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The Behavior of Law: A Theoretical Integration

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Abstract: Donald Black's *The Behavior of Law* contains the most powerful sociological theory of legal variation ever produced. Despite the critical reactions of some analysts, the generality, testability, originality, and validity of the theory have been well-established. The one area where the theory can be improved, however, involves the criterion of "parsimony." The following paper demonstrates that roughly two dozen of Black's original propositions actually reduce to four primary propositions, characterized in terms of status locations along the different vectors of social space. Each of the original propositions can be deduced from these four general propositions without losing any explanatory value or the capacity to order existing "facts" in regard to legal variation.

Keywords: Law, parsimony, pure sociology, sociological theory, theoretical integration.

INTRODUCTION

Donald Black attempted to revolutionize sociological thinking with *The Behavior of Law*, one of the most important and innovative theoretical works ever published in the sociology of law [1]. For example, eight scholars reflected upon the influence of Black's seminal book on various fields of intellectual inquiry and their own work on the 25th anniversary of the publication [2]. Black's ideas proved controversial in part because his approach transcended conventional sociological paradigms, both philosophically and substantively [3, 4]. The single most important ontological leap involved his definition of "social life" as a reality *sui generis*, but in a manner never before imagined. For Black [5, 6], the analytic focus shifted from individuals *qua* individuals to the behavior of social life, defined by interactions occurring within social space without reference to the individual's biological or psychological properties. Black came to describe his approach as "pure sociology," wherein the analyst explains observable variations in behavior within "a multidimensional social space with locations, directions, and distances defined by human interaction itself" (p. 150) [7].

Black has outlined in detail the logic and epistemology of the pure sociology paradigm, responding to various misguided critiques of his scholarship by identifying key criteria that should be used to evaluate his work and scientific theories in general: testability, generality, simplicity, validity, and originality [8]. The "best" scientific theories should be subject to empirical verification or falsification, maximally general in accounting for the diversity of the phenomenon in question, elegant in presenting the most parsimonious formulations, consistent with the available evidence, and innovative or perhaps even transcendent. By those standards, Black's theory of law remains the most significant yardstick against which other theoretical formulations or perspectives should be judged in terms of their scientific merit. The reasons for staking such a claim are several.

First, Black developed a highly testable theory, based upon clear and unambiguous definitions of key concepts and their proposed relationships to each other. The theory's generality—intended to explain legal variation across history and across all societies—cannot be disputed. The elegance and precision of his propositions embody a distinct advantage over the dense prose and often untestable ideas espoused by many of his contemporaries. In fact, Black's propositions usually contain far fewer actual words than can be found in most theoretical analyses. Yet the theory's inherent testability, generality, parsimony, and originality quickly could be dismissed if the theory failed to order the facts successfully. What good are scientific theories if they are *wrong*, apart from eliminating certain possibilities or dead ends?

Indeed, the cogency of Black's many propositions presented in *The Behavior of Law* inspired many researchers in the ensuing decades to gather a broad array of data to test his work. Most important, the scientific evidence evaluating Black's theory of law has been highly consistent with the general theory. For example, Michalski found that more than 70 percent of the research studies over three decades produced strong support for various aspects of the theory of law, while an additional 11% yielded at least mixed results [9]. The apparent weaknesses or empirical inconsistencies largely relate to one of two main reasons: 1) the failure to conceptualize social life in a manner consistent with the theory; and 2) the failure to measure the full range of relevant sociological dimensions outlined in the theory. The

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methodological and empirical refinements should continue for some time.

Bearing these comments in mind, one might ask what more could be expected from *The Behavior of Law*, recently re-issued as a special edition without any substantive changes? Can the theory be refined or improved upon any further? After all, science as an open-ended truth system marches forward endlessly: "absolute truth" can never be known and the logical possibility exists that new empirical cases will be discovered that do *not* conform to extant theory. There remains one area, however, where Black's theory of law actually *can* be refined further: the relative degree of parsimony embedded in his formulations. That might seem like a rather minor quibble, for the economy of the words that Black uses in his formulations may be unsurpassed in the history of sociological theorizing. Perhaps the clarity of his formulations has led most analysts away from further attempts to refine the work. Yet science requires skepticism, for even well-established explanations can be interrogated further—including Black's general theory of law.

