

Law as Code for Power and Ideology: The Use of Legal Language in Public Land Debates

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“Native people relate to rock art with our hearts... We do not view these panels as just art, but almost like a coded message that...informs our life and reality as humans.”

Malcolm Lehi, former Ute Mountain Ute Tribal Councilman

I. Introduction

In 2016, President Obama designated Bears Ears National Monument (“National Monument” or “the Monument”) to protect 1.35 million acres of land in San Juan County, Utah managed by the Bureau of Land Management and the U.S. Forest Service. The Bears Ears area is known for its high density of cultural resources such as rock art, ancient cliff dwellings, granaries, towers, ceremonial kivas and other artefacts across an impressive landscape of sandstone canyons, forested highlands, meadow mountaintops, and desert mesas.² The Proclamation recognised that these ancient sites form an integral and interconnected cultural landscape³ for contemporary tribal peoples. Local and regional Native people continue to use the land for collecting firewood, piñon nuts, and medicinal herbs and gathering materials for crafting baskets and footwear, as well as for conducting ceremonies. Other locals graze their cattle and use the land for recreation.

The designation followed nearly 80 years of tribal advocacy to protect the land, efforts that were later joined by archaeological, recreational, and environmental organisations and private individuals. A proposal was delivered to President Obama by the five tribal governments, namely – Hopi, Navajo, Ute Mountain Ute, Zuni and Ute Indian Tribe of the Uinta Ouray, to create not only a protected land status, but also to establish a new institution so that tribal knowledge and perspectives could be utilised in the co-management of the land. A collaborative approach would be carried out between the federal agencies and a newly established institution, the Bears Ears Inter-Tribal Coalition, composed of representatives from the five tribal governments. Co-management arrangements have taken form sporadically across the United States

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² William H. Doelle, ‘Bears Ears Archaeological Experts Gathering: Assessing and Looking Ahead Report’ *Archaeology Southwest and Friends of Cedar Mesa* (Report prepared by Archaeology Southwest and friends of Cedar Mesa 2017).

³ Various definitions for cultural landscape exist. One concise definition is proffered by Álvarez Munárriz Luis as “cultural areas created by members of a given culture, which serves as the setting that shapes thought, behaviour and orientation”. See, Álvarez Munárriz Luis ‘The Cultural Landscape Concept’ (2011) 6 *AIBR* 50, 63

but have generally been limited to fish and wildlife management.⁴ The Bears Ears National Monument represents the first co-management arrangement developed as a comprehensive land managing strategy for an entire expanse of federal land.⁵

The designation of the National Monument has reignited a heated, sometimes vitriolic and even confrontational, debate across Western states over who owns and controls public lands. The Trump administration in December 2017 set forth a new proclamation that rescinded portions of the National Monument and greatly reduced its existing boundaries by 85%, from 1.35 million acres to just over 200,000.

The Proclamation renamed the Monument *Shash Jáa*, the Navajo term for the area, despite its significance to over five tribal nations.⁶ The President's order also created two positions for county government representatives on the Inter-Tribal Coalition, previously a five-member body of tribal government cultural resource management officials. County Commissioners are perhaps the most outspoken opponents of monument designation. Areas removed from national monument status were in addition opened to new mineral leases within 60 days. Uranium, oil and natural gas deposits are known to exist in the area, with nearby facilities in operation. Some may suspect this move is part of the Trump administration's efforts to achieve 'American energy dominance' to replace former administrations' policy goal of energy independence.⁷

Various Anti-Monument groups have formed since the Monument's inception, including those founded by local Navajo residents, to voice their opposition and advocate for the Monument's rescission or modification. Tribal governments, Native American citizens, archaeologists, palaeontologists and recreational and environmental groups, local and national, constitute the base of the counter Pro-Monument movement. As expected, organisations involved, both pro- and anti-, speak out through online social networking sites. Social networking sites are now considered to constitute a public sphere for the debate and formulation of public opinion.⁸ This article will explore how different groups with divergent political goals

⁴ Ellen M. Donoghue, Sara A. Thompson and John C. Bliss. 'Tribal-Federal Collaboration in Resource Management' (2010) 14 *Journal of Ecological Anthropology* 1. See also, Mary Ann King, 'Co-Management or Contracting? Agreements between Native American Tribes and the U.S. National Park Service Pursuant to the 1994 Tribal Self-Governance Act' (2007) 31 *Harvard Environmental Law Review* 2. See also, Martin Nie, 'The Use of Co-Management and Protected Land-Use Designations to Protect Tribal Cultural Resources and Reserved Treaty Rights on Federal Lands' (2008) 48 *Natural Resources Journal* 3.

⁵ The closest equivalent in terms of scope is the co-management of the Canyon de Chelly National Monument between the National Park Service and the Navajo Nation, but this monument is tellingly located on tribal lands, and co-management arrangements are largely piecemeal and focused on employment opportunities.

⁶ The name of Bears Ears was originally selected because in all tribal languages of peoples that use the area the term invariably translates to "Bears Ears". Bears Ears refers to two buttes located near each other.

