

BEFORE THE LAW: REIFICATION OF LEGAL INSTITUTIONS*

*Patricia Ewick***
*Susan S. Silbey***

INTRODUCTION

In the last chapter of *The Trial*, Joseph K is instructed by his manager at the Bank to escort an Italian visitor on a tour of the local Cathedral. There he encounters a strange and solemn priest who describes himself as the prison chaplain and who immediately attempts to expose K's delusions about his trial and the courts with a parable often referred to, and separately published, as "Before the Law."

In this story, a man comes from the country to the city begging admittance to the Law. A doorkeeper before the entrance tells the man that he cannot enter just now and that he must wait. The doorkeeper dares the man to "try to get in without my permission," but cautions him that were he do to so he would encounter a series of increasingly powerful doorkeepers. Despite his belief that "the law should be accessible to every man and at all times," the man from the country decides that he must wait for permission to enter. He waits for years and at the end of his life when all else is becoming dim, he perceives "a radiance that streams inextinguishably from the door of the law." As he is dying, all of the man's experiences before the law condense into a single question: "why", he asks the doorkeeper, "if everyone strives to attain the Law," has no one come seeking admittance but me?" "No one but you could gain admittance through

*Paper presented at the Annual Meeting of the Law and Society Association, Toronto, Canada, June 1, 1995, and the Annual Meeting of the Research Committee on the Sociology of Law, Tokyo, August 1-5, 1995. This paper is printed *in toto* by the Philippine Law Journal by permission of the authors.

**Assistant Professor of Sociology, Clark University; Assistant Professor, Wellesley College, respectively.

this door, the doorkeeper answers, since this door was intended for you. I am now going to shut it."

Kafka's story is intentionally enigmatic as it provides K and the priest an opportunity to explore competing interpretations regarding the law and power on one hand and delusion and subjectivity on the other. Offered as a parable, the story emplots the relationship between the man and the Law, disclosing and typifying their respective moral positions. The Law is depicted as remote, removed from the man and his life in the country not only by the distance he traveled to seek admittance, but by the ever increasing relays of power suggested by the hierarchy of doorkeepers. The parable positions the man perpetually outside of the Law's space, unable to receive the permission that is needed to enter.

But the autonomy of Law's authority is, at the end of the parable, shown to have been somewhat illusory, sustained all along by the man's deference and cooperation. Rather than being separate and remote, there is a vital and internal connection between the man and the Law. This connection is expressed as a physical relationship within the narrative. As the years pass, as if by some transference of energy, the man shrinks while the doorkeeper grows ever larger; and, in the end, the man's eyes "grow dim," just as a radiant light streams from the Law. Renewed even as the man is diminished, the doorkeeper discloses this vital connection and shuts the door.

Kafka's parable serves as a powerful description of the reification of law. Apprehending the law as having an ontology and authority that is unconnected to the multiple concrete social practices, relationships, and beliefs that enact it, the law confronts us as existing outside of everyday life. As social theorists have long understood, a large measure of the power of law derives from definitions that place it outside the mundane, the private, and the subjective. Much like Kafka's legal supplicant, standing *before* the law we construct the law's unity and its power to constitute us.

Increasingly scholars are recognizing that what we refer to as the law is actually a complex of agencies and organizations, involved in different projects, representing different interests at different times. Furthermore, this complex of agencies and actors is itself part of a vast network of intersecting regulatory mechanisms, including medical and

psychological experts and authorities, families, workplaces, markets and popular culture.

In the face of this complexity, Nikolas Rose has argued that "rather than confer a false unity upon [the law] ... [we] should treat this diversity as a clue to the social intelligibility of the law." The plurality of the law is not, in other words, "a mere surface we must aim to unify through critique; the plurality itself must be the field of analysis."

Following this recommendation necessitates fragmenting the law to discover its dailiness, that is, the ways in which law is made up of human agents in local, concrete and contingent situations. As importantly, it requires identifying how the law emerges from these divergent situations in fact, with the ontological integrity it claims for itself and which is so often conferred upon it.

Today, we are reporting on an empirical project animated by these questions. Our analysis begins not with law but with everyday life. Rather than adopting a "law first perspective", we turn toward the mundane practices, for example buying toothpaste or haggling with a neighbor over the placement of a fence, that appear to have little or nothing to do with law, but that nonetheless enact the varying roles of legality in daily life.

