

# MYRES S. MCDUGAL DISTINGUISHED LECTURE

## Looking, Staring and Glaring: Microlegal Systems and Public Order

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### I

As I stand in a public place, scanning casually but looking at no face for more than a moment, I become fascinated by a particular face. Without quite realizing it, I find that I am studying it intently. Subtly and imperceptibly, looking has modulated to staring. I have no interest in a more expanded exchange with the person I am looking or staring at, and I do not want to be looked at or studied in return. My target senses he is being stared at. (Let us, for the moment, designate the target as masculine to minimize the sexual element, what Freud characterized as "a component of the sexual instinct, *schaulust* or, in its English rendition, *scoptophilia*, the instinct of looking;" it is present in all interaction, but as we will see particularly significant in male-female visual exchanges.) How the target senses the staring, I cannot say, but he almost always does. He turns and looks briefly at me. Since his eyes meeting mine are a contact which would require acknowledgment of each other, I and sometimes both of us avert our eyes quickly.

If we have averted our eyes, my target almost always looks back, as if to confirm the sensation he had of being observed. If I am staring back at him, then my signal may be that I wish an exchange to continue. At this point, he may avert his eyes to reflect on his next move. If he does not keep them averted, he has signalled that an exchange can occur, which is

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an outcome I am not interested in exploring in this context, for it terminates the anterior visual exchanges and transforms the encounter into more conventional modes, the "looking" having performed an instrumental scouting function. But if he keeps his eyes averted, he has signaled two things. He has indicated that he does not want an exchange. Second, and more subtly, he has indicated that he does not want me to continue to look at him.

At this point, I seem permitted at the most one or two quick looks, apparently justified as checking to see whether I have read my target's reaction correctly. And so, like a squirrel stuffing his cheeks with nuts, I gulp in as much as I can and then stop looking.

Until now, the implicit norms of a "looking" situation have been complied with. An overly long and intent look at another, not intended to be noted nor animated by a wish for more contact with the target, has been interpreted by both in a series of nonverbal moves as an invitation to establish a broader exchange and has been refused. This is, of course, a fictitious characterization, since the look was not an invitation; the effect of the fiction is to disarm a "stare" and to render it socially innocuous. Without realizing it, our little exchange has affirmed a larger social norm which balances the need of interacting human beings to gather visual information with the need of the same people to preserve the exoself, the defensive perimeter of the self, from visual penetration or intervention.

But the exchange may not end here. The original looker may either continue to look or resume looking. At this point, the entire character of the exchange modulates, for it is no longer plausible for the target to characterize the looking as innocuous. It has become an intervention, an invasion of the exoself of another against his will for the gratification of the looker. Looking has unquestionably become staring.

A look which has been protested can be rendered innocuous in a number of ways. A gentleman, in days past, might have lifted his hat to the lady or gentleman he stared at and then continued on his way. Lifting one's hat in that context is what we may call a "disarming" communication, akin to saying one is "sorry" when one bumps into another in a crowd.

Unusual looking situations may have special disarming norms. Tourists, for example, may be expected to pay a certain amount for the privilege not only for photographing but even for staring at an indigene. Indeed, in Khartoum, I witnessed a demand for payment for this "unauthorized" looking. Two tourists were watching a man ride proudly on his donkey. When he saw he was being looked at, he raised his stick in acknowledgement and proud salute. When the tourists continued to stare at him, he turned around, dismounted and asked for money.

In some cases, even this sort of staring can be disarmed by either pre- or post-empting with a verbal explanation, whose veracity is not tested. For example, "I'm sorry I'm staring; you remind me of so-and-so"; "I'm certain I know you from somewhere" and so on. Excuses such as

these are not easily available when there is a great divergence in the class or ethnic background of the parties. And, obviously, they are not available when there is no common language.

The uncodified, reticulate network of norms governing looking and staring has certain game aspects. Many individuals are uncomfortable with games, either because of fear of unpredictable outcomes or fear of the loss of self-esteem following a defeat (a deprivation which can be viewed as catastrophic by insecure personalities) and so on. A man or woman who is fearful of encounters with strangers in which the sexual potential is indeterminate may worry that even initial eye-play looking will be assigned a sexual content; hence they may focus on the ground and rely on and become quite skilled in peripheral vision. A female journalist in New York, whose friends must think she loves concrete, writes "I look at it so much as we all learn to do, to avoid looking into people's eyes." The response of such persons to being looked at is often a type of cultivated autism. The person being looked at may affect not to realize that he is under observation or may be shy and thus intently bury his nose in a book or study something else.

From both the perspective of an actor in a looking-and-staring encounter, as well as that of an observer studying looking and staring norms for their utility to social exchange, this response of cultivated autism can sometimes be viewed as pathological, for it can impede the fulfillment of one of the basic social functions of the norms: to permit the initial gathering of visual information without necessary commitments to further interaction.

