UC Irvine
UC Irvine Previously Published Works

Title
Legitimate Acts by Mindie Lazarus-Black; Global Culture

Permalink
https://escholarship.org/uc/item/3s04r1dt

Journal
PoLAR Political and Legal Anthropology Review, 18(1)

ISSN
1081-6976

Author
Maurer, Bill

Publication Date
1995-05-01

DOI
10.1525/pol.1995.18.1.123

Copyright Information
This work is made available under the terms of a Creative Commons Attribution License, availalbe at
https://creativecommons.org/licenses/by/4.0/

Peer reviewed

eScholarship.org Powered by the California Digital Library
University of California

BOOK REVIEW

Bill Maurer
Department of Anthropology, Stanford Universtiy

Lazarus–Black, Mindie. *Legitimate Acts and Illegal Encounters: Law and Society in Antigua and Barbuda*. Washington, D.C.: Smithsonian Institution Press, 1994.

Olwig, Karen Fog. *Global Culture, Island Identity: Continuity and Change in the Aftro–Caribbean Community of Nevis*. Chur, Switzerland: Harwood Academic Publishers, 1993.

Until recently, few books have been published in Caribbean studies that emphasize law and legal processes. For its part, research in sociolegal studies has tended to focus on American legal processes and has rarely explored legalities outside of the continental United States. Sociolegal scholars may have assumed that places outside the U.S. more properly deserved the attention of anthropologists than themselves—after all, "they" have "custom," while "we" have "law." Or, assuming that the colonial project represented an encounter between competing legal systems, they may have left such studies to anthropologists interested in legal pluralism. Caribbeanist anthropologists may have assumed that the effects of law in Caribbean societies were self–evident—that slave–era law helped maintain plantation agriculture, that indenture law ensured a pliant labor force after slavery ended, and that law in colonial and decolonizing Caribbean islands functioned to do what its ideology claims: mediate disputes, administer justice, and govern populations.

Recent scholarship in the Caribbean challenges Caribbeanists' avoidance of the law and sociolegal studies' neglect of colonialism and legal processes outside the U.S. Mindie Lazarus–Black's (1994) *Legitimate Acts and Illegal Encounters: Law and Society in Antigua and Barbuda*, and Karen Fog Olwig's (1993) *Global Culture, Island Identity: Continuity and Change in the Afro–Caribbean Community of Nevis*, make this an exciting time to be an anthropologist interested in both the Caribbean and sociolegal studies. These books present fascinating historical and ethnographic materials and throw fresh perspectives on old problems in Caribbeanist research at the same time that they pose questions for sociolegal studies. They highlight the importance of looking at the Caribbean to understand the role of liberal law in creating the very inequalities that it is meant to redress. They also offer a unique perspective on the place of the Caribbean in the origins of modern legal orders.

Why should sociolegal studies care about the Caribbean? As scholars of the region have pointed out, Caribbean colonization in the sixteenth century represented a "formative stage of

a worldwide phenomenon": "the creation of multiracial, multicultural societies" (Smith 1988:3). Conquered and occupied at a time when divinely ordained kings ruled tributary empires in Europe, the Caribbean remained under European political control as bourgeois revolutions ushered in liberal democracies and industrial capitalism supplanted mercantilism. Sidney Mintz has argued that Caribbean plantation slaves produced "low–cost, high–energy food substitutes (such as sugar, rum, coffee, chocolate, and even tobacco) for the European working classes" and thus played a vital role in the origins of industrial capitalism (Mintz 1977:265). Scholars interested in liberal law's contradictions could learn much by considering the central role of the Caribbean in the transition to modernity. In the seventeenth and eighteen centuries, legal principles based on the belief that all "men" were equal came into being together with laws underwriting slavery, and contracts regulating labor and business transactions came into being together with bonded servitude and markets in people.

Why should Caribbeanists care about the law? Research on the Caribbean has traditionally investigated kinship, gender, race and class. Surprisingly little has been done to investigate the legal foundations of these constructs. Scholars tend either to take them for granted as native or analytical terms or to investigate their historical construction without attending to the powerful ways that liberal law elicits them. Lazarus–Black's book makes an important contribution to our understanding of how liberal law and modern disciplinary "government through families" elicit "natural" difference by claiming to provide a forum for the "expression" and "regulation" of differences that supposedly exist prior to the law. Although Olwig is not explicitly in dialogue with sociolegal studies, her book offers insight into the transition from hierarchical to liberal polities. This transition is crucial for sociolegal scholars investigating the assumptions and constitutive power of liberalism in modern legalities. Lazarus–Black, who does position herself within the sociolegal tradition, is particularly informative on the creative responses of subjected peoples to these shifting legalities (see Darian–Smith 1994).

