

Socio-Legal Studies, Law Schools, and Legal and Social Theory

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I. Preface (2018)

The paper reproduced here argues that socio-legal studies are important for legal education and juristic inquiry, and it outlines problems facing social studies of law in law schools. It claims that legal theory is necessary for practical legal studies but that legal philosophy's purportedly timeless theories about the nature of law have largely failed to meet this need. They have been relatively unconcerned with social variation and historical change and so have not adequately reflected the varieties of possible legal experience. Juristic theory must be sociologically informed. But, equally, socio-legal studies must examine the nature of law as ideas as well as focusing on behaviour in legal contexts. Legal ideas need sociological interpretation. Social theory must inform legal inquiries, and the long tradition of social theories of law is important. Alongside recent theories, the classics of socio-legal theory give deep perspective for studies of present-day law in society.

The text for this article was originally prepared for a one-day conference held at Wolfson College, Oxford, on 22nd June 2012 to celebrate the fortieth anniversary of the founding of the Oxford Centre for Socio-Legal Studies.² I revised it in minor ways and expanded it shortly after the conference but it has not been altered since. It was written for a particular audience on a particular occasion. In its original form it has achieved quite wide circulation. It appears virtually unchanged below. However, a new postscript has now been added to indicate some ways in which these ideas have since been developed. The text keeps the relatively informal style of the paper as it was orally presented.

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² About 60 people registered to attend and there were papers and discussions on such themes as the past and future of the Centre, the relation of empirical legal research to legal theory, whether socio-legal studies constitute a distinct discipline, and the future directions of socio-legal studies. David Nelken and I were asked to present papers that would provide the concluding session for the conference, the brief being to reflect from our personal experience on the nature and situation of the socio-legal enterprise.

II. Introduction

David Nelken and I have each been asked to speak about our personal views of socio-legal studies to provide the final session for today's proceedings. We often find ourselves working side by side in academic projects because our research interests are closely linked in many respects even though our intellectual backgrounds and experiences in academic life contrast sharply in some ways. So, I thought it might be useful here to say something about the way my particular background and experience has shaped my view of the field of socio-legal studies (hereafter "SLS"), its promise and its present challenges, and to link that with some themes that have been addressed earlier today in this conference. After all, there are many different ways of approaching SLS. Perhaps to some extent each of us conceptualises SLS differently, because of the variety of personal motivations that have led us to a concern with this kind of research.

III. A View From The Law School

The Oxford Centre for Socio-Legal Studies has become justly well-known internationally, especially for its rich empirical research. My relationship with the Centre has been somewhat oblique since I am a legal theorist and not an empirical socio-legal researcher. I am a 'consumer' rather than a producer of the kind of empirical research which the Centre has developed very effectively, in what I think of as the mainstream of its activities over its four decades of existence. In part, the outlook I have adopted has been shaped by the fact that I have always worked in university law schools. I came to sociology of law (which I will not here distinguish from SLS) because I quickly became dissatisfied with the kind of theory which legal philosophy offered in the law school environment. I was convinced, even as an undergraduate law student, that law, if it was to be an interesting focus of scholarship, needed to be a theoretically sophisticated subject. But I thought it was struggling towards that like a poor swimmer who had not learned efficient strokes and so made little headway, just treading water despite apparently making huge efforts to move forward.

Legal philosophy offered theoretical resources. But I decided eventually that, because law exists only in *specific times and places*, the concerns of philosophers seeking seemingly timeless and absolute answers to such questions as 'What is law?', 'What is the relation of law to morals?' or 'What is the foundation of legal authority?' were inadequate to make legal scholarship realistic and in touch with law's changing socio-political conditions. Most of the important theoretical questions about law are not at all timeless but very timely – they are issues about the way law is shaped, works and develops in specific historical contexts. They are about what law means to those who are concerned with it or confronted by it, and this meaning cannot be abstracted as though it were unrelated to time and place. Indeed, the claim of legal philosophers that there are genuinely timeless or universal characteristics of law³ might ultimately be no

³ See e.g. Joseph Raz, *The Authority of Law: Essays on Law and Morality* (2nd edn, Oxford University Press 2009) 104, describing what he sees as "the difference between the philosophy of law and the

more than arbitrary stipulation, in the absence of a full examination of conditions of ‘the legal’ in all possible times and places – an impossible task. A designation of the concept of law and its related concepts can usefully be made only for the purposes of empirical study of ideas in practice in *specific* social and historical settings.

