Law in Politics: On the Lower East Side

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Law in Politics: Struggles over Property and Public Space on New York City’s Lower East Side

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This article examines politics on the Lower East Side of Manhattan, New York City, for evidence of law at the constitutive level. We see legal relations shaping grassroots struggles over public space and housing as forums, claims, and political positions. This view challenges instrumental conceptions of law still prominent in some social-scientific approaches.

On New York City's Lower East Side, politics is omnipresent. This part of Manhattan has an extraordinary racial and class mix and the community seems always to be in transition. In the period of this study, roughly from the economic boom of the mid-1980s to the recession that ushered in the 1990s, political conflict erupted frequently. Buildings from Chinatown to St. Marks Place wore banners proclaiming rent strikes or bore graffiti denouncing local developers. Leaflets and posters throughout the neighborhood called meetings or offered distinctive points of view on local and international political struggles. Violence broke out several times between activists and police over the use of the Tompkins Square Park and the occupation of city-owned buildings by squatters. Although perhaps not “lawless,” neither does the Lower East Side readily symbolize the Rule of Law.

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We use this seemingly unlikely place to discuss how law in society helps constitute the political landscape. While law in general takes the form of rules, procedures, codes, and commands emanating from the sovereign, the "constitutive" approach to law describes a role that law plays in society. In this article, we look at law as what E. P. Thompson called "visible or invisible structures" that define political institutions and become the substantive basis for politics. Law constitutes when the "myth of rights" takes on practical significance and becomes a "politics of rights," as described by Stuart Scheingold. In this role, law is more significant and more present than scholars sometimes acknowledge. When we look at the constitution of political claims by law, it is essential to look beneath legislation and the opinions of courts to law in practice. We propose to show how local struggles over power, that is, politics, involve law in the constitutive sense. We treat law as an independent variable, as a source rather than a consequence.

This position is in response to the prevailing paradigm in sociolegal scholarship, which holds that politics and other social forces drive law and that putting law in the driver's seat—looking at things "the other way around"—either smacks of formalism or simply is not interesting. The "politics drives law" position is often simply grounded in an instrumental view of law. This instrumental view is not held to the same degree in every discipline. Instrumentalism remains quite strong in political science, and in the guise of "public choice" theory it seems to be gaining steam. In the legal academy, instrumentalism has links with Legal Realism and grows currently under the banner of Law and Economics. In Law and Society scholarship, instrumentalism is weaker, at least from the evidence of public statements and current importance of interpretivism. But even here the prominent work we turn to in the next section suggests attachment to an instrumental perspective.

We don't mean by a constitutive theory of law that all politics, much less all social life, is law. When someone chooses to live on the Lower East Side, we don't say that decision is constituted by law. But when that choice involves purchase of a house or condominium and a politics in defense of the value in that purchase follows, the law of property may feature prominently in that politics. For instance, agitating to remove a homeless encampment in the neighborhood—one form of politics on the Lower East

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4. Patricia Williams's commentary on property in "Alchemical Notes" argues for a conception of property that would include the power held by clerks in Manhattan stores who control the buzzer that opens the door. Patricia Williams, The Alchemy of Race and Rights (Cambridge: Harvard University Press, 1991).
Side—is legally constituted. To constitute means to stand at the core. A constitutive approach looks at those instances in which law is at the core of the phenomena being studied. In this case we look for law at the core of various political activities.

Calling attention to the constitutive role of law is, of course, not original to us. It had been stated well some time ago by Karl Klare and Robert Gordon and has been articulated in depth by Alan Hunt more recently. The term is definitely becoming more common, yet, we feel that the constitutive role of law is insufficiently instantiated in sociolegal scholarship and deserves to be addressed. We don’t say that law is always an independent factor in politics. Some politics makes law. We know that. But some law makes politics. We don’t seem to know that as well.

The power of the instrumental paradigm in sociolegal research reflects the success of Legal Realism. Realism brought politics into such hallowed institutions as the Supreme Court and spread the message that the key to law was through dissent and disputes. The Lower East Side seems like a very political place. Without bringing back the pre-Realist conception of law as neutral rules, we hope to call attention to the constitutive role of law in grassroots politics. We begin by examining the relationship between law and politics in some contemporary sociolegal analysis. We then offer examples of how law constitutes politics on the Lower East Side. We believe that this work offers a contrast to the instrumental tradition and hope that is provides some clues to the constitutive significance of law.

