Ann. Rev. Sociol. 1978. 4:577–601

MORAL ORDER AND SOCIOLOGY OF LAW: Trends, Problems, and Prospects

◆10566

Richard D. Schwartz

College of Law, Syracuse University, Syracuse, New York 13210

INTRODUCTION

In the liberal-democratic societies of the western world, moral order is always problematic. Unlike the traditional Japanese, we cannot simply draw from our cultural history an integrated normative system, complete with detailed specifications of the nature of our mutual obligations. We have declined, in the alternative, to depend on a dominant authority—a charismatic leader, a single hierarchical party, or the military—to tell us how we should behave. We tend instead to keep our moral order flexible and instrumental, emphasizing individual liberty and promoting social change. Our norms, legal and nonlegal, tend to be diverse and casually related to each other, far from constituting a rational moral order, either formally or substantively.

The absence of a well-defined moral order creates special problems for the society and for its legal institutions. The society tends to be characterized by a substantial amount of anomie, conflict, deviance, and alienation; i.e., by the symptoms of what sociologists used to call social disorganization. Legal institutions are expected to "do something" to overcome these problems by resolving disputes, enunciating norms, implementing salutary social policies, and contributing to the attainment of an agreed-upon set of values. While these objectives sound good when stated conceptually (Parsons 1962), they are in practice difficult to achieve.

In turning to legal phenomena, social scientists have been quick to point out the discrepancies between the idealized model of law and the reality of its operation (see generally Friedman & Macauley 1977). Instead of reflect-

0360-0572/78/0815-0577$01.00

ing a general value consensus, law often implements the value preferences of small groups who are either strategically placed within the system or able to bring power to bear from without. Instead of resolving disputes, it may exacerbate the relationships between parties. Its norms may depart so widely from prevailing standards that parties avoid the law, seeking alternative means, such as direct negotiation or mediation, that deal with disputes without depending on or contributing to substantive norms.

Whether and how our legal institutions can contribute more effectively to moral order remains to be seen. We have begun to locate some of the barriers to the performance of such a role. Law in this society cannot function merely as a reinforcer of preexistent norms, since in many areas such norms are absent. By what principle can law successfully generate and disseminate a coherent set of norms? If substantive rationality is to be the guiding principle, such norms must by definition be related to a set of shared values; they must also be able to penetrate the society and its institutions in a manner that contributes to the value objectives intended by the legal policy. Equally important, legal norms must be limited in scope, intentionally leaving specifiable behaviors, relationships, and institutions free of regulation. Acceptance of legal norms may depend on how they are developed, how they are implemented, and how they are related to societal values. Citizen participation in all phases of the process may be vital not only for insuring acceptance but also for avoiding the use of law to concentrate power and privilege.

The primary objective of this review is to convey to the nonspecialist reader some sense of the work, by lawyers as well as social scientists, that relates to law and moral order. The article is therefore not intended to cover all of the significant research in sociology of law during the past several years; for the same reason, it occasionally emphasizes a particular study that illustrates a particular point or problem. The discussion suggests that social scientists, increasingly aware of the difficulties of isolating and appraising the effect of a given law, have turned toward an examination of the role of law in its larger social context—as a product of society and as a means of dealing with major normative issues. This effort, thus far not very well developed, may ultimately provide a broader framework within which to study specific problems of legal impact, origin, and operation.

LAW REFORM: *BROWN V. BOARD* AS AN INVITATION

Since the Supreme Court decision in *Brown v. Board of Education* (1954), social scientists have paid increasing attention to law and legal institutions. The dramatic holding in that case—declaring segregated education by offi-

cial action to be unconstitutional—suggested that the US Supreme Court, if not the entire court system, could provide a means whereby basic social problems, long a concern of social scientists, might be authoritatively resolved (Kluger 1976). The *Brown* decision had a particularly strong impact on sociologists and social psychologists, because it dealt with the kind of problem in group social relations that had been a long-standing object of their attention (cf Killian 1956). The impact was enhanced, of course, by the flattering recognition embodied in footnote 11, wherein the Court appeared to rest its position on the "modern authority" provided by scholars from these disciplines, particularly through the medium of the Appendix to the Appellants Brief (1954). Thus, the Court seemed not only to throw its weight against segregated schooling, but to do so in part because of the factual materials and conceptual positions generated and conveyed by the social scientists (cf Rosen 1972). What New Deal fiscal policy had done for the economists, the Supreme Court in *Brown* seemed to promise to the rest of the social sciences. While *Brown* was by no means the first case of social science use by government in general or by the courts in particular, its importance for the society gave it a particularly powerful impact.

Political events enhanced the importance for social scientists of the *Brown* decision. *Brown* came at a time when social scientists—along with other scholars—were being subjected, directly or vicariously, to intimidation resulting from the investigations undertaken by the House Un-American Activities Committee and by Senator Joseph McCarthy. As indicated in some major studies (Lazarsfeld & Thielens 1958; Jahoda & Cook 1952), the chilling effect could operate at least as powerfully against scholars as against other target groups. The decision of the Court in *Brown* helped to counteract the resultant demoralization. It not only indicated that social science findings were judicially welcome; it supported the policy positions preferred by the overwhelming majority of social scientists. The euphoria occasioned by such a triumph encouraged many social scientists to turn their attention toward the legal system as a potential user of their knowledge, vindicator of their status in society, and implementer of their policy preferences.

This mood has not been sustained through the intervening decades. As social scientists set about seriously studying legal phenomena, they uncovered a number of questions that created doubt concerning the social role of legal institutions. Among the troublesome questions were the following:

1. To what extent is law capable of modifying behavior as intended? (*a*) in light of the problems of official implementation; (*b*) in light of resistance by segments of the population.

2. To what extent do the failures and successes of legal regulation reflect power inequalities and value conflicts in the society?
3. How might legal processes optimize such potentially conflicting goals as (*a*) equal access to the legal process, (*b*) equality of life chances, (*c*) individual liberty, and (*d*) socially responsible behavior?

In the immediate aftermath of *Brown,* these questions were approached in a generally optimistic fashion. Law was said to be capable of regulating behavior to achieve societal goals far more efficiently than was earlier believed. Roche & Gordon (1955) declared, soon after the *Brown* decision, that the answer to the old question, "Can morality be legislated?" was affirmative, provided (as in the segregation situation) conditions were right. In taking that position, they were differing from a widely held assumption, often credited to William Graham Sumner, that legislation counter to the mores cannot stand. Contributing to the revision of that position was a reexamination of Sumner's view(s) on this matter, which revealed that the great conservative recognized in his essays that law sometimes succeeded —altogether too often for Sumner's taste—in standing against the mores (Ball, Simpson & Ikeda 1962). Evidence was adduced to support the position that behavior change, resisted at first, could lead over time to changes in attitude that would have generalized effects. Changes of this kind were found among such diverse groups as soldiers in interracial units (Stouffer et al 1949), residents of public housing (Deutsch & Collins 1951), and even physicians reacting to Medicare (Colombatos 1969).

As enthusiasm for the prospects of law as an instrument of change grew, however, contrary positions emerged. Law was viewed, for instance, as a way of changing first the behavior and then the attitude of businessmen through governmental regulation (Lane 1966). To this suggestion, however, there developed two negative reactions. The market economists feared extreme mischief to the economy if such efforts at control succeeded. More relevant for our purposes, an emergent group of sociologists and historians doubted that any such regulation could succeed, except if it favored the interests of those who controlled the society. For this group, paramount control in American society was vested in the hands of big business. Accordingly, it must be the case that changes through law would occur only if they were favored by this small, powerful elite. This view was articulated, for example, by Kolko (1965), who saw in the apparent ineptitude of the regulatory agencies the working out of a design, apparent from the beginning, for the railroads—and by extension, all regulated industries—to gain economic advantage by obtaining governmental protection under the guise of a regulatory mechanism that was supposed to serve the interests of the entire society.

