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THE CHOSEN PEOPLE IN OUR WILDERNESS

*Susan P. Koniak**

GATHERING STORM: AMERICA'S MILITIA THREAT. By *Morris Dees* with *James Corcoran*. New York: HarperCollins. 1996. Pp. 233. \$24.

RURAL RADICALS: RIGHTEOUS RAGE IN THE AMERICAN GRAIN. By *Catherine McNicol Stock*. Ithaca: Cornell University Press. 1996. Pp. xi, 197. \$25.

When custom presses on the souls apart,
Who seek a God not worshiped by the herd,
Forth, to the wilderness, the chosen start
Content with ruin, having but the Word.¹

INTRODUCTION

Strangers there are among us, practicing with weapons for something they believe might come — something some of them believe should come. Militia men, patriots, self-proclaimed true Americans. Chosen people. What are we, members of the power elite, the academy, the legal intelligentsia — the other chosen people — to make of them? Sideshow freaks may titillate even a scholar, but they rarely, if ever, inform. Is there more here?

Along with the authors of *Gathering Storm* and *Rural Radicals*, I believe there is. Neither of these books sets out to convince lawyers or law professors in particular that these groups are worthy of attention, but both are written to convince a more general audience that these groups warrant serious attention. *Gathering Storm* is written for the public at large, while *Rural Radicals* is written for a more highly educated subset thereof. Unfortunately, neither book is entirely successful at its assumed task, although both pose important questions.

Gathering Storm is an informer's report, an exposé of a movement whose numbers and potential to do violence most of America

* Professor of Law, Boston University School of Law. B.A. 1975, New York University; J.D. 1978, Yale. [Author: please verify degrees, dates, and institutions]. — Ed. This book review draws heavily on ideas I articulated first in *When Law Risks Madness*, 8 *CARDOZO STUD. L. & LITERATURE* 65 (1996).

1. John Masefield, *Lines on the Tercentenary of Harvard College* (1936), quoted in JOHN BARTLETT, *FAMILIAR QUOTATIONS* 947 (14th ed. 1968).

underestimates, according to the authors. The credentials of the authors suggest that they know of what they speak. Morris Dees² is one of the founders of the Southern Poverty Law Center, an organization that Dees has valiantly led into battle against the Klan and other bigoted domestic groups. His co-author, Professor James Corcoran,³ authored *Bitter Harvest*,⁴ an insightful and well-written account of Gordon Kahl's odyssey from farmer to protester to killer to martyr, and the hardship and discontent that created so many Kahl sympathizers in America's heartland.⁵ As an admirer of the work of both these men, I was disappointed to find their book poorly constructed and indulgent in style.

The chapters of *Gathering Storm* seem almost randomly ordered. I felt unsure, as I made my way through this book, that these authors had laid out a path designed to get their readers to any particular place. Instead, Dees's desire to illustrate his courage, foresight, and importance seems to dictate the route. Dees has reason for conceit: I believe he qualifies as a genuine lawyer-hero who has risked much to bring more justice into this imperfect world. Unfortunately, the chest-thumping in this book highlights his frailties and leaves his strengths in shadow — surely not the goal he had in mind. For Corcoran, who can write well,⁶ this book is similarly no tribute. Its writing is pedestrian at best. Perhaps Corcoran found playing second fiddle to Dees unsatisfying and lost interest or control over the final product. Nonetheless, with all of its flaws, the book contains some interesting information about these strange militia groups, and it manages to suggest why these groups should be of particular interest to scholars of the law.

Dees believes that law is the best answer to the militia threat. Dees's belief in law can hardly be considered naive; he has used law to combat evil before. Dees has put the Klan into bankruptcy (Dees & Corcoran, pp. 100-01), enjoined those hell-bent on terrorizing their Vietnamese neighbors (Dees & Corcoran, pp. 36-39); and crippled with economic damages other purveyors of hate, like Tom Metzger and his neo-Nazi White Aryan Resistance group (Dees & Corcoran, p. 101). Indeed, the book ends with a legal prescription to combat the menace Dees and Corcoran describe: the active enforcement of existing state laws that prohibit private armies and the enactment of such laws where they do not now exist (Dees & Corcoran, pp. 220-21). Dees's faith in law, and his use of

2. Chief Trial Counsel, Southern Poverty Law Center & Militia Task Force.

3. Associate Professor and Chairman, Communications Department, Simmons College.

4. See JAMES CORCORAN, *BITTER HARVEST: GORDON KAHL AND THE POSSE COMITATUS* (1990).

5. See *infra* notes 138-45 and accompanying text.

6. See generally CORCORAN, *supra* note 4.

it, challenges most modern jurisprudential thought, which portrays law as a weak force, a handmaiden to economics, politics, literature, or any other number of disciplines. If he is right, perhaps we are missing something about law's nature and its potential to reshape the world? If he's wrong, can we prove it? And then what?

Rural Radicals raises a very different set of issues. Professor Stock,⁷ a historian at Connecticut College, seeks not so much to warn us of the danger posed by these strangers in our midst, but to locate them in a historical continuum of American activists and thereby convince us that there is promise as well as danger in the spirit that animates these folks. Professor Stock's project is to sort out the common threads in social movements separated by vast expanses of time, all of which she argues are properly identified as originating in rural, as opposed to urban, America.

Stock's whirlwind trip from Shay's Rebellion in the late 1700s to the Grange movement in the late 1800s to the patriot movement of our times, with various other stops, is intriguing, although in the end somewhat unsatisfying. Stock attempts to explain too much with the aid of a few, somewhat fuzzily defined concepts. For instance, she defines "rural" so broadly that this Brooklynite began to think Coney Island and its culture could qualify.⁸ However ultimately unpersuasive her account is, this well-written, short book is worth the time it takes to read it. Why? Because it seems to me that Stock is onto something.

7. Professor of History, Connecticut College.

8. See Stock, p. 7. Stock provides no concise definition of "rural," but she claims that "[o]nly in the countryside" do five aspects of life combine to form a particular belief-set that she labels "rural." Stock, p. 7. These five aspects of life are: frontier life, class, race, gender, and evangelism. Stock, p. 7. I grew up in Sheepshead Bay, Brooklyn, which is not far from Coney Island — the place I reference in the text because I think more readers will have heard of it. Sheepshead Bay, like Coney Island, is at the extreme end of Brooklyn farthest from Manhattan, which I grew up calling "the city" to distinguish that far-off place from Sheepshead Bay. No one in Sheepshead Bay would have said they lived in "the city" because that meant Manhattan to all of us. Sheepshead Bay had no building greater than eight stories and supported a small fishing fleet manned by neighborhood folks. Is life in such a place less frontierslike than life in Boise, Idaho, where the townfolk undoubtedly see themselves as city-dwellers compared to those who live in less inhabited parts of modern Idaho? I am, in short, unsure how to apply Stock's first criterion, frontier life, to the experience of those living in the continental United States of the 1990s. But it seems possible that Sheepshead Bay or Coney Island could make as good a claim as many of the places Stock means to include. As for the other aspects of life that Stock says only combine in rural places, Sheepshead Bay could compete easily on three of the four other scales: class identification, deep racial identification and divisions, and a commitment to patriarchy thriving despite a strong tradition of women functioning as important economic contributors to family life. As for her last criterion, evangelic religion, among Sheepshead Bay's White population, Protestantism was all but unknown. Whites in the Sheepshead Bay of my youth were either Catholic, Jewish, or Greek Orthodox. But religious feeling ran high, particularly in the Catholic community, where Christ and the saints were not abstract concepts, but palpable features of everyday life.

Stock succeeded in convincing me that the patriots of today are connected in some way to the whiskey rebels of our constitutional infancy and to many of the other groups she discusses. What she seems to lack are the analytic or other tools necessary to make sense of the similarities evident in the narratives she provides. Her failure to explain with any precision the connections among these various movements, or their import, makes it particularly important that other scholars who might be better suited to this task read her book and pick up where she leaves off. Understanding the connections Stock struggles to explain might teach us much about where we have been as a nation, where we are now, and where we might be going. That is not, however, the only reason that legal scholars should be interested in this book.

They “took the law into their own hands.” Time and again, Stock resorts to this language or its equivalent to describe the actions of radicals in various historical periods (Stock, pp. 29, 89, 91, 96). Stock, not a lawyer or a law professor, obviously believes those words mean something, and she seems confident that what she means by them will be understood by her readers. As legal-scholars, however, these words are not so easy for us to understand. Can violence wielded by private parties ever be called law? What accounts for Stock’s need to reach for this phrase repeatedly in describing the violence wielded by the groups she discusses? The fact that we would not expect to see that phrase in a book about the violence of drug-users suggests that some violence seems more like law than other violence. How does some violence masquerade as, or take on the quality of, law? In a society like ours, knee-deep in both lawful and unlawful violence, should not our jurisprudence concern itself with such a question?

Both of these books thus raise important questions for legal scholars, although neither sets out to do so. But they both ignore completely something about the groups they study, which not only would have enriched the analysis in each book and been of interest to the general public, but would also have made the importance of these groups to legal scholars much clearer: The militia movement has created law.

It is the law that these groups have created that makes these groups of immediate importance to legal scholars. My interest in the militia movement’s law and what it means for the law that we teach and the jurisprudence that we articulate is what brought me to these books. I was thus sorely disappointed to find that neither book discusses this aspect of the culture created by the militia, or Christian Patriot, movement. Perhaps the authors could not see the law before them because the dominant jurisprudential paradigm in our culture so thoroughly equates law with the state that law with-

out a state is difficult to imagine.⁹ In the remainder of this review, I insist that we stretch our imagination to enable us to see.

THE COMMON LAW WORLD

I have read a fiery gospel, writ in burnished rows of steel:
 "As ye deal with my contemnors, so with you my grace shall deal;
 Let the hero born of woman, crush the serpent with his heel,
 Since God is marching on."¹⁰

Origins

Out of a fiery gospel and a truncated version of the Constitution of the United States, a movement of people has created its own law. They call it "Common Law" and their courts "Common Law Courts"¹¹ or "Our One Supreme Court."¹²

Law is more than a system of rules to be observed or a set of formal institutions that demands recognition; it is a world in which people live.¹³ From the legal world in which we live, the Common Law world seems incoherent. The Common Law calls its people

9. That is not to say that all legal scholars suffer from such a failure of imagination; they do not. Among modern legal scholars, Robert Cover stands out as one whose jurisprudence was dedicated to separating the concepts of law and the state, or established order, and the following discussion builds on his ideas. See, e.g., Robert M. Cover, *The Supreme Court, 1982 Term — Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983). Cover, of course, was not alone. Other recent examples include: William E. Forbath, *The Shaping of the American Labor Movement*, 102 HARV. L. REV. 1111 (1989); James Gray Pope, *Labor's Constitution of Freedom*, 106 YALE L.J. 941 (1997); Walter Otto Weyrauch & Maureen Anne Bell, *Autonomous Lawmaking: The Case of the "Gypsies,"* 103 YALE L.J. 323 (1993). My own work has also insisted on this separation. See, e.g., Susan P. Koniak, *The Law Between the Bar and the State*, 70 N.C. L. REV. 1389 (1992) (discussing the competition between the legal profession's law and the law that governs lawyers as articulated by the state).

10. Julia Ward Howe, *Battle Hymn of the Republic*, 9 ATLANTIC MONTHLY 10 (1862), reprinted in *THE BEST LOVED POEMS OF THE AMERICAN PEOPLE* 356 (Hazel Felleman ed., 1936). There is more than a little irony in beginning this section on rural voices with lines written in celebration of our national union, during the Civil War, by a woman, who was born in that most urban of places, New York City. That these lines nonetheless capture much of the righteous rage now spewing from parts of our heartland should serve as a reminder of how American these voices are.

11. See T.C. Brown, *Uncommon Justice: Common-Law Courts a Fast-Growing Forum for 'Patriots' Battling the American Government and Legal System*, THE PLAIN DEALER (Cleveland), Mar. 2, 1997, at 1A ("Common-law courts — the judicial arm of the Christian Patriot movement — comprise the fastest growing segment of these organizations, with followers in all 50 states At this time last year, followers . . . were evident in only 30 states."); see also Stephen Braun, *Their Own Kind of Justice*, L.A. TIMES, Sept. 5, 1992, at A1; Mark Potok, *Common-Law Courts Take on Legal System*, USA TODAY, Aug. 28, 1995, at 1A.

12. See *Kriemelmeyer vs. De Facto Corporation State of Wisconsin: Edict from Our One Supreme Court in and for La Crosse County, Wisconsin, U.S. of A.* (July 17, 1995) [hereinafter *Kriemelmeyer Edict*] (unpublished Common Law court papers, on file with author); see also Braun, *supra* note 11, at 1A (referring to Ohio Common Law Court as "Our One Supreme Court"); T.C. Brown, *Justice for the Common Man?*, PLAIN DEALER (Cleveland), Dec. 11, 1995, at 1A (same).

