

# Book Reviews

## Constitutionalism and the Limits of Character

Daniel Farber, *Lincoln's Constitution*. Chicago: University of Chicago Press, 2003. Pp. 256. \$27.50.

### David W. Blight\*

At a moment in our history when thoughtful people in both blue and red states consider it a crisis that a deeply conservative President of the United States, buttressed by a small majority triumph at the polls, may have the opportunity to appoint three or four new justices to the Supreme Court and dozens more to the lower federal courts, a close examination of Abraham Lincoln's constitutional views during the Civil War is timely. Daniel Farber, a professor of law at the Universities of Minnesota and California at Berkeley, claims such timeliness because, he writes, "we can use

---

\* Class of '54 Professor of American History, and Director, the Gilder Lehrman Center for the Study of Slavery, Resistance, and Abolition at Yale. Professor Blight is the author of, among other books, *Race and Reunion: The Civil War in American Memory*.

Lincoln as a test of modern constitutional doctrine, and use modern doctrine as a medium for assessing Lincoln's actions."<sup>1</sup> Farber is very much interested in placing legal analysis in historical context, but he is equally concerned with the present. His questions and assumptions, indeed his very motivation in examining Lincoln's constitutional performance, stem from concern about the current revival of state rights doctrine on the Supreme Court. "Secession is dead," declares Farber, "but not the dispute over state sovereignty."<sup>2</sup>

In this insightful and well-crafted mixture of past and present, we get not only a careful look at Lincoln's legal actions in the ultimate national test, but also a sustained argument that we are in danger of a true take-over by latter day proponents of a brand of federalism that would return as much power as possible to the states. The real target of this work of legal scholarship is the state rights coalition on the Supreme Court, led, in Farber's view, by Clarence Thomas. Thomas, according to Farber, represents a constitutional interpretation not far distant from John C. Calhoun and Jefferson Davis. Absent slavery and any hint of racial equality, Farber sees little difference between Thomas—or, fact that matter, his mentor, Antonin Scalia—and the Old South's principal intellectual and political leaders.

Writing for the four-judge dissent in the *Term Limits* case of 1995, Thomas argued that the majority misunderstood the "reserved powers" clause in the Tenth Amendment. His most basic "first principle," said Thomas, was that the "ultimate source of the Constitution's authority is the consent of the people of each individual State, not the consent of the undifferentiated people of the Nation as a whole."<sup>3</sup> Had a constitutional-intellectual ancestor of Clarence Thomas been President of the United States in 1861, the Confederacy and its treasured slave society would likely have won its national independence. Moreover, the desegregation measures of the Supreme Court, beginning with *Brown* in 1954, would never have occurred in Thomas's constitutional universe. And how could the Civil Rights Act of 1964 have been enacted over the "consent" of *states* that likely would have vehemently opposed it? In 1964, when President Lyndon Johnson warned that by standing for federal civil rights legislation as they did, Democrats might be, in effect, playing defense for the coming decades, he could not have imagined that among their staunchest foes would be an African American son of sharecroppers on the Supreme Court who seemingly owes his career to that very enactment. But irony has always been one of the best weapons we have in

---

1. DANIEL FARBER, *LINCOLN'S CONSTITUTION* 2 (2003).

2. *Id.* at 27.

3. *Id.*

understanding American history, and it may ever be thus.

Farber is a careful and measured thinker, and he does seem to have a healthy sense of irony. Unlike the “originalists” among constitutional scholars, who come under scorn from Farber, this author does not expect a principle such as “rule of law” to have a crystal clear definition, nor the question of sovereignty’s ultimate “location” to have a simple answer. No idea stays the same through time in Farber’s world view. To conservative constitutional purists employing rigid “first principles,” Farber seems to say: do some good history first! As a historian of the Civil War era, a time of great trauma and revolutionary change, I can only say, “Bravo!”

