*1997 Presidential Address*

# Tuning to a Key of Gladness

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The author reflects on the significance of violence (the theme of the 1997 Law and Society Association's annual meeting) for sociolegal scholars, considering the changing landscapes of law and difference, especially in the contemporary United States, as well as issues of vocation and agency.

My theme is what Hannah Arendt called "gladness," her word for the pleasure of dialogue in a world of differences.[1] The dialogue I want to talk about is this annual meeting, this associa-

The text presented here is a slightly revised version of the Law and Society Association's Presidential Address, delivered (as is traditional) at a plenary luncheon session of the Association's 1997 annual meeting in St. Louis, Missouri. An address of this sort is a performance of acknowledgment, and I have tried to indicate in the notes and references some of the range and sources of my debts. I am especially grateful to Susan Williams, Fred Aman, Judith Allen, Paula Girshick, Beth Mertz, and Beverly Stoeltje for conversations that helped me focus my thinking about collegiality as a form of agency as I prepared for this event. Address correspondence to Carol J. Greenhouse, Professor of Anthropology, Student Building 130, Indiana University, Bloomington, IN 47405-2555; e-mail: cgreenho@indiana.edu.

[1] The talk, as delivered, opened with a series of jokes, as required on such occasions. To preserve a difference between being there and not—a difference perhaps rare nowadays—I have omitted the jokes from this version. Especially for those who had to miss the event, I refer readers to a little known ethnographic mini-genre: published descriptions of LSA plenary luncheon talks. Stewart Macaulay sets the tone, describing the postprandial condition as a series of "hazards":

> A presidential address at a professional association is an odd art form. Beginners and those completely outside of the group's tradition don't get to be president. Nonetheless, if all you do is celebrate the mainstream, you put the audience to sleep. You must give the speech during a lunch. You compete with dessert and waiters removing plates. You talk after awards and other ceremonies have taken more time than planned. Entertainment may be more appropriate than challenging thought. (Macaulay 1992:825; note omitted)

Sally Merry, with characteristically wry understatement, described the prescription and sized it up as "a tall order" (Merry 1995:11). John Brigham (1995:585) has called the LSA plenary lunch a contradiction necessitated by "the ongoing requirements of the constitutive function." I invoke other plenary luncheon speakers below.

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tion. And I want to explore it in a particular way: not as a report or a prediction, an ethnography or a history—but as a speculation on its inner life. This said, it is never entirely clear what sorts of pronouns and verbs should furnish the space between celebration and aspiration, so I will use an optimistic present tense and an inclusive but indeterminate first person plural for whoever "we" are becoming.

What is it that brings us together under the theme of violence? A luncheon is not the time or place to talk about violence. This is our annual reunion, and my question is about our gathering: this time, we gather "in the name of each person's pain" (to borrow Martha Nussbaum's (1995:27) phrase). Twelve years ago, Marc Galanter (1985:552) invited this audience to contemplate what might follow from the "information explosion" about law, anticipating its impact on the law itself. Looking ahead, he said: "We can imagine that the second kind of legal learning [his phrase for law and society scholarship] might flourish in conjunction with a more responsive and more inquiring legal process." When he said this, it was not a prediction exactly, but a description of the imaginable. And here we are now, imagining violence.[2]

Can the theme of violence be anything other than irony for an association of scholars who daily labor under the banner of law and society? I will argue that it is something other than irony.

The gist of my argument is this: The contemporary facts and public meanings of violence have so refashioned the stakes of social knowledge that human science itself is no longer conceivable without affording violence a central place in our thinking.[3] I refer to "human science" in the broadest possible sense here, not as a label for particular disciplines or methodologies but for the open horizon of scholarly interest in the worlds people make for themselves and each other; I mean it to include whatever it is that all of us here do.

For all of us, I will argue, violence is more than a topic, and more than an irony. It is a relation, a reason to communicate—between researchers and the people they write about; between researchers and their audiences in the classroom, conference room, and in print; amongst themselves—ourselves—as colleagues. We have absorbed this relation—this need to communicate, rooted in our private certainty of vulnerability—from the world we inhabit and study; it is an ethical relation, and it in-

[2] I cannot help but wonder if this is what Felice Levine really had in mind when she talked about "goosebumps" in her presidential address a few years later, in 1988. On that occasion, Levine borrowed a trope from a play then on Broadway, in which aliens ask an earthling for an explanation of goose bumps—"whether they come from the heart, from the soul, from the brain, or from geese" (Levine 1990:8).

