

INTRODUCTION TO SYMPOSIUM ON THE LAW AND THE NEW INSTITUTIONALISM

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The four papers in this symposium help to elaborate the New Institutionalism in the Sociology of Law, a perspective that represents a convergence of ideas in the sociology of law and the sociology of organizations. Institutional accounts of law and organizations emphasize the roles of history, culture, politics, and law in shaping organizations. More importantly, as these essays illustrate, institutional accounts see the role of organizations not only as responsive but also as constitutive: Organizational rituals and structures mediate the very social institutions—including law—that constitute their normative and legal environments.

Institutional accounts of the dynamic interplay between law and organizations challenge the paradigm previously dominant in much socio-legal literature, which elevated economics over culture. The law and society tradition has long rejected formalism and recognized the social nature of legal institutions and legal actors. But discussions of organizational behavior within this tradition nonetheless have employed a distinctly formalist and asocial

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model: Organizations are generally viewed as rational entities that weigh the costs of legal sanctions and respond to law in a direct and instrumental manner. Further, this literature largely neglects the role of organizations in constituting the larger legal order.

In contrast, institutional accounts emphasize the mutual social construction of law and organizations. These accounts hold that organizations are complex social actors whose behavior is shaped more by their cultural environments than by rational calculations and technical imperatives; that organizational response to law is an indirect constructionist process, often involving unforeseen consequences and actions that may be more symbolic than substantive; and that the process of organizational response to law mediates the very law that motivates it. Thus, organizational structures and practices reflect the norms of wider society, but those norms—including law—are to some extent the product of organizational ideology, culture, symbols, and rituals.

Although institutional theory presents a new way of understanding the law-organization relationship, it is actually quite consistent with the basic tenets of law and society scholarship. The law and society tradition emphasizes strongly socialized accounts of law, and of individuals' interactions with law. Law is portrayed as an institution-in-action, largely constituted by informal social actions that are themselves both reactions to formal law and the product of ingrained cultural practices. Sociolegal scholars have long emphasized the relative importance of informal norms, peer pressure, appeals to morality, notions of legitimacy and the relative importance of formal legal sanctions in shaping individual behavior. Yet prior to the influx of institutional accounts of law and organizations, the law and society tradition failed to see organizations as similarly social creatures.

The nexus between institutional theory and socio-legal studies dates back at least to Philip Selznick, a leading thinker in both fields. Selznick's work, now labelled the "Old Institutionalism" (Powell and DiMaggio 1991), stressed that the formal goals of organizations often gave way to norms and rituals as practices became "infused with value beyond the technical requirements of the task at hand" (Selznick 1957: 17). These norms and rituals reflect the value-laden claims and vested commitments of internal constituencies, who were in turn influenced by the broader social norms and rules; thus public law values would naturally enter organizational life (Selznick 1948, 1949, 1957, 1969).

Whereas early institutional theories of organizational behavior emphasized normative sources of organizational behavior, a more recent wave of institutional theory—the "New Institutionalism"—focuses on the cognitive and behavioral dimensions of organizations' cultural environments (Meyer and Rowan 1977; DiMaggio and Powell 1983; Scott and Meyer 1983; Powell and DiMaggio 1991). The cognitive strand of the New Institutionalism, which derives from the social phenomenology of Berger and Luckmann (1967), sees

much organizational action as taken-for-granted responses to socially ingrained categories and assumptions. Work in this tradition holds that organizations adopt institutionalized structures without rational analysis, simply because they are so widely accepted. In contrast, the behavioral strand of the New Institutionalism allows for conscious responses to normative rules. Behavioral institutionalism focuses on the effects of institutionalized norms, without specifying the process that leads organizations to implement those norms (see Suchman and Edelman 1996 for a detailed discussion of the differences between these strands).

The behavioral strand has been particularly prominent in studies of law and organizations. Whereas cognitive institutionalists largely reject the notion of rationality, contending that strategic behavior is precluded by the plethora of taken-for-granted categories and rituals in society, most law and organizations scholars acknowledge that organizations may attempt strategically, and sometimes in form only, to comply with externally-imposed rules (e.g., Edelman 1992; Sutton, Dobbin, Meyer and Scott 1994). This potential for merely symbolic action also diverges from Selznick's "old institutionalism," which generally held that the normative force of legal rules would logically take hold within organizations.

The institutionalist perspective on law and organizations fits the tenets of traditional law and society scholarship in that it holds that organizational life largely revolves around institutionalized practices, normative constraints, and legitimized authority structures. This perspective brings to the sociology of law a view of organizational behavior that takes rules, rights, and obligations seriously. More importantly, it provides a well-theorized account of how those normative regimes shape the structures and everyday practices of organizations. In view of these institutional accounts, it becomes far less tenable for law & society scholars to treat organizations as rational actors in the legal field.

The four papers in this symposium add new dimensions to the interplay of law and organizations. Mark Cooney argues that although extant theories of law and organizations bring law to bear as an important independent variable, law itself remains largely unexplained. He suggests that the next step is to treat law itself as the dependent variable by theorizing such phenomenon as the effect of cultural changes in law and legal environments. Only by specifying the origins of law can we come up with a truly socialized account of the law-organization relationship.

Egon Bittner similarly emphasizes the social construction of law. Bittner argues that both the use and meaning of legal concepts are socially negotiated, and evolve over time through institutional practices, institutionally-determined interests, and use-based understandings. Following other institutional work, Bittner emphasizes and clarifies the role of professionals in diffusing particular constructions of law, in particular, he argues that the judiciary plays an

important role in transforming law from words on paper to realistic social institutions.

Karen Orren's essay comes out of historical institutionalism, a version of the New Institutionalism that originated in political science rather than in sociology. In her analysis of the Pullman Strike, Orren shows that legal outcomes are often a function of particular configurations of institutional rules, role expectations, institutionalized relationships among actors, and constraints that arise from social structural arrangements. The lesson is that it is imperative to situate political struggles and legal outcomes within particular historical and institutional circumstances. Legal results often depend critically on historical circumstances and the outcome of conflicts over institutional rules. Orren points out that an institutional perspective moves the issue of unintended consequences from the margins to the center.

Carol Heimer introduces a new dimension to the social construction of law. Like the other authors, she points out ways in which organizations, and organizational professions, construct the meaning of law. But she also raises a new and critical issue that is likely to influence much future work on law and organizations: the issue of competing institutional logics in the institutionalization process. Criticizing much institutional theory for assuming that institutional norms are universal, Heimer points out that organizations are defined by, and help to define, multiple environments, which often have competing logics. In the medical setting that is the focus of Heimer's analysis, for example, law and medicine provide competing logics. Actors within organizations mediate these competing logics by determining which takes precedence in various situations. Conflicts may arise over competing logics, in which case the relative import of the actors and legitimacy of their claims will influence which logic becomes dominant in any given situation.

These papers—together with other institutional accounts—help to establish the highly reciprocal and endogenous nature of the relationship between law and organizations. Law and society scholarship has established law as an institution in action; institutional organization scholarship suggests that organizations are also institutions in action, and, more importantly, that the normative rules and ritualized practices that arise in organizational contexts continuously mediate the legal rules that, in turn, constrain organizations and help to constitute their environments.

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