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Austin Sarat, Lawrence Douglas, Martha Merrill Umphrey, eds.. *Law and the Stranger.* Stanford: Stanford University Press, 2010. 264 pp. $65.00, cloth, ISBN 978-0-8047-7154-2.

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Strangers discomfit established communities, eliciting strong emotions and often provoking equally strong attempts to remove or at least neutralize outsiders. Strangers elicit these primal responses, not because of their actions, but because their very difference challenges established expectations of proper appearance, language, customs, and ways of life. Cognitive social psychology teaches us that this response is immediate and automatic and is deeply embedded in the pre-conscious brain. It takes conscious and disciplined work to overcome and redirect this human tendency to suspect and exclude strangers and to close ranks around familiar people and existing norms. Hospitality is one name for the cognitive work that is necessary in order for strangers to be admitted and ultimately incorporated into reception societies.

Law and the Stranger is about hospitality and its underpinnings in the philosophy of law. A collection of essays stemming from a seminar held at Amherst College, the individual chapters explore the legal question of the rights of strangers through the multiple lenses of jurisprudence, theory, history, and literature. As the editors make clear in the introduction, the notion of hospitality provides the thread that ties these disparate and far-ranging essays together.

The word “hospitality” dates from the Roman Empire but its roots run back to pre-Periclean Greece. In the ancient world, a host owed food, lodging, comfort, and protection to a stranger while they rested from a journey and also owed them guidance and safe passage when they went on their way. This idea was given philosophical meaning by Immanuel Kant, who argued in his later essays for the ultimate incorporation of strangers in an Enlightened community through the vehicle of international commerce. In a series of works in the 1990s and early 2000s, Jacques Derrida challenged Kant’s Enlightenment incorporation model by posing hospitality as an aporia, a conundrum or insoluble puzzle. The Latin root of the word “hospitality,” Derrida pointed out, was “power” and hospitality was both a measure of a host’s graciousness but also his/her power to dis-

pense or withhold hospitality. This aporia, this dual nature of hospitality, underpins each of the essays in this collection.

In the collection's first essay, "Necessary Strangers," Pheng Chean critiques Kant's notion that international commerce will eventually create a realm of universal hospitality. Chean tests Kant's claims against the experiences of foreign domestic workers (FDW) in southeast Singapore and migrant Chinese sex workers portrayed in Fruit Chan's film, Durian, Durian (2001). What he finds is that rather than offering universal hospitality, global commerce instead creates and marginalizes low-status workers and makes them into permanent "necessary strangers." The nature of their low-status and polluted work in global capitalism provides these workers with little more than the hospitality of being allowed to work. Female domestic workers are denied inclusion in Singapore society because of the legal requirements that their employers post bonds guaranteeing their "good" behavior. The underlying assumption is that these workers are not trustworthy and law-abiding and because of this would never be candidates for inclusion in Singapore society.

Even more severe are the restrictions that international commerce imposes on female sex workers. While Chan's film gestures toward a realm of universal hospitality in its dialogue, in reality it reveals that migrant sex workers are viewed as polluted and undesirable not only in their overseas work sites, but in their own communities when they return home. Even more than domestic workers, global capitalism constructs sex workers as refuse, in the process denying them any form of hospitality, even by their own families and originating communities. Although Cheah views these disparaged workers as constructions of international capitalism, he does not deal with the obvious gender implications of their exclusion and permanent otherness. As much as capitalism, gender norms construct these permanent outsiders and limit the degree of hospitality they are offered.

In "Strangers in Ourselves: the Rights of Suspect Citizens in the Age of Terrorism," Rogers M. Smith looks not at global capitalism, but at the Bush-era war on terror as a legal agent that denies hospitality and most legal rights to certain people suspected of terrorist activities. As he points out, the war on terror threatens to extend the same lack of hospitality to some of its own citizens who might be suspected of harboring terrorist sympathies. Although he doesn't mention it, the assumption made by the Bush and Obama administrations is that these terrorist leanings are generally Islamist in nature.

Smith makes his point by reviewing the history of the legal relationship between strangers and the American state from its inception until 9/11. What he finds is that legal hospitality, expressed as the operation of the nation's laws, affected aliens and citizens equally. All were afforded legal protections under the Constitution and when rights were added or removed from citizens, they were added or subtracted from aliens as well. For example, he argues that Japanese internment during World War II involved Japanese citizens and non-citizens alike. Or, he might have added, the deportation of half a million Mexicans from California and the Southwest during the Depression of the 1930s similarly made no distinction between citizen and alien. Throughout our nation's history, Smith argues, race, not citizenship, has defined the rights of insiders and outsiders.

This political and legal atmosphere began to change in the 1990s when the Antiterrorism and Effective Death Penalty and Illegal Immigration Reform and Immigrant Responsibility Acts began to drive a legal wedge between the treatment of aliens and citizens. The terrorist attacks on the World Trade Center and the subsequent war on terror reversed this trend, however, as George W. Bush and his advisors used a relatively obscure legal interpretation based on the World War II rul-

ing in Ex Parte Quirin, to create a legal regime that limited the rights of American citizens who might be suspected of terrorism as much as it limited the rights of so-called "enemy combatants." In this sense, Smith argues, the American tradition of comparable hospitality (or lack of it) thus continues into the present, albeit in a decidedly darker and potentially more sinister mode.

