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Introduction: Law as a Humanist Science

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A Humanist Science¹ was the title of the final book of Selznick’s long and intellectually productive life, but in many respects it could describe his earliest aspiration for both law and sociology; two academic fields which Selznick helped transform and bring together. Selznick, who died in 2010, helped remake the sociology of organizations in the 1940s and 1950s with his work on the informal processes at work in formal organizations. In the 1960s and 1970s, he turned to the sociology of law where he produced a highly influential study of the new forms of legality being produced by labor law² and major articles on the contemporary relevance of natural law and the anti-positivist tradition more generally in law.³ Selznick also founded two innovative academic institutions that have promoted the interdisciplinary turn in law both at Berkeley and nationally: the Center for the Study of Law & Society (1961), and the Jurisprudence and Social Policy program (1978).

While Selznick’s work is often divided in phases, the strand that runs through almost all of Selznick’s work was his interest in the “intangible” features of social life; whether the informal processes that operate in and around bureaucratic organizations, or the sense of justice that motivates litigants to assume the burdens of taking a case to a court. Unlike either legal or social science positivists, Selznick was eager to treat morals or values as social facts relevant to the resolution of legal disputes and the evaluation of social institutions. Unlike the usual opponents of both positivisms, Selznick believed profoundly and broadly in empirical inquiry as essential to both law and social science.

In insisting at the end that we seize both sides of this seemingly contradictory “humanist science” aspiration, Selznick was doubling down then on a theme that he had invested in consistently as a scholar, first in sociology, than in law. A firm believer that the self-understandings produced by active participants in long term social and legal struggles (like those of workers for employment rights or minorities for civil rights to name two that had particular salience for Selznick’s

³ Philip Selznick, Sociology and Natural Law, 6 Natural Law Forum 84 (1961).
time and career), Selznick was signaling what he understood to be the most important accumulated insight of his long career and life for the project of realizing the normative goals of modern law and social science.

The present moment is a propitious time for a revisiting Selznick’s intellectual and pedagogic vision. Law in the United States and across much of the world is becoming rapidly more integrated with social science and social policy in a way that has been regularly predicted since the end of the 19th century but still seemed a distant objective at the end of the 20th. Yet the success of interdisciplinary legal studies has not gone along with commensurate discussion about the values at stake for either law or the disciplines (social science and humanities for the most part, but natural science and engineering to an increasing degree as well).

The articles in this symposium begin to reconstruct those stakes with an eye toward identifying those themes and deposits in the Selznick legacy that may be most helpful in advancing this too long delayed inquiry. It was the nature of Selznick’s own style as a teacher and mentor that few if any contemporary legal scholars or social scientists identify as “Selznickians.” The very insistence on attention to complexity, context, and the specificity of values mitigated against any “cookie cutter” version of the intellectual project. Still it would be less than candid not to note that each of the authors in this symposium was deeply influenced by Selznick’s methods and questions.

In “Missing all that Matters,” Martin Krygier, author of a recently published comprehensive study of Selznick’s scholarship, provides this symposium with an overview of Selznick’s work before identifying some of the most distinctive features of his work, which Krygier identifies at its broadest as a “sociology of morality,” as well as commenting on Selznick’s distinctive “ways of thought.” Krygier’s takes his title from criticism raised by Selznick’s student and long time colleague Philippe Nonet against breaking Selznick’s work into various fields of influence, a strategy that would yield a great deal but not “all that matters.” Krygier highlights some of the wholeness of Selznick’s project that seems essential for gaining the most out of his specific contributions.

The second article introduces the characteristically Selznickian theme of moral competence. Kenneth Winston, who was Selznick’s interlocutor and foil during the writing of The Moral Commonwealth, asks how one could give content to the idea of moral competence for those who participate in governing (which includes lawyers but also social scientists and public policy experts) and how it could be taught. In “Educating for Moral Competence,” Winston offers an account of public virtues (derived ultimately from Aristotle but through the lens of John Dewey and Selznick himself) that a proper pedagogy would seek to promote in public officials. Far from a narrow subject cabined in a professional responsibility
course, moral competence in Winston's (and one wants to say Selznick's) sense includes the empirical and broadly political skills that have become central to an emerging law school pedagogy.

As Winston and Krygier both advert to, Selznick's distinctive quest for a rigorous approach to understanding what morals and values mean in practice is applicable well beyond law, but is it just an accident of career moves that law loomed so central in Selznick's long and distinguished career, emerging as a theme in the 1960s and remaining central to his intellectual imagination through to his 2008 book? That is a question raised and refined by David Lieberman's contribution to this symposium, "Why Law? Philip Selznick and the Study of Normative Systems." Lieberman turns to two of Selznick's most influential statements on the normative dimensions of social science inquiry, his "Sociology and Natural Law," first published in 1961, and 1964's collaboration with Gertrude Jaeger, "A Normative Theory of Culture." As Lieberman, Selznick's colleague at the Jurisprudence and Social Policy program (JSP), suggests it is an intellectual strategy that is being rehearsed in these crucial articles, a strategy that points not just to law but to other normative systems, whether friendship, religion, or education.

Another way of reading Selznick's long involvement with law is through his extended dialogue with the most celebrated anti-legal positivist in the modern Anglo-American legal academy, Ronald Dworkin. As Paul van Seters, who was Selznick's graduate student and teaching assistant in the mid-1970s, explores in his contribution, "Selznick and Dworkin: The Importance of Values in Social and Moral Theory," Selznick anticipated some of Dworkin's intellectual moves as early as the article on Natural Law (1961). Subsequently, Selznick expressed his appreciation for Dworkin's criticisms of legal positivism, while remaining a critic of Dworkin's liberal jurisprudence throughout their very substantive exchanges in the late 1970s, 1980s, and early 1990s.

Robert Kagan, Selznick colleague in the JSP program, provides a view of Selznick's humanist science from the perspective of an empirical law and society scholar who came to his own confrontation with the normative dimension of law after long efforts to captures its empirical features in more hard headed and verifiable terms. In "A 'Humanist Science,' and Sociolegal Studies" Kagan suggests that morality and values are not primarily the property of policy elites who operate at the level of express motives and in the language of public law, but rather in the interstices of bureaucracies where low level public functionaries attempt to do justice and realize other values.

Robert Rosen, who studied with Selznick while a graduate student in sociology at Berkeley, reflects on Selznick's relationship to data in "All Fact is Beautiful Theory: Remembering Philip Selznick." While Selznick is undoubtedly a major social theorist whose work has influenced research in an astoundingly wide range
of empirical domains, like some other important social theorists, Erving Goffman and Michel Foucault among them, Selznick's theoretical insight is nowhere more powerfully expressed than in the kinds of questions it leads him to ask and the interpretations of data it leads him to raise. Rosen also identifies Selznick with a constitutive aspiration-shaping view of law as a system aimed at adaptation to changing circumstances rather than integration and stability.

In the final contribution, Jonathan Simon, who went through the JSP program in its early and most Selznick-influenced phase, revisits Selznick's 1980 California Law Review article on the JSP program. In "A Funded Experience: Selznick’s Vision of JSP and the Unfinished Agenda of the Interdisciplinary Movement in Legal Education," Simon argues that the triumphalism associated today with the law and social science movement elides a failure to appreciate the values at stake in empirical study of law or realize its gains for pedagogy.