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How Law Happens

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As editors of this collection, we began, in the Introduction, with the idea that “Law Happens.” Our chapters have developed how it happens, in our lives and on the street. In the previous chapters, we have collected many stories of the living law and said that it may involve sovereignty. We have argued that when norms are present in social interactions, both the norms and the interaction may be about sovereignty. In the Introduction, we gave the example of stop signs. And in the volume, there have been discussions that bring out the difference between a stop sign sitting alone on a lonely road and one that has an occupied police car parked next to it. It is sometimes hard to know whether behavior that conforms to law is about law. The material published here examines various dimensions of law on the street. These dimensions are examples of street-level sovereignty, whether they are evident in uniformed systems of authority imposed by the military and illuminated by Linken’s treatment, the kind imposed on sex at college discussed by Mott, or the violent policing that we see so often in the United States that is described by Henao Castro.

The examples suggested in our Introduction, of a selfie at a high school party with alcohol or the image of an arrest, maybe even after the same party, are activities mixed with issues of law and authority whether or not they every deal with judges or the police. We used to say imbricated for “mixed with” and it gave the idea a little weight, or seemed to. The weight of law is not just the involvement with courts or judges, though that is significant on its own, but rather weight, in the sense of sovereignty can also come from all the cultural meanings and inevitable possibilities that are contained in the notion of sovereignty. In the end, it may be those cultural meanings that constitute limits on uniformed police or robed judges. In American life, an office holder reaching into the culture with “social media” is himself governed by
the meaning of that media in the culture. We suggest that the reality of street-level sovereignty is a “A live by the tweet, die by the tweet” sort of thing.

In this sense, the videos that fueled the Black Lives Matter movement are linked to the same extension of authority that both empowered candidate and then ultimately limited the authority of Donald Trump. Going back even further, the gloved fist that was raised by Tommy Smith and Juan Carlos at the Olympics or the national anthem protest of Colin Kaepernick in 2016 have not just political meanings but meanings for sovereignty. Just as Tommy Smith and Juan Carlos influenced Kaepernick, the sit-down protests in the fall of 2016 presented a claim that was answered at the ballot box with the election of Trump to the American presidency. The gloved fist, an act of defiance given meaning by the cameras focused on the Olympic medal stand, the political disrespect, tolerated under law but responded to politically, that was the Kaepernick protest both have meaning more for their social context than for anything in the law. They are widely appreciated contests, which we say are the sort chronicled here.

As our authors have suggested, law will not only govern the social reaction but the reaction that is social constitutes the reach of the law. This is what we called the “understudied” living life of the law. There is study, of course. Over the last 50 years, law IN society has flourished and we have drawn on that tradition. But much of the popular understanding that is the social life of law is thought to be politics or feelings or attitudes. That is, a special needs child playing in Branco’s playground, who is unable to use the broken equipment, absorbs socially, as do those around her, the meaning of her condition as truly as the racial consequences recognized by the US Supreme Court as adhering to Linda Brown in her 1954 case against the Board of Education of Topeka Kansas.

For the same half-century that scholars have built on Oliver Wendell Holmes’ idea that “the life of the law is experience.” While ordinary people have often treated that experience as something other than law, the chapters collected here have suggested otherwise.

THE STREET

We have said that our street draws inspiration from Michael Lipsky’s 1969 formulation. Lipsky was a young scholar in the 1969s and he sought to open up the study of power to places traditionally ignored. His scholarship did that and, to some extent, the informalism and dispersed power that followed those years was part of the movement he was on early and at an intellectual level. Although his framework was literally the storefront bureaucratic outposts of the administrative state, our broader concept owes a great deal to this pioneer.
Incorporating our broader collection of situations reflects law’s breadth. Law has a range that challenges even that of bureaucracy. There are nuances that add to the study of power when we challenge the notion that authority is dependent on hierarchy. And, by incorporating sovereignty into the framework we suggest that the authoritative structures lead to jurisprudential issues more than the sociological ones. Both formulations are quite abstract and both take those abstract concerns to expand the meaning of bureaucracy and sovereignty to be one of taking it to a form where democratic participation is to be expected, to the streets, as it were.

We said in the Introduction that “governance and power are constituted in the banalities of our daily activities.” This is a very different image from the one popularized by the Critical Legal Studies movement. That one relied heavily, as is discussed in Brigham’s chapter, on the work of Kafka. It had the protagonist cut off from law, which was mysterious. Here we suggest that law is “all over.” And, if it is hidden, it is hidden in plain sight. If law is hiding in our daily activities it becomes easy to miss it. But that is not because we don’t see law. It is because we don’t know how to understand that what we see is law. The chapter by Broekman is a remarkable investigation of the many philosophical dimensions of the street as a place to focus on law. After our Introduction, we began with this chapter. At one point we want to make it THE Introduction. It is a very serious investigation into the philosophical dimensions of the street. Broekman was serious about the charge, to look at sovereignty from the societal surface. As we have already noted, there is a concept of the person at the heart of Broekman’s work. It is a complex personhood that emerges in and from common experiences that we agree is highly evident on, and may even be a function of, the street.

