THEME SECTION

**Non-binding coercions:
Ethnographic perspectives on soft law**

Edited by

Filippo M. Zerilli

The rule of soft law: An introduction

Filippo M. Zerilli

Abstract: This introductory article aims to clarify why soft law is an interesting field to explore from a legal anthropological perspective and to point out a number of issues this theme section suggests taking into consideration. The article provides the context for the theme section, inserting soft law within global legal concerns and processes. It outlines the emergence of the notion of soft law, and summarizes the controversies it has raised among legal scholars and law practitioners. Then it explains why, despite the elusive character of the notion and its uncertain normative status, as soon as we move beyond a number of emblematic concerns for law practitioners, soft law mechanisms and practices appear to be a vantage point to explore the emerging transnational legal order, and particularly the relations among state, supra-state, and non-state (private) forms of regulation. Finally, the article introduces the articles in the special section of this issue by highlighting the ways in which they empirically deal with soft law practices and global legal pluralism in a variety of social fields and contexts, using ethnographic sensitivity and imagination.

Keywords: ethnography, governance, soft law, the state, transnational legal processes

Non-binding coercions

As a university lecturer, I am expected to do research in addition to being involved in a number of teaching activities and responsibilities. In both professional endeavors—research and teaching—during the past decade I had to consider forms of regulation legal scholars conventionally identify as “soft.”

While conducting fieldwork on property issues in post-socialist Romania, the introduction of national law and policies concerning the restitution of property assets confiscated during

socialism was one of the primary concerns, both for me personally and for the ethnographic subjects with whom I was working.¹ The social, economic, and political processes leading to the adoption and subsequent modification of state legislation in the (battle)field of property restitution, in which many private and public actors were actively mobilized since the early 1990s, was not a merely local or national affair, although the principle of belonging to a nation influenced early provisions introduced in this domain (Zerilli 2006). On the contrary, conceptions, ideas, and practices concerning the resti-

tution of property to its legitimate former owners were greatly influenced by practices, discourses, and ideologies emanating from a variety of normative sites and institutions located beyond the margins of the state, in a space often qualified as “the West,” either in a eulogistic or critical sense, depending on one’s social and political position. In particular, a powerful discourse on property protection arose from the European international human rights regime that at that time was emerging in Romania and other former socialist countries, alongside the normative order traditionally represented by the nation-state.

Between 1993 and 1996, when Romania ratified the European Convention of Human Rights, the Parliament of the Council of Europe made a number of recommendations to the Romanian government in relation to various issues such as the non-discrimination of homosexuals, the withdrawal of some press offences from the Penal Code, the development of a judicial system independent from the executive branch, and last but not least the “respect of the right to property” (see Andreescu 2001). Not surprising, these recommendations were widely circulated and publicized by the media, provoking lively discussion among individual and institutional actors, including politicians, legal scholars, NGO activists and ordinary citizens. While I was trying to cope with this puzzling ethnographic context in which subjects deployed their political agency, a number of questions came to mind: first, how can we appraise the actual power of such recommendations, that is, those legal instruments which are not binding and which international lawyers characterize as “soft”? Also, how do different sources of norm production aside from the state (e.g., the Council of Europe, local NGOs) interact and possibly reshape national law? How are power relationships between state and non-state institutions and organizations and their specific articulations perceived, interpreted, and represented by different subjects across the local/global divide? Is the binary distinction “hegemony versus resistance,” fashionable in the social sciences, or the notion of “competing actors,” dominant in economics,

useful in grasping those mutual yet asymmetrical relationships between different institutional bodies and Romania? Finally, how can we develop an ethnographic perspective involving interconnections among national, non-national, and de-nationalising processes, between hard and soft normativity, including the capability of individual, collective, and institutional actors to act and resist within and across different legal regimes and locations?²

In a groundbreaking essay originally published in 1973, probably one of the most influential in legal anthropology, anthropologist and lawyer Sally Moore introduced the concept of the “semi-autonomous social field” (Moore [1978] 2000). This concept opened up innovative ways of considering “law” and legal arrangements in anthropology (and law), and helped generations of researchers go beyond the accepted (legal positivist) idea according to which law is simply a uniform body of regulations and coherent interpretations.³ In fact, any system of legal arrangements (whether it be, as in Moore’s examples, the New York dress industry or the lineage-neighbourhood complex among the Chagga of Kilimanjaro) is not completely autonomous or isolated. According to Moore, all observable social fields are linked to “larger settings” (Moore [1978] 2000: 78). Recent developments in the anthropology of law, to which Moore herself made tremendous contributions on both the ethnographic and theoretical levels (e.g., Moore 2001, 2002, 2005) have sought to address the question of the extent to which these “larger settings,” where norms are produced and negotiated, might be theorized and subjected to ethnographic scrutiny, and in what way this can be done (e.g., Nader 1995; Snyder 2005). From this perspective, the concept of a semi-autonomous social field remains an extremely valuable research tool (see Lorenzo, this volume), but it is reasonable to ask what types of challenges the globalizing context in which territories and populations are currently organized and governed presents. In other words, it is crucial to explore how specific legal arrangements are produced and enforced within the complex network of national, international, suprana-

tional, and non-national sites where norms are established. To what extent the emerging “global legal environment” (Berman 2007) can be explored and framed in ethnographic terms, beyond the framework of links between the small-scale study of a semi-autonomous social field and larger settings, helping us to imagine and confront unexpected “topographies of power” (Ferguson 2004) as emerging forms of “neoliberal governmentality” (Ferguson and Gupta 2002).

My second chance encounter with the “softness” of law might be a useful starting point to introduce a number of concerns related to such issues. When I was doing fieldwork in Romania (and particularly after 2001), I was invited to participate in a number of gatherings in order to discuss *how* to apply what in Italy we briefly refer to as “the 3 + 2 reform” (*la riforma del 3 + 2*). It is the project to develop a European system of higher education based on two main cycles, undergraduate and graduate, a system also known as the Bologna Process.⁴ Although the context of higher education is but one example of the wide-ranging transformation shaped by the expansion of neoliberal governmentality in many policy areas (see Shore and Wright 1997; Wedel *et al.* 2005), each university system reacted differently to the same process. Based on my own experience, ten years after the Bologna Declaration was signed, it is no exaggeration to affirm that the Italian higher education system is pervaded by disappointment regarding the effects of the process, accompanied by diffuse nostalgia for the previous “old order” (*il vecchio ordinamento*, namely the four/five-year undergraduate cycle). In the context of this widespread skepticism toward the university reform, an increasing number of initiatives (conferences, meetings, books, etc.) have been launched in order to accurately assess the outcome of the process initiated in Bologna. Interestingly, during one of these gatherings, a colleague noted that “by signing a declaration in Bologna, our country did not contract any legal obligation to the reform.” Actually, the choice to introduce the reform was adopted in Italy as early as 2001 by way of a political (not legal) decision pro-

moted by the Ministry of Higher Education. A formally correct affirmation then, to which another colleague reacted with surprise, “Oh really? I thought it [the reform] was compulsory”, immediately adding, “anyway, it doesn’t really make any difference, if most European countries are conforming.”

