From Legal Realism to Law and Society: Reshaping Law for the Last Stages of the Social Activist State

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This article tells the story of the establishment of the Law and Society Association in the early to mid-1960s. To tell the story, the authors concentrate on the personal stories of the individuals active in that early period and on four university campus sites—the University of California at Berkeley, the University of Denver, Northwestern University, and the University of Wisconsin—at which much of the impetus was focused. They also examine key institutions that funded and/or encouraged links between law and social science—the Russell Sage Foundation, the Walter E. Meyer Research Institute of Law, and the American Bar Foundation. The article seeks also to investigate more generally the factors that came together to build a field of law and social science—which in turn helped to provide the ideas and build the institutions involved in the Johnson administration's War on Poverty. The field was created in part by a process involving both competition and cooperation between law and social science over the new terrain of social problems of racial discrimination, poverty, and crime. The authors suggest that, over time, the center of gravity of the field moved toward law, leaving the social science disciplines for the most part outside. The development of the field generally was also affected by the strong shift in the relative values of these social sciences—especially sociology—in relation to economics in the 1980s.

In the late 1950s and early 1960s, a network of social scientists and law professors took advantage of the rising prestige of social science to renew the Legal Realists' challenge to "legal formalism." One result of the new attack on behalf of social science was the Law and Society Association—now more than 30 years old. The LSA has grown and in many respects thrived over that period. Whether this history should be characterized as a "success" can of course be debated. From whatever position we assess the LSA's accomplishments, however, it is important to recognize that both accomplishments and limitations have been shaped by the individuals who "made up" the LSA in the first place.

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This article explores the origins and early years of the Law and Society Association. We seek to shed light on a number of theoretical concerns about the relationship between law and social science, but the primary ambition is simply to investigate this genealogy. As should be obvious, we believe we can understand the LSA—and our own careers and approaches[1]—better if we can make sense of the generation that preceded us. Not surprisingly, we consider the stories of the fathers and mothers of the LSA fascinating for their own sake. We would also like others to learn about these individuals, what brought them together, and what emerged as a consequence. Instead of trying to force the story into a carefully honed argument directed toward a series of theoretical conclusions, therefore, we have given precedence to the details of the personal stories of the protagonists.

At the same time, however, we have imposed what we hope is a relatively gentle framework of structural sociology. The story of LSA provides a perfect window to examine the question of the relationship between law and social science. More generally, that relationship is itself central to issues about the transformation of the state. Academics and academic ideas provide the expertise and legitimacy crucial to such transformations. What is normally characterized as "academic gossip," therefore, is quite important to our theoretical interests, since academic ideas are not only produced and shaped by the "pull of the policy audience" (Sarat & Silbey 1988) but also by the need to build careers in a very hierarchical and status-conscious academic world (cf. van Maanen 1977). The stories that intersect in this article are the product of many accidental circumstances, but the opportunities that were presented were not random events. Opportunities in the area of law and social science depended on what resources these individuals could bring, what the external world meant for the value of those resources, and the informal networks that provided the knowledge and information necessary to learn and take advantage of opportunities.

Our account, therefore, will provide the information necessary to see what social and intellectual capital the protagonists brought, how that changed over time, who their contacts were, and what opportunities were presented. This focus, as we shall see, involves some simplifying assumptions, and we employ the

[1] Bryant Garth was brought into the LSA through work on a Ford Foundation project on "access to justice" in the late 1970s—after he graduated from law school. Scholars, especially those in the University of Wisconsin group in Madison, such as Lawrence Friedman, Marc Galanter, and David Trubek drew him to the LSA, and his ties to the LSA no doubt account for his selection to be director of the American Bar Foundation in 1990. Joyce Sterling received an undergraduate degree from the University of California, Santa Barbara, where she studied criminology with Donald Cressey. She did her Master's in sociology under the supervision of Harry Ball in Hawaii, and her Ph.D. with Wilbert Moore of the University of Denver. Bob Yegge hired her to come to the law school in Denver in 1978. She was the Executive Officer of the LSA from 1984 to 1987.

language of investments, competition, and markets. We do not mean, however, to deny human agency or to question the motives of the actors. To say that most individuals try to build their careers on what their intellectual and social capital does not mean the same thing as saying that they are rational actors with selfish motives. The public interest lawyer whose only motives are to help the poor, for example, still tends to rely on the legal expertise and credential she has acquired—even when she says that the law is not helpful. Indeed, the quality of academic debates about law and social science (and law itself) would be improved if individuals were able to recognize—perhaps even acknowledge—that the positions we take in intellectual debates tend to relate to who we are.

The emphasis on the people means that we are not providing an intellectual history of the field of law and social science or the Law and Society Association. Others have done so, and we do not seek to replicate their efforts (e.g., Friedman 1986; Levine 1990; Trubek 1990; Munger 1995; cf. Duxbury, 1995; Schlegel 1995; Garth & Sarat 1998a, 1998b). Nevertheless, as suggested above, intellectual histories can be enriched by a better understanding of who the producers were, what they brought in terms of intellectual and social capital, and what the relative position of particular producers was in relation to other competing producers. Such an understanding is not meant to undermine the ideas that were produced but rather to suggest the incentives, circumstances, and institutions that led to particular social constructions.

As suggested above, one theoretical ambition of this article is to shed light on the questions of the transformation of law and the state over time. In terms of our study of individuals, we are interested in how a distinct set of individuals and ideas came to constitute and embody the legitimate expertise for defining and handling particular social problems. The careers of those we interviewed provide considerable information relevant to this question, but obviously the question is much too complex to answer in this article. Many books have already been written on closely related subjects—the transformation of the universities and the law schools (cf. Kalman 1996), which were growing and becoming more open and therefore also more competitive and scholarly; campus politics; the Cold War; a variety of intellectual movements; and broader economic, political, and social trends (e.g., Buhle 1990; Chomsky et al. 1997; Hollinger 1996). The prior story of Legal Realism is of course also central to the full account (see Kalman 1986; Schlegel 1995). Nevertheless, we hope that our focus on individuals central to the LSA, on academic disciplines, and on the relationship between law and social science in the 1960s and 1970s will provide some novel insights and suggestive hypotheses for further discussion and research.

In particular, our research points to several tentative conclusions about the Law and Society Association and the relationship between law and social science. The 1960s, in retrospect, were a good time for an alliance between law and social science both because of what was happening in the production of knowledge and what was happening in the streets and in the civil rights movement "outside" of the academy. Social science provided a new professionalizing expertise that offered ways to manage the new social agenda. Sociological knowledge thus gained in value as a new generation helped to define a political agenda of concern with urbanization, race relations, poverty, and crime (e.g., Berger 1990; Fine 1995). This social science learning could be used to challenge the postwar complacency of law schools and the training and expertise of lawyers for governing the state. The inheritors of Legal Realism could also use this rising prestige of the social sciences to renew their attack against legal traditionalism and formalism. As both a cause and a reflection of this challenge, certain key foundations, especially the Russell Sage Foundation and the Walter E. Meyer Research Institute of Law, made it their missions—although in different ways—to build institutions that would fly the banner of this new sociological expertise. And through their investments in learning and in building institutions, these foundations succeeded in bringing a new expertise to law and to the activist state.

This account of "good times" for reformist social science and law, however, neglects the human agency, the competition, and the conflict that were part of the process of constructing and defining the field of law and social science in the early 1960s (see Dezalay & Garth 1996). Social scientists and lawyers were at times allies, but they also competed to define and to gain ascendancy over the new social expertise. It was not preordained which set of experts—and particular conceptions and ideas—would gain the upper hand in defining the problems and solutions of the social issues that each sought to address. In the terms that are familiar in the LSA today, it was a battle about who would *constitute* the terms of analysis and reform. We find this competition in the contrast between the Russell Sage Foundation—weighing in for social science—and the Meyer Research Institute—supporting law. Within the LSA, we see elements of the same competition in the relative positions of the University of Wisconsin in Madison and the University of California in Berkeley. This competition was not only between law and social science but also about what belonged properly to each domain and determined its boundaries. Yet the competition, in addition, involved a process of cooperation, since each side shared an interest in giving value and legitimacy to the field—a position against traditional social science, and against traditional law.

The field that was built out of this competition, as it turned out, was closer to law than to social science. Law perhaps started with a head start, as the traditional legitimating language of governance, and many of the social scientists were close to law from the beginning of their careers (or lives). In any event, law schools ultimately asserted a strong pull on the social scientists who brought their expertise to law. Not only was much of their learning imported into relatively traditional legal teaching and scholarship, but also—and relatedly—many of the individuals from social science moved into law school faculties. As part of this phenomenon, the center of gravity of the LSA—although always contested—was drawn to the legal academy and legal scholarship. Similarly, law professors who invested in social science—whether linked to the LSA or not—were also drawn into the legal mainstream. The movement of individuals and the trajectories of careers are thus the counterpart of the absorption of certain social-scientific ideas into the core of the law schools and the law—which is how the law changed over time. Once that absorption took place, however, law schools tended again to look formalistic and inhospitable to these interdisciplinary incursions.

From another perspective, what looks like the pull of some social science into law appears also as a push—a rejection of law by the core of the social science disciplines. When social scientists interested in law were pulled into the LSA and the law schools, the core of the disciplines once again moved away from law and legal concerns. Those who had once shifted the disciplines toward law through their scholarly publications, contributions to conferences, course materials, and doctoral students migrated away—reducing the pressure within the disciplines to develop or maintain an interest in legal phenomena. Those who remained tended to reject the law—making a virtue out of necessity.

The narrative focus of this article is on the major university campus centers funded in the early 1960s by the Russell Sage Foundation—Berkeley, Denver, Northwestern, and Wisconsin[2]—and a few other institutional places that appear central to the story—the Russell Sage Foundation itself, the Meyer Research Institute, and the American Bar Foundation. In defense of this strategic choice, it allows us to explore the founding of the LSA, the first presidents, the early editors of the *Law & Society Review*, the two intellectual centers in Berkeley and Wisconsin, and the relationship of these movements to the activities of the elite law schools of the Northeast. Our 23 formal interviews include most of the major actors in the early period, suggesting that it is an

[2] The campuses involved are the University of California at Berkeley and its Boalt Hall School of Law; the University of Denver (both the College of Law and the Sociology Department), Northwestern University (Evanston, IL), and the University of Wisconsin in Madison.

appropriate time to offer some preliminary reflections, but we recognize that we still have much to learn about the history of law and social science—including in the period we cover.

While we focus on the early history, it is important to provide some hints about what happened subsequently. In retrospect, the period of relatively high prestige for scholars bridging law and social science was quite brief. The 1980s was again a period of rapid social change, but social science generally and "law and social science" in particular declined in relative prestige. Indeed, just as law and society helped to build and legitimate the activist state (and the role of law in its construction), the competing movement of law and economics provided much of the learning and legitimacy for the later turn away from social welfare and state activism (see Duxbury 1995).[3] Not surprisingly, the second generation of the LSA—with fewer direct ties to the disciplines and now with a strong institutional identity—identified itself much more self-consciously as a relatively autonomous field. This field, in addition, bore the imprint of the progressive politics that were part and parcel of the link between law and social science in the 1960s.

Our essay proceeds in four parts. The first is a brief discussion of our approach, defending our focus on biography, networks, and the boundaries between the law and the social science disciplines. While we are seeking to keep the theoretical and methodological approaches in the background of our stories, our approach is probably sufficiently unfamiliar to suggest a little elaboration at the outset. The second part provides a summary of the developments and individuals that surrounded the creation of the Law and Society Association in 1964 (cf. Friedman 1986; Levine 1990; Munger 1995; Schlegel 1995). A summary is necessary to provide the background for our more detailed account. Next, in a discussion organized mainly by places, we follow the activities of particular individuals, trying to see what they brought and how they came together at a certain time to build a new institution and set of scholarly bridges. We have not been able to talk to all those who were prominent in these activities, but our interviews provide the basic ingredients of the story. Finally, we conclude with some general observations both about the processes of change and what happened to LSA after its initial formative period.

[3] Highlighting the competition through his imagery, Judge Richard Posner (1995:271) suggests that "what is striking about American sociology of law is how narrow its primary focus seems to have become and how . . . even within their area of primary interest sociologists of law seem to have difficulty either learning from economic analysis of law or repelling its inroads into their domain." Posner, formerly on the faculty of the University of Chicago Law School and now a federal judge, has long been a leading law and economics scholar.

Disciplines and Biographies

We would like our narrative to speak for itself, providing detail on who came together in the early years of the Law and Society Association. As suggested above, however, our presentation also draws on some of the tools of structural sociology. Since some of our theoretical conclusions will draw on this method, we provide a brief explanation here. The method concentrates on biography—the social and intellectual capital of the players, their positions in the academic and legal field, and the individual and collective strategies that were available given their "portfolios of capital" and their relative positions (see Dezalay & Garth 1996; for an interesting discussion of the uses of individual and collective biography by an historian, see Stone 1971; cf. van Maanen 1977). Biography provides a way to see what opportunities were presented in particular contexts, what institutions already existed and shaped possible opportunities and strategies, and how individual and group efforts—competing on behalf of what each side represents—serve to reshape institutions and invent new ones—in particular the Law and Society Association.

In doing this kind of analysis, we attribute "strategic" actions to particular players, suggesting how their activities related to the position they occupied and the opportunities they could see in this space somewhere between law and social science. The word *strategic* is confusing. We do not necessarily mean that the players consciously meant to be strategic in the way that we suggest. Following Bourdieu, we think that actions can be explained and understood only if we assume that most people—including academics—orient their behavior according to which opportunities are available to them and which are not—"their positions and dispositions" (Bourdieu & Wacquant 1992).

One tool for explaining individual and collective strategies is the concept of the field—the academic field, the legal field, the field of law and society (Bourdieu & Wacquant 1992). The field is a tool for analysis and not a description of a fixed entity. It provides a way to represent certain semiautonomous social spaces.[4] We can then explore how relevant players act in relation to each other, to the social and intellectual capital (e.g., degrees, connections, expertises) that they can mobilize on their behalf, and to certain rules of the game—which are themselves the subject of contest (similar approaches to similar subjects include Shamir 1995; Dezalay, Sarat, & Silbey 1989). For example, a law-

[4] It is important that the "legal field" be defined to include players in the production of law who were not necessarily "lawyers," even though they may be pulled into law schools and legal institutions. Also, when we say that the actors operate in relation to the opportunities and structures in the field, we do not mean to say that they necessarily are rational actors in the sense used by economists. Academics, for example, may orient themselves to the symbolic rewards of academic status, which may not pay off in economic dividends (see Bourdieu 1997:229–40).

yer with training in empirical research will naturally use that training to compete—not necessarily self-consciously—against a lawyer without such training, arguing that proper empirical research is necessary to legitimate expertise. The legal sociologist may compete against sociologists by insisting that law should be more central to theoretical sociological issues—and then against empirical lawyers charged with lacking sufficient methodological rigor. To repeat a central but often misunderstood aspect of this approach, when we characterize such activities as "strategic," we do not mean to describe the actual motives of particular actors. Whether they are pursuing knowledge, glory, power, justice, wealth, social change—or a job—is not our central concern. All we suggest is that, whatever their motives, they will typically act to shape the rules and the terms of legitimacy—including in institutions like the LSA—according to what they can bring to the debates in terms of intellectual and social capital.

The biographical approach also seeks to avoid some of the problems of using categories such as "lawyer," "sociologist," or "political scientist," especially in a retrospective account of the Law and Society Association, since the contests are very much about what those categories mean. It is essential to see that the boundaries around those categories were shifting (and in fact continue to shift). Our emphasis on the biographies of the players and on reconstructions of their activities is an effort to overcome the limitations of the given categories and institutions. The biographies can show how individuals break down and rebuild the understandings of what is represented by the disciplines and the law. The same cautionary observation would apply to such terms as "positivist" or "politically committed," "philosophical" or "empirical," since these terms were also changing over time. All these terms, moreover, have meaning only in a relative sense.

The taking of particular positions represented by those terms also depends on the relative positions of the players. An individual may compete to gain a place within law, for example, by emphasizing the importance of her social science expertise, credentials, or networks within law, while at the same time emphasizing the importance of her legal expertise, credentials, or networks to social science. Whether one is formally designated as a lawyer, anthropologist, psychologist, political scientist, or sociologist, therefore, certainly matters, but that designation does not eliminate the possibilities of crossing boundaries and mixing categories. Indeed, as we shall see, the success of many of those we discuss comes from their ability to blur and shift boundaries.

Finally, while our method reveals the networks of personal relationships that were central to bringing people into the community that became LSA, we are not contending that this pattern of complementary and competitive personal relationships is unique to LSA (see Dezalay & Garth 1996). The networks are

used to show not only who came to LSA but also how individuals intersected with existing institutions, how they constructed new ones, and what they brought to those enterprises. It is fascinating to see what created the Who's Who, but that is only part of the larger story of the changing relationships between law and social science. Likewise, while we describe a Who's Who and a number of "career strategies," we should not forget that the stakes were not only careers. The stakes included questions about what to do about poverty, crime, and racial discrimination; and whether law had a progressive role to play in providing a language for the state to address such problems.

