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Everyday Jurisprudence in Urban Australia: Negotiating the space of legal performances

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Abstract
The theme of "street level sovereignty" invites us to contrast the informality of law on the street with the formal authority of the sovereign power. Legal pluralists argue that that law can be informal and based in social formations other than the state. Practitioners of the law, including judges, lawyers and legislators, work with the assumption that state law has a unique status as an authoritative, knowable and monolithic structure. Even for formal law, this has not always been the case: canon law, international law, customary law and other legal regimes are still recognised in various jurisdictions. The laws people live by are more diverse still. Some of these are formal and written, even if they are tangential to state law, such as religious laws or industry codes and standards. Others are known, perhaps even viscerally or unconsciously, by the communities who adhere to them, as in taken-for-granted business practices or generally accepted codes of behaviour towards others: queuing, keeping to the left or right on stairs and escalators. We distinguish here between formal law, which is written and known by experts even though it may not be recognised by state law, and informal laws, recognised in practice, but unrecorded in any formal way. The intersection of various legal regimes, sometimes called "internormativity",2 raises a number of questions that will be addressed in this chapter. Central to these is the relation between informal law and state law: how the two coexist, compete or constitute each other.3 We explore the following questions through a study of the interaction of formal and informal laws in action on a Sydney street.

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Introduction

Time, space and culture

The theme of “street level sovereignty” invites us to contrast the informality of law on the street with the formal authority of the sovereign power. Legal pluralists argue that that law can be informal and based in social formations other than the state. Practitioners of the law, including judges, lawyers and legislators, work with the assumption that state law has a unique status as an authoritative, knowable and monolithic structure. Even for formal law, this has not always been the case: canon law, international law, customary law and other legal regimes are still recognised in various jurisdictions. The laws people live by are more diverse still. Some of these are formal and written, even if they are tangential to state law, such as religious laws or industry codes and standards. Others are known, perhaps even viscerally or unconsciously, by the communities who adhere to them, as in taken-for-granted business practices or generally accepted codes of behaviour towards others: queuing, keeping to the left or right on stairs and escalators.

We distinguish here between formal law, which is written and known by experts even though it may not be recognised by state law, and informal laws, recognised in practice, but unrecorded in any formal way. The intersection of various legal regimes, sometimes called “internormativity”, raises a number of questions that will be addressed in this chapter. Central to these is the relation between informal law and state law: how the two coexist, compete or constitute each other. We explore the following questions through a study of the interaction of formal and informal laws in action on a Sydney street.

First, how are conflicts and transitions worked out between informal and formal laws? We may inquire whether state law always trumps the informal laws of everyday practices, or whether there are opportunities for the recognition of informal law. As will be seen in the case studies, the conflicts are not always between a monolithic formal law and a single underlying informal or “customary law”. This question can be approached through the longitudinal study of legal application over time. Thus we may see whether formal law ultimately wins out by burying informal practices of law under the weight of authority and enforcement, or whether informal laws may persist over time, or perhaps even infiltrate the formal systems of state law.

Second, if formal laws comply with expectations that they be written, publicly known and formally promulgated by state-recognised law-makers, how are informal laws recorded? This question is related to that of time in the previous question, since a law can hardly be worthy of the name if it is ephemeral, changing day by day. Yet if it is not written down, in the manner of formal law, we may ask how is it known and how it persists over time. While some of the informal, or non-state laws to be seen in these studies are written (industry codes, religious law) others are not. We will notice that space and spatial practice can perform
some of the functions that writing has for formal law: we will explore the extent to which informal laws are "written" in places and the ways they are used.\textsuperscript{4}

Third, what is the foundation or origin of informal laws? This is not a question about the founding legitimacy of the law, which is a mythomania that we leave to the exponents of the authority of state law. It asks, instead, about the cultural milieu that gives rise to and nourishes laws. That milieu, or provenance, of the law is well documented in the case of state law, with its roots in Roman law, common law or Napoleonic traditions. In this study we find informal laws' origins in cultural practices and ethnic diversity.\textsuperscript{5} The juxtaposition of state law with customary law is often seen to be a duality of legal systems. A broader legal pluralism, we will suggest, is spawned by social and cultural diversity found in a multicultural society.

These introductory paragraphs open the tool kit to be used in this analysis: time, space and culture. Time allows us to delve into the development, conflicts and outcomes of competition between legal regimes, formal and informal. Space provides the fixed point and theatre of social performances, where rituals, patterns and laws can be inscribed without the need for the formalities of writing. Cultures, in all the diversity seen in an inner suburban multicultural main street, propel the proliferation and cross-pollination of incipient or vestigial legal regimes. They introduce the seeds of normative orders that may have been formally inaugurated or better established in other times or places, whether those be the nations from which immigrants have arrived, or the "law of the land": the Indigenous legal substrate on which formal Australian settler law has been superimposed.\textsuperscript{6} This chapter acknowledges the primacy of indigenous laws in Australia, even though they are not its focus. Studies of Australian customary laws contrast the Aboriginal laws of the land with the formally sovereign common law imposed by settler society, leading to the dualism noted above.\textsuperscript{7} Because of the nature of the areas in this study, where there are more overseas immigrants than Aboriginal residents, the diversity of international cultures, and associated informal laws, are more conspicuous than the presence of indigenous laws.

