*1994 Presidential Address*

# Resistance and the Cultural Power of Law

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Current research in sociolegal studies focusing on resistance provides one way to continue the progressive politics of studying social transformation through law. In response to earlier concerns that the turn to postmodernism and the focus on individual acts of resistance has deflected scholarly work from attention to progressive politics, this article advocates broadening the question to examine a range of forms of resistance and their impact on cultural meanings as well as political mobilization. Through the examination of three examples of resistance that take place within and by means of legal institutions, the article endeavors to expand the frame of analysis to include the myriad processes by which the cultural world is made and remade.

The presidential talk is a challenging genre. The goal is to tantalize your intellect, to tickle your fancy, to sum up the field, and to chart its future, all the while holding your attention between the peas and the chicken. It's a tall order. I'll begin with a few reminiscences, of course, but not as an old-timer. I think I am a middle-timer. The Association has obviously grown since those early days in Madison (I remember wandering through the hotel trying to figure out what CLRP[1] stood for and wondering how any town could be so wholesome) and in Amherst, where the location was so beautiful but I kept hearing mutterings about dorms. Now we are more elegant, but some still yearn for the university setting. We are also busier. In 1994 I see more people attracted to the field than ever, new law and society programs

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[1] CLRP is the Civil Litigation Research Project, a major study of disputing and the civil justice system carried out in the early 1980s at the University of Wisconsin.

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springing up at colleges and universities, and new educational initiatives by the Association such as the Graduate Student Workshop and the Summer Institute drawing new scholars into the field.

And we have moved into new theoretical and empirical territory, having established a solid base of knowledge on many important sociolegal issues. The dispute resolution revolution of the early 1980s has become part of the taken-for-granted world. We now know that most civil cases don't go to trial. The gap between the law on the books and the law in action, explored and analyzed over the past three decades, now seems an unambiguous facet of the legal landscape. I must add, however, that in several conferences I have attended recently about topics as diverse as the service delivery role of the justice system and human rights, I discover that there are many who are unaware of this scholarly chestnut. We now work on topics as varied as human rights, narratives in court, immigration policy, and the death penalty. Feminism is central to our concerns, and the leadership of the Association seems delightfully multigendered. We conceptualize law as more plural, not located entirely in the state. And we see the "effects" of law in far broader, post-Foucauldian terms.

But, at the same time, I think our faith in the progressive possibilities of law has been shaken. It is no longer clear that law can produce a more just society. I think many of us, including me, wonder about the possibilities for law in this increasingly fractionated world torn by nationalism, racism, economic disparities, and environmental destruction. What role can law play in the new orders that are emerging? How can law contribute to the emancipation of subordinate groups, to expanding the dignity, self-respect, and control of less powerful people? And what can we, as law and society scholars, contribute to understanding and refashioning this troubled world?

Two years ago in his Presidential Address in Philadelphia, Joel Handler (1992) tackled this question when he wondered how postmodernism could contribute to transformative politics and worried that it could not. The conversation Joel began continued in the commentary in the *Review* and raised, I think, several fundamental issues for law and society research and for the direction of our scholarship in the future.

Handler argued (p. 698) that the postmodern turn and its deconstructionist basis is disabling to transformative politics. Earlier studies of social protest movements which were produced in a more structuralist tradition, such as those of the 1960s civil rights era, described collective movements which have had long-term implications for social and political change. In contrast, research in the 1990s tends to focus on particular moments of resistance, such as Lucie White's (1991) description of a poor, female, black subject who speaks back to those in power at a wel-

fare hearing, or Austin Sarat's (1990) account of a woman who refuses to cooperate with her welfare attorney, or Patricia Ewick and Susan Silbey's (1992) story of a black domestic worker who gloats that the unjust punishment she has received from the court is in fact no imposition on her life. These moments, which are often cathartic for the individuals involved, in Handler's opinion mark no more than a small break in a world of despair and marginality. The actions are trivial in their impact. They are not inspired by a vision of a more just society and do not generate social movements. He argues that the turn toward deconstruction and its subversive possibilities in sociolegal theory has not furthered transformative politics. Instead, it has conceded the field to those who are still willing to claim such grand narratives as liberal capitalism, ethnic nationalism, and religious fundamentalism (p. 726).

