

The Problem of Method in the Study of Transnational Dispute Resolution

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Introduction: Defining the Problem

The field of transnational dispute resolution (TDR), defined as, primarily, international arbitration, international litigation, and business mediation, is, by all accounts, booming. A number of indicators evince the field's health, including: number and size of arbitral awards, growth of international commercial courts, increase in legal services in the form of international law firms, and curricular reforms in law schools that focus on TDR coursework and training. Despite currents of deglobalization in the U.S., U.K., and western Europe, multi-national companies (MNCs) continue to produce a high volume of cross-border commercial transactions and concomitant disputes. In part, because of those anti-globalization currents, some of these deals are relocating to Asia. This chapter sets out to address the question: how are we to study TDR during a period of Anglo-European deglobalization and Asian revival? More specifically, for purposes of this conference, as a matter of methodology, how can Asian TDR be made an object of study?

The study of TDR has attracted, generally, two main approaches. One, which I call the "legal-formalistic" approach, emphasizes doctrine. The second adopts the methodologies of the social sciences, and which I thus call the "social scientific"

approach. These views each have their own epistemologies and analytical languages, and each sets out to answer different types of questions. The legal-formalistic approach is, by far, the dominant approach, as it is endorsed by the practitioners of TDR. The social scientific approach, often favored by legal sociologists and legal anthropologists as well as adherents to “law and society” and empirical legal studies, is, for the most part, marginalized, particularly by the proponents of the legal-formalistic view. While it could be said that the insider-outsider dichotomy characterizes legal studies more generally, the divide is particularly pronounced in the study of TDR.

This chapter proposes a different perspective by borrowing from the anthropology of experts to suggest that “para-ethnography” is one way to build synergies between the legal-formalistic approach and the social scientific one. In particular, the chapter suggests that ethnographic strategies focused on expert knowledge can elucidate the thought processes that shape TDR practices, especially in Asian jurisdictions. This chapter draws on data collected for a larger project on “new legal hubs” (NLHs), “one stop shops” for cross-border commercial dispute resolution, in financial centers, promoted as an official policy by nondemocratic or hybrid (i.e., democratic and authoritarian) states, located primarily in Asia. Although a modest observation, this chapter’s perspective is aimed at opening up a broader conceptual grounds for methodological approaches to TDR. In the remainder of this chapter, I first identify the current methodologies for studying dispute resolution, then, second, provide an overview of NLHs, third, propose a new method for their study, para-ethnography, fourth, explain my use of that method, fifth, provide a succinct case study applying that method, and, lastly, end with a brief conclusion.

Disciplinary Blinkers

There are, traditionally, two veins of thought on how to study TDR. The first, the legal-formalistic approach, is the doctrinal perspective taught in law schools in the U.S., Europe, Asia, and elsewhere and which, similar to other areas of law covered by a legal curriculum, explains the operation of TDR with reference to the relevant substantive and procedural rules. The specific methodology used in this mode is one that traces the analysis of third-party decision-makers (whether arbitrators, judges, or mediators) in precedent cases, awards, or settlements for purposes of understanding instant or future disputes. Inherently, the legal-formalistic approach is focused on rules, so, for example, in international commercial arbitration, the interplay between international covenants (e.g., the Convention on the Recognition and Enforcement of Foreign Arbitral Awards or “New York Convention of 1958”), domestic legislation (e.g., the Singapore International Arbitration Act of 2010, as amended in 2016), and, perhaps, the rules of institutional arbitration (e.g., Singapore International Arbitration Centre 2016 Rules).

Continuing the example of international commercial arbitration, the legal-formalistic approach zeroes in on the relevant substantive and procedural rules as they affect such doctrinal questions as separability, competence-competence, enforcement of agreements, applicable law and arbitral seat, and the arbitral award. There is a preoccupation (rightly so) on choice of law concerns as they determine the substantive law governing the merits of the parties’ contract, the substantive law governing the parties’ arbitration agreement, and the law applicable to the arbitral proceedings. To understand outcomes of arbitral tribunals, scholars operating in this mode, parse through

judicial cases that review the various legal issues pertaining to arbitration agreements and awards, given that most awards themselves are confidential.

Whereas the legal-formalistic approach is the majority or default mode, there is a second or minority one. This view occurs at the overlap of a number of different literatures, including legal sociology, legal anthropology, “law and society” and empirical legal studies. Broadly speaking, this view adopts specific social scientific approaches to data collection to examine less rules and doctrine and more the structures of power and hierarchy, or space, networks, and ritual, through which such rules operate. Rather than analyzing naked rules, the social scientific approach frames rules (and rule-makers) in their multi-dimensional social, economic, and political contexts. Many of these studies are written by non-practitioners or outsiders to TDR, and a portion of them derive from “crit” vantages, written with the goal not to reproduce elite knowledge practices but to critique them. Empirical methodologies include both quantitative and qualitative strategies, and, further, may use such material to either verify existing theories of dispute resolution or may generate new models.¹ While a generalization, empirical legal studies often uses statistical measures, legal anthropology prefers ethnographic ones, and legal sociology and sister approaches in “law and society” demonstrate a mixture.

The legal-formalistic approach and the social scientific one, while not intrinsically antagonistic, have more often than not regarded the other in such a way. Practitioners may believe that, for example, the sociology of arbitration goes too far in its rubrics of

¹ See e.g., INTERNATIONAL ARBITRATION AND GLOBAL GOVERNANCE: CONTENDING THEORIES AND EVIDENCE (eds. Walter Mattli and Thomas Dietz, 2014); JOSHUA D. H. KARTON, THE CULTURE OF INTERNATIONAL ARBITRATION AND THE EVOLUTION OF CONTRACT LAW (2013); ALEC STONE SWEET & FLORIAN GRISEL, THE EVOLUTION OF INTERNATIONAL ARBITRATION (2017).

“tournament rituals,” “social capital,” and “fields.” From the view of the practitioner, such analogies are inaccessible and impractical, at best, and alienating, at worst. The critical edge of some observations naturally further antagonizes practitioners. Line-drawing occurs on both sides. Practitioners marginalize the social scientific approach, and as practitioners are those who not only occupy arbitration tribunals and benches but also law school lecterns and other professional membership organizations, such marginalization matters.

