Encyclopedia of Law & Society: American and Global Perspectives

Sociology of Law

Sociology of law (or legal sociology) is the systematic, theoretically grounded, empirical study of law as a set of social practices or as an aspect or field of social experience. As such, it draws on the whole range of traditions, methods, and theories associated generally with sociological inquiry.

The Nature of Sociology of Law

The nature of sociology of law (SL) depends on its relations with, on the one hand, *sociology*, and on the other, *law*, as knowledge fields. Both matters are, however, controversial.

Sociology of Law and Sociology

Regarding SL's relation with sociology, Reza Banakar and Max Travers state: "sociology of law can only develop as an empirical discipline if it engages with theoretical and methodological debates in mainstream sociology" (2002: 349). Other scholars also criticize SL, with its specific focus on law, for distancing itself from general sociological debates. Some add to this criticism the claim that SL's destiny is tied to that of sociology as a distinct intellectual discipline. Opponents argue that SL is dependent on a variety of social science and humanist traditions and methodologies not necessarily tied to any single discipline.

From the dominant standpoint, SL appears as a particular specialty in the academic discipline of sociology. As the sociological study of a limited field (law), SL gains its primary research strength from the progress of the larger intellectual discipline of which it is an integral part. At the same time, these academics believe the subdiscipline of SL has the opportunity to contribute special insights to the wider development of sociological inquiries and debates beyond the legal field. Viewed in this way, SL is an application of sociology to legal studies and an effort to advance sociology through studies of law.

To characterize SL simply as a subdiscipline of sociology is, however, controversial for two main reasons. First, in important respects, SL has developed independently of sociology's main lines of disciplinary growth. For example, Eugen Ehrlich (1862–1922) and Leon Petrazycki (1867–1931), primary founders of modern sociology of law early in the twentieth century, were jurists. There is little evidence that major sociological theorists of that time significantly influenced their work, even though these theorists shaped the growth of sociology as a discipline. Equally, although SL has been a rich research field, the study of law has been marginal to sociology as an academic discipline. Indeed, mainstream sociology, in this sense, has usually avoided addressing issues about law. Typically, it has addressed some SL concerns indirectly in recognized subbranches of sociology, such as the sociology of deviance, the sociology of administration and organizations, and the sociology of knowledge.

Second, where law has been a significant focus in writings that have contributed powerfully to the disciplinary formation of sociology, legal studies generally appear in this context as something more than a disciplinary subfield. A few of the greatest sociological theorists, especially Max Weber (1864–1920) in Germany and Émile Durkheim (1858–1917) in France at the beginning of the twentieth century, made research on law central to their overall sociological projects. Weber studied law primarily as a major mechanism of rationalization of the modern social world. Durkheim saw law and morality as inseparable foundations of the structures of social solidarity in modern as well as premodern societies.

These scholars regarded the study of law as integral to general sociological inquiry, illuminating major social processes and patterns of social development. Through the study of law, they could address some of **[p. 1414 ↓]** sociology's most general questions about the structures of social life. In the context of Durkheim's and Weber's work, sociology's legal inquiries were not so much studies of a limited field as a means of exploring basic issues about the nature of modern society or social relationships. They can be regarded, therefore, as more central to sociology than the idea of legal sociology as a subdiscipline might imply.

The meaning and scope of SL, thus, depends significantly on the way the term *sociology* is understood in relation to legal inquiries. If, in this context, it refers not to a clearly demarcated intellectual discipline, but to a loose compendium of traditions,

SAGE knowledge

methods, and theories available to facilitate the systematic, empirical study of social relations or "society," SL can be viewed as having a similarly open character. Seen in this way, legal sociology is hard to distinguish from the interdisciplinary enterprises commonly termed "law and society" or sociolegal studies.

Nevertheless, changing dominant trends of the discipline of sociology have significantly influenced approaches to the sociological study of law since the mid-twentieth century. Thus, SL has often adopted methods and approaches that have been generally prominent at various times in sociology as an academic discipline. These include functional analysis, conflict analysis, interactionism, and ethnomethodology. Scholars formally trained as sociologists, who retain strong commitments to sociological research in nonlegal fields, tend to relate their sociolegal work relatively closely to the outlooks of sociology as a distinct disciplinary field. Other scholars, lacking this particular intellectual formation and approaching sociology of law from a primarily legal background, are often less concerned with disciplinary allegiances. As they seem to see it, legal sociology's focus on law as a field of social experience or social practices encourages studies that transcend specific disciplinary boundaries and limitations— especially, perhaps, those of the disciplines of law and sociology.