*Has* recent law and society scholarship abandoned its historic concern for social justice and progressive politics and replaced it with a range of theoretical and empirical work that focuses on the mundane, the arcane, and the politically irrelevant? There has clearly been a shift in the way law's contribution to social justice has been conceived during the three decades that the Law and Society Association has been in existence. In the reformist period of the 1960s and 1970s, we explored ways to increase access to justice and to further equality through the mobilization of rights (Cappelletti & Garth 1978–79). Law was the center of the firmament in the imagining of a more just society, while civil rights promised to undo some of the injuries of the long, painful history of American racism.

But there was already trouble. Some pointed to the mythic role of rights rather than its accomplishments (Scheingold 1974), while others noted the limits to the capacity of law to make social changes. The 1960s civil rights movement and the law and development movement confronted the gap between what laws aspire to do and the kinds of changes they produce. Meanwhile, Marxist scholars in the 1960s and 1970s critiqued the complicity of the legal system itself in relations of power and warned of the widening of the net of legal intervention. Deconstruction in critical legal studies in the 1980s sought to undermine the authority of the law and to destabilize notions of legal reasoning, while postmodern analyses of law and social movements assaulted our claims to universal theories. Indeed, law has lost its heroic role as the scaffold for social justice and the edifice within which the struggle for justice should take place both in popular consciousness and in left-liberal scholarship. We are left to struggle about how to set an agenda about justice in the 1990s post-Foucauldian, post-Marxian world of discursive power and decentered subjectivities in which no group is authorized to construct for others a vision of a socially just world.

I think Joel Handler asked the right question. It is important for our scholarly research to be guided by a commitment to social justice. But I think he looked too narrowly for ways that law contributes to social justice and transformative politics. One of the important theoretical developments of the last decade is the analysis of the constitutive nature of law: of the way legal processes construct social and cultural life. If you examine the program and the pages of the *Law & Society Review* for the past few years, you will see an increase in attention to discourse, narrativity, and language along with legal culture, legal ideology, and legal consciousness. I think these new concerns reflect a broader definition of the way we think about the "effects" of law. In particular, they focus on the culturally productive role of law, on the ways in which law produces cultural meanings and identities as an aspect of its power. Courts, for example, provide *performances* in which problems are named and solutions determined. These performances include conversations in which the terms of the argument are established and penalties determined. The ability to structure this talk and to determine the relevant discourse within which an issue is framed—in other words, in which the reigning account of events is established—is an important facet of the power exercised by law, as carefully described by recent studies of legal discourse.[2] Legitimacy takes on critical importance since the culturally productive role of law occurs only if the texts, the performances, and the impositions of violence authorized by law are seen as legitimate.

Thus, we can take a broader view of what law does and how it does it. The language and categories of the law are often mobilized by social movements (Scheingold 1974; Brigham 1987; McCann 1994) and can be powerful even when litigants don't win any cases.[3] Thus, it is often the law which provides the language and the locale for resistance. In this era of high drama trials such as those concerning Rodney King and Lorena Bobbit, it is obvious that law creates cultural meanings above and beyond a particular incident and its imposition of penalties.

One of the most interesting ways of thinking about law's cultural contribution to emancipatory projects is in the analysis of resistance. I think that recent scholarly attention to resistance reflects pessimism about the possibilities of major social revolutions in the late 20th century under the global spread of capitalism and the bureaucratic state. With the collapse in the last decade of more revolutionary images of social justice in favor of capitalism,

[2] Several recent studies of conflict and court talk analyze, in various ways, how this legal talk, in courts, in hallways, in mediation centers, in lawyer's offices, defines identities and relationships. See, e.g., Mather & Yngvesson 1980–81; Conley & O'Barr 1990; O'Barr & Conley 1985, 1988; Sarat & Felstiner 1986, 1988; Yngvesson 1993; Merry 1990.

