FUNDAMENTAL ISSUES IN LAW AND SOCIETY RESEARCH

Bryant G. Garth and Austin Sarat, Editors

Volume 1: Justice and Power in Sociolegal Studies

Volume 2: Everyday Practices and Trouble Cases

Volume 3: How Does Law Matter?

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Traditions and Transformations in Law and Society Research

JUSTICE AND POWER IN SOCIOLEGAL STUDIES

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NORTHWESTERN UNIVERSITY PRESS

THE AMERICAN BAR FOUNDATION

Northwestern University Press
Evanston, Illinois 60208-4210

Printed in the United States of America

ISBN 0-8101-1432-1 (cloth)
ISBN 0-8101-1433-X (paper)

Library of Congress Cataloging-in-Publication Data

Justice and power in sociolegal studies / edited by Bryant G. Garth, Austin Sarat.
p. cm.—(Fundamental issues in law and society research ; v. 1)
Includes bibliographical references.
ISBN 0-8101-1432-1 (cloth : alk. paper).—ISBN 0-8101-1433-X (pbk. : alk. paper)
1. Justice. 2. Power (Social sciences) 3. Sociological jurisprudence—Research. I. Garth, Bryant G. II. Sarat, Austin. III. Series.
K240.J88 1997
340'.115—dc21 97-45537
CIP

This material is based on work supported by the National Science Foundation under Grant No. SBR-9410902. Any opinions, findings, conclusions, or recommendations expressed in this material are those of the authors and do not necessarily reflect those of the National Science Foundation.

The paper used in this publication meets the minimum requirements of the American National Standard for Information Sciences—Permanence of Paper for Printed Library Materials, ANSI Z39.48–1984.

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ACKNOWLEDGMENTS

This volume is the first in a series based on a succession of summer institutes organized under the auspices of the Law and Society Association. These institutes brought together junior scholars and leading established scholars around a theme thought to be central to the field. Each volume in the series will examine one of these central themes. Each volume will look at one central aspect of the field of law and society by bringing together scholars from a variety of perspectives and disciplines. We wish to thank all those who have made this series possible. It is never easy to coordinate the timing for the publication of collections of essays, and we are therefore very grateful to all the people who have persevered on behalf of this series. We are also grateful to the participants at the institutes for their enthusiastic interest and sharp insights.

Within the Law and Society Association, we thank especially Ron Pipkin and Lissa Ganter, both of whom devoted considerable energy into the organization of the institutes. At the American Bar Foundation, special thanks go to Brenda Smith, who has patiently worked with these manuscripts as an add-on to an already overloaded schedule; and to Carole Silver, who provided useful editorial services and in general helped bring the project to fruition. We are also grateful to the organizations that have supported these institutes and publications, including the National Science Foundation, which has made three grants to support these summer institutes: SES 9211969, SBR 9422669, and SBR 9410902. We also are grateful for the commitment of resources by the Law and Society Association—and for the smaller commitments by our own home institutions.

Finally, we would like to thank Felice Levine, now the executive director of the American Sociological Association, who served with us on the commitee that began these summer institutes. Her vision of "law and society" as a field of scholarship with its own distinctive questions, approaches, and literature, which she developed first at the ABF and then in her work for the National Science Foundation, has been a key inspiration for these volumes and the scholarly identity of the Law and Society Association.

IDEOLOGY, POWER, AND JUSTICE

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SUSAN S. SILBEY

I. INTRODUCTION

In the last fifteen years, ideology has been the central concept in an expanding collection of research on law. Unfortunately, much of this work reproduces the notorious confusion surrounding the term "ideology" in general, perhaps "the most elusive concept in the whole of social science" (McLellan 1986: 1). One can find several dozen definitions and uses of "ideology," including coherent and articulated worldviews (Verba, Nie, and Petrocik 1979; Converse 1964), false ideas (Marx and Engels [1846], 1970; Scott 1990), and claims of universality for what is actually partial and particular. To use the term "ideology" is, according to Eagleton, "just a convenient way of categorizing under a single heading a whole lot of different things we do with signs" (1991: 193).

But it seems to me that studies of ideology and law are both more and less than semiotic analyses of representation. Studies of legal ideology are analyses of law's complicity with power. With one historically important but conceptually marginal use,[1] the term "ideology" generally points to the ability of ideas to affect social circumstances. Thus sociologists have sometimes described the function of ideology as the capacity to advance the political and economic interests of groups or classes (Mannheim 1936; Marx and Engels [1846] 1970), or alternatively, the capacity to produce cohesion

(Poulantzas 1978: 88) and resolve social strain (Johnson 1968; Parsons 1951, 1967; White 1961). This general notion treats ideology as materially effective representation. From this perspective, the study of legal ideology is the study of how law's representations enact power.

Studies of legal ideology are not, however, only examinations of power at work in and through law. Studies of law and ideology also suggest that the power associated with signs and symbols is being exercised unjustly. Thus, adopting and deploying the term "ideology" is a form of social criticism. In more colorful language, Raymond Williams asserts that ideology "is mainly a term of abuse" ([1976] 1983: 157). To view legal institutions through the lens of ideology implies that the power of law is, despite its visibility and centrality in modern states, incompletely apprehended. To describe legal processes as ideological suggests that in this masquerade law *pretends* to enact justice.

Although justice is the ground of critique, it is rare to find explicit definitions in sociolegal scholarship. Nonetheless, Ewick suggests elsewhere in this volume that justice is implicitly understood as a set of "standards against which power can be held accountable." Distributive justice demands that like cases be treated alike, while substantive justice, or "justness" according to Ewick, demands that the outcomes and consequences of legal processes be reasonable and proportionate. Thus, to invoke the concept of ideology in studies of law is to focus on the ways in which the power attached to and enacted by legal institutions and representations impedes rather than promotes distributive and substantive justice.

In this paper, I argue that use of the term "ideology" in the analysis and interpretation of legal phenomenon is part of a critical project in sociolegal scholarship. Furthermore, introduction of the concept of ideology is part of a more comprehensive theoretical development toward a "constitutive" theory of law (e.g., Hunt 1993; Harrington and Yngvesson 1990; Henry 1995; McCann 1994; Merry 1990; Sarat and Felstiner 1995; Ewick and Silbey 1996). The argument develops as follows.

Sociolegal scholarship begins with a broad but simple claim that legal institutions—like any other social institutions—cannot be understood without seeing the entire set of interacting relations of which they are constituted and the environment in which they function. From this simple premise, sociolegal scholarship is a critical project because it challenges legal professionals who claim autonomy and authority to define the subject and operations of law. By insisting on seeing legal actions and institutions as just the same as, and to be studied just the same as, other forms of social action, sociolegal scholarship questions this claim to authoritative difference and autonomy. But critical research does more than engage in a struggle for a share of professional-intellectual markets (Dezalay, Sarat, and Silbey 1989). Critical scholarship in law specifically challenges not only dominant authorities in the legal profession but also confronts the dominant definitions and understandings of law.

For a long time, the sociology of law was occupied in observing, describing, and documenting the way legal institutions actually worked—what they did and how they did it. It seemed sufficient as a critical project to reveal that legal institutions did not function as they claimed. With time, however, this project became institutionalized so that it no longer represented a challenge to power because it became well accepted that what was called law-on-the-books and law-in-action were not the same. The difference became an accepted social fact—simply the way things were. Some of the critical edge of sociolegal scholarship was lost as scholars took as their task to show the legal system how it failed its ideals of law—principles—and how the legal system—rule of law—could be made to work the way it was supposed to. Often law and society[2] scholars provided technical assistance to do so (Brigham and Harrington 1989).

But contemporary critical sociolegal scholars do more. They examine and interrogate, question and impute, the very ideals and principles that law claims for itself. Critical scholars argue that the ideals and principles that legal institutions announce, even though they fail to support them, are part of how legal institutions create their own power and authority. The ideals of law, such as open and accessible processes, rule-governed decision making, or similar cases being decided similarly—despite their inaccuracy as a description of how law works—are nonetheless part of shared understandings of what law is. Although the ideals are not accurate empirical descriptions, they serve as aspirations that help shape and mobilize suppport for legal institutions. The term "ideology" has been adopted to specifically name this representational and constitutive power attached to legal language, concepts, and practices.

Legal ideologies—public understandings of what law is—shape individual consciousness so that the ideas and understandings seem like one's own. At the same time, social interactions invent as well as reproduce cultural signs, metaphors, and accounts. This is part of "a reciprocal process in which the meanings given by individuals to their world, and law and legal institutions as part of that world, become repeated, patterned and stabilized, and those institutionalized structures become part of the meaning systems employed by individuals" (Ewick and Silbey 1992: 741; Giddens 1987). The endless cycle of production, representation, reception, and re/production describes how people go along with law and do the work of legal institutions without paying attention to the fact that their own actions are what create the legal system, are what make it what it is. Although human action creates the law, it also simultaneously makes it seem "out there," a separate and distinct phenomenon from human action (Ewick and Silbey, in press). This is what sociolegal scholars call the constitutive theory of law: an understanding of law as something that helps construct social relations and is itself constructed by social relations. From this perspective, the task of sociolegal scholarship is to make visible the processes and mechanisms by which individual local action accumulates and condenses into repeated patterns, expectations, and institutions that in their turn have the capacity to shape local action. Thus, the ideological and

constitutive perspective in sociolegal scholarship describes a recursive self-reproducing but nonetheless not completely determined process.

By offering a critique of the complicity of law and the collaboration of scholarship in the constitution of social relations, the proponents of the ideological perspective make a justice claim. They attempt to redress a present imbalance in the distribution of power by resisting the common theoretical and representational paradigms that sustain modern systems of domination. In effect, the ideological perspective claims that cultural texts and interpretive practices should no longer be treated as if they "enjoy a separate nature as an unphysical 'structure' or 'frame of meaning' " outside of power, independent of social relations and the probabilities of human justice (Mitchell 1990: 561). Those "unphysical frameworks or structures," embodied in concepts of mind, idea, or interpretation, are themselves effects produced by modern systems of power in which claims to knowledge are acts of power (Foucault 1980; Mitchell 1990). In other words, the series of distinctions which have organized Western thought and legal scholarship for nearly two thousand years, distinctions between mind/body, coercion/consent, law/state, knowledge/power, law-on-the-books/law-in-action, are themselves instruments of power and complicitous in the presently just or unjust social arrangements. In this way, studies of legal ideology analyze and critique the relationships among representation, power, and justice in legal practices.

