Sinkwan Cheng
Writing Sample

Law, Justice, and Power

BETWEEN REASON AND WILL

Edited by
Sinkwan Cheng

STANFORD UNIVERSITY PRESS
STANFORD, CALIFORNIA 2004

INTRODUCTION

Law, Justice, and Power in the Global Age

According to David Hume and J. S. Mill, questions of justice arise in conjunction with conflicts of interest. Had it not been for the limits to human benevolence and the competition for scarce goods, justice would not have been an issue. Justice impacts on our consciousness most concretely when people press claims and justify them by reference to a set of rules (Benn 1967, 298). With the advance of technology in the new millennium, we should, at least in principle, have better resolved the problem of "scarce goods."[1] Why, then, are more claims being pressed, and more demands for justice being made, than ever before?[2] The observations of Amartya Sen and Jean Drèze on famine may help provide a clue: it is not shortfalls in the production of food, they argue, but the absence of legal channels assuring access to it, that causes so many famines in our times. Translated into the terms of justice in general, it is not the shortage of goods, but the politics of *entitlement*[3] in a world of cutthroat competitions, that creates overabundance for a few, scarcity for the majority,[4] and, above all, unhappiness for all in the age of global capital. This unhappiness is marked first and foremost by the feeling of frustration that "I deserve better; I could have gotten what I deserve had it not been for the existence of the Other."[5] As globalization brings people of different races, classes, and genders into close proximity in a system of intense competition, the conflicts of interest escalate.

The increased tension across the globe makes our time an "Age of Extremes"[6]—extreme injustice, extreme uses and abuses of power—which the legal thought of our times must reckon with. The extreme horror of wars (declared or undeclared) and ethnic cleansing are not the only form of cruelty being experienced by our age. As Etienne Balibar points out, "'globalization' of various kinds of extreme violence has [also] produced a tendential division of the 'globalized' world into *life-zones and death-zones*" (2001, 24). This process institutes a "superborder" between the *Übermenschen* (su-

permen) and the *Untermenschen* (subhumans) (18)—with overabundance on one side, and, on the other, "famines and other kinds of 'absolute poverty' produced by the ruin of traditional or non-traditional economies" (23). Global capital destroys welfare, traditional ways of life, and social bonds (25). Above all, it creates a mass of superfluous human beings—"garbage humans"—who are "being thrown out of work by the million, while at the same time . . . being kept *within* the boundaries *of the market*, since the market is an absolute, possessing no *external limits*" (Balibar 1998a, 16–17). The cruelty of global capitalism is that it allows no alternative and no escape for the disenfranchised: "the global market is . . . the whole world. When it excludes you, you cannot leave it, you cannot search for another America, a place from which to settle and start again" (16–17).

The misery of the *Untermenschen*—the new wretched of the earth—is perhaps reinforced by global capitalist powers' abuse of "politics as anti-politics" (Balibar 2001, 26)—the "preventive counter-revolution" or "systematic use of various forms of extreme violence and mass insecurity to prevent collective movements of emancipation that aim at transforming the structures of domination" (16). The new millennium dawns, therefore, with a pressing need for fresh strategies to counteract abuses of law, justice, and power on both global and local levels. This collection brings together prominent international scholars in the disciplines of law, politics, philosophy, sociology, psychoanalysis, linguistics, and literature to contribute original works on the incommensurable yet inextricable relationships among law, justice, and power. Their innovative analyses of these relationships open new horizons for political action. The reason for making this volume a transnational project is obvious: the force of globalization needs to be taken up on its own terms before we can find some wise and appropriate answers to some of its problematic consequences. An interdisciplinary approach to the subject at hand is also deemed necessary for our project in light of the fact that laws in our times are not isolated systems of rules "in books." Ever since law came to be associated with the popular will in modernity, law "in action" has penetrated every aspect of culture and daily life. This trend has accelerated in late capitalism when buying and selling—the capitalist ideology of self-willed, self-imposed contractual transactions—now hold sway over every aspect of human life, displacing the non-monetary, "non-rational," non-legal mode of human interaction in traditional societies (see Weber 1978). Only a multidisciplinary volume would enable us to see how law, as Austin Sarat puts it, is "everywhere"—both "majestic and ordinary," thoroughly penetrating every aspect of culture and society.

Law, Justice, and Power

"Law in books" often associates law with justice, whereas "law in action" inevitably reveals the operation of a third term—"power"—which breaks up the imaginary economy of the "paper marriage" between law and justice. The premise of this book is that law must be scrutinized in action in order to reveal this hidden complexity in the relationship between law and justice.

Let us begin with the connection between law and justice. At first sight, the two seem inseparable.[7] In Thomas R. Kearns's paraphrase of the common sense association between the two, "Justice without law, where it exists at all, is a precarious good. And without justice, law is an ominous spectre, threatening to violate its own ends." Yet a closer look reveals that the relationship between the two is by no means inevitable. Nor is it "clear and distinct." As Kearns points out, justice "can sometimes be found in a variety of associations and institutions (i.e., in families and between friends) where law is largely absent." Furthermore, utilitarians and Marxists in general disagree that law's (primary) function is to uphold justice. There are "other goods" besides justice that law may be established to protect: for example, security, efficiency, or the interests of a dominant class.

To further complicate the case, many controversies have arisen in the history of legal theory as to which term—*law* or *justice*—should have primacy. For some, *justice* means "the law behind the law, the standard of justice to which positive law must conform" (Pennock 1964, 378). To a believer in natural law, for example, a *law* is legitimate, and carries judicial authority, only when it contains "'rightness,' or correspondence to a standard of justice" (378). For others, such as the legal positivists, "justice" consists primarily of the strict application of existing laws without deviations.

The intricate relationship between law and justice becomes infinitely more complex when power is brought on stage. A consideration of power is indispensable because, whatever ideas we have about law and justice, it is power that makes a real difference in the world—be it catastrophic or providential. Power, in other words, reveals both the oppressive and benevolent faces of the law. Only through power can law act as an oppressive apparatus (see Cartwright 1959). At the same time, it is also through power that law can realize its utopian potential for bringing about a radical reconstruction of society on the principle of justice.[8] To rephrase the relationship of power to law in terms of justice, power is what both enables and destroys the potential of justice within the law. As Pascal puts it, "Justice without force is impotent. Force without justice is tyrannical."

Although power is indispensable to the operation of law, law can also direct the use of power by placing limits on, and controlling abuses of, power.