[3] As Bumiller (1988) notes, however, the law can also marginalize and victimize those who try to use it.

democracy, human rights, and the rule of law, the hope for reform has moved to more bottom-up, small-scale changes. But this attention is also a result of new conceptions of power as far more tentacular and invisible. The transition from understanding resistance as conscious collective actions such as peasant uprisings to more subtle, unrecognized practices, such as foot-dragging, sabotage, subversive songs, and challenges to the law's definition of personal problems in court, parallels the development of new conceptions of power as produced in social relationships, discourses, and institutions such as the law. James Scott (1985, 1991), who has been a central theorist in this transformation, argues that these small acts of courageous challenge to the microscopic control of behavior bring moments of dignity and self-respect. The turn to micro-acts of resistance parallels Foucault's emphasis on the micro-techniques of power (1979; Burchell et al. 1991). As power surrounds and infuses every action, the significance of small acts of resistance to these minute forms of power becomes more important.

But do the foot-dragging and laziness, the speaking back of individuals in the face of power (Scott 1991; White 1991), the participation in a religious sect for the disenfranchised black women workers in South Africa which incorporates a "subtle but systematic breach of authoritative culture codes" (Comaroff 1985: 196), lead to genuine social transformation or do they, as Comaroff (p. 251) asks for South Africa, simply heal workers and return them to the workplace, thus making it possible for these women to continue as workers in an alienating capitalist order? What are the possibilities of resistance through law? Is law too complicitous in relations of power to constitute a site of resistance? Does resistance by means of law simply reinforce the power and legitimacy of the legal system itself? Or, as E. P. Thompson (1975) argued, does it occasionally provide opportunities to challenge the power of the ruling class?[4] Is it possible, as McCann (1994) recently argued, that the law provides a social movement such as the women's pay-equity movement with a discourse and consciousness that facilitates resistance even when it loses its cases?

Much of what is now described as resistance is political activity which does not conform to conventional understandings of

[4] Twenty years ago, E. P. Thompson (1975) raised the issue of resistance through law in his analysis of the 18th-century Black Acts. Although he did not use the term "resistance," he emphasized the way law can be used by subordinates. He agreed with the prevailing view of Marxist scholars that, most of the time, law does support class power as it defends the rulers' claims on resources and labor power and defines what shall be property and what crime. But, he argued, the rule of law is an institution with its own characteristics, history, and logic of evolution. Although the law mediated class relations to the advantage of the rulers, it did so through legal forms, and these forms imposed inhibitions upon the rulers as they sought to maintain the legitimacy of their rule. To be legitimate, to mask power relations, the law must appear to be just, to be independent of gross manipulation (p. 66).

politics, yet is engaged in struggles over power. This is a kind of political activity which presses against power—power which opposes power instead of constructing it, although these differences are obviously relational and hard to specify in the abstract. I will describe three examples of resistance in and through law, each of which foregrounds the way law contributes to enhancing the power of subordinates through processes of cultural redefinition. One is resistance against law, one is resistance by means of law, and one is resistance which redefines the meaning of law. They vary in significance, of course: some represent large social movements, others particular moments in the everyday life of average people. All, I would argue, contribute to the reconstitution of the sociocultural world in some emancipatory ways. The first example concerns one person's resistance to the law that contributes to a redefinition of the categories of identity on which the law operates and through which it exercises power. The other two examples represent social movements that have used the law to produce new cultural meanings and to realign relations of power.