THE PROJECT

Our project is both jurisprudential and sociological; that is, we seek to correct a perception that inhibits social research on law. It is as much about the nature of law as it is about a particular place. In fact, what we say about law in this place we believe needs to be said about law generally. Realism in law and its other manifestations, such as Behavioralism in political science, has been so successful that scholars find it hard to move beyond the instrumental view of law to its role in constituting social and political life. Although some social critics aspire to see law as “part of a complex social totality in which it constitutes as well as is constituted,” much of the critical work in law, as well as the conventional understandings that support positivist social research, sees law in instrumental terms. Law is equated

with rules, like a 55-mph speed limit, rather than practices, like driving up to 62 mph where a ticket gets more likely. Where practices are considered relevant to law, however, as in some contemporary versions of interpretive research,\textsuperscript{10} we think we may be able to help articulate the consequences of a constitutive perspective.

We draw from theories of interpretation in legal scholarship and methodological concerns in social science. The legacy goes back to the Realist tradition incorporated in much legal analysis after World War II. In the social sciences, the positivist dichotomy between theory and reality was wearing thin by 1970, and interpretation became a way to view law not governed simply by texts but by people reading texts. Two stances emerged. The first, a relative or indeterminacy position, combined feminist scholarship such as the work of Carol Gilligan with deconstruction, legal pluralism, and a critique of rights.\textsuperscript{11} This position emphasized differences, particularly between women and men, and supported scholarship on marginality.\textsuperscript{12} But indeterminacy as a view of law also limited the social responsibility associated with rights. The second, a constitutive approach, was a post-Marxist alternative to the indeterminacy position. This approach, or at least affinities to it, were introduced into the sociolegal community through critical theory and suggested in various scholarly pieces, such as that on the city “as a legal concept,”\textsuperscript{13} some feminism,\textsuperscript{14} and Critical Race Theory. But for the most part, the indeterminacy position has dominated discussion in the legal academy, leaving positivism and instrumentalism pretty much intact.

Positivism in scholarship about law and politics persists in spite of the existence of constitutive currents in the professional literature. Contemporary examples include important books at either end of the legal process, Segal and Spaeth’s \textit{The Supreme Court and the Antitunual Model}\textsuperscript{15} and Ellickson’s \textit{Order without Law}.\textsuperscript{16} This work has been widely discussed, and its reception indicates continued enthusiasm for the positive paradigm. The


\textsuperscript{12} Martha Minow, \textit{Making All the Difference} (Ithaca, N.Y.: Cornell University Press, 1990).


\textsuperscript{15} Jeffrey A. Segal & Harold J. Spaeth, \textit{The Supreme Court and the Antitunual Model} (New York: Cambridge University Press, 1993) ("Segal & Spaeth, Supreme Court").

The prominence of this kind of work suggests the continuing need to present the constitutive framework for law. Only if it is discussed with reference to current debates can it be said to have become acceptable. We begin by discussing this work.

Three decades ago political scientist Martin Shapiro helped to establish the proposition that judges' decisions reflect political considerations. From this perspective, law as precedent was manipulated by judicial interests. Politics was evident in the expression of opinion, and it could be measured by dissents. In the social sciences, this work is associated with the "behavioral" revolution which evaluated the attitudes of judges against a background of legal form. Insights about the political orientations of the judges became commonplace in journalism, history, and political science and reinforced the picture of legal text as naive formality.

The tradition of seeing politics as an influence on law continues to appear in upper court scholarship. One influential book on the Supreme Court, Storm Center, by David O'Brien, is indicative. O'Brien describes the Supreme Court as the eye of the political storm in America and enlivens the portrayal with stories of political influence like that wielded by Justice Black over President Roosevelt. Instrumentalism is even more prominent in "the attitudinal model" associated with Segal and Spaeth and others. This is a radical empiricist construction in which the case votes of justices are coded on an attitude scale and the Court is described in terms of the political movement on the scale. Placing the judge at the center of the law gives appellate courts great power while narrowing the conception of law.

At the other end of the legal process, Ellickson's Order without Law examines disputes between the traditional cattlemen of Shasta County who revere the open range and the newcomers who fence in their small "ranchettes." The general demeanor in the community is "neighborliness," and Ellickson finds that the "longtime ranchers of Shasta County pride themselves on being able to resolve their problems on their own." Ellickson finds the law which lawyers know to be uncommon in cattle country, even though he studies the tension between the "pro-cattlemens 'fencing-out' rule" (which provides that a victim of animal trespass can recover damages only when he has "protected his lands with a 'lawful fence' ") and Cali-

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19. Segal & Spaeth, Supreme Court.
22. He does note, however, that "ranchette owners... unlike the cattlemen, sometimes respond to a trespass incident by contacting a county official who they think will remedy the problem." Ellickson, Order 59.
fornia's Estray Act, passed in 1915 in light of increased settlement. In spite of this distinctly legal focus, he minimizes the terrain of law by separating law from society. This perspective revives the formalism which earlier confined law to codes and commentaries. Like Realism in the study of appellate courts, we are asked to take a socially thin slice of law as the whole thing. The research equates law with the formal rules and says, in effect, that law is not present in ordinary life.

