

Resumé

Larry D. Barnett



Present position

School of Law, Widener University (since academic year 1978-79). Professor. Member of the faculty of the Institute of Delaware Corporate and Business Law.

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Appointments while in present position

Fulbright Scholar, University of Leiden, The Netherlands, academic year 1979-80.

Visiting Professor, International Institute for the Sociology of Law, Oñati, Spain, academic years 2011-12 and 2012-13. In each academic year, I taught a course on law-relevant quantitative research and data, one of twelve two-week, credit-granting courses that comprised the curriculum for a Master of Arts degree that is conferred jointly by the University of Milan (Italy) and the University of the Basque Country (Spain).

Education

J.D. with Honors, University of Florida

Awarded membership in the honor society Order of the Coif

Ph.D. (sociology), Florida State University

M.S. (child development), Oregon State University

B.A. with Highest Honors (sociology), University of California at Los Angeles

Awarded membership in the honor society Phi Beta Kappa

Teaching (Widener University): courses

Mutual Funds (a course on the Investment Company Act)
Professional Responsibility (a course on the regulation of lawyers and judges, with emphasis on the A.B.A. Model Rules of Professional Conduct)
Securities Regulation (a course on the Securities Act and Securities Exchange Act)
Social Science and Law (a seminar on social science concepts and quantitative studies relevant to understanding the content, operation, and effects of law in a society)

Research: subject areas

Investment Company Act and Investment Advisers Act
Sociology of Law

Principal publications

Books

Concepts and Doctrines of Law: Macrosociological Theory and Empirical Evidence. In preparation; estimated completion date: December 2013. The book rests on the macrosociological thesis that the concepts and doctrines of law on society-central activities are fashioned by society-level conditions, not particular (or even prominent) individuals. In adducing support for the thesis, which is believed to apply in structurally complex, democratically governed nations and states, the book illustrates types of empirical evidence — quantitative and qualitative — that can be used to build a macrosociological theory of law. *Concepts and Doctrines of Law* will extend and elaborate on my book *The Place of Law*.

The Place of Law: The Role and Limits of Law in Society (Transaction Publishers, 2011) (Google eBook, 2012). Recipient of the Widener University Douglas E. Ray Excellence in Faculty Scholarship Award for 2011. The book is concerned with two general, but related, questions in the sociology of law. First, why is law an evidently universal, enduring institution in developed nations? Scholarship emanating from law schools in the United States is currently dominated by the assumption that law is very effective in regulating behavior and reducing the incidence of activities that are deemed problematic by society, but the assumption is inconsistent with the findings of a substantial body of well-designed quantitative social science research. The book offers an alternative account of the societal role of law. Specifically, the book suggests that the key benefit a society derives from law is not the deterrence of unwanted activities but the preservation and reestablishment of participants' commitment to the society. The book hypothesizes that this benefit occurs because law (i) furnishes symbols that promote cohesion within soci-

ety, (ii) protects and rebuilds the reputation of important segments of society, and (iii) supports and restores trust in entities and individuals in society.

The reasons that law differs between jurisdictions (e.g., states or nations) at one point in time, and varies within a particular jurisdiction over time, is the second question addressed by the book. The answer to the second question, the book contends, lies in the macrosociological proposition that the concepts and doctrines of law are determined by the properties of society and the large-scale forces that fashion these properties. Analyses of data from the United States and Europe using logistic regression furnish empirical evidence for the proposition.

Mutual Funds and Federal Regulation: Readings on the Investment Company Act and the Investment Advisers Act (Lupus Publications, Ltd.). Published initially in 1997 with annual revisions through 2001, the book was an edited collection of materials on the main legal issues that have arisen under federal statutes governing investment companies and investment advisers in the United States. The collection was composed primarily of "no-action" letters from the staff of the Commission, since the letters are the chief source of law on investment companies and advisers. Court opinions, applications filed with the Commission, and Commission-initiated administrative proceedings comprised most of the remaining materials. The book was published by Lupus Publications, Ltd., which ceased operations in 2002. The materials are currently available as a National Web Course of Lexis-Nexis for Law Schools and are updated annually.

