Introduction

Legal Loci and Places in the Heart: Community and Identity in Sociolegal Studies

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> Community has been a central concept of political and legal philosophy since its beginning. It has often served as a frame of reference even when not explored as such. From the well-known opening of Aristotle's Politics to the French constitution of 1958, community has served to designate the human group with which politics and law are concerned and to which all the characteristic phenomena of political life, power, authority, law, and the rest must be referred.
>
> —Friedrich 1959:3

> The community myth is that there is now, or ever has been, a "community" in the sense of groups of like-minded individuals, living in urban areas, who share a common heritage, have similar values and norms, and share a common perception of social order. . . . [T]he idea of community contains many implications of the environment encompassed by the myth. Geographically and ethnically identifiable groups become "neighborhoods," or moral entities characterized by a sense of belonging, a sense of common goals, involvement in community affairs, and a sense of wholeness.
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> —Crank 1994:336–37

> There exists out there, somewhere, "the black community." It once was a place where people both lived and worked. Now it is more of an idea, or an ideal, than a reality. It is like the mythical maroon colony of the Isle des Chevaliers (for those of you who have read Toni Morrison's *Tar Baby*), or like Brigadoon (for those of you who are culturally deprived). "The black community" of which I write is partly the manifestation of a nostalgic longing for a time when blacks were clearly distinguishable from whites and concern about the welfare of the poor was more natural than our hairdos.
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> —Austin 1992:1769

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How is the law implicated in people's struggles to define themselves as individuals and as groups? In what ways do legal processes affect and respond to the division of the social landscape into categories and groups of people? In this Symposium Issue, scholars cross disciplines, methodologies, and cultures to examine the interaction of law with community and identity. The result is an exciting rethinking of more traditional approaches to this issue and also a somewhat astonishing convergence in perspective across many of the studies. From Indonesia to Chicago, from Native American treaty cases to Antiguan family law, our authors uncover the complex, mutually constitutive relationships that form between legal processes and social identities.

Eschewing simplistic or determinist models, these articles analyze history and power, social construction and language, tracing the constraint and creativity that result from—and shape—legal intervention in identity formation and reformulation. To those more comfortable with unicausal models (e.g., "this legal change caused, or failed to cause, that social result"), this move is undoubtedly unsettling.[1] But the authors in this issue, building on developing approaches from a variety of social science fields, insist that we take account of the complexities of the interrelationship between law and social change.[2]

[1] There is, of course, considerable value in the somewhat differing projects whose goal is to demonstrate that certain legal innovations have had (or failed to obtain) some of the impacts intended (e.g., assessing whether in some areas antidiscrimination law has aided in integrating the workforce; see, e.g., discussions in Burstein & Edwards 1994; Donohue & Heckman 1991; Donohue & Siegelman 1991; Heckman & Verkerke 1990; Schultz & Petterson 1992). The studies in this issue simply urge us in addition to examine closely the more subtle side effects of even apparently beneficial legal changes, looking carefully at how people's conceptions of themselves may have changed in their interaction with law. To the degree that we find social complexities that constrain or refract the effects of intended legal changes, there is no simplistic insistence on quick-fix solutions or abandonment of legal reform efforts but rather a more realistic assessment of the mixed baggage that accompanies legal intervention. Indeed, some authors in this issue seem to believe that there is no escape from this mixed baggage. Furthermore, in understanding the implementation of laws in particular contexts, these studies indicate the importance of paying close attention to the particular chemistry and constellation of actors and social traditions involved.

[2] The challenge of conceptualizing a more complex causality itself, of course, is hardly new to social scientists. Founding thinkers such as Max Weber attempted to escape more simplistic approaches, insisting that social science explanation consider multiple sides of the "causal chain" that moves social change (Weber 1958:27)—and that all causal accounts take adequate account of meaning (Weber 1947:99–100). Marxist theorists have at times borrowed in somewhat changed form the Hegelian notion of a "dialectic," in which the material world and "forms of thought" transform one another (Marx 1967:19–20). French sociologist Alain Touraine (1977) carried this thinking a step further with an analysis of the ways society produces itself, an attempt to overcome conceptual divisions between "parts" of society that are thought to stand in causal relation to one another. In grappling with the problem of how to dissolve dichotomous categories while still being able to discuss the problematic they addressed, anthropologist Marshall Sahlins (1976:205) suggests that we resist the "fateful differentiation" of the world into compo-

Rather than assuming a stable "community" or "self" on which law acts, these studies problematize the concepts themselves. The studies ask: How are "communities" formulated and their boundaries determined, and what is the role of legal categories and actors in this process? And in what way does the interaction with legal process shape people's very conception of the "person"—of who they are? What is the effect on people and communities of requiring certain kinds of "authenticity" or "representation" in legal arenas? When legal processes open the door to voices only as they represent in an "authentic" manner certain prefigured communities or social identities, can we unproblematically assume that what we hear is unaffected by this legal framing? What if this way of thinking is itself fundamentally different from that habitually or previously used by the affected people? Thus the notion of community itself, or the particular way in which identity is conceived, becomes problematic parts of the analysis. The quotations with which I began highlight this shift to a more skeptical perspective.

Rather than adopting a view of law as the raw imposition of power from above, or painting idealistic pictures of one-way, successful resistance to legally mediated power, these scholars also ask us to consider the more complicated issues that emerge when people's own histories, customs, and sense of self become the "stuff" with which law works—and when legal frames in turn become the subject (or foundation) of debate. The resulting analyses manage to take account of both the determinacies of power implicated in legal framing and the potential for successful resistance and self-determination that emerges when people actively engage with legal processes and categories.[3] The particular combination of determinacy and openness we see in these studies is

nent parts like "material"/"ideal." As discussed below, much recent work in anthropology, linguistics, and social theory has attempted grounded analysis designed to demonstrate the power of a less segmented causal model of society in capturing social processes.

The authors in this issue similarly undermine the causal dichotomy in which "law" and social groups are approached as two entirely distinct phenomena that have causal impact on one another, asking instead how legal and social processes interpenetrate and define one another.

[3] Although much earlier work focused more on the ways law serves as a site for the imposition of power, in recent years there has been increasing empirical attention to forms of resistance by local communities and/or relatively disenfranchised people (see Comaroff & Comaroff 1991; Lazarus-Black & Hirsch 1994; Scott 1985, 1990). Critical race theory and feminist scholars have used narrative and other forms to create more complicated and respectful views of people of color and "white" women as agents and subjects not reducible to the constraints that surround them (see, e.g., Delgado 1989; Matsuda 1987; Williams 1991). Law-and-society research has used individual case studies in efforts to locate and give voice to those who struggle against the constraints of the structure of legal institutions (Ewick & Silbey 1992; White 1990), while ethnographic and linguistic studies of citizens' court use (or refusal to use the courts) have examined the interplay of resistance and constraint in their experiences with the legal system (Conley & O'Barr 1990; Greenhouse 1986; Merry 1990; Yngvesson 1993). Much of this movement has arguably emerged from more careful attention to the voices of those who had least access to "official" channels of communication; scholars who earlier listened to those voices had in many ways anticipated the "new" move to combine studies of resistance and domination

also analyzed as the product of distinct sociohistorical moments, so that we are moved beyond a vague, abstract model of "power and resistance in law."

