

ESSAY

Discipline and field: some thoughts on the relationship between political science and law and society

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(Received 12 December 2025; revised 12 December 2025; accepted 16 December 2025)

Abstract

The relationship between political science and sociolegal scholarship is, at it's best, a constitutive one. This essay argues that the two fields of study have taken turns illuminating important aspects of law, politics, and social life – responding, in turn, to the theoretical and empirical findings of each other. Law and Society scholarship, in particular, presses political scientists to rethink their foundational assumptions about the rule of law, the power of institutions, and the meaning of judicial decision-making and processes. Some of this rethinking may result, as we posited on the panel which gave rise to this work, in a fruitful “undisciplining” of the field, and re-imagining of the political.

Keywords: political science; state formation; judicial decision making; sociolegal studies; legal realism; discipline

In mid-January 2025, just as the new Trump administration was beginning to make clear the contours of his presidency, I attended the Southern Political Science Association (SPSA) annual meeting. There, Elizabeth Oldmixon, serving as president for the SPSA, gave a talk focusing on the limits of political science – in particular, the American politics subfield of the discipline – for understanding the contemporary moment. Oldmixon described a latent form of American exceptionalism undergirding parts of the discipline, a belief that somehow the founding documents and grounding narratives of this country offered an almost talismanic protection against tyranny. The talk Oldmixon gave would have been at home at a Law and Society Association (LSA) meeting. It blended pop culture references, structural sensitivities and doctrinal analysis; it was a meditation on the need to rethink what she had learned in graduate school about the resiliency of institutions, the durability of the constitution, the presence of a rule of law, and the expectation that well-designed processes and structures should be self-perpetuating, should save us from their own demise.

As I reflected, sitting in the audience of the SPSA that afternoon, on the relationship between sociolegal scholarship and my home discipline of political science, I wondered if some of our political science colleagues might need to hear from those of us who have come through a similar moment, the moment that perhaps initiated our movement between political science and sociolegal scholarship. The feeling of groundlessness that some folks within the subfields of American political science and public law are feeling, related to institutional norms and procedural expectations, is one that we collectively – as law and society scholars – lived through and built a scholarly field around.

Admittedly, when Mark Massoud invited me in early 2024 to participate in a discussion on the relationship between my home discipline and sociolegal scholarship, I did not anticipate the electoral outcome that brought Trump back to power and Oldmixon to her moment of disciplinary crisis. My crisis came three decades earlier, in a New York University graduate course on game theory that validated the rationality of social movement actors, and later again, in an NYU Law School classroom that divorced law from the contexts that generated it.

I came to Law and Society as a political scientist in the early 2000s, at a time when the public law subfield was dominated by what felt like an exceptionally limiting and tautological focus on judicial behavior. Finding sociolegal scholarship was the result of my flight from a discipline that felt more interested in certainty than contingency, in dispassionate prediction than compassionate understanding, and in reifying and naturalizing a set of institutions that were clearly, to me, ready to be destabilized in the interests of justice, emancipation and liberation. What is the good of scholarly work, I asked myself as a graduate student, and continue to ask myself now – if it does not contribute to our understanding of – and, crucially, potential intervention into – the present moment?

Political scientists interested in the power of law often try to ascertain how ideology impacts judicial decision-making. Decades of their accumulated studies (1990s–2010s) made clear that courts are a space for individuals and administrations to achieve their policy preferences (see, e.g. Segal and Spaeth 2002).¹ Sociolegal scholars benefited from the empirical data produced by judicial behavioralists, but were largely unsurprised. Law and Society scholars, after all, can reference the Legal Realist tradition, one that had already established the co-constitutive ideological and political roots of legal practices. We were more interested to examine the ways that the ideological and political sense of law was not destabilizing to its power, nor a flaw in its elaboration, but rather an essential part of its force. Through legal pluralist interventions, Law and Society scholars had also already begun the crucial work of decentering courts and judicial decisionmaking, pointing out the varied arenas in which law and legal meaning are constructed and constituted (Harrington and Yngvesson 1990; Nader 2002; Merry 1988).

