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## Everyday Life and the Constitution of Legality

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Today, there is a chasm in legal scholarship between the study of legal doctrine, located in the law schools and some parts of political science, and the study of legal behavior and practices, located primarily in the social sciences. Natural law, formalist, and realist jurisprudence, the three historically dominant perspectives, have given way to a cacophony of legal theories ranging from law and economics to feminist jurisprudence, critical race theory, and law and literature. Nonetheless, despite the contemporary pluralism in legal scholarship, there is a recurrent dualism that reinstates within this diversity the two faces of law: its inescapable facticity, its coercion and its normative, moral weight. Voluntaristic theories see the individual subject's ideas, intentions and motivations as critical variables in shaping the legal world. More deterministic, structural theories emphasize the power of society and material constraints in shaping the law as well as the behavior and beliefs of persons.

As I will try to demonstrate in this chapter, cultural analysis of the law promises not only to bridge the chasm between these two faces of the law, but also to restore the study of law to its central place within the study of society. In cultural analysis, law is recursively implicated in the construction of diverse and distant social worlds: social networks and organizations, dinner tables, hospitals, movie theaters, novels, and social movements. This approach focuses on the ways in which legality (as a structural component of society) is constituted through everyday negotiated transactions. In this conception, legality is not inserted into social situations; rather, through repeated invocations of the legal concepts and terminology, as well as through imaginative and unusual associations between legality and other social structures, the rule of law is made and recreated daily. Rather than read the law as a set of instructions for organizing social relations (so that any deviation from the recipe is interpreted as a failure to command, that perennial gap between the law on the books and the law in action), cultural analyses seek the multiple and diverse signs of law's presence, which may often include imperfect reproductions of doctrinal commands. This research pays close attention to language and discourse tracing the residues of legal concepts and meanings in everyday social transactions. As a

map of the ways in which commonplace social transactions cumulate to constitute an enduring structure, this study of the constitution of legality may serve as a model for a more general form of cultural analysis.

### THE PLACE OF LAW IN SOCIAL THEORY

Although law became marginalized as a subject within sociology and the social sciences generally, it originally had a central place in classical sociological theory. And, when law had this more central place, the theoretical conceptualization of law was more capacious and less circumscribed than that which came to predominate in twentieth century American sociological and legal scholarship. Durkheim, for example, gave considerable attention to law throughout his writings. In particular, he argued that law had become the embodiment of the collective conscience in an age of interdependence and reciprocity. Within societies with an advanced division of labor, law displaced the traditional role of religion, providing the grounds for a new civic ethic. For Durkheim, "law is the example par excellence of the social fact. It is a visible symbol of all that is essentially social" (Hunt, 1978: 65). Elaborating Durkheim's insights, and Oliver Wendell Holmes's view of the law as a great anthropological document, more recent authors claim that "the law is a fundamental framework (a skeleton someone recently called it) of all a society's forms of association and institutions. If we know the law of any society, we have an excellent outline of the nature of the social system as a whole" (Fletcher, 1981: 33, quoted in Cotterrell, 1992: 2).

For Weber too, law was a central focus of his sociological theories, the linchpin in his explanation for processes of social change and modernization. For Weber, modernity was characterized by a shift in the forms of domination (command relationships in which obedience is experienced as both voluntary and obligatory), epitomized by the rise of formal legal rationality which itself is associated with the rise of bureaucratic administration. Nonetheless, the movement toward formal legal rationality brought with it a tension, according to Weber, between the formalism and proceduralism of legal rationality and the ever more strongly pressed demands for substantive justice, first by workers' movements and subsequently by an expanding array of popular social movements.

Thus, Durkheim and Weber offered similar analyses of the forms and functions of law as both expressions of broader social formations, in particular the transformations toward modernity, and as channels for developing social sensibilities, interests, and actions. In other words, in classical social theory, the law is not simply the armed receptacle for values and priorities determined elsewhere as in the historically dominant natural law tradition; nor is the law merely a limited device of the modern state as conceived in positivist, analytical jurisprudence. It is part of the complex social totality in which it constitutes and is constituted, shapes and is shaped.