## Redefining Ethnic Identities

The first case speaks to a major issue Handler raised in his concern about the impact of postmodernism on sociolegal scholarship: the significance of everyday acts of resistance in legal arenas. One of the hallmarks of postmodern theory is attention to individual narratives, to the inchoate multiplicity of actions by individuals possessing varying degrees of consciousness about the significance of their resistance to larger systems of power. Everyday resistance has always occurred; what is new is the attention scholars have devoted to it and the importance it has been accorded in this scholarly literature.

I begin with a story about one person at one historical moment. I would like you to imagine yourselves almost 50 years ago in a small town nestled in a tropical rainforest, surrounded by miles of green sugar cane dotted with small clusters of tin-roofed wooden shacks, fringed by black lava cliffs plunging into a deep blue ocean, on top of which perch a few large factories belching black smoke and exuding the sweet, foul odor of sugar cane processing. It is probably raining. In Hilo, Hawaii, in 1945, during a wave of concern about prostitution and sexual abuse of young girls, a man, Salvador (pseudonym) was arrested for having sex with a girl under the age of 16. Although Salvador did not contest that he had had sexual encounters with a 14-year-old girl (brief episodes behind the bushes in which he paid her 50 cents for genital stimulation), he did refuse all medical treatment for a hole that he had made in his own hand two years earlier. The wound was kept open with a string drawn through the hole. De-

scribed as nauseating and odorific in the court records, this wound troubled the white American judge, defense attorney, probation officer, psychologist, and psychiatrist who handled the case. All interpreted the wound and Salvador's resistance to medical attention as an indication that he was crazy. None accepted it as a spiritual sign—an indication of holiness marked by stigmata—or considered its link to Catholic practices in his native Philippines or to his membership in the nationalistic/religious organization, the Filipino Federation of America. Salvador was sentenced to prison for a maximum of 10 years for his offense. The court would have given him probation had he agreed to have his hand medically treated, but since he refused, they felt prison would be constructive because it would force him to be treated.

Salvador's sexual act was an assertion of his power within the gender hierarchy, an appropriation of sexual services from a vulnerable young girl for a trivial sum. But can we at the same time view his refusal of medical treatment and acquiescence to prison instead of probation as an act of resistance? I think his refusal can be interpreted as a moment of resistance to the categories of identity which undergirded the racialized hierarchy of the sugar plantation economy of colonial Hawai'i in the 1940s. His adamant retention of his stigmata could be seen as the resistance of a religious man seeking some meaning, some sense of specialness amid the alienation of the single men's houses in the plantation camps and the grinding monotony of cane cutting. It is possible that his actions affected the way dominant groups understood who he was and thought about his and their place in the world.

In many ways, Salvador fits into the dominant whites' assumptions about male Filipino sugar workers. Filipino men were the latest wave of plantation laborers, brought to the islands as temporary laborers without families. Such men were typically thought to be unintelligent and sexually promiscuous. Indeed, Salvador performed poorly on the standard IQ test, which was administered to him in English, as did the other Filipino defendants of the period, few of whom were able to speak standard English. And he, like other single older men of this period, had sexual relations with a young girl.

But Salvador's actions disrupt the dominant groups's understandings of Filipinos: he is both gentle and sexual, crazy and spiritual, criminal and innocent in his search for sexuality. He is labeled crazy, although some recognize that his craziness has something to do with his ideas about Jesus Christ and holiness. The court record indicates that Salvador's notion of himself as a sign of salvation—the mode by which he resists the plantation society—is generally misunderstood and ignored. Nevertheless, in his violence against his body, he engages in a voiceless representation of himself as a person of spiritual merit rather than as a

marginal member of the plantation labor force. Because he fails to fit neatly into the categories of identity on which the plantation hierarchy rests and which serve to legitimate its inequalities, he unsettles this hierarchy in some way.

