Conclusion

A New Social Constructionism for Sociolegal Studies

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In this essay I make a case for what I call a "moderate" and also an "empirically grounded" social constructionist approach, which I conceptualize as a further development of numerous strands of a longstanding and rich tradition. I argue that this approach, one I see as emergent now in cross-disciplinary work like that presented in this Symposium, can help to move scholarly discourse past the impasses posed by dichotomous, either/or thinking about law, society, and epistemology. To orient those unfamiliar with the pertinent scholarship, I begin with a sketch of the intellectual traditions and issues involved.

Social constructionist approaches have a long and weighty genealogy (one that I must confess I balk at trying to represent in this abbreviated form). One could point to the phenomenologists whose work led sociologists to focus on the "social construction of reality" (see, e.g., Berger & Luckmann 1966; Schutz 1970; for foundational texts, see, e.g., Husserl 1946; Weber 1947, 1958). And there are the usual suspects from European social theoretic traditions who have attempted to combine consideration of the material conditions of social life with the analysis of culture and ideology (see, e.g., Bourdieu 1977, 1984; Foucault 1980; Gramsci 1971, 1983; Habermas 1984; and their many followers; see also Postone 1993). In anthropology, work building from these social theoretic and phenomenological roots, as well as from work by Durkheim (1915, 1933, 1938) and others on

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symbolic representation, has produced a rich tradition in cultural analysis (see, e.g., Geertz 1973; Greenhouse 1986; Levi-Strauss 1963, 1969; Rosen 1989; Turner 1974). Work on human psychology from anthropology, psychology, and related disciplines has recently produced an explosion of scholarship on the social construction of the self (see, e.g., Gergen 1990; Gergen & Davis 1985; Stigler, Shweder, & Herdt 1990). The past 15 years in sociocultural anthropology has brought an exciting set of influences into contact with one another, from scholars working on language, culture, political economy, law, and politics—many of whom implicitly or explicitly build on and develop concepts of social construction (see, e.g., Asad 1973; Brenneis 1984, 1987; Briggs & Bauman 1992; Cohn 1989; Comaroff & Comaroff 1991; Conley & O'Barr 1990; Coombe 1993; Daniel 1993; Domínguez 1986, 1989; Greenhouse 1986; Lazarus-Black & Hirsch 1994; Merry 1990; Mertz 1988; Messick 1992; Starr & Collier 1989; Yngvesson 1993). Scholars of color and feminist scholars have also for some time been developing theoretical frameworks for understanding the effects of social construction, especially in legal settings (see, e.g., Bell 1987; Bumiller 1988; Delgado 1989; Fineman 1991, 1994; Minow 1990; Montoya 1994; Ortner & Whitehead 1981; Williams 1991).

In invoking these multiple strands of closely related traditions, I hope to indicate a way in which social science can overcome (indeed, has been overcoming) analytic dichotomies that have plagued attempts to understand human societies in general, and the role of law in particular.[1] As I explained in my Introduction to this Symposium, the concept of social construction can bring together analysis of idea and action, meaning and material life, constraint and creativity, power and resistance,[2] stasis and change—and can do so through a form of analysis that combines empirical and critical work (see, e.g., Coombe 1989; Sarat 1990).[3] Another interesting facet of this approach is its synthesis of a moderate skepticism regarding the fixed or natural character of categories—a skepticism that reaches full flower with

[1] See Mertz 1994b:n. 2 on the ways in which social theorists have developed conceptions of causality designed to avoid stale dichotomies.

[2] For a brief summary of recent directions in research on resistance, see Mertz 1994b:n. 3.

[3] As noted in my Introduction to the Symposium, there has been some debate in sociolegal studies over the advisability of developing a method that combines empirical and critical work (Mertz 1994b:n. 4). I do not mean to imply that the approach suggested here is the only or the canonical formulation of the concept of "social construction." Indeed, analyses of social and cultural construction in sociology and anthropology have often been explicitly idealist in character, focusing less on material constraint and power relations than on culture and ideology. However, in recent years scholars from a number of fields, including anthropology, critical race studies, political science, and feminist studies, have approached social construction as an amalgam of the concerns traditionally dichotomized as "idealist" and "materialist."

deconstructionist analysis—with a grounded empiricism that examines carefully how social life is constructed.

In the following section, I argue that the articles in this Symposium form part of a current innovative development toward a "moderate" social constructionist vision of law (with apologies to any authors who might not read their own texts this way). Crucial aspects of this vision include: (1) a view of law as "underdeterminate" (but not entirely indeterminate); (2) an understanding that legal representations of social identities as fixed or coherent are often fictional, serving other than their apparent purposes; (3) a critical view of the constitution of the "local" in legal discourse, with careful attention paid to the ways in which local units and identities are actually created (at least in part) from the "top down," through interaction with national and international legal discourses; (4) a similarly critical understanding of the ways in which concepts such as "customary law," "authentic indigenous voices," and "rationality" themselves reflect very particular social constructions that are far from neutral reflections of reality; and (5) a sophisticated analysis of the power of legal language to create epistemological frames. These frames, while giving the appearance of neutrality, may constrain legal discussions of social issues in ways that leave important aspects of situations go unheard. This last insight leads to the interesting question of when legal remedies can actually do the jobs assigned to them, and at what points it might be necessary to question or destabilize the very framework or categories suggested by legal discourse.

In the conclusion of the essay, I make a case for a moderate social constructionist approach as a solution to a number of problems bedeviling legal academics and social scientists, from anxiety over the potentially nihilist consequences of deconstructionist approaches, to fairly antagonistic skepticism regarding the use of social science to elucidate practical legal problems. Rather than view the world of possibilities as composed of antagonistically opposed choices (qualitative or quantitative, doctrine as unimportant or all-important, etc.), the approach I develop here bridges antinomies, drawing on the strengths and insights of both "sides" of debates wherever possible.

Emergent Themes

Here I develop further a number of themes that tie together these apparently diverse topics and authors. In keeping with the general approach that emerges from the Symposium, I note that these themes are intended not as discrete theoretical points but as layered and overlapping perspectives, different vantages on the same fundamental processes. Together, they contribute to an emerging integrative and moderate social constructionist vision

of legal processes and discourse—one grounded in empirical study.

A. "Underdeterminacy" and Unintended Consequences: Law as Social Mediation

A central theme uniting the articles in this issue is the *underdeterminacy* of law as a source of social change.[4] I use the term "underdeterminacy" rather than "indeterminacy" because these articles do not simply point out the inevitable slip between formal rule and practical application, between text and interpretation (on indeterminacy in law, see, e.g., Singer 1984; Boyle 1985; Solum 1987). Rather, they combine careful consideration of the determinacies that follow from legal frames with acknowledgment of the structured ways in which social actors and contexts refract and reshape those frames in practice. As we know, legal innovations have unintended consequences,[5] at times producing effects directly opposed to those planned. This stubbornly unpredictable character of some legal processes is a predictable result of their inherently social character.