⁷ Timothy Cama, "Trump vows to create "American energy dominance"" *The Hill*. (Washington, D.C., 29 June 2017). <<http://thehill.com/policy/energy-environment/340135-trump-rolls-out-actions-to-boost-nuclear-fossil-fuels>> accessed 5 November 2017.

⁸ Zizi A. Papacharissi, *A Private Sphere: Democracy in a Digital Age*, (Polity Press 2010).

frame and interpret ‘protection’ of the land through use of a vernacular legal language and forms of reasoning. More broadly, I want to explore how legal ideas are disseminated and reinterpreted at a general vernacular level through power and ideology. I discuss comments on Facebook pages of four organisations: the Bears Ears Inter-Tribal Coalition, a local Anti-Monument Navajo organisation, a local Pro-Monument Navajo organisation and a conservative think tank based in Salt Lake City. Each of these organisations has played a major public role in the controversy; however, my focus is on social media platforms (i.e., comment sections) and how they are used to advance ideology and debate positions. These four organisations are the only organisations on Facebook with group pages dedicated to discussing this issue. I focus my attention on Facebook group pages because they have become an important site of public commentary on controversial issues, and I want to know how legal language is used in public debates. Additionally, one-third of Utahns are members of Facebook and so it provides a space for which real-time interaction between competing groups within public debate can occur.

Among social media platforms, Facebook is seen according to some research as the ideal location for debate, rather than the dissemination of information as is more associated with networks like Twitter. Research has further indicated that social networks provide access to news that might be more concentrated on issue-based public affairs or otherwise go unnoticed.⁹ Facebook generally is used by ordinary citizens to share material and discuss topics that are of concern or interest to them.¹⁰ Group pages, in part, on Facebook allow members to join a set of participants interested in a matter of public concern. Group pages provide members with the opportunity to more freely exchange their views and political positions than might otherwise occur on personal pages where certain social conventions of friendships and familial relations might disincentive the exchange or expression of such ideas. Group pages enable and encourage public discussion and help to overcome the risk of social isolation that could be caused by public posts on personal pages. Therefore, group pages dedicated to a topic or issue offer an appropriate and even robust space for discussion and debate on matters of public affairs among the general population.

The comment sections for these groups were coded and analysed using NVivo software to identify how competing groups use a vernacular legal language in public debate. The comment sections of each group were made into transcripts which could then be coded. A codebook was developed using a grounded theory approach.

This article approaches public lands debates from an ethnographic semiotic approach. I first provide a theoretical framework for the article, and in the sections that follow I discuss various aspects of the theory of ethnographic semiotic research. The first discusses a vernacular legality discourse as it is used by pro- and anti-

⁹ Javier Guallar, Jaume Suau, Carlos Ruiz-Caballero, Albert Sáez, Pere Masip, ‘Re-dissemination of News and Public Debate on Social Networks’ (2016) 25 *El profesional de la información* 3.

¹⁰ Sussane M. Almgren and Tobias Olsson, ‘Let’s Get Them Involved’ ...to Some Extent: Analyzing Online News Participation (2015) 1 *Social Media + Society* 2.

monument groups through social media. The subsequent section discusses the most salient points raised by these groups and how their use of legal language is framed. The final section discusses the style of speech that is used. Collectively, these sections provide the *what, why* and *how* of a vernacular legal language use.

II. Theoretical Approach

I develop here a social semiotics approach to the study of vernacular legal language use and its relation to power and political position of different interpretive communities. The meaning of language, including legal language, is attributed to power in social semiotics. Vannini explains, “[s]ocial semiotics locate the origin of meaning within the field of semiosis, or in other words, within the process of context-bound and conflict-laden interpersonal interaction.”¹¹ Interaction between interpretive communities contains various motives, goals and perspectives, and different individuals and groups have differing levels of access to power in the context of interaction (exo-semiotic contexts). Legal language use is often infused with power dynamics (e.g., judge-litigant-attorney relations) in role-bound, institutional settings (what Bourdieu calls the juridical field), but at a vernacular level legal language use concerns visions of power that index political affiliations, values and goals. As Volosinov put it: “the form of signs is conditioned above all by the social organisation of the participants involved and also by the immediate conditions of their interaction.”¹² A legal language that exists at a general vernacular level helps to understand how legal ideas and reasoning are disseminated throughout society, and may help to project the form and content of power-laden political rhetoric and the legal reforms that develop subsequently.

In social semiotics the study of power is a social process, and so particular interactions between persons may reflect the structures of socio-political domination.¹³ However, hegemony is unstable; meaning is not always affected in the ways speakers desire and meaning changes over time. New ideas may develop in advocacy campaigns to assert power, but these ideas may be challenged through legal, pragmatic or value statements. Social struggle over meaning in a particular context thus ensues and is amenable to analysis in the production of meaning. The development of contested, multiple meanings within various historical, cultural and institutional contexts is referred to as heteroglossia.¹⁴ I want to know how law, understood in this context, following Bourdieu, as a “universalizing attitude,”

¹¹ Phillip Vannini, ‘Social Semiotics and Fieldwork: Method and Analytics’ (2007) 13 *Qualitative Inquiry* 113, 115.

¹² Valentin Volosinov *Marxism and the Philosophy of Language* (Seminar Press 1973), 21.

