

Alf Ross and the Sociology of Law

Jørgen Dalberg-Larsen

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1 Introduction

Jes Bjarup is undoubtedly one of the greatest experts on Scandinavian Legal Realism. Since the 1970s he has written a great number of books and articles on this school of theory;¹ it is, however, no exaggeration to say that he takes a highly critical view of both the school and its leading lights. Especially Hägerström has been a central subject for Bjarup's research, but he has also written a good deal about the Danish jurist Alf Ross, who during some periods has had great influence on jurisprudence in Denmark.

According to Bjarup, Ross – like the other Scandinavian realists – gives a systematically distorted picture of the nature of law, which to a great extent is due to the conception of science they have sprung from. Bjarup thinks that attempts have been made to actually change the science of current law into a social-psychological discipline.² According to Bjarup, there is indeed room for such a science, but Ross has failed to take the consequences of his own position and carry out a regular study of e.g. judicial behaviour taking into account all factors motivating judges.

Thus Bjarup proposes to consider Ross not as a philosopher of law, but as a sociologist, and consequently the issue below will be Ross' view of the sociology of law and its various topics.

The following section presents Ross' general view on the sociology of law as part of the entire science of law, as well as his general view on the social sciences. The next two sections will deal with the two legal-sociological subject fields that Ross took a special interest in: on the one hand the understanding of judicial behaviour – a subject of crucial importance for Ross' view on how to verify statements about the contents of current law. And on the other, studies of the effects of legislation, which according to Ross ought to play a central role within the discipline legal politics.

The focus is especially on Ross' points of view from the 1950s; both because it is during this period that his conception of the nature and functions of the sociology of law is clearly defined, and because it is also during this period that the Nordic sociology of law makes its final breakthrough. For that reason, reference is also made to Ross' evaluation of some of the first Nordic dissertations on the sociology of law, just as the views of the sociologists of law on Ross will be included. The article concludes with some general remarks on Ross' views on the sociology of law, seen from a modern perspective.

2 Ross' General View of the Sociology of Law and Social Science

The major legal-philosophical work of Alf Ross is no doubt *Om ret og retfærdighed* from 1953,³ which was published in a slightly revised English

¹ E.g. Bjarup, Jes, *Skandinavischer Realismus*, Karl Alber, München 1978.

² Bjarup, Jes, *Alf Ross' realistiske retslære*, Bjarup, Jes & Jørgen Dalberg-Larsen, *Retsbegreb, retsanvendelse og retsvidenskab*, Bogformidlingens Forlag, Århus 1993, p. 31-58, especially p. 43-44.

³ Ross, Alf, *Om ret og retfærdighed*, Nyt Nordisk Forlag, Copenhagen 1953.

translation (*On Law and Justice*) in 1958.⁴ In this book, the science of law is divided into two branches⁵ One of them – legal dogmatics or jurisprudence in a narrow sense – has legal norms as its object of study, whereas the other – the sociology of law – concerns itself with law in action. According to Ross, law in action and the norms of law are “not two independent spheres of existence, but different sides of one and the same reality”.⁶ He is consequently convinced that they can be described as “two viewpoints, each mutually presupposing the other”.⁷ In addition, he considers that “doctrinal study of law can never be detached from the sociology of law. Although doctrinal study is interested in ideology, the latter is always an abstraction from social reality”.⁸

Ross thus gives the sociology of law a very central place within the science of law in general; however, at the same time he writes, “The sociology of law as a branch of science is as yet so new and undeveloped that it is difficult to state with which problems it is concerned.”⁹

Whether the sociology of law in general could be described as completely new and undeveloped at this time is highly debatable; however, it is correct that in the Nordic countries it was only just developing at this point. In his Danish edition of the book, Ross refers to an article written in 1948 by the Norwegian Vilhelm Aubert outlining the subject fields of the sociology of law, referring mostly to American literature on the topic.¹⁰

Moreover, Ross writes that it is the objective of the sociology of law “to discover invariant correlations in the law in action”,¹¹ and he carefully divides the yet almost non-existing discipline into several subcategories.¹² He thus distinguishes between fundamental sociology of law, consisting of a general part as well as a number of specialised branches on one side, and on the other, applied sociology of law, which like “the applied natural sciences has a field which is chosen and arranged according to practical problems”.¹³ In this context, he especially mentions studies of the impact of laws “which are important for the practical problems of legislation”.¹⁴

As can be seen, Ross’ conception of the sociology of law shows many traces of his logical positivist view of science, according to which all branches of science have to be regarded as parts of one single science, moulded on the natural sciences. It is thus alien to Ross’ way of thinking to imagine a sociology of law founded to a larger extent on the ideals of the humanities or on

⁴ Ross, Alf, *On Law and Justice*, Stevens, London 1958.

