CHAPTER 1

Rights, Resentment, and Social Change

I. Introduction

During the 2000 presidential debates George W. Bush explained: "I support equal rights, but not special rights for people. [Nobody] should be given special protective status. Everyone ought to have the same rights" (*New York Times* 2000: A22). Although it was not surprising that Bush would borrow a formulation made popular by the conservative intellectuals who make up the New Right political movement, it was surprising that Bush's opponent, Democratic nominee Albert Gore, did not challenge Bush's framing of the issue. Gore did disagree with Bush that a pending congressional bill that would prohibit job discrimination against gays and lesbians was in fact a grant of special rights. However, his silences regarding Bush's formulation of the equal-rights/special-rights distinction suggest that Gore accepted the premise that there exists a class of rights that are special and that, as such, they are illegitimate. Such considerations at least suggest that Gore was unwilling to directly challenge Bush's public condemnation of special rights. It was an unwillingness that he shared with President William J. Clinton, who was similarly silent about the issue in his 1996 debates with Republican Party candidate Robert Dole (*New York Times* 1996: B10). Their silences are as revealing as the original formulations.

Although the most virulent condemnations of special rights come from the political Right, the normative vision that propels those condemnations crosses partisan boundaries. The assumption that there exists a class of illegitimate rights claims, special rights, has become a matter of common sense. Entrenched also is a corresponding, underlying resentment of these rights. The special-rights talk employed by Mr. Bush expresses resentment over how those rights that are presumed to be special threaten the things that equal rights supposedly guarantee: that individual success should be

based upon one's merits, that communities should be places of relative calm and harmony, and that American governments should treat all people exactly the same.

Indeed, special-rights talk is used by many resentful Americans to oppose gay rights, disability rights, affirmative action, and, as I pursue here in-depth, Indian treaty rights. Although opponents of these rights can point to few lasting legal and political victories, their assertion that such rights are special has become a matter of common sense. What is the significance of the entrenchment of this distinction between equal rights and special rights in the American lexicon? And how does this rhetorical success emerge from, and contribute to, the broader success of New Right politics? What cultural and political work, that is, does special-rights talk accomplish?

In this book I analyze special-rights talk both as it constitutes a specific set of disputes and as it reverberates generally. I undertake an in-depth exploration of opposition to Indian treaty rights that illustrates the general impacts of special-rights discourse on American politics. I argue that this discourse has three primary impacts. Each of these impacts, moreover, casts attention on the cultural power of rights talk. Analysis of special-rights talk, accordingly, depends upon understanding how that discourse works conceptually, as both an explanatory resource with which those who employ it make sense of their interests and as a normative resource with which they make sense of the legitimacy of the world in which they live.

Consider, for example, the activists who make up the anti-treaty-rights movement. These activists have mobilized into a loose coalition of grassroots organizations that are dedicated to opposing the treaty-rights claims of the 561 Indian tribes that are currently recognized by the United States. It is unsurprising that treaty-rights claims, which often call for a redistribution of resources, have prompted resentment among people who feel threatened by the changes that tribes seek. After all, the rights mobilizations of other, better-studied social movements, which also sought redistributive social change, met similar fates.[1] As with these other rights claims, resentment over, and countermobilization to, treaty-rights claims is motivated by beliefs that those claims threaten self- and group interests.

Yet anti-treaty-rights activists voice their resentment in a particular idiom, one that obscures and occasionally disavows their own material interests. Treaty rights, they claim, are unfair because, unlike equal rights, they are special rights whose exercise assaults, rather than complements, national values. In particular, treaty rights differ from equal rights in that they provide to their bearers advantages without regard to their efforts or their merits—the traditional markers by which individual success in

America is legitimated. Treaty rights, that is, go beyond the equal opportunities guaranteed by equal rights and instead offer "something for nothing" (Lears 2003). Indian treaty rights are, consequently, interpreted as threats to the body politic. Activists' special-rights talk makes their opposition to treaty rights at once self-interested and patriotic, such that their resentment is expressed according to nationalistic prerogatives.

