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“HIS” AND “HER” STORY: THE LIFE AND FUTURE OF THE LAW AND SOCIETY MOVEMENT

FELICE J. LEVINE*

DAVID TRUBEK tells “his story” of the law and society movement based on reflections of his personal history and largely locates his perspective within the intellectual struggles that have occurred in the law school. While acknowledging that there are other frames of reference, his story, told with a tone of pessimism, describes the evolution of the law and society movement almost exclusively from the vantage of the law school and legal scholarship. Trubek reflects on the twenty-five year history of the law and society movement based on a critical assessment of the field and the forces shaping it, and calls for new ideas, definitions, and directions for sociolegal studies.

Besides being law-school based, his model is essentially cross-sectional and static: dividing the law and society movement into its past, present, and future. He contrasts the past with the contemporary period where—in his view—the original purpose has lost its force and there is no longer an abiding belief or faith in the potency and perfection of law or of social science. He then looks to the future in light of this past, this crisis of confidence about the present, and his hopes and recommendations for the future.

Juxtaposed to “his story” is an alternative view which I presented in response to his Mason Ladd Memorial Lecture at Florida State University in February 1989 and in my Presidential Address to the Law and Society Association in June of that same year on the occasion of the Association’s twenty-fifth anniversary.¹ “Her story” (i.e., my story) acknowledges the influence of the law school world and le-

* Director, Law and Social Science Program, National Science Foundation. This Article is based on my comments delivered on February 24, 1989, in response to the 1989 Mason Ladd Memorial Lecture at the Florida State University given by David Trubek. Although the revised version of Trubek’s lecture sought to accommodate the issues raised by my and other comments, his essential message and my response remain the same. My thinking about this topic over the years has been enriched and refined by conversations with many colleagues. In particular, I wish to thank Ronald M. Pipkin, who helped to debate the issues that led to my initial comments, and Katherine Rosich, who raised questions and offered suggestions that helped me refine my ideas in written form. Also, Frank Munger, Richard Lempert, Carrie Menkel-Meadow, Barbara Yngvesson, Shari Seidman Diamond, and Stewart Macaulay have been ongoing participants in this lively exchange.

1. Levine, *Goose Bumps and the “Search for Signs of Intelligent Life” in Sociolegal Studies: After Twenty-Five Years*, 24 *LAW & SOC’Y REV.* 7 (1990).

gal scholarship on the law and society movement and on the Law and Society Association, but locates the evolution of sociolegal studies in the context of social inquiry more generally. I see the history and the future of law and society as residing at the interdisciplinary intersection of the social sciences, *including* but not *privileging* law-trained participants attracted to empirical inquiry on law-related matters. Thus, my story places the origins of the law and society idea in different sources and with different points of emphasis.

The model I propose views the field more broadly and does not see the same historical or contemporary tensions that Trubek postulates, or at least does not consider them unique to law and society work. My perspective conceives of the field in more heterogeneous, dynamic, and longitudinal terms. Whether the basic difference between Trubek and me reflects our respective levels of optimism or alternative conceptions of the place and role of the law school, there is no doubt that I examine the past and look to the future with a different orientation.

This Article describes my alternative conception, and in so doing responds to the issues raised by David Trubek. I begin by describing what the law and society idea is, its origins and development, and its relationship to law school and legal scholarship. Then, I offer an alternative view of where sociolegal studies is, whether the issues troublesome to Trubek are as characteristic of the past or present as he fears, and whether and in what ways our different "stories" affect our aspirations for the future.

I. WHAT LAW AND SOCIETY IS ABOUT

As I use the term "law and society," it denotes the social study of law, legal process, legal systems, law-related behaviors, and what is endemically legal or law-like in society. I prefer the term "sociolegal studies"² as a synonym for "law and society" because it is inherently interdisciplinary and can integrate and extend the classical characterizations that derive from the older disciplines (e.g., empirical study within legal scholarship, sociology of law, anthropology of law, psychology and law, legal history, public law, judicial process, criminology, law and economics). However broad the scope, it is meant to embrace the study *of* law as a social phenomenon, not the use of social science *in* or *by* law.

2. This term has come increasingly into usage in the late 1980's to characterize this scholarly field of inquiry and the interdisciplinary fusion it represents. Used interchangeably with "law and society," the latter term being also the name of the Association (i.e., the Law and Society Association), which is the leading scholarly organization of the field.

The field of sociolegal studies has several goals: to expand fundamental knowledge about legal process; to explain and understand patterns, departures, and changes within it; to study the interrelationship between the legal system and other social and cultural systems of society; and to understand what I have called the role of law—with a little "I"—in normative ordering.³ While most work in the field has focused primarily on formal and informal institutions and processes relating to state legal systems, the domain of sociolegal studies includes law that occurs in a variety of locations—including the family, the school, the friendship circle, and the workplace.⁴

Who does it? That, too, comes from a variety of locations. We use as shorthand "law and social science," but it is not really divisible into two parts. Law academics have been drawn to pursuing this kind of empirical understanding of law and legal process, but so too have sociologists, political scientists, anthropologists, psychologists, economists, and historians, among others. As the field has developed, the interdisciplinary integration has produced not separate disciplines focusing on isolated legal phenomena, but a commonality of interest that is much more than the sum of its constituent parts.

The conception of law and social science as a series of "law-and's" is not a particularly functional characterization. What has been most engaging and sustaining about sociolegal studies as a field of inquiry is that instead of remaining distinctive interest groups based on discipline of origin, subfield specialties across disciplinary boundaries have evolved. In those subfields, scholars organize their work tolerant of the perspective of others and generate fresh insights out of that very diversity of interest. Just as political science with its focus on the polity and political process has subfields of inquiry (e.g., international relations, electoral behavior, political economy), similarly sociolegal studies has evolved subfield specialties. Irrespective of their disciplines of training, scholars working on procedural justice, crime causation, regulatory enforcement, or deterrence—to name but a few—build on each other's work, challenge each other's assumptions, share complementary goals and objectives, and find that they have more in common than they do with others who received the same degree but turned to other areas of inquiry.