One case in point is Yves Dezalay and Bryant Garth’s foundational study of international commercial arbitration, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (1996), in which they contend that the relationship between academics and practitioners is one of “polarization.”² In his review of the book, former Secretary General of the ICC International Court of Arbitration, Eric Schwartz, points out that this dichotomy is overstated; rather, many academics are practitioners (1997: 232). (At the same time, Schwartz characterizes the study as, at times, “difficult to fathom” and “tedious,” and goes on to conclude: “this book paints a misleading portrait of the world of international commercial arbitration and its development” (1997: 229-230).) On the initial point, indeed, the distinction in contemporary TDR is between practitioner-academics who are, for the most part, formal-legalists and social scientists who are, with few exceptions, mainly non-practitioners. Nonetheless, the dichotomous way of thinking persists, itself rooted in the

² YVES DEZALAY & BRYANT G. GARTH, *DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER* 41 (1996).

historical reception of social scientific approaches to law in the legal academy.³ This way of thinking begs the question whether the two approaches are really irreconcilable or if an accommodation is possible. Before proposing a method that bridges the two disciplines, I turn to one particular formation of TDR: NLHs.

The New Legal Hubs

NLHs as “one-stop shops” for cross-border commercial dispute resolution, often located in financial centers, promoted as an official policy by nondemocratic or hybrid states. The idea of the one-stop shop derives from legal scholar Frank Sander’s idea of the “multi-door courthouse.”⁴ Sander thought that the courts of the future would provide parties with a menu of dispute resolution mechanisms, offering not just litigation but also mediation, arbitration, and ombudsmen. An intake office, who triages disputes, was the key to the system.⁵ NLHs are modern day versions of the multi-door courthouse for sophisticated parties whose lawyers choose which mechanism to use. A second defining feature of NLHs is that they overlap with other sectoral hubs: financial, infrastructural, telecom, and insurance, to name a few. As centers of finance, hubs require clear rules for creating capital markets.⁶ Third, NLHs are located mainly in nondemocratic or hybrid

³ Richard L. Abel, *A Comparative Theory of Dispute Institutions in Society*, 8 LAW & SOCIETY REVIEW 217, 225-6 (1973), Richard L. Abel, *Law and Society: Project and Practice*, 6 ANNUAL REVIEW OF LAW AND SOCIAL SCIENCE 1, 3 (2010), Marc Galanter, *Presidential Address: The Legal Malaise; or, Justice Observed*, 19 LAW & SOCIETY REVIEW 537, 537 (1985).

⁴ Frank E.A. Sander, *Varieties of Dispute Processing*, in THE POUND CONFERENCE: PERSPECTIVES ON JUSTICE IN THE FUTURE 84 (Leo A. Levin & Russell R. Wheeler eds., 1979).

⁵ *Id.*

⁶ RUMU SARKAR, INTERNATIONAL DEVELOPMENT LAW: RULE OF LAW, HUMAN RIGHTS, AND GLOBAL FINANCE 432 (2009) (discussing the creation of a successful regulatory framework for capital markets); Robert B. Ahdieh, *Making Markets: Network Effects and the Role of Law in the Creation of Strong Securities*, 76 S. CAL. L. REV. 277 (2003) (examining why law matters in the creation of securities markets in transitional states); Andrew T. Guzman, *Capital Market Regulation in Developing Countries: A Proposal*, 39 VA. J. INT’L L. 607, 609 (1998) (stating “A country that successfully establishes a regulatory regime that meets the needs of investors and issuers will encourage investment in that country”).

states, by which I mean nonwestern states wherein power is concentrated in the hands of a few (or one) with the result that the system lacks true political pluralism, representation, and an electoral process.⁷ Examples of forms of government include autocracies, kleptocracies, authoritarian systems, single-party states, and hybrid regimes.⁸ Nondemocratic and hybrid states have different and overlapping goals, including political legitimacy (foremost in the eyes of international business parties and secondarily for domestic audiences) and economic development. Legitimacy as a legal service provider can be a precondition for economic growth.⁹ Depending on the relative socio-economic development of the host state, NLHs can either attract FDI or export legal services, thus serving as a multi-purpose growth strategy.

NLHs are particularly prominent in Asia. The two dominant NLHs are Hong Kong and Singapore, a second tier of NLHs is comprised of Dubai and Nur-Sultan (formerly, Astana), with more nascent examples located in China, specifically, Shanghai and Shenzhen. The NLHs spanning from the Middle East and Western Asia to the Asia-Pacific rim are part and parcel of the emergence of the macro-region in the latter half of the twentieth-century and, more recently, after the 2008 worldwide financial crisis, that

⁷ See, e.g., SAMUEL P. HUNTINGTON & CLEMENT H. MOORE, *AUTHORITARIAN POLITICS IN MODERN SOCIETY: THE DYNAMICS OF ESTABLISHED ONE-PARTY SYSTEMS* (1970).

⁸ See e.g., Daron Acemoglu, et al., *Kleptocracy and Divide-and-Rule: A Model of Personal Rule*, 2 J. EURO. ECON. ASSOC'N 162 (2004) (arguing that kleptocracies practice a divide-and-rule strategy, enabled by weak institutions); STEVEN LEVITSKY & LUCAN WAY, *COMPETITIVE AUTHORITARIANISM: HYBRID REGIMES AFTER THE COLD WAR* (2010) (analyzing how formal democratic institutions can serve as the means of obtaining authoritarianism); MILAN W. SVOLIK, *THE POLITICS OF AUTHORITARIAN RULE* (2012) (providing an explanation for why politics assume different forms in different types of dictatorships).

⁹ See RICHARD L. ABEL & PHILIP S.C. LEWIS, *LAWYERS IN SOCIETY: AN OVERVIEW* (1996) (providing a study of the role of lawyers in emergent markets). See also DAVID B. WILKINS, ET AL., *THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY* (2017); LUCIANA GROSS CUNHA, ET AL., *THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY* (2017).

has been called “Inter-Asia.”¹⁰ Following the rise of post-World War II Japan and the so-called “Asian tigers” of Hong Kong, Taiwan, Singapore, and South Korea in the 1980s, China, India, and the Gulf states each experienced rapid growth and integration into international trade and investment regimes. Legal services have followed suit, including TDR. Hong Kong and Singapore, for instance, are more convenient and culturally and linguistically familiar to Asia-based MNCs, than say Paris or Stockholm. While traditional legal hubs such as New York City and London may still attract a large number of cross-border commercial disputes, by many indicators, Inter-Asian NLHs are growing in popularity.¹¹

Just as with TDR elsewhere, NLHs can be examined through the lenses of either the legal-formalistic approach or the social scientific one. Accordingly, a number of studies have, pursuant to the former paradigm, demonstrated how NLHs trade on the quality of their legal frameworks.¹² Further, they may promote legal harmonization through their adoption of international covenants and model laws. Examples include Asian states’ accession to the New York Convention of 1958 and the ICSID Convention of 1965, as well as their adoption of the 1985 UNCITRAL Model Law on International Commercial Arbitration, as amended in 2006.¹³ Likewise, much has been made of

¹⁰ Engseng Ho, *Inter-Asian Concepts for Mobile Societies*, 76 THE JOURNAL OF ASIAN STUDIES 907 (2017).

