

Rights of Inclusion: Integrating Identity at the Bottom of the Dispute Pyramid

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DAVID M. ENGEL AND FRANK W. MUNGER. *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities*. Chicago: University of Chicago Press, 2003. Pp. xii + 274. Cloth \$56.00; paper \$19.00.

I. INTRODUCTION

Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities argues that the legal consciousness of individuals is formed and changed throughout the life course. Employing the life-history method, authors David Engel and Frank Munger detail the narrative, interactive processes through which people with disabilities make sense of their rights and develop ideas about fair and unfair treatment at different stages of their lives and in different social contexts—such as in the workplace and in school. In so doing, they provide important new insights into the lived experiences of people with disabilities, how people with disabilities understand rights, and, ultimately, some of the prospects and pitfalls of using law for social change. *Rights of Inclusion* assumes an important place among a growing body of research on the ways in which ordinary people think about rights, invoke rights discourse, and make rights claims, as well as the conditions under which those rights claims may or may not succeed.

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Like Engel and Munger, the authors presented earlier iterations to our “subjects,” David Engel and Frank Munger, as well as Ben Fleury-Steiner, Steve Hoffman, and Robert Nelson, who generously provided valuable feedback that improved this article dramatically.

Rights of Inclusion is premised on a rejection of the notion of law and society as separate spheres. The authors presume that meanings, ideologies, rights, conceptions of rights, law, and social relationships are not static categories, but rather they are cultural forms that people continually construct, negotiate, alter, and resist (Ewick and Silbey 1992, 1998; Harrington and Yngvesson 1990). Thus they share the theoretical orientation of many modern interpretive scholars that practice, structure, and ideology are interrelated (Bourdieu 1977). This analytical framework emphasizes the processes through which rights become relevant for people in a variety of social settings and the myriad ways that people understand rights.

The book suggests a new way of thinking about rights consciousness and claiming—one that incorporates an explicit and nuanced theory of identity—and makes two central contributions to this literature. First, Engel and Munger's rigorous application of the life-history method shows the iterative and changing relationship between identity and rights consciousness over the life course.¹ Second, they present new findings about a population that receives relatively little academic attention—people at the bottom of the dispute pyramid who perceive they have been discriminated against but do not use the legal system to pursue formal claims. The difficulties faced by researchers in locating these individuals, much less following them over substantial periods of time, make this research uniquely valuable.

As is the case with all research methods choices, the life-history method has advantages and limitations. The authors' use of life stories and exploration of individual-level identity construction allows for significant theoretical advances and raises important questions about causality. These debates are central to our field of inquiry and that we take them up here signifies both the importance of *Rights of Inclusion* and its centrality in these debates. Fundamentally, this book brings to the foreground the scholarly importance of identity to theories of rights consciousness and claiming and undoubtedly will influence future studies of legal consciousness.

Our essay begins with an overview of the important methodological, theoretical, and substantive contributions of the book to sociolegal studies in general and scholarship on rights claiming in particular. This includes a discussion of the implications of their findings for our understanding of what happens at the bottom of the pyramid of disputes. We go on to argue that law and society scholars can better integrate analyses of identity with analyses of institutions and organizations, especially of the ways that institutions and organizations systematically shape conditions for individual rights consciousness and rights claiming. We explore social capital theory as one possible framework for this kind of integrated approach. Our discussion of social capital

1. Engel and Munger prefer the term "life story" to describe their research method. The term "life history" may be more familiar to readers and is the term we use here.

theory builds on core findings of *Rights of Inclusion*, in conversation with the literature in which it is embedded.

Throughout this essay, we suggest ways in which future research can explore questions that are raised by the authors' findings but are beyond the scope of their study. Although we may be accused of succumbing to the "pull of the policy audience" or imposing unfair expectations on qualitative data, we pose suggestions for extending the authors' findings and integrating their theoretical advances into a different kind of approach to rights research. In so doing, we do not mean to imply that the findings are not inherently useful—indeed, both authors of this essay are qualitative researchers. We are motivated to take up these questions because of our strong belief that qualitative research can identify compelling explanations of social behavior (e.g., Katz 2001, 2002). We also seek to facilitate dialogue between qualitative accounts, such as this one, and approaches to social science that are more concerned with correlation and causal relationships, a dialogue that often is at the center of law and society research.

II. THE CENTRAL ARGUMENT OF THE BOOK

Rights of Inclusion asks how the Americans with Disabilities Act (ADA) influences the lives of people with disabilities, especially, though not exclusively, with respect to employment and education opportunities. More theoretically, the book seeks to better understand the process by which rights become salient for individuals who then choose whether to invoke them or not—a process that could be thought of as "rights activation."² More broadly still, the book is addressed to the central question that animates much scholarship in the sociolegal field: when and how does law matter? Engel and Munger are careful to neither assert nor assume that any particular orientation toward the ADA is better than another or that exercising one's rights is an inherent good. They are less concerned with the formal exercise of rights in the litigation system or other formal legal institutions, investigating instead rights consciousness as a process at the level of the individual.³

Rights of Inclusion reveals that disability rights matter in different ways. For some of the individuals studied, the ADA was immediately and importantly salient, even if not formally invoked. For others, disability rights did not matter at all, even under very unfair circumstances that had serious life

2. Engel and Munger do not use the term "rights activation." In using this term, we do not mean that rights are either "active" or not. Rather, we mean activation in the broadest possible sense and across many contexts. For example, rights could become active (or salient) in one's own thinking, in an argument or debate, or in the more formal ways like filing a formal or informal claim.

3. Of course, formal rights mobilization requires action by individuals, which makes the level of analysis in *Rights of Inclusion* all the more important.

consequences. For others still, law mattered at some life stages and not at others. Interviewees “believe that rights are ‘right,’ that is, rights are just and appropriate, yet many also believe that the outcome of invoking rights can be uncertain or problematic” (Engel and Munger 2003, 252). As such, “even in situations of extreme unfairness and disadvantage,” respondents saw little reason to formally invoke the ADA, and, indeed, none of the respondents in *Rights of Inclusion* filed any sort of formal claim (10–11).

These interesting findings underscore a series of compelling empirical questions: How does the ADA impact people with disabilities and what is the nature of that impact? In particular, how do the rights bestowed by the ADA manifest themselves in the lives of people with disabilities? And perhaps most importantly, how do people with disabilities understand these rights and their role in their everyday lives? Drawing upon the life histories of sixty people with a range of physical and learning disabilities, Engel and Munger argue that *identity*—or, most simply, “the sense of who one is and where one belongs” (10)—is a key factor that shapes the role of the ADA, or lack thereof, in their interviewees’ lives. The main objective of the book is to show how rights consciousness develops and operates through the process of identity formation and change.

Engel and Munger are drawn to the life-history method, because it is so well equipped to reveal the narrative, interactive, and intersubjective qualities of identity and changes in identity over time. This method can uncover three key processes, all of which are relevant for people’s legal consciousness: (1) the ways in which people construct stories about who they are; (2) the ways that a constellation of factors—such as personal attributes, relationships with others, available social and cultural resources, and social circumstances—can influence one’s identity; and (3) people’s experiences at different life stages. The authors’ analysis of these processes provides insights into how the law may be relevant to individuals at some moments and not others and how rights may become active or remain inactive over time.

Engel and Munger argue that, by studying people’s life stories, we can better understand their identity formation and thus better discern differences in the development of ordinary citizens’ understandings of rights—their legal consciousness. Using this methodological approach, we can learn how legal consciousness informs the strategies that people draw upon as they navigate obstacles associated with disabilities; these strategies, along with their successes and failures, in turn can shape people’s identities and orientations toward rights. This is the basis of Engel and Munger’s recursive theory of rights, by which they mean that “when rights change identity, one consequence of the change may be a new orientation toward rights themselves, because they may now appear more (or less) relevant to one’s life than they did before the identity shift” (97). And such explanations can be generalized further to other personal attributes protected by antidiscrimination law.

