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Volume 11 - Number 2

# AMICI

Newsletter of the Sociology of Law Section of the American Sociological Association.

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Mathieu Deflem,  
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You don't know what it's like  
You don't have a clue  
If you did, you'd find yourselves  
doing the same things too—  
Breaking the law!

—Judas Priest.

**Editor's Preface**

*This issue of Amici features a symposium on the Iraq war resolution that recently passed in the ASA. Readers will know that there has been some debate on the resolution among the Association's members. The essays in this symposium take the resolution as an occasion to ponder on a variety of relevant sociological matters of law. Yet, rather than merely offering an extension of the ongoing pro & con debate, the contributors to this symposium were asked to offer sociological reflections of some of the many issues involved in relation to important legal and justice issues and their interrelation, which at least since Weber are a central concern in the sociology of law. Readers may also know that I am a strong critic of the resolution. Although my opinion in this matter will not count, it may have inspired my decision to organize this symposium. I therefore provide a short reflection in Appendix to this symposium. I am grateful to the authors, Judith Blau and James Tucker, for their contributions.*

—MD

## LEGALITY, LEGITIMACY, AND THE ASA IRAQ WAR RESOLUTION Weberian Dilemmas In Modern Times

**Background**

The ASA Iraq war resolution was initiated by a petition that was signed by 3% of the eligible ASA membership, meeting the ASA's bylaw requirement to send the petition to the membership for a vote. The resolution then passed and so became an official statement of the ASA, which we here reproduce.

**American Sociological Statement Against the War on Iraq**

The American Sociological Association comprises sociologists and kindred professionals who study, among other things, war and peace, democracy and totalitarianism, conflict resolution and violence, systems of inequality and their effects, states and legal orders, nationalism, and nation-building.

- We believe that foreign interventions that do not have the support of the world community create more problems than solutions. President Bush's and Prime Minister Blair's decision to invade Iraq against the wishes of most of the nations of the world will undermine the already weakened UN, the League of Arab States, and the rule of international law, and will bring more harm than good to the Iraqi people.
- We also believe that the threat of terrorism is not ameliorated by this intervention in Iraq. Instead of lessening the risk of terrorist attacks, this invasion could serve as the spark for multiple attacks in years to come.
- This statement is not issued, and should not be construed in any way, as supporting the dictatorship of President Hussein or his regime. Our major concern with Bush and Blair's policy is not the stated end but with the means.
- Hence, the American Sociological Association calls for an immediate end to the war against Iraq.

—See *War Resolution Symposium* page 3.

## New *Amici* Newsletter Editor!

The Sociology of Law section is very pleased to have secured David Shulman as the next *Amici* newsletter editor. Below follows a message from our new editor.

*Mathieu has kindly offered me an early opportunity to request contributions for upcoming issues of Amici. I'd also like to thank Mathieu publicly for his excellent work editing Amici, and for his ongoing guidance in my making a transition into the editorship. The next several issues of Amici will fall under my editorship. As always, section members are invited to submit any ideas for essays relating to our specialty that they might wish to contribute. Reflective essays on teaching, aspects of graduate training and on books in the sociology of law and related areas that might be considered for a symposium are always welcome. An addition to upcoming issues will be publishing dissertation abstracts of ongoing or recently completed PhD theses of interest to the section membership. To that end, I ask interested dissertation authors and dissertation committee members, to submit abstracts (and a short biographical note about the author) to Amici, so that section members can learn more about the exciting new work of upcoming scholars in the sociology of law. My email is shulmand@lafayette.edu or mail to: David Shulman, Department of Anthropology and Sociology, Lafayette College, Easton, PA 18042.*



### About the New *Amici* Editor...

David Shulman earned his Ph.D. in sociology from Northwestern University in 1997. His interests include complex organizations, deviant behavior, deception, marketing and consumer research. Has published articles on impression management, the meaning of possessions to consumers and private detective work in a number of journals such as *The American Sociologist*, *Field Methods*, *Journal of Consumer Research*, *Journal of Contemporary Ethnography*, *Symbolic Interaction*, and *Handbook of Services Management and Marketing*.

Shulman is recipient of a MacArthur Summer Research Fellowship. Northwestern University awarded Shulman the Outstanding Service Award of the Searle Center for Teaching Excellence and the Robert Winch Award for Outstanding Graduate Student Paper.

Allyn & Bacon has just published a fifth edition of *Talking Sociology*, a popular college text written by David with Gary Alan Fine. The goal of *Talking Sociology* is to introduce readers to sociological knowledge by engaging them in a systematic exploration of how sociology bears on contemporary social questions. David is also working on a new book about the role of deception in workplace culture.

## Editorial Note

*Section members are no longer encouraged to submit their ideas for contributions to the present Newsletter Editor, as this is the last issue under his editorship.*

*Please contact the new Editor (see left-hand column on this page) and offer your brightest ideas. May you live to see the dawn.*

*Mathieu Deflem,  
Newsletter Editor, 2001-2004  
University of South Carolina,  
Deflem@gwm.sc.edu*

**Mounira Maya Charrad's** book, *States and Women's Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco* (UC Press, 2001), recently received a fifth award, the Best Book on Politics and History 2003 Greenstone Award (co-winner) from the American Political Science Association. The book previously received awards in Sociology, History, and the Hamilton Award for best book in any field from the University of Texas at Austin.

## *Amici*

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*War Resolution Symposium*

—From Page 1.

**A Call for a Constitutional Convention**by **Judith Blau***University of North Carolina, Chapel Hill*  
jrblau@email.unc.edu

In Spring 2003 the US Chapter of Sociologists without Borders/Sociólogos sin Fronteras (SSF) obtained a sufficient number of signatures on a petition opposing the US invasion of Iraq to place it, as a resolution, on the ASA ballot. Many issues played a role in our drafting this resolution, not the least of which is that the US defied the framework of international law of which the US is a party, namely, the Geneva Conventions, as well as the Charter of the United Nations. What the atrocity of 9/11 highlighted was the need for more international cooperation, not less, to find terrorists, to prevent the use of weapons of mass destruction, and to ensure that no nation-state would harbor those who perpetrated crimes against humanity.

