Justice Excused: The Deployment of Law in Everyday Political Encounters

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This paper examines the use of legal claims by government officials and citizens in everyday political encounters involving civil rights. Data come from 580 letters sent to the federal government between 1939 and 1941, and from the replies sent by the newly formed Civil Rights Section of the Justice Department. In almost every case, the department refused to intervene and explained its refusal by making legal claims about federal jurisdiction. These legal claims masked the department's discretionary choices and thus helped depoliticize the encounters. Surprisingly, however, a substantial number of letter writers challenged the government's legal claims by deploying their own legal and moral arguments. The willingness of these citizens to challenge official legal pronouncements cautions against making broad generalizations about the capacity of ordinary people to respond effectively when government officials deploy legal rhetoric.

Claims About Justice and Jurisdiction

In June 1939, Layle Lane wrote to U.S. Attorney General Frank Murphy to ask the Justice Department to investigate the case of Elijah Harris. According to Lane, Harris was being held in a prison camp in Everglades, Florida, after allegedly being involved in a car accident in which a white child had died. Lane reported that Harris had not received a fair trial, that he already had paid fines that were supposed to result in his freedom, and that he was receiving brutal treatment. Lane also suggested that Florida was operating a

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forced labor camp and extorting money from the families of prisoners.

Lane's letter was processed by the Justice Department's small Civil Liberties Unit, which the attorney general had created just a few months earlier. The unit, which was later renamed the Civil Rights Section (CRS), sent Lane a reply letter stating that the federal government had no legal authority to intervene. The reply explained,

> It seems that Mr. Elijah Harris is not under the jurisdiction of the federal government, but rather under the jurisdiction of the state of Florida. Therefore, any rights guaranteed the accused in that state should be sought under the constitution and laws thereof (6/1/39. See Appendix for source information).

The reply closed by suggesting that Harris seek help from private counsel.

The CRS's reluctance to become involved in the case is not surprising. The unit's staff was small, had limited resources, and worried that aggressive federal intervention in local law enforcement would create a political backlash that would leave the unit with even fewer resources.[1] Nevertheless, the department's use of a *legal* claim about federal jurisdiction in its letter is surprising. If Lane's description of Harris's case was accurate, the case did not fall under the exclusive jurisdiction of Florida. The Fourteenth Amendment gives the federal government power to intervene when state officials deprive someone of liberty without due process of law.

The department's legalistic reply to Lane was not unique. This article is based on an analysis of 580 letters reporting civil rights violations that were processed by the CRS between 1939 and 1941. I find that the department immediately rejected more than 98% of the complaints as unworthy of any federal attention. Almost all the people who wrote letters received nothing in response but a short letter stating that limits on federal jurisdiction made it impossible for the federal government to help. Such letters and replies provide an opportunity to analyze the way government officials deploy legal claims in routine political encounters, and to explore some of the ways people who participate in political processes react to such claims.

The article stands at the intersection of what Scheingold has recently identified as the two dominant strands of sociolegal scholarship on the "politics of rights": legal mobilization studies and studies of legal consciousness among ordinary people (2004:xx–xxxvi).

[1] Important accounts of the CRS's motivations, founding, and early activities are Carr 1947; Goluboff 2003: Chs. 2, 4, 5; McMahon 2003: Ch. 5; Elliff 1967: Chs. II, III.

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As with studies of legal mobilization, I consider how law shapes political aspirations and influences related strategies for producing social change. However, the focus here is not on leaders and participants in organized movements but on unorganized individuals at a pre-movement stage. As with studies of legal consciousness, I focus on the way ordinary people experience and talk about law. I also conceptualize legality broadly as a constitutive process rather than merely a set of authoritative commands.[2] However, I look relatively narrowly at the ideas people express through a particular form of *political* activity, rather than more generally at the place of law in everyday life (compare, e.g., Ewick & Silbey 1998). Note that both the letters and the department's replies are regarded here as *political* acts. After all, the right to petition the government with grievances is a fundamental form of political participation, one of the few given explicit protection in the Constitution. Moreover, as explained in "Deploying Law to Mask Discretion: The Politics of CRS Legal Claims" below, the government's decisions about how to explain its decisions in reply letters were also influenced at least in part by political considerations.

The analysis here also goes beyond existing studies of legal consciousness because I directly observe the ideas about law that ordinary people express as they interact with government officials, rather than the narrative accounts of such encounters that people provide later to interviewers. Examining such interactions allows me to make new connections between ordinary people's ideas about legality and related legal pronouncements made by government officials.

In some cases, I find that letter writers found creative ways to challenge or resist CRS legal claims by expressing their own legal arguments or consciously mobilizing alternative normative resources to challenge law's legitimacy. The resistance expressed in some of the letters is more forceful and direct than the expressions of resistance documented in other interview-based accounts of legal consciousness (e.g., Ewick & Silbey 1998:184–5). The letters show quite vividly that the deployment of legal claims is not always a one-way process in which government officials impose their vision of law on a passive population. Rather, ordinary people can be savvy participants in dynamic processes in which both citizens and government officials articulate, evaluate, and dispute competing visions of law.

The encounters between the CRS and letter writers also provide a valuable opportunity to decenter analysis of legal rhetoric by moving outside courtrooms to a different set of more overtly

[2] On constitutive versus instrumental approaches, see Sarat and Kearns 1993. On the distinction between "law" and "legality," see Ewick and Silbey 1998:18–23.

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political processes. Most scholars who study the use of legal rhetoric by government officials have focused on judges. Such scholars worry that the formal legal language that judges use to express decisions hides discretion and thus depoliticizes conflicts and legitimates contentious outcomes. As a result, many critical scholars argue for the abandonment of rights-based litigation strategies and in favor of the allegedly more transparent political processes in other branches of government.[3] The CRS letters reveal, however, that workers in other branches sometimes deploy legal rhetoric in much the same way as judges.

The CRS's rejection of so many claims was not the result of callousness. The CRS faced significant practical barriers related to a lack of resources, as well as some genuine concerns about legal limits on the department's power. Those constraints forced the CRS to make many difficult choices. However, the routine use of legalistic replies such as the one sent to Lane allowed the department to make those choices without giving letter writers any useful information about the department's assessment of their complaints and without informing writers about CRS policies regarding rights protection. The CRS also made its ritualistic claims about jurisdiction in nearly every case, regardless of whether there appeared to be a basis for federal jurisdiction over the reported incident. The routine use of such legal claims is interesting because the decision to use such claims may have important political implications. For example, people may be more likely to resist government officials who say, "We choose, as a matter of policy, not to help people like you" than officials who say, "The law makes it impossible for us to help you."

My analysis of the legal claims made by CRS officials and letter writers builds on Cover's important insights into the ideological character of legal rhetoric. Cover argues that critical scholars overestimate the power of law and legal ideology because they misinterpret widespread compliance with law as consensus on underlying principles (1983). Cover points out that the appearance of consensus is possible only because law is backed by the threat of violence (1983, 1986). People and communities often comply with law without abandoning alternative normative visions that conflict with official law (see also Barzilai 2003). Cover thus portrays legal pronouncements as authoritative efforts to deny legitimacy to, and thus to kill off, alternative visions of law and justice that develop in smaller interpretive communities.

[3] See, e.g., Spann 1993, Tushnet 1984. For an overview and critique of such critical accounts, see Polletta 2000. While judges' use of legal rhetoric has attracted the most scholarly attention, there are studies that look at the way other actors use legal claims, e.g., Yngvesson 1994; Ericson 1981:93–133.

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Cover's observations also help explain why formalized legal language remains so central to the performance of law in courtrooms. One of Cover's most provocative suggestions is that the formalistic legal rhetoric that accompanies judicial pronouncements is not solely designed to convince or conciliate persons subjected to law. Rather, judges are trying to convince themselves (1986:1608). Cover develops this argument by looking at judges whose rulings conflicted with their personal moral views, including judges who opposed slavery but nevertheless ordered the return of fugitive slaves (1975) and judges who sentenced people to death (1986). Cover finds that judges rely on the impersonal character of legal rhetoric to lessen their own sense of responsibility for the violence that governments use to enforce law's commands.

This article extends Cover's observations about law's rhetorical rituals in two important ways. First, as noted above, it looks at the deployment of law by government officials who are not judges. Second, the article observes not just the production of legal rhetoric by government officials, but also the way ordinary people react to and challenge official legal claims.

Interestingly, some letter writers challenged CRS legal claims by insisting that CRS officials were exercising discretion rather than being buffeted by unchangeable legal commands. Lane again provides an example. Lane did not capitulate after government officials rebuffed her initial petition by invoking law. She instead wrote back to challenge the department's claims. Lane's second letter articulated an alternative understanding of the federalism principles that the CRS officials had invoked:

> While I know that most crimes are considered offenses against the state and subjected to state laws still the laws of the state are not to deprive any person of the rights granted him under the Constitution. . . . [T]he 5th and 14th amendments specify that no person shall be deprived of life, liberty, or property without due process of the law. This is the case of Elijah Harris of Hilton Georgia who is deprived of liberty and property in Everglade Prison (6/17/39).

The CRS responded with another letter that explained the department's legal position in more detail.

> Under the Fourteenth Amendment, the States . . . are prohibited from depriving citizens of life, liberty or property. However, the provisions of this Amendment have been construed by the Supreme Court of the United States to mean that a conspiracy involving State action must first be shown to permit the intervention by the Federal government by prosecution proceedings (6/24/39).

Ironically, this more detailed explanation reveals new problems with the department's legal position. The Supreme Court had

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never ruled that the Fourteenth Amendment only applied in cases involving conspiracies. As discussed below in "Data and Context," one of the few extant federal civil rights statutes did target only conspiracies (Title 18, Section 51). However, other provisions of federal law (e.g., Title 18, Section 52 and Section 444) did not require a conspiracy and may well have applied to this case.[4] More fundamentally, the department's claim was a non sequitur: Lane had alleged a conspiracy involving state action.

