THE CONSTITUTION OF SUBJECTS IN THE LONG REVOLUTION:
RACE, THE POLICE POWER, AND THE EVERYDAY SHAPING OF THE ENSEMBLE STATE

By

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To Henry (*ita ego dixi vobis*), and to Tiara, with tremendous love to both
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legislative competence for Wales. Dr. Drakeford’s contribution will doubtless rank among the most important in realizing and shaping the devolved future.

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TABLE OF CONTENTS

ACKNOWLEDGMENTS .................................................................................................................. 4
LIST OF FIGURES ....................................................................................................................... 20
ABSTRACT ..................................................................................................................................... 21
CHAPTER

1 INTRODUCTION ....................................................................................................................... 23
   Prologue ............................................................................................................................... 23
   Cara Navalis: A Brief Preliminary Excursus ........................................................................ 29
   Triangulating Constitutional Analysands: Legislation, Regulation, and Race ............ 35
      The British Constitution .................................................................................................. 35
      Police Power .................................................................................................................... 37
   Legisprudence ..................................................................................................................... 42
      Developing Legisprudence ............................................................................................. 46
      Of Law, Legislation, and Legisprudence ....................................................................... 47
   The Field and the Conceptual Field: Law, Regulation, and Rule Regimes in the New Britain .................................................................................................................. 51
      Policing Political Order: The Equalities Regime ......................................................... 56
      Policing Public Health: Medicolegal Therapeutic Regime ............................................ 58
   Subjectivization, Mediation, and Intersubjectivity ............................................................ 59
      S/subjects ........................................................................................................................ 59
      Mediation ........................................................................................................................ 62
      Intersubjectivity .............................................................................................................. 63
   S/subjects of Difference, Governing through Difference .................................................... 64
   The Public Square ............................................................................................................. 67
   Racing the Political Epistemic: Mainstreaming Equality and Some Results ................. 70

2 BRITAIN: ENSEMBLES, EMBLEMS, DILEMMAS .............................................................. 75
   The State and the Nations: Devolution, Territorial Politics, and Ensemble Relations ................................................................................................................................. 86
      Decentralization and the Welfare State in Britain .......................................................... 89
      New Labour and New Britain? ...................................................................................... 89
      Wales: A Case Study of Devolution and Territorial Politics ....................................... 95

3 SITUATING LEGISLATION IN A BRIEF SKETCH OF THE INTELLECTUAL HISTORY OF THE ANTHROPOLOGY OF LAW ............................................................................. 100
   Welsh Law: A Brief Excursus and Justification for Theoretical Practice ....................... 106
   A Brief Critical Review of Anthropologies of Law and Government .............................. 111
   Anthropologies of Law ...................................................................................................... 116
Integrating Analyses of Law, the Police Power, and Government .......................... 129

4 LEGISPRUDENCE: ENGAGING AND THEORIZING LEGISLATION ..................... 140

Ramifications ................................................................................................................. 141
Applying a Legisprudential Lens ............................................................................... 152
  Complexity .................................................................................................................. 154
Legal Technologies ........................................................................................................ 157
Legal Semiotics .............................................................................................................. 159
Legal Agency, Relations, and Practices ......................................................................... 162

5 LEGISPRUDENCE AS METHODOLOGY: CONSTITUTING AND MEDIATING
SUBJECTS IN LEGISLATED ENVIRONMENTS .......................................................... 165

Heuristic Legisprudence: Discovering, Learning, Problem-Solving ......................... 171
Navigating the Ethnographic Workday ......................................................................... 174
George Falstaff and the Rulebook: The Scalar Effects of Epistemologies of
  Ignorance ....................................................................................................................... 184
Cici Williams: Professionalizing the Social Work Student ............................................. 188
Fayez Bashir: Outcomes of Difference in Metadiscursive Practices ............................. 192
Linking the Ethnographic Workday with Methodological Practice ............................. 195

6 LEGISPRUDENCE AS ANALYTICAL FRAMEWORK: INSTITUTIONAL
RELATIONS AND MANIFESTING STRUCTURES THROUGH AGENCY ................. 202

Procuring Equality (or Fairness?) ................................................................................. 204
Mrs. Fei: Becoming a Stakeholder ............................................................................... 212
Stephen Lewis: Fictions of Belonging and Behaving and the Outsider Without .......... 222
Politics and Poetics ........................................................................................................ 231

7 LEGISPRUDENCE AS THEORY: POLITICAL EPISTEMICS, NORMATIVE
GOVERNANCE, AND DIALOGISM AND POLYPHONY ........................................ 235

The Workbench and the Workspace ............................................................................. 236
The Political Epistemic: Whiteness as Norm ................................................................. 240
Jennifer Gross: Calibrating the Politics of Inequality ................................................. 242
Idil and Miski Dourad ................................................................................................... 247
Normative Governance: Official Poetics and the Carnival Response ........................ 249
Ahmed Al-Sayyed .......................................................................................................... 252
Agency in the Theaters of Law: Language, Dialogism, and Polyphony ....................... 255
From the Street to the Assembly and Back Again ......................................................... 259

8 CONCLUSION: LONG REVOLUTIONS, POLITICAL EPISTEMES, AND
EVERYDAY ENSEMBLES ........................................................................................... 266

The Long Revolution in Anthropology ......................................................................... 267
The Long Revolution in Britain ....................................................................................... 274
The Long Revolution in Europe, or Government, Governance, Governmentality:
Normative Practices and Official Poetics.......................................................... 277
Baroness Davari: Walking the Constitutional and Political Hybrids.................. 283
Parliament’s Heir and the Barbarism at the Heart of the Modern Constitution..... 286

APPENDIX

A  DEMOGRAPHIC AND STATISTICAL INFORMATION........................................... 292

B  MAPS AND FIGURES ........................................................................................ 294

C  DEVELOPING LEGISPRUDENCE: A PERSONAL HISTORY AND EMERGING
   EPISTEMIC ........................................................................................................ 305

LIST OF REFERENCES ........................................................................................... 312

BIOGRAPHICAL SKETCH ....................................................................................... 346
<table>
<thead>
<tr>
<th>Figure</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-1</td>
<td>Map of Britain in Europe</td>
<td>294</td>
</tr>
<tr>
<td>1-2</td>
<td>Map of Britain with internal national boundaries</td>
<td>295</td>
</tr>
<tr>
<td>1-3</td>
<td>Map of South Wales and the South Wales corridor</td>
<td>296</td>
</tr>
<tr>
<td>1-4</td>
<td>The Assembly Estate</td>
<td>297</td>
</tr>
<tr>
<td>1-5</td>
<td>Cardiff Bay, the Pierhead Building, and the Senedd</td>
<td>298</td>
</tr>
<tr>
<td>1-6</td>
<td>The Senedd</td>
<td>298</td>
</tr>
<tr>
<td>1-7</td>
<td>Assembly Members crossing the skywalk from Tŷ Hywel to the Senedd</td>
<td>299</td>
</tr>
<tr>
<td>1-8</td>
<td>The Siambr</td>
<td>299</td>
</tr>
<tr>
<td>1-9</td>
<td>The Oriel</td>
<td>300</td>
</tr>
<tr>
<td>1-10</td>
<td>Overlooking Cardiff Bay and Penarth in 2009</td>
<td>300</td>
</tr>
<tr>
<td>1-11</td>
<td>Tŷ Gobaith and the “top” (north end) of Bute Street</td>
<td>301</td>
</tr>
<tr>
<td>1-12</td>
<td>Community mural in Butetown</td>
<td>301</td>
</tr>
<tr>
<td>1-13</td>
<td>Butetown History and Arts Centre</td>
<td>302</td>
</tr>
<tr>
<td>1-14</td>
<td>National Health Service Centre, Riverside neighborhood</td>
<td>302</td>
</tr>
<tr>
<td>1-15</td>
<td>Medical Assessment Unit, Llandough Hospital</td>
<td>303</td>
</tr>
<tr>
<td>5-1</td>
<td>The author at work as constituency caseworker</td>
<td>303</td>
</tr>
<tr>
<td>8-1</td>
<td>Parliamentary Estate in 2009</td>
<td>304</td>
</tr>
<tr>
<td>8-2</td>
<td>Parliamentary Estate, Westminster Bridge, and the London Eye</td>
<td>304</td>
</tr>
</tbody>
</table>
This study examines race and equality in Britain in the context of recent transfers of power from Parliament in London to representative legislatures in the regions of Wales, Scotland, and Northern Ireland. These transfers, called devolution, have dramatically altered the political and legal landscape and the political, cultural, and moral economies of Britain, bringing into existence novel practices of law-making, regulation, and governing.

Part of the drama of equality in Britain concerns the objectives of equality and related legislative strategies, and achievement of these objectives in various sectors, including public service delivery, industry, and government. These objectives and the routes to achieve them are newly inflected as a result of devolution and the capacity of the regional administrations to diverge politically and legally from the strategies implemented by Parliament. In order to innovate in the sociolegal examination of the seismic architectonic shifts that are occurring as a result of the constitutional transformation of Britain, I develop a methodological, analytical, and theoretical rubric
that I call legisprudence. I use legisprudence to analyze three sets of outcomes: political epistemics, normative governance, and the role of language in realizing stated goals.

Devolution is the most consequential constitutional innovation in Britain in the last century, and carries significant everyday consequences. One result of devolution is the new asymmetrical governing arrangements between London and the regions, relations which bring into question the nature of the British state. Formerly termed a “unitary” or “union” state, these appellations no longer seem quite sufficient to describe Britain’s politico-legal character, so I develop the idea of the “ensemble state” to depict the new constitutional settlement and disposition of Britain’s state personality.

In order to better understand the ensemble state, and the institutions, practices, and relations that manifest it, I explore a number of interrelated case studies involving political and legal elites, members of the professions in service delivery, and everyday people. These are fine-grained ethnographic portraits typical of the experiences and consequences of race bias and exclusion that I observed while conducting the research on which this study is based. By attending to the details of the tensions inherent with “race equality” duties and discourses, and focusing on dialogues and vernacular expressions of these, I illustrate the obstacles to and opportunities for articulating and achieving race equality in Britain.

The result is a constitutional ethnography, an ethnographic portrait not only of the human experiences of marginalization, exclusion, and exploitation, but of the constitutional order itself, and the role of non-elites in the actualization and obstruction of constitutional principles in everyday worlds.
CHAPTER 1
INTRODUCTION

It seems to me that we are living through a long revolution, which our best descriptions only in part interpret. It is a genuine revolution, transforming men and institutions; continually extended and deepened by the acts of millions, continuously and variously opposed by explicit reaction and by the pressure of habitual forms and ideas. Yet it is a difficult revolution to define, and its uneven action is taking place over so long a period that it is almost impossible not to get lost in its exceptionally complicated process (Williams 1961:10).

My interest...lies in the mobile interchange between the sovereign, Marxist, and postmodern conceptions of power, in the contrasts created by inter-transferences between them, in coordinating the syntactical flat style and the paradigmatic depth style into original vectors, through emphasizing semiotic positioning and movement (Sandoval 2000:77).

Prologue

In these pages, I tell a story. It is a constitutional story, a constitutional ethnography, if you will. It is a story about the “New Britain,” and struggles over equality. It is a story about imagining sovereign community, about the persistent reconstruction of liberal government and its rationalities, and about the regulation of social relations. It is a story concerned with the positive state, the forging of institutions, and the ordering of public life in the political commonwealth. It is also a story of powerful traditions of social governance, the routes to political change, management of public affairs, and the regulation of public and private life in the interest of the common welfare. In short, it is a story about the British state, the role of legislatures in the constitutional order, and the instruments of governance and administration known as “the police power,” or the fundamental power of government to administer the public welfare and regulate public order. I tell this story in part in order to build a new public anthropology, one oriented to the intersections of the social and the symbolic, the polity and society, and the “everyday conduct and consequences of government” (Novak 1996:9). The public
anthropology I imagine is also one that allows for the possibility of a humanism capable of envisioning a creative vernacular agency in the constitutional order and colonial legacies of the New Britain. This public anthropology is one attuned both to the constitution of public authority and its exertions in pursuit of order, civility, and regulated liberty, and to the transgressive potential of the popular and profane.

These elements in my story of “New Britain” meet in the public square (Bakhtin 1968), that ebullient topography of proximate spaces, of civic praxis and sidewalks, markets and transversal thoroughfares, inhabited by state and civil society in perigee, where hegemonies are brewed, where the public and private implode, where distinctions are mapped onto bodily dispositions, and the sensuous relations of the body to the world are strategized, apprehended, and enlivened (cf. Marx 1988). The public square is characterized by the polyglot languages of architecture, law, tradition, and commerce standing in connection with urban and national wholes, where structures and movement articulate and inter-generate, where cultural subjects, material objects and relations of exchange comingle in patterned, yet potentially startling ways. It is that space where the “sacred frontiers” of state and civil society, public and private, and law and society are transgressed, and in this transgression, this “barbarous reintegration” (Bourdieu 1984:6), new intelligibilities of subjecthood, of becoming, belonging, and behaving emerge and are constituted. It “brings together, unifies, weds, and combines the sacred with the profane, the lofty with the low, the great with the insignificant, the wise with the stupid” (Bakhtin 1973:123).

The public square is the collective space where citizens and others come together to generate common meanings, to make sense of shared histories and experiences, to
grapple with the understandings of membership, obligations, the nature of community, and the common good. It is “an open space traversed by men [sic] and things,” one of the “critical points in the territory which police [powers] will mark out and control” (Pasquino 1991:111). In the New Britain, the public square is a dense, opaque, cacophonous habitation which the political epistemic strives to surveill and tame through official poetics and the constructed hermeneutics of regulated order and civility, coupling the narratives and the practices of law with those of order. It is the commons mapped, delineated, adjudicated, and ordered according to the civilizing projects of bourgeois practice, oriented around particular understandings of social phenomena, yet not entirely contained by these practices. It is simultaneously an ordered and a transgressive space, a measured yet carnival space, where constitutional agency takes on unforeseen shape, where sovereign imaginings and everyday subjects encounter and transform one another. It is a paradoxical alloy of social forces.

Similarly, “New Britain” is a paradoxical signifier. It is both a new construction, legally, politically, rhetorically, and a very old construction. Its recent vita began as an idea, a legal and political idea, about ways to shape a “new” public square, a new legal and political culture and institutional framework for engaging subjects, and administering the archipelago state and its ensemble of proliferating relations (Blair 1997). It is a constitutional idea, vesting large scale reform with the mantle of sovereign integrity. It was offered by Tony Blair, first in 1994 as new leader of New Labour, and then as Prime Minister (1997-2007). Blair’s New Britain coupled modernizing discourses with a respected tradition of sovereign reconstruction, a tradition embedded in the genealogies of kings, Arthurian romance and chronicle, and an organicist constitutional narrative. His
construction simultaneously placed Britain in a very material history, and abstracted New Britain from the vagaries of that history. It also reconstellated the constitutional dynamics of sovereignty and positive stateness as an ensemble of relations and a new \textit{realpolitik} of externality (Europeanization and globalization) and internality (decentralization and devolution) (see Figures 1-1, 1-2).

As is characteristic of legal ideas, New Britain and the constitutional innovation required to achieve it were ideas in action, performative ideas which make things true just by saying them (Bourdieu 1987). Engrossed in legal and political texts and orations, the elements of the New Britain and integral constitutional reform came into being and produced their own effects. Idea, language, institutions. And subjects. New Britain is not simply a set of legal and political structures, objective structures really existing in a cold, hard, real, calculable world; it is also a new array of subject positions and subjectivities, new powers to interpellate and new interpellations, a reconfigured human framework upon which are hung speaking roles, authorizations, the state and its agencies, and the demos, arrayed along the razor edge where I write, between domination \textit{by} law and resistance \textit{to} law among its creative agents on the parquet of the Commons and on the thoroughfare of the commons.

My analysis of this framework centers on the artifice of the \textit{stakeholder}, the fin de siècle successor to the enterprising subject, and on the civic assimilationist idiom of \textit{fairness}, a genre which intends to bring together, and express, a restated commitment to, public and social values, collapsing multiple forms of equality (access, opportunity, outcome), and aiming to remediate social exclusion. This medley of ideas blends
“traditional” British concerns with continental covenants, recapitulating historical antecedents, and illuminating the depth of British embeddedness in European flows.

The stakeholder represents reciprocal investments between one and society, and inhabits a represented and phenomenological world where symbols and socialities, communities and bodies, texts and people come together qua the New Britain. Fairness transmutes the juridical principle of equality, and represents the embedding of multiple inequalities in a vision of integration, cohesion, and the “inclusion agenda” of New Labour (Williams and Johnson 2010). Taken together, stakeholders and fairness are the face of the “modern” constitution in the New Britain, a face which belies the barbarism at its heart (Taylor 2001). This barbarism resides in the tensions of law and forms of violence, and efforts to negotiate these tensions (Benjamin 1996; Derrida 1990). I contend that constitutional politics are deeply invested in this negotiation, that the police powers are an integral tool of liberal constitutionalism, and that the management of difference, specifically race and its cognates, is one of the key historical projects that has shaped constitutional coherence and driven sovereign ambitions. Race, the police power, and the legal, political, social, and cultural practices of constitutional ordering are interleavened in the political epistemic of the New Britain (Glaeser 2010).

I argue that both abstractions, the stakeholder and fairness, constitute a rehabilitated (liberal) political epistemic, the response to a putatively “realistic” understanding of the nature, role, and place of difference in the public square and in the means-ends calculus of liberal governance. Together, the stakeholder and fairness are intended to provide cover for sustained manifestations of inequality and discontent arising from the bodily presence of Others on the archipelago, and to allay the ginned
up twenty-first century fears of “too much diversity” and the perceived “attack on Britishness” that the “rise and rise of multiculturalism” has wrought (Goodhart 2004).

This process in recent years has often been narrated as the “erosion” of the “common sense of citizenship, trust and reciprocities so fundamental to a risk-sharing welfare system” (Williams and Johnson 2010:29). This narration, this political epistemic, guides both official and everyday actions, claiming the normativity of “common sense” (Rosenfeld 2011), bringing forward “the problem of the color line” (Du Bois 1903) and joining it to “the key problem of the twenty-first century [which is] the issue of how we can live with difference” (Hall 1993a). My constitutional ethnography then, is concerned with “the continuing significance of racism as a social and political phenomenon in contemporary Europe and other parts of the globe” (Solomos and Schuster 2002:43), and with the constitutional, legislative, and regulatory tools used to simultaneously emphasize and sublimate race as a constituent of the political epistemic. I conclude that New Britain must recognize and acknowledge the variegated ways it participates in the “new racism” of twenty first century Europe (Evens Foundation 2002).

Stakeholder society and fairness articulate a particular retargeted vision of common values and of Britishness itself. Working through the figures of stakeholder and fairness, New Labour, New Britain, and new Britons, are engaged in multiple struggles in the wars of position aimed at “equality,” “cohesion,” “justice,” and “inclusion” (Gramsci 1971; Hall 1988b). These struggles, and the contested sovereignties that are a significant dimension of them, are sublimated in official poetics by “efforts to promote equality, to achieve fair outcomes for everyone”; by outcomes that “avoid the perception that some groups are singled out for special treatment”; and by outcomes based on “the
over-riding message … that regardless of class, race, beliefs or anything else: in every community, in every corner of the country – we are on people’s side. No favours. No privileges. No special interest groups. Just fairness” (Department of Communities and Local Government 2010:12).

This, then, is the nucleus of my constitutional story: to illustrate the archipelagic ambitions of New Labour for the once and future New Britain, and how new constitutional, institutional, and experiential orchestrations have emerged to give expression to some of these ambitions, and to frustrate others. The dominant representation is of the stakeholder society enacting fairness in the public square through the instruments of regulation and under the aegis of the “modern” constitution. The process is less deliberate than all that, of course. But law, here understood as constitutional, statutory, and regulatory rules and practices, and as “the class of acts of naming and instituting,” is the “quintessential form of authorized, public, official speech” which succeeds because it has the power to make itself “universally recognized” (Bourdieu 1987:838). Complementing Bourdieu, I insist that law is also a primary cultural field in Britain, an essential and foundational sign system through which British folk understand and explain themselves, their nation, and their histories. This is where I begin, with the phenomenological experience of the logics of (liberal) regulation and legislation, the strategies of constitutional order, the mechanics of legal technologies.

**Cara Navalis: A Brief Preliminary Excursus**

We ambled, Cara Navalis¹ and I, looking to pierce the core of (new) Britishness. We found ourselves on the Gower coast’s undulating, hillocky seaside, a crisp wind buffeting us, jackdaws hanging stationary in the bluster. I had asked her to explain life in
Britain, to tell me how British folk explain themselves to themselves. She rubbed her hands together, closed one eye, pursed her lips.

“For the British -” her emphasis, “- its government, the tiers of government from the local mayor to the magistrate and Queen. That's what makes Britain whole, and has done since Alfred [the Great]. But if you ask me about the nations of Britain, that's a different story. In England it's the garden. English soil and the English garden. For us Welsh, most people will tell you it's our language and culture, but I'll tell you it's our socialism, our community. In Scotland it's Scotland itself. And for the Irish it's the sense of distinction, of standing out among the nations. These are how we know ourselves.”

We mooted this order of signs and the definitions of character as we ambled, circling around the symbolism of these images, connecting them with the public practices of law, politics, ethics. For my part, I sought to know legal reason enchanted by the properties of culture and culture enchanted by the lie of reason, and the national and civic inflections of these enchantments, the principles of liberty and equality in the constitutional fantasy. Cara humored me in my endeavor. Together, though for different reasons, Cara and I sought a new hermeneutic, one that could provide a handle for the emerging scales of being, ways of being, and the constitution of political order in the New Britain.

Ours was an effort to understand ourselves, and the new world in which we found ourselves sharing space and time. A new world, insistently called “New Britain” by some, in which self-government and freedom were at stake, and in tension with remade visions of public welfare and order. This was a new world of the rule of law antagonized by the conflicts of the public and social with the private and economic, a new world of
state and civil society relations, where stakeholders bestride the institutions of governance, fairness, equality. These new relations are being (re)structured along new tendential lines of force and the suspension of human beings in between, asymmetrical suspensions that sustain relations of race and class, citizen and immigrant, as well as those of gender, age, mental disorder, and others. Asymmetrical suspensions that marginalize, but that can also beget creative agency.

Perhaps then, not so new. Certainly not a ruptured world, but a new configuration on the long path of transformations that constitute Raymond Williams’ (1961) “long revolution” and the “great arch” of cultural revolution argued by Philip Corrigan and Derek Sayer (1985). On this path, amid these reconfigurations, Cara and I sought out the anaphora of ex-centricity, the paths and repetitions that announce, sublimate, and suppress difference, subjechood, becoming, belonging, and behaving. How does a new legal and regulatory regime take root, in the soil, in the heart, in the memory, in the body politic, in its movement toward emblematicity? What relays convey the newness of a “new” Britain, a “new” Wales, a “new” Scotland, and “new” institutions and objects of governance? Of the new requirements of order and civility? How does the image become appearance, and the appearance reality?

The British state and its institutions are transforming, the old social hierarchies being overthrown, enabling the festival imagination of new national futures. But how does the state, through its government, its public reason, and its legal acts, shed enough of its present culturality to convert (revert?) to a different culturality, to renewed and remapped spatio-conceptual apperceptions of selves, communities, nations? What happens interiorly to these new spatio-conceptual cosmos and the human integuments
that hold them together? In these transformations, what is the nature of rules and of government? How is governing accomplished when a prior way, the unitary state, gives way only partially, incompletely, directionally to a novel way, the union state, or more precisely, the ensemble state? The M4 motorway, Great Northern rail, and coastal waters still link London and the South Wales corridor (see Figure 1-3), not merely as transport infrastructure, but as symbols of communication; not only as particular authorized channels of mobility of persons, ideas, and governing practices, but as ciphers of plural consubstantiality, and a particular relation of domination, albeit one that is under duress, and yielding to multivalent demands. What happens when the fluid conduits of historic membership in the Commonwealth and the challenging inflections and multiple voices of language or culture or socialism find both soothingly conventional and disruptively novel expression, and are given form and outlet in the new institutions, practices, and legal politics of the ensemble state?

The coercive monopoly and legal unity of Britain have been transmogrified in the New Britain, into an asymmetrical political and legal order with a renovated structure of national-territorial presences and voices. This is the constitutional story I seek to tell, or one part of it, anyway. I went to Britain to learn how monopoly and unity have been altered, how the tendencies and asymmetries and suspensions work in practice, and how the new symphony of emerging nationhoods is being scored and orchestrated in the new settlement, by whom, and with what consequential effects. My elemental research questions were concerned with the reconfigured relations between the social and the symbolic in Britain, relations restructured through the everyday practices of governance and regulatory action, and experienced in the daily banal. Cara was among
my first interlocutors, among the first to listen to my (somewhat inchoate) hypotheses about regulation and public order, constitutional change and agency, equality and fairness, and the concerns of legal anthropology. She was the first to laugh unreservedly at my tentative graspings for “the meaning of change and of all things British,” as she referred to my project.

The laughter was not derisive, nor was her summation: “I needn’t remind you that the world is filled with things that seem not to be connected but are. I know what the New Britain is because I’m hooked in to it, because I’m a stakeholder” she had enunciated with a wink, an ironic gesture to the political ambition and to the actual networks, the rhizome, of everyday intersubjective relations in which she finds herself as a “seller in the Sunday market, a Welsh woman, a Briton, BME [Black and Minority Ethnic], the mother of a disabled son, daughter of a mother with dementia, a carer and worker, and a thorn in the side of my Assembly Government.” The rhizome into which she is hooked, the stakes that she holds, connect her to the institutional framework of regulated society, struggles for equality, and the renovations enacted in the names of Europeanization and globalization, of modernization, and of decentralization and devolution. These also connect her to multiple sets of becoming and belonging, to many overlapping and compound communities of identity and alloyed categories of affiliation. This is the new constitutional settlement in the New Britain, aspirationally a long-delayed return to the regulated society of local self-government, of subsidiarity and municipal rights, of common sense and common law, a Renaissance of civic humanism tempered with the liberalism of Locke and Mill, the antagonized local dimensions of public law and constitutional politics. Within this order of signs, Cara found herself, like
others, as a “responsibilized” stakeholder and as an agent of fairness and the fairly regulated society of the new modernized constitutional settlement (Levi and Valverde 2001).

“Being Welsh has always been a political act, and so has being Black. We’ve always been a concern, in need of civility and proper order.” Layers of belonging embedded in a newer sense of becoming and propriety, attributes which simultaneously raise her in relief, and situate her in a condition of regularity and normality. An outsider within, with multiple inflections (Harrison 2008).

_Civility and order_. My heart and brain skittered when she spoke these words, these key concerns of mine. I learned much from Cara, and she conveyed a close knowledge, both in our talks and in her actions, of the rules, rights, duties, and expectations that were newly tied to the territories of transmogrification, the agencies of subjectivization, the jurisdictional work, the ordering of mobilities, and the instrumentalities of governing, of regulating, the new social and public order. Through her personal struggles, and those shared with members of her communities of identity, Cara clearly engaged with the new relations of New Britain, a synecdoche for the ensemble state and the embodiment of the “new” Britain, the “new” Wales, the new institutions of public practice and civic virtue. I went looking for the empirics and epistemics of the relations of race and mental illness with governance and regulation. I found Cara and a host of other magnificent people willing to share with me their experiences of racialization and of mental disorder, of equality and fairness, or having a stake in the constitutive discourses and public practices of the (new) political and legal tradition in (New) Britain.
Triangulating Constitutional Analysands: Legislation, Regulation, and Race

What I offer in this dissertation is a triangulation of constitutional elements; that is, of elements of my constitutional ethnography: legislation, the police power and regulation, and race. I borrow from John and Jean Comaroff to think of these frames “not as analytic constructs but as concrete abstractions variously deployed by human beings in their quotidian efforts to inhabit sustainable worlds” (2009:21). That is, I use my triangulations in an emic sense, getting at the ways these abstractions are involved in the processes of the production and inhabitation of identity and subjectivity, among numerous and variously situated types of person. Let me briefly address each term.

The British Constitution

Some wonder whether such a thing as the British constitution actually exists. There is no single charter document, no founding moment, no originary legal instrument brought into effect in British (or English) political history. There is no statute or other legal text superior to all others. The law courts recognize and rely upon certain documents, provisions, rules, and conventions as constitutional on account of their antiquity and articulation of principle, but this is largely a matter of the search for “clinching argument” or the “grinding of political axes” (Johnson 2004:1).

The skeptical view is the minority view, however, and it is generally well accepted that Britain does indeed have a constitution, a constitutional order, and a well-developed body of constitutional jurisprudence. The absence of a founding charter leads to a variety of conceptualizations of the British constitution: it is unwritten, it is piecemeal, it is scattered, it is a political (rather than a legal) constitution (Barendt 1998; Raz 1998; Sartori 1962). Current fashion tends to favor the conclusion that the British constitution is (1) uncodified; and (2) organic (Johnson 2004; Wicks 2006). There has been much
discussion of the “unwritten” British constitution, but the general current legal consensus maintains that it is better to think of the constitution as uncodified: constitutional materials most certainly are written, they are not, however, codified in a single document or set of documents (Wicks 2006).

The notion of the “organic,” or “historic” constitution is usually attributed to Albert Venn Dicey, a major nineteenth-century figure in British law and constitutionalism. While Dicey did not use these terms in his major work Introduction to the Study of the Law of the Constitution, he did argue that the British constitution was “not created at one stroke,” and that is was distinct from “foreign constitutions” (Dicey 1908:192). From his discussion, the constitution has come to be labeled “organic” and “historic” because it “was original and spontaneous, the product not of deliberate design, but of a long process of evolution” (Bogdanor 2005:74). The metaphor of “organic” is thus used to indicate the idea that the constitution was allowed to grow naturally, rather than having been “built” (see e.g. Sidney Low 1904; Adam Tomkins 2003). J.G.A. Pocock suggests that constitutional organicism is linked to the principle in English historical thought of an organic connection between the past and the present (1987:245).

The British constitution thus exists as texts, as (represented) image, and as experience (Wormald 1998), and cannot be abstracted from the sweep of British history and the sovereign fantasies that have characterized that history (Ingham 2001). What it boils down to is the ordinariness of the British constitution: the granular presence of its order of signs in everyday life, its inseparability from ordinary legislation,2 and its regulatory implications, implications that are both legalistic and Foucauldian. In other words, the British constitution, or perhaps better stated, the British constitutional order,
is a disciplinary, epistemic, and philosophic essence which grounds state action and the administration of the public good, as well as British (and connected Commonwealth) identities and ways of knowing the self as subject. The constitution thus authorizes the police power, which I insist is central to constitutional law. In my reading of British constitutional principles, actions, and history, I think of the British constitution, like Frank Michelman, as an ensemble, of monumental elements, including Magna Carta, the Acts of Union, and the Bill of Rights of 1689, but also of common statutes and political conventions that authorize the quotidian activation of constitutional operations (2006). The ensemble constitution is a key underpinning of my formulation of the ensemble state, about which more below.

**Police Power**

The police power “is the central institution of modern society” (Farmer 2006:161), an institution and set of activities that are “obviously a central part of state power and thus integral to civilized life” (Neocleous 2006:17). William Blackstone identified the police power as essential to the “Laws of England,” and called the “public police and oeconomy” the “due regulation and domestic order of the Kingdom, whereby the individuals of the state, like members of a well-governed family, are bound to conform their behavior to the rules of propriety, good neighbourhood [sic], and good manners; to be decent, industrious, and inoffensive in their respective stations” (Blackstone 1979:162, emphasis in original).

Adam Smith defined the police as “the theory of the general principles of law and government” (1978:398). Hegel, somewhat more prolixly, asserted that the police power “provides … the actualization and preservation of the universal which is contained within the particularity of civil society, [and it does so] as an external order and arrangement
for the protection and security of the masses of particular ends and interests which have their subsistence in this universal” (1991:269-270, emphasis in original). For his part, Marx considered the police power to be “the supreme concept of civil society,” (Marx 1972:104) which sounded the “knell of the exercise of liberal bourgeois power” through the “principle of legal relation,” that is, the articulation of “things which are organically related into an accidental relation” (Marx 1993a:88).

Foucault’s corpus of work is deeply concerned with the nature of the police power and his various attempts to make sense of it. At one point, he states, “The police power includes everything” (Foucault 1979:319). In his formulation of “discipline,” the police power comprised the “totality of measures which make work possible and necessary for all those who could not live without it” (1988:46). Sometimes Foucault distinguished police power from the reason of state, as in *Omnes et Singulatim*; sometimes he argued that the police power was the expression of the *raison d’Etat* (2010a:5), as that thoroughgoing dominance which “links the absolute power of the monarch to the lowest levels of power disseminated in society,” (1991:215).

Echoing Hegel (and invoking Rousseau), Michael Hardt and Antonio Negri focus on the relationship of sovereignty and the police power. They state that sovereignty is “a political machine that rules across the entire society,” and “also a police power” which “must continually and extensively accomplish the subsumption of singularities in the totality, of the will of all into the general will” (2000:87-88). Hardt and Negri’s formulation brings us more or less full circle, back to the concerns of the nature of the state, the exercise of state power, and the essential function of the police power in hypostasizing the state.
Across centuries, then, from Blackstone to Adam Smith, to Hegel, to Marx, to Foucault, to Hardt and Negri on the threshold of the millennium, the police power has been recognized as a key technology of government and of the production, reproduction and maintenance of social order. During the twentieth century, however, the concept of the police was transfigured from one which captured the range and breadth of the complex of technologies of power comprising *raison d’État*, to one narrowly concerned with law enforcement institutions, the body of uniformed officials, and the disciplines of criminal science. In this dissertation, I take up the challenges of restoring a larger sense of police power and police science; of inquiring into the nature, scope, and operation of the police power (Dubber and Valverde 2006); of theorizing the specifics of its deployment and effects, especially as regulatory power (Neocleous 2006; Novak 1996), and of registering its basic constitutional role.

As the materials above suggest, the police power is a complex technology and set of activities that impinge on the relation between the state and civil society, on issues of work and working classes (including their making), on processes of othering and of racialization, and on the role of law in the implementation of police (i.e. regulatory) initiatives. It has an evolutionary trajectory, implicating both absolutism and liberalism, as well as neoconservatism and neoliberalism. At its most fundamental, the police power entails the concern with *public order and civility* (in the typical formulations found in Britain and Canada), or with the *health, welfare, security, and morals of a population* (in the US legal formulation) (Valverde 2006). It is more usefully considered as a set of activities than as an institution, activities that, since the bourgeois revolution, have sought to fix the security of property and the structure of wage labor; activities that both
produce and seek to resolve the tensions between public and private relations; administrative practices concerned with spaces, with groups, and with the production of proper, that is, orderly and civil, behavior.

The materials above also demonstrate that there is a relationship between sovereignty and police power, but not an identity. Sovereignty and police power are not isomorphic, and while “sovereignty without the power to police” may in fact be “no sovereignty at all,” it cannot be said that only sovereign bodies are capable of governing through the exercising police power (Dubber 2006:109). The materials above also illustrate Agamben’s misstatement that “the concept of sovereignty has been … introduced into the concept of police” only relatively recently (Agamben 2000:102). Police has been an enduring conceptual and practical instrument for imagining and constructing sovereign ambition, and for organizing and exercising power, manifest in highly variegated modes of that exercise, imbricating multiple sets of agents in the designation of objectives and implementation of projects to achieve those objectives. Its reduction in the twentieth century has impoverished our understanding of the nature and scope of power (especially in the sense of social power and the extension of state power into the spaces of civil society), its exercise and productivity, and the myriad ways that subjectivities and power interact.

Recovery of police instruments has dangers, however. In its origins, the police power was conceived of as by its nature “inevitable and limitless” (Neocleous 2006:19). It is often linked specifically with emergencies and executive privilege, and the unilateral exercise of executive authority. Such breadth, while evocative and suggestive, diminishes the value of the police as a conceptual instrument, and so we need to
articulate forms of specificity, establish some links between the police power and actual institutions, practices, and forms of agency that it enables or disables (Neocleous 2006; cf. Novak 1996; Tomlins 1993; Valverde 2003b). Specificity on this order will facilitate closer analyses of variegated practices of power and the situated and urgent struggles these produce, from personal encounters, to moral exhortation in the public square, to transactions in markets and civil society, to formal state regulatory applications.

Anthropological examinations of hegemony, colonial strategies of rule, biopower, discipline, governmentality, and policy provide some signposts in a search for specificity, but insufficiently consider (1) the relations between police, law, and political administration; (2) legislation and its fruits; and (3) the constitutional (and constitutive) role of the police power. The specificity I seek finds expression in the connections between government, legislation, and regulation, elements that are integral to the administration of the state and civil society, and the management of spaces and populations and their attributes.

To locate this specificity, I triangulate the constitution, legislation, regulation, and race. In a nutshell, my analysis has its genesis in the welfare state (and ongoing reconstructions of it), and the place of race and health in the administration of welfare regimes. I argue: (1) that the production of social order is a key aim of liberal political and legal cultures; and (2) that in Britain, the police power, exercised through legislation and regulation, instrumentalize particular concepts of race and health and the appropriate practices of administration of these; so as to (3) bring about desired objectives identified with “order.” To provide nuance to this proposition, I also argue that
the macro-projects of social order necessarily entail micro interactions, and it is through these intersubjective interactions that the technologies of power achieve their traction.

**Legisprudence**

Triangulating the relationships between constitution, legislation, regulation, and race is an important development in the anthropology of law, and new tools for this project need to be developed, explored, and elaborated. This is one of my main objectives. At issue are: institutionalization, and political and institutional contexts; the origins, emergence, and scope of the police power, its modes of exercise, and the ways in which it is limited; and the ways in which the police power is activated and its goals achieved (Tomlins 2006). The majority of sociolegal scholarship on the police power and police science (*Polizeiwissenschaft*) has concentrated on criminal law, which necessarily co-locates the police power with jurisprudence, the uniformed police and penal institutions, and academic criminal science. Along with Dubber and Valverde (2006) and several of their contributors, I want to shift attention away from criminal law and jurisprudence, toward constitutional order and the matrix of legislation – regulation. What may appear as slippage between constitution and legislation needn’t detain us here, for two reasons. The first is that *legisprudence*, the set of tools I propose and develop, is, in the most generic sense, focused on positive law. This entails constitutions, statutes, regulations, and other posited forms of law, and so legisprudence as I intend it can easily cognize these varieties. The second is that in the British context, there is no bright line between constitutional law and ordinary legislation, so there is no need to parse whether legisprudence is applicable to constitutional analysis.
Legisprudence *in nuce* is a set of frames for inquiring into, analyzing, and theorizing legislation and its positive kin as texts, as rules, as discourses, as representational and literary practices, as technologies, as relational, and as productive of consequential effects which formally and performatively fabricate new forms of subjecthood and interpellate new subjects. Legisprudence in my formulation is concerned with the ways legislative and regulatory technologies are used to bring about a particular public order, to discourage particular types of disorder, and to (at least normatively) bring about a certain type of civility. It also facilitates the triangulation of constitution, and the matrix of legislation – regulation as the core of the police power.

This approach to the operations of law and government is distinct in recent sociolegal scholarship, and unique in the anthropological literature. This uniqueness stems, in part, from the anthropological tendency *vis-à-vis* law to ignore legislatures and privilege jurisprudence (but see, e.g., Gershon 2008; Gershon 2011; Greenhouse 2005; In press; Lazarus-Black 2001; Moore 1984; Schneider 1998; see also Weatherford 1985 for an early exception which examines the US Congress). In political analyses this privileging takes shape as discussions of sovereignty; in legal analyses it takes shape as dispute resolution. More recent anthropological engagements with the concerns of jurisprudence have considered security (Eriksen, et al. 2010; Feldman 2005; Lakoff and Collier 2008), criminality (Clarke and Goodale 2010; Comaroff and Comaroff 2006; Schneider and Schneider 2008), and the rule of law (Mattei and Nader 2008). These are important studies, but they sustain the disciplinary elision of constitutions, legislatures, and legislation as analytical objects (although there are useful exceptions regarding constitutional analysis in Comaroff and Comaroff [2006]).
The distinctiveness of my approach is my divergence from the common assumption that law, properly, is the privileged prerogative of the state and of political elites. I also counter the familiar assumption that legislation is both suspect and beyond the ken of anthropologists. Attention to recent developments in Britain and Europe frustrate these notions, and productively so. Directing our focus to the everyday practices and consequences wrought through legislative and regulatory enactments can help to illuminate the intersubjective, interpersonal, and deeply humanized relations which characterize legislation and regulation, which I arrogate to the province of legisprudence, and which augurs the patriation of legislation to the anthropological imaginary.

More precisely, my concern is with governing through difference in the present historical moment, and with the conjugation of the discourses and practices of legislation, the police power, and economy vis-à-vis the administration and management of forms of difference. I ask how civil government pursues its objectives, what rules are deemed necessary to the achievement of those objectives, and what agents are interleavened as necessary participants (cf. Tomlins 2006). That is, governors seek to achieve a particular public and social order, proper forms of behavior, and the “general welfare”; I argue that in Britain, these efforts are based largely on the (historical and contemporary) conceptual constructions of difference, including categories of race, ethnicity, multiculturalism and related forms of pluralism, as well as the other symbolic hierarchies, including gender, age, mental illness, heterosexism. My argument is contrary to the odd suggestion that Britain is “known historically for its indifference to difference” (Comaroff and Comaroff 2009:17). This argument begins to
answer the question, How do the constitution, legislation, the police power, and
government coalesce in the everyday administration of designated public, political, and
social goals?

This is less obvious than a superficial reading will appreciate. In the first place, this
coalescence is not static or uniform. Rather, it is an achieved, hegemonic conjuncture of
interests, means, and ends. This hegemony needs to be rendered in its full complexity,
in order for us to apprehend “the very important transformations in the state and state
institutions that are now taking place” (Dezalay and Garth 2002:311). In the second
place, the matrix of legislation, regulation, and government is not straightforward. It is
not a matter of sovereignty and the coercive state of the Weberian imaginary; nor is it a
matter of rule-promulgation and rule-obedience. Rather, it is a matter of continuously
negotiated everyday practices that take shape from circumstances. This shape-taking is
not an objective or functional process of legal practices reflecting extant real conditions,
but one of ontology, of mutual constitution, in which knowledge, law-making, enactment,
objectives, and circumstance come mingle, immanently co-producing one another, the
legal, political, and social equivalents of Heisenberg’s atoms.

In the third place, the coalescence I examine is not universal. Rather, the
modalities of the exercise of police power differ between and within states and polities.
Thus, Britain, by way of example, does not implement police projects necessarily
similarly to France, the European Union, Japan, Brazil, South Africa, or the United
States. Nor is Britain characterized by a particular relation of law and the police power,
but by variegated sets of practices and regimes, so that governance from London differs
from that at the level of regional administrations in Cardiff, Edinburgh, and Belfast.
These inter- and intra-state differences share historical linkages, such as imperialism, (post)colonialism, and globalization, but these do not produce, necessarily, identical understandings or enactments of projects of ordering and civility. Finally, the achievement of the coalescence and reactions to it are the result of struggle taking place in multiple sites, and at multiple political and social levels.

**Developing Legisprudence**

The approach I begin to develop needs to be understood in terms of my primary interest in official and formal\(^4\) law; that is, law that generally goes by the names of positive law, written law (*lex scripta*), or codified law. Positive law in general includes constitutions, legislation, and subsidiary forms, including delegated or secondary legislation, regulations, administrative rules, statutory instruments, standing orders, rules of procedure, and so on. For my purposes, I use legislation and its adjutant, regulation, throughout, and highlight several important facets of the analysis of these: institutions, infrastructures, relations and practices, the variety of legal instrumentalities, legal technologies, and the everyday operation of government. I weave these several threads together in the fabric of a narrative that holds that law generally, and legislation more precisely, are historical and ethnospecific products; that it is, law is contingent, situated, cultural, and ideological, elements which are “materialized in concrete practices and rituals [and which] operate through specific apparatuses” (Hall 1988b:46).

Legislation is also inescapably relational, intersubjective, and dialogic. In my formulation, the historical, ethnospecific, and dialogic production of legislation is not only an elite prerogative, but rests on a polyphonic foundation which encompasses the demos, the public square, and everyday interaction (Bakhtin 1968).
Law, or in fine, legislation, is also born of struggle. Just what this misleadingly simple statement means lies at the heart of my thinking and research. What constitutes struggle, and what is the nature of struggle? Who struggles, and why? Under what circumstances? Against whom? For what? With what outcomes? What I learned from my field research is that the struggles involved in law-making are hegemonic, that legislation is a site where struggles between dominant collectives and marginalized actors is played out in manifold ways and space, a site in which multiple forms of difference, belonging, and becoming are accommodated and contested: nation, language, class, race, ethnicity, gender, age, mental disorder. These struggles engage a much wider set of actors, occupy a much broader sociopolitical topography, and implicate a much more variegated set of interests than I had anticipated. What is at stake in the production of legislation is more than merely social order, morality, culture, or safety; more than merely the domination of one historic bloc over another. What is at stake is the ensemble state itself, how life is properly lived, and the designation and instrumentalization of particular forms of order and civility for the achievement and justification of political objectives (Rose 2006). A fuller account of my development of legisprudence appears in Appendix C.

Of Law, Legislation, and Legisprudence

The main lineaments of this project arose from my interest in systems of meaning and of signification, and the experiences of self and agency within these systems. I conceive of law as one such system, along with science, music, religion, mathematics, art, kinship. These systems of meaning and signification, in their cross-cultural manifestations, share a universality of some sort, yet each is ethnospecifically distinct and locally bedizened, not merely in a relative sense; nor merely in the sense of
variations on a theme; nor merely in the sense of analogous mechanisms for knowing or conveying knowledges; nor merely in the sense of more or less authentic monodies flowing in various global scapes; but as unique and polychromatic ontologies, humanly enacted chiaroscuros bustling about in the welter of the making and enlivening of social worlds, and of representing and living these social cosmographs. Law, to date, has received little ethnographic attention in this way, and legislation virtually none, although promising and suggestive bits are sprinkled throughout the anthropological literature (Coombe 1998b; Geertz 1972b; Mandel 2008; Thomas 1996; Turner 1957) and in related disciplines (Fitzpatrick 1991; Kahn 1999; Pottage 2004; Thomas 2004; Wagner, et al. 2005). I examine the nature and role of legislation, in order to offer tentative suggestions and develop possibilities for remedying its absence in the literature.

My work with law and legislation rests on two fundamental beliefs. The first is my belief that words and ideas are historical phenomena and primary social drivers, as dynamic and powerful as social relationships and material reality. They shape human experience, relations, bodies, consciousness and its communication, and the social wholes in which we live and act (Beaulac 2004). The second is my belief that law and legislation matter, that the encounter with law and with legislated environments is powerfully constitutive of the social and of the self. I bring these two beliefs into conversation and explore their mutual relations as a crucial dimension of my overall research concerns, which this manuscript begins to address.

These two beliefs transmute into the propositions that words both represent and constitute reality and personhood, and that the use of words in law represents and creates reality and personhood in certain determinate ways. These propositions then
assemble into hypotheses regarding the interactions of wholes and parts; the exercise and relations of power and power-holding; the role of categories as instruments and as technologies of both Othering and self-making; the social division of labor and inequalities; and the social and intersubjective activeness of ideas, words, and thinking. If social reality is represented and shaped by words and ideas, then changes in words and ideas will produce changes in social reality. One place to test this formulation is in the domains of legislation, regulation, and government under conditions of substantial social, political, and legal transformation. This is precisely what has happened in Britain in the last decade and more, and thus my decision to design and conduct my research in Britain, and my focus on Wales as an ethnographic laboratory.

This dissertation is thus an ethnography of law concerned with legislation and its relations with (social) power, language, and ideas, as well as its role in shaping human consciousness, and the constitution of personhood and reality in circumstances of significant sociopolitical change. My work contributes to social and cultural theory by (re)habilitating constitutional orders, legislation, regulation, and government in the anthropological imaginary, to demonstrate their participation in the realms of human life that concern the discipline. In order to get at these issues, I focus on the problem of difference, in two registers. The first is difference at the national, or territorial level, attending to Wales as both a constituent of Britain and a novel political actor with new competence to design divergent national policy and shape its jurisdictional and territorial environment. The second is difference within Wales, and the role difference plays in Wales’ development of self-government. These forms of difference, and their interactions, will be examined through two related yet distinct legislative agendas and
policy strategies. The *medicolegal therapeutic regime*, which focuses attention on difference at the level of Wales; and the *equalities regime*, which focuses attention at the level of Wales’ interior.

This focusing should not give the impression of mutual exclusivity: for example, the medicolegal therapeutic regime entails difference within Wales, as well as difference at the national-territorial level. I position it primarily in terms of the nation because the management of the NHS Wales and public health more generally is a key point at which policy divergence has taken place in Wales, as a functionality where Wales has clearly distinguished its priorities and preferences from those of its national-territorial sibs in the ensemble state. Likewise, the equalities regime transcends national-territorial boundaries in Britain, but the conceptualities of difference, namely race and ethnicity, and the management of difference have their own specificity within the remit of the National Assembly for Wales and the Welsh Assembly Government.

In addition to de-transcendentalizing forms and instruments of rule, there are additional particulars that distinguish this study of devolution, law-making, regulation, and the everyday conduct of government. Wales is not a state in any conventional sense, and so analytics of the state need to be problematized in order to be useful. In devolved settings, the nation-state is no longer an ultimate referent for legal authority, and functions in a subsidiary role (Swiffen 2011). Michel-Rolph Trouillot’s (1995) “state effects” is valuable in this regard, but needs re-tooling in order to get at the issues of statalization involved (see also Das and Poole 2004; Mitchell 2006). A primary concern arising from this regards “authority” and the ways that authority is produced, reproduced (or reiterated, as the case may be), and sustained. A corollary to this is concern for
authority’s connection with the constitutional order and power (Dale 2001; Feldman 2008; Meek 1970; Rose 1996). This is one objective of my legisprudence framework. For my purposes, I understand authority to include: (1) the ways by which leadership arrogates and asserts power, that is, the competences of governing; (2) the ways by which leadership demonstrates the grounds for belief in that power and competence; and (3) the ways by which acceptance of those grounds is indicated by members of the populace. There is a clear relationship between authority and governing, and so one set of queries I want to ask in the circumstance of devolution is, how do leaders enact authority? How do people see, hear, read, and believe in that authority? Legisprudence provides me with tools for exploring these issues in context.

