

Socio-Legal Ethnography

JOHN FLOOD

We cannot think of any object apart from the possibility of its connection with other things' (Wittgenstein)

A. PREMISES

ETHNOGRAPHY TAKES US back to our roots where social interaction is at the base of our research. Hobbes talked of the problem of order as the most basic and this, in essence, is what we study. Many research methods have been devised to cope with the problems of social research—social surveys, observation, interviewing, social experiments—but only one gives us insight into the richness of social life. Ethnography makes us simultaneously stand inside and outside the *mise en scène* as we research. It is both a literary and scientific endeavour without privileging one over the other.

I make no apology for starting this essay in such a bald vein. But part of the reason for my so doing is that contemporary methodology has suffered a diminution of scale. For much of the time the empirical is ignored for the benefit of the abstract. The abstract becomes a palimpsest on which anything can be inscribed and argued about without recourse to social interaction. Too often the research process is truncated so the 'essential' work of theorising can be undertaken. Methodology needs to be brought back into the mainstream as an activity that is seen as central to the research enterprise.¹ My argument is not against theory itself, but rather one where theory is to be viewed as part of the research process, not its goal nor necessarily its starting point. Even the hyper-theorists such as Levi-Strauss and Bourdieu did fieldwork in Brazil and Algeria, respectively, before retreating to the Collège de France.

¹ The effects of this can be seen in the efforts of research funders to attempt to increase the future numbers of trained researchers. In their eyes there will soon be a research deficit.

Ethnography has about it an anarchic atmosphere that sidesteps system building. It is contextual, dynamic, reflexive, that is, it is open to all sorts of stimuli. This is not to say that ethnography cannot produce systematic results, but it is not overly concerned with questions of validity and reliability in the conventional way, say, that quantitative approaches are. The research process for ethnography is different from others: it is tentative, multi-textured, open-ended and discursive. It starts from a point of learning and enquiry that recognises we know little rather than supposing a state of knowledge which is subject to *ex post facto* ratification.

Systems theorists who see the world as a series of texts will find ethnography an uncomfortable method. The blinders imposed by the systems approach are desensitising whereas the core of ethnography is to be alert and attentive to everything around you not just particular segments of theoretical reality.

Law, as a topic for research, raises exciting questions in this context. It is situated at the intersection of life and theory. The problem is that most lawyers do not realise it. For them life is constructed out of the narratives told by judges, some of whom occasionally have a literary approach, as did Denning. These narratives are proxies for the real world. It took me some time before I realised that the worlds constructed by judges were often illusory. For example, as students we religiously learn about the snail in the ginger beer bottle and learn to control our gagging reflexes, but in fact we do not know if that snail existed or not.² As heuristic devices, law reports have utility; as devices for engineering social action, they are disturbing. The key for system theorists is that law appears to be a system as a result of the ways it is constructed by its practitioners. Judges and lawyers endow law with an authority that it cannot sustain under examination, especially from the ethnographer.

In my guise as a first-year law student I encountered this difference with drama. One of my teachers, Michael Zander, was fond of engaging his students in his research projects. We did not always know what we were doing or what the repercussions of what we were doing would be, but we enjoyed the immediacy and the action. For example, he decided to find out if police stations had all the necessary information on hand for those brought into custody. This was in the 1970s. The English Legal System class was organised to fan out through London and enter as many police stations as possible at roughly the same time and ask to see this information. Since no one had warned the police stations we were coming, the desk sergeants were shocked and not very pleased when many young persons arrived and

² For interesting insights into one of the most enduring legal cases see *Donoghue v Stevenson* [1932] AC 562; and the Scottish Council of Law Reporting *Donoghue v Stevenson* digital resources page at <<http://www.scottishlawreports.org.uk/resources/keycases/dvs/donoghue-v-stevenson.html>>.

demanded to see their booklets. Some of us were allowed to see them and many of us were evicted, in part because the stations did not have any, and the telephone lines buzzed between Scotland Yard and the LSE. It was fun if uncertain as to how it would turn out.³ Having seen how exciting field-work could be, the students reacted extremely differently. There were those, like myself, who became captivated and there were those who were horrified by the experience and quickly reopened their law reports never to leave the library.

