SOCIAL THEORY AND LAW: THE SIGNIFICANCE OF STUART HENRY

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I. INTRODUCTION: INTEGRATIVE THEORY AND THE SOCIOLOGY OF LAW

The interrelationship between the formal structures of law and the informal social control structures originating at the private and community level (private justice) poses difficult questions for lawyers and sociologists alike. For the legal profession the question concerns the impact of law on social institutions, the community, and on the individual. For the sociologist the inverse question must also be included; that is, what is the impact of various sociopolitical levels of society on the formation of law?

Historically, there have been two divergent approaches to analyzing the interrelationship between formal law and private community justice. Most macrotheorists suggest formal law plays a coercive role in maintaining the status quo within society. Moreover, macro-theorists define private justice either as a reflection of formal law (Marx, 1947) or as a social control mechanism that fulfills a particular need or desire of society (Parsons, 1962). Micro-theories of law, by comparison, emphasize social interaction as people develop social control mechanisms, and isolate these informal structures from any relationship with the formal structures of society (Mead, 1934; Piaget, 1951).

Dissatisfied with the presuppositions and dichotomy of both the macro and micro schools of thought, Stuart Henry, the British sociologist of law, explores how the two might be integrated into a more complete sociology of law. In an important but largely overlooked book, *Private Justice: Towards Integrated Theorising in the Sociology of Law* (1983) Henry develops the thesis that formal law and private justice are integrally related; some of the relations of one are the relations of the other. Thus, while formal law relies on private justice to execute some social control functions, private law relies on formal structures to establish a parameter for its discipline.

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Henry develops this thesis in two main sections of his book. The first is an analysis of past and present theories of the sociology of law (Ibid.: 1–69). Here he sets the stage for his integrated theoretical perspective. To uncover the concrete principles that underlie the theory, section two (Ibid.: 70–219) outlines his research of varied workplace settings as examples of where formal law and private justice intermix.

Henry has two goals in this work. The first is to show that private justice is a legitimate, often ignored, area of inquiry. The second is to develop a theoretical framework that may act as a springboard for an integrative sociology of law. While the author attains the first goal with much persuasiveness, he is much less successful in reaching the second goal. The essential problem in Henry's theory is that it encourages a static description of law, rather than an explanation of law's development. The positive and negative aspects of this work are illustrated in the author's critique of theorists of the sociology of law and in his analysis of workplace discipline.

II. HENRY'S CRITIQUE OF THE SOCIOLOGICAL THEORIES OF LAW

Professor Henry begins his theoretical review by crediting classical macro-sociologists of law (e.g., Durkheim, 1964; Weber, 1947; Maine, 1912) with attempting to place law in its sociopolitical context and with exploring when and why people will legitimate and obey laws. Henry also gives credit to the classical theorists for "debunking" natural law theorists and their notion that "law is a spontaneous and uncontrived product of the continuous flow of life" (1983: 1). Such theorists believe law has evolved naturally, distinct from other private and community rules and customs (e.g., Austin, 1832; Hobbes, 1964). Natural theories of law have been considered positivist because they assume law is a separate, self-contained element of society.

In more modern times, functional theorists have advanced beyond earlier positivist arguments by placing law in a social context whereby law supplies society with a buffer to resolve conflicts (e.g., Parsons, 1954; Merton, 1969). Functional theory makes its own positivist assumptions, however, by viewing the development of the structures of society as an independent, evolutionary process, while private justice is seen merely as fulfilling a structural need. Functional theory, therefore, fails critically to assess the interrelationship between formal and informal structures. The inherent problem within this modern positivist school of law is that it is not able to analyze the formulation of law, or its use by various social actors (Henry, 1983: 4).

Henry also criticizes the most recent defenders of the positivist school, structural theorists (e.g., Unger, 1976; Kamenka and

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Tay, 1980). This school of thought advances beyond some of the obvious pitfalls of functional theory by understanding the independent nature of other elements of law besides the formal. Nevertheless, structuralists either connect private justice to formal law according to a preconceived theory or consider individual forms of private justice as completely isolated elements (ideal-types) separate from formal law.