From a research and teaching perspective, no area of sociolegal inquiry is the exclusive province of any one discipline. For example, while some social psychologists study juries through their small

3. Levine, *supra* note 1, at 22-24.

4. See *infra* pp. 76-78.

groups tools, political scientists, economists, and historians also look at the nature of legal decision making and often focus on the jury as an episode of public participation in legal contexts. Among the classics in the field is the Chicago Jury Study,⁵ conceived in the early 1950's and funded by the Ford Foundation as part of an empirical research program established at the University of Chicago. Even though many jury studies were and are done by social psychologists, that work was undertaken by Harry Kalven, a law-trained social scientist of law, and Hans Zeisel, a sociologist.

II. ORIGINS OF SOCIOLEGAL STUDIES

A. "His" Law-Centered Vision

In the revised text of the Mason Ladd Memorial Lecture, David Trubek acknowledges the construction of law and society as a social discipline, but essentially sees the field as dominated by legal thought, the legal academy, and legal elites.⁶ While he recognizes that the law and society idea was impelled by building a social science of law,⁷ his reference points remain the legal profession, law schools, and legal scholarship as the context and culture of sociolegal work.⁸ From this vantage, he maintains that law and society was a movement of the 1960's, linked to the progressive political agenda of legal elites⁹—including the notion that law was the answer to the social flaws and ills of that period.¹⁰

Part of his rationale for focusing on the law school and legal scholarship rests on his view that legal education controls all forms of legal study.¹¹ Taking this as a premise, he examines the legal environment—in particular legal realism and its successor, "imperial law"—where in his view, law and society has its roots. Most of his assessment of what

5. In addition to the numerous articles growing out of this study, the most visible publication was H. KALVEN & H. ZEISEL, *THE AMERICAN JURY* (1966).

6. Trubek, *Back to the Future: The Short, Happy Life of the Law and Society Movement*, 18 FLA. ST. U.L. REV. 1, 7 (1990).

7. *Id.* at 5-6.

8. *See id.* at 13 n.27. Throughout his paper, Trubek's reference points for law and society remain the law school and legal studies even as he examines the relationship of social science and social scientists. *See id.* at 46-47. Other law-trained commentators have similarly considered the relationship between law and society and legal scholarship. *See, e.g.,* Schlegel, *Notes Toward an Intimate, Opinionated, and Affectionate History of the Conference on Critical Legal Studies*, 36 STAN. L. REV. 391 (1984); White, *From Realism to Critical Legal Studies: A Truncated Intellectual History*, 40 SW. L.J. 819 (1986); Whitford, *Lowered Horizons: Implementation Research in a Post-CLS World*, 1986 WIS. L. REV. 755.

9. Trubek, *supra* note 6, at 7-8.

10. *See id.* at 8-9 (Trubek's discussion of "legalism" and "legalists").

11. *See id.* at 15 n.33.

impelled the creation of the law and society field reflects his concerns about the operational assumptions that motivated legal realism and imperial law. Although I share Trubek's appraisal of the limits of legal realism and imperial law, particularly as they influenced law reform and the law and development project of the 1960's,¹² his assumptions about their impact on law and society as a scholarly field create an aura of connectedness that may only be true, if at all, for those trained in law.

B. "Her" Non-Law-Centered Vision

The twenty-fifth anniversary of the Law and Society Association in 1989 provided me with an opportunity to reflect on some of the same issues raised by Trubek about the development of sociolegal studies and of the Law and Society Association (LSA). At that time, I examined the growth of the field through the lens of LSA and found the enterprise to be pluralistic, dynamic, and self-reflective since its beginning. While I will not reiterate the details of that history here,¹³ the interdisciplinary breadth and reach of law and society and LSA can be seen from its inception.

Perhaps the most important sign that the movement was not law school driven is evident from the founding of LSA itself. Although law-trained people were key to the growth of the field in the early years, the effort was not impelled by legal scholars. Indeed, the idea of a Law and Society Association was spawned at a gathering convened by sociologists at the annual meeting of the American Sociological Association in September 1964 in Montreal. Discussions at that meeting focused on whether a separate section of the American Sociological Association should be created or whether this group should become a free-standing society and be open to other disciplines. Ultimately, interdisciplinary outreach prevailed. After a one-year period of consideration, the decision was made to become free-standing and to welcome all forms of social science scholarship on law to LSA—including the scholarship of law-trained persons who were interested in participating in this empirical enterprise.

Parallel to the formation of LSA in 1964 (the official filing of the certification of incorporation was November 17, 1964), much of sub-

12. Trubek's personal narrative about his work at USAID, *see id.* at 22-23, and his and others' experiences with "law and development projects," *see id.* at 36 n.71, help to explain Trubek's perceptions of the limits of the law. These accounts, however, refer to experiences of legal scholars functioning as lawyers in action programs and law reform efforts. Although some of the same people were involved or became involved in law and society, the two activities are distinct. Thus, the criticisms that are appropriate to one are not necessarily relevant to the other.

13. *See Levine, supra* note 1, at 9-20.

stance on law and society was also being planned in the traditional social science disciplines. In 1965, law and society meetings were convened as part of the annual meetings of the American Political Science Association and the American Anthropological Association. Even before such activity surfaced within professional associations, there were other indicators of social science interest in sociolegal studies. For example, in April 1964, the Wenner-Gren Foundation sponsored a conference on the anthropology of law at the Center for Advanced Study in the Behavioral Sciences in Stanford, California. Two years later Wenner-Gren sponsored a second international conference in Austria to stimulate the study of legal systems in cultural and societal contexts.¹⁴

This is not to say that the impetus was entirely or primarily from sociology or social science. There was activity and interest in empirical work on law within the law school world as well. The philosophy of science underlying the initial conception of law and society was that law-trained people should be drawn into the enterprise of sociolegal studies and that teaching and research would be enriched by law *and* social science collaboration. While at a substantive level the aim was for a social science of law, at an operational level there was an early emphasis on joining law with other disciplines as a way of advancing the scholarly enterprise.

