Abstract and Keywords

The study of law and society rests on the belief that legal rules and decisions must be understood in context. Law is not autonomous, standing outside of the social world, but is deeply embedded within society. While political scientists recognize the fundamentally political nature of law, the law and society perspective takes this assumption several steps further by pointing to ways in which law is socially and historically constructed, how law both reflects and impacts culture, and how inequalities are reinforced through differential access to, and competence with, legal procedures and institutions. This article discusses the key characteristics of a law and society perspective, some of the major research contributions of this field, and recent developments in law and society that hold particular promise for scholars of law and politics today. In particular, it examines three broad areas of law and society scholarship: disputing, decision making, and legal ideology and consciousness.

Keywords: law, society, politics, disputing, decision making, legal ideology

THE study of law and society rests on the belief that legal rules and decisions must be understood in context. Law is not autonomous, standing outside of the social world, but is deeply embedded within society. While political scientists recognize the fundamentally political nature of law, the law and society perspective takes this assumption several steps further by pointing to ways in which law is socially and historically constructed, how law both reflects and impacts culture, and how inequalities are reinforced through differential access to, and competence with, legal procedures and institutions.

The interdisciplinary field of law and society dates to the late 1950s/mid-1960s, and the story of its early development has been told before (e.g. Levine 1990; Schlegel 1995; Garth and Sterling 1998). Its philosophical roots lie in the jurisprudential writings of the legal realists, who saw law as a vehicle for social engineering and challenged depictions of law as apolitical and autonomous. Likewise, social scientists were highly optimistic and confident about the potential of their work to solve social problems. Law and society scholars of the 1960s were also responding to many of the burning issues (literally—from
riots in Los Angeles, Detroit, and elsewhere) of the day. Dismayed and frustrated by the formalism of the legal academy and the irrelevance and narrowness of much social science, a number of legal scholars and social scientists sought to engage in research that would address current policy debates over racial discrimination, poverty, and crime. Substantial funding for empirical research on these topics from the Ford Foundation, Russell Sage, and others provided further impetus for studies that would combine social science and law. Responding to the availability of research funds and their own political and intellectual agendas, a multidisciplinary group of scholars created the Law and Society Association in 1964. Its members were drawn primarily from sociology, political science, and law, with some representation from anthropology, psychology, history, and occasionally economics.

The law and society field welcomed a wide range of subject areas for study. At the same time, President Lyndon Johnson’s War on Poverty attempted to underscore the rule of law by creating federally funded legal aid programs to increase access to justice and address problems of the urban poor. Politicians and scholars recognized that what happened in local agencies or in trial courts could be as important as what happened in Washington, DC. This opened up new topics for empirical research on legal processes and resulted in law and society studies of public defender offices, legal aid, lower courts, administrative agencies, juries, police, and prosecutors. Political scientists authored many of these works and they enjoyed the feedback from sociologists and law professors they received in the law and society community. Constitutional law scholars who supported law and society in its early days had also turned their attention away from formal doctrinal analysis of Supreme Court decisions. They focused instead on interest groups and the lower courts in an effort to understand the political and organizational dynamics in test case litigation, the difficulties of implementing the decisions of the Supreme Court, the politics of administrative agencies, and the politics of judicial selection.

With this early history in mind, what are the key characteristics of a law and society perspective? What are some of the major research contributions of this field? And what recent developments in law and society hold particular promise for scholars of law and politics today?

1 Key Characteristics

Law and society scholarship has typically been multidisciplinary or interdisciplinary. Although most law and society scholars have been trained in one or another established discipline, they have frequently borrowed from other disciplines in their research. For example, early empirical analyses of plea bargaining in criminal courts reflected multiple methods and theories. The studies drew upon organization theory (Blumberg 1967; Eisenstein and Jacob 1977; Feeley 1979), social learning theory (Heumann 1978), ethnography (Mather 1979), ethnomethodology (Sudnow 1965), history (Alschuler 1979; Friedman 1979), and discourse analysis (Maynard 1984). As general law and society theories emerged, for example, to explain trial courts (Shapiro 1981; Boyum and Mather 1983), le-
gal mobilization (McCann 1994), or “why the ‘haves’ come out ahead” (Galanter 1974), these theories sought to integrate the perspectives of different disciplines. Such interdisciplinary work has been more common in recent years. It reflects the maturity and growth of the field as well as the development of graduate and undergraduate programs in law and society.

