Review Essay

Lawyers and Social Change in the Postmodern World

Mark Kessler

Gerald P. López, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice.* Boulder, CO: Westview Press, 1992. ix+433 pages. $55.00 cloth; $17.95 paper.

Maureen Cain & Christine B. Harrington, eds., *Lawyers in a Postmodern World: Translation and Transgression.* New York: New York University Press, 1994. vii+318 pages. $50.00 cloth; $17.50 paper.

Gerald P. López's *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* and Maureen Cain and Christine B. Harrington's edited volume, *Lawyers in a Postmodern World: Translation and Transgression* appear at a time when faith in the progressive potential of law has been badly shaken. Progressive court decisions of the 1960s and 1970s have been routinely modified, weakened, or reversed by more conservative federal courts operating in a more conservative political climate. Living conditions in inner cities for many members of racial minorities continue to deteriorate, despite court decisions guaranteeing formal legal equality. Public schools resegregate, despite court pronouncements that segregation is unconstitutional.

Sociolegal research has contributed to pessimism about law. Several decades of research exposed what Scheingold (1974) referred to as the "myth of rights," the overly simplistic, naive notion that law and litigation evoke self-implementing declarations of rights from courts that, in turn, produce meaningful change.[1] Work in critical legal studies in the 1970s and 1980s challenged the authority of law, portraying it as incoherent, indeterminate, and inconsistent. Neo-marxist and some postmodern scholarship represent law as ideology that legitimates existing power relations. In her recent presidential address to the Law and Society

Address correspondence to Mark Kessler, Department of Political Science, Bates College, 45 Campus Avenue, Lewiston, ME 04240-6022.

[1] For one of the best recent studies calling this myth into question, see Rosenberg 1991.

Law & Society Review, Volume 29, Number 4 (1995)

Association, Sally Engle Merry (1995:12) described the effects of these intellectual currents on our thinking about the role of law: "It is no longer clear that law can produce a more just society. I think many of us, including me, wonder about the possibilities for law in this increasingly fractionated world torn by nationalism, racism, economic disparities, and environmental destruction. . . . How can law contribute to the emancipation of subordinate groups, to expanding the dignity, self-respect, and control of less powerful people?"

Doubts about the role and efficacy of law are accompanied by similar questions about sociolegal research. Indeed, the law and society community in the United States is portrayed as in crisis, haunted by self-doubts about its purposes, accomplishments, and future agenda (Trubek & Esser 1989). During the past decade or so, traditional law and society scholarship has been criticized as intellectually sluggish, lacking a critical, political edge, and too closely tied to the interests of policymaking elites (see, e.g., Silbey & Sarat 1987; Sarat & Silbey 1988; Trubek & Esser 1989). Newer postmodern approaches are criticized as lacking any utility for, or even disabling, transformative politics (Handler 1992).

Merry (1995:13) summarized some of the most salient concerns of the past several years by asking if law and society scholarship has, indeed, "abandoned its historic concern for social justice and progressive politics and replaced it with a range of theoretical and empirical work that focuses on the mundane, the arcane, and the politically irrelevant?" This question raises important issues about the role of sociolegal scholarship in struggles for social justice. Merry put it like this: "What can we, as law and society scholars contribute to understanding and refashioning this troubled world?" (p. 12). A major intellectual challenge, then, facing the law and society community is "how to set an agenda about justice in the 1990s post-Foucauldian, post-Marxian world of discursive power and subjectivities in which no group is authorized to construct for others a vision of a socially just world" (p. 13).

Although quite different in many important ways, the volumes by López and Cain and Harrington help to set such an agenda by exploring traditional questions about the role of lawyers in society in novel, innovative ways. Influenced by contemporary critical theories, especially postmodern legal theory and writings on ideology, both books focus special attention on the role of legal professionals in social change processes. Both books, each in its own way, are concerned about the relationship of law and legal scholarship to progressive politics. Neither reflects the abandonment of concern for social justice issues. On the contrary, both volumes are clearly committed to furthering our knowledge of existing inequalities and injustices and how they may be challenged. Neither volume is without problems nor

complete, and both reflect and reinforce some of the confusions and doubts of our time. But they succeed in placing a familiar and significant topic in new and different frameworks. Elements from each volume may be brought together to suggest new approaches to the study of lawyers in society that have the potential to contribute to transformative politics. Thus, both books may be viewed as part of more general efforts to redirect sociolegal research.

Redirecting Law and Society Research

The Dominant Paradigm: Gap Studies

The major research questions posed and methodology employed in much law and society research emerge from legal realism. The dominant paradigm involves scientific, empirical research investigating a central preoccupation of the realists: whether the "law in the books" corresponds to the "law in action."[2] This work shares an important conceptual feature. It views law (or "law in the books") and society (or "law in action") as distinct, autonomous entities whose relationship to each other may be observed through empirical methods; it seeks to measure the impact of law *on* society. Law and society scholars, working from this perspective, seek to describe the fit between ideals expressed in law and social practices observed in behavior (Silbey 1985). Thus, traditional studies of lawyers not only describe their relations with clients and other court participants but also compare these descriptions to the ideal of due process (classic examples include Sudnow 1965 and Blumberg 1967).

Studies conducted from this perspective inevitably report discrepancies between written law and behavior. Summarizing this research, Sarat (1985:27) suggests that "study after study documented failure, the failure to obtain compliance with court orders, the limited impact of orders which were implemented and complied with, and the failure of ideals, like due process and rehabilitation, to work in the real world." Much of this work has a reformist purpose, using the research findings to suggest ways to close identified gaps. Thus, although these studies portray law as ineffective in shaping behavior, they also reflect an abiding faith that law, if designed properly, may contribute significantly to struggles for social justice.

[2] White (1986) shows that legal realism had at least two distinguishable strains—one that called for empirical, scientific research on the operations of law and legal processes and the other advocating "debunking" of law and judicial decisions. "Debunking," according to White, "subjected 'wrong' opinions to a logical analysis that exposed their inconsistencies, their unsubstantiated premises, and their tendency to pass off contingent judgments as inexorable" (pp. 821–22). The law and society movement embraced the scientific elements of realism, while other scholarly communities, such as critical legal studies, were influenced by the "debunking" strain.

