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Talk of Law: Contested and Conventional Legality

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TALK OF LAW: CONTESTED AND CONVENTIONAL LEGALITY

*Susan S. Silbey**

INTRODUCTION

From February 8, 2006 to February 11, 2006, the *Boston Globe* carried numerous articles, editorials, and letters about a six-year-old boy in the Brockton, Massachusetts public schools who had been suspended from kindergarten for three days for sexually harassing another child in his classroom. The young boy had put his hand in the elastic of his classmate's pants, touching the skin on her back. After the principal reported the incident, the school superintendent forwarded the case to the Plymouth County district attorney's office. The prosecutors refused to bring charges, however, because the Commonwealth's juvenile criminal laws do not apply to children under seven.[1]

The story was quickly picked up by the Associated Press and reported in news outlets across the continent, including the *Wall Street Journal*, the *New York Daily News*, the *Ottawa Citizen*, and the *Calgary Herald*. The story erupted in the news media nine days after the suspension had taken place because the mother, Berthena Dorinvil, refused to allow her son to return to school. Mrs. Dorinvil requested that her son be moved to another elementary school in the district, because she feared that "he would be treated differently" at his old school and would be "stigmatized by the incident."[2]

Within two days of the news blitz, and twelve days after the suspension, the Brockton School Department apologized for suspending the

* Professor of Sociology and Anthropology, Massachusetts Institute of Technology. I am particularly grateful for the extensive research support from Ayn Cavicchi as well as critical suggestions by the participants in the Twelfth Annual Clifford Symposium and the editors of the DePaul Law Review. The conception of a multiplaited legality derives from a ten-year collaboration with Patricia Ewick appearing in *The Common Place of Law: Stories from Everyday Life.* For a more recent article, see Susan S. Silbey, *After Legal Consciousness*, 1 ANN. REV. L. & SOC. SCI. 323 (2005). Errors and misjudgments that remain are the product of my own limitations.

1. Massachusetts law defines a "delinquent child" as "a child between seven and seventeen who violates any city ordinance or town by-law or who commits any offence against a law of the commonwealth." MASS. GEN. LAWS ANN. ch. 119, § 52 (West 2003).

2. Ralph Ranalli & Raja Mishra, *Boy's Suspension in Harassment Case Outrages Mother*, BOSTON GLOBE, Feb. 8, 2006, at A1.

boy. The next day, his "parents hired a lawyer to investigate the school system's handling of the matter."[3] More than two weeks after the suspension, the story continued to generate activity in local and national media across the political spectrum—from *TalkLeft: The Politics of Crime* to *World Christian News* to the *Massachusetts GOP News*.[4] On March 8, one month after the story first made the news, "a Brockton Superior Court judge ordered the city to provide the parents of the boy 'immediate access' to his school records."[5] During the six weeks following the boy's suspension, the school system had provided the parents with "only the boy's health record and report card."[6] After the court ordered the release of school documents, Mrs. Dorinvil reportedly stated that, at the time of the suspension, her six-year-old had been "told to sign a paper on which the principal had written an account of the incident."[7]

The school system has transferred the boy to another school, where he is reportedly happy.[8] It also began revising its system of reporting student conduct to better address inappropriate touching among young children; it would presumably no longer be labeled as sexual harassment.[9] In addition, legislators at the state capitol discussed the case during debate on a bill that would require sex education for children as young as pre-kindergarten.[10] "This incident is a teachable moment for everyone concerned with young children," said Representative Geraldine Creedon, a member of the Massachusetts Education Committee.[11] The outcome of the legislative discussion is not yet clear, nor is it clear whether the family will file suit against the school system.

This story illustrates the deeply layered and textured meaning of the rule of law in popular culture and understanding. Rather than a sim-

3. Tracy Jan, *In Brockton, Boy's Parents Hire Lawyer: School System Apologizes, to Alter Harassment Policy*, BOSTON GLOBE, Feb. 11, 2006, at B1.

4. *See, e.g.*, Don't Shake Hands with Brockton School Principal Diane Gosselin, Massachusetts GOP News & Views Blog, http://gopnews.blog.com/548249 (Feb. 8, 2006, 00:44 EST).

5. Maria Papadopoulos, *Parents of Brockton First-Grader Wrongly Accused of Sexual Harassment Win Court Approval to See the Records in the Case*, ENTERPRISE (Brockton), Mar. 9, 2006, *available at* http://enterprise.southofboston.com/articles/2006/03/09/news/news/news01.txt.

6. *Id.*

7. *Id.*

8. Jan, *supra* note 3.

9. Maria Papadopoulos & Terence J. Downing, *Touchy Subject*, ENTERPRISE (Brockton), Feb. 11, 2006, *available at* http://enterprise.southofboston.com/articles/2006/02/11/news/news/news01.txt.

10. Maria Papadopoulos, *Schools to Revise Harassment Policy*, ENTERPRISE (Brockton), Feb. 10, 2006, *available at* http://enterprise.southofboston.com/articles/2006/02/10/news/news/news01.txt.

11. *Id.* (internal quotation marks omitted).

ple or singular phenomenon—a book that can be placed on a shelf to be consulted when needed—the rule of law actually lives in the myriad practices and contradictory aspirations of a people. Neither entirely a set of disinterested rules and rational procedures for confining arbitrary power,[12] nor merely a terrain of unregulated, agonistic engagement,[13] the rule of law is an ambivalent, paradoxical phenomena that is a commonplace feature of everyday life in the United States. Its ambiguous, knotty constitution sustains, rather than undermines, its durability and its power to shape social relations.

In a recent essay rethinking Professor Robert Cover's Nomos *and Narrative*,[14] Professor Judith Resnik echoes this understanding of the rule of law when she claims that the nation's citizens "*live* law's meaning."[15] Although "in general, judges pronounce the meaning of law," she writes, they "do not have to enact those meanings by themselves engaging in the activity that they require—by living the law that they make."[16]

Resnik, like Cover, focuses primarily on the jurisgenerative work of the few centuries-old communities that have "sustained remarkably distinct legal regimes across time, place, and enormous" socio-political and economic changes.[17] Resnik and Cover argue that these "communities [are] instructive because they show[ ] that the creation of *enduring* legal meaning require[s] action, not just words."[18] Members of these communities do not merely pronounce law, as judges do, they exemplify the process of "living their law."[19] Judges, and most citizens, are "able to state their understanding of law without facing tests of their commitment to the principles they elaborated."[20] But Mennonites, devout Muslims and Jews, or the orthodox Baptists Professor Carol Greenhouse wrote about in *Praying for Justice*,[21] are not always able to do so. When conflicts arise between the law of the state and the core beliefs of these communities, members are forced "either to

12. *See generally* PHILIP SELZNICK, LAW, SOCIETY, AND INDUSTRIAL JUSTICE (1969); Philip Selznick, *Sociology and Natural Law*, 6 NAT. L. FORUM 84 (1961).

