From the Special Issue Editors

Ideology is a difficult term to discipline. That is one of the things members of the Amherst Seminar learned when editing this collection during the last year.[1] Our call for papers was our first concession to the difficulty of disciplining that term. The call for papers suggested ideology might be used to refer to (1) false consciousness associated with and produced by particular structures of domination; (2) systems of belief of a group or class; (3) coherent meanings encoded in social relations and institutions; (4) consciousness linked to material conditions; (5) contested areas of social life as opposed to those that are taken for granted; and (6) the processes by which meanings and ideas are produced. Not surprisingly, the call generated a broad range and a large number of responses.[2]

Ideology, in one of its various meanings, plays an important role in Marxian and Neo-Marxian analyses; research on state theory, culture and language, and attitudes and opinion; and in interpretive scholarship and critical legal studies. As much as any other concept, ideology has provided a terrain of contest where different traditions within the social sciences and in the study of law have been debated. The multiple intersections of these traditions produce a rich and complex, yet unstable and developing, field that associates ideas and consciousness with social practices, history, and power. However, because of the plurality of views on ideology, it often appears in research as "an evasion rather than a solution" (Hunt, 1985: 12). As a concept, ideology has the quality of being both robust and amorphous.

In some of its uses, the concept of ideology appears threatening. It appears to threaten values, such as objectivity, that are themselves thought to be important to the integrity of social science research. Moreover, it appears threatening because it is associated with a vision of a culture and social order plagued by divi-

---

[1] The editorial collective of the Amherst Seminar included: John Brigham, Patricia Ewick, Christine Harrington, Sally Merry, Brinkley Messick, Austin Sarat, Susan Silbey, Adelaide Villmoare, and Barbara Yngvesson. Lynn Mather and Ron Pipkin assisted with the first reading of submitted papers.

[2] The call for papers was distributed to the entire membership of the Law and Society Association as well as to individuals and groups thought to have special interest in the subject of law and ideology. As a result, the seminar received fifty submissions. Submissions by members of the seminar were sent to Robert Kidder as editor of the *Law & Society Review*. Kidder chose reviewers without consultation with the seminar. Each paper from a member or members of the seminar was reviewed anonymously by two referees. The other papers were reviewed by members of the seminar. Each was evaluated by at least two reviewers and discussed in a series of seminar meetings.

LAW & SOCIETY REVIEW, Volume 22, Number 4 (1988)

https://doi.org/10.1017/S0023921600028723 Published online by Cambridge University Press

sive conflict. Thus, some eagerly proclaim the "end of ideology" (Bell, 1960), while others regret that, in the past, analysis of law as ideology has been "hardly used . . . [in] the major texts on the sociology of law" (Hunt, 1985: 12). This special issue seeks to rescue ideology from its detractors and allies itself with those who regret the relegation of ideology to the margins of our community, even though the editors and contributors share the view that ideological analysis of law is no panacea for what has been labeled the "clackety clack" of sociolegal research (Abel, 1980: 805).

In collecting research that looks at law and ideology we encountered two major challenges. The first was to avoid problems associated with instrumental Marxism that inevitably point to false consciousness or class domination (Collins, 1982), while still appropriating the strengths of this historically critical concept. The second challenge was to harness the concept of ideology to social scientific research and writing on law. By harnessing the concept, we mean to bring together the political dimensions of ideology as a concept with the conventions of the law and society research community. Alan Hunt warns, however, against three common misconceptions in theories of ideology that need to be eliminated if the term is to be employed effectively in sociolegal studies. The first is "Ideology" (with a capital "I") used to refer to systematic and total world views. "Consistent world views may exist," Hunt writes, "but they must be treated as special or exceptional cases" (1985: 13). Rather than defining ideology as a coherent world view, it is important to historically and culturally situate ideologies, such as socialism or liberalism, thereby delineating the contingent character of beliefs. The second misconception reduces ideology to false beliefs. In the realm of the social sciences this is the most pervasive understanding of ideology, in part because it separates ideas and reality. The third misconception is the view that ideology is necessarily tied to the interests of a social class. While we recognize that ideology is a loaded term that cannot be abstracted from the history of its uses and development in social theory, research, and political action, its utility and importance in social research on law is not ultimately determined or limited by that history.

