Encoding and advancing the terms of hegemony, law and legal practices set markers to which those who resist must attend. As Scott suggests, many resisters act like “prudent opposition newspaper editors under strict censorship, . . . setting a course at the very perimeter of what the authorities are obliged to permit or unable to prevent” (1990:139). But resisting state domination (or domination of other sorts) often entails seeking inclusion in legal institutions. Protest and resistance are thus sometimes framed as efforts to participate in dominant society by gaining access to its institutions (Glassman 1991; Lazarus-Black 1994; Moore 1992; P. Williams 1991). Historically and cross-culturally there are many examples of subordinate peoples struggling for the inclusion afforded by voting rights, political representation, equal opportunities for education, and entitlements to resources.

Although some people actively seek inclusion in legal processes for specific ends, others “get included” in the law quite implicitly through the legalities that hegemonically organize their lives. In both cases, people regularly appropriate the terms, constructs, and procedures of law in formulating opposition. For example, colonial subjects protested their subordination through documents which incorporated, often inaccurately, the language of colonial law. These imitative oppositional discourses reproduce the legally enshrined relation between colonizers and the colonized by adopting the logic of opposition that underpins colonial claims to power. Nevertheless, negations of this logic are also possible: by appropriating colonial discourses and logics, subordinate people engage in transforming them, sometimes in radical ways (Keesing 1992:238).¹³

Legal procedures contribute to the making of hegemony. For many litigants, witnesses, and spectators, the court is a daunting site where positioning, language, and timing are regulated in ways that contrast with the norms of interaction in other places (Conley and O’Barr 1990; O’Barr 1982).¹⁴ Sometimes participants rebel against these rules, as did the defendants at the Chicago Seven trial who used silence and shouting to resist the state’s efforts to contain them (Coutin 1993a; Dec 1981). Although a witness’s silence can signal the antagonistic refusal to answer an inappropriate question, neither silence nor any other linguistic feature always indicates resistance (O’Barr 1982). Murphy’s (1993) study of disputes over insults in Sierra Leone demonstrates that linguistic conventions for resisting are specific to language and culture. Court speech, oppositional or not, is often transcribed “for the record” and what is captured and what is not reflect the power of certain persons and the subordination of others (Berk-Seligson 1992; Moore 1992).

Symbols of the law are important vehicles in the making of hegemony and in the display of resistance. In the United States, the state uses symbols of the law’s power—scales of justice, judges’ robes, uniformed police and bailiffs, the American eagle, the courthouse facade—to index its own power and authority. But these symbols are multivocal; interpreted and deployed to serve diverse ends. Observing the trial in which Mashpee Indians sued for tribal status, Clifford (1988) describes his ironic realization that the eagle depicted on the courtroom wall was a Native American cultural symbol appropriated by a hegemonic state. Yet, subordinate people bring their own symbols to court. In a dispute over whether Mrs. G., a poor black woman, used state assistance to buy “life necessities” for her daughters, “Sunday shoes” emerged as a contentious symbol. For Mrs. G., purchasing “Sunday shoes” represented values that she was proud to acknowledge even though the state considered those shoes an unauthorized extravagance (White 1991).

Litigants not only deploy legal symbols as oppositional resources, they also inventively manipulate context. Legal institutions are important sites for public performances of resistance by individuals and groups. Telling one’s story in court, particularly a story of oppression, can be an important act of resistance. Legal contexts sometimes provide the arena for narrating a group’s history of resistance, as in cultural defense cases brought by the Amish and Native Americans in which they emphasize their long-standing opposition to dominant culture. But telling the story of resistance can be a perverse rather than liberatory act if, as in treason trials, the narration of oppositional acts is compelled by the state in its own interest (Hirsch 1993). Sometimes oppositional practice is undertaken away from official or legal contexts, but it is “about” the search for justice, as in slaves’ illegal participation in obeah rites to resolve crimes (Lazarus-Black 1994).