THE PURSUIT OF PARSIMONY

The benefits of parsimony can be illustrated with a well-known example from the French sociologist, Emile Durkheim. In his classic study *Suicide*, Durkheim identified several propositions to explain the relationship between suicide and various aspects of social life [10]. Three key propositions can be summarized as follows:

- Suicide varies inversely with domestic integration.
- Suicide varies inversely with religious integration.
- Suicide varies inversely with political integration.

The functional forms of the propositions are identical. In all cases, Durkheim argued that a decrease in a specific form of integration will be associated with an increase in the suicide rate. Thus the propositions can be integrated into an even more general and parsimonious formulation, from which each of the previous propositions can be deduced:

Suicide Varies Inversely with Social Integration

If, as Black argues, "science loves simplicity and despises complexity," then the proposition requiring merely six words represents a clear improvement over three propositions requiring three times that amount (p. 838) [11]. Each proposition can be deduced logically from the more general proposition, which still permits the same empirical generalizations across a broader array of social phenomena. The proposition contains the full explanatory and predictive power of the previous three propositions. Hence the simpler theory surpasses the more complex theory, provided that the former stands up to the empirical evidence equally well. Black applies that standard to sociological theory:

"Although physical science often employs mathematics to achieve simplicity and elegance, testable formulations in sociology normally appear in ordinary language. But they can still be highly parsimonious…One of my aspirations in *The Behavior of Law* was to show sociologists the high degree of simplicity achievable in falsifiable theory at a level of generality hardly imaginable before it appeared. Compare the tangled jungles of verbiage so often produced by modern theoretical sociologists such as Talcott Parsons, Niklas Luhmann, and Anthony Giddens—leaving aside the largely untestable character of their work" (p. 840) [12].

The strengths of Black's theory of law cannot be denied. His systematic presentation of nearly thirty propositions pertaining to variations in legal behavior has yielded extensive commentary and research. Yet one aspect of his theoretical work, implied by the "covering law" approach, or the deductive-nomological (DN) model of scientific explanation, can be improved [13]. Despite the elegance of his propositions, Black's general theory of law can and should be presented even more succinctly *a la* the more integrated and hence more parsimonious model of Durkheim's theory of suicide.

SOCIAL LIFE SIMPLIFIED

Black's core propositions deal with five dimensions of social space that have been conceptualized thus far: the vertical, horizontal, symbolic, corporate, and normative dimensions [14, 15]. Social space can be more expansive or compressed along each dimension. Where little stratification exists, for example, that implies a flatter distribution in the material conditions of existence in social life [16]. In contrast, some societies are characterized by enormous inequalities of wealth and, as such, social space will expand vertically. Likewise, social life can be characterized morphologically as having a greater or lesser degree of integration or differentiation [17]. Social space can be more compressed, as where people's lives are highly intertwined, or more highly elongated or spread out with increases in, for instance, the division of labor.

Clearly some societies have more "culture" than others, if by culture one means the myriad symbolic expressions of social life [18]. Social space thus can be characterized by differential distributions of cultural life. Corporate space defines yet another dimension, as captured by the concept of "organization," or the "capacity for collective action" [19]. Social life thus involves greater or lesser degrees of organization and the formation of groups. Finally, the amounts and types of social control vary from one setting to the next, implying yet again that social space will vary along the normative dimension [20]. Hence the first part of Black's theory deals with the manner in which law varies in relation to the *quantity* of the five dimensions that define social space. The core propositions relating these global dimensions of social space are summarized accordingly [21]:

A. "Law varies directly with stratification." (p. 13)

B. "The relationship between law and differentiation is curvilinear." (p. 39)

C. "The relationship between law and relational distance is curvilinear." (p. 41)

D. "Law varies directly with culture." (p. 63)

E. "Law varies directly with organization." (p. 86)

F. "Law varies inversely with other social control." (p. 107)

Once again, these propositions deal with the general distribution of law implied by the various dimensions of social life. All else constant, the first proposition (A) states that law tends to increase where social life has a higher degree of stratification or inequality. A second proposition (B) suggests that law will be less active where social life involves either a low degree of differentiation in terms of the division of labor (wherein individuals tend toward self-sufficiency) *or* in social settings characterized by high levels of differentiation (which thereby produces an interdependency or symbiosis). Similarly, as relational distance increases, law increases to a point (proposition C). Law tends to be less commonplace among intimates, who share by definition a greater degree of participation in each other's lives, and less common where social units have little interaction. The fourth proposition (D) identifies law as being more active where the quantity of culture increases. In those places where social life tends toward higher levels of organization, proposition E suggests that law should increase as well. Finally, proposition F states that law will increase where other social control may be less prominent or available.

These propositions allude to particular social configurations or "fields" within which law tends to increase or decrease. Where will law more commonly appear? Black theorizes that the quantity of law should increase where more stratification, culture, and organization exist in social space, i.e., should expand where vertical segmentation increases, where cultural resources increase, and where organizational capacity increases. At the same time, law predictably will decrease where other forms of social control are more prevalent. Finally, where relational distance and social differentiation increase, the quantity of law will increase to a degree, only to drop off dramatically where social units are separated by vast differences in social space or effectively live in separate social worlds. These propositions lay the groundwork for Black to develop a more detailed set of propositions pertaining to each of the five dimensions of social space. The current analysis demonstrates, though, that subsequent propositions can be integrated into an even smaller number of propositions that yield the same types of predictions and "order the same facts" that Black's original work outlined with copious historical and cross-cultural examples [22].

STATUS LOCATIONS AND DISTINCT VECTORS

Black devoted one chapter each to the five vectors that define social space: stratification, morphology, culture, organization, and social control. He argued that social *locations* within these vectors of social space have implications for the behavior of law. One social unit's status or relative position along each vector may be similar to or quite different from another's status. Whatever the social units examined (e.g., individuals, families, communities, societies, etc.), their status locations relative to each other both define the social space in question *and* help explain observable variations in behavioral outcomes. The following propositions purport to explain various aspects of legal variation accordingly [23]:

"Law varies directly with rank." (p. 17)

"Law varies directly with integration." (p. 48)

"Law varies directly with conventionality." (p. 68)

"Law varies directly with organization." (p. 86)

"Law varies directly with respectability." (p. 112)

Thus where stratification exists, social units may have similar or at times even radically different locations or "rankings" relative to each other. The proposition suggests, then, that those who have more wealth also have more law. A similar logic applies for the other propositions. Law becomes more active among those who are more integrated, who are more conventional, who are more organized, and who are more "respectable." In contrast, those who are relatively marginal, unconventional, lacking organization, and less respectable are thus less likely to activate the law to pursue grievances.

Yet one can redefine each proposition vis-à-vis the corollary resources implied [24]. As an example, the stratification dimension defines ranked differences in terms of wealth, such that those who have more of that particular resource more often activate law if conflicts arise, holding all else constant. The other dimensions provide potential resource advantages too. The more integrated individuals in society enjoy distinct social advantages compared to more marginal individuals. As Black observes, "The radial location of a person or group is a status that confers privileges and disabilities" (p. 48) [25]. Law further shifts along the cultural vector, increasing toward the center of cultural life or among those who are more conventional. Those who have more culture by definition have a superior *cultural status*—and use more law than those who are more unconventional. Those who have more organization in their lives are more likely to pursue the law to settle their grievances as well. Finally, law appears more among those who have more respectability (i.e., those less often subjected to social control, such as prior arrests or other contacts with the law). In each situation, then, some people enjoy certain status advantages compared to others. Law still varies in accordance with the relative status positions of the disputants. As Black argued in *Sociological Justice*, one can simplify the more general theory through an integration of the aforementioned propositions as follows (p. 10) [26]:

Law Varies Directly with Social Status

The proposition effectively states that among disputants who find themselves located along a vector that confers a status advantage of *any* kind, law tends to be more active.[1] Those who are wealthier, are more integrated, have a higher cultural status, have more organization, and/or have a higher normative status (respectability) will use law more often to settle their disputes than those who have inferior statuses along one or more dimensions. Any and *all* status advantages thereby help explain the behavior of law. The five

