

## Basketball in the Key of Law: The Significance of Disputing in Pick-Up Basketball<sup>1</sup>

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While the conception of law as a constructive and constitutive force is often stated, we have relatively few concrete and grounded case studies showing precisely where and how social actors construct the meaning of their engagements through the invocation of legality. Drawing on Erving Goffman's *Frame Analysis* (1974), I use the concept of "keying" to articulate how basketball players in informal "pick-up" games transform the meaning of their activity through disputing. By playing in a legalistic way, players constitute the game as "real" and "serious" rather than "mere play." The analysis tracks basketball players in the heat of action as they perceive the game, call rule violations, contest those violations, and ultimately give up. Players organize each phase of the dispute's natural history in the "key of law" by constructing and comparing cases, invoking and interpreting rules, setting precedent, arguing over procedure, and proposing solutions. Through these practices, players infuse the game with rich meaning and generate the motivational context demanding that the game be treated as significant. This analysis contributes to an understanding of legal ontology that envisions law's essence as potentiating rather than repairing normative social life.

**S**tudies of disputing and the processes of informal conflict overwhelmingly focus on *how* people dispute. The question of *why* people dispute is treated as self-evident: people dispute because they "have conflict" or because there "is trouble." But these passive states do not necessitate disputes. People find creative ways to manage or avoid their interpersonal troubles (Emerson 2008). So why dispute if it is not necessary or predetermined by the mere existence of trouble? This article takes informal "pick-up" basketball games as a strategic site to answer this question and draw implications for our understanding of the relationship between law and society.

"Pick-up" basketball is an activity that is often riddled with disputes, although it need not be. In many situations, people play

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informal basketball without invoking legality at all. But in the games I describe, it is so rare for a game to go by without at least one extended dispute that players take notice and comment on the absence. Disputing is a common, meaningful, and expected part of the activity. Without any material rewards for winning a game, why play in such an adversarial and litigious way? Rather than focusing on individual motivations or psychological dispositions to account for disputing, I show how players transform the meaning of the activity by engaging legalistic disputes. Disputing gives the game significance and is part of the motivation to play. I suggest that this is a matter of legal ontology. It is about what law and legal processes uniquely and positively contribute to social life.

### **Legal Structure, Legal Process, and the Key of Law**

The traditional view of law understands it as a discrete social institution that is organized as a response to normative offenses in social life. Legal rules are set up in advance so that actors can anticipate the standards against which their behavior will be judged. Donald Black provides the positivist view that law is a system of behavior associated with governmental social control. He seeks a general scientific theory that explains and predicts the behavior of law in response to crime and deviance (Black 1976). The structural functionalist view is largely compatible with Black's positivism, but explores law's place in a larger social system. In instances of crime or deviance, law provides a space to ritually celebrate the collective attachment to norms by reprimanding the wrongdoer and reestablishing social order. Comaroff and Roberts (1981) have summarized these views as part of the "rule-centered paradigm" in which disputes are understood as responses to abnormal, pathological, deviant, or dysfunctional behavior.

The case method was developed, in part, as an intervention in structural and rule-centered accounts of law. First developed and employed by Llewellyn and Hoebel's study of the Cheyenne (Llewellyn & Hoebel 1941), scholars began to decenter law from the analysis and collect rich ethnographic data on how people resolve a variety of normative disagreements. While Llewellyn and Hoebel's analysis of particular trouble cases has occasionally been called into question, their method has long impacted legal ethnographers and law and society scholars (Conley & O'Barr 2004). The case-centered ethnographies of Gluckman (1955), Bohannon (1957), Gulliver (1963, 1979), and Nader & Metzger (1963) were all developed in the shadow of *The Cheyenne Way*.

Through the second half of the twentieth century, processual analyses of disputing behavior contributed to a growing sensibility that law is not merely a corrective institution, but is constructive and constitutive of social life in the first place (Sarat and Kearns 1993).<sup>2</sup> As one of the central proponents of this constructivist view, Geertz noted that law is not “a mere technical add-on to a morally (or immorally) finished society,” but rather is an “active part of it” (Geertz 1983: 218). Thus, constitutive scholars study how people see and make sense of the world with folk understandings of law and legality (Ewick & Silbey 1995, 1998).

While the conception of law as a constructive force has been well established, law is not a social actor and cannot do anything on its own. A persistent challenge for the constructivist camp has been showing precisely where and how social actors construct meaning through legal process. Part of the difficulty is a slippery understanding of legal ontology. Structural positivists and functionalists maintain the authority as analysts to identify a case of crime or deviance. The legal object is presumed to exist nonproblematically. But the constitutive perspective demands that we respect the experiences of actors in the world and begin analysis not with real or actual trouble, but with the interpretation of trouble.<sup>3</sup> This opens up the question as to whether there is any preexisting object toward which legal process responds. Is the legal object entirely constituted through the legal process itself?

Studies of dispute process hedge on this issue when they propose that the process begins with a subjectively interpreted problematic state of affairs toward which participants are responding. Some have continued to characterize this state with the functionalist vocabulary of norm and norm violations (Adler & Adler 1983; Ellickson 1991). More commonly, they use a variety of other terms. “Crisis” (Gulliver 1973), “disagreement” (Gulliver 1979), “injury” (Felstiner, Abel, & Sarat 1980), “offense” (E. Goffman 1961), “grievance” (Yngvesson 1978), “problem” (Merry 1990), “conflict” (Nader & Metzger 1963), “pre-conflict” (Nader & Todd 1978), and perhaps most commonly, “trouble” (Emerson 2008; Emerson & Messinger 1977; Starr 1978; Wästerfors 2011) have all been used as the starting place for a processual analysis of disputing. So even while they resist the objective existence of crime and

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<sup>2</sup> Scholars of legal process came to see that legal cases emerged out of more everyday and “nonlegal” settings (Felstiner, Abel, & Sarat 1980) and ethnographers began to analyze conflict material for comparative analysis in a variety of informal spaces (Gulliver 1979; Moore 1978; Nader & Todd 1978).

<sup>3</sup> A parallel and influential perspective was developed in the sociology of deviant behavior (Becker 1963; Kitsuse 1962).

deviance, the constitution of the initial legal object is not part of the analytic framework.

A more radical and precise understanding of the constitutive role of legal process will take the production of trouble, rule violations, or crime as problematic.<sup>4</sup> The initial interpretive process must be part of the analysis. Description must begin before the emergence of a “problem” or “trouble” and deal with the meaning that is produced as people transform mere difference into moral distinctions of right and wrong, just and unjust, and between what is and what ought to be. Actors should be seen constructing situations such that they call out questions of justice and legality and make comparing cases, presenting evidence, and invoking precedent relevant. Disputing is not merely responsive to a preexisting state of affairs, but is indicative of a qualitative shift in the subjective engagement with ongoing social life.

In the following analysis of disputing in pick-up basketball games, I invoke Erving Goffman’s concept of “keying” to articulate this shift in engagement (Goffman 1974: 40–82). Goffman developed the concept to describe how the “same action” takes on new meaning if performed in qualitatively different ways—that is, in different “keys.”<sup>5</sup> A punch to the shoulder can easily be understood as part of a boxing match if the two parties are wearing boxing trunks and standing inside a boxing ring. In other contexts, however, a punch to the shoulder is done as part of a greeting sequence. Or it can be done as part of a theatrical play in which two characters are boxing. Or it can be done as part of a rehearsal for that play. In each case, the punch is produced in a different “key” and has a qualitatively different relationship to a “real punch.”

Similarly, a game of basketball can mean a variety of things and have different relationships to a “real game.” It can be played as part of a practice, a tryout, a flirtatious date, a silly interaction between parent and child, a cardiovascular workout, a professional championship, a flashy show,<sup>6</sup> and so on. In each situation, the meaning is constituted as participants “key” their behavior to sustain the game’s particular and specific meaning.

