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Disentangling Law: The Practice of Bracketing

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Abstract

Following the call to focus on law as a set of practices, I develop Michel Callon's concept of framing (which I refer to here as bracketing) in relation to law. Bracketing is the process of delimiting a sphere within which interactions take place more or less independently of a surrounding context. It temporarily rearranges the relations that constitute legal reality. A legal contract, for example, draws certain objects and relationships into sharper focus, ignoring or deliberately excluding others. I offer several examples of legal bracketing—some foundational, others highly routinized—and note several distinctive characteristics. I then use bracketing to think about legal categorization, law as effect (rather than essence), law's success, and the heterogeneity found within a legal frame.

LEGAL BRACKETING

Consider the following:

> My sale of a set of snow tires on Craigslist.
> The registration of a fee simple property interest.
> A court deciding whether the oral testimony of an indigenous person constitutes admissible evidence in a case seeking to determine the nature and extent of aboriginal title.
> A lawyer preparing a Statement of Facts in a brief to a court.
> The claim that criminal law is a matter of federal jurisdiction.

All of these moments are identifiably legal in nature. Some are mundane and routine; others more formal or obviously contentious. Some involve recognized legal actors, and some concern everyday practices, such as a property transaction. All relate to legal concepts. How can we make sense of them? In what way are they all legal? We can draw on many tools, of course, such as literatures on legal consciousness or lawyerly best practices. My intent here is to take a different and deliberately modest tack and to use these and other examples to ask, How does law work, practically speaking?

I draw from a broad body of ideas relating to performativity, which treats reality as an effect produced by relationships between agents such that "entities take their form and acquire their attributes as a result of their relations with other entities" (Law 1999, p. 3; 2012).[1] Put another way, the meaning of an entity is an effect of its association with other entities. Those entities may be people or things. Reality is not outside these relations, but produced through it. That which we name law, from this perspective, should be treated as a performance, rather than as a reality that precedes our actions. To describe law as a performance, however, is not to say that it is any less real, nor is it to suggest that any performance is possible. Only certain performances are successful, to the extent that they are able to connect themselves to other entities through complex citational and reiterative enactments (Blomley 2013a). Real property, for example, is an effect, enacted into being and sustained by virtue of a series of relations, hooking up land title offices, cadastral maps, boundary markers, law courts, beliefs and dispositions, everyday practices, and so on.

Although the uptake of these arguments in sociolegal studies has been relatively slow (though see, e.g., Blomley 2013a, Levi & Valverde 2008), there are some intriguing examples of such work. Mohr & Contini (2011), for instance, explore the role of information and communication technology in combination with procedural codes in the performance of a regulative regime. Braverman (2008) offers a lively account of the hybrid legal assemblage that is the sidewalk, tracing the work not only of human actors, but also of street trees, the roots of which "kick back" against attempts to govern them. Legal assemblages perform law, it seems, but in unpredictable ways. The very relationality of such assemblages, moreover, makes them prone to failure or unpredictability (Blomley 2008a, Cloatre & Wright 2012).

The examples with which I began clearly make sense in relational terms. Once removed from the car and inserted into a market network, snow tires become commodities whose worth is a function of other networks of exchange and comparison. By posting them on Craigslist, I am also inserted into a legal "terms of use" that stipulate an array of restrictions, obligations, and indemnities. Even if I do not read the quasi-contract, I bring a set of prior understandings about

[1]The literature on performativity is extensive. Examples I have drawn on here can be found in economic sociology (e.g., Callon 1998a,b; MacKenzie et al. 2007) as well as science studies (e.g., Latour 1986, Pickering 1995) and some contemporary readings of American pragmatism (e.g., Allen 2008, Barnes 2008, Blomley 2014b).

the morality of misrepresentation, and so on. The interaction I have with the ultimate purchaser of the tires is also entangled in a set of relational understandings (such as fair price).

Yet although the exchange is thoroughly entangled, it is, like all the other examples, provisionally bracketed (Blomley 2011). Certain relational associations are severed, given a set of (more or less) shared assumptions that a distinctive arena or institutional space, with its own rules, has been carved out. Sellers and purchasers are to negotiate over market price, not need or charity; a legal brief must be rational, not emotive, and must clearly identify the relevant facts and law applicable to a case, and so on. Yet this bracketing is always partial. Relationality intrudes (I find it hard to think of the prospective snow tire purchaser as a pure market actor: He appears short of money, so I cut him a deal) or is necessary for the bracketing to hold together (the brief writer is encouraged to consider his or her presentation of the legal facts as a persuasive narrative, drawing from wider conventions of storytelling).[2]

Law in its more formal manifestations would seem to be heavily invested in the process of disentanglement. Indeed, it is this that is said to make law distinctive when compared with other areas of human interaction and practice. For some, this is its merit, carving off a distinctive realm unsullied by factionalism, that promises clarity and determinacy. For others, this is simply a facade, behind which lurks class interest. I am more interested, for now, in making sense of the prevalence of and movement between relationality and severing more generally, as a way of thinking about the way law works. In so doing, I take my cue from scholars such as Fleur Johns (2013), who focus on legal practices, the goal being to trace "the day-to-day actions and processes through which the producers of social knowledge actually go about the on-the-ground work of making, conducting and disseminating the kinds of social knowledge that they are involved in making" (Camic et al. 2011, p. 7).

