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**“Let Them Eat Cake”: Globalization, Postmodern  
Colonialism, and the Possibilities of Justice**

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## "Let Them Eat Cake": Globalization, Postmodern Colonialism, and the Possibilities of Justice

Susan S. Silbey

This essay presents three accounts or narratives of globalization. Each narrative describes the triumph of a central character or institution (science, markets, law) against its challenges or enemies (ignorance, regulated or planned economics, human caprice and unreason). The stories convey moral tales about what justice might look like and how social relations might be justly organized and governed. I argue that under the dominant accounts of globalization, the dynamics of power are obscured so that social relations seem to be produced by invisible or natural forces. When the operation of power is masked, I argue, justice, and efforts to confine and regulate power, is made less probable. Law and society scholarship can contribute to a critique of globalization by continuing to identify the ways in which law and power are mutually implicated and embedded in social relations. Rather than describe current forms of international social exchange as globalization, a seemingly neutral terms, the essay urges scholars to identify the role of power by naming global social exchanges as "postmodern colonialism."

### Introduction: "Let them eat cake!"

**I**n 1995, France Telecom announced that it was beginning a process of restructuring and privatization. This announcement followed a decade during which the state telecommunications

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monopoly pushed a backward and inept telephone system to a position of international leadership (in basic and applied research, advanced computer networking, and reliable universal service) that made it the envy of other public and private corporations. Despite this remarkable accomplishment, over the next five years, France Telecom will privatize pieces of itself by exchanging capital shares with other telecommunications enterprises. Not unexpectedly, angry consumers and employees have been protesting against the plan. In October 1995 there was what Telecom employees called a warning strike, and again in April 1996 employees organized job actions in which more than 75% of the work force participated. Consumers and employees complain that calling within Paris, within Grenoble, Marseilles, Lyon, and other places in France is going to cost more under the proposed restructuring plan. In response to the mounting protests and job actions, Michel Bon, the newly appointed chairman of France Telecom, is reported to have agreed that indeed local calls will cost more. However, those calling New York would benefit, as international rates will be reduced in the face of global market competition. Bon implied that because they could obtain a better rate, they ought to call New York.<sup>1</sup>

History records that in 1789, a little more than 200 years earlier, French citizens were also mobilized, at that time protesting not telephone charges or reduced social security but severe bread shortages. Marie Antoinette, Queen to Louis XVI, took notice of the complaints and advised that if bread were not available, they ought to eat cake.<sup>2</sup>

Although more than 200 years separate these moments of protest, the official French responses are the same: let them eat cake and let them call New York. Despite the consistency in the French state's responses to citizen grievances, however, I suspect the consequences will not be similar. This is not solely because bread was more essential and necessary to 18th-century French citizens than the telephone is in the late 20th century, nor solely because contemporary French democracy is more legitimate and secure than the 800-year-old monarchy had been, nor finally because the French have exhausted their capacity for rebellion. Rather, I suggest that at least part of the difference in the popular expression of grievances lies in an absence in the late modern era of imagined alternatives and commonplace narratives of social organization, law, and the possibilities of justice through law.

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<sup>1</sup> *Europe 1* (television) 11 April 1996, 18h49. Interview with Michel Bon, president of France Telecom.

<sup>2</sup> More accurately, the Queen is reported to have recommended that the French citizens eat brioche.

In 1789, law appeared to play a minimal role in constituting the organization of everyday life. Although starving citizens ultimately held the King responsible, it was not because they envisioned the French law as being significantly involved in bread making. In 1996, however, the development of telecommunications, the provision of telephone service, and the restructuring of these technologies is all too apparently a process organized through law and legal techniques.

Thus, as citizens protest against what they experience as social threats, 18th- and 20th-century French men and women can imagine very different alternatives and remedies to their situations. Eighteenth-century French citizens struggled for what they saw as the universal rights of man as a general solution to their problems. The rule of law looked better than the rule of kings. Twentieth-century French citizens facing increased telephone costs have difficulty making similar claims and imagining similar alternatives. The situations and the threats—of rising costs, unemployment, and diminishing social security—that contemporary French men and women daily experience, comment on, and protest against emerge not from the absence of the rule of law but in the face of its very powerful presence.

We live, we are told, in a new world order, a new—perhaps as some claim radically new—organization of time, space, people, and things. While it is clear that law occupies a prominent place in the global society—because most of the global exchange of persons, capital, and culture is managed through legal forms—it is not clear where the place of justice is in this new world order.<sup>3</sup> Although justice seems to serve as a standard to which law is held accountable, it is an elusive and slippery gauge against which law and power are measured and tested. In this contingent, ever moving, and asymptotic relationship, justice can both challenge and underwrite legal power (Young & Sarat 1994). While law may be understood to vary with human capacity and social organization, justice is often believed, David Garland (1990) suggests, to lie “beyond culture and outside of history; a kind of absolute truth which is unaffected by change or by convention” (p. 205).

In this world of global markets, hyperspace, and virtual reality, is it possible that justice can claim a position as a transcendent unchanging standard as it has at other times and places? Or, perhaps—as much law and society scholarship has told us—justice is not eternal and universal but is a culturally and historically constructed ideal whose values and approximate performance simultaneously shape and are shaped by local and variable social organization. Which story of justice—the popular invoca-

<sup>3</sup> The relationship between law and justice is tenuous at the best of times. One is reminded of a comment Justice Holmes is alleged to have made to a young attorney arguing before the Supreme Court. “Young man,” the great justice is reputed to have said, “never forget that this is not a court of justice, it is a court of law.”

tion of an absolute value or the sociolegal account of local and situationally constructed rationality—applies to the new world order? Under globalization, what is the place of justice, and where is the space to make claims of justice?

I wonder whether these changes in social organization, the kinds and methods of exchange, and the legal regimes that help organize and facilitate this exchange require students of law and society to reinvent our skills and competencies. Or is it possible that much of what we have learned through the 70 or more years of empirical studies of law has provided us with the tools to describe and critically analyze the new world order.

For sociolegal scholars, I suggest, globalization is not really a new notion; instead, it is a rather familiar, banal story, many of whose elements and narrative structure have been explored and documented in the myriad volumes of law and society research. Like new Tide®, globalization is an updated, smartly packaged, reengineered version of an old product. Rather than soap powder, here we have the elements of free market capitalism and its representative—liberal legalism—recycled for new markets—particularly for all those places on the globe where the earlier model failed to establish a secure market niche. Lest the metaphorical association with soap powder appear merely playful, we need only recall that globalization on the ground is experienced as soap powder, and beef, and cars, and as computers, movies, and CDs—that is, compact disks and those all-important certificates of deposit.<sup>4</sup> Whether globalization is about justice, however, may be another story.

