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Book Review: The Calligraphic State: Conceptualizing the Study of Society Through Law

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BOOK REVIEW

Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society*. University of California Press, 1993, ISBN: 0-520-20515-4.

The work of anthropologists, lawyers, political scientists and sociologists within the field of law and society can, by and large, be characterized as falling into one of two categories: the study of “law in society” and the study of “society through law.”¹ Studying society through law cannot take place, however, without conceiving of law’s relationship to ordinary social life. Whereas early sociologists, most prominently Durkheim, posited a simple transition between the analysis of law and claims about a society’s social form, over the last century, scholars have come to recognize a host of epistemological problems specific to the study of society through law.²

It was Marxist scholars who first questioned the relationship of law and society. Marxist scholars challenged the Durkheimian view by arguing that law ideologically masked rather than reflecting the true character of social life.³ Gaps between law and society were no longer understood as a problem of delay in legal development. It was argued instead that law organizes, extends and legitimates unequal social relations whether or not it is explicitly an instrument created by and for the owners of the means of production.⁴ Evgeny Pashukanis, for example, argued that bourgeois law, structured around the universal legal subject equal before the law, in treating “all as equals” disguises “the structures of real inequality which it maintains.”⁵ Furthermore, the universal legal subject was historically defined as a property-owner, creating an additional metonymic

¹ R. Cotterrell, *The Sociology of Law: An Introduction* (London: Butterworths, 1992), 8.

² See E. Durkheim, *The Division of Labor in Society* (New York: The Free Press, 1933; first published 1893); S. Humphreys, “Law as Discourse”, *History and Anthropology* 1 (1985), 241–264. Cf. D. Nelken, “Review Essay: Beyond the Study of ‘Law and Society’? Henry’s *Private Justice* and O’Hagan’s *The End of Law?*”, *American Bar Foundation Research Journal* 11 (1986), 323–338.

³ Cf. Humphreys, *supra* n. 2; Cotterrell, *supra* n. 1, at 106, 109.

⁴ *Supra* n. 1, at 110–114.

⁵ *Supra* n. 1, at 117.



link between the bourgeois legal subject and the commodity form that structures capitalist exchange.

Marxist scholarship influenced a number of sociolegal scholars who, drawing on Althusser's "materialization" of ideology, began to question the implicit distinction, posited in earlier work, between law and society. As Marxist scholarship moved away from an understanding of ideology as false-consciousness toward one in which ideology is that which structures our action, some sociolegal scholars began to argue that legal ideology, embodied in the practices of actors, is a force in the reproduction of social norms, boundaries and practices – that is, a force in the reproduction of 'society.'⁶ This emphasis on the way that "law enters into the production and reproduction of society" soon led to recognition that "the idea of 'society' necessarily includes law."⁷ Many scholars went even further, reintroducing pluralist approaches to law by moving sociolegal studies beyond a view of law as litigation and the common law of appellate courts.⁸

Thus, the project of studying society through law has been complicated by the introduction of a host of theoretical nuances regarding law, society and their relationship. As a study that successfully uses legal phenomena to paint a picture of a particular Muslim society and its recent transformations, *The Calligraphic State* provides an interesting example of what the study of society through legal phenomena might look like once these theoretical complications have been digested.⁹

The Calligraphic State is not about Islamic or national law in Yemen or its relationship to society per se. It is instead a historical account of discursive transformations in the Yemeni state that analyzes *shari'a* jurisprudence as well as legal institutions in a sophisticated way to enable the account of society to emerge. In his study, Brinkley Messick employs a number of strategies that digest the theoretical advances discussed above. In the first place, he reduces the scale of 'society,' focusing on a study of only certain aspects of social formation. More importantly, he is sensitive to the institutional and epistemic particularities of the social, historical and

⁶ C. Harrington and B. Yngvesson, "Interpretive Sociolegal Research", *Law and Social Inquiry* 15 (1990), 135–148, 140–143. See also J. Bringham, *The Constitution of Interests: Beyond the Politics of Rights* (New York: New York University Press, 1996).

⁷ Nelken, *supra* n. 2, at 338, 325.

⁸ E.g. B. Yngvesson, "Inventing Law in Local Settings", *Yale Law Journal* 98 (1989), 1689–1709; S.E. Merry, "Legal Pluralism", *Law and Society Review* 22 (1988), 869–896; B. Yngvesson, "Making Law at the Doorway: The Clerk, the Court, and the Construction of Community in a New England Town", *Law and Society Review* 22 (1988), 409–448; Harrington and Yngvesson, *supra* n. 6; Bringham, *supra* n. 6.

