Legality and Community

On the Intellectual Legacy of Philip Selznick

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pensions try to protect workers from arbitrary action by their employers. OSHA aims at guaranteeing a safe workplace (not always successfully).

All of this shifts the balance; the larger society is responsible for guaranteeing legality, rather than the individual factory, company, university, or institution. Community and consensus may take a beating, but there is a gain in substantive rights. Not that large institutions are less legalized than before. Partly because of the influence of the larger society, they are in fact highly legalized; they have more and more grievance procedures and ombudsmen and so on. Some of this looks more like adversarial legalism than it does like Selznick's legality; but I wonder if there is really a choice. The "legalism" comes from the American legal culture and the failure of some American institutions, but the institutions have failed at least in part because of massive historical changes in the organization of work and of the work place.

If the larger society is litigious (assuming that it is), if it suffers from too much law and too much lawyering, the reason may be that so vast and heterogeneous a country simply cannot generate the kind of community or consensus that Selznick's vision of legality requires. A noble ideal at the level of the shop floor, then, will inevitably founder at the level of the great society.

Chapter 9

The Structure of Legality:
The Cultural Contradictions of Social Institutions

Patricia Ewick and Susan S. Silbey[1]

Introduction

In most of his work, from the canonical statement in *Law, Society, and Industrial Justice*[2] to his latest ruminations on the future of post-Communist societies,[3] Philip Selznick uses the term legality as a synonym for the "rule of law." He describes legality as an ideal, albeit an imperfectly institutionalized ideal, for limiting arbitrariness in legal rules and behavior.[4] Although a product of self-reflection and systematic critique, legality is a practical norm. For Selznick, as opposed to many jurisprudential thinkers, legality is also 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."[5] The task for sociologists of law, at this mature stage in the development of the field, Selznick urges, "is to explore the meaning of legality itself . . . the quality of legality and gradations within it."[6]

In this chapter, we try to build on Selznick's pioneering work and take up his challenge to explore the meaning of legality as an empirically observable phenomenon. In this work, we push the boundaries of inquiry beyond the activities of official legal actors to the lives and activities of ordinary Americans, to excavate the sources of its durability and power as both an ideal and as social action. Specifically, we use the concept of legality to distinguish the social institution of law (actors and organizations that make and apply law) from a structure of social action constituted by interpretive schemas and human and material resources. As a social structure, legality is an emergent property, an aspect or coloring of interaction, rather than a set of particular actions and roles or a singular ideal and aspiration. Although Selznick assigned priority among legality's component ideals to the restraint of official power, he recognized "within the rule of law a pluralist sensibility."[7] We pursue this pluralism within legality with considerable seriousness. When theorized as a social structure, legality incorporates multiple, sometimes contradictory, normative claims. The plurality of normative claims sustains rather than undermines legality's power and durability.

To illustrate what we think is the dynamic quality of this theory of legality, we have been looking at other familiar institutions to see whether what we have observed and analyzed with respect to legality is applicable to those institutions as well. Thus, we place our model of legality within a more general theory of social structures as complexes of contradictory narratives and multiple normativity. We hope to suggest the plausibility of this cultural theory of structure by identifying similar patterns of representation for medicine, religion, and sport, as well as legality. In doing so, we hope to make progress on two central problems in social theory: how to merge our observations of microlevel interactions with models of macrolevel social structures and how to explain change over time.

Cultural Analysis of Legality

Because the word *law* names assorted social acts, organizations, and persons, including lay as well as professional actors, and encompasses a range of values and objectives much broader than those identified by idealized conceptions of legality, law has neither the uniformity, coherence, nor autonomy that is often assumed. Yet, despite the enormous variety of forms, actions, actors, and aspira-

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[5]Philip Selznick, "Sociology and Natural Law," *Natural Law Forum* (1961): 97.

[6]Philip Selznick, "The Sociology of Law," in *Sociology Today,* ed. Robert K. Merton, Leonard Broom, and Leonard S. Cottrell, Jr. (New York: Basic Books, 1959), 124.