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[1]Black recognizes that status has many dimensions, as per the following remarks: "Social status includes vertical status (wealth, such as money or livestock), radial status (integration, such as employment or marriage), relational status (a degree of prominence, resulting from social ties to others), functional status (a level of performance, such as the points scored by a basketball player), cultural status (conventionality, such as the relative preponderance of a religion), and normative status (respectability, a condition that declines with the application of social control) (see Black 1976: Chapters 2-6)" (p. 349, note 20) [27].

aforementioned propositions can be deduced from the more general proposition. The theory has been simplified and, therefore, improved accordingly.

The methodological challenge, though, consists of accurately defining and measuring each relevant dimension of social status between or among the disputants involved in a conflict. The vast array of statuses could be inter-correlated, but in reality often are not. One might have more wealth, for example, while being relationally somewhat more isolated or culturally less conventional. The complexity of social life, however, by no means invalidates the theory; rather, the theory demands more sophisticated methodological tools and measurement strategies to ensure that it can be evaluated properly.

RELATIVE POSITIONS: DIRECTIONALITY

In addition, Black developed a set of explanatory propositions pertaining to cases where the disputants have different locations along each of the vectors relative to each other. Hence another series of propositions deals with the relative positions of the disputants and the *direction* in which the law tends to flow. The notion of relative positions applies across each dimension of social space, and, as a result, further helps explain the behavior of law. The following six propositions summarize Black's theoretical efforts along these lines [28]:

"Downward law is greater than upward law" (p. 21), i.e., law is greater in a direction toward less wealth than toward more wealth.

"Centrifugal law is greater than centripetal law" (p. 50), i.e., law is greater in a direction toward less social integration than toward more social integration.

"Law is greater in a direction toward less culture than toward more culture." (p. 65)

"Law is greater in a direction toward less conventionality than toward more conventionality." (p. 69)

"Law is greater in a direction toward less organization than toward more organization." (p. 92)

"Law is greater in a direction toward less respectability than toward more respectability." (p. 114)

These propositions assess the disputants' locations in social space relative to each other along distinct vectors. Black's theory suggests that law responds to these directional differences. For example, some disputants are elevated above their adversaries via an unequal distribution of wealth. The law tends to flow in a downward direction more than vice-versa, and more law will tend to be applied in a downward as opposed to an upward fashion (all else constant). Similarly, there are disputants who are located more at the center of social life compared to their adversaries. The theory predicts that law will be more active in flowing from the center to the margins of social life. The differential locations and distributions of law apply and work to the advantage of those who have more culture, conventionality, organization, and respectability as well. Wherever one social entity has more of any type of status resource or as, per the language above, a status advantage, law will tend to be more active in flowing toward those who

have status disadvantages in a dispute. The following proposition summarizes more precisely the relationship:

Law is Greater in a Direction Toward Fewer Status Resources

The proposition implies each of the previous propositions that Black details in *The Behavior of Law*. His examples illustrate that, *ceteris paribus*, those who occupy higher vertical statuses (i.e., who have more wealth), are more likely to activate the law (e.g., call the police) in disputes with social inferiors than vice-versa. Or, as Black has argued, "Downward law is greater than upward law" (p. 110) [29]. Similarly, those who possess more of each of the other status resources will be more likely to press charges against those with fewer such resources. To be sure, someone with lower cultural status, fewer organizational resources, and less respectability may initiate legal action against someone perched atop them along these various status hierarchies. But the sheer quantity of such cases pales in comparison with those aggrieved parties with superior status resources, while their likelihood of legal success diminishes at each stage of the system.[2]

DIRECTIONALITY AND DISTANCE

The relative locations of disputants predict where law will be more likely to increase, as well as the likelihood that some relative positions will produce more law. In addition, Black's work identifies two other core features that apply across the five dimensions of social space. The first set of propositions deals with the "downward flow" and "outward flow" of law [31]:

"Downward law varies directly with vertical distance" (p. 24), i.e., in a direction toward less wealth, law varies directly with vertical distance.