[3] I use the term "human science" for its appealing spirit of endeavor, as well as its amalgamated reference to the humanities and social sciences, usually employed separately in U.S. university catalogues.

volves real stakes. For example, "culture" and "ethnicity" are names for the benign academic attentiveness to people's celebrations and affirmations but also banners for genocide. "Community" names a collective aspiration for communication but also its exclusive refusal. And, closer to our theme, perhaps, "neighborhood" names the terrain of familiarity and exchange, but it also conjures fatal danger.

The public discourse of violence (which includes physical violence) is as if a human science turned inside out and against itself: the skinside outside, as it were. Are we here taking its measure and trying to make it right by making it a topic? Violence does enter our collective conversation as a topic, but it enters also, more fundamentally, as a commitment to "taking each person's pain seriously"—and as a commitment to taking our profession seriously, and ourselves in it.

* * * *

I begin, then, with some observations on our common craft. Let us start with the notion of exactitude, since whatever work we do and however we do it, exactitude names a central value in our community of argument. I borrow the inspiration for this starting point from the novelist Italo Calvino—that arch-alchemist to whose sensibility physics and fiction were perfect partners in dialogue. In one of his "six memos for the next millennium," Calvino tells us: "For the ancient Egyptians, exactitude was symbolized by a feather that served as a weight on scales used for the weighing of souls" (Calvino 1988:55).

In our business, we also use a feather to weigh souls and assay futures—if you are willing to picture a sturdy quill, dipped in ink, poised over paper, in the hand of an author moved by the mysterious quickening of what Nadine Gordimer (1989) calls "the urge *to make* with words" (p. 285; emphasis in original).

What exactly do we make with words, in this community of scholars and advocates from across the disciplines and around the world? What is the exactitude, the mode of reckoning, that we bring to the human science of law and society? The idea of equality answers both of these questions.

I say equality, but I do not mean sameness, or differences rendered generic. Do not hear in this word some claim that democracy has finished its business or that we have accomplished ours. Please hear its deep currents of doubt and contention; visualize its incompleteness, its desirability; its confrontations; its individuals and groups; its many forms of power; its many questions and interruptions; its subversions; its pleasures; its classic fixity and pragmatic unsettledness. Hear its making and remaking, its remappings; hear it, in Boaventura Santos's (1995) metaphors

for the longings of "emergent postmodern subjectivities": the frontier, the baroque, and the South.

Equality in this open, unspecified, contentious, critical, questioning sense, this programmatic sense of longing, has given sociolegal studies its organic character over the years. It is what makes it possible to refer to collective means and ends in a professional endeavor (*our* professional endeavor) that is profoundly individual and increasingly varied. Equality is our means of naming questions and pursuing them in the library and field and of demanding ends that (if we can imagine such a moment) would confirm that inquiry to have been part of the history of justice; ends that in the meantime are worth debating, as they provide us with a yardstick for contradictions in the world at large and in our own practices, among other reasons.

Thinking about equality allows us to think many things at once—difference, democracy, scholarship, power, individuals, groups, conflict, risk, law, justice, injustice, agency, constraint, citizenship, change (I could go on). It allows us to be many different kinds of human scientist—and to be different vis-à-vis each other.

Equality is a starting point to our questions (a reason to ask about some things before others, some things instead of others). It is also a way of closing questions (a way of finishing our books, articles, courses, and briefs). Equality is "good for thinking," and it is good for writing.[4] Equality—even when we do not name it—accounts for the narrative structures of our writings. We write *as if* toward equality.