This is why legitimacy is always at issue whenever power is being acquired or exercised. The effort to ensure that power operates according to established rules is, in simplistic terms, an endeavor to bring will under the harness of reason, so that the end product of this process—the obedience of the subject—will be submitted to the authority of reason rather than to brute force and raw violence. The sublation of brute force into the power propelling the "civilizing process" (in Elias's sense) informs Max Weber's famous characterization of the state as "upholding the claim to the *monopoly* of the *legitimate* use of physical force in the enforcement of its order" (1978, 54). Becoming "civilized" involves society's surrender of *Gewalt* (that is, violence, power, and force) to the state. As an embodiment of the rational, the state supposedly transforms the violence it takes upon itself into civilization by virtue of the fact that its application of force is *legitimate* and that its end is the protection of a civilized order. But this "civilizing process" becomes more ambiguous as we study concrete cases of law in action. Using imprisonment as his example, Balibar comments that "it is extremely difficult to draw a clear line of demarcation *within* the realm of the law itself . . . between *justice* and *violence*" (1998a, 13). The death penalty, above all, calls attention to "the unavoidable slipping of the exercise of power towards various kinds of institutional cruelty" (Balibar 1998b, 19).

As these examples show, state violence is still violence (and as such cannot be totally assimilated into reason) even though it is codified and labeled as "legitimate." In fact, it is impossible to apply unambiguous labels of "right" and "wrong" to describe the division between power and counter-power, state and revolution, orthodoxy and heresy. As Balibar points out, the dialectical development of the Hegelian World Spirit "is made up of violent deeds and relationships." There remains permanently intertwined with this World Spirit "a manifestation of cruelty, a glimpse of another world, another reality" (Balibar 1998a, 12; translation modified). This "other world" is the realm of *jouissance*—the leftover from the dialectic of violence and counter-violence:

> there are forms, or layers, of violence, which do not gravitate around the alternative of power *vs.* counter-power, although they inevitably return to them and *infect them*. . . . This is, if you like, the most "excessive," the most "self-destructive" part of violence. There is a risk of tautology at this point: we designate a certain violence as *self-destructive* or *irrational* because we feel that it overtakes the logic of power and counter-power. (Balibar 1998a, 11)

The dimension of *jouissance* is absolutely crucial to understanding state power, colonial rule, and many other forms of domination—including "legitimate domination." This leftover that exists outside "the logic of power and counter-power" must be taken into account as we negotiate places for law, justice, and power between reason and will, between right and might.

Reason and Will

In jurisprudence, the complex relationship among law, justice, and power is intimately tied to the tension between reason (*ratio*) and will (*voluntas*). To a rationalist, it might seem obvious that law and justice is related through reason, whereas law and power are connected through the will. However, law in practice reveals that reason has no monopoly on justice. Nor is law merely a discourse of reason, since reason is already will, in the sense that reason can itself be a mode of domination and an instrument for imposing the interests of dominant groups. Max Weber, for example, pointed out how the "logically closed" and abstract system of Roman law promoted by university-based Romanists catered to the interests of monarchs and bureaucrats as well as the rising capitalist class concerned with private rights.[9] While it is true that reason is inextricably *entwined* with will, it would be erroneous to disregard their differences. It is important, for example, to be mindful of the fact that power is not merely a product of the will, since reason can also be a source of empowerment. Rights, as we noted before, can be thought in terms of power, even though this power is usually reduced to the normative dimension. By invoking ideals such as justice, reason, and standards of what human life *ought* to be like, individuals acquire the power to demand just and fair treatment.

REASON

A simple way of thinking about the contrast between law as will and law as reason is to invoke the difference between law as command and the rule of law. This simple dichotomy, however, needs to be complicated by a closer look at various traditions of legal thought.

The natural law tradition, beginning with Stoic thinkers Zeno and Chrysippus and continuing as late as Montesquieu and Blackstone, envisions a universe governed by laws exhibiting rationality. This rational-legal order is accessible to all human beings through their innate capacity for reason. Aquinas, for example, defines law as a "*rational* ordering of things which concern the common good" (question 90, art. 4; italics mine). The Western legal tradition has been dominated for centuries by the notion that law is equated with reason: *semblable reason semblable ley* (what seems to be reasonable seems to be law).

In the secular law tradition, the development from the "pre-legal to the legal world" (Hart 1961, 91) was marked by a transition from *asserted* rule to *justified* rule, or from law as command to the rule of law. In this process, legality became identified with reason, which dictates that the force of law should issue from the *authority* of reason, not from the caprice of raw power. It is reason, rather than the whims of some specific monarch, to

which the subject of law owes his obedience. In turn, the legal order should also accept the restraints of reason, facilitate public consensus regarding the foundations of civic obligation, and respect the principle of *legality*. The ascendancy of the rule of law hence coincided with the displacement of absolute monarchy by *res publica*—a polity which Rousseau identified with lawfulness or the rule of law: "Any state which is ruled by law I call a republic, whatever the form of the constitution; for then, and then alone, does the public interest govern and then alone is the 'public thing' or *res publica* a reality" (1968, 81–82). Rule-governance and the equality of all before the law contrast sharply with the "patrimonial" state governed by the will of the monarch (see Stahl 1830–33).

Reason also has an important role to play in the positive law tradition. Lawfulness and rule-governance, as Dallmayr pointed out, are supplemented and reinforced in civil society "through the enactment of positive laws backed up by legal magistrates." Stylizing reason into a capacity of formal analysis, Hans Kelsen developed a completely formal or "pure" theory of Law independent of social and political life (Dallmayr 1990, 1452, 1458).

The significant role of reason in modern law can be summed up by invoking Max Weber's theory of legitimate domination, which analyzes law and evolving forms of authority by contrasting the charismatic and the traditional to the "rational-legal" (1978, 215 ff.) Fully developed law according to Weber is a system of rule-governance, characterized by rationality and a related impersonal order.

Important as reason is to law, we must not forget that reason itself is a form of will—a drive to understand and master whatever stands in opposition to the human mind. It is precisely because reason is implicated in will that Weber found human beings of a certain culture—that is, the West, which engendered modernity—to be "*especially* rational," particularly fixated on rules, and favoring effectiveness rather than custom as the preferred means for realizing their goals. What Weber did not develop is that the instrumental rational which dethroned custom in favor of effectiveness was itself motivated by a *Sittlichkeit*, a form of will particularly prominent in the West. "Order," after all, is perhaps not found but made, not disclosed to reason but asserted by acts of will.