But his action is an example of the double edge of resistance that injures the resister himself or herself in the act of resistance. The peasant engaged in foot-dragging and laziness earns a reputation as a bad worker and a lout, so that his cathartic moments of freedom come at the price of favors or work. Salvador disrupts in some ways those identities which are the key to power, but in other ways he confirms and strengthens them. And he ends up in prison rather than on probation. Prison is, of course, not a penalty for his abuse of a young girl, which the court is willing to overlook enough to give him probation, but for his refusal to give up his stigmata.

This is a form of resistance that disrupts those modes of conceptualizing and categorizing the world which lie at the heart of modern processes of power. Insofar as power is based on modes of controlling the way the world is constructed and understood, then those who fail to fit into these categories challenge, in a small way, this power. Indeed, social movements often begin with those who, like Rosa Parks, refuse to fit into the social categories which define their lives (see Ewick 1992).

## Redefining Gender Identities

My second case also describes efforts by a relatively powerless group to reconstruct the social identities that define their lives: in this case, battered women. In my study of contemporary efforts to control wife beating in Hawai'i, I found that feminist advocates relied on the authority and categories of the law to introduce new cultural ideas about relationships between men and women. Wife battering was defined as a crime instead of as an aspect of male disciplinary entitlement and marked as a distinctive offense, more serious than simple assault. I will talk here about my ethnographic research in Hilo, Hawai'i, and the changes since 1990, but these changes are characteristic of other parts of the United States as well.

Hilo has a primarily working-class population with a wide range of Asian and Pacific Islander cultural backgrounds, often with several generations' residence in Hawai'i. The historical record indicates that from the time of the creation of Western-style courts in the 1850s, a slender but steady stream of cases of domestic violence came to the courts. Although two-thirds of those accused were convicted, this was a lower rate of conviction than for other offenses in the courts. Penalties were typically very lenient in comparison with other offenses.

Since the mid-1980s, however, in response to a politically powerful feminist movement in a state with generally liberal politics, there has been a significant shift in laws and in judicial and police policy resulting in a sharp increase in the frequency with which domestic violence cases come to court. There are increases both in the civil process when women seek temporary restraining orders and in the criminal process when men are prosecuted for a new crime, "Abuse of a Family/Household Member." Shelters increasingly encourage women to file charges and help them with the paper work for a temporary restraining order (TRO); the police are urged to arrest offenders rather than simply sending them away to cool off, and prosecutors seek more energetically to convict offenders. Requests for TROs in the Hilo area increased from 1 or 2 a year in the 1970s to over 250 a year in the late 1980s and 320 in 1991. Arrests for the crime of abuse of a family member increased from under 35 a year between 1979 and 1986 to 551 in 1991.

It seems unlikely that the incidence of domestic violence itself has risen so sharply. Instead, there is a change in the alacrity with which victims call the police and go to court for help. I think that the increasing domestic violence caseload reveals a cultural transformation in the meanings of violence against women. In the past, women who were battered were told, "You made your bed, now you have to lie in it." There was generally little support for leaving the man from either the woman's family or her husband's family. Women did not like being hit but were not likely to talk about it as a crime. It took the political activities of feminists, the creation of a shelter, and the support of the judiciary and the police to generate the massive increase in the number of women asking the courts for help.

I think a new cultural understanding is emerging. Through participation in court hearings and a court-mandated batterers treatment program, men and women learn a new language. Terms such as male privilege, emotional abuse, psychological battering, economic abuse, intimidation, and the importance of cool-downs become part of their everyday talk about human relationships. Although the court does not produce this new language and cultural understanding, it authorizes it and backs it with the legitimate force of the state.

Legal intervention provides women protection from battering, but it does not, of course, provide women housing, support, love, care for her—their—children, or acceptance by his or her kin and neighbors. Women often find themselves in the awkward position of going to court, getting a no-contact restraining order, getting the man out of the house, and then needing money from him and watching him give it to another girlfriend, or finding that her own kin group doesn't support her for kicking him out. The legal right to kick the man out doesn't solve the

economic problem of support or the social and sexual desire for a relationship with the man.