The American Pragmatists shared this orientation toward the law. In his oft quoted opening to *The Common Law* (1881), Oliver Wendell Holmes suggested what has subsequently become a cultural account of legal institutions: "The life of the law has not been logic but experience." As Holmes insisted upon the triumph of experience over logic, he promoted a realistic account of law, ultimately a pragmatic

understanding that with time has come to be interpreted in cultural terms. Like his younger admirer Dewey, Holmes used the term *experience* as a name for culture (Menand, 2001: 437). By moving the focus of jurisprudence specifically, and philosophy generally, to the exploration of culture, both Holmes and Dewey sought to resolve enduring dilemmas over the legitimacy of law's coercion and violence within an ethics of freedom and democracy.

The key to Holmes and Dewey's pragmatic, experiential and cultural orientations lay in the conception of life as an experiment. Social change – not onward or upward, but forward, and toward a future always in the making – is constant, social relations forever open to revision. In their policy recommendations they argued that social reconstruction, to be effective and sound, should be produced through open, participatory processes. The central epistemological insight, however, lay in the recognition that probabilistic reasoning could regularize the indeterminacy of individual human behavior. In other words, Holmes, Dewey, and their fellow pragmatists adopted the insights of the biological and physical scientists that chance variation at the individual level produced pattern, if not system, at the societal level. Rather than understanding law as a series of particular disputes or general rules, we could, and should, they claimed, understand law probabilistically as a cultural system.

Nonetheless, despite the centrality of law in classical sociological theory and in philosophical and legal pragmatism, the twentieth century understanding of the relationship between law and society shifted: law was dislodged from a central role in the constitution of society to a peripheral position as a technical instrument of the modern state. What law tells us *about* society became less important than what law does *to* society. Law became defined primarily in terms of the processes of creating and enforcing formal rules, as machine rather than meaning; the social study of law became a central topic for political scientists, an allied subject for criminologists and students of criminal justice, and of relatively marginal interest to sociologists generally.

The constricted view of law developed from within sociology itself, and was happily supported by the legal profession and academy. Parsons' work provides an important link among these communities through his narrow definition of law as the mechanism for maintaining system integration. Although Parsons locates law in a finely balanced and inevitably precarious role among complex sociological factors, his understanding, while not entirely instrumental, nonetheless contributed to and fed a limited, functionalist conception of law. Work deriving from Durkheim also ended up narrowing his conception of law's constitutive centrality to become merely an instrument of social policy. For law to fulfill the role Durkheim assigned it as the external symbol for the internal characteristics of social life, it was important that law "exist permanently . . . and constitute a fixed object, a constant standard which is always at hand for the observer, and which leaves no room for subjective impressions or personal observations" (Durkheim, 1982: 82). Using law as an empirical indicator of social solidarity and structure, scholars operationalized law in very concrete, specific terms. They ended up, however, documenting not the permanence, nor objectivity, of law but its particular, dense, and elusive shape. Rather than demonstrate the effectiveness of law as an integrative mechanism, as a means of dispute resolution, or as an instrument of social change, socio-legal scholars systematically documented the law's ineffectiveness and the ways in which intention and

doctrine are regularly interpreted, reshaped, and transformed in local situations. Thus, the empirical research that followed Durkheim's assertion of the centrality of law was taken as refuting both his methodological claims of law's objectivity and the implication of its centrality.

Beginning with the work of the contemporary pragmatist sociologist Philip Selznick, however, cultural analyses of law received renewed attention and energy, spawning what are now several generations of law and society scholars mapping the cultural lives of law. In his work, Selznick eschews any supernatural grounding and plays down the absolute authority of law. He suggests instead that legality is like a Weberian ideal type, which humanly made law approximates and to which it aspires. He describes legality as a socially constructed ideal, albeit an imperfectly institutionalized ideal, for limiting arbitrariness in social organizations and behavior (1959: 13). Although a product of self-reflection and systematic critique, legality is here conceived, as it was for Holmes and Dewey, as a practical norm. For Selznick, in contrast to many other jurisprudential thinkers, legality is an empirically derived concept of variable instantiation. "When a part of the law fails to meet the standards set by the ideal," Selznick writes, it is to that extent wanting in legality. It does not . . . cease to be law, however" (1961: 97).

