

The Common Place of Law

Transforming Matters of Concern
into the Objects of Everyday Life¹

Susan S. Silbey, Ayn Cavicchi

In popular culture, the modern trial often stands as an icon of the rule of law. It appears as a carefully orchestrated process through which indeterminate aggregations of persons, words, stories and material are transformed into facts of intention, causality, responsibility or property. Yet the trial is merely the tip of a giant iceberg of matters that come to legal agencies for reconstruction and containment. Indeed, of the myriad activities that constitute modern life, this official, iconographic symbol of legality – the trial – is outpaced by the proliferation of expectations, norms, signs and objects in which the traces of professional and official legal work have been well hidden.

When we speak of the “rule of law,” it is because most of the iceberg of legality lies submerged within the taken-for-granted expectations of mundane life. Rather than contested and choreographed in sometimes spectacular but always statistically rare trials, law is powerful and “rules” everyday life, because its constructions are regularly uncontested and habitual. Law’s constructions and mediations have been sedimented throughout the routines of daily living, helping to make things move around in more or less clear ways, without having to invoke, display or wield their elaborate and intricate processes, especially the ultimate one, physical force.

Of course, this sedimentation and normative regulation is never complete; we do not always stay within the boundaries of legally sanctioned expectations, and the reach of law is always disputed. Thus, much of the visible iceberg of legality is about what to do in the event of a breach; some of those messes, or matters of concern, lead to litigation, and some, although very few, to trials. An iceberg throws off a calf. Importantly, however, these visible legal battles are the outliers of the law’s more routine activities.

The law is a durable and powerful human insti-

tutional invention because it invisibly suffuses our everyday life. More often than not, as we go about our daily lives, we rarely sense the presence of the law. Although law operates as an assembly for making things public and mediating matters of concern, most of the time it does so without fanfare, without contest, without notice. 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 road (in most nations) because it is prudent. We register our motor vehicles and stop at red lights. We rarely consider through what collective judgments and procedures we have defined “coming due,” “their property” and “prudent driving” or why automobiles must be registered and why traffic stops at red lights. If we trace the source of these expectations and meanings to some legal institution or practice, the origin is so far away in time and place that the matters of concern and circumstances of invention have been long forgotten. As a result of this distance, sales contracts, property and traffic rules seem to be merely efficient, natural and inevitable, facts of life.

Legal objects, signs, forms, rules and decisions are understood, however, to be a special kind of fact, a legal fact. Perhaps we should collapse the distance between the words legal and fact to write *legalfact* to emphasize the procedures of law that are the grounds for constructing facts, that is, *legalfacts*. In other words, jurisprudence recognizes at its core that its truths are created only through its particular processes and that the relationship between *legalfacts* and empirical facts is at best only approximate.

As naturalized features of modern life, the signs and objects of law are omnipresent. Through historic as well as contemporary legal decisions that are no longer actively debated, countless matters of concern have been resolved, concretized and

¹ This exhibit and portions of the commentary derive from Patricia Ewick, Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life*, University of Chicago Press, Chicago, 1998.



The museum as regulated space, 2005,
photo collage, photos: Silke Müller

objectified, literally written onto the surfaces of and figuratively built into the very structures of ordinary social relations, places and objects. Every package of food, piece of clothing and electrical appliance contains a label warning us about its dangers, instructing us about its uses and telling us whether (and where) we can complain if something goes wrong. Every time we park a car, dry-

clean clothing or leave an umbrella in a cloakroom, we are informed about limited liabilities for loss. Newspapers, television, novels, plays, magazines and movies are saturated with legal images, while these very same objects display their claims to copyright. Although much of the time legal forms go unnoticed and cognitively disappear, they are imperfectly naturalized. At any moment,

the stabilized, historical *legalfact* can reappear, perhaps becoming a matter of concern, debate, challenge or resistance. The iceberg fractures and a passing ship hits the new iceberg.

To illustrate the ways in which law publicly mediates matters of concern, we encourage visitors to the exhibit to “trace the frail conduits”² that have produced common place *legalfacts* that we encounter as familiar objects. Although the possible examples we might display are innumerable (clothing labels, warnings on food packages, copyright imprints, trademark logos, sales receipts, air line tickets), we have chosen two common institutions of modern life that are thoroughly shaped by law: the automobile and the museum space.