By contrast with accounts that discuss law as the one-way imposition of power, where lawmakers simply mold social actors and groups like clay, the social constructionist approach developed here understands the subjects of law as agents, actors with at least some ability and power to shape and respond to legal innovations. In the struggle among those formulating legal changes and the many diverse groups of people who could be affected,[6] law becomes a form of social mediation, a locus of social contest and construction. And yet, of course, because of its social character, legal mediation does not operate on a level playing field; these authors are continually mindful of the effects of differential power and access to resources on the struggle and its outcomes. They examine carefully the ways in which differentially situated actors can impact the course of legally mediated social change. And, importantly, this phenomenon is not treated as a random occurrence but as systematically entwined with social structure and history in ways that require analysis.[7]

[4] I say "underdeterminacy" rather than "indeterminacy" because, as already noted, these authors in many ways acknowledge the strongly determinative effects of legal frames on outcomes.

[5] I do not here intend to imply that I think that singular intentions can be easily imputed to particular laws; obviously, behind any statute passed can lie many intentions, some stated, some perhaps not recoverable.

[6] I say "could be" because of the co-constructed character of the legal categories; rather than assume that there is a prefigured and determinate set of people to whom the law automatically applies, we here understand that how and whether people are affected is in part determined by an interactive process.

[7] Thus legal ideology may acknowledge the impact of social context on law but characterize that impact as random and unpredictable rather than as structured and worthy of sustained analysis (Mertz 1995; Mertz & Weissbourd 1985).

Lazarus-Black's article is centrally concerned with this issue, tracing the ways in which the Antiguan Status of Children Act has at once achieved some of its intended purposes and become a potential weapon in unexpected ways. Thus the statute has served as a tool in combatting discrimination against illegitimate children, in some cases successfully forcing schools to admit those children. In using the statute this way, attorneys are (even at times consciously) undoing legacies of colonialism that privileged European family form and cultural/religious traditions. Here, then, is an example of a use of law that is far from "indeterminate." At the very same time, however, the statute may be having unintended effects on gender hierarchy, buttressing an already unequal division of power between men and women. In its silence about gender, suggests Lazarus-Black, the frame provided by the new statute contained within it a hidden potential that is now becoming apparent.[8]

Espeland's article similarly demonstrates the complex causality involved when legislators and administrators use law in attempts to shape society. In one sense, NEPA had effects that went far beyond strictly environmental concerns, providing a forum in which the voices of the Yavapai could be heard in Bureau of Reclamation decisionmaking that affected their lives. At the same time, initial administrative operationalization of NEPA involved fundamental refusals to hear those voices in any real sense. However, the very pretense of listening to indigenous values, as it failed, served as a spur to local resistance. Asserting their distinctive identity as Yavapai, members of the local community forcefully voiced a different view of the decisionmaking process. The community, itself historically shaped in part by external forces, was reshaped in its complicated interaction with NEPA and the bureau—and neither this effect nor the process contributing to the eventual decision regarding the dam were clearly envisaged by the statutory or administrative agency framework.

Goldberg-Ambrose similarly notes the ways in which federal government policies at times had unintended effects. Thus when the government encouraged off-reservation boarding schools for Indian children, a move designed to hasten assimilation, an unexpected by-product was the formation of cross-tribal relationships and the further development of a generalized "Indian" identity. Goldberg-Ambrose paints a complicated picture in which there are multiple and sometimes divergent Native American actors and interests actively struggling within the framework set by law. Some Indian leaders have deliberately worked to develop local legal and political institutions that conform to non-Indian models, specifically because they are aware that the courts

[8] This point is made powerfully as well in work by Martha Fineman (1991); see discussion infra.

will be more likely to guarantee self-governance to units that do this. Activists interested in restoring more traditional political and legal forms, while still protecting tribal sovereignty, have had to tread a very thin line in efforts to contest such tribal leaders without undermining their tenuous authority to assert sovereignty for their tribes. Native American groups have also formed intertribal legal and political institutions to help smaller tribes secure sovereignty. In all these cases we see the complicated and at times unpredictable results of Native American struggles within the confines of the law.

Gooding adds to this picture a detailed analysis of the way federal courts that purport to focus respectful attention on Native American culture and history actually wind up imposing quite alien cultural and linguistic norms. Zerner's account of the repeated reworking of "customary" law in Indonesia similarly demonstrates the multiple layers of social mediation involved in the use of law in practice. And Bower suggests that when legal discourse denies gay and lesbian citizens inclusion in the political community, it may have the unintended effect of fostering a new kind of community for those the courts exclude. In all these cases we see the inadequacy of a model that posits a simple, one-way causal link between law's intended effect and social change.

B. Coherence as Legal Fiction

The approach developed here also analyzes the construction of collective and individual identity in legal contexts as provisional, fluid, strategic, contested—although legal conceptualization often attempts to understand identity as static and fixed. The articles also demonstrate carefully the hybrid authorship of the constructs of community and self that are produced in the interstices of law and society. If legal texts often tell coherent, unitary stories that assume "tribes" or "families" or "communities" (or even "male" and "female"[9]) as fixed, stable identities, then these studies show the fictional character of those stories. The analysis of social identities as instead heavily contextual, social creations provides a useful counterpoint to the static, prefigured conceptions of individuals and groups in many legal narratives. At the same time, "fictions" can take on a life of their own; they can have powerful formative effects on the social world even if they lack empirical validity. Thus a number of authors discuss the impact of legal fictions of coherent groups and identities on the affected people and on efforts to assert and struggle for alternative visions.

[9] The deconstruction or unsettling of standard categories of "male" and "female" has been part of anthropological work on gender for some time now (see, e.g., Collier & Yanagisako 1987; Moore 1988; Mukhopadhyay & Higgins 1988; Ortner & Whitehead 1981; Rosaldo 1980).

Greenhouse complicates this picture still further, asking about the status of the fiction of choice within the constraints given by cultural constructions. (Note that Antigone, to the extent she embodies this fiction, exists within the constraints of the staged action, still never escaping social construction.) Yet, at the same time, analyzing events as cultural constructions requires that we imagine the possibility of stepping outside of particular constructions of the world, asking what the assumptions and entailments of those constructions look like—a myth of freedom, Greenhouse argues, that makes both demands for justice and social science "thinkable in any form" (p. 000).

Bower's article is centrally occupied with this issue, focusing on the ways in which legal discourse seems fundamentally unable to accommodate complex, nonbinary views of gendered identity. Despite occasional moments of possibility, courts appear to return stubbornly to the imposition of fixed, static categories of gender as "either/or" choices. In addition, the use of sodomy as a central defining feature of homosexual identity creates a unitary and reductionist image of complex and multifaceted individual and group identities. In recognition of the limited capacity of the courts to translate this complexity, lesbian and gay activists have turned to more fluid cultural avenues of communication in efforts to alter public perceptions and definitions of gay and lesbian identity.

Goldberg-Ambrose highlights the mythical character of the stable, prelegal "tribe," a myth invented in part in U.S. legal discourse. At the same time, she demonstrates that this fiction is not without real-world consequences, from government decisions about land and resource allocation to court decisions dividing "tribal" from nonmember Indians.