Henry's critique of theory is not limited to macro-theory, however. On the micro level, he argues that major schools can be identified (1983: 33). The first is comprised of legal realists such as Llewellyn, who encourages study of the actual behavior of the courts (1930: 431) and the sociological jurisprudence of Pound, who called for the study of law as it actually is (1943: 60–94). Henry argues that common to these trends is an understanding of the role of the informal functions of law that impose order on the formal. This belief has given rise to a wealth of empirical research on many aspects of law. Henry holds that the problem with the realist practice of empirical research is that it never questions its ideological assumptions, even when arguing for its reform.[1]

Henry holds a similar criticism for community justice reformers. These reformers believe formal law has become bureaucratic and argue for a popular, decentralized form of justice. In contrast, he argues that the question is not how to decentralize law, but rather what is the state of law and the interrelation of formal law and private justice that allows for the centralization to exist.

For Henry, then, an integrated approach to a sociology of law must begin at the point where law is constituted; where people interact and create and recreate its formation. To do so not only requires an analysis of the agencies and procedures of formal law, but also an analysis of social interaction where formal and private justice blend together and interrelate with sociopolitical structures.

Thus, in place of currently accepted micro and macro theories Henry argues for a "genuine pluralism" (1983: 30) in theory that would allow for the autonomy of independent forms of law, each generated by a different source, and each operating at various levels of society. Such a theoretical perspective requires a methodology that is "a more micro-analytical, interpretive perspective which takes seriously the meaning and conceptions of law for the participants. . . ." (Ibid.) Only then can the social construction of law be uncovered.

It is important to note that Henry is not the first sociologist of law to raise such issues. Ehrlich was a Professor of Law at Czernowitz University in Czernowitz, which was then the capital of the

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[1] For an example of the reforms that Henry critiques see Bush, "Dispute Resolution Alternatives and the Goals of Civil Justice: Jurisdictional Principles for Process Choice," 84 *Wisconsin law Review* 893 (1984).

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Austro-Hungarian province of Bucovina. His studies pointed to many of the same ideas discussed by Henry. In his important work, *Fundamental Principles of the Sociology of Law*, first published in 1913, Ehrlich explained his approach to the interrelation of formal and private justice.

For Professor Ehrlich, the source of legal development lies within society as a whole (Ibid.: 391–411). While the state has a monopoly on the formal creation of legal statutes, the state alone cannot regulate all of human conduct (Ibid.: 161–163). Laws created by the state have the power to enforce compliance, but most people adhere to laws willingly with little thought of the formal justice system. Moreover, people also conform to many social control mechanisms of private justice that have no formal sanctions at all (Ibid.: 162).

Professor Ehrlich further suggests that the existence of associations of like-minded individuals is critical to private justice and these associations are almost exclusively organized in the form of economic associations that must conform to existing methods of the production, exchange and consumption of goods (Ibid.: 43). "A man therefore conducts himself according to law, chiefly because this is made imperative by his social relations (Ibid.: 64).

It follows, then, that Professor Ehrlich believes that changes in formal law must be historically relevant and connected to the source of the private means of social control (moral, religious, ethical, and cultural mores), but just as importantly, formal law itself changes as a result of social and economic changes effected by members of associations within the society at large (Ibid: 394–411).

For his part, Henry is critical of Ehrlich on two main points: first, Ehrlich is seeking a universal source of law instead of distinguishing between different sources for different associations; and second, Henry maintains that Ehrlich does not fully appreciate the impact that state law has on private justice. In short, while Ehrlich's work may be considered a plural approach to law it is not plural enough (1983: 50).

To correct this mistake, Henry suggests that a plural legal methodology must operate at various horizontal and vertical levels of society. The horizontal level encompasses law originating in different groups or institutions, while the vertical level includes law that operates within various layers of society that range "from a superficial formality down to a spontaneous, unorganized informality" (Ibid: 47). Thus, an adequate theory of law must account for both the totality of social structures in all layers of society and the particularity of human conduct found in man's social interactions.[2]

To bring his argument from the theoretical to the concrete,

[2] For a discussion of Weber's similar but contradictory conclusions see Trubek, Book Review, 37 *Stanford Law Review* 919 (1985).