13. See Cover, *supra* note 9, at 4-5.

“Freemen” or “Sovereign Citizens” and proclaims that our courts have no jurisdiction over such persons. Sovereign Citizens busy themselves filing liens against government officials and other non-sovereigns. In our world, these liens are legal nullities,¹⁴ and the militias’ obsession with them seems driven by nothing more than the capacity of the liens to annoy those against whom they are filed. Their courts entertain “Quiet-Title Actions,” which have nothing to do with quieting title, as we understand those words, but rather purport to be a gateway to status as a Sovereign Citizen.¹⁵ A person filing a quiet-title action appears in a Common Law court and presents proof that he was not born in Washington, D.C., but rather in one of the 50 states.¹⁶ According to the Common Law, he then emerges free from the jurisdiction of our courts and government.

If any of this constitutes a world, it is not easy to discern what kind of world it is, what generated it, or what its purpose might be. Look again, because even this scanty account contains important clues about the central values of the people who call this law their own.

The group took a legal process that declares land to be free from the claims of others, the quiet-title action, and transformed it into a process that declares people to be free. It took a method of encumbering real property, the filing of a lien, and turned that into a weapon for punishing outsiders. This law seems to have come from a world in which existence, identity, and land are all but inseparable concepts. It is a law born not from the imagination of urbanites, but from that of farmers for whom land means something different from what it means for those who dwell in apartments and walk crowded city streets.

14. See, e.g., *Terpstra v. Farmers & Merchants Bank*, 483 N.E.2d 749, 757 (Ind. Ct. App. 1985) (describing these liens as “a mere nullity without any legal effect”); accord, e.g., *United States v. Reeves*, 782 F.2d 1323, 1326 (5th Cir. 1986) (per curiam); *Ryan v. Bilby*, 764 F.2d 1325, 1327 (9th Cir. 1985); *United States v. Hart*, 701 F.2d 749 (8th Cir. 1983) (per curiam); *United States v. Shugarman*, 596 F. Supp. 186, 192 (E.D. Va. 1984); *United States v. Dyke*, 568 F. Supp. 820, 822 (D. Or. 1983); *Johnson v. Murray*, 656 P.2d 170, 176-77 (Mont. 1982); *Shutt v. Moore*, 613 P.2d 1188, 1191 (Wash. Ct. App. 1980).

15. See *Nature and Threat of Violent Anti-Government Groups in America: Hearing Before the Subcomm. on Crime of the House Comm. of the Judiciary*, 104th Cong. 135 (1995) (statement of Ted Almay, Superintendent, Ohio Bureau of Criminal Identification and Investigation) [hereinafter *Anti-Government Groups Hearings*]; Bill Ellwood, *Constitutional Court of We the People in and for the United States of America, Our One Supreme Court, Common Law Venue, Original and Exclusive Jurisdiction, a Superior Court Sitting with the Power of a Circuit Court and United States District Court for the People in and for Franklin County, Ohio State Republic, United States of America 15* (Oct. 1995) (unpublished handbook, on file with the author) [hereinafter *Ohio Handbook*] (urging people to file quiet-title actions to remove themselves from the jurisdiction of the federal and state governments).

16. See *Anti-Government Groups Hearings*, *supra* note 15, at 138 (statement of Ted Almay, Superintendent, Ohio Bureau of Criminal Identification and Investigation) (explaining the importance of establishing that one was not born in the District of Columbia).

To a farmer, land is identity. "It is his connection to God; it is his religion, his nationality, his family's heritage, and his legacy to his children."¹⁷ To lose one's land is thus much more than an economic disaster; it is a cultural and spiritual disaster as well. The farm crisis of the 1980s was just such a cataclysmic event for many in America's heartland. In *Rural Radicals*, Stock writes:

From North Dakota to Texas and Alabama to Colorado, farmland that had been held by families for more than a century was lost to foreclosure in less than half a decade. Children whose families grew food endured the humiliation of being unable to buy it for themselves. . . . As farms failed, so did rural businesses; towns began to resemble ghettos with boarded-up stores and abandoned buildings in the midst of verdant pastures, fields, and orchards. Families neglected health care and waited for hours in lines for emergency food distributions. Not surprisingly, rates of rural suicides increased. So did domestic violence and murder.¹⁸

To make sense of experience when one's world is crumbling is no simple task. As Stock describes it, two paths presented themselves to rural Americans. A new world could be constructed through alliances with urban labor and the urban poor, the other groups "who found themselves on the short end of the Reagan revolution" (Stock, p. 162). That is, farmers could understand their experience through the narratives of Jesse Jackson and his Rainbow Coalition — narratives that berated big business, cold capitalism, and an unresponsive government that displayed equal disregard toward all manner of ordinary folks of all races and creeds. And some farmers, like those who packed a small church in Iowa to hear Reverend Jackson preach, did just that (Stock, p. 162). Alternatively, farmers could understand what had happened to them through the narratives of the Far Right — narratives that explained

17. CORCORAN, *supra* note 4, at 11.

18. Stock, p. 157 (footnote omitted). In *Gathering Storm*, Dees and Corcoran seem to deny that the farm crisis played a major role in the rise of the militia/Christian Patriot movement. Dees & Corcoran, p. 3. More precisely, they suggest that it was not until the 1990s, when those who appealed to displaced farmers and other downtrodden inhabitants of rural America learned to mask the racism of their message, that the movement took off. See Dees & Corcoran, pp. 3-4. Their rejection of the farm crisis as a pivotal event is, however, belied not only by Stock's book but by the accounts of almost all other observers. See, e.g., Gene Fadness, *Agents, This Time, Act Cautiously*, IDAHO FALLS POST REG., Mar 28, 1996, at A10 (tracing roots of movement to farm crisis of the 1980s); Jim Gallagher et al., "Common-Law Courts" *Grow From Conviction*, ST. LOUIS POST-DISPATCH, Apr. 14, 1996, at 1A (same); Frank Santiago, *Oelwein Bank Case Clogged by "Court,"* DES MOINES REG., Sept. 10, 1995 (same). Indeed, Corcoran himself emphasizes the importance of the farm crisis in his earlier work. See CORCORAN, *supra* note 4, at 35-36, 40-41. On the other hand, the suggestion made by Dees and Corcoran that a shift in narrative focus played an important role in this movement's growth seems to be on target. They identify that shift as a move to less overtly racist messages, which is part of the story. I believe, however, that the adoption of overlapping and reinforcing narratives, see *infra* text accompanying notes 35-56, explains the expansion of this movement. As the normative material upon which this world view was based expanded and grew more complex and sophisticated, the base of people to whom it appealed grew.

how the federal government had been captured by un-American enemies — Zionists intent on destroying this Christian nation and its embodiment, the White Christian farmer to whom the land truly belonged. “[W]hy would this nation’s most honorable citizens suffer so terribly unless the government had been subverted by its enemies?” (Stock, p. 163).

Stock’s book is dedicated to showing that both sets of narratives have strong, deep roots in rural America. Stock argues that rural America has long been home to a belief-set that defies neat Left/Right distinctions. In the end, however, Stock is forced to admit that in today’s rural America this belief-set has proved relatively inhospitable to narratives from the Left, while narratives from the Radical Right have resonated deeply, unleashing enough energy to disquiet a nation. She writes:

Explanations for the farm crisis that put the blame on un-American conspirators, Jews and corrupted elites made more sense (and sounded more familiar) to many rural Americans than the activists on the left wanted to admit. It certainly felt more comfortable than creating alliances with the urban poor. And to some farm men, it felt more comfortable than attending support-group meetings or domestic-violence awareness lectures. [Stock, p. 163]

Or listening to Jesse Jackson preach. Explanations offered by groups like Christian Identity and Posse Comitatus made more sense. Some rural radicals built a law upon those narratives designed to replace what they had lost. It should come as no surprise to find at the center of that law precisely what had been at the center of the destroyed world: land. Equating freedom with quieting title and punishment with the imposition of a lien begins to make sense. “[A legal] tradition includes not only a corpus juris, but also a language and a mythos”¹⁹ Foreclosures gave birth to this law, and so its language is the language of foreclosure. Within the world of American farmers, such language is well understood.

Topography

The Common Law posits two United States of America: theirs, which is the lawful one, and ours, which is the tyrannical imposter. The legitimate United States — theirs — is defined by their law; the illegitimate United States — ours — is also defined by *their* law — our law as understood by their law. Consider how one Common Law text affirms the existence of these two worlds and describes them:²⁰

19. Cover, *supra* note 9, at 9.

20. Ohio Handbook, *supra* note 15, at 9.

THE TWO
"THE UNITED STATES"

"The United States"

"The United States"

The Basic Constitution	Article I, Section 8 Clause 17
The First Ten Amendments (Bill of Rights)	(Ten Miles Square Area only)
Three Branches of Government (Legislative, Executive, Judicial)	Article I, Clause 3
Article III Courts (Constitutional Courts)	Civil War Amendments
A Republic (Republican form of Government of the 50 Union States.)	Civil Rights Act
Common Law, Equity Law, Admiralty Law	Article I, Section 8 Clause 9
Individual Rights, Property Rights etc.	Legislative Courts
No direct Taxes, Duties, Imposts, Excises on commerce only. No taxes on wages.	A Legislative Democracy
No property taxes	Statutory Law, Rules, Regulations
Substance Money (Gold & Silver)	Privileges in lieu of Rights (by contract)
Law of the Land prevails. (Common Law)	Taxes on all privileges, property
Home of the Sovereign Human Being!	Taxes on wages (income tax)
	Law of the Sea prevails. (Admiralty Law)
	Home of the 14th Amendment Slave!

The Common Law understanding is that both these worlds exist *now* in the same physical space,²¹ one legitimately and one illegitimately. This group does not content itself with asserting that its world *should* exist; rather, it asserts that its world *does* exist. It is "home" to Sovereign Citizens and they live there.²² We, on the other hand, live elsewhere, according to them and according to us. But how they imagine that "elsewhere" is not how we imagine it. They believe that we live in a world very different from the world in which we would claim to live. For example, they believe that in our world, admiralty law prevails and the Uniform Commercial Code has somehow replaced the Constitution of the United States as our fundamental social contract. The world they think we inhabit is foreign to us, but they see us living there nonetheless.²³

21. See Howard Freeman, *The UCC Connection: Free Yourself from Legal Tyranny 18* (1990) (unpublished manuscript, on file with author):

If you are charged with *Willful failure* to file an income tax 1040 form, that is a law for a different nation

YOU are a *NON RESIDENT ALIEN* to 'that nation'. It is a *foreign corporation* to you. It is NOT the *REPUBLIC* of the continental united States coming after you. It is a foreign nation . . . a legislative democracy of a foreign nation, and, as such, can NOT rightfully compel a performance of you, since you have signed NO contract with the United States

22. For example, one Common Law text identifies the Common Law court in Wisconsin as being located "without" the United States and speaks of having expatriated to another place. See Kriemelmeyer Edict, *supra* note 12, at 1.

23. The above discussion might lead many to wonder how these people differ from people we might call insane. "[T]he fact that we can locate [the part we play] in a common 'script' renders it 'sane' — a warrant that we share a *nomos*." Cover, *supra* note 9, at 10. From the perspective of a particular normative system, a large group of people who live in another *nomos* may very well be labeled "mad." But collective "madness" can still be distinguished from the truly idiosyncratic normative behavior for which I wish to reserve the term "insane." The reader should not, however, mistake my insistence on a distinction between madness and insanity for an assertion on my part that the terms are commonly used in the manner I suggest. A dominant normative system — the law of a land or the people who live

No one can construct, or reconstruct, a legal order from precepts strung together on a list, whether it is either of the lists provided above²⁴ or one that you or I might construct detailing the fundamental tenets of our constitutional order. More material is needed. For law to constitute a world, a *nomos*,²⁵ there must be material that explains the purpose of the precepts and what they demand of citizens. Narrative is that material. Only through narratives can rules be "supplied with history and destiny, beginning and end, explanation and purpose."²⁶

The Common Law precepts are given coherent shape through biblical and secular narratives that parallel and reinforce one another. The biblical narratives that explicate Common Law precepts emanate from a religious sect called Christian Identity. Identity teaches that White Americans are the true Israelites of the Bible, the chosen people of God.²⁷ A racist, anti-Semitic offshoot of

that law — may well label certain acts of resistance to the dominant *nomos* "insanity" even when they are based on alternate normative systems. In fact, the definition of "insanity" in all cultures may be tied inextricably to the breadth of the culture's acceptance of alternative normative visions. See generally THOMAS S. SZASZ, *THE MANUFACTURE OF MADNESS* (2d ed. 1977) (arguing that the distinction I have drawn between madness and insanity is specious and that neither phenomenon is ever anything more than adherence to a normative vision labeled "mad" by the dominant culture). Nonetheless, I maintain that acts based on a shared, albeit radical, normative vision can be distinguished from idiosyncratic acts whose normative meaning is understood only by the actor.