One helpful way of approaching legal practice comes from the comparable work of Michel Callon on the market, which he characterizes as a "collective calculation device." Calculation presumes a particular set of agencies, organizations, and processes engaged in complex interactions, measurements, and comparisons. The ability to calculate, Callon argues, is inherently relational (based, for example, on assessments of how others in a market interaction will act). However, a market interaction also requires, for calculation to occur, that a partial bracketing of this network be made:

> If calculations are to be performed and completed, the agents and goods involved in these calculations must be disentangled and framed. In short, a clear and precise boundary must be drawn between the relations which the agents will take into account and which will serve in their calculations and those which will be thrown out of the calculation as such . . . . Without this framing the states of the world cannot be described and listed and, consequently, the effects of the different conceivable actions cannot be anticipated. (Callon 1998b, pp. 16–17)

Bracketing, as I define it, entails the attempt to stabilize and fix a boundary within which interactions take place more or less independently of their surrounding context. That which is designated as inside the boundary must be, in some senses, disentangled from that identified as outside.[3] Bracketing, in this broad sense, is a ubiquitous and seemingly inescapable dimension

[2] See **http://www.law.cuny.edu/legal-writing/students/court-brief/court-brief-1.html** (accessed May 10, 2014).

[3] Whereas Callon refers to "framing," I have chosen to use "bracketing." This is to avoid confusion with framing's use in media studies, where it signals the conscious adoption of a particular narrative or theme to make sense of an event or phenomenon (e.g., the framing of taxation as a matter of economic efficiency or social justice). Bracketing also resonates with the textuality and particularities of lawyerly practice (think of the difference between square and round brackets in case citations, for

of experience and perception. It entails complex and subtle calculations that govern what is, and what is not, to be included within a particular setting. When we encounter a situation such as a theatrical performance, for example, we do so according to a quite particular frame:

> A performance. . .is that arrangement which transforms an individual into a stage performer, the latter, in turn, being an object that can be looked at in the round and at length without offense, and looked to for engaging behavior, by persons in an "audience" role. A line is ordinarily maintained between a staging area where the performance proper occurs and an audience region where the watchers are located. The central understanding is that the audience has neither the right nor the obligation to participate directly in the dramatic action occurring on the stage, although it may express appreciation throughout in a manner that can be treated as not occurring by the beings which the stage performers present onstage. (Goffman 1974, pp. 124–25)

Although it is endemic to social life, bracketing takes on a particular force within law, it may be argued. First, law is particularly invested in producing clarity, legibility, and certainty through the drawing of distinctions. Law's "nomos," after all, derives from "nemo," which means to separate, divide, and allot. Second, precisely because of its institutionalization, law is a powerfully performative site. The declaration of the judge is not descriptive, but productive: "Law is the quintessential form of the symbolic power of naming that creates the things named" (Bourdieu 1987, p. 838). It is no accident, therefore, that the examples Callon offers in describing economic calculation, such as the sale of a motor vehicle or the establishment of a contract, entail legal bracketing. The sale of a car is possible because a vigorous framing has occurred that reduces the "market transaction to three distinct components: the buyer, the producer-seller, and the car. The buyer and seller are identified without any ambiguity, so that property rights can be exchanged. As for the car, it is because it is free from any ties with any other objects or human ownership, that it can change ownership" (Callon 1998b, p. 18).

Legal practice and theory help organize these exclusions. For a legal transaction to occur, a space must be marked out within which a subject, object, and set of relations specified as legally consequential are bracketed, and detached from entanglements (ethical, practical, ecological, ontological) that are now placed outside the frame. Law, we might argue, is a both a resource and a locus in the negotiation between bracket and relationality. To the extent that bracketing is successful, that which we know as law is produced.

This is so in a foundational sense. The construction of that which is deemed law rests on the definition of a violent world of nonlaw (Peters 2008). This is evident in relation to tropes relating to legal violence (Blomley 2003) in which law's violence—rational, regulated, advancing common goals—is separated from and imagined as a counter to the "anomic or sectarian savagery beyond law's boundaries" (Sarat & Kearns 1992, p. 5). Without such a division, of course, the commonplace distinctions between terrorism and reasonable force, or murder and execution, break down (Williams 1983, pp. 329–31). But that which is placed outside of law is not simply a space of not-law but is itself a product of law. International legal practice, for example, engaging with issues such as climate change, targeted killings, and natural disasters, seeks to assign international law to "some delimited time, space and subject matter for its 'proper'. . .operation. . .[,] a jurisdiction bounded. . .by one or more before(s) and after(s), below(s) and above(s), against(s) and/or

example). Bracketing as a concept also seems useful because it points to the subtle interplay between relational ground and provisional severance (Riles 2006). Although a bracket in a sentence temporarily cuts the flow, it still relies upon the text as a whole for its meaning.

despite(s)" (Johns 2013, p. 8). Legal practice thus produces bracketed spaces of extralegality, Johns (2013) notes, often organized through temporal moves, such as the designation of issues as pre- or postlegal, or by their treatment as supralegal (that is, treating them as legally exogenous, beyond law's grasp) or infralegal (characterizing them as marginal, incidental, and unworthy).