In keeping with much of current scholarship in sociolegal studies and a number of social science disciplines, these studies avoid crude models dividing meaning from material life; instead they develop complex models of social change in which the understanding that is forged in the interaction of legal and cultural categories is inextricably intertwined with the exercise of power and the distribution of economic necessities. Similarly, the work in this Symposium brings together empirical and critical approaches from a number of disciplines.[4]

As I explain in more detail in the Conclusion that follows the articles, a central concept in this feat (overcoming stale oppositions in a single bound!) is that of "social construction." For the novice, let me briefly explain that a social constructionist approach begins by questioning the "given" or "natural" character of categories and concepts, seeking to understand the social and cultural influences on the way people understand and construct their lives—and for some scholars this would include an examination of our own categories, to the extent that doing so is useful.[5] Because no category—indeed, no language—exists outside of social context, it becomes important to understand the effects of culture and society on the concepts involved in our research, whether they be the categories used by the people we study or the categories we ourselves use for analysis. At the same time, because there is no category outside of social context, the goal of this approach is not to "purify" our language of cultural baggage but rather to understand our own and others' categories in a less naive, more conscious fashion.

(see, e.g., DuBois 1969 [for a rereading of DuBois along these lines, see Chandler 1991, forthcoming]; Genovese 1972; Stack 1974).

[4] By "empirical" I mean work that grounds itself in the observation and study of social practices. By "critical" I mean work that situates and evaluates structures and practices in social and historical context, questioning the necessity or "taken-for-granted" character of existing social formations and asking how they enact or subvert structures of power. Recent debates in sociolegal studies have forefronted the dilemmas involved in attempts to combine these kinds of work, and there is certainly a variety of opinion as to how to approach any such combination. See, e.g., Trubek & Esser 1989, Coombe 1989, Harrington & Yngvesson 1990, and Sarat 1990.

[5] I say "useful" to highlight the somewhat moderate, pragmatic view that I think characterizes the best versions of social constructionism. Thus the endless and agonizing self-reflective consideration of our own work that critics fear (and regularly enjoy mocking) would indeed become a waste of time; the idea is simply to look carefully enough at our own constructs that we understand at least some of the biases and assumptions that might materially affect our conclusions, so as to either correct for them where possible or at least take account of them in our conclusions. This has a rough analogue in the quantitative practice of acknowledging the partial nature of any statistical picture and attempting, where possible, to specify the biases built into the quantitative method used. Perhaps the most important benefit to be gained from such reflexive consideration is an appropriate modesty about our results. See J. Larson as quoted in Mertz 1994; see also general discussion in Mertz 1994.

If the notion that categories and concepts are "constructed" points us toward the standard concerns of cultural analysis, the idea that they are "socially" constructed can move us to look at the social, economic, and political structures at work in the way people act in and view the world.[6] This approach takes seriously the idea that how people think and feel and perceive their world is important in how they act; that out of the myriad of possible avenues for action only a small subset is usually considered to be available—and that this narrowing of possibilities is a result of the combined and intertwined effects of social structure, culture and symbolic representation, politics, economic factors—all analyzable as part of the social construction of human life. Thus, while people's perceptions are important, so are the at times iron constraints of the social structures surrounding them. This approach of necessity combines analysis of idea and action, constraint and creativity, imposed power and active resistance, stasis and change. And our inquiry into social construction will be at once empirical (examining how people work with and within categories) and critical (questioning the "naturalness" of the categories, excavating the power dynamics at work behind apparently "neutral" concepts).[7]

The examination of the impact of law on collective and individual identity is actually a prime site for the development of this new synthetic approach to the study of law and society. Scholars from a wide variety of disciplines have been converging on this area of inquiry for a number of years. In the next section I outline the current convergence of interest in issues of law, community, and identity that, it can be argued, is occurring simultaneously, in interesting ways, across multiple disciplines. We then move to an in-depth discussion of the articles in this Symposium.

I. Law, Community, and Identity across Disciplines

In formulating the topic for this Symposium Issue, Frank Munger, the symposium editorial board, and I sought to bring together a number of diverse yet in some ways interestingly convergent perspectives on the intersection of law, community, and identity—perspectives that have emerged across multiple disciplines. The papers, which were all submitted in response to our

[6] The move to a truly social form of analysis in social constructionist approaches is arguably even now in nascent form, and it is true that a number of classic works in this tradition really focused primarily on symbolic and cultural meaning without a great deal of attention to power structures or material contexts. However, this is currently changing, and I suggest here that the change opens up a possibility for moving beyond a fairly stale and aged dichotomy in social science analysis.

[7] This division between "critical" and "empirical" is in some ways too sharp, as I will suggest in the final section, because arguably careful empirical work has an intrinsically critical character (to the extent that it uncovers or unmasks deceptive appearances in order to reveal what is happening beneath).

Call for Papers (and subsequently reviewed by symposium and outside referees),[8] do indeed demonstrate both the diversity and convergence we hoped to find—although, perhaps predictably, some disciplines are not represented.

A brief survey of cross-disciplinary approaches to the role of law in the constitution of individual and collective selves indicates the rich potential of these issues for cross-field fertilization.[9] On the one hand, we find common themes emerging from disciplines that use differing methodologies and perspectives; here there is an opportunity for deepening understanding by bringing diverse disciplinary approaches to bear on the same questions. On the other hand, there are also different emphases that emerge as a result of disciplinary divisions; it is useful as well to consider the richer picture of community and identity in law that becomes possible when these emphases are combined or contrasted. Here I can only indicate broad areas for ongoing consideration of this cross-disciplinary potential.

Psychologists have examined the role of law in constituting social selves at a number of levels, as, for example, when they examine the boundaries that define people as competent or insane or characterizable as victims. These are crucial borders that in the process of defining individual selves also determine how citizens are legally included in or excluded from the political community; these definitional processes affect not only the perceptions and responses of courts and juries but also those of laypeople (see generally Diamond 1992). And, interestingly, as law absorbs and translates the expertise of psychologists, professional psychological understandings have an effect on the constitution of legal selves. In a different vein, research on procedural justice has emphasized the importance of dignified and respectful treatment to feelings of inclusion in the political and legal community (see Tyler 1990; Lind & Tyler 1988).