¹³ Vannini, *supra* note 11.

¹⁴ Roland Barthes, *Mythologies* (Hill and Wang 1972); Mikhail Bakhtin, *The dialogic imagination: Four essays* (University of Texas Press 1981); Mikhail Bakhtin, *Rabelais and his world* (Indiana University Press 1984); Mikhail Bakhtin, *Speech genres and other late essays* (C. Emerson, Ed. University of Texas Press 1986); Robert Hodge and Gunther Kress, *Social semiotics* (Cornell University Press 1988); Theo Van Leeuwen, *Introducing social semiotics* (Routledge 2005); Volosinov, *supra* note 12.

becomes contested and develops variation in its meaning in social practice.¹⁵ I am interested in legal culture, not as an institutional site of power-laden roles and procedures, but as a “domain of struggle” between different interpretive communities at a general vernacular level.¹⁶ I look at ideological and political exo-semiotic contexts, affiliation with pro- and anti-monument organisations, to see how polysemic meanings related to monument status are produced, created, interpreted, and exchanged. Semiotics is not ‘pure’ theory, and so an understanding of the legal constructs used in speech about the law provides insights into the domain of political struggle about legal reform or enforcement of law. I narrow my focus by looking at discourse, semiotic functions (salience and framing,) and style, which help explain the *what*, *why*, and *how*, respectively, of semiotic resource¹⁷ use.

III. Discourse of Legality

Discourse, following Foucault, is a socially constructed body of knowledge that has material and symbolic associations through representation and mediation in social practice.¹⁸ For example, Vannini shows how a medical discourse is used by both proponents and antagonists of artificial tanning.¹⁹ Van Leeuwen explains, discourses “are versions of those practices plus the ideas and attitudes that attach to them in the contexts in which we use them.”²⁰ Discourse refers to the content of semiotic resources, and explains the what of their use. Political goals gain legitimacy and authority through legality discourses, for the law is a body of rules for governing society and resolving social conflict through a particular form of reasoning which is based on a universalising attitude.²¹ All sides of the Monument debate advocate for land protection, local well-being and a sacred view of the land, but the desired outcomes are mutually exclusive. It is the coexistence between discourses that produce the site of social struggle in regard to the Monument.²² Legality discourses enable interpretive communities to make rational arguments about their moral, aesthetic, and logical goals.

¹⁵ Pierre Bourdieu, ‘The Force of Law: Towards a Sociology of the Juridical Field’ (1987) 38 *Hastings Law Journal* 5, 814, 830-831.

¹⁶ Joe L. Kincheloe and Peter McLaren, ‘Rethinking critical theory and qualitative research’ in Norman K. Denzin and Yvonna S. Lincoln (eds), *The landscape of qualitative research* (Sage 2003), 441.

¹⁷ Signs work as resources in the sense that they can function to accomplish a variety of goals, including informative (to provide information to others), imaginative (to create a fictional universe), heuristic (to enquire about the world without and within), personal (to make oneself known in the world), interactional (to establish and maintain relationships), regulatory (to control the actions of others), and instrumental (to satisfy material needs). M.A.K. Halliday, *Language as social semiotics* (Edward Arnold 1978).

¹⁸ Michel Foucault, *Power/knowledge* (Harvester Press 1980); Van Leeuwen, *supra* note 14; Webb Keane, ‘Market, Materiality and Moral Metalanguage’ 8 *Anthropological Theory* (2008).

¹⁹ Vannini, *supra*, note 11.

²⁰ Van Leeuwen, *supra* note 14 at 104.

²¹ Bourdieu, *supra* note 15.

²² Bakhtin, 1984, *supra* note 14; Hodge & Kress, *supra* note 14.

A. Relevant legal authority

The United States Constitution refers to public lands only once in a provision referred to as the Property Clause. The Property Clause of the Constitution enumerates congressional “[p]ower to dispose of and make all needful Rules and Regulations respecting [public property.]”²³ According to the U.S. Supreme Court, this authority in the context of public land management is “without limitation”²⁴ and it has been used to uphold federal authority to retain public lands and limit certain uses on them.²⁵

The Antiquities Act of 1906²⁶ delegates to the President the authority to designate national monuments in order to provide for an immediate means to protect lands that are of high scientific, archaeological or historic significance. The delegation of authority allows for rapid protective measures to be put in place in order “to prevent imminent and irreparable harm” to lands of major significance and sidestep the laborious legislative process. Presidents typically designate sites at the end of their tenure as part of their legacy, recognising such sites as Devil’s Tower, the Statue of Liberty and the Grand Canyon. The Act, however, grants narrow authority to the President in three principal ways. The monument must meet the requisite level of significance. The size must be “confined to the smallest area compatible with proper care and management of the objects to be protected.” In addition, the delegation of authority only expressly declares the power to establish rather than modify or rescind. The latter powers are, arguably, reserved to Congress under the Federal Land Policy and Management Act of 1976.²⁷ Several lawsuits are pending on the scope of presidential authority under the law.

The Proclamations themselves made moderate change in legal status to the lands. Much of the lands that comprise the Monument were federal lands managed separately by the BLM and USFS prior to designation. The change in a national monument designation concerns principally a set of permissible activities, particularly related to mineral development. Funding for land conservation was not altered by monument designation as it is dependent on the separate congressional appropriations process.