Time and timing are essential considerations when one investigates resistance and hegemony in relation to law. Acts of resistance that use or challenge law—marching, picketing, taking cases to court, and sitting at lunch counters—depend on daytime exposure. By contrast, certain kinds of resistance to law are best concealed under the cover of night. Sometimes resistance is momentary: the political and illegal art of the graffiti painter, for example, succeeds only until the wall is whitewashed. Winning independence from a European power, however, takes years of struggle in courts and other contexts. Moreover,
notions of timing vary cross-culturally and within different legal cultures, and these calibrate the dynamics of hegemony and resistance. Moore points out, for example, that "British law has its own cultural constructions of time" and shows how these clashed with African ideas about when to stake a claim and when to give one up (1992:34; see also Cohn 1959; Moore 1986). Time is critical, too, in the transformation of disputes (see, e.g., Felstiner, Abel, and Sarat 1980; Mather and Yngvesson 1980). Allowing time to pass is sometimes a way to oppress and at others the expression of deep defiance.

In this volume, Joan Vincent directs attention to another way of thinking about time in relation to law, hegemony, and resistance: the hegemonic moment. Vincent looks for such moments “before the law,” that is, before the terms of hegemony (e.g., hierarchical social classifications) are established through legal statutes. The identification of hegemonic moments, however, does not imply a direct and unproblematic trajectory of hegemony over time, from the subtle to the public. Rather, the process of encoding hegemonic constructions in law is frequently interrupted, transmuted, and sometimes reversed. Similarly, several authors caution against reading local acts of resistance as the groundwork to moments of more overt or more effective political action (Handler 1992; Hunt 1992; Keesing 1992; Scott 1990).

Contrary to assumptions that women pursue resistance out of public view, primarily in “domestic spheres,” studies of women’s use of courts suggest that they turn to the state to contest gender hierarchy (Collier 1973; Fineman and Thomassen 1991; Hirsch 1990; Lazarus-Black 1991, 1994; Merry 1990; Starr 1989; Taub and Schneider 1982). Recent scholarship on women’s responses to subordination demonstrates that resistance is mounted in and through legal institutions, in and through hegemonic legal identities. Women’s resistances can involve demanding the rights, privileges, and protections associated with their legal status or calling on the courts to enforce a “justice” not inscribed in patriarchal law. Yet women seeking equal protection and other remedies have found that, by turning to the law, they risk cementing their status in ways that provoke other forms of discrimination. As Hirsch argues in this volume, “Given [. . .] that women are situated in positions of multiple subordination, their oppositional practices might differ from those of men, might be directed against men, or, if pursued in concert with men (e.g., against the state), might have gender-specific outcomes.”

The subject position from which one enters the legal process, or is “entered” involuntarily, influences the success or failure of the struggle. And law’s relation to subjectivity is much more extensive:

Legal processes . . . do more than merely reflect and reproduce dominant cultural conceptions of self, personhood, and identity in Western societies. They are, instead, constitutive of subjectivities. By defining and legitimating particular representations of how these in different subject positions or social groups experience their selfhood, adjudicative and legislative processes serve to maintain, reproduce and sometimes transform relations of power. (Coombe 1991:5)

Given the law’s role in constituting subjectivities, contesting the terms of identity is a significant act of resistance in legal arenas. Domínguez (1986) describes cases involving “Creoles” in Louisiana suing to change their racial classification from black to white. As Minow (1991) argues, however, legal rules, procedures, and practitioners rarely appreciate the “kaleidoscopic nature” of identity (see also Clifford 1988). The productivity of the law—mobilized by the state and by individual actors—yields new subjectivities and thereby reframes relations of power.

The making of subjectivity through law is a particularly intimate locus for the operation of hegemony and resistance. Contestations over the “states of being” of individuals also implicate social struggles involving political “states.” In transforming people and polities, hegemonic processes and oppositional practices—and the contested states that they produce—are inextricably linked to law. As described below, the chapters in this volume explore struggles in and around legal arenas, revealing the many ways that law is critical to the negotiation of power.

