CHAPTER 1

INTRODUCTION: BEYOND METHODS – LAW AND SOCIETY IN ACTION

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One may be forgiven for wondering what is to be gained from another book on research methods. Certainly no shortage of research methods texts exists, especially when one includes in the counting the volumes written for the separate disciplinary traditions that comprise Law and Society. Yet for scholars about to conduct empirical work for the first time, or about to attempt a very different approach, more should be said about the social realities of conducting research than is found in most of these texts. A proper grasp of the philosophical underpinnings of various research methods and an adequate understanding of the practical prescriptions about the mechanics of research are clearly essential aspects of one’s training. However, the art of cooking is more than the following of recipes. Just as reading recipes in a cookbook does not sufficiently prepare you for your first foray into the kitchen (and certainly does not make you a good cook), most research methods books can only take you so far in preparing you for fieldwork. Orthodox methodological texts have two important limitations in this respect.

First, these texts do not generally convey a sense of what it _feels_ like to be out in the field, particularly when things go wrong or become difficult (which is almost always the case). As the interviews contained in this book suggest, research projects are usually longer and their narratives more complex than the researcher would have imagined at the outset. Although this point has to be experienced firsthand to be fully appreciated, the retrospective tales told in this volume work particularly well as a window into the lived reality of research. They demonstrate powerfully that one of the major skill sets required of a fieldworker is not so much
the preparation of the project, although this is very important, but the ability to respond to the unexpected, to serendipitous opportunities, and, almost inevitably, to a certain level of disappointment. It is a rare research methods textbook that prepares students for the emotional dimensions of research and academia and helps them set expectations about what constitutes “success” in research and publication.

Second, research methods texts, and the presentation of research findings more generally, often remain quiet about the imperfect path of the research process. Although transparency about research design and data collection is a basic principle of good social science, it takes a brave soul to give a genuine “warts and all” account of the mistakes that are made along the way or of other infelicities in the research process. There is much to inhibit us from such complete candor. Having made mistakes or missed opportunities, scholars learn to paper over those problems with a dispassionate voice and a cool recollection of the methodological steps. The “whole truth” of how research work actually gets done tends to remain unspoken except perhaps to one’s students, who hear these tales as reassurance when their own projects are mired in ambiguity and struggle. It is difficult, in research as in any area of life, to share one’s insecurities.

Yet, particularly for Law and Society scholars, there is surely both credit to be taken and comfort to be given in being a little more candid. Research methods might usefully be thought of as embodying the “laws” of the research process. Prescriptions about the mechanics of data collection and analysis are, in important ways, the rules and regulations of the social sciences – a self-regulatory system controlled through a mix of community and competition. And just as early sociolegal scholars exposed the gap between law in the books and law in action, so we might, as a scholarly community, consider the gap that inevitably exists between research methods and the realities of research. Although they are normatively important, we should not expect the prescriptions of research methods found in the textbooks to be perfectly mirrored in the research process.

METHODOLOGICAL ANXIETY SYNDROME

Responding to these limitations is more than an intellectual exercise. They have a practical impact on researchers, particularly those new to the enterprise. Many students and scholars experience what we would dub “MAS,” or methodological anxiety syndrome. MAS is a pervasive

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and sometimes debilitating doubt about whether one has the necessary methodological skills to embark on empirical sociolegal work in the first place. It is important to recognize that not all the disciplines that contribute to the Law and Society field engage in the same kind of methodological training. In particular, those coming from law schools may have received no training whatsoever in social science research methods. Yet, sociolegal research has a particular appeal for lawyers who have become frustrated or bored with the limits of doctrinal scholarship, as a number of the interviewees in this book can testify (see, for example, Chapter 5 with Lawrence Friedman, Chapter 8 with David Engel, Chapter 9 with Keith Hawkins, and Chapter 15 with Gerald Rosenberg). It is easy, we suggest, for legal scholars asking sociolegal questions to be intimidated by the apparent mystery of research methods and to be held back from conducting empirical work because of their lack of formal training. Piercing criticism from social scientists of scholarship by lawyers – attacked as insufficiently attentive to the “rules” of empirical research methodology – can all too easily be read as only discouraging exploration or raising barriers to participation in the interdisciplinary dialogue.