Museums are saturated with legality. Through trusts, bequests, incorporation and property law, the museum is a legal invention as much as an architectural, historical, artistic and craft enterprise. The staff and curators enjoy an array of employment rights that specify limits to the degrees of freedom and constraint in their relationships and transactions with the museum. The museum, in turn, in its corporate personhood is burdened with legally prescribed obligations to visitors as well as employees. We will not elaborate these various relationships and obligations here. Around the museum building, however, we are excavating the sedimented law (those frail conduits) that has constructed the museum space and contemporary patrons’ movements through that space. Alongside the *legalfacts* – of fire extinguishers, exit signs, electrical outlets, water sprinklers, facilities for handicapped access – we have displayed portions of the relevant sections of the *Verordnung des Innenministeriums über Versammlungsstätten* [Decree by the Department of the Interior on assembly sites] that mandate the creation and placement of these facilities and objects. The laws specify architectural and safety precautions for public exhibition space. With our notice boards, we are making visible and explicit that which becomes taken-for-granted practice in museum management, attendance and patronage. We have included in these displays not only examples from the relevant codes of Germany and elsewhere but also some illustrations of how aspects of the architecture and public space have been, at

different times and places, matters of active public concern. These concerns are expressed through litigation, news stories or calls for government action of some sort to address a range of issues from freedom of movement and of identity, to risks to the health and safety of individuals as well as the community at large.

The automobile, like the museum “concentrates the most astonishing degree of hyper-regulation. For drivers, a shiny new car comes embedded in a sticky web of laws and fines – not to mention a series of material needs from parking spaces and gas to oil caps designed to fit a single make and model.”³ Moreover, Jain writes, “the technology of auto mobility has defined public space”⁴ in most industrialized nations, from the nineteenth century decisions to install traffic lanes and mandate driving on the right (or the left) side of the road to the more recent allocation of designated parking spaces for handicapped persons. Just as we have exhumed the legal provenance of the exit signs, electrical wiring and fire extinguishers of the museum space, we exhibit the legal construction of the automobile with statutory labels, public dispute and concern.⁵

The construction of the car as a mobile machine is thoroughly specified, and the conformity of the particular automobile with the specifications is certified through inspections. The drivers’ and passengers’ actions and restraint are also specified by law.

When a vehicle cannot meet the legal specifications for road-worthy transportation, the law intrudes by labeling the vehicles with a universal warning sign, thereby permitting a non-conforming vehicle to travel on the roads while announcing to the world its deviance.

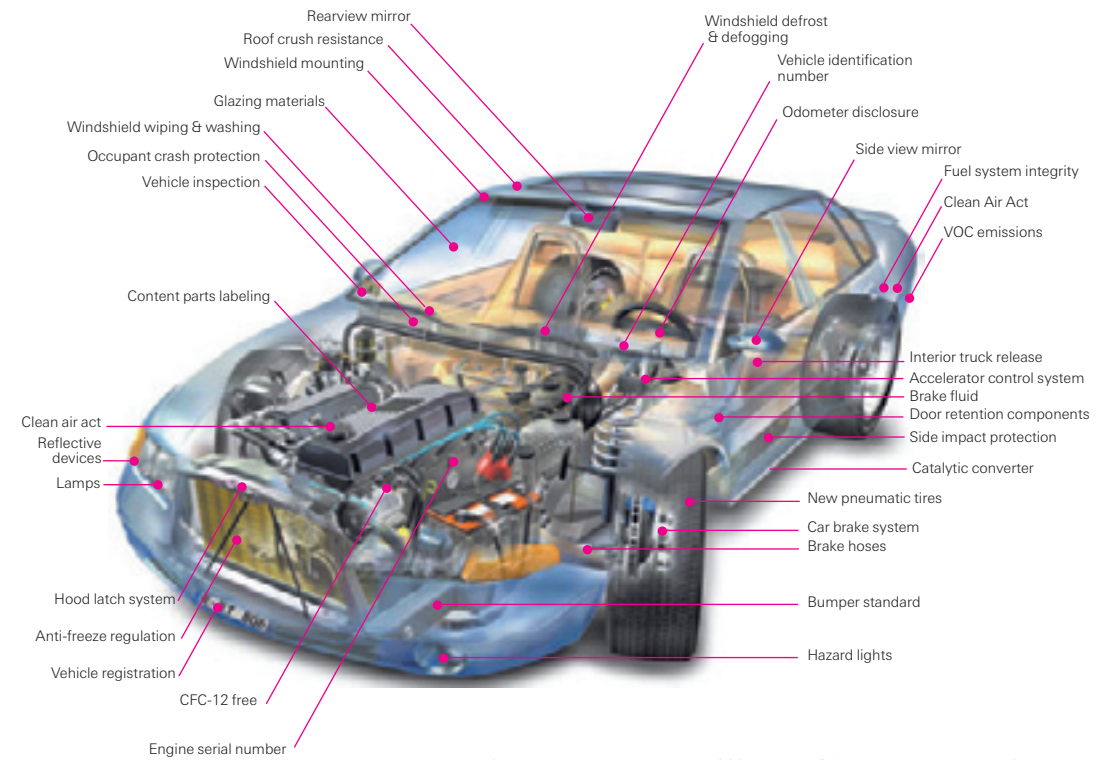
The transformation of this machine, the auto-

² See Bruno Latour, this volume, introduction.