Through in-depth interviews with over four hundred citizens, we collected stories about relationships, interactions and experiences in communities, neighborhoods, families, workplaces and various public and private organizations (including but not limited to legal organizations or agencies). Our objective in collecting these stories has been to identify the law's ordinary presence, how commonplace transactions and relationships come to assume, or not assume, a legal character. We also describe how people understand and behave with regard to the law — what we have referred to as legal consciousness — and finally, to trace the contingencies that might account for these understandings of law.

In certain situations and interactions — for reasons we will identify and specify — people find themselves "before the law," struck by its externality and coherence, and acting upon, and enacting, this interpretation. In other situations, facing different contingencies,

people respond and interpret the law differently, as a field of play or intervention or as an available instrument.¹ To the degree we observed a measure of consistency their understandings and behaviors in relation to the law, that their consistency emerged out of a similarity of circumstance, the fact that in going about routines of daily life, they often encounter the same contingencies because in part, they have access to the same social and cultural resources. It is, in fact, the similarity of circumstance, and perhaps of outcome, that has traditionally underwritten the social scientific notion of "structure." We are trying not to bury the particular contingencies of biography and context under the concept of structure; we are also trying not to underestimate the intransigence and intractability of social experience.

This morning we are focusing on one particular expression of legal consciousness, one which we label, following Kafka, "before the Law." Here, people confront and represent the law as if it were external, unified, and remote; in doing so, people position themselves as outside, standing before the law. Their words express the reified² character of the law; their behaviors it enact it. The question we pose is this: How is the effect of externality, unity; and distinctiveness achieved? How do innumerable discrete, often disjointed and sometimes contradictory, transactions cumulate to produce the

¹Forms of consciousness find expression and enactment in particular stories and discrete lives of persons we interviewed. We assumed, however, -- and found abundant empirical evidence to justify our assumption -- that the different forms of consciousness would not correspond neatly to persons; that is, some identifiable group of people cannot be said to "be" instrumentalists. In describing and analyzing the various understandings of law, we employ an analytic language of *relationship* rather than of one of *persons*. In other words, legal consciousness is not a permanent or essential aspect of a person's identity or life, although it may end up empirically stable.

²Thompson defines reification as a process of "representing a transitory, historical state or affairs as if it were permanent, natural, outside of time... Processes are portrayed as things or as events of a quasi-natural kind, in such a way that their social and historical character is eclipsed." The analysis of reification is part of the self-reflexivity of contemporary scholarship; it represents a challenge and correction to the reifying tendencies of social theory and research in general and specifically to our own constructions of law and society. (See Berger and Luckmann, 1966).

experience of singularity and coherence? In other words, through what social practices and discursive forms is the law apprehended/interpreted as an object: thing-like and inert, powerful and permanent, fixed and remote.

RITA MICHAEL: A WOMAN BEFORE THE LAW

To explore and illustrate the ways in which people express a vision of law as relatively unified and remote and position themselves, their lives, and experiences as separate and distinct from the law, we will begin with the story of one woman, we name Rita Michaels.

Rita Michaels is a middle aged divorced woman working as an office manager sixty hours a week to support two sons in college. Mrs. Michaels is Catholic, attending services several times per week. She lives in a meticulously neat and well maintained house in a lower middle class section of a generally more affluent suburb in northern New Jersey. Divorced since her children were in grade school, she has never received child support from her husband. Her income, at the time of this interview in 1991, was just at the national median of \$34,000.

Despite the conventional features of her biography, Rita Michaels experiences herself as deviant, believing that defining events in her life discredit and mark her with observable stigma.³ At the outset of the interview, she commented that she is different from her neighbors because she is divorced. "I guess that puts me in a different category, socially," she noted.

After having been married for 17 years, during which time her husband had been chronically unemployed, eventually refusing to work, Mrs. Michaels decided to end the marriage. Her decision, she said was difficult and painful. Her family did not support her action,

³Goffman describes stigma as an "attribute that is deeply discrediting"; this attribute should be seen, Goffman says, in terms of relationships not personal characteristic. "An attribute the stigmatizes one type of possessor can confirm the usualness of another, and therefore [the attribute] is neither creditable nor discreditable as a thing in itself" but a characteristic that has differential moral status depending on the set of relationships in which the person is located.

and her friends and neighbors, Mrs. Michaels thought, did not understand her situation.

