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Legalities and materialities

Emilie Cloatre and Dave Cowan

Introduction

This chapter reflects on what materiality-inflected methodologies¹ can bring to an anthropology of law, and to legal studies more generally. Its starting point is an increasing attention across the social sciences and humanities for objects, and thinking beyond the human. These have often, but not only, emerged from science and technology studies (STS), to which we pay particular attention. However, approaches to materiality have themselves become diversified, and their implications for law can similarly be read in multiple ways. At the same time, legal anthropology has helped to re-characterise the complexity of law as a field of social activity by paying attention to its meanings, for actors within as well as outside its own institutions; to its modes of action in practice, again within its explicitly designated spaces as well as its everyday; to its unexpected forms, patterns and directions; to its multiplicity and uncertainty. Approaches within a broadly defined 'legal anthropology' agenda have provided tools to move away from grand and removed theorisation of the law, or an exclusive attention to its own claims, and towards a subtler understanding of law as a relatively fluid, changing and uncertain set of practices. While doing so, legal anthropology has also reminded us of the significance of empirical research to identify and theorise the complex existences of law, a contribution which echoes some of the implications of materiality-oriented theories.

In this chapter, we seek to move these developments on by making two distinct but related contributions: first, to explore the various trends of 'posthuman' understandings of law, and propose that their key contribution is to enable us to push the boundaries of law as a social phenomenon; second, by putting posthuman approaches to legality in conversation with legal anthropology, we do so to argue that one of the strengths of materiality-inflected approaches to law has been its attention to the

micro-details of law's unexpected workings, which will continue to need careful, critical, empirical attention.

On their face, these contributions are not particularly startling. However, the pace at and thoughtfulness with which the developments have occurred have led to some tracks which need jumping (to adopt Sassen's metaphor (2006: 8)) and to a period of cross-disciplinary reflection. Our basic argument is that we need to be clear about some of the core terms and that, once we are, the claims of some contributions need to be modified. The particular core term with which we are concerned, as this chapter develops, is law, not in a basic doctrinal excursus (although, in itself, such work would make for a fascinating study of law-on-law replication: see Blomley, 2014) but as an ontological and epistemological problematic. We no longer adhere to a crude binary of materialism and idealism, for, as Conaghan (2016: 29) suggests,

Matter *matters* because it plays an active role in processes of meaning and apprehension. In this sense, epistemology, as currently understood, must give ground to ontology, including new investigations of the ontological premises upon which critical thinking, particularly that characterised by the cultural or linguistic turn, has been based.

Materiality and 'the social'

The contributions of materiality-inflected approaches to law can be articulated at two levels, at least. On the one hand, they redirected attention to the significance of 'things' or objects, in social practices, and social analysis. On the other hand, this attention to materiality has facilitated an influential revisiting of 'the social' as relational, fluid and contingent. In this chapter, we are particularly interested in those broader implications of materiality-inflected approaches on social theory, and in turn on conceptualisations of law as a social actor. Of course, those two elements cannot be dissociated, and paying attention to materials was, in itself, an important step. As detailed from the late 1970s by proponents of actor network theory (ANT; Latour and Woolgar, 1986; Callon, 1984), objects are not just essential to the constitution of the social, they are also mutually constitutive. Indeed, drawing firm lines between humans and objects was a wrong turn in social theory because humanity is constantly shaped and mediated by an infinite series of devices, from papers or bricks to computers and microchips. Latour's classic, ironic and pseudonymous study of the "sociology of the door closer" (Johnson, 1988) emphasises this problematic. Zooming out from this discussion of the piston automatic door closer, he argues (1988: 303) that "The label 'inhuman' applied to techniques simply overlooks translation mechanisms and the many choices that exist for figuring or de-figuring, personifying or abstracting, embodying or disembodying actors." The dividing line between people and things is negotiable and negotiated.

Materials themselves are complex, both in their histories and making, as well as in their deployment. Jane Bennett (2010) draws on the vibrancy of matter as a constituent of politics. As she puts it, her "aspiration [was] to articulate a vibrant materiality

that runs alongside and inside humans to see how analyses of political events might change if we gave the force of things more due” (2010: viii). Callon (1984) reminds us of the dependency of humans and non-humans by observing the negotiations that take place between fishermen and scallops in Brittany. His was not a study of the exercise of human power, knowledge and achievement, of a straightforward perception of power of one over the other, or even clear boundaries between their roles and actions. Instead, it was a study of translations, as he put it, through problematisations, intersement, enrolment and mobilisation. Although no doubt over-structured and programmatic, in each of these modes of action, the human and non-human agents (or ‘actants’ to borrow from the ANT vocabulary) produced an unchoreographed dance, through which the biologists were seeking to choreograph the collection of scallops. Anne-Marie Mol (2003) opens up this complexity further, by emphasising the multiplicity of individual agents in social processes, where even an apparently fixed material being is in fact deployed across a variety of ontological choreographies. For Law and Mol (1995: 287):

Materiality is decentred: so suggest our stories about strategies. Better, materialities are decentered. There are multiple materialities performing themselves in manifold ways.

In their analysis, the apparently shocking conclusion is that matter is a set of relations which at different times becomes durable. Here, they hint at another key assumption of materiality-inflected approaches: the idea that materialities do not pre-exist social relations, but are always produced by them. For Haraway “objects are boundary projects” (2007: 126).

