Book Review

Lawyers and Power: Reproduction and Resistance in the Legal Profession

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Ronan Shamir, *Managing Legal Uncertainty: Elite Lawyers in the New Deal.* Durham, NC: Duke University Press, 1995. Pp. xii + 252. $45.00 cloth; $18.95 paper.

John Hagan & Fiona Kay, *Gender and Practice: A Study of Lawyers' Lives.* New York: Oxford University Press, 1995. Pp ix + 235. $35.00.

Austin Sarat & William L. F. Felstiner, *Divorce Lawyers and Their Clients: Power and Meaning in the Legal Process.* New York: Oxford University Press, 1995. Pp. xii + 191. $35.00.

Empirical investigation of lawyers has occupied a prominent site of inquiry within sociolegal studies. Over the years, social scientists and legal scholars alike have produced richly textured contributions to the study of lawyers. Not restricted by any particular theoretical or methodological orientation, this literature has significantly expanded the conceptual knowledge and analytic understanding of the legal profession. Particularly salient in this extant literature has been the focus on such macro- and micro-level themes as the relationship between the legal profession, capitalism, and the state; the embeddedness of hierarchy across the distinct hemispheres of the legal profession; and the dark history of inequality within the legal profession that excluded the working class, ethnic minorities, and women from the practice of law. Also within this literature, attention has been accorded to lawyers' practices within situated contexts as they relate both to other lawyers and to their clients.[1] This literature is

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[1] Literature that explores these issues as they relate to the legal profession is extensive. For the lawyer, economy, and state relationship see generally Larson 1977; Derber,

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substantively broad at the same time it is theoretically and methodologically rich, making research on the legal profession an exciting field of scholarly inquiry.

The three books reviewed in this essay are firmly ensconced in these important empirical traditions. Each contributes to questions of professional hierarchy and inequality, professional ideology, and professional practice. Collectively, they provide a solid foundation for those who wish to familiarize themselves with the literature on the legal profession. There is an additional point that unifies this triad. Each work explores the relationship between the legal profession and power, whether it is the power of elite lawyers to remain autonomous from the state, the power of practitioners to construct the law and the client, or the power male lawyers have in their workplaces with regard to salary, promotion, and opportunities as compared with that of women in the law. And the works do so from distinctly dissimilar theoretical and methodological positions. In *Managing Legal Uncertainty*, Shamir situates the professional autonomy of elite lawyers in a neo-Weberian framework that uses historical method; in *Gender and Practice*, Hagan and Kay examine gender inequality in relation to gender stratification theory using mostly survey methods; and finally in *Divorce Lawyers and Their Clients*, Sarat and Felstiner analyze lawyer's interactions and negotiations with clients through an interpretist paradigm that employs ethnographic procedures. Thus, reading these books collectively provides multidimensional insight into substantive themes within the sociology of the legal profession, distinct theoretical traditions contained within the field, as well as the range of methodological possibilities, applications and appreciations available to social scientists. But most important, these books together reveal the interstices of power that cohere to law and legal practice, as well as the variegated ways in which that power is resisted.

This essay is divided into four parts. The first three parts examine the unique levels of analysis taken by each of these books. Part I explores Shamir's macro-level analysis of the relationship between elite lawyers, capitalism, and the state. It also explores the contradictory class relations as well as contestation within the legal profession implied in Shamir's work. Part II reviews Hagan and Kay's contribution to the literature on internal stratification within the bar through their important empirical examination of the barriers to gender equality in the legal profession. Part III explores Sarat and Felstiner's micro-level analysis of the negotiated realities that develop between lawyers and their clients. I

Schwartz, & Magrass 1990; Abel & Lewis 1989; Auerbach 1976; and Halliday 1987. For an examination of hierarchy within the legal profession see generally Heinz & Laumann 1982 and Abel 1989. Finally, for the interaction between lawyers and their clients as well as the exploration of how lawyers construct law see Nelson et al. 1992.

conclude with a discussion of the common themes of reproduction and power found in each work.

I. Power and Profession

Throughout its history, the legal profession has struggled to achieve the legitimation associated with the Weberian ideal of a neutral, value-free expert. This struggle has been necessitated by the contradiction identified long ago by Tocqueville that lawyers are of the people by birth but belong to the aristocracy by habit and taste. The perception that lawyers represent a class for themselves seeking to enhance their own status through allegiances to dominant economic interests has been a recurring theme in the public conscience. One 19th-century lawyer summed up what he saw as the rabid nature of hostility toward the legal profession by commenting that the public viewed lawyers as:

> a species of social vampire which the greed of the dominant class has maintained to help them ruin the "horny-handed son of toil," his learning is but knavery reduced to science; his business, in large part, when not the support of the capitalist offender, is the production of strife, that from it he may draw the enormous revenues he is popularly supposed to enjoy. (Lee 1896:246)

Thus, the perception of lawyers as "hired guns" for capitalists who use their "science" to advance the capitalist class as well as their own self-interests has existed for years.

