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Citation: 31 J.L. & Soc'y 291 2004

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Selznick Interviewed:¹ Philip Selznick in Conversation with Roger Cotterrell*

Philip Selznick enjoys world-wide respect as a sociologist and, unusually among prominent contemporary sociological theorists, he has made law a main focus of his work. A leading pioneer of Anglo-American legal sociology since the 1950s, he has pursued a distinctive scholarly approach, founded in Deweyan pragmatism, that treats ideals and values as fundamental concerns of social science, integral to its methods and aims. This orientation was first developed in his work in the sociology of organizations and is central to his sociology of law and to his writings since the 1980s on communitarianism, which combine philosophical and sociological analysis.

INTRODUCTION

Philip Selznick was instrumental in creating the Center for the Study of Law and Society at the University of California at Berkeley in 1961, and served as its Chair for eleven years. In January 2002 the Center invited me to Berkeley for a week to interview him for a UCB oral history project, primarily to produce for the University a record of key events, contexts, and intellectual developments in his life and career. The more than eleven hours of our taped conversations provided opportunities to discuss broadly many topics of common interest. Among them were aspects of the history of American sociology; the nature, development, and future of sociological studies of law; the concept of community; the relations of legal sociology and legal philosophy; and sociological approaches to the study of values. UCB staff arranged the production of the 80,000 word transcript, which I edited and from which the following adapted extracts are taken.

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- 1 Selected by Jiří Přibán from the series of oral history interviews conducted by Roger Cotterrell between 28th and 30th January 2002.

EARLY INSPIRATIONS

COTTERRELL: In 1938 you began graduate studies at Columbia University ... I wonder whether initially this was a place to be while you got on with your political activities, because you were very politically active around that time.

SELZNICK: Yes. You could put it that way, but it wasn't just a place to be. I thought it was a natural thing for me to do ... to go on to graduate school.

COTTERRELL: I think the reason I put it that way is because Webb says, 'When Philip Selznick entered Columbia in 1938, he had only a hazy idea of where his graduate studies would lead him. He felt it was important to continue his education, but he did not really think in terms of preparing for an academic career.'²

SELZNICK: I didn't, because I was so involved with the political scene that the idea of leaving New York, being outside all of this, seemed hard to accept, so I really wasn't sure what I was going to do with this, but it seemed obvious that that's where I was. I think a lot had to do with the fact that it was all continuous with the work that I had done in [my] honours programme [at the City College of New York] on the culture and personality school. I really learned a lot, and I read an enormous amount of anthropology. I became very familiar with that.

COTTERRELL: So it was anthropology, more than sociology initially, in terms of social science?

SELZNICK: Well, no I wouldn't say that exactly, because I was interested in other things in sociology ... like Max Weber on bureaucracy. The theme of bureaucracy was, of course, very central to us in those days because ... given the nature of the Soviet Union and the kind of regime that was created there, we had problems how to characterize that. One way of characterizing it was to call it bureaucratic collectivism ... In about 1938 or so, we became familiar – 1939 maybe – we became familiar with Robert Michels's book on *Political Parties*.³ That had not been reprinted, but somebody or other had a copy that he was passing around. We were quite impressed with it. This was a powerful way of explaining what could happen to organizations. Michels wrote basically about the socialist organization.

COTTERRELL: Yes, the SPD [German Social Democratic Party].

SELZNICK: Organizations that were committed to ideas, but they were doing the kinds of things and implicating the organizational imperatives that would lead to this self-perpetuating leadership.

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2 D.G. Webb, 'Philip Selznick and the New York Sociologists', paper presented to the Canadian Historical Association Annual Meeting, Ottawa, Ontario, 9–11 June 1982, 18.

3 R. Michels, *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy* (1915).

COTTERRELL: And then James Burnham's *Managerial Revolution*⁴ came along, the book, in 1941. Did that have a big impact? Was that important? He was making very strong claims, having come from the left. He was saying socialism in fact was an impossible dream, I think.

SELZNICK: Yes.

COTTERRELL: The new world order would be dominated by technocrats.

SELZNICK: I don't think it had a big influence. What he said was not very surprising. It was more surprising that it was so popular. The book became something of a bestseller during those periods. That didn't mean it sold an enormous amount of copies. I think you could sell 10,000 copies and be a bestseller in those days, for a non-fiction book. But I was really more interested in his later book, called *The Machiavellians*,⁵ in which he discussed Michels and Pareto and some of the other people. It was a somewhat superficial book, but I did use it in some of my classes because it presents in a fairly easy way some of the arguments about the importance of connecting power and liberty and things like that.

COTTERRELL: But Michels's *Political Parties* was much more important?

SELZNICK: Right, Michels. I think he [Burnham] spent quite a bit of time on Machiavelli, especially the *Discourses*.⁶ And Pareto. I think [Morris] Cohen used to say that the only way to understand Pareto's *Mind and Society*⁷ was [to know] that he was an insomniac.

COTTERRELL: I suppose all of these theories were in a way coming together for you: Mosca and Pareto and Michels and so on. This was all undermining the idealistic claims for Marxism, the possibility that it held out of real transformation.

SELZNICK: I don't think it undermined the basic ideals, say, of social justice, but it called attention to the utopian elements of all of these things, the importance of providing for safeguards against the dispositions that people have to abuse power and take advantage of positions, turn public philosophies into hardened ideologies. Those were the things that we were really learning from that.

But I think that – maybe it had to do with Dewey, but for people like me, we never really gave up on the ultimate moral lessons and the importance of, in Christian terms, the law of love or things of that kind. The only thing was that you couldn't allow this to be identified with some specific human embodiment of perfection.

4 J. Burnham, *The Managerial Revolution: What Is Happening In the World* (1941).

5 J. Burnham, *The Machiavellians: Defenders of Freedom* (1943).

6 N. Machiavelli, *The Discourses (on the First Ten Books of Titus Livius)* (1983).

7 V. Pareto, *The Mind and Society: Trattato di Sociologia Generale* (1935).

ON FUNCTIONALISM, OPERATIVE SYSTEMS, AND POLARITIES

SELZNICK: ... I tended to associate functionalism, when that was a serious topic, with Marx and Freud and not with the anthropological functionalists, whereas I think the functional analysis that was most prevalent, say, in the fifties and so on really had its derivation from the anthropological studies ...

COTTERRELL: Malinowski, and so on.

SELZNICK: Yes, Malinowski and so on. And that made a big difference, because if you think about Marx and Freud, of course, there's a lot of functional analysis; there's a lot of identification of systems. I called it dynamic functionalism, because it has to do with the ways in which you're identifying a system in part by appreciating its contradictions. The contradictions produce a dynamism that results in a reconstruction of the system. And that's very different.

So to me, the idea of opposing functionalism and conflict theory didn't make sense. I understand what people were saying when they were talking about the more anthropological notion, but people overlook – not everybody, there were a couple of people who wrote about functionalism who understood this, I think. Pierre Van Den Berghe, I think he wrote something that got that point. But that was mainly the way I looked at it, too.

I believe even to this day that certain kinds of functional analysis are really important. I've mentioned this in one of the arguments that I make in this new book⁸ about democracy. It's very important to ask yourself, 'What does democracy as a system require?' and 'What is the role of campaigns, of money in politics?'

Unless you have a theory of the nature of the system and what it requires and what might distort the system and so on, you're not going to be able to deal with it effectively; that is, analytically – or even come up with good practical conclusions.

COTTERRELL: The key word is 'system', isn't it?

SELZNICK: Yes.

COTTERRELL: If you're studying formal organizations –

SELZNICK: They are social systems.

COTTERRELL: But in a way, once you've introduced the term 'systems', you are really thinking structurally and in terms of functional relations.

SELZNICK: Anyway, that sort of thing was going on.

COTTERRELL: Yes, and it was only a few years after that that Kingsley Davis said this [functional method] is the way sociology is done.⁹

SELZNICK: Yes.

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8 P. Selznick, *The Communitarian Persuasion* (2002) ch. 7.

9 K. Davis, 'The Myth of Functional Analysis as a Special Method in Sociology and Anthropology' (1959) 24 *Am. Sociological Rev.* 757.

SELZNICK: ... I don't know exactly why, in my own thinking, this has always remained so important, to try to be optimistic and pessimistic at the same time, but it's been so. I remember in the early days, when we were first talking about organizations, one of the key ideas was the connection between or the distinction between formal and informal structure. There were quite a few sociologists who would like to go around saying, 'The formal structure doesn't count; it's the informal structure that counts.' Well, that was baloney, and I said so at the time.

I mean, it's very important what kind of formal structure was created. In a sense, that led you to a certain optimism, that you could, by creating an appropriate formal structure, make a difference for the quality of life of the organization and its effectiveness. But you would have to do that by relating it to the informal structure and creating the infrastructure that's necessary to sustain the formal structure.

I thought that way from the very beginning. Later, I talked about the 'operative system' as a combination of the formal and the informal. But it's one of these things that has also gone by the board. I mean, nobody pays any attention to that any more, I think ... But for the first few years of sociological discussion of this, that was a major thing. But it showed a certain unwillingness to hold things in tension and see both sides of what was going on.

I hate to say this, but it seemed to me to be a little childish.

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COTTERRELL: ... It's hard for people to grasp the notion that polarities can be held, that two polar positions can be simultaneously held, because for a lot of people it collapses into paradox. It looks like paradox, and then that's one of the postmodern things, paradox –

SELZNICK: I know, but if you think about it concretely, it's true. You can say 'discipline' and 'freedom'. They seem to be opposed, but of course we know that all kinds of freedoms are impossible without the disciplines that support them ... Dewey said many times, in different ways, that you have to overcome this disposition to create these dualisms when in fact they're pernicious because they don't really permit you to analyse things constructively. He also had another idea which seemed to me important, that you avoid any doctrine that blocks inquiry. If you say, 'Well, it has to be such; that's the way it is', then there's nothing more to be said, whereas in fact what you want to do is to be able to push inquiry further on to say, 'There might be some conditions under which these things are related, and maybe we can examine those'.

But that's also part of a larger interest in dialogue and communication. Trying to say, 'Well, in what context is it right to think about some things rather than others?' Like, as I was saying earlier today, the notion that you counterpose self-interest and communities seems to be quite wrong, and wrong in the most obvious ways. I mean, [to] almost anybody who knows

anything about organizing community life, whether it's a religious parish, a centre like this [the Center for the Study of Law and Society] or what have you, the idea that you can do without taking account of the even rather immediate short-run self-interest of people is crazy. You do it all the time. You try to make people happy and comfortable, and you want them to get direct satisfactions from what they're doing.

But there's something about our ways of thinking that make us stupid: stupid in the sense of unable to see what's before our eyes, what is fairly obvious.

COTTERRELL: Yes. It really does go to the root of what social science is, doesn't it? Because the idea that you can hold two seemingly opposite things side by side and not be worried about that, but play with their relationship – I mean, basically that's terribly worrying to most social scientists, isn't it, because they're either trying to adopt a sort of positivist position, where the exceptions are fitted within the rules somehow: you might have an iron law of oligarchy, but there are circumstances which you can enumerate, perhaps, in which you can escape the iron law of oligarchy. Or, on the other hand, you take an interpretive approach. You're trying to understand social reality in an interpretive way, and you're trying to get 'the' picture, and in some way interpret the picture. But you're saying neither of those is right.

SELZNICK: Yes.

COTTERRELL: You've got to keep an interplay all the time. Presumably, that's the philosophy, isn't it, which is at the base of your social science?

SELZNICK: I think that's part of the philosophy. I think one of the things I've learned, and emphasize in recent years – the thing I find that reflects the fact that I am a committed social scientist, despite all those interests that I've had in moral philosophy for a long time, is that I am always interested in variation. I want to know – not is there consent but what kinds of consent are there, and what difference do they make in what context.

I remember somebody once wrote something about 'the lesson of sociology is that people conform'. No! The lesson of sociology is that conformity is an important phenomenon and there are different kinds of conformity, and some kinds of conformity lead in one direction rather than others.

Or take Michel Foucault. I mean, as brilliant as he was, he fell into the same trap. It wasn't exactly a trap for him because he was really trying to influence how people think, but he used the word 'disciplines', 'the disciplines'. Well, he wasn't distinguishing among kinds of disciplines: the kinds that are supportive of human life and that make people more competent than they would be otherwise, as against the kind of disciplines that are oppressive. You have to sort them out and say which is which.

He didn't want to do that. He wanted to say that discipline is necessarily oppressive. If you say it's necessarily so, then you're stuck. It's a conversation stopper. It's a little bit like the Marxist idea of talking about 'the bourgeois science' or whatever. That's not an analysis, it's a bill of attainder.

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SOCIOLOGY OF LAW

COTTERRELL: One of the things that some people have said about your ideas is that in the fifties, with *Leadership in Administration*¹⁰ and *The Organizational Weapon*,¹¹ you were really emphasizing the role of elites, and the leader's role, and so on. And then in the sixties, and particularly with *Law, Society, and Industrial Justice*,¹² there's a switch towards much more emphasis on participation and the role of interplay between the leaders and the led, so to speak.

SELZNICK: Yes.

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COTTERRELL: It's very interesting to know what you read [early in the 1950s], to read yourself into thinking about this new field [sociology of law], because there wasn't much around. There wasn't anything really around.

SELZNICK: I think I also read quite a bit of Roscoe Pound. Pound has fallen into considerable disfavour, I think because he doesn't write in this style of analytic philosophy and so on, but he had a lot of good things to say. I think all of this led me to do more reading in legal history and also to try, in various ways, to get some background on legal issues.

COTTERRELL: What about the legal realists?

SELZNICK: I don't think at that time I was immediately that interested in them. I got more interested in that later on. I guess as the years went by, I accumulated a library of books on law. Once, I got a grant out of the blue from the Ford Foundation, the behavioural science section. I don't know what. They decided somehow to endow various people with a couple of thousand dollars of free money to use for whatever they wanted, and I bought a bunch of books.

COTTERRELL: In 1956-7 you were Law and Behavioral Sciences Senior Fellow at the University of Chicago Law School.

SELZNICK: Right.

COTTERRELL: So, from what you're saying, that's just a few years after this interest began.

SELZNICK: Right. Yes. So obviously there was some preparation for that. So I think during those years before that, that made that seem like a thing that I could even think about doing, I had already begun trying to prepare myself for this. I guess I decided at some point that I would not go to law school, not try to take a law degree. I did audit some classes, maybe even somehow took a couple. I can't remember exactly.

10 P. Selznick, *Leadership in Administration: A Sociological Interpretation* (1957).

11 P. Selznick, *The Organizational Weapon: A Study of Bolshevik Strategy and Tactics* (1952).

12 P. Selznick with P. Nonet and H.M. Vollmer, *Law, Society and Industrial Justice* (1969).

COTTERRELL: Here at Berkeley, in the Law School?

SELZNICK: Yes, a couple of things here at the Law School at Berkeley, and in Chicago. And I think I went through some kind of a programme of self-study that was more disciplined on some basic legal topics.

COTTERRELL: You'd read a lot of Weber when you were ... reading yourself into bureaucracy and all that.

SELZNICK: Certainly.

COTTERRELL: And Max Rheinstein published his – well, you didn't need an English translation, you could read it anyway – but Rheinstein published his English translation of *Max Weber on Law in Economy and Society*¹³ in 1954, almost exactly the time that you were really trying to read into law.

SELZNICK: Yes.

COTTERRELL: Did you read that then?

SELZNICK: Yes.

COTTERRELL: Weber's sociology of law?

SELZNICK: Yes. I just don't know how significant that was. I think it was more these general things – I thought I would enjoy my life more if I were going to do work on more general theory, including jurisprudence and things like that.

COTTERRELL: So in a way, it seems a kind of broadening out from the sociology of organizations. A lot of the things you could see – the organizational rules – when you put them on a larger canvas, you can see legal institutions.

SELZNICK: Absolutely. And I felt that was right. That probably reflects a disposition that I had going back many years, to try to reach for some more general theory and be appreciative of that, and therefore to see this connection between organizational theory and sociology of law. And I suppose that's one of the things that led me to have an interest in the Industrial Justice Project. I mean, how that really started, I don't know for sure, but it may have been somehow stimulated by the fact that I had some connection with the Institute of Industrial Relations. Not that there was anybody there that I really had a close connection with, but just almost symbolically ...

And I think from work in organizations, it was rather easy to move to these conceptions of private government and the notion that principles of due process would be highly relevant to the exercise of authority in large organizations.

COTTERRELL: Just going back to Roscoe Pound for a moment, I'm fascinated that you found Pound a good way in, in a sense. As you say, Pound is a very disparaged figure now, and a lot of people say – well, one consensus is that Pound is a very woolly guy. Everything is mixed up in

13 M. Rheinstein (ed.), *Max Weber on Law in Economy and Society* (1954).

Pound; not really a lot of social science, although he picked up a bit of social science from Edward Ross and so on.

SELZNICK: Yes.

COTTERRELL: But did you find Pound attractive because he was putting these things together: values and a bit of social science, and maybe *groping* towards something?

SELZNICK: Yes, I think that's true . . . Well, in the first place, there's a lot of continuity between Pound and the legal realists, but he seemed to me to have – you know, I've sort of forgotten about it now, but – rather trenchant things to say about changes in basic legal ideas. He was trying to show the connection between law and social interests. That was a major theme. He provided a way of thinking about the role of authority in law. I've often quoted a sentence of his, where he talks about the law as made up of these various elements that are all authoritative . . .

So that, without making a big fuss about it, he understood that there were institutions or principles; that the law did not involve only a single element but had diverse authoritative doctrines. And I think, in some dim way, not a wholly explicit way, he understood that there was a lot of variation in the authority of legal doctrines, rules, institutions. That to me was important.

COTTERRELL: Somehow I never thought of the connection before, but [Pound's] jural postulates are the ultimate values of law–

SELZNICK: Yes.

COTTERRELL: – and then, in a different way completely, that [concern with ultimate legal values] becomes a major theme of your sociology of law.

SELZNICK: Yes, right.

COTTERRELL: And Pound's attack on legal positivism –

SELZNICK: Right. I think that's true.

COTTERRELL: I guess you have very trenchant views on that, too.

SELZNICK: . . . I think the contemporary people who are philosophically oriented don't like Pound because he doesn't seem rigorous and he's not making all these fancy distinctions and so on and so forth. I think that's misguided. I think he did really have a lot to say . . . It's a big mistake anyway, I think, from the standpoint of scholarship, to engage in these gestures of dismissal. Very often we find, well, we [had] better take another look –

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COTTERRELL: Yes. There's a lot to say about that. But [in] the three stages of sociology of law that you set out in the 1957/1959 paper,¹⁴ the people you've mentioned – they appear at the pioneer stage. Pound is there and the legal realists and the early European sociologists of law. And then you talk about the muscle-flexing stage: [a] sort of exploration in depth. And then the third stage of true intellectual autonomy and maturity:

14 P. Selznick, 'The Sociology of Law Today' in *Sociology Today*, eds. R. Merton, L. Broom and L.S. Cottrell (1959). The paper was written in 1957.

The sociologist goes beyond ... the stage of technician or engineer and addresses himself to the larger objectives and guiding principles of the particular human enterprise he has elected to study.¹⁵

So that third stage – I read that as translating what you'd been doing in the sociology of organizations directly to law.

SELZNICK: Yes, I think that's fair.

COTTERRELL: The other thing that strikes me about this is that it's an incredibly optimistic paper, I think. There's a quote here. You said:

In a broad sense, there is no real problem of articulating social inquiry to the needs of legal development. Sociology can contribute most to law by tending its own garden.

SELZNICK: Right.

COTTERRELL:

Truly sound knowledge regarding basic human relations and institutions will inevitably find its way into legal doctrine. Truths so well founded that no reasonable, educated man can deny them need no special means of communication beyond the ordinary channels of education.¹⁶

You were thinking, at least at that time, that sociology could produce knowledge which could just feed into law.

SELZNICK: Yes. I was a maybe a little over-optimistic, but I don't know, what do you think? It seems to me it's in principle right. I guess I may not phrase it quite so strongly, but – you'd have to think about, maybe quickly say, 'Well, there are a lot of obstacles, but –'.

COTTERRELL: You didn't think there was anything intrinsically in legal processes, in the legal system, to resist all of that?

SELZNICK: Well, I wouldn't have denied that, but I would have said the resistance will be overcome. Maybe the model that I had in mind was the impact on the Supreme Court and the race cases; not of the particular studies that they cited but the broad sweep of educated opinion about the irrelevance of race differences. I mean, that understanding, in so far as it was made more systematic and so on would have its impact on the law. And I think you could say that of many other things as well. I think that maybe sociology hasn't really pursued it all that well, but there are important truths about family life which could not be ignored by family courts. If sociology did its job well, there would be things that would affect problems of equal justice for men and women. I think that if sociology did its job well, we'd have a different attitude, different ways of thinking in the law about the modern corporation. So in a broad sense ... I think that optimism is justified. What I was trying to say was you don't necessarily need a sociology of law to get sociology recognized in the legal world. The legal world inevitably has to be open to at least the major things that we find; otherwise it would be, anyway,

15 *id.*, p. 116.

16 *id.*, p. 117.

kind of wrong just to say, well, because we've done such-and-such a study, that this is what's going on.

COTTERRELL: Yes. I tend to agree, but there obviously is a very powerfully articulated, opposite position, isn't there? In these days, it's autopoiesis theory and all of that: [the idea] that law has its own language and has its own discourse, which in a way is designed to filter out influences from outside or to reinterpret them in its own way, so sociological knowledge is not going to enter law in any direct way.

SELZNICK: That sounds like Niklas Luhmann.

COTTERRELL: Yes.

SELZNICK: Well, yes, that certainly is a different – and without even bringing into that thesis general questions of systems theory, one can certainly identify the institutional obstacles to incorporating sociological knowledge. But I guess I was thinking about *major* findings of social science – it would not be just sociology but social science. It seems to me in so far as they really are well established, they're going to influence the law, despite these obstacles.

COTTERRELL: Maybe in a way there's a sort of cultural thing here. The American legal system in some ways is a very open system, a very argumentative system.

SELZNICK: Yes.

COTTERRELL: It's not true of many other legal systems.

SELZNICK: What we may have here is more optimism, an apparent optimism about the coherence of social science in that what we have, in fact, is a great deal of incoherence. So it's not really clear what these results are, and therefore it's much easier to go against them or to treat them as matters that people can disagree about. And I think that's really what's happened. It's that we don't have a strong statement about what the social science findings are, or we might say it's much harder to say what the practical relevance might be of knowing certain kinds of things.

In organizational theory – there's much in the business world that interferes with the application of sociological ideas, but there's much that is open to them. In so far as you're dealing with a system which depends on high levels of initiative and commitment to work . . . the sociology of human relations is going to find its way into business. It's useful to translate that, but you know it's going to be translated in some way or another, in different ways.

But I think the paper is optimistic also in another way. I think it was meant to be optimistic. It's a programmatic statement which offers vistas, and so you say, well, we can probably do a lot of these things, including contribute to the great issues of jurisprudence . . .

CULTURAL RELATIVISM AND UNIVERSAL VALUES

COTTERRELL: You're very anxious to say that the range of variation is limited and that there are universals there. I don't want to take it far, but just for the point on cultural relativism, you say [in 'Sociology and Natural Law']: 'The whole point of the doctrine' of cultural relativism 'has been to encourage respect for others as human,' so the cultural relativist position presupposes a universal value of respect for others.¹⁷

SELZNICK: Yes.

COTTERRELL: But is that really true? Isn't the recognition of universal humanity itself a specific value position, which is relative to time and place? People can recognize a universal humanity. Because they recognize a universal humanity, therefore they recognize the value of other people's values and they adopt a cultural relativist position. But that in itself is a specific time-bound position.

SELZNICK: Well, it's time-bound, but part of that is a reflection of the kind of doctrine that cultural relativism developed. The emphasis on cultural plurality, of human beings as taking many different forms – I don't think there's any question, among the anthropologists of that generation, anyway, [that they] had a very strong moral message. And the moral message was that these are all human beings: there is what they called 'the psychic unity of mankind,' and that this is the basic source and justification of respect, and the plurality helps us understand the richness of human experience and the ways people cope with very different origins and environments, but that, despite this, they tend to cope in ways that manifest a human spirit. I mean, that's what all these people have been saying.

That doesn't deny your point, that the recognition of a common humanity is something that has certainly not always been there, but I was talking about what was implicit in the doctrine of cultural relativism, not that a recognition of common humanity was always important. I think the emphasis in the 1920s and 1930s of cultural relativism contributed strikingly to this appreciation of common humanity, just as currently the consciousness of human rights has changed people's attitudes toward certain things, including the natural law perspective . . .

What might be interesting to explore is whether the current doctrines of relativism which we associate with postmodernism are significantly different from the doctrines that were espoused in the thirties here, mostly here, by the anthropologists. I'm not sure. I haven't looked into that enough. But I think there is a tendency to go to a more extreme kind of relativism.

One of the things I tried to bring out in my book, *The Moral Commonwealth*,¹⁸ in the chapter on 'Plurality and Relativism,' was the way in which

17 P. Selznick, 'Sociology and Natural Law' (1961) 6 *Natural Law Forum* 84.

18 P. Selznick, *The Moral Commonwealth: Social Theory and the Promise of Community* (1992).

some prominent anthropologists really rejected radical relativism and were interested in universal attributes, or understood that when Franz Boas wrote about primitive art, he was saying something deeply important. Because he was saying that these are human beings; they manifest the human spirit in this special sense that they are pulled by aesthetic impulses and care about aesthetic impulses . . . ; so that there is some higher nature that is associated with human beings. If you take the varieties of symbolic expression seriously, you tend to be drawn in that direction.

COTTERRELL: Yes. And another thing you said in the paper, which relates to much earlier things, is the connection with functionalism. You explicitly say, I think, that the natural law approach is grounded in functionalism.

SELZNICK: Did I say that?

COTTERRELL: Yes, I think so. And functional analysis, of course, is regularly criticized as teleological because it tends very often to slip into postulating functional needs to hold everything together. Is there ultimately a danger, too, with using the idea of natural law that you're postulating? . . . I appreciate that the idea of purpose is central; there's a purpose in law to be understood and to be teased out by analysis. But is there a danger of making judgements about the end-state, making judgements about how the institution should develop, where it should get to, what law should be like, and so on? Is there a danger in that? Because you can't, in the end, validate that by social science. You have to say, 'Well, this is my interpretation of where all of this should lead.'

SELZNICK: Well, I'm not sure that I would accept that you're necessarily committed to any kind of hard teleological notion when it comes to law . . . You have to be able to say that human communities are open-ended as to what will actually emerge from the debates, the interactions, and the power struggles . . . that go on. But I think you would say that, for a community to be lawful in the broad sense, certain requirements must be met. There must be certain attitudes toward law in different ways by certain groups in the society.

For example, Hart, in his book on *The Concept of Law*¹⁹ – you wouldn't normally talk about him as a functionalist, but he says we have to have a certain attitude [adopted] toward the legal system by the operators of the legal system. If you don't have that requirement, you're in trouble.

COTTERRELL: Sure.

SELZNICK: So, too, you might say that there are certain requirements of sustained criticism as well as trust. Some combination of trust and criticism is needed for maintaining the system, but when you say 'maintaining the system,' I think you want to avoid, as I say, a hard teleology. Because, while you're talking about the system as in a roughly – you might say – healthy state so that at least its fundamental integrity as a legal system is maintained,

19 H.L.A. Hart, *The Concept of Law* (1961).

you don't necessarily mean that it has to be only of a certain kind or that some particular end-state will emerge. You don't know what that would be, and you couldn't say what it's likely to be.

But that doesn't mean there's not a state of the system to be considered. You might be able to distinguish what's required for rudimentary law, just getting the basics in place, from what is required for a more elaborated system. Maybe the norm or the aim of releasing energies, in Willard Hurst's sense, is not something that's in the forefront of rudimentary law. Rudimentary law is mostly a way of keeping people from stealing each other's property and trespassing and things like that.

COTTERRELL: In a way, like Hart's 'minimum content of natural law', the rock bottom.

SELZNICK: Yes, right. But if you want to distinguish between a rudimentary system and some other state of the system – you might call it democratic law or whatever you want to call it, responsive law, or just a more elaborated system of the law, or a law closer to ideals of justice – then the requirements become more stringent.

COTTERRELL: Sure.

SELZNICK: That's what's involved. I don't think this is fundamentally different from the way we talk about moral development in human beings. I have not been too frightened by the fallacies of teleology because, the way I look at it, it's part of our ordinary experience to say that if human beings – in child rearing, for example – are to achieve certain levels of satisfaction in their lives, certain requirements have to be met. They have to be able to have the psychological capacity to restrain themselves, to defer gratification, to build certain competencies, and so on.

Now, that doesn't tell us about *the* teleological end-state of particular human beings, because those are going to be highly diverse. But nevertheless it does tell us about the states of certain generically identified systems, you might say, of the ... psychic wellbeing of mature adults in an industrial society.

I don't think you can get away from teleology to that extent: that is, this concern for an end-state, which I call the state of the system ... You remember I mentioned earlier my teacher, Ernest Nagel? ... Well, Nagel's attitudes toward a lot of these things seemed to be extremely, certainly congenial, maybe simply because I absorbed his way of thinking, but in his book, *The Structure of Science*,²⁰ he discusses functional analysis quite a bit. You know, he had a lot of interest in social science. As a matter of fact, he used to give a joint course with Paul Lazarsfeld, maybe with Robert Merton too, in later years, at Columbia [University] on the philosophy of social science.

20 E. Nagel, *The Structure of Science: Problems in the Logic of Scientific Explanation* (1961).

But I thought he had a lot of good things to say about that, and among them had to do with this idea that you had to identify the *state* of the system that you're talking about, not just the system. Maybe implicitly when we talk about a system we mean a system at a certain state, but you really ought to specify that. Now, you can specify too narrowly because then you'd be doing exactly what you were warning against, but if you start to specify more broadly, so you're talking about a class of persons or systems or what have you, then it's more easy.

Also, Nagel had, I think, very sensible things to say about value judgments. He did it in a characteristic way, by making distinctions that were important. He said we have to distinguish between what he called 'characterizing value judgments',²¹ like saying, 'So-and-so is a good student.' Now, a good student might be a lousy person; we don't know anything about that. A good Nazi is not necessary somebody who's part of a good moral order. But you can still identify, you can characterize a person that way.

And he says this is different from 'appraising value judgments', which require a different logic, and you invoke different things.

COTTERRELL: Yes. I understand.

SELZNICK: I think the same thing. Now, I haven't closely examined what Nagel had to say about teleology, but I'll bet that he finds an answer that tries to see the truth in teleology rather than just being kind of frightened by the word. I think this has been generally true. I don't think you can dismiss the Aristotelian arguments about *eudaimonia* and the relationship between happiness and virtue, and so on. I mean, they are difficult questions, and a lot of people can talk a lot of nonsense about them, but we can't really escape them . . .

RESPONSIVE LAW

SELZNICK: . . . I didn't want to have a theory of law that ignored the importance of foundational attributes of law. In other words, the kind of thing that made the difference between law and no law. So, analytically, this is one reason I was perfectly happy to accept Hart's notion of what law is, which really fits a very rudimentary notion of law.

Also, from a policy point of view, I had, for other reasons, long resisted the idea that institutions, including law, that were infused with value were then to be taken to suggest that the underpinnings were not important. Like the idea that democracy is really a matter of the culture and so on, and [that] the forms, the bare-bones structure that democracy requires in terms of protection, for example, of voting rights and the opportunities for minorities to become majorities and so on [are not important] – if you ignore these

21 *id.*, pp. 492–5.

fundamentals, the way the communists tended to do and the fellow travellers – they talked vaguely about democracy, were willing to embrace as democracies regimes that were really phoney democracies – well, that was something I was very sensitive to. And I think that has influenced a lot of my thinking along these lines, so that when the people associated with critical legal studies began to talk that way, I felt – even though I shared a lot of their concerns, I thought they were going way off.

COTTERRELL: Yes, they were just ‘trashing’.

SELZNICK: What?

COTTERRELL: Trashing and all of that.²² There’s no point in trashing unless you’re going to build.

SELZNICK: Right. Or, as one of them said, ... ‘No structure will save us.’ Well, that’s bunk. I mean, you know, we need structures, and we need structures at many levels. We need structures institutionally and as foundations for the minimum conditions for democracy, the bare bones of democracy, and *then* you look to flourishing, but you don’t give that up. I think that’s true in many other areas, too ... Just because [we say that a structure is not good enough, that doesn’t mean] the structure is unimportant.

COTTERRELL: No. Right.

SELZNICK: It goes back, again, to my earlier, very early disagreement with some of the sociological talk about the irrelevance of formal structure and how only informal structure counts. I thought that was nonsense, too.

COTTERRELL: Yes. So, within the framework that you set up in *Law and Society in Transition*,²³ you ... entrenched that position very firmly because of the developmental [approach]. You cannot get to responsive law, really, *except* by way of autonomous law.

SELZNICK: Not only that, but responsive law presumes the *achievements* of autonomous law.

COTTERRELL: Right. In part, this is structure.

SELZNICK: Right.

COTTERRELL: And then the possibility of loosening structure.

SELZNICK: Right ... If you don’t have an independent judiciary, for example, you’re not going to get responsive law; you’re going to get some kind of regression to repressive law. There’s always that possibility of regression. These developmental things have been important to me. That’s one of the reasons why I found Sigmund Freud attractive, because there also you have developmental models and there is this assumption that you have to create certain basic, enabling conditions for human personality. But these enabling conditions aren’t going to be the whole story; there are going to be all kinds of problems on the road to maturity. But maturity is not an innocent idea. You can specify what it means, and you can ask how people behave that way.

22 Compare M. Kelman, ‘Trashing’ (1984) 36 *Stanford Law Rev.* 293.

23 P. Nonet and P. Selznick, *Law and Society in Transition: Toward Responsive Law* (1978).

And Jean Piaget has a developmental model of learning. I think these things tend to follow the same basic course. You create the competence to deal constructively with the problems faced by the system. Competence in dealing constructively means without giving up the enabling conditions. These have to be protected.

COTTERRELL: Yes. The only slight problem I have with that is: how do you know that there is a particular developmental trajectory? Even with, say, the development of the child, the moral development of the child – well, you know, Carol Gilligan's work, which showed that moral development *might* be significantly different for girls and boys. That's not necessarily anything to do with sex. It may be entirely or very largely to do with environment. So there is still this problem, isn't there, of knowing what is inherent as a developmental track: what is inherent, say, in law and what is something which is culturally or socially determined?

SELZNICK: No doubt, that is a problem, but I think that the more sophisticated developmental models can be restated in ways that allow for that kind of plurality. Because characteristically, the idea of flourishing usually includes the idea of adaptability and flexibility, so that the human person develops certain competences, including certain peculiar competencies to adapt to new circumstances without panicking, without regressing, by developing new ways of doing things.

I think a lot of this goes back to the pragmatist ethos. William James – I didn't always like some of the things he wrote, but when he was talking about the self, for example – or not just James but George Herbert Mead, the whole bunch of them; they more or less had the same idea. You had to create a more flexible self, but yet one that retained coherence. You had to be the kind of self that would be able to meet new demands, to make transformations as they were required, yet without losing the basic integrity.

Well, James had views like that, but so did George Herbert Mead. When Mead talked about the transition from the morality of the significant other to the generalized other, he was really talking about the capacity of people to move from some narrowly defined set of commitments and perceptions and so on, to something that would enlarge horizons, that would permit one to take the point of the view of the other, to be self-critical, without destroying oneself.

I mean, not all of this was wholly worked out, but underlying it was the basic thing. One thing one sometimes forgets about Dewey's argument, and one of the reasons why, in what I'm doing right now, I want to come back to that, and why I call it a humanist naturalism, is that he was interested in certain criteria of human development. So that, for him, growth was an important criterion.

But, of course, he meant certain things by growth. He meant that you grew in competence, and you grew in your ability to deal with new problems. You grew in your ability to overcome the narrowness and self-centredness of life. You grew in your awareness and your capacity to deal with interdependence.

That's why, for him, education was a moral enterprise. It had to do with these transformations of capacities.

COTTERRELL: But it's interesting, in a way – I mean, it may be just accidental – that you have slipped from talking about institutions to talking about the self and the personality. We were talking about law as an institution which has the capacity to grow in a way. Some people have suggested that the notion of responsive law – I think Robert Kagan, in the *Legality and Community* book²⁴ – that this is a very, very good notion for explaining a lot of important things about American law and American legal traditions, the argumentative tradition of working things out, and so on.

But the [*Law and Society in Transition*] book seems to me to have much more ambition. You're not just trying to explain American legal development, you're trying to say what law as a universal institution is capable of.

SELZNICK: Yes.

COTTERRELL: To put it in really crude terms: something like Islamic law, has this got the same capacity for flourishing towards responsive law? [Or] any legal system you want to take, which is not the home legal system?

SELZNICK: I think that's a fair comment, but I guess I would say that if this argument were more fully developed from the point of view of its implications for comparative study, you would want to say that responsiveness can take a variety of forms, and this variety will certainly reflect historical circumstances. But you will see some general patterns.

For example, the development in Germany of what they call a *Sozialstaat* has to be understood as an effort to get beyond traditional conceptions of the *Rechtsstaat*. And so, if you analyse that closely, you would say, well, yes, it has these elements of responsive law in that. Because it was trying to take account – use law to take account – of the social circumstances of modernity.

In Britain you would look more closely at the developments of the state and administration and the kind of decision-making bodies that have really enlarged the discretion of administrators and have broken down the kinds of distinction that I think Dicey emphasized in the nineteenth century about, you might say, the rather alien nature of administrative process or administrative law with respect to the situation in England.

I'm not saying it as well as I could, but I think in different settings, in China and in Britain and Germany, in Russia today, you would use the model we're talking about to identify the particular features or the particular resources that could be mobilized, given the historical circumstances, to meet the special aspirations of responsive law, which go beyond those of autonomous law.

COTTERRELL: Right.

24 R.A. Kagan, 'On "Responsive Law"' in *Legality and Community: On the Intellectual Legacy of Philip Selznick*, eds. R.A. Kagan, M. Krygier, and K. Winston (2002).

SELZNICK: Autonomous law is mainly a way of creating a legal order and doing so by establishing the legitimacy of the courts and the legitimacy of other officials, but responsive law asks us to go beyond legitimacy, to maintain legitimacy while putting it at risk. Well, there are different ways in which that could be done; there's not just one way.

In my paper on 'Legal Cultures and the Rule of Law',²⁵ I should have said more about this, because I was trying to emphasize there that our notions of the rule of law are not incompatible with variation. As I said there, we don't have big arguments about ... the French civil law system versus the British Commonwealth system – which one is a better exemplification of the rule of law.

I mean, we don't argue about that because we don't really know. We say, well, probably each in its own way does a pretty good job of exemplifying the rule of law; each in its own way takes certain risks and needs certain modifications, and so on, but basically we're talking about rule-of-law countries. The same thing would be true of Chinese law, too, where we would expect that there would be different renderings of the responsive law idea . . .

COMMUNITARIANISM

COTTERRELL: All right, could we move on to talk about communitarianism? ... When did this appear on the horizon for you?

SELZNICK: As I told you, around 1979 or so, I began thinking about doing this book, and I even decided on the title, *The Moral Commonwealth*. I know that I was thinking about it ... in my little study up at Geyserville; so that, it had to be during 1978, '79, during that time. I then wrote a prospectus and, while there were a lot of changes along the way, the basic structure of it remained the same, I think: four basic parts and what they were and so on.

I was working on this in the eighties, and it wasn't because of the communitarian discussion. I had already had, in my outline for the book, a part that I called 'The Moral Community,' which was Part Four of this book. And then I began to hear about and read about this argument, this communitarian argument, and I said to myself, 'Well, it looks— that's where I am. I'm thinking that way.' A lot of what was being said in that communitarian discussion seemed to me to resonate with both what I was doing and thinking personally and also with the foundations of sociological thought.

An awful lot was made of ideas like – I mean, Charles Taylor was writing essays about atomism, for example. Well, the critique of atomism was part of

25 P. Selznick, 'Legal Cultures and the Rule of Law' in *The Rule of Law After Communism: Problems and Prospects in East-Central Europe*, eds. M. Krygier and A. Czarnota (1999) 21–38.

basic sociology for a couple of generations. The whole idea of a social self, the idea of human interdependence. Many of the themes that were associated with the development of communitarian ideas were, it seemed to me, wholly consistent with sociological reasoning. So that's really how it began.

Then I began to think a little bit more fully about it, and . . . I think in the mid-eighties at some point, when I retired from the Department of Sociology, they asked me to do a kind of valedictory lecture, which I did, and I called it 'The Idea of a Communitarian Morality'. I think that meeting was in '86. And so I gave that lecture here on campus, and this was something I wrote out . . . The article, after some revisions, was published in the *California Law Review*.²⁶ So that was my first statement accepting the communitarian identification. It seemed to me to be a natural thing in that, just as I didn't associate sociology with conservatism – on the contrary, it seemed to me, much of sociology could be understood in a quite different way – so I didn't identify communitarianism with conservatism, which many people were doing. Well, that's how it started.

COTTERRELL: So initially it was the communitarian *philosophers* that you were reading, particularly Sandel and Taylor, and so on?

SELZNICK: Yes. I guess I read something of Etzioni's, too.

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COTTERRELL: The other thing I wanted to pick up is the relationship with liberalism, because you talk about 'communitarian liberalism'. Am I right in saying that with your writing on communitarianism . . . you actually state a very clear position on liberalism, as such, and it's a . . . powerful support for essential elements in liberalism but a critical view as well? And communitarianism gives you a means of taking your distance.

SELZNICK: I think that's fair. Again, I don't think that this is really different from what sociologists were implicitly saying for a couple of generations. People like Herbert Blumer – he didn't have all this clearly in mind and maybe wouldn't use words like 'liberalism,' but he would *thunder away* to his introductory students about the importance of interdependence and social interaction and communication and all of this stuff, as a *moral* thing as well as [for] being able to see the world clearly. This is what the world is like.

And I think in my textbook, at some point, I remember saying something about the critique of atomism – this was long before any of this stuff was talked about – that the sociological approach resists the idea of the isolated, self-sufficient human being. But you're right. I have emphasized this idea of communitarian liberalism. I wanted to be sure, as I said in the preface to this book²⁷ – I said I was keen to show that the communitarian perspective

26 P. Selznick, 'The Idea of Communitarian Morality' (1986) 75 *California Law Rev.* 445.

27 Selznick, *op. cit.*, n. 8.

belonged to the progressive experience in American thought and practice, and not to something else.

Now, there is another side to it that people could focus on, but I wanted to emphasize the importance of the hybrid.

COTTERRELL: As a way of making a clear distance from the conservative side of communitarian?

SELZNICK: Yes. The tricky problem comes up when you're comparing communitarian with what you might call 'welfare liberalism' ... because welfare liberalism already has a lot of communitarian strands in it.

COTTERRELL: Yes.

SELZNICK: And so why not just say that? Well, I think the reason is that many people who associate themselves with welfare liberalism are still too hung up on doctrines of autonomy and untrammelled freedom and things of that kind that are inconsistent with the communitarian view. As I've said someplace, it used to be taken for granted that when we were talking about liberty, we really meant *ordered* liberty, and that was a phrase that was sometimes used: 'ordered liberty.' But that's not a phrase that people use nowadays.

COTTERRELL: No.

SELZNICK: Right?

COTTERRELL: Just 'liberty'.

SELZNICK: Just 'liberty'. And so the communitarian liberalism is a critique of certain excesses in liberalism that extend to the ideas of even welfare liberals, notoriously Ronald Dworkin. Dworkin has, I think, many communitarian strands in his thought [that] he wouldn't admit to, but he still wants to hold fast to certain ideas and even tries to define liberalism as a system of thought which calls for the community to be neutral with respect to conceptions of the good.

COTTERRELL: Yes, right. And also [for Dworkin], as a legal theorist, as a legal philosopher who sees law in the lawyer's sense of a certain set of nation-state legal institutions, the community ends up as being the political community of the state.

SELZNICK: Yes.

COTTERRELL: Which is ultimately very different from your view, isn't it? I mean, community as a unity of unities and all this sort of thing.

SELZNICK: Well, I think the unity of unities idea would allow us to say, well, certainly *for some purposes* it's important to maintain more limited communities, but we are certainly always open to the possibilities of more comprehensive unities being what really count.

But when Dworkin criticized Hart's positivism in his [Dworkin's] earliest writings and was expressing this more distinctively American view of the law ... focusing on the idea of principles versus rules, it seems to me he was moving in a communitarian direction because he was saying: how can we understand what lies behind the rules that we have as the set of more basic beliefs and institutions that hold the legal order together and

that constitute a much more complex rule of recognition than Hart seemed to be suggesting?

And so he was saying, well, it's really the community in some sense that speaks and offers this authority that lies behind the rule. But, as *you* say, I don't think he's thought it through. He's so smart, you know, you would think he would have thought through everything.

COTTERRELL: Yes, but in the end, his project is completely different from yours, isn't it? I mean, an interpretive community is very important to Dworkin as the way of developing the law and as the way of bringing out the law's meaning, generation by generation and so on. But you're a sociologist ultimately, so community is a way of making sense of the different kinds of social bonds and allegiances and differentiations. The project is not the same, is it? I mean, there are convergences.

SELZNICK: I think there *are* convergences. I'm not always sure I always understand what's meant by 'interpretive community,' but it seems to me that part of the process of community formation *is* a process of interpretation, depending a little bit on what we mean by that. But if we give meaning and we interpret the significance of certain events, we say: here we had a founding; here we had a powerful symbolic utterance, the Gettysburg Address by President Abraham Lincoln; here is our interpretation of the Civil War and what that meant for the formation of the American community.

It requires interpretation, if by interpretation we mean generating meanings and the transformation of meanings. The nature of the community has been reinterpreted. It's been reinterpreted to make African-Americans and women full citizens, at least in terms of aspiration. So I wouldn't separate those two [projects]. But I admit that I'm not sure that I always understand what people mean by talking about interpretive community.

COTTERRELL: I haven't read, by any means, all you've written about community, but from what I have read, you seem to be very concerned to emphasize both unity and differentiation –

SELZNICK: Yes.

COTTERRELL: – and the fact that community can exist at many different levels and many different places, and whatever those levels and places are, they're all valuable. They all serve the richness of life, and they all go beyond the atomistic liberal thing.

SELZNICK: Right.

COTTERRELL: In a way, I think that's an incredible strength, because I don't see that in Dworkin; I just see his interest as being the interpretive community of the legal system, and that's it, really. But one thing I'm not clear about: can you really hold to a strong, clear view of what a community is, if you're very concerned to recognize this great variety of forms of community life? We all know that 'community' is a very vague word in lots of its usages, and the reason why a lot of social scientists reject it ultimately, as a concept, is because it can be so vague and slippery, and it can apply in so many contexts.

SELZNICK: That's true. But, I don't know: 'social relation' is a very vague concept. 'Society' is a very vague concept. It applies to all kinds of settings. I agree with you, but there has to be a strategy in dealing with that. We're talking about something that is, indeed, quite general. My strategy for handling that is to focus on variation and to say, well, a group, whatever kind you want to talk about, is a community in so far as – and then I list a few criteria. And it seems to me that has the great value of pinning it down. These criteria are found; you usually know where these criteria are. You can look at a military unit and ask yourself, in what ways and to what extent does this criterion apply? You can look at a department of sociology or a law school and ask about these things. You can look at a city like Berkeley and ask these questions.

And so the *generality* exists, of course, but I think that's true in a lot that we have to deal with. Religious experience is a very general idea, and you'd have to locate it more sharply, and also then see how it varies in this way. I think that it may be true that social scientists reject the idea [of community], but I think this is somewhat mindless. I think they should understand the degree to which they, themselves, are committed to using it, or some substitute for it. In the common sense, they use it all the time, of course. We know what we mean when we're talking about the university community. It's not that vague and elusive. We may have to spell it out a bit, but we know what that means.

.....

COTTERRELL: In a way, you're a *member* of the communitarian movement. I think you're happy to think of yourself as part of the communitarian movement.

SELZNICK: Yes.

COTTERRELL: That seems to me a very new thing, in a way, in your career, because you don't seem to me to be a joiner. You've gone your own way very much intellectually. Is there a sense, a bit of a feeling of coming home, finding – not in the whole of your intellectual life, but a certain part of your intellectual life – a feeling of rootedness?

SELZNICK: Somewhat, although I don't think it's right to say that I've not been a joiner. I've had strong feelings of identification and sometimes of participation, even in the years since I left the radical movement. I didn't completely turn my back on identification with social movements and politics by any means. I became strongly committed to, somewhat partisan, even, with respect to President Harry Truman and his views. I didn't agree with him about the atom bomb, but I mean –

COTTERRELL: Yes. I certainly didn't mean you haven't had strong allegiances, but as a sociologist, you went your own way.

SELZNICK: Oh. Yes. Well, it's true. You're right in this way also: that what I came to see in connection with this communitarian turn was that there's always been an implicit public philosophy in sociology; that

communitarianism – the new communitarianism that I’m talking about – can be significantly understood as articulating the public philosophy of sociology. Now, it goes beyond that because it takes up issues that sociology wasn’t particularly concerned with, such as free speech and similar matters, but the basic ideas about the structure of society, about the importance of integration, of overcoming divisions, of authentic communication, of socialization for autonomous judgment, of the interplay of freedom and discipline, and many other things, I think, are part of what sociology really has been about.

I guess this could be argued, there could be controversy about this because many sociologists don’t like to think this way, but I think there *is* an underlying public philosophy. There is a tendency for sociologists to be meliorists rather than revolutionaries.

COTTERRELL: Yes.

SELZNICK: An effort to try to bring together, to treat all of the components of society as authentic and valued participants in the larger whole, and therefore not to waste the resources of human capital and so on in a society; [to emphasize] the importance of what’s lately been called ‘social capital’ as a background thing. I think what I said in [*The Communitarian Persuasion*]²⁸ about institutionalization and obligation – at one point, I was talking about enterprise responsibility, and I said you could rephrase Michels’s famous slogan, ‘Who says organization says oligarchy’ into ‘Who says organization says obligation’ –

COTTERRELL: Yes.

SELZNICK: That’s a more general but, I think, more profound *sociological* conclusion about organizations. So sociology and communitarianism fit together very neatly. I mean, it may not be complete, but together they represent very important strands of public philosophy, and together they represent strands that I think have to be called communitarian liberalism. They’re certainly not classical liberalism and probably not just welfare liberalism, because there’s too much concern for the human person.

COTTERRELL: This must be really your way of seeing both sociology as a home intellectually and communitarianism as a home, because obviously communitarianism is a place of philosophers as well, who have no sociological background at all.

SELZNICK: I know. They’re rediscovering sociology, some of them.

COTTERRELL: Right. Yes, yes. But it’s pretty hard to say that sociology’s destiny, in a way, is communitarianism. I mean, it’s a particular perspective. And your very distinct perspective as a sociologist plainly does find a ready home in communitarianism.

SELZNICK: That may be. But I’m not so sure it’s such a distinctive perspective. Take work on crime, delinquency, and things like that. I think the main motifs of the sociological analysts have focused on the importance

28 id., p. 98.

of reconciliation, reunification, of postulating the humanity of the criminal, of trying to provide constructive rehabilitative ways of dealing with undesirable deviance, of appreciating that deviance may also be healthy for the society in some ways, of resisting absolute conformity while accepting the need for strategies of reintegration, of recognizing that people who commit crimes are like the rest of us, and their circumstances are different. That's all part of main sociological analysis.

COTTERRELL: Yes.

SELZNICK: And so these are communitarian views.

.....

COTTERRELL: I suppose violence and war is the very antithesis of community.

SELZNICK: Well, there are certainly a lot of communities that have engaged in violence. It is the antithesis of the ideal of community.

COTTERRELL: As you see it, yes.

SELZNICK: Yes. I've tried hard to say that we have to take account of the dark side of community as well, and the dark side of community is identity politics and the horrors that are committed in the name of God and country and things like that.

COTTERRELL: And this is why the balance of civility and piety, I guess, is so important.

SELZNICK: Yes.

COTTERRELL: There's a sort of tension, I think, in all your work; this idea of [a] tension of things which have to be held in balance somehow.

SELZNICK: Right. I think I became aware of that more in writing *The Moral Commonwealth*. There's an interesting transition that took place there, I think. I began with writing about naturalism and ethics and the pragmatist perspective and things like that . . . but that was more a focus on knowing, on cognition, knowing the good. But as I came toward the end of the book and was writing about this idea of covenant and commonwealth as the last chapter, I began to see much more clearly that one couldn't only talk about knowing; you had to have resolve and commitment, and that there is a difference between knowing and doing, knowing the moral truth and really internalizing the moral truth.

It seemed to me piety was very important for the latter. Of course, here again, we do that in many contexts. We try to get people to understand what is important for good science or whatever, but we don't rely on simply knowing that; we socialize people so that they won't have self-respect if they do the wrong thing. That's why I felt you had to open the door to concepts of piety, which involve this kind of commitment. I've tried, as you say, to have this balance. I don't know if I always understood this, but I came to understand it.

What is important about my thinking is that an openness to theological ideas is not new.

COTTERRELL: Right.

SELZNICK: I mean, this is really something that I had in the forties. Even my sympathy to Christianity is not new.

COTTERRELL: Yes, because you read Reinhold Niebuhr, didn't you, really early on?

SELZNICK: I read Niebuhr when I was very young, yes. But I wrote something in which I explicitly talked about the importance of Christianity, back in the forties. That didn't mean that I had become a believer or anything like that ... If someone asks me what is my religion, I know what answer they want. They don't want to know about my beliefs; they want to know about my identity and what my origins are. So I'm aware of that.

But what I'm saying is that probably being sensitive to those things early on made it a lot easier for me many years later to think the way I did about problems of piety and religion. I don't think I've changed my basic views, which are more naturalist in scope; I'm trying to broaden naturalism to include a deeper appreciation of what religious experience is and see it as part of the continuities of human experience. I don't think reverence is just something somebody thought up that has no roots in what human beings need and what is good for their lives, and so on.

So I see that kind of continuity, but there are also these changes. One of the reasons I feel it's important for us to continue working as long as we can is that we do learn new things. I expect, in this next project [a book provisionally titled *A Humanist Science*] – I'm sure it'll be my last, if I get it done – I'll repeat a lot of things that I've said in the past, of course, but I think there will be things that I'll have learned that I didn't know before. That's very inspiring, very heartening.

COTTERRELL: Yes. You finished the last chapter of your new book [*The Communitarian Persuasion*] with – The last chapter is on theology, religion and community.

SELZNICK: I call it 'A Common Faith,' yes. Which is the title that Dewey used for his lecture, a little book he put out, called *A Common Faith*. I mention that.

COTTERRELL: Right. Is this becoming more important to you, really, to make this connection with religion? I know that theology has always been there, pretty well.

SELZNICK: I don't know that it's more important. I think the current situation in the world makes *religion* more important, maybe, than ever, in the sense of how do we deal with religious extremism.

COTTERRELL: Ah, right. So it's partly to understand religion as a problem.

SELZNICK: Partly, it certainly is a problem.

COTTERRELL: Yes.

SELZNICK: It's partly a problem and partly a beacon, an affirmation. As I say in the chapter, it's an affirmation of the principle of community. I don't know what people will think of this, but I came up with this formulation of 'the principle of community' as the union of solidarity and respect.

COTTERRELL: Yes. Yes.

SELZNICK: Well, some people will like it, I think. I think it captures something . . .

‘BACK TO FOUNDATIONS’

COTTERRELL: Just finally . . . you’ve been absolutely central to the establishment of sociology of law as a field – I don’t call it a discipline; I call it a field – in America and in the English-speaking world more generally. Are you pleased with the way things have turned out for law and society studies? Do you think there are any wrong turnings that have been taken or any better turnings that could be taken? It’s a big field, obviously, and very hard to generalize.

SELZNICK: Yes. It’s really hard to say. I’ve not been entirely pleased, because for a long time I felt that the mainstream work of law and society was too much influenced by a) positivism and b) by, later on, a certain amount of postmodern fragmentation and indulgence and lack of coherence, and maybe – most fundamentally – that the basic ideas that I have espoused have not been really prominent in all this. People have not really been interested in pursuing the larger project of how we could improve the legal order, but have gone sort of hit or miss at various issues, which is not saying something too much distinctive about law and society, but probably [is] true of social science generally. . . . But on the other hand, I think a lot of good people have been doing a lot of good things. We don’t have the kind of, I would say, strong intellectual leadership that’s needed. I’m not going to give it. But there ought to be a way of trying to create that leadership of people who would really, in a sustained way, come to think out what the law and society concerns are all about and try to be programmatic with that.