THE STUDY OF LAW IN SOCIETY IN BRITAIN*

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INTRODUCTION

In 1968 Renato Treves and J.F. Glastra van Loon edited *Norms and Actions*, a book of essays by indigenous scholars describing "law and society" research in their countries. No account of work in Britain was included, probably because there was so little activity in the field at that time. Yet only eight years later remarkable changes seem to have occurred. Courses at undergraduate and postgraduate level have proliferated; the number of empirical research projects is expanding; new centers and institutes have been established, series of books and a specialist journal have been launched, and financial and institutional support is provided by the universities, research councils, and through governmental initiatives. Not too long ago Lon Fuller (1967:1) suggested that the growth of interest in studying the operation of the law in American society had "come to assume the proportions of something like an intellectual movement." Some commentators are tempted to perceive recent British developments in like fashion. But whatever the truth of Fuller's analysis of the American setting, it is dangerous to apply it to the situation in Britain. It would be *reassuring* to think that British academics simply discovered (rather later than elsewhere) a novel field of inquiry and boldly set out to explore it, and that the clamor of current activity indicates a vigorous beginning has been made. This would allow us to predict a healthy future and the rapid enhancement of our understanding of the nature and operation of law. It is just as plausible, however, to regard the current developments as fortuitous and perhaps transitional—the product of a curious concatenation of institutional, political and social influences.

In this article we attempt to sketch the nature of current law and society research in Britain. Our aim is to explain the

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growth of activity and to assess the value of contemporary work. In order to understand instead of merely cataloguing current themes, we begin by asking why did interest in this field not develop in Britain, until very recently? Why did it develop when it did and what factors were most important in promoting it? To what extent does current work continue to exhibit formative influences? What are the implications and likely consequences for future research? Questions of this sort (and their answers) are inherently interesting for any field of inquiry, but particular relevance may be claimed if, as with law and society research in Britain, the field is marked by introspection, dislocation, and uncertainty. It is argued in this article that these characteristics of the field are not—or not merely—signs of its immaturity, but rather reflect the existence of two competing intellectual orientations. Although not always (or fully) articulated, these orientations have remained consistent and important since the beginning, and continue to inform research activity and academic discussion. They were institutionalized at an early stage, have provoked conflicting loyalties, and the crucial issues at stake have yet to be resolved.

In recent years two novel phrases have been heard in departments of law and in departments of social science in British universities.[1] These are "socio-legal studies" and "sociology of law". A casual observer might regard these phrases as synonyms or simply verbal preferences, which indicate that there has been an increase of interest in using the methods and theories of the social sciences to resolve problems about the nature and operation of law. As always with conclusions which are drawn at the expense of eradicating subtle linguistic distinctions, such a superficial view is valid only at a level of generality which masks the gulf which separates these two phrases. For while there has been a growing recognition that the social sciences and the law need somehow to be conjoined, there have been fierce disagreements as to how this should be achieved and for what purpose. The two phrases have been flown as standards in the battle for whatever resources and intellectual or practical prestige might be at stake. Behind the standard of the

1. In Britain, university legal education takes place in "Law Departments" or "Law Faculties"—the difference merely reflecting the internal administrative structure of particular universities. "Law Schools" in the American usage is less common in Britain but may be used generically to refer to both Departments and Faculties. To avoid trans-atlantic misunderstanding, we refer to "department" throughout. It is worth noting that legal education in Britain is at undergraduate level, with the numerically small exceptions of research postgraduate courses and taught Masters courses.

"sociology of law" ranged those who denigrated the other side as antitheoretical, concerned with social engineering through the existing legal order, and not with explaining that order or transcending it by critique. The word "sociology" was emblazoned in gold on their banner because it signified a claim to greater theoretical sophistication. Under the ensign of "socio-legal studies" encamped those who chastized the other side as abstract theoreticians, whose speculations were divorced from reality and lacked practical relevance. Law, lawyers and the legal system were taken as they were found, and their inter-relations with real people were examined and evaluated.

To understand the present state of law and society research in Britain, it is necessary to look behind such slogans and rhetoric if we are to do more than merely reiterate the prejudices and ideologies of the debates. The two sides are caricatured in our account, but the caricatures are neither original nor without effect. As in many good battles each side has propagated in its attacks a crude distorted picture of the other. Since both have been reasonably successful, a pronounced bifurcation of the field has developed. While examining this bifurcation, we attempt to relate arguments within the field to debates in the social sciences and jurisprudence, and thus endeavor to separate what is genuinely new from what is merely a controversial reformulation of the familiar.

THE TWO APPROACHES

Socio-legal studies have been proclaimed as radically different from the work previously done in law departments in general, and by jurisprudential scholars in particular. The emergence of socio-legal studies in Britain was welcomed therefore by some commentators (e.g. Willock, 1974; Twining, 1974) as an innovative, novel and exciting departure for the study of law. Thus it is claimed that in utilizing social research methods and in recognizing the empirical nature of many disputes in jurisprudence previously assumed to be of a conceptual nature, socio-legal work is significantly different and important. Departing as it does from the focal concerns of much prior legal theory, it is seen as new activity which is *relevant* because it deals with the *actual* operation of law and its effects on people—with access to legal services, with the treatment afforded to defendants in court, with welfare and poverty issues. Such a view of socio-legal research has, we suggest, considerable force as long as it is borne in mind that the touchstone is research activity by legal scholars or within law departments. Compared with the con-

ventional research concerns and procedures of academic lawyers, the differences are sufficiently real to have produced strains and tensions in law departments. The new socio-legal approach is regarded as subversive by some law teachers, and others believe it represents the indulgence of those who do not understand what is truly entailed in the study of law. To these critics the proper domain of the law teacher is "hard law" or "black letter law"—the careful analysis and exposition of positive or written law. Their resistence to possible encroachments from socio-legal researchers who wish "to broaden the study of law from within," or to teach "contextual law," is reinforced by suspicions that socio-legal work is too much concerned with the policy of the law, and sometimes even with the politics of the law. The current arguments among lawyers about the legitimacy and desirability of socio-legal work have revealed the existence of competing conceptions of the function of law departments, and socio-legal researchers have become involved in larger disputes, for example, about the importance of legal reform as against the vocational training of students.