Second, in terms of epistemology and methodology, law and society emerged during the 1960s, a time of the behavioral revolution in the social sciences and an optimistic embrace of positivism. Scholars focused their work on legal processes and individual and group decision-making. The study of rules was passé, as was the study of formal institutions. Empirical studies of behavior could be qualitative or quantitative, with the former defined broadly to encompass historical or anthropological methods. Methodological debates that were fierce in political science at this time were, by contrast, relatively muted within law and society. This tendency has continued to characterize the field, with greater focus on theory and substantive results than on sophistication of the methods or an insistence on the superiority of any particular method (Engel 1999).

By the 1980s, law and society critics of positivism raised serious challenges to the paradigm and articulated postrealist, interpretive, and constitutive approaches to law (Brigham and Harrington 1989; Harrington and Yngvesson 1990; Hunt 1993). Scholars reclaimed an interest in institutions (Smith 1988; Heydebrand and Seron 1990) as well as embracing an interest in legal ideology and legal discourse (Mather and Yngvesson 1980–1; Conley and O’Barr 1990; Merry 1990). Contemporary law and society scholarship encompasses a wide range of epistemological perspectives, from the cultural studies approach of law and humanities to empirical legal studies—and everything in between.

Third, normative, policy-relevant concerns for justice and equality that initially drove the field remain significant even as debate continues over the best way that scholars can realize that normative commitment. Sarat and Silbey (1988) urged law and society colleagues to reject the “pull of the policy audience” in order to produce broader, more critical scholarship and to avoid reinforcing the status quo. Levine (1990) noted the long history of tension between basic and applied research in sociolegal studies, but suggested that both could be realized; theoretical work can provide policy insights and studies of specific policy reforms can generate theory. In an important exchange over postmodernism and political change, Handler (1992) chastised the new postmodern scholarship for its inattention to power structures, collective identity, and the possibilities of transformative politics (but see responses by Calavita and Seron 1992; McCann 1992). A decade later, Munger (2001) called for renewed activism along with scholarly inquiry. He observed that as the law and society “field goes global, I see a reawakening of the earlier interest in justice and equality, and in power, class, race, ethnicity, and religion” (2001, 8).

Fourth, comparative approaches to research questions in law and society have been a long-standing commitment of the field, even as they have sometimes been honored in the breach more than the practice (Mather 2003). The very first volume of the Law and Society Review contained articles on comparative family law, one by a sociologist (Cicourel...
Law and Society


One quarter of the membership of the Law and Society Association (LSA) is non-American, and the LSA leadership has been committed to holding its annual meetings outside of the U.S. on a regular basis. Meetings in Amsterdam (1991), Glasgow (1996), Budapest (2001), and Berlin (2007) were held jointly with the Research Committee on the Sociology of Law (the last meeting was also supported by three other non-U.S. associations). LSA meetings held in Vancouver (2002) and Montreal (2008) are cosponsored by the Canadian Law and Society Association. Political scientists in the United States regularly suggest that the field of “American politics” should really be a subset of “comparative politics,” but old habits die hard. The American politics subfield operates quite independently and scholars infrequently cite across subfields. By contrast, the law and society field actively seeks connections to the empirical scholarship on law being done in other countries, connections that are facilitated by LSA networks.

Finally, while law is the central concern of law and society scholars, it is not seen as residing in a formal, separate sphere, apart from society. Law is in society, and most now agree with the argument Laura Nader made initially that the field should have been named “Law in Society” rather than law and society (Nader 1969). Just as political scientists have long recognized the political nature of law, sociolegal scholars add that law is also social, cultural, economic, linguistic, and ideological. Researchers engaged in empirical and theoretical work on law in society thus confront the extraordinarily messy (and some would say futile) question of how to say anything interesting or disciplined at all if in fact “the law is all over” (Sarat 1990). Scholars in the field do not agree in their response. But most identify a particular question or problem about the creation, maintenance, or change in law and seek to answer it wherever the question leads. What is important is to be self-aware in drawing the boundaries for study, as opposed to limiting a priori the scope, and to draw on other disciplines for relevant concepts, methods, or insights.