13. Arthur Allen Leff, *Law and*, 87 YALE L.J. 989 (1978).

14. Robert M. Cover, *The Supreme Court, 1982 Term—Foreword:* Nomos *and Narrative*, 97 HARV. L. REV. 4 (1983).

15. Judith Resnik, *Living Their Legal Commitments: Paideic Communities, Courts, and Robert Cover*, 17 YALE J.L. & HUMAN. 17, 18 (2005).

16. *Id.* at 28.

17. *Id.* at 29.

18. *Id.*

19. *Id.* (quoting Cover, *supra* note 14, at 49).

20. *Id.*

21. CAROL J. GREENHOUSE, PRAYING FOR JUSTICE: FAITH, ORDER, AND COMMUNITY IN AN AMERICAN TOWN (1986).

reaffirm or to abandon a set of core beliefs and, if reaffirming, either to suffer persecution or to migrate."[22]

Cover feared—and history may yet prove him right—that "[t]he universalist virtues that we have come to identify with modern liberalism, the broad principles of our law," procedural justice, and due process considerations, would turn out to be "system-maintaining 'weak' forces."[23] Liberal relativism and procedural justice would eventually, he predicted, erode commitments to the rule of law.[24] The strong forces supporting a durable rule of law derive not from easily assented-to rules of procedure, but from more deeply sedimented habits, conventions, and ways of being in the world.

How *do* Americans live their law? When Americans talk about law, what are they referring to? What does the rule of law mean to ordinary Americans? In their classic account of how to study the "law-stuff of a culture," Professors Karl Llewellyn and E. Adamson Hoebel[25] laid out three investigatory paths to mapping "legal culture" or "legal consciousness."[26] The first path was ideological and traced the extant rules of social control for channeling and controlling behavior.[27] In this path, the scholar tries to map the official, formal norms of a society, those rules of right behavior which individuals—as distinct from the official organs of the community—no longer retain authority to define. This is the traditional task of the legal academic. The second path of legal inquiry "explore[d] the patterns according to which behavior actually occurs."[28] This became the standard model of law and society research for several generations.[29] Finally, Llewellyn and Hoebel urged a third path that looks at "instances of hitch, dispute, grievance, [and] trouble;" it inquires "what the trouble was and what was done about it."[30] This Article follows the third path, al-

22. Resnik, *supra* note 15, at 29.

23. *Id.* at 30 (alteration in original) (quoting Cover, *supra* note 14, at 12).

24. PHILIP SELZNICK, THE MORAL COMMONWEALTH: SOCIAL THEORY AND THE PROMISE OF COMMUNITY (1992).

25. K.N. LLEWELLYN & E. ADAMSON HOEBEL, THE CHEYENNE WAY: CONFLICT AND CASE LAW IN PRIMITIVE JURISPRUDENCE 20 (1941).

26. *See generally* S.S. Silbey, *Legal Culture and Legal Consciousness*, *in* 13 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL AND BEHAVIORAL SCIENCES 8623 (Neil J. Smelser & Paul B. Baltes eds., 2001).

27. LLEWELLYN & HOEBEL, *supra* note 25, at 20–21.

28. *Id.* at 21.

29. *See, e.g.*, THE LAW AND SOCIETY READER (Richard L. Abel ed., 1995); LAW AND SOCIETY: READINGS ON THE SOCIAL STUDY OF LAW (Stewart Macaulay et al. eds., 1995); JOHN R. SUTTON, LAW/SOCIETY: ORIGINS, INTERACTIONS, AND CHANGE (2001).

30. LLEWELLYN & HOEBEL, *supra* note 25, at 21.

though it is obvious that in any complete investigation of legal culture the three paths are intertwined:

> [I]t is rare in a . . . group or society that the "norms" which are felt or known as the proper ones to control behavior are not made in the image of at least some of the actually prevalent behavior; and it is rare, on the other hand, that [the norms] do not to some extent become active in their turn and aid in patterning behavior further.[31]

Norms build up over time with amazing emotional and material power, often attaching moral meanings to what may have originally been accident or convenience. Llewllyn and Hoebel explain that instances of hitch and trouble, as both moments of deviation and as grounds for repair, lay bare a community's norms.[32] What was latent is made manifest, and what appeared consensual is the subject of open, explicit contest. By following what, in a different register, Cover and Resnik call jurispotent conflicts,[33] we may be able to trace the threads of legality that compose the rule of law.

Following the models of trouble cases and jurispotent conflicts, this Article revisits the case of the six-year-old suspended for sexual harassment. Part II traces the lines of interpretation that emerged in the public media to identify the diverse conceptions of law circulating in American society. Part III analyzes how, as an ensemble rather than discrete distinguishable threads, this collection of legal narratives works to constitute a hegemonic legal consciousness, or what we might call the rule of law. Part IV concludes with a different "trouble" case that has also occupied the press in Massachusetts and elsewhere: the local convention of reserving—with milk crates, chairs, or other physical objects—shoveled-out parking spots on public streets. In this movement from the six-year-old sexual harasser to the claims of property on public streets, I hope to show the variety of ways in which legality and the rule of law are performed in American culture, and the difference between contested, ideological law and conventional, hegemonic law.

II. CONTESTED LEGALITY

The following reactions are pulled from the news accounts of the Brockton incident. They display Americans' complex appreciation and enactment of the rule of law.

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31. *Id.*

32. *Id.*

33. Resnik, *supra* note 15, at 25 n.37. Resnik mentions that Cover is more often cited for the terms "jurisgenerative" and "jurispathic" than "jurispotent." Resnik more often uses the term jurisgenerative in her interpretation of Cover's work, see *id.* at 26, 28, 34, 40, 42, 47, 48, 53 (referring to Cover, *supra* note 14).