¹¹ Queen Mary University of London and White & Case, *2018 International Arbitration Survey: The Evolution of International Arbitration 2*, <https://www.whitecase.com/sites/whitecase/files/files/download/publications/qmul-international-arbitration-survey-2018-18.pdf> (rating Shenzhen and Hong Kong as two of the world’s top venues for international arbitration).

¹² See e.g., Olga Boltenko, Howard Chan, and Wong Zi Wei, “Setting Aside Jurisdictional Findings by Tribunals and the Ad Hoc Admission of Counsel in Singapore and Hong Kong,” *Asian Dispute Review* 70 (2020).

¹³ See SIMON GREENBERG, et al., *INTERNATIONAL COMMERCIAL ARBITRATION: AN ASIA-PACIFIC PERSPECTIVE* (2011), Gary F. Bell, *The UNCITRAL Model Law and Asian Arbitration Laws: Implementation and Comparisons* (2018), and Anselmo Reyes & Weixia Gu, *The Developing World of Arbitration: A Comparative Study of Arbitration Reform in the Asia Pacific* (2018).

Singapore as the eponymous inspiration for the Convention on International Settlement Agreements Resulting from Mediation, or, the Singapore Convention.¹⁴ In the same vein, China’s initiative in launching its own one-stop shops for TDR in the form of the so-called “China International Commercial Court,” based in Shenzhen and Xi’an has fired the imagination of many international lawyers resulting in a not a few law firm memos and “client alters” on the topic. A common feature of these studies is a methodology which examines the adoption of and innovation upon multiple sources of legal rules, whether international treaties, national legislation, or institutional rules, the last which may not have the force of law but which nonetheless shape parties’ disputes.

NLHs have been the subject of fewer social scientific approaches, although there are a few such studies. Yves Dezalay and Bryant Garth’s *Asian Legal Revivals: Lawyers in the Shadow of Empire* (2010) extends the qualitative method of their earlier study on international commercial arbitration, namely, elite interviews, to explain post-colonial lawyering in such countries as Singapore, Hong Kong, South Korea, and the Philippines, among others. So, on the one hand, some of the old tensions between the legal-formalistic view and the social scientific counterpart persist, even if on new jurisdictional terrain. On the other hand, in Asian states, there seems to be a growing number of individuals who cross over the lines between legal-formalistic “practitioner” and social-scientific academic, and indeed, such individuals are carving out novel spaces for studying TDR in Asian contexts.¹⁵

¹⁴ Eunice Chua, *The Singapore Convention on Mediation — A Brighter Future for Asian Dispute Resolution*, ASIAN JOURNAL OF INTERNATIONAL LAW (2019).

¹⁵ See e.g., TOM GINSBURG & SHAHLA F. ALI, INTERNATIONAL COMMERCIAL ARBITRATION IN ASIA (3rd ed., 2013).

Building on these contributions, from 2016 to 2018, I conducted fieldwork in and on the major NLHs, including Singapore, Hong Kong, Dubai, Nur-Sultan, Shanghai and Shenzhen. I also conducted fieldwork in London as London's institutions for TDR are a model, in some ways, for NLHs in Inter-Asia, some of which are former British colonial territories. Early on in my fieldwork, I was struck by two features of data-gathering: first, NLHs were a result of a specific nexus of legal specialists or "entrepreneurs," including U.K. legal consultants (e.g., barristers, solicitors, arbitrators, and former judges), government officials representing the jurisdiction in which the NLH is based, and a third group I call "transnational legal elites," comprised of non-U.K. nationals who nonetheless may have received legal training in the U.K., and who know are arbitrators and judges. This nexus of expertise was concentrated in NLHs but also I watched how it moved between and among different NLHs, suggesting a kind of network of knowledge practices. This "traveling knowledge" was thus one challenge to conducting fieldwork.

The second observation was that the kinds of innovations NLHs exhibited were not just structural or institutional in nature but also derived from doctrine and rules. In other words, I soon realized that to study NLHs as TDR holistically, I had to make their legal entrepreneurs' legal reasoning an object of analysis, just as much as the courts and other venues that they were building. This second observation was even more of a challenge, and required me to gain a fuller understanding of the substantive areas of international commercial law in question, namely, international commercial arbitration and international litigation. In the next section, I explain para-ethnography as a method for grappling with the particular challenges of studying TDR in NLHs.

Para-Ethnography

Anthropologists are known to study systems of behavior and thought that differ from that of their own societies. During the formative years of anthropology at the start of the twentieth century, the objects of anthropological study were mostly pre-capitalist societies in Africa, Asia, and Latin America.¹⁶ A leading debate was whether the thinking of members of such societies differed in nature from that of capitalist Western societies.¹⁷ Fast forward a century, and the discipline has diversified significantly such that anthropologists study a wide array of modern forms of knowledge, including the bureaucratic, technical, financial, medical, legal, and artificial.¹⁸ These studies share a commitment to ethnography, one that is grounded in explicating specific disciplinary modes of thinking. In this regard, the programming skills of a blockchain developer can be made the object of study in the same way as the rituals of a Bororo chief.¹⁹ In both cases, the “exotic” is rendered “familiar” through the work of ethnographic translation.

Following these inroads into contemporary professions, and dovetailing with both science and technology studies and legal studies, a literature has coalesced around an

¹⁶ BRONISLAW MALINOWSKI, *CRIME AND CUSTOM IN SAVAGE SOCIETY* (1926).

¹⁷ LUCIEN LÉVY-BRUHL, *HOW NATIVES THINK* (1926) (suggesting that “primitive” man uses non-logical “mystical” modes of thought). *But see* ÉMILE DURKHEIM, *THE ELEMENTARY FORMS OF THE RELIGIOUS LIFE* (Joseph Ward Swain trans., 1912) (inducting the elementary forms of all religions from the totemic beliefs of Australian aborigines).