In my analysis, global justice is an oxymoron, more or less. But that “more or less” is the heart of the matter, and exactly the matter that is made less possible, if not impossible, in the emerging global economy and society. “More or less” conveys colloquially what sociolegal scholarship has taught us about the relationships between law and justice: it is never one thing but always several; never the same everywhere but always variable; never exactly what it claims to be but also not irrelevant that it makes these claims. Although justice is presumed to be transcendent and ahistorical, notions of justice have, in fact, varied with varying social and legal orders.<sup>5</sup> Although human experiences of law and justice are variable, each of the differing stories told about

<sup>4</sup> There is a third “cd” known in physics and chemistry as circular dichroism that is also part of global exchanges. This term describes the capacity of physical systems to respond to light by turning either to the right or to the left. It is an ancillary property of the right- and left-handedness of molecular structures and is often used as a means of identifying the “handedness” of molecules. Knowing the “handedness” of molecules is essential for the creation of new products that circulate in the global economy. For example, the thalidomide disaster of the 1950s (in which a drug taken by pregnant women caused deformation in the limbs of the fetuses) was a result of not separating out the left-handed molecules. Only the right-handed molecules were safe for human consumption.

<sup>5</sup> The historically observed changes in notions of justice are “understood to be accounted for by changes in power—who has it, how it is exercised, against whom, and for

law and justice claims to describe a single uniform phenomenon, erasing the plurality and heterogeneity that may be a source of the depth and durability of legal institutions.

The term “globalization” signals several ongoing complex transformations. Anthony Giddens (1990:64) defines it as “the intensification of worldwide social relations which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa.” Globalization or what some call global formation (Chase-Dunn 1991) or others call global culture (Appadurai 1990) is not just a process, however; it is also a story. To be more precise, there are several stories. The different accounts have different authors, purposes, and audiences. Each story of globalization, like all narratives, is structured through an opposition of forces representing good and evil, human agency and historic fate, desire and the law (White 1987; Ewick & Silbey 1995). As narrative accounts of the triumph of a central character against its enemies, the stories of globalization convey moral lessons. The stories of globalization not only describe how social relations are organized globally; they also construct ethical claims about the way the world should be organized and how social relations should be governed. Each globalization narrative reveals a particular construction of justice and its possibilities.

In the remainder of these comments, I use the language of narrative as a heuristic device for analytically distinguishing alternative models of globalization. I first present the two most common and popular accounts, and then I offer a sociolegal narrative. With these synopses, I do two things: display alternative conceptions of justice and suggest how the skills and competencies of sociolegal scholars may be relevant. I suggest that although sociolegal scholarship has the capacity to challenge the dominant narratives of globalization, we cannot rest content with what we have thus far produced.

### Globalization I: A Narrative in Which Reason Triumphs over Nature

My first narrative of globalization describes a world engirded by a finely wrought network of cables, satellites, air and sea lanes, as well as old familiar land routes, transporting information, things, and people from one place to any other place on the globe in anywhere from a minute to a day. This story describes a world in which the boundaries that once had been created by time and space have been eroded by developments in communication and transportation. It is a story of the triumph of reason

what purposes. These changes merely [are believed to] represent better or worse approximations of those transcendent values of justice” (Ewick 1997).

over nature. It is the conventional history of the Enlightenment in which the unique capacities of human reason try to trap and harness nature by its own laws. This is the chronicle of a 300-year struggle "to develop objective science, universal morality and law, and autonomous art according to their inner logic" (Habermas 1983:9).

Two of the principal characters, science and technology, eventually tame both the enormous powers of nature and the arbitrary powers of human beings as well. The narrative is told through metaphors of motion, light, and progress. What had appeared to be random and arbitrary activity and the whims of God and nature—lots of motion but little light or progress—human reason reveals to be highly organized networks and structures governed by predictable laws and procedures. Using these precious discoveries, the globalization version of the Enlightenment narrative describes how humans slowly accumulate the knowledge and ability to produce ever increasingly rational forms of social organization and technological innovation, in the end overcoming ignorance, superstition, myth, religion, and scarcity to create relative abundance, human freedom and worldwide mobility.

The story moves through different settings in which the relationships between freedom and mobility are emplotted. Some Enlightenment accounts emphasize the international coordination of scientific research to control disease, prolong lifetimes, and improve conditions of everyday life. Others focus on the transnational flow of people, goods, and capital which creates a global division of labor with an equally global diffusion of material and cultural goods. Goods produced with Korean or Chilean labor from materials mined in Zaire or grown in India are sold in the shops on the Faubourg St. Honore, Rodeo Drive, or the Ginza. People born and raised in Mexico, Guatemala, Turkey, Greece, Algeria, or Ethiopia travel north to find work to sustain families left behind. At the same time, rap music from American urban ghettos is played in the shops in Paris and on the streets in Budapest, portable telephones manufactured in Finland adorn the hips of stock brokers and manual laborers from Santiago to Sidney, from Cancun to Cape Town, and television stations around the globe fill their schedules with the likes of *Melrose Place*, *Beverly Hills 90210*, and *Miami Vice* while the office workers from Moscow to Buenos Aires munch on Big Macs and fries.<sup>6</sup>

At the same time as we see how local sites become linked in the global circulation of people, signs, and material goods, the Enlightenment narrative describes how being connected reshapes the parts now joined. While some people and phenomena

<sup>6</sup> Legal and illegal markets circulate proscribed drugs, currencies, and people as well. The trade in women, for example, is as domestic workers and sex workers. See Heyzer, Lycklama à Nijeholt, & Weerakoon (1994).

are ripped from spatial and territorial moorings, others—for example, social groups based on ethnic, linguistic, or religious practices—become "reterritorialized," making claims to specific pieces of geography with newly recognized boundaries as the ground of their participation in the new world order. While some localities experience marked increases in standards of living (measured in terms of reduced infant mortality, longevity, education, and calories consumed), other people experience an equally marked decline in the material, psychological, and sociological conditions of everyday life. In these Enlightenment accounts, the new world order is linked internally by its globally exchanged and shared culture and externally through its collective scientific exploration beyond this globe.

This Enlightenment parable conveys its justice claims by demonstrating how those without reason, those still subject to superstition, myth, and religion, fall by the wayside. Because globalization seems inevitable and necessary in the Enlightenment narrative, "those who embrace it seem modern, reasonable, realistic, and pragmatic while those who do not seem nostalgic, rigid, and radical" (Kennedy 1994:4).

## Globalization II: A Narrative in Which Desire Triumphs over Law

There is, however, a second narrative of globalization. This second story appropriates pieces of the Enlightenment tale to its own purposes, and lately seems to be told more often and with greater authority.<sup>7</sup>

Rather than being a portrayal of the success of science and technology, this second globalization narrative is a story of the historic struggle and triumph of the market economy. It is an account of how the market—against the powerful opposing forces of centralized planning and socialized ownership, as well as technological backwardness—establishes itself worldwide after being confined within national and regional boundaries. It is a story of how people with energy and imagination live freely and efficiently ever after, relying solely on price signals to decide, in the canonical phrase, "who gets what, when, how" (Lasswell 1936). In some versions, the rapid expansion of global markets is attributed primarily to the independent success of its ally technology, while in other versions globalization succeeds because of the failures of its enemies. In this latter account, the collapse of planned economies is validation of the superiority of markets and thus evidence of the "justness" of globalization's triumph. In this tale, the creation of global markets not only improves effi-

<sup>7</sup> The Enlightenment tale has clear counternarratives (e.g., feminism, environmentalism, holistic medicine) that the market narrative currently lacks.

ciency and controls costs; it also creates justice by empowering consumers and overthrowing unresponsive bureaucracies that have outlived whatever useful purposes they may at one time have served.