There is no doubt that this emphasis on conjoining law with social science strongly influenced the shape of the field.¹⁵ The structure of funding through conferences, training, and the support of law and society centers¹⁶ reflects an interest in building sociolegal studies through interaction of legal scholars with social scientists. Early on, in the 1950's, the Ford Foundation, the Russell Sage Foundation, and the Walter E. Meyer Research Institute (succeeded by the Council on Law-Related Studies) sought to encourage the participation of law professors in this interdisciplinary enterprise. Ford Foundation support for research in law and the behavioral sciences at the University of Chicago Law School in the 1950's galvanized interest in bringing

14. These meetings were organized by Laura Nader, anthropologist at the University of California at Berkeley. The products of the second conference were published in *LAW IN CULTURE AND SOCIETY* (L. Nader ed. 1969).

15. Since 1964, there have been twelve LSA presidents, seven of whom have been law-trained. Joel Handler, who becomes president in July of 1991, is also law-trained.

16. The law and society centers supported by the Russell Sage Foundation at the University of California, Berkeley, the University of Wisconsin, Northwestern University, the University of Denver, and somewhat later at Yale University emphasized interdisciplinary training and involvement across law and social science. See Levine, *supra* note 1, at 12 n.7. For a detailed description of the role of the Russell Sage Foundation, see *LAW AND THE SOCIAL SCIENCES* 1-10 (L. Lipsen & S. Wheeler eds. 1986).

law professors and social scientists together in interdisciplinary exchange. Also in the 1950's, the Social Science Research Council initiated summer institutes in law and social science. The first of four was held at Harvard in 1956: Law-trained scholars including Harold Berman, Willard Hurst, Karl Llewellyn, and Soia Mentschikoff exchanged ideas with social scientists Richard Schwartz, E. Adamson Hoebel, and others.¹⁷ Another indicator of law-trained involvement was the incorporation of the American Bar Foundation in 1952 by the American Bar Association and its establishment as a research institute. Through such activity and other social networks and patterns of communication, numerous legal scholars became engaged and active in the field.

This history demonstrates that the law school was an important player, but not the only or necessarily the lead player, in creating law and society. Also, although legal realism and related traditions of legal scholarship were for some academics a part of their ancestry, as with any new life form, the genetic composition is highly textured and multiply determined. In 1965, at one of the earliest symposia convened by the Law and Society Association in cooperation with the American Sociological Association and the Society for the Study of Social Problems, Jerome Skolnick emphasized this very same point. Like others in the law and society enterprise at that time, Skolnick acknowledged the intellectual heritage to law—particularly to legal realism, and to other disciplines. Yet, he distinguished between this new effort that began in the 1950's and was "only just emerging at the turn of the sixties."¹⁸ Although Skolnick appreciated the importance of the legal realist movement, he thought its "most direct contribution was in socializing a generation of law professors who would be disposed to sociological interests in living law."¹⁹

III. UNDERSTANDING THE ORIGINAL UNDERSTANDING

A considerable portion of David Trubek's effort is devoted to critiques of what he postulated to be the original understanding of law and society. His criticisms seem to be applicable to legal realism and what he calls imperial law; however, by embedding law and society in these traditions of legal scholarship, he generalizes—in my view, he overgeneralizes—his concerns. The specific issues that are trouble-

17. See Schwartz, *President's Message: To Ad Hoebel—With Thanks*, 7 *LAW & SOC'Y REV.* 531 (1973).

18. See Skolnick, *The Sociology of Law in America: Overview and Trends*, 13 *SOC. PROBLEMS* 4, 5 (Supp. Summer 1965).

19. *Id.* at 8.

some to Trubek are (1) that law and society were viewed as a closed system, (2) that law was seen as an unproblematic source of normative order, (3) that the field sought disengagement from law and politics, yet (4) that it was centrally motivated by the impetus for immediate policy impacts, and (5) that science evades normative thought and assumes an objective reality. These "understandings" would be equally troublesome to me if I thought they essentially characterized either the formation or the continuation of the field.

I do not mean to imply that contemporary critiques from Trubek or others²⁰ are not useful and should not help to contribute to constructive reflection and improvement. As I see it, however, the issues of concern to Trubek have always been part of the texture of the field, and, in that sense, greater attentiveness to them neither requires a "reversal" of field²¹ nor a radical intervention. In responding to the Mason Ladd Memorial Lecture and in my Presidential Address, I examined current critiques in light of, not in opposition to, law and society's past. That assessment remains germane in this context.

A. *Law and Society as a Closed System*

The first of Trubek's criticisms is directed to the conception of "society as a system." While his concerns about the limits of Parsonian notions of structural-functionalism are well taken,²² his argument is much more applicable to traditional legal scholarship than to work in the law and society enterprise. His view that society was understood to be "a tightly integrated system of interrelated elements or structures" and that these structures perform functions that are "objectively necessary"²³ seems to misconstrue the "law and society" idea. Sociological studies as much departed from as embraced the assumptions of structural-functionalism that were so influential in social science in the 1950's and 1960's. At its inception, the field sought to pull the legal system apart: Instead of taking formal law as objectively necessary or given, it made problematic its boundaries and borders *and* what it does.

20. See, e.g., Abel, *Redirecting Social Studies of Law*, 14 LAW & SOC'Y REV. 805 (1980); Macaulay, *Law and the Behavioral Sciences: Is There Any There There?*, 6 LAW & POL'Y 149 (1984); Sarat & Silbey, *The Pull of the Policy Audience*, 10 LAW & POL'Y 97 (1985); Silbey & Sarat, *Critical Traditions in Law and Society Research*, 21 LAW & SOC'Y REV. 165 (1988); Trubek, *Where the Action Is: Critical Legal Studies and Empiricism*, 36 STAN. L. REV. 575 (1984); Trubek & Esser, "Critical Empiricism" in *American Legal Studies: Paradox, Program or Pandora's Box?*, 14 LAW & SOC. INQUIRY 3 (1989).

21. Trubek, *supra* note 6, at 51-54.

22. *Id.* at 31.

23. *Id.* at 31-32.

