

THE NORMATIVE ANTHROPOLOGIST

Matthew S. Erie

INTRODUCTION	804
I. DISJUNCTURES REAL AND IMAGINED.....	806
II. MINING DISJUNCTURES	811
<i>A. What Do Legal Scholars Mean by “Normative”?</i>	811
<i>B. How Anthropologists Think about “Normativity,” and a Return to Description</i>	814
CONCLUSION	820

THE NORMATIVE ANTHROPOLOGIST

*Matthew S. Erie**

INTRODUCTION

“Ethnography is etic to legal analysis,” stated a law professor and a close mentor in a conversation during an academic conference. The professional life of an anthropologist of law is one of living betwixt and between two worlds, one defined by law and the other by anthropology. Getting these two disciplines to speak to each other may invite hand-wringing; efforts often result in a kind of mimed dance, like Sisyphus on roller skates. As a result, a legal anthropologist writing for a law audience may often hear from law colleagues comments such as “your work is too descriptive,” “it’s too complicated,” or, in various guises, the refrain “it needs to be more normative.” The anthropologist of law may also encounter subtler pressures to conform her writing to a certain expectation, pressures that are no less forceful. Such reactions to anthropological writing and ethnography, in particular, are born of a particular view legal academia has of anthropology, one that is reflected in the epigram that starts this Essay, wherein ethnography, the main mode of producing knowledge in anthropology, is perceived to be “etic” (used by my mentor as a synonym for “outside,” although inaccurately so) to law. This Essay is a preliminary effort to address some of the misperception the legal academy has of anthropology, to identify how and why certain lines that define intellectual community and scholarly output are drawn the way they are, and to re-examine particular points of divergence and perhaps surprising complementarity between the lawyer and anthropologist. In short, I am motivated to engage in interdisciplinary translation as a modest effort to recalibrate the relationship between the two fields. Whereas there is much for the anthropologist of law writing for law audiences to lament, there is also cause for courage.

The launching point for this translation work is the idea, familiar in legal scholarship, that law writing is “normative,” most simply put, that it makes judgments about what the law should be, and the trailing idea, floated in peer reviews by lawyers and anthropologists and multidisciplinary workshops, that anthropological scholarship does not. Rather, anthropological writing is perceived to be “descriptive,” a term in the lawyer–anthropologist exchange

* Associate Professor, Member of Law Faculty, and Associate Research Fellow of the Center for Socio-Legal Studies, University of Oxford. The author thanks Deepa Das Acevedo for organizing the Legal Anthropology workshop and for her and colleagues’ comments on an earlier draft. Jeffrey Omari and Fernanda Pirie also provided helpful comments. All errors are the author’s. This work is part of the “China, Law and Development” project, which has received funding from the European Research Council under the European Union’s Horizon 2020 research and innovation program (Grant No. 803763).

that is a kind of academic scarlet letter. Some of this distinction is drawn from the idea that the social sciences address the “is” whereas law is concerned with the “ought” (a distinction that, in practice, melts into the air). However, in law’s view of anthropology, the is/ought distinction takes on additional overtones. The operating analogy is *law : normative :: anthropology : descriptive*, an analogy that encompasses another, that is, *legal reasoning : universal :: anthropological reasoning : relative*. To unpack these embedded analogies, this Essay asks the primary questions: What do lawyers mean by “normative”? What may anthropologists mean by this term? And what, in the anthropological analysis, is the relationship between description and normativity and relativity and universality, and ultimately, can ethnography be normative?

Caveats are required. First, legal studies and anthropology are diverse fields with their own widely diverging intellectual missions, agendas, theoretical predispositions, and political commitments. There is some generalizing that is part of this process of translating disciplines. Legal scholars, who I define for purposes of this Essay as law professors primarily in U.S. law schools, are diverse in their theoretical leanings with perspectives that range from those of law and economics¹ to “law and political economy”² and from legal formalism³ to the “New Legal Realism.”⁴ Certainly, some legal scholars are more receptive to anthropology than others.⁵ Yet, for the most part, the mainstream legal academy has not embraced anthropology. This Essay is directed at this mainstream.

Likewise, I recognize that anthropology is perhaps an even more heterogeneous and contentious discipline than law. Anthropology has formed and reformed through disagreement,⁶ from the foundational debates on “nature” versus “nurture”⁷ to materialist as opposed to ideational or symbolic interpretations⁸ to the so-called post-modern trend.⁹ This Essay may thus cut

1. See, e.g., Richard A. Posner, *The Law and Economics Movement*, 77 AM. ECON. REV. 1, 1 (1987).

2. See, e.g., Jedidiah Britton-Purdy, Amy Kapczynski & David Singh Grewal, *Law and Political Economy: Toward a Manifesto*, LPE PROJECT (Nov. 6, 2017), <https://lpeproject.org/blog/law-and-political-economy-toward-a-manifesto/>.

3. See, e.g., Ernest J. Weinrib, *Legal Formalism: On the Immanent Rationality of Law*, 97 YALE L.J. 949, 949 (1988).

4. See, e.g., 1 THE NEW LEGAL REALISM: TRANSLATING LAW-AND-SOCIETY FOR TODAY’S LEGAL PRACTICE 2 (Elizabeth Mertz, Stewart Macaulay & Thomas W. Mitchell eds., 2016).

5. See *infra* text accompanying notes 86–91.

6. See generally KEY DEBATES IN ANTHROPOLOGY (Tim Ingold ed., 1996) (aggregating important debates in the field of anthropology).

7. Compare MARGARET MEAD, COMING OF AGE IN SAMOA (1928), with DEREK FREEMAN, MARGARET MEAD AND SAMOA: THE MAKING AND UNMAKING OF AN ANTHROPOLOGICAL MYTH 3–4 (1983).

8. Compare Marvin Harris, *The Cultural Ecology of India’s Sacred Cattle*, 7 CURRENT ANTHRO. 51, 51 (1966), with VICTOR TURNER, THE RITUAL PROCESS: STRUCTURE AND ANTI-STRUCTURE 1 (1969).

9. Compare James Clifford, *Introduction: Partial Truths*, in WRITING CULTURE 1, 1–26 (James Clifford & George E. Marcus eds., 1986), with P. Steven Sangren, *Rhetoric and the Authority of Ethnography: “Postmodernism” and the Social Reproduction of Texts*, 29 CURRENT ANTHRO. 405, 405 (1988).

against the grain in two senses: not only in terms of encouraging legal scholars to reconsider anthropology but also, given that some anthropologists would disagree with my assertions (to some anthropologists, “normativity” may be anathema to their discipline), encouraging anthropologists to more persuasively demonstrate their contributions to law, which includes engaging with the categories of law (i.e., the normative).