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Henry chose to study private justice forms of discipline as they occurred in different workplace settings ranging from a factory to a worker-cooperative (Ibid.: 70–219). What he found was that, no matter how work was organized, similar aspects of private justice could be uncovered. Factories based on the private control of property and containing standard methods of hierarchical management not only used coercion by management to gain social control, but also peer pressure by the workers. At the same time, worker-cooperatives, which were not based on private control, and instead extolled collective decisionmaking, nevertheless, also exhibited forms of hierarchical management.

These findings lead to Henry's fundamental conclusion: private justice is not only an autonomous element of law, but an active, creative element containing its own dynamic. Private justice, therefore, does not "merely serve to legitimate the existing social order, but it also claims some of its territory. . . . (Ibid.: 221).

Next Henry argues that such conclusions have serious ramifications for the sociology of law. First, the notion that a change in formal law equals concrete changes in social control mechanisms at the community level is erroneous because formal law is only one element of the continuum of law. Indeed, when changes in formal law do not account for existing forms of private justice, the formal change either is likely to be absorbed into the established social relations or discarded. Here, Henry follows Montesquieu (1900: 58–80) who has argued that excessive punishment hinders the execution of laws and that manners and customs cannot be changed by law, and Ihering (1914: 178–179) who has suggested that government is bound by laws that cannot and should not be all encompassing since laws exist for the sake of society, not society for the sake of law. Moreover, Henry further argues that the inverse relationship in the development of law is also true: any change in private justice that does not account for the existing structure of formal law will be adapted to the formal system of social control.

Thus, change in law must simultaneously recognize the autonomous yet interrelated elements and layers of law. Moreover, if legal change is to occur, participants must "not create idealistic alternatives but reflect upon how human experience is related to the totality of which it is a part. . . . Such change requires revelation not revolution" (Henry, 1983: 93).

III. IMPLICATIONS FOR THE SOCIOLOGY OF LAW

To his credit Professor Henry points out the necessity for the sociology of law to recognize that private justice exists as an element of law in its own right and has a definite impact on the structure of law. This theoretical recognition is of vital importance and overcomes limitations of past and present theories that either ele-

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vate or ignore private justice. Henry argues forcefully and shows concrete evidence that private justice does indeed exist. Henry's argument for the integration of theory is much less successful. There are problems in both his theoretical construct and suggested methodology. Henry's theory may be condensed to five main points:

1. Various formal, structural elements of law and informal, micro-elements of social control (private justice) combine to create horizontal and vertical layers of law.
2. Taken together, these layers make up the continuum of law.
3. Structural and micro-layers of law are autonomous in that they are distinct and observable, but are also integrated in that each reacts to and helps shape the other.
4. Change within the continuum of law is caused by the interrelationship of structural and micro-layers.
5. Change is possible, therefore, only when participants realize the totality and interrelation of the elements of law.

There are several areas of critique where Henry's thesis appears to falter. The first is his theory of separate yet integrated elements and layers of law. His aspiration not to separate the elements contained within the continuum of law, nor determine private justice from formal structures has led Henry to develop a theory that is all encompassing, but difficult to apply concretely. If all elements are separate, yet all have some of the relations of the other, it becomes difficult to know where the analysis should begin: an infinite number of elements and layers seemingly relate to an infinite number of other elements and layers. Regrettably, Henry does not outline a clear construct to escape this dilemma. Moreover, the few times he does attempt to develop theoretical principles Henry runs into analytical walls.

To begin with, other than private justice we are told very little about potential elements and layers in the law continuum. Indeed, we are told that to categorize elements formally would destroy the integrative approach since all elements share relations with all other elements.[3] Thus, when Henry analyzes private justice and, in particular, discipline in the workplace, he does not view it as an isolated element, but rather as an interrelated part of the law continuum. Private justice, itself, is made up of semiautonomous elements, which Henry places into three layers to study workplace discipline: the state, economy and society; industry, organization, and management; and unions, co-workers and individual workers (1983: 97). These are interdependent parts of the whole continuum, each sharing social relations and distinguishable by the

[3] For a similar use of private and formal law see Glennon, "The Use of Custom in Resolving Separation of Power Disputes," 64 *Boston University Law Review* 109 (1984).