Bracketing need not only be thought of in this foundational sense. Judicial practice can usefully be thought of as a bracketing device that helps perform reality into being, rather than providing a more or less transparent window on a pregiven reality. Evidentiary rules work such a bracketing, for example, by treating the oral histories of indigenous peoples as inadmissible forms of hearsay or by framing them as a set of data that allow a series of factual events to be accessed by others, rather than as a performance that is itself the event (Bryan 2011).

The ability to disentangle from the "ever-tangled skein of human affairs" (Langdell 1871, p. vi) is central to the ability to think like a lawyer. Messy urban conflicts involving homelessness, for example, that others may frame as centered on poverty, ethics, social exclusion, and citizenship may be rebracketed as disputes over jurisdiction (Blomley 2012). Spatial particularities may be erased in pursuit of a universal space of equality.[4] The effect is to carve out a realm of law that operates according to a distinct set of exclusions:

> We do not ask whether someone is a generally reliable person. We ask whether she showed up at the time and place specified in the contract, and with the goods as agreed upon. We ask whether someone precisely mirrored a contractual offer in accepting it, not whether he or she has dreams of becoming a novelist. We may ask about the relative power the two parties had in making a contractual bargain, but that inquiry will be very narrowly circumscribed by the legal definition of what an unconscionable contract is; we will not, for example, conduct a sociological examination of the way race, class, gender, educational background, the structures of neighborhoods or companies or the capitalist economy, or a number of other factors may impact power. (Mertz 2007, p. 120)

But such brackets themselves become inserted in other legal brackets through the mechanism of legal precedent. To invoke precedent requires that a judge draw analogies between the case before him or her and earlier cases. A particular, localized dispute is thus taken up and given meaning as a manifestation of a salient legal category (the doctrine of adverse possession, for example). This is achieved, in part, through the casebook, a compendium of excerpts from judgments, with commentary. As Mertz (2007) points out, the corralling of cases within this frame works to striking effect. Remarkably diverse phenomena are detached from their original contexts, herded together within a particular bracket, and made to work as examples of lines of precedent: "[A] defective coffee urn, mislabeled poison, a loaded gun and defective hair-wash become analogous as 'inherently dangerous' objects. . .[,] making partners of people and objects that would ordinarily not be mentioned in the same conversation, let alone sentence" (p. 64).

The legal fiction is another striking example of the bracketing that is central to law's practice. As Demos (1923, p. 37) notes, a nonlawyer is likely to be bewildered by a court's propensity to "overcome an obstacle apparently by simply denying its existence." For example, when a beneficiary under a will kills the testator, the law can draw from the fiction of the constructive trust to prevent him or her from receiving an inheritance. As such, the beneficiary is declared to be a trustee, holding the property in trust for the next of kin (Knauer 2011, p. 15). Like a theatrical performance, the

[4]See *R. v. Stuart* (2010), holding that the Vancouver police had denied a suspect his constitutional rights by not advising him of his right to counsel, this being police practice in an inner city neighborhood (the Downtown Eastside): "Though the investigation involved the Downtown Eastside, there should be no special rules for the Downtown Eastside. To do so would shift the sands in relation to the application of the Charter across Canada. Canadians are all equal before the law" (para. 4).

fiction relies upon the willing suspension of disbelief. However, it is inaccurate to characterize it as a lie that seeks to deceive. Paradoxically, it works only to the extent that it is recognized as untrue. Demos (1923) points out that the fiction relies upon an attitude of assuming, rather than one of believing. The phrase "as if" [cf. Vaihinger 1966 (1935)] denotes this attitude: For example, a corporation is treated "as if" it were a person, for certain legal purposes. The legal fiction, put another way, should be assessed pragmatically, rather than empirically. It is a tool for thinking and thus for performing legal reality. Precisely for this reason, to dismiss it as "mere" fiction is a mistake (Knauer 2011).

The brackets of law also organize time and space. Legal fictions such as the doctrine of discovery or Crown radical title entail a parsing of history and geography. But we can also see this in the ways in which organizing ideas, central to legal practice, are constructed. Property, it has been mentioned, is often understood by legal and lay actors in a quite particular way, the effect of which is to bracket many of the relations that are inherent to the property form (Singer 2000). Besides imagining a world of isolated individuals, engaged in particular transactions, the effect is to bracket both time and space. Thus Rose (1990) notes the centrality of particular narratives of property that organize history in powerful yet contingent ways. Similarly, we can point to the work that the spatial boundary does in disentangling and severing social and ecological relations in dominant accounts of property (Blomley 2011). But this bracketing constantly faces overflow. Rose (1990) uses narrativity to open up property to alternative temporalities. Similarly, property boundaries are not only a line of separation, but also a zone of connection (Blomley 2005).