Like the Council of Europe recommendations mentioned in the previous example, the Bologna Declaration is not a law in the sense of a binding agreement, nor an international treaty or a directive provided with binding force (Charlier and Croché 2004). It is a principle of soft law, and its authority is chiefly due to the number and reputation of the signatory countries. If a European country decides not to follow the agreement signed in Bologna, it will not be punished with formal sanctions but simply left out of the prestigious European “club.” Accordingly, compliance is not enforced by specific personnel or formal institutional bodies such as judges or courts but is effected by moral suasion and self-regulation, notably by the fear of being marginalized, left out or more drastically excluded from the process.

Despite their voluntary (non-binding) character, it would be mistaken to consider soft regulations such as the Bologna Declaration lacking a coercive dimension.⁵ As we have seen, individual as well as institutional actors often perceive what legal scholars call soft law as hard regulations and behave accordingly. The point to underline here is not the naïveté or ingenuity of some colleagues (or signatory states), nor to reduce their perceptions and behavior to unexpected or accidental circumstances. The important point to stress is that a number of policies prove effective not because they are provided with features lawyers are ready to recognize as hard law (i.e., legally binding provisions), but precisely because a number of enforcing soft mechanisms such as shaming, conformity, persuasion, self-interest, opportunity, or fear *are* effective. From this perspective, soft or non-binding rules can be as coercive as binding rules and agreements. This is why it seems appropriate to refer to soft law also as “non-binding coercions,” apparently an oxymoron that alludes

to those specific procedures and mechanisms aimed at obtaining compliance notwithstanding their non-justiciable character and lower degree of formality.

Although lawyers would traditionally include such enforcing mechanisms amid “atypical” law sources, the long-standing anthropological interest in social ordering in small-scale societies has produced important insights on legal processes in which shame, social pressure, moral suasion, and imitation play a significant role, as is clearly shown by a seminal article on gossip and scandal by Max Gluckman (1963). Interestingly, Merry, reflecting on the enforcing mechanisms of the international human rights regime, has argued that “the implementation of international laws bears some similarity to that of customary village law” (2007: 162). In an earlier essay, Merry explicitly refers to gossip and scandal as mechanisms of international law:

“gossip and scandal are important in fostering compliance internationally as they are in small communities. Social pressure to appear civilized encourages countries to ratify international legal treaties much as social pressure fosters conformity in small communities. Countries urge others to follow the multilateral treaties they ratify, but treaty monitoring depends largely on shame and social pressure” (2006a: 101).

Stressing similarity between customary village law and international law is not merely a way to recognize the need to de-exoticize the discipline of anthropology, a slow process in motion, at least starting from Laura Nader’s well-known call to “study-up” (1979; see also MacClancy 2002). In fact, it is an invitation to directly deal with transnational legal processes per se (Merry 2006b). Throughout this article, I contend that this is a challenge an ethnographic approach to soft law is in a good position to face. Indeed, in putting together this theme section, we suggest that attention to specific forms and practices of regulations such as soft law might enrich our understanding of the emerging transnational legal space and help us clarify some aspects of the politics of the globalization of law. More

specific, I argue that if one wants to understand or trace the current global transformation of law and legality, it is not only analytically useful but a practical necessity to look at particular sites and locations where such non-legally binding coercions originate and take shape through ordinary, mundane social practice.

Soft law and transnational legal space

Unquestionably, as many scholars dealing with globalization have noted, we are currently facing a wide-ranging economic, political, and cultural transformation, including legal and policy-making processes and dynamics (e.g., Edelman and Haugerud 2005; Ong and Collier 2005; Sassen 2006; Tsing 2002; Westbrook 2004). Particularly in Europe, the central role played by the nation-state is currently challenged by a model of supranational and multilevel governance embodied by the European Union (Bobbio 2005). Some authors have suggested portraying this change as a shift “from government to governance”, thus implying the emergence of new methods in the decision-making process (see, e.g., Archibugi 2008; Held 1995). Obviously, what is at stake is not simply a transformation from one governance model to another; rather it is a complex process in the making, one whose outcome, according to many observers, is uncertain and far from producing a homogeneous transnational legal code. However, it goes almost without saying that an unprecedented institutional framework made up of a set of legal competences in which state law is only one of the multiple public and private actors participating in the regulatory process is currently emerging. In many fields of law, the traditional domestic actors in the law-making process (e.g., policymakers, politicians, academics, the judicial system) reciprocally interact and eventually compete with an increasing number of actors outside national jurisdiction, creating a complex transnational space where decision-making, political, and legal processes take place. The point is not simply that some of the leading actors involved in regulation are found outside

the borders of the nation-state; it is rather that the burgeoning of sites from which actors and institutions produce and perceive normativity has broken the monopoly of the nation-state over law and policy-making for its citizens. Along with national actors, transnational, supranational, and non-state actors such as NGOs and social movements are strongly interlinked and increasingly contribute to shaping the production of norms and regulations affecting the everyday life of many people within and beyond national borders. The legal outcome of this new “institutional alchemy” (Caruso 2005: 3), is far from a coherent body of law doctrine, despite recent theoretical efforts to establish a “uniform concept of law” (Günther 2008). It is a fragmented, displaced, and often contested assemblage of regulations, the producers and beneficiaries of which are closely interlinked, as well as mutually conditioned (see Lorenzo, this volume).

Legal pluralism, a notion referring to the co-existence of multiple overlapping norms and legal regimes, which only some twenty years ago was conventionally considered specific to post-colonial settings (see Fuller 1994), is at present widely accepted as the ordinary state of affairs of any socio-legal context in our “world society” (Moore 2005; Teubner 1997). Admittedly, it is difficult to establish whether the globalization of law is an entirely new phenomena, a culturally constructed social fact, or a simple rhetorical effect produced by academic as well as popular discourse, while “the life of the law” (Nader 2003), like any social process, continues to flow and change everywhere. I tend to agree with sociologist Saskia Sassen that yes, the social, political, economic, and legal changes many people are experiencing and witnessing correspond to an “epochal transformation,” another phase of capitalism, one mostly based on neoliberal principles and practices (Sassen 2006; see also Harvey 2007; Mattei and Nader 2008). New legal configurations emerging under global or possibly more aptly “supranational capitalism” (Westbrook 2004) deserve close inspection by scholars from different disciplinary affiliations using multiple methods and, perhaps, creating

new terminology. Francis Snyder’s “global legal pluralism” (2005; see also Berman 2007), seems an appropriate formula to tentatively single out and summarize the current transformations of law and legality.