[7]Selznick, "Legal Cultures," 23.

tions, law seems to emerge from local settings and interactions with the ontological integrity it claims for itself and that legal scholars have for so long attributed to it.

Some years ago, we set out to understand how law managed to do this, that is, to discover the presence and consequences of law in social relations. How does a social institution live in the activities of ordinary people? Specifically, we attempted to understand how legality is experienced and understood by ordinary people as they engage, avoid, or resist the law and legal meanings. This is the study of legal consciousness.

As conventionally studied, analyses of legal consciousness suffer from unresolved oppositions that limit explanatory capacity. If we adopt a notion of consciousness as determined by social forces beyond the individual (a materialist or structuralist model), the very apparently thinking and knowing subject is erased. Too determinist an account of legal action threatens to obscure the actual work people do in creating that which is recognized as a legal "system." From this perspective there is no way to account for the rich interpretive work, the ideological penetrations, and the inventive strategies people describe in their stories about law. On the other hand, if we adopt a notion of legal consciousness that focuses on individual ideas (as attitudes or opinions), we would be unable to connect people's actions and accounts with their lived experiences, including the constraints operating within those particular locations. Treating consciousness as if it were a set of expressed preferences or tastes fails 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 attitudes fails to provide an explanation for changes that might and do occur, individually and collectively, over time. By emphasizing alternative wings of a dualistic conception of human life and experience, each model imagines only part of what, at least provisionally, we might describe as a process of ongoing mutual causation.

In contrast to these materialist and idealist perspectives, we develop a cultural analysis that integrates human action and structural constraint. We abandon any simple deterministic or functionalist view of either individual action or social structure. Instead, 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 and these stabilized patterns become part of the meaning system deployed by as well as constraining the individual.

This cultural (or constitutive) perspective rejects a 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. In this theory, the purposes and ideals of law are a major part of the experience and representations of law, whether or not they are descriptions of operative practices. In this conception law is not merely an epi-phenomenon

produced by deeper structural forces. Law is part of the processes that actively contribute to the composition of social forces, not merely a reflection of them. Finally, this cultural perspective rejects a purely individualistic or subjective conception of law as a linear aggregation of individual actions. The law is not the consequence of independently self-determining individuals who collect their wills for mutually self-interested ends. Rather, individual actions, wills, desires, are constituted (in part) through legal symbols, institutions.

Beginning from what we think is a mediating position between overly idealist and overly 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 state of affairs sanctified by law.* In this rendering, people may invoke and enact legality in ways neither approved nor acknowledged by state law. However, if 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 retain this conceptual distinction and use the word *law* to refer to formal institutions, actors, and actions.

In defining legality analytically rather than as the legal system insists (as that which it sanctifies), we are moving in a trajectory already marked out by prior research. Lawrence Friedman, for example, distinguished lawyer's law ("ideas, problems, or situations or interest to legal theorists") from the law or legal system that includes, in his account, both legal acts ("rules and regulations of the modern state, the processes of administrative governance, police behavior") and legal behavior ("including the work of lawyers in their offices, advising clients").[3] In other words, Friedman distinguishes *official acts* of formal legal agents from the *unofficial acts* of these officials. Our conception of legality expands the compass even further to include the "ideas, problems, or situations of interest" to *unofficial actors* as they take account of, anticipate, or imagine the *official and unofficial acts of formal legal agents.*

This cultural analysis of legality draws on recent work in social theory, as well as the sociology of law. Relying on Sewell's[9] synthesis of work by Bourdieu[10] and Giddens,[11] we argue that legality is an emergent structure of so-

cial life that manifests itself in diverse places, including, but not exclusively, in formal institutional settings. Legality operates as both an interpretative framework and set of resources with which and through which the social world, including that part known as the law, is constituted. In Sewell's formulation, social structure is not an abstract set of constraints operating upon social life, but rather a repertoire of schemata and resources that emerge out of and pattern social interaction. Social structure is constituted daily through human action and discourse. Although they confront us as external and coercive, structures do not exist apart from our collective actions and thoughts as we invoke schemas to make sense of the world and deploy resources to affect people and things.