**The Field and the Conceptual Field: Law, Regulation, and Rule Regimes in the New Britain**

This dissertation represents an extract of my thinking and research on the historical career of the culture of law, and of the longue durée relations between law, the state, social divisions, and power. The extract can be best described as a political and cultural economy of legal politics, that is, as an analysis of the place occupied by constitutions, legislation, and regulation in the structure of social formations, of the role these play in the “whole edifice of social life” (Hall 1986:10). “Law” throughout should be understood in two senses: a broad sense of law as the whole corpus of binding rules of a community; and a narrow sense of law as legislation and its progeny. Context should make meaning apparent; where it does not, I will use more precise language. This will occasionally make for cumbersome language, but this is necessary for the work at hand.
The dissertation as a whole is part of my larger interests in political and legal anthropology, namely constitutional orders, law and subjectivity, and the role of law in shaping social and cultural realities. These broader interests reflect my concern with the intersections of law, the state, government, and the social on the observation that these are generally under-theorized in anthropology. In this dissertation, however, I focus more precisely on legislation for several reasons: first, because I am convinced that legislation and legislated environments are foundational in phenomenological and experiential terms; second, because some of the work on government is already being done by those who study the anthropology of the state and of bureaucracies, and so in this project I hope to build on and complement that work, rather than rethink it; and third, because legislation allows for a reinvigorated attention to the operationalization of ideologies in the achievement of political goals.

In order to enter into an examination of legislation, I focus on a concrete historical analysis of the current political conjuncture in Britain, namely the continuing crisis of the postwar welfare state consensus and the fin de siècle emergence of New Labour in the administrations of Tony Blair (1997-2007) and Gordon Brown (2007-2010). This conjuncture is characterized by an acceleration of welfare state restructuring under New Labour, and by political and legal decentralization as a primary component of the discourses, practices, and strategies of restructuring. One of the key dimensions of decentralization has been devolution, the transfer of certain limited powers from Parliament in London to newly elected legislative bodies in Cardiff, Edinburgh, and Belfast. Devolution is, in general in this context, the transfer of administrative powers, that is, the powers formerly exercised by a Minister of the Government. This transfer
has taken the shape of asymmetrical empowerment, in which different national settlements have been legislated for Wales, Scotland, and Northern Ireland.

For my analysis, I draw my ethnographic and empirical data from these developments in Britain, with a focus on England and Wales, where I conducted the lion’s share of my field research between July 2008 and August 2009, but also informed by short fieldwork projects conducted in Edinburgh. This time frame enabled me to experience a complete annual political and legal cycle, which runs from August to August. The largest proportion of my time in the field was spent in Wales, but I shuttled regularly to London and spent a considerable amount of time there.

The focus of my field research centered on the structures, practices, processes, and discourses of governing and of law-making in London and Cardiff, emergent modes of governing, and modalities of the exercise of power brought about by decentralization and devolution. This entailed attention to Parliament and the National Assembly for Wales as legislatures, and to the executive bodies in each, as well as to Her Majesty’s Home Civil Service. On a parliamentary model, government, or the executive, is drawn from the members of the elected legislature. In London, this body is the Cabinet, led by the Prime Minister. Parliament and the operation of government in the abstract are colloquially encapsulated by the term “Westminster,” because it operates in the Palace of Westminster. The Cabinet refers to the Government in its concrete sense, and the departments of government and civil bureaucracy are referred to colloquially as “Whitehall,” the London district, north of Westminster and northeast of Buckingham Palace, where most government departments are housed. I will use these terms throughout.
In Cardiff, the National Assembly for Wales resides in Cardiff Bay, overlooking the Bay, the Barrage, and Penarth to the southwest (Figure 1-10). It sits astride the historic docklands, adjacent to Butetown (also known as Tiger Bay), a neighborhood populated historically by dock laborers and their families, and currently home to a diverse and dynamic population (Jordan and Wheedon 2000) (Figures 1-11, 1-12, 1-13). The National Assembly has two elements, the elected legislative or parliamentary body, called the National Assembly for Wales, which comprises all the elected Assembly Members (AMs); and the Cabinet Government, called the Welsh Assembly Government. The Assembly Government is led by the First Minister, and composed of eight other Ministers and Deputy Ministers whose functions correspond to devolved competencies, including health, education, local government, culture, transport, and so on. The structure, electoral system, linked institutions, legal competencies and detailed operational rules are specified in the Government of Wales Act (2006).

The National Assembly also has two main operational buildings in the Bay: Tŷ Hywel and the Senedd (Figures 1-4, 1-5, 1-6). Tŷ Hywel houses the Cabinet offices, business offices of the Assembly, Assembly Members’ offices, and the Assembly Commission. Tŷ Hywel connects to the Senedd via the skywalk (Figure 1-7). The Senedd houses the Siambr (Figure B-8), the political debating chamber of the Assembly, as well as a visitor’s gallery, a café called the Oriel (Figure 1-9), committee rooms, and meeting spaces. In addition, the Civil Service personnel attached to the Assembly are housed in Cathays Park, north of the Bay, near Cardiff University and the downtown center.
My field “site” was thus quite broad, from the floors of the House of Commons and the National Assembly for Wales; to ministerial offices and committee rooms; to hospitals, community care facilities, and clinical settings (Figures 1-14, 1-15); to the homes of raced and mentally disordered Welsh, English, and multiple ethnic and national Others in Cardiff and South Wales, as well as in caravan parks and homeless camps in Cardiff and adjacent towns and areas. I track between these spaces, between the micro-, meta-, and macro-levels in order to draw my depiction of life, law, and reality under conditions of legal and political decentralization. My overarching research concern is with Britain, especially as it fits in larger European, Atlantic, and global edifices, but I highlight Wales as a case study and heuristic. My work and results have implications for other contexts of political decentralization and reconstruction of governance, including other European states, the European Union itself, the United States, and beyond.

My ethnographic research spun itself out in these legal, political, and social landscapes. Granular engagements began in Butetown, Riverside, and Grangetown, three Cardiff neighborhoods identified officially as “deprived communities,” and home to diverse multiracial and multiethnic populations. From there I moved to the establishment worlds of the Assembly, Parliament, and the Civil Service, and from there, back to the thoroughfare and the métier worlds of the professions. I wore out a good deal of shoe leather beating my rounds between the neighborhoods of Cardiff, between Tŷ Hywel and the Senedd, between the Bay and Cathays, between Cardiff and London, in Westminster Palace, and between Westminster and Whitehall. Getting a handle on the New Britain, on constitutional agency, legislative action, regulation, and devolution as
events, processes, and the everyday activities of rule required a lot of leg-work, literally, as well as substantial movement and flexible navigation.

Within these contexts, I focused on the everyday practices of law-making, regulating, and governing, circuits and repetitions of movement between and within political and legal spaces, intersubjective relations among rulers and ruled, and the enactment of the annual legal and political cycles, including key rituals, ceremonies, events, and persons. Ultimately, I decided to examine in detail two service delivery regimes which I term the equalities regime and the medicolegal therapeutic regime, as these shape public sector reforms and produce new local identities in terms of “Welshness,” of “Britishness,” and of particular S/subjectivities. The interaction of these with the figure of the stakeholder and the discourse of fairness grounds my analysis of the constitution, legislation, and the police power.

Policing Political Order: The Equalities Regime

The current equalities regime is grounded in the Race Relations Act 1976 and its statutory and regulatory progeny. These include, for example, the Equality Bill 2009 (passed with royal assent as the Equality Act 2010) and policy strategies for designating, achieving, and enforcing diversity and equality goals. They also include governing practices that interpolate law-makers, constituency staff, local government departments, and a distinct network of agencies, actions, personnel, and categories into the activities that together make up the modalities of rule and governing that take shape as “equalities” work, and that achieve the “effectivity” (Althusser 1990) of the political administration of the state and civil society.

The equalities regime signifies, for my purposes, public and social policy agendas and strategies for managing difference in Britain. In the twentieth century, this
encapsulates oscillations around issues of the indigenous population and migrants, and the sets of rights and protections variably afforded to each. Key discursive dimensions include equality, equal treatment, discrimination and anti-discrimination, human and other rights, refugees and asylum seeking, diversity and multiculturalism. Difference in these terms has historically focused, in asymmetrical ways, on disability, gender, race, sexual orientation, religion or belief, and age. Until 2010, these “strands” were separate, dealt with in the main in separate legislative texts, regulatory frameworks, and policy strategies. The Equality Act 2010 was intended to “harmonise [sic] equality law,” bringing each of these strands together in a single document. Harmonization and restatement of relevant enactments were largely intended to create the conditions for decreasing forms of discrimination, alleviating inequality, and improving opportunities.

One of the signature developments of conjoining the equality strands is the move toward “single equality” approaches throughout Britain. These approaches are inflected by the terms of devolution, and the inflections are inscribed into the Act itself: “The Act forms part of the law of England and Wales. It also, with the exception of Section 190 and Part 15, forms part of the law of Scotland. There are also a few provisions which form part of the law of Northern Ireland” (Equality Act 2010 §14). Section 15 then goes on to detail the territorial application and the intertextual linkages between the Equality Act and prior legislation. The Act, its intertextual interlocutors, and related and derivative instruments, such as regulations, guidance, and rules promulgated by Ministers. Together, prior legislation that remains in effect and intertextually imbricated legislation, coupled with the Equality Act 2010 itself, its statutory instruments, and its ongoing amendments, create the basis for the equalities regime as I conceptualize it. It should
be understood that the regime does not denote a singular Britain-wide apparatus for regulating, administering, and governing, but an inflected set of approaches that vary territorially within the insular imaginary and the ensemble state. (For relevant statistics on race in Britain, see Appendix A.)

**Policing Public Health: Medicolegal Therapeutic Regime**

The medicolegal therapeutic regime is grounded in the Mental Health Act 1983 and its 2007 amendment, the policy strategy of community care, which developed out of the deinstitutionalization moves of the 1960s and 1970s, and governing practices that interpolate a similar array of roles, persons, and institutions as above, plus hospitals, physicians, social workers, pharmacies, consumers, carers, and others. Here also, it should be remembered that the regime is not uniform across the archipelago, but comprehends divergences at the national-territorial level.

The metaphor of “grounding” that I use here should be read broadly; the major Acts I refer to are not the sole bases or centers of these regimes, so much as nodes in a complex, baroque legal, political, and institutional ecology and an architecture of law, policy, and government subtended by a set of principles and framework goals relating to the postwar social democratic consensus and its ongoing reconstruction. I argue that both regimes are enactments of the police power, instantiations of political administration through which the state and civil society mutually interact and co-produce one another, and jointly S/subjectivizing and interpellating S/subjects. I also argue that cultural hegemony is articulated and enacted in part through the practices of police and political administration.
Subjectivization, Mediation, and Intersubjectivity

One major question in my research into and analysis of law is how political and other S/subjects are shaped. Additionally, I ask how this shaping is orchestrated. This formulation, S/subjects, needs some clarification, as do my use of mediation and intersubjectivity, and my understanding of the relations between these.

S/subjects

In conventional current configurations, the “subject of law” is the citizen and juridical bearer of enforceable rights (O'Donnell 1999:312; see also Stack 2010). Citizenship is more than rights, however; more than merely legal or merely political. Citizenship is also an issue of action, and of participation in social processes, including, but not limited to, legal and political processes. I want to broaden the scope of the configuration of citizenship, action, and social process to entail persons with different instrumental and engrossed relations with systems of law and processes of law-making. This is my rationale for imploding and writing “S/subjects.”

By “Subjects of law” I mean those persons who are authorized as formal, official makers of law. These may be understood primarily as elites, as law-makers, or as legislators, but I understand “Subjects of law” also to entail the less visible persons involved in lawcraft: staff lawyers and consultant lawyers working in and for a legislative entity; the legislators’ support personnel, in both the legislative and constituency spaces; Civil Service officials and others in the civil bureaucracy and public service; advisers; clerks; researchers; those who manage the business side of parliamentary operations; translators; recorders and (legal) reporters; elected and appointed and hired individuals at multiple levels of government; and the practical roles and workspaces necessary to the shuttling of legislative materials through various offices, channels,
committees, archives, databases, printers, copiers, software programs, file folders, and media, as these materials follow a sort of life course of becoming legislation. In short, there are a multitude of Subjects of the law, of people authorized to participate in the production of formal, official law, as legislation, as regulations, as rules, as guidance and best practices recommendations, as amendments, as developing informal means of achieving formal ends. These are my Subjects of law.

Distinct from these Subjects, are “subjects of law,” those who encounter the legislated world in their everyday experiences, but who have no formal authorization to participate in its making: the raced, the mentally disordered, the CHAVs and ASBOs,\(^6\) the compliant and non-compliant, the immigrant and the refugee, the carer, the aged, the family member with power of attorney, the un/employed, the child, the bully. In order to “three-dimensionalize” lawcraft, I suggest that these subjects are integral to the constitution and to the work of law, the police power, and government, that they form the embodied substrate of thought upon which the activities of Subjects of law are fashioned, that they participate, even if indirectly, in the production of law and in the conduct of government, that they are interactants in the fractal spaces of a baroque legal ecology. They are integral on the one hand as figures, and on the other hand as real, proper, named, identified, diagnosed, observed, and enminded\(^7\) bodies. Their appearance as the figural representations of embodiments as well as in earthy, bodily incarnations are indispensable, even obligatory, to legislation, regulation, and the conduct of government.

The “S/subjects of law,” which I implode in this fashion to signal both their hybridity as mutually sustaining forms of being (in both personal and communal senses) and their
indissociability in the production of law and the everyday work of government, are, in my ethnographic practice, the “points of attachment for the personal and the social” in these productions and works (Fischer 2007:283). In addition, these points of attachment are irreducible to linear or causal or unidirectional analysis, and they are not fungible. The implosion should, furthermore, be read and understood not as a binary construct, but as a spectrum. This spectrum, however, is not linear, with fixed points at which particular roles or types of person are located; rather, it is rhizomatic, a dendritic array around which roles and persons may be variously arrayed according to context and circumstance.

Legislation, for instance, is not simply a product, the outcome of political debate and majority voting procedures that establishes a rule or set of rules. Rather legislation is complexly intertextual, intersubjective, and social; it is co-constituted and recursive; and it is contingent, dependent upon local realities and local imaginaries, even as it draws on principles and conventions with considerable time depth, and larger narratives of modernity, autonomy, reason, universalized political idioms, globalization, morality. It is produced and made to cohere as the rule of law, law’s rule, and the rules of law only through the S/subjects of law, their work, their conduct, their institutionalizations, their manifold interactions, their interweavings, and the ramifications of their activities, words, presences, expectations, duties, fears, wrong-doings, (mis)identifications, orations and “aerations.” It is through the S/subjects of law, their interactions, and the institutions and infrastructures that channel these interactions that legislation and the conduct of government take shape, and police initiatives are achieved.
Mediation

To achieve an integration and analysis of subjectivity, and as a foundation of my formulation and analysis of S/subjecthood, I adopt the idea of mediation, to demonstrate ontological commitments to sociality and relationality, to structural embeddedness, to the role of law, police power, and government in constituting social worlds and subjectivities, and to the “micro – macro [articulations]” that sublend these (Harrison 2008:201). In order to think through the multiple mediations at work in knowledge production and subjectivization processes, I have borrowed and adapted ideas and content from Marx (Marx 1993a; 1993d), Cedric Robinson (1983), Stuart Hall (1986), Donna Haraway (1991), and Harrison’s (2008) inflection of Trouillot’s work.

An important feature of my use of mediation is the consideration of the ways that the governed respond to the deontological efforts of governors to conduce subjectivization, and the prosopic relations involved. In a Marxisant application, mediation amounts to the reconciliation of opposing forces through a mediating object. Marx’s basic mediating object was labor, as intermediary between the economic on the one hand, and the social and cultural on the other. In brief, the laborer produces exchange value congealed in the commodity form, to which symbolic value accrues or is assigned. These objectified elements then circulate, are consumed, and provide the next round of both labor and of capital investments to sustain the productive process. Out of production, circulation, and consumption, then, subjectivities and culturality are produced in accompaniment to economic production in an integrated, indissoluble set of processes (Marx 1993b; see also Murray 1988).

These subjectivities (and culturalities) are multiple. The laborer, for example, comes to recognize herself as laborer, and also as member of various situated
collectives, such as family, neighborhood, union, class, nation, citizen. The capitalist also is similarly subjectivized. Between these poles of subjecthood, other positions and inhabitations emerge as well, all the result of multiple mediations and multiple infoldings (Deleuze 2006). Relatedly, mediation in a juridical sense is the reconciliation of opposing parties through a third party, and the activities involved also subjectivize all parties involved in multiple ways. These elements of sociality have been well-researched in the adjudication-centric model of the anthropology of law (see e.g. Ewick and Silbey 1998; Merry 1990; see also the materials in Part III of Moore 2005). It remains to be undertaken in an analysis of law that foregrounds legislation.

I consider legislation, the police power, and government as subjectivizing and culturally productive, and I stress the role of communication as mediator. Communication should be understood relatively broadly, to encompass not only language (representation and signifying practices), but the processes of communication, as well as the form,⁸ content, technologies, and instruments of communication. Along with legislation, regulation and the conduct of everyday government, these shape an architecture, an ecology, and a politico-legal pedagogy (Prozorov 2004), as well as rationalities and technologies of self-making/subject-making (Moore 1998; Niezen 2009; Ong 2006; Rose 1990; cf. Ulysse 2008). This is the nature of the mediation of S/subjects as I conceptualize it.

**Intersubjectivity**

I insist that legislation is irremediably intersubjective, that the relations of legislation are a hybrid of the dialectical and the dialogical, and that legislation, regulation, and the conduct of government arise not solely from the institutional spaces of their formal genesis, but from relations of everyday living with others. Intersubjectivity
is a key dimension of the relationality of law as I understand it. It embraces the
microsocialities of the public square and the micropolitics of law-making, situating the
labor of law-making, the works of legislation, and analysis of the institutions of law-
making in human relations.

Perhaps most importantly, my application of intersubjectivity is intended to recover
the commonality, the invisible and vernacular elements whom law-makers encounter
and with whom they co-habit lived worlds. My approach to intersubjectivity is heavily
dependent upon Bakhtin (Bakhtin 1968; 1981) and his interpreters (Brandist and
Tikhanov 2000; Peeren 2008), as well as Marx (Marx 1993a; 1993d) and scholars who
engage with his social ontology (Gould 1978; Wendling 2009). My basic approach to
intersubjectivity is based on my belief that the relations I detail in this dissertation must
be essentially conceived as ontological and ethical, that is, as relations of becoming,
belonging, and behaving.

S/subjects of Difference, Governing through Difference

In liberal democracies, rights are one key mechanism by which groups and
individuals seek and attain self-realization (Taylor and Gutmann 1994); that is, rights are
one condition of possibility for recognition and accommodation of (certain forms of)
difference. These forms are subject to ongoing revision, both through emendation and
through interpretation. Difference, then, is historically specific and contingent, and
rights, or related rationales for figuring and governing through particular forms of
difference, are also contingent. Appending a jurisprudential approach to rights with a
legisprudential one, and attention to the positive actualizations of rights, is a useful way
of driving forward analysis of subjectivity, of governing, and of difference as constitutive
of political epistemologies, material and discursive practices, and consequential outcomes.

Legisprudence offers us a methodology by which we can begin to examine contingency and relations, through attention to the *ius*, the *res*, and the *locus* of rights and other legal technologies. By examining the intersections of rights and difference, for example, we can contemplate how distinctions are conceptualized and represented, how boundaries of inviolability are drawn around those distinctions, under what circumstances such boundaries are enforced (or not), the conferral of status on certain types of person (or community, or other figure), how definitions are constructed, how principles are articulated and imported into legal reasoning and legal texts, where these principles come from (considering dimensions of both time and space), and the effects of abstraction as sociolegal and medicolegal technology (Thomas 2004).

I argue that the conditions of possibility for governing in a liberal democracy *require* difference; that is, mechanisms and procedures of inclusion and exclusion, the practices whereby difference is recognized as constitutive yet separate, simultaneously accommodated and harbored, yet marginalized and segregated. Giorgio Agamben, in offering his corrective to Foucault’s (1976:143ff) biopolitics, calls this the “inclusive exclusion” (Agamben 1998:7). Agamben writes, of course, not of difference or rights, but of bare life, of the mere existence of the human figure, *Homo sacer*, as that entity which simultaneously “may be killed, yet cannot be sacrificed,” the figure which “has the peculiar privilege of being that whose exclusion founded the city of men” (Agamben 1998:8, 7). I adopt and adapt Foucault’s and Agamben’s formulations, biopolitics and bare life, as girders of conceptualizations of difference, and of the material, semiotic and
epistemological dimensions of its administration. Difference, in other words, constitutes political and legal being and action, as well as the conditions of possibility for governing and for thinking and bringing about social transformations.

This work of inclusive-exclusion, of adequating universal, abstract, sovereign human figures (whether biopolitical, *Homo sacer*, the citizen, rights-bearer, or other formulation) with concrete, situated, particular identities, is not epiphenomenal, not merely an outcome of (neo)liberal politics, but a core feature of the conditions of possibility of liberal governing, and allied to strategies of accumulation and translocal mechanisms of political-economic engagement. The struggles of a politics of equality, the struggles of a politics of difference, the recognition of identity, status, and equal dignity, and contests between these, are necessary to (neo)liberal democratic government, for building new capacities and linking these and their embodied carriers to the strength and growth of the political, social, and economic nation (Goodale 2009; Kahn 2005; Stears 2007). In other words, officials deploy “a combination of biopolitical and economic rationalities” in order to found difference, demarcate it, and justify its careful management (Ong 2006:187). The modes of the politics and economics of difference may take different forms, such as imperialism, multiculturalism, neoliberalism, enclosure, scarcity, or marginality, among others, but at the core of each mode is a method of thinking and seeking to manage difference (Taylor and Gutmann 1994; Tully 2007). I argue that this is a much more fundamental process than simply the denial of equal access or equal outcomes; it is, rather, an integral and obligatory dimension of (neo)liberal governing.
In attending to difference in its rapport with legislation, regulation, and government, and more specifically in addressing the ways of constituting, cognizing, and regulating difference, and for creating the conditions and instrumentalities for legislation, regulation, and government to appropriate, manage, and administer difference, I make a case for new possibilities for legislation and law-making as objects of anthropological inquiry; for law and policy as coordinated and choreographed human activities; and for the consideration of government as everyday practice that mediates S/subjects, objects, aesthetics, and emotional lives with structured institutional and normative architectures, and with sorted pasts, husbanded presents, and poised futures. The social intercourse that I argue forms the basis for S/subjectivation, mediation, and intersubjective crossings is situated in the public square.

The Public Square

The public square I have in mind is not the public sphere of Habermas and others, the apparatus of civil society and the state arrogated by bourgeois society and made into measured, deracinated, benign, and banal procedures. It is not a space of sanitized transactional encounters. It is a common space, a frank space, a bazaar populated by diverse arrays of folk. It is the space in which individuals are encompassed and laid bare as surfaces, in which their lives are accomplished and assessed, licensed for consumption. It is an agent of transformation and tradition, an instrument of estrangement, a source of familiarization and defamiliarization of laws, habits, expectation, of the “educative spectacle” of official poetics and normativities, and of the conjugation of intimacies that work profound personal and collective effects and materialize the apparatus of government.
This public square is public not because it exists in an oppositional binary with the private, but because events here “are by their very essence open, visible and audible. Public life adopts the most varied means for making itself public and accounting for itself” (Bakhtin 1981:123). Certainly the sense of private content is important to the materials of public life and the public square. It is more important, however, to look more closely at the ways by which the contradictions inherent in the public-private oppositional structure are worked out in such a way that the oppositional structure is maintained, yet the boundaries challenged at the same time, and with what consequential effects.

I argue that difference, especially in its forms of race and mental disorder, is one mechanism through which this contradiction is enacted.¹⁰ These forms of difference are quintessentially public hermeneutics: we believe they reveal to us elemental realities about their bearers, and we believe they are necessarily problematics that belong within the prerogative of the government of social heterogeneity, and the administration of the police power of health, welfare, safety, and morals. This is not to claim a natural basis for distinguishing and responding to the Other; rather it is to remark on the work involved in the constitutive regulation of difference, the strategies of representation and intervention that constitute these “‘third person’ representatives” of private-cum-public discourses (Bakhtin 1981:127). The surfaces of this hermeneutic condense the contradictions that drive forward the everyday work of government: the emergence and existence of heterogeneity and its crystallization and consolidation as particularized forms of difference that shape the behaviors of authority.

The public square is a key site where the transformative influence of difference is enacted in simultaneous and multiplex ways: as personal identity; as relational among
participants; as a presence that recursively shapes the self, the other, and macrosocial forms of belonging; and in the very principles of engagement with and management of difference itself. Constructing the (analytical) public square enables a closer accounting of legislation’s place in Gramscian hegemonies. This is a key lacunae in anthropologies of law and politics.

For Gramsci, “the State represents the punitive and coercive force of juridical regulation of a country,” but,

[t]he general activity of the law (which is wider than purely State and governmental activity and also includes the activity involved in directing civil society, in those zones which the technicians of law call legally neutral—i.e. in morality and in custom generally) serves to understand the ethical problem better, in a concrete sense (Gramsci 1971:266, 195).

For Gramsci, in other words, law, and especially legislation, provides the basis for both coercion and consent, structuring both state and civil society, and effectively transgressing the frontier between them. It effectively re-politicizes civil society, simultaneously (re)locating civil society in the political sphere, locating the civil laity in the visible grids of political goals and strategies, and harnessing these political goals and strategies to lay institutions and agents (cf. Neocleous 1996). One of the primary functions of “positive law,” for Gramsci, is to educate the masses, to bring about “their ‘adaptation’ in accordance with the requirements of the goal to be achieved” (Gramsci 1971:195). Gramsci comes from the civil law tradition, a legal culture and understanding that is somewhat different from Anglo common law culture, and so the possibility remains that positive law, for the Anglo mind, is not of the same character as for Gramsci. I argue that in the Anglo common law world, positive law, legislation and regulation, carries the same educative, regularizing (i.e. hegemonic) function with which Gramsci was familiar. The difference is one of emphasis, of political-legal culture and
legal politics, that is, of the inherited and subjectivizing traditions of law as a point of collective self-identity. Where these struggles are engaged, there we find the public square. In my constitutional ethnography, my attention to ordering and civic humanism in the public square, we find a present characterized by the immanence of the past, by the immanence of common law and common sense, of the common good and the Commonwealth. Grounding the ethnography in the public square, as space of transformation, hybridization, mediation, the commonplaces of shared symbolic orders, and the collisions of innovation and estrangement, opens new optics on the sovereign fantasies of nation and transnational unification across the archipelago and beyond, and the descent of the idea of the unitary state to its present ensemblage and jurisdictional diversification. My constitutional ethnography considers central tendencies and variation, continuities and change, order and disorder in the (New) British state, and the sense-making that accompanies these moments, interleavning public practices and civic virtues and the open-ended obligation of government. Within these macro-social abstractions, I take stock of measures of life and health, and place people, and myself, in the streams of history, memory, and the social.

**Racing the Political Epistemic: Mainstreaming Equality and Some Results**

Taking stock of these measures, my data and analysis entail primarily the examination of race and ethnicity, of mental health and illness (or “mental disorder” in the local lexicon), and the intersections of these. I focus on equalities legislation, policy agendas, and delivery strategies, and on mental health legislation, policy agendas, and delivery strategies. These are considered in the context of the multiple tensions and contradictions wrought by the 1997 ascendance of New Labour and the decentralizing reforms implemented in the decade following. These tensions and contradictions
structure relations between Westminster and the devolved administrations, as well as within the devolved territories themselves.

There are three main results to my research on race, equality, and health, which may be categorized as epistemology, culture, and language. The epistemic result is my finding that much of the design and delivery of various programs and interventions are constructed on the premise of whiteness as normative. The cultural result is an issue of normative governance; that is, the constructions of definitions, of positive rules, and of the conduct of rule according to political and legal rationalities that remain bound in the historical world and cultural archaisms of Englishness-cum-Britishness and the exclusions that result. The language result is multiplex. It is one main issue, the provision of interpretation and translation, currently at stake in the delivery of services and in therapeutic relationships, yet the frequent absence of adequate professional interpretation and translation services structures interactions in ways that sustain racist practices. Furthermore, this lack of adequate communication between physicians (GPs) and patients prevents the provision of equal care, and actually tends to increase costs of health care service delivery. These three problem areas are not easily disaggregated, and there are clearly overlaps between the domains, but I maintain that the separation is necessary for analytical purposes.

In the remainder of this manuscript, I will apply legisprudence to the making and consequential effects of legislation, the exercise of the police power and regulatory action, and the everyday conduct of government. Key to this is the examination of changes not just in political and legal domains, but in social relations and cultural practice, and modes of subjectivity (Gill 2008). Crucial also is attention to changes in
representational practices\textsuperscript{12} and the functioning of legislation, the police power, and government as systems of signification and of meaning-making. In the final analysis, I will demonstrate the reality-making provisions of law and policy; the epistemic commitments at stake; and the fabrication and actions of persons.

What my analysis offers, then, is \textit{legisprudence}, an anthropology of legislation and police power as the helix of government and of lawcraft, designed to get at the labor and constituents of law-making, regulation, and the conduct of the everyday business of government. I focus on the mechanisms, institutions, forms of reasoning, methods, and practices involved; as well as the agents, relations, institutions, infrastructures, language, cultural imagery, knowledge production, representations, figures, and ideas entangled in the productive processes. In short, my approach deploys a material, semiotic, and epistemological framework in order to apprehend, understand, and describe law, policy, and government, and the consequential effects of these, especially under conditions of decentralization and related forms of state restructuring.

The crux, then, is the conjugations of race, mental health and illness, and the police power through everyday interpersonal and intersubjective relations, especially in the public square, to fabricate the new conjunctural disposition of Britain, or what I am calling “the ensemble state.” The ensemble state is the product of the long revolution (Williams 1961). It is an unfinished product, one reaching perpetually beyond its present. Its interior and exterior concatenations and articulations bring the British state into its current being: the ensemble of constitutional texts, principle, and conventions; the ensemble of nations; technologies of democratic governance and public administration; the hegemony of liberal ideologies and practices; sociality and
communication; occupation of the spaces between the constituent nations and the EU; and the cultural consolidations that characterize its present moment.

Within the long revolution and the present political conjuncture, particular forms of subjection, personhood, and activities of becoming-belonging-behaving are “organically” entailed (Gramsci 1971; cf. Hall 1986). What I present below is an analysis of the constitution, legislation, and regulation as mechanisms of the police power, that is, mechanisms for shaping the ensemble state, for fabricating order in the public square, for navigating the dialectic of state and civil society, for constituting, or bringing into being, forms of subjection, and for interpellating S/subjects. Addressing these issues will fill out the pages of this manuscript, but an historical brief might be in order here, to orient the reader. Let me begin as Dylan Thomas might have, somewhere near the beginning.

1 The names of all interlocutors are pseudonyms unless otherwise noted.
2 Legislation derives from *lex*, the Latin term for “[l]aw, especially statutory law” (Garner 2000:738).
3 Black’s Law Dictionary defines positive law as, “A system of law promulgated and implemented within a particular political community by political superiors, as distinct from moral law or law existing in an ideal community or in some nonpolitical community. Positive law usually consists of enacted law – the codes, statutes, and regulations that are applied and enforced in the courts” (Garner 2000:948). Giambattista Vico referred to it as *ius theticum*, law that begins from a thesis, and is characterized by a laying down or setting forth of a positive statement (1998). For my purposes, I use “positive law” to encompass constitutions; legislation, statutes, and acts (these three are synonymous terms for primary legislation); statutory instruments, such as regulations (including secondary, delegated, and subordinate legislation); procedures (i.e. the rules for rulemakers); and administrative rules. Although positive law is often juxtaposed against natural law, as is implicit in the definition above, my intention is rather to position it in relation to juristic forms of law; that is, to evoke the institutions and persons involved in the production of legislation and its progeny.
4 Official and informal modes of law will also come into play, for instance discretion, issues of guidance and recommendations. These are important and integral components of the legal regimes which I address more specifically below.
5 Regulations, or regulatory regimes more generally, derive from legislation, but are in the main the prerogative of agencies of the executive, and are a key dimension of policy-making. Delegated legislation, subordinate legislation, and statutory instruments bring the asymmetries of central and local government into view, and in the case of Britain, this is one place where devolution gets interesting. The relations
within law and within the law-politics matrix are brought into relief through consideration of the formal modes of law and policy, and through the consideration of the persons, institutions, infrastructures, conventions, roles involved in the production of law and policy and their instrumentalization in the daily work of government.

6 CHAV is a colloquialism for “council housing and violent” a label that is generally applied to those who live in housing estates that are provided/funded by the local Council, and who have a criminal record. Most often it is presumed to correctly identify young men, especially young men of color, who wear hoodies and related types of clothing. ASBO is short for Anti-Social Behavior Order, or those who have received such an order and the associated meanings that attach to it. Both of these terms are derogatory, and I have heard both used to describe “subjects” at issue in formal and quasi-formal political and legal discussions in the Assembly, in local government settings, in the British Parliament, as well as in discussions with physicians, psychiatrists, social workers, nurses, academics, and caseworkers.

7 I use this term to indicate my commitment to the idea that “everyday” folk are, and ought to be treated as, bearers of rationality (Reason and Understanding) to the same degree as are “elites” and their associates.

8 I suggest, following Bakhtin (1981), that form is content, and that this is an important consideration for legisprudence. Legislation and its component textual technologies (formal legalese; a preamble or introduction; organization into enumerated sections; composition and articulation of legal technologies such as duties, rights, rules, sanctions; definitions; the architecture of intertextual linkages to existing legal inscriptions) convey meaningful information and contribute formally to the processes of subjectivization and cultural production. Similarly, policy instruments, such as White Papers, Green Papers, consultations, and related technologies including regulatory powers, convey information through form, as well as through content (and through form-as-content; a White Paper as such conveys information distinct from and superior to a Green Paper, for example).

9 This should not be construed to imply that citizenship is only an issue of rights. Rather, I conceive of a much larger variety of actions and processes that enable one as citizen. It is not merely a legal or political category, but a social and cultural one which requires nuanced thinking, especially where subjects do not participate in political or legal processes per se.

10 As will become obvious throughout the remainder of this dissertation, my thinking and theorizations were (are) fundamentally and powerfully shaped by a number of women in encountered in my field research, as well as works by and encounters with feminist, womanist, and subaltern scholars. I wish to acknowledge publicly my profound debt to these organic and academic scholars. I also wish to state for the record that the intersections of race and mental disorder with gender and sexuality must be understood to acutely inflect my field experiences and process of working through my field materials and writing this dissertation. From project design to field emplacement, to data elicitation, to analysis and interpretation, to representation and writing, this work is deeply influenced by relations of race, gender, and sexuality. Limitations of space and an already (overly) complex argument make me reticent to fully engage the implications and empirics of the role of gender and sexuality on my work and thinking. In a subsequent project, I will address these relations more closely and cogently.

11 The ability to self-govern was crafted and tractioned in the original devolution settlement, Government of Wales Act (1999), and amended and re-authorized in Government of Wales Act (2006).

12 Representation carries, of course, dual implications, and I use it here somewhat playfully, and ironically, intending to evoke both meanings. In developing this approach, I am indebted to Marx’s skilful examination of this duality in Der achzehnte Brumaire des Louis Bonaparte, especially his distinguishing use of vertreten (to represent in a political sense, i.e. as proxy) and darstellen (to represent, or as Spivak [1988] writes it, to “re-present,” in the sense of philosophy, art or literature). My understanding of this distinction draws also on the discussion in Spivak (1988).
CHAPTER 2
BRITAIN: ENSEMBLES, EMBLEMS, DILEMMAS

We are a top-sliced country, used to years in which we had no decisions to make, but all the time in the world to complain about decisions made about us by others. It really is difficult, after centuries of not being in charge of your own affairs, to have the confidence to reverse that state of affairs, when the opportunity to do so presents itself. [T]he promise that an Assembly in Cardiff [meant] taking out an insurance policy against the shadow of Thatcherism … coming back to Wales (Morgan 2009).

On a blustery, cold morning in February, Rhodri Morgan, the then-First Minister of Wales said to me,

General DeGaulle used to say it’s impossible to govern France: “How can you govern France, a country that’s got four thousand different types of cheese?” In some ways he was lucky, because Wales [laughs], Wales is a country that’s sort of always threatening to fly apart. We’re always good at identifying the differences between us: people who speak Welsh, people who don’t speak Welsh. People from the North, people from the South. The Welsh in Wales and the English in Wales. Native Britons, migrants and outsiders. People are very aware, and Wales is always threatening to fly into bits. You need things that bind people together. Universal services do that.

He blew into cupped hands as we made our way to his car, preparing to leave Cardiff for the town of Tredegar, to the north about 20 kilometers. His driver, Sarge, held the door for Rhodri, and we climbed in. Once settled, he opened a copy of the Guardian and continued. “The creation of the NHS was the emblem of the post-war social democratic consensus in Britain. Neu,” – that is, Aneurin Bevan, a Welsh Labour Party MP from 1929 to 1960, and Cabinet Minister from 1945 (Lowe 2005:183ff) – “created it. He came from Tredegar, and that’s why we’ve decided to launch this measure in Tredegar, to bring it home. I think he’d be proud.”

Bevan was born in Tredegar on the threshold of the twentieth century. Tredegar was, and remains, a poor village in the South Wales Valleys, on the edge of the
coalfields. Bevan was the son of a coal miner, went to work in the colliery, and became an active socialist and trade union activist as a member of the South Wales Miners’ Federation. He was nominated as the Labour Party candidate for Ebbw Vale in 1928, and won handily in the 1929 General Election (Goodman 1997). By the General Election of 1945 Bevan was positioned for entry into Government, and the Labour Party’s election manifesto that year, building in part on the recommendations of the Beveridge Report, detailed a number of initiatives that together formed what came to be known as the “welfare state” in Britain (Jefferys 2002; Lowe 2005). Key among these initiatives was the NHS.

Labour’s landslide victory and legislative successes under Prime Minster Clement Attlee (1945-1951) brought about the comprehensive social transformations envisioned in the manifesto, and Bevan, as Health Minister, was integral to the shaping of the NHS and the details of its functioning (Webster 2002). Unemployment, unfair treatment of workers, the Labour Party’s reluctance to support increased unemployment benefits, and the Great Depression’s devastating impacts on his constituency converged for Bevan in his pursuit of “a free health service” in a society in which “no sick person is denied medical aid because of lack of means” (Bevan 1952:106, 100).

The creation of the NHS involved much more than a single politician’s vision and action, of course, and is better understood as a hegemonic moment in British history, in which collective historic blocs responded to the “specificity of the political in relation to the [existing] crisis,” engaged “the struggle to contest and dis-organize [the] existing political formation,” and took “the leading position over a number of different spheres of society at once” (Hall 1988a:7). The result, the welfare state, was the achievement of
the social democratic consensus, organized around a particular set of arguments regarding the appropriate roles of the state and the market in distributing resources and making services available to citizens and others. These arguments were constitutional, institutional, and moral-ethical. The postwar consensus marked the ascendance of central planning and social priorities over the laissez faire and individualism of classic liberalism, and a constitutional and institutional shift in the nature of the state and of governance.

Central planning relies heavily on the police power as a justification and organizing principle, as illustrated by the postwar confidence in central control and the power of the state to function as a leveling instrument, smoothing the crises of capitalism and the disparities it generates. Health is a key component of the police powers arrogated by the state, and newly instrumentalized by the welfare state, and is thus a crucial governing strategy. The erection of the NHS and its figural role as the primary symbol of the welfare state accomplished both the practical and the ideological aspirations of centralizing power, shoring up the prerogative of power in central institutions, redistributing wealth, and creating the institutions of the welfare state and infrastructures of service delivery. Indeed, today, many Britons, perhaps most, view the NHS and the state as one and the same (Dearlove and Saunders 2000; Lowe 2005).

Aneurin Bevan’s tenure in Parliament coincided not just with the creation of the NHS, but with the emergence of new concerns with race and ethnicity, and with the advent of “multiculturalism” in Britain. In the early decades of the twentieth century, relations between white Britons and racialized Others took shape largely through immigration and alienage legislation and policy strategies. The interwar period had been
characterized by conflagrations, especially in the Race Riots in 1919, which broke out in virtually every major city across the whole of Britain. The issues of racism and ethnic bigotry were dealt with largely through criminal law and policing, resulting from the positioning of raced persons and communities within the interlocking frameworks of “moral panics” and economic crises (cf. Cohen 1972). It wasn’t until after the second world war that the British Parliament began seriously using civil legislation and social policy to set goals for managing the populations arriving on British shores from the Commonwealth countries and beyond. Increasingly, the consolidating institutions of the welfare state were also obliged to develop methods for delivering services to growing ethnic and racial populations.

During this period, seismic demographic and cultural shifts were taking place. The postwar consensus was not an easy, straightforward, or teleological achievement. The NHS and other institutions of the welfare state had to be built from the ground up, so to speak, and this had to be done in a political economic environment of financial crisis, war debt, destruction of great swaths of the built and social landscapes, and the general disarray following the war. Into this environment were also entering relatively large numbers of migrants: those displaced by war, colonials from the imperial margins, laboring populations seeking work (Drake 1954; 1955; Little 1972). These movements were not new, but their scale increased, prompting multiple responses from the British state, political parties, the Civil Service, and the professions. This historical moment marked the inception of a concentrated state response, through legislation, to manage these incoming populations, and a simultaneous popular reaction built on fear of the
Other, job loss, and the “dilution” of British (often conflated with “English”) culture (Bagilhole 2009; Holmes 1988; Little 1972).

These fears attained perhaps their most vitriolic political expression in Enoch Powell, Conservative MP from 1950-1974, in his “Rivers of Blood” speech in 1968, a response to the Labour administration’s *Race Relations Bill 1968*. In the speech, Powell juxtaposed the figures of the “decent, ordinary fellow-Englishman,” the “native born worker,” and “a white (woman, old age pensioner)” against the figure of the immigrant, and against the imagery and rhetoric of an “annual flow of … dependents,” arguing that Britain, in allowing the “total transformation to which there [was] no parallel in a thousand years of English [sic] history,” was “mad, literally mad” and “busily engaged in heaping up its own funeral pyre.” Drawing on Virgil’s *Aeneid*, Powell prophesied that he, “like the Roman” saw “the River Tiber foaming with much blood” (Telegraph 2007). The Conservatives won a surprise election victory in 1970, on the heels of Powell’s inflammatory rhetoric and the passage of the *Race Relations Act 1968*. Little wonder that race relations in Britain have foundered, frequently accommodating the thrust of racial populism and the language of racist agenda-setting.

In addition to the regular Labour – Conservative ideological and electoral oscillations, the postwar era also witnessed the resurgence of Fascist parties organized around issues of immigration and the “dilution” of British society (Dearlove and Saunders 2000). Fascism has a relatively untold history in Britain, and although such a history is beyond the scope of this dissertation, it is important to note that the major political parties, Labour, Tories, and Liberal Democrats alike, were each pushed by their fascist interlocutors, and each of the parties responded by co-opting at least in part the
concerns, language, and recommendations of fascist agitators, including the National
Front and the British National Party (Dearlove and Saunders 2000). The “racial
populism” and racist vitriol of the era, enunciated by members of all political parties,
focused on securing electoral support for the idea of “a white nation purged of
‘coloureds’ who would be sent back ‘home’” (Dearlove and Saunders 2000:106; see
also the discussion in Solomos, et al. 1982). The emergence and consolidation of the
welfare state, the increase of human diversity and the rise of multiculturalism, and the
rancorous politics of racism in Britain are deeply entwined in the political epistemic, and
continue in the present to shape legislative and policy strategies, as well as ground-
level intersubjective relations, and the everyday operation of government in Britain.

In this mix, the postwar social democratic consensus, or the welfare state
settlement, has been continuously contested, perhaps most aggressively by Margaret
Thatcher. Under Mrs. Thatcher, the central state was attacked for its fosterage of
dependency, and its functions were marketized, in order to bring the discipline of the
market to the public sector (Hall 1988b). In the NHS, this took the shape of internal
markets, which were intended to create the conditions for competition between
providers of services, such as hospitals, increased efficiency of operation, and reduced
costs for purchasers. These conditions would, it was asserted, make health care better,
cheaper, and faster: improving “throughput,” increasing efficiency, giving consumers a
choice among providers, and reducing wait times for services (Thatcher and Cooke
1989).

During Thatcher’s administration, anti-discrimination initiatives, equal opportunity
and diversity legislation, and policy advances also ground to a standstill. In 1978,
Thatcher declared that in power, her Conservative Party “would see an end to immigration for the sake of ‘race relations’ and to preserve the ‘British way of life’” (Brandt 1986). Thatcher’s rejection of Keynesian economics, her dismissal of the welfare state (and indeed of the state itself), the racist proscriptions inscribed in the Immigration Act 1988, and her rhetoric and dilatory political maneuvering on equal opportunity and diversity stirred urban unrest in 1980, 1981, and 1985 (Bagilhole 2009).

The violence and its aftermath coupled with the political trends and transformed the idea of equal opportunity into “a controversial and high profile fact of life” (Cheung-Judge and Henley 1994). Accusations of racism plagued Thatcher, and compelled her successor, John Major, to try to play down the worst of it, to little avail. It was into this milieu that New Labour entered under Tony Blair in 1997, and it was under Blair and his successor Gordon Brown (2007-2010) that constitutional transformation was rapidly and radically pushed forward, creating devolution, the impetus for the Equality Act 2010, and the development of the regimes through which I organize my analysis.

The particular meanings and applications of the principles and framework goals inscribed in the equalities and medicolegal therapeutic regimes are in constant flux as different historical blocs deploy them for particular social, political, and legal purposes. They are essentially the basis for the development of the welfare state. In Britain, the nascent concerns of “welfare” can be dated more or less usefully to the New Poor Law of 1834 and the concerns of the era with the distinction between “the relief of indigence” and the “relief of poverty” (Poor Law Commissioners 1834:334). This distinction hinged on animosity toward and contempt for non-labor and idleness, and the assumption that the relief system encouraged these, therefore undermining the whole edifice of the
British economy (Dean 1991; Neocleous 1996). To combat the (believed) propensity of
the poor to inactivity and thus indigence, counterincentives were necessary, namely
eligibility restrictions and severe discipline.

Additionally, oversight was a key requirement, and so the Poor Law Commission
was created “to overcome the unavoidable discrepancies and corruption created by the
administration of 15,000 [poor relief] units” (Neocleous 1996:119). This was the birth of
means-testing, and the development of the hated approach to poor relief, which
demanded the deeply intrusive and shaming ways by which people demonstrated their
immiseration, including the parading of poverty in front of a relieving officer sent out to
check on the reality of squalor and want.

Following the economic crises of the 1920s and 1930s and the toll of World War II,
the postwar Labour Government in Britain briefly swept means testing to one side, in
favor of universal services, a system in which everybody paid in, and everybody was
entitled to payout in times of hardship. The economist William Beveridge chaired the
Inter-Departmental Committee on Social Insurance and Allied Services, which
recommended widespread reforms in the existing system of social insurance (1942).
The report became known as the Beveridge Report, and was directly influential in the
creation of the system of National Insurance and the National Health Service, the
emblem of the welfare state in Britain. Most scholars usually credit Beveridge as the
“architect” of the British welfare state, and the Report as its originary document (Lowe
2005; Williams and Johnson 2010). It still occupies a place in the political episteme,
continuing to orient current debates over universal versus means-tested, or targeting,
services.
Even in the context of the immediate post-war political climate, however, governments at the Westminster end began to favor a return to means-testing, although there were moments of universalism preferences. Since 1979, means-testing has been the privileged mechanism for determining the distribution of welfare benefits and services, on the argument that scarce resources need to be allocated where need is greatest. Such a preference necessarily introduces some sort of test to identify need, which carries with it issues of stigma, fear, and layers of complexity. The means-testing versus universal services debate is a key site of divergence between Westminster and the devolved administrations.

In the regions, that is, in Wales, Scotland, and Northern Ireland, collective memories of the late nineteenth and early twentieth centuries’ experiences with the Victorian system of means-testing has left a strong animosity. The history of means-testing and a nearly visceral reaction to its most egregious failings has produced favor for, where possible, universal services. This animosity and viscerality are also part of the political epistemic, which has taken on significant new dimensions in the context of devolution and constitutional reform. As a Special Adviser to Welsh Assembly Government told me,

“We know, for example, that in the whole of Britain, the one group of people most likely not to claim benefit are single women over the age of 75 in Wales. We know that part of the reason they don’t claim it is because it is a complicated system and you have to apply for it. This is not universal: if you don’t know it’s there, you don’t know to ask. The Welsh Assembly Government, where it is able, prefers universal services. So where prescriptions are free, they’re free for everybody. Where primary school
breakfasts are free, they’re free for everybody. Where museum and galleries have been made free, they’re free for everybody. This isn’t just the preference of the Assembly Government, it’s the preference of the majority of the people in Wales.”

The concerns and potential remedies of the Victorian and post-war eras continue to populate official poetics in the ongoing reconstruction of (neo)liberal governance in Britain, although draped in different semantic garb. “Indigence” has given way to “dependency”; the “discipline” of the workhouse has given way to the self-improvement of workfare. Means-testing and discourses of targeting have given way to rhetorics of “fairness,” and the politics of universalism and inclusion have given way to stakeholding, with serious consequences for vernacular lifeways. My concerns in this regard are dual: on the one hand, with the political significance of race and health in political administration, that is, the position that discourses and practices of race and health occupy within (neo)liberal welfare governance. On the other hand, I am concerned with the ways these discourses and practices shape the experience of racialization and medico-legalization. In short, this points to the important question of the “relation between the social and the symbolic” (Hall 1993b:2), and the ethnography of communication (or lack thereof) and its social effects. Welfare reform is a big ticket domestic political and fiscal item for many countries, with significant transnational, regional, and global implications. The relationship of race and reform is an important yet relatively understudied phenomenon in welfare service delivery and welfare reforms. My research centers on this phenomenon, drawing linkages in the specific sense of race vis-à-vis public sector reforms, and namely relations between reform proposals and enactments, health care, and race and ethnicity.
The welfare accommodation, between the state and the market, plays out through struggles over variegated representations of the “proper” nature and meaning of the principles of service delivery. These struggles are engaged in legal, political, economic, social, and cultural fields, as participants seek to articulate and establish their meanings and in some cases achieve hegemony (Gramsci 1971; cf. Hall 1986; Hall 1999). Decentralization and devolution are broad instantiations of these struggles; the equalities and medicolegal therapeutic regimes are two points at which the struggle is engaged on more precise terms. I examine these struggles and the role of legislation in their articulation and effectivity, as well as legislation’s effects, and the achievement of objectives. This means, mainly, attention to legislation’s role in the enunciation and enactment of particular ways of “doing” the principles; in regulating the projects of implementation; and in the constitution of polities and nations, institutions and infrastructures, subjectivities and modes of consciousness.