24. The Common Law, like all law, not only identifies certain precepts as binding, but also exiles others. Under the Common Law, the income tax is unconstitutional. See, e.g., Ohio Handbook, *supra* note 15, at 9 (identifying "[n]o taxes on wages" or property as a binding precept of the United States under the Common Law); see also United States v. Kaun, 827 F.2d 1144, 1146, 1149 (7th Cir. 1987) (describing the community's rejection of income taxation). Social security numbers are a mark of second-class citizenship. See Willson Cumber, *Jurors Convict Montville Driver Who Doubts Laws*, *PLAIN DEALER* (Cleveland), Apr. 27, 1996, at 1B; Peter Larsen & Teri Sforza, *Common-Law Believers Go Their Own Way*, *ORANGE COUNTY REG.*, May 18, 1996, at A1. State laws requiring licenses to drive a motor vehicle are a violation of the right to travel under the Common Law. See Dennis B. Roddy, *Conspiracy Theories Are Groups' Lifeblood*, *PITTSBURGH POST-GAZETTE*, Apr. 30, 1995, at A1. Furthermore, federal and state court jurisdiction over Sovereign Citizens is invalid. See Kriemelmeyer Edict, *supra* note 12, at 17; Ohio Handbook, *supra* note 15, at 15.

25. I borrow the word *nomos* from Professor Cover, who explained its use as follows:

The Hebrew word *Torah* was translated into the Greek *nomos* in the Septuagint and in the Greek scripture and postscriptural writings, and into the English phrase "the Law." "*Torah*," like "*nomos*" and "the Law," is amenable to a range of meanings that serve both to enrich the term and to obscure analysis of it. . . . The Hebrew "*Torah*" refers both to law in the sense of a body of regulation and, by extension, to the corpus of all related normative material and to the teaching and learning of those primary and secondary sources. In this fully extended sense, the term embraces life itself, or at least the normative dimension of it, and "*Torah*" is used with just such figurative extension in later rabbinics.

Cover, *supra* note 9, at 11 n.31.

26. *Id.* at 5.

27. See CORCORAN, *supra* note 4, at 38-39.

British Israelism,²⁸ Identity provides a powerful set of narratives that capture many of the themes echoed by other segments of the militia/Christian Patriot movement; it supplies a mythos that serves to unify a community of many subgroups with otherwise competing narratives.²⁹ Taking care throughout their book to explain that not all militia members or self-proclaimed patriots are Identity members, avowed racists, or committed anti-Semites, Dees and Corcoran also make clear how dominant Identity narratives are within the larger movement and explain how they are used to bind together and inspire this community.³⁰

An edict issued by the “one Supreme Court in and for La Crosse county, Wisconsin,”³¹ provides a striking example of how

28. British Israelism is a religious movement born in the 1800s that identifies the Whites of Europe with the lost tribes of Israel. See *id.* (discussing the origins of British Israelism and explaining that religion’s connection to Christian Identity); see also Stock, p. 169.

29. Leonard Zeskind, a researcher and analyst for the Center for Democratic Renewal, an Atlanta-based group that monitors racist and anti-Semitic activities in this country, argues that the Christian Identity movement has been able to create what was heretofore lacking among competing and geographically separate American hate groups: “a practical working unity.” See CORCORAN, *supra* note 4, at 38 (quoting Zeskind) (internal quotation marks omitted). Michael Barkun, a professor of political science at Syracuse University and author of a book on religion and the Radical Right, MICHAEL BARKUN, RELIGION AND THE RACIST RIGHT (rev. ed. 1997), explains that while the Radical Right is made up of many subgroups — “[s]urvivalists, militias, Klans, neo-Nazis, Christian identity churches, skinheads and Christian constitutionalists” — their “views find their fullest expression in the Christian Identity movement,” which Barkun calls “the most significant religious manifestation on the extreme right.” Michael Barkun, *Militias, Christian Identity and the Radical Right*, 112 CHRISTIAN CENTURY 738, 738, 740 (1995) [hereinafter Barkun, *Militias*]. This point is also made in *Gathering Storm*. See Dees & Corcoran, p. 18; see also John Kifner, *The Gun Network*, N.Y. TIMES, July 5, 1995, at A1 (“There is a common religious thread, called Christian Identity, running through many of these groups . . . according to studies by the Anti-Defamation League of B’nai B’rith and others.”).

30. See Dees & Corcoran, pp. 18-24. For example, they describe the preachings of Pastor Pete Peters, an Identity minister. Peters recounts how the biblical figure Gideon threshed his wheat by the winepress to keep it hidden from the Midian tax collectors. See Dees & Corcoran, p. 20 (quoting Pastor Peters). “Gideon was a tax protester who would today be condemned,” but, Pastor Peters explains, he is a hero in the Bible. Dees & Corcoran, p. 20 (quoting Pastor Peters (internal quotation marks omitted)). The Gideon story, according to Identity leaders, has present implications for the righteous. Pastor Peters describes our country as one “invaded by hordes of illegal aliens and sons of the East who bleed a welfare system whose blood bank is the hearts of millions of laboring, overtaxed Americans.” Dees & Corcoran, p. 20 (quoting Pastor Peters (internal quotation marks omitted)). Dees and Corcoran also describe Peters’s use of three biblical figures — Shadrach, Meshach, and Abednego, who “defied King Nebuchadnezzar’s decree that all . . . bow before his golden image.” Dees & Corcoran, p. 20 (quoting Pastor Peters). That story is used to celebrate those today who refuse to “file, report, register, pay, submit, remit, buckle up, get a sticker, take a test, get a license.” Dees and Corcoran, p. 20 (quoting Pastor Peters (internal quotation marks omitted)). Peters also uses the figure of Jesus Christ, who urged his apostles to sell their garments and buy swords. The M-16, according to Peters, is the modern equivalent of the sword of which Jesus spoke. See Dees & Corcoran, p. 21. While *Rural Radicals* mentions Christian Identity in several places, Stock, pp. 1-2, 143-44, and provides a brief rundown of the group’s religious beliefs, Stock, p. 169, it does not give the reader a sense of how important the group’s narratives have become to the larger militia/Christian Patriot movement.

31. See Kriemelmeyer Edict, *supra* note 12, at 1.

some segments of the Common Law movement use the biblical narratives central to Christian Identity to support the Common Law. The edict begins with a statement of purpose: to establish the legal status of its author, the Honorable “Justice” Frederick G. Kriemelmeyer, as a freeman “duly expatriated from ‘*within*’ the United States,”³² — that is, expatriated from the United States that you and I recognize³³ — and to establish that the Common Law court is the only lawfully constituted court in the legitimate United States.³⁴

The edict provides a lengthy biblical exegesis intended to establish that White people³⁵ are the sons of Adam, the only form of man recognized in the Bible.³⁶ Jews, African Americans, and other people of color are the “beasts” of the Bible, the descendants of Cain and Satan, the issue of Eve’s copulation with the serpent.³⁷ White Americans, in contrast, are the true nation of Israel, God’s chosen people to whom the “land” was given.³⁸ That land is the “Land” referred to in our Constitution — the land in which the Constitution is to be the supreme law.³⁹ The Bible was written for

32. *Id.*

33. It is clear that the edict is intended to take Kriemelmeyer out of the jurisdiction of our United States, as opposed to *their* United States. For example, the sentence I have quoted in the text goes on to define which United States is being referred to: “[T]he de facto corporation District of Columbia and *its* possessions, territories and the [de facto] compact party states . . .” *Id.* (alteration in original). Notice that the sentence recognizes that there is in existence a party of states organized by compact. Notice too that that compact is not identified as the Constitution, which the Common Law insists that we have abandoned, and that the edict recognizes the factual existence of our United States but implicitly denies its legitimacy.

34. *See id.* The edict purports to offer proof from “various sources . . . by the judicial power and judicial authority vested in me.” *Id.* It explains its intent to offer “the following proofs of this sovereign Freeman character’s perfect, vested, absolute and Unalienable Right for our Self-appointment as a ‘*de jure*’ ‘Justice, Notary Public, and etc.,’ in and for La Crosse county [de jure], in our [de jure] country of Wisconsin, United States of America.” *Id.* at 2 (alteration in original). So powerful will these proofs be that “even the most jaded mind [could] comprehend [them], fraternal organization State Bar of Wisconsin notwithstanding.” *Id.* In other words, lawyers are the one group not expected to accept, or to admit the validity of, the law set forth in the document.

35. Here I am using the term “White people” to mean Caucasian Christians and to exclude all others, which is how I understand the term to be used in this edict.

36. *See* Kriemelmeyer Edict, *supra* note 12, at 3.

37. *See, e.g., id.* at 6 (second alteration in original):

In the *Jewish Talmud*, (book) *Yebamoth 103a-103b*, it says that *the serpent ‘copulated’ with Eve*. . . [I]n Leviticus 20:15-16, “*If a man lies with a beast, he shall be put to death. If a woman approaches any beast and lies with it, you shall kill the woman and the beast; they shall be put to death, their blood in upon them.*” Here, most, if not all preachers of the Judeo-Christian [preachers mixing the jew’s laws [*Talmud*] with that of the Biblical Law] churches will say that this means that man nor woman [is] to lie with a beast, such as a cow, horse, etc., which is true, but this is not the ‘*beast*’ that our Lord was talking about. It is the colored people, and the *jews*, who are the *descendants of Cain*.

38. *See id.* at 2, 10-11.

39. *See id.* at 3 (citing U.S. CONST. art. VI, cl. 2 (Supremacy Clause)).

the chosen people to be their law,⁴⁰ and the chosen people embodied that law in our original Constitution,⁴¹ which has since been supplanted by “man made constitutions [corporations] contrary to the Word of Almighty God.”⁴² The edict identifies Congress and state legislatures with the prophets of Baal and proclaims the “man made laws” passed by those bodies invalid.⁴³ It distinguishes between God’s law and laws passed under “color of law,” which are false and invalid laws passed by legislatures.⁴⁴ To apply for welfare, or for a social security card, marriage license, or driver’s license from the government, is to give up one’s status as a “freeman” and become a slave, whom the agents of government may “‘tax’ at their will.”⁴⁵

This story explains the importance of land to its community in sacred, noncontingent, noneconomic terms. The chosen people were promised the land by God — a land in which they might follow His Law. The community’s quiet-title process is invested with solemn significance by this story: those with clear title to the land are the chosen people. In a world in which this story is central, a quiet-title action can be understood as a gateway to a new world, the Promised Land. By fusing group identity with the land, the story also invests the filing of liens with new significance. Those who afflict the chosen people are surely the issue of Cain. What better way to mark these enemies, the unchosen, than with a cloud on their title? Surely, that is a mark that the chosen understand.

40. See, e.g., *id.* at 3-4:

[T]he “Ammonite and the Moabites”, which are a different race of People to that of the ‘white race’, “Israel”; will never be able to enter into the assembly of the Lord.

The one main issue is that this new ‘form’ of “man” [Adam] is separate from all the other races

Remember that the *Bible* was written for only one race of people

41. This point is implied, although not explicitly stated, in the edict. For example, the edict emphasizes that those who adopted the Preamble to the Constitution meant the words “We The People” to embrace “the white race and none other. The Preamble emanated from and for the People so designated by the words, “*To Ourselves and for our posterity.*” *Id.* at 25 (quoting *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 406, 480 (1857)).

42. *Id.* at 22 (alteration in original).

43. See *id.* at 17 (alteration in original):

“ . . . the four hundred and fifty prophets of Baal . . . ” represent our so-called congress and/or the state legislators [Satan] of today, creating and passing man made laws, regulations, codes, rules and policies under “color of law.”

. . . .

How many of the People of Israel [Adam/white race] have rejected the words of Almighty God, and rejected their “faith” [surety] in *Almighty God*, to worship man made laws; “color of law”

44. *Id.*

45. See *id.* at 17-18:

Once you have applied for these benefits, via your ‘application forms’, i.e., ‘social security card, drivers license, marriage license, etc., from your ‘new gods’, you have voluntar[ily] become their new “slaves”, to “tax” at their will, for you are no longer “Free”, i.e., a ‘freeman’.

Notice that the racist theme — that Whites alone are the chosen people — can be muted or suppressed without altering the story's ability to invest the quiet-title proceeding or lien filing with significance. If, for example, the story explained how farmers instead of Whites were the true chosen people, the significance given to quiet-title proceedings and lien filings would remain the same. Indeed, there is a version of the farmers/chosen people tale that is not racist. The narrative is Jefferson's: "Those who labor in the earth are the chosen people of God, if ever he had a chosen people, whose breasts he has made the particular deposit for substantial and genuine virtue."⁴⁶ Jefferson further asserted that farmers "are the most vigorous, the most independent, the most virtuous, and they are tied to their country, and wedded to its liberty and interests, by the most lasting bonds."⁴⁷

The chosen people theme thus has a resonance outside the hardcore racist Christian Identity movement, which means that some version of the Identity narrative and the law it has generated can be embraced by a larger group. The fact that there are multiple versions of the chosen people/rural American myth is testament to the importance of the tale and demonstrates that it is accepted by communities with otherwise divergent narrative traditions.⁴⁸

Most Common Law texts, unlike the Kriemelmeyer Edict, do not retell the chosen people narrative.⁴⁹ General references to the Bible as a source of law are, however, abundant in the group's legal

46. Stock, p. 18 (quoting THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 164-65 (William Reden ed., University of N.C. Press 1955) (1787)).