Through the 1960s, a generalized version of this view became increasingly attractive to many social scientists. Chambliss & Seidman (1971) and Balbus (1973) applied the same perspective to an explicit examination of the American legal system and, in doing so, they spoke for many scholars. Even among those who had been powerful proponents of law as an instrument of social reform, law came to be seen, potentially, as a cause of social problems (Rose 1968).

This sharp shift in orientation was understandable in light of the experience of the decade. The 1960s had started with the promise that government would become an instrument for protecting the underprivileged, redistributing wealth, and providing access to economic opportunity and political power for underprivileged segments of the population. President Kennedy conceived such a program not only domestically but also, through the Alliance for Progress and the Peace Corps, in world affairs. During the Kennedy and Johnson administrations several domestic programs emerged aimed at these objectives, e.g. Headstart, Neighborhood Legal Services, VISTA, the War on Poverty, and the Civil Rights Act of 1964 (Rivlin 1971). All of these and related programs were explicitly intended through the use of law and government to serve objectives of equalizing power and privilege, to secure, in Lasswell's terminology, the wider "shaping and sharing" of the major values (1971:14–33).

By the end of the decade, however, these dreams were regarded with irony, if not rage. As the Vietnam conflict escalated, opposition to the war became particularly pronounced among social scientists. Controversy emerged within the social science community on a host of issues including funding of research by the Defense Department, involvement of scholars in the intelligence community, and on-campus recruitment and training of students for military and intelligence functions. A number of related problems developed during this period, including civil disobedience and academic disruption on the campus, heavy drug use and efforts at control through disciplinary action, and the employment of terrorist tactics by a small group of militants (cf Cox 1968). All of these activities helped to arouse latent conflicts in the social science community, and between social scientists and the larger community.

Ironically, these conflicts became particularly evident in the race relations area, which, with *Brown,* had initially engendered such enthusiasm. Questions were raised as to whether school integration would accomplish the anticipated effects of educational achievement and social integration (Coleman 1966; Mosteller & Moynihan 1972; Armor 1972; Jencks 1972). While these questions elicited vigorous responses from the defenders of integration on empirical (Pettigrew et al 1972) and normative (Clark 1973) grounds, the debate made it clear that deep divisions, reflecting divergent

values of the society at large as well as empirical judgments, existed among social scientists. As of this writing, the controversy focused on the *Bakke* case continues to reveal and foster such divergencies.

Also notable were the voices raised among social scientists as well as lawyers (Berger 1977) calling for a limitation on the norm-formulating function of the Supreme Court. This position, reminiscent of Justice Frankfurter's preference for judicial self-restraint, was often related directly to the race relations problem. There remained little support for the earlier view that courts were reliable instruments of consensus and reform.

In the aftermath, many social scientists were prepared to believe that law and government were incapable of altering the basic power relations of the society and that redistributive programs of the early and mid 1960s were doomed to fail for that reason. Others continued to believe that redistributive effects could be achieved through legislative and judicial processes. Still others questioned the heavy emphasis on redistributive and equalization policies because of their potential consequences for individual liberty and achievement-based mobility. A serious debate emerged over whether law-in-action works at all to effect change and, if so, for whose benefit.

Hard evidence on these questions continues to be remarkably scarce; in its absence, positions tend to be chosen more out of ideology than knowledge. Nevertheless some studies are available that help to define researchable issues in such areas as the impact and the origins of law.

IMPACT OF LAW

Many of the early studies in sociology of law noted with interest that law often failed to achieve its intended effect. The legal realists, virtually the first scholars to closely examine the behavioral consequences of law, delighted in pointing out such instances (Llewellyn 1940, 1949; Arnold 1935; Frank 1963; Rumble 1968). Prohibition, the classic example, did not diminish and may well have increased the importation, production, and consumption of beverage alcohol (Sinclair 1962). Progressive income taxation, upon implementation, provided (and continues to provide) so many loopholes and shelters that it virtually nullifies its intended redistributive effects (Blum & Kalven 1963). Nor are such unintended consequences limited to this country. Aubert's study (1955) of Norwegian legislation intended to protect housemaids revealed, unexpectedly, that minimum wages and hours tended to separate housemaids from what had earlier been a comfortable position as an accepted member of the household, if not of the family. The phenomenon of unintended consequences led to an effort to ascertain whether law ever demonstrably produced its intended effects.

One of the best-known efforts of this kind is the study by Campbell & Ross (1968) of the Connecticut speed crackdown. Intended in part as an illustration of quasi-experimental method, the study set out to isolate the effect on auto fatalities of a rigorous campaign to enforce the speeding laws. In late 1955, then Connecticut Governor Abraham A. Ribicoff instructed the judges to invariably suspend licenses upon conviction for speeding, with the time of suspension increasing from 30 days for the first offense, to 60 for the second, and indefinite suspension for the third. This sanction was implemented under the threat that judges who showed laxity in enforcing the law would not be reappointed by the Governor. Data concerning traffic fatalities were gathered from 1951–1959. The analysis utilized an "interrupted time-series design," in which the crackdown was viewed as the interrupting event; the object was to test the hypothesis that the Governor's enforcement policy had succeeded in reducing traffic fatalities.

An inspection of the fatalities during the year following the crackdown shows a sharp decline. Campbell & Ross warn, however, that this phenomenon might readily be attributable to other explanations or to "plausible rival hypotheses." Among the threats to validity, they point to several difficulties in determining whether any legal policy has produced the change toward which it was directed. Some illustrations: a decline in fatalities may have resulted from improved safety features in cars, from more widespread driver education, from publicity arising from measurement of fatalities during the "before" phase of the research, and from short-term fluctuation of unstable rates. Particularly interesting is the regression effect, which could explain a decline in rates because the policy of speed control is most likely to be instituted when the fatalities reach a peak, especially a new high. The effort to control the disturbance may lead to vigorous legal action—as it did in this case—but the subsequent decline in the disturbing behavior may result merely from a tendency of extremes to regress toward the mean, an occurrence to be expected even in the absence of the effort at control. Most of these threats to validity are rejected by the authors with the aid of a long time-series, appropriate statistical tests, and comparative data from neighborhood states.

The Campbell & Ross study suggests that the positive results of the crackdown might well be short-lived. It is noted, for example, that in the period after the initiation of the campaign there occurs a sharp and steady decline in the frequency of speeding violations as a percentage of all traffic violations. While this finding might indicate a real decline in speeding, the authors speculate that it might alternatively mean "that policemen and prosecutors were more willing, in the light of severe sanctions for speeding, to overlook minor infractions or to charge them as something else" (Campbell & Ross 1968:49). They also note that, after the crackdown, a larger

percentage of drivers accused of speeding were acquitted, possibly because judges, unwilling to impose the harsh sentence of license suspension, avoided that compulsion by a finding of not guilty. To establish these speculations empirically would require considerable investigation, some of which has been done since the Campbell & Ross study (e.g. Shover et al 1977). But the discussion suggests some of the processes by which the efforts at law enforcement might, especially with the passage of time, lose their intended effect.

