

Law and Sociology

What we call law and society has often been translated as law and sociology. This is an unfortunate situation for several reasons. First, there is significant work by other social science disciplines using law as a theme; second, sociology is not monolithic as a discipline—particularly when it deals with legal materials. Fearful that sociology will receive additional emphasis, I would like to explore and briefly analyze some of the differences in intellectual stances among sociologists of law.

The ideas below briefly offered have been developed with my colleague Professor Gresham M. Sykes; we hope to expand on them in depth.

The great bulk of writing in jurisprudence has been tinged with concepts and theories of the sociological thought of the time—at least in the sense that discussions of the nature and function of law have invariably involved questions about the structure of society and the nature of man. It would seem that four types of jurisprudence can be distinguished in terms of the kinds and amounts of involvement which law has with the social sciences.

First, there is one mode of studying the law which might be referred to as classical jurisprudence. It has its intellectual roots in the writings of Plato and Kant, Hegel and Hobbes. Its subjects might be the nature of legitimacy, the separation of governmental powers, the nature of justice, and the like.

Second, there is a style or mode or school of legal study which is commonly termed sociological jurisprudence. It received its major impetus at the beginning of this century with Pound—and, I suspect, many social scientists would think it has little to do with sociology. Its intellectual roots are in the writings of Austin and Bentham. This school would focus on questions of decision-making processes of the judiciary, court congestion, the structure and function of various areas of the law, and the like.

Third, there is the sociology of law. It represents, I think, a blending of two historical changes—a growing sophistication and elaboration of the social sciences, on the one hand, and a reawakening of the interest in law as a liberalizing element in the society, on the other. It has been carried out primarily by sociologists rather than lawyers and generally outside of law

schools instead of within. The topics studied by this school would include police brutality, innumerable studies in criminology, the legal profession, and the like.

One major difference between sociological jurisprudence and the sociology of law is that the former is very reluctant to generalize in terms of analytical abstractions. Instead, if generalizations are made, they are apt to be in concrete terms.

Fourth, there is something I would call "law and the social sciences." The intellectual roots probably go back to the work of the legal realists of the 1920s and the 1930s; the names of such "angry young men" of jurisprudence as Karl Llewellyn and Jerome Frank would take a prominent place. This school, which is more a matter of becoming than of being, would focus on such questions as concentration of economic control, prevention of racial discrimination, protection against consumer fraud, and the like.

The above inventory of roughly definable schools of sociology and law shows the diversity among sociologists working with legal materials. I suppose the inventory also represents the order of chronological development of sociological thought about law.

It might be interesting for other social science disciplines to attempt a similar inventory. And it would be useful for sociologists to contemplate the value of each approach, all toward developing further the total professional interest of those of us who would rather be labeled, if labels we must have, scholars of law and society.

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