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source of their autonomy. Thus, some elements are structural and rest outside the organization where the discipline takes place, some are at the organizational level, and some elements are within it. Each has the ability to penetrate and shape the other (1983: 30). One can be left only with the conclusion that these elements are equal and moreover are never ending.

This is just what Henry seems to argue by announcing the need for a genuine pluralism in approach that utilizes a micro-analytic interpretative perspective that concentrates on the participants in the social construction of law (1983: 27). To engage in such a theoretical undertaking would be to dive into an ever-flowing stream of elements and layers, each sharing relations and helping to shape the other. While Henry does tell us that such an approach allows for one element or layer to dominate another, there is no theoretical impetus to uncover this and make the task easier. Rather, Henry's theory continuously calls on the analyst to find new interrelated elements and layers along the continuum of law.

If, in a relatively small unit of analysis such as work discipline, the analyst must take into account the breadth of elements and layers, each impacting the other, how are more general conclusions regarding the sociology of law to be made?

Henry does seem to come to the aid of the analyst by suggesting that similar interactions take place between elements no matter what the organization of work. A rigid control over discipline by management, a participatory form of joint management, and workers' control of decision-making all share the same interaction of elements within the law continuum. Thus, while the number of interrelated elements within the continuum of law may be infinite, Henry does outline some universal attributes as clues for research. But this raises another perplexing problem. How does law change? If the semiautonomous elements are universally evident, what difference does the form of work make, or the organization in which the work takes place, or the sociopolitical context in which the organization exists? Indeed, societal change seems to have relatively little impact on the elements of law. These theoretical constructs seem to dismiss the very potential of an integrative theory. While Henry's integrative theory allows for the dominance of one element over another because of historical conditions, it is the mere presence of the elements and their universal qualities that seem to interest him the most. In fact, the emphasis should be on the inverse relationship: that is, integrative theory should search for the dynamics that make law different, not universal.

In this regard, the author's work is a regression, and not an improvement, on the work of Ehrlich who not only integrated formal law with the development of private justice, but interrelated the development of law to the general development of society. Justice Benjamin Cardozo also has seen the importance of the dy-

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namic relationship of law to society. He has argued that the judicial process has a combination of forces including logic, history, custom and utility; which force will dominate depends on the social interest served or impaired (Cardozo, 1921). In contrast, Henry seems most interested in developing a theoretical construct allowing for the mere existence of elements and layers rather than the dynamics of their integration.

By misplacing the theoretical emphasis, Henry has formed unnecessary and troublesome assumptions. First, he suggests that the entire interrelated continuum of law is designed to act as a mechanism for social control. Indeed, this is the theoretical and ideological underpinning of his entire work, but if one element of law can dominate another, the legal dynamic might include a reaction by the social actors that may alter or dramatically change the formal law.[4]

One may look at many social movements as examples where the social actors played a definite role in shaping formal law far beyond any definition of social control. In regard to the United States, the populist movement of the 1890s, the union movement of the 1930s, and the civil rights movement of the 1960s come to mind. But if we seek to understand these legal changes originating at the nonstructural level, the mechanisms by which the dynamic interrelationship of elements occurs must be uncovered. A static view of time and space in history is not enough.[5] The potential of integrative theory can be unlocked when integrative theorists resist assumptions about social control and ask the following and many similar questions. When does private justice come into conflict with formal law? How does one element of the continuum gain dominance over another element? Are there any signals within the development of the continuum that may alert a sociologist of law to a future legal crisis?

Thus, the thesis that law can be conceived of only as an agent of social control is theoretical abortion to integrative theory. When feudal law gave way to capitalist law during the Middle Ages in Europe, laws protecting the right to private property (which were developed as a result of dynamic changes in formal and private justice) were designed not only to maintain social control, but to institute a social change (e.g., Anderson, 1974: 397–431).