To illustrate the concept of legality as an emergent structure, consider the practice commonly observed in northeastern American cities of placing an old chair or milk crate in a parking space. Imagine a city street, with cars lined along the curbs, snow piled several feet high. Among the cars, there is a shoveled out parking spot, surrounded with masses of snow, and occupied by an old wooden chair and a milk crate. What is this phenomenon and how does it signify the meaning of legality?

We have found that during the winter months in certain neighborhoods, an old chair placed in a recently shoveled parking spot on a public street is understood to endow the chair's owner with use rights in the space. The chair signals to the neighborhood a type of ownership. In doing so, it often elicits the same sorts of deference or respect accorded more conventional types of property. That is, the neighbors park elsewhere. Similarly, the violation or transgression of this property may lead to conflicts and disputes more commonly associated with property as it is formally defined by the legal system. It may lead to claims of trespass—informal as they may be.

Unlike contracts, or copyrights, traffic signs, or bills of sale, which are standard markers of legality, the chair amidst the shoveled snow is not the direct and intentional product of professional legal work. Instead, we might view this chair as a residue of that formal legal practice. Rather than a piece of professionalized law, this is legality at work outside its formal institutional boundaries. Moreover, this may be legality in its most pervasive, powerful, and durable form.

The chair holding a parking spot in the snow illustrates how people invoke legality to fashion solutions to ordinary everyday matters. Sometimes legality ignores the formal law, sometimes legality involves direct confrontation with law, and sometimes legality involves action unrecognized by law. In this example, the chair in the shoveled out parking spot enacts legality by appropriating the formal legal idea of private property. Without registered deeds and titles, without stamps and seals, the person placing the chair in the snow nonetheless

[3]Lawrence Friedman, *Total Justice: What Americans Want from the Legal System and Why* (Boston: Beacon Press, 1985), 29.

[9]William Sewell, Jr, "A Theory of Structure: Duality, Agency, and Transformation." *American Journal of Sociology,* vol. 98, no. 1 (July 1992): 1–29.

[10]Pierre Bourdieu, *Outline of a Theory of Practice,* translated by Richard Nice (New York: Cambridge University Press, 1977).

[11]Anthony Giddens, *New Rules of Sociological Method: A Positive Critique of Interpretive Sociologies* (London: Hutchinson, 1976); *Central Problems in Social Theory: Action, Structure, and Contradiction in Social Analysis* (Berkeley: University of Califor-

nia Press, 1979); *The Constitution of Society: Outline of the Theory of Structuration* (Berkeley: University of California Press 1984).

insists on the right of private property to exclusive use. Without naming the concepts of constructive use or adverse possession, the chair implicitly invokes concepts of constructive use or adverse possession, the chair implicitly invokes conventional justifications for property on the basis of investment and labor. The chair's presence insists on certain prerogatives against the actions of uncertain others, prerogatives and actions that city ordinances may or may not recognize or prohibit.[12] Thus, the law is absent in its formal sense, and yet legality is conceptually and morally present in organizing social relations on this city street around this particular construction and invocation of the concept of private property.

The concept of *legality* needs to be understood as the analyst's tool, distinct from the actions, interpretations, formal and informal stuff of law as experienced and understood by social actors in situ. *Legality refers to the meanings associated with law,* even if the formal law or official legal agents would not approve or accept those associations. It is a name for that which native actors, so to speak, understand as part of law whether it "really" (doctrinally or organizationally) is so associated. By recognizing legality beyond the boundaries of formal doctrine, official action, or the unofficial action of officials, we do not want, inadvertently, to collapse the distinction between law and norm. Norms "specify what actions are regarded by a set of persons as proper or correct, or improper or incorrect." They exist "when the socially defined right to control the [specific] action is held not by the actor but by others."[13] As expected and approved ways of behaving or behavioral regularities that are experienced as obligatory,[14] some norms carry the weight of laws, others do not. Placing chairs in shoveled out parking spots is normative, in some cities, insofar as it is a common phenomenon that is expected and not negatively sanctioned; it is not, however, a legally sanctioned practice. Nonetheless, placing chairs in shoveled out parking spots is part of the social structure of legality because this normal practice is understandable only by invoking the concepts, terms, and traditions of law (i.e., exclusive use associated with property claims, justifications of property claims based on labor). In other words, the practice is not a legal practice that could be backed by state action, nor is it the informal action of official legal agents (the legal system in Friedman's terms). But, placing chairs in shoveled out parking spots on city streets is meaningful, i.e., interpretable by an audience, only by associating with