Legal Construct, Social Concept: A Macrosociological Perspective on Law (hardback edition, Aldine de Gruyter, 1993; paperback edition, Transaction Publishers, 2010). The book proposes that the content of legal doctrine is molded by large-scale social forces, not personalities, and that the individuals who serve as legislators and judges are merely the means by which the needs and values of society are incorporated into law. Two social forces believed to have shaped law are discussed: (1) advances in knowledge and technology; and (2) increases in population size and density. Emphasizing the importance of longitudinal (as opposed to cross-sectional) data for assessing the effects of law, the book reviews existing quantitative research on a range of social issues: The impact of statutes and court decisions involving the regulation of social (as distinguished from economic) patterns of behavior is found to be generally small in magnitude and/or brief in duration, suggesting that regulatory doctrine on social problems reflects, but does not appreciably alter, the needs and values of society and that the primary societal benefit of such doctrine is symbolic. The macrosociological framework of the book is then applied to the subject of patient-requested euthanasia, and the General Social Surveys for 1977-1991 are used to determine the state of and shifts in American values on the issue. The analysis, which includes an estimate of the extent to which individual change and population replacement were responsible for shifting values, indicates that the practice of patient-requested euthanasia will be legalized in the United States.

The Goals and Missions of Law Schools (Peter Lang Publishing, 1990; paperback edition 1992). Junior author; with Scott Van Alstyne and Joseph R. Jolin. The book advances the argument that, as the result of changes in society, fundamental alterations are required in American legal education; specifically, the curriculum of law schools should be diversified and specialized tracks should be developed. Since law school graduates at the present time are uniformly generalists, the book contends that they are not optimally prepared to deal with the array of tasks the social system needs legally trained persons to perform. The book concludes that the problem will persist as long as law schools attempt to enhance their prestige by emulating the approach to legal education of a few prominent institutions.

Law, Society, and Population: Issues in a New Field (Cap & Gown Press, 1985; paperback edition 1989). Senior author; with Emily F. Reed. Foreword by Charles B. Nam. The book develops the thesis that court cases dealing with constitutional issues relevant to demography reflect social structure and values.

Population Policy and the U.S. Constitution (Kluwer-Nijhoff, 1982). Foreword by Kurt W. Back. The book examines the legal implications of population growth in the United States, focusing especially on the constitutional dimension of policies that may unintentionally or intentionally influence such growth.

Articles

Societal Properties and Law on Same-Sex Non-Marital Partnerships and Same-Sex Marriage in European Union Nations, 25 JOURNAL OF CIVIL RIGHTS AND ECONOMIC DEVELOPMENT 625 (2011). Senior author; with Pietro Saitta. In a macrosociological framework, law is assumed to be inextricably tied to the society in which it is found. A proposition central to such a framework is that (i) differences in social, economic, and demographic conditions explain differences in law between countries and (ii) changes in social, economic, and demographic conditions explain changes in law within countries. To test the foregoing proposition, societal antecedents of law authorizing same-sex non-marital partnerships and same-sex marriage were ascertained using pooled time-series data on country-level characteristics of fourteen European Union nations. The odds that such law had been adopted by a country were found to increase with the level of wealth and education of the population of the country and with the fraction of the population of the country residing in urbanized areas having a large number of inhabitants. Implications of the findings for understanding law as a societal institution are discussed, and suggestions for future research are made.

The Public-Private Dichotomy in Morality and Law, 18 JOURNAL OF LAW AND POLICY 541 (2010). The article advances the thesis that the doctrines and

concepts of law are attributable to the properties of society and to the forces molding these properties. The thesis, after being illustrated with the federal Investment Advisers Act, is assessed quantitatively using data from the General Social Survey. The Survey interviews a national sample of adults in U.S. households, and in 1991, it ascertained whether interviewees classified morality as a private matter or as a public issue. The social values of interviewees on the public-private nature of morality were the dependent variable in a study that assumed (i) an activity is not explicitly addressed by law, or is explicitly protected by law from regulation, when society designates the activity as private, and (ii) the doctrines of law that are adopted to regulate activities that are designated public embody the doctrines of prevailing morality.

