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Ron Levi

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Respect of law or respect through law?

Ron Levi

Munk School of Global Affairs & Department of Sociology, University of Toronto, Toronto, Canada

ABSTRACT

What is the role of law and legality in social resilience? This review essay highlights how a sociology of law, culture, and institutions underwrites many of the findings of *Getting Respect: Responding to Stigma and Discrimination in the United States, Brazil & Israel*. The book provides a trenchant analysis of group boundaries, stigma, and destigmatization across three cities worldwide. I suggest that in addition to the role of formal law and legal constraints that the book identifies, we can attend to how legality offers a repertoire for resilience on which people draw when faced with stigma, discrimination, or contentious situations, even when formal law falls short. In this way, combining a sociology of law with a sociology of culture can provide us with an understanding of how societies offer social resilience, and how this resource varies across social, national, and legal contexts.

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Introduction

“We have long been the punching bag and scapegoat for everything in this country”, explained a 29-year-old Ethiopian Israeli, when asked why she participated in protests against racism and police discrimination in Tel Aviv (Maltz 2015). These protests, which occurred in the wake of police violence against a young Ethiopian Israeli, shut down the core Ayalon Highway in Tel Aviv. This was right around the time as violent protests against police racial violence in Baltimore and Philadelphia, though the narrative motivating the Israeli protests appeared fundamentally different.

For young Ethiopian Israelis, these protests were expressed as being about their group’s collective belonging in the national polity. “We came because of Zionism”, meaning “you believe with a full heart that this is your country” this same protestor explained, before going on to assert that her generation held different expectations regarding law and justice than their parents. “We are not our parents’ generation, who kept quiet, kept their heads down and

CONTACT Ron Levi  ron.levi@utoronto.ca

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said ‘amen’ to everything. That period is over. We are a new generation fighting for our rights.” Photos of the protests often included images of young Ethiopian Israelis draped in the Israeli flag – and protests were encouraged by a former Israeli Parliamentarian, also Ethiopian born, as she intervened with a Biblical psalm that “Justice, justice you shall pursue” (Sobleman 2015).

I will return to this interlude later in this essay. It represents, in my view, the core of *Getting Respect: Responding to Stigma and Discrimination in the United States, Brazil & Israel* (GRR). GRR brilliantly draws together seven coauthors from across the US, Brazil, and Israel, to study the lived experiences of discrimination and stigmatization for five groups worldwide: African-Americans in the New York area, black Brazilians in Rio de Janeiro, and Ethiopian, Mizrahi, and Arab Palestinian citizens of Israel based in Tel Aviv. The core thesis of the book, as I read it, is this: when faced with discrimination and everyday forms of stigma, individuals experience these assaults and develop their responses to them based on the repertoires made available to them locally. The book thus weaves together, across three countries and five group case studies, micro-level experiences and responses to discrimination and stigma that attend to macro-historical and institutional elements within each country, and meso-level features of groupness, symbolic boundaries, and cultural distinctiveness through which individuals can interpret their experiences and potential responses. These assaults on worth may be discrimination (in the legal sense), or may be everyday experiences of racism and stigmatization.

Getting respect: findings

Due to the depth of its case studies, with over 400 interviews in total, the book is chockablock with data on how individuals in each of these cities experience stigma and discrimination. That alone is stunning. And a signal contribution of the book is that it brings these empirics together with an analysis that macro- and meso-level factors, and with them national contexts, shape what we often think of as psychological resilience – how to respond in the face of assaults on worth. Here, GRR provides us with a framework for recovering the importance of national institutions and local repertoires. African-Americans, black Brazilians, and Ethiopian, Mizrahi, and Palestinian Arab citizens of Israel, then, identify assaults on worth differently, and form their reaction from the repertoires made available to them.