⁵ Cf. Ross, opus cit. note 4, p. 19.

⁶ Cit. Ross, opus cit. note 4, p. 19.

⁷ Cit. Ross, opus cit. note 4, p. 19.

⁸ Cit. Ross, opus cit. note 4, p. 19.

⁹ Cit. Ross, opus cit. note 4, p. 20.

¹⁰ Aubert, Vilhelm, *Noen problemområder i rettsosologien*, Tidsskrift for Rettsvitenskap, vol. 61, p. 432-466.

¹¹ Cit. Ross, opus cit. note 4, p. 20.

¹² Ross, opus cit. note 4, p. 22-24.

¹³ Cit. Ross, opus cit. note 4, p. 23.

¹⁴ Cit. Ross, opus cit. note 4, p. 23.

conceptions of society as an object of study requiring specific forms of scientific studies, theoretical as well as methodical.

Ross seems to imagine that it is possible, by using exact empirical research, to find invariant correlations between phenomena in law and society, independent of time and place, whether it is a question of factors determining judicial behaviour or a question of the effects of law on society. In that respect, his conception fits those advanced by contemporary sociologists, e.g. George A. Lundberg, based on logical positivism.

Having this conception of science, Ross as those sharing his views rejected large parts of the social-scientific tradition from the 19th century onwards, as will in fact appear from several passages in *On Law and Justice*. He thus rejects all kinds of general theories on development, and among others things he criticizes Marxism, which he calls economic historicism of a quality just as inferior as the historical school within jurisprudence.¹⁵

Altogether, Ross has a knack of finding negative names for the theoretical views he dislikes, also within the social sciences. For instance, he characterizes various attempts at establishing a functionalist theory of law as natural law in disguise or as crypto-natural law,¹⁶ which in Ross' world is just about the most negative designation imaginable.

As mentioned above, Vilhelm Aubert was an early Nordic sociologist of law, who already during the 1940s was occupied with the problems of the sociology of law at a theoretical level. In the 1950s he is one of the driving forces behind the start-up of concrete legal-sociological research in the Nordic countries, a.o. with his book *Om straffens sosiale funksjon* (On the social function of punishment) from 1954, which Ross reviewed in a long article the same year.¹⁷ Ross begins his review by expressing his sympathy in principle for the young researchers who believe in the possibilities of the sociology of law and who are not content with manifestos alone. He then goes on to write that unfortunately he has been searching in vain for evidence fulfilling the promises, according to which the current estimates of the impact of the rules of law can be replaced by certain knowledge based on methodical empirical observations.

Therefore, this book too was a great disappointment to Ross – to put it mildly. According to him, there is a striking absence of regular empirical research in the book. Instead, it advances some absurd hypotheses; for instance explaining the prohibition of incest by referring to some structural needs to avoid rivalry in the family. Ross' criticism that Aubert's book fails to support its theoretical statements empirically is understandable. However, it is a long way from there and to a wholesale rejection of functionalist explanations altogether.

Within the Nordic sociology of law, Theodor Geiger holds a prominent position. He came to Denmark from Germany in the 1930s, and in 1947 he wrote a major work on legal-sociological theory: *Vorstudien zu einer Soziologie des Rechts* (Preliminary studies on the sociology of law). In 1950 this book was

¹⁵ Cf. Ross, opus cit. note 4, p. 347-351.

¹⁶ Cf. Ross, opus cit. note 4, p. 249 and 257.

