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Newsletter of the Sociology of Law Section of the American Sociological Association.

THE ASA SOCIOLOGY OF LAW SECTION: REFLECTIONS ON THE FIRST DECADE

ORIGINAL IDEALS AND CONTINUING CHALLENGES

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It is a pleasant surprise to discover that already the Section on the Sociology of Law has survived its first decade and thrives. The lively program of the Section owes everything to the extensive activities of many committed people. As we enter a new decade of activity, now is a good time to recall some of our original ideals and to emphasize their continuing relevance.

Original Ideals
When Joachim Savelsberg first broached the question of an ASA section on the Sociology of Law, we struggled with two questions. What was its justification on its own terms? And what distinctive contribution could it make that was not already being made by the Law and Society Association, since it made no sense to duplicate functions or to compete?

The answers to the first question were straightforward. After all, sociology's theoretical tradition since the 19th century took law seriously, perhaps most notably in Weber's sociology of law and the economy. Echoes of this centrality appeared in Talcott Parsons' theory, where law was elevated to a "medium of exchange" and legal institutions were an integral element of social structure. The history of civilizations itself could be styled in part in terms of shifts in the

*—See **Decade** page 3.*

THE SOCIOLOGY OF LAW SECTION AT THE ASA ANNUAL MEETING, CHICAGO, AUGUST 15-19, 2002

The section day of the Sociology of Law at the ASA Annual Meeting is Monday, August 19. The section has sponsored the following events:

8:30 a.m. Paper Session: Law and Inequality
- Organizer and Presider: *Laura Beth Nielsen*, American Bar Foundation
- Flexible Formalization and Limited Legalization: Managing Flexible Work Arrangements in U.S. Organizations. *Erin Kelly*, University of Minnesota; *Alexandra Kalev*, Princeton University
- Driver Race and Ethnicity, Vehicle Searches by Police, and Vehicle Search "Hit" Rates: The Contacts Between Police and Public 1999 National Survey. *Richard J. Lundman*, Ohio State University
- Struggles Against Inequlaity in Everyday Life.: Putting Politics in Legal Consciousness. *Anna-Maria Marshall*, University of Illinois, Urbana-Champaign
- Contradictory Legal Consciousness: Race, Legal Beliefs, and the Experiences of Capital Jurors. *Benjamin D. Steiner*, University of Delaware
- Defining Sexual Harassment. *Justine Tinkler*, Stanford University

10:30 a.m. Paper Session: Law, Health, and Healthcare (co-sponsored with the ASA Section on Medical Sociology)
- Organizer: *Mark C. Suchman*, University of Wisconsin
- Organizer: *Sydney A. Halpern*, University of Illinois, Chicago
- Placing a Standard of Care in Context: The Impact of Witness Potential and Attorney Reputation in Medical Malpractice Litigation. *Ralph Peeples* and *Catherine T. Harris*, Wake Forest University; *Thomas B. Metzloff*, Wake Forest University
- Anticipating the Organizational, Professional and Legal Challenges of Emerging Information Technologies in Health Care. *Mark C. Suchman*, University of Wisconsin
- Medicine, Bioethics, and the Law: Explaining the Advent of Human-Subjects Regulations. *Sydney A. Halpern*, University of Illinois, Chicago
- Social Dehumanization Through Biotechnology in Public Ethics. *John H. Evans*, University of California, San Diego
- Discussion: *Carol Heimer*, Northwestern University

12:30 a.m. Refereed Roundtables
- Organized by *Elizabeth Hoffmann* and *Carol Heimer*.

1:30 p.m. Business Meeting

2:30 p.m. Paper Session: Reconsidering the Classics of the Sociology of Law
- Organizer and Presider: *Mark Gould*, Haverford College
- John Dewey and the Legal Realists: A Call for Reviving the Early American Pragmatists' Theory of the Self. *Susan D. Carle*, American University
- The Ideal and the Real in Classical Contract Law. *Arthur Jacobson*, Yeshiva University
- Sociology of Law as a Science of Justice. *Philip Selznick*, University of California, Berkeley

The section **RECEPTION** will be held jointly with the Crime, Law and Deviance section in the Robert Woods Conference center of the American Bar Foundation, 750 North Lake Shore Drive at 6:30 p.m. on **August 18**.

Much more information about the Annual Meeting can be found online: http://www.asanet.org/convention/2002/index.html

Editorial Note

As some readers may have noticed, the online edition of the newsletter was temporarily unavailable few months ago. Fortunately, in the meantime, the newsletter has relocated to a better server. The website URL, www.amicionline.org*, should always remain valid.*

As always, section members are encouraged to submit their ideas for contributions to the Newsletter Editor. Responses to the special on our section's first decade are particularly encouraged, as are essays on teaching in the sociology of law, and books in our sociological specialty to be considered for a symposium.

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...Amici Quotes...

"You're busted, buddy".

—Slogan on the VideoVigilante website that posts videos of cops beating up suspects and other such dirty data. www.videovigilante.com

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differentiation and autonomy of law. In the occasional subfield of sociology, such as organizations, eminent scholars such as Selznick and Stinchcombe also reminded the discipline as a whole that sociology's theoretical aspirations could scarcely be satisfied without comprehending the explanatory force of law and its institutions.

In the drift away from law in the post-Parsonian era of social theory, law also seemed marginal to most sub-fields of sociology. Part of our vision, therefore, was a zeal to "bring law back in." We believed that social theory and sociological practice are impoverished without a clear encounter with law in its many manifestations.

