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Richard Terdiman

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

by
PIERRE BOURDIEU

Translator's Introduction

by
RICHARD TERDIMAN*

Pierre Bourdieu holds the Chair in Sociology at the prestigious Collège de France, Paris. He is Directeur d'Études at l'École des Hautes Études en Sciences Sociales, where he is also Director of the Center for European Sociology, and Editor of the influential journal *Actes de la recherche en sciences sociales*. Professor Bourdieu is the author or co-author of approximately twenty books. A number of these have been published in English translation: *The Algerians*, 1962; *Reproduction in Education, Society and Culture* (with Jean-Claude Passeron), 1977; *Outline of a Theory of Practice*, 1977; *Algeria 1960*, 1979; *The Inheritors: French Students and their Relations to Culture*, 1979; *Distinction: A Social Critique of the Judgment of Taste*, 1984.

The essay below analyzes what Bourdieu terms the "juridical field." In Bourdieu's conception, a "field" is an area of structured, socially patterned activity or "practice," in this case disciplinarily and professionally defined.¹ The "field" and its "practices" have special senses in

* Professor of Literature, University of California, Santa Cruz. B.A. 1963, Amherst College; Ph.D. 1968, Yale University.

I am grateful to John Henry Merryman, Sweitzer Professor of Law, Stanford Law School, for his generous assistance with terminological and conceptual issues which arose in connection with this translation.

1. Bourdieu's work has provided a series of analyses of different social fields. See, for example: *HOMO ACADEMICUS*, 1984 (on the academic field); *Champ du pouvoir, champ intellectuel, et habitus de classe*, 1 *SCOLIES* 7 (1971) (on the intellectual field); *Genèse et structure du champ religieux*, 12 *REVUE FRANÇAISE DE SOCIOLOGIE* (1971) (on the religious field); *Le Marché des biens symboliques*, 22 *ANNEE SOCIOLOGIQUE* 49 (1973) (on the market in symbolic goods); *L'Invention de la vie d'artiste*, *ACTES DE LA RECHERCHE EN SCIENCES SOCIALES* 67 (1975) (on the intersection of literature and power); *L'Ontologie politique de Martin Heidegger*, 5-6 *ACTES DE LA RECHERCHE EN SCIENCES SOCIALES* 109 (1975) (on the intersection of

Bourdieu's usage. They are broadly inclusive terms referring respectively to the structure and to the characteristic activities of an entire professional world. If one wanted to understand the "field" metaphorically, its analogue would be a magnet: like a magnet, a social field exerts a force upon all those who come within its range. But those who experience these "pulls" are generally not aware of their source. As is true with magnetism, the power of a social field is inherently mysterious. Bourdieu's analysis seeks to explain this invisible but forceful influence of the field upon patterns of behavior—in this case, behavior in the legal world.

Bourdieu's examples in this essay come mostly (though not exclusively) from France, but his perspective transcends the specificity of any individual legal system. He intends his investigation to be a case study of a larger system, and of a broad series of patterns in the "juridical field" in general. Not surprisingly, Bourdieu takes the law to be a constitutive force in modern liberal societies. Thus, many of his perceptions and conclusions concerning how the law *functions* within such societies apply as well to the United States as to France.

Bourdieu's essay considers the "world of the law" from several related points of view: the conceptions that professionals working within the legal world have of their own activity; the mechanisms by which their conceptions of the law, and those of others within their society, are formed, sustained, and propagated; and the objective social effects (both within the field and outside of it) of the professional work of lawyers and the law.