47. Stock, p. 18 (quoting Thomas Jefferson as quoted in CARL TAYLOR, THE FARMERS' MOVEMENT, 1620-1920, at 59 (1953)).

48. The very nature of narrative renders it unstable; it is difficult to retell a story without changing it, however slightly. Important narratives — those that form a central part of our understanding of the world — are in some important, if seemingly paradoxical, way the least stable of all. That is not only because they are retold more but also because the quest to unearth their meaning is more urgent and requires more words and new ways of telling.

49. This is not surprising. I would not expect the legal documents from any legal regime routinely to recount that regime's foundational myths. They simply are taken for granted. Consider how few of our courts' opinions recount the tale of our Revolution, the framing of our Constitution, or any of the other narratives that might be considered central to our law. Indeed, an opinion that recounts a central narrative normally signals either that an extraordinary challenge to the system has been made or that a novel legal step is about to be taken by the court, which seeks to legitimize the move by tying it to something accepted as fundamental.

As to the centrality of Identity narratives to the group's understanding of what is lawful, Dees and Corcoran say this:

[T]hrough . . . interpretations of the Bible . . . Identity gives its followers a sense of divine guidance and approval to engage in racial hatred, bigotry, and murder. When Identity counsels "lawful" ways and means, it does not mean local, state, and federal statutes. It means God's Law. Literally. Therefore, if one accepts the Identity teaching that Jews are the children of Satan and people of color are subhuman, one can kill with a clear conscience. It is neither a sin nor is it against the law to murder a race-mixer when a person is simply following God's commands. Instead it is virtuous. It is righteous. Dees & Corcoran, p. 21.

documents.⁵⁰ Indeed, Common Law is law “pursuant to the Word of Almighty God.”⁵¹

As a source of law, the Bible has two distinct advantages: First, it has a built-in supremacy clause — that is, it professes to be the Word of God. Second, it is a relatively familiar and accessible source. On the other hand, in this country, where the separation of church and state is a fundamental concept, albeit for some a highly controversial one, the Bible also has a distinct disadvantage as a source of law. Any legal understanding that relies exclusively on the Bible is vulnerable to the claim that it is religion and not law at all.

Thus, it is not surprising to find that this group does not rely exclusively on biblical exegesis to justify and define its law. The secular sources of this community’s law can even be glimpsed in the Kriemelmeyer Edict, which relies on the Bible more heavily than most Common Law documents. Consider again the statement of purpose in the edict.⁵² Like the Declaration of Independence, to which the edict explicitly refers,⁵³ the edict begins by promising to give reasons for the declaration of sovereignty contained therein, which will convince, we are told, even the most jaded minds.⁵⁴ Other Common Law documents similarly rely on the Declaration of Independence as a source of law.⁵⁵ It is a central element in the Common Law *nomos*.

50. See, e.g., Public Notice, Wisconsin State, Country of Wisconsin, Common Law Venue Supreme Court, United States of America, Wisconsin State (Organic), La Crosse County, Trempealeau County et al., To: Office of Supreme Court Clerk in Juneau County (June 13, 1995) (unpublished manuscript, on file with author) [hereinafter Wisconsin Rules] (containing rules of Wisconsin Common Law Court and quoting from *Matthew* 5:33-37), Citizens Rule Book (unpublished manuscript, on file with author) (including quotes from *Leviticus*, *Isaiah*, *Hosea*, 2 *Chronicles*, and *Acts*, along with quotes from George Washington and Edmund Burke); see also Braun, *supra* note 11, at A1 (“Court officers consult the Bible as often as they flip through Black’s Law Dictionary.”).

51. Kriemelmeyer Edict, *supra* note 12, at 1 (emphasis deleted).

52. See *supra* text accompanying notes 32-34.

53. It reads:

“That to secure these Rights, Governments *are instituted among Men*, deriving their just Powers from the Consent of the governed, *that whenever and [sic] Form of Government becomes destructive of these Ends, it is the Right of the People to alter or abolish it, . . .*” Declaration of Independence, 1776, para. 2 (alteration in original).

Kriemelmeyer Edict, *supra* note 12, at 22.

54. Compare text quoted *supra* note 34 with THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

55. One text from the movement refers to three “original documents” — the Declaration of Independence, the Constitution, and the Bill of Rights — and reprints each of them in full. Citizens Rule Book, *supra* note 50, at 21-60. Another quotes liberally from the Declaration, pointing out that the colonists had been “very patient” and “did not . . . lightly” take the step of declaring independence and that some of the charges against King George can be made today against the current regime. EUGENE SCHRODER WITH MICKI NELLIS, CONSTITUTION: FACT OR FICTION 13-14 (1995). Mr. Schroder is the movement’s most important legal scholar.

Central elements in a *nomos* are, like symbols in a dream or other manifestations of the unconscious, “overdetermined.” In other words, they express in a compact fashion multiple themes that may otherwise be unconnected. The Declaration’s importance to the Common Law is in that sense overdetermined. First, the Declaration legitimates the *nomos* it creates by appealing to God-given rights. Thus, it is an important text for all communities, including the Common Law community, that proclaim a constitutionalism inspired by religious precepts. Second, it was written by Jefferson, a Founding Father and the natural patron saint for this community.⁵⁶

But something even more basic is at work here. In our country, the Declaration is *the* text that legitimizes resistance to an established order. It legitimates that resistance through narrative — by telling a story that portrays the established order as unlawful and the order to be created by resistance as lawful. Thus, the militia community, seeking as it does to establish that the existing order is unlawful and that their order is lawful, appeals to the text respected by all of us that makes just such a move. “The return to foundational acts can never be prevented or entirely domesticated.”⁵⁷ The militias use our revolution to justify theirs, daring us to deny both or neither.

The secular sources for this group’s law are hardly exhausted by the Declaration of Independence. What is perhaps most fascinating about this law is the rich secular narratives used to justify it. Building in many instances on legal interpretations that at first glance appear quite conventional, these narratives take some surprising turns, but there is nothing simplistic about the world of law they

56. Not only did Jefferson celebrate the agrarian life as the foundation of our republic, calling those who till the land the “chosen people,” but as President he:

honored small producers of all kinds, venerated farmers and rural life, and eventually made hundreds of millions of new acres available for settlers in the West. [His administration] shrank the size and the responsibilities of the federal government and by 1803 had abolished internal taxes and the newly established circuit courts.

Stock, p. 50. Hating taxes and federal courts as this group does, what more perfect model for a president could there be? Perhaps most important, however, Jefferson was not afraid of a little revolution now and then. See TAYLOR, *supra* note 47, at 57 (observing that Jefferson was “not . . . altogether unsympathetic with Shay’s Rebellion”).

57. Cover, *supra* note 9, at 24. Lincoln used the Declaration in just this way, often referring to it in contexts that must have been heard in the South as encouraging revolutionary impulses among the enslaved population. See GARRY WILLS, *INVENTING AMERICA: JEFFERSON’S DECLARATION OF INDEPENDENCE* at xvi-xxi (1978). Of course, the South also invoked the Declaration as a justification for dissolving the bonds of government and instituting a new lawful order. Secession or expatriation is the natural move in an order whose legitimacy is dependent on those acts. See *id.* at 82-84 (explaining how our founding myth of social contract leads Americans to cherish the right of expatriation); ELIZABETH KELLEY BAUER, *COMMENTARIES ON THE CONSTITUTION, 1790-1860*, at 253-308 (1952) (explaining how secession long occupied a similarly cherished notion).

create. It includes, for example, an explanation of *Erie Railroad Co. v. Tompkins*⁵⁸ and a place for the Uniform Commercial Code.⁵⁹

The following paragraph from Eugene Schroder's *Constitution: Fact or Fiction*, a Common Law legal treatise, could be placed in any high-school textbook without causing much, if any, stir.

The US Constitution was basically the shackles placed on the federal government by a sovereign people. The people possessed God-given rights. Those rights were only *secured* by the constitution. All rights not specifically granted to the government were reserved for the people.⁶⁰

This almost-standard retelling of our collective beginning nonetheless conveys important information about the community that uses it to relate the beginnings of *its* law. First, it establishes a hierarchy of authority: God, people, the Constitution.⁶¹ The point of the hierarchy is not to render the Constitution invalid as a violation of the law of God, but rather to justify a method of constitutional interpretation: reading the Constitution as an expression of the higher authority by which that document is justified. In short, it explains the use of biblical sources to interpret the law. Second, it emphasizes that a considerable sphere of authority has been reserved, not by the states but directly by the people. The community thereby asserts the legitimacy of law that emanates from neither the federal nor state governments and that challenges both. Finally, the text stakes out a location for the group in relation to the established order. By appealing to our collective beginning, the group portrays its members as redeemers who would restore our world, not as aliens who would overthrow it.

If the recognized order is in need of redemption, the Common Law must explain when it fell from its original state of grace. As "the fall" is a central premise of this *nomos*, there are multiple narratives dedicated to explaining it. One of the most important of these narratives dates the fall of legitimate government — the state's breaking of its constitutional shackles — at 1933 with President Roosevelt's first official acts.⁶² Roosevelt assumed office, declared a state of emergency and thereby suspended the Constitu-

58. 304 U.S. 64 (1938).

59. See *infra* notes 103-23 and accompanying text.

60. SCHRODER, *supra* note 55, at 1; see also, e.g., Eileen Dempsey & Jim Woods, *Outside the Legal System: An Uncommon Approach on Common Law*, COLUMBUS DISPATCH, Sept. 10, 1995, at 1A ("In June, 1,000 common-law supporters from 32 states gathered in Wichita, Kan., where they heard Schroder [lecture on the Common Law].").

61. Notice again that by alluding to the language of the Declaration to link the Constitution to God, the narrative manages to hurdle the church-state separation precept in a manner well-chosen to fend off objections.

62. Schroder begins his book with a reference to this tale and places this "proof" of the illegitimacy of the current order before stories that suggest the decline began much earlier in our history. See SCHRODER, *supra* note 55, at 1, 25-86.

tion — all with the aid of a subservient Congress.⁶³ The unlawfully declared state of emergency has never been officially rescinded, and the Constitution remains formally suspended.⁶⁴ To demonstrate the authenticity of this narrative, the Common Law invokes a powerful form of proof: the established order admits it. Schroder quotes from a 1973 Senate Report:

A majority of the people of the United States have lived all their lives under emergency rule. For 40 years, freedoms and governmental procedures guaranteed by the Constitution have, in varying degrees, been abridged by laws brought into force by states of [N]ational emergency [I]n the United States, actions taken by government in times of great cris[i]s have . . . in important ways shaped the present phenomenon of a permanent state of National emergency.⁶⁵

This story exists in our world, and here I do mean “our.” It can be found in the pages of mainstream law reviews.⁶⁶ The existence of similar narratives in two communities does not mean, however,

63. See *id.* at 26-27.

64. See *id.* at 29.

65. *Id.* at 4 (quoting S. REP. NO. 93-549, at 1 (1973) (internal quotation marks omitted) (alteration in original)).

66. See, e.g., William C. Banks & Alejandro D. Carrió, *Presidential Systems in Stress: Emergency Powers in Argentina and the United States*, 15 MICH. J. INTL. L. 1, 45-46 (1993) (footnotes omitted) (quoting Inaugural Address of Franklin D. Roosevelt (Mar. 4, 1933), in 2 PUB. PAPERS 11, 15 (1938)):

With the Great Depression and the eventual election of Franklin Roosevelt, a virtual revolutionary expansion of presidential emergency powers occurred. In part, Roosevelt benefitted from broad delegations of authority from Congress, endorsed by the courts. In part, he acted on his own when, in his words, “unprecedented demand and need for undelayed action may call for temporary departure” from the Constitution. In the first 100 days of his presidency, President Roosevelt issued the second emergency proclamation in the nation’s history, in which he closed the banks and stopped all financial transactions. Congress ratified the President’s emergency actions within three days, establishing a pattern of executive initiative and legislative acquiescence that is still the norm today. Although the Supreme Court struck down two early sweeping delegations to Roosevelt, by 1937 the President’s threatened Supreme Court packing, his landslide reelection, and new personnel on the Court produced a majority willing to endorse emergency measures.

See also Jill Elaine Hasday, *Civil War as Paradigm: Reestablishing the Rule of Law at the End of the Cold War*, 5 KAN. J.L. & PUB. POLY., Winter 1996, at 129 (arguing that the post-Civil War period provides valuable lessons on how the nation today might find its way back from the current state of emergency rule to government based on the rule of law).

Professor Jules Lobel tells a substantially similar tale complete with copious citations to sources accepted as authoritative in our world. See Jules Lobel, *Emergency Power and the Decline of Liberalism*, 98 YALE L.J. 1385 (1989). His article details the steady expansion of emergency power in our legal order and the failure of Vietnam-inspired legislative efforts to reverse that trend. Among its conclusions is this:

The effect of both the ideology and reality of permanent crisis has dramatically transformed the constitutional boundaries between emergency and non-emergency powers.