Gooding details the imposition of static racialized views of identity on Colville groups whose own ideology of identity acknowledges—indeed, celebrates—the fluidity of processes of social identification and connection. This clash points to deep divisions in language use and world-views that go unacknowledged by the courts. Here we see the way in which an indigenous "science" of social process probably does better justice to the actual dynamic of identity formation than does the imposed "Western" ideology. As disciplines such as psychology and anthropology have come to grapple with the contextual and dynamic character of individual and collective identity, they have often been forced to admit the limits of traditional Western forms of theorizing (and language use, I would add) to mapping or modeling the process they have discovered (see, e.g., Briggs 1986; Gergen 1990; Gergen & Davis 1985; Mertz 1993). Interestingly, non-Western approaches and language forms offer important alternative approaches. This point has been made powerfully in recent writings by Latina scholars who draw on images of masks, bridges,

world travel, braided voices, multilingualism, and translation to capture the fluid and layered processes of identity formation (see, e.g., Anzaldúa 1990; Montoya 1994). And as Chandler (forthcoming) points out, a sophisticated and nonstatic vision of the complex character of identity formation was richly envisioned in the sometimes-overlooked work of W. E. B. DuBois.[10] In the Colville case, as analyzed by Gooding, the courts' myth of static, unitary identity not only fails to capture Colville social understandings, but it also provides a rationale for denying access to resources.

Levine similarly demonstrates the fictional character of the stable "communities" presupposed by EPA reports, arguing that this fiction has permitted the agency to persist in policies which actually undermine the goals of the legislation the agency has been charged with enforcing. She also describes a process whereby novel social groups and forms of group action are generated as a response to the EPA's approach, groups that must "represent" these fictionalized communities in order to obtain redress. In parallel fashion, Zerner's history of the construction of "customary law" documents ongoing attempts to rationalize and "territorialize" not only customary practices but also the fictional homogenous and stable communities from which local law supposedly emanated. These more static conceptions, in Zerner's view, fail to do justice to the rich, dynamic, and complex social practices known to local people as *sasi*.

C. The Locus of Authorship: International/Local, State/Community

Another interesting theme that emerges from these studies is the national—and, indeed, international—context of the construction of the "local community." This perspective undermines a more usual conceptualization, in which it is commonplace to think of larger units such as international networks or national "states" as built up from smaller units such as local communities.[11] Here, instead, we see careful analysis of the process by which concepts of the "local" emerge in the context of international discourses, and community units evolve not just from the "ground up" but in part in response to "top-down" state intervention.

In one sense, this approach is anticipated by a vast literature on hegemony that analyzes how ideology that is adopted across segments of society may actually reflect elite interests (see, e.g., Cain 1983; Comaroff & Comaroff 1991; Gramsci 1983, 1971; Laz-

[10] Chandler (1993; forthcoming; n.d.) gives us an important reading of DuBois's work, demonstrating the way in which DuBois's process of rethinking static, oppositional, and fixed conceptions of racial identity led to a theory of nonoppositional heterogeneity that is in many ways what modern cultural psychologists are struggling to specify (see DuBois 1968, 1969).

[11] One thinks, for example, of work in the antifederalist tradition.

arus-Black & Hirsch 1994; Scott 1985, 1990). This ideology may appear as "natural" and as existing apart from any particular societal group or interest and yet may subtly buttress the position of particular parts of society. Or it may appear to promote interests that it actually undermines. Thus, although some "top-down" legal formulations may actually shape local units or identities, in many cases these very legal accounts derive legitimacy from their purported local roots. For example, as several of the studies here indicate, colonialist reformulations of "customary law" are in part powerful because they supposedly represent indigenous peoples' "own" rules. Similarly, the EPA in part seeks to legitimate its policies through claims that they foster local voices, and U.S. courts purport to protect and represent local Native American interests. There is a deeply ironic contradiction involved in discourses that actually rupture or disempower local people while claiming as an key raison d'être that they foster local "communities."[12]

A version of this "top down" perspective has become commonplace for anthropologists and political economists by now well aware of the effects of the "world system" and of national states on local developments and on conceptions of indigenous peoples and their "customary law" (see, e.g., Asad 1973; Cohn 1989, 1983; Geertz 1963; Hobsbawm & Ranger 1983; Moore 1986; Wallerstein 1976). Building from this insight, the studies in this Symposium provide a close view of the profound contradiction that results when legal legitimacy founds itself in part on a claim that the law is protecting or fostering local communities while it in fact imports distinctly nonlocal values and perspectives. Interestingly, contesting these somewhat deceptive constructions of the local may of necessity take the form of piling one fiction on another, as when modern Indonesian activists reinvent customary law in a form that restores power to local communities while still ignoring aspects of the local practice that comprised that "law." And, in time, because social construction is itself powerful, local people may adopt aspects of the reconstructed "local" world that emerges in interactions with state and international discourses—in a sense, giving some reality to the fictions.

Thus Levine explicitly locates the authorship of a particular construct of "local community" at the national level, in EPA reports and responses to legislation. The division between this construct and industrial-area living arrangements creates difficulties in achieving legislative goals, while it pushes citizens to form social groups that would not otherwise exist in order to mobilize to meet the EPA's vision of collective action. Zerner's article pro-

[12] To see clearly the legitimating effect of this, imagine a court opinion saying that the decision will employ a definition of "tribe" emanating from a colonial government that disrupted and ended local ways of living, and that the history constructed by the court will ignore fundamental principles of Indian history and culture.

vides a thought-provoking demonstration of the complexity of the authorship of local "customary law," constructed in several of its official renditions by colonial and postcolonial governments, and by provincial academics (including law professors). The most recent formulations of customary law even respond to international discourses surrounding environmental protection and human rights. Zerner's history of the interaction of local, provincial, state, and international influences demonstrates not only the complex authorship involved but also the complexity of processes of change. Espeland similarly points to a complicated process by which Yavapai conceptions of themselves as a community changed as they responded to the story about them that emerged in Bureau of Reclamation studies. In all three articles, we see the fascinating place of environmental law as a locus for struggle over the definition of the local community.

Goldberg-Ambrose provides further examples of the unsubtle process by which the federal government and courts have strongly shaped, at times even invented, local tribal units. And Gooding's analysis elucidates the most subtle levels of this process, where the imposition of conceptions of identity and self by courts occurs in the details of language use, naming practices, and ideologies of place and identity.

Lazarus-Black also describes attempts to redefine kinship relations from the top down, demonstrating that even smaller and more "private" social units such as the "family" come to be formed in interaction with state and legal definitions. Far from being pristine or primary units from which communities and larger political units build, family and kin groupings in Antiguan society are a hybrid product in part responsive to a history of colonialism and state intervention. Similarly, Bower suggests that legal and public discourses intrude on a seemingly most private domain, that of gendered and sexual identity, imposing definitions that can be difficult to contest. This perspective on the public construction of "private" realms finds affinities in feminist history, anthropology, and legal scholarship that for some time has traced the ways in which private domains traditionally associated with women are or should be viewed as public (see, e.g., Olsen 1983; McConnell 1992; MacKinnon 1993; Ortner & Whitehead 1981; Scott 1988).