A study of this kind, defining the scope of investigation very narrowly, may be used to illustrate the many ways in which the main intended effects might be nullified. Not only may officials decline to enforce the law; the affected population may also develop resistance. As enforcement efforts grow, a variety of countermoves will be expected. These include such motorists' tactics as increased use of rear-view mirrors, civilian-band (CB) radios for mutual warning, and radar-jamming devices. The enforcement campaign may also motivate certain segments of the motorist population to prove their heroism by defying the police, turning the superhighway into a drag strip, and eventually overcrowding the morgue. Also, the heightened sanction may create an incentive for motorists to bribe, and police to be bribed, in return for nullifying the speeding ticket. Finally the policy itself may be weakened or dropped in light of its unpopularity, inefficiency, or both—either by an incumbent governor seeking more political support or by a new governor replacing one defeated in part because he instituted such a policy.

The presence of so many diverse side effects and what might be called back effects (i.e. on the promulgators or enforcers) makes it difficult to isolate the main effect of a legal policy. While the policy may be shown to produce certain short-term outcomes, social scientists and policymakers alike are interested in longer-range, indirect effects. Considering the difficulty of main-effect measurement, as illustrated by Campbell & Ross, the methodology of side- and back-effect measurement presents extremely vexing problems of conceptualization and measurement.

Nevertheless, studies of implementation have begun to reveal some of the reasons for legal policy failing to achieve its overt purposes. Where the state attempts to impose an unpopular policy, diverse methods for mounting resistance are available to an unwilling population. Often, the efforts of each side to enforce or evade can escalate hostility to the point of creating open defiance, if not insurrection (Hobsbawm 1963). But even where the state has a continuing monopoly of force, it can find itself powerless to modify the behavior in question.

A fascinating case in point is described by Massell (1968) in a study of the efforts of the Soviet government to eliminate the pattern of female

subordination among the Moslem peoples of Soviet Central Asia. During the mid 1920s laws were enacted that prohibited, under pain of criminal sanction, a number of traditional practices including polygamy, levirate, forced marriage, child marriage, and the use of bride price. Also, women's legal rights were defined in such a way as to provide for "absolute equality" of the sexes. Women were given the right to initiate divorce, to equal succession in the inheritance of property, to status as witnesses in court, to education at all levels, to equal employment opportunity, and to suffrage. These laws and many related measures were to be implemented both by government and by party officials, the latter formed into special cadres (Zhenodetl) assigned to work with women. A particular effort was to be directed toward the removal of the veil, symbol of women's inferior status.

Although great efforts were made by the official agencies of the government and the party to implement these objectives, the campaign faltered and, after 2½ years of effort, finally collapsed. Several types of resistance developed. Many women ignored the rights extended to them and resisted even in the face of inculcation or coercion the suggestions that they remove the veil and become liberated. Women who accepted the opportunity for emancipation found it difficult to establish a new set of standards to replace those to which they had been socialized. They found themselves subject to violent attacks by traditional Moslem leaders and their adherents. Also, the local Communist officials, charged with expediting the campaign, interpreted the conduct of women who removed the veil as an invitation to sexual relations, since unveiled women were presumed to be harlots. In consequence, the party members themselves were often involved in sexual exploitation of the emancipated women, unmarried and married, in a range of activities from prostitution to gang rape. The unrest arising from all of these reactions led finally to a decision from Moscow to abandon the effort at vigorous enforcement of the emancipation campaign.

The experience in Soviet Central Asia suggests that even where a powerful state undertakes to use law as an instrument of change, the results are by no means guaranteed. The effort at change failed, at least in the short run, because of opposition from several groups: the women whose positions were to be "improved," the men whose privileges were to be diminished, and the officials who were charged with responsibility for implementing the change.

Several conditions might have made such a change extremely difficult. First, the campaign called for a major change in the fundamental characteristics of these societies and demanded that these changes come about at once. In consequence, it was not possible to secure gradual acceptance of the change through selective experience, diffusion, education, and socialization. Also, the policy was implemented without decisional participation by

those who would stand to gain or lose by it. Lack of such participation may have been inevitable, given the social and political structure, but in any case its absence made it unlikely that the population would become committed to the new laws. Finally, the agents of change—local officials and party members—were drawn from the same culture and accordingly shared many of the attitudes that surrounded and supported the existing social structure.

Caution must be used, of course, in reaching conclusions on the capacity of law to induce social change, particularly where the information available is derived from a limited number of case studies. The studies that have been done derive from quite varied settings and therefore do not readily lend themselves to comparison in that cumulative manner which permits the testing of generalizations. For the most part, they provide us with a sense of the kinds of variables that should be examined in subsequent work.

Research on the impact of law raises some serious methodological problems, even after relevant variables are conceptualized. It is difficult to differentiate the law from concomitant social occurences. Law is characteristically the product of a set of social forces, which may themselves be generating social change. What part law plays in organizing, publicizing, legitimizing, and crystallizing these forces—or in detracting from these effects—is not easily discernable. The problem is difficult enough, as in the two cases discussed above (Campbell & Ross 1968; Massell 1968), where the enforcement campaign seeks to alter an existing trend or state of affairs. Where law is an expression of a prevailing view and a means of implementing it, disentangling it from its origins presents even more serious methodological problems.

Two methods have been adopted from other fields of social science that may help to isolate law as an independent variable. The first of these, experimental method, has been used in several studies to try to determine effects of a law or a law-enforcement policy on attitude or behavior. Perhaps the classic example is the VERA Institute bail-bond study (Ares, Rankin & Sturz 1963). In that study, the New York City court granted pretrial release on their own recognizance to a randomly selected set of detainees, all of whom were thought likely on the basis of earlier studies to voluntarily return to face charges. Over 90% of the experimentals returned to court as required. The results favored experimentals over controls in several regards, including preparation of their defense, percentage acquitted, proportion retaining their jobs, and continuing adjustment of their families.

Experimental studies represent a method of limited scope for a number of reasons. Cooperation of authorities may be difficult to secure because of the inconvenience to the decision maker and the limitation of his or her discretion. Even when such cooperation is secured, it may be subject to

fluctuation or change as it is applied. In one study, for example, in which judges and researchers agreed to depart from the experimental design only in exceptional cases, "it turned out there were many more exceptional cases than [the researchers] expected" (Ross & Blumenthal 1974). Also, since those who permit the use of experimentation in the legal process represent a small proportion of all decision makers, the external validity—i.e. generalizability to the universe of decision makers—must be questioned.

The second method introduced to isolate legal effects is the technique of simultaneous equation estimation of the economists. This approach seeks to control for a set of identified, measured variables so that by statistical means it is possible to estimate the variance attributable to the legal policy. In principle, this technique also permits examination of, and control of, reverse effects. A recent use of this technique by Ehrlich (1975) reached the conclusion, contrary to earlier studies by Sellin (1959), that the death penalty deters murder with rather spectacular success. This finding was quickly attacked on a variety of methodological grounds (cf Baldus & Cole 1975). For example, statistically significant results (a decline in capital punishment correlated with an increase in murder rate) derive almost entirely from a seven-year segment (1962–1969) of a 38 year time period (Bowers & Pierce 1975). The result may also be attributable to a cross-national propensity for murder rates to rise in the aftermath of wars (Archer & Gartner 1976), an occurrence that may have been accidentally correlated with trends and legal decisions opposing capital punishment. Granting, however, that a particular early application may be inaccurate, the methodology employed by Ehrlich seems an appropriate and promising way for disentangling the influence of law where the important variables can be identified and measured (cf Feeley 1976).

If rigorous measurements are to be employed, the concept of legal impact itself should be more carefully defined. What universe of people are included in those whose behavior is supposed to be affected? How do we distinguish between those who would have behaved despite the law and those who conform only in light of the law? What weight do we give to those who disobey the law, who attempt to interfere with its implementation (cf Friedman 1975; Wasby 1970)?

