Review Essay

The Laws of Passion

Francesca Polletta[1]

Susan A. Bandes, ed., *The Passions of Law.* New York: New York University Press, 2000. xv + 300 pages. $35.00 cloth

As a sociologist, I have always been envious of legal scholars' license to prescribe. They not only elucidate the ideas and interests behind the law, the ways it is applied, and the problems it confronts. Unencumbered by social scientists' reticence, they also tell us how to do better. The scholars represented in *The Passions of Law* argue in no uncertain terms that feminists should not appeal to disgust in attacking pornography, that levying more stringent penalties on "hate crimes" unjustly punishes opinions, that we should admit vengefulness as a motive for punishment, and that a wrongdoer's remorse should mitigate his penalty. Of course, the authors describe, analyze, and explain as well as recommend, and they do so in shrewd and enlightening ways. They also occasionally disagree strongly with each other's prescriptions. Those who argue that disgust is bad, shaming is good, and vengefulness is meritorious are countered by those who argue the opposite.

But underpinning these disagreements are shared understandings of what an emotion is and of what a good legal order is—namely, one characterized by the full equality and mutual respect of all its citizens and by social order. In particular, the authors want a society in which "hierarchies based on race, ethnicity, gender, physical and mental handicap, sexual orientation and the like" (Kahan, p. 65) are eliminated, and in which women, racial and religious minorities, homosexuals, and the physi-

[1] Thanks to Edwin Amenta, Richard Blum, Frank Munger, and Helena Silverstein for valuable comments. Address correspondence to Francesca Polletta, Department of Sociology, Columbia University, 510 Fayerweather Hall, New York, NY 10027 (e-mail: fap8@columbia.edu).

Law & Society Review, Volume 35, Number 2 (2001)

cally disabled are protected from discrimination. They argue that legal claims and judgments based on certain emotions can advance these goals better than those based on other emotions or on no emotion at all. The authors have a liberal view of the law. Law should balance equality and freedom; legal reforms are made from the top down; and they are responsive to rational arguments for change. Punishment can be made fair. Goals of social order and social justice for those currently denied it are not at odds: People discriminated against can be protected by the law, and they can be better protected by pursuing reform by legal means.

What happens, though, when we look at the law from the point of view not of judges or liberal commentators but those the law is supposed to serve? How do ordinary Americans feel about the law? In particular, how do Americans disadvantaged by their race, class, gender, sexual orientation, or physical ability feel about the prospects for advancing their interests through legal remedies? In short, they feel entitled and empowered but also intimidated and victimized. They feel proud and self-reliant—but sometimes because they have forgone rather than exploited available legal remedies. In their confrontations with the law as individuals and as collective actors they use emotions strategically, but their very conceptions of what is strategic are based in part on the social epistemology of emotions they assume.[2]

I address these issues as a way to extend the arguments made in *The Passions of Law.* Paying fuller attention to the mix of perceptions and emotions that surround the law makes it clear that there are important obstacles to the goals the authors endorse. It casts doubt on the possibility of reforming law to repair relationships, an aim urged by several authors. It suggests that convincing judges to recognize and channel emotions rather than excise them from the law will likely be difficult given the fact that, much more than the authors acknowledge, judges are already involved in performing and eliciting emotions in the courtroom. It also points to conflicts among the *means* the authors here envisage for arriving at a more egalitarian society. For example, it is not clear that people act to remedy inequalities when their emotional relationship to the law is, as John Deigh urges in the volume, one of filial allegiance. The authors' goals of equality and social order may be in some tension, and nowhere more evidently than in the different emotional displays that each requires. Finally, such an inquiry pushes toward a more complex view of emotions as they relate to law, and to new lines of empirical inquiry.

[2] I take the term "social epistemology of emotions" from Gordon (1989).

The Passions of Law

The volume's contributors hold no truck with a view of law as rational because it is dispassionate. The practice of law is suffused with emotions, among them anger, indignation, disgust, vengefulness, shame, remorse, and romantic love. This does not mean that law is weakened by its passions. To the contrary, the authors argue that we cannot and should not bar the emotional from the legal. Of course, they point out, defining emotions is a notoriously difficult task. And there are differences among the authors not only in assessing what weight particular emotions should be given in legal judgments but also in explaining just how emotions "work," that is, how they relate to action and judgment. Nevertheless, the authors are on the same page in emphasizing the cognitive, ideational content of emotion. One can contrast this to what Elizabeth Spelman elsewhere refers to as the "Dumb View," in which emotions are contrasted to cognitive perceptions and defined in terms of the physical sensations they elicit, such as blushes or tremors (Spelman, quoted in Jaggar 1989). The alternative to the Dumb View sees emotions as based in cognitions and as culturally variable. We learn appropriate emotions from emotional scripts, Cheshire Calhoun writes in *The Passions of Law*, scripts which specify what should elicit a particular emotion (the loss of a parent in the case of grief, an insult in the case of indignation), what the physical symptoms of the emotion should be, what behavior we should engage in in response to the emotion, and what fantasies or patterns of thought we should associate with the emotion (e.g., an obsessive hunt for competitors in the case of jealousy). We *perform* our emotions as well as suffer them, and we assess our emotional experiences by how well they conform to the scripts. The scripts themselves come from cultural materials: fairy tales, movies, plays, sitcoms, advertising, and so on.

This view of emotions has several implications. For one thing, it means that social norms, stereotypes, hierarchies, and prejudices are likely to find expression in our ostensibly "natural" emotional reactions. Disgust, for example, seems one of the most visceral, unthinking responses. We recoil physically from something that disgusts us. But as Martha Nussbaum shows in her chapter (ch. 1), disgust is animated by an implicit *belief* that we are rendered more animal and less human by our contact with animal secretions. Most of us will not eat a cockroach even if it is sealed in a plastic capsule and we are assured that we will eliminate the capsule intact. We will not eat soup out of a sterilized bedpan. We find disgusting a piece of chocolate shaped to resemble dog feces. Disgust polices the boundary between animals and us and between life and death. What disgusts us, though, is not only cockroaches and feces. Throughout history, the proper-

ties of disgust have been projected onto groups of people deemed inferior in order to distinguish them from superior ones. Bad smells, sliminess, decay, and foulness have been associated with Jews, women, untouchables, lower-class people, and homosexuals. For that reason, Nussbaum argues adamantly against those legal writers who would see in disgust a valuable expression of collective approbation. To think that disgust can form the basis for rational legal judgment without rendering these vulnerable groups even more vulnerable is dangerously naïve, Nussbaum argues. To the contrary, the best hope for creating a healthy democracy lies in stripping disgust as much as possible from our social relations.