Thus, the law culturally redefines male rights to discipline through violence and constructs new gender identities in which violence is not deserved no matter what a woman does. Even if she fails to cook or take care of the children or has an affair, he does not have the right to hit her. At the same time, the legal approach to controlling wife battering relies on the categories and meanings of the law. Women are presumed to make independent choices about whether they will stay or leave a relationship when it is destructive. The law provides a place to contest relations of power, but it also determines the terms of the contest. Its ideology, its representation of the problem and its solution, dominates as wife battering is defined as a matter of individual rights not to be hit rather than as a violation of a collective community need for peace. While masculinity is under assault and femininity is being redefined away from accepting violence, the image of the self as an autonomous, rights-bearing, choice-making individual is reinforced.

On the other hand, what is novel in this situation is the expansion of that self to battered women. The rights-bearing self fundamental to social contract theory has not always been extended to include all humans. Through domestic violence interventions, this self is extended to poor women who have often been denied this legally protected self.

## Redefining Indigenous People's Identities

My third example of resistance through law also emphasizes its culturally productive capacity rather than its direct exercise of power. The People's International Tribunal was held in Hawai'i in the summer of 1993 as part of the sovereignty movement of the Native Hawaiian people (see Trask 1993). This tribunal put the United States on trial for its takeover of the sovereign nation of Hawai'i and its acts of resource appropriation and cultural destruction to the Native Hawaiian people. The 10-day trial which moved from island to island taking testimony from experts and ordinary people before an international panel of judges was designed to expand cultural awareness of the U.S.-assisted coup against the Queen in Hawai'i in 1893 (Hasager et al. 1993). The tribunal claims as its ancestry about 50 tribunals of this kind over the past 30 years, in which the citizens of a nation hold their country in judgment, inspired initially by a tribunal convened in 1966 by Bertrand Russell to examine the war crimes of the United States during the Vietnam War. The Permanent People's Tribunal in Rome has organized up to 20 tribunals. In recent years, these tribunals have dealt with issues about indigenous peoples, particularly the International People's Tribunal on In-

digenous Peoples and Oppressed Nations in San Francisco in 1992 (Ka Ho'okolokolonui Kānaka Maoli 1993: 20 Aug.). Like other similar tribunals, it did not exercise judicial authority but made a public statement which endeavored to reshape public consciousness.

The People's International Tribunal, Hawai'i, 1993, Ka Ho'okolokolonui Kānaka Maoli was held on the centennial of the 1893 coup against the Hawaiian monarchy and the subsequent takeover of the sovereign nation by the United States. Convened by Kekuni Blaisdell, the tribunal put the United States on trial. During the late 19th century, American and British sugar planters became increasingly powerful, eager for privileged access to the U.S. market. American and British legal and political systems had been introduced in the mid-19th century, but in 1893 Hawai'i was still an independent constitutional monarchy. In that year, a small group of planters, largely descendants of early missionary families from New England, pulled off a military coup with the assistance of a U.S. warship, then offered Hawai'i to the United States for annexation. The U.S. government balked until a shift of presidents and the imperialist tenor of the times led to a resolution to annex in 1898. Hawai'i remained a Territory until 1959, when a majority of the inhabitants, of which the Native Hawaiians were now only a small fraction, voted for statehood.

The tribunal took the form of a criminal trial, beginning with a formal statement of charges against the United States by the Native Hawaiian people, called by their Hawaiian name, the Kānaka Maoli. Each charge cites the laws that have been violated. It is significant that these laws included the laws of the Kānaka Maoli nation, international treaties from the 19th century, the U.S. Constitution, and various United Nations declarations on human rights and the rights of indigenous peoples. Clearly, the statement of charges and the remedies sought are framed in the language of the law, but this is a plural law in which the law of the nation is nested between indigenous law and global human rights law. The United States, as defendant, was sent the complaint and invited to appear at the trial. An empty chair, labeled "U.S. Representative," sat beside the judges at each hearing. There are some ironies here. The challenge to the legal takeover of Hawai'i was couched in terms of the same law that was used to seize land and water resources 140 years earlier. Like domestic violence cases, the tribunal reinforced legal hegemony at the same time as it resisted particular relations of power through the law.