Economists have worried about the way in which law operates, or doesn't (or shouldn't) operate, at the community level to affect economic entitlements and results (see, e.g., Ellickson 1991; for alternative view of impact of absence of law on community, see Larson 1994).[10] Here community norms and ways of negotiating problems are examined as separable from but also pos-

[8] The two symposium referees played a crucial part in sifting through initial abstracts and then submissions (and in some cases, resubmissions) in order to select and shape the articles that comprise this issue. I regret that I cannot identify them by name.

[9] I acknowledge here the central and formative role of conversations with Frank Munger, Chris Tomlins, Carol Greenhouse, Richard Delgado, Susan Silbey, Lani Guinier, and Shari Diamond in developing this synthesis.

[10] Ellickson charts the fundamental irrelevance of law to exchange relations between ranchers and their neighbors; he demonstrates (1991:52) that an informal and rational system for resolving disputes has developed "beyond" the shadow of the law. Larson (1994) uses close empirical examination of a land-use system that operates outside legal zoning and control to document the possibly deleterious effects of an absence of recourse to regulation and law.

sibly responsive to formal legal rules; there is consideration as well of the effects on local communities of an absence of formal law.[11] Economists have also explored the impact of legal interventions on the economics of discrimination, examining the intersection of social categorization, law, and economic justice (see, e.g., Ayres 1991; Donohue & Siegelman 1991; Heckman & Verkerke 1990).

Historians have drawn on concepts of community when they have asked about legal issues from a community base, viewing law as an expression of underlying social processes and concerns (see, e.g., Allen 1981; Konig 1979; Mann 1987; Nelson 1994; Reid 1980). Along similar lines, the antifederalist tradition and conceptions of civic republicanism have attracted renewed attention because of the way in which they embrace the community as a source of legal legitimacy and power (see, e.g., Appleby 1984; Matthews 1984; Pocock 1975; Wood 1969).[12] Historians have also treated organizations as communities that respond to legal interventions (see, e.g., McCurdy 1975; Tomlins 1985). Taking a somewhat different direction, some historians have examined the legal construction of a concept of community and have also explored how images of community are used to promote things that are not communitarian at all (see, e.g., Frug 1980; Hartog 1983, 1985; Hurst 1956; Knemeyer 1980; Novak 1993).

Studies of politics and political systems have examined the contribution of law to a more or less alienated community (see, e.g., Walzer 1983; see also McCann 1986). Very interesting discussions of the role of law in Eastern Europe, as that area undergoes major transformation, have centered on the role of community in providing the very prerequisites for the rule of law itself (see, e.g., Abel 1990; Cain 1990; Krygier 1990; Tonneis 1993). In the United States, political scientists have examined the way legal discourse contributes to conceptions of the political community that define certain ideas and people as "fringe" or "alien" (Kessler 1993). This legal construction of community has at times encouraged intolerance of nonconformity, thereby disempowering voices that could threaten elite interests (Gibson 1988; Gibson & Bingham 1982). Discussions of the role of rights have similarly delineated the place of law in defining people into or out of the political community (see, e.g., Garth 1986; see also Scheingold 1974).

[11] In a sense, the standard economic vision is ill-suited to investigating community, as it begins by privileging the individual maximizing actor rather than focusing on aspects of group conduct that are aimed not at maximizing individual gain but at building and maintaining community (even at personal sacrifice).

[12] For examples of the excitement in legal circles around the republican tradition and the antifederalists, see Ackerman 1984; Horwitz 1987; Michelman 1986; Sunstein 1985; and the symposia that appeared in 97 *Yale Law Journal* (No. 8, 1988) and 84 *Northwestern University Law Review* (No. 1, 1989).

From the legal academy, we find work by critical race scholars, legal feminists, and other legal scholars concerned with race and gender inequalities that is often at the cutting edge on this issue, problematizing and challenging standard conceptualizations both of the relationship between law and community and of the role of law and rights in the construction of selves. Thus critical race theorists have repeatedly demonstrated the double-edged character of legal rights, which though they participate in a system that perpetuates racist inequalities, have also served as avenues for substantial victories by people of color (see, e.g., Bell 1987; Williams 1991; Matsuda 1987). Regina Austin's work (1992) explores the thoroughly ambivalent position of law for "black communities" in which lawbreakers can both destroy communal life and yet symbolize resistance to unfair aspects of the dominant society. Lani Guinier (1994:129) critiques the use of geographic districting, which in effect grounds political participation—indeed, effective membership in the political community—on the accident of inclusion in particular artificial geographic units:

> Constituents do not consciously choose to become members of this group, since very few people move somewhere in recognition of their likely voting efficacy within particular election subdistricts. . . . In other words, voters do not move to an election district; they move to a neighborhood or community.

Thus the legal construction of "local" political units may appear to give deference to local communities while actually disempowering some of them. Martha Fineman's work (1994) on welfare mothers similarly charts the ways in which political and legal constructions of "single" mothers disempower women who head their families, in effect blaming them for a multitude of social problems while directing attention away from systemic sources of difficulty. Work by legal scholar Martha Minow (1990) contains a strong statement of the double edge—the potential and problems—of the role of law in the construction of social identity. While acknowledging the inevitability of the boundaries that go with legal categorization and recognition of difference, she urges a relational approach to bridge those divisions.

In a similar vein, sociolegal scholars have examined the complex role that law can play in the social processes surrounding identity formation and reformulation. For example, David Engel (1993a) suggests that in struggles between parents of disabled children and the professionals charged with diagnosing those children, parents' use of attorneys can have a positive effect in providing children and parents with a voice. Here the invocation of law can have a positive effect in struggles over the politics of identity, combatting insensitive or silencing procedures.[13] On

[13] Martha Fineman (1988, 1991) makes a similar point about the role of formal law in protecting mothers' rights and fostering their voices in custody hearings.

the other hand, Kristin Bumiller's (1988) pathbreaking work on the consciousness of civil rights "victims" illustrates the potentially disempowering effect of resort to law, which offers the illusion of redress while retaining an individualist and universalist focus that divides, alienates, and isolates potential claimants (see also Engel 1993b). Garth (1992:268) suggests that this effect can be mitigated when members of a group that has suffered discrimination can work together, with some taking active roles—for example, as "class representatives" in class action suits.[14]

Like historians, anthropologists and sociologists have used the concept of community as a basic unit of analysis in studying legal systems, asking what norms and approaches to conflict resolution characterized particular local communities (see, e.g., Barton 1969; Fallers 1969; Gluckman 1965). Cultural analysis of law has looked at the ways in which legal systems express and enact the underlying world-views of communities (Geertz 1973; Rosen 1989). Anthropologists have also examined how law operates at the intersection of the local community and the state in colonial and postcolonial settings (see, e.g., Cohn 1983, 1989; Merry 1991, 1992; Messick 1992; Starr & Collier 1989). There has emerged as well critical consideration of the normative implications of an uncritical approach to the use of communities as "pristine" units of analysis. With this critique has come heightened awareness of the role of legal and political systems in influencing, shaping, and translating local communities and identities. For example, Virginia Domínguez (1986), in work on the social construction of race and ethnicity, examines the role of laws regarding miscegenation in Louisiana in constituting the identities of people of "mixed race." She also analyzes the role of litigation surrounding the "Law of Return" on constitutions of individual and group identities in Israel (Domínguez 1989; see also, e.g., Chandler 1991, forthcoming; Clifford 1988). Anthropological and cross-cultural work provides complex visions of law as a site for cultural construction and social struggle in the constitution of individual and group identities (Greenhouse 1986; Lazarus-Black & Hirsch 1994; Merry 1990; Yngvesson 1993; see also Comaroff & Comaroff 1991; Scott 1990).