However, as a number of the chapters in this book demonstrate, formal training, although invaluable, is not always a prerequisite to the conduct of high-quality sociolegal research (see, for example, Chapter 2 with Stewart Macaulay, Chapter 7 with Alan Paterson, and Chapter 16 with Michael McCann). We do not suggest that training in research methods is unimportant – far from it. There is no immunity from the obligation to be as complete and transparent as possible in describing one’s steps in empirical research, and training can provide both the vocabulary and the imagination necessary for conceptualizing and communicating good scholarship. Yet, we suggest that an awareness of methodological issues and the requisite sensitivity to methodological questions can still be gained where formal training has not been available. In the world of computer programing, software developers openly speak of the “naive implementation” of a solution – the first, simplest,

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and often “textbook” way to get a piece of software up and running. But they cannot end there, if they are to be successful. Software may even be released to the public in “beta” form, with many problems yet to be identified and new versions to be released. Law and Society research typically proceeds on a similar basis: beginning with a naive design, but informed and evolving through experiences in the field and engagement with the data. However, we have not done so well at naming and accepting the importance of “naive fieldwork” in the research process. In this understanding, then, being methodologically thoughtful – possessing the capacity to move from the naive understanding of one’s project to the more sophisticated, and to discover the questions, theoretical potential, and epistemological problems latent in one’s engagement with the world as one sees it – is ultimately much more important than being methodologically trained. Some of the interviews in this volume should give considerable encouragement in this regard, as examples of how to enter the field even when formal training is lacking while developing one’s capacity for empirical research in the process.

MAS, of course, is not restricted to those without formal methods training. It also refers to debilitating doubts about the extent to which one’s research projects have met the methodological standards of the field and so may constitute acceptable scholarship. Many scholars, us included, know the feeling of things having “gone wrong” or having realized well after the fact that a step taken was less than ideal, or worse. Such doubts about methods hold some people back from seeking publication in the best journals of the field. The sentiment that “this can’t possibly be good enough to publish in the Law and Society Review” is a self-fulfilling prophecy when one never submits for publication. Since we began this project, many people have told us of graduate students – in different careers today – who went out into the field, sometimes to foreign countries, to begin their research. Finding “the real world” so different from their theoretical expectations and the approach they had designed for it, they became frustrated and lost in the ambiguity, and they never completed their degrees.

Most forbidding of all, doubt and anxiety generate a collective silence that no one person can break. We suggest that research methods need to be demystified and understood as social practices, just as surely as sociolegal scholars believe that law’s claim to autonomy and superiority must be laid bare. The collection of interviews in this volume makes an important step toward that goal.
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SERENDIPITY AND BAD FORTUNE

W. H. Auden suggested that “a poet will always have a sneaking regard for luck because he knows the role which it plays in poetic composition.”3 Before embarking on this project we sensed that, just as in the arts, serendipity played a significant role in the production of social science. Of course, others have pointed to serendipity. Consider an example from a recent, excellent collection of methodological essays (see Figure 1).4 Amid the grand unified theory represented in the figure, incorporating all of the logics of enquiry and analysis, a thin line labeled “serendipity” cuts across and intervenes. It seems out of place, a sharp juxtaposition between the concreteness of the process and the “black box” that happens at some point in good research. But how can this mysterious dimension be explored and communicated to others? Is serendipity more than insight, or even genius that cannot be acquired, only possessed? Serendipitous experiences may be too idiosyncratic and context-dependent to articulate in a systematic way, but that is not to say we shouldn’t attempt an investigation into the craft that occurs at this level of specificity.