### THE CULTURAL CONSTRUCTION OF LEGALITY

Some years ago, Patricia Ewick and I set out to understand how law managed to be experienced as a thing, a powerful, determining institution, while systematic observations revealed wide variation and contradiction. How does a social institution live in the activities of ordinary people? Because the word *law* names assorted acts, organizations, and persons, including lay as well as professional actors, encompassing a range of values and objectives much broader than those identified by idealized or narrow conceptions, law has neither the uniformity, coherence, nor autonomy that is often assumed. Yet, despite the enormous variety of forms, actions, actors, and aspirations, law seems to emerge from local interactions with the ontological integrity it claims for itself, and that legal scholars have for so long attributed to it. Specifically, we attempted to understand how legality is experienced and understood by ordinary people as they engage, avoid, or resist the law. This is sometimes referred to as the study of legal consciousness (Silbey, 2001).

As conventionally understood, however, the study of legal consciousness suffered from those same unresolved oppositions that plagued the sociology of law generally. If we adopted a notion of consciousness as determined by social forces beyond the individual (a structuralist model), the very apparently thinking and knowing subject was erased. Too determinist an account of legal action threatened to obscure the actual work people do in creating that which then comes to be observed as a legal "system." From this perspective there was no way to account for the rich interpretive work, the ideological penetrations and the inventive strategies observed in the histories and sociologies of law, as well as those related to us by the persons with whom we spoke. On the other hand, if we adopted a notion of legal consciousness that focused on individual ideas (conventionally operationalized as attitudes or opinions), we would be unable to connect people's accounts with their lived experiences, including the constraints operating within those particular locations. Treating

consciousness as a set of expressed preferences failed to offer a coherent report of the finite and limited range of options available to people in fashioning their interpretations and behaviors. More importantly, an approach focused on opinions failed to provide an explanation for changes that might and do occur. Finally, an individualistic, attitudinal conception could offer no help explaining the institutionalization, durability, and power of law over time. By emphasizing alternative wings of a dualistic conception of human life and experience, each model imagined only part of what, at least conditionally, we might describe as a process of ongoing mutual causation.

In contrast to these materialist and idealist perspectives, we developed a constitutive analysis that integrates human action and structural constraint. We abandoned any purely instrumental or functional notion of law as command, a set of devices for a variety of social purposes – devices that are all either effective or ineffective, purposes that are achieved or not. The purposes, ideals and doctrines of law, we argued, are a major part, but not the whole of the experience and representations of law, whether or not they are descriptions of operative practices. Law is part of the processes that contribute to composition of social forces; it is not merely a reflection of them. Finally, this cultural perspective rejects a conception of law as a linear aggregation of self-determining wills; rather, individual actions and desires are mediated through legal symbols and institutions.

Rejecting overly idealist or materialist conceptions, we use the word “legality” to refer to the meanings, sources of authority, and cultural practices that are recognized as legal, regardless of who employs them or for what ends. “Legality” is an analytic term rather than a socially approved state of affairs. In this rendering, people may invoke and enact legality in ways neither approved nor acknowledged by law. However, as we recognize a sense of the legal that exists independently of its institutionalized manifestations, we must also acknowledge institutionalized forms of legality. Because the designation of some actors and actions as official and others as lay is an important cultural distinction, one drawn upon and respected by the people we studied, we also retain this conceptual distinction, and use the word “law” to refer to formal institutions, actors, and actions.

We work with a notion of a reciprocal process in which actions and interpretations given by individuals to their world – and law and legal institutions as part of the lived world – become repeated, patterned, stabilized. These meanings, through repetition and dispersal, become part of the material and discursive systems that limit and constrain future meaning-making. Defining legal consciousness as *participation in the processes of social construction*, our research has focused on the ways in which local, concrete action accumulates into systemic institutions and structures (Ewick and Silbey, 1998, 2003). We document situations in which local processes recursively reproduce macrosocial structures and institutions and, at the same time, provide openings for creativity in reshaping those structures. In particular these constitutive/cultural analyses of legal consciousness describe the processes by which law contributes to the articulation of meanings and values in daily life (cf. Henry, 1983). Attention is directed to the local contests over signification within diverse and competing discourses that take place in most aspects of ordinary life including families (Merry, 1990; Yngvesson, 1993), religious communities (Greenhouse, 1986), medical care (Heimer and Staffen, 1998; Heimer, 1999), engineering (Espeland, 1998), gender, race or age discrimination (Bumiller, 1988), managing

handicapped identities (Engel and Munger, 2003) or poverty and public welfare (Sarat, 1990). In this cultural constitutive conception of legal consciousness, law does more than reflect or encode what is otherwise normatively constructed. Law enables, as well as constrains the possibilities of social interaction. Finally, as Selznick (1959) urged, these cultural analyses explore the meaning of legality and the gradations within it, looking beyond what is given and immediate to what is emergent and durable.

