

Globalization of Legal and Social Studies

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The central themes of this article are the inquiry into the nature of the relationship between society and the laws (formal and informal, official and unofficial, legitimate and illegitimate) that operate within it and the forces that cause law to change to the direction for more economic innovation and cooperation. At some times the inquiry into the theme is alluringly general. How do we describe a legal system? Where does the law come from? And at other times themes are intriguingly complex. What are the social forces that create the law? Why does a legal change not occur even when society changes or when perceptions about the quality of the law change? How do changes occur? Why does the legal change not occur in one time but later in other times? These questions are of considerable importance because we live in an era of transition to some form of democracy and market economy. Many scholars claim that the law has become a central theme in the discourse of these political, economic, and social changes. As a young legal scholar I have a faith in law as an instrument of progressive change. I believe that most of the defects in the society could and would be corrected through liberal legal institutions. I have faith in liberalism, in legal institutions, in "the republic of choice"¹ with

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¹ Especially see Lawrence M. Friedman, *The Republic of Choice: Law, Authority, and Culture* (1990).

freedom and equality. Moreover, I am exposed to questioning these assumptions about the immanent liberal institutions of the law and its power to change social life. Thus I am clear that law is not just social engineering and totally autonomous. The legal system is constantly shaped by social context.

Consider the concept of the law as "a mirror of society"² that allowed me to think and to examine many different forces that combine to shape the law. However, this metaphor might be incomplete, for it portrays the relationship between law and society as unidirectional. That is, some law and society scholars illustrate the ways that society influences the law, but not the ways that the law influences society.³ Here I suggest to understand the interchanges of the legal system and other social systems as discovering the impact of law on society, the impact of society on law, and the legal system as a social system itself. Although the studies about law and society through tradition are not in themselves normative, they may be the basis one which we might draw a normative system. They may provide material for programs of reform or social change. We have to find out, in other words, the sources of law, that is, how social forces get translated into law, and also the impact of law, legal behavior, and legal institutions.

Although modern scholars divide most of the legal systems into either the civil law system (the continental European legal system) or the common law system (Anglo-Saxon legal system), they are also getting to be more alike.⁴ But certainly there are differences in legal culture from society to society and differences in legal systems.⁵ According to

² See, e.g., Lawrence Friedman, *A History of American Law* (2nd ed., 1985); see also Lawrence Friedman *Crime and Punishment in American History* (1993) (describing law as a "mirror of society").

³ Professor Friedman has defined the Law and Society movement as a "scholarly enterprise that explains or describes legal phenomena in social terms." Professor Friedman has also commented that legal scholars, who deal with law and society studies, try to be systematic about their subject; they try to achieve rigor in method and theory, they attempt to separate normative from descriptive issues. Typically, their object of study is living law. See Lawrence M. Friedman, *The Law and Society Movement*, 38 *Stan. L. Rev.* 763 (1986).

⁴ See John Henry Merryman, *On the Convergence (and Divergence) of the Civil Law and the Common Law*, 17 *Stanford Journal of International Law* 357 (1981) (arguing evolution of legal systems is not independent of specific social, economic and political objectives, yet the Common Law and the Civil Law are moving along parallel roads, toward the same destination in many areas of laws.).

⁵ See Stewart Macaulay and Lawrence M. Friedman (eds.) *The Legal System As A*

Professor Friedman if by law one means an organized system of social control, any society of any size and complexity has law.⁶ As long as the country endures, so will its system of law, coextensive with society, reflecting its wishes and needs, in all their irrationality, ambiguity, and inconsistency. It will follow every twist and turn of development. The law is a mirror held up against life. "It is order; it is justice; it is also fear, insecurity, and emptiness; it is whatever results from the scheming, plotting, and striving of people and groups, with and against each other. All these things law will continue to be."