Invading Afghanistan, the US claimed to be acting under Article 51 of the UN Charter, which authorizes a sovereign state to act in self-defense. The ensuing occupation of Afghanistan sorely tested this initial justification for the invasion. Moreover, there was no international justification or multinational support for the invasion of Iraq, and US detention of the prisoners at Guantánamo was a flagrant violation of the Geneva Conventions. Humanitarian law, as the UN Charter states, is rooted in universal contempt of barbarous acts that violate human rights and a powerful affirmation that human rights should be protected by the rule of law. It is, one might imagine, something like a slippery slope. If US citizens did not object to the treatment of prisoners at Guantánamo, it would be likely they would not object to further violations.

Over the past decades, the UN has enacted international law to affirm human rights—which we might call positive law—but it has also enacted negative law, namely punishment in the case of criminal violation of human rights.<sup>1</sup> The former includes the promotion of the well being of humans, while the latter deals with unconscionable crimes against humans. In my own work I am primarily interested in positive human rights law, but I recognize that members of the Section on the Sociology of Law may be more interested in the latter because it is accompanied by a judicial system and provisions for punishment of violators.

The Geneva Conventions of 1949 provided the first set of directives protecting the rights of civilians during wartime and concerning the treatment of prisoners.

These conventions were also normatively strengthened by the UN Charter, which prohibits waging international wars of aggression. It was not until the 1990s that the Nuremberg principles were embodied in international law that was accompanied by a judiciary apparatus, rules of evidence, and criminal penalties. This initially took the form of two specialized tribunals, the Hague Tribunal for war crimes in the former Yugoslavia (in a Security Council resolution in 1993), and the Hague Tribunal for Rwanda (in a Security Council resolution in 1994). Subsequently, in 1998, the International Criminal Court (ICC) was established.

The ICC, under the Rome Statute, advances the principles that perpetrators of international human rights crimes ought be brought to justice in an international court of law and that through precedents and an emerging normative order, international condemnation would help to prevent such crimes in the future. The jurisdiction of the Court includes four types of international crimes: the crime of genocide (the systematic attempt to destroy a group), crimes against humanity, war crimes, and the crime of aggression. The US is only one of seven nations that opposed the enabling Statute, raising important questions for American citizens, in my view, but especially so for sociologists interested in international law.

My own concern has been “soft” or “positive” human rights, which I define here as the rights that people have, under international law, that have evolved independently of capitalist values and institutions (namely, the rights of enterprise without accompanying social responsibilities). Drawing on the work of Karl Polanyi,<sup>2</sup> Moncada and I argue that economic actors escaped societal control during the period of rapid industrialization in the nineteenth century, and increasingly operate without societal responsibilities.<sup>3</sup> Through their rent-seeking behavior, they exploit citizens through the advantage they make of tax law, and their willful disregard of human rights instruments. Rapid globalization has only intensified the extent and depth of exploitation. In principle, hard human rights law now can deal with cases involving international criminals and terrorists, but advancing soft human rights doctrine mostly depends on the will of government leaders, NGOs, and, most of all, high popular regard for human rights that is deeply entrenched in a democratic society. Soft doctrine, in other words, is expressed in practices, norms, and social behavior. For example, since the enactment of Civil Rights legislation in the 1960s, we have come to discover that civil rights is more a matter of daily practices than of legal decisions.

According to conventional classification, there are three generations of “soft” human rights. The first generation is comprised of civil and political rights that were advanced by English common law, and

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<sup>2</sup> Karl Polanyi, *The Great Transformation*. (New York: Rinehart & Company, 1944).

<sup>3</sup> Judith Blau and Alberto Moncada, *Human Rights/Liberal Rights* (Lanham, MD: Rowman & Littlefield, 2004; forthcoming).

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<sup>1</sup> An excellent source on international criminal law is Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice* (New York: New Press, 1999).

subsequently in France and the US. Most countries have constitutional provisions that are virtually identical to those in the US Constitution and pertain to equal protection before the law, rights to a fair trial, and the liberties spelled out in the First Amendment to the Constitution. Civil and political rights are codifiable and enforceable at the level of the nation-state. The second generation of human rights pertains to the rights of people to collective resources, or in the words of Amartya Sen, the rights of people that they inherently possess as freedoms to develop, namely the rights to education, housing, and work.<sup>4</sup> The third generation of human rights is very much an aspect of globalism, and pertains to the rights of all people to be citizens of the world, with rights to cultural and group identity, group membership, and to a clean environment.


The United States has ratified only a small fraction of human rights treaties and charters, both hard and soft. For example, it has not ratified those dealing with the proliferation of biological and toxic weapons, the landmine treaty, the Kyoto Protocol, the treaty pertaining to the stockpiling and use of chemical weapons. Nor has the US ratified the Convention on the Rights of the Child, the treaty pertaining to the protection of migrant workers and their families, the Convention on the Elimination of Discrimination against Women, and most of the international labor standards pertaining to the protection of workers. It denies POW status to Taliban/Al-Qaida, just as it violates international law on the treatment of migrant workers.

It is irresponsible, in my view, for US sociologists not to take thoughtful positions on these issues. For example, considering homelessness and childhood hunger as merely expressions of socioeconomic inequality that can be explained by variation in human capital is quite different from considering them as fundamental violations of human rights. It makes a difference for the kind of research we do as well as our own interpretations of our research findings. I also believe that it is our responsibility as social scientists to change the public discourse, from considering homelessness and childhood hunger as "social problems" to understanding them as violations of international human rights standards.