Second, while I write from the perspective of a lawyer and anthropologist, trained in both disciplines and committed to contributing to both bodies of knowledge, my view cannot be taken as representative of those whose work intersects with law and anthropology. Nonetheless, my perspective is tempered by nearly twenty years of workshopping, conferencing, writing, editing, and collaborating with and alongside anthropologists and lawyers. Formative experiences include socialization into anthropology as a graduate student while attending lectures at the law school and later pursuing a J.D. while attending talks in the anthropology department; participating in young legal scholars’ forums where issues pertaining to legal writing are reflected upon; postpanel conversations at conferences with colleagues from diverse disciplines (a form of sidebar peer review); and organizing multidisciplinary research projects that include group training and readings, peer reading and critique, and collective brainstorming. These experiences have made me aware of the entrenched boundaries of disciplinary identity, entrenchments that can deepen in the absence of sustained interdisciplinary conversations.

Notwithstanding the above concerns, in order to assess anthropology’s contribution to advancing research on formal law, my starting point is to take a step back from a narrow focus on “legal anthropology” as a subdiscipline, and rather to juxtapose law and anthropology as “parent” disciplines. My aim is to adopt, as much as possible, the perspective of law to rethink its relationship with anthropology. This translation work is animated by the conviction that anthropology holds potential to illuminate the study of formal law. The reason for this is that despite the fractiousness of anthropology, anthropologists are united by the common aim to understand others’ worldviews through ethnography, a temperament and method that could be summarized colloquially as walking in another’s shoes. Given the current state of affairs in the early twenty-first century—extreme political polarization, racism, misogyny, xenophobia, religious fundamentalism, and hypernationalism—anthropology’s goals and methods would seem to be both much needed and also adjunct to law’s ambitions to create just societies.

I. DISJUNCTURES REAL AND IMAGINED

Between the disciplines of law and anthropology, there are inveterate perceptions of the self and of the other. Thinking analogically, the anthropologist Sherry Ortner famously once asked: “Is Female to Male as

Nature Is to Culture?”¹⁰ Ortner was concerned with what she perceived to be “the universal devaluation of women,” a social fact that she attributed not to biology but rather to culture, which has more closely aligned women with nature.¹¹ Analogies to analogies, law is often seen (by lawyers and sometimes anthropologists, too) as “universal” whereas anthropology is “relative.” (Extending Ortner’s gendered comparisons to law/anthropology, one could also problematize the masculinization of law and the feminization of anthropology, although this analogy lies outside the scope of this Essay.) The self-distinction of law as “universal” has a long pedigree, dating at least to the great traditions of sacred law and the imbrication of law with religion.¹² Yet the idea of law as “universal” also turns on both the language of law and, interrelated, the status of lawyers and legal academics, who occupy a particular structural position in the U.S. academy.¹³

If legal scholarship envisions law to be universal, then it regards anthropology to be relative. Lawyers view anthropology, in this light, as espousing the belief that cultural variability produces different social and psychological mindsets among different people.¹⁴ This view is most commonly associated with the work of Franz Boas, considered the founder of American anthropology.¹⁵ To provide one point of comparison between Boasian anthropology and legal reasoning, on the question of murder, Boas wrote the following:

The person who slays an enemy in revenge for wrongs done, a youth who kills his father before he gets decrepit in order to enable him to continue a vigorous life in the world to come, a father who kills his child as a sacrifice for the welfare of his people, act from such entirely different motives, that psychologically a comparison of their activities does not seem permissible. It would seem much more proper to compare the murder of an enemy in revenge with destruction of his property for the same purpose, or to compare the sacrifice of a child on behalf of the tribe with any other action performed on account of strong altruistic motives, than to base our comparison on the common concept of murder.¹⁶

For Boas, motive determines the relevant category, that is, even whether an act can be defined as a crime, whereas criminal law in the United States, for

10. Sherry B. Ortner, *Is Female to Male as Nature Is to Culture?*, in *WOMAN, CULTURE, AND SOCIETY* 67, 67 (M. Z. Rosaldo & L. Lamphere eds., 1974).

11. *Id.* at 83.

12. MAX WEBER, *ON LAW IN ECONOMY AND SOCIETY* 224–25 (Max Rheinstein ed., Edward Shils trans., Harvard University Press 1954) (1925).

13. Pierre Bourdieu, *The Force of Law: Toward a Sociology of the Juridical Field*, 38 *HASTINGS L.J.* 814, 820, 822 (1987); see also ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO ‘THINK LIKE A LAWYER’* 4, 99 (2007).

14. See Melford E. Spiro, *Cultural Relativism and the Future of Anthropology*, in *REREADING CULTURAL ANTHROPOLOGY* 124, 124 (George E. Marcus ed., 1992).

15. *Id.* at 128, 130.

16. FRANZ BOAS, *THE MIND OF PRIMITIVE MAN* 192 (1911).

example, holds motive to be irrelevant.¹⁷ Rather than look to the particularized context of the act, the background of the relationship between parties involved, and the psychological mindset of the actor, the logic of criminal law is to posit elements of a crime (i.e., act, *mens rea*, causation between the act and effect) and to determine whether the facts of the case fulfill those elements.¹⁸ In other words, whereas Boas rejects a uniform rule that would be applied across dissimilar cases, the law subsists on precisely such standardization.¹⁹

Boas was a pioneer in cultural relativism, the idea that one's ideas are rooted in culture and may not have universal purchase, an idea that has come to define American anthropology.²⁰ In its stronger forms, cultural relativism may lead to normative relativism—the idea that because societies have different standards, there are no universal standards—and even epistemological relativism which posits that generalizations (i.e., truth) are impossible, a view embraced by some postmodern anthropologists.²¹ Anthropology, in this guise, operates at the margins of knowable truths and instead presents multiple and competing truths.²² All too often, law perceives anthropology to assume the extremist form of post-modernism and to have embraced not only truth-plurality but also truth-negation.²³ In the analogy of *law : universal :: anthropology : relative*, the starting point of comparison is mutual exclusiveness and in-accessibility.²⁴

Following from law's universalism, and moving to the second analogy (*legal reasoning : universal :: anthropological reasoning : relative*), one of the chief purposes of legal reasoning is to provide normative accounts (whether consequentialist, deontological, or aretaic) for the ends and justifications of law. One conventional understanding is that such normative claims are rooted in ideas of rights and justice. As legal scholar Joseph William Singer put it: “There is no alternative but to make arguments that elaborate fundamental human values and that express our considered commitments to judgments about morality and

17. Michael T. Rosenberg, *The Continued Relevance of the Irrelevance-of-Motive Maxim*, 57 DUKE L.J. 1143, 1144 (stating that a settled principle of criminal law is the irrelevance of motive).

