Sociology of Law as a Multidisciplinary Field of Research

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1 Sociology of Law as Research Field and Academic Subject

> *"Law and sociology have always had a close, if troubled, relationship as academic disciplines. They share common origins in the eighteenth century as attempts to understand and regulate the social world according to rational principles... Nevertheless, despite some attempts to bring the two disciplines closer together they remain frustratingly apart."* (Banakar & Travers 2002, p. 1)

Law can be approached from many different perspectives and in a variety of ways. The traditional legal scientist sees law as an autonomous system, the official legal system, the rules of which he or she systematises and interprets. A social scientist, again, sees law as part of the societal system, whereby he or she observes law as part of society. There are also many different approaches to law and society that cannot always be distinguished from one another in a clear-cut way. Legal sociology, legal anthropology, legal history, legal psychiatry as well as law and economics, among others, have established themselves as distinct research disciplines. Characteristic of all these research areas is a multidisciplinary approach. In many instances these different research orientations also intertwine.

Sociology of law has during different periods of time been given a variety of characterisations and definitions. They have varied according to any dominant perception of science, and also according to the discipline and theoretical tradition, within which the definition has been formulated. A societal perspective on law has also at an international level been depicted through a variety of terms, such as, Sociology of Law, Law and Society Studies, Socio-Legal Studies and Empirical Studies of Law. (As to the interrelation among these, see Campbell & Wiles 1976, pp. 549-555, Cotterrell 1994, pp. xi-xiii, Galanter & Edwards 1997, pp. 375-376, Mather 2003, p. 276, Brockman 2003, pp. 286-287). In Finland all these depictions have generally been covered by the concept sociology of law.

Sociology of law may be approached as an institutionalised *subject* in university studies. In many Western universities there are chairs in sociology of law, and sociology of law is an established part of university curricula. Research and teaching in the sociology of law is organised in varied ways in different countries. In some countries the sociology of law forms part of research and teaching in social sciences, whereas in other countries it is part of research and teaching in legal science. However, it is often noted that the sociology of law is at the margin of both these disciplines (Luhman 1985, pp. 1-2, Tomasic 1985, p. 126, Friedman 1986, pp. 773-780).

As a research tradition, the sociology of law has been fairly weak and scattered in Finland. There are, though, chairs in sociology of law in the law faculties at the University of Helsinki and the University of Turku. However, after World War II, empirical research in the sociology of law has been firmly concentrated to sectoral research institutions, the National Research Institute of Legal Policy and the Police College of Finland (Laitinen 1996, pp. 49-51, Ervasti 1998, p. 371, Kangas 1998, pp. 194-200, Haavisto 2002, p. 6). Also doctoral dissertations in the discipline sociology of law have been very infrequent.

Notwithstanding, sociology of law is generally regarded as a *theoretical research orientation.* Sociology of law is a multidisciplinary research orientation, located at the borderline of legal science and general social sciences, sociology. There are a variety of opinions about the sociology of law as a scientific research orientation, and also about its tasks. These are, among others, dependent on whether sociology of law is approached form the perspective of sociology or legal science, from which theoretical tradition (in social sciences) it is approached, and also what perceptions the researcher has about the nature of reality and knowledge. There has, among others, been talk about "lawyers' sociology of law" and "sociologists' sociology of law", reflecting the researcher's affinity to questions formulated in legal science or sociology. (Aubert 1968, p. 20-22). Views about how legal science and social sciences relate to each other are dependent on three central points of departure, that his, how they distinguish 1) law and society, 2) legal science and social sciences, and 3) how the relationship between law and society is perceived.

Social scientists have often seen sociology of law as a *special field of sociology* along with sociology of the family, organisational sociology, sociology of health or sociology of religion (Mathiesen 1980, p. 9, Dalberg-Larsen 1990, pp. 18-19, Uusitalo 1999, p. 818, Kyntäjä 2000, p. 16, Laitinen 2002, pp. 7-8). On this score sociology of law, its tasks and methods, are perceived on pair with sociology in general. In this perspective emphasis is placed on differences between legal science and social sciences. Also legal scholars have often related sociology of law to social sciences and excluded it from the field of legal science (for instance Tuori 2000, pp. 303-305).