B. Legality Discourse

Facebook users apprehend differently the limitations set forth in the Antiquities Act and its overarching purpose of protecting public lands. One group of Anti-Monument

²³ U.S. Const. art. IV, § 3, cl. 2.

²⁴ See *Kleppe v. New Mexico*, 426 U.S. 529, 539 (1976) (quoting *United States v. San Francisco*, 310 U.S. 16, 29 (1940)). See also *Ivanhoe Irrigation Dist. v. McCracken*, 357 U.S. 275, 294–295 (1958).

²⁵ *Gibson v. Chouteau*, 80 U.S. 92, 99 (1872), *U.S. v. Grimaud*, 220 U.S. 506 (1911), *Light v. U.S.* 220 U.S. 523 (1911), *Utah Power & Light Co. v. U.S.*, 243 U.S. 389, 405 (1917), *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 336 (1936).

²⁶ Pub.L. 59–209, 34 Stat. 225, 54 U.S.C. §§ 320301–320303

²⁷ Mark Squillace, Eric Biber, Nicholas S. Bryner, and Sean B. Hecht, ‘Presidents Lack the Authority to Abolish or Diminish National Monuments’ (2017) 103 *Va. L. Rev. Online* 55.

users indicate the Monument is of “immense size,” “too big” or “excessive.” This group reasons monuments generally increase the presence of looters and so a small size is necessary for effective law enforcement. Other Anti-Monument users emphasise that Ancestral Pueblo ruins do not constitute the level of necessary significance deserving of a national monument, and so complete revocation is justified. Finally, a smaller group of Anti-Monument users argue that the legal implications of monument designations are ineffective in preserving objects of significance; a monument merely has a “feel good status” and creates problems rather than resolving them. There are other, “stronger laws,” so it is argued, that can achieve the goal of protection of archaeological sites and so a monument designation is superfluous. Therefore, this final group advocates for a complete overhaul of the Antiquities Act so that states may exercise greater control and to require public input. In the alternative, an amendment is proposed to the Antiquities Act in order to exempt the State of Utah from the legislation.

Pro-Monument users focus their legal interpretation of the Antiquities Act on procedural elements and Native rights. The Trump administration’s efforts to revoke and modify the National Monument are deemed unlawful, and therefore, a lawsuit is encouraged and used as a means for fundraising. Pro-Monument users also profess that protection enables by extension the protection of religious practices of Native peoples in the region, and so continued protective land status is paramount.

The Pro- and Anti-Monument users raise unique perspectives on the Antiquities Act, but do not directly challenge one another’s interpretations. For instance, Pro-Monument users do not debate the size of the Monument through reference to the concept of “cultural landscape” as referenced in Obama’s Proclamation. The vernacular legality discourse is incomplete, and given that users pinpoint separate legal provisions, interpretive communities generally talk past one another. Each political side, however, is consistent in emphasising criminal legal concepts in its interpretations of the law. Users declare the opposing authority to their view to have “stolen” land and that violation of the law should be remedied through “imprisonment” or “jail.” Such references perhaps stem from representations of law in popular culture²⁸ or from personal indignation of the situation, or a combination of both.

In discourse about the U.S. Constitution, more interaction between Facebook users is observed. Commenters extensively debate State Rights under the Constitution. Pro-Monument users only raise one constitutional provision to support their positions – the free exercise of religion clause under the First Amendment – but this provision is not addressed by Anti-Monument users. Pro-Monument users emphasise individual rights, whereas Anti-Monument users emphasise and debate with their counterparts the structural relations of government. The Property Clause

²⁸ Peter Robson, ‘The Portrayal of the Corporate Lawyer on TV: the US and British models from L.A. Law to Trust and Suits’ (2017) 2 *Journal of the Oxford Centre for Socio-Legal Studies*.

which authorises congressional action to create and delegate authority over public lands as expressed in the Antiquities Act is not referenced by either side.

Anti-Monument Facebook users make novel interpretations of constitutional provisions to solidify their points. Anti-Monument users argue the Antiquities Act is unconstitutional by isolating certain provisions and reimagining their significance, and Pro-Monument users debate these interpretations on the basis of historical fact and pragmatism. As one Anti-Monument user stated, “it doesn't matter how many antiquities acts you pass if you want to create federal lands you need to amend the constitution.” The unconstitutionality of the Antiquities Act is raised through reference to two relatively obscure constitutional provisions: the Equal Footings doctrine²⁹ and the Enclave Clause.³⁰ Both provisions lack robust or contemporary jurisprudence, but have been reimagined in federal land ownership debates and social movements across the Western United States. Both were explicitly referenced during the “Oregon Standoff” in 2016 to challenge federal ownership of public lands.³¹

The Equal Footings doctrine concerns the standards for admission of new states into the Union of the United States. The provision was enacted in response to a debate on whether Western states, then territories, should be admitted with equal “power, dignity and authority”³² to the original thirteen states, or whether limitations might be placed on new states so as not to overpower the authority of the original thirteen. Maryland also wanted to ensure that western claims of Virginia and Georgia did not allow those states to amass greater power by consolidating those lands into their own boundaries once recognised. The provision stipulates that all newly admitted state governments have equal sovereignty to their original counterparts and therefore the new states’ sovereignty may not be abridged through imposing conditions in acts admitting them to the Union. Anti-Monument Facebook users, however, reference the doctrine for a different purpose and through the construction of a novel applicable context.