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[12]We have recently been told that in at least one eastern city, the Board of Aldermen has passed an ordinance prohibiting this practice. At the same time, they have also informed the local police that it need not be enforced. In other words, the Board of Aldermen did not have any interest or desire to stop the practice, only to foreclose any future legal claims based on normative practice.

[13]James S. Coleman, *Foundations of Social Theory* (Cambridge, Mass.: Harvard University Press, 1990), 243.

[14]Robert Cooter, "Law and Unified Social Theory," 22 *Journal of Law and Society* (1995): 50; Richard McAdams, "The Origin, Development and Regulation of Norms," 96 *Michigan Law Review* (1997): 338, 350–51.

this practice legal concepts and terms. Thus the chair in the snow is an icon of legality because it illustrates how law lives and works *in* society, and perhaps exposes what is "latent in legal experience."[15]

The Structure of Legality

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. At the same time that interpretive schemas and material resources shape social relations, they must also be continually produced and worked on—invoked and deployed—by individual and group actors. The icon of the chair in the snow illustrates that legality is not inserted into ordinary social situations; rather, through repeated invocations of the law, legal concepts, and terminology, as well as through imaginative and unusual associations between law and other social structures, legality is constituted through everyday actions and practices.

If, however, legality is an emergent 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 various, diverse, often repetitious, and sometimes deviant interactions of everyday life accumulate to produce structures with enough integrity and unity that we social scientists, at least, believe we can trace the operation of social structures through the outcomes produced? From our field work, we have discovered a partial answer to this question, an answer that develops from the recognition that individual actions and accounts of actions are crafted out of more general cultural schemas. Law and legality achieve their recognizable character, despite the diversity of forms, actors, and experiences, because individual actions, and accounts of action, are crafted out of a limited array of what are generally available schemas.

From 1990–1993, we conducted lengthy interviews with over 430 people in a random sample of residents in four counties of New Jersey.[16] We asked these

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[15]Selznick, "Legal Cultures," 23. In this conceptualization, we mean to push the boundaries of what we study under the rubric of law; we do so, as we have said, quite self-consciously to unearth the supports for that durable institution. We are cautious, nonetheless, not to go too far. We are aware of the dangers of including all normative activity under the rubric of law. Selznick has warned us that by blurring the line between legal and nonlegal institutions, legal sociologists may undermine the normative value of recognizing an analytic distinction between law and society and consequently failing to attend to their integration. This integration, Selznick says, may not be fully understood but it is what Lon Fuller "had in mind when he recoiled from the phrase 'law *and* society' . . . [and] preferred the phrase 'law *in* society'" (35–36). We take this admonition to heart. Our conceptualization of legality attends to exactly the issue Selznick identifies as central: how does law work *in* society.

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 nonlegal 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.

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 public 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 are calling 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. (See Table 9.1 for a representation of the variations in these dimensions and the stories.)

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.

We 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 pre-existing rules can be deployed and new rules invented to serve the widest range of interests and values. This account of law represents legality as a terrain for tactical encounters through which people marshal a variety of social resources to achieve strategic goals. Rather than existing outside of everyday life, this version of the law sees it as operating simultaneously with commonplace events

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[16]Respondents were selected through a stratified random sample in four New Jersey counties and interviewed between 1990 and 1993. The interviews lasted between 1.5 to 5 or more hours, with the mean being about 2.5 hours per person. The sample approximated well the New Jersey population in terms of income, was slightly better educated than the state, and had a slightly larger contingent of African Americans. The sampling and methods are described in detail in Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998).