Sociology of Law and Law

The nature of SL is also significantly determined by the meaning legal sociologists give to the term *law.* Legal sociologists have often adopted, for the purpose of their empirical research, lawyers' or policy makers' typical conceptions of law. They treat law, therefore, as the official rules produced, interpreted, or guaranteed by the state through the work of lawyers, courts, and official enforcement and administrative agencies. Given a predominantly behavioral focus of much sociology in English-speaking countries, SL has readily adapted these understandings of law as doctrine (rules, principles, concepts, and so on) into a conception of law as official regulatory activity. Thus, SL has often operated with the assumption that law is the governmental regulatory practices and policies of the state and its agencies.

Nevertheless, throughout its history as a scholarly field, an important strand of theory and empirical research in legal sociology has challenged this focus. These researchers

have denied that they must define the scope of the concept of law for the purpose of sociological study in the same way that lawyers or governmental policy makers define it. In this view, SL does not limit itself to juristic assumptions about law's nature. SL must define its object in its own way, for its own purposes. From this standpoint, lawyers' law (the law recognized by the state and its agencies, such as courts) may appear as only one variety of law. The state produces and supervises regulations recognized as law, but many other groups, organizations, and associations produce regulatory doctrine for their own purposes. For example, organizations of many kinds have institutional means of producing, interpreting, and enforcing regulations that govern their internal structures. Many have constitutions and membership rules, internal rule-governed hierarchies of authority, and procedures for processing internal disputes, addressing grievances, and sanctioning offenders against organizational rules.

Thus, some long-established intellectual traditions of SL (and of much anthropological research) insist that law is to be understood *pluralistically*, not just as something associated with the state and its lawyers, courts, and police, but as the regulatory aspect of many different kinds of social phenomena. As well as state law, there can be private legal systems, for example, of hospitals, schools, factories, corporations, occupations, associations, families, and friendship groups. Some of their regulatory structures may be recognized, **[p. 1415 ↓]** supported, and supervised by state law, but many are not. Thus, from such a standpoint, law appears as a vast continuum of regulatory practices and frameworks encompassing much, if not all of social life. SL has the responsibility to decide for itself what specific features of this continuum will be treated as law for its research purposes. It will not necessarily be satisfied to accept lawyers' or policy makers' typical assumptions or assertions as to what kinds of regulation are most significant or authoritative, or which should be dignified with the name of law.

Nor will it necessarily be content to recognize law, in the lawyer's or policy maker's sense, as a unity. Scholars might better understand state law, sociologically, as a plurality of competing, sometimes conflicting jurisdictions, claims to authority, regulatory practices, and forms of knowledge. The social tensions within state legal practice are important matters for study in legal sociology.

Therefore, from this standpoint, law appears potentially far broader in scope and perhaps much more socially significant than many lawyers and social scientists typically assume it to be. Legal pluralism, asserted in much SL theory and in a great deal of empirical research practice, is one of legal sociology's most important contributions to legal theory. The pluralist extension of the meaning of law potentially extends SL's scope as a research field. It implies that it is a major field of social science, focused on types of regulatory practices that pervade social life.

Sociology of Law and Sociological Jurisprudence

Legal sociologists usually sharply differentiate their field from *sociological jurisprudence*, a term popularized in the Anglophonic world by the American jurist Roscoe Pound (1870–1964). Legal sociologists typically see sociological jurisprudence as the use of social scientific ideas to aid professional legal practice or judicial reasoning. By contrast, they usually assert scientific aspirations for SL not directly related to juristic practice.

To the extent that some researchers consider SL to be a subdiscipline of sociology, they may label as sociological jurisprudence the work of jurists (such as Ehrlich and Petrazycki) who, nevertheless, clearly saw themselves as engaging in the scientific pursuit of SL. However, where researchers take a transdisciplinary view of SL, they see its distinction from sociological jurisprudence in two aspects. First, legal sociology pursues greater rigor and breadth in its empirical and theoretical inquiries. Second, its researchers insist on validating inquiries not by their applicability in lawyers' reasoning but by their theoretical significance for understanding the aspect of the social world that the legal sociologist identifies as legal.