The hypothesis implicit in the above denunciation of lawyers is the very hypothesis that Shamir examines in his book on how elite lawyers managed the attack on legal doctrine that occurred during the New Deal administration. Employing a neo-Weberian theoretical framework, Shamir's principal thesis advances the following proposition:

> To the extent that corporate lawyers acted as a capitalist vanguard, they did so by defending their own perceived autonomous domain and not because they necessarily embraced the particular values of their clients. It was the structural bias of this self-conceived autonomous system of law, and not substantive ideological inclinations, that created the bond between laissez-faire capitalism and the court-centered legal system. (P. 13)

Arguing in opposition to the neo-Marxist portrayals of the legal profession as being subordinate to capitalist interests, Shamir maintains that elite corporate lawyers during the New Deal advanced capitalist interests only indirectly through their own efforts to solidify professional autonomy, control, and power. Shamir's thesis is that the professional monopoly interests of elite lawyers and the economic interests of capitalists were linked more by a web of institutional and normative affinities than by direct correspondence (Bowles & Gintis 1976).

Shamir refers to this structural homology between elite lawyers and the clients they served as the "representation dilemma" of lawyers. That is, to achieve public legitimation and preserve their professional monopoly on legal services, lawyers symbolically distanced themselves from the clients they served. Consistent with the status-enhancing role of professional education and legal ethics, Shamir maintains that elite lawyers sought to preserve their cultural authority through an emphasis on scientific rationality. From this perspective, professional knowledge qua science is a resource that helps professionals legitimate their occupational and social position. As was true of early legal education, the appropriation of legal science by professional elites not only enhanced professional power but also resolved the "representation dilemma" by obscuring the relationship between legal practice and corporate capitalism. For instance, at the turn of the century, Harvard Law School students were trained in the "science" of modern capitalist legal logic but were advised not to become too overtly wedded to business interests (Granfield 1992). The structural homology between elite lawyers and the class interests they served was thereby mystified by the collective ideological work carried on within the profession. The result of this separation of law and politics was that the interests of both elite lawyers and economic elites were advanced.

Shamir empirically tests this theoretical framework through an analysis of elite lawyers' responses to the New Deal. The dilemma elite lawyers experienced with New Deal legislation was significant. New administrative procedures to regulate commerce and business practices through such acts as the National Industrial Recovery Act, the Securities Exchange Act, the National Labor Relations Act, and the Public Utility Holding Company Act ushered in an atmosphere of legal uncertainty by blending law with political values, the separation of which constituted the principal basis for the legitimation in law.

Herein lies the central problematic that Shamir explores in his book. Despite the fact that the New Deal represented the expansion of new opportunities for legal practitioners, the New Deal attack on the rule of law ideal threatened to undermine the traditional authority of elite practitioners. To fail to challenge the constitutionality of this legislation would compromise the authority of elite practitioners that was built on expert knowledge. Yet a strategy of opposition to it would expose their identification with their corporate clients, thereby subverting the legitimation they fostered through the ethical ideals of neutrality and independence.

To resolve this dilemma, elite lawyers carried on their opposition to New Deal legislation through arguments in the name of public interest, as well as through a sanitized professional rhetoric that distanced them from the economic interests of their cli-

ents. Shamir offers extensive documentation of the organized efforts of elite lawyers to resist New Deal legislation, not on behalf of their wealthy clients but rather on behalf of the public good. New Deal lawyers argued that the administrative plans for economic recovery were counterproductive since they would limit the industrial growth that was important to the nation as a whole. And they enlisted the American Bar Association in their opposition so as to appear to be grounded in impartial professionalism. In neither case did elite practitioners convince the public that they were independent from client interests, even when they articulated distinct professional concerns. It was not until the *Schechter* decision of 1935 invalidating the NIRA that elite practitioners found ammunition to oppose the expansion of legal uncertainty through the rhetoric of judicial review. This Supreme Court decision allowed elite lawyers and the ABA to frame their attack on New Deal legislation within the rule of law. The apolitical ideology associated with the judicial system helped to maintain the aura of professionalism and thereby to protect their social and economic privileges.

Yet, as Shamir points out, opposition to administrative procedures and its dissolution of law and politics was not a unified response among lawyers. Solo practitioners, for instance, were less hostile toward the New Deal than their elite counterparts. Where elite lawyers saw an attack on professional autonomy, solo practitioners saw an opportunity for new sources of income. But for this to happen, these practitioners had to acquire market control of New Deal administrative agencies by eliminating the potential competition posed by lay practitioners. In their efforts to monopolize emerging administrative sectors, these lawyers also sought ABA support.