Thus far, we have teased out of this mundane situation a normative system which characterizes some visual information gathering as lawful (we refer to this activity as "looking"), and some visual information gathering as unlawful ("staring"). When an intervention such as staring cannot be disarmed or otherwise rendered innocuous, it creates a crisis for the microlegal system of looking and staring. It is not that staring technically violates rules about looking. After all, violations may be accomplished in ways that do not impair the pertinent norm and indeed may even reinforce it. But in the nature of the activity, staring, by openly and brazenly violating the rule, flouts it, causing that special sense of distress and anxiety people experience when their normative universe begins to crumble.

If, accompanying these rules, there are no techniques for characterizing the staring as unlawful and reinstating the sense of order—there are, in short, no sanctions—then it would be inaccurate to treat looking and staring norms as a legal system in any save the most metaphorical sense. One cannot speak of a legal system unless the distinction between licit and illicit behavior is supported by certain sanctions, *i.e.*, responses sufficiently forceful to clearly characterize offending behavior as unlawful and to prevent, deter, correct or effect what ever other sanctioning goals there may be. In microlegal systems, one would expect these sanctions to be commensurately low-key and often nonverbal. But one must insist they

be present and operate if we are to speak of law.

There are two species of sanctions for staring offenses in microlegal settings. The first are what may be called nonverbal sanctions aimed at terminating the staring with minimum disruption within the microsystem. These involve primarily silent protests by the target. There is a visual communication which sanctions. Let us provisionally refer to such a response as "glaring" to distinguish it from "looking" and "staring." Sometimes the grimace or look of distaste a woman being stared at will flash across her face is enough to stop the staring. As these are relatively aggressive responses, many may be too timid to resort to them. Where it is physically possible and socially feasible, the more timid target may simply turn her back. A woman may turn and seek the arm of her companion, implying that if the staring does not cease, she will invoke her protector. Or she may say to her protector, "That man is staring at me," and he may turn and glare at the starrer. Through such means, the target protests the stare, with the expectation that it will cease.

The sanction may also be verbalized. This is a substantial escalation, inevitable when the ambiguities of behavior are supplanted by the comparative clarity of words: "Stop staring at me." "Would you please stop staring at her." An informant recounts a case, apparently something of a family heirloom, which involved such sanctions. Her grandfather was traveling by train in the West at the end of the 19th century. Apparently he had the curious habit of dozing off into a sort of trance, with his eyes open and fixed on some distant point. The point in this instance was the nose of the passenger sitting opposite him. After what we can assume were a few minutes of fruitless glaring at the staring sleeper, the man being stared at drew his revolver, pointed it at her grandfather's head and said, "If you don't stop staring at me, I'm going to shoot you."

Verbalization is an escalation because it transforms ambiguous behavior, which is so woven into the situation that the actors themselves are often unaware of it, into something express and unequivocal. Nonverbal responses, in contrast, may be so subtle that the parties themselves are not aware of them at a level of overt consciousness. They permit starrer and target to rearrange their relationship without disruptive embarrassment, indeed often without the overt consciousness in which words are the coin of most common exchange. Verbalization precludes this silent settlement. Because words often involve third parties, they increase the stakes and may increase the embarrassment of starrer and target. When verbalized, micro-legal sanctions are often like destructive and disproportionate reprisals in the law of war: lawful in inception but delictual in result.

Sanctions "within" the system reinstate the norms about defense of the self, permitting the pattern of social interaction to continue. In contrast, verbalized sanctions, by virtue of their character and comparative intensity, are responses "outside" the system. While they often terminate the offending behavior, they are also likely to disrupt, if not terminate, the micro-situation itself. If one posits a general community interest in

maintaining interaction, then verbalized sanctions, though apparently dramatically effective, may be considered as dysfunctional. But since the situations we are considering—chance encounters—are quite fungible, no great social consequence follows from the termination of a single one. In this respect, external sanctions in micro-situations cannot be analogized to macrosocial situations where the external sanction may precipitate great disruption and even widespread deprivation.

## II

The curious phenomenon of looking at strangers thus offers some insights into the dynamics of microlegal systems. We now have some sense of the basic rules about looking at others. Before we generalize about microlegal systems, it may be useful to make some observations about the social and psychological dimensions of looking.

A stranger, for purposes of our discussion, may be taken to mean someone we do not know, someone therefore about whom visual information will be a useful and in some circumstances indispensable preliminary to decisions about more association. Nothing would seem simpler than looking at strangers, yet there are, as we have already seen, many cultural and policy antinomies in this apparently simple and mundane act. We gain much of our information in face-to-face encounters by looking. Mayer surmises that modern urban man's sensorium is considerably more visual than that of his pre-urban counterpart. For McLuhan, of course, this assumption is a fundamental variable in accounting for changes in social structure and personality.