It is difficult to strictly define “the” law and society perspective for a political science audience. Some of what falls under this umbrella (e.g. courts and public policy, law and social change, regulation, judicial decision-making) is mainstream law and politics. Other law and society work may seem less so because of the individual topics studied (border patrol, divorce lawyers, film, science laboratories, lawyer jokes) or the methods used (narrative, experiments, network analysis, ethnography). Over the years law and society scholars have attempted to define the field through textbooks or edited collections; these underscore the editors’ quite different perspectives on the field (Kidder 1983; Lempert and Sanders 1986; Macaulay, Friedman, and Stookey 1995; Sarat 2004).
2 Major Contributions to Law and Society Scholarship

A recent symposium of the Law and Courts Newsletter (Winter 2007) featured summaries of the law and society field and its relation to political science, written by seven political scientists who have long been active in this area. Readers should consult this issue for excellent descriptions of this large and robust field of study. I will concentrate on three broad areas of law and society scholarship: disputing; decision-making; and legal ideology and consciousness. I will then briefly mention other areas, while acknowledging that I am still omitting many others.

2.1 Disputing

Studies of disputing ask how disputes become court cases and what occurs to cases once they are in court. What are the alternatives to courts for resolving problems or disputes? Why do some conflicts become legal cases but most do not? How does understanding disputing help to explain conflict resolution and the impact of law? Both criminal and civil conflicts in the U.S. fill out a pyramid with vast numbers of grievances or injuries at the bottom, a smaller number that become disputes, even fewer that contain some kind of informal recourse to law (calling the police or a lawyer), an even smaller number with two-party legal activity (plea bargaining or negotiated settlement), and only a tiny fraction resolved by trial (Trubek 1980–1; Felstiner, Abel, and Sarat 1980–1). A large survey done in the late 1970s by the Civil Litigation Research Project (CLRP) showed that different types of civil grievances (e.g. post-divorce) were likelier than others (e.g. discrimination) to reach higher on the pyramid of legal action (Miller and Sarat 1980–1; Kritzer 1991). The empirical results of the CLRP scholars have been reported in myriad judicial process textbooks but this important, forty-year-old study has not been replicated.

Galanter’s (1974) comprehensive theory exploring the use of courts by repeat players vs. one-shotters suggested multiple ways in which those experienced in legal procedures are advantaged in the legal process. Galanter also showed how disparities in the legal profession (specialization, relations with clients, legal training, etc.) further exacerbated the advantages of the repeat players. Galanter’s study in the Law and Society Review is one of the most frequently cited law review articles of all time. A number of empirical studies since then have supported his theory (see Kritzer and Silbey 2003).

One aspect of Galanter’s theory centers on the differential use of formal vs. informal mechanisms for dispute settlement by repeat players and one-shotters. That is, parties who are more familiar with legal processes know when to settle out of court and when to press on to formal trial, according to the likelihood of gain in the legal rule as opposed to a win or loss in the immediate conflict. This argument, powerfully supported by Albiston’s (1999) research on litigation outcomes after the Family and Medical Leave Act, shows an important link between disputing and change in the law. Employers who were sued by employees seeking family leave ultimately “won” even when they “lost” by settling some
cases out of court because employers gained important rule-making opportunities in oth-
er cases that ultimately weakened the legislation.