Engel and Munger’s findings do not depict a simple relationship between identity and rights consciousness. Instead they say, most plainly, that, “rights

and rights consciousness hinge on the sense of identity that is reflected in the ever-changing life story narratives of individuals with disabilities” (10). The strength of the book’s findings is the window that they provide into the process of identity formation among people with disabilities and its implications for people’s understanding of their rights. They summarize this process as such:

Social and cultural resources become available to individuals at different moments in their lives as they attempt to *narrate* their sense of self, to draw on particular discursive frameworks to talk about their past and future and determine the trajectory of a career. These discursive acts, in turn, combine with other factors to shape *social interactions* and lead to the distribution of identity among family, friends, coworkers, and others. Through the process of identity formation, individuals continually reevaluate their self-concept and their sense that they are being treated fairly or unfairly, that they are positioned appropriately or inappropriately in relation to mainstream social experiences such as employment (178).

One of the authors’ key insights is that their participants’ sense of self and sense of belonging are tied to their perceptions of inclusion or exclusion in mainstream society. Rights are irrelevant to participants if they do not feel that they had been excluded. Such perceptions, then, shape how these participants understand the very rights that are supposed to improve their inclusion in society. This insight underscores Engel and Munger’s argument that identity itself is an important starting point for studying legal consciousness.

III. MAJOR CONTRIBUTIONS

In this section of the essay, we focus on two central contributions that *Rights of Inclusion* makes to law and society scholarship: Engel and Munger’s rigorous application of a methodological approach not commonly used in this field, which enables them to convincingly highlight the contingency of identity and rights consciousness at different life stages, and their new findings about an understudied population—individuals who believe they have had an injurious experience but do not formally pursue legal claims. This combination of methodological rigor and empirical insight provides a strong foundation upon which the authors build a robust and recursive theory of identity and rights.

A. The Contingency of Rights Consciousness and the Life-History Method

The authors’ analysis, the originality of their contributions, the importance of the findings, and, ultimately, some of the shortcomings of the book depend greatly upon their presentation of life-history evidence. The life-history

method, developed to understand the character of cities and city life, became popular in the University of Chicago's sociology department and among anthropologists more broadly in the 1920s (Becker 1966). The method's defining characteristics are its ability to present individuals' unique voices and subjective experiences, reveal conceptual categories and their meanings, and highlight the boundaries of identities (Plummer 2001). Like other life histories done well (Liebow 1995), Engel and Munger's data reveal processes not seen before, challenge common theoretical assumptions, and identify new questions and variables for future research. We start to understand the world from the standpoint of a person with disabilities.

The authors initially conducted phone interviews with 180 possible participants in Western New York, identified through numerous unrelated contacts, to ensure that participants came from a variety of social networks. They then chose sixty individuals with whom they conducted in-depth interviews between 1994 and 1997. The initial sample and subsequent subsample were not intended to be representative of people with disabilities in Western New York or in the United States; rather they were selected to comprise a diverse group of individuals whose lives and careers illustrated the varied social and cultural influences of the ADA.

The respondents had different types of physical and learning disabilities, along with differing levels of understanding of and reaction to the law—from being highly aware of the ADA and its provisions to being indifferent or unaware. The sample of sixty included equal numbers of men and women from three different age groups: high school seniors, people in their early twenties with some experience in the job market, and people in mid-life with considerable work and/or unemployment experience. Engel and Munger also attempted to conduct repeat interviews with eight of the participants and succeeded at reinterviewing six of them; they do not explain how they selected those eight individuals. The book emphasizes, but does not exclusively focus on, the life histories of these eight participants.⁴

The interview questions were designed “to reveal the presence or absence of rights consciousness and the influence of law at various moments in the interviewees' employment experience and career planning” (Engel and Munger 2003, 8). The life histories covered participants' early childhood, memories of family and school, the beginning or diagnosis of their disability, the development of their ideas about work and themselves, influential people, and their work experiences. Engel and Munger did not ask directly about the law until the end of the interview, to see if and how the interviewee raised the topic. Importantly, everyone interviewed felt they had been treated unjustly,

4. Somewhat surprisingly, the authors do not report what they learned in the aggregate from the 180 telephone interviews or the sixty life histories. They also do not provide demographic data about the sample as a whole, such as the percentage of people of color, or baseline data about participants' legal attitudes.

often in the workplace or when applying for a job, but none of the participants had filed a disability rights claim or begun any formal dispute process.

Engel and Munger shared their manuscript with the six participants who participated in repeat interviews and incorporated some of their responses into the text. Thus, some chapters are interspersed with italicized commentary from interviewees providing their reactions to the authors' analysis. These commentaries range from reflective to critical to affirming. The authors' decision to solicit and include this commentary is evidence of the great lengths that they go to treat their research participants with respect, and it further enhances the book's methodological contribution (also see Heyer, this volume, 261–93). Qualitative researchers are frequently encouraged to share their publications with the people studied or to pursue even more involved strategies of member-checking the validity of their findings (e.g., van Maanen 1988). However, when researchers heed this advice, they typically keep the process and subsequent changes to the text (if any) outside the public view. It is very unusual for scholars to include participants' responses in the final product; in doing so, authors risk that they will appear less authoritative, biased, or misguided, particularly if participants' responses do not corroborate the academic analysis. Engel and Munger overcome these obstacles, and our understanding of rights claiming processes is better for it.

Engel and Munger's commendable efforts do more than just honor and engage the participants; they also serve as a lesson for all social scientists, as their effort to get the stories "right" produced data that is unique and important. The authors have a strong theoretical justification for including participants' commentary, as well: it shows the dialogic relationship inherent in qualitative research and serves to remind the reader of the constructed nature of life stories—constructed by the authors as much as by the interviewees. This technique works not just to make the interviewees more real to the reader but also serves to bolster key empirical findings that illustrate the authors' theoretical purpose for choosing the life-history method. That is to say, analysis done and redone over time captures the interactive, evolving process of thinking about rights, and this reinforces in a very real way the insight that legal consciousness and life stories "are not fixed and forever unchanging but are constantly questioned, revised, and reinterpreted by the narrators themselves as well as the researchers who record them" (Engel and Munger 2003, 9).

Consider, for example, the remarks of Georgia Steeb. Georgia is a paraplegic woman who, when reflecting on Engel and Munger's analysis of her story, noted,

When we had our other interview, I think I gave an impression that I would not legally take a route, if I was turned down for a job or if I felt there was some sort of discrimination, somehow battling between my religious beliefs and turning the other cheek. I think there are very

definite times in which the law should be invoked and people should sue. Oh yes, most definitely. . . . [But] we're sue happy with everything. With the rights of people, it's gone well beyond what the Constitution intended for rights (141).

Georgia's remarks underscore the contingent and constructed nature of legal consciousness. She is self-conscious that she could project different attitudes at different times, wants to amend (or at least clarify) her previous position (or perhaps Engel and Munger's misinterpretation of her previous position) on legal action, and tries to present an account that both explains and justifies her ambivalence about rights claiming.

The above excerpt also hints at one of downsides of the authors' use of participants' commentary: the thought-provoking reflexive commentary from participants sometimes raises as many questions as it answers. In this same passage, Georgia mentions that during her interview, she had been under a lot of stress, because she was substitute teaching. Her reflexive commentary about her stress and the authors' decision to include it insinuate that there was a link between Georgia's identity at the time—an overwhelmed teacher with limited access to transportation—and her outlook on legal action.

The authors show us how, in Georgia's life story, her identity matters for her legal consciousness and how it changes over the life course. She had been injured at age thirteen, and, in the subsequent years, she had to deal with inadequate accommodations at school and college, exclusion from activities she had once participated in, mental illness, and divorce. As she coped with these challenges, she became a born-again Christian, and drew primarily on her religious faith and secondarily on ideas about legal entitlement to understand unfair treatment against her. While earlier in her life her sense of what she could or could not do seemed to largely depend on external factors, like the sympathy of teachers or her friends' parents, later in life her outlook was more clearly shaped by her faith and her beliefs about law. Furthermore, she alternately turned to religion and law to make sense of social interactions that might be related to the ADA, such as an inaccessible Montgomery Ward store. As the authors explain, "Her religious belief in the importance of forgiving unenlightened or sinful behavior is different from her rights-based conviction that discrimination is illegal and must be fought and eliminated. For Georgia, the two frameworks exist in a sometimes uneasy tension, and occasionally they pull her in different directions" (140). Her religious faith was an especially critical factor, as it enabled her to rehabilitate and pursue work and then became the principal lens through which she understood the law.

