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## The Cultural Logic of Legal Collaboration: Enduring Lessons from Hopewell

Anna Offit

*Southern Methodist University, Dedman School of Law*

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# PoLAR: Political and Legal Anthropology Review

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Forum

## The Cultural Logic of Legal Collaboration: Enduring Lessons from Hopewell

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From [Festschrift for Carol Greenhouse](#)

*Anna Offit*



My ethnographic research revolves around the question of how federal prosecutors conceive of justice in the context of their everyday work.<sup>[1]</sup> This work reflects an inestimable debt to Carol J. Greenhouse, whose intellectual generosity and scholarship—particularly the timeless *Praying for Justice* (1986)—have enlivened every stage of this project. I first encountered *Praying for Justice* and its rich ethnography of a memorable town called “Hopewell” as an undergraduate in Lawrence Rosen’s “Anthropology of Law” course at Princeton. We discussed justice as a social, cultural, local process that unfolds in the practices and perceptions of people who are embedded in communities like Hopewell. It struck me as a fundamental insight then, and still resonates today, especially given the growing attention given to the *injustice* of wrongful convictions, as coercive law enforcement practices fill headlines and stoke indignation. It seems fitting to return to *Praying for Justice* and its legacy to reflect on the essential role it plays in excavating the contributions of ordinary people to the making of justice.

The federal prosecutors I studied over a five-year period from 2013–2017 frequently characterized their core professional duty as seeking the kind of justice that they believed lay-decision makers—that is, jurors—understand and desire. My fieldwork probed the implications of such an approach and, in so doing, explored the role of collective imagination and fantasy in a system that purports to revolve around the shrewd, objective analysis of facts and evidence. Readers of my work will quickly spot the critical influence of *Praying for Justice*, which not only modeled the kinds of reflexive ethnography that I sought to deploy in my study but also the emphasis on the egalitarian, collaborative, and democratic sensibilities that guide legal work in various contexts, including both Hopewell and the US Attorney’s Office.

## Analytical priorities

Ethnographic insights are bound to the historical and sociocultural circumstances of one’s fieldwork and writing. *Praying for Justice*, for instance, is in part a response to public and scholarly concerns about Americans’ alleged litigiousness. But the “people of Hopewell,” Greenhouse found, would not be caricatured. Instead, they offer a vision of legal “order” that transcends talk of “rules, disputes, sanctions, adversarial relations, or third parties” (1986, 122) to encompass religious and community commitments. In contrast to the dominant view of the time, Greenhouse’s account foregrounds local Baptists’ *avoidance* of conflict, rooted in an idiosyncratic logic linking “Jesus, the futility of disputing, and the inevitability of ultimate redress” (1986, 110).

When her interlocutors explained their faith, however, it was no academic exercise; many earnestly sought to help the anthropologist in their midst achieve salvation by recognizing and accepting Jesus. Participant observation thus demanded of Greenhouse a participatory role that was simultaneously collegial, mutually supportive, and sufficiently distant to permit critical reflection. This distance ultimately translated, as fieldwork progressed, to Greenhouse’s moving from Hopewell to a nearby city from which she commuted to conduct interviews, carry out archival research, and participate in other social activities (12). From the associated data, Greenhouse assembles an inimitable account of justice, locally-conceived, that exemplifies the capacity of ethnographic writing to create conditions from which “the world can be apprehended anew” and theory can be built from the ground up (Strathern 1988, 19; Riles 2011, 14). It reflects anthropological concerns to faithfully and respectfully capture the idiosyncrasies of individual perception while leaving open the possibility, and promise, of comparative study: this is how justice is made in Hopewell, but how is it made elsewhere?

Moving from lay churchgoers to professional lawyers, one is faced with a similar opportunity to confront and challenge conventional accounts of justice and the relationship between lay and professional legal actors. At the time of my fieldwork in a US Attorney's Office, popular accounts cast prosecutors as a monolithic group of law enforcement agents constrained by few meaningful checks on broad and coercive state power. Legal and interdisciplinary scholarship also highlighted the decline of public jury trials due to private plea bargaining. This decline was cause for great concern among various legal actors, including practitioners who wondered what justice meant within the context of a legal system where the role of the public was shrinking. In one Washington, DC symposium, for instance, New York District Attorney Cyrus Vance described the imperative to seek justice as a highly individualized and ill-defined endeavor (Offit 2012). "[W]hat doing justice means," he explained, "is entrusted to our sound conscience: we try to do what we believe is right, in every case and in all our decisions" (Vance 2012).

But, as I discovered in the field, this is only half-true. "Doing justice" is an ill-defined activity, and legal actors collaborate to imagine what it might actually mean to ordinary people—the jurors whom they rarely actually encounter but must persuade if things go to trial. Though increasingly absent from the legal process, laypeople, I found, nevertheless haunt legal work and imagination, shaping commitments to justice that still take seriously the interpretive biases and particularities of an imagined public. In exploring this phenomenon in the field, I was guided by key insights from Greenhouse's work. Among these was the importance of shifting one's focus from institutional order to collaborative *order-making*. Each trial, I noted, challenged prosecutors to think anew about the legal process, jurors, and the conditions for creating a coherent narrative through which justice could be conceived and done.