I now teach a course in research methods to, largely, law graduate students. Very few have any familiarity with formal presentations of theory and methodology; the scientific method is an unread catechism to them. Perhaps the most difficult notion for them to grasp is that of the research question. I try to tell them that research questions are a guide to influence their thinking about their research topics, something that will set up internal arguments that they can carry on in their research. Even though I continue to teach them about the role of theory and the various methods they can use to do their research, my main concern is that they generate an interest in their topics and ask questions because these will stimulate them further. What I try to avoid is overbearing them with discussions about the necessity for constructing theoretical frameworks as a starting point for their research. If they do start at this point the usual result is that they become stuck in a theoretical quagmire from which it is difficult to escape. For example, Donald Black's attempt to impose a false natural science cloak on social science fits in with this style of thinking.⁴ One of the joys of ethnography is that it is not enslaved by a theoretical straitjacket. Therefore it does not encounter the definitional problems of 'structural coupling' or '*habitus*'. It opens the field to many interpretations. The essence then of ethnography is its liberating power. In the field of law, liberation is essential.

What follows is part biography and part analysis. My own journey into ethnography and my feelings about it are a product of my first encounters and disillusionment with academic law.

Originally I was drawn to law by a feeling that law possessed the power to effect change, to help the dispossessed and heal society's ills. Many students start with these ideals in mind. Scott Turow's *One L* chronicles the first year law student's journey from search for justice to the Socratic pleasures of legal reasoning. Appeals to justice are met with scorn from the professors.⁵ As the students engage with the minutiae of the law reports,

³ As a research exercise, there are innumerable problems with the way this experiment was carried out. But to unravel this is not my purpose here.

⁴ D Black, *The Behavior of Law* (New York, NY, Academic Press, 1980).

⁵ S Turow, *One L: The Turbulent True Story of a First Year At Harvard Law School* (New York, NY, Farrar Straus & Giroux; Reissue, 1977).

they revel in their command of the nuanced distinction, they are won over, they become adepts. In my case the law reports lacked life and they were soulless. The potential for transformative engagement slithered away and I was left feeling deprived. Law was failing me and I was failing it. The way I have described this so far already carries the portent of some epiphanic moment. It came when I found myself rejecting all the courses necessary to become a lawyer, that is, those that gained one exemptions from professional examinations, and taking instead a range of divergent or, in the eyes of some, 'marginal' courses. Chief among them was the anthropology of law.⁶ Here law ceased to be an idealised form and became instead a variety of forms and action by and through which people made sense of everyday life, which of course is saturated with normative activity.⁷

The anthropology of law revealed two things to me: that law was not something imposed from above mainly by a state; and that anthropologists carried out their research in markedly different ways to conventional lawyers. Anthropologists felt it necessary to engage with everyday life and the people who lived it. They were the *Empiriki*.⁸ That law was constituted by everyday concerns opened an array of possibilities for its analysis. During the course I focussed on a little-known group of people known as the Lepchas in Sikkim who apparently practised four religions simultaneously and lived by their agricultural cycle.⁹ Linearity was alien to them as life constantly repeated itself in cyclic fashion. Their acephalous society, through bonds of reciprocity, maintained an equilibrium that made courts, officials and police redundant. Nevertheless order was maintained and punishment could be meted out if necessary. Gorer lived among the Lepchas recording their daily activities, listening to their stories and myths. I felt I understood more profoundly the processes of Lepcha social order and disputing than I understood of my own society. By comparison with the anthropology of law, law itself represented itself as an instrumental set of disembodied and narrow techniques. The anthropology of law opened up to me the virtual impossibility of attempting to confine law to state-backed action. We lived in a normatively pluralistic world.¹⁰

⁶ The course was eventually published as S Roberts, *Order and Dispute: An Introduction to Legal Anthropology* (Oxford, Martin Robertson, 1979).

⁷ William Twining used to make his Warwick first year law students read a broadsheet newspaper for articles about law. The result was that they often picked articles with court cases but missed the items on pensions reform or the difficulties of transferring footballers from one club to another.

⁸ R William, *Keywords: A Vocabulary of Culture and Society* (London, Fontana, 1976) 99.

⁹ G Gorer, *Himalayan Village: An Account of the Lepchas of Sikkim* (London, Michael Joseph, 1938).

¹⁰ There are many debates surrounding this issue. Bradney and Cownie review many of them in ch 1 of their study of dispute resolution among Quakers. See A Bradney and F Cownie, *Living Without Law: An Ethnography of Quaker Decision-Making, Dispute Avoidance and Dispute Resolution* (Aldershot, Ashgate, 2000).