Georgia Steeb's story is but one example of how *Rights of Inclusion* makes a contribution through rich, nuanced attention to individuals, identity, rights consciousness, and claiming behavior over different life stages. Some scholars have shown changing identity over life course, though not particularly with reference to rights consciousness (e.g., Cole, Cole, and Lightfoot (2004) on

stages of childhood). Scholars who study legal consciousness have long recognized its contingency even if they have not empirically demonstrated it at different life stages (e.g., Ewick and Silbey 1998; Fleury-Steiner 2002; Fleury-Steiner and Nielsen 2004; McCann 1994).⁵ The life-history method, as Engel and Munger's application illustrates, is uniquely capable of showing the contingent, constructed, and changing nature of legal consciousness over time. In addition to documenting contingency over the life course within the same individual, *Rights of Inclusion* fills a specific gap in the sociolegal literature, which we elaborate in the following section.

B. Theories of Rights Consciousness and Claiming: The Bottom of the Dispute Pyramid

A second major contribution of *Rights of Inclusion* is its analysis of how individuals come to understand that they have suffered a harm, whether they think that harm is something that can or should be addressed via the legal system, and what, if anything, they do about it. The processes that lead up to a formal legal dispute often are represented by the concept of a dispute pyramid, and *Rights of Inclusion* contributes to our understanding of the base of this pyramid—the broad mass of injuries that people widely recognize.

A fundamental empirical truth borne out in law and society scholarship repeatedly is that very few of the *perceived injurious experiences*, which make up the base of the dispute pyramid, actually become *disputes*, and fewer still become *legal cases* in the forms of filings or trials (see, e.g., Miller and Sarat 1981; Galanter 1983). A great body of research exists that attempts to explain the processes by which individuals drop out of the system. This literature offers explanations that include everything from financial barriers to pursuing a claim (Curran 1977), social psychological barriers (Fiske et al. 2002; Kaiser and Miller 2001, 2003; Major and Kaiser 2003), a preference for preserving on-going relationships (Yngvesson 1985), difficulties associated with the organizational processes that one must use to pursue a claim (Edelman 1992; Edelman, Erlanger, and Lande 1993; Edelman, Fuller, and Mara-Drieta 2001; Nielsen and Nelson 2005a), and distrust of legal processes and authorities (Ewick and Silbey 1998; Nielsen 2004), to name just a few.

In the context of civil rights, the bottom of the dispute pyramid is crucial for understanding how rights work, because, as Tom Burke (2002, 2003)

5. Some scholars have emphasized the ways in which legal consciousness is contingent over time. Ewick and Silbey (1992), for example, demonstrate contingency across legal issues, while McCann (1994) shows it among workers. Others highlight the importance of social context for legal consciousness (e.g., Fleury-Steiner and Nelson 2006); Fleury-Steiner (2002), for instance, shows the contingency of identity categories and their relationship to legal consciousness in different settings, such as jury deliberations. But prior to *Rights of Inclusion*, scholarship on legal consciousness has not shown the contingency of legal consciousness over one's life course.

points out, civil rights enforcement in the United States is a “litigious policy”—enforcement relies on individuals bringing private rights of action. For the ADA or any other civil rights law to change social circumstances through the formal legal system, ordinary citizens must recognize that they have suffered a harm, decide to do something about it, and take action. But, as the dispute pyramid makes clear, there is a large group of people who have been injured but do not bring legal claims. We are left wondering: how do they understand their unfair treatment, and what explains their lack of participation in the legal system? Do they think of their situation as a “grievance” to be litigated but then encounter certain experiences that lead them to drop their grievance? Are those individuals who “lump it” suffering discrimination without recourse, or are they using law to negotiate informal arrangements with agreeable outcomes to the parties involved (Albiston 2001, 2005; Bumiller 1988; McCann 1994)?

Despite the legal, social, and political importance of what happens at the bottom of the dispute pyramid, it is difficult to empirically study what happens there (Nielsen and Nelson 2005b). Survey researchers face the challenge of establishing a baseline of people’s personal experiences with discrimination, as individuals may be uncertain about what constitutes discrimination (Marshall 2003) or may not even know if they have been discriminated against (Smith 2002). Individuals also may have different propensities to perceive and report treatment toward them as discrimination or to perceive this treatment as worthy of a legal claim.

Engel and Munger’s contribution to understanding the bottom of the pyramid is significant. They show that people’s understandings and actions concerning unfair treatment and rights do not map neatly onto a sequence of steps that lead to some kind of official decision—as is required by the formal legal system and implied by the dispute pyramid model. They argue that rights become active in three central ways for their participants: rights can transform people’s self-perceptions, influence cultural and discursive shifts, and change social and institutional contexts.⁶ Three related empirical findings shed light on these processes: (1) the different ways in which individuals construct their identities shape how entitled they feel to equal treatment (although whether or not that translates into legal action is not necessarily part of the authors’ analysis), (2) people use commonly available discourses to construct their identities and distinguish between fair treatment and actual treatment received and (3) institutions, resource availability, and timing shape the formation of individuals’ identity and rights consciousness.

The first of these findings is the most well developed. The second two findings underscore that both discourse and institutions influence how people

6. The authors note that exercising ones rights through formal legal processes presumably can shape one’s identity, but they do not have data on this, because none of their interviewees had made such claims.

narrate their life stories, construct their identities, and therefore perceive rights. Our discussion describes these findings, the implications we believe they have for an understanding of rights activation and the dispute pyramid, and directions for future research.

1. *Identity Shapes Perceptions of Equal Treatment*

Engel and Munger observe that people with disabilities confront a “deep dilemma of maintaining one’s identity as an *employee*” in a world where there is “the presumption that all workers must adapt to ‘ready-made jobs,’ and . . . the perception that the ‘disabled’ cannot work” (Engel and Munger 2003, 122). They find that their participants react differently to this challenge, depending on whether they perceive their “self” as distinct from their disability or they see their identity as inextricably bound with negative social judgments about their disability. Interviewees who clearly differentiate between their self and their disability, viewing their disability as “one of many elements constituting the self” (46), are more likely to feel entitled to equal treatment. These same individuals tend to perceive exclusionary treatment as absurd or unfair. This may mean that they are more likely to assert their rights, as well. As the authors explain, “In this sense, identity connects directly to a sense of justice, for the unfairness of exclusion is apparent only to the person who assumes that inclusion is her natural and expected status” (68–69). In other words, rights become important when people with disabilities perceive a disparity between their actual experiences and the experiences they anticipated.

This particular conception of identity, which distinguishes between one’s “self” and one’s disability, is exemplified by Sid Tegler and Sara Lane. Both Sid and Sara use wheelchairs, have had high career expectations since childhood, reject the idea that they are any less capable than other workers, and have a sense of legal entitlement. Yet this sense of entitlement manifests differently for each of them. For Sid it has meant withdrawing from the workplace and becoming self-employed; for Sara it has meant finding informal strategies for requesting and acquiring the accommodations she needed to work effectively in her various jobs. Despite Sid and Sara’s different strategies, Engel and Munger argue that this sense of identity not entirely subsumed by negative perceptions of disability is key to understanding the types of rights consciousness that Sid and Sara exhibit.⁷

7. The authors emphasize “the potentially powerful constitutive effects that rights might have on [individuals’] perceptions of their identities” (122–23), but they do subtly suggest a causal order in the relationship between their respondents’ identities, coping strategies, and rights consciousness. As they state, “We think [participants’] distinct orientations to accommodations and rights derive from their self-concepts and their different ways of managing the tensions between identity and employment” (123).