Nevertheless, the point at stake here is not so much to provide a comprehensive description of the globalization of law (see, e.g., Benda-Beckmann, Benda-Beckmann, and Eckert 2009; Berman 2007; Cassese 2006; Ferrarese 2000; Halliday and Osinsky 2006; Likosky 2002; Mattei and Nader 2008; Merry 2006b; Twining 2000) as to attract attention to the existing correlation between soft law instruments and mechanisms and the legal transformations occurring at the global level. Interestingly, according to Flood, “global law is *soft law* made by professionals during the construction of legal deals. Without this softness, global law could hardly come into being: it would be brittle and fragile, under constant disputation. Yet soft law has been remarkably successful in constituting the global legal order” (2002: 116). Similarly, Teubner (1997: 16) considers softness as a “typical characteristic of global law,” while in the critical opinion of Klabbers (n.d.), soft law is “the handmaiden of the increasing deformalization of global politics.” There is a paradox here that should not go unnoticed. Although the strength of (state) law is traditionally tied to its power to compel (by way of formal sanctions), the strength of global (transnational) law would reside in its ability to adapt to different circumstances, that is, to its malleability and softness. In this perspective, it is practical to refer to soft law as a specific technology of (global) law production, not in the sense of its capacity to become “hard law” in the future, as a number of law scholars would argue, but rather as a specific way to enforce compliance using different, usually self-regulatory means. This is consistent with the dominant logic of neoliberal governance as described by anthropologist Cris Shore, discussing the “culture of audit”: “a key characteristic of neoliberal governance is that it relies on more indirect forms of intervention and control. In particular, it seeks to act *on* and *through* the agency, interests, desires and motivations of individuals, en-

couraging them to see themselves as *active* subjects responsible for improving their own conduct” (2008: 284). Hence a detailed empirical analysis of specific soft law instruments and mechanisms seems important in order to understand how global law originates and takes shape. More specific, when, where, and how global norms are created, internalized, transmitted, negotiated, and possibly enforced (see Halliday and Osinsky 2006). In other words, in order to grasp how global (legal) governance is locally experienced and exercised under neoliberalism, in a space that is neither domestic nor international (Suh 2002).

Fundamentally, in organizing this special issue, we posit soft law as a legal and hence political technology consistent with the current phase of global capitalism and related changes in law and governance as roughly outlined above. If, as I argue, a firm relationship exists between the two, it would be realistic to admit that soft law reflects and at the same time participates in the production of two major trends in the globalization of law (Di Robilant 2006: 500). First in the increasing proliferation of law-making procedures and sites and, second, in the privatization of legal regimes, a dual, parallel process that in different terms might be broadly conceived as the retreat of the state from law-making in many policy areas. From this perspective, soft law instruments are called upon to play an important role in the current process of denationalization occurring at the global level (Sassen 2006) and simultaneously within the margin of the nation-state, the latter being an organizing principle far from having lost its authority (see Ferguson and Gupta 2002: esp. 989–90; Di Robilant 2006: 523; Sharma and Gupta 2006: 5 *et passim*). In fact, as legal anthropologists Benda-Beckmann, Benda-Beckmann, and Eckert have noted, “while state sovereignty is increasingly challenged by the international legal system, at the same time state governments assume controlling and surveillance powers, imposing restrictions on the rights of citizens or peoples that are unprecedented in recent legal history” (2009: 7).⁶

From a theoretical perspective, soft law concepts and practices seem to be a vantage point

from which to understand and learn how state and non-state law procedures and products are currently reassembled in unpredicted and novel ways, overcoming scholarly rhetoric, which not infrequently still considers the “national,” the “global,” and the “local” as mutually exclusive and hierarchically spatialized realms. Of course, this is not to deny a hierarchical organization among different sites of norm production but is, along with Ferguson and Gupta (2002), to invite scholars to engage with images and discourses of state verticality and encompassment as naturalized hierarchical relations between the state (“the above”) and civil society (“the grassroots”). As they suggest in a thought-provoking article, “the point is not to denounce a false ideology, but to draw attention to the social and imaginative processes through which state verticality is made effective and authoritative” (Ferguson and Gupta 2002: 983). In this perspective, exploring new means of governance such as soft law might be crucial in order to understand how state and non-state practices are currently reorganized. Today, as Moore cogently pointed out, “it is clear that much of the debate that surrounds legal pluralism is not just an argument about words, but is often a debate about the state of the state today, one that asks where power actually resides” (2001: 107). Therefore, an ethnographic understanding of soft law could help us to single out changing styles of governance and shed light on emerging forms of global legal arrangements challenging the conventional understanding of law and legality on the traditional temporal and spatial scale of the state.⁷

The force of soft law: Advocates and critics

In order to better assess the kind of socio-legal processes this special section draws attention to, and before we specifically consider some ethnographic analyses regarding soft law, it is worth clarifying what soft law is about from a specific legal standpoint, when it appeared, and how it has been received and debated among legal scholars and law practitioners.

The name itself, soft law, requires at least a few words of clarification to dissipate any possible misunderstanding, especially when one is addressing a predominantly anthropological readership, as is the case in point with this journal. In fact, I imagine the adjective “soft” denotes, at least metaphorically, “flexible” or “informal” legal practices for many readers, but within the field of legal scholars and law practitioners, the expression soft law immediately materializes into a specific set of legal instruments. Despite controversies regarding its normative status and its still unclear, fuzzy, or nuanced contours from a technical point of view, soft law is a legal device any student provided with a broad university background in international or European law would easily recognize. Discussing European Community law, Francis Snyder gave a celebrated description according to which soft law is defined as “those rules of conduct which, in principle, have no legally binding force but which nevertheless may have practical effect” (1993: 16). Soft law is typically embodied within non-binding legal instruments such as recommendations or declarations, but also “resolutions,” “codes of conduct,” “guidelines,” and “opinions” (see, e.g., in Somma 2009). Most of these instruments take the form of written documents commonly produced by international organizations such as the Organization for Economic Co-operation and Development, the World Trade Organization, the International Monetary Fund, or the World Bank, just to name a few of the most influential actors in economic globalization, occasionally depicted as “informal global legislators” (Mattei and Nader 2008: 45). However, even a simple draft proposal elaborated by groups of international experts could possibly fit into the soft law category. Obviously, the examples taken from my personal experience with soft law concern only two policy areas—the international human rights regime and the European higher education system. As a matter of fact, soft law instruments are widely used in many fields of law such as trade law, environmental law, administrative law, tort law, human rights law, and even criminal law (e.g., in Kirton and Trebilcock 2004; Somma

2009; on soft law as a tool in international criminal law see Trappe 2008). However, contrary to widespread assumptions and despite their recent proliferation, soft law technologies are not completely new.

In a recent article, legal scholar Anna Di Robilant (2006) attributes the interest of many contemporary lawyers and legal scholars in (notably European) soft law to two major sources. The first, which she calls “neo-medievalist,” goes as far back as medieval mercantile law, also known as *lex mercatoria*.⁸ The second one, which she labels “social,” locates soft law mechanisms in the antiformalist reaction of European jurists of the late nineteenth and early twentieth centuries, that is within the organicist and pluralist tradition of European continental law. Surely, as Di Robilant convincingly argues, both the neo-medievalist and social sources are rhetorical constructions of contemporary scholars and law practitioners participating in the soft law versus hard law debate on European harmonization, according to their different professional and political agendas.