Basic Chronology

The Law and Society Association was incorporated in November 1964 in the state of Colorado. The incorporation followed a series of meetings begun relatively informally with a breakfast at the meeting of the American Sociological Association in Montreal in June of that year. Some 90 persons attended.[5] Harry Ball, a sociologist (discussed below), provided the initial leadership for the committee organizing the breakfast,[6] and he is sometimes called the first president. He was at that time employed at the University of Wisconsin.

The first president of the Law and Society Association as incorporated was Robert Yegge (discussed below) of the University of Denver, who continued as President until 1970. The first *Law & Society Review* was published in 1966, following a special issue the previous year of *Social Problems,* the publication of the Society for the Study of Social Problems.[7] The first editor of the *Review*

[5] Robert Alford of Wisconsin and Sheldon Messinger of Berkeley later surveyed those who expressed an interest at that meeting and elsewhere to see if they would support a membership organization. They sent a questionnaire to 650 persons, asked for other names, and eventually came up with 689 persons interested in joining (Alford & Messinger 1966). Of the group in academic institutions, which represented 85%, one-third were in sociology and one-fifth in law schools. About one-third of the total had law degrees.

[6] The head table at the breakfast consisted of Harry Ball, Leonard Cottrell, Sheldon Messinger, Arnold Rose, Richard Schwartz, Philip Selznick, and Robert Yegge. The original ad hoc committee probably included the following individuals: Robert Alford (Wisconsin, sociology), Harry Ball, Allan Barton (sociology, Columbia), John Coons, Leonard Cottrell (Russell Sage), William Evan (sociology, MIT), Edwin Lemert (sociology, California–Davis), Sheldon Messinger, Thomas Monohan, Arnold Rose (sociology, Minnesota), Richard Schwartz, Philip Selznick, and Robert Yegge (Ball correspondence, 13 Nov. 1964, archived at American Bar Foundation); Minutes of Ad Hoc Committee on Law and Society, 16 Sept. 1964. Those whose affiliations are not identified here are discussed in greater detail in this article. In mid-1965 the committee expanded to include also William J. Curran (Boston University), Gilbert Geis (Los Angeles State), Herbert Jacob, Marie Witkin Kargman (labeled as Section on the Family, ASA), Leon Mayhew (Michigan), Wilbert Moore, Richard Peterson (Vanderbilt), Rita James Simon (Illinois), Jerome Skolnick, and Gresham Sykes (ASA and Denver) (Law and Society Association 1965).

[7] Which was created itself around 1950 as a somewhat leftist reaction to "orthodox" social science, which was thought to be too positivistic. Arnold Rose was the representative of the Society to the American Sociological Association at the time.

was Richard ("Red") Schwartz (also discussed below).[8] The LSA met as a separate entity in conjunction with other professional meetings until 1975—sociology, anthropology, political science, and law.[9] The first independent national meeting was held in Buffalo. The second president of LSA was Victor Rosenblum, and he was followed by Red Schwartz (discussed below). Both were then at Northwestern.

Philanthropic foundations and organizations related to them were critical in bringing together law and social science.[10] The Social Science Research Council (SSRC) organized a series of summer workshops on law and social science, beginning at Harvard in 1956 and continuing at the University of Wisconsin, Madison. The workshops brought together social scientists and law professors—many connected to Legal Realism.[11] The SSRC also began giving grants funded by the Ford Foundation in the late 1950s for the support of research into "governmental and legal processes" (Lipson & Wheeler 1986:4). The Russell Sage Foundation and the Meyer Research Institute were central in building the networks that formed the LSA, and the Russell Sage

[8] The first editorial advisory board was Robert Alford, Wisconsin; Harry Ball, Hawaii; William Beany, Princeton; Paul Bohannon, Northwestern; Jerome Cohen, Harvard; David Danelski, Yale; Lon Fuller, Harvard; Abraham Goldstein, Yale; Geoffrey Hazard, Chicago; E. Adamson Hoebel, Minnesota; J. Willard Hurst, Wisconsin; Iredell Jenkins, Alabama; Sheldon Messinger, Berkeley; Stuart Nagel, Illinois; Laura Nader, Berkeley; John Noonan, Notre Dame; Maurice Rosenberg, Columbia; Jerome Skolnick, Berkeley; Richard Snyder, Irvine; Andrew Watson, Michigan; and Robert Yegge, Denver (Newsletter no. 3, July 1966).

[9] The original board of trustees, set up in 1967, was self-electing except for positions elected by professional organizations—including law, anthropology, economics, political science, psychology, and sociology. The first board, which included many who were asked to accept positions, was Robert Yegge, President; Richard Schwartz, Editor; Ernest Jones, law, Florida, secretary; Jack Ladinsky, sociology, Wisconsin, treasurer, Robert Alford, sociology, Wisconsin; Carl Auerbach, law, Minnesota; Harry Ball, sociology, Hawaii; Leonard Cottrell, psychology, Russell Sage Foundation; Caleb Foote, law, Pennsylvania; Geoffrey Hazard, law, Chicago and American Bar Foundation; Herbert Jacob, political science, Wisconsin; Jay Katz, sociology; Mark Massell; Paul Meehl; Sheldon Messinger, sociology, Berkeley; Walter Murphy, political scientist; Laura Nader, anthropology, Berkeley; James Nelson; Maurice Rosenberg, law, Columbia. By-Laws of the LSA, adopted 2 April 1967.

[10] The Ford Foundation's investment in law and social science at the University of Chicago was quite important. Among other things, it produced the work on the jury by Harry Kalven and Hans Zeisel (*The American Jury*, published in 1966, and *Delay in the Court*, 1959). The major grant to the American Bar Foundation for the Survey of the Administration of Criminal Justice (discussed below) was part of the same generation. Also relevant to the social science story that intersected with law was the Ford Foundation grant to establish the Center for Advanced Study in the Behavioral Sciences, in Palo Alto, in the mid-1950s. The Meyer Research Institute (discussed below) funded the presence of legal scholars at the Center in Palo Alto from the decade 1958 to 1968 (Cavers 1997:90). The Center helped promote the early careers of, among others, Philip Selznick, Laura Nader, Sheldon Messinger, and Stewart Macaulay. The Ford Foundation also made a grant of $500,000 to the Meyer Research Institute in 1963 to support research in law and social science. The Rockefeller Foundation gave a substantial grant to Willard Hurst in the 1950s to support legal historians.

[11] The first was co-chaired by Harold Berman and E. Adamson Hoebel, the second by Richard Schwartz and Harry Kalven, the third by Victor Rosenblum and Frank Remington, and the fourth by Carl Auerbach and William Beaney.

Foundation facilitated the creation of the LSA. Prior to the time of the establishment of the LSA, the Russell Sage Foundation had already invested more than a million dollars in law and social science, beginning with a first grant to the Center for the Study of Law and Society at the University of California at Berkeley. Subsequent grants went to establish centers at Wisconsin (1962), Northwestern (1964), and Denver (1964).[12] Later in the 1960s, after the establishment of the LSA, the Meyer Research Institute and Russell Sage Foundation funded six years (1967–73) of summer institutes in Denver for legal academics in a program entitled SSMILE—Social Science Methods in Legal Education.[13] The National Science Foundation Program in Law and Social Science began in 1972.

We shall now follow the activities of a number of individuals who intersected with this basic set of events and institutions over this period of the late 1950s to the mid-1970s. The stories are closely connected, and it would be possible to begin with any one of them. We begin with the Russell Sage Foundation, since it funded the centers around which our later narrative is structured. Next, given our particular focus on the Law and Society Association, we turn to the center at Denver and Robert Yegge, the first formal president of the LSA.

The Russell Sage Foundation

The Russell Sage Foundation provided key funding at the critical moments, funding the four centers, the *Law & Society Review,* and a number of publications, including the major books from the Berkeley center. The major actors included Orville ("Bert") Brim, who became the president of the Foundation, and Leonard ("Slats") Cottrell, the individual who negotiated the major grants.[14] In order to see why and how Russell Sage came to play this critical role, we can follow the story of Stanton Wheeler, who came to Russell Sage in 1964—just after the first group of grants to centers of law and social science. Wheeler also was the editor of *Social Problems* at the time of the publication of the supplementary issue in 1965 on "law and society."[15] And he became

[12] Grants were made later to Yale, Harvard, Stanford, and Pennsylvania (Lipson & Wheeler 1986:4).

[13] The first faculty was Allen Barton of Columbia, Jerome Skolnick of Berkeley, and Maurice Rosenberg of Columbia (Cavers 1997:90).

[14] Cottrell, listed as a social psychologist on his letterhead, was offered the position of chair of the University of Chicago sociology department in 1954, but he stayed at the Russell Sage Foundation (Riesman, in Berger 1990:64).

[15] This issue contained an introduction by Red Schwartz and articles by Jerome Skolnick, Harry Jones, a well-known law professor at Columbia, and Geoffrey Hazard, then of the University of Chicago and "administrator" of the ABF. It is interesting to note that the Skolnick study was prepared for the international group, the Research Committee on the Sociology of Law, whose president, Renato Treves, an Italian, was also an early member of LSA. William Evan, a member of the Ad Hoc Committee on Law and Society,

the successor at Yale to Red Schwartz, moving first as an adjunct while at Russell Sage and later full time in 1968 to the position Schwartz had in law and in sociology. Wheeler has written a very useful history of the Russell Sage Foundation's program (in Hammack & Wheeler 1994).

Wheeler came to sociology through an interest in race relations developed from playing jazz with black musicians in high school in Los Angeles in the late 1940s. He received a Ph.D. degree from the University of Washington in 1958 and taught at Harvard and the University of Washington before receiving the offer from the Russell Sage Foundation. Interestingly, the foundation also hired Wilbert Moore from Princeton at the same time, seeking to draw on his expertise in the sociology of professions.[16]

Russell Sage's interest in law and social science, according to Wheeler, was part of the transformation from "a social work foundation into social science." The transition began under the presidency of Donald Young, from 1948 to 1963, and it continued under his successor, Bert Brim. Prior to the transformation, "the foundation had been totally sort of captured . . . by the social workers." Russell Sage was relatively small compared with such giants as the Ford Foundation, and it had to find a niche. According to Wheeler, "in the studies of the professions, Donald Young had found something where he felt the foundation might really have an impact. . . . It seemed to be something, it was new, it was interdisciplinary" (Hammack & Wheeler 1994:10).

Young came in with impeccable social science credentials, close links to the established sister organization the SSRC,[17] a commitment to using social science theory to solve social problems, and "scorn for many . . . practitioners of social work" (ibid., p. 94). Young began to focus on the medical profession in part to move the work of the foundation to a more visible and prestigious level. Part of the effort was to place social scientists in medical schools and, in some instances, in schools of social work. By the end of his tenure, "the Foundation had clearly changed its focus on the professions from medicine to law" (p. 103). Esther Lucille Brown[18] from the earlier generation at Russell Sage and Leonard Cottrell from the new generation reoriented the Foun-

was the Secretary-General of the Research Committee in 1965. We recognize that there is a significant European dimension to this story that remains to be told.

[16] Moore moved from there to the University of Denver. He published *The Professions: Roles and Rules* with Russell Sage in 1970.

[17] The SSRC had been founded in 1923 (Hammack, in Hammack & Wheeler 1994:39). Young had served as a member of the staff since 1932 and the executive director since 1945 (Wheeler, in ibid., p. 90).

[18] Brown was trained as a social anthropologist at Yale in the late 1920s and spent her career at the Russell Sage Foundation. She is probably most famous for advocating the professionalization of nursing, but she wrote about the legal profession at least as early as the late 1930s.

dation to law and in particular to law and social science in the 1960s.

Brown had been a Realist-oriented critic of legal education since the 1930s (see Shamir 1995:140). In the postwar period, she revived the attack. In 1948, in particular, she argued in a book entitled *Lawyers, Law Schools and Public Service* (published by the Russell Sage Foundation) that law school was out of date in training lawyers for modern governance. With respect to social science, she said,

> [I]f knowledge of economics is inadequate, the situation is even more unfortunate so far as the other social sciences, except political science, are concerned. Since the purpose of law is in considerable part that of exercising a form of social control over human affairs, the social scientist is likely to take it for granted that the bar and the bench would have at their disposal the best information available about individual and group motivation and how motivation can be redirected; about social structure and how changes can be made in it; about broad social trends. . . . The average law-school instructor does not have in these fields [psychology, social work, sociology, anthropology] so much as his newspaper knowledge of economics. (Brown 1948:116)

She complained that "the law school is largely closed to the university" (p. 118) and that law professors often "speak on the basis of their own undergraduate work of twenty or thirty years earlier. They do not know that progress in the social studies has probably been as great or greater than in law during the same period" (p. 119).

Once the program was underway, the initial grants went mainly outside of the elite schools and even outside the law schools as well. As Wheeler writes, "Cottrell made initial forays at a number of institutions, including Harvard, Yale, Stanford, Berkeley, Columbia, and Wisconsin. Their response was mixed at best" (Hammack & Wheeler 1994:113). They were perhaps willing to accept funds, "but they did not care for instructions about how to spend it." More precisely, the foundation had more success with the big public schools than with Harvard, Yale, Columbia, and Stanford.

These grants, in Wheeler's account, were part of a new role for the foundation, which he termed "an interstitial role for itself between the academy, other foundations, and policy makers" (p. 83). It is not clear if the role was so new (e.g., Karl 1968; Coser 1997 [1965]). Indeed, the Ford Foundation had been involved in bringing social science to policy and even in encouraging social science research about law since at least the 1930s. The University of Chicago and the American Bar Foundation (discussed below) had both been major beneficiaries in the early 1950s (Schlegel 1995). But there had been some criticisms of Ford's earlier

program of funding social science as leftist and as involving bad ethics (exemplified in the early 1950s by the eavesdropping on juries associated with the Chicago project).[19] The Russell Sage Foundation in any event found a niche, serving as broker between the academy, foundations, policymakers, and the world of economic power.[20]

Policymakers and other foundations intersected especially around the period of the Lyndon Johnson administration's War on Poverty. For example, Lloyd Ohlin, a sociologist discussed later, was supported in the late 1950s by Russell Sage in a position at the Columbia School of Social Work in New York. There he had a great impact on the Ford Foundation programs that became the basis for the War on Poverty and also the U.S. Office of Economic Opportunity (OEO) Legal Services program. According to Alice O'Connor (1996), a historian of this period, "Lloyd Ohlin, best known for his 'opportunity theory' of juvenile delinquency," was a key member of the Ford Foundation's team of academic experts in the late 1950s: "Drawing on this eclectic group of experts to accompany and help refine its programs, the Foundation would create a store of knowledge that bridged the gap between social research and social action, meanwhile cultivating the people who would later help to plan and staff the War on Poverty programs."[21]

Through the program of bringing social science to law and to the state, therefore, the Russell Sage Foundation made a name for itself outside the field of social work, gaining new respectability and a new position in the worlds of academia and state power. The social science promoters found a niche that was relatively successful in the 1960s and 1970s in upgrading their expertise and the position of the foundation. In the process, they also built bridges that affected legal scholarship, social science, and important institutions, including the universities, the Law and Society

[19] The controversy arose as part of the Chicago Jury Project, which had two parts (see Schlegel 1995:240–41). One part was the Kalven and Zeisel study comparing judges and juries. The other, directed by Fred Strodtbeck, a social psychologist who ultimately joined the sociology faculty at Chicago, involved jury simulations. According to Rita Simon, who came to Chicago in 1954 and worked on the Strodtbeck project, there had been skepticism about whether simulations reflected the actual deliberations of juries. Strodtbeck had thus been persuaded earlier in the project to record jury deliberations in St. Louis—with the consent of the lawyers, parties, and judge but not the jurors. Strodtbeck had not intended to publish any material on the actual deliberations, but he did mention at a speech in 1955 that information gained from studying them showed that the simulations also were a useful way to gain insights. His speech set off a furor because of threats to the secrecy of jury deliberations. The ensuing national scandal culminated in legislation banning the recording of jury deliberations in federal courts.

[20] Economic power was represented at Russell Sage by its board, chaired first by Eli Whitney Debevoise and later by another Debevoise and Plimpton law partner, Oscar M. Ruebhausen (chair from 1965 to 1980).

[21] Especially influential was *Delinquency and Opportunity*, published in 1960 and written by Ohlin and Richard Cloward (Glencoe, IL: Free Press). The authors give thanks to Messinger, Selznick, and Skolnick from Berkeley.

Association, and the state's efforts to conduct an antipoverty program.

Robert Yegge and the Denver-Princeton Story

Robert Yegge was one of the key entrepreneurs promoting social science in the law school community. Active in the LSA, he also sought to make law and society the centerpiece of the University of Denver's College of Law. From Yegge's background, there was little doubt that he would become a lawyer. His father was the senior partner of Yegge, Hall, and Evans, perhaps the leading law firm in Denver, and it was assumed that Yegge would return from Princeton, attend the University of Denver College of Law, and join his father's law firm. While at Princeton, however, he became fascinated with sociology, then gaining prestige in the academy, and he became acquainted with such professors as Gresham Sykes (e.g., *The Society of Captives: A Study of a Maximum Security Prison,* 1958) and Wilbert Moore (e.g., *Industrialization and Labor,* 1951; and *Social Change,* 1963). Those two served as his academic advisors for his senior essay.