Yet if we move from the specific context of law departments, the difference between socio-legal work and traditional legal scholarship seems exaggerated and over-emphasized. There is a congruence between socio-legal work and jurisprudence in other, probably more important, respects. (Campbell, 1974(a); cf. Black, 1973; Shklar, 1964). Although the use of social research methods in studying law may be new, many of the questions posed are familiar ones. For example, the concentration of effort by socio-legal researchers on the activities of the legal profession, the administration of criminal justice and, in particular, court procedures, and on the provision of legal services exhibits a fascination with the extent to which prevailing legal norms are reflected in reality or are implemented as mandated by written law.[2] But this concern is underpinned by an

2. Research effort in these areas encompasses the vast bulk of socio-legal work in Britain. More specific treatment of the research is provided below, but representative published material includes the following: Abel-Smith & Stevens: *Lawyers and the Courts* (1967), and *In Search of Justice* (1968); Zander: *Lawyers and the Public Interest* (1968); Blom-Cooper & Drewry: *The Final Appeal* (1972); McGregor, Blom-Cooper & Gibson: *Separated Spouses* (1970); Bottoms & McClean: *Defendants in the Criminal Process* (1976); McCabe & Purves: *Bypassing the Jury* (1972), *The Jury at Work* (1972), *The Shadow Jury at Work* (1974); Adler & Bradley: *Justice, Discretion and Poverty* (1976); Abel-Smith, Zander and Broke: *Legal Problems and the Citizen* (1973); Bridges, Sufrin, Whetton and White: *Legal Services in Birmingham* (1975); Byles & Morris: *Unmet Need* (1975); Elston, Fuller & Murch: "Judicial Hearings of Undefended Divorce Petitions" (1975); Frost & Milton: *Representation at Administrative Tribunals* (1975).

assumption (logical and often moral as well), that the ideal prescriptions contained in the law ought to be directly mirrored in reality.[3] On the basis of this assumption, should there prove to be a divergence between the law and empirical reality, it is convenient and easy to reach one of two conclusions. *Either* there is something wrong with the substance of the law and it should be changed; *or* there is nothing wrong with the substance of the law but the mechanisms or procedures to implement it are inadequate in some way. These conclusions in turn suggest calls for the reform of the substantive law, or for the improvement of legal procedures, and one characteristic of socio-legal studies in Britain has been interest in such reforms.

This socio-legal approach may be illustrated by recent work on the provision of legal services. In such work the proclaimed ideal of equality before the law is accepted as meaningful and worthwhile, but, since research has revealed that there is inadequate access to the legal system among some sections of the community, a problem clearly exists. Researchers have responded to the problem in slightly different ways: some argue for changing the provisions of the state legal aid scheme (Zander, 1969; White, 1973); some promote the establishment of law centers (Abel-Smith *et al*, 1973; Zander, 1969); others suggest the geographical resiting of lawyers' offices to better serve the community at large (cf. Foster, 1973; White 1975); and yet others call for the improvement of publicity services so that the public may be better informed about available legal remedies and the services lawyers provide (Bridges *et al*; 1975). The contours of the "problem" identified by socio-legal researchers are clearly revealed in this array of proposals. Disjunctions between the prescriptions of written law and reality are explored on the assumption that they result from accidental or contingent effects in particular discrete areas. The problem is, therefore, one of how to implement in the most efficient way the ideal of equality before the law by *legal* reform. Thus posed the problem does not require consideration of the general relationship between the legal order and the social order.

Combined with and indeed allied to this orientation to the legal order in general, is a concern about "justice" which runs as a *lietmotif* through socio-legal studies. It is not *merely* that the law sometimes does not operate as it should, or as it promises. In socio-legal work there is a concern about poor people, about the

3. Apparently this parallels, in some respects at least, the situation that prevails in analogous work in America, at least judging by Abel (1973), Black (1973), Galanter (1973).

bias in the law, the abuse of discretion, the prevalence of discrimination and partiality. Researchers press for greater justice for a previously disenfranchised community. As conscious advocates of liberalism and radicalism, many socio-legal researchers advocate reform of the legal structure to provide justice for those for whom they speak (e.g., Abel-Smith *et al*; 1973; Adler and Bradley, 1976). Such motivation is no doubt praiseworthy and may prove of value, but, to be understood in the context of socio-legal research two riders are necessary. First, although justice is an important concern, it does not seem to require any conceptual clarification nor to entail discussions as to the nature of justice or of different philosophies of justice. Rather, quite concrete demands and claims are pressed on the law. Second, the claims that are made seem of a narrowly circumscribed nature. Even though socio-legal studies are most often regarded as novel because of their concentration on policy matters and on reform, it can be argued that what is new is not the interest in policy nor reform but rather the direction or type of reform which is proposed. Law teachers have consistently shown interest in legal reform and the amendment of the law to eradicate anomalies or to take account of changes in society. Socio-legal research, resting as it does on empirical evidence, dwells on the interests and problems of social groupings or social classes that were previously ignored or seen as marginal. To match interest in the reform of property or fiscal laws we now have concern about poverty and welfare law.[4] Just as amendment of positive law was previously the goal so it is now; the relevance of legal determinations and legal procedures is taken for granted. Underpinning this reformism is the idea that proper legal regulation is the panacea for all the iniquities identified by socio-legal research.

The problems posed by socio-legal studies are clearly suited to empirical research methods, and the traditional range of social surveys, questionnaires, formal interviews and standard quantitative techniques are widely employed. Probably because theoretical or more abstract questions are so rarely raised these methods are sometimes employed in a crude positivist fashion with the result that alternatives to empiricism are not considered, and even discussion of alternatives is regarded as of dubious, if any, relevance. This may be understood if it is appreciated that

4. Law teachers who enter the socio-legal field are "encouraged" to work in such areas. Disadvantaged and deviant groups have always been the easiest targets for social research, and, in Britain, there is a developed sociology of working class communities and life-styles, but very little on the middle class.

the research carried out typically demonstrates what was previously known, what could be plausibly guessed, or what might prove of practical utility in suggesting reform. Indeed on occasion public demonstration seems to be the goal rather than new information. Research is descriptive, it focuses on particular legal agencies or discrete legal institutions, and it operates within the framework of the assumptions mentioned above. Given the interest in justice, in reform and the improvement of the legal system, social science methods are seen as useful in precisely identifying the optimum means to achieve the ends in view. Social scientists are regarded as intellectual subcontractors, or, as Willock, (1972: 3) put it, "they should be on tap, not on top." (cf. Willock, 1974).

Socio-legal research in Britain may then be said to have developed into a coherent field of activity possessing at least the following general characteristics. First, the hegemony of law is accepted and furthered, even though some of the particular provisions of the law may be thought to require change. Second, the nature of the legal order is treated as unproblematic, especially in its relationship to the rest of the social world. Equally the general functions of law in society tend to be taken for granted or are assumed to involve the balancing and regulating of different social groups and their interests. Such a perspective assigns high priority to ensuring that the law is informed by liberal and reformist sentiments. Research is unambiguously utilitarian and pragmatic in orientation, and the suggestions for reform which flow from it tend to be limited in scope and of a legalistic nature.

Academics who profess sociology of law adopt different stances on most of these issues, and as a result their research is of a different kind. The focus is no longer on the legal system, known and accepted, but on understanding the nature of social order through a study of law. Insofar as law is scrutinized it is from a perspective that attempts to be exogenous to the existing legal system. The goal is not primarily to improve the legal system, but rather to construct a theoretical understanding of that legal system in terms of the wider social structure. The law, legal prescriptions and legal definitions are not assumed or accepted, but their emergence, articulation and purpose are themselves treated as problematic and worthy of study. Reform of the legal system is not, as such, the goal even though an adequate theory of law may entail a consideration of the relationship of law to social change. Even for those sociologists of law who are committed to a methodology which demands a link

between research and action (e.g., the Marxist notion of "praxis"), the purpose of action is not circumscribed by the technical and legal considerations that hold sway in socio-legal studies. There is much less reliance on empirical examination of the working of particular legal procedures or provisions than in socio-legal studies. Where such inquiry is undertaken, it tends to stem from a broader theoretical concern and to focus on particular procedures for heuristic purposes.