Sociologists without Borders has filed a case against the United States with UNESCO and in a nine-page brief explains how the US is in violation of the Declaration of the Responsibilities of the Present Generation to Future Generations. We draw on sociological wisdom about how institutions can embed provisions for the perpetuation of conditions that preserve human freedoms, maintain sustainable communities, and ensure the healthiest environment possible. We also argue that the pursuit of profits by the few, in the absence of tight controls over multinationals and investors, is a major obstacle to the implementation of human rights law (soft and hard). We also argue that the

United States has become a rogue nation not only in its imperial quest for power, but also in its efforts to secure the most favorable conditions for "rent-seeking," namely, government's capacity of allowing corporate actors to exploit common pool resources for their own benefit. Rent-seeking has expanded far beyond national borders as the war in Iraq increasingly appears to have largely served the interests of multinationals. They also stand to gain by the dramatic expansion of our military bases all over the world since 2001, mainly to protect oil, but also in the draft plans for weaponizing outer space. As the distinguished and famously eloquent historian, Arthur Schlesinger Jr., puts it, "the loonies are in change."<sup>5</sup>

I agree, but argue that bringing about a human rights regime requires much more than throwing the rascals out. I propose a convention for the purpose of revising the US Constitution that would explicitly curtail excessive rent-seeking and affirm human rights principles. As sociologists who study legal institutions, the readers of this newsletter are probably aware that virtually all states revised their constitutions in the last decade in ways that could better take into account the constraints and opportunities of rapid globalization. Likewise, these late twentieth constitutions incorporate the language and provisions of international human rights doctrine, and affirm, for example, the rights of vulnerable groups, such as children, universal rights to housing, and rights to culture and group membership. No other constitution in the world is as ancient, and I argue, as outdated, as is the Constitution of the United States. This is fertile territory for sociologists because nation-building issues have been mostly resolved and the task now is the promotion of human freedoms, welfare, and dignity.



*Professionals in medicine and journalism, among others, have volunteered to take on the responsibilities of working with people in many countries to help them solve, in the most disinterested way possible, the many problems they face. These problems were created by colonialism and capitalism, and aggravated by globalization. Sociologists without borders was founded as part of this new secular global volunteer system, dedicated to working in solidarity with oppressed peoples. Sociologists without borders supports the right to peaceful meddling, and opposes States' practices and programs that advance their own sovereignty but diminish peoples' human rights.*

**<http://www.sociologistswithoutborders.org>**

— **War Resolution Symposium** continued on next page.

<sup>4</sup> Amartya Sen, *Development as Freedom*. (NY: Alfred A. Knopf, 1999).

<sup>5</sup> Arthur Schlesinger, Jr., "Eyeless in Iraq," *The New York Review of Books* 50 (16) October 23, 2003.

**War Resolution Symposium**

—From Page 4.

**The Unethical Organization**by **James Tucker***University of New Hampshire*  
jetucker@cisunix.unh.edu

Writing this short essay has not been easy. This is not because the issue at hand is particularly complicated. In fact, to me the issue is quite simple. The Iraq war resolution, now an official ASA policy statement, clearly violates the scientific mission of the ASA. Why is it necessary to present an extended argument justifying this position, a position that I think should be obvious to any sociologist of law, or any sociologist for that matter? Anyone who cannot immediately identify the illogical and deceitful nature of the resolution is unlikely to be persuaded by someone pointing it out in an essay. I am tempted, like Donald Black did in the Spring 1998 issue of AMICI, responding to critics of a scientific sociology of law, to simply refer readers to Max Weber's writings on facts and values in the social sciences ("The meaning of 'ethical neutrality' in sociology and economics," Pages 1-47 in *The Methodology of the Social Sciences* New York: The Free Press, 1949; "Science as a vocation." Pages 129-156 in *From Max Weber: Essays in Sociology*, edited by H.H. Gerth and C. Wright Mills. New York: Oxford University Press, 1958). But I won't. I will, however, to make my task a little less arduous, include below the following "ethics complaint" that I circulated over the Internet shortly after the resolution became public. The complaint, which addresses ethical and other problems with the resolution, was endorsed by more than 100 sociologists, including three past ASA Presidents.

**The Ethics Complaint**

The resolution—now an official position of the ASA—violates the ASA's Code of Ethics, which states that sociologists must "provide service only within the boundaries of their competence, based on their education, training, supervised experience, or appropriate professional experience" (Ethical Standards, Section 1) and "rely on scientifically and professionally derived knowledge; act with honesty and integrity; and avoid untrue, deceptive, or undocumented statements in undertaking work related functions or activities" (Ethical Standards, Section 2.a.) The resolution also violates current ASA policy that states that the organization should take official positions on public policy only when there is "a solid foundation of sociological knowledge as well as widespread agreement on its policy implications" (Executive Officer's Column, ASA *Footnotes*, April 2003).

Statements in the resolution such as "we believe" that the war will "bring more harm than good to the Iraqi people" and "could serve as the spark for multiple attacks for years to come" are opinions ("undocumented statements"), not supported social scientific evidence.

Has sociology reached a level of scientific and theoretical precision that allows it to forecast the future of terrorism and other international behavior (or any form of human behavior for that matter)? Certainly not, and to claim otherwise is dishonest. Furthermore, most sociologists are not specialists in terrorism, war, and international relations, and are therefore not professionally qualified to take a position on the issues addressed in the resolution. This too is unethical and an abuse of professional authority.

More generally, the call for an immediate end to the war is a moral position that lies beyond the jurisdiction of sociology as a science, regardless of the validity of the predictions about the effects of the war. As any philosopher of science knows, moral positions cannot be deduced from science itself, meaning sociological theory and research, no matter how advanced, cannot tell us whether any particular social policy (such as the decision to go to war) is desirable or undesirable. The morality of war is therefore a matter that is beyond the purview of a scientific organization. So when the ASA takes a position on the war, it ventures into a realm of moral questions that it is unequipped to handle. For example, the resolution endorses a position that the morality of international behavior (i.e., war) is determined by a majority vote of nations, a position that, among other things, would have upheld colonialism and slavery.

