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Commentary

The Availability of Law Redux: The Correlation of Rights and Duties

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> Insofar as the human individual is social in nature, to each person's duty there corresponds another's right. Perhaps even more profound is the view that there are only rights in the first instance, that every individual has claims—those of human beings in general and those arising from their special situations—which as such become duties for the other. But since everyone who is thus entitled is also somehow obligated, a network of rights and duties back and forth arises in which it is the right that is the primary, leading factor; duty is admittedly only its unavoidable correlate situated in the same activity. (Georg Simmel [1908] 2009: 409)

During the first 10 days of January 2014, the front page of the *New York Times* usually carried at least one article referring to rights. The topics ranged from the right to own guns, to perform abortions, of gay couples to marry, of patients' to end medical treatment, of adults brought illegally to the United States as children to become lawyers, as well as the due process rights of prostitutes in China, political protestors in Cambodia, and religious groups in Egypt. Despite 50 years of empirical studies documenting the indeterminacy of rights, mapping the gap between judicially sanctioned rights and their inconsistent protection, and offering penetrating critique of rights as the ground of a just social order, rights talk flourishes nationally and globally. Amidst this exuberant celebration of rights, there is considerably less attention to the fact that rights always create duties, as the epigraph from Georg Simmel claims. We value rights as restraints on power, especially the power of the state, but rights simultaneously enable and require the state to exercise its power in protecting rights.[1] Every protected right, alongside myriad sanctions and legal procedures promulgated to

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[1] Libertarians often describe a minimalist state with limited resources and powers governing a society of abundant political but no social or economic rights.

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protect some interest or proscribe some action contributes to "a persistent surplus of enforcement capacity," a bounty of government authority that ultimately enables routine law enforcement (Silbey & Bittner 1982). The duty to enforce that grounds every legally sanctioned right can also be the basis of unreasonable action, action that has disproportionate ideological force when undertaken in the cause of vindicating rights.

In his 2013 presidential address to the Law & Society Association, Michael McCann spoke about what he called, "The Unbearable Lightness of Rights: On Sociolegal Inquiry in the Global Era." A jazz musician himself, McCann offered a riff—a distinct variation and outpouring in response to a (musical) phrase—on the title of Milan Kundera's 1984 novel, *The Unbearable Lightness of Being*. In his own words, McCann draws on the leitmotif of lightness and weight thematically organizing Kundera's novel to catalog some of the paradoxes of rights talk and its dissemination globally. Although Kundera uses lightness to refer to the singular and ephemeral quality of any human life—that we each live only once and never again, McCann seems to invert Kundera, referring to the lightness of rights in terms of their ubiquity, multiplicity, and complexity. It is not clear why ubiquity, multiplicity and complexity is interpreted as lightness, when we might as easily regard the ubiquity, multiplicity and complexity—the overwhelming presence—of rights as weighty, but McCann takes a different tack. Kundera's novel also focuses lightness on love and sex, unpredictable, haphazard and often fleeting events, and here McCann picks up the theme to reference the indeterminacy of rights, the inability to hold, contain, or know that rights will in fact shape particular human events or experiences. He counterposes the lightness to the heaviness of rights, the conventions and routines through which rights become duties embedded in institutionalized social order. "Rights constructions," abundant, multiplex and paradoxical as they are, "ensure order less because they dupe or brainwash ordinary people," McCann claims, "than because they are harnessed to constellations of group power, institutional arrangements, and state force," that more often than not support existing, unequal, often unjust distributions of advantage and opportunity. Although "the core rights enforced by dominant groups in Western legal traditions have secured property, contracts, and private aggregations of unequal private power while individualizing subjects in ways that impede collective challenge to hierarchy in public life" (see *Citizens United v. Federal Election Commission, 558 U.S. 310* (2010)), McCann insists that rights provide effective resources for social justice in the global south where rights claims are proliferating, as well as the global north where the discourse has had such a powerful historic legacy, despite evidence he has marshaled to the contrary.

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What do we owe each other as residents of the same city, as citizens of the same state, as human beings living on this one globe? Is what we owe each other the same as what we might actually expect of each other? Simmel laid out the fundamental duality that lies at the heart of social engagement. We might imagine, and even desire, a social order based entirely on "a reciprocity of moral, legal, and conventional relationships," where "all of love and sympathy, magnanimity and religious impulse could be regarded as the *rights* of the one receiving them," but alas such a radicalism, Simmel wrote, "does not correspond to psychological reality, in the sense that such an ethical-ideal construction would be feasible." Because, "ultimately, we are responsible for the morality of our actions only to ourselves, to the better "I" in us, to the respect we have for ourselves," a person must decide "in what ways the rights of the other are duties for it." Rights provide the grounds for more than arbitrary relations dependent on chance contingencies only if "right constructs its methodological starting point in the correlation pair of right and duty underlying it: for a person is on average more quickly prepared to claim a right than to fulfill a duty." Simmel's analysis of the marriage of rights and duties suggests, albeit in a rather abstruse and archaic form, the insufficiency of rights as a foundation of sociality because they also provide for what easily become capacious conceptions of duty.

