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The Force of Law: Toward a Sociology of the Juridical Field

Da mihi factum, dabo tibi jus[9]

A rigorous science of the law is distinguished from what is normally called jurisprudence in that the former takes the latter as its object of study. In doing so, it immediately frees itself from the dominant jurisprudential debate concerning law, between *formalism*, which asserts the absolute autonomy of the juridical form in relation to the social world, and *instrumentalism*, which conceives of law as a reflection, or a tool in the service of dominant groups.

As conceived by legal scholars, notably those who identify the history of law with the history of the internal development of its concepts and methods, formalist jurisprudence sees the law as an autonomous and closed system whose development can be understood solely in terms of its "internal dynamic."[10] This insistence upon the absolute autonomy of legal thought and action results in the establishment of a specific mode of theoretical thinking, entirely freed of any social determination. Kelsen's attempt to found a "pure theory of law" is only the final result of the effort of formalist thinkers to construct a body of doctrine and rules totally independent of social constraints and pressures, one which finds its foundation entirely within itself.[11] This formalist ideology, the professional ideology of legal scholars, has become rigidified as a body of "doctrine."

The contrary, instrumentalist point of view tends to conceive law and jurisprudence as *direct reflections* of existing social power relations, in which economic determinations and, in particular, the interests of dominant groups are expressed: that is, as an instrument of domination. The theory of the *Apparatus*, which Louis Althusser has revived, exemplifies this instrumentalist perspective.[12] However, Althusser and the

9. Give me the facts, and I'll give you the law.

10. *See, e.g.*, J. BONNECASSE, LA PENSEE JURIDIQUE FRANÇAISE DE 1804 A L'HEURE PRESENTE, LES VARIATIONS ET LES TRAITS ESSENTIELS (1933).

11. Kelsen's methodology, postulated upon limiting investigation to specifying juridical norms and upon excluding historical, psychological, or social considerations, along with any reference to the social functions that the operation of these norms may determine, entirely parallels Saussure's, which founded a pure theory of language upon the distinction between internal and external linguistics, that is, upon the exclusion of any reference to the historical, geographic, and social conditions governing the functioning of language or its transformations.

12. A general review of Marxist work in sociology of law and an excellent bibliography

structuralist Marxists are victims of a tradition that believes it has accounted for "ideologies" simply by identifying their function in society (for example, "the opiate of the masses"). Paradoxically, these structuralists ignore the *structure* of symbolic systems and, in this particular case, the specific *form* of juridical discourse. Having ritually reaffirmed the "relative autonomy" of ideologies,[13] these thinkers neglect the social basis of that autonomy—the historical conditions that emerge from struggles within the political field, the field of power—which must exist for an autonomous social (*i.e.*, a legal) universe to emerge and, through the logic of its own specific functioning, to produce and reproduce a juridical corpus relatively independent of exterior constraint. But in the absence of clear understanding of the historical conditions that make that autonomy possible, we cannot determine the specific contribution which, based on its *form*, the law makes to the carrying out of its supposed functions.

The architectural metaphor of base and superstructure usually underlies the notion of relative autonomy. This metaphor continues to guide those who believe they are breaking with economism[14] when, in order to restore to the law its full historical efficacy, they simply content themselves with asserting that it is "deeply imbricated within the very basis of productive relations."[15] This concern with situating law at a deep level of historical forces once again makes it impossible to conceive concretely the specific social universe in which law is produced and in which it exercises its power.

In order to break with the formalist ideology, which assumes the

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on the subject can be found in Spitzer, *Marxist Perspectives in the Sociology of Law*, 9 ANN. REV. SOC. 103 (1983).

13. Bourdieu refers here to Althusser's discussion of ideology and law in *Ideology and Ideological State Apparatuses (Notes Toward an Investigation)*, in LENIN AND PHILOSOPHY 127, 135-36 (B. Brewster trans. 1971). "Relative autonomy" refers to the notion in certain versions of Marxist theory that, although the economy (the "base") determines social existence "in the last instance," certain aspects of social life—i.e., those taking place within the realm of what Marxism has traditionally termed the social "superstructure," the realm of politics, the law, and ideology—are *relatively* free of such determination by the economic "base," which tends to intervene and dominate only when a crisis of overt conflict occurs between the economy and other social levels. (Translator's note.)

14. "Economism" refers to a tendency within Marxist political practice to emphasize economic determination so completely that other social elements—particularly ideological and political—are simply neglected as irrelevant. (Translator's note).

15. *See, e.g.*, E.P. THOMPSON, WHIGS AND HUNTERS: THE ORIGIN OF THE BLACK ACT 261 (1975). Thompson is a widely-known British Marxist historian, author of the classic MAKING OF THE ENGLISH WORKING CLASS, 1963. He has written an important attack on Althusserian theory, THE POVERTY OF THEORY AND OTHER ESSAYS (1978). (Translator's note).

independence of the law and of legal professionals, without simultaneously falling into the contrary instrumentalist conception, it is necessary to realize that these two antagonistic perspectives, one from within, the other from outside the law, together simply ignore the existence of an entire social universe (what I will term the "juridical field"), which is in practice relatively independent of external determinations and pressures. But this universe cannot be neglected if we wish to understand the social significance of the law, for it is within this universe that juridical authority is produced and exercised.[16] The social practices of the law are in fact the product of the functioning of a "field"[17] whose specific logic is determined by two factors: on the one hand, by the specific power relations which give it its structure and which order the competitive struggles (or, more precisely, the conflicts over competence) that occur within it; and on the other hand, by the internal logic of juridical functioning which constantly constrains the range of possible actions and, thereby, limits the realm of specifically juridical solutions.

At this point, we must consider what separates the notion of the juridical field as a social space from the notion of *system*, developed, for example, in Niklas Luhmann's work.[18] "Systems theory" posits that "legal structures" are "self-referential." This proposition confuses the symbolic structure, the law properly so called, with the social system which produces it. To the extent that it presents under a new name the old formalist theory of the juridical system transforming itself according to its own laws, systems theory provides an ideal framework for the formal and abstract representation of the juridical system. However, although a symbolic order of norms and doctrines contains objective possibilities of development, indeed directions for change, it does not contain within itself the principles of its own dynamic.[19] I propose to distinguish this symbolic order from the order of objective relations between actors and institutions in competition with each other for control of the right to determine the law. For in the absence of such a distinction, we will be unable to understand that, while the juridical field derives the *language* in which its conflicts are expressed from the field of conceivable perspec-

16. Concerning the notion of "symbolic violence," see the Translator's Introduction, *supra*. Such authority is the quintessential form of the legitimized symbolic violence controlled by the State. (Of course such symbolic violence easily coexists with the physical force which the State also controls.)

17. *See* Translator's Introduction, *supra*.

18. N. LUHMANN, SOZIALE SYSTEME: GRUNDRISS EINER ALLGEMEINEN THEORIE (1984); Luhmann, *Die Einheit des Rechtssystems*, 14 RECHTSTHEORIE 129 (1983).

19. P. NONET & P. SELZNIK, LAW AND SOCIETY IN TRANSITION: TOWARD RESPONSIVE LAW (1978).

tives, the juridical field *itself* contains the principle of its own transformation in the struggles between the objective interests associated with these different perspectives.

The Division of Juridical Labor

I

The juridical field is the site of a competition for monopoly of the right to determine the law. Within this field there occurs a confrontation among actors possessing a technical competence which is inevitably social and which consists essentially in the socially recognized capacity to *interpret* a corpus of texts sanctifying a correct or legitimized vision of the social world. It is essential to recognize this in order to take account both of the relative autonomy of the law and of the properly symbolic effect of "miscognition" that results from the illusion of the law's absolute autonomy in relation to external pressures.

Competition for control of access to the legal resources inherited from the past contributes to establishing a social division between lay people and professionals by fostering a continual process of rationalization. Such a process is ideal for constantly increasing the separation between judgments based upon the law and naive intuitions of fairness. The result of this separation is that the system of juridical norms seems (both to those who impose them and even to those upon whom they are imposed) *totally independent* of the power relations which such a system sustains and legitimizes.

The history of social welfare law (*droit social*)[20] clearly demonstrates that the body of law constantly registers a state of power relations. It thus legitimizes victories over the dominated, which are thereby converted into accepted facts. This process has the effect of locking into the structure of power relations an ambiguity which contributes to the law's symbolic effectiveness. For example, as their power increased, the legal status of American labor unions has evolved: although at the beginning of the nineteenth century the collective action of workers was condemned as "criminal conspiracy" in the name of protecting the free market, little by little unions achieved the full recognition of the law.[21]

Within the juridical field itself, there exists a division of labor which is established without any conscious planning. It is determined instead

20. In France, all law relating to social welfare is categorized as *droit social*, literally "social law." (Translator's note.)

21. See Blumrosen, *Legal Process and Labor Law*, in LAW AND SOCIOLOGY 185-225 (W.M. Evans ed. 1962).

through the structurally organized competition between the actors and the institutions within the juridical field. This division of labor constitutes the true basis of a system of norms and practices which appears as if it were founded *a priori* in the equity of its principles, in the coherence of its formulations, and in the rigor of its application. It appears to partake both of the positive logic of science and the normative logic of morality and thus to be capable of compelling universal acceptance through an inevitability which is simultaneously logical and ethical.

II

Unlike literary or philosophical hermeneutics, the practice of interpretation of legal texts is theoretically not an end in itself. It is instead directly aimed at a practical object and is designed to determine practical effects. It thus achieves its effectiveness at the cost of a limitation in its autonomy. For this reason divergences between "authorized interpreters" are necesarily limited, and the coexistence of a multitude of juridical norms in competition with each other is by definition excluded from the juridical order.[22] Reading is one way of appropriating the symbolic power which is potentially contained within the text. Thus, as with religious, philosophical, or literary texts, control of the legal text is the prize to be won in interpretive struggles. Even though jurists may argue with each other concerning texts whose meaning never imposes itself with absolute necessity, they nevertheless function within a body strongly organized in hierarchical levels capable of resolving conflicts between interpreters and interpretations. Furthermore, competition between interpreters is limited by the fact that judicial decisions can be distinguished from naked exercises of power only to the extent that they can be presented as the necessary result of a principled interpretation of unanimously accepted texts. Like the Church and the School, Justice organizes according to a strict hierarchy not only the levels of the judiciary and their powers, and thereby their decisions and the interpretations underlying them, but also the norms and the sources which grant these decisions their authority.[23]

Thus, the juridical field tends to operate like an "apparatus" to the extent that the cohesion of the freely orchestrated *habitus*[24] of legal inter-

22. *See* A.J. ARNAUD, CRITIQUE DE LA RAISON JURIDIQUE 28-29 (1981); Scholz, *La raison juridique à l'oeuvre: les krausistes espagnols*, in HISTORISCHE SOZIOLOGIE DER RECHTSWISSENSCHAFT 37-77 (E. Volkmar Heyen ed. 1986).