After graduation from Princeton in 1956, Yegge pursued his legal education at Denver, graduating in 1959. At that point he also began a Ph.D. program in sociology while he worked for his father's firm and taught law as an adjunct associate professor. The pressure of his numerous activities limited him to a Master's degree in sociology; but his work in sociology put him in contact with others interested in law and social science, including Red Schwartz. He met Red Schwartz through a panel at the American Sociological Association where Schwartz, as it turned out, defended Yegge's paper against the charge that it was only law and not real sociology. Schwartz then introduced Yegge to a number of others, helping to expand Yegge's "law and society" connections beyond his Princeton professors.

Before picking up Yegge's involvement with the establishment of the Law and Society Association, we want to detail the extraordinarily rapid rise in his career at the Denver College of Law. His initial title was adjunct professor, but he was clearly a rising star in the faculty. We can surmise that his Ivy League credential, his social science expertise, his growing national network, and his family capital were all quite relevant to his speedy rise at Denver. As an adjunct professor, Yegge in 1964 was able to get the first of a number of grants to Denver from the Russell Sage Foundation. Working with Leonard Cottrell, who he met through Wilbert Moore, then at Russell Sage, Yegge made Denver one of the four Russell Sage centers. The Denver grants focused both on the creation of a center and on judicial administration (Yegge 1963).

When the dean of the law school was fired in July 1965, the faculty selected him as acting dean and chair of the dean search committee. He then became the choice as dean—at 30 years of age—without even entering the race. Compromising with Yegge's father, who had expected his son to stay in practice, the law school actually paid the law firm for Yegge's services for the first years of his deanship.

As dean, Yegge tried in effect to replicate Princeton in the Denver College of Law. He hired his mentors from Princeton, including sociologist Gresham Sykes (hired in 1965); political scientist and lawyer William Beaney (hired in 1969); sociologist Wilbert Moore (hired in 1970); sociologist Lawrence Ross (hired in 1967),[22] and lawyer and religious studies graduate James Wallace (hired in 1970). Yegge also linked social science and law to the issues of equal opportunity that were then at the center of much public debate. He created a law school pilot program, funded initially by the Ford Foundation, which became CLEO (the Council on Legal Educational Opportunity)—a pioneer program that lasted into the 1990s with federal funds for recruiting minorities into law schools. He also was active in securing grants for the Denver OEO program of legal services for the poor. In Yegge's words, "it was a fabulous laboratory." Similarly, the Denver group obtained a grant from the Department of Health, Education, and Welfare, which resulted in an article by Gresham Sykes in the *Law & Society Review* (1969) on "the legal needs of the poor in the City of Denver."

The profile that the Denver College of Law sought to present is captured in a statement by Sykes at the time:

> [O]ur main purpose is to provide law students a basic understanding of modern sociological inquiry so that they will be better equipped for their professional work as lawyers—as practicing attorneys, legal policy makers, and legal scholars. Sociology is becoming of ever greater importance to the law, with applications ranging from the presentation of evidence in court to the design of programs for legal reform. (Gauthier 1995:99)

As Yegge used his national contacts in law and society to shape the profile of the law school, he demonstrated locally that he was a player gaining national recognition for those activities.

From Yegge's perspective, in fact, the creation of the Law and Society Association was directed mainly to the legal profession and the legal academy. Sociological inquiry, he recognized from his undergraduate education, had much to offer for the renovation of law, but lawyers had to be convinced. Indeed, according

[22] Moore, Ross, and Sykes were hired jointly with sociology, which helped establish legal sociology as central to the department in Denver. Ross left to become the second director of the Law and Social Science Program of the National Science Foundation, succeeding David Baldus of Iowa (1975–76). Yegge also hired a psychologist, Murray Blumenthal.

to Yegge, the phrase "law and behavioral science" was rejected by the founders of LSA as not acceptable to lawyers: "They didn't think behavioral science had anything to do with law. . . . Law and Society was a lot easier term for them." In Yegge's opinion, "you were walking on eggs in many ways because you had to use the right words. Otherwise, they'd say, they're just a bunch of do-gooders, social workers, that want to muck up our law curriculum."

Both social scientists and upstart lawyers in his opinion were challenging the traditional domain and approach of the legal establishment.[23] They had an intellectual mission:

> thinking about law as more than a bunch of rules. . . . thinking about doing empirical research to verify what had heretofore been preordained conclusions. . . . And beginning to look at law and the legal system as . . . a function of society rather than simply as an hermetically sealed system that was free of all undue outside influences.

Law should be made to take social science—and those with social science tools—seriously.

As the same time, according to Yegge, there were social scientists looking for a home somewhat outside of their disciplines—and closer to law:

> You were asking about the early days, and they were mostly lawyers, but because you were bringing so many different disciplines, it couldn't possibly be all lawyers, I mean it would have lost the point. I mean, you know, there were a lot of these folks that were looking for an academic home, who'd been doing empirical or whatever research, but didn't really have a place to go. . . . So you had some real committed followers here.

An alliance of Denver scholars and a group of social scientists, however, was not necessarily sufficient to gain the attention of the legal establishment. Yegge recognized that he needed to have allies with more legal prestige. Thus, he notes, they had some notable law professors as early allies, including Jack Coons of Northwestern, Maurice Rosenberg of Columbia (e.g., *The Pretrial Conference and Effective Justice,* 1964), and Milton Green of New York University. There were also efforts to build social-scientific legitimacy for the new organization by holding meetings in conjunction with the American Political Science Association (APSA) and the American Anthropological Association (AAA), as well as the American Sociological Association (ASA), all prior

[23] Recalling Harry Ball's enthusiasm for a formal organization, going beyond the informal meetings that had gone on for a couple of years at ASA meetings, he quoted Ball as saying "why not attack these people," and "let's not let the law school hierarchy tell us we don't know what we're talking about. Let's make this a respectable academic endeavor, because we've got a lot of respectable people in the academy who are interested and if we show some kind of strength, maybe law schools would wake up and say, hey, maybe this isn't so screwy after all."

to a meeting in conjunction with the Association of American Law Schools (AALS).

Yegge's overall focus on the legal profession, however, remains quite evident. In his view, the *Law & Society Review* was part of the strategy to gain credibility in law: "Well, we were plotting our strategy and our strategy had been to do a first-rate review that looks like a law review that has great flexibility, and that was Red [Schwartz]'s job." Further, in Yegge's view, having too many social scientists would undermine the credibility of the Association—credibility that depended on the right mix. In his words, the early leaders knew that "in due time we are going to have to attack this law school world another way. There were more nonlawyers that were getting in there, and that was bothering us. And so we figured how are we going to get some of these bright young law professors into the act."

At that point, "back to Russell Sage Foundation we went and said we've got a sensational idea for you, we're going to have a summer six-week quick and dirty get your phony M.A. in Law and Society at the hands of some of the masters, well you know. Slats [Cottrell of the Russell Sage Foundation] says, that's a super idea, let's go, so we started SSMILE."[24] SSMILE (Social Science Methods in Legal Education) was designed to teach law professors enough to draw them into the law and society world and provide them with a credential to legitimate that participation. The first SSMILE workshop was held in 1967. By all accounts, it did succeed in helping to produce a generation of law professors with law and society interests.[25]

William Beaney, one of those who came to Denver, connects the activities of Yegge in Denver, developments in political science at Princeton, and other activities that helped build ties between law and social science before the establishment of LSA. We begin to see some of the forces that brought individuals identified initially with "social science" to institutions focused on law. Beaney was trained in the political science tradition of Woodrow Wilson, best established at Princeton, that "you can't separate government from law," and he began teaching there in 1949. Political science at Princeton—which, unlike Harvard and Yale, had no law school—had been one of the major producers of

[24] The AALS executive helped Yegge bring professors to the program: "We had a lot of help from Millard Ruud [the executive director of AALS]. He was touting us. He could have killed us, but . . . it was now a legitimate activity for law professors to be engaged in."

[25] Among those who attended were: William Felstiner, Robert Stein, Thomas Heller, Philip Shuchman, Lester Brickman, James J. White, Justin Sweet, James Henderson, and Frank Michelman. The early success, in Yegge's view, was confirmed at an early meeting of the LSA group at the Harvard Law School when Dean Derek Bok suggested (erroneously, of course), "Isn't it marvelous how we started all of this." For Yegge, it was clear that LSA had made the law school establishment take notice of and recognize not only LSA but also Denver—and the national role he was establishing for a local law school he joined mainly because of his family ties.

public law scholarship.[26] Beaney was an heir to the grand tradition as co-author with Alpheus Mason of the leading political science text in constitutional law,[27] and he was active in the American Political Science Association.

Law professors were doing some legal scholarship that competed with the political scientists, but Beaney felt his approach was different—drawing more on social science. Cases, for Beaney, were "a beginning. It just gives us a thread or something to build on, focus on while we try to explain things . . . instead of just saying this is the way it is, the way so many lawyers did." With respect to lawyers, therefore, he could emphasize his strength in legitimate social science. The APSA public law section enabled him to meet others with similar interests, including Samuel Krislov,[28] but there may also have been some signs of ferment among the public law scholars. As other sources suggest, public law scholars as a group were losing prestige in political science, which was emphasizing quantitative methods that pushed to the margin those linked to law and to a generalist knowledge of government (e.g., Ross 1991:450–58). And as the legal academy became more scholarly in its treatment especially of constitutional law (Kalman 1996), it was offering both more competition with political science and more opportunity for political science in law.

Beaney became a member of the Social Science Research Council, which was already building bridges between social science and law. He served on its advisory committee from 1959 to 1963. The committee was chaired by David Truman, a well-known political scientist (e.g., *The Governmental Process: Political Interests and Public Opinion,* 1951), and it included some notable law professors, among them Edward Levi of the University of Chicago.[29] The SSRC gave grants specifically to bridge social science and law. While grants could go to lawyers or to social scientists,

[26] The group of scholars Yegge encountered at Princeton may have flourished there in part because there was no law school to absorb or attempt to marginalize them. There were at least three attempts to build a law school at Princeton (Stevens 1983:250). According to Stevens, Princeton in 1975 decided once again not to create a law school.

[27] E.g., Alpheus Mason & William Beaney, *American Constitutional Law* (1964); see also Beaney's *Right to Counsel in American Courts* (1959). Beaney studied law at Harvard Law School before obtaining his Ph.D. in political science at Michigan.

[28] A political scientist at Minnesota, who became the second editor of the *Review* and the LSA President. See Krislov, *The Negro in Federal Employment: The Quest for Equal Opportunity* (1967); *The Supreme Court and Political Freedom* (1968).

[29] Described by Willard Hurst as one of the very few law professors to maintain the Realist interest in social science. Levi went on to become president of the University of Chicago. We have not focused our account on the University of Chicago, but it is clear that it was a leader in the 1950s. According to Rita Simon, who was both a Fellow in the Law and Behavioral Science Project and an assistant professor in sociology from 1957 to 1961, Levi was personally very supportive: "the law school was a very exciting place," although "most of the faculty was very skeptical of this behavioral science." In contrast, "economics was accepted."

law professors typically were found to be inadequate in the requisite social science. According to Beaney,

> [T]he law people usually had rather poorly written applications, and this would be commented on by everybody and so one of the functions of the committee if they thought there was a germ of something good in a law person's proposal was to delegate someone, sometimes even two people, from the committee to try to work with the person.

The idea of the committee, in short, was to overcome the gap between the disciplines—"let's get people out of their rut and over combining fields"—and bring social science to law. The relative prestige of social science in law was evidently growing. Levi, who had been involved at the University of Chicago in encouraging some of the major projects of the 1950s (Schlegel 1995:238–44), offered Beaney a job on the faculty of the University of Chicago Law School. Beaney was then content to stay at Princeton. A decade later, however, he was more receptive to law schools and Yegge, and he moved to the Denver College of Law in 1969.

What made him move to Denver, he suggested, was the personal connection to Bob Yegge, whom he had known partly as a student and later through Wilbert Moore, and "the chance to build a new kind of institution at Denver."

> Bob Yegge had become dean in '65 and we had talked long periods about how, God, if we could turn out some lawyers who really had a broader sense of what law was about, even if they just practiced law and made money, they'd be better citizens and leaders of the community. . . . So, frankly, I'm very excited.

We might also suggest that, in retrospect, his excitement also reflected the increasing value placed on his political science in the law schools, now trying to become more scholarly and relevant to the issues that social scientists were highlighting. While he clearly lost some prestige by moving from Princeton to Denver, he gained an opportunity to act directly in the law world—which was importing and using the new expertise constituting the War on Poverty.

James Wallace, another member of the "Princeton team" at the Denver College of Law, graduated from Boalt Hall School of Law at Berkeley and practiced law in a business law firm in Los Angeles from 1949 to 1957. Unhappy with some of the ethics of his work, and influenced by the social gospel of the Catholic Church, he decided to go to Princeton and attend theological school. His work as a graduate student combined sociology and religion, which brought him into contact with people like William Evan,[30] Wilbert Moore, and later Bob Yegge. Wallace spent one year as a Russell Sage fellow in law and social science at

[30] A sociologist with a strong interest in law (ed., *Law and Sociology* 1962). He was involved as well on the Research Committee on the Sociology of Law.

Northwestern, where he got to know Red Schwartz, Paul Bohannon,[31] Victor Rosenblum, and others, and then he returned to the faculty of the Princeton Seminary. Yegge then recruited Wallace to come to Denver, where he began in 1967. Wallace also conveys the sense of excitement at the time: "this was an exciting place to be because it was in the forefront of this whole movement. . . . It was just a lot going on in this area and in terms of introducing behavioral science and methodology in the study of law." When the LSA began to grow, Wallace became the first Executive Secretary, starting in 1971, and the offices were then moved from Wisconsin to Denver.[32]

Denver, therefore, and Robert Yegge, in particular, brought a strong entrepreneurial push to the LSA and to the related effort to rebuild a law school around the Law and Society Association. Armed with a powerful vision and a sense that the social science investment in law was going to pay rich dividends, Denver was able to attract a group of well-known individuals—including many who in the mid-1960s exchanged Ivy League social science at Princeton for law at Denver. The new recruits gave Denver an identity, and they left an enduring legacy at Denver both in the law school and in sociology.[33]

Richard (Red) Schwartz and Northwestern University

Red Schwartz, the first editor of the *Law & Society Review,* was a key figure in the program established at Northwestern and in the group that established the LSA. He is generally considered one of the leading sociologists in the founding of the LSA. At the same time, however, he never moved very far from law. His father was a lawyer and judge in Connecticut. As an undergraduate at Yale in 1944, Schwartz became more interested in sociology than in other areas of study, deciding "this is my field." In graduate school, he became fascinated with developments in Israel, deciding to compare the kibbutz and the moshav. Working on his dissertation in the Yale library, he ran across a family friend, Joseph Goldstein, who was at that time Articles Editor of the *Yale Law*

[31] An anthropologist who had shared the early interest in law and anthropology.

[32] Wallace remained as Executive Secretary until 1984, when he was succeeded by Joyce Sterling, a sociologist hired by the Denver College of Law in 1978, at the end of Yegge's 13-year tenure as dean.

[33] The sociology department continued to nourish a critical mass in legal sociology, and the sociologists have remained close to the LSA. With respect to the law school, the legacy is evident, for example, in the fact that its recent dean, Dennis Lynch, is close to the LSA community. Yegge also developed a tangible way to encourage interdisciplinary research. He secured what became the Mabel Y. Hughes Research Fund, and it still funds and encourages social science research at the Denver College of Law. The committee that awarded the grants for many years was Red Schwartz, Millard Ruud (of the AALS), and David Cavers; Cavers was later replaced by Victor Rosenblum. The committee thus kept the law school in contact with those at law schools who continued to stress interdisciplinary research.

Journal. Goldstein, who had already obtained a Ph.D. in political science in London, invited Schwartz to submit a chapter for the *Journal,* suggesting that the "trouble with law" was that it was "just too narrow." Schwartz reframed his work, publishing what became a very well-known article.[34] His alliance with Goldstein thus helped to show the relevance and importance of social science to law.

At the same time, Schwartz was somewhat on the fringe of sociology. The reason that he was willing to publish his first article in a law journal rather than in a sociological journal, he suggested, was because he was already holding a position as Ford Foundation postdoctoral fellow at the Institute of Human Relations. The Institute, as he noted, had been formed "under the dynamic aegis of Robert Hutchins," the then "boy wonder dean" of Yale Law School, and it was a place where the Realists developed some of their empirical work (e.g., Underhill Moore; see Schlegel 1995). The Institute was "positively committed to an interdisciplinary approach," and interdisciplinary meant that he was pulled somewhat out of the sociological mainstream.

The precarious position of law within sociology posed a dilemma. As Schwartz began to near the end of his fellowship, he knew that he "had to get a job and it would have to be in some kind of department, and it would probably have to be in a sociology department." He then asked, "How can I be a specialist? Seem like a specialist but still have the freedom to go across the entire field of sociology and beyond for that matter. . . . How about law?" Sociology could take on law, and law could profit from sociology. Indeed, law "was a kind of black hole in American sociology. . . . It no doubt had to do with the fact that the lawyers managed to be such impressive people and that they sounded as if they knew everything that ought to be known about the field and that you better not trespass on the territory unless you happen to be a lawyer." With his background and ties, Schwartz was not afraid to take on lawyers. Finally, this line of decisionmaking was reinforced by the influence of Esther Lucille Brown of the Russell Sage Foundation. Reflecting the Russell Sage Foundation's interest in the late 1950s in using social science to challenge and upgrade legal know-how, Brown had visited Yale and met Schwartz.

