

INTRODUCTION

JANE LARSON'S SOCIOLOGICAL JURISPRUDENCE

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The essays in this Symposium pay tribute to the work of our colleague Jane Larson. Her legal scholarship crossed the boundaries of history, feminism, ethnography, policy, political and legal theory, legal empiricism, advocacy, and interdisciplinary study. Though her life and career were short, she accomplished more in that brief time than many achieve in much longer spans. From Supreme Court amicus briefs to empirical legal research, from feminist legal history to sophisticated doctrinal and policy analyses, Larson covered a great deal of ground. Moreover, in achieving this breadth, she did not sacrifice depth – but rather pushed past the barriers that often limit legal scholarship to relatively superficial interdisciplinary encounters.

For example, one of Larson's signal achievements involved her field research in the borderlands between the U.S. and Mexico. Operating without the resources and support that many empirical researchers in social science departments receive, Larson conducted an on-the-ground study to test abstract tenets of legal theory within the rugged context of the colonias settlements on the Texas-Mexico border.¹ When her empirical research demonstrated the shortcomings of both conservative, market-based approaches and of progressive, state-centered approaches to problems of property law and poverty, she moved on to use existing social science and legal theory to formulate an alternative plan. She then put this grounded legal theory into action, working with others to clear title to property for many colonias residents. She further participated in a follow-up empirical study designed to assess the impact of that applied project.²

Anyone who has participated in the kind of field research involved can attest to the arduous, time-intensive character of the work, as can any public

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1. Jane E. Larson, *Informality, Illegality, and Inequality*, 20 YALE L. & POL'Y REV. 137, 143 (2002)(hereinafter *Informality*), Jane E. Larson, *Free Markets Deep in the Heart of Texas*, 84 GEO. L. REV. 179 (1995).

2. Peter M. Ward, Flavio de Souza, Cecilia Giusti, Jane E. Larson, *El Titulo En La Mano: The Impact of Titling Programs on Low-Income Housing in Texas Colonias*, 36 LAW & SOC. INQUIRY 1 (2011).

interest attorney who has attempted to deliver the kind of community-wide legal services involved here. In both cases, years of effort may be required, with little fanfare or recognition. And yet this was but one of many activities in which Larson engaged. Her work as a feminist legal historian addressed gender-based inequities in and through law, from her scholarly publications to her involvement in the historians' briefs in several high-profile U.S. Supreme Court cases. She wrote editorials and actively engaged with generations of law students; her interests ranged from conflicts of laws and remedies through a wide array of jurisprudential and socio-legal issues.

Toward the end of her life, Larson contributed to the founding of a strand of New Legal Realism in the United States, pushing for the kind of theory-driven empirical research that characterized much of her own work while also embracing the need to rethink legal pedagogy. In both legal research and law teaching, she envisioned forms of rapprochement with the practice of law on the ground. As the title of this Symposium suggests, she had a talent and a passion for viewing law "from the outside in" – from the vantage of those who have been left out, and from novel interdisciplinary and critical perspectives. At the same time, she demonstrated how these seemingly distant people, perspectives, and methods had much to offer those on the "inside," at the very center of law. This Introduction begins by reviewing the Symposium essays in light of these messages in Larson's work. It concludes by considering what Larson's new form of sociological jurisprudence contributes to current debates surrounding legal scholarship, practice, pedagogy, and knowledge.

TURNING THE WORM, BRINGING THE INVISIBLE TO LIGHT

As Cynthia Grant Bowman notes, we can already see within Larson's early work her many facets as polymath and historian, feminist and jurist, social theorist and lawyer.³ Writing on nineteenth-century legal developments surrounding women's sexuality, Larson brought a stunning array of resources to bear on the problems she examined, taking us from historical archives and legal records to literature and music of the time.⁴ Equally at home in technical legal doctrine, political theory, social data, literature, and the arts, Larson quietly achieved a form of interdisciplinarity that has rarely been equaled in legal scholarship. The authors in this Symposium compellingly capture Larson's considerable accomplishments at interdisciplinary edges. As Gerald Torres notes, she created a hybrid form of scholarship that was simultaneously rooted in law, social science, and the humanities – no small feat.⁵

3. Cynthia G. Bowman, *Feminism and the Uses of History: An Essay on the Legacy of Jane E. Larson*, 28 WIS. J. L. GENDER & SOC'Y 195 (2013) (hereinafter *Uses of History*).