A. *"Educators Overreact, but Charge Deserved Attention."*[34]

Start with the school administrators. Why would any reasonable adult report a six-year-old who puts his hands in another child's waistband—touching only skin on the back—for suspension, let alone criminal prosecution? According to the school officials, the law demanded their action; they were following legal mandates. "This was done right by the book," said Cynthia McNally, a district spokesperson with whom I spoke and whose comments were reported in the media, it "was thoroughly investigated."[35] "It's a situation within the parameters [of sexual harassment], and we're dealing with it within the parameters," she said.[36] The Brockton School System has a six-step process for reporting and investigating sexual harassment allegations.[37] The policy requires a written account of the alleged harassment submitted by the accuser and a meeting between the alleged harasser and a principal or other school administrator. The Brockton School System was acting in accord with the mandate of the Massachusetts Department of Education, which requires every school to develop a nondiscrimination policy that covers harassment and bullying.[38] In *Davis v. Monroe County Board of Education*, the Supreme Court assigned responsibility and financial liability to school systems that fail to take action against harassment.[39] Although many school systems adopted policies on harassment prior to 1999, nearly every system in the nation adopted these policies after *Davis*.[40] The *Boston Globe* noted that "[c]ities and towns are liable if their school departments fail to take action against incidents of sexual harassment."[41]

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34. Marilyn Hancock, *Educators Overreact, but Charge Deserved Attention*, ENTERPRISE (Brockton), Feb. 12, 2006, *available at* http://enterprise.southofboston.com/articles/2006/02/12/news/news/news02.txt.

35. Ranalli & Mishra, *supra* note 2 (internal quotation marks omitted).

36. *Id.* (alterations in original) (internal quotation marks omitted).

37. Laura Crimaldi & Casey Ross, *Boy, 6, Hit with Sex Harass Rap*, BOSTON HERALD, Feb. 8, 2006, at 6.

38. *Id.*

39. 526 U.S. 629 (1999).

40. Jodi L. Short, *Creating Peer Sexual Harassment: Mobilizing Schools to Throw the Book at Themselves*, 28 LAW & POL'Y 31, 41 (2006).

41. Editorial, *Brockton Overreaction*, BOSTON GLOBE, Feb. 11, 2006, at A10; *see also* DOUGLAS E. ABRAMS & SARAH H. RAMSEY, CHILDREN AND THE LAW: DOCTRINE, POLICY, AND PRACTICE 291 (2d ed. 2003) ("Over time other professionals, such as teachers and social workers, also became 'mandated reporters.'"); Alexa Irene Pearson, *Eulogies, Effigies, and Erroneous Interpretations: Comparing Missouri's Child Protection System to Federal Law*, 69 MO. L. REV. 589, 591–92 (2004) ("Although the federal legislation provides some standards for defining and reporting abuse, state laws vary. States differ as to who is required to report . . . suspicions of child abuse or neglect." (citation omitted)).

These interpretations of what federal and state law demanded were not limited to the Brockton officials. Antonio Barbosa, principal of the F. Lyman Winship Elementary School in Boston, said that children at his school are taught to "keep one another at arms' length and to use words, rather than to touch."[42] Barbosa claimed that he followed the school "system's six-page sexual harassment policy and that [the school] would treat all incidents seriously," although he could not "recall an instance of a young child sexually harassing a peer."[43] The Boston school policy calls for student suspension or expulsion for harassment, defined as "inappropriate touching, massages, catcalls, whistles, patting, squeezing, or spanking."[44] "We take these things extremely [seriously] these days," Barbosa said, "whereas years ago, people might not have thought of touching as having a sexual connotation . . . . We want to make sure children respect one another and that they don't get in each other's personal space."[45]

Many school officials believe they have no room for discretionary judgment. "[Harassment is] something you have to address legally," a principal in Taunton, Massachusetts stated.[46] "If you don't do something, then a child's civil rights have been violated and there are legal repercussions," said Joseph O'Sullivan, the president of the Brockton teachers' union.[47] "Civil rights has no age limit on it, whether it's a 5-year-old or a 15-year-old or a 20-year-old," agreed a principal in Easton, Massachusetts; all such complaints must be taken seriously.[48] "Teachers are mandated reporters . . . . That's the standard that you have," according to O'Sullivan, "You have a policy, you have to follow the policy, and we do."[49] As Basan Nembirkow, the Brockton superintendent explained, "Our procedures created the situation where [sexual harassment] was the only block you could check."[50]

Two themes emerge from these comments. First, law is a necessary and appropriate response to serious social problems. It is not for petty, personal matters. Second, law not only specifies impermissible behaviors, but also identifies a range of legitimate and even required

42. Tracy Jan & Kathleen Burge, *Case vs. Brockton Boy Stuns Officials*, BOSTON GLOBE, Feb. 9, 2006, at B1.

43. *Id.*

44. *Id.*

45. *Id.* (internal quotation marks omitted).

46. Maria Papadopoulos, *Brockton Boy's Ability to Sexually Harass Girl Questioned*, ENTERPRISE (Brockton), Feb. 8, 2006 (internal quotation marks omitted), *available at* http://enterprise.southofboston.com/articles/2006/02/08/news/news/news02.txt.

47. Papadopoulos & Downing, *supra* note 9 (internal quotation marks omitted).

48. Papadopoulos, *supra* note 46 (internal quotation marks omitted).

49. Papadopoulos & Downing, *supra* note 9 (internal quotation marks omitted).

50. Jan, *supra* note 3 (alteration in original) (internal quotation marks omitted).

responses to the proscribed conduct. Both the officials involved and some critics invoked this sense of law as a set of shared aspirations and recipes for action.

Child-to-child harassment is part of a serious "pandemic of sexual violence" in elementary and secondary schools, according to Nan Stein, senior research scientist at the Center for Research on Women.[51] Stein was one of the leaders of the movement to create the offense of peer sexual harassment; she was also one of the experts quoted liberally in the media coverage of the case. Since the 1970s, she has "constructed and disseminated the narratives about peer harassment that were taken up by the media, schools, and eventually courts."[52] From this perspective of peer sexual harassment as a social problem, the law has responded appropriately by mandating locally enacted antiharassment policies to control the injuries regularly inflicted on school children.[53] Officials must now take it seriously: "School systems, businesses, churches and other institutions—if they know what's good for them—don't brush off allegations of harassment."[54] Stein added in an interview, however, that zero tolerance is not the right approach.[55] Officials must follow rules once enacted, but within reason. In this case, Brockton failed to follow its own defini-

51. Nan Stein, *A Rising Pandemic of Sexual Violence in Elementary and Secondary Schools: Locating a Secret Problem*, 12 DUKE J. GENDER L. & POL'Y 33 (2005) (illustrating Stein's conviction about the existence of a pandemic of child-to-child sexual harassment).