In the early republic and antebellum eras, the biggest constitutional challenge was the matter of federal supremacy. The extent of federal *power*, contends Farber, not an abstract debate over the nature and location of “sovereignty,” was the great question of the day. And he seems very worried that the great question of our own day may soon be whether a growing number of justices on the Court, currently four, led by Thomas, will continue to embrace essentially a version of Calhoun’s idea that the United States is not a real “nation” at all, but a “compact” of states free to endorse local control over abortion rights, the definition of marriage, the character of civil rights, and the place of religion in public life. Farber, of course, could not know our political condition in the wake of the 2004 election when he wrote his book in 2003, but as he delves into Lincoln’s legal challenges, his demand for a conscious mingling of past and present is worth our attention especially now that it seems likely that several more justices of Thomas’s stripe will be appointed to the Court.

When Farber wears his historian’s hat he is generally a good guide through the thickets of Constitutional law and thought in the Civil War period. He will leave some readers a little puzzled over whether he sees federalism or the expansion of slavery as the deepest cause of the war. He should move back the “positive good” defense of slavery from the 1850s to much earlier – the 1820s and 1830s. He might want to reconsider his embrace of the cliché that “history is written by the victors” (ex-Confederates showed us otherwise by the late nineteenth century). And it is not altogether clear how Farber can square Lincoln’s acknowledgement of the “right of revolution”<sup>4</sup> with his declaration that the “central idea of secession is the essence of anarchy.”<sup>5</sup> Yet Farber is solid on most matters of context: President James Buchanan’s “impotent” view that secession was wrong but the federal government powerless to stop it; southern secession as deeply rooted in the defense of slavery; the *Merryman* case, the suspension of habeas corpus, and Lincoln’s defiance of Chief Justice

---

4. *Id.* at 102.

5. *Id.* at 106.

Roger Taney; the Clement Vallandigham free speech case and Lincoln's "blunder" in arresting this Confederate sympathizer who was ultimately banished to Canada because a prosecution was untenable; and the general chaos of the opening months of the war, as well as the tremendous changes in conceptions of executive authority during a war of unprecedented scale.

Farber is concerned primarily with three of Lincoln's constitutional choices: the position that secession was illegal and the decision to use "coercion" against the seceded states; the emancipation of the slaves by executive order and as a war measure; and the suspension of the writ of habeas corpus in order to suppress disloyalty. Farber acknowledges that secession does have a logical basis – a government could become so repressive that a state, or some other group, might seek withdrawal from the nation as an act of "revolution." But Farber also strongly supports Lincoln's actions in defending the Union by arms. In his view, 1861 was not 1776. The American malcontents of 1776 struck for their own "inalienable human rights" with only a "reluctant" connection to slavery, argues Farber, whereas the rebels of 1861 (as states) "invoked their inalienable human rights in defense of their very ownership of slaves."<sup>6</sup> By this reasoning, Farber seems to conclude that secession as the right of revolution depends on the legitimacy of the cause. For any exercise of state rights, whether read as hair-splitting or as close constitutional analysis, one ought to remember that its significance rests in the cause or purpose for which it is employed.

Farber believes Lincoln had ample legal authority to wage war to suppress secession and the Confederacy, and he appeals to Alexander Hamilton and James Madison for support. Indeed, Madison may be Farber's real hero on all matters constitutional, especially for his staunch opposition to any form of secession. He places Lincoln's use of force on the "solid ground" of Madison's Federalist 41, where the Virginian argued that it would be folly to "oppose constitutional barriers to the impulse of [the nation's] self-preservation."<sup>7</sup> And Hamilton rescues Lincoln in Federalist 23 by declaring that once the existence of the government is threatened, "there can be no limitation of that authority which is to provide for the defense and protection of the community in any matter essential to its efficacy. . . ."<sup>8</sup> One cannot escape the sobering realization, however, that the ultimate answer to the question of which idea would prevail in America – "secession on demand" or "perpetual union at all costs" – came only in blood.<sup>9</sup>

---

6. *Id.* at 105.