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<sup>4</sup> Pollner (1978) critiqued Becker’s labeling theory for hedging on whether deviance exists independently of the labeling process. Pollner promotes the more radical constitutive view that the very possibility of “deviance” as a category of behavior is constituted by the community and has no independent ontological existence.

<sup>5</sup> The term is a rough musical metaphor. The “same song” can feel quite different when played in a different key.

<sup>6</sup> In his recent ethnography of basketball in Philadelphia, Scott Brooks (2009) shows informal playground games being played with an explicit interest in being noticed and performing well for onlookers. Both peers and coaches provide an important audience for fancy moves and effective play.

The relationship that players maintain with rules and rule violations is a crucial arena for defining what kind of game is being played. For an adult to argue over a foul call with a child would contribute a set of meanings to the situation that most would experience as bizarre or unsettling. For players interested in a cardiovascular workout, an extended argument might defeat the whole purpose of the game by allowing heart rates to drop. But in the games I describe as being played in the “key of law,” these kinds of arguments are a common, meaningful, and expected part of the activity.

I show that playing with and in the key of law transforms the significance of the game. The disputes are not merely about reestablishing order in the gaming world. They constitute the game with meaning and potentiate its significance for the players. The upshot of this analysis will be a more grounded and phenomenologically sensitive appreciation of what law uniquely and positively contributes to social life.

### **Setting and Method: Pick-Up Basketball as a Strategic Site**

For three years I have engaged in regular participant observation field work at Beach Park in the city of Santa Monica near Los Angeles.<sup>7</sup> The basketball court lies approximately 100 yards from the beach and on weekday mornings, it becomes a bustling scene of basketball players making teams, playing games, waiting their turn, and socializing with one another. Players at Beach Park vary dramatically in skill level. Some are ex-college players while others are life-long recreational players who never played competitive basketball. Some are excellent athletes without much skill while others are men in their 50s whose skill level is high, but lack the athleticism that they once had.

Players wait for a total of 10 players to arrive before organizing two teams of five. As more players arrive, they create a queue of “next” teams on the sideline. The losers of a game join the queue as the next team of challengers plays the previous game’s winning team. In part, players want to win because losing can mean suffering through a long wait before getting back into a game.<sup>8</sup> As is typical of pick-up basketball games, at Beach Park there are no referees, uniforms, schedules, or score keepers. Players create and sustain orderliness themselves.

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<sup>7</sup> The name of the park and the players are pseudonyms.

<sup>8</sup> For in-depth analyses of team formation in pick-up basketball, see Jimerson (1996, 1999).

Often, games start out slow and friendly, but gradually heat up as players argue over rule violations, fouls, and the score. Because disputes attract the collective focus of players and spectators, they emerged as a readily describable series of interactions in my field notes. Upon returning home from the court, I write up detailed accounts of the dispute proceedings. I have accumulated nearly 1,000 pages of field notes and a corpus of over 200 disputing situations. Some are quick and passionless while others are long and heated. In all descriptions I have recorded the relevant features of the game situation, the arguments made, compromises attempted, the outcome, and in some cases the post-dispute commentary and frustrations.

For at least three reasons, the disputing practices at Beach Park provide a strategic setting to consider the constitutive role of legality. First and most importantly, the motivation to dispute during these games is not at all self-evident. In games that players describe as friendly and fun, why dispute so vigorously? Why not play light-hearted games and give one another the benefit of the doubt? Indeed, passersby have often expressed these sentiments to me as they cannot understand why players argue so much when there is apparently so little on the line. In formal legal contexts the justification for the conflict is more difficult to problematize because participants have already come to understand the situation as legal. On the basketball court, we must ask what it is that the players are doing by playing in such a litigious way.

As a practical matter, the basketball court is strategic because within one extended encounter, it is possible to observe the rise and fall of litigious interaction many times over. While post hoc interviews are convenient for capturing accounts of trouble they cannot grasp the emergent meaning of litigious interaction.<sup>9</sup> Further, observational community studies often find neighbors going days or weeks without disputing. Thus, they examine the moral ideologies through which people actually avoid disputes and decry the invocation of legality (Baumgartner 1988; Greenhouse 1989). The basketball court provides a scene where litigiousness is regularly engaged and embraced.

Finally, at the pick-up basketball court, the decision-making authority is nonhierarchical. No player arrives at the court with more authority than others to organize the game or impose a vision of how things ought to go. The presence of authority is critical to

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<sup>9</sup> Studies of legal consciousness use interviews effectively to uncover frames of understanding and discourse on everyday troubles (Ewick & Silbey 1995, 1998; Nielsen 2000, 2004). Examinations of more private and intensely personal troubles also necessitate interviewing (Emerson 2008, 2010; Kaufmann & Morrison 2009; Vaughan 1986).

law (Nonet & Selznick 1978: 4), but systems of law are often examined only after authority has settled down in the hands of a particular person, process, or position. On the basketball court, meaning is created as participants make and contest bids for authority.

These strategic features of pick-up basketball are tied to the fact that the games are played in public. Goffman (1971: 107) recognized the possibility for the pursuit of legality and justice in public place encounters. We know that on the street (Anderson 1999; Duneier 1999), in elevators (Hirschauer 2005), or behind the wheel (Katz 1999: 18–86), people may quickly construct a situation as invoking deep questions of right and wrong. Compared with those encounters, however, pick-up basketball players want to sustain interaction for several hours and can invoke intersubjectively known rules of play. Thus, the interactions take on a more law-like quality. Players construct and compare cases, invoke and interpret rules, set precedent, and present compromises. I now turn to an analysis of how these practices transform and constitute the meaning of the activity.

## The Key of Law and Significance of Disputing

Organizing behavior in the key of law is instrumental in resisting competing definitions of the basketball games. The informality of the affair opens up the possibility that the biggest, the strongest, the most talented, or the most popular players would simply have their way. Although such players may occasionally hold more sway, it is essential for all parties to resist the implications of that potential. Just as it is not fun for losing teams to feel they were robbed, it is not fun for the winning team to have the legitimacy of their victory questioned. The pleasure of the experience is contingent on collective agreement that the games are basically fair.

But injustice and bias are not the only threats to the significance of the games. By taking the possibility of injustice seriously, players resist that idea that the games are “just for fun” and that they are “just playing around.” In formal basketball leagues, the entrance fee, the scoreboard, and the recording of wins and losses generate a sense that the games count for something. On the playground, players must find alternative ways of ensuring that they are not doing something so childish or frivolous as “play.”<sup>10</sup> Disputing gives the game significance.

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<sup>10</sup> Lee’s (2009) study of battle rappers demonstrates the reverse problem faced by pick-up basketball players. By doling out vicious insults, battle rappers risk being under-



My descriptions of disputing practices at Beach Park are organized in a natural history framework. I begin before the emergence of trouble or rule violations as players engross themselves in and perceive the unfolding action. I then track a variety of practices as players call violations, contest those calls, and ultimately give up and resume play. Each phase of the natural history is organized in the key of law.

### **Perceiving**

In *Frame Analysis*, Goffman worked in the pragmatist and phenomenological traditions, which appreciate that perception is not a matter of being passively impressed upon by external stimuli. Rather, we actively organize our perception in reference to practical projects that frame the meaning we give the world around us. “Mere perceiving,” Goffman noted, “is a much more active penetration into the world than at first might be thought” (Goffman 1974: 38).

Pick-up basketball players organize their perception of the unfolding action by using their understanding of the game to see typical basketball-relevant events. That is, the game provides a frame inside which they understand one another’s actions. When a player runs across the court, others see him as running toward a strategic position. Unless they identify something that changes the definition of the situation, they cannot and will not see the player as running toward the ocean even if he is momentarily running in that direction.<sup>11</sup> They see movements as part of gestalt configurations which implicate likely next sequences of moves within the game. Just as Eric Livingston (2006) showed in the context of checkers, expert basketball players can see more strategic possibilities than can novices.