The study of law and society undergoing such a change is relevant as many countries attempt to use law to effect social change. Laws are being passed in almost every modernizing country of Asia, Africa, Latin America, and the Middle East with the intent of changing behavior and attitudes of the less modern sectors of society. Yet particularly neglected is the empirical investigation of how diverse social groups and communities in a country are acting to economic as well as "legal" innovation. Research on how new laws alter the behavior and attitudes of groups would seem necessary if we are to assess correctly the impact of transition mentioned earlier. This is a window on the pathologies of the law and allows us to gauge the effect and efficiency, or lack thereof, of particular legal mechanisms as they are reformed and presently operate within the society.⁷ We must understand how things work in society by discovering under what conditions, in what directions, and within what limits they can change.

How can we get a cooperative solution for the development period, or are we going to miss it and end up at sub-optimal point (game theory)?⁸ We can get cooperative solutions, but only in very small player games, where players have a lot of information, small numbers, know each other intimately, and are going to play each other again and again. Coase theorem says that "markets work, and we do not need law nor the lawyers,

Social System: Structure, Rules And Roles, in the Law and Society Reader: Readings on the Social Study of Law (1995) at 546-551.

⁶ See Friedman, *The Law and Society Movement*.

⁷ To understand the underlying reasons for the dual system and its survival, success, and failure, legal scholars need to use empirical research rather than large questions of theory.

⁸ Useful introductions to game theory in general are found in David M. Kreps, *Game Theory and Economic Modeling* (1990); Roger B. Myerson, *Game Theory: Analysis of Conflict* 15, 97-98 (1991); Eric Rasmusen, *Games and Information: an Introduction to Game Theory* (1989).

unless we have transaction costs, in which case we need legal institutions to get us to optimal solutions."⁹ As in systems in which we are short of information, we need legal institutions to get to cooperative or expanded solutions. But, first we must answer the question of "what is the source of law and legal change?"

Some old topics take on new salience in new arenas in socio-legal studies. The issue of "legal transplantation", for example, has become hot again.¹⁰ There is, it seems, always room for catch-up with so-called modern legal systems. There are plenty of opportunities to study "non-contractual relations,"¹¹ for instance, and their interaction with "contractual relations".¹² The question of and relation between formal and informal norms can help to explore the "gap" between living law and law in the words.¹³ In some places formal changes in law had no effect, because informal systems continued to dominate decisions.¹⁴ I believe that this is partly because people for those who do not follow the formal system the words in the books cannot induce behavioral change. In many developing countries legal scholars often neglect behavior. Perhaps one of the reasons is that legal education tends to be formalistic. Legal scholars in these countries see law as norms, or language, or ideology if not rhetoric. In other places, where legal reforms are not made, informal mechanisms fostered the economic changes nonetheless.¹⁵ Although there is increasingly need for formal norms because our

⁹ In awarding Coase the Prize for economics, the Nobel Committee emphasized two articles, *The Problem of Social Cost*, 3 J.L. & Econ. 1(1960), and *The Nature of the Firm*, 4 *Economica* 386 (1937). This "theorem" has various formulations. For example, if there are no transaction costs to impede bargaining, legal rights will be allocated efficiently through private exchanges, regardless of the underlying rule of law.

¹⁰ In this sense the study of "comparative law" has risen, too. Watson views the purpose of comparative law as the improvement of one system through the knowledge of the rules and structure of another system. See Alan Watson, *Comparative Law and Legal Change*, 37 *Cambridge L. J.* 313, 314-15 (1978).

¹¹ See, e.g., Stewart Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, in Mark Granovetter and Richard Swedberg, EDS., *The Sociology of Economic Life* [(1963) 1992] at 94-107.

¹² See, e.g., David Charny, *Nonlegal Sanctions in Commercial Relationships*, 104 *Harv. L. Rev.* 375 (1990).

¹³ See Saskia Sassen, *The Informal Economy: Between New Developments and Old Regulations*, 103 *YALE L. J.* 2289 (June, 1994).

¹⁴ See, e.g., Frank K. Upham, *Legal Informality and Industrial Policy*, in Frank K. Upham, *Law and Social Change in Japan* (1987).