**COMPLEMENTARY APPROACHES AND EMERGENT THEMES**

The chapters of *Contested States* examine the active role of law, legal agents, and institutions in fashioning forms of domination. Each author pays careful attention to the myriad ways in which people reconfigure hierarchical coercive structures. We ask how legal identities like wife, slave, undocumented alien, delinquent, and colonial subject—categories imbued with “naturalized” notions about race, gender, class, and citizenship—structure the practice and consciousness of those who embody and encounter them. We do not assume that subordinated people come to courts only as victims or supplicants; we focus instead on how power and law are transformed by their words and actions.

Part 1, “Performance and Protest,” addresses the role of law in hegemony and resistance by attending to the theatrical display of law’s
power and its vulnerability in legal and extralegal contexts. In assessing
the use of law by wives, colonized people, and other subordinate
persons, the authors question whether the oppositional use of legal
institutions and processes intensifies hegemony or undermines it. This
section’s emphasis on performance and protest develops important
theoretical insights by scholars who investigate courts as “theaters,”
illuminating their political, ideological, and educational functions in
earlier times (see, e.g., Hay 1973; Thompson 1975). The dramaturgical
metaphor applied to courts leads contributors to ask: What stories do
people tell in court? Which litigants are silenced? Are the audiences
for these performances disgruntled villagers, the press, or court clerks
and judges? Who directs the performance?

In some respects, though, the metaphor “courts as theater” is too
limiting. Thinking about law and power in terms of “performance and
protest” rather than “theater” encourages us to pay analytic attention
to audiences as well as actors, to silences within and between dialogues,
to nakedness as well as costume, to scene designers and stage tools as
well as sets and props. The focus on performance illuminates instances
when legal struggles crystallize in infamous trials and also captures
how routine encounters with law shape social processes less dramati-
cally but more pervasively.

Part 1 begins with Sally Engle Merry’s analysis of courts as sites
for the performance of hegemony and resistance. In locales marked
by cultural diversity and unequal power, one group’s rules are imposed
on another through court performances that expand the hegemony of
law. She argues: “These performances demonstrate the procedures of
the dominant order, demand compliance with it, and illustrate, through
both the imposition of laws and their enactment in the daily life of
subordinate peoples, the ways it applies to everyday life.” In mediating
domestic conflicts in a working-class, ethnically diverse population,
lower court judges in Hawaii find themselves caught between the laws
and norms of the dominant social and legal elite and those of an
underclass who regularly participate in unruly and illegal behaviors.
Merry demonstrates that litigants are taught through the court’s perform-
cances to distinguish between acceptable and unacceptable behaviors.
In Hawaii, legal cases are performances of hegemony and resistance
that actively reshape legal consciousness under conditions of postcolo-
nial legal pluralism.

The colonial legacy operates quite differently in Tonga. Susan Philips
finds that Tongans’ performances in court exhibit and encourage dis-
tinctly Tongan values and relationships, many of which were incorpo-
rated into the legal system during the colonial and postcolonial periods.

When magistrates rely on indigenous ideologies in criminal cases in-
volving drunkenness, hitting, and theft, they effectively appropriate
the moral authority of traditional Tongan understandings of gender
and kinship. For example, because Tongan tapu (taboo) dictates that
opposite sex siblings should not be co-present when insults are uttered,
even as evidence, women remain in the background in these criminal
trials. Women’s constrained speech and circumscribed presence in
court reproduces Tongan gender hierarchy and reflects hegemonic
ideologies about public order, respect, and the traditional primacy of
brother-sister relations. As a result, these courts protect sisters while
doing little to address the victimization of wives in intrafamilial con-
flicts. Yet, in addition to illuminating the distinctly Tongan nature of
the postcolonial legal system, Philips insists on that system’s ideological
diversity: “what law is and does is quite varied in Tonga, and the
genderedness of the Tongan state in the legal realm is not an implicit,
seamless web, but consists as well of flashes, of displays of explicit
stances on gender that themselves are not necessarily coherent.”