So, I sought theory that could help and I looked for it in social science. I thought that philosophical legal theory merely went round and round in circles in trying to address ‘timeless’ questions about the nature of law – going over the same issues endlessly, never resolving them – like, to use another writer’s metaphor, a continually replayed game of football.⁴ Social theory suggested the possibility of breaking out of that philosophical circularity⁵ and linking big issues about law to observation of the varied, changing social and political contexts in which legal ideas have to find meaning and significance.

I am optimistic that socio-legal theory can do what legal philosophy has failed to do; that it can be relevant in the law school world in ways that perhaps some legal philosophy is not. But I am also aware of obstacles. Legal theory – theory aimed as explaining the nature of law – depends on empirical socio-legal research to keep it grounded in experience and sensitive to social variation. Most academic lawyers in Britain still have relatively limited awareness of or exposure to empirical socio-legal research, except perhaps where it relates directly to their legal specialism and where they have the sort of favourable conditions for wide-ranging scholarship that the best law schools allow.

American legal scholars have sometimes claimed that ‘We are all legal realists now’⁶ and it might be tempting to say ‘We are all socio-legal scholars now.’ It seems true that legal scholars in the English-speaking world are often reluctant today to label themselves as ‘black letter lawyers’. What once was a label of pride to denote single-minded, rigorous and precise analysis and systematisation of legal doctrine, now more often gets treated as an admission of myopia, which no one wants to make. But socio-legal research cannot be said to have invaded the law school. In this country, unlike some continental countries, it is surely generally viewed sympathetically by academic lawyers of most persuasions. But socio-legal research has not modified the most basic patterns of legal thinking. It has not much disturbed the jurists.

sociology of law. The latter is concerned with the contingent and the particular, the former with the necessary and the universal.” As used by legal philosophers, however, this way of characterising the distinction tends to imply misleadingly that sociology of law (unlike legal philosophy) is not concerned with or does not provide general legal theory. In fact, the key issue is: what is the object to be theorised? Is it law as experienced in particular kinds of society or civilization, or law as some kind of pure form detached from social context?

⁴ Cf. AM Honoré, ‘Groups, Laws and Obedience’, in AWB Simpson (ed), *Oxford Essays in Jurisprudence* (2nd ser, Oxford University Press 1973) 1-2.

⁵ For a different – and brilliant – way of portraying the strangeness of timeless speculation about time-bound law see William Twining, ‘The Great Juristic Bazaar’ (1978) 14(3) *J Soc’y Pub Tchrs L* ns 185, though the author rightly insists that his vivid and exotic “dream”, including its hilarious vision of the “Legal Philosophers’ Circle”, is, like all dreams, open to many interpretations.

⁶ Joseph W Singer, ‘Legal Realism Now’ (1988) 76 *California Law Review* 465, 467; John Henry Schlegel, *American Legal Realism and Empirical Social Science* (University of North Carolina Press 1995) 2.

Its value certainly does not depend of whether it has influence in the lawyers' world of doctrinal argument, dispute processing and practical regulatory design, but its long-term security probably does, to some considerable extent. In recent years, in Britain, posts in socio-legal research have been created in law schools, and part of the motivation for this – apart from any intellectual arguments – may have been that SLS is seen in some university environments as a promising focus for attracting external grants to support research. Funding from sources other than the usual state higher education support (for example, from charities, industry or European institutions) is increasingly valued in British universities for its own sake, quite apart from its financial value, as a mark of external recognition and esteem. In such a climate, support for socio-legal research in research-active law schools may make good practical sense. Yet this is a fragile foundation for the development of SLS in law schools, because external funding opportunities can disappear and fashions in academic planning can change. SLS remains vulnerable unless it becomes more clearly integrated with doctrinal law teaching and research. That means that it must engage with the idea of law as doctrine directly.