¹⁵ See, e.g., Jane Kaufman Winn, *Relational Practices and the Marginalization of Law: Informal Financial Practices of Small Businesses in Taiwan*, 28 *Law & Society Review*

lives more and more depend on strangers and formal rules are the rules that govern relationships among strangers, no society today can survive without informal norms. This is because society changes rapidly, and so should the law. But there is no dynamic formulation of such changes in the legal systems.

To get the leading edge we need to work together. We need joint acting by individuals, firms, and states. In fact, one of the merits of working together, would be to enable different systems of contract and corporation – that is to say, different sets of legal devices for the decentralized allocation of economic power and access – to coexist within the same economy. Once the state adopts strategies, other actors are going to adjust: firms (private actors) and individuals who begin to alter their own behavior to succeed within the context and different rational a need to adjust. These collective choices are called “culture.” For example, the elements of an effective corporate law depend on time, place, and “culture.”¹⁶

I would like to talk a little bit about my approach to law and connect this to the argument about legal culture and cultural determinism. First, I do not utilize the functionalist approach to law as the responsive tool of practical, functional requirements of social life. The functionalism is the belief that the emergence and diffusion of legal arrangements can be explained by their consequences and, in particular, by their capacity to fulfill inexorable requirements of practical social life. Second, the relationship of law to culture, as the unique expression of the life of a people, is an unresolved problem. By legal culture, we mean the ideas, attitudes, beliefs, opinions, and expectations that people in a society hold with regard to law and legal institutions.¹⁷ The idea of law as the expression

193 (1994). But, also see, Frank K. Upham, *Speculations on Legal Informality: On Winn's "Relational Practices and the Marginalization of Law"*, 28 *Law & Society Review* 233 (1994).

¹⁶ See, e.g., Bernard Black and Reinier Kraakman, *A Self-Enforcing Model Of Corporate Law*, 109 *Harv. L. Rev.* 1911 (June, 1996) (stating that without taking into consideration these elements, corporate law cannot resolve the basic problems of business and economic efficiency such as a sensible balance among company managers' need for flexibility to meet a rapidly changing business environment, companies' need for low-transaction-cost access to capital markets, large investors' need to monitor what the managers do with the investors' money, and small investors' need for protection against self-dealing by managers and large investors. Insufficient corporate law, in turn, increases the cost of capital and reduces its availability.).

¹⁷ Lawrence M. Friedman, *Is There a Modern Legal Culture?*, 7 *Ratio Juris* 117 (1994) at 118.

of a unique form of life drastically exaggerates the unity and continuity, and understates the made-up character of the culture manifest in law. For example, in the Japanese model, life-time employment and shareholder importance laws are not mandated by positive law,¹⁸ we may be surprised to discover that this system is a relatively recent invention of conservative statecraft by entrepreneurs, politicians, and bureaucrats, and that it followed several generations of bitter industrial conflict.¹⁹ The whole of a culture turns out to resemble this example, repeated a thousand times over a thousand details of social management.²⁰

Of course, one of the tantalizing things for social scientists is that when you transfer one of the institutions literally from one country to the next just by translating the law, the outcome can be very different, in fact the actual behavior generated can be very different. Japan is an example because in two major periods, Japan very quickly and radically adopted

¹⁸ I argue that the process of institutionalization of Japanese practices was primarily political and economic rather than cultural. Both lifetime employment and the shareholder impotence system are business customs not legal contracts. See Robert E. Cole, *Permanent Employment in Japan: Facts and Fantasies*, 26 *Industrial and Labor Relations Review* 615 (1972). They are what North calls "self-imposed codes of conduct" in Japanese firms, enforced by the potential relation of labor. See Douglass C. North, *Institutions, Institutional Change and Economic Performance* (1990). Their nature as an institution is to set rules for behavior by providing different incentives to each party. Japanese practice, in Sabel's words, is "the pattern of monitoring" – "the determination by the transacting parties that the gains from learning be distributed according to the standards agreed between them, as interpreted by each." See Sabel, *Learning by Monitoring*, *supra* note 7.