D. Social-cultural Construction and Contest: Reinventing "Custom," "Authentic Voices," and "Rationality"

If these essays underscore the underdeterminacy of law as a source of social change, they also stress the underdeterminacy of indigenous practices as a source of local "customary law" as it is translated in official legal (and also academic) renditions. In keeping with recent work in legal anthropology, some of these

studies show the way in which concepts of local "custom" and of "customary law" become reworked—in a sense, invented—in the interaction with Western law (see Cohn 1989, 1983; Moore 1986). In this perspective, the translation of local life and daily practices into formal legal and/or bureaucratic categories is not simple or transparent. Instead, the very task of formulating these practices as "law" translatable in Western or formalist terms can be seen as imposing a fundamental alteration of local understandings and meanings. Political and legal anthropologists engaged in heated debate over this issue at a theoretical level from very early times in the development of legal anthropology (see, e.g., Gluckman 1965, 1967; Beidelman 1966; Bohannon 1969), asking whether *anthropologists* should or could perform this act of translating indigenous customs as "law." However, it was not until recently that sustained questioning was extended to versions of "customary law" that emerged from the interaction between colonial regimes and indigenous peoples. Earlier, more naive anthropological accounts that at times accepted aspects of these renditions of "customary law" on their face have now been replaced by more sophisticated analyses that look carefully at the translation process itself.

Similarly, there is now a vigorous questioning of the search for the "authentic" indigenous voice that can speak for whole communities or cultures; it appears that more often than not this demand by colonizers for authenticity imposes an approach that simplifies and renders unitary the complexities of local life. At the same time, the colonialist elevation of a single "authentic" indigenous voice above others actually shifts power relations at the local level. When colonizers seek to find and systematize local "customary" law, and attempt to locate the "authentic" voices who will articulate that local knowledge, law in its search for authenticity becomes a central figure (or "trope") in colonialism itself (see Asad 1973; Spivak 1985; Said 1978, 1983).

Zerner's article provides a clear example of the process of invention, in which fluid, complex, and variable Moluccan practices were continuously reworked into fairly unrecognizable form by colonial and postcolonial governments seeking to legitimate their policies with an appearance of deference to local norms. Furthermore, the search for authenticity regarding indigenous "law" led to peculiar and ironic consequences—as when the desire to pin down the "real" customary norms led to a focus on written versions of the rules, resulting in a formulation that reflected more about the need for authenticity than it did the form of local practices. And, again, in reaching out to local elites, village councils, and "police" (arguably an identity forged in the colonial appropriation of local sasi practices anyway), colonial governments altered local power structures as they searched for "authentic" indigenous leaders.

Goldberg-Ambrose's study similarly recounts a process of invention in which governmental and legal texts recreate purportedly indigenous forms in their own image. Gooding traces this "invention of tradition" in the court's attempt to impose alien conceptions of identity (at once individual and group) on the Colville. Once again we see that even while U.S. courts drastically reformulate and mistranslate indigenous practices—essentially inventing versions of customary law—they engage in a search for authenticity that only deepens the distortion. Thus long and labored attempts to delineate the "true" boundaries of a tribe, the "authentic" history of Indian people, or the "real" (singular) identity of particular Native Americans only add to a process of misunderstanding that insistently translates indigenous histories, concepts of identity, and group membership in terms of distinctly nonindigenous categories and forms of thought. Espeland's article delineates dramatically the potential consequences of this profound mistranslation of Native American life in U.S. legal and bureaucratic discourses.

Thus, in Indonesia and in the United States, we can see that law in its deceptive quest for "authentic" indigenous forms actually serves the purposes of colonialist powers that are seeking to translate, tame, and alter the experience, structure, and categories of indigenous peoples' lives. And in Antigua, as Lazarus-Black explains, the translation that occurred through family law subtly altered indigenous family forms and values, advancing the ability of colonists to control the family form, social status, and economic power of slaves and other people of color. And yet, as several authors in this Symposium show us, with increasingly sophisticated understanding of the perils of legal translation, indigenous peoples and local communities are now learning to use the law's quest for "local customary law" and "authentic" local forms to serve their own purposes—at times accepting the fictions involved in order to ask that the law live up to its surface promise of deference to their ways and values. As Greenhouse reminds us, the daunting task of deciphering these processes requires "a determined effort to avoid both the romantic and racialist misreadings of the modern word *culture*—and, yet, equally important, also to avoid confusing discrimination or disadvantage for identity" (p. 1239).

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At the same time as conceptions of "customary law" and demands for "authenticity" call for reexamination, particular conceptions of "rationality" that have been imported to many local arenas as part of legal categorization are also problematized by these authors. Rather than viewing the notion of "rationality" as somehow standing above and apart from the cultural context from which it came, some of these articles ask how this and other

similar categories function in legal contests: In what ways do "rational choice" models themselves reflect hidden cultural assumptions that may conflict with local values and processes?

Perhaps the most explicit discussion of this problem is found in Espeland's discussion of the conflict between Yavapai values and the rational choice model adopted by the Bureau of Reclamation. The bureau's model was an attempt to weigh all the possible trade-offs involved in building a dam that would flood the Yavapai reservation. It sought to render the many diverse considerations commensurate—indeed, expressible in numerical form. Thus not only economic impacts but public value, people's preferences, and social well-being were at the end expressed in quantified form within the bureau's framework. Espeland demonstrates the failure of this model to capture key aspects of the situation as viewed by the Yavapai, including a strongly held sense of the land as an incommensurate value. In looking at this version of "rationality" through the lens of Yavapai culture, we come to appreciate the culturally specific character of the concept.

Levine similarly critiques the model of utilitarian choice underlying EPA policy, because its accompanying assumptions about ease of citizen mobilization within coherent "communities" fail to take account of actual local situations. Inherent in this model, she argues, is an image of single-voiced, stable social groups that perform as rational actors, weighing costs and benefits in "deciding" whether to complain about poor air quality in industrial areas. This image is very much an invention, one that serves some interests rather than others, while it poses as abstract, neutral, and in some sense above cultural construction.

Zerner's account similarly contrasts indigenous understandings with the forms of rationalization imposed by governments and intellectuals, who sought to translate the heterogeneous and fluid web of rich ritual and social practices that comprised *sasi* as sets of functional, static, homogenous, bureaucratized rules. The focus of the court in dealing with the Colville also results in a translation of fluid naming practices into static, fixed identities, as Gooding demonstrates. The inadequacy of the rationalized form when seen from this vantage highlights the obvious truth that the rationalization process is itself cultural and social, emanating from very particular contexts and moments in history, and resulting in effects that are far from neutral.

E. Legal Discourses and the Power of the Frame: Destabilizing Classification Systems

The observation that there is power in legal categorization is by now fairly routine in legal studies; we are not surprised to find that it matters whether someone can succeed in getting themselves defined as a member of a "suspect" classification for pur-

poses of legal redress. The social constructionist approach developed in this Symposium, however, takes us one step further: It asks how the assumptions underlying the very system of classification itself matter—how they fit with or do violence to social systems and expectations, how they mold people and communities with detrimental or empowering effects. Thus several authors suggest that although immediate legal success might result from fitting into existing categories, these short-term victories leave intact an underlying system of categorization that often ignores important aspects of communities' and individuals' lives. Ultimately, these authors suggest, some groups and individuals will continue to suffer at the hands of the law until they manage to put in question or "destabilize" the very frame that yields the legal categories that define them.

