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DR. STRANGELOVE (OR: HOW I LEARNED TO STOP WORRYING AND LOVE METHODOLOGY) ☆

Michael McCann

ABSTRACT

This chapter derives from the movie Dr. Strangelove cues for exploring questions about the quest for methodological insularity and purity in socio-legal research. Steven Lukes' classic three-dimensional model of power provides an intellectual focus for the core exploration of relations between epistemology and data generation, the two key elements that we usually identify with methodology. The discussion culminates in an affirmative argument for the value of approaching methodology as jazz, the creative popular music that grounds reliable, humane sense in Kubrick's movie and provides an apt analogy for much of the leading scholarship in the LSA tradition.

☆ I write this chapter for our graduate students at the University of Washington – past, present, and future. I benefited greatly from commentary on earlier drafts by many scholars, including: Stuart Scheingold, William Haltom, Gad Barzilai, Katherine Beckett, Rachel Cichowski, Angelina Godoy, Steve Herbert, George Lovell, Jamie Mayerfeld, Joel Migdal, Arzoo Osanloo, Mark Weitzenkamp, Cesar Rodriguez-Garavito, David Engel, Jeff Dudas, Lisa Miller, Jon Goldberg-Hiller, Susan Sterett, Helena Silverstein, John Gilliom, and an anonymous reviewer for this book.

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Now look boys, I ain't much of a hand at makin' speeches. But I got a pretty fair idea that something doggoned important's going on back there. And I got a fair idea of the kind of personal emotions that some of you fellas may be thinking. Heck, I reckon you wouldn't even be human beings if you didn't have some pretty strong personal feelings about ... (methodological) combat. But I want you to remember one thing, the folks back home is a countin' on ya, and by golly we ain't about to let 'em down. Tell you somethin' else. This thing turns out to be half as important is I figure it just might be, I'd say that you're all in line for some important promotions and personal citations when this thing's over with. That goes for every last one of you, regardless of your race, color, or your creed. Now, let's get this thing on the hump. We got some flying to do.¹

– Major T.J. “King” Kong, *Dr. Strangelove*

I am not sure but that methodology is a little like religion. It is something we need everyday, but something which we are irresistibly impelled to think and talk about, but regarding which we never seem to reach a definite conclusion. Each one, if he is clever, works out something adequate for his own use, but the general principles remain unsettled ...

– Thomas Cooley, 1930, cited in McCann, 1996, p. 457

Why should the bomb be approached with reverence? Reverence can be a paralyzing state of mind.

– Stanley Kubrick, 1964, interview

My breakthrough moments always seemed to come when I left the lesson plans ... My grandfather didn't seem to worry that he was making it up as he went along, and I try not to either.

– Bela Fleck, NPR interview²

INTRODUCTION

Themes

This chapter addresses two themes that have, in my view, proved foundational to the rich tradition of interdisciplinary law and society research. The first theme is the *analytical focus on power*, and especially on inequalities of power that law sustains, restrains, contests, and sometimes transforms. This theme is particularly interesting for me as a political scientist, although in my view law and society research has devoted rather *more* explicit and sophisticated attention to questions of unequal power than does scholarship in my home discipline, and especially in the subfield of public law. Second, I call attention to the notable socio-legal tradition of crafting *new and original research questions, designs, and methodologies*. Methodological diversity and innovation have been hallmarks of law and society scholarship, and this marks another one of the reasons why I and many others long ago became interested

in Law and Society Association (LSA). The virtue of the legacy is not just its openness to different approaches, but its celebration of creativity and improvisation in imagining the very enterprise of research. The interdisciplinary intellectual tradition of law and society research has been as inventive in the forms of research as in the substantive questions it poses.

The Contentious Context: A Provocative Analogy

This chapter reflects on both of these themes, but my primary point of departure and focus is the latter topic concerning methodological inclinations. *In short, this chapter reconsiders familiar methodological modes for interrogating power in an effort to deconstruct and challenge the power of methodological obsession itself in professional academic life.* I am moved to this topic for lots of reasons, but at least in part because a palpable rift attributed largely to methodological differences has developed over recent years among law and society scholars. In some ways, this schism follows from the very success of LSA in attracting scholars from so many different academic disciplines, thus contributing to an ever-proliferating diversity in methodological orientations. It thus seems ironic that increasing theoretical diversity and openness in LSA has been attended by the intensifying perception of schisms drawn along simplistic binary lines of methodological inclination. Readers of this chapter no doubt are familiar with the usual litany of imagined clashes, including quantitative vs. qualitative, behavioral vs. interpretive, experimental vs. ethnographic, rigorous vs. non-rigorous, and hard science vs. soft science or non-scientific methods.³ These divisions long have been deep within the social science disciplines, but such depth of tension strikes me as relatively new in the interdisciplinary study of law and society.⁴

Perhaps the most palpable sign of this division is the recent development of separate interdisciplinary socio-legal associations defined by methodology, each with its own conferences and journals.⁵ One group has been bound by commitments to cultural studies drawing on humanities traditions and largely eschewing scientific claims; the other has congregated colleagues who are committed to quantitative social science and mostly undertake statistical empirical studies of social behavior.⁶ Generally, these groups are differentiated by their separate, specialized conception of “appropriate methodologies,” although many readers will already note in that claim the problem of collapsing techniques for generating and analyzing data with their underlying epistemological and theoretical foundations, a point that is developed further in the following pages.⁷

In the spirit of intellectual play, my discussion builds on a loose, very imperfect, but hopefully provocative analogy between this rift in LSA and the satirical take on the Cold War offered by Stanley Kubrick's hilarious 1960s movie *Dr. Strangelove*. The ostensible methodological fissure in LSA is, after all, mostly a sort of cold war punctuated by occasional hot clashes, with détente sustained by an informal non-aggression pact and various efforts by leaders of different groups to promote parity in organizational resources and to preach mutual tolerance as the keys to coexistence in the same multi-disciplinary professional sphere. In the movie, the seemingly rational logic of mutually assured destruction ultimately fails when a rogue U.S. Air Force general authorizes dropping a nuclear bomb on the Soviet Union, which in turn detonates a Russian "doomsday machine," the ultimate technology without mind or conscience that obliterates the civilized world. The parallel that most interests me, though, is how the fixation with specific forms of technology potentially can – as expressed artistically through various sexual and gendered connotations about power, fetish, and sheer craziness – subvert good sense, practical professional norms, meaningful dialogue, and creative action. In particular, the obsession with purity as a source of potency is a theme hammered repeatedly in the movie. As General Ripper is quoted after issuing "the code" for attack, "God willing, we will prevail in peace and freedom from fear and in true health through the purity and essence of our natural fluids. God bless you all." The very danger of sustained contact with the alien Communist rivals, Ripper declares, is that it will "sap and impurify our precious bodily fluids."

The movie thus probes a familiar paradox, one that haunts academic research. On the one hand, methodologies are important technological means that humans construct to advance the rational pursuit of normative ends. We thus think of methods as normatively "neutral" and apolitical, as humanly crafted techniques intended to serve independently derived values and purposes. Such techniques are celebrated for ensuring systematic rigor and well-defined standards of reasonableness for professional action. As the Empirical Legal Studies blog playfully proclaims, "Bringing Methods" is a way to discipline "Our Madness." On the other hand, methodological techniques of data production and analysis are not value-free, but rather they inherently implicate and instantiate many types of epistemological and ontological premises or values.⁸ Like all purposive, moral, or religious discourses, methodologies express certain intrinsic, foundational ways of knowing that generate contending allegiances and become normative ends in themselves that drive human action. It follows, moreover, that methodologies often become inescapably tied to particular patterns of

professional practice and privileged position.⁹ Quests for instrumental effectiveness and moral superiority become fused, perhaps confused, in institutional practice, sometimes causing individuals to go "a little funny in the head" and organizations to go awry.¹⁰ Major Kong's famous speech, quoted at the start of this chapter, captures this point as well. Dr. Strangelove's erratically sadistic drive for technical superiority, Ripper's mad obsession with purity, and General Buck Turgidson's adolescent lust for the bomb each underlines further the theme that methods can be a source of madness far more than modernist mythologies recognize.

My appropriation of this theme here allows me to inquire about whether the increasing intellectual fixation on equating methodological specialization and purity with intellectual potency is similarly misguided and unproductive among socio-legal scholars. Like Kubrick, my venture imagines a possible scenario that is undesirable, but I make no effort to link this imagined potential trajectory to specific people, statements, and events in LSA. The goal is to stimulate thought and discussion about the relationship between ends and means in socio-legal scholarship, not to identify demonstrable sins or sinners.¹¹ I instead stick to my key thematic inspiration from the movie: how the lure of technical purity and superiority of method can impede creative thought, undermine good sense, subvert good intentions, divert organizational energies, and generate unproductive conflict. Indeed, the movie brilliantly satirizes how the pull of technology can become a fetish potentially detrimental to cogent analysis, meaningful dialogue, and humane action.

The scale of implications for the fictional movie vision and real academic life are, of course, incomparable. It would be absurd in the extreme to liken the implications of academic fads to nuclear holocaust, which Kubrick brilliantly underlines with black humor. Buck Turgidson's chilling lines are worth recalling on this point: "Mr. President, I'm not saying we wouldn't get our hair mussed. But I do say ... no more than ten to twenty million killed, tops. Uh ... depended on the breaks." At the same time, we should recognize that the stakes in the methodology wars are not inconsequential for individual academic careers. Institutional hiring, advancement, awards, grants, graduate student devotees, and the like all are affected by these battles, which invests such goods with some passionately experienced significance. As Kong puts it in the movie, "important promotions and personal citations" are at stake.¹²

Finally, I profess at the outset that my primary goal in the chapter is not to produce greater peace among scholars nor to promote a more stable coexistence among diverse scholars in LSA. Those may be laudable goals in academic politics and international policy-making alike, but they are not my motivations here. I do not seek to preclude all fighting in the intellectual war

room.¹³ In fact, my contentious argument may well add to strained relations. But I do view the tendencies to common scholarly identification along divergent lines of methodological conformity and the pursuit of methodological purity as potentially detrimental to the unique interdisciplinary quest and character of the law and society community. Such identification is likely to obscure the more complex and important challenges of crafting epistemological clarity while discouraging innovation, serious debate, and creative synthesis in research design. Retreat into like-minded academic clusters threatens to privilege intellectual insularity, encourage misplaced confidence in our limited ways of knowing, and reward repetition of familiar research modes regardless of their merits. The risks are not, as in nuclear war, rapid death to masses of fellow citizens, but rather the slow demise of the critical exchange necessary to innovative thought. The commitment to purity may produce more conceptual rigor mortis than rigor if scholars increasingly interact with and produce research primarily for those who already agree with their first principles. As I see it, this is as true for humanities-oriented scholars who spurn scientific conventions as for social scientists, for post-positive culturalists and interpretivists as much as for behavioral positivists. In short, methodology is an odd, unproductive foundation for organizational investment and rivalry, one that often deserves the parody that outsiders to academic professions find easy prey.

The fact that the LSA was born in the same year (1964) as the movie *Dr. Strangelove* was released thus strikes me as potentially ironic. Has the association's founding fusion of commitment to well-grounded empirical inquiry, intellectual creativity, cross-disciplinary dialogue, methodological bricolage, and political progressivism – the historically apt antidotes to Kubrick's nuclear nightmare – succumbed to the technological righteousness, professional specialization, and concomitant ideological insularity that Kubrick long ago satirized as insane? Has LSA divided along lines of specialization familiar in the disciplines rather than transcended them by nurturing a truly interdisciplinary or trans-disciplinary identity? Not really, in my view, at least not yet. But I hope that the outrageous analogy at least creates an opening for the more subtle, measured reflection about our intellectual legacy, current trends, and possible fates that follows.

A Preview of the Analysis

The remainder of this chapter will explore the contours of this logic. I have chosen to develop the argument by focusing on different approaches to

analyzing or interpreting “power,” the substantive theme earlier recognized as highly salient in law and society scholarship. I use the three-dimensional conceptual scheme devised by sociologist Steven Lukes (1974, 2005) some thirty years ago as a starting point to formulate my key points about the complex, indeterminate, often confused relationship between two dimensions of methodology – between *techniques of data generation/manipulation* and fundamental *epistemological premises*, between the conventions we use for evidencing manifestations of power and the modes of imagining what we mean by the concept of “power.” The subsequent section then builds on the lessons of that inquiry. My point is not that methodology does not matter, nor is it that the quest for rigor is futile. Quite the opposite: I suggest that we must resist the potent pull toward methodological purity in order to adequately develop supple, effective, well-crafted methodological approaches that help to make sense of power's many faces in social organization. Lusting for methodological insularity, purity, or superiority is the opposite of taking methodology, much less interdisciplinarity, seriously. Specifically, I argue for greater humility about the promises of specific methods to help us know our topics, for the value of commitments to multi-methodological inquiry, and for studies that integrate different epistemological groundings and craft diverse methodologies accordingly. In short, I celebrate scholarship that defies easy categorization, spurns methodological purity, and revels in creative synthesis or at least juxtaposition of different approaches to addressing unusual questions. These virtues are what once drew me to much law and society scholarship, and it is a legacy that merits respect and understanding. Along the way, I raise a variety of other related conceptual issues and offer many examples from the canon of law and society scholarship to illustrate my more affirmative points.¹⁴

A THREE-DIMENSIONAL MODEL OF POWER: METHODOLOGICAL IMPLICATIONS

On Power

Steven Lukes' slim 1974 volume, *Power: A Radical View*, was a landmark contribution to social theory. My brief discussion here cannot begin to capture the originality and complexity of his analysis, to assess its considerable intellectual impact, or to address its constraints, conundrums, and confusions. I do not even try. My aim instead is to use his conceptual analysis as a starting point and organizational scheme for thinking about

the relationship between epistemologies of power and techniques for investigating those different ways of thinking about or knowing power. In short, I shamelessly exploit his work for my own ends and, in the process, often depart from and even invert some of his theoretical positions.

It is worthwhile, however, to offer at the start a few general comments about Lukes' project, which recently was expanded to address new currents of social theory over the last several decades (2005). His initial study focused on the dynamics of social domination and inequality, and especially on the many ways that hierarchical power relations induce or enforce quiescence from subaltern subjects. Lukes' primary orientation to power thus is relational in character and focused on forms of constraint; he outlines a conception of "power over" that presumes asymmetry and inherent conflict of interests (see Lukes, 2005, p. 64). All the three dimensions of power that he explores thus are grounded in "the same underlying conception of power, according to which A exercises power over B when A affects B in a manner contrary to B's interests" (Lukes, 1974, p. 30).

Lukes recognizes in the reissued volume that his initial angle was "narrow" and presumed a simplified model of binary power relations, focusing on a conflict between groups defined as dominant and subordinate along singular, seemingly clear lines. The legacy of neo-Marxist class theory, and especially Gramsci's conception of hegemony, is unmistakable in this regard, even though Lukes devotes few words to those influences. This initial framework excludes other plausible approaches to power, including power as a "resource to be distributed" and power as an "enabling or productive force" (Allen, 2005). Lukes wrestles with these other approaches to power, and especially with Foucault, in his updated volume (2005). The limits of his framework are not crippling for my purposes here, however, for many socio-legal scholars similarly focus on how law figures into structures of domination and the complex constraints placed on subaltern groups, whether demarcated simply or complexly. Indeed, Lukes' fundamental question about how power constrains, channels, limits, co-opts, absorbs and diverts or directs subjects – and especially ordinary people with few resources and little status – in ways that sustain injustice is at the heart of much socio-legal scholarship. I will offer specific examples of well-known socio-legal studies in the following pages illustrating the various dimensions of power that he offers.

Finally, it is worth noting that Lukes says very little directly about my primary theme regarding the relationship between epistemology and methodology, although in many ways his entire book can be viewed as very much about this topic. Again, my discussion ranges beyond and at

times even against the grain of his thinking. I have been helped along the way, though, by John Gaventa's 1980 volume attempting to implement Lukes' three-dimensional model interrogating "power and powerlessness" in a small Appalachian coal-mining town. Gaventa directly faced the fact that "there are methodological difficulties" involved in operationalizing the ambitious model (1985, p. 25). How do we study what does not happen? How do we falsify claims about non-action? How do we demonstrate unarticulated or latent interests? Can we find relevant counterfactuals? Gaventa effectively labors to show that these challenges are "surmountable." Part of his answer is conceptual clarity in framing the questions and assumptions specific to each dimension of power, and part is methodological flexibility; both parts require lots of work. But some ground must be covered before we get to that argument.

The One-Dimensional Approach

Lukes begins with the most simple and familiar dimension or conception of power. This "one-dimensional view of power involves a focus on *behaviour* in the making of *decisions* on issues over which there is an observable *conflict* of (subjective) *interests*, seen as express policy preferences, revealed by political participation" (2005, p. 19). He links this approach to the pluralist analysis advanced by political scientist Robert Dahl (1961) and his students, where the key question is "who governs," and the answer largely turns on who participates and has the resources to wield influence in policy-making venues (see Gaventa, 1980, pp. 13–14). The perspective tends to presume, I might add, a model of relatively autonomous, self-directed actors who intentionally seek various ends through strategically rational behavior, thus imparting a strong "methodological individualism" to most versions of this approach. Moreover, there is a pronounced commitment to determining the relative *causal* significance of actors on their context or of contextual factors (e.g., organizational and monetary resource distribution) on the capacity of actors. These latter two features align the first dimensional model easily with traditional behavioral study as well as with various game theoretic or microeconomic models of interaction. In short, power is envisioned as demonstrable causal influence, with causality largely understood as linear, direct, unidirectional, and measurable. A strong current of positivist epistemology generally drives the emphasis on observable action and conflict.

This type of inquiry into power is very common among socio-legal scholars. Indeed, it is difficult to undertake study of human interaction

without wandering into this explanatory realm to some degree, asking “who acts?”, “who prevails?”, “to what effect?”, and “why?” The approach is very often identified by law and society scholars with an “instrumental” conception of law’s power or action, and it is heavily linked to the legacy of legal realism. One can think of many examples. The longstanding interest of law and society scholars in “access to justice” and individual legal mobilization has raised many relatively straightforward questions about who mobilizes law, what factors affect that mobilization (or lack thereof), what accounts for the escalation or dropping of grievances at various points in disputing processes, and what factors determine the effectiveness of such mobilization actions against adversaries (e.g., Black, 1973; Miller & Sarat, 1980–1981; Zemans, 1983). Specifically, for example, why do low income people mobilize law less to redress their many legal grievances (Curran, 1977)? Many later studies of legal mobilization typically include elements of such instrumental analysis in various degrees as well.

Another tradition of instrumental analysis concerns institutional impact, often focused on legal implementation capacities and processes. Some scholars focus again on the inegalitarian implications of “who governs” in implementation processes (Melnick, 1983; Kelman, 1981; Coglianese, 2001) or official non-compliance with or resistance to legal governance (Muir, 1967; Dolbeare & Hammond, 1971; Wirt, 1970). A related body of scholarship has explored the potential power of law to deter individual criminal action (Piliavin, Gartner, Thornton, & Matsueda, 1986; Matsueda, Kreager, & Huizinga, 2006). Yet another tradition of studies regarding the impact of U.S. federal court decisions has relied heavily on the direct, linear conceptions of causal influence that Lukes characterizes in the one-dimensional model of power (Rodgers & Bullock, 1972; Rosenberg, 1991; Donohue & Heckman, 1991). The relative (in)capacity of the Supreme Court to prevail over other branches of national government also poses similar questions framed in similar terms (Dahl, 1957; Casper, 1976).

The examples from socio-legal research are potentially endless. Rather than offer more examples, though, I turn to the important issue of methodology. One does not need a comprehensive survey to recognize the wide range of methodological techniques – conventions for data generation, retrieval, and organization – that have been mobilized to address one-dimensional power relations. Studies by law and society scholars run the gamut of data-gathering conventions addressing one-dimensional causal approaches to power. For example, studies of Supreme Court decision-making range broadly, including attitudinal explanations drawing on elaborate big-N databases (Segal & Spaeth, 1993); rational choice frameworks mixing formal modeling with a

variety of quantitative and qualitative case study data (Epstein & Knight, 1998); wholly qualitative case study narratives by historical institutionalists (Clayton & Gillman, 1999); interview intensive studies of court personnel (Perry, 1991); multi-method studies of legal support networks (Epp, 1998). However different the techniques of data generation, all these studies are interested in explaining fairly straightforward questions about what causes and constrains judicial behavior or judicial impact on other actors. We see the same diversity of methodologies in looking at the impact of courts on social relations. Gerald Rosenberg’s landmark study of judicial impact and capacity to secure compliance uses a wide range of methodologies and types of data in one large study (1991).

The very fact of diversity in methodological techniques among and within studies is evidence that there is no deterministic relationship between theoretical or epistemological foundations of methodology and conventions of data production; one-dimensional power can be theorized in different ways and evidenced by different types of data. “There is no single correct method of causal analysis,” agrees Ian Shapiro (2005, p. 41). Indeed, this fact of pervasive diversity suggests that scholars generally find value in each of many methodological approaches, and there is no compelling reason for deeming any particular mode of data generation as inherently superior. That said, big-N statistical studies, and especially sophisticated forms of regression analysis, are more common in studies at this level of power than for other dimensions. The reason will become even more evident in subsequent pages, but suffice it to say that empirical models of observable conflict and linear causal factors among rational, relatively autonomous subjects are far more amenable to such statistical methods than are other, more complex models of power and subjectivity.¹⁵ In other words, the lure of the one-dimensional model of power and subjectivity often is less its intrinsic theoretical or epistemological integrity than its amenability to formulaic methodological operationalization. And to the extent that this is the case, we witness one way in which methodological capacity, elegance, and purity can drive, rather than just neutrally serve, scholarship. We will return to this theme shortly.

The Two-Dimensional Approach

The second dimension of power derives from E.E. Schattschneider’s (1975) classic insight that lack of action or ineffective action by various people may reflect less their personal failures than “the suppression of the options and

alternatives that reflect the needs of non-participants ... Whoever decides what the game is about also decides who gets in the game" (p. 105). This was the foundational understanding on which Bachrach and Baratz (1970) constructed their "second face of power," which in turn was appropriated and developed by Lukes. Its core insight, to quote Schattschneider again, is that "... (a)ll organizations develop a mobilization of bias' in favour of the exploitation of certain kinds of conflict and the suppression of others. Some issues are organized into politics while others are organized out" (cited in Gaventa, 1980, p. 9). The reluctance to express grievances, or apparent quiescence, thus may not reflect affirmative consensus about the status quo or inability to recognize core interests so much as realistic recognition on the part of the disadvantaged that change may not be possible or worth the costs of effort.

Lukes emphasized that this second face, or dimension, of power was initially grounded in a critique identifying important limitations of the one-dimensional model, including especially the latter's focus on observable decision-making behavior amidst a context of demonstrable conflict. The second dimension instead is attentive to "non-decisions" and inaction that result from exclusions of participants and their issues or anticipated negative consequences from the subaltern population's potential actions. These exclusions or anticipated negative consequences can take many forms (force, sanctions, manipulations, deceptions, biased treatment, procedural barriers, unequal resource distribution) and include informal as well as formal, rule-oriented features of institutionalized activity. And it is the "organization of bias" sewn into social and political institutions, processes, and routines that is the focus of most study in the second dimension. This approach still gives considerable attention to instrumental action by rational social agents, but it suggests a more complex, dynamic conception of contextual influence at work in cognitive processes as well as socially conditioned (i.e., "constituted," and hence not autonomous) subjectivities. Indeed, many subsequent scholars interested in agenda setting, framing practices, and social movement struggles have developed process-based understandings of this second level to include feedback loops, multiple causality, and dialectically interacting forces that relax, even defy, the strict assumptions of positivist linear causal models. At the same time, however, it is critical to remember that Lukes viewed the second dimension of power as building upon and supplementing rather than supplanting the first dimension in the aggregative two-dimensional model.

Not surprisingly, a great deal of socio-legal scholarship has directly or indirectly addressed the second dimension of power. For example, Stuart

Scheingold (1974), drawing on the important scholarship of Murray Edelman, demonstrated how the "myth of rights" at once lured Americans to value certain principles while discounting others, to privilege certain ways of addressing grievances while ignoring others, with both diversions supporting status quo inequalities. Joel Handler's (1966) earlier important work critiquing new property ideals was grounded in recognition that our proprietarian legal tradition facilitates economic independence for some people and organizations that make legal action realistic while rendering it strategically unrealistic for dependent others such as the welfare poor. Perhaps the most brilliant and influential study in this mold was Marc Galanter's (1974) *Why the 'Haves' Come out Ahead*. Galanter's argument about differences between "one-shotters" and "repeat players" in civil disputing was a classic demonstration of mobilized biases in law. Not only do organized repeat players tend to prevail in civil disputing due to one-dimensional power advantages of wealth, expertise, and status, Galanter suggests, but their ongoing engagement in various types of disputes enable them to shape the very rules of law in ways that favor systematically their position and interests over time relative to one-shot disputants.

Much other literature on disputing follows suit. Mather and Yngvesson's (1980-1981) discussion about how legalization of conflicts by disputants, third parties, or audiences can either narrow or expand the terms of the contest is a classic second dimension analysis. Laura Beth Nielsen's recent study (2004) of citizen responses to street harassment likewise shows how aggrieved women and minorities remain largely quiescent because of the perceived biases or unresponsiveness of the legal system. At a broader group-based level, Gad Barzilai's studies of minority politics in Israel illustrates how the individualistic thrust of liberal legal rights talk renders legal mobilization by non-dominant communities either unattractive or ineffective, demonstrating yet another mobilized bias of law (2004). Stephen Daniels and Joanne Martin have explicitly built on agenda setting theory to demonstrate how the anecdote-infused "rhetoric of reform" has been "organized into politics," while social science evidence about civil disputing and juries has been "organized out" (1995). A long tradition of studies regarding social movement litigation has similarly demonstrated how courts and law generally have narrowed activists' substantive agendas and tactics into manageable, "co-opted" terms (Kessler, 1990; Edelman, Erlanger, & Lande, 1993; Coglianese, 2001; Eskridge, 2001), while others have argued how well organized and funded legal activists in turn have at times influenced the agendas of high courts (Lawrence, 1990; Epp, 1998). Indeed, just about all socio-legal study to some degree has worked to expose the

mobilized biases and constraints of law in responding to both discrete grievances and promoting status-quo hierarchies.

Again, we can witness many methodological techniques of producing data in this second dimensional research, although the balance of qualitative study to quantitative study tends to be weighted more toward the former than in one-dimensional studies. One important reason is that the relaxed or qualified approach to causality and the common focus on inaction or non-decisions renders positivist premises and statistical regression models for sorting out discrete variables less useful. Some studies of institutional bias have drawn on quantitative analysis, but they tend to be out-numbered by qualitative case study based on analytic narratives. At the same time, critical exchanges about specific analytical ventures often highlight the clash between assumptions and techniques in first dimension studies that are less relevant at the second dimension. To what extent, and in what aspects, can mobilized bias be studied as a matter of strict causality, and especially through statistical measures? This question has been prominently debated, for example, between analysts of top-down judicial impact, who often use positivist models of causality to study “indirect” as well as “direct” effects of judicial decisions, and scholars of legal mobilization who urge relaxation of strong causal arguments in making sense of reform litigation processes initiated by subaltern populations in two-dimensional terms (Rosenberg, 1992, 1996; McCann, 1994, 1996).¹⁶ Debates about the merits of quantitative vs. qualitative techniques and other matters of technical convention (case selection, etc.) often are involved, but these often only obscure the more fundamental debates about basic epistemological premises.

The Three-Dimensional Approach

The third dimension of power goes far beyond the other two dimensions, although it is important to emphasize again that Lukes intends the former to build on the latter in aggregative fashion. What is new in the third dimension is recognition that the human subject may not only be inhibited or diverted from pursuing his preferred interests, but his quiescence or conciliatory actions may reflect various forces “influencing, shaping or determining his very wants” (1974, p. 23). This focus thus variously directs attention to: the “study of social myths, language, and symbols;” the “social construction of meaning and patterns;” forms of mass communication and information control; patterns of socialization and “internalization

of ... values, beliefs, or rules of the game;” the psychological processes of subject identity formation; and the development of subject “consciousness” – all forces that sustain subordination and hierarchical order in an organized life (Gaventa, 1980, pp. 15–20). Studies of this third dimension very self-consciously transcend the confining individualistic and behavioral premises of other two approaches. It thus “offers the prospect of a serious sociological and not merely personalized explanation” (Lukes, 1974, p. 38). And, finally, in emphasizing sociological processes of subjectivity formation as well as latent conflicts that may not be observable, discussions of power in the third dimension are further removed from reliance on the logic of causality.¹⁷

Lukes’ demarcation of the third dimension arguably represents his most original and important contribution. His debt to Gramsci and other neo-Marxists who highlight ideology, consciousness, and hegemony again is clear. Moreover, Gaventa later showed how the approach links up well with scholarship by Murray Edelman and others on “symbolic politics” and “deep” agenda setting theory. It also is relevant to note the applicability and appeal of these ideas for the huge movement in interpretive theory that grew in the decades following publication of Lukes’ volume.

At the same time, subsequent trends in social theory posed significant challenges for Lukes’ model. For one thing, Lukes’ suggestion that people have objective interests that they can fail to recognize or act on generated much critical debate. Gaventa (1980) and Lukes (2005) each provide spirited defenses of the conceptual move, and many other types of theorizing could be mobilized as well for their position (Pitkin, 1972, pp. 253–256; Shapiro, 2005, p. 32), but most contemporary scholars have remained skeptical. Second, and more interesting, some scholars have debated how the contributions of Michel Foucault and his followers do or do not fit into Lukes’ (and Gaventa’s) scheme. Specifically, how does the latter, who tends to agree that third dimensional power is widely dispersed and diffuse, address “power/knowledge” that “is everywhere, not because it embraces everything, but because it comes from everywhere” (1978, p. 93)? Lukes addresses this issue at length in his revised edition, arguing that Foucault’s bold argument about the decentered character of positive constitutive power is radically overstated and that Foucault himself abandoned or modified his strongest claims in his later theory, while a more reasonable version of Foucault’s argument fits and adds to Lukes’ theory. Other scholars see in Foucault a more formidable challenge to Lukes and suggest that the former should instead be viewed as offering a “fourth dimension” of power analysis. This is an important debate, but it is not critical to my analysis

here, for many socio-legal scholars are interested in the questions that Lukes poses, regardless of how they do or do not situate Foucault in the mix.

Finally, Lukes' third dimension poses a host of methodological challenges. How do we demonstrate interests that are not expressed and conflicts that are not observable? How do we probe and demonstrate citizen consciousness, identity, and thought processes? Gaventa (1980 p. 27) takes this challenge head-on at the levels of general theory, research design, and research interpretation. I noted earlier that he views the challenges as formidable but "surmountable." His general proposal involves "... going outside of the decision making arenas and carrying on extensive, time-consuming research in the community in question ... to discover through their experiences, lives, conditions, and attitudes, whether and by what means power processes" work (p. 27). His empirical study itself is almost entirely qualitative, combining a vast array of techniques that include in-depth interviews, archival research, news media assessment, and various other quasi-ethnographic tools. While some scholars have used traditional quantitative methods such as attitudinal surveys and opinion polls to probe the third dimension, most scholars – especially in the interpretive camp – find these of little use for understanding the complex ways that cognition, consciousness, and identity of subjects are socially constructed. As Pitkin (1972) puts it, citing Peter Winch, understanding human action or inaction "means, consists in, 'grasping the point or meaning of what is being done or said. This is a notion far removed from the world of statistics and causal laws; it is closer to the realm of discourse and to the internal relations that link the parts of a realm of discourse'" (p. 254).

We need not look far to find a great deal of socio-legal scholarship that explores law's manifestations and influence at the third dimension. Scheingold's classic study – published in the same year as Lukes and drawing on other scholars such as Edelman and Geertz working at similar levels – of the "myth of rights" that at once "beguile" the American citizenry and provide discursive resources for political mobilization provides a classic study at this level (1974; see also Milner, 1986). The entire tradition of legal mobilization studies that developed in subsequent decades arguably focused much of its attention on third dimension questions, building on and contributing to the "interpretive turn" in scholarship. Following upon questions about "legal meaning" framed in early behavioral scholarship (Miller & Sarat, 1980–1981; Mather & Yngvesson, 1980–1981), a litany of studies by prominent socio-legal scholars (Merry, 1990; Yngvesson, 1993; Sarat, 1990; Ewick & Silbey, 1998; Greenhouse, Engel, & Yngvesson, 1994) used in-depth interviews and various quasi-ethnographic methods to explore

the "legal consciousness" of ordinary citizens, including especially the least powerful subjects in modern American society. Bumiller's (1988) original analysis of the paralyzing psychological effects of embracing anti-discrimination rights likewise fit right into the third model. All of these studies looked at the ways in which legal norms and conventions shape subject consciousness and identity, contributing variously to conformity, contestation, and resistance (Ewick & Silbey, 1998; Engel, 1998). A new generation of scholars has followed this lead in exploring "civil rights" consciousness through highly interpretive approaches (Engel & Munger, 2003; Fleury-Steiner & Nielsen, 2006; Lovell, 2006). At the same time, studies of group based and social movement legal mobilization have refined and extended Scheingold's initial approach to include focus on legal consciousness and meaning making (Hunt, 1990; McCann, 1994; Silverstein, 1996; Brigham, 1996).

Another major trend, inspired by the interpretive turn in the humanities, has directed attention to the power of law in popular culture and power of popular culture in shaping legal practice. The most systematic social scientific versions of such study have focused on how political discourses about law in the mass media have saturated civil society, shaping the fears and legal expectations of subjects in mass society. Perhaps the best known of such work is in the area of criminal justice (Scheingold, 1984; Beckett, 1997), although studies of mass media production of knowledge about civil law also have won attention (Daniels & Martin, 1995; Galanter, 1998; Haltom & McCann, 2004). Other scholarship, often influenced by Foucault, has focused on the discursive norms, practices, and policy logics of legal elites within criminal justice bureaucracies (Simon, 1994; Herbert, 1996) and society at large (Garland, 2002). Finally, study of legal constructions in popular texts such as movies, novels, TV shows, and the like have proliferated, many associated with the Law, Humanities, and Culture group.

Most of this literature fits the epistemological premises and methodological expectations of third dimension power relations outlined by Lukes and Gaventa. The research tends to be directly or indirectly critical of behavioral approaches, of the commitment to assessing relative causality, of the limitations of methodological individualism, of core premises about autonomous rational subjects, and of reliance on quantitative techniques of data gathering. At the same time, while some of this research admirably comports with Lukes' entire three-dimensional framework, much of it can be, and has been, subjected to criticism on the basis of Lukes' ambitious approach. For one thing, an exclusive focus on "meaning" can diminish or obscure broad-ranging attention to the role of social context in shaping citizen subjectivity and cognition. In Lukes' terms, much study of the third

dimension simplistically rejects rather than builds on first and second levels of power, with their attention (strictly or loosely) to behavior, causality, and the like. Indeed, the widespread practice of reporting findings about legal consciousness of subjects or the meanings of various cultural texts often is attended by a relative suspension of scholarly analysis about the sociological factors that contributed to the production, circulation, and significance of various norms, values, or conventions. This tends either to leave unexplored the sources of meaning that are not evident to subjects themselves or to grant free reign for the interpretive researcher to impute such patterns based on theory alone, ungrounded in empirical research (Shapiro, 2005, p. 33). As Ian Shapiro has argued, this trend among interpretivists and culturalists arguably represents as much a conceptually simplistic evasion of grounded social analysis as the narrowly confined projects of behavioralists who inquire only into one-dimensional power relations (2005). The pathologies of methodological purity can afflict scholars who restrict themselves to any one of the three dimensions of analysis alone.

Moreover, the fixation on third dimensional interpretive concerns alone can produce analysis which is disingenuous. After all, it is virtually impossible to ignore issues of behavior, overt conflict, and causality in social analysis.¹⁸ I frequently underline this point for graduate students by assigning a representative text in which the “interpretivist” author in the opening pages boasts of rejecting causal analysis, and then leading the students through the litany of implicit causal claims and behavioral observations that the same author makes in subsequent pages. Disavowing causal factors rarely leads to ignoring them; it instead provides the author only a weak rationalization for not doing so in explicit, rigorous, systematic ways. Finally, research cast entirely at the third dimension of power can easily divorce itself from conventional techniques associated with more formal methodologies commonly employed in first or second dimension studies yet relevant to the study at hand. For example, studies of selected social texts (movies, novels, TV shows, etc.) often pay little attention to legitimate questions about why those texts matter, what they represent generally beyond themselves, and why they should be considered as important or worthy of attention. In short, they circumvent very relevant questions about case selection, sampling bias, and generalizability of findings that most positivist methodologies take seriously. Interpretive scholars no doubt sometimes think through these issues and can offer good answers or at least caveats, but often studies dismiss such concerns as a result of rejecting positivist or related commitments and retaining fidelity to pure interpretive conventions.

Summary

The preceding discussion of Lukes’ provocative inquiry about multiple dimensions of power has underlined several important themes. First, core conceptual or epistemological premises of general methodological approaches do not determine which specific techniques of data gathering are appropriate, especially regarding quantitative or qualitative data, even though there is a substantial connection between different theoretical frameworks for understanding power and the tools chosen to evidence them. It follows that most debates over methodology turn primarily on underlying epistemological issues rather than strictly on matters of data gathering techniques, although the latter may receive most of the attention or become shorthand for deeper differences. Much ordinary academic discourse tends to be quite confused and confusing about these distinctions.

Second, methodological disagreements often reflect and nurture tendencies to focus narrowly on one or another epistemological dimension of analyzing power rather than embracing the complex, aggregative, multi-dimensional approach urged by Lukes and Gaventa. As the latter scholars would have it, attention to any one dimension alone represents a highly limited and misleading foundation for analyzing human relations.¹⁹ First dimensional approaches tend to simplify reality by confining attention to behavior by rational individuals in contexts of expressed competition or conflict, thus ignoring or dismissing the intersubjective discursive practices, cognitive processes of meaning production, and constructed identities of subjects at stake. By contrast, interpretive studies limited to the third dimension of power typically explore the latter themes, but they slight attention to the loosely causal or sociological dimensions of contextual influence and instrumental activity that figure into specific relationships. Each approach captures important aspects of power relations but also is simplistic and misleading. As Shapiro (2005) has put it, each side – both pure behavioralists and interpretivists – flirts with its own flight from reality into methodological specialization, obsession, and myopia.

My argument about these dynamics so far has been largely deductive and speculative, as I have intentionally avoided citing specific examples of the trends that I find problematic. Even if I were to cite specific examples, moreover, I have not developed data demonstrating that there is a marked, significant trend in these directions among socio-legal scholars. My point here is not to lament that these tendencies have grown to a large degree among law and society scholars but, like the director Kubrick, to envision a dramatic scenario of what could happen, if the pressures and inclinations of

methodological specialization and tribal segregation among groups of scholars continue to grow. Increased methodological insularity and myopia does seem a plausible outcome from the emergence of separate associations, conferences, and journals organized along methodological lines. And where two sides organize for the sake of preserving purity and technical superiority, General Ripper proclaimed, "there will be only one course of action open: total commitment." The result will not be that we all are carried away on a thrill-ride to oblivion. But something important in our research community is likely to be lost.

APOCALYPSE, NOT: TOWARD AN AFFIRMATIVE METHODOLOGICAL VISION

I do not actually believe that LSA is collapsing either organizationally or intellectually any more than Stanley Kubrick actually expected in 1964 that the entire world soon would go up in a chain of mushroom clouds. But I want to go further than Kubrick, whose brilliant fictional drama's success above all turned on its capacity to provoke sustained nervous laughter.²⁰ In short, the remainder of this chapter will develop a more affirmative way of thinking about methodology that transcends the pathological inclinations toward insularity hinted in previous pages. In some ways, this argument outlines my own personal vision about research. But I developed this vision through thinking about the implications of Lukes' (and Gaventa's) arguments for the requirements of compelling interdisciplinary scholarship²¹ as well as reflecting on the scholarship in the law and society research tradition that has most inspired me. I thus cite along the way examples of work that represent the virtues that I enumerate, the antidotes to obsessions with technological purity and potency that were at the heart of the doomsday fantasy that I have imagined by way of analogy to *Dr. Strangelove*.

The Ambiguous Power of Methodology

It is important, above all, to affirm that methodology can be a powerful force. This is true in two senses. On the one hand, professional identity, status, and affiliation often turn on differential methodological commitments. This type of methodological power can become fetishistic when insulated from alternative forms of knowledge and made a discrete object of

desire. This power of methodological allegiance is neither necessary nor particularly desirable. On the other hand, scholars who resist professional tribalism and purism should appreciate the ways that concern for methodology actually can improve our academic research efforts. We usually think that methodology matters because it disciplines our research through fidelity to proven principles, conventions, and techniques that systematically govern our selection, production, and processing of data. In this sense, methods should elevate our research activity over less sophisticated, slipshod ways of knowing. But I would add a second different if closely related feature – in short, that methodology can provide a powerful resource for inspiring a sense of *trust* from our readers. When we take methodology seriously, we work hard to be credible, to show that we reflected very deeply about our core questions and research designs, that we thought through alternative arguments, questions, and forms of evidence, that we anticipated objections and did the best we could to address them in consistent fashion. In this sense, methodology represents a noble aspiration that can never be fully achieved.²²

Charles Tilly's recent book *Why?* (2006) is helpful on this point. He argues that giving reasons is a relational act, by which he means that providing explanations aims to build, sustain, and sometimes rebuild relations with specific groups of others. Developing and displaying our methodological maneuvers is just such an act of good faith directed specifically to our professional colleagues, who in turn will judge us by our efforts. I may be naïve, but I regularly tell graduate students that the particular methodologies that they employ matter far less than the sincerity and effort that they make to demonstrate their serious efforts to be systematic. If you do your best to develop a rigorous approach, I suggest, most other scholars are likely to treat the endeavor respectfully, even if it does not fit their preferred styles or commitments. This message may reflect a bit of wishful thinking, but it has been generally confirmed by what I have witnessed among law and society scholars over several decades. Such relational good faith has been an important part of what has made our intellectual community special.²³

In making this case, I emphasize again taking a larger view of methodology, one that places emphasis on the basic epistemological premises of the research project as well as on the specific techniques that are employed to evidence that project. This view assumes that every project uses techniques that are inherently imperfect, limited, selective, and biased. One does not have to be a zealous post-positivist to recognize that we cannot neutrally or fully apprehend reality as it is, but rather we can understand only through the constructed conventions of language and

related cognitive techniques or tools. Of course, we should debate the contributions of specific techniques and freely critique scholarship that transgresses sound principles, consistency, or good sense in choosing and implementing techniques. But this focus should be secondary to the expectation of clearly articulated and consistently executed epistemological claims about how we know the world, how we imagine power in social relationships, and the like. After all, our studies can be no better than the questions we pose. An elegant, careful, data-rich study of an unclear premise or trivial question achieves little. By contrast, a weak or thin empirical study of a well-conceived and important question at least can provoke more and better research. Coherence and consistency in both articulating core conceptual or epistemological foundations and matching our techniques of data production to them should be the first order of our commitments about methodology. As noted earlier, we often confuse criticism and judgment about the latter with the former, and that confusion does not serve us well. One reason why this confusion matters is that continuous generation of good questions depends on relaxing the grip that both specific epistemologies and evidentiary techniques can place on our critical imagination.

On Methodological Humility and Interdependence

Taking methodology seriously in these ways requires a fair amount of humility about what we attempt and achieve, or even can achieve, as researchers. We must remember that every way of seeing is a way of not seeing; every epistemology and technique of data generation obscures even as it reveals. Particular methodologies can refine a particular lens but not overcome the limits of that specific lens and the standpoint of the viewer. That is, I think, why methodological purists of all sorts evade discussion about epistemology, about basic premises regarding how we know – because the infirmity, the instability, the “unsettled” character (see opening Cooley quote) of the conceptual ground on which all techniques are built quickly becomes apparent upon direct reflection. As such, claims about the intrinsic superiority (or inferiority) of particular methodologies, whether positivist or post-positivist, behavioral or interpretivist, experimental or ethnographic, should not be taken seriously; indeed, they should be viewed as the opposite of taking methodology seriously. The sometimes heard claim that “I have the facts and others just have opinions” is as misguided as are the obsessive, patriotic rants equating purity with potency by Buck Turgidson or General

Ripper in *Dr. Strangelove*. Indeed, those in the movie – like Mandrake, Muffley, and Kisof – who display humility about the limits of knowledge and fragility of communication again are reviled and disobeyed by the “psychotic” military leaders who defy the former’s authority. An avid aversion to certain methodologies (like positivism) reflects a similar type of quest for purity, which can be especially disastrous when it licenses rejecting the challenges of methodological rigor altogether. That inclination is akin to rejecting the goal of technological improvement because of reservations about the dangers specifically of nuclear power. Both show how methodological fetishism can make us “go funny in the head,” as President Muffley put it in the movie.

Again, critical exchanges about the care or wisdom in implementing particular techniques or matching techniques to epistemological principles are fair game in academic “shooting wars.” But claims of harnessing the superior technological form are hardly warranted, at least until one of our colleagues shows that the perfect and complete study is possible.²⁴ Moreover, such presumptuousness is hardly consistent with the commitments to democratic equality, social justice, and respect for others that most of us proclaim. As Tilly (2006, p. 180) shows and Kubrick demonstrates, claims of superior forms of esoteric knowledge or technological purity are inherently elitist, hostile, and demeaning; they evade engagement, discourage dialogue, and erode relations of trust and understanding among differently oriented scholars, contradicting our commitments to solidarity in causes of understanding injustice and promoting justice.²⁵

Finally, humble respect for the promises, challenges, and limitations of methodology can help us to realize how much we need and benefit from the alternative ways of knowing enacted by our colleagues. I do not offer here a weak argument for tolerance, as tolerance encourages passivity in the face of insularity and myopia. It is the evasive recourse of those who defend thin versions of methodological pluralism or *multi-disciplinarity*.²⁶ Rather, following David Engel (1999), I offer a “strong argument in favor of the proposition that we as law and society scholars are mutually dependent on one another” (p. 14). Because every individual mode of study is selective, confined, and doomed to distortions that accompany its illuminations, our best shot for understanding lies in the connections, interstices, and aggregations among different ways of knowing. As Engel (1999) urges, we should not think of different methodological approaches on a continuum, except unless that continuum is a Mobius strip, a continuously progressive, twisting loop that has no inside or outside. “Each approach now seems closely related to the others; they are additive, not alternative” (p. 13).

Linear models of causal power capture certain dimensions; literary approaches sensitive to ambiguity, irony, and contradictions in meanings capture other dimensions. As Lukes urged, they together provide a more complex set of understandings that far transcend the potential of any one-dimensional model alone. It stands to reason that we learn more by taking each approach seriously and by facilitating respectful, engaged dialogue among approaches rather than in evaluating one as intrinsically more worthy than the other. Moreover, as Engel again notes, contact among different methodological approaches can be a source of creative synthesis and new insights. "Our field is enriched by the growing variety of forms and approaches, for each new approach at one level signals new possibilities at other levels, and each insight obtained through one mode of investigation suggests new issues to pursue using other modes of investigation" (p. 15). What is brilliant scholarship, after all, but such new, unexpected syntheses of previously unconnected ways of knowing joined to a fascinating substantive question?

All these premises or norms, I might add, are reinforced by the exposure to multiple methods and especially interdisciplinary engagements commonplace in LSA research. It is not difficult to identify the rich, complex legacies of studies constructed over time on related subjects by scholars from different epistemological standpoints. By contrast, sequestering ourselves in familiar circles of like-minded researchers is unlikely to moderate one-dimensional narrowness or to promote such catalytic encounters, juxtapositions, and fusions.