We claim that *legality* is a structural component of society. That is, legality consists of cultural schemas and resources that operate to define and pattern social life (Sewell, 1992). Through repeated invocations of the law, legal concepts and terminology, as well as through imaginative and unusual associations between legality and other social structures, legality is constituted through everyday actions and practices. So, legality is produced through every package of food, piece of clothing, and electrical appliance with a label warning us about its dangers and instructing us about its uses. Legality is enacted every time we park a car, deliver clothing for dry-clean, or leave an umbrella in a cloakroom, and we are informed about limited legal liabilities for loss. Newspapers, television, novels, plays, magazines and movies are saturated with legal images, while these very same cultural objects individually display their claims to copyright and participation in legality. We pay our bills because they are due; we respect our neighbors' property because it is theirs; we drive on the right side of the street because it is expected. We rarely consider, however, through what collective judgments and procedures we have defined "coming due", "theirs," or prudent driving. If we trace the source of these meanings to some legal institution or practices, the legal origin is fixed so far away in time and place that circumstances of their invention have been long forgotten. As a result, contracts, property or traffic rules seem not only necessary but natural and inevitable parts of social life. This pervasiveness of law – its semiotic, visual, discursive profusion – is the daily constitution of legality.

If, as we argue, legality is an emergent, rather than necessary and determinate aspect of social relations, we need to figure out how the multitude of interactions that form everyday life come to assume the unity and consistency we recognize as a social structure and as a durable institution. How, one might ask, do the diverse, sometimes deviant and often repetitious, interactions of everyday life accumulate to produce structures with enough integrity and unity that social scientists believe we can trace the operation of structures through the outcomes produced? From our fieldwork, we have discovered a partial answer to this question, law and legality (see below for definitions of these terms) achieve their recognizable character, despite the diversity of actions and experiences, because individual transactions are crafted out of a limited array of what are generally available cultural schemas. We hasten to add, however, that those more limited, general schema, are not themselves eternal and immutable, but constantly in the making through local invocations and inventions.

### THE NARRATIVES OF THE LAW

From 1990 to 1993, we conducted lengthy interviews with over 430 people in a random sample of residents in four counties of New Jersey (Ewick and Silbey, 1998).

We asked these people about the circumstances of their everyday lives. We inquired about any problems, conflicts, or events that were not as they wished them to be, and how they responded to these problems. We listened in their answers for the times when they invoked the law and legal categories to make sense of these events, and the moments when they pursued other non-legal means of redress or accommodation. We were as interested in the silences – the times when law could have been a possible and appropriate response and was not mentioned – as we were in the times when law was mentioned, appropriately or not.

We began the interview by asking how long the persons had lived here, what they liked and did not like about this neighborhood, and how they were the same or different from others living here. Following this general, getting acquainted opening, we inquired about any problems or conflicts respondents had in the course of their daily interactions and relationships. The situations about which we asked were intentionally varied and comprehensive, seeking to create rather than foreclose opportunities for respondents to report diverse experiences and interpretations. We were seeking their experience and interpretations of the law and did not want to assume its place in their lives but rather discover it as it emerged in accounts of events. The list of probes included the sorts of events that are not unusual for people to define as legal problems, or to seek a legal remedy (such as vandalism, property disputes, and work-related accidents). The list also included events and situations that seem less obviously connected to traditional legal categories or remedies, such as the division of household labor, medical care, or curricular issues in schools. Although many of the situations about which we asked do not always, or often, culminate in a legal case, they all involved situations in which a person might, if they so chose, assert a legal right, entitlement, or status. The events we asked about routinely generated disputes, complaints, and cases for the legal system to process and appeared on the dockets of local courts in the state. Although most people have these experiences, most do not treat them as legal matters. We were seeking to understand just how such interpretations are made, to define an everyday event as legal or not. Thus, if a respondent claimed to have experienced a problem, we asked how our informants responded to these situations, what actions they took, and what alternatives they considered but did not pursue. We did not ask explicitly about formal legal actions or agents until the very end of the interview. We waited to see whether, where, and how the law would emerge in our respondents' accounts. The interview was specifically designed to access the actors' interpretations of legality, not to check the quality of their "legal knowledge," according to some professional judgment of what constitutes the law and legality.