Table 9.1. Narratives of Legality in Popular Consciousness

	"Before the Law"	"With the Law"	"Against the Law"
Normativity	impartiality, objectivity	legitimate partiality, self-interest	power, "might makes right"
Constraint	rules, formal organization	contingent outcomes, authoritative closure	institutional visibility
Capacity	rules, formal organization	resources, experience	social structures: roles (inversions), rules (literalness), hierarchy (leap-frogging)
Time/Space	separate sphere from everyday	simultaneous with everyday life	colonizing time/space of everyday
Archetype	bureaucracy	game	"making do"

and desires. In this second story, people talked about the value of self-interest and the effectiveness of legal rules and forms for achieving their desires. In contrast to the sacred face of legality, this is the profane law, the stuff of lawyer jokes, and TV movies.

Finally, we heard a third schema in people's accounts of law. In this narrative, law is presented as a product of unequal power. Rather than 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 as being unable to either maintain the law's distance from their everyday lives or unable to play by its rules.

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 persistent structure of legality and the potential of variation and change. The structure of legality is constituted by multiple schemas composed both of ideals and practices, normative aspirations and grounded understandings of practical action, God and gimmick, sacred and profane.[17]

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 or schemas. 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—a reified realm of abstract reasoning—can be countered by references to law's game-like availability.

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 become irrelevant.

The Structure of Culture: Some Illustrative Examples

In the subsequent sections of this chapter, we make two additional points. First, we show how the narrative and normative plurality described in the structure of legality is common to other institutions and social structures. We suggest that the model of legality we developed inductively from the interviews with citizens in New Jersey may be the beginning of a more general theory of the structure of culture. Second, we focus on the issue of contradiction among the schemas because we think that this may provide an opening for explaining change over time—a central question in debates about structure and agency in social relations.

There is any number of places we might look for comparisons.[18] Consider for example the classic work on the medical profession, *Boys in White*[19] by Howard Becker, Anselm Strauss, Everett Hughes, and Blanche Greer. Becker et al. describe medical education as "constituted by both idealism and cynicism." They argue that these situationally produced orientations are mutually dependent and functional for medical education and the profession. Although the medical students "develop cynical feelings in specific situations directly associated with their medical school experience," Becker and Greer[20] say "medical students never lose their original idealism about the practice of medicine." The cynicism serves to protect the idealism whose realization they locate in their imagined future practice. Through this analysis, the authors attempt to explain, in part, the contradictory popular accounts of the medical profession.

In the cynical account, the doctor, while not the money-grubbing entrepreneur that some claim, is nonetheless "first and foremost engaged in making a

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[17]In "Tribute to Amitai Etzioni," Selznick wrote recently (July 9, 1999), "To understand the dynamics of community, the problems it raises, the challenges posed for social policy, we must always be aware of persistent contradictions, cross-currents, and dilemmas. This basically Hegelian sensibility is difficult to maintain, perhaps because, despite our claims to sophistication, we cannot disenthrall ourselves from linear, undialectical modes of thought. It remains hard to accept the notion that life is suffused with contradictions, and that, indeed, it is the study of contradictions that leads us to our most important understandings. And this is especially important when we seek adequate theories of selfhood, community, or institutional life." http://www.sase.org/conf99/selznick.html. Taken off the Web 1/28/00, 3:48 p.m. SASE 1999.

[18]This is a very preliminary account, intended to be exploratory and provocative, in the very best senses. Unlike the model of legality, produced inductively from hundreds of interviews, the models we offer below arise from reading canonical works in the sociology of medicine, religion, and sport. In the following schematic representations of various accounts of medicine, sport, religion, and equity jurisdiction, we do not reproduce completely the three narrative schemas we found among the people's stories of law. It is likely, however, that with additional inquiry, additional narratives and schemas would be found.

[19]Howard Becker, Anselm Strauss, Everett Hughes, and Blanche Greer, *Boys in White: Student Culture in Medical School* (Chicago: University of Chicago Press, 1961).