The core of the "law and society" idea was to conceive of law and law-related processes and behaviors as a social process that might best be understood as a part of and embedded in broader social and cultural contexts. To the extent that scholars like Lawrence Friedman and Stewart Macaulay organized their work around a "system" idea,²⁴ it was intended to offer an alternative to doctrinal models and to foster a conception of law, not as fixed or structurally necessary, but as a social institution integral to society. From this vantage, sociological studies was instrumental in encouraging a perception of both "law" and "society" as an open system. Law was not assumed to be a closed system functioning in hydraulic or regularized ways. If anything, law was envisioned to be a dynamic, interactive, and loosely coupled system that is interwoven in and with the fabric of society.²⁵

Relaxing assumptions even about the centrality of law and its boundaries has always been part of what has animated the field. From the outset, sociolegal studies took seriously the idea that it is important to examine the realities of law—including the social arrangements, distributional consequences, and norms produced by its formal and informal institutional processes—and to focus beyond state law to the rule systems and social control mechanisms that structure and regulate other social contexts. Studying law with a little "I" locates and looks at law broadly in, for example, the family, the school, the workplace, or the market. This perspective seeks to understand law's organization, its governance structures, its sanctioning systems, and its relevance to the quality and quantity of social exchange. This interest in interpreting and looking at "legal matter" as it occurs and is dispersed in a variety of locations and settings can be seen in sociolegal work dating back to the 1960's and early 1970's by such scholars as Sally Falk Moore, Philip Selznick, and June Louin Tapp.²⁶ It remains an interest of currency and importance today.²⁷

Questioning the very boundaries and scope of law even produced some tension and uncertainty for a field endeavoring to define itself.

24. *Id.* at 31 n.55.

25. For example, in his writing Friedman emphasized that "[t]here is, of course, no 'true' definition of law. . . . Geometrically, the figure is *rough* and *imperfect*, but it is close enough to the circle for our use." L. FRIEDMAN, *THE LEGAL SYSTEM: A SOCIAL SCIENCE PERSPECTIVE* 10-11 (1975) (emphasis added).

26. See P. SELZNICK, *LAW, SOCIETY, AND INDUSTRIAL JUSTICE* (1969); Moore, *Law and Social Change: The Semi-autonomous Social Field as an Appropriate Subject of Study*, 7 *LAW & SOC'Y REV.* 719 (1973); Tapp, *Reflections*, 27(2) *J. SOC. ISSUES* 1 (1971).

27. In a very engaging paper, Silbey and Sarat reaffirmed the importance of studying sociolegal phenomena beyond state law to a variety of "places and spaces" and saw this perspective as being integral to "critical empiricism" on law. Silbey & Sarat, *supra* note 20, at 166.

In 1976, Marc Galanter—then editor of the *Law & Society Review*—revealed this tentativeness when he asked:

Can there be a field of 'law and society' if it is not held together by the normative vision of legal learning? . . . We seem to pursue a field of inquiry whose ambit is defined by reference to a kind of learning that we reject as inadequate. In exposing the law's claims to autonomy and displaying its continuity with other aspects of social life, we seem to undermine the possibility of a coherent and self-contained field of inquiry which addresses it.²⁸

One explanation of this ambivalence may flow from the influence of legal scholarship on law-trained sociolegal scholars. Another explanation might reflect the apprehension that a broad definition of boundaries might strip this incipient field of a field.²⁹ Whatever underlies this uncertainty about the consequences of a broad conceptualization, it suggests that the original understanding in law and society was not of a fixed, certain, and closed system, but, on the contrary, a fluid one.

B. Law as an Unproblematic Source of Normative Guidance

Trubek also criticizes the original understanding of law and society as seeing law as a univocal or unproblematic source of normative guidance. In making his point, he refers to the longstanding tradition of "gap" studies³⁰ that focused on the "impact" of law or sought to show the disjunctures between "law on the books" and "law-in-action." As Trubek views it, by starting with "law," research accepted a univocal vision of the legal system and accorded it validity, certainty, and legitimacy.

As a caution, Trubek's position is well taken. I have already emphasized the importance that sociolegal studies not be overdetermined by problems or conceptualizations that flow from the legal system, legal academy, or legal scholarship. Others³¹ too have cautioned about the oftentimes limited or even skewed understandings that can issue

28. Galanter, *From the Editor*, 10 *LAW & SOC'Y REV.* 483, 487 (1976).

29. Seeing sociolegal studies broadly as embracing the study of law, law-like processes, and law-related behaviors is not, in my view, inconsistent with the notion of an integrated field or discipline. See Levine, *supra* note 1, at 23-24. See also Levine & Pipkin, *Graduate Programs in Sociological Studies: A Requisite for the Future*, 4(1) *FOCUS ON L. STUD.* 4 (1988).

30. Trubek, *supra* note 6, at 36.

31. See Abel, *supra* note 20; Sarat & Silbey, *supra* note 20; Sarat, *Legal Effectiveness and Social Studies of Law: On the Unfortunate Persistence of a Research Tradition*, 9 *LEGAL STUD. F.* 23 (1985).

from concentrating work on only "impacts" and "gaps." Also, with benefit of several decades of research experience, there may now be more awareness of the limitations of scrutinizing only the gaps. As a commentary on the original position, however, Trubek's critique seems misplaced.

Studies that issued in the early years on law-in-action, legal impact, or implementation were more likely to take law, not as precepts with normative validity, but as points of departure for then scrutinizing and illuminating the realities of "legal life." Depending upon the context or problem of study, scholars may have as much questioned a particular set of laws or legal arrangements as accepted them as a source of normative validity. Although the period of the late 1950's and early 1960's may have reflected some hope that law reform could ameliorate social problems and make a difference on issues of social justice, the interest in studying law was not motivated by an undifferentiated acceptance of law.

To make his point, Trubek analyzes the law and development project as an instance of accepting law as an undifferentiated source of guidance. Earlier,³² I located the law and development movement within the framework of law reform and legal action, despite some overlapping membership in the participants, as essentially not an episode in law and society history. Although I am sympathetic to his critique of the limits of that movement and its failure to appreciate the ethnocentrism involved in transporting modern law to developing countries, the project itself was basically an enterprise of the legal profession and the legal academy. Thus, it is more appropriately a subject of sociolegal studies than a critique of it.

