Language-and-Law Scholarship: An Interdisciplinary Conversation and a Post-9/11 Example

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Abstract

Language-and-law research is now an established field for study, with decades of development behind it. And yet the field remains fragmented, with disparate streams of scholarship that, ironically, tend to speak in different languages: linguistic anthropology, discourse studies, semiotics, literary theory and rhetoric, translation studies, sociolinguistics, legal philosophy, and more. On one hand, this broad variety speaks to the robust character of language-and-law studies as a focus for relatively diverse scholarly endeavors. And for a number of reasons, it seems likely that the separate schools of thought in this area will generally continue to pursue their often distinct paths. On the other hand, as this article argues, a careful reading of work in the area reveals the potential for a productive conversation among some very different perspectives. Such a conversation offers the promise of creating exciting bridges among law, the social sciences, and the humanities. It also draws together interest in a variety of kinds of language: spoken, gestural, written, visual. This kind of bridge, we suggest, is one of the gifts of the truly interdisciplinary space opened up by sociolegal research—it permits us to combine quite diverse kinds of knowledge in our quest to more fully understand closely related legal phenomena. In this article, we also combine two different kinds of disciplinary voices, inviting the reader to assess what insights about law arise from these voices separately and, perhaps, together.

INTRODUCTION

There is an astonishing variety of approaches to be found under the label of language-and-law scholarship. We cannot cover all of these schools of thought in a single article, but we begin with a survey of many variants of this research, using a style of writing more familiar to readers of social science articles. We then contrast this social scientific approach to legal language research with more humanist and critical approaches, examining what adherents are calling the "law as. . ." perspective and providing a brief case example of how this could shed light on post-9/11 legal discourse. On one hand, proponents of the humanist perspective suggest that their approach widens our understandings both of language and of law, helping us to question taken-for-granted assumptions. On the other hand, the less-open-ended perspectives of the more traditional social scientific approaches that are often pursued under the aegis of language-and-law studies arguably provide frameworks that take better account of social institutional arrangements. (And certainly one could argue that within social scientific language-and-law perspectives, there still lies room to question what "law" and/or "language" encompasses.) Those writing in the "law as. . ." vein tend to have more affinities with research in critical discourse studies, history, and literary theory, but the lines are interestingly blurry in many ways. In explicating the contrast between social scientific "language-and-law" and humanistic "law as. . ." perspectives, we purposefully write in two different disciplinary styles, inviting the reader to take this article itself as an experiment in interdisciplinary communication.

A clear-eyed assessment of the intellectual terrain points to reasons why parts of the field have developed along their separate paths. We therefore resist (at least partially!) the Pollyannaish tendency of review essays to imagine new syntheses that combine previously separate approaches within a field. In our estimation, a realistic view takes the splintered divisions within language-and-law studies quite seriously as reflections of still broader interdisciplinary divides among scholars who study law—and indeed, the world—with different goals and epistemologies in mind. We begin with an overview of these variations in approach.

THE MANY FACES OF LANGUAGE-AND-LAW STUDIES

One of the more confusing aspects of the field of language-and-law is the range of very different approaches that all use the same label—and often without much acknowledgment that the other approaches have value, or even exist. From philosophy to linguistics, from anthropology to psychology, we find a variety of ways of discussing the nexus of law and language; indeed, we even find different ways of conceptualizing "language" and/or "law."

Legal philosophers and jurisprudents tend to look back to figures such as Jeremy Bentham [1970 (1782)] and H.L.A. Hart (1994) for the roots of language-and-law studies. Bentham insisted that legal philosophers should not focus on ephemeral rights and duties understood as naturally or morally correct in the abstract but should instead focus on the actual pronouncements and enactments—the words—that constitute law as it is experienced by human actors. In this sense, he urged scholars to pay close attention to the language of law. In Bentham's formulation, legal language carried force by virtue of the fact that it expressed the command of a sovereign who headed a society's political structure and could enforce its stated laws by force; words had meaning only to the extent that they could evoke "sensible" (i.e., perceptible) substances, actions, and so forth (see Endicott 2010). Hart (1994) later built upon but altered Bentham's approach, looking at the language of law as a particular set of socially structured linguistic practices (in which words did not have to designate perceptible entities but rather were most importantly viewed as functioning to elicit responses from their audiences) (see Weissbourd & Mertz 1985 for a partial critique;

see Schauer 2011 for an argument that Hart did not differ from Bentham as much as some have suggested).