Sid and Sara are presented to readers in contrast to Jim Vargas, a physical therapist with a learning disability. Engel and Munger report that Jim blurs his identity and his disability by, for example, hesitating to interpret his career “as anything but the product of his own ability and volition” (129). This blurring leads him to believe at root that he is responsible for his job-hopping and the problems he confronts at work and to “question his *own* view of his qualifications for employment and thus his entitlement to on-the-job accommodations” (129). Jim also chooses to not reveal his disability to his employers because he thinks that they will not want to pay for accommodations and will distrust employees who claim to have learning disabilities. As such, Jim is reluctant to invoke rights or even to feel upset that he has had to leave many jobs for which he was qualified. His self-perception and his views on requesting accommodations leave him feeling he is not legally entitled to any employment (much less to simple modifications on the job).

The comparison of Sid, Sara, and Jim shows how identity affects rights consciousness. Their understanding of their “self” in relationship to their disability, combined with strategies for coping with tensions between identity and work, shape their orientation toward legal rights for workplace accommodations and their propensity to toward such accommodations as a right, or, indeed even to *think* of such an accommodation as a right. The comparison of Sid, Sara, and Jim is obscured a bit because of the nature of Jim’s disability—he has a learning disability that he can physically hide. So, it is somewhat unclear if the lived realities of his particular disability (e.g., he can choose not to share it with others) informs his identity and ideas about accommodations. For example, people with learning disabilities might be more likely to see their identity as inextricably bound up with their disability than do people with physical disabilities.⁸ Still, the book makes clear that a sense of entitlement probably is necessary, but not sufficient, for a worker with a disability to pursue accommodation through the legal system; note that Sid and Sara, who have a sense of their disability as one of many aspects of their self and a sense of self as highly competent, do not engage in rights claiming behavior.

Engel and Munger’s conception of identity, which stems directly from their respondents’ own words, is congruent with the antiessentialist theoretical framework that has become more common in the field of identity theory (Harris 1990; Spelman 1988). Within this conception of identity, there is space for people with disabilities to fully integrate their disability into their self-understanding and still feel entitled to equal treatment. One’s identity can be *enriched* by a disability and the experience of managing it in an “abled” world (e.g., Chorost 2005; Padden and Humphries 2005; also see Heyer, this volume, 261–93).

8. The comparison between Sara and Sid and Jim also does not describe possible material bases for their different experiences and identities, which we discuss later in this essay.

The separation of disability and self is also analytically valuable. Many participants' sense of entitlement is connected to how "at fault" they feel for workplace challenges involving their disabilities—whether they understand those challenges as practical difficulties with accommodating their disability at work or as errors that their disability introduces to their job performance. It means, as Engel and Munger say, that identity is connected to rights consciousness. In the conceptual framework of the pyramid of disputes, we can apply this insight to better understand the difference between thinking of a problem situation, such as a desirable job without accommodation, as either a "perceived injurious experience" (a bad situation with no attribution of fault) or a "grievance" (a perceived injurious experience attributed to the fault of another, such as an employer). *Rights of Inclusion* elaborates on this distinction by showing the role of identity in individuals' interpretations of problem situations. Engel and Munger's findings also point to the limitations of how law and society researchers typically understand the concept of grievance; the authors show that people may perceive that they had injurious experiences but attribute fault to themselves, not to others.⁹ Their findings lead to the conclusion that the complex social-psychological processes through which people understand unfair treatment and rights do not neatly correspond to a linear progression of actions toward formal resolution.

Given these insights, future law and society research could explore various aspects of disability that might lead an individual to take on more or less self-blame. For example, are people with physical disabilities more likely to see their "selves" as separate and apart from their physical condition? Do people with learning disabilities, in contrast, tend to think of their disabilities as more part of them? In addition, the timing of when the person becomes disabled (in the case of physical disabilities) or is diagnosed with a disability (in the case of learning disabilities) may affect how "disability" is integrated into one's identity (see, e.g., Ghaziani 2004). For instance, do individuals have different reactions to their experiences depending on whether their disability preceded their entry into the labor market or followed it? If an individual becomes physically disabled later in life after successfully completing college and the beginning phases of a career, she may be more likely to feel that, as a good worker, she is entitled to accommodation (and, again, that may or may not manifest itself in terms of rights). Or, she might think of herself as now flawed, while the person who grew up with a disability better understands what she can achieve. Such analyses would help us better understand the relationship between identity, type of disability, life circumstances, and rights consciousness.

9. For a thorough review of the social psychology on the perception of discrimination, see Major and Kaiser (2005). Judgments about discrimination vary by context, the extent to which one identifies as a member of the group that being discriminated against, and belief in the "just world view" or fairness.

2. *Common Discourses Provide a Vocabulary for Constructing Identity and Conceptualizing Fair Treatment*

Engel and Munger state that discourses—or, “patterns of thought and speech” that individuals use to think about and relate their experiences (Engel and Munger 2003, 142)—shape the processes of rights activation primarily through their influence on individuals’ identity. Keeping with their interest in the interactive and narrative aspects of identity, they assert that discourse “is the communicative medium through which the self interacts with and comes to be distributed among others . . . [N]arrations of the self continually draw on available discourses to create and recreate identity” (143). They describe discourse in two interrelated ways: as one of many resources available for people to draw upon and as a constitutive component of individuals’ identities.¹⁰

Engel and Munger emphasize that people use discourse to incorporate law into their everyday interpretations of their life experiences. In other words, language is part of the “broader societal processes that enable law, at times, to become part of the common sense understandings of the world” (143). According to the authors, certain discourses matter for disability rights activation, because they provide people with disabilities with a language to express their identities and the identities of “legitimate” employees and to explain how rights apply (or don’t) to their personal situations. In particular, these discourses serve as a medium people can use to differentiate between the treatment they believe is fair and the actual treatment they receive.

Engel and Munger find that three discourses not directly concerning disabilities were especially common in respondents’ interactive and narrative construction of their identities. These include a discourse of the (free) market, racial justice discourse, and religious discourse.¹¹ Respondents often drew on these discourses both to make sense of and to explain their everyday experiences, fair and unfair treatment, and the relevance or irrelevance of rights.

10. Cultural sociologists commonly distinguish between analyses that treat discourse (and other cultural forms) as an explicit social construction available for instrumental use or as an implicit feature of social life and prefiguration of social relationships (e.g., Wuthnow and Witten 1987).

11. The authors note that formal legal rights can support more subtle discursive frameworks that introduce ideas about rights and become a part of everyday speech. For example, conversations between employers and employees may not explicitly refer to the ADA or even to “law” but may still address issues of accessibility. Furthermore, “the very enactment of civil rights can subtly shape the terms of discussion or the images and conceptual categories that are used in everyday interactions” (11). Surprisingly, the authors’ discourse analysis does not include discourses specifically about disabilities or the ADA. They imply that they did not find a well-developed discourse about the ADA because the law was quite new when the research was conducted. They explain, “It might be argued that the statutory language of the ADA is itself part of a discourse of disability rights. . . . While there is good reason to believe that such a discourse has begun to emerge, we do not make that claim in the discussion that follows. Instead, we examine perceptions of the ADA as they are filtered through other discourses” (144, fn. 1).

For instance, some interviewees invoked a market discourse to stress the costs and benefits of accommodation; others (or even the same respondents) would use a free market discourse to justify the legitimacy of their rights and present their opinions as rational and pragmatic.

All three discourses can both create and limit opportunities for individuals when discussing identity, rights, fair treatment, and employment. This tension is especially evident in how participants talk about race. As the authors explain, “The history of racial justice in America has created a discourse about unfairness and oppression that is available to other victims of injustice and can expand the options for conceptualizing and communicating their experiences” (149). Engel and Munger state that their participants differentially draw upon racial injustice as a discursive frame, and they describe in-depth a few white male participants who did not embrace this discourse, because they were uncomfortable with the historic association of civil rights claims with African-Americans.