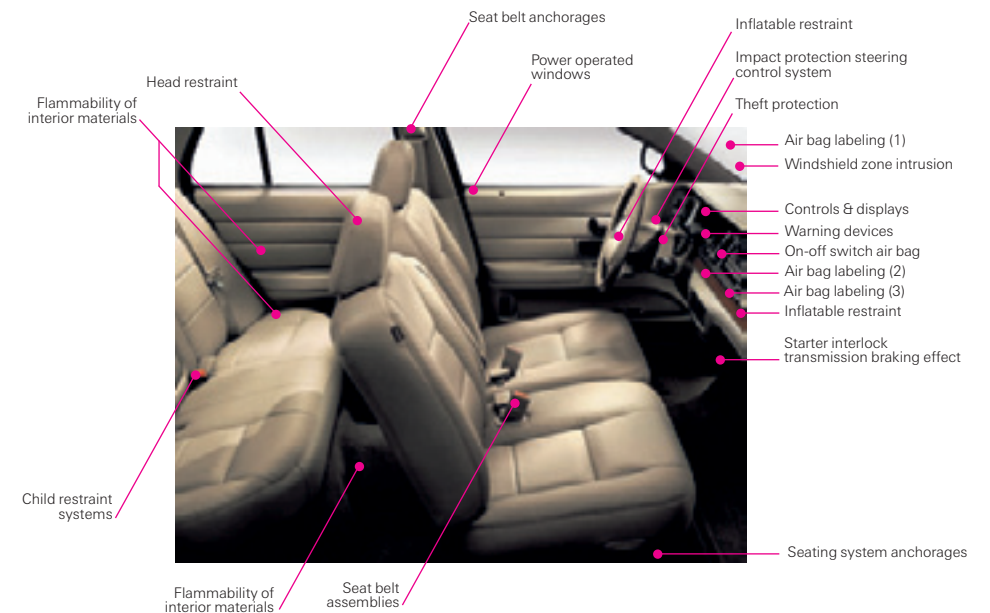
³ Sarah S. Lochlan Jain, “‘Dangerous Instrumentality’: The Bystander as Subject in Automobility,” in: *Cultural Anthropology*, 19, 1, 2004, p. 61.

⁴ Ibid.

⁵ In his classic text, *An Introduction to Legal Reasoning*, University of Chicago Press, Chicago, 1949, Edward H. Levi uses the case of *McPherson v. Buick* 217 NY 382 (1916) to exemplify what he calls the third phase of the life of the “dangerous instrument” concept in tort law. In Cardozo’s opinion in this New York State Court of Appeals case, for liability to attach, danger must be immanent in the object. But, Cardozo argues, the objects to be so classified may change over time. In *McPherson*, 1916, Cardozo writes that a defective automobile poses an immanent danger and as such becomes an inherently dangerous object.



The Legally Constructed Automobile (1), 2004, photo © Susan Silbey and Ayn Cavicchi



The Legally Constructed Automobile (2), 2004, photo © Susan Silbey and Ayn Cavicchi



Notice of failure to comply with automobile regulations, here inspection failure, 2004, photo © Susan Silbey and Ayn Cavicchi



Amish wagon, Pennsylvania, 2003, photo © Susan Silbey and Ayn Cavicchi

mobile, through licenses, titles and assorted safety requirements has been a subject of continual struggle and debate. Newspaper reports, legislative records, countless law cases attest to the public's concern about the automobile.

The connection between legality and everyday life is most explicit in the variable driving conditions over time and around the globe. A collision between a newly installed trolley car, a peddler's wagon and an automobile was a familiar scene on a San Francisco street in 1905. In 2005, the competition for public space has been won by the automobile in most European and North American cities, while it is still a lively contest in much of Asia. Bicycle riders and pedestrians, however, have begun a counter campaign to recapture the public roads. The ability of law to organize everyday life, and without appearing prominently on the scene, is illustrated powerfully in a highway traffic jam, or what in France is called a *bouchon*, a blockage or cork in the road. Sitting in traffic on an expressway, for example at the entrance to a tunnel or at a tollbooth, one observes an extraordinary degree of compliance, and perhaps complacency, among the drivers in what is usually a frustrating situation. The traffic jam and the appropriation of parking spots, which we will describe below, symbolize the degree to which contemporary society

is suffused with legality. The cars are registered and the driver's licenses issued according to law; the traffic moves in lanes whose size, construction, and marking are determined by law. Cars are sorted into lanes according to instructions inscribed on various signs: one lane for taxis, another for personal cars, yet another for "high occupancy cars". As cars crawl toward and approach a tollbooth, the drivers' hands emerge offering the stipulated toll. Having paid the toll, their cars move on.