18. See generally THOMAS J. GARDNER & TERRY M. ANDERSON, CRIMINAL LAW 54–55 (6th ed. 2014).

19. See, e.g., Louis Kaplow, *Rules Versus Standards: An Economic Analysis*, 42 DUKE L.J. 557, 557 (1992) (explaining the operation of *ex ante* rules and *ex post* standards in designing law).

20. MATTHEW ENGELKE, HOW TO THINK LIKE AN ANTHROPOLOGIST 10 (2019).

21. See Spiro, *supra* note 14, at 125, 127.

22. By competing truths, I mean more Akira Kurosawa's *Roshomon* rather than Donald Trump's “alternative facts.”

23. See, e.g., STEVEN LUBET, INTERROGATING ETHNOGRAPHY: WHY EVIDENCE MATTERS xiii (2017) (dismissing anthropology for its “turn toward postmodernism.”).

24. By no means does stereotyping run only from law to anthropology. Anthropologists are also perfectly capable of engaging in such characterizations. See, e.g., Amy Levine, *Risking Ethics*, 15 FINNISH Y.B. INT'L L. 149, 150 (2004) (describing the image anthropologists have of U.S. lawyers as including “money-hungry, culturally insensitive, politically (neo-liberally) dubious, and ‘normative’ practice in opposition to the humanistic, culturally sensitive, politically-minded, and ‘self-reflexive’ labels that anthropologists often affix to their own practice.”).

justice.”²⁵ In short, normative arguments envision “conceptions of the good,”²⁶ leaving aside for the time being, the provenance of “good.” Consequently, legal reasoning is evaluative and prescriptive. The reasoning that runs through judicial decisions or law review articles shares a common movement—to boil down (or reduce) factual or doctrinal complexity to first principles: right and wrong, good and bad, lawful and unlawful.²⁷ American common law has evolved a machinery of tools in aid of this goal: objective tests, the “reasonable person” standard, hypothetical bargaining, and social contract, to name a few.²⁸

Contrary to law’s evaluative and normative drives, law views anthropological reasoning as descriptive and relative. Anthropologists document, interpret, and represent other ways of doing, knowing, and being—in essence, describe. This description takes the form of ethnography, both a process and a product.²⁹ The process entails long-term immersion in a different social or cultural setting during which the ethnographer compiles fieldnotes (i.e., fieldwork) and then writes an account of her encounter with an other (an ethnography).³⁰

The foregoing definition makes ethnographic writing sound easier than it is. In reality, ethnographies are anything but straightforward and throw up a host of conceptual, linguistic, ethical, and epistemological concerns. “Ethnographies are documents that pose questions at the margins between two cultures. They necessarily decode one culture while recoding it for another.”³¹ Description, then, is wedded to the project of cultural relativism. In the relativist vein, ethnographies are more concerned with elucidating value systems rather than judging them.³² To judge a society could potentially result in imposing one’s own standards, an act that is problematic to the anthropologist given the discipline’s self-awareness of its historical genesis with colonialism.³³ Instead of

25. Joseph William Singer, *Normative Methods for Lawyers*, 56 UCLA L. REV. 899, 904 (2009).

26. *Id.* at 923.

27. See Niklas Luhmann, *The Third Question: The Creative Use of Paradoxes in Law and Legal History*, 15 J.L. & SOC. 153, 154 (1988) (finding that paradox sheds light on the binary code of law).

28. See generally Randy Frances Kandel, *Six Differences in Assumptions and Outlook between Anthropologists and Attorneys*, 11 NAPA BULL. 1, 3 (1992) (discussing American common law meaning of “objective” test versus “subjective” test); Richard Mullender, *The Reasonable Person, the Pursuit of Justice, and Negligence Law*, 68 MOD. L. REV. 681, 681–82 (2005) (noting the “reasonable person” standard); Steven W. Feldman, *Statutes and Rules of Law as Implied Contract Terms: The Divergent Approaches and a Proposed Solution*, 19 U. PA. J. BUS. L. 809, 828–30 (2017) (explaining the hypothetical bargain); Peter Rigby & Peter Severeid, *Lawyers, Anthropologists, and the Knowledge of Facts*, 11 NAPA BULL. 1, 5 (1992) (noting the “social contract” concept).

29. Donald P. Kelly, *Introduction: A Discursion on Ethnography*, in *THE ETHNOGRAPHIC EYE: AN INTERPRETIVE STUDY OF EDUCATION IN CHINA* 3, 3 (Judith Liu et al. eds., 2000).

30. *Id.*

31. JOHN VAN MAANEN, *TALES OF THE FIELD: ON WRITING ETHNOGRAPHY* 4 (2d ed. 2011) (citation omitted).

32. KATHERINE VERDERY, *MY LIFE AS A SPY: INVESTIGATIONS IN A SECRET POLICE FILE* 96 (2018) (showing the ethnographer grappling with the question of whether to judge interlocutors who spied on her during her fieldwork).

33. See, e.g., Diane Lewis, *Anthropology and Colonialism*, 14 CURRENT ANTHRO. 581, 582 (1973).

drilling down toward first principles, in its ambition to represent other worlds, ethnography moves outward and around. As a result, ethnographies can be exploratory and even elliptical. Further, there can be a multilayeredness to ethnography, a move to complicate rather than streamline.³⁴ Such writing style is largely alien to the law review that determines entry into the legal academy, job placement, tenure, and status in the field.

Arguably, the most widely recognized anthropologist outside of the discipline, including in U.S. law schools, is Clifford Geertz. The popular perception of Geertz largely confirms views of anthropology as concerned primarily with describing cultural variety. Geertz's contribution to introducing an "interpretive turn" to anthropology, which became popular in the 1980s,³⁵ an approach that became widely popular, cannot be overstated. The problem is that only certain aspects of his work have become mainstream. Many of these seem to extend Boasian cultural relativism. For example, in his "Local Knowledge: Fact and Law in Comparative Perspective," Geertz sounds a particularly pessimistic note on the collaboration of lawyers and anthropologists.³⁶ He defines the legal process as "the skeletonization of fact so as to narrow moral issues to the point where determinate rules can be employed to decide them" whereas ethnographic analysis is the "schematization of social action so that its meaning can be construed in cultural terms."³⁷ Never the twain shall meet (except when Geertz applies his interpretive schema to the anthropology of law).