52. Short, *supra* note 40, at 42.

53. The actual history of the law on harassment is not as strong as the voices in Brockton seem to suggest. Legal construction of this heretofore normal, if undesired, behavior was transformed through a series of cases. Following *Franklin v. Gwinnett County Public Schools*, in which the Supreme Court held that schools could be sued for monetary damages if they ignored sexual harassment, many states began requiring schools to create sexual harassment policies. 503 U.S. 60 (1992). However, *Franklin* was a case of adult school employees harassing a minor student; the analogy to peer harassment was not entirely clear. Short, *supra* note 40, at 38. Although *Davis* ruled that "a private damages action may lie against the school board in cases of student-on-student harassment," the Court, over the vociferous dissent of four Justices, set a high bar so that this action would apply "only where the funding recipient acts with deliberate indifference to known acts of harassment in its programs or activities." Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 633 (1999). The difference must be "so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit." *Id.* Despite the Court's rather strong language, many states, Massachusetts included, required all school systems to prohibit sexual harassment. The school systems could design their own complaint and sanctioning policies to comply with this high standard. Justice Kennedy's dissent predicted, however, that "[a]fter today, Johnny will find that the routine problems of adolescence are to be resolved by invoking a federal right to demand assignment to a desk two rows away." *Id.* at 686 (Kennedy, J. dissenting).

54. Hancock, *supra* note 34 ("[A]t least those in charge took the incident seriously. . . . [A]t least folks were paying attention. And that's a good thing.").

55. Telephone Interview with Nan Stein, Senior Research Scientist, Ctr. for Research on Women, in Wellesley, Mass. (Mar. 15, 2006); *see also* Nan Stein, *Bullying or Sexual Harassment? The Missing Discourse of Rights in an Era of Zero Tolerance*, 45 ARIZ. L. REV. 783 (2003).

tions and procedures, which called for suspension when there is "*repeated*, unwanted, or unwelcome verbalism or behaviors of a [sexual] nature."[56] This was not even a case of sexual harassment, Stein asserted, so the invocation of the law "was outrageous."[57] Moreover, no one has suggested sexuality was involved in the six-year-old's decision to touch his classmate's back.[58] In addition, Stein added that "nobody knows whether this was the first or one hundredth incident with this child, irrespective of whether it was sexual in nature."[59]

Stein's interpretation was echoed by others who were less active and less professionally allied with the issue of sexual violence among children.[60] These nonprofessional actors also argued, however, that invoking sexual harassment for disciplinary issues that are normal aspects of child development only "trivializes actual sexual harassment."[61] Harassment is real, they agreed, and "it should not be brushed off,"[62] but this was not a case the law was meant to address. Thus, both the officials who believe they are following legal rules governing sexual harassment, and people who find the sexual harassment law necessary but inapplicable here, agree that the law is a set of governing substantive and procedural standards.

B. "Punishable by Emasculation"[63]

Some observers thought the Brockton school department's actions were necessary; others saw them as an unfortunate overreaction and a misinterpretation of a serious social problem and reasonable public law. Some members of the public, however, saw this as just another instance of the overwhelming power of "loony liberal[s]"[64] who pray "at the altars of political correctness."[65] "Not even childhood is safe from excessive incriminations of the politically correct kind" whose "invasion into our lives is appalling," according to the student newspa-

56. Editorial, *6-Year-Old Predator? Brockton Harassment Charge Defies Common Sense*, TELEGRAM & GAZETTE (Worcester), Feb. 10, 2006, at A10 (emphasis added) (internal quotation marks omitted).

57. Telephone Interview with Nan Stein, *supra* note 55.

58. Derek Rose, *No Kiddin'! Boy, 6, in Sex Flap*, DAILY NEWS (N.Y.), Feb. 10, 2006, at 15 (quoting Christopher Murray about a six-year-old not having the capacity to be sexually gratified).

59. Telephone Interview with Nan Stein, *supra* note 55.

60. *See, e.g.*, Editorial, *6-Year-Old Predator?*, *supra* note 56.

61. *Id.*

62. Papadopoulos, *supra* note 46.

63. Editorial, *It's Tough Being a Boy*, LAS VEGAS REV.-J., Feb. 11, 2006, at 10b.

64. Don't Shake Hands with Brockton School Principal Diane Gosselin, *supra* note 4.

65. Editorial, *It's Tough Being a Boy*, *supra* note 63.

per at the University of Texas at Arlington.[66] Feminists, the argument goes, undermine classrooms and families and emasculate boys with their zero tolerance politics. This voice was not prominent on news pages in the *Boston Globe*, but it did appear in letters to the editors in Boston newspapers and elsewhere, as well as on weblogs. In addition, the Brockton superintendent of schools had reportedly been receiving "hate mail from all over the country,"[67] perhaps from those who saw him as part of this conspiracy of feminist political correctness.

Again, two themes emerge in the interpretations that saw the incident as part of a national political struggle. First, the law has become a tool of feminists preoccupied with gender and sexuality. Second, sexual harassment laws have become an uncontrollable weapon that can be used to harass good people, as well as undermine important policies and rights. Officious bureaucrats and litigious citizens are different sides of the same unfortunate power struggle. According to these interpretations, the Brockton story is more about power than law.

Gender and sexuality play several roles in the stories. Some perceived the incident as the logical outcome of the power of feminists to colonize and reinterpret ordinary social relations through their harping about gender inequality. See what they have wrought! These responses were not entirely wrong. Many of these harassment policies were adopted with the advice and support of professional education managers and organizations spurred by an organized campaign that had been ongoing since the 1970s.[68]

Despite the vehemence of the claims, they were considerably muted in comparison to what had erupted in 1996, when a ten-year-old in Lexington, North Carolina was suspended for kissing a young girl in school.[69] At that time, the major media were mobilized, with TV news and public affairs programming carrying interviews with proponents of various positions in organized debates. The theme of this political interpretation was the same in 1996 as it was in 2006:

66. Cole Dowden, *Kindergartners Gone Wild*, SHORTHORN, Feb. 14, 2006.

67. Jan, *supra* note 3.

68. Short, *supra* note 40, at 41–51.

69. According to several of the stories, this type of incident had been reported in the news before. Editorial, *Sex at 6?: First-Grader Punished for Sexual Harassment*, TULSA WORLD, Feb. 13, 2006, at A15 ("It has happened before. A New York second-grader was suspended in 1996 for kissing a girl and ripping a button off her skirt. The boy said he got the idea from his favorite book, *Corduroy*, about a bear with a missing button."); *see also* Norimitsu Onishi, *Harassment in 2d Grade? Queens Kisser Is Pardoned*, N.Y. TIMES, Oct. 3, 1996, at A1 (reporting that later in the year, "a 6-year-old was suspended for kissing a classmate on the cheek"); Nancy Weil, *Read Their Lips: No Kissing*, ST. PETERSBURG TIMES, Sept. 26, 1996, at 1; *Boy Banned for Kissing Gets Star Treatment*, DAILY TELEGRAPH (Sidney, Austl.), Sept. 26, 1996, at P4.