This kind of Realism orients students of communities away from legal material, distorting the relationship between law and politics. When disputes range from the rules of trespass to the fact of ownership, we see law in operation. In looking at the Lower East Side we develop that perspective by examining the forms of law in grassroots politics and their interaction with economic and cultural forces that shape the neighborhood. If law and political institutions are seen only instrumentally, either as goodies to be acquired or as processes to use, it follows that the political actor and political activity will only be superficially affected by the law. Yet we know, from the renewed interest in institutions, that the Rule of Law, specific laws, and legal institutions are major influences on politics. We challenge those who would place law in the background of politics and fail to note its consequences. Derrick Bell, William E. Forbath, and MacKinnon have addressed these consequences in the areas of race, labor, and gender. We wish to do the same for property and public space as a way of grounding politics in law.

THE NEIGHBORHOOD

The Lower East Side runs from the East River to Fourth Avenue and the Bowery, about a third of the way across Manhattan, and from Chinatown to 14th Street. At its peak in the early 20th century, the district had a population of over 500,000. It declined to 154,800 until it began to grow.

23. "One of the most venerable English common law rules of strict liability in tort," the "fencing-out rule" makes the owner of livestock liable for damage to neighboring property even in the absence of negligence. Id. at 42.

24. Although the landowners in Shasta County did know whether their own lands were within the open or closed range designation, Ellickson speculates that the level of knowledge was probably "atypically high" because the range law had been the subject of political controversy. He found that the residents he interviewed were unfamiliar with terms like "estray" and "lawful fence" and knew little about subtleties in the law. Thus, he observes that disputing takes place "largely independent of formal law." Id. at 49-51.


again in the 1980s. Roughly 20% of its population received some form of public assistance within the last decade, with 20,000 people on Aid to Families with Dependent Children (AFDC) or Home Relief. Housing is extraordinarily diverse. In 1990, the area contained 60,000 government-subsidized housing units, one of the greatest concentrations of public housing in New York City, 19th-century brownstones, tenements, condominiums, squatter settlements, homesteaders, and a significant share of the city's homeless population.31

Politics in the neighborhood involves not just party contests between Republicans and Democrats (or, rather, regular and reform Democrats, in this area) or appeals for city services, but struggles over the definition of ownership, claims to the enjoyment of public space, and appropriate neighborhood responses to economic opportunity.32 One source of political conflict—government support for investment in luxury co-ops juxtaposed with reduced subsidy (and consequently a diminishing supply) for decent, affordable housing for low and moderate income people—can be easily understood by looking at residential land use in the late 1980s relative to all of Manhattan. In 1987 almost one-third (31.7%) of the district's residential space was made up of "old law" tenements, the unventilated buildings built in the early 19th century. The proportion for Manhattan as a whole was 10.2%. On the other hand, only 11.1% of the residential units were condominiums. For the rest of Manhattan, 33.7% of the residential units were condominiums.31

Another set of issues involves the use of public space. Some of the public space has been recently claimed, like the community gardens that sprung up in vacant lots, and some is more traditional, like the area's largest municipal park, Tompkins Square. In the mid-1980s, developers backed by the city and those who lived on the Lower East Side, clashed over the community gardens. Some of the gardens were communal experiments born in the 1960s, and others manifested a public life style brought by Puerto Rican residents from the Caribbean.32 While state institutions from law enforcement to the Housing Authority were mobilized to enforce the dominant norms of ownership, grassroots groups and individual squatters acted on alternative claims.33


32. Blanca Silvestrini, "The World We Enter When Claiming Rights: Latinos and the Quest for Culture" (delivered to the Amherst Seminar, 19 April 1991).

With the decline of trade unions and the political machines, grassroots politics have assumed importance as vehicles for collective action by the working and lower-middle classes and by minority groups on the Lower East Side. Spurred by the 19th-century legacy of immigration, settlement houses to serve (and discipline) them, and political activism around such issues as joblessness and public assistance, the activists of recent decades have challenged the authority of the state and city to define property relations and allocate land use. Although these challenges have often been met by state coercion—the appropriation of abandoned buildings in defiance of neighborhood claims on them, police repression of protest—citizen activists can also cite victories in which they forced officials to compromise and influenced the definition of the neighborhood. Housing, social service, and community development organizations in the area—Cooper Square, Pueblo Nuevo, Good Old Lower East Side, the Local Enforcement Unit, and the Joint Planning Council, the coalition that has generated a comprehensive plan for the area—have succeeded in returning abandoned buildings to the housing stock, held private landlords accountable with strict enforcement of housing codes, and forced the city to endorse cooperative housing that is managed by residents.