The Tongan example also illustrates the critical power of words in
shaping power dynamics in legal contexts. Language, inherently muta-
ble and manipulable, offers an important resource for resisting and
transforming hegemonic legal constructions. Oppositional linguistic
practices include reinterpreting legal language, refusing to speak at the
law’s command, and drawing on legal discourse in nonlegal contexts.
Some people learn new rhetorical strategies through their encounters
with legal institutions. Most, however, learn the language of law by
hearing and speaking about legal processes. To return to the theatrical
metaphor, tales told in intermissions and interpretations offered by
critics partially define the meanings of a performance.

Control over legal discourse and the silences of litigants are central
in Erin Moore’s chapter about disputing in rural Rajasthan, India.
Moore investigates men’s hegemonic control of public disputing for-
through the tale of one woman’s stubborn attempt to subvert that control.
Honey, a Muslim woman who refuses to conform to religious and gender norms, actively pursues her legal rights in village
councils and state courts. Honey’s oppositional performances highlight
the patriarchal nature of law in India and illustrate how lawmakers
invoke custom, religious ideology, and formal statutes to communicate
and enforce the social and legal consequences of marriage. The juxtapo-
sition of village councils and state courts means that Muslim women
“find themselves in positions of multiple subordinations and at the
same time in conflicting alliances—with and against the state, with
and against the local Muslim caste, with and against the religious
leaders who have the voice to fight the state." For some readers, Honey's saga raises a perplexing question: If her claims fall on deaf ears, why does she persist in using the courts? The example reminds us that the decision to seek justice in court cannot be reduced to a simplistic calculation of whether or not one might "win." Rather, Honey's performance confronts the limits of hegemony.

Joan Vincent examines a very different "dramaturgy of power": an agricultural show in colonial Uganda. Her analysis of the making of hegemony through the performance of state ritual offers provocative commentary on the role of consciousness in processes of domination: "All three cultural constituencies within the colonial state-European and Asian merchants, Baganda subimperialists, and other African ethnic groups encapsulated in the new modern Uganda—were thus all subject to this moment of hegemony. In the performance they concurred unwittingly, as it were, in the making of their future statuses in colonial law." As noted earlier, Vincent develops the concept of the "hegemonic moment" to draw attention to those events or periods in which the content and means of domination coalesce, especially as they remain beneath conscious elaboration. Her example shows that power relations evolve through performances seemingly unrelated to law and emphasizes the importance of "decentering" legal contexts in capturing law's contribution to hegemony.

Barbara Yngvesson's chapter draws part 1 to a close with a performance that illustrates succinctly how hegemony and resistance operate in tandem in the United States. Through court appearances, working-class people "restructure the social contours of their lives" creatively and oppositionally. Yngvesson argues that "court hearings become sites of momentary insurrection as complainants who are caught up in the power of law deploy the law in unconventional ways." Her profile of Charlie, a homeless man who repeatedly disrupts local court, displays the capacity of people without social resources to manipulate the law. Charlie's fate, however, suggests the tenuous nature of such control, and of resistance, in legal contexts. Yngvesson's work makes clear that sometimes performance, like power itself, is "double-edged," moving us deftly from the issue of performance to the problem of paradox.

The chapters in part 2, "The Paradoxes of Legal Practice," explore law as contested practice, contributing to the making of hegemony through its capacity to categorize and coerce. At the same time, legal categories, processes, and discourses encourage and enable multiple forms of resistance. These chapters highlight paradoxes within and between legal and extralegal arenas. Each author finds that legal processes themselves generate forms of domination and resistance. Paradox is a critical component of the legal treatment of women: law subordinates women categorically and yet is an important resource for their empowerment. Shifting attention to the paradoxes of law enables us to understand better the relation between individual experience and the structures, processes, and institutions that constitute social life in complex societies.