Different but in some ways allied critiques of the unreflective use of the "local community" as a basic (self-formed, independent) unit of analysis have emerged from sociology as well. For example, sociologist William Julius Wilson (1987) and others have pointed out the role of top-down governmental interventions in creating and maintaining race-segregated economically

[14] Sociolegal scholars have also examined struggles over identity within the legal profession (see, e.g., Abel 1988, Abel & Lewis 1988, Halliday 1987, Garth 1993, and Nelson, Trubek, & Solomon 1992), as well as the impact of legal professionals on clients' conceptualizations of their own identity (see, e.g., Sarat & Felstiner 1986).

impoverished local communities.[15] As Frank Munger (1993:252) has noted, the power of this perspective for sociolegal studies is considerable, for as we uncover the role of law in "[s]tate policies [that] create, maintain, and respond to community and perceptions of community" in ways that enhance social inequality, we can with renewed vigor "explore the proposition that the problems of the disadvantaged are in part a product of systemic forces that the state itself maintains and, implicitly, could change" (see also Hagan 1993).

Linguists and discourse analysts have studied the law as it impacts local speech communities and conceptions of self (see, e.g., Borneman 1993; Bloch 1975; Brenneis 1984; Briggs 1990; Mertz 1981; Woolard 1989). And—a related issue—they have examined the way in which local identities and concerns are translated and transformed in legal language (see, e.g., Chock 1991; Coombe 1991, 1993; Merry 1990; see also Conley & O'Barr 1990). At the same time they have analyzed communities as sites where relationships and identities are forged, and "authentic" voices formulated, often for legal audiences. Thus, for example, close analysis of colonial governmental and legal discourse demonstrates the subtle but far-reaching impacts on indigenous societies of translations in this language (see, e.g., Daniel 1993; Mertz 1988; see also Fabian 1991). At the same time, studies have also focused on indigenous peoples' struggles with these impacts, struggles that at times produced narratives contesting the terms of colonialist discourse.[16] Ongoing work continues to unravel the subtleties of this dynamic of translation of collective and individual identities through legal discourse (see, e.g., Coombe 1991; Hirsch 1992; Philips 1994).

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Thus, from many directions, social analysis of law has taken up the problem of community and identity, in the process learning much about both the role of law in society and the role of society in law. Although the rich strands of argument are too numerous to summarize here, we can at least note a number of emergent themes. First, as we examine more critically the use of

[15] As examples of work exploring the strong effects that social contexts (themselves shaped by govermental and legal interventions) can have on crime and criminal justice, see Bursik & Grasmick 1993; Hagan 1993; Myers 1993; Sampson & Laub 1993.

[16] For example, Daniel (1993:572) details the imposition of an "agronomic" terminology that "belonged to a rationalized system which favored precision over approximation, universal standards, and units of measurement over contexualized ones." Imposition of this terminology was part of a social and economic structure that brought immigrant laborers to work on tea estates in Ceylon, under a system involving massive control of living conditions and actions. In reaction against these severe limitations, migrant laborers use stories and language as well as actions to express resistance. (One story, for example, involved a laborer who, in response to constant haranguing from an insensitive supervisor about the proper length of pruning cuts to tea bushes, severed the supervisor's arm at precisely the length dictated by the metric of the agronomic vocabulary.)

"communities" as basic units (whether for sociolegal analyses or for political systems), we find that varying approaches to community say a great deal about the notions of social selves that are also integral to legal categorization and thought. This kind of inquiry furthermore leads us to focus on the character of the "ties that bind," whether market or nonmarket, asking how and whether law should foster or interfere with community. Over time, we can map the impact of law through a focus on communities and identities as sites for social change. Researchers have also tracked the effects of legal interventions on organizations through an analysis of those organizations as kinds of communities. We see, as well, an increasingly sophisticated examination of the complicated images of community that appear in and through law, with scholars no longer taking for granted that the images map the reality with any precision (and then asking what role these images actually play). Scholars from differing disciplines have also elucidated the ambivalent place of rights and "rights-talk," as part of a growing awareness of the complex role of law in both fostering and constraining (sometimes at the very same moment) the development of community and individual identities. Recent work also contains heightened consideration of the crucial role of a politics of these identities in legal decisions that impact access to economic, spiritual, and even physical survival. These are themes taken up with sophistication, and powerfully developed in the articles of this Symposium Issue.

II. Community and Identity from Antigua to Antigone: The Symposium Articles

The symposium authors draw on perspectives from anthropology, sociology, legal and sociolegal studies, literary criticism, social theory, philosophy, and history. They also bridge diverse areas of the world and of law.

The symposium begins with an analysis of Antiguan family law by Mindie Lazarus-Black. During the 1980s, Antigua adopted a number of statutes designed to alter the situation of "illegitimate" children. The foundational piece of legislation, the Status of Children Act, barred discrimination against "children born out of wedlock." In one sense, this attempt to legally redefine kinship rights and family prerogatives, which followed Antigua's achievement of full independence from Great Britain in 1981, represented a departure from the legacy of colonialism. Because of the higher status of European religion and family form, differential "legitimacy" had accrued to children of unions formally recognized in church weddings. In seeking to end this invidious privileging, the new statute combatted entrenched, legally sanctioned social structures that reflected the historic dominance of "white" and "European" over "black" and "African" ways. Lazarus-

Black documents attorneys' use of this statute in subsequent successful efforts to fight exclusion of "illegitimate" children from private secondary schools. However, at the same time, the statute may also have opened the door to a shift in the legal rights of parents. Although no cases have as yet reached Antigua's High Court, there have been initial attempts to use the statute to buttress fathers' claims to children born "out of wedlock." In some cases, as illustrated in this article, men may use their claims under the statute in efforts to force concessions from the women who are the mothers of their "illegitimate" children—women who disproportionately take responsibility for raising those children. In this alternative reading, the statute would enforce rather than undermine some aspects of existing power inequalities, giving men another way in which to wield power over women. Thus, while the statute tackles kinship as a site for hegemony, seeking to alter colonialist legacies through legal redefinition of social identity, it may at the same time reinforce gender hierarchy—in part, Lazarus-Black suggests, because it ignored the gendered character of the kinship identities at stake.