The neighborhood was a very nice neighborhood, people knew me from when my kids were little, knew my husband, but no one really, no one knows what goes on inside someone's house. So, when I was divorced, or when I was in the process of doing this, a couple of my neighbors really were very upset. And my husband went and told these people that I was this terrible person and that I was throwing him out.

Later in an interview, Rita Michaels said,

...the neighbors, their acceptance of the fact that I was going to do this terrible thing, that I was this terrible person, um. And I don't know, I think that that maybe was the most painful.

Her failed marriage had undermined her sense of competency in her role as mother, as well as neighbor. Discussing childrearing and discipline, Rita Michaels alluded to the fact that her divorce was connected to the problems of her adolescent sons. In one incident, her eight grade son was caught drinking in the back of the school; in another her son had his ear pierced. In recalling each of these events, Rita Michaels reiterated the stigma she felt as a consequence of being divorced. In response to these minor delinquencies her stepfather, she told us, had

really hit the ceiling. Thought I was this terrible mother. Yes. To get this earring... He kind of assumes that because I don't have a husband, that maybe I can't handle. He hasn't done it too much anymore... It's not always easy sometimes being a single parent.

Remarkably, in light of the recurring expressions of pain and inadequacy associated with the divorce, Mrs. Michaels described the legal transaction ending the marriage as affirming/gratifying. She told us that "The divorce was a rather pleasant experience, believe it or not."

... the court experience, what it felt like to go to the courtroom and face the judge or whomever. I don't mean that it was

pleasant, I just think that I was pleasantly surprised because the judge had evidently read all the whatever they have, before time, ... it was evident that he had done his homework...I don't think I was in that court more than, I would say maybe 45 minutes and he awarded me the divorce. He said that there was no reason for me to have to live under these conditions...It left me with a good feeling. That I did do the right thing, and that he thought it was right also. Funny, I remember his exact words because it left a lasting impression.

In contrast to family and neighbors, the judge was affirming of her experience and decision to seek a divorce. Rita Michaels did not easily choose a divorce but turned to the law because she believed she had no alternatives available, and sought the only help she thought it could provide — release from her obligations to husband who himself had failed in his marital obligations. In doing so, she found, in addition to formal termination of her marriage, a validation that she had not expected. Rejected and stigmatized by her family and friends and feeling outside the moral universe guarded, Mrs. Michaels found that the law offered an alternative.

There existed, she found, a broader set of values, rights and expectations that included her and her husband, something less particular, partial, or local than the world of her family and friends. Her husband had not fulfilled his obligations under this larger, encompassing and general set of norms, and she took comfort in the fact that she could point to them as grounding and legitimacy for her action. Here, Mrs. Michaels articulated a very traditional conception and function of legal ordering: protection of the individual against local group norms, a protection that derives from the fact that law is located outside of the local norms.

Rita Michael's view of the law as transcendent, impartial and powerful was expressed elsewhere in her interview. In one story she told us that she accompanied her son to traffic court after his car had been hit. She claimed that in the traffic court a police officer changed his story, contradicting her son's claim to have been hit by another woman.

The police officer got up and denied knowing anything about my son, could not see where this lady would have ever had this

problem and it turned out that he's a policeman right on the corner of where this lady lives. And so he went against everything he had said and we were not, we lost the case.... It makes you lose faith in, un human nature, police people.

Later in the interview, referring to this experience, Mrs. Michaels remarked,

I came away feeling kind of disappointed in the system that this man could change his story...You know, you kind of put police officers and the courts on a higher level and you would never expect them to go to this level.

Mrs. Michael's disappointment in the police officer's testimony was premised on her expectations, forged in part during her previous "pleasant" experience. Her deeply felt disappointment nonetheless belied her belief in the essential fairness and integrity of legal actors and the legal system.

In addition to serving on a jury, Rita Michael's divorce and this traffic case were, notably, the only formal interactions she had with courts or legal agents. In fact during the two and a half hour interview, the law was conspicuously absent in her narratives of work, neighborhood, and family. Yet her life was clearly not unproblematic. She reported difficulties regarding medical care, consumer issues, schools, and town services. These problems and disputes were experienced and characterized by Rita as part of everyday life, to be weathered or endured as best she could manage. At one point in the interview, when asked why she had not considered calling the police in regard to a hypothetical neighborhood disturbance, Rita answer simply and characteristically: "I don't," she replied, "use my police that way."