If one element has the capacity to gain dominance over another, a theorist must also allow for the potential that either a macro- or micro-bias may be correct.[6] That is, given certain condi-

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[4] As an example of how private justice can impact formal law see Steinberg, "Church Control of a Municipality: Establishing a First Amendment Institutional Suit," 38 *Stanford Law Review* 1327 (1986).

[5] A similar point was made in Kelman, "American Labor Law and Legal Formalism: How Legal Logic Shaped and Vitiated the Rights of American Workers," 58 *St. John's Law Review* 1 (1983).

[6] For an example of how formal law can impact private justice see Simon,

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tions and circumstances, a theorist may be correct in emphasizing micro-social interaction, or macro-structures. Henry is correct that neither may be seen in a determinist fashion: neither micro- or macro-elements or layers can fully determine the shape and relations of law in the other, but while each interacts and together form the law continuum, this supposition must not lead the analyst to preconceive an equality between elements. What exists in concrete reality should be the guiding force in uncovering the form of the interrelationship.[7]

If the possibility of dominance were left open, an integrative theory that allows for, indeed looks for, such dynamics may lead to a fruitful analysis. For example, in hunting and gathering societies there was little or no hierarchy of government. In many of these societies elders of both sexes acted as advisors but had no formal institutional power to enforce their decisions. The daily demands of existence required a consensus decision-making process. The result was little or no antisocial behavior (e.g., Goodman and Marx, 1978: 240–242). In such a society it is not difficult to see the dominance of private justice over structural forms of social control. That is not to say, however, that structural conditions did not help shape the form of private justice. Hunters and gatherers were nomadic and moved from area to area as the conditions of food and weather prescribed. This structural reality had an effect on the form of private justice, albeit a subordinate one.

In tribal societies the situation was much different. Here it may be possible to argue that there was a more equal interrelationship between private and structural justice. Rather than being nomadic, tribes became more stationary, cultivating the land and domesticating animals for food. Most important for this discussion was the rise of quasi-legal forms in the administration of justice. Law and order was maintained through blends of authoritative and public justice. As in decision-making, most tribes settled disputes through a combination of kinship ties, public opinion, and authority figures related to the chieftan (Schapera, 1967: 135–202). Thus, in a tribal society the dynamic relationship between private and structural justice was more flexible and active as compared to feudalism, for example, when royalty emerged with absolute power and the interrelationship became heavily weighted toward formal law (Anderson, 1974).

In this same vein, some general conclusions may be proposed for modern industrial societies. In modern societies the structural elements in the continuum of law have gained dominance over micro-elements. This conclusion is based on the fact that the na-

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"Rights and Redistribution in the Welfare System," 38 *Stanford Law Review* 1431 (1986).

[7] For a particularly acute example of the potential inequality of elements in their interrelation see Gordon, "Indian Religious Freedom and Governmental Development of Public Lands," 94 *Yale Law Journal* 1447 (1985).

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ture and impact of the community on the individual is far less direct than in hunting and gathering societies. Modern societies exhibit a more complex division of labor and relative reduction in the structural importance of community, as well as family. This does not mean that community and family values and socialization have evaporated, but only that relative to previous societies social discipline and socialization have taken on a more formal function through various institutions including education, work, and the criminal justice system. These institutions must be considered more structurally related to macro-social and macro-political developments than in previous social formations, resulting in a dominance of the structural elements of law.[8]

Again, this idea is not to suggest that structural elements determine the nature of private justice. It simply allows for the possibility that if certain historical conditions exist in specific periods of time, the dominance of one element of law over another may develop. Moreover, the degree of domination and the length of time of its existence is variable and can be changed by the social actors, particularly during general periods of social change.