\textit{Laws on the street}

This study centres on the inner south western suburbs of Sydney, and specifically on streets running off Canterbury Road (closer to the city called New Canterbury Road). They are in the adjoining local government areas of Marrickville and Canterbury, between 10 and 15 km (6-10 miles) from the city centre. This was the axis of Sydney's manufacturing industries, which progressively extended three times further to the south west. In the 1950s-70s immigrants were sought for industrial work, so these suburbs were heavily populated by successive waves of migration from southern Europe, then the Middle East and South East Asia. The areas along (New) Canterbury Road, which had been established along tram and train routes in the early 20th century, have become convenient and accessible inner suburbs in sprawling, automobile-based Sydney, prized for their public transport links and their multicultural vibe. The attraction of lower housing prices, which also drives gentrification, is diminishing in those parts of this area closer to the city, and is banishing even remotely affordable housing further and further from the city centre.

The present article is based on two distinct experiences of these areas, separated by several decades. The first period was in the late 1970s, during intensive migration into the Canterbury local government area of people fleeing Lebanon's civil war which began in 1975 and lasted about 15 years. One of the authors worked in community health in the area, involving liaison and research with local and other levels of government, with other agencies and with the Lebanese community.\textsuperscript{8}
The second period of research began in 2012, when a survey was made of all the food outlets in Marrickville Road, the commercial and civic main street of the eponymous local government area. In the street’s 2.7 km (1.7 miles) length, there were 117 food outlets, bearing 17 different linguistic or national cultural identifiers. Our main focus in this chapter is on two blocks closest to New Canterbury Road, where there is a local shopping centre with cafes, restaurants, fresh food shops, a bookshop, hairdressers and other businesses which mainly serve the local community and people working in the area. Shops and restaurants within these two blocks at that time were identifiable Vietnamese, Pakistani, Lebanese, French, Italian, Turkish, Thai, Portuguese and Greek. This area has been observed since 2012, with a second period of systematic research in 2014, updated in 2016. In the more recent time period, forty years after the influx of Lebanese immigrants, we report on research carried out at two yearly intervals, with ongoing informal observation in the intervening periods.

This study proceeds by way of three case studies which illustrate the interactions of formal and informal laws. The first looks at smoking at two pavement cafes. The second considers the availability of halal food, comparing the situation in the period of intensive migration from Lebanon in the 1970s with that in 2014, when there was a halal restaurant between the two cafes, and a halal butcher and convenience store around the corner in New Canterbury Road. In the third case study we compare experiences of crossing the street and regulation by speed humps and marked pedestrian crossings. In the first of these case studies, change took place within the 12-18 month period of observation. The other two case studies draw on comparative material from the earlier period for their longitudinal aspects over time.

**Three case studies**

*Smoking at outdoor cafes*

Outdoor tables and seating at cafes and restaurants in Marrickville Road is licensed by the local government authority, Marrickville Council. Council is keen to encourage these uses of outdoor space, having widened footpaths for the purpose, and waived licensing fees. However, since this is publicly owned land controlled by Council, it can apply certain conditions. One is a blanket ban on smoking at any outdoor seating associated with cafes or restaurants, adopted with the Council's Smoke-free Outdoor Environments Policy in 2011.

There is a widened section of footpath accommodating up to about 20 tables outside six premises on the north side of Marrickville Road, running some 20 meters east from Seaview Street in Dulwich Hill (see figure 3.1). These premises included two cafes (at 471 and 469) and, in 2014, an upstairs restaurant. The cafes each use about half of the available footpath space. The corner of Seaview Street and Marrickville Road is a focal point for the Dulwich Hill shopping centre. There is a council notice board on one side of the road, and pedestrian crossings over both streets. Round the corner in Seaview Street from the outdoor cafes there is a council library, opposite the high school. At the corner there are two phone boxes, and council has provided bench seating, planting and a water dispenser.
The widened section of footpath on Marrickville Road is fenced to the trafficable side, which is busy with passing cars, trucks and buses (limited to 40 km/h). There are signs on this fencing, spaced about 3-4 meters apart, reading "This is a No Smoking Area", with the usual symbol. The last one of these signs, at the eastern end of the fencing, has been graffitied to read "This is a Smoking Area", with a tick. The change to the sign followed local custom, since smoking was better tolerated at the eastern end of the tables. The shop-keeper from the last shop in this row would walk directly from his door to one of these tables, and was one of the regular smokers and coffee drinkers there. In wet weather, when the last tables are exposed, the smokers generally retreated to the adjoining tables under the umbrella, still those furthest from the Seaview Street corner. At the end closer to Seaview Street it was very rare to see anyone smoking.

This case study highlights the interaction of formal and informal regulation of activity in a public space. While the formal council regulation applies equally throughout the area, informal regulation applies more strictly at one end than at the other. Entering this area from the corner of Seaview Street the tables are more visible, and form a more obvious "front" area to the civic space. The eastern end becomes an out-of-the-way back area, despite a similar amount of passing foot traffic, where transgression of the formal rules is more acceptable.