One of these men, Raymond Militello, considers civil rights to be preferential treatment. Raymond assumes that the ADA operates in the same way as (he thinks) affirmative action operates, and that the law gives preferential treatment to people who are less qualified than other applicants. He says, “It seems that in some instances you are favored more, you’re not on an equal level. One person’s up here, you’re over here because of your disability, race, color or creed. And because of . . . some government law, boom . . . you’re way past them” (148). His feelings about disability rights in his personal life are similar but more ambivalent. He believes that he has received what he considers to be unfair “back door” preferences, because he has learning disabilities. Yet, Raymond thinks he would be foolish to refuse those advantages—he has been treated unfairly and stigmatized for his disability and, more simply, he should take advantage of opportunities that life presents him.

Engel and Munger point to the ways in which Raymond Militello and others talk about race as evidence of the salience of racial categories for the way that people think about rights more generally. Because of the history of civil rights in the United States, struggles for racial justice have had an enormous influence on the language available to talk about rights. Framing something as a civil right requires grappling with issues of race, even though race may be entirely unrelated to the issue at hand. The crux of the conflict for Raymond and others who share his beliefs seems to be that, by invoking rights to explain his experiences or propose solutions, he risks equating himself “with a group [racial minorities] they are unwilling to embrace as allies, a group toward which they themselves may even feel racial animosity” (147).

Engel and Munger argue that the content of those discourses can both constrain and enable how participants articulate their understandings of themselves and their rights. They cite Foucault’s observations that discourse communicates implicit definitions of what is sayable, explaining, “If potential

rights holders cannot articulate a disparity between the treatment expected and the treatment actually received, they may come to accept as natural and appropriate what might otherwise be considered exclusion or discrimination” (144). In thinking about how these findings apply to the dispute pyramid, it is unclear how, or even *if* discourse shapes rights consciousness. Do people just use discourses that affirm their views of themselves and the world or the situation at hand? Or can learning a new discourse change someone’s understanding of rights? While the authors’ objective is not to untangle these broader questions about the relationship between discourse and consciousness, their findings raise important questions for future research.

Engel and Munger’s insights about interviewees’ perceptions of worthy, capable employees greatly enhance our understanding of what happens at the base of the dispute pyramid. Most, if not all, of the interviewees intensely want to be considered good employees. Given the common but contested social assumption that people with disabilities cannot or should not work and the practical obstacles around employment that all of these participants have faced, it is understandable that interviewees would be very assertive about affirming this aspect of their identity. As the authors show, participants employ discourses about the market, racial justice, and religion to construct identities as good workers. Yet, interviewees also invoke these three discourses to express different, sometimes conflicting ideas about the *meaning* of taking legal action, especially in response to discriminatory treatment that is not extreme. Some, but certainly not all, participants seem willing to embrace the idea of rights, but the idea of actually taking legal action to enforce those rights has negative connotations for many. For example, some participants describe people who invoke legal claims (or the acts of invoking legal claims) as irrational and blind to employers’ constraints. Some respondents suggest that the people who take legal action either are members of a minority racial group with whom they do not want to associate or have betrayed a trust in God, who in Georgia Steeb’s words, “makes positions for people.”

These perceptions of taking legal action can provide insights into a possible rudimentary typology of conceptual constructs—or dispositions—that may be held by individuals who choose not to take legal action. In this typology, some individuals may conceptualize a sharp distinction between the types of people who are good employees and the types who embrace rights, preferring to ally themselves with the “good employees.” Others might reconcile their identities as good employees with their identities as people who embrace rights but not with their ideas about what it means to take legal action. Any such typology would need to acknowledge the malleable nature of an individual’s identity, which can shift depending on the social context and over one’s life time.

Georgia Steeb, the born-again Christian described earlier, is an interesting example of this latter disposition. Georgia asserts that disability rights are appropriate and proper, but she expresses ambivalence about actually using

the legal system to pursue these rights. Not surprisingly, she tends to use different discourses depending on whether she is talking about unfair treatment or taking action. She refers to rights when she describes “what she considers the unfair denial of opportunities” (160) and “to legitimate her grievances about unjust treatment” (161), while she invokes religious discourse “to support her decisions to let her life take its course” (161). She, like many other interviewees, experienced a tension between her views of disability rights and of faith; she associated rights with confrontation, religion with forgiveness and acceptance.

Engel and Munger’s findings reveal a gap between Georgia’s rhetorical statements about invoking rights—she claims she would quickly take action if she were treated unfairly—and the reality that she has been treated unfairly but has never taken such action. Thus, returning to the rudimentary typology of dispositions outlined above, it could be that people who do not pursue legal claims are not interested in or capable of reconciling their conceptions of good employees with their view of what it would mean for them, personally, to take action. Such a view of good employees certainly is reinforced by many the structural and organizational incentives not to “cause trouble” on the job (e.g., Miethe and Rothschild 1994). This distinction may take on a unique significance for people with disabilities because of their historic exclusion from the labor market and common assumptions about the incompatibility of disabilities and employment.

3. *Different Combinations of Resources and Institutions Shape Rights Activation*

Finally, *Rights of Inclusion* argues that the degree of access to resources shapes people’s identity formation and the likelihood that employment rights under the ADA will become active. According to Engel and Munger, “social circumstances” (what could also be thought of as institutions)—particularly family, social class, race, and gender—enable or constrain individuals’ access to resources. Their data show how, in the lives of specific individuals, different constellations of resources combine to directly influence people’s perceptions of rights and the role of rights in their lives. Engel and Munger explain that while factors sometimes combine in predictable ways, they can combine in unexpected ways as well. They stress the importance of timing—both the general timing of resources in one’s life or career and, especially, the timing of the onset and diagnosis of a disability and the kinds of resources accessible during that period. They also emphasize the pervasive impact of gender on the organization of work, employers’ expectations, career planning and choices, and self-perceptions. Because they largely save these in-depth analyses of social circumstances until the final chapters, earlier sections of the book sometimes read as though Engel and Munger are neglecting important

social factors—particularly race and social class. At times, this approach can make identity seem almost self-created and self-driven, especially in adulthood. However, in the second half of the book, they more directly explore how social context and institutions intersect within individuals' lives.

Readers interested in policy implications or in causal inference may hope for future analyses that build on Engel and Munger's powerful findings by generalizing, across research participants, about what produces different rights orientations. Such analyses could help to identify commonalities in participants' rights orientations and generate explanations of how and when some social factors matter more than others.

For example, consider this discussion from chapter 5 about the effects of social circumstances on rights consciousness. The authors say, "The effect of social factors such as family, class, and race is to make available (or unavailable) a combination of resources with which to construct an identity and a career. Sometimes these factors combine in surprising fashion to enable an individual with a disability to think and talk about herself in new ways . . . Sometimes these same factors can prevent an individual from envisioning a viable career" (Engel and Munger 2003, 202), and they describe one person for whom each of these situations was true.

We were left wondering if there was a pattern across participants. Was there anything similar about the participants who could not imagine a realistic career path? In Jack Katz's words (2001, 448), "if we observe a given phenomenon at time 2, . . . what will have happened earlier, perhaps in a particular sequence of stages that led to the outcome?"

By remaining true to the ethos of much qualitative research, *Rights of Inclusion* shies away from generalizing about such patterns across research participants. In so doing, depending on your perspective, the authors have either (1) opened important avenues for future research; or (2) possibly ceded too much to quantitative research to explain those patterns, when in fact qualitative research can provide compelling explanations for why people see the world the way they do.

IV. BEYOND RIGHTS OF INCLUSION: IDENTITY AND LEGAL CONSCIOUSNESS IN RIGHTS ACTIVATION AND MOBILIZATION RESEARCH

In the last twenty-five years, scholars of law and society have made considerable advances in the empirical study of rights activation processes and outcomes, and Engel and Munger provide a new and important argument for the inclusion of identity as a crucial factor in that understanding. Much of the work on rights activation takes place under the general rubric of "legal consciousness," and *Rights of Inclusion* comfortably can be considered a study if not of legal consciousness, then certainly one that uses the insights of legal

consciousness in theory and method. While the broad label “legal consciousness” encompasses many arenas of study within it, our essay primarily has analyzed *Rights of Inclusion* as a study of legal consciousness as it aids our understanding of rights activation and mobilization.