"[L]ook at what you feminists have done" to little children.[70] Unfortunately, according to a child psychiatrist in Philadelphia, "[It's] an approach to answer 20,000 years of the degradation of women by finding some 42-pound little fellow to take the fall for it."[71] According to an editorial in the Quincy, Massachusetts *Patriot Ledger*, little girls are being mobilized by their politically correct parents; no little girl would know to claim sexual harassment.[72] Sexual harassment may be serious but it protects girls, not boys, some writers claimed; if a little boy were touched by a little girl, "it would be passed off."[73]

Prominent in the Associated Press report that was carried across the nation was the description of Mrs. Dorinvil, referring to her as a "stay-at-home mom."[74] In addition, the newspapers reported that this "stay-at-home mother" was "rais[ing] her only child in the conservative moral tradition of Haitian evangelicalism."[75] She and her husband, "a school bus driver in Boston, do not let [their son] watch secular television and have signed up for cable so he can watch religious cartoons."[76] One message conveyed by this framing of Mrs. Dorinvil emphasized the disabling effect of the power of the dominant political culture. A religious stay-at-home mother—and a statistical minority—who has more time to devote to her child than working mothers cannot protect her child from the overwhelming power of the state.

The fact that the boy did not watch mainstream conventional television provided additional silage for those who saw the incident as a sign of the corruption of the public culture; the law was not a product of a feminist conspiracy, but of a sexualized media. Many of those who tried to explain what had happened—rather than evaluate it—linked the social problem of sexual harassment to the sexual saturation of popular culture by the media.[77] In the first construction, the

70. Telephone Interview with Nan Stein, *supra* note 55; *see also* Dvorak Uncensored, http://www.dvorak.org/blog/?p=4183 (Feb. 9, 2006, 02:02 EST) (depicting a cartoon of Jack and Jill).

71. Rose, *supra* note 58 (internal quotation marks omitted).

72. Editorial, *Brockton School's Reaction Was Overkill*, PATRIOT LEDGER (Quincy), Feb. 14, 2006, at 18.

73. *Id.* ("If a male child told a teacher that a female child touched him, it would be passed off; but because it was a female student, it gets investigated.").

74. *See, e.g.*, Rose, *supra* note 58.

75. Ranalli & Mishra, *supra* note 2.

76. *Id.*

77. *E.g.*, Editorial, *Allow Room for Innocence*, CALGARY HERALD, Feb. 11, 2006, at A28; Posting of Joel Mark to http://www.worldmagblog.com/blog/archives/022494.html (Feb. 9, 2006, 08:22 EST) ("Our culture protects and celebrates lewd and egregious forms of sexual chaos of all sorts in public, in print, in movies, on TV, in debate, in Super Bowl commercials, on cable, in internet, and on and on. We put real perverts on parade and are outraged if they are called perverts.").

incident was a result of the power of feminist groups to colonize the law. In this second rendering, however, the incident was a consequence of the power of the media to suffuse our lives with sexuality. In both cases, it was about power. Indeed, Mrs. Dorinvil seemed to experience it as a matter of unjust power. No one contacted her about the incident, she reported, until "she was instructed to pick her son up from school."[78] "When I got there, they had all this paperwork in front of them," she said, "They said they had already called the district attorney and school police."[79] From Mrs. Dorinvil's perspective, the heavy arm of the law had fallen on her unannounced: "I was shocked. I was crying. I was out of control because I [saw] that this [was] not fair."[80] She was unable to explain to her son what was happening: "He doesn't even know what that word 'sexual' is. I don't see how I'm going to explain it to him . . . . I can't. He's just too young for that."[81]

This religious, attentive, stay-at-home mother was incapacitated by the combined power of the school officials, the threat of the police, the referral to the district attorney, and in the critics' accounts, the power of feminists and the media. Managing to keep the media at bay, she was unable to keep the law from her doorstep. In this situation, she did what a lot of people do under the circumstances: she found a way of resisting the bureaucratic procedures by following them literally.[82] Following the demand to remove her son from school, she did not let him return. The school expected that the child would of course return following the three-day suspension. By insisting that the boy be moved to another school to avoid stigmatization, she required the school to fully embrace its own interpretation that the case was serious enough to warrant suspension and referral to the district attorney. Further, by picking up on the school's literal use of policy, she directly challenged the school administration's prerogative to determine a child's placement.

Mrs. Dorinvil's resistance exposed to public view the power institutionalized in the school bureaucracy—a routinized, complacent authority that conventional procedures did not seem to restrain or moderate. Whether it was an example, as some commentators claimed, of "cover your ass bureaucrats"[83] trying to hide behind badly

78. Crimaldi & Ross, *supra* note 37.

79. *Id.* (internal quotation marks omitted).

80. *Id.* (internal quotation marks omitted).

81. Ranalli & Mishra, *supra* note 2 (internal quotation marks omitted).

82. *See* Patricia Ewick & Susan S. Silbey, *Narrating Social Structure: Stories of Resistance to Legal Authority*, 108 AM. J. SOC. 1328 (2003).

83. *See* Editorial, *Lessons Needed in Common Sense*, BOSTON HERALD, Feb. 9, 2006, at 34.

drawn policies, or genuine concern about harm to the little girl, they sacrificed another child. His stay-at-home mother had the time, it seems, to resist. Her resistance was unexpected and almost inconceivable, thus prompting the scandal. Had this happened in Newton, Wellesley, Weston, or Lexington—communities with considerably more affluent and professional populations than the blue collar, primarily black population of Brockton—the young boy's family would have arrived at the school with lawyer in tow. The case would have been resolved on the spot without public notice, and it is unlikely that the child would have been suspended or assigned to another classroom.

