

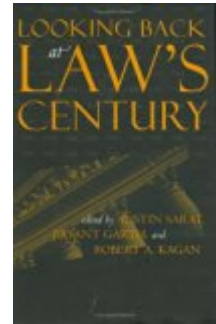
H-Net Reviews

in the Humanities & Social Sciences



Austin Sarat, Bryant Garth, Robert A. Kagan, eds. *Looking Back at Law's Century*. Ithaca and London: Cornell University Press, 2002. 446 pp. \$45.00 (cloth), ISBN 978-0-8014-3957-5.

Reviewed by Lee Bernstein (American Studies Program, San Jose State University)
Published on H-Amstdy (December, 2002)



The Triumph of Law

The Triumph of Law

Few aspects of contemporary U.S. social, cultural, political, or biological existence escape the grasp of law. Indeed, a historian of the early Republic once remarked that the United States is itself a product of the “triumph of legal discourse.”[1] Consider a few dramatic changes: during the twentieth century, the number of lawyers rose from 109,000 to 1 million (p. 306). This increase represents a doubling of the number of lawyers per capita. Furthermore, much of this increase came after the 1960s. In 1995, there was one lawyer for every 307 people in the United States, up from 1:627 in 1960 (p. 5). Furthermore, the influence of the law and of lawyers is even greater than their numbers. Since its inception, two-thirds of the seats in the Senate and half of those in the House of Representatives have been filled by lawyers (p. 306). However, the collection makes clear that “the law” has been both a shield and a weapon that rarely serves one objective: it has defended corporate autonomy and arranged for increased protections for workers and consumers; it has defended and sought to dismantle government-sanctioned segregation; it has invaded and defended our bodies, minds, and souls. So, if the twentieth century witnessed a “triumph of law,” as the editors of *Looking Back at Law's Century* argue in their introduction to this important new collection of essays, which law triumphed and who lost?

It will be no surprise to most readers that, for the most part, the growth in the size and influence of the legal profession has benefited their largest and wealth-

iest clients. From international relations to criminal trials, corporate interests have a distinct advantage. Foreign policy posts are typically held by elite lawyers on leave from corporate firms who often make human rights issues merely one consideration among many in negotiations centered on trade. In addition, as the average hourly rate for lawyers was \$180 in 1998 (and \$250 for partners in large firms), a criminal trial has become a luxury that only white-collar and top-echelon drug dealers can afford. In contrast, as legal historian Jonathan Simon argues, criminal defense for the poor is little more than a “plea bargaining bazaar carried on in the shabbiest of public buildings” (p. 300). The U.S. prison population has risen to globally and historically significant levels. Simon provocatively argues that “law in the contemporary United States is shaped by a suburban middle class that views the cities as sources of contagion and danger and the young inhabitants of those central cities as presumptively dangerous” (p. 123). Legal scholar Kendall Thomas points out that this has had the effect of undermining the Fifteenth Amendment. If projections hold true, 40 percent of the next generation of African American men will lose the right to vote (p. 96). In an article that rejects the overemphasis on moral notions of racial justice (and in favor of a political conception), Thomas urges us to see that the broad use of felony disenfranchisement blocks “increasing numbers of African Americans from access to a political institution that has been crucial in creating and sustaining black civic activism and consciousness” (p. 97).

While this notion of “winners and losers” is provoca-

tive and enlightening, *Looking Back at Law's Century* makes an important contribution to those areas of twentieth-century law that are less clear-cut than is implied in its assertion of "the triumph of law." Some of the exceptions to this triumph are well-known to most students of American studies: the judicial victories of the civil rights and prisoner's rights movement or the human rights work of Amnesty International, Human Rights Watch, and the United Nations. Perhaps the most important exception to the triumph of corporate law is in the area of class action or aggregate lawsuits—those high-profile, large-figure liability cases brought against asbestos, energy, and tobacco companies in the last thirty years. In a dramatic contrast, the plaintiff *lost* in the only suit brought against the owners of the Triangle Shirtwaist factory after the 1911 fire. Though the ambulance-chasing personal-injury attorney is by now a standard joke on late night television, this collection reminds us that tort claims were a response to "the enormous carnage caused by industrial technology." As the profession moves toward larger, more specialized corporate law firms, the personal-injury lawyer remains one of the few areas open to small firms made up of people trained at lower-profile institutions (p. 316).

These claims for financial and legal redress have become important markers of the symbolic transformation of citizenship in the twentieth century. The lawsuit, Guyora Binder argues in the collection, is a central paradigm for the way we speak about our place in society: "To claim is often to advert to a right, but it involves a different relationship between personality and right than that contemplated by classical liberalism. To claim is not to act securely within a sphere of autonomy defined by rights, but to assert a right to redress. To claim is to project one's personality outward into an inherently unpredictable public space of controversy." This transformation of "rights" into "right to redress" can be seen beyond the courtroom in arenas as disparate as a press conference, talk show, consumer complaint, or letter[s]-to-the-editor (p. 159).

This transformation of "rights" signals that the "dual role" of law that the editors present in the introduction may become less significant in the twenty-first century.

Law, they argue at the outset, "has been shaped most profoundly, and in turn has helped structure, two powerful 'extralegal' developments—the halting rise of more extensive, competitive, and inclusive democratic political processes, and the construction of more productive and competitive capitalist economies" (p. 8). As the "handmaiden of capitalism" the law and the courts "constructed and legitimated markets" by structuring tax, trade, and environmental rules to benefit the narrow economic interests of the corporate elite. In contrast, state and federal courts have been a great resource to those who seek to protect and promote broad rights for the less powerful. Martha Minow's essay on the history of international human rights law shows how this function of law entered the international arena, first in the wake of World War II and more recently with the International Criminal Tribunals for Rwanda and the former Yugoslavia (pp. 68-69). However, even as it appears that the law will continue to have a dual role, the essays in the collection offer scant evidence that U.S. laws and legal processes will serve as the conduit for "inclusive democratic political processes." Even Minow concedes that "it may be more apt to suggest that the age of human rights rhetoric is upon us, challenging people to realize or else ignore the rhetoric" (p. 58).

Rather than an historical survey *Looking Back on Law's Century* is a series of provocative arguments about the ways that the law shaped and responded to areas of U.S. and international society—for better and worse—during the twentieth century. The contributors will be familiar to readers of *Law and Society Review*, the *Yale Journal of Law and Humanities*, or the growing body of work in the areas of interdisciplinary legal studies. Like these works, *Law's Century* aggressively crosses disciplinary boundaries between rhetoric, anthropology, history, and political science, enlivening and deepening debates about citizenship, human rights, racial and gender injustice, and the United States in a transnational context.

Note

[1]. Christopher L. Tomlins, *Law, Labor, and Ideology in the Early American Republic* (New York: Cambridge University Press, 1993).

If there is additional discussion of this review, you may access it through the network, at:

<https://networks.h-net.org/h-amstdy>

Citation: Lee Bernstein. Review of Sarat, Austin; Garth, Bryant; Kagan, Robert A., eds., *Looking Back at Law's Century*. H-Amstdy, H-Net Reviews. December, 2002.

URL: <http://www.h-net.org/reviews/showrev.php?id=6987>

Copyright © 2002 by H-Net, all rights reserved. H-Net permits the redistribution and reprinting of this work for nonprofit, educational purposes, with full and accurate attribution to the author, web location, date of publication, originating list, and H-Net: Humanities & Social Sciences Online. For any other proposed use, contact the Reviews editorial staff at hbooks@mail.h-net.msu.edu.