Below I explore four historical periods treated in these books to make a sketch of the transition from hierarchical models of social order to liberal models founded in modern law. I begin with the hierarchical society brought to the Caribbean in the sixteenth and seventeenth centuries, then move to the beginnings of "liberal" law in the eighteenth century, to the post–Emancipation period in the nineteenth century, and finally the period of outmigration and diaspora in the twentieth century.

Both Olwig and Lazarus–Black begin their books by considering the early period of colonization in the sixteenth and seventeenth centuries. "To the early British settlers, it was

'natural' that there be different ranks of men" (Lazarus–Black, p.12). In the seventeenth century, slaves, like servants occupied an established social rank in a hierarchy—as inferior people, but as people nonetheless. Lawmakers focused on maintaining status distinctions. Seventeenth century "legislators were anxious that sexual relationships, love, or marriage not threaten the boundaries between different categories of workers" (Lazarus–Black, p.67).

In the mid– to late eighteenth century, legal principles derived from social contract theory were imported into the Caribbean. Olwig argues that as eighteenth century colonial production shifted from yeoman farming to plantation agriculture; the hierarchical world gave way to notions of equality. Changes in productive relations, together with slaves' and others' challenges to hierarchy, begged new forms of domination and control. Local whites had the ability to draft laws independently of the Crown and thus were able to respond quickly (Lazarus–Black, pp.22–24).

With changes in economic and political relations, the hierarchical inequalities of people transformed themselves into "natural" inequalities: all people were considered equal by nature but some had "faulty natures" making them less than "free men." Lazarus–Black draws our attention to the role of liberal law in constructing "natural" families and individuals who, if they "failed," had only themselves to blame for their problems and required the intervention of government agencies to "manage" them. Olwig observes that the transition to liberal law led to new racisms. "While the colonizer tended to regard the early African slaves' cultural practices with a mixture of incredulity and curiosity, the later slave culture became increasingly condemned as immoral and animal–like" (Olwig, p.7). Liberal law called forth an individualism at the same time it denied humanity to slaves, and linked this denial not to socially constituted hierarchy but to "naturally" given difference.

But enslaved persons found possibilities in liberal law to protest masters' treatment of them even if they sometimes continued to imagine themselves as part of a corporate status group (Olwig, pp.13, 133). A "justice" and "rights" ideology quickly emerged among the enslaved (Lazarus–Black, p.38, ch.2). In a 1736 rebellion, slaves used courts as liberals to argue for justice and equality, but did so as a collectivity, as a corporate status group (Lazarus–Black, p.51). Lazarus–Black's highly original treatment of *obeah* (usually construed by Caribbean scholars as witchcraft) as a "system of illegalities" or constructed "customary" law called forth by and shadowing the legal order demonstrates how people tried to manipulate hierarchy and acquire justice (Lazarus–Black, p.43ff).

The liberal ethos called forth "natural" relations of blood by suggesting that all persons were made by "nature" and not placed by God in a social hierarchy (Lazarus–Black, p.58–59). The Amelioration Acts of 1798 in Antigua "gave . . . slaves a way to announce publicly, and force whites to acknowledge, that they were people living in families" (Lazarus–Black, p.71); hence "after 1798, slaves began incorporating kinship legalities into their kinship practices." The new legality conjured up a kinship system that "demonstrated" all persons to be equal because they were all constituted by the same kinds of ("blood") relationships: "the kinship system created in Antiguan law encompassed all of the island's people: settler, servant, and slave. Kinship legalities had penetrated every rank of society" (Lazarus–Black, p.71). Liberal law called forth a "nature" that transcended social order. As a consequence, slaves and free persons found that they needed to "prove" their "good natures" to lessen the inequalities they faced—and they did so by emphasizing "good marriages" and "legitimate children" (Olwig, pp.13, 69; Lazarus–Black, chs.4 and 5).