Black (1995, s. 862-864) has been most outspoken in safeguarding the purity of sociology of law from a sociological perspective. He has advanced the view that normative arguments or rules that lawyers see as binding are not facts that can be analysed in the sociology of law. He has also emphasised that "pure" sociology cannot for example examine the effects of legal rules, because then it gets involved in "unscientific" speculations. Black rejects teleology in sociology that he considers as "bad science". Summarising he notes: "In my sociology, social life has no goals, purposes, values, needs, functions, interests, intentions, or anything else not directly observable by anyone." Black's theoretical points of departure have received much criticism (see for example Nonet 1976, pp. 525-534).

There are others, who consider that research in the sociology of law is needed to enhance an understanding of the inner world of law that is *of relevance for law and legal policy*. From this perspective it is seen that the sociology of law cannot merely be perceived from the theoretical tradition of sociology, but also legal scholarship is needed. According to Eckhoff (1985, pp. 32-36), for example, lawyers should take empirical research "in their own hands". They should not be confident that social scientists investigate reality in such a way that it would be of significance for law and legal policy.

Sociology of law can thus also be seen as a branch of legal science. From the perspective of legal science, research in the sociology of law has above all been justified on grounds that lawyers lack tools for handling facts about reality. To perceive and picture reality is often seen as unproblematic among lawyers (Tolonen, J. 1997, pp. 300-308). Lawyers have often also been accused of seeing

social facts as things that may be manipulated and as means for pursuing a certain policy of action, and not so much as data that would give them a reason to change their own perspective (Munger 1998, pp. 26-27).

> Dalberg-Larsen (1990, pp. 41-43) has distinguished four different perceptions of the sociology of law. Above all legal scientists have characterised sociology of law as certain *methods*, through which legal questions can be examined. Such methods almost exclusively involve quantitative statistical ones. At the same time, the relevance for lawyers of sociological theories has been questioned. Second, sociology of law has been described as a way to investigate legal phenomena *from a sociological perspective.* By this is meant making use of sociological methods as well as sociological theories. Third, sociology of law has been given a more limited meaning, whereby research should merely focus on central *legal institutions or organs*, such as courts, legislation or the administration. Fourth, there is, above all in the US, a long tradition of researching *the factual significance of legal rules in society.* In this approach legal science is criticised for focussing on formal rules, whereby the difference between formal law (Law in Books) and factual legal practises (Law in Action) is brought to the fore in its stead (see Pound 1910).

There have been disputes among these different perspectives. Legal scientists have been of the view that sociologists do not understand or respect the content of law. According to them, sociologists undermine law as a professional activity. It is seen that social scientists have concentrated on unofficial social control, ignoring thereby the official control and the social significance of the legal system. Sociologists, for their part, have complained that legal scientists are not sufficiently sociological in their examination of "Law in Context" or in their studies inspired by the "Law and Society" movement. In many countries sociologists' basic degree does not include law-related studies except, perhaps, as part of some criminological courses. Conversely, sociology – as understood by sociologists – are normally not taught in law faculties (Banakar & Travers 2002, p.1).