The Council gave reasons for the smoke-free zones policy: "healthier, cleaner and greener". There are good health reasons not to smoke including avoiding passive smoke, and less obvious environmental reasons, notably the impact of butts which "take up to 5 years to break down". Yet the extent of bans on smoking in public areas, notably outdoor
areas, has an obvious aesthetic and sensory dimension. Contravention of non-smoking regulations is first perceptible to the sense of smell; passing by, one will not notice (visually) the surreptitious cigarette, or even, unless you look for it, the packet or the lighter on the table. The smell alerts us to this transgression.

Despite uniform council regulations covering the whole extent of the outdoor seating and dining area, informal law dictated that smoking was tolerated at the eastern, but not at the western end of the footpath. The council regulation had been in force for 3 years in 2014, when this study was carried out, and was still consistently breached. Since that date, it has been noticeable that smoking has been eradicated from the entire area. Informal changes to the law, such as a change of management at the "offending" café did not seem adequate to explain this change. Research into the formal law did. While local councils in New South Wales have delegated authority over planning and land use, they have no constitutional recognition in Australia, and have few powers and no authority to police criminal or other such matters. From 2011 to 2014, council cautioned businesses that their licence to use footpaths "will be conditioned". No other penalties were specified in the policy. In July 2015, however, the New South Wales government, with the major police enforcement power in the state, introduced amendments to the Smoke-free Environments Act 2000. These provided a $300 on the spot fine for customers smoking at outdoor cafés, and a possible $5,500 penalty for businesses where offences occurred.

We see here the interaction of three legal orders: the informal law of the street, which appeared to tolerate smoking further from the "civic" corner of Seaview Street, but without formal penalties; the Local Government regulation which banned smoking at all outdoor cafes in the Marrickville area, displaying signs and threatening conditions on licences to use footpaths; and the State law of New South Wales, which provided direct penalties, including substantial fines applied to individual smokers and to business proprietors. It appeared that the soft approach of the local council did little to overcome the informal law, with its graded tolerance for smoking. Financial penalties levied by the State, however, were of sufficient deterrent force to eliminate smoking from all the tables of the outdoor cafes within six months of their implementation. Since the informal law continued to apply, despite council regulations, right up to the time of the legislation, it seems likely that this was the main factor that trumped the law of the street.

The formalisation of halal meat

At the time of the 2014 study the door between the two cafes on Marrickville Road opened to a flight of stairs leading to a halal Pakistani restaurant ("Jinnah's", seen in figure 3.1). Around the corner, in New Canterbury Road, was a halal butcher and convenience store. In each case, the status of the food sold was signified by the word "halal", in Roman or in Arabic script, displayed on signs at the front of the premises. This refers to religious law, indicating that the food has been prepared in accordance with Islamic principles: notably that pork is not served, and that other meat comes from animals that have been slaughtered in the correct manner by properly qualified people. The relationship between religious and state law has been formalised to a degree in recent years, though it was not always so. Practices, too, have changed, with the increasing formalisation and availability of halal meat.

Here we broaden our inquiry, back in time to the early days of large scale immigration from Lebanon during the civil war there, and to consider also the neighbouring local government area of Canterbury, which adjoins Marrickville less than 2 km (about 1 mile) south west of the area we are discussing. While only 2.7% of the population of the Marrickville local government area are Muslims (a little higher than Australia as a whole: 2.2%), 16.6% of the population of the Canterbury local government area state their religion
as Islam. While there had been Lebanese and Syrian migration to that area, and to Marrickville, earlier in the twentieth century, numbers of arrivals from Lebanon increased markedly following the outbreak of the civil war there in 1975. While the immigrants had always included Muslims and Christians, the number of Muslims settling in the Canterbury area provided a population base for a mosque as well as numerous businesses catering to Muslims, including halal food outlets. Subsequently, Muslims from other countries gravitated to the area so that today there are more Muslims than Arabic speakers in Canterbury, and many times more than the number of persons born in Lebanon (many of whom are still Maronite Catholic or Eastern Orthodox).

In the late 1970s, halal food was hard to come by in Australia, including in the south western Sydney areas of Canterbury and Marrickville. As coordinator of a state government community health service in Canterbury during that period, one of the present authors worked closely with the council and the Lebanese community. The slaughter of animals in suburban backyards came to the attention of council and the community health service. This practice was not uncommon in rural and semi-rural Lebanon, and was adopted in Australia as a means of ensuring halal meat was available, particularly during Eid celebrations. At that time there were few formal channels, such as halal abattoirs or widespread certification of halal meat. The practice of slaughtering animals in suburban backyards caused some consternation in council, perhaps more for cultural than for legal reasons.

The legal situation surrounding slaughter of animals and halal certification has changed over the intervening forty years. This has involved a web of formal state and federal law, delegated powers allowing local governments to make certain orders, religious law, industry codes and trade agreements.

At the time of writing, home slaughter is not illegal in Australia, but meat from animals killed "at home" is not allowed to be sold in a commercial context, i.e. it is for home use only. Animal cruelty and human health seem to be covered by the response of the major animal welfare organization, the Royal Society for the Prevention of Cruelty to Animals (RSPCA): if you kill it you can eat it (at your own risk, as it were).