(p. 294) Another way in which disputing can be linked to change in law is through the ex-
pansion or reframing of a dispute into a new normative framework, and through the sup-
port for that expansion that parties may obtain. As Mather and Yngvesson (1980–1)
suggest, legal cases are not objective events, but are socially constructed to reflect the in-
terests of supporters of disputants, to appeal to a particular audience, and to incorporate
the values and language of law. The language of law is inherently political, ordering facts
and invoking norms to support one set of interests or another. By constructing claims in
certain ways, one can expand the law and mobilize others in support of the new interpre-
tation. Groups lacking in political power may succeed in attracting support for legal
change through reframing issues and mobilizing support, as shown in litigation over com-
parable worth (McCann 1994), tobacco control (Mather 1998), and sexual harassment
(Marshall 2005). A victory in litigation, even if later reversed on appeal, can aid in agenda
setting and serve as a catalyst for further change.

The linkage among litigation, political order, and political change also emerges in empiri-
cal research on the use of courts over time. Filing disputes in court should be seen as an
alternative to traditional forms of political participation, as Zemans (1983) argued, and in-
deed longitudinal study of court usage in the U.S. by McIntosh (1983) supports this view.
Nevertheless, courts are not passive institutions waiting for disputes to percolate up the
pyramid to become fodder for judicial decisions. Courts are institutions of the state and
as such, they (or other arms of government) can and do exercise power to shape the na-
ture and amount of litigation (Munger 1990; Harrington and Ward 1995). This general
point about the power of institutions was made in law and society research some time
ago. Recent battles over tort reform illustrate it well, as actions by state legislatures,
Congress, and the U.S. Supreme Court have all sought to curb what business interests
saw as an “explosion” of litigation.

2.2 Decision-making

A second major area of law and society research focuses on decision-making. Scholarship
on judicial decision-making is hardly news to those interested in the politics of law, but
those in law and society broadened the terrain in several ways. They examined decision-
making by judges at all levels of court including nonlawyer judges on justice of the peace
courts, those on small claims courts, misdemeanor and felony courts, civil courts, and oc-
casionally appellate courts. Research revealed differences in sentencing severity across
courts and in patterns of judicial interaction with prosecutors (Eisenstein and Jacob 1977;
Eisenstein, Flemming, and Nardulli 1988). Questions about racial discrimination in trial
court sentencing have been investigated numerous times, initially with some mixed re-
results. More recently, an overview of forty different sentencing studies that controlled for
offense and defendant’s prior record showed clear evidence of significant race effects in
judicial decisions in state and federal courts (Spohn 2000).
The impact of race has also been shown in numerous state studies of jury and prosecutorial decisions to recommend the death penalty. Jury decision-making has received a great deal of attention from sociolegal scholars. They have explored, for example, the impact of decision rules and jury size on verdicts, differences in evidence-driven vs. verdict-driven processes of deliberation, how juries compare to judges, juror assessments of credibility by race and gender of witnesses, jury assessments of corporate defendants, jury awards over time, and jury nullification (Levine 1992; Hans 2000; 2006; Sunstein et al. 2002).

Second, recognizing that over 95 percent of trial court cases settle through plea negotiations or settlement talks, without trial, sociolegal researchers examined decision-making by lawyers. They asked, for example, how, why, and when do prosecutors and defense attorneys engage in plea bargaining? Do decisions by defense attorneys vary according to whether they are privately employed or public defenders? How are lawyers’ decisions to recommend particular dispositions affected by the views of their clients? The rich literature on these questions found in earlier research on plea bargaining would benefit from reexamination in order to see how legal changes on sentencing and jury selection, demographic changes in lower court personnel, increased punitiveness in the cultural and political climate, and the impact of federal anti-immigration measures on local officials, have affected the processes of negotiation in criminal courts.

Lawyers in civil cases also play important roles in dispute settlement and in the production of law. Research on lawyers representing personal injury plaintiffs (Rosenthal 1974; Genn 1987; Kritzer 2004) and divorce clients (Sarat and Felstiner 1995; Mather, McEwen, and Maiman 2001) has revealed much about lawyers’ screening decisions in agreeing to represent clients, their interactions with clients, and their negotiating strategies and decisions on settlements. We also know a good deal about the strategies, problems, and goals of cause lawyers (Sarat and Scheingold 1998; Scheingold and Sarat 2004). By contrast, we know much less about decision-making in the work of corporate lawyers, and this is also an area that deserves more research.