Not surprisingly, the interests of elite practitioners and the visions of law they constructed had considerably more weight in the profession. The ABA joined forces with elite lawyers in challenging New Deal legislation, while it resisted attempts by solo practitioners to monopolize the administrative field. Thus, the characterization of danger that was articulated by elite lawyers—the threat posed by the New Deal to the cultural capital associated with the legal profession—was elevated to a higher status than were the pedestrian economic concerns of non-elite practitioners.

According to Shamir, the New Deal not only divided elite and non-elite lawyers, it also split practitioners and academicians, a division caused by the struggle over the self-legitimating ideology of the legal profession. While the New Deal reform-minded era was anathema to elite practitioners, Legal Realists in law schools celebrated the progressive spirit of the New Deal and the interventionist approach to law it engendered. The Legal Realists in the academy attacked the elite foundations of legal practice by

exposing law's indeterminant and socially constructed nature. Realists, feeling somewhat marginalized in law schools, engaged in their own "collective mobility project" to increase the status and influence of legal academicians. They tried to demystify law and legal practice by contextualizing law and severing it from the formalist traditions that were supported by elite practitioners. For this, Legal Realists, like many present-day legal scholars, received the scorn of elite practitioners who accused them of practicing impractical scholarship (Edwards 1992).

Shamir's analysis of the differential response to New Deal legislation among lawyers and the internal struggles within the legal profession it created leads to a conclusion that challenges class-based as well as statist political theory. Such approaches view lawyers as either capitalist tools or state bureaucrats. In both cases, the profession as an autonomous field capable of establishing boundaries and creating jurisdiction is systematically denied. In what might be termed "bringing the profession back in," Shamir concludes that corporate lawyers cannot simply be reduced to capitalist agents, nor can Legal Realists be seen merely as state managers. Rather, the picture he paints is of a profession engaged in an internal struggle over its cultural capital. For corporate lawyers, it was precisely their definition of what constituted professional lawyering, one based on the idea of law's autonomy, that lead them to be servants of power.

One of the limitations of Shamir's profession-centric versus class-based argument regarding corporate lawyers is his failure to recognize that social class reproduces itself through the cultivation of a class-based system of cultural capital. Shamir is correct in arguing that the decontextualization of law symbolized for corporate lawyers its rational and autonomous character. It is obvious how the decontextualization of law benefits both the legal profession and the corporate elite. For lawyers, law's integrity is bolstered by an emphasis on decontextualized expert knowledge that only they have obtained. For the corporate elite, the decontextualization of law restricts lawyers to the analysis of formal rules at the expense of recognizing the unequal social relations and contradictions that produced those rules. Thus, the separation of law from its social context served multiple interests.

However, elite lawyers were not simply elite lawyers because of their structural position in the legal profession. The values, ideals, habits of mind, and dispositions, as Bourdieu (1984) would call them, of elite lawyers reflected their own elite traditions as well as their structural position within the legal field. Many of these elite professionals were, by social background and educational experience, members of the upper class. They were also predominately male. For years, law schools reproduced social class by admitting students from elite backgrounds and erecting barriers that prevented the entry of the working class, minori-

ties, and women. Thus, many of the elite lawyers Shamir refers to possessed cultural dispositions that tied them to the corporate networks of power. While elite lawyers' objections to the New Deal reforms were professionally driven, they no doubt were also influenced by their eminent social backgrounds. In fact, the ideological gulf between contemporary corporate lawyers and their clients may be greater than elite lawyers experienced during the New Deal. Research demonstrates that contemporary corporate lawyers hold political values that are generally different from those of their clients (Nelson 1988; Luban 1988). There are several reasons for this difference in political ideology, one of which has been the inclusion of alternative constituencies in law school. Elite lawyers were vehement in their opposition to the democratization of legal education and fought hard against such trends (Rustad & Koenig 1985; Granfield 1992). This democratization was viewed by elites as potentially undermining the status of the legal profession as well as destroying the class-based republican virtues these lawyers held. One group whose entry into the legal profession was explicitly impeded was women. It is to this discussion, and specifically to the issue of gender equality in the profession, that I now turn.