WILL

The relations of will to law, justice, and power are complicated by two largely incompatible interpretations of the will in Western culture. On the one hand, the will is conceived as the faculty of choice or decision, by which human beings freely determine their actions. This freedom is predicated on the supposition that human beings, unlike animals, can act on the

basis of reason. From the sixteenth century onward, however, another tradition took root—one which holds the will to be a mere locus of action-motivating passion common to animal and human beings. From this perspective, the will is no longer a locus of agency or freedom. This trend became especially prominent with the empiricists.[10] However, the initial impulse for this understanding of the will came from the Augustinian-Calvinistic conception that original sin severely damaged human beings' practical rationality. As a result of the Fall, human action became as appetite-driven as animal action; the human will lost its status as a rational appetite or a locus of free agency (see Calvin 1960, book 2, chapter 2; Pink 1998, 720–24).

Both concepts of the will have had a tremendous impact on law, justice, and power. Insofar as the will is understood as rational appetite and the locus of free agency and self-determination, law is concomitantly perceived as emanating from the popular will. Law as the expression of popular will provides the legitimate foundation for the nation-state. Thus when Europe translated the universal text of Roman law into national codes of vernacular law, the national codes came to "represent the spirit of the people in an authoritative and accessible written form which would bind its administrators and judges to the popular will" (Goodrich 1994, 322). Compliance with law no longer meant submission to arbitrary rules but of "giving oneself the law" in the sense Kant elaborated in his concept of autonomy.[11] Embracing the optimism of a republican, Hegel upheld the state as the highest stage in the moral evolution of human beings. Law in this sense emerged from the will of the state as a rational association. The state embodied concretely, as a living institution, the autonomous, rational will of human beings.

The association of law with popular sovereignty in political modernity presents a particularly difficult problem for international justice, since any foreign intervention into state affairs would by implication become an attack on the unity and integrity of state sovereignty, on popular will, on freedom, autonomy, and justice. The legality of international law is thus called into question.[12] As John Ford describes it, "Where external independence is regarded as a further facet of the internal superiority of the sovereign, the constraints of international law can no more be considered properly legal than the constraints of natural law, and international law can at best be considered to have delegated authority" (1998, 58).

Will as action motivated by passion has played no less prominent a role than will as rational appetite in the history of law. Cicero, for example, recognized the importance of rhetoric for effecting the practical goals of philosophy, even as he stressed at the same time human beings' natural capacity for reason. The rhetorical culture of the ancient Romans was sensitive to how the discourse of reason is already a discourse of mastery: the discourse of reason, in their view, asserts *dominion* and carves out a *domain* for the

speaking subject.[13] The Romans' awareness of how law and justice are always inflected by particular interests and the will to domination has persisted into the present. For instance, the New Rhetoric movement, starting in the mid-1940s by Chaim Perelman and Lucy Olbrechts-Tyteca, revives the legacy of Aristotle and the Roman jurists, emphasizing the use of discursive techniques in legal arguments to move an audience to certain decisions or actions. This rhetorical view of law flies in the face of legal rationalism's valorization of transparency and intersubjective communicative ethics.

The involvement of law with *Sittlichkeit* or mores is another way that the unreflective aspects of the will become intertwined with issues of justice and power. Hermann Kantorowicz, for example, protested that the "ought"—that is, the moralizing element of all laws—is culturally determined, not universal. Legal evolutionism and historical jurisprudence provide perhaps the best illustrations of *Sittlichkeit*-oriented legal thinking. In the English-speaking world, Henry Sumner Maine was among the most renowned legal evolutionists to link different "stages" of law to the social developments that produced them. A more mystical connection between law and culture was established in German romanticism, which identified law with the cultural unity of a people. Friedrich Karl Savigny, generally regarded as the founder of historical jurisprudence (Stone 1950, chapter 18), held law to be the expression of national distinctiveness and the spirit and genius of the institutions of a people (*Volksgeist*), with *Volksgeist* resonating both race and culture.

The ideological dangers of historical jurisprudence notwithstanding, Savigny's ideas help draw attention to the discrepancy between the positive norms of the state, and the de facto norms which emerge from the institutions of society at large—a gap that reveals how the formalized reason of positive law fails to reflect the "living law." Picking up this clue from Savigny's writings, the Austrian jurist Eugen Ehrlich capitalizes on the living law as "the *de facto* normative pattern that develops as competing social interests are resolved within the many groups and institutions constituting the 'inner order' of a society" (Mayhew 1968, 60). Law needs to be attentive to *Sittlichkeit* for the practical reason that, in order to function effectively, it must recognize itself as a materialist practice with its own social reality. The legal establishment must also take social mores into consideration for ethical reasons. Long before the advent of multiculturalism, the view that law needs to be sensitive to custom and mores was already in place. Guizot and Hegel, for example, were aware of the need to create institutions that reflected people's passions, interests, and values. Without this sensitivity to will, law could become unjust and even tyrannical. In fact, any attempt to colonize the will by reason risks perverting the will. Reason is reason only when it maintains a heterogeneity to the will. The attempt to totalize law with reason at the expense of will can easily transform reason itself into a perverse will. Lacan, among others, has important insights on this subject.[14] The danger of totalizing will with reason can be seen in the dynamics of imperialism, colonialism, and their contemporary transformations—dynamics which are no mere by-products of "the white man's hypocrisy." The transformation of pure reason into perverse will enables us to see how, even when "the white man's mission" is carried out for the most "just" reasons combined with the most sincere intentions, the result is still often violence and cruelty.[15]

In short, despite attempts by "legal purists" such as Hans Kelsen to construct a completely formal theory of law independent of social and political life, the interlacing of law and will renders "'the social' . . . both impossible to differentiate from 'the legal' yet as constitutively law's 'outside'" (Brown 1998, 496).[16] In fact, even if law attempts to resolve normative problems through purely positivistic means, one must not overlook how the *rituals* of textual interpretation are culturally and socially embedded.

LAW AND THE DIALECTIC OF REASON AND WILL

A discussion of law in terms of the dialectic of reason and will is unavoidable because law is as much a set of normative principles as a material practice. Law is not law unless it is both. In philosophical terms, law is concerned with both speculative and dialectical reason, and practical reason is precisely what is at issue in the dialectic of reason and will. In between reason and will, practical reason becomes the battleground for whether reason should guide custom, or whether it is a product of custom itself. In this dialectic, reason may set the grounds for action, but it may also be perceived as a mere slave to passion (as Hume maintained), a rationalizing instrument in the service of the will.

It is not the intent of this volume to produce a definitive answer to these questions. Its goal is rather to investigate the new dynamics and configurations of reason and will, and the new forms of their entwinement with law, justice, and power in the twenty-first century.