In order to experience that world and portray it, fieldwork was key. It is through fieldwork that one begins to enter the mentality of the other. The primary means for doing so is language; knowing and understanding the language of the group. Understanding language means learning language, appreciating how it is used both prosaically and poetically. Both are necessary just as the right and left hemispheres of the brain are essential for complete human beings. In other words, we need to be scientific and artistic. The artistic or poetic aspect emerges when we attempt to play with the nuances of language, and so often get it wrong. Santos was run out of a *favela* at gunpoint when he told an inhabitant of one that he was doing research on *favelas*.¹¹ Unfortunately, the appropriate word for researcher in Portugal translated into police investigation in Brazil. Becker also showed how tyro marijuana smokers had to learn to get ‘high’—the term was not self-explanatory or self-executing—since impostors could be identified by experienced smokers.¹² Group norms are demonstrated in interaction—ours and theirs. Without interaction scientific description of our world will be lifeless and most probably incorrect.¹³

B. BECOMING AN ETHNOGRAPHER

Although the anthropology of law was a well-stocked field with studies of groups around the world, the sociology of law was relatively empty.¹⁴ It seemed once the state claimed the major role in law production, regulation and administration, law reverted to its formal characteristics in the Weberian sense rather than containing any impression of being socially constructed.¹⁵ It was difficult to encounter texts that would explain how the ‘law jobs’ were being done in modern western society. One could see occasional

¹¹ B de Sousa Santos, ‘Science and Politics: Doing Research in Rio’s Squatter Settlements’ in R Luckham, (ed), *Law and Social Enquiry: Case Studies of Research* (Uppsala, Scandinavian Institute of African Studies; and New York, NY, International Center for Law in Development, 1981).

¹² HS Becker, ‘Becoming a Marijuana User’ (1953) 59 *American Journal of Sociology* 235–42.

¹³ An interesting contrast to this claim is found in the work of Goffman who although engaged gives an impression of complete disengagement. See, for example, E Goffman, ‘On Cooling the Mark Out: Some Aspects of Adaptation To Failure’ (1952) 15 *Psychiatry: Journal for the Study of Interpersonal Processes* 451–63; and HS Becker, ‘The Politics of Presentation: Goffman and Total Institutions’ (2003) 26 *Symbolic Interaction* 659–69.

¹⁴ I am making an artificial contrast between the anthropologist as student of preliterate societies and the sociologist as the student of the modern.

¹⁵ ‘An order will be called *law* if it is externally guaranteed by the probability that physical or psychological coercion will be applied by a *staff* of people in order to bring about compliance or avenge violation’. M Weber, G Roth and C Wittich, (eds), *Economy and Society: An Outline of Interpretive Sociology* (Berkeley, CA, University of California Press, 1968) 34. See also AT Kronman, *Max Weber* (Stanford, CA, Stanford University Press, 1983) 31.

glimpses but not much else. For example, I became interested in the role of the barristers' clerk, an agent who supplies work to barristers and collects their fees.¹⁶ To my naïve view of the world, it seemed ridiculous that the legal profession could base itself on Dickensian class divisions and that barristers' clerks were truly a relic of the 19th century. Yet, as the study evolved, I came to see that clerks were an important part of the English legal system, providing a network through which different parts could coordinate. The entire court listing system was balanced around the clerks' diary manipulation: this way they could keep the courts' case docket moving and maintain a steady schedule of work for their barristers.

Let me provide a brief account of the barristers' clerk's world so that this chapter remains intelligible. Essentially the clerk is the middleman, or mediator, between the diverse interests of the legal system, namely those of barristers, solicitors, judges, list officers, and occasionally the client upon whom the system depends. Although these groups are discrete, they are interdependent. But their interdependence does not prevent them from pressing divergent demands that must somehow be resolved into a common aim if the legal process is to function reasonably smoothly. How is this resolution effected? By the clerk—and in so doing he assumes different roles to satisfy the demands, but keeping in mind his own interests. Broadly, there are three such roles: counsellor, negotiator, and 'fixer'. Perhaps the most important is that of fixer, since the others are variants of it. While performing these roles the clerk carries out a number of tasks. The main ones are negotiating his barristers' fees and collecting them, obtaining work for his barristers, supervising their and the chambers' accounts, helping to schedule cases and checking the daily court lists for his barristers and the solicitors.¹⁷ The barrister's clerk has a wide range of duties delegated to him.¹⁸ The ostensible rationale of his existence is to relieve the barrister of the day-to-day routines of office administration so that the latter can concentrate entirely on legal work. But the clerk does much of the 'dirty work' of the Bar. He fulfils a role that would be difficult, both theoretically and practically, for the Bar to do without. For example, he generates work for barristers, permitting them the claim that they conform to their rule against advertising: he can refuse to accept work on a barrister's behalf by, say, charging an exorbitant fee, allowing barristers to say that they conform to the supposedly inviolate cab-rank rule. Clerks have a lively history appearing in novels by Surtees and Trollope, and Charles Lamb wrote about his father who was a clerk.

