

1996

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Recommended Citation

22 Annual Reviews of Sociology 187 (1996)

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LAW AND INEQUALITY: Race, Gender. . . and, of Course, Class

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KEY WORDS: sociology of law, class theory, legal institutions

ABSTRACT

This chapter discusses the concept of class in an important subfield, the sociology of law. Class, a pivotal institution of society, was central to the earliest studies of legal institutions and of law and inequality in particular. More recently, class has played a less important role. This chapter argues for the continuing importance of class and provides examples of its potential use in contemporary sociolegal research. The first part reviews early work that employed class and instrumental models of the state. Grounded, anti-formal models of law provided a contrasting view. Following wider trends in the discipline, sociology of law turned from structural models to theories of law as an ideology, and most recently, as reviewed in the second part, to law as an element of consciousness and experience. While acknowledging the value of contemporary research that documents a deeply textured, paradoxical, and nuanced analysis of the role of law in society, the third part argues for theorizing the link between experience and context, including the role of social class, and presents a research agenda for a sociology of law, where the relationship between law and class is considered both as institution and experience.

“The plain fact is that in a new stage of capitalism, class divides as ruthlessly as it did in the age of the Robber Barons.”

Richard Sennett,¹ 1942

¹ As quoted in “Back to Class Warfare,” *The New York Times*, December 27, 1994.

INTRODUCTION

In this essay we review the ways in which class has been conceptualized and used to explain the role of legal institutions in society. Though always controversial in American social science, class is nonetheless central in thought and theorizing about society, including its legal institutions. In the past two decades, theories of class and social structure have been endlessly critiqued, and the importance of class as a research concept reduced to the point of near extinction. Class is only now beginning to be reconsidered—as one more anchor of personal identity like gender, race, and ethnicity. The contemporary turn from structural theory toward interpretive studies of experience emphasizes nuanced descriptions of actors' orientations to law in a particular context, but it has offered little to explain the interaction between individual agency and continuing patterns of political or economic hierarchy.

Understanding the structural foundations of class continues to be important in the postmodern world. Class describes an individual's position with respect to the central economic and cultural institutions of society and, in turn, relates that position to the social resources available to the individual. Just as new ways have been found to bring the state back in or to create a new institutionalism that acknowledges the importance of complex continuing patterns in social life—but purged of deterministic claims—so class must be reconceptualized. Indeed, our review of sociolegal research shows that class has continued to be an important, if largely implicit, concept not only making possible a clearer understanding of the distributive effects of economies but also providing a key to understanding power in contemporary society.

We show here that class, as a marker for the distributive effects of law, has been of great importance in sociolegal studies. In the 1970s, structural theories began to decline in importance. In the sociology of law, the importance of class was diminished still further by the weight of arguments of neo-Marxists and others that law is an ideological force, not a straightforward reflection of resource inequality or a simple instrument of domination.

The interpretive and postmodern turn in sociology is reflected in contemporary sociolegal research on legal culture and legal consciousness, and on narrative and discourse about law. The critique and decline of grand theory did not undercut interest in the concrete distributive consequences of law, the bread and butter of the field, but the shift did sever these studies conceptually from their roots in general theories of society. The second part of this chapter describes the shift as well as the conceptual limits of this paradigm: Agency alone will not provide an understanding of the group-life of a society or its institutions or the ways in which class continues to form an important bridge between those contingencies that comprise elements of an actor's own understanding of action and those of which the actor is unaware.

Finally, the third part of the chapter presents a research agenda for a sociology of law where the tension between structure and agency, class and law, frames the undertaking. Using recent studies as examples, we show why the institutions of class continue to explain dimensions of inequality and hierarchy and how incorporating a nuanced, agency-sensitive concept of class will contribute to the development of sociology of law and to class theory.

THEORY AND THE PROBLEM OF LAW AND INEQUALITY

The sociology of law has always drawn on theories prevailing in the discipline. Early sociology of law was shaped by mainstream theories, including conflict, structural-functional, and grounded theories of society (Dahrendorf 1959, Parsons 1964, Glaser & Strauss 1967). Conflict and structural-functional theories have been particularly influential in the sociology of law. Both were derived from nineteenth century social theory of industrial society in which class structure was understood as fundamental, as a source of both order and conflict. The purpose of the state was to make the differentiation of social roles at the heart of class structure work smoothly (structural-functional theory) or to contain the inevitable conflict that resulted from inequality created by class structure (conflict theory). Marxist conflict theory also viewed the state as an instrument of the ruling class or some combination of dominant classes (Marx & Engels 1950). In all of these theories of the class-state, the law legitimates state authority, enabling the state to carry out its purposes (see Evans 1963). Almost all early sociology of law accepted this fundamental ordering of class, law, and the state. Weber's theory of legal formalism and the role of the legal profession in maintaining the authority of law has also been influential. It is not surprising, therefore, given the lineage of the theories dominating the early sociology of law, that economic class was universally and uncontroversially the measure employed in research on law and inequality.

A second perspective in the sociology of law was employed in studying inequality, but without connection to grand theory. Sociology of law shares with the discipline at large a body of research that begins with an anti-instrumental and anti-formal model of the relationship between law and inequality. Growing out of symbolic interactionism and inductive, grounded theory of society, law and inequality are explained as social processes marked by situation and context (Goffman 1956, 1961, Berger & Luckmann 1966).

Research within the sociology of law thus grew from widely shared theoretical perspectives within the discipline, and the contradictory premises of these perspectives, structural on one hand and antistructural on the other, contained the seeds of tensions that have driven debates within the field about the role of structure and class. Sociology of law has also been deeply influenced by intellectual traditions specific to legal scholarship, particularly liberal legalism. In

contrast to conflict, structural-functional, and grounded theories, liberal legalism is not a theory, but rather a “description of ideal practices on which law as we know it is said to depend” (Munger 1993:99). In this model of a sociology of law, social science helps policymakers achieve the law’s ideals of fairness and equality. The influence of liberal legalism explains, in part, the tendency of American sociology of law to focus on description of legal problems rather than on theory development.²

Law and Inequality From the Top Down

Law and society scholars, finding the egalitarian pretensions of both liberal legalism and state theories of law an easy target, produced a vast literature exploring the inevitable gap between an ideal of equal justice on the books and the biases introduced by social organization into the law in action (Abel 1980). Class was often an important element of the explanation of the “gap,” but it was rarely developed theoretically.