23. Mastery of such norms can be recognized, among other signs, in the art of maintaining the order and style which have been recognized as proper in citing one's authorities. *See* Scholz, *supra* note 22.

24. *See* the Translator's Introduction, *supra*, for discussion of the concept of *habitus*.

preters is strengthened by the discipline of a hierarchized body of professionals who employ a set of established procedures for the resolution of any conflicts between those whose profession is to resolve conflicts. Legal scholars thus have an easy time convincing themselves that the law provides its own foundation, that it is based on a fundamental norm, a "norm of norms" such as the Constitution, from which all lower ranked norms are in turn deduced. The *communis opinio doctorum* (the general opinion of professionals), rooted in the social cohesion of the body of legal interpreters, thus tends to confer the appearance of a transcendental basis on the historical forms of legal reason and on the belief in the ordered vision of the social whole that they produce.[25]

The tendency to conceive of the shared vision of a specific historical community as the universal experience of a transcendental subject can be observed in every field of cultural production. Such fields appear as sites in which universal reason actualizes itself, owing nothing to the social conditions under which it is manifested. In *The Conflict of Faculties*, Kant noted that the "higher disciplines"—theology, law, and medicine—are clearly entrusted with a social function. In each of these disciplines, a serious crisis must generally occur in the contract by which this function has been delegated before the question of its *basis*[26] comes to seem a real problem of social practice. This appears to be happening today.[27]

III

Juridical language reveals with complete clarity the *appropriation effect* inscribed in the logic of the juridical field's operation. Such language combines elements taken directly from the common language and elements foreign to its system. But it bears all the marks of a rhetoric of impersonality and of neutrality. The majority of the linguistic proce-

25. According to Andrew Fraser, the civic morality of the body of judicial professionals was based not upon an explicit code of regulations but upon a "traditional sense of honor," that is to say, upon a system in which what was essential in the acquisition of the skills associated with the exercise of the profession *went without saying*. *See* Fraser, *Legal Amnesia: Modernism vs. the Republican Tradition in American Legal Thought*, 60 TELOS 15 (1984).

26. Some writers, such as Kelsen, have raised this question, albeit theoretically, thus transposing into the legal realm a traditional problem of philosophy.

27. The case of the "lower disciplines" is different. With philosophy, mathematics, history, etc., the problem of the basis of scientific knowledge is raised in the reality of social existence itself, as soon as the "lower discipline" finds itself established as such, without any support except that of the "judgment of authorities." Those who refuse to accept (as do Wittgenstein and Bachelard) that the *establishment* of "the authorities," which is the historical structure of the scientific field, constitutes the only possible foundation of scientific reason condemn themselves either to self-founding strategies or to nihilist challenges to science inspired by a persistent, distinctly metaphysical nostalgia for a "foundation," which is the nondeconstructed principle of so-called deconstruction.

dures which characterize juridical language contribute to producing two major effects. The *neutralization effect* is created by a set of syntactic traits such as the predominance of passive and impersonal constructions. These are designed to mark the impersonality of normative utterances and to establish the speaker as universal subject, at once impartial and objective. The *universalization effect* is created by a group of convergent procedures: systematic recourse to the indicative mood for the expression of norms;[28] the use of constative verbs in the present and past third person singular, emphasizing expression of the *factual,* which is characteristic of the rhetoric of official statements and reports (for example, "accepts," "admits," "commits himself," "has stated,"); the use of indefinites and of the intemporal present (or the "juridical future") designed to express the generality or omnitemporality of the rule of law; reference to transsubjective values presupposing the existence of an ethical consensus (for example, "acting as a responsible parent"); and the recourse to fixed formulas and locutions, which give little room for any individual variation.[29]

Far from being a simple ideological mask, such a rhetoric of autonomy, neutrality, and universality, which may be the basis of a real autonomy of thought and practice, is the expression of the whole operation of the juridical field and, in particular, of the work of rationalization to which the system of juridical norms is continually subordinated. This has been true for centuries. Indeed, what we could call the "juridical sense" or the "juridical faculty" consists precisely in such a *universalizing attitude.* This attitude constitutes the entry ticket into the juridical field—accompanied, to be sure, by a minimal mastery of the legal resources amassed by successive generations, that is, the canon of texts and modes of thinking, of expression, and of action in which such a canon is reproduced and which reproduce it. This fundamental attitude claims to produce a specific form of judgment, completely distinct from the often wavering intuitions of the ordinary sense of fairness because it is based upon rigorous deduction from a body of internally coherent rules. It is also one of the bases of a uniformity which causes individual attitudes to converge and to sustain each other, and which, even in the competition

28. Philosophers within the natural law tradition subscribe to this long-recognized trait in order to claim that juridical texts are not normative but rather descriptive, and that legislators simply identify what is, not what ought to be, that they utter what is just or justly distributed according to what is written as an objective property into things themselves: "The legislator prefers to describe legal institutions rather than establishing rules directly." G. KALINOWSKI, INTRODUCTION A LA LOGIQUE JURIDIQUE 33 (1964).

29. *See* J. L. SOURIAUX & P. LERAT, LE LANGUAGE DU DROIT (1975).

for the same professional assets, unifies the body of those who live by the production and sale of legal goods and services.

IV

The development of a body of rules and procedures with a claim to universality is the product of a division of labor resulting from the competition among different forms of competence, at once hostile and complementary. These different forms of competence operate as so many forms of specific capital associated with different positions within the juridical field. The comparative history of law would no doubt sustain the view that, given varying juridical traditions and varying moments within the same tradition, the hierarchical ranking of the different classifications of legal actors, and of the classifications themselves, have varied considerably, depending upon specific periods and national traditions and upon the areas of specialization they designate—for example, public versus private law.

Structural hostility, even in the most diverse systems, sets the position of the "theorist" dedicated to pure doctrinal construction against the position of the "practitioner" concerned only with the realm of its application. This hostility is at the origin of a permanent symbolic struggle in which different definitions of legal work as the authorized interpretation of canonical texts confront each other. The different categories of authorized interpreters tend to array themselves at two opposite poles. On the one hand are intepretations committed to the purely theoretical development of a doctrine—the monopoly of professors of law responsible for teaching the rules currently in force in normalized and formalized forms. On the other hand are interpretations committed to the practical evaluation of a specific case—the responsibility of judges who carry out acts of jurisprudence and who are thereby able, at least in certain instances, to contribute to juridical construction. In fact, however, the producers of laws, rules, and regulations must always take account of the reactions, and sometimes of the resistances, of the entire juridical body, specifically of the practitioners. Such experts can put their juridical competence in the service of the interests of certain categories of their clientele and add strength to the numerous tactics by which those clients may escape the effects of the law. The practical meaning of the law is really only determined in the confrontation between different bodies (e.g. judges, lawyers, solicitors) moved by divergent specific interests. Those bodies are themselves in turn divided into different groups, moved by divergent (indeed, sometimes hostile) interests, depending upon their po-

sition in the internal hierarchy of the body, which always corresponds rather closely to the position of their clients in the social hierarchy.

The result is that the comparative social history of juridical production and of juridical discourse on that production systematically specifies the relation between the positions taken in that symbolic struggle on the one hand, and the positions occupied in the division of juridical labor on the other. The tendency to accentuate the syntax of the law is rather characteristic of theoreticians and professors, while attention to the pragmatic side is more likely in the case of judges. But a social history should also consider the relation between the variations in the relative power of these two polar orientations concerning juridical work, variations which depend upon place and historical moment, and the variations in the relative power of the two groups within the power structure of the juridical field.

The form of the juridical corpus itself, notably its degree of formalization and normalization, seems very dependent on the relative strength of "theoreticians" and "practitioners," of law professors and judges, of exegetes and legal specialists, within the power structure of the field at a particular point in time, and upon their respective abilities to impose their vision of the law and of its interpretation. Variations in the relative power of different groups to impose their particular vision of law might help to explain the systematic differences which separate national traditions, particularly the major division between the so-called Romano-Germanic and the Anglo-American traditions.

In the German and French tradition, the law, particularly civil law, seems to be a real "law of the professors" tied to the primacy of legal doctrine over procedure and over everything which concerns proof or the execution of judgments. This dominance of doctrine reproduces and reinforces the domination of the high magistracy, who are closely tied to the law faculties, over judges who, having passed through the University, are more inclined to admit the legitimacy of the magistrates' interpretations than those of lawyers whose training has been "on the job." In contrast, in the Anglo-American tradition, the law is jurisprudential (case law), based almost exclusively on the decisions of courts and the rule of precedent. It is only weakly codified. Such a legal system gives primacy to procedures, which must be fair ("fair trial"). Mastery is gained above all in practice or through pedagogical techniques which aim to imitate as much as possible the conditions of professional practice: for example, the "case method," used in Anglo-American law schools. Here, a legal rule does not claim to be based upon moral theory or rational science but aims merely to provide a solution to a lawsuit, placing

itself deliberately at the level of the debate concerning a specific application. The status of such a rule becomes comprehensible when one realizes that in any particular case the significant jurist is the judge who has emerged from within the ranks of the practitioners.

V

The relative power of the different kinds of juridical capital within the different traditions is related to the general position of the juridical field within the broader field of power. This position, through the relative weight granted to "the rule of law" or to governmental regulation, determines the limits of the power of strictly juridical action. In France, juridical action is today limited by the power that the State and the technocrats produced by the Ecole Nationale d'Administration (National School of Administration) exercise over large sectors of public and private administration. In the United States, on the other hand, lawyers produced by the major law schools are able to occupy positions outside the limits of the juridical field itself, in politics, administration, finance, or industry. The greater strength of the juridical field in the United States results in certain systematic differences, which have often been mentioned since deTocqueville, in the social role of the law and, more precisely, in the role attributed to legal recourse within the universe of possible actions, particularly in the case of campaigns to right particular wrongs.