The socially constructed character of emotions also means that social stereotypes shape our expectations of how people will respond emotionally to legal actions. We act on the basis of the behavioral logics of emotion we impute to others. Judicial decisionmakers assume, for example, that people forced to drive with a "Driving Under the Influence" sign will be ashamed enough to refrain from driving drunk. That folk psychology may be wrong. As Toni Massaro points out (ch. 3), what psychologists know about shame suggests instead that different things trigger shame in people and that they react behaviorally to feelings of shame in different ways. For every person who remorsefully renounces the disapproved behavior, another externalizes blame and lashes out in anger. William Miller and Cheshire Calhoun similarly expose the behavioral logics of emotion that inform law and adjudication. Miller (ch. 9) elucidates a modern "jurisprudence of fear" evident in a military statute governing cowardice. Calhoun (ch. 8) shows that judges have accepted flimsy legal arguments against homosexual marriage because they, like much of the public, assume that gays and lesbians are incapable of romantic love. Our emotional scripts reserve such bonds of affection for heterosexual couples. Accordingly, homosexual unions cannot be perceived as anything but narcissistic, competitive, and unworthy of being legitimated as marriage.

A view of emotions as socially constructed also suggests, however, that destructive emotions can be *de*constructed and *re*constructed. Calhoun warns us not to view the task as an easy one. But several of the authors here see "rational kernels" in emotions that are often treated as uncivilized or untrustworthy, and see the potential for educating such emotions so as to foster rational action and judgment. The desire for vengeance, says Robert Solomon, "need not be dangerous or disruptive, need not be violent, need not be unreasonable, and need not be opposed to law and constraint" (p. 129). Vengefulness seeks not harm but justified and measured punishment. It seeks balance in relationships, whether between individuals or between individual and community, and seeks to cleanse something that has become polluted.

"Putting the world back in order" need not involve harm to the offender, Solomon points out, and the cleansing of pollution can be achieved by reinstating the polluted citizen to his prior status.

In his examination of how remorse is treated in the popular film about a death row inmate *Dead Man Walking*, Austin Sarat (ch. 6) argues that even though we Americans worry about the genuineness of expressions of remorse, we do see a wrongdoer's contrition as important. By assuming responsibility for what she has done, affirming her and our autonomy, and taking on the victim's pain, the remorseful wrongdoer opens the possibility of eventual reconciliation. In other words, emotions—those of the people being judged and those of jurors and judges—should be a part of judgment. Far from precluding rational action, emotions may facilitate rational response. "[E]motion focuses attention, crystallizes evaluation, and prompts action in circumstances in which reflection would be interminable, unfocused, and indecisive," says Richard Posner (pp. 310–11). "[W]e need some kinds of passion for good decisionmaking," Samuel Pillsbury concludes his examination of the emotional lives of the jurists Oliver Wendell Holmes Jr. and John Marshall Harlan (p. 351). The two men had profoundly different conceptions of jurisprudence but were similarly inspired by what Pillsbury calls a "faith in justice."

To be sure, people can be carried away by emotion. Martha Minow (ch. 10) describes the "bloodlust" that has sometimes overwhelmed states' efforts to prosecute war criminals, initiating new cycles of revenge rather than an end to the violence. With respect to disgust, Toni Massaro points out, "The judge's disgust could imply, among other things, that the community has official license to act on its disgust, which could inspire its members to be far more fierce and punitive to the offender than they might be if responding individually" (pp. 98–99). The danger of emotions unleashed is that of vigilantism and the lynch mob. For that reason, the task of tempering, channeling, "sublimat[ing]," and "tutor[ing]" (Solomon p. 124, p. 143) emotional expressions becomes paramount. Law tends to be "uncomfortable with feelings," says Pillsbury. "Anglo-American legal culture has long held that law is good to the extent that it comes from detached, principled—and dispassionate—decisionmakers. Thus that quintessential figure of American justice, the judge, dresses in a somber black robe, sits at a high bench, and employs universal principles of reason to surmount the self-interested passions of the litigants" (p. 330). This stance is counterproductive. Rather than seeking to police the courtroom of emotional outbursts, judges should help to expand the menu of emotions that can legitimately be taken into account in decisionmaking.

In particular, the authors in *The Passions of Law* argue, judges should treat the emotions that are elicited in and through trials as material for repairing sundered relationships. I noted that for

Solomon the desire for vengeance actually reflects a desire to make whole again a social order that has been breached. Danielle Allen (ch. 7) finds a commitment to restoring broken relations among ancient Greeks' view of punishment and compares it to our own muddled view of punishment as variously reformative, deterrent, or retributive. What made possible the Greek conception of punishment was recognition that anger by a victim toward the wrongdoer was legitimate and a problem in need of a political solution. In our society, by contrast, we simply exclude the wrongdoer from the community; our anger remains unresolved. We need to think much more about what is necessary to "restor[e] conditions of peace and friendship" (p. 205), Allen concludes, and aim punishment at repairing those relations. Martha Minow draws on the evidence of reconciliation commissions held in the wake of state-sanctioned human rights atrocities and on alternative dispute resolution to argue for a form of justice aimed at helping disputing parties build new relationships with each other. Judicial decisionmakers can use law to inspire an expanded range of emotions: not just vengeance but also stoicism, pride, anger, hope, and the desire for reconciliation. John Deigh (ch. 11) argues that people obey the law because of an emotional bond similar to that between parent and child. The practice of law should nurture that kind of filial allegiance.

Disadvantaged groups, for their part, can use emotions to advance their interests. They can appeal to common emotions to secure support for their cause. And they can express uncommon or discomfiting emotions to provoke, challenge, and secure a hearing for their cause. Against Martha Nussbaum's attack on disgust as the basis for legal action, Dan Kahan (ch. 2) urges disadvantaged groups not to surrender appeals to disgust as a strategic resource. Why should our side give up the power of disgust if their side will not? Gays can encourage disgust for the hate-monger; women, disgust for the wife-abuser. In a kind of emotional jujitsu, we can appropriate disgust and turn it around: It is those who accuse us of being disgusting who are themselves disgusting. Cheshire Calhoun (ch. 8) makes a different kind of argument. Drawing on Alison Jaggar's notion of "outlaw emotions"—emotions that are prohibited or not recognized in particular groups—she points to the disruptive power of expressing such emotions. The woman who publicly voices her fear and anger in being subjected to sexual banter begins to develop a critical social theory. The gay and lesbian activists who fight for recognition of same-sex marriage challenge existing sexual hierarchies by insisting on their competency to experience romantic love.

The arguments I have just rehearsed are powerful ones. There is a great deal that is simultaneously sensible and visionary about them. They do not call for unbuttoned expressions of emotion, whether mercy or vengefulness, as a way to solve social

problems. If they are critical of penalties that seek to banish wrongdoers from the community of the law-abiding, they do not flinch from recognizing the need to punish and the horror of wrongdoers' offenses. They are not excessively optimistic about disadvantaged groups' capacity to turn the expression of outlaw emotions into real change; and they worry about what happens when disadvantaged groups are given the opportunity to vent their (entirely legitimate) anger. Yet, they envision a wholesale transformation of how and why we punish, and how and why we make and adjudicate legal claims.