[20]Howard Becker and Blanche Greer, "The Fate of Idealism in Medical School," *American Sociological Review,* vol. 23, no. 1 (February 1958): 50–56.

living,"[21] constrained in doing as much good as the idealist wishes by "the impossibility of learning all one would need to know to practice medicine properly."[22] The medical student "may decide on the basis of his own uninformed notions about the nature of medical practice that many facts are not important since they relate to things which seldom come up in the actual practice of medicine."[23] As a consequence, he "cuts corners"[24] and learns only what he is "likely to be asked on an examination; [the medical student] uses this as a basis for selecting both facts to memorize and courses for intensive study." This cynical account is grounded in the here and now, day-to-day activities of medical school.

In a contrasting narrative, medical students offer an account of a noble profession, "idealistically proclaim[ing] that their work is all that it claims on the surface to be."[25] In this narrative, rather than emphasize the value and necessity of occupation, medical students emphasize their calling and devotion to service. Whatever constraints exist do so as a consequence of insufficient science, failures of professional organization, and the peculiarities of medical school. The practice of medicine is enabled, in this story, by the hard, long years of study and focus on the future; by a process of "postponement," "they protect their belief that medicine is a wonderful thing, that their school is a fine one, and that they will become good doctors."

In a more recent work, Alt[26] describes Western professional sports in terms of a similar dialectic of "ideal types of ritual and mass consumption." In a reified account of sport as ritual, what we might analogize to the account "before the law" or the idealistic story of medical service, participants and audience alike express strong support for the moral meaning of skill. Alt refers to the ways in which organized sports through just and fair competition build community. Constrained by rules of play and standards of performance, organized athletic competition celebrates hard work and skill. It takes place in defined, circumscribed arenas, in specified periods of time and over designated seasons. Alt also offers an account of professional sports as the pursuit of voyeuristic pleasure and the creation of spectacle. Constrained by the imperatives of rationalized corporate capitalism, Western sports are enabled and sustained by consuming fans. In the narrative of mass consumption, professional sports are less local than national and global, experienced at a distance through electronically mediated images and statistical or actuarial practices.

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[21]*Ibid.*, 50.

[22]*Ibid.*, 51.

[23]*Ibid.*, 52.

[24]*Ibid.*, 50.

[25]*Ibid.*

[26]John Alt, "Sport and Cultural Reification: From Ritual to Mass Consumption," *Theory, Cultural and Society*, vol. 1, no. 3 (1983): 93–107.

Narrative and Normative Multiplicity: Stability and Change and Future Research Agendas

The structure of legality that we identified in our research on the popular consciousness law is repeated in both medicine and professional sports.[27] Why, we keep asking ourselves. What accounts for these similarities across such diverse terrains? One line of reasoning leads us to explore the way people tell stories about their own and others' activities. The dimensions we use to compare the narratives of legality, medical education, and sports are, after all, fundamental features (variables) of social action (norms, structure/constraint, capacity/agency, time and space). Perhaps narrative structure is homologous with that which it seeks to represent. Another line of inquiry sends us to the institutionalist literature that emphasizes mimesis and reproduction in social organizations[28] and the appropriation that occurs across institutional and organizational sites from a common kit of cultural schemata.[29] Abbott offers another approach as he describes various fractal processes (in social and cultural phenomenon) that create both differentiation and reproduction through splits, conflicts, and remapping or ingesting one into another. "Like any good ritual," he writes, the fractal cycle "unites opposites."[30] There is insufficient space here to pursue these lines of analysis. We will, however, explore briefly the implications of this pattern of normative and narrative multiplicity for social theory generally, and leave these additional lines of inquiry for future research.

Indeed, we will be even more emphatic and argue that alternative narratives create protective covering that inures institutions against more systemic challenge and that structures actually rely upon the articulation and polyvocality of diverse narratives in order to persist. As a corollary, and most important for the elaboration of our model of legality, we suggest that the absence of that polyvocality (or what we might call significant imbalances in the narrative constitution of a social structure) creates vulnerability and increases the likelihood of structural transformation.