While providing global reach across three cities, solely comparing experiences and reactions across countries is not the book’s only goal: it also seeks to contextualize stigma and destigmatization strategies within national contexts and their group boundaries. In so doing, GRR insists that it is not evaluating the quality or success of some responses to assaults on worth compared with others. Instead, GRR systematically develops its analysis of macro-, meso-, and micro-dimensions of context and experience for each

group, in each chapter of the book. Comparison comes through of course. For instance, African-Americans report, across all groups, the highest rates of assaults on worth of different sorts (96 per cent), as well as the highest rates of discrimination (72 per cent). Faced with these assaults on worth, African-Americans appear more likely to confront than other groups, with black Brazilian more likely to ignore or forgive such assaults. African-Americans and black Brazilians are also more likely than the Israeli groups to engage in forms of management of the self, such as humor, strategic silence, or seeking to act against stereotypes.

How to explain these findings? This is where GRR arrives with its core contribution. Building on the work of Hirschman in *Loyalty, Voice and Exit* as well as the work of Boltanski and Thévenot in *On Justification*, the GRR team looks to identify the features of societies that provide narratives of action when faced with stigma and discrimination. These are thick contexts that are difficult to reduce to an array of explanatory variables, especially since these have multidimensional consequences: they help explain the degree to which groups may *experience* an offence as stigmatization, the actions they take in *response*, as well as the *ideal actions* they believe ought to be taken to address them.

In the US, the greater likelihood of confronting assaults on worth is explained by reference to a legal culture, the predominance of neoliberal narratives, the experiences of the Civil Rights movement, strong levels of self-identification, and continued high social and spatial segregation (30, 84), with some of these same dimensions also explaining why African-Americans will next tend to rely on management of the self through greater silence and defying stereotypes, rather than collective responses (107). In Brazil, though nearly 80 per cent of respondents report stigmatization and assaults on worth, weaker levels of racial self-identification (135), the absence of a civil rights movement and a conventionally greater emphasis on social class than on race, redistributive social policies of the neoliberal era, and a comparative lack of confidence in justice systems (132) helps explain their reluctance to identify assaults as related to their group identity, as well as their emphasis on feints, deflection, and ignoring, and a much lower rate of engaging in formal complaints or use of the legal system (176, 305). And in Israel, the degree to which groups perceive themselves as included in the national identity animates their experiences and responses. Arab Israelis have the highest degree of groupness, identify incidents as related to their group identity (242), use language in their responses that distances themselves from the polity (211–213), and are less likely to speak out than Ethiopian or Mizrahi Jews; Ethiopians, despite experiencing stigma, express less rigid group boundaries, feel deeply invested in the Israeli national identity, and are more likely to confront, work harder, and persevere collectively; and Mizrahim, who represent the majority in Israel and for whom group boundaries are most

porous, are least likely to relate assaults on their group identity specifically, and are most likely in the country to rely on neoliberal repertoires of self-reliance in the face of stigma.

There are of course nuances here. For instance, group dynamics are changing in the US, in Brazil, and in Israel, with racial identity growing in Brazil among the young and educated (137), with older cohorts in the US more attuned to civil rights (81), and with new Israeli legislation having the potential to change how individuals perceive and respond to discrimination. There are also international dimensions: a middle-class black Brazilian respondent compares the discrimination they face with their impression of how the African American middle class is treated (161); an Arab Israeli notes the tension of enjoying more human rights in Israel than in Arab countries but feeling humiliated at the same time; and in Brazil some reflected on changes in how they valued their black identity in light of transnational constructions of blackness (140). The methodological point, here, is that the very dimensions being studied – the identity of these groups, the contexts in which they live, and the permeability of their national repertoires – are also always shifting.

These broad patterns tie to the book's project with parallel work, co-directed by Michèle Lamont, on "Successful Societies" – which seeks to map and assess how culture and institutions work to provide social resilience and enhance collective well-being across social and national contexts. GRR thus seeks to speak to how social resources, repertoires, histories, and collective imaginaries of who belongs to the polity all have an influence on our capacities to respond to challenges. "The quality of societies", GRR concludes, "is measured not only by distribution (who gets what and how much) but also by questions of recognition, inclusion, and voice" (273). Resilience, then, is something that societies make available in variable forms and degrees.