But Where Are Law's Subjects?

We do not learn much in this book about how ordinary people feel about the law. Robert Solomon talks about philosophers' failure to consider the "brutal opinions of the hoi polloi" (p. 125) in his brief for vengefulness, but his own consideration of their opinions is largely speculative. Other authors talk about a societal "we," but again, there is no suggestion that the authors have actually canvassed Americans on how they feel about law and punishment. For the most part, rather, they view law from the point of view of judicial decisionmakers. They ask how punishment should be justified and what it should aim to do, and what kinds of arguments should be admitted into decisionmaking.

There is nothing wrong with such a perspective. It persuades by resonating with what we know about our own "brutal opinions" and our more considered convictions. It also persuades by revealing options that we had not thought of, alternative possibilities embedded in familiar categories. But it does have limitations. For one thing, it assumes a great deal about the emotional experiences ordinary people have in their encounters with the law. How do people, especially members of the disadvantaged groups that the authors see as in need of legal protection, feel about judges, justice, and rights claims? Is their relationship to law the filial allegiance that John Deigh describes? Do complainants struggle to bring emotional expressions into a courtroom that struggles to keep them out? Are they better served by performing the kind of emotional reversal with respect to destructive emotions that Kahan recommends—turning disgust against those who would turn it on them—or by striving to excise such freighted emotions from a legal lexicon?

Consider the working-class plaintiffs in a Northeastern city that anthropologist Sally Engle Merry (1990) studied. For them, law was an emotional battleground. They went to court incensed about a violent boyfriend, noisy tenants, the disrespectful children of a neighbor, a threatening ex-spouse. They felt entitled to legal remedy. But court clerks, magistrates, and judges treated

these disputes between longtime acquaintances with mutual fault and blame and chronic in character as a drain on the court's resources and as not properly legal. Their emotionalism made them "particularly undesirable," Merry observes (1990:15). A prosecutor described her unwillingness to bring such "garbage cases" to trial. The parties were likely to start shouting at each other, she worried, and the judge would say to her, "Why did you bring this crap in here?" (Merry 1990:14). To shift such cases away from the courtroom toward formal mediation or some resolution outside the legal system altogether, court workers tried to redefine them as moral or therapeutic rather than as legal. Complainants should "learn to get along." A woman should recognize that she was "bigger" than her antagonist and desist from pursuing her case. Each time one man presented "evidence" for his complaint against his neighbor, Merry writes, "he was encouraged to think in terms of friendship, neighborly obligation, and the responsibilities of parents; his documents and pictures were ignored" (p. 121).

But law's subjects fought back. They refused the moral and therapeutic discourses imposed on their problems. They insisted that their problems with their neighbors, boyfriends, or children were legal in nature. They refused to go to mediation. When their case was thrown out for lack of probable cause, they filed new charges on a different incident. In mediation, they continued to use a legal discourse or refused to settle. In a second kind of resistance, plaintiffs upped the emotional ante. Rather than accept the emotional tone set by court personnel, one of soothing blandishment, conciliation, and calm logic, they expressed hot emotions: rage, pain, righteous disbelief. What they were battling was *not*, pace Merry's own conclusion, the court's effort to excise emotion altogether. She argues, "Courts are clearly one of those settings in which rational discussion is valued above emotional discussion. Emotion in court is troublesome, out of place" (p. 149). Instead, clerks in the lower courts, and prosecutors and defense attorneys if the case progresses to a trial, see their mandate as one of "cleansing problems of their emotionally chaotic elements and reducing them to cold, rational issues. If the parties shout in anger or burst into tears, the judge will not have to hear it; it will take place in the halls of the courthouse. Indeed, it is likely that the clerk-magistrate has already heard the tears and rage and has tried to calm and deflect these feelings in his office" (p. 148). What is striking in the interactions Merry describes, however, is court personnel's efforts not to excise emotions from plaintiff's presentations but to tame them, redescribe them, transform them into acceptable emotional performances. Both the moral and therapeutic discourses on which court personnel depend operate by eliciting particular emotions in those to whom they are addressed. When a clerk urges a complainant to

replace rage with sympathy for her opponent, or when a magistrate lectures battling neighbors on the need to get along, each uses selectively soothing, supportive, and authoritarian tones to elicit the appropriate responses. When a court official gets the parties to agree to mediation, he relocates emotional expression to a different arena.[3]

This does not mean that Merry is wrong when she says that people can subvert the court's control by being resolutely emotional. Resistant complainants cling to their hot emotions. They refuse to be pacified, to express the right emotions in the right places. Merry traces the court history of an 18-year-old woman whose relationships with her husband and sister-in-law were stormy. The escalating conflict involved restraining orders taken out by the woman and sister-in-law against each other and by the woman against her husband, a charge of theft filed by the woman against her husband, a charge filed with the Child Protection Services by her husband against her on the grounds of her unfitness as a mother, and charges of assault, battery, and trespass made against the woman by her sister-in-law. In the process, the woman was learning how to use the court to her advantage. In one of her early appearances before the judge, she doubted that the judge would give her the restraining order she sought against her sister-in-law. Angry, she burst into tears and marched out of the courtroom. She was sent back in by the court officer and told to apologize, but since the judge then gave her the restraining order, she concluded that her tears had swayed him. In subsequent appearances, she resisted mediation, reasoning that she was better off in court, "especially if I turned on the waterworks" (p. 168).

If displays of unrestrained emotion got this court-user some of what she wanted, they also secured her a reputation as "crazy" and the case as "garbage." Thus, says Merry, "the garbage case is a site of struggle: the court endeavors to manage chaos, to contain emotion, to blunt the impression of injustice by providing some service," although not necessarily the one the plaintiff wants, "while the plaintiff fights for recognition of his problem as he or she experiences it and for the legal relief to which he or she feels entitled. The court tries to manage and eject the case while still providing some form of justice. The plaintiff, as she resists conversion of the case to moral discourse, discovers how to use the court for her own purposes" (p. 171). In both modes of resistance, people refused to separate a legal discourse from an emotional one. By insisting that their cases were legal ones, they

[3] Merry's failure to recognize that court personnel are using emotions rather than seeking to prohibit them may stem from her ambiguity about whether the moral and therapeutic discourses she describes are *alternatives* to a legal discourse or are *forms* of legal discourse. I argue that they are the latter. See McCann and March's (1995) similar critique.

resisted the court's efforts to delegitimate their anger and pains as "personal" or "therapeutic." And by yelling or crying in court, they refused to see the court as a realm of law, *not* emotion. The court, for its part, was uncomfortable with loud, confrontational emotion, but certainly not unwilling to speak the language of emotion itself. Judges and clerks sought to elicit feelings of shame, responsibility, respect for the moral authority of the court, and optimism about the possibilities of resolving a long-standing dispute. They expressed variously irritation, exasperation, bother, condescension, and sympathy.