> The emergence of the "Law and Society" movement that focuses on the relations between law and society is normally traced back to the mid 1960s. The emergence of this movement was associated with general social change in the US, along with a critique of prevalent societal practices. Law was seen as an important tool for social change, and behind it there was the idea to make use of knowledge offered by social sciences about reality, for policy purposes. The "Law and Society" movement was institutionalised in 1964 with the foundation of the "Law and Society Association" and also with the "Law and Society Review" that has been published since 1966. The movement focussed its attention on different social problems and strove to improve the position of different population groups and also to promote equality (Ewick & Kagan & Sarat 1999, pp. 5-6, Cotterrell 1994, p. xii).
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> The "Law and Society" movement criticised the traditional focus of legal science on formal rules, emphasising in its stead the difference between formal law ("Law in Books") and factual legal practises ("Law in Action"). One central goal was to throw light on the process whereby "Law in Books" was transformed into "Law in Action" (White 1986 pp. 819-843). Demands were made for

> empirical research about the effects of law in society, as well as analysis about the role of law as a means of social control and steering. At a theoretical level the "Law and Society" movement had its roots in the American legal realism of the early 20th century.

According to Tamanah (1997, pp. 12-14) only a few social scientists researching law have studied law. Conversely, few legal researchers have extensive competence in social sciences. According to Tamanah representatives of both orientations are partly blind to the views of the others, deaf to their way of deliberation and ignorant of the interests and matters of concern of the others. This has also lead to a situation whereby research in the sociology of law sometimes has received a second-class status within both disciplines. In social sciences faculties legal sociologists have been accused of lacking scientific maturity, and in law faculties their work is seen as irrelevant for legal questions.

Notwithstanding, many have been of the opinion that the sociology of law should be open to different social sciences such as legal science (for example Dalberg-Larsen 2000, pp. 36-38, Cotterrell 1998, Raiser 1999, pp. 30-31). It has also been argued that the sociology of law need not necessarily be seen merely as part of academic sociology. Instead, the sociology of law should be seen as a truly *multidisciplinary field of research*. It should also be noted that research falling under the label sociology of law is today pursued from a variety of perspectives (Cotterrell 1984, pp. 6-7). In the Nordic countries, for example, sociology of law has had very strong ties to legal theory and legal philosophy, and many sociologists of law have also had a legal training. In addition to sociologists of law, also anthropologists and political researchers, among others, have pursued research in the sociology of law (See Laitinen 1996, pp. 50-519, Mathiesen 1998, p. 72, Dalberg-Larsen 2000, pp. 26-28). Some are of the view that cooperation between legal scientists and sociologists has increased during past years (Vago 2003, pp. 28-29).

Established divisions among disciplines as well as the division into subjects (curriculum) can be seen as social constructions that are based on academic policy, as well as on a division of work among sciences, rather than based on purely intellectual grounds. According to Cotterrell (1986, p. 10) both legal science and sociology should, as research orientations, be understood as social rather than intellectual phenomena. Hence, they can only be understood in their historical context. There is no "pure" intellectual necessity determining their existence but instead certain social, political and economic circumstances (see also Rubin 1997, s. 543-544).

2 The Tasks of Sociology of Law and its Relation to Legal Science

> *"Dogmatik ohne Soziologie ist leer, Soziologie ohne Dogmatik ist blind."* (Kantorowicz 1911)

At a general level, sociology of law may be defined as a research orientation that examines the interrelation between legal practices, institutions, legal doctrines and their social context (Cotterrell 1994, s. xi-xiii). Law is thus researched from

a social sciences perspective. Earlier it was generally seen that sociology of law examines the interaction between law and society (for example Ross 1953, p. 30, Kyntäjä & Laitinen 1983, p. 9). Criticism against the view that law and society are separate phenomena, the interaction of which could be studied, is today fairly generally accepted. Instead it is often seen that research in the sociology of law is concerned with law in society or in its societal context. According to this view, law and society are at multiple levels intertwined and they cannot always be clearly separated from one another.

> The interrelation between law and society can be distinguished in three different ways. Law may first be seen as an *autonomous* system, whereby law should be understood on its own terms independent of the social context. Second, the relationship between law and society may be understood as *interactive*. According to this view law and society are distinct phenomena, but they interact at many different levels. Third, law and society may be seen as *homologous*, whereby their structure and origin are so intertwined that they cannot be separated one from the other (Friedrichs 2001, pp. 5-6).