4. Jane E. Larson, "Women Understand So Little, They Call My Good Nature 'Deceit'": A Feminist Rethinking of Seduction, 93 COLUM. L. REV. 374 (1993) (hereinafter *Rethinking of Seduction*); "Even A Worm Will Turn at Last": Rape Reform in Late Nineteenth Century America, 9 YALE J.L. & HUMS. 1 (1997) (hereinafter *Nineteenth Century Rape Reform*).

5. Gerald Torres, *Law and the Creation of Meaning: A Brief Reflection on the Work of Jane Larson*, 28 WIS. J. L. GENDER & SOC'Y 105 (2013) (hereinafter *Creation of Meaning*).

Indeed, one of the hardest tasks facing those who seek to blend law with other fields is the great barrier posed by law's frequent obliviousness to other perspectives, discourses, and epistemologies. Legal scholars, judges, and lawyers are often happy to cite and absorb work from other fields while completely missing the quite different epistemologies and imperatives underlying that work. To specialists in other fields, the legal applications then appear to be quite shallow and even distorted. For example, "law office history" is often quite selective, picking only the sources and evidence that support the author's argument, using present-day frameworks that distort the historical record. Legal historians who are professionally trained in historical methods and approaches take a very different approach, working hard to respect her subjects' historically-situated perceptions and priorities. Bridging law and the humanities can prove almost impossible, when legal scholars are so focused on solving normative problems that they miss complicated nuances while their counterparts in the humanities can skip past the normative imperatives of law too easily. It was thus quite an accomplishment, as Bowman and Torres point out, that Larson managed to produce a nuanced history of women's earlier legal activism that did not succumb to presentism despite her interest in current legal questions. She corrected the then-existing understanding of the chronology and import of that early activism but did not idealize her subjects, instead noting their many imperfections while also highlighting the subtlety of their positions on issues such as seduction, age of consent, and women's sexuality. And although Larson's early historical research worked carefully to preserve the ideas and frameworks of her subjects, she also pushed her contemporary audience to learn from those earlier efforts when trying to rethink a number of current policy dilemmas.

Of course, the translation process between history and law cannot always be accomplished seamlessly, as Larson knew when she undertook to work on several Supreme Court briefs in what turned out to be landmark cases. She and her colleagues performed the thankless task of converting historical insights into a rhetoric that could be heard and absorbed by the U.S. Supreme Court. As Bowman notes, Larson and her co-author Clyde Spillenger were later to defend their form of translation, with its inevitable departure from historians' preferred mode of argumentation, as part of the price that historians and social scientists would have to pay if they were to enter into a dialogue with law.⁶ Not to attempt this dialogue, in Larson's view, was an ethical failure. This sense of the academic's responsibility, along with a pragmatic embrace of the ambiguities and complexities of interdisciplinary translation, also informed her later advocacy of a new legal realism.

Jane Larson's ability to forge an organic link of this kind among ethics, scholarly life, and public commitment is a talent frequently acknowledged by the contributors to this Symposium. In Michelle Oberman's article, we see this legacy spelled out in a poignant account of Larson's advice to a colleague as it

6. Bowman, *Uses of History*, *supra* note 1.

has played out on multiple levels.⁷ Oberman honors Larson as polymath by weaving together many sources: an essay by the Director of Policy Planning at the U.S. State Department, a book by anthropologist Mary Catherine Bateson, cancer survivors' narratives, writings by psychologist Jerome Bruner and legal feminist Martha Fineman, and the tenets of cognitive behavioral therapy. At the heart of Oberman's essay is a question that continues to haunt the legal profession, as it does other professions as well: do women face different challenges than men in their professional lives, and if so, how are they to make sense of the resulting struggles they face? Oberman, like Larson, pulls legal readers out to a wider world both in terms of disciplinary sources but also in terms of the sensibilities and "data" that may be required if legal minds are to address problems whose solutions must draw from broader sources than law. This is an awareness that has come and gone within jurisprudence, as scholars at times reached to the humanities and to critical perspectives – only to retreat when the new "new" approach from some other source pulled them away. As did Larson, Oberman reminds us that we need not always drop valuable "outside" perspectives when new trends and fashions come along.