Insofar as SLS focuses on law it has to compete with juristic studies of law and in some way impose itself upon them. Hans Kelsen's famous claim to relegate sociology of law to the periphery of legal concern as a dependent study should have outlived its relevance, yet it still haunts us.⁷ As Kelsen saw, if sociology of law does not find space to address the meaning of law in *something like* a 'juristic sense' – that is, as ideas and doctrine – it has no central concept of law except insofar as it borrows this from lawyers. No one can really believe that a concept such as – to use Donald Black's term⁸ – 'governmental social control' captures the full meaning many people attach to the idea of law. So the intellectual situation seems parallel to that in criminology. 'Crime' seems to be what law says it is; and 'law' seems to be what the state and the lawyers say it is.

So where do the social scientists stand in relation to concepts of crime and law? Are they just bystanders waiting for the lawyers to clarify founding concepts of their intellectual field? The way out of this problem is surely to admit that SLS has to engage seriously with theoretical ideas about the nature of law, it has to take *its own stand* theoretically on the nature of law as ideas, practices and experiences; and that theory must take careful account of (but certainly not be limited by) juristic legal theory. Juristic theory provides part of the 'raw' material (indicators of legal experience and legal practice) available for empirical socio-legal theory to work with.

Part of the object of social study of law should be to show how juristic ideas find their meaning in relation to their time and place. It is for social science to study law's time and place and to clarify the nature of law through such study. So, legal ideas (as well as behaviour in legal contexts) must be interpreted sociologically; that is, systematically and empirically as social phenomena. By this means one can ask why legal ideas take the form they do, what social forces drive their development, why some

⁷ Hans Kelsen, *General Theory of Law and State* (A Wedberg tr, Russell & Russell 1961) 175-7.

⁸ Donald Black, *The Behavior of Law* (Academic Press 1976).

kinds of legal arguments typically prevail over others in hard cases. It is necessary to show that legal analysis that lacks any sensitivity to what social science can offer is likely to be inadequate and blinkered, because it cannot gain an informed understanding of the currents of socio-political change in which legal problems arise and legal aspirations are formulated.

Socio-legal scholarship (theory and empirical research) has to *invade the law school*. But this is certainly not to turn law schools into social science departments, and not to make legal analysis into sociological jurisprudence (that is, social science on tap to help the lawyers when they feel they need it). It is to make the study of law a great *conversation* that draws on the whole range of types of knowledge necessary to make that conversation an informed one.

This approach could be illustrated in many contexts but two illustrations will have to suffice here. Many lawyers are actively concerned with the numerous kinds of *transnational extension of law* beyond the boundaries of the nation state that are now taking place.⁹ The old forms of juristic legal theory often seem inadequate to inform these developments, because so much traditional juristic thought and legal philosophy presupposes the state as the source and guarantee of all law (including international law).¹⁰ But many kinds of social theory are now exploring the various forms of ‘the social’, ‘the political’ and ‘the economic’ that are no longer contained within state boundaries. So too is socio-legal research. We need the mainstream intellectual communities in the law school to recognise just how profound the changes underway now are and to convince these communities that such massive changes in legal regulation and its environment cannot be understood through the ‘internal’ resources of traditional legal thinking.

The other matter that can conveniently be mentioned here is *multiculturalism* with all its trials and tribulations. Lawyers have begun to rediscover legal pluralism – the phenomenon that legal anthropologists studying faraway lands always lived with but which is increasingly ‘coming home’ to the old established metropolitan centres of law¹¹ – that is, especially to the legal systems of western Europe. Legal aspirations are now revealed clearly as rooted in ‘culture’, however culture is to be defined. What was once taken for granted as law’s uniform cultural foundation, and so did not need generally to be mentioned in legal analysis, has now become explicit and problematic.¹² Which cultures provide the home for which legal aspirations and ideas? How can the interplay of cultures through law now be managed?

⁹ Roger Cotterrell, ‘What is Transnational Law?’ (2012) 37 *Law & Social Inquiry* 500.