Looking is important as a preliminary or pre-engagement "scouting" activity, a type of intelligence gathering. The looker is able to acquire information from afar, as it were, without having to engage his target verbally. After verbal exchange, extrication by ignoring the other is more difficult. In some circumstances, it could be viewed as an insult and engender strife. Looking was almost certainly an important natural selection feature and continues to have some advantages over other long- and mid-distance sensory methods. At its most mundane, visual orientation is simple common sense and the folk wisdom is expressed in sayings like "Look before you leap," "Use your eyes," "Open your eyes," "Are you blind?" "Why do you think God put eyes in your head?" and so on. But looking is more than pragmatic. We also gain aesthetic and erotic pleasure from looking, and many strata in our culture encourage looking at the human face and figure as objects of beauty.

Where the looker's object is another person, looking becomes an important *social* activity. For the object also has eyes and knows he is being observed. This is not a light matter in our culture. "Property," Jhering observed in his curious and often disturbing essay, "is but the periphery of my person extended to things." Our exoself, the external image of the self-system, available to the eyes of others, is but a cultural creation, a type of psychosocial carapace or integument. One of its functions is pro-

pective. "Each of us," wrote Buber, "is encased in an armour whose task is to ward off signs."

Looking is not a "spatial invasion." In many ways, the exoself is proprietary. The property notion is expressed in subtle ways. People may look, but they are expected to look at those parts that the "owner" of the exoself wants them to look at, at certain times and following certain procedures. Minimally polite behavior often dictates that others accept, at least publicly, the exoself as presented by its owner. The politician's wife, whether she ingratiates aggressively or, as Mrs. Nixon, under relentless public glare tries desperately to protect a core of integrity behind a fixed and glazed smile, feels entitled to be taken at "face value." For all people, there are proper ways of looking at another's exoself. Improper ways may range from penetration to exploitation. What woman cannot attest to the difference between a look of respectful admiration and a leer or an ogle?

In curious and complex ways, the exoself, while the private property of the self, is also a *res communis*; its specific character and the appropriate normative regime for looking at it will be determined by features of the particular context. The emotional experience captured in Jhering's remark is one that most normal people undergo. Beautiful people, whose psychic makeup does not include sufficient narcissism and exhibitionism, suffer more, though only the scopophobic find it unbearable.

Sensitivity to being looked at may be less intense with intimates, but even then there may be unspoken rules. One of C.S. Lewis' characters says, "Do you not know how bashful friendship is? Friends—comrades—do not look at each other. Friendship would be ashamed." Even lovers, whose tacit compact includes taking and allowing great delight in each other's physical beings, may resent being looked at in certain circumstances, in certain ways, or at certain times. And, of course, relatives, who are even less restrained than strangers, look at children without any restraints; this can be an excruciating experience for children. Alas, children enjoy no coordinate privilege and cannot effectively protest the intrusion. Even for them, unrestrained gathering of visual information is deemed uncouth. Children, exhibiting a healthy curiosity, often drift into utterly absorbed staring; adults regularly admonish them not to stare. As children grow older and try to construct for themselves the unexpressed code about gathering visual information, they may err on the other side and be rebuked for "sneaky" looking and peeping until they learn the appropriate balance and techniques.

Amy Vanderbilt, whose work is a useful cache of micro-norms, alerts her readers to sub-cultural variations.

Etiquette, too, is obviously geographically influenced. In cities thousands of families live under one roof, yet most never speak to one another on meeting. In the country not to speak to one's neighbor on encountering him would be very rude. In some parts of the South girls are quite accustomed to young men asking for late dates, a date—usually with an old beau—following one that may end at about eleven. Elsewhere such behavior might be considered questionable.

Her observation applies to looking and staring, not only geographically, but in terms of culture and class as well. There are subcultures where general norms for gathering visual information, such as those considered above, are inverted: long and lingering eye contact is considered courteous, while aversion of the eyes is characterized as rude. For example, in Cassadaga, Florida, a spiritualist village, increased eye contact is not delictual. It appears to be bland and noninquisitive looking, passive rather than aggressive looking. In some encounter groups or environments that characterized themselves as "consciousness raising," where explicit, vigorous and sometimes aggressive exploration of the self and others is the norm, more eye contact will be tolerated, though certain types of focal restrictions may still operate. In China, in earlier periods, and to an extent even now, the European alien, acculturated to norms restricting looking and staring, could glare and glare, while the curious Chinese would simply continue to stare without any sense of wrongdoing. Of course, this does not mean that the Chinese of that time did not have norms about looking at each other. It is also possible that, in looking as in so many other activities, different rules apply to aliens or outsiders.

Sensitivity at being looked at increases with regard to strangers, perhaps because of personal experience, perhaps because our culture teaches us to be wary of strangers, perhaps because of a persistence of the child's profound fear of the stranger, perhaps for phylogenic reasons. To some degree, everyone is sensitive to being looked at. In our civilization, this may be an aspect of psychopersonal organization which may be integrally linked to a socio-economic system which encourages individuation. In deference to, or perhaps to encourage, individuation, formal authority may prohibit certain types of "peeping," *i.e.* unauthorized looking. It may enjoin photographing people in certain circumstances and may even allow tort suits against paparazzi for violations of looking restraints.