¹⁹ In the *New Competition*, Best notes that "[W]hile culture is not a concept in conventional economic analysis it is often deployed to explain what cannot be explained by economic categories. Thus culture is introduced to explain the success of the *kaisha* when traditional categories of economic analysis fall short. But used in this way, the concept of culture is rarely explanatory. To explain the competitive success of Japanese firms by the existence of an exceptional Japanese culture of cooperation, for example, leaves unexplained the numerous examples of failed Japanese firms, the class struggle that followed the Second World War, the intense competition amongst Japanese firms, and comparatively poor performance of Japanese firms before the 1950s... Thus culture is important in explaining the success of Japanese firms, but it cannot be taken for granted." See Michael Best, *The New Competition: Institutions of Industrial Restructuring* (1990) at 145-146.

²⁰ See footnote 104 of the article by Joel Rogers, *Divide And Conquer: Further "Reflections On The Distinctive Character Of American Labor Laws"*, 1990 *WIS. L. REV.* 1 (1990) at 46. Aoki lists several propositions of the Japanese "capitalism." He noted that "The Japanese economic system is *not* simply the spontaneous product of Japanese culture." Masahiko Aoki, *Japanese "Capitalism" Past, Present, and Future*, Paper, Stanford University (1993) (on file with the author).

"best practice institutions." The first time this occurred was in the Meiji reformation of 1868. The second time it was between 1945 and 1951 when Japan was occupied by the United States. Legal norms were simply imposed by the high command of the U.S. in labor law, antitrust law, other kinds of company organizations. The fascinating thing is that these institutions have worked very well. They do not work like they do in the U.S., at least to a second order of importance. Maybe in very broad terms they do, but we know that Japanese labor practices are quite different from U.S. labor practices, even though the Fair Labor Standards Act was virtually the same in implementation or design in Japan after 1945 as it was in the United States. Similarly, company law and antitrust are very different, even though these were also areas of intense transfer of institutions. Therefore, I do not want to exaggerate; I want to be more precise. Culture does matter in a very deep way in how the law actually manifests itself in behavior.

The formulation of a culture is a process of rendering experience. If the culture is an important element in making up society then we must agree with Professor Friedman, because law should be a product of experiences embedded in society and each society shapes its own legal system. It is also interesting to note that cultures with similar needs and interests have adopted different – and sometimes opposite – legal rules.²¹

The study of culture and competition in Silicon Valley and Route 128, "Regional Advantage" by Saxenian, is about flexible cooperation and competition whose ideas emerge in these lines about the need for cooperative arrangements between enterprises in high-technology industry.²² Property rights are quite different and novel in this industry in Silicon Valley. There has been a great desegregation of property rights and all sorts of complicated arrangements for informal and formal rights. The

²¹ Blankenburg compared, for example, the Netherlands with German province of Nordrhein-Westfalen, which lies just across the border, and whose population is culturally quite similar to that of the Netherlands. The official law of the two jurisdictions is also quite similar. But there are great differences in the use of law and litigation. See Erhard Blankenburg, *Legal Cultures Compared*, in Ferrari (ED.), *Laws and Rights: Proceedings of the International Congress of Sociology of Law for the Ninth Centenary of the University of Bologna* (1991).

²² See Annalee Saxenian, *Regional Advantage: Culture and Competition in Silicon Valley and Route 128* (1994) (explaining open organizational networks and strong entrepreneurial initiatives embedded in the local or regional business culture in Silicon Valley) [hereinafter Saxenian, *Regional Advantage*].

study shows the use of innovative market institutions and corporate law to undertake a market-based process for this kind of development.²³ There is a great deal of innovation that comes about because of the very special kind of arrangement between firms.