Such problems become even more complicated when we try to deal with civil actions, where the frequency with which law is used depends on decisions by volunteer plaintiffs. In the examination of the use of contract law by automobile dealers, for example, Macauley (1963) discovered that the dealers made very little use of the formal procedures prescribed in law for the making of valid contracts and rarely used courts to enforce obligations. Did that mean that contract law had little effect? Suppose that in the

nineteenth century contract law provided for the development of regularized business relations such that a culture developed in which informal relations were able to regulate without the necessity of recourse to law. Suppose that the courts, seldom used, stood as a backdrop, an ultimate resort, from which the parties drew confidence. Suppose that the power of the law was used by sellers to press buyers into credit arrangements and defaults—even though the formal machinery was rarely invoked. Such issues entail problems of definition and measurement that are not yet adequately handled in the sociology of law.

Beyond such effects lie even more remote consequences of law. Legal regulations on the books and in action ramify throughout the society in ways that are difficult to trace. As Hurst (1960, 1964) pointed out, laws providing for the construction of roads might facilitate the development of industry, leading to a pattern of urban growth, contributing to changes in the structure of the family, to the distribution of wealth, to the concentration of power in urban political machines, and to the organization and recognition of industrial workers. Obviously, the law does not determine all these changes; nevertheless its significance for such changes cannot be lightly dismissed.

PATHWAYS TO LEGITIMACY

The impact of law is thought to be deeply affected by the legitimacy accorded to law by the population to which it applies. This view, not yet subjected to rigorous test, seems to be supported by a wide range of observations in studies of civil rights implementation, police illegality, the school prayer decisions (Muir 1967), industrial relations (Gouldner 1954:157–228), and juvenile delinquency (Sykes & Matza 1957).

Legitimacy has been attributed in theory to a number of determinants. In primitive societies, it may derive from close adherence to custom; in complex societies, where moral consensus diminishes in the face of diversity, reconciliation of interests by optimizing shared goals may be the most feasible substitute for custom.

Custom

To the extent that law accords with custom or prevailing views of rights it is thought likely to be viewed as legitimate. This view is found particularly among anthropologists studying relatively integrated cultures. Malinowski (1926) reached this conclusion, virtually as a matter of definition, in choosing to define law as including all customary understandings. But others who distinguish law and custom also stress the significance of a close correspondence between law and custom (e.g. Hoebel 1954).

Bohannan (1965, 1968), providing an explicit rationale for the closeness of law and custom, describes law as a mechanism for repairing breaches in relationships that are normally governed by customary norms. When such a breach occurs, the formal apparatus of legal decision making is invoked. The dispute is then taken out of its usual setting and closely investigated. In the course of repairing the breach, according to Bohannan, the customary norm is restated and used as a basis for the disputants and their associates to resume the preexisting relationship. The effect of this procedure is to "reinstitutionalize the norm," so that it is interpreted and reaffirmed in the legal sphere, a process that also clarifies and strengthens it in its original cultural setting. The legal norm, Bohannan declares, is seldom if ever identical in form or substance to the initial custom. In form, it is more explicit, precise, sharp, and uniform. In substance, too, it characteristically varies somewhat from the custom—a gap that creates tension that works toward change in custom and/or law. Despite such gaps, however, the legal norm tends to remain quite close in substance to the customary norm; this is so because the law originates from a breach in the prevailing customary pattern, because those who intervene seek to restore the preexisting relationship, and because the customary pattern is the model of proper relationships held by the intervenors, if not also by the disputing parties. By close adherence to original custom, law is more likely to be accepted as legitimate by those with whose customary ideas it accords.

Bohannan's model of law as the reinstitutionalizer of custom seems to best fit those societies, such as the West African Tiv whom he studied (1957), where customary norms are largely known and accepted. The model fairly approximates the operation of law as described among a number of technologically simple, folk-type societies such as the Cheyenne (Llewellyn & Hoebel 1941), the Barotse (Gluckman 1955), and the Kapauku (Pospisil 1958). The reinstitutionalization model becomes increasingly problematic, however, where customary consensus does not exist, either because there are strongly held conflicting views, opinion being divided among several alternatives, or because opinion has not had a chance to form. As societies become more complex, through internal development or external contact, these various possibilities become more likely. If the conflicting views are held by two power groups, relatively equal in strength, it may be impossible to resolve their differences by commonly accepted cultural standards. In such circumstances, recourse to an external procedure tends to be chosen. Where such a forum is provided by the state, its decisions tend to reflect a set of standards and forces unrelated to local custom (cf Nader 1965). An interesting explanation of a mixed system involving choice between internal mechanisms and state courts has been described in an important monograph on a Mexican village (Collier 1973). The author reports that local

procedures for dispute resolution and policy formation may be maintained in the face of external state pressures, but that the substance of decisions in such circumstances tends toward laws that would have been enforced in the courts (Collier 1976).

While ethnographers such as Bohannan and Hoebel have generally studied the development and use of law in simple societies, another perspective is adopted by anthropologists who have explored the emergence of state forms. This group has stressed the manner in which the state develops a set of its own interests, reflected in laws, which tend to oppose customary norms. Representative of this perspective is the work of Diamond (1971), an anthropologist whose research focused on archaic societies in which the political form of the state was only partially developed. These protostates are organized around the principles of census, tax, and conscription. In its early stages, the protostate frequently lacks the power fully to oppose the customary order and therefore makes use of it: "In Dahomey, for example, where the king was said to 'own' all property, including land, it is plain that such ownership was a legal fiction and had the effect of validating the preexistent joint-family tradition" (Diamond 1971:50). Diamond cites many comparable instances of protostates where law seems to confirm the customary order. But he insists that these occur, not because they are desired by those who rule, but because the rulers have no choice if they are to secure minimal actual control. The test occurs as the state grows more powerful, so that it is able to impose law in opposition to the existing order of custom. Diamond cites as evidence that certain customs develop or were adopted in defense of kinship and other pre-state institutions "against the assault of the state" (1971:48).

The difference of opinion between Bohannan and Diamond corresponds to the conflict-consensus division among sociologists. Bohannan adopts a general view of law, well illustrated in his own data from the Tiv, that emphasizes the consensual origins of law. Diamond counters with examples from Dahomey, his own research subject, which illustrate the divergence between law and custom, as well as the conflict between the two. Each writer believes his model reveals the essential characteristics of law. While their difference of opinion undoubtedly has heuristic value, it is not at all clear that empirical questions can be formulated, which if answered would determine which of the two is "right." The conceptual problem arises in part from the difficulty of specifiying for complex societies the equivalent of the concept of custom. We need a notion of moral order that bridges custom and moral consensus. The Durkheimian idea of collective conscience, a classic formulation, resists operationalization. Recent work in public opinion research, though promising, continues to struggle with the problem (cf Barton & Parsons 1977).

Moral Consensus and Law in Complex Societies

When we try to fit these views to contemporary society, we find that law often does not correspond to commonly held standards. Standards are frequently so diverse that a single law could not satisfactorily correspond except to a mean position where the dispersion would be very wide. Moreover, the central tendency of public opinion often varies markedly from the positive law. Such findings were reported at some length in a pioneering study comparing attitudes with statutes on matters of parental authority (Cohen, Robson & Bates 1958). Although the interview method—aimed at acquainting subjects with the issues—may have biased respondents against statutory law, the results suggest a gap sufficiently large to resist a purely methodological interpretation. Similar findings were reported by Stouffer (1955) in a very carefully designed study of public opinion on civil liberties, a survey that led to the conclusion that leaders of civic organizations (right, left, and center) all adhered more closely to constitutional standards of civil liberties than did the rank-and-file of the population.