Out of the thousands of individual accounts of law we collected, more than 5,900 events were described, we were able to identify three schemas, or what we sometimes refer to as publicly circulating narratives of legality, running like a braided plait through the idiosyncratic stories people told us. Each of these understandings draws on different cultural schemas; each invokes different justifications and values; each expresses different explanations – capacities and limits – for legal action; and finally, each locates legality differently in time and space and positions the speaker differently in relation to law and legality (as a supplicant, player, or resister). These dimensions – what we call normativity, constraint, capacity, and time and space of law – have proved a useful way to identify the consistencies and variations among the stories of law.

In one story, "before the law" (borrowing from Kafka's parable), legality is imagined and treated as an objective realm of disinterested action. Operating by known and fixed rules in carefully delimited spaces, the law is described as a formally ordered, rational, and hierarchical system of known rules and procedures. Respondents conceived of legality as something relatively fixed and impervious to individual action, a separate sphere from ordinary social life: discontinuous, distinctive, yet authoritative and predictable. In this account the law appears as sacred, in the Durkheimian sense of the word, meaning "set apart" from the routines of daily life. In this account, people describe the normative grounds for invoking law in terms of general, public needs and obligations. Thus, as one woman explained her refusal to take legal action when injured in an automobile accident, "I learned when I was young, in my family, that you handle these things yourself." She contrasted this unwillingness to sue when she was injured in the accident to her energy in pursuing a complaint against a supermarket chain when she tripped on a smashed banana. In the latter incident, others beside herself were threatened with injury. "Older folks, children, anyone could have been badly injured" from such lax practices, she claimed. As legality is characterized by its universal, objective norms, it is both constrained by the rules that insure that objectivity and that enable action at a remove from the agency of any individual. In the words of another respondent, the courts can "handle the problems of ordinary people fairly well." They are predictable, he added, "judges are generally honest in dealing with each case." Courts are expensive, he also commented, but not so much that you would not sue them if you really needed to. "You see," he explained, "I was afraid at one point when I first started going to court. I was nervous about it... It was a new experience, you know, so I was a little nervous. Court is always looked upon as this force." But with experience, this social worker lately become private detective explained to us, you discover that "it's a place you go to get justice. It is for you to get justice." Emphasizing the sense of layered organization, he added, at least "it's a good place to start."

We also heard a second story of law, a story we call "with the law." Here legality is described and played as a game, a bounded arena in which preexisting rules can be deployed and new rules invented to serve the widest range of interests and values. This account of law represents legality as an arena of competitive tactical maneuvering where the pursuit of self-interest is expected and the skillful and resourceful can make strategic gains. Rather than discontinuous from everyday life and its concerns, the law is enframed by everyday life. The boundaries thought to separate law from everyday life are understood to be relatively porous. The law as a game involves, however, a bracketing of everyday life (different rules apply; different statuses and roles operate; different resources count) but it is a bracketing that can be abandoned if need be. Respondents describe acceptance of formal legal constructions and procedures only for specified objectives and limited situations. Here respondents display less concern about the legitimacy of legal procedures than about their effectiveness for achieving desires. These stories describe a world of competitive struggles; they seem less concerned about law's power than about the power of self or others to successfully deploy and engage with the law. In contrast to the sacred face of legality, this is the profane law, the stuff of lawyer jokes, and TV movies.