¹⁶ J Flood, *Barristers' Clerks: The Law's Middlemen* (Manchester, MUP, 1983). <http://www.wmin.ac.uk/law/Prof_John_Flood/Barristers%20Clerks%20book.pdf>.

¹⁷ *Ibid*, p 3.

¹⁸ At the time of the research approximately 4% of clerks in London were female, hence the use of gender specific language.

The single most contentious point raised about barristers' clerks by their critics is the form of their remuneration. Clerks generally receive a clerk's fee which is paid by way of a percentage commission. They take great pride in their commissions, though it may, to some, appear a dubious form of payment within the Bar, which considers its own fees *honoraria* and is unable to sue for them. Critics condemn the clerk's fee for the reason that clerks have a personal stake in extracting the largest possible sum from the client. Superficially the criticism sounds plausible, but it ignores the manner in which clerks conduct their business. Overcharging would simply prevent solicitors from returning to a particular set of chambers. The clerk's goal is to generate a constant supply of work. The fixing of fees thus requires careful deliberation. At one time receiving 10% of the brief fees was a sign of great esteem, 'a ten per cent man'.

I end this account with three vignettes that illuminate the role and status of clerks.

- In 1976 a senior clerk described his tasks thus: 'a barrister's clerk does everything for his governor, even sewing on his fly-buttons, because the typist couldn't do it, as there was no time to take his trousers off'.
- A common law clerk explained why the bar needed clerks, 'I tell you, barristers need clerks, because they've got no common sense, and that's what a clerk's got. These barristers go to university and they get pumped full of law through one ear and their common sense comes dripping out the other side' (said replete with gestures: fingers in at one ear and the others waving away from the other).
- A junior clerk describing his initiation into the Temple remembered the rules laid down by his first senior regarding status and hierarchy: 'When I call someone by their first name, you call them Mr So-and-so; when I call someone Mr So-and-so, you call them Sir; when I call someone Sir, you don't speak to them'.

I had to make sense of a way of being that was largely alien to me. Barristers' clerks were working class men with little or no education. I, as a middle class, educated student was remote from them. In many ways doing ethnography is a way of developing empathy, which also means finding out more about oneself in the process. I am trying to present myself as someone who will make sense of their world to me and to them. Being a researcher is a strange occupation to others. Others have a good idea of what they do because they do it. That does not mean they can articulate what they do since in most likelihood they have not had time to reflect on their actions. The researcher plays the role of the external reflector. But for the researcher to take on that role there must be trust, which needs empathy. Without it there will be no worthwhile results.

Occasionally the criticism will arise that ethnography can observe only the surface of interaction. It is unable to determine the deep structure that produces 'universal' ideas of what makes the world. Certainly we cannot read minds and so we cannot know or verify internal states, but that is not what interests us. If we are unable to produce an objective account of reality as something 'out there', then the alternative is to explore subjective accounts and determine how they constitute sociological understanding through the process of social interaction.¹⁹ Ethnography is provisional, never absolute. The very way that ethnographers go about their tasks suggests they are constantly learning and uncovering new interpretations and meanings. Ethnographers' findings are of a different character to those of social surveys. We are not concerned about our degrees of freedom, but whether we have understood sociality better than we did before we undertook our fieldwork.

I felt vindicated about my method of researching barristers' clerks after I listened to a group of them talk about their careers at a Bar Conference in the 1990s. They were contrasting the way barristers' clerks ran a set of chambers with the more bureaucratic modes of administration adopted by practice managers. The latter could be good at instituting systems for record keeping, billing and so forth, but they lacked the interpersonal skills to deal with advising barristers when to move from one type of work to another, for example, criminal to personal injury, or when to apply to become a Queen's Counsel (QC) with its consequential effect on the types of work a QC would be hired to do. The clerks' accounts of their work and roles were rich and contextual. At the conclusion of the panel I went to speak to them. As I introduced myself, they told me, 'I used your book to prepare my speech'. My journey through the clerks' world and its results corresponded with their own understanding. I had been able to make the barrister's clerk's world intelligible internally as well as to the outside world.

Ethnography presents a unique set of problems for the researcher, in part because it is a messy process. There are problems of entry, developing trust and empathy, recording interaction, and making sense of ethnographic data. The first three of these are largely absent from many other types of research.