The special sensitivity of many communities to eye contact arises from many factors. There is a certain explosive potential to the gathering of information visually, for eye contact plays an important and distinctive role in the repertory of communication techniques. Whether or not, in Leibnitz' lapidary phrase, "the eyes are the windows of the soul," key phases in sexual invitation and the initiation of courtship are effectuated in many circles by looks rather than by words. Some social psychologists assert that there are many gender-based differences regarding looking in our society. In some stratified societies, looking may signal equality or dominance; looking away or lowering the eyes may signal deference or appeasement. The meaning of a refusal to look at someone who is talking to you may vary with context, some times being deferential, sometimes being a form of insult.

Depending on the context, eye communication conveys explicit content and also conveys secondary or metacommunicative information. A stare is paradoxical. It can be a threat, *i.e.*, a repellent; it can be an invitation to social interaction, *i.e.*, an attractant. In routinized situations, only gross departures from the norms will require fresh interpretation. In

nonroutinized situations where strangers look at each other, there is considerable possibility for misinterpretation. These considerations can hardly outweigh the need to gather information visually, but they do introduce special complexities.

Because of these antinomies, the general normative regime for looking and the characterization of certain visual techniques in certain circumstances as unlawful is necessarily complex, for it must balance the social benefits gained from visual observation against the social benefit of protection of the self.

### III

Our discussion of looking, staring and glaring has brought us to the point where we may, quite tentatively, essay some generalizations about the law in microsocial settings.

In a microsituation, a very small group of people, as a result of their social, if not physical proximity (they may be proximate telephonically or sequentially by mail) have the opportunity to interact. Physical proximity is an important though not indispensable variable for these situations, for it permits multiple nonverbal communications. Like every other social situation, mundane microsituations—even with only two actors and of the shortest duration—have the complex and significant normative components that are characteristic of law in its conventional usage. These components are:

- (1) Expectations, shared by the people in the situation, that in that situation, there is a "right" way of acting;
- (2) Expectations that defections from that "right" way or norm will lead to a shared subjectivity that the defection was "wrong"; and
- (3) Expectations that the injured party is authorized to take certain responses that may hurt or sanction the offending actor and at the very least must reaffirm the norm that has been violated.

We may speak of a legal *system* because, for all its informality, there is more than those imprecise precatious, better captured in the ambiguities of the subjunctive mood. There is a rule and an attendant set of expectations about proper subjective and objective responses to norm violation, intimating some sort of system for enforcing the norm.

Very complex micro-legal systems are found embedded in languages reflecting and reinforcing policies about relations between classes, castes, and genders. There are micro-legal systems about looking at people, touching them accidentally, standing in line, laughing, and so on. Whenever they occur, micro-legal systems are important from sociological, manipulative, and legal perspectives because of their function in micro-situations as well as for their contribution to more general systems of community order. Amy Vanderbilt may be discounted somewhat for puffing her own product, but her point is pertinent to our discussion.

Who needs a book of etiquette? Everyone does. The simplest



family, if it hopes to move just a little into a wider world, needs to know at least the elementary rules. Even the most sophisticated man or woman used to a great variety of social demands cannot hope to remember every single aspect of etiquette applying to even one possible social contingency . . . .

The word "etiquette" for all the things I have tried to discuss is really inadequate, yet no other will do. It covers much more than "manners," the way in which we *do* things. It is considerably more than a treatise on a code of social behavior . . . we must all learn the socially acceptable ways of living with others in no matter what society we move. Even in primitive societies there are such rules, some of them as complex and inexplicable as many of our own. Their original *raison d'être* or purpose is lost, but their acceptance is still unquestioned.

Alas, no code book can cover every contingency. Moreover, no current etiquette handbook codifies the micro-law of the many different strata and groups an individual is likely to encounter in a heterogeneous society. Even equipped with some such *vade mecum*, some social situations will seem so novel to the actors in them that they will be uncertain about the appropriate norms and how they are to be applied. Novelty, in its social significance, should not be confused with trivial notions of the exotic. Stanley and Livingstone could meet in the bush and interact without introduction as naturally as they might in a club in London, while a white and a black may cross paths daily in a New York subway station, but be unable to establish an easy pattern of interaction. Novelty may derive from the identity, class, culture or language of the other or uncertainties about any of these, from the nature or purpose of the encounter or uncertainty about it, from its location, and so on.

Where there is uncertainty about norms appropriate for the situation or the suspicion that there are no norms, the situation will not be disrupted if the parties seek jointly or in parallel fashion to prescribe or make law. Each party then seeks in his own mind to determine appropriate norms, by tentative analogy from "like" situations, or by a complex process of claim and deference which accompanies the more manifest exchanges. (There is a certain play or game aspect to these exchanges and, as we saw earlier, personalities too insecure to risk even the minor losses of games may find it extremely difficult to interact under these conditions of increased uncertainty.)