Schwartz went on to work for several years in interdisciplinary programs at Yale, always maintaining somewhat tenuous relations with sociology. He described the perception of the sociologists as follows: "What was he anyhow? Is this man a real sociologist or is he just working the boundaries of the field and maybe slipping over into others. Well, that impression was reinforced probably

[34] Schwartz (1954) argued that formal controls were necessary when informal controls were ineffective—comparing the *moshav* (cooperative settlement) with the *kibbutz* (collective settlement).

by the interest that the law school showed in me."[35] Indeed, responding to the law school interest expressed again through his friend Joseph Goldstein, now a faculty member, Schwartz agreed to develop social science materials for criminal law and family law under the auspices of a National Institute of Mental Health grant. As had occurred in the era of Legal Realism, sociology was once again finding its way into the law school. In Schwartz's opinion, "the Legal Realist approach found a natural home at Yale [as opposed to Harvard], and it was still alive and well and quite well respected when I was there in the '50s."

He began again to think of finding a more permanent job: "Jerry Skolnick and I were kind of a two-person team at the Yale Law School at that time, and we really didn't know where we were going to look because we were kind of oddballs in terms of our careers at this point." Their sociology was of interest to law, but sociology, as was noted earlier about political science, may have been moving also to more quantitative analytical approaches.[36] And Yale Law School, despite the interest of some professors, was not going to make either Schwartz or Skolnick a mainstream law professor.

An eminent social psychologist at Northwestern, Donald Campbell (Campbell & Stanley, *Experimental and Quasi-Experimental Designs for Research,* 1963), invited Schwartz to consider Northwestern, and Schwartz joined the faculty there in 1961. He was hired as a member of the sociology department,[37] but he was again teaching in an interdisciplinary program.

Once at Northwestern, Schwartz found that Richard Snyder, the chair of political science (e.g., *Roots of Political Behavior,* with Hubert Wilson, 1948), Victor Rosenblum, then also of political science (discussed below, e.g., *Law as a Political Instrument,* 1962), Paul Bohannon of anthropology (e.g., *Justice and Judgment among the Tiv* 1957), and Jack Coons of the law school (e.g., *Chicago, Civil Rights U.S.A.'s Public Schools: Cities in the North and West,* 1962), were receptive to a joint program in law and social science. This team—with Campbell also involved—obtained the Russell Sage grant in 1964. The Northwestern grant placed an emphasis on producing scholars with joint degrees—law and political science and law and sociology, in particular.[38]

[35] Further, "And that was one reason Joe Goldstein was able to get away with, not only get away with, but get a lot of support for bringing on a sociologist in his project in the same way that Fowler Harper. . . was able to bring on Jerry Skolnick to do a casebook with him in the family law field."

[36] Despite counterattacks evident in the creation of the Society for the Study of Social Problems (SSSP).

[37] He turned down a joint appointment in law and sociology, the two departments in which he had held appointments at Yale. He did not want to be spread over two departments, which had contributed to his uncertain status at Yale.

[38] Among graduates are Robert Rabin, at Stanford Law School, Joseph Sanders, of Houston Law School, and Robert Nelson, of Northwestern and the ABF.

Schwartz had also been an active participant in the SSRC workshops that began at Harvard in 1956, and he knew Harry Ball, who was working to build law and social science at Wisconsin.[39] More generally, as Schwartz also said, "people were beginning to locate each other." And they had the connection to the Russell Sage Foundation in particular. According to Schwartz, Bert Brim, with whom he had gone to graduate school and who became the President of the Russell Sage Foundation in 1964, said to him, "Red, it's time for you to get into the big time." And from his perspective as a sociologist not quite at home in sociology, the new LSA offered important possibilities as an organization about law in which social scientists could play a—or perhaps the—leading role. Schwartz said that the organizers at the time saw themselves as "playing England to the law's Spanish empire"—"a kind of program for a bit of imperialism." Indeed, they felt that sociology itself could gain—and gain status in law—by fighting for some turf in scholarship about law. Law and society provided that possibility.

Leonard Cottrell, the second person in command at the Russell Sage Foundation, made the actual grant to start the *Law & Society Review*, and Schwartz was the choice of the new LSA and the funders as editor. Suggesting a gaze at law, Schwartz stated, "We had the idea that what we would try to do would be to have it structured as much as possible like a law review but with student editors from various disciplines." Schwartz went on to edit the *Review* for three years.[40]

In his later career, Schwartz himself moved closer to law and further away from mainstream sociology. He became the dean at the State University of New York at Buffalo Faculty of Law, serving from 1971 to 1975—hosting the first national LSA meeting as well. While perceived by many in traditional legal circles as a "sociologist" trying to run a law school without a law degree, his arrival to a law school with strong scholarly ambitions also reflected the legitimacy granted to sociological inquiry in law—at least at that moment. He helped to recruit in a way that made Buffalo one of the centers for law and society—and later Critical Legal Studies—scholarship.

Victor Rosenblum, another of the important figures at Northwestern, also came to law, but his path was through political science. As an undergraduate at Columbia, he became fascinated by political science. Upon graduation in 1945 from Columbia, however, he decided to begin his career in political science by studying law, also at Columbia. What he found was that law school was

[39] "Harry was doing spade work that was very important. He was bringing together a sociologist and a lawyer for lunch. And he did it over and over. He spent an enormous amount of time doing that. He was a builder of relationships between these two fields."

[40] He was followed by Samuel Krislov and then Marc Galanter, who was recruited to the State University of New York at Buffalo by Schwartz.

not as exciting intellectually as undergraduate education, "but it was like an obstacle that just had to be met in order to get the law degree and then get on." He found a few interesting courses and instructors, but, on graduation, "I was still motivated by the drive to get on with understanding the real world and to get out and do graduate work in political science." The expertise of political science, he thought, would give him a tool for building a career to help to shape and reform the postwar world.

He went to graduate school in Berkeley, where, he reported, he was eyed with suspicion by both sides. He nevertheless was treated with some respect in the law school world as well as in the political science department. He began teaching in political science at Berkeley, worked for one year in Washington, DC, studying administrative reform, and then was offered a position by his former mentor at Columbia, Richard Snyder, the new chair of the Northwestern political science department. He began at Northwestern in 1958, gradually built ties with the law school, obtained a joint appointment from 1963 to 1968, and eventually joined the law school full time.

From his perspective, his acceptance in the law school legitimated his career in important respects: "This was the high point of my life and something that I sort of dreamed about but had not really thought was possible." What he sought initially from political science, namely, scholarly work in matters of social policy and governance, he found in Law and Society and then in law. Rosenblum became not only the President of the Law and Society Association but also the President of the Association of American Law Schools.[41]

There has continued to be a very active law and society community in Chicago, and the Northwestern political science and sociology departments have maintained a strong presence in the LSA. Political science at Northwestern may in fact be closer to LSA than any other major political science department. The law school, however, with a few well-known exceptions, never moved very far in the direction of combining law and social science. Wisconsin and Berkeley, each for very different reasons, managed ultimately to develop a critical mass of law and society inside the law school, and also to find ways to sustain the tradition.

[41] Through Rosenblum and Jack Heinz, Northwestern later intersected with the American Bar Foundation—which moved (with the ABA) from Chicago's Hyde Park community to the Northwestern Law School building in 1984. Currently there are three law professors, two sociologists, and two political scientists from Northwestern with joint appointments at the ABF. There are three economists, one sociologist, and one anthropologist from the University of Chicago with joint appointments. There is also a psychologist/lawyer appointed jointly with the University of Illinois–Chicago.

James Willard Hurst's Wisconsin

Wisconsin, in contrast to Northwestern, did not have to create anything new with its Russell Sage Foundation grant. It already had a thriving interdisciplinary community that was centered in the law school. With—and at times against—Berkeley, Wisconsin provided a key early intellectual center for the production of research in law and social science. Wisconsin, as we shall see, also had the most direct link of the four centers to the social science strain in Legal Realism.

Our account of the activities in Wisconsin, the third Russell Sage Foundation grantee we discuss, will be seen through the stories of Harry Ball, a sociologist and key founder of the LSA, and Stewart Macaulay and Lawrence Friedman. Friedman and Macaulay are both past presidents of the LSA, and they are also products of what can be characterized as James Willard Hurst's Wisconsin.

Wisconsin's connection to legal realism provides the background for Hurst's role. The dean at Wisconsin Law School during the 1930s was Lloyd Garrison, who had been involved in the Legal Realism movement at Yale (and who went on to be one of the named partners in Paul, Weiss, Rifkind and Garrison in New York). In 1937, he hired Willard Hurst, a graduate of Harvard Law School who had just clerked for Justice Brandeis following a year working with Felix Frankfurter at Harvard.[42] Interestingly, Hurst had found his legal education at Harvard Law School to be unintellectual and "conceptual," almost untouched by Legal Realism. Wisconsin was very different. As Hurst stated in an interview with Dirk Hartog (1994:379),

> [I]t was apparent right from the very outset that this was a law school unlike most law schools, that did not exist in isolation from all the rest of the university. It was just taken for granted that we would have working contact with the economics department, with sociologists, only later with historians, because legal history was still regarded as not really a subject. But economics and sociology, it was taken for granted that people there were interested in the law school, and the law school was interested in them.[43]

[42] Hurst had also been recruited by the law school at Buffalo, where the chair of the hiring committee was David Riesman, who later moved to sociology. Riesman, who clerked for Brandeis the year before Hurst did, complained of the increasing preoccupation of the legal academy with the Supreme Court after the Court's attacks on the New Deal. He later described Hurst as one of the "handful of law professors" in the late 1940s who shared Riesman's interests in other aspects of the law (Riesman, in Berger 1990:49). The year after Hurst went to Wisconsin, Hurst was offered a job at Yale Law School, but he turned it down because of his devotion to Garrison and the enterprise at Wisconsin. Later Hurst's key ally at Wisconsin was Jake Buescher, an early scholar in environmental law.

[43] Of course, the links did not start with Garrison. John R. Commons in the economics department in the 1920s published his *Legal Foundations of Capitalism* (1924), and the book notes the help he received from William Page of the Wisconsin Law School, in

Hurst collaborated with Garrison in developing first-year teaching materials for a course on "law in society" (Hartog 1994: 372).[44]

We begin the more LSA-centered story with Harry Ball, who was responsible for activities under the 1962 Russell Sage grant to Wisconsin. Ball served in the army in World War II as a battalion sergeant major of an African American battalion. He reported that the battalion had 71 white officers, 6 white enlisted men, and only 1 black officer, the chaplain. Probably an interest in race relations helped him later choose sociology for graduate school. His mentor in graduate school in sociology at Minnesota was Arnold Rose.[45] Ball described Rose's interests as in "race relations and the possibility of law," not the "sociology of law, as such." Ball did his doctoral research on the administration of rent control in Hawaii, which also involved him in questions of race relations.

Ball then took a teaching position in sociology in Pomona in 1956, and from there participated in seminars about race relations, desegregation, and law.[46] While at Pomona, he applied for and received a Law and Behavioral Science Fellowship at the University of Chicago Law School.[47] There he met Frank Remington, professor at the University of Wisconsin (see Melli 1997), and Lloyd Ohlin, both of whom were active with the Ford Foundation–sponsored Survey of the Administration of Criminal Justice, undertaken by the American Bar Foundation (discussed below). They recruited Ball to Wisconsin in 1960 to work on some aspects of the criminal justice project. Because of Hurst's influence, Wisconsin already had an established law and social science community and even a research identity.

Among others, Ball noted Willard Hurst, Stewart Macaulay, and Lawrence Friedman of the law school,[48] and Herbert Jacob

addition to help from Arthur Corbin of Yale Law School and Wesley Mitchell of Columbia. The Progressive tradition in Wisconsin is no doubt closely connected to the development of the law school in the state capital, Madison.

[44] It was a "historically-oriented course in which we undertook to trace the development of the law of industrial accidents from common law to the modern statutes and administrative regulations" (Hartog 1993:378). The picture is of law being used as a progressive tool. Carl Auerbach used a variation of the materials to teach undergraduates in the 1950s in Wisconsin. In 1956 Auerbach and Samuel Mermin published a revision of the "Law in Society" course materials entitled *The Legal Process: An Introduction to Decision-Making by Judicial, Legislative, Executive and Administrative Agencies.*

[45] Rose was at the time active in the Society for the Study of Social Problems, which was publishing a number of articles that focused on law in the late 1950s and early 1960s.

[46] He participated in a workshop in Madison in the late 1950s, sponsored by the Social Science Research Council and designed to bring social scientists and the law together.

[47] The fellowship was administered by Harry Kalven at Chicago as part of the general activity funded by the Ford Foundation. Kalven of course worked on the jury research with Hans Zeisel. It is important again to emphasize that, while we do not treat it separately, the University of Chicago was very important to the emerging community of law and social science scholars in the 1950s.

[48] Who he described as the new "identified Hurstian."

(e.g., *Justice in America: Courts, Lawyers, and the Judicial Process,* 1965) of the political science department. Ball became a lecturer in sociology while working on the ABF project. With respect to the application to the Russell Sage Foundation, Ball reported, "in consultation with Slats [Cottrell of Russell Sage] and with Willard [Hurst] and what not, we sort of designed a three-year proposal for several hundred thousand dollars." Ball was to be the administrator of the program. "The way we designed the thing was to pair off social scientists with lawyers, depending on what their interests were." Wisconsin, in his words, "was moving faster than any place else" at that time. The second phase of the project was to buy scholars' time for research and to train students from law and from social science.[49]

The successes of the program[50] made it sensible to try to build a new association. "Red [Schwartz] and I got the idea of starting an organization, and I think we were the original two."[51] Ball then became very active in 1964 in working to set up the LSA organization.[52] Ball's early activity was limited, however, because he left Wisconsin in January 1965 to move to Hawaii. Cottrell reportedly had pushed the university to grant tenure to Ball in sociology, but the university resisted. Ball's relatively marginal position in sociology probably made it difficult to bargain for tenure. Ball decided to move on, and he stayed in Hawaii for the remainder of his career.

Stewart Macaulay graduated in 1954 from Stanford Law School, "where the breath of fresh air was Realist and we got very little of it." He then clerked for a judge before becoming a Bigelow Fellow at the University of Chicago Law School in the academic year 1956–57. At Chicago, in a pattern we have seen several times, he encountered some of the activity proceeding in law and social science, including the Jury and Arbitration projects at the University of Chicago and the Survey of the Administration

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49 "I asked Willard, you know, on the law side, how do I recruit people? And he said, ignore the law review and go after the great undistinguished middle. Because, he said, what they are is very, very talented people who simply aren't that motivated to be lawyers, but they are interested in law, but they don't want to be lawyers, and they also don't really want to be political scientists."

50 Lawrence Friedman and Jack Ladinsky, for example, paired for "Social Change and the Law of Industrial Accidents" (1967).

51 Also "somehow Red and I got the idea of convening a breakfast meeting . . . at the ASA."

52 The early initiative in Wisconsin also meant that the original executive functions were carried out there. Jack Ladinsky, a sociologist, and Joel Grossman, a political scientist, were the leading contributors to the office in Wisconsin. As mentioned earlier, the office moved to Denver when Wallace took over those aspects of the LSA. It is also important to note that while political science was not well represented on the Ad Hoc Committee, Herb Jacob, then of Wisconsin, was added in 1965. Jacob took a leading position in building within political science. See Herb Jacob to Harry Ball, in Ball correspondence, 6 May 1966 (archived at ABF). The *Newsletter* of June 1965 noted Jacob's role and the recruitment of political scientists.

of Criminal Justice at the ABF—all of which were funded in the early 1950s by the Ford Foundation.

Macaulay accepted a teaching job in Wisconsin, however, not because of its interdisciplinary tradition, but rather because that was the best teaching offer he had. At Wisconsin, the pull of Willard Hurst moved him closer to the sociology of law. He came to sociology, as he has noted, with some prejudice from his undergraduate days: "it was a football player's major." But Hurst had grants from a series of foundations at the time, most notably Rockefeller, based on the notion that, after World War II, "law professors . . . need history, they need economics, they need these kinds of things." Hurst, at that time, according to Macaulay, "simply knew everybody, and he had this block of money, and I remember getting a semester and a summer where I just did reading, worked my way through Talcott Parsons." Hurst's vision matched well with Macaulay's predisposition to criticize legal formalism.

Hurst's contacts figure in Macaulay's famous article on "noncontractual relations in business." The substance of the article, published in 1963, was inspired by his father-in-law, a retired general manager of Johnson's Wax in Racine, Wisconsin, who was skeptical about the importance of the formal law. Racine, Macaulay noted, had big businesses, but they were also still "family corporations." As is well known, Macaulay's interviews confirmed his impression that the formal law of contract did not play a very important role in the business world he studied. When Macaulay finished the paper, Hurst "arranged the grand tour and I had an hour with Talcott Parsons and I had what turned into an afternoon with Robert Merton." Merton asked for a draft, invited Macaulay to be on a panel on "applied sociology" at an ASA meeting, and encouraged submission to the *American Journal of Sociology,* "which promptly rejected it." Macaulay by then knew something about sociology and methods, but samples and statistical methods—not his interest in any event—seemed to him to have little to do with the problem of getting CEOs to talk about their actual experiences.