In these neighborhood conflicts, law constitutes "visible and invisible structures" for political life. By focusing on one of the most politically charged communities in the United States at a time when its residents were mobilized—voting, speaking out, resisting, confronting the police—we wish to make the case for a greater role for law in politics at the grassroots level. Here, even the name of the area is contested. The "Lower East Side" is geographical and recalls the eastern European immigration that gave the region its identification in American history with the huddled masses immortalized on the Statue of Liberty. In the 1960s, a vibrant counterculture population, assisted by real estate developers, appended the name "East Village" to part of the neighborhood in a move to link it with the Bohemian spirit and higher real estate prices of its neighbor to the west. Because the area is beyond First Avenue to the East, where the Avenues are designated by letters, it is sometimes derisively called Alphabet City. Most recently, the Latino population was able officially to rename part of Avenue C for the community's own version of its place. They call it Loisaida, "Spanglish" for Lower East Side. The politics of naming is a highly visible aspect of community politics often involving law, and when a name becomes official, displayed on street signs or city buses or designating a political entity, it takes on extra significance.

Research for this project focused on several political arenas, including local Community Board meetings, the allocation by New York City of low-

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income housing resources, and the anti-gentrification movement. Data collection over a two-year period beginning in the fall of 1988 consisted of attendance at about half of the monthly community board meetings, lengthy interviews with 11 community activists of varying persuasions, participant observation of at least a dozen demonstrations in the area, and the collection of dozens of fliers and other materials intended to encourage participation in grassroots political activity. All this was informed by the experience of daily life in the community.

**Some Illustrations**

In the next sections, we describe the way law constitutes a forum for political discourse, go on to show how legal forms shape political claims, and conclude with law's influence on political position. Our categories capture some of the legal aspects of politics on the Lower East Side in the late 1980s. We call attention to distinctive place of law when we can see the law in politics more clearly that way. We do not, however, mean to suggest that law in this sense operates in the same way we once imagined that precedent operated for the appellate judge.

**Law as Forum**

Law structures the community politics through governing institutions meant to constitute a political space. From constituent service to protest and mobilization, different institutions direct, satisfy, and frustrate political interests.34 One of the most salient institutions for politics on the Lower East Side in the late 1980s was the Community Board. Established by revision of the New York City Charter in 1975, the 59 community boards represent districts with 100,000–200,000 residents designated by the Department of City Planning to reflect the traditional geographic boundaries of New York's neighborhoods.35 The approximately 50 members of each community board are appointed by the Borough Presidents and the City Council and serve for two years (they are usually reappointed) without compensation. Technical and information services to the boards are provided by the Department of City Planning. The Lower East Side is represented in this arrangement by Community Board #3.36

34. At this writing, the Speaker of the New York Assembly, Sheldon Silver is from the Lower East Side. His prominence in the legislature gives politics in the area heightened significance and real meaning to constituent service.


36. The district includes part of Chinatown, which has its own distinctive character and problems and is only an occasional participant in community board politics.
The boards advise the city on planning, budgeting, and service delivery and can be quite powerful, although it is usually by coaxing or embarrassing rather than by outright grants of authority. Boards are staffed with a district manager who helps coordinate sanitation, fire, parks, and police services. These relationships and the manner in which members of the boards are appointed ensure that the community boards are not forces for changing power relations in the city. "Rather, they seek to gain a hearing and to attain the capacity to operate community programs." Community Board #3 on the Lower East Side follows this model (but also chafes within it).

The board's character as a "legal" arena reminds neighborhood people of the authority of the city. Board meetings call attention to the city as a coercive power through a law enforcement presence at meetings. The service component of the city is evident in the information and technical assistance that comes to the board from municipal departments like Parks and Recreation. More subtly, law constitutes some very significant political activity on the Lower East Side through Community Board #3. The board sets political constraints and influences forms of resistance. The responses to decisions of the board by activists who appear at meetings are evident in the choices they make about what kinds of political claims are feasible. The board constitutes a political forum through law. Here activists shape their claims to fit legal categories that have been defined by the city and state of New York (e.g., tenant co-ops) and by the legacy of the Anglo-American legal system (property rights, the right to assemble).

Monthly board meetings became charged in the late 1980s over the allocation of housing and the uses and hours of Tompkins Square Park. Not only were police in attendance, but they were sometimes positioned around the room with their nightsticks out and helmets ready. Their presence (not generally deemed necessary at community board meetings) was intended at least as much to symbolize the city authority behind the board as to keep order. As both symbol and physical force, the police contribute to order maintenance, and in both of these capacities they delineate a distinctive forum under the authority of the city. A dozen officers might cover a meeting attended by as few as 20 board members and an audience of only 40 or so. Despite the police presence, tempers flared, verbal threats were common, and fist fights occasionally broke out.