A Challenge to the Dominant Paradigm: Law as Ideology

A variety of critical approaches viewing law as ideology provide an alternative to traditional law and society gap studies (e.g., Klare 1979; Hunt 1985; *Legal Studies Forum* 1985; *Law & Society Review* 1988; Bumiller 1988; Hutchinson 1989; Forbath 1991; Kessler 1993). This work—emanating from law professors associated with critical legal studies, feminist and critical race writings, and social scientists seeking to develop a critical sociology of law[3]—rejects the portrayal of law as ineffective, arguing instead that law plays an important ideological role in constituting the social world. Influenced by theorists of ideology and practice, such as Gramsci and Bourdieu, and postmodern writers, like Foucault and Derrida, this work examines law as a discourse that shapes consciousness by creating the categories through which the social world is made meaningful. From an ideological perspective, there is no useful distinction between law *and* society. Rather, law is part of social life, not an entity that stands above, beyond, or outside of it. Law and society are inseparable and mutually constituting so that the focus is not on law's impact *on* society, but rather on how law operates *in* society.

From an ideological perspective, law operates in society in different ways. On the one hand, it legitimates and reinforces existing relations of domination by constituting these relations in ways that give them the appearance of being natural and unexceptional (Klare 1979; Hunt 1985; Kessler 1993). But law's hegemony—its ability to produce acquiescence with its norms without the use of force—is never complete (Foucault 1980). Legal ideology may be interpreted in multiple ways, containing space for resistance to dominant norms, ideas, and relations (see Yngvesson 1988; McCann 1994; Merry 1995).

Critics of the dominant law and society paradigm also question the epistemology and methodology of conventional social science research based on the hypo-deductive scientific model. The reasons vary among critical camps, but most reject the fundamental underlying assumptions of this research model—such as the fact-value distinction, the belief in the researcher's objectivity, the distinction between a subject and object, and the view of knowledge as the accurate representation of an externally existing "reality." Some scholars, especially those in law schools, reject any attempt at empirical analysis.[4] Scholars in feminist and critical race studies resist meta-theories containing universal principles by embracing personal narrative and storytelling as

[3] Important in this regard are members of the Amherst Seminar who edited special issues of the *Legal Studies Forum* (1985) and the *Law & Society Review* (1988) focusing on legal ideology.

[4] See the discussions of critical legal studies and empirical research in Trubek 1984 and White 1986.

major research practices (Michigan Law Review 1989; Ewick & Silbey 1995). Other legal scholars, many with disciplinary homes in the social sciences, seek to develop an interpretive research practice (Trubek 1984; Harrington & Yngvesson 1990; Sarat 1990).[5] Rejecting conventional social science's call to discover and report universal and generalizable explanatory principles, these scholars call for studies that are sensitive to the historicity, contingency, and socially constructed nature of social life, that are intensive, rather than extensive, and that emphasize particularity and specificity (Silbey & Sarat 1987). Arguing that all knowledge is partial and a function of those who produce it, they suggest that "other voices, including the voices of the subjects our writing helps to constitute," be included and carefully consulted (Sarat 1990:166). Thus, they advocate the proliferation of contextually situated studies that illuminate how various legal ideologies are interpreted and employed by those occupying varying locations in social relations, such as those associated with subject positions of class, race, gender, religion, ethnicity, and sexual orientation (Kessler 1993).

Redirecting Studies of Lawyers: The Books under Review

Both books examined here may be viewed as attempts to redirect the study of lawyers by moving beyond theory and research on the structure and function of legal practice and work that separates and contrasts ideals of legal practice (practice norms as expressed in "law in the books") and "actual" legal practice (practice norms "in action").[6] Both employ ideological approaches to understand the political implications of lawyers' work. Although the books share an interest in legal discourse and ideology, they employ postmodern insights about the role of discourse in constructing social reality in different ways.

Cain and Harrington focus on the creative, constitutive role that lawyers play as they use language. Referring to lawyers as "conceptive ideologists," "imaginative traders in words," and as engaged in "discursive translation," they emphasize how lawyers "invent categories," categories that "are constitutive of practices and institutions within which their clients can achieve their objectives" (p. 33). López, of the other hand, explores how legal and popular cultures create an ideology of legal practice that constitutes professional norms of legal activity. His book is an ar-

[5] These critiques from sociolegal scholars of conventional social science epistemology and methodology are influenced by and form a part of broader critiques of the scientific method. For a collection of articles that place interpretive practices in the framework of this critique, see Rabinow & Sullivan 1987.

[6] See the useful summary of previous theoretical approaches to lawyers and legal practice in Harrington's essay, "Outlining a Theory of Legal Practice," in *Lawyers in the Postmodern World.*

gument that progressive lawyers must fight against this vision of the "good lawyer" to advance the causes of their clients.

While both volumes exhibit similar theoretical influences, they differ quite dramatically in style of presentation, methodology, and the audience they seek to reach. Cain and Harrington's collection, edited by two social scientists and containing chapters employing a range of social science theory and methods, is pitched primarily to an academic audience interested in the theoretical and practical issues raised by an ideological approach to lawyers. López, a law professor and prominent critical race scholar, presents a series of fictional accounts of progressive lawyering in an effort to redefine and redirect activist legal practice. His work does not have the theoretical aspirations of Cain and Harrington's volume, making no larger claims about lawyers, legal ideology, or law and social change. Although the descriptions and analysis will be of interest to sociolegal scholars, López seems primarily interested in raising issues and questions for current and future practitioners.

The remainder of this essay discusses the content of these two volumes in the context of ongoing reassessments of the progressive potential of law and law and society scholarship. I argue that, for different reasons, neither volume, by itself, develops an adequate framework for a critical sociology of lawyers' work. However, when looked at together, the distinctive qualities of each volume may be integrated to suggest a set of questions that hold great promise for a politically engaged scholarship that has the potential to contribute to struggles for social justice.

Cain and Harrington's Postmodern Lawyer

The Cain and Harrington volume has 11 chapters written by prominent legal scholars preceded by an introductory essay by the editors (besides chapters by Cain and Harrington, the authors are Doreen McBarnet, Sally Wheeler, David Sugarman, Sue Lees, Yves Dezalay, Frank Munger, Martha Fineman, Wilfried Schärf, and Stuart Scheingold). Cain and Harrington each contribute a useful chapter of their own summarizing different aspects of the literature on lawyers and presenting a theoretical framework for studying lawyers in society. These opening chapters are followed by 5 chapters that examine the specific roles of lawyers for capital and the state and 4 chapters dealing with some aspects of lawyers for subordinated groups and individuals.

Cain and Harrington set out to present selections that explore lawyers' power. In particular, they suggest that their focus is on "the constitutive powers of lawyers' work in relation to capital and state power" (p. 2), how lawyers' work impacts on "the way gender is constituted, as well as . . . the meaning of race and ethnicity" (p. 1), and "whether or nor legal practice can be . . .

effective in bringing about relational and institutional changes to meet the needs of those sections of society typically regarded as powerless" (p. 3). The editors refer to lawyers' work that constitutes capital, as well as gender and race, as "translation"—translating into legally relevant forms the demands, interests, and objectives of clients and others occupying dominant positions in social relations. Legal work done on behalf of the marginalized, on the other hand, is described as "transgressive," "breaking the discursive and relational boundaries which inhibit effective action on behalf of those on the losing end of social relationships" (p. 3).

Chapters exploring these themes range over a great variety of topics and employ diverse theoretical approaches and methodologies. McBarnet shows how capital employs attorneys to avoid legal impositions, like taxes and regulations. Wheeler examines how lawyers for financial corporations use and manipulate law on behalf of their clients in struggles with lawyers for production firms over assets in insolvent companies. Sugarman looks broadly at the many significant tasks and roles of business lawyers in Britain from 1750 to 1950 to problematize conventional distinctions between "lawyering" and "business" and "public" and "private" law. Lees assesses the ways in which women are treated as both defendants and victims in British criminal trials between 1987 and 1990. Dezalay examines the ideology of mediation through a comparative history of Western legal systems. Munger focuses on the practices of Appalachian lawyers after industrialization transformed a West Virginia town into a more rigidly class-stratified society. Fineman works through issues in feminist legal theory and methods regarding how to theorize and advocate gender equality while accommodating multiple dimensions of difference. Schärf examines the role that paralegals in South Africa have and may play in challenging both the state and the established legal profession. And Scheingold analyzes contradictions between the values, aspirations, and self-images of British radical lawyers and the constraints of the professional culture in which they work.

The broad range and eclectic nature of the selections in this volume expose readers to many aspects of legal practice and approaches to social research. While this range may have advantages for some readers seeking the broadest possible coverage, it makes it extremely difficult to identify the project represented by the volume as a whole. Indeed, one of the problems with the collection is that little seems to draw the individual chapters together. Perhaps such confusion about how to view this as a collective work cannot be avoided in a volume that ranges so broadly over lawyers' activity in different historical periods and societies. The editors seem to suggest as much, acknowledging that "these discussions traverse Britain, France, and the USA, at periods

from the nineteenth century to the present day. What is presented could not, for these empirical reasons alone, be a continuous discourse" (p. 3).

This is fair enough, it seems to me. But, as the editors further acknowledge, the chapters exhibit significant, irreconcilable differences in theoretical approaches and methodologies. Cain and Harrington explain, "We have not tried to iron out these differences. We believe that no one formulation can make an authoritative claim to truth, and that the reader will be more enlightened by the diversity and choice" (p. 3).

While it may be the case that "no one formulation can make an authoritative claim to truth," a single volume containing several formulations, all of which are placed under the title of "lawyers in a postmodern world," is likely to puzzle rather than enlighten readers. The tremendous "diversity and choice" of scholarly approaches and styles make it unusually difficult to interpret where the editors would like to take the study of lawyers in society. For example, some of the selections, such as Lees's analysis of gendered binary oppositions in the discourses of rape and murder trials, are guided by social constructivist perspectives that raise questions about whether "reality" exists independently from language. Cain's essay about lawyers as "symbolic traders," on the other hand, while informed by social constructivism, argues that "it is necessary to allow for the existence of intransitive relationships, that is, relationships which exist independently of anyone's 'knowledge' of them" (p. 42). Harrington cautions against accepting an instrumentalist conception of lawyers as "hired guns" for their clients; Cain discusses ways in which lawyers serve corporations by "translating the objectives and demands of clients into an acceptable legal discourse" (p. 32). Methodologically, selections range from Lees's postmodern discourse analysis to Harrington's interpretation to Munger's hypodeductive science.

Readers may also be legitimately confused about the specific topic of inquiry represented by the volume's selections. Some of the chapters do not focus on the constitutive power of lawyers. For example, Sue Lees's "Lawyers' Work as Constitutive of Gender Relations" is as much about the ways that judges' decisions and written law constitute particular notions of gender in the murder and rape trials she studies as it is about lawyers' work. Martha Fineman's "Feminist Legal Scholarship and Women's Gendered Lives" examines issues in feminist legal theory, drawing only the most tenuous connections to the constitutive work that lawyers do. And Frank Munger's chapter, "Miners and Lawyers," looks at the caseloads and clients represented by Appalachian attorneys, not at their creation or use of a legal discourse to constitute social relations.

When viewed together, the selections are, at the very least, ambivalent about postmodernism. While a postmodern emphasis on discourse and the constitutive properties of language are prominent themes in much, but not all, of the work, some of the analyses seem strangely out of place. For instance, after the editors make a convincing case for looking at lawyers *in* society by examining how their work constitutes the social world, McBarnet's study of corporate lawyers' techniques for avoiding regulations imposed by the state on their clients returns to the familiar structure and argument of "gap" research. The "law on the books" imposes constraints on capital; lawyers manipulate language to avoid compliance by their clients; the "law in action" contradicts ideals expressed in law.[7]

In fact, it is not clear what Cain and Harrington's collection says about postmodernism because there is no extended discussion of it as a theoretical formulation. The editors use the term in their introductory essay without discussing which elements of postmodern work influences their conception of it or the work that they do. Ultimately, Cain and Harrington dismiss it in the following way: "It is our view that post-modern analysis does not allow for an anticipatory or theoretical exploration of limits [of what lawyers do], and so can offer little guidance for . . . progressive lawyers and sociolegal scholars" (p. 11). This, of course, is a major claim, but curiously neither the editors nor the chapter authors return to it later in the volume, showing how individual analyses of lawyers' work support the claim.