In spite of such allegedly remote sources, soft law has acquired considerable popularity under neoliberal globalization.⁹ In particular, it has developed and been conceptualized within the field of international public law during the 1970s, notably in the United States. Its role has become particularly salient with the adoption, within the European Union, of the Open Method of Coordination (OMC), an inter-governmental means of governance based largely on soft law instruments, elaborated within the Lisbon strategy adopted since 2000 (Radaelli 2003; see also Katcherian, this volume).¹⁰ Consequently, soft law technologies have increasingly attracted the attention of numerous legal scholars and law practitioners, generating contrasting feedback and reactions.

Concerning the reception of soft law among contemporary scholars, Di Robilant (2006: 504–11) has provided a broad picture of the extremely diverse positions represented within the international legal community, ranging from soft law “enthusiasts” to soft law “radical critics.” Although it is beyond the scope of this article to

offer an extensive review of this growing body of scholarly writings, in order to better develop the rationale of this special section, I give a couple of examples that are emblematic of the two opposite camps. On the one hand, soft law enthusiasts consider that “the soft law approach offers many advantages: timely action when governments are stalemated; bottom-up initiatives that bring additional legitimacy, expertise, and other resources for making and enforcing norms and standards; and an effective means for direct civil society participation in global governance” (Kirton and Trebilcock 2004: 5). On the other hand, radical critics argue that “soft law is soft with aggressive and opportunistic market actors, which under the shield of soft legality succeed in transferring costs to society, and hard for weak actors” (Mattei 2003, cited in Di Robilant 2006: 508–9). Hence, for enthusiasts soft law is likely to “produce more effective global governance promoting economic openness, environmental enhancement, and social cohesion” (Kirton and Trebilcock 2004: 7), but to critics it is “yet another pattern of reception of American categories poorly fitting the fabric of European law” (Mattei 2003, cited in Di Robilant 2006: 509).

Admittedly, I am sympathetic toward the critical camp, whose stance is alerting us to the threat of the privatization of the legal regimes that soft law instruments entail.¹¹ Nevertheless, as I have argued elsewhere with reference to neoliberalism (see Zerilli 2008), although one might even agree with liquidating soft law (like neoliberalism) as another “creative destruction” (Harvey 2007; see also Gledhill 2004), soft law practices and discourses may possibly represent “sites of opportunities” (see Lorenzo, this volume) where powerless or discriminated individuals and collective actors can rearticulate power relations, enhancing them within specific political and social contexts. That is why I suggest confronting soft law, accepting the challenge to empirically deal with its discourses and ideologies in social practice before emitting a final verdict with regard to its presumed merits or pitfalls. I agree with a number of legal scholars (e.g., Abbott and Snidal 2000; Di Robilant

2006: 554; Trubek *et al.* 2005) when they encourage taking a more “pragmatic” approach toward the heterogeneous array of non-binding instruments. Interestingly, a similar point has been made by anthropologist Anna Tsing apropos globalization: in order to overcome “a misleading portrait of a single global future,” we should be able to look at globalization as “a set of projects that require us to imagine space and time in particular ways” (2002: 476). In the same way, this theme section is an invitation to go beyond the controversy on soft law versus hard law (on which, however, see Craig, Katchikian, this volume), also encouraging an understanding of soft law projects and ventures as concrete manifestations of multifaceted, overlapping, and often contradictory circumstantial arrangements of specific legal articulations in/of given social and political settings, beyond the local/global divide (e.g., Maurer 2009). An undertaking of this kind will not remain unchallenged by a number of assumptions explicitly and more often implicitly posited by mainstream legal reasoning.

Reviewing the soft law literature produced by international law practitioners, it is possible to detect two major concerns that deserve critical consideration. They both refer to the “means to ends relation” (Riles 2004, 2005) and are closely interconnected. I distinguish them here for analytical purposes. The first concern is a theoretical one, and raises the question: is soft law really a law, or it is rather a non-law? In other words, if according to many legal scholars and law practitioners, law is binding—has the power to attain compliance by way of formal sanctions—how can an instrument of social pressure, influence, or persuasion be considered “genuine” law? Although from a strictly legal point of view, the objection might be consistent, notably for a project that looks for legal concepts of uniform if not universal validity, to many others and especially to anthropologists, it probably sounds surprising, not to say idle. To those who raise doubts concerning the normative value of soft law, the anthropologist is tempted to reply with the words leading international lawyer Richard Falk used in discussing interna-

tional law, notably discerning “the jurisprudential insult that arises when influential persons continue to raise the question as to whether international law is really law at all, or in its more moderate form, is a species of primitive law that deserves only qualified respect” (2002: 355). Obviously, as most scholars would agree, the hard and soft logic of regulations are by no means mutually exclusive and are better seen as tools provided with a different degree of normativity along a *continuum*, rather than in the binary logic distinctive of legal positivism (see, e.g., Goldmann 2008).¹² Moreover, as a number of studies within the field of legal anthropology have shown, despite a conventional call for neutrality and its universal claims, law (soft or hard) and justice are produced and operate in a social context (e.g., Moore 2005; Nader 2003; see also Dembour and Kelly 2007). The same scholarly tradition has greatly contributed to clarifying that if we want to understand or map out how legality works in social settings, we need a more open definition of what law is, including the one conventionally assumed in Euro-American legal thought. International lawyers implicated in the soft law versus hard law debate, ultimately questioning the normative status of the former, seem rather reluctant to assume such socio-legal premises, nowadays taken for granted even by many legal scholars. The question of whether soft law is authentic law should ultimately encourage lawyers and non-lawyers to go beyond a strictly legal (positivist) conception of law, still influential among the representatives of the legal community of scholars, notably within the group Riles (2005) calls the “instrumentalist” law scholars (as opposed to the “culturalists”).¹³

A second and related concern, recurrent within the “instrumentalist” group of scholars, is of a practical nature and asks: is soft law effective? In other words, despite its non-legal binding character, is soft law able to produce norms and regulations of real effectiveness? Once again, this is a perfectly legitimate and certainly important question from a legal and most of all a policy-making perspective. For culturalist scholars, I imagine the question of efficacy is also relevant, but in a rather different way: it is an in-

itation to scrutinize the very idea of (soft) law *solely* as a means to an end. From an anthropological perspective, soft law should not be seen simply as a tool to reach specific stated ends; it should rather be explored as an object, an apparatus, in Foucauldian terminology *un dispositif*, namely a political technology which creates, enhances, maintains, perverts, and modifies the exercise of power within a given social body. Hence, it is relatively unimportant to assess to what extent soft law is able to meet its deliberate goals. Once its machinery is set in motion, we could hardly say that it goes ahead without producing any social or political effect. However, from the same perspective, it is not important to ask whether the tangible outcome of any soft policy corresponds to the original intentions designated by lawyers and policymakers. It is instead necessary to scrutinize and question the presumed neutrality and apolitical character of such an instrument. To put it bluntly, as James Ferguson does while discussing “development”: “the anthropologist cannot take ‘planning’ at its word” (1994: 17). Moreover, beyond the consequences as an unintended product of any regulative means, the question of soft law effectiveness might also be critically explored (and eventually dismissed) by looking at the instrument in its own right (see Katcherian, this volume). To better bring this into focus, Riles is again helpful; when drawing on Agamben, Dewey, and Heidegger, she argues that “political analysis and critique must begin from within the epistemological boundaries of the instrument—that solutions must be found in the means of technology” (Riles 2004: 790).

