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LAW AND SOCIETY MOVEMENT

"Law and society" refers to an association of scholars, a journal of academic research, and a collection of empirical approaches to understanding how law works. As an intellectual movement, law and society scholars often locate themselves at the margins of traditional legal scholarship, looking at what law does rather than what law ought to do. In place of the normative orientation of most jurisprudence, the law and society approach makes a simple but ambitious claim: law, legal practices, and legal institutions can be understood only by seeing and explaining them within social contexts. By employing what are believed to be the more reliable and powerful resources of scientific inquiry, law and society scholarship moves beyond purely subjective interpretations through systematic comparison between theory and data and at the same time offers critical judgment because it is independent of the authority and interests of the legal profession and institutions.

Because law is a system of both symbols and action, structured reason and constrained force, the social scientific study of law has roots in diverse traditions. Attention to the relationship between law and society, the role of reason, and the regulation of force can be found in ancient and medieval works of philosophy from Plato (fifth-century-B.C.E. Athens), through Thomas Hobbes and John Locke (seventeenth-century England) to Montesquieu's canonical work, *The Spirit of the Laws* (eighteenth-century France). The cultural and social action dimensions of law became more prominent in the nineteenth century, when jurisprudential thinkers such as Friedrich Karl von Savigny (1831) in Germany described

law as the slow, organic distillation of the spirit of a particular people, and when historians such as Henry Maine (1861) in Britain described the development of social relations over the millennia as a movement from status to contract.

At the beginning of the twentieth century, legal scholars in major U.S. and European institutions were devoting increasing attention to the sociological aspects of law. The Austrian scholar Eugen Ehrlich (1913) described what he called "the living law," the complex system of norms and rules by which the members of organizations, communities, and societies actually live. Formal law emanating from the state is dependent in large part, he argued, on its informal concordance with the living law. U.S. judge and jurist Oliver Wendell Holmes perfectly expressed the movement toward social understanding of law when he wrote in *The Common Law* (1881) that the life of the law is not logic but experience. Roscoe Pound (1910), dean of the Harvard Law School, pushed the sociological perspective yet further when he named the informal practices of legal institutions "the law-in-action," contrasting them to "the law-in-the-books," legal doctrines formally enacted and ideally in force. U.S. legal realists, writing in the 1920s and 1930s, made the exploration of this gap between the formal law and the law-in-action the central focus of their research. Alongside their efforts to expose the illogic of ostensibly logically compelling principles and precedents, the legal realists began the work, taken up by the law and society movement three decades later, to describe the law-in-action.

By the end of World War II, the social sciences had developed empirical tools for data collection and analysis (e.g., surveys of legal use and need, statistical analysis of court records, interviews with jurors and judges) that moved the study of the law-in-action forward with energy and effectiveness. The social sciences had become a respectable third wing of U.S. higher education, finally standing abreast the historically more prestigious humanities and the more recently institutionalized sciences. From some perspectives, the social sciences, in adopting methods from the physical sciences, especially experimental techniques and quantitative methods of data analysis, had begun to pull ahead of the humanities as sources of reliable social knowledge.

Turning their gaze to legal processes and institutions, social scientists could also draw upon their own disciplinary traditions to authorize their research. The most important social theorists writing in the nineteenth and early twentieth centuries had already recognized law as a central means of rationalized coordination and regulation in modern societies no longer governed as tightly by custom and religion. Post-World War II social scientists were encouraged to look closely at how law accomplished this role as the general societal manager. In this work, they

drew upon Emile Durkheim's models of the different functions of law in societies with lesser or greater divisions of labor and sought out evidence of varying degrees of repressive law or restitutive law in more or less industrialized societies. Following Max Weber, others described patterns of litigation and legal doctrine associated with different types of economic and cultural development.

In 1964, a group of sociologists, political scientists, psychologists, anthropologists, historians, and law professors formed the Law and Society Association; in 1967, they began publishing a research journal, the *Law and Society Review*; and following two national meetings in the 1970s, annual conferences provide opportunities for exchanging and debate. The early years of the association and journal, as well as four research centers located on the campuses of the University of California at Berkeley, the University of Denver, Northwestern University, and the University of Wisconsin, were supported by generous grants from the Russell Sage Foundation, whose interest in social policy and change found a happy target in this nascent intellectual movement. Recognizing law as the central governing mechanism and language of the modern state, the foundation sought to explore ways in which the legal profession might, or might not, provide leadership for progressive social change. Drawing upon the diverse historical sources available, research projects by society members, and the pioneering work of contemporaries such as Philip Selznick at Berkeley, Harry Kalven, Hans Zeisel, and Rita Simon at Chicago, and Willard Hurst at Wisconsin, the birth of the law and society association signaled an organized, long-term commitment to interdisciplinary empirical work that would transcend the limitations of traditional legal scholarship. The foundation, association, and journal created a field in which "social science disciplines could be brought to bear on and combined with law and legal institutions in a systematic manner"; thus, in its support for academic research centers, training institutes, fellowships, specific research projects, and a professional association and publication, the foundation "was both responding to and contributing to [a] moment of striking change" (Tomlins 2000, 934).