Compared with socio-legal studies the subject matter for research in sociology of law is markedly different. For example instead of (or prior to) research into the implementation of legislative provisions there is considerable interest in the processes by which law emerged or was created. Historical research is undertaken into the context and configurations which allowed or promoted the passing of legislation. (Carson, 1974(a); Paulus, 1975). The "official versions" of the intentions and purposes of particular statutes are not granted automatic respect but are instead challenged and subject to critical scrutiny (Winkler, 1975): so too are the conventional justifications of court procedures (Carlen, 1976) and the legal representation of clients (Mungham, 1974; cf. Bankowski and Mungham, 1976). Sometimes the contrast with socio-legal perspectives is explicitly drawn; discussing the socio-legal preoccupation with the problems of the poor and the provision of legal services, Cain (1975:51) has argued that greater attention should be paid to "rich man's law." Inquiry in this area, she argues, is likely to lead to greater advances of our understanding of the operation of the law in British society, as well as portraying the true dimensions of the problems of the poor and the possibility of solving them through extending the provision of legal services. (cf. Morris, 1973a).

We have drawn the contrast between socio-legal studies and sociology of law in stark terms, and deliberately so. But it is important to add that the examples we have given of perspectives and research concerns in sociology of law, are illustrative only. As a field of inquiry sociology of law is not marked by any special unity or internal coherence, and for this reason we have expressed the contrast with socio-legal work in relatively negative terms. If the comparison is extended to the methodology employed, the same point must be repeated. In sociology of law there is no orthodoxy in methodology and discussions include concern with the most basic philosophical questions of social science methodology such as, for example the epistimological status of alternative research procedures. There are there-

fore debates about the possibility of making claims to knowledge on the basis of this mode of theorizing, that type of procedure, this form of comparison, or that sort of inference. Altogether the conceptual apparatuses used in sociology of law are various, theoretical insights and perspectives from many other of the social sciences are adopted or discarded in studies, historical and cross-cultural research often remote from "the law in action" is regarded as relevant. This variety may be understood if it is appreciated that the elementary commitment of sociologists of law is different from that of socio-legal researchers; it is not to law departments, the law or reform of the law, but to furthering knowledge and understanding of the law in terms of the wider social order.

In the light of this general sketch, two comments seem in order. First, there might be a temptation to argue that the heterodoxy in sociology of law merely reflects many of the current controversies in the social sciences in general. This is true, if the currency of the controversies is emphasized, for until relatively recently the social sciences in Britain have had more in common with the general orientations and methodology of socio-legal studies than with sociology of law. Second, to appreciate the impulses behind the development of both orientations within the field it is necessary to understand something of the history of British social science.

BRITISH SOCIAL SCIENCE

We frequently refer to the societies in which we live as "modern societies," and by this signify the fact that, despite their differences, they share certain overriding features. They are marked, for example, by a high division of labor, and their members have certain perceptions of the world, and ways of examining the world, which are, historically, of recent origin. The term "modern societies" is often taken as a synonym for "industrial societies," and the process of industrialization is viewed as the watershed between the old and the modern. Similarly the very ways in which we now talk about or seek to understand the law, were also shaped or influenced by changes that took place in the 18th and 19th centuries, and the attempts by European intellectuals to comprehend the processes that were transforming their social world. If we are to understand contemporary developments in law in society studies in Britain we must explicate the impact of industrialization on the development of the social sciences, and on the legal system and legal scholarship.

It is a commonplace to relate the emergence of sociological writings to industrialization (e.g. Nisbet, 1966). Much of the work of the 19th and early 20th century European sociologists was concerned with accounting for that process and explaining its social consequences. Since the upheavals of industrialization induced cataclysmic change in the social structures of European countries, it is hardly surprising that the central question posed was about the nature of social order—concretely, what form and structure the newly emerging societies were likely to take. Max Weber's exploration of the origins of capitalism and his concern with the political, administrative and legal changes which industrialization was producing in Germany, and Durkheim's concern about the effects of an increasing division of labor on the moral order of French society, exemplify this concern. The result was a body of writing, much of which can be aptly described in Parson's phrase as "grand theory," which is now regarded as comprising the classical texts of sociological theory. From an historical view it is therefore unremarkable that sociology is so frequently characterized as the "study of social order."

In spite of being the first country to industrialize Britain was in many important respects an exception to the general trend in Europe. Specifically the effects of industrialization upon the development of the social sciences, and upon the law in Britain, were markedly different from those in continental Europe. The differences are significant enough to mean that Britain cannot be encompassed within a general discussion of European developments, without a gross distortion which omits or denies the uniqueness of the British development. Only by having regard to the particular nature of this development, and its influence on contemporary institutions and academic thought, can we understand the backcloth against which law in society research in Britain struggled to emerge in the latter half of the twentieth century.

The emergence of capitalism and industrialization in Britain brought about important changes but, nevertheless, produced less social upheaval than in most other European countries. Weber's attempt (1954: esp. chs 3-5) to develop a general theory of the nature of the law in the new societies encountered difficulties with "the England problem": the form of legal rationalism which seemed to encapsulate adequately the insistent changes taking place in the rest of Europe did not seem to apply to England (cf. Bendix, 1966: Ch. 12; Green, 1959; Albrow, 1975; Trubek, 1972). Later European writers, for example Karl Renner (1949), were also to point to the problem

of understanding England in terms of the general pattern of legal development elsewhere. As various writers have noted (e.g. Kahn-Freund, 1949; Stoljar, 1961), the explanation for this was that the English legal system was, for a variety of reasons, able to fulfill the Weberian requisites for the operation of law in industrial development, without major changes in its structure. The law of England, resting on the common law system, did not have to turn to the construction of codified provisions nor to elaborate deductive systems, as did much of the rest of Europe, in order to accommodate the demands of the new social order.[5] More generally the British social structure had already achieved a large degree of administrative centralization and capital accumulation *prior to* industrialization and this meant that the process could be accompanied by political assimilation rather than the radical, in some cases revolutionary, upheavals of the rest of Europe. Social institutions in Britain, including the law, therefore, did not require the same degree of re-organization or reformulation to permit industrialization to proceed.

