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Jonathan Goldberg-Hiller, 'Law by Night'

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Jonathan Goldberg-Hiller. *Law by Night*. Duke University Press 2023. 344 pp. \$109.95 USD (Hardcover 9781478020530); \$29.95 USD (Paperback 9781478025351).

When we think about and discuss law, we usually do not think about or discuss the night, and vice versa—when we think about the night, we do not often consider law. We tend to view nighttime activities as either a time for rest or as involving outlaw behaviours, disconnected from diurnal regulations. Jonathan Goldberg-Hiller’s *Law by Night* explores how law is transformed by the night, how it can be abolished in the night, and how nocturnal activities contribute to the formation of laws governing the day. To do so, Goldberg-Hiller draws from various disciplines and theoretical frameworks, including feminism, the history of slavery, and police studies, but primarily biopolitics. His work spans a wide range of eras, regions, and cases, from the United States to African countries, from the Middle Ages to today, and from royal succession to curfews in colonized areas and during the recent COVID-19 pandemic. The book also touches on diverse human experiences, from sleep to escape from slavery, from feminist “Take Back the Night” movements to the fear and security issues of the night. While *Law by Night* may initially appear to be a book on legal theory, it transcends that genre—it is also a work of cultural studies, political theory, and a study of state power, among other themes.

The book begins and ends with a special emphasis on the concept and function of metaphor within law and society. The middle chapters examine different ways in which human activities at night interact with law. Throughout human history, darkness has been a constant presence in civilization. From Plato’s allegory of the cave to state violence committed under the cover of night, darkness can either challenge us to rethink social structures or test our survival. This has informed two dominant cultural perceptions of the night: that night is more dangerous not only for the people but also for the power. The second perception is fed also by the myth of insurrections and riots which can be more uncontrollable at night than at daylight. Goldberg-Hiller’s central argument is that both perceptions of night and law can fuel violence by activating a politics of fear and threatening the social hierarchies that dominate the day (12). However, the state and its law treat it as a continuation of the day, its activities, and its dynamics. This leads us to the core purpose of the book: to better understand how this violence operates in and is legitimated by the dark. The author moves from the allegory of the cave and Lon Fuller’s fictional exploration of anthropophagy to examining real cases that expose the dark side of time.

One such case explores the right to sleep, limits on state intervention during the night, and how the sleeping body becomes subject to control. Goldberg-Hiller uses Michel Foucault’s theories to shift the focus from sleep to its governance, and from sleep as a personal and individual activity to sleep as a communal and symbolic act. Sleep is subjected to all symbolic, political and social meanings and arrangements power applies to political communities in modern societies.

The state’s right to regulate sleep brings with it an obligation to monitor and protect its citizens, but this right can easily escalate into an uncontrollable state power to kill is examined with reference to the way darkness is interlaced with Blackness. Although Goldberg-Hiller has previously claimed that night can threaten social hierarchies, he also shows how state violence



often increases at night, and how it contributes to the racial dynamics of violence. To do this, he returns to the slavery era in the United States and to the dependence of republicanism on slavery. He introduces the old-fashioned word of militia—where white communities defended themselves and turned gun ownership into a marker of racial and national belonging. The most intriguing part of the analysis revisits the fear, dating back to slave-hunting in Africa, that the prey might become the predator. Today, police officers who disproportionately kill Black individuals justify their actions by claiming to fear for their lives. This is the contemporary parallel to the white militia which hunted people in the dark and denounced law until they made the hunting of people lawful (67).

In opposition to state surveillance and lethal violence, it is often noted that riots and insurrections are favoured by the dark. From Los Angeles to Paris suburbs, and from Athens to Buenos Aires, the night belongs to people who confront police violence and challenge state power. Goldberg-Hiller links these uprisings to historical resistance, reminding us how the night has facilitated the slaves' attempts to win their freedom and resist the cruelty of the day. In these moments, the night becomes illuminated, and the day becomes identical with the darkness: when freedom and resistance meet the night, the night is not any longer a dark, threatening, and terrifying space.

By connecting the dark legacy of white militias during slavery with the modern-day realities of state and police violence, Goldberg-Hiller shows how the projection of bad intentions and obscurity are now used to justify extrajudicial killings. This raises the question of whether these acts of violence are motivated by generalized racism, seeking to confirm its hegemony, or by long-institutionalized police practices (93), exposing the state's violence for what it truly is.

For those who lived through the COVID-19 era, curfews and lockdowns became a part of daily life. In *Law by Night*, Goldberg-Hiller examines curfews through the lens of Carl Schmitt, Giorgio Agamben, Foucault, and Slavoj Žižek, making this one of the book's most biopolitical chapters. He also touches on neoliberalism, emphasizing how the responsibility for safety shifted from the state to individuals. Using examples from Agamben, he shows how citizens were turned into hunted bodies, punished for crimes they had not committed. Juvenile curfew laws, for instance, produce the crimes they seek to prevent (119), turning young people into lawbreakers. Goldberg-Hiller also discusses the colonial roots of curfews, using the example of Palestine, where curfews were used to segregate people and weaponize time. He draws connections between the colonial use of curfews and the pandemic-era curfews, suggesting that health and survival are more about social and political governance than biology (129), aligning with the central tenets of biopolitics.

While so far Goldberg-Hiller has highlighted the negative side of the night, he next explores the feminist struggles to take back the night. He turns to Andrea Dworkin's feminist philosophy and of the Enlightenment's struggle over consciousness-raising. The latter is extended to the claim of their independence as an example to how a paradigm developed to exclude has helped the excluded to gain their self-consciousness. Night becomes the place of activism and the frame of lawlessness distorting the traditional views of night as danger for white women because of black men and danger for black people because of white terrorism. Even though some criticism on aspects of her

work is presented, Dworkin's thought is central here.

Law by Night concludes as it begins: with an exploration to metaphor. In the final chapter, the author seeks to define how metaphor shapes the way we translate night in legal terms and meanings which have since the Enlightenment been destined to regulate day. Drawing on Derrida, Walter Benjamin, and José Saramago, he argues that legal metaphors often frame darkness negatively, rendering actions more suspicious. This brings us back to the fundamental issue of the power which sets law for the protection of the less vulnerable in the day. However, it cultivates injustice in the night, functioning as a guardian of a continuous lack of freedom, justice, and equality.

Law by Night sheds light to the complex relationship between law, day, and night aiming to grasp these realms influence each other. It seems that sometimes the book explores themes which could be omitted to maintain a tighter focus and the argument is not lost amidst these diverse frameworks. Readers not familiar with the various theoretical frameworks, historical contexts, and terminology used will probably find it challenging to follow the relationship described throughout the book. Nevertheless, it could potentially serve as a starting point for further reading and exploration especially for those readers. It also seems that the author occasionally romanticizes the night, overlooking the fact that exploitation does not pause after sunset; on the contrary, it might be even worse than during the day. He finally seems to believe in the ability of the night to attribute equality more than his own work proves the night to be able to do. Overall, Jonathan Goldberg-Hiller offers us a book which can be an excellent example of legal theory that remains grounded in reality, and closely connected to the power from which it emerges.

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