Toward an ethnography of soft law

Let me attempt to recapitulate. Whereas a growing number of legal scholars welcome soft law instruments as the appropriate way to boost global governance, soft law critics raise doubts regarding their real efficacy and/or draw attention to their ideological implications. However, beyond optimistic or skeptical views and reactions, what is surprising, from an anthropolog-

ical standpoint, is that advocates and soft law critics both fail to appreciate that, in spite of its apparently technical and/or ideological dimension, soft law—despite its international, transnational, or global range—is always the product of concrete social and historical arrangements taking place by means of individual, collective, and institutional practices in specific locales and temporalities. Unfortunately, how such arrangements are produced in the course of “the immediate, direct, vivid impression of the lives of Peter, Paul, and John, of single, real individuals” (Antonio Gramsci, cited in Crehan 2002: 165) is seldom carefully considered, and consequently how soft law works in concrete social locations is often left vague and opaque. This is why an empirical consideration and ethnographic understanding of soft law also seems a challenging and timely undertaking.

Ultimately, despite the multiple ramifications regarding its development and the controversial opinions concerning its elusive normative status and legal character, soft law projects and practices are legal (hence social and cultural) artifacts stimulating thinking about law and legality and their changing mutual relationships within the current legal transformation occurring at a global level. The articles in this special section encourage thinking about this particular technology of law production: questioning its apparatuses, working out its actual mechanisms and understanding its workings and logic by means of different soft law instruments and projects. The section begins with an article by Jeff Katcherian examining the Civil Society Platform for Intercultural Dialogue, an initiative to foster European cultural policy recommendations under the Open Method of Coordination umbrella. The article explores how European bureaucrats and civil society members address the tensions generated by preserving the principle of sovereignty and the parallel aspiration to reach suitable European integration with specific reference to the notion of “culture.”¹⁴ Katcherian’s article illustrates how, under the pressure of the crisis of the European ideal (best exemplified by failure on the part of France and the Netherlands to ratify the Euro-

pean Constitution), the European Union has shifted from promoting cultural programs to coordinating a plan aimed at creating a truly European cultural policy by way of soft law instruments. Interestingly, as Katcherian points out, here soft law should not be seen as a means employed to attain a more stringent degree of normativity in the future, as often suggested by the formula “from programs to prescriptions,” recurrent in international law. As his multisited ethnography of soft law practices shows, the recourse to soft normativity is not instrumental but an end in itself, notably in the context of a European cultural policy in which openness, negotiation, and (intercultural) dialogue are values to be affirmed and promoted for what they are. Thus, Katcherian convincingly argues that the soft law ideology pervading the Platform needs to be explored on its own terms, dismissing the rhetoric of effectiveness and suggesting instead to seriously adopt its affective dimension, as a constitutive part of the process of culturally constructing Europe. This is a challenge Katcherian brilliantly faces, examining softness and the process of softening culture as an aesthetic, as an object provided with its own internal logic, to be comprehended in its “form” rather than its content, as Riles’s (2000) ethnographic analysis of the network has also argued. Furthermore, dealing with the controversial production of written documents during the Platform’s meetings, the article shows that the enacting of soft regulations became not only a way to foster intercultural dialogue but an opportunity to rethink policymaking, beyond the conventional logic of the nation-state.

The interplay between state practices and supranational legal arrangements is at the core of the next article, in which legal scholar Elizabeth Craig explores a process in the making concerning some highly controversial issues, such as the protection of language, culture, and identity under the “national minority” umbrella. Craig typically asks if and how non-legally binding instruments such as international human rights conventions might be translated and enforced in domestic law. Relying on both soft law scholarly literature and recent contributions in

the anthropology of human rights, Craig's article develops a twofold argument with reference to specific soft law instruments and mechanisms. At a general comparative level, she considers the development of different international minority rights instruments over the last two decades and measures their usefulness when confronted with specific norms to be enforced at the domestic level. Observing the elusiveness of some provisions contained in these instruments and noting their failure to clearly identify what either a "minority" or a "national minority" actually is, Craig raises doubts about softness as an appropriate means of enforcing cultural and minority rights. Craig tackles issue relying on her own experience as a legal adviser to the Culture, Identity, and Language Working Group of the Northern Ireland Bill of Rights Forum, a project in progress favored by the changing political circumstances established by the agreement signed in 2006 by the British and Irish governments and the main political parties. Specifically, the article highlights the problems involved in the incorporation into state law of the Framework Convention for the Protection of National Minorities, a "legal soft law" instrument developed by the Council of Europe in 1995. Describing how the representatives of the main actors involved in the process (political parties, churches, trade unions, NGOs) meet to discuss the issues at stake, Craig shows how law technicalities intersect with the political intricacies of a divided society like Northern Ireland. She then clarifies the difficulties in translating into national legislation specific rights, such as the right to self-identification or receiving instruction in minority languages. The article also reveals paradoxes and ambiguities concerning the use of several soft law instruments. In fact, from a strictly legal perspective the Bill of Rights drafting process could hardly be considered a successful event (on many issues no substantial agreement was found), but the debates that have taken place at the domestic level might be considered crucial in monitoring and advancing the minority rights agenda in Northern Ireland. Craig concludes that if the Framework Convention has shown its limitations in the

drafting process, these are not necessarily due to its internal weaknesses; we should rather discern how such an instrument was used and manipulated in social process by key players, including legal academics and transnational actors.