The hostility between the holders of different types of juridical capital, who are committed to very divergent interests and world-views in their particular work of interpretation, does not preclude the complementary exercise of their functions. In fact, such hostility serves as the basis for a subtle form of the *division of the labor of symbolic domination* in which adversaries, objectively complicitous with each other, fulfill mutual needs. The juridical canon is like a reserve of authority providing the guarantee for individual juridical acts in the same way a central bank guarantees currency. This guarantee explains the relatively weak tendency of the legal habitus to assume prophetic poses and postures and its inclination, visible particularly among judges, to prefer the role of *lector*, or interpreter, who takes refuge behind the appearance of a simple application of the law and who, when he or she does in fact perform work of judicial creation, tends to dissimulate this fact.[30] An economist, no matter how directly involved in practical administration, remains connected

30. R. DAVID, LES GRANDS COURANTS DU DROIT CONTEMPORAIN 124-32 (5th ed. 1975) (citing 5 TRAVAUX DE L'ASSOCIATION HENRI CAPITANT 74-76 (1949)).

to the pure economic theorist who produces mathematical theorems more or less devoid of referents in the real economic world, but who is nonetheless distinguished from the pure mathematician by the very recognition that the most impure economist gives to his theories. Similarly, the most lowly judge (or, to trace the relation to its final link, even the police officer or prison guard) is tied to the pure legal theorist and to the specialist in constitutional law by a *chain of legitimation* that removes his acts from the category of arbitrary violence.[31]

It is indeed difficult not to see the operation of a dynamic, functional complementarity in the permanent conflict between competing claims to the monopoly on the legitimate exercise of juridical power. Legal scholars and other legal theorists tend to pull the law in the direction of pure theory, ordered in an autonomous and self-sufficient system, freed of all the uncertainties or lacunae arising in its practical origins through considerations of coherence and justice. On the other hand, ordinary judges and legal practitioners more concerned with the application of this system in specific instances, orient it toward a sort of casuistry of concrete situations. Rather than resorting to theoretical treatises of pure law, they employ a set of professional tools developed in response to the requirements and the *urgency* of practice—form books, digests, dictionaries, and now legal databases.[32] Judges, who directly participate in the administration of conflicts and who confront a ceaselessly renewed juridical exigency, preside over the adaptation to reality of a system which would risk closing itself into rigid rationalism if it were left to theorists alone. Through the more or less extensive freedom of interpretation granted to them in the application of rules, judges introduce the changes and innovations which are indispensable for the survival of the system. The theorists then must integrate these changes into the system itself. Legal scholars, through the work of rationalization and formalization to which they expose the body of rules, carry out the function of assimilation necessary to ensure the coherence and the permanence of a systematic set of principles and rules. Once assimilated, these rules and principles can never be reduced to the sometimes contradictory, complex, and, finally,

31. One finds a similar chain linking theoreticians and activists in political organizations, or at least in those that traditionally claim a basis for their action in a political or economic theory.

32. A good example of the process of codification which produces the juridical from the judicial would be the publication of the decisions of the French Cour de Cassation (Supreme Court) and the selection, normalization, and distribution which, beginning with a body of decisions chosen by the presiding judges for their "legal interest," produces a body of rationalized and normalized rules. *See* Serverin, *Une production communautaire de jurisprudence: l'edition juridique des arrèts*, 23 ANNALES DE VAUCRESSON 73 (1985).

unmasterable series of successive acts of jurisprudence. At the same time, they offer to judges, whose position and dispositions incline them to rely on their sense of justice alone, the means of separating their judgments from the overt arbitrariness of a *Kadijustiz*.[33] The role of legal scholars, at least in the so-called Romano-Germanic tradition, is not to describe existing practices or the operative conditions of the rules which have been deemed appropriate, but rather to *formalize* the principles and rules involved in these practices by developing a systematic body of rules based on rational principles and adapted for general application. These scholars thus partake of two modes of thinking: the theological, in that they seek the revelation of what is *just* in the text of the law; and the logical, in that they claim to put deductive method into practice when applying the law to a particular case. Their object is to establish a "nomological science," a science of law and law-making that would state in scientific terms what ought to be. As if they sought to unite the two separate meanings of "natural law," they practice an exegesis aimed at rationalizing positive law by the logical supervision necessary to guarantee the coherence of the juridical corpus, and, simultaneously, to discover unforeseen consequences in the texts and in their interplay, thereby filling the so-called gaps in the law.

We should not underestimate the historical effectiveness of the legal theorist's work which, by becoming part of its object, becomes one of the principal factors in its transformation. But neither should we be misled by the exalted representations of juridical activity which are offered by its own theoreticians.[34] For anyone who does not immediately accept the presuppositions upon which the legal field's operation is based, it would be hard to believe that the pure constructions of legal scholars, still less the decisions of ordinary judges, comply with the deductive logic which

33. *See* II M. WEBER, ECONOMY AND SOCIETY: AN OUTLINE OF INTERPRETIVE SOCIOLOGY 976-78 (G. Roth & M. Wittich eds. 1978). In Islam, the *Kadi* is a minor local magistrate. "Kadi Justice" is Weber's term for a legal system oriented "not at fixed rules of a formally rational law but at the ethical, religious, political, or otherwise expediential postulates of a substantively rational law." *See* M. WEBER ON LAW IN ECONOMY AND SOCIETY 213 & n.48 (M. Rheinstein ed. 1954). (Translator's note).

34. Motulsky, for example, seeks to demonstrate that "jurisprudence" is defined by a specific and specifically deductive treatment of givens, by a "juridical syllogism," which allows subsumption of particular cases under a general rule. H. MOTULSKY, PRINCIPES D'UNE REALISATION METHODIQUE DU DROIT PRIVE, LA THEORIE DES ELEMENTS GENERATEURS DE DROITS SUBJECTIFS 47-48 (Thesis, University of Paris 1948). Like epistemologists who reconstruct ex post facto the actual practice of a researcher and produce an account of scholarly procedure as it ought to be, Motulsky reconstructs what might (or should) be the proper "method of production" of the law. He outlines a phase of research seeking a "possible rule"—a sort of methodical exploration of the universe of rules of law—and distinguishes it from the application phase, comprising the application of the rule directly to a particular case.

is the spiritual point of honor of all these professional jurists. As the "legal realists" have demonstrated, it is impossible to develop a perfectly rational juridical methodology: in reality, the application of a rule of law to a particular case is a confrontation of antagonistic rights between which a court must choose. The "rule" drawn from a preceding case can never be purely and simply applied to a new case, since there are never two completely identical cases and since the judge must determine if the rule applied in the first case can be extended in such a way as to include the second.[35] In short, far from the judge's being simply an executor whose role is to deduce from the law the conclusions directly applicable to an instant case, he enjoys a partial autonomy that is no doubt the best measure of his position in the structure of distribution of juridical authority's specific capital.[36] His decisions are based on a logic and a system of values very close to those of the texts which he must interpret, and truly have the function of *inventions*. While the existence of written rules doubtless tends to diminish the variability of behaviors, and while the conduct of juridical actors can be referred and submitted more or less strictly to the requirements of the law, while at the same time a proportion of arbitrariness remains in legal decisions and in the totality of the acts which precede and predetermine them, such as the decisions of the police concerning an arrest. This arbitrariness can be imputed to organizational variables such as the composition of the deciding body or the identities of the parties.

VI

Interpretation causes a *historicization of the norm* by adapting

35. Cohen, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L. REV. 809, 809-19 (1935).

36. The freedom granted to interpretation varies considerably between the Cour de Cassation, see *supra* note 31, which has the power to annul the force of a law (for example by proposing a strict interpretation of it, and lower courts, in which judges' academic training and professional experience incline them to abdicate the freedom of interpretation which is theoretically theirs and to limit themselves to applying established interpretations (comprising statements of the decision's basis in the law, doctrine, legal commentary, and appellate court decisions). Remi Lenoir offers the example of a court in a working-class district of Paris in which, every Friday morning, the session is specially given over to identical lawsuits concerning breach of rental and sales contracts, brought by a local firm specializing in the sale and rental of household appliances, televisions, and the like. The decisions, which are entirely predetermined, are rendered with great rapidity; the lawyers, who are rarely even there, do not speak. If for any reason a lawyer is present—which would prove that, even at this level, the court's power of interpretation exists—such presence is perceived as a sign of esteem for the judge and the institution which, as such, is worthy of such respect since the law is not rigidly applied there. It is also a sign of the importance attributed to the decision and an indication of the chances that an appeal of the decision might be made.

sources to new circumstances, by discovering new possibilities within them, and by eliminating what has been superseded or become obsolete. Given the extraordinary elasticity of texts, which can go as far as complete indeterminacy or ambiguity, the hermeneutic operation of the *declaratio* (judgment) benefits from considerable freedom. It is not rare for the law, as a docile, adaptable, supple instrument, to be obliged to the ex post facto rationalization of decisions in which it had no part. To varying degrees, jurists and judges have at their disposal the power to exploit the polysemy or the ambiguity of legal formulas by appealing to such rhetorical devices as *restrictio* (narrowing), a procedure necessary to avoid applying a law which, literally understood, ought to be applied; *extensio* (broadening), a procedure which allows application of a law which, taken literally, ought not to be applied; and a whole series of techniques like analogy and the distinction of letter and spirit, which tend to maximize the law's elasticity, and even its contradictions, ambiguities, and lacunae.[37]

In reality, the interpretation of the law is never simply the solitary act of a judge concerned with providing a legal foundation for a decision which, at least in its origin, is unconnected to law and reason. The judge acts neither as an interpreter meticulously and faithfully applying the rule (as Gadamer believes), nor as a logician bound by the deductive rigor of his "method of realization" (as Motulsky claims). The practical content of the law which emerges in the judgment is the product of a symbolic struggle between professionals possessing unequal technical skills and social influence. They thus have unequal ability to marshall the available juridical resources through the exploration and exploitation of "possible rules," and to use them effectively, as symbolic weapons, to win their case. The juridical effect of the rule—its real *meaning*—can be discovered in the specific power relation between professionals. Assuming that the abstract equity of the contrary positions they represent is the same, this power relation might be thought of as corresponding to the power relations between the parties in the case.

37. Mario Sbriccoli has proposed a list of the procedures which allowed medieval Italian jurists (lawyers, magistrates, political counsellors, etc.) in the small communes of the time to "manipulate" the juridical corpus. For example, the *declaratio* could be based upon the legal category of the case, the substance of the norm, the usage and common meaning of the terms, their etymology—and each of these elements could be subdivided again. The *declaratio* could also play upon contradictions between the legal category and the text itself, taking off from one of them to yield an understanding of the other, or vice versa. *See* M. SBRICCOLI, L'INTERPRETAZZIONE DELLO STATUTO, CONTRIBUTO ALLO STUDIO DELLA FUNZIONE DEI GIURISTI NELL'ETA COMMUNALE (1969); Sbriccoli, *Politique et interprétation juridiques dans les villes italiennes du Moyen-age*, 17 ARCHIVES DE PHILOSOPHIE DU DROIT, 99-113 (1972).

In granting the status of *judgment* to a legal decision which no doubt owes more to the ethical dispositions of the actors than to the pure norms of the law, the rationalization process provides the decision with the *symbolic effectiveness* possessed by any action which, assuming one ignores its arbitrariness, is recognized as legitimate. Such effectiveness depends at least in part on the fact that, unless particular vigilance is exercized, the impression of logical necessity suggested by the form tends to contaminate the content as well. The rational (or rationalizing) formalism of rationalist law, which has been distinguished by Weber and others from the magic formalism of ritual and of ancient procedures of judgment (such as the individual or collective oath), participates in the symbolic effectiveness of law at its most rational.[38] The ritual that is designed to intensify the authority of the act of interpretation—for example formal reading of the texts, analysis and proclamation of the judgment—which, from Pascal's time forward, has always claimed the attention of analysts, only adds to the collective work of sublimation designed to attest that the decision expresses not the will or the world-view of the judge but the will of the law or the legislature (*voluntas legis* or *legislatoris*).