Failure to successfully prescribe norms appropriate for the situation will result in what is objectively described as anomie, but is subjectively experienced as "awkwardness." That feeling impedes or clogs interaction, or presses toward ostensible non-interaction, as when two people pretend to ignore each other. Both of these outcomes may be deemed socially pathological, since we may assume a general interest in modern secular societies in facilitating exchanges. (The present study is not primarily concerned with the process of prescribing or making micro-norms, but rather with their application.)

The distinguishing feature of a norm is not, as is commonly thought, words in an "ought" formula. Every aspect of life, every flow of communication is full of imprecations. It bears repeating that the feature of a norm that distinguishes it from all the depreciated "you oughts" and "you shoulds" of a daily conversation is its *sanction*, a communication accompanying the "ought" that indicates that the speaker or the community is willing to invest something of value to see that the norm is followed. The investment can be something to punish or deprive the deviator or something to reward the conformer. Rewards may be no more than symbolic approval or disapproval or something substantial—money, time, life—given, withheld, or taken away. Often, sanctions are woven into a social situation with an instinctive cunning. In the looking context, a glare is a common sanction. In interviewing, for example, Richardson, Dohrenwend, and Klein note that some interviewers use social pressure "directly and forcefully."

One method is to urge the respondent to participate by classifying him with a group which he respects. This approach is embodied in such statements as, "I have been interviewing a number of leading citizens and, to complete my study, I should like to ask you . . ." or (to a physician respondent) "I am interviewing all members of the county medical society, and I'd like . . ." Such an approach exploits the desire of the respondent to conform to the behavior of others in the reference group or, conversely, his reluctance to refuse to participate in an activity which the reference group apparently endorses or approves.

For our purposes, it is important to note that these communications function as sanctions. Where normative communications are also accompanied by indications of authority, they may properly be called law. But remember that norms, while an indispensable part of law, are not synonymous with law. The distinguishing feature of a norm is that it is deemed of sufficient importance for someone to expend personal effort and social value to secure behavior conforming to it. Note that the effort need not be sufficient to win full or even partial compliance, but only enough to sustain a norm as such.

Microsituations are governed by microlaw and microlaw must have sanctions, though they may be microsancions. The jurisprudential significance of trivial sanctions will be considered later. At the moment, it is important to recognize that behavior seemingly embedded in a situation and stimulated by some sense of irritation may function situationally as a sanction. If X fails to play by the rules in a two-person game and Y, out of a sense of indignation, disrupts the game by leaving, Y's behavior has sanctioned. It has deprived X and, more importantly, affirmed the norm that has been violated. Conversely, Y's failure to leave, while permitting the game to continue, might have resulted in termination, erosion, or modification of the norm.

Motive and consciousness of sanctioner and target are not required indicia of a sanction. Actors in microlegal systems are usually unaware of

the legal quality of the experience and particularly oblivious to their own functional roles as decision-makers or sanctioners. They view their own behavior, insofar as they are overtly conscious of it, as an expression of irritation or a matter of personal defense. They would hardly imagine that they have been deputized *pro hac vice* to sanction a lawless starrer. Nonetheless, their responses may be sanctions, for here, as in macrolegal arrangements, it is the systemic effect rather than the motive or even consciousness of the actor that renders his reaction a sanction. In the result, microlegal norms have micro-enforcers, potentially each and every one of us.

Routine situations may have distinct though un verbalized norms. If one is an acculturated member of a group, one knows the norms and even the norms of norm-making. But the core method is trial and error, and one may learn the new norm only through what may be to some an exhilarating experiment but to others a series of embarrassing failures. Moreover, it may take time for members of a particular community to establish an appropriate norm.

Time is also a factor for outsiders. When they enter a group with a distinct microlegal system, it will take time to learn the rules. Until then, the social transient is like a child, unfortunately without the limited tolerance allowed to children. In cruel correspondence, ignorance of micro-law may interact with a variety of other fears, making it easier for group members to consider outsiders as crude and barbarous.

In very fleeting, nonroutinized interactions, norms may be established in a tentative manner, but then fade as interaction ends. In more routinized interactions, the norms are known and to some extent have been refined by experience. Though the interactions may seem trivial and the sanctions evanescent, the situations have occurred often enough for the observer to assume that both the norm and the response are consistent with and expressive of more general social values. Curiosity and further investigation may be warranted if they are not, for components of a social system which impede the realization of larger social goals should be viewed, as suggested below, at least *prima facie* as pathologies.

#### IV

Research into microlegal systems is perforce different from other legal inquiries. The norms are unwritten, uncodified and often consciously unperceived. In situations which do not appear to be novel to the actors, the appropriate norms are known, though often knowing is at a level of consciousness so deep that the very actors whose behavior is influenced by those norms are unaware of knowing, acting and reacting to them. But the norms are there, and it may become painfully apparent to the sensitive traveler that he is ignorant of them, whether he is venturing abroad or into a different stratum in his own country. In some cases, handbooks of etiquette, guidebooks or books of folklore may codify and promulgate some of the micronorms. In others, folklore itself may supply the infor-

mation. Even if people are aware of the pertinent microlaw, they may not characterize it as law. Moreover, awareness is often limited to a particular norm and not to its systemic aspects. Hence the need for a certain importunate and persistent style of inquiry. An investigator must often press his informant until, with some irritation, one finally says something like "Well, you're just not supposed to . . ." It takes considerably more probing for the informant to dredge up the responses that are functional sanctions, fleshing out the microlegal system. Once the informant grasps the object of the inquiry, he may become an investigator himself, with certain possibilities for enhancing self-knowledge and growth. This happens because infractions of microlaw causing embarrassment or other dysphoria, which are not comprehended by the subject, may have subtle impacts on his personality and behavior.