Responses and Challenges to the New Millennium

TRENDS AND COUNTER-TRENDS

The dominant trend of legal studies in the twentieth century could be characterized as a turn away from "law in books" to "law in action." The beginning of the new millennium has seen a continuation of this focus on law's association with will rather than law as pure reason. This volume is not content to merely follow this fashion. It seeks instead to set a new tone for

the study of law, justice, and power as they relate to reason and will—a goal it seeks to accomplish by 1) further teasing out the critical potential in current legal scholarship, and 2) indicating new directions for legal thought by calling attention to various blind spots in contemporary approaches to law.

The focus on the entwinement of law with will rather than reason is evident in many aspects of contemporary legal studies. The notion that law is a field of dissensus and conflict arising from cultural differences and class stratification seems to have gained ground on theories founded on consensus and common values. The return to *Sittlichkeit* in discussions of multiculturalism and human rights in the late twentieth century, the revival of interest in Carl Schmitt in discussions of international law, the attention to the quotidian and micropowers in the sociology of law, the ethical and rhetorical turns in legal theory, and the role of psychoanalysis in challenging traditional understanding of the law, are all telling evidence that the relationship of justice to law can no longer be approached merely in terms of reason.

Cultural and sociological studies of law inspired by Marx and Foucault call attention to the ways power serving private interests is often rationalized by, and as, law. It is important, however, to remember that the will does not only produce violence. The will can also generate power in the service of justice. In fact, reason without will is impotent. Moreover, will sometimes can reach a justice that lies beyond reason—as in the case of love and forgiveness. This is not to say, however, that reason should be subjugated to the will. The temptation to elevate will above reason, exemplified in postmodernist thinking, needs to be subjected to rigorous examination, even as one should be mindful of the many contributions postmodernism has made to law and democracy. The horror of the triumph of the Will in the Nazi movement, the elation the Nazis experienced by exalting (their version of) the Hegelian Spirit (in contradistinction to "the mind") and the Nietzschean Will, their utter contempt for "the imbecility of reason" they associated with liberal democracy, should be enough to warn us against prematurely hypostatizing will above reason. Justice cannot be upheld without reason. To ignore reason and the universalism associated with it means giving up the grounds on which we can talk about universal human rights and equality. A one-dimensional insistence on cultural relativism and identity politics risks giving legitimacy to General Westmoreland's "multicultural" claim during the Vietnam War that extreme measures against "Orientals" were not morally unacceptable because "Life is plentiful, life is cheap in the Orient. As the philosophy of the Orient expresses it, life is not important" (Davis 1985). We must not prematurely dismiss the importance of reason if we are to carry on struggles for justice and democracy. Governance by law (in the sense of reason) instead of by "men" can at least establish a basic democratic framework where human beings can, at least in principle, recognize right and not might, and where they can associate with each other as rational beings of equal dignity.

While differences between reason and will need to be maintained in order to avoid colonizing the will with reason, hard-and-fast distinctions between the two have to be problematized. Even if one sets aside Lacan's observation that "pure reason" can become a perverse will, it would be naive to insist that law is solely a discourse of reason. Fruitful and critical discussions of law, justice, and power can come about only when we acknowledge the value of both reason and will, and engage them in an ongoing process of mutual interrogation and defamiliarization. Rousseau and Kant have both attempted to reconcile reason and will within the concept of autonomy. Habermas offers a discursive model, steering between facticity and validity to achieve a similar objective. While benefitting from these great thinkers' insights, contributors to this volume at the same time seek strategies for negotiating places for law, justice, and power between reason and will, between right and might—with special attention to the *Sittlichkeit* of the new millennium.

CONTRIBUTIONS MADE BY THE VOLUME

The book is organized under seven topics. Part I, "The 'New World Order' Between State Sovereignty and Human Rights," launches the discussion into the new millennium by addressing the pressing issue of the (im-)possibility of (trans-)national justice in the "New World Order."

The year 1989 marked not only the end of the Cold War but also the "second death" of a balance of world powers which originated in Europe in 1648 with the Treaty of Westphalia. Established to prevent wars and hegemonic dominance, this balance arrangement was destroyed by the two World Wars. What ensued was the birth of a new kind of "balance"—a "'balance' of super-powers"—between the USA and the USSR. This second balance came to an end in 1989. Since that time, the global triumph of capitalism has taken place alongside a drive toward universalism in international politics, such as the rising popularity of human rights above state sovereignty, and of "morality" above politics. Morality, associated with human reason, is deemed universal. By contrast, politics is suspected of complicity with the particular wills of power elites. Various humanitarian operations have thus taken place on behalf of "a law that ranks higher than the law which protects the sovereignty of states" (Havel 1999; quoted in Žižek's essay in this volume). The tensions involved in such undertakings between state sovereignty and human rights, between legality and morality, make it incumbent on us to subject such applications to rigorous examination.

To illuminate the debate over which should have primacy—human rights or state sovereignty—Part I includes two kinds of transnational "humani-

tarian" operations: military interventions and refugee policies. Three scholars from four disciplines—philosophy, psychoanalysis, international law, and sociology—contribute to this debate. The first two essays take the Kosovo campaign as a point of departure, whereas the last essay turns to the 1999 British Immigration Act regarding refugees from Bosnia-Herzegovina and Afghanistan. The first two contributors, Slavoj Žižek and Martti Koskenniemi, observe how political and military interventions—made in the name of reason, law, and justice—are in reality often complicitous with the will to domination. Žižek diagnoses the NATO operation's complicity with global capitalism, and critiques high-sounding moral claims such as depoliticized "universal human rights" for blurring the boundaries between private and public in political discourse. In a similar spirit, Koskenniemi questions NATO's substitution of "moral duty" for law in justifying the campaign in Kosovo. Unlike Žižek, however, Koskenniemi maintains the necessity of an ethical politics, despite the impossibility of fully realizing such a goal in a divided and agnostic world. Koskenniemi thus proposes a law whose tentative universality is derived from the absence of any external objective structure; as such, it can "remain open for the articulation of any moral impulse" and "any conception of what is just." Moving the focus from military interventions to the opening of state borders to asylum seekers, Maggie O'Neill relies on, and is much more affirmative of, human rights and morality than the first two contributors. Her chapter focuses on the interrelationships among citizenship, (human) rights, power, and the law as they are experienced in the United Kingdom by asylum seekers from Bosnia-Herzegovina and Afghanistan.