Expressing a playful, gamelike conception of legality, people describe the ways in which they collect receipts, keep copies of official papers, maintain evidence for what might be needed in the future, if legal problems arise. They talk about the ultimate gamesmen, the lawyers, and the essential necessity of experience and resources for playing the game well. One man described his journey from naive to experienced gamesman. He described an incident in which he lost a legal dispute with a former employer over a month's unpaid wages. He had been hired by a consulting firm and had been instructed, he claimed, to be available for contracting out. During the two months, he was never given any work and was never contracted out. When he did not receive compensation for the second month, having been paid for the first, he complained to the state department of labor, which initiated an investigation. After a year, the case ended up in court. He lost. He interpreted his loss, however, to his lack of knowledge and experience, from not knowing "how to go about these things." He attributed his defeat to his failure to document his claim and to act expeditiously. "I lost the case because I didn't have a way to prove my claim because all the employment records were kept by the company... The only thing I had was the offer of employment by the consulting company, you know, that was the only thing that I had... So it was my word against his and I lost... I think my mistake was that I waited too long... when they were telling me that your check was in the mail. I should have been more adamant, and up front and I should have requested immediately my salary." He summed up this particular story by observing, "No, I was not ready. I mean I didn't have a good chance, I think that's why I lost."

In contrast to this story of early failure, he later described his growing expertise and more regular legal successes that illustrated his acquired skill in engaging the law to manage his relationships. Underwriting this skill was an emerging understanding of bureaucracy, an understanding that would instruct him in how to behave in relation to the law. Recognizing the futility of changing this pervasive feature of modern societies, he accepted the necessity of learning how to survive while working with it. He came to understand that people who work in bureaucracies have very limited interests. He learned to use these operating constraints to achieve his own ends. "Well, what I'm trying to tell you is, you see what the requirements are, and you try to find out what they're looking for, and then you try to go about these requirements and see how you can satisfy them. Because that's what a bureaucrat really does, you know. He looks at the requirements, or whatever the law specifies, and then if you meet these requirements, you have a good chance... My experience is that if you have a case... documented in a very precise way, then the law can, you can use that law in your favor." He summarized this particular understanding, saying, "That's another way of looking at the system, you know, identifying the right loopholes... It's amazing what things can be done and cannot be done with... within the law." The account of legality as game playing is not orthogonal to the notion of the objective, disinterested rule constrained and enabled system of the first story. It merely emphasizes the room within the system for intervention, agency, and the role of inequality. A third conception, however, acknowledges both the first two accounts of law and denies their persuasiveness, or their dominance.

In a third narrative, law is presented as a product of unequal power. Rather than being objective and fair, legality is understood to be arbitrary and capricious. Unwilling to stand before the law, and without the resources to play with the law,

people often act against the law, employing ruses, tricks, and subterfuges to evade or appropriate law's power. People revealed their sense of being up against the law when they described themselves as being unable to either maintain the law's distance from their everyday lives or unable to play by its rules. Importantly, in this third construction, people were not describing illegalities as much as activities for which the law, or official organizations, had not yet taken official notice. The actions were indecipherable by the operating rules of the organizations. In these accounts, law is arbitrary but not unconstrained. The features of modern rational law, those features emphasized in the first and second accounts – its size, visibility, the fact that it organizes the actions of many persons, occupies space, and monopolizes time – represent to many persons constraints on the law's ability to act. Mired in formal procedure, captured by bureaucratic structures and remote from the real concerns of citizens, the law is often unable to effectively resolve disputes, recognize truth, or respond to injustice.

One woman told us what dozens of other respondents also reported. When her children's cars were broken into, she did not claim compensation from her insurer. Although she reported the incidents to the police, she did not expect much from them because "they have so many other problems. . . . We didn't, we don't, report anything to the insurance company unless it is something really major because we're afraid that our insurance rates will go up. My daughter's bill was \$900 and my son's was \$400. It is easier to absorb the cost." According to this woman, neither the police nor the insurance company can fully protect her. The police cannot protect or redeem her property, and she feels that she cannot jeopardize her insurance by seeking compensation for these smaller injuries and losses when she fully expects bigger ones in the future. This account conveys a picture of two giant organizations (law and insurance), which, despite their power, fail her. Because the legal system is large and cumbersome, minor disputes and losses often cannot pass the boundary conditions for cost effective action. Precisely because her problems fell within – rather than outside – these institutionalized domains, her loss appears insignificant. Another respondent echoed this description of an unwieldy giant: "I wouldn't go through the system, cause I think that you get hung; I don't trust it at all. I have learned to trust me, period. . . . I wouldn't put myself in the hands of the law. It works nice on paper, you know. . . . But a paper law, from what I've seen doesn't work."

