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A Pattern of Violence: How the Law Classifies Crimes and What It Means for Justice. By David Alan Sklansky. Cambridge, MA: Belknap Press. 336 pp. \$29.95 hardcover

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about the law's promise to dismantle hierarchy, the activists saw Title VII (alongside persistent grassroots organizing) as a resource to leverage law in favor of subaltern workers' conceptual challenges to institutionalized racial and gendered inequality.

This long history of two generations of Filipino labor rights activists developed in *Union by Law* includes many multi-generational complex worker struggles and collective sociolegal praxis. Across time and space, activists took on dominant power structures in the United States and the Philippines and responded to the willful actions of state officials enforcing exploitation through law. In this sense, they were ardent internationalists—not merely interested in labor peace or improved wages, but more broadly in labor advocacy and rights activism as a means to achieve socialist democracy in the United States, in the Philippines, and around the world. And yet, these worker activists still engaged and leveraged the hegemonic ideals of US legal liberalism in attempt to reconstruct and transform their worlds.

Union by Law is a pioneering subaltern history of immigrant workers and their relationship to law and legal institutions in the 20th century. The book should fundamentally reshape how we do research on legal mobilization and social movements. Rather than analyzing discrete, bounded episodes of law and organizing, this pioneering study examines resistance across time and space in order to capture questions of differential power, to understand the development of nomoi and narratives, and to see clearly the long-term dynamics of racial hierarchy and global empire. Though unique in its narrative, lens, and methodology, the book confirms much of what sociolegal scholars like Stuart Scheingold and Michael McCann himself have long argued: law is variegated both for and against social justice; official law is repressive in most moments but can signal possibility in others (McCann, 1994; Scheingold, 1974). In *Union by Law*, unfree, noncitizen Filipino labor activists struggled to expand and mobilize their rights and use law to refigure their worlds into a more radical vision, but the enforcement of neoliberal ideology amidst racial capitalist empire limited their contestation both within and against law, serving as a formidable constraint on the realization of a more just world.

REFERENCES

- Cover, Robert. 1986. "Violence and the Word." *Yale Law Journal* 95: 1601–22.
- McCann, Michael. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago, IL: University of Chicago Press.
- Scheingold, Stuart A. 1974. *The Politics of Rights: Lawyers, Public Policy and Social Change*. New Haven, CT: Yale University Press.

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A Pattern of Violence: How the Law Classifies Crimes and What It Means for Justice. By David Alan Sklansky. Cambridge, MA: Belknap Press. 336 pp. \$29.95 hardcover

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There is perhaps no issue more critical or central to criminal legal reform than how we think about and approach violence. Over half the people in US prisons have been convicted of a violent crime, and many of those convicted of "nonviolent" crimes received prison sentences because of uncharged or unconvicted violent conduct. And as Franklin Zimring and Gordon Hawkins pointed out in their book *Crime Is Not the Problem* (1999), the fear of violence, lethal violence in particular, suffuses the decisions made at every level of the criminal legal system.

Yet serious discussions about how to approach and think about violence are still the third rail of criminal legal reform. Reformers remain apprehensive to even raise the issue, while defenders of the status quo are quick to exploit each and every act of violence to push back against change. Thus

David Sklansky's new book, *A Pattern of Violence*, could not be more timely. The book's goal is not to show us how central violence is to criminal legal policy, but rather takes that centrality as a given and then explores how confused, inconsistent, and often simply incorrect the law's, and the public's, views of violence are.

Sklansky highlights three central challenges, each of which is substantial. First, he notes that we struggle to even define what violence is. Not everything that causes physical harm is classified as a "violent" crime (like some misdemeanor assaults), while some crimes that cause no physical harm are still defined as "violent" (like some burglaries). Second, we often waver on its significance. Sometimes that an offense is violent supersedes all other aspects of it, but not always (like when we view killings by children as different than otherwise identical killings by adults). And third, our views on the causes of violence are often too simplistic. We sometimes view violence as a product of a person's environment and circumstances, but too often we oversimplify its causes and see it as something almost entirely essential to that person himself.

Sklansky examines how these challenges play out in six distinct domains: the general criminal code, the regulations around police behavior and police violence, the specifics of rape and domestic violence law, the treatment of violence by and against children, the regulation of violence (especially rape) in prison, and the Supreme Court's focus (or lack thereof) on violence in its jurisprudence about speech and guns.

To me, the book's strongest argument is its repeated emphasis that we adopt an overly "characterological" view of violence: violence, we commonly think, stems from who a person *is*, rather than the situations they find themselves *in*. As Sklansky demonstrates clearly, it is a view that justifies some of the harshest and more punitive aspects of our current criminal legal system in all the domains that he considers, even if it runs contrary to much of the evidence about how violence arises. Driving home the errors of this perspective, as well as how it is inescapably tied to racist views on behavior, is a major contribution of this book.