Numerous studies examined access to justice for persons of limited means. Research projects at the American Bar Foundation and elsewhere documented the legal problems of the poor. The poor, it was shown, made only limited use of lawyers and law, and a resources theory (Mayhew & Reiss 1969) was developed to explain the failure to act in terms of lack of knowledge, lack of material resources, or passivity in the face of oppression (Levine & Preston 1970, Curran 1977, Carlin, Howard & Messinger 1966, Mayhew 1968).

Abel (1973) reviewed this literature and reframed its agenda in more general terms as a theory of the structure of dispute processing. While dispute processing theory and research has been criticized for failing to examine underlying social conflict (including class conflict) as well as the interplay and contestation that “socially constructs” all of social life (Kidder 1980–1981, Berger & Luckmann 1966), Abel’s model provided a more precise conceptualization of the effects of structural inequalities on legal and prelegal conflict resolution than did any prior work (see also Felstiner, Abel & Sarat 1980–1981, Miller & Sarat 1980–1981).

Studies examined the stratification of the legal profession, especially in large cities (Smigel 1964, Carlin 1962, Handler 1967). Smigel’s seminal study of the Wall Street lawyer, for example, documented the ways in which class and status intersected to create a closed world of elite, WASP law practice dominated and controlled by men. Class background and the privileges of status, as measured by such indices as membership in the Social Register, were of no significance for women, as Epstein’s (1983) work made abundantly clear: Daughters of

² As a number of scholars have reported, in projects growing out of this model sociologists often played a second-class role to legal academics (see Simon and Lynch 1989, Skolnick 1965).

the elite were systematically denied entry to the Wall Street firms of their brothers. Epstein's work demonstrates how gender alters the effects of class on the stratification of legal practice. If gender was one key to exclusion from the professional elite, so was service to clients at the lowest extreme of the class structure, and several studies examined the careers and commitment of lawyers for the poor (Handler et al 1978, Katz 1982).

Research showed the dependence of lawyers on the class structure of society. A market-dependence theory of the legal profession, linking professional organization and individual lawyer behavior to economic dependence on a capitalist market, profoundly influenced empirical research on both stratification and the role of the profession in society (Abel 1989). A more sophisticated theory of market dependence, combining literatures on the lawyer-client relationship, network analysis, and theories of mobility showed that lawyers in Chicago were stratified into two hemispheres of law practice defined by networks of professionals embodying distinct differences in clients, organization of practice, career lines, and values (Heinz & Laumann 1982).

A large body of research on the role of courts and adjudication (see Galanter 1986 for an extensive review), documented the gap between the promises of fairness and equality and the practices of the legal process. Research examined the stratified functions and effects of courts (Wanner 1974, 1975), their relationship to external social organization, and the construction of roles within the courts (Boyum & Mather 1986, Baum et al 1981–1982, Kagan et al 1977, 1978, Galanter 1986). Tracking social movements for reform of adjudication led to interest in the redistributive effects of judicial rationalization (Heydebrand & Seron 1990), mediation, and alternative dispute resolution [described at length by Menkel-Meadow (1984) and Galanter (1986) and extensively critiqued by Abel (1982)].

At the focal point of the literature on law and inequality is an article by Galanter, perhaps the most frequently cited in all of the earlier law and society research literature, which attempts to summarize the vast array of findings up to the mid-1970s (1975). The article presents a process model of the cumulative effects of disadvantage between those Galanter calls one-shot players in law and those he terms repeat players. The disadvantages stem from differences in knowledge, experience, material resources, and the social context of typical pairings between one-shotters and repeat players. In addition, the differences in knowledge, resources, and organizational capacity are exacerbated by the institutional biases of legal process itself—unequal access to lawyers and ability to command their best efforts, the complexities of litigation that favor the knowledgeable and the rich, and the advantages of being able to “play for rules” in legislatures and before courts. In all but explicit terms, the article presents

a comprehensive summary of the sociology of law research showing that the system of justice is thoroughly embedded in the class structure, and indeed the title of the article carries the message—"Why the Haves' Come Out Ahead." While Galanter presents a clear and powerful description, he does so, much as does the field itself, without developing a strong conceptual or theoretical scheme: In an article laced with evidence of inequality and hierarchy, the term 'Haves', like social class itself, is neither defined nor theorized.³

Law and Inequality From the Ground Up

There is a second, anti-instrumental and anti-formal tradition of research and theory development in the sociology of law. In contrast to structural models of law and society, grounded theory gives much greater weight to agents' roles in constructing frames of reference.⁴ For example, Blumberg (1967), Sudnow (1965), and Macaulay (1963) assume that the relationship between inequality and law can be understood primarily from the interactions among actors in the settings studied. Blumberg & Sudnow describe the construction of typifications through interaction between the regular participants in criminal court proceedings—the judge, prosecutor, and defense counsel. "Normal" crimes receive well-understood, routine treatment, based on typification of the defendant and the crime situation. Mutual commitments are made between court regulars about the expeditious disposition of cases that leave defendants, usually poor, out of the negotiation.