The "New World Order" and the disruption of political and legal boundaries across nation-states were well prepared by colonialism.[17] Part II, "Colonialism and the Globalization of Western Law," uses the retrospective insight gained from the global age to throw new light on law and colonialism. Peter Fenves's essay explores how the formation of *res publica* simultaneously caused the nation-state to transgress its own boundaries by "deporting justice" to colonies. Focusing on Kant's rejection of *Machtspruch* (sovereign sentence) for *Rechtspruch* (legal decision), might for right, Fenves demonstrates how the *Machtspruch* was reintroduced to preserve the state when strict legality threatened an avalanche of executions. In such a state (of) emergency, *Machtspruch* was reinstated to deport "disruptive elements" to colonies—the "under-house" instead of the "slaughter-house." The *Machtspruch*, outlawed by the court of reason, thus turned out to be the "higher" reason making possible the rule of law. The West's "progress" from the rule of might to the rule of right, in other words, was dependent on the existence of colonies outside the dominant countries' legal jurisdiction yet under their executive authority.

My own essay examines how Western law, which reforms and deforms the colonized's culture and consciousness (for instance, their relationships to labor, land, time, and marriage), can also be mobilized in the colonized's struggle for independence. I contrast two differing forms of strikes carried out by the men and women in Forster's *A Passage to India* and investigate how the men appealed to, while the women rejected, the proprietary rhetoric of Western law and the foundation it provided for the British colonial structure. My analysis of strategies of resistance to colonial law uses the insights of Lacanian psychoanalysis to develop a notion of law defining the subject in terms of his/her lack, in contrast to liberal law which defines the subject in terms of his/her possessions.

Part III, "Legal Pluralism and Beyond," moves from external to "internal" colonialisms, from the global operations of law to its local administrations, by addressing the rising importance in legal studies of the "local" and the pragmatic in such domains as multiculturalism, gender studies, and the quotidian. While supportive of the politics of legal pluralism, the essays in this section go beyond the contributions of twenty-first-century scholarship. Nancy Fraser opens the conversation by arguing that justice today requires both redistribution and recognition of the values held by diverse cultural and historical groups. These values are also known as the will of different peoples—a will associated with *Sittlichkeit* (ethics) and "the good"—in contradistinction to reason and its association with *Moralität* (morality) and "the right." Contrary to identity politics, however, Fraser seeks for marginalized groups a justice which would recognize differences without falling into the trappings and constraints of *Sittlichkeit*. In the process of rethinking recognition on the basis of the right rather than the good, of reason rather than will, Fraser destabilizes the distinction between morality and ethics.

John Brigham also writes in response to the disintegration of the grand theory of law, but he concentrates instead on the pragmatic turn in legal theory. Foucault and Foucauldian legal scholarship serve as a focal point for Brigham's comments on informal law—the operation of normative control in areas traditionally considered to be outside the domain of law (Goodrich 1994, 324). While criticizing the tendency of Foucauldian scholarship to trivialize the state and the law and their concrete articulations of power, the essay also credits Foucault's legacy for drawing attention to the cultural mechanisms through which the law is imposed and the way it operates through various practices of everyday life. Brigham's goal is to transcend "the traditional conception of legal pluralism to a constitutive perspective that is in the best tradition of Foucault."

Part IV, "New Ethical and Philosophical Turns in Legal Theory," brings the discussion from the *empirical* other of legal pluralism to both the *concrete* Other[18] and the *radically singular* subject in Continental ethics and phi-

losophy. This section marks the concerted efforts of four legal, political, and philosophical thinkers to explore new ways of going beyond Enlightenment notions of law, justice, and power. Ernesto Laclau, Robert Gibbs, and Peter Fitzpatrick challenge the Kantian notion of autonomy in ways that surpass contemporary academic appropriations of Levinasian ethics. Alain Badiou, on the other hand, rethinks the (dis-)connections between philosophy and politics in a manner that enables him to radically revise the Enlightenment principle of equality. For him, equality is "a universal capacity for political truth" that is nevertheless subjective and performative, with "neither a guarantee nor a proof."

In taking up the ethical turn in legal theory, the first three essays demonstrate how this volume is by no means content with uncritically hypostatizing ethics above norms. Contributors to this volume, in other words, are sensitive to the fact that departure from the duty to apply pre-existing laws declared to subjects of law in advance results in its own form of injustice. Instead of prematurely privileging equity above legality, heteronomy over autonomy, the three authors seek to engage these ideas in a rigorous process of mutual interrogation, all the while vigilant that, as responsible thinkers, they have to respond to both demands of justice.

In this spirit, Ernesto Laclau explores both the continuities and discontinuities between norms and ethics. While refusing to treat ethics and norms as independent of each other, Laclau warns against the totalitarian practice of collapsing the two. He advocates establishing an impossible but necessary relationship between the two registers via a "radical investment of the ethical into the normative"—radical because "there is no way of logically moving from ethical experience to norm," and the relationship is one of investment because "there is nothing which could be called an ethical normativity." This radical investment renders the normative order heterogeneous to itself. In so doing, Laclau goes beyond the Enlightenment idea of autonomy by proposing a subject that "emerg[es] from the undecidable game between autonomy and heteronomy . . . for which there is no universality but universalization, no identity but identification, no rationality but partial rationalization of a collective experience."

In resonance with Laclau's critical response to the Enlightenment tradition of justifying the rule of law on the basis of autonomy, Robert Gibbs proposes a philosophy of law based on ethics and "responsibility for *others*" (my italics). He analyzes three thinkers—Levinas, Luhmann, and Lyotard—focusing on their shared attempt to contest the *self*-grounding of universal law. Beginning from an asymmetric ethics of responsibility for the Other, Gibbs explores the ways that both norms and laws can serve to balance particular responsibilities and to hold open the future for the Other. Focusing on judicial procedure (the right to a hearing and to appeal) and

deliberative democracy (seen from the viewpoint of an ongoing revision of legislation), Gibbs offers a way to justify law starting from particular and extreme responsibilities. His goal is to investigate alternative ways of justifying both norms and laws.