We don’t write directly about the Supreme Court here, but of course cases that get to the highest courts start with contests over “street-level sovereignty.” Brigham’s treatment of body scanners, which are generally in the building and not, literally, in the street, provide a line of demarcation that constitutes a structure of authority, not only by delineating who can get in but in the form by which it is done and what that form is taken to mean. In the case of the scanners we said that they may be more indicative of the nature of modern law than Franz Kafka’s doorkeeper.

And, similarly, the “Wise Latina” who gets to the High Court famously, brings her understandings of the street as part of that wisdom. Justice Sonia Sotomayor’s Bronx streets were a version of the type made famous on the American late 20th-century children’s television show “Sesame Street,” whose picturesque urban landscape was no more or less constituted by law (and mutually constituting it) than the middle class streets of the white suburbs popularized in the 1950s on “Leave It to Beaver” or “Ozzie and Harriet.” One of the aspects of the street, then, is that it gets carried around. In the
volume, the frogs that stowed away to Hawaii find themselves contending with human neighbors in a Pacific paradise who do not appreciate their noisy, foreign chirps. Then there are the cultures of humor, which come from other places and constitute cultures. The Jewish, often immigrant comedians of the Borscht Belt, become the mainstream on early television in shows like Red Skelton, Jack Benny, and Groucho Marx.

SOVEREIGNTY

We have said that the sovereignties we have been discussing are akin to those addressed by radicals in the 1960s who spoke of putting their bodies on the “cogs of the machine.” Sovereignty here is not an abstraction or simply a facet of political theory. It is those things, but it is also something that lives on the street. We have said, with reference to Schattschneider, that authorities generally want to limit the scope of conflict. This means limiting the range where we can see a conflict or even a conventional practice as constituted by fundamental issues over the authority behind the practice or bearing on the conflict.

In the preceding chapters we have cultivated an awareness of aspects of a political and legal structure at their most basic, on the street. At least it is more likely that we would be aware of sovereignty when we see it as something that might be contested. In street-level encounters like those over invasive species or play structures or sex, when we become aware of sovereignty dimensions it not only heightens encounters, it transforms them. Becoming aware transforms the structures of society from unseen patterns or behaviors we take for granted to potentially contested territory. To see a source of authority is often to unmask its power. The signs outside of markets that designate handicap spaces or spaces set aside for pregnant women take on meanings as we understand who puts them up and who stands behind them.

We have said that at the level of the street it is sometimes the case that knowledge of sovereignty, even the concept of sovereign authority itself, is often unequally held. Some may know whether something is private property or how it might be enforced and some may not. As Marusek has pointed out, in the United States, many random bystanders are reading to challenge, or at least challenge in principle, use of a handicapped parking spot. We understand that comedy sometimes works with this principle and have mentioned how in the 1950s and 60s, Lenny Bruce drew crowds to his shows in part over the excitement stimulated by the possibility that they might be raided. Similarly, we saw how the children of Hawaii got a little too engaged in frog killing even for those who despised the invasive coqui.
Hobbes’ image of the sovereign as Leviathan, a giant made up or constituted by masses of people is familiar in political theory circles. It is on the frontispiece of his book on the subject. All those little people are, in the Hobbesian image, subsumed in the giant’s body. And, in the theory of the Leviathan, they are reconstituted and consequently controlled. But we could also see the people in various respect as functioning in their ordinary life “as part of” or “incorporated into” the sovereign. When we skirt land that is patrolled or trespass where we know that no one cares (or is looking) we may be contesting sovereignty. Branco says that as a mother, playgrounds take on new meaning. They not only become places of healthy exercise but also of social learning. The broken equipment made explicitly for the handicapped may teach a little something to the child who has no physical limitations herself, and to the mother. And activity is as normative and consequential as any formal law, and way more vibrant.

We suggested various ways to connect the chapters in this volume and draw out the lessons of street-level sovereignty and we have reviewed some of them in drawing out these conclusions. Here are some other considerations that return to the initial formulations. Pavoni, like Branco, is writing from Europe and, like Broekman, makes an important theoretical contribution. In her urban landscape mixing of sovereignties are the norm because spaces are obviously shared. She outlines a number of aspects that influence the sharing and they in turn become considerations in the story of sovereignty. One of these is mobility, both the mobility that is made possible by rules like those for traffic and the mobility that challenges the authorities behind those rules and reconstitutes the street as with the *woonerf*.

Mohr and Hosen are also interested in how the street is constituted and they focus on dimensions of culture, the cafés, restaurants, and food stores that mean something different about the street than its meaning for cars. Like Pavoni, their streets are urban and they are also interested in the ways streets can be reconstituted as more than places for cars to travel. By focusing on smoking and *halal* meat, the authors call attention to one of the more basic contests over the uses to which property can be put. This is where animals may be killed for their meat. But they also cover nearly universal phenomena such as the ability of one crossing a street to “make the cars stop,” with the help of various signs and signals.