Emancipation in 1834 generated decisive changes in Caribbean social orders. "Lawmakers placed increasing emphasis on individuals' rights to enter into contracts and concomitantly developed a new relationship between individuals, families, and the state" (Lazarus–Black, p.102). No longer a patriarchal status group, the "family" in this new order comprised a set of contractual and blood relations among people, and the state's role became that of guaranteeing those contracts and providing sanctions for their breach (Lazarus–Black, p.107). "Poor laws were drafted to shift the burden of caring for the underprivileged from the state to the family. Statutory law stipulated exactly who constituted an individual's 'family' and who was, therefore, legally responsible" (Lazarus–Black, p.103).

"Government through families"—employing censuses, birth and death registers, and other means of enumerating "populations"—apparently was meant to lower infant mortality, but also served to maintain the labor force (Lazarus–Black pp.111–112; Foucault 1978). New notions of "welfare" and "dependency" arose with state intervention in childcare (Lazarus–Black, p.112). In a society based on individual achievement rather than ascribed status, education became a means to mobility; whites wanting to maintain their position in society attempted to limit access to schools, and made "legitimacy" a litmus test for school entrance applications (Lazarus–Black, p.115; Olwig pp.100–109).

Lazarus–Black notes the irony of the liberal doctrine of equality for the region's poor; all workers were "individuals," but "needy" individuals were seen as "parts of families." The poor had to demonstrate that they belonged to a "family" in order to receive poor relief (Lazarus–Black, p.116). Here the law elicited "natural" families while "helping" needy

persons to stand alone as individuals. "The individualization of labor was accompanied by a program of government through families that redefined the state's role in managing formerly private affairs of kin" (Lazarus–Black, p.126).

Yet the new individualism also brought more people into the courts to seek justice and fostered the expansion of the new hegemonic legality throughout Caribbean society (Lazarus–Black, p.109). It did so, however, in a contradictory manner. Individuals were "free" to obtain justice through courts. However, only "failed" individuals were seen as needing courts to intervene in their "private" affairs. Lazarus–Black observes that today people find going to court shameful (compare Greenhouse 1989).

Both Olwig and Lazarus–Black discuss the impact of twentieth century emigration on Caribbean societies, and both discuss the legal constitution of "diaspora." For Antiguans, U.S. immigration law's emphasis on "blood relations" encourages people to use adoption law to *create* "natural" families in order to facilitate the movement of persons across borders (Lazarus–Black, p.185). For Nevisians, the process of making a "home" requires emigration, since a heavy emphasis on "equality" mandates that the material goods that "make" a home not appear to have been gained at the expense of neighbors. In Olwig's account, children become crucial links to forge a home community across territorial boundaries (Olwig, ch.7).

As studies of law, these two books thus offer new answers to old questions dogging Caribbean studies—questions about kinship, race and class, household, immigration and identity. As works on Caribbean societies, these books have much to contribute to the study of liberal law. They call upon us to interrogate the paradoxical and ever–changing shape of a world "where Western concepts of equality leave little room for the recognition of other ways of thinking and acting" (Olwig, p.208). For legal scholars interested in Caribbean societies, they lead the way in an exciting period of future research.

References Cited

Darian–Smith, Eve

1994 Review of Lazarus–Black. *PoLAR: Political and Legal Anthropology Review* 17(2):125–135.

Foucault, Michel
1978 *The History of Sexuality, vol.1.* New York: Vintage.

Greenhouse, Carol
1989 Interpreting American Litigiousness. In *History and Power in the Study of Law*, J. Starr and J. Collier, eds. Ithaca: Cornell University Press. Pp. 252–273.

Lazarus–Black, Mindie
1994 *Legitimate Acts and Illegal Encounters: Law and Society in Antigua and Barbuda.* Washington, D.C.: Smithsonian Institution Press.

Mintz, Sidney
1977 The so–called world system: local initiative and local response. *Dialectical Anthropology* 2(4):253–270.

Olwig, Karen Fog
1993 *Global Culture, Island Identity: Continuity and Change in the Afro–Caribbean Community of Nevis.* Chur, Switzerland: Harwood Academic Publishers.

Smith, R.T.
1988 *Kinship and Class in the West Indies.* Cambridge: Cambridge University Press.