In this paper I review some, by no means the entire body, of the research on law and ideology. I suggest that we might advance theoretically by noting how the components of this triad—ideology, power, and justice—are differentially deployed in the research literature. Specifically, I argue that the term "ideology" is often infused with different notions of power, and with differential commitments to making explicit the embedded justice claims and critiques.

In the next section, I review briefly how the concept of ideology was introduced as a means of mitigating the theoretical dichotomies (e.g., mind/body, idea/action) that had preoccupied philosophy and social analysis for centuries, and which were reproduced in sociolegal scholarship by the distinction between law-on-the-books and law-in-action.

The third section analyzes the alternative conceptions of power and justice embedded within studies of ideology and law. Some uses focus on local cultures and contests over alternative meanings to emphasize the uncertain reception of legal ideologies. By privileging competitive struggles, these analyses ignore institutionalized structures of power and thus undermine the possibility of a justice critique. In effect, by noticing the ways in which actors make justice claims, authors may excuse themselves from political critique. A second use of ideology reverses the emphasis from uncertain reception to ideological production. These studies often deploy a more instrumental conception of power, suggesting that ideology is a tool, and as such a tool belonging primarily to the powerful. The political critique is often more explicit, however, deriving from a view of justice as distributive equality, and ideology as a mask created to obscure inequality and the work of power.

Rather than taxonomic categories, I consider these two conceptions important but incomplete efforts in a process of theoretical development.

I will offer a third perspective that integrates these two positions with a constitutive notion of power and a more variable notion of justice. In this third perspective, ideology and hegemony are the opposite ends of a continuum where power and justice vary. At one end of the continuum, ideology is used to refer to struggles to establish dominant meanings and to make justice claims on the basis of alternative ideologies. Power may be locally contested and at the same time institutionally structured. At the other end of this conceptual continuum, the term hegemony is used to refer to situations where meanings are so embedded that representational and institutionalized power is invisible. Although moments of resistance may be documented, in general subjects do not question dominant structures and cannot make justice claims against the aspects of structure and power that are invisible. Thus, the scholar's use of the term "hegemony" is an enactment of a surrogate claim, a political critique that attempts to expose the silenced justice claims of the subjects (who are objects) of law and power. In this attention to hegemony, justice seems to lie in the possibilities of reflexive participation and communication through which object status is transformed into liberated subjectivity (Habermas 1970, 1992). The possibilities of political critique are strongest, I suggest, in this third cumulative or integrative perspective. Nonetheless, this conceptualization of ideology and hegemony leaves several unanswered questions, questions I raise briefly in the fourth section of the paper.

Having juggled these three abstractions—ideology, power, and justice—for long enough and having completed my conceptual excavation, I conclude with a concrete example illustrating how a constitutive perspective on ideology and hegemony can provide the grounds for political critique and the possibilities of resistance.

2. INTRODUCING IDEOLOGY TO SOCIOLEGAL SCHOLARSHIP

From its earliest uses, a pejorative aura attached to the term "ideology."[3] It was generally believed that "sensible people rely on *experience,* or have a *philosophy,* silly people rely on *ideology*" (Williams 1983: 157). For the longest time, the political Right and Left understood ideology as abstract and false thought. The ability to strategically manipulate appearances—with abstract and false thought—was treated as a sign of political power. In their use of the concept of ideology, political philosophers and social scientists have mixed descriptive and normative assessment.

Ideology is not simply a description of political accomplishment—successfully creating impressions useful for one's interests—but rather that which must be overcome to achieve justice. From this traditional perspective, it is the duty of philosophy and science to overcome the injustices produced

by false ideas. For example, Plato justifies inequality in a city ruled by a philosophic elite, those who have the capacity for true knowledge, because he was convinced that confusion and other substantively bad results followed when cities were governed by false beliefs or mere images. His own experience of the Sophists' activities in Athens convinced Plato that any political system, good or bad, was the direct product of the beliefs held by its members, and if "mere opinion" could wreak havoc on a community, "true belief might work just as powerfully in the opposite direction" (Wolin 1960: 38). This fueled Plato's conviction that philosophy—the pursuit of real knowledge—was not only a good thing in itself, but of practical political importance and urgency. This latter approach, with its direct heirs in the Enlightenment and contemporary social science, connects the pursuit of real knowledge with the possibilities of justice and names ideology, an expression of political power, as the enemy of both truth and justice.

Since Plato first attempted to distinguish what was real and true from what was illusory and false by differentiating a concrete and incomplete world of senses from an immutable and true world of ideas, Western philosophy has been plagued by models opposing thought and action, truth and illusion. Descartes's preoccupation with the relationship between body and mind, and Locke's analysis of sensation and reflection, extended and elaborated this persistent dualism until Kant and then Hegel attempted imaginative reconciliations. In the Enlightenment, mind and the world outside of the mind—the idea and its enactment—still represented entirely separate entities and processes. However, in the age of emerging empiricism, Plato was turned on his head, and ideas—as distinct from things—became associated with the untrue rather than the real and ultimate truth. Because ideas are intangible, ideology—as either the study of ideas or as systems of ideas—was again tainted with this patina of subjectivity and untruth.

Over time, the effort to construct a science of society produced a vision of social life that was predominantly behavioral and positivist, reinforcing the pejorative associations among ideology, subjectivity, and untruth. Although many sociologists claimed otherwise, most prominently Max Weber, mainstream academic social scientists eschewed interest in anything that could not be objectively measured and empirically validated. This was interpreted to mean that anything not capable of quantitative, not only objective, measurement was sociologically irrelevant. Eventually, only that which could be measured was considered real. As a consequence, social science spent most of its energies studying behavior (that which could be "objectively" observed), relegating ideas and representations to the realm of the subjectively unreal. This laid the foundation for seeing human beings as objects rather than subjects—actors but not minds—and left little room for joining action and meaning, behavior and interpretation, other than in opposition.

This intellectual inheritance took an ironic turn in law and society research where the effort to document relationships among image, reality, power, and justice was pursued for a long time before the concept of ideology was adopted

to organize empirical analyses of law. The dualisms that consumed philosophy and sociological theory were reproduced in the terminology and topics relevant to law. For example, for the longest time, the dominant conception of law as a system of rules was absorbed by competing interpretations of that rule system as the locus of reason or force. Seeking to identify the real (material) workings of the legal system, rather than the ideal (illusion) of a rule of law, sociolegal scholars reversed the terminology of the classical Platonic distinctions, resurrected the Enlightenment debates, and created their own particular duality between law-on-the-books and law-in-action. Research became preoccupied with dichotomies between law and state, equality and hierarchy, ideals and practices, and its own version of agency and structure in the debates about consent and coercion (Hunt 1993).

Tracking what came to be called law-in-action as distinct from law-on-the-books, several generations of empirical researchers identified persistent contradictions within liberal law: structured patterns of inequality, coercion, and, by implication, injustice that belied aspirations to equality and due process (Fuller 1964). There seemed to be an inescapable "gap" between the written rules or aspirations and practices of law (Feeley 1976; Abel 1980: Nelkin 1981; Sarat 1985; Silbey 1985). Thus, police practices were not merely described but described in terms of their consistency with the ideal of the rule of law and with democratic aspirations; case processing in courts was not merely detailed but measured by the demands of constitutional due process; regulatory enforcement was not only modeled but also assessed for its conformity to legislative mandates and policy interests. Repeated studies demonstrated that "the gap between the ideals of law and its performance is a central and pervasive feature of legal existence and of the consciousness of those who deal with, operate, and observe the legal system" (Trubek 1977: 544).

During this same period from the late 1960s to 1970s, criminologists in Britain were arguing that much of what was observed as a violation of law was in fact the product of law. Rather than controlling crime, law was itself crimogenic. Critical criminologists denounced the "correctionist" stance of traditional criminology by revealing the law's complicity in crime production and announcing their own commitment to diversity, crime-free social arrangements, and social equality (Taylor, Walton, and Young 1973, 1975). For example, in a classic study of mugging and street crime, Hall et al. (1978) demonstrated how law and popular culture were mobilized to create a politically useful meaning about mugging that synthesized diffuse fears about race, crime, and youth with a more general panic about structural changes in British economy and society. A spiral of signification was created in which a specific issue (mugging) became identified with what was named as a subversive minority, and then this single issue became linked with other issues that represented an escalating threat with prophecies of more trouble to follow if action was not taken. The series of representations produced one overwhelming consequence: "it legimated the recourse to law, to constraint

and statutory power, as the main, indeed the only, effective means left" of defending the British state. "It toned up and groomed the society for the extensive exercise of the repressive side of state power" (Hall et al. 1978: 278). The analysis offered a step-by-step description of how law was ideologically mobilized by showing how a popular cultural consensus was actively created that empowered the state, legitimated repressive law enforcement, and successfully claimed to have cabined broader social unrest.

In American law schools, critical legal scholars began to unpack the contradictions and specific class and group interests embedded in much legal doctrine. Offering a progressive critique, critical legal scholars systematically deconstructed the doctrinal edifices of one after another icon of American law, including contracts, torts, and corporations, as well as antidiscrimination and labor law. They decoded the representations and relationships institutionalized by legal doctrine.[4] Some analyses simply revealed logical incoherence, while others demonstrated the presence of alternative values and interests suppressed by dominant ideologies (e.g., Kennedy 1976; Kairys [1982], 1990; Frug 1984; Frug 1985). Some argued that legal education was itself a training exercise for future careers at the top of a socially dominant hierarchy (Kennedy [1982], 1990; Kelman 1987).

Faced with what looked like the false ideals or appearances of law (doctrinal texts and law-on-the-books), some researchers refused to discount the "gap" as either an atypical aberrant practice, a legally remediable lapse, or "as evidence of the total falsity of ideals . . . merely a mask behind which the rich and powerful hide their continued domination and exploitation of the poor and powerless" (Trubek 1977: 544). Some researchers called for intensive study of how the law worked, but without using ideals as a template against which to measure, assess, or interpret practices. Some began to deploy the notion of ideology as a way of paying attention to practices while refusing to ignore the role of the ideals as a part of the practice of law. Thus attention to "legal ideology" became a way of understanding and analyzing the persistent gap between the ideals and practices of law. Attention to "legal ideology" became a way of overcoming what I described above as an overly behaviorized and positivistic view of law. By adopting the concept of ideology, sociolegal scholars could build on Weber's work on legitimation, on the symbolic functions of law (e.g., Gusfield 1963; Edelman 1964, 1971), and could join traditional Marxist socioeconomic concerns to a rehabilitated interest in human subjectivity (e.g., Althusser 1969). An ideological conception of law could underwrite analyses that explored law's symbolic and material constitution and consequences.