This part of the book begins in a mid-nineteenth-century Philadelphia courtroom which has become "an arena of conflict, ... [a] public site for contests over the meaning and application of law." Through his focus on the struggle between Ellen and Paul d'Hauteville for custody of their young son, Michael Grossberg investigates transformations in American family law at a time when law and lawyers were assuming hegemonic authority. Widely discussed in the press and the local community, the d'Hauteville custody case provided a public context for negotiating shifts in the meaning of "motherhood," "fatherhood," and "child welfare" as well as mapping new roles for law in family life. Grossberg's analysis reveals "why and when within a hegemonic legal order certain ideologies and distributions of power became privileged while others were rendered oppositional or ignored." Grossberg demonstrates how courts empowered one woman in her struggle against patriarchal authority, while strengthening the power of law over domestic relations.

What does it mean to read the legal record for paradox? In her analysis of rare legal records from sixteenth-century Uskudar, Istanbul, Yvonne Seng challenges long-standing assumptions about Turkish women which held that they were confined to the home and subject to male authority without legal redress. The Uskudar record reveals instead that women were actively involved in a wide range of cases involving property and family law. Case records and estate inventories indicate that workmen participated to a surprising degree in local business and economic ventures. Seng explores how women empowered themselves in relation to law, devising subterfuges to escape the strictures of Muslim inheritance laws and appearing in court in defiance of community norms. The variety and number of legal cases confirm that the women in these legal records were not exceptional; thus, "we must begin to think of their actions as strategies for the everyday." Seng's chapter finds paradox at two levels: in the legal practices of sixteenth-century Turkey and in the scholarly treatment of Turkish women.

Merry, Philips, Moore, Grossberg, and Seng all offer examples of women's use of the legal system for resistance, highlighting the paradox...
of gender hierarchy and legal patriarchy. Susan Hirsch argues that understanding law's treatment of women also requires attention to struggles involving class, ethnicity, religion and politics. Her chapter analyzes how Kenyan Islamic courts (Kadhi’s Courts) have emerged in the postcolonial period as a critical arena for Swahili Muslim women to contest male authority in the family. Yet the Kadhi’s Courts play another role: they symbolize the religious commitment and community solidarity of all Swahili Muslims, a religious minority living in a secular state. Paradoxical alliances and divisions result from the positioning of Islamic courts as “complex sites of resistance” with multiple purposes and meanings. For example, the success that Swahili women find in court depends on the secular state’s intervention in Kadhi’s court procedures. However, these same women unite with Muslim men across class and ethnic divisions to protest the Kenyan state’s hegemonic attempt to change inheritance law, another kind of secular state intervention. In analyzing the example, Hirsch proposes that “the points of interconnection among resistant acts are quite telling, capable of revealing that some struggles over power facilitate or preclude others.”

The chapters by Moore, Seng, and Hirsch contribute to an emerging literature that moves beyond stereotypical depictions of Muslim law as hegemonically ensuring women’s oppression. This literature explores the local character of oppression in the name of Islam, legal reform in Muslim countries, and Islam’s expression in contexts of legal pluralism (see, e.g., Beck and Keddie 1978; Dwyer 1990; Kandiyot 1991). That individual women are positioned differently from one another, even when they are positioned under Muslim law, is demonstrated through these chapters. The contrasts among Indian, Turkish, and Kenyan courts in the treatment of Muslim women’s claims suggests that understanding the legal position of Muslim women requires attention to customary practices, ethnic and national politics, legal pluralism, and global discourses about “women’s rights.”

June Starr also recasts previous understandings about the hegemony of Muslim law by exposing a paradox: Why did the nineteenth-century Muslim Turkish state adopt a secular code of law for trade rather than Islamic law? As background for her discussion, she describes the role of Islam in the Ottoman Empire and the growth of trade within the empire and with Europe. Her account, centered on the Ottoman port of Izmir, highlights growing European influence in the reorganization of agrarian production, market practices, and the adjudication of commercial disputes. Starr examines the creative role of middlemen merchants in challenging hegemony and creating new legal codes. Legal change in this instance is not the result of one hegemonic system replacing another, but rather that these transformations evolved over many years through the deals, exchanges, and sheer volume of trade in the region. Legal culture, as practiced in an intense market “nexus,” came to be recognized by reformists and, eventually, reflected in the legal code.

