Introduction: Law at the Intersection of History and Theory

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Like culture and society, law often serves as the subject matter or object of history. Historians working from outside law recognize that formal or positive human-made laws and legal institutions themselves turn the stuff of the world into objects, subjecting them to legal regulation and control. Even when they take to heart Michel Foucault's displacement of the centrality of the subject as agent and as cause though, historians tend to link law—whether as sovereign, disciplinary, or governmental power—to intellectual history or to politics. They trace the promulgation and enforcement of law and examine legal relations of oppression and resistance to show how law simultaneously acts and is acted upon. Their histories sometimes seem oblivious to the ways in which law as a discipline also writes its own histories, however. Historians working in this framework thereby miss the ways in which law makes history its object and challenges how historywould approach law and make law its object.

There are, and of course have been, many kinds of law, with their own vocabularies and arrangements, sometimes recognizable, sometimes translatable, sometimes not, to one another. Within the academy as well as in public opinion, twentieth-century Western law, whether celebrated or deplored, has largely appeared to consist of formal statutes and rules of judicial opinions of nation-states. Thus, in the United States, we have histories of constitutional law and of the development of the Bill of Rights; in Europe, of the spread of Roman law. Empirically oriented "law and society" scholars, whose sociological realism dates back to turn-of-the-century challenges to the formalism and false ideologies of the legal academy, have generally criticized such official or positive laws and their insider histories. Instead they offer accounts of "law in action," or of the power and behavior of officials, and of the development of private law and of policing and punishment. Conventional twentieth-century disputes between the legal academy's "law on the books" and socio-legal scholars' "law in action" have given short shrift

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to the customs, religious laws, and natural laws of other times and places, and even to non-domestic international or interstate law.

During the past twenty years or so, however, new legal histories have emerged. The articles that follow exemplify just such work. Rather than seeking to condemn or correct the old law (as many critical legal studies still strive to do), or to establish new laws at the margins or edges of positive law, these legal histories move—like the tides—in and out of a littoral zone of law and non-law, alternately coming into contact with official law and drawing back from it, as they thematize and rethink the ways in which both law and history are told. Situated at moments inside and outside the fields of both law and history, they deploy and critique the vocabularies and conventions of more mainstream legal, socio-legal, and legal historical scholarship.

In the issue's opening essay, for instance, Martti Koskenniemi shows how *ius gentium,* or the "law of nations" (which, as Samera Esmeir shows in her closing essay, has come to be associated with contemporary "international" law), migrated between the thirteenth and eighteenth century across different academic disciplines. These disciplines included competing faculties of theology, as well as philosophy and law. The disciplines and the debates about sovereignty and the territorial powers of earthly rulers that mattered to their practitioners, Koskenniemi argues, structured not only the subject matter and archive of the law of nations, but also the authority of legal knowledge in ways that standard international law histories have not acknowledged. Shai Lavi turns to religious law, and in particular to Jewish dietary laws and laws of ritual slaughter, to discuss the bond that is law. His study in historical jurisprudence shows the limits of conceiving of that bond in any purely sociological terms that would prioritize relations of persons—or human communities—to one another. Lavi's discussion of law incorporates the intertwining human obligations to animals and to God that have both marked boundaries between Jewish, Christian, and Muslim communities and allowed those boundaries to be crossed. K-Sue Park's interrogation of the U.S. government's promises of compensation for damage or loss to European settlers filing Indian depredation claims during the long nineteenth century moves between two histories: the history of those who enacted dispossession and that of those who suffered from it. Her analysis not only complicates public-private distinctions by explaining how law incited private violence against indigenous peoples under the cover of negotiated peace, but also reveals a heretofore unrecognized but foundational

pre-history to widely accepted U.S. histories of torts, property rights, and social insurance. Finally, Samera Esmeir shows how the concept of the "international," which is so important to modern politics and law, developed out of a 1789 discussion of law in which Bentham coined the word. She traces the way that the "international" came to stand in for a Eurocentric world that was conceived as a horizontal surface divided into territorial states and eventually became interchangeable with it. Offering a critique of the way in which, today, one must be part of an international world, Esmeir explores two very different nineteenth-century "itineraries" of the international, seeking in the responses of Ottoman Empire jurists and in the aspirations of Marxist socialism possibilities of thinking beyond the current political impasse.

Together these articles suggest possibilities of doing legal history and legal theory differently. They argue for the relevance of law and legal histories to particular world histories, to intellectual histories and histories of politics, religion, imperial conquest, and global imaginaries, as well as to legal theory, sociological theory, tort law theory, and political theory and economy—and to their histories. Just as important as their contributions to such histories, though, is the way in which, as specifically legal histories, these particular articles work both inside and outside the law. They reveal unexpected aspects and journeys of the stories and terms grounding the historical scholarship that has taken law as its object. They complicate and offer alternatives to taken-for-granted understandings of what law is and has been: neither the authoritative oppressive laws of a state nor a straightforward object of analysis, but rather a dynamic field of knowledge and practice, generating and dependent upon its own irreducible histories.