Like Laclau and Gibbs, Peter Fitzpatrick is interested in heightening law's responsiveness to justice. Fitzpatrick's discussion of the death penalty lends particular urgency to the confrontation of law with ethics in the domains of death. Death shares with law a tone of finality, but death also subverts the closed finality of law by confronting it with an absolutely unknown that is beyond the legal order: "Death denies and dissolves [the legal] order and makes something else possible, something unknowable without any assurance beforehand." Existing at the limits of law, death is both within law's horizon and yet beyond it.[19] Working to serve law at its limit by making manifest law's authority to make a "final" decision, death paradoxically challenges law at the same time: the finality involved in death penalty confronts law with an absolute responsibility to ensure that its decision "be made and brought to bear in as open, accountable, and revisable a manner as possible." Speaking from the standpoint of a new philosophy, Alain Badiou takes up a somewhat different task in his engagement with the Enlightenment paradigm of law, justice, and power. Rather than relying on the language of abstract universals, he rethinks equality in terms of the radically singular and the performative. While justice pertains to an "egalitarian recognition of [all people's] capacity for truth," Badiou also maintains that "equality means that the political actor is represented under the sole sign of his specifically human capacity." Justice in this way is characterized as the "*seiz[ing* of] the egalitarian axiom inherent in a veritable political sequence" by philosophy—the latter realized as a comportment to thought and truth. Equality cannot be positivized as an objective of action; rather, it is an *axiom* of action. This axiom, Badiou emphasizes, is performative. Justice which "seizes the latent axiom of a political subject" hence "designates necessarily not what must be, but what is."

Part V, "The 'Inhuman' Dimension of Law: Poststructuralist Assessments," turns from ethics and philosophy to investigating a linguistically generated "inhuman" dimension of law, using the insights of deconstruction and Lacanian psychoanalysis. Focusing on Benjamin's *Zur Kritik der Gewalt*, J. Hillis Miller identifies *Schicksal* (roughly translated as "fate") to be the cause of the incommensurability among law, justice, and power. *Schicksal*, or the "mystical foundation of authority"—as Derrida (1990), following Montaigne and Pascal, names this problematic—is wholly other to human reason; it both disrupts and makes possible binary oppositions. At times associated with *divine* will and at others with mythical violence (a binary opposition which breaks down), *Schicksal* is as resistant to *human*

will as it is to reason. Miller traces this "inhuman" dimension to the fact that the "ground of authority is a foundation immanent to language as speech act." The mystical foundation of law, in other words, is the immanence of an abyss "within performative utterances that is covered over by the word *Schicksal*, as in a judge's pronouncement of a verdict for capital punishment that determines the luckless criminal's fate."

Juliet Flower MacCannell explores the "inhuman" dimension of the law by tracing manifestations of the drive in theories of law from Aristotle to Hobbes, the demise of which tradition she credits to Rousseau—the main subject of her discussion. By offering a concept of law invested in freedom rather than order, MacCannell argues, Rousseau liberates the political subject from the hidden fantasies that had perpetually destroyed the law of order from within. By corresponding Rousseau's analysis of the flaw in classical legal theory (in the *Second Discourse*) to Freud's work of "construction" in psychoanalysis, MacCannell's study gives us new insight into political freedom. It also enriches our understanding of freedom in the psychoanalytic sense: freedom in both cases involves the impossible struggle for freedom from fantasy.

MacCannell's essay draws attention to the insights psychoanalysis has to offer to legal studies. The possibility of cross-fertilizations between law and psychoanalysis has taken hold in both disciplines since the last decade of the twentieth century—a dialogue partly prompted by the fact that both invoke the concept of "law." "Law" has different referents in the two fields, and it is important not to confuse them, but neither is it accurate to set them entirely apart—for example, by assigning them to separated domains such as "internal *versus* external law." Even though psychoanalytic law is not the same as judicial law, the former is a by-product which escapes, or is left over from, judicial law. Psychoanalytic law thus relates to judicial law in terms of what Kant and Hegel would call "limit" rather than "boundary."[20] Far from existing in two separate realms called the "internal" and the "external," the two laws bear to each other a (non-)relation of what Lacan and Jacques-Alain Miller would call *extimité*. This (non-)relation renders psychoanalytic law a particularly strategic tool for reading with, and against, judicial law.[21] Love and perversion, for example, operate "outside the limits of the law."[22] They are the *unheimlich* other to judicial law and as such can de-*familiar*ize the latter for us. Employing the insights of psychoanalysis, Julia Kristeva—the author of the essay in Part VI, "Psychoanalysis: Justice Outside the 'Limits' of the Law"—urges us to think anew the relationship between law and justice.

Kristeva turns to two kinds of "good will"—forgiveness and promise—which open a different avenue to justice and power from outside the limits of the law. In her psychoanalytic explication of Arendt's political philosophy, Kristeva points out how forgiveness is the only power that can release the human subject from the facticity of the past with which the judgment of law is concerned. Contrasting justice to mercy with their respective emphases on equality and singularity, Kristeva concurs with Arendt that "to judge and to forgive are but the two sides of the same coin" because "every judgment is open to forgiveness." While forgiveness releases human beings from the facticity of the past, promise protects human beings from the unpredictability of the future. Promise in the forms of legislation and the "mutual promise 'act in concert'" delivers human beings from the sense of insecurity that goads them to acts of domination.

Forgiveness, aimed at the person and not the deed, is an act of love. Kristeva's essay has a powerful message to deliver: "Whereas forgiveness is opposed to vengeance, the promise is opposed to domination." With this message, the volume concludes with an essay which welcomes the new millennium on a note of love, forgiveness, and promise.

NOTES

I would like to thank Austin Sarat for graciously permitting me to use the title "Law, Justice, and Power" for this volume and this chapter—"Law, Justice and Power" being a title he uses for his series with Dartmouth/Ashgate Press. I would also like to acknowledge my debt to the Law and Society Association, of which Professor Sarat was the president, for sponsoring my participation at their Summer Institute in 1997. The abundant good work of the Association has been crucial to refining my legal scholarship and inspiring me to undertake this project. Special thanks are also due to all contributors to this volume for their excellent work and their collaborative efforts on this volume.

1. Globalization has, for example, "trebl[ed] world per capita income since 1945" (Scholte 1996, 53).

2. The number and complexity of lawsuits, both collective and individual, have increased drastically in the past few decades. Clare Dyer reports on March 27, 1999, that "Negligence claims against general practitioners have gone up 13-fold between 1989 and 1998, according to figures released last week by the Medical Protection Society. . . . Compensation awards and settlements also rose steeply: while the highest settlement in 1989 was £777000, in 1998 it was £1.7m ($2.7m)" (1999, 830). Despite this upsurge in litigation, unfortunately, those most in need of justice are often the ones who do not have the means to demand it. Oftentimes, it does not even occur to the most disenfranchised in society that they are entitled to, or deserving of, justice.

3. "*Entitlement*," of course, is a legally charged term. Sen defines *entitlement* as follows: "The entitlement of a person stands for the set of different alternative commodity bundles that the person can acquire through the use of the various *legal* channels of acquirement open to someone in his position" (1990, 36; my italics). On Sen's entitlement approach, see also his works in 1977 and 1981.