Equality is where methodologies converge. Sampling, confidence levels, bias, standpoints, multivocality, dialogue, "subversive stories and hegemonic tales" (Ewick and Silbey's (1995) phrase)—these are just some of the signs pointing to different aspects of equality's place in the very concept of practice in our line of work. Equality makes our methods debatable and our debates relevant to the world we want to know better, and make better. Democracy and human science share a conceptual lexicon in certain respects important to both.[5]

In broader terms, the democratic imagination for equality is about the measurement of society's capacity to accommodate the

[4] The phrase "good for thinking" is Edmund Leach's formulation of Claude Lévi-Strauss's theory of totemic classification, which concretizes and classifies the human environment in terms that are simultaneously linguistic and mythic: "This is the essence of Lévi-Strauss' arguments about totemic-species categories and food-preparation categories—they are categories which refer to things 'out there' in the human environment and they are things good for thinking, not just things good to eat" (Leach 1970:124). Drawing on this formulation, I am suggesting that "equality" is not only a concrete problem of social organization and material welfare but also a way of thinking about human relations and the relevance of analyzing them as human scientists.

[5] They share a lexicon—and contradictions, particularly with respect to the association of pluralities with the norm. On the shared lexicons of modern democracy and social science, see Agnew 1986; Latour 1994; Greenhouse 1998.

individual weights of its many souls in civil dialogue. That is why equality can never be merely instrumental, some mere arithmetic; material well-being is its necessary prerequisite, but it is not sufficient. Equality's ultimate instrument is conversation. Pens in hand, what we make with words is a thinkable conversation among equals. We make on paper a world that does not yet exist, even when we are reporting on what is. Ink holds a place for conversations to come.

Doing that work is one step toward fulfilling what Gordimer (1989:185) calls the writer's "[r]esponsibility [that] awaits outside the Eden of creativity." That vital link between creativity and responsibility is the essence of any vocation, perhaps; historically, it is the essence of the law and society field in very particular ways. Martha Nussbaum (1995:91) writes: "The ability to imagine vividly, and then to assess judicially, another person's pain, to participate in it and then to ask about its significance, is a powerful way of learning what the human facts are and of acquiring a motivation to alter them."[6]

One can speak of inequality, and furnish such claims with facts, but equality is never simply furnished in this way.[7] That is why, under conditions of inequality, ink is so very important as a medium of reform. Especially given our line of work, the history of our literacy as a technology of law seems intrinsically to commit us to reforming the future. It imparts a temporal sense to sociolegal studies, even when we are writing about the present, and even when we are not writing "about" equality. Like writing itself, which is also always "becoming,"[8] equality can never simply be proclaimed as having been achieved.

The very idea of equality (no matter what that idea may be in specific terms) always, also, promises that there are alternative futures, in the sense that all people are entitled to choices. Choices can be lived and observed, but in our business, ink is the only medium for registering those other life conditions: the absence of choices, the given future, the pending equality.

Equality can be demanded; it can be refused; its denials can also be refused. Such demands and resistances are intrinsically, fully social; they are also always particular (cf. Merry 1995). Such encounters are always between specific actors, at a specific time

[6] Nussbaum's argument is in favor of teaching law through literature; in this passage, she advocates literature as a means of experiencing the desire for equality, given fiction's ability to radically juxtapose fortune and misfortune—creating in the reader a sense of self-interest in "ameliorating persistent inequalities" (p. 185).

[7] I read the majority opinion in *Brown v. Board* as confirming this very point; "separate but equal" creates a simulacrum of equality, but with mere things—not lives.

[8] The full context of the phrase is the opening passage of Deleuze's essay: "To write is certainly not to impose a form (of expression) in the matter of lived experience. Literature rather moves in the direction of the ill-formed or the incomplete. . . . Writing is a question of becoming, always incomplete, always in the midst of being formed, and goes beyond the matter of any livable or lived experience" (Deleuze 1997:225).

and place. In this way, equality also imparts to sociolegal studies some of its idea of the particular and its sense of the local, and the larger significance of these.

Writing, no matter how comprehensively factual it may be, is always a transformative assertion of significance. I take it as given that experience cannot be directly recorded except as it is remembered and retold, however immediately (Deleuze 1997; Scott 1994). Gordimer (1989) proposes that "[t]he *transformation of experience* remains the writer's basic essential gesture; the lifting out of a limited category something that reveals its full meaning and significance only when the writer's imagination has expanded it" (p. 298; emphasis in original). This comes close to what David Trubek (1986:597) meant, perhaps, in claiming the law and society movement for transformative politics; in contending that social scientists must choose between "detachment" and "hope."