Thinking about materiality, of course, has implications for thinking about being humans, and, as a first step, for thinking about bodies. Haraway’s work (1991, 2007) is particularly important here, in thinking about bodies *per se*, and in turn about some of the politics of being human. As she reimagines humans as ‘cyborgs’, she makes both an observation and a political statement: humans are all socio-technological hybrids, though maybe more visibly so as technological advancements transform the limits of human bodies; but at the same time thinking about ourselves as hybrid enables us to move away from loaded political categorisations. Revisiting how we think of the relationship between bodies, materials, social relations and their co-production rather than co-existence forms the basis of her critical reflexions on sexual difference and feminism.

Bodies in materiality-inflected theories present a degree of ambivalence as social agents and are a good illustration of the implications of thinking about materiality for thinking about boundary-making. They are particularly complex sites of social and political interactions and have become loaded with meaning in ways that are almost always impossible to disentangle. They are political hybrids. At the same time, materiality-inflected theories remind us of the non-uniqueness of bodies as social objects – characteristics are shared with other organisms, other relations, other sites, while constantly dependent on the complexity of each of these. Rethinking the

workings of medicines or space, for example, requires us to re-trace some of the processes at stake in making up these things, in negotiating forms of situated knowledges (and their strategies for broader claim-making); but also to retrace the complexity of organisms both on their own and as parts of the broader techno-scientific machinery. Here, the ins and outs of bodies are constantly negotiated, as is the inherence of medicine or space as a field of knowledge, and of its relationship to plants, cultures, buildings, devices etc. (e.g., Fassin, 2007; Biehl, 2013; Langwick, 2011; Blomley, 2016).

Haraway's attention to bodies also enables her to set an agenda for feminist reflections on the production of situated knowledge. Paying attention to the situatedness of knowledge also suggests a more general move away from universal claims towards attention to the micro and always limited, fractal, movements and interactions – a point, both political and methodological, to which we return below, but that for now can be summarised as follows:

I would like to insist on the embodied nature of all vision, and so reclaim the sensory system that has been used to signify a leap out of the marked body, and into a conquering gaze from nowhere. This is the gaze that mythically inscribes all the marked bodies, and that makes the unmarked category claim the power to see and not be seen, to represent while escaping representation. This gaze signifies the unmarked positions of Man and White.

(2007: 114)

Law and materialities

How then do such studies translate into thinking about law? At one level, such a translation should be smooth, as the workings of law are heavily dependent on materials of all kinds – from the spaces of courtrooms and their peculiar furnishing, to the multiple documents and forms that circulate to 'make law happen', to the very objects that law conditions (from houses to medicines). This attention to the 'things' of law has opened up fresh insights into the everyday workings of legal processes. Artefacts as lively beings of negotiations between actors in legal processes have been at the forefront of this attention. In his analysis of the Conseil d'Etat, Latour (2013) demonstrates the inherent entanglement of materials in the making of decision by judges. Plenty of other studies have opened up new and exciting research in which artefacts are front and centre of the analysis. From consent forms (Jacob and Riles, 2007) to legal files (Van Orschoot and Schinkel, 2015), from leases (Hunter, 2015) to patents (Cloatre, 2013), from international agreements (Riles, 2006) to courtrooms (Mulcahy, 2010), through to the very constitution of bureaucracies (Hull, 2012), researchers have become adept at following the complex roles of artefacts through legal processes. More than neutral intermediaries, these paper-actants have become framed as essential constituents of the orders that law is seen to generate.

But law does not just rely on such materials and artefacts; it also relies on their reproducibility across space and time. A document can be an artefact that functions

as “a technique for interesting” (Freeman and Maybin, 2011: 160; see also Latour and Woolgar, 1986: 45–50); such documents “anticipate and enable certain actions by others – extensions, amplifications, and modifications of both content and form” (Riles, 2006: 21). Further,

the document is a translation that also translates. It is intrinsic to those communicative processes in which actors inhabiting different social worlds first enter into relations with each other and then begin to recast or reconstruct themselves, their interests and their worlds. This means simply that the document connects actors and coordinates their actions.

(Freeman and Maybin, 2011: 165)

The production and proliferation in our libraries and on the spaces of the internet of template documents and macros, contractual terms and conditions, which translate law into our everyday lives, are perhaps the clearest illustration of this reproducibility (Radin, 2012). This reproducibility is a key element in the ways in which law achieves its status. The standardisation of things makes an array of new techniques possible. And the standardisation of *legal* documents are crucial technologies in private legal infrastructures as “devices through which particular technical, institutional, political, legal, and economic arrangements gain solidity and durability” (Riles, 2011: 46).

However, we should not rest solely on such physical artefacts but also the apparent truths that they convey. Generations of constitutional lawyers have given us the idea of the rule of law that has been repeatedly inscribed and has become ritualised in public life. We argue that the very idea of the rule of law operates as a “material semiotic” (Law and Mol, 1995: 280–281) through which, as a durable metaphor, it has proudly come to symbolise the essence of Western democratic thought, despite its evident flaws. Attention to materiality as it is translated into law suggests that, in order to get a grip on legal phenomena, we must pay attention to the role of things in shaping, or mediating, interactions. Focusing on materiality in law therefore enables objects to become re-thought as complex blackboxes, that can be opened up to question despite being seemingly uneventful moments of everyday social life.