4. Jean Drèze and Amartya Sen draw attention to the vast number of famine victims in our times as a result of "the political economy of hunger": "Despite the widespread opulence and the unprecedentedly high real income per head in the world, millions of people die prematurely and abruptly from intermittent famines, and a great many million more die every year from endemic undernourishment and deprivation across the globe" (1990, 1). Etienne Balibar repeatedly highlights how global capital induces massive reproletarianization by dismantling social and developmental programs:

> One kind of effect [of globalization] is simply to generalize material and moral insecurity for millions of potential workers, i.e., to induce a massive proletarianization or reproletarianization (a new phase of proletarianization which crucially involves a return of many to the proletarian condition which they had more or less escaped, given that insecurity is precisely the heart of the "proletarian condition"). This process is contemporary with an increased mobility of capital and also humans, and so it takes place across borders. (2001, 24–25)

5. Among the deprived, such sentiments would seem well justified. But ironically, it is the "haves," rather than the "have-nots," who tend to be consumed by the *ressentiment* against "the neighbor who stole my *jouissance*," as Lacan would put it. The "ethic" of capitalism is superegoistic: the more one has, the more one wants. This is why capitalism is characterized by what Marx diagnosed as a constant revolution of the means of production. "Giving famishes craving" is one way to account for the tremendous energy generated by this structural imbalance of capitalism.

6. This is a term appropriated from Eric Hobsbawm.

7. This is especially true in many European languages outside English. The medieval concept that an unjust law is no law (invoked by Martin Luther King in his "Letter from City Birmingham Jail") obviously comes from the fact that in Latin (as well as in French, German, Italian, and Spanish), the word for *law* (*jus*, *droit*, *Recht*, *diritto*, and *derecho*) stands for what an English speaker would render as "*just* law," "*right* law," or "*justice*." Even when these terms are used to denote "law" in the narrow sense of the word, they carry with them a rather strong connotation of *rightness* (Pennock 1964, 378).

8. Sociological jurisprudence, for example, is committed to using the power of law for social reforms and the realization of democracy. Important spokesmen of this school include Rudolf von Jhering (1872) and Roscoe Pound (1911–12). Philip Selznick provides a telling illustration of the indispensable role of power to the operation of law: "A tax is *illegal* if it violates an authoritative order, and it is *nonlegal* if it lacks appropriate authority . . . legality presumes the emergence of authoritative norms whose status as such is 'guaranteed' by evidence of other, consensually validated, rules" (1968, 52).

9. Similar critiques targeting the Roman law of private property had also been made by Rousseau and the early Hegel.

10. Hume, for example, defines the will as follows: "By the *will*, I mean nothing but *the internal impression we feel and are conscious of, when we knowingly give rise to any new motion of our body, or new perception of our mind*" (1978, "Of Liberty and Necessity," book 2, part 3, section 3 of *Treatise of Human Nature*).

11. Justice thus emerges as "the sum of the conditions under which individual wills can be conjoined in accordance with a universal law of freedom" (Attwooll 1998, 511).

In light of Kant's concept of autonomy as a reconciliation of will and reason, I part company with Fredrich Julius Stahl's (1830–33) purely formal definition of the rule of law. By identifying the *Rechtsstaat* exclusively with reason, Stahl set the rule of law in opposition not only to "patrimonial" law but also to the law associated with popular will.

12. The urgency of such issue in our global age is precisely what Part I of this volume undertakes to address.

13. See Part V of this volume, devoted to discussing law, justice, and power between philosophy and rhetorics.

14. See Parts VI and VII in this volume.

15. See Part II of this volume.

16. See Part III of this volume.

17. Bill Ashcroft, Gareth Griffiths, and Helen Tiffin have commented on the relationship between colonialism and globalization, although they omit the fact that colonialism was from its onset a legal as well as a military, political, and economic enterprise. Law provided the "legitimacy" and foundation for the political and administrative structures of the colonial state. The observation of Ashcroft et al. goes as follows: "The importance of globalization to post-colonial studies comes . . . from its demonstration of the structure of world power relations which stands firm in the twentieth century as a legacy of Western imperialism" (2000, 112).

18. The "concrete" in Continental philosophy does not refer to the merely empirical. Hegel criticized the merely empirical as "abstract" (see, for example, Hegel's discussion of empiricism at the beginning of *Phenomenology*). For Hegel, empirical data remain abstract until they have been mediated into the Absolute. In similar spirit, Marx maintained that the commodity makes sense only within a system of references—that is, the market (see *Capital*). Note also that the "concrete" and the "radically singular" in existentialism and contemporary French thought do not equal the empirical. For further elaborations on this subject, please see n. 33 in Chapter 5 of this volume.

19. It would be interesting to perform a Levinasian move here and seize on death as a way of opening law to ethics (see Levinas, *God, Death, and Time* [2000]; *Entre nous* [1991]; and *De l'existence à l'existant* [1978]). Fitzpatrick's demand that law be hyperresponsible in the face of its inadequate response to the death of the other, however, would differ in context and emphasis from Levinas's discussion of death as what interrupts absolutely my self-mastery.

20. See Kant's *Critique of Pure Reason* and *Prolegomena*; see also Hegel's *Phenomenology* and *Logic*. In brief, "limit" could be described as a "reflection-into-itself" of the boundary.

21. My strategy of reading one thought with, and against, another is adopted from Lacan's "Kant *with* Sade" (my italics).

22. This expression is appropriated from the end of Lacan's *Seminar XI* (commonly known as *The Four Fundamental Concepts of Psychoanalysis*). See also Juliet Flower MacCannell's development of this idea in her article "Love Outside the Limits of the Law" (1994).

WORKS CITED

Ashcroft, Bill, Gareth Griffiths, and Helen Tiffin. 2000. *Post-colonial studies: The key concepts*. London: Routledge.

Attwooll, Elspeth. 1998. Legal idealism. In *Routledge encyclopedia of philosophy*, ed. Edward Craig et al., 5:510–14. London: Routledge.

Balibar, Etienne. 1998a. Violence, ideality, and cruelty. *New Formations* 35:7–18.

———. 1998b. Specters of violence. Paper presented at the School of Criticism and Theory, Cornell University, July 14.

———. 2001. Outlines of a topography of cruelty: Citizenship and civility in the era of global violence. *Constellations* 8, no. 1:15–29.

Benn, Stanley I. Justice. 1967. *Encyclopedia of philosophy*. 4:288–302.

Brown, Beverley. 1998. Legal discourse. In *Routledge encyclopedia of philosophy*, ed. Edward Craig et al., 9:496–99. London: Routledge.