"Centrifugal law varies directly with radial distance" (p. 50), i.e., in a direction toward less social integration, law varies directly with social distance.

"In a direction toward less culture, law varies directly with cultural distance." (p. 65)

"In a direction toward less conventionality, law varies directly with cultural distance." (p. 70)

"In a direction toward less organization, law varies directly with organizational distance." (p. 93)

"In a direction toward less respectability, law varies directly with normative distance." (p. 117)

For each of the above six propositions, there are two key components that flesh out the relationships between the various independent variables and law: distance and direction. Greater distances imply that more law will be involved. At the same time, however, such increases flow in a direction toward defendants who are at social locations more marginal to the complainants. Black's theory thus

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[2]In his subsequent work, Black refined and broadened certain aspects of the theory to discuss, among other issues, the influence of third parties or the ability to attract partisan supporters. Thus someone at a status disadvantage can change their social fields or particular vectors by hiring lawyers, who then further influence the likelihood of pursuing legal action and, if so, what the legal outcomes will be [30].

proposes that the greater the gap separating the disputants, the more law—regardless of the dimension in social space. Black has acknowledged the comparability of these different statuses as well, arguing that "The same pattern occurs in cases spanning other social elevations, such as different levels of social integration, organization, conventionality, and respectability" (p. 777) [32]. All else constant, the theory predicts that law will be greater in a direction toward those with fewer social or status resources in any realm: those with less wealth, less social integration, less culture, less conventionality, less organization, and less respectability. In summation:

In a Direction Toward Status Inferiority, Law Varies Directly with Distance

By definition, some social units have clear status advantages relative to others, such as having more wealth. There are many other social "resources" or *statuses* other than wealth, however, that can be quantified and that confer distinct advantages. Apart from material resources, those who have a higher degree of social integration, more culture, more conventionality, more organization, and more respectability relative to others with whom they interact have legal advantages. The proposition thus suggests that the greater the distances along *any* of these vectors (all else constant), the greater the likelihood of activating the law and, once activated, the greater the legal advantages that disputants with relatively more resources will enjoy. Moreover, the proposition implies a summative advantage, in that those who occupy simultaneously several positions of relative advantage should fare even more successfully in legal disputes. Regardless of the metric used to assess each particular dimension, the proposition suggests that any *net* status advantages between disputants should favor one litigant over the other—and that the greater the social space between them (meaning the larger the gap or distance), the more law will be applied.

The conceptual and empirical parallels deal with the possibility that law may on occasion flow in an upward direction and/or in an inward direction—toward those who have status advantages. Black identified six propositions that summarize the theoretical relationships between law and various distances accordingly [33]:

"Upward law varies inversely with vertical distance" (p. 25), i.e., *in a direction toward more wealth, law varies inversely with vertical distance.*

"Centripetal law varies inversely with radial distance" (p. 50), i.e., *in a direction toward more social integration, law varies inversely with social distance.*

"In a direction toward more culture, law varies inversely with cultural distance." (p. 65)

"In a direction toward more conventionality, law varies inversely with cultural distance." (p. 70)

"In a direction toward more organization, law varies inversely with organizational distance." (p. 93)

"In a direction toward more respectability, law varies inversely with normative distance." (p. 117)

These propositions specify what happens where the gap along *any* vector grows ever larger between complainants who suffer from one or more types of status disadvantages as compared with defendants. Those occupying inferior status positions are less likely to use the law in the first place. The propositions further imply that the greater the relative status disadvantages along any particular vector, then that reality has a dampening effect on the law. In the extreme, the notion that a homeless, unemployed individual would sue a wealthy lawyer, for example, becomes almost unthinkable. Where such lawsuits do occur, the likelihood of more law being applied decreases at each stage of legal processing. Following the previous logic, then, the above six propositions can be reduced to one simpler proposition:

In a Direction Toward Status Superiority, Law Varies Inversely with Distance

The proposition predicts that where social life flows in a direction from social disadvantage to social superiority, *ceteris paribus*, the quantity of law will decrease as the distance increases for otherwise identical disputes. Disputants who are most disadvantaged ideally would benefit in the legal system by "closing the gap" between themselves and their adversaries. High-status lawyers and partisans can help, for example, but these may be more difficult to access from positions of relative social disadvantage [34]. Left on their own or without being able to bridge the status gaps further, those who suffer from ever more serious status disadvantages are less likely to pursue their grievances through the law and, if lawsuits end up being filed, then they are less likely to receive favorable judgments.