The narrative of desire triumphant describes how worldwide sourcing, flexible production, low-cost transportation, and communication meet in three major scenes of action: Western Europe with its trading partners in Central and Eastern Europe and northern Africa; Japan and the little tigers with their partners in Asia; and North America—Canada and the United States with its engagements in Latin America. Just as the boundaries between time, space, people, and things are erased in the Enlightenment tale, the market narrative of globalization describes how the traditional distinctions among market tools—between banking, brokerage, business, housing, and consumer credit—are loosened. New financial instruments are created as well as markets in these inventions, new markets in commodities, stocks in commodities, funds that collect stocks in commodities, as well as markets in currencies and debts. Time future is discounted into time present in such fantastic and baffling ways that few people claim to understand the way it all works.

An English buyer can get a Japanese mortgage, an American can tap his New York bank account through a cash machine in Hong Kong and a Japanese investor can buy shares in a London based Scandinavian bank whose stock is denominated in sterling, dollars, Deutsche marks and Swiss francs. (From *Financial Times* (London), 1987, quoted in Harvey 1990:161)

This bewildering world of high finance encloses an equally bewildering variety of cross-cutting activities, in which banks borrow massively short-term from other banks, insurance companies and pension funds assemble such vast pools of investment funds as to function as dominant market makers, while industrial, merchant, and landed capital become so integrated into financial operations and structures that it becomes increasingly difficult to tell where commercial and industrial interests begin and strictly financial interests end. (Harvey 1990:161)

In this labyrinth of creative accounting and innovative financial services—what Robert Reich (1983) has called “paper entrepreneurialism”—capital is also mobile, residing nowhere more than in cyberspace. Ever liquid, flowing from one merger to another acquisition, the capital that fuels the global circulation of goods, services, and people is faceless and rootless, free of the solid ground in which humans, despite their successful electronic and space explorations, must be born, spend most of their days, and die.

In this market account, we can identify episodes of dispersion and integration. Global dispersion is typified by the creation of new producers and sites of production within nations and trans-

nationally. So we see large and small companies increasing their subcontracting, and doing so with several geographically distant subcontractors for the same product. We see industrial homework spreading into the hinterlands of remote parts of the world at the same time as highly skilled cognitive (mind-work) laborers and professionals move their work from office to home, sometimes also at great distances from the centers of control and management. This diffusion of worldwide outsourcing—fueled by low transportation costs and computerized communication linkages—creates flexible production and higher profits for corporate managers and owners while relegating labor and suppliers to hyper-competition and increasingly insecure income.

The scientific accomplishments highlighted in the Enlightenment tale become the technical means through which the market can be efficiently globalized. The territorial dispersion is accompanied, however, by a parallel concentration of centralized control to manage and finance the dispersed production. The remotest site of individual production is tied by centralized management through a closely linked chain of financial and design control located primarily in the global cities—such as New York, London, and Tokyo. But these cities, Saskia Sassen (1991:5) claims, are not merely control sites. They are centers of independent production as well. They produce the “specialized services needed by complex organizations for running spatially dispersed networks of factories, offices, and service outlets.” They also produce the “financial innovations and the making of markets . . . central to the internationalization and expansion of the financial industry” (ibid.).<sup>8</sup>

Like the first story, this second narrative also communicates clear moral lessons, the most important of which is that private property rights are paramount and should be inviolable. The major actors or characters in this story are private persons. This means that states should cease engaging in economic activity and state-owned productive enterprises should be privatized. In this political and moral economy, national borders should cease being barriers to trade; all national economies should be open to trade. Exchanges and engagements in this moral universe are marked solely by market prices (which are the means of rewarding good action and punishing bad). Public regulation of private enterprise, as an alternative to price regulation, should cease. As a corollary to the dominant role of prices as the major form of communicating participation in the market economy, domestic prices should conform to international prices and monetary policies should be directed to the maintenance of price and

<sup>8</sup> In Sassen's telling of the tale, these cities are the scenes in which concentrated low-skill, low-wage, infinitely replaceable “throwaway” labor provides the support services in the restaurants, luxury hotels, hand laundries, gourmet shops, and child care facilities demanded by managers in the centers of financial and managerial control.

balance of payments stability. These are the universal constants—the morality—of market economies.

Although markets depend on law to provide a stable normative environment, ensuring security of property and contracts, the market narrative insists that law do no more. Beyond the assurance of mutual trust and normative order, the market demands that the rest of economic affairs remain entirely matters of market (i.e., price) decisions rather than consequences of political organization or legal reason. In other words, the market urges law to police a fixed boundary between the public and the private, between economics and politics. Even though national legal orders have, for more than a hundred years, created various adjustments to counteract market instabilities and imperfect competition, a key feature of this globalization story is the fury of its critique of legal intervention. And although the shift from national to global regimes brings in new levels of legal regulation—international economic law and international public law—it turns out that these international legal regimes merely recreate the public private divide. Historical experience notwithstanding, this globalization narrative insists that the private law regime of property and contracts, at both the national and the international levels, is an apolitical realm, merely supportive of private initiative and decisions, immune from public or political contestations and without redistributive consequences (Kennedy 1994).<sup>9</sup>

Whether the story is told on the front pages of newspapers or the back pages of academic journals, whether the story is told to applaud what is happening, to voice criticism, or to express fear, the understanding of justice and morality is consistent. Globalization is not a matter of where government and law shall issue, nor a matter of shifting jurisdiction from the nation state to the globe. Instead, this narrative of globalization offers a change in *how* collective life will be governed. It signals a movement from politics, in the Aristotelian sense—of debates about how we shall live together—to economics, that is, how our individual desires can be unconsciously coordinated through prices. This narrative, as a conventional account of the market, demands very little from collective human action or conscious human design, only

<sup>9</sup> Despite globalizers' claims, however, the international legal regime "contains just the combination of hyper-formality (standard terms, absolute property rights) and 'reasonableness' or 'comity,' even policy, of conflicting rights and clashing institutional prerogatives, which opens domestic private law to the politics of adjudication" (Kennedy 1994:14). Transposing these legal forms to global markets will likely also open international economic regulation to similar discursive and interpretive (i.e., political) practices. Rather than keeping politics outside of the market, legal regulation brings politics to the center.

that all things—land, labor, and resources—be available for exchange through commodification and pricing.<sup>10</sup>

In the Enlightenment narrative, reason occupied a central role as the force for taming unruly nature. In the market narrative, desire triumphs over both law and reason. Reason is relegated to a subordinate role as a technically useful instrument for calculating costs and benefits of alternative means for satisfying wants and desires. Law is relegated to an equally subordinate role as a background figure providing context but little determinative action. By subordinating reason and law to desire, the market narrative is a parable about lowering expectations about what collectivities can or should do. It thus asks us to limit our conceptions of justice to a contentless efficiency (Bittner 1983) and to forgo aspirations for equality or quality of social life. As several marketeers recently suggested, we need "to focus . . . on measures that enlarge the scope for wage differentials [inequality] without making it socially unacceptable" (Kosai, Lawrence, & Thygesen 1996).