The ability to bracket, and the stability of the line that is drawn, is not, however, a given but has to be worked at, given the ubiquity of overflows that escape the container (Prudham 2008, Riles 2006). These overflows move through multiple conduits, of which people are only one. I frame myself as the owner of the intellectual property in this article. But to do so is to deny all the other relations that go into this work, including the intellectual obligations I have to other scholars, as well as the software that allows me to write it. The successful disentanglement of the legal subject, in other words, isn't easy. For a property transaction to be successfully bracketed, the property owner is to be identified, and constituted as a "separative self" (Nedelsky 1990). But the making of such purified legal actors is not straightforward. In her detailed account of educational practice in US law schools, Mertz (2007) documents the drawn out, painstaking Socratic practices involved in creating lawyers, as instructors rework students' identities through the disciplinary use of hypotheticals, ethical bracketing, and the modeling of the split self. She also notes the resistance from students who cling to the idea that law is about fairness, not frames. Legal education entails a rebracketing of the subject, as the law student is taught to rethink conflicts in professional terms. Bracketing, therefore, is a conditional accomplishment, rather than something inherent in the order of things.[5]

However, although bracketing "puts the outside world in brackets. . .[,] it does not actually abolish all links with it" (Callon 1998a, p. 249). The performance of a play entails a careful bracketing, but it would not succeed were it not for a whole set of prior expectations that are inevitably present (such as a set of cultural understandings about what it is to watch a play). Similarly, a legal contract entails a rigorous framing that seeks to carve out a space for the exchange of certain goods and services. Yet this presupposes a legal regime of courts, cultural expectations about property, and so on, outside the frame. Indeed, this very relationality is a precondition for

[5]It is interesting to read legal scholarship in this light. US law and economics scholarship in property, for example, spends considerable energy in attempting to determine bright-line rules that seek to carve out the essence of legal forms such as private property, hedging it against its sticky relationality (see Fitzpatrick & McWilliam 2013 for an anthropological analysis of such stickiness).

the success of the bracket. A hermetically sealed contract, for Callon, would be a failure. All of these external elements, Callon (1998a, p. 254) points out, are both resources and intermediaries: "[T]hey frame the interactions and represent openings into wider networks, to which they give access."[6]

Law is relational; so, to bracket law is to cut, redirect, or efface some of its entanglements. Bracketing "represents a violent effort to extricate the agents concerned from [a] network of interactions and push them onto a clearly demarcated 'stage' which has been specially prepared and fitted out" (Callon 1998a, p. 253). Brackets, Slater (2002, p. 243) notes, thus become "political and strategic battle lines." When and how they are constructed and who gets to bracket are deeply consequential questions. For not everyone has the opportunity or the power to successfully frame law in ways that stick. Take property: Given the implication of property in life chances, identity, security, and autonomy, the production of property's frames can be conflictual. The reconstitution of property as an object of economic rationality in early modern England, for example, entailed fierce conflict, struggle, and resistance (Blomley 2007). Although the process whereby individual transferable quotas were put to work within the European fishery turned a "hot, politicized sector tied up in sticky traditions and coastal culture. . .into a cool and rational sector for the future" (Holm 2007, p. 236), this disentanglement was massively disruptive to communities, work patterns, and economic relations. The bracketing of oil as an object of property in the Ecuadorian Amazon entailed an attempt to force a separation between a sublime rainforest, carefully protected by an eco-friendly corporation, and the sticky social and property relations shattered by resource extraction (Sawyer 2004). Land titling entails a powerful temporal framing, acting as a "crucial time barrier beyond which all memory [becomes] amnesia" (Shamir 1996, p. 243).

We should avoid the assumption, however, that bracketing has a straightforward relationship to centralized power.[7] First, we need to be careful in assuming that legal bracketing is the exclusive prerogative of the powerful or that the propensity to purify is something for elites. Urban antipoverty activists struggle to perform a purified rights bracket, in which the homeless are understood as universal citizens and rights bearers. Urban authorities, conversely, rely on often highly entangled and fluid framings predicated on police powers, discretion, nuisance, and community (Blomley 2012). Second, bracketing is not necessarily the same as the top-down process noted by scholars such as James Scott (1998, p. 35), who characterizes the modernization of property systems in Europe as producing a "vastly simplified and uniform property regime that is legible and hence manipulable from the center." Although he points out, in passing, that simplification is in some senses relative (navigating a centralized property law system requires technical expertise, for example), the practice he dubs "seeing like a state" is characterized as reductive and somehow artificial (Steinberg 1995).

However, as noted below, I resist the idea of the artificiality or virtualism of such moves. There can also be little doubt that the localized property regimes that are remapped by such simplifications also entail bracketings (Blomley 2014a). Moreover, to characterize this as a simplification risks overlooking the complexity and the heterogeneity within the frame, as discussed below (cf. Blomley 2008b). It also ignores the ways in which a process of disentanglement can go hand in hand with one of re-entanglement. A land survey may cut a whole series of connections in its rendering of the parcel (such as ecology, history, indigeneity, and so on). Yet the survey is itself meaningless unless

[6]In economic theory and practice, Callon (1998a) notes, considerable time and energy are given over to measurement, in order not only to attempt to stabilize the bracket but also to assess the overflows at work (via the economic externality, for example). The bracket, in that sense, is a space of calculation. It becomes interesting to think of the comparable investments in legal practice and scholarship.