The new towns and manufactures did, of course, affect the British consciousness in important ways. The theme of transition was central to many contemporary novels; romantic protests against pervasive change emanated from the pens of writers such as Thomas Carlyle. In the early period of industrialization, writers of the "Scottish Enlightenment," originally stimulated by Humian philosophy, wrote about the changing social world in ways which might have established an indigenous intellectual outlook on the nature of social order. The "commonsense" school of philosophy, and the reliance on conjectural history, contained elements which in the writings of Adam Smith, Lord Kames, and Adam Ferguson, and especially the little known John Millar, might have inaugurated such inquiry. However, it was not to be. In the waive of intense anxiety and repression which swept Britain after the French Revolution the focus of dominant social thought shifted and Millar's work was directly suppressed. Millar has remained ignored, and Ferguson little read; the figure who emerged as dominant for later generations was Adam Smith, but only Adam Smith the arch prophet of *laissez faire* political economy, not Smith the sociological inquirer.[6]

5. The particular focus for Weber (1954 ed.) and Renner (1949) was England but the points are equally relevant for Britain as a whole.
6. As Ronald Meek (1954:85) has said: "The more narrow economic views of *The Wealth of Nations* have usually been emphasized at the expense of the general sociological system of which they were

It was the work of the political economists which provided the basis upon which the British social sciences developed, and the central theme of their work was an *a priori* conception of social order produced by the market balancing and refining complementary self-interest. As Philip Abrams (1968:8-9) has argued:

> The elements of social knowledge, specified by Smith and accepted by his heirs, were the individual and the market—or more strictly, individual labour and the price mechanism. The Invisible Hand was the market reified, a force with a cogency of the laws of nature, generated by the activity of individuals, and standing over and against them as the source of social order, harmony and integration . . . [They] postulated a fundamental consensus and community of interest among individuals and classes. The central image of the Invisible Hand ruled out the need to recognize implacable conflicts of interest. Situations of overt conflict were problematic not because one had to take sides but because one had to determine how many men had come to mistake their real interests.

Thus for the political economists, and indeed the early sociologists and social statisticians, those misunderstandings which produced conflict could be gradually ameliorated by a social policy which was increasingly informed by knowledge of social facts. From their inception therefore, the social sciences in Britain were dedicated to the collection of social facts as guidance for policy making, and, in spite of later debates over the interpretation of facts or the impact of evolutionary theories, this twin commitment was to remain the dominant theme until the second half of the twentieth century. Abrams (1968:53) observes succinctly: "The striking thing about the development of British sociology is the continuity of its principal traditions. The pattern of work of the 1960s flows from that of the 1830s."

The relative stability of social order in Britain during industrialization meant that the metamorphosis of social institutions could be understood as a series of pragmatic adjustments, rather than systemic change which invited a new theoretical understanding of order and control.[7] Sociology did develop in England, as elsewhere, but it was pragmatically conceived, utilitarian in stance, and technical in execution. With the possible exception of evolutionism, none of the classical sociological

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essentially part". *Cf.* Pascal (1938); Bryson (1945); Lehman (1930), (1952).

7. Relatively little attention has been paid to the precise ways in which English social theory responded to the crises of the new industrial society. Recently, however, influenced by the Althusserian notion of the "problematic", some work of this kind is being produced. See for example Stedman Jones' (1971) attempt to explain the changing theories of unemployment and poverty in London of the 1860's, 70's, 80's and 90's, in relation to the changing nature of employment and housing.

theories are associated with British writers. Similarly both specific institutions and the content of the law were adapted in an *ad hoc* fashion to meet particular practical needs. Where continental European juristic thought was turned to (for example, in nineteenth century textbooks) it was for the purpose of addressing specific problems; it was neither studied for its own sake nor as the basis for introducing continental deductive logic into English law. More broadly, pragmatism and an uncomplicated empiricism became, and have remained, essential features of British political and intellectual life. If we may be excused the holistic notion of "national characteristics," the British empirical tradition has produced an almost instinctual distrust of abstraction and theorizing. Indeed this attitude of mind has been regarded as a major reason for the existence of a political system believed to be unique in providing freedom under the law, stability, and order. This strangely xenophobic belief is epitomized in the English estimate of Hegel's philosophy—as continental abstract theorization which leads to an ugly and dangerous glorification of the State! (see e.g. Russell, 1946: Bk. 3, ch. 22).

British social science and the concerns of British social scientists continued to be influenced by such conventional stances and characteristics in the late 1950s and early 1960s. It might then appear that socio-legal studies (which we earlier described as utilitarian, pragmatic, and empiricist) merely manifest orientations and attitudes which are deeply ingrained and traditional. In a sense such a view is correct, but it fails to explain the fact that empirical research on *law* did not develop until quite recently; even by the early 1960s socio-legal studies were few and far between.[8] Equally, nothing contained in our historical comments could be taken as presaging the current activity in the sociology of law. To explain the contemporary developments in both socio-legal studies and sociology of law we must look to specific academic disciplines and to other factors which helped to promote the recent growth of interest.

One fact is of paramount importance for the growth of law and society research. Quite simply, higher education in Britain expanded. Between 1945 and 1969 the number of universities in Britain increased from 21 to 44. The numbers of students

8. There were of course some studies which involved consideration of legal provisions and procedures; the very pragmatism of British social science meant that aspects of law were included in earlier work. What we are concerned to explain is the recent growth of a self conscious area of study which takes law as its central defining characteristic.

rose by 194%. In addition the higher education sector was further swelled by the development of polytechnics as degree granting institutions.[9] The impact of such growth was particularly felt in the 1960s. The number of academics, both social scientists and lawyers, increased dramatically. This alone would have produced an increase in the *amount* of research and writing. The creation of so many new departments in a short period, however, also allowed the biggest single opportunity that British higher education has ever had to design and experiment with novel courses and combinations of courses. Rapid expansion could only be achieved by the employment of a relatively large number of young academics who were, particularly in the new institutions, freed from many of the previous constraints of tradition and professorial authority. These changes took place in the context of an expanding economy and it was a period of optimism and experiment. In the 1960s there was a heady mixture which speeded up the processes of generational change in interests and methods and in course structures and content. This provides the essential backcloth against which developments in particular areas of the social sciences, and in law and jurisprudence, may be understood.

THE GENESIS OF INTEREST

The traditional pragmatic and utilitarian character of British social science reached its apotheosis in the immediate postwar period when the social sciences were harnessed to the task of social reconstruction and the creation of the new "welfare state." The early dream of the social sciences, that knowledge of the social world was to inform and enlighten policymaking, was now to be implemented in overt social engineering. The "Invisible Hand" concept of the 19th century theorists was now modified by a Fabian vision in which the state was to be transformed into a caring agency to mitigate the harshest effects of the market. There was a basic faith in the efficacy of social planning, reflected at that time in numerous studies of socialization processes, and in debates about juvenile delinquency, educational facilities and family conditions.

By the early 1960s much had changed and British social scientists were beginning to re-assess their role. Sociologists were engaged in a fundamental reappraisal, asking whether the postwar objectives had been achieved. Re-examination of such

9. The increase of student numbers was largely made possible by the introduction of the national "grant system" which pays for student fees and maintenance. See Ashby & Anderson (1970): esp. Ch. 6.

issues as social class, income distribution and educational opportunity, raised increasing suspicions that the policies which had been confidently proposed as re-distributive, had brought about little change in the major structural determinants of power and wealth in Britain. Disillusionment with sociologically guided social enginerring began to take root, and by the 1960s a new generation, themselves children of the welfare state, began to question the whole philosophy underlying it. To raise such doubts necessitated consideration of major theoretical problems of the nature of the social order and the nature of the State; it also entailed a critical examination of the methods and the methodology by which these questions were to be answered. In a sense this represented a return to the concerns of classical sociology in 19th century Europe—a return facilitated by the appearance in the 1950s of American translations into English of a number of the European classical texts, and by the discovery and translation of the early works of Karl Marx. The indigenous British sociological tradition was subjected to an attack which challenged its assumptions and put in doubt its methods and purposes, and which by the mid 1970s had taken the form of an all-out onslaught on "positivism." While it also occurred in other countries (see Gouldner, 1971), this crisis in sociology had distinctive features in Britain which were to resonate in other disciplines and in discussions about social policy.

