropriation of the law by agents in the form of 'maxims'."

22. SUSAN SILBEY, "J. Locke, *op. cit.*: Invocations of Law on Snowy Streets", *Journal of Comparative Law*, 5 (2), 2010, p. 90.

23. ID., "Talk of Law: Contested and Conventional Legality", *op. cit.*, p. 657.

24. Cf. SUSAN SILBEY et AYN CAVICCHI, "The Common Place of Law, Transforming Matters of Concern into the Objects of Everyday Life", in Bruno LATOUR and Peter WEIBEL (eds.), *Making Things Public, Atmospheres of Democracy*, Cambridge: The MIT Press, 2005, p. 556. For S. Silbey, a legal fact is not a fact "captured" by law, but a fact "produced" by law, in the sense that it reveals how much the legal procedures involved in daily life serve as a basis for the very construction of the facts.

25. On the notion of "normative fact" as used by Gurvitch, see in particular *L'idée du droit social...*, *op. cit.*

to legal innovations that this experience, as a re-creation of the rule by the actors, encourages?

Let's go back for a moment to the investigative device of *The Common Place of Law*. The research was based on a total of 430 intensive one-shot interviews, carried out on the basis of a random sample and a semi-open questionnaire, three-quarters of them by a team of interviewers. To avoid imposing any definition of law and legality, the first questions are general and relate to neighborhood, family, and work. The interviews then aim to capture the "legal consciousness" when people evoke episodes or events in their lives that may have been troubling, or "any things that were not as you would have liked them to be or you thought should be otherwise."<sup>26</sup> This event or episode is then examined in detail. Questions arise about the knowledge of the legal categories and the perception of the effectiveness and legitimacy of the law.

To grasp the variety of forms that legal consciousness assumes and to construct ideal types, the extension of the sample was preferred to an ethnographic inquiry which, according to the authors, would raise problems of generalization.<sup>27</sup> However, this choice was made at the expense of the study of practices and contexts, that is to say "of the social surface on which the individual acts, in a plurality of fields, at every moment."<sup>28</sup> The inquiry thus leads us to link, without mediation, individual conceptions and behaviors to the existence of the hegemonic power of law.

This critical point of the book has been raised by other researchers within Legal Consciousness Studies themselves. According to Michael McCann, for example, "more systematic efforts to analyze key aspects of the subject's context and situation may be useful for understanding common sense in law, understanding how and why certain normative interpretations take precedence over others, and identifying what is truly specific to that context and not to others." "To connect the individual meanings of the law with authoritative interpretations because they emanate from institutions," would better show the power and scope of the law.<sup>29</sup> In the same vein, Jérôme Pélisse<sup>30</sup> recalls the invitation of David M. Engle to seize "the intermediate-level structures [...] associated with the activities of the social groups and which have only an indirect relation with the State law,"<sup>31</sup> and Laura B. Nielsen

26. Patricia EWICK and Susan SILBEY, *The Common Place of Law. Stories From Everyday Life*, *op. cit.*, p. 23-26; Liora ISRAËL and Jérôme PÉLISSE, "Quelques éléments sur les conditions d'une 'importation'" (Note liminaire à la traduction du texte de S. Silbey et P. Ewick), *Terrains & travaux*, 6, 2004, p. 101-111.

27. The risk of monographic reduction is high in ethnography. However, as Paul Pasquali explains, following Jean-Claude Passeron and Jacques Revel, an empirical case in the social sciences is always more than a pure illustrative example: it makes it possible to condense, in a more or less singular form, social regularities that are embodied by individuals and crystallized in institutions. See Paul PASQUALI, "Combinar etnografía y sociohistoria: de la unidad de las ciencias sociales a la complementariedad de los métodos", *Revista Colombiana de Antropología*, 54 (1), 2018, p. 31-57.

28. Pierre BOURDIEU, "L'illusion biographique", *Actes de la recherche en sciences sociales*, 62-63, 1986, p. 72.

29. 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 Publishing Limited, 2006.