Because social values on whether morality is private or public comprised the dependent variable, the factors that mold these values are likely to prevent or permit law regulating numerous socially significant activities. Logistic regression was used to estimate the relationship to the dependent variable of two sets of factors that potentially influence whether morality is designated private or public. One set was factors that structure (e.g., stratify) a society and that have important societal correlates and consequences. The other set was comprised of modes of thought and conduct that are cultural dimensions of a society. Notable relationships to the dependent variable were found for the structural factors of gender and, among women, educational attainment. In terms of gender, the odds that morality would be considered a private matter were approximately three-and-a-half times higher among women than among men. In terms of education, the odds that morality would be considered private were approximately three-fourths lower among women with 13 or more years of schooling than among women with 12 or fewer years of schooling. The article suggests that, because the odds of placing morality in the private sphere are appreciably greater among women, gains in the status of women may help to explain U.S. Supreme Court decisions that construed the federal Constitution to restrict government regulation of sexual activity and its incidents.

The Financial Sector Upheaval of 2008: Sociological Antecedents and Their Implications for Investment Company Regulation, 5 HASTINGS BUSINESS LAW JOURNAL 229 (2009). In 2008, the United States experienced a severe contraction in the availability of credit, a marked reduction in the price of common stocks, and an appreciable increase in interest rates on debt instruments issued by business entities and by state and local governments. The premise of the instant article is that, although this upheaval was economic in form and sudden in occurrence, it stemmed from change that was sociological in character and that started in prior decades. Specifically, the 2008 upheaval in finance is traced to a shift in social values among Americans — namely, an increased prevalence of hedonism and materialism in conjunction with an increased emphasis on short-term considerations — and to the suboptimum intellectual skills of the population that resulted from this shift. Quantitative evidence in support of the thesis is presented, and implications of the thesis for provisions of the Investment Company Act are discussed.

Mutual Funds, Hedge Funds, and the Public-Private Dichotomy in a Macrosociological Framework for Law, Working Paper No. 34, Interuniversity Centre for Research on the Sociology of Law, Information and Legal Institutions, University of Messina (2008), <http://www.cirsdig.it/indexeng.html>. Reprinted in *HEDGE FUNDS: THREATS AND OPPORTUNITIES* 30 (L. Padmavathi ed., ICFAI University Press, 2009). Four macrosociological propositions underlie the instant Paper: (i) the institutions comprising a social system are, in the long term, compatible with one another; (ii) the compatibility of institutions involves, inter alia, concepts that are similar or identical across at least some institutions; (iii) the concepts and doctrines of the institution of law manifest the properties, including the central values, of the social system; and (iv) the properties of the social system are fashioned by system-level forces. Because the propositions are consistent with existing evidence, they are the foundation for an examination of the concepts of public and private. In the United States, the dichotomy between public and private is widespread both in social values and in law, as illustrated by the Investment Company Act. Under the Act, mutual funds are classified as public and hedge funds are classified as private. However, research is lacking on the source of social values that lead law to designate certain topics as public and other topics as private. In a macrosociological framework, the designation can be attributed to another institution or to the social system as a whole. These alternatives are assessed using data from a national sample of adults in U.S. households. Specifically, logistic regression coefficients are estimated for the relationship between (i) the strength of ties to each of four institutions (economy, education, law, and religion) and (ii) whether social values designate morality a public or private matter. In the sociology of law, (ii) is important because law incorporates societal designations of matters as public or private. The findings indicate that the designations are produced by the social system, not by an institution. The implications of this conclusion for the sociology of law are discussed.

The Regulation of Mutual Fund Boards of Directors: Financial Protection or Social Productivity?, 16 *JOURNAL OF LAW AND POLICY* 489 (2008). Reprinted in *MUTUAL FUNDS: REGULATORY PERSPECTIVES* 163 (L. Padmavathi ed., ICFAI University Press, 2009). Section 2(a)(19) of the Investment Company Act classifies directors of mutual funds and other types of investment companies as either interested or not interested. Under section 10(a) of the Act, directors who are deemed not interested by section 2(a)(19) must comprise at least 40% of the board of a registered investment company, and rules of the Securities and Exchange Commission require a higher percentage. The preceding sections of the Act and rules of the Commission are based on the assumption that only non-interested directors consistently protect the shareholders of investment companies from financial exploitation. The assumption exists even though all directors, regardless of their classification by section 2(a)(19), are subject under state law to the same fiduciary duties and to the same test for determining whether they breached a fiduciary duty. Notably,