Anti-Monument users claim that relatively large amount of federal lands in Utah (i.e., 66.5%), the second highest in the nation, should be grounds for a constitutional challenge. The high percentage of federal lands protected in Utah should justify a moratorium on creation of new federal lands so as to avoid economic hardships for citizens and further reductions in the territorial expanse of state authority. Constitutional law is interpreted under a principle of torts, *res ipsa loquitur*, meaning that establishing the existence of hardship should lead to a finding of a legal violation. While much of the federal lands in question were acquired at the time of statehood through an agreement with the state under the Utah Enabling Act, these users argue that federal designations following statehood are also covered by the provision. The Equal Footings doctrine applies to the terms under which a new

²⁹ U.S. Const. art. IV, § 3, cl. 1.

³⁰ U.S. Const. art. I, § 8, cl. 17.

³¹ See, Liam Stack, ‘What We Know About the Standoff in Oregon’ *New York Times* (New York, 3 January 2016) [electronically available at:

<https://www.nytimes.com/interactive/2016/01/04/us/04oregon-listy.html>].

³² *Coyle v. Smith*, 221 U.S. 559, 560 (1911).

state is admitted, thus making the Antiquities Act and the designation of Bears Ears National Monument inconsequential, but users utilise its central thrust of co-equal sovereigns to demand greater land ownership and control for states and their citizens at the exclusion of federal and tribal governments. Such users reimagine the provision to exist within contemporary factual circumstances as a legal means to rebalance the power scales that have presumptively been weighed too heavily in favour of the federal government. One Anti-Monument user states:

“The founders set up the EQUAL FOOTING ACT this is where any future State that comes into the UNION comes in under the SAME CONDITIONS AS THE ORIGINAL THIRTEEN! The federal government is USURPING POWER IT DOES NOT HAVE. All State Senators need to stand and declare NULLIFICATION that means the States will NOT comply with the federal governments usurpation of power!”

Pro-Monument users make various statements to contest this view, arguing that the State of Utah “willingly gave up” federal land holdings at the time of statehood by referencing the Enabling Act.³³ Furthermore, Pro-Monument users emphasise the importance of the federal system of checks-and-balances in determining what is considered “unconstitutional.” As one Pro-Monument user states, “Well, has a Supreme Court ever found it to be unconstitutional? No, they have not.”

Reference to “Article 1, Section 8, Clause 17” and comments that the federal government is not permitted to own or control more than 10 acres of contiguous land raise another constitutional matter. The so-called Enclave Clause deals with the location the new nation’s capital, a place that the framers felt should be in a district that was independent of any particular state government and subject only to federal control. A plan was adopted to create a federal district no larger than 10 acres. The provision does not preclude the federal government from purchasing or holding title to other land; however, Anti-Monument Facebook users have reimaged the provision under a rigid, exacting interpretation (rather than a legal deductive and analogic) as they argue the federal government is prohibited from creating or retaining public lands in excess of 10 acres. As one user noted, “With matters of the constitution, it is All or Nothing. All or nothing. All.” Anti-Monument users exclaim that the federal government should therefore be legally required to “give the land back.”

Pro-Monument users challenge this interpretation with specific references to the terms under which Mexico ceded to the United States the area that became the territory of Utah. They note the lands were under federal control before Utah became a state and therefore there is “nothing to give back.” Pro-Monument users also make

³³ Section 3(2) of the Enabling Act of the State of Utah declares, “That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States...”

the pragmatic claim that if the federal government could not own more than 10 acres of land, it would prohibit the establishment of military bases. A Pro-Monument user states, “That’s so bogus. I guess we better close all Air Force bases. The Constitution doesn’t even allow an Air Force according to your logic.” To this claim, one Anti-Monument user, once again using an exacting interpretation of the constitution, replied with only one phrase, “Article 1, Section 8, Clause 17.”

IV. Social Media and the Salience and Framing of the Law

The dominant signs of an interpretive community are referred to as the “salience” of speech, and the way in which signs connect together is termed “framing.” Interpretive communities can be explained in terms of their conceptual frameworks, and those conceptual frameworks contain dominant concepts and networks of interconnected meaning. Salience and framing together explain the *why* of semiotic resource use. For example, when users on Facebook employ legal language they may be referring to their personal values and goals or visions for society, and so salience and framing help to explain why different groups use legal language in the ways in which they do.

The concept of **salience** simply indicates that some communicative elements are more functional (i.e., significant) than others.³⁴ Salience is indicated through points of emphasis that function to highlight an interpretive community’s dominant semiotic resources, their positions, affiliations, goals and values that motivate their speech. The following table lists the words and phrases most frequently referenced that were identified through word frequency analysis using NVivo:

Pro-Monument	Anti-Monument
American	Utah
National	Local
The people	The Navajo
Country	San Juan County
Sacred	Using
#standwithbears	#rescindthemonument
Support	Protect
Vote	Needs
Sue	Live
Greed	Roads
Money	Jobs

Framing refers to how, rather than “elements of a composition...[being] given separate identities [they are instead] represented as belonging together.”³⁵ Monument status on the Anti-Monument side is viewed alongside lifestyle, traditions,

³⁴ Vannini, *supra* note 11.