More explicitly still, Geertz argued that cultural relativism was less a theory developed through anthropologists like Boas and more an intrinsic element to the field itself.³⁸ Armed with the specificity of their data, the task of anthropologists is to confront and expose normativity itself.³⁹ Despite the fact that Geertz's legacy is complex,⁴⁰ a certain version of Geertz has penetrated the

34. Webb Keane, *Self-Interpretation, Agency, and the Objects of Anthropology: Reflections on a Genealogy*, 45 *COMPAR. STUD. SOC'Y & HIST* 222, 222 (2003) ("If there is anything that exemplifies a certain common style in ethnographically-oriented approaches to culture and society today, and sets them apart from other kinds of social science, it is the habit, irritating to colleagues in some other disciplines, frustrating to students, deemed perverse by potential funders, and bewildering to the public, of responding to explanations with the remark, 'We need to complicate the story.'").

35. *Id.* at 228.

36. Clifford Geertz, *Local Knowledge: Fact and Law in Comparative Perspective*, in *LOCAL KNOWLEDGE: FURTHER ESSAYS IN INTERPRETIVE ANTHROPOLOGY* 167, 169 (Clifford Geertz ed., 1983).

37. *Id.* at 170.

38. Clifford Geertz, *Anti Anti-Relativism*, in *RELATIVISM: INTERPRETATION AND CONFRONTATION* 12, 14 (Michael Krausz ed., 1989).

39. *Id.* at 30 ("We [anthropologists] have, with no little success, sought to keep the world off balance; pulling out rugs, upsetting tea tables, setting off firecrackers. It has been the office of others to reassure; ours to unsettle.").

40. See William H. Sewell Jr., *Geertz, Cultural Systems, and History: From Synchrony to Transformation*, in *THE FATE OF 'CULTURE': GEERTZ AND BEYOND* 35 (Sherry B. Ortner ed., 1999); see also Paul Shankman, *The Thick and the Thin: On the Interpretive Theoretical Program of Clifford Geertz*, 25 *CURRENT ANTHRO.* 261, 261 (1984).

wider academy, including law, further solidifying the relationship between anthropology and cultural relativism.

Problems attendant to selective readings of anthropology are not a result of only non-anthropology audiences but are also attributable to anthropologists themselves. Despite the dynamic nature of anthropological thought, anthropologists have struggled with getting the word out. Some of anthropology's public relations deficit derives from the inherent anticommercial sensibility of anthropology,⁴¹ and yet in the marketplace of ideas,⁴² anthropology can do much more to promote its contributions to cross-(and intra-) cultural understanding.

In the above account, I have sketched out some of the main differences between, on the one hand, legal reasoning and writing and, on the other hand, anthropological reasoning and ethnography. The above sketches are perceptions of those differences held by and between the different disciplines. There is some essentializing that operates in such portrayals, and yet, they also demonstrate long-standing commitments by both lawyers and anthropologists. In the following part, I further plumb these attributed differences.

II. MINING DISJUNCTURES

Whereas the perception of anthropology by law results from filtering (on the law side, the tendency to pigeonhole, and on the anthropology side, poor messaging), there are legitimate differences between the two disciplines in terms of their aims. These differences do not have to be reconciled; instead, it is more productive to think of these differences as capable of complementing each other. Before explaining this complementarity, it is important to come to grips with how the different disciplines think of "normativity," where divergences may lie, and how these divergences may be translated into the other discipline.

A. What Do Legal Scholars Mean by "Normative"?

"*Descriptive, normative, and prescriptive.* These are the three parts to the law review article," shared a colleague, a junior U.S. law professor, during a workshop I attended at a major U.S. law school. Often, one hears that the heart of the law review article is the normative argument,⁴³ and yet rarely is the nature of this argument defined.⁴⁴ Where the role of the normative argument is defined

41. Cris Shore, *Anthropology's Identity Crisis: The Politics of Public Image*, 12 ANTHRO. TODAY 2 (1996) (finding that anthropology as a discipline suffers from acute problems of public image).

42. Joseph Blocher, *Institutions in the Marketplace of Ideas*, 57 DUKE L.J. 821, 877–78 (2008) (conceptualizing universities as "speech institutions").

43. Robin West, *The Ethics of Normative Legal Scholarship*, 101 MARQ. L. REV. 981, 984–85 (2018) (stating "most of what is published in law reviews—is normative").

44. See, e.g., Martha Minow, *Archetypal Legal Scholarship: A Field Guide*, 63 J. LEGAL EDUC. 65, 68 (2013) (positing twice that different types of legal scholarship make normative claims but not defining what

in the production of legal scholarship, it is often done so in a cursory way, as if it must be done quickly to move on to the more substantive discussion.⁴⁵ Singer's definition above, that normativity is about "conceptions of the good," is a helpful starting point—but only that. What is "the good"? Who determines its content, scope, and application? What are the guidelines for such determinations? After all, the idea of the "conceptions of the good" is most commonly associated with political liberalism, especially that of John Rawls, who viewed a citizen as deriving their conception of the good through their own religious, philosophical, or moral doctrine.⁴⁶ Of course, liberalism and its preferred governmental form of democracy are but one set amongst a number of different and competing ideologies and political forms. The question remains: what do U.S. law professors mean by "normative"?

I put this question to a dozen colleagues, all tenure-track or tenured law professors at various U.S. law schools, representing a number of fields, from criminal law to public international law. I generated a simple questionnaire and distributed it via email to the scholars. My goal was not to generate generalizable data based on statistical sampling (the sample was based on convenience and hence nonprobabilistic), but rather to take the temperature of a circle of colleagues on how they conceptualize normativity. To be more precise, I limit any conclusions to this tiny sample but offer it up as one data point that could be compared to others.

An initial reaction from one colleague was typical: when I asked what a "normative argument" means to her, she responded that she had no "deep thoughts" on the topic. This response signaled some of the taken-for-granted nature of the normative argument in legal reasoning. Other colleagues recommended how-to-write-a-law-review articles by scholars such as Martha Minow and Eugene Volokh, although these also do not necessarily explain how to approach and craft a normative argument.⁴⁷

Perhaps the most consistent response to the question was something along the lines of "this is where you offer an argument for what the law *should* be as opposed to what it is." Yet there was discrepancy in responding to the question of the source of normative judgments. Perhaps unsurprisingly, responses to this question reflected the scholar's area of focus. For example, a law professor

normative means); EUGENE VOLOKH, *ACADEMIC LEGAL WRITING: LAW REVIEW ARTICLES, STUDENT NOTES, SEMINAR PAPERS, AND GETTING ON LAW REVIEW* 81 (4th ed. 2003) (mentioning the centrality of "normative arguments" or "normative analysis" but leaving those terms unexplained).