30. Jérôme PÉLISSE, "A-t-on conscience du droit?", *op. cit.*

31. *Ibid.*, p. 126; see David M. ENGLE, "How laws matter in the Constitution of Legal Consciousness?", in Austin SARAT and Bryant G. GARTH (eds.), *How does Law matter?*, Evanston: Northwestern University Press, 1998, p. 109-144.

shows how “the consciousness of law of ordinary citizens is not a phenomenon that shows unity, but it must be situated in relation to particular types of laws, singular social hierarchies, and experiences that these different groups do have of law.”<sup>32</sup> Each method can show a different result, as evidenced by the wide gap, underscored by Susan Silbey in *After Legal Consciousness*, between ethnographic surveys that have described relationships to law variable according to “local situations, norms, and customary ways of doing” and statistical surveys that have “described deep, broad, normative consensus.”<sup>33</sup> Thus, instead of fitting the behaviors into standard representations (“facing the law,” “with law,” or “against the law”), why not interpret the different “legal consciousnesses” in the light of the contexts that make them possible, and therefore “normal?” And what do these contexts tell us about the *reciprocal* relations between law and “legal consciousness” and, more broadly, between law and “normative facts” (if we refer to the central concept in the sociology of law elaborated by Gurwitsch)? This is where ethnography can offer new knowledge by multiplying scales and contexts of analysis

Let’s break down those contexts.

We think, first of all, of the context of the interview, which we know introduces bias to the respondents’ stories. Repeating interviews is a good way to take into account the effects of the survey relationship on the stories given and build trust between interviewer and respondent, which is the only way to gain access to “unofficial” practices.<sup>34</sup> As Jean-Pierre Olivier de Sardan says, “in each new interview with the same interlocutor, he or she credits the researcher with more expertise: this credit is a major asset for the researcher. Indeed, the more we feel that we are dealing with an incompetent foreigner, the more stories we can tell him”<sup>35</sup> and support “the legal illusion,” the idea of a flawless adherence to law and legality. We then think of the biographical context, of which Giovanni Lévi said that it constitutes “the ideal link for verifying the interstitial and nonetheless important character of the freedom available to the agents, and also for observing the way in which the normative systems, which are never free from contradictions, function [...]”<sup>36</sup> These contradictions, which, according to Giovanni Lévi, authorize the multiplication and diversification of practices, are apprehended through moral arrangements, tacit agreements, social obligations that regulate interpersonal relations, and upon which resorting to law, avoiding it, or challenging it depend.<sup>37</sup>

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32. Jérôme PÉLISSE, “A-t-on conscience du droit ?”, *op. cit.*, p. 127; Laura B. NIELSEN, “Situating Legal Consciousness; Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment”, *Law and Society Review*, 34 (4), 2000, p. 1055-1090.

33. Susan SILBEY, “After Legal Consciousness”, p. 340.

34. Olivier SCHWARTZ, “L’empirisme irréductible”, in Nels ANDERSON, *Le hobo. Sociologie du sans-abri*, Paris: Armand Colin, 2018.

35. Jean-Pierre OLIVIER DE SARDAN, “La politique du terrain”, *Enquête* [online], 1, 1995, p. 10.

36. Giovanni LEVI, “Les usages de la biographie”, *Annales. Économie, sociétés, civilisations*, 44 (6), 1989, p. 1333-1334.

37. Cf. SCHIJMAN, “Vivre à crédit : pauvreté, économie et usages du droit dans un grand ensemble à Buenos Aires”, sociology PhD thesis, Université Paris 7, 2013.

A third relevant context is that of communities: family, neighborhood networks, occupational groups, for example. This is where consensual usages, customs, material habits, ideas of justice—normative facts in short— emerge, giving rise to what Alain Cottereau calls “lawful legality” as opposed to textual legality.<sup>38</sup> To grasp the scope of this “law from the bottom up,” one last pertinent context is that of institutions, with its windows, its intermediaries of law, its secondary rules of application, its local jurisprudence. This is to word it differently the locus where he establishes a tight interlace with the law conceived as “top down.” To paraphrase Jacques Revel, we could say that at each level of investigation, the weave of the law appears different. And the game of the researcher “consists of linking these realities together in a system of interactions with multiple inputs.”<sup>39</sup> This game of scales is a favored way to restore the weight of official law in individual actions and, conversely, to observe the strength of the actions which, by repeating themselves and becoming generalized, produce “precedents”—discreet displacements of rules—and become structure.<sup>40</sup> Putting together methods and scales of analysis may be a way of grasping law in everyday life, as an experience of both official law and what is and should be the law for individuals and groups concerned: that underground part of the arrangement of the rules.