Since we sensed that a sociology alienated from a core part of its founding theory needed to be confronted with the possibility of law, we sought to formulate ways in which a section on the sociology of law might simultaneously benefit sociology and offer a unique value to the law and society movement. We believed that a new section could set up a two-way traffic between law and other aspects of sociology that would simultaneously multiply benefits in several directions.

First, we sought to proselytize others. We argued that the sociologies of family, stratification, collective behavior, race and ethnicity, organizations, culture —most every subfield of sociology itself would benefit from an engagement with an active section that showed how sociology could mobilize law for theory, research and practice.

Second, we wanted to inspire ourselves. In this export-import modality, we hoped that the sociology of law might be enlivened by a faster, heavier traffic from the most vital parts of sociology —and in the late 1980s, those included the sociology of the state and sociology of culture, among others.

Third, we hoped to energize the law and society movement itself, since many, perhaps most, of us were active in the Law and Society Association. In many ways, the law and society movement, as it became institutionalized, sought to carve out a distinctive niche in the scholarly firmament —to find its own intellectual agenda, its own questions, and its own distinctive answers. It was inter-disciplinary from the beginning— and quite successful in doing so. We hoped that stimulating import-export among subfields of sociology would contribute to the continuing revitalization of law and society as interdisciplinary field.

I believe this original vision continues to be relevant, even if sociology of law's "trading partners" may have changed, as different subfields of sociology have risen and fallen, or have drifted closer or further away from an encounter with law.

Continuing Exchanges: The Case of Economic Sociology

Let me offer one example of ways the original vision will continue to be realized from an exciting frontier of sociology.

Economic sociology currently is a dynamic emerging field. Although some kind of economic sociology has been around for a long time —indeed Marx, Weber, Polanyi, Parsons, Stinchcombe, and many others might be styled economic sociologists— it is only in the last five years or so that it has begun to carve out for itself a coherent organizational niche in sociology, not least by forming a section on economic sociology within the ASA. Economic sociology offers a fertile relationship with the sociology of law, so much so that one of its leaders, Richard Swedberg, has recently called for an economic sociology of law.[1]

One does not need to dig very deeply to discover that critical issues for economic sociology implicitly or explicitly engage law. Following Granovetter, it is a central premise of economic sociology that the model of neo-classical economics, where autonomous actors freely exchange goods and services in open markets as if the market itself is institutionally unstructured, is a myth. In fact, markets are structured heavily by embedding institutions of all sorts. Carruthers discovered that political affiliations stratified trading in early English financial markets; many observers point to the widely observed phenomenon of *quanxi* in Chinese trading relationships; family ties heavily structure the internal trading among companies within the largest Indonesian conglomerates. And in a world of imperfect information, problems of trust and uncertainty in market exchanges are solved in part through social networks, as Karpik has shown in his work on French professional services.

In fact, studies of economic history and economic development indicate that part of the drama of those transitions occurs when legal means of structuring economic relationships seek to displace or control competing bases of exchange. Thus, observers of Chinese economic change at present debate how fully a rational-legal concept of transparent economic transactions is displacing those based on personal relationships (*quanxi*).

One example of such institutions are the rating agencies that structure national and international credit markets. Public and private debt is rated by Moody's or Standard and Poor's and those ratings form the basis of investment decisions and the pricing of capital. That these agencies seek to propagate global standards for financial markets is a matter not only for economic sociology, as the latest issue of Economic Sociology's European newsletter suggests, but they combine efforts at commensuration (on which Wendy Espeland, the

[1] Richard Swedberg, "Law and Economy: The Need for a Sociological Approach," Economic Sociology —European Electronic Newsletter Vol.3. No. 3 (June 2002).

incoming Chair-Elect of our Section, has written eloquently), efforts at norm-setting, and efforts at regulation —all of which are central issues in the sociology of law.

Networks of all sorts structure economic transactions. Among the most important are networks of credit relationships: every firm is embedded in many lending and borrowing relationships where money is owed or received from other economic actors. The balance of power in the credit network is determined as much by the legal entailments of property rights, and the relative strength of those rights, as the sheer volume of monetary obligations or power of the respective actors. A notion of power in credit relationships therefore becomes considerably more contingent and sophisticated when it integrates concepts of property rights into the analysis of financial networks.

Neil Fligstein, another leader in economic sociology, has sought to direct that sub-field towards the architecture of financial institutions. In his earlier work, Fligstein had already pointed to the importance of legal change in antitrust law for the organization of firms. This direction coincides with the concerted efforts being made by groups of rich nations, such as the G22, to erect national and international financial institutions that will forestall the kinds of financial meltdowns we saw in the Asian Financial Crisis of 1997-98. The IMF and World Bank, among others, have recognized that this institutional architecture rests heavily on legal regimes. For instance, Carruthers and I are currently studying how the international financial institutions (IFIs) are joining with INGOs and others to propagate bankruptcy regimes that offer developing nations a system of substantive and procedural laws alongside courts, out-of-court processes, and professions. All of these are presumed to increase the predictability and stability of markets and thereby stimulate the flow of credit. Explicitly, therefore, the IFIs recognize the legal contingencies that affect the viability of markets.