This brief and schematic discussion is not meant to inculpate any particular person, party, or set of ideas, but rather to illustrate the spectra between which oscillations of political debate occur, and to implicate the set of ideas that populate and are drawn upon in the deliberative practices of constitutional ordering, legislative production, and the everyday work of government. Law-making in Britain, including its variant processes in the devolved administrations, takes place in contexts of historical legacies of colonialism, industrial extraction, globality, poverty, labor, and marginality that continue to inflect the contemporary political and legal ecology. These elements populate the cognitive worlds of legislators and others involved in law-making, shaping the political epistemic in determinate ways. These legacies, in other words, are material
and symbolic, and saturate the deeply humanized relations of law-making and
governing in Wales and in much of Britain more generally. They also inform the
awareness of and desire to participate in historical change and movement that
characterizes most of my interlocutors, from the demimonde of the street to the more
rarefied and totemic worlds of the political chambers. My interest is in understanding
law-making and political-legal rule regimes from the perspective of the cognitive worlds
of those who create law, and of legal and political subjects more generally, and
connecting these with the outcomes of equality and other institutional initiatives. Within
this observation-analytical space, I give specific attention to particular forms of
difference, namely race (and ethnicity) and mental disorder, as objects of law and
government, and with distinct problematizations and consequential effects. More
precisely, I examine difference in Britain in two senses: the national-territorial sense
brought about through political and legal devolution, and the legal subjective sense
within the national-territorial jurisdictions, especially as these vary between the center
and the devolved administrations.

The State and the Nations: Devolution, Territorial Politics, and Ensemble
Relations

Devolution is a complex, asymmetrical, and emergent mode of government. The
devolved administrations are not independent, and devolved Britain is not a federal or
quasi-federal state. Parliament in Westminster explicitly retains its sovereign
prerogative, but has transferred executive powers to the regional administrations,
institutionalized in an elected Assembly in Wales, an elected Assembly in Northern
Ireland, and an elected Parliament in Scotland. The understanding of these powers as
executive in nature is an important cultural artifact, and presents a seeming paradox:
what does it mean to transfer executive powers to a legislative body? On the Montesquieuian (1989) notion of the separation and balance of powers, this paradox seems to jeopardize legitimate governing, and compromise the notion of limited government. In British constitutional terms and on the Parliamentary model, however, the embeddedness of the executive within the legislature is a conventional and relatively unproblematic mode of political and legal operation.

More prosaically, the transfer of executive powers means that the functions of the former Secretaries of State for Wales, Scotland, and Northern Ireland have been bundled and delegated to the legislative bodies. In other words, the powers conferred upon the new legislative institutions in Cardiff, Edinburgh, and Belfast are those formerly exercised by Ministers. This is important for two reasons: first, it illustrates the nature of the powers to be exercised by the new legislatures; and second, it illustrates the nature of the legislative remit of these institutions. In essence, these powers are limited, circumscribed, subject to Parliamentary oversight (and overrule and potential retraction), and bound to the delineated jurisdictions of the national regions. These are specifically national-territorial and regional powers. The sovereign powers are not shared or segmented between multiple levels of government as in a federal state like Germany or the US; nor are sovereign powers unified in a confederation, like Switzerland, Serbia and Montenegro, or Canada. Rather, the center, Parliament, as the single tier of government, retains sovereignty, and Britain remains formally a “unitary” state, with supreme power vested in and vigorously guarded by Parliament. Within this formal construction, portions of the Parliamentary prerogative for certain fields of action are delegated to the devolved administrations.³
The bundling and delegation have been precisely legislated in the Acts of settlement, namely the Government of Wales Act 1998 (and its amendment and reauthorization in 2006), the Scotland Act 1998, and the Northern Ireland Act 1998 (and its amendment in 2009). These Acts are constitutional legislation; they are integral to the British constitutional order, alongside Magna Carta (1215), the Glorious Revolution (1688), the union moments, the extension of the franchise (1832), Parliamentary sovereignty (1911), accession to the European Communities (1972), and the incorporation into domestic law of the European Convention on Human Rights and Fundamental Freedoms (1998) (cf. Wicks 2006). In British constitutionalism, some “moments” are clearly constitutional, although there is no bright line between constitutional legislation and ordinary legislation. As pointed out in the introduction, Britain has no single written constitution, nor is the British constitution codified as such. It exists as a palimpsest of documents (statutes, rules of law) and conventions, or “rules which are not laws” (Dicey 1908:24). These conventions are practices, related to functions, which are not legally enforceable, but which are binding upon those to whom they apply. The British constitutional order is characterized by oscillations between rules of law and conventions, and the malleable and somewhat open-ended nature of their co-operation. As an example, the office of Prime Minister, quite obviously a constitutional office, “does not exist in law” (Wicks 2006:62). It is a conventional position, which provides “the flesh which clothes the dry bones of the law” (Jennings 1959:81-82). Conventions are an essential part of the British constitutional order and the British culture of law and legal politics.
Decentralization and the Welfare State in Britain

Decentralization and devolution have reshaped the legal and political landscape of Britain. They have also reshaped legal and political discourse, and the material and semiotic practices and epistemic communities of law-making, police power initiatives, and the conduct of government. In addition, these processes have reconfigured the discourses and statuses of key objects of knowledge in legislation, regulation, and government. These objects include such totemic concepts as the social, the citizen, the public sector, justice and equity, and the goals of governing, especially services, service provision, service delivery, and service outcomes. Decentralization and devolution, in other words, have become integral dimensions of the British and the local cultural fields.

Part of the effect of devolution has been not merely the creation of new entities of government in Wales, Scotland, and Northern Ireland, but the transformation of the meaning of the political constitution, of the political commonwealth, and the nature of the state and nation. Nation, state, law, culture, and sociopolitical practices have all been fundamentally altered, reconstellated, in the devolved lifeworld. It is in this sense that I adopt the image of the "ensemble state," and treat devolution is a "mutation that merits attention" (Haraway 1997:230), both for its macrosocial implications and for its inscription and legibility in the everyday and in the interoceptive understandings of self, community, nation, constitution, and state.

New Labour and New Britain?

Devolution has been consistently narrated as an effort to decentralize without compromising the supremacy of the center, namely of Parliament. This is a paramount consideration in Britain, because of the doctrine and philosophy of Parliamentary sovereignty and its epistemic basis comprising such principles as liberty, democratic
inclusion, representation, accountability, the maintenance of government, the separation of power, and the regulated monarchy (Blackburn and Kennon 2003; Child 2002; Goldsworthy 1999).

From the Magna Carta in 1215, to the formal annexation of Wales in 1536, to the Glorious Revolution of 1688, to the Union of England and Scotland in 1707, to the Reform Act of 1832, and the Parliament Act of 1911, the “historic,” or “organic” British Constitution is understood to have come about as a result of evolution, not deliberate construction. It is an uncodified document, operating through both conventions and legal rules (Loughlin 1992; Tomkins 2003). It is a political, rather than a legal, constitution, and as a general statement, it is unique in the democratic world. These are crucial elements of the political epistemic in Britain, and of the symbolic nature of the British constitution in its role as figurative escutcheon. This role has been integral to the political societies it birthed, and to shaping the experience of being British, as well as the experiences of encounters with Britain and the British. The end of the twentieth century, and beginning of the twenty-first, has seemingly brought about the end of this historic and organic constitution, and a different politico-legal and cultural bête is emerging from the loss of empire, the transformation of the marmoreal imperial-scape, accession to Europe, and the sweeping constitutional reforms initiated in 1997. Indeed, as Vernon Bogdanor observes, “a new British Constitution [sic] seems to be about to evolve” (2005:74).

British constitutionalism and constitutional history, and British politico-legal history more generally, were, however, a relatively unchanged political imaginary until 1997, when Blair’s administration initiated its “quiet revolution” (Bogdanor 2005). This political
imaginary is deeply rooted in an insular sense of place, in the archipelagic aspirations of British sovereignty, so that global imperial loss was rarely narrated as constitutional change; merely an external development in the Empire or the Commonwealth. Home rule in Ireland and devolution to Wales, Scotland and Northern Ireland are more explicitly framed as constitutional change. This change, what some call revolution and other refuse to call revolution, was undergirded by a set of modernist principles, common to Enlightenment European tradition. These included modernization, flexibilization, accountability, transparency, subsidiarity, and increased individual rights. Critical dimensions of the principled basis were consensus, trust, and subsidiarity and multilayered democracy. Devolution itself was only one component of the larger, more encompassing program of decentralization and constitutional reform focused on institutional transformation in the judicial system (creation of a Supreme Court, incorporation of the Human Rights Act), the House of Lords (removal of all but 92 hereditary peers, removal of the Law Lords, and calls for an elected House), the House of Commons (reduction in the numbers), voting reform (introduction of proportional voting for representation in the European Parliament), local government reforms, formalization of the constitutional independence of the Bank of England from the Government, as well as transparency moves and freedom of information innovations. (Bogdanor 2005; House of Commons and Secretary of State for Wales 1997).

This was a program designed to bring government closer to the people affected by decision-making, a program which Blair and his colleagues framed as “modernisation” [sic]. This modernization project created a new political economy in Britain, and new cultural politics in law, policy, and government across and between the regions. From a
US perspective, these changes may strike one as relatively benign, perhaps even trivial. From a British perspective, they are deeply affecting and momentous transformations of identity-producing historico-cultural institutions and normative means of political operation that attach to a value system and sense of self.

This constitutional transmogrification is believed by some to mark the end of the “historic” British constitution (Bogdanor 2009). In addition to being significant legal and political changes, these innovations are also potent cultural symbols, and sites of struggles over meaning and signification. As such, they produce and are the product of emergent social differences and differentiations. They are not merely differences in inter-personal or identity terms, but differentiations in national-historical terms, and in contemporary geopolitical and neoliberal terms. Furthermore, the question whether these changes mark the end of the historic British constitution is itself a cultural as well as political and legal question, drawing into the discussion the nature and status of constitutions, and of the British constitution more precisely.

At the time of its proposal and in the run up to the referenda, devolution was frequently assessed as an attack on the British character, an undermining of Britain’s place in the world, and a diminution of Britishness. A number of the reforms, especially the implementation of the Human Rights Act and the creation of the supreme court, were interpreted as fundamental challenges to the political bedrock of Parliamentary sovereignty and to understandings of the proper ways of doing law, policy, and government. The political commonwealth, for many in the later 1990s, was being squeezed between an intrusive and oppressive European Union and inappropriately assertive nationals in the Celtic fringe. Demands from historically resident communities
of color, migrants, refugees, and others added to the perception that something fundamentally British was being challenged and replaced. New Labour increasingly came to be maligned by cultural, political, and social conservatives as the destroyer of (British) worlds.

The reforms, however, are not merely changes in law or the dominance of a particular ethnic, racial, religious, national, or partisan ideology. They are material changes, especially in the creation of new institutions of law, politics, and government. They are semiotic changes, or innovations in the ways by which meaning is assigned, authorized, contested. They are epistemological changes, or shifts in the ways by which reality is known and intervened upon. Importantly, they are also culturally specific. These changes, at their root, are about the foundational myths of the British state, and have to do with notions of Britishness and other forms of national and other identities, membership and (non)belonging, the conduct of politics and government, the historic meta-narratives of liberty, justice, equality, and the nature of proper humanness and related symbolic forms that populate the British self-imaginary. As such, they interpellate and reconstruct history, for instance the history of colonization throughout the archipelago and in wider contexts. These reconstructions are then mapped onto the new poetics and institutions of constitutional transformation, generating a new political theology of the social body, the body politic, and particular types of personal bodies in their connections with the rhetorics and practices of stakeholding and fairness, for instance, within the regime environments of equalities and medicolegal therapeutic strategies.
Devolution, as one of these reforms, is an instantiation of and response to the “moral-practical self-understanding of modernity as a whole...articulated in the controversies we have carried on since the seventeenth century about the best constitution of the political community” (Habermas 2001:xli, italics mine). For Tony Blair and the advocates of devolution and constitutional reform, the political community in Britain in 1997 was in need of overhaul, of “modernisation,” of the “mission to modernise – renewing our country for the new millennium” (Cabinet Office 1999a). This urge to modernize attached itself to particular infrastructures, namely the public sector, including health care, education, housing, employment, and benefits, among others; to particular institutions, including hospitals, schools, the Treasury, and the criminal justice system; to the democratic framework of the country; and to the operation of government itself (Cabinet Office 1999a:4).

But, what does it mean to modernize a modern system? For Blair, it meant open and inclusive government, “better” government, and government that generates (and deserves) trust among its electorate. This is fairly conventional political rhetoric, but attention to the discourses of constitutional change, decentralization, devolution, the stakeholder society, and fairness highlights two essentials as the standards of action and evaluation: efficient conduct of government, and quick, relevant decision-making by agencies of the public sector. Law and the police power are implicated in both standards, as exemplars of functioning, and as instruments of implementation and measurement.

From the perspective of Westminster and Whitehall, decentralization and devolution were moves towards modernization, flexibilization, and integration, toward
improved government, toward “better government for a better Britain,” and “better government to make life better for people” (Cabinet Office 1999a:4,5). From the perspective of the regions, Wales, Scotland, and Northern Ireland, decentralization and devolution meant the transfer of partial legal and political competences, responsibility for some of the largest budget domains, and accountability for the major “domestic” policy silos and for the achievement of stated policy objectives. In the case of Wales, this included health, education, housing, social services, economic development, agriculture, heritage, transport and roads, and Welsh language, among others, and the delivery of legal obligations in those fields. In addition, it required the taking on by a brand new organization, the National Assembly, of the (re)design and fiscal burdens of these responsibilities, and the navigation of reconfigured relations with Parliament and the Cabinet, as well as those with the European Union, through funding, oversight, and joint-working requirements.

**Wales: A Case Study of Devolution and Territorial Politics**

[D]evolution is all about drawing more and more people into the business of government, rather than keeping them in their place and out of ours (Morgan 2009).

In the case of the National Assembly for Wales and the Welsh Assembly Government, devolution has capacitated the Assembly with the complex and heavy obligation of fashioning a novel social body and a novel body politic, a socio-cultural “Welshification” on the one hand, and a politico-legal Welsh specificity on the other. The National Assembly in its deliberative praxis materializes a “theater of persuasion” (Haraway 1997:29), a theater which is integral to the Assembly’s arrogation and performance of authority, and to its role in constituting publics, a public square, and subjects (Egginton 2010). Its successes have not been a given. The perceptual and
practical transition to devolved government was a hard-fought effort: even for advocates of full independence the Assembly leadership, initially, was little more than “Blair’s right hand” extended, invasively and cynically, from London, and the Assembly itself “little more than a talking shop” (Rhodri Morgan, personal communication, January 31, 2009; Carwyn Jones, personal communication, February 4, 2009).

Recognition and acceptance by Welsh publics of the authority of the Assembly and of its status as the political center in Wales have been hesitant, incremental, and slow. Each success, however, has cumulatively assisted in the performance and persuasiveness of devolved government. This is so such that by the tenth anniversary of devolution in 2009, Rhodri Morgan, the then-First Minister could remark that, as a result of manifold capacity-building initiatives, public-building efforts, and successful crisis response, by the end of 2001, “We were running the country. Ergo, the Assembly was not a talking shop. QED” and “Devolution is all about drawing more and more people into the business of government, rather than keeping them in their place and out of ours” (Morgan 2009).

The Assembly’s successes include the emergence and consolidation of a cabinet form of leadership, the triumph over the 2000-2001 hoof-in-mouth crisis, the passage of its first Measure,\(^8\) the successful negotiation of the first legislative competence order (LCO),\(^9\) the first Assembly’s successes in restructuring and reforming the National Health Service in Wales to produce a distinctive “Welsh NHS,” the provision of free school breakfasts and free prescriptions, and the formation of the One Wales coalition government (and the translation of the One Wales principles into practice) in 2007. The successes mark the Assembly’s emergence as a deliberative law-making body with
power and authority to both sanction and persuade in order to pursue its commitments to achieving a specific Welsh way of governing.

Since 1999, the legislative output of the Assembly has been relatively consistent: between 1999-2010 there have been twelve Measures passed, and 2,164 pieces of subordinate legislation. This means an average of 180 legal instruments each year, with peak years in 2000 (224 pieces) and 2006 (222 pieces). Are these big numbers? What does it mean?

As a comparison, between 2000 – 2010, the British Parliament itself passed 399 Acts, and 21,563 statutory instruments, an average of 2,196 legal instruments each year in approximately the same period. Massive, and hardly the full extent of Parliament’s output during this period.

Better scalar comparisons, perhaps, would be with Scotland and Northern Ireland, devolved regional siblings of Wales. Between 1999 – 2010, Scotland, which has an elected Parliament and therefore is of a different politico-legal order than Wales, passed 163 Acts and 4,818 statutory instruments. This works out to an average of 452 legal instruments each year, with peak years in 2005 (493 pieces) and 2007 (601 pieces). In the same years, Northern Ireland, with an elected Assembly and on the same order as Wales, passed 75 Acts, 5,904 statutory rules, and 117 Orders in Council. This means an average of 871 legal instruments per year during which the Northern Ireland Assembly was operational, with peak years in 2003 (475 pieces) and 2005 (482 pieces). The Northern Irish case is somewhat distinct, for several reasons, not the least of which is the fact that the Northern Ireland Assembly was suspended between
the years 2002 and 2007. Nonetheless, compared to its devolved siblings, Wales seems to have been relatively quiescent. Is this important? Is it illustrative?

These figures certainly leave us with some general questions: 1. What counts as law? Or more specifically, what counts as legislation and therefore as the constitutive analysand of legisprudence? 2. What is the relationship of legislation to other forms of positive law? 3. What is the relationship between the particular form of government and its ability and willingness to produce law? And 4. What has devolution wrought, in terms of legislation, the police power, the conduct of government, and the outcomes of struggles for equality?

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1 The British National Party (BNP) was resurgent during the period of my field research, promoting a message of extremism which centers on the “recovery” of an all-white Britain; employment, housing, and education preferences for white Britons; apartheid and anti-miscegenation laws; active campaigning against “Islamicization” and immigration; and ultimately the expulsion of all non-whites. A scandal developed when the BNP’s membership list was leaked to the press, implicating a relatively large and diverse array of elites, including high ranking police and military officers, Members of Parliament, mayors and local government councilors, clergy, doctors, lawyers, academics, and others. In addition, in local and European elections held during the period, the BNP secured a number of seats, provoking a strong reaction, including large demonstrations in Cardiff, Bristol, Birmingham, and other cities, and the creation of the anti-fascist organization Hope Not Hate (see http://www.hopenothate.org.uk/).

2 One of the more absurd measures of success was death during hospital stay, which was counted as a successful outcome of throughput.

3 “Delegation” means precisely a grant of authority exercised on another’s behalf. In the case of devolution, this means that the devolved administrations act as agents of Parliament, their powers enabled through parent Acts, such as the Government of Wales Act 2006, which prescribe “the detailed and technical rules required for their operation” (Martin and Law 2006:157).

4 The Union of England and Wales occurred de facto and militarily during the reign of Edward I and was announced (but not legislated) in 1295. The de jure unification occurred under Henry VIII in 1536 and 1542. The Union of the monarchs of England and Scotland was a negotiated result achieved in 1701. The Union of Great Britain and Ireland, which formed the United Kingdom of Great Britain and Ireland was achieved in 1800. The Irish Free State, under a form of Home Rule autonomy, separated from the union in 1922, and in 1927 Parliament enacted the name change to the United Kingdom of Great Britain and Northern Ireland. The Republic of Ireland seceded formally in 1948. Devolution, I argue, is a new configuration of the union history, and so it makes more sense to speak of Britain as a “union” state, rather than as a unitary state (Wicks 2006). In my formulation, I signal the union and its multiplex assemblage of political and legal relations as the “ensemble state.”

5 The political and legal processes of devolution began with referendums on devolution in Scotland and Wales, and on a partnership form of devolution in Northern Ireland (in conformity with the Good Friday
Agreement); and, following on successful referendums in each region, the passage of Acts implementing the terms of devolution: the Scotland Act (1998), which created a directly elected Scottish Parliament; the Government of Wales Act (1998), which created the directly elected National Assembly for Wales; and the Northern Ireland Act (1998), which created the directly elected Northern Ireland Assembly.

6 Some prefer the formulation “Parliamentary supremacy” to “Parliamentary sovereignty.” I will use sovereignty throughout to signal the principle that Parliament is the “uncaused cause” of law in the United Kingdom, although this is really an unsatisfactory prescription (Goldsworthy 1999:237).

7 Tony Blair campaigned in 1996 on the devolution platform; the Labour Party won the election and entered into Government in 1997. The referenda were held in 1998, and the initial Acts of the devolution settlement were debated and passed in 1999.

8 Measure is the term used to indicate primary legislation passed by the National Assembly with Royal assent. In Parliament, primary legislation is called an Act of Parliament; a Measure is its equivalent in Wales. Primary legislation passed by the legislatures of Scotland and Northern Ireland are also called Acts.

9 An LCO is an additional legal instrument for drawing down powers to the Assembly. The Government of Wales Acts delineate framework powers, within which certain competences are not within the purview of the Assembly. In these cases, to legislate or act the Assembly must obtain an LCO. This process will soon be formally rescinded, as the 2011 referendum on full law making powers for the Assembly was successful, and the Assembly will be granted these powers in the upcoming Parliamentary and Assembly sessions (i.e. in the Fall of 2011).


11 In addition, there are Local Acts, Ministerial Orders, and other forms of law that could be considered. For the purposes of the comparison here, Acts and Statutory Instruments are sufficient.

12 During this period, the Northern Ireland Assembly was suspended, therefore no Acts were passed. Statutory Rules and Orders in Council continued to be created, however, through the administrative apparatus of Whitehall and the Secretary of State for Ireland, hence the peak years of output during the suspension.

13 It should also be clarified that the Northern Ireland Assembly has a particular legal technology, the Order in Council, that is nominally not shared with the National Assembly for Wales or the Scottish Parliament, although the Order in Council and the Legislative Competence Order share qualities.
CHAPTER 3
SITUATING LEGISLATION IN A BRIEF SKETCH OF THE INTELLECTUAL HISTORY
OF THE ANTHROPOLOGY OF LAW

The central organizing metaphor in Anglo-American law and in sociolegal scholarship generally is the dispute. This metaphor has brought with it a privileged focus on jurisprudence, although other contenders have emerged in the discursive pantheon and theoretical industries of law and social sciences, including rights, citizenship, constitutionalism, criminal substantivism, law and economics, and law in context. I propose to develop an alternative approach, which I call "legisprudence,"¹ to correct the deficiencies of the anthropology of law.

Legisprudence considers law not as cases, but as legislation. It cognizes positive law in all its forms: legislation, constitutions, statutes, statutory instruments, regulations, rules, and the myriad related technical forms that accompany positive law: provisions, codicils, amendments, guidance, procedures, contracts, compacts, and so on. The breadth of law, in this formulation, encompasses legislatures, executives, and courts²; policing institutions; para-institutions, such as civil services, and central banks; quasi-public bodies engaged (or authorized) as legal actors; as well as the empowerments and inducements awarded to civil society and private interests in the pursuit of goals of public order and proper social formation. In addition, legisprudence also entails the cultural expectations of governing through these forms, and normative expectations of equality before the law. In other words, I understand law to consist simultaneously of law’s rule, the rules of law, and the rule of law, and this forms the background and context in which I offer my analysis of legislation and police power.³
This is not to adopt an a-critical stance that takes the normative or the cultural at face value. I do not presume that the rule of law proceeds fairly and equitably, that all persons are equal before the law, or that the rules of law are not implicated in unfair forms of accumulation, marginalization, exclusion, and expropriation in contexts of historical and contemporary, domestic and global, political and economic restructurings. Quite the opposite. However, such fictions and ramifications are a necessary dimension of the analysis of law, and can tell us a great deal about particular societies, and such considerations deeply inform my research, analysis, and interpretations. The absence of attention to legislation deprives anthropology “of an object with which it is still unfamiliar: the cold rationality of legal institutions, the instrument of society’s permanent acculturation of itself” (Thomas 2004). While I do not necessarily adhere to Thomas’ denotation of law as coldly rational, I do take his concern seriously, and agree with him that attention to the rules of law, the content of legislation, its practitioners, and its institutions is crucially important to anthropology’s interests.

My position should also not be presumed to indicate an instrumentalist approach to law. I do not mean to suggest that legal prescriptions and behavior are isomorphic. Nor do I assume that in Britain, or in any other setting, for that matter, that cultural familiarity with, expectations of, or shared meanings regarding law predominate. Rather, as my field research has made clear to me, notions of law, legality, and lawfulness take manifold different shapes, as do legal consciousness and legal agency. Part of my argument in this dissertation is that law in situ, that is, law-making in Britain and the devolved administrations, has constitutive valence, and brings new ways of being into being, aligning citizens, migrants, refugees, and others in common ways, transforming
and shaping simultaneously S/subjects, institutions, and the polity. Police power is an integral dimension of these enactments and their consequential effects.

I deploy legisprudence as both a heuristic for developing research into legislation, and a framework for theorizing legislation. My basic approach is the consideration of content, production, products, and consequential effects, which enables me to examine not just legislation, but legislative bodies and deliberation and related legal practices, as well as subjectivization and the relationships of law and cultural or racial difference, especially in struggles for equality and recognition. Building on the intellectual foundations of legal realism, critical legal and critical race theories, and the lineage of anthropology of law scholarship, I aim to broaden the scope of what gets to count as relevant for inquiries into law and as the valid object of (sustained) analysis for anthropologies of law.

There is a tendency to myopia in the anthropology of law, a tendency which: (1) reduces “law” to a relatively small variety of essences and to a few types of “proper” heuristics for entering into analyses of law; and which (2) reduces the complexities of the intellectual tradition of the field, creating a linear trunk of dogmatic researches out of a relatively diverse dendritic array of inquiries and representations. The intellectual history of the anthropology of law demonstrates that the field “discursively establishes and performs what gets to count” as law (Haraway 1997); my starting point is the need to transform the received ideas that have patterned the univocal accounts of law established and performed within the discipline. Law cannot be reduced to dispute resolution, rights, citizenship, or criminal substantivism. It cannot be reduced to rules, norms, or processes. It cannot be reduced to social control, domination, or the
instrument of social sectors. It cannot be reduced to an epiphenomenon; nor to one
element of binary constructions with culture, economics, or society. Finally, an adequate
historical reconstruction of, and innovative agenda for, the anthropology of law cannot
be reduced to the debates that privileges these aspects.

Although law is irreducible to conflict management, rights, citizenship, or criminal
substantivism, there is a strong tendency to do just that. The field is densely packed
with analyses of disputes, methods and sites of dispute resolution, participants in
disputes, and the nature of the dispute as a social microcosm. In themselves, such
analyses are relatively unproblematic. Taken as a whole, however, to the extent that
they define the field and foreclose alternatives, they are quite problematic, for four
primary reasons. First, is the privileging of judicial forms of law qua law. There is a
presumption, usually unreflexively accepted, that there is no other dimension or site for
finding law and its relations with the social. This presumption rearticulates and
reinscribes conventional analytical boundaries, and makes difficult the development of
alternative approaches to the examination, analysis, and interpretation of the
phenomena of law and its relations with the social, with the cultural, with the self, and
with subjectivization.

Second is the filtering effect of the jurisprudential approach. The reading, the
reception, and the effects of reception of the works of the anthropology of law bring
about a set of epistemological standards that tend to reduce the breadth and diversity of
prior researches. For example, Gluckman’s (1955; 1956; 1965) analyses of law tends to
be reduced to merely analyses of dispute resolution. If we temper the abridgement work
done by the focus on juristic forms of law, we can read a number of important
enlargements in Gluckman’s writings, namely his concern with conceptualizations and their relations to their cultural settings, or what one might think of as an ontological concern; and his concern for reasoning, that is, for the epistemological, cognitive, and deliberative activities and choices that populate the judicial process. In short, rather than a focus only on the judicial process and dispute resolution per se, Gluckman’s work can be read to engage a broader array of anthropological concerns, which enables a certain rehabilitation of his work to anthropology in general, as a contribution to a field of inquiry that is larger and more encompassing than merely “law.” Movement away from the core trend does occur, but slowly and sporadically, delaying the development of alternate research and analytical possibilities.

Third, is the tendency to reduce the modes of inquiry into law to constructions of practice and theory, in either an interiorized sense or an exteriorized sense. The interiorized poses advocacy (practicing law) versus jurisprudence (legal philosophy and legal education). The exteriorized either poses law as an autonomous domain susceptible to only limited critical inquiry by “outsiders” in the human sciences, or lumps law into politics. These juxtapositions erect boundaries and treat them as real, conceptually demarcating social and political, and theoretical and practical spaces, illustrating an achieved consensus, or an achieved hegemony. Analysands are treated as if they belong, naturally, to one or another bounded domain, rather than as “boundary objects” that circulate and transgress boundaries, inflecting (and inflected by) local conditions and agent motivations and intentions, acting and conducing action, simultaneously challenging and (re)constituting extant boundaries and communities of interest (Bowker and Star 2000; Star 2010; Star and Griesemer 1989).
Fourth, is the tendency to pose law in terms of positivism – naturalism debates, or to sterile rehearsals of materialist and idealist disagreements about essences, whether these are historical or transcendental, and what relation such essences have to political communities. Although these are useful historiographic and philosophical points that tell us something about the historical epistemologies of law and its socio-cultural settings and about the human sciences that analyze law, they do not constructively engage with relevant contemporary concerns.

If my analysis holds, it follows that there can be no single, unitary concept of what law is; rather, it is diverse across fields, time, professions, and practices, as well as across typological and substantive identifiers. Legal philosophers, legal theorists, and social theorists have differing ideas as to the nature and identity of law. Practitioners, too, have varying ideas, so that lawyers, advocates, legislators, judges, jailers, police, and medicolegal personnel understand and interact differently with law. These differences are not just theoretical or practical, but are also discursive, that is, material-semiotic, epistemological, and representational. They are built into institutions and infrastructures; inscribed in statutes, statutory instruments, regulations, and ordinances; and they subtend the proceduralisms of law, in the taking of evidence; committee work; deliberating bills; amending proposed texts; voting; conducting tribunals; conforming to the requirements of standing orders; teaching law, and professionalizing. In decentralizing Britain, and in the post-devolution administrations in Wales, Scotland, and Northern Ireland, the political, institutional, epistemological, and practical realities of the work of law and the conduct of government have been significantly transformed. This has had the effect of making the local and ethnospecific dimensions of legislation
in Britain and in Wales and the other regions newly relevant and compelling. Decentralization in the form of regional devolution, in other words, is “a mutation that merits attention,” one which has altered the official poetics and the syntactics, semantics, and pragmatics of law-making, the police power, and the everyday work of government (Haraway 1997). In this dissertation, I argue for the normalization of legislation and its progeny as disciplinary commonplaces. Before I proceed to the conceptual development of legisprudence, however, let me ground this discussion in some particulars from Wales.

**Welsh Law: A Brief Excursus and Justification for Theoretical Practice**

For the first time since the tenth century, a Welsh law was passed in 2008. This law, the *NHS Redress (Wales) Measure 2008*, was enabling legislation which targeted liability reform within the NHS, but with implications for public law in Wales more generally. As enabling legislation, this Measure extended the capacity of the Welsh Government and Ministers to create subordinate (that is, Welsh) legislation, securing and strengthening the legal framework of devolution in Wales. It also was a part of a Britain-wide movement toward self-regulation as a preferred mode of governing, and part of the Welsh Assembly Government’s (2006) *Healthcare Quality Improvement Plan*, and the Assembly Government’s Department of Health and Social Services’ agenda to “put things right” in the NHS (2008; 2010).

The *Redress Measure*, a rather humble bit of legislation, is credited with the inauguration of rejuvenated Welsh law-making, although this contention is only partially accurate. During my year of fieldwork, the Assembly passed two Measures, and had several more “in the pipeline.” As of this writing, in mid-2011, there has been enough law-making activity to warrant the emergence of a specifically Welsh corpus of law, and
an institutional and epistemological infrastructure to support the notion and practical realities of “Welsh law”: Welsh law curricula are developing, a body of lawyers specializing in Welsh law has emerged, and Britain’s National Archives hosts a site, legislation.gov.uk, “The Official Home of UK Legislation 1267-present,” which features sections dedicated to the legislation of the devolved regions, Wales, Scotland, and Northern Ireland.

This picture is somewhat misleading, however, although it’s misleadingness points up themes endemic to the anthropology of law, including, What is law?, What is the relationship between law and politics?, and What is the relationship between law and identity, or law and subjectivity? Devolution opens new windows on these questions. In the paragraph above, and in many analyses of devolution, Wales undergoes a historical re-emergence as a figure both unified and autonomous. The reality of this figure’s existence, its mimetic effect, is pegged to law, and more specifically, to legislation, to the positive enunciations of the Welsh legislature and government. This is relatively unsurprising, and a rather banal observation characteristic of our expectations of polities as functional entities. Or is it? Our question, What is law? can now be repositioned, not to ask about the definition or nature or essence of law, but about what gets to count as law, as the meaningful and useful analysand in the anthropology of law and politics. Additionally, consideration of the connections between polity and legislation can lead to fruitful discussions of the symbolic capital of law-making, as well as of the control over the shape of the political narrative as newly authorized political and legal agents take on the role of national myth-makers, generating, at least in part, the conditions for imagining community.
Colloquially, we understand that legislation is a privileged function of the state, but in disciplinary terms, anthropologists of law and politics have typically consigned legislation to the analytical and interpretive dustbin. *What is law?* conventionally receives the response, “Dispute resolution, courts, adjudication!” This is a rather incomplete inventory, and in an absurd way, if we accept as a starting premise that the polity and law are necessarily conjoined, then the dispute-centric model more or less removes Wales from the analytical world: Wales has no court system of its own, it has no system of dispute resolution that is its own. The judiciary in Wales is an arm of Her Majesty’s Courts and Tribunals Service.⁵ Certainly there are courts in Wales, but they are not *Welsh* courts, so the linkages between law and society, between law and politics as drawn by court-centric models, creates odd and discordant prescriptive, descriptive and interpretive effects.

A better response to *What is law?* is inclusive of “Legislation!” If we also consider related technologies of law, such as *subordinate legislation*, *delegated legislation*, and *statutory instruments* to count as law, then our conceptualization of law changes, is enlarged, becomes more encompassing. If we do allow these other forms of legal technology to count, then the first bit of law passed by the National Assembly was *The Education (School Government) (Wales) Regulations, 1999*, made August 5, entered into force September 1, and one of 30 pieces of law passed that year. A survey of the first year of legislating and regulating in Wales gives a sense of the Assembly’s competences, of the scope and politico-legal topography of devolution: education, housing, agriculture, health, local government, transport. A look at an introductory text of one of these instruments is also revealing:
“The National Assembly for Wales makes the following Order in exercise of the powers conferred on the Secretary of State for Wales by Section 126(3) of the National Health Service Act 1977 and section 5(1), and paragraph 29(1) of Schedule 2 to the National Health Service and Community Care Act 1990 and of all other powers enabling the Secretary of State in that behalf and now vested in the National Assembly for Wales, considering it appropriate in the interests of the health service to make this Order, and after completion of the consultation prescribed under paragraph 29(3) of Schedule 2 to the latter Act” (The National Health Service Trusts (Wales) (Dissolution No. 2) Order 1999, footnotes removed).

This preamble gives us insight into the distribution of devolved power, the historic and ongoing nature of the relationship of Wales with England and Britain; the Assembly as representative of a new modality of legality and of governing; the importation of prior principles; the inscription of democratic mandates and the drawing of boundaries; and the vision and early governing objectives of the Assembly, namely the dissolution of the existing health infrastructure, a precursor to subsequent institutional and structural reform of the National Health Service in Wales focused in large part on principles of social governance. Further, the preamble demonstrates the intertextual nature of law, the deep ecology of legislative (institutional, statutory, and regulatory) architectures, and the presumptive nature of Parliamentary law, that is, its supremacy, its binding nature, its sense of permanence (albeit, ironically inflected through a related sense of impermanence, transitoriness, and mutability). The preamble also highlights the material-semiotics of “modernized” democratic accountability regnant in the contemporary political climate.
Importantly for the work at hand, the preamble, and the instrument it introduces, also underscores the nature of health as a critical dimension of governing: on the one hand, as the largest budget item in Wales; on the other, as a key element of the police power, of the reason of state and *Polizeiwissenschaft*. Health is also a key site at which struggles for equality are enacted, and the multiple intersecting rules regimes and policy strategies and practices are crucial to these struggles in complex ways. The preamble demonstrates the polity’s arrogation of health, welfare, morals, and safety as normative, normal, and normalizing domains through which governing, including valuation, is properly to proceed (Dubber and Valverde 2006; Foucault 1988; Gordon 1991; Valverde 2003a). In this environment, the limits on political power are seen in the text, in the content of statutory and regulatory documents. New claims to legitimacy, to rule, and to authority over the identification and management of public issues are also seen, as are parallel claims, from the Assembly and Parliament, on the political and legal constituents of the territorial nation.

Devolution has brought about novel material, semiotic, and epistemic realities, through a precise form of law, the statute and its progeny, that articulate the design and intent of change; through a more encompassing sense of law as a necessary and proper component of ordering society; and a particular way of imagining social worlds and their futures, as well as the technologies to constitute and progress those imagined worlds and futures (Geertz 1972b; Goodman 1978). We often imagine this generic sense as the system of law, the rule of law, or as Paul Kahn (1997) has called it, the “reign of law.” At stake, in part, are concepts of the public weal and contests over the identification and implementation of problems and solutions, and how best to achieve
designated goals for the interests involved. In general, regardless of the goals, the
type of reforms, or partisanship in the designation of problems and solutions, there is
virtual unanimity regarding law as the proper, indeed, the indispensable mechanism for
achieving all aspects of change. Attention to decentralization and devolution in Britain,
to the development of the National Assembly for Wales, and its law- and policy-making
and conduct of government open a novel lens for the anthropology of law, with
implications for the discipline more generally.

**A Brief Critical Review of Anthropologies of Law and Government**

The intellectual tradition of the anthropology of law and policy is discontinuous in
two senses. First, the privileging of dispute resolution as the central, or indeed the sole
site in which law is to be found has generated a relatively overdetermined corpus of
anthropological analyses of courts, criminal justice, and rights. The second is the dearth
of integrative work that considers law and government as significant and germane co-
constituents of social worlds observed by anthropologists. My goal is to suggest
remedies for these problems, not in order to overthrow extant agendas of research, but
to supplement and to embed a new dimension within existing frames. I attempt this not
just to place legislation in social context, but in intellectual context, and to remove
legislation from isolation and recover its popular dimensions. I remain shocked and
beleaguered by the state of the discipline in this regard, and its willingness to ignore the
important role of legislation in the social worlds we study, its presence for those who
inhabit the multiple and particularized stories we tell, its generative nature in the lives of
those with a stake in its everyday engulfment.

Anthropology needs to understand legislation as something other than just a
corpus of rules or the besmirched product of cynical political instrumentalisms. In
addition, practitioners need to become more familiar with and comfortable with legislatures. There is no place on our globe that goes unlegislated, no place that is beyond the gaze and the imagination of the legislator. The encounter with legislated environments is the everyday experience “on the ground,” as well as a core dimension of the *raison d’être* of the legislator. I have learned in my field work that ordinary folk are keen observers of their local legal systems, and of larger-scale intrusions on “their” law. This is not to say that they share the same familiarity with legal things as enjoyed by political and legal elites. Part of my work, then, is to find out “where people are” and to familiarize the unfamiliar. This broad (self-imposed) mandate covers, if such a distinction is sustainable, both the intellectual and the popular: to familiarize anthropologists with legislation and at the same time to engage with popular encounters with, understandings of, and agency vis-à-vis the law. The analysis of legislated and regulated environments, and the recovery of these intellectual and popular dimensions of law, also includes the effort to give law (back) to the people. This entails inquiring into both the meanings that legislation intends and the meanings that people attach to legislation in particular times, places, and contingent circumstances. Ultimately, on the long view, this has clear implications for our understanding of the relationship of the rules of law to justice, and to the achievements we decide to call “just” (Dale 2009).

Regarding the over-emphasis on dispute resolution, criminal substantivism, and rights, the salient point to note is the absence of considerations of rules of law and positive law, especially legislation, in the anthropological literature (Snyder 1981a). My argument is that such rules are essential social and cultural artifacts, but one would be hard pressed to find sustained antecedent work in anthropology to commend the
argument (but see the following excellent exceptions: Borneman 1992; Coutin 2000; Holston 2008; Mandel 2008; Moore 1998).

The distinction upon which this argument rests must be understood carefully: the early works of legal ethnography were certainly concerned with rules, but this concern encountered two obstacles. First, much of the classic legal ethnographic work was attentive to rules primarily as these were inductively derived from attention to courts, delicts, and trouble cases; second, the reception of these works has sublimated their attention to positive rules of law. Legislation and related forms of positive law are missing from both ethnographic and intellectual concern. These forms need to be rehabilitated in the anthropology of law, to improve the discipline’s engagement with its objects of analysis and its interlocutors.

The emphasis on and development of case interests and case methods emanates from three antecedents. First, from natural law and social contractarian theories; second, from the hegemony of Anglophone researchers and Anglo colonial administrations in the execution of early legal ethnographic research and writing; and third, the ascendancy of the realist movement. These factors created a path on which the anthropology of law has found itself, with little initiative or support for alternatives. Where alternative approaches have developed, they have been circumscribed within the realm of the “logic of disputes” and the institutional infrastructures of dispute resolution. For example, much time and ink have been devoted to debating the questions of whether law is universal or locally variable (Bohannan 1957; Gluckman 1955); whether law is better conceptualized as rules or as processes of dispute resolution (Comaroff and Roberts 1981; Moore 1978; Radcliffe-Brown 1952; Turner
1957); or whether dispute settlement is more properly judicial, formal, and rule-based or negotiated, social, and politicized (Gluckman 1955; Gulliver 1963; Nader 1995).

Whatever the particular merits of the arguments, and the preferences of each of these scholars and their allies in debate, fundamentally, the discussion resides in a context of dispute management.

What happened, then, to the precocious explorations of forms of positive law in the classics of legal ethnography? Many of the early ethnographers of law were aware of, concerned with, and attentive to positive law (as regulations, legislation, or codes), but the reception of their work has infrequently taken up these concerns. Where these concerns have been addressed, some excellent work has been produced (e.g. Coombe 1998b; Coutin 2000; Darian-Smith 1999; Mandel 2008; Maurer 1997; Moore 1998; Perry and Maurer 2003; Snyder 1999; Snyder 1981b; Snyder and Savané 1977; Thomas 1996; 2004), but, as noted above, it is discontinuous, in the sense that it is not cumulative or sustained, and there is little in the way of a corpus of literature to which one can turn to uncover what anthropologists collectively think about legislation, constitutions, regulatory regimes, or related forms of positive law. There is also little in the way of calls for a remediation of this lacuna, and much that pretends to recognize the gap does so as much to dismiss as to rectify.

For instance, Donovan (2008) points out that, while dispute settlement is “an important dimension of legal anthropology’s intellectual history, the methodological collapse of law into disputing and its theoretical consequences should not be exaggerated” (184). I disagree, in the main because it is quite difficult to exaggerate the consequences of this collapse, and finding a way forward is not as easy as Donovan
would like us to think. It certainly is not as simple as his suggestion that practitioners should focus on pluralism, justice, and fairness. The “methodological collapse” continues to present clear difficulties and limitations for the discipline of anthropology generally, and for the specific subfield of the anthropology of law in particular. I have three main objections to the ongoing neglect of positive law in the ethnographic literature.

First is the absence of theorization of legislation specifically, and positive law more generally. Second is the backward-looking inclination of anthropological studies of adjudication and dispute resolution, which tends to create a past-oriented, sacralist, traditionalist, romantic, and conservative corpus of research and writing. The tendential nature of such research and reportage positions ethnographic subjects vis-à-vis their histories in particular and limiting ways. Third is the virtual removal of futures orientations of groups under study. Legislation, much more than judicially-derived rules, situates a people in terms of their sense of their own future and control over that future, as well as their sense of autonomy (Moore 2005). Anthropological research that precludes or excludes legislation and other forms of positive law also excludes these futures and the relationship of a particular group of people to their future. The effect of this is not just to deny people their future and their capacity to imagine it, to seek to shape and change it; the effect is also to remove peoples from the future and to foreclose their presence and potential as historical agents. This epistemological colonization is an artifact shared across much anthropological literature and scholarly activity, and one which has resulted in significant empirical, interpretive, and intellectual losses. Recovery of historical, epistemological, and intellectual agency is an important
activity for anthropologists to undertake, including recovery among ethnographic subjects themselves, and the recovery of the intellectual products of anthropological scholars marginalized on account of their race, class, gender, and other identity features delegitimized by epistemologies of ignorance (Harrison 1997; Harrison and Harrison 1999; Sullivan and Tuana 2007). This effort at recovery underlies and serves to justify much of my work for this dissertation. Let me draw a partial portrait of the existing literature and its gaps, in order to link the assertions above to the intellectual history of the discipline.

**Anthropologies of Law**

Henry Sumner Maine began his seminal *Ancient Law* with the remark that “[t]he most celebrated system of jurisprudence known to the world begins, as it ends, with a Code” (1986:1). Maine was referring, of course, to Rome and Roman law, and his use of these as figures was designed to highlight his arguments against prevailing nineteenth-century legal ideologies, characterized by the ahistoricism and utilitarianism of Jeremy Bentham and John Austin. Bentham had argued that the end of legislation was not to conserve tradition, but to bring about the greatest good for the greatest number. Austin, Bentham’s disciple, asserted that law *per se* existed only where a sovereign posited it. Both thinkers were fundamentally concerned with positive law, and its role in social ordering and achieving specific future goals. Enculturated in the common law system of England, however, each was at pains to explain the role and function of jurists: for Bentham and Austin, the jurist was responsible for interpreting positive rules and applying them, in terms of utility for Bentham, and “scientifically” for Austin. For Maine, sense could only be made of the jurist’s role, and of the law more generally, through attention to historical development and to the jurist’s place in a
legislated politico-legal environment. He was also deeply interested in the relationship we would identify today as “law and society,” and especially in the constitutive role of the rules of positive law.

Maine’s objective was to demonstrate the evolution of law, the historical antecedents of law, and the comparative analysis of law. What has often been made of Maine’s rich, detailed work has been its reception and diminution as merely another instance of evolutionist thinking, and as a series of contrasts that illuminate the stagist evolutionary commonplaces of archaism and modernity (Moore 2005:20ff; Rouland 1994). These developmental contrasts are generally pared down to progressive development of social forms: sentiment to contract; family to territory; collective to private property; and the two most famous: tort to crime; and status to contract. Out of these most famous contrasts, what has captured the anthropological imagination is attention to crime and to the basis for rights. Maine’s effort to demonstrate and theorize legal relativity, thus extending the project developed by Montesquieu (1989 [1748]), goes virtually unnoticed, and the breadth of his attention to codes, codification, the universality (historically and geographically) of written law, and the fundamentally constitutive nature of written law is generally elided. His belief and robustly supported argument that local variability in law proceeds from within law itself is a key dimension in theoretical and ideological genealogies regarding the autonomy of law. Coupled with related ideas of the source and direction of causal changes in culture and society, Maine’s is an important work for the anthropology of law for many reasons other than crime and rights, which themselves garner relatively little attention in his writings. Maine’s work is flawed, of course, but it has retained, as Lawrence Rosen has pointed
out, “its ongoing capacity to stimulate insights and debates for more than a century and a quarter” (1986:vii). Unfortunately, in the anthropology of law, the insights and debates stimulated rarely tend towards the issues of codes, codification, rules of positive law, or the independence of law.

Similar absences characterize the reception of Lewis Henry Morgan’s *Ancient Society* (Morgan 2000). Morgan emphasized the link between law and property, and more fundamentally, between law and the constitution of society: “The growth of the idea of property in the human mind commenced in feebleness and ended in becoming its master passion. Governments and laws are instituted with primary reference to its creation, protection, and enjoyment” (2000:521). For Morgan, property was the driving force of evolution, which had produced the shift from an originary human condition of matriarchy to a latterly condition of patriarchy, the institution of which was the basis of civilization. Law, for Morgan, was naturalistic, although not entirely of the “natural law” variety, and so the distinction between law and custom, for example, remains untheorized in his writing. Morgan did draw on John Locke and other social contract theorists, however, and it seems clear that the existence and importance of codified rules are a basic premise for Morgan, including for the Iroquois, among whom he conducted fieldwork. In Morgan’s text, law and the positive rules of law were intimately connected to property, and thus to the advent and firm establishment of civilization.

The anthropological imaginary infrequently remembers this focus of Morgan’s however, preferring instead to recall his concern with kinship, his evolutionist ideologies and his description of “ethnical periods.” Also missing is the recognition that Morgan’s evolution was historical, not teleological. The causes of change, for Morgan, arose from
initial conditions, and were therefore external to the theory rather than derived from it, making his evolutionism empirical, not formal (Morgan 2000). Positive rules of law become crucial as part of the initial conditions of a society’s evolution, and divorcing these rules from the analysis of social change, social conditions, or historical movement becomes quite problematic for understanding or appreciating Morgan’s theories and his contribution to ethnographies of law. The general failure to acknowledge his modifications of evolutionism (and the move away from a natural law approach that they signal) and their import for anthropological analysis of law results in the failure to develop lines of thinking that explore the role and relationship of positive rules of law to historical, cultural, and social change.

It should be noted that Morgan was an early ethnographic fieldworker, and based much of his thinking and writing on his encounters with ethnographic subjects and his empirical observations of these experiences. The genesis of the core anthropological method is conventionally credited to Bronislaw Malinowski, however. Arising from new, expanding, and intensified (colonial) encounters with a diverse array of human groups, and ongoing debates regarding the theoretical issues of evolutionism, functionalism, and universalism (and their paired alternates), the social sciences in the late nineteenth and early twentieth centuries were consumed by major concerns with the attributes and comparability of human groups. Commonest among the arguments was the suggestion that “primitive” and “savage” groups lacked some essential attribute for full inclusion in “modernity” or in the global family of nations. Relativists sought to discredit such notions, but often ended up reinforcing them, not due necessarily to their own theorizations and interpretations of empirical materials, but more often to the reception
and interpretation of their works. Maine and Morgan, for example, were both received reductively, as noted above, and this conventional reading has largely perdured to the present. One result of this has been the sustained assertion that certain types of people, “primitives” or “savages,” or more recently, “Natives” and “indigenes” do not possess the essential attribute of law. Following on Malinowski’s *Crime and Custom in Savage Society* (1926), based on his fieldwork among the Trobriand Islanders between 1915 and 1918, it is virtually impossible to continue to make this claim in good conscience, or to fail to recognize that positive rules of law characterized even “savage” or “primitive” societies.