7. *Id.* at 136.

8. *Id.*

9. *Id.* at 110.

As a legal war measure, Farber interprets Lincoln's Emancipation Proclamation of January 1, 1863, as "clearly justified."<sup>10</sup> Farber seems a good deal less interested in this great enactment than in questions of free speech and individual rights. Emancipation was a seizure of property in time of war and an "extraordinary use of executive power."<sup>11</sup> Farber views Lincoln and emancipation through the lens of recent scholarship—an interpretation of the president as a pragmatic thinker who grew with events and time to see freeing the slaves as both a practical and a moral necessity for winning the war. But, unfortunately, as a constitutional problem it just does not garner the same attention in Farber's mind as those measures for which some have accused Lincoln of "dictatorship."

Farber contends that accusations of Lincoln as a "dictator" are "overblown." Lincoln, he believes, was a "democratic leader," but one who "often operated without explicit legal sanction."<sup>12</sup> In the opening months of the war, under the emergency of putting down a "domestic insurrection," Lincoln did expand the army enormously, authorized extraordinary expenditures, closed the mails to some disloyal publications, ordered a naval blockade of southern ports, and suspended the writ of habeas corpus in order to control dissent, all initially without congressional approval. Many of these actions, Farber suggests, were "akin to lawmaking."<sup>13</sup> After an extended discussion of the relative "confusion" during the first eighty years of American constitutional discourse about the precise limits of executive power, Farber defends Lincoln on all counts save one—violation of individual rights to free speech and the extent of military arrests and trials for dissent. Lincoln's closing of the *New York World*, a Democratic Party newspaper, and the small minority of the 13,000 people arrested for disloyal speech who were northern, non-combatants (jailed for their opinions), says Farber, "cannot be defended."<sup>14</sup>

In the end, though, Farber asks for careful attention to context, and he seems to support the open-ended notion that sometimes presidents are justified in violating some laws in the interest of "necessity." Some parts of Farber's conclusion fall into lame language. Lincoln's "mixed record" on civil liberties, he contends, is "perhaps understandable" and "not at all bad."<sup>15</sup> One comes to expect more directness from a scholar who has offered such careful analysis of constitutional language and spirit. Moreover, Farber identifies two "lessons" from Lincoln's encounter with

---

10. *Id.* at 156.

11. *Id.* at 152.

12. *Id.* at 115.

13. *Id.* at 120.

14. *Id.* at 174.

15. *Id.* at 175.

the Constitution in the Civil War. First, that all such analysis must be placed firmly in history--the "struggles of their times."<sup>16</sup> And second, in all such great constitutional crises, we must ultimately rely on the "indispensable role of character" among our leaders. Character? Farber resolves that in Lincoln's "ability to combine ruthless pragmatism and a deep fidelity to principle, he may have been unique."<sup>17</sup> Well, if Lincoln was unique, and we have come to generally trust him in retrospect, how then do we hope for other presidents, who are likely never to measure up to the sad-faced genius from Illinois?

Is Farber's scholarly judgment in the end based on *trust in character*? This is a sobering prospect in the context of our own time. With intelligence, learning, and a deep sense of history, Lincoln could hold two profound ideas in his head at once, and it probably sustained him through his unprecedented challenge. He was the one who, while young in 1838, famously said "let reverence for the laws... be the political religion of the nation." Yet, in the darkest times of the Civil War twenty-five years later he could declare "liberty to all" and a "new birth of freedom" his highest principles, thus declaring the Declaration of Independence, in effect, a greater guide than the Constitution itself. The rule of law and natural rights—two timeless traditions—march together in America. We need more than character to find or keep their balance.

---

16. *Id.* at 196.

17. *Id.* at 199.

# An Anthropologist Examines the Lawyer Tribe

Laura Nader, *The Life of the Law: Anthropological Projects*, Berkeley: University of California Press, 2002. Pp. 262. \$40.