II. Power and Gender

The issue of gender equality in the legal profession raises a second point about professions and power, although here the struggle is largely internal. In the above section, I suggested that Shamir's work can be understood as an illustration of the power of the profession, or at least segments of it, in relation to the perceived attack from an interventionist state. With regard to the issue of gender equality, the power struggle is one that plays itself out more directly in the structure and dynamic of legal practice. In their *Gender in Practice: A Study of Lawyers' Lives,* Hagan and Kay explore the power of women lawyers to overcome the history of overt oppression within the legal profession and obtain parity with their male counterparts with regard to salary, occupational mobility, and opportunities.

The legacy of differential and, at times, overtly hostile, treatment of women in the legal profession has been well documented. In their efforts to break into the legal profession, in their efforts to survive the subtle and not so subtle forms of discrimination in law school, and in their professional lives in practice, women had distinctly different experiences in the law. Aspiring women lawyers struggled against a culture that refused to see them as capable of anything beyond domestic responsibilities. They struggled against the sexualization of their presence in the law school classrooms as well as in the law firms. Many who struggled against this denunciation of personhood within the legal

profession did so in silence. For years, there was little opposition to the practice known as "ladies day" at Harvard Law School that subjected women to overtly misogynous displays of their outsider status. As one former victim of ladies day explains:

> I wish I could say, of myself and my women classmates, that we refused to participate in Ladies Day, rose in outraged revolt, denounced the whole procedure, and walked out in protest to the dean. In fact, we did none of these things. I know I simply sat there in a stew of horror and humiliation and answered the questions, hating Leach [the professor], hating the law school, but accepting silently the denigration being presented by both. (Harrington 1994)

Women, as well as other cultural outsiders, suffered the violence of direct discrimination and that associated with subjugation of alternative voices that might challenge the acontextuality and "perspectivelessness" (Crenshaw 1989) of legal education. Although the number of women lawyers increased during the 1980s, as did the number of female law students, who constituted about 25% in the mid-1970s and almost 50% by 1990, women lawyers made claims to a continued subordination. In both law school and in legal practice, women often reported experiencing alienation, discrimination, sexual harassment, disrespect, and dissatisfaction. Reports of extensive discrimination in practice led, in 1988, to the ABA's Commission on Women in the Profession, which adopted a report that "called for deep changes in the discriminatory and biased attitudes toward women in the male-defined professional culture and in family and workplace issues" (American Bar Association 1990). Thus, while women have been admitted to practice, as Hagan and Kay remind us, women's struggle for equality in the legal profession is far from having been won.

Hagan and Kay empirically examine the lives of lawyers through a panel study of 815 lawyers in Toronto and a cross-sectional representative study of more than 1,100 lawyers across the province of Ontario.[2] Both the Toronto panel and the Ontario survey collected information about lawyers' lives, their job histories, law school attendance, work commitment, professional contacts and networks, income, marriage, parenthood, and leaves. In addition, the authors conducted 50 interviews with lawyers to gain some understanding of the qualitative dimension of their professional lives.

Using a multi-methodological approach, they test two contradictory theories regarding the position of women in the legal profession; human capital theory and gender stratification theory. The first theoretical framework adduces a rational choice

[2] Note that in chapter 1 and in the authors' methodological appendix, there is a discrepancy of more than 400 cases in the Ontario sample, though in each case the authors report a 67.7% return rate.

model to explain the patterns of employment and occupational advancement in the legal profession. Emphasis is placed on individual choice, efficiency, and the investment in human capital such as education. From this perspective, individuals make rational choices about the competing spheres of work and home. Differential rewards are accorded to those willing to make greater investments in their occupational careers. Thus, gender inequality within the legal profession is a natural by-product of a woman's choice to invest more fully in family life than in her career.

By contrast, gender stratification theory maintains that women are penalized not for lacking commitment but for being women. From this perspective, women are precluded from the opportunities and rewards that are available to men. Unlike human capital theory, which assumes that women choose their own subordination, gender stratification theory maintains that discrimination is embedded within the hierarchical structure of the workplace, in the attitudes and assumption of males, and in the language and practices of everyday life. Gender stratification theory, as described by Hagan and Kay, connects with the legacy of discrimination against women lawyers, while human capital theory neutralizes the prevalence of discrimination in its contemporary and, by extension, its historical form. It is the exploration of the contradiction between these two competing theoretical positions, and the implications that emerge from this analysis, that makes Hagan and Kay's study a major contribution to the social science literature on the legal profession.

The authors begin their analysis of inequality in the legal profession by situating practice in a context of the profession in transition. This transformation of the legal profession is characterized by an expansion of law firms that led to a concentration and centralization of legal services. The changing orientation of the legal profession toward mega-lawyering, documented by both Nelson (1988) and Galanter and Palay (1991), produced a series of fiduciary dilemmas, expressed in the need to generate business and control costs. To expand legal services required increasing revenues, usually through the generation of new business. But the need to control costs meant that business had to be organized in new ways. Consistent with "new class" theory, "intellectual" workers, that is, lawyers, became subject to a "proletarianization" in their environments as their labor became increasingly concentrated. This professional proletarianization, characterized by a shift from self-employment to managerial control, resulted in the loss of autonomy and an increasing desire to routinize and standardize services.