C. *"Boy's Parents Hire Lawyer"*[84]

A third line of interpretation involves the more familiar scenario in which a litigant retains counsel to regain rights threatened by another—the bread and butter of legal practice. In this account, we focus on the fact that once the story broke in the news, the Dorinvils did hire an attorney. "I want to stand to defend my rights," Mrs. Dorinvil said.[85] Because she hired an attorney, she was able to secure her child's transfer to another school, receive an apology from the school system, and instigate a review of the school's policy that led to formal changes. A month after the original incident, again with the help of her attorney, Mrs. Dorinvil obtained court-ordered access to her son's full school record and all of the investigations of the incident to find out what actually happened.[86] This legal engagement proved once again that we no longer live in "the nonlitigious days of Dick and Jane."[87] If the law is not seen as an absolute command as in the first interpretation, nor as a matter of brute political power as in the second set of interpretations, then in this third line of analysis, litigation is at least an option. There is room for maneuvering, engagement, and discretion all along the way. Viewed as a tactical resource, the law need not be invoked categorically.

Many of the teachers, principals, and school officials contacted by the media described alternatives that the Brockton schools could have pursued. Joan Vodoklys, principal of the McCarthy Elementary school in Framingham, Massachusetts, suggested that "[i]nstead of suspension . . . she would have first contacted the parents, and then would have asked a social worker or counselor to speak with the boy

84. Jan, *supra* note 3.

85. *Id.* (internal quotation marks omitted).

86. Papadopoulos, *supra* note 5.

87. Editorial, *Sex at 6?*, *supra* note 69.

about his intentions."[88] "Giving the boy (and maybe the girl if she started it) some 'time-out' in the classroom might have been enough," as some reports have suggested.[89] A New York City school official said that the department does deal with sexual harassment by youngsters, but a typical punishment would not involve suspension: "It does happen, kids get curious," but "[u]sually, the kids get put into counseling."[90] The *Boston Herald* suggested that "a stern lecture and a meeting between the teacher, the principal and the boy's parents" were all that was necessary, "not a three-day suspension, a referral of 'evidence' to the DA and a permanent mark on [that] little boy's reputation."[91] The *Tulsa World* suggested that "a quiet talk with the boy and maybe a report to the parents would have been sufficient."[92] "Rather than be suspended or branded a potential criminal," one letter to the *Boston Globe* recommended, "the child should have been corrected and counseled as to what constitutes inappropriate touching."[93] A letter to the editor noted, "[A] competent elementary school teacher could have, and should have, handled the little incident in the classroom. They are just kids. Bravo to the mother for bringing it all public."[94] The principal in another Brockton school said, "Nine times out of 10 it's about sitting down with them, talking with them, telling them about respecting each other's personal body . . . . And nine times out of 10, you will never see that child again."[95] The general consensus was clear that "talking to this child was all that was needed"[96]—by the teacher, the parents, or perhaps a professional counselor.[97]

Believing themselves constrained by the federal and state laws, and finding that "sexual harassment" was the only applicable category listed on official forms, the Brockton School suspended the six-year-old. Without legal representation, Mrs. Dorinvil was unable to influence or persuade the school to act otherwise; she was unable to mobilize a review process. With legal representation, however, and

88. Jan & Burge, *supra* note 42.

89. Hancock, *supra* note 34; *accord* Editorial, *6-Year-Old Predator?*, *supra* note 56 ("School officials said a girl in the boy's class told the teacher he had put two fingers inside the waistband of her pants. His mother said he told her he touched the girl's blouse after she touched him.").

90. Rose, *supra* note 58 (internal quotation marks omitted).

91. Editorial, *Lessons Needed in Common Sense*, *supra* note 83.

92. Editorial, *Sex at 6?*, *supra* note 69.

93. Editorial, *Counseling Is What 6-Year-Old Needed*, BOSTON GLOBE, Feb. 10, 2006, at A18.

94. Editorial, *School Wrong on Boy, 6*, PATRIOT LEDGER (Quincy), Feb. 18, 2006, at 14.

95. Papadopoulos & Downing, *supra* note 9 (internal quotation marks omitted) (quoting Frances Hoeg, the principal at Duval Elementary School).

96. Editorial, *Brockton 6-Year-Old*, PATRIOT LEDGER (Quincy), Feb. 17, 2006, at 6.

97. Jean Porrazzo, *Most Important Lessons Begin at Home*, ENTERPRISE (Brockton), Feb. 12, 2006, *available at* http://enterprise.southofboston.com/articles/2006/02/12/news/news/news05.txt; *see also* Editorial, *6-Year-Old Predator?*, *supra* note 56.

certainly with media coverage, the legal mandate became considerably less rigid. Alternatives were considered and negotiations ensued. The school system became less confident of its own action, reconsidered its legal obligations, reinterpreted the legal mandate, and finally apologized to the Dorinvil family. Just as importantly, the system formally changed its policy, as well as the forms for referring incidents of abuse between children to higher authorities. With this apology and the policy revision, the school officials demonstrated their discretionary, rather than mandatory, authority. Rather than a fixed, inviolate set of commands, the school system's response to Mrs. Dorinvil's attorney evinced an understanding of public policy as malleable, adaptable, and the product of engagement.

III. LOCATING THE RULE OF LAW IN CONVENTIONAL (HEGEMONIC) LEGALITY

Thus far I have displayed at least three interpretations of law that circulated in public discourse in response to the Brockton case. None of these accounts—whether the conception of law as (1) a set of procedures and rules of play that offer accessible and participatory decisionmaking, (2) a transcendent good that defers as it both confines and embodies coercive force, or (3) a tool of power that subordinates as it promises justice—is able to sustain, by itself, the pervasive deference to law that saturates American society. Let me be clear that I am not disagreeing with colleagues who locate deference to law in procedures or in conceptions of rights and legitimacy. But by themselves, they are not sufficient. A true description of how law lives and survives as a taken-for-granted set of practices is needed to encompass this deeper understanding.