## Edgar S. Cahn\*

As a law professor, it feels a bit strange to think of the legal profession as a tribe to be studied by anthropologists. But for Laura Nader, professor of anthropology at UC Berkeley, we lawyers have become the tribe whose rituals, artifacts, craft and rules she has seen fit to study for over four decades. In *The Life of the Law: Anthropological Projects*, Nader pays tribute to the achievements of our legal system, but she pulls no punches when she sees law used as a means for cultural imperialism, maintenance of exploitive power structures, and the continued subversion of justice.

One cannot avoid noting the centrality of the “justice motive” in Nader’s understanding of the life of the law. Like her brother Ralph, Laura Nader is at heart an advocate for social justice. It is with an advocate’s soul, therefore, that she speaks to this quiddity of the law – its double-edgedness as its essence. One edge secures the order of the status quo. The other destabilizes that order in the search for justice. As an advocate, Nader fastens onto the hope that justice will at least be served by the law, while acknowledging the threat that the law concurrently poses to any such hope.

*The Life of the Law* began its own life as a series of lectures, and as a book it has not completely outgrown its origins. Thus the book is best approached as a kind of travel log, the narrative of a professional observer’s journey into the law told from three perspectives. First, an intensely personal and experiential view of the law is presented from Nader’s experience as an anthropologist whose fieldwork began with the Zapotec-speaking people of Mexico and then led to the law tribe of the United States. Second is an historical chronology of anthropological and

---

\* Distinguished Emeritus Professor of Law, University of the District of Columbia David A. Clarke School of Law.

jurisprudential scholarship on the meaning and life of Anglo-American law and its relationship to other systems of law, especially those of colonized peoples. Third comes a synthesizing narrative that seeks to sift through all that has been learned on Nader's own journey and the journeys of others into the law's realms in this and other societies.

Through each of these perspectives three separate but interlocking motifs are introduced and revisited, examined and re-examined in ways that allow for a deepening understanding of the possibilities and tensions inherent in Anglo-American law. The first of these motifs: an inquiry into the nature of law from which emerges a "user theory" of law. The second: a fierce challenge to the increasingly predominant "harmony model" of law. The third: a designation of plaintiffs as jurisprudential heroes. I shall first examine these motifs, and then turn to Nader's decades-long journey into the law and the three different perspectives upon that journey through which these motifs weave.

The first motif takes the form of a question: What is law? Does the law consist only of rules? Or is it rather made up of the whole balance of norms, exchange relationships and society's ordering processes? The inquiry begins with her anthropological studies of the Zapotec peoples and their means of resolving disputes, then continues to the contemporary American arena. Throughout, the inquiry centers on disputes and on those who use the dispute-resolving mechanisms in their society. Out of that inquiry there evolves what she calls a User Theory of Law. "[T]he direction of law," she observes, "depends mainly on what people are enabled and motivated to use the law to do. . . . Law clearly comprises more than judicial or legislative institutions; it also includes the social and cultural organization of law."<sup>1</sup> This provides her vantage point. Anthropological methods enable her to ask in unique ways "how well the law fits the society it purports to serve and how able the law is to meet new contingencies in that society."<sup>2</sup>

Armed with anthropological methods of inquiry, Nader pierces the pervasive belief that Anglo-American law stands apart from the political rough and tumble of competing interests, providing a level playing ground in which combatants submit to the neutral application of disembodied rules. Rather, like all systems of law, it is "the vehicle by which different parties attempt to gain and maintain control and legitimation of a given social unit."<sup>3</sup> Yet, it is not *only* that. Anglo-American law, she notes, is rooted in conflict. But in relation to justice, the law that emerges from the

---

1. LAURA NADER, *THE LIFE OF THE LAW: ANTHROPOLOGICAL PROJECTS* 49 (2002).

2. *Id.* at 100.