First, the premise that emergency was a short, temporary departure from the normal rule of law is no longer operative. Emergency rule has become permanent.

Id. at 1404 (footnote omitted). Lobel, unlike Schroder, asserts that Congress officially ended Roosevelt’s 1933 state of emergency in the 1970s, see *id.* at 1401 n.75, but agrees that broad emergency powers are still available and used by the federal government, see *id.* at 1412-21. The status of Roosevelt’s state of emergency is, however, open to question in our world. Jill Elaine Hasday writes that when Congress acted in 1976:

that we are looking at similar legal worlds. Two groups may share a text, like the Declaration of Independence or the Constitution or Roosevelt's Emergency Proclamation, and even agree on the authoritative nature of that text as a source of law, without inhabiting the same *nomos*.⁶⁷ Similarly, their legal interpretations of authoritative texts may resemble ours. But the Common Law attaches a significance to the emergency power tale that we do not — a significance that is out of place in our world.

In our world, the emergency-power tale does not signify that our entire constitutional order has collapsed.⁶⁸ Indeed, it manages to stand for precisely the opposite proposition: that our constitutional order exists. In our world, this tale is about a blemish on our system, not a disease that has already proved fatal to it.

Common Law narratives on Reconstruction provide another explanation of the fall of legitimate government. These narratives explain that the Civil War Amendments were not properly ratified by the states.⁶⁹ The Common Law narratives thus exile those amendments from the Common Law *nomos* and locate them exclusively in our world. Having marked these amendments as the fault line between the two worlds, the Common Law explains how these amendments transformed our world into one unworthy of freemen. According to the Common Law, the Fourteenth Amendment created a new and inferior form of citizenship, federal citizenship,⁷⁰ to

four states of emergency had not been terminated. In addition to Truman's Korean War declaration, Franklin Roosevelt's 1933 declaration to handle the banking crisis, Act of Mar. 9, 1933, ch. 1, 48 Stat. 1 (1933); Nixon's 1970 declaration to cope with the Post Office strike, Proclamation No. 3972, 3 C.F.R. 473 (1970); and Nixon's 1971 declaration to meet balance of payment problems, Proclamation No. 4074, 3 C.F.R. 60 (1971), were still in effect. Most commentators assume that the National Emergencies Act terminated these states of emergency. But Congress may not have this authority. Whether the four states of emergency are still in effect has not been tested by litigation.

Hasday, *supra*, at 149 n.154 (citation omitted).

67. See Cover, *supra* note 9, at 7 ("If there existed two legal orders with identical legal precepts and identical, predictable patterns of public force, they would nonetheless differ essentially in meaning if, in one of the orders, the precepts were universally venerated while in the other they were regarded by many as fundamentally unjust.")

68. Hasday, whose rhetoric on "reestablish[ing] the democratic rule of law," Hasday, *supra* note 66, at 143, comes closest to this idea, is still miles away. Instead, like Lobel, she questions at most the constitutional validity of a circumscribed set of acts taken by our government pursuant to emergency rule, not the constitutional authority of the government in general.

69. See Citizens Rule Book, *supra* note 50, at 25 (referring to the dubious legality of these Amendments); SCHRODER, *supra* note 55, at 133 (describing the Civil War Amendments as war amendments of questionable force during peacetime).

70. The Citizenship Clause of the Fourteenth Amendment is the clause that purportedly created this new class of citizenship. That clause states: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." U.S. CONST. amend. XIV, § 1. Mainstream narratives explain this clause as a repudiation of the Dred Scott decision, which held that no African American, free or slave, could be a citizen of either a state or the United States, see *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), and intended to secure state and federal

be contrasted with sovereign, state citizenship, recognized by the original, valid Constitution.⁷¹ Through this process our world became the "Home of the 14th Amendment Slave."⁷² Instead of incorporating the Bill of Rights, the Fourteenth Amendment denies those rights, putting in their stead a more limited freedom — protection against interference with "due process" and the denial of "equal protection."⁷³

In the Reconstruction narratives, themes from Common Law biblical narratives return in secular garb. The Common Law community is equated with the original citizens of this nation — that is, White Americans and the descendants of slaves and their compatriots who willingly accept a form of second-class, Fourteenth Amendment citizenship are exiled to another world and denied rightful title to the land. The Reconstruction tales echo the "chosen people" theme by identifying community members with those by and for whom the original, valid Constitution was written.

In our world, as we construct and understand it, the Civil War Amendments mark the unification of a nation. In the Common Law *nomos* they mark the division of one United States into two. We do not share a history; we do not share a world.

In our world, *Erie Railroad Co. v. Tompkins*⁷⁴ is an important topographical feature,⁷⁵ and in the Common Law construction of our world, it is also important.⁷⁶ Just as the Common Law needs an account of when we abandoned the Constitution, it needs an account of when we abandoned the common law. Otherwise, the mis-

citizenship for the freed slaves. See LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 5-16, at 356 & n.12 (2d ed. 1988). In "our" legal world, the Amendment did not "create" federal citizenship but only redefined it to cancel the restrictive definition given in the *Dred Scott* case. See *id.* § 5-16, at 355-56.

71. See Kriemelmeyer Edict, *supra* note 12, at 23 ("When this Nation was founded each of the individual sovereign States of this Union has their own Citizens (Capital "C"), a.k.a., Freemen characters . . . but then came the so called 14th Amendment, that added a second class of citizen."); Ohio Handbook, *supra* note 15, at 9 (detailing characteristics of two United States, one "Home of the 14th Amendment Slave"; the other, "Home of the Sovereign Human Being"). But see TRIBE, *supra* note 70, § 5-16, at 355-56 (explaining that while the concept of United States citizenship was not defined in the original Constitution, the document acknowledges the existence of such citizenship by referring at various points to "citizens"). The *Dred Scott* decision similarly recognized the category of United States citizenship as implicit in the original Constitution. 60 U.S. (19 How.) at 404-05.

72. See *supra* note 71 (quoting Ohio Handbook, *supra* note 15, at 9).

73. SCHRODER, *supra* note 55, at 132-33; see also Laurie Goodstein, 'Agents of God' Practice a Christianity Few Would Recognize, WASH. POST, May 20, 1995, at A12 ("The movement . . . divides the nation's population between white 'sovereign state' citizens with God-given inalienable rights, and non-white '14th Amendment' citizens with illegitimate 'Constitution rights.'").

74. 304 U.S. 64 (1938).

75. Not only is the case taught to virtually every law student, but we tell many stories to explain it. See Akhil Reed Amar, *Law Story*, 102 HARV. L. REV. 688, 696 (1989) (book review) (explaining that *Erie* is a "rich" case that supports many different readings).

76. See Freeman, *supra* note 21, at 4-5.

sion of the Common Law *nomos* — to restore the Constitution and common law — is meaningless. *Erie* proclaimed: “There is no federal general common law.”⁷⁷ Another birthright was forsaken and the Word of God was forsworn.⁷⁸

But *Erie* renounced *federal general* common law, not all common law.⁷⁹ Their Common Law, however, is not divisible; it does not vary from state to state. Their Common Law is Blackstone’s, a form of natural law ordained by God.⁸⁰ It is the Common Law described by Justice Story in the case *Erie* overruled, *Swift v. Tyson*: “[I]t will hardly be contended that the decisions of Courts constitute [the common law]. They are, at most, only evidence of what the laws are.”⁸¹ Their Common Law was abandoned in *Erie*, and an imposter was put in its place.

After *Erie*, instead of Common Law there is “the law of the State.”⁸² Enter the Uniform Commercial Code (U.C.C.), a document that is enormously important to the Common Law. In searching to explain what law governs in our world in place of the Constitution and the common law, this community has found its way to the U.C.C. — the noncommon, commercial law that *Erie* supposedly declared supreme.⁸³

The basic social contract of our world was once the Constitution and the Common Law. Now our relationship with our government is through the Uniform Commercial Code. In speaking to our legal system, then, Common Law adherents rely on the U.C.C. They speak the language that their law tells them we will respect. They remove themselves from our legal order according to their law through a quiet-title process, but to perfect that removal under our law — to get us to accept it — they follow procedures grounded in the U.C.C. Their law tells them we must accept that because the U.C.C. is law we honor.

77. 304 U.S. at 78.

78. See Freeman, *supra* note 21, at 6 (“Common Law is based on God’s Law.”); Kriemelmeyer Edict, *supra* note 12, at 1 (equating Common Law with the Word of God).

79. As most contemporary mainstream narratives note, *Erie* left state courts free to continue to articulate their own versions of the common law and bound the federal courts to accept what the state courts said. See, e.g., Paul J. Mishkin, *Some Further Last Words on Erie — The Thread*, 87 HARV. L. REV. 1682 (1974) (celebrating *Erie*’s recognition of the need to protect the rights of states to make laws in area of their competence).

80. See 1 WILLIAM BLACKSTONE, COMMENTARIES *40.

81. *Swift v. Tyson*, 41 U.S. (16 Pet.) 1, 18 (1842).

82. *Erie*, 304 U.S. at 78.

83. See Freeman, *supra* note 21 at 4 (“The District Court had decided on the basis of *COMMERCIAL (Negotiable Instruments) LAW*, that this man was not under contract with the Erie Railroad, and therefore he had no standing to sue the company.”). The district court had, in fact, decided that Pennsylvania law, requiring privity of contract, did *not* govern but that the common law did, which extended liability to pedestrians foreseeably harmed by the railroad. See FLEMING JAMES, JR. & GEOFFREY C. HAZARD, JR., CIVIL PROCEDURE § 2.35, at 118 (3d ed. 1985).

The official comment to section 1-207 explains that it is to be used "where one party is claiming as of right something which the other believes to be unwarranted,"⁸⁴ which is precisely what the Common Law understands to be happening when our illegitimate government and courts purport to govern Sovereign Citizens. The U.C.C. Comment states:

This section provides machinery for the continuation of performance along the lines contemplated by the contract despite a pending dispute, by adopting the mercantile device of going ahead with delivery, acceptance, or payment "without prejudice," "under protest," "under reserve," "with reservation of all our rights," and the like.⁸⁵

Common Law members routinely rely on those phrases when filing documents with any part of our government or appearing in our courts.⁸⁶ For example, Common Law adherents who do not give up their driver's licenses, are advised to write "without prejudice, UCC 1-207" under their signature on the license.⁸⁷

Our legal order, as constructed by the Common Law, thus provides a path through which a Sovereign Citizen can exit. Even more important, our legal order provides an entrance to the Common Law order. Section 1-103 of the U.C.C. states that contracts are subject to general legal principles of common law (as well as those of any other applicable law) where that law is not specifically displaced by the U.C.C.⁸⁸ Section 1-103 is thus transformed into "an all-powerful . . . mantra"⁸⁹ that, according to the Common Law, requires our courts to apply Common Law to Sovereign Citizens and forces our world to recognize theirs.

Trajectory

I have taken the space to survey some of the law created by this community — from *Érie* to the U.C.C. — to demonstrate how creative and sophisticated the legal interpretations constructed by this

84. U.C.C. § 1-207 cmt. (1995).

85. U.C.C. § 1-207 cmt. (1995).

86. See Memorandum from "JME," law clerk to Chief Justice Moyer, to Chief Justice Moyer of the Ohio Supreme Court, at 6 (Oct. 25, 1995) (unpublished manuscript, on file with author) [hereinafter Moyer Memo] (explaining that "[r]arely do [Common Law adherents] sign their names without citing to this section or stamping the document 'without prejudice'"); see also Freeman, *supra* note 21, at 25-26 (explaining the importance of making a reservation under § 1-207 when appearing in "our" courts); Kriemelmeyer Edict, *supra* note 12, at 33 ("'Without prejudice' with explicit reservation of all unalienable Rights, waiving none, 'without recourse'" (citing Wisconsin equivalent to U.C.C. § 1-207)).

87. Freeman, *supra* note 21, at 13-14.

88. See U.C.C. § 1-103 (1995). Common Law adherents of § 1-103 have cited our courts extensively. See e.g., Moyer Memo, *supra* note 86, at 6.

89. Moyer Memo, *supra* note 86, at 6.

community are.⁹⁰ But sophisticated interpretations are not the same as law. We reach here the crux of the matter: What makes this community's interpretations more than academic musings?

The militia movement's interpretations are not just stories; they are stories and precepts intended to guide behavior. It is the commitment to act in accordance with the stories and norms that makes this material law.⁹¹ Law, as opposed to other forms of normative discourse, seeks to "impose meaning on [a resistant reality] . . . and then to restructure it in the light of that meaning."⁹² That is what separates law from literature; the judge's words from the philosopher's; and this community's narratives from those of others.

"Martyrdom, for all its strangeness to the secular world of contemporary American Law, is a proper starting place for understanding the nature of legal interpretation."⁹³ It is the proper starting place because it reminds us that law "is never just a mental or spiritual act."⁹⁴ Moreover, as *Gathering Storm* shows us, martyrdom is no longer alien to the contemporary American scene,⁹⁵ nor are acts

90. There are other paths in this law that are as complex and creative as the one I have outlined above, but I do not want to take the space here to retrace them. In my earlier elaboration of this group's law, I provide an additional example: the transformation of our courts from courts exercising Common Law and equity jurisdiction to courts exercising admiralty jurisdiction exclusively. See Koniak, *supra* n.*, at 85-86.