¹⁸ Laura Nader, *Up the Anthropologist: Perspectives Gained from Studying Up*, in *REINVENTING ANTHROPOLOGY* (Dell Hymes ed. 1972); TIMOTHY MITCHELL, *RULE OF EXPERTS: EGYPT, TECHNO-POLITICS, MODERNITY* (University of California Press. 2002); HUBERT DREYFUS, *WHAT COMPUTERS STILL CAN'T DO: A CRITIQUE OF ARTIFICIAL REASON* (1992); DAVID GRAEBER, *THE UTOPIA OF RULES: ON TECHNOLOGY, STUPIDITY, AND THE SECRET JOYS OF BUREAUCRACY* (2016); KAREN HO, *LIQUIDATED: AN ETHNOGRAPHY OF WALL STREET* (2009); VILMA SANTIAGO-IRIZARRY, *MEDICALIZING ETHNICITY: THE CONSTRUCTION OF LATINO IDENTITY IN A PSYCHIATRIC SETTING* (2001); BRUNO LATOUR, *THE MAKING OF LAW - AN ETHNOGRAPHY OF THE CONSEIL D'ETAT* (2009).

¹⁹ See, e.g., CLAUDE LÉVI-STRAUSS, *TRISTES TROPIQUES* (John and Doreen Weightman trans., 1955[1973]).

“anthropology of experts.”²⁰ These ethnographic case studies suggest that immersion in the modes of hypothesis formation, experimentation, data collection, analysis, and argumentation in laboratories and courtrooms, for example, can shed light on how expert knowledge is generated and deployed by diverse actors, including funders, governments, academics, lay publics, and the experts themselves. The anthropology of experts has also exposed an epistemological problem that calls into question some of the analogical logic of the blockchain developer::Bororo chief. If the expert knowledge under study is rooted in the same theories as the knowledge of the ethnographer, then that shared or overlapped knowledge may be problematic for the reason that she cannot sufficiently create critical distance between herself and the object knowledge under examination to adequately assess its contours, texture, and heft. In other words, similar to the “native anthropologist” who shares a body of assumptions with her interlocutors, the anthropologist may already be normalized into a way of thinking that is thus “invisible” to her.

One way that anthropologists have dealt with this problem is through devising comparative strategies of reasoning between the overlapping expert knowledges, the anthropologist’s and the interlocutor’s. One stream of thought on this question can be traced to British anthropologist Marilyn Strathern’s body of work that has been described as a “reflexive” approach to anthropology’s knowledge production vis-à-vis experts. In her own words, Strathern writes, “The reflexivity that has become routine in both

²⁰ Dominic Boyer, *Thinking through the Anthropology of Experts*, 15 *ANTHROPOLOGY IN ACTION* (2008); HARRY COLLINS & ROBERT EVANS, *RETHINKING EXPERTISE* (2007); PENNY HARVEY & HANNAH KNOX, *ROADS: AN ANTHROPOLOGY OF INFRASTRUCTURE AND EXPERTISE* (2015); CANDIS CALLISON, *HOW CLIMATE CHANGE COMES TO MATTER: THE COMMUNAL LIFE OF FACTS* (2014); PETER MILLER & NIKOLAS ROSE, *GOVERNING THE PRESENT: ADMINISTERING ECONOMIC, SOCIAL AND POLITICAL LIFE* (2008).

anthropological and ethnographic enquiry in some senses mirrors the self-conscious auditing of present-day health policies for Aboriginal people in Australia.”²¹ Strathern uses the bureaucratic processes of health professionals as a mirror for anthropologists’ own ceaseless re-examination of its foundations.

Strathern’s approach has been influential in American anthropology, as well, and has spurred further methodologies of studying expert knowledge. Notable among these examples is Bill Maurer’s idea of “lateral reasoning” as a basis for ethnography, as illustrated in his study of Islamic finance.²² For Maurer, anthropological knowledge production and that of experts reside side-by-side, informing each other, and the job of ethnography is less to explicate expert knowledge than it is to frame this oscillation.²³ This perspective—that ethnography is not external to but immanent within expert knowledge and that experts combine their forms of knowledge with ethnographic description—is taken up by Annelise Riles in her study of collateral. Riles understands collateral not only in its traditional sense as a security given by the debtor to the creditor to guarantee payment for an obligation, but also as that which is “on the sidelines somewhat of an afterthought” as in the position of legal knowledge vis-à-vis markets.²⁴ Further, the concept becomes, like Strathern’s health bureaucracies, a conceit for expert knowledge itself (here, legal expertise), which “claims to be unique, set apart,

²¹ Marilyn Strathern, *Anthropological Reasoning: Some Threads of Thought*, 4 HAU: JOURNAL OF ETHNOGRAPHIC THEORY 27 (2014).

²² BILL MAURER, *MUTUAL LIFE, LIMITED: ISLAMIC BANKING, ALTERNATIVE CURRENCIES, LATERAL REASON* (2005).

²³ *Id.* at 7.

²⁴ ANNELISE RILES, *COLLATERAL KNOWLEDGE: LEGAL REASONING IN THE GLOBAL FINANCIAL MARKETS 2* (2011).

collateral.”²⁵ Lastly, Dominic Boyer has cogently articulated the problem of the anthropology of experts in his example of studying German intellectuals. He proposes

A dialectician studying other dialecticians did not seem quite capable of evoking the impression of critical theoretical distance of the kind that is often valued as an index of objectivity or sophistication...[and that this posed] the threat of an epistemological end point for anthropology in the potential doubling, collapse and/or cancellation of analytical knowledge forms...”²⁶ Boyer’s response to this problem is, in a move that echoes the earlier debates over primitive man as “mystical” and civilized man as “rational,” to call for de-emphasizing the pure rationality of expert knowledge by bringing back desire and affect in the study of expertise.²⁷

The anthropology of experts, particularly the vein of thought that stresses reflexivity may seem, to non-anthropologists (and even some anthropologists) as overly focused on questions that are internal to anthropology, and of limited importance beyond the discipline. Formal-legalists, in particular, may question the relevance or utility of such approaches. I submit that there may be excesses to such meditations, but they also provide a foundation that is helpful not necessarily to circumvent an impasse between social scientific methodologies and formal-legalistic ones, but to pull on both of these analytical currents to advance the study of TDR, and even the hard case of NLHs.

In particular, some reflexive anthropologists propose “para-ethnography” as a specific methodology to confront and even operationalize the doubling of knowledge

²⁵ Id. at 25.

²⁶ See Boyer *infra* note 20 at 41.