Mindie Lazarus-Black challenges a persistent argument in Caribbean studies which holds that issues of law and justice remained within the province of West Indian colonists and that the few legal rights accorded slaves had little influence in their lives. She argues instead that courts, cases, and legal consciousness were critical to the politics of slave resistance; Lazarus-Black documents that between 1736 and 1834 slaves in the English-speaking Caribbean used at least three alternative legal forums to protest the behavior of their masters and that of other slaves. Her chapter examines when and why slaves invoked formal law, investigating how they altered the meaning and practice of bringing cases before the courts. She finds that slaves practiced resistance at court even as they participated in the making of hegemony. Her description offers a portrait of the range of slaves’ oppositional practices, noting the pursuit in tandem of legal and illegal strategies. West Indian hegemony was “forged around slave huts and cooking pots as well as in courts of law.”

Attention to the dynamics of hegemony and resistance in relation to law alters our perspective on the intersection of historical and legal change. Sally Falk Moore has suggested that we need to investigate further the “secular moralizing, practical admonition, and redefinition of reality that accompanied the legal and administrative apparatus of the colonial period” (1992:43). Starr’s account of the fate of Islamic commercial law in Turkey takes up Moore’s suggestion in a noncolonial but culturally diverse context. Grossberg’s study illuminates an infamous case interesting in its own right but also important because it indexes cultural and social transformation. In investigating law’s role in social transformation, contributors to this volume approach both historical and legal records with a healthy skepticism shared by some of our colleagues.” Asking what constitutes a legal record, who keeps them, for what purposes, and which legal archives are “mined” while others are ignored, provides us with fresh insights about how hegemony is shaped and to what extent resistance is possible. We find it telling, for example, that sixteenth-century documents revealing Turkish women’s use of courts remained untranslated until recently and that slaves’ use of courts was “unseen” by many Caribbeanists.

The problem of documentation or lack thereof is a central theme
in the volume's final chapter. Susan Coutin examines practices of the United States sanctuary movement developed in the 1980s to assist undocumented Central Americans. To define the undocumented as refugees, movement workers pursued a strategy of "civil initiative," authorizing private citizens to reinterpret American immigration laws and to challenge the exclusivity of the government's right to confer legal statuses. They instituted procedures to screen potential refugees and to offer them sanctuary in local communities. However, by drawing on a power-laden discourse grounded in law, the sanctuary movement reinforced rather than subverted hierarchical immigration categories and practices. As Coutin explains, the movement's reliance on confessional "testimonies" of torture from Central Americans to establish their claims for refugee status is a particularly poignant replication of hierarchy which documents "the difficulty of drawing on the law's potential for resistance without simultaneously invoking its capacity to oppress."

CONCLUSION

The contributors to Contested States approach and analyze law, hegemony, and resistance in myriad ways. We welcome this diversity as intellectually challenging and appropriate, suggesting that in different sociocultural orders and at different times these concepts operate and are expressed in historically and culturally specific ways. Yet common themes link these chapters. They demonstrate that law and legal practices are constitutive of a variety of powers—political, economic, symbolic—and that, cross-culturally, the power of law is at once hegemonic and oppositional. The authors share a concern for the way in which law contributes to the making of everyday consciousness and practice, and they also attend to how it shapes and is shaped by oppositional practices.

What is most striking methodologically about Contested States is that each author breaks hegemonic disciplinary boundaries. The impact of feminist theory and social history is obvious in many of the chapters. Phillips, Moore, Seng, and Hirsch extend feminist analysis to encompass several languages, diverse courts, and different forms of knowledge held by men and women. In these works, "contested states" alludes not just to gender or government, but to feminist theory and method, as authors endeavor to develop theoretical constructs like power, hegemony, and resistance and at the same time remain especially sensitive to women's experiences. Many of us captured women's cynical critique of law in our field notes, even as we watched women use courts in strategies of resistance and to gain power. Ironically, women may comprehend the paradoxes of law so clearly because they live under conditions of multiple subordination in which law makes rules for relationships but also offers opportunities to reconstruct power and gender hierarchy.