In her Introduction to *The Passions of Law*, Susan Bandes makes an important point that is not much taken up by the essays that follow. When we look for the emotions that suffuse the practice of law, Bandes argues, we should pay attention not only to hot emotions like rage and remorse but also to emotions so taken for granted as to be unnoticed. "[T]he passion for predictability, the zeal to prosecute, and mechanisms like distancing, repressing, and isolating one's feelings from one's thought processes are the emotional stances that have always driven mainstream legal thought. As a result, they avoid the stigma of emotionalism. That derogatory term is reserved for the 'soft emotions': compassion, caring, mercy" (p. 11). Most of the essays in *The Passions of Law* acknowledge that judges' decisions are colored by their emotions; Samuel Pillsbury (ch. 13), for example, refers to judicial decisionmakers' "passion for justice." But neither Pillsbury nor any of the other authors scrutinize the varieties, dynamics, locations, and effects of the passions that typically inform judicial decisionmaking.

Consider, in contrast, the studies of courtroom interaction by Carol Greenhouse, Barbara Yngvesson, and David Engel (1994). They found that court personnel and regular spectators regularly "rolled their eyes in mock despair, laughing silently at the lack of self-control and endless family trouble of those who sought assistance from the court in ordering their lives" (p. 140). Personnel and spectators were performing emotionally for each other, signaling the difference between themselves—people who upheld the law—and those they characterized as "brainless" and socially disorganized. The division between the conflict-avoiding and the conflict-ridden was also between community "insiders" and "outsiders," since complainants in the lower courts were usually recent working-class arrivals to the town. Along with Merry's, these studies suggest not only that we abandon the notion that law is unemotional but also that we question the idea that the law is "uncomfortable" with emotions. In some ways, the legal personnel in these accounts were skilled in performing emotions.

Merry's (1990) account should also temper our faith in the possibility of a jurisprudence that is aimed at repairing relationships rather than permanently excluding the wrongdoer. Re-

member that that kind of emotional repair is advocated by several essayists in *The Passions of Law.* But in Merry's study, court personnel actively resisted using the law to repair relationships. Precisely what made claims "garbage cases" was the fact that they stemmed from chronic problems in relationships rather than properly "public" conflicts between strangers. So, knowing something about how courtroom interactions tend to unfold in practice should make us less certain in our view of how judges handle emotional language and less optimistic about how easy it will be to get them to focus on relationships rather than on offenses.

There is another point. Merry's study does attest to the power of disruptive emotions to secure complainants what they want. By expressing outlaw emotions, by crying, yelling, and whining, the complainants were able to elicit what they saw as concessions from an unyielding court. In the process, however, they also thereby sealed their fate as "garbage cases," to be dispensed with as quickly as possible. Emotive complainants battled a court system that sought to silence them, and the battle was a real one. But the resources available to each side were unequal (see also Yngvesson 1993). That raises a larger set of questions. Do the disadvantaged ever win? What role does their expression of emotions, whether sympathy-eliciting or provocative ones, play in winning? What role does their emotional experience of the law play in what *counts* as winning? These questions lead us to a cluster of studies that have examined Americans' everyday struggles with the law.

Resisting the Law

In contrast to the top-down approach that has characterized much legal scholarship and the essays in *The Passions of Law,* a collection of ethnographies and interview-based studies has refused a view of law as consisting exclusively of formal rules and procedures (see, among others, Ewick & Silbey 1998; Merry 1990; Yngvesson 1993; Greenhouse et al. 1994; Sarat 1990; White 1990; Engel & Munger 1996). Law is "all over," they say (Sarat 1990): Law's meanings are negotiated in countless interactions between court personnel and citizens, among court personnel, and outside legal settings altogether. Scholars associated with this approach tend to use the term "legal consciousness" to denote people's perceptions, evaluations, interpretations, hunches, and feelings about the law. People's consciousness of the law is at once sophisticated and contradictory, they find. People experience the law as arbitrary and capricious, stacked against them, and immune to their pleas for understanding or sympathy. At the same time, they see openings to get what they need. They are resigned in some ways, resistant in others.

The latter has been of particular interest. Against a view of people as deludedly acquiescent to their domination, several writers in this vein have shown law's subjects operating creatively to secure what they can from an unyielding system. They selectively ignore, misinterpret, or disobey the law in order to exercise autonomy and dignity and to act on the values they hold important. They pretend not to understand what is going on when they do understand it; they manipulate and irritate court personnel; and they disrupt the functioning of ordinary court procedure. In subsequent accounts of their resistance, they express emotions of pride and illicit pleasure. So, for example, Ewick and Silbey (1998) tell the story of Millie Simpson, an African American domestic worker who was arrested for leaving the scene of an accident and driving an uninsured vehicle. It turned out that a friend of her son's who was staying with them had taken the car and returned it after having rear-ended another car, without Millie even realizing it had been missing. As a result of a series of miscommunications with judges and the failure of her court-appointed attorney to appear, she was found guilty, fined, and required to perform community service. The case was eventually reopened through the intervention of her wealthy employers, and she was cleared of guilt. But in relating the story to the interviewers, she "paused, laughed, and informed us conspiratorially" that when arranging for the community service she was required to perform she had suggested to the court officer that she work at a church—where she had been volunteering for years (p. 12). "Millie took immense pleasure in the ruse she played on the court. While she was relatively disengaged in the legal contestation orchestrated by [her employers] the Richardses and her attorney, Millie Simpson savored her private victory won within the cracks of the institution" (p. 13).

Other authors document similar ruses, evasions, and sleights of hand. This kind of resistance does not challenge or question authority directly. Instead, it remakes the situation as it stands, say Ewick and Silbey, using available resources to gain or retain some power against a much more powerful antagonist. The significance of such acts lies in the momentary experience of autonomy and dignity they permit individuals and in their demonstration to others of the system's vulnerability. Emphasizing the *pleasure* people derive from even fleeting reversals of power, researchers frequently describe interviewees laughing in telling stories they have told many times before. For ordinary Americans, this research suggests, the main experience of the law is one of frustration, resignation, intimidation, and confusion, but with moments of creative self-assertion.

This line of argument has come under criticism. To what extent are such exercises of autonomy or pleasure in guile fleeting and limited in their effect (Handler 1992; McCann & March

1995)? Does resistance ever translate into more organized, larger-scale, and enduring efforts to make change? Or, to the contrary, may it actually discourage effective challenge by convincing people they are changing something when, for just a moment, they disrupt the order of the court? McCann and March (1995) argue that researchers have waffled on the concept of resistance, seeing it as an unmitigatedly good thing but failing to assess whether anything disadvantaged people do to breach norms in court is good, and failing to assess whether their breaches in fact serve them individually or serve the groups of which they are members.