Shading interest-based conflicts in nationalistic tones, the special-rights talk employed by anti-treaty-rights activists generates three primary impacts. First, it inflates the resentment that activists feel toward treaty rights. Perceiving their efforts as defenses not only of their own interests but also of the equal rights of all Americans, activists envision themselves as "counter-subversives," as defenders of an American way of life under siege from Indian treaty rights (Rogin 1987). These countersubversive inclinations amplify the activists' resentment, transforming that resentment from its original basis in self-interest to a basis in national values. By portraying anti-treaty-rights activism as an act of selfless devotion to country, special-rights talk infuses that activism with the zealotry of a moral crusade; it thus motivates activists to redouble their opposition to treaty rights.

Second, their special-rights talk makes the activists' arguments about the threats of treaty rights intelligible to a wide audience.[2] Their discourse expands the "scope of conflict" to include new actors, a substantial number of whom accept the depiction of treaty rights as un-American, and who consequently support the activists' efforts (Schattschneider 1960). Their special-rights talk thus simultaneously motivates the anti-treaty-rights movement and broadcasts the movement's concerns to otherwise disinterested populations.

Yet the hortatory qualities of special-rights talk are a mixed blessing for anti-treaty-rights activists. As Schattschneider (1960) argued, the successful expansion of a conflict to new institutional and cultural settings often leads the original parties to lose control of the terms by which conflict proceeds. Such a dynamic is particularly apparent when anti-treaty-rights activists garner the support of public officials. This support has been, at best, of uncertain worth and, at worst, counterproductive. Indeed, the sympathetic participation of public officials inadvertently introduces a host of institutional constraints and electoral incentives that, once the dispute in question becomes formally politicized, tend to work to the disadvantage of the activists' goals.

The third impact of the activists' special-rights talk is even more damaging to their goals. Their discourse leads activists to consistently overestimate the negative effects of treaty rights on their personal interests, attributing to those rights much greater causal influence than can be substantiated. Meanwhile, activists exonerate the impersonal, long-term economic and

political processes (such as the rise of a service-based economy and the continuing problem of unresponsive government) that are more damaging to their interests. Opposition to treaty rights thereby stifles potential challenges to the actual causes of activists' resentment.

Neither special-rights talk nor its impacts are confined to the anti-treaty-rights movement. The ambiguous embrace of rights that propels the anti-treaty-rights movement is a hallmark of New Right political critique and, so, also an underappreciated element of the "culture wars" that define contemporary American politics (Hunter 1991; Haltom & McCann 2004). Prominent conservative intellectuals and politicians frequently decry the rights claims of socially marginal Americans, labeling them as perversions of the true meaning of civil rights and, accordingly, as unfair, needlessly contentious, and un-American. For example, conservative attacks on the gay-rights movement, the disability-rights movement, and affirmative-action policies all follow this script.[3]

The New Right's halting embrace of rights works in the same fashion as does the special-rights talk employed by anti-treaty-rights activists: It converts interest-based disputes into value-based disputes and thereby heightens conflict; it appeals to diverse audiences; and it places and displaces blame for hard times in ways that insulate harmful economic and political trends from critical scrutiny. Conservative-rights talk cultivates, in particular, the resentment of many middle-class and working-poor Americans. These "forgotten Americans" resent the denigration of their own rights by entrenched policy elites, on one hand, and by the traditionally disadvantaged Americans whose deviant rights claims make them the unfair beneficiaries of governmental programs, on the other hand (Goldwater 1970). The championing of this resentful population has propelled the New Right governing coalition to electoral success (Kazin 1995; McGirr 2001; Keck 2004; Mason 2004). Indeed, the success of conservative-rights talk suggests that rights discourse is a potent resource for opponents of all sorts of redistributive social changes, not only those associated with treaty-rights claims.

Accordingly, although the empirical analysis of special-rights talk that I present here most clearly applies to the anti-treaty-rights movement, I will argue that the impacts of that talk have broad resonance. Indeed, the special-rights talk employed by the anti-treaty-rights movement emerges from, and contributes to, the New Right's political vision. Anti-treaty-rights activists lament that "ordinary," forgotten Americans have become the new victims of a nation that panders to the interests of former victims, thereby sacrificing the equal rights of deserving citizens. Portraying themselves as so victimized, activists' special-rights talk meshes seamlessly with the narrative of decline and grievance that animates New Right critique.

Thus, in this book I explore mobilizations of law and rights that aim to block redistributive social change. Such mobilizations are accessible through the existing scholarship on legal mobilization. Some creative extension is required, however. Although the scholarship provides important conceptual resources for such an investigation, it deals predominately with the use of law by marginalized groups that seek social change. It is mostly silent on the types of social movements under investigation here: those that use law and rights to pursue reactionary politics.