There are some areas, however, in which considerable convergence occurs in moral standards. There is evidence, for example, that substantial consensus exists throughout the population regarding the ranking of seriousness of crimes, at least for the most serious offenses (Rossi et al 1974; Blumstein 1974). Comparable findings are reported from Belgium, Holland (Van Houtte & Vinke 1973), and Finland (Makela 1966). Whether popular consensus is reflected in the formulation and administration of law has been questioned on the basis of a detailed study of legislative changes in criminal law covering an active fifteen year period in California (Berk, Brackman & Lesser 1977). The authors of that study reached the conclusion that although general consensus may exist at the level of rhetoric or normative formulation, this agreed-upon view is not reflected in the details of legislation and administration because of a series of deflections, which include media influence (notably by the Los Angeles Times), legislative logrolling, and the significance of technical legislative provisions not understood by the public.

It has been suggested that the criminal law, at least, would be more efficient and would be perceived as more legitimate if it confined itself to those offenses on which a strong and pervasive consensus exists. This position was given extensive popular currency by Morris & Hawkins in *The Honest Politician's Guide to Crime Control* (1970). Their argument develops the view stated in an earlier article by Kadish (1967), who urged that the criminal sanction be rid of the obligation imposed on it by moralistic legislation to enforce law against victimless crimes such as prostitution, consensual homosexuality, alcoholism, and gambling. Kadish stressed in

particular the consequences of such "overcriminalization" for the corruption of the police, their use of informers, the dangers of entrapment, and the decline in public opinion (resulting from such practices) of the legitimacy of the criminal law.

Perceptions of the legitimacy of law in contemporary societies are not likely to depend on a simple relationship between moral consensus and positive law. The determinants of legitimacy are far more complex, and while social scientists have approached this problem from a number of perspectives, we do not at this point have a satisfactory model or set of findings to report.

Law and Substantive Rationality: The Example of Equality

In the aftermath of the late 1960s, many have come to believe, as noted earlier, that law is incapable of providing a satisfactory basis for moral integration in western societies. There is widespread acceptance of the proposition that our type of society cannot depend for much of its normative content on the mere process of reinstitutionalizing preexistent custom. While custom may provide some basis for judicial decision making, it assumes this role only under very narrowly defined circumstances.

How, then might law contribute to the formulation and acceptance of moral order for a society such as ours? In a functionalist view, law might be expected to implement, through norms and sanctions, the core values of the society. This would provide substantive rationality, which, if widely understood, should enhance the legitimacy of law.

Serious doubts about the capacity of law to perform this function have come not only from the conflict theorists but from a variety of other sources as well. Doubts of this kind are strengthened by the lack of definitional agreement in the value sphere. If values cannot be defined, one is hardly in a position to determine whether value consensus exists, let alone to decide how any given value can most efficiently be attained.

There is little consensus on the definition of the core values of the society. We use a set of common words—such as equality of opportunity, freedom, privacy—but each of these terms proves on inspection to contain many nuances.

To illustrate the point, let us consider social equality as a value. This term has been very much the subject of consideration in the courts, the legislatures, the political world, and the social scientists. The term is used to cover the distribution of wealth, power, prestige, and anything else valued by the possessors. It also is variously used to cover both equality of status and equality of opportunity. Even for a given value, such as wealth, concepts

of relative equality vary widely (Miller & Roby 1970). Unfortunately, with such diversity it effectively remains an undefined term, which creates enormous diversity of understanding and a spate of different operational measures.

On the credit side, however, these conceptual differences have become more apparent in consequence of a vigorous discussion of the concept. As the discussion proceeds, the idea of equality becomes increasingly refined. If in its initial usage it served primarily as an ideological slogan, it has since become considerably more usable as a research concept. Characteristic of this shift is the tendency to treat equality as limited, variable, one of a series of objectives, and as the product—indirectly as well as directly—of changes over time.

Such conceptual developments may facilitate the contribution of law to moral order by fulfilling some of the preconditions of substantive rationality. For one thing, it may make available for professional, and eventually for public, discourse some practicable goals rather than limitless, utopian aspirations. For another, such redefinitions should encourage the formulation of researchable *Zweckrational* questions concerning the means, if any, by which ends such as equality may be more nearly approached under given social conditions.

The discussion of equality has recently proceeded with great vigor in law, philosophy, and the social sciences. In philosophy, Rawls (1971) has become the outstanding figure through his concept of justice as fairness, a construct blending utilitarian and natural law assumptions. Hypothetically, he proposes that all people, if ignorant of where they would find themselves in the social structure or what their preferences would be, would converge in their view of a just social order. A key feature of the just society, thus perceived, is the "difference principle," that allocations should always provide at least equal benefit to those in the most disadvantaged positions. Thus, such distributions will be either equal or redistributive, or else they will foreseeably redound to the benefit of the most disadvantaged (e.g. by providing incentives for efficiency to the advantaged).

Legal policies in recent years have often expressed a rationale quite comparable to these principles. The Civil Rights Act of 1964, for example, provided a legislative basis for affirmative action policies aimed at correcting the results of earlier discrimination. An explicit argument for equalization in the distribution of state resources was provided for the educational sphere by a team of law professors whose expertise included advanced training in economics and sociology. Their book, *Private Wealth and Public Education* (Coons, Clune & Sugarman 1970), provided the intellectual basis for the California decision in *Serrano v. Priest* (1971), which required the

redistribution of state aid for education in a manner that would lead toward equal quality of educational offerings in all districts receiving aid.

At the same time, proposals have been advanced for limiting the approach toward equality. At the normative level, Michelman (1969) asserted that the constitutional concept of equal protection was neither intended nor used for comprehensive equalization but to insure that no unfair barriers were imposed upon participation in the political life of the society, a view reminiscent of the observations of Marshall (1950). Dahrendorf, in his essay "Liberty and equality" (1968), warned that, while some kinds of equality are vital for ensuring full participation, excessive equality that eliminates difference may impinge on the freedom of self-fulfillment: "the possibility of liberty requires inequality, institutional pluralism, differentiation of strata, and a multiplicity of character patterns" (1968:212). He thus, provides a supplement to the famous functional argument for inequality advanced years ago by Davis & Moore (1945), which has been so vigorously debated ever since.

The concept of a limited degree of inequality may also find support in a widely held consensus, as suggested in a recent empirical study by Jasso & Rossi (1977). Their research, making ingenious use of systematically varied hypothetical employees, found that a cross section of the Baltimore population chose as fairest a financial distribution that favored married over single, male over female, and well educated over poorly educated individuals. The high degree of consensus reported in the study suggests that a customary basis for some inequality may exist, which accords with the limited-equality value concepts that are now being enunciated.

Parallel findings have emerged from work on equity theory in social psychology. Starting from the formulations of Homans (1961) and Adams (1963), a growing number of laboratory researchers have explored the implications of the proposition that the differential distribution of rewards is considered equitable as a function of the individual's perceived contribution to the group (Berkowitz & Walster 1976). Whatever differences in performances are perceived in such studies, there is a regular tendency for participants to allocate rewards accordingly, and there is resistance to following instructions for equalization (Leventhal 1976). On the other hand, if the allocation of rewards is perceived as unduly large the recipient may feel guilty, and, in the laboratory at least, attempt to redistribute his reward (Homans 1976). Such action is particularly likely when the decision maker is under instructions to increase harmony within the group (Leventhal, Michaels & Sanford 1972).