Although she did not mention it in her letters, Lane was a schoolteacher who was active in the American Federation of Teachers and later a Socialist Party candidate for Congress (Schierenbeck 2000). She was not, however, a civil rights lawyer. Like almost all the people who wrote letters, Lane showed no sign of legal training and was thus not inclined to respond by pointing out the precise technical errors in the CRS's legal claims. Nevertheless, Lane did not accept CRS legal claims at face value. Sensing that the government's position was absurd on its face, Lane wrote back with a third letter that challenged the government's position through ridicule:

> If a citizen of the United States has to go thru the legal technicalities of proving a conspiracy on the part of the state before he can expect protection of his life then our constitutional privileges are very much of a mockery (6/26/39).

Lane continued to insist that there had to be some basis for federal intervention in the case.

I show below that Lane is just one of the many people who used legal and constitutional discourse as a rhetorical weapon, to both challenge the government's legal position and articulate broad aspirations for novel rights and for a more responsive and inclusive democracy. That finding would, of course, provide more grounds for celebration if my stories of legally savvy letter writers were stories with happy endings. Sadly, however, the capacity to articulate powerful claims of injustice and challenge the government's legal claims did not create the capacity to secure concrete assistance. For example, Lane's multiple appeals never produced any help for Harris.

Such failure at the level of concrete results is not unexpected. Scholars who study political participation and movements for social change have generally found that letter writing and other individualized requests for government patronage are ineffective.[5] Goluboff (1999) has challenged that view in a fascinating study of

[4] Sections 51, 52, and 444 are now codified as Sections 241, 242, and 1581 of Title 18, United States Code.

[5] Perspectives on the use and relative effectiveness of citizen letters as political participation can be found in Verba and Nie 1972; Kingdon 1989:54–60.

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CRS activity, one that relies in part on a group of letters to the CRS regarding southern agricultural workers. This article is not, however, occupied with questions about what effects the letters had. Rather, the article analyzes the deployment of legal rhetoric in these encounters because doing so yields important insights into the participants' underlying ideas about law, democratic politics, and rights protection.

The article is also not occupied with criticizing the CRS for failing to help more letter writers. The CRS's failure to help may in some of these cases seem disappointing when judged against today's expectations about government responsibilities for protecting rights. However, as explained in more detail in "Data and Context," the CRS was operating at a time when a variety of legal, political, and practical barriers made it impossible to pursue many cases. Those constraints make the CRS's failure to provide help to more letter writers understandable. There are many letters reporting incidents over which the federal government had no solid basis for claiming jurisdiction, and some other letters making claims that do not seem credible or complaining of offenses that seem relatively trivial. Moreover, the CRS did in some cases make heroic efforts to pursue perpetrators of civil rights abuses.[6]

It is impossible to specify precisely what factors led the CRS to pursue particular cases. The cases that were pursued were always relatively severe offenses, but severity alone did not guarantee a response. Most of the cases the CRS pursued had some feature that made it relatively easy for the CRS to investigate or conduct a prosecution, such as a sympathetic local U.S. attorney or cooperative local law enforcement. The cases that the CRS pursued also came to the CRS's attention through news accounts, Federal Bureau of Investigation (FBI) reports, or letters from interest groups, and not just lone reports from a single citizen.

Some letter writers presented cases that had some federal angle that made it easier for the CRS to provide help. For example, the CRS was able to help Charlie Thompson, who wrote to complain that local officials in Florida had conspired to steal his life savings from a post office savings account (11/30/39). After the CRS contacted the Post Office Department, the postal inspector's office conducted an investigation. Despite the fact that local officials contrived a cover story, the inspector sided with Thompson and his money was eventually returned. Thompson's story was not much different in severity from many other stories of African Americans being mistreated by local officials in the South. The local U.S. attorney, as was often the case, was very reluctant to become

[6] Carr's account of the CRS's efforts in *Catlette v. United States* (132 F. [2d] 902 [1943]) provides one powerful example (1947:155–60).

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involved. However, in Thompson's case, the CRS could be helpful because the federal postal inspector's office could do the investigation rather than the FBI.[7]

The idiosyncratic features of the cases that interested the CRS make it difficult to present a simple formula that explains CRS decisions about which cases to pursue. However, such an explanation is not the goal of this article. I focus instead on the strategies that the CRS officials used to communicate with the people whose complaints were rejected. The CRS's reply letters never explained the practical constraints that made it impossible to help many of the people who wrote with legitimate complaints. The CRS instead made broad and categorical legal claims that hid the sources and complexity of legal constraints while ignoring equally important barriers that resulted from a lack of resources. The CRS's legal claims portrayed outcomes that were the result of discretionary policy choices as mechanical choices dictated by external legal standards over which the CRS had no control. So long as transparency has inherent value in democratic political systems, scholars should be concerned about tactics that mask the discretionary choices of government officials.

It is also important to point out that I do not mean to single out the CRS for making obfuscating legal claims. While in some places in the analysis I say that the CRS's use of legal rhetoric about jurisdiction in reply letters is "troubling," I use that term to signal a very modest rebuke of CRS practices. Even if the CRS letters did have some downside, that does not mean that CRS practices were unjustified or that the CRS made uniquely flawed choices. My best guess is that many other government agencies quite often deploy legal claims in their boilerplate responses to unwanted complaints. I focus on the CRS's use of legal claims because I only present evidence about the CRS in this article.[8] If it is common for government officials to use such legal claims, then those claims deserve more attention from scholars who seek to understand the impact of

[7] FBI reluctance to help with investigations was a recurring problem for the CRS (President's Committee on Civil Rights 1947:122–3; Carr 1947:152–3). The CRS's initial letter (12/12/39) contacting the U.S. attorney about Thompson hints at those problems: the CRS asked that the U.S. attorney not tell anyone at the FBI that the CRS was looking into the case.

[8] One case in the CRS files reveals that other government offices used contestable legal claims when responding to citizens. The case involves Regina Wallace, who complained that she had been kidnapped and taken across state lines by officials of a public mental hospital in the Bronx (5/19/39). After the CRS told her she should complain to local officials because the federal government had no jurisdiction, Wallace wrote back to challenge that claim (11/15/39). Wallace buttressed her reply by including a copy of a letter that was sent to her by the office of the Mayor of New York. The mayor's letter stated that the city government had no jurisdiction to help because the case should be handled in the courts (9/22/39).

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legal rhetoric on politics or wish to compare the efficacy of pursuing social change through courts rather than other institutions.

The rest of the article proceeds as follows. "Data and Context" provides background information about the source data and looks at the legal and practical barriers that made it hard for the CRS to help letter writers. "Deploying Law to Mask Discretion: The Politics of CRS Legal Claims" analyzes the legal claims made in CRS response letters. "Deploying Law as a Weapon of Contention" considers the legal and constitutional claims that some letter writers deployed to buttress their complaints or to challenge CRS legal claims. A concluding note considers the implications of these findings for understanding how the bureaucratic deployment of legal claims shapes the political and legal consciousness of unorganized citizens.

Data and Context

The letters and replies examined for this article are among those that have been preserved under a civil rights file classification in the general correspondence files of the Justice Department at the National Archives (Records Group 60, entry 114. See Appendix). Most were written by individuals who did not claim to have an institutional or organizational affiliation and who exhibited no sign of legal training. Almost all the writers who addressed personal status issues claimed to be of modest means. Thirty percent of the writers who could be classified by sex were women.

The letters capture a broad range of public ideas regarding rights-related entitlements and associated political processes. Not all the letter writers used the terms *civil rights* or *civil liberties*. However, all the letters in the sample were classified upon receipt as falling under a "civil rights" file designation by workers at the Justice Department, White House, or some other executive branch agency.[9]

The range of concerns expressed in the letters makes it clear that ideas about what counted as "civil rights" were much different

[9] The routing procedures that led to civil rights letters being forwarded to the CRS from other departments are not entirely transparent. The CRS records at the archives do have some memos, notes, and internal routing sheets with scattered information about routing procedures. However, they do not fully reveal the basis for decisionmaking because they are expressed in very general terms. For example, there are no instructions in the files that define what should count as a "civil right." However, the wide-ranging content of the letters that did get forwarded suggests that the persons responsible for forwarding civil rights–related mail to the CRS defined *civil rights* quite broadly. One reason the files include a broad range of rights claims is that the department's file classifications tracked provisions of the federal code, and the code provisions (Sections 51 and 52) corresponding to the civil rights file classification (144) applied very generally to all federally protected rights.

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in 1939–1941 than they are today.[10] While the category *civil rights* is today reflexively associated with issues of race and racism, the overwhelming majority (90%) of the letters in this sample did not make any mention of race.[11] Letters focused instead on such diverse issues as economic rights (e.g., the right to paint signs for a living, the right to "sell liquor to Indians"[12]), welfare rights (e.g., the right to receive unemployment benefits[13]), and rights related to participation (and entrapment) in various government processes. The CRS was responsible not just for civil rights–related mail sent to the department, but for all civil rights–related letters sent to the executive branch. As a result, there is considerable variation in intention and tone among the letters. Some were addressed directly to the attorney general; others were more personal appeals sent to Franklin or Eleanor Roosevelt. Some sought patronage or assistance with personal problems; many others gave voice to general claims about systemic injustices but did not ask for, or seem to expect, any assistance. Some writers posed as powerless victims and begged the government for help; others defiantly asserted their dignity and autonomy while making it clear that they did not expect the government to make any meaningful reply.

The letters were coded for available demographic information, the subject of the complaint, which rights (if any) were claimed, and what the writer requested (if anything). The coding makes it possible to present some basic quantitative claims about content. However, the richness of the source data means that no single article can capture everything of interest in the letters. This article does not try to summarize the content of the letters and does not attempt a comprehensive analysis connecting that content to a broader historical context. Rather, the article focuses more modestly on analyzing how CRS officials and letter writers deployed legal rhetoric and uses that analysis to address general rather than historical questions about how law infiltrates everyday political encounters.

[10] This finding is consistent with recent historical accounts of shifting rights categories during overlapping time periods (Goluboff 2003; Anderson 2003).

[11] Race was mentioned in 56 of the 580 cases. The coding for race generously includes any mention at all, even if the writer did not connect the claim to the complaint. However, the small number of race-related letters probably says more about the biases in using letters to sample public attitudes than about connections between civil rights and race in public attitudes. Moreover, the percentage almost certainly underestimates the percentage of *all* the letters processed by the CRS that mentioned race. Some of the letters processed by the CRS were given a separate file designation because they raised issues falling under the federal anti-peonage statute and are not part of this sample. Goluboff's (2003) study of those separate letters reveals that many concerned African American agricultural workers in the South. Goluboff also offers a multidimensional exploration of the ways different officials and organizations sorted out intertwined issues of economic and racial injustice during the early years of the CRS.