### Interpreting the Globalization Narratives: Postmodern Colonialism

We could argue, and I expect we will, about whether I have correctly characterized or wrongly caricatured these accounts of globalization. Suffice it to emphasize that both stories can be and are the subject of diverse interpretations.

#### Diverse Interpretations

For example, there are some commentators who see in the Enlightenment narrative the possibility of a new democratic transformation. Some stress that the circulation of capital and culture is—as the phrase suggests—a circulation, not solely a movement from the center to the peripheries. By dissolving political, temporal, and spatial boundaries, the technological revolutions underwriting this transnational exchange create capacity for movement in all directions and with less capital investment than was heretofore possible. From this perspective, globalization enables more diverse participation and more sources of influence—what we might consider a form of enfranchisement—throughout the world system (Santos 1995). Those at the geographical peripheries of the world system welcome the chance to be regular and possibly influential members of the virtual global community. In the global networks of communication and ex-

<sup>10</sup> As we know, "in a market system, everything has a price—each commodity and each service. Even the different kinds of human labor have prices. . . . We each receive income for what we sell, and we use this income to buy what we want" (Samuelson & Nordhaus 1983:43). See also Polanyi 1944.

change, human creativity can be unleashed from traditional cultural and material constraints to find new forms of expression in what now seems like an unbounded space of possible interactions and connections. Here, observers point to the importance of human rights discourse in shaping an actual, not merely a virtual, community, and the empirically documentable changes that discourse has wrought in heretofore authoritarian regimes (Woodiwiss 1994). Similarly, some commentators note the growing significance of environmental concerns in mobilizing social movements across traditional political, racial, and gender boundaries. For optimistic observers, the market poses an opportunity and challenge.

Other interpreters, however, claim that the Enlightenment narrative is a saga of disenchantment (Weber 1978). Noting the immediacy with which persons, goods, information, and technologies move across vast distances, and the expanding breadth and accelerating pace of consumption, these observers emphasize how the loss of sacred illusions has left a corrosive absence at the center of human life where "all that is solid melts into air" (Marx & Engels 1848 [1993:12]).<sup>11</sup> Critics notice the bombardment by stimuli, the neurological overloads, and the homogenizing consequences of the escalating circulation of signs and symbols removed from local experiences and interpretive frameworks (Simmel 1971 [1903]; Berman 1988; Postman 1986, 1993). They point to isomorphisms, convergences, and hybridizations that create a sense of pervasive sameness across heretofore diverse cultures.

I share some of these more critical and pessimistic interpretations. Nonetheless, because I retain a commitment to portions of the Enlightenment story, I like to believe it is an unfinished story; the denouement remains uncertain. I am also firmly attached to some of the critical values of Enlightenment science: the insistence on public methods of research, publicly displayed, with empirically demonstrable criteria of validity, and faith in the pragmatic reason of common people. But (and this is a big but), I am

<sup>11</sup> The paragraph in *The Communist Manifesto* reads:

The bourgeoisie cannot exist without constantly revolutionizing the instruments of production, and thereby the relations of production, and with them the whole relations of society. Conservation of the old modes of production in unaltered form was, on the contrary, the first condition of existence for all earlier industrial classes. Constant revolutionizing of production, uninterrupted disturbance of all social conditions, everlasting uncertainty and agitation distinguish the bourgeois epoch from all earlier ones. All fixed, fast frozen relations, with their train of ancient and venerable prejudices and opinions, are swept away, all new-formed ones become antiquated before they can ossify. All that is solid melts into air, all that is holy is profaned, and man is at last compelled to face with sober senses his real conditions of life and his relations with his kind. (Marx & Engels 1993 [1848]:12)

The continual innovation in productive techniques has led to the instability Marx and Engels describe; whether it has produced the popular self-reflection they predicted is, however, less clear.

less sanguine about the ability of reason and science to resist the seductions of the market and desire.

### Postmodern Colonialism

Thus, for the present, I regard globalization as a form of postmodern colonialism where the worldwide distribution and consumption of cultural products removed from the contexts of their production and interpretation is organized through legal devices to constitute a form of domination.<sup>12</sup> I offer two examples of postmodern colonialism, conjunctures of unexpected combinations that defy spatial, temporal, and cultural distances. For example, I saw a man riding a bicycle along the trolley tracks of Milan. He was dressed not in an Armani or Versace costume common enough in this city but in a laborer's jacket and pants. He was peddling quickly and expertly, overtaking Ferrari and Ford, while talking feverishly into his portable telephone. Two months earlier, while accompanying my husband to a scientific conference, I had observed a four-year-old Japanese boy unwrapping a package of blow-up water wings and swimming goggles at the hotel's pool. The little boy was excitedly pestering his rather reserved mother to get into the swimming pool with him so that he could demonstrate his effectiveness with these technological marvels. The background sounds were provided by a group of German and French scientists sitting in the jacuzzi energetically debating a problem in quantum mechanics. All of this going on in four languages, and watched over by the American sociologist. I thought of the miles and centuries and animosities that had brought this particular group to this place in Australia, so untroubled in their familiarity and pleasure. I also believed that few observing the scene could imagine that the little boy's vigorous desires and appeals to his mother were other than market creations.

In postmodern colonialism, control of land or political organization or nation-states is less important than power over consciousness and consumption, which are much more efficient forms of domination. Moreover, this is neither a necessary nor a particularly benign development in social relations; nor is it the consequence of some natural law of human evolution writ in our genes several million years ago. Globalization, or what I am calling postmodern colonialism, is an achievement of advanced capitalism and technological innovation seeking a world free from restraints on the opportunity to invent and to invest. It is a world in which size and scale in terms of numbers of persons (who can produce), and in numbers of outlets (to disseminate and place

<sup>12</sup> This description of postmodern colonialism first appeared in the *Law & Society Newsletter*, November 1995 and May 1996.



the products), and capital (to purchase both labor and land) determine the capacity to saturate local cultures.

Significantly, this is not something occurring outside the law or without the active collaboration of law and legal scholars. Keeping in mind the conventional analyses of colonialism as a form of domination perpetrated by more powerful nations on those believed by the colonizers to be at the peripheries of the world system, we might also recall the active role that law played in that history of organized domination. Although the last several centuries of European imperialism have been transformed in this century by successful liberation movements, it seems that we are witnessing a new form of domination that may be more insidious and difficult to dislodge. My worries, of course, are not meant to overstate the success of Western penetration, to ignore the role of Asian capitalism, or to underestimate the resistances to colonialism. I mean to highlight, however, some worrisome features of globalization.

First, we have what Jürgen Habermas (1992) refers to as the colonization of the life world. This refers to the proliferation of media produced, marketed, and disseminated messages that become the images and symbolic resources of ordinary people, although these images and messages are independent of, and often at odds with, people's daily lived experiences. People live in worlds in which their emotions, desires, and rationalities may be produced independently of their experience. There is an active ongoing struggle to retain access to and hold onto locally produced and experienced physical, emotional, and cognitive interactions. Instead, what is local is supplanted by what is global; what is emotive, physical, and interactive is replaced by what is remote, mediated, commodified, manufactured, and produced for purchase and consumption globally. What distinguishes this postmodern colonialism from more traditional forms of colonialism and capitalism is that the production and distribution is driven by and about signs, symbols, and communication as much or more than it is about things, or what Marx called the forces of production. Significantly, the signs or messages circulate independently of what they supposedly represent, and thus have an independent effect on action and experience. The truth value of representations or images is somewhat irrelevant to their power. Moreover, the production of the images and messages is a self-conscious activity of particular profit-driven occupations and professions.