[7]We should also be cautious of claims about power as a metaphysical essence (see Blomley 2014b).

inserted in dense networks of land markets, registration, and property law; cultural networks premised on visual aesthetics; scientific networks that validate the visual and the geometric as fact; and so on. "That is the reason why it could be said, in a paradoxical way, that, in order to make disentanglement possible, . . . agents heavily invest in the production of entanglements! To disentangle you have first to entangle better" (Barry & Slater 2002, p. 293).

LEGAL CATEGORIZATION

As mentioned above, Callon developed framing in the attempt to understand economics and its relation to markets. Although there are clear institutional overlaps, it is useful to ask whether there are particularities to law that demand more careful attention. Presumably, bracketing-work varies, depending upon context. Goffman (1974), for example, describes the importance of spatial and embodied cues (such as the use of the elevated stage, or conventions of dialogue) in theatrical framing. For law, it seems to me, one particularly important (and rarely reflected upon) framing technology is categorization.

"[O]ne thinks like a lawyer," argues Mertz (2007, p. 3), "because one speaks, writes, and reads like a lawyer." To do so requires the category, which provides legal technicians with not only a tool for the identification of problems and their resolution but also an instrument through which to think. As such, "the primacy of categorization in legal reasoning would be hard to overestimate" (Hamilton 2002, p. 116). Law school entails an induction into the "proper deployment of. . .categories" (Mertz 2007, p. 79). Legal categories are not everyday ones (in fact, lawyers work hard to distinguish everyday and legal categories), but produced, refined, and sustained through generations of legal practice and inculcation. We are not making distinctions here between, say, world music, jazz, and folk music, but between acts and omissions; easements and profits à prendre; freehold and leasehold. The production and stabilization of such lawyerly categories, and the hard work that goes into sorting the world into them, should be a focus of our attention.

In light of the earlier discussion of the complex relationship between relationality and bracketing, it also becomes useful to attend to the particular ways in which legal categories are themselves put together. Take, for example, the legal category of the Canadian check. As Hamilton (2002) shows, the formal meaning of the check is fixed in Canadian law by the Bills of Exchange Act, in which it is defined as a "bill of exchange drawn in a bank, payable on demand" (RSC 1985, ch. B-4). The stability of its categorical form is legally consequential, it seems. A determinate legal result is to flow from definitional attribution, regardless of context. The organizing idea is that all must know, from the face of the bill, what sort of negotiable instrument we are dealing with. At work, Hamilton notes, is a definitional model of categorization, predicated on a container model of categorization, where one is either in or out of a category.

But, Hamilton points out, there are many examples of checks in everyday use that do not conform to the bright-line categorical logic of the Bills of Exchange Act. A postdated check, for example, is not payable on demand and thus, formally speaking, is not a check. Yet its frequent use (for rent payments, for example) would suggest that it appears to successfully work as a check, pragmatically speaking. This is possible, given that judges, when confronted with the need to fix the meaning of postdated checks, work with a prototypical or radial approach to categorization, Hamilton argues. Membership in the category "check" is not always a yes/no question, but one that works outward from a prototypical core, allowing for degrees of association and similarity (so that a postdated check might be termed a variant or special species of ordinary check, for example). Put in my terms, at work within legal practice are two different forms of categorical bracketing, one more hermetic (yet still reliant upon overflows), the other more graduated and permeable (yet still seeking to draw categorical distinctions) (Rose 1988).

The tendency in law is to think of the category as an outcome of thought and practice. For Feinman (1989, p. 664), legal categorization "presupposes objects that are to be classified, categories into which the objects are to be grouped, and some means of separating the objects into the categories." The objects, it seems, come first. We are encouraged to think of entities as having some thingness to them, rather than note the ways in which boundaries constitute the object. For Abbott (1995, p. 857), however, "it is wrong to look for boundaries between pre-existing social entities. Rather we should start with boundaries and investigate how people create entities by linking those boundaries into units. We should not look for boundaries of things but for things of boundaries." This reopens a connection to the work of Pierre Bourdieu, who similarly explores law's performative power, while also foregrounding the social politics at work. Bourdieu (1985, p. 729) characterizes a trial as a struggle to impose "a principle of legitimized distribution," at stake being "the inextricably theoretical and practical struggle for the power to conserve or transform the social world by conserving or transforming the categories through which it is perceived."