social science studies on the accuracy of the assumption have reached contradictory conclusions. However, a considerable body of research casts doubt on the effectiveness of law as a mechanism to regulate social behavior in general. Thus, the instant article suggests that law manifesting the assumption does not markedly reduce the frequency with which investment company shareholders are financially exploited but, instead, benefits society in ways captured by the concept of social productivity. In particular, the article hypothesizes that such law serves as a symbol of a commitment by society to combating shareholder exploitation and thereby aids in bonding individuals to the social system. Such law can also be expected to preserve public trust in, and protect the reputation of, investment companies. Under this reasoning, law on investment companies is important because of its sociological effects, not because of its economic impact.

Law as Symbol: Appearances in the Regulation of Investment Advisers and Attorneys, 55 CLEVELAND STATE LAW REVIEW 289 (2007). From a macrosociological perspective, law is an institution of society, is shaped by conditions in society, and facilitates social life by inter alia producing symbols. Law accordingly adopts concepts and principles that focus on the appearance to society of certain phenomena and that are symbols when the phenomena are socially significant. To illustrate symbols in law, the article examines (i) the "hold oneself out" standard in defining an investment adviser under the federal Investment Advisers Act and (ii) the standard for ethical conduct that requires attorneys to avoid appearances of impropriety. If symbolic concepts and principles are tied to the properties of society, the adoption by a state of the appearance-of-impropriety standard will be related to one or more system-level properties. In an analysis of data with logistic regression, differences between states in whether the standard was in use as of 2005 were found to be associated with differences between states in the levels in 1980 of two such properties: cultural heterogeneity, which was measured by the percentage of state inhabitants who had been born outside the United States; and social system rationality, which was measured by the percentage of adults in the state who were enrolled in college. Specifically, the odds that a state was using the standard were appreciably raised by each increase in level of cultural heterogeneity and were appreciably lowered by each increase in level of social system rationality. Because the appearance-of-impropriety standard for attorneys is symbolic, the two properties affected whether symbolism developed in law. The findings also suggest that information on societal properties and the forces behind them can be used to predict, albeit imperfectly, the symbolic concepts and principles of law that will exist at future points in time.

The Roots of Law, 15 AMERICAN UNIVERSITY JOURNAL OF GENDER, SOCIAL POLICY, AND THE LAW 613 (2007). The article advances the macrosociological thesis that (i) the concepts and doctrines used in law are determined by the properties of society and that (ii) these properties are produced by large-scale forces. The thesis thus maintains that the content of law is not shaped by

the persons who serve as legislators, judges, and executive-branch policy-makers; such individuals are merely the vehicles by which societal conditions mold law. To illustrate, the article examines shifts in law in the United States on a number of subjects, including law setting the age of majority and law regulating access to abortion, and it links these shifts to changes in specific aspects of U.S. society. Data from the 1960 census on the forty-eight co-terminous states are analyzed with logistic regression to identify system-level properties distinguishing states that liberalized their law on abortion between 1967 and 1972 (i.e., before the U.S. Supreme Court decided *Roe v. Wade*) from states that did not. The regression analysis, in conjunction with time-series data for the nation as a whole, suggests that the liberalization by states and by *Roe* of law-imposed restrictions on abortion was associated mainly with increases in school enrollment and educational level among young women. The article advances the premise that long-term growth in the quantity of knowledge broadly affected the American social system and its law, and ascribes the rising prevalence and longer duration of education among women — as antecedents of the liberalization of law on abortion — primarily to the expansion of knowledge.

Social Productivity, Law, and the Regulation of Conflicts of Interest in the Investment Industry, 3 CARDOZO PUBLIC LAW, POLICY, & ETHICS JOURNAL 793 (2006). The article proposes and develops a concept — social productivity — to complement the widely used concepts of social capital and economic productivity. All three concepts are concerned with structured groups, which include organizations, institutions, and societies. However, while social capital focuses on a group's *social resources* and economic productivity focuses on a group's economically relevant goods and services, social productivity focuses on a group's *social outputs*. These social outputs are important not only because they affect the degree of commitment to the group by its participants but also because they affect the responses to the group by others. From the perspective of social productivity, government adopts law in order to preserve the reputation of important groups, provide symbols, and maintain or increase trust and fairness. To illustrate the concept of social productivity, the article examines ways that federal law on investment companies and investment advisers deals with conflicts of interest.