¹⁷ Ross, Alf, *Et rettsociologisk forsøg*, Tidsskrift for Rettsvitenskap, vol. 67, p. 358-376.

reviewed by Ross,¹⁸ who is somewhat more appreciative of Geiger than of Aubert. However, he finds that Geiger misinterprets the concept of law in a fatal way by regarding it to be unilaterally oriented towards the compulsion determined by fear, and by ignoring the acceptance of power based on an ideological acceptance of the underlying authority. According to Ross, this ideological acceptance of power is important for the citizens' acceptance of the rules of law and accordingly their tendency to be law-abiding.

However, it does seem a bit of a paradox that Ross levels such severe criticism against Geiger's conception by drawing attention to his own alternative theory, bearing in mind that, according to Ross, theories of law should always be supported by sound empirical research. In actual fact, Ross does not refer to any sound empirical support for his points of view, which should therefore be ranked as ordinary common-sense forms of knowledge – precisely what in Ross' own view ought to be replaced by empirically based real knowledge.

Apart from that, Ross considers Geiger's book a valuable contribution to the sociology of law, and Geiger to be a keen sociologist, who, unfortunately, knows nothing about legal theory and legal science. And, according to Ross, Geiger's horizon darkens the more he touches upon specific legal problems.¹⁹ Arguably, Ross' writings from 1950 should probably be interpreted to mean that he thinks that there is an intimate connection between the sociology of law and legal dogmatics, but that there are insurmountable differences between juridical, legal-dogmatic and legal-sociological problems, which means that the basic concepts of law cannot be defined in the same way within these two fields. And it is exactly Geiger's assertion that a correct legal-sociological definition is also a correct jurisprudential (legal-dogmatic) definition which so arouses Ross' indignation.

It is not my intention in this place to go further into Ross' conception of the nature of legal dogmatics, but only to point out that whereas many scientists have regarded Ross as a legal theorist whose real intention was to replace traditional legal dogmatics with social-psychological or legal-sociological studies,²⁰ Ross himself thinks that he has only given a new and more satisfactory account of the scientific nature of traditional legal dogmatics.

3 Ross on Judicial Behaviour

It is beyond doubt that Ross' best known contributions to the sociology of law relate to his conceptions of the factors behind the behaviour of judges. The

¹⁸ Ross, Alf, *Review of: Theodor Geiger, Vorstudien zu einer Soziologie des Rechts*, Tidsskrift for Rettsvitenskap, vol. 63, p. 215-224.

¹⁹ Ross, Alf, *Om begrebet 'gældende ret' hos Theodor Geiger*, Tidsskrift for Rettsvitenskap, vol. 63, p. 243-272, spec. s. 243. See also Dalberg-Larsen, Jørgen, *Geiger, Illum og Ross om ret og retsvidenskab*, Perspektiver i samfundsvidenskaberne, Aarhus Universitetsforlag, Århus 1994, p. 35-48.

²⁰ Cf. Bjarup, opus cit. note 2, p. 43, Aubert, Vilhelm, *Rett og samfunnsforskning*, Universitetsforlaget, Oslo 1958, p. 35.

comprehension of judicial behaviour is pivotal in Ross' philosophy of law, which is again defined as a theory about the basic nature of jurisprudence.

In Ross' opinion, the main task of jurisprudence proper is to make assertions about current law that can be verified in an exact way, just like all other types of scientific assertions.²¹ For that reason, Ross needs to find an exact foundation of verification for these assertions, and, as is a well-known fact, he chooses the behaviour of judges. However, Ross does not regard assertions about current law to concern judicial behaviour. On the contrary, they concern the norms, and the contents of norms are to be conceived as an ideological phenomenon which does not appear in time and space, and which can therefore not in itself be studied in a science formulated according to the model of natural sciences. However, it is nevertheless possible to comment on the contents of legal norms on an exact scientific foundation, due to the fact that, in a manner of speaking, the norms come to real tangible manifestations in the physical world by being applied by the judges in their decisions. That is: the given basis of Ross' interpretation of assertions about current law is the conception that it is actually possible to express a fairly reliable opinion on the contents of current law by referring to future judicial behaviour in the field in question. Accordingly, all judges must be influenced by one and the same factor when judging, and according to Ross this factor can only be a joint ideology, adopted by all of them as part of their own individual ideology.