Gaining access to groups exemplifies this point. In the three ethnographic studies I have engaged in, gaining access presented different problems each time. With the barristers' clerks my main difficulty was that I didn't know any nor did I know how to make contact with them. As a first-time researcher, it hadn't occurred to me that I should consider this aspect of the

¹⁹ This in part relies on Weber's approach to sociological method. M Weber, 1968, above, n 15 at 4.

research when selecting my topic. Official sources were of little help including the Barristers' Clerks Association, which genteelly ignored my requests for help. I was concerned that no access was going to mean no research. At this stage I was expecting to carry out interviews as my main research method. A stroke of good fortune changed my situation when a friend of mine, who worked in a neighbourhood law centre, told me he knew a junior clerk and would arrange an introduction. Although the subsequent meeting was successful and the clerk wanted me to sit in the clerks' room to experience the frenetic pace of the job, circumstances almost conspired to block me. I had telephoned the senior clerk to submit a firm date for my visit. He enquired whether I had read the *New Statesman* that day. I told him I had not. He then launched into a lengthy rant against an article entitled 'NCOs of the law'.²⁰ There was one paragraph, in particular, that had greatly upset him.

One person who felt the clerks' prejudice is a clerk herself: Mary Hickson, the clerk of the most unusual chambers in Britain, those of Lord Gifford in Lambeth. She works in an office that has a notice 'Sue the Bastards!' by the door and an anti-abortion poster in the window. As part of her training for clerking, she spent two months in 'The Cloisters' ... 'I learned how much I disliked the Temple and how much they don't want a woman to be a clerk. The senior clerk there just told me to go away and get married'. This prejudice is exercised against women as barristers, though, says Hickson, 'they think they're okay for some things like matrimonial work'.²¹

In addition the article referred to the criticism that the barrister's clerk's commission tended to inflate the fees charged to clients. The senior clerk vehemently denied that clerks were biased against women; he even said that when a new set of chambers was being established he had recommended a woman as clerk. The description of the clerks' room, including its posters, represented to him a gross violation of good taste and proper conduct. 'I certainly wouldn't have posters and a sign saying "Sue the bastards!" in my clerks' room'. He also felt that clerks were being unjustifiably attacked over the question of counsel's fees and put forward the defence that certain occasions and circumstances demanded he reduce or even waive some fees. Sometimes, he said, the fault lay with solicitors, who offered unnecessarily high fees to counsel: for example, one solicitor suggested a £50 fee for a matrimonial matter that, at best was worth only £25.

The upshot was, according to him, that no barrister's clerk would allow me, or any other researcher, to enter their chambers—a total, eternal ban. I

²⁰ The article was written at the time that the Benson Commission was investigating legal services. *Final Report of the Royal Commission on Legal Services*. Cmnd 7648 (London, HMSO, 1979).

²¹ J Bugler, 'NCOs of the Law', *New Statesman*, 5 March 1976, p 287–87.

felt faint with shock, but for the following twenty minutes I virtually pleaded with him to change his mind. I pointed out the advantages, in that I would be able to present a fair and objective picture of clerking, which would naturally suffer through my not having experienced the urgency and frenzy of the clerks' room. And, as a final argument, I offered him the opportunity to read and comment on my writing, but without assigning any editorial control to him. To my relief the arguments had some effect. He began to retreat from his position and question me about the length of my stay. I answered that two or three days would be sufficient. Again he raised objections but, greatly to my surprise, now considered it short and instead suggested I extend the visit to a week, when he could take me to the Old Bailey and the Law Courts. Paradoxically my situation had actually improved as a result of this apparent catastrophe. It was as though he wanted me to prove the article false.²² Eventually, I remained in various clerks' rooms for several months having become an accidental ethnographer.

In my second study the process of gaining entry was supposed to be much smoother. My purpose was to do an ethnography of a large law firm in Chicago.²³ On this occasion I was fortunate to have as one of my dissertation committee members Jack Heinz, a law professor at Northwestern University and then executive director of the American Bar Foundation. Many of the city's lawyers had been taught by him, so he was knowledgeably placed to advance my chances of gaining entry to a law firm. One of the key obstacles was the problem of my presence violating attorney-client privilege. The first law firm I approached was supportive of my aims until one of their clients was found shot dead, allegedly by the Mafia, in a Chicago parking lot. As this would result in an awkward investigation by the authorities, the firm decided they should decline my offer to observe them. The next firm that was approached agreed to take me as observer, again the way smoothed by my supervisor, provided they could hire me on a temporary basis to overcome the difficulty with attorney-client privilege.

My third study of the Financial Ombudsman Service (FOS) was another accidental ethnography. While at a reception for someone leaving the Law Society, I met her predecessor. In the usual small talk of receptions I asked him what he was now doing. He replied he was chief ombudsman at the new FOS. 'What's that?', I asked. He told me about the different ombudsmen organisations—eg, banking, investment, insurance—that were being integrated to form a unified financial ombudsman service.²⁴ After we parted, rather in the style of *esprit d'escalier*, it occurred to me

²² J Flood, 'The Middlemen of the Law: An Ethnographic Inquiry into the English Legal Profession' (1981) *American Bar Foundation Research Journal* 377–405.