This approach overlaps with another theme of economic sociology —that of risk and how it is managed in markets. Financial risk entails law in several ways. Indeed the Asian Crisis has underlined how much financial risk depends on whether or not debtors in developing nations will recognize the property rights (e.g., of collateral) of foreign lenders; or how much risk is mitigated by the existence of competent and neutral legal institutions to effect financial restructuring; or how risk is moderated by the ways that legal institutions provide a shadow for efficient operation of out-of-court settlements. Indeed, even a notion of 'legal risk' has begun to emerge—and it is a very sociolegal concept, for it implies not only what the law may say on the books, but also what probability there is that the law will operate effectively to ensure orderly credit markets.

If economic sociology confronts problems which might be illuminated by the sociology of law, the latter also can bring issues and approaches that may stimulate the former. Sociologists of law are acutely aware of the limits of pristine regulatory regimes and the contingencies of their implementation. Our concepts of law are more flexible, less reified than some which appear in economic sociology. We are well accustomed to the view that markets are legally constituted —that actors in the market (individuals, fictive actors such as corporations) are socially and legally constructed, that market activities are made possible by enabling legal concepts, such as the terms of joint ventures. We understand something of the vast intricacy of laws that regulate every aspect of market transactions. And of institutions that cope with breakdowns in market behavior. We are familiar with both the powers and the limits of legal institutions. And we are much experienced at explicating the complex relations between the formalism of rules and institutions and practices that instantiate them.

One of the places where the mutuality of our two sub-disciplines is best revealed is in work on transitional and developing societies and economies. In these situations, countries seek to establish markets where previously hierarchy has existed. Or they seek to shift the basis of a market from personalistic to arms-length transactions. Or they endeavor to extend the sources and types of credit beyond local or national bounds. In each of these cases, and many others, the constitution and reconstitution of the market is accompanied by a flurry of law-making and institution-building. International financial institutions believe strongly, for instance, that economic development depends on the implementation of secured transaction law. They thus continue to pose simultaneously a research agenda for the sociology of law and economic sociology —what are the legal precursors of economic development and what impact in fact do they have on various types of markets? Law and development issues such as these are now entering a second generation. They offer a lively site for mutual engagement between scholars of these two intertwined institutions —law and the market.

In sum, I believe that the Section is a good place for we, as sociologists of law, to forge a common intellectual bond. Perhaps more importantly, however, it gives us a strategic position from which we can export to the rest of sociology a legal dimension that exists in virtually every subfield of sociology, just as we can import from other subfields exciting new theoretical and research agendas to the benefit of sociologists of law and sociolegal scholars more widely. Intellectually, this means a continuing engagement with the leading work in other fields. Practically, this means concerted efforts to structure conversations and undertake joint explorations with sociology's many other specialties.

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The Section's First Decade

THE SECTION AS AN INSTITUTIONAL SAFE HAVEN FOR THE SOCIOLOGY OF LAW

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As it happens to all strangers, many things amazed me when I moved from Europe to America in 1989. They included one fact of comparatively minor importance, the lack of a Section for the Sociology of Law in the American Sociological Association.

In 1991 I coped with this surprise with a well-established method. I wrote a brief statement, in which I laid out some substantive and some institutional reasons why a Sociology of Law section would be a good idea. I paraphrase from my 1991 statement regarding the institutional reasons: "The American Sociological Association does not adequately institutionalize the sociology of law despite its central importance for the understanding of society, its subsystems, social action, culture, formal organizations, social structure and conflict, and social change. For example, the last three Annual ASA Meetings offered only one session each on the sociology of law. Papers presented at sessions of the Section for Crime, Law, and Deviance almost exclusively dealt with issues of criminal behavior or criminal justice organization. Issues of criminal law found almost no attention, issues of other types of law, none at all. At the same time there is considerable interest in issues of law within the discipline. The ASA *Guide to Graduate Departments* documents more than 170 sociologists who indicate 'law' or some special type of law —excluding criminal law— as an area of specialization. The Law and Society Association's membership directory lists about 120 members whose addresses are in sociology departments or who are known to us as sociologists. Together these two directories list more than 220 persons (there were overlaps) who document an interest in the sociology of law. They typically meet at the annual meetings of the Law and Society Association. While this multi-disciplinary context is important for law and society studies, it also distracts from the systematic development of the *sociology* of law" (Savelsberg 1991).

One year later the Section for the Sociology of Law was under way. Terry Halliday led the effort. Members of the initial Steering and By-laws committees included further, and I will have to trust my notes here, Donald Black, Lauren Edelman, Butler Jones, Bob Kidder, Rick Lempert, Setsuo Miyazawa, Frank Munger, Al Reiss, Robert Rosen, Larry Ross, Joachim Savelsberg, and Kim Scheppele. Clearly, the section's foundation has increased the representation of this specialty at ASA meetings during the past decade.

While not all hopes may have been fulfilled, I maintain that the Sociology of Law section provides an important opportunity for sociologists working on legal issues to get together, in addition to the Law and Society meetings. Importantly, the ASA meetings are a place to connect with other specialties within sociology such as sociological theory, organizations and occupations, gender, political, and medical. By pursuing this path, the section has countered tendencies of some sociological specialties to set up intra-disciplinary boundaries (Vaughan 1999:310). The section has instead consciously advanced such encounters. The foundation and program strategies of the Section for the Sociology of Law have thus, in one small area, slowed the "fizzling out at the edges" that several scholars have diagnosed for fields like sociology that are competitive and decentralized (Fuchs 1993; Halliday 1992).

