Law and Everyday Life, *The Common Place of Law*

I. Introduction,
from formalist to realist conceptions of law
law on the books to law in action

De Tocqueville, *Democracy in America*,
"The language of the law thus becomes, in some measure, a vulgar tongue; the spirit of the law, which is produced in the schools and courts of justice, gradually penetrates their walls into the bosom of society, where it descends to the lowest classes, so that at last the whole people contract the habit and tastes of the judicial magistrate." (Tocqueville, 1959, Volume 2:20)

II. American society is filled with signs of legal culture.

III. How do matters of everyday life become matters of law?
Recall the disputing pyramid, the civil justice system:

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  Appeal
  trials
  filings
  lawyer
  dispute (denied claim)
  claim - against another
  grievance - blame another
  perceived injury -- name event as,
  injury UNPIE (unperceived injurious events)
  events
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0.015 appeals
"law on the books"
1.5 trials

research on law
in everyday life

1000 events
IV. Background of a research project: The New Jersey Supreme Court, Commission on minority and non-minority use of courts

Previous research:

A: surveys, generalizable results from large sample randomly selected respondents - **20 minute phone call** produced picture of high degree of support for legal institutions, **little variation** by usual indicators

B: ethnographies, in-depth, long term, **small community studies**, non generalizable, produced picture of **variation**, much resistance to law and legal institutions

C: our design: do in-depth work with large random sample Recall our research design:

- events --- defined as problems --- action: no action
- non-legal action (friend, minister, other party)
  - legal action: police, lawyer, agency

shaped by
- socio-economic status
- race/ethnicity
- gender
- community structure
- family size and structure

VI. Results; **Before, With, Against the Law**

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<th>With the Law</th>
<th>Against the Law</th>
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<td>Normativity</td>
<td>impartiality,</td>
<td>legitimate</td>
<td>power, &quot;might</td>
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<td>objectivity</td>
<td>partality, self-interest</td>
<td>makes right&quot;</td>
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<td>Constraint</td>
<td>organizational</td>
<td>contingency,</td>
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<td>rules, formal</td>
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<td>organization</td>
<td>resources,</td>
<td>(roles, rules, hierarchy)</td>
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<td>experiences,</td>
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<td>Archetype</td>
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<td>game</td>
<td>making do</td>
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VII. Reconciling the contradictory narratives of law

idealist view, fragile, too easily undone by experience cynical critique unable to sustain legitimacy over time

idealism leavened by critique sustains "the rule of law;"
pragmatic critique, e.g. "the 'haves' come out ahead" protects legality from more sustained and significant critique

ahistorical, general, universal ideal alongside local, non-general practices