Macaulay's study of noncontractual relations in business has been highly influential in shaping this microsociology of law. Macaulay observed that sales transactions between businesses led to the establishment of continuing relations between sales personnel and the creation of sales practices based on mutual commitment established through long-term dealings (Macaulay 1963). The law, though technically applicable, was largely irrelevant to such practices when continuing relations developed between actors. The continuing-relations hypothesis, quite similar to observations on conflict resolution by anthropologists, makes understanding the effects of inequality considerably more complex,

³The lone effort to develop a general theory of law and inequality (Black 1976) also fails to do more than offer a set of unexplained categories. Black predicts a patterning of legal relationships according to the relative position of parties in the social order. For example, he predicts that the greater the social distance between two individuals, the more law will govern the relationship and the greater the likelihood of third-party intervention to resolve a dispute. Black's insistence that theory consider only observable behavior, not meaning or understanding from the actor's viewpoint, has been highly controversial. By providing a target for such criticism, Black helped to coalesce interest in the ideological analysis of the role of law and in interpretive theory.

⁴An anthropology of law also played an important intellectual role in the development of socio-legal studies. Indeed, much of the work on dispute processing borrows heavily from anthropology (Nader 1969, Collier 1973, Moore 1978, Mather & Yngvesson 1980–1981, Merry 1982).

as Macaulay himself noted. Among his purchasing agents, continuing relations developed among relative equals, but not between large and small or among the very large businesses. Commenting on the generalizability of Macaulay's study, Yngvesson argued that continuing relations need not involve equals nor be based on trust, and they may involve coercion to prevent recourse to the law (1985, see also Macaulay 1966).

Reflecting on the implications of the line of research inspired by his study, Macaulay has suggested that continuing relations in the form of social networks, private associations, organizations, and informal groups break down formal structure and instrumental legal processes, rendering the state-society boundary meaningless. Sociology of law thus constructed from the ground up supports many of the impulses that led to rejection of class-structural theory of the state, including the claim that agency is more important than the invisible hand of class. Anticipating this turn in sociology of law, Macaulay has remained firmly committed to the importance of the role of social life in explaining the relationship between law and inequality (1984).

Legal Ideologies and Social Class

The failed social reforms and revolutions of the 1960s and 1970s fueled disillusionment with structural theories of law, in particular theories of class-instrumentalism. Empirical studies of contemporary and historical legal conflict by Marxist scholars pointed to a more ambiguous role for class in determining the long-run benefits and burdens imposed by law. A study of the court dispositions of participants in riots by African-Americans in Detroit in 1968 (Balbus 1973) showed that even in response to a serious episode of class and racial strife the courts followed conflicting imperatives. The findings of the study cast serious doubt on the ability of any one perspective, in particular class theory, to explain the behavior of courts even in the middle of a serious episode of class conflict. Similarly, studies by Hay (1975) and Thompson (1964, 1975) of the enforcement of repressive eighteenth century English criminal laws showed that law aided class rule by being violent but also by seeming, and to a degree by being, just. Thompson concluded that the law displayed a "relative autonomy" from class control:

It is true that the law did mediate existent class relations to the advantage of the rulers. . . . On the other hand, the law mediated these class relations through legal forms, which imposed again and again, inhibitions upon the actions of the rulers (1975:264).

The sociology of law was deeply influenced by the European Marxists and neo-Marxists on the subject of legal ideology (Gramsci 1992, Hunt 1981, 1985). The concept of ideology provided a means of avoiding simplistic claims about mechanical class rule and false consciousness. The new challenge was to

examine the politics of law—the playing out of class conflicts in contests about the meaning of law in a process that was class-biased but historically contingent. Instrumentalism, state-centered law, structural models of society, and ahistorical social science all came into question as ideology became the vehicle for explaining the relationship between law and social class.⁵ Reviewing the literature on the study of law as ideology, Hunt cautioned “ideology is and will remain a difficult, slippery, and ambiguous concept” (1985:31), though it endures as a powerful lens for explaining the role and power of the legal form in social relations.

Some who have contributed to the growing body of research on legal ideology have assumed, as did most Marxist scholars, that legal ideology is a terrain of struggle, conflict, and indeterminacy, but also that ideology is related to “broader social forces rooted in economic, political, and other practices and to institutions” (Hunt 1985:32), i.e. the reproduced patterns of social life that we have called structure. For example, Larson (1977) examined the historically contingent ways in which lawyers and other professionals secured a powerful class position by using ideological claims—merit, science, and service—coupled with political closure and control over access through university-based education and licensure by the state. Abel and his collaborators (1982) describe the rise of the politics and ideology of informalism in law and the reasons for its seemingly contradictory effect—extending the legitimacy and power of the state to new disputes and new parties. Both studies document the historically contingent impulses embedded in legal institutions with a view toward explaining their role in legitimating a structurally unequal, class-based society.

Studies like those of Larson and Abel that located legal ideology in an institutional structure have avoided a simplistic base-superstructure reading of Marx by emphasizing the complex and often contradictory functions of law in society, including the ways in which law constrains both the dominated and the dominating and the contingencies that mediate the law’s effects. Some scholars have criticized the lingering instrumentalism and structuralism in such sociological studies of ideology (Harding 1986, Trubek 1984). Indeed, some scholars of legal ideology begin from altogether different premises.

As we show in the next section, a growing body of research focuses on interpretation, holding “that the meanings of cultural and social forms are

⁵Feminist scholarship made a particularly important contribution by expanding the horizons of investigations, raising critical questions about method, and questioning whether there is even a distinction between theory and method (Menkel-Meadow & Diamond 1991). Within the sociology of law, feminist scholars have examined the entry of women into male bastions such as law practice (Epstein 1981, Menkel-Meadow 1989), courts (Cook 1978), and alternative dispute resolution (Menkel-Meadow 1984).

constituted in their use" (Greenhouse 1988:687, emphasis added). The relationship between law and inequality is to be understood as the social and cultural processes by which things (genders, races, individuals, nations, and so on) come to be recognized as differentiable. . . from the eye of the beholder" (1988:688). Because this perspective also holds that there are no intrinsically or historically prior differences, the interpretivist task is to study only how some symbols of difference become "legitimate 'givens' of public life" while others do not (Sarat & Felstiner 1988, 1995).