In the section's concluding article, Rocío Lorenzo offers yet another good example of how soft technologies operate in mundane social practices and contexts, specifically focusing on a network of private companies and non-profit organizations in São Paulo that have adopted affirmative action policies to struggle against racial discrimination, a widely debated and controversial issue in Brazilian society. From a theoretical perspective, Lorenzo's article provides a challenging attempt to complement Moore's (1973) notion of a semi-autonomous social field with Bourdieu's (1986) celebrated theorization of the juridical field in order to disentangle the "transnational social," a space where non-conventional policymakers (e.g., experts, consultants, managers, and activists) participate in the production of norms, using voluntary means of regulation. Interestingly, Katcherian and Craig's articles both deal with the creation or adoption of soft regulations primarily by (supranational and/or national) public actors, while Lorenzo's article deals with the introduction of affirmative action in the private sector, that is "outside" the national legal system. To capture such "beyond the law" or private regime of regulation, she explores affirmative action in the framework of a vast array of non-binding instruments such as corporate social responsibility, managing diversity, sustainability, and other human rights-oriented, typically voluntary forms of regulation. Actually, the adoption of self-regulatory means in the Brazilian workplace proves to be only relatively effective in assuring preferential treatment for Afro-Brazilians, or the "black" population, as specific target actors. As many of Lorenzo's informants imply, the adoption of such policies responds better to new market imperatives such as business ethics and corporate accountability, rather than to the actual implementation of rights for the targeted population. This hypocritical character of corporate social responsibility has led many critics to argue that

binding governmental and international norms, rather than voluntary measures, seem necessary to ensure that companies behave in a socially responsible manner. However, according to Lorenzo's article, the emerging regime of global regulations influencing both public and private actors also represents an opportunity for disadvantaged groups such as those targeted in the Brazilian affirmative action programs. This is consistent with her own ethnography among the beneficiaries of Geração XXI, the first affirmative action program for black youngsters adopted in Brazil. Furthermore, Lorenzo's ethnography also disputes the fact that affirmative action and similar instruments might be liquidated as *uma coisa de gringo* (i.e., a North-American imported product), as soft law critics often simplistically do.

Albeit different, all the contributors rely on direct observation of soft law practices in a variety of social, political, and legal contexts. They all raise issues and ask questions from inside the soft law projects they have researched and lived, sharing experiences and conversations with both the producers and beneficiaries of different non-legally binding means of coercion. However, Katcherian and Lorenzo's articles reflect their acknowledged methodological commitment to fieldwork methods as they have been conceived and developed (i.e., changed) within the anthropological tradition in which they are both located, while Craig's analysis develops from direct participation in the soft law venture she explores in her capacity as a "legal expert." Intriguingly, at a time when anthropologists are increasingly interested in how the practice of fieldwork might be refunctionalized by means of doing ethnography among and notably in collaboration with "expert subjects" (e.g., Holmes and Marcus 2005; see also Holmes, this volume) it is somehow ironic to learn that the legal experts themselves are also refining their professional agenda via ethnographic sensitivity and anthropological lenses. A reversal worthy of note, which undoubtedly deserves closer inspection from both legal and anthropological perspectives.

Acknowledgments

The idea for this special section grew out of the multidisciplinary panel "Soft law, anthropologists and legal scholars," convened by Julie Trappe and myself at the Tenth European Association of Social Anthropologists Conference, "Experiencing diversity and mutuality", Ljubljana, Slovenia, August, 2008. While only a selection of papers from the meeting is included, I am grateful to all the participants, and particularly to those who presented papers and raised issues during the discussion session. I also wish to thank Julie Trappe and an anonymous *Focaal* reviewer for comments on an earlier draft, and Mary Groeneweg for revising the English manuscript. The usual disclaimers apply.

Filippo M. Zerilli, PhD, is a lecturer in cultural anthropology at the University of Cagliari, Italy. His research interests include the history of anthropology, post-socialism, property relations, and the anthropology of law and rights. He is the author of *Il lato oscuro dell'etnologia* (1998) and editor of *Dalle "Regole" al "Suicidio". Percorsi durkheimiani* (2001). He co-edited *Incontri di etnologia europea. European ethnology meetings* (1998) and *La ricerca antropologica in Romania* (2003). His *Diritti (e conflitti) postsocialisti. Restituzione della proprietà e etnografia della legalità in Romania* is forthcoming.
E-mail: zerilli@unica.it.

Notes

1. Not surprising, after 1989, changes in the property regime in former socialist states increasingly attracted anthropological attention. For an overview of the relevant literature, see Hann (2007). A comparative law and economics approach to property law reform in post-socialist countries is developed by Mattei (1997: 201–21).
2. Some of these questions lead me to explore in detail the case of Dan Brumarescu, the first Ro-

- manian citizen to address the European Court of Human Rights in relation to a claim on property, which had been expropriated during socialism (see Zerilli and Dembour 2007).
3. This is a general—commonsense—definition of law based on the binary opposition binding/non-binding (i.e., legal/non-legal). One that goes beyond the differences between civil law and common law legal traditions, which according to many authors (e.g., Ferrarese 2000) are currently being eclipsed under the emerging “global legal canon.”
 4. The Bologna Declaration was signed on 19 June 1999 by the Ministries of Education of twenty-nine countries, members of the Council of Europe (see ec.europa.eu/education/policies/educ/bologna/bologna.pdf). Interestingly, it is roughly at that time that the “culture of audit” and its subtle infiltration within the higher education system has become a significant—and currently expanding—area of anthropological research (e.g., Shore 2008; Shore and Wright 1999; Strathern 1997, 2000).
 5. Despite its conventional and widely accepted political meaning (i.e., government by force), the verb “to coerce” (from Latin *coercere*) etymologically relies on notions of enclosure, confinement, warding off, namely ways of establishing boundaries between the inside and outside (that is relationships of inclusion and exclusion).
 6. Moreover, in several circumstances, states increasingly delegate these controlling and surveillance powers to non-state actors such as security guards, private associations, and even criminal organizations (e.g., Penglase 2009).
 7. On the specific issue of law specialization, see Benda-Beckmann, Benda-Beckmann and Griffith (2009).
 8. According to Galgano (2001), economic globalization represents regeneration of the medieval *lex mercatoria*, apparently fulfilling the old dream of a world merchant’s republic, the lords of which would be the members of the international business community. For an assessment of *lex mercatoria* as soft law, see Teubner (1997).
 9. Here the connections between soft law and Joseph Nye’s notion of “soft power,” introduced in international relations in the early 1990s, might be fruitfully explored, notably considering soft power’s allegedly non-coercive nature (namely its capacity to reach desirable outcomes without employing force).
 10. Catey (2008) also explores the social and cultural dimension of the OMC as a new means of governance at the crossroads of regional, state, and supranational policies within the European Union.
 11. Here the opinion of Jan Klabbers, in my view one of the most perceptive authors among the critics, deserves an extensive quote: “Soft law ... fits neatly with the disappearance of the public/private distinction. ... Indeed, in a world where the distinction between public and private is no longer clearly demarcated, public and private authority too run into each other; as a result, it may well be that hard law emanating from public authority will become the exception rather than the norm; perhaps, in such a world, soft law is the most plausible form that law can take, precisely because it remains unclear who exercises authority, and on what basis” (Klabbers n.d.; see also Klabbers 1998).
 12. This is also suggested by recent field research concerning the adoption of soft regulations to improve the work environment within small private companies in Denmark (see Boesby Dahl and Roepstorff 2008).
 13. According to Riles, “the legal academy currently consists of roughly two groups ... the Culturalists and the Instrumentalists. ... The culturalists generally treat law as the embodiment of norms, the outcome of political compromise, and the repository of *social meanings* ... The instrumentalists, in contrast, view law in primarily pragmatic instrumental terms, as a tool to be judged by its successes or failures in achieving stated ends. For them ... law is a means to an end ... and it should be evaluated according to its usefulness in solving actual legal problems” (2005: 973). Interestingly, the same article urges “culturalist” law scholars (including anthropologists) to take “law technicalities” seriously (*ibid.*: 975), obviously including the means-to-end relationship and its reversals (Riles 2004: 789–90). Albeit limited, this special section is an effort in this direction, going beyond interdisciplinary rhetoric.
 14. Discourses on and of “culture” and their contextual articulations in the construction of Europe as an emerging polity have been critically explored in the preceding *Focaal* theme section (see Taylor 2009).