Even with these problems in identifying Cain and Harrington's project, there is much to be gained from a careful reading of this collection. Specifically, the theoretical context provided by Cain and Harrington, as well as by authors like Sugarman, suggests at least some elements of a reconstructed critical sociology of the legal profession. The turn toward discourse, ideology, and power in some of the selections in this volume suggests promising lines of future research. Moving the study of lawyers in society in promising new directions are Cain and Harrington's conception of lawyers as "conceptive ideologists" or "discursive translators" and their distinction between "translation" and "transgression" in the work that lawyers do; Cain's discussion of how lawyers for capital create and constitute new relations, from

[7] Frank Munger's study of Appalachian lawyers also seems misplaced in a volume on lawyers in a *postmodern* world. Unless I misinterpret what Cain and Harrington mean by using the term "postmodern" in the title of their book, Munger's work seems inconsistent with an approach focusing on discourse and ideology and raising questions about conventional social science methods. Munger's article—an excellent, thoroughgoing analysis of the kinds of legal practices engaged in by Appalachian attorneys before and after industrialization—says nothing about discourse or ideology, does not focus on language, and uses standard social science methods to report "data" purporting to represent "reality." By conventional standards, Munger has produced an outstanding study of a politically, socially, and legally significant issue using appropriate methods. But the connections between his study and discourse, ideology, or postmodernism more generally are unclear.

the International Monetary Fund to trust funds; Wheeler's research on how lawyers for different "fractions" of capital use and make law in the struggle over assets in insolvent companies; Sugarman's examination of how lawyers help to create political discourses, rights talk, and specific conceptions of polity and his suggestions for integrating legal and cultural studies; Harrington's discussion of how concepts like "administrative law" are negotiated in struggles over work; and Scheingold's study of constraints for progressive lawyers contained in the content of conventional professional culture.

The description and analysis of the postmodern lawyer presented in this volume is, however, somewhat limited and incomplete. Those selections that focus on the work that lawyers do virtually ignore clients or members of other potential audiences. Most of the work represented in this volume is so law- and lawyer-centered that one does not get a sense that ideological constructions created by lawyers in making law—such as those constructing views of gender or race—are interpreted in multiple ways by diverse audiences. Further, scholars represented in this volume ask questions about the creative, constitutive work that lawyers for capital do without asking how lawyers for marginalized groups and individuals use and/or contest dominant ideological constructions. Indeed, most of the volume is devoted to an examination of lawyers for capital. When progressive lawyers are featured, as in Scheingold's chapter, it is in terms of limitations on their work.[8]

In other words, while this volume encourages important work on the constitutive, creative roles played by lawyers for capital, and how legal discourse constructs gender and race, it contains little analysis of the potential of law or progressive lawyering as sites of resistance to dominant ideological constructions and social relations. The explicit focus on what lawyers for capital *do* and the *limits* on progressive lawyers in this volume can only lead to pessimistic conclusions about the role of law and lawyers in struggles for social justice. Thus, Cain (p. 46) writes that "the

[8] In Cain's chapter, she suggests that lawyers for capital are qualitatively different from lawyers for marginalized groups. According to Cain,

> the uncertainties which beset the poor cannot be rendered predictable by law as can the uncertainties of capital. It is only selectively that the law can deal with the problems of the poor. It can deal in general with the problems of capital. And the reason for this is that the law has either constituted or recognized the modes of existence of capital. What capital "is" at a point in time and what the law is are the same. There is an integral relationship between law and capital, brought about by lawyers. But *there is no such relationship of reciprocal constitution between law and poverty*. The being of poverty lies elsewhere. (P. 41; emphasis in original)

This may explain why poverty lawyers do not engage in the kind of creative work that lawyers for capital do. But this is an empirical issue that is not examined in this volume. It is not an issue that can be effectively addressed with an exclusive focus on the work that lawyers for capital do. It suggests the need for studies of the work of poverty lawyers in such areas as welfare rights and housing.

structure of the courts, the organization of the practitioners, the procedures, the rules, the rules about the making of rules, the whole discursive and relational apparatus that constitutes the law militates against the routine use of the system by downsiders." This approach, then, reinforces the belief that law and lawyers have little to offer movements for change and that sociolegal scholarship can do little more than document existing sources of domination. While both of these propositions may have some validity, such a conclusion cannot be confidently drawn without studies assessing more systematically the work that progressive lawyers *do* and the ways in which legal ideologies are interpreted by various constituencies.

López's Rebellious Lawyer

Gerald López focuses his attention on public interest, or progressive, lawyering that takes place in a variety of practice settings. His book critiques orthodox notions about law practice that, he argues, are shared by many, if not most, progressive lawyers. His critique is grounded in his own life experiences growing up in the 1960s when the "first wave of self-consciously progressive lawyers" arrived in his East Los Angeles neighborhood, "then *the* Chicano part of Los Angeles" (p. 1). López saw these attorneys as "outsiders, white and male," who "all appeared to dress, speak, and act alike—or at least to dress, speak, and act not at all like us" (ibid.). While praising the commitments and good intentions of the new lawyers, López found their notions about practicing law, "the idea of practice that shaped their offices, their priorities, their routines, their habits, their know-how, their sense of a job well done" to coincide with the subordinating assumptions of a traditional legal and political culture "that for so long had kept Latinos, among others, at the margins and at the bottom" (p. 2). Thus, according to López, by reproducing dominant cultural norms in their practice, progressive lawyers reinforced the conditions of subordination that they had traveled to East Los Angeles to change. In the 1970s, López attended Harvard Law School, became a law professor, and now writes in an effort to redefine and reorient a more "rebellious" progressive law practice.