Grounded sociological theory of law and inequality (described earlier) privileges agency by emphasizing the sociological task of explaining the ways in which agents act and construct social meanings in the process. Interpretive theory in the sociology of law takes this one step further by being anti-institutional as well. Social difference—race, class, gender, or sexual preference—is explained entirely through the words, meanings, and language used by actors in the process of going about their business as citizens, employees, legal professionals, plaintiffs, or defendants. Interpretive explanations of difference are theoretically severed from any analysis of ongoing patterns of society outside the framework by which meaning is created for the actors being considered. There is no place for a classical sociological concept of structure in such an analysis, and in particular there is no room for analysis of relational inequalities such as class.

NARRATING THE STORIES OF LEGAL EXPERIENCE

An emerging sociology of law employs interpretive methods to examine narratives and texts in order to understand legal ideology, legal consciousness, and law in everyday life. A constitutive theory of law attempts to understand the ways in which law forms identity and experience and is, in turn, constituted by the everyday interactions that give law meaning. Constitutive theory shares with Michel Foucault's (1977) description of cultural history a belief that culture determines the micro-distribution of power, thus decentering—but also largely determining—the allocation of power in society. As we noted in the first part of the chapter, some studies of legal ideology acknowledge the importance of the institutional dimension of action. Others, including those based upon constitutive theory, pursue the origins of meaning but not the dimension of social interaction that we term structure (Geertz 1983, Sarat & Felstiner 1995).

Narratives of legal consciousness are among the most common forms of interpretive scholarship employed on behalf of the constitutive perspective. Narratives have been used to demonstrate that power is contingent and specifically that power may not be determined by categories such as race, gender, or class. For example, the narratives of a welfare mother (White 1993), an African-American law professor (Williams 1991), a female defendant (Ewick

& Silbey 1992), and parents of children with disabilities (Engel 1993) have been used to show that the expected hierarchies of wealth, race, or professional status can be subverted.⁶

In a recent review of this literature, Ewick & Silbey attempt to explain the contingent relationship between reproduction of the social order and narratives of legal consciousness (1995). They argue that there are limits to the power of narrative to subvert the existing social order because “[a]ll stories are produced and communicated interactively with a social context” (p. 211). While “narratives are likely to bear the marks of existing social inequities, disparities of power and ideological effects,” yet, the “assumption that ‘society’ is an ongoing production that is created daily anew, rather than a fixed and external entity” is a reminder of the “dual capacity of reproduction and invention” (p. 222). Although they attempt to come to grips with the stability of “existing social inequities” and other patterns of social order that condition the timing, content, and interpretation of narratives, Ewick & Silbey’s formulation of “reproduction and invention” offers no means of explaining such patterns other than the narratives themselves. Similarly, those who present narratives of the legal consciousness of the poor assume that such narratives, by themselves, provide a full understanding of law and poverty (see, e.g. Sarat 1991, Ewick & Silbey 1992, White 1991). Such studies collapse the distinction between idea and action. Put differently, by taking poverty to be what the poor say about poverty, such studies of narratives, methodologically and conceptually, abandon analysis of the social patterns or institutional practices and histories of poverty and law.⁷

Interpretive sociology of law is well illustrated by Felstiner & Sarat’s observational study of lawyer-client interactions during divorce counseling (1995). Lawyer-client exchanges are interpreted to show how power “unfolds,” “shifts,” “permeates,” and “moves” between lawyer and client in the process of defining, negotiating, and settling a divorce. For the lawyer, “interaction takes place in a familiar space and a space of privilege” symbolized by, for example,

⁶Although there are passing references to the working class, welfare poor, or the occupational status of the individuals’ whose consciousness is described, these typifications are not carefully identified apart from the holism of oppressed consciousness, and there is often little or no systematic evidence of relevant group characteristics (Merry 1990, White 1990, Sarat 1990, Ewick & Silbey 1992, Alfieri 1992). Equally common are interpretive accounts that imply that social differences or power are completely dependent on contingencies that occur during social interaction (Abrams 1993, Sarat & Felstiner 1995).

⁷Critical race scholars claim that (auto)biography, legal cases, personal experience, and historical chronicles are powerful forms of “storytelling in the law” (Lawrence 1992:2278), which permit the reader to live in the writer’s world as she thinks about identity, law, and action (Williams 1991, Bumiller 1988, Engel 1991, Ewick & Silbey 1992, Sanger 1993). For example, White (1991) writes about an African-American welfare mother who speaks up at a welfare hearing, contrary to her attorney’s advice, a story that shows the possibility of autonomous action in spite of the repressive power of the context and the woman’s own attorney.

the office, law books, language, or rituals. But the lawyer's power over the client is "malleable." Sarat & Felstiner acknowledge that "structure" circumscribes and shapes "a limited reservoir of possibility defined by history and habit" (1995:23), but the outcome of the circumscription of possibility is rarely predictable or routine. From the interpretive perspective, inequality in power unfolds "in its use."

We are left to speculate: Are gender, race, class, or power so completely malleable? Is there no power in such differences to create inequality that shapes, or compels, or moves individual action or group interaction whether conscious or not? Does the power of class, gender, or race—difference—exist only as experience "in the eye of the beholder?" Is there no institutional and social history of the power of class, race, or gender beyond individual experience? As White has recently suggested:

While the Foucaultian lens reveals the fluidity of power, it does not show how power can be congealed in social institutions in ways that sustain domination. It may be true that everyday interactions create and maintain social institutions, but this insight does not enable us to map those interactions against the institutional matrices they create. Nor does this insight show us how institutions constrain the circulation of power, channeling it to flow toward some social groups and away from others (1992:1505).