Sociolegal research on the imposition of law and legal pluralism that aimed to isolate and illuminate the impact of western systems on local cultures did not take the imposition of western law as a social good. Although such studies can also have their ethnocentrism and can fail miserably to capture the perceptions and interpretations of those involved, this problem—taken up later³³—is different from conceptualizing law as unproblematic or as virtuous. Trubek's challenge to be critical and to avoid complacency in making or accepting assumptions about law is a wise one. I see this challenge, however, as part of the original understanding, and, although never realized perfectly, certainly it was never "suppressed" or "evaded."³⁴

32. See *supra* note 12 and accompanying text.

33. See *infra* pp. 85-87.

34. Trubek, *supra* note 6, at 37.

Again I return to the view that Trubek's concerns are more appropriately directed to law or perhaps to legal scholarship than to original understandings in law and society. His consideration of recent legal scholarship in critical legal studies, feminist jurisprudence, and critical race theory is important, but more germane to law and legal doctrine. This connectedness is most evident in the two instances where Trubek discusses how feminist jurisprudence offers a critique of legal assumptions about the objective necessity and normative validity of legal structures or the univocality of doctrine.³⁵

The feminist critique itself makes good sense. It is widely recognized that social interaction—including that related to law—and scholarly discourse at least through the 1950's and 1960's showed little awareness of the power, purpose, and impact of male domination. In contrast to traditional legal scholarship, however, the field of law and society, with its focus on examining the empirical realities and consequences of law and identifying complexities and underlying dynamics, invariably raised questions about the normative validity of extant structures, functions, and impacts of the legal system. From that vantage, the kind of question-raising about law that derives from sociolegal studies helped to create an environment ultimately more sympathetic to the issues and insights offered in the 1970's and 1980's by feminist jurisprudence. Although Trubek's discussion of feminist critiques of law is certainly relevant to legal doctrine and doctrinal scholarship, it is less clear how his observations are a critique of sociolegal studies.³⁶ This is not to say that there are not important criticisms of social science from feminist philosophers and sociologists of science that do pertain to law and society. Later, I consider the importance of these critiques.³⁷

C. *Disengaged from Law and Politics . . .*

In addition to his critique of how law and society conceived of law, Trubek also raises questions about the initial conception of the enterprise itself. He finds particularly troublesome what he considers the need to conceptualize the field in objective terms that separate itself from law and from politics. Here, too, the characterization seems overdrawn.

35. *Id.* at 31-32, 37-38.

36. In recent years, feminist critiques of law have been generating important new questions that require empirical study and should transform the ways that sociolegal scholars conceptualize law-related problems. How law functions to subordinate women, how legal institutions themselves are gender-based and stratified, and how legal processes produce gender-biased outcomes are but a few of the essential questions for law and society research.

37. *See infra* pp. 85-87.

The effort to define the law and society enterprise in its own terms and as distinct from traditional legal scholarship did not necessarily indicate the intention to separate from the larger social context or to deny social relevance or responsibility. In departing from doctrinal analysis and pulling toward a new enterprise, perhaps law-trained colleagues pursuing empirical research may have seen themselves as marginal to the law school world.³⁸ However, this contrast with legal scholarship did not necessarily imply a disengagement from law or politics for law academics or social scientists. In 1966, in the introduction to the first issue of the *Law and Society Review*, then Editor Richard Schwartz³⁹ observed an interdisciplinary interest in *both* knowledge about law *and* in information of value to legal policy. He emphasized, however, that the "crucial task" was gaining a theoretical understanding of law as part of the social order.

In taking as its task this commitment to building fundamental empirical knowledge, sociolegal studies did not aim to avoid the political dimensions or ramifications of its work. From the outset, there was recognition that research itself is not exempt from the politics that are internal or external to a field. Every social process has its value and status hierarchies, and, although preferences in theory, method, or context may vary with time, academic "politics" can subtly affect what is or is not done. Also, to the extent that research is an integral part of broader social processes, the production of knowledge is itself political.⁴⁰ Whether or not the call is new, Trubek's concerns about conceptualizing science as disengaged from society and his urgings that scientists take responsibility for the impacts of their work are messages that cannot be sounded frequently enough.⁴¹

38. The implication of much of Trubek's paper is that law and society is perhaps less marginal in law schools than it once was both because it is better established and because the legal academic culture has radically transformed. Trubek, *supra* note 6, at 36, 45-46. The issue of marginality vis-a-vis one's field of training seems to be more the preoccupation of law-trained colleagues than those trained in the social science disciplines. Perhaps the prestige hierarchies are more rigid within the law school world because there is more consensus about the dominant paradigm (whether critical or supportive). Or, perhaps, empirical study of social phenomena is the "stuff" of social science training, but, for law-trained colleagues, "joining the sociolegal tour" represents a greater departure from the prevailing professional culture of their "home" departments. Galanter's calling "law and society" discourse a "second legal learning" shows that legal scholarship is a point of comparison for law-trained colleagues in ways that are likely not felt by social-science trained colleagues. See Galanter, *The Legal Malaise; or, Justice Observed*, 19 LAW & SOC'Y REV. 537 (1985).

39. Schwartz, *From the Editor . . .*, 1 LAW & SOC'Y REV. 6 (1966).

40. See also Sarat & Silbey, *supra* note 20; Trubek & Esser, *supra* note 20.

41. The role and complexity of the social sciences addressing social issues and problems have been topics of considerable *tension* and *attention* especially since World War II. See, e.g., Kelman, *The Social Consequences of Social Research: A New Issue*, 21(3) J. OF SOC. ISSUES 21

The tensions and difficult choices between basic and applied research, between theoretical and policy-oriented concerns, and between political and policy interests that are endemic to science can be seen in the formation and functioning of any field—including sociolegal studies. Although sociolegal work *was* and *is* driven by an interest in “social science of law” and not “social science in law,”⁴² there has been both ambivalence and rumination about the meaningfulness of research, the value or limitation of addressing politically “hot” topics, the potential for “capture” or being “captured,” and the extent to which law or legal policy has implicitly or explicitly determined the shape and substance of sociolegal work.⁴³ This rumination has a long history. In 1965, at the first Law and Society symposium, Skolnick⁴⁴ grappled with the tension between basic and applied research and cautioned against drawing precise lines instead of developing theoretical issues on whatever the problem.

