Political Science
Legal Studies 217

IMPACT OF LAW

Functions of Law

- Establish relations between government and the people
  - Powers of government
  - Enunciate rights of the people
- Allocate social & economic resources
- Establish and enforce standards of behavior
- Prevent and settle disputes

But, What Difference Does the Law Actually Make?

- Imagine a world without law
  - Hobbes: "The state of nature"
  - "solitary, nasty, brutish, and short"
- Democracy depends on "the rule of law"
- Law generally versus specific laws?
- Difficulty of assessing law’s impact
How Successful Is Law?

- When does law do what we ask of it?
- What are the unintended effects of law?
- How do we know what are the effects of law or other societal forces?
- Did *Roe v. Wade* lead to an increase in the number of abortions?

Source: Center for Disease Control

![Graph of legal vs. illegal abortions performed, by year — United States, 1974–1993](image)

- Legal vs. illegal abortions
- Nature of legal change
  - Statutory change
  - Judicial change
- What would have happened without *Roe*?
  - Additional statutory change?
  - Would abortions have increased for other reasons?
Impact of Roe decision
- Increased number of abortions?
- Decreased fertility rate?
- Increased women’s participation in the labor market
- Reduced death and injury from unsafe, illegal abortion?
- Increased promiscuity?
- Decreased valuing of life?
- Decreased respect for traditional values?
- Mobilized political conservatives

Banning Abortion
- Reduce abortions
- Reaffirm traditional family values
- Make women’s lives less predictable
- Create an underground abortion market
- Increase health risks arising from illegal abortions
- Increase child abuse
- Decrease societal wealth
  - More children
  - Fewer women working

Constitutive Role of Law: An Alternative Image
- Social construction of our world versus material nature of our world
- Law creates
  - Expectations
  - Categories
  - Mental structures
- Law orients individuals in their day-to-day interactions in extensive and complex ways
Impact as Compliance

- When do we comply with the law?
- Routine law breaking
- Principled law breaking
  - Civil disobedience
  - The *Crito*: Socrates and the hemlock
  - Natural law
- Noncompliance other than criminal behavior

Deterrence

- Compliance due to fear of consequences
- Centrality of rationality
- Utilitarianism
  - Jeremy Bentham (1748-1832)
  - John Stuart Mill (1806-1873)
  - "The greatest happiness for the greatest number."
  - if two available punishments have equal deterrence, then the lesser punishment must be chosen.

The Rationality Problem

- Motivations for crime or disobedience
  - Individuals
    - Crimes of calculation
    - Crimes of neglect
    - Crimes of passion
  - Corporations
    - Crimes of calculation
    - Crimes of neglect
    - Crimes of greed
  - Pre-*Roe* decisions to obtain illegal abortions
  - Decisions to provide abortions
Issues in Deterrence Analysis

- Types of deterrence
  - General deterrence
  - Individual ("specific" or "special") deterrence
- Mechanisms of deterrence
  - Certainty
  - Severity
- The death penalty debate

Legal Engineering to Achieve Deterrence

- Increase severity of sanctions
  - Will murder rate in Wisconsin go down if we adopt a death penalty?
  - Will murder rate in Wisconsin go up if we reduce the maximum sentence to 20 years? 10 years?
- Increase certainty of sanctions
  - Increase detection rate
  - Make penalties mandatory

Impact of Criminal Law Beyond Deterrence

- Condemnation of unwanted behavior
  - Retribution
- Compensation for injury
  - Restorative justice
- Creating proper expectations
  - Rehabilitation as re-education
- Incapacitation
  - Protection of society
Dilemmas of Legal Engineering

- Unintended and/or unpredicted consequences
- Difficulty of determining change
  - Has crime decreased in states with concealed carry laws?
- Difficulty of attributing change to specific causes
  - Multi-conjunctural causation
  - Is the decrease due to concealed carry laws?
- “Gap” studies

Assessing Consequences

- Research design
  - The classic experiment
  - The quasi-experiment
- The potential for error
  - Failing to see something that is not there
  - See something that is not actually there
- The problem of validity
  - Internal validity: are you seeing what you think you are seeing?
  - External validity: does what you see in the experimental setting apply outside that setting?
- The problem of reliability

Threats to Validity in Experiments

- History
- Selection
- Maturation
- Instrumentation
- Testing
- Mortality
- Regression
Moving Beyond Experiments

- Statistical control
  - Random selection/sampling
  - Correlation of variables
- Case studies
  - Selecting cases purposefully rather than randomly
  - Cases as "replications" rather than "sample points"

Examples We Will Look At

- Crime control
- Control of smoking and pornography
- Environment and regulation
- Equality and discrimination
- The role of LAW and the role of POLITICS