Of course, amid the chance developments and insightful realizations that help to refine a research project, the research process throws up bad fortune as well as good. Our second instinctive hypothesis was that ambiguity and difficulty were the rule rather than the exception in empirical research. We suspected that behind most research projects – right up to the most insightful sociolegal projects, the ones we teach and turn to for our own inspiration – were stories that would settle the nerves of every aspiring researcher. By reaching out to leading scholars in the field and asking for their reflections on their projects, we appreciated that we were putting people into an academic confessional. We knew we would hear of challenges and how many of these hurdles were overcome (or else these works would not exist as well-read and much-discussed contributions to the field), but we would also draw attention to mistakes and the limitations of these studies. Our approach is not to meet candor with criticism. While there are unquestionably norms and best practices

for research methods, analysis, and interpretation, we maintain a less normative stance, one that views ambiguity and difficulty as essential elements of the research process. For research to be at the cutting edge, the researcher needs to be discovering new areas of study, finding new communities or subjects of research, or testing new analytical frames. The ambition to discover something new about the world brings the researcher into engagement with the world. A judge may believe that his or her task is to find the most closely matched precedent to answer the case at hand (however discretionary we know that task to be); a researcher who is not simply replicating existing research does not have that comfort. Every research project is, in some way, a project of “first impression” – a de novo attempt to find the world through a new slice or with a new lens. Uncertainty and doubt are the researcher’s faithful companions.

This collection of interviews, if it adequately captures the way research methodology works “in action,” does not free anyone of the
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need to be thoughtful, intentional, and reflective about methods. What it might do, however, is relieve many of the worries that plague students and scholars.

LAW AND SOCIETY IN THE CONFIDENT AGE

Though not a guiding purpose of this volume, in the course of conducting the interviews we came to appreciate the collection as having a secondary value: functioning as an oral history, of sorts, of well-known and well-regarded Law and Society research projects. Law and Society as an academic field and an organization is now firmly established, and the findings of affiliated scholars have found their way into curricula and policy making around the globe. Yet, fortunately, the field is young enough that many of its founders are around to tell their tales. The organizational history of Law and Society has been told in other places.\(^5\) Also, the stories of many research projects, including some in this book, have been retold at conference panels or lectures to students and occasionally have been published as individual pieces. Still, although our primary emphasis has been on understanding how projects took shape and overcame challenges, we have appreciated our position of hearing these stories and believe that others will too. Both for those with long-standing familiarity with the projects in this volume and for those coming to these analyses anew, there is an intrinsic interest in hearing the research stories that underpin them, one that requires no justification.

Of course, if approached as history, this volume has many limitations. Having focused on the social realities of research, our dialogues with authors leave unexplored – or edited out due to limitations of space – many features a historian might think to ask or include. Perhaps more

significant, the interviewees, although representing a diverse group of scholars and projects, were not sampled with a broader historical record in mind. Having initially toyed with the notion of constructing a collection of the “classic” works in the field, we quickly retreated from that frame for somewhat obvious good reasons. To attempt to capture a group of studies that represent “the classics” would be an almost impossible task and would necessitate a controversial claim, especially in a field as diverse as Law and Society. To attempt to capture a group of studies that represent “the classics” would be an almost impossible task and would necessitate a controversial claim, especially in a field as diverse as Law and Society. Furthermore, it would have restricted our focus to the earlier period of the Law and Society movement, which would have undermined our primary goal of creating a useful resource for junior researchers of various intellectual interests and methodological approaches. In our collaborative discussions about the plan of the book, we frequently pointed to more recent works that we thought presented wonderful models of field research but that may not yet have attained the iconic status possessed by older works. We also wanted to focus on projects that have turned attention toward important new domains or have applied exciting new analytical frames. The interviews of Yves Dezalay and Bryant Garth (Chapter 18), John Braithwaite and Peter Drahos (Chapter 21), and John Hagan (Chapter 22), each focusing in their own way on globalization, are cases in point.