In 1984, Roger Cotterrell published *The Sociology of Law*, a basic text built around an incisive and powerful account of law as ideology. Synthesizing the emerging literature that viewed law as an ideological phenomenon with the extensive empirical literature documenting law-in-action, Cotterrell established the centrality of an ideological perspective in sociolegal studies. He explicitly used the concept as a means of resolving the tensions between

doctrinal (law-on-the-books) with cultural (law-in-action) conceptions of law. In this effort, he self-consciously moved beyond narrowly behaviorist visions, but stopped short of other analysts who threatened to include all of social life within the terrain of law. He wanted to make a place for both the traditional doctrinal materials which occupy legal professionals and are looked to by ordinary citizens, and the important empirical work on the daily life and practices of legal institutions and actors produced by sociolegal scholars. Building on both the work in critical criminology and cultural studies that documented the social processes of representation and domination in Britain and the critical legal studies that analyzed class interests in American legal doctrine, he offered the notion of legal ideology as a means of seeing how both cultural practice and doctrine combine to shape the way law works in social life.

Very soon thereafter, Alan Hunt published a long article in the *Law and Society Review* delineating "advances and problems in the recent applications of the concept of ideology to the analysis of law." He laid out what was to become known as a constitutive theory of law in which "legal ideology provides a constituent of what Althusser called the 'lived relation' of human actors" (1985, 1993: 121). Hunt identified three levels at which legal ideology functioned: the content of concrete legal norms; the content of general principles; and the content of the form of law. Importantly, he distinguished between the processes of law that produced ideological effects—that is, that mirrored or transformed phenomenal experience into reified abstractions—and consequences of legal processes that produced particular ideological content—norms, categories, or representations that might thus mystify or distort.

Together, Hunt and Cotterrell provided theoretical ground for an abundance of empirical work in which the concept of ideology has been deployed to emphasize ways in which ideals and practices of law work together to empower or to subordinate different persons, groups, positions, and understandings. These studies of legal ideology are not limited to the direct action of law such as an arrest or the disposition of a trial or regulatory process; nor do ideological analyses emphasize exclusively the written text and doctrinal principles. Rather, the analyses of law using the concept of ideology attempt to demonstrate how power is enacted in the conjoining of action and representation through cultural practices and consciousness. When law is understood as an ideological phenomenon, it accentuates the capacity of law to forge authoritative and powerful accounts of social relationships.

3. POWER AND JUSTICE IN STUDIES OF IDEOLOGY

Having adopted the concept of ideology to analyze legal phenomenon, however, researchers deployed the term in diverse ways, infusing the concept

of ideology with competing notions of power and justice, producing less and more effective political critiques. Although I speak of these uses as distinct, it is more likely that one can find several versions operating in combination in any particular piece of research. I offer these distinctions, nonetheless, as analytic devices to help identify potential uses and critical capacities of the ideological perspective. Moreover, they can be understood as pieces of a developing perspective, a perspective I outlined in the introduction and return to below.

A. Ideology: Culture without Power

In some pieces of sociolegal research, ideology is equated with culture and becomes synonymous with the most pervasive and general processes of social construction. Seeking to avoid the quagmire of attributions and analyses of false consciousness, some writers focus on the mutually constitutive processes of making meaning among sentient actors and, as a consequence, perhaps inadvertently, strip ideology of its role in the processes of constituting and distributing power. In this first, "powerless" conception, Merry, for example, describes ideology as a

> set of symbols and meanings by which individuals make sense of their world and their experience, suggest[ing] that it is neither false nor true, but one of a range of ways of making the world coherent. Cultures provide multiple and competing sets of symbolic forms and meanings from which individuals choose. These symbolic systems are subject to redefinition through experience and changes in the social system itself. (Merry 1985: 61)

Fine and Sandstrom similarly assert that ideology "helps actors to cope with their lived reality and to facilitate social concourse" (1993: 25). Specifically, Fine and Sandstrom, like Merry, mesh meaning and interaction to "focus on how individuals and groups *do* ideology"; they describe "how people use and act on ideas to realize their interests and purposes in everyday situations" (1993: 25; cf. Thayer 1981).[5] Here, ideology is understood as simultaneously symbolic, affective, and behavioral sets of interconnections among social actors, not simply as beliefs but as situated action. Ideologies are (1) "based on a set of dramatic metaphors and images to which people respond on the basis of their shared experience and expectations"; (2) "not purely cognitive, but depend crucially on emotional responses"; (3) "presented at such times and in such ways as to enhance the public impression (and to justify the claims and resources) of presenters and/or adherents"; and (4) "linked to groups and the relationships between groups, which in turn depend on a set of resources in order to enact ideologies effectively" (Fine and Sandstrom 1993: 35).

These works go a good way toward understanding ideology as situated social action. There is an important emphasis on the relationship between ideology and lived experience as well as the ways in which actors in small group interactions make contextualized interpretations and judgments about

their lives in a social and physical surround. "This model demonstrates how ideology and situated action are tied together recursively in a larger dynamic system of social action" (Steinberg 1993: 314). There is strong emphasis on plurality and contestation in the construction of social meanings (Merry 1990; Yngvesson 1993; Sarat and Felstiner 1995) with less attention to institutionalized structures of power and inequality (but see Seron and Munger 1996).

Consider, for example, Merry's study of working-class legal ideology. She describes how the concept of rights and legal language becomes, to use Geertz's (1973) phraseology, a "model of" society and a "model for" action. By conceiving of themselves as rights holders, disputants pursue grievances with neighbors and family members by filing suits in a local court. In one case where two children were fighting and throwing rocks, the parents filed charges and countercharges against each other alleging a variety of minor criminal actions such as threat, assault, and battery. Rather than adopting possible alternative interpretations of the incident, for example that this was just children fighting, or that it was part of ongoing opposition to racial and ethnic integration, each parent attempted to vindicate his or her child's action as a matter of an individual right infringed by the other. According to Merry, "this incident shows how social relationships can be defined in terms of legal rights," which provide a "model of neighbor ties . . . which can be brought into play when it is useful" (1985: 65). Cultural symbols such as legal rights, according to this analysis, also provide a "model for" action defining the remedies available. "Because the court was an option for both parties, their dispute was more likely to be phrased in terms of legal rights" (Merry 1985: 65). In this analysis the legal symbolism and interpretations Merry attributes to the parties seem to emerge as the mutually efficient and available one. The institutional and strategic viability of the alternative interpretations is unexplored.

In this conception, ideology is everywhere and culture is a collection of ideologies. Power is also everywhere but institutionalized nowhere. The political critique of injustice attached to the concept ideology is considerably weakened, even where traces may be found.[6] Although hierarchical relations and structured inequalities are critical variables in the constitutive perspective I described above, differences in participation and capacity are subordinated in this effort to strip ideology of its associations with false consciousness, with instrumental conceptions of power, and with naive materialism. In the effort to acknowledge the struggles through which power is enacted, and thus to recognize the agency of even the relatively powerless, this cultural perspective seems to valorize a choosing subject enmeshed in a web of symbolic and material interactions. Unfortunately, the emphasis on the choosing subject selecting from a tool kit of available symbols, metaphors, and strategies elides the actions of collectivities seeking "to privilege their visions of the world as reality," and the efforts of "others in turn [to] find the means to resist such attempts" (Steinberg 1993: 317). The analysis of working-class legal ideology seems to assume the existence of the symbolic terms—the cultural

surround—from which the subjects choose and with which they negotiate. The deployment is tracked while the invention is not interrogated. In order to offer any productive purchase in the repertoire of social analytic concepts, I suggest, ideological analyses must take on the burden of specifically acknowledging and interrogating cultural production as well as reception. Yes, ideologies are "contextually produced chains of meaning" (Steinberg 1993: 317), but those contexts are structured, and constrained, even as they extend to the very personal, intimate, and seemingly idiosyncratic sinews of social interaction. The constraints—blocked paths, rejected interpretations—need to be made explicit and more visible.

B. Ideology: The Power of Actors

In a second set of uses, power and ideology are relatively concrete and observable. Here, the role of power is an explicitly acknowledged and essential element in the constitutive and interpretive work that is described by the term "ideology." Here, ideology is articulated and power is disproportionately exercised by discrete persons and collectivities. Ideology depends directly on and develops from the agency of social actors and groups. Although the power located in collectivities, as well as private persons, may not be appropriately and proportionately represented in public institutions, power is relatively formal and visible. There are two common analyses of this more instrumental and actor-centered notion of power: a pluralist and an elite version.

In the pluralist versions of actor-centered power, the "choosing" subject of the cultural perspective is explicitly endowed with independent agency and will. That actor is identified as the central agent of social and political life, which is merely "an association of self-determining individuals who concert their will and collect their power in the state for mutually self-interested ends" (Wolff 1969: 5). This is a model of power as fundamentally and essentially private. The public or political realm is, effectively, a consequence of the intersection and accumulation of private individual agents. The classical pluralist model includes protections against injustice in the form of major imbalances of power. Private power, if unbalanced, can be checked by the existence of competing actors and groups and by a vigorous patrolling of the boundary between the public and private realms. If the responsibility for checking private power devolves to the state, however, there is a structural necessity to check the power of that public umpire. The American solutions to this "technical" problem of pluralist democracy are quite familiar: a Bill of Rights, checks and balances, and the creation of competing or countervailing powers. In this pluralist conception of power, ideologies can be checked, false ideas unmasked, truth and real knowledge achieved by the open, public competition among and between ideas (e.g., Dahl 1961; Polsby 1963). The social world is a virtual marketplace of relatively *subjective* ideologies, opinions, and attitudes competing for control of the public realm: the state and the public culture of beliefs and allegiances. Following several decades of

merely reinforced rather than opposed the logic of market forces and the hierarchy of modern capitalist society. He suggests parallels with the eighteenth-century debates about property rights that Hay (1975) as well as E. P. Thompson (1975) reported. McCann suggests that even though the parties to the political struggles mobilize mainstream legal norms (e.g., claims of property rights by the propertyless in eighteenth century, claims of equal rights by those receiving less pay for the same work in late twentieth-century America), the law's adverse rulings did not silence their sense of injustice. They are undaunted if they lose particular battles; they do not believe that the law represents the only right and just outcome. They are willing and able to employ alternative, sometimes contradictory arguments, depending on the arena and the opponent. The struggle is an ideological engagement because the players retain a sense of opposition, a self-consciousness of their own role in shaping the terrain on which political struggle is joined, and an awareness that legality itself is fashioned as it responds to and enacts power.