The influence of history and historical anthropology continues in studies of law and power. In this volume, Starr and Vincent exemplify the rapprochement of these fields; their chapters reassess historical events and processes with great sensitivity to the forms and forces that shape cultural categories and usher in their transformation. Working with historical legal documents from the Caribbean, Lazarus-Black learned it was impossible to understand why slaves used colonial tribunals until she relinquished the hegemonic notion that West Indian slave masters alone controlled the meaning of going to court. In contrast, historian Grossberg's "extended case" analysis uses a method familiar to legal anthropologists to prove law's power to redefine American families. And, finally, Yngvesson, Merry, and Coutin expand ethnography's capacity to uncover fundamental meanings and struggles in and around legal arenas in the contemporary United States.

In presenting these essays, we are encouraged that cross-cultural comparison offers a rich and fruitful strategy for building scholarly knowledge about law and society. Contrasts and congruences among the theoretical approaches and illustrative examples presented in the chapters expand our understanding of the role of law in hegemony and resistance. Investigating law cross-culturally, and in relation to hegemony and resistance, we have come to a new appreciation for law as discourse, process, power, and subversive activity.

Notes


2. Foucault's concepts of power and discourse are addressed in several of his major works (Foucault 1978, 1979, 1980, 1983). Interpreting Foucault, Shapiro explains that discursive practices in society "delimit the range of objects that can be identified, define the perspective that one can legitimately regard as knowledge, and constitute certain kinds of persons developing conceptualizations that are used to understand the phenomena which emerge as a result of the discursive delimitation" (1981:130).

3. Thompson (1975) demonstrated that in eighteenth-century England there was money to be made from men who illegally hunted deer in state
dealt with issues of "contract." Slightly later, Emile Durkheim elaborated the discussion between "primitive" and "civilized" legal sanctions. In the mid-nineteenth century, anthropologists of law debated the universality of law, collected legal cases, and described systematically how other people's legal systems functioned (see, e.g., Bohannan 1957; Collier 1973; Colson 1974; Fallers 1969; Gluckman 1955; Gulliver 1969; Lewellyn and Hoebel 1941; Nader 1969; Pospisl 1971; Roberts 1979; Schapera 1937). These studies demonstrated the importance of law in social life and highlighted cultural variations. Customs were codified, but, ironically, researchers ignored the impact of colonialism on indigenous legal institutions and practices. Moreover, they continued to assume two things about power in relation to law; namely, that it was the province of the state and its supporting institutions and that it operated through force.

5. By the early 1980s, Comaroff and Roberts had identified two approaches in the anthropological study of law. To summarize these briefly, the "rule-centered" paradigm directed attention to order, rules, and judgments, while the "processual" paradigm led scholars to focus on conflict, legal processes, and litigants. For further discussion of the history of legal anthropology, see Comaroff and Roberts (1981); Nader (1969); Nader and Yngvesson (1973); Roberts (1979); Starr and Collier (1989).

6. As is well known, Gramsci (1971) did not explicitly define hegemony; the concept evolves in his Prison Notebooks. Important discussions of hegemony appear in Comaroff and Comaroff (1991), Femia (1981), Forgacs (1988), Laclau and Mouffe (1988), B. Williams (1991), and others. In recent years, a number of authors have explored hegemonic practices characterizing legal institutions, particularly law schools. See, e.g., Kennedy (1982); P. Williams (1991).

7. We do not mean to suggest that elites always act in ways that further their interests (Foucault 1980:187) or even as a united front (Vincent 1989). Vincent argues in reference to colonial law in Africa: "While lawmakers in the hands of members of the ruling class serve their interests, they do so in a form that the law takes and the impetus that projects it into the societal arena derive from events in the course of their struggles against one another and the compromises finally reached" (1989:156).