The Institution of Monopoly

I

In reality, the institution of a "judicial space" implies the establishment of a borderline between actors. It divides those qualified to participate in the game and those who, though they may find themselves in the middle of it, are in fact excluded by their inability to accomplish the conversion of mental space—and particularly of linguistic stance—which is presumed by entry into this social space. The establishment of properly professional competence, the technical mastery of a sophisticated body of knowledge that often runs contrary to the simple counsels of common sense, entails the disqualification of the non-specialists' sense of fairness, and the revocation of their naive understanding of the facts, of their "view of the case." The difference between the vulgar vision of the person who is about to come under the jurisdiction of the court, that is to say, the client, and the professional vision of the expert witness, the judge, the lawyer, and other juridical actors, is far from accidental. Rather, it is essential to a power relation upon which two systems of presuppositions, two systems of expressive intention—two world-views—

38. *See* P. BOURDIEU, CE QUE PARLER VEUT DIRE (1982). The effects of formalization are discussed at 20-21; the institutional effect at 261-84.

are grounded. This difference, which is the basis for excluding the non-specialist, results from the establishment of a system of injunctions through the structure of the field and of the system of principles of vision and of division which are written into its fundamental law, into its *constitution*. At the heart of this system is the assumption of a special overall attitude, visible particularly in relation to language.

While we may agree that, like every specialized language (philosophical language, for example), legal language consists of a particular use of ordinary language, analysts have nonetheless had much difficulty in discovering the true principle of this "mixture of dependence and independence."[39] It is not sufficient to refer to the effect of context or "network" in Wittgenstein's sense, which draws words and ordinary language away from their usual meanings. The transmutation which affects all linguistic traits is tied to the assumption of a general attitude which is simply the incorporated form of a system of principles of vision and of division. These principles constitute the field which is itself characterized by an independence achieved in and through dependence. The speech-act philosopher Austin was surprised that the question of why we call "different things by the same name" is never asked; one might add that there is a question of why it causes no problem for us to do so. If legal language can allow itself to use a word to name something completely different from what that word designates in ordinary usage, it is because the two usages are connected by linguistic stances that are as radically exclusive as are perceptive and imaginary conscience according to phenomenology. The result is that the "homonymic collision" (or the misunderstanding) which might result from the confrontation of two signifiers within the same space is extremely improbable. The principle of the separation between the two signifiers, which we usually attribute to the effect of context, is nothing other than a duality of mental spaces, dependent upon the different social spaces that sustain them. This *postural discordance* is the *structural* basis of all the misunderstandings which may occur between the users of learned codes (*e.g.*, physicians, judges) and simple laypeople, on the syntactic as well as on the lexicological level. The most significant of such misunderstandings are those that occur when words from ordinary usage have been made to deviate from their usual meaning by learned usage and thus function for the layperson as "false friends."[40]

39. Vissert Hooft, *La philosophie du langage ordinaire et le droit*, 17 ARCHIVES DE PHILOSOPHIE DU DROIT 261-84 (1972).

40. Such, for example, is the fact with the French word *cause* (case, lawsuit), which in common usage has a meaning completely different from its meaning in law.

II

The judicial situation operates like a *neutral space* that *neutralizes* the stakes in any conflict through the de-realization and distancing implicit in the conversion of a direct struggle between parties into a dialogue between mediators. As third parties without direct stakes in the conflict (which is not the same thing as neutral), and ready to comprehend the intense realities of the present by reference to ancient texts and time-tried precedents, the specialized agents of the law introduce a neutralizing distance without even willing or realizing it. In the case of judges, at least, this is a kind of functional imperative, but one which is inscribed at the deepest level of the habitus. The ascetic and simultaneously aristocratic attitudes, which are the internalized manifestation of the requirement of disengagement, are constantly recalled and reinforced by a peer group quick to condemn and censure those who get too openly involved with financial dealings or political questions. In short, the transformation of irreconcilable conflicts of personal interest into rule-bound exchanges of rational arguments between equal individuals is constitutive of the very existence of a specialized body independent of the social groups in conflict. This body is responsible for organizing the *public representation* of social conflicts according to established forms, and for finding solutions socially recognized as impartial. The solutions are accepted as impartial because they have been defined according to the formal and logically coherent rules of a doctrine perceived as independent of the immediate antagonisms.[41] The self-representation which describes the court as a separate and bounded space within which conflicts are transformed into specialist dialogues and the trial as an ordered progression toward the truth,[42] accurately evokes one of the dimensions of the symbolic effect of juridical activity as the free and rational application of a universally and scientifically recognized norm.[43] As a political compromise between irreconcilable demands, presented as the logical synthesis of antagonistic theses, a judgment contains within itself the

41. Recourse to the law in many cases implies recognition of a definition of the forms of grievance or of struggle which gives primacy to individual (and legal) conflicts over other forms of struggle.

42. "Thus the law is born in the trial, which is a regulated dialogue whose method is dialectics." M. VILLEY, PHILOSOPHIE DU DROIT 53 (1979).

43. Representations of juridical practice (conceived as rational decision-making or as the deductive application of a rule of law) and juridical doctrine itself (which tends to conceive the social world as the simple sum of actions by rational, equal, and free legal subjects) predisposed earlier legal scholars, persuaded by Kant or by Gadamer, to seek in Rational Action Theory the means for modernizing the traditional arguments for the law. Again we see the eternal renewal of the same techniques for eternalizing.

whole ambiguity of the juridical field. It owes its effectiveness to its simultaneous participation in the logic of two separate fields: the political, characterized by the opposition between friends (or allies) and their enemies, in which the tendency is to exclude the intervention of any third person as arbiter; and the scientific, which tends to grant practical primacy to the opposition between truth and error, granting effective decision-making power to an agreement among specialists.[44]

III

The juridical field is a social space organized around the conversion of direct conflict between directly concerned parties into juridically regulated debate between professionals acting by proxy. It is also the space in which such debate functions. These professionals have in common their knowledge and their acceptance of the rules of the legal game, that is, the written and unwritten laws of the field itself, even those required to achieve victory over the letter of the law (thus in Kafka's *The Trial,* the lawyer is as frightening as the judge). From Aristotle to Kojève, the jurist has most often been defined as a "third-person mediator." In this definition, the essential idea is *mediation,* not decision. Mediation implies the absence of any direct and immediate adoption by the jurist of the "case" before him. Thus, a superior power appears before the litigants, one which transcends the confrontation of private world-views, and which is nothing other than the structure and the socially instituted space in which such confrontations are allowed to occur.

Entry into the juridical field implies the tacit acceptance of the field's fundamental law, an essential tautology which requires that, within the field, conflicts can only be resolved *juridically*—that is, according to the rules and conventions of the field itself. For this reason, such entry completely redefines ordinary experience and the whole situation at stake in any litigation. As is true of any "field," the constitution of the juridical field is a principle of constitution of reality itself. To join the game, to agree to play the game, to accept the law for the resolution of the conflict, is tacitly to adopt a mode of expression and discussion implying the renunciation of physical violence and of elementary forms of symbolic violence, such as insults. It is above all to recognize the specific requirements of the juridical construction of the issue. Since juridical facts are the products of juridical construction, and not vice versa, a

44. The philosophical tradition (and particularly Aristotle in the *Topics*) refers more or less explicitly to the formation of the social field, which is the basis for the constitution of verbal exchange as *heuristic discussion,* whose explicit orientation, in contrast to the *eristic debate,* is toward the discovery of propositions valid for a universal audience.

complete retranslation of all of the aspects of the controversy is necessary in order, as the Romans said, to *ponere causam* (to "put" the case), that is to institute the controversy *as a lawsuit*, as a juridical problem that can become the object of juridically regulated debate. Such a retranslation retains as part of the case everything that can be argued from the point of view of legal pertinence, and only that; only whatever can stand as a fact or as a favorable or unfavorable argument remains.

IV

Among the requirements which are implicit provisions of the contract defining entry into the juridical field, three need to be mentioned particularly in light of Austin's work. First is the need to come to a decision—a decision relatively "black or white," for the plaintiff or for the defendant: guilty or not guilty, liable or not liable. Second is the requirement that the indictment and the pleadings must conform to one of the recognized procedural categories established in the history of the law. These categories, despite their number, remain very limited and very stereotyped in comparison with the accusations and defenses found in daily life. All sorts of conflicts and arguments might be said, by reason of their triviality, not to have attained the status of the legal, to be outside the legal, by reason of an exclusively moral appeal. Third, entry into the juridical field requires reference to and conformity with precedent, a requirement which may entail the distortion of ordinary beliefs and expressions.[45]

Stare decisis, the rule which decrees the authority of prior legal decisions for any current action, stands in relation to juridical thought as Durkheim's precept, "explain the social *by* the social," does to sociological thought: it is but another way of asserting the autonomy and specificity of legal reasoning and legal judgments. Reference to a body of precedents that are recognized as functioning as a space of possible solutions for the current case legitimizes the decision by making it seem the result of neutral and objective application of specifically juridical procedures, though it may in fact be motivated by quite different considerations. Precedents are used as tools to justify a certain result as well as serving as the determinants of a particular decision; the same precedent,

45. According to Austin, from this set of requirements, constitutive of the juridical world's particular perspective, emerges the fact that legal scholars do not give ordinary expressions their ordinary meaning and that, even beyond inventing technical terms or technical senses for ordinary terms, they have a special relation to the language which inclines them to unexpected extensions or restrictions of sense. *See* J. L. AUSTIN, PHILOSOPHICAL PAPERS 136 (1961).

understood in different ways, can be called upon to justify quite different results. Moreover, the legal tradition possesses a large diversity of precedents and of interpretations from which one can choose the one most suited to a particular result.[46] For these reasons, the notion of stare decisis should certainly not be conceived of as a kind of rational postulate guaranteeing the consistency and predictability as well as the objectivity of legal decisions by acting as a limit imposed upon the arbitrariness of subjective determinations. The predictability and calculability that Weber imputed to "rational law" doubtless arise more than anything else from the consistency and homogeneity of the legal habitus. Shaped through legal studies and the practice of the legal profession on the basis of a kind of common familial experience, the prevalent dispositions of the legal habitus operate like categories of perception and judgment that structure the perception and judgment of ordinary conflicts, and orient the work which converts them into juridical confrontations.[47]

V

Even if one does not fully accept its presuppositions, the methodology of "dispute theory" may be useful for providing a description of the collective labor of "categorization" that tends to transform a perceived, or even unperceived, grievance into an explicitly attributable harm and thus convert a simple dispute into a lawsuit. Nothing is less "natural" than the "need for the law" or, to put it differently, than the impression of an injustice which leads someone to appeal to the services of a professional. Clearly the feeling of injustice or the ability to perceive an experience as unjust is not distributed in a uniform way; it depends closely upon the position one occupies in the social space. The conversion of an unperceived harm into one that is perceived, named, and specifically attributed presupposes a labor of construction of social reality which falls largely to professionals. The discovery of injustice as such depends upon the feeling that one has rights ("entitlement"). Hence the specific power of legal professionals consists in *revealing* rights—and revealing injustices by the same process—or, on the contrary, in vetoing feelings of injustice based on a sense of fairness alone and, thereby, in discouraging the legal defense of subjective rights. In short, the power of the professionals is to manipulate legal aspirations—to create them in certain cases, to amplify

46. *See* Kayris, *Legal Reasoning*, in THE POLITICS OF LAW 11-17 (D. Kayris ed. 1982).