⁹ B. Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley, Los Angeles and London: University of California Press, 1993).

geographic context under examination and how these have changed over time. He analyzes law as only one of a number of important social institutions that must be considered in conjunction if one wishes to understand a particular society. He addresses the way law is implicated in the political and power structure. And finally, he consistently moves us away from a static structuralist account, paying close attention to the historical and political struggles at the heart of the social transformations under examination. As such *The Calligraphic State* provides an exemplar of a way to usefully use legal phenomena to shed light on society.

Before I elaborate each of these moves, I wish to reiterate that the issue at hand is how the study of jurisprudence as well as legal practices can shed light on the fundamental workings of a society. This problem must be distinguished from the slightly different issue of what sorts of problems case records and materials present for an analysis of society.¹⁰ It must also be distinguished from a host of other cautions and precepts associated with studies that focus solely on law and its transformations.¹¹

As mentioned earlier *The Calligraphic State* seeks only to paint a picture of a specific segment of social life in Yemen – namely transformations in the ‘rules of formation’ of texts and in their turn of authority.¹² Insofar as his project is about the place of writing in governance – what he calls a ‘textual polity’¹³ – Messick explicitly acknowledges that his work is not an account of the full-workings of power in Yemeni society: “neither the patrimonial-bureaucratic aspects of state authority nor the agrarian context of the associated production system are given the full treatment they deserve.”¹⁴ This highlights an implicit critique of the earlier studies of law and society insofar as it has taken apart the notion that society and its mechanisms of social cohesion form a singular and coherent entity to be studied in one shot.

In a similar vein, Messick is careful not to take the meaning, social position and boundaries of “law” as a given. Extending Humphreys’ assertion that law is “a complex of ideas and institutions in which demarcation lines vary over time and between one group and another,”¹⁵ Messick writes:

¹⁰ E. Mertz, “Legal Language: Pragmatics, Poetics, and Social Power”, *Annual Review of Anthropology* 23 (1994), 435–455; B. Santos, “Law: A Map of Misreading. Toward a Postmodern Conception of Law”, *British Journal of Law and Society* 14/3 (1987), 279–302.

¹¹ Cotterrell, *supra* n. 1; Humphreys, *supra* n. 2; Nelkin, *supra* n. 2.

¹² Messick, *supra* n. 9, at 1–2.

¹³ *Supra* n. 9, at 6.

¹⁴ *Supra* n. 9, at 1.

¹⁵ Humphreys, *supra* n. 2, at 251.

Although legal phenomena are a major concern of the following chapters, caution must be attached to the conventional gloss for the shari'a as "Islamic law." The shari'a is better characterized ... as a type of "total" discourse, wherein "all kinds of institutions find simultaneous expression: religious, legal, moral and economic." "Political" should be added to this list, for the shari'a also provided the basic idiom of prenationalist political expression.¹⁶

Central to Messick's work, is the argument that the categorizations and relations between law and other institutions studied by scholars of western societies do not translate into the Yemeni context until the demise of the calligraphic state. By moving "away from an understanding framed in terms of the Western standard for law, which has obscured the shari'a's different range of social importance and its distinctive modes of interpretive dynamism," Messick reminds sociolegal scholars of society that they must always consider the local categorizations and interrelations of social institutions – law among them.¹⁷

This attention to the internal configurations of knowledge and social institutions leads to a third shift in the study of society through law. Messick breaks with a tradition that relies solely on legal phenomena to understand society. Messick is interested in legal phenomena as one of many central social institutions, particularly education. Jurisprudence and legal institutions are studied only in as much detail as other social institutions (education and politics).¹⁸ Thus, the project of giving an account of the micro-workings of a particular social order has moved from a sole interest in an account of legal forms to a tracking "[f]rom domain to domain," of "the quiet redundancies of discursive routines."¹⁹ It is only as these are seen to be "mutually confirming" that one is able to make broader claims about the specific social process in question.²⁰

Following on the insights of Marxist and other conflict-focused scholars, Messick also draws attention to power relations implicit in legal discourse and practice. In the chapter on *Shari'a* Society, Messick highlights the tensions internal to the *Shari'a* state.²¹ He points out that Islam, and more specifically *shari'a* discourse, values highly an egalitarian ideal, with "an 'insistence that all men [are] on the same level before God.'" ²² This stance is at odds with the fact that in a society where knowledge

¹⁶ *Supra* n. 9, at 3.