Even if not a rigorous history in any meaningful sense, it is difficult not to be impressed by the interplay of forces that have helped to generate many major research projects in the field. Rather than reducing research to an individual enterprise, the interviews in this book repeatedly pay a debt to mentors, such as J. Willard Hurst, or to the concentrations of colleagues found at key institutions in the development of the field, such as the American Bar Foundation, the University of Wisconsin, Yale University, and the Oxford Centre for Socio-Legal Studies. Though merely scratching the surface, by tracing out the common intellectual and institutional roots of these empirical, sociolegal projects, these interviews contribute a deeper appreciation of the emergence of Law and Society as a field confident in its ability to contribute to the understanding of law in action.

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METHODS AND APPROACH

In our conversations with the scholars in this volume and with interested colleagues, we could not avoid the recursive suggestion that the interviews we were conducting might be put to use in a sociological study of the sociology of law. Our actual ambitions were much more modest, but we nevertheless recognized that it would be supremely ironic if we did not, in a collection such as this, turn the spotlight on ourselves long enough to speak in detail, and with candor, of the methods and approaches we adopted in producing this book.

The idea for the project was floated over beers at The Brewer’s Art, an upscale brewpub in Baltimore, where the Law and Society Association annual meeting was held in 2006. We were already friends, having worked as Research Fellows at Oxford University’s Centre for Socio-Legal Studies. Having previously enjoyed the experience of co-editing a collection of essays, we set our minds to the conception of another project that would allow us to work together. Our own memories of having completed doctoral research in the Law and Society tradition were sufficiently recent, perhaps even a little raw, that we could see the value of a volume such as this. In particular, in one case a little-known, and now fairly old, volume of reflective essays, and in the other a review essay based on a close examination of an empirical project, had been of such inspiration and comfort to each of us, respectively, that we were confident of the pedagogical payoff of research narratives over and above the methods textbooks. Unusually, perhaps, for projects conceived in a brewpub the night before, we pitched the idea the next morning to John Berger at Cambridge University Press – making it seem like it was a well-formed idea, of course – and his distinct enthusiasm launched our efforts.

One of our first decisions was to choose particular projects rather than authors with an outstanding corpus of work. That meant excluding many luminaries and some of our favorite authors when their individual projects duplicated the approaches and themes already selected for

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inclusion. Our concern for the representativeness of various methodologies, approaches, and subjects meant that many fine examples of empirical scholarship, particularly given the depth of excellent ethnographic fieldwork in Law and Society, could not be included. Our emphasis on empirical research projects naturally led us to reject numerous classic pieces that were based on keen insight into the empirical world but that did not tell the story of a discrete project.¹⁰ Our process of selection led us to produce a diverse list of works across a wide time span. However, the selection was complicated by not knowing what the response to our invitations would be. We proceeded in waves, prepared to extend different invitations depending on the responses. As it happened, the response rate to our invitations was one hundred percent, so we never drew from our contingent list of possibilities.

We chose an interview format for the main chapters, rather than seeking authored essays. We did this for two reasons. First, for entirely practical reasons, we believed that potential contributors from a wider range of approaches (and frequently we had specific scholars in mind) would be more willing to agree to an interview than to authoring an essay. Second, and more substantively, we were keen to capture a more immediate and conversational tone for the pieces. We instinctively felt that this format would make the book more accessible and easier to use for readers, creating pieces that can be paired with the primary texts as a form of commentary and reflection on the works. We were keen to establish a contrast to the more prosaic, and at times drier, style of methods textbooks. We also believed that capturing something of the spoken voice of the authors would enliven the narratives and somehow bring them closer to the reader. It would help convey the essential humanity of research, an underlying aim of the volume as a whole. Last, whereas some useful collections have provided scholars with narratives about the methodological practices used in the field,¹¹ we knew from more isolated examples and our own experience with interview methods that interviewing would allow us to ask authors to “unpack” the emotional dimensions of their projects or go deeper into various aspects of their experiences. Interviews simply allow one