But what about justice? The first model emphasized choosing a subject drawing from a repertoire of cultural symbols. To rebut imputations of passivity and unconscious or unknowing acquiesence to power among the powerless, researchers documented local contests and struggle. It was sufficient, for the critical project, to show that one could not predict the uses of particular signs, symbols, and ideologies. By shifting the emphasis from uncertain reception to ideological production, this second model, pluralist or elite actor-centered theories, cannot rest content with participation as a political position and measure of justice. Justice seems to be understood as distributive equality, and thus equal capacity or effectiveness in shaping the ideological terrain, rather than mere participation, is necessary to serve critical goals. By revealing inequality in symbolic and material outcomes, this more instrumental position demonstrates the failure of law to achieve justice. Ideology is deployed to describe how law obscures that inequality and its own complicity in the creation and maintenance of inequality.

C. Ideology and Hegemony: Contest and Domination

I propose a third conception which places ideology ("struggles to control cultural terms in which the world is ordered and, within it, power legitimated") as one end of a continuum along which power and justice vary. At the other end, power is explicitly present but more diffuse than in the actor-centered conceptions. We can sort through a lot of the confusion and make much progress in understanding the relationships among ideology, power, and justice if, following Comaroff and Comaroff, we adopt the term "hegemony" to refer to this end of the continuum where power is dispersed through social structures and relations. Rather than viewing ideology as expressed in the representations of individual subjects or as the consequence of group power, in this third notion, power and hegemony derive "as if naturally, from the very

construction of economy and society" (Comaroff and Comaroff 1991: 23). Here, hegemony is used to refer to those circumstances where representations and social constructions are so embedded as to be almost invisible, so taken for granted that they "go without saying, because, being axiomatic, they come without saying" (Comaroff and Comaroff 1991: 23; Bourdieu 1977: 167). But where there are articulated sets of meanings, values, and beliefs, where there is active contest over meanings, values, and beliefs, I use the term "ideology." Thus along the power dimension of the continuum, ideology and hegemony differ by the degree to which there is active contest and struggle among groups promoting alternative ideologies.

> Whereas [hegemony] consists of constructs and conventions that have come to be shared and naturalized throughout a political community, [ideology] is the expression and ultimately the possession of a particular social group, although it may be widely peddled beyond. The first, [hegemony], is non-negotiable and therefore beyond direct argument; the second [ideology] is more susceptible to being perceived as a matter of inimical opinion and interest and therefore is open to contestation. Hegemony homogenizes, ideology articulates. Hegemony, at its most effective, is mute; by contrast, says de Certeau (1984: 46), "all the while, ideology babbles on." . . .
>
> Hegemony . . . exists in reciprocal interdependence with ideology: it is that part of a dominant world view that has been naturalized and, having hidden itself in orthodoxy, no more appears as ideology at all. Inversely, the ideologies of the subordinate may give expression to discordant but hitherto voiceless experience of contradictions that a prevailing hegemony can no longer conceal. (Comaroff and Comaroff 1991: 24–25)[11]

In this third recursive and cumulative notion, ideology/hegemony integrates across the prior notions to suggest that power is neither entirely a matter of conscious intention and decision, nor a consequence of one person's or group's consolidated and complete domination of others, nor so pervasively present or absent as to be equated with culture generally. Rather, power circulates, and operates through institutions as well as cultural symbols. In addition to being the ability of some to achieve intended and foreseen effects on others (the elite view), power is also a consequence of collective forces and social arrangements. The bias of social systems, that is, the degree to which particular interests and persons are benefited (are powerful), or disadvantaged (powerless), is a consequence not only of individually chosen acts (the cultural and pluralist conceptions), but also of socially structured and culturally shaped patterns of behavior of groups and practices of institutions. Here, "domination," refers to structured patterns of asymmetry in the distribution of social resources which can be ***drawn upon and reconstituted in ongoing social interaction*** (see Sewell 1992). Techniques of power even in the most intimate exchanges, at the extremities of social exchange, are systematically invested, utilized, colonized, transformed, and extended by ever more general, and institutionalized or recursively reproduced, mechanisms (Foucault 1978,

disrepute, this model of power has resurfaced as the most popular conception of the possibilities of justice in a global economy.[7]

In a second version of actor centered ideology, power can be concentrated in elites—groups or classes—rather than in individuals. In *The German Ideology,* Marx and Engels provide the canonical statement of this elite version of the actor-centered conception of power (e.g., Mills 1956; Hunter 1953). Here, Marx and Engels use "ideology" to mean a set of ideas that are largely determined by the economic arrangements of a society. In class societies such as capitalism, ideologies are determined and distorted by class interest. Ideology is the idealized version of material conditions. In what may be a highly schematic and thus vulgarized condensation, ideology refers in this formulation to sets of ideas that reflect the interests of the ruling class, ideas that are impressed on the consciousness of the proletariat, rendering that consciousness false or mistaken about the actual conditions of life. Thus, ideology derives from the capacity of a dominant group, the capitalists, to impose their will and their worldview on others. I think this is one of the most commonly deployed accounts of ideology and can be connected to behaviorist theories of power which define power as the ability of one person to achieve intended and foreseen effects on others (Wrong 1979).[8] In this actor-centered version, like the pluralist version above, power is also unlikely to be entirely or independently public, official or formal. Nonetheless, powerful actors and groups manage to obtain what they want, including ideological conformity and subordination as well as manipulation of public authority.

Douglas Hay's classic essay "Property, Authority and the Criminal Law" (1975) illustrates well this elite conception of ideology, while laying the ground for questions taken up in the third perspective described below. Its central place in sociolegal literature merits an extended summary. Hay observes that eighteenth-century British law was replete with statutes mandating capital punishment, and in particular capital sanctions "to protect every conceivable kind of property from theft or malicious damage" (1975: 106). Not only had Parliament produced an unprecedented number of capital statutes, but it had also sanctioned an increasing number of convictions under these statutes. At the same time, Hay observed, there was a noticeably declining proportion of death sentences. Hay sets out to understand this blatant and apparent disjunction between legal prescriptions and the practices of criminal law. How was this contradiction managed and what were its consequences for British society? Deploying the conception of ideology as a means of resolving social strain or contradiction (see introductory essay), Hay suggests that the contradiction was functional, protecting the power and resources of the landed gentry exactly as it was intended to do. This is an early and very clear example of research that went beyond the observation of a gap between law-on-the-books and law-in-action to explain both the pattern and the consequences of that gap.

The major work of Hay's essay is a demonstration of how the combination of more stringent capital sanctions, coupled with a noticeable measure of legal

formalism, discretionary administration, and publicly visible mercy in the form of pardons, sustained the interests of the landed gentry by establishing not merely the sanctity of property but the authority of law. The criminal law created, Hay argues, an explicit set of obligations and materially realizable bonds of obedience and deference that legitimated the status quo by "constantly recreating the structure of authority which arose from property, and in turn protected its interests" (1975: 108). Here the law served, according to Hay's analysis, to create the meaning of wealth and definitions of property by naming the actions and relationships that challenged and resisted these definitions as a crime: theft.

The law may have fabricated these relations of property but, Hay continues, "class interest and the structure of law itself shaped it into a much more effective instrument of power" (1975: 108). Because ultimate power—physical strength and numbers—lay with the populace, the landed elite required a means of subjugating their strength. By strategically deploying mercy, while invoking metaphors of equality, the law served the interests of the landed gentry. The law provided a political, apparently consensual, solution by which the "motives of the many induce [them] to submit to the few" (William Paley quoted in Hay 1975: 108).[9]

Although Hay describes the law as an instrument of power, in his analysis authority is not a reservoir of social resources (e.g., chips or trumps) held by someone or some group. Instead, he treats authority as a set of relationships enacted in performances of command and deference (Wrong 1979). As performances, authority relations are scripted, enacted through cultural representations. In Hay's analysis, law provided the scripts for the enactment of command and deference. The law was the means by which the power of the authors of the law could be institutionalized so that the authors of the script and the beneficiaries of the play became less visible. In this way, Hay describes the historical invention of the script spoken by Merry's subjects.

It is important to recognize, however, that while Hay's analysis shows how the criminal law was specifically manipulated to serve the interests of the landed classes, ideology does not belong exclusively to the powerful. There may be in any setting, institution, or political system, dominant sets of understandings, representations, and interpretations, in other words a ruling ideology that will be associated with dominant groups, classes, or persons. However, subordinate populations may also have ideologies and may draw upon them in a variety of ways, including but not exclusively struggles aimed at redistributing the balance of power. Any struggle is ideological to the extent in which it "involves an effort to control the cultural terms in which the world is ordered and, within it, power legitimized" (Comaroff and Comaroff 1991: 24). Moreover, ideologies need not be so coherent and consistent that they can be exclusively attached to the interests of any one group.[10]

McCann's (1994) study of pay equity reform provides a contemporary example of the complexities of ideological struggle. McCann argues against critics who claim that women's efforts to achieve pay equity through litigation

1980). Ideas, meanings, interpretive frameworks, metaphors, and images are part of those apparatuses of power, and function as ideologies when contested and as hegemony when taken-for-granted.

In this continuum of ideology/hegemony, it is not the activity of the capitalist class, impressing its views on the proletariat, but the power of the commodity form, the essential structural element of capitalism, that shapes social life, transactions, and meanings. In this sense, what I am calling hegemony does not arise mechanically from class domination; instead hegemony resides invisibly in the forms of production, distribution of resources, linguistic codes, and forms of interpretation in capitalist society. In this analysis, people are produced by the things, or *by the forms of producing and distributing* things, so much so that the very construction of self, identity, mind, and meaning is masked, unnoticed, and unquestioned.