One might also ask how typical such resistance is. In her interviews with victims of discrimination, Kristin Bumiller (1988) also found people taking pride and satisfaction in their resourcefulness. But such emotions came from their decision *not* to pursue legal remedies (and in this respect, they were like the vast majority of victims of discrimination, who overwhelmingly do not choose to press claims). They were unwilling to take on the role of the victim, Bumiller argues. By making a formal complaint, they risked losing control of a hostile situation. They were unlikely to win in any case, they felt, and would be forced to argue their worthiness before a far more powerful opponent. They saw in law the possibility neither for winning power nor for asserting their dignity. They took pleasure instead in their capacity to ignore a harassing employer or to remain unbowed by an unjust dismissal. Legal interactions did nothing to contribute to their sense of agency.[4]

One answer to these criticisms is to show that individual acts of resistance *do* contribute to more collective, organized, enduring, and explicitly political challenges. No one has yet done that. However, Ewick and Silbey (1998) go further than previous accounts by suggesting one of the means by which individual actions may contribute to collective ones, namely, in telling stories. In their interviews with four hundred people about their experiences of the law, Ewick and Silbey were struck by the narrative coherence of interviewees' accounts of resistance and of the pleasure they took in recounting them. "This is my favorite story," said one; others demonstrated their pleasure in winks, smiles, and laughter. The practiced way in which they told the stories suggested that they had been told before, to friends, family, acquaintances, and coworkers. Interestingly, Ewick and Silbey saw the same narrative integrity in people's accounts of humiliations they had endured in their encounters with the law, whether of being searched inappropriately by police or illegitimately silenced by a judge.

[4] Greenhouse et al. (1994) similarly found that "narratives of avoidance" of the law, told with satisfaction and pride, were common in the communities they studied. See also Engel & Munger (1996).

> [S]haring stories of resistance may be one means through which individual encounters become the basis of collective action. . . . Relying on humor and bravado, these stories recount and celebrate either a reversal or an exposure of power. The fact that these tales are offered with a smug pride or moral outrage, as opposed to shame or guilt, indicates that behind the telling of the trick or report of humiliation lies a moral claim, if not about justice and the possibilities of achieving it, then about power and the possibilities of evading it. (Ewick & Silbey 1998:220)

The emotions that are displayed in the story may be even more important than Ewick and Silbey indicate. Stories work in part through the emotions they elicit in the listener: a giddy sense of shared triumph from besting a legal opponent, or indignation at the humiliation to which the hero of the story has been subjected. The stories people tell may contribute to collective action but not by persuading their listeners that the system is more vulnerable to change than they thought. Instead, the stories of triumph show them that resistance can be pleasurable, and the stories of humiliation elicit in them the kind of indignation that compels participation. Looking at why people participate in protest that is already underway may shed some light on this process. We know that people do not join or launch collective actions simply because they perceive that new opportunities have opened up. Even if they do see such opportunities, why should they subject themselves to possible repercussions when they can free ride on the effort of others? One answer is that they are prodded to participate by their emotional investment in the issue or by their solidaristic commitment to those already in the movement (see, e.g., McAdam & Paulsen 1993).

Elsewhere, I have argued that stories are important in stimulating those emotions in part because they are organized around emotional transformations (Polletta 2001). For example, in the narratives of the 1960 student sit-ins that circulated informally among southern black students before any formal organization was established, a key transformation centered on students' political "apathy." In the stories students told, the only thing that distinguished those who were laying their bodies on the line from those who were lying around in their dorm rooms was that the former had come to recognize that their apathy was nothing more than repressed political desire. It was not that they were apathetic; it was that they were "weary with waiting." In that sense, said students, "we had been ready to do something like this for a long time" (quoted in Walzer 1960:114). Indeed, "we have been planning it all our lives" (Fuller 1960:13). Rather than exhorting students to shake off their apathy, an injunction that most students would probably associate with the familiar calls to vote for student council candidates or to join the debate team,

the sit-in narrative endowed apathy with a transformative telos. The story encouraged action by providing an emotional propaedeutic. It helped students to reinterpret their political noninvolvement as repressed political aspirations and urged them to act to release those aspirations. Similarly, in the stories that people tell of their resistance or their humiliation before the law, the emotional denouement is the punchline: the pleasure of besting the law, the indignation of being bested by it.[5]

What, then, is the relation among emotions, law, and equality? Legal subjects' expressed *feelings* about the law tell us more than their beliefs about the law alone. This is in part because emotions are so closely connected to normative evaluations. Emotions provide the experiential basis for values; we know how we rate something based on the emotions it inspires. Indeed, many of the words we use to denote normative values are based on emotions: "admirable," "desirable," "contemptible," "respectable," and so on (Jaggar 1989). In addition, however, even if theorists of emotion reject the opposition between reason and emotion, people in their everyday lives tend to operate as if the two were opposed. We refer to feelings about something to describe strong reactions but often also less easily explained ones whose causes we do not entirely understand or credit as legitimate. We see our emotions as overwhelming us rather than as being consciously or deliberately chosen, and as coming from a deeper, truer, more fundamental part of ourselves than our rational or strategic responses. We "reveal" our emotional reactions or "betray" them, as if they are who we really are in spite of our routine efforts to conceal them. When people choose to talk about the law in terms of their feelings, they may be communicating their experience of powerlessness before the institution. They may use an emotional lexicon to convey their respect for an institution charged with so important a task as preserving order and justice. But they may also talk about feelings because they lack the ideological vocabulary to describe their experience of domination by an institution that is supposed to protect them. Like resistance, people's revealed feelings about the law may *penetrate* their relation to law without *explaining* it in a way that would enable them to master it.

[5] Frank Munger offers another take on the problem: It is not so much that people are "subverting" authoritative meanings of the law; instead, they see the real, authoritative meanings of the law as being different from—betrayed by—legal authorities. The sources of resistance lie in the dialogical qualities of legal language (Munger, personal communication). See Marc Steinberg's (1999) fascinating effort to show how dialogical processes open up possibilities for overt challenge.