45. See, e.g., George P. Fletcher, *Two Modes of Legal Thought*, 90 *YALE L.J.* 970, 971 (1981) (flagging two types of normativity, "normative ethics" and "meta-ethics," and understanding the former as propositions asserting conduct as good or bad and the latter as concerned with the analytical frames used by others).

46. JOHN RAWLS, *JUSTICE AS FAIRNESS: A RESTATEMENT* 19 (Erin Kelly ed., 2001) (defining "conception of the good" as "an ordered family of final ends and aims which specifies a person's conception of what is of value in human life The elements of such a conception are normally set within, and interpreted by, certain comprehensive religious, philosophical, or moral doctrines in the light of which the various ends and aims are ordered and understood.").

47. See sources cited *supra* note 44.

focusing on Islamic law responded, “Fairness—if I see the law is having a disproportionately negative impact on one segment of society versus another then I explore normative arguments to improve it.” A finance lawyer responded:

The basis for my normative claims varies depending on the topic and paper. I have based claims in previous papers on Pareto efficiency, Kaldor-Hicks efficiency, allocative and productive efficiency, informational efficiency, notions of democratic accountability and legitimacy, distributional justice, and the need for policy institutions to reflect the broader political and economic environment within which they are situated.

Clearly, areas of expertise inform individual scholars’ notions of normativity.

The implication of this specialization of normativity is that there is no platonic ideal of norms, and, further, there can be outright disagreement as to the acceptability of norms. For instance, in my sample, there was disagreement as to whether efficiency can be a justification for a normative claim. One scholar responded, “Not for me. I think that might be a policy argument. Normative claims carry value judgments. I think it’s harder to connect value judgments to efficiency claims.”⁴⁸ Another, more inclined toward law and economic analysis, wrote, “Sometimes, but I also do not recognize ‘efficiency’ as a single, comprehensible normative framework” The basis, then, for the “ought” was filtered through the individual scholar’s own intellectual agenda, theoretical and policy-centered perspective, and likely a host of additional factors such as her education, intellectual models, and political and social commitments. In sum, my bootstrap survey suggests that normativity as the basis for the “universal” was, in fact, deeply individuated if not personal; normativity can mean many different things.

The jurist Karl Llewellyn made such a point when he argued that “normative generalization” was a “creation,” writing, “It is creative in its selection of life-stuff to work with and from; it is creative in what it does with the selection.”⁴⁹ By way of example, he further wrote

Here are three farmers each of whom has borrowed to finance his working season and met with pest or drought, and each of whom has given as security his car, furniture, leasehold, and prospective crop. One lender takes the car and furniture, and turns out the farmer; one gives his farmer time; one forgives the debt. You can generalize and normatize from any of these, or you can imagine something fourth or fifth, and further, and generalize from that. Your generalizing normation will be creative also in the direction and scope, in the *range*, you give to the generalization: will it deal with “cotton-farmers,” with

48. See Singer, *supra* note 25, at 904–05, 911 (making a clear distinction between efficiency arguments and normative ones, the latter, again, based on moral philosophy).

49. Karl N. Llewellyn, *The Normative, the Legal, and the Law-Jobs: The Problem of Juristic Method*, 49 *YALE L.J.* 1355, 1361 (1940).

“debtors,” with “persons making contractual engagements,” with “failure of crop,” or with “unforeseen difficulty”? Will you introduce other limitations or extensions: “tenant-farmers,” “white tenant-farmers with more than six minor children who have occupied the premises at least three successive years”?⁵⁰

Llewellyn is not only pointing to the challenges of inductive thinking but also underscoring that normative argumentation, what he termed “an expressed judgment of rightness,”⁵¹ was a “projection” or “idealization” made by “somebody.”⁵² The subjective position, then, of the legal scholar has considerable influence on shaping her normative claims, claims that purport to have their own universalizing effect.⁵³ The foregoing is not to say that legal scholars’ norms are wholly determined by their particular or individual whims, or borrowing a phrase attributed to legal realist Jerome Frank, that legal scholarship is what scholars had for breakfast,⁵⁴ and further, neither is it to dismiss the viability of such statements, but rather the significance is to highlight that the ways legal scholars go about making normative claims often lack one of the defining features of anthropological reasoning—reflexivity.⁵⁵

B. *How Anthropologists Think about “Normativity,” and a Return to Description*

In returning to the embedded analogies that start this Essay, I suggest that anthropology, too, may be normative in its own sense and description may be the vehicle for such an anthropologically informed normativity. To lay the grounds for a normative anthropology, I first explain what at least some anthropologists mean by description or what description “does” in their scholarship, with reference to reflexivity more narrowly and comparison more broadly, and then spotlight a number of approaches that open up new avenues for engagement between law and anthropology.

Whereas normativity may have a taken-for-granted quality in legal scholarship, anthropologists have developed a number of strategies to think reflexively about their analytical categories, strategies that often operate through description. Reflexivity has a number of meanings in anthropology, including the idea prevalent after the so-called reflexive turn in anthropology in the 1980s that anthropological knowledge production is itself culturally mediated and should be subjected to autocritique.⁵⁶ One inveterate concern is the imposition

50. *Id.* at 1361–62.

51. *Id.* at 1359.

52. *Id.* at 1362.

53. See Bourdieu, *supra* note 13, at 820.

54. Dan Priel, *Law is What the Judge Had for Breakfast: A Brief History of an Unpalatable Idea*, 68 *BUFF. L. REV.* 899, 908–09 (2020) (tracing the adage to a passage in Jerome Frank’s 1930 *Law and the Modern Mind*).

55. Marilyn Strathern, *Anthropological Reasoning: Some Threads of Thought*, 4 *HAU: J. ETHNOGRAPHIC THEORY* 23, 27 (2014).