Women entered the legal profession in vast numbers precisely at the time these changes were occurring. In fact, Hagan and Kay argue that the expansion of law firms was made possible

by women entering the profession in the 1970s and 1980s. As the reputation and client base of law firms grew, partners were forced to increase their stable of lawyers, yet also control costs and labor. Hagan and Kay maintain that women have been used to fill this proletarianized role in law firms, resulting in a natural ceiling effect that arrests women's movement to partnership. Hagan and Kay hypothesize that the proletarianization of the workforce, combined with different access to job and client networks and traditional attitudes about women's roles, translated "into lower levels of compensation and mobility that culminate in a ceiling effect" (pp. 33–34).

The analysis conducted by Hagan and Kay not only supports the hierarchical nature of lawyering, finding that both men and women have been subjected to the loss of autonomy but also that women experience lower ceiling effects in these managerial environments than men. To support their claims, the authors provide statistical documentation that shows that for both men and women, the proportion of partners is smaller in 1988 than in 1977 while the proportions of "nonautonomous" and "semiautonomous" positions have increased over time. In each case women bore the burden of these changes.

In addition to encountering a lower ceiling, women had different experiences from men in securing employment, particularly in large law firms. Hagan and Kay present data to demonstrate that while law school grades are the strongest indicator of employment in large law firms for both men and women, rendering some support for human capital theory, men make greater use of social networks than women. Social network theory maintains that job recruitment is embedded in a context of social relations, where higher status individuals tend to use "weak ties," diffuse informal associations that develop through such processes as casual interaction, recreation, and ethnic identification.

Hagan and Kay find support for the influence of social networks on employment. In their sample, men had higher rates of private schooling than women. Such schools are a common way of establishing an extensive weak tie network (Cookson & Persell 1985). Indeed, a larger proportion of male lawyers reported using these networks in securing their first position than women, giving some support to the operation of an "old-boy" network. Women were judged more on grades alone, while men benefited from both grades and social contacts. It is not surprising that networks matter, for as Granovetter and Tilly (1988:192) write, "[s]ince personal relations are typically homogeneous by class, ethnicity, and region, this mode of allocation can effectively produce existing inequalities." The data presented by Hagan and Kay indicate that gender is also a factor in the establishment of powerful social networks.

Not only do women experience differences with regard to job recruitment, the journey to partnership is similarly affected by differences in gender. The differential rate of partnership across gender, 60% for men and 42% for women in Toronto firms and, in the Ontario sample, 49% and 25%, respectively, is explained by a combination of gendered factors. In addition to elite law school attendance and high grades, Hagan and Kay's structural equation model shows that having corporate clients and taking parental leave significantly affect promotion to partner. Acquiring corporate clients, a factor that is consistent with human capital theory, is significant for both men and women. However, if the findings of the last two chapters are any guide—that women have fewer social networks and that a higher proportion of women make up the ranks in "nonautonomous" lower-status positions—then there are clear gender interactions occurring. Women may be less likely to generate corporate business for the firm due to their structural position in the firm as well as the lack of networks. Moreover, women, according to Hagan and Kay, may also have been perceived as less of a threat to whisk wealthy clients away from the firm and as being generally more compliant and stable than men. Hagan and Kay's finding supports Epstein's (1981) classic work on women lawyers that women are more restricted than men in the development of client networks.

In addition to the significant affect of corporate clients, women's positions are adversely affected when they take parental leaves. The effect of parental leave is large and negatively correlated with partnership for women. Interestingly, parental leave does not adversely affect men largely because few men availed themselves of this option. Thus, Hagan and Kay conclude, the more women are like men with regard to the generation of corporate clients and remaining committed to work by declining parental leaves, then the more likely they will successfully scale the partnership wall. This pattern seems so well ingrained in the professional culture that even women in law school recognize the adverse affect of parental leaves (Granfield & Koenig 1992b).

The effect of parental leave on women is coupled with the finding that women experience greater role conflict than men. In a classic "second shift" scenario, women reported assuming a greater proportion of child care and other domestic responsibilities than men, leaving work to attend to their children and adjusting work schedules to accommodate family life (Hochschild 1989). These differential experiences also contribute to career shifts among women as well as to their decision to leave law entirely.