Research on law and ideology seems to join the critical potential of sociological jurisprudence, American legal realism, and law and society research with a renewed attention to the power of ideas and legal doctrine (see Trubek, 1984). This research suggests interesting continuities with a nineteenth century view of law as the framework for social order while it relies upon concepts and approaches deployed by sociolegal scholars. Research on law and ideology goes beyond traditional doctrinal analysis and law-school-centered views by focusing on law as enacted in social life. Researchers observe legal processes and identify systematic outcomes and structured inequalities that document the ways law is respon-

https://doi.org/10.1017/S0023921600028723 Published online by Cambridge University Press

sive to power. In so doing, such research helps to undo idealist and orthodox conceptions of law and the legal order.

By joining a tradition of scholarship on ideology with social science studies on law, researchers build on several now classic works. In particular, Thompson (1975) made a notable and critical contribution to the study of law in his work on the development of the English working class and the enactment and enforcement of the Black Acts by arguing for the inseparability of the constitution of consciousness and the instrumentalities of the bourgeois legal order. Similarly, Genovese (1976) described the role of law in legitimating and mediating the violence of American slavery by pointing to the law's presence in slave culture and practice. Hay (1975) described the importance of law's particular combination of justice, majesty, and mercy in moulding the consciousness by which the populace submitted to the eighteenth century English aristocracy. These researchers showed how law shaped social situations and popular consciousness while at the same time the very substance and form of the law was being constituted. Law is the raw material that legal actors create and work on while they simultaneously use it to manage social relations (McBarnett, 1984).

Building on these works requires four conceptual moves in law and society research. The first is a move from focusing on concrete, tangible, and material interests to ideas and concepts in legal discourse. This shift is meant to be subtle, in that attention to ideology incorporates a concern with interests while moving beyond the instrumentalism of an interest focus. The interest focus in sociolegal research often treats law as a set of resources used to manage society rather than as a set of categories for understanding and interpreting social action. The interest focus implies that law creates compliance, and is interesting and problematic when it fails in that effort (Sarat, 1985). The role of law in constructing an authoritative image of social relations and shaping popular consciousness in accordance with that image is seldom investigated.

An ideological perspective looks at the role of ideas incorporated into political arenas, institutional roles, settings and processes. Ideology describes ideas that have structure and coherence at least in part because of their location in social life and social relations. Ideas are neither epiphenomenal nor free floating. At the same time, interests, behavior, power, and history cannot be understood without attention to consciousness and the construction of social meanings. Law is, however, more than belief; it also includes coercion. Law involves real restraint; it "plays upon a field of pain and death" (Cover, 1986: 1601). Nevertheless, there are aspects of belief and consciousness that may capture much of what is regarded as legal in the realm of coercion and restraint.

In this issue Austin Sarat and William Felstiner's study of lawyer/client interaction in divorce cases exemplifies this effort to examine the linkage of consciousness and social relations, as does

https://doi.org/10.1017/S0023921600028723 Published online by Cambridge University Press

the study of mediation ideology by Christine Harrington and Sally Engle Merry. The discussion of divorce, observed by Sarat and Felstiner in lawyers' offices, connects the production of ideas concerning responsibility and blame with the dynamics of professional authority. For Harrington and Merry the meaning of community mediation is "made" or constructed as funding is mobilized, as institutional support is generated, and as a local leadership of core mediators is organized. This work grounds the idea of community mediation in the social relations constituting the reform movement.