Merton learned of the rejection of the article, helped Macaulay revise the paper, and changed the title. He defined it as a "preliminary study" in part to avoid some of the methodological strictures. He advised Macaulay to submit to the *American Sociological Review,* and it was accepted and published in 1963. At the time, however, there was no real audience for the research. A social scientist commented that Macaulay was "wasting all that space a real sociologist could have used," and from the perspective of law schools in Macaulay's terms, "I might as well have published in *Sports Illustrated.*" Merton, however, who already knew Hurst, was evidently willing to invest in law and in the social sci-

ence network around it at that time. He and Hurst could find common ground in an alliance against the legal establishment.

Macaulay was not active in the formation of LSA, but he participated from the beginning. He also produced, with Lawrence Friedman, one of the early sets of materials on *Law and the Behavioral Sciences* (published in 1969). After Ball left Wisconsin, and before Friedman went to Stanford, Friedman and Macaulay discovered that each had been asked independently to teach the cross-listed sociology of law course that Ball had taught. They decided to team up. They sought but were unable to get the materials that sociologists Red Schwartz and Jerome Skolnick were putting together elsewhere (published in 1970), so they decided to produce their own.

In one sense, this exchange can be taken as an example of competition between lawyers and sociologists, but each pair was also staking its claim to the terrain of law and society. Seeking to give the Friedman-Macaulay text scientific credibility, for example, Macaulay said, "the first book has an awful lot of the trappings of structural functionalism, at least, the vocabulary." The law professors tried to link to the grand sociological theory associated especially with Talcott Parsons. Macaulay added, however, "I don't think either of us believed it that much." The competing texts thus have different emphases, but they are also rather similar, helping, therefore, to build a field of law and society.

Lawrence Friedman also illustrates the power of Hurst in shaping careers at that time. Friedman graduated from the University of Chicago Law School in 1951 at the age of 21. Because of implicit family expectations, he felt he needed a profession, and the profession he chose was law. However, he said, "the idea of getting a Ph.D. and becoming a professor . . . wasn't part of my world." He found some professors he liked, such as Harry Kalven and Max Rheinstein, but he "hated" law school: "I just found it dull, unintellectual, mindless." Further, "the formalism and normativity just struck me as jarring. There had to be something different, better." After graduating, he decided to stay another year working with Rheinstein: "I wanted to be a scholar." After two years in the army, he practiced law "to earn a living." He had wanted to teach, "but the U of C was extremely unhelpful and obviously didn't think I was qualified. I wasn't one of their pets or stars."

He moved to teaching after a friend from law school, Henry Manne, then teaching at St. Louis University, got a visiting offer to go to Wisconsin and needed to find a replacement. Friedman stayed in St. Louis for four years, writing traditional doctrinal articles, but continuing his interest in legal history. He was happy, therefore, that Manne introduced him to Willard Hurst. In 1959, Hurst gave him " a small amount of money to come up in the summer and work on one of a series of projects that he was di-

recting in Wisconsin legal history." Friedman joined the Wisconsin faculty in 1961.

The Hurst influence was then tremendous. At Wisconsin, Hurst "dominated" the law school, and "he was pushing what we would now call law and society." Indeed, in Friedman's retrospective account,

> [A]s far as I am concerned, Willard Hurst, although he's primarily a legal historian, is the founding father of law and society studies because his legal history is sociolegal history. . . . Willard Hurst didn't say you have to do history. There were people who were interested in history, but it was the approach—the approach of treating law as a dependent variable, treating it in context.

Hurst encouraged Friedman—and many others—to write about Wisconsin, which led to the publication of *Contract Law in America* in 1965.

Besides Hurst, moreover, there was a group including Harry Ball, Joel Grossman (*Lawyers and Judges: The ABA and the Politics of Judicial Selection*, 1965; *Law and Change in Modern America*, 1971, with Mary Grossman), Joel Handler (*The Lawyer in His Community*, 1967; *The "Deserving Poor,"* 1971, with Ellen Jane Hollingsworth), Stanley Katz (*Colonial America*, 1971), Stewart Macaulay, Jack Ladinsky, Frank Remington, and others: "it was just a wonderful atmosphere." The perspective of the law school was that "we know that there are other schools and they have a lot more prestige and money, but we know that we're doing the work that's valid and they're just horsing around with formalism." Unfortunately, in Friedman's opinion, "I thought the truth was bound to spread, but I turned out to be wrong." Although Friedman has maintained his commitment to this critical perspective, his scholarship has brought him recognition in the elite of legal education. He joined the law faculty at Stanford in 1968 and has won such prizes as the Order of the Coif Triennial Book Award. Still, as he suggests, his sociological and historical work makes him an outsider in a law school world whose center of gravity appears always to be "traditional legal scholarship."

The Wisconsin tradition built around Hurst, which can be characterized as that of "law as the dependent variable" or, perhaps more accurately, "law in context," provides one enduring strain in the field of law and society. It is quite strong in the historical writings of Friedman and the writings of Macaulay on noncontractual relations, in particular, and also in the approach of Joel Handler to welfare reform, legal services, and public interest law. To take an example from the early days of the War on Poverty, Handler set forth the proposition, identified with Yale's Charles Reich, that the legalization of welfare and provision of due process hearings would be sufficient to deliver concrete gains for welfare recipients (see Handler 1966). In Handler's

criticism of the faith in legal formalism, the idea was that a careful examination of social context could make sure that law did deliver better substance. In the writings of Hurst and many of these and other followers, therefore, the idea that law is a dependent variable was not inconsistent with idealism or with an active role for law (e.g., Hurst 1956). Educated lawyers aware of social and economic contexts could make law a much more effective instrument for social progress.

Unlike Denver and Northwestern, although each for different reasons, Wisconsin was able to maintain a critical mass within the law school, nourished by those outside. It was able to sustain a law and society tradition that self-consciously offered a different model than that found in the elite law schools—to which Northwestern (and many others) remained oriented.[53] The group also identified with the LSA, with Friedman, Macaulay, Handler, Jacob, and Marc Galanter, who came later, all serving as presidents, and Joel Grossman serving also as editor of the *Review*. It was usual to hear in the 1980s that more Wisconsin law faculty came to LSA meetings than attended faculty meetings. Madison could be seen as the capital of the LSA in the 1970s and early 1980s.

Berkeley, Sociology, and the Center for Law and Society

The Russell Sage Foundation grant to establish the Center for Law and Society at Berkeley in 1960 was the first of the four Russell Sage Foundation grants aiming to make law take into account social science and social scientists. The establishment of the Berkeley Center began a process that continued through the closing of the School of Criminology and the establishment of the Jurisprudence and Social Policy program at the law school in the late 1970s. We shall concentrate on the early years, seen especially through the accounts provided by Phillip Selznick, Sheldon Messinger, Laura Nader, Philippe Nonet, and Jerome Carlin. Selznick, the key figure at that time, recruited the others, as well as Jerome Skolnick, another person who is central to the history of law and society (and criminology). Messinger, however, was more involved in the Law and Society Association than the others.

Selznick attended City College in New York in the 1930s. He majored in sociology while encountering also some "realist" legal philosophy through Morris R. Cohen (e.g., Cohen & Cohen 1930; Horwitz 1992). He went to graduate school at Columbia 1938–42, thinking of moving into social work. He met such sociologists as Robert Merton and Robert Lynd, and he became academically more ambitious. Drawing on Robert Michel's studies of

[53] It is likely as well that the fact that graduates of the University of Wisconsin Law School did not have to pass the state bar exam in order to practice law in the state took off some of the pressure to conform to the model of other law schools.

political participation, Chester Barnard's pioneering work on organizations,[54] and a course from Merton on the "analysis of social institutions," Selznick used an SSRC Fellowship to do a dissertation on the Tennessee Valley Authority. The resulting book attracted considerable attention within scholarly circles.

Meanwhile, Selznick in 1947 had taken a position at the University of California at Los Angeles in a department that combined anthropology and sociology. While at UCLA, which was building a distinguished group (e.g., Donald Cressey, Leonard Broom), he also worked at the RAND Corporation on "communist strategy and tactics" (*The Organizational Weapon: A Study of Bolshevik Strategy and Tactics*, 1952). The work he produced further built his reputation in organizations, which was central in the "institutionalism" he helped to pioneer in sociology.[55]

Selznick moved to Berkeley in 1952, and he took to Berkeley a growing interest in law. According to him, for "obscure reasons," he "began to understand the study of formal structures of organizations was like the study of legal institutions." There were similar issues, such as how the "formal and informal" structures related. His undergraduate courses from Morris Cohen, an important "realist" legal philosopher (Horwitz 1992) who raised such issues as the "social basis of contract," informed his legal interest. From another perspective, he felt that he would not be happy if he "stuck to organizational studies," producing a "series of case studies." He wanted a "broader theory," and he was drawn to jurisprudence as a place where he could link his organizational interests to that kind of theory.

The "sociology of law" existed, but Selznick did not find it to be satisfactory. He took some classes in law and spent the academic year 1956–57 at the University of Chicago, where he could see that there was interest in law and social science—and that the Russell Sage Foundation was getting involved. In a chapter in a book edited by Merton, Leonard Broom, and Leonard Cottrell, entitled *Sociology Today* (1959), he was given the task of describing the sociology of law in a section on the sociology of institutions (including religion and other topics). Drawing on many sources, including natural law, he argued that "the sociology of law could not reach its full potential unless it confronted the major problems of jurisprudence." He believed that the Europeans had demonstrated the importance of the sociology of law for particular problems, but he sought to add another dimension.

While at the Center for Advanced Study in the Behavioral Sciences, established by Ford in the late 1950s, he began to negotiate with Leonard Cottrell to establish the Center for Law and Society. Russell Sage provided enough funds to hire a full-time

[54] Barnard was himself an executive and the author of *The Functions of the Executive* (1938).

[55] See the comments of Arthur Stinchcombe (1997), one of his students.

vice-chairman, and he recruited his former student at UCLA, Sheldon Messinger, to fill that position. Within the university, he said, approval was not very difficult. The "idea seemed obvious," designed to fill "a hole here in academic life." The purpose was twofold: first, to allow social science to draw on the "history of thought on law," which is about "how a society is organized"; and, second, to help solve the problem that "so many problems of the legal order need to be decided by mobilizing resources outside the legal order." More specifically, the focus of the Center was on graduate students and dissertation research.

Selznick around this time was chair of the sociology department, and for many years he co-authored a popular textbook on sociology that included materials on the sociology of law (with Leonard Broom). Berkeley's sociology department contained many "big names," including Erving Goffman, Richard Bendix, Kingsley Davis, Neil Smelser, David Matza, and Seymour Martin Lipset, and according to Selznick, the group got along very well. They all did substantive work, and they attended to theory without anyone being "only a theorist." Within the law school, there was some support for the Center, in particular from Geoffrey Hazard (who had spent a year studying political science at the University of Chicago) and Caleb Foote, but it was a gradual process of getting the law school to take the Center "seriously."[56]

Selznick believed that in the early 1960s the University of Wisconsin law school was "much more in tune" with the Center's approach. Scholars at Wisconsin recognized the importance of social science and social scientists. In the early years, he reported, lawyers tended to look to social scientists "only for quantitative analysis," thinking "we'll define the problems," and we do "not want the theories" of the social scientists. A new cohort of law professors, led by Sanford Kadish, began to move much closer to the Center later in the 1960s.[57]

Selznick's work in the 1960s culminated in *Law, Society, and Industrial Justice* (1969), written in collaboration with Philippe Nonet and Howard Vollmer and published by the Russell Sage Foundation. Because of Selznick's importance in defining the Berkeley Center, it is useful to relate the book to Selznick's background and position. Not surprisingly, the approach differs from the Wisconsin approach of law and context—starting with law and drawing on social science to provide the social and eco-

[56] Interestingly, Hazard left the law school in 1964 to come to the University of Chicago and the American Bar Foundation because, in his words, "I had been quite restless at Berkeley to say the least. I wanted some new kind of challenge and adventure because I had concluded that Berkeley was not charting its course in the direction of becoming the best law school in the United States, which is what I had thought they were trying to do" (Hazard 1975:14 April 1975, pp. 18–19).

[57] Messinger reported also that the law school's interest initially was "largely formal." Kadish has written extensively on issues of criminal justice (e.g., *Discretion to Disobey*, 1971).

nomic context. Instead, Selznick and his collaborators examined the general institutional setting of labor management relations, asking how "emergent law"—including due process—could be brought to and realized in the industrial setting—as "industrial justice." In parallel with Selznick's own move from institutionalism toward legal issues, a key question for the book was "what it means to 'legalize' an institution, that is, to infuse its mode of governance with the aspirations and constraints of a legal order" (1969:8).

Sheldon Messinger—whose own approach was linked strongly to the emerging criminology of the 1960s—was Selznick's first recruit to be the day-to-day manager of the Center. Messinger had attended the University of Chicago before and after World War II, then went to Los Angeles to marry prior to finishing his Bachelor's degree. In Los Angeles he worked selling whiskey before deciding to go to UCLA to finish his degree, planning to study philosophy. A lecture by Donald Cressey on "social problems" captured his interest, indeed building on Messinger's earlier exposure to criminal justice issues by Joe Loman at Chicago. Loman was later to be Sheriff of Cook County (Illinois) and then chair of the Berkeley School of Criminology. Messinger completed his B.A. at UCLA in one year and continued in graduate school, where he was in the second or third group produced by the relatively new UCLA department. After doing research for his dissertation on the California prison system, he took an SSRC fellowship to teach sociology at Princeton beginning in 1956 (where he met, among others, Gresham Sykes). During his second year at Princeton, he was invited—no doubt through his former professor Selznick, by then at Berkeley—to the Center for Advanced Study in the Behavioral Sciences in Palo Alto. He accepted and, deciding to try to stay in California and finish his dissertation, secured a position in Berkeley working on an NIMH grant to a psychologist, Harold Sampson, to study "schizophrenic women." He began the work in 1957 and continued work on it until 1961. Selznick then offered him a three-year position at the Center.

In addition to Selznick, Messinger, and Foote, the key members of the Center included Jerome Carlin (who came in 1963) and Jerome Skolnick (who came in 1962), both of whom joined the sociology department with Center affiliations, and Philippe Nonet, then a doctoral student in sociology but already treated almost as faculty.[58] Messinger and Carlin teamed up for a well-known project on civil justice that Jerome Carlin (discussed below) initiated. It initially involved also Geoffrey Hazard, but when Hazard left for the University of Chicago and the American Bar

[58] Nonet came from Belgium in 1961 to study with Selznick, whose article on the sociology of law with attention to natural law had attracted him. He joined the Center and sociology as a faculty member in 1966.

Foundation, they proceeded without him. The project resulted in the well-known article in the first issue of the *Law & Society Review* on "Civil Justice and the Poor" (also with Jan Howard). The article described the unequal access to law by the poor and helped make the case for the redistribution of legal services. It fit very well with the War on Poverty and the ferment that was building around new legal services programs.

Carlin, now an artist in Berkeley (since 1970) and the founder of San Francisco Lawyers for the Arts, brought an especially rich background to the Center. The son of a named partner in a leading Chicago law firm, Sonnenschein, Carlin, etc., he grew up in Chicago interested especially in painting. In the postwar era of Abstract Impressionism, he decided to go to graduate school after his B.A. from Harvard in 1949. Following an interest in "Social Relations" from Harvard, he chose to join the sociology program at the University of Chicago.

Sociology, he stated, was a place of "energy," "coming alive from people from the disciplines," without formal training, but developing a "new way of looking" at the economic and political system. He remembers also that he was interested in lawyers as part of that focus, thinking that lawyers could "play a critical role" and perhaps also "never quite sure what his father did." He decided that to gain access to study lawyers, he ought to get a law degree. After completing his Master's degree at Chicago, therefore, he attended Yale Law School.

He returned to Chicago, where his advisor, Edward Shils,[59] sought to shift Carlin's trajectory. He encouraged him to go to Frankfurt to study critical theory with Horkheimer and Adorno. Carlin did so but came back in 1956, realizing he did not want to work on "the theory of social science." He decided the easiest way to begin to study lawyers was to focus on solo practitioners, and the result was the pioneering account of that world, entitled *Lawyers on Their Own* (1962).

He then was recruited to Columbia for the Research Center of the Bureau of Applied Social Research, where he had many more resources at his disposal to study the legal profession in New York. There he began another major work, *Lawyers' Ethics* (1966, published by Russell Sage), and he was recruited to Berkeley to the Center and the sociology department. Beginning in 1963 at the Center, he sought to do a project related to his growing belief, documented in *Lawyers' Ethics,* which he was then completing, that "the legal system reinforced the class system in justice." Carlin worked initially with Hazard as well as Messinger and Jan Howard (then a graduate student), but without resources to do original research, the team produced the series of essays on

[59] Who with Max Rheinstein of the University of Chicago Law School had translated Max Weber's *Economy and Society* (1954).

"class justice" mentioned above. The Russell Sage Foundation also published a book from this project (Carlin, Howard, & Messinger 1967).