Bourdieu's central claim is that the juridical field, like any social field, is organized around a body of internal protocols and assumptions, characteristic behaviors and self-sustaining values—what we might informally term a "legal culture." The key to understanding it is to accept that this internal organization, while it is surely not indifferent to the larger and grander social function of the law, has its own incomplete but quite settled autonomy. If we take the term "politics" in its broadest sense, referring to the complex of factors (economic, cultural, linguistic, and so on) that determine the forms of relation within a given social totality, there is thus what might be termed an *internal politics of the profession*, which exercises its own specific and pervasive influence on every aspect of the law's functioning outside the professional body itself.

philosophy and power); *Le Champ scientifique*, 2 ACTES DE LA RECHERCHE EN SCIENCES SOCIALES 88 (1976) (translated as *The Specificity of the Scientific Field and the Social Conditions of the Progress of Reason*, 14 SOCIAL SCIENCE INFORMATION 19 (1975) (on the scientific field).

To experience the "force of law," the quasi-magnetic pull of the legal field (whether as a legal professional, as a criminal defendant, or as a civil litigant accepting the jurisdiction of a court for resolution of a dispute) of course means accepting the rules of legislation, regulation, and judicial precedent by which legal decisions are ostensibly structured. But in this essay Bourdieu claims that the specific codes of the juridical field—the shaping influence of the social, economic, psychological, and linguistic practices which, while never being explicitly recorded or acknowledged, underlie the law's explicit functioning—have a determining power that must be considered if we are to comprehend how the law really functions in society.

According to Bourdieu, such comprehension is possible because the practices within the legal universe are strongly patterned by tradition, education, and the daily experience of legal custom and professional usage. They operate as learned yet deep structures of behavior within the juridical field—as what Bourdieu terms *habitus*. They are significantly unlike the practices of any other social universe. And they are specific to the juridical field; they do not derive in any substantial way from the practices which structure other social activities or realms. Thus, they cannot be understood as simple "reflections" of relations in these other realms. They have a life, and a profound influence, of their own. Central to that influence is the power to determine in part *what* and *how* the law will decide in any specific instance, case, or conflict.

As Bourdieu points out early in his essay, neither of the two major strains of theoretical jurisprudence, formalist and instrumentalist, has any coherent way of talking about the formation or influence of these pervasive structures that organize the juridical field and thereby influence the decisions of the law.²

Bourdieu agrees with instrumentalist theories of jurisprudence to the extent that he strongly believes the juridical field functions in close relation with the exercise of power in other social realms and through other mechanisms. Principal among these are the manifold modalities of power controlled by the State. But to Bourdieu, the juridical field is not simply a cat's paw of State power, as instrumentalist theory at times tends to suggest. Neither is the law just a reflection of these other modal-

2. *Formalist* theories by their nature abstract the functioning of the law from any social determination, such as that which is exercised by the juridical field as Bourdieu conceives it. *Instrumentalist* theories accept a notion of determinism but attribute it to the power of socially or economically dominant groups outside the law. Neither strain of jurisprudential speculation thus has any room for attributing such determination to the specific organization and practices of the legal world itself. That, however, is precisely what Bourdieu claims here.

ities of state control. On the contrary, the law has its own complex, specific, and often antagonistic relation to the exercise of such power.

In this sense the law exhibits tendencies toward something which appears like the autonomy formalist theory attributes to the law. But it does not do so on the same theoretical grounds. In Bourdieu's conception, the law is not by nature and by theoretical definition independent of other social realms and practices as the formalists claim. Instead, it is closely tied to these. But the nature of its relation is often one of intense *resistance* to the influence of competing forms of social practice or professional conduct, for, as Bourdieu argues, such resistance is what sustains the self-conception of the professionals within the juridical field. Paradoxically, this manner of what we might term negative connection to the extra-legal realm is what gives the law the deceptive *appearance* of autonomy which formalist theory transforms into a theoretical postulate. The intricate and problematical forms of relation between the juridical field and other loci of social power then become a central focus of "The Force of Law."