I would further reiterate my earlier support for the section by adapting a set of theses that Rob Sampson and I recently formulated in an editorial introduction to a special issue of *Crime, Law, and Social Change* (Savelsberg and Sampson 2002). This issue deals with the relationship between criminology and sociology, which is at its best in the kinds of contributions by John Hagan, Jim Short, Jr., Susan Silbey, and Diane Vaughan this issue entails. While the conditions of criminology and Law and Society are not identical, a newsletter publication may allows me the experiment of citing those theses while replacing the term "criminology" by "Law and Society Studies" (L&SS):

> *Thesis 1*: Law and Society Studies (L&SS) has grown as a multi-disciplinary field out of disciplines, especially sociology.
>
> *Thesis 2*: L&SS, like other multi-disciplinary fields, begins to isolate itself from sociology.
>
> *Thesis 3*: L&SS is not a discipline, as it does not have an intellectual core.
>
> *Thesis 4*: L&SS's isolation from sociology comes at a great cost.
>
> *Thesis 5*: As L&SS closes itself off from other academic disciplines, including sociology, it opens itself up to extra-scholarly influences, especially those of the law and its makers, including the legal profession ["those of the state" in the original]. It is at risk of losing its intellectual integrity.
>
> *Thesis 6*: Concern with disciplinary credentials should be replaced by a renewed focus on intellectual ideas.

Space is too limited here to report the arguments with which we support these partly provocative theses for the case of criminology (for such arguments see Savelsberg and Sampson 2002), and some parts of the story are well known. I only mention the first organizing event of the Law and Society Association (LSA), a breakfast meeting of one hundred sociologists at the 1964 ASA meetings in Montreal (Yegge 1966). The Law and Society Association, of course, became a huge success. Yet, the distance between LSA and sociology has grown considerably. I will also mention the mushrooming of specialized Law and Social Studies programs, at times

specialized degree programs, in academic institutions. Craig Calhoun (1992) rightly observed some time ago that the foundation of such interdisciplinary programs holds the risk of creating new boundaries between academic fields rather than advancing exchange between disciplines. This risk must be taken seriously.

What about the power of extra-scholarly influences? I would concede that 'the law' is not as powerful and clearly defined a reference outside of the world of scholarship as 'criminal law and justice' are. The risks to L&SS may thus not be as grave as those to criminology. Nevertheless, law's representation by a comparatively powerful legal profession in combination with its normative and interpretive logic--as opposed to socio-logic of our discipline--may at times overwhelm social science partners in a joint multi-disciplinary enterprise.

Systematic research is needed to tackle questions regarding the relationship between the organization of scholarship and knowledge produced in general and for our field in particular. Findings from recent work on the relationship between the institutionalization of criminology and criminological knowledge yield some insights. In this research a group of graduate students and I collaborate to analyze the association between state actions and the institutional forms of criminology on the one hand and the production of knowledge about crime and crime control on the other. In one line of work we examine two mechanisms through which the polity may affect scholarly work. Influence may occur directly through research funding or indirectly as academic institutions change their internal organization in response to government-induced demand for professional training. Wolf Heydebrand (1990) has argued a decade ago that academic institutions have become increasingly responsive to such demands. We find this confirmed for criminology and criminal justice studies. Some of the findings from multivariate analyses of a sample of scholarly journal articles published between 1951 and 1993 appear in a forthcoming article entitled "Politicized Scholarship? Science on Crime and the State" (Savelsberg, King, and Cleveland 2002). First, authors affiliated with criminology and criminal justice programs focus more strongly on topics and theories suggested by the state than authors from sociology programs. We refer to this as "program effect." Second, articles based on funding provided by political agencies are more likely to relate to substantive and theoretical concerns articulated by the state, the "funding effect." Yet, the funding effect is less pronounced than the program effect. Third, the relationship between a changing ideological climate and criminological knowledge is almost fully explained through funding and program effects. This test of the relationship between state strategies and institutional forms of scholarship and scholarly knowledge production is conservative. An examination of text books, policy journals, or publications series of the National Institute of Justice would almost certainly have yielded stronger relationships.

Again, Law and Society Studies is not part of an organizational field with one dominant actor outside the world of scholarship as powerful and clearly defined as the criminal justice system. Yet, caution may be warranted nevertheless given the Law and Society Studies' closeness to the field of law, much more prestigious than the social sciences and to the legal profession and the state as producers of law, both much more powerful than social science. Encounters with the multi-disciplinary world of Law and Society Studies will, of course, continue to provide us with challenges, stimulations, provocations, and exposures to the world of law. Institutionalizing the sociology of law, however, for example through the Sociology of Law section, may provide a safe haven to guard the conceptual, theoretical, and methodological integrity of the sociological endeavor and to secure continued exchange with other branches of sociology.

Happy tenth anniversary then—and many happy returns!

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The Section's First Decade

SOCIOLOGY OF LAW IN THE PUBLIC SQUARE OF SOCIOLOGY

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Anniversaries are a useful species of numerology, because they create regularized opportunities for looking back. In this case, we look back over ten years of the sociology of law section.

I could write about how our section was started because of an inspired idea from Joachim Savelsberg, who approached Terry Halliday and me with the proposal to start a section. Or about how the section was helped immensely by the fact that Jim Coleman was the president of the ASA at the time. Jim was himself a closet sociologist of law with his work on the legal history of the corporation and its usefulness for social theory, so he was immensely supportive of our efforts. Or I could write about how we were assisted in many respects by the fact that Felice Levine was the executive director of the ASA when the idea for the section was first circulated. Felice, of course, was a past president of the Law and Society Association and was very helpful in getting us up and running within the ASA structures. Or I could write about how many people supported the effort and contributed by serving as section officers, by joining the section and attending the annual sessions. Our section was only an idea ten years ago and now it is indisputably a part of the ASA. We may be small, but we are a dedicated group with fascinating yearly programs and a community in common.