The meeting of 22 May 1990 illustrates the use of the community board as a repository of "visible and invisible structures of law" that shape political life in this contentious community. It started with angry protests about the role of the state in disturbances in Tompkins Square Park on May Day. Mary, a woman from the squatter group, stated that police surveillance of the park provoked rather than prevented scuffles at what was billed as a "resisters' festival" (expressing support for resistance to police efforts to put squatters out of otherwise abandoned buildings). A neighborhood journalist claimed that political people were being kept out of the park, and he decried the transformation of the neighborhood into a "war zone." A local block association chairman described the heavy police presence in the park as putting the area "under martial law." An artist and activist invoked the vocabulary of civil liberties to decry beatings by police on the night of 1 May and subsequent harassments of various kinds. When the board took up homelessness in the area, a speaker from the Revolutionary Communist Party said the police "create homelessness and then they attack the homeless." A local priest described the fundamental issue as "who owns the land, who has a right to the buildings." As the meeting turned to tenant evictions linked to redevelopment and housing legislation, the participants had been "made" into an audience.

This meeting showed a community board providing a forum for political discourse where the legal dimensions of the board influenced the discourse. Mary couched her complaint about police behavior within a framework that assumed the institutional legitimacy of those she criticized. On less alien terrain—a street corner or a park bench, for example, where squatters' claims are often heard—Mary might have made a more extreme claim (she is an anarchist) such as abolition of the police and community control of public security. Her stance at the board meeting supports the view that community boards, with their rules and officially sanctioned leaders, may deflect more extreme political positions. Some housing professionals who attend meetings feel that the meetings bring out the extremes of viewpoint and behavior, that the forum becomes a stage for otherwise thwarted performers. Whether stage or channel, the legally constituted community board is a distinctive political forum.

The board as a sanctioned site of politics brings together a variety of people—renters and landlords, homeless and squatters—with a broad range of ethnicities and economic levels represented. Speakers set aside for the duration of their participation in the arena the trappings of hierarchy that make some worlds and lives more authoritative than others. While the

40. In this view, the police who back up the boards are equated with those who allocate housing resources, determine the status of squatters, and enforce city policy in the parks.

marks and features of the homeless stand out, it is hard to tell an owner from a renter in this setting. Presentations at board meetings are also leveled by assumptions shared by speakers and board members about the protected position of at least some kinds of speech in a constitutional democracy. The law creates the board as a forum that diminishes in political space the divisions of authority that would exist between owner and renter, or renter and homeless at the doorstep of an apartment.

The board's authority is acknowledged at the most fundamental level. In this setting, parliamentary procedure is one example of the constitutive dimension of the board as a legal forum. A characteristic of meetings—even on occasions when fist fights threaten to break out—is labored attention to Robert's Rules of Order. Even the neighborhood's small group of anarchist squatters, who reject the authority of the state, acknowledge the board's significance by attending and speaking at meetings where they think a decision will affect them. Despite their utopian struggle for housing, in the meetings, their politics reflects at least a nod to the prominence of the possible. Neighborhood activists define their orientation and their clout in relation to decisions taken by the board. In each of these instances, law operates constitutively and politics is affected.

Law as Claim

A good example of constitutive law on the Lower East Side is the law of ownership. Law delineates the social relationship of occupants or potential occupants to types of housing. By housing, perhaps as much as by anything else short of ethnicity\(^{42}\) (to which housing is highly correlated), people are known and their interests emerge. The laws of ownership and the social relations they constitute are the terrain of politics.\(^{43}\) The Lower East Side has been a focus of housing politics for over 50 years beginning with the innovative "First Houses" constructed by the New York City Housing Authority in 1935. The political manifestation of the law on ownership is to differentiate claimants—as homeless, or owners, or squatters.

Housing on the Lower East Side takes more forms than most Americans can imagine: co-ops, condominiums, apartment houses, and brownstones; rental arrangements include market-rent, rent-controlled, and rent-stabilized apartments, sublets, subsidized units, conventional public housing ("the projects"), and middle-class state-supported housing ("Mitchell-

\(^{42}\) The role of law in constituting ethnicity seems to be a good deal smaller than its role in defining property.

\(^{43}\) For attention to how rent control laws contribute to political mobilization, see Michael Lipsky, *Protest in City Politics* (Chicago: Rand, McNally, 1970).
Lama"). There are other types of ownership best described as transitional, some strictly legal and some not; homesteading is in the former category, as are shelters. Lofts vary. The "squats" are not legal, although the city's "thirty day law" decrees that a squatter who can prove residence for at least 30 days is no longer a trespasser under the law and must be accorded the due process protection of formal eviction. There are also the homeless, on benches, in tents, and in doorways. The nontrivial sense in which laws "make" people homeless is the sense in which law constitutes our claims.