In Bourdieu's conception a social field is the site of struggle, of competition for control. (Indeed, the field defines what is to be controlled: it locates the issues about which dispute is socially meaningful, and thus those concerning which a victory is desirable.) This struggle for control leads to a hierarchical system within the field—in the case of the juridical field, to a structure of differential professional prestige and power attaching to legal subspecialties, approaches, and so on. This system is never explicitly acknowledged as such. In fact, such an implicit hierarchy is often explicitly contrary to the doctrine of professional collegiality and the theoretical equality of all practicing members of the bar. But this hierarchical if covert "division of juridical labor" structures the legal field in ways which Bourdieu's essay endeavors to bring to light. For example, it pits sole practitioners against members of large firms; or corporate attorneys against attorneys for disadvantaged groups; or, on another level, the partisans of more scholarly approaches against those favoring more "practical" approaches to resolving particular legal issues.

Much of this structuring and competition happens in the strange linguistic, symbolic, and hermeneutic³ world in which the struggle for authorized or legitimized interpretation of the texts of the legal corpus, and also the texts of *legal practice*, takes place. Bourdieu, in common with many contemporary Continental social theorists, uses an extended notion of the "text" which may be unfamiliar to many American readers.

3. Referring to the "science of interpretation."

This conception encompasses not only the written record (in the law, for example, legislation, judicial decisions, briefs, and commentary), but also the structured behaviors and customary procedures characteristic of the field, which have much the same regularity, and are the subjects of much the same interpretive competitions, as the written texts themselves.

In turn, and crucially in Bourdieu's view, professionals within the legal field are constantly engaged in a struggle with those outside the field to gain and sustain acceptance for their conception of the law's relation to the social whole and of the law's internal organization. Bourdieu traces in detail the social and particularly the linguistic strategies by which the inhabitants of the legal universe pursue this effort to impose their internal norms on broader realms and to establish the legitimacy of interpretations favorable to the self-conception of the field, to the ratification of its values, and to the internal consistency and outward extension of its prerogatives and practices.

Bourdieu's emphasis on linguistic and symbolic strategies is worth a further word here. He bases his view implicitly on a strain within contemporary philosophy known as "speech act theory."⁴ Ordinarily we think of language as describing a fact or a state of affairs. But in the concept of the "performative" the philosopher J. L. Austin sought to formalize a special linguistic capacity (one which is particularly inherent in the law) that makes things true *simply by saying them*.⁵ This power is of course the attribute of judges and judicial decisions, among others.

The texts of the law are thus quintessentially texts which produce their own effects. Bourdieu devotes particular attention to this special linguistic and social power of the law "to do things with words." Essential to that capacity—to the law's reproduction and continuation, to its legitimation in the eyes of those under its jurisdiction—is what Bourdieu terms the law's "power of form." This power inheres in the law's constitutive tendency to *formalize* and to *codify* everything which enters its field of vision. Bourdieu connects this tendency with Max Weber's speculations about "formal rationality."⁶ He argues that this formalization is

4. See J. AUSTIN, *HOW TO DO THINGS WITH WORDS* (1962); J. SEARLE, *SPEECH ACTS: AN ESSAY IN THE PHILOSOPHY OF LANGUAGE* (1969). Bourdieu by no means accepts Austin's and Searle's theories without criticism. Particularly, Bourdieu has been at pains to argue that the force of performative utterances like those considered here is not intrinsic in the abstract speech situation or in language itself, but derives also from the force of the social authority whose delegation to a particular individual (a judge, for example) is ultimately sustained by the coercive power of the State.

5. The example typically given is itself quasi-judicial: the monarch's power to ennoble commoners simply by dubbing them and proclaiming that they are now titled.

6. See M. WEBER, *ECONOMY AND SOCIETY* I, 86 *passim* (G. Roth & C. Wittich eds. 1978).

a crucial element in the ability of the law to obtain and sustain general social consent, for it is taken (however illogically) as a *sign* of the law's impartiality and neutrality, hence of the intrinsic correctness of its determinations. Bourdieu demonstrates the importance of the written formalization of legal texts and the codification of legal procedures to the maintenance and universalization of the tacit grant of faith in the juridical order, and thus to the stability of the juridical field itself.