The perspective on law offered by sociology of law differs essentially from the perspective of the core of legal science, legal dogmatics. Their points of departure, research methods, goals and perceptions of law differ one from the other. The following figure presents the differences between the perspectives of legal dogmatics and sociology of law (see also Black 1989, p. 21, Friedrichs 2001, p. 119).

	Legal dogmatics	Sociology of law
Target	Rules	Factual behaviour, practices and institutions
Perspective	The participant's	The observer's
Method/ generally	Text hermeneutics	Social sciences' methods
Typical method	Interpretation and systematisation	Analysis of empirical material
Approach	Law as an autonomous system	Law in its social context
Perception of law	Formal law	Formal and informal law
Goal	To create coherence within the legal system	To explain and examine critically

Figure 1. The relationship between legal dogmatics and sociology of law.

For legal dogmatics, it is seen as a central task to interpret and systematise legal rules. The work of the legal scientist is compared to that of the judge, and the theory about the sources of law has been elevated to a central point of departure. At the same time, emphasis is placed on the particular "internal" perspective of the legal scientist as opposed to the "external" perspective of representatives of

other disciplines. It is seen that legal science examines rules whereas social sciences examine regularities. The border between is and ought has been signed out as a central factor that distinguishes the approach of legal dogmatics from an empirical social one (Aarnio 1989, pp. 46-61, Aarnio & Riepula 1991, p. 448, Tuori 2000, pp. 303-305). Legal dogmatics has as its central task to explore the content of current legislation. The perception of law is thus limited to current official legislation. Thereby the knowledge interest and research method differs from the research interest and method of the sociology of law.

The perceived task of sociology of law, again, is to develop general *theories* that explain social processes related to law. Another task assigned sociology of law is *empirical research and analysis* of the mutual relationship and variables between central legal and social phenomena (Friedrichs 2001, p. 118.). Sociology of law can take as its research object practices involving the drafting of laws and law reform. In this case the research interest of the sociology of law is not specifically directed towards the interaction between law and society, but rather towards how and in what form law is shaped in legal practices. Legal dogmatics, again, is part of law as a social practice. In research in the sociology of law, one has to know the methods, through which law is formulated as well as legal reasoning.

> Trubek (1984, pp. 575-622), who has examined "empiricism" and discussions about it in the "Critical Legal Studies" movement, has found that empiricism has been given several different meanings. Some relate empiricism directly to positivism and determinism. Others, again, see empiricism as non-dogmatic legal science. In everyday speech empiricism is often referred to as certain research methods, such as interview surveys or multi-variable analyses. Researchers who take a pragmatic approach, again, have emphasised that their interest in examining "facts" has to do with a practical interest rather than an epistemological attachment to positivism or a belief in determinism. In Finland J. Tolonen (1988, p.175), among others, has emphasised the problematic character of the term "empiricism".

Sociology of law – independently of the researcher's theoretical orientation – *explains the reasons for certain phenomena and their effects,* or strives to picture and *increase understanding* of both official and unofficial legal institutions and actors. Other relevant questions are the origin of modern law, forms of legal thought and reasoning, as well as their relation to certain politico-economic systems. The sociologist of law reflects on the relation of law to social change and vice versa: the significance of social change for law. Legal dogmatics, again, is not interested in these kinds of questions, but takes instead current legislation as a given fact, as it were. In simplified terms one might say that legal dogmatics is conceptual and steering whereas sociology of law is a descriptive and explanatory field of research (Sutton 2001, p. 14.)

Sociology of law thus investigates legal phenomena using *methods and theories offered by social sciences.* The use of social sciences' methods involves two central elements: 1) a recognition that all perspectives and observations are, by necessity, somewhat one-sided and incomplete, as observations never are disassociated from the observer, but also 2) that it involves a serious attempt to overcome incomplete perspectives through a systematic collection, analysis and

interpretation of the empirical material (Cotterrell 1984, pp. 4-5). In other words, no absolute and unambiguous "truth" can be obtained in social sciences research, but one has to be satisfied with a picture of the world that is as "close to the truth" as possible. This can be attempted through systematic collection of material and methods of analysis (see Niiniluoto 2003, pp. 7-11).