Getting respect: law, recognition, and the structure of legality

How, though, are these social resources transmitted? What institutions within societies are central to the macro-level institutional dimensions identified in New York, Rio de Janeiro, and Tel Aviv? It is here, I argue, that GRR – though not explicitly identifying itself as doing so – relies upon and elaborates a sociology of law that underwrites many of its findings. By often turning to the role of legislation and people's understandings of the law in explaining how discrimination is experienced and responded to, specifically identifying the role of legal experts in defining cultural repertoires (284), and at times also pointing to the context of different legal cultures, GRR opens new avenues to combine a sociology of law with a sociology of culture – with the role of law and legality as central to how societies offer resilience, and helping to define the symbolic boundaries and institutional contexts in which individuals respond to challenges of discrimination and stigma

(Jenson and Levi 2013). For sociology, this offers an opportunity to further connect the study of culture, institutions, and law for understanding what GRR identifies as “the quality of societies”, inclusion and exclusion from civil society, and people’s resources – or lack of them – for coping with challenges (see Ewick and Silbey 1998; Alexander 2008 ; Saguy and Stuart 2008; Silbey 2010; Berrey 2015).

To get here requires drawing out some of GRR’s theory of law and culture. This is just beneath the surface in GRR. Indeed, the book begins by explicitly displacing a law-first analysis of discrimination, and goes on to displace a law-first analysis of recourse. The focus of the research is on assaults of worth, thus extending far beyond those forms of discrimination covered by the Civil Rights Act and court decisions since that time (61–62) – broadening discrimination, then, beyond access to resources. Depending on the group in question, there are 20–30 per cent more reports of stigma compared with discrimination. And individual responses to stigma also extend far beyond legal complaint, which in all cases remains a minority choice. Indeed, though for different reasons across groups, in each case few respondents prove to be in favour of addressing stigma through group-based state policies – which would be inevitably legally anchored – such as affirmative action.

Yet if a black-letter account of discrimination and law is successfully displaced by GRR, some legal formalism continues to lurk, zombie-like, in some of the explanations the book offers. African-Americans, for example, are said to be more confrontational in response to stigma because of a “legal culture” in which “it is legitimate to stand up for oneself when facing racial slights” (87), and a “culture of litigation” including a high number of lawyers per capita (88) – with groups in Brazil and Israel thought to be less confident in the strength of a legal response. Similarly, when exploring the comparative “thinness of meaning” of being black in Brazil, GRR suggests that this “may be due to a relative lack of institutionalized repertoires” for racial identification, such as those “made broadly available by the Civil Rights Movement in the United States” (142). And in Israel, GRR points to a less developed, less expansive, and more recent set of legal tools regarding discrimination, as well as the role of courts in not recognizing some ethnic categories (e.g. “Mizrahi”) in antidiscrimination cases, as part of the explanation for why these assaults persist and in limiting the possible range of responses that people expect and can deploy. Law, and legal consciousness about what law offers, thus emerges as an important dimension of GRR.

Can formal law and our awareness of it explain this much? What about legal failures, limits, and dashed expectations – the long documented gap between the “law in the books” and the law in action, also well known in popular consciousness (Silbey 2005)? Can the lack of formal legal recognition, as such, be a lynchpin for understanding why groups in other locales deploy the strategies they use – and will it thus, as GRR at times suggests, change with

new legal interventions? How does discrimination relate to legal cynicism, understood as belief in the injustice and inefficacy of legal institutions (Desmond, Papachristos, and Kirk 2016; Hagan, Kaiser, and Hanson 2016; Sampson and Bartusch 1998)? And with recent estimates ranking Israel first worldwide in lawyers per capita (Zarchin 2011), what might we expect regarding Israeli expectations and responses to assaults on worth?