Like that of a number of his compatriots whose influence in the realm of cultural theory and scholarship has also been considerable, Bourdieu's writing can be perplexing for readers unaccustomed to the rhetoric of contemporary French research in the "human" (or social) sciences. But despite frequent charges of abstraction and abstruseness made against writing in this vein, it is largely its *difference* from our own rhetorical habits that can lead to impressions of difficulty.

In the American context, the notion is widespread that research on a familiar subject (by virtue of the subject's very familiarity) ought to be easily accessible. But much Continental work in social science challenges this idea at a fundamental level. It asserts that the mysteries of social existence are densest, not in the behavior of far-off exotic peoples, but in our own everyday usages. Here, familiarity has bred an ignorance which arises not from the strangeness of the object of investigation, but from its very transparency. Living within it, so thoroughly suffused with its assumptions that it is even hard to recall just when we adopted them, we tend to lose the critical perspective which makes "social science" more than simply a recital of what everyone already knows. The common sense of things, the knowledge everyone is sure to have, is precisely the *starting* point for the investigations of such a social science.

If the real meanings of our social practices were what we say and think about them every day, then there would be no need for the kind of research that occupies social scientists to begin with. Common sense rhetoric is an attractive ideal. But many scholars writing in the tradition Bourdieu exemplifies would argue that such rhetoric can disguise as many truths as it reveals. For inevitably it reproduces precisely the common assumptions and understandings (what Bourdieu terms the *doxa*, as I will discuss below) whose misperceptions and inadequacies any in-depth research seeks to uncover. In putting this common sense to the test by challenging its fundamental assertions and presuppositions, writing like Bourdieu's also tests and challenges plain, "common-sense" writing styles—because they tacitly assume precisely what Bourdieu wants to call into question: that reader and writer share a comfortable and unproblematical understanding of the meaning of words, of categories,

and of social practices themselves, that we *already* know the truth about the very things which on the contrary Bourdieu claims need to be brought to light.⁷

For Bourdieu, it is precisely these meanings and categories, these understandings and mechanisms of understanding, which are under investigation and which need to be rethought most thoroughly. Thus, while constantly emphasizing the degree to which the law forms and determines the lives not only of its practitioners but of all citizens in modern social systems—so that we are all “inside” the juridical field in some sense—Bourdieu writes purposely, and purposefully, as an “outsider.” Only by claiming his right to seek *critical* understanding of precisely what we are all certain we understand more or less “naturally” about the law can Bourdieu justify his perspective on these everyday realities which surround and so deeply influence our existence. This means rediscovering and representing rhetorically the *complications*, the paradoxes and contradictions, which our common-sense conceptions complacently round off and simplify. A certain asperity of writing style is one consequence of such an attempt.

* * *

The analysis here brings to bear on the world of the law concepts developed earlier in Bourdieu’s work, and elucidated perhaps most systematically in his 1972 *Outline of a Theory of Practice*. Among these concepts are the notions of “habitus,” “orthodoxy,” “doxa,” “symbolic capital,” “principles of division,” “symbolic violence,” and “miscognition.”

From *Outline of a Theory of Practice*, Bourdieu draws the notion of *habitus*: the habitual, patterned ways of understanding, judging, and acting which arise from our particular position as members of one or several social “fields,” and from our particular trajectory in the social structure (e.g., whether our group is emerging or declining; whether our own position within it is becoming stronger or weaker). The notion asserts that different conditions of existence—different educational backgrounds, social statuses, professions, and regions—all give rise to forms of habitus characterized by internal resemblance within the group (indeed, they are important factors which help it to know itself as a group), and simultaneously by perceptible distinction from the habitus of differing groups. Be-

7. Of course I am not suggesting that Continental cultural theorists are alone in making such arguments. Suspicion of the commonsensical is at the heart of much social and cultural theory. For a refreshing (and strikingly illuminating) example of such suspicion within the Anglo-American tradition, see M. THOMPSON, *RUBBISH THEORY: THE CREATION AND DESTRUCTION OF VALUE* (1979), especially chapter 7, and particularly p. 146.

yond all the undoubted variations in the behaviors of individuals, habitus is what gives the groups they compose consistency. It is what tends to cause the group's practices and its sense of identity to remain stable over time. It is a strong agent of the group's own self-recognition and self-reproduction.