BRINGING CLASS BACK IN: AN AGENDA FOR THE SOCIOLOGY OF LAW

Our review of sociolegal research has shown that analysis of class has declined in importance and that the recent interpretive research on law and inequality has abandoned the institutional and social organizational perspectives of earlier research. The theoretical framework for class analysis employed throughout much of the twentieth century has been challenged by the emergence of a global economy, indeed a global society, in which local movements for human rights can be linked across continents by e-mail and fax, by changes in the organization of work, and by the rise of new cultural themes of consumerism and personal identity. The turn toward an interpretive sociology of law offers a nuanced and microsocial understanding of the asymmetry, paradoxes, and contradictory relations of once familiar experiences across a range of social institutions.

Nonetheless, interpretive research on law and inequality often inadequately addresses how individual lives are interwoven to become part of larger patterns, or why such patterns evolve and persist over time (Sewell 1992). Contemporary society—including the role of law in attorneys' offices, in public agencies, and in everyday life—does not emerge on a *tabula rasa* and cannot be explained

exclusively by examining the interpretations of individuals outside of time and place. The limitation of an interpretive sociology, in particular the analysis of narratives, is in large part a limitation of method. While narratives may capture variation, improvisation, or resistance, by definition they cannot account for the institutional contexts of action, including the institution of class.

In this concluding part we focus our attention on the continuing importance of relative differences in institutional power and resources for the sociology of law. Economic class remains one important element of inequality. Economic class position, associated with employment (and unemployment), income, and ownership of economic resources, is a nearly universal part of social experience.⁸ Because class is necessarily relational, everyone experiences inequality, difference, and almost universally, subordination in a fundamentally important aspect of social life.⁹ Notwithstanding the continuing importance of economic class, in the late twentieth century, a group's position is defined only partly by its economic class endowments. Other sources of capital—cultural and symbolic—also create hierarchies, power, and subordination as well as opportunities for change.

The class theory of Pierre Bourdieu, to offer one promising example, examines the variation, improvisation, and even indeterminacy of agency without losing sight of group trajectories or the tendency toward reproduction of patterns in social relations (Bourdieu 1985, 1987, Bourdieu & Wacquant 1992). Groups are positioned by patterns in the distribution of endowments of capital. Bourdieu broadens the concept of capital to include the positioning power not only of economic relationships but also of cultural, social, and symbolic capital. Bourdieu's theory of agency considers the effects of a great range of resources while linking those resources to the societal processes that create or maintain them. The habitus, the interpretive context for action generated by a group's experience in society, is a system of "lasting, transposable dispositions which, integrating past experiences, functions at every moment as a matrix of perceptions, appreciations, and actions and makes possible the achievement of infinitely diversified tasks" (1977:82–83). Bourdieu's concept of class is flexible and empirical, providing a means of understanding both the positioning

⁸As Rosemary Crompton remarks in the course of an exhaustive assessment of research on class, "although 'work' may possibly have declined as a significant source of social identity, work is still the most significant determinant of the material well-being of the majority of the population" (1993:18). Our point is somewhat broader, namely that work is not only an important source of material resources but also a relational position that places individuals in a hierarchy of authority as well as hierarchies of symbolic and material power.

⁹Class is a system of relational inequalities created by the economy. Class is a relational inequality because, unlike height or talent, it exists through a social process which requires that some individuals acquire more benefits, including authority, status, and income, than others.

power of historical conjunctions of capital endowments for particular groups and the contingency of individual action.

While a theory of class such as Bourdieu's is complex and open ended, it offers a means of making more precise distinctions and observations about contemporary social relations. One consequence of failing to conceptualize class in more theoretical terms is to rely on even more problematic categorical descriptions by using holistic labels such as "working class American," "middle class family," "underclass African-American," or simply "poor," which are found in contemporary ethnographic studies of law and inequality. A theoretically informed concept of class, such as that employed by Bourdieu, will suggest specific institutional processes, generating inequality through endowments of capital and the formation of a habitus. Further, more precise concepts will make possible both comparison and extension of findings across studies. Herein lies the challenge—to build our understanding of the sources and continuity of social hierarchy while respecting the complexities of power and agency.

Class and Law in Everyday Life

Studies in the sociology of law reviewed in the first part of this chapter include research on everyday encounters with legal institutions, documenting the ways in which law may (or may not) be mobilized by individuals of different class, race, or gender. The early studies of legal mobilization have been criticized because they seemed to provide only static portraits of individuals, a characteristic that has weakened categorical approaches to inequality. But the authors of many earlier studies were well aware of the dynamic and interpretive dimensions of action, conflict, and the assertion of rights that have become the focus of attention in more recent qualitative research. Findings of such studies offer guidance for contemporary sociolegal research attempting to link class and law in everyday life.

For example, research by Levine & Preston (1970) attributed a low rate of legal problem-solving among their low-income respondents to a lack of knowledge about rights and to lack of the legal competence often associated with higher income. Yet they considered that "subjects were probably experiencing powerlessness and a feeling of resignation in the face of circumstances about which they thought little could be done" (109) (compare Carlin et al 1966, Felstiner 1980–1981). Mayhew & Reiss termed this perspective the personal resources theory, and they argued that it represented one aspect of their broader theoretical proposition that the role of law in everyday life is a product of the ongoing organization of social life and its institutional structure (1969).

The recent turn to research on legal consciousness can expand our understanding of the social organizational perspective. Studies of legal consciousness

directly examine what was merely inferred from very thin data in the early studies—passivity or activism, legal competence, powerlessness, resignation, and the like. Studies of legal consciousness also have a direct bearing on institutional structure. The meaning of such concepts as employment, authority, market, and property are the foundation for the institutions that shape “legal contacts” (to employ Mayhew & Reiss’ phrase) linking class to rights and justice (Sennett & Cobb 1972, Willie 1985, Hochschild 1981), to legal conflict (Crowe 1978, Baumgartner 1988), or to beliefs about entitlements (Newman 1988, Munger 1991).

While research on legal consciousness could fill a gap in our understanding of the relationship between meaning and structure, such studies often overlook any process that informants themselves do not describe. In some research the social organizational understanding of action, and specifically class organization, has been lost altogether. Few studies of legal consciousness examine the social organization of work, or more generally the class structure, as a source of the ideological matrix comprising legal consciousness.