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.[2] The young boy had put his hand in the elastic of his classmate's pants, touching the skin on the other child's 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.[3]

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

[2] This is an abbreviated account of a more extended analysis that originally appeared in Silbey (2007).

[3] 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 ch. 119, §52 ().

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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 that he would be "stigmatized by the incident" (Ranalli & Mishra 2006).

Within 2 days of the news blitz, and 12 days after the suspension, the Brockton School Department apologized for suspending the boy. The next day, his "parents hired a lawyer to investigate the school system's handling of the matter" (Jan 2006). More than two weeks after the suspension, the story continued to generate activity in ever-widening local and national media markets across the political spectrum—from *TalkLeft*: *The Politics of Crime* to *World Christian News* to the *Massachusetts GOP News*. 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" (Papadopoulos 2006b). 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" (Papadopoulos 2006b). 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" (Papadopoulos 2006b). The case was closed when the school district administrators transferred the boy to another school, and agreed to revise its system for reporting student conduct to better address inappropriate touching among young children; it would presumably no longer be labeled as sexual harassment.

This story illustrates the deeply layered and textured meaning of the rule of law in popular culture and understanding, offering what I consider a painful example of how the discourse of rights plays out locally and for individuals. This story illustrates how institutionalized rights—in this case, the right to be free from sexual harassment, the corresponding obligation of public institutions to enforce those rights, the right of parents to be informed of a child's school record, the right of a parent to be informed of any assault to her child, the corresponding obligation of schools to provide access to a child's school record, and to inform parents of incidents of sexual assault or harassment—provide not only protections and obligations but also abundant resources for arbitrary and unreasoned exercises of power by organized authorities.

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 enacted to protect the rights of children. "This was done right by the book," said Cynthia McNally, a district

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spokesperson with whom I spoke and whose comments were reported in the media, it "was thoroughly investigated" (Ranalli & Mishra 2006). "It's a situation within the parameters [of sexual harassment], and we're dealing with it within the parameters," she said (Ranalli & Mishra 2006). 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. Interpretations of what federal and state law demanded of school administrations were not limited to the Brockton officials. "We take these things extremely serious [sic] these days," another school superintendent 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" (Jan & Burge 2006). Many school officials believe they have no room for discretionary judgment. "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 (Papadopoulos & Downing 2006). "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 (Papadopoulos 2006a). "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" (Papadopoulos & Downing 2006).

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 responses to the legal proscription. Both the officials involved and some critics invoked this sense of law as a set of shared aspirations and as recipes for action. Child-to-child harassment is part of a serious "pandemic of sexual violence" (Stein 2005). From this perspective of peer sexual harassment as a social problem, the law has responded appropriately by mandating locally enacted antiharassment policies to protect the rights of children to be free of sexual and other forms of harassment.

Although some observers thought the Brockton school department was keeping faith with its legal duties, other members of the public saw this as just another instance of the overwhelming power of "loony liberal[s]" who pray "at the altars of political correctness" (*Las Vegas Review* 2006). "Not even childhood is safe from excessive incriminations of the politically correct kind" whose "invasion into our lives is appalling," according to the student newspaper at the University of Texas at Arlington (Dowden 2006). 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 *Boston Globe* reported that the Brockton superintendent of schools had been receiving "hate mail from all over the country" (Jan 2006), 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 blizzard and deluge of civil rights. 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 story. 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 (Short 2006). In his carefully researched, comparative study, *Making Rights Real*, Charles Epp (2009: 214, 222) describes law-inspired institutional change in police bureaucracies, workplace sexual harassment, and playground safety, emphasizing not the singular centrality of rights but the strength of institutionalized norms of accountability and professional managerial prerogatives. "Where once bureaucratic agencies resisted external legal control . . . a common policy model of legalized accountability has grown and consolidated . . . [remaking] norms and identities of the managerial professions, shifting them decisively from a celebration of insulated discretionary expertise to a celebration of fidelity to legal norms." Although the changes in two of the settings (policing and personnel management) were spurred by activist demands to give practical meaning to the rights revolution's promises, those rights claims prompted professional responses without which the claims making would have led nowhere. The new institutional model, Epp writes, "gives individuals new levers of influence but also ironically empowers bureaucratic institutions."