[12] Henry Kost, Miami, FL, 11/16/41; Joseph Johnston, Fallon, NV, 3/4/39.

[13] George Trinckes, Stockton, CA, 4/3/39.

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To see some of the limits and advantages of using letters as data, it is useful to compare letters to interviews, the method more typically used by scholars of legal mobilization and legal consciousness.[14] One immediate shortcoming of letters is that they cannot provide access to a representative sample of a general population: only people who wrote letters can be in my sample. Letters also provide no opportunity to use follow-up questions to clarify subjects' claims or create consistency in the categories of information recorded for each subject. The only information available for most letter writers is information that writers chose to provide. As a result, there are gaps in the data that make it difficult to make reliable quantitative claims about many important variables.

Another problem, more peculiar to this project, is that many letters are missing from the archives. Most of the letters are filed by state of origin. Some state files have gaps in chronology, and some states are missing entirely. While the letters used for this study span all regions of the United States, the gaps in the available records make it difficult to make reliable claims about how the volume and content of letters vary across regions.[15]

These shortcomings, while important, must be balanced against some important advantages of using letters. One is that letters allow direct observation of actual encounters with government officials, while interviews typically document only the narrative stories that people tell about such interactions. Moreover, interviews can be influenced by subjects' anxieties or expectations regarding the interviewing process. In contrast, letter writers have considerably more control over how they present themselves. A final advantage of letters is that they provide access to the past. The CRS letters are from a period that scholars have long identified as a crucial transitional stage in elite attitudes toward civil rights (e.g., Kellogg 1979; Dalfiume 1968; Edgerton 1994). The letters were

[14] See, e.g., Ewick and Silbey 1998, McCann 1994, Nielson 2004, Brigham 1996, Gilliom 2001, Hull 2003, Hoffman 2003, Marshall 2003, Engel and Munger 2003. Historians have, of course, long relied upon letters to the government as data. More recently, Lee has used letters to the president as data in a study of political and legal mobilization around civil rights issues in the 1950s and 1960s (2002). In addition, Goluboff's important study of the rights strategies developed by the CRS and the National Association for the Advancement of Colored People (NAACP) considers letters sent to the CRS (1999, 2003).

[15] Because some letters are missing from the National Archives, it is difficult to estimate the number of letters processed by the CRS between 1939 and 1941. According to Carr, internal Justice Department documents indicate that the CRS handled 8,162 letters in 1942, and 13,490 in 1943 (1947:125). Carr estimates that about 20,000 letters were processed in 1944 (Carr 1947:125). By all accounts, the volume of correspondence increased dramatically once the United States entered the war, so the actual totals from 1939 to 1941 are probably lower. The President's Committee on Civil Rights reported in 1947 that the CRS processed between 1,500 and 2,500 civil rights "complaints" per year between 1939 and 1947, but the report is not clear about how "complaints" were distinguished from other correspondence (1947:120).

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also written before the proliferation of rights bureaucracies and interest organizations in the second half of the twentieth century gave people new avenues of redress for rights violations. Since these subsequent changes most likely made people *more* willing to assert rights, the resourcefulness and contentiousness of these letter writers suggests that ordinary people today might also be resistant to the messages of legitimacy embedded in formal legal claims.

Legal Context

The two most striking features of the legal context in which the early CRS made its claims about jurisdiction are (1) there was almost no federal civil rights law, and (2) government officials faced tremendous uncertainty about the meaning and potential reach of the few civil rights laws that did exist, largely because many crucial legal and constitutional questions about federal jurisdiction were quite unsettled.

During the years covered here, Congress was unable to enact new civil rights laws, due in part to the obstructionist tactics of southern senators (Zangrando 1980). As a result, the CRS had to rely upon a few scattered provisions of federal law that addressed civil rights, provisions that had lain mostly dormant since Reconstruction. Faced with uncertainty about the precise meaning of those statutes in a post–New Deal world, the CRS developed a litigation campaign. The strategy was to use test prosecutions involving particularly egregious rights violations to obtain court rulings broadening federal jurisdiction over civil rights.[16]

During the years covered in this article, CRS officials had not obtained definitive court rulings on the reach of existing statutes, and thus in many cases had no way of knowing for certain whether judges would recognize particular incidents as falling under federal jurisdiction. The few precedents on the use of federal civil rights powers did not provide the CRS with firm guidance because the judges on the bench in 1939 were more likely to support both civil rights and the expansion of federal power than the judges who had last ruled on the existing statutes. The CRS was created a year after the Supreme Court signaled a new interest in civil rights and civil liberties in its famous footnote to the *Carolene Products* case.[17] The Supreme Court was also rebounding from the New Deal constitutional crisis, which ended after the Court reversed precedents to

[16] Carr (1947: Chs. 3–4) provides a detailed discussion of the development of the litigation strategy.

[17] *United States v. Carolene Products Co.,* 304 U.S. 144 (1938). Goluboff shows, however, that the trend now identified as starting with *Carolene Products* is much clearer in retrospect than it was at the time of the CRS founding (2003:45–58).

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allow federal regulatory powers to expand. These factors gave CRS officials some hope that judges would give a broad interpretation of federal power under existing laws as they ruled on CRS test cases.[18] Ironically, however, the CRS was sending hundreds of letters categorically denying any basis for expanding federal jurisdiction at the same time that CRS attorneys were arguing in court that there *was* a solid constitutional basis for the expanded use of federal power.

The uncertainty about the reach of federal power hinged on two questions related to two evolving constitutional doctrines. The first question was whether the "right" that was allegedly violated was a right that was subject to federal protection. The second question was whether the rights violation was something that the courts would recognize as "state action." This second question was important because Supreme Court rulings in the late nineteenth century found that the federal powers created by the Fourteenth Amendment could only reach violations that were perpetrated by state actors. Rights violations by private actors remained under state jurisdiction unless there was some element of state action.[19]

The three civil rights provisions that the CRS used in test prosecutions each raised different issues under these two core questions. The CRS was on firmest constitutional ground when using Section 444 of Title 18, a federal anti-peonage statute. Because that provision fell under Congress's Thirteenth Amendment powers to end involuntary servitude, the state action doctrine did not apply. The CRS used Section 444 to pursue numerous peonage cases in the South (Goluboff 1999, 2003: Ch. 5; Carr 1947:180–2), but the provision could only be used in cases involving some form of forced labor.

The other two extant provisions of civil rights law had potential for wider application because their language was more general. Section 51 provided protections for "any right or privilege secured . . . by the Constitution or laws of the United States," while Section 52 applied in cases involving "any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States." These more open-ended provisions gave the CRS opportunities to expand federal power to cover a wide range of rights, including new rights that had not yet been recognized when the provisions were enacted. The range of federal rights protected "by the Constitution" was slowly expanding as the courts were begin-

[18] Carr provides a review of the expectations and strategies that emerged among CRS attorneys who conducted research into existing case law shortly after the formation of the CRS (1947:57–70).

[19] For perspective on the development and significance of the state action doctrine, see Nieman 1991: Ch. 4.

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ning to incorporate provisions in the Bill of Rights as limitations on state governments.[20] The range of rights protected by the "laws of the United States" had grown because Congress had created new statutory rights, such as the rights Congress promised to labor organizations in the Wagner Act of 1935.

However, other features of Sections 51 and 52 limited their applicability. Section 51 was limited to cases involving conspiracies of two or more persons. (It was this provision that the CRS alluded to in its second reply letter to Layle Lane.) Section 52 applied only to persons who acted "under color of any law, statute, ordinance, regulation, or custom." CRS attorneys assumed that offenses pursued under both provisions would have to have some element of "state action," but were unsure how strictly the courts would read "under color of law" because no court had ever established the meaning of that phrase (Carr 1947:61–3, 70–7).

Uncertainty about the reach of federal power was compounded by the fact that the votes of many Supreme Court justices proved unpredictable in test cases. For example, Justice Frank Murphy, who had created the CRS just two years earlier while attorney general, joined an opinion in 1941 that suggested that the CRS's entire prosecution program was unconstitutional (*United States v. Classic*, 313 U.S. 299, 329, Justice Douglas, dissenting). Justice Murphy seemed to change his mind again in 1945, when he wrote a blistering dissent supporting the CRS position in another test case (*Screws v. United States*, 325 U.S. 91, 134). Frank Murphy was not the only justice who appeared to be internally conflicted: five justices who voted in both those cases switched sides between supporting and opposing the CRS position.

The overlapping sources of legal uncertainty meant that there was often no way to know for certain whether particular cases would fail for lack of jurisdiction. During the period covered here, the CRS had not yet brought the test cases to determine whether particular rights violations or particular forms of state action provided a basis for federal intervention.[21]

In the remainder of this article, I express some concerns about the CRS's claims about jurisdiction. My concern is not primarily about the technical accuracy of the CRS claims in particular cases but about the apparent inconsistency between the CRS's recogni-

[20] On the origins and significance of incorporation, see Amar 1998.

[21] President Truman's Committee on Civil Rights, which reviewed CRS activities in 1947, found that the CRS prosecuted just 178 cases from 1939 to 1947. Some of those prosecutions were not civil rights cases, but cases involving violations of parts of the Fair Labor Standards Act and Safety Appliance Act that were assigned to the CRS. The committee's report found much to praise in the unit's activities but concluded that the CRS's approach to prosecuting test cases "merits some criticism" for the very small number of cases prosecuted (President's Committee on Civil Rights 1947:120).

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tion of legal uncertainty about jurisdiction in its litigation strategy and the CRS's routine use of claims about jurisdiction in its reply letters. Thus, I do not try to demonstrate that the CRS's claims were false in every case, and I discuss some cases where CRS claims about a lack of federal jurisdiction were sincere and likely true. The systematic use of legal claims in reply letters is interesting and important even if the CRS had good reasons for rejecting many of the complaints. As explained in "Deploying Law to Mask Discretion" below, the CRS's stark legal claims made it seem as though limits on federal jurisdiction were the result of permanent and unchangeable legal barriers. There was no hint that the biggest obstacle to more effective federal protection was Congress's unwillingness to exercise its broad, constitutionally granted powers, and no hint that the CRS attorneys were selecting some violations as test cases because they expected judges to allow federal jurisdiction to expand. By obscuring the malleability and contestability of legal limits on federal jurisdiction, the categorical claims in the reply letters masked the political and policy choices that the CRS was making as it developed its program for improving federal civil rights protections.