¹⁰ For especially interesting recent attempts to reshape some of these traditional forms to confront new realities see Detlef von Daniels, *The Concept of Law from a Transnational Perspective* (Ashgate 2010), and Keith C Culver and Michael Giudici, *Legality’s Borders: An Essay in General Jurisprudence* (Oxford University Press 2010). For a critique of Von Daniels’ approach see Cotterrell (n9), 504-8.

¹¹ Prakash Shah, *Legal Pluralism in Conflict: Coping with Cultural Diversity in Law* (Glasshouse 2005).

¹² Roger Cotterrell, ‘The Struggle for Law: Some Dilemmas of Cultural Legality’ (2009) 4 *International Journal of Law in Context* 373.

It seems obvious to most academic and practising lawyers working on questions of law and religion and legal problems of minority groups that these issues are never ‘purely’ legal in some positivist sense, but thoroughly socio-legal, so that legal matters can be addressed only by seeing them as deeply immersed in cultural understandings and concerns.¹³ As these topics become more pressing interests for lawyers of all kinds, it should be expected that socio-legal research will gain further openings to invade the law school environment.

So, my thinking is much influenced by the intellectual problems of the law school world and also by a sense that the brightest future for SLS may depend at least to a significant extent on forging strong links with this world. In Britain it has long seemed clear that university social science departments, in general, are not very interested in law. Perhaps they are somewhat frightened of it – with its endless technicality and its confident claims to organise and govern the social. Or perhaps they still see it as largely socially insignificant – they think that life goes on without law intruding (as litigation) into most (middle class) people’s lives. And where law *does* intrude *forcefully*, especially into the lives of marginalised populations, a special field – criminology – is left to handle that. Or perhaps law is seen by many social scientists as an intellectual no-go area, best avoided. They may think it obvious that in the intellectual division of labour of the modern university and the organisation of modern professions, law has its own disciplinary structures, its own demarcated field – perhaps beyond the social, somewhere in the humanities; so, to study law one goes to law school – a different part of the academy where people grub around with regulations rather than study social life.

Surely these are caricatures of attitudes and intellectual and practical divisions – but they have some residual substance. They imply a range of problems for socio-legal research, which sits uneasily on the institutional borders between the knowledge fields of social science and law. Perhaps there is a degree of insecurity among some lawyers, who sense a social world out there which they really ought to understand better, and also among some social scientists, who might even admit to a little resentment at the great accumulation of professional and political power supporting law financially and giving it prestige as a focus of study and practice.

Socio-legal scholarship can, of course, study these tensions alongside its other agendas. Its insights might help reshape aspects both of law and social science. Sociology of law has been called an intellectual stepchild,¹⁴ on the edge of established disciplines. But the view from the periphery of orthodoxy is often clearer, sharper and wider than from its centre.¹⁵ And government support for socio-legal research has to some extent displaced issues about disciplinary boundaries or competition between

¹³ E.g. Ralph Grillo and others (eds), *Legal Practice and Cultural Diversity* (Ashgate 2009).

¹⁴ Reza Banakar, ‘The Identity Crisis of a “Stepchild”’: Reflections on the Paradigmatic Deficiencies of Sociology of Law’ (1998) 81 *Retfaerd* 3.

¹⁵ Cf. Roger Cotterrell, ‘Ehrlich at the Edge of Empire: Centres and Peripheries in Legal Studies’, in M Hertogh (ed) *Living Law: Reconsidering Eugen Ehrlich* (Hart 2009) 75.

law and social sciences, perceived practical usefulness being the sole criterion of the worth of research in most governmental perspectives.

IV. The Wide View: Socio-Legal Studies and Social Theory

Now I want to move outside the law school world in the rest of these remarks. When, as an academic lawyer, I first became seriously interested in sociology of law I had had no formal education in sociology. I found that – with sufficient curiosity and motivation – it seemed possible just to begin reading and learning anyway, and not to be afraid of unfamiliar concepts and methods of inquiry. But, when I had the chance, I enrolled for formal study in sociology and was guided in depth by good teachers through key ideas and research traditions and the great classics of social theory – Marx, Weber, Durkheim and others.