Law is a part of this symbolic communicative aspect of postmodern colonialism because the medium that colonizes consciousness is itself saturated with legal images and issues. The globally exchanged culture is typified by televised images of American law. Like everything else, law has become entertainment. American television—which is broadcast all around the

world—is bathed in law. Fictional trials, real trials, news of trials, analyses of trials, not to mention crimes and legislation, all are represented without serious distinction between what is supposed to have actually happened to living, breathing human beings and what is merely a product of someone's imagination. American television drama, preoccupied with law and crime, is a major staple of global television entertainment; half-hour situation comedies that rely on local knowledge for their humor are rarely exported. The life and death drama, the sexual subplots, and struggles for power that characterize television "drama" are apparently understandable despite the enormous variation in local cultures. This is one way in which American law circulates around the globe; both the practices and ideals of law, the history and the fictions, become part of the engagements between social movements and corporate capital in diverse corners of the globe.

The second, perhaps more important, aspect of this postmodern colonialism that is energized by law refers to the explicit selling—rather than implicit representations—of American law around the world, especially but not exclusively in Eastern Europe. Sociolegal scholars have long understood and written about the ways in which liberal law provided the "infrastructure" for capitalist investment and development. Contemporary "wanna be" capitalists also know that they need that law to create the market economies that are supposed to be the vehicle for modernization and democratization, wealth and power. We also know that the International Monetary Fund and the World Bank demand efforts at democratization and formal appearances of the rule of law as conditions for their aid. How are needy nations and "wanna be" capitalists going to democratize and institutionalize the rule of law? Well, we have Western lawyers, experts, and good samaritans ready to provide the means. Without buying the property of other nations, without occupying the territory, and even without investing its own capital in the economic and social development of other nations, the West is able to shape the culture and economies by offering the legal forms through which social exchange takes place.

I have two concrete examples of the gift of Western law to add to my collection of postmodern moments. Shortly after the demise of the Soviet Union, I encountered a group of American college students, none with legal training, translating the Uniform Commercial Code (UCC) into Ukrainian. They had been enthusiastic students of Soviet culture and were now working at a new economic institute engaged in the task of bringing the market to the Ukraine. The history of trade practices and cultural norms that had been so much a part of Karl Llewellyn and Soia Mentschikoff's ambitions for (and the history of the development of) the UCC was unknown and unimportant to the new

capitalists. The Ukrainians needed a code, and they took the most obvious and perhaps accessible one they could find. How, I wondered, were the courts in Ukraine going to refer to conventional practices of the trade—which is a crucial aspect of the UCC—when disputes arose? Was it really possible to just move a code developed—after so much struggle and caselaw—somewhere else and expect that the organizing functions would work the same? Everything I have ever learned in sociology and law encouraged me to believe that this was folly, which would not work as sold or expected. Nonetheless it was a folly in which some careers at home and in Ukraine were going to be made with rapid success.

Just recently, I encountered a similar but considerably less naive example in which American charitable foundations—for example, Ford, Rockefeller, Kellogg, MacArthur—are training people in Third World countries to set up “foundation-like” organizations. Although these Third World organizations will not have the capital endowments that are the lifeblood of American foundations, this activity is seen by the mentoring foundations as a means of teaching about charity, the responsibilities of capital, and a healthy division between public and private spheres in developing economies.

I am not suggesting that Western law might not in some circumstances be useful to a wide range of nations and peoples, or that human rights and environmental movements have not produced some noticeable goods for humanity. Rather, I am concerned about the consequences of marketing specific legal devices as if they were one of those dresses that fit all sizes. I am worried about how local justice can be achieved within a supposedly universal, all-purpose, one-size-fits-all law.

Describing globalization as a kind of colonial domination may overstate the case. It seems to overlook the amount of variation and invention in the local uses of what otherwise might appear to be uniform products. These local practices have the capacity to transform what might superficially seem like cultural imperialism into expressions of individual identity, local innovation, and possibly cultural and political resistance (Cushman 1995). But, I wonder, how much local innovation needs to exist before it is not plausible to say that local cultures are being colonized by global market forces? If all social structures involve not only repetition and reproduction but also appropriation, invention, and innovation (which I believe they do), how can I claim that the contemporary patterns of cultural transmission are a form of colonization? How can I ignore variation (and the power of any cultural product or social process certainly varies) and offer a characterization of popular culture and law that seems to ignore that variation and local agency?

Although I admit that there are lots of local inventions and innovations displacing global forces, I suggest that there is nothing like an equal exchange taking place. It is this inequality in effects that is sufficient, I want to argue, to ground an interpretation of globalization as a form of domination, like colonialism. The global transmission of standardized products and signs—facilitated, organized, and protected through increasingly standard legal forms and processes—is much more effective in structuring local social exchanges and imposing meaning on local cultures than are local innovations able to appropriate and reconstruct the mediums of global exchange.

As an illustration of unequal exchange and cultural construction that might be characterized as postmodern colonialism, let me offer an example from the work of Rick Fantasia (1995), who has been studying fast food and the spread of MacDonald's in France. MacDonald's now has at least 323 restaurants in France, the single largest number of restaurants belonging to one company. There are a number of other fast-food establishments in France, some of American origin such as Burger King, and others with American-sounding names but with French ownership, such as Quick. Just about every MacDonald's restaurant—whether in Paris or in Lille, or in Bayreuth, Milan, Moscow, Tokyo, Sydney, or Chicago—looks just like every other MacDonald's, serving the same food, in similar packages, in physical spaces that are nearly alike, and with common production, organization, and management techniques.

However, Fantasia (1995) writes in a recent essay in *Theory and Society*, that it would be wrong to think that the marketing of hamburgers, milk shakes, french fries, and soft drinks is only about what is constant: nourishment and food consumption. That which appears uniform and can, in fact, be accurately described by standardized measures is anything but invariable. Rather, it is very possible to argue, and easy to demonstrate, that eating hamburgers has quite variable meanings, and in particular that MacDonald's has a very different cultural meaning in France than it does in the United States. In France, for example, a meal at MacDonald's is seen by French youth as a space of freedom from conventional norms, stuffy restaurants, and French cultural pretensions with regard to food. MacDonald's is seen as a distinctly American place, with an exotic atmosphere of loud music, bright lights, and funny colors and costumes (the servers' uniforms). In France, unlike the situation in the United States, MacDonald's has a very small working-class market. Adolescents and student consumers are supplemented by a large contingent of middle-level managers and white-collar employees who make up more than 50% of MacDonald's French consumers. Moreover, the French people do not purchase from and eat at MacDonald's as Americans do; for example, the cash register does

not signify the head of a line for ordering food in France as it does in the United States. In France, large crowds of people hover around the counter, vying for a server's attention. It is clear, in other words, that eating at MacDonald's does not constitute the same cultural practice in France as it does in the United States, or in Boston as it might in Sheridan, Wyoming. Thus one might read in the consumption of MacDonald's hamburgers examples of local innovation and invention that might seem to challenge a claim that MacDonald's is an example of postmodern colonialism.