Viewed thus, legal categorization does not describe an external reality but helps create it. Consider, for example, a modern-day treaty process involving indigenous communities and the federal and provincial Crowns in British Columbia, Canada (Blomley 2014c). For the Crown, treaties are all about bracketing: Aboriginal title is seen as messy, fluid, and uncertain. A treaty, like a legal contract, will (it is hoped) frame it as knowable and certain, without dangerous and unpredictable overflows and entanglements. One crucial obstacle to the resolution of treaties, however, has been the categorization of the property interest that a First Nation will have in the land that it recovers from the Crown. The Crown has insisted that First Nations hold their treaty settlement lands as a form of fee simple, this being bracketed as a clear and certain entitlement. First Nations negotiators, however, have pushed back, re-entangling fee simple in culture, politics, and place. Fee simple, they insist, is caught up in troublesome networks of sovereignty and economy. Indeed, it is these very connections, one might suggest, that make it so desirable to the Crown: Fee simple cuts away the worrisome entanglements of indigeneity, while plugging First Nations into more legible economic and political circuits. One can trace the categorical moves of both parties, with the Crown attempting to bracket colonial history and ethics, and First Nations working to emphasize fee simple's more problematic entanglements. This is a highly technical practice, working in and through and against lawyerly forms such as the doctrine of tenures and estates, the legal fiction of Crown title, and categorical sorting hats, like the *numerus clausus* principle. But it is fully political. The struggle over the bracketing of fee simple is a contest over what property is to be. The treaty, like the judgment of the court, "belongs in the final analysis to the class of acts of naming or of instituting" (Bourdieu 1987, p. 838).

LAW AS EFFECT

It is not just legal categories that are enacted into being through the bracket. Take the crucial distinction between law and society. Liberal societies are heavily invested in the idea of law as an autonomous field, detached from the vagaries of social context. Instead of treating this divide as a given, or simply as a social construction that can presumably be deconstructed through willful effort, we can view it as a relational effect. Rather than critiquing or defending the distinction, an alternative view seeks to examine the way in which the distinction is itself produced as a bracket. To examine law as an effect is to examine it "not as an actual structure, but as the powerful, metaphysical effect of practices that make such structures appear to exist. . . . [O]ne could analyze how the mundane details of the legal process, all of which are particular social practices, are so arranged as to produce the effect that 'law' exists as a sort of abstract, formal framework, superimposed above social practice" (Mitchell 1991, p. 94). However, none of this is to say that the

distinction is somehow illusory, a head trick we play upon ourselves. To the extent such framings are successful (see below), they should be regarded as real, and as productive of power relations.

Mitchell (2002) offers a compelling analysis of this in relation to the modernization of property law in nineteenth-century Egypt. It is tempting to treat this as the imposition of an abstraction, predicated on universal legal rules. Modern law appears, in opposition to that which it replaces, as self-contained and self-arbitrating, and as universal rather than particular. However, Mitchell points out, the form of law that replaced precolonial property was just as particularistic and violent. Crucially, however, it reorganized spaces, people, objects, and ideas so as to produce a distinction between that which now appeared as particular and that which came to seem general: "[S]ome appeared fixed, singular, anchored to a specific place and moment, like objects, while others appeared mobile, general, present everywhere at once, universal, unquestionably true in every place, and therefore abstract" (Mitchell 2002, p. 528). It was, in my terms, a bracketing that made possible the very idea of law as distinct and detached. But this did not happen only at the level of word and representations. The distinction, Mitchell (2002, p. 78) argues, "was built into the architecture of the countryside" through the creation of enclosed agricultural estates that spatially generated the effect of a distinction between abstraction and material reality, inscribing the effect of an absolute opposition: "on one side an agricultural colony consisting of labor, animals, resources, implements, and land, all of them now objects to be owned; on the other, administration, bookkeeping, order, property, the right of ownership" (p. 78).

This is useful in directing us to the ways in which law's spaces are produced through and productive of law's frames. Space, from this perspective, should be thought of in relational terms. Cities, regions, places, and territories "come with no promise of territorial or systemic integrity, since they are made through the spatiality of flow, juxtaposition, porosity and relational connectivity" (Amin 2004, p. 34). A place should not be thought of, from this perspective, as a piece of space with a line drawn around it, but rather as a contingent coming together of entities, a temporary touching down of heterogeneous and spatially stretched relationships (Massey 2005). Such spaces, then, are continuously being made and remade as relations are reconstituted (Jones 2010). But an attention to relationality should not obscure the important ways in which space is legally bracketed (or put another way, legal forms are sustained by particular spatialized framings; Painter 2010). In other words, the "law effect" is often related to a "space effect." A legal device such as jurisdiction, for example, relies upon a spatial bracketing, such that legal data appear presorted into discrete and stable scalar categories of the national or the local (Blomley 2013b, Valverde 2009). The stability of the jurisdictional bracket is, in part, a function of the apparent fixity of scale.

Foregrounding the hard work that goes into bracketing law is useful in that it redirects us from metaphysical abstractions, such as the law or the state, or assumed distinctions between particular and general. It points us instead to an examination of how such categories and distinctions are themselves performed into being. In other words, an attention to framing invites us to trace how these assemblages are put together and stabilized, while also considering how certain exceptions and silences are performed into being.