The fact that this rumination is generic and recurrent does not make it any less consequential. Undergirding research, there are always the questions of what to do and when or whether to do it, and there are no easy answers. Academics who have dedicated their careers to research and teaching regularly experience this tension between “knowing” and “doing.”⁴⁵ Given that time and space for research are not infinite, it is obviously difficult and challenging to reconcile goals, aspirations, and often competing demands. Also, scholars differ in the extent to which they believe their work can or should have immediate relevance and, as frequently, they themselves change depending upon the problems being pursued or their own sets of experience or frustration with their work.⁴⁶ For example, in a 1974 article on scholars’ par-

(1965) (written almost contemporaneously with the founding of Law and Society). In the 1970’s, June Louin Tapp and I also addressed the reluctance and responsibility of scholars to pursue sociolegal research that is engaged and reflective. See Tapp, *supra* note 26, at 1-2; Tapp & Levine, *Reflections and Redirections*, in *LAW, JUSTICE, AND THE INDIVIDUAL IN SOCIETY: PSYCHOLOGICAL AND LEGAL ISSUES 3-5* (J. Tapp & F. Levine eds. 1977).

42. Among others, Lawrence Friedman made this same distinction in describing the orientation of the field. Friedman, *The Law and Society Movement*, 38 *STAN. L. REV.* 763, 778 (1986). See also J. MONAHAN & L. WALKER, *SOCIAL SCIENCE IN LAW* (1985) (exemplifying the latter tradition).

43. See Abel, *supra* note 20; Sarat & Silbey, *supra* note 20.

44. Skolnick, *supra* note 18, at 23-24.

45. Because law school and the legal profession are practice and public-policy oriented, law professors may exhibit more heightened awareness of or pressure to work in ways that are more relevant to or consistent with political values and policy agendas. But, if these issues are heightened for law-trained scholars, they are certainly not unique to them. While the intensity and level of interest may vary among individuals, the issue of social responsibility is never absent.

46. In a very fine paper on feminism and the science of psychology, Anne Peplau and Eva Conrad reflected on feminist research and feminist methodology. See Peplau & Conrad, *Beyond*

ticipation in the law and development movement,⁴⁷ Trubek and Galanter lamented the consequences of being deceived or coopted by the policy and political motives of governments and lawyers in the United States and in developing nations. Yet, in the Mason Ladd Memorial Lecture and in this paper, Trubek calls on sociolegal scholars to become more politically engaged.

This seeming contradiction is more the rule than the exception. Even among less activist colleagues than Trubek, there is a sense that one's work should be relevant and important. It may be endemic to the scholarly condition to experience enduring ambivalence—an approach/approach, avoid/avoid conflict of sorts. Yet, for those who have chosen careers in teaching and research, there is abundant opportunity for fundamental work on politically important issues (such as race, gender, ethnic conflict) without sacrificing scholarly integrity to political statement.

For sociolegal scholars committed to building fundamental knowledge about law-related processes, this duality is not new even within the same individual, let alone across our colleagues. There was no univocal voice, as some like Trubek might suggest, from sociolegal research in the past; there is no single message today, and there is no reason to expect an authoritative resolution in the future, nor should we seek one.

D. Yet . . . Eager for Impacts

Trubek finds the original understanding wanting in large measure because sociolegal scholars were preoccupied with seeking to produce objective knowledge. He takes the view that objectivist conceptions require a stance of neutrality toward particular interests and visions of social life that lead and led to disengagement from law, politics, and normative judgments. Seeing objectivity as a core tenet of positivist social science, he criticizes this notion as both inhibiting legal and political engagement (already discussed) and promoting a view of true knowledge that was there to be used.

Non-Sexist Research: The Perils of Feminist Methods in Psychology, 13 *PSYCHOLOGY OF WOMEN Q.* 379 (1989). They called for a diversity of research topics, methods, and goals; the legitimacy of both problem-centered and basic research; and reflection on the role of personal values. They argued that there are a variety of opportunities for action and that scholars have to be conscious of the potential implications of their work but not have as a litmus test being action-oriented or applied. Indeed, while supportive of a range of approaches, they cautioned that action-oriented work can also redefine the issues being studied in ways that are limiting and that fundamental work should not be constrained by the absence of an overt implication. *Id.*

47. Trubek & Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1974 *Wis. L. REV.* 1062.

Much of Trubek's uneasiness about early and contemporary work⁴⁸ in law and society stems from his assumptions that social science shrouds itself and what it observes in an objectivist framework of value neutrality. Sidestepping the debates in science that date back to the 1960's about value-free and value-neutral work, he posits a univocal "science" and univocal "law and society" that sought to ascertain and impart truth but that showed little awareness that the scientific enterprise itself affects the shape of that knowledge. In the next section, I present an alternative conception of sociolegal studies as science.⁴⁹ Most important here is Trubek's vision that, in producing authoritative and objective knowledge, law and society scholars, however much they were disengaged from law and politics, expected their knowledge to have authority and make a difference in social life.

The expectation of social researchers that their work would make a difference, however naive or even misplaced, was certainly not a fatal flaw if true. Undoubtedly, many of the first generation of scholars who were attracted to empirical work on law harbored a hope that their scholarship would have an impact. Some likely even turned to social science, as opposed to other areas of work or other areas of science, out of an interest in dealing with issues of social relevance. Furthermore, sociolegal scholars certainly were not unaware of the potential political impact and political importance of the issues that were being addressed—whether it was work on the delivery of legal services for the poor,⁵⁰ work on policing,⁵¹ or work on the stratification of the legal profession.⁵² Appreciating, however, that knowledge on such issues can have important consequences did not mean that the dominant impetus was to look for immediate policy impacts.

Essentially, as I see it, in the formation of law and society, there was great diversity in the form and intensity of social engagement and in the motivation for relevance and political or policy impact. Fur-

48. From Trubek's vantage, there is still a reluctance to abandon "objectivism" with all of the trappings he ascribes to it. Trubek, *supra* note 6, at 46-47. In examining what he believes to be a now current and more critical approach to sociolegal studies than was characteristic of its past (what he has termed "critical empiricism"), Trubek continues to find as a sticking point an "unwillingness to abandon *some form* of objectivism." *Id.* at 50. While I am sympathetic to what has been called "critical empiricism," I find it more continuous with traditions of the past in its thrust and critiques than as discontinuous from it. The prior discussion should make that clear.