Jazzing It Up: Toward Multi-Methodological Studies

I want to push the argument further, however. Rather than just underlining the potentially complementary and catalytic effect of methodological diversity *among* socio-legal scholars, I want to make the case for methodological diversity *within* single projects. By this, I again do not mean just a diversification in the routine employment of quantitative and qualitative, experimental and ethnographic, data gathering techniques, although that surely is a part of my call. My more ambitious challenge instead is for studies that explicitly integrate and balance different epistemological approaches to the subject at hand. This follows quite directly from Lukes' three-dimensional model of power, which is aggregative in character. My reading of Lukes' model, and the powerful empirical study generated by Gaventa, suggests that focus on any one

dimension alone is inadequate, while studies that integrate all three analytical dimensions – with their different epistemologies and ontologies – of power at once provide a more ambitious and potentially satisfying endeavor.²⁷ Gaventa's own empirical study led the way in facing the many challenges at stake and illustrating the rich array of payoffs. His study integrates historical, instrumental, institutional, ideological, and other dimensions into a complex narrative full of rich data as well as complex, comparative analysis. He shifts back and forth between different levels with great dexterity, and the overall final product is profound, compelling, and insightful. Most readers seem to agree that he wins great trust that he has not only conducted his empirical investigation exhaustively, utilizing a variety of appropriate techniques, but he worked extremely hard to imagine power at multiple epistemological levels, to integrate insights of different kinds, and to produce a complex yet accessible account of how unequal power works in a small Appalachian coal-mining town (see Shapiro, 2005, pp. 42–49).

Such complex, multi-dimensional work has long been encouraged by many scholars in the social sciences, so I claim little originality for my exhortation. The promises of such broadly multi-epistemological and multi-methodological study are many. For one thing, if all approaches are limited, selective, and distorted, integrating multiple dimensions into a single study can at least offset some of measure of that myopia. We need to be both hedgehogs and foxes, balancing the strengths and weaknesses of different ways of knowing; we can never see human reality in all its complexity, but we can see more complexly and variously than from a single vantage point.²⁸ Moreover, as noted above, integrating seemingly different ways of knowing is often the source of creativity, of intellectual innovation. As Pitkin (1972) urges, "(o)ur need is for forms of social and political study that can do full justice to the complexity of action, that are not doctrinaire ... but open, inventive, observant, flexible ..." (pp. 285–286). In short, we should not be content just to develop singular approaches that engage and complement different approaches by others; we should strive to pack different angles of vision into each of our studies. Finally, the commitment to multiple epistemological standpoints and approaches is likely to be a sound antidote to the dangers of methodological myopia, obsession, and fetishism for purity discussed earlier. Commitment to integrating plural epistemologies should help us retain a clearer grasp on the problematic illusions about methodology generally.

I venture to offer a familiar metaphor for this supple approach to methodology – that of improvisational jazz music. *Dr. Strangelove* again is

suggestive in this regard. Kubrick uses music very sparingly and selectively in the film. One motif is humorously ironic juxtaposition, as illustrated in the opening scene featuring a quasi-erotic exchange between one plane fueling another (think mother and child) while the sentimental pop song "Try a Little Tenderness" plays in the background; another is the final scene of nuclear apocalypse with the equally sentimental, wistful "We'll Meet Again" providing stark contrast.²⁹ A second motif is the use of the familiar civil war tune "When Johnny Comes Marching Home"³⁰ that plays whenever the scene shifts to the B-52, at once underlining the mindless patriotic conventions driving the madness along with the irony that these soldiers would not be coming home. About a quarter of the way into the film the use of music becomes even more subtle and creative, however. Captain Mandrake, struggling to retain some grounding in common sense against Ripper's stiff obsessions with esoteric jargons and codes, finds a radio on the base playing "civilian jazz," thus providing him evidence that the nation is not under nuclear attack and a counter-attack is unwarranted. Kubrick cuts back and forth between Mandrake drawing on jazz to support his sane pleas at the base and Major Kong in a B-52 obsessively preparing to deploy his weapon while the morbidly patriotic "Battle Hymn of the Republic" intones. "Please sit down. And turn that thing off!", Ripper finally roars at Mandrake, refusing to process an alternative source of lyrical knowledge that makes a lie of his pure conviction and codes. "There will be only one course of action open: total commitment ... I thought I issued instructions for all radios on the base to be impounded."

Kubrick's dramatic intentions here are clear. In short, jazz provides a creative form of knowledge in the movie, the well-grounded and supple antidote to the one-dimensional, repetitive musical knowledge that is propelling the whole military industrial complex to catastrophe. Interviews with Kubrick and commentary by reviewers³¹ support an expansive interpretation of jazz as an apt analogy for the style of research methodologies that I celebrate here. For one thing, any good jazz player must master the primary forms and logics as well as techniques of music, beginning with multiple genres of Western classical music but often including all types of world music. These basic conventions provide the foundation on which the musician builds and "plays," in the classic sense explored by Piaget, allowing even that conventions may be knowingly discarded, challenged, and violated as well (e.g., atonal jazz). Second, a good jazz player must integrate multiple levels of knowledge at once, including chord structure, scales, harmonic logic, rhythm, tempo, and technique; blues-based jazz generally shifts these dimensions from which

players "take off" only rarely within a song, while other forms of jazz transition among these various dimensions continuously, often concurrently. To be an accomplished jazz player, one thus must not only master the fundamentals of form and routinely "cite" the canon by playing classic tunes or familiar licks recounted from earlier artists or standards, but one must experiment within an ever-expanding range of stylistic variations on elements of form and canonical themes. Finally, while some jazz players prefer to play solo, most prefer playing live in combos, for that is where the excitement of dynamic interaction, of exchanging styles and creative turns, takes place. Jazz traditions encourage individual players to engage and humbly honor other contributors, both those concurrently on the same stage and those many others identified with the broader historical jazz tradition. In sum, jazz is a well-grounded and highly disciplined mode of inventive, flexible, integrative performance developed through engagement with forms and techniques endorsed by a sophisticated interpretive community.

Jazz thus becomes my metaphor for sophisticated, creative, multi-dimensional, impure, even openly transgressive but still rigorous socio-legal methodology.³² It is the methodological temperament that best seems to fit the designs of those who imagine law and society scholarship as a *trans-disciplinary* aspiration. The law and society tradition is full of wonderful examples that represent ambitious efforts along these lines. I can quickly list a number of classic books that to a notable extent represent this tradition: Stuart Scheingold (1974, 1984) *The Politics of Rights* and *The Politics of Law and Order*; Jonathan Simon (1994) *Poor Discipline*; Yves Dezalay and Bryant Garth (1996) *Dealing in Virtue*; David Johnson (2001) *The Japanese Way of Justice*; Malcolm Feeley and Edward L. Rubin's (1998) *Judicial Policy Making and the Modern State*; Austin Sarat (2001) *When the State Kills*; Lynn Mather, Craig McEwen, and Richard Maiman (2001) *Divorce Lawyers at Work*; Gad Barzilai (2003) *Communities and Law*; Kitty Calavita's (2005) *Immigrants at the Margins*; Jon Gould (2005) *Speak No Evil*. Each of these studies not only draws on diverse types of data, but each integrates multiple levels of analysis (epistemologies) regarding power and subjectivity, at least implicitly paralleling the type of study to which Lukes and Gaventa point. Perhaps the most impressive example of all, in my view, is Sally Merry's (2000) majestic *Colonizing Hawai'i*. The book blends very sophisticated understandings of culture and colonialism into a complex analysis of power that seamlessly integrates instrumental agency, institutional structure, and constitutive understandings of subjectivity with an enormous variety of data, producing a richly innovative, insightful,

inspiring volume. Of course, all of these examples are books, and most are big books at that.³³ But multi-methodological study is possible within article-length format.³⁴ David Engel's widely known essay "The Oven Bird's Song" (1984) does it all, fusing attention to instrumental, institutional, and ideological dimensions of power into a single provocative essay, a classic in the field.³⁵

Engagement and Distance

Finally, I add a few words on classic issues regarding the tension between distance and engagement in our research. Traditional social science has highly valued distance, both geographic and cognitive, of scholars from their subjects. The idea is to promote data collection and interpretation that is independent of, and hopefully more sophisticated than, that possessed by the subjects whom we study. Methodology, and positivism in particular, is valued for playing a role in disciplining knowledge gathering and inferences, insulating the researcher from contaminating partiality or over-determination by presumptive normative or theoretical biases. Distance and disinterest are commonly equated with objectivity. There are many epistemological problems in this quest for an Archimedean point, including the fact that we researchers cannot ever escape the selective, biased lenses through which we see the world.³⁶ Equally problematic is that distance from subjects and their context removes researchers from access to local knowledge, from information and understandings that may be critical to making sense of social relations, while at the same time inviting ungrounded abstract theory to impute alien causal mechanisms.³⁷ Just how much should we trust the interpretations of a scholar who spends all her time poring over statistical data at a computer in an academic office, far removed from the lives, motivations, and actions of people she claims to be studying? Conversely, direct engagement with the subjects and context of study – say, through ethnography, participant observation, or other interview-intensive qualitative methods – promises access to local knowledge and subjects' worlds of meaning, but risks undermining independent analysis of subjects' motives or of contextual influences or implications to which the subjects are relatively unaware. Moreover, highly discretionary personal interactions of researchers and subjects permit a great deal of "loading" and fixing in data seeking and interpretation. In short, research that is "up close and personal" can be blinded by its own affinity with the expressed interests of subjects or the researcher's own personal causes.

My unremarkable point is that multi-dimensional methodological studies offer the possibility of balancing the advantages of both distance and engagement. While we should stop far short of expecting to produce a complete check and balance on limited knowledge, the effort to integrate different levels of analysis can be productive. One classic model of such study routinely begins with a large-N statistical portrait of certain patterns in correlation among variables, followed up by several in-depth case studies that add additional qualitative data regarding local meanings, practices, and contextual contingencies that are less amenable to standardized measures (see, for example, Ginsburg, 2003). Efforts to balance macro-, meso-, and micro-level analysis, or different dimensions of power as demonstrated by Lukes, represent other familiar strategies. In short, there are many ways that different epistemologies and techniques can be combined to diversify the standpoints of researchers, see through multiple lenses, and balance the goals of both distance and engagement.