³⁵ Carey Jewitt and Rumiko Oyama, (2003) ‘Visual meaning: A social semiotic approach’ in Theo Van Leeuwen and Carey Jewitt (eds), *Handbook of Visual Analysis* (Sage 2003), 149.

wilderness, distant special interests and States' rights, and on the Pro-Monument side status is associated with economic development, law enforcement, free exercise of religion, political corruption, national identity and separation of powers. Historical contexts provide a means for framing people's opinions, values and views about monument status, for they demonstrate how overarching policy positions are situated within larger contexts, which create a starting point for deliberation on the matter at hand. Gamson and Modigliani make this point clear when they say frames are the "central organising idea or storyline that provides meaning"³⁶ or "a central organising idea for making sense of relevant events and suggesting what is at issue."³⁷

Pro-Monument users emphasise a national historical narrative, while Anti-Monument users index personal or local history to sustain their arguments. Pro-Monument users point to the general historical mistreatment of Native peoples in the United States, and particularly associate rescinding the National Monument with the history of the federal government's failure to fulfil treaty obligations with tribal nations. One Pro-Monument user stated, "A politician strikes an agreement with Native Americans. Soon after, another politician revokes that agreement - The History of America." Other Pro-Monument users place Bears Ears within a more contemporary national context, questioning whether rescinding the Monument will lead to another "major movement like at Standing Rock" with the Dakota Access Pipeline.³⁸ A legacy of broken promises for Native peoples, according to these users, could be curtailed in the present controversy.

Anti-Monument users point to personal or local history as a framing device. Personal life experience and the development of federal lands in the adjacent region are referenced as rationales for their accrued distrust. One user stated,

"I grew up in the Grand Staircase as a boy chasing cattle and being out there before any of your type of people were around where you could be out there for days and not see anyone. That's when the country was pristine and protected and free of all your so called 'protect the land for future generations' was even thought about. Since it was declared a monument under the chickenshit president Clinton all it's done is bring more people and trash that comes with it to this once sacred country."

Personal life stories of land use are referenced to highlight how the land and nearby areas were enjoyed prior to a period of federal interference. These stories emphasise the solitude and enjoyment the land once provided. The land, they reason,

³⁶ William A. Gamson and Andre Modigliani, 'The Changing Culture of Affirmative Action' in Richard G. Braungart and Margaret M. Braungart (eds) *Research in Political Sociology* (JAI Press 1987), 143.

³⁷ William A. Gamson and Andre Modigliani, 'Media Discourse and Public Opinion on Nuclear Power: A Constructionist Approach' (1989) 1 *American Journal of Sociology* 95, 1, 57.

³⁸ See, Charlie Northcott, 'Dakota Access pipeline: Is the Standing Rock movement defeated?' *BBC News* (Washington, 9 February 2017) [electronically available at: <http://www.bbc.com/news/world-us-canada-38924160>].

was once wild and enjoyed freely, but federal officials have needlessly restricted peaceful enjoyment of the land through intimidating practices. A national monument designation would embolden these officials even further to limit local use and enjoyment. One Anti-Monument user stated, “It started changing a few years ago. On one occasion I was threatened with a fine for not having a permit for too large a group. (We only had two in our party!)” A general distrust of federal policies by local Navajo communities is also mentioned, particularly regional or national historical events that had local effect. The relocation of Navajo people during the Long Walk of 1864 and forceful placement of Navajo children in boarding schools are mentioned as a basis for contemporary distrust of federal policies, the indexes of historical trauma. The selection of different historical moments allows for different kinds of individual deliberation. The contexts used are distinct based on geographic scale, national or local, the conceptual frameworks that permeate all monument-related speech. Through this kind of storytelling, monument status is framed as a remedy for past breaches of duty or as suspect and deserving of distrust because of past government action.

V. Style

Style refers to “metasigns that work by sustaining the difference and uniqueness of social agents.”³⁹ Style expresses individual feelings and social allegiances (solidarity, group identity and ideology),⁴⁰ and it works as a “marker of individual and collective identity, and as a telling characteristic of culture and subculture.”⁴¹ Irvine eloquently explains that style “crucially concerns distinctiveness; though it may characterise an individual, it does so only within a social framework; it thus depends upon social evaluation and, perhaps, aesthetics; and it interacts with ideologised representations.”⁴²

The study of style is primarily concerned with how people use semiotic resources. For example, Facebook users employ similar concepts, such as “sacredness” and “protection of the land,” but advocate very different legal and political measures to achieve those ends. In this case, style works as a marker of personal and collective political affiliations on the basis of views about the role government in people’s lives, either as a promoter of social benefit or harbinger of social ill; legal language use about public land thus is encoded with larger political ideologies. The benevolent government view rallies opponents of theft and damage and so protection and the sacredness of the land must be institutionalised through greater legal control and political attention. The draconian government view

³⁹ Vannini, *supra* note 11, at 135.