**"OBJECTS IN THE MIRROR ARE CLOSER THAN THEY APPEAR":
REIFICATION OF LAW**

In the experiences and incidents Rita Michael recounted, she acted upon an understanding of the law and her life as representing different orders of existence. Her affairs were immediate subjective, and trivial by contrast to what she described as the permanence, remoteness, and solemnity of the public realm of law. To Rita

Michaels, the differences between law and her everyday life were not just the opposite ends of a single ontological axis, an analytic perspective we will suggest in a moment. Rather, to Mrs. Michaels, the law seemed transcendent, literally incomparable to the mundane affairs of her personal life.

Some social analysts argue that the apparent coherence and transcendence expressed in this interpretation of law is more illusion than reality. They claim that whether one speaks about the law, the state, or some other institutionalized set of social practices, such as medicine or the family, the unity invoked by such terms is a linguistic net, or mask, for a vast array of discrete actors and actions whose diversity is masked by the unifying label. The discrete actions and actors that appear as an institutional unity is created recursively, scholars such Timothy Mitchell suggest, by the linguistic formulations and abstractions of social theorists themselves.

We propose a third position that neither reproduces the radical separation between law and everyday life that Rita Michaels suggests, nor supports the notion that the distinction between law and everyday life is an illusion as Mitchell suggests. Although objectified and everyday life are not incomparable, occupying distinct planes or existence, they are different and the difference is not false or illusory. The difference represents variations on a continuum of social organization.⁴ In other words, the concrete behaviors, roles, and expectations that come to be abstracted and subsumed under institutional rubrics are those that have been rationalized — to use Weber's term, or disciplined — a slightly but not entirely different process described by Foucault. Those rationalized and disciplined practices produce different experiences and outcomes than the social practices we generally refer to, and experience, as "everyday."

We are suggesting that the characteristic experience people point to when they note the distinctiveness, coherence, and externality

⁴Bohannon's concept of the double institutionalization may have been an early formulation of this notion that law and ordinary affairs are distinguished by the degree of formal organization. In fact, Mitchell's discussion of how structural effects such as "the state" are achieved belies his insistence that there is no difference between the institutional effect, "the state" and the discrete actions of the everyday.

of law is achieved by differential levels of social organization. The innumerable discrete, often disjointed, and sometimes contradictory transactions that some of us describe in law making, litigation, enforcement, judgment, and aspects of commonplace activities cumulate — through specialization and coordination of tasks — to produce the experience of coherence and unity which we then apprehend as "law."

Rationalization or disciplinary practices involve the coordination of specialized tasks across time and space to produce articulated goals. The space may be geographic territory or jurisdiction, as much as it may be a courthouse or a factory. The time may be limited in terms of the demand for speedy trials, a life time, or many centuries. Nonetheless, the apprehension of the institutional continuity and coherence of law is created by the greater and differential degree of coordination than is apparent in the activities of ordinary people as they go about the daily activities of individual lives.

To explore and clarify this hypothesis, we have been reading our respondents' interviews to identify moments when the law appears to them to be law-like. We have noted at least four aspects of the law's appearance as an external, inert, and remote: we refer to these conditions as the impartiality or the objectivity of the law, the intractability or determinacy of the law, the capacity or efficacy of the law, and, finally, the materiality or space of law. When attributed to "the law", these features effectively reify the law, simultaneously ridding social action of human agency, and constructing the thing-like nature of the law.

Historically, the objectification or reification of the world has been achieved by the invocation of supernatural beings⁵ as causal agents determining the affairs of the world. More recently, in a more secular but perhaps equally reified world, de-humanization is achieved by locating power in social institutions, such as the law, the state, or other disciplinary apparatuses. Evidence of reification, of standing before the law, is recognizable, then, in those instances, anecdotes, and illusions in which identifiable human actors and human qualities are absent or denied. It should be noted, perhaps, as we describe our respondents' conceptions of the law as a distinctive institutional

⁵Marx, and reification of god.

phenomenon, that these are the same qualities that the law claims for itself. This is the law's own story as well as our respondents' stories.

IMPARTIALITY

First, respondents refer to the impartiality and objectivity of law. Here, impartiality corresponds to the absence of an historical, biographical and socially located, and thus "interested" self. The law is dissociated/separate from persons who have particular needs, interests, or relationship. Individual actors — that is neighbors, bosses, spouses, — have partial views expressing and reflecting these interests, whereas the law, not being embodied in any individual, is experienced as existing outside of, and thus enframing (Mitchell, 1993), the full range of positions. It is this position that endows the law, (or the particular legal decision-makers) with the very impartiality that constitutes its authority for many citizens.