I add two other less conventional arguments along this line. First, and perhaps most controversial, such multi-methodological approaches can be especially useful for scholars who self-consciously develop research agendas grounded in their own personal engagements and commitments to politics. In my view, one of the most welcome features of the law and society tradition has been a relative openness to research that aims to build on and advance political causes of particular disadvantaged or oppressed groups to win justice or increase social welfare. Indeed, the original thrust of LSA was to harness the many tools of social science to legal realism in ways that might increase the capacity of law to advance justice and the social good. Faith in social engineering through legal reform waned in the latter part of the twentieth century, but commitments to justice continued to drive many intellectual currents – critical legal studies, critical feminism, critical race theory, and more recently various global justice advocates, to name a few – that have long played a prominent role in LSA.³⁸ This type of overt merger of politics and scholarship has generally been accorded less approval in the more scientifically inclined disciplines, but it has provided a badge of honor for many socio-legal scholars, one of the reasons for discipline-weary scholars to seek refuge in LSA.³⁹

One reason why this tradition of more overt political engagement has produced highly respected research, I would suggest, follows precisely from the methodological diversity and creativity displayed in much law and society scholarship. Again, when multiple standpoints and types of data support a line of analysis, there is more reason for trust that the interpretive argument is not simply driven (or over-driven) by political values or

identifications and thus merits substantial respect even by those who do not share the commitments of the author. Indeed, multi-epistemological analyses are more likely to resist the often implicit, unacknowledged theoretical and political biases that attend each particular methodology alone (see Lukes, 2005, p. 63). Hence, I would propose that methodological jazz has contributed to the very best traditions of politically engaged scholarship seeking to win trust and credibility in the LSA tradition.

Second, and finally, effective political engagement relies on effective communication. One of the endemic problems for sophisticated academic analysts, whether employing single-epistemological or multi-epistemological approaches, is in translating our typically complex, data rich, and often esoteric treatises into terms that mass publics – from students to journalists to policy-makers to ordinary consumers – can understand. Indeed, our rich traditions of potentially relevant research often have remarkably little impact beyond our professional colleagues (Haltom & McCann, 2004). “(O)n the whole, social science’s technical accounts stay within the academy, unheard by the general public,” Tilly has observed, and I suspect the same is true for most critical scholarship in the humanities traditions as well (Tilly, 2006, p. 177). I thus echo Tilly’s recent exhortations for scholars to supplement their specialized academic studies with versions of “superior stories” that render more accessible and credible the core points and themes of our research for broader public consumption (pp. 175–180). This not only promises to increase our capacity as publicly engaged intellectuals to influence the world beyond, to enhance the “sociological imagination” of our fellow citizens and to challenge the madness that often triumphs in other insulated regions of specialized activity such as satirized in *Dr. Strangelove*. But injecting that “human element” of common sense, as General Turgidson called it, also provides another check on the obsessions for methodological purity and pull of arcane fads that frequently drive academic life. If we scholars cannot make our findings sound plausible in ordinary language, as accessible and lyrical as the jazz we hear on the radio, it might just mean that we have, in Shapiro’s apt words, taken “flight from reality” (2005).

CONCLUSION

Divisions over preferred methodologies have grown in the LSA during recent years, but they have produced at most a temperate Cold War. Although signs of withdrawal into insular organizational activity are palpable, patriotic gore produced by overt rivalries has been limited.

Moreover, I happily note that I have encountered only a few colleagues in either camp whose methodological fetishes remind me of Ripper, Turgidson, or the mad scientist Dr. Strangelove. Indeed, even though I cannot claim to know what goes on in these methodologically specialized conferences and related exchanges, I would not be surprised to find only meager evidence supporting my concerns. To be honest, I have encountered many splendid examples of scholarship from each of the different methodological camps in the recent period. Likewise, while there may be some relationship between the increased attention to technical purity and withering of overt political discourse at LSA meetings that troubles some of us, the latter trend probably reflects more the greater size, diversity, and anonymity of association membership, the larger national context of political malaise, generational change, and other such factors. At the same time, the sounds of intellectual jazz can be heard everywhere, especially in the Collaborative Research Networks, the International Research Collaboratives, and other less formal groups organized around substantive themes. As I see it, increasing levels of comparative, transnational, and global study have made the improvisational approach endorsed here all the more relevant, the methodological equivalent of world music. In fact, increased exchanges from scholars and activists from around the world are making such a posture not only desirable, but almost unavoidable. And, finally, I take it as a good sign that LSA officers are unlikely to insist that I post on this chapter the same type of disclaimer that the U.S. Air Force imposed on Kubrick’s apocalyptic film.⁴⁰

But I do nevertheless find in recent trends reason for reflection. The concern is not, I want to underline, the individual choices of scholars about the methodologies that they employ in their research and teaching. I have no interest in telling other individuals how to conduct their research, much less in arguing that any one mode is superior to another. Indeed, that is precisely the type of inclination that I am challenging. Intellectual jazz is not the best style for everyone or every project; many scholars continue to produce excellent research by reliance on traditional methodological and epistemological frameworks. My aim, then, is not individual conversion so much as revitalization of respect for some of the most distinctive traditions and commitments in the LSA. I wonder whether the development of separate methodological sub-groups will: endorse misleading analytical categories associated with methodology; reinforce the perception that scholars must choose from two (or more) opposing methodological traditions and align themselves with either of two (or possibly more) intellectual tribes; discourage scholars from appreciating the many independent, supple,

creative approaches to research that have been advanced by the LSA legacy; and, perhaps most important, divert attention away from the important substantive questions we ask and novel themes we study, such as those concerning unequal power and the possibilities of social justice. These developments could, in short, change the character and influence of LSA as a uniquely creative, diverse, even disruptive intellectual community in ways that many of us would, and should, lament. This impact probably would be most felt by graduate students and junior scholars who look to LSA as a source of intellectual guidance and professional support for independent research, but it no doubt would also be manifest in many other spheres of professional decision-making and practical power.

So how might we imagine the appropriate response? The standard response is an appeal to increased tolerance for diversity in methodologies. This is the modest “big tent” vision of *multi-disciplinarity*, familiar in LSA presidential speeches. The problem is that this posture hardly discourages, and actually would encourage, methodological insularity, with different players choosing to perform in separate rings largely for their own specialized audiences. It does little to promote dialogue and innovation. A second response might be the “stronger” vision of *interdisciplinarity* encouraged by David Engel, wherein we socio-legal scholars commit ourselves to respecting and valuing the interdependency that we all share among our differential methodological approaches. In this mode, we might each continue to go our separate ways, but we would view our own projects more humbly and understand the importance of learning from others and developing our work in ways that build on and speak to scholars whose research is cast in very different forms. This approach greatly values serious dialogue, and I have heartily endorsed this prescription.

But I have also gone further in suggesting yet a third response, one that affirmatively celebrates experimentation with the complex rhythms of intellectual jazz improvisation in our scholarship. This posture urges us to transcend reverence for familiar methodological models and fashion new synthetic approaches that are highly innovative in form as well as in the substantive questions we ask. Such a spirit can be found in much previous socio-legal scholarship, and it constitutes one of the most exciting dimensions of the LSA tradition. It seems essential to the aspiration for trans-disciplinarity in law and society research, especially in an increasingly globalized context.⁴¹ We have our own versions of Miles, Monk, Trane, and Fleck, and my hope is that their inspiration is not lost amidst the patriotic rhythms that urge methodological alliance or purity. Following that muse offers one way by which we might together learn to stop worrying and love methodology.

NOTES

1. The word “nuclear” was deleted at the point of the ellipses, and “methodological” is inserted in its place, thus appropriating the movie text to make the point of the chapter.

2. Bela Fleck is the leader of the phenomenally creative, eclectic, boundary-breaking jazz quartet, The Flecktones, who have been nominated for over twenty Grammys and won in eight different categories.

3. I do not include a third methodological camp – that of rational choice, game theory, and related methods grounded in microeconomics – in this discussion. This is in part to contain the length of my discussion, but mostly because this research agenda has been rather less prominent in LSA than in the disciplines.

4. The familiar argument that recent tensions reflect differences *among* the disciplines gathered under the LSA tent thus are misleading. Not only are these methodological tensions rampant *within* many social science disciplines, but much of the recent organizing around methodology has been led by law school scholars largely outside the social sciences and humanities disciplines, while yet other leaders have actually bolted from their home disciplines to declare methodological conversion.

5. Some may object that these new associations are not officially, intentionally, or significantly connected to LSA. But these points do not contradict my premise that these developments, whatever their intent, will surely affect LSA, quite possibly in ways that I enumerate at the end of the chapter.

6. For the Association for the Study of Law, Culture, and the Humanities, see [http://www.utexas.edu/cola/conferences/lch/index.php?path\[0\]=main](http://www.utexas.edu/cola/conferences/lch/index.php?path[0]=main). The other is the Empirical Legal Studies group. <http://www.elsblog.org/>. Each has its own website, conferences, and journal.

7. Some non-positivist cultural analysts go further in expressing disdain for methodology itself, as if the attempt to be careful, rigorous, systematic, disciplined, and coherent itself is mad. I address this later.

8. Consider Pitkin (1972), “What social scientists do is not, of course, any concept-free observation of events among human beings, but an attempt to fiddle with the concepts we already have in such a way to make them scientifically usable. That has meant the invention of new, technical concepts, the attempt to confine work to those concepts which seem “realistic” or “factual,” the use of “operational definitions,” and the attempt to redefine familiar concepts in such a way to make them realistic, factual, or scientific. The effort has not been spectacularly successful ... Technical terms still reflect our conceptual system ... Terms that appear realistic or factual turn out to be grammatically as complex as any “value word” ... And the attempt to redefine familiar terms to make them scientific is subject to vicissitudes of its own” (p. 275).