When is a Mutual Fund Director Independent? The Unexplored Role of Professional Relationships under Section 2(a)(19) of the Investment Company Act, 4 DEPAUL BUSINESS & COMMERCIAL LAW JOURNAL 155 (2006). An investment company that must register with the Securities and Exchange Commission is required by the Investment Company Act to have a specified percentage or number of directors who are not "interested" in the company. To be not interested (i.e., to be independent), a director of an investment company is barred by section 2(a)(19) of the Act from inter alia having had, during the last two completed fiscal years of the company, a material business relationship or a material professional relationship with specified parties. The Commission, in interpreting section 2(a)(19), has not clearly distinguished the

two types of relationships and has not focused on professional relationships apart from business relationships. The article contends that this is contrary to the intent of Congress. Accordingly, the article (i) identifies both the elements of a business relationship and, through social science research on occupations and studies by American Bar Association bodies, the elements of a professional relationship; and (ii) reviews three no-action letters in each of which the Commission staff could have found that a proposed arrangement would have created a professional relationship for an investment company director.

The Regulation of Mutual Fund Names and the Societal Role of Trust: An Exploration of Section 35(d) of the Investment Company Act, 3 DEPAUL BUSINESS & COMMERCIAL LAW JOURNAL 345 (2005). Section 35(d) of the Investment Company Act authorizes the Securities and Exchange Commission to prohibit investment companies registered with the Commission (the vast majority of which are mutual funds) from using names that contain words deemed by the Commission to be “materially deceptive or misleading.” The article incorporates the findings of social science research to underscore the role of names and trust in society. Linking trust to regulatory law, the article reviews pertinent case law (mainly “no-action” letters by the staff of the Commission) and explores Rule 35d-1, the sole rule adopted under section 35(d). The article also discusses fund names that are not covered either by section 35(d) or by Rule 35d-1 — specifically, names that are “cute” or “catchy” — and suggests a possible revision of the section that would employ a behavioral science, value-neutral approach to fund names rather than the current value-based approach. Although section 35(d) has been in the Investment Company Act since the Act was adopted in 1940, this is the first law review article devoted to the section.

Population Policy and Law in the United States, 3 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 95 (1980). The article suggests that a fruitful approach to curbing fertility and alleviating population pressures in the United States may be to reduce the support that childbearing receives from publicly owned goods and publicly operated services. Law relevant to the thesis is reviewed. The *Journal* is published at the Harvard University School of Law by the Harvard Society for Law & Public Policy.

Population Growth, Population Organization Participants, and the Right of Privacy, 12 FAMILY LAW QUARTERLY 37 (1978). The article advances the thesis that population growth in the United States reduced the privacy that Americans value and thereby became the common antecedent for two seemingly unrelated phenomena in the third quarter of the twentieth century — the emergence of two organizations concerned with domestic population growth, and a narrow judicial interpretation of law relevant to privacy. The thesis is supported by (1) data obtained in sample surveys I conducted of the members of Zero Population Growth and the members of the National Organization for Non-Parents, and (2) court opinions pertinent to the right of privacy.

Family Law Quarterly is published by the Section on Family Law of the American Bar Association.

Zero Population Growth, Inc., 21 *BIOSCIENCE* 759 (1971). Reprinted in ARMAND L. MAUSS & JULIE CAMILLE WOLFE (EDS.), *THIS LAND OF PROMISES: THE RISE AND FALL OF SOCIAL PROBLEMS IN AMERICA* 379 (1977). The article, which uses data from a sample survey I conducted, describes the characteristics of the members of Zero Population Growth, Inc., a nationwide grassroots organization concerned with population growth in the United States. According to a Ph.D. dissertation completed in 2006, "all observers agreed that ZPG was by far the most influential interest group advocating domestic population reduction" in the United States during the twentieth century. *BioScience* is the journal of the American Institute of Biological Sciences.