Of course, legal categorization is in a sense not that different from any form of social categorization; every act of dividing people up into "types" or "categories" involves some degree of reification, of noticing only some aspects of those people while ignoring their complexity, ambiguity, and uniqueness. Thus a more complicated question emerges—not whether law reifies, but how, to what degree, with what consequences. Nonetheless, several authors suggest, it may still be the very fixing of identity into static categories itself that some people take as the starting point for their struggle with the law. And this struggle is not necessarily misdirected, for although some fixing of identity may be inherent to social categorization of many kinds, so is contest over the reconfiguration and change of categories. Furthermore, when this process of configuring and shifting social categories is moved into legal domains, it often takes on a different character. For example, writing social categories into law may render more static a relatively fluid social process in which categories are continually fixed and unfixed—or it may differentially empower certain portions of society. Then again, it may validate one vision of social identity or one mode of classification as opposed to many other possible configurations.

Gooding provides a nuanced discussion of the complex issues involved here, demonstrating the complex role of legal language in this process. Although conscious struggles over identity occur within the linguistic frames of court and Colville language, Gooding points us to another, less overt level of language at which we can witness a clash of values and cultural views. A closer analysis of the forms of language use and ideologies of language that operate at that more subtle level reveals the power of the racialized, singular frame for identity inherent in the federal courts' approach to treaty rights cases. Although individual tribes may succeed in obtaining rights by fitting within this framework, the frame itself will deny protection to many—and will continue to

undermine attempts to assert indigenous values and world-views in court.

Bower similarly suggests that the very conceptualization of "sex" and "gender" underlying legal categorization creates difficulties that cannot be resolved through resort to static, binary, essentialized approaches. Instead, she suggests, it will be necessary to challenge the system of classification itself in fundamental ways to take account of the ambiguities of homosexual and transsexual identity. Indeed, Bower views these identities themselves as a challenge to the stable system of identity formulation that lies at the heart of U.S. legal discourse—a challenge that could be destabilizing if not contained. When resort to traditional legal methods failed, gay and lesbian activists resorted to avenues outside the legal system in efforts to contest singular legal definitions.

Espeland provides a clear example of the necessity of stepping outside of the frame provided by an agency charged with administering the law in order for local voices to be heard effectively. Staying within that "rational choice" frame, Espeland suggests, would have erased key moral and cultural concerns from the agenda. Use of a radically different framework, which accentuated the politics of Yavapai history and identity, allowed those concerns to be heard. We see a fascinating contrast in discourse forms—use of symbolism in political protest as almost diametrically opposed to the bureaucratic study with its reduction of social complexity to numbers. However, in her conclusion, Espeland reminds us that the frame suggested by those applying NEPA remains strongly intact, not only within the United States but elsewhere. A striking warning against simplistic assessments of the role of legal frames can be found in the odd combination of local empowerment and silencing that we see in this story about NEPA's effects on Yavapai struggles.

Lazarus-Black demonstrates that reformist family law legislation can itself replicate wider legal framing of hierarchical gender relations, if specific consideration is not given to the gendered dimensions of kinship and family life. Legal theorist Martha Fineman (1988) has made this point in the context of divorce law in the United States, arguing that apparently gender-neutral statutory language can exacerbate existing gender inequalities, giving additional bargaining power to fathers who already possess significant financial and other advantages. In recent work, Fineman (1994) takes this critique of the legal frame surrounding the family one step further, proposing that the law no longer treat family relations any differently than any other relationships. This approach would destabilize the entire legal frame surrounding the family.

For Levine, resisting the very system of classification that imagines coherent, active, communities as the foundational units

of social life in industrial areas would be a critical step toward providing citizens with meaningful access to legally defined rights. This system understands communities on the model of autonomous, individual actors, rather than using a more social or relational vision. Martha Minow (1991) specifically suggests the use of a relational approach to unsettle the divisive and difficult legal frames that now exist for dealing with social difference.

* * * * *

In sum, we can see some strong convergences in the themes and arguments of these apparently diverse studies, convergences that not coincidentally locate them in a stream of research that is emerging from many corners of the interpretive social sciences.

Conclusion

A growing sense of uneasiness is emerging from a number of quarters regarding the value of critiques that have been generated by some social scientists and by critical theorists of various kinds. Some have read deconstructionist work as an indulgent pessimism, giving us scathing critiques of everything under the sun and little guidance as to how to proceed—and all this in language that they find at times to be annoyingly, even smugly, indecipherable. At worst, this can cause the more pessimistic among us to throw up their hands and imagine that these developments signal abandonment of efforts to find any meaning whatever in legal texts. Or, alternatively, it can lead to an impatient rejection of the insights to be gained through the careful questioning of our own frameworks urged on us by many deconstructionists. Indeed, despite a long tradition of empirical work on law by anthropologists, sociologists, and others using interpretive and qualitative methodologies, there is even in some quarters a sense that these (and other law-and-) approaches are "impractical" exercises of little actual value or import (see Edwards 1992; Glendon 1994).

The pieces in this Symposium, I believe, demonstrate that judicious application of interpretive social-scientific perspectives and critiques can yield insights that hold both theoretical and practical significance. It should be of some practical interest for law reformers to know that unexpected gender consequences can follow from gender-neutral statutory language designed to remedy colonialist intrusions on indigenous family structure, that unexamined images of community lurking behind agency reports can thwart legislative purposes, that the apparently neutral language of rational choice theory can serve to silence and obliterate the perspectives of local "communities" supposedly due respect and protection. Or it could significantly alter the ability of people at the local level to achieve their goals if they

understood that some forms of legal discourse are simply incapable of translating certain concerns, or that some legal language that gives the appearance of great deference to local concerns actually masks indifference to or active rejection of local values. Alternatively, understanding the ways in which some national and international law discourses can provide effective vehicles for promotion of local interests might also be of some practical use.[13]

In none of these cases does the move to interpretive analysis yield a bottomless nihilism regarding the possibility of knowledge. Indeed, we see that this kind of sociolegal study performs a crucial service in attempts to understand how law actually works on the ground. For all its power, quantitative analysis lacks the capacity to provide careful on-the-ground examinations of the very categories of phenomena that are to be counted. Much is already given, or given away, by the time subjects are classified into these categories and asked questions that presuppose major aspects of the terms of discourse.[14] The subtle but crucial understandings that emerge from carefully grounded ethnographic and interpretive work of the kind presented here can yield important information as to the actual reception of legal interventions by those who are the intended (or not-intended) subjects of law. It can also provide important data on the translation process through which statutory or bureaucratic or caselaw language takes on meaning in practice (on law and translation see Mertz 1992, 1994; White 1990).

At the same time, for those concerned about understanding the relationship between law and society at a theoretical level, these studies provide a reasoned middle road between the Scylla and Charybdis of choices sometimes posed by today's theoretical debates—for example, between positivism and nihilism, between solely descriptive studies and studies that evince a concern for justice (see discussion in Constable 1994), between hegemony and resistance, between purely theoretical accounts and data-driven research reports.