Compared with refereed games, players in pick-up games must organize their perception around an additional task. Not only must they monitor the game with an eye toward strategy, they must also be looking for rule violations. This is no small challenge. While referees are free to move to strategic vantage points in order to see various kinds of violations, pick-up players must look for violations from the vantage point of players. From within the action they are at a decided disadvantage for seeing potential violations.

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stood as “really meaning it” and participants must cue each other that it is all just play. Pick-up basketball players are faced with the problem that their activity may be understood as “just a game.”

<sup>11</sup> It is not uncommon for a child or a dog to run onto the court. These events break the frame of meaning and players can easily be observed running after the child rather than running to score a basket.



One day, a sideline spectator told Wayne that his opponent had just committed a traveling violation. Wayne snapped back at the spectator, "I know [that he travelled] but I can't watch for that! I'm playing 'D' [defense] and you know this boy has some shit in his arsenal!" Wayne recognized the serious challenge of simultaneously shadowing a skilled opponent's movement and monitoring that movement for rule violations.

Pick-up players could respond to this perceptual challenge in a number of ways. They could, for example, always give their opponent the benefit of the doubt and rely entirely on the good faith of others to fess up when they break a rule. Players would need not concern themselves with violations and could focus their perceptual energies entirely on game strategy. At Beach Park, this is rarely the case. In playing the game in the key of law, players develop strategies for looking at the action from within to pick out rule violations as they happen. But rule violations do not present themselves as such. Sequences of play must be perceived, understood, and constituted as cases of a particular type of infraction.

A very common strategy is to maintain a constant level of embodied self-reflexivity (Pagis 2009).<sup>12</sup> Especially when they possess the ball, players stay alive to the various forms of contact they absorb. If they jump to shoot the ball, opponents typically tune their perception into the release point above the shooter's head. But the shooter himself stays alive to contact he absorbs through his hips or torso. While some opponents may insist that there was no illegal contact on the shot, the shooter can simply respond that he was fouled "on the body" where nobody else was looking. Little grabs, bumps, hip checks, and wrist slaps are all possible sources of foul calls, which must be routinely attended to. Close monitoring of one's own body is essential to sustaining the key of law.

Another strategy is to watch an opponent's behavior not for its current rule-violating status, but as part of an unfolding action sequence that projects a forthcoming rule violation. For example, Wayne saw his opponent's actions as constituting a possible violation in the making:

Jesse ran down the court to play offense. He approached Wayne and, while facing him, began to slow down in order to block

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<sup>12</sup> Pagis explores how embodied self-reflexivity is fundamental to the practice of yoga and meditation. Meditators learn to become aware of and feel sensations in their body with heightened sensitivity. In basketball, such embodied self-monitoring serves the practical purpose of identifying violations. But it simultaneously contributes to the ways that players find emotional and gratifying meaning in the game. If they feel the physical contact from another player and are able to simultaneously score the basketball, the reverberations through one's sense of self are powerful. See also Wacquant (1995).

Wayne's path and prevent him from playing effective defense. As Jesse moved toward him, Wayne yelled out "Don't move on that screen! Don't move! Don't move!" As Wayne pushed past Jesse's body he called a foul. "I was telling him the whole time not to move, and then he tried to head hunt me. That's going this way!" He pointed in his team's offensive direction to indicate it should be his team's possession.

As Jesse moved down the court, Wayne's announcement showed that he was watching Jesse's movement for possible rule violations. He identified Jesse's movement as projecting a sanctionable event—a "screen." Wayne constructed the action as a case-in-the-making by reading the prospective "horizon" of action (Goodwin 1994).<sup>13</sup> He read Jesse's movement as "starting to" do something illegal even if he had not done it yet.

In his announcement, Wayne provided a cease-and-desist order. He communicated to Jesse and to others that Jesse's course of action was unacceptable. Jesse was given an opportunity to alter his behavior and produce a refined, respectful, and rule-governed screen. When Jesse continued his trajectory Wayne called the foul and described Jesse as having tried to "head hunt," an allusion to the viciousness of Jesse's play. Both the violation itself and the alleged violence of the play were constituted through Wayne's ability to organize his perception of the unfolding play as a case-in-the-making.

Pick-up players do not merely see cases one at a time, however. Their perception of unfolding action is informed by recent incidents. Players may see forthcoming action as another case of the same type of violation that was recently identified. This perceptual work is made even easier when a single player develops a reputation for committing or calling the same kind of violation over and over again.

A player named Otis, for example, frustrated his opponents one day by continually calling fouls as he attempted wild, out of control, and un-makeable shots. His opponents became angry and called him a "hack" for leaning too heavily on foul calls when he had no chance of scoring. In one play, Otis's opponent Tyler correctly anticipated another instance. As Otis sprinted toward the basket with the ball Tyler yelled out, "here comes another foul!" When Otis called a foul a spectator and I burst out laughing at the

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<sup>13</sup> Goodwin showed how this perceptual practice operated in the landmark Rodney King trial. The defense argued that jurors needed to learn to see the video evidence as police officers were trained to see it in order to understand why the officers delivered such brutal blows to an apparently innocent victim. The officers' "professional vision" demanded reading what King was "starting to" do with each painful, twisting response to a baton blow.

accuracy of Tyler's prediction. Tyler turned to us and commented, "For real. It's so fucking obvious!"

Tyler's use of the previous play to guide his perception allowed him to see an unfolding instance of the same kind of case and he identified the likely violation before it actually happened. While he was not involved in the play itself, the point here is that he used his knowledge of previous plays to inform his seeing the play in progress. The reasoning by analogy that is fundamental to law informs the very perception and comprehension of unfolding action on the basketball court.

Another perceptual strategy is to see how certain movements and actions are so closely associated with a particular violation that they might as well serve as visual evidence for the violation itself. In the case of the traveling violation, players often make the call because the player with the ball made an "awkward" movement that just "didn't look right." On one play Otis saw a different aspect of my movement that implicated a traveling violation: "You think you went from full speed to a complete stop without sliding your feet? You're crazy!" What Otis actually claims to have seen was a movement (coming to a quick stop) that would be very difficult to perform without violating the traveling rule. He did not see my feet actually move, nor did he need to in order to justify having witnessed the violation first hand.

Perceiving the game in the key of law requires a disciplined engagement with the unfolding action. Players separate cases out of the flow of the action by using both rules and recent situations to guide their perception of the game. While perceiving the game in this way is essential to generating the disputes, doing so does not imply that players want to enforce the letter of the law on every possible occasion. For instance, in a game that had already been interrupted by numerous travelling violations Fred called yet another violation when he saw my teammate Tom shuffle his feet:

Immediately after calling the travelling violation on Tom, Fred waved off the call and announced that Tom's team could keep the ball and re-start their possession. Fred's teammates were not so generous and wanted to enforce the rule and take possession of the ball. While his teammates argued the point Fred turned to me and said, "Yo it wasn't even so much of a call as a comment. I was commenting on the play. It's like when you're watching a basketball game on TV and a dude shuffles his feet, what do you say?" I smiled and agreed, "yeah, you say 'travel!'" He continued, "Right. It's instinctive. You just say it. I didn't want to call it, I really didn't. But I couldn't help myself."

Fred experienced his own call as a nearly unconscious reflex. The practice of seeing the game in the key of law carried him into

making the call in spite of his better judgment moments later. The violation had not given Tom much strategic advantage and Fred did not want to be a stickler for the rules, but his impulse was to announce the violation that he witnessed. To articulate this, Fred drew on his experience of watching basketball on TV where spectators are free to comment on violations without anticipating that their comments will impact the game itself. Fred's call was not the product of a rational desire to enforce the rule, but rather emerged naturally from his disciplined and rigorous perceptual engagement with the action.