49. See *infra* pp. 85-87.

50. See, e.g., J. CARLIN, J. HOWARD & S. MESSINGER, *CIVIL JUSTICE AND THE POOR: ISSUES FOR SOCIOLEGAL RESEARCH* (1967).

51. See, e.g., J. SKOLNICK, *JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN DEMOCRATIC SOCIETY* (1967).

52. See, e.g., Ladinsky, *The Impact of Social Backgrounds of Lawyers on Law Practice and the Law*, 16 J. OF LEGAL EDUC. 127 (1963).

ther, to the extent that scholars sought to make a difference, there is little indication that the desire to have an impact flowed from a vision of perfect or objective truth. Both in the past and present, there was less confidence or arrogance than Trubek implies. While scholars sought to draw inferences and offer generalization and explanation, the prevailing view did not assume that social knowledge was absolute, perfect, or fixed.

E. Sociolegal Studies as Science

"His" story and "her" story (i.e., Trubek's and mine) perhaps most diverge in their conceptions of sociolegal studies as science. Despite the many accomplishments of law and society that Trubek notes, his story focuses on the limitations and constraints of social science; my story sees social science as having brought new ways of conceptualizing and observing law and law-related processes. Trubek is concerned about abuses that might follow from substituting the authority of science for the authority of law. He see social science as falsely assuming an objective reality; I see social science as the process of seeking to be objective about subjective events and experiences—including science.

Essentially, Trubek's critique of social science derives from the concerns alluded to above: That science abates normative thought; that science assumes an objective reality; and that much of science denies that it is part of the process of social life and social relations. To the extent that sociolegal work represents extremes on such dimensions, inattention to these issues would be problematic. In terms of actual work, however, past or present, sociolegal studies as a scholarly enterprise would not be characterized in such terms.

My view of sociolegal studies as science is based on looking at the nature of the activity. I see science as a form of work, not a set of graduate degrees (witness the professional social science done by scholars with only legal training). It is certainly not the only form of valuable work, but work of value nonetheless. Science as a mode of work is a way of building knowledge through the development of ideas grounded in or examined against observing, collecting, accumulating, scrutinizing, or even at times altering the empirical realities of life. As a mode of work *we do*, it is a mode of work *we are obliged to examine*.

Criticisms from within sociolegal studies about the value-neutrality of scholarship, the determinate nature of knowledge, and the interactive effects of researcher and researched are all important for constructive self-reflection. Philosophers and sociologists of science have contributed substantially to our understanding of these issues. Current

writing, especially from feminist and interpretivist scholars, has added fresh insights and new dimensions for self-correction.⁵³ Within social science and sociolegal work, despite some "straw-persons," there have been useful cautions about excesses and biases in the past and about limits on knowing that should inform our future.

One of the most insightful and constructive of these cautions was recently published by Randall Collins.⁵⁴ He examined how social science comes to terms with subjectivist, interpretivist, reflexive, and emergent critiques of science. He persuasively argues that one learns from the various critiques and that these critiques are not necessarily separate and apart from science, but part of the dialogue of doing science in a better way. For those who value the process of learning and the value of understanding without any illusion of the absolute certainty of what we know, such critiques are instructive and integral to the activity and integrity of science itself. We must keep in mind that science is a social process and, like all social processes, it is dynamic, even at times erratic, but capable of change. Thus, the critiques are grist for doing science in a more profound way.

All of this said about value neutrality, objectivity, and the doing of science, Trubek and I diverge less than this language suggests. There may be a simple explanation underlying our apparent differences in view. An obvious one is that he, of course, is trained in law, and I in social science. This may account for some of the variance, but not all. As much to the point, Trubek continues to see the law and society enterprise as part of legal scholarship, and he is wary of language that might imply an "exclusive jurisdiction"⁵⁵ over legal knowledge. Even when Trubek considers social science, his frame of reference remains the law school. Thus, his concern about privileging social science may be understandable. I see law and society as a multidisciplinary endeavor that occurs in a wide number of institutional locations—including the law school—and as neither being law-school or state-law centered. Therefore, I worry less about privileging sociolegal studies

53. Among the leading philosophers of science framing feminist critiques in social science is Sandra Harding. Her participation as the lead speaker at a plenary session on "Feminist Epistemology and Law and Social Science" at the 1989 annual meeting of the Law and Society Association indicates the importance that sociolegal researchers place on serious consideration of these issues. See S. HARDING, *THE SCIENCE QUESTION IN FEMINISM* (1986); *FEMINISM AND METHODOLOGY: SOCIAL SCIENCE ISSUES* (S. Harding ed. 1987). In each discipline, scholars are grappling with the relationship between such critiques and social science inquiry. In psychology, see, e.g., Peplau and Conrad, *supra* note 46; in anthropology, see, e.g., Stacey, *Can There Be a Feminist Ethnography*, 11 *WOMEN'S STUD. INT'L F.* 21 (1988).

54. Collins, *Sociology: Proscience or Antiscience?* 54 *AM. SOC. REV.* 124 (1989).

55. Trubek, *supra* note 6, at 50.

vis-a-vis law school work than about contributing more generally to social knowledge.

IV. ACADEMIC AUTONOMY AND THE ROLE OF THE LAW SCHOOL

By focusing on law and society as a part of legal scholarship and as essentially a movement within the law school world, Trubek presents a rather circumscribed view of the scope of the field and what has been achieved. Although perhaps not intended, the limitation of his conception is nowhere better captured than toward the end of his paper when he reflects, with quite positive affect, about the accomplishments of the field:

The pioneers did accomplish something lasting. It is no small achievement to have constituted a new object of inquiry in *legal studies*. . . . It was a major accomplishment to *open legal studies to professional social scientists*. And it was no mean feat for a basically liberal movement of social science intellectuals to gain even a *foothold in the generally anti-intellectual and often politically conservative environment of the law school*. There was, indeed, a lot to celebrate at the twentieth-fifth Anniversary party.⁵⁶

Although I share Trubek's pleasure in this accomplishment, by defining what was gained from the vantage of only one of the originating disciplines, the law school, he fails to see that sociolegal studies in its first twenty-five years did that and so much more.

Law-trained colleagues may be especially inclined toward such a frame of reference. State law is after all the exclusive subject of work and study within the law school, and a majority of the work in law and society has focused on processes, activities, and behaviors in relation to state law. Yet, although they may not think about their standing in law schools, colleagues trained in the other disciplines that constitute sociolegal studies similarly consider the inroads that have been made in gaining legitimacy and credibility in their fields. All of these perspectives, however, reflect and reinforce dependencies that do not adequately account for the growth of and intellectual opportunities in sociolegal studies as an autonomous field.