II. Mobilizing Law and Rights

Legal-mobilization scholarship has in recent years assumed an important place in the field of law and politics. Drawing inspiration from Stuart Scheingold's seminal (1974) work, *The Politics of Rights,* scholars have detailed how law simultaneously constrains and enables the opportunities and imaginations of those who use it (see also Zemans 1983 and Scheingold 2004). Indeed, scholars interested in how law might facilitate social change have examined how the use of legal rules, vocabularies, and symbols shape the politics of race, gender, "everyday" citizen interactions with authority, and, especially, social movements.[4] In general, these studies have emphasized that the effects of law use for marginalized populations are at best ambiguous.

On a positive note, law use, particularly when tied to a "politics of rights" strategy, can activate an individual's political vision (or consciousness). One recognizes that his or her situation is not a natural product of one's abilities but is instead the product of conditions that are, in principle, changeable. Recognition of the contingent, and thereby political, quality of one's situation facilitates critique, resistance, and (possibly) transformation. Rights claims both help to initiate this nascent political consciousness and provide the instrumental mechanisms by which change is pursued.

In addition to encouraging relatively powerless populations to understand their grievances as political, as actionable, "rights talk" (and law in general) has strategic currency. This is because most Americans share the values traditionally associated with rights: equality, fairness, due process, and the like. Formulating one's claims according to these values increases the chances that the claims will be intelligible to a wider audience. In this sense-making role, rights talk can sometimes generate the support of otherwise indifferent populations for the goals of the marginalized (Scheingold 1974; McCann 1994).[5]

Rights talk thus displays the qualities of what Murray Edelman called "hortatory" political language. Because its content is at once highly salient and "notoriously unstable and ambiguous"—that is to say, all sorts of

interests can be convincingly depicted as a function of one's rights—rights talk can be used to "persuade a mass public . . . that the policies that [the speaker] espouses should be accepted generally" (Edelman 1964: 134). Simultaneously "appealing to everyone's sense of fairness" and functioning as a "medium of self-expression, a rite which helps the individual to reflect in action [her] own [identity]," rights talk exhorts audiences to action even as it affirms and constitutes the moral worth of the speaker herself (Edelman 1964: 137; see also Passavant 2002). Rights talk thus offers strategic and psychic resources to listener and speaker alike.

Legal-mobilization scholars therefore tend to stress the less obvious, indirect ways in which law (and especially rights) contributes to, and occasionally expands, our interpretations of possible and desirable social configurations (Scheingold 1974 & 1989; Galanter 1983; McCann 1994 & 1999). Given this "cultural power" of law (that it helps us to "imagine the real" and to make that reality understandable to a wider audience—Geertz [1983]), it follows that law is comprised of a set of values and ideals that can be occasionally harnessed by the less powerful in order to conceptualize, and to act out, a more fair, more equal, and more inclusive society. In this way, law, and specifically rights talk, can be an important resource for social movements that pursue redistributive social change.

However, legal-mobilization scholars have also emphasized that law use can be a problematic strategy for those same movements. Although legal claims may offer and suggest remedies for individual cases of discrimination, they typically "leave larger patterns of exclusion firmly in place" (Fish 1996: 734; see also Crenshaw, Gotanda, Peller, & Thomas 1995: x). Successful legal claims sometimes convince people that illegal discrimination has been remedied and therefore there is little need to confront and challenge stratified social orders (Karst 1989). Indeed, because legal values and procedures (such as equal treatment, due process, etc.) are tied to individuals and not to groups, law often insulates systemic inequality from attack (Balbus 1977; Lawrence 1987; McCann 1989; MacKinnon 1989).

Although law encourages individual claimants to see themselves as victims of injustice, the tendency of modern legal practices to presume that existing systemic inequalities are natural may narrow the opportunities and the imaginations of would-be reformers. Modern law is thus comprised of a variety of cultural values that anchor, and discourage attempts to fundamentally transform, the status quo. In this way, modern legal practices are hegemonic (Williams 1977: 108–14; Comaroff & Comaroff 1991: 19–32; McCann 1994: 304–10). As Galanter emphasized in a somewhat different context, liberal legal orders usually, though not always, provide for the "haves to come out ahead" (Galanter 1974). Many scholars therefore have concluded that law use is an ambiguous engine of hegemony.[6]