The point is that perceiving in the key of law is a qualitatively unique way of looking at the action that creates and sustains players' serious engrossment in the game. Because they are at the disadvantage of monitoring the rule governed activity from within, they develop perceptual strategies that parse the action in reference to the rules and other recent cases. But it does not follow automatically from this way of looking that the games take on an overwhelming litigious tone. It is a necessary, but not a sufficient condition for playing basketball in the key of law. Litigiousness is sustained as players call violations, dispute over them, and resolve disagreements.

### **Calling Violations**

All games require the identification of rule violations. If this task is not sufficiently performed, the players may sense that they are no longer playing the game they set out to play. Goffman (1974: 81) noted that in competitive sports, it is the job of referees to ensure that players do not make a game of the game by not treating it seriously. If too many violations go unannounced, players may find themselves engaging in an ironic or silly game rather than one that feels serious and "real."

Without referees to do this for them, pick-up players must publicize violations themselves. At Beach Park, the relevance and necessity of announcing rule violations is taken for granted. The key of law is sustained by seeing unannounced violations not as evidence of a silly or ironic game, but as evidence of injustice and victimizing. Thus, teammates criticize one another for not calling violations that they perceive as warranted. It is presumed that the opponent would enforce the rule in precisely the same situation. Each team typically operates with the assumption that unless announced, there has been no violation.

One day there was a new player at the park. He arrived and left by himself and nobody seemed to know who he was. He was offered a spot on a team and played in several games over the course of the day. In one game Otis smacked the ball out of his

hands. The ball bounced off the newcomer's leg and trickled out of bounds. Otis quickly yelled "That's our ball! We're going this way!" as he pointed in his team's offensive direction. The newcomer snapped back that it was an obvious foul because Otis had slammed into his body. Otis quickly relented, "I'll give you the foul dude. You didn't call shit though and it touched you last. You gotta call your fouls out here because nobody's just gonna give them to you." Julio, one of the newcomer's teammates delivered the same message in a more supportive tone, "Just call your fouls out here man. Just call 'em."

Though Otis was prepared to admit that he had committed a foul, he was not going to volunteer the information. It was only once the newcomer actually made the call that Otis relented. In fact, Otis was exasperated that the newcomer would be frustrated with him. For Otis, it went without saying that he would not call a foul on himself. In fact, players are regularly sanctioned by teammates when they announce that they violated a rule before their opponent announces it himself. When Doc raised his hand and announced that he had bumped into Jeff and fouled him, his teammates were displeased. One yelled at him to "let Jeff call his own fouls!" Jeff retrospectively agreed with Doc's admission of guilt but it's impossible to know whether Jeff would have made the call on his own volition. So at Beach Park players are criticized for failing to call a warranted foul *and* for calling a warranted foul on oneself. Upholding these expectations is a vital part of sustaining the legalistic and adversarial quality of play.<sup>14</sup>

While foul calls announce a certain kind of trouble, players do not always respond to them as problematic. In many cases players quickly agree with the announcement and move to resume play immediately. But in the way they call fouls, players necessarily present some interpretation of the kind of foul it was. Those interpretations, rather than the foul itself, can easily become the center of disagreement. Goffman refers to these interpretive disputes as "ordinary trouble" (Goffman 1974: 304). For example, a foul call can be used as an opportunity to "call out" a specific opponent or an entire team for their wrongdoing.

Matt faked like he was going to go up for a shot and his defender, Jeff, jumped high into the air. As Jeff landed he wrapped his arms around Matt to blatantly prevent him from attempting a shot.

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<sup>14</sup> Robert Kagan (2001) characterized the American way of law as "adversarial legalism." The adversarial element refers to the absence of powerful third parties leaving disputants to invoke legality themselves. Pick-up players sustain this stance when they insist that there is no foul without a call.

Matt yelled, "Can I get a shot off!? Goddamn!" He tried to force the ball up toward the basket despite the fact that Jeff was holding him down. When he failed to score, he aggressively screamed that he was constantly being "hacked" during his shot attempts throughout the day. Jeff's teammate Tony expressed frustration that Matt was making such a big deal out of this play. Tony yelled, "Everybody out here gets fouled sometimes. I get slapped in the face. Why do you have to say shit!? Just call your goddamn fouls!"

In calling the foul on Jeff, Matt registered a complaint that this foul exceeded an ordinary level of physicality. He claimed that Jeff's foul was not only violating the rules of basketball, but was imposing on his experience in a more profound way. If Matt's opponents hack him on every shot attempt, then what is the point of playing?

Through his frustrated tone and situating this foul as part of a larger series of morally problematic cases, Matt suggested that this was not a "normal foul."<sup>15</sup> Tony resisted that interpretation. He saw Jeff's foul as not so atypical that it warranted such an angry response. For Tony, the foul was "just a foul" and was not unlike the kind of contact that everybody tolerates as part of typical games of basketball. The important point here is that both players oriented to the distinction between foul calls which register "normal fouls" and those that register more serious trouble. The following instance presents a similar dynamic:

Otis chased after the ball and in the process ran into Jesse who stumbled from the contact. Jesse called a foul and was upset by Otis's physicality. He shoved Otis in the chest and said, "What the heck man! What do you have against me anyways?!" Otis smiled and as he skipped backward to play defense taunted, "I'm going for the ball homie. It's just about the rock [the ball]. I don't have any fucking clue who you are, nor do I care. It's all about the rock!"

Like the previous case, Jesse's foul call registered a complaint beyond the mere violation of rules. Jesse claimed that the foul was not only atypical, but was indicative of how Otis related to him as an individual. Otis's actions, Jesse thought, stemmed from motivations

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<sup>15</sup> David Sudnow (1965) described how public defenders use informal standards of "normal crimes" to structure their plea-bargaining negotiations. In coming to an agreement on a reasonable plea, the defender and the district attorney both orient to their understanding of what a typical burglary, or murder, or child molestation case looks like. It is these working typifications rather than the letter of the law that are most consequential for the punishment an offender ultimately receives.

that were external to the game's competitive framework. Otis contested that interpretation and insisted that Jesse hold external concerns as irrelevant inside the game itself. Inside the game, as in the law, participants are meant to wear "masks" such that the rules apply independently of the player's identity (Noonan 1976). Drawing on a folk understanding of legal theory, Otis reminded Jesse that he saw him as a mask, not a person. As a full-fledged person with a life outside the game, Jesse was irrelevant to Otis's actions. He was merely going for the ball.

In these two cases, Matt and Jesse both registered moralistic complaints through their public identification of a rule violation. The foul calls provided the opportunity for an indictment of morally problematic play. Players can make other kinds of statements through their foul calls as well. For example, an insult:

Dee was called for fouls on several consecutive possessions. A few plays later my teammates were griping about a call that Dee's teammate made and Dee yelled, "That was a foul dude! A fucking foul! Look, we don't *WANT* to call that weak shit, but ya'll are calling it so we *HAVE* to call it!"

In this case, Dee transformed the meaning of his teammate's foul call. He demanded that his opponents see this foul call in the context of all the calls they had made. Those calls, he said, were not merely wrong or unreasonable, but were "weak." Players are often referred to as "weak" or "soft" for calling fouls on minor contact regardless of whether that contact was technically illegal. So Dee used this call to make a more general and derisive statement about his opponents' play. If they were unsatisfied with this call, they should see it as a reflection of their own "weak" behavior.