From the observation of narrative and normative contradictions in several institutional domains, we hypothesize that the existence of competing and contradictory accounts of medicine, sports, and legality sustain those institutions as structures of social action. Indeed, we might be even more emphatic and argue, not only that alternative narratives create a protective covering that inures insti-

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[27]This pattern may also characterize science. See Judith Scott, "Representations of Science in Popular Culture," thesis submitted for honors. Department of Sociology, Wellesley College, 2000.

[28]Walter W. Powell and Paul J. DiMaggio, *The New Institutionalism in Organizational Analysis* (Chicago: University of Chicago Press, 1991).

[29]Ann Swidler, "Culture in Action: Symbols and Strategies," *American Sociological Review*, vol. 51 (1986): 273–86.

[30]Andrew Abbott, The Chaos of Disciplines (Chicago: University of Chicago Press, 2001), 26.

tutions against more systemic challenge but that structures actually rely upon the articulation and polyvocality of diverse narratives in order to persist. As a corollary, and most important for the elaboration of our model of legality, we suggest that 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 structures relying upon the contradictory rendering 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 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 with respect to those institutions.

Consider for example the canonical descriptions of the development of equity jurisdiction within Britain as an instance of how ideological consistency rather than complexity erodes institutional authority. For hundreds of years from the fourteenth century onward, remedies "at law," were purchasable from common law courts and typically provided for compensatory payments to the injured party as damages. Remedies "at equity" were purchasable from the Lord Chancellor's office or equity courts and typically provided affirmative acts or cessation of specified acts. Some authors describe the invention of equity as a means of alleviating what had become an overly formalistic system of writs and actions that limited the possibilities and range of legal redress for all sorts of grievances. By creating an alternative route to the Lord Chancellor's office, the British crown kept itself in the business of dispute resolution when its maturing legal processes had threatened to make the law all but irrelevant to most, or many, of its citizens. Other accounts describe equity as a means of moderating and softening the rigor of abstract generalizations that are always at some point found to be incomplete. The moderations are regarded as equitable relief to distinguish it "from the normal rule which would otherwise be enforced."[31] Another view describes equity not as an alteration of the rules but as a means of securing their better application and enforcement. Thus, equity is seen as a correction for either universal ambitions or the constraints of legal rules. In any case, the parallel existence of jurisdictions and processes for law and for equity highlights the basic duality. This example suggests to us that it was the absence of heterogeneous processes and jurisdictions that was experienced as a threat to the power and durability of legal processes.[32]

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[31]William Seagle, *The Quest for Law* (New York: Alfred A. Knopf, 1941), 182.

[32]James Scott, in *Seeing Like a State* (New Haven: Yale University Press, 1998) offers a similar analysis of state building, suggesting that the conjunction of immanent logic and technique is never quite realizable in practice thus necessitating these dialectical institutional structures.

The process known as secularization provides a rather well-known example of the instability of univocal narrativity with respect to another social institution: religion. Secularization generally refers to a cultural shift that relegates religion and concern with supernatural matters to fewer and more circumscribed aspects of social life. Weber traces the roots of twentieth-century secularization to the Protestant reformation and the rise of capitalism. Prior to this shift,

> [r]eligion provided the moral framework for everyone. Everyday life was punctuated by saints' days, fairs, pilgrimages, festivals, seasons of feasting, atonement, and celebrations. The culture of ordinary people was saturated with folk customs, magical spells, rituals, and religious occasions. Springs and wells provided healing waters, the relics of saints offered safe journeys or protections to relatives and friends.

Weber referred to the gradual disappearance of this way of life in the Western world as "disenchantment." With modernization and secularization, religious observance became temporally and spatially circumscribed. The new spirit of capitalism preempted the asceticism it dictated. The institutional authority religion had possessed, it ceded to the state (or to therapeutic professionals who ultimately became the new pastoral healers). Religion lost its central organizing (and defining) role not because it became profane, but because being "set apart" (in time, space, and in terms of social interactions) it became merely sacred.[33] The occasional rabbi and priest joke notwithstanding, religion lost much of its profane articulation in the routines of daily life. And with that, it lost its institutional and ideological dominance and authority.