Having the opportunity to devote much time as a student to mastering key writings in social theory without any need to orient that study immediately to the needs of legal inquiry (although I continued to teach law full-time while I was a sociology student) was an important confidence-booster. It provided a theoretical and conceptual language to set alongside juristic legal theory. But many socio-legal scholars do not follow that route. They start from a particular knowledge-field – perhaps law or one of the social sciences – and then read themselves beyond it as seems necessary for their particular research projects. Most people do not consciously straddle two or more intellectual disciplines equally. They see their roots as being primarily in one such discipline and, from that base, they explore outwards. So, how important is some kind of systematic exposure to fundamental unifying theory in law and social science? Is there is any ideal recipe for a well-grounded socio-legal awareness in research?

I am sure, at least, that it is not necessary to become a social theorist to engage in SLS. But nor is it enough to stay firmly rooted in lawyers' thought or even perhaps to adopt in practice empirical social science research methods. I do think there is a need for a *strong sensitivity* to empirically-oriented social theory to gain a broad perspective on the nature of social change (and legal change within this) and to have access to frameworks for thinking *in general terms* about the nature of social relations, institutions and structures – that is, about 'the social', the environment law inhabits. Perhaps because of my background I have found myself returning endlessly to the sociological classics: especially to Durkheim for his efforts to build a sociology of morality and the challenges he poses to rethink what meaning might be given to social solidarity today, and how this solidarity might be fostered; and to Weber for his coldly anguished portrayal of capitalism, and of the modern state with its formidable bureaucratic apparatuses and dense layers of technical, instrumental law.

Why go back to this kind of theory? A century has passed since these scholars of genius left us their intellectual legacy. But this temporal distance does not make them irrelevant now; it reveals them as master map-makers of the whole vast social terrain of modernity (in which all modern ideas of law have been formed). They wrote in the youth of social science and so had no professional constraints to inhibit their ambition to explain all the key features of social life as they understood them, seeking

the widest sociological perspectives. Classical social theory brings into sharp focus the key features of a modern Western social world that, since this theory was proposed, has undergone the most radical transformations but in relation to which legal and social change can still usefully be measured. Using this theory as a base marker is a way of gaining deep perspective on the present; a set of frameworks for analysis that (properly supplemented, adapted and critiqued) can still inform contemporary empirical and theoretical research in productive ways.

By contrast, contemporary social theory is in some respects *too close to us* to give this deep perspective. For all its essential insights, it gives competing accounts whose enduring value often cannot be properly judged at present: it includes theoretical approaches that, perhaps dominant for a time in debate, rapidly succeed each other or gain cohorts of combative adherents to defend them against other contenders. Some are destined to be powerful maps of the unfolding future, but some are fated to be, to use a striking term, ‘provincial in time’.¹⁶ None of this is to deny in any way the importance of many kinds of recent social theory insofar as, like the classics, these are richly informed through empirical study of social variation. It is only to suggest that the kind of theory necessary to give perspective to SLS is not necessarily always the latest products.¹⁷ Just as law as a field of doctrinal scholarship can appeal to a tradition of juristic theory that stretches back through several centuries and shows a powerful continuity of concerns (and a frequent reinventing of the wheel), so SLS should appeal to a long theoretical tradition that stretches back at least to the founding classics of social theory that established some still fundamental parameters of inquiry.

You may wonder why I have emphasised this so much. Here I offer only a very personal view. I think it is becoming necessary to retrace some steps in social theory and to link that retracing to the contemporary challenges that SLS faces, so as to make its directions most relevant to address current social issues about law. There are many such issues, and the work of the Oxford Centre reflects many of them. But I think that there are now some questions for the agenda that are dauntingly large – somewhat comparable with the vast issues that classic social theory addressed. These are issues about the conditions of social solidarity; the social character, effects and future of capitalism; the possibilities of giving meaning to ideas of community in modern society; the consequences of unchecked economic inequality; the links and contrasts between legal and economic rationality. All of these are major themes in the writings of one or other of the classic theorists Durkheim, Weber and Marx, and are

¹⁶ ‘What is lastingly important [in intellectual life] can easily be unfashionable in its day... [I]t is possible to be provincial in time as well as in place’: Bryan Magee (1998), *Confessions of a Philosopher: A Journey through Western Philosophy* (Orion 1998) 30, 31. To see this ‘provincialism’ as a possible defect is not to contradict the claim made earlier that theory should avoid efforts to portray law in some timeless way. There is a ‘middle position’ – an optimal ‘broad view’ which good social theory can provide; one that is neither too focused on recent experience nor so generalised as to ignore variation between societies and across history.