47. Certain legal realists, who deny that rules have any specific power, have gone as far as equating the law with a simple statistical regularity that guarantees the predictability of functioning of legal tribunals.

them or discourage them in others.[48] The professionals create the need for their own services by redefining problems expressed in ordinary language as *legal* problems, translating them into the language of the law and proposing a prospective evaluation of the chances for success of different strategies. There is no doubt that they are guided in their work of constructing *disputes* by their financial interest, but they are also guided by their ethical or political inclinations, which form the basis of their social affinities with their clients. Above all, they are guided by their most specific interests, those which are defined by their objective relations with other professionals. These interests are manifested, for example, in the courtroom itself, giving rise to explicit or implicit negotiations. The functioning of the juridical field tends to impose the effect of closure, visible in the tendency judicial insitutions to produce truly specific traditions, in categories of perception and judgment which can never be completely translated into those of the nonprofessional. Juridical institutions produce their own problems and their own solutions according to a hermetic logic unavailable to laypeople.[49]

The alteration of mental space, logically and practically contingent upon change in social space, guarantees the *mastery of the situation* to those who possess legal qualifications. They alone can adopt the attitudes which allow the constitution of situations according to the fundamental law of the field. Those who tacitly abandon the direction of their conflict themselves by accepting entry into the juridical field (giving up, for example, the resort to force, or to an unofficial arbitrator, or the direct effort to find an amicable solution) are reduced to the status of client. The field transforms their prejuridical interests into legal cases and transforms into social capital the professional qualifications that guarantees the mastery of the juridical resources required by the field's own logic.

VI

The constitution of the juridical field is inseparable from the institu-

48. One of the most significant powers of lawyers depends upon the work of *expansion* or amplification of *disputes*. This function, which is fundamentally political, consists in transforming accepted definitions by transforming the words or labels that identify people or objects, most frequently by using the categories of legal language in such a way as to include the relevant person, action, or relationship in a larger class. On this labor of *expansion*, see Mather & Yngvesson, *Language, Audience, and the Transformation of Disputes*, 15 LAW & SOC'Y REV. 776 (1980-81).

49. On all these points, see Coates & Penrod, *Social Psychology and the Emergence of Disputes*, 15 LAW & SOC'Y REV. 654 (1980-81); Felstiner, Abel & Sarat, *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming*, 15 LAW & SOC'Y REV. 631 (1980-81); Mather & Yngvesson, *supra* note 48.

tion of a professional monopoly over the production and sale of the particular category of products' legal services. Legal qualifications comprise a specific power that allows control of entry into the juridical field by deciding which conflicts deserve entry, and determining the specific *form* in which they must be clothed to be constituted as properly legal arguments. Such qualifications alone can provide the necessary resources to accomplish the work of construction which, through selection of the pertinent categories, allows reality to be reduced to the useful fiction we term its juridical definition. The body of professionals is defined by their monopoly of the tools necessary for legal construction. This monopoly is itself an appropriation: the size of the profits that the monopoly of the market guarantees to each professional depends upon the degree to which the monopoly can control the production of its members, the training and above all the licensing of juridical actors authorized to sell legal services. In this way, the supply of legal services is regulated.

The best proof of these assertions can be found in the effects produced, both in Europe and in the United States, by a crisis in the traditional mode of entry into the legal profession (and indeed into the body of physicians, architects, and other holders of the different varieties of cultural capital). In this connection might be mentioned, for example, efforts to limit the supply of professional services by measures which increase the difficulty of entry into the profession, as well as efforts to limit the effects of increased competition to supply professional services, such as declining income. On the other hand, the professionals also make efforts to increase demand, through quite varied means. One such means is advertising, more frequent in the United States than in Europe. Another is the work of militant groups whose effect (which does not mean whose object) is to open new markets for legal services by supporting the rights of disfavored minorities or by encouraging minorities to press for their rights. Similar efforts seek more broadly to convince public authorities to contribute directly or indirectly to sustaining what might be termed the "juridical demand."[50]

The recent evolution of the juridical field thus allows us to observe directly the process of appropriative constitution—accompanied by the correlative exclusion of simple laypeople—which tends to create demand by bringing within the juridical order an area of social existence that previously had been conceded to prejuridical forms of conflict resolution. For example, in the case of disputes involving numerous types of labor contracts, labor arbitration boards offered arbitration based on a sense of

50. On the effects of the growth in the lawyer population in the United States, see Abel, *Toward a Political Economy of Lawyers*, 5 WIS. L. REV. 1117 (1981).

fairness, according to simplified procedures, and presided over by individuals with experience in the area of the dispute. These disputes have slowly been annexed into the juridical realm.[51] Through an objective complicity between the best-educated union officials and certain jurists who, owing to their generous concern for the interests of the least favored members of society, have extended the market for their own services, this enclave of juridical independence has been slowly integrated into the professional legal market. More and more frequently, members of labor arbitration boards are obliged to appeal to the legal system to arrive at and to justify their decisions, particularly because complainants and respondents have increasingly tended to resort to the courts and to have recourse to the services of lawyers. The multiplication of appeals has also obliged the labor arbitration boards to defer to decisions of the appeals courts. As a consequence, the professional legal periodicals and the lawyers, more and more frequently consulted by management or the unions, have profited considerably.[52] In short, a process of *circular reinforcement* goes into action: every step toward the "juridicization" of a dimension of practice creates new "juridical needs," and thus new juridical interests among those who, possessing the specific qualifications necessary (knowledge of labor law in this case), find in these needs a new market. Through their intervention, such practitioners cause an increase in the formalism of legal procedures, and thereby contribute to increasing the need for their own services and products, to the practical exclu-

51. *See* Bonafé-Schmitt, *Pour une sociologie du juge prud'homal,* 23 ANNALES DE VAUCRESSON 27 (1985); *see also* Cam, *Juges rouges et droit du travail,* 19 ACTES DE LA RECHERCHE EN SCIENCES SOCIALES 2 (1978); P. CAM, LES PRUD'HOMMES, JUGES OU ARBITRES (1981).

52. *See* Dezalay, *De la médiation au droit pur: pratiques et représentations savantes dans le champ du droit,* 21 ANNALES DE VAUCRESSON 118 (1984). Although the spread of knowledge of labor law among union militants has produced a broad acquaintance with legal rules and procedures in a large number of nonprofessionals, this circumstance paradoxically has not had the effect of causing a reappropriation of the law by concerned laypeople to the detriment of professional monopoly. Rather, the border between laypeople and professionals has moved. The professionals have been driven by the logic of competition within the field to increase the technical complexity of their practice in order to keep control of the monopoly of legitimate interpretation and to escape the devaluation associated with a specialization occupying an inferior position in the juridical field. *See* Dhoquois, *La Vulgarisation du droit du travail. Réappropriation par les intéressés ou développement d'un nouveau marché pour les professionnels?* 23 ANNALES DE VAUCRESSON 15 (1985). There are numerous other manifestations of this tension between the effort to extend the market by conquest of a sector previously left to lay resolution (an effort which may be all the more efficacious, as in the case of the labor arbitration boards, to the extent that it is innocent or not intentionally manipulative) and the reinforcement of professional autonomy, that is to say the raising of the barrier between professionals and laypeople. An example would be the resolution of job-classification and work-rule disputes within private firms.

sion of laypeople. Laypeople are obliged to have recourse to the advice of legal professionals, who little by little will come to replace the complainants and defendants. The latter in their turn become nothing more than a group of individuals who have fallen under the jurisdiction of the courts.[53]

The distance from lay attitudes that defines membership in the field would be impaired by any too-passionate defense of a complainant's interests. The desire to carefully maintain this distance leads the semi-professional mediators who function in the negotiation mechanism increasingly to participate in the process in a technical way in order to more strikingly signify their divorce from those whose interests they are defending. They tend therefore to give an increasingly authoritative and neutral character to their arguments, but they do so at the risk of undermining the very logic of the process of amicable negotiation to begin with.[54]

The Power of Naming

I

A trial is a confrontation between individual points of view, whose cognitive and evaluative aspects cannot be fully distinguished. The confrontation is resolved by the solemnly pronounced judgment of an "authority" whose power is socially granted. Thus the trial represents a paradigmatic staging of the symbolic struggle inherent in the social world: a struggle in which differing, indeed antagonistic world-views confront each other. Each, with its individual authority, seeks general recognition and thereby its own self-realization. What is at stake in this struggle is monopoly of the power to impose a universally recognized principle of knowledge of the social world—a principle of legitimized *distribution*.[55] In this struggle, judicial power, through judgments accompa-

53. This is a typical example of one of the processes which, even if we avoid conceiving of them in the naive language of cooptation, tend to suggest the utility of what might be termed "negative functionalism." These processes urge us to think that any form of opposition to dominant interests fulfills a useful function for the perpetuation of the fundamental order of the social field; that heresy tends to reinforce the very order which, while it combats it simultaneously welcomes and absorbs it and emerges even stronger from the confrontation.

54. *See* Dezalay, *Des affaires disciplinaires au droit disciplinaire: la juridictionalisation des affaires disçiplinaires comme enjeu social et professionnel*, 23 ANNALES DE VAUCRESSON 51 (1985).

55. *Nomos*, the Greek word for "law" or "custom," derives from *nemo*, meaning to separate, divide, distribute. In archaic times the *rex* (king) held the power to set boundaries *(regère fines)*, to "fix the rules, to determine, in the precise sense, what is right *(droit)*." *See* 2 E. BENVENISTE, LE VOCABULAIRE DES INSTITUTIONS INDO-EUROPEENNES 15 (1969).

nied by penalties that can include acts of physical constraint such as the taking of life, liberty, or property, demonstrates the special point of view, transcending individual perspectives—the sovereign vision of the State. For the State alone holds the monopoly of legitimized symbolic violence.