To put all of this another way, our ability to conceptualize a here and now *from which to speak or write about any situation, as human scientists,* is constituted deep in the conscious possibility of equality, even when equality is not our subject. But more than this, conversation and writing are not merely media of reporting, they are among the media of equality itself. We make (or unmake) equality on paper, in the way we write, in our teaching, as ourselves, amongst ourselves. Making equality is a significant form of action: It is what frees us from being wholly dependent on "the policy audience" for our own agency, though, of course, it is what makes us want that audience, too (Sarat & Silbey 1988). We do have other audiences. The largest audience for academic writing is students. But I will come back to this point later.

To imagine equality and writing together is no mere analogy but a remark on practice. Equality has always involved textual practices—scriptures, constitutions, charters of rights, the arts, literature, social science—not merely *alongside* legal and political practices, but *as* law and politics (cf. Gilroy 1993). For this reason, among others, equality's career is intrinsically interdisciplinary: people's demands for equality have never respected established boundaries or conventional knowledge practices, and people have always drawn their rationales and modes of expression from across canons and lexicons, and then returned them, altered. Our field is interdisciplinary for this same reason, and in this same way; this accounts for some of the history of the law and society movement's marginalization in its single-discipline home bases, and our traditional celebration of this fact (Brigham 1995:585).

Nor are we always at home amongst ourselves; the world makes the stakes in our endeavor too high for us to contemplate getting it wrong with any ease (cf. Handler 1992). Indeed, we should not allow ourselves to imagine that it is merely methods

we argue about when we do argue—we are arguing about the world's risks for the people we write about, in the terms most handily under our autonomous control.

Thinking of the ways equality moves from the imagination to the streets and back again confirms the impossibility of dividing for long the symbolic from the material, or the humanities from the social sciences (in the narrower sense of these terms). And—to look within our community of scholars, advocates, teachers, and students for a moment—we know, too, that the light of creative scholarship does not stay lit for long within a relationship of unequals. Conversation and the commitment to mutual comprehension are essential to every aspect of our craft.

Equality can be experienced only in dialogue with another person, or as the desire for dialogue, in person or in print.[9] The kind of dialogue I mean presupposes personal well-being. The kind of equality I mean presupposes the possibility of rearranging the world's goods and maintaining the thinkability of that possibility as reason itself—as a fundamental socio-logic.

The discursive power of equality in precisely this sense is vividly self-evident in the pages of the *Law & Society Review;* it is what gives them their perspective and passion, sometimes along with a certain refreshing abstraction and liberating *in medias res.*[10] This has been true from the beginning. While law and society research also appears in many other venues, the *Review* is our own, and it gives us one way of talking about traditions. Early *Law & Society Review*s are devoted to topics anchored in the empirical reality of the inequality of citizens, in terms of their access to state institutions in the United States and abroad, and the way law works in practice. Early tables of contents include articles on topics from the standard U.S. law school curriculum—criminal law, family law, torts, and so forth—reread through the differentials that mark the experiences of particular social groups as overdetermined, especially by race and poverty.

Early contributors to the journal were optimistic Aristotelians in their sense of law's ability to deliver justice and community to divided nations.[11] This perhaps marks their contributions as chronicles of another time. But in their theoretical defense of

[9] I am indebted to Susan Williams for this formulation of community and autonomy as centering on speech communities. She proposes that a feminist theory of community would focus on the conditions under which individual (autonomous) voices can be marshalled and registered in collective conversation. Williams's concept of autonomy is central to the view of equality that I offer here; see Williams 1997.

[10] Taking their standpoint from their concepts of equality, they achieve[d] a "perspective by incongruity" (Burke 1984:308-14).

[11] For example, in the first "From the Editor. . ." page, Schwartz (1966:7) refers to the Law and Society Association's guiding visions of law, describing law as "a conduit through which all of the diverse institutional elements of the society simultaneously flow." Law and social behavior were deeply fused, as in Schubert's (1968:409) later discussion of legal realism as "human jurisprudence." Gibbs (1968:esp. 430-43) defended the study of law through empirical research on related grounds.