This section has outlined two important ways in which calling practices contribute to sustaining a game in the key of law. First, players hold one another accountable for calling "their own" fouls. At Beach Park players are expected to know that neither opponents nor teammates will announce a violation that is properly theirs to announce. The adversarial nature of the game itself is reflected in the adversarial nature of the calling behavior. Second, calling fouls and violations provides an opportunity for players to communicate moral dissatisfaction with each other's play. Through the quality and tone of their call, they communicate complaints as well as insults. Calling fouls is not merely a matter of enforcing the rules of basketball. It is an opportunity to make meaningful statements about the morality of an opponent's play and the game as a whole.



## **Contesting Calls and Disputing**

I have been describing how pick-up basketball players give significance and meaning to a game of basketball in the ways they perceive the game and in the ways they announce rule violations to other players. My analysis continues to track the natural history of disputes as players contest the call that has labeled some piece of action as a rule violation. While the previous section showed players grumbling about the way calls were made, this section deals with open attempts to undermine the legitimacy of a call and to actually contest its enforcement. I consider a large repertoire of argumentative strategies and maneuvers through which players contest opponents' calls.

One general way that players contest the legitimacy of a violation call is to take issue with the process of calling rather than the play itself. Regardless of the facts, if the correct protocol was not followed, the whole case can be thrown out. Players know that injustice is not only about unfair or arbitrary rules, but about the unfair or arbitrary application of rules. Like lawyers arguing over the legitimacy of pieces of evidence, the location of the trial, or the members of the jury, basketball players enforce appropriate legal procedure on one another.

A common complaint along these lines is the ambiguity of the call itself. Confusion abounds when players let out verbal grunts of pain or exasperation as others may interpret those noises as foul calls. If a defender stops playing in response to a grunt and the offensive player goes on to score an uncontested basket, there is likely to be disagreement as to whether that basket should count. In an attempt to demand clarity, Dee often argues that only the specific word "foul" should be respected as a legitimate call. This never sticks as players continue to use a diverse array of colloquialisms to announce a rule violation. However, if it can be established that enough defenders stopped playing in response to a grunt, the subsequent basket will not be counted. Like all disputes, this outcome is up for grabs as the grunter may claim that his grunt was obviously "just a grunt."

Another argument invoking calling procedure is that the call was not made on time. A player should not be allowed to decide whether or not to call a violation after he sees how the play turns out. Calls that are made "too late" are often dismissed promptly and emphatically:

After a series of fakes Rob laid the ball into the basket. As he ran back on defense Steve said that he thought Rob had committed a traveling violation. Jake, Rob's teammate, immediately yelled at Steve, "You gotta call it before the shot goes in though. You didn't say shit til' he already made it!" Steve momentarily argued the

details of the play with Rob but it was Jake who put the discussion to rest when he yelled, "It doesn't matter dude! Did it look awkward? Hell yeah. But you gotta call that shit when it happens! There's no discussion!"

Jake successfully disputed the legitimacy of Steve's call by referencing a possible source of injustice. Had Rob missed the shot, it may have been in Steve's advantage to *not* make the call at all. Given that Rob made the shot however, it was certainly in Steve's interest to make the call and enforce the rule. Jake ensured that Steve was not allowed to practice such strategic rule enforcement. Although Rob actually engaged Steve on the details of the play itself, it is more difficult to come to agreement on those grounds. Jake was able to dismiss the case on procedural grounds by arguing that Steve had missed the opportunity to call a violation.<sup>16</sup>

Wayne articulated this argument even more forcefully one day when he called a travelling violation on Jeff as Jeff attempted an awkward looking shot. Although Jeff's wild attempt swished through the net, Wayne insisted the basket should not count. Jeff argued that if he had travelled, it was only because his defender had pushed him illegally. If the basket was going to be discounted due to a travelling violation, Jeff reasoned that he was fouled and deserved to retain possession of the ball.

Wayne yelled, "Right but you didn't call shit! You didn't even think about calling a foul until you realized you traveled. That's not how it works. You tried to play through it cuz you thought you were gonna score!"

Interestingly, Wayne actually agreed that Jeff had been fouled before he travelled. But Wayne argued that Jeff had only called the foul in response to Wayne's calling the travelling violation. Wayne understood this as an attempt to retrospectively enforce rules that Jeff had willingly ignored during the play itself. He argued that Jeff had implicitly renounced his rights to call the foul by continuing to play. So despite the fact that Wayne agreed that Jeff was fouled, he successfully argued against the legitimacy of the basket through a nuanced reading of the timing of the call in relation to the unfolding play.

A final way to contest the legitimacy of calls on procedural grounds is to argue that the player who called the violation did not have the appropriate rights to make the call. As discussed earlier,

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<sup>16</sup> Elsewhere I have referred to the allotted time in which a player may legitimately call a violation as the "foul call opportunity space" (DeLand 2012).

the most common example of this is to demand that the victim himself make the call. In the following example, Calvin's rights to make a call are challenged on different grounds:

Calvin yelled out from the opposite end of the court, "Travel! You walked!" There were groans from his opponents. Matt was especially vocal from the sideline. "Come on Calvin, you can't call that from back there. You're too far from the play to even know!" Pointing to players closer to the action Matt said, "Let them make the call!" Calvin snapped back at Matt that he saw the violation despite his poor vantage point. When some other spectators suggested that Calvin's call was accurate, Matt said to them, "You don't know what you're talking about! He can't make that call. Maybe if he ran back and played defense, I'd say okay. But Calvin's the laziest motherfucker out here my nigga. He doesn't get to make that call!"

Calvin's rights to make the call were contested on two grounds. First, Calvin was so far away from the play under question that he was expected to allow players with a better vantage point make the call. Matt's criticism continued, however, with a moral indictment of Calvin's behavior. Not only should Calvin not make the call because he could not physically see, he did not deserve to make the call because he was too lazy to run and help his teammates play defense. In fact, Calvin has become infamous for a lazy brand of play. Players occasionally whisper about his insufficient effort and wasted physical potential. By invoking that reputation in his argument, Matt departed from a strictly rule-based argument to invoke a more personal or "relational" brand of legal discourse (Conley & O'Barr 1990).<sup>17</sup> Calvin's call, Matt argued, should hold less merit given what everybody knows about the kind of player he is.

Thus, callers are challenged if they were understood to be not playing the "right way." If a player was seen as playing "soft" or in an unaggressive style, if his play lacked certain fundamental skills, or if he displayed morally insufficient effort a player may find himself with reduced rights to enforce a rule. One day I had a long discussion with Nick in which he recalled an instance from a past game when he refused to call a foul despite illegal contact. I asked him why he did not make the call and he explained to me, "Well, [I

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<sup>17</sup> Conley and O'Barr argue that relational legal discourse draws on informal social rules and lies on the opposite end of a continuum with rule oriented legal discourse which focuses on formal legal rules. They provide some evidence that women are more likely than men to provide relational accounts in small claims courts (Conley & O'Barr 1990: 79). The rituals and performances of masculinity at the park basketball court may then resonate with the fact that player arguments are often based on rules rather than relationships. As in this example, however, relational arguments are not entirely absent.

didn't call it] because I fucked up and lost the ball anyway. If it was just the foul that had made me lose the ball, then I would have called it for sure. But I knew I fucked up too. That's how I usually think about it." So for Nick, a player who is in the midst of making a bad play loses some of the moral grounds on which he can legitimately make a call. Regardless of whether it was a "real foul," Nick felt that foul calls should not be used to undo the consequences of an ongoing mistake.<sup>18</sup>

Thus far, I have dealt with strategies for contesting the legitimacy of calls that focus on appropriate procedure and ignore the facticity of the event in question. But players also regularly confront the details of the play in question and argue that, in fact, a rule violation did not occur. Players from the opposing team often present alternative versions of the same event. The task of deciding which version is the "true" version is a serious practical challenge with no easy solution. In his research on traffic courts, Mel Pollner (1987) describes a "reality disjuncture" as a situation in which two plausible versions of the same event must be accounted for. While traffic litigants rely on a judge to choose the true version, pick-up basketball players must work this out together.<sup>19</sup>

In order to try to convince their opponents that their version of the play is the correct version, players search for convincing evidence. A common method is to perform reenactments that display a version of the play that emphasizes that performer's view of its legality or illegality. For example, Rasheed showed how he had landed in bounds before he touched the ball, an indication that his team should maintain possession of the ball.