I quote one page from this study: "The region's leading law firms similarly specialized in areas that were important to technology firms, such as intellectual property, licensing, incorporation of start-ups, and trade law. Like the market research and venture capital firms, Silicon Valley lawyers frequently brokered business connections as well."²⁴ Also according to the study of the Silicon Valley legal community by Friedman et al.: "It may well be that one of their most important contributions has come from the fact that they know all the venture capitalists personally and could set up lunches with them for their scientist and engineer clients."²⁵ The study concluded that the style of law practiced in the region was "informal, practical, result-oriented, flexible and innovative, keyed to high-trust business relationships – that matches the business culture of Silicon Valley."²⁶ Service providers specializing in the problems of technology industry such as lawyers played a role of intermediators and deal making in Silicon Valley.²⁷

As seen, the example of the role of lawyers in Silicon Valley is very intriguing.²⁸ In Silicon Valley, reflecting their role as repeat players, lawyers become a source of cooperation. Reputational dealings increased cooperation between players and lawyers are intermediators from whom information and trust flow to other players.²⁹ When there are many play-

²³ *Id.*

²⁴ See Saxenian, *Regional Advantage* at 41.

²⁵ See Lawrence Friedman et al, *Law, Lawyers, and Legal Practice in Silicon Valley*, 64 *INDIANA L.J.* 555 (1989).

²⁶ See Lawrence Friedman et al, *Law, Lawyers, and Legal Practice in Silicon Valley*, 64 *INDIANA L.J.* 555 (1989) (describing how Silicon Valley lawyers in the start-up phase of small high-tech businesses "function as all-purpose intermediaries, as links between entrepreneurs and financial sources, as well as between business and government agencies at all levels").

²⁷ See Saxenian, *Regional Advantage* at 41.

²⁸ See Lawrence Friedman et al, *Law, Lawyers, and Legal Practice in Silicon Valley*, 64 *Indiana L. J.* 555 (1989).

²⁹ See, e.g., Marc Glanter, *Why the "Haves" Have Come Out Ahead: Speculations on the Limits of Legal Change*, 9 *Law and Society Review* 95 (1974) (discussing the circumstances under which lawyers increase or decrease the strategic advantages as repeat players in litigation).

ers information networks become more difficult to establish and more expensive to maintain. Professor Gilson analyzes this trend from the globalization of business and law practice point of view: "If lawyers serve as a substitute for shared conceptions of cooperative commercial conduct, there are implications for the structure of law firms. Multi-national law firms may be effective ways of communicating norms across commercial cultures. Similarly, if cooperation becomes more difficult because internationalization reduces the likelihood that clients will have long-term repeat dealings with each other, multi-national law firms may provide a substitute; since there will be a much smaller number of law firms than clients, repeated dealings between law firms, even if not between particular clients, may serve to facilitate commercial cooperation across national boundaries."³⁰

Economic development and democracy are possible but imagination of economic, social, and as well as "legal" institutions are required.³¹ The necessary imagination involves establishing a more intimate link between the formal apparatus and casual conjectures of legal and economic theory. This link, in turn, can only be built on the basis of a more realistic understanding of actual and potential institutions. This institutional perspective will allow an alternative vision of democratic development to emerge, a vision that has embedded with detailed proposals for supportive legal institutions.

The worldwide emulation of cultures, and the relentless pressure to pillage and recombine practices from all over the world for the sake of practical success, increasingly eviscerate the customary content of national identities. Back to the discussion about changes in the world, these changes or rather emulations are accompanied by interest in democratization, human rights, and social protection. These changes affect the nature of law's regulatory and protective function, change the conditions for legitimation, and increase the involvement of global legal actors in national fields.

³⁰ Ronald Gilson, *Random Musings on the Globalization of Business and Law Practice*, Stanford Law School, Paper (on file with the author).

³¹ I want to suggest, at this point, that "our" imagination is not necessarily "ours," that what we take to originate in our own consciousness is likely to have been already presented to us externally. What we present as our subjective own is merely our representation of some objective given. Conversely, what we claim as simply an uncontroversial representation of some external "fact" is necessarily our own construct. The assumed dichotomies of subjective/objective, internal/external, cause/effect are problematic. See Friedrich Nietzsche, *The Will to Power* (Walter Kaufman & R. J. Hollindale trans., 1967).