In mentioning such critiques, however, it is not our intention to proceed to examine their adequacy or veracity. Rather, in the present context, two points are significant. First, this consciously different view of priorities for sociological study impelled some younger sociologists to an interest in examining law and legal structures. Concerned with understanding the nature of social order, they appreciated the potential relevance of a sociology of law as their predecessors had not. Thus interest in law and society studies resulted directly from the debates in sociology. Second, and more importantly, the encounter between socio-legal studies and sociology of law, which we depicted earlier, may be understood as being part of this more general debate in British social science.

The debates were quite overt and virulent in criminology, and it is worth examining some of the specific issues raised there, for recruitment to law and society studies has been much affected by the development of "the new criminologies," and analogies between law and society research and criminology have been frequently drawn. In a valuable article Stanley Cohen (1974) has highlighted the crucial issues in the debates

between the old, mainstream criminologists and the new, and has identified the deficiencies of mainstream criminology as perceived by its critics. First, Cohen notes, criminology was interdisciplinary in character. Consequently criminologists had frequently become insulated from developments in their original disciplines, with the result that research problems tended to be selected on shared utilitarian grounds rather than stimulated by theoretical insights. Lack of connection with theoretical developments and reliance on pragmatic concerns, had engendered a limiting positivist approach to inquiry. Equally the ideological thrust of criminological research was seen to increasingly dominate activity: criminologists were largely "in business" to combat crime, to improve the correctional process. Cohen concludes (1974:20) that criminology's development has been "intellectually facile and when (because of the pragmatic ideology) it has no theoretical edifice to support it, it is extraordinarily vulnerable to attack for faddishness, not to say charlatanism."

The purpose of such critiques, which were numerous in the late 1960s and early 1970s, was not merely eschatalogical. The new generation of criminologists attempted to learn from the mistakes of the past, and sought through the sociology of deviance to make a new beginning. The subject matter for study was now "deviance" rather than "crime," and this new title was intended to signify an appreciation of the integral relationship between controller and controlled, and of the normative context of the infractions (legal or otherwise) that were studied. The "new criminologies" incorporated a realization that control and punishment may actually encourage or create deviance, and this in turn led some researchers to consider questions of the purpose of laws and their relation to the wider society. Attention has been given to law creation (Carson 1974,b) and the enforcement processes of the law. Processual accounts of enforcement are indeed common; for example, in a well known study Young (1971) has explored the nature of the relationship between drug takers and law enforcers (See also Cohen, 1971; Taylor and Taylor, 1973; Rock and McIntosh, 1974). An avowedly anti-correctionist stance has emerged, which by consciously revealing the political nature of the definition of deviance, and sometimes also deviance itself, has increasingly made theories of law and the state central for the new British criminologies. (Taylor *et al*, 1973, 1975; Bankowski and Mungham, 1976; and see generally Wiles, 1976).

Although the arguments outside sociology and criminology were less intense, other areas of social scientific endeavor have

been influenced by the debates. Social work, which had expanded uncontroversially during the 1950s and 1960s, suddenly found its activities subject to scrutiny and criticism. From the debates within sociology, and particularly from the developing deviancy theory, flowed a series of challenges to social work's dependence on psychoanalytic theory. Its political and epistimological assumptions were subverted and its reliance on case work methods was impeached (e.g. Bailey and Pearson, 1975). In Social Administration[10] the orthodox and accepted stances and strategies for research were similarly now "revealed" to be partial or inadequate. It would be tedious to offer a blow by blow account of the development of the argument in each of these fields. The result was the development of schisms and divides similar to those in sociology and criminology (and, as we have seen, in the law and society field).

In other disciplines comparable reappraisals are only now getting under way, or have yet to take place. In contrast with their American colleagues, political scientists in Britain have not shown particular interest in all-encompassing theories nor in inquiring into the relationship of political processes with the total social structure. Questions which might have prompted research (of the kind long established in America) into court judicial or legislative processes, or into governmental or executive conduct, have gone unasked.[11] Reflecting the general attitude of mind which we outlined earlier,[12] the focus of inquiry has been essentially practical (studies of voting patterns and behavior, etc.) and the methodology preponderantly, ponderously and crudely empiricist. Occasional efforts to stimulate political scientists into other research inquiries met, until very recently, with little visible success. In 1967 W.J.M. MacKenzie attempted an overview of available research on the law in his book *Politics and Social Science*, but was forced to conclude in frustration: "We know much more about the role of Roman law, of medieval law, or tribal law than about the role of civil law today." (1967:287). Again in comparison with the position in America, economists in Britain have virtually ignored studies of law, or the relevance of legal regulation to economic develop-

10. "Social Administration" is roughly equivalent to American "Public Administration".

11. There is, for instance, nothing to parallel the work of Nagel (1969), Schubert (1964); Schubert & Danelski (1969); Grossman (1966), (1968); or Sayre & Kaufman (1960). But *cf.* Paterson (1974).

12. Other more particular factors are, of course, also relevant here; for example, the absence of a written constitution and especially a Bill of Rights, and the very gradual continuous development of constitutional practices and conventions over centuries.

ment. And even where, in Anthropology, there *was* an interest in law it failed, for a variety of reasons (not relevant to the present argument) to influence work in the other social sciences. If British Anthropology's interest in law constituted an exception this was no more than a reflection of its isolated position in British social science.[13]

Thus far we have suggested that the conventional orientations of the social sciences in Britain deflected or discouraged interest in wider theoretical issues. Only where the impact of the more recent competing orientation has been felt (in particular social scientific disciplines) do questions which may *lead to* study of law appear relevant. But to complete our description of the context which favored the expansion of law and society studies which has occurred over the last eight years, we must say something of developments in law departments and among lawyers—developments which have complemented, or at least been consonant with, the changing directions of social science.