Carlin's later activities merit attention. He elected to leave the academy at the time of the creation of the federal Office of Economic Opportunity's legal services program and compete against the San Francisco Bar Association for the OEO grant to San Francisco. Carlin was successful and for three years directed the activist San Francisco Neighborhood Legal Service Foundation. SFNLF was widely known for its innovations with neighborhood law offices (Carlin 1970), taking Carlin's theoretical approach and translating it into a new role for lawyers. Carlin left SFNLF in 1970 with the presidential election of Richard Nixon, a vocal critic of activist legal services, and devoted most of his attention to his ventures in the art world.[60]

Let us turn back to the Berkeley Center and its work. Selznick and Messinger originally, and Skolnick soon after, were members of the Ad Hoc Committee on Law and Society. It appears that Messinger, perhaps in part because of his role as the Center's full-time administrator, was the most active of the group in the establishment of the Law and Society Association. He participated in the early breakfast meeting with Ball, Schwartz, and Yegge, organized a survey (with Robert Alford) of persons potentially interested in becoming members, and remembers his own skepticism (*contra* Red Schwartz) about whether the LSA could become anyone's "primary association" in place of a disciplinary affiliation. By the late 1960s, however, Messinger's other activities had led him to reduce his LSA commitment.[61] Indeed, for whatever reasons, despite the early involvement, the Berkeley group did not participate as actively in LSA over the years as did the Wisconsin group.[62] One interviewee from Berkeley said that members of the Berkeley group may have felt a certain "snootiness" about the "depth" of law and society studies. Berkeley generally and Nonet and Selznick in particular—as suggested above—have taken a more "philosophical" and "jurisprudential" position than that which characterizes much of LSA.[63]

[60] Carlin also was an early board member and stimulus in the creation of Public Advocates, a pioneer public interest law firm in San Francisco.

[61] In particular, he finished his dissertation in 1969 and took a tenure-track position, then chair, in the School of Criminology. In the 1980s he became active again after the establishment of the Jurisprudence and Social Policy program. He was elected to the LSA Board of Trustees.

[62] There are many recent exceptions, including, e.g., Malcolm Feeley and Robert Kagan, especially as persons close to LSA and Wisconsin were recruited to Berkeley (recently, e.g., Lauren Edelman—in addition to Feeley), and indeed the pattern has been changing. Berkeley is now one of the leading producers of young scholars who gravitate to the LSA—among them Marianne Constable, Robert Rosen, Jonathan Simon, Susan Sterett, and Victoria Woeste. As suggested below, Berkeley gained in the late 1970s from the demise of the School of Criminology.

[63] Nonet said after 1981 that he had decided that social science was a "dead end."

For whatever reason, of these two early scholarly centers, as noted above, Madison has produced the individuals who, until recently, typically became presidents of the LSA. To those in Berkeley, it may have appeared that Wisconsin was trying harder to compete with Berkeley than Berkeley with Madison. Or it may have been that the center of gravity of the LSA shifted toward "law in context" and away from the jurisprudential and institutional concerns that were especially important to the founding sociologists. In any event, while the Berkeley intellectual influence has always been present, the Wisconsin approach received more attention in the LSA in the 1970s.[64]

Also in Berkeley, but less oriented toward the Center, was Laura Nader, who was one of the few women involved in the early years of LSA and also a creator (or re-creator) of the subfield of legal anthropology. Nader graduated from Wells College in New York in 1952 with an interest in Latin America. After reading a book on anthropology, she decided to pursue it as a career and enrolled in graduate school at Harvard. At that point, she had no particular interest in law, but it was clearly in the family. Her brothers, both in law school,[65] encouraged her to "collect some law cases" while she was doing fieldwork in Mexico. She found some "excellent material" which she used for her dissertation, completed in 1961.

She joined the Berkeley anthropology department in 1960, and by then her specialty was in the anthropology of law—which she was helping to make prominent. She co-taught a course at the law school with Herma Hill Kay, who began teaching that year as the first woman law professor at Berkeley. She also interacted somewhat with the Center for Law and Society, and she invited Messinger and Selznick to the conference she organized while at the Center for Advanced Study in the Behavioral Sciences in 1964. The first major conference on law and anthropology brought together Leopold Pospisil, E. Adamson Hoebel, and "everyone" who then had some identification with law and anthropology. As a testament to the excitement it generated, the book produced from the conference (Nader 1969) sold numerous copies for the American Anthropological Association. Nader also helped promote the LSA by helping organize a meeting of the LSA group in conjunction with a meeting of the American Anthropological Association.

Working to develop this emerging subfield of legal anthropology, she organized her students into the Berkeley Village Law Project, which proceeded despite the fact that Nader's very junior status hindered efforts to find external funding. The project

[64] From this early Berkeley cohort, we can point out the influential criminal justice scholarship of Jerome Skolnick and books like Nonet and Selznick's *Law and Society in Transition: Toward Responsive Law* (1978).

[65] Ralph Nader was graduated from Harvard Law School in 1958.

focused on villages in part because "law and development" agencies were concentrating on the major urban areas, neglecting other parts of the countries. The project is known for producing many recognized names in the anthropology of law, including Klaus Koch,[66] Barbara Yngvesson, Philip Parnell, Harry Todd, June Starr, and Michael Lowy. The project's focus on "disputing" influenced law and society as well as legal anthropology. Legal anthropology continued to be a very live field into the 1970s. Laura Nader herself was invited to numerous legal conferences, especially to promote alternatives to litigation. She even spoke at the famous Pound Conference in 1976, which launched the ABA's and the judiciary's love affair with alternative dispute resolution.

The Law and Society Center in Berkeley did not make a central place for legal anthropology or for Laura Nader, and she also did not remain very active in the LSA. Indeed, according to Nader, the creation of LSA contributed to her problems with anthropology. She recognized that she was training students but that anthropology had no place for them. Mainstream anthropology emphasized "kinship, language, politics" and other subjects, not law, and the number of jobs generally was declining, making it harder to establish a new area. She noted that as David Riesman had observed about sociology, anthropologists generally tended to shy away from law—perhaps in "awe" or perhaps from "not knowing enough."

She hoped the LSA would help the students present their papers and at the same time build legal interest in anthropology. Unfortunately, the students and new legal anthropologists tended, in her opinion, to make LSA their only affiliation, neglecting to build up the subfield *within* anthropology. They "stopped coming to anthropology." The LSA anthropologists, she also observed, tended "not to work abroad," which perhaps also pulled them away from mainstream anthropology. Legal anthropology "was halted," becoming "marginal in anthropology," and indeed "marginal in law" (cf. Collier 1994). Nader's writings have tended to emphasize the need for law (e.g., *No Access to Law*, 1980), but she even stopped teaching the anthropology of law.[67]

The problem that Nader noted in anthropology had its analogue for the sociologists close to the Center for Law and Society. While Selznick, at least for a time, seemed to be involved as much in sociology as in law, he recognized early that the Center's ambition could not be realized without getting "closer to law."[68] Eventually, as discussed below, the Center group moved into the law school with the creation of the Program in Jurisprudence and

[66] Who a few years later trained Donald Brenneis, Carol Greenhouse, and George Marcus at Harvard.

[67] For five years. She has recently been teaching the course again.

[68] Selznick also notes that sociology had "lost interest in law."

Social Policy (JSP) in the late 1970s. The relations with sociology of those Selznick recruited to the Center make clear the drift apart—toward law on one side, away from law on the other.

With respect to sociology, Jerome Skolnick left Berkeley without tenure in 1967, moving to Denver, the University of Chicago, and the University of California, San Diego, as a tenured professor before returning to Berkeley in the School of Criminology in 1970.[69] Philippe Nonet stayed formally with sociology, obtaining tenure in the department, but he was never much interested in the work of the other Berkeley sociologists, except Selznick and Bendix. The others "may have been good by the standards of social science," but they had "very limited philosophical educations": few people had the "intellectual stature of Selznick." Sociology, furthermore, was fragmented—"more a confederation than a community." For many reasons, therefore, Nonet's life at Berkeley was "based at the Center, hardly at all in the department." Carlin's perspective is a variation of the same phenomenon. He had a sense of "pulling away" from the sociology department where he was half-time, because to him it tended to be "too broad" and "philosophical" or "too narrow" and "statistical."

It is understandable that when the university decided to kill the School of Criminology because of its political orientation[70] and to focus on law and society, the law and society program was placed in the law school, now under the deanship of Sanford Kadish. The law school was of course safer politically, and the trajectory of Selznick, Nonet, and the others was moving in that direction. What was left of the criminology school was merged in 1977 with the Center for Law and Society under the auspices of the new JSP program. Selznick and Nonet went two-thirds to the law school (in the specially designated JSP lines), while Messinger and Skolnick went full time.[71] The law school insisted on reviewing the credentials of all but Selznick; they were all able to pass muster. That is not to say that the social scientists moved to the core of the educational and scholarly enterprise at Berkeley. The Berkeley group was bound to be somewhat marginal in a law school that, unlike Wisconsin, remained dominated by the legal mainstream. Sociology, needless to say, drifted even further from law without the active presence of Selznick and Nonet.[72] Still, the legacy of the origins in sociology remains evident, even—somewhat paradoxically—in the jurisprudential component of the JSP program.

[69] In 1968–69 Skolnick was also the director of the President's Commission on the Causes and Prevention of Violence.

[70] Gilbert Geis tells some of the story in Blomberg & Cohen 1995.

[71] Bernard Diamond became half time at JSP and half time in psychology.

[72] Meanwhile, the subfield of criminology, although not our focus here, gradually built its own autonomy as an interdisciplinary group.

The Walter E. Meyer Research Institute of Law

The preceding sections provide the basic detail of the story of the establishment of the Law and Society Association. The recent publication of David Cavers's history of the Walter E. Meyer Research Institute of Law, edited by John Henry Schlegel (1997), helps provide the more general story—and especially the law school context. There is considerable overlap with the history of the LSA, including that of the social scientists, but the Meyer Institute should also be seen as a law-oriented competitor to the sociology-oriented efforts of the Russell Sage Foundation.

David Cavers was the prime mover in this story. He graduated from Harvard Law School in the 1920s, having served as president of the *Law Review*. He seems to have shared the critique of law school later expressed by Hurst. He very early caught the bug of Legal Realism. He began his teaching career following Thurman Arnold to West Virginia in 1930, but Arnold left for Yale before Cavers began. Cavers then moved to Duke, where he established *Law and Contemporary Problems* as a "medium for that correlation of the law with other social sciences" (1997:4). He moved to Harvard Law School after serving in the federal Office of Price Administration during World War II.

Throughout his career, he promoted the idea of social science research as a way for legal scholars to contribute to solving social problems, and this approach made Cavers an important voice in legal education. He shared both the Realists' criticisms of legal formalism and the belief that law professors should be the dominant players in developing new expertises that avoided the errors of formalism. He thus played down the need for technical social-scientific expertise as a prerequisite for the empirical research he favored. Law professors could learn all they needed to know to handle the challenge. He wrote in 1957 that "the methodology of science would set tasks for law that would be too hard, too dull and expensive, and the marginal increment too meager" (quoted by Schlegel in Cavers 1997:14).

Cavers became the associate dean at Harvard early in the 1950s with a focus on encouraging research (p. 10). Through his activities as associate dean, he became friendly with Walter E. Meyer, a solo practitioner and brother of Eugene Meyer, the owner of the *Washington Post* (and an early president of the World Bank) (p. 33). Cavers encouraged Meyer's interest in research,[73] and Meyer elected to bequeath 5,000 shares of stock in the St. Louis Southwestern Railway Company to create a "Research Institute of Law." Cavers was named in the will as a trustee to represent Harvard—with other trustees to be designated from

[73] Meyer was "a good friend of Felix Frankfurter, who was two years behind him in law school and with whom he shared an apartment" during World War I (p. 33).

"members of the faculties of Yale, Columbia, and New York University Law School" (p. 32). Meyer died in 1957, and that year the Institute was created.

The orientation of the Institute—and Cavers—was toward law and especially to the core represented by the elite law schools of the Northeast. Like the Legal Realists, Cavers sought to use this new expertise to take on the traditionalists in the name of new and sophisticated legal research. The original trustees were Harry Jones of Columbia, Eugene Rostow of Yale, Edmond Cahn of NYU (soon replaced by Albert Garretson), and Cavers. The Institute quickly granted funds to support Maurice Rosenberg's ongoing research at Columbia, and the trustees then moved to consult outside experts about their potential program. For this activity, they needed to tap into the community of law professors interested in social science. Almost inevitably, they selected Willard Hurst of Wisconsin and Harry Kalven of Chicago, both of whom were already prominent in linking law and social science—and strong inheritors of Legal Realism. They also selected Hessel Yntema,[74] then of the University of Michigan and one of the Legal Realists who participated in the effort to build an Institute for the Study of Law at Johns Hopkins University in the 1930s (see Schlegel 1995), and Adam Yarmolinsky, a 1948 Yale Law School graduate who gained some prominence with Robert Hutchins and the Ford Foundation's Fund for the Republic.[75]

The Meyer Institute held a conference in July 1958, at Harvard, and those attending debated the best ways to spend the Institute's funds. Hurst proposed funding chairs at law schools to help overcome the obstacles to systematic research in law schools, and he also highlighted the relative success at the University of Wisconsin. Yntema, recalling his efforts to build an institute at Johns Hopkins University, focused on building a research institute that would provide leadership in legal research. Kalven highlighted the problems both of doing large-scale research and of integrating that research into a law school—drawing on the mixed experience at the University of Chicago. And Cavers sought to encourage the development of law professors as empirical researchers and solvers of social problems. As he said in 1969, legal education should give priority "to laws bearing most directly on our cities' troubles—laws dealing with the provision of decent housing, landlord-tenant relationships, urban redevelopment . . ., fair employment, and civil rights" (quoted by Schlegel in Cavers 1997:18).[76]

[74] Yntema by the late 1950s was mainly known for his work as editor of the *American Journal of Comparative Law.*

[75] There were also advisors from the four participating law schools: Maurice Rosenberg from Columbia, Kingman Brewster Jr. from Harvard, Myres McDougal from Yale, and Dean Russell Niles from NYU (Cavers 1997:49).

[76] Furthermore, Cavers specifically asserted the importance of lawyers in this task against those who thought that urban issues were "more appropriately the concern of the

The board then decided to employ an executive director and give grants generally to "concern method, philosophy, and promise of forwarding interdisciplinary cooperation, rather than particular topics" (p. 53). While the control of the program was squarely in the hands of law professors, the board was receptive to proposals from social scientists as well. After all, it was hardly bombarded by requests, especially from among the elite law schools. The Institute lasted until 1969, when it was replaced with the Council of Law-Related Studies, which itself ended in 1974.[77] Ultimately the Institute and its progeny gave away $4,642,000 (p. 115).[78]

The Meyer Institute was a major effort to help social science methodology invade the elite law schools, but it did not succeed in building any long-term commitment to such methods. Each of the four law schools received large grants of $400,000 to endow research chairs, but the chairs were not used to institutionalize social science methods. Nothing happened to make Columbia, Harvard, NYU, or Yale build a lasting space for empirical research. Nevertheless, it is indicative that three of the major Meyer players and grantees, Maurice Rosenberg and Walter Gellhorn of Columbia and Alfred Conard of Michigan, served as presidents of the AALS in the early 1970s (p. 113).

Other grantees in the elite private schools included Guido Calabresi at Yale, Joseph Goldstein of Yale, John Kaplan at Stanford, and Robert McKay at NYU. None of these law professors from the relatively elite law schools invested very much in the Law and Society Association (although several served for a time as trustees of the LSA).[79] At the same time, however, the Meyer Institute inevitably fed into the networks of social scientists—and a few law professors initially—being built in and around the Law and Society Association, legal services for the poor, and criminal justice research.[80] Many of the individual grantees of the Meyer

political scientist, . . . economist, sociologist and social psychologist, the social worker, public health worker, and city planner" (quoted by Schlegel, p. 18).

77 Cavers and the group were unable to create a permanent entity to encourage law-related research and law teachers following nontraditional research paths. According to Cavers (p. 113), funds for an initial try were promised from the Ford Foundation, but the group could not find a "law teacher thought qualified." The remaining Meyer funds were given to the SSRC and the American Bar Foundation.

78 The sum included the grant of $500,000 from the Ford Foundation to the Institute.

79 The point that law professors did not invest much in the LSA is reinforced by the fact that even the Wisconsin law professors were not especially active in the formation of the LSA—initially the product of a network mainly made up of sociologists. The Wisconsin group was drawn in and provided intellectual leadership, but the law professors did not actively promote the formation. Bob Yegge, perhaps because of the relatively less prestigious position of the Denver College of Law, was much more willing to invest entrepreneurial energy in a new organization.

80 In 1963, for example, Yegge kicked off the Denver judicial administration program by holding a conference with Gellhorn, Hazard, Jones, and Milton Green, in addition to Wilbert Moore and Donald Young of the Russell Sage Foundation (Yegge 1963).

Institute were names familiar in the LSA, including Harry Ball, Jerome Carlin, Joel Handler, Herbert Jacob, Harry Kalven, Stewart Macaulay, Victor Rosenblum, Philip Selznick, Jerome Skolnick, and Hans Zeisel. There were also grants for research on the New Haven Legal Assistance Foundation, to the *Harvard Law Review* to study neighborhood law offices, and for many studies of urban problems.