The book also provides important historical accounts about how our sense of violence and its importance have shifted over time. While "violence" is currently the class of offense that attracts the most political attention, it has not always been so: vice, more than violence, was once the sensationalized crime of choice. Our views of rape and domestic violence have also shifted over time. Although the crimes were initially viewed as primarily "sex" crimes, in the 1980s advocates pushed to frame them as more about violence than sex, only to return to centering "sex" in recent years. The same pattern has occurred for violence committed by children, where the relative importance of "youth" over "violence" has waned and then waxed.

Also importantly, Sklansky warns that our still-strong proclivity for classifying more and more behavior as violent is risky. Defining conduct as "violent" brings it attention, but that frame then limits, perhaps problematically, how we think about the causes of and solutions to that behavior. Similarly, at times we risk reducing the word "violence" to mean "behavior we really just don't like," which similarly constricts our ability to think clearly about different sorts of harms and the different responses they may require.

Sklansky's description of the changing importance we place on the violence of behavior is particularly relevant to our current moment. Too often, changing how we approach "violence" is viewed as some sort of political impossibility. Sklansky's book provides an important reminder that politics are never immutable, even for something as emotional salient right now as violent behavior.

The one issue I had with the book is that I fear it may make our views on violence appear more incoherent than they really are. At times, I felt the book could have been stronger had it been three chapters, not seven: one each for the three ways we misthink violence (its definition, its significance, and its nature), with each chapter relying on examples pulled from the six categories he uses as chapters. There is no doubt that our thinking about violence is often contradictory, but I also had a nagging feeling that there were some more-coherent patterns to how we view violence's definition, significance, and nature that I had a hard time seeing because of how their discussions were broken up across multiple chapters.

Sklansky's book, however, is ultimately less about providing clear answers and more about making sure we appreciate how much conceptual confusion undergirds a term we frequently use with such confidence and little thought—and a term with significant political consequences. Our data and statutes draw seemingly objective lines between “violent” and “nonviolent” behavior; *A Pattern of Violence* does an excellent job of laying out how tentative, subjective, inconsistent, incoherent—and mutable—those lines really are.

REFERENCE

Zimring, Franklin, and Gordon Hawkins. 1999. *Crime Is Not the Problem: Lethal Violence in America*. New York: Oxford University Press.

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Power in Modernity: Agency Relations and the Creative Destruction of the King's Two Bodies.
By Isaac Ariail Reed. Chicago: University of Chicago Press, 2020. 312 pp. \$32.50 paperback

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Isaac Ariail Reed's *Power in Modernity: Agency Relations and the Creative Destruction of the King's Two Bodies* (2020) proposes a bold, imaginative thesis: modernity is characterized by the recurrent search for new figurations and myths that bind actors to those who command. Modernity, in other words, is haunted by the historical loss of the King's two bodies—the first mortal and the second sempiternal—and the consequent problem of agency: how do we bind others to act on our behalf? Or, whose projects do our actions realize if they can no longer speak in the hallowed name of the King?

To appreciate the break that Reed's intervention creates in social theory, we might begin from his reflections on Franz Kafka's “Before the Law”—long familiar to sociolegal scholars. As Reed observes, social theorists have taken this parable of a man who waits in vain for admission to “the Law” as “a sociological nightmare from which the subject cannot awake” due to the symbolic violence of modern power (2). Turning away from such melancholic renderings of domination and consciousness because of their limited depiction of the *play* of power in modernity, Reed crafts a new theoretical language of power relations through the figures of the rector, actor, and other, each of whom performs a necessary part in the making of projects. Critically, in recasting the study of power in terms of the seriated acts of rectors and actors that pursue the former's projects, *Power in Modernity* not only prompts sociolegal scholars of empire to revisit the mythical figurations at the heart of sovereignty in relation to the current jurisdictional turn (Richland, 2013) but also opens up questions about how legal speech binds and transforms actors over time.

To proceed, some definition of Reed's distinct theoretical framework is in order. Embedded within relations of agency that have long roots in law (Shapiro, 2005: 272), rector and actor are defined by the hierarchical relation of control that allows the rector to “*send an agent [actor] into the world, and bind said agent to act on [the former's] behalf*” (30). Rectorship thus depends on whether and how actors can be called and bound to projects not of their own authorship. Projects, in turn, are realized in time:

“In a project, a person or a set of persons *projects* into an uncertain future an image of the world; that imagined future becomes part of their repertoire for navigating the present world; attempts to *remake* the world take on a relationship to the projected image via interpretation” (34).

Finally, excluded from projects that frame the relation between rector and actor, those othered are profaned and denied recognition as actors or authors (19). Hence, the other is dehumanized and rendered part of the uncertain world that is to be mastered or, worse, eliminated.