Few jurisprudential writers have addressed microlegal systems. Petrazycki, with his essentially psychological approach to law, did some work, much of which remains unavailable to English language readers. Ehrlich, given his interest in law not associated with the apparatus of the state, would have been amenable to micro-normative inquiries. Unfortunately, neither he nor his students at Czernowitz seem to have executed such studies. A number of anthropological studies have examined microsituations, but have generally not appraised their consequences to public order. Moreover, such studies have generally focused on more durable, territorial and nonterritorial communities.

More recent sociological studies have fruitfully explored norm generation in informal situations. A few names stand out. Goffman has been unparalleled in exposing the reticulate network of norms in microsituations. Berne was able to unpack the intricate and rapid exchanges between people and relate them to psychopersonal issues. The work of Simmel shows great sensitivity to micronormative systems. Ethologists have examined the norms in the primate kingdom; more than a few have noted their similarity to our own. From a psychological perspective, Ellsworth has produced a number of studies concerning norm enforcement via non-verbal communication. Writing from the legal standpoint, Weston has insisted on the legal quality of micronorms. Particularly astute observers such as Weyrauch have even described the constitutive process and constitutional outcomes in microsituations.

## V

What accounts for the jurisprudential resistance to microlaw? Writers who identify law with the apparatus of the state must necessarily dismiss microlaw as law. *De minimis non curat praetor*, they intone gravely, without explaining how one determines what is *de minimis* in the lives of people. Their rejection must be criticized both for its arbitrariness and for ignoring the extent to which the "law of the state" is produced, in non-state procedures, through custom.

At the core of most etatistic theories of law is a hierarchical institu-

tional assumption: the notion that law requires an institutionally distinct enforcement agency, a sheriff. This assumption confuses function and institution. While sanctioning and enforcing are indispensable, a particular institution is not. Many systems are characterized by the development of specialized enforcers, but in many other systems, as Malinowski observed, law is enforced coarchically. In the international system, Georges Scelle characterized this phenomenon as *dédoublement fonctionnel*: the same actors would alternatively be claimants and effective deciders. What is necessary is not a formal enforcer, but an expectation accompanying a characteristic normative formulation that someone, possibly even the injured party, may authoritatively respond to infractions of a norm. It is that factor which contributes to sustaining the norm.

The comparative triviality of the sanctions applied in microlegal situations has led some writers to dismiss their importance and not to view them as law. Thus Austin called them positive morality: “[r]ules set and enforced by *mere opinion* (italics in original), that is, by the opinions or sentiments held or felt by an indeterminate body of men in regard to human conduct.” Other writers refer to them as etiquette. Degree of severity of a sanction is a tricky criterion for distinguishing law. It is useful, perhaps inescapable, in statistical descriptions in a mass society, for they must assign numerical values to the otherwise unmanageably large number of fragments of experience with which they deal. But when it comes to the design of events that may make people persevere in or change certain behavior, it is wrong and self-defeating to succumb to the arithmetical assumption that more of something good or bad will induce or deter *pro tanto* in desired ways. Things are more complicated than that.

Severity of sanction is a meaningful criterion for distinguishing real from semantic norms only if there is a general correspondence between the quantum of deprivation entailed in the sanction and the dysphoria it is supposed to cause to all those who are supposed to be susceptible to it. Obviously quantum varies with the condition of the target. Deprivations of respect may be most effective determinants in one stratum and completely without effect in another. A fifty dollar traffic fine may be irritating to a wealthy man, and a \$50,000 fine may be a trivial inconvenience to the corporation that can pass it on to its customers. The same fifty dollar fine, however, may be devastating to a poor man who earns that much each week. The bite of a sanction is a function of the phenomenology of the target and not of the sanctioner; the bite is adequate if it is enough to maintain the norm. The “trivial sanctions” of Austin’s positive morality may be very effective indeed. The microsancions of microlegal systems to which we are actually susceptible may be much more significant determinants of our behavior than conventional macrosancions which loom portentously, but in all likelihood will never be applied to us.

In a large, heterogeneous society such as ours, a jurisprudence of microlegal systems is of more than theoretical interest. Many smaller groups are durable enough to establish and maintain cultural norms and to transmit them from generation to generation. Members of different

groups interact at varying levels of intensity. Interactions can be jeopardized if members of different groups do not develop either an intuitive or explicit conception of norms which, though perhaps unexpressed in some conventionally recognizable normative codification, may arouse strong reactions if they are violated. At the very least, they may be expected to retard interaction.