In a second and similar conceptual move, ideological studies connect behavior with culture through the concept of social practice (Bourdieu, 1977). That notion examines the role of convention and symbols in legal institutions. Legal practices embody ways of understanding that are widely accepted and rooted in the ways people use and act on those understandings. As a result they become empirical and observable (Brigham, 1984: 3). Legal practices embody not only sets of conventions but also theories of society. Law provides a crucial site for the construction of such theories as well as descriptions of social structure, processes of social change, and the justice of particular distributions of power. The social theories embedded in legal practices are especially consequential because they carry the symbolic trappings and the coercive power of the state.

The analysis of law and ideology thus engages scholars in efforts to decode legal practices (Geertz, 1973). This means that researchers study the devices by which people find their way in and make sense of the taken-for-granted aspects of the legal world and the legal aspects of the taken-for-granted world. Using ideology to describe the ways in which legal behavior becomes ordinary, routine, and unquestioned promotes an examination of how the meanings of legal practices are constructed and contested (Silbey, 1985).

The analysis of practices in the study of law requires attention to what Giddens (1979) calls the "duality of structure." Social forms are reproduced through social exchange (as in lawyer/client, litigant/khadi interactions), but this exchange may also include instances of resistance. In this collection, Brinkley Messick's study illustrates the simultaneous reproduction of and challenge to Shari'a law in deference ceremonies. Messick's analysis treats the Shari'a text as decentered, open, and consensual so that its common sense aspect, a key element of social practices, sustains the hegemony of Muslim jurists. Yet the interpretative processes he describes do not merely generate consensus and a mystified passivity but generate consciousness that challenges common sense and that hegemonic consensus. Other work in this collection, for example, Simon's essay, however, suggests the ways in which practice sustains social forms that may silence resistance.

A third move in studies of law and ideology is the treatment

https://doi.org/10.1017/S0023921600028723 Published online by Cambridge University Press

of power. In these studies, power is understood as more than the accumulation and deployment of resources (Lukes, 1974). Instead, power is organized and deployed through law, and through that organization and deployment provides the inescapable fabric of social life (Foucault, 1977). In studies of law and ideology, the power of law resides in part in its capacity to inscribe the arbitrary and cultural features of social life with the aura of the natural and inevitable (Gabel, 1977; Sumner, 1979; Unger, 1987). All of the articles in this issue illustrate the power of law associated with the capacity to forge authoritative understandings of social relationships. In addition to the ability to 'naturalize' what is conditional and arbitrary legal ideologies can also be powerful as they conceal, falsify, or distort. It is not the immutable natural reality assumed by positive science that is concealed, however, but alternative social constructions forged from diverse experiences and competing visions. By rejecting alternative interpretations, legal ideologies are powerful to the extent that they also deny that they are themselves constructions.

In this issue, Jonathan Simon describes the power of techniques of classification and accounting to affect social action and create differential life consequences while undermining the basis for identity and group solidarity. The actuarial practices certified in legal doctrine erode the foundations of social identity created through shared experiences, discourses, and traditions by substituting classifications based on locations on a statistical distribution. The power of these practices, and of the law, to deny as well as to shape consciousness and action is found in their ability to neutralize the moral charge of what would normally be considered offensive forms of distinction. Simon argues that the forms of categorization associated with actuarial practices are less likely to lead to a dialectic of power/resistance because actuarial practices create aggregates without a foundation in social experience or consciousness.

Elizabeth Mertz describes the treatment of indigenous people in South Africa and America in terms of the language of law and the uses of history. Her study shows how law and official discourses construct histories that support repressive policies in treatment of native people and constitute widely accepted and conventional narratives that legitimate this control. And for Carol Greenhouse, the dominant/subordinate power relation is a realm of social relations based on a distinction between the insider/outsider in the community of Hopewell. This distinction is related to law: The outsiders are those who have no local histories or structures of informal social control, such as family or community ties, and as a result are overly dependent on courts. Thus the court exercises a greater influence in the lives of outsiders, in their affairs, and in the ways in which they are understood and perceived by others. In these studies, power is shown to be immanent in every-

https://doi.org/10.1017/S0023921600028723 Published online by Cambridge University Press

day relations; it is in these relations that the meaning-making and constitutive power of law is to be found.