It is true that a major obstacle to the development of a style of legal thought with the characteristics and ambitions I have in mind that it requires the legal scholar to assume a perspective distancing from his own legal culture. But distancing may pay off; it can produce insight. One of the most promising vehicles for such insight through distancing is what Professor Friedman calls "trans-national comparison." Professor Friedman noted that "the 'science' of law in general requires historical and trans-national comparison — requires, in other words, special training and research." Trans-national comparison studies contribute two important perspectives for understanding my own legal system. First, it offers a method for "questioning" and "distancing" my own legal system from the dominant legal consciousness by confronting different legal forms and traditions. Second, it will enable me understand my own legal system from self-criticism by exposing in law and society deficiencies, contradictions, and competing visions.

In a short article it is impossible to consider each of Law and Society studies, but some of them are particularly noteworthy because of their wide scope. Friedman's "The Role of Law in United States Society" is perhaps the most comprehensive, yet concise, introduction to the Law and Society studies, asking "what is the American conception of law; to what extent have formal, legal norms replaced informal ones; how the law influence on society; what is the legal culture".³² The observation of different legal systems in light of these questions would prove enormously valuable in comparing similar questions about my own legal system. Since the Law and Society studies is interdisciplinary and it emphasizes on behavior, Macaulay's "Law and the Behavioral Sciences" took my attention of how legal thought may distort definitions of problems, calling on the contributions of social sciences while recognizing the limitations of each.³³ Griffiths's article "What Do Dutch Lawyers Actually Do In Divorce Cases?" observes how little we know about lawyers actually behave.³⁴ His finding is that lawyers are two-way "transformation agents" that control the communication between society and the law, interacting with clients what Mnookin calls "in the shadow of the law". Haley's work on Japanese attitude to litigation reconsiders

³² See Lawrence M. Friedman, *The Role of Law in United States Society*, in *Conference on the Role of Law in the United States and China* (on file with the author).

³³ See Stewart Macaulay, *Law and the Behavioral Sciences: Is There Any There There?*, 6 *Law & Policy* 149 (1984).

³⁴ See Griffiths, *What Do Dutch Lawyers Actually Do in Divorce Cases?*, 20 *Law & Society Review* 135 (1986).

what he calls myth of reluctant litigant from comparative and empirical perspectives.³⁵ It begins with Japanese myth of reluctant to litigation that many commentators attribute to the Japanese an unusual and deeply rooted cultural preference for informal, mediated settlement of private disputes and a corollary aversion to the formal mechanisms of judicial adjudication. Then, it draws on comparative material from American's frequently litigious culture. It points out in institutional incapacity for settling disputes in Japan and questions the relationship between, for example, the number of lawyers and litigation, or limited access to courts and so on. Blegvad's examination of commercial relations, contract, and litigation in Denmark observed that litigation is avoided for reasons other than cost.³⁶ It points out for business problems, calls for a mixed legal and economic solutions, and leaves more questions open for future explorations if the law and legal culture continue to cast a complex shadow over many events in society. Kelman's comparative work between America and Sweden on "Compliance and Public Policy" emphasizes the importance of things happen "down there" rather than "out there" that means the real action goes on where the rules are being implemented and if there is no real connection between "down there" and "out there" the rules are empty words.³⁷ When employer do not want to or find to comply with the rules made by the public agency some enforcement effort are needed. In such cases, there is the problem of inducing employers to change their behavior. The agency must possess a stock of inducements, employers must find these inducements strong enough, and there must be an ability to monitor performance. These ideas can be true in many daily rules we face in our lives from the speed limit to parking fines. "A Note on Legal Evolution" in Macaulay, Friedman and Stookey begins of course the famous work of Max Weber.³⁸ Weber analyzes four possible types of situations: formal rationality, substantive rationality, formal irrationality and substantive irrationality.³⁹ Weber tends to view legal systems as moving from irra-

³⁵ See John Owen Haley, *The Myth of the Reluctant Litigant*, 4 *Journal of Japanese Studies* 359 (1978).