Not surprisingly, the authors also find a significant income gap between men and women, even after controlling for human capital variables such as experience and law school attendance. On average, the authors find that "men earn about $70 for each

hour billed, while women earn about $40." This difference is hard to explain given that the authors find that women work as many hours as men and score equally high on work commitment, even those having children. These findings contradict human capital theory, which claims that income differentials are explained by differences in career investment. The authors conclude that the social context of the workplace restricts a woman's ability to bill clients. Male lawyers bill more hours than female lawyers (and therefore get a higher return) not because they work more hours or are more committed, but because males benefit from the hierarchical positions in the firm that reward men with greater access to billable cases. Thus, discrimination is not blatant. Rather, and in support of gender stratification theory, it is mediated through an organizational culture that allocates work assignments differentially across gender. For these reasons, it is not surprising that the authors find that women report higher levels of dissatisfaction with their work than men and leave legal practice because of that dissatisfaction more often than men, who leave because of other opportunities and limitations that do not involve dissatisfaction.

The authors conclude by integrating human capital theory with gender stratification. While the authors reject the "chosen spheres" argument implicit in human capital theory, they do find support for the salience of human capital variables such as the cultivation of corporate clients, the accumulation of billable hours, and decisions to take parental leaves and invest in family responsibilities. From a human capital theory perspective, differences in these variables explain income gaps across gender. However, the authors make the point that these variables themselves are "gendered," that is, women are structurally disadvantaged in these areas, thereby supporting gender stratification theory.

Eliminating inequality in the profession has typically been handled in two ways. Either cultural outsiders accommodate themselves to the demands of the legal profession, the Superwomen or the model minority, or egregious cases of discrimination are identified and prosecuted. Both strategies, however, fail to address the structure of inequality that is embedded within the legal profession. In the first place, accommodation simply reproduces the legacy of oppression by imposing arbitrary standards. Women act like men, minorities try not to stick out, and those from the working class hide their humble backgrounds (Granfield 1991). In the second place, a focus on "smoking guns" and civil rights litigation against individual perpetrators of discrimination often leaves the structure of inequality intact (Bumiller 1989). It is in this spirit that the authors recommend changes in the structure of the legal profession that "encourage the inclusion, retention, and promotion of women as well as other minorities in the profession" (p. 203).

Like Shamir's analysis, Hagan and Kay's work exposes the dynamics of power within the legal profession. For Hagan and Kay, power is contained in the structure of work assignments that disadvantage women. Power is contained in the prevailing attitudes that family life for women is more occupationally disruptive than it is for men. Power is contained in the hierarchical segmentation of workers into different categories. Power is contained in the social networks that limit the participation of women and other minorities. Thus, as was true of Shamir's analysis of elite lawyers, it is impossible to speak about inequality in the legal profession independent of inequality in society.

The strengths of this research are many. Overall, it combines the three elements of exemplary research: a strong theoretical framework, sophisticated empirical analysis, and a clear substantive focus. Because of this, Hagan and Kay's book is a major accomplishment. However, despite these attributes, the book appears to be limited largely to an analysis of large law firm lawyering. Despite their access to data on small firm or nonfirm environments, there is very little discussion of lawyers' lives within these settings. It is to a discussion of non-elite lawyers and their relations to clients that I now turn.

III. Power and Negotiation

Much of the literature on the legal profession and power, including the two books reviewed above, treat power as a having a reified quality that some possess and deploy at the expense of others. Either the legal profession itself possesses power or segments of the profession possess greater power than others. For instance, elite lawyers possess more power to determine the cultural capital of the legal field than non-elite lawyers, and male lawyers possess more power to succeed in the legal profession than female lawyers. In either case, power possesses an overdetermined quality, the only questions being how that power is mobilized, for what purposes, and the struggles that ensue. What has been missing from this literature is a close analysis on how power is negotiated, diffused, reproduced, and resisted in everyday legal practice.

Over the years, a focus of how law and legal practice constructs, defines, and otherwise constitutes the world has gained considerable prominence within legal studies. From this perspective, power is a product that emerges out of interaction that is locally situated. To use the language of positivism, power is a dependent variable, not an independent variable. Power is a quality that is derived from the ability to construct and deploy meaning. Since law's power lies in its ability to construct meaning, a lawyer's power emerges in an interactional context where she is bet-

ter equipped, through the trappings of professional status and the language of the law, to construct meaning.

This decentralized view of power as a shifting characteristic of concrete circumstances is closely akin to Foucault's notion of power. The interpretist turn in sociolegal studies, influenced greatly by the poststructuralism of Foucault as well as the cultural anthropology of Geertz, examines law and legal practice for its ability to make meaning. As Nelson & Trubek (1992:4) write:

> This trend within legal studies is properly seen as part of a larger movement within the social sciences and the humanities to analyze how individual and institutional actors construct systems of meaning that take on the appearance of external reality, and thus, self-referentially, influence the behavior of the actors who constructed them.