An enormously productive piece of work for scholars of language (including Hart) was J.L. Austin's (1962) famous *How to Do Things with Words*, which provided a shared point of departure for scholars in philosophy and jurisprudence, on one hand, and more sociologically oriented schools of linguistic thought, on the other. Austin famously focused on speech as action ("speech acts") and language as functioning in various ways. For Austin, referring to things was simply one of many ways language works to communicate. One particularly important kind of function identified by Austin is the "performative" one (Austin 1962, p. 5), through which utterances actually perform the functions they describe ("I hereby marry you," "I apologize") (for a critique of Austin on this point, see Silverstein 1979, pp. 210–14). In addition to his impact on Hart, Austin produced insights on linguistic function that bore fruit in the fields of sociolinguistics, anthropological linguistics, and pragmatics, among others. However, these various descendants of Austin study linguistic action in very different ways: Philosophers and formal linguists tend to confine themselves to abstract analyses of how language works, whereas other scholars focus on the actual written language of law, and still others have moved out into the world to observe (and hear) speech acts empirically as they occur in naturally occurring interactions. Thus philosophers who claim to study what they call ordinary language do not take to the field to tape and observe everyday speech but rather employ their own intuitions about what the "ordinary" usage of a word is—as do many linguists. By contrast, social scientists studying ordinary uses of language have examined how a variety of people speak, noticing how people's ordinary usages actually vary along a number of dimensions. From this vantage, using the introspections of elite scholars as a foundation for studying ordinary speech seems at best limited, and at worst lazy or nonsensical.

Those in the field of sociolinguistics and its cousins anthropology and sociology have been among the leaders in championing the move to examine everyday spoken language using empirical social science methods. As Conley & O'Barr (2005, p. 10) explain, in their now-classic book *Just Words*,

> The primary concern of sociolinguistics has always been the integration of social variables into theories of language. Until the 1960s, it was common for theories of the structure of language to be based on ideal, perfectly formed utterances, which typically existed only in the imaginations of linguists.

A telling example is the study of pragmatics, or the contextual structuring of language. On one hand, the famed philosopher Paul Grice (1975) is often cited as a major contributor to the study of pragmatics from a philosophical vantage, based in part on a set of maxims that he proposed as key principles underlying ordinary conversations: Examples of the maxims, derived from introspective and anecdotal sources, included "be brief" and "avoid ambiguity." On the other hand, sociolinguists, anthropologists, and sociologists studying pragmatics examine how conversations actually occur, and by doing this, they reveal the many circumstances under which ambiguity or longer utterances are actually preferred forms in numerous instances (see Ochs 1994 for more examples). Sociologists in particular devised a system for studying actual linguistic interactions that is known as conversation analysis (CA; also discussed as ethnomethodology).

Within language-and-law studies, the diverse strands of thought about how best to analyze language in its social contexts have led in a number of directions. From CA came work on linguistic interaction in courtrooms, shedding new light on structures such as openings, witness examinations (Atkinson & Drew 1979), and plea bargaining (Maynard 1984). The power of CA lies partly in its ability to discern tacit rules governing the ordering of verbal interactions, empirically demonstrating how underneath apparently simple everyday exchanges lie many complicated,

socially shared structures for coordinating the intricate dance of communication. When can someone commence talking without this speech counting as an interruption? How does one repair a botched effort at talking? And then, in fascinating (and very important) analyses, conversation analysts show how the ordering of legal talk varies from everyday talk in quiet but crucial ways. For example, a layperson entering a courtroom may unwittingly violate many rules for communication in that setting without ever knowing it. And of course if litigants cannot afford their own lawyers or if they come from subcultural groups with quite different norms, the problems only proliferate (Gruber 2014, Philips 1998). This last point, of attention to differences among social and linguistic groups, has for the most part emanated from scholars combining the tools of CA with those of sociolinguistics and/or anthropology.

