

How Law Behaves and the Effects of its Behavior

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For a long time, the law has been considered a concept detailed with guidelines that are constant across all conflicts. Law is simply defined as governmental social control. Social control is the definition of, and response to, deviant behavior. Considering law only in this manner is a jurisprudential approach. It negates the most prominent aspects of law in practice. Donald Black outlines the sociological model of law in his book, *The Behavior of Law*. This theory defines law in a far more complex manner and unveils, just as the title conveys, that law indeed behaves. Black's point is clear, the quantity and use of law changes just as the situational, relational, vertical, and cultural characteristics of all the parties involved in the crime changes.

Before Black first outlines the various elementary forms of conflict management. Law for conflict resolution is rare. These elementary forms are the most common practices in managing conflict. The most elemental form of law is toleration, where the conflict is most likely never brought up. Parties involved may also practice avoidance, and reduce their interactions. In other cases, parties may have the ability to negotiate the issues by talking it out, while other times this occurs in the form of a settlement where a third party mediates the discussion. In some cases, parties use self-help strategies to solve conflict using violence. These forms of elementary resolutions may vary, depending on the status of parties involved. Among relative status equals, this is known as vengeance, and among parties of unequal status this may display itself as either discipline or rebellion.

Just as the forms of conflict management used to resolve social problems change, so too does the quantity of the law change. The quantity of law changes as a result of the social geometry of the case. Simply, who are the parties involved? The quantity of law changes with both criminal conflicts and civil conflicts. For the purpose of this course, the focus was on criminal law. This type of social control is known as penal. Penal crimes are all crimes that must be punished. Contacting the police forms the base of this scale. This scale continues just as an arrest is more law than no law, serious charges are more law than minor charges, and convictions are more law than acquittals. As the severity of law used grows, various lengths of prison sentences display more, or less law used. At the top of the scale, displaying the

largest amount of governmental social control is when a death sentence or an execution is the final resolution. Even at this point, these practices can be performed in more gruesome manners than others.

After outlining a sturdy base for the varieties of conflict management and the variations of the quantity of law used, Black explores the relationship between social geometry and the amount of law enforced. Social geometry is the location and direction of a case in social space as defined by the social statuses and ties of the parties. For each aspect of social space that Black discusses, the greater the distance, direction, and location between the offender and the victim, the greater the amount of law is applied. In considering all the aspects of social space, if an offender portrays a high status, integrated, conventional, organized, or respectable position in society, they will always face less law than if the offender is a low status, marginalized, unconventional, unorganized, or disreputable person. Furthermore, in all aspects in social space, when both parties exist in an equal position in society, more law is applied if they share high status characteristics, than if they share lower status characteristics.

The first form of social geometry that Black details is the stratification of the parties. Stratification is the vertical relationship between parties. As Black puts it, “law varies directly with rank” (17). Black explains that when a low status victim commits a crime against an individual with a high status in society it is considered an upward crime. This type of crime results in downward law as the law is brought down in social space. In Caddo Parish, Louisiana between 1988-2008 the effects of vertical relation between parties is clear. In conflicts where a black offender killed a white victim, 11% of offenders were sentenced to death, and the average number of pages in the case file was 629. Contrarily, in conflicts where a white offender killed a black victim, 0% of the offenders were sentenced to death and the average number of pages in the case files was 215. As telling as the 11% difference in death sentence convictions is, it is just as important to note the 414-page difference on average in the case files. This noticeable variable shows the large difference in the quantity of law in both cases. In an attempt to provide another scenario and give an even more general example consider the situation of a crime between a homeless citizen and a wealthy one. More law is imposed when a homeless man commits a crime against a rich man, than if the rich man commits a crime against homeless man.

The second dimension of social space that Black analyzes is the horizontal dimension: morphology. This concept considers peoples distance from one another in regards to their division of labor, networks of interaction, intimacy, and integration. Black believes that the degree of participation of the parties involved in conflict affects the amount of law enforced. In cases where the parties are intimate, less law is enforced than in cases where the parties are strangers. The statistics from the handling of homicides in Houston in 1969 demonstrates this. In 64 cases where the offender and victim were related 61% of cases had no punishment and 0% of cases received the death penalty. Contrarily, in 48 cases where the offender and victim were strangers, no punishment was given in 33% of conflicts, and 10% of all offenders received the death penalty.