But as we previously stated, focusing on matter is always about more than simply bringing objects into social analysis: it is about re-questioning networks, relations and events through the opening of what goes as unseen and unquestioned in the constitution of social life. It is this level of analysis which particularly matters to us, notably the conceptual ramifications or implications of materiality scholarship for critical engagements with law. It would be a mistake to understand the import of materiality to law as being only about a renewed attention to things. Focusing critically on materiality also enables the re-thinking of other concepts or processes of significance to, and in, law, layering complexities upon the apparently mundane. Such studies are exemplified by researching processes such as the making and unmaking of time (Grabham, 2016, Valverde, 2014, Blomley, 2003, 2014) or knowledge (Pottage, 2014).

From materiality to the fluidity of law

A key implication of materiality-inflected approaches is the idea that the 'social' is inherently fluid and indeterminate – an idea that is both particularly challenging, and particularly interesting, for thinking about law. Here, the fragility of boundaries and categories, the complexity of processes of ordering, and the entanglement of knowledge, practices, and materiality invite us to rethink the ways in which law should be understood and approached (Cloatre and Pickersgill, 2014). The co-constitution of materiality and practices replaces broader understandings of what we can take as fixed starting points of 'social' analysis. One of the immediate implications for studies of law is the impossibility of the classic distinction between law and society (or, in fact, 'law and' anything); indeed, such a distinction implied by the conjunction collapses entirely. In his introduction to ANT (2005: 7), Latour regards *The Common Place of Law* as the kind of study in which the social question is collapsed by the method.

We suggest that the idea of fluidity has two key implications for materiality-inflected legal scholarship: first, at the conceptual level, these approaches suggest a radical dissolution of the stability of law as a defined social field, whose existence is at any point a given and independent source of norms, seeing in its place a field always in making and deeply entangled in other forms of social making and unmaking or unsettlement. The methodological implications of this insight suggest that a return of ethnographic attention to the day-to-day practices of law and legalities, as well as its localised making, unmaking, settling and challenging, would be more productive than turning legalities in on themselves. A key implication is that the boundaries between the legal and illegal, regulated and unregulated, law and paper and law in action, or indeed of the 'legal' per se, start dissolving once legal processes become analysed in terms of their material making and entanglements. Fleur Johns (2013: 24) has begun this kind of analysis in thinking about how non-legality is made up, in this case international law, challenging those

international legal studies that seek to apply international law to a world cast in some sense as beyond that law (or vice versa), worry incessantly that international law is not enough for the task of application (or absorption), and hence neglect to scrutinize and tactically engage with those aspects of international legal work that are constitutive of at least some dimensions of that beyond.

Legal processes can be seen as relational and constantly in the making, as practices transform the very objects they seek to engage – from minute artefacts to subjective understandings of law. Through their emphasis on the fluidity of objects and on the relationality of the social, materiality-inflected approaches to law therefore open useful perspectives in interrogating how law is deployed, in apprehending its complex effects and exploring its modes of action. It also raises questions about the very nature of law – and of where the boundaries between legal/non-legal may be drawn. In order to understand these mechanisms and the ontological significance of a move towards materiality, we argue that it is necessary to move beyond the terrain of

legal institutions and into the messy spaces of the everyday where these legalities and non-legalities take hold (see, for example, Mezey, 2001). This in turn raises questions about the specificities of both the object of study and the discipline – what is left of the law, and how do we talk about it? As Latour suggested about the weakness of the notion of ‘society’, is there any sense in which the law is specific or peculiar – or is it always simply ad hoc and fragile? Some of these conversations relate closely to those questions opened up by legal anthropologies, to which we now turn.

Legal anthropologies, from law to legalities

Following the emphasis of materiality-inflected approaches to law requires a particular type of attention to laws’ everyday. In many ways, exploring the law outside of its classic, or official, spaces offers a richer picture of its nuanced contours than focusing exclusively on those explicitly ‘legal’ sites. Here, our argument meets the extensive work that anthropologies of law have produced over the years to move beyond the most clear-cut instances of legal events. In tune with those anthropological studies of law, we argue that, if one wants to appreciate law’s ways of acting and its making through social practice/s, one needs to explore law outside its own explicit spaces. This makes our focus different to some extent from those of Latour and others (Latour, 2013; Pottage, 2014), whose attention to materiality has been framed as an exploration of its modes of enunciation. Instead, we want to reflect on the broader questions that legal anthropologists have been asking about law’s nature, practices, boundaries – or, to remain within an ANT vocabulary, ‘modes of action’. We also remain convinced that empirical engagement and reflection outside the apparently official contexts of law provides a significant set of opportunities for theorization. In these spaces, law’s modes of existence are less certain, as the boundaries of ‘law’ itself are blurred. Instead, and bringing together early ANT and the work of legal anthropologists, we emphasise the importance of micro-events, and materially situated practices, to theorisation. Indeed, one of the most significant contributions of ANT and other materiality-inflected approaches for legal studies is their ability to poke at the boundaries of law, from its fractal side, and engage with some of its more silent and discreet modes of action.