According to Hydén (1997, pp. 112-115), practicing lawyers do not only interpret law but in fact they also make extensive use of a sociology of law perspective. Little attention is, however, devoted to this in legal training and research. In his argumentation for this view Hydén refers, among others, to contracts that is the most common legal instrument. When drawing up a contract, a practicing lawyer has to be attentive both to the reasons for the choice of solutions and also to their effects. Many other scholars have equally seen that the sociology of law has something to offer practicing lawyers and legal science researchers alike (for example Hellner 1969, pp. 209-210, Eckhoff 1985, pp. 32-36, Ervasti 2004, pp. 12-20).

Within legal science, sociology of law *supplements* legal dogmatics by addressing different kinds of questions to the legal system. On the other hand, sociology of law also *competes* with legal dogmatics for an interpretation of law. The point of departure for legal dogmatics is that law determines application. Sociology of law challenges legal dogmatics by arguing that there may also be law external factors that influence the application of law in individual cases (Hydén 1997, pp. 112-115). Sociology of law thereby rejects the idea of law as an autonomous system that could be interpreted merely through its own internal rules (see Galanter & Edwards 1997, pp. 375-376, Munger 1998, pp. 53-54, Laitinen 2002, p. 13, Milovanovic 2003, p. 5).

In research in the sociology of law, *law is generally not limited to current official legislation*, but it also extends to different unofficial procedures and practices outside the official machinery. Above all the anthropology of law that focuses on the law of indigenous peoples has had difficulties in accepting positivist legal theory and concepts in Western law. In this regard, criticism has, among others, been voiced against the idea of law being determined by the central power, courts, and police or through the sovereign legislator's set of laws (Nousiainen 1985, p. 2). Compared to the unofficial social system there are, furthermore, so small difference between existing practices in courts and other legal institutions in Western industrialised countries, in regard to the use of agreements, compromises, pressure and political support, that it is difficult to distinguish them from each other. Research in social aspects of law has partly blurred the distinction between the legal and the non-legal social order (Kidder 1997, p. 198).

Another aspect that is specific to the sociology of law is that it does not bind itself by *legal concepts* or legal ways of perceiving the world (Rottleuthner 1987, p. 4-5). The knowledge interest and the concepts used in the sociology of law are thus not limited to questions that are relevant or interesting for law. In the sociology of law frequent use is made of the concept of conflict, which is more extensive than the juridical concept of a legal dispute. On the same score, the term deviant behaviour is frequently used instead of the legally defined criminal concept. There have, though, also been attempts to construct a sociological concept of crime (Laitinen & Aromaa 2005, pp. 12-17). The norm is

one of the most central concepts both in legal science and in the sociology of law. However, in the sociology of law it is given a considerably much wider meaning, as it is not merely confined to official norms.

> In various textbooks on the sociology of law, themes such as the following are frequently considered: 1) the theoretical origins of the sociology of law, 2) the functions of law, 3) legislation and its effects, 4) conflicts and conflict resolution, 5) social control, 6) legal institutions (courts, legislator, administration), 7) law and social change, 8) the legal profession, 9) legal culture (se among others Aubert 1976, Tomasic 1985, Rottleuthner 1987, Röhl 1987, Dalberg-Larsen 1989, Raiser 1999, Friedrichs 2001, Anleu 2003, Vago 2003, Alvesalo & Ervasti 2006). Emphasis varies in different textbooks, but this list gives an indication about what themes have been seen as central in the sociology of law.