DISCUSSION AND CONCLUSION

By applying Black's own criteria for evaluating the adequacy of scientific theories, the current paper demonstrates that several aspects of Black's *The Behavior of Law* can be reformulated and integrated to enhance the degree of theoretical parsimony. Black has recognized that such integration might be possible too, especially in his work *Sociological Justice* [35]. The relative social statuses of those participating in social life in principle can and should be measured, in an effort to determine whether and to what extent the law behaves as predicted. Defining key elements of Blackian theory in terms of status differences in social space produces an economy of propositions that effectively summarize nearly two dozen of Black's original propositions in four even more general propositions:

1. Law varies directly with social status.

2. Law is greater in a direction toward fewer status resources.

3. In a direction toward status inferiority, law varies directly with distance.

4. In a direction toward status superiority, law varies inversely with distance.

Each of the original propositions can be deduced from these four general propositions without losing any explanatory value or the capacity to order existing "facts" regarding legal variation. Even more significant, the logic of the current approach naturally extends beyond law to include all forms of social control (both formal and informal). If

social control refers to any response to a grievance or conflict, with the implicit morality that underlies such disagreements, then the geometry that explains legal outcomes logically should apply more generally to other strategies for managing conflict or the manner in which evaluations are rendered more generally. Indeed, Mark Cooney's research has confirmed similar patterns with respect to the social control of homicide, or the "wrongness or immorality of homicide," concluding that (p. 186) [36]:

1. Upward homicide is more immoral than downward homicide.

2. In an upward direction, homicide is more immoral as vertical distance increases.

3. In a downward direction, homicide is less immoral as vertical distance increases.

4. The higher the social elevation of homicide, the greater its immorality.

Note the parallels between these sets of propositions, as well as the even more profound implication: the possibility of developing an even more encompassing theory of normative evaluation or "moral regulation." The core sociological wisdom implies the relative nature of the social evaluation process, rather than any possibility of universalism. Those who have status advantages of any kind by definition have more resources—and, *ceteris paribus*, will be treated more favorably before the law, forgiven or absolved or wrongdoing more readily, and evaluated in more positive terms in general. Hence, for example, the degree to which legal responses to homicide along with popular judgments of those accused (and their victims) will vary, depending on the location of those homicides in social space [37]. And the greater the composite array of multiple status advantages, the more pronounced and definitive will be the judgments [38]. Likewise, greater gaps or social distances between disputants in terms of their relative statuses will have measurable effects upon the nature of normative evaluations that occur, either in a more or less favorable direction.

The main challenges, then, tend to more methodological than theoretical in nature. The measurement processes of the different dimensions of social space are somewhat limited, for the complexities of the different dimensions are not readily captured in single-variable measures that often dominate the empirical work in the social sciences. Simply measuring individual status characteristics, for example, does not adequately capture the relational statuses of those involved in the cases under study. Furthermore, the specification of the degree and the manner in which the different statuses overlap or operate independently or conjointly have not yet been determined with any degree of precision. A third concern involves the degree to which much of the research continues to be comparative (a positive) but highly selective (a negative), often consisting of only confirmatory examples as opposed to genuinely representative or random samples of cases drawn from the cross-cultural literature (leading to concerns about "confirmation bias"). Finally, the current formulations are ordinal in nature and thus lacking once more in the precision one might prefer to determine "absolute magnitudes" characteristic of many formal equations in the physical

sciences [39]. With some continued methodological progress, the theory developed thus far can and will be tested more systematically and refined further. Even more compelling, though, would be the implication that the theory of law represents a special case of a more general theory of normative evaluation and, perhaps, a more general theory of social life.

CONFLICT OF INTEREST

The authors confirm that this article content has no conflict of interest.

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