

## Preface

RIGHTS DISCOURSE is a central, though often neglected, feature of American conservative politics. Activist and rank-and-file conservatives, for example, engage in frequent, sophisticated, and sincere mobilizations of law and rights. *The Cultivation of Resentment* argues that these mobilizations are central both to the identity and to the appeal of conservative politics. Moreover, the prominence of conservative legal mobilizations suggests that American rights discourse is more ubiquitous and flexible than is typically assumed. American rights discourse, accordingly, should be viewed as a potent resource both for those who seek, and for those who oppose, egalitarian social reform.

The analysis presented in this book proceeds from the understanding that the conservative adoption of the New Right political vision is a defining feature of modern American society. This political vision is marked by a dual resentment—of the political participation of historically disadvantaged citizens, on one hand, and of witless, naïve, and corrupt governmental officials and cultural elites, on the other hand. Accordingly, it portrays an America under siege from irresponsible and corrosive politics. This nationalistic resentment is often noted by scholars of American conservatism as a crucial element of the New Right's popular appeal. However, few scholars appreciate the increasingly specific form that this resentment takes. Conservatives argue that the abuse of law, and particularly of rights, is central to national decline. Conservatives maintain that formerly excluded groups misuse rights to persuade public officials to elevate minority interests over the interests of all other citizens. Accordingly, the resentment that infuses New Right activism is frequently cast in a rights-based idiom that excoriates formerly excluded groups for claiming "special" rights that violate the "equal" rights of all other Americans. Conservative activists at once champion as patriotic rights claims

that maintain traditional hierarchies and stigmatize as un-American rights claims that aim to unsettle those hierarchies.

Such “special-rights talk” is not simply a clever rhetorical tool. It also does important cultural and political work for those resentful Americans who employ it. In this book I explore the effects of special-rights talk on the activists who make up the contemporary anti-treaty-rights movement, a loose coalition of grassroots organizations that oppose the treaty rights of Indian tribes. Resentful over how “special” treaty rights give Indians unfair advantages not available to others, anti-treaty-rights activists emphasize that treaty rights conflict with the nation’s commitment to protecting the equal rights of all citizens. Convinced by their special-rights talk that they are heroic defenders of an endangered American way of life, anti-treaty-rights activists construct for themselves a virtuous, and exceedingly consequential, identity as “countersubversives” who protect the body politic from the irresponsible activism of Indians.

The ambivalent view of rights and nation expressed by members of the anti-treaty-rights movement—for whom “equal” rights are thought to exalt America and “special” rights to undermine it—is at the center of the New Right political vision. As such, it lies also at the heart of the popular appeal of modern conservative politics. By linking rights to the nationalistic resentment that saturates American politics and culture, this study adds new insight to the prevailing scholarship on law and politics, which typically presumes that rights discourse is a resource only for groups that seek redistributive social change.

I began this book in the department of Political Science at the University of Washington. Indeed, this book is deeply indebted to, and entrenched within, the intellectual currents established by two distinguished members of the UW community: Michael W. McCann and Stuart A. Scheingold. Moreover, both Michael and Stuart have provided me with a great deal of personal and professional help over the span of many years. Michael, in particular, has offered consistent engagement, encouragement, and advice for which I am deeply grateful.

I have accumulated many other significant debts. Also at the University of Washington, I benefited greatly from the help of David J. Olson and Christine DiStefano, each of whom offered incisive and critical insight on early drafts of this book. The members of the interdisciplinary center for *Comparative Law and Society Studies* (CLASS)—especially George Lovell, Steve Herbert, Katherine Beckett, and Claire Rasmussen—were constantly supportive and intellectually stimulating colleagues. I am particularly grateful to George and Claire, who have each read and commented

on multiple earlier versions of the argument presented here. Finally, I acknowledge the friendship and intellectual camaraderie of Robert Farley (of the University of Kentucky); Scott Lemieux (of Hunter College); and Wendy Gunther-Canada, Michael Howell-Moroney, and Angela Lewis (all of the University of Alabama-Birmingham).

I have been fortunate to find an intellectual home in the *Law and Society Association*. It is through the LSA that I have come into contact with many of the scholars whose own research, and whose direct engagement with mine, have indelibly shaped this book. I here acknowledge the help, support, and general cheerfulness of Charles Epp, John Brigham, Bill Haltom, Neal Milner, Jonathon Goldberg-Hiller, Renée Cramer, Laura Hatcher, Leonard Feldman, Bronwen Morgan, Bert Kritzer, Helena Silverstein, Susan Burgess, Tom Burke, Lief Carter, Scott Barclay, Paul Passavant, Austin Sarat, Patricia Ewick, and John Gilliom (who merits a second acknowledgment for pointing me in the right direction during my time at Ohio University).

I am grateful also to my colleagues in the department of Political Science at the University of Connecticut. In particular, I acknowledge Howard Reiter (both for doing a splendid job as department head and for his primer on Connecticut politics), Ernie Zirakzadeh (who offered extensive and thoughtful comments on Chapter 1), and David Yalof and Mark Boyer (whose office doors are always open for advice and conversation). Virginia Hettinger, Michael Morrell, Shareen Hertel, and Kristin Kelly have been especially supportive, and I thank them. I am also grateful to Kerri Murphy for providing able research assistance. It is, though, Jennifer Fontanella and Justine Hill who receive my deepest gratitude. Their oversight and attention to detail are greatly appreciated.

I am grateful for permission to include, in altered form, some material that has been previously published. Portions of Chapter 6 appear in "Rights and Regulation in Bush's America; Or, How the New Right Learned to Stop Worrying and Love Equal Rights," in *The Intersection of Rights and Regulation*, ed. Bronwen Morgan, Aldershot, United Kingdom: Ashgate, 2007, pp. 153–166. Earlier versions of some of the material presented in Chapters 1 and 4 appear in "In the Name of Equal Rights: 'Special' Rights and the Politics of Resentment in Post-Civil Rights America," 39 *Law & Society Review* 4, 723–757. I am grateful to Ashgate and Blackwell Publishing for permission to include this material here.

At Stanford University Press, Amanda Moran showed early enthusiasm for this book and then skillfully shepherded it to publication, quickly securing outside reviews and, later, a contract. Sarah Ives cheerfully responded to questions and requests, and generally helped me to meet looming

deadlines. Margaret Pinette of Heckman & Pinette ensured that the book's production went smoothly. Two anonymous reviewers provided exacting and sympathetic suggestions that made this book much stronger. I am grateful to Amanda, Sarah, Margaret, and the reviewers for their help.

My greatest debts are to my family. The Dudas and Mustappa families have been constant sources of encouragement; I gratefully acknowledge their love and support. Mary Dudas read the entire book in manuscript form and then patiently and clearly instructed me both on what I was and was not arguing. She also provided me with the book's title, which saved me from the pompous title that I had planned and thus, also, from untold future embarrassment. Mary's fingerprints are all over this book, and I am very happy to acknowledge their presence here. Mary is, moreover, a wonderful companion and a loving mother to our two angels, Connor and Andrew. I dedicate this book to the three of them, "mujussies" all.