Emotions and Mobilization

Sometimes, of course, members of disadvantaged groups confront the law as organized collective actors. A woman who has been passed over for a promotion signs on to a sex discrimination suit brought by the Equal Employment Opportunity Commission. Environmental activists sue a zoning board for granting a variance to a developer in a wetlands area. Homeless people and their advocates appear in court to challenge Workfare regulations. Do their emotional experiences of the law further their interests or hamper them? Can they "perform" emotions so as to elicit sympathy, respect, agreement, or the fear that leads more powerful actors to make concessions? Can they employ the emotional jujitsu that Dan Kahan recommends, turning the feelings often expressed toward them against those who would deny them their rights? Can they challenge the emotional prohibitions and the emotional incompetencies that are imputed to disadvantaged groups as a way to undermine the hierarchies they sustain? In sum, can they use emotions strategically? Again, the literature on the topic is sparse. No scholar that I know of has made emotions the centerpiece of his or her study of legal mobilization. What I have done here, as earlier, is to tease out of lines of arguments and empirical materials tentative findings about the emotional satisfactions and frustrations that accompany collective actors' interactions with legal institutions.[6]

Scholars associated with Critical Legal Studies (CLS) have made some of the sharpest criticisms of rights claimsmaking. Rights' indeterminacy allows judicial decisionmakers to operate on the basis of idiosyncratic and ideological preferences, they argue, and it allows unmeritorious opponents of progressive interests to invoke legal rights with equal clout (Tushnet 1984; Freeman 1988; Kelman 1987). Rights' individualist and abstract character makes it difficult to warrant *group* claims and to address concrete injustices. Thinking in terms of rights, moreover, substitutes a mystified notion of human sociability for a more authentic form of unalienated connection (Gabel & Kennedy 1983–84). In this respect, the deficits of rights are specifically emotional ones. Rights, says Peter Gabel, are a substitute for the human

[6] A number of scholars have begun to examine the place of emotions in movements that are organized around rights claims, however, even if not focused on litigation. In addition to those discussed below, see the essays in Goodwin et al. (2001). Other authors have described emotion-talk in rights campaigns in the context of "framing strategies." See, e.g., Coltrane & Hickman (1992). In his study of legal mobilization on behalf of the poor, Mark Kessler found that many poverty lawyers *wanted* to bring the class action suits that would further a social reform agenda but were discouraged from doing so by groups invested in the status quo. While lawyers were sometimes subjected to outright threats of violence, perhaps more effectively demobilizing was the derision with which judges and local members of the bar treated them, calling them "crusaders," "social engineers," and "troublemakers" (1980:135). Lawyers' emotional experience of legal mobilization thus proved an obstacle to their efforts on behalf of the disadvantaged.

bonds that we desire but rarely experience in our adult lives. We believe that as rights-bearing subjects we have that kind of connection with the state, but we thus make the state into something real, something that can grant us our selfhood, rather than recognizing it as a "passivizing illusion" (Gabel & Kennedy 1983–84:26).[7]

Groups who band together to fight for their rights—and Gabel refers variously to the civil rights movement, the women's movement, and the labor movement—often *do* experience moments of unalienated connection as they turn a stigmatized identity into a source of pride and agency. But these experiences are temporary. Whether they win or lose their bid for rights, they invariably begin to see the state as the source of whatever power they have. Participants begin to distrust each other and to devalue the affective solidarities they had created among themselves—to devalue what was actually a tremendous source of power. The answer, say CLS writers, is not to give up rights claims altogether, but to prevent them from absorbing, moderating, substituting for, or otherwise undermining the aims of the movement. Instead of the dry, dispassionate formalism of legal claimsmaking, they recommend informality in legal interactions, an effort to make affective connections across the divide of alienated legal relations, and a determination to heighten the movement's "evocative appeal" instead of depending on (indeterminate) rights (Gabel & Kennedy 1983–84; Gabel 1984).

The CLS critique of rights has spurred countercritiques (see, e.g., Schneider 1986; Williams 1987; Polletta 2000; Hunt 1993). I want to highlight the emotional experiences of rights claimsmaking that rights' defenders have drawn attention to in rejecting the CLS position. Movement groups derive dignity, autonomy, solidarity, and hope from rights struggles, these scholars argue (see, among others, Brigham 1987; Schneider 1986; Villmoare 1991; White 1987–88). Dignity and autonomy come not just from the character of activists' relations with each other, however, but also from their relations with participants in a long tradition of struggle. Scholars may not have made the point explicit enough, but the collective identities that Gabel sees as providing an experience of unalienated connection are as much imagined as experienced. For African Americans, for women, for workers, and possibly for other groups (more and less at different times and places), battling for rights emotionally connects the group today

[7] That the connection people desire with the state is an emotional one is evident, Gabel says, in the fact that we cannot be easily disabused of it. "[I]t seems quite possible for a believer to be persuaded that 'the law is indeterminate' and that 'everything is political' without ever abandoning his longing to defer to a senior partner, or the awe that he feels in the presence of a judge" (Gabel 1984:1586).

to a "people" whose struggle neither began nor will end with this particular fight.[8]

As CLS writers argue, rights claimants seek to be recognized, and that recognition is a source of pride. But it does not come only from the state, and this is a second point that CLS writers have missed. In his study of litigation campaigns for wage equity, Michael McCann (1994) found that whether or not activists won a favorable court ruling, the possibility of such a victory often prompted employers to begin the contract negotiations with workers that they had resisted. Under the threat that judges might impose a new wage structure, employers recognized workers' rights. In my own analysis of rights-talk in the southern civil rights movement (Polletta 2000), I was struck by the extent to which local activists saw "first-class citizenship," an aim they frequently invoked, as a status garnered in and through the struggle. "Although we've suffered greatly, I feel that we have not suffered in vain. I am determined to become a first-class citizen," one resident wrote.[9] Her suffering was vindicated by her determination—had already *been* vindicated—not by the eventual possibility that she would be able to vote without fear of reprisal. First-class citizenship, and the pride and satisfaction that accompanied it, was an identity in the making, something claimed now, rather than a means to an end. Such an identity required its recognition, but recognition not necessarily from the state, which was outright hostile at the local level and unreliable at the national level. Instead, recognition of first-class citizenship came from kinfolk, congregation, community, and movement.

Finally, critics of the CLS position have taken issue with its solution to the alienated character of rights, namely that progressive groups treat legal interactions more informally and that they appeal to empathy rather than to legal justiciability in litigation. For people who have been without power, these writers point out, appeals to formal procedures and standards are not so easily dismissed. Informality, like tradition and discretion, is often just the gentler face of domination (Rollins 1985; Merry 1990).[10]

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[8] For African Americans, Patricia Williams writes, "[T]he experience of rights-assertion has been one of both solidarity and freedom, of empowerment of an internal and very personal sort; it has been a process of finding the self. The individual and unifying cultural memory of black people is the helplessness, the uncontrollability of living under slavery. I grew up living in the past: the future, some versions of which had only the sheerest possibility of happening, was treated with the respect of the already happened" (1987:89–90). See also Crenshaw (1988) and Evans (1993) on the place of rights struggles in an enduring black women's "outlaw culture," and Rhode (1990) and Villmoare (1991) on such struggles' contribution to building "interpretive communities."

[9] Mrs. Fannie Lou Hamer field report, Ruleville, Mississippi, Southern Regional Council Papers Microfilm, Reel 179, #1338–40, 30 Sept. 1963.

[10] See also Patricia Williams's (1987) account of her and Peter Gabel's very different experiences in looking for apartments in New York City, in which Gabel, a white man, sought informality in his transaction, and she, a black woman, sought formality.