Nonetheless, it would be a second mistake to assume that because MacDonald's can have this variable cultural meaning that there are no more general and structural consequences for social relations, and for law, in the global distribution of fast food. In fact, several consequences mark the exchanges taking place in and through MacDonald's as quite unequal, and the disparity is so large, I contend, that it justifies the claim that the spread of MacDonald's is part of a new form of colonialism. At the level of cultural symbols already discussed, I note that while eating hamburgers has a distinctly different meaning in France than it has in the United States, I also note that it is hamburgers, and not *croque monsieur*, on which French office workers and youth are writing their local scripts. A critic would respond by noting that *quiche* has become equally common in the United States, so common that *quiche* can be the subject of popular humor (remember "Real men don't eat *quiche*"?). I agree but note a significant difference, a difference that leads me to other important aspects of inequality. On one hand, the importation of hamburgers into France and other countries is the result of a centralized integrated effort by one or two organizations' rationalized marketing processes. On the other hand, the importation and adoption of *quiche* in the United States is the result of dispersed discoveries and adaptations—from Julia Child's successful television shows generating an entirely new interest in food to the training of chefs in a myriad of competing culinary institutes—which have in the end produced a uniquely American (and I might add less gendered) cuisine. The difference between a bottom-up adoption and amendment of a cultural product and the rationalized production and distribution of an absolutely uniform product for global consumption is the significant difference and a source of inequality.

The success of MacDonald's and the spread of global markets is the result of systematic intentional rationalization at just about every level of action. It is also integrated through highly centralized corporate hierarchies. It is this centralized and integrated rationalization that constitutes and colonizes everyday life around the globe and is the source of increasing inequality. What MacDonald's has created never existed before in France: a family

restaurant and possibilities of eating out for masses of French people for whom eating in a restaurant had been a rare occasion. But MacDonald's achieved this through a work process that is a quintessential example of the deskilling and reengineering that is also systematically lowering wages and incomes. An increasing share of food consumption in France (and elsewhere) takes place through a production and distribution system that is organized into programmed and computerized systems, involving low-skill, low-paid, part-time labor. The product is designed and distributed in consistent standardized processes and legal forms (that secure material and economic capital) with the most variable and transient human labor.

These processes are part of a global transfer of income and intellectual capital that has increased the divide between the haves and the have nots. For example, although recent investment in the U.S. and global markets is growing, and productivity is rising markedly, wages and real incomes for more than 80% of U.S. workers has steadily fallen. This situation is repeated in France, Belgium, Germany, Canada, and the United Kingdom. Government statistics claim that the weekly earnings of 80% of the American work force fell 18% between 1973 and 1995. The income of the executives and high-level managers (the other nearly 20%) rose between 19% and 66%. Moreover, during this same period employees' share of companies' increased income has also fallen. During the 1980s, labor earned 52% of income; in 1993, labor was taking 38%. The share paid out to capital investment remained at a constant 28%.<sup>13</sup> While the same has happened in most of the industrialized world, it cannot be interpreted as a simple transfer from more to less industrialized nations.

More to the point, the processes of restructuring and reengineering that are bringing about this increased productivity and reduced real wages (as measured by most economic indicators) is being exported around the globe in order to create similar increases in productivity. The policies and techniques that have stimulated this new productivity in the United States and Japan, for example, are being aggressively promoted and sold as models for other nations to adopt. Thus, while there is a transfer of production and managerial technique (and with it an apparent increase in income for previously less industrialized nations), the new technologies will put a ceiling on the rates of growth (in workers' real incomes) in those developing economies. A downward shift in wages accompanies the restructuring for greater productivity. Two recent studies have tracked these changes globally, estimating that within the United States alone between 75%

<sup>13</sup> These numbers come from "The Best of Times—The Worse of Times," remarks by Lawrence B. Lindsay, a governor of the Federal Reserve Bank to the Baltimore Chapter of the Commercial Finance Association, 7 March 1994, quoted in Head 1996.

and 80% of the largest companies have begun reengineering their work forces and that these efforts are increasing in the United States as well as elsewhere (Hammer & Champy 1993; Hammer & Stanton 1995; Champy 1995).

Restructuring and reengineering involve the computerized redesign of manufacturing and white-collar work to use the simplest most interchangeable parts and persons; they purposively displace the need for abundant human labor and capital. (They also rely on highly paid consultants who help train managers to do the hard work of firing workers.) The newly designed and computer-aided manufacturing and office work require little education or training. The examples are abundant. Nissan and Honda claim, for example, that they give very little emphasis to the educational and vocational qualifications of their prospective employees whether hiring in Germany, the United States, or Japan. Manual "dexterity, enthusiasm, and an ability to fit into the team" are much more important than calculation, interpretive, or other cognitive skills, they claim (Head 1996:48). Manpower International claims that it can provide the computer skills necessary to do most of the newly designed white-collar work with two months' training and through its pool of ever temporary help. And MacDonald's prides itself on its ability to train its restaurant workers in 20 minutes—through videotaped instructions—for any job required to staff a MacDonald's restaurant.

Not only are we seeing a transfer of income from workers to upper-level managers and investors, but consistent with this division of income we are witnessing an accelerated division of intellectual labor. The new systems that organize work and production are designed by highly educated, technically trained specialists. Such skills are difficult to acquire, take many years of preparation, and thus command these noticeably higher salaries. And yet the increases in productivity have been already achieved without any reforms in public education. In other words, the increased productivity requires the talents of few and not the education of many.

Thus, what the global economy of lean production gives us is a highly stratified work force with millions of people constituting the interchangeable parts in the rationalized production designed by the precious intellectual labor of a few. Although most people use, rely on, work their individual imaginations responding to and adapting these standardized products and services, they are—by these very same processes—put at an increasing remove from the material substance of their daily lives (the design and control of these systems of production, distribution, and consumption). Although the beneficiaries are no longer nation-states, and may be less territorially confined, I think it not unreasonable to characterize these global processes as a new form of colonialism.

Importantly, as sociolegal scholars we need to remember that the global dispersal of production, distribution, and consumption is taking place with the active participation of legal actors and legal forms. These processes of global marketing and restructuring are constructed, and can only be constructed, with the collaboration of law. A final example from MacDonald's provides an apt illustration of how the law plays a crucial role integrating and rationalizing this new colonialism. In 1972 MacDonald's opened its first outlet in Paris, which Fantasia reports became the first fast-food establishment in the country. In the first 10 years, from 1972 to 1982, the local franchiser holding the rights to develop in France opened 12 outlets. In the next 15 years, more than 310 more outlets were opened. It is not irrelevant that the rapid expansion of MacDonald's in France took place following a legal suit in which the parent corporation claimed that the local franchise was mismanaging the French outlets. Only after this successful litigation did MacDonald's regain control of the franchises in France and set to work on its expansion.