¹⁷ *Supra* n. 9, at 4.

¹⁸ This is especially important where the demarcation between religious, legal, moral and economic does not make much sense. *Shari'a*, although it is often glossed as referring to law, in fact encompasses all four.

¹⁹ *Supra* n. 9, at 252.

²⁰ *Supra* n. 9, at 252.

²¹ *Supra* n. 9, at 152–166.

²² *Supra* n. 9, at 154.

was essential to power, “knowledge was neither universally accessible nor evenly distributed.”²³ Elsewhere, Messick argues that the strong egalitarian dimension of the jurisprudence of transactions in which “[b]eing an adult and of sound mind are all that are required of an individual to enter into a binding shari‘a contract” should not be interpreted simply as an instance of “egalitarian-individualistic principles.”²⁴ Rather, this ideology indirectly supported “actual inequalities between the parties engaged in the contract.”²⁵ Later still, in analyzing the “absence of any requirement bearing on knowledge or instruction” such that anyone who is Muslim, non-slave, discerning, of good character and serious can be a witness, Messick looks to the way in which decisions about who is of “irreproachable character” are determined.²⁶ When it turns out that it is “the *mismatch* of social position and occupation, the lack of conformity of background with work activity that cause a question to be posed about an individual’s character,” Messick has shown us a hierarchical reality emerging again out of ostensibly egalitarian jurisprudence.²⁷ In these ways, legal doctrines are not simply interpreted to reflect the social world as it is. Rather legal doctrines are revealed to be enmeshed in the social world along with the politics of domination.

Finally, *The Calligraphic State* highlights the importance of seeing all social institutions as products of specific historical processes. Consistently, we find practices situated historically with attention to political struggles. For instance, in discussing the beginnings of the codification of the *shari‘a*, Messick discusses the political and historical pressures facing the Ottoman Empire.²⁸ In these ways, Messick reminds us that we must come “to understand the specific historical experience and processes out of which contemporary ideologies and configurations of power have emerged” and that “[s]tructures cannot be understood without the events and processes which produced them.”²⁹

The Calligraphic State then is one more image of what the study of society through law might look like once one has broken with a law and society framework grounded in a correspondence theory of law as a reflection of society. A number of strategies for dealing with the theoretical advances in socio-legal studies have been offered. The study suggests that “society” must be further specified. Law, in turn, becomes one among

²³ *Supra* n. 9, at 154.

²⁴ *Supra* n. 9, at 159.

²⁵ *Supra* n. 9, at 160.

²⁶ *Supra* n. 9, at 161.

²⁷ *Supra* n. 9, at 162.

²⁸ *Supra* n. 9, at 54–72.

²⁹ Humphreys, *supra* n. 2, at 257, 259.

many instances of a specified social process. Law no longer has the privileged status it once had. It is rather one instance among many that must be studied to gain insight into a particular social process. Scholars must study the intersections of institutions in order to make sense of social processes. *The Calligraphic State* posits that contextualization, in terms both of defining institutions and their relationships and of understanding the development of particular institutional configurations, is essential to the study of society.

At the same time, Messick breaks with traditional sociolegal concerns by extensively examining oral and written practices. For example, insofar as his project is about the place of writing in governance, Messick pays attention to the mechanics of discursive practices in ways that are unusual for much law and society scholarship. The final chapter of *The Calligraphic State* presents a description of the 'new age of writing' that arose with the bureaucratic national state.³⁰ In it, Messick documents the changes in the template of written texts, from a spiral to a straight ruled design.

The change from spiral to straight ruled texts, he argues, signifies a change in the basic epistemological structure of documents and the principle of their authority.³¹ A basic change in state-form, with an underlying change in the basis of authority, manifested itself in a change in the form of writing.³² Such transformations run deeper than physical appearance. The very meaning of particular writings changed. For example, in *shari'a* society, handwritten copies of a manuscript were authoritative not because they were replicas of the original but because they were copied by persons whose prestige and dignity ensured their authenticity.³³ By contrast in the bureaucratic state, it is the verbatim accuracy, made possible by technology, that makes a copy valuable. *The Calligraphic State* is thus both a constructive synthesis of, and decisive break from, where law and society has been.

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³⁰ *Supra* n. 9, at 231–250.

³¹ *Supra* n. 9, at 234.

³² *Supra* n. 9, at 236.

³³ *Supra* n. 9, at 240–241.