References

- Abbott, Kenneth W., and Duncan Snidal. 2000. Hard and soft law in international governance. *International Organization* 54: 421–56.
- Andreescu, Gabriel. 2001. Romania in the council of Europe: Individual rights, discrimination and special measures. *Papeles del Este* 1: 1–11. <http://revistas.ucm.es/>.
- Archibugi, Daniele. 2008. *The global commonwealth of citizens: Toward cosmopolitan democracy*. Princeton: Princeton University Press.
- Benda-Beckmann, Franz von, Keebet von Benda-Beckmann, and Julia Eckert. 2009. Rules of law and laws of ruling: Law and governance between past and future. In *Rules of law and laws of ruling. On the governance of law*, 1–30, Aldershot, UK: Ashgate.
- Benda-Beckmann, Franz von, Keebet von Benda-Beckmann, and Anne Griffiths, eds. 2009. *Spatializing law. An anthropological geography of law in society*. Aldershot, UK: Ashgate.
- Berman, Paul Schiff. 2007. Global legal pluralism. Princeton Law and Public Affairs, Accepted Paper Series, Paper 08-001. <http://ssm.com/abstract=985340>
- Bobbio, Luigi. 2005. Governance multilivello e democrazia. *Rivista delle politiche sociali* 2: 51–62.
- Boesby Dahl, Dorte, and Anne K. Roepstorff. 2008. To regulate or not to regulate. Logics of regulation of CSR and work environment in the case of Denmark. Paper presented at Tenth EASA Conference, Ljubljana, Slovenia, 26–30 August.
- Bourdieu, Pierre. 1986. La force du droit. *Éléments pour une sociologie du champ juridique. Actes de la recherche en sciences sociales* 64: 3–19.
- Caruso, Bruno. 2005. Il diritto del lavoro tra *hard law* e *soft law*: nuove funzioni e nuove tecniche normative. Working Papers Centro Studi di Diritto del Lavoro Europeo “Massimo D’Antona” 78. <http://www.juntadeandalucia.es/>.
- Cassese, Sabino. 2006. The globalization of law. *Journal of International Law and Politics* 37: 973–93.
- Catey, Scott A. 2008. Devolution and Europeanisation in Wales: Regions and “Soft” varieties of law and policy instruments in European governance. Manuscript.
- Charlier, Jean-Emile, and Sarah Croché. 2004. The Bologna process and its actors. Centro universitario di valutazione e controllo-CRESCO, Università degli Studi di Siena Working paper 8. <http://www.cresco.unisi.it/wp/wp8.pdf>.
- Crehan, Kate. 2002. *Gramsci, culture and anthropology*. London: Pluto Press.
- Dembour, Marie-Bénédicte, and Tobias Kelly, eds. 2007. *Paths to international justice: Social and legal perspectives*. Cambridge: Cambridge University Press.
- Di Robilant, Anna. 2006. Genealogies of soft law. *American Journal of Comparative Law* 54: 499–554.
- Edelman, Marc, and Angelique Haugerud, eds. 2005. *The anthropology of development and globalization: From classical political economy to contemporary neoliberalism*. Oxford: Blackwell.
- Falk, Richard. 2002. Re-framing the legal agenda of world order in the course of a turbulent century. In Likosky, *Transnational legal processes*, 355–77.
- Ferguson, James. 1994. *The anti-politics machine: “Development,” depoliticization and bureaucratic power in Lesotho*. Minneapolis: University of Minnesota Press.
- . 2004. Power topographies. In *A companion to the anthropology of politics*, ed. David Nugent and Joan Vincent, 383–99. Oxford: Blackwell.
- Ferguson, James, and Akhil Gupta. 2002. Spatialising states: Toward an ethnography of neoliberal governmentality. *American Ethnologist* 29 (4): 981–1002.
- Ferrarese, Maria Rosaria. 2000. *Le istituzioni della globalizzazione. Diritto e diritti nella società transnazionale*. Bologna: Il Mulino.
- Flood, John. 2002. Capital markets, globalisation and global elites. In Likosky, *Transnational legal processes*, 114–34.
- Fuller, Chris. 1994. Legal anthropology, legal pluralism and legal thought. *Anthropology Today* 10 (3): 9–12.
- Galgano, Francesco. 2001. *Lex Mercatoria*. Bologna: Il Mulino.
- Gledhill, John. 2004. Neoliberalism. In Nugent and Vincent, *A companion to the anthropology of politics*, 23–48.
- Gluckman, Max. 1963. Gossip and scandal. *Current Anthropology* 4 (3): 307–16.
- Goldmann, Matthias. 2008. Inside relative normativity: From sources to standard instruments for the exercise of international public authority. *German Law Journal* 9 (11): 1866–908.
- Günther, Klaus. 2008. Legal pluralism or uniform concept of law? Globalisation as a problem of le-