This is the main contents of Ross' theory on judicial behaviour. However, it is indeed complicated by the fact that Ross also mentions other factors which make the judges judge the way they do, but which are typically not presented openly in their *ratio decidendi*. Therefore, these may have the character of "a facade designed to support the belief in the objectivity of the decision".²²

It can therefore be established that on one hand Ross attaches decisive importance to a joint ideology as an explanatory factor for the judicial behaviour required to verify assertions about current law, but that on the other hand, along with representatives of the American Realism, he accepts that judicial behaviour can be explained from a plurality of widely different factors.

Ross' sociological theory on the existence of a joint judges' ideology can be regarded as the crux of his view on the assertions of jurisprudence. However, as has been mentioned already, it is also a theory which he makes no serious attempt to verify in accordance with the guidelines he thinks ought to be applied within any science. In principle, it would be possible to submit the theory to further scientific tests; however, Ross himself seems to feel no need to engage in such a project. Instead, he gives further specifications of the contents of this joint ideology in a number of areas, e.g. in his account of the sources of law, which he considers an account of part of the joint normative ideology of the judges.²³

Especially in the early American sociology of law, the study of judicial behaviour has been a main theme, for obvious reasons. In the first place, this subject has been of great political importance in the USA, as American courts have great political influence, and because it is evident in the USA that judicial

²¹ Ross, opus cit. note 4, p. 38 f.

²² Cit. Ross, opus cit. note 4, p. 44.

²³ Ross, opus cit. note 4, p. 75.

behaviour cannot be explained by referring to a joint legal ideology; this is in particular evident in cases of dissenting judgments. Studies of such cases have shown that in identical cases some judges systematically judge in one way, and others judge in a totally different way. In the second place, the reason why the research of judicial behaviour is widespread is probably that research can be carried out in a way meeting the scientific demands advanced within logical positivism, and in similar schools which have also been very important in the USA, for example within the sociology of law between the 1920s and the 1950s.²⁴

However, it could be argued that American research of judicial behaviour has virtually ignored the many situations where judges do have a common conception of how law is to be applied, and that in this respect Ross' theory could be a valuable supplement. Only, it has to be admitted, it has got no empirical basis, which Ross too considers important for such theories, and which he frequently criticizes others for lacking when they advance their various legal-sociological theories. Nor are there any precisely formulated hypotheses about which factors play the most decisive part for judicial behaviour in different situations, which might form the basis of actual empirical research.²⁵

It is exactly Ross' social-scientific view of judicial behaviour and his emphasis on this behaviour in determining current law which so inspired the young law-educated researchers of the sociology of law who became the pioneers of Nordic sociology of law.²⁶ A good example is Verner Goldschmidt, who made the first large empirical legal-sociological study in Denmark.²⁷ His subject was customary law in Greenland, and among other things he was interested in defining the role of the judges and thus the factors that influence judicial behaviour in general, and in Greenland in particular. Goldschmidt was inspired by Ross' definition of the source of law: the cultural tradition,²⁸ which he presumed to figure prominently in a Greenland context, and in his book *Retlig adfærd* (Judicial behaviour) he established a general theory about the different components of the judicial role, which was then tested in the Greenland empirical study.

In 1957 Ross reviewed Goldschmidt's book,²⁹ and once again he was largely disappointed about the results of the new research in the sociology of law. For one thing, Ross deplored that in his definition of the concept of legal authorities, Goldschmidt had not attached enough importance to the authorities' possibility of using physical force as a legal sanction. In addition, Ross was discontented

²⁴ See Dalberg-Larsen, Jørgen, *Lovene og livet*, 4th ed., Greens Jura, Copenhagen 1999, p. 180-185.

²⁵ See Bjarup, opus cit. note 2, p. 44, Goldschmidt, Verner, *Retlig adfærd*, Bianco Lano, Copenhagen 1957, p. 174.

²⁶ See Blegvad, Britt Mari, *The Systematic Position of Sociology of Law in Current Scandinavian Research*, Acta Sociologica, vol. 10, p. 2-19.

²⁷ Goldschmidt, opus cit. note 25.

²⁸ See Bentzon, Agnete Weis, *Kilder til ret og retssociologi*, Lovens liv, Jurist- og Økonomforbundets Forlag, Copenhagen 2000, p. 1-14, espec. p. 6.