Still, most legal-mobilization scholars have recognized the liberating promises and potentials of legal strategies, given that they are often the only plausible means for questioning the legitimacy of the status quo (Haltom & McCann 2004). Because they have a sense-making, or cultural, power, rights mobilizations, for example, can contribute in important (if indirect) ways to facilitating challenges to entrenched privilege (Crenshaw 1988; Williams 1991; McCann 1994). Accordingly, while recognizing the often disabling consequences of legal practices for those who engage in them, scholars tend to look favorably upon E. P. Thompson's famous conclusion that the modern legal order is a fairer and more open system of governance than cynics acknowledge (Thompson 1975: 267; see also Hunt 1993).

It is, though, not clear that the legal-mobilization scholarship adequately captures the dynamics of those social movements, such as the anti-treaty-rights movement, that oppose redistributive social change. Although the account of treaty-rights politics provided here generally confirms the utility of rights claims for redistributive causes,[7] tribal successes have also exacted significant costs. The most substantial involve the mobilization of resentful and zealous opposition groups. Persuaded by their own rights discourse that treaty rights are unfair and un-American, anti-treaty-rights activists have sought to block the social changes that treaty-rights claims aim to accomplish.

Yet the existing legal-mobilization scholarship is mostly silent about these sorts of rights mobilizations and the resentment that inspires them. With notable exceptions, scholars have been more interested in how rights claims potentially empower egalitarian politics (Herman 1997: 111–12; Goldberg-Hiller 2002: 34). They fail, for the most part, to interrogate conservative forms of rights talk (exceptions are Goldberg-Hiller & Milner 2003; Haltom & McCann 2004; and Dudas 2005). But a great deal of legal activism is in the service of conservative social movements (Hatcher 2005; Teles 2007). These movements are frequently inspired by resentment over the rights claims of socially marginal Americans. It is a resentment that, when expressed in a counterlanguage of rights, turns activists into countersubversives.

III. Resentment, Special Rights, and Countersubversion

Conservative legal mobilizations are, in large part, reactions to the political activism of women, African Americans, the physically and mentally disabled, Indians, and gays and lesbians over the past fifty years. That activism was characterized by a willingness to mobilize rights as resources for social change. Initiating a "rights revolution," the legal mobilizations

of marginalized groups helped to make American society more fair and more just (Epp 1998).

However, the changes in American society prompted by these rights mobilizations were, and are, accompanied by hostility. Threatened by the activism of the socially marginal, many resentful Americans responded with an activism of their own. Scholars agree that this resentment was motivated by self-interested concerns. Yet scholars also note that these concerns were often cast as matters of principle, with many relatively fortunate Americans explaining how their privilege was earned with hard work and merit, making it unfair to force them to bear the weight of society's duty to remedy injustice (Wills 1970; Fish 1994).[8]

Scholars argue, moreover, that the politics of resentment works in a general, even predictable fashion: resentful Americans consistently misdiagnose the sources of their anxieties, placing and displacing blame in unconvincing ways (Edelman 1988: 66–89). Indeed, the culprits identified by the resentful are rarely those most responsible. The misattribution of blame at once inflates the alleged threats presented by the innocent and exonerates those parties and processes that are responsible. Such displacement "makes it unnecessary to undertake any analysis that would probe the part played by social and economic conditions and institutions in unequally allocating life chances, successes, and failures" (Edelman 1988: 78).

This tendency is exaggerated in contemporary times, when large, impersonal forces such as corporations, bureaucracies, and global economic processes exert definitive influence. Resentment personalizes grievances, replacing structural explanations with individualist ones. Resentful politics is thus frequently a futile response to the uncertainty that pervades American life. To the extent that they accomplish the same evasion, conservative-rights discourses (such as special-rights talk) are expressions of resentment.

This general feature notwithstanding, the resentment that animates contemporary American politics is historically specific. It emerges from a collective worldview that represents the egalitarian changes of the latter half of the twentieth century as confirmation of America's historic commitment to the principles of nondiscrimination and equal rights. This worldview emphasizes that "post–civil rights" America has repudiated and overcome the injustices that for so long made a mockery of the nation's egalitarian pretensions (Schacter 1997; see also Crenshaw 1988).[9] It is, of course, undeniable that in contemporary times the essentialist logics that formerly underwrote hierarchy have lost much of their footing (Gerstle 2001). Open celebrations of heterosexual white-male supremacy have been for the most part replaced in American political discourse with understandings that race, gender, and sexual orientation are illegitimate grounds

upon which to grant or deny benefits. Although it is not warranted to conclude from these changes that material outcomes are now entirely the consequence of one's merit and are therefore legitimate, many Americans reach exactly that conclusion.