¹⁷ The ongoing relevance of classical social theory is signalled by the fact that a major scholarly journal, the *Journal of Classical Sociology*, is devoted to exploring its contemporary interest and significance.

prefigured, developed or reinterpreted in much other social theory. But in the modern development of sociology of law these big themes have often been largely discarded.

The reasons for putting them aside have usually been sound enough. We quite properly recognise that few if any writers today can hope to embrace the full ambitions of the classic theorists and it might be foolish to try to emulate the range of their intellectual concerns. We live in an age of necessary specialisation and of precisely defined professionalism; and the age of ‘grand narratives’ has famously been declared to be over.¹⁸ Yet in fact, remarkably, each of the big issues I have just listed as part of the agenda of classic social theory is now quite rapidly and forcefully pushing itself back on to the contemporary agendas of debate. When, as now, the word ‘crisis’ is regularly linked to such big themes as the future of capitalism, ‘Europe’, financial regulation, social cohesion and the nature of democratic politics, it might be suggested that there is a need, if not to invent new grand narratives of social theory, at least to focus existing research methods and conceptual resources on large-scale issues again. In other words, perhaps to develop ‘middle-range’ socio-legal theory¹⁹ to shape analyses with *long-range* significance, and to apply and refine that theory in empirical research.

I think that this reorientation is happening increasingly in SLS. For example, the field of regulation and governance which has always been an important focus is becoming very much more so, with a wealth of important research activity and journals devoted specifically to this field. Surely this will continue as pressing questions are addressed, for example about the prospects for effective regulation of national and international economic and financial systems; systems that have been brought to the edge of disaster by regulatory inadequacies, ‘white-collar’ and corporate criminal activity, obfuscation of transactions through complexity, and intricate forms of corruption. Exciting developments are now underway to rediscover old ambitions for an economic sociology of law²⁰ to fill the sense of a void left by orthodox economists’ thinking about the legal regulation of economic life. Accounts of the imminent ‘death of the social’ a few years ago²¹ will surely be seen as much exaggerated, as it becomes clearer that our most prominent public anxieties relate precisely to the nature of the social and the need to rebuild and strengthen many of its foundations – partly through a wise use of law. Under these conditions the

¹⁸ Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge* (G. Bennington and B. Massumi trs, Manchester University Press 1984).

¹⁹ Amanda Perry-Kessaris, ‘What Does it Mean to Take a Socio-Legal Approach to International Economic Law?’, in A. Perry-Kessaris (ed) *Socio-legal Approaches to International Economic Law: Text, Context, Subtext* (Routledge 2012) 3; Roger Cotterrell, ‘Spectres of Transnationalism: Changing Terrains of Sociology of Law’ (2009) 36 *Journal of Law and Society* 481, 494, 499-500.

²⁰ E.g. Richard Swedberg, ‘The Case for an Economic Sociology of Law’ (2003) 32 *Theory & Society* 1; Lauren B Edelman and Robin Stryker, ‘A Sociological Approach to Law and the Economy’, in NJ Smelser and R Swedberg (eds) *The Handbook of Economic Sociology* (Princeton University Press 2005) 527; Sabine Frerichs, ‘Re-embedding Neo-liberal Constitutionalism: A Polanyian Case for the Economic Sociology of Law’, in C Joerges and J Falke (eds) *Karl Polanyi, Globalisation and the Potential of Law in Transnational Markets* (Hart 2011) 65.

²¹ Cf. Nikolas Rose, ‘The Death of the Social? Re-figuring the Territory of Government’ (1996) 25 *Economy and Society* 327.

responsibilities and opportunities for SLS in assessing the conditions, limits and consequences of legal intervention can only continue to grow.