López's ideas about law and legal practice are related through stories of the lives and experiences of numerous fictional attorneys, citizen activists, and other clients. Readers learn about the dilemmas of public interest legal practice through the experiences of such people as Catherine, a 24-year-old, third-year law student contemplating her future legal career in the context of how other lawyers she has worked with do their jobs; Teresa, director of Advocates for Justice, an impact litigation firm where Catherine worked after her first year in law school; Jonathan, a

housing lawyer for legal aid; Abe, an "old left" labor lawyer; Sophie, an Irish Catholic immigration lawyer for legal aid who lives in the low-income neighborhood of Oakland, California, where she works; Amos, an African American who coordinates a new nonprofit organization in Oakland, United Help for Families; Lucie Fung, a newly appointed director for the Community Law Office, a nonprofit legal support center; Martha Fisher, a private attorney who occasionally represents clients pro bono; Dan Abrams, a "gay Jewish progressive lawyer" practicing juvenile law with the Law Collective in Berkeley; and Etta Johnson, an "African-American lesbian citizen activist" working for a local tenants' union. In the course of several richly detailed, skillfully crafted, intricate, and revealing narratives of the ways in which these characters do their jobs and interact with one another, López presents provocative and potentially significant views about law and legal practice.

For López, law has many parallels to storymaking and storytelling. Indeed, he suggests that "law is not a set of rules" or "a collection of definitions and mandates to be memorized and applied," but rather is "a set of stories" embedded in "a culture composed of storytellers, audiences, remedial ceremonies, a set of standard stories and arguments, and a variety of conventions about storywriting, storytelling, argument-making, and the structure and content of legal stories" (p. 43). Within this legal culture, lawyers construct stories that, they hope, "the audience will find understandable" and that "will persuade the audience to grant the remedy sought" (p. 39).

In their practices most progressive lawyers are guided by a set of assumptions and beliefs, emanating from the dominant legal and popular cultures and reinforced in law school and on-the-job socialization, that López refers to as "the regnant idea." "Regnant lawyers," those guided by conventional beliefs, see themselves as "the preeminent problem-solvers in most situations they find themselves trying to alter"; have only rare and sporadic interactions with other groups and institutions in their communities and then only in the context of work on a specific case; know little, if anything, about how legal change affects their client communities; see little use in providing community education; and believe that lawyers should "assume leadership in proactive campaigns," a posture that relegates clients to passive and insignificant roles. "Regnant lawyers" see themselves as "heroic" figures and they rely uncritically on familiar legal approaches to problems, especially litigation (p. 24). The qualities of the regnant lawyer are clearly in evidence in the progressive lawyers that López observed in East Los Angeles in the 1960s, lawyers who "tended to fit our needs and aspirations into preestablished frameworks that were neither animated by nor ultimately much responsive to the lives we were leading" (p. 3).

The propositions that comprise the "regnant idea" of lawyering, then, privilege specialized professional knowledge and marginalize practical knowledges emerging from daily life. The regnant idea, writes López, "prescribes what counts as worthwhile knowledge and as praiseworthy work." What counts from this perspective is knowing "how things work and how to get things done" (p. 26). Legal professionals possessing this knowledge embrace and perpetuate the regnant idea by word and deed, acts that serve to protect their own status and prestige and preserve their authority to speak the "truth" about the sociolegal world.

López advocates a strikingly different type of legal practice—a "rebellious" legal practice—that, among other things, will reimagine, contest, and ultimately transform dominant, taken-for-granted truths. To López, truth is not given or universal. Rather, truth is constructed, situational, contingent, negotiated, partial; no story "makes sense of everything in the world" (p. 65). Rebellious lawyers realize the importance of gaining a perspective on truth from their clients, that significant practical knowledge may reside outside of their own situated understanding of the social world. Rebellious lawyers willingly abandon their own privileged professional position as they seek to learn about other ways of knowing and alternative realities. Thus, at the center of rebellious lawyering are closely collaborative relations with clients and communities: "lawyers must know how to work with (not just on behalf of) women, low-income people, people of color, gays and lesbians, the disabled, and the elderly. They must know how to collaborate with other professional and lay allies rather than ignoring the help that these other problem-solvers may provide in a given situation. They must understand how to educate those with whom they work, particularly about law and professional lawyering, and, at the same time, they must open themselves up to being educated by all those with whom they come into contact, particularly about the traditions and experiences of life on the bottom and at the margins" (p. 37).

López's call for rebellious lawyering connects in important ways to his view of law as storytelling. "Regnant lawyers," he writes, "fail to see the ways in which subordinated people do not submit, belly up, to everyone and everything assaulting them." "Rebellious lawyers," on the other hand, benefit from their collaboration with clients by being able to "discover just how often subordinated people do deploy story/argument strategies, some remarkably ingenious and resourceful, to contest the roles others would assign them" (p. 49).

Thus, to López, rebellious lawyers have much to gain from the practical knowledge of their clients. While lawyers typically know more than their clients about the legal culture, its stories, and its storytelling practices, the practical knowledge of clients emerging from the conditions of daily living sometimes runs

counter to stories from the dominant culture and challenge their authority. Lawyers collaborating with subordinated people and communities, may create new stories and argument strategies that disturb and disrupt dominant ways of thinking and knowing.

López's vision of rebellious lawyering, then, may be viewed as part of his critique of what counts as knowledge. He argues that a truly fruitful, collaborative relationship includes both partners challenging the other's knowledge. According to López, "As part of a larger collective effort within the rebellious idea of lawyering against subordination, a client and a lawyer do not want simply to add to each other's knowledge, a bit of this and a bit of that coexisting easily. Instead, they desire to challenge what each knows—how they gained it, what each believes about it, and how each shares and uses it. In so doing, they work constantly (if often in unglamorous and fragmented ways) to change the very understanding most people cling to both about what clients and lawyers share and about how they use what each knows about living and lawyering" (p. 53).

