

Law and Social Sciences
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May 8, 2005

“Law and social sciences” (LSS) describes a set of topics and domains rather than a discipline. Scholars trained as anthropologists, legal historians, sociologists, political scientists, psychologists and, of course, lawyers, all write about law and society. We will be discussing methods that arise in each of the social science domains in different panels. Some studies that are generally considered as LSS (and are funded by that NSF panel) have no specific methodological differences from studies that deal with other topics. For example, survey-research studies or experimental studies concerning legal legitimacy are not methodologically different from survey-research studies or experimental studies concerning racism, although probably the former but not the latter would fall under LSS. Therefore there is little reason to treat the first set on a different panel on methodology than the second.

I would suggest we reflect on three closely-related questions:
First, are there ways in which the topic of law inflects social science studies methodologically?
Secondly, has such inflection given rise to a norm about the quality of methods?
Third, what methodological choices or changes would improve the quality of individual research and, more importantly I think, improve the quality of collaborative work within LSS as a field of knowledge?

The first question is empirical, the third normative, and the second both. In addressing them I will mention mainly work from sociology, anthropology and history.

Regarding the first question: let me advance a proposition that will either seem obvious or highly contestable: that if one enters the domain of law from a social science, one will face normative pressure to study formal legal processes and institutions: court cases, judges’ reasoning, and what we mistakenly call “informal” types of adjudication. If one enters the field after law school, one will encounter corresponding pressure to study something about social life: the political economy of institutions, the linguistics of social interactions, or the social networks shaping everyday life. These two pressures, then, would tend toward creating the field of LSS methods.

Now, some work usually classified as LSS might not seem like it fits this definition: ethnographies of villages, surveys of attitudes about courts. That’s right; it doesn’t; and I am simply leaving the work to the side. But, we can detect developments and criticisms within these subtraditions that confirm the hypothesis.

For example: ever since Comaroff and Roberts’ *Rules and Processes* (1981), a collaboration between an anthropologist and a lawyer, ethnographies of legal processes have faced pressures to take account of both the broad sociocultural order and the nature of legal reasoning in a specific institution, and to look in detail at particular disputes in order to discern the relationships between those two domains.

We can see that pressure if we look at criticism leveled at work that does do not that—and here we are looking for the emergence of a norm, my second question. The insightful work of Larry Rosen (1989) in an Islamic court in Sefrou, Morocco, came from the interpretivist tradition. Rosen draws out general ideas about truth and responsibility from what happens in court and gives us a vivid sense of a specific cultural logic and how it shapes courtroom procedure. He describes some cases. But he does not tell us much about how judges relate what they are doing to broader traditions of Islamic jurisprudence. We might be in a non-Islamic court—indeed, one might wonder whether such a court in Morocco would look very different.

The criticism of Rosen came from historians of Islamic law, who, because of the nature of their materials, focus on Islamic legal reasoning. They, in turn, have been roundly criticized for assuming that Islamic legal doctrine is “applied” in a real Islamic court. The sociologist Baudouin Dupret (2000), for example, points out only by examining judges’ legal reasoning can one tell whether the judge is invoking an Islamic legal principle as law or as a norm. In many cases a statute is applied, but Islamic justification provided.

One might state the norm as something like the following. A researcher must examine the processes of reasoning, disputing, or other that characterize the object of study. He or she must also provide two kinds of context for those processes. One, which we might term “legal”, includes the memories of past cases, or norms about how one should proceed. The other, which we might term “social”, includes the ideas, values, structures that shape the events in question.

LSS researchers follow this norm in a number of ways. I will mention some, together with (now, third question) avenues for methodological enhancement. (I choose only works that I find very good.)

Some studies choose a very small number of litigants to illustrate how the system works. In her books and film, Ziba Mir-Hosseini follows a few claimants over time in Iranian divorce courts, to show how one bargains and interacts with judges. Erin Moore (1998) wrote an entire book based on one woman’s case in India, a strategy that allowed her to show how different levels of dispute resolution react on each other. Both approaches could be enhanced by comparative research: are there regions, or judges, or courts that differ in important ways? Adopting a “triangulating” strategy would add the plausibility that the micro-studies can be scaled up the level of a nation or a tradition.

Systematic archival work can provide a useful check for hypotheses generated by a small number of cases. Sally Merry’s recent historical book on Hawaiian law (2000) selected a sample of cases over a long time period. I did the same (2003) in work on the history of family law cases in Sumatra. In both cases, the historical work kept us from looking for invariant relationships between decisions and features of society or culture.

In my own Indonesian work, I emphasized the relations among levels, using ethnography in a village, archival study in a courtroom, and narrative analysis of national-level published materials. This sort of work takes a lot of time, however.

Many LSS researchers analyze material inductively, by sorting it into 2-4 piles. Philips (1998), for example, wanted to learn whether political orientations shaped judges' courtroom actions. She tape-recorded courtroom sessions and interviewed judges. She then sorted all this material into two piles: judges who, when taking plea, said that the record sufficed, and judges who stuck to procedural rules that required them to ensure the voluntary nature of the plea. Philips also found that these two piles were conservative and liberal, respectively, but the interesting feature of the study for us is that she was able to see the importance of this distinction in plea practices only through an inductive approach based on systematic recording of courtroom practices. Ewick and Silbey (1998), working on ordinary persons' attitudes toward the law, worked in a similar manner, sorting interviewees into three piles characterizing their stances with respect to law and showing how they arrived at those stances.

I would argue, more broadly, that a "differentialist" method seems simple-minded but is immensely productive. One asks: what seem to be the most important differences here? "Important" is defined by the research question: political attitudes, or legal consciousness. "Here" has to be information gathered with some sort of systematicity to avoid the usual selection biases: stratified samples of interviewees, selections of cases from alternate years, and so forth.

What do we need more of to add rigor to LSS research? Let me suggest several items for discussion.

First: we should recognize the importance of training in law and in a social science, without requiring degree programs.

LSS researchers who come from law school usually know little about social science research. Law and Society Association offers some workshops, but I do not know whether these have been evaluated. "We" (the NSF) should see the "retooling process" as a necessary and important part of training for LSS and other trans-disciplinary domains, and think about research training that starts from good examples of studies, and unpacks how the studies were done.

Conversely, LSS researchers who enter law from a social science might need a very different type of retooling. My sense is that many of us do not appreciate how much more we should know about the legal system we study. This sort of rigor involves an awareness of legal language, precedents, and also ways of analyzing texts in a particular legal tradition.

Secondly: we need more micro-level studies.

My sense is that we need much more microsociological studies of what happens in a courtroom or other setting: how do real people plea and testify, how words and gestures combine to produce certain effects. If a small amount of training in linguistics were to be added to training across several disciplines it would strengthen this element of research.

Third: we should underscore the value of collaborative, comparative research.

Comparisons point up important axes of difference, which other kinds of work (I would push “micro-historical” studies) can then explain. Without comparisons, one never knows if that small-claims court in New England tells you anything about life outside New England. But such work requires either a long-term research agenda or collaboration.