One of the enduring legacies of Malinowski’s pioneering work in law and custom is his taxonomy that embraces the classic distinction, also seen in Maine, between “criminal” and “civil” forms of law. For Malinowski, civil law entailed “the rules of law…with a definite binding obligation,” the “positive ordinances,” and “the positive law governing all of tribal life,” (1926:30-31) and he devoted considerable space in the text to discussions of rules of positive law. Malinowski states, in fact, that “a study of purely criminal law among savages misses the most important phenomena of their legal life” (1926:31). This aspect of his writing is nearly completely ignored by his successors, however, in favor of his material on crime, his vague definition of it, the absence of coercion he remarked, and his analysis of the functionalism of the category of criminal acts; that is, the recognition of certain acts as a particular type of violation of social norms functions to foster reciprocity and sustain social cohesion, (see e.g. Conley and O’Barr 2002; Nader 2002; Radcliffe-Brown 1952). The reception and the effect of the reception of *Crime and Custom in Savage Society*, as with Maine’s *Ancient Law* and
Morgan’s *Ancient Society*, has thus played a key role in the overdetermination of dispute resolution and criminal substantivism in the anthropological literature, and the neglect of positive law, of extra-judicial rules, rule-functions, and rule-effects.

Where rules of conduct have been explicitly considered, early ethnographers tended to focus on their existence, their capture in codebooks, and the nature of their enforceability. This work was conducted nearly exclusively in colonial settings, and the preeminent work in this regard was Isaac Schapera’s (1938; 1943b) writings on the codification of indigenous law, based on his fieldwork among the Tswana of the Bechuanaland Protectorate. Schapera’s basic assumption held that a rule of conduct which the Tswana were willing to enforce constituted a rule of law. Schapera was commissioned and funded by the colonial government and collected lists of these rules, destined to be used to “better govern” the protectorate, for example, by enabling the establishment of “Native courts,” and the allocation to Native groups autonomy of decision-making in certain limited domains of social life (Donovan 2008; Moore 1969).

From our vantage point in late modernity, this is clearly an ethically challenged justification for ethnographic work, and Schapera’s practical focus limits the analysis of law’s rules in terms of their content or production, although his work has survived and continues to be used by independent Botswana (Heald 2003). It should also be noted that Schapera (1943b) produced a monograph specifically detailing the “tribal legislation” of the Tswana, which, like his *Handbook*, has exerted relatively little influence in anthropological research and thought, largely due to its merely “practical” nature, and the assumption that “disembodied lists of rules” are not useful for anthropology (Moore 1969:262).
Ironically, perhaps, Schapera’s main interests included the role of legislation as a mechanism of both continuity and change and the role of chiefs as innovators of social change (Schapera 1943a; 1947; 1970). Nonetheless, his work is explained away as merely lists and generally atheoretical. His attention to the making and instrumentalization of rules and their recovery and maintenance demonstrates at least formally the significance of positive and codified rules for both society and for anthropologies of social genesis and transformation. Schapera’s “fact-finding” work, however, tends to be regarded as mildly interesting, but more or less unproductive for anthropology (cf. Moore 2005; perhaps more illustrative is Schapera’s absence from recent important texts in the anthropology of law, including Nader 2002; Rosen 2006; Starr and Collier 1989; Starr and Goodale 2002).

Where rules of conduct have been considered on less pragmatic administrative terms, ethnographic and theoretical attention has tended to be directed at their functional roles as mechanisms of social regulation. Building on and extending Schapera’s formal premise that social willingness to enforce a rule constitutes it as law, legal ethnography in the mid-twentieth century was captured by “realism,” shifting attention to actual enforcement and the institutions and structures of enforcement. These developing enforceability concerns, however, subsumed rules within the activities of enforcement institutions, namely forms of tribunal (as distinct from a police force, for instance), thus reinscribing and (re)privileging adjudication-centric design preferences and models of the nature, character and essence of what gets to count as law. Instances typically considered to embody this approach in the classic legal ethnographic literature include Gluckman (1955; see also 1956) on the Barotse, and Bohannan
(1957) on the Tiv. For Gluckman, rules were of primary importance. He argued law should be understood as a body of rules, including statutes and judicial enunciations. Gluckman’s emphasis was on this enunciation of rules by courts, but he did attend significantly to issues of legislation also, as well as the relationship of posited rules to adjudication. His attention to positive rules of law in legislation and statute, however, has been obscured by the reception of his work and subsequent expansions upon it.

For Bohannan, on the other hand, “the whole idea of legislation is, however, of European origin,” even though the Tiv spoke of law and the acquisition of law, which Bohannan himself, in his linguistic analysis, interpreted as equivalent to making legislation (Bohannan 1957:55). Clearly, for Bohannan, the legal life of non-European indigenous peoples is characterized only by jural phenomena, as exemplified by the Tiv.

The argument between Gluckman and Bohannan turns out to be not merely one of comparative methodologies and the analytical relevance of western legal categories. It was, rather, rooted in distinctions drawn over the nature and sources of law, and the “tribal” possession of what we might call a full spectrum of law as a system, which includes posited rules (whether or not written or codified) as well as the institutions and infrastructures of dispute resolution. The premise argued by Bohannan, that native or tribal peoples are characterized by an absence of positive law, ignored Maine’s work, and was a characteristic assumption held by many anthropologists, including the realists in legal anthropology. It is also one which continues to affect the field of the anthropology of law. The ultimate legal realist ethnography of the period, and one which demonstrates the jural premise, is doubtless The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence (Llewellyn and Hoebel 1941).
The jurisprudential theory that underlies Llewellyn and Hoebel’s work narrowed the conceptualizations of law, of what gets to count as law, and of what constitutes the proper sites and methods for legal anthropological inquiry. From the realist ascendency, courts, cases, and the trouble case method emerged as the privileged model of legal anthropology. The questions “Where do we find legal data?” and “What do we do analytically with these data?” were answered with “the trouble case.” The trouble case is a case already adjudicated (and the past tense is important; it was improper, for Llewellyn and Hoebel, to consider cases in progress). Their underlying functionalist premise, significantly influenced by Supreme Court Justice Oliver Wendell Holmes, Jr., was that law is designed to “channel behavior” in order “to prevent or avoid conflict,” and its outcomes should be predictable (Llewellyn and Hoebel 1941). Regulation was one mechanism for channeling behavior, but the rather dim view of human nature held by the realists meant that they viewed regulation as misguided at best, with generally little to do with actual human behavior, and therefore ineffective as a deterrent. Bad actors abound, conflict is endemic to human communities, and the law’s task is the necessarily retrospective task of sorting out “social messes.”

Preeminently for the realists, this process of sorting out social messes is the work of courts, and dispute resolution, especially the trouble case, becomes not just a functional element of any society, but a microcosm of that society and its preferences for social action. In other words, attention to the resolution of cases of dispute enables the anthropologist to inductively derive general rules of law and general propositions about the nature of a particular society. Although the realist movement receded and encountered robust challenges from processualists, critical theorists, poststructuralists,
and others in the latter half of the twentieth century, the realist premises and, more importantly, the ongoing processes of reception of *The Cheyenne Way*, *The Judicial Process among the Barotse of Northern Rhodesia*, and *Justice and Judgment among the Tiv*, among others, continue to inflect the anthropological imaginary, setting and maintaining conventional boundaries around law both in its internal distinction, i.e. jurisprudence versus legisprudence; and in its external distinctions, i.e. law vis-à-vis politics and law vis-à-vis society. The research and writings of Gluckman, Bohannan, Llewellyn and Hoebel, and their intellectual progeny continue in the realist vein, sublimating positive law to juridical phenomena, and continuing to relate dispute resolution to larger social frames and the theoretical concerns of the discipline: for example, legal universalism for Gluckman; relativism and arbitration for Bohannan.

The beginnings of novel inquiry and challenges to the overdetermination of courts and dispute resolution can be found in work of Leopold Pospisil (1958) based on his fieldwork among the Kapauku Papuans. His research and writing stands out in the ethnographic literature of the mid-twentieth century.

Pospisil shifted the discipline in two important ways. First, he asked again the question, “What is law?” Second, he moved attention to a broader array of social institutions and the ways by which the relationships between institutions, society, and members of society worked to produce social order. Regarding the former, his interest was in establishing and articulating a clearer distinction between law and other forms of social regulation, including custom and religion (Pospisil 1958; 1971). None of his predecessors had adequately defined law, and so Pospisil set out to make such a
definition, and to do so, he opted to examine a much more diverse array of regulatory
technologies, including institutions, rules, and related phenomena.

Pospisil also drove forward scientific and comparative methodologies through his
use of existing data to design and test theories regarding culture change and making
generalizable cross-cultural statements. Pospisil has been both applauded for his
scientific approach (Donovan 2008) and condemned for his scientism (Goodale 1998).
For my purposes, what is useful from Pospisil, irrespective of his figuration in
disciplinary debates over empirical versus text-based and interpretive approaches, is his
willingness, like Gluckman, to readily accept codes and regulations as relevant and
important legal elements and as cognizable anthropological analysands. Granted, he
tended, like the other realists, to privilege judicial or related authoritative decision-
making in trouble cases; nonetheless, the breadth of his category of law laid important,
albeit infrequently taken up, groundwork for the analysis of positive law and rules of law.

Pospisil conventionally marks the end of the “classic” period of legal ethnography,
characterized by early ethnographic efforts to identify, to carve out and define the
domain and methods of the anthropology of law, as well as discussions of what
American and European legal systems were able to learn from those of their nonliterate
peers. 8 Disciplinary concerns had shifted from the evolutionism of the nineteenth
century (although implicit evolutionism often remained), to a more general structuralist,
functionalist, and translational concerns with legal difference and cross-cultural
commensuration of different legal forms and legal systems. Perhaps the most salient
contributions of the classics of legal anthropology were their ethnographic sensibility
and depth of research; their empiricality; their emphases on the complex contexts of law
as social action; their interest in the nature, sources, and identity of law; and their resistance to the siren of defining what law should be (Moore 2005). These contributions established a firm foundation upon which later exemplary developments in the field were built.

The transition out of the “classic” era was marked by the shift to new methodological and theoretical concerns in legal anthropology focused on novel approaches to pluralism, the extension of field researches to western countries, greater concern for the issues of decolonization, post-colonialism and sociolegal developments in the “new nations” (Rosen 1978), as well as a more coherent approach to both the conduct of research and the professionalization of a generation of legal anthropologists. Key figures in legal anthropology in this movement included Laura Nader, June Starr, and Barbara Yngvesson, among others. Nader emerged during this period, and established her dominance in the field, including intellectual and conceptual leadership and her determined effort to raise and professionalize the next generation of legal anthropology scholars (Nader 1969; 1965). Nader, Moore, and Merry have virtually defined the field of the anthropology of law since the transition, although important additional voices have been heard throughout.

The transition out of the classic era was also characterized in part by a period of malaise in Anglo-American legal ethnography, a circumstance noted by Simon Roberts (Roberts 1978; 1979), and deployed as his basis for arguing for “the abolition of the subdiscipline itself” (Fuller 1994:9). Roberts’ concern was with the sterility of debates, with the “wasteful and debilitating quarrels” that hobbled law’s promise for contributing to more general anthropological concerns (1978:4). Even as Roberts issued his plaint,
however, important works were published that moved the discipline forward on the western Atlantic, although the desultory status of the anthropology of law in Britain continued (Fuller 1994; Snyder 1981a). Among these works are Hamnett (1977), Moore (1978), Nader (Nader 1969; Nader and Todd 1978), and by 1981, in a revivifying and expanding field, Roberts had reversed himself and co-authored a valuable text with John Comaroff (Comaroff and Roberts 1981).

Other innovative and benchmark works of the period that demonstrated the energy and creativity of practitioners were published by Cohn (1987), Greenhouse (1988), Mertz (1988), Moore (1986), Rosen (1989), and Snyder (1981b; Snyder and Hay 1987). With the exception of Snyder’s work, however, there is virtually no call for or seeming interest in positive law or legislation in these works, however. While they do make useful contributions in terms of law as process, legal pluralisms, language, the cultural role of law, rights, and the exploration of justice and fairness, as well as new discussions of crime and policing, these works all sustain the “methodological collapse” discussed above.

More recent texts have been somewhat more interesting as regards dimensions other than dispute resolution. Eve Darian-Smith (2004), for example, examines legal categories and legal discourses as they produce Native American subjectivities in a politico-legal universe of Indian gaming, ethnic tensions, and racism. Merry (2005; 2006) tracks legal discourses across multiple registers and networked universes, and interrogates the contours of law and the role of transnational legal forms in cultural transformations. Bowen (2003) offers an archaeology, based on archival research and courtroom-based ethnography, of public reasoning, and while he does not challenge the
model of adjudication, he does expand the boundaries of legal anthropology and connects it in a more symmetrical and organic sense with the concerns of political anthropology. In this, he also illuminates new potential for anthropologies of policy and government.

Goodale (2009), for his part, begins to link legislated worlds with larger political, philosophical, and foundational concerns, such as rights, liberalism, law and the making of modern subjects, law-in-action, intentionality, and critical-reflexive approaches to the study of law (see also Goodale 2005). Although he does briefly consider law in its positive form, he does not offer any meaningful analysis of it, and in fact tends to regard it as “denotative” and deductivist, and attention to such legal forms as referring to “a finite set of universal normative principles that are, to greater or lesser degrees of accuracy, codified through a positive law of the legitimate sovereign” (Goodale 2009:32). These are common misconceptions directed at Civil Law systems and their filial emplacements, and are of little analytical or heuristic value. Even among these recent innovations, in the legal ethnographic state of the art, there remains a disconnect regarding positive law and legislation, as well as more compelling questions about the person and person-making, although Darian-Smith comes closest to an articulation in kinship with my own work, and her writing demonstrates a sustained and broad concern (1999; 2004; 2010).

Integrating Analyses of Law, the Police Power, and Government

The literature going by the name of “anthropology of policy” suffers, perhaps most seriously, from the absences of law in its analyses. Nader (2007) has remarked this absence of law most clearly, directing the criticism at work of members of the Interest Group for the Anthropology of Public Policy (IGAPP) in the American Anthropological
Association (Wedel and Feldman 2005; Wedel, et al. 2005) and the burgeoning corpus of policy ethnographies, which build on the works in Shore and Wright (1997). The salient point to note is the lack of attention to and theorization of the relationships between law and policy as related but distinct instrumentalities of governing. Their conjugation as the helix of government accomplishes much of the work of police power initiatives.

Regarding the dearth of work that addresses law, policy and government considered together, the salient point to note is, as above, the absence of sustained theorizations of their mutual relations. I find this to be largely an issue of the nature of what anthropologists consider to be legal data. The reign of the scientistic approach during the twentieth century compelled researchers and theorists to do two things. First, to assume the necessity of boundable, discrete data sets; and second, to compile these data sets so as to be quantifiable, commensurable, and comparable across cultural units. What this epistemological premise conduced was research that sought to distill various levels of analysis: society > political organization > order and control mechanisms > legal data. Legal data thus occupied a (relatively minor) position analogous to kinship data, religious data, etiquette, and others, so that polite behavior, kin relations, economic transactions, and divine mandates became indistinguishable from enforceable rules, formal institutions of legal interaction, legal rituals and roles. This is the basis of Roberts’ (1978) critique, and it is a valuable critique. His solution, however, led in the wrong direction, and to the malaise in legal researches in British social anthropology (Fuller 1994).
Since Radcliffe-Brown’s (1952) work, in which he obviously considered law and political organization to be essentially the same thing, or at least shared elements of a parent domain, law has been either subsumed as part of the political, that is, as just another element of order and control; or positioned merely as an instrument of politics, one that needn’t bother the anthropologist. Indeed, as noted above, Simon Roberts (1978; 1979) advocated the abolition of the subfield of the anthropology of law precisely because separating it out from politics and government was, he believed, impossible and misleading. A better solution than abolition, however, is to recognize the importance of law (qua legislation), its analytical separability from politics, and the fruitfulness of analyzing the joint nature of legislation, policy, and government.

Implicit in this approach are the additional problems associated with the colonial mindset, which took for granted that the legal in colonized settings must have been customary, and therefore even more closely joined up with kinship, religion, etiquette and other normative forms of order and control. Colonial science, therefore, established a pattern of legitimacy for research and analysis that severely limited the possibilities for the observation and analysis of what gets to count as law.

These limitations were also derived from the further constraint imposed by equating the legal with social order, social control, and, latterly, pluralism. Certainly, kinship, religion, and etiquette are important features of social order and social control. To equate the legal with order and control, however, is a serious error in the intellectual history of the anthropology of law. It certainly is true that law and legal actions and institutions are important mechanisms of order and control. However, to assume that the legal is merely one mechanism of order and control is a very positivist, empiricist,
instrumentalist, and functionalist approach to law, one that fails to understand the breadth and capacity of law as a generative, constitutive, and ramified social rhizome.

What is needed, then, is a new way to mobilize law and its joint relations with policy and government. I use the idea of government rather than politics in part because I want to step away from (1) the epistemological presumption of the unified hierarchy of politics and law, and (2) the implied combativeness of the political. In the first sense, this enables me to consider positive law *eo ipso*. In the second, rather than structuring analysis around the presumption that relations are necessarily and mainly agonistic, conflictual, mutually exclusive, and ideologically dogmatic, it enables me to consider additional modes of relationality: contrastive relations, consensus orientations, and deliberative practices among agents and collectives, and within institutions. Too much of the anthropological and human sciences literatures are inflected through the assumption that human nature is conflictual, that human relations are structured through diremptive binaries, and that proper analytical techniques take binary oppositional structure as the correct starting point. These binaries are articulated in a number of ways, the most basic being the enlightenment formulation of “I – not-I,” which has become more recently a conventional formulation of recognition of the Self through the Other, that is, the Self is recognizable only as being not the Other. This is fairly standard fare throughout the human sciences (Žižek 1999), historical legal epistemologies (Dore 2007; Schmitt 2005), psychoanalysis (Lacan and Fink 2006; Lacan and Miller 1988), poststructuralism (Derrida 2002). I diagnose this assumption as deriving in part from entrenched epistemological tendencies to structure social and analytical worlds around binaries which are necessarily discordant and combative.
Part of the problem I discern is the dearth in the anthropology of law of an accumulation of knowledge based on experience in research. The development of the anthropology of law has lacked coherence and sustained cumulative efforts. This has resulted in sporadic institutionalization of the discipline, and a general lack of awareness of the salience of law to everyday social activities, and its analogous existence with other cultural domains, such as economy and religion, for example. Part of this stems from law’s own efforts to distance itself from society, to create a taxonomy of “separate spheres,” and the willingness of anthropology (and the social sciences more generally) to go along with this myth and relegate law to a rarified analytical location. From this place, law has become largely esoteric, a specialized, and at times questionable, subfield (Roberts 1978). The rejection of the idea of anthropology of law as a viable distinct subfield results in law, especially in its positive forms, becoming little more than an appendage of political anthropology. In its lack of attention to certain details, the tradition has missed the greater part of law and lawcraft: its production; the logics and forms of reasoning that support it; its integral role in modernist, enlightened, rationalist, and liberal governmental projects. In other words, we have missed the analyzability and understandability of law and its fundamental relationship with governmental rationalities and technologies, and its relevance in the creation and shaping of social subjectivities.

I suggest that the anthropology of law needs a wider universe of relevance: “What is law?” should elicit much larger social, spatial and practical domains than it conventionally has, or currently does. We need to go beyond the end products of cases, consciousness, documents, policies, and the like, and diligently and rigorously examine the manifold transactional elements, including within law, that conjugate to produce
these finalities and the totalities they shape and index. Such (problematic) totalities include society; the citizen (i.e. a total or totalized subject which implodes the matrix of “law and society”); the nation; the state (i.e. representations of the state in binary terms, which presume an all or nothing, zero sum reality to the existence of the state and state power); the nation-state; forms of globalization; and constitutive antinomies of modernity, such as public-private, nature-culture, science-nature, self-other. Partial analyses, however, incompletely recognize and theorize the relations between law, other sociocultural domains, and society in general. If we assume, for instance, that law is merely a mirror of the social (cf. Hall and Karsten 2009), then our analytical impulses, as well as our results, are curtailed (Chase 2005; Niezen 2010; Rosen 1999).

Additionally, the analyses of law in anthropology need to extend well beyond the bounds of institutions, rules, processes, agents, and consciousness. Such analyses must embrace examination of novel domains that excite the anthropological imagination: the situated practices and pluralities of knowledge production; the role and influence of normative (organizing) schemata, such as Anglophone empiricism, positivism, post-modernism and the mutually constitutive relations between law and these philosophical and practical traditions; and the construction and use of knowledge to achieve social ends, including data gathering, facts, inference, conclusions, and forms of reasoning. Law is a site of implosion of technologies for imagining, knowing, and seeking to intervene in social worlds. The gathering of facts and other data forms, the formulation of propositional and theoretical knowledge, and the conversion of these into mechanisms of, justifications for, and means of valuing and evaluating government are important aspects of law, relatively neglected by anthropologists. The aggregation of
these into the epistemes within which lawcraft is undertaken is an important dimension in my development of legisprudence.

Based on my ethnographic research, I have come to realize that the problems faced by the “elites of statecraft” (Feldman 2005) and elites of lawcraft and of “lawfare” (Comaroff and Comaroff 2007) currently are frequently addressed through both legislative and policy solutions. These problems include, for example, creating a desired social order; producing appropriate subjective dispositions; and achieving security, economic, and fiscal goals. Accomplishing these goals largely or primarily through policy instruments is an important development for both legal and political anthropology. It is also a development which has, historically, struck fear into scholars of constitutionalism and democratic governance. The fear stems from the assumption that policy solutions are more or less unilateral Executive undertakings, and are therefore anti-majoritarian and not subject to transparency and legitimating processes of participatory production (Baker 2002). Such fears find their origin in a distinction drawn between Civil Law and Common Law systems, often presented metonymically as the difference between France and England, in which France is positioned as an “administrative law” country characterized by invasive bureaucracy and oppressive government (Bradley and Ewing 2007; Ziegler, et al. 2007). This political epistemic, which has its analog in human sciences in the privileging of dispute resolution, draws a false image of legal systems, their purity, and their “normal” characteristics as political, social, and cultural artifacts and poetics. I take up analysis of this forced and false legal-cum-national division in a separate project.
The effort to solve problems through policy represents a somewhat novel approach to governing, which should be understood less as instantiation of egregious executive misuse of power, but rather as an effort to rely on persuasion, consensus- and capacity-building as the means to stated ends. I diagnose the move toward policy solutions as a logical outcome of the discourses and practices of “governance,” or more precisely, a particular approach to the exercise of police power. I also believe that policy solutions should not stand in distinction or opposition to legislative or regulatory solutions. These should be approached as related sociopolitical instruments employed differentially as needed. Furthermore, I believe that in the New Britain, policy solutions have an (independent) origin connected to the particular political form that governing has taken in the last decade, namely, the multiplication of devolved polities and ensemble relations. This has created a new “politicity,” and which, I suggest, indicates a partial supplanting of law by policy as the preferred instrumentality of rule in sub-state jurisdictions. If such is the case, as I believe it is in Wales and the other devolved regions of Britain, the implications are powerful, shifting power, at least partially, away from the privileges of sovereignty (coercion, enforceable sanction) and adjudicative procedures for rectification of non-conformity, to persuasion, audit-measures, and a deepening cyberneticist ontology of political-legal ecology that favors communication and learning procedures between institutions and infrastructures of government. This is not an endorsement of any variety of the so-called “retreat of the state” thesis; rather, it is to begin to inquire into the processes by which state (and statal) elites are re-spatializing, re-territorializing, (re)consolidating their power, re-figuring their sovereign imaginaries and the insular territories over which they preside, and undertaking
“centralizing-decentralizations” in order to accomplish objectives and achieve intentions (Ferguson and Gupta 2002; Loughlin 1996; Mansfield and Solingen 2010; Rose 1996; White, et al. 2010).

Rather than reinvent the wheel of the anthropology of law, I seek to append a novel approach to existing literatures on courts and adjudication, human rights, criminal justice, law as culture, and related efforts, and to extend the potential of the (sub)field of the anthropology of law into new domains of law and new approaches to the analysis of law. In this effort, I adopt, adapt, and build on recent works in anthropology that move beyond the conventional jurisprudential approach. Among these are works that address the production of fictions and their necessity to social life (Clarke 2009; Clarke and Goodale 2010); legality and constitutions as fetish, and disorder as a normative mode of governance in postcolonial states (Comaroff and Comaroff 2006); the impact on daily life of intellectual property regimes (Coombe 1998b); the role of immigration law in shaping migrant experience and resistance in the US (Coutin 2000); the intersections of local, national and European law and their impacts on nationalism and autonomy (Darian-Smith 1999); in Bolivia, the mutualities of liberalism, everyday social practices, and patterns of intention in appropriations of law at local levels (Goodale 2009); administrative law-making and decision-making in the Conseil d’Etat (Latour 2010); the rule of law as a mask for new practices of capital accumulation and expropriation (Mattei and Nader 2008); international finance regimes and legal exclusion in the Caribbean (Maurer 1997; see also Maurer and Schwab 2006; Perry and Maurer 2003); womanhood and resistance to the legal ideologies and institutions of patriarchy in India (Moore 1998); and the historical anthropology of Roman law and legal institutions.
Each of these is exceptional, and each demonstrates the potential for anthropologies of law that look beyond the adjudicative. These works also impinge, albeit some only peripherally, on my concerns with the police power, the relations of the state and society, relations of the social and the symbolic, relating law to the world beyond legal institutions, and legal agency and social change. This is one goal of the remaining chapters of this dissertation.

See Appendix A for a thorough discussion of my development of the concept.

We encounter a difficulty here, however, that elicits an ethnographic sensibility. The conventional (American) distinction of three separate and coordinate branches of government, which mutually balance and constrain each other, is not always a useful organizing principle in analyses of law. In Britain, for example, the executive (Prime Minister and Cabinet) is not separate from the legislature (House of Commons); the historical role of High Chancellor enjoyed executive, legislative, and judicial competencies and privileges; and the highest court of appeal, the Law Lords, was a body abstracted from the upper chamber of Parliament, the House of Lords. While these have undergone significant transformation recently (i.e. the abolition of the office of Lord Chancellor) (Bogdanor 2005), the ethnospesific nature of law and its political organization should remain top of mind for the analyst and the reader. There are other institutions and roles in Britain government and politics that transgress the easy simplification of a Montesquieuian coordinate branch analysis. Attention to the police power is an effective way to overcome the limitations of the coordinate branch analysis.

In order to distinguish law in the narrow sense of legislation from law in the formal systemic sense, I will use fairly specific terminology (as terms of art) throughout this dissertation: legislation, regulation, positive law, constitution, statute, act, rule, procedure, ordinance.

This statement can be found on the virtual tour of the National Assembly for Wales, at http://senedd.nafw-server.org/en/index_standalone.html (accessed November 21, 2010). I should note that as a “fact” it is not an uncontested statement. Some argue that indigenous Welsh law continued to be made through the thirteenth century (Davies 1996).


The relative lack of attention to legislatures and legislation is not unique to anthropology, but is a trend in the Anglo-American human sciences more generally, as remarked by the contributors to Bauman and Kahana (2006).

This can be seen in James Clifford’s (1988) discussion of the Mashpee case, and in the work of Audra Simpson (2008). I should also note that I have contracted as a researcher for litigation undertaken by several Native groups in the US and Canada, and much of my work has centered on questions of whether Indigenous people in the Americas “have” law, or can be proven to have had law in the pre-colonial past. The state, courts, lawyers, and academics, in my experience, begin from the assumption
that Indigenes do not possess the attributes of law/legislation, and therefore the burden of proof is on
Indigenes to demonstrate their historical pre-European relationship with positive forms of law. This is a
nearly impossible burden, and has resulted in state-based decisions and actions that unjustly expropriate
land, resources, and cultural properties, as well as legitimize treaty violations, trust violations, and
practices of eradication.

Gulliver (1963), Barkun (1968), and Fallers (1969) also belong to this classic era, and their
ethnographies are important contributions to the field. Each endorses traditional processes of dispute
settlement as the proper object of analysis.
CHAPTER 4
LEGISPRUDENCE: ENGAGING AND THEORIZING LEGISLATION

The law, Christopher Brooks reminds us, “is a diabolically ambiguous term” (2008:5), and for Robert Novak, “[g]overnment and law are complex beasts” (1996:18). My task is to work through the relations involved in these “diabolical” and “complex” social facts. I developed legisprudence in order to do so. There are, in a nutshell, three sets of institutional relations that concern me: government and law; government and the police power; and law and police power. Within these, I am interested in vernacular agency, dialogism and polyphony, political epistemics, and mediation. In this chapter, I lay out the basic groundwork for legisprudence as an apparatus; in subsequent chapters, I will detail the constituent dimensions of legisprudence: as methodology, as heuristic, as analytical framework, and as theory.

The basic question I pose is, What are the ways in which government seeks to achieve goals through the use of legislation, regulation, and the police power? This is much less instrumental than it may seem; indeed, it should be read constitutively, in the sense that governments seek to effect order, civility, and public welfare through legal (that is, legislative and regulatory) regimes that generate their own conditions of possibility, that enable the institutions, infrastructures, and humanisms that can bring about proper ways of being, acting, and doing. This includes institutions that are not part of the state or government, such as institutions of civil society and the private sector, linking these with government through legal regimes and the police power.

In Britain, the equalities and medicolegal therapeutic regimes collocate state, civil society, and private sector institutions and agents in the production of the regimes’ objectives. In the case of equality, these objectives are understood in the main as the
elimination of “discrimination, harassment, victimisation [sic], and any other conduct that is prohibited by this Act”; and to “advance equality of opportunity” and “foster good relations” among those who share the protected characteristics and those who do not (Equality Act 2010 §149). These protected characteristics are age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, and sexual orientation (Equality Act 2010, §4).

The Equality Act is only one piece of the substantial legislative and regulatory architecture of the equality regime. Its effects are achieved in part through repeal of certain prior enactments, such as the Race Relations Act 1976 and parts of the Equality Act 2006, and revocations of sets of regulations (Equality Act 2010 Schedule 27). Other existing Acts and Regulations are unaffected and continue in effect toward the (aspirational) achievement of the objectives of designated forms of equality.

Ramifications

Felicia Afua-Morrow met me at the entrance to City Hall with an effusive greeting and infectious enthusiasm. She owns a training consultancy with specialized programming in equality and diversity, BME consultation, and leadership and management. Her primary focus is on equality in the workplace, and the legal duties owed by private companies who exercise a public function, as well as their obligations in recruiting and contracting for employment.

On this day, Felicia was co-organizing and hosting a conference on mental health and ethnicity in Wales. Service users, carers, charities, NGOs, private companies, local health departments, the medical and legal professions, the Welsh Assembly Government, and the Department of Health in London were all represented, and each representative spoke to the themes of delivering equality, achieving outcomes,
experiences of inequality and poor mental health, racism and related forms of bias, legal obligations, and less formal social mechanisms of anti-discrimination and how to integrate duties, morality, and the economics of equality. The Draft Equality Bill 2009 was circulating, and a public consultation was taking place across Britain. The Bill was at the forefront of the minds of many who attended the conference.

The conference was split between the main Hall and adjacent smaller rooms where participants broke off for workshops, targeted training, and some fairly intense panel discussions. The main Hall was a large high-ceilinged room with faux marble statuary in high niches – heroic figures of the sacred and secular past gazed down on us as we conferenced. The Hall had a slightly elevated stage backed by a tattered and threadbare curtain, discolored from the sunlight streaming in from the high windows. Motes of dust could be seen floating in the morning rays. There was a parquet wood floor and a runner of old carpet around the outer perimeter of the Hall. Large round tables populated the floor. Each table had settings for eight, each setting had a name placard of folded card-stock, a water glass, and a set of flatware. As Felicia and I walked into the main Hall, a crew was finishing the set up, moving a podium into place, mic checking, and taping down power cables.

“Thank you so much for helping us to put this together,” Felicia said to me, taking hold of my arm and directing me to a table. “We really appreciate you taking the time to help, and I know that what goes on here today will affect your research.” She was positively beaming, and the energy in the room was buzzing. She introduced me to my table-mates, and rushed off as someone called out to her from the podium.
I sat at table with three women of the Chinese community in Swansea, a general practitioner (GP) from Cardiff, the Undersecretary of Health from London, a mental health NGO Director from Liverpool, and Felicia herself, although she was mostly busy elsewhere throughout the day. The three women, all seated to my right, were speaking together, and when they noticed that I was watching them, switched to English. They related to me that they had been discussing the Draft Equality Bill consultation and the responses they had tendered.

“The Bill does not go nearly far enough,” said Ellen Kong, sitting directly next to me. “There is nothing about language and translation services, and not enough recognition of ethnicity. It’s not good enough to talk all about ‘race.’ Chinese are not a race, and the difference is important. Race, minority, BME… it gets confusing for people. The Government needs to be clear what they are doing, what communities are involved.”

To Ellen’s right, Joy Cho nodded. “Yes, translation is a key issue for us in the Chinese community as well as other ethnic minority communities in Britain. But not just that. We also need a voice, a Chinese community voice, to speak to Members of Parliament and to the Welsh Assembly Government, because they have really no idea that we exist, that we have needs as individuals and as communities. They think the Chinese community takes care of all Chinese people, which is not true.”

Ellen agreed with vehemence, and to Joy’s right, Cecilia Huang joined in, gesturing vigorously and speaking fast. She code-switched throughout, with Ellen and Joy offering translations as necessary. “Doctors and hospitals must have [a legal duty] to make sure that translation services are available. We Chinese [cannot be expected
to] speak perfect English, to speak English well enough [to give complete information about our pain and symptoms]. If it isn’t in the law, then they won’t do it. I know they won’t do it [because of experience]. My son, who was born in China and does not speak English well yet, and myself have both needed doctors, and both needed translators. But we were not given any, and [lived with pain] for many months.”

Joy put her hand on Cecilia’s arm, as she and Ellen began talking in unison. “There was a strategy in place” they both said, before Ellen deferred to Joy. “The strategy was supposedly based on research and best practices, and recommended that translation services be provided. This was never universally achieved, and was very much not consistent, especially in Wales, but across most of Britain, too. And they have no way to measure compliance. Anyway, at the local authority level, we end up on the sharp end of the stick, with no communication between health departments and social services departments, limited provision of services, lack of funding, and outright hostility and ignorance. Plus, as a community, we’re fragmented, so there is very little ability to present our issues to local authorities. They don’t even know we’re here in many cases.”

Joy had managed a London-based registered charity that offered translation and other services for Chinese speakers in medical, legal, and other settings. Several years ago, she had left the charity to start a similar organization in Wales, where the need was great. It was based in Cardiff, and served Chinese people and communities in Cardiff, Swansea, Newport, and other places along the South Wales corridor. She had received an OBE³ for her work, and both the Queen and Prince Charles had visited her offices and commended her accomplishments.
The conference got underway just at that moment, with Felicia opening the microphone, introducing herself and welcoming all of us. Chairs shuffled, tea and coffee cups clinked as they were returned to saucers, and the rumble of conversation quieted. Felicia was a captivating speaker, and drew us in with stories, inflections, and presence. She laid out the program for the day, the goals of the conference, and highlighted some of the important speakers and contributions we could anticipate. Throughout the day we would hear a short series of speakers, followed by break outs, and then a return to our tables for coffee and snacks, lunch, and late afternoon tea. There was much networking going on, a rich exchange of ideas, and detailed discussions of equality and how to achieve it. At our table, Jo, the Undersecretary for Health and Cecilia Huang had an intense conversation, with interpretive assistance from Andrew Chen, the NGO Director. April, Ellen, and I continued our discussion of language equality in detail, with Gwynedd Jones, the Civil Servant for the Welsh Assembly Government’s health directorate, joining in, as well as her colleague Nicola Creak, from Health Inspectorate Wales, who returned to our table often. Felicia made the rounds, occasionally offering a few words to our conversations, and generally ensuring that we were engaged with one another, discussing the conference themes and topics.

The conference was, by all accounts, a terrific success. During my period of field research, I was able to participate in a number of similar events, mostly throughout South Wales, but also in Bristol, London, and Edinburgh, and I was able to follow through with participants in many of these events, to gauge the impacts and the political and legal ramifications of the humanized and personal encounters. These events are in many cases powerful means by which thinking is oriented, and an extraordinary
instrument of deliberative practice. They also are a key dimension of the public square as I conceptualize it. Coupled with other large scale formal practices, such as public consultation, stakeholder identification and engagement, interest group mobilizations and demonstrations, as well as smaller scale practices, such as surgeries, meetings with political representatives and their staffs, and petitions, these events bring together citizens and other political subjects with lawyers, business people, service providers, professionals, elected representatives, Civil Servants, and others, creating a humanized process of developing legislative and regulatory practices. Legal instrumentalities, institutions, and infrastructures, in other words, take on a less abstract and decontextualized nature.

Legisprudence as I formulate it is deeply interested in these dimensions of law-making. Rather than simply a formal succession of stages from draft to Act, legislation entails a much broader social actualization that needs accounting. In the case of the conference described above, I was able to trace the movement of our tables’ conversations through to a number of critical junctures. Details were taken on by Felicia in subsequent work she conducted, including at least two workshops attended by local authority staff, one of who told me, “without Felicia’s training, I would have never thought to consider the needs of the Chinese population. They’re so invisible, you know, it’s difficult to remember they’re here and account for them” (DR, field interview, April 23, 2009). She confirmed that since the workshop she has lobbied her supervisor in the local health department and a number of local councilors regarding the provision of translation services.
Details from the conference, including names, specific quotes, and paraphrases also were translated into the everyday work of the Health Inspectorate Wales and the Health directorate in Cathays Park, “giving a concrete dimension to our concerns about mainstreaming equality strands, and our responsibility to make sure that everyone in Wales is treated fairly and equitably” (GJ, field interview, February 4, 2011).

These details were also “cited in evidence given to the [National Assembly for Wales’] Health and Social Services Committee” by Gwynedd Jones (field interview February 4, 2011). From there, these data made their way to the offices of Assembly Members, and at least three times into the Plenary debates in the Siambr, although the filtering mechanisms at work tend to foreground the general issues of language, and obscure the specific demands articulated by members of BME communities. This has the effect, in Wales, of sometimes becoming linked with the issue of Welsh language. This filtering was evident in my experience regarding the claims of members of the Chinese community, as well as Somalis, Sudanese, Haitians, and others.

The technologies and infrastructures at work in the development of law-making in the National Assembly include email, intranet, wired and mobile phones, texts, electronic messaging, social networking, the political whip and other Party procedures, hardcopies of evidence summaries, committee reports, consultations, file folders and boxes, official and personal letters, and a variety of informal mechanisms, such as corridor conversations, chats over tea, and the occasional exchange over ales down to the local pub. I was able to follow bits of material through each of these technologies and infrastructures, and identity some general patterns and outcomes, such as the filtering effect, as discussed throughout this dissertation.
I was also able to witness both formal and informal communication of content from this conference (and other events) in Westminster and Whitehall. These communications were less detailed, and more broadly focused on (constitutional) excentricity; that is, the inflecting role of devolution and prerogatives of the devolved administrations, rather than on seeking specific remedies in Parliament or Cabinet policy strategies for the ideas, concerns, and complaints articulated. At this level, the mass of information flowing into the workspaces of decision-makers is enormous, and subject to a number of management devices that drastically thin the texture of data. Nonetheless, at the committee level and in corridor conversations, I observed references to both Felicia and Joy and the concerns that they articulated, as well as to the more pointed issue of the presence of the Chinese community in Britain, and appropriate interventions available to law-makers.

Furthermore, the conference was the topic of a number of posts and threads on listservs and other electronic collectivities. I monitored four such lists, including the intranet for the National Assembly for Wales for Members and their support staff; the intranet for the Labour Party; a listserv entitled Minority Ethnic Health; and the Wales Equality and Diversity in Health and Social Care Support Service (WEDHS) email group. Information regarding the conference appeared on each of these lists, both before and after. Entries on the Assembly intranet mostly regarded the announcement of the conference, although Gwynedd Jones posted a summary that was read and discussed by three Assembly Members (in my presence), and at least one Minister that I know of, as well as her constituency office staff. The Minister, her staff and I all reflected on the conference and the information from the conference, as well as the
presence and needs of the Chinese community in the constituency. The Labour Party intranet announced the conference, but I saw no follow up.

The Minority Ethnic Health listserv is a Britain-wide group that primarily comprises government, legal, and medical professionals. Several members were present at the conference, and three of these wrote detailed narrative assessments. Lengthy and engaged discussions ensued, largely devoted to the issue of language and translation services, and the legal status of interpretation and translation services. With two exceptions, none of the posts addressed the Chinese community; rather, all particular forms of BME membership were subsumed in larger discourses of “ethnic” and “race,” lumping techniques that reflect the prevailing legislative and policy strategies of “single equality,” strategies that integrate, and place on a similar legal footing, the multiple strands of equality that constitute and orient the existing political epistemic. Where distinctions were made regarding BME specificities in the discussions, there were two main varieties. On the one hand, particular clinical interests, such as diabetes, smoking, and heart disease, took over the discussion. On the other hand, locally prominent ethnicities were raised to the level of representative BME community, and determine much of the content of subsequent threads. One list member and conference participant, tried to steer the conversation back to the “particular characteristics of the Chinese community in Britain,” but was unsuccessful and ultimately demoralized by the reluctance of her “professional community and peers to seriously give any thought to Chinese people and the social exclusion of the Chinese” (HY, personal communication, May 5, 2009).
Much of the Minority Ethnic Health thread was concerned with the legal status of language and translation services. This status is more or less unstable as regards health care delivery, not only in Britain, but in Europe more generally. Devolution has created one set of variabilities; the British Government’s policy rhetoric and recommendations, as distinct from Parliament’s willingness to affirmatively mandate translation services, creates another; and European Directives create a third. Ambiguous legal language adds another dimension to the uncertainty. The palimpsest of authorities, jurisdictions, and obligations brings about contradictory responses. Some are galvanized by the confusion, and undertake to lobby, agitate, and work toward clarification in legal language and in legal duties. Others throw their hands up and pledge to work locally to achieve outcomes. Still others try to actualize their networks, collecting local and regional information, and sending “up the chain” to the Assembly and to Parliament via multiple networked agents. Some are motivated to capitalize on the confusion, to the detriment of minority communities and persons.

What is most interesting about conferencing, networking, electronic social collectivities, and the human and institutional responses to specific demands is the way that information percolates through the political and legal institutions, infrastructures, and technologies, and resonates with human beings conducting their work in and through these institutions, infrastructures, and technologies. This is not to paint a pretty picture of a ground swell of good intentions gaining legal traction. Indeed, what percolates is often hostile, and some resonances are with pre-existing prejudices regarding minority populations, fiscal burdens, and the obligations of the state vis-à-vis individuals and minorities.
Much of the information that flows upward is met with hostility and rejection. In more than one conversation, I was privy to a significant amount of animosity directed at, variously, Chinese, migrants in general, and migrants working illegally in Britain. I also observed in these conversations a clear rhetorical distinction between “foreign” migrants and European migrants. This might be due in part to European law and the privileging of EU citizens, but, for example, Swiss, Serbians and Albanians, who are not EU citizens, are also not perceived as “foreigners,” nor are Americans, Canadians, or Australians. “Foreigner” seems to be a colloquial label and category that applies to Chinese persons and persons from the region of North Africa and the Middle East, but less so to Indians, Pakistanis, and other “Asians.” It is less clear where Africans and Afro-Caribbeans are fitted into the conceptual scheme. Although I want to emphasize that there are exceptions to this, I discern a fairly clear pattern of the normativity of whiteness at all levels, including the formulation of legislation and regulation. One effect of this is the design of services and service delivery, and social order more generally, around a presumed normative core that is white; specific needs and provisions are understood as deviations from this norm, which both furthers exclusions, and associates expenditures, and therefore minorities, with undue fiscal burdens.

Ultimately, the Equality Bill 2009 became the Equality Act 2010, the flagship legislation of the next generation of New Britain’s modernized equalities regime. My ability to trace the particular effects of Felicia’s conference ended well before the passage of the Act and royal assent, and there is nothing facially in the Act that gives any indication that it is permeated by the specifics of the conference. At any rate, this is not terribly relevant, really. My goals with legisprudence are not to demonstrate or prove
a clear connection between particular events and particular legislative outcomes. This seems an impossible and Sisyphean task. My goals are, in part, to locate legislators, as well as legislation and the regulatory instruments to which it gives rise, in the public square, deeply imbricated in relations that orient thought, behavior, and action. Legislation and regulation in this sense are simultaneously catalysts that emerge from the crucible of interactions in the public square, and hybrids that re-enter, creating new effects and consequences in ongoing processes of (trans)formation of public order, civic virtue, and constitutional integrity.

**Applying a Legisprudential Lens**

Legisprudence, as I formulate it, entails the ethnographic observation, analysis, and theorization of forms, issues, institutions, and practices of legislation, as well as the extensive social spaces that contribute to the processes of law-making. I use it to distinguish my work and my objects of inquiry from jurisprudential, natural (or moral) law, and customary (or chthonic) law approaches, although there are clearly overlaps and intersections with each of these. My primary objectives in arguing for the conceptual and analytical utility of legisprudence are: (1) to examine legislation, legislators, and legislatures and the social, cultural, political, and legal environments in which they operate, and to ground legislation as both product and evocative object in these larger social and vernacular worlds; (2) to recognize the political origins of legislation, but without sublating legislation to the political dialectic or falling prey to the contempt for democratic engagement and practices that such sublation represents; (3) to examine the consequential and constitutive effects of legislation; and (4) to open a space for considering the labor involved in law-making and the production of related forms of positive law and public policy.
Legisprudence at its core is a theory of legislation, concerned with the province, provenance, properties, and structure of legislation and regulation. More broadly, it is a methodology, a heuristic, and analytical framework, and a theoretical apparatus for thinking through and about legislation. While it has clear implications for constitutional law, public and administrative law, for my purposes in this dissertation, I am concerned mainly with the statutory and regulatory architectures that comprise the particular legal regimes under discussion. The following four chapters will address the four dimensions of legisprudence, but let me provide some basic detail here.

Legisprudence is designed to accomplish several things. First, it allows for the isolation of legislation and regulation from jurisprudence. Second, it positions legislation and regulation as primary analysands. Third, it serves as a heuristic for interrogating legislation and regulation, which opens multiple spaces for theorization. Fourth, by isolating legislation and regulation, and moving these into our main observation and analytical space, it reduces the tendency in anthropologies of law to explain away both written law and its effects.

My approach to legisprudence is one of disaggregation and reassembly. I first disaggregate my materials into four subdomains: methodology, heuristic, analytical, and theoretical. After due cooking of these materials, I then reassemble them, using a set of conceptual tools from the human sciences to look across the borders of my subdomains to see how linkages are forged in the making of law, the design and implementation of police power projects, and the everyday conduct of government.

As a methodology, legisprudence facilitates the investigator’s engagement with research design, data elicitation, ethical commitments, and the epistemological and
ontological demands of the execution of a research program. It also allows for an emic approach, asking how the legislator and others go about doing their work as such. As a heuristic, legisprudence enables us to ask innovative and probing questions about legislatures, legislators, legislation, and legislated and regulated environments. This also works as an emic query, seeking the structured ways that legislators and others discover, learn, and act in a given set of circumstances. As an analytical framework, legisprudence focuses on: (1) the production of legislation; (2) its content; and (3) law-making’s consequential effects, especially its role in molecular – molar relations and linkages, and its participation in cultural production and subjectivization. Finally, as a theoretical apparatus, legisprudence brings a multidimensional optic for examining, describing, analyzing, and interpreting legislation and its consequential effects in social worlds. For my purposes, reassembling these subdomains involves four core elements for consideration: complexity; legal technologies; legal semiotics; and legal relations and practices.

**Complexity**

Theorizing complexity in law is a difficult task, confounded by conceptualizations of law as a system; by the preeminence of courts; by narratives of autonomy, objectivity, and progressive rationalization; and by the abrogation of theoretical and analytical prerogative by anthropologists and others in the human sciences. Complexity in law too often is phrased in terms of legal pluralism, which itself tends to be built on epistemological conventions that map law onto states or onto cultures-*cum*-nations (Benton 2002). Law becomes the will of the sovereign, the voice of the people, or the general will in these formulations, and diversity and complexity tend to get thinned to *post hoc* narratives of domination which presume stabilized institutions, processes, and
authorities. This domination can be narrated as imperial or colonial, that is, originating in transnational or transcultural and external processes of imposition; or it can be narrated as classed, raced, or gendered, that is, originating (largely) within domestic and internal relations of stratification and hierarchy; or as hybrids of these.

At its base, whether articulated in terms of sovereignty, nationality, or domination, the complexity of law as pluralism proceeds along these lines of tendency as neatly packaged, so that complexity becomes external to law itself, an issue of political objectives, of balancing, or assimilating, or tolerating the non-dominant forms subsumed within a particular dominance environment. What is really a concern with heterogeneity is displaced and presented as complexity. Actual complexity, namely the internal complexity of law, of law in the making, of law as fields of forces populated by manifold actants (Latour 2005), tends to be lost to these formulations.

For my purposes, I hold that law’s complexity is a baroque ecology (cf. Ong 2006:ch. 8). This is not to assert “an historical continuity with the grand style of the seventeenth century” (Kwa 2002:26). It is instead to argue for the phenomenological and immanent realness of law, for explorations of the ways in which subjects and social members flourish as a result of association and cooperation, for attention to the compound and intricate synoptic behaviors involved in its materialization and creative transformations, and for consideration that its existence as a “unity” (that is, as a legal system) is an achievement that needs to be accounted for, rather than assumed (Deleuze 2006; Egginton 2010; Ong 2006).

This privileges attention to the elements of law and to law’s existence as a field of forces, as experience, event, process, culture. I maintain, contrary to prevailing
narratives, that law is inherently unstable, irrational, and subjective, and thus requires an extraordinary amount of ideological and rhetorical work to make it appear stable, rational, objective, uniform, and unified. Holding the disparate elements together and providing the veneer of stability are key achievements, and integral elements of its complexity. I am not suggesting that law is disorganized, anarchic, or chaotic, but that its architectonics are something accomplished (Bakhtin 1990). These accomplishments are textual (and intertextual), rhetorical, discursive, ideological, relational, and subjective. Law’s unifying structural design and its materialization in institutions, infrastructures, rituals, rules, roles, and subjectivities are historical and political achievements, and it is the work of this achievement that needs examination, analysis, and explication.

What I do not want to suggest is that law follows directly from the war of politics, however. Certainly political dynamics are important, but we cannot assume that the production of law arises or follows directly from political conflict. We also cannot assume that political objectives result necessarily in legal teleologies. Institutional forms, partisan interests, clashes between strata of legal agency, and variegated and changing demands inflect the products of law in multivalent ways, and the relationships between legislation, regulation, and politics must be understood to be non-laminar, nonlinear, and discontinuous. It is through law and police power technologies that strategic political objectives are pursued and attended to in their ongoing development, and through the everyday work of government that adjustments are determined, decided, executed. This is a parsimonious synthesis of the law, police, and government matrix with which I am concerned. The phenomenological dynamics that make up this matrix are in need of
much more sophisticated analysis in political and legal anthropology, and explorations of law’s baroque ecology and complexity can provide constructive contributions to the anthropology of law. I will add ethnographic thickness and empirical substance to these claims in the following chapters.