[13] In addition, the project of empowering local communities itself comes under scrutiny when we come to understand those communities in more complex ways, as neither homogenous nor prelegal, as representing the interplay of multiple interests, as in some ways thoroughly compromised (yet inescapable) sites for struggles over identity. This is another facet of the double edge of concepts of community and identity.

[14] Here I do not intend to suggest an opposition between quantitative and qualitative analysis; to the contrary, particularly in large-scale societies, it seems crucial to combine the insights of multiple methods (with due consideration of the limits of each). Thus quantitative work can be used to assess generalizability and patterning, while qualitative research provides vital information about the meanings and processes that produce those general patterns in contexts. One of my favorite examples comes from James Gee's (1985) work on the schooling of African American children: large-scale studies have certainly demonstrated the massive failures of schools to adequately serve the needs of these children, and Gee takes us inside the classroom to demonstrate in linguistic detail the painful processes of mistranslation and silencing that are contributing to that failure.

A concern with escaping such dichotomies through more grounded and contextual analysis of the effects of law has similarly emerged in several recent works by law-and-society scholars. Sarat and Kearns (1993:61) suggest that a focus on law in everyday life can help bridge the divide between "constitutive" and "instrumentalist" views of the law, serving to remind us that "[l]aw plays a constitutive role in the world of the everyday, yet it is also available as a tool to people as they seek to maintain or alter their daily lives." Or people may choose to avoid or work around the law (ibid.; Greenhouse 1986).

In similar fashion, Lazarus-Black and Hirsch (1994:13) urge that we pay attention to the "making of subjectivity through law" in complex processes that transform "people and polities." These processes are analyzed as multifaceted, involving the power of the state but also individual struggles over the legal constructions that affect people's lives: "We do not assume that subordinated people come to courts only as victims or supplicants; we focus instead on how power and law are transformed by their words and actions" (ibid.; see also Ewick & Silbey 1992; Greenhouse, Yngvesson, & Engel 1994; Merry 1990, 1991; Yngvesson 1993). At the same time, as they and McCann (1992) remind us, analysis of local resistance needs to be understood within the broader context of wide-scale social changes and structures. Thus McCann (p. 747) argues for a flexible program that brings together the strongest contributions of a number of approaches (postmodern, structuralist, contextualist, standpoint theory); this program, in examining both the fluid and local character of legal struggles and the broader political, social, and historical forces in play, could produce "scholarly inquiries about the nature of existing injustices and how they might be effectively challenged." Tomlins (1993:xiii–xiv) similarly employs a "possibly idiosyncratic approach" that sees law as "neither epiphenomenal nor relatively autonomous" but rather respects both the struggle and the structure involved in legal processes.

In sum, what could be called a "moderate" or "empirically grounded" social constructionist approach emerges from recent work and from the articles in this Symposium. These articles demonstrate that acceptance of the constructed character of social categories and understandings need not lead to epistemological or moral nihilism. The authors take strong positions about the relative soundness of different constructions of social reality, making it quite clear, for example, that the EPA's construction of "community" is not well grounded in what we observe of local groups in industrial areas—or that federal courts' and agencies' construction of Native American groups, histories, and culture misses much of what we know about the subject. It is not all the same to these scholars whether one chooses one form of socially constructed knowledge over another; they look carefully at the

contexts and effects of such choices, insisting on a more social vision that tests constructs against experience and observation. These authors also ask that we confront the real moral choices often concealed by the cultural and legal frameworks they analyze and take apart for us.[15] Their critiques are in a sense grounded by empirical work, which provides an important check against the potential excesses of pure theory.[16] And yet we do not have here mere catalogues of "facts" or descriptions that are naive about the conditions of their own production. Nor do these critiques stay at the level of individual experience to the detriment of more structural understandings of the social forces in play (see McCann 1992). Rather, the blend of data, theory, and reflexive awareness yields informative analysis of the way law impacts people's lives, and of the way people respond to and shape the realization of law in practice. This analysis quietly performs a trenchant critique of the hypocrisies of some forms of legal practice, laying bare their harmful effects, celebrating resistant uses (and exiting) of legal processes, suggesting possibilities for reform—and all this carefully grounded in the empirical observation of social practice.

References

Anzaldúa, Gloria, ed. (1990) *Making Face, Making Soul, Haciendo Caras: Creative and Critical Perspectives by Women of Color.* San Francisco: Aunt Lute Books.

Asad, Talal (1973) *Anthropology and the Colonial Encounter.* London: Ithaca Press.

Balkin, J. M. (1994) "Transcendental Deconstruction, Transcendent Justice," 92 *Michigan Law Rev.* 1131.

Beidelman, T. (1966) "Swazi Royal Ritual," 36 *Africa* 373.

Bell, Derrick (1987) *And We Are Not Saved.* New York: Basic Books.

Berger, Peter, & Thomas Luckmann (1966) *The Social Construction of Reality.* New York: Doubleday & Co.

Bohannon, Paul (1969) "Ethnography and Comparison in Legal Anthropology," in L. Nader, ed., *Law in Culture and Society.* Chicago: Aldine.

Bourdieu, Pierre (1977) *Outline of a Theory of Practice.* Cambridge: Cambridge Univ. Press.

[15] For arguments that deconstructionist theory can speak to issues of morality and justice, see Balkin 1994; Chandler 1991; Cornell 1992.

[16] An awareness of the situatedness of our own intellectual production from privileged, elite institutional loci should push critical scholars in particular to perform such "reality" checks more regularly, for only through a respect for the experience of those for whom scholars purport to speak can critical scholarship hope to live up to its promise. In attending to the "voices" of those who are the subjects of law (and of scholarly inquiries around law), we can learn from the lessons of anthropology, which has for some time now struggled with the inevitably compromised position occupied by elite Westerners who seek to "represent" the understandings and cultures of indigenous peoples to Western audiences. Cautious empirical work that provides accurate renditions of indigenous voices (or, at least, as accurate as possible) would seem to be vital to any such effort. And when I say "as accurate as possible," I point to the importance of awareness of the limits of our own capacities, for another source of difficulty (as indicated in many articles in this issue) is a myth of transparent representation that hides the inevitable distortions and changes that come with translations of all kinds (see Mertz 1993; Mertz & Weissbourd 1985; Silverstein 1979, 1993; Weissbourd & Mertz 1985; White 1990).

——— (1984) *Distinction: A Social Critique of the Judgment of Taste.* Cambridge, MA: Harvard Univ. Press.

Boyle, James (1985) "The Politics of Reason: Critical Legal Theory and Local Social Thought," 133 *Univ. of Pennsylvania Law Rev.* 685.

Brenneis, Don (1984) "Straight Talk and Sweet Talk: Political Discourse in an Occasionally Egalitarian Community," in D. Brenneis & F. Myers, eds., *Dangerous Words: Language and Politics in the Pacific.* New York: New York Univ. Press.

——— (1987) "Performing Passions: Aesthetics and Politics in an Occasionally Egalitarian Community," 14 *American Ethnologist* 236.