In sum, the Meyer Institute's effort was to simultaneously promote a Legal Realist agenda in the law schools and to place lawyers at the forefront of the new state efforts to address such issues as crime, poverty, and racial discrimination. The agenda necessitated bridges between law and the new social science central to these questions. The effort certainly produced competition between lawyers and social scientists on this emerging terrain of law and social science. At the same time, however, it also reflected cooperation between the same individuals against legal conservatives hostile to any kind of law and social science synthesis. The experience of the Meyer Institute is thus one aspect of the construction of a new interdisciplinary expertise and a field. The emergence of the field is well represented by the several collaborations between the Meyer Institute and the Russell Sage Foundation, including the SSMILE workshops and Lipson & Wheeler's *Law and the Social Sciences* (1986). LSA was a beneficiary of this process of investment in the field.[81]

It is also true, however, as we suggest in our conclusion, that the investment did not serve as a vehicle to institutionalize Cavers's stated ambition—to revive and upgrade the Legal Realist program through empirical research by law professors. The center of the legal establishment re-formed, and those who continued to assert social science methods and approaches too strongly against legal doctrine were pushed to the margin.

The American Bar Foundation

The American Bar Foundation was not central to the founding of the LSA, but its history interacts with the others reported here in several notable respects. In particular, the picture of the construction of the field is enriched by seeing how the ABF drew on the research traditions being developed in Berkeley, Chicago, Northwestern, and especially Wisconsin, and also how it interacted with the War on Poverty.

[81] One of the last acts of the Council of Law-Related Studies was in the early 1970s to give a grant to the SSRC to form a Committee on Law and Social Science, resulting eventually in publication of *Law and the Social Sciences*. The links between the Meyer legacy and the LSA are evident from the composition of the committee: Stanton Wheeler, Leon Lipson, Marc Galanter, Lawrence Friedman, Phoebe Ellsworth (psychology), Sally Falk Moore (see note 99), Nelson Polsby (political science, Berkeley), and Philip Selznick. Contributors to the volume—a solemn embodiment of the state of the field of law and social science at the time—included many of those on the committee.

In the early years after its founding in 1954, most of its work was related to or requested by committees of the American Bar Association. The major exceptions, however, were a few very large projects, most notably the Ford Foundation-funded Survey of the Administration of Criminal Justice, which lasted throughout the 1950s and into the 1960s. The Survey, called for initially by U.S. Supreme Court Justice Robert Jackson, was meant to serve the ABA, but it also facilitated a major investment in research. The research team was entirely led by law professors, mainly from Wisconsin, but the inspiration came also from the new sociology. The director was a Hurstian, Frank Remington, a Wisconsin law graduate and law professor, and a key collaborator was Herman Goldstein, also at Wisconsin. The intellectual inspiration to examine what police, prosecutors, and judges do came from an alliance between Remington and the project's consultant, Lloyd Ohlin, then at the School of Social Work at Columbia University.[82] As we have seen, Remington hired Harry Ball to come to Wisconsin to work on this project. The agenda was very much one of seeing the law in action, focusing on the discretionary decisions that impeded the guarantees of the formal law.

The success of the Survey[83] helped make it possible to imagine a more ambitious role for the ABF, and in 1960, around the time of the founding of the LSA, the ABF board sought to upgrade the quality of the personnel in residence at the ABF. The new executive director, E. Blythe Stason, moved to Chicago, and he recruited a new group, including Barbara Curran, who had just received an LL.M. from Yale. When Stason announced plans to retire, the ABF Board[84] recruited Columbia Law School's Harry Jones, then active in the Meyer Research Institute (see Jones 1963). The plan was for Jones to come to Chicago as "research director," work with Stason for a transitional year, and then take over as executive director. Jones, however, decided not to stay on after the year. He evidently had a particular ambition for the ABF, hoping to turn it into a kind of elite think tank, but neither the ABF staff nor the ABF Board shared that vision (Haz-

[82] Ohlin, one of the pioneers in criminology and also one of the key scholarly sources of the War on Poverty, was never involved with the LSA, but his trajectory is illustrative of the role of law and social science at the time of LSA's founding. His connection to the War on Poverty has already been mentioned. Among other accomplishments later in his career, Ohlin became the associate director of the President's Commission on Law Enforcement and the Administration of Justice, 1965–67. That commission was the source of the National Institute of Justice push to fund social science research and build criminology departments. Ohlin then became a professor at Harvard Law School, in a sense riding the interest in sociology and crime to the top of the legal academy.

[83] It led to the development of the criminal justice focus on "discretionary decision-making" (see Walker 1992).

[84] The board was led by precisely the kind of lawyers who led the Russell Sage Foundation—in particular, Whitney North Seymour of Simpson Thatcher, Harold Gallgher of Wilkie Farr, and Lewis Powell, later to serve as president of the ABF Board and an associate justice of the Supreme Court.

ard 1975). Jones returned to Columbia. The legal establishment was probably not yet convinced that it really needed that kind of interdisciplinary research.

A year later, the ABF board drew on the law and social science community gaining prominence at Berkeley. Geoffrey Hazard was recruited to the ABF in 1964, serving in the position of half-time ABF administrator and University of Chicago law professor. Hazard, already involved somewhat in bridging law and social science through the Center for Law and Society, decided to move the ABF squarely in that direction.[85] Among other things, he even hired the first non–law-trained social scientist, June Tapp, a psychologist, and under his auspices Felice Levine came to the ABF.[86]

From Hazard's perspective, this niche was the only plausible one for the ABF if it was to gain any respect from legal academia.[87] In his words, "I thought that the principal thrust of the Bar Foundation's work should have an important empirical component. The reason I thought that was because I perceived that the law schools couldn't do that very well and that there was a lot of empirically-based research about law and its processes that needed to be done" (1975:33). He also felt that the ABF was unlikely to attract first-rate legal scholars, who could get higher pay and more status at law schools: "So I thought, you know, hell, we've got these people, we can go out in the field on a sustained basis, and that's something the law schools can't do. So let's establish us as having a kind of complementary role that explores or utilizes this methodology" (p. 37). The best way to upgrade the ABF—building a more respected place within the legal community—was to focus on empirical research that, Hazard recognized, was unlikely to gain prominence in mainstream law schools. Lawyers and a few social scientists could make their place with policy-relevant empirical research.

In the mid-1960s, not surprisingly, the ABF also became involved in research associated with legal services and the Johnson administration's War on Poverty. With the beginning of the War on Poverty, the question of legal services for the poor quickly surfaced through a Department of Health, Education and Wel-

[85] According to Barbara Curran, Hazard "encouraged even more intense studies that involved collection of empirical data." And "although the criminal justice and the commitment of mentally ill were empirical projects, the notion of social science . . . and its resources and social science techniques, which wasn't all that developed itself then, really was something Geoffrey believed in."

[86] Felice Levine stayed at the ABF instead of attending law school. She moved from the ABF in 1980 to a period of long and significant service in building up the field of law and social science at the National Science Foundation.

[87] According to Hazard (1975:33), "I didn't realize this at the time, but I sure found it out pretty fast afterward that a good many of the University of Chicago faculty pretty much shared the view that the Bar Foundation was a kind of joke and that anybody who would involve himself with it in a serious way was a fool because it inevitably ended in your becoming a tool [of the ABA] and so forth."

fare conference in Washington. Hazard was invited, but he sent Barbara Curran. The conference began a series of events chronicled elsewhere that helped not only to produce the OEO Legal Services Program (Johnson 1974) but also to keep it close to the organized bar. The ABA and the ABF then became heavily involved in research on "legal needs," involving Felice Levine, then a graduate student at the University of Chicago planning to attend law school, and Barbara Curran—with Curran's work culminating in *The Legal Needs of the Public*, funded by the ABA, and published in 1977.

The ABF continued more or less in the direction that came from its Wisconsin-Berkeley connection. In fact, a former Wisconsin dean, Spencer Kimball, served as executive director for more than a decade beginning in the early 1970s.[88] Hazard converted his early social science into a career very much in the law school mainstream.[89]

Some Concluding Observations

Our detailed stories concentrate on the individuals and networks that built and formed around the four initial Russell Sage centers. This focus, as noted above, allows us to examine the career trajectories of individuals who were central to the establishment of the Law and Society Association in the mid-1960s. In addition to providing the stories of where these individuals came from and how they got together, we also suggest some more theoretical observations that can serve as tentative conclusions. The careers around law and social science from the 1950s to the 1970s can be used to provide some insights about the construction and operation not only of the LSA but more generally of legal scholarship and the law, social science disciplines, and even the activist state.

To start with the more general conclusions, the obvious point is that social science expertise was an appreciating asset in the post–World War II period. Social scientists—especially sociologists—were aggressively on the move. Sociology departments were centers of excitement, and at least one prominent law professor close to the Realist tradition, David Riesman, was willing to

[88] Empirically oriented lawyers, however, have been increasingly replaced by individuals with advanced social-scientific training. Indeed, the ABF seeks consciously to hire persons whose research is close to the core of the social science disciplines—with applications to law. Also in contrast to the Hazard period, most of the 20 research fellows now are half-time at the ABF and also teach in Chicago area universities. Despite the proximity to the Northwestern Law School after the move from the University of Chicago neighborhood in 1984, the ABF and the law school at Northwestern have also tended to develop different research profiles.

[89] Hazard moved from the ABF to Yale Law School, where he became a leading national scholar on professional responsibility. Now one of the most prominent law professors in the United States, he teaches at the University of Pennsylvania and serves as the director of the American Law Institute.

give up his legal career and identify himself as a sociologist. Those who chose to study sociology saw their expertise gain in value in the academy and in the state. The careers of such individuals as Harry Ball, Bill Beaney, Jerome Carlin, Leonard Cottrell, Sheldon Messinger, Laura Nader, Lloyd Ohlin, Philip Selznick, Red Schwartz, Rita Simon, Jerome Skolnick, and Stanton Wheeler are all examples of the strong dividends returned on investments in social science in the 1950s.

These individuals helped to build a new expertise about civil rights and urban problems, including crime and poverty, and their progressive ways of defining the problems and searching for solutions were able to gain the attention of the elite world of foundations and reformers in the postwar period generally and especially in the 1960s. *Brown v. Board of Education* had helped dramatize the issues of racial discrimination, and the problems of inequality were embarrassing to a country fighting a Cold War against "socialism."

Once some of the pioneer sociologists began to show the way and gain dividends for their expertise, it was not surprising that talented and ambitious people moved into the social sciences. The move into the social sciences, in addition, was in part a move away from law. Law as the traditional language of the state appeared to be falling behind in the competition to define social problems and produce legitimate solutions. Law, of course, had resources to regroup, including a legacy of Legal Realism that could be tapped in many law schools—especially Wisconsin. Nevertheless, the mainstream of the law school world appeared out of touch with the new sets of problems that were reaching the agenda of the state.

Our interviews suggest that many of those whose stories we have told were people who had once contemplated careers in law or came from legal families. Rita Simon, for example, came to Chicago in the mid-1950s to take a fellowship in law and behavioral sciences because she was still contemplating a career in law. Not that she necessarily ever wanted to be a practicing lawyer: "I always thought that would be an interesting career to have. I don't know that I ever wanted to practice law, but if I ever went into politics, . . . it might be an interesting career." Among the sociologists, Red Schwartz, Jerome Skolnick, and Jerome Carlin all came from legal families—derailed by the excitement surrounding sociology and the new social problems. They chose to look outside of law school to realize ambitions to gain an expertise that would put them at the center of the efforts to solve the emerging social problems. Similarly, with respect to other disciplines, for example, Victor Rosenblum—a lawyer and political scientist—studied political science as a way to gain social science expertise relevant to the state. And Laura Nader, from anthropology, was influenced early by her two brothers in law school.

Within the law school world, a number of ambitious individuals who attended law school, even though at different times, including Carl Auerbach, Lawrence Friedman, Stewart Macaulay, and Victor Rosenblum, found it to be intellectually sterile, lacking the excitement of what they learned in their undergraduate courses—or perceived from their reading. Robert Yegge probably would have attended graduate school in sociology if he had not been obligated through his father to return to Denver to practice law in his father's law firm. He became a lawyer, but he identified also with social science. Often attracted to the academic side of law, these and individuals like them fought against the "legal formalists" who dominated the world of legal education. They found allies and mentors among the unreconstructed inheritors of the Legal Realist tradition, in particular people like Willard Hurst and David Cavers.

It is not surprising that these groups came together at a certain time in the 1960s. In retrospect, we can characterize the events we have described as the construction of the field of law and society—a space that included the Law and Society Association but also many others involved in bringing together law and social science. The construction of a field is not simply a matter of cooperation (see Dezalay & Garth 1996). Its characteristics reflect conflicts and competition about how the field should be constructed and whose approaches, credentials, and networks will count more. To understand the process and especially what was constructed, it is useful to focus a little more attention on some of the major conflicts and fault lines we have seen.

In all these conflicts, it is necessary to see the relative positions of the competitors. In particular, the position of the new legal realists of the 1950s and 1960s can only be understood in relation to the legal world they occupied. They had to fight for respectability in their renewed efforts to bring social science to the law school world. Cavers and Hurst, for example, used the resources of foundations, the growing prestige of social science, and the evidence of racial discrimination and urban problems to attack the legal establishment. Similarly, people like Carlin, Schwartz, and Selznick in sociology, Nader in anthropology, and Jacob and Krislov in political science fought to gain a greater place for law in their own disciplines. As these individuals came together to occupy the field between law and social science, they naturally came into conflict about the relative positions they would occupy on this field.

Conflict between law and social science has been seen in many settings. In the SSRC in the 1950s, the debate was between the legal dilettantes and the social scientists able to write good proposals. More generally, the competition was evident in the contrasting approaches of the Russell Sage Foundation and the Meyer Institute. The Russell Sage grants favored social science

and the social scientists who were comfortable in law. Berkeley's sociologists got the first grant, and only Denver's grant went to the law school. The Russell Sage Foundation was dominated by sociologists, and it favored approaches that made lawyers recognize and support the expertise that social science was producing. The Meyer Institute, in contrast, started with law professors, with Cavers's ambition to teach them to draw on the methods of social science in order to make themselves relevant to the new social problems. As noted before, Cavers specifically asserted the importance of lawyers against those who thought that urban issues were "more appropriately the concern of the political scientist, . . . economist, sociologist and social psychologist, the social worker, public health worker, and city planner" (quoted by Schlegel in Cavers 1997:18).[90]

This competition became especially evident in the 1960s when these two foundations made their major investments, and the process of competition was a key aspect of the construction of the field of law and society (or law and social science). Substantial new resources were made available to the players from law and from social science in this space between the two. The Russell Sage Foundation funded research and created the academic centers, the Meyer Institute funded research (and both funded SSMILE), and the Ford Foundation also became a major player in promoting the new expertises. With the War on Poverty and the years leading to it, the federal government also became a major investor in and legitimator of this new expertise and a particular set of experts.

At times, this competition was almost violent. Carl Auerbach reported that at an AALS meeting in 1966 on the subject of building bridges between law and the social sciences, law professors and those from sociology—including Alvin Gouldner—fought vehemently—"nearly resorting to blows." After speeches by several sociologists, Kenneth Culp Davis, a pioneer legal scholar concerned with discretion in administrative law, said that he had gone through the sociological literature and found nothing useful. Walter Gellhorn, another law professor close to the Meyer Institute, reportedly said that "if he wanted a sociologist, he would hire one."

The Law and Society Association was initially the creation of people who—in terms of this relative opposition between the Russell Sage Foundation, representing sociology, and the Meyer

[90] A list of research projects proposed by Harry Jones, then a law professor at Columbia, at the conclusion of a Denver conference on these issues in 1963 is instructive (Jones 1963). They include "studies of the relation of formal legal norms to the social norms by which members of our society live. How little we know of the 'living law' of the legal order"; "efficacy studies"; and "the sense of justice . . . in the hearts of all the people, not merely in the impressions acquired by those who come to court often and usually in the company of lawyers." His idea was that social science would help an agenda defined by lawyers.

Institute, representing law—were much closer to Russell Sage. Yegge was the only law professor among the major founders, and the Russell Sage Foundation provided the initial funds. Yet within the LSA group, the very same structural opposition could soon be found. According to Rita Simon, debates at LSA board meetings in the 1970s often concerned the "role of social scientists within the legal profession, and we were still considered handmaidens and sort of technicians that had to supply just very technical answers to legal scholars who would then (1) frame the problem and (2) analyze what the data really meant."

The competition between Wisconsin and Berkeley can also be cast as part of this opposition between law and social science. Wisconsin's center was dominated by the law school and the personality of Hurst, while Berkeley's center was initially dominated by sociology—especially Selznick. The law professors at Wisconsin, as we have seen, developed their approach by emphasizing—in their struggles with the legal establishment—that law was the dependent variable. This strategy allowed them to use social scientists and social-scientific tools to attack legal formalism and the legal establishment on behalf of the "context" of "law in context." The idea—especially in Hurst's works—was that the context was necessary to make the law more effective and better able to solve social problems.

The Berkeley sociologists, in contrast, emphasized jurisprudence and legal philosophy, which they—in particular Selznick—could see that sociology lacked. Scholars of institutions, as Selznick argued, needed to bring law to those institutions. The sociologists also could emphasize their superior training for social research. The law professors, they could suggest, were incapable of making serious contributions to important theoretical questions of concern to social science—necessary to solve social problems. When the Berkeley sociologists and the Wisconsin lawyers found themselves on similar terrain, however, the opposition tended to turn into one between law and social science. Depending on what position one took in this competition, therefore, the sociologists at Berkeley could be seen as "merely sociologists"—lacking any real legal expertise. Or they could be characterized as "real scholars," in contrast to "atheoretical" or dilettante lawyers.