There is very little that happens on the road that has not at some time been specified by law. And, although the millions of drivers who travel along the streets and highways follow instructions about lanes, speed, tolls, licensing of cars and themselves, this legal regulation is only rarely a matter of active contemplation and calculation. Typically we become aware of the law and our relationship to it only when the formal law – and the violence embedded in it – makes an appearance. Our pulse quickens at the sight of a police cruiser or the sound of a siren. At that moment, we scrutinize our own behavior and status in regard to the law's intensions and powers. Most of the time, legal regulation is unremarked, without consideration or challenge.

Although the law appears to be orchestrating

the crowd in a traffic jam, much is going on that is quite distant from the law as a set of behavioral rules. The *legalfacts*, the signs of law, are always mediated by social action. The very same object or *legalfact* that is the source of dispute is also a source of communion. The drivers are bound together in a legally constructed space through which they are negotiating their way, literally and morally from one moment to another. While the law seems to govern most everything in the traffic jam, there is nothing it completely or totally regulates. People do not simply observe rules about right of way. At times, they forgo their right of way to let another driver into the traffic, demonstrating their own sense of fairness or courtesy. Others blatantly violate such norms, enacting their own sense of daring or entitlement within the structure of rules defined by "the law". Paying the toll can be an opportunity to voice a grievance or, for some, to share a pleasantry. In the lanes of traffic, tollbooths and drivers, somewhere in the intersection of rules and their enactment, legality emerges in the routine of ordinary everyday life.

The automobile has not only transformed the citizen into a licensed driver, the machine into a legally constructed object, but the public spaces now are apportioned among vehicles and persons who become, as a consequence of the automobile, pedestrians with legally specified rights and obligations.

An old chair placed in a recently shoveled parking spot on a public street and two elderly gentlemen sitting in beach chairs also in a parking spot on a public street display the depth of legality in shaping the concepts, practices and understanding of everyday activities. The practice of placing an old chair on a public street to hold a parking spot reveals a deeply sedimented conception of ownership and labor that cannot be practiced or interpreted without legal concepts and cognitions. The chair placed in the parking spot on a public street, with or without a person in the chair, is understood to endow the chair's owner with use rights in the space. Unlike contracts, copyrights, traffic signs or bills of sale, which are standard markers of legality, this chair in the snow is not the direct and intentional product of professional legal work. Instead, we might view these chairs as residues of that formal legal practice.



San Francisco trolley and car on tracks, 1905, film still. ■ Although the automobile has defined contemporary urban space, its dominance emerged only recently and not universally.



Beijing, China, 2004, photo © Susan Silbey and Ayn Cavicchi

Rather than a piece of professionalized law, this is a visual image of the law from the bottom up and from outside of legal institutions. The chair in the shoveled-out parking spot signals to the neighborhood, or any would-be parker, a type of ownership. In claiming ownership, that chair often elicits the same sorts of deference and respect accorded more conventional types of property: Other drivers park elsewhere! Similarly, the violation or transgression of this property claim (removing the chair and parking in the spot) may lead to conflicts and disputes more commonly associated with property as formally defined by the legal system, by informal claims of trespass.



Most British Road Deaths Are Laid to Jaywalking

Special Correspondent to THE NEW YORK TIMES.

LONDON, Nov. 29.—An official analysis of Britain's fatal road accidents reveals that jaywalkers are mostly to blame.

Of 1,581 pedestrians killed in the first six months of the present year 461 literally walked to their deaths. The speed of automobiles was blameable in only 395 accidents, while most of the deaths were caused by cars traveling less than twenty miles an hour.

The most dangerous hour was between 3 and 6 o'clock in the afternoon. Altogether 3,225 persons were killed in the six-month period.

LOS ANGELES REGULATES ALL WHO RIDE OR WALK

Traffic of a Particularly Congested Area Moves According to an Original Plan—Pedestrians Have Many Safeguards Against Accidents

Los Angeles has made a remarkable step toward the solution of the problem of regulating traffic through the city streets by the Police Traffic Board, which Philip D. West in photograph, has been authorized to...

JAY WALKERS ARE MENACE TO MOTOR HIGHWAY SAFETY.