Thus sociolinguists have also been concerned with the structure of courtroom interaction but have added attention to the impact of sociological variables and have examined a variety of legal settings (see Eades 2010 for an overview of work on courts, police interrogation, lawyer–client interactions, informal courts, mediation, and alternative criminal justice practices; for an early review of the area, see Danet 1980). Over time, language-and-law scholars working in a social scientific vein began to blur some of the boundaries separating empirical methods, blending a number of approaches in order to capture more fully the richness of linguistic, conversational, social, and narrative structuring in legal exchanges (see, e.g., Berk-Seligson 2009; Matoesian 1993, 2001; Ng 2010; Trinch 2003). This emerging synthesis is especially apparent in anthropological linguistics, where language-and-law researchers are combining CA, sociolinguistic approaches, narrative analysis, semiotics, textual analysis, and anthropological perspectives that take account of culture and social power (see, e.g., Conley & O'Barr 2005, Hirsch 1998, Mertz 2007, Richland 2008). Conversation analysts have taken issue with the inclusion of social power in linguistic analysis, preferring instead to view each interaction on its own terms (Travers 2006). Linguistic anthropologists and sociolinguists have, in turn, stressed the importance of wider social and cultural contexts to the construction of meaning in these local exchanges (Conley 2006).

Turning back to jurisprudential discussions of legal language, philosophical preferences for abstract over empirical (in the social science sense) research continue to dominate scholarly work in this area (see, e.g., Dworkin 1986, Waldron 1994). At the same time, the written language of case law can sometimes provide a kind of data that brings jurisprudence down at least to examining the level of the actual texts of written law, as opposed to relying on imagined bits of language subjected to analysts' speculations on what everyone's linguistic practices are (usually based on self-reflection rather than a survey of actual linguistic usages). Scholars with training in both law and formal linguistics have developed hybrid approaches that take insights from the abstract analytical traditions but apply them more systematically to legal language of various kinds, including, but ranging beyond, the traditional focus on case law texts (see, e.g., Solan 2010, Tiersma 2008). This melding of perspectives has also produced some applied or forensic work used, for example, to improve comprehension of jury instructions or to argue against subtle forms of pressure in police interrogation (Shuy 2005; for an overview, see Tiersma & Solan 2012).

From arguably the most humanist side of language-and-law studies, there is a vibrant strain of scholarship with roots in literary studies. James Boyd White (1990), a leading figure in the law-and-literature movement, was an early voice for reading law as literature and literature as law. A community of scholars interested in the intersection of law and the humanities has since developed, with its own society (the Association for the Study of Law, Culture, and the Humanities) and journal (*Law, Culture and the Humanities*). The community's focus is on "an understanding of law as a complex interpretive and cultural phenomenon, rooted in distinctive historical and social circumstances" (Sarat 2005). Consistent with its literary roots, this scholarly movement often focuses on the texts of law, albeit from a very different perspective—and with different

methods—than do legal scholars. Constable (2005), for example, questions why social science research on law does not talk more about justice, and she also digs beneath the surface of legal doctrine, using rhetorical analyses of legal texts to examine law's silences as well as its language.

Many of the language-and-law traditions share an interest in analyzing the texts of law, as seen in our review of these diverse (yet overlapping) philosophical, social scientific, and humanist strands of research. From narrative to grammatical analyses, from examining legal texts for underlying linguistic ideologies to studying legal texts as sources of authority in need of explanation, language-and-law scholars have developed just as broad a panoply of perspectives on written as on spoken legal language (as well as on silence!). Yet another approach to the analysis of legal texts has emerged from the realm of critical discourse analysis (CDA). Following Fairclough (1989) and Van Dijk (1993), this work has a special focus on the relationship between language and power, "and particularly of how language contributes to the domination of some people by others" (Fairclough 1989, p. 3). When applied to the analysis of law, CDA's attention to the ways in which language is a vehicle of power has been an effective tool for unpacking histories, politics, social relations, and ideological complexities embedded within the language of "terrorism" (Jackson 2005) and the language of "rule of law," both with reference to the material realities of postcoloniality (Rajah 2011, 2012) and with reference to the emerging notions of transnational legality (Rajah 2014). This is one of the most explicitly political schools of thought among those identifying with the language-and-law field; part of the critique of language here involves intense skepticism over the neutrality of empirical, legal, or scholarly discourses of any kind. We discuss this further in the next section.

Thus far we have written in prototypical social scientific expository language, a style that is itself far less fluid or artful than the language used by more humanist or critical scholars of legal language but that tends to be more direct and readily comprehensible. In the next section, we delve into a case example of work on the language of law, and we shift to a different linguistic register. From language that states what the extant scholarship is or has done, we move to language that upsets and questions the static or given categories for thinking about law. We invite the reader to compare what can be gleaned from these different ways of talking about the field(s).