Excavating some of the data throughout GRR suggests that something else may also be going on – and that the method and perspective of GRR can give us the opportunity to connect a sociology of law with an understanding of boundaries, collective resources, identity, and everyday strategies of worth. A hint of this appears when noticing that the groups that self-identify as having the strongest self-identification – African-Americans and Arab Palestinians – are also the groups that are most likely to identify legal *rights* as their idealized model for incorporating into the polity, whether these be civil rights in the US or rights of citizenship in Israel (30). And in Brazil, interviewees do seem to invoke legal rules while noting continued discrimination. All, in other words, appeal to the power of law in all settings – with appeals by those who define their groupness most rigidly pointing to universals of rights, and appeals by others to more quotidian protections provided by legal regulation. Given GRR's reliance at times on a formal approach to legal resources and their variation between national legal contexts, this may appear surprising. But a cultural understanding of law may reveal that this is precisely where some of law's power comes from.

Constitutive approaches to law suggest that the power of legality can come not only from the specific legal resources it makes locally available – it can also come from the apparent disconnect between aspiration and experience. Influential research by Ewick and Silbey (1998) on legal culture demonstrates that it is precisely because law is “god and gimmick, sacred and profane” that legality enjoys continued hold on everyday life. They show that the structure of legality depends on law being sacred while also connected to everyday experiences of contingency and real-life problems: as a social institution that is known to be partial and unable to provide full redress, experiential evidence of law's partiality does not undermine its cultural power and promise. In other words, Ewick and Silbey (1998) demonstrate that legality as social structure persists because it functions at different analytical registers, as both pragmatic game and as sacred normative principle.

GRR provides further evidence for this constitutive view of law. We see peeking through GRR that law works not by pronouncement, but by providing a platform for actively negotiating stigma and boundaries. African-American respondents in GRR – who while placing stock in the advances of the Civil Rights movement, are also acutely aware that legal gains alone, including those offered by the Equal Employment Commission, are insufficient to inform their own responses to discrimination. Legality includes, they are

aware, something else: one attributes their successful complaint to “[s]ee, because I’m one of the people that I know the system”; another to their reliance on a “prominent law firm”, knowing that the difference this produces “is the way of the world” (88–89). Black Brazilians do the same, internalizing how and when to comply with police profiling, when “one has to move on” in the face of illegal discrimination, and learning how to dance around non-explicit, but evident, racism (156, 166, 175). And in Israel, individuals also make claims by knowing how to play legality as a game – at times pursuing equality through national identity, and at times through humour and ruses on official forms (247). Law, yes, but law also as a strategy rather than pure legal principle.

Building on GRR, what type of resource, then, is law? What kinds of repertoires does law make available to people as they negotiate stigma, discrimination, or contentious situations (Boltanski and Thévenot 2006)? In Robert Cover’s (1983) terms, law is “a resource in signification”, so that “[n]o set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning”. In my own work, I have found that even when explicitly blaming the failure of the legal system to address rampant violence in Chicago, city residents continued to make appeals to fundamental legal concepts of rights and liberties in framing their aspirations. They did so despite lamenting how the legal system was unable to respond effectively to gang violence – and also lamenting that gangs benefited from more legal protections than law-abiding citizens. It is remarkable that, despite the violence and turmoil residents were experiencing, normative appeals to law and legality persisted as the framework for seeking well-being and security. Law’s appeal as the solution thus persisted even when experience suggested its failure, precisely because people could shift between different registers of how law works (Levi 2009). And within more rarefied legal fora, legal experts’ repertoires similarly draw from different registers, and vary depending on the contentious political context in which they find themselves. Comparing prosecutors’ opening statements in war crimes trials at both the Nuremberg Trial and the International Criminal Court, we find that legal experts can either appeal to multiple orders of worth to justify prosecutions when law is seen as insufficiently powerful, and can instead appeal to sacred and narrow technical justifications when law is seen as unduly political (Levi, Dezalay, and Amiraslani 2016). Legality, in other words, is a polysemic resource, and law provides a framework for managing contention precisely because it allows us to alternate between principle and pragmatism.