LAW'S SUCCESS

It is tempting to think of law's bracketing in a Polanyian sense, as a form of disembedding that separates the abstract from the real. But society is not the real context from which a virtual legal frame has been extracted. Rather, bracketing should be thought of as an attempt to arrange a set of relations, foregrounding some and severing others. Whereas disembedding assumes society as a container, the disentanglement at work in the production of a bracket is different. It entails the attempt to extricate agents and entities from the relational networks that give them meaning,

while retaining their connections to the outside world. Disentangling is not the separation of law from society, but "a reframing of culturally meaningful items that never cease to draw on their external meanings" (Slater 2002).

As such, a criticism of law's brackets in terms of their abstraction from reality, such as the drawing of distinctions between law in the books and law in action, misses the point. Law's brackets need to be assessed not by their truth, but by their success. Success, in this sense, can be determined not by the objective fit of an enactment or statement with a prior world, but rather according to the degree to which it is able to create a world in which it becomes true. Callon (2007, p. 319) uses the term "agencement" to describe the mutual coproduction that is at work here. The discipline of law and economics, for example, though highly abstract, is successful to the extent that it is able to help produce a world (of journals, think tanks, jargon, conferences) in which it is true.

Consider the remarkable uptake of Peruvian economist Hernando de Soto's influential prescriptions for property reform. De Soto has persuaded numerous governments in the developing world to formalize the property holdings of squatters in the name of converting what he characterizes as dead capital into collateral and thus achieving economic security and prosperity. Yet although de Soto's ideas are immensely powerful, the actual effects for the poor are mixed and may be positively regressive. Legions of critics have characterized de Soto's model as a massive simplification that misses the evident realities of squatter settlements (for example, that squatters are often able to raise capital and transfer property even without state-sanctioned title).

Such criticism rests upon the gap between de Soto's representation and reality. However, as Mitchell (2007) points out, the effectiveness of de Soto's arguments does not reflect their success in representing the real world. We should treat de Soto's ideas not as representation, but as a performative bracketing. They work not by representing that which was previously unrepresented, but rather through a reconfiguration of property, in particular through the construction of a boundary between a market and that which is outside, and thus should be brought within it. We see this in de Soto's reliance upon the bracketed metaphor of the bell jar to describe the capitalist West, separated from the entrepreneurial yet untitled informal sectors of the developing world. Inside the bell jar, a series of representations (notably land titles) are said to align themselves in such a way that property becomes a basis for economic growth. Outside is dead capital, awaiting the vivifying power of land titling. Mitchell points out, however, that the line between formal and informal sectors should be treated as an effect, rather than a representation of reality. For him, the distinction is a "terrain of warfare" (Mitchell 2007, p. 254) spread across the entire planet, as the poor struggle to carve out an autonomous space partly detached from formal law and market mechanisms. As such, to lift the bell jar entails more than a technical transfer of assets from outside to inside; rather, it involves the attempt to violently redistribute assets and rework power relations.

Why, then, are de Soto's ideas taken up? Perhaps their appeal rests less on their veracity, than on their ability to both mesh with and constitute a receptive world. A (broadly neoliberal) context exists within which de Soto's ideas are truthful, and the reiteration of his ideas helps to further constitute a receptive environment. Latour (1987, p. 251) refers to organizing work of this sort as "metrology," meaning "the gigantic enterprise to make of the outside a world inside which facts. . .can survive." But his ideas are also seductive, Mitchell (2007) notes, by virtue of the framing that he performs. De Soto's bracket offers a solution to poverty through the realization of a wealth that is presently dead but can be made live through titling. We can get something for nothing, it seems. As mentioned, this rests on a bracketing whereby law and the market have an outside. Money is to be created out of nothing by moving dead capital and informal law inside the bell jar. But it also requires that there is something inside the bell jar that will work this magic (or "mystery," as de Soto puts it). This relies upon another bracketing: "Capitalism is said to have a

hidden key or principle. The multiple forms of expropriation, claim, violence, organization, and resistance. . .are imagined to express an underlying form, whose name is capitalism. Beneath the diversity and violence, we are told, lies some rule or law, whose hidden existence makes every historical case an expression of the same mysterious essential form" (Mitchell 2007, p. 263).

LEGAL HETEROGENEITY

Closer attention to the practices that go into performing law is useful in revealing not only the complexity and hard work involved in the building of legal frames, but also the surprising heterogeneity of that which is inside them. As discussed above, bracketing and simplification are not synonymous. This is not hard to demonstrate. Valverde (2012) documents the happy cohabitation of entirely opposed legal knowledge formats in Canadian aboriginal law cases. Analyzing a property dispute centering on the movements of the Missouri River, Blomley (2008b) points out the presence of diverse and incommensurable rivers at work within the hearings (idiographic, scientific, indeterminate, simplified), while observing that the court is still able to produce a stable frame.

If we accept that legal reality is performed through practices, such as bracketing, such diversity should not be surprising: Indeed, it should be expected (Law 2012). Rather than legal brackets being taken as certain and pure, it becomes useful to keep an eye open for their heterogeneity. To bracket is not necessarily to create simplified homogeneity, in other words. Under these circumstances, it becomes interesting to ask how brackets hold together in spite of (or perhaps because of) this heterogeneity.