Briggs, Charles (1986) *Learning How to Ask: A Sociolinguistic Appraisal of the Role of the Interview in Social Science Research.* Cambridge: Cambridge Univ. Press.

Briggs, Charles, & Richard Bauman (1992) "Genre, Intertextuality, and Social Power," 2 *J. of Linguistic Anthropology* 131.

Bumiller, Kristin (1988) *The Civil Rights Society: The Social Construction of Victims.* Baltimore: Johns Hopkins Univ. Press.

——— (1983) "Gramsci, the State, and the Place of Law," in D. Sugarman, ed., *Legality, Ideology, and the State.* New York: Academic Press.

Chandler, Nahum (1991) "The Force of the Double: A Reading of W. E. B. Du Bois on the Question of the African American Subject." Presented at 1991 American Anthropological Association Meetings, Chicago.

——— (1993) "Between," 20 *Assemblage* 26.

——— (forthcoming) "The Signification of the Autobiographical in the Work of W. E. B. DuBois," in S. Lavie & T. Swedenburg, eds. *Displacement, Diaspora, and Geographies of Identity.* Durham, NC: Duke Univ. Press.

——— (n.d.) "The African-American Example: The Concept of Race and Diasporic African Identities" *J. of Research in African Literatures.* (forthcoming)

Cohn, Bernard (1989) "Law and the Colonial State in India," in Starr & Collier 1989.

——— (1983) "Representing Authority in Victorian England," in E. Hobshawn & T. Ranger, eds., *The Invention of Tradition.* Cambridge: Cambridge Univ. Press.

Collier, Jane, & Sylvia Yanagisako (1987) *Gender and Kinship: Essays toward a Unified Analysis.* Stanford, CA: Stanford Univ. Press.

Comaroff, Jean, & John Comaroff (1991) *Of Revelation and Revolution: Christianity, Colonialism, and Consciousness in South Africa.* Chicago: Univ. of Chicago Press.

Conley, John, & William M. O'Barr (1990) *Rules versus Relationships: The Ethnography of Legal Discourse.* Chicago: Univ. of Chicago Press.

Constable, Marianne (1994) "Genealogy and Jurisprudence: Nietzsche, Nihilism, and the Social Scientification of Law," 19 *Law & Social Inquiry* 551.

Coombe, Rosemary (1989) "Room for Manoeuver: Toward a Theory of Practice in Critical Legal Studies," 14 *Law & Social Inquiry* 69.

——— (1993) "The Properties of Culture and the Politics of Possessing Identity: Native Claims in the Cultural Appropriation Controversy," 6 *Canadian J. of Law & Jurisprudence* 249.

Cornell, Drucilla (1992) *The Philosophy of the Limit.* New York: Routledge.

Daniel, E. Valentine (1993) "Tea Talk: Violent Measures in the Discursive Practices of Sri Lanka's Estate Tamils," 35 *Comparative Studies in Society & History* 568.

Delgado, Richard (1989) "Storytelling for Oppositionalists and Others: A Plea for Narrative," 87 *Michigan Law Rev.* 2411.

Domínguez, Virginia (1986) *White by Definition: Social Classification in Creole Louisiana.* New Brunswick, NJ: Rutgers Univ. Press.

——— (1989) *People as Subject, People as Object: Selfhood and Peoplehood in Contemporary Israel.* Madison: Univ. of Wisconsin Press.

DuBois, W. E. B. (1969 [1903]) *The Souls of Black Folk.* New York: Penguin Books.
——— (1968 [1940]) *Dusk of Dawn: An Essay toward the Autobiography of a Race Concept.* New York: Schocken Books.
Durkheim, Emile (1915) *The Elementary Forms of the Religious Life.* New York: Free Press.
——— (1933) *The Division of Labor in Society.* New York: Free Press.
——— (1938) *The Rules of the Sociological Method.* New York: Free Press.
Edwards, Harry (1992) "The Growing Disjunction between Legal Education and the Legal Profession," 91 *Michigan Law Rev.* 34.
Ewick, Patricia, & Susan Silbey (1992) "Conformity, Contestation, and Resistance: An Account of Legal Consciousness," 26 *New England Law Rev.* 73.
Fineman, Martha A. (1988) "Dominant Discourse, Professional Language, and Legal Change," 101 *Harvard Law Rev.* 727.
——— (1991) *The Illusion of Equality: The Rhetoric and Reality of Divorce Reform.* Chicago: Univ. of Chicago Press.
——— (1994) *The Neutered Mother, the Sexual Family, and Other Twentieth-Century Tragedies.* New York: Routledge.
Foucault, Michel (1980) *Power/Knowledge: Selected Interviews and Other Writings,* trans. C. Gordon et al. New York: Pantheon Books.
Gee, James (1985) "The Narrativization of Experience in the Oral Style," 167 *J. of Education* 9.
Geertz, Clifford (1963) *Agricultural Involution: The Processes of Ecological Change in Indonesia.* Berkeley: Univ. of California Press.
——— (1973) *The Interpretation of Cultures.* New York: Basic Books.
Gergen, Kenneth (1990) *Cultural Psychology: Essays on Comparative Human Development.* Cambridge: Cambridge Univ. Press.
Gergen, Kenneth, & K. E. Davis, eds. (1985) *The Social Construction of the Person.* New York: Springer-Verlag.
Glendon, Mary Ann (1994) *A Nation under Lawyers: How the Crisis in the Legal Profession Is Transforming American Society.* New York: Farrar, Straus & Giroux.
Gluckman, Max (1965) *The Ideas in Barotse Jurisprudence.* New Haven, CT: Yale Univ. Press.
——— (1967) *The Judicial Process among the Barotse of Northern Rhodesia.* 2d ed. Manchester: Manchester Univ. Press.
Gramsci, Antonio (1983) *The Modern Prince and Other Writings.* New York: International Publishers.
——— (1971) *Selections from the Prison Notebooks.* London: Lawrence & Wishart.
Greenhouse, Carol J. (1986) *Praying for Justice: Faith, Order, and Community in an American Town.* Ithaca, NY: Cornell Univ. Press.
Greenhouse, Carol J., Barbara Yngvesson, & David Engel (1994) *Law and Community in Three American Towns.* Ithaca, NY: Cornell Univ. Press.
Habermas, Jürgen (1984) *The Theory of Communicative Action,* Vol. 1: *Reason and the Rationalization of Society,* trans. T. McCarthy. Boston: Beacon Press.
Hobsbawm, Erik, & T. Ranger (1983) *The Invention of Tradition.* Cambridge: Cambridge Univ. Press.
Husserl, Edmund (1946) "Phenomenology," 17 *Encyclopedia Brittanica.* 14th ed. Chicago: Univ. of Chicago Press.
Lazarus-Black, Mindie, & Susan Hirsch, eds. (1994) *Contested States: Law, Hegemony, and Resistance.* New York: Routledge.
Levi-Strauss, Claude (1963) *Structural Anthropology.* New York: Basic Books.
——— (1969) *The Elementary Structures of Kinship.* Boston: Beacon Press.
MacKinnon, Catharine (1993) "Reflections on Law in the Everyday Life of Women," in Sarat & Kearns 1993.
McCann, Michael W. (1992) "Resistance, Reconstruction, and Romance in Legal Scholarship," 26 *Law & Society Rev.* 733.