This conclusion raises a further issue. If it is true that an integrative approach to the sociology of law must not simply describe the various elements of the continuum of law, is it not also true that general sociological theory must search for dynamic interrelations throughout the whole of society? Moreover, if general sociology must focus on dynamic interrelationships, law can be understood only in its interrelation to the rest of society and must not be viewed in isolation from the other elements.[9] The potential of an integrative approach is now greater: if an understanding of the dynamic of law and society is gained, and if the interrelationship of the structure and nonstructural elements within, outside, and through law is made clear, then a complete integrative understanding of the sociology of law becomes possible.

One last implication of Henry's integrative theory merits discussion. He argues that only when social actors realize the interrelated nature of law elements can constructive changes be applied. His argument is based on the belief that actions within the continuum often are focused on a particular aspect of law rather than on its totality. It is this "diversification with its powers of mystification which stifles the possibility of liberation" (1983: 181).

Putting aside Henry's overemphasis of law's social control

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[8] Institutional influence on private justice often is caused by direct governmental involvement. Private justice is monitored and steps toward mitigating its impact often are suggested by federal government institutions. For example, see Kerwin, "Assessing the Effects of Consensual Processes in Regulatory Programs: Methodological and Policy Issues," 32 *American University Law Review* 401 (1983).

[9] For an example of how societal development can affect law see Bell, "The 1983 James McCormick Mitchell Lecture—A Hurdle Too High: Class Based Roadblocks to Racial Remediation," 33 *Buffalo Law Review* 1 (1984).

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function and the extreme difficulty in understanding all of the elements and layers contained within his integrative theory, Henry's belief in the power of revelation is at best still only an idealistic hope. People are concerned with particular elements of the law continuum because of the activity of their everyday lives. To ask someone to step outside that existence and become fully integrated is surely wishful thinking. While it is true that people are not mere dupes of circumstance and have the ability to act on those circumstances, actions are not divorced from the social context. Within the continuum of law, the structural and nonstructural elements have long interrelated dynamic histories. An analysis of the dynamic may well lead to an understanding of conditions, which may in turn lead to change, but the theory itself has relatively little direct impact. Rather it is people dynamically acting on and reacting to concrete elements of the law continuum that cause change. They do so, however, because of the conditions found within the dynamic, not the theory. Law, itself, contains internal and external interrelations and changes continuously, and therefore, whether or not a proposed legal change is possible depends not only on the level of consciousness of the social actors, but on the conditions and development of the legal dynamic, as well as the conditions and dynamic of the society as a whole. The purpose of an integrative theory of law, therefore, should be to uncover the interrelated conditions of formal law and private justice, for not only does this outline the concrete conditions of the continuum, but having accomplished this, may point to a potential consciousness that is not only raised, but constructively directed.

IV. TOWARD AN INTEGRATIVE THEORY FOR THE SOCIOLOGY OF LAW

There are several points in Henry's proposal for an integrative theory of law that are useful starting points. His insistence on looking at law as continuous, interrelated parts indeed has merit. Moreover, his desire to view social actors in their everyday life is equally correct. Law is not an abstract category that can be understood apart from human beings. Rather, law is a human creation that acts and reacts to all elements contained within it. However, an integrative theory should not be concerned only with a description of various elements of the law. Rather, the main focus of integrative theory should be on uncovering the dynamic activity within and between elements.

In attempting to employ such a theory it must be understood that people cannot simply change law as they see fit. This is not to view micro-elements of law as rigid or predetermined by the macro-elements; both structural and private justice elements are simply parts of the specific history and conditions of the law continuum. Change occurs when the dynamic between private justice

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and formal law gives rise to concrete conditions that allow for legal change, but these conditions are always connected with the general development of society.

Thus, the goal of integrative theory should be to create a clear picture of the dynamic. And Henry has outlined the first crucial step for this by calling attention to the interrelated nature of the continuum of law. What is needed next is a clearer understanding of the processes of both micro- and macro-forces that combine to make up the law continuum, and how those forces relate to the macro-structures of society.

