Rethinking How We Bundle and Divide

By Robin I. Mordfin

Time, like so many other facets of modern life, can be lumped together—or it can be divvied up. Although each day is a lump of 24 hours that cannot be reused or elongated, the minutes and hours can be allocated to different activities in nearly limitless ways. A professor writing a book, for instance, might find that she is most effective if she sets aside several hours a week—or several hours a day—to write, rather than trying to accomplish the entire project in a series of marathon sessions or in scattered 10-minute bursts. But assembling the cooperation of all of her temporal selves—and arranging the rest of her life to preserve those time blocks—may be quite another matter.

Land, jobs, goods, services, and countless other commodities can be sliced or lumped, too—and in each case, how we choose to group or divide these resources matters, Professor Lee Fennell argues in a new book, Slices and Lumps: Division and Aggregation in Law and Life (University of Chicago Press). It’s a concept, she says, that can improve our approach to urbanization, conservation, the sharing economy, legal doctrines, and even personal struggles with time, money, health, and work.

“Configuring well is extraordinarily valuable but often elusive. Assembly and division problems crop up in nearly every aspect of life, yet the importance of configuration is underappreciated,” said Fennell, the Max Pam Professor of Law. “New technologies make it easier than ever to bring people and ideas together and to slice up jobs, homes, cars, and other goods in ways that were previously impossible. Yet core challenges remain: getting people to agree to a novel configuration and deciding how to split up the surplus from the new arrangement.”

In Slices and Lumps, Fennell argues that dividing and aggregating are really two sides of the same coin. Lumpy goods, she notes, lose value if they are broken up. Consider bridges (how can one cross a river on half a bridge?), conservation of habitats (animals need a certain amount of contiguous space and resources in order to survive), and electoral college votes in winner-take-all states. But other goods become more valuable when divided, such as a large parcel of land that is more valuable when subdivided into smaller building lots. Both types of challenges—carving out useful slices and assembling useful lumps—require cooperation among those who have control over the resource in question.

Throughout the book, Fennell questions conventional thinking, emphasizing the need to account for innovations that segment or bundle goods and services in new ways. For instance, a generation ago most Americans were wedded to the notion that one had to own the whole car, and pay the whole insurance bill, if one wanted access to an automobile. Today, people share cars through applications like Zipcar and companies like Metromile, which charges for insurance only by each mile driven. In high-priced urban areas, housing is changing, too. Assumptions about square-footage minimums have begun to break down with the rise of microunits suited to single-person households—a trend whose success depends in part on how housing fits together with surrounding urban amenities like parks that offer additional shareable space.

Looking at resources and their uses in a slices-and-lumps fashion, Fennell contends, can help governments, markets, and households understand the choices that confront them and illuminate alternatives. We need not take lumps as we find them, but can instead ask whether a better configuration exists, and how we might innovate toward it. And such innovation is indeed underway in many sectors.

“But it is essential to consider what other changes these new configurations bring with them,” she added. “For example, new ways of slicing up homes or jobs may also do away with beneficial legal protections or social arrangements.”

Thus, Fennell advocates for an emphasis on configuration entrepreneurship, one that prioritizes improving the aggregation and division of goods, services, and other items in both the public and private sector. Treating the art and science of configuration as a crucial area of research enables us to see how lumping and slicing problems in different arenas share a common structure, raise related concerns, and may be amenable to similar solutions.

“Developing such a field of inquiry,” she said, “could lead to better policy, better laws, and better approaches to problem solving in many areas of public and private life.”
Ryan Doerfler Joins the Faculty

By Becky Beaupre Gillespie

Ryan Doerfler, a scholar whose work on statutory and constitutional interpretation grew from an interdisciplinary focus on law, epistemology, and the philosophy of language, joined the Law School’s faculty this summer as a professor of law. Doerfler served as a Harry A. Bigelow Teaching Fellow between 2014 and 2016 and as the Walter V. Schaefer Visiting Assistant Professor of Law during Winter Quarter 2019.

“This is a really wonderful community, and it is exciting to come back and rejoin that group,” said Doerfler, who spent three years as an assistant professor at the University of Pennsylvania Law School after his Bigelow Fellowship. “The atmosphere at the Law School is distinctive and amazing. It’s such an interactive, engaged faculty climate.”

Dean Thomas J. Miles, the Clifton R. Musser Professor of Law and Economics, called Doerfler a “brilliant scholar” whose work “underscores the immense value of interdisciplinary inquiry.”

“We are excited by Ryan’s scholarly work, which addresses important questions about statutory language and meaning, as well as by the exemplary teaching he displayed as a Bigelow Fellow,” Miles said. “We are absolutely delighted to welcome him back to the Law School.”

Doerfler, who majored in philosophy as an undergraduate at Wake Forest University, earned a PhD in philosophy in 2011 and a JD in 2013, both from Harvard. After law school, he clerked for the Honorable Sandra L. Lynch for the US Court of Appeals for the First Circuit and has been a visiting law professor at both Columbia and Harvard. His recent scholarly work includes, “Can a Statute Have More Than One Meaning?” (New York University Law Review, 2019), which examines whether statutory language can mean different things in different cases, and “High-Stakes Interpretation,” (Michigan Law Review, 2018), which explores why courts often interpret text differently when deciding high-stakes cases.

“Ryan’s research and teaching add significantly to our strengths in public law and interdisciplinary work,” said Alison LaCroix, the Robert Newton Reid Professor of Law and the chair of the lateral appointments committee. “His work is esteemed by leading scholars in the fields of legislation and statutory interpretation, as well as by legal philosophers. At a relatively early stage in his career, Ryan has already become a significant voice at the center of debates over statutory meaning and analysis, engaging with questions and methods that are of particular interest to the current Supreme Court.”

Doerfler’s interest in the intersection of philosophy and law emerged early in law school, when he took a course titled Legislation and Regulation. As a doctoral student, he had focused on applying the philosophy of language to normative discourse about ethics, art, and other topics. But as he considered the meaning of various statutes and regulations, he found himself applying his linguistic thinking and, ultimately, exploring the impact that different methods of statutory interpretation have on judicial decision-making.

“A lot of the questions that we were being asked in that course just struck me as the applied philosophy of language,” Doerfler said. “I saw this obvious connection between the work I’d been doing on these more abstract, theoretical issues and these [more concrete] questions in the law.”

Doerfler, who is currently working on a paper that proposes a new framework for evaluating doctrines that assign significance to the “clarity” of a statutory text, says these areas of inquiry are of particular relevance as courts pay increasing attention to the intended meaning of the Constitution and other laws.

“The issues surrounding statutory interpretation are a topic of wide debate, especially on the Court,” Doerfler said. “I think right now we’re at an interesting point. Exactly how the law of statutory interpretation is going to develop is really up for grabs.”

Doerfler, who teaches administrative law and legislation, says he enjoys being in the classroom, adding that statutory interpretation has “immediate practical utility for law students.”

“If you work in litigation—as a lot of our students do—a lot of what you do is going to involve either interpretation of statutes or interpretation of regulations,” he said. “These are direct skills that apply across a wide range of subject-matter areas.”