The insult uttered by a private person as private speech, engages only the speaker and hardly possesses symbolic efficacy. In contrast, the judgment of a court, which decides conflicts or negotiations concerning persons or things by publicly proclaiming the truth about them, belongs in the final analysis to the class of *acts of naming* or of *instituting*. The judgment represents the quintessential form of authorized, public, official speech which is spoken in the name of and to everyone. These performative utterances, substantive—as opposed to procedural—decisions publicly formulated by authorized agents acting on behalf of the collectivity, are magical acts which succeed because they have the power to make themselves universally recognized.[56] They thus succeed in creating a situation in which no one can refuse or ignore the point of view, the vision, which they impose.

Law consecrates the established order by consecrating the vision of that order which is held by the State. It grants to its actors a secure identity, a status, and above all a body of powers (or competences) that are socially recognized and therefore productive. It does this through the distribution of the right to use those powers: through degrees (*e.g.* academic, professional) and certificates (of professional specialization, of illness, of disability). It also ratifies all processes related to the acquisition, augmentation, transfer, or withdrawal of those powers. The judgments by which law distributes differing amounts of different kinds of capital to the different actors (or institutions) in society conclude, or at least limit, struggle, exchange, or negotiation concerning the qualities of individuals or groups, concerning the membership of individuals within groups, concerning the correct attribution of names (whether proper or common) and titles, concerning union or separation—in short, concerning the entire practical activity of "worldmaking" (marriages, divorces, substitutions, associations, dissolutions) which constitutes social units. Law is the quintessential form of the symbolic power of naming that creates the things named, and creates social groups in particular. It confers upon the reality which arises from its classificatory operations the maximum permanence that any social entity has the power to confer upon another, the permanence which we attribute to objects.

56. These judgments are model acts of categorization; *katègoresthai*, in Greek, meant to publicly accuse.

The law is the quintessential form of "active" discourse, able by its own operation to produce its effects. It would not be excessive to say that it *creates* the social world, but only if we remember that it is this world which first creates the law. It is important to ascertain the social conditions—and the limits—of the law's quasi-magical power, if we are not to fall into a radical nominalism (suggested in certain of Michel Foucault's analyses) and posit that we produce the categories according to which we produce the social world and that these categories produce this world. In reality, the schemas of perception and judgment which are at the origin of our construction of the social world are produced by a collective historical labor, yet are based on the structures of this world themselves. These are structured structures, historically constituted. Our thought categories *contribute* to the production of the world, but only within the limits of their correspondence with preexisting structures. Symbolic acts of naming achieve their power of creative utterance to the extent, and only to the extent, that they propose principles of vision and division objectively adapted to the preexisting divisions of which they are the products. By consecrating what is uttered, such utterance carries its object to that fully attained higher existence which characterizes constituted institutions. In other words, the specific symbolic effect of the representations, which are produced according to schemas adapted to the structures of the world which produce them, is to confirm the established order. A "correct" representation ratifies and sanctifies the doxic view of the divisions of the social world by representing this view with the perceived objectivity of orthodoxy. Such an act is a veritable act of creation which, by proclaiming orthodoxy in the name of and to everyone, confers upon it the practical universality of that which is *official*.

II

Symbolic power, in its prophetic, heretical, anti-institutional, subversive mode, must also be realistically adapted to the objective structures of the social world. In science, art, or politics, the creative power of representation never manifests itself more clearly than in periods of revolutionary crisis. Nonetheless, the will to transform the world by transforming the words for naming it, by producing new categories of perception and judgment, and by dictating a new vision of social divisions and distributions, can only succeed if the resulting prophecies, or creative evocations, are also, at least in part, well-founded *pre*-visions, anticipatory descriptions. These visions only call forth what they proclaim—whether new practices, new mores or especially new social groupings—because they announce what is in the process of developing.

They are not so much the midwives as the recording secretaries of history. By granting to historical realities or virtualities the recognition that is implicit in prophetic proclamation, they offer them the real possibility of achieving full reality—fully recognized, official existence—through the effect of legitimation, indeed of consecration, implied by publishing and officializing them. Thus only a *realist* nominalism (or one based in reality) allows us to account for the magical effect of *naming* as the term has been used here, and thus for the symbolic imposition of power, which only succeeds because it is fully based in reality. Juridical ratification is the canonical form of all this social magic. It can function effectively only to the extent that the symbolic power of legitimation, or more accurately of naturalization (since what is natural need not even ask the question of its own legitimacy), reproduces and heightens the immanent historical power which the authority and the authorization of naming reinforces or liberates.

Such analysis may seem quite distant from the reality of juridical practice. But it is indispensable for accurately understanding the principle of symbolic power. While the responsibility of sociology is to remind us that, as Montesquieu put it, society cannot be transformed by decree, our awareness of the social conditions underlying the power of juridical acts should not lead us to ignore or to deny that which creates the specific efficacy of rules, of regulations, and of the law itself. In explaining practices, a healthy reaction against what might be termed abstract "juridicism" should lead us to restore the constitutive dispositions of the habitus to their proper place. But this does not imply that one ought to forget the specific effect of an explicitly promulgated regulation, especially when, as is the case with legal regulations, it is accompanied by sanctions. There is no doubt that the law possesses a specific efficacy, particularly attributable to the work of *codification*, of formulation and formalization, of neutralization and systematization, which all professionals at symbolic work produce according to the laws of their own universe. Nevertheless, this efficacy, defined by its opposition both to pure and simple impotence and to effectiveness based only on naked force, is exercised only to the extent that the law is socially recognized and meets with agreement, even if only tacit and partial, because it corresponds, at least apparently, to real needs and interests.[57]

57. The relation between the habitus and the rule or doctrine is the same in the case of religion, where it is just as mistaken to impute practices to the effect of liturgy or dogma (based on an overestimation of the efficacy of religious action which is the equivalent of "juridicism"), as to neglect that effect by imputing such practices entirely to personal inclinations, neglecting thereby the specific efficacy of the body of clerics.

The Power of Form

I

Like the practice of religion, juridical practice defines itself in part through the relation between the juridical field and demand on the part of laypeople. The juridical field is the the basis of the supply of legal services arising from professional competition; demand is always partially conditioned by the effect of this supply. There is constant tension between the available juridical norms, which appear universal, at least in their form, and the necessarily diverse, even conflicting and contradictory, social demand. This tension is objectively present in juridical practices themselves, either positively or potentially (in the form of avant garde ethical or political transgression or innovation). In analyzing the legitimacy granted in practice to the law and its agents, we must avoid two misunderstandings. First, legitimacy cannot be understood simply as the effect of general recognition, granted by those who are subject to it, to a jurisdiction which the professional ideology would have us believe is the expression of universal and eternal values, transcending any individual interest. On the other hand, such legitimacy cannot be comprehended as the effect of consent that is automatically insured by nothing more than social mores, or power relations, or, more accurately, the interest of dominant groups.[58] We can no longer ask whether power comes from above or from below. Nor can we ask if the development and the transformation of the law are products of an evolution of mores toward rules, of collective practices toward juridical codification or, inversely, of juridical forms and formulations toward the practices which they inform. Rather, we must take account of the *totality of objective relations* between the juridical field and the field of power and, through it, the whole social field. The means, the ends, and the specific effects particular to juridical action are defined within this universe of relations.

II

To take account of what law is, in its structure and in its social

58. The tendency to understand complex systems of relation in a unilateral way (similar to the tendency of linguists who seek the principle of linguistic change solely in one or another sector of social space) leads some, in the name of sociology, to simply invert the old idealist model of pure juridical creation. Depending upon a series of struggles within the scholarly body, this model has been simultaneously or successively identified with the actions of legislators or of legal scholars or, in the case of the partisans of public or civil law, with the decisions of courts. "The center of gravity of the development of the law in our period . . . , as at any time, can be found neither in legislation, nor in doctrine, nor in jurisprudence, but in society itself." J. CARBONNIER, FLEXIBLE DROIT, TEXTES POUR UNE SOCIOLOGIE DU DROIT SANS RIGUEUR 21 (5th ed. 1983).

effects, it is necessary to go beyond the state of present or potential social demand and the social conditions of possibility which such demand offers to "juridical creation." We need to recover the profound logic of juridical work in its most specific locus, in the activity of *formalization* and in the interests of the formalizing agents as they are defined in the competition within the juridical field and in the relationship between this field and the larger field of power.[59]

There is no doubt that the practice of those responsible for "producing" or applying the law owes a great deal to the similarities which link the holders of this quintessential form of symbolic power to the holders of worldly power in general, whether political or economic.[60] This is so despite the jurisdictional conflicts which may set such holders of power in opposition to each other. The closeness of interests, and, above all, the parallelism of habitus, arising from similar family and educational backgrounds, fosters kindred world-views. Consequently, the choices which those in the legal realm must constantly make between differing or antagonistic interests, values, and world-views are unlikely to disadvantage the dominant forces. For the ethos of legal practitioners, which is at the origin of these choices, and the immanent logic of the legal texts, which are called upon to justify as well as to determine them, are strongly in harmony with the interests, values, and world-views of these dominant forces.

The membership of judges in the dominant class is universally noted. In the small communities of medieval Italy, possession of that particularly rare form of cultural capital that we term juridical capital was sufficient to guarantee a position of power.[61] Similarly in France, under the Old Regime, the "noblesse de robe" (those holding noble titles by virtue of their positions as magistrates), although they had less prestige than the military nobility, were frequently members of the aristocracy by birth. Sauvageot's investigation of the social origins of magistrates who entered practice in France before 1959 shows that a very high proportion came from families in the legal profession and, more

59. Max Weber considered the *formal* logical properties of rational law to be the real foundation of its *efficacy* (based particularly upon its capacity for generalization, seen as the source of its universal applicability). He associated the development of a body of legal specialists, and of juridical scholarship adapted to making the law an abstract and logically coherent discourse, with the development of bureaucracies and of the impersonal social relations which they foster.

60. These similarities have only grown stronger, in France, with the creation of the Ecole Nationale d'Administration, which guarantees that high government functionaries and a substantial proportion of the directors of public and private companies receive at least a minimum level of legal training.

61. *See* Sbriccoli, *supra* note 37.

broadly, from the bourgeoisie. Jean-Pierre Mounier has demonstrated that, at least until recently, the wealth guaranteed by a privileged class background was a condition of the economic independence and even of the ethos of austerity which constitute what might be called the necessary attributes of this profession dedicated to the service of the State.