Balbus (1977) has emphasized this hegemonic character of liberal law in his analysis of the homologous cognitive processes operating in the forms of liberal law and capitalism. He claims that the generalized categories of liberal law constitute one of its primary mechanisms of domination by being, in effect, beyond question. The specific form of liberal law (open textured terms or signifiers stated as principles and ideals), Balbus argues, reproduces the essential characteristics of capitalism in what he calls the commodity form of law. In both capitalism and liberal law, generalized mediums of signification and exchange (e.g., money, individuals, rights) are used to obscure, and thus distort, the variation *within* those categories. In fact not only legal concepts but linguistic signifiers generally obscure the particularities of their use.[12] However, the openness or generality of the concepts—their metaphoric availability—also enhances investment in the categories. Different readers or audiences can see in the same term diverse meanings. Linguistic and legal signifiers thus serve as interchangeable and collective vehicles for diverse interests and purposes, sometimes competing and resistant interests. Nonetheless, these opposing forces are contained within very limited categories and formulations that can be differentially shaped and mobilized by local agents.[13] For example, by describing an aspect of experience in the language of rights, we deny the complexity, ambiguity, and contradictions of social experience that are represented by that single term. Invoking the concept of rights, a person crystallizes experience in a set of abstractions making connections with others and claims for deference and priority that may be neither empirically available nor likely. Nonetheless, the label "right" authorizes and legitimates the imagining of association and community that is denied in practice.[14]

In another classic analysis of the "hegemonic function of law," Genovese described how American slave law shaped popular consciousness, and became, by its pretensions to be an autonomous neutral institution, a vehicle for sustaining slave-owning class hegemony. Southern slave law was able to do this, Genovese argues, by disciplining both "criminal" slaves and harsh slaveowners, and thus appearing evenhanded to a degree sufficient to compel social conformity. Because slave owners turned to the courts to enforce discipline

among the slaves, the law ended up disciplining slaveholders as well as slaves. By turning to law as a source of discipline, the slaveholders enabled the slaves to become, as well as themselves, creators of law. Thus, Genovese found courts acknowledging the humanity and volition of the slaves, which was necessary if the slaves were to be punishable under law as legally competent and thus reasonable human actors; at the same time, slaveholders, and courts, insisted on the status of slaves as chattel.

This contradiction within the law of slavery, while providing little protection for the slaves, nonetheless created opportunities for moral invention and resistance. The slaves were certainly not deceived and saw that they had few rights at law and that those could easily be violated by the whites. But even one right imperfectly defended was enough to tell them that the pretensions of the master class could be resisted. Before long, law or no law, they were adding a great many "customary rights" of their own and learning how to get them respected. Here, as Genovese shows, the law acted not as a simple and direct agent of the ruling class—the slave owners—but as a mediator between the ruling class as a whole and individual members. That it could do so, Genovese argued, derived from the law's hegemony, its appearance, and sometimes practice, as relatively autonomous from that class—something embedded, long-standing, historic, and independently viable.[15]

Finally, Bumiller's (1988) analysis of how victims of discrimination refused to use civil rights law to interpret their situations and to respond to their discrimination provides a contemporary example of the hegemonic power of law.[16] The study is also important because it suggests how we might identify aspects of resistance within what seems to be hegemonic law. This research gave evidence of the taken-for-granted, possibly hegemonic aspects of law because it looked not at cases at law, or grievances filed, but at what had not come to law. By looking at the nonuse of law, Bumiller documented the "legal" silence of her respondents, and thus the hegemony of state law and institutions. The people Bumiller interviewed resisted in private what was generally perceived as the encompassing—taken-for-granted—structure of cultural terms and constraints.[17]

These analyses of the hegemonic functions of law push the justice critique beyond a condemnation of inequality to an examination of the possibilities for resistance and transformation. Although all ongoing social organizations incorporate contest and struggle over the constitution of their world, most aspects of social structure[18] are taken for granted and not subject to conscious consideration and engagement. Social actors accept a good part of their social worlds as necessary, and often as natural, as perhaps they must to function at all in those worlds. Often invisible, and certainly uncontested, these taken-for-granted structures are thus unlikely to be the subject of justice claims and critiques, although they may be a source of disadvantage and injustice. Because hegemony colonizes consciousness, a central concern of critical scholarship "is to give voice to the subject: to collect, interpret, and present materials about human experiences that preserve the voice of the

subjects" (Bell 1991: 245) and, in effect, to produce the surrogate justice claims that have been silenced by hegemony (Bell 1991).[19]

Moreover, because justice must be more than equal participation in an ongoing "unjust" system, the justice critique cannot be limited to denunciation of unequal participation in ideological production. Rather, the critique moves elsewhere to expose the construction of the taken-for-granted world. Thus, the task of the critical scholar analyzing hegemony is not only to give voice to the silenced but also to demonstrate how hegemony is constituted as an ongoing concern. Through social analysis, then, the critical scholar makes a space for an analysis of justice by making manifest the taken-for-granted conditions of social organization and, by implication, the possibilities of alternative social worlds. In this way, analysis hopes to disrupt hegemony's colonizing power.[20]

4. CONCLUSIONS AND QUESTIONS: A RESEARCH AGENDA

In the previous sections, I suggested that the concept of ideology was adopted to mediate persistent dichotomies plaguing empirical sociolegal research, especially distinctions between the ideal and the real, the law and the practice of law. However, ideology has taken on variable meanings in research that embody alternative conceptions of power and justice. Using the concept of ideology to describe variable cultural reception effaces the exercise of power in creating and deploying symbols, language, and interpretations. The local struggles to create convincing accounts and to control situations is described without analysis of the political or macrosocial dimensions, thus eroding the critical capacity for making justice claims and arguments. Using ideology with an agent-centered notion of power to document ideological production inverts the problem: ideology becomes a specific instrument used by individuals or groups to achieve political power. Too often, these perspectives either overestimate the power of the less powerful or ignore them altogether, making it seem as if only the powerful have ideologies. Moreover, when ideology is only the contested ground of political conflict, it seems to ignore the power that is enacted without contest. An important correction to the first cultural perspective, the second actor-centered conception tends to err in the direction of naive instrumentalism. I offered a third conception that builds on the strengths of the previous two formulations by distinguishing contested ideology from hegemony which is embedded in social structures and no longer contested.

In sum, then, when the ideological perspective is applied to law, it emphasizes the ways in which law participates in the struggles to create visions of the world that are accepted as true and real. The ideological perspective describes efforts to shape social relations by forging consequential metaphors and signs for communication and interaction. This is a critical perspective in which the

law can never be seen as neutral: neither as neutral between the parties, which is an overly simplified popular vision, nor neutral in respect to the general organization of social relations. The law is a principal agent in the construction of the world because—in its concrete legal norms, in its general principles and values, and in its form and processes—it is a means of apprehending the world. Thus the persistent gap between law-on-the-books and law-in-action does not threaten either the legitimacy of law or its purported power as a means of social control and governance. The ideological perspective suggests that there is an independent, sometimes hegemonic, power exercised by the forms and ideals of law. When law functions hegemonically, its categories and symbols so suffuse consciousness that opposition and resistance are unlikely because most of the time they are unthinkable, outside the cognitively available categories. In other words, as Wittgenstein wrote, "what we cannot speak we must pass over in silence" (Wittgenstein [1921] 1961: 151).

Adopting the concept of ideology for sociolegal research, however, raises as many questions as it dissolves contradictions. Can we assume that all ideologies are equally effective? How well do different ideologies perform their functions? How do we differentiate among ideologies? If this conception of ideology identifies the connection between power and representation, it defines ideology without necessarily or linguistically distinguishing subordinate legal ideologies from dominant legal ideologies, dominant from hegemonic legal ideologies, without specifying the relationships between the distribution of power and the work of ideology. In addition, is there a relationship between forms of power (Wrong 1979) and forms and styles of ideology? Certainly Foucault (1973) suggests that forms of power vary with different epistemologies and different systems of representation. We need to understand what distinguishes dominant from subordinate ideologies, but we also need to understand how shifts occur between subordinate and dominant ideologies. In other words, how does the ideological become hegemonic? If there is movement, what accounts for it? These are empirically researchable questions, questions that extend beyond the boundaries of sociolegal research but that may have greater probability of successful analysis within sociolegal research than in other social spheres.

Consider, for example, two different versions of hegemony. In one account, a dominant hegemonic ideology persuades "subordinate groups to believe actively in the values that explain and justify their own subordination" (Scott 1990: 72). As a consequence, they readily comply with laws, rules, and regulations that more powerful groups enact to sustain and enhance their interests. A different version suggests that hegemony achieves law abidingness and conformity through "non violent forms of control exercised through the whole range of dominant cultural institutions and social practices, from schooling, museums, and political parties to religious practice, architectural forms, and the mass media" (Mitchell 1990: 553). In the first account, subordinates provide consent; in the second, compliance and resignation are sufficient. There is a growing body of literature developing to suggest that

the first, consenting version of hegemony is untenable as a model of the ways in which legal ideology enacts power. Empirical sociolegal research (much of it reviewed elsewhere in this volume) describes complex interactions between the law and compliance to law. It has never been complete. Not only does law make provision for its own violation, but cynicism about the neutrality and majesty of law has persisted alongside grandiose claims for its transcendent legitimacy (Ewick and Silbey, in press).

The "resigned compliance" version of hegemony, more commonly deployed in sociolegal scholarship, recognizes that conflict and resistance are consistent with the existence of a dominant hegemony. All that is required is that the order of things seem inevitable. "A degree of distaste for, or even hatred of, the domination experienced" is not incompatible with hegemony in this sense in which neither agreement, consensus, nor harmony is necessary. "The claim is not that one's fated condition is loved, only that it is here to stay whether one likes it or not" (Scott 1990: 75). Contemporary social theorists sometimes describe what I am referring to as hegemony when they speak of the sedimentation and institutionalization of structures of everyday life.[21] Giddens, for example, talks about "the naturalization of the present" in which existing socioeconomic arrangements, especially those that existed for several generations and centuries, come to be taken for granted (1979: 195). And Bourdieu describes how "every established order tends to produce (to very different degrees and with very different means) the naturalization of its own arbitrariness" (1977: 164). Thus, when law is understood as a hegemonic phenomenon (in contrast to contested ideology), it refers to this ability to inscribe arbitrary and varied cultural forms with the aura of the natural and inevitable.