²³ J Flood, 'Anatomy of Law: An Ethnography of a Corporate Law Firm', (PhD dissertation, Department of Sociology, Northwestern University, 1987).

²⁴ See <<http://www.financial-ombudsman.org.uk>>.

that there existed a research possibility in this new organization. My subsequent conversations with the chief ombudsman indicated he was of a mind to encourage research on his fledgling service. He patiently spent two hours telling me about the organisation, but revealed that he was reluctant to have his employees give up large amounts of time to be interviewed by me. Could I do the research in a less invasive way? I suggested he let me hang around him and his colleagues and observe them. He warmed to this approach and I began my ethnographic study of the FOS.

In ethnography one has to deal with life in real time, with interaction as it occurs. It is not possible to wait and go back and ask, 'How was it for you?' The point of ethnography is not to recover memory, as in oral history, except as something auxiliary to action observed. Although I refer to observation as though it were some passive activity like watching a film, it never is so remote from what is happening. Ethnography is often referred to as 'participant-observation', which I would argue is more common than mere 'observation'. It is difficult to be disengaged from interaction and the researcher is frequently drawn in by stealth.²⁵ For some researchers this kind of involvement is disturbing because it may diminish their neutrality and impartiality. They can be seen as taking sides by being implicated in that which they are observing. But this is not always the case. During my time with the barristers' clerks I would happily answer the phone and check diaries, especially if the clerks' room was shorthanded. This mundane activity helped me understand how the clerks' room actually functioned day to day. For the clerks the busiest time of day was around five to six o'clock in the evening when the solicitors called in to get barristers for the next day. It was like rush hour—phones ringing continuously, clerks calling across the room to each other for information. No one could stop until the phones stopped ringing.

Being active in the field as participant can mean that others identify one as belonging to a particular group. Most barristers who encountered me in the clerks' room saw me as another clerk, which put me below their sights. My being so categorised meant that my situation was perceived as harmless and enabled me to observe things that I might not have been able to see if my position had been different. For example, part of my research interest was how clerks and barristers interacted with each other given that they came from different backgrounds, classes, differed extremely in educational level, yet endured a considerable degree of interdependence. Quintin Hogg, a former lord chancellor, had once said: 'A solicitor is a

²⁵ Conversely in their study of divorce lawyers and clients, Sarat and Felstiner observed through the medium of the tape recorder in the lawyers' offices while they were absent which kept them firmly distanced from the action. See A Sarat and WLF Felstiner, *Divorce Lawyers and Their Clients: Power and Meaning in the Legal Process* (New York, NY, OUP, 1995) 8–10.

man of business, a barrister an artist and a scholar'.²⁶ The bar had surrounded itself with traditions, often newly-minted, that seemed to insulate it from the pressing concerns of commercial life.²⁷ Since not every barrister was accompanied by a private income, the need to generate money was ever present. The difficulty for the bar was how to overcome the impurity of being directly concerned with negotiating fees and collecting them.²⁸ The solution to the dilemma was the clerk: he would bring in the money and the work. The world of work surrounds itself with ideas of cleanliness and dirt and different occupations are esteemed according to their degree of moral purity. Everett Hughes coined the term, 'good people and dirty work', which is where the clerks are situated.²⁹

Even if there is no actual identification with a group, there may be ascribed identification in that others are convinced you are a part. In the Chicago law firm most clients saw me as another attorney with his yellow legal pad. This is often a useful attribution. What others think has an impact on the group and they begin to think the researcher is one of them. Admittedly these multiple attributions and ascriptions can become confusing, but the task of the ethnographer is to accept the challenge of multiple roles and identities. There were times when I would find the confusion overwhelming. The main one was when the clerks went to the pub. Clerks spent a lot of time in pubs because that was the best meeting place to exchange news and gossip. Gossip is an essential means of communication since it enables people to trade information especially in situations where little is written down. In addition to talking, the clerks drank. I was not used to drinking heavily but I had to participate otherwise any pretence of being in with the clerks would collapse, despite the consequences of my own physical collapse. In a way, I was no different to Becker's marijuana smoker learning about being high.³⁰ I had to learn to drink and behave in ways that were unfamiliar to me.

²⁶ S Aylett, *Under the Wigs: The Memoirs of a Legal King-Maker* (London, Eyre Methuen, 1978) 160.