This Berkeley-Madison conflict was evident in the first issue of the *Law & Society Review*. Carl Auerbach (1966), then a Minnesota law professor who had taught at Wisconsin from 1947 to 1961 and identified with the Hurst tradition, attacked Skolnick, Selznick, and Carlin—pointedly labeled in the article title as sociologists—for their preoccupation with normative concerns. Auerbach, consistent with the perspective described above, said that their mission should be to supply the "context" for legal developments and potential legal initiatives. Skolnick's (1966) re-

sponse, in the same issue, emphasized among other things that sociologists should not confine themselves to applied research "that lawyers consider useful" (p. 110). He also defended the emphasis on normative concerns, arguing that the "sociology of law is not a merely a description of the law in action" (p. 109).

The relative positions can also be seen in the approaches to legalization and procedural due process. Joel Handler (1966), from the perspective of law and context, based his criticism of law professors like Charles Reich on their neglect of the social factors that would limit the impact that welfare rights and hearings would have on the lives of the poor. In contrast, Selznick's *Law, Society, and Industrial Justice* (1969:274) emphasized due process as "the primary source of concepts and doctrines used in bringing the rule of law to new settings." The differing approaches, as suggested above, relate to the fact that Handler was initially using social science to challenge legal formalism while Selznick was initially using law to show its relevance to the study of social institutions.

It is important, however, not to exaggerate these differing positions. The contrasting structural positions evident in these writings should not obscure the close proximity of these players on the emerging field. As stated before, these were the lawyers closest to social science and the social scientists closest to lawyers. Even at the personal level, the protagonists described in this article were all friends and collaborators in building interest in the field of law and society. They shared a position against legal and sociological traditionalism, but they disagreed about how to define the new field of law and social science—and the relative positions of lawyers and social scientists within that field.[91] They tended naturally to want to define the field in terms of their own expertises and approaches.

By the mid-1960s, this general field of law and social science—including those competing for dominance in it—had not only developed a number of institutions and adherents, but it also had served to define and build much of the expertise of the state as the War on Poverty began and added further resources to the field. Many of the people discussed in this article intersected with the new set of state programs and expertises, and indeed the relative success of the field is reflected in the career successes of those we have mentioned. There are many examples of high-profile work in dealing with issues of crime and delinquency, including the example of Lloyd Ohlin[92] helping to define the sociologi-

[91] The same conflict between the sociologists and lawyers was found in the competing casebooks. On one side was Friedman & Macaulay (1969) and on the other was Schwartz & Skolnick (1970). In retrospect, despite the different accents, the books look very similar.

[92] Rita Simon also worked on the Mobilization for Youth project in New York in the early 1960s.

cal strategies of the War on Poverty. Quite a number of the early players were active in writing about the role of law in civil rights (e.g., Krislov, Rosenblum, Coons). Others sought to highlight the role of the courts in protecting the new rights associated with this role of the state[93] (e.g., Grossman, Jacob), indeed even encouraging the development of a right to counsel (Beaney 1955). Perhaps most obviously, the development of activist legal services for the poor was an enduring legacy of the alliance between law and social science in the mid-1960s (see Johnson 1974)—seen especially in the career of Jerome Carlin but also in the stories of Denver; the work of Joel Handler, Jack Ladinsky, and others in Wisconsin; and the American Bar Foundation's various studies of "legal needs." At the time of the development of the LSA, in short, the expertise of law and social science—including but not limited to the LSA—was gaining legitimacy and moving rapidly into the state.

The field that was constructed tilted in favor of law. It may have been possible in the 1950s to imagine that sociology or another social science would be able to gain ascendancy over law in providing the expertise and experts in state governance, but by the late 1960s it was clear that law had reformed—incorporated enough social science to regain its status and relevancy. This phenomenon can be seen in the careers of the early activists. As we have seen, numerous individuals of that generation (e.g., Bill Beaney, Lloyd Ohlin, Victor Rosenblum, Red Schwartz, Rita Simon, Jerome Skolnick, and Stanton Wheeler—most without law degrees) were pulled not only into the LSA but also away from the disciplines in which they were originally trained. They initially challenged traditional law from outside, forming an alliance with—and also competing with—those challenging from within. As it turned out, however, by the 1970s they tended to have become assimilated into the law. All had teaching positions in law schools. Relative assimilation, of course, does not necessarily mean a place at the core of elite legal institutions.

This shift in the center of gravity of the field of law and social science generally was also evident in the 1970s in the relative power within the LSA of law professors and in particular professors linked to Madison. The presidents of the LSA were almost all law professors linked to Madison.[94] A later indicator of the shift

[93] Samuel Walker (1992) shows how the criminal justice revolution of the Warren Court generally drew on the ABF-Wisconsin project on criminal justice. Martha Davis (1993) shows also how legal services—through Edward Sparer, who worked on an early Meyer Institute grant with Monrad Paulson—came to Ohlin and Cloward's Mobilization of Youth project when it was expanded to have a legal component. She also shows how Charles Reich came to incorporate welfare in his famous law review article on "The New Property" (1964).

[94] Prior to the election of Susan Silbey to a presidential term commencing in 1994, the past presidents included four law professors who had taught at Wisconsin (Lawrence Friedman, Marc Galanter, Joel Handler, and Stewart Macaulay) and Herb Jacob, who taught political science for many years at Wisconsin. In addition to the early leaders and

in the center of gravity occurred when the Berkeley Center for Law and Society was brought into the domain of the law school. Put another way, with some consequences that we can explore in more detail below, much of the investment in the field of law and social science in the 1960s ultimately found its way into the LSA and the law schools. Indeed, for a short period of time in the early 1970s, this movement seemed to have found a place at the core of the law.[95]

This shift toward the world of law had consequences in the social sciences. We have not studied the academic disciplines that came to the LSA in detail, but we know enough to suggest that what happened in the disciplines and what happened in law—and in law and society—were very closely related. The development of the social science disciplines, in fact, reveals a complex phenomenon through which (1) the autonomy of social science is established in part by pushing law aside; and (2) law simultaneously repels and absorbs the social science.

With respect to sociology, for example, developments internal to sociology in the post–World War II period brought new tools to examine social problems, and the scholars could see the relevance of their tools to law. Examples include the institutionalism of Philip Selznick, the theories of social change of Wilbert Moore, the survey methods of Hans Zeisel, and the new criminology of people like Lloyd Ohlin and Jerome Skolnick. Sociologists generally were more interested in professions (see generally Fine 1995),[96] and leading figures in sociology, exemplified by Robert Merton,[97] were willing to build a place for law in sociology.

Those most actively promoting law competed within sociology against those whose positions did not draw on legal connections or claims to expertise. Sociologists close to law, such as Schwartz, Selznick, and Skolnick, thus sought to build law in sociology. Their activities affected choices in textbooks, hiring decisions, editorships of journals, and in general what would be considered legitimate as part of the core of the discipline. But when these and other individuals were pulled to law, which they were

editors already mentioned, including Yegge, Schwartz, Rosenblum, and Krislov, the only other presidents were Charles Kelso, a law professor, and Felice Levine, a social psychologist.

95 As noted above, three consecutive presidents of the AALS—Maurice Rosenberg, Walter Gellhorn of Columbia, and Alfred Conard of Michigan—were identified with social science research and the Meyer Institute.

96 The SSRC recently reprinted articles that, drawing on the successes of social sciences in the World War II, made the case for this new learning: "One of the greatest needs in the social sciences is for the development of skilled practitioners who can use social data for the cure of social ills, as doctors use scientific data to cure bodily ills" (statement of Pendleton Herring in March 1947); Herring was a political scientist and president of the SSRC from 1948 to 1968) (Herring 1997:5).

97 It is also instructive that Carlin studied the legal profession in New York under the auspices of the Bureau of Applied Research at Columbia University. The Bureau linked Carlin to Paul Lazersfeld, another of the major figures of the postwar era.

already close to in the first place, the now dominant group in sociology could bid them good riddance. As suggested earlier, the sociological traditionalists were already nervous about whether what Yegge and even Schwartz did was "sociology." As the example in Berkeley also suggests, the sociologists in the mainstream ultimately failed to embrace those who moved into the legal world. Sociology regrouped and looked somewhat askance on those who had sold out[98] to law or to applied sociology. As Selznick stated, sociology "lost interest in law." Or put another way, the sociologists who were closest to law ultimately decided—or saw a better opportunity under the circumstances—to join forces with law rather than try to compete against law from within mainstream sociology.

The same was true in a different way in anthropology. Laura Nader had effectively used law initially in anthropology to try to create a subdiscipline (see Collier 1994), and she trained a number of students to become legal anthropologists. Law was given legitimacy for a brief time in the center of anthropology.[99] But the power of law and the new institution of the LSA pulled many of these individuals away from the discipline. They not only stopped attending anthropology meetings, but also they stopped going abroad for their research. As Nader complained, the lack of a presence of law within anthropology made it relatively easy for the anthropology of law to die within anthropology. At the same time, anthropologists have become very prominent in the leadership of the LSA.

In political science, the story is somewhat different, but the result is the same. The traditional public law scholars had studied law, but they were losing their power in competition with, on one side, the new behaviorists, and, on the other, the law schools that were now more involved in constitutional theory. Traditional public law was being pushed out in terms of prestige in the discipline. Some political scientists were converting to new kinds of judicial and legal studies, and they gained attention in the discipline. People like Sam Krislov, Victor Rosenblum, Herb Jacob, and Joel Grossman were investing in finding a new political science relevant to questions of civil rights and urban problems. Ultimately, however, they were drawn to the LSA. They then typically invested much more in the LSA than in revitalizing their collective position in political science. Political scientists who became presidents of LSA—in addition to Rosenblum—included

[98] A full treatment of sociology would also note that sociology moved to the left in the 1960s, perhaps making law seem less relevant. Questions of capitalism versus socialism, for example, did not leave much of a place for law.

[99] Sally Falk Moore, a Columbia Law School graduate and attorney in the Nuremberg trials, returned to the United States and attended graduate school in anthropology in order to gain social expertise on questions of the role of law and social change. She had been a student of Karl Llewellyn at Columbia. An account of her career conveys the excitement around legal anthropology in the mid-1960s (Moore n.d.).

Samuel Krislov and Herb Jacob, and Joel Grossman served as Editor of the *Review*. But the public law section of political science languished, cut off from legal scholarship in the law schools and unable to regain the prestige it once had.

There is an apparent paradox in this result. The careers we discuss suggest that the investment in law and social science over this period of time was quite professionally rewarding. The trajectories also suggest that leading beneficiaries of this investment were the LSA and also the law schools—perhaps at the expense of the other social science disciplines. Despite that investment, however, few would contend that the LSA or social science in the law schools is reaping rich dividends. Law schools have not moved to embrace social science methods or theoretical concerns in any lasting fashion, and the mainstream of the law school world (including the elite schools that the Meyer Institute targeted) appears again to be quite traditional. There are of course exceptions in varying degrees, and Berkeley and Madison are among them, but even in Berkeley it is not clear that the law school faculty necessarily accepts the program in Jurisprudence and Social Policy (JSP) as central to the school's academic and professional missions.

We can suggest two reasons for this paradox. One, which echoes Shamir's (1995) study of Legal Realism and the period of the 1930s and 1940s, is that the legal world is most receptive to the arguments of social science in periods of rapid change, and our picture of the 1960s—only the tip of the iceberg of ferment on campuses—fits that characterization. When law successfully imports and in effect contains that social change, the more traditional scholars are quick to build a new formal edifice around it. Casebooks in family law, professional responsibility, criminal procedure, poverty law, civil procedure, contracts, and many other subjects, for example, were changed in response to the scholarship generated by the LSA and its allies of the mid-1960s—the product of the field of law and society. No one who studies contracts, for example, fails to learn of Macaulay and the "relational contracting" theories derived from his work. Yet, as new generations of students will note, these materials are generally taught in casebooks and with the traditional legal categories and concepts. As a result of this process, the law changed but looked again to be relatively conservative and doctrinal. Legal formalism (on this "formalism" see Fish 1994) reasserted itself through the academic and other critics of the interdisciplinary tendencies of those who used social science to challenge the traditional makeup of the formal law.[100] And those who continued to insist too strongly on the importance of social science methods once

[100] Anthony Kronman (1993:224–25) thus opposes a "rationally transparent science of law."

again found themselves on the margins of the legal world—unless, as many did, they repositioned their scholarly stance to move to the legal mainstream. Lloyd Ohlin, for example, was recruited to the Harvard Law School, the pinnacle of legal prestige in the late 1960s, but law students probably did not see him as a mainstream faculty member. More generally, few law schools today have any core commitment to law and social science.

The second reason for the relatively weak position of law and social science in the 1980s is simply that the relative value of social science expertise declined. A know-how that served to help construct an activist state seemed to lose some of its relevance. The "law and economics" movement (see Duxbury 1995) took place mainly outside of the LSA,[101] yet it is interesting to suggest its parallel trajectory. The early career of Lawrence Friedman helps to relate the position of law and economics to that of the LSA. Friedman's classmate in law school, Henry Manne, who also introduced him to Hurst, was one of the major entrepreneurs of law and economics.[102] Hurst, indeed, was interested in economics as much as sociology. Manne's reaction to law school was no doubt quite similar to Friedman's.[103]

Academic investment in economics by the mid- to late 1970s tended to pay richer legal career dividends than investment in the disciplines that were built more into LSA. Just as bright and ambitious people were drawn to social science in the 1950s, many were drawn to economics in an era when inflation and the state were considered the great enemies of progress. Economics seemed to define the problems and the solutions for the 1980s just as sociology did for the 1960s.[104]

We do not have the space or time to continue the story to the present, but we can offer a few brief observations. First, once the LSA was established, many of the leaders of the association tended to define the scholarship around the LSA as a "field" distinct from law and from the social science disciplines. This self-image came naturally from the fact that many of those who came

[101] At one point, the LSA did entertain the possibility of a formal alliance with the Association for Evolutionary Economics at the request of the latter in 1966. See Carl Auerbach to Harry Ball, 29 March 1966, Ball correspondence. This association was the group that contained the descendants of the institutional economics identified with John Commons at Wisconsin. The LSA did not pick up this alliance, which might have positioned the organization better to incorporate economists and their approaches.

[102] Manne, in fact, as a professor at George Washington in 1966, promoted a joint American Economics Association–AALS committee to encourage collaboration between law and economics. At that time the LSA was trying through people like Carl Auerbach to develop more autonomy from the AALS and resisted a joint committee. See Ernest M. Jones (Florida, law) to AALS President-elect Wex S. Malone, 31 May 1966, Ball correspondence.

[103] Friedman got a taste of legal sociology nevertheless at Chicago, and no doubt Manne got a taste of economics. Indeed, like Hurst, Edward Levi encouraged both social science and economics (Duxbury 1995).

[104] And law in the 1980s was transformed to reflect the theories and fashions of the imported economic analyses.

to LSA were the products of those who already identified with LSA—or people who had no homes elsewhere in part because of the success of LSA. Second, we suggest that the center of gravity of LSA—even as a distinct field—remained closer to law than to social science. And third, the link of the founding of LSA and the progressive politics of the 1960s helped to give the LSA an enduring progressive political imprint.[105]

As a final observation, we would like to recall the period of the mid-1960s and suggest some parallels today. It is true that there is no evidence of a revival of the activist state or a renewed War on Poverty, but institutional concerns are again quite important in anthropology, economics, political science, and sociology. In addition, questions of inequality, poverty, and crime may again be moving onto the political agenda. The receptivity of the law schools to a new project of empirical research, or, more generally, to new importation from the social sciences, remains open, but it appears that the time is ripe for a post–"law and economics" initiative. With sufficient energy and new investment in scholarly bridges, the LSA may be able to renew its progressive role at the intersection of law and social science.

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[105] We can see these elements in some of the more recent developments. The role of law professors, in particular, was reinforced by the influx of those who had been involved in and critical of law and development. Yale's Law and Modernization Program in the late 1960s and early 1970s—involving Richard Abel, Marc Galanter, William Felstiner, and David Trubek, among others—was especially important in bringing together individuals who became quite important in the LSA. The legacy of Wisconsin is evident in the work of Abel, Galanter, and Trubek, who transformed the criticisms of the formal law's efficacy into the more political critique of "liberal legalism" promoted within LSA and by Critical Legal Studies (CLS). CLS, which they helped create in the mid-1970s (Schlegel 1984), in a sense competed with LSA on the question of who represented the leading progressive movement in law. The CLS cousins of LSA tended to reject empiricism on behalf of legal theory. As the writings of David Trubek at the intersection of LSA and CLS suggest, this debate could almost be expressed as the Yale Trubek versus the Wisconsin Trubek (see Trubek 1984). The position of CLS helped inspire the most prominent intellectual development in the LSA in the 1980s—the Amherst Seminar (see Trubek 1984; Silbey & Sarat 1987; Trubek & Esser 1989). Not surprisingly, many of those associated with this new generation represented by the Amherst Seminar—for example, Austin Sarat, Ronald Pipkin, Christine Harrington, and Kristin Bumiller—were trained in Wisconsin. The Amherst Seminar tended to accept the constitutive view of law promoted by law professors in CLS, while focusing criticism on the lack of attention within CLS to the empirical context in which law was resisted and used by ordinary people. Seen in this way, we might suggest, the LSA in the 1980s once again replicated—in a new and different political setting—the Realist attack on the formal law.

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