Legality is, in this way, even more central to GRR than the book anticipates. We gain a lot that is new about law through GRR: the willingness to confront stigma and discrimination, GRR astutely notes, is interconnected to law and to the legal and political successes of the Civil Rights Movement – but so is, I would suggest, the appeals to universal legal claims made by those with

the strongest degree of groupness, and so are the realizations that enacting law in everyday life requires negotiation, orchestration, and material resources. In connecting with issues of legality, GRR allows for a sociology of law that can map on to people's experiences across global contexts – and with its attention to thick context, meso-level dimensions, such as the degree of ethnic groupness, that has at times eluded research in the sociology of law. And from the sociology of law, GRR can further explore how the resource offered by legality requires more than formal appeal to lawyer's law – but also provides a repertoire of universals on which people draw even when formal law falls short. As a result, across cities, legal contexts, and ethnic groups, African-Americans, Arab Palestinians, black Brazilians, and Ethiopian and Mizrahi Jews all invoke law's promise, whatever legal resources are in fact provided in their daily experience.

This is also evident in the account of Ethiopian protests in Tel Aviv with which I began. These protests are also invoked in GRR, as evidence of a demand for equality and their full assimilation to the Israeli national identity (269). Yet in providing us this framework, GRR is also providing us an opportunity to push forward – through the study of boundaries and groups – a sociology of law. Faced with evidence of racism and discrimination, including violence at the hands of law enforcement, the interlude quoted above engages law as bridging the sacred and profane (cf. Ewick and Silbey 1998). No longer willing as a community to “say amen to everything” (thus invoking the sacredness of the state as an ideal), the community's identification with the national polity shapes this protestor's understanding of law as something that can be obtained, “a new generation fighting for our rights”. With protestors draped in the Israeli flag, this is a claim that reinforces the relevance of law to the everyday, while law's sacredness is reinforced in the same scene, with the psalm “Justice, justice you shall pursue”. These protests reflect a belief in the injustice of law enforcement. Yet also operative here is an investment in national identity with a continued and unflinching call on a repertoire of legality – idealized, material, flawed, and polysemic.

Conclusion

Throughout its case studies, GRR connects micro-level experiences and responses to stigma with the group, historical, and institutional contexts in which individuals find themselves. Its global design makes these findings ever more trenchant. It is by combining analyses from Brazil, Israel, and the United States, that the book provides us with new insights into how race and inequality are negotiated – and it is in this same way that the book generates ever new insights into the cultural role of law.

There is an opportunity here to further connect the experiences that GRR draws out with the symbolic work that law generates. Law makes some

histories visible, whether through trials or publicly commemorative acts (Savelsberg and King 2005); legal forums construct and give meaning to racial categories (Haney López 1996); and law demarcates the civil sphere itself, along with its delineation of insiders and outsiders (Alexander 2008). These will come into sharp relief as individuals move across borders, since these legal repertoires provide and make available new forms of boundary work – and by moving into new locales, people come to participate and engage with different institutional and legal histories. As GRR signals in its conclusion, such worldwide flows will have effects on how boundaries are negotiated, recognition obtained, and resilience offered. Legality will be central to this process.

This book is a brilliant account and compendium of boundaries, stigma, and destigmatization. Underneath it is, I argue, a thick account and opportunity to extend a sociology of law, culture, and institutions. In this, I offer a personal conclusion. My grandmother – a Sephardic Jew born in Egypt, who then lived in Israel prior to Canada, and who might now be thought of as Mizrahi – was greeted by a Canadian border official after a trip abroad. “Bienvenue chez vous”, he expressed on her return, or “welcome home”. However surprising that phrase could be for someone whose life was diasporic for decades, as expressed by a state authority the phrase also carried an implicit legal force, a cultural repertoire on which to draw, and with it an official representation of civil society.

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