3. *Id.* at 117.

conflict between groups is powerfully double-edged. On the one hand, the law as the servant of interests serves as a threat to justice. On the other, the law as a repository of societal norms and principles serves as its guarantor.

Using her anthropological background, Nader underscores this double-sided nature of Anglo-American law with an example from her studies in the Zapotec-speaking part of Mexico. Dispute resolution systems that may have been introduced as part of the hegemonic system of European control, she notes, have been altered by the Zapotec-speaking peoples themselves. The systems she studied had evolved into a counter-hegemonic system, she noted, one "that services to solidify social integration at the local level and to erect a legal defense system against encroachment of superordinate control in the form of the state."<sup>4</sup>

The danger posed by law to justice is undeniable. Nader is clear on this. But by virtue of her discipline and by what that discipline has made it possible to see, Nader is unable to join the company of those Critical Legal Studies scholars who view the law only as a system of cultural hegemony. To such a unitary view of the law – the law as the tool for the preservation of existing power relations – she cannot subscribe. Her anthropological perspective commits her to a second and parallel understanding of the law as a tool for, not against, justice. In characterizing academic movements in law, she identifies most closely with the Law and Society movement, believing that law can and must be used to achieve social change and to remedy inequality and injustice, both within nation-states and between them. Moreover, it is in the conflictual nature of the law that its potential for achieving justice lies.

This leads then to the second motif that will thread through Nader's journey into the law: a blistering critique of the legal profession's shift since the civil rights era of the 1960s to mediation, alternative dispute resolution, and what Nader more generally characterizes as the "harmony model" of law. She traces the rise of mediation and alternative dispute resolution methods as practiced here in the United States and increasingly as exported to less-developed, formerly colonized nations. The ideology of mediation, she notes, "depends upon a negative evaluation of a traditional legal system, an evaluation that does not pursue root causes." Disputants are trained

to associate litigation with alienation, hostility, and high cost and to look upon mediation as a process that 'encourages' civic and community responsibility for dispute resolution . . . [D]isputes about facts and legal rights become disputes about feelings and relationships. A therapeutic model replaces the legal one and justice

---

4. *Id.* at 36.

is measured by implicit standards of conformity. Social justice as generally understood ... then becomes irrelevant.<sup>5</sup>

Mediation methods are becoming dominant – alarmingly so in Nader’s view. She argues that they are in fact profoundly anti-law, not least in the ways in which they stack up on the side of control, not justice. She notes how harmony has been invoked as an ideal by hegemonies as “a means of pacification through law.”<sup>6</sup> Citing the American Revolution, she regards conflict as part of “the struggle in life that keeps people bound together” and notes that “disputing may be a means to harmony and to autonomy and self-determination.”<sup>7</sup>

Justice, or to be more precise, the “justice motive,” is what underlies the third theme that Nader presents. In all societies and among all peoples, Nader suggests, there exists an inherent sense of what is unjust. Out of this sense there exists everywhere an ultimately ineradicable “justice motive” that is the bedrock of all systems of law, not just the Anglo-American one. It is just this “justice motive” that for her confers immeasurable superiority on the traditional model of Anglo-American law over the increasingly dominant methods of Alternative Dispute Resolution and mediation. The former, with its roots in social conflict, is a system of law that is admittedly flawed and internally riddled with tensions, but it is nevertheless vastly preferable to the bloodless and therapeutizing “harmony model” that seeks to drive out conflict. Removing conflict from the law’s scope of action also means driving out its capacity to reflect the just claims of society’s weaker members. It also undermines the law’s capacity for meeting a society’s changing needs.

This then leads to the culminating theme of the book: the heroic place of legal plaintiffs in the Anglo-American system of law. It is they, Nader argues, who ensure that conflict continues to be incorporated into the law. It is they who ensure that the “justice motive” is served. It is they who make it possible for the law to adapt and change as it must if it is to address the needs of a changing society. The life of the law, in Nader’s view, *is* the plaintiff. “By contesting their injustices by means of law or illegality or subversions, plaintiffs and their lawyers can decide the place of law in making history.”<sup>8</sup>

Those, then, are the three motifs that in different ways are addressed and revisited through each of the three separate perspectives that Nader takes in what is a very personal account of a journey into the life of the law.