"law and society" research against a view of law as pure doctrine, authors in the late 1960s and early 1970s also drew fundamentally on tacit emotional understandings of equality as integral to the process of sociolegal research itself. This, along with the fact that their projects were often explicitly and energetically critical, made them seem new when I reread them recently.[12] Indeed, the history of equality is not linear; it is improvisatory, eclectic, opportunistic, uncontained, unapologetic.

A broader reading of those developments would present equality in the conceptual formation of the law and society field as part of the twinned history of liberalism and classic social science, methodological individualism being well suited to the guarantees of equality intrinsic to the liberal nation-state. There are also histories that follow from that pairing. In relation to our gatherings, one could say that the very commitment to taking law and society research "to the field level" (to borrow Galanter's 1985 ballpark metaphor) brought the research community directly into contact with the world conditions that effected its intellectual expansion, with consequent transformative effects on the association itself—its intellectual range, the demography of its membership, and its organization (p. 543).[13] This history continues in all its pluralities.

Those world conditions include the hardening and whitening of lines around conservative agendas and the rise of social movements pressing for democratization, among other developments. Closer to the context of a meeting like this one, we might note the responses of universities to these movements, the increasingly embattled position of higher education with consequent pressures against and sometimes between social sciences and humanities programs, and the changing terrain of disciplinarity—again among other things.

With whatever strokes of the brush or pen, making equality with words is—for us—simultaneously a defining gesture toward the relationship of law and difference, and toward collective responsibility on the side of difference. Let us mark a place for

[12] Their theoretical framework for equality rested more or less implicitly on Weber, whose conceptual equations—of social relationships with mutual acknowledgment, law with legitimate coercion, and community with mutual affective ties—remain central to much of the empirical canon (Weber 1978:26-27, 34-35, 40-41). Whatever else has changed in the landscape of sociolegal research, these classic positions still prevail, defining a climate of assumption about how law *might* work in a community of equals. The evolution of those assumptions in the practice of human sciences includes the history of the law and society movement. For discussion of the ways in which law and society research traditions have selectively relied on Weber's work, see Trubek 1986.

[13] In his review of the contributions of law and society research to "new knowledge about law," Galanter (pp. 543-49) identified six main areas: (1) the move downward, from "peak decision makers to the field level," (2) the larger "cast of characters," (3) multiple forms of law and norms, (4) indirect and unanticipated consequences of law, (5) the importance of law's symbolic and "information transfer" functions, and (6) increased public interest and media attention to law.

talking about what we do in relation to who we are, where we work, and with and for whom.

From that place, we observe that the recent history of social movements' rights-based claims for equality pushed law and society research into and then well past the law itself. Out in that broader landscape, law, and with it the conceptual framework of the nation-state, formerly so clearly dominant in the organization of sociolegal research, are now highly and importantly problematic. The nation-state and state law must now share the conceptual terrain of law and society research with other institutions shaped by other globalizing and localizing processes, together with their normative and subjective effects (cf. Maurer 1995:284; Silbey 1997). Arjun Appadurai identifies the global spread of nationalism and the nation-state form as "the dominant concern of the human sciences" today (Appadurai 1996:188). Sociolegal research maps its traces, as well as the fields altered by the globalization of locality; we no longer work only within nation-states.

Substantial bodies of law and society research examine law, legal institutions, law makers, and law users; these projects have tended to emerge from within the frameworks of nation-states, though to be sure we have never simply stopped there. But our "where" is larger now, the itinerary expanded not only by the relevance of other nations' legal systems but also by the relevance of other fields of inquiry related to the sites and idioms of the transformation of law and the nation-state itself. Recent world developments and theoretical developments in our respective disciplines mean that substantial bodies of law and society research now explore domains outside the framework of nation-states altogether. Sometimes, this is because the people we write about conceptualize and demand justice outside the sphere of state law. Sometimes, we are interested in how law itself marshals "signs and practices" of difference that are in circulation in broader, often transnational contexts.[14]

The methodological and epistemological debates that have enlivened this organization over the years are evidence of the fact that scholars' professional practices are shaped by this widening horizon of stakes and hopes for—and also apart from—law in the world at large. I do not mean only our own hopes but also those voiced by individuals and groups asking for justice in their own terms (Ewick & Silbey 1995:222; Merry 1995). Even a broad brush such as the one I am using now cannot fill in the canvas of our field, and in any case, there is always more canvas, concepts of justice being intrinsically, insistently, plural, and coming to us from the future. Still, one can mark a broad shift.