This broader appreciation of law is most clearly addressed in Ewick and Silbey’s classic, *The Common Place of Law* (1998). They critique the ‘law first’ tradition of scholarship, arguing that it has drastically narrowed our vision; and that, despite the research which shows that law “has no center and little uniformity, it is often implicitly assumed that the law is still recognizably, and usefully distinguishable from that which is not law”. If we unhinge law from its institutional setting and think about the cadences of legalities in everyday life, “we must tolerate a kind of conceptual murkiness”. The key move for our purposes here is away from ‘law’ to legality, a term that Ewick and Silbey use “to refer to the meanings, sources of authority, and cultural practices that are commonly recognized as legal, regardless of who employs them or for what ends”. They provide a material example of this shift – an old chair left on a public street, where snow has been cleared, to hold a parking spot might be seen in

a Lockian sense as a marker of exclusivity, ownership/possession as a result of labour. Silbey and Cavicchi (2005: 561) see this chair as “a visual image of the law from the bottom up and from outside of legal institutions”. It signals a type of ownership and “often elicits the same sorts of deference and respect accorded more conventional types of property: Other drivers park elsewhere”.

This move away from the ‘explicit sites’ of legal events, and from law to legalities, mirrors that of STS when looking at science from the laboratory to its outside, and from science in the making to the deployment of constituted scientific objects and artefacts. In law, it suggests a move away from a primary focus on the modes of enunciation of the law (though these are relevant) and toward the more fluid spaces of legal meanings, expression and ambivalence. Indeed, a meeting point between materiality-inflected approaches and the longer tradition of legal anthropology lies in their mutual challenge to the boundaries of classic sociological analysis. Materiality approaches have from the outset differentiated themselves from approaches focusing on contextualization – for actor-network theorists, there is no ‘context’, only inter-relationships. As Lezaun and Woolgar (2013) put it: “‘materiality’, just as ‘context’ and its cognate terms, needs to be understood as the contingent upshot of practices, rather than a bedrock reality to be illuminated by an ontological investigation” (p. 326). Such an approach meets arguments long-made in legal anthropology, in which the relationship between ‘law’ and ‘society’ has been revisited as a more dynamic and co-constitutive set of processes; in which law is more than a static object expected to impact upon, or originate from, a pre-existing society (Morrill and Mayo, 2015). Arguably, materiality-inflected approaches may be taking this notion of fluidity as opposed to fixity to its furthest by seeking to apply it to each of the objects of law, but it also primarily proposes an intervention into ‘law and society’ debates that seeks to deny the set existence of either. This is what Rose and Valverde (1998: 545) might have had in mind when they argued that there is no such thing as ‘the law’. They argued (*ibid.*) that

Law, as a unified phenomenon governed by certain principles, is a fiction. This fiction is the creation of the legal discipline, of legal textbooks, of jurisprudence itself, which is forever seeking for the *differentia specifica* that will unify and rationalize the empirical diversity of legal sites, legal concepts, legal criteria of judgement, legal personnel, legal discourses, legal objects and objectives.

Materiality-inflected approaches also arguably challenge the imagined boundaries between law and its ‘others’, or the inside and outside of law, meeting in this effort the proponents of legal consciousness traditions. Ewick and Silbey (1998), in their engagement with law in the everyday consciousness of working-class Americans, provided fresh insights into what law may be or claim to be. At the core of their argument is the idea that legalities are transformed, or enacted, in and through the meaning-making processes of those who experience them. In their study, legalities are multiple, and arguably a determinedly ‘different’ object for each of those that come to experience them, and in turn rewrite them in their own way as a social actor. They

compare the reception of legalities to whale-song, an analogy which has resonance with the kind of ontological choreography through which ANT scholarship twists. Like Anne-Marie Mol's sick bodies, legalities are multiple in their everyday ontology. The field of legal consciousness has grown exponentially, focusing at times on the complex consciousness of legal actors, such as disputants and non-disputants as well as those who are outside the system (e.g., Cowan, 2004). The core questions these studies raise are about the fluidity of legalities as they are experienced in everyday life as well as echoing the fluidity of the social. While some have felt uneasy about the apparent dissolution of a core idea of 'law' in legal consciousness (Mezey, 2001; Levine and Mellema, 2001), especially when focusing on the experiences of those only occasionally encountering its institutions, they demonstrate that, in its modes of action, legality may not retain any more solidity than any other social objects; and it is likely to be similarly open to some degree of rewriting and reinventing in the everyday – within, like any objects, the possibilities that networked forces allow. For us, the key significance of these studies is their disembedding from the initial 'making' of law, as it is produced by legislators or in courtrooms. It is not about seizing an unseizable 'original moment', but about reimagining the law as a process of ongoing production.

Of course, the fluidities inherent in legalities do not, as for any other social object, entail their full malleability; they do not necessarily imply a loss of a core, made up of things, languages, codes, institutions, practices, which although constantly changing, reinvented and stretched in new directions, remain recognizable for particular actors at particular times. For Naomi Mezey (2001: 150),

Although it generally appears in its reified form as a seemingly external object, at heart the law is the accumulation of the tiny and intimate acts of people as they go about their business and try to make sense of the world; in other words, law is the embodiment of social practices.

Susan Silbey (2005) also reminds us that the reinventing of legalities that everyday encounters generate always operates within limits – themselves the result of a myriad of other social patterns: 'Indeterminacy does not make all things possible; it means only that possibilities are not predetermined or fixed' (ibid.: 330).