Rita Michaels' reified view of law was expressed in the validation she received from the judge. Whereas her neighbors lacked information ("one never knows what goes on inside someone else's house") and could be swayed by the misrepresentations of her husband that she was "a terrible persons" Rita perceived the judge as informed, having "read all" and "done his homework" — and impartial.

This same view of the law was later challenge in her experience with the police in the trial involving her son's car accident. She expected an objective report, an account of what had happened at the accident; instead, the performance of the police officer's role as legal agent was preempted by his relationship to a neighbor, a relationship that was particularistic and, thus, partial. Her perception that the policeman's misrepresented the facts — that he knew nothing about the accident and that the old woman could not have been involved — humanized the law and as a consequence disappointed Mrs. Michaels. She was perplexed and disturbed precisely because the "law-like" nature of the law broke down.

The impartiality imputed to law is not just a claim for the objectivity of the law's functionaries; the objectivity inheres in what the law itself will or should cover and regulate. In other words, the conception of an objective law defines an arena of behavior and action that is and is not appropriate for public attention. Respondents,

including Rita Michaels, often mark and police this boundary separating and dividing the law from private worlds of self interest and individual actions. Individual's decisions to mobilize the law often involved the crucial interpretive move of framing a situation in terms of some public, or, at least general, set of interests.

In Rita Michael's statement that she doesn't "use her police that way," the referent to "that way" was a situation of individual interest. Other respondents' articulated a similar standard for mobilizing the law.

I might go to the police, but then again I might not. If they were destructive, or fighting, or, you know, then I might. I'd call the police ... if there were gun shots or something like that, *cause everybody's threatened then.*

Notably, in the above statement it was not the severity of the action, the firing of a gun, that was named as the reason for calling the police, it was the potential for collective harm that was invoked. In another interview, the respondent emphatically expressed a view of the police that disqualified the mundane as petty and, even infantile.

I think that ... if it's a neighbor, you should try and resolve the dispute yourself. I don't think the police are there for that purpose, to be honest with you ... We have a police force to solve, ya know, to take care of crimes. Not to be our Daddys and Mommys, because we can't handle something ourselves.

Conversely, when the law is invoked the situation was often presented so that it posed some general or collective harm, or potential for him. For example, one of our respondents, after having been critical of a neighbor for suing the driver of a car that had hit his son, revealed that she too had been a plaintiff in a law suit. She had slipped on a piece of fruit in a supermarket, had sued and had subsequently collected thousands of dollars in damages. In explaining her reasons for bringing the suit, the woman observed:

I did sue, because it would be hard to think of some senior citizen slipping on that.

The sincerity of her motive is not, of course, the issue. What is of importance is her perception that such a casting is necessary.

Through references to such a vocabulary of motive, the law's impartiality and objectivity is invoked and maintained.

CONSTRAINT

A second component to the reification of law involves the perception of constraint directing human behavior. Respondents, in referring to the Law, would often allude to the intractability and determinacy of rationalized and structured action. Coming before the law, citizens encounter, of course, human actors, embodied, uttering their own words, making particular decisions. Nonetheless, in face of this corporeal, particular, and undeniably human action, people construct a transcendent and reified law by focusing on the ways the observed behavior is constrained. In the face of such constraint, respondents suggest that legal actors and subjects, including themselves, are, to paraphrase Durkheim, "acted upon, but they know not by whom." In this view, legal decisionmakers have little or no discretion over interpreting or acting upon matters before them. They are understood to be, to a large extent, "programmed" by instructions that eliminate the possibility of human intervention.

As in Kafka's "Before the Law," this sense of determinacy and intractability of law is often expressed by the image of hierarchy, the relay of increasingly powerful doorkeepers that dwarf, and in some sense render unnecessary, the authority of any *particular* doorkeeper. This sense of controlled sequence is at the heart of modern bureaucracy and legally regulated action. The specialization of tasks is coordinated through a circuitry of rules and regulating that appear to take the place of human action or decision-making.

In the view of most citizens, judges (typically only generically referred to as such) occupy the pinnacle of this hierarchy of decisionmaking within courts. Yet even their discretion and authority is notably constrained by the facts, or by precedent, or by, what numerous respondents simply referred to as "the paper."