⁴⁰ Hodge and Kress, *supra* note 14, at 82.

⁴¹ Vannini, *supra* note 11, at 135.

⁴² Judith T. Irvine, “‘Style’ as Distinctiveness: the culture and ideology of linguistic differentiation” in Penelope Eckert and John R. Rickford (eds) *Style and Sociolinguistic Variation* (Cambridge University Press 2001), 18.

organises opponents of rural lifestyle change and so protection and sacredness must be preserved through limitations on government interference.

Legal language use on monument status is styled in “competing voices and competing interests”⁴³ of practice versus identity, localism versus national interest and freedom versus social care. In the words of Kress: “signs are always motivated by the producer’s ‘interest,’ and by characteristics of the object.”⁴⁴ An association, or lexicon rule, develops that connects monument revocation with ideals of local land use and monument designation with ideologies of American-ness. The object indexed is characterised as either protected land because it is managed through the force of law or protected land because it remains rural. As one Anti-Monument user stated, “Why is it that they don't think of the degradation more people using these fragile ecosystems will bring? Let the folks who know how to sustainably live in these areas continue their way of life.” The object is also indexed as sacred land that merits legal protection or sacred land that deserves to be left alone. As one Anti-Monument user stated, “This is a sacred place that a monument status only plain and simple destroys the sacredness. Leave it for public multi-use land.”

Anti-Monument Facebook users employ messages of ‘localism’ to establish their uniqueness and distinguish themselves from perceived or actual Pro-Monument views. Localism refers to comments that assert a preferential weight be given to the views and interests of local people. In this case, localism applies to statements of residents of San Juan County to continued land access and practices that existed prior to monument designation. Local rights and interests are bolstered by a claim to increased observation and knowledge of local conditions. Competing interests, it is maintained, should be weighed according to direct knowledge and experience gained through living in the area. Knowledge and experience give rise to a preferential politics of localism. The locality of interests supersedes the national significance of a national monument: local views first, then extend outward, or else the government practice should be deemed “undemocratic,” Localism is particularly acute in the case of statements regarding local Navajo people.

Anti-Monument Facebook users often profess that all local Navajo are against the Monument, and that Tribes in favour of the Monument are not, according to a common refrain, “even from Utah.” One Anti-Monument user stated, “What I've noticed over the last several years, is that local tribes were not in favour of Bears Ears while national tribes (who don't live in Utah) were in favour.” The sovereignty of the Navajo Nation extends into southern Utah, an area that borders the Bears Ears National Monument. The Tribe’s sovereignty, defined under the U.S. Constitution, treaties and Supreme Court jurisprudence, and the government-to-government relationship it enjoys with the federal government, easily gives way to a new social

⁴³ Robert Hodge and Gunther Kress (1997) ‘Social Semiotics, Style and Ideology’ in Nikolas Coupland and Adam Jaworski (eds) *Sociolinguistics* (Modern Linguistics Series. Palgrave MacMillan 1997).

⁴⁴ Gunther Kress, ‘Against arbitrariness: The Social Production of the Sign as a Foundational Issue in Critical Discourse Analysis’ (1993) 4 *Discourse and Society* 2, 169, 173.

category, “Utahn Navajos.” The views of local Navajos, under a localism politics, must take precedence over those of the tribal government, and therefore, the structural relations between the three kinds of sovereigns in the United States, federal, state, and tribal, should be secondary to local interests. The preferential treatment of local interest is justified along two grounds: a presumption of reversion to prior land use and status and an assertion of “locking up the land” by national monument designation. These two grounds assert that locals can manage the land appropriately and that a national monument would interfere with proper management and use.

Localism is often based on a presumption of reversion to prior land use and status. Anti-Monument statements assert that local residents have demonstrated their capacity to conserve and manage the land through accumulative knowledge and practices. As one Anti-Monument Facebook user reasoned, “What’s wrong with the way things are now? The grazers manage their lands well. They take care of things. Since they are the users of the land they are the best to take care of it. It impacts their bottom line.” Another Anti-Monument user stated, “People who are attached to the land are the one who can take care of this land the best. Local residents have been taken care of from their use of this land and so why would they destroy what takes care of them?” A monument, it is reasoned, would only encourage greater pedestrian traffic and subsequent adverse effects, thus creating problems that were previously non-existent or nominal. An Anti-Monument user explained,

“Unfortunately, those of us that live right next to the monument are already seeing the negative effects of increased tourism. Garbage, toilet paper and tracks left behind by people who care very little about this area. You talk about looting. What do you think a lot of those tourists take home for souvenirs?”