**Legal Technologies**

Legal technologies primarily entail the specialized instruments and technical forms of legislation and regulation, including statutes, ordinances, rules, duties, sanctions, and so forth. I also suggest that organizing frames, such as positivism, naturalism, or moralism, are themselves a variety of technology that needs consideration as such. These frames function in much the same way as a genre, with formal elements that constrain and limit possibilities, that condition members (or audiences) to expect that things will proceed in certain ways (Bakhtin 1986). For example, John Chipman Gray, Harvard professor law, did not believe that statutes are law themselves, merely a source of law (Gray 1927). This is a particular perspective on positivism, with implications for the operation of law, and the analysis of law, or the nature of law, not the least implication being that statutes are excluded from such an analysis.

In addition, technologies as I use the term includes the principles, expectations, and values of a given legal culture, including contractarian rationales, interpretive conventions, rationalism, objectivism, democracy, majoritarianism, consensual decision making, and related forms of legitimation, justification, aesthetics, and ideological function. Somewhat more broadly, this also includes such concerns as the rule of law, and particular regimes, or ways of organizing sets of legal technologies into a focused apparatus.
In general, then, I am interested here in the “apparatuses, practices, and consumables” of law-making, and the touchstones that these rely upon (Dyer 1997:90). My interest also extends to consideration of the social groups with a role in the production of legal facts and artifacts, and extending the bounds of such groups to accommodate a broader array of vernacular players; the relationship between technologies and agency; and the interpretive flexibility that characterizes the linguistic and related artifacts of legislation (Kline and Pinch 1996; Pinch and Bijker 1984). These elements are often situated in a conventional framework that privileges objectivity, rationality, and generalizability, and expectations which deeply influence agents, practices, products, and analyses of law, bringing about particular effects (Habermas 2001; Steiner 2002).

Overall, my focus on the technologies of law-making is one way of escaping narratives of autonomy and determinism, which depict legal change as arising from within the law itself, following a logic of its own, and creating external, independent effects on society (Perez and Teubner 2006; Tomlins 2007; Walker 2003). Autonomy and determinism as components of a theory of law are insufficient; as a theory of society, inadequate; as a theory of social and cultural change, limited and partial at best. Technologies nicely transgress my self-imposed subdomain boundaries, enabling a closer examination of the articulations at work in law-making, among stakeholders, between agents, in sites, across jurisdictions, through languages. Thinking through the technological metaphors thus facilitates moving beyond the passive approach that characterizes anthropology’s relationship with legislation, to center legislation and regulation as actively shaped by, and actively shaping, society, relationality, and culture,
and to reclaim the liberatory potential of agency pursued through objectification entailed in positive law (cf. Cussins 1996).

**Legal Semiotics**

The examination and explication of legal semiotics is not just the analysis of language and representation, but of “all the different means by which law is communicated” (Goodrich and Hachamovitch 1991:159). Semiotics enables us to get at the semantics, syntactics, and pragmatics of law, as well as the representations and discourses found in legal texts and images. It also enables exploration of the materialism of ideologies, that is, on the one hand “the role of language as the specific material reality of ideological creativity” and communication (Vološinov 1986:xiv); and on the other hand, the Althusserian-Lacanian operation of ideology “in and through the production of subjects,” which offers a way to track the emergence of new discourses and subject positions, as well as the displacements effected by these (Hall 1988b:49). Legal semiotics offers a method for analysis of the culture of law, the language of law, and the role of legal symbols in the “continuous production and transformation” of ideas, ideologies, and subjectivities (Hall 1988b:48).

In my concrete historical context, this entails the discourses of decentralization, devolution, stakeholding, and fairness, and the new subject positions of devolution, of a transformed constitutionality, and of reordered conceptions and practices of the common weal. Among these are citizenship, border identities, and new national and regional identities, as well as the reconfigured self-sufficient and responsibilized individuals of (neo)liberalizing projects: exercisers of choice, responsible citizens, the geographically mobile, deliverers of “personalized” services, stakeholders. These are component elements of Tony Blair’s (1997) “New Labour, New Britain” project, a

Devolution is the new common sense in Britain. The struggle for its definitions were largely won by New Labour, although not in any settled kind of way, and since the May 2010 formation of the Conservative-Liberal Democrat governing coalition in London, these definitions and the prevailing common sense have been subject to reconfiguration. In other words, the common sense, or “new consensus,” is a hegemonic achievement, one that requires ongoing material and ideological struggle. Legislation, regulation, and police power projects are integral to this ongoing struggle. The ongoing struggle is not simply one of particular items of legislation or regulation, however, but also embrace historically and culturally significant principles by which Britons explain themselves to themselves: the constitution, Parliamentary sovereignty, liberty, nationhood. For instance, and somewhat ironically, the transfer of power to the regional administrations included police prerogatives, the instruments of which are now being activated in order to deepen the devolution settlements and challenge the reserved powers of Parliament. Law, as we know and can see demonstrated in the devolution contestations, simultaneously oppresses and provides the conditions for resisting oppression. This is certainly not a nirvanic situation, nor one that necessarily favors the resistors. It is, however, an interesting dimension of legal politics and the operation of law, pointing to challenges to liberal assumptions of the zero-sum game of sovereignty and power, and to the (post)colonial reconfigurations that elaborate, multiply, and proliferate power, rather than draw it into discrete and separable packages (Benton 2010; Valverde 2006).
Then-existing discourses, representations, and subjectivities in Britain were transfigured following on New Labour’s dominance during the years 1997-2007. Decentralization and devolution took shape, in part, through the formulation of new subjectivities and interpellation of subjects into these constructions. From New Labour campaign rhetoric to the Queen’s Speech in 1997 to the devolution settlements in 1998 and subsequent amendments (e.g. Government of Wales Act 2006) and to the recent (March of 2011) referendum on devolving full legislative power to the National Assembly for Wales, legislation and regulation have played and continue to play key roles in the processes of subjectivization and interpellation, and legisprudential semiotics enables critical analysis of the production of the imaginaries and topographies of decentralization and devolution, and their representation and inhabitation as conditions of, simultaneously, political unity and separateness.

Such an analysis might embrace the emergence of a distinct Welsh way of doing things within the ensemble state; understood as divergence and convergence modulated together, infolding and producing the ensemble state through everyday public practices (Deleuze 2006). Through these practices, and the legal texts and images that underlie, constitute, and authorize them, the contradictory and conflictual relations of neoliberal (post?)capitalism and welfare state restructuring are rhetorically and ideologically manifest, that is, made material. Examination on these terms allows me to bring together speakers and the spoken, the ethnographic, the material-semiotic, and the epistemological. This includes law’s socio-communicativity and its generativity, themselves multidimensional facets that help to capture the ways by which law, government, society, and culture are intertwined. By convention, we may think of law as
formal, or as rational, or as autonomous, but it is undeniably linguistic, and an
examination of the semiotics and poetics of legislation and regulation are key aspects of
legisprudence.

Primarily, this entails language and modes of communication; the mutual
constitutiveness of law and the social and subjective; and law’s poiesis. The languages,
symbols, forms of communication, and ways of knowing that comprise the fabrication of
legislation are important to its analysis as process, practice, and product. I treat them as
necessary constituent cultural resources, without which the particular form of social
regulation and technology of social and cultural engineering called the police power
could not be.

**Legal Agency, Relations, and Practices**

The relations and practices of law-making include the involvements at play in the
production, content, and effects of legislation. I insist that legislation is irremediably
intersubjective, that the relations of legislation are dialogical, and that legislation and
regulation arise not solely from the institutional spaces of their formal genesis, but from
relations of everyday living with others. This intersubjectivity entails the microsocialities
of the public square and the micropolitics of law-making, situating the labor of law-
making, the works of legislation, and analysis of the institutions of law-making. As well,
it includes the recovery of the invisible and the vernacular, of those with whom law-
makers interact beyond the deliberating chambers and hallways of political and legal
power, who contribute to the shaping of thought and bring to the fore particular ideas,
concerns, and needs, often embodying, visibilizing, and abjecting the social thresholds
and repertoires of social representations for imagining the body, the subject, the polity,
and available mechanisms for pursuing police power projects of social and cultural
工程学（Kristeva 1982；Stallybrass and White 1986）。立法可能使身体及其边缘物象化，创建类别和分类学税种，从而引导注意力和资源，但立法者及其辅佐人员每天与身体发生联系，身体承载着其起源的印记、其世俗性、其生命和创伤。这些关系影响法律的方向，并需要被人类学家认真对待。

政治无疑是塑造立法的最显而易见的力量，但立法及其产物不仅仅是简单地应用政治。我认为这种关系不可能以简单或直接的方式进行。理解政治及其影响特定方式的组织和管理政治是必要的，但并不充分，对于法律制定及其产品的理解和行使警察权力。而不是假设直接的、目标导向的、阶级导向的或霸权中心的分析方法来分析法律制定和运作，我考虑与法律制定有关的机构的、基础设施的、相互的、人际的和社会关系，这些关系促成了法律制定作为一种法律形式的构建。

在接下来的三章中，我将对法律制定的亚领域进行适度的详细讨论，对给定的分析方法的厚度和经验细节给予更多的关注，这些细节赋予其意义。此外，在每一章中，我都会指明重新将各个部分组装成综合的整体的立法合理性调查。

1 我应该指出，该法案还规定了“公共部门职责，以解决社会经济不平等性”（平等法2010年§1）。

2 “坐在餐桌旁”是一个常见的英国俗语。
Order of the British Empire, an order of chivalry and an honor bestowed by the Queen, which “recognises [sic] distinguished service in the arts and sciences, and public services outside of the Civil Service and work with charitable and welfare organisations [sic] of all kinds” (The British Monarchy 2011). The OBE was instituted by George V in 1917, and was the first order of chivalry to reward women and foreigners for service to the Kingdom.

Felicia commissioned me to assist with the post-conference assessment, and so, of the 83 registered participants, I was able to follow up with 65. For the most part this consisted of survey instruments and questionnaires, but also included fourteen one-on-one interviews with: two service users; two carers; four local authority councilors; two local authority health department staff; as well as with Gwynedd Jones, Nicola Creak, and Andrew Chen. These interviews ranged in length from 30 minutes to two hours.

“Down to the pub” is a common British colloquialism.

Legisprudence can also accommodate constitutions, statutory instruments, regulations, rules of procedure, amendments, and so on, but I limit my inquiry here to legislation and regulation.
“Reality,” Edward Said reminds us in his introduction to the fiftieth anniversary edition of Erich Auerbach’s Mimesis, “is completely historical” (2003:xxvii). Establishing the truth claims and representations of reality, or the signification and investiture of meaning, is one of the achievements of the mimetic effect of figural language (White 1999). Anthropological truth claims are now (post-Geertz) grounded in thickness; more thickness equals more truth, or more realism. This is something of a truism, but perhaps worth restating. Said insisted that writing in the thickness idiom aims at “a greater realism, a more substantial ‘thickness,’ a higher degree of truth” (2003:xxi).

In the anthropology of law-cum-legislation, reality, or the apprehension and representation of reality is somewhat thin, especially in terms of the human element involved. An integral part of that missing element of the realism of constitutional principles and legislative domains is the popular, demotic element, that is, attention paid to the scope and range of common human action and effective agency (Said 2003:xxvii). I thicken my ethnography of legislation, regulation, and government by enriching the theater of law and politics, by examining inversions of symbolic hierarchies, by transfiguring the drama of legal and political development and praxis through the interweaving of vernacular agency with sovereign ambition. This is not merely to gesture to the masses in figural terms, but to draw out popular forces as actual participants in the construction, production, and actualization of positive legal phenomena, including rules, duties, regimes, principles, and therapeutic and other relations.
Elitist forms of sociolegal analysis miss this dimension, and, like Ruth Mandel’s efforts to reconfigure Clifford’s cosmopolitanism, I offer a sort of novel demotic and sociohistorical reality by inverting “the hierarchical ranking” of analysis and representation (2008:50). This broadening of the cast of players, the linking of history and common folk in their being as political and legal subjects, broadens also the ethnographic context in which these subjects inhabit and experience legislated and regulated environments, as well more focused dimensions of those environments: equality and fairness, stakeholding and public order, and therapeutic relationalities. It also broadens the ethnographic context of law-making itself, the exercise of the police powers, and the everyday conduct of government.

This is more than a renovated project to study up (Nader 1972), or an expanded effort to study through (Reinhold 1994). It is, rather, an effort to mutually immerge the vernacular and the sovereign, which for me entails not just the conjoined examination of political elites and the demotic commonalty, but also an examination of official poetics and the political epistemic in their mutual relations with multiple varieties and gradations of colloquial speech and action. In other words, I want to avoid reproducing the symbolic hierarchies of high and low and conventional representations of binarisms, in favor of multiple and scalar sets of situated and imbricated agents. My constitutional ethnography is not only a story about official culture versus carnival, but one that tries to get at the transecting realities of behavior and agency.

The ways in which law-makers and their adjutants conceptualize their inhabited worlds and their status as makers and movers of those worlds and of history is not a rarefied epidemic abstraction fabricated and imposed from above. On the contrary, it is
part of an organic social development that arises from casual encounters, structured engagements, inchoate contestations, and directed struggles. Importantly, bringing together the vernacular and the sovereign in an analysis of legislation, regulation, and government opens an optic on discriminatory classifications, their discursive elaborations, their authorizations through actions, epistemologies, and modes of governance, and their distributed and interlocking nature. This optic enables me to consider the ways in which ethno-nationalism, race, gender, heterosexism, and related classificatory symbols mutually sustain one another, linking, understanding, and representing bodies, social formations, geographic spaces, and psyches through dominant repertoires (Stallybrass and White 1986).

It is in this sense that I approach political elites as Subjects of law and politics; that is, those who are authorized and who assume authority to comprehensively know, adequately discern, and meaningfully shape legal and political worlds, and to constitute and orient proper legal and political subjects. These Subjects are deeply embedded in local communities, immersed in the calls and claims of constituents and others affected by decision-making and government action. For me, the question is one of authority, more than legitimacy, and the self-reflexive understanding of the (political) “I” (or “We” as the case may be better stated). Integrating this understanding into legisprudence is a move intended, in part, to bring trends in late modern intellectual history and philosophy into anthropology in an empirical way; that is, to ethnographically explore the concerns of epistemology, post-structuralisms, the pathologies of reason, skepticism, and the role of language in law-making, the exercise of the police power, and the everyday conduct of government.
As a research methodology, legisprudence facilitates the interrogation of a number of interrelated problematics, key issues in social theory that link legislation, the police power, and government. In the main, and in their broadest formulations, I have three such problematics in mind: (1) the relation of the individual to the social, and the social to the symbolic (and the nature of macro orders and methods for investigating their properties); (2) subject-object relations, which I frame as the relationship between the material, the conceptual, and the social; and (3) the roles (and origins) of knowledge, language, and action (especially in the sense of behaviors) in generating, sustaining, and transforming "real instantiations of sociation" (Frisby and Sayer 1986:122). As ethnographic practice, legisprudence also facilitates grounded encounters with, and understandings of, "the practices of differently situated and positioned actors within contradictory social relations," namely those within legislated and regulated environments (Roseberry 1989:10).

As an illustration, Robins and Aksoy (2001) note that identity and community have become problematic as conceptual tools, and novel approaches are required in order to apprehend the relational fields in which ethnographic subjects (and researchers) find themselves, and the complex coordination of cultural reference points that our interlocutors must seek to achieve in order to find forms of belonging and have those forms acknowledged. In the case of Britain generally and Wales more specifically, nation, national identity, and community are key legal and political problematics (that is, key ordering devices with particular socio-historical efficacies), as are the discursive and material practices of racialization. In addition to political problematics, they are also key tools of cultural and social engineering. As pointed out above, these conceptualities and
political-legal tools often privilege whiteness as normative, and attempt police projects of social and cultural engineering on these terms. Within the ethno-nation (and the ethno-national hierarchy of Britain), other symbolic hierarchies are at work: race, ethnicity, minority, gender, sexuality, language ability, mental health status, age, criminality. As a Special Adviser in the Welsh Assembly Government said to me, “We’re not good yet, at really comprehending and addressing need among minority communities. We still presume that Wales is a white country. Fitting ethnic minorities into that in really helpful ways continues to elude us, although we clearly have a stake in normalizing those communities” (NE, field interview, January 16, 2009).

Legisprudence offers novel ways to analyze and theorize the role of legislation, regulation, and government in terms of these ordering functions. This includes cultural and social engineering efforts, the effective means of allocating material, symbolic, and knowledge resources, of structuring the struggles for equality. It also offers a new route for public engagements, for a public anthropology that has something to say about legislation, regulation, and government, and something to say to those in positions to listen and take constructive action.

For my purposes in this chapter and those following, legisprudence is intended to capture an encompassing representation, from the ground up, so to speak, of constitutional agency, of subjectivization, and of the mediation of emergent relations: therapeutic, between agents of government and the vernacular in the spaces of the public square, between the State, polity, citizens, and others. It entails a detailed examination of the theater\(^1\) of law, politics, social relations, objects, and knowledge, to demonstrate the breadth and extent of persons, spaces, materials, concepts,
experiences, and labors which traffic in the production of legislation and the police
tower, as well as in the quotidian operation of government. In its method of
representation, legisprudence is meant to figure, through both metonym and
synecdoche, the complex and systematic political and legal ecology of law-making in
Britain and in Wales, with a view toward developing its implications more broadly.2

As a figural idiom, I intend legisprudence to educe the constitutive relations
between and among disparate agents, many of whom are rarely attributed any role in
the production of legislation, regulation, and government. My constituent elements of
legisprudence, such as deliberation, anaphora, political theater, vernacular agency, and
S/subjecthood, are figural and literal terms that I deploy to refer to reality and reality
effects (Auerbach 2003; see also White 1999). Conventional accounts of law-making
focus on binaries of elite and common, or official and popular, and the work of elites and
officials, those directly involved with the fabrication of the products of law, with programs
of regulation and policy, and with the functions of government. This reproduces
conventional symbolic hierarchies of high and low, and the epistemologies that
accompany these in European cultural settings (Stallybrass and White 1986).

In anthropology, these epistemologies are often at work, built into analyses of the
processes and products of law, especially in conventional work that disaggregates the
official into domains of law and politics, with the focus regarding law centered on judicial
products and producers. Building on my discussion above, the anthropology of law
needs to be pushed forward on three fronts: (1) the examination and theorization of
legislation, and related non-judicial legal sites, forms, and practices; (2) the
consideration of public reasoning and the relations of forms of reasoning to particular

170
(types of) outcomes in politico-legal theaters; and (3) the analysis of the role played by non-elites in the production of legislation. Legisprudence is designed to tackle these dimensions singly and in their interrelations.

Ethnography is well-suited to the contemplation of these fronts due to its emphasis on propinquity and attention to the immanence of structures, practices, and concrete human actions, as well as its concern for the sets of layered relationships in any given setting. Through legisprudence, as a method for organizing ethnographic inquiry and presentation regarding legislation, regulation, and government, I offer my examination of these fronts in the context of law-making, regulation, and governing in Britain, inflected through the emergent realities of devolution, with a particular focus on race equality and exercises of the police power and as the everyday conduct of government.

Heuristic Legisprudence: Discovering, Learning, Problem-Solving

I have developed the practice of legisprudence as a heuristic, a framework and a model of action for the examination of these problematics, their political and academic contextualizations (that is their conditions of epistemic possibility and genealogies), and their constitutive elements, practices, and processes.

In order to get at the essence of each and all of these, what is required, rather than exemplars or definitions, is an examination of experience and of practice; that is, “situated, material practice that ties a whole range of heterogeneous phenomena in a certain specific way” (Latour 2010:x, italics in original). I embed experience and practice in my legisprudential research and analysis, in my strategies for investigation (that is, my methods of inquiry and data elicitation), as well as in my strategies of presentation, and co-implicated issues of ethics, the relationships between interlocutors, and reflective considerations (Clandinin and Murphy 2009).
As a methodology, then, I understand legisprudence to entail not only acquiring and analyzing data, and the application of interpretive instruments and conventions, but also epistemological commitments; ontological commitments (that is, the suppositions implied by the assumption of the existence of analytical materials or categories); and ethical commitments. These ethical commitments entail primarily, but not only, issues of relationality, including my responsibility, as researcher and as author, to act as witness to the conditions of life that participants in my field research experience, especially those who are silenced and marginalized, and my obligation to emphasize the policy implications of my research (Clandinin and Murphy 2009; Scheurich and Young 1997).

“Heuristic” considerations are a key dimension of my methodology. I mean by this to bring explicitly into my project issues of discovery, learning, and problem-solving. Primarily I mean my own processes of discovery, learning and problem-solving as investigator; that is, how does one go about investigating legislation, regulation, the police power, and the conduct of government? Where does one begin? What questions does one ask? I start from the premise that certain “principles and common outcomes can serve a heuristic function” for careful investigation of law and its adjutants (Lave, et al. 2010:659). Discovery, learning and problem-solving also extend to other investigators, of course.

There are two caveats that accompany my configuration of the heuristic model. The first is that the heuristic can also be applied to the subjects of study. I can ask my probing questions of the knowledge and actions of the agents of law, whether vernacular or official, that is, to inquire as to their ways of discovering, learning, and problem-solving. The second is that my approach should be distinguished from the
A heuristic model, then, as part of the methodological approach to the study of legislation and legislated environments, structures our ways of inquiring and knowing. For example, in an onomastic sense, law signifies a corpus of rules “that orders human activities and relations through systematic application of the force of politically organized society, or through social pressure, backed by force, in such a society,” or “the aggregate of legislation, judicial precedents, and accepted legal principles,” or “a body of authoritative grounds for judicial and administrative action” (Garner 2000:712). “Law,” in other words, is a *genred* narrative field and system of rationalization (Briggs and Bauman 1992; see also Poovey 2008). It is also a chief signifier that performs “a kind of visible onomatopoeia” (Haraway 1997:4), mingling multiple domains and discursive formations: state, nation, order; modernity, reason, calculation; justice, right, territory, jurisdiction.

These definitions tend to overdetermine law, to present it as a marmoreal singularity of force and reason, of coercion and consent, authorized by political society. Such overdeterminations and related epistemic conventions are useful heuristic challenges, and therefore can serve as interesting starting points, however. It is the singular vision and apprehension of law-as-edifice that I challenge, for instance. Law, I insist, is not a single edifice, not coherent, not marmoreal. Furthermore, law and legislation are not the same thing; law and adjudication are not the same thing, although this latter formulation has held conjunctive sway in recent memory. Legisprudence is tasked to capture the hidden communions that congeal to materialize law in its
legislated and regulated forms, and to facilitate critical analysis not only of legislative work and institutions, but of the relationships between legislation regulation, and government, or more generally, the analysis of legislatures and their position in constitutional states and in political society. It is also tasked to capture the material, symbolic, and epistemological achievements that effect the hegemonic vision of law as singular, unified, coherent, and autonomous.

**Navigating the Ethnographic Workday**

My Cambrian adventure, between the pastoral cozy of the countryside, the gritty streets of the urban and town landscapes, and the wild mercury of the Celtic Sea, unfolded something like this. The great majority of my fieldwork was spent working in an ordinary sense. I normally spent three or four days per week at work "in the Bay": in a Ministerial office in the Welsh Assembly Government and in backbench AMs' offices in the National Assembly; or at work in elected Members’ constituency offices in Cardiff and the Vale of Glamorgan.

I was formally taken on as Members’ support staff, given a thorough background check, an ID and electronic pass card, the right to use the Assembly’s intranet, and an official email account. My access was not unrestricted, but I was welcomed and made to feel as a regular employee. I used the Members’ library and conducted research, drafted or co-drafted legal and policy materials, walked files and other materials through formal processes, met with constituents, wrote official correspondence, handled casework, assisted with surgeries, visited schools, elder care facilities, hospitals, and other institutions as part of a Minister’s or a Member’s entourage, kept diaries and notes for official meetings, and communicated on behalf of Assembly Members with the press, MPs, local authorities, the civil bureaucracy, service departments, and private and
voluntary sector personnel. This accounted for a total of approximately 1000 hours of work distributed over twelve months.

In Wales, I was invited to participate in official Party functions, both within the Assembly, as part of the regular weekly unfolding of the business of government, and outside of the Assembly, in meetings, dinners, election events, rallies, hustings, speeches, lectures, and the like. I also visited and spent significant amounts of time in constituency offices in other parts of Wales, in the offices of local government councilors, and in health and social service departments in Cardiff, the Vale of Glamorgan, Swansea, Caerphilly, and Blaenau Gwent. This work accounted for almost 500 hours of field time.

In London, I had similar responsibilities, but on a somewhat smaller scale. I worked with backbench Members of Parliament in the House of Commons, as well as with clerks, and with staff, doing work basically identical to that which I undertook with Assembly Members in Wales. Much of the constituency work I did for MPs was done in Wales, although I also worked briefly with MPs in other parts of Great Britain, including in Scotland. I also shadowed a number of Ministers and Deputy Ministers, as well as Members of the House of Lords, over the course of many days, although I was never quite as closely aligned with Parliamentarians as I was with Assembly Members. The time spent working with Parliamentarians and others in London accounted for nearly 400 hours of field work.

Finally, I volunteered for three organizations: a local community history organization in Cardiff; a Black Voluntary Sector Network organization, headquartered in Cardiff; and a Britain-wide organization that deals with BME persons with mental
health concerns. My association with these organizations enabled access to hospitals, to clinicians, to nurses, to health executives, to medical administration staff, to social workers, to psychologists and psychiatrists, to legal representatives, to various race equality organizations’ staff, and to personnel in related race and ethnicity settings and in public and mental health settings across South Wales, and in England and Scotland. I worked a variable number of hours with each of these groups during an average week. In total, this volunteering accounted in a formal sense for approximately 200 hours of field time, although informally, I spent a great deal of ethnographic time with people that I met through these networked affiliations.

In total, I have ten handwritten royal octavo notebooks (200 pages each), indexed and cross-referenced; daily computerized field diary summaries; 167 recorded interviews ranging from twenty to 200 minutes in length, as well as about 100 hours of recorded conversations, speeches, lectures, and conference and workshop presentations; two gigabytes and approximately 4000 hardcopy pages of official, unofficial, and embargoed documents; and four gigabytes of photos and video footage. Together, these materials constitute the bulk of my field research data.

An average ethnographic workday started around six o’clock in the morning, as I made early rounds with friends, acquaintances, and others for breakfast, coffee or tea, and discussions of the morning news, catching up from previous encounters, and just general conversation about the goings on in Wales, Britain, Europe, and the world. Some of these were one-on-one meetings, more often there were several of us who would meet. Some meetings took place in homes, some in restaurants, cafés, and coffee shops. Many of these meetings also took place on sidewalks and on walks
through parks and neighborhoods. Some interlocutors preferred to meet in “local” shops and restaurants, others in the large chains, and a few preferred McDonald’s.

These morning engagements were extraordinarily productive, an order of socio-communication in which I was consistently able to observe the iterations and anaphora of legal culture and legal politics at work in the everyday, and see the actualization (and otherwise) of constitutional principles and the aspirations of political society. They reminded me of the power of the speaking voice as a communication and socialization technology. They also highlighted the nature of relationality, sociality, and especially commensality. Talking over food and drink in a relatively relaxed atmosphere is a favorite social lubricant and learning method.

Usually by seven or seven-thirty I was off to another morning meeting, another round of cappuccino and croissant or Welsh cakes with another set of interlocutors and another set of concerns and topics. Following this, normally around eight-thirty, I began to make my way to my various formal work sites. On a Tuesday, this meant taking the High Street and St. Mary’s Street, south, away from Cardiff Castle, and toward the Bay. Crossing Callaghan Square, just below the Cardiff Central train station, I’d enter onto Bute Street and the dockside neighborhood Butetown, colloquially known as Tiger Bay, for a long time home to waves of migrant labor, and a historic crucible of sorts, where hegemonic notions of “race relations” were fought out, where the various proprieties of multicultural diversity, of both devolved Wales and the New Britain, continue to be struggled with (Drake 1954; Drake and National Federation of Settlements and Neighborhood Centers 1966; Jordan and Wheedon 2000).
I’d make my way down, past the Pet Hospital and St. Mary the Virgin Catholic Church, along Bute Street, usually meeting friends and acquaintances, who frequently insisted that I come to have a coffee and conversation. Afterwards, I’d continue to the Bay, passing the Butetown History and Arts Centre (Figure B-13), or the Bay Arts Centre, depending which route I took, across Bute Place, onto the concrete plaza of the Wales Millennium Centre, past the Pierhead Building, and into Tŷ Hywel and the various offices. Tuesdays I worked in the office of Victoria Davies, a Labour backbencher from a constituency in North Wales. On a Wednesday or Thursday, this routine was the same, the main difference being the office in which I worked. On a Friday, I went to constituency offices, catching the Arriva Trains Wales from Cardiff Central to the cities, towns, and villages of destination (Figure 8-1).

Once I arrived at the Assembly on a Tuesday, usually between nine and nine-thirty, the everyday business of governing was already underway. Victoria Davies, the Labour backbencher, was invariably already bustling: on the office telephone, coordinating with her constituency staff in the office in North Wales, texting from her mobile, typing emails, reading from the pile of the day’s documents as she prepped for the weekly Plenary, committee meetings, and appointments, and in constant communication with David Evans, her head of office, who sat at a desk just adjacent, conducting the daily business of the office: press contacts and press releases, drafting questions to be asked of Ministers in the Siambr, “sorting the wheat from the chaff” of the everyday “barrage of stuff” that descended on the office (DE, personal communication, October 9, 2008).
Dave usually had a paper cup of tea steeping beside him, the television switched on and tuned to various news outlets: BBC, SkyNews, ITN. It ran silently, mostly, until an item caught his eye. He would jab a finger on the remote, intent on the story for a moment, then return to the work at hand. Vic and Dave would routinely take a break for special televised segments, such as interviews with Assembly Members and others, or morning political shows, offering running commentary on both the interviewers and the interviewees, the questions asked, the answers given, the set design and lighting, clothes and hair, how the particular topics at hand were relevant to their own work, and the tides of political concern that shifted and flowed in the press, in the hallways, in committee rooms, and on the floor of the Siambr, as well as in broader and more encompassing gyres of regional, national, European, and global politics.

By ten o’clock, Victoria was out the door, and off to her daily commitments. Tŷ Hywel is a rabbit warren of corridors, stairways, and offices, and on the days I shadowed Victoria, it was a calorie burning endeavor. An actual day typifies the daily conduct of governing: from the office on the third floor to conference rooms on the ground floor for a meeting with stakeholders in the development of the Older People’s Commission; then into an adjacent room to meet with interest group representatives concerned about environmental degradation and the use of plastic shopping bags; to the café on the second floor and a meeting with one or two other AMs regarding a proposal to build a nuclear power plant across the Severn; back downstairs for the launch of a new report on communications and the digital gap in Wales; to a Party meeting regarding the proposal to cull badgers in an effort to eradicate bovine tuberculosis; to another launch, of a new Assembly initiative on domestic abuse; to a
third launch regarding further education in North Wales; to an economic meeting with representatives from Boeing’s plant in North Wales; back to the office for a quick meeting with the chief executive of a drug and alcohol rehab facility, followed by an appointment with the policy adviser for the National Society for the Prevention of Cruelty to Children; to a fourth launch; and then back to the office again, to prepare for the weekly Plenary debate and government business.

Ten minutes before two o’clock a bell would chime, signaling the start of the weekly Plenary in the Siambr. Victoria and Dave would share a few last words, he’d remind her of particulars they had agreed, and she’d grab a sheaf of papers. Her friend, Bethan, from an adjacent county in the North and housed in the office next door would knock, open the door, and pop in, and they’d be off together, heads bowed in conversation, through the halls of Tŷ Hywel, across the sky walk into the Senedd, and to the floor of the Siambr. The Presiding Officer would call the Siambr to order, and announce Questions to the First Minister (FMQs). An AM would stand, frame a question, like “Will the First Minister make a statement on…” and the debate was off. FMQs lasted 45 minutes or so, followed by substantive policy statements, legislative statements, and other items of government business. On a Tuesday, plenary time is devoted entirely to government business. On a Wednesday, another regular day for plenary debates, remaining government business is addressed, followed by opposition business. During my time in the field, the Welsh Assembly Government was a coalition of Labour and Plaid Cymru, the nationalist party of Wales, called the One Wales Coalition. The Conservatives, or Tories, colloquially, and the Liberal Democrats were in the opposition.
During the plenary, AMs drifted in and out, taking their seats and joining the procedural formalities of deliberations as necessary. Assembly staff were also constantly coming and going, delivering large envelopes and bits of message paper to AMs. It is common for the Siambr to be less than full throughout, except when there are major debates and when the vote is called at the end of the day, normally around five o’clock.

As for me, after we crossed the sky walk, I would break off from Victoria and Bethan, and head to the visitor’s gallery perched above the Siambr. For the remainder of the afternoon, on both Tuesdays and Wednesdays, I would watch the deliberations, and take notes, occasionally donning headphones to listen to the deliberations in Welsh, via the real-time streaming of bilingual translations that the Assembly provides. Watching from above, I had the impression of a staid and formal process underpinned by perpetual human activity, which struck me as an attractive figure for legislation, regulation, and government more generally. This idea, of the Siambr as an index, fills in some of the content of my metonymic and synecdochic dimensions of legisprudence.

Following the day’s business, I would return to Victoria’s office, chat with Dave (and Vic, once she returned), and then listen as other AMs with offices on the same corridor would drop by to go over the day’s happenings. Victoria’s office was a hub of sorts, a gathering place for a group of collegial AMs and their staff members, where a number of informative conversations took place. Victoria and Dave were both virtual magnets, friendly, warm, and funny, as well as intensely interested and deeply invested in their work. I often found myself lost amid the cultural, political, and shared insider material that passed between people in these informal get-togethers, and I’m fairly
certain that frequent bewildered looks must have crossed my face. At these moments, Dave, Victoria, and the others, with good humor and a lot of laughter, would take a few minutes to bring me up to speed on the particulars, sweeping through Welsh history; Welsh and British politics; personal relations that had family roots generations deep; a who's who of famous, infamous, and un-famous but important personalities; principles, rules, exceptions; and a laundry list of details that grounded their particular actions today in the iterations of law, language, history, custom, and relationships that inflected thought, preference, and ideas about “the best ways of doing things in the Assembly” (DE, personal communication, November 11, 2008).

This was how much of my time was spent in the spaces of the Assembly, the main differences being the different offices in which I worked. These differences were not minor, in so far as the apparent dedication and workloads were often quite distinct, and gave me a close familiarity with different working styles, self perceptions of one’s legal and political Subjectivity, and of one’s obligations of an AM, and the “proper ways of conducting oneself” on behalf of constituents (SM, field interview, December 2, 2008).

On a Friday, I would catch the 9:20 train out of Cardiff, and go to work in the constituency office of Laura Mills, the Minister for whom I worked. Her office staff, Liz Gray and Cerys Lang, brought me into their working world with grace, welcoming me immediately, quizzing me on my research, and using what I told them to organize my working time in the office. They included me in virtually everything, and spent hours familiarizing me with cases, files, the procedures of dealing with cases, local politics and the peccadilloes of the local councilors, the ins and outs of the bureaucracy of the local authority and its service departments, the local press, the town’s history and its place in
the historical British industrial landscape, the famous folk who come from there and come to there on holiday, and the nature of the working class community that characterized the town and set it off from the rural and generally wealthy surrounds. The office and the town were a study in the deep care that Laura, Liz, and Cerys all had for their neighbors, the inhabitants of the town and county, and for Laura’s constituents. I personally benefitted enormously from that care, and I learned from Liz and Cerys much about law and politics in the town, in Wales, and in Britain.

On a Monday, my ethnographic workdays were anything but routine. I rarely found myself in the Assembly, mainly because many AMs leave on Friday, spend the weekends in their constituencies, and travel on Monday, to return to the conduct of business on Tuesday, Wednesday, and Thursday. Mondays found me more or less across the whole of South Wales, and occasionally beyond: in local authorities, in health and social services departments, in Cathays Park with Civil Servants of the Assembly, at Cardiff University, where I would frequently meet with faculty and graduate students to discuss research, consider joint projects, and plan lectures, workshops, and seminars. Monday evenings I was often engaged in graduate student organizational meetings and colloquia, more or less informal gatherings with “wine and nibbles,” and a student or two sharing some bit of their research. Other evenings in the week usually found me at dinners, lectures, pub and restaurant gatherings, charity events, awards ceremonies, receptions, gallery shows, and so on. The days rarely ended before ten o’clock at night, and often lasted much longer.

The next several sections of this chapter, although what they describe did not take place in the Assembly or in constituency offices, draw heavily from these workday
routines and the relations that interpellated me into much larger macro projects of governing. The following accounts begin to ground the constitutive relations and encompassing representation that I intend legisprudence to capture and portray. The chapter will conclude with sections in which I begin to draw connections with my theoretical practice.

**George Falstaff and the Rulebook: The Scalar Effects of Epistemologies of Ignorance**

George Falstaff and I found ourselves talking together on a spring evening, over a table of curries. Rich, almost intoxicating aromas wafted around us. We were part of a large house party thrown by Tony Rose, with catered Indian cuisine, bottles of red, white, and dessert wines, and several varieties of beer on hand. We had met twice previously; first, at another of Tony’s house parties, and second, when I shadowed a health executive through the rounds of psychiatric services. George and I had spent a good amount of time talking both times, and he was familiar with my project. We struck up a conversation moving gradually from perfunctory niceties to a more engaging conversation about psychiatric health care and service delivery in Cardiff.

George is the lead social worker employed by the Cardiff County Council, and moves between a number of hospitals, clinics, and other sites. He referred to himself as a “free agent, you know, like you colonials want for your baseball players” (GF, personal communication, June 25, 2009). Devolution to him meant little more than an additional layer of government intrusion and new regulatory interference in his work. “We had the 1983 [Mental Health] Act, which worked just fine, the organization was much better. Under the 2007 [Mental Health] Act, my ability to treat my patients with competence is gradually being eroded. Now, the structure of devolution and the structure of the health
authorities aren’t the same, which defeats any coherence and really makes it difficult to treat patients fairly” (GF, personal communication, May 25, 2009). For George, devolution had wrought a new disconnect in service delivery and in his capacity as a medicolegal therapeutic agent, a disconnect that separated him from his understanding of fairness and equity. This disconnect had then been exacerbated by the institutional reforms implemented by the First Assembly (1999-2003), and further worsened by the passage of the Mental Health Act 2007.

“What they’ve done is erect a whole new set of burdens that conflict with my ability to work. Now we’ve got this new set of institutions and a sort of ongoing, perpetual reform, and every time I’m faced with a client, I’ve got to think about the various equalities strands. It’s no way to work. OK, this is a woman, what do I have to do to conform? OK, this is a Black, what do I have to do to conform? Now, here comes an elder, a gay, a Pakistani, whatever. Do I have to make sure they speak English? And the nest of filth in Cathays [Park, the offices of the civil bureaucracy].” He trailed off, shrugging, and refused to clarify what he had meant by this statement.

“Let me tell you what a rule book does, how guidance put out by the Assembly Government destroys the therapeutic relationship. I’ll tell you about Fayez, OK?” George poured himself a refresher of red wine, picked a samosa from the table and popped it in his mouth. He gestured for me to follow him, and we walked out of the kitchen, to a table in the garden, well away from the others. He leaned in and lowered his voice as he began.

“Fayez came in during a student rota. With his mother. He’s only a teen, and he’s Arabic, Palestinian, I think, or something. Anyway, he knew he was psychotic, and he
was deeply, deeply afraid, so we deemed him a suicide risk. The student…” George leaned back, rested his head on the back of his chair and rolled his eyes. Letting go a long plosive sigh, he exhaled through puffed cheeks and pursed lips. A pause. He leaned forward again, flattening his palms on the table between us and spreading out his fingers and drumming them. “…The student. She was so young and naïve, I mean, very dedicated to the rules, overly dedicated to them, you know, and they just don’t teach them what its actually like to be there. So Fayez is in crisis, and the student shouts that we need a translator. She was, I mean there’s a kid right before her, right, and he’s clearly in trauma, and she’s worried about getting a translator! She even left to retrieve her manual and show me that a translator is required where there is – might be! – a problem communicating! Unbelievable. She just walked away, and came back while I’m speaking to Fayez and his mother, and opened the book and pointed to the page!” He shook his head, eyes closed, looked up again and ran his left hand along the side of his face. “A translator. At a time like this. Can you believe that?”

I wasn’t sure how to understand his concern, or what his concern was, really. Surely it’s reasonable to seek a translator when there are language barriers, even, or perhaps especially, during a crisis? I hid my lack of understanding by looking down, scribbling a few notes to myself in my field journal. When I looked up again, George resumed. “So we got Fayez sorted. Then we had a terrible row afterwards. I had to speak with her about how to conduct herself properly, and of course it had to go in her performance evaluation. She has to learn. Anyway, it may be that she doesn’t belong in social work after all. She has to realize what it takes to be a professional, and
pretending that she hadn’t made an error, or letting the error go by without addressing it, is just not possible. You see?”

I had to come clean. “Not really, George. What was the problem with her going after a translator?”

His face hardened. “As I said, I was” – significant emphasis as he leaned in close, raised his voice, and enunciated – “speaking to Fayez and his mother. They’re both English speakers, so there was absolutely no reason, no need for a translator. Had the student bothered to pay attention, or ask, she would have learned that, and there would have been less tension, it would have been a less tense situation. Instead, she presumed that, I don’t know, the accent or the name or the ethnicity or the skin color or something meant that Fayez had to be incapable of understanding. It’s a common thing between different race groups, they all look down on one another. Anyway, it’s that kind of unthinking and unattentiveness that always comes up with minority students, ignoring details and running to the rule book, afraid to break the rules for fear of sanction or a lower grade.

“What it does is make Fayez and his mother question what’s going on, and whether I’m going to help, maybe whether I’m even able to help, and whether the student is a part of the process, or whether she’s just going to disappear for a book. Finally, then, her actions worsen an already bad, an already crisis, situation. Thoroughly unacceptable, and I told her so, and made sure that the rest of the staff knew of the problem, for Fayez’s sake, and his mother’s – she was distraught – as well as to prevent it from happening again, or at least I hoped so. And it went into her review.” He
sat back, sipped wine. “I mean, she’s a pretty girl, even though she’s gay, but her actions are really rather low, after all, don’t you think?

“Anyway, where would I be without these people?” – he issued a long, burdened sigh – “I’ve got a stake in their success, because it reflects on me, and when they do proper work, patients get better treatment and we run much more efficiently. When they don’t, when they act foolishly…” He waited for several moments, expectantly, it seemed. I studiously kept me eyes and attention focused on my notebook, writing. He relented, turned aside and lit a cigarette. Standing to return to the party he said, “As I told you before, I won’t give you the student’s name, because of privacy. But I can connect you with Fayez and his mother, for your research.”

*That information is not private?* I thought to myself.

**Cici Williams: Professionalizing the Social Work Student**

As it turned out, I already knew the student, and from my associations with students at Cardiff University had heard rumors of the incident George narrated. The student’s name is Cici Williams, a social work student at Cardiff University. I first met her when I was looking for the mailroom in the Glamorgan Building, which houses the School of Social Sciences, and blundered into a graduate student meeting. She beckoned me to the seat beside her, and offered me a glass of wine. “I’m Cici, I’m up next,” she had whispered. “We can have a chat afterwards.” She then had given a short presentation on inequality in social care, and when she finished, she grabbed my arm and hustled me out to *The Pen and Wig*, a local student hang out. We chatted for an hour or so, and she volunteered to be interviewed for my project, if I was interested. I was, and a few weeks later we arranged to meet at the *Cato Arms* on a fine fall evening, as a golden pink sunset ushered in the end of the day. Cici sipped from her beer, gave
an approving sigh, and sat back at our table beneath an elm tree in the pub’s courtyard. Traffic buzzed by on Cathedral Road. A family bustled along the sidewalk with wheeled suitcases and a pram. We talked for a bit, getting to know each other a bit more. The talk slowly turned to research and the politics of inequality in Wales.

“Listen,” she began, “I’m Black, gay and I’ve been in hospital for psychosis. I’m also able to cope with my issues. I’m employed. I’m finishing school. I’ve done my student rota, although that was a fucking mess.” Another sigh, another sip of beer. I raised an eyebrow, and she took the invitation to explain.

“First of all, I’ll tell you that being Black in Wales is not easy. Being gay is less easy. There’s like six of us here, you know? And we’re all outing, whether we want to be or not. So I’ve got all of that working against me when I go for the rota. And then I end up with the worst bloke in Cardiff. Racist, sexist, hates gays. Great credentials for a social worker, right? Anyway, this kid comes in, Fayez. He was referred, his mom brought him in. He was acutely unwell, and communication with him was difficult, and the mother doesn’t speak English very well. Anyway, whether she speaks well or not, she’s obviously stressed, and needs a translator to make clear what’s happening. [George] Falstaff just ignored her, kind of pushed her to one side, and started the assessment. He basically said, ‘I know what’s best,’ which meant pharma and sedation, and incapacitation. He said later, ‘I can make those decisions because I’m a professional’” – she threw up air quotes, half-mockingly imitated the delivery – “but I watched him with many people, and there’s clearly a color issue for him.”

Cici’s hands were wrapped around her glass, her knuckles white, her knees pulled up to her chest. She couldn’t raise her eyes while she spoke. The obvious visceral pain
she still felt after several months made a deep impression on me. I asked her if she wanted to stop. She wiped at her eyes, and said no. I didn’t know what to do. Do I reach out a hand? Try to comfort her? I opted just to remain silent, to let her proceed when she was ready.

“At the time, Fayez didn’t even know he was in hospital, he thought he was going to prison. I said, ‘Hang on, we need an interpreter.’ Inpatients have rights, after all. Falstaff just insisted that both Fayez and his mother were fluent in English, and he waved me away, just dismissed me. It went bad from there, and I ended up with the blame. Falstaff wrote me up, like I had not followed procedure. Then he told me to ‘get my ass out of his sight,’ and said that I didn’t belong in the profession. He sectioned Fayez, who ended up on an adult ward, though clearly a ward with younger people would have been more suitable. And he basically told the mother to get lost.” By the time she finished, Cici was exhausted, drained and angry, her entire body clenched at the memory. We sat in silence again for a time. The blue of twilight had begun to settle, street lights were coming on. A light in the yard adjacent began to glow behind her profile, a tear streak glistened on her cheek.

“Well, we do have to work within the scope of the legislation, don’t we? And the policy in Wales is clear about ensuring that the patient is central. If I want to be an appropriate practitioner, then I have to follow the rules. Not just because they are rules, but because it’s a matter of respect, and dignity, and these are primary concerns of the legislation and the policy in Wales. I want to help people, especially BME people. We’re disproportionately represented in all the negative ways: psychosis, criminal and anti-social behavior, medical needs, benefits. And when we get into the system, we’re there
longer, we’re more likely to end up sectioned or jailed, and far more likely to be administered medicines rather than other therapies. I know from my own experiences in hospital that ‘recovery’ never came up as a therapeutic possibility for me, until I began to suggest it. They were like, ‘Oh, that’s brilliant, why didn’t we think of that?’ The common assumption is that somehow mental disorder is more permanent for us. So I want to see people given proper treatments and proper care, but also I want to see equality and fairness in the system. I have a stake in it from both sides, and this is part of the reason I’ve trained for social work.

“What I learned from the rota with Falstaff is that these things are not even on the horizon for many senior staff and practitioners. There is a disconnect between the new Mental Health Act and the Assembly Government’s policy and the national service framework. What goes on in practice is not in line with either British law, Welsh law, or best practices. What Parliament and the Assembly want and what crisis teams do are not at all the same thing. Not even close. And the result is predictable: minorities, women, and gays and lesbians continue to experience extremes of isolation, rejection, and fear. We’re the last to seek help, and when we do, we run into the rock face of inequality, marginalization, exclusion and racism. We also don’t have adequate networks of support, and so the problems we encounter just get magnified. Either we’re released to community with no family or care support, or we’re not released because we have no support. The outcomes are not good, and it appears that we’re naturally prone to sickness and violence. I’m sick of being judged, of being told I’m different, being told my difference is sickness. I think we all are.
“What the service needs is much more awareness of diversity. Racial, cultural, religious, sexuality, and the relationship of these with mental illness. That awareness has got to come from the top, the leaders have to lead. Not just in the health service, but in the Assembly. Not all Blacks are schizophrenic, you know? Not all knife crime is committed by Blacks. Being gay is not supposed to be considered a mental disease any more. The psychosis I experience is not due to being gay, and being gay is not the result of psychosis. Falstaff doesn’t get that, and he’s only one of many. How do you change those who refuse to believe, though? And how do you change a system that’s run by them? The system is still completely biased. What happens, because of that, is that my identity affected everything on the ward, not just me.”

Fayez Bashir: Outcomes of Difference in Metadiscursive Practices

I connected with Fayez, through his mother, after George gave me their names and contact details, and informed her of my research and my interest in their family’s experience. She emailed me one day in November of 2008, asking if I would be interested in speaking with Fayez. I replied affirmatively, and over the next two days we exchanged emails, a dialogue that culminated in her invitation to me to “come round to [their] home,” in Splott, a neighborhood in Cardiff. On a rainy afternoon in mid-November, I made my way there.4

“Fayez is sixteen. It’s been very difficult. His father died two years ago. That was the most difficult, I think, but Fayez does not speak of it. Since then, he has changed, and recently, about six months ago, he became so upset one day. I didn’t know what to do, and finally the police came. I didn’t know that he had been beaten by those other boys. Fayez said nothing to me about it, until the police came. It was devastating. I thought our lives were over.”

192
We spoke for about forty minutes, over tea. She excused herself, and left the room, returning with Fayez, and introduced us. While his mother looked on, I explained my research to Fayez, and asked if he would be willing to speak with me. He was, and we began.

“Can you tell me about your experience?”

“I think sometimes the worst part is knowing,” Fayez said of his experience and diagnosis. “When I had my first episode, I was hearing voices, I felt I couldn’t trust anyone, I didn’t sleep for days. I started talking to my dad. My mum couldn’t cope, at all, and finally it got so bad there was nothing to do but make a referral. I ended up on the ward. But now I am psychotic. That’s what they call me, and I can feel it, I can feel being psychotic, and the way it makes me. I can tell when it’s coming, it isn’t always – I’m not always psychotic. And it wasn’t always like this, either. But I knew that I was changing and I didn’t know what to do, how to not change. I had a lot of anxiety, a lot of rage, and I had hallucinations. That was bad, and I was scared to say anything to anyone, because normal people don’t have those things, don’t have hallucinations. It just got so overwhelming. But knowing, I mean having a diagnosis, a word that describes me now, that’s worse. I thought it would be a relief, but it’s not.” He paused, his eyes cast toward the floor. He was silent for about a minute and half.