Let us now look more closely at the terrain that Nader’s journey covers

---

5. *Id.* at 144.

6. *Id.* at 29.

7. *Id.* at 125.

8. *Id.* at 71.

and the three perspectives through which that journey is presented. Nader speaks first of her experience as an anthropologist. She describes doing fieldwork in the villages of Mexico, where she came to the conclusion that a harmony model of law as applied to the Zapotec-speaking population “was part of a pacification movement that originated with Christian missionaries and colonizers.”<sup>9</sup> Nader conducted further fieldwork in the villages of Lebanon, and then went to the village of Berkeley, California, in the 1960s. Her field work culminated with an invitation to attend a different kind of tribal gathering, the annual meetings of the American Bar Association. She relates the convening of a conference by Chief Justice Warren Burger to introduce and “sell” Alternative Dispute Resolution to the legal community. It was then that she observed for the first time that “the framework of what I call coercive harmony began to take hold.”<sup>10</sup> Parallels, she noted, were drawn “between lawsuits and war, between arbitration and peace, parallels that invoked danger and suggested that litigation is not healthy.”<sup>11</sup> Nader saw that with her observations she had come in a sense full circle from her original Zapotec research. Now, she writes, “I was observing another pacification movement that used the same tactics of ‘coercive harmony.’”<sup>12</sup> Nader raises the alarm and builds what she calls a “user theory” of law whose central argument is that litigation that plaintiffs pursue is central to ensuring that the law is dynamic, oriented to social justice, and hence responsive to society’s needs.

Nader’s second narrative – her second “take” upon the life of the law – is a jurisprudential history in which observers of the law in action debate about what the law is and what it ought to be. The history is of a battle between elitists and democrats. The former tend to be formalists who view the law as being crafted by society’s finest legal minds, whereas the latter view the law as growing out the actions and tactics of those who use it. Clearly, Nader’s “user theory” of law aligns far more naturally with the second position than the first.

The historical presentation begins with the debate between Sir Henry Maine and an American, Lewis Henry Morgan in the nineteenth century on the nature of Anglo-American law. For Maine, the legal system was a triumph of civilization, the result of continuous refinement by generation after generation of intellectual aristocrats. For Morgan, jurisprudence was at its finest when it drew upon the wisdom of “the people.” Morgan himself drew upon the wisdom of the Iroquois confederacy and the restorative justice traditions of the Native Americans whom Maine

---

9. *Id.* at 53.

10. *Id.* at 52.

11. *Id.* at 53.

12. *Id.*

dismissed as ignorant primitives.

From there, the historical review jumps to the writing of *The Cheyenne Way* in which the legal scholar Karl Llewellyn teamed up with anthropologist E. Adamson Hoebel to analyze how the Cheyenne resolved the “trouble-cases.” Although the book is generally regarded as a classic, Nader provides us with what may have been its real contemporary significance—something that has been lost over the years. When published, the law-making practices of the Cheyenne were laid out as a challenge to the formalistic assumptions about law being asserted by professors at the Harvard Law School, especially Dean Langdell. Like Sir Henry Maine’s, this was an elitist approach presenting the law as arising out of the elaboration of morally neutral and objective doctrinal analysis by highly trained legal minds on a case-by-case basis. Llewellyn and Hoebel wrote *The Cheyenne Way* to illuminate the life of the law, not as the outcome of an elite discourse, but as the result of community conflicts, and evolving constantly as a living tool for coping with changing circumstances.