LAW AS LANGUAGE

In this section, we alter the voice in which we write, examining scholarship on legal discourse within the frame provided by "law as. . ." studies. We conclude this section with a brief case example, reviewing in particular the humanist language-and-law scholarship that engages with 9/11, the war on terror, the invasions of Iraq and Afghanistan, and related issues (referred to collectively here as the 9/11 literatures). Our discussion highlights how, in keeping with the precepts of the "law as. . ." framework, these 9/11 literatures question the fundamental premises underlying how we see and think of both law and language. The reader will likely note several differences from the previous section immediately: a shift to first-person narrative on our part, drawing attention to ourselves as authors, as well as a change from declarative and assertive language to a mix of questions, assertions, and intellectual challenges. On one hand, this approach requires more patience and attention from the reader and may not suit those who turn to these *Annual Review* articles for quick, definitive overviews of areas of scholarship. On the other hand, the writing style permits more nuance and emotion, and it challenges the reader to mull over the complicated issues involved, noting ironies and respecting unresolved dilemmas rather than simply extracting certain bullet points. In that sense, this approach is designed to challenge the reader's thinking rather than providing a set of conclusions or findings or directions on how to proceed.

"Law as. . ." perspectives contrast with the broad category of "law and" subfields (law and psychology, law and economics, law and anthropology—up to and including broader fields such as law and society, law and culture, and so forth) that, at least in their names, seem to take the two fields being joined as clearly distinct entities. Most language-and-law approaches would nominally fit within the "law and" category. From a critical perspective, it becomes necessary to ask whether the "law and" approaches so common within sociolegal studies wind up subordinating "legal scholarship to other disciplines" at both theoretical and methodological levels (Lavi 2011, p. 812). Lavi sees "law and" approaches as constraining scholarly analysis in two ways: (*a*) At an epistemological level, they operate through "the implicit assumption that law is accessible only through the lens of a certain 'school' (formalism, realism, positivism, natural law, and so forth) or 'perspective' (law and economics, law and literature, law and history, legal science)" (p. 812), and (*b*) in this view, a constraint of "law and" is "the modernist premise. . .[,] the way most scholars tend to take for granted certain modern characterizations of law and identify law only by its modern conceptions" (p. 812). For Lavi (2011), what matters is approaching the study of legal phenomenon without the constraining frames of "school," "perspective," or "the modernist premise."[1]

In our discussion of examples from the 9/11 literatures below, we attempt to avoid these epistemological pitfalls while doing justice to literatures that study the relevant legal phenomena. But if the focus is legal phenomena and the approach is made without the standard language-and-law mapping of terrain, how can we steer ourselves through the rich possibilities opened up by this catholic vein? Tomlins & Comaroff's (2011) recent revisiting of the heuristic of "law as. . ." offers an analytic compass that, they would argue, has the potential to revitalize language-and-law scholarship for this current moment in which the assumptions and approaches of sociolegal scholarship are being challenged anew. James Boyd White is widely credited with introducing this heuristic, in his original readings of law as literature (White 1973), literature as law (White 1984), and more: "I could imagine a course not in law and history, or sociology or economics or anthropology, but law as each of those things" (White 1990, p. 19).[2]

The "Law as. . ." Heuristic

Like White, Tomlins & Comaroff (2011) invite the reader to turn away from the more typical trajectories of sociolegal studies (such as law and society, law and politics, law and culture) and instead to see and think of law's sociolegal pairings through a lens of "law as. . .". For them, "law as. . ." is "not determinedly programmatic. . .but open-ended (hence the ellipsis)"; it is an open-endedness that facilitates "a moment of reconsideration, a pause to contemplate" (Tomlins & Comaroff 2011, p. 1040). This moment and pause are an interruption, just as the more complex connection implied by "as" might be understood as a refusal to rely too easily on established ways of conceptualizing the language that relates to law and, in turn, the law that is expressed through language.

Importantly, as a heuristic, "law as. . ." is informed by two key attributes. First, it takes the shape of metaphor: Meaning is ascribed to law primarily via reference to the subject that occupies the space of the ellipsis. The yoking of law and a second subject in the device of metaphor effects comparison; it highlights resemblance and resonance while drawing imaginatively and symbolically on difference, dissonance, and the surprises of juxtaposition. As literary devices,

[1]There is much to debate here; certainly the rich literatures from the broad spectrum of "law and" approaches could generate many counterexamples to these broad generalizations—starting with much work in law and anthropology. But we accept the general point that "law and" fields may emphasize what comes after the "and" while neglecting complex understandings of law or of the relation involved.