Ideologies, even when contested, can be said to distort and mystify experience, to falsely portray unity, and to conceal class relations. But it is not "the truth"—an immutable natural reality knowable through positivist science—that is concealed. Rather, law in its ideological and hegemonic capacities masks the possibilities of alternative understandings and accounts of social relations. By suppressing alternative interpretations, ideologies also deny that they are themselves creations. In short, neither ideology nor hegemony proclaim themselves as such. For example, the ideologies of meritocracy, competitive individualism, desert, and fairness simultaneously construct and deny systems of structured inequality. Therapeutic professionalism, founded on the rhetoric of diagnosis and intervention, denies its role in creating pathologies of mind and body it then seeks to treat.

Of course, denying the existence of an ideology does not make it go away; if anything, it makes the ideology stronger because it may then operate at the hegemonic level, more deeply where it cannot be challenged overtly. Ideologies that have the ability to deny themselves, or to naturalize themselves as I have been suggesting, become hegemonic through their ability to deflect criticism and attention. The power of an ideology may well be its capacity for invisibility, similar to what Bourdieu refers to as habitus. From this point of

view, law may have more than one ideology implicit in it. Some legal rules (for example, rules against murder or in favor of private property in the U.S. system) may seem "obvious" or otherwise so hegemonic that they cannot be questioned except by marginal types like academics. But other legal rules may be more questionable (like antidiscrimination laws and new rape statutes) and more ideologic. The question, of course, is whether these are properties of all ideologies or only of some particular hegemonic systems. Perhaps this is another subject for further research.

Hegemonic ideologies, even in the version that assumes only resigned compliance rather than agreement and consensus, may not merely naturalize the social world but may encourage subordinates to believe that they are just, that is, the justice that is possible. What is perceived as what ought to be—"necessity becomes virtue" (Scott 1990: 76). Imagining an alternative system becomes not only difficult, not only undesirable, but undesired.[22] Even though serfs, peasants, and other widely subordinated groups are regularly imagining alternative worlds, I suggest that hegemony may persist. The resistant imaginings Scott describes (1990: 80) merely up-end—in imagination—the system of subordination; they do not question the inevitability of stratification and inequality, merely the subordinate location (misplacement) in a world of purportedly inevitable and apparently natural inequality. Thus, in this example, the notions of inequality and stratification are hegemonic.

If law can be hegemonic, to what degree do challenges to law reject law or specific laws? Moreover, to what degree can challenges to hegemony operate completely outside the dominant discourse?[23] Can political struggles be pursued without a common ground of cultural interpretation? It may be important to begin to specify and distinguish counterhegemonic from ideological struggles in order to identify systemic confrontations from disputes within an accepted boundary (e.g., Fantasia 1988; Hunt 1993: 227–48; McCann 1994). This is especially important, if we recognize that hegemony is complex, self-contradictory, and polyvocal (Bakhtin 1981; Billig et al. 1988). To what degree does the polyvocality of an ideology contribute to its hegemonic potential? Or, conversely, to what degree does univocality contribute to the instability of hegemony?[24] Messick's (1988, 1992) analysis of Islamic law suggested that the abundance of intratextual space—the ability to forge multiple readings and yet remain within the sacred spaces—helped sustain religious/legal domination. Genovese's study of American slave law also suggested that the contradictions generated by trying to use law to enforce the physical domination of slaves sustained the legitimacy of slavery while it simultaneously provided opportunities for resistance to slavery. Does polyvocality contribute to or subvert conflict? Does it make resistance more or less likely? Does polyvocality erode the possibilities of justice critiques? Is the claim of procedural justice an example of how liberal law subverts the possibilities of substantive justice critiques?

Finally, what role does scholarship play in the ongoing struggles to forge compelling accounts of social life? In the ideological constitutive perspective

I have been outlining, scholarship cannot be exempt from a role in the constitution of the world. Because we know that our actions and interpretations produce and reproduce the world, critical scholars try to develop ways of describing what happens in social relations that unsettle dominant conventional understandings and empower alternative visions and actions. Being critical "means refusing to accept as given the dominant ways that social relations are represented" (Peller 1992). Through teaching and research, sociolegal scholars disrupt the taken-for-granted comfortable understandings of law and social relations—the way the world works—to construct accurate but unconventional alternative descriptions that may frustrate the processes of reproduction on which institutional power rests.[25] The stories we tell become part of a new taken-for-granted world.

In the institutions and profession of law that valorize history, precedent, hierarchy, and authority, empirical research has by definition this disruptive critical capacity. Because studies of law and ideology analyze not only power (the way things are), but embody justice critiques as well (the way things might be), adopting an ideological perspective on law has the capacity to enhance this critical potential. It must be said, however, that critical scholars often fall short of the mark. Ironically, justice is rarely the explicit topic of sociolegal research and more often only an implied critique. The reticence to be explicit about justice may derive from a residue of scientism that infects all social science, and with it an unarticulated belief in the possibilities and virtues of value-free scholarship. As C. Wright Mills advised, however, social scientists have a responsibility to help think through what might be as well as what is. Thus we might view those who adopt the ideological perspective as self-consciously partisan in the construction of social reality.

5. EPILOGUE: AN ILLUSTRATIVE STORY

Several years ago, I participated in a faculty seminar at Wellesley College that was part of an effort to enrich liberal education by encouraging interdisciplinary exchange. The group consisted of four social scientists, two historians, and a half dozen literary critics. The seminar was entitled "Rereading the Canon"; the readings consisted of two canonical texts, Virgil's *Aeneid* and Goethe's *Faust,* accompanied by selected theoretical essays by Bloom, Benjamin, Brecht, and others. Each session, three times a week for a month, began with one of the seminar leaders (both members of language and literature departments) introducing a passage from the text for the day. These preliminary remarks usually offered historical context, some cross-references, and other background for the passage. Very quickly, however, conversation was joined around particular interpretations of passages and themes in the work.

I began the seminar with great enthusiasm because I harbored ambitions to expand my sociological repertoire of interpretive techniques and skills. For some time, I had been impressed by erudite performances by literary scholars

and by theoretical arguments about the connections between literature and social science. But I was soon disappointed. No, that is not right; I was frustrated, and more to the point, I soon became angry.

I was floundering in the seminar. Although I would faithfully prepare for each session and would listen carefully to the discussion, I could not figure out what was expected or accepted as a response to the text. I was unable to discover the grounds of interpretation. I did not know what counted as compelling evidence for particular readings. If the interpretation seemed to rest on the placement of the material in the text, I asked if order was one of the guidelines. If repetition and reiteration seemed to support a particular interpretation, I asked again if that were another important variable. Interestingly, although historical and background information was regularly presented by the seminar leaders in their introductions of the texts, it was almost never used when interpretations of the texts were debated. Each time I formulated what seemed like a "rule" or a methodological instruction, I was dismissed; I seemed to be going about this the wrong way. According to the responses, there seemed to be no specifiable rules or methods per se. I was beginning to feel as I did in college when I sat through literature classes, captivated by the texts but bewildered by the teacher and the discussion. I never knew where the class was going, or why, except to notice the pattern of particular persons' styles and interests. The relationship between the text and the analysis eluded me completely. I was becoming increasingly agitated. I also began to sense that I was treated as comic relief.

But these were not my youthful college days, and I was no longer easily intimidated by agile wordplays and facile performances. Then, I removed myself from the source of the frustration; now I responded. I talked to others in the seminar and discovered that they too—the other social scientists, that is—were also frustrated. Several of them also remarked on the familiarity between this class and their college experiences, and how this kind of frustration had made them choose to study social science and history rather than literature. The literary discussion, they said, was opaque and mysterious when they were students and remained so now as faculty.

I should probably note that although there turned out to be differences among the literary scholars, I first experienced them as homogeneous because they collectively joined in conversations that, despite their differences of method and perspective, they individually understood without naming or explaining to the others. Some turned out to be quite traditional in their approaches and methods, and others were postmodern deconstructionists. These differences were, nonetheless, obscured by the ability to read, interpret, and argue about interpretations without translation among themselves.

I had always imagined, and imagined again in this seminar, that there must be a text somewhere that would explain how to do it, how to read and interpret literature. I looked for a guide that would offer a set of rules that, while obviously not embodying the full extent and richness of literary interpretation, nonetheless would offer a novice an introduction to the techniques

and methods. I sought access to what seemed to lie, and I was sure did lie, behind the visible and audible. I sought access to what in current scholarship seemed like powerful magic.

It sounds preposterous, and to a large degree offensive, to suggest that a tenured faculty member at a relatively wealthy and elite institution is colonized. Nonetheless, for that moment, I was not unlike "Christianized" peoples around the globe, who are often convinced that the white colonizing missionaries have a separate, secret bible and set of rituals (be it cricket, the telegraph, or tea parties) that account for the colonizer's power (cf. Comaroff and Comaroff 1991: 32). Some anthropologists describe the "whimsical 'unreason' of such movements as the cargo cults . . . [arising] from precisely this conviction" (Comaroff and Comaroff 1991: 32). My own desire to enter the liturgic secrets of literary interpretation were not, I believe, far removed from these native movements. Like some indigenous peoples who were observed during colonization to walk around wearing watches and eyeglasses that did not work, I too sought what seemed like symbols of the powerful. In this case power was the ability to read beyond the surfaces of texts and situations, and the visible sign was not the apparel of the colonizer but the ability to deploy literary language, tropes, and terms of art. The cargo cults, the wearing of nonfunctional watches, and the desire to enter the world of literary interpretation may each represent "early efforts to capture and redeploy the colonialist's ability to produce value." Often, however, such adoptions and appropriations are, according to anthropologists, "seen as enough of a threat to elicit a punitive response" (Comaroff and Comaroff 1991: 32).[26]

For sure, I was made uncomfortable by the dismissals and humorous tolerance of my colleagues. And I was made anxious and distressed by the game, because it felt like "their" game, from which I was excluded. Although, each time I asked, the seminar leaders denied that there were rules or specifiable criteria, clearly there were unacceptable as well as acceptable, better as well as worse interpretations. This is an example of what I earlier referred to as hegemony. If there were distinctions and rules but I could not know them, and there was no reason to suppose I lacked the capacity to know them, no wonder I felt an almost purposeful exclusion or segregation. This was distressing.