For example, most recent community-based studies of legal conflict and dispute resolution pay only limited attention to class, for there is no systematic tapping of class experience as such unless class is mentioned by the subjects (Greenhouse et al 1994). Such studies have focused on inductive discovery of the groups—social networks, neighborhoods, and families—whose interpretations shape disputes and legal conflicts. While some scholars pursuing these studies have suggested that the silence of their informants concerning class may itself have significance (see Greenhouse et al 1994:185), there is no way to determine which aspects of the legal experience or consciousness described by means of the research are attributable to the effects of social class.

A more robust research agenda must attend to the social organizational elements deemed important for the formation of consciousness. As the focus and site of research in the sociology of law has shifted from formal legal institutions to the routines and events of everyday life that are only occasionally touched, if ever, by formal legal institutions, a broad invitation exists to explore beyond the outer edges of the narrative. Beyond the limits of narrative lie the patterns that connect the individual to jobs as well as to organizations, neighborhoods, families, associations, communities (with public authorities), and networks that enable or limit action, whether they are fully understood by their members or not. In these ongoing connections, class is the local embodiment of larger patterns shaped by property holding, market institutions, cultural preferences, and political organization, patterns that may be reconstructed locally, but as variations on themes that play more widely in society.

Class Hierarchy, the Economy, and the Legal Profession

Sociolegal research on lawyers has encompassed research on professional careers and on the social role of lawyers. In both lines of study scholars have examined the effects of class hierarchy, mapping the effects of social stratification on lawyers' careers and examining the effects of clients' wealth and power on lawyers' services. While the studies have been attentive to the effects of social hierarchies on professional stratification and differentiation, the research seldom considers lawyers in relation to class as an institution—namely the role of lawyers in the creation, maintenance, or changes in class organization. Further, both lines of inquiry began with studies of the external factors explaining the behavior of lawyers; more recently they have begun to take greater account of the ways lawyers themselves understand their careers and social roles. This shift from deductive to inductive research has enriched our understanding of the organization of professional work but has exacerbated the tendency of researchers to ignore the relationship between the profession and other institutions in society.

Studies of the career patterns of attorneys have closely paralleled the development of research on social stratification. The earliest work on lawyers' careers relied on conventional mobility models (Ladinsky 1963, Carlin 1962). Later research turned to network models to explain career patterns (Heinz & Laumann 1982, Nelson et al 1987, Seron 1996).

Two recent studies of lawyers' careers draw on contemporary theory of class formation to examine how the organization of lawyers' work helps construct class differences. Hagan et al (1988) employ a relational definition of class, i.e. focusing on domination within the work place, while Hagan & Kay (1995) apply Bourdieu's analysis of noneconomic class endowments to describe the careers of women lawyers entering the professional workplace. The work of Hagan & Kay suggests a means of extending the internal network model of professional stratification (Heinz & Laumann 1982, Nelson 1987) by examining the positioning of lawyers in a general class system. Contemporary theories of class formation (Bourdieu 1977, 1985) and agency (Sewell 1992) may help guide examination of the sources and significance of the social endowments possessed by lawyers and the development of their orientations as agents within a habitus created by class.

A second illustration of the potential contribution of the concept of class to research on professional careers is a recent study by Seron of New York City lawyers (1993, 1996). Reflecting a more grounded, inductive research tradition, Seron showed how lawyers are able to pursue a variety of adaptive strategies for reorganizing their work in response to changing economic pressures. Within a system of stratification among law practices created by market opportunities

and lawyers' career endowments, lawyers demonstrate the possibilities for "re-regulated improvisation" (Bourdieu 1977:77) by a group for which the habitus of professional role is well defined. Seron's perspective could be extended. For example, contemporary research on the relationship between economic restructuring and reorganization within large law firms (Galanter & Paley 1991) would be greatly enriched by considering how lawyers form ideas about reorganizing large law firms and adapt to altered endowments of economic class capital and other forms of social capital implicated in market changes.

A large sociology of law literature considers the social role of the legal profession. Early research on the part played by the profession in promoting justice and ameliorating social inequality (Handler et al 1978, Capelletti et al 1975) found an easy target in the structural-functional theory which specified that the profession stabilized and legitimated the social order (Parsons 1964). Alternative theories suggested that a self-interested monopoly of professional knowledge (Freidson 1986, Abbott 1988) or control of market position (Larson 1977, Abel 1989) motivated professional organizations and individual lawyer's behavior.

The relationship between lawyers and the evolution of major institutions of the society, including the class system, should be a prime area for continuing development of theory and research. A great deal of empirical evidence has been amassed to show the uneven distribution of lawyer's services, reflecting the market power of clients and professional self-interest. Yet this literature initially failed to consider the institutional questions raised by such findings—why social inequality persists and why it persists in particular forms (Currie 1971). Later research on the organization and the social role of lawyers partially addressed such questions by drawing on market dependency theory, which described the contribution of market pressure to the formation of professional organizations and the creation of a professional monopoly. But market dependency theory, by itself, does not account for the nature of economic hierarchy, or the complex relationship between class, the work of lawyers, and the production of professional culture (Nelson et al 1992). Thus, in spite of decades of research showing that lawyers are influenced by client wealth and power, few broad theoretical attempts have been made to understand the role lawyers play in maintaining or transforming fundamental social institutions (Munger 1994).

Weber maintained that lawyers' commitment to law, irrespective of lawyers' class origins or class loyalties, is an important prop for legitimate authority in a plural society (1954), while, in contrast, Marx argued that the professions served the interests of those who held ultimate power—the capitalist class (1950). Heinz & Laumann's study of stratification among lawyers in Chicago raised questions about whether any significant core values are shared by all lawyers

(1982). Their finding that lawyers are separated into two distinct hemispheres representing organizations and individuals, and subdivided further by types of practice within each hemisphere, suggests rather that lawyers' values vary considerably as a function of client influence (and by the class of the client). The turn to grounded research on lawyers' work has also suggested that lawyers create culture, as well as reflect culture, when they serve their clients (Gordon 1982, Sarat & Felstiner 1995). For example, Dezalay & Garth conclude from their research on lawyers in international business transactions that lawyers are important carriers of legal and economic culture in the internationalization of trade and business relations (1995).