In its more than thirty-five years of history, this interdisciplinary movement has produced a body of durable knowledge about how the law works. Law and society research has discovered law everywhere, not only in courtrooms, prisons, and law offices but in hospitals, bedrooms, schoolrooms, in theaters and films and novels, and certainly on the streets and in police stations and paddy wagons. At times, sociolegal scholarship has also mapped the places where law ought to be but is not. For law and society scholarship, as for many citizens, "the law is all over" (Sarat 1990). In historical studies of litigation, policing, the legal profession and delivery of legal services, court cultures and judicial biographies, the effec-

tiveness of legal regulation of workplaces and business transactions, and legal consciousness; in reports on access to law; and in histories of how particular legal doctrines and offices developed, law and society research demonstrates how organization, social networks, and local cultures shape law. This research has also demonstrated how law is recursively implicated in the construction of social worlds—of organizations, social networks, and local cultures—and thus contributes to both the distribution of social resources and the understandings of the worlds so constituted.

These accounts describe how in doing legal work, legal actors and officials respond to particular situations and demands for service rather than to general prescriptions or recipes provided by legal doctrine. Although law claims to operate through logic and formal rationality, it is no different from most other work and thus, rather than following invariant logic or general principles, proceeds on a case-by-case basis. This is evident in the production of law through litigation and in the creation of precedent through decisions in individual cases; it is true of law enforcement as well. Most participants, professional and lay, operate through reactive, situationally specific rationality. And even in instances of organized campaigns by civil rights organizations, labor unions, or the women's movement for pay equity, legal strategies rely on this understanding that long-term changes depends on the ability to aggregate the outcomes of individual cases.

Because legal action is not rule-bound but situationally responsive, it involves extralegal decisions and action; thus, all legal actors operate with discretion. Documenting the constraints and capacities of legal discretion has occupied these several generations of law and society scholars, whose research provides evidence about how discretion is invoked, confined, and yet ever elastic. In exercising this inevitable discretion, legal actors respond to situations and cases on the basis of typifications developed not from criteria of law or policy alone but from the normal and recurrent features of social interactions. These folk categories are used to typify variations in social experiences in an office, agency, or professional workload and to channel appropriate or useful responses. These typifications function as conceptual efficiency devices.

By relying on ordinary logics, local cultural categories, and norms, legal action both reflects and reproduces other features and institutions of social life. On the one hand, as a tool for handling situations and solving problems, law is available at a cost, a cost distributed differentially according to social class, status, and organizational position and capacity. On the other hand, law is not merely a resource or tool but a set of conceptual categories and schema that produce parts of the language and concepts people use for both constructing and interpreting social interactions and relationships. These ideologi-

cal or interpretive aspects of law are also differentially distributed. The most well-cited piece of law and society research summarizes much of the research by creating a model of the variable capacity of legal actors based on their status as one-time or repeat players in the legal system, concluding that despite ambitions for equality under law, "the 'haves' come out ahead" (Galanter 1974). This observation does not undermine legality but has become part of the common cultural understandings that help sustain the power and durability of law as common knowledge of legality's limitations protects the law from more sustained critique.

In addition to developing a growing body of empirical knowledge about how law works, law and society has also been successful in institutionalizing its field of scholarship. Although the sociology of law in Europe remains a predominantly theoretical and normative enterprise, it is, nonetheless, a required subject for the education and training of lawyers. In the United States, the original centers of law and society research in the law schools of Berkeley, Wisconsin, Denver, and Northwestern remain strong, with additional concentrations of law and society at the University of California at Los Angeles, the State University of New York at Buffalo, the University of Michigan, and New York University law schools.

The influence of law and society research on legal agencies is probably much more significant than its relative marginality in legal education suggests. Most courts, agencies, and legal organizations collect data about their activities. Most recognize the role of nonlegal factors in shaping their work and use social variables among other indicators to analyze and explain legal work. Law and society scholars regularly serve as expert witnesses in litigations on capital punishment, witness reliability, and gender and racial discrimination, among other topics. Newspapers also report the results of sociological research. Thus, alongside a picture of the law as a system of words and documents, law and society has succeeded in painting a picture of law as a social system, an understanding that has been documented in popular and professional consciousness.

Finally, law and society research has flourished most conspicuously outside the law schools in colleges and universities. The appearance of an increasing number of synthetic texts for undergraduate students, research journals, dictionaries, and encyclopedia entries, the development of the more than five dozen undergraduate programs and the half dozen Ph.D. programs in existence and demands for international meetings and collaborations testify to an increasingly mature and institutionalized field.

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See also Law and Economics; Legal Behavioralism; Legal Realism

References and further reading

- Ewick, Patricia, and Susan S. Silbey. 1998. *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press.
- Galanter, Marc. 1974. "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change." *Law and Society Review* 9: 95-160.
- Garth, Bryant, and Joyce Sterling. 1998. "From Legal Realism to Law and Society: Reshaping Law for the Last Stages of the Social Activist State." *Law and Society Review* 32: 409-471.
- Lipson, Leon, and Stanton Wheeler. 1986. *Law and the Social Sciences*. New York: Russell Sage Foundation, 1986.
- Sarat, Austin. 1990. "'... The Law Is All-Over': Power, Resistance and the Legal Consciousness of the Welfare Poor." *Yale Journal of Law and the Humanities* 2: 343-379.
- Schlegel, John Henry. 1995. *American Legal Realism and Empirical Social Science*. Chapel Hill: University of North Carolina Press.
- Tomlins, Christopher. 2000. "Framing the Field of Law's Disciplinary Encounters: A Historical Narrative." *Law and Society Review* 34: 911-972.