An interdisciplinary faculty seminar invokes the most basic, generally unspoken, norms of collegiality, in this case an equally shared commitment to liberal education and, to this end, a commitment to intellectual growth in all disciplines. But as the seminar unfolded, we did not seem to have equal capacity and role, and the commitment to sharing and exchange seemed elusive. The battles among disciplines are notorious, but what appeared to be domination by my literary colleagues seemed out of proportion. For several years, it appeared as if humanist scholars were waging a paper campaign against science, and especially social science. Perhaps what I experienced was just resistance against the increasing domination by science both inside and outside of the academy, as C. P. Snow had warned two generations earlier. For

some social scientists, it looked as if the humanists were winning, subordinating the claims of social inquiry to the aesthetics of rhetorical performance. Nonetheless, there always seemed to be something inconsequential about it all, just another academic fashion that would in time wane in the face of what had for several hundred years seemed like the inevitable march of science.

For a moment, however, enclosed in the small hermetic world of the seminar, this seemed like real power. This was no longer just play. The metaphor of a battle with sides drawn between friends and enemies with all the usual tactics was beginning to seem all too real. Here the intellectual claims and seductive arguments of literary critics' abstract discussions about the relativity of knowledge and the indeterminacy of texts had been transported from the realm of theory to phenomenal, ontological experience. I wanted to play on the team; I had been seduced and motivated to join the seminar because I was committed to interdisciplinary exchange and because I sought access to some of the cultural capital that seemed to attach to literary scholarship. But they wouldn't let me in.

Anthropologists of colonialism have observed what I experienced in that seminar, that "with time and increasing experience, the colonized show greater discrimination, greater subtlety in interpreting [the colonialist's] embrace and its implications" (Comaroff and Comaroff 1991: 32). No longer satisfied with wearing the markers of the colonialist or speaking their language, and yet experiencing continued exclusion and subordination, dominated populations develop more diverse responses. Some will appropriate more and more of the images, ideologies, practices, and aesthetics of imperial power; others, however, will continue to be excluded, and some of those may begin to adopt practices of contestation and resistance. There is no simple formula or pattern.

In our seminar, some of the more self-identified feminists began the attack. The leaders had organized the seminar to stimulate conversations they hoped would demonstrate the excellence of canonical texts, excellence as evidenced by the textual richness, openness, and availability for multiple and complex interpretations and lines of analysis. For example, the seminar leaders offered what they claimed were feminist readings of the texts, as well as other readings from the margins. As efforts to validate plural perspectives, these readings nonetheless sustained the notion of a center and periphery: first, by the implication that these were marginal readings, and second, by the treatment of the canon as the apex or center of literary accomplishment. At the same time, the seminar leaders resisted, quite vehemently at times, any notion that the canon itself was exclusionary or represented some unjustified privilege; it was simply the best that had been thought and written. Soon, the attacks became more vigorous and were joined by other members of the seminar who could not accept the notion of "the best" as a natural or neutral category, nor a definition and specification of the margins that legitimated a privileged center.

Members of the seminar began to bring in readings for the group, readings which did not simply offer less conventional interpretations of the principal

texts but analyses of canon formation written from a variety of perspectives. The seminar read histories and began collectively to create a genealogy of the canon which challenged the claim that these books were, by supposedly objective measures, superior to all other works of literature. We tried to show how the arguments for excellence, and the measures used, were themselves products of locally determined values, and that despite the ambitions of the promoters, there were no universal criteria by which to establish what constituted the very best and thus justified the exclusive attention to some works of literature. Here is an example of the movement from what I defined above as hegemony to what we called ideology. We tried to point out the incoherence of the arguments: how alternative conclusions followed from the same premises; how the premises themselves turned out to be contradictory; and how the conclusions were arbitrary or based on dubious assumptions or hidden rhetorical tricks (cf. Gordon 1988: 17).

We went further, and I think it was in our next move that we actually began to convert some of our literary colleagues. Approximately half the seminar were social scientists, after all, and we did not believe that either by trashing the canon defenders' arguments or by revealing their inconsistencies and contradictions that we would have done enough; nor did we believe that literary history or interpretation was random, whimsical, or chaotic. Indeed, it was clear that there was a pattern and a structure; it was merely implicit rather than explicit, and I had felt it consistently. My frustration had arisen from the regularity in my experience coupled with the persistent public denial[27] of the existence and political consequences of that structure. We took it on ourselves to try to demonstrate for our colleagues the organization of their own work, the consistencies of the substantive and methodological arguments, even as they insisted that there were none. Furthermore, we tried to show them that their insistence on the lack of method or substantive pattern, what sociologists call structure, was itself patterned and consequential and marked a particular cognitive and, we insisted, moral and political ground. Here is an example of a justice critique produced as an analysis of the taken-for-granted grounds of interaction. We moved from analyses of this seminar to the materials and pedagogy of other classes, and we ended up presenting alternatives from our own work and finally collectively reconstructing this course for future use with Wellesley College students.

I have used this seminar experience as a concrete example of the movement from hegemony to ideology, from the taken-for-granted and uncontested grounds of authority and power, here literary scholarship, to ideology, "an articulated set of meanings, values and beliefs of a kind that can be abstracted as [a] 'worldview' " of any social group (Williams 1977: 109). In that seminar, some of us experienced the discomfort and contradictions inherent in situations of subordination and denial. By making our observations public, we explicitly defied the foundations of hegemonic power because hegemony relies, for its effectiveness, on its invisibility and inscription within social relations. We used the conventional tactics of trashing and deconstruction.

We exposed the contradictions, as well as the latent patterns embedded in the structure of the seminar and the seminar curriculum, and we created histories and genealogies which attempted to denaturalize the canon and demonstrate its historical and institutional creation. Finally, we attached the particular practices to a specific group and its interests.

Our success, however, did not depend entirely on these tactics, nor on some special insight or talent, nor did it mirror some grand transformation in American academia. This was, after all, local politics and we were in the end colleagues within the same institution. There were alternative sources of authority available for members that derived from their status within the college, prestige in alternative fields, as well as personal resources. These resources are important because they suggest additional avenues of penetration and resistance that can develop with variations in social and historical circumstances.

Obviously not all who attended and participated in this seminar experienced it the same way as I have described here. At other times and for other purposes I too have offered alternative accounts. Nonetheless, I believe that the major elements of the story are accurate, even if my embedded interpretations are contestable and points of emphasis constructed for particular didactic purposes. For example, we could construct alternative accounts that might emphasize the relative impotence of the seminar leadership as compared to that located among some of the participants. Others might want to describe the events not in terms of a clash of worldviews, of the transformation of hegemony into contested ideology, but as the confrontation of alternative teaching styles. Because there was no dominant perspective within the seminar, and because the leaders and literary critics were open to a variety of discourses and arguments, some may claim that my discomfort derived simply from a refusal on their part to be didactic and to prefer a nondirective, mimetic teaching style. However, there is much at stake in defining the difference as style, ideology, or hegemony. The difference is the acknowledgment of power and criticisms of injustice. Talking about the difference as style implies unconstrained, free choice, without consequence or hierarchy. Talking about ideology and hegemony puts power and justice at the very center of the analysis.

NOTES

I am particularly grateful to colleagues and friends who patiently read and reread several versions of this paper as it evolved over the years from its first incarnation to this more extended argument; their criticisms and insights prevented untold errors while providing needed direction: Patricia Ewick, Austin Sarat, Kim Scheppele, Carroll Seron, the anonymous reviewers of this volume, and the participants in the 1992 Law and Society Summer Institute.

1. Destutt de Tracy (1754–1836) first used the term "ideology" at the end of the eighteenth century to refer to what he hoped would be the scientific study of ideas, thoughts, and

cultural phenomenon. Just as geology would study the geo/earth, or eventually sociology would study the social, ideology was to be the scientific study of ideas—exploring the relation of ideas to sensory reality. Ideology, as the science of ideas, was supposed to provide a nonreligious, natural, and scientific foundation (ideas) for political organization, especially in postrevolutionary France (Kinloch 1981: 5). This use, although the first recorded use of the term, is not, however, one of the uses we usually associate with the term nor among the meanings I wish to understand. Rather, the more common usages and meanings of the term refer to ideas, signs, cultural phenomena themselves, and most often the term is used to mark a boundary between appearance and reality. The adoption of this term as a concept for social analysis derives from these more conventional uses. Rather than naming the analytic enterprise, i.e., the study of ideas, the term is used as tool of that enterprise, something deployed in the analysis of ideas.

2. I shall use the terms sociolegal and law and society interchangeably to denote the community of researchers who take as their task the description and analysis of the social organization and practices of law and legal institutions.

3. For example, Napoleon Bonaparte attacked the principles of the Enlightenment as just so much "ideology," and conservative critics attacked any social policy derived from social theory in whole or in part as "just" ideology. Marx and Engels ([1846] 1970) popularized this critical meaning in their view of ideology as an idealized expression of dominant material relationships.

4. If we think about cultural critique as focusing on three related aspects of culture—production, representations/texts, and reception/reading—critical legal studies devoted most of its early efforts toward unraveling the complex constructions and embedded meanings—the representations and significations—within legal texts (see R. Johnson 1986–87).

5. Swidler's action-oriented formulation of culture provides a foundation for Merry's and Fine and Sandstrom's conceptions of ideology. Swidler conceived of culture as that which "influences action not by providing the ultimate values toward which action is oriented, but by shaping a repertoire or 'tool kit' of habits, skills and styles from which people construct 'strategies of action' " (1986: 273).

6. In her conclusion, Merry (1985: 68) suggests that working-class participation and the "active role . . . [it] plays in creating its version of legal ideology" may support state power. The working-class court users she describes may not be aware, she claims, of their collaboration and the legal system's complicity in sustaining state power. The critique, where present, reproduces just that which it sought to avoid: working-class false consciousness and a mechanical instrumental conception of power.

7. See Wilhelm Ropke (1954: 207) for a mid-century position. Most publications of the World Bank and the International Monetary Fund during the 1980s provide more contemporary examples. Of course, Adam Smith, *The Wealth of Nations* (1776), is the classical statement of this position. Smith, however, had assumed that the free pursuit of individual desire and free exchange of ideas would take place within a framework of shared expectations and morality which he had described in *The Theory of Moral Sentiments*, first published in 1759. See Lowi 1992 for a critique of the dominance of this economic model in contemporary political science.