As grounded research continues to explore the interplay between professional work and the creation of social organization, economic change, or the control of conflict, class theory offers a means of looking beyond the situated lawyer to the normatively constructed habitus of professional life and to the institutional pressures and limitations imposed by the economic organization of society (see Simon 1988, Alfieri 1992, Bezdek 1992, Seron 1993, 1996). Contemporary qualitative research on the work of the profession should examine the conditions under which lawyers contribute to the reproduction or change in fundamental patterns in society such as markets and classes (Harrington 1985, Halliday 1987, Shamir 1993).

Class Structure and the Administration of the Law

By linking the internal practices of public and private organizations directly to the class structure of society, the theories of Marx & Weber posed a powerful hypothesis about the scope of social control.¹⁰ Yet empirical research has increasingly demonstrated the importance of institutional, organizational, and professional practices as ends in themselves (Heimer forthcoming; Reichman 1989, Hawkins 1989, Heydebrand & Seron 1990). "Law from the bottom up" refers to the analysis of the practices of those who are the first-in-line (at the bottom of the authority ladder) to apply legal authority. Their practices do not merely alter the terms upon which law will be applied; they are the law (Cohen 1985, Massell 1968, Edelman et al 1993, Macaulay 1963). The research has undermined to a considerable extent the Weberian master-narrative of organizational order (cf Suchman & Edelman forthcoming; Lempert 1991).

Such findings have made understanding the relationship of legal institutions to class structure both more difficult and more direct. To the extent that lower

¹⁰Instrumental and structural Marxism argued that in the last analysis law reflected class domination. Weber argued that law was upheld by an autonomous legal profession, but he also argued that legal authority existed in constant tension with the social hierarchies of class and status that distorted such authority. Much sociolegal research supports the existence of direct effects of class on legal institutions, and we have reviewed these in first part of this chapter.

levels of officials, judges, police, prosecutors, and social workers are not controlled by higher level authorities, the structural theories of the state and class seem to lose their relevance. To the same extent, however, organizations may be permeated much more directly by class organization or culture and other influences on bureaucrats and functionaries, whose jobs are defined through a mixture of situational constraints and grass roots accommodations (Cohen 1985, Handler 1990). While innovation and change may come from the bottom, more often the effect is to permit routinization of decision-making according to locally generated norms about what constitutes a “normal” case or a “last resort” case. These typifications are subject to class, race, and gender biases (Sudnow 1965, Emerson 1981, Daly 1994).

Studies of social control suggest not only that class is a factor in the treatment of individuals but also that social control is organized quite differently to deal with different social classes. Through policing and welfare, the poor and especially the underclass experience a special kind of “government of the poor” (Simon 1993, Cohen 1985, Sampson & Laub 1993). In addition to a long line of studies showing that white collar crimes are treated relatively leniently (Sutherland 1955, Hagan et al 1980, Shapiro 1987), Cohen argues that the “soft” technologies for social control—self-help, therapeutic guidance, education—are reserved for those who have greater social and economic capital (1985). Simon suggests that the disparity in class treatment is increasing because growing income differences, increasing numbers of permanently unemployed, and the Africanization and ghettoization of poverty in political discourse are contributing to a shift in emphasis from rehabilitation and reform of the poor to surveillance and control (Simon 1993, Feeley & Simon 1992).

“Loose coupling” (Hagan 1979) between and within the agencies of social control that is apparent from studies of crime control raises still broader questions about the relationship between class, state, and society. Loose coupling between state agencies as well as extensive interpenetration of state and society often renders the state’s attempts to regulate ineffective because power is shared among state agencies, private institutions, associations, and networks (Moore 1978, see especially Macaulay 1986). This state is not the class-state described by Marx, Weber, or Durkheim but is rather a more complex institution; it is dependent on the power of class but, absent special conditions, far less instrumental in its capacity. What implications do these findings have for the relationship between class structure and the role of the state’s regulatory efforts over time?

Four research strategies are suggested by current work on the relationship between class, law, and the state. The first is to study the formation of the habitus of routine decision-making by the bureaucrats responsible for disposing of most

of the state's business. Though the existing studies are revealing, they often do not approach their analysis of case decisions from the perspective of a wider set of cultural and institutional influences beyond the office setting.

Second, the state may be studied as a collection of concrete critical decisions and ongoing relatively stable processes. Calavita's study of the Immigration and Naturalization Service's handling of the *bracero* farmworker program shows that the theory that state bureaucrats are dependent on the resources of those with continuing access to the means of producing wealth must be supplemented with knowledge of the particular state managers involved in a particular decision (1992). The intersection of biography and the momentum of agency history exposes both the lasting dependencies between state and economy and their contingency.

Third, the state-class connection may be usefully considered in light of a nonfunctional systems theory articulated by Block (1987) to take account of surprising, counterintuitive patterns, e.g. the strong response by law enforcement agencies to the savings and loan crisis (Calavita & Pontell 1994). Politics always creates an important contingency in law enforcement, especially in the United States (see Savelsberg 1994).

Finally, as sociology of law becomes more international and more global in its subject matter, the endowments of class, the links between societies, and the institutional response to change take on new complexities. Hierarchy, domination, and resistance are altered by the pressures of a global economy, the interactions between cultures, or simply by the power of modern communications that makes it possible to bypass the courts and even the nation state to assert claims for rights. The juxtaposition of the use of local, national, and international legal institutions reminds us that the relations of domination and exploitation take on new forms in a global society, forms that are often constituted in ways unfamiliar to western sociologists (Upham 1987, Winn 1994).