The ASA failed to protect the profession from those who are willing to use it to advance moral and political causes. Indeed, the ASA itself has become a party to this serious breach of professional ethics.

**The ASA Response**

In early August, I submitted the ethics complaint to the ASA Committee on Professional Ethics (COPE). The COPE reviewed the complaint and, according to a letter I received in early September 2003, determined that the complaint "seemed more a matter of Association governance, and therefore, a matter for [the Executive] Council, whereas the ASA Code of Ethics addresses the behavior of individual members." At the request of the COPE, the Executive Council discussed the complaint at the ASA meeting in Atlanta.

In early October 2003, I received a letter from the Executive Officer, who suggests that ASA policy is contradictory when it comes to official statements on public issues. On the one hand, she cites a 2001 ASA sub-committee's report on policy statements: "Chaired by then Vice President Richard Alba, the sub committee concluded that 'a prior limits should not be placed on Council's ability to speak for the Association on important matters of public policy. This conclusion does not, of course, prevent the Council from deciding that statements on a particular policy are inappropriate for the Association (because, for instance, they are well beyond the expertise of the discipline or not relevant to it)." On the other hand, she states that "under our By laws, even if Council decides that a Members' Resolution is beyond the expertise of the discipline, or rejects it for any other reason, Council is required to submit that resolution to the to the membership for a binding vote, if it has been signed by at three percent of

the Association's voting members." In the end, the Council chose to abide by the By laws rather than the ASA policy that was created in 2001.

Technically, then, the matter is in fact an ethical one (rather than an issue of governance) that concerns the members who drafted and sponsored the resolution and the members who voted to have the resolution become official ASA policy. But COPE was unwilling to investigate the matter further or sanction anyone.

### An Isolated Incident?

Perhaps the Iraq war is an aberration and most sociologists became caught up in the passion of the moment and were unable to separate their personal beliefs about the war from their professional responsibilities as social scientists. Unfortunately, this does not appear to be the case. Just recently, for example, a resolution opposing President Bush's suggestion that the US Constitution be amended to prohibit same sex marriages was endorsed by three percent of the membership and forwarded to ASA Council, which "voiced, strong unanimous support for the resolution, thereby making it an official ASA policy statement" ([www.asanet.org/public/marriage-res.html](http://www.asanet.org/public/marriage-res.html)). The Council also chose "to submit the resolution directly to the membership on the 2004 annual election ballot [because] endorsement by the membership would give the resolution greater weight" (*ibid.*).

This resolution contains the same ethical and other problems as the Iraq war resolution. The authors of the resolution cite no sociological studies, other than to make the general claim that "sociological research has shown that systems of inequality are detrimental to the public good." More importantly, however, the resolution supports a moral position that cannot logically be derived from scientific research. Once again, then, sociologists have violated the Code of Ethics by abusing their professional authority.

I might also add that the latest resolution has another ethically troubling dimension. In early March 2004, ASA President Michael Burawoy, claiming to speak on behalf of ASA Council, sent an e-mail to the chairs and chairs-elect of the Sex and Gender, Sexualities, and Family Sections and members of the Lesbian, Gay, Bisexual, and Transgendered Caucus. The e-mail detailed several actions—including a member resolution—that the ASA might take in response to Bush's proposed Constitutional amendment. In fact, Burawoy encouraged the various chairs and members of the LGBT Caucus to pursue a member resolution, even pointing out that "we would need to move swiftly" so that members could get a chance to vote on it during the upcoming ASA elections ([stata.unlv.edu/familysection/fa2004v5\\_03c.htm](http://stata.unlv.edu/familysection/fa2004v5_03c.htm)).

Burawoy's e-mail also provided suggestions for the content of such a resolution. After conceding that the research on lesbian and gay parenting "is not uncontroversial and many studies have methodological flaws" and may be "too thin," he nonetheless suggests the following: "It is possible that a member resolution could be prefaced by (or incorporate) the major findings [of research on lesbian and gay parenting]—if a

consensus could be achieved." In other words, the ASA President solicited a "member resolution" and offered potential authors of such a resolution specific advice on the kind of language it might contain.

Why does the ASA permit this to happen? One answer is that ASA regulations are not clear when it comes to member resolutions. This may partially explain the lack of enforcement of ASA ethical principles by the organization. Beyond this, however, is a sociological reality that sociologists of law are familiar with: Written law (including formal rules not administered by the state) does not necessarily reflect the real world application of law (or other formal rules). Police officers and judges, for example, define the written law in different ways in different cases, or they disregard the written law altogether (all of this depends on the social structure of the legal case). Sociologists do the same thing. Those of us who object to violations of ASA policy are therefore unlikely to get far trying to get members to live up to the organization's standards of conduct since these standards have been disregarded by most members.

In light of these developments, I and others think it is time to form a new association that is truly dedicated to advancing sociology as a science. Some other disciplines have more than one national association, and it is not uncommon for academics in such disciplines to have memberships in more than one association. I do not see why sociologists cannot do the same.

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### ...Amici Quotes...

I'm always more persuasive when I don't believe what I'm saying.

—Ally McBeal.

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## SAVE SOCIOLOGY

*The Save Sociology website was developed in response to the various forms of attack on sociology as an academic discipline that have sadly taken place in recent years, especially since the advent of so-called public sociology. The site collects—and makes public to the public!—all kinds of pertinent information that provides evidence of the non-academic nature of these developments and that offers food for thought to secure the academic status and objectives of the discipline of sociology.*

The Save Sociology Site is available @

**Academus.org**

<http://www.academus.org/>

SOCIOLOGY OF LAW SECTION  
ACTIVITIES @ THE ASA ANNUAL  
MEETING, SAN FRANCISCO, 2004

*The Sociology of Law section has organized several paper sessions and a series of roundtables. The section Business Meeting --to which all members are invited-- is scheduled on Sunday, 8/15/2004 from 3:30 p.m. - 4:10 p.m.*

**1. "THE SOCIAL STRUCTURE OF LAW"**

Sunday, 8/15/2004 from 10:30 a.m. - 12:10 p.m.