Accordingly, even as it champions the principles of nondiscrimination and equal rights, the post–civil rights worldview expresses the "generalized resentment" (Connolly 1991) that pervades American politics. For the principle of nondiscrimination admits of the conviction that any consciousness of race, gender, and/or sexual orientation in the drafting and administration of public policy is not only inappropriate, but also inconsistent with the legitimate interests of others (of white men especially) (Lawrence 1987; Crenshaw 1988; Fish 1994).[10] And, as I argue here, the rights claims of socially marginal Americans are frequently interpreted as excessive and unfair. In each of these scenarios the post–civil rights worldview asserts a new process of victimization. No longer powerless, the traditionally disadvantaged are now seeking, and being granted, benefits and advantages beyond those that their achievements merit; their successes are thus interpreted as assaults against the interests of those Americans who lack membership in a historically disadvantaged group (Williams 1991; Goldberg-Hiller & Milner 2003).[11] Accordingly, contemporary resentment is intimately linked to a worldview that at once celebrates certain rights claims and assails others, insisting that the former (equal rights) are legitimate claims for nondiscrimination whereas the latter (special rights) are illegitimate claims for "reverse" discrimination.

Goldberg-Hiller and Milner's important (2003) account emphasizes just this aspect of special-rights talk. As they note, the accusation of special rights relies upon an implicit and idealized version of equal rights. The claim of special rights, they argue, expresses a binary logic that opposes legitimate and virtuous equal rights to illegitimate and corrosive special rights. Thus accomplishing an inversion "in which the rights claimants become transgressors and everyone else victims of [their claims]," the accusation of special rights portrays claimants as "morally dangerous, irrational, or profligate people whose very rights claims become indicators of their general unseemliness" (Goldberg-Hiller & Milner 2003: 1078–79; see also Schacter 1994: 302–6; and Herman 1997).

Accordingly, as Goldberg-Hiller and Milner suggest, the allegation of special rights works as a defense against the rights claims of those who challenge particular relations of privilege. The rhetorical transformation of a right into a "special right," they note, is simultaneously a degradation of the rights claim and the claimant and, implicitly, a defense of the cultural and material arrangements that are under attack from that rights claim in the first place. Special-rights talk therefore fortifies particular

institutional configurations without engaging in explicit justification of those configurations.

Goldberg-Hiller and Milner's theorization of special-rights talk is illuminating. My interest, though, is somewhat different. In emphasizing how special-rights discourse is mobilized in order to naturalize particular arrangements of power, they focus, as do I, on the instrumental effects of special-rights talk (how it expands the scope of conflict by appealing to otherwise disinterested audiences). However, they do not share my interest in how special-rights talk constructs the identities of those who employ it. I explore not only how special-rights talk mobilizes resentment, but also how it propels and transforms resentment, casting it in a distinctively nationalistic form that ultimately encourages activists to envision themselves as countersubversives.

Indeed, the cultural work done by conservative-rights talk—the transformation of a resentment based upon competing interests into one based upon competing national values and visions of America—fosters in its users a "counter-subversive mentality." As developed by Michael Rogin (1987), the countersubversive mentality leads its adherents to conflate personal and national threats. The conflation is doubly consequential. First, condemnation of subversive enemies and their behaviors consolidates the identities of American countersubversives. Second, obsession with morally corrupt enemies authorizes countersubversives to emulate the very behaviors that they condemn, for this is the only way in which subversive threats can be contained (Rogin 1987: xiii–xvii). It is unsurprising that outrage over the inappropriate rights claims of marginalized Americans motivates counterclaims of rights.

The countersubversive mentality is thus a product of the interaction of resentment and conservative rights discourse. Indeed, the New Right political vision excoriates crafty minorities and the guileless liberal elites whom they regularly dupe for making abusive rights claims. These rights claims harm both personal and national interests, at once attacking the life chances of hard-working citizens and the values that animate American democracy (Haltom & McCann 2004; McCann & Dudas 2006). Turning its speakers into countersubversives, conservative-rights discourse orients conflicts between American citizens in a distinctive manner: it displaces conflicts of interest into the realm of national identity.