I found this to be the case in affidavits filed in the early 1960s by black Southerners whose efforts to register or plans to desegregate local schools had become known to local whites. Clear threats by whites to black residents' jobs, livelihoods, and safety were couched in the language of paternalism, fealty, and indeed, *friendship*. Cato Lee of Lowndesboro, Alabama, was summoned to the home of a white man to whom he owed money when it became known that Lee planned to enroll his children in the all-white high school. "He said that I haven't violated the law but there might be some trouble at school in September if my two children go. He said that he was just trying to help me since he's been knowing my Daddy a long time. He told me that if I didn't withdraw my children's names I might lose some friendship over in my hometown." John Hunter of Hayneville, Alabama, was visited by a white neighbor who inquired about his crop, then asked, "John, haven't I been your friend?" Hunter responded, "Yes, as far as I know." The neighbor went on to advise, "John, the best thing for you to do is to go up there and take [your son's] name off of those [school lists], because these white folks don't like it at all."[11]

Critics of the CLS position do not deny that the formality of the courtroom can buttress the state's authority and inscrutability at the same time as it discourages expressions of compassion and empathy. But they remind us that formality can also make visible exploitative practices that were previously protected by their status as traditional, informal, personal, or idiosyncratic (see also Massaro 1989 on empathy). Along with the emotional connection groups experience in rights claimsmaking and the recognition they secure from multiple sources, the formality of rights claimsmaking is in some ways a resource for disadvantaged groups rather than a liability. Such groups' experience of rights claimsmaking cannot, *pace* CLS writers, be reduced to an enervating dependence on the state.

That may not be the whole story, though. Does relying on a rights strategy produce emotional experiences or require emotional displays that are unproductive in other ways? In his study of the animal rights movement, sociologist Julian Groves found a strong concern among activists to distinguish themselves from those they dismissed as "animal lovers" or "cat-and-dog people" (1995; 2001). Activists refused to appeal to the public's empathy for the plight of abused animals. Instead, they talked about animal "rights" in as dispassionate a tone as possible. The coordinator of a movement chapter explained to listeners of a radio talk show:

[11] Affidavit of Cato Lee, Lowndesboro, Alabama, Student Nonviolent Coordinating Committee Papers (SNCC) Microfilm, Reel 18, #703, July 1965; affidavit of Mr. John Hunter, Hayneville, Alabama, SNCC Microfilm, Reel 18, #714, 17 July 1965.

> Perhaps the best way to explain what the central idea of animal rights is may be to say what it is not. For example, many people get terribly upset, emotionally wrought up, if they see, let us say, the heart-wrenching [image of a] calf as it has been torn from its mother immediately after birth and shoved into one of those regulation-size crates where it spends its entire life chained by the neck, and it can never move and never chew. People get very emotional, some people cry when they see these acts of cruelty. . . . But the animal rights view says let us push these emotions out of the way for one moment and be very cool and rational about it. And if we do, we will then discover that what is wrong here is not necessarily this particular act or degree of cruelty. . . . The bottom line then is that what we owe the animals is not kindness and compassion, but respect and justice. (1995:449)

For animal rights activists, right-talk and justice-talk was appealingly unemotional and rational—and masculine. In their effort to distance themselves from a less-credible-because-emotional opposition to animal mistreatment, they tended to project men as the leaders and spokespeople of the movement. Women, particularly housewives, were seen as more emotional and less rational than men and professionals. Paradoxically, male animal rights activists were admired for their emotional expressiveness; it did not threaten their image as rational, but rather, it gave them the added cachet of sensitivity. Activists were using emotions strategically: Asserting animal rights in a cool and logical tenor gave their claims credibility. But their notions of strategy depended on a gendered view of emotion and reason. Perhaps male animal rights activists were served by this strategy; women activists, passed over as leaders and spokespeople, were probably not, and whether the movement as a whole was served remains a question.[12]

The activist survivors of child abuse that Nancy Whittier (2001) studied urged each other to experience and express strong emotions when they gathered for meetings and conferences: anger, grief, and shame, but also pride at overcoming their victimization. When survivors appeared in court to press claims for crime victims' compensation, they were urged to demonstrate grief, fear, and shame in order to legitimate their claims of injury, but not anger or pride. Justified as "strategy," the emotional injunctions described by Groves and Whittier also reveal normative assumptions about reason, emotion, and gender. The question they raise is whether conforming to mainstream gender rules for displaying emotions strengthens popular views of some emotions as masculine, political, and agentic, and others

[12] James M. Jasper (1999), in tracing the history of the emotions connected to animal protectionism, argues that there may, in fact, be greater strategic benefits to be had from basing opposition to animal cruelty on compassion rather than rights.

as feminine, nonpolitical, and characteristic of victims rather than agents.

Deborah Gould (2001) details yet another set of emotion rules shaping movement strategy around rights. Since Stonewall, "pride" has been the normative emotion among gay and lesbian activists. But pride can inspire different forms of activism. Whereas after Stonewall, expressions of pride accompanied militant and confrontational protest, in the early years of the AIDS crisis, activists invoked pride to call for volunteerism, remembrance of the dead, and polite lobbying. They discouraged expressions of anger in favor of demonstrating quiet nobility in the face of a deadly epidemic. The movement's emotion rules did not change until five years into the epidemic. Shocked by the Supreme Court's *Bowers v. Hardwick* (1986) anti-sodomy decision, government inaction, and state legislatures' willingness to consider quarantines, gay men and lesbians began to express indignation and outrage and to form activist groups like ACT UP. "Pride" now demanded militant confrontation.

The point, then, is that activists are constrained by the same folk logics of emotions as is everyone else. Activists can challenge and refuse those logics, along with the behaviors they expect of subjects, but insofar as they do not, such logics set the terms of strategic action as much as do activists' explicit normative commitments.

Conclusion

The authors in *The Passions of Law* argue for more emotion in law, but they do so in a markedly dispassionate way. No one expresses anger or indignation at an unjust law, pride in our capacity to reform, or distrust of previous scholars' arguments. Martha Nussbaum (ch. 1) describes horrible crimes and repellent acts, but in order to warn us against making disgust the basis of a legal judgment. When Danielle Allen (ch. 7), Martha Minow (ch. 10), Robert Solomon (ch. 4), and Austin Sarat (ch.6) argue for punishment that is aimed at repairing relationships rather than exiling the wrongdoer, none expresses his or her horror at that kind of exile, or tells a tragic story of its consequences for someone. Jeffrie Murphy's chapter (5) is the one exception: The author is openly remorseful in repudiating his earlier confidence in the possibility of a sound moral basis for punishment.