“School was terrible. There were some CHAVs who never left me alone. Always bullying me, calling me names, calling me ‘nigger’ and following me after school, and fucking with me.” His mother winced, but whether at the epithet, the curse, or the image of the brutality her son had suffered, I couldn’t tell. “Finally they started punching me, hitting me, slapping, pushing… I fell down and they kicked me. And kept kicking me.”
His mother was silently shaking, weeping as Fayez recalled the beating. “That was when the police came, someone reported the fight. The CHAVs I think got ASBOs, and the police said that I was violent and had started the fight, but that wasn’t true. I mean, I didn’t start anything, they started hitting me, and I was just really angry and shouting. The police refused to believe me, and said that I must have been on drugs because I was angry and shouting. They wrote me up in their report, and they came to our house afterwards. I just couldn’t get through it anymore and it was like an explosion went off. That was when the referral had to be made and I went to hospital.

It took me some time to work out these details, and to understand what had happened to Fayez. George had insisted that the police had brought him in, that he was a “security and self-harm risk,” and therefore had to be sectioned. Cici was uncertain as to whether the police had been involved. In reality, the police did not bring Fayez in. After the fight, Fayez’ behavior began to really worry his mother, and so she contacted the general practitioner (GP), who referred her to a consultant. The consultant recommended an assessment, and arranged an appointment. Before the appointment, however, the stress of the fight and the ensuing couple of days built up in Fayez and his mother decided to take him to the hospital.

His mother put a hand on Fayez’ shoulder, and said, “He was there for three days. I went to see him every day, but he was so blank, so empty because of the medications. When they finally let him out, they gave me a handful of pills. Only that! No help with what to do, how to care for him. The doctor who had first seen him [George Falstaff] kept telling me not to worry, he’d be fine as long as he stays on the medicines, that I can recommit him if there’s a problem. But what Fayez needs is to feel like he’s part of
society, treated fairly, instead of being shunned. Everybody with the kinds of difficulties he has can shine and those qualities should be encouraged, and supported.”

Fayez had no history of drug use or of violence, and had only had the one psychotic episode, which probably resulted in part from a serious physical assault. His referral, did not directly involve the police; nevertheless, assertions of drug misuse, and violent behavior were taken up as true at the point of intake, and his acute psychosis was taken as evidence of the veracity of the history. Proper treatment in his case was thus pegged to “security,” which became “the paramount consideration,” for Fayez personally, for the hospital and staff, and for “society in general” (GF, personal communication, May 25, 2009).

The desire for security and the mapping of colonial assumptions on postcolonial bodies, psyches, and geographic spaces continues apace as a characteristic of the “modern” regulatory regimes of equality and medicolegal therapeutic relations. Fayez, and his mother, transect and collocate the symbolic hierarchies and institutional roles that compose the regimes, establishing the means for governing, namely, the containment of difference and its ambivalent expressions.

**Linking the Ethnographic Workday with Methodological Practice**

My ethnographic workdays run throughout these portraits. I knew George through relations with Members of the National Assembly for Wales, relations which I was able to “snowball” into further associations and connections with clinicians, social workers, psychiatrists, nurses, and others (Stoilkova, personal communication). Cici I met as a result of the appointment I had at Cardiff University during my fieldwork, an appointment that was the result of relations developed with Cardiff University faculty and staff in the National Assembly. My relationship with Fayez grew out of the reference from George,
but also from work in the constituency office for a local AM. Each relationship was not only built from snowballing, but recursive and very interestingly interconnected, due in part to the relatively personal nature of political and social life in Wales.

These workdays and the intimate interconnections also form the core of legisprudence as a heuristic and a methodology for this project, that is, as a way of thinking about and inquiring into legislated environments, and the dense sets of relations and consequential effects that characterize the role of legislation, legislatures, and legislators in the everyday worlds of vernacular agents, articulating statecraft in the ensemble state, service delivery and the professions, and the demos. As I have stated above, the key institutional relations with which I am concerned are those between legislation, the police power, and government, and legisprudence as methodology is concerned with the examination of these relations and the forms of agency that both mediate and are mediated by the institutions. This mediation produces S/subjectivities, materializes the political epistemic, institutionalizes the legal and political landscape, and creates the formal authorizations for the actions of legislating, regulating, administering, and governing. This includes sociolegal instrumentalities, like discretion, which enable ambivalent and sometimes contradictory actualizations of official requirements, as is often the case regarding equality achievements.

As can be seen in the interactions between George, Cici, and Fayez, “equality” has indexical potentiality and often multiple outcomes. Race, language, and the practices that are believed to bring about equality are brought together in the actions and interactions that constitute everyday governing, and in the actual and symbolic struggles over the normative structure of the community and dominant cultural
repertoires. In this situation, these struggles are putatively private issues which became public affairs, and in the case of Cici’s reprimand, a public scandal, a contest played out in the public square largely in the terms George established, and wrapped in the high discourse of political society: fairness, efficiency, stakeholding. The multiple conversations I shared with people about the incident centered on questions about Cici’s ability to work properly, “given her situation” (SF, personal communication, June 02, 2009). Very little discussion was given to George’s behavior or the implications of bias. George’s acts of reprimand and Cici’s demand for interpretation, in other words, are not just an interpersonal struggle, but a constitutive part of the apparatus of everyday governing, the maintenance of a particular social order, and the antagonistic enactments of agency that differentially activate constitutional principles.

Similarly, George’s sectioning of Fayez and his unquestioning acceptance of the narrative of drug use and violence resulted in Fayez’ loss of capacity and his loss of freedom, as well as his mother’s invisibilization and loss of agency (virtually entirely), and dismissal from her son’s care. These actions also enact constitutional principles, of liberty and equality, and also are a constitutive part of the apparatus of everyday governing, and the struggles over the content of the political episteme. In this case, George’s exercise of discretion and his authority are enacted not only as rules of hierarchy, but as mechanisms of ordering and sense-making with powerful symbolic charge. Although George was not authorized to perform the precise diagnosis, he did explain psychosis to Fayez, and became an important figure of the therapeutic status and subjective identity of “psychotic” that Fayez then took on. The issue was not simply one of language per se, but of (the absence of) translation of the cultural concepts of
mental disorder and meaningful elaboration of the material and discursive extremes of psychosis, sectioning, incapacitation, and deprivation of liberty.

The exalted aims of fairness, equality, and therapeutic quality became, for Fayez, little more than a debasing move that altered his self-perception, making him feel “like a criminal,” necessarily deserving of his removal from society, and fundamentally inflecting his ability to cope once released to community care. Furthermore, the iterative nature of the narrative of violence and drug use, on every intake form, repeated in every encounter with medicolegal personnel, a constant barrage of assertion linked with NHS and social care institutions, with letterhead paper, with uniforms, and with his existence in community, was so constant that Fayez began to forget whether or not he had ever used drugs, had ever committed violence. There were many days that he was able to say with confidence that neither was accurate; there were many other days when he was unable to say with certainty. In several of our conversations, Fayez demonstrated an ambivalent internalization. He discursively sublimated his uncertainty in general statements about the improper nature of violence and drug use, thus subtly expressing the dominant repertoire and inculpating himself for types of behavior he had not engaged, desolating and abjecting his sense of self.

George was a key agent of meditation in this subjective transition, along with others in the medicolegal institutional regime. Although I do not want to suggest that this was intentional or deliberate, it does highlight the power of proceduralisms and of the constant repetition of regulated procedure and its contribution to formulae of identity and recognition. Because of the status of the NHS as a premier institution of the state, because of police involvement, and because of the profile of the NHS reorganizations
conducted in devolved Wales, the encounter with psychosis, for Fayez and his mother, became an issue of government, of multi-level statecraft. This dimension also took deep phenomenological and existential hold among others, friends and relatives of Fayez, shaping familial and community relations and affirming the symbolic hierarchies of mental distress, race and ethnicity, “proper civilized behavior,” and perceptions of “victimhood,” and linking them with the state and government (EB, field interview, May 29, 2009).

Additionally, Cici’s and Fayez’s bodies played mediating roles in George’s ongoing professional sense of self, a corporeal actualization of the symbolic repertoires of difference and hierarchies of centers and margins, of the proper social body and its borders. Not only the physical bodies with all of the deviations they represented for George, but also the need to manage them; that is, “work,” which occupies such a prominent role in individual and social life, and its category of experience and continual role in subjectivization. Additionally, George’s specific sort of work, within the scope of government and integral to its proper functioning, participates in the everyday continuation of well-ordered society. In his role as psychiatric social worker, George condenses the multi-layers of governing in the New Britain: his empowerment and obligations under the Mental Health Act 2005, the Mental Health Act 2007, and other legislation that sustains and performs the England and Wales hybrid; the practices required or recommended by the Welsh Assembly Government; the duties imposed by the Local Authority; the administrative rules and guidance within the NHS and the health care system more generally, and the ethical guidelines of his profession, all locate George in a complex legal and political ecology and constitutional matrix, in which the
facts of difference give him the iconography of his *memento hodii*, his knowledge of “today, this is who I am.” Labor and difference are thus linked with civic identity, with legislation, the police power, and government, and ultimately with the emerging constitutional narrative of the New Britain (cf. Tomlins 2010).

I argue that, together, the protagonists in these stories differentially enact constitutional principles, and constitutional fantasies, in this case issues of equality, fairness, and rights. Each account points up issues of language (including what constitutes adequate language ability and the extent of legal obligation), of the political epistemic, and of normative governance. I will return to these threads and argument below, in order to further illustrate their articulations with legislation, regulation, and governance in the constitutional ethnography of New Britain.

1 I use the term “theater” in the sense of a sphere of enactment of usually significant events or action, not in the sense of the place where dramatic performances take place (Egginton 2010). I do not intend to evoke the metaphors or rhetoric of theater in the sense of dramaturgy, as in, for example, James Scott’s (1990) “hidden transcripts.”

2 I should note that Ronald Niezen’s recently released *Public Justice and the Anthropology of Law* (2010) entails an analysis of human rights, and addresses some of my concerns, namely the role of communication in the construction and conveyance of understanding of/within normative systems, and attention to the problematic of the public and its role vis-à-vis the construction and functioning of normative systems.

3 A surgery is a session at which elected representatives and their staff are available to be consulted locally on more or less regular occasions. These consultations may take place in the constituency office or another local site, such as a town hall, or a school. The Welsh Assembly Government Minister for whom I worked was renowned for her surgeries.

4 Mrs. Bashir arranged for a family friend to be present to translate as necessary. Their family moved to Britain in 2001 and to Cardiff in 2003. Mrs. Bashir has a very good command of English, but she finds herself nervous speaking to native speakers, and was much more comfortable with the friend present to assist her. Fayez himself has become a fluent English speaker.

5 CHAV is a derogatory acronym that stands for Council Housing and Violent. It generally refers to young men who live on housing estates owned by local Councils, and who are stereotyped as anti-social, criminal, and violent.
6 Anti-Social Behavior Order, a civil order issued against a person who engages in anti-social behavior (see the Crime and Disorder Act 1998, ch. 37, as amended by the Anti-Social Behaviour Act 2003, ch. 38, §85).

7 In addition to the accounts from George, Cici, and students at Cardiff University, the incident was related to me by five separate people, in five separate organizations: a Local Health Board executive, a Cardiff constituency caseworker, a Black Voluntary Sector Network executive, a journalist, and a professor in Cardiff University Law School.
CHAPTER 6
LEGISPRUDENCE AS ANALYTICAL FRAMEWORK: INSTITUTIONAL RELATIONS AND MANIFESTING STRUCTURES THROUGH AGENCY

It should be clear, following from the poststructural corpus of writing, that there is no preexisting subject (or subjectivity), no formed, unified, and completed identity, whether of the racialized minority, the mentally disordered person, the woman, the homosexual, the politician, the doctor, the homeless, the aged. The intellectual challenge now is the bringing forward of Foucault’s “genealogy of modern subjectivity” (Valverde 2006:103), which regards the production of these objectivized and subjectivized roles and identities, and their mutual interactions, as well as their interactions with existing and changing social environments, institutions, and relations. Additionally, I suggest that what is needed is more attention to institutionalization, the creation or transformation of institutions, their conditions of possibility, and the recursive relations of mediation between agents and structures. This chapter begins to unravel these relations and conditions.

Key to this challenge is the recognition that power, law, and capitalism have productive dimensions (Foucault 1991; Marx 1993b; Marx and Engels 1972; Phillips 1980; Robinson 1983; Sunder Rajan 2006; Yanagisako 2002). These dimensions emerge from the dialectical and dialogical relations of subjects and the social, and the socio-historical, socio-communicative practices that constitute and shape them (Bakhtin 1968). The relations are critical to legisprudence as a model and as a theoretical framework, and to my analysis of legislation, regulation, and government.

The relations of subjectivity have, of course, received analytical attention, much of which proceeds from premises of an integrated Cartesian cogito or a splintered Nietzschean self. Recent signposts on the intellectual highway of this concern include
Althusser’s (1971) “interpellation”; Foucault’s (1976; 2005) “subjectivation” and related processes of self-making and self-government; Deleuze’s (1994) development of interpellation and the third party requirement, his “larval selves,” and his arguments against a primordial subject which “does not undergo modification”; and the becoming-subject of Deleuze and Guattari’s (1983) schizophrenic capitalism; among others (see e.g. Aretxaga 1997; Hoy 2009; Ortner 2006; Rose 2006; Žižek 1999).

My own thinking has been significantly shaped by the concern with subject formation, and the role of legislation, regulation, and government in these processes. Interpellation is a foundational concept for me, as is subjectivation, and especially Deleuze’s analysis of Foucault’s “infolding” and the metaphor of the fold (1986; 2006). The fold transgresses the conventional hermeneutic which posits an indicative relationship between surfaces (including behavior) and psychic identity as essence. Rather than clear separation of “outside” and “inside,” infolding privileges the notion of these phenomena turning into one another in a continuous process of becoming and self-actualization, necessarily involving language, environment, and learning in the making of selves and subjects.

In addition, the fold is an extendable metaphor, which can also be usefully applied to institutions, or rather to institutive and constitutive processes, so that a given institutional reality is not an outside or surface appearance overlaid on an interior space (of history, or of particularized function), but the expression of infoldings, of outsides and insides interacting. A similar metaphor, the mangle, has been suggested by Pickering (1995), but I opt for the fold because it allows for a more useful political and legal ecology, for the processes and harmonics of multiplicities interacting, and for a more
sensuous perception of radiations and ramifications. The fold is immanent within the “organic” development of persons, institutions, social environments. The mangle leaves the impression of an external agent undertaking the action required to produce the mangled reality, thus sustaining a sort of old school structuralism.

Through the metaphor of the fold and of infolding, I bring subjectivity and the rejection of the notion of a congealed self into my legisprudential analysis, to consider several moments of the whole of a given analysand: complexity; the co-productive relations of legislation and S/subjects; the constructions and experiences of what the self seems to be at any given moment, what it may become in future, and the nature of its mutability in legislated environments. Conjugating these concerns within the framework of legisprudence enables consideration of the extant influences on possibilities for action, possibilities for living (Hacking 1999).

The case materials detailed in the following sections bring out issues of subjectivization, interpellation, and the co-productive mediations of S/subjects and institutions.

**Procuring Equality (or Fairness?)**

“Can I help you, Mr. Catey?” Mary asked me as she pushed the trolley down the hallway toward the meeting room. There was a conference scheduled to begin shortly. I was standing on the ground floor of the Tŷ Hywel, in the hallway outside the room, waiting for my “guide,” James, one of the Government’s special advisers. We had just stepped off the elevator, and he had begun a whispered conversation with the Minister for Finance. They huddled together a few paces away, locked in a very serious conversation, from the look of it. This was the fourth time in as many days that I had stood in this hallway, very nearly in this exact spot, waiting for a public event to begin,
and I found myself again looking at the framed black and white photographs that decorated the hallway, images of another century, mostly rural, hinting at the history and heritage of Wales. Several of the Assembly staff had taken it upon themselves to take pity on the somewhat awkward and out-of-place foreigner standing in the hallway, perhaps a bit too intent on the photos, waiting for his designated guides and guidance. Mary was one of these staff members, who seemed rather pleased to look out for a lost soul in the guise of anthropologist.

“They’ve got you waiting again, haven’t they? Is this what you people do for a living? Always waiting? Seems a proper silly thing, really, you’ve been here every day this week, haven’t you? Let me show you in.” Her good-natured smile belied the chiding, and she patted me on the arm as she passed. “Come with me!”

I smiled back. “Good morning, Mary! It’s my pleasure to see you again this morning….”

Just then James put a hand on my elbow. “Mary’s found you again, has she? Listen – Aye, yes, good morning, Mary, yeah, he’s back isn’t he!” They shared a quick pat on the arm and friendly smiles.

“I’ve got him from here – Listen, Scott, go in and find a seat, the Minister and I will be right there. Here’s the agenda,” he handed me a sheet of Assembly letterhead with handwritten notes scratched on it, and a grey file folder nearly an inch thick, “and in this file is most of the material you’ll need to orient yourself. Mainly we’ll be discussing procurement, and after the meeting, we’ll go back upstairs and have a chat with the Minister. He’s got about twenty minutes blocked out for you, that should be enough, yes? Anything else I can help you with? OK?” – he winked – “We’ll start in about five
minutes, so go in, help yourself to something to eat, and I'll be right there. Sit nearer the front, OK? And save me a seat!" With a wink and pat on the elbow he was off again, down the hall, where the Minister was just finishing another conversation. He and James put their heads together again, and resumed.

I walked into the conference room. Several long tables were arranged in a square at one end of the room, and the chairs positioned around this square were already nearly filled. As I would find out, these were mostly business owners from around Wales, as well as a few academics. The head of the table was reserved for the Minister and his officials. There were several rows of chairs set up in the remaining space of the room, and I sat, near the front, and opened the file on the adjacent seat.

James appeared with a biscuit. “Did you get a biscuit or something? A tea?” he asked and he crunched his, brushing crumbs from the front of his pale blue shirt. “The Minister’s very eager to speak with you. We just had a chat about your research, and I briefed him on your work here. He’s quite interested in hearing about what you’ve found so far, and your conclusions. It’s not often we get researchers in here for as long you’re on for. Some interns, and a few students from Swansea spend time here, but we can’t remember anyone being here for a year. Especially an anthropologist!

“Now, there’s the Minister now, we'll be starting soon. Have you had a biscuit? Do you need anything? I’ll be back, just need to make sure we get started on time and off right.” He bustled over the tables, shook hands with several of the attendees, and handed the Minister a sheaf of papers, poking a finger at the top page, and then riffling through the remainder, nodding his head and speaking. The Minister glanced over at me, nodded and gave a small wave; James followed the gaze, and let go with a broad
smile and a wave of his own. I waved back, nearly losing control of the file folder and papers, which I had moved to my lap. About a minute passed, and the Minister cleared his throat, announcing that we were ready to begin, and James appeared, taking his place on the chair adjacent to me.

As the Minister began to detail the agenda, James leaned over to me, whispering. “Procurement is one of the most important aspects of the Assembly’s business, you know, and touches on virtually every piece of business we conduct. Environment, farming, education, economy, finance, local government, health care, housing, sustainability, all of it. Of course, it’s also a key part of the Government’s race equality strategy, as you’ll know. We work very hard to mainstream race equality through procurement, to make sure that it’s front-ended, in terms of employment, as well as measured outcomes. Procurement is some of the most important work we do. It’s part and parcel of everything, and mainstreaming as part of the procurement process really ensures that we get it in from the ground up, so to speak. These are some very important people here today, from around Wales. It’s about value for money, and awarding contracts that are going to be fair and sustainable, especially for SMEs [Small and Medium-Sized Enterprises] and for social enterprise generally.

“The other side of it is service delivery and providing services, and procurement, in terms of cost and quality, is instrumental to the outcomes of service delivery. That’s what you’re here to study, yes? So procurement might seem to be very, very dull, quite boring really, but it’s very important to WAG policies and to One Wales. And policy is really the main way we organize our work and objectives here. You’ve read the [Government of Wales] Act, so you know that improving public services is one of the
main reasons the Assembly was created, and the Act provides us” – he stopped and scribbled a note on the pad in his lap – “provides us with the, uh, the legislative framework to do that. But law, you’re here to study law, and there is law that we have to follow, of course, and that, well, enables us, but really, law is replaced, in many ways, by policy, and that’s especially true here in Wales. Placing duties on public bodies is important, of course, but it’s not the only way to work, and especially here in Wales, we’re so small and rely so much on personal relationships… For example, LSBs [Local Service Boards], you’re familiar with LSBs, right?” I nodded and gave a “sort of” motion with my hand; James looked down and scribbled again. “Right, I’ll get you that proposal. The Minister is quite keen on the LSBs, although he wasn’t initially, and there’s no law that requires their development, they’re not dependent on law at all, really, it’s all based on relationships between departments and people, and local government agencies, especially health and social care. It’s regulating through persuasion, and the text inquires have been quite positive, so far. So LSBs will be crucial to improving care, and they are one of the ways we will achieve the goals of the coalition government, and achieve our larger political objectives, like equality. Procurement is essential to understanding and conducting the business of government.”

James was a garrulous interlocutor, and a favorite of mine at the Assembly. My discussions with him were uniformly enlightening and rife with nuggets that could keep a researcher asking questions for a good long time. On this day, he left me with two key ideas: that law is being supplanted by persuasive measures; and the nexus between legal duty, persuasion, and the conduct of government. These turned out to be a serendipitous leaving, one to which we returned later, and which gave me quite useful
questions to ask of other special advisers, Assembly Members, and Ministers and their officials. This relationship, of legislation, persuasion, and government, or perhaps more cogently framed as the nature (and effects) of the relationship between law and politics, is foundational to legisprudence and to understanding, partially, institutional relations and the recursive mutualities of agency and structures.

It’s an intriguing question, this one of the nature of the relationship between law and politics. In a normative sense, it throws a wrench into the works of sociolegal and sociopolitical analysis. Law is stamped with the imprimatur of reason, derived from several centuries’ worth of political epistemics and legal semiotics. One the one hand, assumptions regarding the autonomy of law, the internal drivers of its evolution, and its existence as a remove from the everyday of society and the impurities of mere political behavior. Much of the talk about law, especially about legislation, centers on processes of deliberation, understood as rational social engagement of controversy, and consensus, understood as, at least representativeness in the final closure-enactment of legal instruments. Politics, on the other hand, are more or less ideologically driven, a partisan product based on tenets of belief and sets of strategies for achieving objectives agreed internally to a party, and thus not representative, not accountable, not deliberate in the same way.

Such partisan objectives may be subject to pragmatic concerns, certainly, but somehow politics is distinct from, and less than, law, and persuasion is less than deliberate and reasoned prescriptions. If policy and regulation through persuasion have come to replace law as the regular way of conducting the business of government, it would seem problematic: at the very least achieving through unilateral processes of
Ministerial rule-making what ought to be achieved through negotiation, coordination, interaction across the partisan boundaries and other social fragments.

This development in the Welsh context partakes of a long-standing concern within the conventional political epistemic, the S/subjective apperception of English and British as quintessentially a common law constitutional environment. Rooted in place and the history of place in the archipelago, the sense of self arises from groundedness (literally) in the soil and the *ius soli* determination of citizenship and recognition. This self-awareness is understood as distinct from other nations’ methods and institutions of self-government. English, or British, normative governance, in this instance, its exceptionalism, posits the actions of ministers of state as administrative measures, characteristically (and negatively) embodied by the French and the civil law system, the continental derivative of the Renaissance uptake of Roman law precursors. These administrative approaches, derogated as “prerogative remedies and declarations” and “forms of oppression and misgovernment,” have a long history of a presumed relationship with *injustice*, from the jurisprudence of Edward Coke (Chief Justice of the Common Pleas, 1606-1613, and Lord Chief Justice, 1613-1616) to the preeminent English legal historian John Baker (2002:151). The Assembly Government’s efforts to govern through persuasion, or through “administrative misgovernment,” as one opponent termed it, brings constitutive and institutive measures to the fore, experimenting with ways of grounding them in intersubjective fields, rather than in duties, prescribed responsibilities, sanctions. More carrot than stick, more consent than coercion, a number of my interlocutors, within the Assembly, within Local Authorities,
within the professions, and among the commonalty, had serious reservations about the legitimacy of such actions, and the predicted and likely outcomes.

But perhaps this is to overdraw the distinction between law and politics? Hasn’t much been said about the partisan nature of law itself and of the production of it, as the result of multiparty compromise, and outcomes dependent upon mere numbers in majoritarian systems? Is the replacement of legal duty with persuasion or administrative fiat a next logical step in conducting the business of government? How does one go about investigating the claims? I contend that this is nothing new, that law (that is, rules of law) and its alter, whether as persuasion or as ministerial fiat, have always been conjoined in the British constitutional order, that the opposition of common law jurisprudence and administrative law is a constructed opposition with a long history and an intraclass character, a struggle over proper politico-legal order and the maintenance of social order more broadly. I find this tension inscribed in British constitutional, legislative, and regulatory history from the medieval period to the present. Devolution itself is the transfer of administrative, i.e. ministerial, functions, and the regimes I have under consideration rely in significant part on persuasion and other forms of consensus manufacture, rather than on sanction or imposition.

Rule regimes contribute significantly to the mediation of social, political, and professional S/subjectivities, and I argue that legislation and government are key participants in these processes, and in the relation of these subjectivities to the totality of society. These S/subjectivities relate to capital accumulation, for example, beyond a simple generic sense of creating a laboring population or educating concern for the working class. To get at this relationship and its ramifications, we need to examine the
role of difference and inequality as these are structured into legal and political activities, such as procurement, but also in deliberation, and legal and political products, such as statutes, regulations, and guidance, and legal and political outcomes, such as infrastructures, contracts, equality of access to service delivery, delivery of services themselves, clinical and other encounters, and so on. Procurement impinges on each of these, and is therefore an important dimension of the equalities regime, of mainstreaming equality, and of seeking to achieve equality outcomes in devolved Britain. Although procurement places a statutory duty to promote race equality on public providers and those with whom they contract, its achievement through other means is a potent example of the manifesting of structures and institutions through intersubjective agency. In the case of the conference I attended with James, the main focus was on social housing, with implications for social landlords, contractors, and local authorities. The implications open a lens not just on questions of the theoretical dimensions of structures and agency, or the pragmatic dimensions of the extent of law and politics, but on the relationship between positive proactive duties to comply with race equality mandates and persuasive mechanism to supplement these duties, and the institutivity of S/subjective relations.

Mrs. Fei: Becoming a Stakeholder

Mrs. Fei came from Guangzhou, in China.² When she first arrived in Britain, in 1990, she suffered from severe depression. “For many years, I have suffered from torment in my marriage, and depression. How did I come out from the darkness of my life, when I couldn’t see any future for myself?”

She lived briefly in Birmingham, where a Chinese doctor told her that “maybe fifty per cent of the Chinese population [in Birmingham] might have been suffering from one
sort of mental illness or another." She realized she was one of those fifty per cent. "I
realized that all the negativity and the darkness I experienced because of my marriage
contributed [to the depression] and had great impact on me, but there was a lack of
information for me, and I had no way to find out, and this made me act in some stupid
ways."

Soon thereafter, she moved with her husband and daughter to Cardiff. About two
months after settling in the Riverside neighborhood, close to the Taff river embankment,
she was in a bank and suddenly felt unable to control her emotions. "I don't remember it
very well, just that everything seemed to go very dark, and I felt pressure in my head,
like it would shatter. I was shaking, and began to hallucinate. Spirits floated in my eyes
and spoke to me. I think I shrieked, and I ran out of the bank. I realized that I needed
treatment, otherwise I would end up in an institution. I spoke to my daughter
straightaway, because I realized I was on the brink and I couldn't bear this anymore."
Her daughter took her to a doctor, who told them Mrs. Fei was experiencing psychosis
and would need to be hospitalized.

She was. Just after her admission, her daughter married and moved to Swansea,
about 40 minutes away by car. Up to that point, her daughter had been the only
interpreter available, and all interactions with doctors and hospitals had been mediated
through her daughter. Suddenly, her daughter was gone, and she no longer had a way
to communicate with doctors or staff. A deep sense of fear, isolation, and loneliness
overcame Mrs. Fei. Her husband divorced her, her daughter, in addition to no longer
being available every day, was also growing weary of helping to care for her mother,
and she was involuntarily committed to a room on a hospital ward for severe mental
disorder. Her daily seclusion was interrupted only by a nurse who entered her locked room twice a day to administer injections. She broke into screams, actions which were interpreted as manifestations of psychosis, in need of increased medication.

She began to lash out at the nurses: “Does anyone hear me? Does anyone know that I’m speaking? Where am I now? I want to go home! Why won’t you let me go home? Don’t touch me, don’t touch me! I don’t want medicine! I don’t understand what’s happening!' These are the things I said to the nurse, to the others when they came into my room. They couldn’t understand me, and they said things that I couldn’t understand.” Her outbursts were interpreted as the further worsening of her condition, and she was again sedated and medicated.

“So one day, my daughter visited me, and I told her I had to leave this place. I couldn’t stay any longer in this place. I didn’t know what day it was, or how long I had been there. I couldn’t count because of the light, it seemed it was always light, and the medicines made me so heavy in my thinking. It was no good. My daughter told me that I had been there for three years, and I couldn’t make myself understand that. How could it be three years? How could my daughter have stopped coming to see me for three years?”

Before I contacted [Swansea Chinese Community Co-op Centre] I didn’t know the right treatment, for example, should I go to the NHS, or some place for older people? Now I know where to go, and how to get the treatment I need for my clinical condition of depression. Since 2007, I have decided to stay in Britain. I registered with the NHS, and since then I been very actively engaged with [the Centre]. I have participated in a lot of activities, even as a volunteer in the health project, providing mentoring sessions for the
newcomers in mental health care. I know that happiness is not something we can take for granted, it is something we must strive for within ourselves. From my experience, I can conclude the following: first, there must be something done to motivate ourselves, and find what is missing in terms of our emotional well-being. Second, there must be something done to help us seek help from other sources. I must also set a target in my future and overcome these difficulties. And third, it is very important to participate, to volunteer, and to engage more with other people. The more I engage with mental health users, the more confidence I build, because I know one day a lot of people will recover.

“One thing that I identify as very important is the capacity building of mental health users, to turn them into very active volunteers and stakeholders, which is a very good therapy. And also, there should be more interaction and understanding between different areas. I would also like to say that interpretation is very good and necessary, so that I can understand all the things that are said by professionals, and it is something that a lot of services have not achieved. I know that a change in my surroundings means a change in my clinical condition, and so now I stay in Britain. I go back to China sometimes, I stay in Britain sometimes. Right now I am in Swansea, and my daughter is here, and she helps me, she still translates for me sometimes, and I still volunteer at the Centre. The main problem now is that we don’t have language facilities for people who don’t speak English, and we need a lot more help from Parliament and the Assembly. They treat us like we don’t exist.”

Mrs. Fei’s experiences and narrative point to the (cultural) logics of understandings of difference; namely of racialized and ethnicized collectivities as somehow coherent, unified, and aware of themselves as such; of the symbolic hierarchy of mental illness; of
the nature and needs of Otherness. These cultural logics, the outcomes of the historical and social epistemologies at work in situated social and politico-legal spaces in Britain, proceed on a more or less scientized set of assumptions regarding intra-group affinities. Racialized populations are presumed to share things, namely, biological and cultural things, including genes and phenotypes, heritage and solidarity. Ethnicized populations are usually held to share similar sorts of things, with, in general, a stronger emphasis on cultural things, language, religion, beliefs, customs. These political epistemics, these ways of understanding Others, create particular modes of management and instruments of governing and administering the social, conducing the forging and elaboration of institutions, infrastructures, legal regimes, discourses, and particular forms of relati

Historically, and for too long, particular forms of difference and diversity have been approached by governors as “problems,” an epistemological perspective that has shaped (determined?) difference itself, as well as the design of infrastructures for managing the “problem,” accomplishing certain outcomes, and creating appropriate forms of evaluation. Chinese populations in the British insular imaginary and official poetics have long been believed as self-segregating, isolated, interiorly caring collectivities (Benton and Gomez 2008). As a physician said to me,

The problem we face is that the Chinese are invisible and secretive. They deliberately form enclaves, they resist outsiders, and they take care of their own. I’ve been a GP for twenty years, and I’ve yet to treat any Chinese who are up with the times or who will give adequate detail for me to make a thorough examination and diagnosis. I know there is specific need there, in the Chinese community, but how do we break down that Chinese wall and get through to them? The clinical picture is quite sad for them, really. How do we consult with a fragmented group that has no viable representation? We can't adapt services just to meet their needs, especially when they are
reticent to make those needs clear and come out to take advantage of the health and social care we offer.

Mrs. Fei and others constantly run up against this prejudice, finding themselves discursively and materially positioned as in need, but living within an ethnic community that will provide. This approach has created a “negative politics of welfare” and service delivery, an incremental and reactive politics “in which people become the problem and/or marginal adjustments are made to the institutional workings” (Williams and Johnson 2010:4). This negative politics is one of the consequential effects of law, policy, and government in liberal polities.

Britain and Wales are sites in which to gauge the politics of difference and need, and the instrumentalization of ideologies to achieve goals. Mrs. Fei understands herself as a stakeholder, a key interactant in the institutional life of the Swansea Centre and its delivery of services, and simultaneously as an effective agent, or executant, of government objectives, assisting with service delivery and the remediation of need.

As forms of difference through which governing occurs, “mental disorder” and “race and ethnicity” are simultaneously objects and targets of law, policy, and government. They are seen by and made through the production of law and policy and the actions of governors and others. The “objective,” or objectified, conceptual and categorical items of “mental disorder” and “race and ethnicity” participate in the constitution of the subjects sorted into these categories, as well as those Subjects sorted into roles authorized to manage, administer, and adjudge difference in manifold ways and settings. These are not causal relations, but epistemological, ontological, and intersubjective relations that operate in dialectical, polyphonic, dialogical, and mutually constitutive ways. Ultimately, the existence and functional operationalization of the
categories of race/ethnicity and mental disorder conduce change not simply at the micro-level of personal and subjective change, but also at the mezzo-level (institutional, organizational, community, professional), and at the macro-level of polity, nation, state, culture.

The struggles brought out in these narratives drive forward my constitutional story. On the one hand, we have a Chinese community seeking to embed itself. On the other hand, we have a physician, a “dedicated human rights activist” and “believer in universal, free at the point of delivery” health care, who accepts the premise that Chinese in Britain are subsumed within a single Chinese community, and the premise that it is a community that is simultaneously unified and fragmented, turned interiorly and averse to engage exteriorly. These fallacies characterized the speech of the majority of members of the professions, academics, and political and legal elites who participated in my research, and illustrate the nature of the obstacles face by Chinese in Britain.

The politics of inequality here are built on a set of putatively universal behavioral and cultural norms, norms that reflect white, middle class political economic positions and the epistemic narratives that shield these positions from recognition of their hegemony, and the racializing nature of their narratives of “natural” and “cultural” behavioral practices, the perception of which registers the Chinese community as defective. Secrecy, backwardness, and inwardness, the supposedly “natural” and (irremediable) “cultural” traits of the Chinese juxtapose a sort of incompetence vis-à-vis modernity: it is impossible for modern institutions and agents to reach out to the Chinese community, to provide education, health, and inclusion; at the same time, it is
impossible for the Chinese community to engage modernity, because of their intrinsic style of communal relations. The common belief is that the Chinese actively seek self-segregation, and the needs of community members are looked after by the community. The representation is a “political tool for covering up the structural factors” which generate inequality, exclusion and health needs (Briggs 2001:672). The totalizing image of Chinese presented in the narratives of political, legal, and professional elites both embraces the whole of the Chinese as a race, or cultural collective, and sustains the acceptability of racist practices.

In Mrs. Fei’s case, the subordination is multiple: race, gender, age, language (in)ability, nationality, and health status. The interlocking hierarchies in which she found herself as a depressed, i.e. mentally disordered, woman conjugated to shape the conditions of her confinement, therapy, and eventual release (to her daughter, not to the institutions of community care, an important distinction in the procedural release process and in the ongoing intersubjective manifestations of institutions). The medicolegal therapeutic regime, that is, structured the relationship of Mrs. Fei with her physicians, psychiatric workers, nurses, social workers, hospital administration, legal advice, police, judges, members of the voluntary sector, other Chinese, and her family. These relations take on the shape of violence, malpractice, and labor expropriation, or would, except for the symbolic portrayal of her situation as self-generated, the result not of racist practices, but of antimodern “Chinese ways.” The therapeutic regime has dual legitimating implications for existing social inequality. On the one hand it reflects and authenticates social practices founded on race-based stratifications as a primary mechanism of managing diversity; on the other hand, it deepens and elaborates
prevailing race categories and the adjutants discursively coupled to these categories, thus “confirming” and reifying the hegemonic common sense and social power of race ideologies.

Mrs. Fei comes to stand metonymically for the Chinese community in Britain, a categorical figure that confirms both the weakness and susceptibility of the Chinese body to defective topos (separateness, domestic violence, accelerated and uncontrollable mental disorder) and the confirmation that this body in its collective forms is intractably resistant to, and therefore alien to, the British body politic. The culturalist argument, separateness and incommensurability, (re)casts racist epistemes in the language of modernizing and constitutional concerns: separateness defines the Chinese in official poetics as anti-stakeholders, even thought Mrs. Fei and others apprehend themselves clearly as stakeholders.

Additionally, resistance and incommensurability relieves the state and its community or local agents from the obligations of fairness. After all, treating such a recalcitrant group on a par with disciplined others indefensibly channels resources in ways that look like “special treatment” that distorts equitable distributions, thus driving people apart in the sovereign community. The Chinese in other words, are responsible for the mistreatment they experience as Chinese.

It is also important to note how political epistemics and official poetics make their way into diverse social spaces: personal, familial, communal. When I met Mrs. Fei, she was adamant that her illness and recovery were her responsibility, that as a Chinese woman, she had particular inclinations that disposed her to avoid the British, and cause unnecessary hardship to health care providers and to the economic system as a whole.
Her daughter was also quite convinced that the issue of fairness was paramount, and that Chinese persons like her mother were wrong to expect “extra care” in the form of interpretation facilities, cultural competence among health care workers, or targeted health care initiatives.

“When I first came back [in 2007], I thought that the NHS ought to help me, to translate for me, to make information available to me, to care for me so I could get better. I know now that this is not right, that it is up to me to learn English so I can get the best care, and to know where to go to find the information I need, so that my doctors can treat me efficiently. I was naïve and stupid then, but I know better now, and I can make better choices about my therapy.” Radio and television broadcasts, public service announcements, newspaper coverage, physicians’ advice and pamphlets in doctors’ offices and hospitals, literature available from the constituency offices of the local Assembly Member and Member of Parliament, conversations with local volunteers, visits to the Assembly and online broadcasts of Assembly and Parliamentary debates, and a proliferation of publications available at the local Chinese Centre [in Swansea] have oriented Mrs. Fei’s self-understanding and her sense of appropriate action.

Further, among the majority of my interlocutors in the Chinese communities in London, Newport, Cardiff, and Swansea, the prevailing sense of how to best proceed is “to change the Chinese culture” and “educate the Chinese in Britain to understand their responsibilities as citizens and stakeholders,” as Dr. Gi Huang, a prominent Chinese physician told me (GH, personal communication, February 24, 2009).

A key rationale for this understanding links stakeholding to devolution, audit measures, and grant availability. Dr. Huang went on at length about the gains made
with NHS funding: “We received official funding from the NHS to provide support for Chinese service users, to use the mainstream NHS service in mental health that they are entitled to. The NHS doctors refer to us, and in many cases we can see the patient on the same day. And I can say, that this is not easy, but we have been successful, to get interpreters, to get lawyers for tribunal hearings, because we have focused on education, making clear the responsibilities we share, and the obligations our patients and their carers have. The only reason our funding was continued was because we were able to improve the service users’ engagement with the mental health service, and report on these efficiency improvements to prove the benefits to the NHS, to the Department of Health, to the Chinese community, and to the Assembly.”

Mrs. Fei’s experience highlights the absences endemic to Britain’s racialized order of community care and health and social care reforms more generally. On the one hand, faced with economic burdens and institutional failures, the state has chosen, over the course of several decades, to pursue the option of de-institutionalization for health needs, relocating the provision of services in “community” providers, and responsibilizing stakeholders.

Stephen Lewis: Fictions of Belonging and Behaving and the Outsider Without

“All I want is dignity. But it’s a never-ending process of cleansing, forever cleansing. They steal my dignity, cleanse me of my dignity, every time they gin up fear by talking about us ‘swamping’ them, bringing in their numbers, their quantitative measures, their outcomes. And the forces of good just crush us further. Our own children, doing the work of the fascist’s boot. Fragmenting, disturbing, frenzied. ‘Who are you?’ I’m just an avocado…”
Stephen was a mentally disordered Black man living in the Riverside neighborhood of Cardiff. He said this to me after many weeks of getting acquainted, a gesture to my persistence in seeking his participation in my field research. He rocked slightly as he spoke the words, tapping his palm on his thigh, his eyes focused on something distant. A cadence underlay his words, his utterance had a particular meter and rhythm, a poetry. His voice was a deep gravelly eminence that seemed to rumble out of him with its own substance. When he finished, he sat back and lapsed into silence. This was a usual mode of interaction with Stephen, one which compelled several mutual acquaintances to comment on the difficulty of being around him.

I came to understand Stephen’s poetic narrative not just as poetry, but as a type of poetics (Bakhtin 1973), as a specific, characteristic way of speaking, a kind of ritualized speech and communicative sociality, a subjectifying and situating form of speech that located his apperception of (non)belonging, the absence of a sense of becoming, and his awareness of and engagement with the historic shifts in the political landscape and cultural order that are the effects of constitutional change and decentralization in Britain.

The referents in his quote are a complex order of signs. The avocado, for example, is Stephen’s metaphor for the violence of structural, institutional, and individualized racism in the ensemble state. Throughout our interactions and conversations, he reiterated this metaphor to convey human susceptibility to the strategies and tactics of domination. The overriding image is the avocado “broken by the baton,” an image he seems to have adopted from witnessing events either in the Notting Hill race riots in the 1970s or the race riots in Oldham in 2001. The avocado is
also a critical metaphor for Stephen, which he uses to ask about his identity, whether he is Afro-British, Afro-European, Afro-Caribbean, or something other altogether.

“What do I make of myself, out of what they are trying to make of me?” He finds himself in a complex palimpsest of language, official agencies, legal requirements, and voluntary sector organizations. “When I was sacked, there was no help for me. The law [Race Relations Act 1976] was new, the commission [for racial equality] was just formed, trying to find its way. For the law’s sake, all I could do was go to the tribunal. And they told me the university didn’t have a duty.”

Stephen’s articulations of his perceptions of Britain, of Wales, and of his place, as a Black man with schizophrenia, in a devolved nation acknowledge this reticulate embeddedness and his “epic quest” to achieve independence and recognition of his humanity. The time Stephen spent with me, the words he spoke evinced not only his own struggle with mental illness, racism, and oppression, but were also a sort of living exposé of much broader struggles.

Cara Navalis had introduced me to Stephen, with an assurance that I “must get to know him,” and allow him to “speak for my project.” Stephen had once been a vendor at the local community market. This is how Cara and he had met. He had had to cease his selling during a recent period of great stress, when his schizophrenia worsened and he increasingly withdrew from his everyday activities.

Even with Cara’s introduction, however, Stephen remained recalcitrant, professing noninterest in my project and my being in Wales. I told this to Cara, and she winked and laughed, a belly laugh to “frighten Satan himself,” saying, “Patience, dear boy! Trust old Cara.” And so, once or twice a week I went to visit Stephen, at his council flat. I’d ring
the bell, he’d wait for minutes before peering from behind the curtain, and slowly opening the door. He rarely spoke first, but simply looked at me and waited for me to speak first. I would, often to no avail. For seven weeks this went on. I tried each week to devise a different way of trying to get Stephen to speak with me, a new way to engage him, an innovative approach to drawing out the interlocutor. None was successful, and the effort became frustrating. I repeated to myself that this was research with people with mental illness, that I had to expect these kinds of difficulties. Back to Stephen’s flat I would go, to try my innovations, to no avail. I’d spend a few minutes, 5, 10, 20, trying, and then Stephen would nod, maybe say “Thank you,” and turn away. Facing a closed door, my spirits would fall, and I’d move along to the next item on the day’s agenda.

On the eighth week, I showed up at Stephen’s door, knocked, and Cara answered. “Get in here!” she insisted, grabbing my arm and ushering me inside. Stephen sipped tea, seated at a small square table. There were two additional cups on the table, one steamed, freshly poured. The other was empty, waiting, it seemed.

“Have a cuppa, Llemmy, and sit down.” Cara bustled with her usual energy, but she was more somber than usual, even her use of the nickname she had given me seemed perturbed. I sat. Stephen poured tea for me. Then he spoke.

“You probably don’t know the history of the university here, you probably are unaware of the ways we have been treated. You probably don’t know how researchers, and politicians, and volunteers, and lawyers have come in here and taken from us for decades. And you probably don’t know how very little of that taking has been returned to us.” Clearly I had stumbled into something, but I had no idea what it was.
We spent several hours together that day, as Stephen and Cara related to me their families’ experiences as research subjects, as residents in particular neighborhoods at particular political moments, when “data” are collected to gauge the state of the community, and political actions taken as a result. These experiences have fostered a deep mistrust of researchers, politicians, civil servants, academics, students, and even the voluntary sector.

“I don’t know if the voluntary sector are any better now, but I don’t believe they are,” Stephen stated at one point during the afternoon. “They do nothing for us, they do things to us. They have an idea of what the community should look like, and they try to make it look that way. But it’s not my community. I don’t recognize it, and as much as they want me to become a part of it, I can’t. I don’t belong in their vision, their vision that’s just a rainbow smeared over a white surface, a rainbow of only certain colors, a surface that hovers over their political template.”

Illumination dawned on me slowly. In the first conversation I had had with Stephen, I had introduced myself as a visiting fellow at Cardiff University, and I mentioned that I had begun my research by meeting with key staff at a number of voluntary sector organizations that deal with issues of race, mental illness, homelessness, and related concerns. Unwittingly, without the deeper familiarity with the city and its designated spaces that better, more aware, diligence would have provided me, I positioned myself as precisely the kind of researcher that Stephen, and many others, it would turn out, detested and feared. Not an auspicious beginning, and thus Stephen’s reluctance to engage me in those first weeks. I later learned that Cara had intervened with Stephen, had convinced him that I was not “one of those,” and persuaded him to give me a
chance. After this, our weekly conversations became significantly more interleavened. His contribution, and Cara’s, was foundational to my learning and understanding.

Stephen was the son of a Jamaican father and an Irish mother. His father James had migrated to Britain aboard the *Empire Windrush* in 1948, met and married Stephen’s mother, Fiona, later that same year in London, and together they raised a family of three. Stephen was the oldest, born in 1949, and had two sisters, Berniece, born in 1952, and Una, born in 1955. The family moved several times, in search of work for both parents, and the children consequently had grown up in, among others, London, Birmingham, and Glasgow. Berniece died in 1969 of a hemorrhage, and Stephen’s parents had died in 1975, in a traffic accident, just as Stephen was beginning as a lecturer at Glasgow University.

Stephen had been, by his own account, a “middle class Briton, a petty bourgeois man,” until he began experiencing delusions and problems with thinking, speaking, and communicating. When I met Stephen in 2008 he was fifty-nine, and had been living with his illness for nearly thirty years. His experience with the mental health services and the medicolegal therapeutic regimes in the UK dated to the 1970s, and his most intense experiences occurred late in the decade and into the 1980s, during the NHS reorganizations of Thatcher’s first administration. He remained in Glasgow for several years after a diagnosis, living through the contradictions of the “rise of multiracial Britain” in an atmosphere of racial animus, and the “indignities of a deteriorating mind.” He slowly watched his world contract: involuntary commitment, hospitalization, job loss, reliance upon benefits, a move to council housing, loss of friends and kin, stigmatized reactions to his diagnosis and behavior, inability to interpret emotion and connect with...
people, social withdrawal, and release to community care “with no community to care for me.” After his release, Stephen was beaten several times, at least twice in racially motivated incidents, and suffered serious neglect, as well as seemingly endless bureaucratic shuffling between health care and social services departments. He ended up homeless in Glasgow, and spent nearly two years “sleeping rough,” and “on the rock face of deprivation,” before Una found him and insisted he move to Cardiff with her. He arrived in Cardiff in 1996. After his arrival, Stephen was able to maintain with Una’s help. This was when he met and befriended Cara. His condition began to worsen, however, and in 1998 they sought assistance. With Una’s persistence and the active intervention of Ramesh Anar, a constituency caseworker for the local AM, by 1999 Stephen had gotten medical care, psychiatric care, social work care, and job placement assistance.

“Our parents had moved back to London, and they died while Stephen was still in Glasgow. I think this was a trigger for his illness,” Una told me. “He was unable to see them at the end, and the funeral was very difficult for him. On top of that… well, It’s not easy to be Black in Glasgow even now, and back then it was worse, of course. Not that it’s easier in Cardiff…. The changes in the health service have really improved Stephen’s experience and his ability to manage his illness, though.” Una was reluctant to take credit for her role in helping Stephen to work toward recovery. She waved her hand when I suggested it. “Pfft! Nonsense. A bit of stability, that’s all. The rest is him, and his struggle to find his place. Ramesh was a godsend, too”

A decade later, when I met Stephen, he was living on his own, working at a local Tesco’s, a supermarket chain, and spending his free time painting, weaving, and
learning to wood carve from a Ghanaian man recently settled in Cardiff. He also spent a
great deal of time continuing to navigate the mental health system and the benefits
system. Most recently he had been seeking to obtain direct payments, so that he can
arrange and manage his own care services, and a carer’s allowance for Una. “They say
she doesn’t qualify, that the hours she spends are not enough,” he told me. “I’m going
back to surgery this week to talk to Ramesh. He said that he thinks we should be able to
make it work. Rhodri also assured me that there should be no problem, too.”

Stephen clearly considered himself an outsider, in many senses. He stated to me
more than once that he was not really a member of society, that he did not belong,
either objectively or subjectively, and we discussed at length the many mechanisms of
exclusion and enforcement of the sense and reality of not belonging. Among his most
serious concerns were the micro-practices of his exclusion and the minute reminders of
his location in multiple interlinked hierarchies of value. It was clear to him that his
parentage, his racialization, and his illness were “acts of disobedience” that resulted in
pointed comments, mean humor and humiliation, micro-violences, and “being shown the
door.”