As a broader theoretical matter, the study of legal consciousness recently has come under attack from those who believe its mandate is too vague to be meaningful (what does the concept *not* include?), as well as those who have become disenchanted with recent scholarship within its rubric. Most notable, perhaps, is Susan Silbey’s recent essay in the *Annual Review of Law and Social Science*, “After Legal Consciousness,” which critiques the body of research for concentrating too much on individual level thoughts and actions without enough attention to legal hegemony, or, “how law sustains its institutional power despite a persistent gap between law on the books and law in action” (2005, 323). Prior to that essay, legal consciousness had been appropriately criticized for focusing too attentively on the individual level of analysis (see, e.g., McCann and March 1997). Other critiques have suggested that studies of legal consciousness can sometimes read as though the individual stands apart from social institutions rather than being shaped and reciprocally shaping them (Nielsen 2000). The myopic focus on the individual is most certainly not what the pioneers in the field intended (Sarat 1990; McCann 1994; Ewick and Silbey 1998), but recent studies of legal consciousness have tended to be more attitudinal and social psychological than one might prefer (see Silbey 2005 for a review of the field).

While we agree with much of the critique of studies of legal consciousness, we are not prepared to dismiss the concept as so compromised as to be useless. Indeed, *Rights of Inclusion* provides excellent examples of how people’s identities and their lived experiences of their disabilities, workplace challenges, and the law all inform their ideologies about law and cumulatively shape their behavior with regard to law, such as their strategies for negotiating better access on the job. This kind of in-depth analysis of the factors that rebuff and attract people to the law makes a very important contribution to understanding legal hegemony in the American context. In the case of disability rights (like other areas of civil rights), the story of how law matters is quite different if people believe they have been legally harmed but cannot afford a lawyer, if they misunderstand the ways that law might be invoked in their particular situation, or if their moral values are inconsistent with a legal solution. *Rights of Inclusion* takes us a long way toward understanding these processes more fully and raises interesting questions about the relationship between identity, organizations, and institutions.

Building on Engel and Munger’s insights, we argue that studies of rights activation and mobilization would benefit by the development of a synthetic approach that takes into account the various individual (e.g., identity, consciousness), organizational (e.g., workplace, social movement groups), and institutional (e.g., gender, work, race) forces that affect rights consciousness.

Of course, only so much about rights consciousness can be explained at the level of the individual, and the intensive focus on individuals' identity formation in *Rights of Inclusion* can, at times, draw attention away from the broader patterns through which organizational and institutional forces shape the conditions under which people develop rights consciousness. This is not a problem unique to *Rights of Inclusion*; the life-history method, for all it teaches us, often is criticized for obfuscating the role of organizational and institutional processes that influence individuals' behavior (di Leonardo 1998). We know that legal rights are affected by the organizational settings in which they are applied, by the nature of the competing institutional claims to rights, and according to the different social locations of the individuals making rights claims (Merry 1990; Nielsen 2000; Sarat 1990; Sarat and Kearns 1995; Yngvesson 1985). The field would be well served by moving from studies that focus on one or two levels of analysis (the individual level, the organizational level, and the institutional level) to begin to develop a set of theoretical tools that allow us to look at the connections across these levels.

One promising approach for analysis of rights activation and claiming processes that integrates analysis of individual, organizational, and institutional forces is a social capital model. The concept of social capital, as developed by Pierre Bourdieu (1986), Bourdieu and Wacquant (1992), and others, highlights how the resources that individuals have at their disposal influence their capacity to achieve positive outcomes or to avoid negative ones.¹² John Hagan and Bill McCarthy (1997, 228) explain,

Social capital theory assumes that people acquire at birth and accumulate through their lives unequal shares of capital that incrementally alter and determine their life chances. It focuses on ways that individuals succeed and fail in socially organizing their efforts to attain cultural goals.

These shares of capital include the tangible benefits associated with socially and politically constructed systems of wealth retention and distribution, such as strong protections for inherited wealth in capitalist societies. Social capital can also include the less-tangible benefits that are conferred through systems of unearned privilege, such as being white or male in a society that devalues women and people of color.

Like the life-history analysis employed by Engel and Munger, social capital theory places significant emphasis on the individual. Unlike life-history analysis, however, a social capital approach supplies a framework for analyzing how the organizations and institutions in which individuals are embedded matter for outcomes. A social capital approach also explores the relationship

12. Bourdieu (1986) distinguished social capital, or the various relationships with others that provide differential access to resources, from cultural capital, or legitimate knowledge about various topics.

across these levels of analysis. Studies of rights consciousness that use something like a social capital approach would draw attention to the systematic ways in which relationships between and among individuals, groups, and organizations (such as families and companies) influence rights claiming. These relationships and interactions provide differential levels of material and social resources that enable people to exercise their rights or avoid formal legal channels. Furthermore, these relationships equip individuals with different kinds of information, norms, and understanding of appropriate behavior (in short, cultural capital) in regard to their rights and more generally in social life.

Engel and Munger are very attentive to many of the mechanisms that produce, disseminate, and transmit social capital, although they do not draw on this framework explicitly. As we have shown above, they look to families, schools, neighborhoods, and organizations to help explain differential expectations, identities, and outcomes between respondents. But, as we have noted, they pay uneven attention to the ways that gender, race, and class might shape whether an individual has knowledge about her rights or her need to invoke rights at all.

Engel and Munger's thoughtful analysis could be extended using something like a social capital approach. For example, to use one of their examples, consider Sara Lane, a woman who uses a wheelchair, and Rick Evans, who has cerebral palsy. They have confronted similar life challenges and have had access to comparable intellectual and material resources. However, Sara differs from Rick in key ways: she has had a successful work career as a journalist, she narrates a life story that emphasizes her successes and "normal" experiences, and she sees the ADA as a possibly helpful resource that has already influenced her employers' behaviors. Engel and Munger emphasize that Sara's identity, "evolved through experiences with people who did not have disabilities and institutions that were not isolated or segregated" (Engel and Munger 2003, 57). They point to child-rearing decisions that Sara's parents made that contributed to these characteristics, such as encouraging her to use crutches instead of a wheelchair (her doctor gave the same advice) and transferring her out of special education for junior high and high school. Sara explains,

[B]ecause my disability was so integrated into our family as a community, it just made it obvious to me that that's how it would be in the rest of my life. I mean, my parents accepted it, and they worked around it . . . but they never made it into this monstrous deal, in terms of, oh, we can't do that because of Sara, or we'll leave Sara home. That was never an option . . . I just know that, because I was treated as an equal, as a peer, when I went to get a career, I went to college, those barriers didn't exist in my mind—that they're going to leave you out because you're disabled. (22)

Sara's mother, who later became a special education teacher, expected her to participate in mainstream social and educational settings "where self-sufficiency and a 'normal' identity were most likely to emerge" (22) and helped to arrange her participation in such settings. She would brief the schools and teachers prior to Sara's enrollment. "They were ready for me,' Sara recalls" (22).

Rick's parents, in contrast, encouraged him to use a wheelchair although he could still walk, enrolled him in schools solely for children with disabilities, and made other decisions that unintentionally excluded him from the social mainstream. These choices caught up with him as an adult. Within a month of getting his first job (a process that took three years), he had to give it up because he could not obtain wheelchair accessible housing and could not handle the commute from his parents' house. He had a string of interviews over the following ten years, but they yielded only one short-term job, and he never tried to live alone again. According to the authors, "Rick believes that he has limited capacity to persuade an employer to hire him, rendering his long search for employment futile. His isolation from the social mainstream from childhood to the present has led him to conflate his disability and his identity" (56).