Moving from the United States to Israel, Leora Bilsky compares the ways in which criminal legal cases involving terrorism have been dealt with in Israel. In "Strangers Within: The Barghouti and the Bishara Criminal Trials," Bilsky addresses the problems faced by courts when they attempt to apply established criminal law to the decidedly political actions and claims of defendants in terrorism trials. In the cases in point, the state of Israel charged two leaders, Azmi Bishara, an Arab Israeli citizen and member of the Knesset, with making speeches that incited terrorist attacks, and Marwan Barghouti, a non-Israeli citizen and member of the Palestinian parliament, with complicity in murder. Where such trials were normally held in special military courts, the Israeli administration decided in these cases to try the two men in the civilian criminal court system.

This decision has far-reaching legal implications, Bilsky argues, because it placed the courts, which claim to adjudicate without reference to politics, squarely in the political arena. In the first case, Bishrara claimed that his speeches were covered under the immunity laws protecting members of parliament and that he was only answerable to the Knesset itself. He further argued that to criminalize his speech behavior, which was directed against the pro-Jewish and anti-Arab nature of the Israeli political and legal system, would in effect criminalize legitimate Arab Israeli opposition to the prevailing policies of the government.

Barghouti made a different, but equally political claim. Barghouti denied the authority of Israel to try him under Israeli criminal law and instead argued that he should be tried under the international law of war, which allowed violent action under certain conditions. Both cases thus threatened to become political trials that blurred the difference between constitutional and criminal law and equally threatened the fairness of the Israeli judicial system. Not surprisingly the courts rejected both men's claims and proceeded to conduct criminal trials.

These and other terrorism cases pose a serious threat to the authority and non-political fairness of court systems, and in response Bilsky proposes two solutions. On the one hand she argues for "abuse of process" defenses which would bar prosecutions where trials would substantially harm the sense of fairness and justice on which the legitimacy of the courts rest. On the other hand she argues that the secretive (and supposedly non-political) deliberations of juries would also remove the taint of politics from terror and other potentially political trials. This appears to be the path chosen by Attorney General Eric Holder and the Obama administration in their decision to try some Bush-era "enemy combatants" in federal criminal courts.

Today's increasingly transnational world provides the context for Paul Schiff Berman's consideration of the conflict between multiple normative communities and the laws which different groups of strangers bring to those communities. In "Conflict of Laws and the Legal Negotiation of Difference," Berman argues that people and technologies such as the Internet that routinely cross national borders necessarily lead to conflicting legal interpretations. Since laws are rooted in nation-states, transnational interchanges naturally invoke choice-of-law questions. Pointing to the general confusion exhibited by U.S. courts in dealing with these transnational issues, Berman suggests a "cosmopolitan pluralist vision" that would acknowledge (and celebrate) difference while providing a means to create hybridities or translations of laws across community and national

boundaries. Negotiation around the choice of laws, agreeable jurisdictions, and the recognition and acceptance of judgments would, Berman argues, allow communication across the boundaries of difference instead of continuing what he views as a futile attempt to resolve these issues by obliterating difference.

Literature opens a different window onto the legal question of the stranger. In "Who's the Stranger? Jews, Women, and Bastards in Daniel Deronda," Hillary M. Schor examines George Eliot's portrayal of three groups of disenfranchised "strangers" in Victorian England as a means to discuss the issues of social and personal alienation. Eliot wrote her novel against a backdrop of destabilized national identity in a period when both women and Jews were actively campaigning for complete inclusion in British society and the British polity.

In Schor's reading, Daniel Deronda is a double story of alienation and otherness as the title character gradually realizes and embraces his Jewish roots and confronts the social stigma and political barriers that his new identity signifies. As Deronda embraces the alienation of a subaltern ethnic identity, Gwendolyn Harleth, the other main character of the novel, also moves from a respectable condition, in this case as a wife and mother, into a different kind of alienation that ultimately affirms her selfhood and worth. The end of an ill-starred marriage to a villainous husband casts Harleth out of the circle of respectability and leads her to recognize her new position as stranger in the community in which she lived. This newfound alienation, Schor argues, allows Harleth to escape the restrictions of Victorian patriarchy and enables her to glimpse a world in which strangers like herself could claim the same rights as "respectable" Victorian insiders.

In the book's final essay, Kenji Yoshino argues that utopian literature, while providing a space in which we can become strangers to our everyday world, also creates worlds that are ultimately authoritarian and antilegal. Drawing on Michel Foucault's notion of "heterotopias," spaces in which human diversity and difference can be reimagined as an integral part of social and legal life, Yoshino finds similar spaces in law. It is in dicta, dissents, and the Universal Declaration of Human Rights that he finds opportunities to step away from the real world into the legal imaginary.

While the title, Law and the Stranger, suggests comparison to the work of Mae Ngai and JoAnna Poblete-Cross on the legal position of nonwhite migrants in nineteenth- and twentieth-century America, the essays collected here are much more about the philosophy than the history of law. With the partial exception of Smith's essay, legal historians will find little in the way of empirical historical discussion in this book. On the other hand they will discover a world of interesting and provocative ideas between its covers.

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