Research that began by simply analyzing individual decision-making soon moved to consider (and to incorporate into theory building) the context in which those decisions were made. Relevant aspects of context include, for example, institutional features, legal rules, economic structures, social networks and organization, and shared cultural values. The literature thus moved from its original behavioral focus to reflect institutional and cultural theories. Understanding and explaining the work of lawyers involves studying them within their communities of practice, including the law firm as a community or important cultural space (Kelly 1994; Mather, McEwen, and Maiman 2001). Empirical research that has demonstrated collegial influence on lawyers’ decisions has been done in the areas of divorce, personal injury, criminal defense, and most recently, occupational safety and health (Schmidt 2005).

Heinz and Laumann (1982) first reported the significant differences in lawyers according to what they called the two hemispheres of the legal profession: lawyers who represent
organizations or corporate entities and those who represent individual clients (and see Heinz et al. 2005 for more recent findings). Lawyers representing organizations not only have higher incomes and prestige than those representing individuals, but they work in larger firms, have fewer clients, spend less time in court, and have different educational backgrounds, social characteristics, and political values. The bifurcated profession has enormous implications for the creation and enforcement of law. For example, law and politics scholars should examine how lawyers exercise influence on law through particular communities of legal practice (Mather forthcoming). Specialization by legal field, coupled with the social stratification of the profession (with disproportionate representation in different fields by gender, race, class, and religion) and observed differences in political values by field, provide rich data for political scientists who are willing to go to lawyers’ offices, rather than to courts, to see where law is made.

Finally, sociolegal scholars broadened their scope beyond judges, juries, and lawyers to include the work of less visible legal actors such as court clerks (Yngvesson 1993), health and safety inspection officers (Hawkins 2002), immigration officials (Coutin 2000), probation officers, and police (Skolnick 1994; Bell 2002). Every decision of a low-level legal official helps to shape a pattern of law interpretation and enforcement, and to construct ideas about law for the public they encounter.

Even further, law and society researchers have explored the decisions and work of private actors, those without official legal status but who also contribute to lawmaking and law enforcement through private ordering. Who are some of these actors? They include: real estate agents and mortgage brokers who maintain a color line in urban housing; security guards with badges and uniforms who patrol malls and parking lots; human resource officers who define the parameters of civil rights laws through their routine advice and actions in employee disputes; mediators who help parties resolve conflicts without the expense of trial or the constraints of law. Political scientists studying the legislative process are accustomed to paying close attention to the role of private interest groups in lawmaking and administrative enforcement and have developed theories of specialized influence (e.g. the “iron triangle” for congressional subcommittees). Similarly, law and courts scholars should build on the empirical work on private ordering to better understand connections between powerful private interests and law (see e.g. Edelman and Suchman 1999).

2.3 Legal Ideology and Consciousness

Legal ideology and consciousness comprises a third major area of law and society scholarship. Decisions by the street-level bureaucrats, legal officials, and private actors discussed above matter in part because of the direct effect of their actions on people’s lives: denying a mortgage; stopping and frisking a suspicious character; channeling personnel conflicts away from law. But from an ideological perspective, what is even more important for the law is the meaning conveyed by those decisions. What values reside in the categories of “suspicious” and “not suspicious” and how are they conveyed in each encounter? Law and society research reminds us that law is constructed through such categories for classification. When the clerk of a local court dismisses a citizen’s griev-
Law and Society

ance as not “really” a legal matter, he is making law for the court (Yngvesson 1993). Similarly, with every passage through airport security, government agents are communicating that the law of the U.S. border is different than it was before September 11; the state is more powerful, scrutinizing not only our passports and suitcases, but our belt buckles, toothpaste, and nail files.

Studies of the actuarial practices of insurance companies, for example, underline the power that comes from the rhetoric of granting or denying insurance (Simon 1988; Glenn 2000). Researchers have examined different areas of law to uncover the hidden assumptions, as in the racial bias of insurance, that privilege some people and interests over others. Numerous works document race and gender disparities that emerge from ostensibly neutral concepts or principles. As the title of one article says, “Is the ‘reasonable person’ a reasonable standard in a multicultural world?” (Minow and Rakoff 1998). Focus on legal ideology looks at the categories of law and how they are used, in order to reveal the process by which legal meaning is constructed. While political scientists readily acknowledge the ideology of constitutional constructs, law and society scholars analyze the narratives, taken for granted assumptions, and values in other areas of law—contracts and tort (Engel 1984), employment, property, family, and so forth.