91. See Cover, *supra* note 9, at 45 ("The transformation of interpretation into legal meaning begins when someone accepts the demands of interpretation and, through the personal act of commitment, affirms the position taken.")

92. RONALD DWORKIN, *LAW'S EMPIRE* 47 (1986) (emphasis added; emphasis in original deleted). I have taken liberties with Professor Dworkin's words. He used the words "an institution" where I have substituted in brackets "a resistant reality." Even more important, his emphasis is different. He wrote: "impose *meaning* on an institution . . . and then to restructure it in the light of that meaning." My change in emphasis is meant to indicate a change in meaning.

There is more than a little irony in my misquotation of Professor Dworkin. In *Law's Empire*, Professor Dworkin all but ignores the importance of action to law and the violence that thereby inheres as legal empires collide. That is precisely what I mean to highlight. See Robert M. Cover, *Violence and the Word*, 95 *YALE L.J.* 1601, 1602 n.2, 1611 n.24 (1986) (criticizing Dworkin's failure to address the violence inherent in law).

In an early draft of *Violence and the Word*, which Professor Cover gave me to read, the material in those footnotes was more fully explicated in the text. I commented that the critique detracted from the thrust of the article and should be shortened and relegated to the notes. Professor Cover told me that he had just read *Law's Empire* and could not resist responding to what he had read, but that on reflection it would probably be better to save a full-blown response to another time and place. Cover died shortly thereafter. After his death, I was helping his wife clean out his study and came across a yellow pad filled with several pages of longhand. These scribbles appeared to be the beginning of a book review of *Law's Empire*, entitled "And He Just Couldn't See." All that remains in print of Professor Cover's thoughts on *Law's Empire* is in the footnotes I have cited. Because I know that the material in them was important to Professor Cover, I here draw special attention to them and hope that some readers will examine what he wrote there with care.

93. Cover, *supra* note 92, at 1604.

94. *Id.* at 1605.

95. The photo section of *Gathering Storm* begins with pictures of Kahl; Robert Matthews, founder of The Order, who died in a siege with the FBI in 1984; and Richard Wayne Snell, a

of terrorism or other acts of armed resistance that demonstrate commitment to an alternative legal order.⁹⁶

Martyrs proclaim the extant reality of a community's law by refusing to renounce that law when faced with great suffering and the prospect of imminent death.⁹⁷ One sign that this community has law is its obsession with martyrs. Vicki and Samuel Weaver, the woman and child killed at Ruby Ridge, are two martyrs of this movement.⁹⁸ Gordon Kahl is another. Having vowed to resist any attempt by the lawless forces of our government to arrest him for failing to pay his taxes, and having made good on that vow in a gun battle that left two dead and four wounded, Kahl holed up on a farm in rural Arkansas.⁹⁹ "More than one hundred federal, state, and local law enforcement officers assaulted the building" (Dees & Corcoran, p. 15). They showered the building with bullets, set it on fire, and shot thousands of rounds of ammunition into the building as it burned.¹⁰⁰

A commitment to kill or be killed is a serious commitment indeed. If the Common Law demanded that level of commitment of each member of the community in response to any and all demands by our government insisting that our law be followed, there would in short order be few members of this community left. And given the vast array of violence at our government's disposal, none of those few would be around long.

But the Common Law does not demand blood at every turn, nor does it leave questions of how and when to resist our government to the conscience of the individual. The tales of martyrdom so central to this community's *nomos* celebrate and affirm the use of violence

Christian Identity leader who killed a black state trooper and a pawnshop owner who Snell believed was Jewish. Snell was executed on April 19, 1995. Dees & Corcoran, pp. 176-77.

96. As Professor Cover observed:

Martyrdom is not the only possible response of a group that has failed to adjust to or accept domination while sharing a physical space. Rebellion and revolution are alternative responses when conditions make such acts feasible and when there is a willingness not only to die but also to kill for an understanding of the normative future that differs from that of the dominating power.

Cover, *supra* note 92, at 1605.

97. See *id.* at 1604-05 ("[The] triumph [of the martyr] — which may well be partly imaginary — is the imagined triumph of the normative universe — of Torah, Nomos, [Law] — over the material world of death and pain.").

98. "To those in the Patriot movement the siege at Ruby Ridge wasn't just an attempt to arrest one man. Rather, it was an attack on a way of life and the U.S. Constitution [as this community understands that law]. It was a sign of just how far a federal government — no longer of the people, by the people, and for the people [but now lawless] — would go to impose its tyranny upon freedom-loving [law-abiding] Americans." Dees & Corcoran, pp. 30-31.

99. Dees & Corcoran, pp. 14-15. At the end of *Rural Radicals* Catherine Stock also tells an abbreviated version of Kahl's saga. Stock, p. 171.

100. For a full (and riveting) account of Kahl's life and death, see CORCORAN, *supra* note 4.

in the name of the community's law, but they also affirm the value of caution. Kahl, after all, ended up dead.¹⁰¹ "[T]exts of resistance, like all texts, are always subject to an interpretative process that limits the situations in which resistance is a legitimate response."¹⁰² The Common Law's texts of resistance distinguish between actions expected of adherents and actions that would be celebrated but are not expected.

The organized state reserves for itself a near-exclusive license to use force and relies on that license as a primary method of affirming its law;¹⁰³ it insists that people do what the law "requires" or else. Thus, when the state means something to stand as law, we expect it to speak in imperatives. When the state fails to *act* in accordance with the imperatives it speaks — fails to demonstrate by action its insistence that the norm expressed as an imperative is to be obeyed "or else" — it creates uncertainty about the status of the norm as law.

Private groups with law, on the other hand, risk state force anytime they try to back up their law with violence; unlike the state they must be chary in their use of "must." The power of the state "put[s] a high price on [the group's] interpretations."¹⁰⁴ Private groups thus typically express their commitments in terms of what is expected, not of what is required. Furthermore, in the realm of the expected, there is what is expected now and what might be expected later.

In the Common Law *nomos*, what is expected now are non-violent acts: relinquishing one's social security card¹⁰⁵ and driver's license,¹⁰⁶ relying on the U.C.C. in dealing with the government, and invoking Common Law court process to declare oneself a Sovereign Citizen. But the Common Law's insistence that our government has abandoned the Constitution makes even these non-violent moves risky for group members.

In our country, most communities that seek to maintain a law of their own use the Constitution to establish their independence from state regulation. For example, religious communities use the Free

101. As one of Kahl's mourners put it, "He did what a lot of us would like to do, but don't dare to." *Id.* at 255 (internal quotation marks omitted).

102. Cover, *supra* note 9, at 50.

103. *Id.* at 12-16 (explaining how the state maintains law primarily in one mode and private groups primarily in another).

104. *Id.* at 50.

105. See Kriemelmeyer Edict, *supra* note 12, at 23. It is difficult to imagine a more perfect symbol for our *nomos*, as it is portrayed in the Common Law, than a federally issued social security card, concrete and ubiquitous evidence of the new government that took over after the New Deal.

106. See Roddy, *supra* note 24, at A1 (describing theory on driver's license and right to travel).

Exercise Clause of the First Amendment; journalists, the Free Press Clause; and the legal profession, the Sixth Amendment. Groups use constitutional precepts as boundary rules because they understand that in our world the Constitution is supreme law. In other words, if they can convince us that the Constitution protects their *nomie* autonomy, then their law wins. The Common Law makes this promising strategy unavailable because it denies that the Constitution is supreme law in our *nomos*. Members are thus left citing the U.C.C. to us to justify their claim that our government lacks power over them, rendering their appeal for *nomie* autonomy incomprehensible.

This move has real costs for the Common Law community. To render itself unintelligible in the face of force is to invite the use of that force. Thus, while invoking the U.C.C. is in itself a nonviolent move, as is driving with no license plates or driver's license, all of these moves invite violent responses.

Having thus invited violence, the Common Law texts detail the response that community members may take. They authorize Sovereign Citizens to file liens against the property of government agents who attempt to enforce state law against them.¹⁰⁷ These liens impose real costs for defying the Common Law claim of sovereignty; the process to remove these liens can be costly and time-consuming.¹⁰⁸ The liens thus make members of our world feel the power of the Common Law, if only for a short time.

Liens are not the only way in which the Common Law makes itself felt in our world; the Common Law has appropriated other pieces of our corpus juris, and it authorizes its members to seek redress in our courts based on Common Law interpretations of these pieces of our law. For example, Common Law adherents file *Bivens*¹⁰⁹ suits — suits alleging that government agents have acted outside the scope of their authority, violated the Constitution, and thereby caused injury.¹¹⁰ The Racketeer Influenced and Corrupt Organizations (RICO) statute¹¹¹ has also been appropriated to express the Common Law idea that the government is a corrupt organization engaged in a conspiracy to deny the rights of Sovereign

107. See *Anti-Government Groups Hearings*, *supra* note 15, at 156-57 (excerpting "Militiaman's Newsletter" that details five-step process for filing Common Law lien and asserts that "[a]s of this time 'Freemen' have deposited billions of dollars in liens").

108. See Erin Hallisey, *Lien and Mean*, S.F. CHRON., July 16, 1995, at 1/Z1.

109. See *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) (holding that under certain circumstances a party may bring a damages action against government agents for violations of constitutional rights).

110. See, e.g., *Brown v. United States*, 105 F.3d 621, 623 (Fed. Cir. 1997) (seeking damages under *Bivens* from federal agents who "unlawfully" collected taxes from these Sovereign Citizens); *Sherwood v. United States*, No. C-96-2223-JSB, 1996 U.S. Dist. LEXIS 18682, at *12 (N.D. Cal. Dec. 6, 1996) (same).

111. 18 U.S.C. §§ 1961-1968 (1994).

Citizens.¹¹² By making us defendants in our own courts, the Common Law again exacts costs on people in our world, for responding to a lawsuit is costly.¹¹³

Although Common Law adherents use our courts to seek redress against our government and its agents, the Common Law does not concede that the jurisdiction possessed by our courts to punish our government, its agents, or anyone else in our legal world¹¹⁴ is exclusive. Common Law courts also have jurisdiction over people in our United States. While most legal scholars write as if the only courts in this country were those maintained by the states, the Common Law community is not the only community in America that has established courts.¹¹⁵ Nonetheless, I would venture to guess that few, if any, other private courts purport to exercise jurisdiction over people outside their group without those people's consent. The Common Law courts do just that. These courts thus represent a serious commitment by community members to restructure reality in accordance with the law they speak.

For those who would deny the right of our *nomos* to continue, no better target exists than the people who enforce its norms. Those people include elected officials of the government; agents of the Internal Revenue Service and other federal agencies; federal, state and local law-enforcement officers; and our judges. Common Law courts have asserted jurisdiction over all these people.¹¹⁶

112. See *Sherwood*, 1996 U.S. Dist. LEXIS 18682, at *7, *28-*29 (involving an attempt to use RICO to establish that the federal government is an enterprise run through a pattern of racketeering by its agents, federal employees).

113. While Common Law adherents thus make use of our courts, it would be a mistake to think that this signifies acceptance of our *nomos*. While appealing to material that is part of our corpus, they retain the idioms of the Common Law. Thus, to challenge the legality of past foreclosure proceedings, see *United States v. Hilgeford*, 7 F.3d 1340, 1341 (7th Cir. 1993) (describing previous quiet-title actions brought by defendant to challenge bank's earlier foreclosure on farm mortgage on the ground that Hilgeford possessed "superior title to the land, based on a land patent," undoubtedly issued by a Common Law court), or the collection of taxes by the federal government, see *Harrell v. United States*, 13 F.3d 232, 233 (7th Cir. 1993) (involving suit filed under federal "quiet title" act, 28 U.S.C. § 2410 (1994), to challenge levy on wages by IRS); *Sherwood*, 1996 U.S. Dist. LEXIS 18682, at *6 (seeking, inter alia, quiet title as a means of establishing that no federal taxes could be imposed on the plaintiffs), the Common Law adherent comes to our courts and files a quiet-title action.

114. Our courts have rejected the Common Law's understanding of the breadth of jurisdiction our courts possess over our government and its agents. See, e.g., *Sherwood*, 1996 U.S. Dist. LEXIS 18682, at *6, *13 ("This Court has no Jurisdiction because the United States has not Waived its Sovereign Immunity. . . . Furthermore, the United States' sovereign immunity cannot be avoided simply by naming agencies of the federal government or their individual officers and employees."). But see *Harrell*, 13 F.3d at 234-35 (affirming that federal "quiet title" act waives sovereign immunity and that it may be used to challenge a federal tax lien, but only when the challenge is to the lien as distinct from the tax assessment itself).

115. For a rare example of a law review article devoted to a private group in this country with its own law and courts, see *Weyrauch & Bell*, *supra* note 9.