Organizer: Mark Cooney (University of Georgia)

President: Sharyn L. Roach Anleu (Flinders University)

Papers:

Theresa L. Goedeke (Florida A&M University)  
Blurring Boundaries: Science and the Making of  
Manatee Protection Law

Matthew David Dimick (University of Wisconsin)  
Of Land and Lordship: Class Structure, Class  
Formation, and the Origins of Property in Early Medieval  
England

Valerie Jenness (University of California, Irvine) &  
Ryken Grattet (University of California, Davis)  
Operationalizing Criminal Law and Policy in Local  
Law Enforcement: Organizational Permeability and the  
Policing of Hate Crime

John E. Shutt (University of South Carolina) &  
Mathieu Deflem (University of South Carolina)  
The Maze and the Minotaur: Habermas,  
Technocratization, and Federal Sentencing Guidelines

Discussant: Calvin Morrill (University of California-Irvine)

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**2. "SOCIAL MOVEMENTS AND THE LAW"**

Co-sponsored with the Section on Collective  
Behavior and Social Movements

Monday, 8/16/2004 from 10:30 a.m. - 12:10 p.m.

Organizer: Mary Bernstein (University of  
Connecticut)

President: Ryken Grattet (University of California,  
Davis)

Papers:

Jennifer Earl (University of California) & Sarah A.  
Soule (University of Arizona)  
Seeing Blue: A Police-Centered Explanation of  
Protest Policing

Anna-Maria Marshall (UIUC)  
Putting the Cause Before the Law: The Oppositional  
Potential of Institutional Social Movement Strategies

Ellen C. Berrey (Northwestern University)  
Divided over "Diversity": The Politics of Affirmative  
Action at the University of Michigan

Nicholas A. Pedriana (Louisiana State University)  
Legal Opportunities, "Constitutive" Framing, and the  
Battle Over Protective Labor Policies for Women

Discussant: Ryken Grattet (University of California,  
Davis)

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**3. "LAW BETWEEN GLOBALIZATION AND  
NATIONAL INSTITUTIONS" (INVITED SESSION)**

Sunday, 8/15/2004 from 8:30 a.m. - 10:10 a.m.

Organizer: Joachim J. Savelsberg (University of  
Minnesota)

President: Joachim J. Savelsberg (University of  
Minnesota)

Elizabeth Heger Boyle (University of Minnesota)  
Democracy and the Rule of Law in World Polity  
Context

Terence C. Halliday (American Bar Foundation) &  
Bruce G. Carruthers (Northwestern University)  
Negotiating Globalization: Global Templates and the  
(Re)Construction of Insolvency Regimes in East Asia

Ron Levi (University of Toronto) & John Hagan  
(Northwestern University)

Local Knowledge and Transnational Expertise:  
Authority, Legitimacy, and Legal Knowledge Practices at  
the International Criminal Tribunal for the Former  
Yugoslavia

Abigail Cope Saguy (University of California-Los  
Angeles)  
Sexual Harassment Law in France: A Product of  
Globalization?

Discussant: Marion Fourcade-Gourinchas  
(University of California, Berkeley)

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#### 4. SOCIOLOGY OF LAW ROUNDTABLES

Sunday, 8/15/2004 from 2:30 p.m. - 3:25 p.m.

Organizer: Elizabeth A. Hoffman (Purdue University)

Table 1:

Annette M. Nierobisz (Carleton College)  
A Tale of Two Recessions: Employment  
Opportunity, Downsizing Discourse and the Adjudication  
of Canadian Wrongful Dismissal Claims

Terence C. Halliday (American Bar Foundation) &  
Bruce G. Carruthers (Northwestern University)  
The Recursivity of Law in the Globalization of  
Corporate Bankruptcy Systems

Table 2:

William G. Staples (University of Kansas)  
Doing Time at Home: House Arrest and Invisible  
Punishments for Families and Others

Brian C. Janssen (Ohio State University) & David  
Jacobs (Ohio State University)  
Explaining the Severity of Rape Law: Stratification  
and Threat Theory Analysis of State Rape Laws

Table 3:

Michael H. Fox (Hyogo College)  
The Higashi Sumiyoshi Case: False Confession and  
Wrongful Conviction in Japan

Ethan Michelson (Indiana University)  
The Trials and Tribulations of Chinese Lawyers

Table 4:

Jodi Short (University of California, Berkeley) &  
Michael W. Toffel (Haas School of Business, University  
of California, Berkeley)  
EPA's Self-Policing Policy and Regulatory  
Institutionalization

Michele Landis Dauber (Stanford University)  
The Sympathetic State

Table 5:

Tracey Lynn Kyckelhahn (University of Texas,  
Austin)  
The Right to Be Free from Offense and the  
Management of Inter-Group Conflict

Pat L. Lauderdale (Arizona State University)  
The Politics of Deviance and Terror

Gulseren Kozak-Isik (University of Minnesota) &  
Aysegul Kozak (University of Minnesota)  
Weber's Misunderstanding of Traditional Islamic Law

Table 6:

Bonnie Jean Bondavalli (Lewis University)  
Advocates for Immigration Law Reform on the  
Internet

Ken E Salo (University of Illinois, Urbana  
Champaign)  
Contested Legalities: Elite Acts and Subordinate  
Tactics in Restructuring Apartheid Fisheries

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—See *Related ASA Sessions* on Page 9!