More recently than the historical events related above, Canterbury Council has adopted a Local Orders Policy on the "Keeping of animals", under section 124 of the Local Government Act 1993 (NSW). The Act provides for a council to order a person to refrain from doing a thing under certain circumstances: this may include "not to keep birds or animals on premises, other than of such kinds, in such numbers or in such manner as specified in the order." So the Canterbury Council policy specifies the conditions under which various species may be kept. Sheep and goats, for example, must be kept on areas greater than 1500 square meters, and only on land where suitable grazing exists. Such conditions would not exist on private land in the densely populated Canterbury area, so even without any specific prohibition on slaughter, "keeping" the animal would breach these orders under the Act.

Halal slaughter is permitted under New South Wales (Prevention of Cruelty to Animals Act 1979 s 24) and other states' legislation, while certification is regulated under a federal government initiative. Meat is certified as halal through the Australian Government Authorised Halal Program, which recognises some twenty Islamic organisations approved for "supervising the production and certification of halal meat for export". Establishments slaughtering and processing halal meat must have "Approved Arrangements", and slaughtermen must be registered and have an identity card, issued by Aus-Meat (a body of the Australian meat and livestock industries) which notes the Approved Islamic Organisation responsible for training and oversight. Halal meat is thus highly regulated by a web of government, religious and industry bodies. While these arrangements were put in place in
2005 to ensure the integrity of Australian halal meat exports, they also provide a clear and reliable foundation for halal certification for domestic consumption.

The overall impact of these interlocking formal, informal and delegated laws has clarified the position of slaughter and halal certification. Backyard slaughter, a practice imported from the Lebanese countryside, is more clearly regulated, is less likely to be practised due to the passage of time since migration, and has been rendered unnecessary to access halal meat. This is now sold in halal butcheries and served in halal restaurants. These "front" regions depend, as we have just seen, on a wide range of codes, orders and procedures operating behind the scenes (as far "back" as the abattoirs and slaughtermen), so that customers can be confident that they are consuming halal products. Muslim shoppers can and do access halal food from the many shops catering to them in Canterbury and Marrickville.

Religious law can be observed either informally or formally, regulated by religious, industry or state authorities, taken on trust, or on direct evidence, or by viewing a formal certificate. We see all these levels interacting in this case study. In the 1970s, the only authorities were religious, and the community ties were close-knit. Families knew the imam, or the local butcher or restaurateur. Animals slaughtered at home by the person known to be religiously authorised were directly seen, experienced to be halal. If the local food supplier was known to be honest and pious, then the community who knew this could take the food on trust as being halal. Since the efforts of the national government to regulate halal meat in the interests of the export trade, a panoply of regulations has been introduced, involving state, religious and meat industry players and resulting in a formal halal certificate for meat, which the consumer can see displayed at the point of sale.

_Crossing the street_

Also dating back to the period of migration from Lebanon during the civil war, Ghassan Hage has documented the case of a particular Lebanese immigrant who had been traumatised during the war. He developed a mania for going back and forth on a pedestrian crossing in Beamish Street in the Canterbury area, carried away by the power he had to make the traffic stop, so different from the closer encounters between cars and pedestrians he was used to in Lebanon. Pedestrian crossings, variously marked, exist in most jurisdictions, yet they are observed in very different ways. In Australia cars usually stop when a pedestrian indicates they are stepping off the kerb. In most of Asia, the Middle East and the Mediterranean, cars will slow or take evasive action so as not to hit a pedestrian, wherever on the road they happen to be, without necessarily coming to a halt.

Crossing Marrickville Road, in the block or two we are examining, is regulated by various laws, signs, barriers and speed humps. There are fences at the edge of pavements which provide a barrier between the people at the cafes and restaurants and the passing traffic. They also stop pedestrians from jay walking and crossing too close to particular corners, while encouraging them to use the designated pedestrian crossings. The speed humps reinforce the speed limit by making excessive speed uncomfortable for the driver, and dangerous to the undercarriage of vehicles. The formal 40 km/hour speed limit is signalled by a red and black sign on a white ground: an official and standard form of legal notification. This is accompanied, on an extra panel on the side of the white sign, by the advisory note that this is a zone of "high pedestrian activity". (See figure 3.1, where a speed hump warning sign is positioned on a light pole before the "40" sign.) In addition to formal regulation of speed, and advice about the reason for the reduced speed limit, there is a moral persuasion in the form of an image showing pedestrians, particularly children. Pedestrian crossings are slightly raised, forming another speed hump, and are marked on
the roadway in painted zebra stripes, together with a vertical yellow and black sign with a representation of a pair of walking legs.

In this proliferating forest of signs, and labyrinth of barriers, the pedestrian and the driver must draw on all their semiotic, interpretive and urban survival skills. If a simple reading will help them to understand the intended and unintended meanings of the signs, further interpretation may be needed to discern the legal context and regulatory force of these signs. Their survival skills will impel them to stop reading and interpreting signs, in order to read the behaviour of other pedestrians and of the car drivers. For all the regulation, only the most foolhardy pedestrian would step off the curb without first making eye contact with an approaching driver, or determining whether the car was slowing to a stop, speeding up, or simply cruising for a parking space, oblivious to the presence of pedestrians or of any signs other than those indicating the complicated parking restrictions.