8. For a critique of this actor-centered notion of power, see Lukes 1974; Connell 1976, 1987; Clegg 1989.

9. To the unpropertied Englishmen of the time, Hay writes, the law offered a majestic spectacle, twice a year in the Assizes and four times a year in Quarter sessions, in which entire communities would witness "the most visible and elaborate manifestation of state power to be seen in the countryside, apart from the presence of a regiment" (1975: 109). In its symbolism, management of emotions, and psychic demands, the law's rituals performed much like religion. The court spectacle became a carnivalesque occasion for the community to coalesce in defense of violated norms and the sanctity and deity of property. The interests and agency of the owners of property were removed and distanced by the court performance. This distancing, perhaps charade, was emboldened by the "punctilious attention to forms, the dispassionate and legalistic exchanges between counsel and the judge" (Hay 1975: 112) that showed to all how those administering and using the laws were themselves subjugated by it and willingly submitted to its rules. The majesty of the law that demanded equality nowhere else available in eighteenth-century England was enacted by a decorous concern for protecting the property of ordinary as well as noble Englishmen. Finally, the regular and consistent pardoning of convicted felons, Hay argues, sustained the image of an independent and just legal system. "Discretion allowed a prosecutor to terrorize the petty thief and then command his gratitude, or at least the approval of his neighbors as a man of compassion. It allowed the class that passed one of the bloodiest penal codes in Europe to congratulate itself on its humanity" (Hay 1975: 120).

10. For many years, it was a favorite occupation of survey researchers to deny American voters any ideological consciousness because the researchers were unable to establish a logical consistency among the beliefs and political positions of the surveyed population. They lacked "ideological constraint," it was said (Converse 1964; Verba, Nie, Petrocik 1979).

11. Hegemony is always dominant; ideologies may be either ruling or subordinate.

12. Wittgenstein's great achievement was to demonstrate the soundness of this argument. In his philosophy of psychology, Wittgenstein claimed in an oft quoted phrase that "an inner process stands in need of outward criteria." Here Wittgenstein did not mean some simplistic version of behaviorism but the demand for careful attention to context and to use as examples of those outward criteria. He believed that we could understand language, or any human emotion or thought process, not by developing a general theory but rather by developing alert and observant sensitivity to the ways in which people act and the organization of those actions.

13. Karl Llewellyn made a similar claim when he wrote in a book review in the *Harvard Law Review* (1926: 145), "Mortgage is a legal concept; that concept, in all its phases is important. Mortgage is also a security device. That fact, in all its phases, is even more important. The legal concept is empty, without its application." In "What Is Wrong with So-called Legal Education" (1935: 669), he continued in this vein, "Legal rules mean, of themselves, next to nothing. They are verbal formulae, partly conveying a wished-for direction and ideal."

14. The identification of the commodity form as part of the hegemonic character of liberal law derives from Marx's critique of rights. In that analysis, Marx described the alienated self as a product of the liberal state's denial to each person his or her species membership, and the institutionalization of an isolating loneliness that is then justified as human nature. The liberal state, Marx argued, abolished distinctions based on birth, social rank, education, and occupation when it declared, as it did in the American Declaration of Independence or the French Rights of Man, that all men are created equal. (Of course neither the American Declaration nor the French Rights of Man meant to imply that all persons were equal, certainly not men and women, and certainly not slaves, and in places certainly not persons without property. Thus these declarations of human equality rested upon unexamined notions of who exactly were the humans being referred to.) The liberal state thus assured to each citizen the equal right to participate in the collective sovereignty and denied the relevance of birth, social rank, education, and occupation to that participation. (From 1780 until 1870 only freed white men could be naturalized as American citizens. After 1870 freed slaves and white women were included. Persons who were neither white nor

freed black could be naturalized [Lau 1994].) However, far from denying the importance of these distinctions, Marx argued, the liberal state institutionalized these distinctions by relegating inequalities of birth, social rank, education, and occupation to the protected realm of civil society untouchable by legal action. In other words, he argued, liberal law creates a fundamental schism between man (in civil society) and citizen (in the state) which is then treated as a natural condition. In this way, Marx continued, the liberal state derives its raison d'être—the protection of political equality and the fundamental rights of man [*sic*]—as a means of confining the natural material inequality that exists in civil society. As a consequence, Marx wrote, the citizen lives in perpetual alienation with a self divided between state and society. The citizen lives in a state organized by a set of "privatized" relationships which state law claims—through the conception of rights—are beyond the law or the state to affect. Rights, in this conception, become the means by which participation is organized; but rights cannot provide fundamental or real emancipation because rights are the creations of the liberal state and the means of alienating the individual from her species consciousness—life in civil society.

Following this line, Peter Gabel extends Balbus's analysis by specifying the processes by which "the legal order substitutes an harmonious abstract world for the concrete alienation that characterizes [people's] lived experiences" (1981: 263). He defines alienation as a "paradoxical form of reciprocity between two beings who desire authentic contact with one another and yet at the same time deny this very desire in the way they act toward each other" (Gabel 1984: 1567). He argues that individuals desire intersubjective recognition—what he calls authentic connection—but deny this desire as they confront others across a "forbidding distance." As a consequence, the individual "withdraws her own self and adopts a false self," with which she confronts and interacts in the world. Thus we live in a world in which we perpetually feel "at once unconnected to everyone else and yet anxiously committed to the pretense of connection that is manifested in the reciprocity of roles" (1984: 1573). Rights provide a basis for denying this dilemma, Gabel argues. They become part of the stories we tell ourselves about how we are collectively constituted, yet remain individuals.

15. Genovese's argument parallels, to a large degree, Hay's analysis of eighteenth-century English criminal law, and thus demonstrates the continuity and development among these diverse uses of ideology and hegemony in sociolegal research. For heuristic purposes, however, I have differentially placed these pieces of research in this scheme to illustrate different emphases. Hay illustrates well concern with ideological production and class interests, especially the suggestions of instrumental deployment of "mercy," while Genovese is more explicitly concerned with questions of hegemony. As such, Genovese provides less attention to protecting particular group interests and more to the inadvertent consequences of a formalist conception of law.

16. Bumiller interviewed people who chose not to seek legal remedies when they believed those remedies were available and due them. She reported that her respondents (who claimed to have been discriminated against on the basis of age, sex, or race) refused to turn to law in order to avoid the need to speak through lawyers and the tendency of legal processes to individualize grievances. Her analysis of the respondents' stories suggested that they experienced—as Marx had theorized—that legal action and rights are alienating. The individualization of grievances and the lawyer's mediation deny people control of their own lives and isolate them from their community and cultures at a time when they may be most in need of connection and support. Their discrimination was based on their group identities and membership, but the law required that they act individually.

17. See, e.g., White 1991; Ewick and Silbey 1992, in press; Tucker 1993; Merry 1995; and Gilliom 1996 for additional studies of resistance. See Handler 1992 for a critique. What remains theoretically open, however, and discussed briefly in the next section, is the

degree to which an ideology can be hegemonic and resisted. Need struggle be manifest for it to be ideological?

18. I use "structure" to mean interpretive schema and resources through which social interactions and organizations are constituted. Structures that operate to define and pattern social life are both determinant of and at the same time highly contingent on social practice. Understood as processes rather than immutable conditions, social structures account for both reproduction of social relations and for social change. See Sewell 1992; Ewick and Silbey 1995.

19. This is a large part of the task of much critical race theory in legal scholarship. See Bell 1987, 1992; Crenshaw 1988; Delgado 1995; Delgado and Stefanic 1992; Harris 1990; Matsuda 1987, 1988.

20. See Ewick and Silbey 1995 for an analysis of how hegemony is reconstituted through narrative and how it can also be subverted.

21. This literature derives directly from Gramsci's writing on hegemony.

22. Scott (1990: 80) rejects the notion of hegemony and, in particular, questions this more empirically viable version of hegemony. He suggests that serfs, peasants, and other widely subordinated groups are regularly imagining alternative worlds; thus the naturalization hypothesis fails, he claims. These imaginings are some of the "hidden transcripts" of resistance he documents in his work. I question Scott's evidence for rejecting this version of hegemony because the resistant imaginings he describes do not challenge the inevitability of stratification and inequality. In the end Scott rejects the notion of hegemony as an explanation for compliance with power, and for why the many succumb to the few. He argues that there is not quiescence in the social world, merely the picture of it. He can make this argument only if we define hegemony as absolutely complete. But, I suggest, no sociological concept can be defined without the possibility of variation. Mitchell suggests, however, that Scott's terminology specifically misreads Gramsci. Where Scott talks about consensus—agreement and harmony—Gramsci talked about *consenso*, "which refers primarily to the 'consent' given by exploited groups to the exploitation. The consent reduced the need for the use of violence against them, but may or may not produce consensus in the sense of harmony" (Mitchell 1990: 554).

23. Some recent work on representation and law goes directly to this point. Aware of how efforts to report on social life contribute to its reproduction, some writers seek to unpack the processes by which we create social exchange and meaning by simultaneously trying to describe and destabilize the processes of representation they describe. They do not wish, e.g., to participate in an unthinking reproduction of gendered or racist representations—representations that are not merely labels, e.g., he/she, but deeply coded within syntax and social relations. This accounts, I believe, for what might seem like overly mannered and difficult writing styles.

24. See Cushman 1995 for analysis of popular cultural resistance within a singular hegemonic culture.

25. I want to make clear that I am not talking about intentionally false representations but efforts to highlight and recognize what is present but too often hidden by hegemonic ideologies.

26. I include the references to colonization to illustrate the theoretical connections and utility of the concepts of ideology and hegemony, much of which originally developed from studies of colonialism but which have been applied more generally in cultural studies.

27. Privately, one of the humanists started talking to me about my continued demands for help in the seminar. He offered me several texts that "did what I wanted"; he also acknowledged that literary people resist that kind of didactic instruction.

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JUSTICE AND POWER IN CIVIL DISPUTE PROCESSING

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TOM R. TYLER

I. JUSTICE AND POWER IN CIVIL DISPUTE PROCESSING

The goal of the papers in this volume is to examine the relationship of justice and power within different areas of law and society research. Other chapters in this volume have emphasized the importance of the concept of power (see Fineman), suggesting that justice is defined largely and, perhaps exclusively, by the objective distribution of power. I will argue for a different perspective: that justice is, to at least an important extent, distinct from power. I will do so through an examination of the recent literature on civil dispute resolution.

A. THE STUDY OF POWER

Social scientists studying power have typically defined power in objective terms, focusing on the ability of people to influence the distribution of resources among the members of society. Gamson (1968) defines power as the ability to determine the behavior of others, hence "altering what would have occurred without you" (Gamson 1968), a definition shared with many others (Cartwright and Zander 1953; Easton 1958; Parsons 1958). This definition flows from Weber's definition of power as "the ability to impose one's will on