As an ensemble, rather than discrete distinguishable threads, the collection of legal narratives works to constitute popular legal consciousness, or what we might call the rule of law. Any particular experience can fit within the diversity of the whole. Here, legality is understood to be both a set of ahistorical, universal principles and a set of pragmatic opportunities and strategies. It sustains itself, as hegemonic, because any singular account conceals the social organization of law by effacing the connections between the concrete particular and the transcendent general.[98] It is both beyond the mess of mun-

98. Patricia Ewick & Susan S. Silbey, *Common Knowledge and Ideological Critique: The Significance of Knowing That the "Haves" Come out Ahead*, *in* IN LITIGATION: DO THE "HAVES" STILL COME OUT AHEAD? 273 (Herbert M. Kritzer & Susan Silbey eds., 2003); *see also* Ewick & Silbey, *supra* note 82; Patricia Ewick & Susan S. Silbey, *Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative*, 29 LAW & SOC'Y REV. 197 (1995). For a more elaborate argu-

dane reality and securely located within daily affairs. To state the matter differently, legality is much weaker and more vulnerable where it is more singularly conceived. If legality were ideologically consistent, as our Platonic heritage has for so long urged, it would be quite fragile. For instance, if the only thing people knew about the law was its profane face of crafty lawyers and media-reported tort cases, it would be difficult to sustain the support necessary for legal authority. The aspiration for disinterested, procedurally regular decisionmaking serves to balance that cynical account, feeding the image of lady justice—the sacred, awesome, transcendent legality. However, a transcendent, reified law, unleavened by familiarity (and even the cynicism familiarity breeds), would in time become irrelevant. Law that becomes entirely procedural and without substance becomes legalistic.[99] Either way—as solely god or as empty game—it would eventually self-destruct. Instead, legality is strengthened by the oppositions that exist within and among the narratives.

The Brockton case is both usual and unusual, banal and extraordinary. It is a very common example of what constitutes routine compliance—efforts to organize social relations in accord with legal requirements. As a relatively minor, street-level form of law enforcement, it is merely one of thousands—indeed, millions—of such actions that take place every day and constitute daily life in America. On the other hand, it is unusual in that it is an incident that moved several steps along the litigation process, from a perceived injurious event (the boy's hand on his classmate's back) through the stages of "naming, blaming and claiming."[100] Although almost any social transaction could, in theory, become a matter of dispute and lead to legal claims, few in fact do.[101] Even when people hire an attorney and then file

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ment, see PATRICIA EWICK & SUSAN S. SILBEY, THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE (1998).

99. Lawrence M. Friedman, *On Legalistic Reasoning—A Footnote to Weber*, 1966 WIS. L. REV. 148.

100. William L.F. Felstiner, Richard L. Abel & Austin Sarat, *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 LAW & SOC'Y REV. 631 (1980–1981).

101. Marc Galanter, *Adjudication, Litigation and Related Phenomena*, *in* LAW AND THE SOCIAL SCIENCES 151 (Leon Lipson & Stanton Wheeler eds., 1986); Marc Galanter, *Reading the Landscape of Disputes: What We Know and Don't Know (And Think We Know) About Our Allegedly Contentious and Litigious Society*, 31 UCLA L. REV. 4 (1983); Marc Galanter, *Real World Torts: An Antidote to Anecdote*, 55 MD. L. REV. 1093 (1996); Herbert M. Kritzer, *Studying Disputes: Learning from the CLRP Experience*, 15 LAW & SOC'Y REV. 503 (1980–1981); Herbert M. Kritzer, *Propensity to Sue in England and the United States of America: Blaming and Claiming in Tort Cases*, 18 J.L. & SOC'Y 400 (1991); Herbert M. Kritzer, W.A. Bogart & Neil Vidmar, *The Aftermath of Injury: Cultural Factors in Compensation Seeking in Canada and the United States*, 25 LAW & SOC'Y REV. 499 (1991); Richard E. Miller & Austin Sarat, *Grievances, Claims, and Disputes: Assessing the Adversary Culture*, 15 LAW & SOC'Y REV. 525 (1980–1981);

suit, as Mrs. Dorinvil did, few cases actually go to trial. But Mrs. Dorinvil did get her hearing.[102]

When we speak of a rule of law, it is because most of legality lies submerged within the taken-for-granted expectations of mundane life. We might imagine this legality, this rule of law, as an iceberg whose mass lies beneath the articulated events of ordinary social life. Rather than contested and choreographed in the rare trial, legality "rules" everyday life because its constructions are mostly uncontested and habitual. Law's constructions and mediations have been gradually sedimented and built up throughout the routines of daily living, just as each day of precipitation adds to the mass of the iceberg, some floating visibly above the waterline, the larger mass invisible below. Actions that become practices, habits, and then conventions help us to go through life in more or less unproblematic ways, without having to think about each step we take as we drive cars, cross streets, pay for groceries, or take our children to school. The conventions that become law are not different, helping to organize social relations, often without having to invoke, display, or wield the law's elaborate and intricate processes—especially its ultimate, physical force.

Of course, this normative and legal sedimentation is never complete; we do not always stay within the boundaries of legally sanctioned expectations, and the reach of law is always disputed. Thus, much of the visible iceberg of legality is about what to do in the event of breach; some of those messes or matters of concern lead to litigation, and some even to trials. Importantly, however, these visible legal battles are the exceptions to the law's more routine dominance.

The law is a durable and powerful human institution because it invisibly suffuses our everyday life. As we go about our daily lives, we rarely sense the presence of the law. Although law operates as a means for making things public and mediating matters of concern, most of the time it does so without fanfare, without contest, and without notice. We pay our bills because they are due; we respect our neighbors' property because it is theirs. We drive on a particular side of the road because it is prudent; we register our motor vehicles and stop at red lights. We rarely consider the collective judgments and procedures through which we have defined "coming due," "their property," "prudent driving," or why automobiles must be registered

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Susan S. Silbey, *Case Processing: Consumer Protection in an Attorney General's Office*, 15 LAW & SOC'Y REV. 849 (1980–1981); David M. Trubek et al., *The Costs of Ordinary Litigation*, 31 UCLA L. REV. 72 (1983); Deborah R. Hensler, *Why We Don't Know More About the Civil Justice System—And What We Could Do About It*, USC L. MAG., Fall 1994.

102. Papadopoulos, *supra* note 5.

and why traffic stops at red lights. If we trace the source of these expectations and meanings to some legal institution or practice, the origin is so far away in time and place that the matters of concern and circumstances of invention have been long forgotten. As a result of this distance, sales contracts, property, and traffic rules seem to be natural and inevitable facts of life.

Legal objects, signs, forms, rules, and decisions are understood, however, to be a special kind of fact—a legal fact. Perhaps we should collapse the distance between the words "legal" and "fact," using *legalfact* to emphasize the procedures of law that are the grounds for constructing facts. In other words, jurisprudence recognizes at its core that its truths are created only through its particular processes, and that the relationship between *legalfacts* and empirical facts is approximate at best.[103] The habits sustained by law and the interpretations of social relations underwritten by legal concepts or authorities may also function as *legalfacts*.