Clearly sexual activity is as vitally important as what we eat and how we travel. And sex has always been regulated but in what seems to be very new ways discussed by Mott, sex in the United States is facing new forms of regulation that she sees as tied to a form of political economy. This is the neoliberal framework of consent that has been imposed in the United States, and particularly on college campuses. In this story, a traditional dichotomy
between freedom and violence is given heightened significance by a moral panic compounded by a neoliberal regime. It is a fascinating story.

The notion that the use of violence in a regime may be understood politically should not be a surprise but we think that the notion that we see the imposition of force on the street as contestable and not simply a function of right and wrong or benighted “first responders” versus the rabble is both more and less than one might already have thought. For Henao Castro, the concept of biopolitics helps us to interpret sovereignty at the level of public interaction with the police. Using images of life (bio) and death (necro) he encourages us to see the most basic sphere where we live and “writ” larger. Policing itself is a newer formulation of control arising in the 19th century and coming to fruition less than 100 years ago. Yet it attempts to impose the mechanisms of state power down to the level of the street. Where one might easily once have thought of the street as simply an aspect of the natural environment, the policing of the street in the last century displaces that possibility. What we see as a threat to life itself, is, in this piece, the state extending its physical reach and, perhaps, threatening our ability to live on our own.

By covering the military and its differences from civil authority, we think that Linken’s chapter challenges us to think of the ways ordinary life is constituted by comparing it with the very different but often nearly overlapping nature of military life. In the military, authority and hierarchy are to the front and in the center. In this sphere, military practices work with otherwise ordinary men and women to make them different. And, a challenge to those practices has different consequences than otherwise similar challenges in ordinary life. In fact, when the “Gold Star” parents of Army Captain Humayun Khan spoke at the Democratic convention in 2016, the power of military culture for the ordinary processes of politics was brought to the forefront. The meaning of a death at work for the military is different than a death on most jobs. Different codes define events that are in some sense the same but in important ways events like death become different because they acquire significant meanings in context. This happens because, as we suggested in the Introduction, certain sovereignties, like that over ones hair, are taken away.

The absence of sovereignty is clearly evident as we seek entrance to airports, particularly in the United States. To many, the barriers to access are accepted as a feature of travel. However, Brigham suggests that we may have reason to rethink technologies like the body scanner, particularly when compared to the alternatives. In looking at scanners as providing access, he suggests the possibility of discarding a prevailing image that has been important to critiques of law. This is the image of “the stranger from the country” standing “before law” which is epitomized by a gate that he cannot
pass through. Brigham suggests that the scanner, by providing access to the continued movement, and lately the consumer goods, on the other side of the scanner, the gate becomes less of a barrier and more of a bridge. This is a partial explanation for why many have put up with significant inconvenience since its introduction.

It is clear that humor plays a social function. In the chapter by Lorenz, the function examined is often explicitly contesting established authorities and norms about race. Off the street in a comedy club, ordinary life is examined and the comedy becomes a form of entertainment. It draws on shared practices it may affirm or destabilize. In the most powerful examples, such as the work of socially conscious comedians like Richard Pryor, Chris Rock, or Dave Chappelle, Lorenz shows how the sovereignty of a racial regime is destabilized. Although the ability to laugh about race in the United States is problematic, in the case of this work, the hierarchies around which racial structures are built are not simply scrutinized by the comedian. In the clubs, the scrutiny constitutes the meaning of race.

We called attention to death in the Introduction. It is clearly regulated in special ways that indicate long-standing concern about the end of life. There is nothing here on abortion, the comparable beginning of life struggle that has made streets in front of clinics battlegrounds of the most dynamic and tragic sort. But the movement to avert racial killings discussed by Henao Castro and the black comedy described by Lorenz both highlight the life and death struggles that are the stuff of sovereignty as we have collected it here. And in other scenes of life and death, placing a bounty on frogs turned out not to be such a good idea in Hawaii which is part of a world increasingly sensitive to paying children to kill.

In nation-states, it is not only at the higher reaches, but at a conference table or in a marble temple, that we contest law’s authority. In fact, in those places it is often about the details; sovereignty is quite often at “the bottom” or what we call the level of “the street.” In the end, this collection has tried to be suggestive. It asks scholars to think of the authority behind law from the ground up rather than the “top” down. In jurisprudence we can’t really start at the bottom. Too much has gone on. However, we can suggest the relevance of the street and begin to explore its authorities. These contests, perhaps because they do not always involve uniforms or special chambers, suggest some ordinary considerations that are relevant at all levels. Questions raised, and disputes about, the legitimacy of a handicap parking pass or the authority of an arrest is the stuff of contemporary law. Increasingly, in an era of exploding forms of media, cell phones capable of disseminating images instantaneously, and celebrity culture, the influence from the street on the very structure of power needs greater recognition. We hope to have made a start.
REFERENCES