Engel and Munger contrast these two respondents to effectively explain why Rick and Sara have such different identities despite their similar disabilities. A social capital analysis of these respondents would build on this insight by showing how different cultural logics of child rearing might influence the ways in which families transmit social capital and privilege and by exploring the influence of social capital on children's identities (Horvat, Weininger, and Lareau 2003; Lareau 2002). Sara's parents employed what Annette Lareau refers to as "concerted cultivation," or the processes through which middle-class families tend to encourage their children's skill development through organized extracurricular activities and extensive reasoning. According to Lareau, middle-class children raised under these conditions are more likely to gain a sense of entitlement that is often facilitated by their parents' patterns of talking with them, fostering their ideas, and intervening with authority figures. Lareau (747) explains, "Differences in a cultural logic of childrearing gave parents and their children differential resources to draw on in their interactions with professionals and other adults outside the home. Middle-class children gained individually insignificant but cumulatively important advantages." In this light, social capital theory helps to explain the potential outcomes of different strategies for managing a disability. We see how parental influences on a child's identity can become forms of social capital or social liability for the child, because it is not merely identity but also the way an individual has (or has not) learned to negotiate bureaucracy, interact effectively with authority figures, and argue for benefits.

Social capital theory helps to explain not just how people gain access to resources but also what people do with these resources, which can profoundly influence the experiences of a child with disabilities. Middle-class

families and working-class/poor families typically use different strategies to manage their children's special educational needs, such as learning disabilities (Horvat, Weinger, and Lareau 2003). Middle-class parents frequently have unique access to personal contacts with professionals that can help them mobilize the knowledge and expertise necessary for challenging school officials' decisions. They tend to be far more proactive in relation to schools, sharing and gathering information about test preparation, and discussing these topics with people they know in the field of education. To better understand these family level influences on identity formation among people with disabilities like Sara and Rick, future research could incorporate observational data about parent-child interactions or interviews with parents, siblings, and other family members.

Engel and Munger's findings, in turn, help to refine a social capital approach to rights consciousness. According to the authors (in personal communications during the drafting phase of this essay), Rick and Sara both grew up in middle-class families, so the notion that there is a monolithic "middle-class" logic of child rearing or that middle-class status necessarily prepares one for the middle-class is inaccurate. It may still hold that middle-class families are *more likely* to use what Lareau and her colleagues refer to as a middle-class cultural logic. Moreover, Engel and Munger's data can be analyzed to see whether certain logics of child rearing—regardless of the class circumstances of one's family of origin—do a better or worse job at equipping a person to participate in the middle-class as an adult. For example, in adulthood, Sara was gainfully employed and earning an income as a journalist. Rick, in contrast, had not developed the skills necessary to financially support himself at any level of income. So, the authors' findings, in their challenge to common social scientific assumptions about how class engenders privilege, can help us better specify social capital theory.

An approach to rights consciousness and claiming that considers social capital would leverage what we know about rights claiming in organizations, as well. A great deal of scholarship about law and organizational imperatives shows how law can be affected by the organizational context into which (and often through which) it is deployed (Edelman, Erlanger, and Lande 1993; Edelman and Suchman 1997; Sutton et al. 1994). However, the ways in which those organizational processes translate into the mind of the individual and affect consciousness and rights activation are less well understood, and a social capital framework is one approach that could help capture that. For example, corporate diversity initiatives add a variety of nonlegal categories, such as learning style, to legally protected categories, such as disability and race (Edelman, Fuller, and Mara-Drieta 2001) and communicate strong messages about the kinds of language and communication skills that competent, upwardly mobile employees should exhibit (Berrey 2006). The cumulative message is that employees interested in scaling the corporate ladder should approach discrimination as an issue of social inclusion or exclusion, not as

a legal concern. If participants take these diversity initiatives seriously, we imagine that they might accept this particular construction of employee identity, which in turn could contribute to a distinctive orientation toward rights claiming among higher status workers in a company.

Reconsidering Sara's story in a way that accounts for organizational imperatives would mean examining the schools that she attended and their influence on her rights consciousness. Certainly, her identity was formed in part at school, and her mother's involvement in her schooling leaves no doubt that at least some administrators were aware of their legal obligations (which predate the ADA in the Individuals with Disabilities Education Act and the Rehabilitation Act). Future research on this topic might call for interviews with educators, administrators, and peers as well as organizational level data about children's schools, such as their financial resources, policies, and professional training requirements.

Social capital theory places a premium on class as a social institution. It understands the worth of social capital in economic, transactional terms: social capital ultimately is as valuable as the financial capital into which it can be converted. Engel and Munger have a nuanced perspective on class and rightly explain that higher-class status or family resources do not neatly translate into a greater or lesser likelihood of rights activation. We suspect that social capital theory provides limited analytical tools for examining intersectionality in identity or the influence of place on identity. Social capital theory also asserts that certain forms of social capital make it easier for a person to function in certain social settings, particularly mainstream settings. Engel and Munger, on the other hand, do not identify the combinations of identities and resources that make it easier for people with disabilities to function in different social settings. However, their findings do suggest that certain combinations are more beneficial to people with disabilities employed in mainstream workplaces, particularly their findings concerning respondents' sense of entitlement to work. By suggesting that future research on rights consciousness should begin to integrate the three levels of analysis that we have highlighted here—the individual, the organizational, and the institutional—possibly by using a social capital theoretical model, we do not mean to detract from the contribution of the current project. Indeed, all of the information needed for us to examine Engel and Munger's examples is included in the text itself. *Rights of Inclusion* is a major step forward and inspired us to think of ways to build upon what is now a substantial body of literature on rights consciousness and claiming.

V. CONCLUSION

Rights of Inclusion makes a fundamental contribution to law and society scholarship. Engel and Munger convincingly demonstrate that identity is a

crucial variable for understanding how people with disabilities understand themselves and their rights when faced with unfair treatment. The authors' findings illuminate the factors that shape people's perceptions of workplace obstacles, their views of rights, and their reluctance to initiate a rights claim, whether formal or informal. Engel and Munger's recursive theory of rights highlights the iterative, narrative relationship between identity and rights consciousness, showing their mutual dependence, the ways they evolve over an individual's life course, their expression in different discourses, and the influence of factors like gender and timing. Their theoretical contribution can be used to account for important differences among similarly situated people with disabilities (or other protected classes) and to interpret the variation in people's actions or inaction around inequality in a new way.

Research, such as *Rights of Inclusion*, can illustrate the value of existing analytical concepts, even as it invites new theoretical or interpretive approaches. Engel and Munger demonstrate the potential significance of studying the legal consciousness of individuals, both for identifying and explaining actual patterns in the use of law and for revealing the invisible power of law's hegemony. In the context of contemporary American disability law, the hegemonic version of civil rights law discourages and disparages the use of rights even as it proclaims their existence. Thus, the message is mixed: people with disabilities are told they have the right to be included, but discourses of the market, religion, and anti-affirmative action racial animosity discourage them from using legal channels to resolve problems at work or in school.

At the same time, the methodological contributions and theoretical innovations contained in *Rights of Inclusion* can be extended by scholarship that links analyses of individuals' identities and rights consciousness with analyses of how organizations and institutions, such as race, class, and gender, systematically structure the conditions under which people understand and take action around their rights. The field of law and society, particularly research on legal consciousness, would benefit from studies that connect these various levels of analysis. There are a number of possible analytic approaches, and here we have begun to explore social capital theory as a flexible yet powerful framework for making these connections.

REFERENCES

- Albiston, Catherine R. 2001. *The Institutional Context of Civil Rights: Mobilizing the Family and Medical Leave Act in the Courts and in the Workplace*. Ph.D. diss., Jurisprudence and Social Policy, University of California, Berkeley, CA.
- . 2005. Bargaining in the Shadow of Social Institutions: Competing Discourses and Social Change in Workplace Mobilization of Civil Rights. *Law & Society Review* 39:11–49.
- Becker, Howard S. 1966. Introduction. *The Jack-Roller*, by Clifford Shaw. Chicago: University of Chicago Press.