56. Bob Scholte, *Toward a Reflexive and Critical Anthropology*, in *REINVENTING ANTHROPOLOGY* 430, 431 (Dell Hymes ed., 1972).

of one's categories on interlocutors' thought processes and culture.⁵⁷ Hence, description operates as the means by which anthropologists think back on their own assumptions, categories, and thought processes, as they move analytically back and forth between their own understanding and the analogues of their interlocutors. As such, strategies of self-reflexivity operate in tandem with different understandings of cultural relativism. Not all anthropologists reject the idea of universal human rights, for instance, and in fact, there is a rich scholarship that proposes anthropologically informed arguments for human rights for all, including those most marginalized by global capitalism, the nation-state, and structural patriarchies.⁵⁸

Reflexivity is actually one instance of a broader analytical mode: comparison. That is to say, anthropologists may compare property regimes or marriage institutions of society *A* to their own (i.e., reflexivity) or they may compare society *A* and society *B* (i.e., comparison) with their own cultural categories as a more or less explicit point of reference.⁵⁹ The goal of comparison, in many cases, is not particularism but rather explanation of cultural difference or the generation of theory. Even Weberian interpretivism, which was so formative for Geertz, is aimed at the "causal explanation of the difference."⁶⁰ Geertz, too, can be seen as championing cross-cultural explanation and not just cultural specificity.⁶¹ Anthropologists continue to debate whether description affords better comparison or, conversely, whether comparative frames improve particular descriptions (i.e., whether description is a means to a larger end or the end itself),⁶² but the point is that some anthropology uses description of and between cultures to explain differences

57. Sally Falk Moore, *Comparative Studies*, in *LAW IN CULTURE AND SOCIETY* 337, 345–46 (Laura Nader ed., 1997) (summarizing the debate between Paul Bohannan and Max Gluckman about cross-cultural legal comparison).

58. See ENGELKE, *supra* note 20, at 14–15. For more examples, see SALLY ENGLE MERRY, *HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE* 1–6 (2006); David N. Gellner, *From Group Rights to Individual Rights and Back: Nepalese Struggles Over Culture and Equality*, in *CULTURE AND RIGHTS: ANTHROPOLOGICAL PERSPECTIVES* 177 (Jane K. Cowan, Marie-Bénédicte Dembour & Richard A. Wilson eds., 2001); Terence Turner, *Human Rights, Human Difference: Anthropology's Contribution to an Emancipatory Cultural Politics*, 53 *ANTHROPOLOGICAL RSCH.* 273 (1997).

59. See *supra* note 57; see also CAROL J. GREENHOUSE, *A MOMENT'S NOTICE: TIME POLITICS ACROSS CULTURES* (1996).

60. MATEI CANDEA, *COMPARISON IN ANTHROPOLOGY: THE IMPOSSIBLE METHOD* 124 (2018) (citing Roth's introduction to *Economy & Society*).

61. *Id.*

62. Compare Ladislav Holý, *Description, Generalization, and Comparison: Two Paradigms*, in *COMPARATIVE ANTHROPOLOGY 1* (Ladislav Holý ed., 1987) (arguing that comparison should facilitate the explanation of meaning within particular cultures), with Ronald Cohen, *Reviewed Work: Comparative Anthropology by Ladislav Holý*, 91 *AM. ANTHRO.* 247, 249 (1989) (restating anthropology's aim of using description to derive generalizable theory).

and even identify commonalities, patterns, and underlying structures,⁶³ including in regards to law.⁶⁴

In short, description is the mode through which anthropologists think reflexively and comparatively, methods that may have normative ends. Along these lines, writing nearly three decades ago, Annelise Riles called for greater interdisciplinary conversation between law and anthropology, arguing specifically: “To make a claim about the future of interdisciplinary work in legal anthropology, then, is to be normative in the sense of this engagement between normative and reflexive knowledge.”⁶⁵ Since Riles’s call to arms, the anthropology of law has developed apace, with anthropologists adopting different approaches to incorporating normativity into their work and in so doing bridging disciplinary divides. I highlight five of those approaches in the following paragraphs: the anthropology of formal law, description as normative, alternative normativities, critique, and collaboration.

The anthropology of formal law. Law may continue to regard anthropology as focused on the peripheries of law (e.g., social sanctions, custom, religious law, informal or unofficial law, etc.), but in recent decades, anthropology has moved to the center of law. This move was initiated by Laura Nader and subsequently by scholars such as Carol Greenhouse and Sally Engle Merry; these scholars did not study the legal systems of “far-away” preindustrial peoples but, rather, adjusted their ethnographic lenses to explain how law works in such jurisdictions as the contemporary United States.⁶⁶ Ethnographic studies of the legal “self,” as opposed to the (non)legal “other,” generate their own methodological and epistemological challenges. That is, reflexivity may be “easier” when there is an identifiable gap between the categories used by an ethnographic subject and ethnographer. When the ethnographic subject employs the same discourses and tools as the ethnographer, objects compared through reflexivity become blurred. Yet these challenges equally afford new opportunities for comparison, ranging from para-ethnography to renewed commitments to interpretive “lateral comparison.”⁶⁷ Fundamentally, these studies have paved the way for approaches that bring to bear anthropology’s commitment to holism and context, that is, the social embeddedness of law in

63. See, e.g., *MODES OF COMPARISON: THEORY AND PRACTICE* (Aram A. Yengoyan ed., 2006); PETER VAN DER VEER, *THE VALUE OF COMPARISON* (2016); *COMPARING CULTURES: INNOVATIONS IN COMPARATIVE ETHNOGRAPHY* (Michael Schnegg & Edward D. Lowe eds., 2020).

64. See, e.g., *COMPARATIVE LAW AND ANTHROPOLOGY* (James A.R. Nafziger ed., 2017).

65. Annelise Riles, *Representing In-Between: Law, Anthropology, and the Rhetoric of Interdisciplinarity*, 1994 U. ILL. L. REV. 597, 644.

66. Laura Nader, *Up the Anthropologist: Perspectives Gained from Studying Up*, in *REINVENTING ANTHROPOLOGY* 284 (Dell Hymes ed., 1972); CAROL J. GREENHOUSE, *PRAYING FOR JUSTICE: FAITH, ORDER, AND COMMUNITY IN AN AMERICAN TOWN* (1986); SALLY ENGLE MERRY, *GETTING JUSTICE AND GETTING EVEN: LEGAL CONSCIOUSNESS AMONG WORKING-CLASS AMERICANS* (1990).

67. See, e.g., Hirokazu Miyazaki & Annelise Riles, *Failure as an Endpoint*, in *GLOBAL ASSEMBLAGES: TECHNOLOGY, POLITICS, AND ETHICS AS ANTHROPOLOGICAL PROBLEMS* 320 (Aihwa Ong & Stephen J. Collier eds., 2005); CANDEA, *supra* note 60, at 122–23.

regard to such institutions as class, race, and religion, on formal law that is more often than not analyzed primarily through and as doctrine. In other words, these studies and others make the “familiar” law “strange” and thereby enable a thoroughgoing rethink of how law is designed, enforced, and experienced. During a period of democratic backslide in the U.S., fueled by populism and nativism, the anthropology of formal law can be part of the solution in diagnosing the core problems in legal and democratic institutions in order to build more inclusive and just alternatives.⁶⁸