For those occupying this panoply of housing forms, as well as those who deal in them, the legal definitions and the hierarchies they create are critical. Forms of property establishing differing relations to the government are evident in the regulation of construction, the maintenance of buildings, and the processes of conveyance. The law of property shapes people's political rights, their actual and potential access to instruments of political leverage, and their objectives as political actors. The residents of the Lower East Side participate in a politics of property evident in their use of legal categories to describe their housing. For instance, tenants can tell you that they live in "Section 8" or "old law" housing. Abandoned tenements link the area to earlier waves of immigration, providing opportunities for squatters and developers. The community gardens in abandoned plots provide another focus for claims of entitlement. For many residents, activism may fade once he or she has acquired legal stability through tenancy or ownership. Here, the law's imprimatur on property symbolizes political resolution.

We know that ownership frames the physical and social world. What a politics of law needs to account for is the way that property demarcations, such as those between private and public space reflecting the laws of ownership, constitute social relations on the Lower East Side. Tompkins Square Park is terrain contested by many different users. Under city control, the park draws political struggles. The park is a forum, like the community board, but because its use is contested we say that the law designating the land between Avenues A and B at 9th Street a park makes particular claims possible. Use of the park is highly contested compared to rental property or that held as "fee simple" title. The legal distinction between ownership and opportunity for use is constantly at issue on the Lower East Side. Walking (down the sidewalk usually), one is made aware of what is public and what

44. These forms of ownership are not the only way that buildings may be constituted in law. On the Lower East Side one speaks of "old law tenements" to refer to buildings constructed before legislation in the late 19th century set minimum standards for air and light in tenements. Richard Plunz, A History of Housing in New York City 262 (New York: Columbia University Press, 1990).


46. Marlis Momber, a participant in the homesteading movement, comments, "When the ownership thing takes over, they no longer care about their fellow man." Interview, 16 March 1990, with John Brigham.
is not. For a homeless person sleeping, tentatively, on the steps of the 10th Street public library, the possibilities contained in the laws of property become behaviors. Ownership is represented in material ways (locks, fences, razor wire) and more discursively (in language that says "Get out," "Where is the rent," "Come in").

Community professionals in the neighborhood mobilize and interpret the law as a part of their political life. One interpreter of this sort is Donna Ellaby, Director of Good Old Lower East Side, who characterizes her activism as organizing tenants to "raise the stakes on what it means to be a property owner."47 She says that she carries her version of the housing code around in her head and rarely calls a lawyer or the police. For Ellaby, the law is "a luxury item" in politics. Yet, she is keenly sensitive to the effect of the economy on ownership. As markets drop she notes that ownership shifts from individual landlords to banks. This is followed by federal banking insurance and regulatory agencies, "the RTC and the FDIC or Freddy Mac or Ginny Mac."

Law in politics is influenced by nonprofit grassroots organizations that have replaced local party machines on the Lower East Side as mediators between citizens and officialdom. The politics of the paid organization staffs—artists, city planners, housing and public health specialists, social workers—are shaped by their state created status as professionals certified to assume the role of advisors as to the politics of property claims.48 They put together tenant management schemes and get financing to rehabilitate abandoned buildings instead of helping raise the proverbial barn. More important for politics, their planning provides an information base and forms for mobilizing political demand. Where party bosses had access to officials, the organizers add expertise in the official culture of ownership. The community professionals understand anti-gentrification politics as a function of economic development pressures and the rules around which groups can mobilize.49

Law as Position

Conventionally, politics exists along a spectrum where intensity and comprehensiveness of claims defines the position of actors. Law plays a formative role in giving meaning to the ideological perspectives held by activists in the neighborhood. Laws put some politics at the center and

48. Prominent LES organizations with community professionals using the law in politics include G.O.L.E.S. (for Good Old Lower East Side, a tenant organizing group), Charas (the biggest arts group), NENA (Northeast Neighborhood Association) Health Center, Tompkins Square Park Neighborhood Coalition (the local homeowners), and the Joint Planning Council (a coalition of all the housing organizations—generally reformist, professionally staffed).
some on the periphery of the political spectrum. On the Lower East Side, political activity covers efforts to maintain traditional power relations in the neighborhood, various reform inclinations, and an imaginative array of transformative positions. Laws such as those about the responsibility of renters and the expectations of owners delineate the relationship of one political claim to others. Laws are often the variable in reform movements while they act as impediments in more transformative politics and resources for those who would maintain the status quo.