If knowledge is power, then how do people obtain their knowledge of law? Examining the “litigation crisis” in tort law and the media coverage of the hot coffee and antitobacco lawsuits, Haltom and McCann (2004) found that the institutional conventions of news reporting combined with cultural values about the importance of personal responsibility to muffle the voices of litigation scholars and the plaintiffs’ bar. Interest groups on different legal issues battle for the hearts and minds of jurors and the public. While the tort reformers played their hand in the mass media, the plaintiffs’ bar chose an insider strategy of legislative and judicial lobbying. In addition to the newspapers’ images of legal issues or cases, television and film provide ample material for the cultural production of law. The drama of trials, conflict between good and evil, guilt and innocence, chaos and order, all convey legal meaning that may find its way into law. Survey research on the “CSI effect,” for example, has not revealed clear results, yet some trial attorneys are convinced that the TV show is shaping popular legal ideas. Prosecutors worry that avid watchers of CSI, when asked to serve on a jury, are more reluctant to convict unless there is scientific evidence.

Studies of legal consciousness explore how people’s experiences and understandings of law translate into actions and how social action in turn constitutes their relation to law. For example, Ewick and Silbey (1998) conducted detailed interviews with people of diverse backgrounds and found three distinct narratives about law, each with its own normative value and structure: law as impartial, objective, and remote; law as a game shaped by self-interest and individual resources; law as a power to be resisted. Other research on legal consciousness, which examined people’s experiences and understandings of how the law should respond to offensive public speech, found interesting variation in responses by race and gender (Nielsen 2004). Engel and Munger (2003) examined how people with disabilities understood and used (p. 298) the new rights conferred by the
Law and Society

American for Disabilities Act. The authors concluded that individual identity was key to perceptions of, and experience with, legal rights. Scholars of law and politics should find intriguing material here to integrate with research on political participation, framing of issues, critical race theory, or feminist jurisprudence.

2.4 Other Areas of Law and Society Scholarship

Other areas of law and society scholarship may be more familiar to those in law and politics so I will mention them only briefly.

2.4.1 Regulation and Compliance

Studies of regulation and compliance have been a mainstay of law and society scholarship, encompassing research on compliance with Supreme Court decisions on prayer in schools, implementation of lower court orders on school busing, compliance with environmental, health and safety, or business regulations. Once a legal rule is announced, judicial decision is made, or new regulations go into effect, how do officials secure compliance? Whereas legal scholars try to draw a bright line between law and discretion, many sociolegal scholars would challenge the distinction. Law, it is argued, is constituted by the discretionary decisions that give it meaning. Instead of conceptualizing discretion as “the hole in a doughnut,” surrounded by legal form, as Dworkin (1977) suggested, critics have challenged the very distinction between the two (Hawkins 1992; Pratt 1999).

Similarly, the notion of law as purely governmental regulation breaks down entirely with the proliferation of private and quasi-public actors whose support is critical for the success of any regulatory regime. In place of command and control models of regulation, some point to the empirical and normative advantages of self-regulation (Gunningham and Rees 1997). Important comparative work on regulation by Kagan (2001) identifies the very different approaches of Britain and the U.S. and critiques what he calls the “adversarial legalism” of the American system.

2.4.2 Legal History

One of the critical influences on the development of law and society was Willard Hurst and his focus on legal history. His view of law as deeply grounded in the social and economic context of its time shaped generations of scholars studying particular laws, judicial decisions, or legal movements (Simon 1999). The notion of law and society as mutually constitutive emerges clearly in much of the sociolegal historical scholarship (e.g. Gordon 1988; Hartog 2000), and especially in work on race and the law (Gomez 2004).