Leone has catalogued many of the semiotic devices involved in crossing streets and ways of reading them. Of particular importance is his recognition of their narrative and even intergenerational function. A street sign or a speed hump is erected to be permanent: it will be there even when there is no police officer. Yet the ways it is observed, interpreted or even transgressed are equally important in determining the regulatory culture of the street. Like any cultural expression supported by artefacts, it can be conveyed to newcomers, the young are raised into it, and the communications themselves are constantly circulating. Pedestrians observe each other, they observe drivers, who note each others' reactions and those of the pedestrians. The law inhabits the street in which it is observed. But of course this is not simply the formal law of the New South Wales traffic code. It includes the lore of the neighbourhood and the accepted conventions of driving and crossing streets.

In different places and different cultures there are varying distances from the pedestrian at which the car will stop, whether the pedestrian has stepped off the curb, is walking purposefully towards the curb, or is simply thinking of crossing the street. One of the authors, when bringing his family to Haldon Street, Lakemba in the heart of the Canterbury area, to eat and shop for the best Arabic and halal food in Australia, would warn them to forget their normal assumptions about the way traffic moved in the regional Australian city where they lived. To reinforce the different morés applying to traffic and crossing the street, his advice was to forget they were in Australia, and to assume an approach more familiar from Asia or the Middle East. Likewise, international students from Asia or the Middle East, driving on international licences on a leafy university campus in the same regional city, take a different approach to marked pedestrian crossings than is customary in that refined environment. Particularly when there are more newly arrived students at the beginning of semesters, they can be seen to swerve around pedestrians already on crossings, and not to stop for others, about to step off the kerb. One of the authors has had occasion to berate such drivers, in Arabic, even surprising himself, that he has become so "Australian".

Hage's example of the mania experienced when cars observe different informal laws than one is used to has its obverse in the sense of threat or offence when there is less distance or the limits are pushed further. The experience of one of the authors in crossing the street, just at the corner where the cafes are located, is illustrative of this inversion. Waiting for a bus to pass, and then another car or two that were travelling close behind, the pedestrian decided to enforce his right to cross at the crossing, and so interrupted the flow of traffic by stepping between cars. Perhaps this transgressed some recognised norm which is to avoid such discontinuity. Or perhaps the driver had been in Lebanon as recently as Hage's manic road-crooser. In any case, the shout from the car of "mash'Allah!" ("God is amazed!") was typical of the exasperated and ironic expressions reported all over the world from pedestrians and drivers whose normal routine or expectations are disrupted by
transgressive activity.\textsuperscript{22} It is hardly necessary to insist that the transgression involved has little to do with formal law (indeed, formally, the pedestrian had right of way): expectations of the enactment of informal law were transgressed.

In a more recent piece, Hage has revisited his analysis of the use made of a pedestrian crossing, in the context of a cross-cultural reading of informal law and urban activity. Having earlier referred to the pedestrian crossing as "an ethical structural fact", he had to rethink that definition in the context of Lebanese pluralism. The urban morés of Beirut, whether in queuing or jostling for a sandwich, or crossing the road, are more contested and socially interactive than the equivalent activities in Australia. Hage thus recognises that sociality is negotiated, and not guaranteed by the state: "Negotiated sociality is a face-to-face 'horizontal sociality' that is not mediated 'vertically' by the law as a third party.\textsuperscript{23}

With Hage, we suggest that such an observation always applies to urban street life, even in Marrickville. As we have seen in the case of smoking or crossing the road, strict state legality is always present, in signs, traffic codes and speed humps, but is marginal to day-to-day activities. This may be more obvious in Beirut, Naples or Teheran than in Sydney.\textsuperscript{24} Yet the flow of peoples and cultures, whether these be the national cultures of immigration or the subcultures of class and age, provides constant challenges to a taken-for-granted interpretation and enactment of formal legal norms. Indeed, it may be that in a monocultural society (if such a thing exists) the ways law is negotiated horizontally are invisible: everyone "respects" the law and the lore in their own way. But since it is the way of all the other members of the society, any fault lines between formal and informal law are invisible. It is notable in the observations of Leone, Branco and Hage, cited above, that the status of being an outsider, or a returning expatriate, stimulates the appreciation of the horizontality of informal norms, that is to say, of legal pluralism on the street.

**Discussion**

**Space**

These case studies illustrate the interactions between formal and informal law and regulation in defining appropriate "region behaviour."\textsuperscript{25} Smoking is prohibited at all outdoor dining facilities, but it was informally tolerated at some more than others. It is safer to cross the road at a pedestrian crossing, but only if you recognise informal rules, closely observe cars, and negotiate your passage by eye contact with oncoming drivers. Animals need not be slaughtered in suburban backyards to meet halal standards: state, industry and religious regulation and the practices of government, industry and religious bodies now ensure that halal meat is available at "front of house", in restaurants and butcheries.