Within the nation-state framework, difference is relevant mainly as a negative. Citizenship is its idiom of cherished and

[14] The phrase is in this context is from Comaroff & Comaroff 1991:27.

chastening exactitude. Within that framework, difference could be defined as the inequality of a collective group (or groups) in relation to one's own situation of privilege and security.[15] From beyond that framework of the law's "others," difference is not first a question of collective identity but of agency experienced as self-identification (Bhabha 1996). Between these two meanings of difference and equality, violence is exposed as a new exactitude.

Indeed, it is equality that now requires us to talk about violence. I do not mean only the violent things people do to each other, for the moment, but the ways public discourse in the United States and elsewhere nowadays makes thinking about difference already a way of thinking about violence in a variety of ways.[16] The link is in the ways state law figures in the public management of identities—through rights and policing, for example, as well as a host of other circumstances (Greenhouse in press; Sarat & Berkowitz 1994). Difference cannot flourish where it is predefined as a problem of public order, or where "equality" demands that it disappear.

The theoretical and methodological expansion of the human sciences and the law and society field in particular since the mid-1980s coincides with the public preoccupation with and contests over the terms of difference—perceived as violence—in that same period. Both the expansion of the human sciences and the public conflicts are effects of increasingly transnational cross-currents reshaping the nation-state, state legality, and crucial aspects of citizenship, among other things.

One example of a context where collective identity is palpably fused to assessments of social danger in this way is in what Feeley and Simon (1992) call "the new penology." The "spectacular shift in emphasis from rehabilitation to crime control" (p.

[15] I draw this distinction from Bhabha's broad delineation of several meanings of difference—as singularization, victimage, association, creativity, and commitment—as implying different modalities of agency and critique.

Whether as an issue of personal responsibility (cf. Lévinas 1993:20-31) or political consciousness, difference precludes the reduction of individuals' situations to self and collective other. In this vein, Touraine (1994:195) considers some of the permutations of separateness and recognition in modern democracies, specifying: "Democracy is impossible if an actor identifies him or herself with universal rationality and reduces others to apologists for their particular identity" ("La démocratie est impossible si un acteur s'identifie à la rationalité universelle et réduit les autres à la défense de leur identité particulière").

[16] Cf. Feeley & Simon 1992:452, 455; Gordon 1990:esp. chs. 9 & 10; Simon 1993:253-56. The "new penology" is one context where these developments can be seen in stark relief. In the new penology, "individualized diagnosis and response is displaced by aggregate classification systems for purposes of surveillance, confinement, and control" (Feeley & Simon 1992:452). In the "new discourse," the individual is replaced by "an actuarial language of probabilistic calculations and statistical distributions applied to populations" (ibid.). My own emphasis here is doubly on the shift from individuals to groups and on the way that shift transforms the relations of social knowledge from equality to risk, violence, and victimization. I am grateful to Michelle Brown for providing me with the reference to Feeley and Simon's article.

454) that they note in that emergent discourse associates different risks of violence with race and class groups. This calculus in the corrections field corresponds to parallel shifts in other domains in and beyond the law.[17] The rising vogue for "racial and demographic determinism" (Shapiro 1997:5) in a wide range of contexts makes violence integral to social knowledge—from detective fiction and mysteries (e.g., Young 1991) to urban life (e.g., Gooding-Williams 1993; Law & Social Inquiry 1994) and rising ethnonationalist movements around the world (e.g., Malkki 1995).