To what extent equalization can actually be achieved in a given society, and under what circumstances, remains an open question—one likely to

attract much attention in the near future. In an important contribution, Lenski (1966) developed a theory of stratification based on the proposition that the distribution of power determines the allocation of wealth in societies possessed of a distributable surplus. His theory suggested that political democracy and powerful socialist political parties would tend to increase the equality of wealth among the strata. Empirical research in the past decade has, with steadily improving methods, explored this theory by determining in cross-national samples the political correlates of wealth distribution (Cutright 1963, 1965, 1967; Jackman 1974). A recent study utilizing a direct measure of income distribution tentatively reaches the conclusion that, while political democracy per se does not affect inequality, "Strong socialist parties acting within a democratic framework appear to have reduced inequality in industrial societies" (Hewitt 1977:460).

The development of systematic cross-national studies in political sociology foreshadows comparable comparative work in the sociology of law. For one thing, the methods employed in such studies can readily be adapted for use in sociolegal research. Substantively, the finding of a relation between political power and wealth distribution poses the question of how such changes came about. As an intervening variable, if not independently, law may well play a major role in explaining whether, how, and to what degree efforts at redistribution of wealth and other life chances succeed. Viewed broadly, law and legal institutions might well comprise a major instrument by which such policies are justified, supported, and implemented (or—alternatively—coopted, controlled and converted into the opposite of the ostensibly intended equalization). Which of these results occurs, when and why, are still open questions. On the one hand, it seems plausible that equalizing policies, adopted under political pressure by legislatures, may be nullified and reversed at those stages of implementation where, visibility being lower, differential power can more readily be asserted. On the other hand, efforts to document such tendencies at the microlevel, within a given society, have met with mixed results. For example, even the assertion that sentencing tends to reflect racial and class bias is supported by certain studies (Nagel 1969:81–112; Thornberry 1973) and unconfirmed in others (Chiricos & Waldo 1975).

An important exploration of inequality in litigation was provided by Galanter (1974). Taking a systemic view of the litigation process, Galanter suggests that "repeat players" are able to gain advantage, in a number of ways, over those who participate only once. Repeat players can anticipate litigation and build a strong record, employ specialists in a way that achieves economies of scale, get to know and use court personnel, acquire an advantageous reputation as a fighter and/or a bargain keeper, adopt a

long-range minimax strategy, put resources into the effort to get favorable rules from the court or legislature, estimate which rules will or will not have real-world impact, and press for implementation of rules favorable to themselves. Although there is not a perfect correspondence between status advantages and being a repeat player, Galanter suggests that repeat players generally are the "haves" in the American setting. He cites a wide range of empirical evidence in illustrative support of his conjectures. A study by Wanner (1974, 1975) provides some support for Galanter's thesis by showing that civil actions tend to be won more frequently by government and corporations than by individual plaintiffs. Galanter believes that the role of the legal profession is particularly significant in heightening the advantage of repeat players and discusses ways in which the profession might alleviate the disadvantages encountered by the "have-nots."

The assertion that law in action tends to reflect, and contribute to, social inequality has been sounded from a number of quarters. In his book, *The Behavior of Law*, Black (1976) is perhaps the most sweeping. Presenting a series of generalizations about the "quantity of law," Black hypothesizes, for example, that *ceteris paribus* there is "more law" directed toward those of low than those of high status. Black concludes that law will continue to play an important role in maintaining inequality until society becomes much less structured, more anarchic than it currently is.

A somewhat comparable conclusion is reached by Unger (1976). Reviewing a number of historic societies (in particular Chinese, Japanese, Indian, Muslim, Hebraic), Unger concludes that the conditions for western law were present in none of them and that only in very special circumstances was it possible fully to develop an autonomous (from political influence), general, uniform, objective, and neutral legal system. Law of this kind developed in the western world, according to Unger, for two reasons: the monotheistic belief in a transcendent God and the struggle against feudalism, which led to a firm but arms-length alliance between the centralizing kings and the bourgeoisie. Both of these conditions having changed, Unger sees law as no longer able to maintain its distinctive characteristics. Instead it yields to the demands of special interests, particularly corporate and welfare groups, justifying such claims in terms of functional considerations but in fact giving way because of the combination of pressure and loss of principle. Such a course dooms law, in Unger's view, to a fatal loss of legitimacy, and he predicts bad times ahead for societies, such as ours, that already lack a strong legal basis for order. Foreseeing a Spenglerian decline, he expects either a "City of Pigs," a new tribalism in which groups will only protect the narrowly defined interests of their members, or the "Heavenly City," resulting from the emergence (out of the experience of decline) of a

new natural law based on mutual human respect. Although Unger does not see much chance for this latter development, he thinks that it may eventuate because, during decline, we may learn from experience to participate in the "subversion of inequality." He makes quite clear his belief that the subversion of inequality will occur not through law but in spite of it.

Generalized expressions such as those of Black and Unger may reflect at least in part the shock of discovery resulting from detailed explicit examination of the manner in which western legal systems work. Although the legal realists alluded to anomalies in the operation of law, they relied mostly on anecdote and illustration. Also, their audience, fairly limited, treated such illustrations as exceptions—cause for reform perhaps but not for rejection. The detailed, systematic, and persistent empirical study of legal institutions undertaken since World War II does not lend itself so readily to absorption or dismissal.

Instead it seems likely that law will increasingly be evaluated by its capacity to contribute to the attainment of societal goals. We are, however, only beginning the process of specifying those goals, operationalizing them, weighing the adequacy with which they can be achieved, examining the side and back effects of using law together with other policy devices as means for doing so. Diverse groups in the society, including many whose interests have earlier been underrepresented in the political and legal arenas, have come forward to voice their claims to resources, equal protection, and human dignity. While claims of this kind will not lead to complete equality, they may result in equalization and in fairer treatment. Relevant studies (Mayhew 1968; Mayhew & Reiss 1969; Fitzgerald 1975; Selznick 1969; Nonet 1969) yield diverse conclusions concerning the success of such efforts, but they do not preclude the possibility that law can serve as an instrument for more fully attaining some of the highest charter values of the society. Rather, sociolegal research helps us to see those circumstances under which law succeeds or fails to accomplish its stated objectives. As such knowledge becomes increasingly available, we may be better able to appraise the possiblity that participation in our legal and political institutions might become the liberal equivalent of the Marxist class struggle, i.e. that liberal democratic consciousness, defined in terms of a shared sense of justice, may be raised by the experience of participating in channelled confrontation through which diverse interests may be enunciated and optimized. If that process is to be facilitated, however, we need considerably more knowledge about the operation of these institutions. The systematic increase in such knowledge may well be enhanced as social scientists and lawyers come to share a realization of what is at stake for the society as it tries to use law to help shape a viable liberal-democratic social order.

ACKNOWLEDGMENT

I wish in particular to thank Jonathan Paff for his intellectual contributions as well as his research assistance in aid of this paper. Valuable help was also received from several volunteers: Eileen T. Cohen in Syracuse and Ellen Konar, Ross Runfola, and Rosemary Vogt, three members of my Spring 1977 Sociology of Law seminar in Buffalo. Typing was done with patient good cheer by Linda Diehl.

Literature Cited

Adams, J. S. 1963. Toward an understanding of inequity. *J. Abnorm. Soc. Psychol.* 67:422–36

Archer, D., Gartner, R. 1976. Violent acts and violent times: a comparative approach to postwar homicide rates. *Am. Sociol. Rev.* 41:937–63

Ares, C., Rankin, A. M., Sturz, H. 1963. The Manhattan bail project. *NY Univ. Law Rev.* 38:67–95

Armor, D. J. 1972. The evidence on busing. *Publ. Interest* 28:90–126

Arnold, T. 1935. *The Symbols of Government.* New Haven: Yale Univ. Press. 278 pp.