Political and Institutional Context

While the lack of effective federal civil rights law did create real obstacles for the CRS, the important underlying reasons why the government was unable to help complainants were left unstated in the CRS reply letters. Considering some of those underlying reasons makes it easier to understand why the CRS could not help more letter writers. However, looking at those unstated reasons also makes the routine resort to legal claims seem more troubling. The CRS's exclusive emphasis on legal obstacles kept a variety of contingent and more politically charged obstacles hidden from letter writers.

The biggest practical obstacle was that CRS never had the resources to pursue a large number of cases. The CRS was a small unit subsumed within the criminal division of the Justice Department. Between 1939 and 1947, the CRS typically had about seven attorneys on staff, all of whom worked in Washington, D.C. The CRS thus had to rely on local U.S. attorneys and FBI agents to conduct any investigations. Many of those community-based officials had personal ties and close working relationships with local elected officials and law enforcement officers and were thus reluctant to cooperate in civil rights cases (President's Committee on Civil Rights 1947:120–3).

Of course, such problems would not have been insurmountable if the Roosevelt administration had been willing to make a stronger

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commitment to civil rights. For example, higher-level department or White House officials might have pressured reluctant U.S. attorneys or the director of the FBI to cooperate with the CRS. The president and attorney general could have directed more resources toward civil rights protection or attempted a more aggressive litigation strategy. (The CRS was itself established by the attorney general without any congressional authorization). The failure to take such steps reflects the Roosevelt administration's deep ambivalence regarding civil rights and civil liberties. By the late 1930s, both the looming war and the increasing importance of African American swing voters in northern states created pressure to address race-related civil rights problems. Nevertheless, Roosevelt remained dependent on the southern wing of his party, a wing comprising white supremacists whose power depended upon the continued disenfranchisement of most African Americans in the South. The resulting cross-pressures meant that the Roosevelt administration would occasionally take symbolic steps to protect civil rights and occasionally pursue egregious abuses. The administration was also able to pursue a quieter and more long-term strategy for remaking the Supreme Court as an institution (McMahon 2003). However, the pressures also meant that the administration was unwilling to shift resources to the CRS or, more generally, to mount a more ambitious but potentially disruptive program for protecting rights.[22]

Deploying Law to Mask Discretion: The Politics of CRS Legal Claims

This section looks at how the department used legal claims to explain its refusal to help civil rights complainants. The CRS's claims about jurisdiction made it seem as though the department's response was dictated by fixed legal standards that were beyond the control of the department while hiding the discretionary choices that made it difficult for the CRS to help more people. The department's curt replies also suggested that limitations on federal jurisdiction were permanent and thus not proper topics for political contention. If letter writers took such legal claims at face value, the claims would hide contingent choices that might otherwise be grounds for protest or contention.

In addition, the CRS's legal claims about jurisdiction were expressed in ways that made the replies spectacularly uninformative to letter writers. CRS reply letters never specified which jurisdic-

[22] For perspectives on racial politics under President Roosevelt, see Sitkoff 1978; McMahon 2003; Brinkley 1995; O'Reilly 1995: Ch. 3; Kryder 2000.

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tional elements were missing and never provided letter writers with concrete information about what kinds of cases the CRS thought *would* fall under federal jurisdiction.[23] The use of broad legal claims thus kept important elements of administration policy hidden from letter writers.

Most people who wrote letters did not understand the intricacies of federal civil rights law and thus did not try to make technical arguments establishing federal jurisdiction. Most writers instead focused on providing narrative descriptions of personal predicaments. The apparent hope of such writers was that the difficulty, urgency, sadness, or unfairness of their situation would attract attention from authorities.

A moving example is a handwritten letter to President Roosevelt from L.B. Hampton of Lawtey, Florida. Hampton's letter, dated Christmas Eve, 1939, related events that had occurred after a "cattleman" had purchased a piece of property that Hampton had been living on and farming for 20 years:

> [h]e came in my house on the 23 of Dec. 1939 and I was out working he drove my wife and she was in a family way. her and three little children. then he knocked off the top of the house and she did not have but $3.50 three dollars and fifty and he took it. and broke up all the furniture. and when I came in from my work I found my wife and three little children outdoors and its cold down here and raining. I has a fine strawberrie crop and they are getting ripe and he has put up signs no trespassing. I can't gather them.

After relating his story, Hampton's letter made the following request:

> So please advise me what to do for I am a poor colored man. I have not got nothing to go upon and I want you to send somebody here to straighten this man out for this is a white man country, Bradford. The colored have not got no show (12/24/39).

Although Hampton left some (perhaps deliberate) ambiguity about the nature of his legal claim to the property, he nevertheless communicated his predicament quite effectively.

After Hampton's letter was forwarded from the White House, the CRS sent a short reply stating that the Justice Department could not help: "The facts as given by you do not indicate a violation of federal criminal statute and it, therefore, would seem

[23] One observable pattern among the letters provides some clues. Nearly half of the letters in my sample (286/580, 49%) complained about the actions of government officials at either the state or federal level. For that group of cases, there were no state action concerns, and any honest claim about a lack of jurisdiction had to have been the result of the CRS's belief that the asserted "right" was not one that the federal government had the power to protect.

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that this Department has no authority to act" (1/15/40). The CRS suggested that Hampton instead obtain a private attorney and seek redress from state authorities if he felt he "had a good claim to the farm." That response left Hampton without redress. The suggestion that he seek help from a private attorney and local officials was particularly unhelpful given Hampton's poverty and his words regarding the powerlessness of African Americans in places such as Bradford County.

The department's claim that it could not help Hampton may have been accurate. Nevertheless, the differences between Hampton's personal appeal to the president and the department's formal and abstract reply are quite striking, and they give the exchange a curiously detached quality. Hampton's appeal to the president was answered not by White House staff but by an attorney at the Justice Department. The reply shifts the terrain of engagement away from the concrete, personal level where Hampton operated comfortably and effectively, and toward a more abstract level where only specially trained experts function with confidence. The CRS stated that there was no violation of criminal laws but left unanswered the question of whether there was anything the president could do to help. The reply also failed even to acknowledge the financial ruin of a lost crop, the brutal treatment of Hampton's family, or Hampton's quite plausible claims about pervasive racism in Florida.

The government's use of legal claims would not be as striking if such claims had not been made with numbing regularity. It might be assumed, for example, that the department made legal claims because civil rights complaints are always, at some level, requests for relief through legal processes. However, the CRS made legalistic claims about jurisdiction even when writers did not mention rights, invoke law, or ask for help. The CRS routinely stated that there were no violations of criminal law even though less than 5% (28 of 580) of the letters requested a criminal prosecution. The department's frequent references to criminal law undoubtedly reflect that fact that the CRS was part of the criminal division of the Justice Department. Nevertheless, writers who wrote personal appeals to the president or Eleanor Roosevelt must have been puzzled to receive replies stating only that one federal department was unable to provide a single form of redress.

Almost all of the reply letters followed the same boilerplate structure. The replies began with a short paragraph acknowledging the letter and attempting to restate the subject of the complaint. The replies then asserted that the department could not help because the matter fell outside the department's statutory or constitutional jurisdiction. Some of the replies also suggested other places the writer might seek help, most often from a private attorney (11%, 66/580). A smaller proportion of replies suggest that

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the writer should approach the local U.S. attorney if they could document their cases (8%, 46/580).

A typical example of the CRS strategy is a reply sent to Pearl Squires Olsen, who wrote from Manistique, Michigan, to complain about corruption on a local school board. The CRS noted,

> From the information contained in your letter, there is nothing that would indicate that the matters complained of are not purely local. In these circumstances, the Department of Justice would have no jurisdiction to intervene (3/21/39).

Another example is the reply sent to George Ruzicka, who wrote from Sayville, New York, to ask whether he could be forced to work against his will under an employment contract:

> From the facts set forth in your letter, the remedy open to you for the protection of your rights lies in the courts of your state. There is nothing under these circumstances which would permit the federal government to intervene (4/28/39).

In a few cases, the coldness of the jurisdictional claim was tempered with expressions of regret that the department could not do more. When Florence Brown wrote from Baltimore to complain of her husband's criminal conviction, the CRS replied,

> This Department would like to be of service to you but the matter you complain of appears to be within the exclusive jurisdiction of the State of Maryland (1/10/41).

After telling Alvina Douglas of Ann Arbor, Michigan, that they could not help reverse her daughter's murder conviction, the department noted,

> It is well understood that the cause for which you plead is a matter of deep concern to you, and it is with regret that you cannot be favored with a more encouraging reply (3/12/40).

Such expressions of empathy were the exception rather than the rule.

CRS reply letters also failed to provide citizens with the information they needed to understand the limits on federal jurisdiction. Replies stating categorically that there was "nothing" that the department could do under "these circumstances" provided little help to writers who wanted to understand what alternative circumstances might allow the government to help. In many cases, it might have been possible for better-informed writers to reframe complaints to establish a basis for federal intervention. For example, Hampton might have alleviated state action–related concerns by providing more information about the complicity of state officials in the wrongs done to his family.

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Of course, even if Hampton had made allegations that established a clear legal basis for federal intervention, he still could not have forced the department to provide help. While the department is precluded from acting when it lacks jurisdiction, there is no legal basis to force the department to act when it has jurisdiction. Government agencies must routinely make the difficult choice to ignore legitimate reports of wrongdoing, not because they lack legal power to help but because they do not have sufficient resources to respond to every allegation or problem. There is thus nothing suspect about the CRS exercising discretion and choosing not to pursue all legal remedies for every complaint. However, my concern here, as noted above, is not that the CRS made indefensible choices when it refused to provide help, but with the strategies the CRS used to communicate its choices. Those strategies often obscured the fact that choices were even being made.