116. See *Potok*, *supra* note 11, at 1A (reporting on the "flurry of indictment of federal, state and local officials" issued by Common Law courts (quoting Mike Reynolds, Southern Poverty Law Center (internal quotation marks omitted))).

Common Law courts indict these embodiments of our *nomos* for treason.¹¹⁷

The entire Ohio Supreme Court has been indicted by a Common Law court,¹¹⁸ as have many federal judges across the nation.¹¹⁹ Indictments are a form of conditional threat — if the defendant is convicted, punishment will follow — but they are more than that. They are an assertion of authority, the authority to condemn. Whether the Common Law courts mean to insist on the authority to condemn with violence and not just words is unclear.¹²⁰ As one of our state court judges observed, “[W]hen you hear about things like indictments . . . [y]ou wonder what they will do to enforce these things. All judges who have heard of this have some concerns.”¹²¹

As the acting chief justice of the Ohio Common Law court, Bill Ellwood, explained it, he would first issue subpoenas for persons named in the indictments to appear before him and ask the county sheriff to enforce those subpoenas. If the sheriff were to refuse, he would ask the local U.S. Marshals Service. If that failed, the National Guard would be asked.¹²² “If the National Guard fails, then people have no place to go but to the constitutional militia Yes, the militia are involved. They are the last resort of enforcement for the common law courts.”¹²³

The state, claiming as it does a near-perfect monopoly on force, would not let an armed group exercise force in the name of a competing law. The militia would be destroyed; our law would kill it. Not surprisingly then, the Common Law community has refrained from using its militias to enforce the edicts. Instead, the edicts stand as implicit invitations for individuals in the community to take action. Some take up the invitation: After being indicted by a Common Law court for unlawfully asserting jurisdiction over a Sovereign Citizen charged with a traffic violation, Hamilton, Montana, municipal judge Martha Bethel of Montana received threats saying she would be brought to the Common Law court by force to stand trial. That was only the beginning:

117. *See id.*

118. *See Anti-Government Groups Hearings, supra* note 15, at 138 (statement of Ted Almay, Superintendent, Ohio Bureau of Criminal Identification and Investigation).

119. *See Brown, supra* note 12.

120. Some Common Law courts have declined to issue indictments, apparently because the actions that these indictments may require imply too great a commitment to violence. *See Potok, supra* note 11, at 1A.

121. *Brown, supra* note 12; *see also Braun, supra* note 11 (reporting that after judge and jury were sent treason indictments, marshals began guarding them as they heard evidence in tax case against “Common Law advocates”).

122. *See Brown, supra* note 12.

123. *Id.* (quoting Ellwood, author of Ohio Handbook, *supra* note 15 (internal quotation marks omitted)).

After someone threatened to “riddle my home with gunfire,” the police came to map my house and land. They told me which room to hide in if the house were attacked. They suggested I pack a duffel bag and a police radio, flashlight and other emergency gear. They mapped out where in the woods I would hide with the children if we had to run.

Over Easter weekend, the police suggested we leave the county after they received information that an attack would be made on me or my house. Most recently, a Federal law enforcement agency told me a contract had been issued for my murder.¹²⁴

Other judges have received similar threats and also have sought protection from law enforcement agencies.¹²⁵

That individuals have taken up the words of Common Law courts as a warrant for action is not surprising. Speaking of the connection between the words of our courts and the violent acts of our law, Professor Cover wrote:

Persons who act within social organizations that exercise authority act violently without experiencing the normal inhibitions or the normal degree of inhibition which regulates the behavior of those who act autonomously. When judges interpret, they trigger agentic behavior within just such an institution or social organization. On one level judges may appear to be, and may in fact be, offering their understanding of the normative world to their intended audience. But on another level they are engaging a violent mechanism through which a substantial part of their audience loses its capacity to think and act autonomously.¹²⁶

In our legal order, when the judge denies a stay, the executioner does not deliberate further: he pulls the switch. In the Common Law world, the transformation of judicial utterances into violence is much more open-ended. After a Common Law judge speaks, who shall do what, and when, are questions without definitive answers. Nonetheless, it is clear from what their judges have said that their words are intended to trigger action.¹²⁷

124. Martha A. Bethel, Editorial, *Terror in Montana*, N.Y. TIMES, July 20, 1995, at A23.

125. See *Anti-Government Groups Hearings*, *supra* note 15, at 138 (statement of Ted Almay, Superintendent, Ohio Bureau of Criminal Identification and Investigation) (reporting on threats against Ohio judges and on one Ohio judge who has requested and received police protection for himself and his family); Katherine M. Skiba, *Extremists Take Up the Gavel*, MILWAUKEE J. SENTINEL, Oct. 29, 1995, at 1 (reporting on threats against Montana judges).

126. Cover, *supra* note 92, at 1615.

127. The acting chief justice of the Ohio Common Law court attenuates somewhat the connection between his words and violence by inserting procedural steps that will postpone the moment when the militia is called to act. See *supra* text accompanying notes 122-23. However, Leonard Ginter, one of 23 members of the Common Law national supreme court, manages to invite more immediate action by invoking the past and yet speaking in the present tense.

Go back to the time when somebody committed treason years ago, most of them were put on a scaffold to swing That's what we need to do. If we do about 10 of them,

Courts thus are more than concrete embodiments of an extant *nomos*. That is, courts also develop and implement a “system of cues and signals”¹²⁸ that triggers violent acts, helping to organize the violence within a community and to direct it toward a common goal: the death of alternative normative understandings. Courts express a community’s commitment to kill off other legal understandings within the community and outside the community if the court’s jurisdiction purports to extend beyond community limits, as the Common Law’s does. The law that the Common Law courts are dedicated to terminating is, of course, ours. Their indictment of our judges and law enforcement officials makes that mission clear.

This community is not, however, unaware of the formidable array of violence at our legal order’s disposal. The knowledge that we have killed their martyrs instructs them to proceed cautiously in elaborating the commitment that Common Law adherents are expected to demonstrate. And signs of caution can be found.¹²⁹ But a legal vision powerful enough to have created a world in which people live and a destiny to which they aspire is a force not easily contained.

Faced with the awesome power of our law, most communities change their law, altering its destiny and its meaning, so that the community that aspires to its own law is not destroyed by the greater force opposing it. The militia community does not seem poised to make that move of accommodation.¹³⁰ But the historical review Catherine Stock provides in *Rural Radicals* demonstrates how other radical movements, similar in many respects to this one, managed to alter their destinies. Moreover, she illuminates the paths that some in this community might use to do just that — the latent, but potentially resonant, narratives that might change the

the rest will straighten out. It wouldn’t necessarily have to be a judge or a governor. If one governor got it, we wouldn’t have any trouble with the rest.

Id. (quoting Leonard Ginter); see also Gallagher et al., *supra* note 18 (describing Common Law court’s trial, conviction, and issuance of arrest warrant for Franklin County, Missouri, Associate Judge Michael Brown on charge of treason); *Anti-Government Groups Hearings, supra* note 15, at 153 (statement of Nickolas C. Murnion, attorney, Garfield County, Jordan, Montana) (relating how Common Law constable envisioned process against State officials: “[W]e would be tried by a jury composed of freemen and if convicted the penalty would be death by hanging,” and to save taxpayer money the hanging would be from a bridge instead of a gallows). Gintner served five years in prisoner for conspiracy and harboring a prisoner for his role in helping Gordon Kahl elude authorities. See Bill Simmons, *Ark. Man Awaits Takeover of Courts*, COM. APPEAL (Memphis), May 7, 1995, at B2 (describing Ginter’s role on Common Law supreme court and in Kahl case).

128. Cover, *supra* note 92, at 1628.

129. For example, one commentator reports that most “rightist leaders won’t publicly back the indictments” against our judges and officials because it is “too early to take that step.” Potok, *supra* note 11, at 1A.

130. See, e.g., Sam Howe Verhovek, *Serious Face on a Texas Independence Group*, N.Y. TIMES, Jan. 24, 1997, at A1 (describing formation of “Republic of Texas” by Common Law advocates).

shape of this *nomos* and redefine the aims of this law. In the end, however, she is agnostic on whether this community will transform itself and adopt more constructive goals, reminding us that bloody confrontations are also an important part of our past and perhaps of our future.

Dees and Corcoran do not see this community moving to a more accommodating legal vision. They see the community moving toward war, a bloody and ultimately futile confrontation with the state. They sound the alert and ask us to reinforce our legal barricades, to change the way we understand and use our law so that we might more efficiently dispose of the threat this community poses. All law necessarily changes in the face of committed resistance, and our law is no exception. Our law has already responded to the threat posed by the Common Law. Dees and Corcoran want more. How our law responds dictates what our law will be, what shape our world will take. Thus far our law's response to the Common Law has gone unnoticed by legal academics; it is time we paid attention. When worlds collide the trajectories of both are changed.

HOW THE COMMON LAW IS CHANGING OURS

There was a man with a tongue of wood
 Who essayed to sing
 And in truth it was lamentable
 But there was one who heard
 The clip-clapper of this tongue of wood
 And knew what the man
 Wished to sing
 And with that the singer was content.¹³¹

Our judges hear the clip-clap of the Common Law and pronounce it "frivolous."¹³² In our world, classifying a legal argument as "frivolous" is an action of significance. In our courts, one is free to urge "the extension, modification, or reversal of existing law or the establishment of new law," only if one's position is designated "nonfrivolous."¹³³ Thus, frivolousness is a legal boundary. Official state law describes three areas of normative space: the world of law in which we live ("existing law"), the world of law in which we might live ("nonfrivolous" new law), and the world of law we must

131. STEPHEN CRANE, *WAR IS KIND*, reprinted in *STEPHEN CRANE: PROSE AND POETRY* 1325, 1332 (J.C. Levenson ed., 1984).

132. See, e.g., *United States v. Schmitt*, 784 F.2d 880, 882 (8th Cir. 1986) (describing claim that our courts lack jurisdiction over "Freemen" as "entirely frivolous"); *Ryan v. Bilby*, 764 F.2d 1325, 1328-29 (9th Cir. 1985) (sanctioning Common Law arguments as "frivolous appeals," however "heartfelt"); *Peth v. Breitzmann*, 611 F. Supp. 50, 56-57 (E.D. Wis. 1985) (sanctioning Common Law adherents for filing "frivolous" lawsuits against agents of federal government).

133. FED. R. CIV. PROC. 11(b)(2).

not inhabit ("frivolous" law). State force stands ready to enforce "existing law" to maintain the world we know. More interesting, state force supports the continual creation of worlds that might be. In other words, our law allows people to invoke compulsory process to insist that others answer "nonfrivolous" arguments about what the law should be. But one who employs state force — that is, invokes court process — to argue for frivolous law, or law that must not be, risks punishment by the state. These boundary lines are hotly contested,¹³⁴ as they should be, given that what is at stake is nothing less than the definition of the inhabitable world. What is, however, sometimes lost in this debate is the importance to any *nomos* of marking the edge of the inhabitable world in some way.

"Maintaining the world is no small matter and requires no less energy than creating it."¹³⁵ In our world, this task requires enormous ingenuity as well as great energy because our concept of liberty, most specifically the First Amendment, insists that the state abjure control over most of the material used to construct new legal worlds. "[T]he narratives that create and reveal the patterns of commitment, resistance, and understanding — patterns that constitute the dynamic between precept and material universe — are radically uncontrolled"¹³⁶ in our legal order. That "is the radical message of the first amendment."¹³⁷ Our legal order proclaims our freedom to create through narrative any vision of law we choose. Moreover, while our law proclaims that the state has primary responsibility for articulating what precepts count as law, it reserves space for private groups to articulate precepts that are treated as law.¹³⁸ Our legal order allows nonstate actors not just to imagine law through talk, but to express commitment to the law they create through action, even when their acts conflict with official law as recognized by the state. No matter how well established a particular legal interpretation is, if a court redefines state law to incorporate the legal interpretation demonstrated by the action, no punishment may be imposed.¹³⁹

Maintaining the contours of a legal order dedicated to the proliferation of legal meaning, and in which pronouncements of the

134. See GEOFFREY C. HAZARD, JR. ET AL., *THE LAW AND ETHICS OF LAWYERING* 430-31 & n.61 (2d ed. 1994) (citing sources discussing issue).

135. Cover, *supra* note 9, at 16.

136. *Id.* at 17.

137. *Id.*

138. The general tort principle that accepts a profession's standards as providing the standard of care in negligence cases is one instance of this. See HAZARD ET AL., *supra* note 134, at 187-88.

139. This general rule is subject to an important caveat to which we will return. An injunction may not generally be challenged by committed action. Even if a court later accepts the challenger's understanding that the injunction was illegally issued, the now "lawful" conduct may nonetheless be punished. See *Walker v. City of Birmingham*, 388 U.S. 307 (1967).

state are almost always subject to serious challenge, is no simple matter. Maintaining our *nomos* requires some very deft maneuvering, and I now want to ask whether, in responding to the Common Law, our legal order is becoming klutzy in the way it maintains our world.