Given the pervasive authority of law to define, organize, and violate the lives of individuals, it is not surprising that many persons described themselves caught within a foreign and powerful system against which they resisted. In these moments, rather than understanding legality as an arena of transcendent authority to which one defers, it is described as an ascendant power to which one conforms. Rather than perceiving legality as a game one plays in order to seek one's interests and values, people described legality as a net in which they are trapped and within which they struggle for freedom. Rather than apprehending the law as distant from and incommensurate with mundane affairs, or as operating alongside and simultaneously with everyday life, at moments when people express a resistant consciousness, they experience legality as palpably present, substitutive of its 'here and nowness' for all other experiences of law, limiting movement, and curtailing meaning and action. Thus, in plotting to remake an unfair situation "as it stands" (Dewey, 1981), these accounts of law described its power and the possibilities for escaping it.

Specifically, each story of this third conception of legality recounted the way in which an aspect of social structure (e.g., role, rule, hierarchy) was deployed to achieve a momentary reversal of the more probable and expected outcome of the legal transaction. Roles are reversed when a man pretends to be a woman and gets rapid response from the police when dozens of earlier calls failed, or a young woman brings her mother to the police for child neglect through drunk driving. Hierarchy is inverted when a consumer skips over layers of bureaucratic processing to complain to the CEO of a corporation. By describing the inversions of social structure to achieve a momentary reversal of legal authority, this third story of law reveals the tellers' consciousness of how opportunities and constraints are embedded in the normally taken for granted structures of social action. Moreover, the stories make claims not just about the structures of social action and the possibility of resistance, but also about the justice and morality of resistance to some forms of legal authority (Ewick and Silbey, 2003).

While the three stories we observed woven in and among our respondents' accounts of law can be analytically distinguished from each other, in operation they cannot be separated as one constitutes and enables the other. These are not three separate narratives. It is as an ensemble, woven together, that the several accounts of legality create a durable structure while providing the potential for variation and change. The structure of legality is constituted by multiple schemas, recursively composed of both normative aspirations and grounded understandings of practical action, God and gimmick, sacred and profane.

We surmise that legality's durability and strength (as a structure of social action) derives directly from this schematic complexity in popular consciousness. We believe that legality is actually strengthened by the oppositions that exist within and among the narratives. For instance, challenges to legality's authority for being only a game can be rebutted (explicitly or implicitly) by invoking legality's reified, transcendent purposes. Similarly, dismissals of law for being irrelevant to ordinary people and mundane matters – only a professional and reified realm of abstract reasoning – can be countered by references to law's gamelike possibilities.

To state the matter differently, legality is much weaker and more vulnerable where it is more singularly conceived. If legality were ideologically consistent, it would be quite fragile. Either way – as solely god or entirely a gimmick – it would eventually self-destruct. For instance, if the only thing people knew about the law was its profane face of crafty lawyers and outrageous tort cases, it would be difficult to sustain allegiance and support necessary for legal authority. Conversely, a law unleavened by familiarity and even the cynicism it breeds would in time truly become irrelevant.

The various, diverse, sometimes deviant and often repetitious transactions of everyday life accumulate to produce the consistency we recognize as law because, despite the diversity of situations and interactions, there are a relatively limited number of circulating scripts or narratives of legality. Each of these understandings draws on different cultural schema with different justifications and values, explanations for law's capacities and limits, and finally, each locates legality differently in time and space. Each of these publicly circulating narratives of law captures one of the revered and feared Janus-like faces of law. By marrying facticity and normativity in their stories of law, people discursively enact and thus sustain the rule of law.

## LESSONS FROM THE CULTURAL ANALYSES OF LAW

There are four lessons we might take away that make this cultural analysis of law relevant for other analyses of culture. First, the normative plurality described in the narrative structure of legality is common to other institutions and social structures. A similar narrative plurality is repeated in medicine (Becker and Greer, 1989; Becker et al., 1961), professional sport (Alt, 1983), science, and even love (Swidler, 2001). In each instance, the cultural phenomenon is described both in terms of normative ideals and its practical enactments (Ewick and Silbey, 2001). Neither the normative ideal nor the reality of love, medicine, sport, or science is understood to be its entirety. Thus, the analysis of the conceptual or analytic content of the narratives as well as the relationships among the different accounts may provide the beginnings of a more general theory of the structure of culture.