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The critical developments that we have allowed ourselves here cannot have the absurd pretension of being a kind of scientific judgment on a body of work that has made gigantic contributions. The objective of this article, like the whole dossier in which it is inserted, is first and foremost to reproduce our discussions on the positioning in relation to law opened by reading work like Susan Silbey’s. Because that body of work makes old questions resurface: how to seize legality in its deeply plural and also *situated* nature, compared to other normativities which unfold and concern morality, morals, aesthetics, ideology, etc.? How, yet, not to get everything muddled, to the point of losing the irreducible specificity of law (the criticisms of Kelsen keep all their relevance)? In short, how to correctly grasp the very great diversity of *interpenetrations*?

Also, it is clear that to grasp the whole thing properly inevitably means grasping it in the immense diversity of its contexts, places, times, and fields of action where normative approaches intersect and interfere. These are related to official spaces and those of everyday life, practices of “clerics” but also of “lay people” (who may not any longer be qualified as lay people if their practices are considered as such and to the extent they are autonomously standing), without limiting themselves to fixed dichotomies such as dominant / dominated or state / civil society.

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38. Alain COTTÉREAU, “Droit et bon droit. Un droit des ouvriers instauré, puis évincé par le droit du travail (France, XIX<sup>e</sup> siècle)”, *Annales. Histoire, Sciences Sociales*, 57 (6), 2002, p. 1521-1557.

39. Jacques REVEL and Jean-Claude PASSERON, “Penser par cas. Raisonner à partir de singularités”, in ID. (dir.), *Penser par cas*, Paris: Éditions de l’EHESS, 2005, p. 9-45.

40. Emilia SCHIJMAN, *À qui appartient le droit ? Ethnographier la pauvreté*, Paris: Lextenso éditions, coll. “Droit et Société”, forthcoming.

The joint consideration of micro and the macro levels certainly contributes to the search for a replacement of the law which looks forward toward the future.<sup>41</sup> In its own way, the renewed interest in Georges Gurvitch's sociology of law in recent years bears witness to just such a concern.<sup>42</sup> It is certain, in any case, that the theoretical advances in this field are achieved through an observation of the law which is manufactured and implemented in official spaces, by the professionals concerned, and, jointly and in an interactive approach, that which is implemented in the spaces of everyday life, *activated* by "ordinary" citizens. This latter approach has been minimized, if not neglected, over and over again in the production of knowledge about the law.<sup>43</sup> However, knowledge of the transformations of law, such as that of the transition from the status of utopia to that of the actual reality of the notion of the rule of law,<sup>44</sup> also depends on taking into account the "social sources" of legal rules of which ordinary citizens, better integrated with the poor, are all actors. So, if we had to qualify the contribution we get from reading Susan Silbey, it is without hesitation in the field of openness that we would look for our vocabulary. Opening to a daily life that is too often ignored, to intersecting methodologies, to a constantly renewed debate. This is not the only nor the littlest merit of the dialogue undertaken with Susan Silbey, allowed by her, that it reminds us of its importance for the future.

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41. On this point, see the critical analysis of *The Common Place of Law* by Naomi MEZEY, "Out of the Ordinary: Law, Power, Culture, and the Commonplace", *Law & Social Inquiry*, 26, 2001, p. 145.

42. See in particular Jacques LE GOFF, *Georges Gurvitch. Le pluralisme créateur*, Paris: Michalon, coll. "Le bien commun", 2012.

43. Jacques COMMAILLE, *À quoi nous sert le droit ?*, Paris: Gallimard, coll. "Folio essais", 2015.

44. Daniela PIANA, "Beyond the *État de droit*. The Social Dimensions of Legality in a European and Comparative Perspective", research project, Institut d'études avancées de Paris, 2017-2018. See also Cristina DALLARA and Daniela PIANA, *Networking the Rule of Law. How Change Agents Reshape Judicial Governance in the EU*, Farnham: Ashgate, coll. "Studies in Modern Law and Policy", 2015.

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— *Droit et anarchie* (dir., with Chloé BERTRAND, Raphaël BRETTE and Flore PULLIERO), Paris: L'Harmattan, coll. "Presses universitaires de Sceaux", 2013.