When combined with the specific effects of professional training, such a background helps to explain that the magistracy's declared neutrality and its haughty independence from politics by no means exclude a commitment to the established order.[62] The effects of such unanimous tacit complicity become most visible in the course of an economic and social crisis within the professional body itself. Such a crisis arises, for example, in an alteration of the mode by which the holders of dominant positions are selected. At such a moment, professional complicity of the sort just discussed collapses. Certain newcomers to the magistracy, by virtue of their position or personal attitudes, are not inclined to accept the traditional presuppositions defining the magistracy. The struggles they undertake bring to light a largely repressed element at the heart of the group's foundation: the nonaggression pact that links the magistracy to dominant power. To this point the professional body is held together in and by a universally accepted hierarchy and consensus concerning its role. But increasing internal differentiation leads to the body's becoming a locus of struggle. This causes some members to repudiate the professional pact and to openly attack those who continue to consider it the inviolable norm of their professional activity.[63]

III

The power of the law is special. It extends beyond the circle of those who are already believers by virtue of the practical affinity uniting them with the interests and values fundamental to legal texts and to the

62. J. P. MOUNIER, LA DEFINITION JUDICIAIRE DE LA POLITIQUE (Doctoral Thesis, University of Paris I, 1975). A good index of the values of the magistracy as a body in France can be seen in the fact that magistrates, despite their reluctance to intervene in political affairs, were of all the legal professionals, and particularly in comparison with lawyers, the group which most frequently signed petitions against the liberalization of the law concerning abortion.

63. The results of the most recent professional election in France (held by mail ballot between May 12 and 21, 1986) brought to light a marked political polarization within the body of magistrates. Until the formation of the Syndicat de la Magistrature in 1968, all unionized magistrates were members of a single organization, the Union Féderale des Magistrats, which later became the Union Syndicale des Magistrates. In the recent election, the moderate USM considerably declined in strength, while the Syndicat de la Magistrature, leftist in tendency, gained, and the new Association Professionnelle des Magistrats, rightist, made its existence felt by winning more than 10% of the vote.

ethical and political inclinations of those who have the responsibility of applying them. The universalizing claims of legal doctrine and procedure, which are manifested in the work of juridical formalization, contribute to the establishment of their practical "universality." The specific property of symbolic power is that it can be exercised only through the complicity of those who are dominated by it. This complicity is all the more certain because it is unconscious on the part of those who undergo its effects—or perhaps we should say it is more subtly extorted from them. As the quintessential form of legitimized discourse, the law can exercise its specific power only to the extent that it attains recognition, that is, to the extent that the element of arbitrariness at the heart of its functioning (which may vary from case to case) remains unrecognized. The tacit grant of *faith* in the juridical order must be ceaselessly reproduced. Thus, one of the functions of the specifically juridical labor of formalizing and systematizing ethical representations and practices is to contribute to binding laypeople to the fundamental principle of the jurists' professional ideology—belief in the neutrality and autonomy of the law and of jurists themselves.[64] "The emergence of law," Jacques Ellul writes, "occurs at the point at which the imperative formulated by one of the groups composing a whole society takes on the status of a universal value by the fact of its juridical formulation."[65] It is indeed necessary to relate universalization and the creation of forms and formulas.

The rule of law presupposes the coming together of commitment to common values (which are marked, at the level of custom, by the presence of spontaneous and collective sanctions such as moral disapproval) and of the existence of explicit rules and sanctions and normalized procedures. This latter factor, which cannot be separated from the emergence of writing, plays a decisive role. Writing adds the possibility of universalizing commentary, which discovers "universal" rules and, above all, principles; and writing adds the possibility of transmission. Such transmission must be objective—depending for its success upon a methodical apprenticeship. It must also be generalized—able to reach beyond geographical (territorial) and temporal (generational) frontiers.[66] Although

64. Alain Bancaud and Yves Dezalay have demonstrated that even the most heretical of dissident legal scholars in France, those who associate themselves with sociological or Marxist methodologies to advance the rights of specialists working in the most disadvantaged areas of the law (such as social welfare law, *droit social*), nonetheless maintain their commitment to the science of jurisprudence. *See* Bancaud & Dezalay, *L'économie du droit: Impérialisme des économistes et résurgence d'un juridisme*, 19 (paper at the Colloque sur le Modèle Economique dans les Sciences [Conference on Economic Models in the Sciences], Dec. 1980).

65. Ellul, *Le problème de l'émergence du droit*, 1 ANNALES DE BORDEAUX 6, 15 (1976).

66. *See* Ellul, *Deux problèmes préalables*, 2 ANNALES DE BORDEAUX 61-70 (1978).

oral tradition makes disciplined technical refinement impossible in that it is tied to the experience of a unique place and social setting, written law fosters the process by which the text becomes autonomous. It is commented upon; it interposes itself between the commentaries and reality. At that point what the inhabitants of the legal world call "jurisprudence" becomes possible: that is, a particular form of scholarly knowledge, possessing its own norms and logic, and able to produce all the outward signs of rational coherence, of that "formal" rationality which Weber always carefully distinguished from "substantive" rationality, which rather concerns the *objects* of the practices thus formally rationalized.

IV

Juridical labor has multiple effects. Its work of formalizing and systematizing removes norms from the contingency of a particular situation by establishing an exemplary judgment (an appellate decision for example) in a form designed to become a model for later decisions. This form simultaneously authorizes and fosters the logic of precedent upon which specifically juridical thought and action are based. It ties the present continuously to the past. It provides the guarantee that, in the absence of a revolution which would upset the very foundation of the juridical order, the future will resemble what has gone before, that necessary transformations and adaptations will be conceived and expressed in a language that conforms to the past. Thus contained within a logic of conservation, juridical labor serves as one of the major foundations of the maintenance of symbolic order through another of its functional traits.[67] That is, through the systematization and rationalization which it imposes on juridical decisions and on the rules appealed to for grounding or justifying those decisions, it gives the *seal of universality*—the quintessential carrier of symbolic effectiveness—to a view of the social world which, as we have seen, exhibits no striking divergences from the point of view of dominant power. From this position, juridical labor has the capacity to lead to what might be termed *practical universalization*, that is, to the generalization in practice of a mode of action and expression previously restricted to one region of the geographical or social space. As Jacques Ellul indicates:

> [L]aws, at first foreign and applied from without, by experience come slowly to be recognized as useful and, over time, become a part of the collectivity's own patrimony. The collectivity has progressively been

67. Thus in France the relation between appointment in a law faculty and conservative political orientation, which can be empirically demonstrated, is not accidental. *See* P. BOURDIEU, HOMO ACADEMICUS 93-96 (1984).

> formed by law; laws only become "the law" at the point when society agrees to be formed by them. . . . Even a set of rules applied under constraint for a time does not leave society as it was. A certain number of legal or moral habits have been created.[68]

It makes sense that, in a complex society, the universalization effect is one of the mechanisms, and no doubt one of the most powerful, producing symbolic domination (or, if one prefers to call it that, the imposition of legitimacy in a social order). When the legal norm makes the practical principles of the symbolically dominant style of living official, in a formally coherent set of official and (by definition) social rules, it tends authentically to *inform* the behavior of all social actors, beyond any differences in status and lifestyle. The universalization effect, which one could also term the *normalization effect*, functions to heighten the effect of social authority already exercized by the legitimate culture and by those who control it. It thereby complements the practical power of legal constraint.[69]

The juridical institution promotes an ontological glorification. It does this by transmuting regularity (that which is done regularly) into rule (that which must be done), factual normalcy into legal normalcy, simple familial *fides* (trust), which derives from a whole effort to sustain recognition and feeling, into family law, sustained by a whole arsenal of institutions and constraints. In this way the juridical institution contrib-

68. Ellul, *supra* note 65.

69. Among the specifically symbolic effects of the law, particular attention must be paid to the effect of what might be termed "officialization," the public recognition of normality which makes it possible to speak about, think about, and admit conduct which has previously been tabooed. For example, such is the case with laws concerning homosexuality. Similarly, we need to consider the effect of symbolic imposition that can arise from an explicitly promulgated rule and from the possibilities it designates through broadening the space of possible conduct (or, even more simply, in "giving people ideas"). Thus, in their long resistance to the French Civil Code, peasants faithful to the tradition of primogeniture acquired the knowledge of the legal procedures made available to them by the juridical imagination, although these were violently rejected by the courts. A number of these measures (often recorded in notarized agreements which historians of law frequently rely upon in reconstitutions of "custom") are completely devoid of reality—for example provisions refunding dowries in case of divorce at a time when divorce was in fact impossible. Nonetheless, the juridical "supply side" has significant real effects upon representation. In the realm just discussed as elsewhere (for example in labor law), the representations that constitute what might be termed "the law as it is lived" owe a great deal to the more or less distorted effect of codified law. The realm of possibilities which the latter brings into existence, through the very labor which must be expended to neutralize them, doubtless tends to prepare the minds of citizens for the apparently sudden changes that will occur when the conditions allowing for the realization of these theoretical possibilities come into existence. We might posit that this is a general effect of juridical imagination which, foreseeing every possible case of transgression of rules thanks to a kind of methodical pessimism, actually contributes to bringing such transgressions into existence in a proportion of the social world.

utes *universally* to the imposition of a representation of normalcy according to which *different* practices tend to appear *deviant*, anomalous, indeed abnormal, and pathological (particularly when medical institutions intervene to sustain the legal ones). Family law has thus ratified and validated as "universal" norms family practices that developed slowly, propelled by the efforts of the dominant class's moral avant garde within a set of social institutions selected to regulate the essential relations governing family unity, particularly the relations between the generations. As Remi Lenoir has demonstrated, family law has contributed considerably to accelerating the generalization of a model of the family which, in certain parts of the social (and geographic) world, particularly among peasants and artisans, collides with economic and social obstacles linked to small enterprises and their reproduction.[70]

The tendency to universalize one's mode of living, broadly experienced and recognized as exemplary, is one of the effects of the ethnocentrism of dominant groups. It is also the basis for belief in the universality of the law. Such a tendency is equally at the heart of the ideology that tends to see the law as an instrument for the transformation of social relations. The analyses offered earlier in this Essay allow us to understand that this ideology finds an apparent basis in reality. For the behavioral principles or ethical grievances that jurists formalize and generalize do not arise just anywhere within the social world. In the same way that the force truly responsible for the application of the law is not any random individual judge but the entire set of the law's agents, often in competition with each other, who accomplish the identification and the branding of the offender and of the offense, so the authentic writer of the law is not the legislator but the entire set of social agents. Conditioned by the specific interests and constraints associated with their positions within different social fields (the juridical, but also the religious, political), these agents formulate private desires or grievances, transform them into "social problems," and organize the presentations (newspaper articles, books, organizational or party platforms) and the pressures (demonstrations, petitions, delegations) designed to push them forward. Juridical labor thus sanctions a whole effort of construction and formulation of representations, coupling it with the effects of generalization and universalization that are specific to the techniques of the law, and with the means of coercion which these techniques are able to bring to bear.