- Berrey, Ellen. 2006. The Power of Diversity: Organizational Discourses and Practices in a Neighborhood, a University, and a Corporation. Paper presented at the 2006 annual conference of the American Sociological Association.
- Bourdieu, Pierre. 1977. *Outline of a Theory of Practice*. Cambridge: Cambridge University Press.
- . 1986. The Forms of Capital. In *Handbook of Theory and Research for the Sociology of Education*, edited by John Richardson. New York: Greenwood Press.
- Bourdieu, Pierre, and Loic Wacquant. 1992. *An Invitation to Reflexive Sociology*. Chicago: University of Chicago Press.
- Bumiller, Kristin. 1988. *The Civil Rights Society: The Social Construction of Victims*. Baltimore: Johns Hopkins University Press.
- Burke, Thomas F. 2002. *Lawyers, Lawsuits, and Legal Rights*. Berkeley: University of California Press.
- Burke, Tom. 2003. How Do Rights Work? The Case of the Americans with Disabilities Act. Paper presented at *Rights and Realities: Legal and Social Scientific Approaches to Employment Discrimination*, Stanford Law School.
- Cole, Michael, Sheila R. Cole, and Cynthia Lightfoot. 2004. *The Development of Children*, 5th ed. New York: Worth Publishers.
- Chorost, Michael. 2005. *Rebuilt: How Becoming Part Computer Made Me More Human*. New York: Houghton Mifflin Co.
- Curran, Barbara A. 1977. *The Legal Needs of the Public: The Final Report of a National Survey*. Chicago: American Bar Foundation.
- di Leonardo, Micaela. 1998. *Exotics at Home: Anthropologies, Others, American Modernity*. Chicago: University of Chicago Press.
- Edelman, Lauren B., Howard S. Erlanger, and John Lande. 1993. Internal Dispute Resolution: The Transformation of Civil Rights in the Workplace. *Law & Society Review* 27:497–534.
- Edelman, Lauren B., Sally Riggs Fuller, and Iona Mara-Drieta. 2001. Diversity Rhetoric and the Managerialization of Law. *American Journal of Sociology* 106:1589–1641.
- Edelman, Lauren B., and Mark C. Suchman. 1997. The Legal Environments of Organizations. *Annual Review of Sociology* 23:479–515.
- Engel, David M., and Frank W. Munger. 2003. *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities*. Chicago: University of Chicago Press.
- Ewick, Patricia, and Susan Silbey. 1992. Conformity, Contestation, and Resistance: An Account of Legal Consciousness. *New England Law Review* 26:731–49.
- Ewick, Patricia, and Susan S. Silbey. 1998. *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press.
- Fiske, Susan T., A. J. Cuddy, P. Glick, and J. Xu. 2002. A Model of (Often Mixed) Stereotype Content: Competence and Warmth Respectively Follow from Perceived Status and Competition. *Journal of Personality and Social Psychology* 82:878–902.
- Fleury-Steiner, Benjamin. 2002. Narratives of the Death Sentence: Toward a Theory of Legal Narrativity. *Law & Society Review* 36:549–76.
- Fleury-Steiner, Ben, and Laura Beth Nielsen. 2006. A Constitutive Perspective of Rights. In *The New Civil Rights Research: A Constitutive Approach*, ed. Ben Fleury-Steiner and Laura Beth Nielsen. Williston, VT: Dartmouth/Ashgate Press.
- Galanter, Marc S. 1983. Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society. *UCLA Law Review* 31:4–71.
- Ghaziani, Amin. 2004. Anticipatory and Actualized Identities: A Cultural Analysis of the Transition from AIDS Disability to Work. *Sociological Quarterly* 45:273–301.
- Hagan, John, and Bill McCarthy. 1997. *Mean Streets: Youth Crime and Homelessness*. New York: Cambridge University Press.

- Harrington, Christine B., and Barbara Yngvesson. 1990. Interpretive Sociolegal Research. *Law & Social Inquiry* 15:135–48.
- Harris, Angela P. 1990. Race and Essentialism in Feminist Legal Theory. *Stanford Law Review* 42:581–616.
- Heyer, Katharina. 2007. A Disability Lens on Sociolegal Research: Reading *Rights of Inclusion* from a Disability Studies Perspective. *Law & Social Inquiry* 32 (1):261–93.
- Horvat, Erin McNamara, Elliot B. Weininger, and Annette Lareau. 2003. From Social Ties to Social Capital: Class Differences in the Relations between Schools and Parent Networks. *American Educational Research Journal* 40 (2):319–351.
- Kaiser, Cheryl R., and C. T. Miller. 2001. Stop Complaining! The Social Costs of Making Attributions to Discrimination. *Personality and Social Psychology Bulletin* 27:254–63.
- . 2003. Derogating the Victim: The Interpersonal Consequences of Blaming Events on Discrimination. *Group Processes and Intergroup Relations* 6:227–37.
- Lareau, Annette. 2002. Invisible Inequality: Social Class and Childbearing in Black Families and White Families. *American Sociological Review* 67 (5):747–76.
- Liebow, Elliot. 1995. *Tell Them Who I Am: The Lives of Homeless Women*. New York: Penguin Books.
- Major, Brenda, and Cheryl Kaiser. 2005. Perceiving and Claiming Discrimination. In *Handbook of Employment Discrimination Research: Rights and Realities*, ed. Laura Beth Nielsen and Robert L. Nelson. Dordrecht: The Netherlands: Springer.
- Marshall, Anna-Maria. 2003. Injustice Frames, Legality, and the Everyday Construction of Sexual Harassment. *Law & Social Inquiry* 28 (3):761–93.
- McCann, Michael. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University of Chicago Press.
- McCann, Michael, and Tracey March. 1997. Law and Everyday Forms of Resistance: A Socio-Political Assessment. *Studies in Law, Politics and Society* 15:207–36.
- Merry, Sally Engle. 1990. *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans*. Chicago: University of Chicago Press.
- Miethe, Terance, and Joyce Rothschild. 1994. Whistleblowing and the Control of Organizational Misconduct. *Sociological Inquiry* 64 (3):322–47.
- Miller, Richard E., and Austin Sarat. 1981. Grievances, Claims, and Disputes: Assessing the Adversary Culture. *Law & Society Review* 15:525–66.
- Nielsen, Laura Beth. 2000. Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment. *Law & Society Review* 34:201–36.
- . 2004. *License to Harass: Law, Hierarchy, and Offensive Public Speech*. Princeton, NJ: Princeton University Press.
- Nielsen, Laura Beth, and Robert L. Nelson. 2005a. Scaling the Pyramid: A Sociolegal Model of Employment Discrimination Litigation. In *Handbook of Employment Discrimination Research: Rights and Realities*, ed. Laura Beth Nielsen and Robert L. Nelson. Dordrecht: The Netherlands: Springer.
- . 2005b. Rights Realized? An Empirical Analysis of Employment Discrimination Litigation as a Claiming System. *Wisconsin Law Review* 2:663–711.
- Padden, Carol A., and Tom L. Humphries. 2005. *Inside Deaf Culture*. Cambridge, MA: Harvard University Press.
- Plummer, Ken. 2001. The Call of Life Stores in Ethnographic Research. In *Handbook of Ethnography*, ed. Paul Atkinson, Amanda Coffey, Sara Delamont, John Lofland, and Lyn Lofland. London: Sage Publications.
- Sarat, Austin. 1990. The Law Is All Over: Power, Resistance, and the Legal Consciousness of the Welfare Poor. *Yale Journal of Law and Humanities* 2:343–79.
- Sarat, Austin, and Thomas R. Kearns. 1993. *Law in Everyday Life*. Ann Arbor: University of Michigan Press.

- Silbey, Susan. 2005. After Legal Consciousness. *Annual Review of Law and Social Science* 1:323–68.
- Smith, Ryan. 2002. *Measuring Racial and Ethnic Discrimination*. Chicago: National Opinion Research Center, University of Chicago.
- Spelman, Elizabeth V. 1988. *Inessential Woman: Problems of Exclusion in Feminist Thought*. Boston: Beacon Press.
- Sutton, John R., Frank Dobbin, John W. Meyer, and W. Richard Scott. 1994. The Legalization of the Workplace. *American Journal of Sociology* 99:944–71.
- van Maanen, John. 1988. *Tales of the Field: On Writing Ethnography*. Chicago: University of Chicago Press.
- Wuthnow, Robert, and Marsha Witten. 1988. New Directions in the Study of Culture. *Annual Review of Sociology* 14:49–67.
- Yngvesson, Barbara. 1985. Law, Private Governance, and Continuing Relationships. *Wisconsin Law Review* 1985:623–46.