Friedman and Ladinsky’s (1967) well-known account of the rise of workman’s compensation law in the early twentieth century reflects a critical eye toward the autonomy of law. After charting the demise of the common law tort doctrine of the fellow-servant rule, they ask whether law was simply “lagging” behind society. Their answer, quite familiar to law and society scholars forty years later, was a resounding “NO.” What was seen as “lag” to some was simply vested interests claiming their power. The old tort doctrine lasted as long as it did because there was no stable compromise behind its replacement.
Many similar legal changes would benefit from reexamination by political scientists who have studied American political development and could bring new understandings of the political contexts for change as well as informing law and politics scholars about important areas of the common law they have overlooked.

2.4.2 Procedural Justice

Procedural justice questions have also been explored for decades by those interested in integrating philosophical questions of justice with psychological research and people’s experiences with law. Applying the philosophical distinction between procedural and substantive justice to the legal system, psychologists hypothesized that providing fair and transparent court procedures would result in greater satisfaction and compliance regardless of the substantive outcome of their case. Tyler’s (1990) work on *Why People Obey the Law* generated a large body of research testing this idea, and finding considerable support. Other researchers extended the research to litigant satisfaction in felony cases according to the perceived fairness of the procedures (Casper, Tyler, and Fisher 1988) and to acceptance of unpopular decisions of the U.S. Supreme Court (Gibson 1989; cf. Tyler and Rasinski 1991).

3 Recent Developments

Although the law and society field lacks clear boundaries to separate its interdisciplinary perspective from the other disciplines, it has significantly aided our understanding of law and politics through the various areas of research discussed here. I have already referred to some promising avenues for future research on law and politics. Let me just outline a few others.

1. Look beyond appellate courts. There has been little recent research on American trial courts, despite huge changes in the balance of federal to local legal power, a massive increase in incarceration, a wealth of quantitative data on state courts available from the National Center for State Courts, and the creation of new types of specialized courts for drugs or mental health. Further study of trial courts and tribunals in other countries would add greatly to our comparative knowledge of courts. Law and society work on international disputing through arbitration (Dezalay and Garth 1998) and on the international Tuna Court (“the world’s premier fish market;” Feldman 2006, 313) show the potential for integrating norms, disputing, and law. Numerous other regional and international bodies could be studied as well to help us understand processes of law and globalization.

2. Broaden the range of legal actors to study beyond judges and beyond the arena of public law. Integrate studies of the legal profession with our understanding of courts and lawmaking. By combining the specialization of the bar with the sorting process of legal education that shapes the class, race, and gender of who enters (and remains) in corporate law, one might gain new understanding of the outcomes in different legal areas. The phrase “public law” is highly misleading given the range of public policy concerns and effects that emerge from areas of “private” law (Shapiro
Private law areas of tort, property, contracts, labor, and family contain a wealth of interesting law and politics questions that would benefit from the scrutiny of political science. In punitive damages, for example, juries and trial judges were completely free (until very recent constitutional limits were imposed) to impose civil punishments for fraud or negligence. Why not do the same kind of rigorous investigation of damage awards that has been done for criminal sentencing to explore the determinants of punitive damages?

3. Examine how people use courts, harking back to a view of litigation as a form of political participation. Integrate perspectives from identity politics, legal consciousness, critical race theory, and feminist jurisprudence, with knowledge of legal institutions and processes. Examine test case litigation to see how changed conditions and new modes of communication have altered the strategies of interest groups.

4. Popular culture involves framing problems, events, and people. Law is increasingly seen as a set of visual images in popular culture. How do those visuals affect law? Political scientists with an interest in capital punishment should consider Haney’s (2005) excellent book on the death penalty. Haney combines decades of psychological research on jury decision-making in death cases with research on popular culture and public opinion to present a disturbing look at the forces that maintain capital punishment in law.

In sum, the field of law and society continues to develop in response to new research questions and new scholars. Political scientists contribute to, and learn from, this interdisciplinary approach to law and politics.

References


Lynn Mather

Lynn Mather is Professor of Law and Political Science and Director of the Baldy Center for Law and Social Policy at the State University of New York at Buffalo.