Unlike the regnant lawyer who relies on litigation to resolve disputes, the rebellious lawyer emphasizes nonlegal solutions. Rebellious lawyers help to fashion more explicitly political strategies, such as coalition formation, and identify other audiences, such as local elected officials, agency personnel, the business community, law enforcement officials, and sympathetic liberals, to whom stories should be told. Thus, rebellious lawyers need to learn "what stories and storytelling practices govern the remedial ceremonies" of all potentially useful audiences (p. 191). Perhaps most importantly, López stresses the significance of lawyers demystifying law, making it more accessible for their clients. Demystification and accessibility contribute to greater client autonomy: "Helping people to see that they can identify, understand, and contribute to solving their own and others' problems is one way of helping them gain more control over the life that we share" (p. 70).

The complex, richly textured, and very human characters López develops in his beautifully written narratives promise to engage and inspire the lawyers and law students for whom he writes. This book raises extremely significant questions about how to work with clients and what it means to represent, or (re)present, "others." In most of his stories, López explicitly identifies the gender, race, and ethnicity of both lawyers and clients, permitting him to sensitively assess how one's subject position may intrude on lawyer-client interactions. For example, in one story, Martha Fisher, a white woman attorney, represents Jesse Cruz, a Latino. Showing a characteristic attention to the details of interaction, López suggests that Fisher's formal introduction of herself as "Ms. Fisher" in the initial meeting helps Cruz to

speak with a woman in this position of authority, while simultaneously heightening his discomfort with her whiteness (p. 178).

Throughout the book, López offers useful, detailed descriptions and prescriptions for lawyer-client relations. For example, in discussing Martha's work with Jesse, López cautions that

> a responsible representative . . . must do more than mechanically translate her client's story into language that the court or other relevant audience will understand and respond to. While respecting Jesse's knowledge of and hopes for the situation, Martha must encourage him to explore alternative versions of what is going on and what would amount to an improvement.

López pushes the lawyer to consider the client's perspective as solutions are fashioned:

> The core of the process is the representative's effort to understand the client's story in his own terms, to use her knowledge to help the client refine his own understanding, and at the same time to begin to think about the stories she might tell on behalf of the client—or might coach the client to tell on his own behalf—to various audiences.

López goes on to outline several rules of collaboration:

> The lawyer must be educated about what the client needs, about what the client wants, about the transactions and relationships into which she will intrude, and about how to work with this particular client. At the same time, the client must be taught how to collaborate: sometimes how to testify but, in all circumstances, how to recall and communicate the details and texture of his story and how to bring lay know-how to bear on collective problem-solving.

Because it is often difficult "to determine precisely what elements of the client's story are relevant to potential solutions," the lawyer "must—with the client—pursue both those elements that the lawyer hypothesizes may be relevant and those that the client feels are important" (p. 173). López's narratives and commentaries force all who serve as representatives, in whatever capacity, to think seriously about who they are in relation to others, how they appear to those they represent, and what assumptions they bring to their relations with clients.

While López's stories will effectively engage, stimulate, and challenge legal practitioners, social scientists may legitimately question their accuracy. Such skepticism could have been minimized with a fuller and richer development of López's personal experiences as a lawyer and observer of public interest attorneys. Because he ends an autobiographical account opening the book at the time he enters law school, the reader is not informed about what elements of his own experience, beyond his early years in East Los Angeles, contribute to the stories he tells.

In general, López's book exhibits a curious ambivalence about social science and empirical research. At one point, López

writes that the set of stories he relates in this book "hardly substitute for the many situated studies we need" (p. 27). At least some of these studies exist, and many are listed in an extensive appended bibliography that López seems careful to separate from his stories. López's narratives contain no references or notes linking the stories or the arguments he makes to social science research. Thus, for example, a discussion (p. 45) about the reluctance of subordinated people to mobilize law and seek professional assistance could have been supported and enriched by the work of Kristin Bumiller (1988), work that is listed in the bibliography. He does not discuss those studies that directly address the central concerns of the book, public interest practice (e.g., Handler *et al.* 1978; Katz 1982; Kessler 1987, 1990) and lawyer-client interaction (e.g., Rosenthal 1974; Bell 1976; Hosticka 1979; Olson 1984; Sarat & Felstiner 1986; White 1990; Sarat 1990). Confidence in the accuracy of his description of regnant lawyering would be enhanced by drawing explicit links to empirical research that supports the view created in the stories. For example, López's description of one regnant lawyer's file—a file "meant to help her quickly place each case into one of the five or six predefined categories of 'landlord-tenant situations' "—appears strikingly similar to descriptions of public defenders who impersonally place their clients, even before meeting with them, into crime categories based on their reading of police records (Sudnow 1965).

Throughout the stories he develops in the book, López employs a scientific discourse to demonstrate how his characters learn about the world. For example, Lucie Fung, the new executive director of the Community Law Office, conducts a "study" of the organization's operations and shares her "findings" with the reader. Like a competent social scientist, she describes her methods and tools of research—tape recording the interactions of lawyers and receptionists with clients—and presents and analyzes the transcripts produced. She also qualifies her findings, as in this excerpt from her description of one lawyer study:

> Again I had my tape recorder as well as my eyes and ears. But I ended up with only a little more than two weeks to cover all this territory, and that turned out to be less than I really wanted. So I didn't get to review most of the lawyers' IOLTA support work, particularly on the telephone. And I didn't get to watch them operate in the field, at brainstorming sessions, around conferences. (P. 102)

López's description of the fictional characters' "findings" never imply an acceptance or awareness of his belief—stated elsewhere in the book—that truth is socially constructed, historical, or contingent.[9]

[9] My comments about López's use of fiction should not be read as a blanket indictment of the genre. Indeed, scholars like Derrick Bell (1987, 1992) use fiction in ways that

Toward Studies of the Postmodern, Rebellious Lawyer: "Transgression" through "Translation"

Cain and Harrington's theoretical framework, combined with López's focus on lawyer-client interaction, provides useful conceptual materials for developing critical studies of lawyers with a potential to contribute to struggles against domination. Cain and Harrington argue convincingly that a more complete understanding of legal practice requires integrating studies of lawyers for capital and lawyers for the relatively powerless (p. 2). Although not well developed in this volume, they introduce the concepts "translation" and "transgression" to refer to lawyers' roles for these diverse interests.