In an article with Ronald M. Pipkin,⁵⁷ I argued that the field of sociolegal studies would be enriched by autonomous academic ar-

56. *Id.* at 48 (emphases added).

57. Levine & Pipkin, *supra* note 29.

rangements dedicated to its development. Some of these infrastructural arrangements are already in place. Many colleges and universities offer majors or concentrations in law and society, and traditional programs in criminology and criminal justice have broadened their focus and even their names (e.g., to justice studies). In addition to such activities in academic institutions, teaching materials of quality are now more readily available. Journals have proliferated from initially two or three to currently more than two dozen. The growing importance of specialized scholarly societies (e.g., the Law and Society Association, the American Society of Criminology), the nature of the work and the critical mass of scholars at research institutes (e.g., the American Bar Foundation, Rand's Institute for Civil Justice), and the viability of funding sources (e.g., National Science Foundation's Law and Social Science Program, the Fund for Research on Dispute Resolution) are all indicators of growth. As important, parallel organizational, academic, and scholarly efforts can be seen in other countries.

Although these infrastructural supports have been instrumental to the growth of sociolegal studies, there is still a missing link: There are few freestanding academic programs⁵⁸ that fully integrate graduate and undergraduate education. The presence of programs that have their own integrity and are not in an adjunct status vis-a-vis other fields and disciplines—including the law school—is especially important from the vantage of the current state and future health of the field. Joint programs and an inter-departmental model have worked and continue to work reasonably well in attracting participants to this arena of work. Yet, remaining embedded in the substance, reward structure, and status hierarchy of other disciplines creates limitations and distractions that can constrain the creativity of the field and inhibit the entry of the next generations.

In that earlier article,⁵⁹ Pipkin and I weighed the intellectual and strategic advantages and disadvantages of disciplinary autonomy and urged both an independent conception of sociolegal studies and freestanding academic units. I will not repeat our reasoning here. Most important is that such autonomy focuses thinking about law and normative ordering in broad and generic terms. It places the center of gravity not in state law but in law-related processes and behaviors that occur in all social domains and over time and cultures. Also, it fosters

58. There are some notable exceptions: the Jurisprudence and Social Policy Program at the University of California at Berkeley; the School of Justice Studies at Arizona State University; and the Policy and Society Program at Northeastern University.

59. Levine & Pipkin, *supra* note 29.

thinking in ways that value multiple methods and multi-disciplinary integrations and that transcend traditional disciplinary or interdisciplinary frameworks. Although no field is immune from complacency or rigidity in its interests and priorities, an autonomous sociolegal studies encourages new fusions and makes problematic professional and institutional definitions of law. To the extent that Trubek's critiques of the original understanding of law and society are well founded, there is much to be gained from thinking in autonomous terms.

This shift in emphasis does not mean that the law school world is not or could not be an important part of the enterprise. As a fellow traveler in law school circles since the early 1970's and as a missionary at heart for sociolegal studies, I see changes in the role of empirical scholarship in law school, and also I see potential for even greater change in both the attitude and participation of law-trained scholars. Others, with more "hands on" experience, seem to question this optimism.⁶⁰ They are less sanguine and emphasize that other intellectual movements receive greater visibility in law school life (e.g., critical legal studies, feminist jurisprudence, law and economics). As I see the past, law-trained colleagues helped shape the field just as did sociologists, political scientists, anthropologists, and some other less well represented disciplines.⁶¹ As I see the future, law school is likely a fertile ground for new recruits and "converts," but certainly not the only fertile ground nor any more central to sociolegal studies.⁶²

In looking toward the next generation of sociolegal scholars, it would be valuable to continue to attract participants from the law school world and especially to reach out to law students. But, in planning for the future, it is also important to realize that the field is not exclusively located within the law school; nor is it a creature of legal scholarship. Looking ahead and shifting the outreach as much to law students as law faculty, it is with the long-term hope that law students will more readily internalize the value of thinking broadly, empirically, and critically about law.

V. CONCLUSION: "HER" FINAL STORY

Interspersed in his paper, Trubek recounts "stories" of his personal experiences that reveal the depth of his feelings and the range of his activities. Through his stories, Trubek aims to depict his concerns

60. See, e.g., Friedman, *supra* note 42; White, *supra* note 8; Trubek, *supra* note 6.

61. See *supra* pp. 70-72; see also, Levine, *supra* note 1, at 20 & n.32.

62. For an insightful appraisal of the history of empirical research in law schools and some constructive strategies for change, see Schuck, *Why Don't Law Professors Do More Empirical Research?*, 39 J. OF LEGAL EDUC. 323 (1989).

about sociolegal studies and his conception of what the field is. In a similar spirit, I conclude my paper with a "story" about the two of us:

In 1974 I met with David Trubek and Marc Galanter, and they told me about their aspirations for "independent centers or departments of legal studies"⁶³ that could help nurture and advance the law and society idea of an autonomous field of law.⁶⁴ I thought their vision was plausible and desirable. It resonated with my own characterizations of the field and my sense of identity. I found it invigorating to talk with colleagues who shared a similar dream. I understood Trubek's frustrations in meeting resistance in the Yale Law School to the vision he preached. I realized that this effort to transform the social structure of legal education or of the academy might take more time than could be accomplished in our generation. I made that vision my agenda.

I worked at the American Bar Foundation through the 1970's with that goal. I worked at the National Science Foundation through the 1980's and further saw the complexities but significance of forging new fields and transforming the structure of science and social science. I reflect on my friendship with Trubek over these decades as having been built on a shared commitment to education and advocacy about this vision. Progress has been made. There is more cohesion and less opposition to what was once a curious, if not threatening, idea. Trubek's vision made sense. It made a difference for the field and for me that we talked back in 1974. It still can and does make a difference.

63. Trubek, *supra* note 6, at 28-29.

64. In 1974, Marc Galanter first used the concept of autonomy in calling for "autonomous social research on law." See Galanter, *The Future of Law and Social Science Research*, 52 N.C.L. REV. 1060 (1974).