To begin the task of exploring the dynamic of integrated theory requires a rejection of two main approaches influencing the study of the sociology of law. In the United States the approach has traditionally emphasized the mechanism for, and the function of, consent to law. Implicit in this approach is that law is utilized at all levels of society as a means for consolidating the consensus of values and for social control. As Henry has argued, social control will not be effective if it is inconsistent with the psyche, or culture as expressed at the private and community level. Nor, it is important to add, will social control be effective if it is at odds with the current political and economic structures. When congruent with social development, formal law sanctions and private legitimizing functions of law have powerful impacts. They are not, however, inevitable and universal ramifications of law.

Simultaneously, an integrative theory of law must leave open the possibility that law is not simply reflective of the macro-social structures. Often implicit in this second major approach is the notion that there is a direct relation of law to economic structures, power, and ideology, and that these structures determine the shape and impact of law. It should follow that as laws are adhered to at the private and community level, it is because of some form of false consciousness.

While the reduction of law from macro-structures can provide critical, even necessary, insights connecting law with other social structures within society, that connection is not necessarily unidirectional. In periods when society is reproducing effectively, law and other macro-structures may indeed be in relative unison and greatly influence private means of law, particularly when historical conditions allow macro-structures to gain dominance. However, during these periods the consent to law is not merely a false consciousness, but is internalized and promoted at the micro-level. This does not preclude change originating at the micro-level, however. If it did, not only would all changes in law simply mirror macro-structures, but the many examples of legal change sought by groups and classes within society would appear negated.

An integrative theory of law requires a different approach. Whether or not law is a mechanism for social control through private consent, or whether changes in macro-social structures di-

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rectly influence formal and private law, or whether private forms emerge to challenge existing principles of formal law and indirectly macro-social structures, are questions to be studied and not assumed by theoretical principle.

An integrative theory may provide not only an explanation of the development of law, but of a great deal of other social phenomena as well.

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REFERENCES

ABEL, Richard (1982) *The Politics of Informal Justice*. New York: Academic Press.

ANDERSON, Perry (1974) *Lineages of the Absolutist State*. London: New Left Books.

AUSTIN, John (1832) *Lectures on Jurisprudence*. London: John Murray.

CARDOZO, Benjamin (1921) *The Nature of the Judicial Process*. New Haven: Yale University Press.

COLLINS, Randall (1981) "On the Microfoundations of Macrosociology," 86 *American Journal of Sociology* 984.

EHRLICH, Eugen (1913) *Fundamental Principles of the Sociology of Law*. Cambridge, MA: Harvard University Press.

GOODMAN, Norman, and Gary T. MARX (1978) *Society Today*. New York: Random House.

GIDDENS, Anthony (1979) *Central Problems in Social Theory*. London: Macmillan.

GURVITCH, Georges (1947) *Sociology of Law*. London: Routledge & Kegan Paul.

HENRY, Stuart (1983) *Private Justice: Towards Integrated Theorising in the Sociology of Law*. London: Routledge & Kegan Paul.

IHERING, Rudolph von (1914) *Law as a Means to an End*. Boston: Boston Book.

KAMENKA, Eugene, and Alice TAY (1980) *Law and Social Control*. London: Edward Arnold.

KNORR-CETINA, K., and Arron CICOUREL (1981) *Advances in Social Theory and Methodology: Toward an Integration of Micro-, and Macro-Sociologies*. London: Routledge and Kegan Paul.

LLEWELLYN, Karl (1930) "A Realistic Jurisprudence—the Next Step," 30 *Columbia Law Review* 431.

MARX, Karl (1965) *The German Ideology*. London: Lawrence & Wishart.

MONTESQUIEU, Baron de (1900) *The Spirit of Laws*. New York: D. Appleton.

PARSONS, Talcott (1937) *The Structure of Social Action*. New York: McGraw-Hill.

POUND, Roscoe (1903) *Outlines of Lectures on Jurisprudence*. Cambridge, Mass.: Harvard University Press.

SANTOS, Benedito (1980) "Law and Community: The Changing Nature of State Power in Late Capitalism," 8 *International Journal of the Sociology of Law* 379.

SCHAPERA, I. (1967) *Government and Politics in Tribal Societies*. New York: Schocken Books.

UNGER, Roberto (1976) *Law in Modern Society*. New York: Free Press.

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