To begin, we must refer again to the expansion of higher education which took place in postwar Britain. The impact of this expansion was pervasive and was nowhere more dramatically felt than in the growth in the number and size of law departments. It is worth recalling that historically, possession of a University degree qualification in law has never been (and still is not) a requirement for entry to the legal profession in Britain. Traditionally most lawyers have qualified for entry to the profession by studying courses and passing examinations organized by

13. Social anthropology in Britain has not shared the conventional characteristics of the rest of the social sciences, nor has it failed to develop useful and fruitful studies in law. Interest in anthropology of law has indeed flourished and it is perhaps in this area alone that British academics may claim to have made a notable contribution to law and society studies. From Malinowski (1926) to the celebrated works of Gluckman (e.g. 1965a, 1965b, 1967) and up to the present (Hamnet, 1975), inquiry into the nature of law in primitive cultures has been assiduously pursued. Yet this tradition in anthropology says less about social sciences in Britain than about the unique development of anthropology as a discipline. As Kuper (1973) shows in a perceptive account, anthropology has been *sui generis*. First, the strength of the discipline derived from a small cohesive corps of senior scholars who decided the direction of inquiries; they "controlled the profession" (Kuper, 1973: 154). Second, from its earliest days anthropology was associated with colonialism and colonial administrations. "Savages" or "primitive men" were different from "civilized men"; there were evolutionist and, occasionally, racist undertones. Anthropology was insulated from other social sciences and neither impinged on nor was seen as a threat to the other social sciences, even though it departed from orthodox approaches on many important intellectual issues. In view of this background, even though there are new and more congenial perspectives in the other disciplines, and even though anthropology itself has changed considerably in the postcolonialist period, it may be many years before anthropology is integrated with other social sciences. This, if it proves true, will be unfortunate for law and society research.

the profession itself. The relatively small number of teachers of law in law departments tended themselves to be practicing lawyers first and foremost (who taught on a part-time basis), or, in Oxbridge colleges or sporadically throughout the provincial universities, specialists in the areas of legal study more remote from legal practice. Even as late as the 1950's law departments in Britain were marked by a pronounced vocational stance, tempered only slightly if at all by attention to legal theory or jurisprudence.

Courses in jurisprudence provided the liberalising element in law degree syllabi, or their lip-service to the idea, but even these courses were of a character inimical to the development of interest in law in society research. Analytical jurisprudence and legal positivism (in particular the writings of Bentham, Austin, Kelsen and, more recently, Hart) have proved of intimidating endurance as archetypes for 19th and 20th century British legal theory. Neither sociological jurisprudence nor legal realism triumphed over positivism as they did in America; even now there remains a tendency to treat these schools of thought as departures from the "correct" approach. (Cotterrell and Woodliffe, 1974). Of course there have been exceptions to this. From Maine and Dicey, and later through attention to the writings of Roscoe Pound, Karl Llewellyn, Wolfgang Friedman and Morris Ginsberg, some regard has been paid to the "social context" of law. Continental European influences, through Duguit, Ihering, Ehrlich and Weber, were not entirely absent. But such incursions have been of tangential importance; the precepts of such writers have, almost uniformly, been "translated" into terms acceptable to the general perspective of analytical jurisprudence and legal positivism.[14] Even today, the most popular jurisprudence textbooks used in law schools continue the tradition (Lloyd, 1972; Dias, 1970; Paton and Durham 1972; Stone, 1964, 1965, 1966; but cf. Campbell, 1974b).

This situation in legal education was not destined to remain undisturbed. With the growth in higher education, it became increasingly common for students to enroll for full time study of law degrees. The numbers studying law—either to gain eventual entry to the profession or for its own sake—continued to swell; there were 2,640 university law students in

14. Reflecting the pronounced vocational orientation of legal education jurisprudence was treated as "another law subject" which, although eclectic in content and admitting a wide variety of material (from American Realism, sociology, psychology, anthropology, etc.) remained faithful to a positivistic approach to legal study. Cf. Summers (1968) and Campbell (1974a) for criticisms of this approach.

1954 and 7,072 in 1975.[15] Existing law departments expanded and new law departments were established to cater to the demand, and, of course, more staff to instruct the students were required. It has proved significant that the staff recruited to cope with the rapid and insistent expansion were, again, young academics and the posts to which they were appointed were full time academic posts. Reliance on practicing lawyers who taught on a part-time basis has diminished considerably. Along with the increase of staff as such, this has led to the emergence, for the first time in Britain, of a substantial body of full time legal academics.

Within law departments it was a time of experimentation and innovation as well as expansion. A process of change, as yet far from exhausted, was set in motion. Of the newly established departments some were based on philosophies antithetical to the prevailing vocational orientation, some taught law within faculties of social science, some were dedicated to teaching "the law in context."[16] As a result, tensions and conflicts within associations of law teachers developed, and there were clashes with the governing professional bodies over the "recognition" of the new law degrees. Within older law schools, as well, significant changes took place. Orthodox jurisprudence, with its exaggerated attention to analytical inquiry and legal positivism, was subjected to attack and criticism. The new legal academics, particularly the younger ones, showed interest in new approaches and new methods. Sometimes this emerged positively as eagerness to pursue lines of enquiry that appeared fruitful or exciting; sometimes, negatively, as concern to overcome or compensate for the inadequacies of prior legal theory. New courses were placed on law syllabi, for example, courses on poverty and welfare legislation; traditional courses were restructured and rewritten; new teaching methods and materials were introduced; specialist conferences and study groups were formed. Given the change and complexity with which the legal system had to deal, and given the perceived paucity of fertile ideas or advice in legal theory, the social sciences were turned to for help. For some law teachers the motivation was to enhance understanding of the law, for others it was to gain assistance in the practical task of making the law work, improving it or reforming its content.

15. By 1975 there were also 2,779 law students in Polytechnics. On developments in law departments and legal education, see generally *Great Britain*, Committee on Legal Education [The Ormrod Report] (1971), Wilson (1966), Wilson and Marsh (1975), Thomas and Mungham (1972).

16. For example at the Universities of Brunel, Kent and Warwick.

Many law teachers, imbued with the notion of social scientists as data-gatherers, merely sought technical expertise and often gained it. Others encountered social scientists who articulated the new perspectives in sociology and sociology of deviance; of these, some were impressed by the arguments and others denied their relevance. Law teachers thus entered into the law and society field, and socio-legal studies and sociology of law received an important boost in both numbers and enthusiasm.

At the same time other factors were working to accelerate changing perspectives among academic lawyers. The British legal system was increasingly faced with complex and difficult challenges: the Unilateral Declaration of Independence in Rhodesia, the continuance of "the troubles" in Northern Ireland, the controversy over political trials, the festering labor relations crises. Novel strategies for controlling or regulating society were being enacted in legislation (to deal with race relations, the treatment of juvenile offenders, industrial relations etc.) but their efficacy was unknown, unpredictable and haphazard. There appears to have been official recognition of the fact that the traditional methods and sanctions of the law might be inadequate or inappropriate to regulate an increasingly complex and rapidly changing society. In 1965 the two Law Commissions were established,[17] charged with the tasks of keeping the law under review and of proposing reforms and modernization; they were instructed to collect such information and make use of such under review and of proposing reforms and modernization; they realized that policy makers had an urgent need for up-to-date and accurate information about the operation of law and legal procedures, if they were to govern effectively.

Together with the new initiatives of law teachers and the apparent strain being experienced in legal structures this last factor was to prove important. At official levels, in government departments, research councils and charitable trusts, the decision to promote research into the operation of law had been made. The *basis* for the decision was the concern about the increasing challenges to the law and the law's inadequacy and inflexibility in responding to challenge, together with the view that the legal profession in Britain was a monolithic and ultra conservative profession whose practices and functions urgently needed reap-

17. The Law Commissions Act, 1965 established the Law Commission (section 1) to promote the reform of the law of England and Wales and the Scottish Law Commission (section 2) to reform the law of Scotland. The functions of the Commissions are detailed in § 3 of the Act.

praisal.[18] The *thrust* of the decision was, through research, to promote reform of the law and legal procedures and, more generally, to facilitate efficient social engineering through and by the law. It was felt that there was "a critical need for research into the processes of civil law" and "legal reform, legal services, the machinery of justice and social effects of new legislation" were priority areas for research activity.[19] In these terms it was of strategic importance that law teachers and legal academics should be involved in law in society studies (although it was recognized social scientists could be of assistance as well) and financial encouragement to such involvement was provided. The genesis of interest in law in society studies in the 1960s which has, as we have seen, resulted in considerable growth of activity, stemmed then from disparate sources—intellectual, institutional and political. The effects remain visible today.