The inadequacy of legal discourse in translating gendered identities is also the subject of Lisa Bower's article, which examines the ways in which law's negative or prohibitive character can actually spur a process of identity formation for individuals and groups. The article begins with a consideration of the *Bowers v. Hardwick* (1986) case, in which the Supreme Court upheld the constitutionality of a Georgia sodomy statute. This decision was sobering to the lesbian and gay activists who had hoped to use law to help forge a legitimated public identity and end forms of discrimination. In addition to disappointment about the outcome in *Bowers*, activists and commentators were offended by the framework for understanding homosexual identity suggested by the Court's language. This framework focuses on a particular act, sodomy, as defining the essence of homosexual identity, thereby simplifying and/or ignoring the complex, subtle, and variable character of the people so labeled. After *Bowers*, gay activist groups such as Queer Nation attempted to work against the limitations imposed by the Supreme Court—but outside of a legal framework, using public demonstrations and improvisations in efforts to protest the simplified, unitary description imposed in legal discourse. The article then returns to a focus on law, asking whether there is room within legal frameworks for the more complicated vision of identity proposed by lesbian and gay activists. Through a detailed analysis of the language of a case involving transsexual identity, Bower locates moments of possibility, when the district court appears to allow for a complex, ambiguous, nonbinary conceptualization of gender. However, the Seventh Circuit opinion restores a binary conception, founded on a "fictive community whose sexual identity is ostensibly stable," so that

"differently sexed subjects are theorized as marginal to this community and, accordingly, denied legal protection" (p. 000). Bower suggests that the effect of this resistance in legal discourse to more complex understandings of gendered identity may itself in turn be sparking a "renewal of community and a new style of politics" for lesbian and gay Americans (p. 000).

In her analysis of EPA enforcement of the Clean Air Act (and its amendments), Noga Levine examines the agency's reliance on an image of community that is without empirical foundation. Thus EPA reports presuppose a myth: that there are coherent industrial communities poised to make (and effectively communicate) utilitarian choices between poor air quality and jobs. A linked concept that emerges from EPA policy is the notion that these distinct coherent communities have distinctive and differing responses to industrial air pollution and odor—and that respect for these divergent preferences bars use of proactive and uniform national standards. The agency used this framework to justify a strictly reactive enforcement approach under which the only way trouble spots could be identified was through local collective action. By contrast, Levine presents three case studies demonstrating the extraordinary marshalling of resources required to bring citizens together in order to trigger intervention under the current enforcement scheme. Precisely because they are not part of a tight-knit, single community but simply are diverse people linked by similar living conditions, the citizens must produce new forms of social groupings and gatherings. In Levine's view, then, the reactive enforcement scheme hides behind a myth: that local "communities" are "choosing" not to complain about industrial air pollution. In fact, because of the difficulty of obtaining redress, this scheme masks the fact that utilitarian choices are indeed being made without community consent—and that those choices favor industrial profit over citizens' health. The myth of community permits a form of coercion to pass as consent, while local residents struggle to create new kinds of groups in order to obtain legally recognized rights.

A different sort of myth lies behind the treatments of "customary law" that have emerged through history in the Central Maluku islands of Indonesia. Through Charles Zerner's account of this history, we witness the construction and reconstruction of conceptions of "customary law," in a process that reflects as much the world-view of colonial and postcolonial governments as it does indigenous practices. The indigenous practices at issue were called *sasi*, a "changing family of customary practices, administrative roles, ritual performances and beliefs . . . deployed to regulate access to terrestrial, and . . . marine and riverine resources" (p. 000). In the late 19th and early 20th centuries, accounts of sasi by governmental authorities and local elites relied on images of unruly local communities in need of discipline. A fluid and

shifting set of local practices appeared as a codified list of rules and fines, to be enforced by a form of "forest police." Zerner views this formulation of sasi as the colonial government's attempt to use "customary law" in regulating and controlling the production of agricultural and marine commodities. In recent governmental and academic texts, sasi has been reinterpreted as an indigenous set of conservation practices; indeed, the new history locates sasi as a source of resistance to colonial incursions. Ironically, Zerner finds a novel form of rationalization in the appropriation of sasi for environmentalist discourses, which often reduce rich ritual and belief systems to sets of administrative formulas. Initially used by the government to encourage and even control local production for markets, this reinterpretation has been reworked yet again by provincial scholars and young activists; it currently provides a creative source for groups seeking to resist extractive political economies that would intrude on local economic prerogatives and power. This newest construction of "customary law" results from a confluence of international environmentalist and human rights discourses, local environmental and community activist efforts, provincial academic work, governmental policies, and mobilization on the part of local officials and community members.

I am particularly pleased that, through routine submission and review processes, an unusual number of articles dealing with law and Native American communities appear in this Symposium. In recent years even anthropologists, the likely academic voices for those communities, have given less attention than they could to the lessons to be learned from Native American encounters with law. The three articles that take up those lessons bring the Native American experience squarely within the ambit of the most central questions facing law-and-society (and other social science) research today. One hopes that this is just the beginning of heightened attention to this kind of work on Native American societies.

Carole Goldberg-Ambrose in a sense sets the scene for us, tracing the powerful role of federal and international law in shaping aspects of Indian group identity. Thus even a unit such as the "Tribe," which is often viewed (for example, by the Supreme Court) as an indigenous unit that is somehow "prelegal," carries the imprint of years of U.S. government and legal interventions. While Native Americans have not sat passively by throughout the history of these interventions, but have worked actively to respond in ways that reflect their own values, there has clearly been a differential in power between the parties involved—so that today's political units and the terms used to describe them strongly reflect U.S. governmental frameworks. Goldberg-Ambrose draws on anthropological literature that for some time has demonstrated this co-constructed character to Na-

tive American social structure and culture. In some cases, U.S. government needs (for example, to identify leaders who could sign oil and gas leases) resulted in interventions that concocted central "tribal" leadership and political forms that were quite different from more diffuse, localized forms of indigenous authority. Or in the rush to consolidate Indian peoples on reservation lands (often to maximize availability of land for non-Indians), quite distinct Indian groups might be treated as parts of the same "tribe." Although conformity to models imported by the U.S. government clearly causes problems for existing official tribal political units, critiques of current tribal structure have been muted by a not-inacccurate fear that any criticism will simply be used to undermine tribal (and Native American) power and sovereignity in general. U.S. law and the categories it encodes have also contributed to the development of intertribal groups and a generalized "Indian" identity, as Native Americans actively work for empowerment within the official legal discursive frameworks.