Smoking has been tolerated, but only at the "back" end of the café strip. Back yards are no longer spaces for halal slaughter: formally defined and carefully hidden back regions (abattoirs) now serve that purpose. The scandals that periodically erupt when animal rights activists penetrate the back regions of chicken factory farms or abattoirs, whether in Indonesia or Australia, indicate the significance of region differentiation. At the front--the restaurant or the suburban butchery--we see only the label certifying that what occurred at the "back" was halal, or met relevant health standards. When produce is properly and reliably certified--whether as organic, free range or halal--we do not need, and probably do not want to see with our own eyes, or smell with our own nostrils what we savour with our mouth.\textsuperscript{26} The interplay of formal and informal regulation of space and behaviour removes the need for personal sensory experience or interpersonal trust. The certificate suffices.

Law, space and region behaviour constitute each other. At the most formal level, statutes, planning instruments or council by-laws specify permitted land uses, conservation
zones, pedestrian crossings and prohibited activities. These laws represent spaces and the activities that may or may not occur in them, clarified with signs or maps. At less formal levels, social interactions and habitus constitute the nature of spaces. They open, unveil, unleash or serve up pathways, sights, smells and dishes that are constituted by social relations, interacting with formal and informal codes of behaviour. Spaces thus acquire their own regulatory force, so that we understand whether they are back or front, and what behaviour is proper or improper to them.

In examining the informal as well as the formal law, we see more clearly the role of space itself as a marker and enforcer of standards and forms of activity. Rules, laws or mœurs must, by definition, persist over time. Formal law in Europe, at least since the Roman and Visigothic administrations, relies primarily on written records or documents for its permanence. Many historic formal law traditions also rely on space as a marker and reminder of the law: tombs in Rome, the street processions of the Doge in Venice or the bailiff in Amsterdam, seisin and possession in 13th century England. Space also serves informal law. Indeed, as formal law increasingly depends exclusively upon the written word, the language of spatial markers and patterns of spatial practice are increasingly abandoned to the realm of the informal.

Law is one of the social elements that produce space and regulate behaviour. However, when we consider spatial practice and representational spaces, as they are understood by their inhabitants, we see that these are not always consistent with the legal and formal regulatory representations of space of local government and other authorities. The accommodation between these conceptions of space is mediated through social activity and through a web of regulatory regimes that are not always apparent to a state-centred or "black letter" view of law. Urbanists, sociologists and architects, just like lawyers, can recognise that space, like law, is not always "black letter" space. That is to say, it is produced and represented by regulatory as well as behavioural systems that are not always formal and written, but are nonetheless effective. This perspective helps us to move away from a view of space as it is defined formally (as in written codes and regulations), and of activities as simply "compliant" or "transgressive", to a more modulated appreciation of the interaction of formal and informal codes with space and social activity.

Time

It has already been noted that laws must have permanence: ephemeral patterns of behaviour and social activity are neither law-like nor lore-like. However, neither formal nor informal law is fixed and immutable. In the case studies we have observed formal law changing, through state legislation, and informal law coming into line with it, as in the case of smoking. We have seen the increasing importance of religious dietary law, both in regard to domestic demand and export markets, leading to changes in laws recognised by the state, as in the case of industry codes. And we noted the time lag between immigration, or arrival as an international student, and adoption of local laws—particularly informal ones—or the accommodation of the incoming informal law. In the meantime, each immigrant negotiates her or his own way to survive in an unfamiliar and alien legal regime. This may involve difficult experiences, such as trying to negotiate, from the assumptions of a different legal culture, with traffic police who enact their role as if it were the enforcement of a black letter law. Before accommodation, gaining access to halal food involves a process of negotiation, a process that may become easier as the laws and practices in the host country themselves negotiate new demands.

In rapidly changing situations, as for the immigrant or the multicultural society, or technological and scientific change, practice runs ahead of formal law. Texts slow down the
law. Written at a specific point in time, they are then frozen and require increasingly flexible interpretations to cope with changing circumstances, both social and technological. Whether the text be a constitution, a holy book or a Napoleonic code, its pretensions to lay down the law for all time are constantly challenged. Both the circumstances of its enforcement and those of the "users" of the law change over time. The dangers of smoking, even passive smoking, are recognised, and social expectations, conditioned by both law and science, change; the law can change further. Cars go faster; speed limiting and detection devices are invented. Muslims migrate to new parts of the world without the established religious infrastructure; refrigeration and increasing speed of transport allow international trade in slaughtered meat; local meat producers, abattoirs, the imams and ulama adjust to the demand; the state follows suit. Laws change in response to practices as they become established, while practices adapt to changing laws. This observation applies as much to informal as to formal law. Each dances with the other—formal law, practice, technique and informal law—in time and in place.

Places, like texts, help to slow down and position the law. Yet they do so without the explicit instructions of a text. It may be said that the law of a place is open to more flexible interpretation than that of a text. It follows repeated practice, rather than prescribing specific practices. Performances of the law always take place: they are situated. Here we see the constitutive theory of law in practice. Repetition makes the law, while the law conditions iterations, but they are not condemned to be identical to each other.