CURRENT ACTIVITY

The two alternative orientations to law and society research continue to bifurcate the field in Britain. Before discussing the influence of funding agencies on research and the nature of current research work, however, it may be helpful to outline the context of academic activity in Britain. Unlike America, Britain is a small country with a higher education sector which, as we noted earlier, has only recently expanded beyond a few elite institutions. This has had consequences for a specialist area like law and society which may not be immediately apparent to American readers. First, the small number of individuals working in the field allows discussion groups and specialist conferences to play an important role and to develop into significant interest groups.[20] There is only irregular contact with developments in America and because of language barriers there is little involvement with European work. As a result discussions, more or less informal, play a more significant part in influencing disciplinary activity than is possibly the case in America. There is not the same pressure on university teachers to publish and,

18. This view has since led to the announcement that there will be a Royal Commission to inquire into the legal profession.

19. These particular statements, fairly typical of the prevailing views, were made when the Centre for Socio-Legal Studies (see below) was established. (SSRC, 1972).

20. In the law and society field the most important discussion group, the Socio-Legal Group, was established by some law teachers in 1971, and later merged with the smaller Law Group of the British Sociological Association. At present its membership (academics and postgraduate students) is around 250; it convenes two or three conferences each year. For an account of the Group's activities and its influence in the field see Cain, 1974.

indeed, the much lower economies of scale in a small country do not provide the same opportunities for publishing. Since the publications rate is relatively low it can be misleading to estimate the extent of interest in an area of study from published material alone. The expansion of higher education has afforded younger teachers, and even some research students, opportunity for innovation. Whether their work is published or not these younger researchers may exert some influence in research activity and in defining priorities for study, through involvement in discussions and regular personal contact. But the small size of the country also allows those funding agencies which exist to be more influential than they appear to be elsewhere. The major agencies in Britain continue to be guided by more senior academics, mostly professors. This may lead to an unfortunate distance between the active researchers in a field and those to whom they must look for finance to continue their research.

Socio-legal studies with its utilitarian and policy oriented research holds obvious attractions for funding agencies. One of the first bodies to promote law and society research in Britain was the Nuffield Foundation, and, unsurprisingly, its first two initiatives were to establish a program of research into the provision of legal services and to offer law teachers grounding in social research methods. Continuing along these lines the Foundation later established the Legal Advice Research Unit for research into poverty and welfare issues and the provision of legal services. Subsequently there was a direct, if temporary, investment in one of the early neighborhood law centers in North Kensington, London. More importantly the Nuffield Foundation provided the funding and main personnel for the Legal Action Group (LAG), which has become the most important pressure group for extending legal services to the disadvantaged, and has used social research as one means of achieving this end.[21] LAG has provided a setting for many young academic lawyers to do research in previously disdained areas of law (such as social security provisions) while putting this knowledge into practice in free legal advice centers. Such a stance has the twin attractions of radicalism (relative to entrenched and conservative professional bodies) and elitism (preserving the role of the lawyer as the possessor of special skills

21. The stance of the governing Council of the Law Society in England on the issue of extending the provision of legal services has changed considerably in the last decade. Outright opposition at the beginning has successively been diluted and overcome by pressure groups and reforming lawyers. The debates continue however and were a major reason for setting up a Royal Commission to inquire into the activities of the legal profession.

and knowledge). In addition such research goals allow the lawyer to learn a few simple social science skills, without needing to grapple with major debates in the social sciences.

Influential though the Nuffield Foundation has been, the major funding agency for social science research is the Social Science Research Council (SSRC).[22] The existing subject committees of the SSRC, for example, the Sociology Committee, might well have channelled funding support to the sociology of law rather than socio-legal studies, but until recently such committees have not been empowered to initiate or encourage developments, as the Nuffield Foundation may do. In 1972, however, a new SSRC Committee on Social Sciences and the Law was created and given a brief wider than that of many other subject committees, to initiate and encourage development in law and society research. The precise reason for establishing this new committee at this time remains somewhat obscure, but the vision which inspired the committee's attempts to foster development was clearly one of socio-legal study as we have used that term.

The new committee attempted to encourage growth within institutionalized and multi-disciplinary settings. The legal process and procedures of civil law were to be studied from the perspectives of disciplines such as economics, industrial relations, political science, psychology, social administration and sociology. The committee's first major decision was to establish in Oxford the Centre for Socio-Legal Studies and this Centre enshrined a pragmatic and interdisciplinary orientation. The Centre was expected "to fill a critical need for research into the processes of civil law" (SSRC, 1972:17) and support for its work was stated to be forthcoming from the Law Commission and the Committee on Legal Education. Dedicated to the praiseworthy task of seeking to reform and keep the law up-to-date the Centre then reflected an ancient orientation. (And, given the large financial resources granted to it, there is no doubt this orientation will be continued).[23] The initial work of the committee and the establishment of the Centre, with their stress on multi-disciplinary studies and organizational structures, bore an uncanny similarity to the old criminology. As such they were in direct opposition to many of the forces which had been

22. While funded by central government the research councils in Britain are independent bodies whose individual subject committees are mainly staffed by academics.

23. Although its research focus is narrower, the Institute of Judicial Administration of Birmingham University is governed by the same general approach. See SSRC 1976: 9. But cf. note 27 below.

shaping the development of sociology of law independently of the committee's influence. The result predictably was a replaying of the conflict which had earlier rent British criminology, though fortunately at a less intense and bitter level. Many of those interested in the sociology of law felt that the new committee were trying to institutionalize and bureaucratize what they regarded as a spontaneous intellectual development, and, worse still, that the committee did not comprehend the nature of the division which existed in law and society studies in Britain. The committee has since become more sensitive to such differences, but it nevertheless remains wedded to the encouragement of interdisciplinary socio-legal research.

There is little doubt that the focus of socio-legal work remains practical and pragmatic, informed by an interest in reform and by the vestiges of Fabianism. The target areas for socio-legal work are reform of the law, reform of lawyers and reform of law faculties; the topics chosen for research reflect these priorities. We have already noted the interest shown in the legal profession and in their dealings with the public. On the basis of socio-legal work in this area criticisms have been made of lawyers, the fees they charge, the services they do or do not provide for clients, and the control they maintain over their internal affairs and their relationship with the wider public. From the writings of Abel-Smith and Stevens (1967, 1968) and of Michael Zander (1968) have stemmed a series of studies which put in question the whole operation of the legal profession in Britain. Zander has been the most prominent critic of lawyers. Combining the use of simple research (on bail, fee-charging by barristers, legal representation, the unmet need for legal services and welfare and consumer law), with his role as legal correspondent for the national newspaper *The Guardian*, he has, for many years, been a thorn in the flesh of the legal profession. He was one of the most outspoken critics who provoked the setting up of the Royal Commission of Inquiry into the Legal Profession and he has been influential in other areas of legal reform and change.

