
PREFACE TO SEVENTH EDITION

The seventh edition of this book, like the first six, is conceived as a traditional law school casebook, albeit on a non-traditional topic and with an effort to make it accessible to social scientists. The purpose of the book should be clear at the outset: to apprise the reader of the actual and potential uses of social science in the American legal process and how those uses might be evaluated. We here view social science as an analytic tool in the law, familiarity with which will heighten the lawyer's professional effectiveness and sharpen the legal scholar's insights. The principal alternative to this "inside" perspective on the relationship of social science to law is the "law and society" or "sociology of law" approach which seeks to understand the functioning of "law" as a social system. See, for example, S. Macaulay, L. Friedman, and J. Stookey, *Law & Society: Readings on the Social Study of Law* (1995); R. Abel, *The Law and Society Reader* (1995). In choosing an orientation from within the legal system rather than that of the law and society observer, we mean no disparagement of the latter. Indeed, we hope that the materials will be found stimulating to those within the law and society tradition. See Monahan and Walker, *Teaching Social Science in Law: An Alternative to "Law and Society,"* 35 *Journal of Legal Education* 478 (1985).

We have adopted as our particular objectives in this book the analysis of four subtopics, all part of the larger involvement of social science in law: (1) substantive law, meaning the legal rules which make the involvement relevant; (2) legal method, referring to the process of managing the involvement; (3) social science findings, meaning the relevant research results, and (4) social science method, referring to the techniques of carrying out and analyzing that research. These objectives can be restated as an analytic or heuristic framework within which social science in law is viewed as a matrix or table consisting, on one dimension, of issues that are primarily "legal" as compared with issues that are primarily "social science" in nature, and, on the other dimension, of issues that focus on "substantive" matters as compared with issues that focus on "methodological" ones. The matrix could be diagrammed as follows:

	Law	Social Science
Substance	Substantive Law	Social Science Findings
Method	Legal Method	Social Science Method

Issues pertaining to the nature of a legal doctrine under consideration (e.g., why is social science relevant to the legal determination of obscenity or segregation?) would be Substantive Law. Questions regarding the means by which courts apprise themselves of social science information (e.g.,

should a study have been introduced at trial rather than on appeal?) would be questions of Legal Method. The results of social science research pertinent to a given legal issue (e.g., does the death penalty deter crime?) would be Social Science Findings. Finally, the methods of data collection and analysis that generated the social science findings (e.g., did the studies eliminate all rival hypotheses that could account for the results?) would be Social Science Method.

The first two chapters of the book build the foundation necessary for appreciating the uses that have been found for social science in American law. The first chapter, *Jurisprudential Origins of Social Science in Law*, considers the development and ramifications of Legal Realism as the jurisprudential movement that gave legitimacy to empirical inquiry. The second chapter, *A Primer of Legal and Social Science Methods*, offers a short introduction to fundamental concepts in scientific evidence and in social science research. With this jurisprudential and methodological background, we turn to the legal topics upon which social science has been brought to bear.

Rather than organize the substance of the book according to conventional legal categories (e.g., Constitutional Law, Criminal Law, Civil Procedure) or traditional social science disciplines (e.g., Sociology, Psychology, Anthropology), we have chosen a more theoretical scheme, one that has potential for uncovering relationships that span many different legal categories.

The substance of the book identifies four major uses of social science in law. In chapter three, *Social Science Used to Determine Facts*, we consider the first of these legal applications, the use of social science to determine factual issues specific to a particular case. In chapter four, *Social Science Used to Make Law*, we go on to consider the use of social research by courts to establish legal rules that will not only determine the outcome of a particular case, but will also govern a broad category of future cases. In the next chapter, *Social Science Used to Provide Context*, we consider a use of social science by courts that falls somewhere between the uses identified in chapters three and four: the use of general social science research to provide a context or background for the determination of a factual issue important only in a particular case. In the last chapter, *Social Science Used to Plan the Litigation of a Case*, we consider the efforts of attorneys to employ social science to prepare for trial.

In each of these chapters our objective is to encourage the development of new insights about the future of social science in law. In this comparatively new field of endeavor, there is much to be learned about the best way to involve social research in the legal process. We provide our own thoughts about this topic with the hope that these views will provoke criticism and discussion. If both teachers and students are encouraged by our presentation to participate in this creative process, our hopes for this book will be fully realized.

While the chapters include material from all of the social sciences, less emphasis is placed on economics and psychiatry, since the relationship of these disciplines to the law has developed to the point that specialized casebooks are already available. See, e.g., R. Cooter and T. Ulen, *Law and Economics* (5th. ed, 2008); R. Reisner, C. Slobogin, and A. Rai, *Law and the Mental Health System: Civil and Criminal Aspects* (5th ed., 2009).

When taking our course in Social Science in Law, law students frequently asked how to find social science materials on a legal topic not covered in the book or how to update what was included. When graduate and undergraduate students in the social sciences enrolled in the course, they asked how to read legal citations. We have included Appendices, originally drafted by David Faigman and thoroughly revised and updated for this edition by Kent Olson, to help answer both questions. Also compiled in an Appendix are the Federal Rules of Evidence most relevant to the involvement of social science in law.

We appreciate the advice of a number of colleagues on revisions for the seventh edition: Shari Diamond, Phoebe Ellsworth, David Faigman, Michael Saks, and Christopher Slobogin. We are grateful for the excellent work of our student assistants for the seventh edition, Mary Niemann, Elizabeth Kade, and Katherine Foster.

A word is necessary on several editorial conventions we have adopted. Many citations and footnotes that we considered non-essential in the reprinted material have been omitted without indication. Where footnotes are retained, they bear their original numbering. Omissions in the text of the cases and materials, except at the beginning of an excerpt, are indicated by bracketing the first letter of the succeeding word, rather than by a series of dots or asterisks. All extended quotations begin as a new paragraph. Finally, we would like to thank those authors and publishers who gave us permission to reprint in this edition from their works. They are as follows: Excerpts from ABA Standards for Criminal Justice, Second Edition, copyright © 1980 by American Bar Association; reprinted by permission of the American Bar Association.

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