Holding the ball out in his left arm and his right arm straight out to his right, Rasheed walked up to Reggie and tried to show how he had jumped in bounds and caught the ball. He emphatically landed with his feet inside the legal playing area, then smacked the ball with both hands to display when in the course of his jumping and landing he had caught the ball.

While such demonstrations are very common, they are rarely very effective as opponents can easily produce reenactments of the play that portray a different set of facts and lead to the opposite

<sup>18</sup> In fact, pick-up basketball players invoke a legal metaphor to refer to situations in which a foul call saves a player from making a bad play. That situation is commonly referred to as a "bail out."

<sup>19</sup> From these observations, Pollner drew important conclusions about the social construction of reality. By selecting just one of the competing versions of events, the judge sustains collective belief in an objective, singular, noncontradictory reality. Further, for that reality to hold, the judge must account for how two people could have possibly seen the "same event" in different ways. Perhaps, the judge says, the driver's speedometer was broken.

outcome. In fact, the demonstrations have the potential to backfire if a player unwittingly demonstrates his own rule violation.

I attempted to show Julio how I had not travelled. I tossed the ball to myself, caught it, and then took a dribble. Julio watched my feet carefully and said, "Exactly dude. You just travelled right there and that's exactly what you did. You moved your feet before you put the ball down. It's so engrained in you to do that. You do it even when you're trying to show how you didn't do it!"

Another strategy for convincing opponents of the validity of a particular version of the event under question is to call on witnesses to corroborate. While it is generally easy to find a teammate to confirm one's version of the play, they are easily dismissed by opponents who presume them to be biased by their team's interest. If a disputant can find a member of the opposing team to corroborate their version, they gain a valuable resource in the dispute. Especially if the corroborating opponent was involved in the play under question, the dispute is typically brought toward quick conclusion. In the most heated disputes, however, players become furious with teammates who speak against them. Thus, players who are unsure of what happened or who agree with their opponent often remain silent during the heat of the debate. They may even walk away from the disputants to show that they have no interest in expressing an opinion. The lack of involvement from players who might speak against their own team's interest prolongs disputes between players who whole heartedly believe in the righteousness of their cause.

Sideline spectators are highly contested eye witnesses. While they have a greater claim to an unbiased opinion and often enjoyed an excellent vantage point during the play under question, spectators are often dismissed as intervening in a dispute that is none of their business. A spectator once yelled to others on the sideline "Be quiet sideline! Let them work this out themselves!" Other times, even sideline spectators are questioned for their biases:

Rasheed turned to Sirat and said, "Shut the fuck up! You're on the sideline homie. I know he's your boy [friend] and all, but you gotta remember that you're on the sideline, you're a fucking spectator." Rasheed's opponent Gary said, "I'm everybody's boy!" and Rasheed responded, "I know you are, but that don't mean you can make bullshit calls! Ask any ref in America. They would not give you that call."

In the absence of a referee who might be trusted to make a truly unbiased ruling, players struggle to find evidence or witnesses that can sway the opinion of their opponents.

With no good resources to easily resolve disputes as questions of fact, players occasionally confront the very nature and definition of the game they are playing. Given that the rules of basketball constitute and define the activity, they must negotiate how far they can stray and still claim they are playing the same game. This can become a live question for players in the heat of disputes.

Eventually Ace admitted that he touched the ball while it was above the rim, and therefore had technically committed a goal-tending violation. Ace said, "Yeah I touched it, we play through that shit out here though. That's an NBA call yo! I never seen anybody try to call that in a street ball game!" When he said that it was an "NBA call" Derrick immediately snapped back, "What are we gonna go by!? Oh you wanna play street ball?! Aight nigga, let's play street ball! I didn't know that's how you wanted to play, but if you wanna play street ball we'll play street ball nigga!"

By questioning whether the rule ought to apply in this kind of game, Ace switched from an argument of fact to an argument of jurisdiction. This rule, he claimed, need not apply to the kind of game that we were playing—a "street ball" game.

Derrick contested that definition of our activity and proposed a different vision for what it would mean to ignore the rule in question. For Derrick, allowing this rule to go unenforced would open us to the potential of chaos. How many other rules would we have to ignore if we let this one slide? Further, if we opted to play in a chaotic and lawless game, Derrick threatened to take full advantage. He portrayed himself as the kind of player who would actually excel during a lawless game in which his opponents would need to fear his unrestrained physicality.

So players navigate between two possible sources of injustice. On one hand the situation of pure legalism—the mechanical and unreflective application of rules—can inhibit the experience of justice (Bardach & Kagan 2002). As Nick once said in reference to a rule that prohibits "carrying" the basketball, "Everybody carries out here sometimes. You could call it every play. The question is do we want to just be making call after call after call? Or do we want to play basketball?" Like Ace, Nick argued the game is intruded on if the rule is applied too strictly to borderline instances. There should be some leeway in using the rule to regulate against only those instances that clearly violate the spirit of the rule. On the other hand, to decide that on any given occasion the rules of basketball may or may not be enforced creates a game that is so unpredictable it no longer facilitates the experience of justice. For Lon Fuller (1963), this is one of the fundamental roads to legal disaster as law's

“internal morality” is desecrated if individuals cannot anticipate how their behavior will be treated by those charged with enforcing the rules.

In challenging the legitimacy of violations, players navigate between these different sources of injustice that threaten the experience they want to have in playing the basketball game. Even when they act in their own team’s strategic interest, they make the effort to organize their argument in a way that gives it the accent of legitimacy. They are concerned with how the ruling on a particular case matters for future cases and for the meaning of the entire activity. Players are fundamentally concerned with the fact that the game is less meaningful and less fun if one team walks away believing they have been robbed. Players engage legal sensibilities<sup>20</sup> in full awareness that “because I said so” is not a good enough reason for their call to stand.

### **Doing Giving Up and Resuming Play**

Because players struggle to create agreement about what happened during the play under question, disputes can drag on for many minutes. Arguments go back and forth. One player may demonstrate the play and articulate an argument that convinces one opponent, only to have another opponent jump in with vigorous disagreement. For play to resume, something must give. Regardless of whether they ever come to agreement on the facts of the play, they must decide which team will resume the game with the ball and what the score will be.

In all disputes, but especially in disputes that have become heated, it is rare for one player to convince another that his account of the play is correct. Rather, play is typically resumed only when one player gives up and allows play to resume under his opponent’s conditions. Players do not *just* give up, however. They do so in strategic ways and at strategic moments. Players give up in ways that resonate with two concerns: the collective memory of the situation and the meaning that the outcome has for one’s face or sense of self.

Most subtly, for instance, as players give in to an opponent’s call they may deliver the idiomatic expression “respect the call!” as they prepare to resume play. On the one hand, the player portrays himself as a reasonable and trusting individual. But delivered with just a hint of sarcasm, the expression also serves to remind others that the call was not so objectively self-evident that it was beyond

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<sup>20</sup> Geertz (1983) referred to “legal sensibilities” as the navigation between particular facts and a general vision for how social life ought to be organized. It is a particular way of “imagining the real.”



question. Announcing that the call ought to be respected is hardly an admission of guilt. Rather, it may serve as a resource in future disputes as players point back to the previous call as an instance where the opponent had already been given the benefit of the doubt.