The tribunal appropriated legal forms and symbols in an effort to harness the power and legitimacy of law in a movement of resistance. But the prosecutor and judges continually redefined law, detaching it from the nation-state context and linking it to a more global notion of justice. Law acquired a fundamental plu-

ralism. This move appears in the opening statement by the prosecutor, Glenn Morris, identified in tribunal literature as a Shawnee attorney and Director of the Fourth World Center for the Study of Indigenous Law and Politics, University of Colorado at Denver, and Director of the Denver chapter of AIM. He begins by linking this tribunal to the struggles by Native Americans in the continental United States and Canada, then moves to redefine law:

> [I]t is our responsibility to tell the world that justice cannot be employed without also including an indigenous vision of what justice means. . . . We believe that as indigenous peoples we come from societies that had our own laws, that had our own understanding of the land and the sky and the ocean. And now it's time for the West to integrate those principals into their law. (Hasager et al. 1993:9)

The judges themselves represent the community of international indigenous rights groups and scholars. The verdict, written by these judges at the close of the proceedings, clearly articulates their position on law (Ka Ho'okolokolonui Kānaka Maoli 1993):

> The Tribunal considers that it is applying the law as fully and as honestly as it knows how. It refuses, however, to define law in a formalistic or colonialist manner. It is guided by five mutually reinforcing conceptions of law from which it draws freely in developing its findings on the charges and its conclusions and recommendations for redress.

These five principles are:

1. Kānaka Maoli law
2. International law, especially the 1992 version of the Draft Universal Declaration on the Rights of Indigenous Peoples by the UN
3. The Constitution of the United States, the laws and judicial decisions of the United States and of the State of Hawaii
4. The Law of Peoples as Nations
5. The Inherent Law of Humanity

The verdict concludes:

> Law is a great river that draws on these five sources as tributary rivers, and the Tribunal will apply law in this spirit. We have found indigenous Hawaiian understanding of law to be an indispensable and powerful background for this verdict, and we believe that law experience and wisdom of indigenous peoples generally is helping the democratic movement of peoples and nations to develop a more useful and equitable sense of law that has been evolved by modern governments and states which sit in judgement of the world's peoples in such organs of world order as the UN Security Council and the Group-of-Seven.

Thus, this is a movement which not only uses law as a mode of resistance but also challenges the legitimacy of nation-state law as the sole or even primary source of law. Unlike the case of domestic violence, which challenges patriarchal authority and gender definitions but does not question the authority and legiti-

macy of law itself or the individualistic notions of personhood embedded within Western law, this movement attempts to redefine some aspects of law while accepting its symbolic power, seizing the concept of justice and deploying it as separate from state law. This and similar social movements indicate the shifting importance of local, national, and global legal systems, and the emergence of a new kind of legal pluralism in which the critical questions are how these systems intersect with and exert power over one another (see Santos 1987). The tribunal represents a move to seize and redefine law itself. Law is taken from its nation-state context and redeployed as plural, as local and global as well as national. As in the indigenous rights movement more generally, it promotes a legally plural notion of law in which state law is only one of many levels, without privileged centrality (see Tennant 1994; Parmentier 1993). If we see law as constituted by social practices and meanings, such movements have larger implications for law itself.

## Conclusion

These examples demonstrate, I think, that the study of resistance within, by means of, and through law is of consequence for emancipatory projects. I draw three conclusions from these examples of resistance. First, actions which seem to be individual, even idiosyncratic, emerge from distinctive cultural understandings embedded in particular social worlds, whether a Filipino nationalist/religious cult, the 1980s feminist movement in the United States, or a cultural tradition celebrating the rule of law and human rights. Cultural understandings inform all actions, including those we label resistance. Thus, to speak of isolated individual acts of resistance is to deny the social world that constructs that individual and her sphere of action. Clearly, law in the 1990s continues to provide a site for resistance, and perhaps more important, a *cultural form* and *consciousness* for resistance.