Studies presented in this collection provide many excellent examples of and encourage additional research on "translation"—how lawyers for capital translate client needs, interests, and demands into legal discourse and lawmaking that constitutes aspects of social life. However, neither the volume's editors nor the chapter authors contribute much to an understanding of how lawyers for the disadvantaged engage in "transgression." In their introductory essay, Cain and Harrington do suggest that "law work for powerless groups necessarily must have a different form which at times transgresses established legal relations themselves" (p. 2). But this volume's clear focus is the limits on public interest practice, not its potential to disrupt established practices or meanings.

López's stories of the "rebellious lawyer" suggests ways in which Cain and Harrington's framework may be applied, at the level of lawyer-client interaction, to investigate both the limits and potential of law and lawyers for social change. In particular, the "rebellious lawyer" engages in "transgression" through "translation" of client needs and desires into new stories told to a variety of audiences. According to López, rebellious lawyers engage in "bicultural and bilingual translation" (p. 44), moving "in two directions, creating both a meaning for the legal culture out of the situations that people are living and a meaning for people's practices out of the legal culture" (p. 43). The rebellious lawyer's challenge, then, is to "translate" in ways that truly "transgress" established practices and social relations.

do not raise similar questions about accuracy. Bell's work uses fictional stories to dramatize his belief that civil rights laws and court decisions have not produced racial justice in the United States. He does not purport to describe reality through his stories but instead uses them to encourage consideration of his provocative arguments. López uses stories to describe how typical lawyers for marginalized groups and individuals practice law. He makes claims through his stories about how lawyers greet clients, conduct interviews, take notes, keep files, and take action. It is this use of fictional stories to describe reality that raises questions about accuracy. Such questions are highlighted because López makes extensive use of a scientific discourse within his stories, discussing the kinds of field research his characters do to learn about typical legal practices. The purpose of these elements of the story seems to be to enhance the credibility of the descriptions he provides.

López's discussion highlights the importance of examining legal practice from the client's perspective, or from the bottom up. His work thus has much in common with postmodern scholarship examining local resistance to domination. Summarizing the significance of looking to the margins in postmodern studies of social change, Ewick (1992:761) writes: "if we are to understand social change, either the incremental or revolutionary, we must begin by examining 'where people are at' and seriously consider the role of daily acts of resistance and subversion in the constitution of consciousness and, thus, in the formation of collective movements."

López's "rebellious lawyer" considers "where people are at" and seeks to develop counterhegemonic stories that encompass clients' lived experiences. His fictional stories of how successful rebellious lawyers translate client stories into transgressive action encourage empirical research that explores the nature and outcomes of interaction and collaboration between progressive lawyers and their clients. Such work will necessarily examine lawyers' work that is "nontraditional," work that falls outside of the legal system's conventional boundaries. But it should also examine the extent to which traditional legal work, such as litigation, may change conventional understandings, shift the terms of debate, contribute to feelings of empowerment, and/or assist in political mobilization (e.g., Schneider 1986; Williams 1987; Scheingold 1989; McCann 1994).

Legal scholar and women's rights lawyer Elizabeth Schneider (1986) writes about one case of traditional lawyering that serves as an example of what such research might uncover. Reporting on her experience as co-counsel in the case of *State v. Wanrow* (1977), she demonstrates how tapping into a client's practical knowledge may, at least on some occasions, produce new "stories" that result in significant shifts in how courts both view specific problems and the rules they develop to deal with them.

In *Wanrow*, a jury convicted a Native American woman of second degree murder for shooting a white man whom she believed had attempted to molest her child. Although the woman claimed to know that the man had a history of child molestation and had previously attempted to molest her child, the trial court instructed the jury to consider only the circumstances "at or immediately before the killing" and to apply the "equal force" rule of self-defense—a rule prohibiting the use of force greater than the assailant used—to the woman's claim that she acted in self-defense. After reading the trial transcript, the woman's lawyer team realized that the judge's instructions prevented the jury from considering the woman's state of mind "as shaped by her experiences and perspective as a Native American woman when she confronted this man" (p. 606). The jury had no information on such things as the lack of police protection in such circum-

stances, the woman's knowledge of the man's history of child molestation, or the woman's belief that she could only defend her child and herself with a weapon. The "equal force" rule, moreover, prevented the jury from evaluating her claim that she acted in self-defense.

In court, the lawyers challenged the law of self-defense as gendered. They argued for women's "equal right to trial," a right requiring a new self-defense rule. The Washington Supreme Court agreed with the lawyers that the rule was gendered and announced a new rule based on the individual defendant's "perceptions." According to this court: "The respondent was entitled to have the jury consider her actions in the light of her own perceptions of the situation, including those perceptions which were the product of our nation's 'long and unfortunate history of sex discrimination' " (p. 608).

Of course, not all courts would have ruled as this one did. But this example shows how lawyers may use the practical knowledge of their clients to develop new stories and storytelling strategies for a variety of potential audiences. With great sensitivity to lawyers' potential to assist in struggles for change, Allan Hutchinson (1992:785) provides useful guidelines for progressive lawyers (or what he calls "the postmodern lawyer"):

> [T]he postmodern lawyer must attend to the local circumstances of disputes, to the situated places in which people exist, and the contingent possibilities for action. At the heart of their professional existence is the acute responsibility to turn the unavoidable occasions of resistance into meaningful moments of transformation, not invidious instances of subtle complicity or lost opportunities of misjudged insurrection.

Sociolegal scholarship has a role to play in this process. Studies of what progressive lawyers do—in particular, how such lawyers interact with clients in fashioning strategies to resolve concrete problems—promise to provide legal practitioners with important examples of both successful and unsuccessful collaboration. Some studies, such as the work of Schneider (1986) previously discussed, may sensitize progressive lawyers to how their clients' experiences can help shape new stories and argument strategies. Others may be more useful in demonstrating typical problems in lawyer-client interaction. In general, such studies promise to assist in specifying the extent to which, as well as the mechanisms by which, local resistance is turned into "meaningful moments of transformation." In this way, sociolegal scholarship may provide practical knowledge to those directly involved in political struggle. Such work has the potential to both reinvigorate sociolegal research on legal practice and contribute to a renewed sense of purpose and efficacy among scholars committed to egalitarian change.

References

Bell, Derrick (1976) "Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation," 85 *Yale Law J.* 470.

——— (1987) *And We Are Not Saved: The Elusive Quest for Racial Justice.* New York: Basic Books.

——— (1992) *Faces at the Bottom of the Well: The Permanence of Racism.* New York: Basic Books.

Blumberg, Abraham S. (1967) "The Practice of Law as a Confidence Game: Organization Co-Optation of a Profession," 1 *Law & Society Rev.* 15.

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

Ewick, Patricia (1992) "Postmodern Melancholia," 26 *Law & Society Rev.* 755.

Ewick, Patricia, & Susan S. Silbey (1995) "Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative," 29 *Law & Society Rev.* 197.

Forbath, William E. (1991) *Law and the Shaping of the American Labor Movement.* Cambridge: Harvard Univ. Press.

Foucault, Michel (1980) *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977,* trans. & ed. C. Gordon. New York: Pantheon.

Handler, Joel F. (1992) "Postmodernism, Protest, and the New Social Movements," 26 *Law & Society Rev.* 697.

Handler, Joel F., Ellen Jane Hollingsworth, & Howard S. Erlanger (1978) *Lawyers and the Pursuit of Legal Rights.* New York: Academic Press.

Harrington, Christine B., & Barbara Yngvesson (1990) "Interpretive Sociolegal Research," 15 *Law & Social Inquiry* 135.

Hosticka, Carl J. (1979) "We Don't Care about What Happened, We Only Care about What Is Going to Happen," 26 *Social Problems* 599.

Hunt, Alan (1985) "The Ideology of Law: Advances and Problems in Recent Applications of the Concept of Ideology to the Analysis of Law," 19 *Law & Society Rev.* 11.

Hutchinson, Allan C., ed. (1989) *Critical Legal Studies.* Totowa, NJ: Rowman & Littlefield.

——— (1992) "Doing the Right Thing? Toward a Postmodern Politics," 26 *Law & Society Rev.* 773.

Katz, Jack (1982) *Poor People's Lawyers in Transition.* New Brunswick, NJ: Rutgers Univ. Press.

Kessler, Mark (1987) *Legal Services for the Poor: A Comparative and Contemporary Analysis of Interorganizational Politics.* New York: Greenwood Press.

——— (1990) "Legal Mobilization and Social Reform: Power and the Politics of Agenda Setting," 24 *Law & Society Rev.* 121.

——— (1993) "Legal Discourse and Political Intolerance: The Ideology of Clear and Present Danger," 27 *Law & Society Rev.* 559.

Klare, Karl E. (1979) "Law-Making as Praxis," 40 *Telos* 122.

Law & Society Review (1988) "Special Issue: Law and Ideology," 22 *Law & Society Rev.* 629.

Legal Studies Forum (1985) "Special Issue on Law, Ideology and Social Research," 9 *Legal Studies Forum* 3.

McCann, Michael W. (1994) *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization.* Chicago: Univ. of Chicago Press.

Merry, Sally Engle (1995) "Resistance and the Cultural Power of Law," 29 *Law & Society Rev.* 11.

Michigan Law Review (1989) "Symposium: Legal Storytelling," 87 *Michigan Law Rev.* 2073.

Olsón, Susan M. (1984) *Clients and Lawyers: Securing the Rights of Disabled Persons.* New York: Greenwood Press.

Rabinow, Paul, & William M. Sullivan (1987) *Interpretive Social Science: A Second Look.* Berkeley: Univ. of California Press.

Rosenberg, Gerald N. (1991) *The Hollow Hope: Can Courts Bring about Social Change?* Chicago: Univ. of Chicago Press.
Rosenthal, Douglas E. (1977) *Lawyer and Client: Who's in Charge?* New York: Russell Sage Foundation.
Sarat, Austin (1985) "Legal Effectiveness and Social Studies of Law: On the Unfortunate Persistence of a Research Tradition," 9 *Legal Studies Forum* 23.
——— (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, & William Felstiner (1986) "Law and Strategy in the Divorce Lawyer's Office," 20 *Law & Society Rev.* 93.
Sarat, Austin, & Susan S. Silbey (1988) "The Pull of the Policy Audience," 10 *Law & Policy* 97.
Scheingold, Stuart A. (1974) *The Politics of Rights: Lawyers, Public Policy, and Political Change.* New Haven, CT: Yale Univ. Press.
——— (1989) "Constitutional Rights and Social Change: Civil Rights in Perspective," in M. W. McCann & G. L. Houseman, eds., *Judging the Constitution: Critical Essays in Judicial Lawmaking.* Glenview, IL: Scott, Foresman.
Schneider, Elizabeth M. (1986) "The Dialectics of Rights and Politics: Perspectives from the Women's Movement," 61 *New York Univ. Law Rev.* 589.
Silbey, Susan S. (1985) "Ideals and Practices in the Study of Law," 9 *Legal Studies Forum* 7.
Silbey, Susan S., & Austin Sarat (1987) "Critical Traditions in Law and Society Research," 21 *Law & Society Rev.* 165.
Sudnow, David (1965) "Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office," 12 *Social Problems* 255.
Trubek, David M. (1984) "Where the Action Is: Critical Legal Studies and Empiricism," 36 *Stanford Law Rev.* 575.
Trubek, David M., & John Esser (1989) " 'Critical Empiricism' in American Legal Studies: Paradox, Program, or Pandora's Box?" 14 *Law & Social Inquiry* 3.
White, G. Edward (1986) "From Realism to Critical Legal Studies: A Truncated Intellectual History," 40 *Southwestern Law J.* 819.
White, Lucie E. (1990) "Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.," 38 *Buffalo Law Rev.* 1.
Williams, Patricia (1987) "Alchemical Notes: Reconstructing Ideals from Deconstructed Rights," 22 *Harvard Civil Rights–Civil Liberties Law Rev.* 410.
Yngvesson, Barbara (1988) "Making Law at the Doorway: The Clerk, the Court, and the Construction of Community in a New England Town," 22 *Law & Society Rev.* 409.

Case

State v. Wanrow, 88 Wash. 2d 222 (1977).