²⁹ Ross, Alf, *Retshåndhævelse i socialpsykologisk belysning*, Tidsskrift for rettsvitenskap, vol. 70, p. 110-127.

with Goldschmidt's findings that social pressure from the surroundings was an essential factor for the understanding of the conduct of the authorities. In Ross' opinion, Goldschmidt ought to have attached greater importance to some common, normative attitudes on the part of the authorities as a factor of explanation.

It is highly probable that Goldschmidt's study is open to criticism in a number of respects. However, it seems conspicuous that Ross levels his criticism against precisely the points where Goldschmidt's conception is in disagreement with Ross' own. Ross seems to demand that – whether the context is a modern Western European system of law or Greenland's customary law – exactly the same concepts should be applied and the same results should be reached as to what determines judicial behaviour. This does not seem to indicate any real interest on the part of Ross in modifying his own points of view in the light of the results from empirical social research. However, at the end of the review Ross praises the book for presenting valuable observations and analyses of conditions in Greenland essential to legislation and administration.

Much later, Ross' view of current law as being empirically demonstrable by means of judicial behaviour inspired the Norwegian Hans Petter Graver in his argumentation for seeing the state of the law of a country not as a systematic unity but as a number of overlapping legal orders with partially different contents.³⁰ This conception of law characterized by legal pluralism,³¹ Graves motivates purely empirically in studies of the application of the Norwegian Housing Act, which he finds to reflect stable differences when applied by various types of competent authorities. Thus the courts determine the state of law in one way, the central administrative authorities in another, and the local administrative bodies have yet other ways of applying the law, which all differ from each other as well as from the central decisions.

According to Graver, the empirical fact is that if Ross' perspective of judicial behaviour is expanded to comprise all competent authorities applying the law, then it is no longer possible to regard national law as one coherent unity.

Graver's new "realistic" conception of law seems to be in logic continuation of Ross' conception. However, it is very doubtful whether Ross would have accepted it: The conception of current law as a systematic unity is a feature so fundamental to his conception of law that it is hard to imagine he would have abandoned it.

Then it is exactly Ross' unsubstantiated hypothesis about a common ideology of the judges which constitutes an attempt to give his conception of the system of law as a unity an empirical foundation. He was not minded to give up this foundation, even in a Greenland context, and would probably be even less so in the case of Nordic legal matters as those studied by Graver.

³⁰ Graver, Hans Petter, *Normative systemer. Skisse til en oppløsning av rettsbegrepet, Regulering og styring*, Gad, Copenhagen 1989, p. 53-68.

³¹ On legal pluralism, see Dalberg-Larsen, Jørgen, *The Unity of Law: An Illusion?*, Galda and Wilch, Berlin-Cambridge/Mass. 2001.

4 Ross on the Study of the Effects of Law

As mentioned in section 2, Ross' definition of the sociology of law included a category he called applied sociology of law, and within this category he considered the study of the social effect of law highly important. For, according to Ross, the traditional form of legal politics, which he regarded scientifically untenable, ought to be replaced by legal politics founded on the sociology of law. Ross formulates his view of this branch of jurisprudence in the following way:

“It emerges from these reflections that the nature of legal politics cannot be sought in a specific objective in the same way as, for example, the science of medicine, agricultural science, or the science of bridge building are organised in relation to a specific objective. If legal politics is to be a discipline on its own, the position must be converse. Its particular nature must be conditioned by a particular body of knowledge that is of relevance as soon as the technique of the law is employed for the solution of social problems irrespective of their objective. This special body of knowledge can only be sought in the legal-sociological knowledge concerning the causal connection between the normative function of the law and human behaviour, or, we may also say, concerning the possibilities of influencing human action by the apparatus of legal sanctions. Legal politics is applied legal sociology or legal technique.”³²

In my opinion, Ross here describes a research field highly important for legal sociology, from both a theoretical and a practical perspective. Such studies of the social effects of law will produce invaluable knowledge of the real importance of law as a regulator of society. Such knowledge can be of purely theoretical importance as the basis of a more realistic conception of the nature of law: what really makes people comply with the law or break the law etc. And, as Ross points out, such knowledge can also be of practical importance for legislators who are interested in making laws which actually bring about the intended effect and have no essential negative consequences.

However, Ross' definition of this field of research involves some crucial problems. First, Ross' science only aims at studying whether the law actually has an effect on the citizens' conduct or not. Therefore, it does not really aim at finding out whether the purpose of the law is in fact attained. And often it turns out that even if the citizens do obey the law, it still does not have the desired effect. In other words, the wrong means – regulation of the citizens' conduct – have been used to try to attain the desired end.³³ Such situations are frequent in real life, and very often the efficacy of a law will not only, or even primarily, be a question of securing the citizens' respect for the law, but also a question of making available the necessary resources, building up the relevant institutions, training the staff applying the law, etc., etc.

In other words, making effective laws implies involving a number of factors other than regulation of the citizens' conduct. And in order to make the citizens behave in a relevant fashion in relation to the law, very different means will

³² Cit. Ross, opus cit. note 4, p. 32.

³³ See Dalberg-Larsen, opus cit. note 24, p. 257-258.

often be required than relying on the legal apparatus of sanctions referred to by Ross.

And furthermore, as Vilhelm Aubert points out, many of the laws in a modern welfare state cannot primarily, if at all, be regarded as rules supported by what is usually called the legal apparatus of sanctions: courts, police and jails. On the contrary, they work through the distribution of positive sanctions to the citizens,³⁴ e.g. in the field of social law.

As mentioned before, Ross sees this part of legal sociology as an applied science serving the interests of particular users. In this field as well as in general, he seems to completely underestimate the importance of developing more general legal-sociological theories to inspire empirical research. As has been proved clearly also in this research field, the general theories are often an eye-opener for possible long-term and perhaps unintentional results of legal regulation, which can then subsequently be examined empirically and create the basis for relevant, practically oriented sociology of law.

In this research field, which is so important to Ross, one of the first major empirical studies within Nordic sociology of law is to be found, viz. the investigation of the effects of the Norwegian legislation concerning domestic helpers published in 1952 in the book *En lov i søkelyset* (Spotlight on an Act).³⁵ This pioneer work was reviewed by Ross in 1953,³⁶ and as was to be expected, he once more started off by expressing sympathy for the young pioneers within the sociology of law, only to proceed to predominantly criticise the results obtained. In his rather brief review, Ross particularly criticises two things: firstly, Ross thinks that this act is a bad choice for an investigation if the purpose is to obtain a general understanding of the effects of laws, as this act rarely gives rise to legal actions or to citizens approaching a lawyer in cases of conflicts. Secondly, he finds that the questionnaire sent to the domestic helpers and the housewives to test their ability to understand the contents of the act uses a legally untenable or at least dubious interpretation of the act as the basis for an evaluation of their comprehension of the act. This last point in particular is treated so exhaustively in Ross' review that he strays so far into legal hair-splitting that he seems to practically cut the connection to the study itself and its complex of problems.

As I see it, this review is the clearest example of Ross' tendency to disparage and directly misinterpret the new legal-sociological research. This book is an almost exemplary empirical study, which Ross had no objections to as regards the empirical methods of research. Nevertheless, he still manages to give a generally negative impression of the book, partly by completely ignoring a number of the outstanding qualities which has earned its present status as a classic within the sociology of law,³⁷ and partly by calling attention to two points of criticism, at least one of which seems completely groundless. As mentioned before, Ross seems to consider legal action and legal guidance as

³⁴ Aubert, Vilhelm, *Rettsens sosiale funksjon*, Universitetsforlaget, Oslo 1976, p. 51.

³⁵ Aubert, Vilhelm, Eckhoff, Torstein and Svein, Knut, *En lov i søkelyset*, Akademisk Forlag, Oslo 1952.

³⁶ Ross, Alf, *Review of: En lov i søkelyset*, *Juristen* 1953, p. 367-372.