That discourse, moreover, does concrete political work. First, it cultivates the resentment of those who employ it, motivating them to entrench themselves against the un-American activism of socially marginal people. Second, because it offers defenses of supposedly endangered American values, conservative-rights talk is persuasive to otherwise indifferent au-

diences. Third, conservative-rights talk, however, ultimately directs the resentment of its speakers away from the structural factors that harm their material interests and toward the relatively unharmful activism of socially marginal Americans. Accomplishing both cultural and political work, conservative-rights discourses (such as the special-rights talk employed by anti-treaty-rights activists) animate both New Right politics and the American culture wars themselves.

IV. Methodological Principles

RESEARCHING THE CULTURAL POWER OF LAW

To understand the political impacts of conservative-rights discourse it is critical to first understand its cultural power. The legal-mobilization scholarship is particularly useful in this regard. This scholarship argues that the institutional power of law—the capacity of legal actors and legal institutions to coerce behavior—should be placed within its specifically cultural contexts. Recall that law's effects on how people live are less often direct and more often indirect. We are likely to detect law's primary influence in society by tending to how legal values, symbols, and discursive conventions help shape people's perceptions of their experiences and their selves; law influences which kinds of relations people interpret as natural (unchangeable) and which kinds of relations they interpret as political (contestable). The cultural dimensions of law therefore draw our attention both to outwardly legalistic actions and to the normative bases (the justifications) according to which people conceive of the possibility of action in the first place (Brigham 1988, 1996; Sarat & Felsteiner 1995; Ewick & Silbey 1998).

The utility that marginalized populations sometimes obtain from using legal discourse, for example, comes less from the invocation of the institutional apparatuses of the state and more from the long-standing cultural values that legal discourse expresses. The more that the claims for inclusion made by less-powerful people resonate with more-powerful people, the greater the likelihood that those claims will be successful (McCann 1994). At the very least, this cultural power of law suggests that the making of a legal claim, even if it does not generate popular support, might mollify the anxieties of those who fear the social change that excluded groups pursue and might, therefore, discourage resistance to redistributive politics (Scheingold 1974, 1989; Sokol 2006: 152–58).

Central to these scholarly insights is a focus on how various populations interpret legal claims.[12] Because legal ideals and symbols fire people's imaginations, such that particular kinds of actions seem possible and

others impossible, it is important for scholars to understand how it is that law is understood, or perceived. As it is the most useful method for studying perceptions of law, my approach is interpretive.

Interpretive social science orients the analyst's attention both epistemologically and methodologically. Epistemologically, a focus on interpretation —on how shared values and practices provide us with the cognitive resources for making sense of ourselves and others—presumes the centrality of language to human action. It is through language that we make the world meaningful; and it is these meanings that inspire our behavior. Language, accordingly, does not describe an already existing reality so much as it mediates what we understand as reality (Burger & Luckmann 1966).

Methodologically, an interpretive account of the influence of law and rights thus values data sources, and methods of analysis, that "probe the meaning-making activity of subjects and situate their efforts in . . . general, analytical, historically grounded terms" (McCann & Dudas 2006: 40). My empirical analysis—which details both the centrality and the consequences of special-rights talk for the anti-treaty-rights movement—relies on archival data, personal papers, position papers, speeches, committee testimony, letters to the editor, mission statements, and other verbal formulations as primary-source material. I analyze this data systematically, presenting both a content analysis (in Chapter 3) that highlights the common themes and discourses that preoccupy movement activists, and two bounded case studies (in Chapters 4 and 5) that connect activists' resentment of treaty rights with the concrete forms of organizational activity that make up the anti-treaty-rights movement. My interest, accordingly, is in the cultural and political work done by the special-rights talk employed by anti-treaty-rights activists. I am concerned with how their rights discourse shapes both the political visions of activists and the trajectory of the anti-treaty-rights movement itself. At the same time, my analysis contextualizes this movement, embedding it in the New Right politics from which it draws and to which it contributes.