McConnell, Joyce (1992) "Incest as Conundrum: Judicial Discourse on Private Wrong and Public Harm," 1 *Texas J. of Women & the Law* 143.
Merry, Sally Engle (1990) *Getting Justice and Getting Even: Legal Consciousness among Working Class Americans.* Chicago: Univ. of Chicago Press.
Mertz, Elizabeth (1988) "The Uses of History: Language, Ideology, and Law in the United States and South Africa," 22 *Law & Society Rev.* 661.
——— (1992) "Creative Acts of Translation," 4 *Yale J. of Law & Humanities* 165.
——— (1993) "Learning What to Ask: Metapragmatic Factors and Methodological Reification," in J. Lucy, ed., *Reflexive Language: Reported Speech and Metapragmatics.* Cambridge: Cambridge Univ. Press.
——— (1994a) "Legal Language: Pragmatics, Poetics, and Social Power," 23 *Annual Rev. of Anthropology* 435.
——— (1994b) "Legal Loci and Places in the Heart: Community and Identity in Sociolegal Studies," 28 *Law & Society Rev.* 971.
——— (forthcoming) "Linguistic Constructions of Difference and History in the U.S. Law School Classroom," in C. Greenhouse & D. Greenwood, eds., *Democracy and Difference.*
Mertz, Elizabeth, & Bernard Weissbourd (1985) "Rule Centrism vs. Legal Creativity," in E. Mertz & R. Parmentier, *Semiotic Mediation: Sociocultural and Psychological Perspectives.* New York: Academic Press.
Messick, Brinkley (1992) *The Calligraphic State: Textual Domination and History in a Muslim Society.* Berkeley: Univ. of California Press.
Minow, Martha (1990) *Making All the Difference.* Ithaca, NY: Cornell Univ. Press.
Montoya, Margaret (1994) "Mascaras, Trenzas, y Grenas: Un/masking the Self While Un/braiding Latina Stories and Legal Discourse," 17 *Harvard Women's Law J.* 185.
Moore, Henrietta L. (1988) *Feminism and Anthropology.* Minneapolis: Univ. of Minnesota Press.
Moore, Sally Falk (1986) *Social Facts and Fabrications: "Customary" Law on Kilimanjaro, 1880–1980.* Cambridge: Cambridge Univ. Press.
Mukhopadhyay, Carol, & Patricia Higgins (1988) "Anthropological Studies of Women's Status Revisited: 1977–1987," 17 *Annual Rev. of Anthropology* 461.
Olsen, Frances (1983) "The Family and the Market: A Study of Ideology and Legal Reform," 96 *Harvard Law Rev.* 1497.
Ortner, Sherry, & Harriet Whitehead (1981) *Sexual Meanings: The Cultural Construction of Gender and Sexuality.* Cambridge: Cambridge Univ. Press.
Postone, Moishe (1993) *Time, Labor, and Social Domination.* Cambridge: Cambridge Univ. Press.
Rosaldo, Michelle Z. (1980) "The Use and Abuse of Anthropology: Reflections on Feminism and Cross-cultural Understanding," 5 *Signs* 389.
Rosen, Lawrence (1989) *The Anthropology of Justice: Law as Culture in Islamic Society.* Cambridge: Cambridge Univ. Press.
Said, Edward (1978) *Orientalism.* New York: Pantheon.
——— (1983) *The World, The Text, and the Critic.* Cambridge, MA: Harvard Univ. Press.
Sarat, Austin (1990) "Off to Meet the Wizard: Beyond Validity and Reliability in the Search for a Post-empiricist Sociology of Law," 15 *Law & Social Inquiry* 155.
Sarat, Austin, & Thomas Kearns (1993) "Beyond the Great Divide: Forms of Scholarship and Everyday Life," in A. Sarat & T. Kearns, eds., *Law in Everyday Life.* Ann Arbor: Univ. of Michigan Press.
Schutz, Alfred (1970) *On Phenomenology and Social Relations*, ed. H. Wagner. Chicago: Univ. of Chicago Press.
Scott, James (1990) *Domination and the Arts of Resistance: Hidden Transcripts.* New Haven, CT: Yale Univ. Press.
——— (1985) *Weapons of the Weak: Everyday Forms of Peasant Resistance.* New Haven, CT: Yale Univ. Press.

Scott, Joan Wallach (1988) *Gender and the Politics of History.* New York: Columbia Univ. Press.

Silverstein, Michael (1993) "Metapragmatic Discourse and Metapragmatic Function," in J. Lucy, ed., *Reflexive Language: Reported Speech and Metapragmatics.* Cambridge: Cambridge Univ. Press.

——— (1979) "Language Structure and Linguistic Ideology," in P. Clyne, W. Hanks, & C. Hofbauer, eds., *The Elements: A Parasession on Linguistic Units and Levels.* Chicago: Chicago Linguistic Society.

Singer, Joseph (1984) "The Player and the Cards: Nihilism and Legal Theory," 94 *Yale Law J.* 1.

Solum, Lawrence (1987) "On the Indeterminacy Crisis: Critiquing Critical Dogma," 54 *Univ. of Chicago Law Rev.* 462.

Spivak, Gayatri (1985) "Subaltern Studies: Deconstructing Historiography," in R. Guha, ed., *Subaltern Studies IV: Writings on South Asian History and Society.* Delhi: Oxford Univ. Press.

Starr, June, & Jane Collier (1989) *History and Power in the Study of Law.* Ithaca, NY: Cornell Univ. Press.

Stigler, James, Richard Shweder, & Gilbert Herdt (1990) *Cultural Psychology: Essays on Comparative Human Development.* Cambridge: Cambridge Univ. Press.

Tomlins, Christopher (1993) *Law, Labor, and Ideology in the Early American Republic.* Cambridge: Cambridge Univ. Press.

Turner, Victor (1974) *Dramas, Fields, and Metaphors: Symbolic Action in Human Society.* Ithaca, NY: Cornell Univ. Press.

Wallerstein, Immanuel (1976) *The Modern World System.* New York: Academic Press.

Weber, Max (1947 [1925]) *The Theory of Social and Economic Organization.* New York: Free Press.

——— (1958 [1904–5]) *The Protestant Ethic and the Spirit of Capitalism,* trans. T. Parsons. New York: Charles Scribner's Sons.

Weissbourd, Bernard, & Elizabeth Mertz (1985) "Rule-centrism versus Legal Creativity: The Skewing of Legal Ideology through Language," 19 *Law & Society Rev.* 623.

White, James Boyd (1990) *Justice as Translation.* Chicago: Univ. of Chicago Press.

Williams, Patricia J. (1991) *The Alchemy of Race and Rights: Diary of a Law Professor.* Cambridge, MA: Harvard Univ. Press.

Yngvesson, Barbara (1993) *Virtuous Citizens, Disruptive Subjects: Order and Complaint in a New England Court.* New York: Routledge.