These comments have an interesting corollary to cost-benefit analysis, an explicit evaluation tool in public administration and business to assess alternatives in decision-making. The basic assumption of cost-benefit analysis is that things are worth doing if the benefits outweigh the costs.⁴⁵ Localism statements simply assert that a ‘no action’ alternative is the most pragmatic, fair option, and the optimal means to protect the land. However, statements of localism see only two alternatives within the wider context they evaluate: land of prior use and status or land of increased use caused by a change in status. Some Pro-Monument users retort that large-scale extractive industries have their eyes on the region, so a monument designation is a pre-emptive move against such land disturbing activities. Localism statements rectify their position through a representation of fact that again relies on prior personal and collective observation. There is, so it is argued, no known interest among industries to extract resources from the area, or else they would have already done so. As one Anti-Monument user states, “Very little of San Juan County can be and is mined for

⁴⁵ Amartya Kumar Sen, ‘The discipline of cost- benefit analysis’ (2000) 29 *Journal of Legal Studies* 2.

anything. Especially the land inside the proposed Bears Ears monument. Been there, traveled it and know what I say is true.”

Statements of localism are further styled through messages that characterise the object of a national monument. Localism relies on statements of “locking up” the land. Localism is not associated with an ontological view of localness, ‘who we are’, but with local use and practices on the land, ‘what we do’. The presumption of reversion relates to the benefits of rescinding the monument, whereas locking up the land statements explain the ungirding costs. These statements rely on a view that the National Monument is similar in legal category to a National Park. These styling statements concern why, broadly speaking, national monument designations pose risks and “take away rights and freedoms.”

The association between national monuments and National Parks asserts that locals will no longer be able to engage in customary practices, such as collecting firewood, grazing, hunting, harvesting wild plants, or visiting places that require an off-road vehicle. The Monument accordingly creates a land use boundary that prohibits these practices in absolute terms. Local perspectives conflate the National Monument, a legal designation that may, depending on the managing agency involved, be compatible with the conservation or sustainable use principle (a land use principle developed by Gifford Pinchot), with a National Park,⁴⁶ a designation based on the philosophy of preservation (a land use principle developed by John Muir) that disallows uses such as hunting, collecting forest products, etc. The Monument is managed jointly by the Bureau of Land Management⁴⁷ and U.S. Forest Service,⁴⁸ federal agencies that followed Pinchot’s conservation principle, which promote multiple use policies.⁴⁹ Localism asserts that experience on the land demonstrates a cultural ethic of conservation, and, therefore, local land use practices are superior in nature to the National Monument’s presumed preservation policies.

Pro-Monument users style their messages according to notions of American identity in order to justify their positions and challenge localism and the drawn conclusions about the costs and benefits of monument designation. American identity statements are often framed as the land “belongs to all of us,” whereas comments on localism emphasise the land should be “given back” to its rightful owners. American identity claims are based on the ideologies of American identity, U.S. federalism and their corollary in established federal policy on public lands. Federal policy currently stipulates that the federal government should retain its federal holdings and that

⁴⁶ The mission statement of NPS states, “To conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

⁴⁷ The mission statement of the BLM states, “To sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.”

⁴⁸ The mission statement of the USFS states, “To sustain the health, diversity, and productivity of the Nation’s forests and grasslands to meet the needs of present and future generations.”

⁴⁹ The Bears Ears National Monument’s management plan allowed for hunting, fishing, collection of forest products, off-road vehicle use, etc. under an existing permitting system (e.g., a firewood permit cost about \$15.00 USD/quart of firewood).

lands are held in trust for the benefit of all American people.⁵⁰ One Pro-Monument Facebook user commented, “Why is there such surprise? Don’t people believe in the USA?” The negative effects on local practices are dismissed outright, not according to the specifics of the management plan, but under the ideology of American-ness, for the land belongs to ‘us,’ too.

VI. Conclusion

Legal language use among different interpretive communities involved in Western public land debates demonstrates how people with competing interests invoke law and talk past one another in asserting their claims, goals and values. The law becomes a proxy for and is mediated through political ideology and identity as it is reimagined, asserted and debated. Legal concepts and forms of reasoning are thereby disseminated at a vernacular level, which may in turn be further adopted in legislative reform and political rhetoric.

The ‘law,’ what Bourdieu calls a universalising attitude, is not solely a function of institutional control and influence, but also social relationships and day-to-day interactions. Legal culture is, therefore, broader than the institutional settings of law, as it reaches and disseminates into general, vernacular social relations and practices – the sociolinguistics of legal implementation, or the ways in which law becomes a part of quotidian social practice.

The study of law as a matter of general social practice may help to further explore how law becomes implemented into society and help to explain why in some cases there are ‘implementation gaps’ between legal principles and daily realities, for law at a grassroots level becomes encoded with power and ideologies. Perhaps as movements such as these expand and gain momentum, law not only works from the institutions down, but from a general, vernacular level up to the institutional level. Certainly, the legal interpretations of these groups have no or little institutional effect within the courts; however, the Utah congressional delegates have recently proposed legislation to reduce the federal estate in the State of Utah by 5% in order to provide funds for public education. This article suggests that law may be a much more dynamic social process than has been previously explored in the literature.

⁵⁰ Under U.S. Common Law, the federal government holds public lands in trust for the American people. See, *Illinois Central Railroad v. Illinois*, 146 U.S. 387 (1892). It is also the established federal policy that federal lands should be retained by the federal government since the passage of the Federal Land Policy and Management Act (FLPMA) of 1976[43 U.S.C. 1701]. Sec. 102 (a)(1) of the Act states, “The Congress declares that it is the policy of the United States that the public lands be retained in Federal ownership.”