²⁷ See *id.*

between anthropologist-as-analyst and expert-as-object.²⁸ The prefix “para—” is understood in this context as “side-by-side” in the sense of two experts working collaboratively (e.g., “paramedic”). Para-ethnography thus goes beyond the heuristic exercise of taking a particular cause or effect of expert knowledge (e.g., health bureaucracy or collateral) as a basis for reflexively thinking about anthropological knowledge to posit à la Boyer that there is indeed a causal relationship between the analyst’s and object’s forms of knowledge. Hence, para-ethnography is a mode of academic knowledge production that is joint or fused, and does not take for granted the intimate co-imbrication of multiple ethnographers.

Seeing Through the Third Eye

“As a practitioner, I...” I have consistently heard this start to a sentence in response to a paper I have given or at the beginning of a question in a question-and-answer portion of an academic event. The qualifying clause fulfills two functions: one, it self-identifies the speaker as a lawyer, arbitrator, judge, or other type of legal expert. Two, it distinguishes the speaker from the listener, in this case, me. I may be a practitioner, too, but not the speaker’s type of practitioner. For example, in speaking with an arbitrator about a research project who used this phrase, it made no difference to the arbitrator that I had practiced law; rather, I was not an arbitrator and so belonged in the out-group. Starting with the works of Pierre Bourdieu, a line of scholarship has noted the

²⁸ Douglas R. Holmes & George E. Marcus, *Para-Ethnography*, in 2 THE SAGE ENCYCLOPEDIA OF QUALITATIVE RESEARCH METHODS: A-L 595 (Lisa M. Given ed., 2008); Douglas R. Holmes & George E. Marcus, *Fast Capitalism: Para-Ethnography and the Rise of the Symbolic Analyst*, in FRONTIERS OF CAPITALISM: ETHNOGRAPHIC REFLECTIONS ON THE NEW ECONOMY 33 (Melissa S. Fisher & Greg Downey eds., 2006); George E. Marcus, *The Uses of Complicity in the Changing Mise-En-Scène of Anthropological Fieldwork*, in ETHNOGRAPHY THROUGH THICK & THIN 105 (George E. Marcus ed., 1998).

monopolistic effect of legal language, remarking on the social division between lay and legal professionals.²⁹ These divisions seem particularly acute in the field of TDR, where the credentials of international arbitrators, judges, lawyers, and mediators may be quite high, distancing them from non-experts. Inversely, among international arbitrators (and secondarily, international mediators), because the field is not regulated by either a self-governing professional organization or state agency, the bar to entry may be lower, and thus there is a strong incentive to police professional boundaries.³⁰

Whereas only so much can be done to shift thinking among one's expert interlocutors regarding the potential benefits of a social scientific approach to studying TDR, the researcher can change her own perspective. So while para-ethnography may provide a specific methodological tool that may be helpful in addressing disconnects between legal-formalistic and social scientific approaches, conducting such a methodology required me to close the gap by acquiring some of the relevant knowledge and skills possessed by TDR experts. In other words, I had to see with the "third eye," to use Chinese anthropologist Wang Mingming's concept.³¹ For Wang, anthropology in China is divided between those internal and external to it; "native anthropologists," that is Chinese anthropologists who study Chinese culture, in reaction to Western anthropology

²⁹ Pierre Bourdieu, *The Force of Law: Toward a Sociology of the Juridical Field*, 38 HASTINGS LAW JOURNAL 805, 817 (1987). See also JOHN M. CONLEY & WILLIAM O'BARR, RULES VERSUS RELATIONSHIPS: THE ETHNOGRAPHY OF LEGAL DISCOURSE (1990); MICHAEL W. MCCANN, RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION (1994); JOHN M. CONLEY & WILLIAM M. O'BARR, JUST WORDS: LAW, LANGUAGE, AND POWER (2nd ed., 2005); ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO "THINK LIKE A LAWYER" (2007).

³⁰ Catherine A. Rogers, *The Vocation of International Arbitrators*, 20 AMERICAN UNIVERSITY INTERNATIONAL LAW REVIEW 957 (2005), Sergio Puig, *Social Capital in the Arbitration Market*, 25 EUROPEAN JOURNAL OF INTERNATIONAL LAW 387 (2014), Florian Grisel, *Competition and Cooperation in International Commercial Arbitration: The Birth of a Transnational Legal Profession*, 51 LAW & SOCIETY REVIEW 790 (2017).

³¹ Mingming Wang, *The Third Eye: Towards a Critique of 'Nativist Anthropology'*, 22 CRITIQUE OF ANTHROPOLOGY (2002).

which they perceive to be “colonial,” tend to reproduce narratives about civilization and progress, in line with the views of the regime whereas Western anthropologists of China may be more limited in their linguistic skills and access to data, but may be capable of a more nuanced analysis. Wang highlights a younger generation of Chinese anthropologists (himself included), trained in the U.S. and U.K., who engage with Euro-American anthropology, rather than reject it. Similarly, whereas social scientists of law may react to formal-legalistic views as hegemonic, and thereby, paradoxically, reinforce divisions, following Wang, it is time for a closer engagement of social scientists of TDR with formal-legalism.

To that end, for purposes of studying NLHs, I adopted a multi-pronged strategy that included learning about the field of TDR as an “insider” while also engaging with para-ethnographers. For the former, this meant studying international commercial arbitration and international litigation casebooks, undergoing training in international commercial arbitration at the Chartered Institute for Arbitrators in London, and even teaching international commercial arbitration in Asia, on an inter-disciplinary team of instructors, to law students at Oxford, as well as to international practitioners through the American Bar Association’s Section on International Law. For the latter, I conducted fieldwork for approximately two years at or on the major NLHs, visiting international commercial courts and arbitration centers, spending time with U.K. legal consultants, transnational legal elite, and government officials in formal and informal settings. I traveled to each hub, including Singapore, Hong Kong, and Shenzhen and Shanghai. Although I did not physically visit Dubai, on behalf of my academic institution, I established a memorandum of understanding (MOU) with the Dubai International

Financial Centre Courts (DIFC Courts) and have participated with representatives of the DIFC Courts³² through a number of events (either at my home institution, or via conference calls and virtual meetings). Similarly, I engaged experts in Nur-Sultan through telephonic and digital communication. In visiting the legal hubs or in traveling between them, I sought out para-ethnographers, those legal experts who were systematically thinking about the construction and promotion of legal hubs. In the section that follows, I detail some of my findings, which demonstrate the benefits of working with para-ethnographic partners.