8. Cain is unusual in reading Gramsci "to achieve a better understanding of law" (1983:96). As she points out, Gramsci emphasized law's educative function and its role as a generator of social norms. He understood that law's advantage was that it could be used both coercively and persuasively, but law did not achieve a specific place in his political strategy or theory (ibid.:101-102). We argue that law's coercive and productive capacities render it an especially critical place to deduce how hegemony is manufactured and when it is undermined by oppositional practices.

10. Thus, we find, as Hunt does, that a focus on the end result of hegemony as secured or lost is too narrow a use of the concept. Hunt (1992:33) directs attention instead to "the processes through which different discursive elements are put together in constituting hegemony." We note that Hunt, like others, uses the concept of counterhegemonic practices to describe some types of resistance. The continuum model outlined in this introduction is less restrictive than the concept counterhegemony.

11. The peasants Scott studied imagined both the reversal and the negation of their domination, and, more important, "they have acted on these values in desperation and on those rare occasions when the circumstances allowed" (Scott 1990:81). The fact that peasants rebel brings Scott close to rejecting the concept of hegemony entirely. He does, however, suggest two conditions under which subordinate groups may come to accept or legitimate the arrangements that justify their subordination: (1) there is a good chance that many of the subordinates will eventually occupy positions of power (as in age grades); (2) the subordinates are under conditions of extreme conditions (ibid.:82).

12. Comaroff and Comaroff (1991:31) summarize the controversy over the meaning of resistance as "the problem of consciousness and motivation." In a nutshell, some scholars prefer to limit resistance to conscious behaviors; others allow acts motivated by less explicit levels of awareness to qualify as resistance. We agree that "just as technologies of control run the gamut from overt coercion to implicit persuasion, so modes of resistance may extend across a similarly wide spectrum" (ibid.:31). Conceptualizing resistance has been a challenge as scholars debate, among other issues, whether oppositional acts must be conscious, collective, organized, or effective to be called resistance. For discussions of these debates see, e.g., Comaroff (1985); Giorou (1983); Keesing (1992); Ong (1987); Sholle (1990); B. Williams (1991).

13. Educational institutions have provided a rich context for the development of theories about resistance and identity. Willis's (1977) study of working-class "lads" in a British school demonstrated that class is often remade through resistance. McRobbie (1981), Holland and McPherson (1988), Hall (1993) demonstrate that the forms of resistance to schooling, and their consequences, are shaped by gender and race. Foley (1990) makes the critical point that, in many schools, ethnicity is a key factor in determining how students resist and whether the institution is altered through their efforts.

14. Keesing raises a related methodological challenge by suggesting that scholars of resistance must unravel the "tangled skeins of personal motivation, hidden schemes, private ambitions, as well as conceptions of collective struggle" (ibid.:25). The practice of "strategic drift" (McRobbie 1981; Holland and McPherson 1988) and Hall (1993) demonstrate that the forms of resistance to schooling, and their consequences, are shaped by gender and race. Foley (1990) makes the critical point that, in many schools, ethnicity is a key factor in determining how students resist and whether the institution is altered through their efforts.

15. An example of this strategy is a "legalistic" letter written by Kwaio people to insist that the colonial state reroute airplanes in their region so that Kwaio men could avoid being positioned underneath menstruating women and thus avoid "pollution." Their remarkable letter constituted a demand for recognition of custom made through the terms of law (Keesing 1992:233).

16. Early scholarship on the language of law emphasized its hegemonic role, highlighting, among other linguistic features, the mysterious syntax of legal documents and the peculiar conventions of courtroom speech (see, e.g., Atkinson and Drew 1979; Brenneis 1988; Charnow et al. 1982; Levi and Walker 1990; O'Barr 1982). More recently, several authors have demonstrated that courts and legal documents embrace multiple discursive practices, including those of ordinary, even powerless, speakers (see, e.g., Conley and O'Barr 1990; Hirsch 1994; Merry 1996; Mertz 1988; Philips 1984; White 1991).

17. For sources on method, see, e.g., Clifford 1988; Cohn 1959; Geertz
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