²⁷ This is clearly a tradition of mythic proportion. Abel has conclusively demonstrated that for many years a large proportion of the bar has relied on the state via legal aid to support it. See RL Abel, *The Legal Profession in England and Wales* (Oxford, Blackwell, 1988); and RL Abel, *English Lawyers between Market and State: The Politics of Professionalism* (Oxford, OUP, 2003). Hobsbawm astutely noted that, 'Inventing traditions ... is essentially a process of formalization and ritualization, characterized by reference to the past, if only by imposing repetition'. E Hobsbawm and T Ranger, (eds), *The Invention of Tradition* (Cambridge, CUP, 1992).

²⁸ M Douglas, *Purity and Danger: An Analysis of the Concepts of Pollution and Taboo* (Harmondsworth, Penguin, 1970).

²⁹ EC Hughes, *The Sociological Eye: Selected Papers on Work, Self, and the Study of Society* (Chicago, Aldine Atherton, 1971) 87–97, 338–47.

³⁰ Becker, 1953, see above, n 12.

Any research setting is potentially daunting for the researcher. How is one going to be received? Are the people friendly? Will I make a fool of myself? When I first met the lawyers in the Chicago law firm I was about to study, someone shouted, 'Here's the company spy!' But all of this goes to the task of developing trust. The scale of the setting has a big effect. With clerks I dealt only with a few at a time and it was easy to be vouched for as I moved around different clerks' rooms. My last two stints of fieldwork were within large organisations where there were a variety of coalitions, alliances, groups, and networks to contend with. Here it is easier for one to be identified with particular groups and their interests. I was most aware of being categorised in this way when I researched the Financial Ombudsman Service. At the FOS I started my fieldwork with the management who were reconstructing eight different ombudsman services into an integrated whole. Some of these eight had been privately run, others were state institutions. The cultural divergences were enormous at times even though everyone I encountered seemed eager to bring about this integration. I felt I had to stay within the group that I was observing as they were doing the core work of designing the integration. For the remainder of the organisation there were thousands of financial services cases to be dealt with, some under the separate ombudsman rules and the newer ones under the integrated service rules. With a caseload of 45,000 disputes spread among approximately 400 employees, little time was left for the organisation itself. Nonetheless, for the management determining how the FOS would evolve was crucial. The governing legislation had produced a hybrid form of control where the FOS was fundamentally autonomous but its budget had to be approved by the Financial Services Authority (FSA).³¹ Approving the budget became the entry point for the FSA to attempt to micro-manage the FOS. For me, the ethnographer, the meetings between the FOS and the FSA were highly charged dramatic scenes where the two sides struggled and bitterly contested control. In this context I became very much identified as a member of the FOS management by both sides, which, at times like these, was inescapable for me. One cannot say, 'this is nothing to do with me,' for one is explicitly implicated.

C. MAKING SENSE OF ETHNOGRAPHY

The data collected in fieldwork are multifaceted. They cover conversations, observations, impressions, and so forth. It is at this point that ethnography gets epistemological qualms. Is it looking for similarities or differences, convergence or divergence? The Chicago School would

³¹ See Financial Markets and Services Act 2000, ss 225–34 <<http://www.hmso.gov.uk/acts/acts2000/20000008.htm>>.

emphasise the former,³² while Burawoy expresses the latter.³³ Perhaps it is at this stage that theory fulfils a role for ethnography. Once one engages in analysis, one cannot help but theorise. But what is indicative of the ethnographic approach is the link to inductivism and grounded theory. By this I mean that it is not always possible to set up prior theoretical frameworks in ethnography no matter how precise one tries to be, because the researcher does not always know what the outcomes will be. Ethnography is constant surprise. It gives rise to fresh theoretical insights as it evolves.³⁴ This rolling style of theorising facilitates the creation of an ‘organisational epistemology’ that assists ideas to build on each other as the research progresses.³⁵

Social scientists make unfair generalisations about ethnography, frequently that because it focuses on small-scale activities, it must ignore the world-at-large. There is no reason, for example, why such grand themes as globalisation cannot be brought into the realm of ethnography. The Financial Ombudsman Service is now an integral part of the apparatus that governs the delivery of financial services. Its success has led to governments in Asia and Latin America considering adopting the model for their societies. The ombudsman has generally become a powerful means of resolving disputes in many areas of life from financial services to funerals. Ethnography can help interpret these movements by understanding the processes and steps that societies and organisations must go through in order to produce workable and reasonable solutions to problems encountered by the citizenry.

Making sense of ethnography should be simple. The books of Studs Terkel telling of life in Chicago through the words the people he talked with are powerful and redolent of the struggles and indignities that life throws at working class people.³⁶ The stories speak to us and they are also the kind

³² MJ Deegan, ‘The Chicago School of Ethnography’ in P Atkinson, *et al*, (eds), *Handbook of Ethnography* (London, Sage, 2001).