Martha Ertman takes a similar combination of lessons from the work of Larson, like Oberman writing in a blend of professional and personal voices.⁸ Interestingly, in looking back at Larson's writings, one sees that in her academic articles and co-authored book, she maintained a largely professional register. The pull to a more hybrid form of writing in this Symposium is perhaps partially a matter of genre; as Ertman notes, we are writing in festschrift style to honor a colleague who has died, and the memories we all bring to this task are personal as well as professional. Yet, there is a deeper reason for the hybrid format so many of our Symposium contributors have chosen for their articles here. Ertman neatly captures this when she articulates her choice to braid together memoir and legal analysis: the message of Larson's work was frequently that personal arrangements carry political implications, and that the seemingly remote voice of formal law is actually deeply embedded in the cultures and lives it renders invisible. In this sense, permitting the downtrodden to turn and at last claim their own voices within law requires us to make the invisible underside of law visible. Ertman, like other authors in this Symposium, demonstrates how complex this task can become – and also like others in the Symposium, she credits Larson with pushing her colleagues to reach greater heights of rigor and honesty in attempting to make law more accountable to the women and men who become its subjects.

Ertman characterizes Larson's work as possessing a fundamental optimism, which is a theme that would re-emerge in her new legal realist scholarship. Thus the seemingly intractable and tragic legal dilemmas with which Larson's work was occupied never led her to a fatalist (and, she would

7. Michelle Oberman, "Your Work Will Be Your Most Faithful Mistress:" *Thoughts on Work-Life Balance Occasioned by the Loss of Professor Jane Larson*, 28 WIS. J.L. GENDER & SOC'Y 181 (2013).

8. Martha Ertman, *The Legacy of Jane Larson: The Politics of Practicality and Surprise*, 28 WIS. J.L. GENDER & SOC'Y 207 (2013).

argue, cowardly) sense of defeat. She did not seek the safety of doctrinaire positions that fit neatly into existing schools of thought; she was not content to employ just one method for exploring multifaceted questions. Combining feminism and game theory, or social theory and empiricism, she worked to develop unorthodox legal approaches with an eye to pragmatism (in multiple senses). Ertman honors this legacy in her proposals for law reform aimed at creating equitable treatment for both members of pair-bond exchanges, and at supporting fidelity within those exchanges.

Guadalupe Luna and Christyne Vachon write of yet another way in which Larson's work provided legal scholarship with methods for making the invisible visible, while maintaining a constructive and optimistic frame. Their articles draw from Larson's research in the colonias. Luna actually took part in the colonias work with Larson, and she writes from a first-hand perspective of the arduous nature of that study.⁹ Luna's vivid account of the original field research helps us to grasp the importance of direct empirical reports from the ground level in understanding how an absence of housing regulation really translates in daily life. Desperate measures for obtaining any kind of drinking water might include using containers that had stored toxic chemicals, or risking contamination from sewage just to have some kind of water. In a sense, Luna's article continues her collaboration with Larson, carrying forward some of their earlier research concerns and also some of the scholarly methodology they had developed. That methodology, as Luna repeatedly notes, fits solidly within the "new legal realist" tradition. It combines "bottom-up" research and theory with a healthy respect for the power of the formal law.

Eschewing the overly simplistic division between "law in action" and "law in books," Luna – like Larson – includes both formal doctrine and grounded empirical legal research in her final synthesis. Her article focuses in particular on the role of women in marginal communities like the colonias. She shows us how, despite their vulnerable status, women in the colonias have been able to mobilize so that they can actually put formal law to use in service of those at the margins rather than only of those at the centers of power and privilege¹⁰ Luna points out the interesting interstitial role of women in addressing issues of law and poverty. She links the struggles of women at the margins of society with those of women scholars, authors, librarians – and law professors. These women attempt to stand for and with one another, and with others who have been marginalized in the face of law and inequality – in the process taking their own risks, balancing active involvement with professional imperatives. Luna tellingly links two strands in Larson's work – a focus on inequality in the colonias and a central interest in the situation of women vis-à-vis law.

9. Guadalupe T. Luna, "Facts Are Stubborn Things": *Irregular Housing in the Texas Colonias*, 28 WIS. J.L. GENDER & SOC'Y 121 (2013).

10. On the vulnerable subject and legal theory, see Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J. L. & FEM. 1 (2008).