#### Journal of Contemporary Ethnography

Scott A. Hunt is the editor-elect for the Journal of Contemporary Ethnography. JCE publishes theoretically, methodologically, and substantively significant studies based upon participant-observation, unobtrusive observation, intensive interviewing, and contextualized analysis of discourse as well as examinations of ethnographic methods.

Submissions from all substantive areas and theoretical perspectives are welcomed. Email manuscript submissions (in Word or WordPerfect format) may be sent to sahunt00@uky.edu. Hardcopy submissions and all other correspondence should be sent to Scott A. Hunt, Editor, Journal of Contemporary Ethnography, Department of Sociology, University of Kentucky, Lexington, Kentucky 40506-0027.

A processing fee of US\$10 must be submitted via a check or money order made payable to the Journal of Contemporary Ethnography.

#### ...Amici Quotes...

Why, they did terrible things to my father — they put manure in his well and they made him talk to lawyers.

—*Cat Ballou* (1965).



Other Sessions on Law @  
The Annual Meeting, 2004

*Check the program for more law-related sessions,  
such as the following regular sessions.*

**PUNISHMENT AND CONFINEMENT**

Sunday, 8/15/2004 from 12:30 p.m. - 2:10 p.m.

Matthew Silberman - Bucknell University (Organizer  
& Presider)

Bert Useem (University of New Mexico), Anne  
Morrison Piehl (Harvard University )  
Prison Disorder During the Buildup Period

Pamela E. Oliver (University of Wisconsin, Madison),  
James E. Yocom (University of Wisconsin)  
Explaining State Black Imprisonment Rates 1983-  
1999

John Sutton (University of California, Santa Barbara)  
Imprisonment and Opportunity Structures in Modern  
Western Democracies

David F. Greenberg (New York University) & Valerie  
West (New York University)  
Sentencing Americans to Death after Furman

Katherine Beckett (University of Washington)  
discussant

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**LAW AND SOCIETY I**

Sunday, 8/15/2004 from 12:30 p.m. - 2:10 p.m.

Organizer: Pamela Irving Jackson (Rhode Island  
College)

Alfonso Morales - University of Texas at El Paso  
(Presider)

Richard D. Schwartz (Syracuse University)  
Toward a Sociolegal Paradigm

Thomas Koenig (Northeastern University)  
Toxic torts, Politics and Environmental Justice: The  
Case for Crim torts

Kirsten Campbell (Goldsmiths College, University of  
London)  
'The Enemy of All Mankind': How Can We Properly  
Judge the War Criminal?

Alfonso Morales (University of Texas at El Paso)  
The Social Origins and Prospects for Economic  
Mobility of Recent Mexican Law School Graduates

**LAW AND SOCIETY II**

Monday, 8/16/2004 from 10:30 a.m. - 12:10 p.m.

Organizer: Pamela Irving Jackson (Rhode Island  
College)

Brian Donovan - University of Kansas (Presider)

Steven F. Messner (State University of New York),  
Eric P Baumer (University of Missouri-St. Louis) &  
Richard Rosenfeld (University of Missouri-St. Louis)  
Distrust of Government, The Vigilante Tradition, and  
Support for Capital Punishment

Sharyn L. Roach Anleu (Flinders University)  
Everyday Work and Emotional Labor in the  
Magistrates Court

Chin-Shou Wang (University of North Carolina)  
Judicial Reform and the Breakdown of Authoritarian  
Regime: Evidence from Taiwan

Brian Donovan (University of Kansas)  
"Seduction" and Sexual Coercion: Prosecuting  
Acquaintance Rape in the Early Twentieth Century

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**LAW AND SOCIETY III**

Tuesday, 8/17/2004 from 12:30 p.m. - 2:10 p.m.

Organizer: Pamela Irving Jackson (Rhode Island  
College)

Pamela Irving Jackson - Rhode Island College  
(Presider)

Pamela Irving Jackson (Rhode Island College),  
Peter A Zervakis (Center for European Integration  
Studies, Bonn, Germany)  
The Integration of Muslims in Germany, France and  
the United States: Law, Politics and Public Policy

Ates Altinordu (Yale University)  
The Meaning(s) of the Headscarf: The German  
Kopftuchstreit

Gulseren Kozak-Isik (University of Minnesota),  
Elizabeth Heger Boyle (University of Minnesota)  
Gendered Responses to Legal Pluralism:

Stephanie L. Kent (Ohio State University), David  
Jacobs (Ohio State University)  
Social Divisions and Coercive Control in Advanced  
Societies: Law Enforcement Strength in Eleven Nations  
from 1975 to 1994

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—Continued on Page 11.

**Of Interest...**

## Academic Freedom and Publishing Or: The ASA Police Never Sleeps...

On March 9, 2004, the editors of ASA Section newsletters and other ASA publications received the following message from the ASA Executive Office:

ASA editors:

*As reported in the New York Times on February 28... and elsewhere in the press, the federal government very recently "has warned publishers that they may face grave legal consequences for editing manuscripts from Iran and other disfavored nations."*

*This situation has emerged because of several new advisories from the US Treasury Department indicating that existing laws and regulations prohibiting trade with various nations are now being interpreted as extending to scholarly journals. That is, according to the Treasury Department, the mere act of reviewing or copyediting a manuscript from one of these nations is now being defined as "trading with the enemy," potentially subjecting editors and publishers to fines of \$500,000 and 10 years in jail.*

*Previously, the Berman Amendment to the Omnibus Trade and Competitiveness Act of 1988 that exempts "information and informational materials" from such embargoes has been interpreted by the federal government as exempting scholarly articles reviewed and copy edited by journals such as those published by the ASA. September 2003 interpretations by the Treasury Department's foreign-assets-control office (OFAC), however, changes this. In effect, it defines as exempt only publication of "camera-ready copies of manuscripts." This obviously changes dramatically the situation for all scholarly publishing in which this type of unreviewed and unedited publication is virtually unheard of.*