Initially, I thought of Stephen and others as “outsiders within” (Harrison 2008). It
became apparent, however, that something else was at stake. I began to think in terms
of outsiders without, part of an “oil and vinegar” set of relations as several of my
S/subject interlocutors termed it, in a simile that likens fluidity to rigid incompatibility, and
involves notions of proper order, or at least rhetoricized strategies of orderliness which
exist in ambivalent juxtaposition with the high discourses of stakeholding and fairness,
of inclusion and equality.
The prosaic formula of the simile provides insight into how both elements are to be apprehended and interpreted in terms of becoming, belonging, and behavior, and gives some indication of how political epistemics structure intersubjective relations and processes of mediation. A physician, Jennifer Gross, spoke of her Somali and other patients as being in an oil and vinegar relationship “with society and the medical services.” George Falstaff, the psychiatric social worker, spoke specifically of Fayez’s mother in these same terms, in a conversation in which he also critiqued “her ‘community’” (he used air quotes), referring to them as “crabs pulling her down,” effectively preventing her from proper assimilation and interfering with her ability to get help for her son. It was only when “the police got her the referral,” an inaccurate description of the process, that she was able to rise out of the strictures of community and “behave properly.” Proper behavior included the subjection of her son to the (opaque) gaze of state agents, his involuntary commitment and pharmaceuticalization, and obedience to the authorized demands of the state, to speak (or not), to act (or not) in those ways deemed appropriate by Subjects of law, the police power, and government.

In these comments and practices, echoed numerous times during my field work, minorities, especially ethnic minorities\(^4\) are, through discursive and material practice, constituted as “communities,” which is itself a category already standing conceptually and physically apart from “normal” or “mainstream” society. As such a category, it is also a signal of difference, of the inferiority in the symbolic hierarchies of race, and of the government of raced difference. Domination, assimilation, and propriety are
interdiscursively linked with the languages and epistemologies of equality/fairness, stakeholding, and constitutional principle.

Outsiders without are thus characterized by relations in suspension, but irremediably not in solution. In illustrative moments of prejudice, these outsiders without clarified in their presence as Other, and as Others somehow beyond the embrace of citizenship, language membership, and insular fantasies of belonging and right acting. Multiple meanings are implied in the phrase outsiders without, namely experiences of externalness and lack, and perceptions of deficiency.

"It’s a shame these people don’t learn how to fit in," Jennifer Gross said to me. “It’s a pity, really,” George Falstaff had affirmed, “that they can’t figure how to have their customs in private, but act properly in public.” Pity, offered in the guise of respect and beneath the veil of grudging toleration, but a veil which is easily pierced, replaced by revulsion, vilification.

I learned much from Stephen and Cara regarding insights into the nature and experience of extreme social distance, hierarchy, and transgression; and into the production of status in the bourgeois political epistemic, and the micropolitics of multiculturalism (and other forms of pluralism) and exclusion in (neo)liberal preferences regarding the conduct, obligations, and limits of government.

**Politics and Poetics**

The case materials in this chapter illuminate agency and structure, or perhaps better, action and structure, dilemmas that affect the delivery of services, the perceptions and treatment of Others, and the differential achievement of constitutional principles and other aspirations of political society. Each case also illustrates the constructed nature of public and private binaries, the hybrid essence of the public
square, and the flurry of associations that conjugate to reveal institutions, structures, mediations.

Procurement joins private ownership and private work, including domestic ownership and production, to public goals of economic supply and to political objectives of equality (in employment, in service delivery) and of stakeholding, and to mechanisms of justification, transparency, and accountability, opening private worlds to public scrutiny, at least to an extent and under certain circumstances.

Mrs. Fei demonstrates the integral role played by private actors in the operation of rationalities of governing that rely on non-public entities to deliver services and assist in the remediation of need.

Stephen Lewis shows how relational fields are constructed and enacted, including over the long term, and implicate the academy and research into his illness and degrading treatment as an “outsider without.”

Becoming, belonging, behaving, and evaluations of these by authorized Subjects are prominent relational and cultural fields in which S/subjects must navigate complex cultural coordinates in order to achieve the recognition that subtends belonging and the valuations that subtend becoming and (proper) behavior. Institutionalization, or the legislative and regulatory constitution and activation of institutions of service delivery, manifests itself in these intersubjective fields.

This is something of a chicken and egg question, the causal directionality of which I wish to challenge. A common assumption regarding institutionalization in these terms is that the legislature or authorized entity creates an institution, staffs it, and then it begins operating, only then creating effects in the world. I insist that a better approach is
to query the very processes by which the legislature is authorized, regressing the analytical genesis and examining the creation of conditions not as originary but as themselves a constituent dimension arising from intersubjectivity acting on and within existing structural and institutional constraints.

No institution is created from thin air, or by collectives of persons previously exempt from the reticular interconnections of constitutional, legislative, and regulatory reality. In Britain, the National Assembly for Wales and the Welsh Assembly Government were fabricated from extant institutions, power arrays, and deployments of legislative, regulatory, and administrative materials. The Mental Health Act 2007 and the Equality Act 2010 were engineered within a functioning and complex political and legal ecology, out of densely entwined sets of technologies, epistemologies, practices, and relations. The new rules imposed by these Acts descended upon actors already immersed in the legislated and regulated environments of public service delivery, and already ensconced with their own prejudices, expectations, and demands, complexly interwoven with official poetics, political epistemics, and the public square.

Established and emerging relations solidified some structures, challenged the manufacture and realization of others, transgressed the actual operation of still others. Political epistemics, normative governance, and the twinned dimensions of dialogism and polyphony implode to mediate the design, creation, implementation, operation, evaluation, and maintenance of the alloyed institutional array of legislation, regulation, and everyday government on the archipelago, from habeas corpus to stakeholding, between Parliament and the domicile, from the street to the Siambr, in clinics, hospitals, offices, NGOs, and others.
I am deliberately conflating the subject and the self here, in order to try to think through subject-object and mind-body polarities, and to bring embodiment and the bodily principle to the fore.

I interviewed Mrs. Fei with the assistance of an interpreter, Sue Lee. Although I was adamant that she receive payment for her time, Ms. Lee insisted that I did not need to pay her. We agreed that I would donate £100 to the Swansea Chinese Community Centre Co-op instead.

This tends to be an ideological assertion, rather than a principled or ethical or reflexive reality. The criteria of ethnicity, if they were ever really free of biology, are becoming heavily biologized, and racialized. I’m thinking especially of culture of poverty arguments (Lewis 1965; Moynihan 1965) and the recent resurgence of these popular, journalistic, and political arguments, as well as their appendage ideologies (Cohen 2010).

But also applying to socioeconomic, religious, disabled, gendered, and other collectivities.
CHAPTER 7
LEGISPRUDENCE AS THEORY: POLITICAL EPISTEMICS, NORMATIVE GOVERNANCE, AND DIALOGISM AND POLYPHONY

Through political epistemics I examine understanding and the conceptualizations of the structures of reality, and the nature of the possibility for action as it is conceived and constituted by the S/subjects of legislation, regulation, and the everyday conduct of government (Glaeser 2010). Conceptualization here has dual implications: on the one hand, in a verbal sense, it refers to the cognitive and intersubjective processes of consciousness, that is, of perceiving and seeking to understand and know the world as it is perceived, and as it has been received. On the other hand, conceptualization refers, in a nominal sense, to the fabrication and promulgation of representations of the world and the understanding and knowing of it through these representations, as well as intervening in the world based on these representations. These inflections are not in any causal or linear relationship; rather, I assume them to be in dialectical, dialogical, and polyphonic relations, which, furthermore, are not simply limited to the minds, actions, or interactions of elites. Concepts, conceiving, understanding, and acting, and the dialectic of these, extends to history, and more importantly, to the social grounds of a political world. Capturing this ensemble of temporalities, spatialities, socialities, enthriving diversity, heteroglossia, and polyphonic dialogics with empirical ethnographic thickness has been a primary objective of mine.

The relations I discuss throughout this dissertation are a multiparty traffic in practices, people, places, objects, and ideas, which I attempt to encapsulate, condense, and represent as constituents of my legisprudence framework. At issue are particular forms of socio-communicativity and the relations between practices, contexts of action, language, culture, molecular-molar relations, and the everyday interactions that I
understand to be constitutive of the political and cultural economy of legislation, regulation, and the conduct of government in Britain.

This approach entails attention to the spectrum of processes, events, practices, institutions, and agents that comprise the material, symbolic, epistemological, and socio-communicative system of legal and political decision-making and governmental activity. Legisprudence, in addition to its heuristic value and analytical focus also offers a model of action; a search for adequate methodological practice and theoretical language for conceptualizing and writing about legal agency, the fraught constructions of domination and resistance, and law as a vector of oppression. These elements, this spectral array, the search, are brought together, engineered and reverse engineered, as it were, on the workbench.

**The Workbench and the Workspace**

The workbench is a metaphor of human action and of spatiality that I use to capture the sense of the construction involved in law-making, not just in the office desk dimension, but throughout the legislative enterprise, from casual encounters and structured interactions between officials and vernacular agents to framework conditions and constitutional principles. I borrow the metaphor of the workbench from Bruno Latour and Steve Woolgar (1979), and extend it as the “workspace.” My workspace approach privileges ethnographic method, namely participant observation, in order to obtain a close perspective on legislators, regulators, and the everyday work of government, similar to the methodological approach to science advocated by Latour and Woolgar in their seminal text *Laboratory Life* (1979), and developed vis-à-vis the experimental life by Shapin and Schaffer in *Leviathan and the Air-Pump* (1985).
Whereas Latour and Woolgar (1979:29) examine “the process of production of science in situ,” however, I examine the process of the production of law, or more precisely, legislation and regulation in situ, and how these operate as the helix of government. The discursive practices involved in the production of legislation and regulation are located in the (debating) chamber, committee rooms, and office spaces; on desks and in file folders; in digital databases; in corridors; over tea in the Oriel.¹ In short, these practices are found where law-makers are found at work, where they are socialized and immersed in the technical culture of procedure, rule-boundedness, party conformity, and the socio-communicative practices, or “craft activities,” of deliberation and the “manipulation and production of objects” and knowledges that result in law-making and regulation, and that are extended into society, into the public square as the apparatus, aspirations, and rationalities of governing (Latour and Woolgar 1979:29-30).

Part of my rationale for construing the workbench as residing in these diverse settings, and construing the making of law to include patterned informalities is to disconnect law from its normative partner of formality. My position is that: (1) law is not only the outcome of constrained and prescribed patterns of interaction (procedural adherence and voting); and (2) the informalities of place, space, interaction, and socialization are not merely political, rather they are integral to the creation of professional Subjectivities of law, and to the production of law and its formal manifestations. This is not to suggest that law is politics, or that politics is law, however; it is to suggest that law has its origin in politics, that its vivification is indissoluble from politics, and that the epistemological decision to separate politics from law obscures the political genesis of law and the choices made that bring it into existence in its particular
forms (Wintgens 2005). This same epistemological decision tends to preclude the inclusion of vernacular interactants in constitutional and legal politics, and in the actualization of government as targeted activity, such as service delivery. This decision leaves a fairly large array of S/subjects and executants out of the research and analytical enterprise, eliding certain dimensions of the activities of government and the consequential effects of these activities.

I suggest that a fuller picture of legisprudence and anthropological attention to legislation more generally needs to cognize not just the “dedicated” institutions of law-making, but a much broader field of vernacular agents that participate in the production (and obstruction) of law. This includes constituency staff; professionals in academic disciplines, medicine, engineering, and science; and, most crucially for my approach to the analysis of law, constituents, residents, and individuals and populations “in need.”

Attention to the workbench and the material cultures and practices that embrace the labor and laboratories of the production of law raise additional questions, such as, What are the usual narratives and the sustaining technologies of legislation, regulation, and government? The instruments of law, or the technolegal devices that I think with and through, include rules, norms, doctrines, and substantive domains of legal theory and practice. Tort, contract, and crime are not merely doctrines or substantive fields of law, but instruments for organizing theory, and ways of getting from the machinery of law (production) to the unifying theories, rather than the reverse. Approaching the history and substance of law in this way allows for simultaneous explorations of sociohistorical developments (industrialization, urbanization, colonization, embourgeoisement) as well as the labor history involved, especially as these connect to
consequential developments in the fields of law, including parliamentarianism and the emergence of rights, equality, labor regimes and regulation (Hassel 2008), medicolegal therapeutic regimes, and others. Similarly, substantive conceptual tools such as difference and its specific forms, including race, ethnicity, gender, sexuality, age, mental illness, and others, are also instruments for organizing theory, as well as for understanding sociopolitical worlds, and designing interventions for regulating and for administering populations.

Latour and Woolgar state their objective as trying “to get an interesting analytical handle on our understanding of scientific practice” and seeking to understand how scientists “construct an ordered account out of a disordered array of observations” (1979:34). I adapt this vis-à-vis legisprudence to develop a better analytical handle on our understanding of legal, political, and governing practice, and how law-makers do the work not just of constructing ordered accounts out of disordered arrays of observations, but how (and where, and under what conditions) they observe, organize, and order in the first place. Once they do the work of observing, ordering, and then constructing accounts, I examine how these are given formal imprimatur as laws, policies, rules; how these authorized technical forms do the work of culture change, of standard setting (Normensetzung), and of constituting social and political bodies; and how these get linked discursively and institutionally to broader apprehensions of “social order,” including formulations of who is (normatively) in, and who is out, and why. In other words, legisprudence enables examinations of how the actual, the figurative, the literal, and the cognitive interact, how they implode in various (and variously unified) forms, and how these achieve the status of authority and epistemological taken-for-
grantedness as representations of reality. There are, in other words, complementary centripetal and centrifugal forces operative in the production and implementation of law, and the execution of governance. These forces provide a useful diversification of the binary of dominance and resistance that underlies much sociolegal analysis.

The workbench, in essence, brings together manifold constituents, which are ordered, deliberated, and alchemized as official, authoritative, technolegal forms; these forms then are transmitted, which means more than their formal promulgation, but also their social inscription, or their translation as norms, their uptake in terms of subjectivation and ways of being. I suggest that legislation conduces behaviors, that behaviors conduce legislative production, and that it is these “physiological” processes that co-produce or co-constitute the relationship between law-making, regulating, governing, and S/subject formation that ought to center in an anthropological approaches to legisprudence. The materials I employ in this dissertation are designed to draw our attention to law as constructed, and to the role of knowledge practices in that construction. Where people come together and traffic in the ideas, experiences, and rationalities that influence the construction of technolegal instruments and their everyday application as instruments of governing, there we find the workspace and the workbench of legislation, regulation, and government.

**The Political Epistemic: Whiteness as Norm**

This section might just as easily be titled something like “the unknowledges of racism,” but I keep with the idea of the political epistemic in order to sustain the threads of my argument in this manuscript. One of the key things I discovered during my field research was the active maintenance of the valuation of whiteness as the model for (a) understanding the (British) world, and (b) designing legal and political interventions in
that world. This maintenance sustains a racialized political, cultural, and moral economy across the archipelago, co-implicating the knowledge practices of law, politics, and governance in their various worksites.

Normative whiteness factors into the results of my research at the epistemological, cultural, and linguistic levels, inflecting human relations and institutional relations across multiple levels of government. It is not merely a matter of ignorance or “the passive obverse of knowledge” (Mills 2007:11). It is a problem that is recognized. Remedies are often actively resisted, however, as practices of not knowing, as practices of denial of correctives, as cultural and political rationalities generated within, and in turn (re)generating the conditions of possibility of domination, exclusion, and oppression. Normative whiteness indexes not just ignorance, but epistemic failure, the absence of political reflexivity, and an unwillingness and inability to operationalize contrary knowledges. One of my key interlocutors in the National Assembly was chagrined when I reported this finding to him. Chagrined, but not surprised.

“We have a lot of work to do to overcome these prejudices. Class and race, especially. It’s a cultural change, and the Assembly has tried to lead on it, but we’re working against generations of fear and mistrust, and we’re frankly limited in what we can do, what we can expect to achieve in these terms” (JR, field interview, February 05, 2009).

Generations of fear and mistrust, but also of hostility to the Assembly itself, to political society and the official poetics of equality, fairness, inclusion. Hostility to the calls emanating from government, calls perceived as intrusions into professional practices in the clinic, the hospital, the academy. Active ignorance is among the most
disturbing dimensions my findings. It accomplishes a number of effects in addition to the maintenance of hierarchies and exploitation. It also creates a hostility between the Assembly and members of the professions, setting up an intellectual and political segregation that mirrors the crisis of faith in politics and in the ability of law to accomplish objectives. Failures of government are not, then, straightforward, but distributed, so that service deliverers who bear the unknowledges of racism are complicit in causing failures, in sustaining and perpetuating racism, but without transparency, without accountability; blame shifts, to the politicians, or to "bad actors," or to service users and racialized Others, responsible, as with Fayez Bashir, Cici Williams, Mrs. Fei, and Stephen Lewis, for their own and their communal problems.²

Jennifer Gross: Calibrating the Politics of Inequality

On a day in late April, I sat at table with a general practitioner, a social worker and several other health care professionals, two academics, and their spouses. We convened our party in the mid-afternoon in the garden of Anthony Rose's home, midst the hedges and foxglove, dressed against a lingering chill, in the rays of a genial but rather pallid spring sun. Over pints of ale, bottles of wine, and plates of curry, cheeses, and fruit we parleyed well into the night, discussing the state of the Welsh polity, the impacts of devolution on education and health care providers, and the looming electoral punishing that Labour was likely to face when then-Prime Minister Gordon Brown decided to call the election. Scandal abounded throughout the political commonwealth: sex and money in London; iPods and trouser presses in Cardiff. These sets of outrages are stories themselves, but the political shenanigans at the moment had been flushed out, it seemed. For a time, anyway.
So there we sat, over drinks and dinner. Settling darkness and a fine Welsh mist had driven us indoors finally, and the wine had everyone feeling warm and expansive. A good humor had settled over us and we were steeped in a pleasant camaraderie, the nearby fireplace crackling and popping. The talk turned, in time, to questions of my research. I started with talk of the Butetown and Riverside neighborhoods in which I was working, both largely minority populations, both designated as deprived communities by the National Assembly for Wales. I held forth for a while, at turns critical of and charitable to the political practices of deprivation and race relations. The mood gradually became somewhat somber, and I turned to a few comedic tales of the things I had seen and heard in the hidden corners of law and government, to lighten the tone. The somber mood didn’t lift. A few serious questions followed, on methodology, on the graduate process in the US, on “what conclusions” I had reached. Nick, a psychiatric social worker employed by Cardiff city, returned to a comment I had made about racism in Wales and the negative impact that I believe changes in equalities legislation will have on minority communities.

“Shit, Scott. You’ve got to face facts. It’s not that we’re racist, but ninety percent of the minorities I see in the emergency wards are there because of drugs. They’re using drugs, and that has consequences. The new legislation is necessary for us to do our work, and to make sure that…” he trailed off, holding me in a stare. “I support the police role in sectioning, otherwise how will these people get the attention and the treatment they need?”
I stammered, feeling the sear of an anger flush rising to my cheeks. I knew it was filling my eyes, too. His misdirection irked me: I had said nothing of policing. How should I answer? Our good humor had evaporated. The physician, Jennifer, broke in.

“This is going to sound terribly racist, but this is just how it is. The Vietnamese grow the stuff, the drugs, the opium, the heroin, the Pakistanis move it, and the Somalis sell it, especially around Butetown and Grangetown, but in Riverside also. The men selling it are also pimping out their sisters and daughters, and probably their wives, for all I know. And the Somalis just refuse to integrate, yet they use the public services just like everyone else. The mothers, some of whom have been here for years or even generations, refuse to learn and speak English. They have about six words in English and they bring their school aged children with them into my surgery to translate for them. It’s horrible, and it just goes to show…you know.” She didn’t complete the sentence, just left it hanging there for us to draw our own inferences of what it is that the remarked behavior “just goes to show.”

I asked her whether she sees Somalis in her practice, which she answered in the affirmative. “Yes, of course. My practice is in Butetown. I’m inundated with Somalis.”

When I pressed her about how her perception of Somalis’ integration affects her clinical interactions with Somali patients, she replied, “Well, I’m a doctor. Of course it doesn’t make any difference how I feel personally, it’s just about diagnosing and treating that person.”

I felt incensed, and betrayed, somehow. I had known that she worked in Butetown, and thought that she did so out of antiracist concern. Now, I had found a presumed alliance to be absent, and worse, found myself to have been profoundly naïve. The
blush felt hotter on my face, and I had begun to sweat from the heat of the fire and my rising anger. I felt a rivulet trickle slowly down my back. I had to say something, to express my objection to the real and manifest racism I believed I was hearing, to connect this everyday racism with the bias encoded in equality strategies, to point up the links between abstractions of racism and enactments of racism, around the table, in the clinic, at the psychiatric sectioning of mentally ill and racialized persons.

Anthony leaned forward, and with an emphatic gesture, began, “You've gotta understand that we're not just a bunch of bourgeois ne'er-do-wells sitting around complaining about the Somalis or the Irish or whatever other group you might have. But, the Somalis don’t even get along with themselves, they don’t even like each other. You colonials... You just don’t understand these things!” He clapped me on the back, laughed heartily and poured wine all round. I reached for the glass, simultaneously bothered and relieved by Tony’s efforts to diffuse the tension.

“Well, they’re tribal,” said the physician.

Tony nodded vigorously. “That’s right, they’re tribal, and they refuse to enter into our society in normal ways.”

Incredulous, my felt betrayal and the shame at my naiveté were mounting. “But, Tony, isn't that the same argument that was made a hundred years ago about the Welsh and the Irish? And isn’t that the same argument that ultimately underlies the rationale for devolution? That the Welsh, Irish, and Scots are nationally, which might be read as ‘tribally,’ different, and at some level un-integrate-able?”

“Yeah, right, but its different now. It’s not about the romantic and manufactured picture of a group of people who never really fit the stereotype, who may have had a
different language but didn’t use it, or who moved with relative ease between there and here, between Ireland and Wales and further abroad in the UK. It’s different now, and it’s not just a matter of the British getting more indelicate from one day to the next, but it’s the leadership, the political leadership, who are not doing anything about it, and who are actually courting the votes in Muslim areas. I think Rhodri [Morgan, then-First Minister] has been to a hundred Eids this year alone. And Labour and Plaid [Cymru, the nationalist party in Wales] are cutthroat in their attempts to get that vote. The Muslims vote en masse, you know, and whoever secures that vote can assure themselves a place in the Assembly. So we’re saturated with them. And it’s not just the Somalis. We have Chinese, Bangladeshis, Pakistanis, Indians, Persians, Arabs… and all of them have their own languages and culture and mostly they keep to themselves, they take care of their own. There’s now a torrent of regulations, policies, and best practices coming down from the Assembly. How are we legitimately supposed to implement policy, whether at hospital or in the classroom, given these circumstances, given the ways that they act?"

A desiccated silence followed that seemed to close the argument. I weighed the value of one last effort, but decided this was not the place to wage the battle. Tony leaned back, and the others settled themselves more comfortably in their chairs. A toast was proposed to the “continuing good work of our colonial,” accompanied by relieved laughter. I raised my glass, drank, then excused myself, and went to the toilet. Once the door was shut, I pulled out my field journal and furiously scribbled several paragraphs, beginning with

*Note the shifts between different abstractions of person: Somalis in general, as a type or category of problematic person which indexes a disconnect*
between deservingness and assimilation; and the person who presents for care or services, who becomes putatively deracinated, just another body in need of the clinical gaze, a body that has no effect on that gaze (and produces, so claimed, no AFFECT in that gaze), has no reciprocally informative presence for the GP in her own assessment of her role as a GP. + GP’s linkage of deprived areas [communities, neighborhoods, territory] with a particular population [Somalis] and gender distinctions, = racialized women as deficient mothers and prostitutes who model poor integration behavior for children, and men who engage in non-conventional and immoral economic activities, i.e. drug selling. All of these representations are perceptually/ideologically held to be more or less repugnant and objectionable, and linked not just to deprivation and race, but also to political reorganization, political practice, the implementation of government objectives in the public sector, and especially to the sense of self of medical, social work, academic, and other professionals. = epistemologies of ignorance, whiteness as norm.

This exchange haunted me for the remaining months that I was in the field, and I found myself for a time without the intellectual or emotional tools to understand and cope with what I felt to be a practice of deliberate degradation, of intentional rejection of alternative ways to conceptualize difference and plural relationalities. I also was troubled by my own complicity in these processes, as had been pointed out to me by Stephen Lewis. It wasn’t until I described my situation to a Somali friend that a remedy began to work its way into my psyche and intellect.

Idil and Miski Dourad

The friend was Ibrahim Dourad. His mother, Idil, is a patient of Jennifer Gross, and has seen her a number of times in recent years. Idil speaks very little English, and during her first visit to the clinic had extreme difficulty in communicating her pain and medical issues to the staff. The staff either refused or were unable to provide an interpreter, or help Idil with a referral to a clinic that would provide language assistance. This caused Idil a great deal of worry and concern about diagnosis, treatment, follow up, and medicine. She resolved to take her daughter, Miski, with her to translate the next
time she presented to the clinic. It did not go well. Idil relayed to me that at first, the staff refused to let Miski into the treatment room with her, because she is a minor. Then they said she couldn’t come in because of privacy concerns. Then they said that it was a matter of equality, “but they wouldn’t explain to me what that meant.”

The doctor came into the waiting room, impatient to see Idil and wondering why she wasn’t in the treatment room.

“I explained to her what was going on,” Miski said. “But she got very angry, and began to scold me. She got very close to my face and spoke loudly and pointed her finger at me, saying ‘You’re not supposed to be here, this isn’t proper.’ Then she scolded my mother.”

Miski turned to Idil, explained our conversation, and waited while Idil responded. Then she translated Idil’s words for me: “She tells me how to live, what to do, the proper ways of being a good neighbor in Cardiff. What does this have to do with my sickness? I go to her as a doctor, for medicine, and she tells me I must learn English and give up my veil. What can I do?”

Idil began to speak again, adding, “And then she told me that it was inappropriate for [Miski] to be there, because the information may be private.”

Miski said, “I asked her, ‘Do you have a translator?’ ‘No.’ ‘Do you speak our language?’ ‘No.’ ‘Then how can you treat my mother?’ And do you know what she said? She said, ‘Your mother must learn to speak English. You people have been here long enough.’” Miski spread her hands in a gesture of futility, and turned back to Idil.

Idil, Miski, Ibrahim, and I continued to talk for nearly two hours. Miski was visibly exhausted by the end of it, and I assumed the same for Idil, although she was mostly
stoic throughout. Idil wished me a good night, and Ibrahim walked with me along Bute Street, to Callaghan Square, where we parted. I returned to my flat, trying to work through the information I had just received, to put it together with other bits floating in my mind, to square all of it with the constitutional and legal politics I was there researching. When I got back to my garret, I spent several hours writing notes, indexing details that had come up in disparate conversations, interviews, and encounters. I wasn’t sure I liked the conclusions it all seemed to be leading to.

**Normative Governance: Official Poetics and the Carnival Response**

Luigi Boccherini, a virtuoso cellist and composer of the eighteenth century, wrote that “the composer achieves nothing without executants” (Luigi Boccherini, letter to Marie-Joseph Chénier, July 18, 1799). It is in this sense that I assimilate subjectivity and mediation into my legisprudence. Like a musical composition, legislation, the police power, and government achieve little without a body of subjects over whom authority is exercised, and who respond to authority, its official poetics, and its enunciations.

Certainly, S/subjects of law are not performers in the same sense as musical performers, but the embodied, visceral, carnal relationship of S/subjecthood in law can be thought in the related sense of a “complex synesthetic culture” (Baxandall 1985:48) and *tableau vivant*, as “communal effects” that make and change in unison with social totalities (Diderot 1987:199; see also Le Guin 2006). Adapting these potentials, and in line with some of the writing of Barthes, I treat legislation, regulation, and the practices of governing, in part, as both a *work*, that is, as finished products for consumption (congealed as a statute, a rule, or, more broadly, an institution or role in the delivery of services), and a *text*, that is, an unfinished, “structured but decentered network” of irreducible, plural meanings, that “requires practical collaboration” from subjects...
Legislation, regulation, and the conduct of government, in other words, are distributed social artifacts that can only actualize through human action. Or inaction. Or resistance to action. Constitutional agency takes manifold forms, including the obstruction of the objectives of political society by the very executants relied upon for their implementation.

S/subjects, in this formulation, come to resemble the performer of music “who is ‘solicited’ into action by the score, which he [s/c] completes rather than expresses” (Barthes 1974:56; cf. Hoogland 2003). The interactions of official poetics and the demands of these poetics with “the existential conditions of any subject’s being-in-the-world” elicits and actualizes both subjective formation and the ongoing and continuous processes of co-production of both persons and the material, symbolic, and epistemological worlds in which they find themselves (Braidotti 2002; Hoogland 2003:2).

In part, this is a theoretical question of aesthetics; the aesthetics of text, the aesthetics of law, of the embedded and embodied responses of affect, sensuality, and judgment tied to particular forms of cultural production and cultural narration. The official poetics inscribed in legislation, regulation, and the conduct of government project intention, volition, a sense of worlds, and the attributes of modes of being in such worlds. Poetics, epistemics, and executants interpellate one another, in processes of (mis)communication and (mis)recognition, imbuing interactions with contradictory, indeterminate, heterogeneous, and ultimately generative meanings. This plurality is an ontological necessity for the productive and dynamic encounter to enable new modes of being, new S/subjectivities or the affirmation of existing S/subjectivities. These encounters are not typically the effect of a subject reading a statute or a regulation, but
of a complex set of institutional and social mediations and appropriations, explanations and understandings, that bring the material, the semiotic, and the epistemological together dialectically and dialogically, shaping not only S/subjects and intermediaries, whether these are human or non-human, corporeal or non-corporeal, but also institutions, systems, pedagogies, hegemonies, actions. What results are patterns of shared yet contradictory meaning that bring about subjectivities and social worlds, simultaneously approximating and distancing these, and regularizing them in the horizons of reality.

These regularizing processes, which we might refer to as common sense and prejudice (Ricœur 1991), subsequently flatten the dynamic and generative nature of poetics-epistemics-executants interactions and the image-ideas and subjectivities that emerge from these interactions, reifying them, reducing them to fungible types, and conflating personal embodiment and experience with collectivized representations of these (Hage 2010). Such representations are then affixed to larger generic ideas of difference and the problematizations of difference, so that personal experience becomes predicated to the generic image-ideas (such as race, or mental disorder), enabling the calculative rationalities of government for managing “problems,” and producing or maintaining forms of hegemony and domination (Chakrabarty 2007). Images, and other forms of sign, and perception emerge from concrete, corporeal sociality; referents are invested with meaning through these complexes of language, text, institutions, and persons. In other words, generativity becomes representation, and the volitionary and intentional aspects of legislating and regulating, of governing and the police power, take effect. Executants are S/subjectivized, and reality is not merely
reproduced, but created and recreated in an ongoing way, with the public square acting as agent of transformation.

**Ahmed Al-Sayyed**

In Britain, the Human Rights Act (1998) and equalities legislation (including the Equality Act 2010), are both linked to the European Convention on Human Rights, and both impose duties for the fair and equitable treatment of persons who share protected characteristics: race, age, gender, age, disability, religion or belief, and sexual orientation. These duties, what we call rights, create institutions, create effects, have important social consequences, and require dense networks and forms of labor to come into being. Attention to the positive content of rights as legislation is important because it gives us insights into human behavior and action that rights in a court-centered approach cannot provide.

Rights, as rules, cross borders, imbricating concerns external to a particular right *per se*. One such emerging development, currently of concern to Stonewall UK and Stonewall Cymru, is the rights of gay and lesbian asylees and refugees, especially as they have occasion to use mental health services. Similarly to the treatment of Fayez Bashir, Cici Williams, Mrs. Fei, Stephen Lewis, and Idil Miski detailed above, Ahmed Al-Sayyed encountered a legislated and regulated environment constructed, at least in part, around rights, and the protection of him as a homosexual and as an asylum seeker. The environment is also populated by human agents who bear the epistemologies of ignorance discussed above, unknowledges that carry extreme consequences.

I met Ahmed on the street, under a sheet metal sky in December. Moisture had crystallized in his beard as walked to meet me, and small frozen bits clung to his
whiskers. Ahmed is a young gay man who fled Somalia to avoid capital punishment for homosexual acts. He had escaped following several episodes of torture, and made his way to Britain. He has kin in Cardiff, and traveled there to join them and find work.

Initially, a cousin and his family had taken him in, and they shared an apartment in Grangetown for a few months. Ahmed was desperate to hide his sexuality from his family, and when the cousin and other members of his family learned that he is gay, they forced him out of the apartment. When I met him in late 2008, Ahmed was living between friends’ homes, trying to figure out how to survive and stay in Britain. He had applied for asylum when he arrived, but someone, he suspected the cousin, had reported him as illegally present, and he had had difficulty sorting out the asylum process as a result. He had been detained twice, and a social worker, convinced that he was suicidal, had involuntarily committed him for assessment. He was determined to be psychotic and detained for three days, until he was released to his cousin and “community care.”

On the day we met, Ahmed had just learned that his application had been denied, and that he was to be deported back to Somalia. The social worker had reported that Ahmed’s claim to be gay was false, that he was using it as a ruse to obtain status, and that his mental health issues were merely “confusion” and not legitimate to a claim of asylum. Ahmed was devastated by the loss of family, the bureaucratic and penal nightmare of the medicolegal and asylum systems, and deportation back to Somali and likely death. Friends from Stonewall Cymru had intervened on his behalf, but were unable to convince the case worker that Ahmed actually is gay. The case worker also refused to believe, despite documented proof, that Ahmed faced capital punishment in
Somalia. Stonewall Cymru members went to the Welsh Assembly, to the Minister for Social Justice, but because asylum and refugee concerns are non-devolved, the Minister could do little, although he did promise to intervene through persuasion with colleagues in London.

His Stonewall friends then took Ahmed to London, for a meeting with staff in the Home Office. During all of this, Ahmed fell seriously ill, and had to spend several days in hospital. While there, he was recommitted for psychiatric evaluation, and re-diagnosed as psychotic. He was also told that “homosexuality is likely a symptom of the psychosis,” that therefore he isn’t “really” gay, and pretending to be in order to avoid deportation was an act of anti-social behavior. I saw him just after he was discharged to community care, and he said to me, “I can’t stay if I am gay, and I can’t stay if I’m not gay. What do I do? They tell me I’m only psychotic, and that’s not a crime, not even in Somalia.” Stonewall lobbied the Welsh Minister and other Assembly Members and their staffs, as well as the Home Secretary, Britain’s Border Agency, and Members of Parliament, to no avail. A short time later, Ahmed was returned to Somalia.

Ahmed’s experience illustrates the ways in which non-citizens, a powerful NGO and lobby, legislation and regulations, rights, a devolved administration, and the Home Office are joined together in a generative project of social order, one which aspires to the creation of fundamental changes in identity, so that mental health professionals are forced to confront and alter their biased perceptions of the homosexual subject; in which politicians and bureaucrats must re-evaluate their political constituencies; in which two of Britain’s least visible and most discriminated against populations, refugees and LGB persons, are brought together as political and legal subjects, and as constitutional
agents, participating in the co-production of law, policy, and practice. Unfortunately, the challenges of this project of social, political, and cultural engineering encountered the recalcitrance of situated bearers of the unknowledges of racism, homophobia, and fear of the otherness of mental disorder. This recalcitrance activated constitutional agency, by actively resisting the duties of equality and parsing "symptoms" of homosexuality, and assuming an archaic epistemology of homosexuality as mental disease.

This aspirations of political society, inscribed in legislation, regulation, and governing practice from the European Union and its Conventions and Directives, to the British Government, to the devolved administration in Wales, were thwarted by the incompetence and recalcitrance of political S/subjects in powerful roles of determination.

Agency in the Theaters of Law: Language, Dialogism, and Polyphony

As stated above, one thing that is necessary to the anthropology of law is to address the conventional separations in legal analysis, namely those between law and politics, and those between the judicial and legislative. It is also necessary is to account for the historical epistemologies out of which these cleavages arose, found root, and flourished, and current epistemologies that structure not only the official poetics and enunciations of legislation, regulation, and government, but the quotidian everyday agents of governance and their decision-making.

The conventional separations of law-politics and of judicial-legislative domains, positions the judge as the primary agent of law, the law finder, or law applier. In this construction, litigants, or disputants, tend to have relatively little presence, and less agency. This has the effect of abstracting "common folk" out of the realm of law, except in so far as they have consciousness of law, or respond to law, or are incorporated into
society through conformity to rules and norms, or have strategies for avoiding rules and norms. In these constructions, official language is more or less all one hears. There is little in the way of heteroglossia, of vernacular poetics and enunciations, of dialogic interactions or of polyphony, the mere presence of multiple voices in any given politico-legal setting.

A similar problem also obtains where legislators or politicians are examined, for instance in academic law and political science studies that consider legislatures and legislation. Agency in these formulations tends to reside with the elites of law-making. I prefer to attribute agency to common folk and to their vernaculars, to attribute real agency in the theaters of law and government, in law-making, the exercise of police power, and the conduct of government. This is simultaneously an epistemological and ontological commitment and an empirical discovery, to which the ethnographic portraits above gesture as synecdoche.

It is not a construction of officials versus commonality, however, It is a much more nuanced analytical stance, one which seeks to account for the minute gradations that exist in the vertical hierarchy of officials – commonality, as well as the ambivalent positions occupied by real people (Stallybrass and White 1986). No person stably inhabits a single subjective position at any given moment. S/subjective positions are, rather, contingent, multivalent, and variegated depending on a given array of intersubjective relations at play. I have tried in the ethnographic case materials above to capture the asymmetries of agency and S/subjecthood, and the fraught working out of dilemmas of action and structure in legislation, regulation, and government.
The relationship between S/subjects and structures, and the problematic of the relationship between individual and community, are in need of (re)thinking, and this rethinking can usefully begin with the (re)appropriation of legislation, or positive law more generally. In addition, in the threshold moment of decentralization and devolution law-makers and others also asked new questions impinging on the principles of law and constitutionalism, the state and the nations, and cultural particularity. The questions included, *What would count as law and government in the newly devolved regions? What would be the roles of new political and legal institutions, agencies, and agents? What would happen to previous structures?* and, *What was to happen to the arrangements that had previously structured the internal order of political commonwealth, the delivery of services, and the relationship between governors and governed?*

Considering these questions and the answers settled upon moves us away from representations of law as unified, often univocal, and systemic. It also moves us away from conventional approaches to agency and power, and the epistemics of hierarchy and binary. What is needed now is a clarification of alternatives, and this space, between ethnography and jurisprudence, is where I interpolate legisprudence.

My initial, tentative formulation of legisprudence focused narrowly on issues of practices, that is, on the practices that occurred in debates about law in the institutions tasked with making law. My dissertation fieldwork focus was, initially, overly narrowly dedicated to legislative chambers, especially to the floor of the Senedd, to the House of Commons in Parliament, and the processes by which a bill becomes law. It quickly became apparent that this restricted perspective was unsuitable for obtaining credible
answers to the questions I was asking, so I turned to the literature of science and
technology studies, and to the work of anthropologists influenced by this literature.

The science and technology literature drove me in turn to begin thinking more
precisely about working law-makers’ material culture and practices (Galison 1997; see
also Thomas 1991), as well as relations between the molecular-molar analytical terrains
and the specific human integuments that connect institutional landscapes, political
society, epistemologies, and real, embodied persons. This led me to an interrogation of
the settings, the environments in which legislation is made, and then to the idea of the
work and workspaces of legislation, and to questions concerning how the material
culture, symbolic hierarchies, and political epistemics of law-makers, governors, and
their authorized adjutants should be observed, questioned, understood, and analyzed.

Legislation, regulation, and government are domains of cultural production in this
formulation, domains in which distinctions which “get to count” are “set forth, debated,
and authorized as proper or improper…practice” (White 1999:vii). Law in this sense
resides in language use, practice, ritual, knowledge; and the distinctions which get to
count do so as facts, as normality, as categorically real, as proper, as imperative. In
other words, epistemologies materialize, and the analytical gaze must consider the
material, symbolic, and epistemological in the analysis of government and the
executants of government, and the consequential effects of their epistemic
commitments.

These elements, what we might call the banality of law as a domain of cultural
production, are important. Positioning legislation as object of anthropological inquiry
brings the productive process of law-making and the potentials of constitutional and
legal agency into greater relief, and highlights the cultural belief in legislation as a primary mechanism for identifying and remediating social ills, and legal elites’ belief in their own role as keepers of legal knowledge, and as keepers of the secrets of proper order and right behavior. These highlights point to the nature of political and legal authority, the importance of the sense of perpetual changeability (of legal texts themselves, of the social, and of persons, as well as of history in general), especially as enacted through interpretation and discretion. They also highlight the status and entwinement of both knowledge and ignorance, and the relationship of praxis and cultural meaning as these bring about the constitution of S/subjects and the achievements (or obstruction) of the aspirations of political society.

**From the Street to the Assembly and Back Again**

Fayez and I walked together in Sophia Gardens, adjacent to Cardiff Castle, crossing over the River Taff. We paused to watch some young boys fishing from the bridge. I leaned with my back against the railing, enjoying a rare day of autumn warmth. Fayez, leaning out over the railing, peered into the water and murmured quietly to himself.

“Have you caught anything yet?” he asked the closest boy, and got a shake of the head in return. A bicyclist rode slowly by, decked out in a pinstripe suit and bowler hat, a blue and red umbrella dangling from his handlebars. He tipped his hat as he drifted by. It was a late fall afternoon, and both Fayez and I were in shirt sleeves. Sun sparkled from the river’s ripples, the solar of Cardiff Castle peeked over the tree tops adjacent. Fayez turned away from the river, looked at me. “My social worker tells me that Wales is changing, that I’m the new face of mental illness. You know what I think of that?” I cocked one eye, shook my head. “I think it means that I’ll finally get the direct funding
my mom has been trying to get, that it will be easier now that the government is here. And maybe I won't get sectioned again. Everything has changed, and I'm the ‘face’ of that.” He threw up air quotes, gave a wry smile, and we continued on our way, descending the ramp on the east side of the bridge, and strolling into Bute Park on our way to the Caffè Nero for a coffee and pastry.

We encountered Cici there, and chatted together for a few minutes before she had to move along, back to work at Race Equality First. Fayez and I stayed together for another half an hour or so, until he drifted on his way. He tossed a quick wave through the glass as the door closed behind him, then merged into the sidewalk foot traffic of this little piece of the public square in devolved Wales in the New Britain. I began to think about legal politics and constitutional agency, and the essential roles played by Fayez and Cici in my coming to grips with devolution and constitutional transformation on the archipelago.

As I sat, sipping a cappuccino, I wrote in my field journal, exploring ideas of postcoloniality and their application to legislation, regulation, and government in the New Britain, and their utility in the framework of legisprudence. I was sure that I was looking at the differential actualization of constitutional principles, but how does one write that cogently?

I began with the twinned ideas of desire and disgust, situated in interlinked symbolic hierarchies. These are the intimate familiars of postcolonial analysis, and seemed a solid starting point, a place from which to begin thinking more precisely about the nature of intersubjective relations within legislated environments, and how these
relations are in mutual traffic with the ideas and practices of exclusion, inequality, and racism.

George Falstaff, for instance, embodies the epistemological presumption of the normativity of whiteness, Britishness (as a synonym for Englishness), and heterosexism, and he observes, with no irony, the regimes of fear that structure minority relations, deeply affecting intergroup interactions, and inflecting intragroup interactions as well.

He said to me during an interview, “The population here, those that we see [in psychiatric health and social care], are predominantly white British,” betraying not only the hierarchies of color, but also of the ethno-nations of Britain, conflating the geography of “here,” Wales, with British/English psycho-symbolic repertoires, and simultaneously eliding the disproportionate presence of Blackness in the psychiatric services. This epistemology, of normative whiteness, structures how George conducts himself, that is, the enactment of normative governance, and influences whether the objectives of political society, such as rights and equality, are achieved, as language provision, or respect for patients and cultural difference.

His epistemology is invested in vertical hierarchies and related notions of social order. His symbolic hierarchies include not only the macro scalars of race and ethnicity, but much more personal and focused relations, such as his own (superior) ability to exercise discretion juxtaposed vis-à-vis Cici Williams’ formalism, that is, her inferior ability to function outside of the rules. This inability, for George, necessarily compromises patient care (quality) and imposes constraints on the service and on service users (unfairness). Furthermore, for George, Cici’s “blind adherence to the
rules” exempts her from a stake in the profession and in the particular institutions which structured their encounters. His discretion and her formalism, then, are a crucial point of intersubjective intersection, through which (his) (un)knowledge is affirmed, and comes to constitute a sort of ground level hierarchy that enables George to assert his embodied self as both dominant and exemplary of his antithetical professional normality. He also links rule adherence and formalism, as intellectual and practical deficiency, with ethnicity and sexuality, saying, “Her behavior really is rather low, don’t you think?” and “These people just don’t get it,” as noted above.

George also inscribes Fayez in a “minutely discriminatory system of classification” (Stallybrass and White 1986:3), as his discursive elaborations encode multiple forms of discrimination. The hierarchies of race, gender, sexuality, and mental illness implode in the encounter between George, Cici, and Fayez, an implosion that links epistemology to normative governance and ultimately to three distinct forms of exclusion: of Cici; of Fayez; of Fayez’s mother. This governance is the structuring instrumentality of discretion, a crucial tool of the rules regimes under consideration. In this case, discretion, specifically the decision not to provide interpretation for the intake process, was reconstructed in the high discursive terms of equality, fairness, patient’s rights, and stakeholding, each of which were transcoded, somewhat splenetically, as confrontational to delivery of services and professional conduct.

George’s actions carry constitutional charge. His epistemology-cum-discretion is, in my reading, orientalizing and subversive of the constitutional principles of equality, rights, accountability, and transparency. His aesthetic and moral judgments not only structured his performance as psychiatric worker and as supervisor and educator, but
also reinscribed and reenacted hierarchy and cultural (colonial) history, reproducing the “inherent dominative mode” of legal, political, and constitutional behavior (Williams 1977). The subversion, and the epistemological pathologies of the bourgeois executants detailed in these pages, are a prominent component of what I have come to understand as the barbarism at the heart of the modern constitution (Taylor 2001).

The interpretation incident and Fayez’s sectioning implode in these accounts, bringing to the fore critical questions regarding the operation of government and the everyday actions of authorized agents of the regulatory apparatus. This entails forms of rule, the science of government (Polizeiwissenschaft, or the police power), and the role of these in and as (neo)liberal modernity, that is, as modes of power which constitute and characterize liberal forms of rule and modernity. These modes are characterized in part by a “will to politics,” that is, by sets of agonistic relations, and their desired/desiring and intentional embodiments, that compose the socio-communicative spaces of legislation, regulation, and government. The derivations of “the Real,” “the True,” and “the (common) Good” that emanate from these agonistic relations and are mapped onto designated socio-political fields, such as populations, communities, territories, citizens, minorities, criminals, the elderly, the mentally disordered, and so on.

To get at this critical question requires the historicization of government and of the sciences of the internal order and administration of the polity, as well as the granular detail of everyday actions and intersubjective relations. This means not just the emplacement of a particular government in temporal and chronological streams, but also the exploration of the conditions of possibility of governing, as well as the empirical operation of government and its consequential effects in everyday, quotidian terms. The
conditions of possibility of governing are more than merely derivative of the conditions of possibility of knowledge. They are more than simply functions of the establishment of (the acceptability and predication of the “truth” of) representations, of knowledge of objective natural and social worlds (Canguilhem 1989; see also Han 2002).

More is required, of course, and this dissertation is merely a first step toward a more substantiated and comprehensive legisprudence. I have attended, briefly, to some of the multiplex mechanisms that structure social relations and construct and reproduce, in an ongoing way, social inequalities and the struggles to contest them. This is a crucial dimension of legisprudence as methodological, analytical, and theoretical practice, especially regarding efforts to account for the structure and execution of my inquiry, as well as my epistemological and ethical commitments. The next step in my ongoing project concerning constitutional agency, the public square, and becoming, belonging, and behaving in the sovereign fantasies of Britain will entail additional ethnographic research in the other devolved regions, as well as in England itself, and to develop a comparative approach to insular hegemonies and the aspirations of political society.

1 The Oriel is a café in the Assembly building, situated above the Senedd, from which visitors can see proceedings in the Siambr, an overview of the main entrance, and, exteriorly, views of the Cardiff skyline, Cardiff Bay, and the Bay area.

2 My research findings parallel those of the Macpherson Report (1999), which concluded the official inquiry into the racially motivated murder of the Black youth Stephen Lawrence in 1993. The inquiry diagnosed “pernicious and persistent institutional racism” in the London Metropolitan Police, and made recommendations for its amelioration (see also Hall 1999; Harrison 2002). My research indicates to me that similar forms of racism populate the institutions of service delivery, especially in health and social care. One major difference is that service delivery is more dispersed than and lacks a similar centralized structure to the Met, and so correctives face additional challenges.

3 Generative here should not be taken to imply progressive or beneficial. On the contrary, generative can mean the creation of new systems of oppression, new and subtler ways of committing undetectable racist micro-aggressions, novel mechanisms of exclusion, and so on. Generativity as I use it should be linked conceptually with everyday structurations, such as language (Hill 2008), knowledge (Clandinin and Murphy 2009; Gardiner 2006), and sociality (Certeau, et al. 1998; Featherstone 1992; Lüdtke 1995), as
well as more narrowly construed practices, such as governing (Feldman 2008), and law (Ewick and Silbey 1998; Goodale 2009).
CHAPTER 8
CONCLUSION: LONG REVOLUTIONS, POLITICAL EPISTEMES, AND EVERYDAY ENSEMBLES

In this dissertation, I have tried to adopt the position of a sort of post-glossator, concerned with the relationship between law and government, the modern equivalent of the commentators on Justinian’s *Institutes* (Ullmann 1946). Where Justinian posited his constitution *Tanta*, giving the force of law and imperial legitimacy to the *Digest* in 533, and the Glossators adapted his codifications for a kind of complaisant medievalism attentive to the needs of the courts, the Post-Glossators reacted vigorously to medieval authority and insisted on the application of the dialectics of scholasticism to law and politics. These Renaissance legists and humanist civilians evanesced the coordination of law and rationality, demanding the abandonment of medieval juridicality, and a move toward the *usus modernus Pandectarum*¹ (Savigny 1979). I have undertaken a similar move, looking to the relationship between law-making and society, between municipal law and the body politic. My analog to Justinian and the *Institutes* is Tony Blair and the British constitution, although I do not wish to push this (extreme) metaphor too far. Legisprudence is my post-glossatorial innovation, a heuristic and framework for inquiring into legislation, regulation, and government in their complex interrelations, as well as the material, symbolic, and epistemological scaffolds over which they are draped, and through which authority makes its claims, states its goals, and strives to achieve its ends. These ends are not uniform among Subjects and law and their adjutants, as we have seen, and the intragroup tensions are a key site of the production of pathologies of reason and distortions of constitutional agency. These conclusions are drawn from my empirical research in the New Britain, and based on (emic) constitutional discourses and practices, and legal politics within Britain. My diagnosis of the
subversion of constitutional principles and aspirations, in other words, is not grounded in
universalist or imposed notions of what a constitution order ought to look like, or what
constitutional politics ought to seek to achieve; rather, it is grounded in the cultural
history, political epistemics, and the longue durée of insular constitutional evolution and
sovereign aspirations across the archipelago. This dissertation, in other words,
straddles and seeks to draw together three “long revolutions,” in a sort of homage to the
Welsh scholar Raymond Williams and to his heirs in critical cultural studies. These are
the long revolution in anthropology, the long revolution in Britain, and the long revolution
in Europe.