Similarly in inquiring into the administration of justice or the operation of law, numerous studies attempt to show how the system *actually* works. Whether the specific focus is court processes (Bottoms and McClean, 1976; Elston *et al*; 1975) or tribunals (Grace and Wilkinson, 1975; Frost and Milton, 1975) or the jury system (Cornish, 1974, McCabe and Purves, 1972a), 1972b, 1974) the research illustrates a fascination with finding out how procedures work in reality and how they affect

people. The most ambitious research project in Britain to date, organized by the Oxford Centre for Socio-Legal Studies, focuses on the financial consequences of accidents and impairment, and the relevance or otherwise of the law. Finally, in the most popular area of research, a veritable host of studies (only a fraction of which have been published) attempt to illustrate the bias in the law, the differential access in giving legal services (e.g. Abel-Smith *et al*, 1973; Bridges *et al*, 1975). These studies variously indict specific legal procedures, the legal aid system, the legal profession or governmental policies. In this as in the other major areas of socio-legal research there is the belief that "finding out" about the operation of the law in fact will enable the making of more sensible and more rational decisions about revision of the law. Intelligent and continual planning in a complex society may thereby proceed.

At its best socio-legal research may be remarkably effective. There is little doubt it has had some impact, and has stimulated reforms of the law. Unless one is prepared to dismiss all such reforms as trivial, irrelevant or harmful, its utility and importance may not be ignored. Yet in spite of the successes and reforms, the critics of socio-legal work must be heeded. The very pragmatism entailed in the approach is also a major weakness. Unless socio-legal research can be part of an attempt to develop a more general theory of social order and law, then its contribution will remain piecemeal and *ad hoc*. The desire for reform and theory construction are, it should be added, not contradictory if for no more sophisticated reason than the fact that the prediction of unintended social consequences depends on adequate explanation.

Those who wish to develop the sociology of law have argued in this critical vein. They have stressed the need for explanation and theory, and the need for the questions asked, and methodologies used to answer such questions, to be aimed at that purpose. Their interests are in large questions which probe the nature of law and its relationship to society, which question the legitimacy of the law and legal institutions, and challenge legal definitions.[24] Three examples from current sociology of law work may be given. First, an initial interest in historical studies of law stimulated examination of the emergence of specific statutes and the forces that allowed or controlled their enactment (Carson, 1974a; Paulus, 1975; Bean, 1974; Gun-

24. This interest has also stimulated new publishing ventures. For example the *Law in Society* series of books and the *British Journal of Law and Society*.

ningham, 1974). Such studies have raised interesting questions about the nature of the legal order, but have also led to an extended consideration of the nature of order and control generally. Sociologists of law are now showing interest in the work of some British historians who have written about labor history, the changing social order in the 18th and 19th century and the impact of industrialization (Hobsbawn, 1971; Thompson, 1969, 1975; Thompson *et al*; 1975; Anderson, 1971; Rudé, 1970; Foster, 1974; Stedman Jones, 1971). A second concern that is current in the field revolves around the nature of the state. To a large extent this interest flows from Marxist theories of the state though it was perhaps stimulated recently by the intense conflict (social, political and, to some extent, class conflict) generated by the ill fated Industrial Relations Act 1971.[25] It is likely that Marxist, and to a lesser extent anarchist, appreciations of the state will continue as popular areas in the sociology of law. (See Bankowski and Mungham, 1976). Finally, there are a series of studies that continue to exhibit the influence of deviancy theory on sociology of law. In Carlen's work (1976) for example, the specific inquiry relates to magistrates' courts but the research interest is in examining the ways and means by which legal processes maintain control—how legitimacy is preserved, how reality is constructed and manipulated to protect and preserve a particular form of law in a particular class-structured society.

In posing such larger questions about the nature of law in society the sociology of law has also imported the fragmentation and disagreement from contemporary sociology. There is not *a* sociology of law in Britain but rather as we have shown a variety of approaches. While such variety provides richness and interest for those wholly committed to the social sciences, it is hardly surprising that to law teachers interested in the social operation of law, the very diversity and complexity of modern sociology present a considerable obstacle. Socio-legal studies may be entered with a few newly learned techniques, but sociology of law demands commitment and application. To overcome the obstacle and to facilitate the development of sociology of law, it therefore became important for lawyers to appreciate the con-

25. In the Industrial Relations Act 1971 the Conservative Government attempted to regulate trade unions and an ambitious range of labor relations matters by law, and established the Industrial Relations Court for resolution of conflicts. The Act was attacked as an employers' charter and an assault on workers rights. A series of conflicts culminated in confrontation between the coal-miners and the Government which, in a general election, saw the defeat of the Conservatives and the return to power of the Labour Party who repealed the 1971 Act.

cerns of sociologists and working conferences were established which provided forums in which the complexities could be discussed and debated.[26] The ability of lawyers to contribute to the sociology of law has been accepted. Within law schools, law teachers now offer courses on sociology of law. Some universities have become interested in providing postgraduate courses to help foster the development of sociology of law and courses now exist at the Universities of Brunel, Sheffield, and Cardiff. The Social Sciences and the Law Committee of the SSRC, on the basis of their view as to how interdisciplinary success was to be achieved, were initially somewhat uninterested in such developments but more recently they have started to provide financial support for these courses.

The new training programs will take time to achieve more widespread effect and socio-legal studies will, until then, remain the most popular research activity. Law teachers who have subscribed to sociology of law rather than socio-legal studies will for some time continue as a committed few who have undertaken a long trek.[27] But criticism of the weaknesses of the socio-legal approach will continue, even as the several different sociologies of law provide alternative and different criticisms. This fragmentation of sociology produces difficulties for the aspiring entrants, and it also feeds that lurking British suspicion of "theory." Future developments are difficult to predict, but we believe that the approach of socio-legal studies is untenable *per se*. It must, sooner or later, turn towards the development of theories and explanations, if its reformist goals are not to degenerate into piecemeal changes that have unknown, unpredicted and unintended consequences. Ultimately the aims of the two approaches are not incompatible and, in the long term, the contemporary divide, which is so marked just now, ought to disappear. There is a danger that this fruitful potential may be distorted by an unbalanced provision of funding resources. How far the study of law and society in Britain continues to have an effect on social policy, depends, in part at least, on current debates on the future of the welfare state, as much as on what happens within the field. The most hollow victory of all would be a sociology of law as an ornament of university academics and without a practice in the world of man.

26. If only because, as we have suggested, the major financial support was available to and for lawyers and law teachers.

27. Very recently, the Oxford Centre has begun to show interest in mounting studies in sociology of law. Apparently the new Director of the Centre, Mr. D.R. Harris, regards complementary development of socio-legal research and sociology of law as important, and this could be encouraging in terms of future developments.

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