Wendy Espeland's essay analyzes the struggle that ensued between the U.S. Bureau of Reclamation and the Yavapai of the Fort McDowell Indian Reservation, when the bureau planned to build a dam that would flood the reservation. From the Yavapai point of view, this action took place against a long history of displacement and broken U.S. government promises. Initial discussions of the proposed dam once again ignored values that the Yavapai viewed as central. The debate was framed in part by the National Environmental Policy Act (NEPA), which required federal agencies to prepare Environmental Impact Statements (EIS) before taking actions that might significantly affect the environment. NEPA actually forced the bureau to take Yavapai interests seriously for the first time (the Yavapai had not been considered in previous bureau reports and studies). In preparing their EIS reports on the dam, the bureau's experts decided to employ a rational choice model that relied on a consequentialist causal logic and that sought to render different kinds of impacts commensurate. This frame meant that the study would exclude any significant consideration of Yavapai concerns such as the role of land as an incommensurate value, the backdrop of history, the ethics of breaking promises, issues of fairness, the symbolic significance of aspects of land and culture, or the interrelatedness of features and impacts that were treated separately in impact statements. The Yavapai response was to contest the frame that excluded such considerations, using political protest and appeals to the media. Effective mobilization and reinterpretation of historical symbols of Yavapai identity added weight to this attempt. Ultimately, the government dropped plans to build the dam. This study provides an intricate picture of the complex role of law in at once opening doors and constraining the terms of discourse, while a politics of identity is at once forged in the interaction

with law and yet bursting out of the legally determined boundaries.

Susan Gooding concludes the articles in the Symposium with a subtle analysis of the language through which Colville identity has been translated, and mistranslated, in a recent treaty rights case. The Confederated Colville Tribes of Washington State are seeking to intervene in a case in which the fishing rights of other neighboring tribes were upheld. To date, the Colvilles' attempt has been unsuccessful, with both district and appellate federal courts denying intervention on the grounds that the Colville tribes have over time shifted their structural form and names too much to claim the "maintenance of organized tribal structure" required for inclusion as treaty signatories. Gooding demonstrates that the district court's formulation ignores both the role of the legal system itself in creating the fragmented identity it now finds unacceptable, and indigenous forms of identity revealed in naming practices. The court in essence requires that the people of the Colville Tribes maintain one primary identification to claim their rights as descendants of treaty signatories. Yet Colville naming practices generally employ a form of "layered" identity in which multiple sources of identification take part. Gooding contrasts the court's often frustrating search for singular identities with Colville witnesses' insistence on identifying themselves in the traditional "layered" form; in a poignant example, one woman refused to choose between her grandparents' communities when asked by the judge to pick one place as her primary source of identity. "I wouldn't want to disappoint either of my parents," was her reply. This study provides a powerful and detailed analysis of a central irony in the relationship between U.S. law and Native American identity: the legal discourse looks as if its central purpose is the accurate translation of indigenous understandings and categories, yet its structure persistently repeats a fundamental injury of mistranslation—of understanding Native American identity and categories only through the prism of non-Indian priorities, values, racialized epistemologies, and language forms.

In her commentary, Carol Greenhouse takes up the issue of choice, arguing that ideologies of individual choice mask the strong but subtle constraints that inhere in the boundaries of cultural and social constructions. Through a reading of Sophocles' *Antigone*, Greenhouse foregrounds the tension between apparent choice and sociocultural constraint that she sees as a central theme in Symposium essays. In an intruiging exploration of the "doubling" found with cultural constructions in the shadow of the law (and of the state), she takes us through the paired contradictions of the positions of the two sisters in *Antigone*—each negotiating gendered lives within systems of belief that limit their degree of choice. Antigone asserts the primacy of the laws of the

gods that bid her to perform burial rites for her brother, defying the more local male authority of the king and state in an action she characterizes as unchosen, prefigured by the very fact of her birth into her brother's family, and required by law. Her sister, Ismene, views her path as equally prefigured, for compliance with the laws of men is a corollary of female gender. In one sense, one could think of the two sisters as choosing between social constructions of the law, gender, and self—but that would assume a level of remove and conscious choice, where the characters speak of constraint and necessity. To what degree are we ever free to make such "choices," Greenhouse asks us—and even then, what sort of "choice" is it for Antigone to opt for actual death, or Ismene for what she characterizes as death in life? Yet imagining the possibility of that freedom, Greenhouse suggests, is precisely the ground from which social or cultural "construction" can build in creating openings for reflection on what is and what could be.

* * * * *

I leave you now to a fuller reading of this new work, an exciting foreshadowing of at least part of the next generation in law-and-society scholarship. In the Conclusion I return to expand further on a number of themes and issues that together can chart a new kind of social constructionist approach for sociolegal studies.

References

Abel, Richard L. (1988) *The Legal Profession in England and Wales.* Oxford: Basil Blackwell.

——— (1990) "Capitalism and the Rule of Law: Precondition or Contradiction?" 15 *Law & Social Inquiry* 685.

Abel, Richard, & Philip S. C. Lewis, eds. (1988) *Lawyers in Society,* vol. 1: *The Common Law World.* Berkeley: Univ. of California Press.

Ackerman, Bruce (1984) The Storrs Lectures: "Discovering the Constitution," 93 *Yale Law J.* 1013.

Allen, David Grayson (1981) *In English Ways: The Movement of Societies and the Transferal of English Local Law and Custom to Massachusetts Bay in the Seventeenth Century.* Chapel Hill, NC: Univ. of North Carolina Press.

Appleby, Joyce Oldham (1984) *Capitalism and a New Social Order: The Republican Vision of the 1790s* New York: New York Univ. Press.

Austin, Regina (1992) " 'The Black Community,' Its Lawbreakers, and a Politics of Identification," 65 *Southern California Law Rev.* 1769.

Ayres, Ian (1991) "Fair Driving: Gender and Race Discrimination in Retail Car Sales," 104 *Harvard Law Rev.* 817.

Barton, R. F. (1969) *Ifugao Law.* Berkeley: Univ. of California Press.

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

Bloch, Maurice, ed. (1975) *Political Language and Oratory in Traditional Societies.* New York: Academic Press.

Borneman, J. (1993) "Uniting the German Nation: Law, Narrative, and Historicity," 20 *American Ethnologist* 288.

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

Briggs, Charles (1990) "Disorderly Dialogues in Ritualized Impositions of Order: The Role of Metapragmatics in Arao Dispute Mediation," 30 *Anthropological Linguistics* 448.

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

Bursik, Robert, & Harold Grasmick (1993) "Economic Deprivation and Neighborhood Crime Rates," 27 *Law & Society Rev.* 263.

Burstein, Paul, & Mark E. Edwards (1994) "The Impact of Employment Discrimination Litigation on Racial Disparity in Earnings: Evidence and Unresolved Issues," 28 *Law & Society Rev.* 79.

Cain, Maureen (1990) "On Babies, Bibles, and Bathwater," 15 *Law & Social Inquiry* 679.

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

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

Chock, Phyllis (1991) " 'Illegal Aliens' and 'Opportunity': Myth-Making in Congressional Testimony," 18 *American Ethnologist* 279.