9. Fay’s compelling analysis (1987) shows how logical positivism is no less political and normative than positions grounded in critical challenge to existing institutional structures (see also Shapiro, 2005).

10. This is how President Mandrake explains the deployment of the bomb to Dmitri Kisof, the Soviet premier.

11. In the terms of Lukes (1974) discussed below, my analysis consciously deemphasizes the first dimension of instrumental power, and focuses far more on

second and third dimensions of power in the LSA academic community. In short, this chapter is primarily about professional ideology and organizational practice. The overall chapter also balances analytical with normative concerns, although I remain perplexed by the conventional distinctions implied by use of these terms in much professional discourse.

12. Many readers of early essay drafts urged me to include a sociological analysis of how methodological claims shape and express struggles over unequal professional power in and beyond LSA. This endeavor is sensible, potentially valuable, and tempting. However, I have concluded that this approach does not fit or advance, and may actually obfuscate, my specific concerns in this chapter.

13. My comment invokes one of the most famous funny lines in the film: "Gentlemen, you can't fight in here. This is the War Room!"

14. My approach thus reverses Kubrick's in one way. Where he focused the screenplay on satirizing mad individuals and practices while downplaying sane alternatives, I avoid lampooning any specific persons but do point to examples of works that might serve as antidotes to ideological obsessions with methodology.

15. The "technology required is easily within the means of even the smallest nuclear power. It requires only the will to do so," says Dr. Strangelove about the inviting fetishism of technical power.

16. The debate between Rosenberg and me arguably demonstrated the simplistic obsessions and purist assumptions that I critique here. Rosenberg strongly defended causal analysis, while I rejected it in favor of process-based views of power, implicitly merging second and third dimensional approaches of Lukes. However, our dichotomous framings of our approaches obscured how we each integrate different levels of power analysis and diverse methodological premises in our studies. In short, we each were guilty of a sort of purist posturing that magnified some differences in our actual studies but obscured others.

17. Pitkin (1972) is useful on this point in discussing ordinary language theory. "Our concepts of action require explanation in terms of motive and reasons rather than causes ..." (p. 253).

18. As Shapiro (2005) notes, "studying the evolution of ideologies while ignoring causal questions is not possible. We should be unsurprised, therefore, to discover ... substantive work (that) is laced with implicit causal claims and assumptions" (p. 35). This claim about causality seems overdrawn, in my view, but the general thrust of the statement merits attention.

19. See Michael Pollan's brilliant editorial (2007) demonstrating how the "ideology of nutritionism" fueling contemporary American obsessions with obesity isolates individual nutritional elements at the expense of examining their interactions and more holistic understandings of diets and health. His target was normal natural science, but the argument has implications for any one-dimensional approach to empirical inquiry and analysis.

20. "The greatest message of the film is in the laughs. You know, it's true. The most realistic things are the funniest," Kubrick related in an interview (Tabriz, 2005).

21. The attentive reader will note that I have been using the term "interdisciplinary" in relatively unproblematic ways up to this point. I will complicate this characterization in subsequent pages.

22. In this sense, it is through the public act of representing our methodologies that we discipline ourselves. The very anticipation of having to explain and defend

our processes of inquiry in order to be considered trustworthy imposes structure and method on the research and interpretative process.

23. I am quite familiar with the claim of some positivists that fidelity to sound methodological principles provides an alternative to having to trust the scholar. This strikes me as an untenable premise of the natural science model. That interpretive scholars sometimes seem equally comfortable assuming that trust of readers is given and need not be won by the author's rigorous attention to method strikes me as equally untenable, however. "Proof," the cerebral but dramatic play by David Auburn (and movie by John Madden), is an interesting meditation on these and other related themes. Not only does the play draw clear links between methodological purity and madness, but it raises questions about whether elegant techniques can either succeed in analyzing human relations or eliminate the need for trust among scholars.

24. Ian Shapiro offers this advice (pp. 197–198): "One of the worst features of methodological disagreement ... is the propensity for protagonists to compare the inadequacies of one method with the adequacies of a second, and then declare the first to be wanting. Since all methods have limitations and none should be expected to be serviceable for all purposes, this is little more than a shell game. If a method can do some things well that are worth doing, that is a sufficient justification for investing some research resources in it. With methods, as with people: if you only focus on their limitations you will always be disappointed."

25. In *Dr. Strangelove*, the two figures who seem most sane and reasonable display a general suspicion of technological obsession and humility about the difficulties of understanding and communicating. That both of them, RAF Captain Lionel Mandrake and President Merkin Muffley, are clearly identified as feminine (consider their names), mild-mannered, and impotent "perverts" is an important part of the sexual and gendered logic of the film. Such portrayals again should provide scholars some reason for introspection about their own languages and associations regarding methodological prowess.

26. I assume familiarity with the distinctions between disciplinary, multi-disciplinary, interdisciplinary, and trans-disciplinary modes of study (see Van den Besselaar & Heimerikis, 2001).

27. "Dimensions of power and powerlessness may be viewed as interrelated and accumulative in nature, such that each dimension serves to re-enforce the strength of the other" (see Gaventa, 1980, pp. 20–22, 256).

28. This virtue is often equated with the practice of "triangulation" (see McCann, 1994, pp. 16–17), although I have become disenchanted with the mechanical natural science logic of that analogy.

29. "We'll meet again, don't know where, don't know when/But I know we'll meet again, some sunny day ..."

30. On the many potentially relevant meanings of this song, see <http://lcweb2.loc.gov/cocoon/ihas/loc.natlib.ihas.200000024/default.html> and http://en.wikipedia.org/wiki/When_Johnny_Comes_Marching_Home.

31. Kubrick was a jazz drummer when young, specialized in photographing jazz players in his initial career, and remained a jazz enthusiast throughout life. He is well known for his creative use of both classical and jazz music to advance substantive themes in all of his movies. Moreover, many commentators have likened the production of the movie *Dr. Strangelove* itself to improvisational jazz in the ways

that I suggest here, an analogy that Kubrick himself encouraged in his repeated suggestion that making movies is more like making music than other artistic endeavors. Consider, for example, the parallels to my analysis in an extended essay on Kubrick by Adam Uhlich (2002): "The jazz photos show a side of Kubrick that is less discussed, the spontaneous, musical side ... A photo of a trumpet player feels three dimensional, as if the instrument and its master reach beyond the lens and into the very lives of the viewer. You can hear the music and feel the movement in this still frame, and the sense of life being lived (as opposed to the sense of life *having been* lived in the 'pose' photographs) is extraordinary. This image, and the many others like it, presuppose the musical interludes in Kubrick's films that recreate these feelings of presence. It is in these moments of musicality, of the physical and psychological dance of characters and setting, where Kubrick's movies come most alive." It hardly seems a stretch to argue that Kubrick's own cinematic jazz aimed to offer an antidote to the narrow methodical madness he perceived in the modern military industrial complex.

32. For a parallel discussion of the jazz metaphor, see Silbey (2003). Howard Becker (1998) also invokes jazz in his wonderful book on research techniques and philosophy, *Tricks of the Trade*.

33. As far as I know, most of these scholars have played little role in the recent methodological Cold War, a fact that underlines my basic point.

34. A parallel objection can be raised that this challenge raises a high bar for which many scholars have inadequate training. But jazz can be learned while very young, after learning just some basic chords and scales; my neighborhood piano teacher has 8-year olds playing jazz within a couple of months of starting lessons. No one begins as a master jazz player; rather, one can learn elementary jazz with the basics and continue to learn and experiment with new repertoires and levels of sophistication throughout life. That is what makes it fun, a fulfilling art as well as a science.

35. The book that I co-authored with William Haltom, *Distorting the Law* (2004), explicitly develops a three-dimensional approach to power closely paralleling Lukes and Gaventa. My earlier book, *Rights at Work*, implicitly but very consciously builds on these same models, although in less playful ways. *Java Jive* (2002), which I also co-wrote with Haltom, also integrates the three-dimensional approach of the book into a single essay.

36. "This much, however, seems clear: at least our talk about the world is conventionally delimited. Whether or not what we see is objectively there, whether or not there is any objective reality to see, what we say or think discursively about it must be said or thought in language. And that means in saying it, we must introduce assumptions and implications built into our language ... This strongly suggests, finally, that the interdependence of words and the world, the determining and limiting role of concepts on what is perceived as reality, will generally be most intensive with respect to human, social, cultural, and political things." Moreover, "our conceptual system depends both on what we have learned to say and on what we have experienced, and both these dimensions expand as we learn and grow." (Pitkin, 1972, pp. 111, 114-115).

37. Distance from research sites and subjects is implicated in one of the most common problems in quantitative research – the reliance on poor statistical indicators to serve as proxies for independent causal variables.

38. My claim here is not that scholars in all of these movements produced rigorous, well-designed empirical research, but they did encourage socio-legal research framed by novel questions and openly committed to goals of social justice.

39. A fair number of socio-legal scholars have increasingly lamented the retreat from more direct political engagement, both individually and collectively, in LSA over recent decades. Whether this alleged retreat is at all related to the increase in growing obsessions with methodological purity would be an interesting thesis worth considering, but space does not permit it here.

40. "It is the stated position of the United States Air Force that their safeguards would prevent the occurrence of such events as are depicted in this film. Furthermore, it should be noted that none of the characters portrayed in this film are meant to represent any real persons living or dead."

41. The applicability of these ideas for comparative and transnational research deserves far more extensive attention than I can devote here. Indeed, if space permitted, I would add much more about comparative research design grounded in extensive local knowledge of different social contexts (see Merry, 2006).

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