³⁶ See Britt-Mari Blegvad, *Commercial Relations, Contract, and Litigation in Denmark: A Discussion of Macaulay's Theories*, 24 *Law and Society Review* 397 (1990).

³⁷ See Kelman, *Compliance and Public Policy*, in Kelman, *Regulating America, Regulating Sweden: A Comparative Study of Occupational Safety and Health Policy* (1950).

³⁸ See Macaulay, Friedman & Stookey, *Law & Society: Readings and Materials*.

³⁹ See Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (1978).

tional to rational and from substantive to formal rationality. However, some reformist legal change is not evolutionary. The example of Turkish case was revolutionary program and official law became very modern one. But still there is a question of the "living law". And of course another important question in evolutionary ideas is that "Is a modern Western legal system necessary for economic development?" Winn, "Relational Practices and the Marginalization of Law: Informal Financial Practices of Small Businesses in Taiwan," is skeptical and points to Taiwan's successful economic development.⁴⁰ She finds that the relational structure of traditional rural Chinese society has survived in a modified form in modern Taiwan, and this modern form selectively blends elements of the modern legal system, networks of relationships, and the enforcement services of organized crime. Taiwan's legal system indirectly supports relational practices rather than working through the kind of universal normative order often associated with the idea of a modern legal system. Before talking about some characteristics of modern legal systems, I want to note that common themes underlie these scholars use middle-range theory to investigate his or her topic and explain the findings. There are no Ungerian permanent revolutions posited, nor Posnerian visions of a minimal state. The juxtaposition in these works of the findings of empirical research with what either high theory or generally accepted wisdom would lead one to expect is itself enlightening, since it frequently forces us to reconsider our premises concerning our knowledge of the way the world works.

Professor Friedman describes six traits of modern legal systems in his article "Is There a Modern Culture?"⁴¹ He refers a legal culture of modern societies both to an element of contemporary societies and another characteristic of wealthy, industrial societies. First, he states, "modern legal systems are in process of rapid change, like their societies." I want to express my doubt whether rapid societal change is a real structural change and whether this rapid change hits majority of people in these societies, especially in the countries in transition since there is a huge social and economic gap among people. The ordinary working citizen is likely to feel herself an angry outsider about changes, powerless to

⁴⁰ See Jane Kaufman Winn, *Relational Practices and the Marginalization of Law: Informal Financial Practices of Small Businesses in Taiwan*, 28 *Law & Society Review* 193 (1994). See also, Frank K. Upham, *Speculations on Legal Informality: On Winn's 'Relational Practices and the Marginalization of Law'*, 28 *Law & Society Review* 193 (1994).

⁴¹ See Lawrence M. Friedman, *Is There a Modern Legal Culture?*, *Ratio Juris* 117 (1994).

reshape the collective basis of collective problems she faces. Meanwhile, it is true that in every rich industrial democracy, there is a technological revolution and a vigorous subjacent some kind of experimentalism moves through, for example, the organizations of firms and of learning: firms and schools. However, these changes in the microworlds of the firm and the school hits in the end against the limits imposed by the untransformed public world, still exhausted and perplexed. Until we do justice to close the social and economic gap the rapid change of society and therefore its legal system remains a metaphor. The second trait is the law of modern states is dense and ubiquitous. It is true that modern states and societies generated an enormous mass rules and norms on almost every aspect of modern life. The third trait of modern law is more overtly cultural. The fourth characteristic of modern law is a strong belief in fundamental life. The fifth trait is individualism. Traditional or non-modern societies seem to be communal; the unit of legal analysis is the family, the group, the community. In the modern West, the individual is the unit of legal analysis. Professor Friedman states that every individual should have an opportunity to have absence of restraint and choose a style of life, or way of life, freely selecting among options, developing a unique personality.⁴² There are obviously links among these traits but also some tension. One tension between for example individualism or liberalism and communitarianism. I want to explore this tension in a broader sense and take this opportunity to clarify my ideas about some aspect of communitarianism and individualism which I believe should be real trait of a modern law and perhaps society.