Clifford, James (1988) "Identity in Mashpee," in J. Clifford, ed., *The Predicament of Culture: Twentieth-Century Ethnography, Literature and Art*. Cambridge, MA: Harvard Univ. Press.

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

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

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

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

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

——— (1991) "Contesting the Self: Negotiating Subjectivities in Nineteenth-Century Ontario Defamation Trials," 11 *Studies in Law, Politics, & Society* 3.

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

Crank, John (1994) "Watchman and Community: Myth and Institutionalization in Policing," 28 *Law & Society Rev.* 325.

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

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

Diamond, Shari Seidman (1992) "Foreword," in D.K. Kagehiro, & W.S. Laufer, eds., *Handbook of Psychology and Law*. New York: Springer-Verlag.

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

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

Donohue, John, & James Heckman (1991) "Continuous versus Episodic Change: The Impact of Civil Rights Policy on the Economic Status of Blacks," 29 *J. of Economic Literature* 1603.

Donohue, John, & Peter Siegelman (1991) "The Changing Nature of Employment Discrimination Litigation," 43 *Stanford Law Rev.* 983.

DuBois, W. E. B. (1969 [1903]) *The Souls of Black Folk.* New York: Penguin Books.

Ellickson, Robert (1991) *Order without Law: How Neighbors Settle Disputes.* Cambridge, MA: Harvard Univ. Press.

Engel, David (1993a) "Origin Myths: Narratives of Authority, Resistance, Disability, and Law," 27 *Law & Society Rev.* 785.

——— (1993b) "Law in the Domains of Everyday Life: The Construction of Community and Difference," in A. Sarat & T. Kearns, eds., *Law in Everyday Life.* Ann Arbor: Univ. of Michigan Press.

Ewick, Patricia, & Susan Silbey (1992) "Conformity, Contestation, and Resistance: An Account of Legal Consciousness," 26 *New England Law Rev.* 73.

Fabian, Johannes (1991) *Language and Colonial Power: The Appropriation of Swahili in the Former Belgian Congo 1880–1938.* Berkeley: Univ. of California Press.

Fallers, Lloyd (1969) *Law without Precedent.* Chicago: Univ. of Chicago Press.

Fineman, Martha A. (1988) "Dominant Discourse, Professional Language, and Legal Change," 101 *Harvard Law Rev.* 727.

——— (1991) *The Illusion of Equality: The Rhetoric and Reality of Divorce Reform.* Chicago: Univ. of Chicago Press.

——— (1994) *The Neutered Mother, the Sexual Family, and Other Twentieth-Century Tragedies.* New York: Routledge.

Friedrich, Carl J. (1959) "The Concept of Community in the History of Political and Legal Philosophy," in C. Friedrich, ed., *Nomos II: Community* 3–24. New York: Liberal Arts Press.

Frug, Gerald (1980) "The City as a Legal Concept," 93 *Harvard Law Rev.* 1059.

Garth, Bryant (1986) "Migrant Workers and Rights of Mobility in the European Community and the United States: A Study of Law, Community, and Citizenship in the Welfare State," in M. Cappelletti, M. Seccombe, & J. Weiler, eds., *Forces and Potential for a European Identity.* Berlin: Walter de Gruyter.

——— (1992) "Power and Legal Artifice: The Federal Class Action," 26 *Law & Society Rev.* 237.

——— (1993) "From Civil Litigation to Private Justice: Legal Practice at War with the Profession and Its Values," 59 *Brooklyn Law Rev.* 931.

Geertz, Clifford (1973) *The Interpretation of Cultures.* New York: Basic Books.

Genovese, Eugene (1972) *Roll, Jordan, Roll: The World the Slaves Made.* New York: Vintage.

Gibson, James (1988) "Political Intolerance and Political Repression during the McCarthy Red Scare," 82 *American Political Science Rev.* 511.

Gibson, James, & Richard Bingham (1982) "On the Conceptualization and Measurement of Political Tolerance," 76 *American Political Science Rev.* 603.

Gluckman, Max (1965) *The Ideas in Barotse Jurisprudence.* New Haven, CT: Yale Univ. Press.

Greenhouse, Carol (1986) *Praying for Justice: Faith, Order, and Community in an American Town.* Ithaca, NY: Cornell Univ. Press.

Guinier, Lani (1994) *The Tyranny of the Majority.* New York: Free Press.

Hagan, John (1993) "Introduction: Crime in Social and Legal Context," 27 *Law & Society Rev.* 255.

Halliday, Terence C. (1987) *Beyond Monopoly.* Chicago: Univ. of Chicago Press.

Harrington, Christine, & Barbara Yngvesson (1980–81) "Interpretive Sociolegal Research," 15 *Law & Social Inquiry* 135.

Hartog, Hendrik (1983) *Public Property and Private Power: The Corporation of the City of New York in American Law.* Chapel Hill: Univ. of North Carolina Press.

——— (1985) "Pigs and Positivism," 1985 *Wisconsin Law Rev.* 899.

Heckman, James, & J. Houlte Verkerke (1990) "Racial Disparity and Employment Discrimination Law: An Economic Perspective," 8 *Yale Law & Policy Rev.* 276.

Hirsch, Susan (1992) "Language, Gender, and Linguistic Ideologies in Coastal Kenyan Muslim Courts," 2 *Working Papers on Language, Gender, and Sexism* 39.

Horwitz, Morton (1987) "Republicanism and Liberalism in American Constitutional Thought," 29 *William & Mary Law Rev.* 57.

Hurst, Willard (1956) *Law and the Conditions of Freedom in the Nineteenth Century United States.* Madison: Univ. of Wisconsin Press.

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

Knemeyer, Franz Ludwig (1980) "Polizei," 9 *Economy & Society* 2.

Konig, David T. (1979) *Law and Society in Puritan Massachusetts: Essex County, 1629–1694.* Chapel Hill: Univ. of North Carolina Press.

Krygier, Martin (1990) "Marxism and the Rule of Law: Reflections after the Collapse of Communism," 15 *Law & Social Inquiry* 633.

Larson, Jane (1994) "Free Markets Deep in the Heart of Texas." Presented to Anglo-American Real Property Institute, 24 Sept. 1994 (Chicago).

Lazarus-Black, Mindie, & Susan Hirsch, eds. (1994) *Contested States: Law, Hegemony, and Resistance.* New York: Routledge.

Lind, E. Allan, & Tom Tyler (1988) *The Social Psychology of Procedural Justice.* New York: Plenum.

Mann, Bruce (1987) *Neighbors and Strangers: Law and Community in Early Connecticut.* Chapel Hill: Univ. of North Carolina Press.

Marx, Karl (1967) 1 *Capital.* New York: International Publishers.

Matsuda, Mari (1987) "Looking to the Bottom: Critical Legal Studies and Reparations," 22 *Harvard Civil Rights–Civil Liberties Law Rev.* 323.

Matthews, Richard (1984) *The Radical Politics of Thomas Jefferson: A Revisionist View.* Lawrence: Univ. of Kansas Press.