*As you can imagine, publishers and scholarly organizations, including the ASA and its leadership, see this as an attack on scholarship and freedom of expression.*

*The Executive Office is working with ASA's legal counsel as well as with our Association leadership and other professional societies and publishers to respond to this situation. We will keep you informed as our information grows. Members of Congress, for example, are beginning to respond to this situation and it is possible that it may undergo some change.*

*In the meantime, we want to inform you about this matter as it currently stands. The disfavored nation list that is potentially involved includes the Balkans, Burma, Zimbabwe, Cuba, Iran, Iraq, Libya, Liberia, North Korea and Sudan.*

*Request: This communication is to request that you inform the Executive Office immediately (myself or Karen Edwards) if you receive a manuscript from one of these nations or if you have such a manuscript anywhere in review process. The purpose of our request is to ensure we have the information we need to obtain legal advice about strategies we can all use to protect the review process of ASA journals and other publications.*

*President Burawoy, President-elect Troy Duster, Publications Committee Chair Carol Heimer and I strongly support editorial independence. This communication is intended to help gather information necessary for us all to*

*help the Association and our editors protect the process of unimpeded assessment and editorial judgments based upon the intellectual merits of materials submitted for publication.*

*Thank you for helping us in this important enterprise.*

*We will keep you abreast of developments as the Executive Office, Council and Pubs Comm continue to inform ourselves about changes in this situation and actions we can take to strengthen the vital principles of the freedom of scholarship and the independence of scholarly publishing.*

Sally

Sally T. Hillsman, PhD

Executive Officer

A related column by the Executive Officer has been published in the ASA newsletter *Footnotes* (April 2004). \* Members of the Sociology of Law section may wish to know that the present newsletter editor responded to the Executive Officer's email as follows:

*"Considering the increasingly politically motivated actions by the ASA leadership, especially by its Council and Executive Office, most recently in the matter of the Iraq War resolution, I am of the opinion that the ASA can no longer legitimately claim to defend any attacks on scholarship. I therefore have to inform you that I will not obey your request to notify the Executive Office of any manuscripts coming from certain countries.*

*I presently serve my final year as Newsletter editor of the Sociology of Law section. I am also website editor and council member of the Theory section and website editor of the Comparative & Historical Sociology section. Since the final issue of the Sociology of Law newsletter is already in the works and since as website editor I do not publish manuscripts, it is unlikely that I will be involved in editing manuscripts. Nonetheless, my decision is deliberate and purposeful. My decision also does not necessarily reflect on the sections for which I serve.*

*John Dewey once wrote, "Majority rule, just as majority rule, is as foolish as its critics charge it with being... The means by which a majority rule comes to be a majority is the more important thing: antecedent debate, modification of views to meet the opinions of majorities." It is more than a shame that such noble (and —dare I say— authentically American) pragmatist ideals are lost on the ASA.*

Sincerely,

Mathieu

Members of the Sociology of Law section should be ideally placed because of their sociological expertise to contribute to some of the critical matters addressed in this debate and I hope they will.

—MD

*Sociology of Law*

[http://www.departments.bucknell.edu/soc\\_anthro/soclaw/](http://www.departments.bucknell.edu/soc_anthro/soclaw/)

\* In the meantime, the Chief of Licensing at the U.S. Treasury Department has referred to the ASA statement as a "misinterpretation" of Treasury policies (Letter, May 17, 2004).

**Other Sessions on Law**

—From Page 9

**SEXUALITIES AND LAW**

Monday, 8/16/2004 from 2:30 p.m. - 4:10 p.m.

Organizer: Jyoti Puri (Simmons College)

Barry D. Adam - University of Windsor (Presider)

Elizabeth Bernstein (Barnard College)  
 Border Wars: The Regulation of Sex, Commerce,  
 and Urban Space in the Global Cities

Phoebe Christina Godfrey (Texas A & M  
 International University)  
 The Device that Dare Not Speak Its Name:

Jan Fredrik Wickman (Åbo Akademi University)  
 Transgenderism in Law - Common vs Codified

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**ECONOMIC SOCIOLOGY: THE FIRM II:  
CORPORATE LAW, CORPORATE OWNERSHIP**

Sunday, 8/15/2004 from 2:30 p.m. - 4:10 p.m.

Organizer: Marc Schneiberg (Reed College)

Lauren B. Edelman - University of California-  
 Berkeley (Presider)

Daniel Maman (Ben Gurion University of the Negev)  
 The Interplay between Global and Local: The New  
 Israeli Corporate Law

Mark Gould (Haverford College)  
 Looming Catastrophe: How and Why 'Law and  
 Economics' Undermines Fiduciary Duties in Corporate  
 Law

Robert F. Freeland (Stanford University)  
 The Nature of the Firm Revisited

Gregory Jackson (RIETI), Ruth Aguilera (University  
 of Illinois)  
 Some Determinants of Cross-National Diversity in  
 Corporate Ownership: A Fuzzy Sets Approach

Lauren B. Edelman - University of California-  
 Berkeley (Discussant)

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**...Amici Quotes...**

I don't get tough with anyone, Mr. Gittes.  
 My lawyer does.