### Burying Power and Injustice

I have been arguing that despite claims of increased openness, exchange, and participation, globalization has increased the divide between the rich and the poor. At the same time, it has concentrated in relatively fewer hands ever greater wealth and power over larger numbers of persons: that is the critical distinguishing variable, the increasing number of persons subject to concentrations of power. The current economic data are quite explicit on this point, and even those commentators who advocate free markets agree that inequality is increasing.

The problem, however, is more than simply the fact of inequality or of concentrations of power. The possibilities of justice are eroded under globalization primarily because that greater power has been made less visible (Ewick forthcoming). Both the Enlightenment narrative and the market narrative bury the injustices of globalization. In the first story in which reason and science triumph, globalization is driven by what seems like inevitable progress: invention capturing nature—time and space—through transportation and communication. In the second story, globalization is not inevitable but nonetheless also disguised by the operation of the unconscious and invisible hand of the market. By concealing the social organizations of science and of markets, these globalization narratives substitute abstract logic for sociology. By cloaking social organization in inevitable progress and unconscious markets, the globalization narratives return us to a world governed by mysteries rather than by humans. And in this move—deftly obscured in the suppressed sociology—the

conventional narratives of globalization erode the possibilities of justice.

For there can be no justice—defined or sought—without power. “Notions of justice,” Ewick (forthcoming) writes, “are defined by the power against which they are poised.” Indeed, it is the experience and imagination of power unchecked that has underwritten the historic debates and struggles that have occupied not only legal scholars but all human groups as far as we know about how to constitute a just society. The major social movements that have characterized modern history—beginning with the early peasant revolts, the liberal revolutions, and the socialist movements of more modern times—have each represented transformations in just these understandings of how human agency and power shapes the world (Turner 1969).

When human life and social conditions were understood to be beyond the power of the powerful, misfortune was not something for which power was held responsible. On the other hand, when power is held responsible, the situation is understood not as misfortune but as injustice. And the victims of injustice do not petition for charity; instead they claim rights to a remedy. In effect, modern social movements brought transformations in the understandings of the capacities and responsibilities of power. To the extent, however, that the world is understood to operate by inevitability for which no human power is responsible, there is no room for right or injustice, only inefficiency or charity.<sup>14</sup> By disguising power within the invisible hand of the market or inevitable progress, the dominant narratives of globalization deny the existence of a recognizable and powerful other from whom one can demand justice.

### The Sociolegal Narrative: Law Triumphs but Is Not Enough

Although the Enlightenment and market narratives are commonplace and conventional tales, they succeed in part because they are banal. They draw on commonplace understandings of the world; their familiarity enhances their power because the unstated implications are unquestioned, their assumptions and elisions unrecognized. Conveying moral accounts of how the world works, these narratives warn about what happens to those who do not go along with the moral instruction: those who are not reasonable, instrumentally efficient, or do not participate in the

<sup>14</sup> Human rights provides a counterexample. Without doubt, human rights discourse makes explicit justice claims. I suggest, however, that human rights discourse is a prominent but weak counterexample because the meaning of those rights is energetically contested, and when proponents of human rights make claims to economic rights and improvement, there is much less consensus and support.

global market. The popularity of these globalization narratives also stifles alternative accounts.<sup>15</sup>

Thus, we observe what every parent knows: It makes a difference what stories we tell ourselves. But if it is the case, as Patty Ewick and I have recently tried to show, that narratives can be both hegemonic and subversive, perhaps it is possible to construct a counternarrative, a subversive story.<sup>16</sup> More directly for the interests of the Law and Society Association, I wonder if it is possible to construct a sociolegal narrative of globalization that remains attentive to power and thus accounts for the possibilities of injustice, and justice.

If these globalization narratives become legitimate and commonplace—hegemonic—by effacing the social organization of power and injustice, sociolegal scholarship can contribute a subversive story by revealing how law contributes to the social organization of power, specifically by tracing the ways in which law’s power underwrites globalization. If narratives can be hegemonic by suppressing their sociology within abstract logics, then I like to believe that sociolegal research has already contributed to a counternarrative through its empirical accounts of the social construction and organization of law.

To the extent that we can forge a narrative out of sociolegal scholarship, it is a story not of the triumph of reason as the Enlightenment tale provides, nor a story entirely of individual choice and desire surpassing reason and social organization as the marketeer’s narrative suggests. Rather, framed in this idiom, the sociolegal narrative is an account of the triumph of law.<sup>17</sup>

If I read the literature correctly, and judge from the papers presented at annual meetings, sociolegal scholarship has discovered law everywhere, not only in courtrooms, prisons, and law offices but in hospitals, bedrooms, schoolrooms, in theaters and films and novels, and certainly on the streets and in police stations and paddy wagons. And there are even times when the sociolegal scholar maps the places where law ought to be but is not. For sociolegal scholarship, then, “the law is all over” (Sarat 1990). Thus, portrayed as a narrative with a structure of struggle and opposition emplotting a moral tale, the sociolegal account is

<sup>15</sup> Together the commonplace narratives of cumulative progress and individual choice, of rational invention and unconscious markets, contain sufficient breadth, variation, and contradiction—what some refer to as polyvocality or heteroglossia—so that together they are effectively protected from critique. Globalization is discursively constituted through these variations and contradictions. In other words, most of the discursive terrain is occupied, and it is difficult to find alternatives to these dominant narratives within familiar symbols and logics.

<sup>16</sup> See Ewick & Silbey 1995 for an elaborated account of what constitutes a hegemonic as against a subversive narrative.

<sup>17</sup> A “law-first” paradigm constructs law as the central character of sociolegal scholarship. Even those works that abandon the law-first paradigm as a research strategy nonetheless attempt in the end to tell a story about law (e.g., Sarat & Felstiner 1995; Merry 1990; Greenhouse, Yngvesson, & Engel 1995).

a story of how the law triumphs over desire. Whether law triumphs over reason is less certain, however, for in different genres and paradigms of sociolegal scholarship, reason may be the devil or the heroine of the plot.

By relying on this fundamental insight of sociolegal scholarship—that law is where it does not appear to be—sociolegal scholarship has the capacity to track the social organization of power in the abundant sites and social spaces now described by “globalization.” Moreover, studying the social organization of law is a particularly good way to study the exercise of power under globalization: first, because so many of these new forms of interaction and exchange are organized through law; and, second, because to some extent, we have already been there.

The subject under the lens of sociolegal scholarship—liberal legalism—is structurally homologous with the contemporary accounts of globalization. Indeed, the narratives of globalization reproduce large pieces of liberal legalism’s accounts of itself. Each relies on methodological individualism. They share a conception of the world—markets, science, and liberal law—as the cumulative outcome of individual will and agency. The narratives of the market and of liberal legalism also share the conceptual logic of the commodity form (Balbus 1977).

Not only is there a noticeable structural homology between the narratives of globalization and liberal legalism, but the gap between law on the books and law in action revealed in much sociolegal scholarship can also be observed in the accounts and practices of globalization. Not only do we observe a consistent contradiction—a gap between ideal and reality—but the same gap is produced: abstract formal equality and substantive concrete/experiential inequality.