Between Doctrine and (Its) Image

One mainstay of ethnographic fieldwork is the anthropologist's contrasting interlocutors' actions with their speech.³³ Through such juxtapositions, ethnographers can identify the slippages between individual and social action. In studying NLHs, I was struck by two domains of activity, which did not easily correspond to "action" and "speech." The first comprised the sum total of innovations embarked upon by the NLHs, including procedural, doctrinal, and technological. These innovations derive from reform mainly at the level of TDR institutions, and the interaction between these rules and national legislation. As such, they are the bailiwick of the legal-formalists. The constant reform of procedural institutional rules aimed to i) increase the likelihood of enforcement of those institutions' decisions and awards abroad, ii) decrease transaction costs of users, and iii) fulfill i) and ii) while competing with rival regional NLHs.

³² See Memorandum of Understanding between the University of Oxford and the DIFC Dispute Resolution Authority, signed May 11, 2018.

³³ TOM BOELLSTORFF, et al., *ETHNOGRAPHY AND VIRTUAL WORLDS: A HANDBOOK OF METHOD* 92 (2012).

The second domain of activity consisted of the promotion of the foregoing. That is, it is not enough to continuously improve a TDR institution's rules; instead, these improvements must be communicated to would-be parties. Fundamentally, TDR institutions based in NLHs must convince parties to select their institution as the venue for dispute resolution in the dispute resolution clauses of their contracts. To do so, the three main legal actors in NLHs, U.K. legal consultants, local government officials, and transnational elite, engage in "image-work," narratives that are self-legitimizing, to advertise their legal services to MNCs.³⁴ These narratives speak to the hyper-modern dispute resolution facilities, including the most up-to-date procedural rules and "lawtech," including artificial intelligence and machine learning, to persuade MNCs that their institutions efficiently deliver justice.

One of the main functions of image-work, then, is to counter-balance the public relations deficit of many of the jurisdictions within which NLHs are based. As most NLHs are built in nondemocratic or hybrid regimes (i.e., those that are both democratic and authoritarian), they do not enjoy the reputation of the legacy hubs (e.g., London, Paris, and New York City), which are all based in democracies. NLHs thus raise the wider question as to whether the provision of TDR services is dependent on good governance, understood as transparent and accountable political institutions and rules. NLHs thus beget the question: can jurisdictional carve-outs sever TDR from bad politics? As such, the promotional work of NLHs' exponents, which goes beyond the naked rules of doctrine or their narrow interpretation to consider the mutual effects of law and politics, invites a broader socio-legal approach.

³⁴ Christian De Cock, et al., *Financial Phantasmagoria: Corporate Image-Work in Times of Crisis*, 18 ORGANIZATION 153 (2011).

These two domains of activity, which I shorthand as doctrinal innovation and image-work, were apparent in my interaction with representatives of the DIFC Courts. By way of background, the DIFC Courts, established in 2006, are designed as a jurisdictional carve-out from a legal system that is otherwise unfamiliar to MNCs given that UAE law includes Islamic law and is written in Arabic language.³⁵ The DIFC Courts consist of a Court of First Instance and a Court of Appeal, which is the court of final appeal.³⁶ Modeled after the Commercial Court in London, the bench of the DIFC Courts features mainly retired U.K. judges trained in English common law. The DIFC Courts English common law procedural rules to cases and substantive law chosen by parties, including a “local law” called “DIFC law,” the result of legislation and common law decisions. This local law is the default law for commercial and civil disputes within the DIFC, a 110-hectare area.³⁷ The DIFC Courts are part of a dispute resolution complex that includes international commercial arbitration institutions, some of which are “joint ventures” with London-based houses (i.e., the Dubai International Financial Centre—London Court of International Arbitration Centre or DIFC-LCIA Arbitration Center). The DIFC Courts are thus purported to be “islands of transnational governance.”³⁸

³⁵ See JAYANTH K. KRISHNAN, THE STORY OF THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS: A RETROSPECTIVE (forthcoming) (providing a history of the founding of the DIFC Courts) and Jayanth K. Krishnan & Priya Purohit, *A Common-Law Court in an Uncommon Environment: The DIFC Judiciary and Global Commercial Dispute Resolution*, 25 AM. REV. INT’L ARB. 497, 506 (2014).

³⁶ See Law No. 16 of 2011, Amending Certain Provisions of Law No. 12 of 2004 Concerning Dubai International Financial Centre Courts (hereinafter “Dubai Law No. 16”), art. 5(A), (B), *available at* <https://www.difccourts.ae/2011/10/31/law-no-16-of-2011-amending-certain-provisions-of-law-no-12-of-2004-concerning-dubai-international-financial-centre-courts/>.

³⁷ See Dubai Law No. 12 of 2004, as amended, *available at* https://www.difc.ae/files/7014/5510/4276/Dubai_Law_No._12_of_2004_as_amended_English.pdf.

³⁸ Alec Stone Sweet, *Islands of Transnational Governance*, in ON LAW, POLITICS, AND JUDICIALIZATION 323 (Martin Shapiro & Alec Stone Sweet eds., 2002).

Given their experimental nature, the DIFC Courts have initiated a set of doctrinal reforms that are unique in the field of TDR. As the central dispute resolution mechanism of the DIFC Courts are the courts themselves, the reforms have focused on enhancing the enforcement of DIFC Courts' decisions outside the DIFC, within the UAE, and beyond in other states. As a baseline, DIFC Court decisions are fully enforceable within the DIFC.³⁹ Beyond the DIFC, to enforce a DIFC Court decision within Dubai, the prevailing party must apply for an "execution letter" from the DIFC Courts,⁴⁰ which is then submitted to the relevant onshore Dubai court for approval. Despite a series of cases that have expanded the jurisdiction of the DIFC Courts,⁴¹ their judgments have encountered difficulty in being recognized and enforced by courts outside of the DIFC. According to one study, as of 2014, no Emirati court outside Dubai had enforced a DIFC judgment due to "lack of faith."⁴²

In addition to case law, to shore up the efficacy of DIFC Courts' judgments outside of the DIFC, the judges and administrators of the DIFC Courts introduced a number of reforms. First, the DIFC Courts have created a latticework of MOGs and MOUs with partner institutions throughout the world. These memoranda are not enforceable but they do show intent of courts and arbitration houses to enforce each other's decisions. The first MOG was signed with the London Commercial Court in

³⁹ See *DIFC Courts Enforcement Guide 2018* 13, available at http://issuu.com/difccourts/docs/enforcement_guide_combined_single ?e=29076707/61750336.