Comparing the CRS replies to some hypothetical alternative reply strategies makes it easier to see that choices about what to say in boilerplate reply letters can have important political effects. There are, of course, many strategies that government officials can use when responding to unwelcome complaints, including the strategy of not responding at all. Officials will want, at a minimum, to avoid needlessly antagonizing constituents. While it is not possible to directly observe the CRS's motivations, it seems safe to presume that the choices any politically accountable officials make about how to respond will be influenced at least in part by expectations about how writers might respond to different types of responses.

Reply letters that rely on claims about legal constraints can be a particularly attractive strategy for government officials who have to tell distressed constituents that they will not provide requested assistance. Legal claims can shift attention away from more politically charged factors that shape official choices about whether to provide help. One unlikely alternative to the claim that the law made it impossible to help would have been to explain that the administration was unwilling to respond to many severe rights violations because leaders chose not to commit more resources to civil rights. For example, in Hampton's case, the CRS could have explained that one reason the Roosevelt administration was hesitant to pursue the many egregious injustices done to African Americans in the South was that the perpetrators of those injustices were an essential part of the president's political coalition.[24] Open discussion of such

[24] Elliff's research on the early CRS shows that such political calculations were often an important part of department decisionmaking on prosecution strategy (1967: Ch. 3). Elliff uncovered a series of internal department memos from the early 1940s that reveal that officials were being very careful not to inflame white Democrats in the South. When the CRS did take action, other administration officials would reassure southern officials

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issues would have made it clearer that the department was not simply being buffeted by external legal constraints. Another alternative to making legal claims in reply letters would have been for the department to respond with transparent political pandering (e.g., "The President shares your concerns, which is why he has done so much for America's black farm workers and even supported creation of the first civil liberties unit in the Justice Department") or with obnoxious political triumphalism (e.g., "Inaction and states' rights is this administration's unwavering policy and you should vote for the other party if you don't like it"). Such hypothetical replies, while certainly less polite, would have been more engaging and informative than the detached replies that writers such as Hampton actually received. It is, of course, easy to see why politically sensitive officials in the Justice Department would prefer to routinely use legal claims in order to avoid confronting these more contentious issues.

Unfortunately, the available records of most of the encounters between letter writers and the CRS do not yield direct evidence about the CRS's motives for using legal claims. There are, however, a few instances where the files contain supplementary materials that provide some clues. For example, a note written on a letter from Joseph Clark, of Detroit, Michigan, shows that the department was sometimes concerned about the political implications of its reply letters. Clark had complained that he had been mistreated by FBI agents for his involvement in the American League for Peace and Democracy (2/29/40). Acting Assistant Attorney General Welly K. Hopkins handwrote a note on Clark's letter, explaining, "No reply is being made because this man would undoubtedly misuse any letter of the Dept. of Justice." Hopkins also noted that an FBI report on Clark indicated that he had a "bad background."

In another case, the file contains items that reveal clearly the tension between the legal excuses given in reply letters and the nonlegal factors driving department decisionmaking. George Rogers wrote in March 1940, to complain that he and three other men had been arrested in Newport, Arkansas, for allegedly trespassing on railroad property. Rogers reported that the men were forced at gunpoint and without trial to perform a day of labor for the city, and he suggested that the city and the railroad were running a "boodle system." The department initially showed some interest in this complaint. The head of the criminal division wrote to Sam Rorex, the U.S. attorney in Little Rock, noting that the case appeared to be a violation of both Sections 444 and 52. However, instead of asking Rorex to investigate Rogers' case, the department

that the CRS would not disrupt white southerners' "intimate relations with the Negro" (1967:156).

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asked the U.S. attorney to find out "whether this practice is customary in that locality" (3/29/40).

When Rorex wrote back and asserted that the practice was not "customary," the department chose not to pursue the case. That decision is certainly defensible. The department apparently decided not to use scarce resources to pursue a problem that locally based officials portrayed as an isolated incident. However, the reply that the department sent to Rogers did not explain or even acknowledge the fact that the department was making such a choice. The reply instead stated categorically that the department had "no authority to act" because an "investigation" had determined that there had been no violation of a federal statute (5/18/40). That claim was not truthful. The department's conclusion that the practice was not "customary" had no bearing on whether federal jurisdiction obtained in Rogers' case.

Before shifting to an examination of letter writers' responses to the CRS's legal claims, two concluding observations about the CRS's use of such claims are in order. First, legalistic responses such as the ones sent to Rogers and Hampton create a particularly narrow picture of the politics of rights protection. The replies suggest that the capacity of the federal government to protect rights was bounded by fixed legal and constitutional limits on federal jurisdiction. They thus imply that any broader or aspirational claims expressed in complaint letters fell outside the legitimate range of political disagreement while hiding the fact that limitations on federal power were largely the result of contingent and reversible policy choices made by the president and Congress.

Second, the department's routine deployment of opaque legal claims is particularly troubling because many of the people who wrote letters were potential allies in the CRS's broader goal of improving federal rights protections. Routine efforts to depoliticize conflicts could be viewed more sympathetically if the legal claims were directed at political opponents of the president or the CRS. Such claims might be regarded as fairly innocent efforts to be courteous. Ironically, however, the CRS was using legal claims when responding to people who seemed to share the CRS's ultimate goal of improving federal rights protections. By writing reply letters that left the CRS's goals and strategies hidden, the department was missing opportunities to build grassroots support for its creative effort to expand federal jurisdiction and improve rights protections. Instead of providing writers with useful information about how the relevant legal and political obstacles might be overcome, the replies seem designed to make it more likely that changes would be shaped by the cautious choices of the elite legal professionals at the CRS with little participation or scrutiny from the general public.

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Deploying Law as a Weapon of Contention

The above discussion of the deployment of legal arguments by government officials presents a negative picture of the role of law in everyday political encounters. There is, however, another side to the story. Government officials were not the only participants in these encounters who deployed legal rhetoric. Letter writers also made claims about law and the Constitution, and they used such claims to justify their demands, to challenge legal claims made by government officials, and to express broader aspirations and democratic visions. Looking at the way such citizens deployed legal rhetoric in these encounters reveals that the CRS's legal claims did not always depoliticize encounters because ordinary people could resist the CRS's claims.

Unfortunately, it is not always possible to observe how letter writers responded to the CRS's letters. It is certainly possible that some letter writers took the CRS's legal claims about jurisdiction at face value. However, many writers did make claims that reveal doubts about the CRS's position. Some writers wrote back to the CRS to challenge legal claims made in reply letters. Other writers made challenging claims about law and government motivations in their initial letters, even before the CRS had the opportunity to invoke the law. While the challenges made by these writers did not force the CRS to help, they do provide valuable clues regarding letter writers' underlying ideas regarding law and legal ideology, and illustrate some important limits on the capacity of official law to shape the political consciousness of ordinary people.

This section explores three ways in which letter writers deployed legal claims and used such claims as tools of contention in encounters with government officials: (1) by writing back to challenge CRS legal claims, (2) by challenging the personal commitments of officials who refused to help, and (3) by articulating broad normative visions as an extralegal basis for demanding a government response. These three categories of contention are conceptually distinct, but not hierarchical, exhaustive, or mutually exclusive. While cases where people wrote back to the CRS provide the most direct evidence of citizen engagement with official legal arguments, some of the people in my second and third categories wrote just one letter to the CRS. The level of defiance and sophistication also varies considerably within each of the three categories.

Many of the letters making legal claims blur conventional distinctions between institutionalized and noninstitutionalized forms of protest. Normally, institutionalized processes such as writing letters or making claims about "rights" are not seen as avenues for *resistance* to government. After all, some challenges, including many

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legal claims, are accommodated and even invited by persons in power (Orren 1976; Schuck 1983). These letters show, however, that many ordinary people use the institutionalized form of letter writing not just to invoke recognized legal processes or to make requests for familiar forms of patronage. Many people instead write to give voice to complaints, express contentious ideas, or challenge the legitimacy of government policies.

Interestingly, the writers who deployed legal language were by no means confined within the established boundaries of official law. Rather, many writers self-consciously crossed those boundaries while using legal or constitutional imagery to express broader visions of justice or claims for new entitlements. Such aspirational claims show how letters raising rights issues can be a powerful component of what Guidry and Sawyer (2003) call "contentious pluralism," i.e., the dynamic process through which excluded voices articulate and begin to act upon demands for recognition.

Writing Back: Directly Challenging Legal Officials' Claims About Law

The cases where it is easiest to see the capacity of ordinary people to engage and challenge official legal claims are those where people wrote back to the CRS. While only 12.4% (72/580) of the people wrote back, almost all of those who did challenged legal claims made by the CRS. The responses of these writers provide the clearest evidence that not everyone is intimidated when government mandarins make abstract and absolute legal pronouncements to justify contentious decisions.

There is considerable variation in tone among those who wrote back to the CRS. A letter from Joseph Collier of Chicago provides a vivid description of one writer's disappointment. Collier wrote back to report that the reply he received was "... enough to drive a man to drink, or to the Communists, or to enquire at foreign embassies at Washington as to becoming a citizen of another nation, because I have been utterly ignored and neglected-treated like a cockroach" (8/12/40).

More typically, writers eschewed vivid descriptions of personal reactions and instead challenged the CRS by making legal claims that undermined the department's expressed view of its responsibilities. For example, after being told to take his complaint about a local school board to state officials, S. J. Murphy of Richmond County, Georgia, wrote again to invoke the Supremacy Clause of Article VI:

> I respectfully contend and insist that the Richmond County Ga. school board has violated first amendment of the federal consti-

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> tution by abridging freedom of speech and press. Said constitution being the supreme law of the land according to article six. If a body of people violate an article of constitutional law I fail to see where the state has jurisdiction (4/4/39).

Another writer went beyond invoking the Constitution and challenged the CRS with sophisticated claims about the interplay of statutory and constitutional principles. Morris Hall of Westford, Massachusetts, wrote to complain about a picket line interfering with his right to work (3/29/39). After the department's curt reply referred him to the protections Congress had given to pickets under the Wagner Act of 1935 (4/8/39), Hall wrote back to claim that the department had "wittingly or unwittingly overlooked the vital point of my communication" (4/10/39). He continued:

> My query was directed to something more fundamental than the bare legal authority set forth [in the Wagner Act]. It was an attempt to discover just how comprehensive the so called crusade of the Dept. of Justice in support of civil liberties of our citizens was to be. Are you prepared to challenge the thesis that the right to work is a basic civil liberty?. . . . This is not a matter to be passed over lightly by mere reference to a general legislative statute as you will probably see on further reflection (4/10/39).