Giving up on a dispute is also a strategic time to deliver an insult. While preparing to play, teammates of the culprit often yell to the victim, "You've been doing the same shit to us all day and we don't call shit!" or "That's a weak call homie!" When these complaints are made as everybody prepares to resume play, they are not meant to challenge the dispute's outcome. Rather, they serve to register that the "weakness" of the call has not gone unnoticed. They contribute to the collective understanding that a certain player or an entire team has a developing pattern of making bad calls. If the pattern continues players may feel increasingly emboldened to hold their ground in later disputes. So even when there is no longer a challenge to the rule's enforcement, players are concerned with how the play is remembered:

Dejuan called a travelling violation against Dave. Dejuan yelled, "He shuffled his feet when he pump faked! Cuz he changed his mind. He was gonna go up and then he shuffled his feet!" Dave's teammate Matt disagreed. Matt claimed that Dave kept his feet firmly on the ground during the "pump fake." Dejuan let it go. He passed the ball to his opponent saying "Aight it's your ball, but he did travel. Just know that he really did travel."

The point here is that even when Dejuan backed off his attempt to enforce the rule, he was still overtly concerned with controlling the collective memory of the play. He wanted to set the record straight.

By reminding others that the true facts of the play are not being honored in the conditions of resumption, players create a resource that may be drawn on in subsequent situations. In the very next possession Dejuan called another travelling violation by yelling, "Now *THAT* was a travel!" The emphasis on "that" points to the contrast with the previous play. Having registered a dissenting opinion in the case with Dave, Dejuan created a resource for calling a more certain violation just moments later.

While Dejuan retrospectively invoked the relevance of a previous case, sometimes players explicitly anticipate how a current outcome can shape future rulings. Especially early in a day of basketball, players may give up on a dispute and chalk it up to the need to set a precedent for the rest of the day. For example, one day Matt had one of his foul calls contested on the grounds that he had only made the call after he saw that his shot did not go in. That is, he made the call too late. After a few minutes of yelling back and

forth, Matt gave in and as he prepared to resume play he called out: “Okay everybody we’re good now! You call your shit right away when it happens or it ain’t gonna be respected. That’s it, that’s how it’s gonna be. Just call your shit when it happens!” Everybody seemed to respect that solution and play began again.

Matt was concerned that the “late call” policy could be arbitrarily applied to him and then forgotten when other players inevitably did the same thing. He tolerated losing the dispute only by making very explicit the need for this policy to apply going forward. Whereas Dejuan wanted to generate the memory of a factually incorrect outcome, Matt merely wanted to demand consistency moving forward.

In other cases, giving up is more directly tied to negotiating the meaning for self and the need to save face. Saving face is especially challenging after long and heated disputes in which players have invested a lot of themselves in the argument. Players search for and invoke accounts of how giving up does not implicate weakness in the face of a forceful opponent. For example:

Reggie called out that the score was “nine-zero” and Rasheed blew up: “It’s EIGHT-zero my nigga! Eight-zero. It’s been eight to zero!” One spectator sitting on the sideline mockingly called out across the entire court: “Okay, call it eight to zero, ya’ll still shouldn’t be proud! You don’t even have a bucket! How are grown men gonna come play at the park and not score a fuckin bucket!?” Nick, who was on Reggie’s team, wandered toward the sideline and commented, “I guess my jumper got taken away.” Neil, another teammate of Reggie and Nick, looked over to the players on the sideline and said, “Whatever man,” He shrugged and continued, “eight or nine to zero, we’re still kicking their ass.”

Not long after these comments, the game was re-started with a score of 8–0. Although all players came to agree on the conditions of resumption, they did not agree on the reality of the score. Nick, for example, noted that a score of 8–0 must mean that his most recent basket was taken away. The result was unjust in that his team lost credit for a basket that, in reality, was made.

Reggie and his teammates were able to give up by finding a way to rationalize how giving in to Rasheed was not a sign of their own weakness. The spectator validated Reggie’s team’s domination and assisted them in seeing how giving up put them in higher esteem relative to Rasheed’s petty complaint. Through this interpretation, the act of giving up did not mean that Rasheed got his way through force, but that Reggie’s team was “kicking their ass” so badly that they could afford to let it go. Their domination was actually ratified

and enhanced by giving up on the dispute and “giving away” a basket.

A final case shows an explicit and vigorous interest in both setting precedent and saving face. Junior argued vigorously that a travelling violation called against him was unfair because he had been fouled first. Eventually he gave up angrily.

“You know what?” Junior said, “Fuck that man. Take it.” He ran decidedly back toward the opposite end of the court. “Next time you come into the lane, I’m gonna smack the shit out of you and you better not say shit! Let’s play!” One opponent then suggested that Junior accept the compromise of “shooting for it” but Junior had already made up his mind and demanded his opponents take the ball. He was very determined as we started to play again and played with more aggression and energy on that next defensive possession.

In rejecting the offer to accept a compromise,<sup>21</sup> Junior transformed the meaning of giving up. For Junior, the fact that he had been called for a traveling violation was the product of his opponents’ corruption and a compromise would only let them off the hook and allow them to feel they had acted reasonably. By rejecting the compromise Junior claimed additional rights to respond to this injustice with less restrained physicality and violence. He set a precedent for future noncalls.

Though threatening violence hardly appears to be a legalistic mode of resumption, Junior forms up his threat as a response to his opponent’s unjust behavior. He wanted to ensure that his opponents lived with the full implication of the injustice. In fact, the result of this threat was not increased violence, but increased litigiousness. When the game resumed, Junior played with heightened energy and physicality. He was more likely to bump into opponents and, invoking this play as precedent, was more likely to stand his ground in response to their foul calls. The potential for more law-like interactions was increased and indeed the rest of the game was riddled with disputes. By giving up in the way he did Junior produced momentum for the game’s continued adversarial and legalistic quality.

In the way they give up, players show that the dispute was not merely about correcting an injustice, but about the meaning of their activity going forward. As in calling and contesting rule violations, players give up in ways that generate meaningful statements about self and game. To give up on a dispute while

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<sup>21</sup> When players “shoot for it” they take an uncontested shot from the three-point arc. The dispute is decided by whether the shot is made or missed.

establishing precedent means something quite different than giving up because the game is “just for fun.” So even as players are unsatisfied with the outcome, giving up in the key of law keeps alive the possibility of future injustices and generates resources for future disputes. Players project their concern for injustice forward into the game itself and transition seamlessly back into perceiving the action in the key of law.

## **Discussion**

Each of the previous sections examined how basketball players organize their behavior in the key of law through the sequential phases of the natural history of disputes. These practices did not just respond to and correct a breakdown in social order. Rather, in each phase, players drew significance from and added significance to the games. In these litigious interactions, players make meaningful statements about self, other, and game. So here is a concrete and grounded example in which social actors constitute and transform the meaning of social life through the invocation of legality.

One way to understand the full implications of this analysis is to consider other settings and interaction contexts in which the key of law is either embraced or resisted. In fact, at Beach Park, the key of law is not uniformly embraced. Toward the end of a day, the games often take on a lighter air and can become quite silly. Partly due to physical fatigue, players are more likely to walk up and down the court and attempt tricky passes, fancy dribbles, or wild shots. These games are more likely to be interrupted by fits of laughter than litigious disputes. Nobody celebrates winning or experiences much frustration over losing these games and nobody remembers them the following day. Players tend to avoid confrontational disputes. If a player does argue a call, he may find that others demand he change keys. They might even belittle him for taking the game so seriously, “Whatever man, take the ball, it ain’t that serious.” While this quality of play presents a certain sort of fun, it often signals to sideline spectators that the day of basketball is essentially over. Spectators pack up their things and begin leaving the park.

Resistance to the “key of law” might be observed in a variety of other informal settings. In casual conversation, people can become unsettled and frustrated if they feel that their interlocutor is “cross-examining” them. They recognize the law-like interaction patterns of the court room and find them at odds with their preference for casual chitchat. Similarly, in romantic relationships, one partner might come to learn that the other has been silently building up a

case against them by keeping mental tabs on a series of transgressions. Such a realization can easily become the substance of new conflict. Implications about the relationship are drawn from the legalistic tone in what was thought to be a domain properly void of legality.