[2]In a somewhat different vein, Sally Falk Moore (1978) had already written of "law as process" in the 1970s.

metaphors dismantle straightforward cause–effect analysis (Rimmon-Kenan 1989, pp. 67–68; see also Miller 2006) and nudge the reader into a startled rethinking in which meaning is sensed and tenuous rather than forming a linear, reasoned certainty. Tomlins & Comaroff (2011) illustrate these meanings by yoking law to some unlikely foils, refractions, and reflections (for example, law as reading against the grain, law as fetish, law as claim). In this aspect of metaphor, "law as. . ." can draw attention to the deeply personal processes of meaning making—processes that are intrinsically partial, thereby mimicking the partial accessibility of all communication, all knowledge, all justice. The reader escapes static disciplinary categories and has to think outside the boxes. Note that this approach necessarily directs attention to the effect of scholars' own linguistic frames upon the way we conceptualize our research.

However, recognizing the fragmentary and interior processes of meaning making is by no means an invitation to retreat into abstraction or to perceive the individual as disembedded from the social. Tomlins and Comaroff want the "law as. . ." heuristic to push sociolegal scholars into becoming acutely aware of historical contexts, and in this, "law as. . ." is consonant with sociolegal studies' attention to the specifics and complexities of context (Tomlins & Comaroff 2011, p. 1041). Tomlins and Comaroff tack between abstract and concrete levels in a creative and challenging fashion, framing the metaphor of "law as. . ." so that it confronts us with how law works within a continuing dialectic between metaphysics and materiality. This is a second crucial attribute that "law as. . ." offers as a scholarly heuristic. Here the authors are drawing on the work of Karen Orren (1992), who contrasted the abstract common law rules governing master/servant relations with the material realities faced by workers as times changed. Orren describes the metaphysical aspect of the legal rules in the following terms: They were "detached from their original settings, placed in a framework of concepts, the reasonability of which was defined through a process of exposition by professionally trained intellects" (Orren 1992, pp. 160–61, cited by Tomlins & Comaroff 2011, p. 1039). This metaphysics of law created an ongoing tension as the material circumstances of the workplace grew ever more different from those in the settings that had given rise to the original rules. The "law as. . ." approach, then, draws attention to this tension, standing for "a pause to contemplate what the theory and practice of [legal] history might gain by rejoining metaphysics to materiality" (Tomlins & Comaroff 2011, p. 1040). This is the kind of dialectic that Valverde (1999, p. 659) has characterized as resisting synthesis in "a permanent but fruitful tension and mutual reinforcement." In this formulation, the meaning making of "law as. . ." is situated in the specificity of place, time, and social relations. Meaning relates to matter.

What then of metaphysics, the other limb of the dialectic? Although Tomlins & Comaroff (2011, pp. 1039–40) contextually define metaphysics and materiality as the continuing (perhaps unnoticed) presence of an attribute, ideology, or relational dynamic from a long-ago historical moment in a present and particular material reality, the term metaphysical and the register of lyrical, often poetic language they adopt can also invoke the canon of metaphysical poetry in which matter yearns for a connection to more-than-matter (think John Donne or Andrew Marvell); this is metaphysical in a cosmological sense, a metaphysics that gives meaning to the matter of experience. In these invocations of the metaphysical, perhaps "law as. . ." may be read in part as reviving Cover's [1992 (1983), pp. 95–172] influential argument about the links between the normative universe and narration in the meaning-making processes of law.

Read this way, the heuristic of "law as. . ." is an analytic approach that revitalizes language-and-law scholarship in two fundamental ways. First, some traditional constraints as to how and where we see and understand legal phenomena are set aside, and second, through attention to the matter/metaphysical dialectic, the ethical vacating of law and of language is rendered problematic. This is a point central to the work of Marianne Constable (2005, 2011), who has repeatedly urged law-and-society scholars to rethink the place of justice in their scholarship. One example of a turn

toward the ethical through such a lens is Eve Darian-Smith's (2013) call to push past thinking of law as concerned primarily with state law and to instead see law at levels below and beyond the state through an explicitly counterhegemonic, and genuinely pluralist, lens. She argues that to turn away from a state-centric focus, as well as away from a Euro-American-centric perspective, and instead see law in multiple spaces and levels (see also Sassen 2008) with both a critical alertness to power and a humanist embrace of diversity builds upon the founding critical impulse of sociolegal studies and reinvigorates the field, thereby enabling us to address urgent contemporary issues such as terrorism.