The legal "supply side," the relatively autonomous creative capacity of the law which the existence of its specialized field of production

70. R. Lenoir, La Securitiè Sociale et L'Evolution des Formes de Codification des Structures Familiales (Thesis, Université de Paris, 1985).

makes possible, thus results in a specific effect. This effect sanctions the effort of dominant or rising groups to impose an *official representation* of the social world which sustains their own world view and favors their interests, particularly in socially stressful or revolutionary situations.[71] It is surprising that analysis of the relations between the normal and the pathological take so little account of the specific effect of the law. The law, an intrinsically powerful discourse coupled with the physical means to impose compliance on others, can be seen as a quintessential instrument of normalization. As such, *given time*, it passes from the status of "orthodoxy," proper belief explicitly defining what ought to happen, to the status of "doxa," the immediate agreement elicited by that which is self-evident and normal. Indeed, doxa is a normalcy in which realization of the norm is so complete that the norm itself, as coercion, simply ceases to exist as such.

V

One cannot take complete account of this effect of *naturalization* without extending the analysis to include the most specific effect of juridical formalization: the *vis formae*, the power of form, of which the ancients spoke. The shaping of practices through juridical formalization can succeed only to the extent that legal organization gives explicit form to a tendency already immanent within those practices. The rules which

71. My analysis of the "custom books" and the records of communal deliberations for a number of communities in the Béarn region of France (Arudy, Bescat, Denguin, Lacommande, Lasseube) makes it possible to see how "universal" norms for collective decision-making—such as majority voting—took over during the French Revolution, replacing the old custom that required the unanimity of "heads of households." This change in procedures depended upon the authority conferred on the new norms by their very objectification. As such they were well adapted for dissipating the old shadowy "it goes without saying," as enlightenment dissipates darkness. One of the essential characteristics of customs, in Kabylie as in Béarn and elsewhere, is that the most fundamental principles are never spoken and that analysis must detect these "unwritten laws" via the enumeration of penalties which are associated with their practical transgression. It seems clear that, by an effect of "allodoxia" (variation or reversal in opinion), explicit, written, codified rules, possessing the appearance of general assent by virtue of their general applicability, slowly defeated resistance because they seemed the proper formulation, though more concise and systematic, of the principles which in practice had regulated conduct. This occurred despite the fact that in practice the new principles negated these same earlier customs. A principle like unanimity in decision-making tended to exclude institutional recognition of the possibility of any division (especially a continuing one) into hostile camps, and, more profoundly, the possibility of delegating decisions to a body of selected representatives. It is, moreover, striking that the institution of "municipal councils" was accompanied by the disappearance of participation on the part of the very people concerned with the decisions to be made, and that, throughout the nineteenth century, the role of the representatives themselves was limited in practice to ratifying the proposals of nonelected Prefectural authorities.

succeed are those which, as we say, *regularize* factual situations consonant with them. Even so, however, the movement from statistical regularity to legal rule represents a true social modification. By eliminating exceptions and the vagueness of uncertain groupings, and by imposing clear discontinuities and strict borders in the continuum of statistical limits, juridical formalization introduces into social relations a clarity and predictibility. It thus institutes a rationality that can never be fully guaranteed by the practical principles of habitus or the sanctions of custom by which these unformulated principles are directly applied to particular cases.

Without accepting the notion of "intrinsic force" which philosophers have sometimes attributed to a true idea, we must nonetheless grant social reality to the symbolic power that "formally rational" law (to use Weber's language) owes to the specific effect of formalization itself. By ordaining the patterns that govern behavior in practice, prior to any legal discourse, through the objectivity of a written rule or of an explicitly expressed regulation, formalization establishes the operation of what might be termed a *homologation effect*.[72] The objectification of the practical code in the form of an *explicit code* permits different speakers to associate the same meaning with the same perceived sound and the same sound with the same conceived meaning. Similarly, the explicit statement of principles makes possible explicit verification of consensus concerning the principles of consensus or disagreement themselves. Although this process cannot be completely identified with axiomatization because the law contains zones of obscurity which are the very basis for legal commentary, homologation makes possible a form of rationalization comprehended, in Weber's terms, as predictability and calculability. Unlike two players who, for lack of agreement upon the rules of their game, are condemned to accuse each other of cheating every time their comprehension of the game diverges, the actors involved in an undertaking governed by specific rules know that they may *count* on a coherent and inescapable norm. They therefore may calculate and predict both the consequences of adherence to the rule and the effects of transgressing it. But the powers of homologation are only fully available to those who have equal status in the regulated universe of juridical formalism. The highly rationalized struggles which homologation sanctions are reserved to those who possess a high degree of juridical competence joined with the specific competence of professionals in legal combat, experienced in the use of forms and formulas as weapons. As for others,

72. From *homologein*, meaning to say the same thing or speak the same language.

they are condemned to submit to the "power of form," that is, to the symbolic violence perpetrated by those who, thanks to their knowledge of formalization and proper judicial manners, are able to put the law on their side. When they need to, these are the people who can put the most skillful exercise of formal rigor (*summum jus*) to the service of the least innocent ends (*summa injuria*).

The Effects of Homology

I

In order to take full account of the symbolic power of the law, it is necessary to consider the effects of the adaptation of legal supply to legal demand. This adaptation is less the result of conscious transactions than of structural mechanisms such as the homology between different classes of producers and sellers of legal services and different classes of clients. Those who occupy inferior positions in the field (as for example in social welfare law) tend to work with a clientele composed of social inferiors who thereby increase the inferiority of these positions. Thus, their subversive efforts have less chance of overturning the power relations within the field than they do of contributing to the adaptation of the juridical corpus and, thereby, to the perpetuation of the structure of the field itself.

Given the determinant role it plays in social reproduction, the juridical field has a smaller degree of autonomy than other fields, like the artistic or literary or even the scientific fields, that also contribute to the maintenance of the symbolic order and, thereby, to that of the social order itself. External changes are more directly reflected in the juridical field, and internal conflicts within the field are more directly decided by external forces. Thus, the hierarchy in the division of juridical labor, visible in the hierarchy of professional specializations, varies over time, if only to a limited extent (as the unchanging prestige of civil law bears witness). This variation depends notably upon variations in power relations within the social field. It is as if the positions of different specialists in the organization of power within the juridical field were determined by the place occupied in the political field by the group whose interests are most closely tied to the corresponding legal realm. For example, as the power of dominated groups increases in the social field and the power of their representatives (parties or unions) grows in the political field, differentiation within the juridical field tends to increase. This was illustrated in the second half of the nineteenth century by the development of commercial and labor law and, more generally, of social welfare law.

Struggles within the juridical field, for example between the primacy

of private law and public law,[73] owe their ambiguity to the fact that, in the name of private property and freedom of contract, the "privatists" defend the autonomy of the law and of lawyers against any intrusion by politics or social or economic pressure groups, and particularly against the growth of administrative law, and any penal, social, commercial, or labor-law reform. These struggles often have well-defined stakes within the juridical or academic field, such as the control of curricula, the creation of new topic divisions in learned periodicals, or of new academic subdisciplines and new professorships teaching them. Such struggles thus bear on the issue of control within the professional body and control over its reproduction. By extension they concern all aspects of legal practice. But such struggles are both overdetermined and ambiguous in that the privatist partisans of autonomy and of the law as abstract and transcendent entity find themselves defenders of an *orthodoxy*. For the cult of the text, the primacy of doctrine and of exegesis, of theory and of the past, are coupled with a refusal to recognize the slightest creative capacity in jurisprudence, and thus with a virtual denial of social and economic reality and a repudiation of any scholarly grasp of that reality.

II

We can therefore understand that, according to the logic observable in all social fields, members of dominated groups can find the bases of a critical argument for conceiving of the law as a "science," possessing its own methodology and rooted in historical reality, only *outside* the juridical field, in the scientific or political fields. One source for such an argument is an analysis of jurisprudence itself. In a division mirrored universally in theological, philosophical, or literary debates concerning the interpretation of sacred texts, the partisans of change place themselves on the side of science, of the historicization of meaning, and of attention to jurisprudence, that is, to new problems and to the new forms of law which these problems have produced (such as commercial, labor, and penal law). Sociology, which the guardians of public order tend to see as indivisible from socialism itself, is conceived as the pernicious reconciler of science and social reality, against which the pure exegeses of abstract theory becomes the best protection.

In this case, paradoxically, the autonomization of the legal field implies, not the increasing withdrawal of a body devoted exclusively to the reading of sacred texts, but rather a growing intensity in the confronta-

73. In the civil law tradition, "private law" is conceived as regulating conflicts between individual citizens and enforcing private rights; "public law" involves relations between the state (or other public entities) and citizens. (Translator's note).

tion of texts and procedures with the social realities that they are supposed to express or regulate. The increasing differentiation and competition within the juridical field, coupled with the increasing influence of dominated groups within it, which parallels the increasing strength of their representatives in the social field itself, helps to foster this return to social realities. It is not by chance that the attitudes concerning exegesis and jurisprudence, concerning the sanctity of doctrine on the one hand and its necessary adjustment to concrete realities on the other, seem to correspond rather closely to the positions that their holders occupy within the field. On one side of the debate today, we find the adherents of private law, and particularly of civil law, which the neoliberal tradition, basing itself on the economy, has recently resurrected. On the other, we find disciplines such as public law or labor law, which formed in opposition to civil law. These disciplines are based upon the extension of bureaucracy and the strengthening of movements for political rights, or social welfare law (*droit social*), defined by its defenders as the "science" which, with the help of sociology, allows adaptation of the law to social evolution.

III

The fact that juridical production, like other forms of cultural production, occurs within a "field" is the basis of an ideological effect of miscognition that escapes the usual forms of analysis. These analyses conceive of "ideologies" as directly referrable to collective functions, even to individual intentions. But the effects that are created within social fields are neither the purely arithmetical sum of random actions, nor the integrated result of a concerted plan. They are produced by competition occurring within a social space. This space influences the general tendencies of the competition. In turn, these tendencies are tied to the assumptions which are written into the very structure of the game whose fundamental law they constitute—in the case considered here, for example, the relationship between the juridical field and the field of power. Like the function of reproducing the juridical field with its internal divisions, and hierarchies, and the principle of vision and division which is at its base, the function of maintaining the symbolic order which the juridical field helps to implement is the result of innumerable actions which do not intend to implement that function and which may even be inspired by contrary objectives. Thus, for example, the subversive efforts of those in the juridical avant garde in the end will contribute to the adaptation of the law and the juridical field to new states of social relations, and thereby insure the legitimation of the established order of such relations.

As demonstrated by such cases, in which the results produced simply invert what had been consciously intended, it is the *structure* of the game, and not a simple effect of mechanical *addition*, which produces transcendence of the objective and collective effect of accumulated actions.