Operating with reference to the legally constituted hegemonies of state and market, reform movements on the Lower East Side envision different practices such as public housing and sweat equity. The “In-Rem” housing program of New York City is a characteristic reform movement. “In-Rem” refers to housing taken over by the city as a result of default on taxes owed. During the 1970s and 1980s the city took over thousands of buildings, creating a vast array of small, run-down properties for which the city was responsible. These properties were put to a variety of uses, including the self-help projects that are at the center of the In-Rem program—tenant co-ops, for instance, and sale of the properties to nonprofit organizations, which develop them as low-income housing. Several community-based nonprofit organizations took advantage of the city’s distributive schemes to get abandoned buildings back on the tax roles, adapting Scandinavian models of cooperative housing to urban American needs. Since the property was not commercially viable, reformers had an opportunity for experimentation. Even as activism slowed in the 1990s, some reform efforts continued around the creation of a “mutual housing association” which provides low- and moderate-income residents a kind of social ownership that avoids the risks of both market housing and “the projects.”

A somewhat more radical reform effort was the movement against “warehousing,” or the withholding of scarce apartments from the rental market. Given the legal rights of renters in New York City, landlords need to empty a building when contemplating a change in its property status, such as converting from rental units to condominiums. Housing activists on the Lower East Side dubbed this activity warehousing and challenged it as a “crime.” The point is not the empirical truth of the claim, but rather how

50. This legal development derives from the city’s position as sovereign, where, in the context of defaults for nonpayment of property taxes, the city government operates as the ultimate authority.


52. Mutual housing involves a combination of central and tenant management, heavy involvement by community organizations, 100% financing for construction plus sec. 8 subsidy for some tenants. Id.

the claim directed many reformers' march through the institutions.54 Like the chant "Abortion is Murder" or "Education is a Right," the slogan "Warehousing is a Crime" is radical in its rhetorical refusal to acknowledge the traditional hierarchies of legal authority. Although this slogan is often found in "illegal" contexts, such as graffiti, for the most part the very nature of the claim, unlike that of many anti-abortion activists, situates the claim in the context of reform politics. Those seeking reform make use of rhetoric that relies on the symbolic connotations of legal categories in order to advance a political project, rather than to bring formal charges against warehousing landlords.

Some political activists on the Lower East Side prefer to mount more radical attacks on the basic political economy of property. The squatters (and a few of the homeless) envisioned "decommodification" of housing, and they have been aggressive in using forums from the Community Board to the New York Times to state their case. They seek to establish social rather than individual ownership and remove housing (at least for lower-income people) from the private market.55 Here need, rather than legal right, establishes the claim and possession is its realization. The law, in this sense, "makes" them radicals. Frank Morales, a clergyman who works to organize squatters (and is one himself), described the movement to take over unoccupied buildings as "a logical and ethical response to suffering" which creates "possibilities for people to take charge of their own lives."56 Morales expressed bewilderment at the resistance of liberals to squatting, illustrating his point with a reference to the Dinkins administration then in City Hall calling squatters "hardened criminals." Here the claim "Housing is a Right" aspires to a transformation in property that goes well beyond the reach of conventional institutions or the politics of reform. The squatters explicitly place themselves on the periphery of the law and wage a cultural politics that appropriates the language of rights to their own ends. For Morales, "the language of need, of hunger, can extinguish conceptions of right, but people are forced to play the game of rights" because claims based on expressions of need do not receive a hearing. To the extent that the law is state power, its adoption in forms of community politics is limiting.

The squatter discourse includes not only legal images but innovation. In a flyer produced by the City-wide Action Committee to End Homelessness for the "Free the Land Mayday 1990" celebration, activists made the claim that the principles of the Fifth Amendment provide a basis for taking private property for the "greater public good," not by ordinary governmental

56. Frank Morales, interview, 8 Nov. 1990, with Diana Gordon.
processes, but by physical occupation—and not just on the Lower East Side, but throughout the nation. This aspirational politics uses the language and form of the law to make intelligible a claim that would transcend the traditional institutions and expectations of law. The squatters explicitly and consciously redefine the meaning of eminent domain. Two of the squatters defended their decision to mount armed resistance to any potential efforts by the city to remove them from their buildings by asserting their right to self-defense. When challenged by reform-oriented activists as to the lack of a positive right to defend their dwelling in such a situation, the squatters fell back on a kind of natural law argument for which their conception of human dignity replaced public authority.