To summarize, we now turn to our example of the intertwining of law and language in the case of 9/11 through a heuristic we understand as encompassing four entwined strands. That heuristic, "law as. . .", turns scholarly attention to the mutual embeddedness of (*a*) the interior and personal processes of meaning making; (*b*) the material realities of context and the empirical; (*c*) the affective dimensions of understanding, such as the discomforts of partial knowing and the delights of insight; and (*d*) the yearning for metaphysical, cosmological, and ethical significance that can be missed when we focus too exclusively on material realities.[3]

Renisa Mawani's (2012) recent exploration of "Law as Archive" is a potent example of the rich analytic readings facilitated by the heuristic of law as [a kind of language]. Building on "law as. . .", Mawani delves into archive as analytic concept and as material reality to explore ethical, empirical, and interpretive issues, arguing that law is the archive. Framing her argument with the immediacy of concerns relating to archive in postinvasion Iraq, Mawani (2012, p. 337) argues that, as archive, law is

> an expansive and expanding locus of juridico-political command. . .operati[ng] through. . .a double logic of violence: a mutual and reciprocal violence of law as symbolic and material force and law as document and documentation. Law's archive is a site from which law derives its meanings, authority, and legitimacy, a proliferation of documents that obscures its originary violence and its ongoing force, and a trace that holds the potential to reveal its foundations as (il)legitimate.

Thus Mawani draws our attention to the complex processes and ambivalent power relations through which documents themselves become a form of legal language and authority.

Law as Discourse of Citizenship and Identity: A Post-9/11 Example

We turn now to our case example, reviewing part of the 9/11 literatures through the lens of "law as. . .". As Carol Greenhouse (2006, p. 191) has pointed out, the field of 9/11 scholarship is imbued with theoretical significance, in part because "[t]he compression of events and the intensity of the performativity of text in relation to the buildup to war and other aspects of the war on terror challenge the conventional distinctions between text and practice, discourse and event, and even legality and authority." Language-and-law scholarship, because of its overlapping harmonies with the social sciences, the humanities, and cultural studies, is especially well positioned to engage with the compressions, intensities, and dismantling of distinctions that Greenhouse (2006, 2011) flags because, as she notes, a major arena and vehicle for these dynamics is discourse.

It is perhaps unsurprising that the complexities and enmeshments highlighted by "law as. . ."—interpretive processes, materialities, affects, and ethics—are a thematic commonality running

[3] For a discussion of the scholarly reluctance to acknowledge partial knowing and the way this reluctance impairs deeper understandings of legal-linguistic-social phenomena, see Mertz (2002).

through the 9/11 literatures. After all, in our post-9/11 context, sociolegal studies confront more than the founding gap between law on the books and law in action (Pound 1910). The field is now confronted by an abyss between law's deeply historical (Goodrich 1991, 2011) and humanist promise of justice and legitimacy [Constable 2005, 2011; Cover 1992 (1983); Fitzpatrick 1992, 2001; Lacey 1996; Santos 2007; Santos & Rodríguez-Garavito 2005; Valverde 1999; Waldron 2010; Ward 2009; White 1990] and a law—often both on the books and in action—that is manifested in behaviors such as torture, terrorism, and targeted killings (Abel 2007; Baylis 2006; Bowring 2002; Carty 2002; Duffy 2012; Hajjar 2013; Lokaneeta 2011; Luban 2002, 2007, 2010; Margulies 2006; Megret 2013; Meltzer 2002; Parry 2006b; Shafir 2007; Sylvester 2006). These are behaviors in which there is too often little to distinguish between state and nonstate actors, behaviors extensively justified by legal advisors to governments (Biggio 2002; Holder 2012; Yoo 2005, 2006) through modes of law too long in force for us to continue to characterize them as exceptions or emergencies.