Note that Hall rejected the department's effort to escape responsibility by classifying his case as a labor issue falling under the Wagner Act rather than a civil liberties case.

Letters such as Hall's reveal that basic knowledge of constitutional and statutory law sometimes helped letter writers offer detailed refutations of the department's legal claims. The overall record shows, however, that writers did not need to master specifics to communicate effectively. Consider for example, Henry Kost of Miami, Florida. Kost wrote directly to President Roosevelt (11/6/41) to complain that a local licensing ordinance was interfering with his right to paint signs for a living. After the Justice Department told Kost that the matter fell under the jurisdiction of the state of Florida (11/14/41), Kost wrote back to the CRS and challenged the government lawyers' ideas about constitutional law. Kost wrote:

> The Constitution of the United States gives me the right to pursue happiness, and cartoon drawing is my happiness. The State of Florida made a law that violates the constitution and I want an apology+damages via money for violating my rights+want the law cancelled (11/30/41).

While the right to "pursue happiness" is mentioned in the Declaration of Independence rather than the Constitution, Kost's technical error does not obscure his central point.

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Getting Personal, Demanding Help

My second category captures people who framed their expressions of concern or demands for action in very personal terms. Such writers pointedly noted the failure of particular government officials to live up to their own expressed ideals. These letters are particularly interesting because they show that some writers believed that there were independent principles of justice that should trump conflicting legal obligations.

Letter writers invoked norms of masculinity, patriotism, or justice to challenge government officials. One example is in a letter from John Stoddard of East Falls Church, Virginia. Stoddard complained about being prosecuted for threatening a group of labor "racketeers," one of whom had recently been given a position in the Roosevelt administration. Stoddard wrote:

> I wonder if . . . this appointment . . . causes the Department of Justice to refuse to start criminal prosecution . . . The law is there but not the men to enforce it. To deny equal protection of the law to all is not only discriminatory, but cowardly (3/7/39).

Samuel King, an African American Congress of Industrial Organizations (CIO) organizer attempting to escape government harassment in Alabama, wrote to Attorney General Frank Murphy after reading that Murphy had told a conference of mayors that he wanted to improve civil rights protections. King appealed to Murphy's intelligence rather than his courage:

> Notwithstanding the fact that hypocrisy is rampant, I just can't believe that a man so intelligent as you would have told those mayors that the government intends to assist the citizens in being free . . . by seeing that they are given the rights to enjoy their civil liberties, were it not so (5/16/39).

Other writers hoped to build on a more general sense of moral responsibility. For example, Jacob Kind's complaint about a friend's incarceration in Detroit included the following passage:

> The Constitution of the United States guarantees to every citizen of these United State the right to Life, Liberty, and the Pursuit of Happiness. A citizen of these United States has been deprived of his liberty and pursuit of happiness. No one, after his continued efforts to obtain such assistance, will help him. It is incumbent upon you, therefore, as President, to exert some sort of effort to help him (4/13/39).

Another example comes from one of Layle Lane's letters. Lane concluded by appealing to the Justice Department's sense of justice by claiming, "A department of justice whose chief activity is chasing kidnappers or running down income tax evasions is unworthy the name of department of justice" (6/26/39).

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Some letter writers went beyond claims of cowardice or inconsistency to make personal appeals that seemed more threatening. A person signing her name as Ever Joy wrote back to the department to repeat her story about a corrupt New York official named Flatto. She wrote,

> I am going to hold you personally responsible until I have released to me all that belong to me . . . you are under oath and paid to see me have the protection guaranteed to us to protect our property and businesses . . . I shall hold you responsible until you put Mr. Flatto under confinement . . . I shall expect service from you at once, according to your oath. I am surprised that you would waste my time and yours sending me your letter of March 27, telling me to go to the local authorities (4/6/39).

Joy's plea was unsuccessful.

Other writers tried to make it clear that they understood that the department was using legal claims to hide discretion. Writers did this by pointing out instances where the president had found creative ways to sidestep legal limitations on his powers in order to achieve an important goal. One example is Mary Moloney, who wrote to the president from Chicago to complain that she and other land owners had not received a fair deal when the city purchased some land for school construction. After the CRS told Moloney that the department had "no authority to intervene" because no federal criminal laws had been violated (12/20/39), Moloney wrote back to the president to argue that he had other ways to bring local governments into line. She pointedly noted that the president had in the past pressured local governments by threatening to withhold federal money:

> My criticism of the [reply letter] is what about the erecting of the subway in Chicago. Mr. Ickes refused to lend money to Chicago unless Chicago did what he wanted relative to the construction of said project. It is a local affair but still Mr. Ickes said to Chicago "you will do it my way or no money." Those may not be his words but the meaning is about the same (12/31/39).

Another example comes from Henry Johnson, who wrote from Chicago to complain that the president's reluctance to use federal power to combat lynching was inconsistent with his willingness to expand federal power to combat kidnapping:

> I admit that it is well impossible for ANY President to take a all out stand against lynching,—but I still remember the decimation of the kidnapping menace. You thoroughly put the screws on that. It so happens that the deprivation of life and property without due process of the law is condemned by the CONSTITUTION. Giving you the power Mr. President to act any time a lynching threatens or occurs. Do you think Sir that the nation's

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> "G" men are better employed safeguarding some rich person from being separated from his ill gotten wealth or protecting some poor black from a blood thirsty mob (4/25/41; emphasis in original).

By noting how the president had responded more aggressively to other problems, writers such as Johnson and Moloney communicated their awareness that discretionary choices also influenced the department's capacity to respond to civil rights complaints.

Visions of Justice

A third group of letter writers presented challenges to the department's technical legal claims that were less direct but more foundational. They did so by articulating alternative visions of justice or morality and suggesting that the department's legal claims were incompatible with those visions. Many writers in this category distinguished their visions of justice from what they saw as the pretensions of justice embedded in official legal claims. One reason such efforts are interesting is that they show that writers could consciously draw on alternative normative resources outside the law to challenge claims of justice embedded in official law.[25] The willingness of people to confront government officials with such distinctions reveals important limits on law's capacity to shape popular consciousness. Writers who made such distinctions reveal that legal officials cannot always legitimate their choices by invoking the law and claiming that their choices are dictated by external legal standards.

Many of the writers who offered alternative visions did so in their initial letter to the CRS, not in a response to a CRS reply letter. Some writers anticipated that government officials would be unwilling to help, and also that the government's expressed justification for refusing to help would be some legal claim. Many of these writers did not know precisely what legal claims the government would make, but they were still able to mount coherent, anticipatory challenges to government legal claims.

A first example is a letter sent by H. Bain complaining about being defrauded by a Mr. Anheuser of Missouri. Bain explained that a lawyer told him he lacked any remedy under law because a set of Missouri "statutes" prevented him from suing. Bain acknowledged that he lacked legal grounds for redress, but he still asked the department whether he could nevertheless "get around the statute" and pursue his claim. He closed by asking the attorney

[25] See Sarat and Kearns (1993:22) on the importance of paying attention to alternative normative resources when studying law in everyday life.

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general, ‘‘[c]an't I have the right to demand settlement on MORAL grounds?’’ (5/24/39; emphasis in original).

Many other letter writers buttressed their complaints by making claims about rights or justice that the writers themselves recognized as falling outside official law. For example, Roy R. Schwing of Pasadena, California, wrote to complain that he had lost money on an investment after state emergency legislation allowed the reorganization of the California Security and Loan Corporation (3/5/39). After recounting an unproductive consultation with a lawyer, Schwing asserted that law could not provide justice because lawyers invariably side with powerful corporations. This understanding did not, however, lead Schwing to meekly accept as just the legal outcome to which his lawyer was resigned. Schwing instead insisted that obligations should be structured by fundamental normative principles rather than obfuscating legal pronouncements that conflicted with those principles. He explained, ‘‘Whatever legal verbiage may mean, I am certain that the common man must cling to his original contract to guide him through the confusion’’ (3/5/39). Schwing's handwritten letter includes numerous references to relevant constitutional provisions. It also provides a quasi-Lockean moral argument to establish the legitimacy of his claim:

> As a worker whose savings are the result of self-denial, and are a slow accretion, whose intentions are to create a reserve fund in order that the future may be productive of some degree of economic freedom; I feel that under the institutions of these democratic United States of America, I should have certain rights which I may expect to remain inviolable (3/5/39).

Predictably, the CRS rejected Schwing's complaint.

In another encounter, Virginia Dryer of Pontiac, Michigan, attempted to articulate the underlying normative purposes of law in order to argue against strict adherence to a law. Dryer, a champion dog breeder (‘‘eleven blue ribbons’’), wrote to complain about a local law limiting persons to ownership of no more than two dogs. She argued that the reasons for enacting the law did not justify enforcement of the law in her case. Dryer claimed that serious dog breeders were much less likely to allow their dogs to run free and do damage than ordinary dog owners. A just law, Dryer suggested, would focus on how people treat their dogs rather than the number of dogs that they own (3/17/39).

In his letter complaining about a friend's involuntary incarceration at a mental hospital (4/13/39), Jacob Kind, of Detroit, Michigan, offered a long preamble that made general claims about human nature, citizenship, and the proper functioning of the law. When he finally got around to the details of his friend's case, Kind indicated that his friend's ‘‘sojourn’’ at the hospital had been

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extended only because he had threatened to sue the hospital for mistreating him. Kind emphasized that his friend was punished only because he acted "in accordance with principles of good citizenship." He asked,

> What is more admirable than for an ordinary citizen of this city and this country to become incensed at disgraceful conditions existing at that city's institution for mental patients—and to endeavor to object in the only way a citizen can legally object to unjust treatment afforded to a former inmate at that institution (4/13/39).

Kind acknowledged that the hospital's decision to incarcerate his friend was within the confines of the law. That recognition did not, however, silence him. Instead of seeking redress under recognized legal categories, he appealed to higher law and higher moral principle.