In the *Theory of Practice*, Bourdieu defines and distinguishes *orthodoxy* and *doxa*. The former is defined as correct, socially legitimized belief which is announced as a requirement to which everyone must conform. Orthodoxy thus implies some degree of external control. *Doxa* on the other hand implies the immediate agreement elicited by that which appears self-evident, transparently normal. Indeed doxa is a normalcy in which realization of the norm is so complete that the norm itself, as coercion, simply ceases to exist as such.

Symbolic capital, for Bourdieu, designates the wealth (hence implicitly the productive capacity) which an individual or group has accumulated—not in the form of money or industrial machinery, but in symbolic form. Authority, knowledge, prestige, reputation, academic degrees, debts of gratitude owed by those to whom we have given gifts or favors: all these are forms of symbolic capital. Such symbolic capital can be readily convertible into the more traditional form of economic capital. The exchange value of symbolic capital, while it cannot be stated to the penny, is continuously being estimated and appraised by every individual possessing or coming into contact with it. The relevance of a notion of symbolic capital to the study of an important professional field like the juridical is considerable.

From *Distinction* Bourdieu draws the notion of *principles of division*: the structured ways different social groups differentiate between rich and poor, elite and mass, "pure" and "vulgar," "insiders" and "outsiders," ultimately between what they value positively and what negatively, between the good and the bad. Division (distribution) of society's rewards then proceeds along the lines of the principles established.

Symbolic violence implies the imposition of such principles of division, and more generally of any symbolic representations (languages, conceptualizations, portrayals), on recipients who have little choice about whether to accept or reject them. In *Reproduction*, Bourdieu conceives the education function of the State as the quintessential form of symbolic violence. This is because compulsory education and the force of pedagogical authority obliges students to conceive their own social situation, like the material they study, according to the interpretations of them inculcated by their schooling. It is not that they must accept these interpretations (although there are clear costs for not doing so), but that

even contestation is played out in terms of the assertions implicitly or explicitly made by the authorities who are charged with teaching. The term "symbolic violence" is meant to be provocative and is closely linked with the concept of miscognition.

Miscognition is the term⁸ by which Bourdieu designates induced misunderstanding, the process by which power relations come to be perceived not for what they objectively are, but in a form which renders them legitimate in the eyes of those subject to the power. This induced misunderstanding is obtained not by conspiratorial, but by structural means. It implies the inherent advantage of the holders of power through their capacity to control not only the actions of those they dominate, but also the *language* through which those subjected comprehend their domination. Such miscognition is structurally necessary for the reproduction of the social order, which would become intolerably conflicted without it.

It could be argued that such terms and conceptions are no more difficult to understand, no more counterintuitive, than some of the law's own central concepts. The point is that some such specialized (and often apparently hermetic) language is a constant and invariable condition of the existence of any disciplinary or professional field. Bourdieu's "Force of Law" represents, exemplifies, and investigates the intersection of two such fields, the sociological and the juridical. Such an intersection, or confrontation, cannot evade the terminological and conceptual conflict, the struggle for conceptual control, which by its very nature is implicit in the existence of any field. So here, in a sense, sociology pits itself against the law—not in a spirit of hostility, but in one of intimate critical investigation. It seeks to utilize the privilege of external perspective to illuminate the juridical field in a way that, for perfectly good and understandable reasons, is hardly visible from within the field itself.

8. In French, the common word *méconnaissance*; the term has also been translated as "misrecognition." Obviously neither of these coinages is fully satisfactory.