Second, the templates of the common narratives join social theory to everyday action and meaning. Thus, just as each of the common schema of legality emphasizes a different normative value (e.g., objectivity, availability and self-interest, power), it also provides an account of how social action is constructed within that account. The "theories" of social action consonant with the dominant value (determinacy, possibility, power) describe action within each as nonetheless both institutionally constrained and enabled. A similar narrative template, drawing upon the dimensions of constraint, capacity, normativity, time/space to describe social action, can be constructed, we believe, for many other aspects of culture, synthesizing the diverse accounts that have plagued the literatures over time, thus offering the possibility of significant theoretical and empirical advance for sociology. More specifically for law, the narratives not only mediate alternative social theories, they reproduce the variety of jurisprudential conceptions of law that have for so long competed for position as *the* account of law's power and authority.

Third, this dialectical set of narratives of legality is not simply the familiar opposition between ideal and practice, or capacity and constraint, but a variation between general accounts and the specific experiences of actors. A general, ahistorical, truth (the objective rational organization of legal thought and action) is constructed alongside, but as essentially incomparable to, particular and local practices (e.g. importance of and unequal quality of legal representation; the inaccessibility of bureaucratic agents; the violence of police). By emphasizing the normative ideal of objectivity and rationality, first-hand evidence and experience of discriminatory police, incompetent lawyers, and/or overworked bureaucrats, experience that might potentially contradict that general truth (and values) of rationality, accessibility, and objectivity is excluded as largely irrelevant. However, a durable and hegemonic conception of the rule of law is not achieved by simply removing law from everyday life through its rationalized concepts, abstractions, and definitions. At the same time that legality is construed as existing outside of everyday life in its professional realm, it is also located securely within it. Legality is different and distinct from daily life, yet commonly present. Everyday life may be rendered irrelevant by an abstracted, rational and reified conception of law, but the power and relevance of law to everyday life is affirmed by the story of law as a game.

The apparent incomparability of the two schemas or stories conceals the social organization that connects the general ideal of objective disinterested decision

making in 'before the law' to the material practices represented in the story we call 'with the law,' including the inequality of access, the mediating role of lawyers, the gamesmanship required to play. Thus, legality becomes a place where processes are fair, decisions are reasoned, and the rules are known beforehand at the same time as it is a place where justice is only partially achieved, if it is at all, where public defenders don't show up, judges act irrationally and with prejudice, and where the haves come out ahead (Kritzer and Silbey, 2003). Any singular account of the rule of law and the spread of its rationality globally (e.g., Boyle and Meyer, 1998) conceals the social organization of law by effacing the connections between the concrete particular and the transcendent general. As a consequence, power and privilege can be preserved through what appears to be the irreconcilability of the particular and the general. Moreover, because legality has this internal complexity – among and within the common narratives, legality achieves hegemony. Any particular experience can fit within the diversity of the whole. Rather than simply an idealized set of ambitions and hopes, in the face of human variation, agency, and interest, legality is observed as both an ideal as well as a space of practical action.

Fourth, we focus on the issue of contradiction among the popular schemas of law because we think that this may provide an opening for explaining change over time – a central question in sociology. If one can observe similar cultural heterogeneity and contradiction in a variety of social institutions, is it possible that competing and contradictory accounts (e.g., of medicine, sports, science, family) sustain those institutions as structures of social action. Is it possible that the coexisting alternative narratives not only create a protective covering that inures institutions against more systemic challenge, but that structures actually rely upon the articulation and polyvocality of each distinct narrative in order to persist? As a corollary, might the absence of that polyvocality, or what we might call significant imbalances in the narrative constitution of a social structure, create vulnerability and increase the likelihood of structural transformation? If we are correct about social structures relying upon the contradictory cultural renderings of experience, it should be possible to trace the cultural ascendance of institutions and social structures, such as law, to the degree of contradiction they narratively encompass. By taking a broad historical view, we should be able to trace the rise and fall of institutions to the sorts of stories people tell, or are enabled to tell by the availability of diverse, and sometimes contradictory, schemas. Thus, the final lesson is the theoretical importance of focusing on the activities and accounts of ordinary every life as a means of understanding culture and society.

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