Significantly, because of the constraints that are perceived to be operating to direct and shape human action, the law is also understood to be predictable and determinant. This quality allows citizens to anticipate and define matters before them in terms of their

supposed legal character. In other words, they, too, often feel and defer to the constraint of the law.

In one case that illustrates this dimension of law, an African-American man explained his failure to take any legal action in a situation in which he believed he had been discriminated against. Having worked for a food service management company for many years, the man claimed that he was not paid the same as others who had preceded him in the position. Yet, he claimed,

[there] was a lot I could do. I spoke to 'em about it, and you know, they said, they [came] up with a grading system or grade unit or operation, ... and [said] the most you could get in an increase is a certain amount

Speaking hesitantly and somewhat unsure of the technical details on which his claim was rejected, the man expressed the futility of challenging his superior in the face of the grading system, a mythical doorkeeper which constrained his boss and seemingly justified what the respondent suspected was an injustice.

CAPACITY

There is a third aspect of rationalized and structured social action that respondents perceive when characterizing the law as something that exists apart from concrete behavior: what we call capacity. Our interviewees recognized that the same features of social organization that limit and constrain human action also enable action that would not otherwise be likely or effective. In this sense, respondents in reifying the law point to the *efficacy* and *capacity* of legal institutions.

Socially structured behavior enables an individual to operate by proxy and thus produce results that could not be achieved on their own. Although legal action is embedded within hierarchical programs that limit and control it, it is also capable, by virtue of the same social organization, of instigating action that, in terms of its scope and durability, extends beyond the capacity of any individual. Thus, outcomes extend beyond the immediate and observable and imply, but do not necessarily reveal, the connections and relays — the invisible threads of organization — that authorize and enable action.

The gap between what is understood to be individual capacity and the reverberating outcomes is supplied by invoking the law.

This capacity associated with bureaucratic structure is well understood in the context of modern criminal justice where the organizational capacity links the judge's word with the violent acts of the jailer or the executioner. The "context of judicial utterance," Robert Cover wrote,

is institutional behavior in which others, occupying pre-existing roles, can be expected to act, to implement, or otherwise to respond in a specified way to the judge's interpretation. Thus, the institutional context ties the language act of practical understanding to the physical acts of others in a predictable though not logically necessary, way.

Thus, the rational organization of an array of agencies (police, the bar, the courts, prisons) involving thousands of actors and decisionmakers (medical authorities, judges, attorneys, juries, janitors) imparts to mere words the capacity to literally inflict pain and death.

Respondents provide evidence of apprehending this organizational capacity of law when they describe something happening in law, but cannot account for how it was produced. For example, in the case of Millie Simpson, the respondent was first found guilty of having an uninsured vehicle and leaving the scene of an accident and several weeks later, on appeal, found not guilty. She was unable to describe the process that produced this outcome and said,

they called me and we went up, you know, to the table. And I don't even know what the judge said, I couldn't even understand what he was saying. And the lawyer told me, he said "okay", he said "that's it, it's all over." I was right there and I don't even know ... I didn't even know what he was talking about.

In another interview, a respondent we call Bess Sherman, described an ongoing series of difficulties she has had securing disability payments under SSI. She is over 65, and recently underwent surgery for cancer. She has been unable, however, to complete all the paper work necessary to have her disabled status

officially ratified. After having visited numerous doctors, welfare and social security offices, a doctor she was consulting took it upon himself to produce the paperwork for her. She was uncertain how he did it, or why, only that he spoke into a little machine and said he would take care of it and very soon she had been certified as disabled.

After characterizing her experience serving on a jury as "interesting, very interesting", another respondent explained why she found it so interesting in terms of this dimension of organized action:

I: What made it interesting?

R: The presentation of the case and then the way the jury sort of comes together to make a verdict,...I found it interesting, ya know, ...it just, ...the whole process. Not any part of it.

Respondents are not always mystified by the capacity of institutional action; nor do they always interpret or experience this capacity positively. In fact, the most frequent references to the institutional capacity of this sort are to the ways in which it obstructs, denies, confuses, and complicates.