3 Research Fields that are Close to the Sociology of Law

> *"Indes scheint es, daß einer Soziologie des Rechtes als selbständiger Disziplin die Größten Schwierigkeiten entgegenstehen"* (Kelsen 1915, p. 875)

Research fields that are close to the sociology of law are legal policy, criminology and criminal policy. *Criminology* focuses on research on crime as a social phenomenon. In criminology efforts are made to explain, above all, the reasons for crime and the working of the control system (Lappi-Seppälä 1997, pp. 190-194). In criminology crime can be approached from several research traditions, such as psychology, biology, anthropology or psychiatry. The sociological part of criminology is sometimes called criminal sociology (Christie 1965, p. 15). There are numerous meeting points between criminology and the sociology of law. In practice, a major part of research in criminology can also be seen as research in the sociology of law (Anttila & Törnudd 1983, p. 20, Laitinen & Aromaa 2005, pp. 20-21). By *research in criminal policy* is meant research that strives to, or is able to participate in or to influence societal decision-making, planning, the formulation of policy guidelines or practices relating to crime and its control (Lappi-Seppälä 1997, p. 194).

Legal policy represents a similar companion to the sociology of law as criminal policy is to criminology. *Legal policy research* can, on the same lines as criminal policy, be defined as research that aims at, and has the ability to influence decision-making in legal policy matters, the drafting of laws, planning, the formulation of guidelines as well as practices (see also Anttila & Törnudd 1973, Törnudd 1992 and Laitinen 1999, pp. 796-797). However, there are no clear distinctions between legal policy research and research in the sociology of law. In many cases, legal policy research is in fact applied research in the sociology of law. *De lege ferenda* research in legal science, that is, research directed towards the drafting of laws can be seen as one sub-section of legal policy research (Linna 1987, pp. 5-9).

> According to Aarnio legal policy research can be defined in three different ways. First, legal policy research can be defined according to its *tasks and purposes*. In this regard, research involves legal policy only if its purpose is to produce

> information needed for planning. Second, legal policy research can be defined from the point of view of the *practical use* of the research findings. Research involves legal policy if it is factually used in legal policy planning and *decision making*. Third, *research can be seen as legal policy research if it is possible* to use it in societal planning (Aarnio 1983, s. 233-236).

Other research orientations that have affinities to the sociology of law are, among others, such research fields as legislative research and administrative science (Rottleuthner 1987, pp. 4-5, Tala 2004). Another research tradition that comes close to research in the sociology of law is program evaluation, whereby is meant a systematic application of social sciences' methods for the purpose of assessing the conceptualisation of societal programs, planning, implementation, as well as their usefulness. (Rossi & Freeman 1993, p. 5).

Sociology of law has also meeting points with many other fields of research. Laitinen (1996, pp. 171-180) has for example pointed to traditions of thought such as the autopoesis theory of law, the Critical Legal Studies movement as well as feministic legal theory, as being close to the sociology of law.

4 In Conclusion

> *"It might not even be fruitful to separate the sociology of law from legal science. It can quite well be seen as part of legal science, and equally as part of general sociology"* (Laitinen 1996, p. 9).

By way of summary, the sociology of law is a demanding interdisciplinary field of research. On the one hand, it requires the mastery of methods in social sciences, but on the other, it also requires an understanding of legal thinking, and the way in which the content of law is determined and the decisions are reasoned in the legal world. The sociology of law can enhance an understanding of legal phenomena in ways that the traditional legal science cannot. At the same time it can offer new perspectives for social sciences.

The sociology of law should also be recognised as a genuine field of research that encompasses many different sub-orientations and a variety of actors. It is thus not meaningful to narrowly delimit or define the sociology of law out of the tradition of a specific research discipline or profession. One should instead rather accept theoretical pluralism and see the sociology of law as a field where researchers from different traditions can discuss together. In a small country it also requires networking and cooperation among different research entities. It appears that in the sociology of law cooperation has during past years increased among different universities and sectoral research institutions. There also appears to be increasing cooperation among different research orientations such as criminology, sociology of law, legal policy research, legislative research and evaluative research.

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