It is what 'counts' as law that offers one of the most difficult conceptual dilemmas for both legal consciousness scholars and a materiality-inflected revisiting of the law. In the way ANT authors have emphasised the irreducibility of the social, and the fact that notions such as 'the economy' can only be explained through an unpacking of the practices, objects and relations on which they are based (Callon, 2007), the 'legal' may cease to be a useful descriptive category of a generally understood, and shared, concept. Critiques of legal consciousness point to the dissolution of any essence to 'law', which some may want to continue pursuing for political and analytical purposes. Indeed, the contributions of legal consciousness go beyond demonstrating the effects law may have on an outside world, but seek to revisit the boundaries of legalities. One response to this is to suggest that the boundaries lie in the perceptions, attitudes and approaches not of the researched but the researcher in their interpretation

of their data. It is perfectly possible to observe that at least some of the stories of their research participants are read by Ewick and Silbey as providing meanings about legalities, when others might not have done so. Naomi Mezey (2001: 153), in her critique of *The Common Place of Law*, illustrates why a move away from the fixity of law also needs to be complemented by an attempt at defining multiple relationalities:

By looking for the exercise of power in the mundane extremities of everyday life, by locating legality wherever vaguely legal concepts are embedded in social practices, Ewick and Silbey radically reconceptualize what the law is. Losing law in society is partly their point (p. 35). But it also means losing any meaningful distinction between Rita Michaels's experience in divorce court (p. 60) and Charles Reed's protest to the school board about a teacher's transfer (pp. 115–16), or between being arrested and contesting the water bill. To the extent that they have authoritative power in people's daily lives, all the institutions, rules, and conventions that people defer to or defy are equally part of legality.

That is not to suggest that Ewick and Silbey's readings are not valid; far from it; but it does suggest that the ways in which researchers see legalities reflect their perceptions and biases (just as any researcher). Here, as Haraway would suggest, and as we return to below, we are all tied by our own bodily vision. Reflecting on *The Common Place of Law*, Susan Silbey (2005: 347) re-emphasised that legal consciousness is centrally concerned with the production of legality, rather than its effects as a predetermined (and self-referential) object:

In this work, legal consciousness is decentered in that the research does not document chiefly what people think and do about the law but rather how what they think and do coalesces into a recognizable, durable phenomena and institution we recognize as the law.

Effacing the boundaries of the 'legal'

In reimagining the law as a fluid set of relationships, studies beyond legal ethnographies have offered ways to revisit law's uncertain boundaries in the everyday. They use other starting points to imagine the ambivalence of relationships with, and around, fluid legalities. Anthropological explorations of 'illegalities', and in particular illegal markets, offer a useful starting point here on how to navigate on the borders of the legal, without necessarily using it as a fixed, or even relevant, categorisation. In her inquiry into the counterfeit drug markets of Nigeria, Kristin Peterson (2014) uses the concept of 'speculative markets' to explore the spaces of informal medicines distribution. This enables her to move beyond more classic legal/illegal dichotomies often used when thinking about such drug markets. Perhaps precisely because her central interest is not the law, she subtly moves beyond notions of criminality, and illegality, to reflect on needs, powers and practices in strategies of survival. She demonstrates in nuanced ways the different processes through which the legitimacy and the necessity

of those markets is created not just against but also with and through formal state law. Similarly, Janet Roitman (2006), in her exploration of illegality in the Chad Basin, provides another useful example of why it is necessary to move beyond the illusion of a traceable dichotomy between what is *about* (or indeed, against) or not about the law. In exploring the narratives of the bandits' activities, she renders visible the deployment of other systems of normativity that evolve alongside law (legal pluralism) but also navigate across, in and out of it, so as to render the notion of illegality itself redundant/irrelevant. Focusing on some of these ideas, she explains:

More than just an instrumentalist calculation, or a strategy to maximize economic gains or personal interests, they explain this exercise in maintaining illegality in terms of licit behavior, or what they see as practices that, while not lawful (hence illegal), are nonetheless not forbidden. Illegal activities are rendered licit practice. Licit practice is in this sense understood to be what is allowed or what has become normal practice. This particular domain of illegality – that is, unregulated economic activities and gang-based highway robbery – thus creates a supplementary sense of “licit.” For many people in the Chad Basin, “licit” is not simply equated with what is taken to be legal or lawful; “licit” has come to signify practices that are permissible or, to use the terms of my interlocutors, even “legitimate,” given the context in which they live.

(p. 249)

Notions of licit and illicit, legitimate and illegitimate, come to complicate what processes of ‘illegality’ are about, to a point where law ceases to appear as a central determinant in what shapes the normative landscape. As formally illegal economic activities become normalised, they come to coexist with other forms of economies in a way that make differentiations between apparently distinct spaces of social activities more complicated. Here, Roitman’s analysis complicates illegalities in a way that echoes Ewick and Silbey’s efforts to complicate the notion of legalities (p. 251): ‘Despite the contradiction in terms, the illegal realm is a domain of licit behavior; the practice of illegality is an ethics insofar as it is a practice of truth.’

Cloatre and Enright (2016) also move beyond divisions between legal/illegal/non-legal in their study of the history of the contraceptive movement in Ireland. Relying on everyday narratives of those who were engaged in resisting, avoiding and reimagining the Irish prohibition on the sale of condoms for over 30 years, they argue for the inadequacy of imagining a clear boundary between the law and that which breaks it, or is not about it. Of course, *the* law has particular features and constructs particular patterns of powers: being formally within it offers a different form of security than being outside it does. There is a particular precarity to spaces of formal illegality. At the same time, drawing clear boundaries around the law is neither possible nor desirable for social analysis. Instead, and relying on the work of Povinelli (2011), they propose to revisit the engagement of those they study as being about alternative social visions, that are not graspable through the drawing of an imaginary legal/illegal boundary. Formal states of il/legality continue to matter in some ways but are

largely constituted through the subjective beliefs and the everyday practices of those who ignore it, challenge it and in turn redefine its modalities of being (Halliday and Morgan, 2013). They are never just a pre-existing state of events.