But rather than review the history of our section at any greater length, I'd rather talk about a different history. I want to consider the history of the relationship between sociology of law and sociology as a discipline because ultimately the best rationale for our existence is an intellectual one. It's hard to say what has become of sociology in general in the last ten years. Mostly the discipline seems intent on continuing its centrifugal movement into different specialties, so in the short term, having sociology of law is a good thing because it gives those of us who do this kind of work a place to retreat to from the underdeveloped public square of our discipline. But I want to suggest that the resurgence of sociology of law within the broader discipline also gives us a chance to recreate a core for the discipline, as indeed sociology of law did at the very origins of our discipline. Sociology of law can provide the new design of the public square of sociology as a whole.

This requires a much longer history than just the ten years of our section. I tried to trace some of it in a piece I wrote for the Annual Review of Sociology some years back (Kim Lane Scheppele, "Legal Theory and Social Theory," *Annual Review of Sociology,* 20:383-406, 1994), but let me recap the highlights here. In what we think of as the beginning of our discipline, sociology of law wasn't a specialty, but rather it was built into the very idea of the field. Law was both an important source of data about the state of society itself and also an important model for how theoretical insight could be organized. For example, Emile Durkheim's *Division of Labor in Society* used as one of its primary measures of the state of social development the presence and elaboration of civil and criminal law. Max Weber, who had been trained as a lawyer and who even unhappily and briefly practiced law, took theoretical inspiration from the debates over the proper organization of legal knowledge. For example, he organized his masterwork *Economy and Society* in the image of the German Civil Code of 1900 (with a definitions section at the start, and the whole society analyzed in terms of types of institutions and their rules of operation, each in separate chapters). Weber retained a theoretical and practical interest in law throughout his life; his correspondence with Hugo Preuss during the expert phase of the drafting of the Weimar Constitution shows Weber's engagement with the political theory of his day, and Weber's active participation in debates with Russian intellectuals over Russian political development after the 1905-1906 Revolution clearly showed his continuing commitment to law as a way of both reflecting and encouraging new social practices. For both Durkheim and Weber, among others writing during the huge social changes of the 19th century, law and its operation were not just objects of study, but formed the very frames in which they thought and acted.

As sociology was Americanized throughout the 20th century, this emphasis on law as a source of both data and theory was lost in favor of a view of society whose inhabitants' relationship to law was categorized as either compliant or deviant. Behavior became the base and ideas the superstructure of the American version of sociology. This development, associated with the rise of urban ethnography as a major source of inspiration in the early Chicago School, collapsed concerns about law, broadly speaking, into the study of the violations of criminal law, more narrowly conceived. Of course, criminality, its causes and its effects on social life are an important topic. But it is also important to see the nearly singled-minded focus on criminal law in sociology as a narrowing of the influence and effects of the broader discipline of law on sociology.

How can that broader effect be imagined? I think that the broader effect can be seen in two ways: 1) Legal rules provide a rough estimate of how, on average, people behave (with the many exceptions now made obvious by the empirical work of many in our field) and what, in general, people value; and 2) legal concepts and categories are in a very practical sense a rough draft of social theory. Let me take each in turn.

First, on the relationship between rules (i.e. doctrine) and social practices. Sociologists' emphasis on deviance and on how law in action differs from law on the books

are important. Laws never work exactly as they are written. But our focus on the gaps between law and practice obscures the fact that one can tell a great deal about a society by reading its laws, even without knowing more about practices. One can see this more clearly over great historical and cultural divides than from one day to the next in the same place. For example, early medieval laws in much of Europe emphasized pacts between kings and the nobility and elaborated devices for allocating control of land and collection of revenue from that land. By the 19th century in the same countries, laws regulating relationships among strangers were more important, and contract was at least as prominent as property (perhaps even more pervasive) in defining social relations (as Henry Maine became famous for noticing). Or, to take another obvious example, women in Europe and North America appear as submerged in their relations with men until the 20th century; women's progressive independence from being defined only relationally to men can also be traced through an examination of law on the books (even with all of the deviations in practice). Does the presence of a guarantee in a law code mean that everyone actually realizes the guarantee? Of course not. But does law reflect the presence of new social relationships, new institutions and new ways of thinking that have become dominant in a society? Absolutely. Legal rules by themselves are never the whole story of social practices. But they are part and parcel of that story.

Moreover, these observations are not limited to state law. Every social community and organization has law-like rules, rules which are often descriptions of actual behavior as much as they are normative statements about ideal conduct. The law-like rules with which every social organization functions are often a useful starting point for understanding what matters and how to the organization, as well as what it take its own ideals to be. Deviations in practice can be expected, but social organizations in which most rules are broken by most members are clearly in trouble (and this fact by itself may make them interesting to study —but law is hardly irrelevant in this determination either!).

Then, on legal concepts and categories. Law (at least in the sense that is taught in law schools) is a way of thinking the world. So is sociology. Since both law and sociology are ways of thinking about the same social worlds in the same times and places, it would be surprising if there weren't family resemblances in the ideas used by law and those used by sociology. In fact, social theory has often developed historically precisely through critically examining and elaborating on legal ideas.