It is this approach to power that Sarat and Felstiner take in their analysis of divorce lawyers and their clients.

Sarat and Felstiner examine how power emerges in the context of lawyer-client interactions. They analyze the meanings that are produced within these relations, the strategic and tactical efforts of both lawyer and client to control interactional space, and the resistances that flow from contested meanings. As opposed to noninterpretive approaches to law and legal practice that reify and materialize power in distinct groups or institutions, Sarat and Felstiner examine how the microdynamics of power are negotiated within a relational context. Through an ethnographic examination of conferences between 20 lawyers and their clients in 40 divorce cases, these authors examine the fragility, fluidity, and indeterminacy of power within lawyer-client relations and how definitions of marital conflict, legal action, and acceptable outcomes are delicately negotiated in the process of interaction.

After presenting a lucid theoretical introduction that establishes their perspective on power, Sarat and Felstiner move to an examination of how divorce lawyers and their clients interpret the interactional context as well as the variegated problems associated with marital dissolution. Lawyers present a version of reality that focuses on the legal task of dissolving a marriage involving such matters as dividing property, custody, child support, and the "legal steps that must be taken to bring the substantive matters to closure" (p. 27). Clients, on the other hand, frame their talk in a context of rights and responsibilities and by constructing an explanation for their marriage's failure. In most cases, though not in all, lawyers ignore a client's attempts to blame a spouse and strive to strategically maneuver the conversation in the direction of legal issues and tactics. Power is communicated through lawyer silences to client-blaming rhetoric, through lawyer assertions of the non-unique character of client emotional experience, and by employing the professional language associated with legal process. Thus, lawyers teach their clients to be

subordinate to legal interpretation of divorce, thereby disempowering clients who seek to impose alternative interpretations. Such talking past each other often contributes to an appearance of arrogance on the part of professionals who disparage their clients and dissatisfaction by clients who believe their lawyers do not understand or empathize with them. The struggles between lawyers and clients, as illustrated by the authors, suggest that power operates in a more fluid fashion rather than being one-dimensional and nonrecursive.

An additional power struggle occurs over the definition of realistic expectations. Lawyers construct their particular definitions of what realism is for a variety of reasons. Law school fails to prepare them for actual practice (Sarat 1991; Granfield 1994), lawyers tend to treat the situation hierarchically with the lawyer in control (Bellow 1979), they may not be experienced enough (Alfieri 1990), or they might be too alienated and overworked to care about client definitions. Whatever the reason, the construction of realism by lawyers has significant implications, particularly in the possible depoliticization of cases (Bellow 1979; Gabel & Harris 1982–83). As Sarat and Felstiner point out, lawyers attempt to gain control of the situation through strategic negotiation as opposed to direct confrontation. "Lawyers urge, cajole, flatter, use rhetorical tricks, provide unqualified or contingent advice, predict harm, discomfort, frustration, or catastrophe, but they almost never say, 'I the professional, I am the expert, now do this' " (p. 60). It is as if lawyers are using any technique available, even to the point of making things up, to control the situation. There is clearly an element of gamesmanship at play in these lawyers' efforts to gain control.

Lawyers also exert power by interpreting the law for their clients. In doing so, they emphasize not the technical, formal certainty of the law, but rather its uncertainty.[3] Sarat and Felstiner find that these lawyers demystify the law and expose law's indeterminacy to their clients. This law talk, however, threatens to undermine a lawyer's legitimacy in the eyes of a client. Such delegitimation is mitigated by the lawyer encouraging the client to accept the value of the lawyer's knowledge of "law in action." Included in this law talk is the lawyer's delicate recommendation that clients settle the case rather than adjudicate. Lawyers construct the meaning of settlement in such a way to privilege it over the financial expense, insensitivity to individual concerns, and unpredictability of trials. However, as the authors point out, power is not imposed by the lawyer; rather power is more free-floating in that the lawyer lets the client make the final decision

[3] This point is interesting when considered in association with Shamir's book. It seems that these divorce lawyers, as non-elite members of the bar, market themselves not so much as legal tacticians but as organizational insiders. In fact, this is precisely Sarat and Felstiner's point about the lawyers they studied.

to settle, thereby protecting the lawyer from any blame should a client receive less than expected.

Sarat and Felstiner's point about control is not unlike Shamir's revealing analysis of distancing techniques of elite lawyers. Shamir found that elite lawyers distanced themselves from their wealthy clients through an ideology of professional autonomy.[4] The divorce lawyers studied by Sarat and Felstiner also distanced themselves from their clients to gain control; however, these lawyers used different techniques. The strategy these lower-status lawyers used involved civil inattention, that is, they refused to validate the perceptions of their clients. Thus, the structural location of lawyering may greatly influence the ways in which lawyers express their independence.