It is true that the real action in society should go on in the life of individuals. The responsibility of the state is to insure the basic securities, equities and decencies and enable the individual to formulate and to execute her own life projects. But there is a second sphere of life that is to say the main action in society goes on in particular communities, family, groups so on. Society should become a confederation of communities. The central apparatus of the state come to play a nearly residual role with these communities and their dealings with each other. It is in them in the communities rather than in society as a whole that the main action of life takes place. We can understand this direction of the change: as a liberal communitarianism. The powers of the state are increasingly devolved to particular group and communities organized or not on a territorial basis. These communities are not all inclusive of the lives of their

⁴² See Lawrence M. Friedman, *The Republic of Choice: Law, Authority and Culture* (1990).

individual members. Individuals belong to several such communities in different dimension of the lives. The communities are not rigidly exclusive to those who want to join them. And the communities are not primarily constituted on an ascriptive basis that is to say by physically inherited attributes. All these characteristics together make of this a liberal communitarianism and we need to develop a legal framework or find in the society the norms and concepts that will make this conception work.

The sixth feature of modern legal systems is globalization. What is happening today is that discourse about law is becoming global. If we still think at this point that law is a mirror of society the sixth trait also means globalization of world societies. However, it seems to me that there is a paradox with idea of globalization or convergence of legal systems and some kind of pluralism that we want to achieve in our society and even in the world. A traditional form of collective identity throughout world history has been the attachment to a distinct form of life, defined in the detail of practices and institutions. For the Roman, to be a Roman was to live according to Roman custom: a dense texture of social life informed by ideas and ideals of human association — enacted images of the possible and desirable relations among people in different domains of experience. In modern life, people and societies express a will to difference in the face of waning of actual difference more often and more strongly than they reflect the possession and defense of a unique form of life. The remaining differences of religion and language, or the economic rivalries among societies may further excite the will to difference. The way to make differences less dangerous is, paradoxically, to make them more real. The way to make them more real is to develop practices and legal pluralist institutions, and ways of thinking and talking, that can both generate and express them. If my argument correct the globalization of law leads to a process of not convergence but communication among legal systems. So only with this sense should the studies of law and society be globalized.

The Law and Society presents the pragmatic understanding that law is a process prone to distortion, error and manipulation. The Law and Society provides the check, the reality test, the field level information that helped me to compare how law operates in action in different societies and communities. We must earn a strong understanding of how to use not only careful empiricism but also normative vision. I want to stress the importance of these aspects that socio-legal studies can do its

work best when it combines normative inquiry and empirical studies. Because pure empiricism do not produce anything but dry numbers also pure theory tends to decay into utopianism or academic posturing. The importance of both aspects should help us to think compare and give a vision how to reconstruct our own legal system.

I repeat the same sentence in the first paragraph "I have faith in liberalism, in legal institutions, in 'the republic of choice' with freedom and equality." In this activity the basic question is how I as a young legal scholar, can achieve my faith. I should be able to study law prophetically or poetically; systematically or by parable; with a particular context in mind or on a worldwide scale; linked to particular movements or disconnected from them; extending actual experience or anticipating possible experience; for the here now and now of immediate feasible changes or for the remote and speculative future of unborn humanity; with a wealth of empirical detail and justificatory argument. It is not true that we cannot be visionaries until we become realists. It is also true that to become realist we must make ourselves into visionaries.

A. History and Nationality

This article explores the role of history and nationality in the development of social welfare organizations in the United States, and how these organizations have influenced the development of the U.S. welfare state.

Since the 1960s, the concept of nationality has become a central theme in the study of social welfare organizations. This article explores the role of history and nationality in the development of the U.S. welfare state.

The article begins by exploring the role of history in the development of social welfare organizations. It then discusses the role of nationality in the development of the U.S. welfare state.

Finally, the article concludes by discussing the role of history and nationality in the development of social welfare organizations. It argues that these factors have played a significant role in the development of the U.S. welfare state.