Calvin, Jean. 1559, 1960. *Institutes of the Christian religion*. Trans. F. L. Battles. Ed. J. T. Mitchell. Philadelphia: Library of Christian Classics.

Cartwright, Dorwin. 1959. A field theoretical conception of power. In *Studies in social power*, ed. Dorwin Cartwright, 183–220. Ann Arbor: Research Center for Group Dynamics, Institute for Social Research, University of Michigan.

Dallmayr, Fred. 1990. Hermeneutics and the rule of law. *Cardozo Law Review* 11, no. 5–6:1449–69.

Davis, Peter, dir. 1974, 1985. *Hearts and minds*. Videocassette. Los Angeles: Embassy Home Entertainment.

Derrida, Jacques. 1990. Force de loi: Le "fondement mystique de l'autorité" / Force of law: The "mystical foundation of authority." *Cardozo Law Review* 11, no. 5–6:920–1045.

Drèze, Jean, and Amartya Sen. 1989. *Hunger and public action*. Oxford: Oxford University Press.

———, eds. 1990. *The political economy of hunger*. New York: Oxford University Press.

Dyer, Clare. March 27, 1999. GPs face escalating litigation. In *British Medical Journal* 318 (7187): 830.

Ford, John D. 1998. Sovereignty. In *Routledge encyclopedia of philosophy*, ed. Edward Craig et al., 9:56–59. London: Routledge.

Goodrich, Peter. 1993, 1994. Law. In *The Blackwell dictionary of twentieth-century social thought*, ed. William Outhwaite and Tom Bottomore, 321–25. Oxford: Blackwell.

Hart, H. L. A. 1961. *The concept of law*. Oxford: Clarendon.

Havel, Vaclav. 1999. Kosovo and the end of the nation-state. *New York Review of Books* (June 10): 6. Quoted from Slavoj Žižek, NATO as the left hand of god?, in this volume.

Hegel, Georg Wilhelm Friedrich. 1977. *Phenomenology of spirit*. Trans. A. V. Miller. Oxford: Clarendon Press.

———. 1969. *Hegel's science of logic*. Trans. A. V. Miller. Atlantic Highlands, NJ: Humanities Press International.

Hobsbawm, Eric. 1996. *The age of extremes: A history of the world, 1914–1991*. New York: Vintage-Random.

Hume, David. 1739–40, 1978. *Treatise of human nature*. Ed. L. A. Selby-Bigge. Oxford: Oxford University Press.

Jhering, Rudolf von. 1872. *Der Kampf um's Recht*. Wein: Manz.

Kant, Immanuel. 1998. *The critique of pure reason*. Trans. and ed. Paul Guyer and Allen W. Wood. New York: Cambridge University Press, 1998.

———. 1977. *Immanuel Kant: Prolegomena to any future metaphysics that will be able to come forward as science*. Trans. and ed. Gary Hatfield. Cambridge: Cambridge University Press.

Lacan, Jacques. 1978. *The four fundamental concepts of psycho-analysis*. Trans. Alan Sheridan. Ed. by Jacques-Alain Miller. New York: Norton. Translation of *Le Séminaire de Jacques Lacan*, vol. 11, *Les quartre concepts fondamentaux de la psychanalyse*. Paris: Éditions du Seuil. 1973.

———. 1989. Kant with Sade. Trans. James B. Swenson Jr. *October* 51:55–104.

Levinas, Emmanuel. 1978. *De l'existence à l'existant*. Paris: J. Vrin.

———. 1991. *Entre nous: Essais sur le penser-a-l'autre*. Paris: Bernard Grasset. Trans. as *Entre nous: On thinking of the other*. 1998. Trans. Michael B. Smith and Barbara Harshav. New York: Columbia University Press.

———. 1993. *Dieu, la mort et le temps*. Paris: Bernard Grasset. Trans. Bettina Bergo as *God, death, and time*. 2000. Stanford: Stanford University Press.

MacCannell, Juliet Flower. 1994. Love outside the limits of the law. *New Formations* 23:25–42.

Marx, Karl. 1957–62. *Capital*. Ed. Frederick Engels. Moscow: Foreign Language Publishing House. 3 vols.

Mayhew, Leon H. 1968. The legal system. In *International encyclopedia of the social sciences*, ed. David L. Sillis, 9:59–66. New York: Macmillan.

Pennock, J. Roland. 1964. Law. In *A dictionary of the social sciences*, ed. Julius Gould and William L. Kolb, 378–80. New York: Free Press–Macmillan.

Pink, Thomas. 1998. Will. In *Routledge encyclopedia of philosophy*, ed. Edward Craig et al., 9:720–25. London and New York: Routledge.

Pound, Roscoe. 1911–12. The scope and purpose of sociological jurisprudence. *Harvard Law Review* 24:591–94, 25:489–516.

Rousseau, Jean-Jacques. 1762, 1968. *The social contract*. Trans. M. Cranston. Harmondsworth, UK: Penguin.

Sarat, Austin. 1988. " . . . The law is all over": Power, resistance, and the legal consciousness of the welfare poor. *Yale Journal of Law and the Humanities* 1:343–70.

Scholte, J. A. 1996. Beyond the buzzword: Towards a critical theory of globalization. In *Globalization: Theory and practice*, ed. E. Kofman and G. Youngs, 43–57. London: Pinter.

Selznick, Philip. 1968. The sociology of law. In *International encyclopedia of the social sciences*, ed. David L. Sillis, 9:50–58. New York: Macmillan.

Sen, Amartya. 1977. Starvation and exchange entitlements: A general approach and its application to the great Bengal famine. *Cambridge Journal of Economics* 1, no. 1:33–59.

———. 1981. *Poverty and famines*. Oxford: Oxford University Press.

———. 1990. Food, economics and entitlements. In *The political economy of hunger*, ed. Jean Drèze and Amartya Sen, 34–52. New York: Oxford University Press.

Stahl, Fredrich Julius. 1830–33. *Die Philosophie des Rechts nach Geschichtlicher Ansicht*. Heidelberg: Mohr.

Stone, Julius. 1946, 1950. *The province and function of law: Law as logic, justice, and social control—A study in jurisprudence*. Cambridge: Harvard University Press.

Weber, Max. 1968, 1978. *Economy and society*. Trans. Ephraim Fischoff, Hans Gerth, A. M. Henderson, et al. Ed. Guenther Rother and Claus Wittich. Berkeley: University of California Press.

Part I

THE "NEW WORLD ORDER" BETWEEN STATE SOVEREIGNTY AND HUMAN RIGHTS