

The Role of Science in Law

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The allure of science has always captivated members of the legal profession. Its siren's song offers a tune of perfection and the promise of endowing law with the respect and deference from society that we crave. We continually look to science to rescue us from the discomfort of difficult legal decisions, and we are constantly disappointed.

The powerful allure of science flows in part from our distress over the imperfections of law. With 20th Century legal theory ringing in our ears, it is tempting to see law as a hopeless enterprise, distorted by biases, hampered by ineptitude, and cluttered with contradictions. Anything deconstructed loses power, although ultimately, the instinct to deconstruct everything loses power, itself, by leaving nothing. Nevertheless, with these critical perspectives in mind, the call of science is particularly strong.

This article traces the interrelation of law and science from the early 1800s through modern law, analyzing law's attempts to import science into law and attempts to export law's problems to science. Using examples from internet searching, gene patenting, antitrust law and other doctrines, the article explores the nature of law and suggests approaches to make science work more effectively within the domain of law.