Some ethnographic studies show the cultural logic by which individuals avoid and resist the implications of invoking law. Rural conceptions of neighborliness (Ellickson 1991), suburban ideas about moral individualism (Baumgartner 1988), religious principles (Greenhouse 1989), and a desire for continuing business relationships (Macaulay 1963) have all been cited as reasons to resist openly litigious interaction. And yet, if we examine everyday behavior closely, we can see legality as an organizing principle in interaction even as actors prefer to keep things friendly.

Ellickson's cattle farmers, for example, prefer to operate by a "live and let live" ethic but they quietly keep mental tabs of favors given and damages received. A sense of injustice gradually increases if the balance becomes skewed in favor of a particular neighbor. Similarly, Macaulay's businessmen may resist lawyers and formal contracts, but that does not mean they are not alive to the possibility for injustice. One's "business reputation" becomes a folk-legal construct as businessmen discuss how reasonably others have behaved in similar past situations. Both Ellickson's cattle farmers and Macaulay's businessmen actively typify individual instances as cases of a more general type, they keep track of and compare those instances, and they organize their behavior with an interest in sustaining a sense of fairness and justice across cases. Although state law may be avoided as much as possible, the key of law is very much present.

In a forthcoming article, Susan Silbey (2011) describes another everyday practice that might usefully be understood as organized in the key of law. She provides a detailed analysis of the property claims made by Americans who use household objects as place holders after shoveling snow from a parking spot on a public street. The signs they post draw on legal logic that has roots in Locke's labor theory of property. The residents expect to reap the rewards of their labor by having the parking spot waiting for them upon their return. While some residents defend the legitimacy of these claims others see them as absurd. As one informant said, "Whether you shoveled it or not, it's a public street. This isn't mid-19th century Oklahoma. You've got no claim" (Silbey 2011: 82–83). When these disagreements stir up emotions among neighbors, it is not merely because of the few minutes gained or lost shoveling snow. When residents see, interpret, and organize their parking practices through folk-legal understandings, they implicate transcending meaning. Residents see what kind of community they live

in through the lens of parking. A car parked in “their spot” is understood as a sign of disrespect and the invasion of a foreign cultural ethic born somewhere else. But these practices do not take place in every snowy city. The point is that when parking practices are organized in the key of law they come to take on greater significance.

While the basketball court is a useful setting to consider the constitution of meaning through rule enforcement and litigiousness, the concept of “keying” has broader implications for understanding our relationship with state law. Because criminal legal mechanisms penetrate unequally into different communities and segments of society, social actors are differentially attuned to the key of law in their everyday lives. For example, Alice Goffman’s (2009) recent ethnographic account of young black men who live their lives “on the run” in a hyper-policed neighborhood in Philadelphia reveals a situation where even the most everyday behavior becomes organized with an eye toward law enforcement practices. These men avoid hospitals, work, and loved ones because they anticipate that the police will be there looking for them.

While Goffman’s research subjects were often wanted for violations as benign as a failure to appear in court, Curtis Jackson-Jacobs (2004) shows a significantly more criminal activity being done in a context that did not demand such obsession with law enforcement. His account of crack cocaine use among middle-class white college students shows that they organize their drug use behavior with a greater concern for stigmatization from roommates than arrest by police. The illegality of their drug use is not a dominant concern. Understanding how and where behavior is organized in the key of law can yield important lessons about the social contexts in which lives are most deeply touched by legal institutions.

Studying law as a key is a way of recognizing very explicitly that law is not something apart from social life. The musical metaphor is helpful. Just as a happy song can become sad when played in a minor key, a playful game can become quite serious when played in the key of law. Engaging social life in a legalistic way is a qualitative shift. It changes the tone of the activity and gives social life a different feel. Sometimes this tone is embraced as perfectly harmonious with the meaning of the activity. But other times the key of law is experienced as abrasive, unsettling, or simply unnecessary. Future research would do well to document how social life varies in its legalistic qualities. Understanding where, how, and to what end the key of law is used as an organizing principle in social life can reveal novel aspects of legal inequality and generally enrich our understanding of the relationship between law and society.

## Conclusion

In studying the disputing behavior of pick-up basketball players there might be a tendency to expect that the biggest, tallest, most skilled, most popular, or most aggressive players rule the day. A very different kind of study might have considered whether the most skilled players are able to assert their authority over less skilled players during disputes. Such an analysis would quickly face an irresolvable problem. The analyst would be forced to make determinations about whether any given play was resolved “correctly” or whether it was a case of a skilled player having his way with an unskilled player. This task is precisely the practical concern of the players themselves and, I argue, should be analyzed as part of the work they do in pulling off a game of basketball.

I have examined how players organize their behavior to resist the interpretation that the game is ruled by biased, unjust, or corrupt forces. In doing so, they accomplish a game that everybody understands as basically fair. This accomplishment requires a particular method and mode of watching the unfolding action. It requires the construction of individual instances as cases of a more general type which can be remembered and compared. It requires the active appeal to reason through which players compare instances and propose solutions. Finally, it requires some willingness to give in and allow the game to proceed under alternative conditions. These practices generate a gestalt of perceiving, interpreting, reasoning, and action that I have summarized as the “key of law.”

Through these interactions players define the games as more than “just play.” By keying their actions to identify and treat cases of injustice, players tap the existential pleasure of the activity. While games can powerfully reveal character, it is impossible to feel like a hero, a rebel, a miracle worker, or a leader if the whole activity is a joke.<sup>22</sup> If one’s opponent is laughing during a game-winning shot, it hardly means the same thing. For this reason, victories in dispute-ridden games are celebrated with great emotion and pleasure while losses generate much disgust and disappointment.

By engaging the games in a litigious way, players transform the meaning of their activity. They activate law’s potential to create normative and meaningful social reality. Legal scholar Robert Cover was especially apt at articulating the relationship between

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<sup>22</sup> Robert Perinbanayagam (2006) has demonstrated how game playing can resonate deeply with one’s sense of self. He shows how games are live action narrative myths in which the players construct heroes, enemies, good, and evil as they engage in the game’s structure of interaction. The point for this article is that those meanings lose their resonance unless players take the game seriously through an orientation toward legality and justice.



law and the normative universe, which he referred to as “nomos.” In his essay “nomos and narrative” he described it this way:

A *nomos*, as a world of law, entails the application of human will to an extant state of affairs as well as toward our visions of alternative futures. A *nomos* is a present world constituted by a system of tension between reality and vision. (Cover 1983: 9)

Law, he says, is a bridge that links a certain reality to an imagined alternative. That is, law potentiates a world of rich and meaningful interactions, but it does not constitute that normative world on its own. It requires the application of human will. Individuals organize their behavior to construct the bridge between what is and what could be.

When people engage formal legal institutions, they intuitively know this. Whatever their practical concern, the outcome will be grounded in new meaning if achieved through legal process. They do not merely want to have their way, they want a sense of legitimacy that comes when their way is validated through legal process. Even revolutionaries typically take the time to argue that the current legal system is, in fact, illegal according to a higher standard of justice.

And so it is with basketball players at the park. Anger over a bad call yields more litigiousness rather than unrestrained violence. And although players may become quite heated, when the games end tempers cool. For players who frequent Beach Park, even a loss can confirm that they had the kind of experience they set out looking for. They sit on the sideline discussing how the loss was “fair and square” and how it revealed their inability to play effectively—a realization that ultimately makes future victories more meaningful. So why do players dispute over immaterial pick-up basketball games? To invoke the language of Alfred Schutz (1967: 86–91), they do not dispute “because” the games are significant, they dispute “in order to” make the games significant.

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