In a more subtle sense, micronorms and their sanctions may be significant factors in the shaping of personalities in ways that have civic impact and importance, not to speak of effects on an individual's autonomy, self-assurance, sense of self-worth and capacities to develop affection toward others. Put most generally, microlegal systems may influence our ability to be happy.

Microlegal systems, like international law in Holland's famous apothegm, may be near "the vanishing point of jurisprudence," but their low visibility and hitherto disdainful rejection by scholars of the law should not obscure the significant effects they can have on social order and psychopersonal organization.

## VI

Philosophers and moralists may contemplate with easy conscience and even admiration what has come to be known as the "Masada Complex": societies that choose to perish rather than depart from fundamental norms expressing key group values. But the policy scientist, particularly one who is sensitive to the psychoanalytic dimensions of behavior, rejects options of mass suicide. The posited function of normative arrangements at every level is to enhance survival and life.

Where microlaws exist in a larger social situation, the critical evaluation of their social utility is the extent to which they contribute to general as well as the more specific social goals of that situation. Consider some examples. The minimally essential rules on a two-person sailboat must assure the boat's effective operation. That imports a command structure, a distribution of functions and so on. Similarly, the rules *within* a sports team, as distinct from the so-called "rules of the game" are indispensable for playing. They must include, in addition to the rules about interaction, expectations about how decisions are to be made: those matters which are to be decided by the captain and those to be decided by the group.

Imagine that you must design the microlegal system of a space capsule. Obviously, a good deal of attention must be given to mundane rules for interaction there. The constitutive process—norms about decision-making itself—is something less of a problem than it might appear, for the astronauts are electronically integrated almost constantly with ground control and thus with a pre-existing command and control system. By the same token, some of the more obvious features of the spacecraft's system of public order were certainly transposed, at various levels of consciousness, from the terrestrial order. But what of the less visible rules, the micronorms about shaping spheres of privacy in the cramped quarters,

about self-care, about things that, although perceived, were not deemed to be seen or heard socially? Some of these micronorms might have been adapted from cognate "enclosed" situations, such as railroad cars, trans-continental carriages, submarines, planes, elevators, and lifeboats, but none of them would have been quite as enclosed as a space capsule. Hence even though some micronorms might have been adopted or adapted, they would still have to be tested to evaluate their appropriateness and efficacy in the new environment.

When called upon to appraise alternative rules for microsituations such as a space capsule, one of the first questions asked is whether the proposed norm contributes to the survival and success of the mission. The necessary preeminence of this question is obvious. The obviousness should not obscure its possible negative correlation, for survival may entail departing from ethical considerations which would otherwise prevail. Whatever the degree of conformity of the proposed norm with more general social values, the exigency of survival imposes certain boundaries within which concern about the ethical content of the proposed norm is a luxury that cannot be afforded.

Of course, many of the terms within this formula are quite vague: what is "success," "mundane functioning" or "survival"? Each of these terms probably covers a spectrum from minimum to optimum. Trade-offs between the degree of efficiency and the synergizing effect of a micronorm, that which is not maximally efficient, but is popular and yields greater personal contribution to the enterprise, invite complex calculation and some flexibility in the ethical content of the norm. But there is a limit; when it is reached, discipline and external sanctioning must bridge the gap between voluntary compliance and expected defection from the norm. Somewhere there is a minimum related to mission achievement and personal survival. That minimum will be a factor in appraising the ethical conformity of the proposed micronorm.

Beyond the survival test for micronorms, an effectiveness test would turn on the degree to which the proposed norm contributed to the mundane functioning of the mission. This evaluation requires complex considerations involving assumptions about the nature of the mission, as well as about human behavior in general. As speculative as that consideration may be, it is simple when compared to the appraisal of microlaw in more mundane social situations. There, the range of consideration must be expanded to include impacts on personality formation and overall social functioning. With regard to gathering visual information, mundane functioning must be considered in relation to its aggregate effects on personality and desired psychosocial development.

A third test of ethical conformity would relate the congeniality of the proposed norms to the more general ethical standards of the overall culture. In social systems in which ethical standards are homogeneous or in which a tight hierarchical structure enjoys exclusive competence in prescribing and applying standards, this can be a fairly simple operation. But in pluralistic systems or systems undergoing change, there may be

little or no agreement on appropriate ethical standards. In these latter circumstances, the ethical conformity test itself becomes prescriptive rather than applicative. Yet the potential for impact may be enormous because of the pervasiveness of the situations in which the norm will prevail and the relatively low visibility of microlaw.