The Long Revolution in Anthropology

In the anthropology of law, it is virtually anathema to suggest that legal doctrine is,
or ought to be, material for our disciplinary attention. This stems mainly from
presumptions that the objective of an anthropology of legal doctrine might lead to
evaluative statements about law’s principles by the anthropologist. Such thinking
maintains that anthropology has no business in law’s interior. This kind of
epistemological closure has analogues in theology and science. Prior to the turn of the
twentieth century, there was no intellectual permit for (social) science to study the
content of religion, such as religious belief and religious practice (Kahn 1999). Similarly,
until the second half of the twentieth century, the social sciences had no remit to
examine the content of science. Such inquiry wasn’t available until scholars such as
David Bloor (1976) and Barry Barnes (1974; Barnes and Shapin 1979) of the Edinburgh
School challenged the classical epistemological constraints established by Karl
Mannheim (1952) and Robert Merton (1957) (Jensen 2010; see also Stengers 1997;
2000).
Classical epistemology concerning religion and science maintained a dual set of mandates. These were: (1) that there was a clear distinction between external factors, which scientists could study, and internal factors, which remained beyond the reach of social scientific inquiry and analysis; and (2) that internal factors were virtually removed from external influence, that developments in religion and science were the result of logical internal progressions (Jensen 2010). Part of the concern was over fear of reformist agendas, that is, the assumption that social scientists’ real interest in studying the content of religion or science was to critique and alter, or “correct,” that content.

Similar closure continues to characterize the anthropology of law. Doctrine, rules, standards, and particular legal forms are more or less off limits to social scientists, left to legal academics and legal historians to understand and explain (but see the following for suggestive and interesting exceptions: Comaroff and Comaroff 2006; Maurer 2005; Pottage and Mundy 2004; Thomas 2004). As with religion and science before, much of the concern is epistemological, although some continue to worry that anthropologists will judge the content of law, perhaps find it wanting, and seek to interfere (Donovan and Anderson 2003). It is unlikely, however, that anthropologists interested in the content of law would be concerned to make such judgments or to seek to intervene or correct. Even so, the insularity of law’s interior has been well demarcated and defended, and only rarely trespassed by the wily ethnographic tortfeasor. It seems shortsighted and limiting to draw and maintain such borders, and the value to ethnographic inquiry of legal doctrine, principles, standards, and fictions, and the generative effects of these on social worlds and subjectivities, should be reconsidered. I insist that these connections and effects are clear and compelling.
I suggest, therefore, that it is time for anthropology to break the lock, and constructively possess the territory within. Knowledge of the difference between a post obit bond and a writ of quare clausum fregit need no longer reside solely in the purview of the lawyers, the legal academics, or the historians of legal doctrine. Understanding and translating these into other contexts is no different than Paul Bohannan’s insistence upon fidelity to the meaning and content of indigenous terminology, such as the jir (1957). The content of law, its texts, rules, standards, and doctrines, shape worlds and the conditions of possibility for inhabiting and experiencing those worlds: kinship, domestic relations, categories of personhood, inheritance, property forms, relations between individuals and the state, symbolic hierarchies, valuations, and pasts and futures, among others. It is crucial that ethnographers begin to take seriously the capacity of law’s forms, as “material, social, and semiotic technologies through which what will count as [real] and as matters of fact get constituted for—and by—many millions of people” (Haraway 1997:50).²

The content of law, I argue, is indispensable to the anthropology of law, and a crucial dimension of the material, semiotic, and epistemic basis of my legisprudence framework.³ Such content may be interpreted as deriving exclusively from the privilege of government, which I do not mean to suggest. The rules of law, figured and materialized in doctrines and related forms, are often held to “belong” exclusively to the state (cf. Asad 2004, regarding the argument that an abstract law presumes the State and state power required for its actualization). This is an erroneous assumption however, and one that a segment of legal anthropologists, namely those interested in demonstrating the legal rationality of indigenes as bearers of both culture and reason,
have long been at pains to counter (Fallers 1969; Gluckman 1955; Gomme 1880; Haar, et al. 1979; Hoebel 1940; Llewellyn and Hoebel 1941; Maung Maung 1963; Meek 1937; Noon 1949). I do not support the argument that “non-Western” and “non-State” groups do not have normative systems of social control that are recognizable as “law”; rather, I maintain that parallel normative systems of ordering and control can and do exist, and have done, and non-state forms of these can be cognizable as “law.” I do not wish to engage this argument herein, however, as it is beyond the intended scope of my analysis. (I note, however, that this recovery of indigenous rationality and legal “Trägerheit” are central to my development of public anthropology, which initiates this dissertation, and to which I will return immediately below.)

I take “positive law” as my object, that is, the law as promulgated by and, presumably imposing the will of, the Austinian legislator (Austin 1995; 2005), not because this is a higher form of law or more relevant, but precisely because anthropology has largely dismissed legislation and the rules of law from its purview. By opening legislation and the rules of law to consideration, the content and doctrinal development of law are opened to analysis from the outside, and the ways that seemingly ancient and esoteric forms of law can take on new dimensions, as useful records rooting inquiries into social ontology. My research was designed around the examination, specifically, of government, that is, of the institutions, persons, and relations that constitute ruling entities, the production of law within these entities, and the relationship between law, government and the constitution of the social body. This should not be read as implying that I believe that law emanates solely from government. As my argument has developed throughout this manuscript, it should be clear that this
is not for me a guiding assumption. I suggest only that government is one locus from which law emanates. It is a locus that is privileged in certain times, places, and cultural-colonial contexts, but it is not necessarily exclusive, and my work should not be read as suggesting a necessary link between law and the state, or, as the case may be, law and the polity.\textsuperscript{4} Law (and policy) can arise from private interests (Schepel 2005), from NGOs (Likosky 2005; Riles 2000), from other non-state actors (Likosky 2002), and from among those captured by the idioms of commonalty, carnival, or below-ness (Rajagopal 2003; Rodríguez Garavito and Santos 2005; Santos 2002). To ignore these generative sites and presume that law emanates solely, or even primarily, from the state, the polity, or government, is to linger in the constraints imposed by modernist epistemologies.

Scholars in the anthropology of law have rarely teased out the structured relations of law and modernist epistemologies, and more rarely have attempted to work through the implications of modernist ontology and epistemology for legal epistemology\textsuperscript{5} (but see Dore 2007 for a non-anthropologist's comprehensive effort to remediate these absences; cf. Edwards, et al. 2008; Littlewood 2002; 2006; Moore and Sanders 2006). In this sense, the work I present here, especially in its attention to dimensions of political epistemics, is in part a sort of “anthropology of legal knowledge” with parallels to writings on the sociology of scientific knowledge, or SSK, and related fields (Barnes, et al. 1996; Bloor 1991; Thorpe 2008; see also Watson-Verran and Turnbull 1995). What I aim to achieve is more than a re-articulation of Marxian formulations of ideology and critique of ideology, or of a Foucauldian power/knowledge couplet or its extension by Spivak (1992). My ontological-epistemic concern is with claims to rationality, method and reasoning in law, technologies of knowledge, and the coherentizing effects of law,
that is, how law authorizes, sustains and reproduces social worlds, simultaneously rationalizing and legitimizing these worlds for their inhabitants. These need to be understood in their particular social, cultural, and political contexts, and compared with aspirations and designated goals. In the case materials I have presented, there is a clear contest between enunciations from “above” and their realization in the everyday practices of governing. This contest has widespread and pernicious effects, and forms the basis for my diagnoses of distortions of constitutional agency, subversions of the problematics of sovereignty (Haahr 2008), and the barbarism at the heart of the modern constitution. These are not simply issues of power, and while the Foucauldian power/knowledge couplet is an important contribution to post-structural, postcolonial, ethnic, feminist, queer, and critical and other discourses, it needs further extension in general terms, and it needs in particular to be more adequately applied to law.6

I am also interested in the analytical approaches deployed (or not) to capture these ontological-epistemic dynamics for various bodies of sociolegal literature, and the way such analytical approaches think about and position S/subjects as I have described them above. This is a main feature of public anthropology as I construct it. That is, in my conceptualization of public anthropology, I make a distinction between, on the one hand, anthropology with a broader understanding of the public and who constitutes publics; and on the other, engagements with various publics, and the enactment of various forms of public and political action. I tend to simplify this distinction as one of ethnographic witness vis-à-vis the responsibilities of public and political engagement. By constructing this distinction, I also seek to usefully integrate the elements, and link them through levels of analysis (Al-Mohammad 2011; Forman 1994).
For instance, understanding Subjects as not just persons, but as members of bureaucracies, and the shift in moral calculus that this positioning and everyday embedding fosters and requires. Recognizing the constraints placed on moral action by the structures and objective features of law-making, police power initiatives, and governing are important elements of my ethnographic analysis above. Norms and adherence and conformity to norms and more concrete legal rules and duties repositions Subjects as well as the targets and goals of interventions. This shouldn’t be read as an assertion of the laminar behavior of authorized political agents; such agents, or Subjects in my formulation, are equally prone to ignorance, misfeasance, and harm as to conformity. Recognition of the nuances and the variegated empirics of behavior in different structural settings and sociohistorical contexts should occupy our attention and analyses.

More importantly, however, is conceptualizing subjects as participants in law-making processes is a unique recovery of agency and its relationship with structural features; this is, for me, an imperative of public anthropology. This imperative entails the recognition of those at the margins as more than merely marginal. These subjects must be seen, rather, as agents of moral and rational action in multiple contexts, whose enminded bodies subtend the polar dimensions of the S/subject distinction, whose presence is not simply figural, but real and generative, providing witness of the experiences of the margins. Public anthropology must recover these positions and provide voice for them, but must also be attentive to the ways by which they reveal the fears of broader society and especially of those who govern. The raced, the mentally disordered, the sexually exceptional, the poor, and others excite the imagination of their
“mainstream” counterparts, they are figures that make society uneasy (see e.g. Hall, et al. 1978). Anthropology, in my view, has a role, and an obligation, not just in giving voice, but in terms of documenting the pertinent issues more broadly, by collating and disseminating texts (oral and written) and experiences of marginalization and injustice, including the (historic and continuing) injustices perpetrated by anthropology itself. This is the foundation of my understanding of public anthropology, which then, in concrete terms, seeks to constructively and critically bring these subjects into the public square as recognized and essential contributors to discourses and practices of knowing, of intervening, of reforming, of including. Bringing subjects more visibly into the public square also challenged us to more clearly identify which publics we need or want to address, under what conditions, and in what ways. Adapting to the various demands of various types of public is the final dimension of my approach to public anthropology.

The Long Revolution in Britain

Raymond Williams’ “long revolution” was characterized by three sets of revolutions: the democratic, industrial, and cultural revolutions (1961:10). In his analysis, the revolution is a long process and sequence of beginning, of ending, and beginning again, during which “man [sic] makes the shape, and the shape remakes the man” (1961). I understand this formulation in terms not only of art, as was the focus of Williams’ discussion at this point in his text, but in terms, of course, of legislation, regulation, and government. How any particular group of people exists in history and shapes rules and norms of becoming, belonging, and behaving recursively shapes the political and social body itself in a process of ongoing transformation, accommodation, articulation. Williams’ long revolution was cultural-critical, however, not self-congratulatory. It was a cautionary analysis that pointed out the need to pay attention to
steps forward and steps back, the retractions and retrenchments of rights and the
privileges of Britishness, and the pathologies and subversions of what I call “normative
governance,” and which implicates the high discourses of constitutionalism,
Parliamentary sovereignty, and liberty, as well as the vernacular polyphonies of bigotry
and efficiency, of racialization and the experiences of raced persons and collectives, of
need, desire, and hope.

To paraphrase William James, then, what is it that has concluded that we are
concluding about? Legisprudence is not simply a perspective on law. It is a perspective
on social anthropology as an enterprise and situated practice. Looking at law, the rules
of law, and law’s rule should, I hope, bring into relief much else besides. For me, for this
dissertation, the main concern has been the very difficult task of bringing into history
those invisible people who populate our ethnographic worlds, who often are relegated to
supporting roles in the theaters of law, politics, and cultural production. The lie agreed
upon in the human sciences, that which concludes that these are rarefied domains, the
prerogative of elites, and are abstracted from the social, sustains as analytical fields
which overdetermine those institutions that fit, namely, in this case, juridical institutions
and jurisprudence.

It is, I believe, time we moved beyond this, and beyond the case study of Britain
and Wales to suggest and think about ways in which ethnographic familiarity with law
can better inform our understanding of cultural apperceptions and practices in other,
divergent settings. As well, we ought to (re)consider the role of legislation and regulation
in identifying need, in structuring services and their delivery, and in the amelioration of
issues of inequality as a general (that is, constitutional) principle, as well as in specific
forms of inequality and discrimination, including racism, sexism, ageism, anti-immigration, heterosexism, religious intolerance.

The cultural and political economic struggles over the control of polities, political constituencies, and politico-legal charters, over constitutions and legislative competence, over discretion and constraint, over stakeholding and fairness are key sites of elaboration of the material, semiotic, and epistemological interactants that legisprudence seeks to capture and enlarge. There are “monstrous hybrids” of these actively populating both sovereign and bureaucratic imaginaries, interpellating S/subject and histories, and seeking to sustain symbolic hierarchies, hegemonies, and the material consequences of exclusion, exploitation, oppression (Cohen 2006).

One monster inhabiting the New Britain is exclusion and unfairness, and the epistemologies of ignorance that counter projects of inclusion, equality, and opportunity. Both the projects of inclusion and the practices of exclusion require certain types of historical subjects, subjects to whom I have given some ethnographic flesh in these pages. This “enfleshment” and critical analysis of modern epistemologies and modern rationalities of governing are not merely part of a disciplinary project in anthropology, or insular projects of the study of Britain, but of larger historical and global projects aimed at provincializing Europe, of placing Europe in its (post)colonial, historical, and cultural contexts, of embedding Europe and Europe’s constituent agents in diverse and encompassing frames of dependency and “occidentalizing” hegemonies (see e.g., Chakrabarty 2007; Gilroy 2005; Smith 2006; Spivak 1999). I hope that this dissertation makes some small contribution to these projects.
The Long Revolution in Europe, or Government, Governance, Governmentality: Normative Practices and Official Poetics

Government, or the exercise of political authority, entails the collective organs responsible for public administration, as well as the principles, processes, institutions, and agents involved in decision-making in the polity, and the implementation of decisions, through, for instance, legislation, policy, or other mechanisms (Loughlin 2004; Tomkins 2003). My approach to the analysis of government needs to be understood as distinct from, and complementary to, discourses of governance and governmentality. “Governance” models in the human sciences have been drawn primarily from policy studies and political science, and generally focus on institutional complexity, differentiation, and interdependence and “governing without government,” in which centralization and control are challenged by institutional and policy networks which deliver services in ways that government is not (has never been) able (Rhodes 1997:5ff). Governance owes its academic pedigree largely to the work of Niklas Luhmann, and his emphasis on the “centreless society” characterized by systemic polycentricity, mutual challenges of intelligibility between systems, and an agonistic mode of development (Luhmann 1982).

Governance analyses emphasize the metaphor of “steering” the ship of state, a metaphor often juxtaposed against “rowing” (i.e. governments should steer and not row). In other words, government should concern itself with the creation of the conditions for partnerships and “good governance,” that is, the ability of non-governmental entities to act, rather than the imposition of directives from above. Good governance in turn means the negotiation of policy implementation and the “best possible” and “most efficient” combinations of public, private and voluntary sectors in
the delivery of services (see, e.g., Stoker 2000). Presumptive equality among negotiating and cooperating partners is held to best conduce mutually beneficial results, and the positive-sum nature of these results will accrue not just to services or delivery of services and related obligations, but also to the societal achievement of democratic outcomes more generally.

Governmentality studies, on the other hand, generally begin from Foucault’s writings and seek to understand the nature of power and of the operation of government (of the self and of others). Foucault (2000: 219-220) summarizes “governmentality” as:

1. The ensemble formed by the institutions, procedures, analyses, and reflections, the calculations and tactics that allow the exercise of this very specific and complex form of power, which has as its target populations, as its principal form of knowledge political economy, and as its essential technical means apparatuses of security.

2. The tendency that, over a long period and throughout the West, has steadily led toward the preeminence over all other forms (sovereignty, discipline, and so on) of this type of power—which may be termed ‘government’—resulting, on the one hand, in the formation of a whole series of specific governmental apparatuses, and on the other, in the development of a whole complex of knowledges [saviors].

3. The process or, rather, the result of the process through which the state of justice of the Middle Ages transformed into the administrative state during the fifteenth and sixteenth centuries and gradually becomes ‘governmentalized.’

This is a somewhat long description, and conceptually muddled in so far as Foucault’s tendency (here) to define governmentality as the “governmentalization of government” doesn’t really enable clarity. If we restrict ourselves to just the first element, the “ensemble,” the muddle is relieved, but I include the full quote for two reasons: (1) to convey Foucault’s long term diachrony; and (2) to illustrate (part of) the basis on which subsequent governmentality studies have proceeded to define themselves and to approach their analytical objects.
Foucault’s muddle has its expression in the (inchoate) breadth of scope of what has come to understand itself as governmentality studies in the last two decades. Nonetheless, there is an emergent “Foucauldian dogma” perpetrated by a cadre of (mostly Anglo) neo-Foucauldians which delineates governmentality in a rather reductionist way as “governmental rationalities,” clearly stripping the depth and nuance of Foucault’s own description, as seen in the quote above and in his other published works, especially his lectures, which demonstrate his ongoing struggle with power, politics, and the nature, forms, operations, and effects of government (see, e.g., Foucault 2003; 2010a; 2010b).

The emergent dogma tends to conflate biopolitics, security, and discipline as the primary (or sole) concerns of governmentality, elements which clearly were important to Foucault, but which he did not use to circumscribe an understanding of “governmentality” (see, e.g., Barry, et al. 1996; Burchell, et al. 1991; Dean 2010; Miller and Rose 2008; Rose 2006). In positioning my analytic of government vis-à-vis governmentality, I suggest that “government” needs a fresh re-thinking, to build upon the insights of Foucault and his intellectual progeny, yet avoid the conflation of government with rationality and related missteps that have developed in the proliferation of governmentality scholarship.

Out of this dogma and reductionism, Dean, Miller, Rose and other neo-Foucauldians focus primarily on two dimensions for analysis: (1) governments’ and other official institutions’ efforts to shape subjects that conform to policy, and (2) the organized practices through which such subjects are governed. At first glance, this would seem to condense my own approach; however, there are a number of
divergences. First, and most importantly, is my attention to the recursive and mutually
co-constitutive nature of the relationship of governors and governed. It is not enough to
examine the production of subjects; rather, or in addition, I want to examine the ways in
which subjects participate in the constitution of government and rule regimes. Second,
“organized practices” for the neo-Foucauldians are drawn from the analysis of policy;
that is, they are, by and large, not based on ethnographic presence in the fields of
government, and so elide a critical methodological dimension, and collapse actual
practices into the categories of policy analysis and political science. Third, policy is only
one of the instrumentalities of governing, and, as Laura Nader (2007) has pointed out,
what’s missing from policy analysis (and, I would add, from analysis of government) is
law. Nader points to the relations between law and behavior, and she invokes rules, but
her main focus in the rule of law as an ideological framework used to justify plundering.
This is an important statement and concern, but needs to be extended to specifically
and explicitly cognize legislation. My approach privileges the ethnographic derivation of
practices, the distillation of “ensembles” of practices, and the integration of legislation
into analysis of the work of policy and the everyday practices of the conduct of
government.

It is concerned primarily with (1) political ontology; (2) reflective and self-conscious
governing; and (3) the will to progress (cf. Li 2007). This trilogy will be elaborated below.
As indicated above, political and social ontologies are crucial to my approach to
analysis of law and government. Ontology here is not used to refer to a transcendent or
universal structuring of reality, but to the “structuring structures that provide for the
possibility of action” (Bourdieu 1977:78), and to the perception or apprehension of such
structures, possibilities, and actions. An essential characteristic of ontology as I use it as method for inquiry and for representation, is that it is always in motion, a developing cosmos; not merely a background against which things develop, but a developing thing in itself.

Reflective, self-conscious governing is intended to bore into the ways by which governors assess, evaluate, reason about, communicate about (and with), and deliberate on their political world (i.e. in the sense of their métier), their social world (i.e. in the sense of the populated universe in which they are embedded and in which they intervene), and the obligations that characterize their governing activities. These include the variform practices, technologies, and rationalities of calculation, information, knowing, and acting as governors. The idea of “self-conscious” governing is adapted, in part, from Max Weber’s (1978; 2009) analysis of Träger; that is, the bearers or “carriers” of “patterned actions,” the “living, human embodiments of concrete action orientations,” who are crucial to the persistence of forms of macro-social phenomena (Coulter 2001:31; cf. Kalberg 1994). These Träger can be specific “named individuals, […] or ‘self-conscious’ social ‘strata’ (such as political parties, churches, sects, states, or voluntary enterprises comprising individual too numerous…to identify)” (Coulter 2001:31).

In my formulation, governors are self-conscious Träger in the sense suggested by Weber, although I revise and modify his concept. It is through governors’ “meaningfully oriented actions,” that is, their manifold social interactions as agents of government, oriented to their belief that the polity and government exist and that actions undertaken as a polity or government are authoritative, legitimate, legal, and valid, that the polity or
government exists (Weber 1978:14). Necessary to this existence are the conditions of possibility that enable it, the actions of the governors, and the presence and actions of the governed. I will expand on these analytical and methodological points and demonstrate their ramified operations in greater detail below.

_Träger_, the bearers of self-conscious, patterned (cultural) actions, are essential to my analysis of the everyday practices and the logics of practical conduct that constitute government. There is potential here for error, namely, the reification of a general micro-macro dichotomy characterized by a metaphorical macro that only emerges from micro-interactions, and Weber deployed his particular methodological individualism precisely in order to avoid the fallacy of reification of macrosocial abstractions, such as the state (Weber 1978). This is also a problem frequently encountered (and unresolved) by other theorists, including symbolic interactionists and some ethnomethodologists. In the end, it leaves us with the ontological problem of the actuality of macro phenomena. Some scholars have tried to resolve the issue by recourse to geography or architecture: macrosocial phenomena occupy physical and built space, and we can see cities, banks, and so on. This leaves the institutional question unanswered, however: What does it mean for a government, for example, to _do_ something (Coulter 2001)? I will try to answer this question below.

The third element of my trilogy is the will to progress, adapted from Tania Li’s (2007) notion of the “will to improve,” and Nietzsche’s (1924) conceptualization of the “will to power,” especially as brought forward by Foucault and developed as the “will to knowledge” (1976). Simultaneously shaping and emerging from the given polythetic reality in which they find themselves operating, and developing from their reflective
practices of self-conscious governing, governors in modern government (and arguably in amodern, or ante-modern forms as well) are motivated by a desire to advance society and politics, and they are ensconced within discursive frameworks and a general expectation of the production of change for the better, that is, the making of progress.

Part of my concern is to rethink conventional analytical causalities, to make the political, rather than the economic, the historical a priori, the driver of history, the instrument of historical consequence and human progress. Rather than a determinative-determined structure that entails a material foundation of economics upon which a political edifice is erected, and out of which ideologico-cultural epiphenomena emerge, I favor the priority of the political; that is, the material-relational structured around the conflicts, contrasts, and negotiations of values, as the foundation and en-structuring mechanism of social universes.7 Instead of capitalism-democracy, I want to think about my ethnographic data first in terms of the political formation; not as an overdetermined “form” (such as “democracy”), but rather, in the empirical form of governing-rulership (Herrschaft), so that issues of political and cultural economy are examinable as strategies of accumulation and the recursive effects of these strategies, rather than as causally privileged phenomena that shape social and subjective cosmologies. Bringing all of this to analytical fruition is the task confronting the long revolution in Europe as it takes its next steps.

Baroness Davari: Walking the Constitutional and Political Hybrids

Baroness Davari and I sat adjacent to the Thames, on the Members’ deck of the Palace of Westminster (Figure 8-1). A fine breeze swept across the water and ruffled the collar of her blue blouse. She had short hair, stylishly short, and a lively demeanor. She poured a bit of milk, which plumed into the amber depths of her tea. She stirred,
clinked the spoon twice on the rim of the china teacup, returned spoon to saucer, and brushed absently at a stray cake crumb stranded alone on a slightly darkened stain on the wood. The Baroness was a key interlocutor of mine in Parliament, and had been a keen early supporter of the decentralization agenda and constitutional reforms proposed by the Labour Government in 1997.

We met on a fine spring day in May of 2009. She greeted me at St. Stephen’s Porch in Westminster Hall. We ascended the stairs to the east, entered and crossed through St. Stephen’s Hall. As we hurried through the central lobby, she paused and pointed down adjoining corridors, “Peers to the south, Commons to the north.” She escorted me swiftly along the east corridor, down a set of steps to a landing, and the Members dining area. A quick order of tea, and onto the deck, pulling out chairs and dropping our bags beside us as we sat, both of us slightly out of breath. Behind her stood Westminster Bridge, with a steady stream of traffic trundling across. Even above the sound of the river the rumble of lorries and busses was audible, just at the threshold of hearing, more of a felt experience. Further along in the distance and opposite, the glass and steel cabins of the London Eye flashed and shone in the sunlight, slowly crawling across the horizon (Figure 8-2). Adjacent, just over the balcony of the deck, a buoy bobbed and jolted in the wake of passing craft. We both peered at the greenish grey Thames.

“The waters of state, innit?” This colloquialism, from the aristocracy, took me by surprise, which she seemed to intend with a wink and a grin. “You know, all of this is new, relatively.” She made a broad, encompassing gesture toward the Palace, and I wondered if she meant the changing political organization of the UK or the building
itself. As if tapped into my thought, she continued, “I mean the built side of the Palace here. It used to flood, to flood right into the hall, just there. Then they built it up so the waters would stay out. Drove Henry crazy, they say.” I nodded, making notes in my field journal — change and rebuilding, metaphor for reforms? As if still tapped into my thought, she picked up on the idea, turning the figure of reform: “That’s quite the apt metaphor for devolution, I suppose. How far do our territorial waters extend, and how do we keep them from flooding in where they aren’t wanted?”

So began our conversation, which lasted nearly an hour before the Baroness returned inside for an evidence session on European subsidiarity and regionalism. Between these two poles of decentralization and Europeanization, I interviewed her about the nature and attributes of constitutional transformation and political reorganization in the UK, the modernization agenda and public sector reforms, and the effects of recent legislative and policy strategies in the UK and the devolved administrations, including the equalities and medicolegal therapeutic regimes. Twenty-four minutes into our discussion, I transitioned to questions about the National Health Service, mental health issues in the UK, and the issues facing minority communities throughout the political commonwealth.

“I know the mental health and equalities legislation from both sides,” she began, as an aide rushed to the table, opened a file folder, and whispered in her ear. They conferred quietly for a few moments, before the aide jotted notes on the file, and remarked aloud on the upcoming session. The Baroness waived her hand, then fished her mobile from a pocket, swept the screen and dialed as the aide hurried away. She held a finger in the air, a gesture for my patience. “Sir Humphrey?...” I turned my
attention to my field journal and to capturing the content and character of the conversation. The Baroness finished, laid the mobile on the table between us, returned her attention to me. “As I said, I know the issues from both sides. I am both a service user, for nearly 20 years now, and a lawmaker in the House of Lords. This gives me a unique perspective on the making of law, and the political concerns that go into it, and the needs of the mentally ill and those being discriminated against. I can tell you about my experiences, from primary care to hospital to community care, and about how our legislative system works. All of which, of course, are now caught up in the streams of devolution and our European commitments.” The mobile buzzed and from the corner of my eye I noticed her aide hurrying back to the table as the waters of the Thames slapped on the deck moorings.

**Parliament’s Heir and the Barbarism at the Heart of the Modern Constitution**

“Parliament’s heir in Welsh slate,” said Cara Navalis, as we stood with our backs to Cardiff Bay, the wind buffeting us, at the foot of a swath of steps and railings rising to the glassed foyer of the Senedd. A clear, bright, crisp day, and our tiny, distanced reflections were just visible to us, wobbling in the panes, with glinting breaks on the baywater capping and mirroring from behind us as we mooted the nature of “the new Wales.” She painted an image of Wales as the ill-omened inheritor of Westminster’s patrimony.

“The Third Way has given way to ‘clear red water,’ and a new rule of law, so they say,” she began, bringing together the (reconstituted) Labour Party of Tony Blair and his ideologue Anthony Giddens, Rhodri Morgan’s articulation of a more historically and communally grounded socialist and Welsh Labour Party, and the constitutional principles that abound throughout the Commonwealth and sovereign fantasies. “It’s
rather more like them tossing us our bits, and staled blood brought on by too many
leeks.” A grimace and a roll of the eyes. “You’ve read the White paper. The whole thing
has been one long journey through a partial inheritance, with bits of Welsh
accoutrements tacked on for good measure.” A long sigh. “But I suppose it is good that
we have our own government now, more or less. If we can achieve independence and
real law-making powers, it will make a difference. Anyway, nationalism is dead, the
nation is reborn, and Hain tells me I’m ‘eccentric,’ did you know? Well, fuck him.”

The Right Honorable Peter Hain had been Secretary of State for Wales in 2005
when the White paper “Better Governance for Wales” was published, as the debate on
devolution was re-engaged in Westminster, Cardiff, and beyond. The re-engaged
debate brought back to the political fore the extent and nature of decentralization in the
United Kingdom and its consequences. Decentralization had emerged as a key political
discourse and maneuver in 1997, during the Parliamentary campaign and elections that
saw the end of eighteen years of Conservative government and the emergence of “New
Labour,” with its neoliberal agenda, under the charismatic leadership of Tony Blair.

Blair’s Government brought decentralization to political reality throughout 1997, as
a deliberative strategy and agenda, and to material and semiotic reality in 1998, as Yes
Campaigns, referenda, and, finally, as enacted legislation in 1999 that created and
empowered the institutions and infrastructures of the National Assembly for Wales, the
Scottish Parliament, and the Northern Ireland Assembly. Human dimensions followed
as cadres of lawyers, politicians, Civil Service personnel, academics, public sector
workers, voluntary sector, business people, and others convened to determine
operational questions, and grind into motion the gears, relations, and languages of
functionality. The institutions were then peopled, through party mechanisms, elections, appointments, and the host of internal procedural activities necessary to the daily tasks of conducting government. None of this was simple, or straightforward, or linear, and much of it took place in the breaches, in the small, quiet spaces of prosopic commensality. In these spaces, personal engagements and conflicts slowly forged the local artifices of political reason and governing techniques (cf. Foucault 1998), where state restructuring, cultural reconfigurations, and social and subjective formations coalesced to take momentary shape. These shapes were largely transient, as it worked out, but formative, nonetheless, establishing parameters and conventions of behavior and institutional performance, and also enabling demonstrations of what would come to be considered right, proper, and normal, as well as demonstrations of what would come to be patently improper and unsuitable to the conduct of the new Welsh politics in the new political institution of the Assembly, the “forum for the nation” (Secretary of State for Wales 1997:8).

Decentralization, or “devolution” in local vernacular, was, for New Labour, “the answer” to many political questions at the end of the twentieth century. It was said to strengthen the unity of the UK, while empowering the Celtic Nations. It was said to increase rights, while inculcating a sense of ownership, of stakeholding in the institutions and processes of law, politics, and government. It was said to be part and parcel of modernizing Parliament and politics. Most importantly, perhaps, it opened up Government, and was imbued with admirable constitutional qualities: equality, subsidiarity, transparency. The constitution was to be democratized in novel ways, not through extension of franchises, but through processes designed to bring decision-
making closer to the people, through the thorough restructuring of political institutions. It provided for a “directly-elected Assembly” designed to “assume responsibility for policy and public services currently exercised by the Secretary of State for Wales” (Secretary of State for Wales 1997:7).

This subsidiarity was levered to bring about “a degree of ownership in the new institutions” of devolved government in Wales, Scotland, and Northern Ireland, and to make the newly elected legislatures, like the National Assembly for Wales, an accepted part of the restructured “political landscapes” of New Britain (Secretary of State for Wales 2005:6). Devolution, decentralization, and the other elements of constitutional transformation in the New Labour administrations were intended as correctives, to modernize the constitution, legal politics, and the state, to remedy the lingering pathologies of classism, racism, colonialism, and bourgeois overreach. Cara Navalis, Stephen Lewis, Mrs. Fei, Cici Williams, Idil Dourad, and Fayez Bashir, among others, offered unambiguous representations of the problems that are sustained in the present historical conjuncture.

I had virtually no idea what Cara Navalis meant that day as we mooted the Assembly, and it took me several weeks to develop an understanding and appreciation for her perspective. I was in Wales in 2008-2009, a full decade after the establishment of the Assembly, a decade that had proceeded by and large under the leadership of a single First Minister, Rhodri Morgan, and a consistent set of Cabinet Ministers and Assembly Members. A decade in which the Assembly had achieved a great deal, and had realized notable successes. The end of the decade was marked by celebration and triumphant recalling of the progressive development of the Assembly, its movement
toward a sense of itself as fully operational and fully rationalized. This is perhaps a
deserved triumphalism, but it is a partial retelling, as Cara’s narrative reminded me.

Hers was a story not of the ideal nature of origins and development, but of the
atavisms of decentralization and devolution, of the disruptive effects of constitutional
transformation and of legislation in her life and her sense of self. Hers was not a
theogony of devolution, of the victory of liberty, of the triumph of political rationality and
the incremental and parallel maturations of the Assembly and the New Britain. She did
not look back, or look over, or look down from above. She preferred to look under, to
look sideways, to look askew, in order to understand herself and her Wales in familiar
terms. Her telling was a fraught history, perhaps even lowly, derisive, and ironic, in
which the material, semiotic and epistemological articulations of power implode as
public sector reform and the new demands, yet continued performance, of service
delivery and service deliverers who bear the unknowledges of racism and domination.

For Cara, there was no veil to be rent, no mask to unveil, no ocean of clear red
water to cross. Devolution is important, but its grandiosity disguises what for her is only
a changed reality of surfaces and of measured spectacle to navigate in the everyday.
For her, there is something hereditary, but perhaps not quite inherited, for its origins are
not what they are claimed to be, and its successes not as clearly achieved as often
claimed. Her decentralized everyday is still structured by the intensities of racialization
and mental disorder on the archipelago, and by the stigmas, demands, and dismissals
enacted by authority, experienced in the quotidian banality of discretionary acts that
enact constitutional agency by obstructing constitutional principles, producing,
mimetically, the reality and reality effects of the barbarism at the heart of the modern constitution.

1 “The modern application of pandects,” i.e. of the complete codified system of law of a country.

2 Haraway (1997) is writing here about ‘technoscience’ but I am convinced that the language and ideas that she deploys are commensurable with examination and analysis of law.

3 Accordingly, autonomy cannot be ascribed to law without attention to the construction of selves, and the dependence of such constructions on law and law’s content, as well as the compatibility and referentiality that are required for, for instance, persons and rules to co-constitute (Cussins 1996).

4 Strictly speaking, Wales is not a state, but is typically referred to by scholars studying devolution and relations within Britain as “region” or “nation.” For my purposes, I term Wales and related regional administrative and government entities as “polities” to signal their kinship with State forms, but also their non-State statuses and the curtailments on the conventional powers of “sovereignty” and independence.

5 There is also relatively little attention to legal ontology, which I will address in a subsequent project.

6 This is not to engage the debate regarding whether or to what extent Foucault rejected law (Hunt and Wickham 1994) or to develop the question of his position on law (Golder and Fitzpatrick 2009). Rather, it is to point to a need within the anthropology of law for more sustained attention to: (1) his work generally; and (2) the expansion of the foundations he established, especially in terms of the emergent dogmas surrounding power/knowledge and governmentality.

7 This is how I read Marx’s oeuvre; the economistic schema critiqued in this paragraph is intended to implicate structural Marxists’ reduction of Marx’s breadth of analysis to the architectural metaphor, and the “material,” i.e. economic, basis for virtually everything.
APPENDIX A
DEMOGRAPHIC AND STATISTICAL INFORMATION

According the 2001 Census, the population of the United Kingdom is 59 million. 4.6 million, or 7.9%, are reported as non-white. Half of this number resides in London, the remainder are distributed throughout the country, mostly in urban centers, but with sizable communities even in some remote and rural locations (Office for National Statistics 2005). The following table and graph illustrate the country’s racial and ethnic diversity. These charts are reproduced from the Office for National Statistics and used according to the terms of the Open License Agreement and the UK Government License Agreement.

<table>
<thead>
<tr>
<th>Population: by ethnic group, April 2001</th>
<th>United Kingdom</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Numbers)</td>
</tr>
<tr>
<td>White</td>
<td>54,153,898</td>
</tr>
<tr>
<td>Mixed</td>
<td>677,117</td>
</tr>
<tr>
<td>Indian</td>
<td>1,053,411</td>
</tr>
<tr>
<td>Pakistani</td>
<td>747,285</td>
</tr>
<tr>
<td>Bangladeshi</td>
<td>283,063</td>
</tr>
<tr>
<td>Other Asian</td>
<td>247,664</td>
</tr>
<tr>
<td>All Asian or Asian British</td>
<td>2,331,423</td>
</tr>
<tr>
<td>Black Caribbean</td>
<td>565,876</td>
</tr>
<tr>
<td>Black African</td>
<td>485,277</td>
</tr>
<tr>
<td>Black Other</td>
<td>97,585</td>
</tr>
<tr>
<td>All Black or Black British</td>
<td>1,148,738</td>
</tr>
<tr>
<td>Chinese</td>
<td>247,403</td>
</tr>
<tr>
<td>Other ethnic groups</td>
<td>230,615</td>
</tr>
<tr>
<td>All minority ethnic population</td>
<td>4,635,296</td>
</tr>
<tr>
<td>All population</td>
<td>58,789,194</td>
</tr>
</tbody>
</table>

Sources:
Census, April 1991 and 2001, Office for National Statistics;
Census, April 2001, General Register Office for Scotland;
Census, April 2001, Northern Ireland Statistics and Research Agency.

Notes:
Census ethnic group questions: In both 1991 and 2001 respondents were asked to which ethnic group they considered themselves to belong. The question asked in 2001 was more extensive than that asked in 1991, so that people could tick 'mixed' for the first time. This change in answer categories may account for a small part of the observed increase in the minority ethnic population over the period. Different versions of the ethnic group question were asked in England and Wales, in Scotland and in Northern Ireland, to reflect local differences in the requirement for information. However, results are comparable across the UK as a whole.
In the table "." means not applicable.
Non-white ethnic group includes all minority ethnic groups but not White Irish or Other White groups.
The non-White population: by ethnic group, April 2001

United Kingdom

Percentages

- Asian or Asian British (50%)
- Black or Black British (25%)
- Mixed (15%)
- Chinese (5%)
- Other ethnic groups (5%)

Source: Office for National Statistics licensed under the Open Government License v.1.0.
Figure 1-1. Map of Britain in Europe (map courtesy of Edward González-Tennant)
Figure 1-2. Map of Britain with internal national boundaries (map courtesy of Edward González-Tennant)
Figure 1-3. Map of South Wales and the South Wales corridor (map courtesy of Edward González-Tennant)
Figure 1-4. The Assembly Estate (map copyright National Assembly for Wales, used with permission)
Figure 1-5. Cardiff Bay, the Pierhead Building (center), and the Senedd (right), 2009 (photo copyright Andrew Scott Catey)

Figure 1-6. The Senedd (2009) (photo copyright Andrew Scott Catey)
Figure 1-7. Assembly Members crossing the skywalk from Tŷ Hywel to the Senedd (photo copyright Andrew Scott Catey)

Figure 1-8. The Siambr (photo copyright Andrew Scott Catey)
Figure 1-9. The Oriel (photo copyright Andrew Scott Catey)

Figure 1-10. Overlooking Cardiff Bay and Penarth in 2009 (photo copyright Andrew Scott Catey)
Figure 1-11. Tŷ Gobaith and the “top” (north end) of Bute Street (photo copyright Andrew Scott Catey)

Figure 1-12. Community mural in Butetown (photo copyright Andrew Scott Catey)
Figure 1-13. Butetown History and Arts Centre (photo copyright Andrew Scott Catey)

Figure 1-14. National Health Service Centre, Riverside neighborhood (photo copyright Andrew Scott Catey)
Figure 1-15. Medical Assessment Unit, Llandough Hospital (photo copyright Andrew Scott Catey)

Figure 5-1. The author at work as constituency caseworker (photo copyright Andrew Scott Catey)
Figure 8-1. Parliamentary Estate in 2009 (photo copyright Andrew Scott Catey)

Figure 8-2. Parliamentary Estate, Westminster Bridge, and the London Eye (photo copyright Andrew Scott Catey)
APPENDIX C
DEVELOPING LEGISPRUDENCE: A PERSONAL HISTORY AND EMERGING
EPISTEMIC

As repeated throughout this dissertation, I insist that a useful new direction for political anthropology and the anthropology of law is engagement with and theorization of legislation as elements of a field of inquiry missing from the discipline. In order to think through this lacuna and begin developing my theorization of legislation and its kin, I sought early on in my doctoral studies to formulate a term or phrase that could conveniently convey the breadth of objects, relations, and processes that I want to examine. I settled on the term “legisprudence,” one of the key innovations I attempt in this dissertation.

I began using the term legisprudence in 2003, after an intense effort to work through a number of problematics that had engrossed me while conducting graduate studies at Holy Cross Greek Orthodox School of Theology. At the time, I thought it was my own neologism, but I discovered later it was also used by a number of European scholars of legal theory and legal philosophy, and it became the title of a journal started in 2004.

In 2001-2003, while at Holy Cross, I was consumed with two research projects. One focused on the School and seminary itself, and the *economia* of reception and uptake of “official” dimensions of Church enunciations, including canon law and related doctrinal forms. The second focused on historical canon law, syncretism, and the dialectics of centralization. I was exploring the historic-social relations between “official” Church dogmas and processes of localization in early Christian churches, with special focus on Christianity in Ireland through the mid-seventh century.¹ My goals were
twofold, both practical and theoretical. The first was to explore the historical convergences and divergences of official and local realities of canon law, dogmatics, and systematic theologies in Ireland of the seventh century. The second was to research and analyze historic circumstances in order to situate extant problems at the School and suggest ways to remediate those problems.

I began my research in late 2001, starting with an examination of the issuance, consolidation, and codification of canon law by the Ecumenical Councils, that is, treating canon law as legislation, and the reception and performance of canonical rules by churches, monasteries, and political entities distant from the centers of Church administration. I wanted to understand the relationship between law (both “sacred” and “secular”) and the “dissolution” of Irish Orthodoxy, as well as the subsequent loss of knowledge about the early development of Christianity in Ireland. Finally, I wanted to bring forward, and into an intellectual mainstream, an anthropological analysis of canon law and its cultural histories.

Following my graduation from Holy Cross, I entered graduate school in the Ph.D. program in the Department of Anthropology at the University of Tennessee, and my work there began with a focus on historical religion and anthropology in Western Europe. The work I had conducted at Holy Cross had left me unsatisfied in my search for a framing device and theoretical apparatus and while at Tennessee I continued to search for an appropriate way to mainstream the ideas I was working with. “Legisprudence” became that device and apparatus.

My specific history with the word “legisprudence” began when I took a course in ancient and medieval historical sources with Dr. Michael Kulikowski (now at Penn
For this course, I wrote a paper entitled “The Incorporation of ‘Non-Native’ Inputs in Anglo-Saxon Law: The Berkshire Case, A.D. 990,” in which I examined the codification of law, centralizing initiatives of government and administration, the function of the monarch as executive, and the role of law in the consolidation of medieval monarchy. In the paper I analyzed an Old English lawsuit which occurred during the reign of the English king Æthelred II (A.D. 978-1013, 1014-1016), and which concerned an estate in Berkshire. The lawsuit proceeded according to procedures established by legislation promulgated by Edgar (the Peaceable, A.D. 959-975), one of Æthelred’s predecessors, and was closely watched from the political center. Conventional sociolegal and legal historical scholarship assumed that the monarch’s interest in the case derived from the medieval premise that “love should precede the law” (cf. Wormald 2001). Analyses of the case therefore tended to proceed according to the (modernist) assumption that the truism governed legal activity; that is, that felicity and compromise characterized medieval litigation and other “traditional” dispute resolution processes, and the goals and outcomes of litigation. Amity in the kingdom was held, interpretively, as the first objective, which putatively “explained” the case’s outcome.

In my paper, I argued instead that kinship, authority, and the nature of positive law were at stake, and that the historical epistemology of law, especially in the period under consideration, was more “transitional” than static, and therefore different than the modernist inflection tended to assume. In order to make the argument, I needed a conceptual device distinguishable from “jurisprudence” and cognate forms of legal analytical idioms. I coined “legisprudence” in order to pursue the argument and create the distinguishment. It was later, in 2005, that I learned of the same term’s nearly
simultaneous coinage and usage by the legal philosopher Luc Wintgens and his collaborators (Wintgens 2002; 2005). In addition, it seems that the word was used also by both Jeremy Bentham and Sir William Blackstone in the eighteenth century. Rather than a neologism, then, I stumbled upon a qualified existing term with an exemplary genealogy and utility for my own approach to the anthropology of law.

Nonetheless, legisprudence as I deploy it is conceptually distinct from legisprudence as deployed by Wintgens and others (and by Bentham and Blackstone as well). For Wintgens and other scholars of law and legal philosophy, the objectives of legisprudence are encapsulated in the mission statement of the journal *Legisprudence*, which “aims at contributing to the improvement of legislation by studying the processes of legislation from the perspective of legal theory” (see e.g., Hamers and Finkelstein 2009:423). Indeed, the improvement effort is an ongoing central dimension of legal scholarship more broadly (Kahn 1999), and one which distinguishes the anthropology of law from other legal analytical disciplines. Anthropologists of law, including myself, are not, in general, oriented toward goals of producing more correct pieces of legislation or reform of legislative processes. That is, legisprudence as I formulate it is not a normative endeavor, but an empirical and contextual one. For my part, my interests lie primarily in analysis of legislation from the perspective of anthropological theory, or social theory more generally, and I’m not specifically interested in designating how proper law-making should proceed or how proper legal rules or texts ought to appear. In this sense, “improving” legislation or the processes by which it comes into being is not generally the goal of social science. The issue for me is not to improve legislation and its production in a normative sense, but to analyze legislation and legislatures in terms
of concrete historical circumstances and output, and gauge their operation, relevance, and efficacy on the merits of their place in particular historical, social, and cultural circumstances. In addition, I seek to understand what legislation means to those who draft it, live by it, accord it importance in the art of government and social ordering; and to understand the cultural implications of demands for improvement. “Improving” and the “quality of” legislation take on different meanings for different people, and in differing circumstances. These circumstances, the demands and goals at stake, the ontological and epistemological commitments involved, the systems of ethics and moralities invoked, the variegated meanings, and the contestations at issue are important dimensions of my formulation of legisprudence.

The improvement debates are conceptually and practically linked to correlated concerns with the nature, behavior, and output of legislatures as unavoidably political entities. The basic premise held by many, and ascendant in our contemporary historical moment, is that legislation is “unprincipled, incoherent, and undignified,” with a focus on whether legislatures are (necessarily) “broken” (cf. Waldron 1999a). I do take a side in this debate. I hold that neither statement is an accurate description of legislation or legislatures in the abstract. Particular pieces of legislation, or the situated process by which pieces of legislation come into being may be problematic, even unprincipled and undignified, in particular circumstances and according to particular perspectives; legislatures may be crude and highly politicized at a given moment. These, however, are matters of sociocultural analysis, of empirical and interpretive work, and like Waldron (1999a), I’m not ready to concede the failure as a general matter.
But what is more important from an anthropological perspective is the place of legislation and legislatures in the official poetics and sociopolitical mythos of many societies (Bakhtin 1981), the practices that characterize legislation and legislatures, and the subjectivities and relations that constitute them and that they bring into being. In such “legalist” societies, legislation, legislatures, and legislators are as integral to social functioning, to social organization and cohesion, to cultural sense-making, to apprehended relations with time and space, and to understandings of the self as are kinship, economy, science, medicine, religion, environment, and history. They are a part of the sine qua non of social reality. This sense of the integralness and centrality of law, especially legislation and positive law more generally, is the foundation of my work, and the motivator for my effort to reutilize law as legislation and the legitimacy of these as anthropological analysands (cf. Latour 2010).

In addition to this (re)habilitation, my interests in law reside in the hope of connecting law, especially in its legislative and positive forms, more comprehensively as an analytical and explanatory habiliment to other social domains. My conceptual and analytical use of legisprudence, and the interpellation of law into the domains of the social is designed to move toward the achievement of these goals.

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1 Preliminary material from this project was presented at the biannual conference of the Society for the Anthropology of Religion in April of 2003. This presentation was mainly concerned with the intellectual history of canon law, and the reception of literatures dealing with marginalized issues and historic practices of Orthodoxy/Catholicism.

2 This division is a false distinction for the period I was considering, and I use it here only as a convenient shorthand.

3 I confronted similar concerns in subsequent research focused on Henry II’s (1154-1189) use of legislation. Henry used legislation to strengthen his position and implement reforms. Among these reforms were: the creation of judicial remedies in his Royal courts (on the basis of which he is often credited with the creation of the English Common Law); improvement of the functioning of Norman government; reining in the barons’ abuses of feudal prerogative and their destabilization of the Monarchy;
and creation and normalization of the centralized bureaucracy. This research focused primarily on these developments and the origins of Henry’s legislative model in Islamic Law (Berman 1983; Makdisi 1999).
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Swiffen, Amy

Taylor, Charles, and Amy Gutmann

Taylor, Miles

Telegraph, The

Thatcher, Margaret, and Alistair Basil Cooke
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Thomas, Yan

Thorpe, Charles

Tomkins, Adam

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Andrew Scott Catey received his Bachelor of Arts and Master of Arts in anthropology from the University of Montana, in 1994 and 2000 respectively. He also studied theology at Holy Cross Greek Orthodox School of Theology, where he received his Master of Theological Studies in 2003. Following his graduation from Holy Cross he enrolled at the University of Tennessee, where he studied for one year before transferring to University of Florida to complete his graduate education. In addition to the Doctor of Philosophy degree, Mr. Catey also received a Juris Doctorate from University of Florida’s Levin College of Law.