This book, like those reviewed above, has several strengths. The detailed attention to lawyer-client interactions, as well as the interpretist theoretical context that runs through this work, makes it an important contribution to the literature on the legal profession. While this book represents a superb example of interpretist studies in law and legal practice, it does contain some weaknesses, particularly when read in conjunction with the previously reviewed volumes. Although there is considerable attention to the power struggles that are embedded in the conversations between lawyers and their clients, there is little analysis of the social structures and context of practice. The reader learns very little about organizational context or about the gender or class backgrounds of lawyers or clients. From an interpretist perspective and from the view that power is free-floating, this may not matter. However, if the books reviewed above are any guide, these structural contextualities are important. For instance, do women lawyers interact differently from male lawyers with their clients? Legal scholarship on women has suggested that women approach law and practice dissimilarly from men (Menkel-Meadow 1985). With the exception of identifying women divorce lawyers, the issue of gender is underanalyzed. Similarly, is there a difference in lawyer-client relations across different sectors of the profession? There is good reason to believe that organizational context matters, for as David Wilkins (1990) has pointed out:

> the divergent realities of practicing lawyers preclude the formation of a [unified] culture. . . . Lawyers who represent large corporations are different from those who represent individuals. Plaintiffs' lawyers are different from defendants' lawyers. Lawyers in large cities are different from lawyers in small towns. Lawyers who litigate are different from lawyers who primarily negotiate or provide office counseling. (P. 487)

[4] For a related discussion of distancing tactics among elite lawyers and law students, see Granfield & Koenig 1992b.

Consequently, depending on the context of practice as well as characteristics of the lawyer and client, power may be more or less contingent.

A second point concerns the authors' important thesis about power and resistance. Sarat and Felstiner portray clients as possessing power and not simply being duped by professional rhetoric. Seeing clients as agents with power does provide a balance to the literature that portrays professional power more asymmetrically. However, there is an undertheorization about social class as it relates to power. Does the class background of these clients make them more vulnerable to the power of professional authority? Would corporate clients have more power in controlling interactions with lawyers? Again, without the context of the lawyer or the client, there is little material to help answer these questions. However, despite these limitations, this book fills a gap in the literature on the legal profession by offering profound insight into the actual operation of law and legal practice in everyday life.

Conclusion

The theme of the reproduction of power and its resistance runs through each of these books. Most important in this regard is the observation that the reproduction of the power exercised by lawyers varies across the structural location of lawyering. Elite lawyers exercise power by manipulating the rhetoric of professionalism and the rule of law. Divorce lawyers assert power by controlling client interaction. Rather than use professional discourse to gain control, these lawyers use a condescending "insider" language of the judicial system to exercise power over their clients. Hagan and Kay found that power is exercised in the organizational structures that impose limits on women. Thus, power is reproduced at multiple levels and is affected by the level of practice in which a lawyer is situated. One might even hypothesize that lawyers understand the nature of this reproduction. For instance, a rule of law rhetoric is avoided by divorce lawyers because doing so would make them appear insensitive. In the case of elite lawyers, civil inattention toward a client would be taken as disrespectful. In either case, using the wrong reproductive strategy to control clients and manage public legitimacy could lead to serious problems for lawyers. It is this context of practice that is illustrated in these books that is missing in the training of lawyers.

However, as these books also demonstrate, where there is reproduction, there is always resistance. Reproduction is never complete nor uncontested. Each book demonstrates the processes by which power is reproduced as well as resisted. The cultural authority that coheres to the legal "powers that be" does

not occur without a hegemonic struggle. As these books demonstrate, power is resisted by marginalized sectors of the profession as well as by clients.

The themes of reproduction and resistance that unify these books make them important contributions to the legal profession literature. They also suggest a research direction for the future that explores the processes through which power is asserted by lawyers as well as the various ways the exercise of that power is restricted by competing groups within the profession, clients, and other entities. Such research would be especially instructive if questions of reproduction and resistance in legal practice were tied to the structural location.

In this essay, I have attempted to situate these three books in the larger context of social science literature on the legal profession. Collectively, these books offer much for both the novice and the experienced scholar or practitioner. For the novice, this collection provides a solid introduction into the important substantive issues articulated by this literature. For those already versed in this literature, the works reviewed here will make important contributions to the theoretical debates in the field. For each audience, these books will inspire scholarly investigation into lawyers and power for years to come and, perhaps, particularly in response to the latter two books, stimulate discussions about reform.

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