⁴⁰ Jayanth K. Krishnan & Priya Purohit, *A Common-Law Court in an Uncommon Environment: The DIFC Judiciary and Global Commercial Dispute Resolution*, 25 AM. REV. INT'L ARB. 497, 506 (2014).

⁴¹ See e.g., [2011] DIFC CA 002, <https://www.difccourts.ae/2011/01/22/ca-0022011-corinth-pipeworks-sa-v-barclays-bank-plc/> (last visited Oct. 22, 2018) (expanding the DIFC Court's jurisdiction over overseas parent companies that have a subsidiary in the DIFC).

⁴² See Krishnan & Purohit, *supra* note [], at 509.

2013.⁴³ Subsequently, the DIFC Courts have signed nine MOGs with courts throughout the world.⁴⁴ Additionally, over the last decade, the DIFC Courts have signed eleven “collaboration MOUs” with courts within the UAE and the greater GCC.⁴⁵ Despite the efforts, the efficacy of the soft law instruments is in doubt. Still, there is at least one precedent for its use: in 2014, an Australian court affirmed and enforced a decision by the Court of First Instance consistent with the MOG between it and the DIFC Courts for the reason that the respondent’s assets were based in Australia.⁴⁶ In addition to Australia, by 2017, DIFC Court judgments had been enforced by the United Kingdom.⁴⁷

Second, the DIFC Courts has introduced cross-institutional mechanisms to strengthen enforcement. One example is a mechanism by which parties opting into the jurisdiction of the DIFC Courts can also refer their final judgments for enforcement through the DIFC-LCIA Arbitration Centre.⁴⁸ The mechanism allows the DIFC-LCIA to

⁴³ See Memorandum of Understanding on Strengthening Judicial Exchange and Cooperation between Commercial Court, Queen’s Bench Division, England and Wales and Dubai International Financial Centre Courts (signed Jan. 23, 2013).

⁴⁴ These include the Supreme Court of New South Wales (signed Sept. 9, 2013), the Federal Court of Australia (signed Mar. 28, 2014), the Commercial & Admiralty Division of the High Court of Kenya (signed Nov. 27, 2014), the Supreme Court of Singapore (signed Jan. 19, 2015), the District Court for the Southern District of New York (signed Mar. 22, 2015), the Supreme Court of the Republic of Kazakhstan (signed Aug. 28, 2015), and the National Court Administration of the Supreme Court of Korea (signed Nov. 4, 2015). In addition, the DIFC Courts has established an “MOU on References of Questions of Law” with the Supreme Court of Singapore (signed Jan. 19, 2015).

⁴⁵ These include a “collaboration MOU” with the Dubai courts (July 16, 2009); a “protocol of jurisdiction” with the Dubai Courts (May 1, 2009) for “due enforcement of the judgments rendered by the other Party”; a second such “protocol of jurisdiction” with the Dubai Courts, (Dec. 7, 2009) for “[f]ollow[ing] the concerning laws and regulations as for the jurisdiction issue between DIFC Courts and Dubai Courts”; and “collaboration MOUs” with: Notary public Department of the Dubai Courts, Ministry of Justice of Jordan, UAE Ministry of Justice, Dubai Judicial Institute, and Ra Al Khaimah Courts; and a “service MOU” with the international Cooperation Department of the UAE Ministry of Justice.

⁴⁶ See *Graciela Ltd. v. Giacobbe* [2014] DIFC CFI 027 (finding for the claimant in a wrongful interference in property suit).

⁴⁷ *DIFC Courts Enforcement Guide 2017 25*, available at http://issuu.com/difccourts/docs/enforcement_guide_e5__2017?e=29076707/48883438.

⁴⁸ The DIFC–LCIA was established in 2008 as a joint venture between the DIFC and the LCIA. Following challenges to its jurisdictional reach, Dubai Law No. 7 of 2014 *available at* https://www.difc.ae/files/6914/5510/4274/Dubai_Law_No._7_of_2014_English.pdf was passed to establish the Dispute Resolution Authority which in turn governs the DIFC Arbitration Institute (DAI). The DAI

convert judgments into arbitral awards that can then be enforceable abroad through the New York Convention of 1958.⁴⁹ While the effects of incorporating more inclusive policies into the court's operations remains to be seen, the mechanism to convert a judgment into an arbitral award, much like the MOGs and MOUs, is mainly untested. As of 2017, no party had opted to use the mechanism, likely out of concern that other jurisdictions, at the enforcement stage, may not consider the conversion of the judgment into an arbitral award to be valid because nonpayment of a judgment may not be a genuine dispute capable of being referred to arbitration.⁵⁰

The DIFC Courts thus raise important doctrinal questions, particularly for conflict of laws (i.e., jurisdiction, choice of law, and enforcement concerns). These questions can be analysed pursuant to relevant case law, statutes, and international conventions. At the same time, to limit the analysis to a purely doctrinal examination would fail to reveal much of what makes the study of NLHs so compelling, particularly for the larger subject of TDR. This became apparent to me spending time with some of the personnel behind the DIFC Courts, namely, the CEO of its dispute resolution authority, a U.K. finance lawyer and court reformer, as well as its judges, including a leading U.K.-trained arbitrator and judge from Singapore. These experts had developed their own theories for

entered into an agreement with the LCIA to relaunch the DIFC–LCIA in 2015. *See* DIFC–LCIA, *Overview*, <http://www.difc-lcia.org/overview.aspx> (last visited Oct. 22, 2018).

⁴⁹ DIFC Courts Practice Direction No. 2 of 2015 on Referral of Judgment Payment Disputes to Arbitration (Feb. 16, 2015), *available at* <https://www.difccourts.ae/2015/02/16/difc-courts-practice-direction-no-2-2015-referral-judgment-payment-disputes-arbitration/> (stating that the parties may “further agree that any dispute arising out of or in connection with the non-payment of any money judgment given by the DIFC Courts may, at the option of the judgment creditor, be referred to arbitration under the Arbitration Rules of the DIFC–LCIA Arbitration Centre”).

⁵⁰ Christopher Mainwaring-Taylor & Yacine Francis, *DIFC Courts Introduce Unique Mechanism to Convert DIFC Money Judgments into Arbitral Awards*, ALLEN & OVERY (Oct. 18, 2018), <http://www.allenovery.com/publications/en-gb/lrrfs/middleeastandafrika/Pages/DIFC-Courts-introduce-unique-mechanism-to-convert-DIFC-money-judgments-into-arbitral-awards-n.aspx>. *See also* Dalma R. Demeter & Kayleigh M. Smith, *The Implications of International Commercial Courts on Arbitration*, 33 J. INTER’L ARB. (2016).

