

Law and Society

An Introduction



John Harrison Watts • Cliff Roberson



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Law and Society

An Introduction

For Harrison

To Gary Bayens who has been such a great mentor. As an inspiration for my daughters: Whitney, Mariah, and Makayla.

For Cliff

To Elena Azaola for her continuing support, to Stephanie Teeslink for her assistance, and Geneva, Nikkita, Isiah, Trevor, Amy, Iain, and Asher—my grandchildren.

Preface

This text on the study of law and society is more than a look at how law controls or influences our society. It is designed to open the students' eyes to the fascinating topics involving law and society. Our approach is to present a text that may be used in a one-semester course on law and society or a sociology of law course. While each chapter builds on the previous chapters, the text is designed so that the chapters may be studied in a different order, depending on the design of the course.

The text is written in a manner that may be understood by college students and thus enable instructors to focus on selected issues and topics during class time. Too often in the law and society area, textbooks can be understood only by instructors, and thus valuable class time must be used to explain the meaning of the concepts covered in the text. To overcome this problem, we followed the example of Ernest Hemingway and used familiar, concrete words and short sentences whenever possible. This approach should allow valuable class time to be used to encourage critical thinking on the part of the students.

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An Overview of Law and Society

1

Chapter Objectives

After reading this chapter you should be able to

- Describe the issues involved with the law and its interchange with society
- Provide a workable definition of law
- Explain how law influences our daily lives
- List and explain the three approaches to issues in law and society discussed in the chapter
- Discuss the roles sociologists should take when addressing law and society issues
- Define the concept of rule of law

Introduction

In today's society, law permeates all forms of our social behavior. The law is everywhere, with us and around us. To get to class, traffic law dictated the manner in which we drove or where we walked across the street. Law even governs our right to sit in class and our obligations to pay tuition. It is a vast, though sometimes invisible, presence. Chapter 1 introduces readers to the issues involved between law and society. The problems with definitions of law are discussed along with classifications of law. Three approaches to law and society issues are discussed, along with the ramifications associated with each approach. The final section of the chapter looks at the concept of the "rule of law."

The study of law and society has never been more interesting and important as it is today. In studying law and society, we should remember that the law is an enormous and complicated process. Any attempts to simplify it are usually a failure. The law is also parochial in nature. For example, mathematics is more or less the same subject in Rome, Italy, as it is in New York, New York. The legal system operating in Rome, however, is vastly different from the legal system operating in New York. While two plus two should always equal four, the law is constantly changing. Presently, the pace of social change is unsurpassed in history. The pace of legal change is also unmatched

in history. Yet, often the law does not keep pace with social change. As will be noted in the text, changes to laws frequently lag behind social change. In the text, we present the major theories and points of view without advocating any particular slant. Our goal is to expose the readers to the major theoretical perspectives without advocating a particular position, ideology, or theoretical position.

Chapter 3 examines the contributions of sociological research and its impact on the law. There are differences of opinion over what roles sociologists should take when conducting research in law and society issues. The traditional approach is that sociologists should conduct their research in a value-neutral and empirical fashion and then report the findings in a similar manner. Others contend that sociologists should do more than merely describe and explain social events. They contend that sociologists should assert their rights to criticize and advance ways of rectifying or redressing law and society problems.

A PARADOX

The more civilized individuals become, the greater is the individual's need for law, and the more law he or she creates. Law is but a response to social needs.¹

Do you agree with the paradox? Assuming that the paradox is correct, how do you explain it?

Law and Society

Law and society is the field of study that encompasses the many relationships between, and the effects of law on, the social sciences and humanities. What do we mean when we use the term *law and society*? Secondly, how does the concept of law and society differ from the field of sociology of law? It may be easier to consider the second question first.

It is sometimes difficult to distinguish between the fields of law and society and the sociology of law. There is no bright line separating the two disciplines. For the purposes of this text, we have accepted Javier Trevino's concept of the distinction between the two.² According to him, sociology of law analyzes the relationship between law and society from a sociological perspective, while law and society examines the relationship from a broader point of view that includes the social sciences as well as the humanities. Under that concept, sociology of law is a subset of law and society. Trevino states: