

Amalgamating Law Science and Society

By Sayan Basak

The relation between law and science – the set of parallels, tensions, analogies, and ‘cross borrowings’ which relay the two enterprises to each other – has long been a productive theme in the social sciences. It has become the focus of a broad range of styles of enquiry, which collectively address a multiplicity of sites, objects and concepts, and which have evolved a number of generative cross-disciplinary conversations¹. This article has two closely interlinked objectives. The first objective is to develop an exchange between the two most established approaches to the question of law and science – ‘law and society’ scholarship and ‘science and society’ scholarship – each which has evolved its own specific representations and conceptualisations of normativity and sociality. Our second objective is to encourage these two strands to meet on ground which at first glance they seem to have in common but which has not so far been a medium for sustained intellectual exchange between the two – namely, the figure of society or sociality as the shared context of their respective investigations of normativity².

Each field constitutes its own specific observation of “society”, in accordance with its own specific process of structuration. Society is an object and resource of regulation in one case, and an object of true description in the other³. Both ways of observing reality operate with implicit or explicit concepts of sociality, especially when constituting their respective concepts of normativity. On the basis of this observation, we seek to develop a synergy that will be of real significance to contemporary social-scientific debate⁴. There are a number of increasingly pressing reasons for suggesting that the intersection of law, science, and sociality has become a central, but so far under-theorised, question for social-scientific investigation. One field in which this theoretical voice-over can be studied is the area of bioscience. The case of bioscience shows that law and science – in various emergent conjunctions – are becoming the two principal ingredients of a powerful new political and normative discourse. The rise of biotechnology and (other) information technologies has generated an alliance between the two systems of knowledge, in which the critical potential of the legal tradition is cast as a moderating influence on scientific ambition, while at the same time legal categories are ‘educated’ by the novel productive capacities of science⁵.

The most significant development is the emergence of the various strands of bioethical discourse, coupled to biomedical, environmental and insurantal technologies. The other principal strand lies in the complex of regulatory programmes and practices which have evolved around biotechnological and informatics technologies⁶. Both strands constitute normativities, i.e. implicit or explicit rules of adequateness/reasonableness within each field. These normativities are negotiated in different ways between law and science. They engage and reconfigure questions, which have long been central to the social and political sciences, namely, questions about the social conditions of social action and rationality, the historical or social constitution of persons, the social apprehension of life (Foucault 1976, Agamben 2004), the specific character of ‘human nature’ (Habermas 2001), or the dynamics of private and public governance regimes (Abels 2002/2003, Gottweis 1998, Irwin 2001, Levidov/Marris 2001, Pollack/Shaffer 2005, Salter/Jones 2002) In short, these developments re-open a whole set of questions about the constitution or structuration of the social⁷. The normative potentiality of this emergent alliance between law and science is an invaluable resource for the social-scientific exploration of emergent normativities.

The practice of bioethics has not yet developed a substantial second-order reflection on its own conditions of possibility, and the important studies of Agamben, Atlan, and Habermas have yet to been developed or complemented by substantial historical and empirical inquiry. In what sense would a more sustained conversation between 'law and society' scholarship and 'science and society' scholarship – which is precisely what this workshop seeks to encourage – be the best way of initiating a more general and more sustained social-scientific exploration of such “techno scientific” normativities? Our workshop is premised on the observation that although the question of law/science has been addressed quite extensively from the legal or scientific perspective, and although these perspectives have developed the richest resources for an interpretation of “techno scientific” normativities, they still remain too isolated in their approaches⁹⁻¹¹.

Somewhat ironically, perhaps, studies in 'law and society' and 'science and society', while referring their specific objects of investigation to the broader context of society, have each developed a somewhat local conception of 'society' or 'sociality'. Whereas, for instance, from the perspective of the legal system, “society” is a potential source of normative substance, but also – and this is more problematic – a permanent source of no normative perturbances (such as facts, power, interest, ...), from the perspective of science, on the other hand, “society” is in a similar way the permanent source of non-factual perturbances (such as norms, power, interest, ...) ¹². This is the situation addressed by the interlinked objectives of our workshop. Our first objective, which is to bring both approaches together on the common ground of 'society', is complemented by the second, which treats 'society' as a problem rather than a presupposition; and, more specifically, as a problem which requires both approaches to develop new concepts of normativity.

The themes and speakers for the workshop have been selected with a view to realising our project of situating existing debates in science studies or law and society scholarship in the broader question of how new emergent forms of normativity reflect the evolution of social structural conditions, or how they generate new units of political or social-scientific 'accounting'. Our workshop brings together more general reflections on the emergence of new normativities with selected 'law and society' and 'science and society' scholars who are themselves key actors in social science debates the better to exploit the potentialities of the question of law and science. Not all of these scholars have written directly on questions of law and science, but (for example) Teubner's consistent explorations of the resonances between systems theory and other contemporary social theories will be invaluable in bringing out the broader contexts of the debate, just as Thomas's in-depth historical account of law and medicine as modes of normativity in antiquity (which is somewhat different in focus from the analyses of Foucault (1977-1984) and Herberger (1981)) will be of importance in developing a genealogy of modern forms of legal-scientific normativity¹³⁻¹⁷. Of course, existing debates in the multiple field of law and science do engage with the broader social and political aspects of emergent normativities, but again our aim in 'lifting' these debates into a more generalisable debate, is not only to generate synergies between different perspectives on law/science, but to enable these synergies to contribute to general issues of social science.

Focusing more sharply on the specific methodological component to our aim, what is the merit of encouraging a more systematic reflection on the theoretical and methodological implications of the 'law and society' scholarship for 'science and society' scholarship, and vice versa? What significant effects do we seek to generate by initiating such a synergy? From the perspective of 'science and society' scholarship, the point is to induce a long-established tradition of reflection on normativity and sociality to develop an engagement with emergent normativities. From the side of science, or of science studies, Merton addressed some time ago the question of what forms of normative sociality (based on norms of exchange and transmission of information) organised the production of scientific

knowledge. Since then, scholars have explored the role of different modes of sociality in the fabrication of scientific criteria of proof or asset (here, we have in mind Shapin & Shaffer's (1985) celebrated work on Hobbes, Boyle and the air pump, which focuses on experimental procedures of verification and assent in the 17th century), the role of social processes or *intéressement* in the constitution of experimental procedures and the verification of experimental outcomes (Latour), or the ways in which the products of science and technology incorporate norms and institutions while at the same time influencing them (Jasanoff et. al 1995, Silbey/Ewick 2003). In terms of our theme of 'emergent normativities', the objective now is to build on these studies as resources for studying not so much the sociality of laboratories or technical operations, but rather, or also, the sense in which technical operations pervade and characterise social action in general¹⁸⁻²¹.

Of course, the work of Bruno Latour in particular has already proposed this sort of 'expansion' or 'blurring' of the sociality of the laboratory into the sociality of society, but it is our view that the "techno scientific" normativities to which we have referred have given a novel context for this sort of enquiry. For example, the development of the concept of a 'transformation event' in the context of the regulation of the marketing of transgenic organisms (see Lezaun), which identifies 'transgenic' organisms by reference to the specific technical-industrial intervention which produced them, implies the emergence of new notions of relationship, based less on conventional biological taxonomies, and more on the novel – and normative – models of origin and relatedness that are being developed 'between' law and science²². Our workshop is designed to draw out the significance that these emergent normative artefacts have beyond the specific regulatory contexts in which they are evolved, and the sense in which they both symbolise and perform new modes of social action²³.

Let us take another example, the existing tradition of 'science and society' studies of institutional normativity have recently broadened out into an exploration of how the institutional norms of knowledge production have been eroded by the expansion of intellectual property regimes. Is scientific knowledge now being privatised at the expense of the public sphere? Can one in any case distinguish private and public (Strathern & Pottage 2004)? Again, the broader question – which can be developed properly only by bringing into conversation both with each other and with more general social-scientific enquiries – is that of how emergent alliances of law and science articulate new configurations of social agency and structure²⁴. This is the perspective from which it becomes essential to revisit a set of existing questions in 'science and society' scholarship: how do science and technology produce and change norms (inside and outside the laboratory)?; how does science build norms of scientific quality?; how are mechanisms of norm-building and institutional power interrelated?; what are the effects of evaluation on scientific programmes?, and so on. Here, the accumulated insights of law and society scholarship (understood in broadest sense), which has developed a rich reflection on forms of normativity and sociality, leading from Foucault and Habermas, through Luhmann and Teubner, to Agamben and Rabinow, offers an incomparable resource for the development of new, more expansive, models of laboratory/society relations in 'science and society' scholarship. By the same token, emergent "techno scientific" normativities open up the other direction of the conversation, which leads from 'science and society' scholarship to 'law and society' scholarship. Science, or more usually technology, is the social agency that has been principally responsible for the fabrication of new social entities and of the forms of action or relation which configure these entities²⁵⁻²⁶.

Legal categories of object, person, and event find themselves obliged to adapt to the kinds of development that are so well captured by 'science and society' iconographies of the laboratory. What we call 'emergent normativities' arise from the practical tension between legal and scientific categories, a tension that has yet to be fully reflected in theoretical conversation. And in the case of

'law and society' scholarship, "techno scientific" normativities offer the perspective from which to revisit old questions about the nature of legal concepts and operations, and from which to make productive use of tools or procedures developed by 'science and society' scholarship, notably the specific mode of ethnography which has been evolved through this body of work. We do not claim that conversations between 'science and society' and 'law and society' scholarship have never taken place thus far. After all, there have been investigations of how modes of authorization in science and the law build upon, mimic, or incorporate one another (Jasanoff 1990, Smith and Wynne 1989, Wynne 1982, 1988, 1989)²⁷. And, some of the key scholars in the field(s), notably Jasanoff, Silbey, and now Bruno Latour (2002), are active on both 'sides' of the conversation we seek to initiate. Nor do we claim that there is an 'exclusive synergy' here. We are quite aware that the question of law/science has been taken up in other intellectual arenas. For example, it has become an especially dynamic theme in anthropological inquiry, and the work of Strathern (1999), Franklin (2000), Hayden (2003) and Landecker (2001) has reinvigorated existing ways of imagining the relation between the two by exploring how technoscientific practices have reconstituted the categories of person, thing, and action which are central to law, and which have long been objects of anthropological inquiry²⁸⁻³¹.

Our proposal is simply that the anticipated synergy between 'science and society' scholarship and 'law and society' scholarship will be especially productive because it 'lifts' or transforms existing debates into central resources for addressing the emergent social-scientific question of "technoscientific" normativities.

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