Liberal assumptions guide the authors' arguments: that law should balance order and liberty; that disadvantaged groups can be protected by laws targeting individual acts of discrimination; that the good of all is best achieved through reforms initiated at the top; and that policy elites are responsive to rational argument. Their liberal premises are enacted in a style of argument that is reasoned, aimed at legal decisionmakers, and confident in

speaking on behalf of a generic "we." They do not use the jargon, convoluted phrasing, and passive verbal tense that social scientists often do to convey an impression of emotional detachment and objectivity. Instead, they convey calm sympathy for those unjustly treated—without conveying despair that they *can* be treated fairly; respect for the law and its practitioners; and a reasoned optimism about the possibility of reform.

I point this out not to suggest that the arguments made in *The Passions of Law* are any less compelling but to note just one of the many ways in which emotions inform legal arguments. The authors in this volume highlight some of them; they neglect others. A common view has court officials striving to keep emotions out of the courtroom, and the authors here do not fully challenge that view. But some of the empirical studies I have discussed show legal decisionmakers skilled in an emotional discourse. They selectively display sympathy, disdain, irritation, and humor to process cases expeditiously through their courts. Their emotional performances reflect not only their desire for dispatch but also their normative evaluations of the people whose cases they are processing. They convey to those before them and to their colleagues and spectators their recognition of the boundaries between legitimate legal cases and "garbage" cases, between "insiders" and "outsiders," between respectable people and those mired in chronic conflict.

The authors in *The Passions of Law*, notably Cheshire Calhoun and Toni Massaro, begin to examine the logics of emotion that inform adjudication. Legal decisionmakers operate on mainly implicit theories about the connections among emotions, perceptions, capacities, intentions, and action. They assume, for example, that gays and lesbians are not capable of romantic love and that shame will lead wrongdoers to desist from prohibited behavior. But these theories represent only the beginnings of an understanding of how social epistemologies of emotion operate in law. Such an inquiry would trace the relations among the legalistic, moral, and therapeutic discourses that Merry identified, and the place of emotions in them. It would also tease out rules about *where* certain emotions and not others can be expressed, whether in lower courts but not higher ones, outside the courtroom but not in it, in legal seminars but not in law review articles. Such boundaries may be essential to sustaining the authority of the institution in which they operate.

The alternative to the liberal sensibility that the authors here display is a more radical and skeptical one. The system is less responsive to rational argument than to threat, less likely to reform on the basis of progressive ideals than from the recognition that more power will be lost by *not* reforming. The interests of the disadvantaged lie in disorder, not order, and even then, their resistance is likely fragmented and fleeting. When they are able

to organize collectively, their rights victories are threatened by rollbacks, selective enforcement, and the probability that their radicalism will be weakened by their dependence on the state and by their gnawing distrust of each other. Their best hope lies in bids for power, not rights, in efforts to use emotions strategically to breach the ritualized sanctity of the courtroom and to forge affective connections with each other in defense against the alienating character of rights and the state's efforts to turn claimants into emotional dependents.

Taken as a set of recommendations for disadvantaged groups, however, these views of emotion are not without difficulty. Contrary to a common criticism, I argue on one hand, that the feelings of triumph and dignity that people gain in temporarily besting the law and the humiliation they experience in being manipulated by it *may* become the basis for more organized collective challenge through the emotional power of the stories they tell. On the other hand, the same feelings may also come from *avoiding* engagement in the law. To claim oneself a "victim" of discrimination is in our culture to give up agency, along with the possibility of feelings of pride, resourcefulness, and dignity.

Popular logics of emotion also shape the efforts of organized collective actors to use emotions to strategic effect. Movement groups strategize about what kinds of emotions to display when they appear in court and when they claim rights in forums outside of court. But operating strategically may mean reproducing the ideological dualities that keep disadvantaged groups on the losing side of reason/unreason, public/private couplets. For example, women activists who avoid stereotypically female emotional displays may thereby strengthen the belief that only stereotypically male emotional styles are properly political. Paying more attention to the epistemologies of emotion that inform movement strategizing may compel us to reinterpret what seemed strategic imperatives as strategic trade-offs. Again, though, I am struck most by how little we know. Do the pride and autonomy that normally powerless people experience in temporarily outsmarting the law contribute to more organized and collective challenge? Do authorities respond more to threat or emotional appeal on the part of organized groups? How far *can* activists go in challenging the emotional predilections and capacities that are popularly imputed to them? And how should we go about answering these questions?

To answer the first, we probably have to rely on activists' accounts of their interactions with the law prior to joining a movement campaign. This does not necessarily mean *leaders'* accounts. We should instead solicit the stories of the rank and file, people who are less likely to have come to the movement through established activist networks. We would want to know how their own encounters with the law politicized them and if the experiences

of their friends, family members, neighbors, or coworkers, told and retold in the kind of stories that Ewick and Silbey describe, did. Of course, people revise their life stories in line with their current political preoccupations. Interviewees may now recall their whole lives as marked by struggle (or, conversely, remember no struggle at all, along the lines of the "I was just a passive, apathetic person" narrative).[13] However, asking people to talk about how their views of law—and of authorities, the system, the government, and those in power—have *changed* as a result of their activism might also reveal ways in which they have *not* changed and might prompt accounts of earlier encounters with the law that proved influential.

The second question, about whether challenges work through threat or persuasion (or both or something else), requires close empirical study of actual legal campaigns and a focus both on challengers and on those they target. In her account of a campaign mounted by immigrant workers on Long Island to gain legislation strengthening penalties against employers who failed to pay them, Jennifer Gordon (1999) points out that the political conservatism of the legislature had made such a victory unlikely since many of the workers were undocumented. She details the mix of political self-interest and sympathy that seems to have motivated legislators—and begins to get at why activists were able to elicit legislators' sympathy. We need more of this kind of study.

Finally, the third question, on how far activists can go in challenging the emotional predilections attributed to them, can probably best be got at by studying points at which those limits have been breached. When authorities, third parties such as media and funders, and opponents and allies describe protesters, do they draw attention to protesters' emotionality? When and how? What normative assumptions underpin those characterizations? At what points in a movement's trajectory, in what institutional contexts, and/or in relation to which groups are references to protesters' excessive emotionality likely to be made?

If we do not yet have the answers to these questions, *The Passions of Law* sets the stage for answering them. What we need is not simply a "bottom-up" vision of emotions in law to complement the authors' top-down one. We need a fuller understanding of the social epistemologies that govern people's experiences, expressions, and interpretations of emotions. By "people"

[13] Betty Friedan hewed to this narrative in her celebrated 1963 *The Feminist Mystique*, describing herself as until recently an apolitical suburban housewife, captive of the forces of domesticity that she would come to challenge, and not "even conscious of the woman problem," as she put it (quoted in Horowitz 1996:2). We know now, however, that Friedan in 1963 was a longtime labor writer and activist, with special expertise in discrimination against women. Her journalism in the 1940s and 1950s was marked by sharp insight into the economics of feminine domesticity and a keen sense of the "woman problem" (see Horowitz 1996).

I mean judges as much as those who come before them, and movement strategists as much as those to whom they appeal.

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