Every Large City Trying to Reduce Accidents by Teaching Pedestrians Common Sense Lessons of Carefulness—Ordinances Suggested to Curb It.

FIELD of jay walking which, in the aggregate, means more to show city's efficiency in judging motor safety than any other factor, is now being taken up by the city of New York. The safety was recognized in New York and will endeavor to teach every person in the spirit of common sense. Although a detailed investigation has been completed, due to the heavy safety education, especially within the last year or two, in a more systematic character by pedestrians of motor traffic.



Deputy Mayor Says Regulations Often Go Unheeded—Pedestrians Found Careless and Far From Helpful

By THEODORE SHABAD

MOSCOW, Sept. 11.—From early morning until late into the night, a steady stream of trucks speeds along Moscow's broad streets.

Trucks, often four or five abreast, change just. The swiftness of trucks and passenger cars adds a lighter note, but it is the passing flow of the...



"Pedestrian Parking" on a public street, 2004, photo © Susan Silbey and Ayn Cavicchi, photo: Michelle Taylor Lagunas



The common place of law: property claims on a public street, 2004, photo © Susan Silbey and Ayn Cavicchi

Without naming the doctrinal concepts of constructive or adverse possession, the person placing the chair in a clearing among mounds of snow implicitly invokes conventional and historic justifications for property on the basis of investment and labor, just those arguments that underwrote the emergence of liberal law in the seventeenth century. The two old men's seats in the parking spot and the heavy labor of shoveling out the mounds of snow are understood to endow the chairs' owners with use rights in those spaces. By placing a chair in a public parking place, the formal legal idea of private property is appropriated along with many of the rights associated with it, such as exclusive use. Yet, property here is construed very differently than its doctrinal sense demands or would allow. Even without registered deeds and

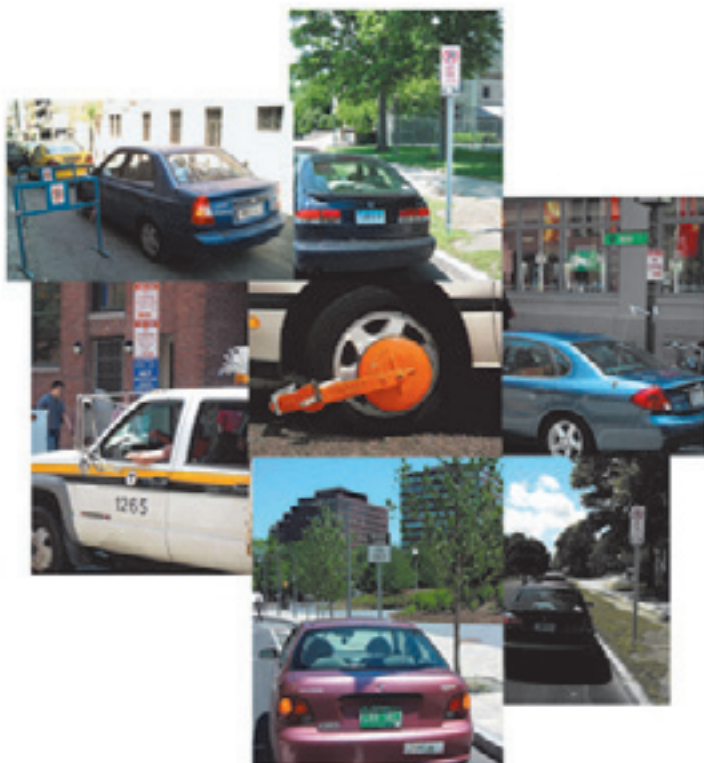
titles, stamps and seals, the law is absent in its formal professional sense and yet continually and morally present in organizing social relations on this city street around this particular construction of the automobile, the parking space and private property.

The public street becomes a forum, an agora with a particular "set of procedures, its definition of freedom and domination, its ways of bringing together those who are concerned [...] and what concerns them".⁶ The *legalfacts* of public space, the truth of who owns and who can use this space, for what and for how long, no longer commands unremarked deference. Whether others defer or contest the claims to the parking spots, the *legalfacts* now demand collective reconfirmation of their matter-of-factness.

Public concern about the capacities, rights and obligations of pedestrians, assortment of newspaper clippings, 1924-1961, © New York Times



Public spaces of the automobile, 2004, photo collage, photo © Susan Silbey and Ayn Cavicchi



Parking violations, 2004, photo collage, photo © Susan Silbey and Ayn Cavicchi



Where to park the car and where NOT to park the car, photo collage, 2004, photo © Susan Silbey and Ayn Cavicchi