"The performative needs to be rethought not only as an act that an official language-user wields in order to implement already authorized effects, but precisely as social ritual." In noting the importance of ritual, Butler provides here a useful model to analyse and promote this formal-informal (re)iteration of law over time. Noting that Bourdieu fails to see the subversive possibilities of utterance and ritual, while Derrida assumes such to be inevitable, by combining elements of each she derives a liberatory analysis. This discovers the conditions for breaking out of the power of habitus through critical perspectives. Those critiques do not act purely at the level of language, but in social interactions, through "negotiated sociality". Each crossing of the street, each cigarette smoked, each halal transaction around food, references the previous ones and lays the groundwork for the next. This is how the social practice of law can be projected into the future.

Our illustrations from the demands of changing technology, health science and trade show some of the channels by which law is opened to other institutional systems. Informal law is more malleable than formal or state law. It is quick to respond to new social facts, while being slowed down by habitual practices. Halal meat was regulated in the interests of international trade, but it was first popularised in Australia by Muslim immigrants. Prohibitions on smoking follow the discoveries of medical science on its dangers to health, yet they must interact with informal norms, and the interventions of the tobacco companies. Law reform is stimulated and challenged, slowed down or impelled by social practices, expressed in informal law, as well as by larger social realities including science, technology and economics.

By seeing the interpenetration of formal and informal law—in the provision of halal food and the practices of smoking, driving and walking on the street—we catch a glimpse of the possibility of practice instituting formal as well as informal law. Even beyond constituting the law, Dardot and Laval have called this the "praxis instituante", the praxis that institutes the law: "the self-production of a collective subject in, and through, the continuous co-production of the rules of law." In their sketch for a revolution of the 21st century by which the common could overcome the monopoly of state power and the tyranny of the markets, it is only this instituting process which can establish "the common" in the social imaginary.
Culture

Culture both nourishes law and is constituted by it. In the case studies we have seen legal cultures grow around street corners. We have seen cultures arrive in a new area and accommodate to, while also moulding the laws of previously established cultures. The mix of cultures coming to the place form the basis for establishing new informal legal relations, renewed and renegotiated with each encounter. Each of us carries around a culture in our thoughts, actions and meaning systems. While culture is inculcated from our earliest years, this is not to say that we become, in adulthood, immutable products of a culture. Each of us carries culture into each encounter, from which new cultural understandings, practices and regularities emerge.

The assumptions of the model of indigenous "customary law", that we noted in introducing this chapter, suggest a timeless underlying law that has been superseded by the new sovereign law of the colonisers. Any "accommodation" is assumed to be on the terms of the colonists. This simple dualism is challenged when the presumptively monolithic sovereign law confronts new practices and informal legal regimes which arrive with, or spring from the legal cultures of a mix of new immigrants. Each encounter of formal and informal law, or of one legal culture with another, is negotiated anew. The state plays a role in this process, but it is not the simple hegemonic act of "accommodation", the grudging and minimal acceptance of difference. The state cannot regulate every encounter. It makes room for the halal butcher not through accommodation but because the space is taken up by the new alternative.

"Accommodation" and "tolerance" are always top-down: they indicate what the state authority is prepared to accept or put up with. This study has shown both ethical and empirical reasons for preferring "negotiation". The citizens also have their own diverse opinions, habitus and cultural and legal expectations that suggest how far they can go in putting up with the state. Cultures and informal laws, like the immigrants themselves, insist on their own survival. This always involves negotiation: some recognition of formal or informal law is necessary to reach the other side of the road alive. This applies to the figurative road of living in a new country as much as the literal Marrickville Road or Beamish Street. The negotiations of law and culture pick their way among proliferating options: there are consequences as well as choices.

We follow Geertz in seeing that the comparative study of law is made up of cultural translation. He derives this conclusion from two principles that have also guided this study: "law is local knowledge not placeless principle and … it is constructive of social life not reflective, or at any rate not just reflective, of it." Each of the case studies illustrates the interaction of various levels of formal and informal law. The outcome of those interactions is always indeterminate, since every encounter is freshly negotiated. People may or may not smoke; cars may or may not stop; meat may be certified as halal or taken on trust. It is only in the outcome of each encounter that we can know which level of law, which combination of informal and formal laws, applied in a given situation. This negotiated sovereignty is a form of radical street level positivism, based not on the solid foundation of a Grundnorm, but on the negotiated facts of empirical experience and the instituting praxis of law. These are patterns without certainty; indeterminate regularities that both make and break rules, always at the same time.

Conclusion

In this chapter we hope to have illuminated some central issues in the social, political and material relations of law by exploring a few very specific places in the inner south west
of Sydney. To restate our opening questions, in the broadest terms, we asked where laws come from, how they are recorded, and how conflicts among them are worked out. Throughout the chapter informal laws have been juxtaposed against formal, state laws. In the process, the lines between the formal and informal have become blurred.

Our focus on a multicultural and (post)colonial society has revealed a patchwork of legal regimes in operation. Invisible to this study, but pre-existing and surviving beneath the surface of the laws we observed here, are the indigenous laws of Australia. The imposition of colonial common law, at federal and state level, laid down a formal platform of law, written and institutionalised. Overlaying and undermining the law of the colonial power are numerous informal laws, seen here to be operating at street level. They spring from traditions (both autochthonous and introduced), habits and alternative legal regimes.