The centrality of violence in the current discourse of difference is not only a shift in the need to know about others; it is also a shift in the means of knowing.[18] Specifically, the public fascination with spectacular public interrogations—trials, confirmation hearings, indictments, scandal, particularly when these involve racial and/or gendered difference—suggests the pervasiveness of the criminal trial as a public discourse involving high stakes and emotions. The confrontations between this emergent discourse and the discourse of equality that I have been describing are sometimes highly pitched, sometimes very subtle. It is their crosscurrents that yield issues of identity, difference, and discourse as sociolegal research topics (among others, and among other effects).

It seems that this emergent public discourse has nowadays moved away from the Enlightenment *social contract* paradigm—the paradigm out of which the law and society movement first developed—to a *criminal trial* paradigm. This means that important institutions of social knowledge have shifted from an ideological basis in hypothetical exchanges among moral equals to one that contemplates society at large as an audience for the staged accountings of groups by a small elite of law enforcers.

The social contract promised a universal rationale for self-identification with others, a paradigm of *identity,* in Kenneth Burke's sense, that acknowledged human beings' separateness, and compensated for their inevitable divisions (Burke 1969: 120–23). In contrast, the new criminal trial paradigm is rooted in a prevalent refusal to identify in this positive sense; it equates difference with division, and fashions difference as a template for social *judgments.* The modernist affirmations of the individual and pluralism have by no means vanished, but (I would argue) it is the *limits* of pluralism that now occupy the center of public debates about culture, law, economy, politics, state power, and the "world order" in general. Sometimes, it seems, it takes a spe-

[17] For discussion of parallel shifts from addressing individual offenders' intentions to controlling what are perceived to be group risks and effects in other domains, see Feeley & Simon, p. 453; Garland 1985.

[18] Discussion of the criminal trial paradigm in this section is adapted from Greenhouse 1997:184-86.

cialist to know that difference is not just a synonym for intractable or irreducible conflict. These days, hope has become arcane, and that makes our specialty a significant counter-discourse.

The criminal trial paradigm is not just about difference but also about law. It is always also a trial of the rule of law itself. There is much in the history of the modern world to remind us that a paradigmatic link between alienation from the rule of law and the criminalization of difference is adaptable to any social scale.[19] It poses pervasive dangers.

Contemporary circumstances confront us with the terrifying and repugnant specter of human beings valued (or devalued) in categorical terms, in direct relation to groups' (immigrants, the poor, among others) perceived serviceability to particular interests. This is a profound crisis of identification, this marking of collective others as society's "transformandum"—Burke's term for the "chosen vessel" of social renewal. Though identification also has other contexts and meanings, Burke places identification in this sense at the core of terror and genocide, as the poetics of violence (1969:12–13).

Any adult is familiar with at least some aspects of the cultural lexicon that styles violence and victimization as lines of collective identity. The "mythico-histories" of identities includes a semantics of violence and violent practices that is sometimes transnational, sometimes more local; I will not detail them here.[20] The details are not the point anyway; the point is to acknowledge where and how questions of identity become fused to official and unofficial licenses to harm. I use the term "semantics of violence"; I mean it as a reference to physical violence but also to hunger and homelessness and hopelessness, and the logics that make these seem inevitable.

Gathered under the theme of violence, do we converge on the far side of hope for law? Is this a requiem? Or a rallying ground?

The theme of violence is by no means the end of our conversation, but I do believe that it may mark a significant turning point in the way we organize our fields of inquiry around the meanings of difference and the limits of law. Specifically, the facts and fictions of violence push us to decide whether or not we accept the limitations of a concept of difference restricted to the present-day domains of the state's interests.[21] This is not merely a theoretical question but also a practical and ethical question of who is making equality for and with whom, and under what cir-

[19] Cf. Arendt's (1973:89-120) discussion of the Dreyfus trial as a public trial of the French state.

[20] The term "mythico-histories" is Malkki's (1995:52 ff.).

[21] Compare, for example, the liberal paradigms of containment explored by Sarat and Berkowitz (1994) and Griffiths (1986) with "polycentric" approaches discussed by Hellum (1995).

cumstances—of who is talking, and to whom, and who is listening.