Of course, the fluidity of the law also has different forms. Even if focusing on legal institutions themselves, those are always permeated by other forms of normativity and social relations. Here, our understanding of the fluidity of law differs from Latour's exposé of the Conseil d'Etat, and our view of legal relations as being of a 'different nature' from others is maybe not fully aligned. At one level of course, what is produced within legal institutions emerges and is self-defined as legal – legal institutions produce a particular kind of legality. But analytically, the relationships produced (and producing) are inherently part of a broader landscape of connections, and emerge not as unique or particular. Again, this is helped by shifting to maybe less familiar terrains than those that have for long predominated legal scholarship. For example, when Peterson follows her informal medicines in a local courtroom in Nigeria, the evasiveness of law, and its inherent hybridity, comes to the fore: legal texts, materials and settings come to produce a particular kind of encounter, but are also entangled with customary expectations, practices and spatialities. Rather than two separate discourses, however, the modes of enunciation of each, as well as their material ramifications, make them impossible to isolate. In the end, the decision of the court is not the one that those who were relying on written laws were expecting, as the legal judgment becomes transformed by the multiple social processes that shape how the spaces in question are understood in the courtroom.

Cloatre (2018) argues that looking at the boundaries of legitimate medicine provides a vantage point from which to seize the porous and hybrid nature of law *and* its boundaries: what falls in and out of medicine or constitutes a legitimate type of healing practice is determined not only by abstractly defined cultural and historical elements, but by grounded and always shifting material embodiments of those histories and cultures and by everyday practices. Medicines are complex sites of legal events. When approaching the boundaries of medicine (away from biomedicine and towards popular or traditional healing, away from tablets and towards herbs, away from the institutions and towards the spaces of informality), endless opportunities arise to see the boundaries of law as a social object crumble (see also Fisly, 1998). Others have explored the always-renegotiated nature of the law and its others by looking at the interactions between witchcraft and formal legal systems, where endless shifts between them are such that the boundaries of each order become unclear (Niehaus, 2005).

But if legal events are inherently hybrid, spaces that are apparently 'unregulated' may also be permeated by subtle forms of legality and themselves appear as particular forms of socio-legal hybrids. For example, Cloatre's (2013) analysis of pharmaceutical patents shows the unexpected ways in which those supposedly 'legal' tools continue to act in Djibouti, where they have no formal existence, or how the labelling of certain drugs as 'counterfeit' escapes the legal boundaries of the term. Similarly, Harper and Ecks (2013), in following the formally unregulated drug market of Nepal, demonstrate how law-like mechanisms fall into place to recreate networks of power

and influence in drug distribution. Throughout these studies, medicines as objects come to challenge the presumption of where law sits, how it acts, or indeed what type of social space it occupies. Drugs shift between categories that law is formally expected to define, through the practices of their many users. Meanwhile, ‘unregulated’ markets become shaped by myriad legal influences that are often indirect and bear limited relation to what the law may have intended, but demonstrate its (influential) messiness. At stake in those studies are questions about where and how law matters, and what can be drawn from its formal existence or absence. At one level, these are questions about fluidity within the law: how norms travel across jurisdictions, in and out of materials, through unexpected networks, effects and spaces. At the same time, they also invite us to reflect more carefully on the possibility of a boundary between the legal and ‘the rest’, and on the uniqueness of law. Andreas Philippopoulos-Mihalopoulos (2014) suggests we pay attention to the discreet ways in which the lawscape operates and to the unexpected ways in which silent legalities affect our everyday. Drawing the lawscape is about acknowledging and retracing fractal legalities. Similarly, acknowledging the fluidity of law is about exploring the boundary-making efforts that go into generating both the formal and visible spaces of legality and the discreet, unexpected and everyday inscriptions of legalities as one set of events in the shaping of complex b/orders.

As an example of these kinds of silent but fractal legalities, Cowan et al. (2018) focus on discourses of property ownership produced by marginal home owners. Legal scholars focus predominantly on two opposing theoretical positions – exclusion and an ideal of progressive property, in which certain legal institutional values provide for a stewardship role of the owner – in which they share a singular rather curious feature: both theses about property have a top-down, law-first orientation. In seeking to state what property is and why it is what it is, as well as what it should be, their starting points are law and rights to, as well as over, property. Of course, their orientations are rather different; the ownership thesis types tend to rest with hard-nosed law and economics thinking; the progressives assign legal values to which conflicts over rights to property should aspire. There is also the related concern among property theorists about the sorting processes inherent in property which are said to produce insiders and outsiders. This work, which seeks to uncover the often hidden politics of legal doctrine by reference to legal values, fits within a set of understandings about legal doctrine which highlight both their power and their problematic. As Fox O’Mahony (2014: 411) puts it, “A view from the marginalised outsider provides a valuable mechanism by which to test whether the frames we use to resolve property problems orient us towards immanent solutions that tend to privilege insiders over outsiders (or vice versa)”.