One of the most moving efforts to confront legal authority with higher standards of justice is a letter written by Royal Wilbur France of Winter Park, Florida. France sent Associate Justice Murphy a copy of a complaint (6/13/39) that he had sent to the chief of police in Orlando. France's teenage son had been arrested after observing the police as they raided a nightclub in one of Orlando's African American neighborhoods. After noting that an officer had told his son, "[y]ou ought to have the shit kicked out of you," France wrote to the chief: "Such talk and conduct on the part of an officer does not tend to create respect for the law or its enforcers in the minds of decent people" (6/13/39). Near the end of his letter, France calmly but forcefully challenged the chief's racist worldview and its effect on the chief's approach to policing.

> I do not subscribe to your theory that a white man is not safe in a Negro section. I believe that few if any Negroes would raise a hand against a white man anywhere in this country unless under extreme provocation. . . . I wonder whether a Chief of Police who speaks scornfully of "niggers" and "niggertown" is in a position to get the best results in law enforcement among the colored section of our population (6/13/39).

France's cover letter to Murphy explained that he was forwarding the letter only to provide information, and it did not indicate that he wanted or expected the CRS to help him. Nevertheless, the CRS wrote back with the ritualistic statement that the department lacked jurisdiction to help with purely local affairs.[26]

[26] France's letter revealed that he was a professor of economics at Rollins College but did not mention that he was a former attorney. See France 1957.

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Another strategy that many letter writers used to establish the importance of a complaint was to compare the United States with Nazi Germany. Even though they were written before the United States became directly involved in the war, 13% (77/580) of the letters in my sample made some reference to the war in Europe.[27] One example is a letter sent by Georgiana Wines, of Los Gatos, California, asking the department to take steps to protect the rights of consumers against large corporations. In a complaint about a lemon she bought from the Ford Motor Car Company, Wines noted and applauded the president's oft-expressed concerns about the deprivation of rights by the Nazis. However, Wines warned that by focusing on rights violations overseas, "[w]e are apt to neglect to see the big corporations of our country unjustly take from those who are unable to defend their rights" (4/18/39).

Interestingly, some of the most defiant letters invoking the looming war came from African Americans who challenged the Roosevelt administration's commitment to protecting rights and liberty abroad. Some of these letters used claims about the war to articulate broader, and in some cases more radical, visions of rights.

One powerful example is a letter sent to President Roosevelt in 1940 by Reverend J. T. Cooper of Roper, North Carolina (5/20/40). Cooper's strategy in his letter was to adopt a very polite stance while posing a series of rhetorical questions that pointedly challenged the sincerity of the Roosevelt administration's commitments. Cooper complained that a group of African American leaders had recently been denied the right to register to vote. Cooper asked,

> Since this country declares that the Constitution was made by the people, for the people and of the people and that it stands to and do protect the rights and liberties of all the people a life regardless of race or color and if this be true, kindly state to me why me and my race here in this part of the country are debared from registering and voting (5/20/40).

Cooper's invocation of a phrase from the Gettysburg Address, together with his rhetorical questions, made a powerful case. His complaint eventually turned into a warning:

> [t]his country will soon need the help of all the people that is here in it and some more, to help protect this so called Land, and I am asking you to please see to it that if me and my race are debarred from any of rights and privileges, we shall also be debarred from the rights to shoulder the arms and march to the Battlefront and

[27] This finding is consistent with those of many scholars who have argued that the rise of Nazism and the U.S. entry into the war created important opportunities for challenging the system of racial apartheid in the United States. See, e.g., Kellogg 1979, Dalfiume 1968, Korstad and Lichtenstein 1988, Klincker and Smith 1999, McMahon 2003.

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> give our lives to protect something that we don't get any benefit out of (5/20/40).

Cooper anticipated and employed the argument connecting the war in Europe to domestic race relations that would soon become an important reason for administration support for civil rights advances.[28]

Cooper's motive for expressing his concerns about the hollow symbolism of President Roosevelt's commitment to civil rights does not appear to have been a naïve belief that President Roosevelt would respond by immediately securing the right of African Americans to vote in Roper, North Carolina. Like many other letter writers, Cooper hinted that he did not expect the government to respond meaningfully to his complaint. His effort to expose the contradictions in American policies and give voice to his disappointment can nevertheless be understood as a meaningful, albeit somewhat futile, expression of resistance.

Another moving and defiant letter came from Frank Griffin of Brooklyn, New York. Griffin's letter combined references to President Roosevelt's war rhetoric with bold statements expressing pride in the dignity of his race.

> I, like you, am proud of being an American and stand behind you as do the millions of Americans in defense of our country. Time after time I sat in rapt attention as you addressed your fellow citizens over the radio. I have cheered when you spoke strong words of defense of minorities in other lands. I have breathed a little bit freer when you have stood like a giant soldier for social reforms. And as I look at the noble black color that identifies me with the Negro Americans, and run my hands through my wooly hair I feel secure in the thought that I could at last speak to a President of my country who would see no difference in the noble hue of my birth right and that of my fairer skinned brother citizen (3/12/39).

The supportive tone in the opening quickly changed.

> I sometimes wonder Mr. President if you are cognizant of the fact that 9,000,000 black Americans are denied full rights of citizenship in our great Democracy? I wonder if, as you ride through the cotton fields of the South, you hear their voices vainly crying for real freedom in this, our Democracy? I wonder if you have heard of the pain and suffering of my people in their Jim Crow Ghettos? . . . I wonder if you ever see in your most deserved vacations in the great state of Georgia, the discrimination, the Jim-Crowism,

[28] After the United States became directly involved in the war, CRS attorneys and other civil rights sympathizers in the administration wrote articles connecting the administration's civil rights program to the propaganda war in Europe (see, e.g., Rotnem 1942, 1943; Coleman 1944).

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> starvation and hunger of my people? I wonder if you know that our homes are broken into by officers of the law with out benefit of a warrant? I wonder if you know that over 5000 of my people have been lynched (3/12/39).

Griffin also mentioned that Marian Anderson had been denied the right to sing at the "ironically named 'Constitution Hall' because she is a Negro" (3/12/39).

In these instances, efforts by letter writers to articulate higher moral arguments changed the meaning and significance of their letters. Many scholars have criticized rights rhetoric for allegedly creating isolation, deference, or feelings of victimization or dependency. (See, e.g., Spann 1993; Tushnet 1984; Bumiller 1988. For alternative views, see Polletta 2000; Williams 1991; Crenshaw 1988). The letters from Cooper and Griffin reveal, however, that ordinary people could invoke the language of rights to give greater rhetorical power to aspirational demands for *collective* empowerment. While the government did not provide any concrete redress in response to such complaints, that fact is not by itself reason to dismiss the significance of the letters for the people who wrote them. As Kelley's work on *Race Rebels* (1994) shows, minor acts of resistance have political meaning even when they do not elicit substantive responses from persons in power (see also Scott 1990; Ewick & Silbey 2003).

Conclusion: Rethinking Law, Politics, and Contention

The findings presented here suggest that paying attention to the way both citizens and nonjudicial government officials deploy legal claims can lead to a more robust account of the impact of legal ideology on political practices, the effect of legal pronouncements on ordinary legal consciousness, and the complexity of ordinary people's reactions to official law. While the people who wrote letters to the CRS are not a perfect sample of ordinary people (whatever that may mean), their moving efforts to articulate their concerns reveal that there is considerable variation, complexity, and sophistication in the way people respond when government officials deploy legal claims to explain contentious decisions. The fact that the letters were written before the celebrated rights-orientated litigation campaigns of the 1950s–1970s, and during a period when official law provided so few opportunities for redress of rights violations, makes the writers' willingness to subvert official expressions of law even more surprising and moving.

The CRS letters show that scholars cannot fully understand how government officials use legal claims as ideological weapons unless they look beyond judges to other, more overtly political ac-

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tors in other branches. Some scholars who are particularly critical of the use of rights-claiming for its reliance on judicial processes have assumed that alternative strategies, pursued in other branches of government, provide a more "pure" form of political interaction, i.e., interaction that is freed from the pernicious effects of legal rhetoric (Spann 1993: Ch. 6; see also Tushnet 2000.) This study shows, however, that even people who go outside the courts to appeal to more directly accountable officials are still confronted with legal rhetoric. That finding suggests that law has permeated politics more completely than some critical scholars have recognized.

In some respects, the deployment of legal claims by executive branch officials has more troubling implications for democratic accountability than the deployment of such claims by judges. It is easy to understand why judges cite legal rules to establish their legitimacy. Decisions made by judges have to be defended in that way, given that judges are often unelected officials and thus not expected to make discretionary choices based on personal values. In contrast, executive branch officials are answerable to an elected president and are thus expected to make discretionary choices that reflect the value judgments of an administration. It thus seems particularly important for such officials to give substantive and informative explanations for the choices that they make. If they instead routinely offer explanations that mask their discretion, they make it more difficult for people to understand and evaluate government choices and thus more difficult to hold officials accountable.

Of course, the data considered here do not provide any basis for measuring the relative impact of judicial versus bureaucratic deployment of legal claims or for determining which form of deployment is more disruptive of political processes. It is certainly possible that legal claims by bureaucrats are less influential because people are more willing to challenge legal claims when they are made by nonjudges. While the CRS letters do not make it possible to test that possibility, they do at least reveal that ordinary people can challenge legal claims made by government officials and can consciously articulate normative visions as alternatives to law.

What is particularly interesting in this sample is the way many writers employed law's own pretensions of legitimacy as a weapon against officials who were responsible for enforcing the law. Many of the writers discussed in "Deploying Law as a Weapon of Contention" did not simply state objections to legally dictated outcomes. Writers also revealed that they did not naïvely buy into some idealized vision of the rule of law that portrayed government officials as always constrained by formal legal rules. By writing back to question CRS legal claims, writers challenged the objectivity and

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inexorability of the legal rhetoric government officials used to rationalize their (non)responses. By reminding officials of the inconsistency between their refusal to help and their personal obligations, commitments, or values, writers could try to make it more difficult for government officials to take comfort in the feelings of powerlessness that they constructed through their commitments to law. And by self-consciously articulating normative visions outside of the law, writers could remind government officials that they too possessed the capacity to recognize, construct, and even act upon alternative visions of justice.