For other observers and commentators, the Brockton case was a sign of the corruption of the public culture; the law was not a product of a feminist conspiracy but of the saturation of popular

culture by the media.[4] In the first construction, the 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, however, it was about power. Indeed, Mrs. Dorinvil also seemed to experience the situation as a matter of unjust power, not of the media though, but the power of the school authorities claiming to enforce law. No one at the school contacted her about the incident or their concerns, she reported, until "she was instructed to pick her son up from school" (Crimaldi & Ross 2006). "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" (Crimaldi & Ross 2006). 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 see that this is not fair" (Crimaldi & Ross 2006). 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" (Ranalli & Mishra 2006). This attentive 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 of powerlessness, Mrs. Dorinvill did what a lot of people do under the circumstances: she found a way of resisting the bureaucratic procedures by following them literally. Following the demand to remove her son from school, she did not return him to school. The school expected that the child would, of course, return to school 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 their own interpretation that the case was serious enough to warrant suspension and referral to the district attorney. Further, by picking up 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 com-

[4] For example, Editorial, Allow Room for Innocence, *CALGARY HERALD*, February 11, 2006, at A28; Posting of Joel Mark to http://www.worldmagblog.com/blog/archives/022494.html (February 9, 2006, 08:22 EST) ("Our culture protects and celebrate 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.").

mentators claimed, of "cover your ass bureaucrats" (Boston Herald 2006) trying to hide behind badly drawn policies, or genuine concern about harm to the little girl, they sacrificed another child. His mother's 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—then 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.

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. "I want to stand to defend my rights," Mrs. Dorinvil said (Jan 2006). 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 a formal change. 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 so that she could find out what actually happened. This legal engagement proved once again that we no longer live in "the nonlitigious days of Dick and Jane."[5] If the law is not seen as an absolute command as the administrators first claimed, nor as a matter of brute political power as in the second set of interpretations, then in this third line of analysis, litigation to enforce one's civil rights is at least an option. There is room for maneuver, engagement, and discretion all along the way. Viewed as a tactical resource, rights 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 short of suspending the boy and referring the case to the prosecutor. "Instead of suspension" a principal in another school system said, "she would have first contacted the parents, and then would have asked a social worker or counselor to speak with the boy about his intentions" (Jan & Burge 2006). "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 (Hancock 2006). A New York City school official said that the department does deal with sexual harassment by youngsters, but a

[5] 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*, February 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.")

typical punishment would not involve suspension. "It does happen, kids get curious," but "[u]sually, the kids get put into counseling" (Rose 2006). The *Boston Herald* (2006) 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. The *Tulsa World* (2006) suggested that "a quiet talk with the boy and maybe a report to the parents would have been sufficient." "Rather than be suspended or branded a potential criminal," one letter written to the *Boston Globe* (2006) recommended, "the child should have been corrected and counseled as to what constitutes inappropriate touching." 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" (*Patriot Ledger* 2006a). 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" (Papadopoulos & Downing 2006). The general consensus was clear that "talking to this child was all that was needed"—by the teacher, the parents, or perhaps a professional counselor (*Patriot Ledger* 2006b).

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 Schools 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 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 enacted an understanding of public policy as malleable, adaptable, and the product of engagement.

Is this a story about the protection of one child's rights, the supposed victim who is coincidentally absent in all accounts of the case? Or, is this a story of the overreaching of rights, the availability of rights to empower unreasonable bureaucracy? Surely, the

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Brockton case offers a provocative illustration of the fundamental duality of rights and duties that Simmel begs us to consider.

This story illustrates the deeply layered and textured meaning of the place of rights and the rule of law in popular culture and understanding. The rule of law and the meaning of rights live in the myriad practices and contradictory aspirations of a people. Neither entirely a set of disinterested rules and rational procedures for confining arbitrary power, nor merely a terrain of unregulated, agonistic engagement, an ambivalent, paradoxical phenomenon that is a commonplace feature of everyday life in the United States, law functions as the principal mechanism for social order in modern society (Durkheim [1893] 1933). In an essay rethinking Robert Cover's essay, "Nomos and Narrative" (1983), Judith Resnik (2005: 18, 28) echoes this understanding when she claims that the nation's citizens "live law's meaning." 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."

Resnik (2005: 29), like Cover, focuses on the jurisgenerative work of the few centuries-old communities such as Mennonites, Amish, and Hassidic Jews who have "sustained remarkably distinct legal regimes across time, place, and enormous" sociopolitical and economic changes. 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." Members of these communities do not merely pronounce law, as judges do, they exemplify the process of "living their law" (Resnik 2005: 29, quoting Cover 1983 at 49). Judges, and most citizens, are "able to state their understanding of law without facing tests of their commitments to the principles they elaborate," Resnik claims. 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."[6] Liberal relativism and procedural justice would eventually, he predicted, erode commitments to the rule of law. The strong forces supporting a durable rule of law, like the normative ordering of these distinctive communities, derive not from easily assented-to rules of procedure, but from more deeply sedimented habits, conventions, and ways of being in the world.