At their least formal, these patterns of law-like behaviour are expressed in everyday interaction: crossing the road, driving a car, sitting at outdoor cafés, buying food. They are performed against a backdrop of street level laws and their signs. Some of these are state-sanctioned: the "no smoking", speed limit and pedestrian crossing signs. There are also signs that declare food to be halal, which derive from Islamic formal and written legal regimes, which have been incorporated over several decades into state and industry codes. So we see that the more formal of these laws have been inscribed into signs, codes and statutes. Others are inscribed in the human micro-geography—the regions—of the street: the visible, civic "front" corner where one does not smoke, as opposed to the "back" region where smoking was tolerated (and where the formal sign had been graffitied). The laws are recorded in action in space, in formal signs (in Arabic and English), and in graffiti as well as in codes and statutes.

Some of the activities on the street could be clearly seen to be transgressive, such as smoking in front of a "no smoking" sign, whether or not it had been graffitied. Most, however, fall into a grey area of negotiation, such as the interactive dance between the pedestrian and the car at the marked crossing, whether or not accompanied by ironic comments on unexpected behaviour. Negotiation, we propose, is at the heart of all this street level legal activity. In meeting their daily needs—to eat, smoke or cross the road—the local people go about their business in habitual ways. Habit, habitus and regularity come before regulation, before the law. In this process laws, both formal and informal, carve out their own space, make room for actions, regularity and regulation, in a process that is less polite and less conscious than accommodation, yet more civil than competition or conflict.

Bodily practices in space and time precede legal regulation, but are not immune to it. Perhaps Legendre overstates it when he writes that there is "no difference between a legal codification and the encoding of the body" (as in dance). De Certeau modulates more carefully when he identifies the dual functions of the planners and common people in the city, attributing to the former a panopticon urge to control, and to the latter a narrative (i.e. pedestrian) experience of the space, in which memory plays an important part. "In short," writes De Certeau, "space is a practiced place. Thus the street geometrically defined by urban planning is transformed into a space by walkers." We see the same relationship between informal law, legal codes, and the habitus of daily life. Deep memories coded into bodies persist, new practices spring up in the urban environment, laws are created or respond through adaptation, prohibition or negotiation.

If laws can come from below, from the street and from the coding and interaction of bodies, they can also channel the big ideas and interests of recent times or of long traditions. Islamic law, medical science and economic interest have all been seen, in these case studies, to contribute to the outcomes of daily interactions: smoking is banned, and
decreases as a social practice; halal meat becomes available, in accord with ancient laws and the demands of global trade. Yet even these big ideas are expressed on the street, in bodily habitus and suburban backyards, and in the signs that regulate and advertise activities of daily life, on their way to being law.

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Legislation
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Schreiner, Agnes T. M. "So, this is how it is done ..." In *Ritual and Semiotics*, edited by J. Ralph Lindgren and Jay Knaack, , 123-43. New York: Peter Lang, 1997.


ENDNOTES


8 Some of those experiences and findings, including inputs from other agencies, is included in Richard Mohr et al., *The Lebanese Community in the Canterbury Area*, (Canterbury Community Health Services). Sydney: Ethnic Affairs Division of the Premier's Department of NSW, 1978.

9 They were identifiable by the use of one of these languages, a depiction of a national flag, or by explicit reference to the cuisine or type of food available. In addition, there are other shopkeepers of these and other ethnicities, who do not advertise their linguistic or cultural background.


11 Since this was written in mid 2016, the library has moved and Marrickville Council has been amalgamated with other local authorities to form a larger council.


13 Until the 1920s present day Lebanon was part of Syria.

14 Mohr et al., *Lebanese Community*.


16 The backyard of a house in Belmore or Lakemba may have been considered to be private, a "back" region in Goffman's terms, by the Muslim residents. This was not the view of certain Anglo-Australian neighbours, or the council health authorities. They considered it sufficiently "public", or "front" to want to discourage or prohibit the slaughter of animals there.


22 Leone reports the "sarcastic courtesy" of an elderly pedestrian lady in Turin, cut off by a car: "vada pure, nel!" ("go right ahead!"). Leone, "Cruzando calles", 134.


26 Henshaw notes that in modern western cities "the smellscapes of city streets are turning into sterilized clones of one another." Victoria Henshaw, "Welcome to the Smellscape," 222 New Scientist, June 2014, 28.


30 Agnes T. M. Schreiner, "So, this is how it is done ....," in Ritual and Semiotics ed. J. Ralph Lindgren and Jay Knaack (New York: Peter Lang, 1997), 123-43.


32 Lefebvre, Production of Space, 33 ff.


36 The simple "customary law" model is equally challenged when indigenous peoples form new cultural and informal legal practices in response to colonisation. This can occur through practices of resistance, through interpenetration and innovation as a result of mingling of diverse indigenous and immigrant groups, or through creative adaptation and epistemic responses to settler law. See Mohr, "Shifting Ground," 1-24.