Such methodological pluralism is a hallmark of the legal-mobilization scholarship (McCann 1994, 1996; Silverstein 1996). The commitment to diverse data sources and analytically focused modes of interpretation relies upon a foundation informed by social-constructivist principles. This foundation acknowledges that all claims to knowledge are partial and incomplete. To compensate, the methodological pluralist employs a variety of data and modes of analysis in order to present the most rigorous possible interpretations of social phenomena (Taylor 1987; McCann 1994: 14–18; Yin 1994: 13). The chapters that follow present data that is accumulated from a variety of sources. The resulting analysis uncovers the content, the

meaning, and the consequences of the special-rights discourse that pervades the anti–treaty rights movement. I turn now to an overview of the book's chapters.

V. Overview

The trajectory of Chapter 2 is historical; it details the roots of the tribal activism that offends, and motivates, the anti-treaty-rights movement. I argue that the mobilization of treaty rights, and the tribal sovereignty that they express, animates contemporary tribal activism. The chapter begins with a brief exploration of the ambiguous legal status of tribal governments in the United States. "Quasi-sovereign" nations, tribes are at once independent of most state and local regulations and entirely dependent upon the will of Congress. As the concrete expression of this quasi-sovereign status, treaty rights reflect the ambiguity of tribal nationhood. Yet because they are claims for autonomy from the oversight of state and local governments, treaty rights occasionally have been a useful resource for tribal claims of authority over land and other natural resources. The mobilization of treaty rights is, accordingly, the invocation of a peculiar but potentially empowering form of nationhood. Indeed, the most successful treaty-rights mobilizations have had meaningful impacts on the distribution of resources in many localities in the United States.

For a variety of reasons, these mobilizations began to find a receptive audience among many national officials following World War II. These officials increasingly understood treaty-rights claims as legitimate and deserving of support. Although this chapter relies heavily upon secondary research, it provides context that is important for understanding the dynamics of contemporary opposition to treaty rights.

Chapter 2 describes how legal mobilizations can sometimes be useful for generating redistributive social change; Chapters 3, 4, and 5 severely complicate matters. These chapters illustrate how the contemporary treaty-rights claims of tribal nations are frequently opposed by wider populations. Rather than ameliorating the anxieties that are typically associated with social change, the rights claims of tribal governments inflame those anxieties. Anti-treaty-rights activists, in fact, interpret treaty rights as special rights that denigrate both their own equal rights and the core American values of individual merit, community harmony, and equal opportunity.

Consequently, contemporary debates over treaty rights are contests over which sorts of legal meanings should be accepted. In this contest, both supporters and opponents can persuasively argue that they have "rights" on their side. Whereas Chapter 2 illustrates how the legal mobilizations of

tribal governments can foster redistributive social change, Chapters 3, 4, and 5 focus upon how these same legal mobilizations trigger resentment over tribal influence in American society.

Thus, successful tribal legal mobilizations typically also generate resentment within, and countermobilization by, the populations most immediately affected by them. These populations have typically formed local organizations whose activities are coordinated by a variety of national umbrella groups. Chapter 3 details the activities and, especially, the aims of these organizations and groups.

The empirical centerpiece of Chapter 3 is a content analysis of the documents that some of the more well known of the national anti-treaty-rights groups have produced in order to present their concerns to public audiences and policy makers. I find that opponents are typically motivated to oppose treaty rights by self-interested concerns that those rights threaten their interests. However, I also find that these opposition groups consistently employ their own rights talk. And their rights talk transforms defenses of self-interest into defenses of the core American values of individual merit, community harmony, and equal treatment. It transforms them into defenses, that is, of an American way of life that is allegedly under assault from Indian treaty rights.

Chapters 4 and 5 explore specific conflicts over treaty rights. Chapter 4 details the Puget Sound "fish wars" of the 1970s and 1980s. More than simply a regional conflict, the fish wars spawned the contemporary anti-treaty-rights movement itself.

Chapter 4 chronicles how federal Judge George Boldt's landmark *U.S. v. Washington* (1974) District Court opinion, which interpreted centuries-old treaties as guaranteeing to area tribes up to 50 percent of the region's salmon and steelhead-trout catch, provided the occasion for a zealous countermobilization. This countermobilization movement, made up primarily of non-Indian commercial and sport fishers, insisted that Boldt's opinion was an affront both to personal interests and to core American values. Opponents argued that the decision was an increasingly typical example of how the equal rights of hard-working, "ordinary" Americans were sacrificed so that a guilt-ridden nation could atone for past sins by offering special rights to its traditionally disadvantaged populations. Convinced of its moral and legal rightness, the countermobilization movement engaged in activism that delayed the implementation of *U.S. v. Washington* for close to a decade.