Aubert, V. 1955. The housemaid—an occupational role in crisis. *Acta Sociol.* 1:149–58

Balbus, I. 1973. *The Dialectics of Legal Repression: Black Rebels Before the American Criminal Courts.* New York: Russell Sage. 269 pp.

Baldus, D. C., Cole, J. W. L. 1975. A comparison of the work of Thorsten Sellin and Isaac Ehrlich on the deterrent effect of capital punishment. *Yale Law J.* 85:170–86

Ball, H. V., Simpson, G. E., Ikeda, K. 1962. Law and social change: Sumner reconsidered. *Am. J. Sociol.* 67:532–40

Barton, A. H., Parsons, R. W. 1977. Measuring belief system structure. *Publ. Opin. Q.* 41:159–80

Berger, R. 1977. *Government by Judiciary.* Cambridge, MA: Harvard Univ. Press. 483 pp.

Berk, R. A., Brackman, H., Lesser, S. 1977. *A Measure of Justice: An Empirical Study of Changes in the California Penal Code, 1955–71.* New York: Academic. 312 pp.

Berkowitz, L., Walster, E., eds. 1976. *Equity Theory: Toward a General Theory of Social Interaction.* New York: Academic. 263 pp.

Black, D. 1976. *The Behavior of Law,* New York: Academic. 175 pp.

Blum, W. J., Kalven, H. Jr. 1963. *The Uneasy Case for Progressive Taxation.* Univ. Chicago, IL. 108 pp.

Blumstein, A. 1974. Seriousness weights in an index of crime. *Am. Sociol. Rev.* 39:854–64

Bohannan, P. J. 1957. *Justice and Judgment Among the Tiv.* London: Oxford Univ. Press. 221 pp.

Bohannan, P. J. 1965. The differing realms of law *Am. Anthropol.* 67, 6, 2:33–42

Bohannan, P. J. 1968. Law and legal institutions. *International Encyclopedia of the Social Sciences,* Vol. 9, pp. 73–78. New York: Macmillan

Bowers, W., Pierce, G. 1975. The illusion of deterrence in Ehrlich's research. *Yale Law J.* 85:187–208

Brown v. Board of Education. 1954. 347 US 483. Also reprinted in Kluger 1976: 779–85

Campbell, D. T., Ross, H. L. 1968. The Connecticut crackdown on speeding: time-series data in quasi-experimental analysis. *Law Soc. Rev.* 3:33–76

Chambliss, W., Seidman, R. 1971. *Law, Order, and Power.* Reading, MA: Addison-Wesley. 533 pp.

Chiricos, T. G., Waldo, G. 1975. Socioeconomic status and criminal sentencing: An empirical assessment of a conflict proposition. *Am. Sociol. Rev.* 40:753–72

Clark, K. B. 1973. Social policy, power, and social science research. *Harvard Educ. Rev.* 43:113–21

Cohen, J., Robson, R. A., Bates, A. P. 1958. *Parental Authority: The Community and the Law.* New Brunswick, NJ: Rutgers Univ. Press. 301 pp.

Coleman, J. S. 1966. *Equality of Educational Opportunity.* Washington, DC: GPO. 548 pp.

Collier, J. F. 1973. *Law and Social Change in Zincantan.* Stanford Univ. Press, CA. 281 pp.

Collier, J. F. 1976. Political leadership and legal change in Zinacantan. *Law Soc. Rev.* 11:131–63

Colombotos, J. 1969. Physicians and Medicare: A before-after study of the effects of legislation on attitudes. *Am. Sociol. Rev.* 34:318–34

Coons, J. E., Clune, W., Sugarman, S. 1970. *Private Wealth and Public Education.* Cambridge, MA: Harvard Univ. Press. 520 pp.

Cox, A. 1968. *Crisis at Columbia: Report of the Fact-Finding Commission Appointed to Investigate Disturbances at Columbia University.* New York: Random House. 222 pp.

Cutright, P. 1963. National political development measurement and analysis. *Am. Sociol. Rev.* 28:253–64

Cutright, P. 1965. Political structure, economic development, and national social security programs. *Am. J. Sociol.* 70: 537–50

Cutright, P. 1967. Inequality: a cross-national analysis. *Am. Sociol. Rev.* 32: 562–78

Dahrendorf, R. 1968. *Essays in the Theory of Society.* Stanford Univ. Press, CA. 300 pp.

Davis, K., Moore, W. 1945. Some principles of stratification. *Amer. Sociol. Rev.* 10: 242–49

Deutsch, M., Collins, M. E. 1951. *Interracial Housing: A Psychological Evaluation of a Social Experiment.* Minneapolis: Univ. Minnesota Press. 173 pp.

Diamond, S. 1971. The rule of law versus the order of custom. *Soc. Res.* 38:42–72

Ehrlich, I. 1975. The deterrent effect of capital punishment: a question of life and death. *Am. Econ. Rev.* 65:397–417

Feeley, M. M. 1976. The concept of laws in social science: a critique and notes on an expanded view. *Law Soc. Rev.* 10:497–523

Fitzgerald, J. M. 1975. The contract buyers league and the courts: A case study of poverty litigation. *Law Soc. Rev.* 9:165–95

Frank, J. 1963. *Courts on Trial: Myth and Reality in American Justice.* New York: Atheneum. 441 pp.

Friedman, L. M. 1975. *The Legal System: A Social Science Perspective.* New York: Russell Sage. 338 pp.

Friedman, L. M., Macauley, S. 1977. *Law and the Behavioral Sciences.* Indianapolis: Bobbs-Merrill. 2nd ed. 1076 pp.

Galanter, M. 1974. Why the "haves" come out ahead: speculations on the limits of legal change. *Law Soc. Rev.* 9:95–160

Galanter, M., Trubek, D. 1974. Scholars in disenchantment. *Wisc. Law Rev.* 4: 1062–1102

Gluckman, M. 1955. *The Judicial Process among the Barotse of Northern Rhodesia.* Manchester Univ. Press, England. 386 pp.

Gouldner, A. W. 1954. *Patterns of Industrial Bureaucracy.* Glencoe, Ill: Free Press. 282 pp.

Hagan, J. 1974. Extra-legal attributes and criminal sentencing: an assessment of a sociological viewpoint. *Law Soc. Rev.* 8:357–83

Hewitt, C. 1977. The effect of political democracy and social democracy and equality in industrial societies: a cross-national comparison. *Am. Sociol. Rev.* 42:450–64

Hobsbawm, E. J. 1963. *Primitive Rebels.* New York: Praeger. 208 pp.

Hoebel, E. A. 1954. *The Law of Primitive Man.* Cambridge, MA: Harvard Univ. Press

Homans, G. C. 1961. *Social Behavior: Its Elementary Forms.* New York: Harcourt, Brace & World. 404 pp.

Homans, G. C. 1976. Commentary. See Berkowitz & Walster 1976, pp. 231–44

Hurst, J. W. 1960. *Law and Social Process in United States History.* Ann Arbor: Univ. Mich. Press. 378 pp.

Hurst, J. W. 1964. *Law and Economic Growth: The Legal History of the Lumber Industry in Wisconsin, 1836–1915.* Cambridge, MA: Belknap. 946 pp.

Jackman, R. W. 1974. Political democracy and social equality: a comparative analysis. *Am. Sociol. Rev.* 39:29–45

Jahoda, M., Cook, S. W. 1952. Security measures and freedom of thought. *Yale Law J.* 61:297–333

Jasso, G., Rossi, P. H. 1977. Distributive justice and earned income. *Am. Sociol. Rev.* 42:639–51

Jencks, C. 1972. *Inequality: A Reassessment of the Effect of Family and Schooling in America.* New York: Basic. 399 pp.