The legal phenomenon of ruptured citizenship, through many layers of discourse and material experience, provides an example of this. Operating for the moment within the framework of a "law as. . ." approach, we open up the definition of legal phenomena to mean, along with Davies (2002, p. 4) (on the related subject of the philosophy of law),

> everything – from literature to science, and everyday experience. The whole world is structured by laws of one sort or another. . . . There are laws of social behavior, laws of language, laws relating to what counts as knowledge and what doesn't, and laws which say that . . . law itself must be clearly distinguished from other sorts of inquiry. . . . But how can law be even conceptually separate from its context? How can it be conceptually separate from the human lives who have created it, who apply it, who criticize it, and who relate to it?

Using this approach, certainly our experiences and understandings of what it means to be citizens would count as legal phenomena.[4] Indeed, citizenship has a particular salience for sociolegal studies, especially when studied through the lens of legal mobilization. Because that field is particularly attentive to the role of citizenship with reference to the gap between law on the books and law in action,

> [t]he gap itself is treated largely as an inherent feature of a system of power that relies on citizens' acquiescence for its effective enactment. In this context, the gap is interesting only to the extent that it is a reflection of the ability of the apparently fixed meaning of black-letter law to adapt, via a dynamic mechanism related to the social practices that offer it meaning and hence power, to the needs of both existing and new forms of social behavior. (Gould & Barclay 2012, p. 332)

But if the sociolegal gap is, in part, an expression of citizen acquiescence and if apparently fixed law engages in a fluid responsiveness to the social, we are left with a difficult question: To what extent does the contemporary abyss (between a humanist justice and a militarized instrumentalist law) articulate citizen acquiescence? Or perhaps, in our contemporary context of "apparent empirical transformations of the world, away from the absolute sovereignty of independent nation-states and towards the proliferation of varieties of plural citizenship . . . [and] new forms of global allegiance" (Ben-Porath & Smith 2013, p. 4), we need to rethink the enmeshments of citizenship, law, and acquiescence. For some explorations of these complexities, see Adelman (2007),

[4]This fits well with Ewick & Silbey's (1998) work on the commonplace of law.

Amaya (2007), Chandrasekhar (2003), Heinz (2007), Marti et al. (2007), Saft & Ohara (2006), Simone (2009) and the contributions to Ben-Porath & Smith (2013). Here, our willingness to reconsider law as multiple kinds of language, in its relation to justice, may open new doors for reflection.

The language of ruptured citizenship is at the forefront of Leti Volpp's (2003, p. 147) analysis of the manner in which 9/11 has "facilitated the consolidation of a new identity category that grouped together persons who appear to be Middle Eastern, Arab, or Muslim," an identity category solidified through "a particular racialization, wherein members of this group have been identified as terrorists, and disidentified as citizens." US state policy and practice have played a role, not just in the construction of this identity category, but also in the more than 1,000 incidents of violence, which occurred within just a year of 9/11, directed at those assigned (in and through language) to this post-9/11 identity category. Although this violence was "perpetrated by the general public" (p. 147), Volpp sees it as expressing the race-related governmentality formulated and enacted by the American state in response to 9/11:

> In simultaneously advocating policies of color blindness for citizenry while engaging in racial profiling for noncitizens, and publicly embracing all religions, while particularly privileging Christianity, the administration has, in the name of democratic inclusion, disingenuously excluded. That an epidemic of hate violence has occurred within the context of "private" relations thus does not mean that such violence is without "public" origins or consequences. (pp. 150–51)

If the frames provided by legal knowledge prefigure social activity (McCann 1994, p. 6) then the hate-based violence of some citizens against other citizens is, in part, a response to state-scripted policies and practices. This hate-based violence becomes just one instance of the ways in which 9/11 appears to have consolidated the identity category "Muslim" into the (Western) repository for multiple abhorrences (Disha et al. 2011; Hage 2003, pp. 66–68; Jackson 2005; Mamdani 2005; Margulies 2013; Rabkin 2013; Sullivan & Hendriks 2009; Waldron 2010, pp. 273–74), rupturing citizenship to such an extent that US citizens who happen to be Muslim have been refused entry into the country of their citizenship (Volpp 2007).