Vachon demonstrates the enduring relevance and potency of Larson's work, drawing very direct connections between the regulatory dilemmas identified by Larson in the colonias, and the legal problems posed by immigrant labor in the United States.¹¹ In both cases, as Vachon astutely notes, informality and illegality pose a paradoxical challenge: they contribute to the vulnerability of already marginalized, poverty-stricken populations at the same time as they open up potentially life-saving possibilities. In the one case, people in the colonias who otherwise would be unable to afford housing have somewhere to stay – albeit under significantly worse conditions than would usually be mandated by legal regulations. In the other case, immigrants have some kind of work to sustain them, albeit under conditions so sub-par that these employment situations often violate minimum legal standards governing safety at work. Informality and illegality are at once a source of inequality and the only hope marginalized people have for managing in the face of drastic inequalities. Simplistic solutions – “don't regulate at all,” or “fully enforce regulations” – only make the situation worse. Failure to regulate simply consigns economically disadvantaged people to continuous hazard from unsafe conditions, whether at home, at work, or both. This failure leaves power to harass, dispossess, and exploit within the discretion or whim of private parties (or, arguably worse, government employees).

Like Larson, Vachon begins with a combination of empirical exploration and legal theory; she starts her investigation with observations which revealed substandard working conditions for vulnerable Burmese immigrants in the United States, but also with formal legal aspirations for corporate social responsibility. She acknowledges the global dimensions of an apparently local phenomenon, incorporating socio-legal perspectives on law into her analysis. To address the dilemmas she has uncovered, Vachon draws on Larson's non-doctrinaire prescriptions for law and vulnerable populations, arguing for a gradual and sensitive process of “regularization” rather than for an all-or-nothing approach. Vachon's practical mix of sources and solutions includes interdisciplinary insights from a noted psychologist who had dealt with the lived realities of Burmese immigrants in local contexts, but Vachon also considers straightforward formal legal measures such as SEC rule-making procedures. This focus on fluid processes that allow goals to shift in interaction with available means leads us to yet another of Larson's projects – a new legal realism based in pragmatism of several kinds.

LARSON'S LEGACY AND A NEW LEGAL REALISM

The same pragmatism (as noted, in several senses) that marked Larson's scholarship and activism led her to push for a new form of legal realism as the twentieth century came to an end and a new millennium began. With her characteristic combination of attention to the institutions and ideas within which law operates, she wondered whether the time was ripe for renewed

11. Christyne Vachon, *Burma Just Around the Corner: When U.S. Corporations Employ Refugees*, 28 WIS. J.L. GENDER & SOC'Y 159 (2013).

attention to empirical work within the legal academy, long before parallel interest in “empirical legal studies” and similar efforts had emerged. Along with others who shared her concerns, she began the work that led to a panel at the Law & Society Association meetings in 1997 (“Is it Time for a New Legal Realism?”) and the first United States New Legal Realism conference in 2004.¹² The group that she helped to galvanize wanted to see the project of the original realists carried forward in a very particular way – not through empiricism for its own sake, nor through a replay of the more limited project of studies of judicial behavior that characterized some of the older realist effort – but with a sophisticated blend of all of the available social science knowledge on law that has developed in subsequent decades.

In doing this, the newer effort would draw on many generations of work in the social sciences that used a combination of methods to investigate theoretically-driven questions about how law works on the ground.¹³ Echoing older themes such as Llewellyn and Hoebel’s interest in law ways, Charles Clark’s research on law administration, Walter Wheeler Cook’s empirical study of the actual operation of civil courts, and Underhill Moore’s dogged attempts to track law in action in everyday and institutional life, this newer scholarly effort would be able to move much further in tracking what (if, sometimes, any) effect the formal law as enunciated by judges and legislatures had on the ground.¹⁴ The New Legal Realism would also examine the workings and effects of the executive branch and administrative agencies. And it would continue to take seriously judges and courts as important (but hardly the only) sources of law. This more encompassing study of law in books and in action would build from the work of the Law and Society movement – which had found a way to bring together scholars from the full range of social sciences while also staying in conversation with law professors concerned about how to integrate studies of formal legal doctrine with empirical research.¹⁵

In this formulation, the New Legal Realism was to focus on the difficult task of translating among disciplines, rather than simply assuming that one could move transparently among disciplinary methods and discourses. As Torres points out, Larson was exemplary in her full embrace of the need to work with existing legal categories and doctrines, while nevertheless also importing other perspectives and critiques. She was impatient with battles over academic turf that led some scholars to insist that only one approach was valid;

12. *New Legal Realism*, WIKIPEDIA.COM, http://en.wikipedia.org/wiki/New_legal_realism(last visited May 15, 2013).