If we are asking ourselves—as we must—what difference we want or expect law and society research to make, we can measure the distance between the criminal trial paradigm and what *we* know. It makes a difference to know about the affirmative solidarities of social groups, born of the experience of self-identification at specific historical junctures, as evidence of communities' abilities to initiate new and vital social forms for themselves and others. It makes a difference to know difference for its own sake—for all our sakes—and as integral to the unfinished work of democracy (see, e.g., Milanovanic 1992). The law is one site where equality can be made, and made to matter—but not the only one. We write for many audiences, none larger or more responsive than our students and colleagues. This connection is also part of what we make with ink.

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Equality's "now" is not a time but a collective looking forward. Equality's "here" is not a place but a collegial conversation, a mutual opening outward.[22] Our subject is constantly remaking itself, and we know more now than we once did about the ways state power and personal agency are mutually implicated. Making equality with words is a significant form of action, no mere irony; knowing that words alone are not enough does not cancel their importance.[23] In our projects, a weft of ink threads large-scale institutions to stories from below, making reflexive analysis political, extending democracy's surprises. We are, all of us, writing about what is for the sake of what might be. What we do with the feather of exactitude, with its lightness, defines us as individual scholars; it is also what makes our collective dialogue on law and society simultaneously an act of hope and responsibility.

Violence may have come to our agenda as a question of order and governability,[24] but as a question of equality it leaves us with a much longer agenda and a far wider geography—questions about material well-being, social participation, means and contexts of democratic self-expression, institutional improvisation

[22] Cf. Deleuze on his collaboration with Felix Guattari, as "[trying] to go beyond [the] traditional duality [of psychiatrist and patient]. . . . [T]here had to be two of us in order to find a process that was not reduced either to the psychiatrist or his madman, or to a madman and his psychiatrist." Quoted in Guattari 1995:97-98.

[23] Rather, perhaps it is irony if one defines irony in a way that makes explicit its political and even revolutionary potential, as does Hutcheon 1995:10-13 (on the interpretive attribution of irony as a social act). For Hutcheon, the attribution of irony combines an interpretation of meaning and an attitude (p. 11) that together constitute political agency, in the sense of creating a "transideological" discourse. From this perspective, there is no such thing as "mere" irony (registering the said against the unsaid) but rather the active insertion of meanings from one ideological frame into another.

[24] I borrow the term "governability" from Hermer & Hunt 1966.

and adaptation, the social organization of power, the mobilization of diverse forms of agency, struggles for social justice, academic freedom, among other sites and modes of renewal. The circulation of these ideas and forms draws our attention to nation-states and other spheres within, across, and beyond them; their routings include, but are not limited to, law. The meaningful ground for law and society research is—and has always been—the everyday contexts of legal and political experience that nurture an affirmative desire for difference (cf. Constable 1995; Coombe 1995).

Arendt (1968) identifies the affirmative desire for difference as itself a form of social knowledge built on the search for truth and the need for discourse (I leave her references in the original masculine form):

> [T]ruth can exist only where it is humanized by discourse, only where each man says not what just happens to occur to him at the moment, but what he "deems truth." But such speech is virtually impossible in solitude; it belongs to an area in which there are many voices and where the announcement of what each "deems truth" both links and separates men, establishing in fact those distances between men which together comprise the world. . . . [Should all men be united in their opinions,] the world, which can form only in the interspaces between men in all their variety, would vanish altogether. (Pp. 30–31)

And she evokes the kind of conversation she means, stating simply:

> [T]ruly human dialogue differs from mere talk or even discussion in that it is entirely permeated by pleasure in the other person and what he says. It is tuned to the key of gladness, we might say. (P. 15)

It is between individuals that such dialogue might most obviously be seen as an act of love; but it also extends to the classroom, the colloquium, collaborative authorship, the interview, reading and writing for others to read. It includes meetings like this one, and, I hope, a long series in the years ahead, here and abroad, each one absorbed in the next.

Tuned to the key of gladness, we come to these meetings to rehearse what we value for ourselves and others, and to share in the peculiar gritty hopefulness implicit in our craft. I believe we gathered under the theme of violence because it reminded us of something altogether different that we aspire to, and our knowing that our agency as scholars depends primarily on the collegial community gathered here. In short, this time, I think we came to this meeting because the theme of violence spoke to our collective conscience, and to our hearts.

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