Of course, framing an issue in legal terms is a traditional way to defend the status quo. During one of the battles over Tompkins Square Park, representatives of residents near the park, many of them homeowners, circulated a plea, titled “Bring Back the Park,” to their neighbors to attend a special meeting on the condition of the park. They urged that residents insist that the city enforce local law to get the homeless out of the park. Prominently appended to the memo were the park rules regarding storage of materials, camping, fires, etc. Here political strategists relied on law to defend the property interests of homeowners and small business proprietors. Invoking the rules assured less political residents a legitimate basis for denying others access to a public space. The park rules, to which middle-class homeowners and more conservative residents turn, function in both instrumental and symbolic ways at least in part because uses of the law allow interests to be masked as an expression of belief in the status quo.

Our purpose is not to uncover a true politics behind the mask of the law. Rather, we wish to understand the ways in which law, in the form of parks department rules, community boards, forms of housing, and claims of right determine the sort of politics that is possible. Sometimes it seems as if the use of legal form and vocabulary may be nothing more than a convenience in an instrumental politics. And, of course, some uses of law on the Lower East Side are instrumental. As shorthand, calling warehousing a “crime” is an attempt to marshal at least images of law in the processes of struggle, bypassing the role of government in defining what is “criminal.” Still, these retorts are primarily expressive, using law to inform us about what groups want. But law is also the terrain of politics. Indeed, enforcing a curfew in the park, an old rule whose adherence was only proposed in the late 1980s, spawned the violent police riot during the summer of 1988.

57. Leaflet on file with authors.
CONCLUSION

Our portrayal of politics on the Lower East Side helps us to see law where others have not. Law informs politics in many ways. We suppose that law is always more significant in political struggles than contemporary commentary would have it be. By focusing our attention in an area known for its politics we hope to establish that law is not something that is always opposed to or simply the result of politics. We see political activists constituting their politics differently because of the language, purposes, and strategies which exist as law—federal, state, and local. We have tried to show that these influences take a number of forms.

Some of the work on which we rely illuminates the various forms of law in the politics of such activities as an assertion of right (gay activism in the context of the AIDS epidemic) and the challenge to law as remedy (the legal academy's claim that law has no force but is merely rationalization). 58

The present study takes another perspective with its attention to forums, claims, and political position. The different roles of the law in politics reveal political activity in a mutually constitutive relation with the law. This is not a precise determination.

Sometimes social factors influenced by law in one arena, such as divorce in family law, will have consequences in another area, like eviction, in the law of property. Both may contribute to alienation, which may well erupt as political dissent. Nor is the logic of legal claims an issue for us. Squatters may simultaneously claim that their right is established by their need and not by public authority and also plead for concessions from the government. Property owners bring various social connections and forms of wealth to bear when they struggle against less well heeled activists. Our point is not to map all the influences of law on politics or establish limits to the political that are distinctly legal. The point is rather that we sometimes ignore law by operating at the instrumental level with reference to what laws do.

At the heart of our study is a case in point, Tompkins Square Park, "a barometer of New York City's passions." 59 The park is a 10-acre square that has been a public forum for a changing community since Irish and German immigrants, thrown out of work by the economic panic of 1857, demanded that the city give them jobs and tore apart the park benches for bonfires to dramatize their desperation. 60 Between 1988 and 1992, many confrontations, some verbal and others violent, took place over various issues: a pro-

posed curfew for the park (to oust both revelers and the homeless at midnight), a tent city constructed by the homeless in the park (and housing more than 200 people during the summer of 1989), the use of the park's bandshell for rock performances, and the closing of the park for renovation.

The park is a legally constituted forum. In a sense analogous to the community boards, it constitutes a political space. Concerts and happenings now are the order of the (political) day with May Day events bringing out legions of New York City Police. At another time camps of homeless people in individual shelters operated under the cover of the park's no curfew policy. Here, the park became a cause or a claim. It was something to fight for. But in the struggle, differing positions on its use determined what side one was on and the park became the basis of whether one was a radical, a reformer, or a conservative.

Does that make law whatever one wants it to be? Is this the fallacy of the position we have offered? Of course, we hope not. Rather, it seems that law in the constitutive rather than the instrumental sense operates in politics without necessarily determining anything in the limited sense we usually use to talk about politics. But then, the law does often determine a great deal and its limits can be quite precise when it comes to the presumptive use of public force or a prior right to allow access on a cold winter's night.

In the end, for some reasons we hope have been made evident, we conclude with a rejection of the slogan "Die Yuppie Scum." Realizing that many have expressed the willingness to die for the right flat in New York City, this is the sort of rhetoric that tells us very little about the constitutive role of law in politics. Like formal sources of law, the highly charged rhetoric of politics on occasion takes us away from the more fundamental ways in which much of politics depends on law. Sometimes, in fact, because we understand politics as the play of interests we pay little attention to the ways in which the law structures these interests. This inattention is a barrier to understanding the nature of politics. On the Lower East Side, it is also a threat to a distinctive neighborhood.