³⁷ See Dalberg-Larsen, opus cit. note 24, p. 24.

accessories to any law that is not completely special and aberrant. This conception might indicate that Ross only seldom went out into real life to see what society looked like for ordinary citizens. If he had done so, he would soon have found out that many citizens' lives and welfare are affected by laws, without them even contemplating approaching the courts or lawyers with their problems. The field of social law is a good example of this. So it seems that Ross has a fixed idea of a particular form of typical law, which he wishes to generalize without investigating whether it is possible to fit the laws in real life into this category, including the many laws that are hardly ever the object of legal-dogmatic studies, but which nevertheless can be essential to the citizens' daily lives.

Ross' conception of the research field of legal politics has been severely criticized within traditional legal research.³⁸ However, as mentioned before, it has caught on in practice through a large number of Nordic studies on the effect of laws based on legal-sociological points of view, carried out by jurists as well as sociologists.³⁹

Thus, the field of research has been established as Ross wanted. However, this is hardly thanks to his contributions. Nevertheless, it deserves mentioning, and I would like to end this section with a quotation showing that generally speaking Ross had both an objective and a realistic conception of the possibilities and limitations of legal politics, and that he is still worth reading.

“We can sum up as follows: legal politics is possible, because the legislator is not impotent. The possibilities of legal politics are limited, because the legislator is not almighty either. The legislator meets social forces (in particular the legal consciousness and economic interests and power relations) that will not be exorcised by mere words. On the other hand, there is no permanent and impassable barrier either. The legal consciousness and the economic forces are themselves to a certain degree products of the evolution of law – legislation viewed in its historic continuity. All the various social forces – the political ideology, the legal consciousness and the economic factors – are at work together in mutual interaction. The barriers, therefore, must not be regarded as permanent dykes, embanking a canal. They represent a point of inertia in reciprocal interaction and can be compared with the banks of a river, which are determined by the erosion of the current and its deposits and at the same time determine the course of the water.”⁴⁰

5 Conclusion

The topic of the preceding sections was Ross' view on the sociology of law, expressed in his works from the 1950s and especially in *On Law and Justice*. Ross seldom took up this subject in his later works, but chiefly concentrated on classical legal-philosophical themes, e.g. within criminal law.

³⁸ See Lauridsen, Stuer, *Retspolitisk argumentation*, Juristforbundets Forlag, Copenhagen 1974.

³⁹ See e.g. Dalberg-Larsen, opus cit. note 24, p. 261-283.

⁴⁰ Cit. Ross, opus cit. note 4, p. 354-355.

Ross' greatest contribution to the sociology of law was that he placed it as an essential part of the entire jurisprudence. This was a completely novel idea at the time, and has in all probability helped improve the conditions for this new discipline in the legal research environment. In addition, his interest in the legal-political field and his importance for the debate on judicial behaviour and its causes are worth mentioning.

However, as mentioned above, Ross' view on the sociology of law is problematic in a number of respects – especially seen from a present-day perspective. But many of the points he is being criticized for are less due to Ross himself than to the logical-positivist conception of science that he shared with so many others. However, Ross' relentless adherence to this conception of science, well into the 1950s and 1960s, made him an outdated theorist already at that time, also in the field of sociology of law, not least because he had absolutely no sense of the importance of the sociological theories for empirical research. But the problems in connection with Ross' attitude to the sociology of law are not only due to his conception of science in general. It is also due to some special traits in Ross, both as a legal theorist and as a person. Three points will be mentioned below.

Firstly, Ross was most reluctant to diverge from his basic theoretical views – the many and good reasons to do so notwithstanding, including the results of the legal-sociological research.

Secondly, Ross himself never took the step to do empirical legal research. Therefore, his ostensibly empirically founded analyses of for instance the components of the consciousness of judges were merely theoretical constructions. On this point, he differs radically from many supporters of American Realism.

Thirdly, Ross had a very critical disposition and found it next to impossible to admit that others had done good research, especially if the results did not concur with Ross' own conception.

Nevertheless, it must be concluded that Ross' views on the sociology of law – especially seen from the perspective of that time – have had a far more conducive and lasting effect than his views on the basic nature of legal dogmatics, which Jes Bjarup has criticized so severely, and based on arguments that I can broadly endorse.

It is therefore not inconceivable that it was Ross' positive attitude to the sociology of law in *On Law and Justice* that induced me to move away from legal philosophy and towards the sociology of law instead, when as a young research fellow in the late 1960s I studied legal philosophy under the direction of Alf Ross.