Kadish, S. 1967. The crisis of overcriminalization. *Ann. Am. Acad.* 374:157–65

Killian, L. M. 1956. The social scientist's role in the preparation of the Florida desegregation brief. *Soc. Probl.* 3:211–14

Kluger, R. 1976. *Simple Justice.* New York: Random House. 795 pp.

Kolko, G. 1965. *Railroads and Regulations.* Princeton Univ. Press, NJ. 273 pp.

Lane, R. E. 1966. The regulation of businessmen: social conditions of government economic control. Hamden, Conn.: Archon. 144 pp.

Lasswell, H. D. 1971. *A Pre-View of Policy Sciences.* New York: American Elsevier. 173 pp.

Lazarsfeld, P. F., Thielens, W. Jr. 1958. *The Academic Mind: Social Scientists in a Time of Crisis.* Glencoe, Ill.: Free Press. 460 pp.

Lenski, G. 1966. *Power and Privilege: A Theory of Social Stratification.* New York: McGraw-Hill. 495 pp.

Leventhal, G. S., Michaels, J. W., Sanford, C. 1972. Inequity and interpersonal conflict: reward allocation and secrecy about reward as methods of preventing conflict. *J. Pers. Soc. Psychol.* 23:88–102

Leventhal, G. S. 1976. The distribution of rewards and resources in groups and organizations. See Berkowitz & Walster 1976, pp. 91–131

Llewellyn, K. N. 1940. The normative, the legal, and the law jobs. *Yale Law J.* 49:1355–1400

Llewellyn, K. N., Hoebel, E. A. 1941. *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence.* Norman: Univ. Okla. Press. 360 pp.

Llewellyn, K. N. 1949. Law and the social sciences—especially sociology. *Am. Sociol. Rev.* 14:451–62

Macauley, S. 1963. Non-contractual relations in business: a preliminary study. *Am. Sociol. Rev.* 28:55–67

Makela, K. 1966. Public sense of justice and judicial practice. *Acta Sociol.* 10:42–67

Malinowski, B. 1926. *Crime and Custom in Savage Society.* London: Routledge & Kegan Paul. 132 pp.

Massell, G. J. 1968. Law as an instrument of revolutionary change in traditional milieu: the case of Soviet Central Asia. *Law Soc. Rev.* 2:179–228

Marshall, T. H. 1950. *Citizenship and Social Class.* Cambridge, MA: Harvard Univ. Press. 154 pp.

Mayhew, L., Reiss, A. J. Jr. 1969. The social organization of legal contacts. *Am. Sociol. Rev.* 34:390–18

Mayhew, L. H. 1968. *Law and Equal Opportunity: A Study of the Massachusetts Commission Against Discrimination.* Cambridge, MA: Harvard Univ. Press

Michelman, F. I. 1969. On protecting the poor through the Fourteenth Amendment. *Harvard Law Rev.* 83:7–59

Miller, S. M., Roby, P. A. 1970. *The Future of Inequality.* New York: Basic. 272 pp

Morris, N., Hawkins, G. 1970. *The Honest Politician's Guide to Crime Control.* Univ. Chicago Press, IL. 271 pp.

Mosteller, F., Moynihan, D. P., eds. 1972. *On Equality of Educational Opportunity: Papers derived from the Harvard University Faculty Seminar on the Coleman Report.* New York: Random House. 570 pp.

Muir, W. K. Jr. 1967. *Prayer in the Public Schools: Law and Attitude Change.* Univ. Chicago Press, IL. 170 pp.

Nader, L. 1965. Choices in legal procedure: Shia Moslem and Mexican Zapotec. *Am. Anthropol.* 67:394–99

Nagel, S. S. 1969. *The Legal Process from a Behavioral Perspective.* Homewood, Ill.: Dorsey. 399 pp.

Nonet, P. 1969. *Administrative Justice: Advocacy and Change in Government Agencies.* New York: Russell Sage. 274 pp.

Parsons, T. 1962. The law and social control. In *Law and Sociology: Exploratory Essays,* ed. W. M. Evan, pp. 56–72. New York: Free Press

Pettigrew, T. F., Useem, E. L., Normand, C., Smith, M. S. 1972. Busing: a review of "The Evidence." *Publ. Interest* 29:88–118

Pospisil, L. 1958. *Kapauku Papuans and their Law.* New Haven, CT: Yale Univ. Publ. Anthropol., 54, 296 pp.

Rawls, J. 1971. *A Theory of Justice.* Cambridge, MA: Belknap. 607 pp.

Rivlin, A. 1971. *Systematic Thinking for Social Action.* Washington, DC: Brookings. 150 pp.

Roche, J. P., Gordon, M. M. 1955. Can morality be legislated? *NY Times Mag.* May 22, 1955

Rose, A. M. 1968. Law and the causation of social problems. *Soc. Probl.* 16:33–43

Rosen, P. L. 1972. *The Supreme Court and Social Science.* Urbana: Univ. Ill. Press. 260 pp.

Ross, H. L., Blumenthal, M. 1974. Sanctions for the drinking driver: an experimental study. *J. Legal Stud.* 3:53–61

Rossi, P., Waite, E., Bose, C., Berk, R. 1974. The seriousness of crimes: normative structure and individual differences. *Am. Sociol. Rev.* 39:224–37

Rumble, W. E. Jr. 1968. *American Legal Realism: Skepticism, Reform, and the Judicial Process.* Ithaca, NY: Cornell Univ. Press. 245 pp.

Sellin, T. 1959. *The Death Penalty.* Philadelphia: Am. Law Inst. 84 pp.

Selznick, P. 1969. *Law, Society, and Industrial Justice* New York: Russell Sage. 282 pp.

Serrano v. Priest. 1971. 487 *Pacific Reporter 2d* 1241–66; 96 *Calif. Reporter* 601–26

Shover, N., Bankston, W. B., Gurley, J. W. 1977. Responses of the criminal justice system to legislation providing more severe threatened sanctions. *Criminology* 14:483–500

Sinclair, A. 1962. *Prohibition: The Era of Excess.* Boston: Little, Brown. 480 pp.

Stouffer, S. A., Suchman, E. A., Devinney, L. C., Star, S. A., Williams, R. M. Jr. 1949. The American soldier. In *Studies in Social Psychology in World War II,* Vol. 1. Princeton Univ. Press, NJ. 599 pp.

Stouffer, S. A. 1955. *Communism, Conformity, and Civil Liberties.* New York: Doubleday. 278 pp.

Sykes, G., Matza, D. 1957. Techniques of neutralization: a theory of delinquency. *Am. Sociol. Rev.* 22:664–70

Thornberry, T. P. 1973. Race, socioeconomic status and sentencing in the juvenile justice system. *J. Crim. Law Criminol.* 64:90–98

Unger, R. M. 1976. *Law in Modern Society: Toward a Criticism of Social Theory.* New York: Free Press. 309 pp.

Van Houtte, J., Vinke, P. 1973. Attitudes governing acceptance of legislation among various social groups. In *Knowledge and Opinion about Law,* ed. A. Podgoreck, W. Kaupen, J. Van Houtte, P. Vinke, B. Kutchinsky, pp. 13–42. London: Robertson

Wanner, C. 1974. The public ordering of private relations: Part I: Initiating civil cases in urban trial courts. *Law Soc. Rev.* 8:421–40

Wanner, C. 1975. The public ordering of private relations: Part II: Winning civil court cases. *Law Soc. Rev.* 9:293–306

Wasby, S. L. 1970. The supreme court's impact: some problems of conceptualization and measurement. *Law Soc. Rev.* 5:41–60