As naturalized features of modern life, the signs and objects of law are omnipresent. Through historic as well as contemporary legal decisions that are no longer debated, countless matters of concern have been resolved, concretized, and objectified—built into the very structures of ordinary social relations. Every package of food, piece of clothing, and electrical appliance contains a label that warns us about its dangers, instructs us about its uses, and tells us whether (and where) we can complain if something goes wrong. Every time we park a car, dry clean our clothes, or check our coats, we are informed about limited liabilities for loss. Newspapers, television, novels, plays, magazines, and movies are saturated with legal images, while these very same objects display their claims to copyright.

Although much of the time, legal forms go unnoticed, they are imperfectly naturalized. At any moment, the stabilized, historical *legalfact* can reappear, perhaps becoming a matter of concern, debate, challenge, or resistance. Children attend school from ages five through sixteen in Massachusetts, as the General Laws and convention have required for the last 150 years. The fact that teachers monitor student interactions for sexual harassment and report such incidents to authorities, however, has not yet become habituated or uncontested, despite the legal mandate. Here, the visible iceberg of legality cracks and hits a passing ship. Most of the time, however, legal regulation goes without consideration or challenge.

103. *See* BRUNO LATOUR, REASSEMBLING THE SOCIAL: AN INTRODUCTION TO ACTOR-NETWORK-THEORY (2005) (providing an extended discussion of the making of social facts, including scientific facts).

IV. ONE FINAL ILLUSTRATION

My favorite illustration of this deeply sedimented, hegemonic law concerns the familiar practice in Chicago, Boston, New York, and some other northern cities, of placing an old chair, traffic cone, milk crate, or other noticeable object in a recently shoveled parking spot on a snow-filled public street. "Before snowfalls, a parking space belongs to the one who occupies it: you leave it, you lose it. In wintertime Chicago, however," writes Fred McChesney in an economic analysis of this practice and of the city's response to it, "excavating one's car changes the system of property rights."[104] Professor Richard Epstein refers to this practice as "dibs":[105] "[It] reduces available parking spaces . . . it also rewards those who have put the effort into the job. Would the shovelers spend all that time if they only got to use the space just once?"[106] In this way, Esptein further argues, "[Dibs provides] a trade-off not dissimilar to that found in the patent and copyright law. The initial digger of the spot is given a limited monopoly for its use."[107] Although questions of duration of the monopoly preoccupy the economic analysis, my interest lies in the legality of the practice, in the sense I have been using the term, as a discourse of law. Like those who hire lawyers to protect their rights or negotiate a child's return to school, McChesney and Epstein express a pragmatic sense of law as a negotiated contest rather than a transcendent good.

Dibs on parking spots enact a form of justice sustained by supply and demand, utility and exchange. At the same time, however, the practice of placing an old chair on a public street to hold a parking spot evokes a foundational conception of ownership and labor, which cannot be practiced or interpreted without legal concepts and cognitions, as our economic and legal commentators evidence. The chair placed in a parking spot on a public street is understood to endow the chair's owner with use rights in the space. This understanding is not limited to our esteemed colleagues. My point is that this practice cannot be interpreted by those who engage in or observe it without invoking legal concepts and meanings. It is unintelligible without notions of property and trespass. But unlike contracts, copyrights, traffic signs, or bills of sale, which are standard markers of legality, this chair in the snow is not the direct and intentional product of pro-

104. Fred S. McChesney, *Snow Jobs*, LIBR. ECON. & LIBERTY, Oct. 15, 2001, *available at* http://www.econlib.org/library/columns/mcchesneysnow.html.

105. Richard A. Epstein, *The Allocation of the Commons: Parking on Public Roads*, 31 J. LEGAL STUD. S515, S528 (2002).

106. Richard Epstein, *Parking and Property*, U. CHI. MAG., Apr. 2003, at 42.

107. *Id.* (internal quotation marks omitted).

fessional legal work. Instead, we might view these chairs as residue of that formal legal practice. Rather than a piece of professionalized law, this is a visual image of the law from the bottom up and from outside legal institutions. The chair in the shoveled-out parking spot signals to the neighborhood, or any passerby, a type of ownership. In claiming ownership, that chair often elicits the same sorts of deference and respect accorded more conventional types of property. Other drivers park elsewhere. Similarly, the violation or transgression of this property claim by removing the chair and parking in the spot may lead to conflicts and disputes more commonly associated with property as formally defined by the legal system—informal claims of trespass.

Without naming the doctrinal concepts of constructive or adverse possession, the person placing the chair in a clearing among mounds of snow implicitly invokes conventional and historic justifications for property on the basis of investment and labor, the same arguments that underwrote the emergence of liberal law in the seventeenth century. The heavy labor of shoveling out the mounds of snow is understood to endow the chairs' owners with use rights in those spaces. By placing a chair in a public parking place, the formal legal idea of private property is appropriated along with many of the rights associated with it, such as exclusive use. Yet property here is construed very differently than its doctrinal sense demands or would allow. Even without registered deeds and titles, stamps and seals, the law is absent in its formal professional sense, but it is continually and morally present in organizing social relations on a city street around this particular construction of the automobile, the parking space, and private property.

The public street has its own "set of procedures, its definition of freedom and domination, its ways of bringing together those who are concerned . . . and what concerns them."[108] The *legalfacts* of public space, the truth of who owns and who can use this space, for what and for how long, no longer command unremarked deference. Whether others defer to or contest the claims to the parking spots, the *legalfacts* of property rights, the city's services, and law enforcement now demand collective reconfirmation of their legitimacy.

The Brockton elementary schools, just as the public street with a milk crate holding dibs, become spaces of civic engagement for those concerned with children, schools, freedom, sexuality, and the law.

108. Bruno Latour, *From Realpolitik to Dingpolitic: Or How to Make Things Public, Introduction* to MAKING THINGS PUBLIC: ATMOSPHERES OF DEMOCRACY 14, 31 (Bruno Latour & Peter Weibel eds., 2005).

The *legalfacts* of children's rights, of teachers' obligations, and of parental authority no longer command uncontested compliance. Whether others defer to—or challenge—a teacher's report of sexual harassment, a school system's authority to determine a child's placement, or a parent's desire to shield a child from hostile forces, legality now demands collective reconfirmation of its status as *legalfact.* This is the rule of law enacted and lived every day by Americans.