The power of legal ideologies and law itself derives not only from its constitutive effects, but from internal contradictions, paradoxes, and impurities as well (Balbus, 1977; Cohen, 1985; Dalton, 1985; Peller, 1985). Whereas some might see such contradictions, paradoxes, and impurities as weakening the power of law to intrude on and successfully order social life, these apparent weaknesses make law available for innumerable uses and provide an extraordinarily wide arc for its compass. The contradictions, however, are not between ideological rhetoric and implementation or practice; they are within the words, texts, and narratives themselves (Kennedy, 1976; Bakhtin, 1981). As Messick's essay illustrates, the hegemonic power of Shari'a texts lies not in its monovocal insistence on hierarchy but in its textual openness to equality and community alongside and within hierarchical structures. "The strength of the discourse is its textual . . . and lived heteroglossia, . . . subverting and dissimulating itself at every doctrinal turn, the discourse is effectively protected from sustained critique" (1988: 657). In another context, Harrington and Merry illustrate how the community mediation movement is fortified by the contradictions within the valued symbols of community and consensus. They point out the rhetorical interplay between consensus, community, participation, and organizational sustenance, at the same time as they underscore the strength and power of these intersections in expanding mediation reforms.

Fourth, studies of law and ideology direct attention to history, the variability of legality and its conditional nature. Legal ideologies are constituted within particular historical circumstances. Attributions and interpretations are not only a product of particular social interactions, material conditions and institutions, they in turn influence the organization of social interaction in specific contexts. Most importantly, because situations are numerous and variable, there are multiple meanings and multiple ideologies.

Again, in this issue, Gerald Turkel shows how a consistent embrace of an ideological perspective requires that the concept of ideology and a particular ideological construct, the public/private distinction, must themselves be located historically. Turkel takes the historical legacy of the public/private distinction in Marx's writings as a starting point for an inquiry into its place in contemporary sociolegal scholarship. Greenhouse points to the court as a crucial location for the expression of local ideologies during periods of social transition. Her analysis shows how the law and its courts become central locations for the production and contest over the meaning of community life in an American town, and over the character of Hopewell's past and future. Mertz shows how law constructs and uses the idea of history and specific histories, and how the law's construction and use of history is impli-

https://doi.org/10.1017/S0023921600028723 Published online by Cambridge University Press

cated in the power of law itself. History becomes ideological as accounts of the past and the nature of subordinate people in the past are harnessed to narratives that accompany contemporary control and restriction of these people.

Thus, looking at law as ideology builds on work that has challenged the autonomy of law but goes beyond acknowledgment of social influences to the task of specifying the particular interaction of circumstances and ideas. Ultimately, an ideological framework may encourage a view of law as more than merely the product of ideas or the outcome of instrumental forces; it recognizes the importance of both symbols and structures in social relations and directs attention to the reception and recreation of law in society. This effort brings the concept of ideology more firmly into the service of empirical studies of law and, in so doing, enriches what is already a fertile research tradition. But, as we have argued above, the effort to join analyses of ideology to empirical studies of law disquiets that tradition precisely by drawing on a concept with its own charged and controversial history and undisciplined character. To emphasize its controversial history is to endanger both the tradition of law and society research and the serviceability of ideology to that tradition. To emphasize its familiarity is to invite a skeptical "so what" from those who will eagerly dismiss the study of ideology and law as just so much old wine in new bottles. It is, however, in the intersection of the disruptive and the familiar that this special issue seems to sit.