The battle between elitist and democratic understandings of the law is then brought up to date with a description of differing “schools” of jurisprudence. The old battle between elitists and democrats continues, but has shifted. Standing on the side of the elitists is the harmony model of law, which discounts real conflicts of interest between colonizers and the colonized. In particular, “the view that is still with us today, of colonized peoples as primitive and disordered and in need of being transformed by plans that are fixed, abstracted, and disembodied, is part of the culture of expanding capitalist economies with which such transformation is more compatible.”<sup>13</sup>

By the time of the presentation of the third perspective on the life of the law, Nader’s themes have become familiar. Essentially, this becomes a demonstration of the multiple ways in which plaintiffs have by their victories caused the law to adapt to the society’s changing structure and needs. For the common good, Nader asserts, the “harmony model” of law needs to be pushed aside, not promoted. To chart new directions in the law will require “the courage to enable citizen plaintiffs to reclaim the law.”<sup>14</sup> What the law needs is litigation, not harmony.

Thus, in the end, the plaintiff is key for Nader. And just as Nader herself has come full circle, so has the reader of this rich and intriguing volume. Yet, while Nader’s advocacy for a plaintiff-centered “user-defined” law is compelling, that advocacy may have produced an over-reliance on its potency as a corrective force.

---

13. *Id.* at 114.

14. *Id.* at 211.

In embracing and celebrating the potency of plaintiffs in major cases involving the tobacco litigation, toxic waste, and product safety, she tends to overlook, at least for a moment, one key ingredient that her earlier observations and her extensive studies in *Little Injustices* and *No Access to Law: Alternatives to the American Judicial System*, brought home. No one knows better than she (except possibly her brother) how the rich and powerful use the law. Her own user theory of law asserts that the law is rarely neutral. The tribe of lawyers, especially when it embraces Alternative Dispute Resolution, is not a champion of neutrality (as Nader herself so persuasively argues!). For now at least, lawyers' individual interests appear overwhelmingly to ride far more with large and powerful corporations than with the common man. If the law is, as Nader herself asserts, a vehicle in the struggle for control and legitimation, then the current dominance of the harmony model may well be as much the outcome of structural forces as of ideological arguments.

In other words, the harmony model is *interior* to the legal system, not something exterior to it. It has arisen from the ways in which lawyers, judges and plaintiffs (corporate or otherwise) interact, and has not been imposed upon it. Hence, while the normative arguments push in one direction, the law itself pushes in another.

In short, we will need more than armies of plaintiffs and plaintiffs' lawyers to level the playing field and to ensure that the legal system in all its manifestations is an effective vehicle for realization of what Laura Nader calls "the justice instinct." The next step will be to take the "user theory" of justice to another level and create forums and mechanisms whereby the consumers of unjust practices can become the co-producers of justice for themselves and for others.

*The Life of the Law* is an important and complex book—not easy reading for those unfamiliar with the juristic-anthropological methodologies in which Nader has been steeped for so many years. Crossing and crisscrossing her methodological terrain with the familiarity of long acquaintance, she proffers few signals and signs to orient those who are less familiar with the field who wish to join her in this exploration of the law's inner life. The journey is also, however, an immensely rich one, not least for its portrayal of the inner tensions of the Anglo-American system of law: those natural contradictions that arise out of the law as it serves on the one hand to achieve social justice and on the other to secure social order. While highlighting the law's ever-present proclivity to be subverted into a vehicle for subjugation rather than a force for justice, Nader wades in as advocate for the law in its capacity and potential for ensuring that justice may be served.

Now more than ever, we have need of Nader's refusal to take a one-sided view of the law. She presents a rare anthropological perspective to

guide us in our quest for ways to create a new culture of civic responsibility, of outrage against unacceptable disparities, of awareness that there are disparities—national and international—that must be deemed so unacceptable that they trigger the intervention of law. Her user theory of law underscores the fact that it is the recipients of injustice and their allies who will have to become the producers of a different justice system. The epic struggles to come that will determine the direction of the law will be fought on issues as diverse as ownership of the genetic code and the binary code and in forums as diverse as cyberspace and outer space. Anthropology is not done with this tribe yet.