—Chinatown (1974)

**Sociology of Law Section  
Committees, 2003-2004****Membership Committee:**

Brian Gran, Chair, Case Western Reserve  
 Melissa Holtzman, Ball State University  
 Judith Harris, University of South Carolina, Spartanburg  
 Alfonso Morales, University of Texas, El Paso

**Publications Committee:**

Matt Silberman, Chair & Webmaster, Bucknell  
 Nancy Fischer, Macalester  
 Mathieu Deflem, University of South Carolina  
 David Shulman, Lafayette College

**Nominations Committee:**

Kathy Hull, Chair, University of Minnesota  
 Kevin Delaney, Temple University  
 Ethan Michelson, Indiana University  
 Mike Sauder, Northwestern University

**Book Award Committee:**

Ruth Horowitz, Chair, New York University  
 Robert Dingwall, Nottingham  
 Elaine Draper, California State, Los Angeles  
 Orville Lee, New School for Social Research  
 Becky Sandefur, Stanford University

**Student Awards Committee:**

Sarah Gatson, Texas A&M  
 Ronit Dinovitzer, Univ. of Toronto  
 Jen Earl, University of California,  
 Santa Barbara

**Fellowship Opportunities...**

The Foundation for the Defense of Democracies (FDD) conducts research and education on international terrorism. FDD produces independent analyses of global terrorist threats, as well as of the historical, cultural, philosophical and ideological factors that drive terrorism, and which threaten democracies and the individual freedoms guaranteed within democratic societies.

Among other activities, FDD organizes an Undergraduate Fellowship and an Academic Fellowship for professors. The Undergraduate Fellowship begins in early August with a two week course of study in Tel Aviv, Israel and lasts for the duration of the following academic year. The Academic Fellowship Program for professors and lecturers features an intensive, 10-day course on terrorism and the threat it poses to democratic societies. The program is taught in Tel Aviv, Israel.

More information can be found online:  
<http://www.defenddemocracy.org/>

**War Resolution Symposium**

—From Page 1.

**APPENDIX**

*The letter printed below was prepared on November 3, 2004. It was sent to the ASA for publication in the Footnotes newsletter. It was received and 'accepted' for publication by an officer at ASA, but it was few weeks later rejected by the ASA Executive Officer, apparently because ASA had "received virtually nothing more on this topic from members over recent months apart from your November 4th communication." When I informed the Executive Officer of the earlier 'acceptance' I had received, she referred to it as "wrong information" and "an unfortunate miscommunication." She continued that the ASA membership had already voted, "overwhelmingly supporting [the resolution] in a legally held referendum."*

*I responded that the decision not to publish my letter in my mind exemplified the use of editorial power to curtail my right to exercise speech and that my letter could not possibly be part of an on-going dialogue for the simple reason that many ASA members do not even know about some of the excessive unprofessionalism their Association is involved in. Also, I questioned the 'overwhelming' nature of the support the resolution would have received, because the majority was reached in part by not counting those members who did not vote on the resolution although they had returned the ballot, a practice of disregarding abstentions that—I noted then and now—was to my knowledge used at least once before, in Nazi Germany (to secure the election of an SS officer to become the next President of Interpol). It appears to me that Footnotes is not the ASA members' newsletter but that of others. The silence that remains, as Sartre reminded us, is reactionary. My letter is here offered in Appendix.\**

## How the ASA Leadership Damages Sociological Research: A Scholarly and Professional Viewpoint

by **Mathieu Deflem**  
 University of South Carolina  
 deflem@gwm.sc.edu

As a sociologist and member of the ASA, I am appalled by the recent actions the ASA Council has taken in the matter of the resolution on the war in Iraq. The ASA leadership, not its members, have spoken. By implication of the very mission of ASA, the Association cannot pass nor defeat resolutions on matters that are not inspired by our commitment to promote the scientific analysis of society. Council, therefore, should not even have forwarded the resolution for a vote. Among the many negative effects of the resolution, the official position of the ASA denies the diversity of opinions on the morality of the Iraq conflict among the Association's members.

The most contentious aspect in this matter is definitely not whether the ASA can take action on the

war as an Association, but that the war resolution is by definition a highly normative matter on an important moral issue that the ASA cannot legitimately comment on. The Association and its members as *members* are experts in science, not morality. Members of the ASA are sociologists. We are not only sociologists, but that will not and should not concern us as members of the Association. The ASA resolution denies any respect for who we are in a manner only the greediest of institutions do. When will the ASA police come to get you?

This issue is not a matter of personal opinion versus position by the Association, but about the nature of such opinions, whether they fall within the province of the objectives of the Association or not. If it is true that the present ASA by-laws allow or even compel Council to move ahead with resolutions even when these are beyond the expertise of the discipline, then the by-laws are not congruent with the mission of the ASA. As nothing is more foundational to the ASA than its mission, the exclusion of issues beyond the expertise of the discipline would be a decision made *a posteriori*.

Not only is the position of the ASA leadership not sociological, it has in effect seriously jeopardized my own sociological research activities and possibly those of some of my colleagues. As a sociologist with an expertise in law and social control, I am presently investigating the policing of terrorism. In that capacity, I meet with and interview officials from government and law enforcement. What are they to think about a scholar whose professional Association by its own admission is no longer interested in scientific work, but instead involves itself with ideological and political positions!?

It is in this context baffling to note the recent critique of the ASA leadership on the "Politically Motivated Attack on NIH Peer-reviewed Research". Originally, when posted online, this statement referred to an "Ideologically Motivated Attack", but that makes no difference. Whether it's called political or ideological, such a critique by the ASA can since and because of the Iraq resolution no longer be scientific in nature. Instead, it has to be assumed that this position is itself political or ideological, not disagreeing with the influence of politics or ideology on science, but with the influence of a particular political or ideological stance.

As an active member in the ASA, I find that the Association continues to provide an excellent forum for communication among its members, especially through the Sections where scholarship fortunately remains central. However, from an organizational viewpoint, it remains sociologically appropriate to analyze the ASA leadership, especially the move towards the formulation and adoption of political or ideological resolutions. These issues require intense investigation on the behavior of the ASA, as an institution where, indications are, the leadership is divorced radically from its mission. Then we may find out why some in the Association have apparently abandoned any concerns to practice the ideal of science and have the courage to think the unthinkable.

*Sapere aude!*

\* I should add that in the meantime another letter by me, about this year's resolution, will be published in *Footnotes* (August 2004). It will be followed by a response, of course.