## Selective narratives

There is a second important parallel I discovered between Greenhouse's monograph and my own: prosecutors in the US Attorney's Office, like the local Baptists of Hopewell, consciously worked to avoid conflict associated with the unequal distribution of power. These findings diverge from anthropological accounts of consensus models, such as Laura Nader's work on harmony ideology, in their focus beyond logics of disputing and resolution—or conflict and conciliation (Nader 1990, 307; Blight 2009, 391). Greenhouse and I both emphasize that the core issue is the preconditions for collaboration that lay behind ideologies and institutionalized forms of dispute resolution. Greenhouse focuses on practices of omission: in Hopewell, residents sought to create conditions for sharing selectively edited stories about themselves and their community. They focus on singular moments of charity, compassion, and resolution, bracketing the difficult histories of Cherokee removal, the Civil War, and Reconstruction. This selective framing occurred in both formal accounts of the town's history and residents' life-writing and reflection. Sometimes, the significance of excising stories was not at first apparent to Greenhouse, who could only divine it with the benefit of repetition and ethnographic analysis. It was her refusal to impose monolithic analytic frames on her interlocutors' narratives and experiences that stands as a model for the historical reflexivity which countless legal anthropologists, including myself, have found to be essential for making sense of what holds people and processes together when the centripetal force of an agonistic legal system should otherwise pull them apart.

In my fieldwork, I found that the federal prosecutors' collaboration frequently involved sharing accounts—or "war stories," as they referred to them—to affirm their common experiences and professional values. The core of these stories was the imperative to "seek justice" rather than attempt to obtain convictions through prosecutions and guilty pleas—a theme echoed in published work by former state and federal prosecutors (see, for example, Bharara 2019, xiv-xv). The prosecutors sought to

legitimate this view by invoking their professional roles as representatives of and advocates for members of an imagined American community (Anderson 2006). Among themselves and with new interns, trial teams referred to themselves as “Team America,” binding themselves together by eliding difficult facts of organizational hierarchy and political difference that, like Hopewell’s untold stories, might otherwise divide them.

During trials, the legal process compelled actors to work together toward a common end. This process, though not without tension, also spawned incredible creativity, improvisation, and opportunities for imagining together what justice might look like. In some cases, they identified justice with mercy, which could mean deciding to overlook certain evidence or reassemble or substitute evidence to reduce social harm. Mercy could also mean not asking family members to testify against one another despite the legality of doing so (Offit 2019, 57) or declining to mention irrelevant but damaging evidence of a defendant’s extramarital affair. At various junctures, prosecutors confronted stark decisions to choose one or another alternative. In fact, the trial process often began with such a decision, as they had to determine if charges should be brought at all or if an indictment should be dismissed altogether.

The authority to make these decisions typically fell to an individual prosecutor, empowered as a supervisor. But they tended to choose a course of action only after conversations with colleagues, their cooperation and collaboration enabled by the process of imagining together a group of hypothetical laypeople for whom justice, evidence, and arguments would have this meaning or that meaning, this resonance or that resonance. Like the residents of Hopewell, this coming together rested upon a shared understanding of the need to craft narratives, carefully selecting pieces in response to one another and a non-present, imagined audience—jurors for prosecutors, God for the Baptists.

## Overcoming obstacles

Still, despite this emphasis on collaboration, adversarial norms pervaded the prosecutors’ activities in and out of the office. And just as the practice of imagining jurors allowed prosecutors to develop trial strategies together, it permitted them to overcome intragroup tensions.

Prosecutors framed their points of view referring constantly to imagined jurors’ perceptions that they collaboratively generated in conversation. Because prosecutors all shared common ideas about jurors as normative points of reference, they also shared an egalitarian ethos that allowed them to erase hierarchical divisions that could stifle open discussion. For example, when they prosecuted a politician for disabling message boards that constituents had used to discredit him, the prosecutors’ views were divided. Some felt the defendant’s actions stifled free expression, and others viewed the anonymous use of social media as a platform for bullying. Rather than personalize this source of disagreement, prosecutors made reference to potential jurors that the trial team might face who “could” view evidence along the lines they advanced. Imagining the jury allowed prosecutors to speak freely about *alternative* formulations of justice, holding open the possibility of changing each other’s minds.

When prosecutors referred to a jury, they were turning to a normative repertoire which included evoking ordinary citizens’ perspectives as influential reasons why federal prosecutors might decline to prosecute or modify their cases. Significantly, the imagined jury offered this resource without compelling a particular outcome in a given case. The figure of the jury offered an array of available anecdotes and possibilities for prosecutors to consider, rather than entering prosecutors’ deliberation as a set of

fixed principles or rules—”prescrib[ing] particular actions in particular contexts” (Greenhouse 1986, 82). Jurors presented prosecutors with an open and alterable vocabulary from which they could fashion contrary proposals while preserving the possibility of changing prosecutors’ minds.