Conclusion

We have been arguing that legality should be understood as a pluralistic set of interpretive schemas and resources. Moreover, we have argued that legality is a durable and powerful structure because it is plural and not exclusively legal. The schemas we call before, with, and against the law are exemplified by archetypes—bureaucracies, games, and "just making do"—that also characterize

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[33]The sacred, according to Durkheim, is not simply about beliefs in supernatural entities, which others have used as a definition or foundation of religion. In preliterate societies, the world was not divided between the natural and the supernatural with religion having domain over the supernatural. Rather, religion identified different aspects of life as sacred or profane; all was religiously coded in this dichotomy. "The central dichotomy in pre-literate cultures was to be understood as separating those things, times, places, persons, animals, birds, stones, trees, rivers, mountains, plants, or liquids that were set apart (sacred) from routine (profane) uses in everyday life." ("The Cultural Formations of Modern Society," Robert Pocock, in *Modernity*, ed. Stuart Hall, David Held, Don Hubert, Kenneth Thompson [Cambridge, Mass.: Blackwell 1996.])

other structures of society: medicine, science, sport, and religion. Sharing sche-
mas and resources among different institutions and structures creates supple-
ments that can be appropriated for diverse social activities, including but not
exclusively specifically legal purposes.

One is never before only the law because any legal matter is also a matter
about something else. Everyday life occurs as interactions among friends,
among colleagues, among family members, between consumers and merchants.
These relationships are the raw materials out of which disputes and legal cases
emerge. Where dispute or conflict is absent, which is most often, these interac-
tions are nonetheless grounded in normative expectations infused with legal
language and concepts. As social actors and interactions become subjects of
legal definition and regulation, they retain their nonlegal informational, material,
and relational components. Those familial, emotional, medical, or economic
aspects may be reshaped by legal action, but the nonlegal aspects are not entirely
erased. They are, in this sense, the *raison d'être* of the legal action that persists
as a residue or supplement to the legal features of action.

As a structure of social action, legality is also an objective phenomenon—
rather than only a moral or subjective aspiration. Legality is observable and in-
terpretable. Its objective status derives from the fact that it is collectively pro-
duced and experienced. Objective and external, legality appears impervious to,
thus constraining, the desires of particular human beings. At the same time, le-
gality is experienced as a human construction, a game played and won by the
more skilled and resourceful contestants. People's stories of law simultaneously
combined objectivity and subjectivity, normative aspirations for justice through
law with accounts of law's meanness, its flaws, and its failures. The contradic-
tory quality of legality is evident in the oppositions between the schemas as well
as within each schema. We suggest that this marriage of a reified, abstracted
account alongside a pragmatic, cynical account is apparent within and across
diverse institutions.

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 and a
space of practical action. Although each (meta)narrative emphasizes a different
normative value and provides a different account of the social organization of
law, marrying norm and practice, together, as an ensemble, the several narra-
tives of law cover the range of conventional experiences and aspirations.[34] Be-
cause legality has this internal complexity—among and within the schemas,

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[34]Selznick ("Legal Cultures," 24, 28) writes, "the ideal is not alien to the social real-
ity of law, if we include in that reality, as we must, the energies and expectations it gen-
erates." "The analyst of legal culture," he continues," should study the interplay of his-
toricity and principle." Might not principle and historicity, ideal and social reality of law,
be experienced and represented in popular culture by the multiple narratives of legality?

legality can be a powerful and durable, perhaps hegemonic, structure. Any par-
ticular experience or account can fit within the diversity of the whole.

In an important sense, we have moved beyond conventional distinctions be-
tween ideals and practices, law on the books and law in action that has under-
written modern sociological studies of law. We do not have to treat the contra-
dictions within and among the multiple schemas of legality as a flaw to be
remedied or a site to be managed. Indeed, we have been arguing quite the con-
trary. The distinction between ideal and practice is a false dichotomy. By em-
plotting particular and different relationships among ideals and practices, the
multiple schemas and narratives of legality reveal their mutual interdependence.
Thus we conclude by observing that the persistently defamed gap between law
on the books and the law in action is not a vacuum; it is a space of action and
interpretation; it is one source of the law's power and stability; it is the place of
change.