How does this work? Legal doctrine is a set of concepts and categories that have the effect of sorting social relations into meaningful categories and noting what features of belief and action should be attended to if one is to understand what has happened. For example, *mens rea* requirements throughout much of the criminal law reveal that the subjectivity of individuals matters in determining what their actions *are*, legally (and, I would add, socially) speaking. As Oliver Wendell Holmes famously said, even a dog can tell the difference between being stumbled over and being kicked. Sociology reproduces this concern about the difference between internal and external evaluation of action in its non-behaviorist modes by also being concerned about intention, meaning and other elements of subjectivity in conjunction with an emphasis on actions. Actions done with particular forms of intent simply are different sorts of actions in both sociology and law than those same actions performed without such intent.

Or take constitutional law, a field that some of us are now trying bring into sociology, refusing to leave it just to political scientists and lawyers. Constitutional law is about constraining power with principle. But how is power constrained? Historically, power is constrained when the state pushes at various social institutions and they *push back*. For example, the battles in the 12th century in much of Western Europe foreshadowed the development of constitutional principles. The chief fights were between the Catholic Church and the nobility on one hand and kings on the other. What resulted was not just a sharing of power between institutions, but also a set of abstract principles that would be used to regulate relations among institutions for centuries to come. The separation of church and state, for example, is both an abstract principle and a marker of real historical struggles that came out a particular way. And the separation of church and state doesn't exist in the same form in places where the battle came out differently as it did, for example, in Russia where the tsar simply made the church a part of the state bureaucracy. To take another example: the separation of powers (where nobility's victories over the crown are marked by the creation of a parliament that governs with the king) is again a legal residue of concrete historical struggles and can serve both as an organizing idea and as a description of social practices (that may be more or less consistent with the general principle). Where absolutism lasted longer, other political institutions are less strongly developed – and this is generally reflected in the shape of constitutional doctrine.

Large historical changes in power and its limitations are often marked through changes in law. One can see, for example, how the near-monopoly on landed privilege was broken down through the rise of new forms of capital and new forms of social and geographical mobility because these gave rise to new forms of law. The historical struggles become visible by reverse-engineering the legal categories. Legal doctrine shows in its abrupt changes where the bodies are buried and where the battles were fought. In addition, legal theory can be a rough draft of social theory precisely because it grows out of these struggles. The concepts and categories useful to the winners of such battles (which is often what legal theory is) are often useful to analyze because they are the terms in which the rulers justify and legitimate their rule. Not that they should just be

taken uncritically from law into sociology. But they should surely be relevant to sociological thinking.

I realize that in making this case, I give much more emphasis than most do to the useful effects of legal doctrine, the currency of law schools. And our field would be greatly impoverished if everyone dropped present-day empirical study to read law books. But I think our field is impoverished also if most of us believe that law books and the ideas that they contain are irrelevant to sociology.

Law can be a model for our common public space in other ways as well. At the moment, a substantial part of our discipline thinks of sociology as being most akin to natural science with its emphasis on universal theories and its behaviorist senses of empiricism. Think of how sociology would be different if we imagined that our closest field, intellectually speaking, was law! Law, like sociology, develops an infrastructure of ideas that attempts to make sense of the world. In addition, law, like sociology, is interested in reliable evidence that can be assessed by critically analyzing sources. But law does not presuppose that the only interesting facts are those that occur in large numbers nor does it presuppose that the only interesting categories are primarily summaries of many empirical instances.

Much of what I am saying here is obscure at least in part because it is compressed. But I hope to have created at least some opportunities for thinking about sociology of law not just as a single and specialized topic in sociology but as a model for doing the sociology of every other topic. After all, families, organizations, professions, cultural institutions, and forms of life of all kinds are themselves reflected in law, so it would be surprising if law were not somehow relevant to all of the various specialties in our discipline. The trick is to figure out the "somehow."

On this tenth anniversary of our section, let us think about ourselves not as just a small section within a large and ever more differentiated discipline, but as the possible core of a newly rethought discipline. Let's spend the next ten years trying to model this new public square of a sociology that again relies heavily on sociology of law. We can start with our work and our conversations on how law is deeply embedded in all of the structures that we study, including sociology itself.

(And for anyone who wants to study our section's by-laws, those of us who tried to draft them are still around!)

* * *

The Section's First Decade

REFLECTIONS ON THE ORIGINS OF *AMICI*

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When the Sociology of Law section was in its birthing throes there was a great deal of hope about what it could do for sociologists who were drawn to law and society-related research but wanted to retain a sociological stamp on what they were doing. The concept of an ASA-based section was rooted as much, if not even more, in the concept of networking and communication amongst sociologists as it was in any particular vision of what sociology's distinctive approach to law and society studies might be.

So it was that I was contacted about possibly putting together a newsletter for the section. Having had most of my early files related to the newsletter wiped out in a cyberspace disaster, I'll have to reconstruct some of the events from a hazy memory and will undoubtedly use vague phrases rather than try to insist on razor-sharp eyewitness testimony.

My recollection of the first contacts is that some people thought that my experience as a former editor of the Law and Society Review might make me particularly able to construct a newsletter for the first time. Little did they (or I) know how different newsletters are from journals.

I contacted ASA and asked them to send me examples of other ASA section newsletters, and found that there was a wide range of appearances, content, and style. I ascertained from ASA and from our Section organizers how many pages we could afford to print and how to send the material to ASA for copying and distribution.

My memories from that early period are of spending hours at the computer trying to figure out how to format a newsletter so that it would look like a newsletter. The software at the time was both marvelous and frustrating. It allowed me to create a masthead, but wouldn't let me store it in a retrievable form. So at the beginning I was forced to rely on Xeroxing and scotch-taping to create a first page. I would try to force material into columns only to have them create chaos on the last page, forcing me to start all over again.

Then there was the matter of what to call the newsletter. The name "*Amici*" came to me in a flash while I was doing something totally unrelated to academic work, though I cannot remember what it was now. But there were other names considered as well. I remember trying out various names with members of the organizing council (in particular, a conversation with Kim Scheppele) and the *Amici* name somehow won out. Because of its ad hoc origins, I was amused when the

name later became an object of criticism by a member who saw it as a good symbolic representation of what he considered to be the section's failure to stick to its original principles.

As for the content, we eventually developed a system of "reporters" and specialized sections, thanks to the tireless work of Matt Silberman, our Bucknell connection. But at the beginning, we had to strain to figure out how to pull material together from a group "in need of networking". In addition, e-mail was a bit of a novelty at the time, so quite a bit of the work was done by phone and snail mail. Of course there would be a piece from the Section chair. And we figured out early on that we should provide advance notice of the Section activity at the ASA annual meetings. But "finding news" amongst a scattered group of academics whose activities had never before been collectively treated as "news" was a challenge. To be sure, sociologists of law had been making news on their own for decades (at least people like us think of it as news). But it turns out that the concept of "news" implies a news-making body and a news-consuming body, and before the first issue of *Amici* came out, nobody knew just how coherent that body was or could be.

It's for others to judge how much of a role *Amici* played in the construction of the Section. It sometimes felt, at the beginning, that *Amici was* the Section, that production and distribution of it was what made people aware that there was a Section in the Sociology of Law. Whether that perception was accurate or incredibly ego-centric, I would say that the Section has moved well beyond that phase, if it was a phase, and that there really is "news" to report about the Sociology of Law.

* * * * *

...Amici Quotes...

A gravedigger holding a shovel points at another gravedigger with a much longer shovel and explains: "That's only for lawyers —a city ordinance says they have to be buried 12 feet under."

—From a cartoon posted at www.prisoners.com.

Teaching Sociology of Law

The newsletter is pleased to offer a contribution by Gary T. Marx of interest for our teaching of the sociology of law. We hope to publish more such essays, comments, or queries on the educational objectives, merits and needs of sociologists of law, so please send in your thoughts!

FINALS FUN

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The final exam below may be of interest to colleagues. Because life and the issues we study are so serious we need to find ways to better enjoy what we do. Elsewhere, I have argued for the importance of having fun as one of 37 moral mandates for aspiring social scientists.[1] Rather than the drudgery often associated with generating and grading exams, I found a way to enjoy that process by asking students in a beginning law and society class to evaluate an outrageous speech supposedly given at a law school graduation. For the first time in three decades of teaching, the students who had done their work thanked me for the final. Rather than directly asking about the course material, I asked students to critique a speech containing ideas that the course sought to disabuse them of, or at least have them critically reflect upon. This follows the logic of IQ test questions which ask, "what's wrong with this picture?" In writing the largely satirical final exam shown below, I began by listing the erroneous or debatable pop-culture ideas students often bring to class as fact. These ideas are received from television, film, talk shows and even many high school civics classes. As a teacher the challenge is to engage these beliefs with respect to their empirical, theoretical, logical, cross-cultural and moral adequacy, while also noting the complexity, value conflicts and ambiguity that may surround them. To be effective satire can't be too far from reality. I thus sprinkled the speech with material that was supported by readings and lectures.

Final Exam
The following speech was given by Alexandra Hamilton IV to the graduating class of the Jaw Bones Law School. Critically and comprehensively assess this speech in light of the course materials indicating where and why you agree, or disagree and how, if at all you would qualify or extend it. Judge it by reference to its' logic, empirical support and consistency with values you hold. Any thoughtful student could obviously write about this. Your response must be informed by reference to

[1] See: Marx, Gary T. (1997) "Of Methods and Manners for Aspiring Sociologists: Thirty-seven Moral Imperatives", *The American Sociologist*, vol. 15, no. 2, available at www.garymarx.net.

theorists, empirical research and comparative materials encountered in the course.

"The law and its marble institutions are a majestic edifice that serve as the cornerstone of any society. The thin black and blue lines of the courts and police are all that stand between order and chaos. In American society the law emanates from tried and true principles which characterize civilized societies everywhere. The law represents the natural moral order of human beings as it is rooted in religion, biology and the hard lessons of historical evolution. Lincoln captured this well when he noted that "we hold these truths to be self-evident". The 10 Commandments are for all people and all time.

The law as we know it today represents a social contract. As Hobbes so clearly showed, individuals come together to form a society in order to be protected from each other. In so doing they agree to be subject to the law for the greater protection it offers. The law receives its legitimacy from being a consensual form rooted in modern rationality and transcending the will of the individual. This separates it from the traditional authority of pre-industrial and colonized societies. It is democratic in serving the best interests of the majority ("the greatest good for the greatest number"), while also protecting the rights of minorities. Our law hallows the most basic right in any society -the protection of private property and all that entails. As the problems of contemporary Chinese society suggest, economic and political liberty are inseparable. As both Karl Marx and the law and economics approach have found, the best criterion (both normatively and scientifically) by which to approach judicial decisions is the maximization of economic growth.