In the context of both the US Attorney’s Office and Baptist community within Hopewell, lawyers’—and citizens’—commitments to erasing human authority and promoting egalitarianism involved referring to third-party figures who were elevated above one’s fellow man. In place of a religious deity, prosecutors constructed idealized jurors who could be addressed in abstract or more familiar terms depending on the expediencies of a particular case or conversation. For Hopewell Baptists, this elevated figure was Jesus. These Baptists were also able to diffuse adversarial tensions by invoking “dueling” reference to scripture to resolve disagreements. Under these circumstances, the “conflictual content of debate” could be diminished, allowing parties to “avoid the appearance of directly and personally criticizing each other” (114).

## Thick Reflexivity

How did the Baptists of Hopewell—and prosecutors of the US Attorney’s Office—generate knowledge about the decision-makers they imagined? The Baptists spoke of their histories of acute conflict, drawing on shared interpretive frames and vocabularies to diffuse untenable tensions while generating solidarity. This social process registered in the *individual* histories of Greenhouse’s research subjects, which offered various glimpses of the complex interplay between ordinary citizens’ local knowledge and how they crystallized egalitarian values in the figure of Jesus. This is where ethnographic attention to prayer narratives became crucial, as prayer created a context where personal and even negative feelings—the obstacles to collaboration—were integrated productively into public and collective practice (Greenhouse 1986, 87–91).

Prosecutors’ analog to prayer was the jury selection process, which offered a similarly explicit link, or at least the aspiration of a connection, between the idealized lay decision-maker and local knowledge that gave specificity to lawyers’ knowledge claims in the context of particular trials. Talk of jury selection often entered prosecutors’ discussions as a source of authoritative critique of evidence they might present and as a means of tethering disparate opinions to their professed goal of pursuing justice through their trials. Not all prosecutors had first-hand exposure to jurors, but even these prosecutors would invoke imagined jurors’ perspectives too. Those who lacked first-hand exposure to jurors often referenced *colleagues’* encounters with jurors—and particularly when insights from these encounters bolstered their own opinions or challenged those of recalcitrant peers. In this respect, the jury selection process allowed for prosecutors to align their personal assessments of the strength of their evidence with opinions they imputed to the citizens they imagined might be summoned to court. Expressions of egalitarianism thus inhered in the figure of Jesus (for Baptists) or the juror (for prosecutors) who served as narrative resources for unmaking surrounding social hierarchies.

Greenhouse’s contribution to techniques of historical reflexivity is significant and goes beyond her thematic attention to the cultural logic of collaboration among members of a shared community. Her work embodies her collaborative spirit as an ethnographer—both in relation to her research subjects and scholarly colleagues. With each rereading of *Praying for Justice*, I am always drawn to a particular part—the book’s preface, addressed to the people of Hopewell. Its placement is itself a powerful message: your concerns come first. It is a striking reminder that while a great ethnography is, in Greenhouse’s terms, an “unseen teacher” (1986, 18), a great ethnographer makes visible the personal debts, relationships, and commitments that sustained the collaborative work from which anthropological insight springs.



**Anna Offit**, JD, PhD, MPhil, is an Assistant Professor of Law at SMU Dedman School of Law. She joined SMU Law from New York University School of Law, where she served as a postdoctoral research fellow with the NYU Civil Jury Project. She received her JD from Georgetown University Law Center and her PhD in Anthropology from Princeton University. Her teaching and research interests span criminal law, legal ethics, comparative law, anthropology, and law and society. In her doctoral work, she applied empirical research methods to the study of prosecutorial ethics and lay participation in legal systems, and, as a Fulbright scholar to Norway, analyzed the abolition of all layperson juries in appellate criminal cases. Dr. Offit's research has been funded by the National Science Foundation, the U.S.-Norway Fulbright Foundation, the Princeton Institute for International and Regional Studies, and the Lois Roth Foundation. Her work has been published or is forthcoming in the *Northwestern University Law Review*, the *Ohio State Law Journal*, the *UC Irvine Law Review*, and the *Political and Legal Anthropology Review*, among other law review and peer-reviewed journals. She holds a secondary appointment as an Assistant Professor in SMU's Department of Anthropology.

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## NOTES

<sup>[1]</sup> I am profoundly honored and humbled to be among Carol Greenhouse's students, readers, and admirers. Carol's seminars introduced me to the vivid and transformative world of ethnography. This includes not only her incredible oeuvre but works by a multitude of legal anthropologists who have since become my intellectual interlocutors, including Beth Mertz, Susan Coutin, Sandra Cisneros, Barbara Yngvesson, Richard Wilson, Justin Richland, and Annelise Riles (to name only a few). Though I cannot do justice in this space to the breadth and depth of Carol's inimitable contributions to anthropological and adjacent studies of law, I can say without hesitation that my own learning and academic career are indebted to her brilliant scholarship and unflinching commitment to help guide my own moments of discovery with a mix of synthesis, elaboration, and excitement. Carol's gifts are many: mentorship, empathy, generosity—she represents the best of our discipline and embodies the qualities that I aspire to have as a teacher and scholar.