Development of Sociology of Law

Europe

The classical theories of Durkheim and Weber reserved an important place for law in sociology's concerns, but later sociological theorists have rarely followed the lead of these pioneers. Weber's extensive writing on SL remained largely neglected in Englishlanguage commentary until the 1970s, even though Max Rheinstein (1879–1977) published an edited English translation as early as 1954. Rheinstein, an eminent American comparative lawyer, had been a student of Weber. Before the advent of modern sociolegal research, Rheinstein saw comparative legal studies as focused on functional comparison of legal rules and institutions and on the "social function of law in general"; comparative law was thus partly "synonymous with sociology of law" (1938: 619, 622). While legal sociology remained in embryo form early in the twentieth century, comparative law claimed responsibility for studying legal doctrine in terms of its functioning in specific historical contexts.

Until the 1960s, the most prominent contributions to SL were purely theoretical and produced mainly by European authors working in diverse legal and social environments. Ehrlich (in Austria-Hungary), Petrazycki (in Russia and Poland), and Georges Gurvitch (1894–1965, in France) all developed original sociological approaches to law that entailed greatly extending the concept of law beyond its usual application to the legal precepts studied by lawyers and used by courts. Each of these writers developed a distinctive legal pluralism, extending the scope and emphasis of legal sociology in different ways.

Ehrlich warned of the myopia of juristic views of law that failed to recognize the dominant regulatory **[p. 1416 ↓]** power of the spontaneously produced norms of different kinds of social associations. Petrazycki directed attention toward socially diffuse and pervasive psychological experiences of law. Gurvitch produced legal sociology's most elaborate pluralist typology of law, viewing law as the regulation of a vast range of different social groupings and bonds. By contrast, the German Theodor

Geiger (1891–1952), working in Scandinavia, eschewed legal pluralism and developed a behavioral legal sociology, emphasizing the significance of official enforcement of norms and of citizens' calculated decisions to obey or disobey them.

Apart from such isolated theoretical projects of individual scholars, the most significant body of collective work in legal sociology before the mid-twentieth century was probably that of the French group of Durkheim's close collaborators and disciples. However, Durkheimian sociology became unfashionable in France after World War II, and its strong legal focus failed significantly to influence later generations of scholars. Among early social theories of law, only those using Marxism provided resources that researchers more recently have widely taken up in legal sociology.

Given this situation, a significant gulf between early theoretical contributions to SL and empirical work in this field began to develop during the 1950s. In many Western nations, empirical research has flourished since the late 1960s. In Germany, Italy, the Scandinavian countries, Poland, and other European environments, governments established professorships or other designated university posts in SL, as well as research centers. They placed some of these in law schools, but others were independent of law faculties and sometimes were created despite existing law faculty distrust or opposition. The impetus came substantially from governmental demands for policy-relevant information about the possibilities, limitations, and effects of law as an instrument of social planning.

United States

In the United States, major grant-giving foundations strongly supported social scientific research in law beginning in the 1960s. In part, they helped to establish important research centers at several universities. At American universities, empirical social research on law saw by far its most extensive development and successful institutionalization. Nevertheless, the term *sociology of law* is not very widely used in the American context. From its beginning, social scientific research on law in the United States has been widely presented as a broad interdisciplinary or multidisciplinary enterprise, rather than a self-contained subfield of any particular discipline. The most prominent exception relates to economic analysis of law.

Thus, academics have typically used the inclusive term *law and society* to designate this research field, and the issue of the nature of SL as such has not generally been seen as significant, as it has been in Europe. Many researchers who recognize distinct disciplinary allegiances to one or more of the social sciences, but also often (as outside the United States) law professors without formal qualifications or training in particular social science disciplines, have produced important empirical and theoretical studies in law and society. Law has served as a strong organizing focus for a great diversity of social research initiatives.

This situation may be partly a consequence of the cultural centrality of law in the American context. Also significant, however, have been distinctive developments in legal scholarship. To a far greater extent than most European countries, the United States has a need for social scientific study of law that appears to be a natural outgrowth or extension of practical juristic concerns. The traditional focus on judicial reasoning and decision making in American legal thought, coupled with the pervasive influence of legal realism in juristic research in the United States in the early twentieth century, sensitized many scholars to the significance of behavioral studies of law, especially studies of the decision-making behavior of judges.

Legal Realism

To some extent, American legal realism weakened lawyers' faith in the rationality of legal doctrine and inspired calls for studies of "law in action" and "fact research" about the contexts of legal activities. Realist movements in jurisprudence outside the United States have probably had similar connections with the growth **[p. 1417 ↓]** of sociolegal research. For example, Ehrlich's early SL developed alongside his involvement with the German "free law" jurists, who studied the nature of judicial decision making and advocated its improvement. Independently, a distinctive form of legal realism in Scandinavia in the first half of the twentieth century raised skepticism about normative legal analysis and inspired a strong focus on law as a policy instrument of government. Consequently, it implied a need for the kind of behavioral, instrumental SL that eventually developed in various European countries.