Similarly, political scientists interested in social movements and their articulation to power through electoral and elite politics, spent those same decades attempting

¹Throughout this essay, readers should know, I am peppering – parenthetically – examples of the work I am referring to. Often, I nod to the text that was the first encounter I had with the idea; sometimes I refer to a text that offers a more comprehensive set of citations than I can in this short piece. I am in no way being exhaustive.

to elaborate theories to impute rationality to people seeking change, or predicting movement success on the basis of decontextualized, though elaborate, “games.” Again, sociolegal scholars benefited from the empirical data produced by rational choice understandings but were able to reference our own literature on the ways that material circumstances had a nuanced but clear role in the success of legal mobilization. The haves, we know, come out ahead – but not only because they have the resources to win a round or two; rather, they come out ahead because they have the power, through iteration, to change the very rules of the game being played (Galanter 1974). Crucially, law and society scholars began to understand the power of playing that game – of articulating claims to rights, for instance – in shaping what could even be argued for. Rather than courts being the sole arbiters of what rights individuals had (and who had them), rights claiming itself, as a set of movement actions, redefined and reconstituted what those rights were (McCann 1994; Scheingold and Sarat 2004). The pursuit of legal mobilization had the potential to expand access to legal power; it also, sociolegal scholars understood, could expand access to politics and open opportunities for various forms of mobilization – it could create a virtuous circle of mobilization beyond litigation, no matter the outcome of particular cases. Law and society scholars understood that circle of mobilization reinforced the very power of law itself to be seen as a force for both movements and institutions.

I was a junior scholar at the dawn of the *Perestroika* movement within political science; it was a time of methodological innovation, and an opening towards interpretivist work within the discipline (Yanow and Schwartz-Shea 2010). But I could not wait for the tides to turn within the legitimating confines of my discipline. Within sociolegal scholarship, rather than within political science, I found a place where I could ask the kinds of questions I wanted to ask (namely, questions of interpretation and meaning), while using the methods that I wanted to use (primarily ethnographic and participant-action, but also archival, content analysis, and interview), to formulate an understanding of power (law, institutions and processes) as influenced profoundly by human action through historical unfolding, rather than as naturalized or structurally determined. I was interested in what I came to understand to be the constitutive relationship between courts, agencies and social movements, between judicial decisions and movement activism. I was curious about the gap between “law in action,” and “law on the books” – about the ways that individuals experienced that gap, made sense of it, and moved beyond it.

This curiosity led me to situate my own work within the foundational texts of second-generation law and society scholarship. This work insists on understanding the mutually constitutive relationship between law and society – in rejection of a “chicken and egg” question that posits the primacy of one, and in a subtle shift away from questions about whether law is a “hollow hope” or a “magic mirror” (Hall 1989; Rosenberg 1991). As I understand the field, when we undertake constitutive sociolegal scholarship we are first and foremost engaging in an exercise that recognizes the contingency and constructedness of law (Mensch 1998).

Over the course of the past 60 years, sociolegal scholars have shown that even the most well-designed structures and processes don’t work unless humans make them work; that rules aren’t self-enforcing; that rights don’t self-evidently exist absent action to make them real; and that the democratic rule of law only exists when a democratic government is willing to enforce and abide by it. As *Law & Society Review*

readers know, scholars working in this tradition are interested in the ways that ideologies, institutions and individuals interact to create systems of power and opportunities for resistance of that power (Haltom and McCann 2004). We are interested in the construction of counterhegemonic narratives (Lazarus-Black and Hirsch 1994) in the proliferation of practices that come to be understood as “legal,” and in the terrain of law as a potentially malleable and creative space (de Sousa Santos 1987).

Central to the constitutive mindset is the view that law is contingent upon context, and upon human action. This contingency means that law is also open – to change, to capture, to interpretation, to disruption. This is destabilizing in a way that can be both thrilling, and anxiety-provoking. This understanding of law’s contingency opened the way for the elaboration of literatures focused on thinking through ideas of legal consciousness (Chua and Engel 2019; Ewick and Silbey 1998), legal mobilization (Handler 1978), legal pluralism (Merry 2012; Moore 1978), the implementation of law (Epp 2009; Nielsen 2004) and the endogenous limits of law and legality (Edelman 2004). It also opened the way for creative re-imaginings of law’s potential forms and creative re-interpretations of moments of legal theater – from judicial nominations to state-sponsored execution, from trial court practices to the funneling of complaints away from judicial process.