The outcomes of the fish wars were, for all parties involved, decidedly ambiguous. For one, the rights mobilizations of Puget Sound tribal nations initiated a transfer of resources to a historically underprivileged population. Yet they also provided a rallying point for aggrieved Ameri-

cans whose interpretations of treaty rights as special rights simultaneously amplified their resentment (nationalizing it) and expanded the scope of conflict to invite otherwise disinterested popular audiences and public officials into the countermobilization. The countermobilization's successful expansion of the conflict into new institutional terrain introduced a further layer of ambiguity. As the conflict entered into electoral politics, countervailing institutional prerogatives marginalized the visions and aspirations of Boldt-decision opponents; all of which led to an eventual resolution of the conflict in terms decidedly unfriendly to opponents. Meanwhile, opponents' unceasing hostility toward the Boldt decision led them to simultaneously inflate the threat that treaty rights presented to their economic interests and exonerate the far more damaging threats of environmental degradation and incompetent state management of the fish resource, and to reject the most promising means of defending their interests.

Chapter 5 confirms the ambiguous consequences of activists' special-rights discourse. This chapter explores conflicts over tribal gaming, the most salient and controversial aspect of contemporary tribal politics. I focus on the activities of casino opponents in Connecticut, which has emerged as the epicenter of the movements both for, and against, tribal gaming. I situate local opposition within the national context of the emergence of tribal gaming as the dominant conceptual framework for making sense of the promises, and dangers, of treaty rights.

The centerpiece of Chapter 5 is a study of the failed efforts of the Eastern Pequot Tribal Nation (EPTN) to gain federal recognition as an Indian tribe. Recognition would have brought the tribe into the same government-to-government relationship with the United States that tribes with formal treaty rights enjoy. It would have also, and more important for those local residents who vehemently resisted the tribe's recognition application, made the EPTN eligible to negotiate a compact with Connecticut to open a third tribal casino in the lucrative Northeast market. Alarmed that such a casino would turn Connecticut into the "Las Vegas of the East" and forever ruin the state's rural way of life, activists and elected officials organized to defeat the tribe's efforts. Propelling this opposition was a widely shared belief that the tangible and intangible costs of an EPTN casino would far outweigh its benefits. The calculus by which opponents reached this conclusion, however, owed less to careful and dispassionate analysis than to outrage over the alleged unfairness and illegitimacy of the special treaty rights that the EPTN sought.

Special-rights talk once again generated a series of ambiguous consequences. Although the opponents' activism appears to have played an important, if indeterminate, role in the eventual defeat of the EPTN's recognition bid, there is little reason to believe that preventing tribal casinos

will mollify the activists' anxieties in the long run. Indeed, obsessed with their endangered way of life, opponents have ascribed their vulnerabilities to existing and (potentially) future tribal casinos. Although such an understanding of the threats posed by treaty rights has generated substantial support from Connecticut's elected officials, it narrows the critical visions of the activists. Casino opponents fail to understand, or at least fail to acknowledge, that tribal casinos are a part of the larger shift away from a manufacturing-based and toward a service-based economy, a shift that has had disastrous consequences for Connecticut's urban and rural areas. Moreover, elected officials are exonerated from scrutiny for their decades-long unresponsiveness to the state's deteriorating economic infrastructure. As in the countermobilization to the Boldt decision, the activists' resentment—expressed and amplified through their special-rights talk—fixes and displaces blame.

Chapter 6 concludes and expands the theoretical scope of the study. In this chapter, I contend that the special-rights talk employed by anti-treaty-rights activists draws from a more general resentment of the rights claims of socially marginal Americans. Cultivated by New Right intellectuals and politicians, this resentment provides the raw material for the New Right's political vision and, so, is an underappreciated element of the American culture wars.

The impacts of this conservative-rights talk, which end up being decidedly ambiguous for the material interests of the "forgotten Americans" championed by the New Right, suggest anew the limits of using rights discourse to effect redistributive social change. Indeed, the protean nature of rights talk makes it useful both for proponents and opponents of redistributive causes. Insofar as it can be fashioned to articulate with a reactionary political agenda, rights talk is an important resource for promoting inegalitarian goals. When the cultural power of rights is considered it becomes clear that America's contemporary experience with rights is significantly more reactionary than existing scholarship has recognized.