However, as Blomley (2013, 2016) has demonstrated, the exclusionist and progressive theses are problematic in their untested empirical assertions. Reading Cowan et al.’s data demonstrates the porousness and fluidity in everyday understandings of ownership among their marginal owners. These are people at the insider/outsider margins, but they firmly express themselves as private owners and assert their superiority over the social rump. They understand property as a form of control, something

which was emphasised by their décor and stuff (a position which chimes with the anthropologists of home: Miller, 2010; Hurdley, 2006). They express themselves as being in control but the stories they tell are of being out of control. Their boundaries are not the front door but expressed through their positionality – that is, property for them is what distinguishes them from the rest and is emphasised through things, like potted plants, sweet wrappers or concerns over the dropping of cigarette butts. In this rendering, property ownership performs understandings of tenure and class.

Those stories are interpreted as contradictory and almost incapable of a mono-chrome analysis. However, they argue that something rather more significant is going on in these narratives. Miller (2010: 96) plays with the word accommodating, arguing that home is not just a place to live but an ongoing process in which we appropriate where we live: “It may imply our changing of a home to suit ourselves, but it can also imply the need to change ourselves in order to suit our accommodation”. And we are constantly engaging with this process, changing things as we go. Cowan et al. suggest that they must embrace their participants’ contradictory narratives precisely because their participants were changing themselves, as they sought to establish their place in the world both at the level of idea and relationally. They argue that this was what the narratives were telling them, emphasising the complexity and richness of property’s everyday lives.

At the same time, acknowledging the non-uniqueness of law places legal scholars in a dilemma: on the one hand, the importance of a critical agenda that continues to explore the dissolution of legalities in the everyday, the uncertainty of its boundaries and the inherent subjectivity of its definition; on the other hand, the underlying question of what law, as an object of analysis and set of social relations, may be, and if and how we can analyse it as a defined thing. This latter question is not one this chapter can answer – or indeed any single analysis could. Instead, it may be useful to reflect on the strategies we may deploy to pursue both these agendas, taking seriously their challenges and continuing to develop understandings of law as an object, or a series of objects, that is multiple, ambiguous, elusive and constantly reshaped both by its own actions and those of its analysts.

Approaching everyday legalities: some methodological implications

Some of these questions, and in particular that of a return to a clearer sense of the legal, have been explored by others. Attending to the modes of enunciation of law, as proposed by Latour and others, is indeed one way to address the question of what law is from a fresh perspective by reflecting on its material mode of existence. However, as we have expressed above, this strand of inquiry has not sufficiently engaged yet with the rich contributions of legal anthropologies that have challenged the boundaries of an imagined, defined, legal space, to make a fully satisfactory intervention on these questions. Even if remaining focused on the question of the making of law and its enunciations, examples such as the court ruling Kristin Peterson describes

demonstrate how the process of creating a legal decision may borrow from a multiplicity of languages and practices, that others may not recognise as law in a universalised way.

Annelise Riles (2005) proposes another useful entry point into rethinking about what is specific or special about law, as she puts forward a new agenda for re-engaging legal technicalities. The agenda is important and indeed a useful counterpoint to studies focused on the dissolution of law rather than its own production or language. At the same time, it encounters limits, once again, when moving away from the spaces where law is technical to where it is engaged by its everyday users (e.g., Sally Engle Merry, 1990), to the travels of medicines, to the travels of the lease. The everyday experiences of legalities, as much as they are a challenge to its definition and labelling, play a part in rendering it powerful. As Susan Silbey reminds us, “The law is a durable and powerful human invention because a good part of legality is just this invisible constraint, suffusing and saturating our everyday life” (2005: 331).

Our premise, as we have explained, is that one of the key ways in which materiality-inflected theories are useful for legal researchers is precisely to focus on these other spaces – those where law is experienced, practice, translated, reappropriated and in turn redefined by its many users. Those spaces where what Callon describes as the ‘actor-worlds’ of law-makers (the imagined spaces where law would be practiced) are rewritten by the messiness of real-life society. Such explorations, inevitably, depend on detailed empirical descriptions of those spaces, that are also informed sufficiently by critical and conceptual tools to open up broader challenges to preconceived ideas of law. In turn, an effect of this is to render visible the more discrete existences of law, that it would be easy for legal analysts to forget or push aside as irrelevant.

For this purpose, we advocate the kinds of theorising about legalities which enable a reflection on the mundane, the everyday, through multiple sources of data that enable the discreet modes of operation of law to become visible. The simple act of box-ticking (and the production of the box categories themselves) involves a variety of translations of the self. Indeed, in one study, the box-ticking exercise was regarded as a method of performing risk, trust and implementation (Cowan et al., 2009: 297).

The key contributions of legal ethnographies are indeed arguably about both the fluidity and the multiplicities of law (Bibler Coutin and Fortin, 2015). In the way that anthropology has reflected on the relation between ethnography and theory (Biehl and McKay, 2012, Fassin, 2013), one of the contributions of materiality-inflected approaches to law may be to encourage us to reflect on what the messiness of the everyday of law, in its materially embedded practices, may contribute to a broader theorization of law as an object – and indeed suggest some limits to over-generalisations. As those traditions open doors for the critical interrogation of law and its limits, they suggest that legalities may continue to be defined as a fluid set of relationships, rather than as a neatly contained social category. By allowing the fluidity of the social to be brought to the front and categorisations to be opened up, one of the great strengths of these approaches may therefore be to enable a new interrogation of law by avoiding its assumptions and pre-defined characteristics.