Our system is the fairest and most just the world has ever seen. Compare it to the unfairness of European systems in which the full weight of the state is directed against the powerless individual, or the feudal period when there were no rights at all. In emphasizing procedural justice we create respect for the law among its' subjects and its' enforcers and we insure that there will be substantive justice as well. The American system guarantees all men their day in court and the right to confront and challenge their accusers and the evidence. The warrant system requires that a strong evidentiary case be made before a judge, in order to cross sacred personal boundaries through searches, wire tapping and arrest. The Constitution guarantees the right to privacy. The Miranda ruling guarantees that any confession will be fairly and accurately obtained. If a person can't afford a lawyer the state will provide one. The discovery rule prevents the government from presenting surprise witnesses and hidden evidence. The lowliest of us has the right to bring a case against the most powerful (including the government and multi-national corporations) and to challenge their case against us.

Our system of public judicial proceedings, along with the election of many judicial officials, brings maximum accountability. New information technologies applied to the judicial system such as public video and audio records of judicial activities and the televising of court proceedings enhance this.

The right to a trial by jury means that individuals will be fairly judged by their peers rather than a socially and culturally distant judge. To be sure, laws are not always perfect, but our system offers numerous means (e.g., through legislation, appeals or defenses such as necessity and entrapment, the exclusionary rule, integrity tests, executive clemency) for the identification and correction of mistakes. In addition technology is on our side —the polygraph and DNA make the truth available to all.

The law is like an elaborate mathematical problem in which, beginning with the basic assumptions and clarity of mind, it is possible to logically deduce the correct answer. Our system is fluid and dynamic, based as it is on reverence for the eternal principles of natural law and the precedents gifted us by earlier judges. If the law is to meet its promise and be legitimate we must adopt a strict constructionist view in which the intention of the legislators and/or the precedents of the common law are carefully read, not read into, or worse ignored, by judges seeking a new role as legislators. Any other view opens the gates to the snake farm of political interests in which mere power and mass attitudes, momentarily impassioned by the demagogic sophistry of lawyers and social movement leaders, are determinative.

Unfortunately, some lawyers take advantage of procedural protections, free speech, the mass media and theatrics to undermine our justice system and cast doubt on the facts. Some seem to be in favor of the criminal, rather than justice. I am more than a little embarrassed by the several meanings of the term criminal attorney. However with fair-minded lawyers who are on the side of the law and who are held to a professional code of ethics and with careful investigative work by neutral professional police and inspectors, the facts will speak for themselves.

We must never permit fuzzy thinking and sentimentality to cloud our judgment and to dilute institutional goals. Of course compassion, mercy and helping people have their place in the family and church, but the first goal of the justice system must be justice tempered with efficiency.

To fairly enforce the law and insure equality there must be uniformity. That means that the creeping (or in recent decades galloping) discretion seen in the judicial system at all levels (and the related blind faith in authorities to decide what to do) must be stopped. Judicial behavior must be determined by clearly stated, rigidly applied rules. And there can be no exceptions! Only through the elimination of plea bargaining, the creation of more mandatory arrest and sentencing rules, and limits on liability can we insure legal equality. A justice system with discretion is a moral and empirical oxymoron and serves to undermine the central characteristic and

contribution of modern bureaucracy —standardized procedures for treating cases equally, regardless of who or what they involve.

Questionable relations between police and informers, regulators and regulated industries, and above all guards and prisoners must never be tolerated. Anything less than full enforcement of the law brings discrimination (a justifiably unstabilizing influence). To shy away from "zero tolerance policies" for the short-term expediency of avoiding conflict, comes with a terrible long-term price. A little bit of corruption can no more remain a constant than can mountain snow dislodged by an earthquake fail to generate a thundering avalanche.

It is a simple law of social physics, if we want more justice and fewer violations, we need more and more aggressive law enforcement! That is why I advocate a doubling of the resources of our investigative and correctional agencies over the next decade. The proportion of funding for neutral and unbiased technologies must be significantly increased. In this time of fiscal restraint we must save money by becoming more efficient. We can do this by creating a more rationalized, professionalized and bureaucratically organized justice system. The private sector and the military must serve as models for this.

If we are to balance the scales of justice and have equality there must be greater attention to prevention. Law enforcement must more actively seek out infractions, rather than always responding after the fact or waiting for what citizens volunteer to report. This is particularly the case for white collar offenders who are unintentionally shielded by our current system.

The law educates by example. Strong sanctions applied with celerity, certainty and vigorous cercaria after an infraction are effective. The enhanced enforcement I advocate must receive wide spread publicity regarding the dangers of wrong doing and the pain of punishment. We must sell respect for the law with the same mass media techniques that sell cigarettes. I advocate televising state executions for that purpose. We need more video-cam websites revealing the inside of prisons. The certainty of punishment, particularly to the extent that it involves harsh punishment and the isolation of male peasants (sic!) [editors note: the transcriber erred, the speaker said malfeasants] from civil society, strengthens the resolve of the law-abiding and serves to deter those who may have initially strayed."

Gary T. Marx, Professor Emeritus from M.I.T., is an ambulant and ebullient scholar having most recently taught at the University of Washington, UC-Berkeley, and Northwestern. One of the advantages of being itinerant is that you never have to re-write the final.

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ASA Sociology of Law Section

2002 ELECTION RESULTS

The Section is pleased to announce the following results of our section's past elections:

Chair-Elect is Wendy Espeland.

Secretary-Treasurer is Carroll Seron.

Council Members are Jo Dixon, Terence C. Halliday, and Abigail C. Saguy.

Congratulations to all!

www.asanet.org

The ASA website has made tremendous improvements recently. You can now perform various services online, including a review of your current membership status and section affiliation!

http://www.asanet.org/members/onlinesvc.html

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