Concern with Environmental Deterioration and Attitudes toward Population Limitation, 20 *BIOSCIENCE* 999 (1970). Reprinted in R. Leisner & E. Kormondy (eds.), *ECOLOGY* 94 (1971). The strength of the relationship between level of concern with environmental deterioration and the favorability of attitudes toward population limitation was assessed with data from a 1969 national sample survey of adults in the United States. The relationship was found to be relatively weak.

U.S. Population Growth as an Abstractly-Perceived Problem, 7 *DEMOGRAPHY* 53 (1970). Using data on a small population that were gathered in a sample survey I supervised, the article finds that a concern with population growth in the United States is just moderately associated with acceptance of responsibility to limit personal childbearing. *Demography* is the journal of the Population Association of America.

Other

Population Research and Policy Review. I founded the *Review*, a journal in the field of demography that has been published since 1982, and served as editor-in-chief for its first eleven volumes. The *Review* was established to focus on the link between empirical social science research and public policy relevant to population structure and dynamics. Initially published by Elsevier and currently published by Springer, the *Review* has been the journal of the Southern Demographic Association since 1993 and is one of seventeen currently published English-language periodicals that the online library JSTOR covers in its category of "Population Studies" journals.

Recent professional activities

2005. Since 2005, I have been one of two or three faculty advisors each year to the *Delaware Journal of Corporate Law*. The *Journal* is a student-edited publication of the Widener University School of Law, and as measured by citations to articles published, it is among the leading business-law journals in the United States.
2007. At the joint meeting (held in Berlin, Germany) of the Research Committee on Sociology of Law and of the Law and Society Association, I presented the study of abortion law that is reported in my article *The Roots of Law*.
2008. At the annual meeting (held in Milan, Italy) of the Research Committee on Sociology of Law, I presented the analysis of data that is reported in my article *Mutual Funds, Hedge Funds, and the Public-Private Dichotomy in a Macrosociological Framework for Law*.
2009. At the annual meeting (held in Oñati, Spain) of the Research Committee on Sociology of Law, I organized and co-chaired (with Pietro Saitta of the University of Messina and Cirrus Rinaldi of the University of Palermo) two sessions on Empirical Research and Methods. I also made presentations based on my articles (i) *The Public-Private Dichotomy in Morality and Law* and (ii) *The Financial Sector Upheaval of 2008: Societal Antecedents and Their Implications for Investment Company Regulation*.
2010. In March, four universities in Italy hosted presentations by me of the study that is reported in my article *Societal Properties and Law on Same-Sex Non-Marital Partnerships and Same-Sex Marriage in European Union Nations* (co-authored with Pietro Saitta of the University of Messina). In July, I presented the study at a session organized by the Research Committee on Sociology of Law during the meeting (held in Göteborg, Sweden) of the International Sociological Association.
2011. In July, I presented a paper in Oñati, Spain at the International Conference on the Social Economy; the paper was titled "Mutual Fund Regulation in Europe: An Empirical Test of a Macrosociological Framework for Law." The Conference was organized by three universities in Spain and by the International Institute for the Sociology of Law (IISL).
2012. In August, I presented a paper titled "A Macrosociological Study of Law on Divorce in Western Europe," and chaired the session on the sociology of law, at the conference of the Nordic Sociological Association; the conference was held at the University of Iceland. In Octo-

ber, I presented a paper by live video at a conference hosted by the Faculty of Law at the University of Montreal; my presentation was titled "The Case for a Cost-Benefit Analysis of Law Banning Discrimination in Employment." Also in October, I presented a paper titled "Change in Concepts and Doctrines of Law" at the inaugural conference of the Mid-Atlantic Law and Society Association; the conference was hosted by the School of Law at Drexel University.

Miscellaneous

Member of the Scientific Board of the Interuniversity Centre for Research on the Sociology of Law, Information and Legal Institutions at the University of Messina (Italy). The website of the Centre is at <http://www.cirsdig.it/indexeng.html>

Social Science Research Network author rank in downloads (as of December 2012): 85th percentile

Member of the Florida Bar.

Marital status: married.

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