Second, if our frame of analysis is expanded to include the myriad processes by which the cultural world is made and remade, then actions with no apparent impact may nevertheless be consequential. They may, for example, reshape the way identities and communities are understood. At the minimum, they may disrupt prior understandings. The worker who refuses medical treatment fails to conform to some groups' standards of rational behavior in the name of religious faith. A woman who hears from a judge in court that no action of hers deserves a beating can assert this position (as I heard one woman do) when she stands before another judge listening to her partner complain that his beating was justified because she failed to care for their children adequately. Gender is being redefined as she objects to this excuse. In 1994, one year after the People's International Tribunal,

there was growing recognition of Native Hawaiian claims, and this and other events had helped to redefine the meaning of Hawaiian identity. Viewed as irresponsible and "childlike" in the 19th century, Hawaiians in the 1990s were increasingly recognized for their rich cultural tradition and demands for greater political power. Social life is grounded in identities that distribute power and virtue; redefinitions of identities shift the map of power.

Third, these examples indicate that there is no sharp line between individual and collective actions. Each individual acts as part of some social collectivity, whether family, association, or movement. And collective movements depend on individual participation. For example, the violence control program and the courts can reshape gender relations in Hilo only if women are willing to report violence to the police, to come to family court asking for temporary restraining orders, and to testify in court against their batterers. The People's International Tribunal was made up of many people who chose to come and testify about their experiences of subordination and cultural loss as well as those who participated as judges, attorneys, and organizers. To draw a dichotomy between collective movements and those which emanate from isolated individuals is to deny agency, the extent to which institutions and structures are constituted by persons who see themselves in cultural terms, act in terms of commonsense and everyday practices, and, as they develop competing images of the world, refuse to go along.

But has the recent work on resistance taken an overly celebratory stance? Much of the literature posits an authentic, truth-perceiving subject who is not duped about the power structure or her place in it and whose resistance requires only the courage to speak. Because James Scott (1991) uses the dramaturgical metaphor, viewing resistance in terms of public transcripts of acquiescence juxtaposed to hidden transcripts of resistance backstage, he espouses this position. It appears in some recent law and society scholarship as well, including my own. There is a romantic edge to these interpretations, reminiscent of the portrayal by urban sociologists of close-knit rural villages confronting the alienating city or images of American Indian ecological sensitivity constructed by other Americans painfully aware of their own environmental destructiveness. All resistance is not constructive, nor are all subordinated peoples able to critique the conditions of their subordination. Some resistance is clearly damaging to individuals, as the string through the hand was to Salvador's health. The Malaysian peasants Scott (1985) studied earned reputations as lazy and unreliable, diminishing their opportunities for work from patrons. Some resistance is destructive to community life, such as robbery, drug traffic, and cheating on income taxes. We cannot escape judgments about "good" resistance and

"bad" resistance. The celebration of some forms of resistance contains implicit commitments to social justice and equality. It would be more honest to acknowledge where we stand and join in the search for a more just world.

I think a focus on the constitutive power of law and a broad definition of its cultural effectivity and representational power suggest the importance of research on the cultural meanings produced by law in the habitual, possibly resistant, practices of everyday life as well as through major social movements. Local-level ethnographic research on legal institutions, on systems of establishing and maintaining borders, on citizenship regulations, on the creation of national identities and deterritorialized communities, on legal definitions of gender and race identities, on ways to produce legal institutions more responsive to cultural differences, are of critical importance as we move into the next century. Law and society research, with its three decades of empirical research on the social organization of the law, is poised to consider these major social justice issues and the role the law plays in them. I hope that we will continue to do so.

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