There are many reasons that make such recognition of the inherent messiness of law aside of its formal modes of enunciation, or expected modes of action, as both practically and theoretically important. One of them, however, is the ongoing need to improve the ranges of voices and experiences that are included in defining what law is and how it works. A focus on formal law and its institutions can only succeed in reflecting the privilege of the status of law and its actors. It tells us nothing about those affected by its eminence (the pigeons and the farmer in Latour's opening story). Indeed, the modes of enunciation of the law as explored in the Conseil d'Etat should be confronted with, compared to and weighed against the ways in which decisions are made, for example, in the Nigerian courtroom just as much as in the everyday decisions of Rita Michaels. What happens in each of the offices and each of the markets of Djibouti, Ghana, Nigeria or the borders of the Chad basin, or in homes around the world, are in themselves inevitably productive of new, diverse, productive and restrictive legalities. We argue that these legalities of the everyday are not just crucial to the ways in which law works, but also attendant to the silences and hegemonic truths produced by legality. These are the productive spaces where legal anthropology and STS can meet, and where materiality-inflected approaches can help us reinvent how we approach legality/law and its boundaries. Although Latour has been recently critical of his own concept of irreduction, the notion may remain helpful in questioning law and approaching it without preconceived notions of its working or of the imagined movements that shape its action.

This goes some way in acknowledging the inevitable situatedness of our knowledge as researchers. Engaging this issue and navigating through the imagined dichotomy between the universalistic claims of science and pure relativism, Haraway reminds us that

the alternative to relativism is not totalization and single vision, which is always finally the unmarked category whose power depends on systematic narrowing and obscuring. The alternative to relativism is partial, locatable, critical knowledges sustaining the possibilities of webs of connections called solidarity in politics and shared conversations in epistemology.

(2007: 117)

At the same time, both Haraway and Karen Barad (2007) argue that the process of observation is never just that, and never simply about capturing a pre-existing state of being: the process of observation itself contributes to producing and transforming objects as they are being mobilised, complicating yet further the process of empirical inquiry and the very nature of the task.

While no simple solution to the dilemma of engaging law in its defined yet changing multiplicity can be proposed, these are a few ways in which materiality-inflected theories may be useful. By recognising and embracing this shifting and uncertain nature of legalities as relational, and as part of a broader and messier set of connections, materiality-inflected approaches suggest that it is important to pay attention to micro-moments as well as to big events and to the apparently insignificant rather than

to the obvious. They also enable us to never take ‘the law’ or its feature for granted, but to always seek to unpack its particular ways of working, within a particular set of processes or a particular space. Finally it invites us to reflect critically on the nature of ethnographic knowledge: as a necessary entry point to gather and recount some of those complex and localised features, but as an endeavour that needs to remain critical and modest in its own claims. Ethnographic knowledge is always constitutive of the very order it aims to describe, and always inevitably situated and partial. In our collective efforts to conceptualise and reflect on the law, it nevertheless remains a necessary element of understanding better the contours of fluid legalities.

Conclusions

What is left of law, and is there anything that remains characteristic of, or central to, law?

Once we start acknowledging the unexpected effects of law, account for the hybridity of legal discourses, myths and interpretations, is it more than whatever it becomes in materially-embedded practices – and therefore something that we can only understand by observing these practices?

The movement away from the formalistic starting point of law, and its imaginary as something that impacts society as a separate system, started long ago in socio-legal studies and critical legal studies, and indeed materiality-inflected theories offer tools and questions to push this even further. Legalities can then be understood as being constituted through routines and practices, so that they are little more than what actants make of it, or with it, and little more than what the materials it affects and shapes go on to do. Its origins, including institutional origins or textual forms, may matter in identifying its starting point, but, for us, that offers only a very limited snapshot of its vivacity and truth-claims. And indeed, these forms may not make its modes of actions radically different from other forms of ordering, at least in their practice. Law as the expression of state power remains, of course, an important dimension to acknowledge, but once mixed with fluid jurisdictional boundaries, private interests, routinised practices that may or may not follow what the state expected or imagined when laws were drafted, and material travels, this vision of law as an institutionalised exercise of state power becomes limited.

Instead, rendering visible some of this messiness allows for a broader rethink of the meaning of law, its practical deployments, and therefore enables more encompassing critiques of power through its silent as well as overt expressions. In our work on houses and medicines, we can see the potential that this kind of messiness has for legal method and for our appreciation of the everyday heterogeneous practices of legality. However, with Blomley (2014), we think that there is considerable potential in unwrapping the ways in which legality is sold to us as apparently homogeneous when that is not our experience; and, in so doing, there is scope for radically re-orienting our approaches and methods for appreciating difference and the significance of the mundane, the blackboxed. So, for example, as the courts in England and Wales move towards digitisation, while their fabric disintegrates, and as the spaces of

legality become fractured and spliced with the everyday (or are recognised as such), a focus on materialities opens up new sites for the engagement of socio-legal scholarship enmeshed with our lived experiences as autoethnographies.

Note

- 1 We use this expression in this chapter to denote the kinds of methodologies in which matter extends beyond human matter, and which emphasise the processes, practices, discursive trajectories and translations of things across time and space.

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