The Scope of Sociology of Law

Academics often define the scope of legal sociology in ways that clearly demarcate it from that of juristic scholarship. They assume the jurist's focus is on legal doctrine: rules, principles, concepts, and values contained or implicated in law, together with lawyers' accepted modes of reasoning with these. Sociology of law, by contrast, is concerned with behavior in legal contexts. Thus, for the jurist Hans Kelsen (1881–1973), SL is a science not of law but of "law-creating behaviour and law-observing or law-violating behaviour" (1991: 301). Kelsen thought one of legal sociology's primary tasks was analyzing the workings of the ideology of justice. According to him, while the jurist studies law, the sociologist should study the attitudes, beliefs, and ideologies that surround the use of legal norms, as well as the activities of officials and citizens in relation to law.

The Theories of Donald Black and Philip Selznick

Both jurists and legal sociologists have often accepted some clear division of labor between their respective spheres of activity. The American sociologist Donald Black explicitly advocated this division in setting out his influential vision of the scope and methods of SL. Black sees SL as unconcerned with law as doctrine. It must have a strictly behavioral focus: "from a sociological standpoint, law consists in observable acts, not in rules as the concept of rule or norm is employed in both the literature of jurisprudence and in every-day legal language" (1972: 1091). For Black, law is a social fact—governmental social control—the quantifiable behavior of governmental agencies and citizens in applying, invoking, or avoiding regulatory or sanctioning strategies in various contexts. SL is, thus, not concerned with legal values or policies as such. Its task is to observe variation in the behavior of law as social control and to deduce testable hypotheses and predictions about this behavior from the patterns observed.

In the United States, the most prominent debate about the nature of SL centered on the merits of this strict behavioral outlook. The Berkeley School of legal sociology, under the

leadership of sociologist Philip Selznick, advocated a view of the research field entirely at odds with Black's vision. It emphasized the relevance of legal sociology for clarifying the conditions and possibilities for realizing legal ideals.

Selznick set out a schematic SL program, which saw it moving through three phases. In the first (represented by the work of the pioneer European theorists and the insights of sociologically minded jurists), general sociological perspectives are brought to bear on legal study and practice, creating a sensitivity to the broad sociological issues that the very existence of law raises. A second phase involves detailed studies of particular doctrinal and institutional problems of law, using rigorous sociological research methods. In the third, most ambitious phase, the resources of sociology are "to explore the meaning of legality itself, to assess its moral authority, and to clarify the role of social science in creating a society based on justice" (1965: 124). Ultimately, legal sociology must confront value questions about law. At this point, the concerns of legal philosophy and SL merge. Scholars should reinterpret or clarify law's doctrinal problems by exploring the social conditions that give them their significance, drawing on the insights of the sociological tradition.

In practice, the orientation of most research in legal sociology has fallen somewhere between the Black and Selznick extremes, both of which, despite their radical incompatibility, find some warrant in Durkheim's early contributions to sociolegal research. Black's positivist method treated law as observable social fact; Selznick insisted that scholars should understand law as a key part of society's official morality. Both positions are **[p. 1418 ↓]** compatible with aspects of Durkheimian sociology—a mansion with many rooms.

Other Theories, Themes, and Concepts

Much legal sociology follows broadly positivist approaches: that is, it seeks to study legal processes and institutions in terms of objective data derived from observation of social practices; it examines cause and effect relationships and tests hypotheses; and it claims to separate advocacy or evaluation from the specification of its scientific conclusions. Researchers have undertaken a huge variety of empirical studies. The range includes the genesis and effects of legislation; dispute processing practices and

institutions; the structure and practices of administrative and law enforcement agencies, including police; citizens' practices in avoiding or invoking law; conditions influencing the possibilities for people to obtain legal assistance or redress; the work and organization of lawyers, juries, and judges; relations between particular legal and social changes; the nature and sources of citizens' attitudes toward law and conceptions of justice; and the extent of popular knowledge and understanding of particular legal provisions.

Many studies in legal sociology have adopted the outlook of sociological functionalism, assuming that the phenomena they examine (for example, organizations, institutions, patterns of social activity, or currents of ideas) are to be understood in terms of the objective function they fulfill in relation to other social phenomena or to society as a whole. Ethnomethodological studies have focused on the ways in which social order emerges in legal settings through the minutiae of social interactions such as conversations. Interpretive approaches have emphasized the importance of revealing the ideological meanings of legal practices. Some scholars have advocated a politically engaged empirical social research, recognizing that actors construct all social knowledge for specific purposes that serve particular constituencies.