Description as normative. As mentioned above, a law review article may include a descriptive section, but the legal academy rewards credit principally for normative contributions. This idea is itself questionable given that there are extremely influential writings in law, whether Charles Reich’s *A New Property*, Lawrence Lessig’s *Code is Law*, or Anu Bradford’s *Brussels Effect*, that are primarily descriptive accounts.⁶⁹ The valorization of the normative is, it turns out, a foundational norm of legal scholarship. For anthropologists, normative positions are possible, but only after thoroughly understanding the particular practice, structure, or community in question. Anthropologists seek immersive experiences within legal and financial institutions, for example, which allow them to understand the relationship between individual actors and agency on the one hand and organizations, networks, and broader fields of inquiry (e.g., capitalism, international law, illegal trade, etc.) on the other hand.⁷⁰ Specifically, ethnography of law “shows the analytic possibilities of focusing on particular situations, individual actions, wider structural inequalities, and systems of meaning.”⁷¹ Whether the World Bank, the UN and local human rights activists, NGOs, or Chinese law firms, ethnography describes the inner workings of legal institutions and how they internalize legal norms and produce them in turn.⁷² Through sustained exposure to the operation of these institutions, anthropologists venture normative arguments, whether, for example, human rights must be attuned to vernacular understandings or that the study of the challenges and assets of multicultural lawyers can lead to a better grasp of the

68. See, e.g., Jonathan Rosa & Vanessa Díaz, *Racionologies: Rethinking Anthropological Accounts of Institutional Racism and Enactments of White Supremacy in the United States*, 122 AM. ANTHRO. 120 (2019); William Mazzarella, *The Anthropology of Populism: Beyond the Liberal Settlement*, 48 ANN. REV. ANTHRO. 45 (2019).

69. Charles A. Reich, *The New Property*, 73 YALE L.J. 733 (1964); LAWRENCE LESSIG, *CODE AND OTHER LAWS OF CYBERSPACE* (1999); Anu Bradford, *The Brussels Effect*, 107 NW. U. L. REV. 1 (2012).

70. See, e.g., Galit A. Sarfaty, *An Anthropological Approach to International Economic Law*, in RESEARCH HANDBOOK ON THE SOCIOLOGY OF INTERNATIONAL LAW 296 (Moshe Hirsch & Andrew Lang eds., 2018) (offering reflections on the ethnographic study of the World Bank); KAREN HO, *LIQUIDATED: AN ETHNOGRAPHY OF WALL STREET* (2009) (studying investment bankers on Wall Street); CAROLYN NORDSTROM, *GLOBAL OUTLAWS: CRIME, MONEY, AND POWER IN THE CONTEMPORARY WORLD* (2007) (studying illegal trade ethnographically).

71. Sally Engle Merry, *Anthropology and International Law*, 35 ANN. REV. ANTHRO. 99, 106 (2006).

72. See Sarfaty, *supra* note 70; MERRY, *supra* note 58; Matthew S. Erie, *Anticorruption as Transnational Law: The Foreign Corrupt Practices Act, PRC Law, and Party Rules in China*, 67 AM. J. COMPAR. L. 233 (2019).

formation of transnational law.⁷³ Not all anthropologists are averse to making normative claims; they simply prefer to do so in terms informed by their interlocutors.

Alternative normativities. One finding from my simple survey of my law colleagues was that they most often understood normative arguments as “value judgments.” Values such as goodness, rightness, justice, impartiality, and maybe efficiency, are the basis by which they can judge a legislative innovation or recent judgment. Yet, as demonstrated, there is less reflection on where these values come from, how they became benchmarks for the given jurisdiction or community, and how they represent (or do not represent) the interests of the population in question. Related, whereas some of the heuristics of legal analysis may purport to be universal (e.g., “reasonable person” standard), such concepts may have roots in certain culturally-specific (i.e., relative) ideas about personhood, rights, and obligations. Some of these values and heuristics assume American political liberalism as the operative ideology. Before the current crisis of Western democracy, anthropologists have sought to explain alternative moral philosophies and traditions that may vary from those of American and European liberalism, for example, those of Islam, which has different notions of personhood, property, freedom, civic relations, and authority.⁷⁴ These studies have focused, in particular, on ethics, which asks, centrally, how should one live and what is the basis of a good life? As James Laidlaw put it: “The claim on which the anthropology of ethics rests is not an evaluative claim that people are good: it is a descriptive claim that they are evaluative.”⁷⁵ In other words, the end goal of anthropology’s “responsibility to alterity”⁷⁶ may be less to posit that all cultures, knowledge practices, and so on are relative and untranslatable, and more to illuminate the bases through which others make their own judgments. This illumination may be the first step to building cross-cultural understanding, a project sorely needed during a period when democracy and truth itself have lost their recognizability.

Critique. Critique—of social institutions, including law—has been a powerful normative drive for many anthropologists. Singer excludes critique as counternormative.⁷⁷ The idea seems to be that those who critique are postmodernists who are concerned more with deconstructing everything rather than reconstructing anything.⁷⁸ This dismissal overgeneralizes. When a feminist anthropologist writes about notions of the body, she is not only exposing the

73. See MERRY, *supra* note 58; Eric, *supra* note 72.

74. See, e.g., TALAL ASAD, FORMATIONS OF THE SECULAR: CHRISTIANITY, ISLAM, MODERNITY (2003).

75. JAMES LAIDLAW, THE SUBJECT OF VIRTUE: AN ANTHROPOLOGY OF ETHICS AND FREEDOM 3 (2014).

76. Webb Keane, *On Multiple Ontologies and the Temporality of Things*, MATERIAL WORLD (July 7, 2009), <https://materialworldblog.com/2009/07/on-multiple-ontologies-and-the-temporality-of-things/>.

77. See Singer, *supra* note 25, at 926.

78. *Id.*

violence of patriarchy but also providing a roadmap for more just gender relations.⁷⁹ “Conceptions of the good,”⁸⁰ to take Singer’s definition, are often implicit in critique; or to put it another way, critique catalyses the “anthropological imagination”⁸¹ about other ways of doing things. Further, direct engagement often begins with critique.⁸² As for the legal arena, anthropologists have critiqued colonialism, the role of U.S. courts in the “War on Terror,” and U.S. immigration policies, to name a few studies.⁸³ Each such study not only diagnoses the abuse of legal authority but also suggests more humane possibilities.⁸⁴