As I write this, I find myself wishing to capture the *feeling* that I had as a young scholar in the 1990s and 2000s, that the comparison between political science and sociological scholarship was stark: in one place I felt at home – in the other, I felt alienated. Over the years, conversations with other law and society scholars, who have similar disciplinary homes, lead me to believe they might feel the same way. And yet, I have continued to attend political science meetings and to read publications dedicated to that discipline; and as other political scientists have continued in the same fashion, to do both, I see the importance of such scholarly interplay. This interplay has resulted in important theoretical and empirical shifts within the subfields of public law and American political development.

Exciting emerging scholarship seeks to re-think commonly held understanding of doctrine and understand the impact of federal judicial decisionmaking and process on public policy and perception at the state level (Zackin 2020). Similarly, important new work includes an analysis of Supreme Court nominations processes that shows us how those processes replicate inequities associated with race, gender and class, and how in that replication they have an impact on American political life, public policy and the legitimacy of the Court (Boyd et al. 2023). I am drawn, as well to the ways that early new institutionalists (Clayton and Gillman 1997), and later American Political Development scholars influenced by their work within sociolegal studies are contributing to an understanding of contemporary political moments and doctrinal shifts, through a contextualizing historical and developmental lens (Frymer 2017; Novkov 2024; Whittington 2019). And, I am drawn to work by political scientists grounded in comparative politics and comparative courts, doing work on state formation that helps us understand, for instance, that the rule of law in itself is not a singular good – that the rule of law can create authoritarianism and dictatorship (Massoud 2013), and that the judiciary’s role as a backstop against democratic decline is not guaranteed (Dichio and Logvinenko 2024; Gardbaum 2024; Keck 2024).

I notice, and *LSR* readers will, too, that this political science work is produced, in large part, by scholars who also attend *LSA* meetings, and publish in law and society

journals alongside their political science offerings. To put it another way, perhaps, the law and society scholarship I turn to most frequently is sociolegal scholarship written by those trained in political science. Indeed, the intersection between political science and law and society is a fruitful place for theory building and exploration.

In the conversation that closed our panel, “Building the Disciplines with Law and Society,” at the 2025 LSA annual meeting, we asked ourselves how law and society scholarship can contribute to the disciplines that we come from and within which we reside, and how those disciplines can potentially contribute to law and society scholarship. We asked what challenges we saw the field facing, as we entered a new phase of scholarly expansion and focus. And, we wondered aloud if perhaps we have been engaging in a process of “undisciplining” by bringing law and society scholarship to our home disciplines – and our home disciplines to law and society scholarship (Tennison 2025).

There is an affective and emotive valence to my felt answers to these questions. In my experience of the field, sociolegal scholarship offers a set of practices and relationships that emphasize possibility, interconnection, and optimism. Even as we often investigate the most devastating impacts of law and confront its limitations, sociolegal scholarship emphasizes attention to resistance, to counter-hegemonic practices and narratives and to potentials. Whereas the discipline of political science in the United States grew out of moments of consolidation and certainty, and out of a desire to consolidate and make certain democratic state power, sociolegal scholarship grew out of moments of critique and crisis, of understandings of the limitations of that power. For these reasons, I understand law and society to be both a scholarship of and about resistance, and a scholarship *in* resistance. So, too, sociolegal scholarship feels akin to something like a movement – a movement comprised by a set of practices, commitments, and habits of mind that are expressed through a literature.

In any event, the field of sociolegal scholarship feels more elastic than the disciplines of sociology, history, anthropology, political science and law or legal education. It borrows from and refers to each, in turn. Indeed, law and society must both rely on those disciplinary homes and inform them – and it would benefit us to investigate the mutuality of sociolegal scholarship in conversation with its disciplines, and to elaborate sociolegal studies as a scholarly field constituted by and in constitutive relationship with the disciplines out of which it arose and to which it contributes.

Acknowledgements. I am grateful that Mark Fathi Massoud invited me to join this panel, and for the tremendous contributions made to our conversation by the panelists who joined us, as well as the audience. The engagement we had, from the floor, indicates to me that this venture is worthwhile. I am also grateful to Massoud as well as Sarah Neibler for their comments on an early version of this essay.

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Cite this article: Cramer, Renée Ann. 2026. "Discipline and field: some thoughts on the relationship between political science and law and society." *Law & Society Review* 60(1): 82–88. <https://doi.org/10.1017/lsr.2025.10084>