McCann, Michael W. (1986) *Taking Reform Seriously: Perspectives on Public Interest Liberalism.* Ithaca, NY: Cornell Univ. Press.

McCurdy, Charles (1975) "Stephen J. Field and Public Land Law Development in California, 1850–1866: A Study of Judicial Resource Allocation in Nineteenth Century America," 10 *Law & Society Rev.* 1.

Merry, Sally Engle (1990) *Getting Justice and Getting Even: Legal Consciousness among Working Class Americans.* Chicago: Univ. of Chicago Press.

——— (1991) "Law and Colonialism," 25 *Law & Society Rev.* 889.

——— (1992) "Anthropology, Law, and Transnational Processes," 21 *Annual Rev. of Anthropology* 357.

Mertz, Elizabeth (1981) "Language and Mind: A 'Whorfian' Folk Theory in U.S. Language Law," 93 *Working Papers in Sociolinguistics* 1.

——— (1988) "The Uses of History: Language, Ideology, and Law in the United States and South Africa, 22 *Law & Society Rev.* 661.

——— (1994) "The Perfidy of Gaze and the Pain of Uncertainty: Anthropological Theory and the Search for Closure." Delivered at 1994 American Anthropological Association Meetings, Atlanta, GA.

Messick, Brinkley (1992) *The Calligraphic State: Textual Domination and History in a Muslim Society.* Berkeley: Univ. of California Press.

Michelman, Frank (1986) "Foreword: Traces of Self-Government," 100 *Harvard Law Rev.* 4.

Minow, Martha (1990) *Making All the Difference.* Ithaca, NY: Cornell Univ. Press.

Munger, Frank (1993) "From the Editor," 27 *Law & Society Rev.* 251.

Myers, Martha (1993) "Inequality and the Punishment of Minor Offenders in the Early 20th Century," 27 *Law & Society Rev.* 313.
Nelson, Robert, David Trubek, & Rayman Solomon, eds. (1992) *Lawyers' Ideals and Lawyers' Practices: Professionalism and Transformation in the American Legal Profession.* Ithaca, NY: Cornell Univ. Press.
Nelson, William E. (1994) *The Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society.* 2d ed. Athens: Univ. of Georgia Press.
Northwestern University Law Review (1989) "Roads Not Taken: Undercurrents of Republican Thinking in Modern Constitutional Theory," 84 *Northwestern Univ. Law Rev.* (Special Issue) 1.
Novak, William J. (1993) "Public Economy and the Well-ordered Market: Law and Economic Regulation in 19th Century America," 18 *Law & Social Inquiry* 1.
Philips, Susan (1994) "Local Legal Hegemony in the Tongan Magistrate's Court: How Sisters Fare Better than Wives," in Lazarus-Black & Hirsch 1994.
Pocock, James (1975) *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition.* Princeton, NJ: Princeton Univ. Press.
Reid, John Phillip (1980) *Law for the Elephant: Property and Social Behavior on the Overland Trail.* San Marino, CA: Huntington Library.
Rosen, Lawrence (1989) *The Anthropology of Justice: Law as Culture in Islamic Society.* Cambridge: Cambridge Univ. Press.
Sahlins, Marshall (1976). *Culture and Practical Reason.* Chicago: Univ. of Chicago Press.
Sampson, Robert, & John Laub (1993) "Structural Variations in Juvenile Court Processing: Inequality, the Underclass, and Social Control," 27 *Law & Society Rev.* 313.
Sarat, Austin (1990) "Off to Meet the Wizard: Beyond Validity and Reliability in the Search for a Post-Empiricist Sociology of Law," 15 *Law & Social Inquiry* 155.
Sarat, Austin, & William L. F. Felstiner (1986) "Law and Strategy in the Divorce Lawyer's Office," 20 *Law & Society Rev.* 93.
Scheingold, Stuart (1974) *The Politics of Rights, Lawyers, Public Policy, and Political Change.* New Haven, CT: Yale Univ. Press.
Schultz, Vicki, & Stephen Petterson (1992) "Race, Gender, Work, and Choice: An Empirical Study of the Lack of Interest Defense in Title VII Cases Challenging Job Segregation," 59 *Univ. of Chicago Law Rev.* 1073.
Scott, James (1985) *Weapons of the Weak: Everyday Forms of Peasant Resistance.* New Haven, CT: Yale Univ. Press.
——— (1990) *Domination and the Arts of Resistance: Hidden Transcripts.* New Haven, CT: Yale Univ. Press.
Stack, Carol (1974) *All Our Kin: Strategies for Survival in a Black Community.* New York: Harper Torchbook.
Starr, June, & Jane Collier (1989) *History and Power in the Study of Law.* Ithaca, NY: Cornell Univ. Press.
Sunstein, Cass (1985) "Interest Groups in American Public Law," 38 *Stanford Law Rev.* 29.
Tomlins, Christopher (1985) *The State and the Unions: Labor Relations, Law, and the Organized Labor Movement in the United States, 1880–1960.* New York: Cambridge Univ. Press.
Tonneis, Sibylle (1993) "Digesting the Past on the Left, or the Rule of Law and the German Lesson," 18 *Law & Social Inquiry* 629.
Touraine, Alain (1977) *The Self-Production of Society.* Chicago: Univ. of Chicago Press.
Trubek, David, John Esser (1989) " 'Critical Empiricism' in American Legal Studies: Paradox, Program, or Pandora's Box?" 14 *Law & Social Inquiry* 3.
Tyler, Tom (1990) *Why People Obey the Law.* New Haven, CT: Yale Univ. Press.

Walzer, Michael (1983) *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic Books.
Weber, Max (1947 [1925]) *The Theory of Social and Economic Organization*. New York: Free Press.
——— (1958 [1904–5]) *The Protestant Ethic and the Spirit of Capitalism*, trans. T. Parsons. New York: Charles Scribner's Sons.
White, Lucie (1990) "Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.," 38 *Buffalo Law Rev.* 1.
Williams, Patricia J. (1991) *The Alchemy of Race and Rights: Diary of a Law Professor*. Cambridge, MA: Harvard Univ. Press.
Wilson, William Julius (1987) *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy*. Chicago: Univ. of Chicago Press.
Wood, Gordon (1969) *The Creation of the American Republic, 1776–1787*. Chapel Hill: Univ. of North Carolina Press. Press.
Woolard, Kathryn (1989) *Double Talk: Bilingualism and the Politics of Ethnicity*. Stanford, CA: Stanford Univ. Press.
Yale Law Journal (1988) Symposium: "The Republican Civic Tradition," 97 *Yale Law J.* 1493.
Yngvesson, Barbara (1993) *Virtuous Citizens, Disruptive Subjects: Order and Complaint in a New England Court*. New York: Routledge.

Case

Bowers v. Hardwick, 478 U.S. 186 (1986).