³³ M Burawoy, ‘Revisits: An Outline of a Theory of Reflexive Ethnography’ (2003) 68 *American Sociological Review* 645–79.

³⁴ Compare, however, Wacquant’s claim that, ‘To fail to exercise theoretical control at every step in the design and implementation of an ethnographic study—as with every other method of social observation and analysis—is to open the door to *theoretical simple-mindedness* whereby ordinary notions issued out of common sense fill in the gap and steer crucial decisions on how to characterize, parse, and depict the object at hand ...’. L Wacquant, ‘Review Symposium: Scrutinizing the Street: Poverty, Morality, and the Pitfalls of Urban Ethnography’ (2002) 107 *American Journal of Sociology* 1468, 1524.

³⁵ HS Becker, ‘Theory: The Necessary Evil’ in DJ Flinders and GE Mills, (eds), *Theory and Concepts in Qualitative Research: Perspectives from the Field* (New York, NY, Teachers College Press, 1993).

³⁶ S Terkel, *Working: People Talk about What They Do All Day and How They Feel About What They Do* (New York, NY, Pantheon Books, 1984). See also <<http://www.studsterkel.org>>.

of stories that people listen to and act on. According to some oral historians and social scientists these stories are not generalisable, they are *ad hoc*, personal, occasional. They do not constitute a basis on which to theorise or make policy. Just as I am a legal pluralist, I am a methodological pluralist. I believe the battle lines between qualitative and quantitative approaches are illusory and unnecessary yet they persist. If social science had the confidence not to attempt to replicate the natural sciences, its impact on the world would potentially be greater. However, the lines are drawn and the main critique from the 'quantoids' is that qualitative research concentrates too much on the particular at the expense of the general—only large Ns can tell the truth.

Part of the problem is a misunderstanding that some have about ethnography. Ethnography is about interpretation not causal analysis. And ethnography also includes history; time is an essential element. If we want to understand the complexity of lawyer-client or doctor-patient relationships, we need to know what happens in those interactions, we need to observe them as they unfold and play out. A survey that recollects dim memories will not tell us much. If we want to know how organisations attempt to create a culture and establish their niche, we need narrative because these things are contested, ambiguous and inchoate.³⁷ The case of the FOS is interesting. Here is an organisation that came together from many and over time came to play a central role in the financial services industry. It had to coordinate its strategies to accommodate the needs of the industry, the regulators and government, and yet establish its own identity and role. This was not something that could be created on a template since it required careful negotiation in order to establish its bona fides with these groups. The backgrounds of the managers—they came from a mix of legal and regulatory careers—assisted in these processes since they embodied some of the values recognisable by others in the network. By understanding the processes that form organisational culture and identity, we can do things like formulate good practice elsewhere, but we need to be able to identify the constituent parts not merely the end result. As Van Maanen nicely encapsulates it: 'Narrative is not an ornamental or decorative feature designed to make ethnography more palatable or audience-friendly, but a cognitive instrument in its own right'.³⁸

Perhaps one of the most telling points about ethnography is its adoption by corporate enterprises as a means of understanding their businesses and consumers' responses to them. The technology industry has led the way

³⁷ J Van Maanen, 'Afterword: Natives "R" Us: Some Notes on the Ethnography of Organisations' in DN Gellner and E Hirsch, (eds), *Inside Organisations: Anthropologists at Work* (Oxford, Berg, 2001).

³⁸ Van Maanen, *ibid*, p 256.

through its realisation that the views of software engineers and consumers do not necessarily coincide and that the social implications of computing are increasingly important.³⁹ Moreover, ‘anthropologists are now regarded as a necessity at such firms’.⁴⁰

To bring this essay to a close, I would reiterate a telling point made by Everett Hughes many years ago. It is in connection with the stated problem that others sometimes have with ethnography, that we cannot learn anything beyond the details of the story told. Hughes wrote:

I am suspicious of any method said to be the one and only. But among the methods I would recommend is the intensive, penetrating look with an imagination as lively and as sociological as it can be made. One of my basic assumptions is that if one quite clearly sees something happen once, it is almost certain to have happened again and again. The burden of proof is on those who claim a thing once seen is an exception; if they look hard, they may find it everywhere, although with some interesting differences in each case.⁴¹

³⁹ For example, see L. Suchman, *Plans and Situated Actions: The Problem Of Human-Machine Communication* (Cambridge, CUP, 1987).

⁴⁰ ‘Off With the Pith Helmets’, *Economist Technology Quarterly*, 13 March 2004, p 6.

⁴¹ Hughes, 1971, above, n 29 at ix.