Collaboration. Lest it be assumed that law and anthropology are parallel tracks or dovetail only in the form of subdisciplines (e.g., legal anthropology, “law and society,” critical legal studies, socio-legal approaches, etc.), lawyers and anthropologists can combine their respective intellectual agendas to elucidate complex legal problems. One classic pairing is that of the legal scholar Karl Llewellyn and the anthropologist Edward Hoebel, a collaboration that blazed the path for legal realism.⁸⁵ In current times, interdisciplinary scholarship has made strides, particularly in such fields as family law, law and development, and transnational law; however, many of these collaborations feature a legal scholar who is based outside the United States, demonstrating some of the parochialism of the United States legal academy.⁸⁶ Nonetheless, collaborations between lawyers and anthropologists in the United States have made significant contributions to interdisciplinary research. For example, Sally Engle Merry and legal scholars Benedict Kingsbury and Kevin Davis conducted a study on “indicators”—that is, rank-ordered data that aims to represent performance

79. See Lynn Walter, *Feminist Anthropology?*, 9 GENDER & SOC’Y 272 (1995).

80. See Singer, *supra* note 25, at 908.

81. HENRIETTA L. MOORE, A PASSION FOR DIFFERENCE: ESSAYS IN ANTHROPOLOGY AND GENDER 1 (1994).

82. See, e.g., Nancy Scheper-Hughes, *The Primacy of the Ethical: Propositions for a Militant Anthropology*, 36 CURRENT ANTHRO. 409 (1995); PAUL FARMER, PATHOLOGIES OF POWER: HEALTH, HUMAN RIGHTS, AND THE NEW WAR ON THE POOR (2003); DAVID GRAEBER, DIRECT ACTION: AN ETHNOGRAPHY (2009).

83. E.g., John L. Comaroff, *Colonialism, Culture, and the Law: A Foreword*, 26 L. & SOC. INQUIRY 305 (2001); RICHARD L. ABEL, LAW’S TRIALS: THE PERFORMANCE OF LEGAL INSTITUTIONS IN THE U.S. “WAR ON TERROR” (2018); JASON DE LEÓN, THE LAND OF OPEN GRAVES: LIVING AND DYING ON THE MIGRANT TRAIL (2015).

84. See sources cited *supra* note 82.

85. KARL N. LLEWELLYN & EDWARD ADAMSON HOEBEL, THE CHEYENNE WAY: CONFLICT AND CASE LAW IN PRIMITIVE JURISPRUDENCE (1941).

86. See, e.g., Amy J. Cohen & Ilana Gershon, *When the State Tries to See Like a Family: Cultural Pluralism and the Family Group Conference in New Zealand*, 38 POL. & LEGAL ANTHRO. REV. 9 (2015) (featuring collaboration by a legal scholar and an anthropologist both based in the United States). *But see* Eve Darian-Smith & Colin Scott, *Regulation and Human Rights in Socio-Legal Scholarship*, 31 LAW & POL’Y 271 (2009) (written by an Australian anthropologist, based in the U.S., and an Ireland-based legal scholar); PALACES OF HOPE: THE ANTHROPOLOGY OF GLOBAL ORGANIZATIONS (Ronald Niezen & Maria Sapignoli eds., 2017) (edited by a Canadian anthropologist and a European legal scholar); THE OXFORD HANDBOOK OF LAW AND ANTHROPOLOGY (Marie-Claire Foblets et al. eds., 2022) (featuring works by anthropologists and lawyers, mostly based outside the United States).

(e.g., the World Bank's Ease of Doing Business Indicators)—as methods of global governance.⁸⁷ The project, which produced a number of book monographs, combined the best of ethnography—reflexive description—with theoretical insights from the scholarship on regulatory governance.⁸⁸

Another multidisciplinary research project that involves both lawyers and anthropologists, and one that I lead, is “China, Law and Development” (CLD), based at the University of Oxford. The CLD project studies China's approach to transnational governance, through both shaping international law and engagements with the legal and regulatory orders of host states that receive Chinese capital.⁸⁹ The CLD project features both anthropologically informed case studies based on ethnographic fieldwork and writing and legal analyses of China's efforts to build order across borders.⁹⁰ Our experience is that legal scholars and anthropologists do not have to agree on everything when it comes to issues of methodology, data analysis, theory, and comparison and that while disagreements can be sharp, they can also be productive. Lawyers' and anthropologists' continual checking of each other can fine-tune the thought processes of both and ultimately provide a more holistic picture of complex global transformations.⁹¹

CONCLUSION

This Essay has argued that law's perception of anthropology as lacking normativity, in part by its use of description, is one of the major hurdles to anthropology's greater acceptance in law, and yet that perception is misguided for the reason that anthropological reasoning—including description, self-reflexivity, comparison, and even softer forms of cultural relativism—can have its own normativity. This bottom-up and outside-in (and sometimes, following more recent approaches, top-down and inside-out) normativity can complement law's versions of the normative. The view from the factory floor or construction site can say just as much about formal law as the perspective from the courthouse, although, importantly, in different ways. Whether as alterneity or as critique (or both), these views can and should be included in the discussion.

Law does not have to distrust anthropology and dismisses anthropology at its own risk. In terms of knowledge production, legal scholars also often use

87. *Indicators*, INST. FOR INT'L L. & JUST., <https://www.iilj.org/indicators> (last visited Mar. 15, 2022).

88. GOVERNANCE BY INDICATORS: GLOBAL POWER THROUGH QUANTIFICATION AND RANKINGS (Kevin Davis et al. eds., 2012); THE QUIET POWER OF INDICATORS: MEASURING GOVERNANCE, CORRUPTION, AND RULE OF LAW (Sally Engle Merry et al. eds., 2015); SALLY ENGLE MERRY, THE SEDUCTIONS OF QUANTIFICATION: MEASURING HUMAN RIGHTS, GENDER VIOLENCE, AND SEX TRAFFICKING (2016).

89. CHINA, LAW AND DEVELOPMENT, <https://cld.web.ox.ac.uk/home> (last visited Mar. 15, 2022).

90. *See id.*

91. *See generally* Matthew S. Eric, *Chinese Law and Development*, 62 HARV. INT'L L.J. 51 (2021).

description in their scholarship, including that based on their own life experiences, to make normative claims. Anthropologists do the same. What legal scholars can learn from them is that when anthropologists describe, compare, and reflect, they do so in a self-conscious and systematic way. In terms of improving the product (i.e., law), legal scholars cannot afford to disregard anthropology. Anthropology is becoming more indispensable to international and comparative law not only on pressing issues of domestic legal and political reform. This trend pertains to foreign relations and international law concerns, particularly in the case of the U.S.–China relationship that lies at the heart of the contemporary globalized world. None of the foregoing is to suggest that law and anthropology are commensurate; instead, their differences in sources, methodologies, and commitments can make the disciplines mutually supporting. Precarious times call for new solutions created by looking to modes of knowledge production that have traditionally been relegated to the margins. The anthropology of law has “come home,” and both the thinking about and the actual provision of justice are enhanced as a result.