Ultimately, the question of the place of values in SL remains crucial. To assert, contrary to a strict behavioral approach, that SL must ultimately be concerned with analyzing or clarifying legal values is to deny any clear separation, as postulated earlier, between the fields of the jurist and the legal sociologist. Selznick's radical research agenda, enlisting SL in the pursuit of legal ideals, implied that it might ultimately be absorbed into a multidisciplinary field of "jurisprudence and social policy" (the name of the University of California at Berkeley's sociolegal teaching program). For its critics, this approach risks tying SL to controversial choices and definitions of values—usually centered on the ideal of legality or the rule of law—despite the fact that these values vary greatly in meaning and significance in different cultural contexts of law. It is, however, possible to agree that legal sociology should be centrally concerned with clarifying law's moral meanings, but to insist that these meanings are contingent and that they vary greatly with social conditions that scholars should study empirically.

Certainly, legal sociology is not concerned merely with the study of behavior in legal contexts. Most of the classical theorists of legal sociology attached great significance to the sociological study of legal ideas. Weber clearly recognized that jurists and

sociologists pursue the study of legal doctrine for different reasons, and he made the study of law as a system of thought central to his SL. Thus, he saw the emergence and dominance of contrasting types of legal reasoning as having great social and economic significance in different historical contexts.

Equally, Marxist theory emphasizes the ideological significance of legal doctrine, and Durkheim stressed its nature as an indicator of prevalent forms of social solidarity. Again, the concern of most legal pluralism theorists has been to stress that, in one way or another, legal ideas and reasoning are not just the preserve of lawyers but are pervasive throughout social life. More broadly, some legal sociologists analyze the nature of law as a normative form. Michel Foucault's (1926–1984) influential studies of disciplinary norms have provoked important controversies as to whether legal form is changing in socially significant ways or is bypassed in important respects by nonlegal kinds of regulation.

Black, Kelsen, and others advocated a sharp separation of tasks between the legal sociologist and the jurist, which is incompatible with some dominant theoretical orientations of SL. It presupposes a dichotomy **[p. 1419 ↓]** between internal (juristic) and external (sociological) views of law, which the main development of legal pluralism theory in sociology of law necessarily denies. If law derives its meaning and authority pluralistically from a wide variety of social settings, it can be simultaneously an insider and an outsider in many different kinds of law and in relation to a great diversity of legal experience. The distinction between internal participant and external observer becomes unstable in this situation of legal plurality.

One radical approach in legal sociology, *autopoiesis*, recognizes the plurality of law's locations but continues to insist on the significance of internal-external distinctions. According to this theory, law is not, in essence, a set of institutions but a discourse or system of communication whose identity is given only by the fact that it distinguishes, in all its essential operations, legal from illegal or (legally) right from wrong. Legal discourse, in whatever context it may appear, applies this binary coding to whatever information it recognizes. Using this coding, law conducts its internal operations and relates to what it takes to be its external environment. The influence of autopoiesis on some legal sociologists indicates not only that SL is now very much concerned with the social character of legal doctrine, but also that it recognizes a need to study the

powerful ways in which this doctrine seems to establish its own interpretations of the social world.

SL increasingly tries to examine how legal doctrine maintains its own criteria of truth about social phenomena, explaining them in its own ways, for its own purposes. For perhaps related reasons, contemporary legal sociology is also much concerned with the nature of legal culture—the general outlooks, beliefs, attitudes, and modes of understanding that shape the way people interpret and practice law in any particular society. From one sociological point of view, law is a powerful creator of meaning in the social world. From another, it absorbs and reflects a vast array of cultural meanings from the environments in which it exists. As a result, legal sociology seeks today to study law, theoretically and empirically, as both a system of social ideas and a focus of social behavior.

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See also

- Comparative Law
- Comparative Legal Systems
- Culture, Legal
- Durkheim School
- Durkheim, Émile
- Ehrlich, Eugen
- Ethnomethodology
- Foucault, Michel
- France
- Free Law School
- Geiger, Theodor
- Germany
- Gurvitch, Georges
- Italy
- Kelsen and Legal Sociology
- Kelsen, Hans
- Marxism

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- Morality and Law
- Petrazycki, Leon
- Pluralism, Legal
- Pound, Roscoe
- Realism, American Legal
- Reflexive and Autopoietic Law
- Rheinstein, Max
- Scandinavia
- Social Conflict
- Sociological Jurisprudence
- Structural Functionalism
- United States
- Weber, Max

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