The horizontal dimension of social space also details the aspects of integration. Black notes the variation of the parties' participation in the social life of their communities directly correlates to the quantity of law practiced. Black's argument defines peoples' location in social space on a scale between integrated and marginal. An integrated party may be married, or parents, they may be teachers, or they may be highly involved in their community. A marginal party inversely exists on the edge of the society; they may be parts of various groups, but they don't actively participate in them. Black notes, "the conduct of marginal people is more likely to be defined as criminal..." (55). This theory predicts that more law is inflicted when marginalized people commit crimes against integrated parties than the alternative. This increased law on marginalized people is known as outward law. In previous events, empirical evidence shows that when a parent was murdered, 69% of offenders were sentenced to death. However, in the cases where the victim was childless, only 27% of the offenders were sentenced to death. Parents are highly integrated and are relied on by greater dependents; therefore, the quantity of law for their death is greater.

The third aspect of social space that Black details is the symbolic aspect of the crime and the culture of the parties. This examines whether the parties involved were conventional, or unconventional within the social context of the crime. Law practiced is greater when an unconventional offender commits a crime against a conventional victim. Black notes, "those with a university education are the least vulnerable to law, followed by those with a high school education, and lastly by those with only a

grammar school education or less” (67). As research conducted in Houston displays, if a murdered victim has a college degree the offender is two times as likely to be sentenced to death. On a larger scale, the handling of homicides in seven California counties between 1850-1900 show the effects of the conventionality of parties. Forty-eight Hispanics were accused of killing White victims. Of those accused, thirty-one were convicted (65%). Oppositely, 101 Whites were accused of killing Hispanic victims. Only nine of the accused were convicted (9%).

Black discusses the corporate dimension as the fourth aspect of social space effecting law. In this, Black considers the varying capacity for collective action. Are the parties involved in the conflict organizations/groups or individuals? When an individual commits a crime against a group, the most law is enforced. Crimes between individuals attracts less law than crimes between organizations. Additionally, when an organization comes to the defense of an individual, that individual’s status is raised. In a nationwide study, between 1968-1977, 92% of citizens who killed a police officer were convicted of a crime. In comparison, between 1952-1969 only .3% of police officers who killed a citizen were convicted. This makes a citizen 462 times more likely to be convicted than a cop. Police are part of a large organization, and as a result less law is enforced on them than is implemented on individuals.

The final aspect of social space that Black discusses is the normative dimension: the respectability of those involved in the conflict. The reputation of a party is the extent to which they have been subject to social control. This aspect directly affects the results of the crime. The quantity of law is greatest when a disreputable offender conducts a crime against a reputable victim. In class we discussed the murder of a church play writer who was raped and killed by a man with a previous criminal record. In another crime, a career prostitute was killed in a motel by a highly reputable man with a clean record. The church play writer and the man in the motel were reputable, so the law functioned in both of their favors. However, the career prostitute and the man who killed the church play writer were disreputable citizens. As a result, the man faced a large quantity of law and the prostitute’s murderer faced less law.

The film *Spotlight* is a great example of how social geometry categories outlined in Black’s sociological model can simultaneously exist and effect law all the more as a result. This film follows an

investigative team at the Boston Globe who researches the sexual abuse of minors' allegations against Catholic priests. The opposing parties involved in each of these allegations feature strikingly different characteristics in the social fabric of both their smaller communities, and the larger Boston metro area. These characteristics had a clear and distinct effect on the manner and enforcement of the law.

In Black's model the status of the parties involved is clearly defined. In this film, the Catholic Church belongs at the center of social life in Boston. This is made clear when the archbishop of Boston gifts *The Catechism of the Catholic Church* to the new Jewish editor for the Boston Globe. Considering this, the priests who serve as a part this institution are of high status and very reputable individuals. They are very integrated in their community, and have relational ties that stretch far beyond the average person's network. As mentioned, discussion of religion and church is common, so the position of a priest is as conventional as they come. Contrarily, the victims in the cases against the priests all shared a rather low status position in social space. They were marginalized boys and girls who were raised in poverty, were a part of broken homes, and often were children with deadbeat dads. All these aspects were rather unconventional for the social context of Boston.

Black's perspective of the social relation of law explains the low quantity of law used in these cases. The social distance, direction, and location between these parties is separated by a huge gap. The parties involved led to upward/inward law. This type of law has the most minimal amount of repercussions for the offenders. The study by John Jay College of Criminal Justice also exemplifies this. Between 1950-2002, 4,392 priests faced allegations of sexual misconduct with minors. In the end, only 100 priests were sentenced to prison. A mere 2% of all accused priests. All of these results display a similar pattern. A blind eye was constantly turned (in Boston and around the world) on the abuse, and social pressures often silenced victims. Had these cases' abusive roles been reversed, an outrage would have sparked immediately. In reality, the established roles led people to disassociate with these scandals because it contradicted their allegiance with the church. As the film echoes, "if it takes a village to raise a child, then it takes a village to abuse one." Using Black's theory, this quote summarizes that law behaves, and sometimes even dissipates as a result of the social geometry of the parties involved.

Works Cited

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