NLHs, their obstacles and potential. More specifically, they were also gathering data, often traveling between and among NLHs to do so, analysing that data, and generating explanatory frames for how NLHs could not only fit into the existing landscape of TDR but also improve upon it. This knowledge production was part and parcel of their promotional work for their own specific hub. In short, the experts were para-ethnographers.

The proponents of NLHs often had a particular conception of what NLHs are and what they do. For instance, the CEO of the DIFC Courts' dispute resolution authority envisioned them as "nodules of connectivity"⁵¹ that were interlinked by soft law and technology as much as by his and his colleagues' sharing of knowledge and problem solving, aided by their frequent traveling between the hubs. For the CEO, Dubai, like Nur-Sultan, Singapore, and Hong Kong were all international nodes and while they established independent of China's "going out" policy of the late 1990s, they were also well-positioned to facilitate Chinese cross-border transactions and their disputes. As such, they were "bridgeheads"⁵² for Chinese investment: Hong Kong and Singapore for Southeast Asia, Nur-Sultan for Central Asia, and Dubai for the Middle East.

Within this network of NLHs, each individual NLH is to be a bubble of legal modernization, heavily influenced by London's experience. As remarked by the judge

[We] try to give them the whole experience. So DIFC was meant to be a home away from home. So they hired retired civil servants, retired bankers from the Bank of England, the former general manager from Sydney stock exchange for their fledgling exchange...[It's] like you're in your own backyard. The legal

⁵¹ Interview, London, November 6, 2017.

⁵² Ibid.

system is like that. Because Dubai is a financial centre, too, the view is that there is no messing about. The financial world is dominated by Anglo-Saxon common law, so [Dubai] needed common law.⁵³

Hence, through U.K. staffing and partially transplanting English common law procedural rules, the DIFC Courts are a kind of derivative hub. Although the other NLHs have different relationships to London than Dubai (some more post-colonial than others), most have adapted some form of English common law into their procedural rules for international litigation, and have done so through the work of U.K. legal advisors. This interhub *lex mercatoria* is not complete, however, particularly in regards to enforcement of foreign judgments and orders. In the absence of an international convention on the recognition and enforcement of foreign judgments,⁵⁴ London is still trying to supply soft law to fill in the gaps, in the form of the Standing International Forum for Commercial Courts' *Draft Multilateral Memorandum on Enforcement of Commercial Judgments for Money*.⁵⁵ Meanwhile, the Chinese are starting to supply mega-regional soft law through their own *Joint Statement of the World Enforcement Conference*.⁵⁶

NLHs, in fact, show how Chinese legal entrepreneurs are building on and supplementing legal infrastructure created by the British Empire for China Inc. The

⁵³ Interview, Oxford, May 11, 2018.

⁵⁴ The Hague Convention on the Recognition and Enforcement of Foreign Judgments is still being deliberated. See Special Commission on the Recognition and Enforcement of Foreign Judgments of the Hague Conference on Private International Law, 2018 Draft Convention, May 24–29, 2018 (on file with the author).

⁵⁵ The *Draft Multilateral Memorandum on Enforcement of Commercial Judgments for Money* was discussed on September 27, 2018, during the second meeting of the Standing International Forum for Commercial Courts (SIFoCC) in New York City. Currently, individual members of SIFoCC, including judges from the main NLHs discussed herein (i.e., Dubai, Singapore, Hong Kong, Kazakhstan, and the PRC), are in the process of finalizing the document.

⁵⁶ See e.g., *Joint Statement of the World Enforcement Conference* (drafted by the Supreme People's Court following a high-level conference in Shanghai on January 20–23, 2019, featuring presidents and chief justices of supreme courts).

missionary work of NLH proponents is part of this process. Hence, image-work operates not only to attract parties to use a NLH for their dispute resolution services, but also to proselytize the concept of NLHs for the purpose of producing other NLHs. The relationship between NLHs is one of both competition (e.g., between international arbitration houses) and cooperation (e.g., mutual enforcement of other hubs' judicial decisions), and thus the multiplication of hubs can potentially lead to a race to the top.

This process was evident in my conversations not only with legal experts from the DIFC Courts, who were creating links with counterparts in China, but also with PRC judges, arbitrators, and officials who were interested in building their own hubs, based, in part, on the experience of the DIFC Courts and other hubs, like Singapore. Image-work comprised of a number of self-representations including publications with case statistics for international commercial courts or awards given from arbitration tribunals, Internet versions of the foregoing, and “road shows” whereby representatives from the hubs venture out into other jurisdictions to advertise their procedural and technological advancements. China has learned from other NLHs through these exchanges and is building its own NLHs in Shenzhen and Shanghai. Concurrently, hubs like the DIFC Courts are also studying Chinese legal reform, namely, the introduction of AI into “smart courts” for its own improvement. Some of these reforms and improvements will have traction; others, like the use of a robot to deliver sandwiches to arbitrators at Maxwell Chambers in Singapore, are merely window dressing. Nonetheless, this is the work that images do—to produce and reproduce the idea of legal and technological modernization. It is important to note that these observations on image-work move the analysis beyond

mere doctrinal questions, and thus would not be as readily apparent without a social-scientific approach.

Conclusion

It is something of a truism that doctrinal approaches to legal questions and “law and society” ones demonstrate more divergence than convergence. The study of TDR seems to exhibit particularly acute forms of this divergence. This chapter has essayed to challenge this assumption, and the kinds of line-drawing it encourages. Rather, a methodology that incorporates para-ethnography may be one means, amongst others, that help bridge these divides. The value added of para-ethnography is that it invites the analyst to grapple with the intellectual work of her interlocutors, in this case, legal entrepreneurs who champion doctrinal innovation to improve the standing of their NLH. This engagement then is principally a “legal analysis,” and operates through logic, case law, and statutory reasoning. At the same time, para-ethnography, as an ethnographic method, highlights the “contextual, dynamic, and reflexive”⁵⁷ factors that motivate legal reasoning and logic. These factors become particularly salient in studying law in nondemocratic or hybrid contexts where the category of the political has heft. For the foregoing reasons, para-ethnography, one that balances doctrinal analysis with empirical insights, may generate new synergies in the study of TDR.

⁵⁷ John Flood, *Socio-Legal Ethnography*, in *THEORY AND METHOD IN SOCIO-LEGAL RESEARCH* 33, 34 (2005).