In accounting for this gap, sociolegal research has been able to depict how power is instantiated in all sorts of social relations and to demonstrate not only that social organization matters but how it matters. In just about every piece of empirical research on law, the insight is repeated. In historical studies of litigation, in studies of policing, in studies of the legal profession and delivery of legal services, in reports on access to law, in histories of how particular legal doctrines and offices developed, in studies of court cultures and judicial biographies, in studies of the effectiveness of legal regulation and crime control, and in studies of legal consciousness as well, research has shown how organization, social networks, and local cultures shape law. This research has also demonstrated how law is recursively implicated in the construction of social worlds—of organizations, social networks, and local cultures—and thus how law contributes both to the distribution of social resources and the understandings of the worlds so constituted.

Thus, by reading the pages of *Law & Society Review*, *Law and Social Inquiry*, *Law and Policy*, *Social and Legal Studies*, *Droit et Société*, the *International Journal of the Sociology of Law*, *Law and Human Behavior*, or the host of other journals that represent our enterprise, it is possible to find accounts of the organization of power through law. These accounts describe how in doing legal work, legal actors and officials respond to particular situations and demands for service rather than to general prescriptions or recipes of the task. Although law claims a general rationality, it is no different from most other work and, rather than operating on the basis of invariant general principles, proceeds on a case-by-case basis. This is certainly evident in the production of law through litigation and in the creation of precedent through decision in individual cases; it is true of law enforcement as well. Moreover, most lay participants also operate on a reactive, situationally specific rationality. And even in those instances of social movement litigation by labor unions, the civil rights movement, or the recent women’s movement for pay equity (McCann 1994), movements’ strategies relied on this understanding that long-term changes would depend on the ability to aggregate the outcomes of individual cases.

Because legal action is not rule bound but situationally responsive, it involves extralegal decisions and actions; thus, all legal actors operate with discretion. Documenting the constraints and capacities of legal discretion has occupied several generations of law and society scholarship and provides a store of transferable wisdom about how inevitable discretion is invoked, confined, and yet ever elastic. In exercising this inevitable discretion, legal actors respond to situations and cases on the basis of typifications developed not from the criteria of law or policy but from the normal and recurrent features of social interactions. These “folk” categories are used to typify the variations in social experiences, in an office, agency, or professional workload and to channel appropriate or useful responses. These typifications function as conceptual efficiency devices.

By relying on ordinary social logics, local cultural categories, and norms, legal action both reflects and reproduces other features and institutions of social life. On the one hand, as a tool for handling situations and solving problems, law is available at a cost, a cost distributed differentially according to social class, status, and organizational position and capacity. On the other hand, law is not merely a resource or tool but a set of conceptual categories and schema that provide parts of the language and concepts we use for both constructing and interpreting social interaction. These ideological or interpretive aspects of law are also differentially distributed.

Finally, by documenting how law both helps to constitute social interaction and is itself constructed by social action, sociole-

gal scholarship has been able to demonstrate the ways in which law is internal to the market, something marketeers fail to notice or seek to ignore by insisting that law is external. Among such research is the extensive work done early in this association's history on public regulation of business and markets and on administrative law. Similarly, the classic works on contracts—their history, use, and nonuse—and family law have revealed the perpetual struggles to establish a public private divide that is naturalized in some of the globalization narratives.

The stunning tradition of research has consistently challenged the law's claims to autonomy as it has simultaneously challenged the market's claims of autonomy and supremacy. More recent work on scientific disputes and on the use of scientific evidence in legal cases has similarly questioned the claims of science to disinterested truth telling and logic divorced from social organization. In its efforts to map the life of the law—that which has been experience as well as logic—sociolegal scholars have ended up modeling the intersections of semiautonomous social fields.<sup>18</sup> Thus, if sociolegal research can be described as a narrative of the triumph of law, it is important to remember that the law triumphs only by its ubiquity, not by its omnipotence. And when it comes to power and justice, the clear and unambiguous lesson of the sociolegal story is that law is not enough.

### Conclusion: The Possibilities of Justice

Being able to recognize what might at first seem new and even strange—globalization—in what is familiar—liberal legalism—is not sufficient to produce a counterhegemonic narrative. We cannot rest content with some notion that we have been here before. If the dominant narratives of globalization make questions and claims of justice less possible by masking the operation of power through invisible hands and inevitable change, we must expose and track the power that nonetheless operates below the surface of prices and progress.

We need a sociology of globalization. This is the challenge for sociolegal scholarship. We need to pay attention to variables and variations we may have observed insufficiently in the past but which now seem to shape both law and globalization. For example, we need to attend more directly and more energetically to issues of scale and complexity. In the new world order, vast temporal, spatial, and cultural distances are bridged; social organizations based on similarity and proximity have been transformed into functionally interdependent connections among very different and very distant people. Not only has the qualitative sub-

stance of interactions changed but at the same time the quantity and pace of social interactions have increased geometrically. The everyday lives of the majority of people in most social classes all over the globe are constituted by more encounters, of shorter duration, over greater distances than ever before. We need to consider how matters of time, space, and complexity, how issues of volume as well as content, help frame legality and globalization.

Let me be explicit. I am not suggesting that we pursue social theory because of a scholastic desire for knowledge for knowledge's sake nor as a justification for occupation. I suggest that we pursue sociology more seriously because without that theoretically informed analysis of the social organization of power and law, without analysis that begins with the elemental dimensions of social interaction, critical questions of justice cannot be answered. In my view, sociological inquiry is the minimal prerequisite for engaged action on behalf of justice.

If we take social theory more seriously, we cannot exempt our own role in the social organization of power and our complicity in the globalization narratives. Stories are not only read or told, they are made. By entitling our narratives "globalization" rather than "capitalism," "late capitalism," or "postmodern colonialism," we camouflage the organization of power and thus misrepresent the targets of, and impede the struggles for, justice.

I conclude by revisiting the stories of French government responses to protest and grievance with which I began. Marie Antoinette and Michael Bon were separated by more than 200 years, the guillotine, and the demise of French monarchy. They are also distinguished by their varying acknowledgment of the claims of justice, social organization, and power. Marie Antoinette's remark mocked the French peasants; she didn't really expect them to eat cake in lieu of bread. Her sarcasm grew out of and expressed a consciousness of power, inequality, and entitlement. It was, moreover, unconcerned with the demands for justice. By contrast, Michael Bon was not being cynically dismissive. He really believes in global markets and really offers New York as an alternative to Grenoble, Paris, and Lyon. He truly regards cheaper calls to New York as compensation for local networks, obligations, and attachments. He imagines cross-global connections adequate and sufficient to sustain emotional and social life; he values what is distant more than what is near. He thus helps to erode the boundaries whose absence he also bemoans. Where Marie Antoinette was aware of the distance between herself and her subjects, Michel Bon is oblivious to the power of France Telecom and the way it shapes the lives of ordinary people. In contemporary France, power has become so disguised that it is unrecognizable even to itself. Michel Bon can see French citizens

<sup>18</sup> Sociolegal scholars create as well as map semiautonomous fields. This is, after all, a multi- or interdisciplinary association.

only as consumers in a market, and in that blindness he undermines the possibilities of justice.

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