13. Howard Erlanger et al., *Is It Time for a New Legal Realism?*, 2005 WISC. L. REV. 335 (hereinafter *Time for NLR?*). The authors of that article were (in alphabetical order): Howard Erlanger, Bryant Garth, Jane Larson, Elizabeth Mertz, Victoria Nourse, and David Wilkins.

14. On “law ways,” see KARL N. LLEWELLYN & EDWARD A. HOEBEL, *THE CHEYENNE WAY: CONFLICT AND CASE LAW IN PRIMITIVE JURISPRUDENCE* (2002); on the empirical work of Cook, Clarke, and Moore, see JOHN HENRY SCHLEGEL, *AMERICAN LEGAL REALISM & EMPIRICAL SOCIAL SCIENCE* (1995).

15. LAW AND SOCIETY ASSOCIATION, <http://www.lawandsociety.org/> (last visited May 16, 2013).

instead, she irreverently combined theories and empirical research traditionally associated with both the left and right, concerned more with getting at the truth than with fitting into established camps.¹⁶ I have written of Larson's brand of "pragmatism" in multiple senses. We see this in her research on the colonias. On the one hand, she wanted to discover a form of analysis that could provide the best available understandings of law, property, and poverty. In this regard, she was "pragmatic" in the casual sense of being practical; she took from the theory and empirical results at hand, in an effort to analyze and then address social problems through law. She didn't care if doing this would ruffle feathers, as her concern was more with the analysis and with the people law was supposed to serve.¹⁷

Her approach was also "pragmatic" in the more technical sense introduced by philosophers like Dewey, as Victoria Nourse and Greg Shaffer note in their important article on new legal realism.¹⁸ Drawing on social theorist Hans Joas's explication of Dewey, Nourse and Shaffer explain how new legal realist work is pragmatic in the more technical philosophical sense: in keeping with a pragmatist agenda, new legal realist "scholars study a real problem in the world (they do not start with a theory or a normative agenda), and as they encounter the problem, scholars emerge with different ideas and new strategies, learning from those who must deal with the problem (the 'legal subjects')."¹⁹ Nourse and Shaffer specifically reference Larson's research in the colonias as an example of this approach.²⁰ Clearly, Larson began with a problem in the world: the disempowerment and substandard living conditions of colonias residents who could not afford more standard, regulated housing. Larson then worked between existing theories and her emerging empirically based understanding of the colonias in her effort to formulate a possible set of remedies. (The remedies themselves were conceptualized as gradual and emergent in an evolving situation, rather than being pre-specified in a rigid formula.) After putting in place one available remedy (clear titles to land), Larson joined with others to assess how this intervention had worked out on the ground. In keeping with the norms governing good empirical research, Larson and her colleagues accepted findings that did not support their original hypotheses (whereas, in keeping more with legal training, some legal scholars simply look for reasons to invalidate and throw out data that does not conform with the conclusion they wish to reach). Although Larson and her colleagues found that titling did not achieve the goal that had originally been envisioned, it did lead to another outcome (political empowerment), an unexpected turn of events

16. Her book with Linda Hirschman provided another example of this irreverent combination of theories and disciplines. LINDA R. HIRSHMAN & JANE E. LARSON, *HARD BARGAINS: THE POLITICS OF SEX* (1998).

17. And for this, she paid dearly at a professional level. I personally observed a number of ways in which this turned out to be true.

18. Victoria Nourse & Gregory Shaffer, *Varieties of New Legal Realism: Can a New World Order Prompt a New Legal Theory?*, 95 *CORNELL L. REV.* 61, 84-86 (1993).

19. *Id.* at 85.

20. *Id.* at 85-86.

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which then could nevertheless guide ongoing attempts to bring law into the service of those it had previously failed. This shifting relationship between means and goals, informed and guided by changing events in the world (which themselves were revealed through empirical research), fits well with a pragmatist agenda.

Thus, Jane Larson will be remembered as a founding force in this generation's renewed legal realism. In characteristic fashion, she worked between highly theoretical formulations, on the one hand, and ground-level problems and research methods, on the other. She incorporated legal doctrinal analysis into her research while also drawing in sophisticated ways on legal and social theory. She envisioned, enacted, and exemplified the promise of this generation's new approach to law and society.

CONCLUSION

This Symposium remembers Jane Larson as a scholar, friend, colleague, feminist, mentor, teacher, legal theorist, mother, and empirical legal scholar – just to name a small subset of the roles she played in her lifetime. We mourn an early loss, but celebrate a life, mind, and heart that shone brightly, casting a light that lives on still.