It is one thing to design microlaw for innovative situations and another thing to appraise microlegal systems which are integrated and operating in larger contexts. Where micronorms seem dysfunctional, in terms of the three criteria proposed, the observer may discover that they derive from other social arrangements which are functional. The factors which have given rise to these systems may be deeply embedded in personal or group history. Courtship role assignments and norms may, for example, have been profoundly shaped by mother-child relations and particularly by breast-feeding practices and may take on a contextually rational content only when related to all other features of the culture in question. They may also be shaped by more articulate group norms which will assert that they serve certain purposes, as Bateson's and Mead's study of Bali suggests. Some micronorms may function to reflect and reinforce class divisions. In some cases, this may be homeostatic; in others, it may be viewed as dysfunctional, as for example, the almost caste character of subordination of nurses to doctors and the effect it has on nurse recruitment, performance, and drop-out.

Thus a satisfactory appraisal of a microlegal system about the gathering of visual information must relate the specific norms and their operation, not only to facilitating contextually appropriate exchanges between individuals, but also to their consonance with general and deeply held cultural values. Staring is neither good nor bad per se. Whether staring contributes to or detracts from useful social interaction depends on the context. The target's subjective perceptions play an important role in determining whether a look is a stare.

If one cannot make a concordance of looks and stares, one can essay a concordance of looks and stares that give particular patterns of gazing a meaning for participants. It is hardly a matter of surprise that the *content* of looking norms may vary widely among different microsocial situations within a particular community. Perhaps more interesting is that particular individuals readily adapt to the different looking norms as they move from situation to situation in the course of a day, such as from encounters in an elevator, to visual orientation in public transportation among strangers, to visual orientation in the mundane office setting under whose assertive bonhomie a complex stratification system that has almost caste elements operates, to aggressive business encounters marked by bold eye contact that may be cultivated less for information gathering and much more as a metacommunication of candor, decisiveness and self-assurance, a look that matches the set of one's jaw much as a tie goes with one's shirt and jacket, to a cocktail party at a business convention, where all micro-norms seem crafted to facilitating rapid and superficial contact with strangers and so on. That an individual knows and can oper-



ate often in rapid succession with many diverse micronorms about looking is no more cause for comment than the ability of a member of a highly stratified society to use different types of body language to communicate with peers as well as with people at many different levels of superordination and subordination.

The extreme variety of the contents of the different norms in these and hundreds of other distinguishable situations does not per se mean that some are right and others are dysfunctional. There is no absolute or platonic content to a looking norm. Looking norms are instrumental. The basic question is whether their content and systemic operation adequately fulfills the immediate objects of an encounter and are consonant with some general cultural values. Hence, norms of widely varying content may be appropriate in widely varying contexts, but in other contexts, they may be dysfunctional and actually impede fulfillment of the exchange and of more general social values.

## VII

The fact that some micronorms or microlegal systems are dysfunctional prompts reflection about the traditional jurisprudential response to microlaw. The traditional jurisprudential focus has been on mass and aggregate behavior and on norm-setting by the apparatus of the state. As a result of capriciously and inconsistently applied definitions, microlaw has been dismissed as mere etiquette. Even psychologists have ignored the legal approach to microsituations. Microlegal systems possess all the desiderata of law, however, even though they are scaled to their microscopic dimensions. Do they thus possess enough importance to warrant study, appraisal, and perhaps even intervention and redesign?

The characteristic of "smallness" may be dismissed immediately as of absolutely no significance. Who would gainsay the importance of microsurgery because it is small or insist that macrosurgery is more important because it uses saws and axes rather than the technology of the space age?

With the exception of mobs, including the dispersed audiences of contemporary mass media, virtually all the rest of social life is a congeries of micro-social situations. In modern, as opposed to traditional, society, a substantial proportion of these situations involve strangers. Compliance with microlaw is prerequisite to interaction with intimates, but as we saw is more problematic with strangers since neither party may know which norms are appropriate to the encounter. The importance of microlaw in a factory where two ethnic, language or racial groups have a propensity for conflict can be increased or decreased by micro-legal adjustments needs no illumination. But conflict avoidance is only one of an array of social concerns. More generally, understanding the dynamics of microlegal systems may be a prerequisite to effective operation in modern social heterogeneity.

The conscious design of microlegal systems may make many interac-

tions in the workplace, the school, the family or other latter-day institutions specialized to affection more productive and less bruising to egos. One needs little imagination to appreciate the importance of appraising microlegal systems in a space capsule and modulating or terminating norms that have either developed or have been adapted holus-bolus from elsewhere where they were contextually effective, but which now undermine the effectiveness of the space mission. Perhaps it is not so obvious that the self-fulfillment of individuals in many other contexts may be aided by, if not require, an appropriate microlegal system.

A fundamental tenet of liberal democracy is the effort to maintain a line between governmental regulation and the so-called private sphere or civic order. The purpose of this part of our discussion is not to discard that valuable notion in favor of a totalitarian organization, however benevolent, that penetrates and organizes every cellular aspect of society. I am not calling for a comprehensive scheme of microlegal statutes. Rather, the objective is to alert and sensitize scholars and the diverse official, as well as non-official, custodians of the private sphere or civic order, to the fact that key aspects of individual lives are affected by microlegal arrangements. Individuals should become aware of them so that, like the other norms of society, they may be appraised and, where necessary, changed to increase their contribution to a good life.