Injunctions are designed to kill competing legal understandings. With an injunction, a court insists that action in the future will conform to the judge's understanding of law. Those enjoined may continue to believe what they like, but acting on those beliefs will trigger state force. Because injunctions are powerful weapons designed to kill competing law, a *nomos* dedicated to proliferating legal meaning will disfavor their use. And so ours does, at least in theory. When challenged by the powerful competing constitutional vision put forth by the American labor movement at the beginning of this century, however, this supposedly disfavored tool of law became a judicial favorite.¹⁴⁰ Moreover, while it might comfort those of us committed to a *nomos* with lots of open normative space to think that the injunction law articulated then did not permanently alter the shape of our world, it did. *Howat v. Kansas*,¹⁴¹ which exalted the labor injunction, buttresses *Walker v. City of Birmingham*.¹⁴² *Walker*, which insists that even an unconstitutional injunction must be obeyed, blocks an important route from existing law to law we might achieve and wish to affirm. The heavy-handed use of the labor injunction, leading as it did to *Walker*, thus had lasting effects.

To combat the Common Law, courts are once again employing injunctions, as if they posed no special threat to the legal order they supposedly protect. Courts routinely approve permanent and sweeping injunctions forbidding Common Law adherents from filing liens against government officials and others. For example, in permanently enjoining two named persons and "all those in active concert or participation with them" from filing Common Law liens and garnishments aimed at any federal employee, one federal district court judge said this:

I find that the *public interest* will be served by an injunction forbidding this harassment in the future, and such an injunction shall issue. In framing such an injunction, I rely upon the power granted to me by 26 U.S.C. § 7402, which authorizes me to make such orders as are necessary for the enforcement of the internal revenue laws. [Notice that the injunction framed applied to all federal employees, not just those enforcing tax laws.] I am also mindful of the fact that *legitimate* political expression must not be foreclosed; only harassment of fed-

140. See Forbath, *supra* note 9, at 1148-79 (describing the use of the labor injunction as a means of killing off a competing understanding of law); Pope, *supra* note 9, at 967-68 (same).

141. 258 U.S. 181 (1922).

142. 388 U.S. 307 (1967).

eral employees in their personal lives. In framing such an injunction I also act under the "rule of necessity," see *Van Dyke v. Moore* [a previous case involving some of the same actors now before the court], since Van Dyke [one of those enjoined] has *purported* to sue the federal judges in this district, as well as all Ninth Circuit judges in Oregon, in an attempt to prevent federal judges from hearing such cases.¹⁴³

The "rule of necessity"? A tax injunction that protects all federal employees? The public interest? Not since cases like *In re Debs*,¹⁴⁴ one of the more notorious labor injunction cases,¹⁴⁵ have courts described their injunctive powers so broadly.¹⁴⁶ Moreover, the Common Law cases are broader than the labor cases in one respect — the description of the threat to public order that justifies the lien injunctions is so trivial. The described threat is that federal agents might be less than vigilant in enforcing the law if they are not protected from frivolous legal claims. Next to such a threat, the Pullman strike looks like a real threat to the nation's continued existence. Moreover, the trivial threat described in the lien cases not only supports the injunctions, but confers standing on the government to petition the courts in the name of restoring public order.¹⁴⁷

143. *United States v. Van Dyke*, 568 F. Supp. 820, 822 (D. Or. 1983) (emphasis added) (citation omitted); see also *United States v. Andra*, 923 F. Supp. 157, 159-60 (D. Idaho 1996) (limiting permanent injunction to liens filed against agents of the IRS but justifying the injunction by stating only that the liens are "null, void and of no legal effect," and thus should be enjoined); *United States v. St. Paul*, No. CV-93-1790 LGB (Ex), 1993 U.S. Dist. LEXIS 13454 (C.D. Cal. Aug. 30 1993) (issuing injunction to prohibit the filing of liens against any federal employee based on I.R.C. § 7402 (1994); 28 U.S.C. § 1340 (1994), which confers jurisdiction on district courts in matters arising under the tax laws, and 28 U.S.C. § 1345 (1994), which confers jurisdiction on district courts in civil actions commenced by the United States).

144. 158 U.S. 564 (1895).

145. See OWEN M. FISS, *HISTORY OF THE SUPREME COURT OF THE UNITED STATES: TROUBLED BEGINNINGS OF THE MODERN STATE, 1888-1910*, at 58-72 (1993).

146. In *Debs*, Justice Brewer, writing for the Court, affirmed the injunction that broke the Pullman railroad workers' strike, explaining that a court's power to issue such an injunction rested on "obligations which [government] is under to promote the interest of all, and to prevent the wrongdoing of one resulting in injury to the general welfare." 158 U.S. at 584. Moreover, that open-ended "obligation" of government could, according to the Court, itself confer standing on the government to petition the court to restore public order. 158 U.S. at 584.

147. See *United States v. Hart*, 545 F. Supp. 470, 474 (D.N.D. 1982) ("Hart argues that the United States lacks standing . . . Under the facts of this case, the suggestion is frivolous." (citing *In re Debs*)), *affd. per curiam*, 701 F.2d 749 (8th Cir. 1983). The court rested its power to issue the injunction on the trilogy of statutes cited later in *St. Paul*, 1993 U.S. Dist. LEXIS 13454, at *3, see *supra* note 143 (describing those statutes), and another, 28 U.S.C. § 1357 (1994), conferring jurisdiction on district courts in actions by any person alleging injury while acting pursuant to an act of Congress to collect revenues or to enforce the right to vote. These sources, according to the district court, justified permanently enjoining Hart and those acting in concert with him from attempting, *inter alia*, "to . . . interrupt . . . any federal, state, county, or municipal official in the performance of their official duties." *Hart*, 545 F. Supp. at 475. In affirming this decision, the appellate court ignored the district court's broad

Courts have not only loosened the constraints on when injunctions might be issued and vastly expanded the government's power to seek them, they have also issued some staggeringly broad injunctions to protect our *nomos*, which these cases reshape into one that tolerates very little disorder. For example, in *United States v. Hart*, the district court permanently enjoined "Hart and all others in active concert or participation with him from making arrests of or otherwise attempting to molest, interrupt, hinder or impede any federal, state, county, or municipal official in the performance of their official duties."¹⁴⁸ The Eighth Circuit upheld this injunction with no discussion of its breadth.¹⁴⁹ In *United States v. Kaun*,¹⁵⁰ the district court enjoined Kaun, from, inter alia:

Organizing . . . an entity or otherwise promoting any plan . . . based upon (a) the false representation that wages . . . are exempt from federal income taxation, or (b) any other such frivolous claim with respect to the scope of federal income taxation

Advertising, marketing, or selling any documents [that made such claims about income taxation]

Filing, providing forms for, or otherwise aiding and abetting the filing of Freedom of Information requests with the Internal Revenue Service.

[Or f]iling . . . or prosecut[ing] . . . any civil action in any court in the United States . . . based on [such claims].¹⁵¹

The scope of this injunction is astonishing. To justify this awesome exercise of power, the district court noted that the legal understanding advocated and acted upon by Kaun was shared not just by members of his immediate circle but by other groups across the nation and emphasized that this legal understanding was being transmitted in group classes devoted to constitutional law and other legal subjects.¹⁵²

The Seventh Circuit upheld this injunction, although the court first "narrowly" interpreted some of its parts.¹⁵³ The "narrowing" process did not, however, dramatically curtail the injunction's scope. For example, the court made it clear that Kaun could attend meetings with other tax protesters and could "share his general beliefs" with others.¹⁵⁴ The injunction, however, would be violated "if

interpretation of the government's standing and in a conclusory sentence affirmed the power of the district court to enjoin Hart. *Hart*, 701 F.2d at 750.

148. 545 F. Supp. at 475 (emphasis added).

149. See 701 F.2d at 750.

150. 633 F. Supp. 406, 418 (E.D. Wis. 1986), *affid.*, 827 F.2d 1144 (7th Cir. 1987).

151. 633 F. Supp. at 418.

152. See 633 F. Supp. at 411-12 (discussing how Kaun group is associated with other groups and noting that members of Kaun's group were required to attend sessions on constitutional law and other legal subjects).

153. *United States v. Kaun*, 827 F.2d 1144 (7th Cir. 1987).

154. 827 F.2d at 1152.

... Kaun actually persuaded others, directly or indirectly, to violate the tax laws, or if ... Kaun's words and actions were directed toward such persuasion in a situation where the unlawful conduct was imminently likely to occur."¹⁵⁵ After offering its "narrow" interpretation of the injunction, the Seventh Circuit held that the injunction was neither vague nor overbroad.¹⁵⁶

Broad and weakly justified injunctions are not the only change in our normative landscape that the Common Law movement, or more precisely our judges' reaction to the Common Law movement, has effectuated. The intolerance for competing law, demonstrated by the expansion of injunctive power, manifests itself in other ways. Most notably, in *United States v. Schneider*,¹⁵⁷ the Seventh Circuit stated that demonstrating disrespect for our law warrants extra punishment. Schneider was convicted in federal district court of threatening the life of a state court judge. He had written a letter to the Illinois Supreme Court that contained the following language:

I remind you again, that this "Idiota Persona Non Grata" [the circuit court judge] is of your problem and if is allowed to continue to be mine, he will be executed as the pending [here the Seventh Circuit inserted "warning?" in brackets] to others as enemies of the Constitution and Nation by his act of War You had better nuffify [sic] and countermand any of this demented orders or he will be nullified for his criminal activities.¹⁵⁸

The Seventh Circuit found that the threat was:

ambiguous, but the task of interpretation was for the jury, which did not take leave of its senses in concluding that it really was a threat to kill the circuit judge if his superiors did not rein him in and nullify his orders; that it was not just the rhetoric of hyperbole that comes so easily to the lips of angry Americans.¹⁵⁹

The Court emphasized that the judge asked for protection from the local sheriff.

The fact that the victim acts as if he believed the threat . . . is evidence that it could reasonably be believed and therefore that it *is* a threat. . . . We add that the high level of violence in this country, some of it directed against public officials, warrants juries in taking such threats deadly seriously.¹⁶⁰

Here the Seventh Circuit makes clear its view: our understanding of what constitutes a threat by this defendant must change in response to our perception that our legal order is more generally

155. 827 F.2d at 1151-52.

156. See 827 F.2d at 1153.

157. 910 F.2d 1569, 1571 (7th Cir. 1990).

158. 910 F.2d at 1570 (internal quotation marks omitted) (first alteration in original).

159. 910 F.2d at 1570 (citations omitted).

160. 910 F.2d at 1571.

under attack. Not content with bolstering the protection afforded the legal order against injury by stretching what constitutes a criminal threat, the court then approved the idea of punishing insult to the legal order, helping yet again to reshape our *nomos* into one intolerant of dissent. The district court had imposed the maximum sentence on Schneider, five years. In approving the stiff sentence, the Seventh Circuit sent a message to those who would construct new law: "Persons who do not merely violate the law, but flout it, can expect to be punished more severely than persons who do not thus season their criminality with effrontery."¹⁶¹

CONCLUSION

We, scholars of the law, hear neither the clip-clap emanating from the Common Law community nor the clip-clap our courts are generating in response. One dark, complex, and dangerous world of law is generating another, moving our *nomos* perceptibly closer to the Common Law's characterization of our world. And where are we? We are otherwise occupied — busy exercising our own tongues of wood, content to be understood by one another, and relatively comfortable, if not proud, that lawyers and judges find little of value in most of our songs.¹⁶²

Consider Kierkegaard's tale:

When Philip threatened to lay siege to the city of Corinth, and all its inhabitants hastily bestirred themselves in defense, some polishing weapons, some gathering stones, some repairing the walls, Diogenes seeing all this hurriedly folded his mantle about him and began to roll his tub zealously back and forth through the streets. When he was asked why he did this he replied that he wished to be busy like all the rest, and rolled his tub lest he should be the only idler among so many industrious citizens.¹⁶³

There are actually more important things for us to do. Pay attention to the clip-clap of law outside of our confined community. Investigate some law on the ground. Pick up one of these books or another on this movement and contemplate the many ways in which

161. 910 F.2d at 1571.

162. There may be a different audience out there, an audience thirsty for law. It requires no great leap of imagination to contemplate members of the Common Law community, those Internet groupies, reading our words. They might enjoy Professor Ackerman's insistence that legal understandings commonly used in our world to establish the legitimacy of the Fourteenth Amendment and the New Deal are "built on sand." BRUCE ACKERMAN, *WE THE PEOPLE: FOUNDATIONS* 44 (1991). They would get a particular kick out of his insistence that the Fourteenth Amendment was not ratified in accordance with Article V of the Constitution, see Bruce Ackerman, *Constitutional Politics/Constitutional Law*, 99 *YALE L.J.* 453, 500-07 (1989), as they insist themselves.

163. *PARABLES OF KIERKEGAARD* 5 (Thomas C. Oden ed., Princeton Univ. Press 1978) (quoting Johannes Climacus, *Philosophical Fragments*).

law distorts, destroys, and regenerates itself. Are you busy rolling your tub? Clip-Clap. Law is growing out there.