Speaking about her difficulty getting reimbursed from Medicaid, one woman speculated:

I remember getting a list of all prescriptions for the whole year from the pharmacy and the reasons and the diagnoses from the doctor, I mean it took a long time to do, sent it in, and [I] never got a penny from them, never heard from them....What they said is that they never got it, and I, I just really questioned that they didn't get it. ...[T]hey sometime make it so difficult...the whole process is so difficult that it's *almost geared up so that* some people will, particularly an elderly person, will just simply give up on it... (emphasis ours)

What is significant about this woman's account of her experience is her sense that this is not a *failure* of organizational action, or an unanticipated cost of bureaucratic function. Her assertion that the organization is "*geared up so that*" clients will "give up" implies an structure designed intentionally to produce that outcome.

SPACE AND MATERIALITY

The fourth aspect of a reified law is its materiality and, related to that, the various ways in which it occupies space. Ironically, for the law to achieve its transcendent status as something distant and removed from everyday life, it cannot be intangible or abstract. The law-like effect of the law is related to the fact that it occupies and orders space: buildings, courtrooms, benches, pews, tables, files and codes.

The rationalization of various sectors of social life in the nineteenth century, including production, education, and the military, presupposed the bringing together of workers, students, soldiers, respectively, to some centrally located place. The factories, schools, and barracks constructed as part of this historical process were both a condition for and a material manifestation of these ways of organizing human action.

The construction of such places required a radical transformation of the meaning and experience of time in the lives of individuals. To enter these spaces, as workers, students, or legal supplicants, necessitated petitioning one's day into hours, one's week into days and so forth. As E. P. Thompson notes, this partitioning had the affect of producing a distinction in the mind of workers disciplined by industrial capitalism between "their employer's time and their 'own' time". Moreover, it accomplished a redefinition of time from something lived into something spent, and potentially wasted.

Similarly, in Kafka's parable, the man came *from* the country to the law. The law is thus a place, not a form of action, not a system of ideas, but a space that needs to be entered. Yet the supplicant's overriding experience of being "before the law" was one of waiting, of a life spent.

This relationship between temporal and spatial ordering is clearly expressed by our respondents. In reporting their experience before the law, people repeatedly refer to the amount of time spent waiting for something to happen, for example, to be called for jury duty or to have a case heard or to receive a benefit or service. The sheer number of offhand and casual allusions to waiting defies

reproduction here. Yet a typical account serves to illustrate the relationship between time, space and rationality.

The problem I see with motor vehicle is the line is just so excessively long, no matter when you go. I mean, you wait in line a good — a minimum of two hours ...

The point is that the time spent is, to paraphrase Thompson, "the law's time": time spent away from work, or family, or neighbors, or leisure. It represents and is experienced as a disruption, often unconnected to everyday life.

PAPER: AN EXAMPLE OF THE REIFICATION OF LAW

The associations among paper, writing, textuality, inscription and law provide particularly apt illustrations of the ways in which law is reified and objectified through specific social practices. Inscribing ideas, relationships, and transactions on paper is understood by our respondents as a central organizing principle of modern legal-rational society. For instance, written or physically encoded communication, decouples actions from any particular actor; the capacity of law to inflict suffering and pain is achieved by a writ, a court order, or the failure of a governor to issue a pardon. Moreover, the words on the paper, writ, or pardon are taken at face value, objective and determinant. Finally, inscription converts temporally experienced phenomenon into spatially juxtaposed and concretized things.

CONTINGENCIES OF REIFICATION

We should note although rationalized and objectified structures operate similarly on the agents and subjects of law, the likelihood of constructing a reified conception of law is variable. There will be historical and social variation in the degree to which law is seen as objectified, rationalized, constraining and enabling without human intervention. It may be worthwhile to hypothesize about the conditions under which one may find more or less objectified, dehumanized conceptions of law. Thus, for example, if a reified view of law is sustained by structured, organized action, then we can imagine that under conditions of institutional failure and incapacity, the law is less likely to be seen as external, remote, and transcendent. Similarly, in circumstances when the mechanisms of control and

agency are made transparent, such as in the O.J. Simpson trial, the audience is less likely to construct a ratified and transcendent view of law. As our work progresses, we will be developing this analysis.

CONCLUSION

Kafka concludes the parable "Before the Law" with the doorkeeper explaining to the man from the country that "No one else could ever be admitted here, since this gate was made only for you. I am now going to shut it." In this phrase Kafka suggests that there is no law without embodying it in human action, that the structure of doors and doorkeepers relies on, even while it denies, human agency.

Similarly, the expressions of a reified law we have reported here both reflect and construct the law as remote and powerful. They are not false representations of the law, for in the very process of articulating and enacting this view of the law they construct something that is very different from "everyday life."

- oOo -