In his imaginative and path-breaking study, *This Is Not Civil Rights*, George Lovell (2012) analyzes how American citizens "live law's meaning" as displayed in letters written by ordinary Americans to the federal government in 1939 and 1940. Unlike the

[6] Resnick (2005) at 30 (alteration in original; quoting Cover, 1983 at 12).

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rights activists who promoted a bureaucracy for protecting children against sexual harassment illustrated in the Brockton case or the professionals who created bureaucratic accountability described by Epp (2009) in *Making Rights Real*, Lovell is looking at legal claims by nonspecialist complainants whose "letters introduce associations and categorizations that help to uncover and dislodge assumptions about rights." McCann (2013: 6 mss) sees Lovell's work as evidence of "how inherently light, volatile, and malleable rights talk can be." These depression era Americans offer expansive conceptions of rights that even in a world replete with fecund rights talk "it now seem[s] difficult to imagine." Clearly, they seek solutions for injustice. An escaped convict writes, "My objective is, contact the law, get the ear of men who realize that justice is the only thing that places man above the brute, men who realize that civilization would have been lost in the entanglement of ages had not justice been done and men who realize that each age requires changes and each change requires a more flexible justice" (Lovell: 170). Although articulate beyond the norm, this and other letters are not professionally shaped claims, but views of legal possibilities imagined by ordinary people, often without any invocation of rights. More than a few writers described the law's complicity and legitimation of unjust practices, for example, concerning shady business practices: "Of course, anyone feels badly enough about being swindled on a used car deal, but when the courts turn around and protect the swindler, that is much worse and some action should be taken to stop this un American practice" (Lovell: 171); or, for example, concerning routine beatings of prisoners: "If such an abomination be permitted in any state, hypocritically cloaked as lawful, is it logical to presume that equally and perhaps death-dealing atrocities will not be penetrated minus the hypocritical cloaking?" (Lovell: 171). As Kristin Bumiller (2014) writes in her review of *This Is Not Civil Rights*, these letters express citizens' aspirations for "state responsibility prior to the growth of civil rights turmoil, making . . . their claims in ways that evoked a nascent sense of social justice."

The book is entitled *This Is Not Civil Rights* because, in the end, rights cannot be separated from the state power they aspire to limit (Marx 1843). Although letter writers often "portrayed law as an ideal linked to justice," they also clearly "understood that law routinely fell short of such ideals" (Lovell: 169). They recognized implicitly, if not always explicitly, the state's duty to enforce and protect rights. Moreover, as Lovell suggests, if we read these letters as efforts to obtain help from the government, they clearly failed. Although citizens were undeterred by narrow, constrained talk of rights, often going far "beyond anything recognized in official law" (Lovell: 178), it was the officials who "deployed law *not* to advance rights but to kill off people's efforts to appropriate legal language in support of

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aspirational claims" (Lovell: 179, my emphasis). As Bumiller (2014) notes, rather than telling an optimistic story of rights as McCann suggests, Lovell's work illustrates "the lost potential for a more expansive notion of civil rights," conceived and appealed to as social justice.

Ironically, it is the letter-writing citizens, rather than the optimistic sociolegal observers, who articulate the duality of rights and duties inherent in Simmel's conception of social order. The letter writers express "a desire for a more responsive state that would address not only the [particular] problem experienced but provide for citizens' fundamental needs and protect against anti-democratic forces" (Bumiller 2014). Is it possible for us, sociolegal scholars, to really, truly acknowledge the limitations of rights as a moral ground for social relations without resurrecting them as the central discourse of law? Does Simmel not remind us that to the extent we ground legal discourse in rights, we are bound to address, and embrace equally, the discourses of responsibility and duty? Is such talk so strongly attached to religion and conservative ideologies that more progressive scholars are unable to acknowledge the fundamental duality of sociality?

If every right begets a duty to enforce, I conclude by recalling that all laws—rights and powers—have unintended uses, the range of such capacities and uses depending on the imagination and resourcefulness of law's users, whoever they may be. Although unintended uses are well known, literally, the bread and butter of law and society research, rights advocates generally seem to perceive these unintended consequences as lurking about the periphery of legality, the unintended and unwelcome detritus of overly formalized bureaucracies. Rather than the boundaries of law, however, the ambiguities, uncertainties, and affordances of law (and those generated alongside rights) reside in the core of legality. "Every provision of law, once set loose is candidate for any use to which it might lend itself. Lawyers, judges, and above all, legislators, will probably be very uncomfortable with the idea that they can never be certain of what they beget no matter how carefully they attend to the act of creation. But circumstances appear to play havoc with these designs, and likelihood of this happening increases with the conscientiousness of law enforcement agents" (Silbey & Bittner 1982: 424). More rights beget more duties beget more resources for conscientious legal agents.

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