Class Mediation of Law and Social Change

Classic social theory placed law in an instrumental role. Law could both create and respond to social change; indeed, state capacity to respond to or manage the consequences of industrialization was a core concern of the theories of Marx, Durkheim, and Weber. The poignant ineffectiveness and contingency of legislation and litigation during America's civil rights era in the 1960s had an impact (Scheingold 1974, see Gordon 1984), but skepticism about the instrumental effectiveness of law is an older theme in American sociology of law, reflecting, among other sources, the influence of legal realism (Arnold 1935). Authors such as Handler (1978) and Rosenberg (1991), who amass evidence of the failure of social movements for legal rights, base their skepticism on theories about the direct effects of class and inequality on the state, and they challenge

the liberal legal ideal of an effective, neutral, and responsive state. Handler and Rosenberg show that an imbalance in class resources combined with the inertia and bureaucracy of the state will nearly always defeat redistributive change (for an important critique of this view see Simon 1992).

An important locus of the relationship between law and change lies outside formal legal process. Sumner's claim that folkways always prevail over stateways was clearly wrong. Law directly influences ordinary life. The ways that it influences ordinary life are many—by contributing to the creation of social norms, by producing knowledge that becomes a foundation for action, and by direct enforcement of change. The effects of law vary, but they are not always marginal or inevitably invisible. Based on what we know about class differences in knowledge, moral decisions, values, styles of conflict resolution, and their interaction with gender and race, there is surely a class component to the social change that law can create. Now we have come full circle, because to understand such effects we must understand the context in which action is contemplated and undertaken in everyday life.

Michael McCann's study of the role of legal rights in the pay equity movement (1994) takes seriously the challenges of studying legal change and legal consciousness at the grass roots. He applies a discourse theory of legal mobilization in which "law is understood to consist of a complex repertoire of discursive strategies and symbolic frameworks that structure ongoing social intercourse and meaning-making activities among citizens" (1994:282). Further, he argues that rights are "inherently indeterminate, pluralistic, and contingent in actual social practice (*ibid.*)" While he also acknowledges the importance of institutional attributes such as social class and organizational or political context, his findings, like those in many recent studies that follow the turn to discourse and narrative, do not systematically locate the individuals interviewed in relevant group contexts—in the continuing patterns of association and experience that were either similar across all workplaces or unique to particular settings. Thus, McCann's study brings us back to the concerns with which we began this essay, namely, appreciating the connection between the larger institutional patterns of a class society and the role of law.

CONCLUSION

Research without a structural concept of class impoverishes our understanding of law and inequality. Underlying the reluctance of many to examine class is a generation-long skepticism about the concept of structure. The structure-agency problem goes to the core of sociological theory and method, and to what it means to conduct empirical research with conceptual rigor. A review of the literature in the sociology of law revealed swings between analyses that

emphasized structure or agency. Just as earlier theory in the sociology of law tended toward a more instrumental view of social action, so contemporary theory tends to focus on the indeterminacy of action. While interpretive work presents an important critique of structural theory, structure and class have not gone away.¹¹ Class continues to describe an important aspect of social life, namely the powerful link between the lives of individuals and the economic organization of society that is beyond the control and often beyond the knowledge or full understanding of those individuals.

Our review of ways that more careful attention to the role of class might enrich the sociology of law leads to several suggestions for incorporating the concept of class into sociolegal research:

- The *experience* of class is a starting point. Biography—the experiences of individual and group through time—is fundamental.
- The relationship of class structure to the activities of members of a class is complex.

The direct effects of class structure are modified by the experience of race and gender, the roles occupied by individuals in complex organizations, and by the emergent and creative possibilities of social action.

- Research on class requires a comparative perspective.

Ultimately sociology studies the social group. Narrative and case-study methodology treat the subject as representative of a larger group. Identification of the similarities and differences between sites and subjects should be made explicit, and class is one of the important dimensions on which narrative and case studies can be compared.

- The concept of class evolves through empirical research.

Class theory suggests possible connections between the experience of the situated individual and the group-habitus and the larger patterns of social life, but our understanding of class rests on discovery of the precise role of class and habitus through empirical research.

- The element of time is essential.

¹¹ Attempts to grapple with the structure-agency problem are in evidence across a variety of subfields, including the sociology of professions (Abbott 1988), comparative sociology (Orren & Skowronek 1994, Orren & Skowronek forthcoming; Somers & Gibson 1994), criminology (Savelsberg 1994), and organizations (Powell & DiMaggio 1991). The pivotal question is: "How [can] sociological theories which do accept the *sui generis* collective character of social arrangements... retain a conception of individual freedom and voluntarism?" (Alexander 1982).

Both as situated experience and as a larger pattern in social life, class is best understood through biography and through community history. Class, so understood, is one important element in the accretion of particular routines, knowledge, and relationships that constitute the trajectory of a group through time. Out of these grow change and, equally, the tendency to reproduce the patterns of social life.

The turn to narrative studies in sociolegal research reflects awareness of the importance of context and agency. But in taking this turn, contemporary studies of law and society have sidestepped the capacity to explain the sources and significance of difference and inequality in terms that individuals themselves cannot employ. While biographies are individually experienced and understood, they are also shaped by history not only of the individual's making (Calavita & Seron 1992). As C. Wright Mills (1959) concluded, the promise of the sociological imagination lies in explaining the link between the meanings of the private lives of individuals and "the larger historical scene."

ACKNOWLEDGMENTS

We would like to acknowledge the contributions of colleagues who read earlier versions of this essay. In particular we would like to thank Kitty Calavita, Marcus Dubber, Cynthia Fuchs Epstein, John Hagan, Bonnie Oglensky, Renate Reiman, Jack Schlegel, Susan Silbey, and Rob Soute. We have tried to follow their good advice, but our success or failure in doing so remains our responsibility alone. We would like to thank Kevin Zanner & Jason Yots for their assistance with our research.

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