If, fueled and framed through interlaced forms of legal (and connected) discourses, the phenomenon of ruptured citizenship gives expression to the impossibility of separating private from public, then Darian-Smith (2013, p. 14) points us to even greater complexities and connectivities made visible through the lens of a global sociolegal perspective when she suggests the connectedness of post-9/11 Islamaphobia to the global economic recession, high unemployment rates, xenophobic and racist reactions to immigration and to the nonwhite Other, and the Republican party's efforts in the 2012 US presidential elections to disenfranchise minority voters in certain states. Citizenship is ruptured in another manner in the context of paranoid nationalism (Hage 2003) and the transnational context of societies that conduct themselves as warring societies (Ben-Porath & Smith 2013; Brysk 2007; Hage 2003, 2005; Spence 2005), when the range of ways of being a citizen becomes constrained by the discursive binary of friend versus enemy. It is a binary useful to states in their efforts to bolster legitimacy [Schmitt 2007 (1932)] but intolerant of critical reflexivity (Hage 2003, 2005; Journell 2011; Luban 2010; Mamdani 2005), as it turns citizens into potential belligerents (Ben-Porath 2006) obliged to display unquestioning obedience and to sever themselves from the individual civic capacity for questioning, reflection, and reflexivity.

The post-9/11 context has also intensified the (long-standing) professional politician's anti-intellectual response to academic discourse, escalating the intolerance in a manner that mirrors the hatred analyzed by Volpp (2003, 2007). As Hage (2003, p. 105) notes,

> Intellectual and political logic are often not compatible. Politicians need certainties . . . [;] they need pieces of knowledge that are no longer subjected to critical questioning. People are defined as friends or enemies according to how they relate to these certainties. Critical intellectuals do not know what certainty is. They judge each other according to how thoroughly, ethically and interestingly they can keep questioning everything. . . . They perform, at best, a general function of keeping a culture democratically alive, forward looking and open to transformations. . . . The era and the society we live in is rather unusual in the history of Western democratic societies in that many politicians neither like nor ignore intellectuals but actually attack them systematically. Complexity and subtlety are among the first casualties, although the list is a long one.

For academics, whether engaging with high school students (Journell 2011) or in research and teaching at other levels, the ethical imperative of critical self-reflexivity arguably takes on a particular urgency in the post-9/11 context, especially with reference to the legal/linguistic categories of human rights and security. But how can a discourse that requires certainty and quick answers be responded to with one that pushes listeners to question—to question what law is and should be or how our language, as it intersects with, informs, and supports that of legal categories, fits with still more difficult questions of justice? (See Brysk 2007 and Darian-Smith 2013 for further discussion of the challenges facing academic efforts in this regard.)

In summary, if post-9/11 material and ideological conditions are increasingly hostile to critical questioning, then critical scholarship could play a vital role in resisting both the polemics that reduce our discursive choices to friend versus foe and the apocalyptic perspective of emergency and exception that closes off discussions relating to "democratic orientation, action, and renewal"—orientations to democracy that are possible, "even in the context of emergency" (Honig 2009, p. xv). The critical discourse scholar's insistence that matter be yoked to an ethical and self-reflexive metaphysics becomes an especially crucial intervention in our post-9/11 context. Here we see an area where studies of law as language could open new forms of talking about justice.

CONCLUSION: LAW, SCIENCE, AND THE HUMANITIES—BEYOND DISCIPLINARY BOUNDARIES. . .AND BACK AGAIN

We began with an overview of a very vast terrain, trying to map in very broad-brush terms the many angles from which scholars have studied the language of law. We briefly surveyed law's standard preoccupation with normative language and many variants of social scientific attention to the contexts of legal speech and text. Not satisfied with a standard narrative summary of humanist and critical approaches to legal language, we then used those kinds of perspectives to delve into a particular example in more depth, exploring scholarship that has examined legal and political discourses surrounding the events of September 11, 2001. Pushing against easy definitions of law and language, we challenged ourselves and the reader to consider legal discourse and action in a different way. This second kind of summary, we found, could be done most effectively within the specificity of a particular example. We have offered this combination of an opening declarative overview followed by a question-raising in-depth exemplar as its own exercise in interdisciplinary conversation, providing a more standard review of literature while at the same time demonstrating the dubious character of any such enterprise, to the extent that it provides a too-facile closure on complex subjects. Yet the anchor provided by our initial review of the language-and-law literature is important too, providing a reference point and overview that is also part of the dialectical conversation we hope to encourage. That such a conversation could be held within the bounds of a review of language-and-law studies speaks to the breadth and promise of this still-growing field.

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