Take, for example, the deployment of fee simple by the Canadian Crown in its negotiations with First Nations discussed earlier. As noted, the Crown works hard to disentangle fee simple in the face of the entanglements insisted on by First Nations. For the former, fee simple is obvious and straightforward. For First Nations, it is a hot, messy category that entrains sovereignty, economic individualism, and Englishness. However, when one looks more carefully inside the fee simple category proffered by the Crown, one finds intriguing heterogeneity. The fee simple within is sui generis, not generic, as indicated by its technical label: "fee simple plus." The "plus" component refers to the fact that the lands are not subject to the normal exceptions and reservations set out in the provincial Land Act. The lands are also not subject to expropriation except under particular terms and do not fall within the Crown's reversionary interest. The nature of the property holding that First Nations have carved out is also highly distinctive. Perhaps the very heterogeneity of fee simple allows for compromise between both parties (Law 2009). However, whatever it is, fee simple plus seems to successfully perform a certain fee simple to the extent that it is able to insert itself into a larger network of markets and land registries that treat it as a legible and singular property form (Blomley 2014c).

As can be seen, recognizing multiplicity offers an important entry point in an ontological politics of law (Mol 1999). Rather than criticizing law for its exclusions or its inaccuracies, we might take more seriously the bracketing work that is endemic to law, asking how it is that the frames we find objectionable prove successful in performing the real, or exploring how alternative performances might be successful. To do so requires the recognition of our role, as scholars, in law's performance (Law & Urry 2004), as well as a careful interrogation of the powerful work of law's brackets.

CONCLUSION

I have tried to point to the manner in which sociolegal relations frequently turn on the movement between entanglement and bracketing, between cut and flow. A relative wishes to buy a new car. A

mutual friend expresses an interest in acquiring her old vehicle. However, the relative is reluctant to engage in such a property transaction, given a worry that even when she severs her relationship with the car, she will still have moral obligations to the purchaser should something go wrong with the car or an accident occur. I remind her that when she sells her car, these obligations are formally severed. And so on. Many other examples—some mundane, others more formalized—can be identified.

My goal here, borrowing from and extending Callon's account, has been straightforward. I wish to point to the centrality of bracketing in legal practice and knowledge at many different legal sites. Although bracketing, as I have described it, is endemic to all forms of meaning making, it takes on a particular salience and character within legal practice. My motivation has been one of taking the practices of law seriously, on their own terms. Although law and society scholarship has done sterling service in revealing the ways in which law is imbricated in and productive of social relations and cannot be carved off from the social, as a pure and unsullied realm, it also runs the risk of valorizing the social at the expense of the legal. The danger, however, is that we lose sight of the technical forms of practice that are central to law, without which law is not law at all. As Riles (2011) points out, law's technicalities are composed of a distinctive bundle of instruments, expertise, agency, and practice. Although these technicalities clearly have social effects and necessarily encode particular ideologies, they also have their own specificity. This needs to be recognized and taken seriously, if we are to understand what law does and how it works: "[L]egal knowledge is not a flourish or a detour; it is a very serious thing. The legal techniques at work in doing state work are real. They are consequential. And thinking of the state as the practice and effects of knowledge work does not trivialize it, but specify it" (Riles 2011, p. 89).

Similarly, the simplification produced by bracketing turns out to be complicated, I have argued (Blomley 2008b). Bracketing is hard work, and the result is a contingent effect that must be sustained through other enactments and enrollments. The disentanglement that the legal bracket requires can be violent and disruptive. Bracketing, therefore, can become a political and ethical battle zone. Yet, curiously, bracketing requires that other relations are drawn upon, even if they appear to lie outside the frame. As such, we should be cautious of characterizing the legal bracket as a simplification (for it is often highly complicated) or as an abstraction (as opposed to a contingent rearrangement of certain connections, entailing both cuts and connections).

I have attempted to make some preliminary comments relating more specifically to legal bracketing. I note the particularly important role of legal categorization, so central to legal practice, as a bracketing device. The notion of law as a distinctive domain, divorced from politics and society, can itself be thought of as a form of bracketing, I suggest, reliant upon the severing and maintenance of particular distinctions, including supposed differences between spatial forms, such as scale. As such, it becomes easier to consider legal disentanglements as conditional arrangements that are more or less successful in maintaining distinctions, rather than as metaphysical forms of disembedding. Disentanglement is not the same as disembedding, I suggest. Finally, I note that disentanglement should not be thought of as creating purity and singularity. Although this may be one of its effects (think, for example, of the judge's decision, which promises determinacy), the contents of law's brackets, such as the Crown's "complex" fee simple in the treaty example, are often surprisingly hybrid and heterogeneous.

I do not wish to suggest that bracketing is a magic key with which we can unlock law's secrets. There is much that is unavailable to this type of analysis, notably an examination of any larger social and political logics that lie behind the law. However, I hope it is clear that attention to legal bracketing does not preclude ethical reflection or attention to power relations. For now, my goal has been to offer one modest way in to an understanding of some aspects of the practical work of

law. In so doing, my aim is to supplement other analyses of law, where appropriate, rather than overthrow them.

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