- gal theory. *NoFo. Journal of Extreme Legal Positivism* 5: 5–21. <http://www.helsinki.fi/nofo/>.
- Halliday, Terence C., and Pavel Osinsky. 2006. Globalization of law. *Annual Review of Sociology* 32: 447–70.
- Hann, Chris. 2007. A new double movement? Anthropological perspectives on property in the age of neoliberalism. *Socio-Economic Review* 5: 287–318.
- Harvey, David. 2007. Neoliberalism as creative destruction. *Annals of the American Academy of Political and Social Science* 610: 21–44.
- Held, David ed. 1995. *Democracy and the global order: From the modern state to cosmopolitan governance*. Cambridge: Polity.
- Holmes Douglas R., and Marcus George E. 2005. Culture of expertise and the management of globalization: Toward the re-functioning of ethnography. In Ong and Collier, *Global assemblages*, 236–52.
- Kirton, John J., and Michael J. Trebilcock, eds. 2004. *Hard choices, soft law: Voluntary standards in global trade, environment and social governance*. Aldershot, UK: Ashgate.
- Klabbers, Jan. 1998. The undesirability of soft law. *Nordic Journal of International Law* 67 (4): 381–91.
- . n.d. Reflections on soft international law in a privatized world. www.helsinki.fi/eci/Publications/JKSoft_law_and_public.pdf.
- Likosky, Michael, ed. 2002. *Transnational legal processes: Globalization and power disparities*. London: Butterworth LexisNexis.
- MacClancy, Jeremy, ed. 2002. *Exotic no more: Anthropology on the front lines*. Chicago: University of Chicago Press.
- Mattei, Ugo. 1997. *Comparative law and economics*. Ann Arbor: University of Michigan Press.
- Mattei, Ugo, and Laura Nader. 2008. *Plunder: When the rule of law is illegal*. Oxford: Blackwell.
- Maurer, Bill. 2009. From the revenue rule to soft law and back again: The consequences for “society” of the social governance of international tax competition. In Benda-Beckmann, Benda-Beckmann, and Eckert, *Rules of law and laws of ruling*, 217–236.
- Merry, Sally Engle. 2006a. Anthropology and international law. *Annual Review of Anthropology* 35: 99–116.
- . 2006b. *Human rights and gender violence: Translating international law into local justice*. Chicago: University of Chicago Press.
- . 2007. Human rights law as a path to international justice: the case of the Woman’s Convention. In Dembour and Kelly, *Paths to international justice*, 161–85. Cambridge: Cambridge University Press.
- Moore, Sally Falk. [1978] 2000. *Law as process: An anthropological approach*. Münster-Hambourg and Oxford: LIT Verlag and James Currey.
- . 2001. Certainties undone: Fifty turbulent years of legal anthropology, 1949–1999. *Journal of the Royal Anthropological Institute* 7 (1): 95–116.
- . 2002. An international legal regime and the context of conditionality. In Likosky, *Transnational legal processes*, 333–54.
- , ed. 2005. *Law and anthropology: A reader*. Oxford: Blackwell.
- Nader, Laura. 1979. Antropologia cambia rotta! Prospettive dello studio di chi sta in alto. In *Antropologia radicale*, ed. Dell Hymes, 275–99. Milan: Bompiani.
- . 1995. Civilization and its negotiations. In *Understanding disputes*, ed. Pat Caplan, 39–63. Oxford: Berg.
- . 2003. *Le forze vive del diritto. Introduzione all’antropologia giuridica*. Naples: ESI.
- Ong, Aiwai, and Stephen J. Collier, eds. 2005. *Global assemblages: Technology, politics, and ethics as anthropological problems*. Oxford: Blackwell.
- Penglase, Ben. 2009. States of insecurity: Everyday emergencies, public secrets, and drug trafficker power in a Brazilian favela. *PoLAR—Political and Legal Anthropology Review* 32 (1): 47–63.
- Radaelli, Claudio M. 2003. The Open Method of Coordination: A new governance architecture for the European Union? SIEPS Report 1. <http://eucenter.wisc.edu/OMC/Papers/radaelli.pdf>.
- Riles, Annelise. 2000. *The network inside out*. Ann Arbor: University of Michigan Press.
- . 2004. Property as legal knowledge: Means and ends. *Journal of the Royal Anthropological Institute* 10 (4): 775–95.
- . 2005. A new agenda for the cultural study of law: Taking on the technicalities. *Buffalo Law Review* 53: 973–1033.
- Sassen, Saskia. 2006. *Territory, authority, rights*. Princeton: Princeton University Press.
- Sharma, Aradhana, and Akhil Gupta. 2006. Introduction: Rethinking theories of the state in an age of globalization. In *The anthropology of the state: A reader*, 1–41. Oxford: Blackwell.

- Shore, Cris. 2008. Audit culture and illiberal governance: Universities and the politics of accountability. *Anthropological Theory* 8 (3): 278–99.
- Shore, Cris, and Susan Wright, eds. 1997. *Anthropology of policy: Critical perspectives on governance and power*. London: Routledge.
- . 1999. Audit culture and anthropology: Neoliberalism in British higher education. *Journal of the Royal Anthropological Institute* 7 (4): 759–63.
- Snyder, Francis. 1993. The effectiveness of European community law: Institutions, processes, tools and techniques. *Modern Law Review* 56 (1): 19–54.
- . 2005. Governing economic globalization: Global legal pluralism and European Union law. In Moore, *Law and anthropology*, 313–29.
- Somma, Alessandro, ed. 2009. *Soft law e hard law nelle società postmoderne*. Torino: Giappichelli.
- Strathern, Marilyn. 1997. “Improving Ratings”: Audit in the British university system. *European Review* 5 (3): 305–21.
- , ed. 2000. *Audit cultures: Anthropological studies in accountability, ethics and the academy*. London: Routledge.
- Suh, Don. 2002. Situating liberalism in transnational legal space. *Duke Journal of Comparative International Law* 12: 605–30.
- Taylor, Mary N., ed. 2009. Critical perspectives on the persistence of “culture talk” in the making of Europe. Theme section of *Focaal: European Journal of Anthropology* 55: 3–58.
- Teubner, Gunther. 1997. Global Bukowina: Legal pluralism in the world society. In *Global law without a state*, 3–28. Brookfield: Dartmouth.
- Trappe, Julie. 2008. Soft law for serious crimes: the duty to remember and the liberty of history. Paper presented at the Tenth EASA Conference, Ljubljana, Slovenia, 26–30 August.
- Trubek, David M., Patrick Cottrell, and Mark Nance. 2005. “Soft Law,” “Hard Law,” and European integration: Toward a theory of hybridity. www.law.wisc.edu/facstaff/trubek/HybridityPaperApril2005.pdf.
- Tsing, Anna. 2002. *The global situation*. In *The anthropology of globalization. A reader*, ed. Jonathan X. Inda and Renato Rosaldo, 453–85. Oxford: Blackwell.
- Twining, William. 2000. *Globalisation and legal theory*. Cambridge: Cambridge University Press.
- Wedel, Janine R., Cris Shore, Gregory Feldman, and Stacy Lathrop. 2005. Toward an anthropology of public policy. *Annals of the American Academy of Political and Social Science* 600: 30–51.
- Westbrook, David A. 2004. *City of gold: An apology for global capitalism in a time of discontent*. New York: Routledge.
- Zerilli, Filippo M. 2006. Sentiments and/as property rights: Restitution and conflict in post-socialist Romania. In *Postsocialism: Politics and emotions in Central and Eastern Europe*, ed. Maruska Svasek, 74–94. New York and Oxford: Berghahn Books.
- . 2008. “Real Men” in postsocialist transition: The Greek Catholic ethic and the spirit of neoliberalism in a Transylvanian village. In *Churches in-between. Greek Catholic churches in postsocialist Europe*, ed. Stéphanie Mahieu and Vlad Naumescu, 233–54. Münster: LIT Verlag.
- Zerilli, Filippo M., and Marie-Bénédicte Dembour. 2007. The house of ghosts: Post-socialist property restitution and the European Court’s rendition of human rights in “Brumarescu v. Romania.” In Dembour and Kelly, *Paths to international justice*, 188–215.