Such writers could not force the CRS to help, and they may not have altered CRS behavior. Such writers could, however, inform CRS officials that they did not believe that legal constraints were the only reason for government inaction. Writers could thus make it clear that the CRS's legal claims, even if sincere, had not provided a convincing explanation or justification for the department's decisions.

Such findings challenge earlier accounts that have focused narrowly on the production of legal ideology by judges without considering law's role in everyday encounters between individual citizens and government officials. The letters suggest that scholars should be more cautious when making broad generalizations about the capacity of ordinary people to make meaningful, coherent responses to government officials who deploy obfuscating legal claims. The inaccessibility of legal reasoning and the rituals of legitimation that accompany legal decisions do not necessarily lead ordinary people to capitulate to normative pronouncements expressed by government officials as "law."

The frequency with which writers expressed broad and aspirational rights claims also reveals that earlier empirical accounts of the evolution of rights-claiming may underestimate the fluidity and inventiveness of popular rights claiming. For example, Polletta's fascinating study of civil rights–claiming in the 1960s explains the emergence of novel rights claims by connecting such claims to specific features of the organizational and social context (Polletta 2000). This study shows, however, that some people can propagate novel and expansive rights claims even in the absence of the supportive structural factors that Polletta identifies.

Finally, the findings here show that examining actual encounters between citizens and legal officials can add to scholars' understandings of legal consciousness. Recent scholars of legal consciousness have used interviews to collect the narrative accounts that people give of their encounters with law. This study has instead used direct observations of one type of interaction between citizens and legal officials. The findings here supplement, and in some respects challenge, the accounts of resistance to law found in

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earlier accounts. For example, Ewick and Silbey found that interview subjects who told stories about resisting law described practices that are ''often hidden, intentionally designed or executed to remain unrecognized and undetected by those against whom they are directed'' (1998:184), and that ''in those cases where tactical resistance is open and traceable to an individual, it tends to be practiced so that it can be denied if called to task'' (1998:184–5). In contrast, people in this sample addressed their complaints (and often their defiant ideas) directly to powerful persons and made claims in a written form that made it hard to deny their message. Sadly, however, the findings here confirm that the avenues of resistance created through official legal channels do not necessarily make such resistance an effective vehicle for changing official policies.

Ultimately, the willingness of many people to challenge the CRS's legal claims reveals that the problem for the people writing to the CRS was not law's legitimating rituals or ideological messages of neutrality and permanence. The problem was that political institutions were at that time unresponsive to novel demands for rights and institutionally incapable of making meaningful responses to many egregious violations of core rights. A full explanation of those institutional shortcomings requires a much lengthier exploration of the broader political terrain, including the disenfranchisement of substantial portions of the population and a party system that led President Roosevelt to coddle white supremacists in the South. This article does not provide that broader institutional explanation. It does suggest, however, that the hypnotic power of official legal pronouncements need not play a central role in a more complete account. As Cover warned, excessive focus on the way legal officials deploy law to communicate ideological messages can lead scholars to exaggerate law's capacity to shape popular consciousness. By paying more attention to the way people respond to a broad range of official legal claims, scholars can develop more accurate accounts of the interactive processes through which legal meanings are asserted and contested.

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Appendix: CRS Correspondence in the National Archives

The data for this study come from letters preserved in correspondence files of the Department of Justice at the National Archives. (Records Group 60, Entry 114, Classified Subject Files). Civil rights materials are in files beginning with 144, and are housed in boxes 17573–17608. All of the quotes from the letters are verbatim, with spelling and usage errors reproduced as in the original texts.

The sample includes 147 letters in a general correspondence file for civil rights (File 144–0–0) that come from all over the country, as well as the files for the District of Columbia (144–16–0) and the following states: Arkansas (144–09–0), California (144–11–0 and 144–12–0), Delaware (144–15–0), Florida (144–18–0), Illinois (144–23–0), Maryland (144–35–0), and Missouri (144–42–0). Multiple letters from the same person are counted as a single case.

In addition to the bulk correspondence files, the archives also contain some separate case files for the 144 designation. These files are numbered sequentially beginning with 1, e.g., 144–1, 144–16–1, etc. The case files for 1939–41 were examined to see if any were initiated solely by citizen complaint letters, but no such cases were found. Some state case files are missing from the archives, but the archives contain a collection of sequential record slips (Records Group 60, Entry 96) that provide some checks on documents missing from files.

The 580 cases considered here are among 793 cases in the files listed above. The cases removed from the group of 580 are 163 letters that only asked the president to veto some policy proposal related to civil rights, 23 cases where persons wrote solely to offer general praise for the CRS's efforts, and 29 where persons wrote only to acquire general information about the CRS program. While many of these letters are quite interesting and important, they are not relevant to the core claims in this article because they did not require the CRS to explain a decision about whether to provide help. Most of the excluded cases did not receive any reply from the CRS.

The letters mentioned in this article are listed below, with related letters grouped under the initial listing.

H. Bain to A. G. Frank Murphy, 5/24/39, File 144–18–0
  Asst. A. G. O. John Rogge to Bain, 6/28/39
Florence Brown to the Department of Justice, 12/30/40, File 144–35
  Asst. A. G. Wendell Berge to Brown, 1/10/41
Joseph Clark to Robert Jackson, received 2/29/40, File 144–37–2
Joseph Collier to "Civil Liberties Division," 8/4/40, File 144–23

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Asst. A. G. O. John Rogge to Collier, 8/9/40
Collier to A. G. Robert Jackson, 8/12/40
J. T. Cooper to Franklin Roosevelt, 5/20/40, File 144–0
Alvina Douglas to Franklin Roosevelt, 2/12/40, File 144–37–0
Asst A. G. O. John Rogge to Douglas, 3/12/40
Virginia Dryer to "Legal Department, Washington DC," 3/17/39, File 144–0
Royal Wilbur France to A. G. Frank Murphy, 6/24/39, File 144–18–0
France to Orlando Police Chief William Smith, 6/13/39
Asst. A. G. O. John Rogge to France, 8/4/39
Frank Griffin to Franklin Roosevelt, 3/12/39, File 144–0
Morris Hall to A. G. Frank Murphy, 3/29/39, File 144–0
Asst. A. G. Brien McMahon to Hall, 4/8/39
Hall to Murphy, 4/10/39
McMahon to Hall, 5/6/39
L. B. Hampton to Franklin Roosevelt, 12/24/39, File 144–18–0
Asst. A. G. O. John Rogge to Hampton, 1/15/40
Joseph Johnston to Nevada State Legislature, copy to Justice Department, 3/4/39, File 144–0
Henry Johnson to Franklin Roosevelt, 4/25/41, File 144–23
Ever Joy to Franklin Roosevelt, 3/9/39, File 144–0
Asst. A. G. Brien McMahon to Joy, 3/27/39
Joy to A. G. Frank Murphy, 4/6/39
Samuel King to A. G. Frank Murphy, 5/16/39, File 144–16–0
Acting Asst. A. G. Welly Hopkins to King, 5/26/39
Jacob Kind to Franklin Roosevelt, 4/13/39, File 144–0
Henry N. Kost to Franklin Roosevelt, received 11/6/41, File 144–18–0
Asst. A. G. Wendell Berge to Kost, 11/14/41
Kost to Berge, 11/30/41
Layle Lane to A. G. Frank Murphy, 6/1/39, File 144–18–0
Acting Asst. A. G. Welly Hopkins to Lane, 6/9/39
Lane to Hopkins, 6/17/39
Hopkins to Lane, 6/24/39
Lane to Hopkins, 6/26/39
Asst. A. G. O. John Rogge to Lane, 7/13/39
Mary Moloney to Franklin Roosevelt, 11/16/39, File 144–23
Moloney to Franklin Roosevelt, 12/6/39
Asst A. G. O. John Rogge to Moloney, 12/20/39
Moloney to Franklin Roosevelt, 12/31/39
Moloney to Franklin Roosevelt, 4/16/40
S. J. Murphy to J. Saxton Daniel, copy to Justice Department, received 3/14/39, File 144–0
Asst. A. G. Brien McMahon to Murphy, 3/28/39

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Murphy to A. G. Frank Murphy, 4/4/39
Asst. A. G. Brien McMahon to A. G. Murphy, 4/14/39
Pearl Squires Olsen to A. G. Frank Murphy, received 3/11/39, File 144–0
Asst. A. G. Brien McMahon to Olsen, 3/21/39
George Rogers to U.S. Department of Justice, received 3/18/40, File 144–9
Asst. A. G. O. John Rogge to Rogers, 12/28/40
Rogge to U.S. attorney Sam Rorex, Little Rock, 3/29/40
Rorex to Rogge, 4/25/40
Rogge to Rogers, 3/29/40
George Ruzicka to Franklin Roosevelt, received April 1939, File 144–0
Asst. A. G. Brien McMahon to Ruzicka, 4/28/39
Roy B. Schwing to A. G. Frank Murphy, 3/5/39, File 144–0
Asst. A. G. Brien McMahon to Schwing, 5/16/39
John Stoddard to A. G. Frank Murphy, 3/7/39, File 144–0
Charlie Thompson to A. G. Frank Murphy, 11/30/39, File 144–18–0
Asst. A. G. O. John Rogge to U.S. attorney Herbert S. Phillips, Tampa, 12/12/39
Rogge to Post Office Department, 12/12/39
Rogge to Chief Inspector K. P. Aldrich, Post Office Department, 2/14/40
Post office inspector R. A. Carlton to Phillips, 2/6/40
Thompson to Phillips, 2/6/40 (telegram)
George Trinckes to Department of Justice, 4/3/39, File 144–0
Asst. A.G. Brien McMahon to Trinckes, 4/25/39
Regina Wallace to A. G. Frank Murphy, 5/19/40, File 144–0
Office of Mayor, New York City, to Wallace, 9/22/39
Wallace to Murphy, 11/15/39
Wallace to Franklin Roosevelt, 1/11/40
Asst. A. G. O. John Rogge to Wallace, 1/24/40
Wallace to H. W. Graf, Navy Department, 2/14/40
Wallace to Rogge, 2/14/40
Rogge to Wallace, 2/29/40
Georgiana Wines to Franklin Roosevelt, 4/18/39, file 144–0

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