The Amherst Seminar,
Special Issue Editor
June, 1988

REFERENCES

ABEL, Richard (1980). "Redirecting Social Studies of Law," 14 *Law & Society Review* 805.
BAKHTIN, M.M. (1981). *The Dialogic Imagination*. Austin: University of Texas Press.
BALBUS, Isaac D. (1977) "Commodity Form and Legal Form: An Essay on the 'Relative Autonomy' of the Law," 11 *Law & Society Review* 571.
BELL, Daniel (1960) *The End of Ideology*. New York: Free Press.
BOURDIEU, Pierre (1977) *Outline of a Theory of Practice*. Cambridge: Cambridge University Press.
BRIGHAM, John (1984) *Civil Liberties and American Democracy*. Washington, D.C.: Congressional Quarterly Inc.
COHEN, Stanley (1985) *Visions of Social Control*. Oxford: Polity Press.
COLLINS, Hugh (1982) *Marxism and Law*. Oxford: Oxford University Press.
COVER, Robert (1986) "Violence and the Word," 95 *Yale Law Journal* 1601.
DALTON, Clare (1985) "An Essay in the Deconstruction of Contract Doctrine," 94 *Yale Law Journal* 997.
FOUCAULT, Michel (1977) *Discipline and Punish*. New York: Pantheon.
GABEL, Peter (1977) "Intention and Structure in Contractual Conditions:

https://doi.org/10.1017/S0023921600028723 Published online by Cambridge University Press

Outline of a Method of Critical Legal Theory," 61 *Minnesota Law Review* 601.

GEERTZ, Clifford (1973) *The Interpretation of Cultures*. New York: Basic Books.

GENOVESE, Eugene (1976) *Roll, Jordan, Roll*. New York: Pantheon Books.

GIDDENS, Anthony (1979) *Central Problems in Social Theory: Action, Structure, and Contradiction in Social Analysis*, New York: Macmillan.

HAY, Douglas (1975) "Property, Authority and the Criminal Law," in Douglas Hay, Peter Linebaugh, John G. Rule, E.P. Thompson, and Cal Winslow, eds., *Albion's Fatal Tree*. New York: Pantheon Books, 17.

HUNT, Alan (1985) "The Ideology of Law; Advances and Problems in Recent Applications of the Concept of Ideology to the Analysis of Law," 19 *Law & Society Review* 11.

KENNEDY, Duncan (1976) "Form and Substance in Private Law Adjudication," 89 *Harvard Law Review* 1685.

LUKES, Steven (1974) *Power: A Radical View*. London: Macmillan.

MESSICK, Brinkley (1988) "Kissing Hands and Knees: Hegemony and Hierarchy in Shari'a Discourse," 22 *Law & Society Review* 637.

MCBARNETT, Doreen (1984) "Law and Capital: The Role of Legal Form and Legal Actors," 12 *International Journal of the Sociology of Law* 231.

ORTNER, Sherry B. (1984) "Theory in Anthropology Since the Sixties," 26 *Comparative Studies in Society and History* 126.

PELLER, Gary (1985) "The Metaphysics of Law," 73 *California Law Review* 1151.

SARAT, Austin (1985) "Legal Effectiveness and Social Studies of Law: On the Unfortunate Persistence of a Research Tradition," IX *Legal Studies Forum* 23.

SILBEY, Susan S. (1985) "Ideals and Practices in the Study of Law," IX *Legal Studies Forum* 7.

SUMNER, Colin (1979) *Reading Ideologies*. New York: Academic Press.

THOMPSON, E.P. (1975) *Whigs and Hunters: The Origins of the Black Act*. New York: Pantheon Books.

TRUBEK, David (1984) "Where the Action Is: Critical Legal Studies and Empiricism," 36 *Stanford Law Review* 575.

UNGER, Roberto Mangabeira (1987) *False Necessity: Anti-Necessitation Social Theory in the Service of Radical Democracy*. Part I of *Politics*. Cambridge: Cambridge University Press.

https://doi.org/10.1017/S0023921600028723 Published online by Cambridge University Press