V. Postscript (2018)

Six years on, I hold to all of the views expressed in the previous paragraphs. But two things, in particular, should be given more emphasis: one of them because it remains largely implicit in the text; the other because it can be clarified by referring to ideas developed since the paper was written.

The implicit theme is the important distinction between a sociological jurisprudence and a scientific sociology of legal ideas. The paper strongly advocates a sociological study of legal ideas – not in place of but alongside the mainstream of sociology of law which has been centrally (and properly) concerned with the empirical study of behaviour in legal contexts. Sociological study of legal ideas is not just valuable for, but essential to, doctrinal legal scholarship and juristic concerns with law. But this claim has sometimes been wrongly seen as a suggestion that social scientific research on law should be *subordinated* to mainstream doctrinal legal scholarship. In other words, it has been seen as a resurrection of the old intellectually conservative and professionally parochial idea that social scientists can be ‘on tap’ but not ‘on top’ within the world of legal scholarship as a whole.²²

Nothing is further from my view. Sociology of law must be a scientific inquiry in its own right, not dependent on its usefulness for jurists. Within this scientific enterprise should be included the sociological (social scientific) study of legal ideas – that is, the theoretical-empirical study of social sources and effects of these ideas, and of the forces in society that shape them and give them meaning in specific contexts. Social conditions, which sociology can study, make some legal ideas, aspirations and arguments seem meaningful and pertinent, or impractical or irrelevant, in particular times and places but not in others. Equally, some doctrinal legal solutions can seem viable, acceptable or necessary, or else impossible, unwise or ‘off the wall’, depending on sociologically explicable context. So, social science can illuminate the nature and development of legal ideas and reasoning.

Sociological perspectives can, on this view, do much to clarify juristic debates by revealing their socio-historical contexts; treating law as an aspect or field of social experience, not as something analytically apart from it. They can do this even though social science cannot *become* jurisprudence. It certainly cannot *resolve* normative questions. It remains an enterprise of studying what ‘is’ (and ‘has been’, and perhaps ‘will be’), not one of prescribing what ‘ought’ to be. So the sociology of legal ideas is (and must remain) social *science*; committed to disinterested explanation of the social (including legal) world.

²² Cf. the editorial on the first page of the inaugural issue of the *Journal of Law and Society*: ‘We wish to refute certain notions regarding the nature of what is commonly called “socio-legal studies”. We do not subscribe to the view that the social scientist is to be cast in the role of handmaiden to the lawyer, the lawyer being in the dominant position’ (1974) 1 *British Journal of Law and Society* 1.

But sociological jurisprudence – that is, jurisprudence in general informed by sociological insight – is necessarily a value-focused enterprise. It is not a neutral scientific inquiry about law. It is an enterprise of safeguarding, promoting and interpreting a practical *idea* of law as infused with values. In a recent book *Sociological Jurisprudence*²³ I have tried to emphasise the sharp distinction between, on the one hand, a scientific sociology of ideas and, on the other, a value-oriented project of jurisprudence that should draw on the social sciences. This sociologically-oriented jurisprudence should – to use the paper’s terms – ‘invade the law school’. *Via* such an outlook in jurisprudence, socio-legal studies can be aided in colouring and informing all law school studies. In *Sociological Jurisprudence* I have argued that all jurisprudence must be sociologically informed, in part because of fundamental ongoing contemporary changes in law and its social environment. But this is certainly not to say that all the issues of jurisprudence are sociological, or that jurists should become social scientists, or even that all law teachers should think of themselves as jurists.

When the paper was written in 2012 I saw legal philosophy and socio-legal studies as parallel enterprises in competition; vying to give theoretical guidance for legal studies. I argued that legal philosophy – in the forms developed since the 1960s in the Anglophone world which came to dominate legal theory until relatively recently – is unsuited to this role. This is because of its general lack of serious and substantial concern with the diversity of lawyers’ practical engagements with law and the changing nature of legal experience and its contexts.

Indeed, it seems now that most legal professionals (practising and academic) and socio-legal scholars usually attach very little significance to legal philosophy. Surely the reason is that much of it tends to treat ‘the empirical’ in general, and the specific varying and changing problems of legal practice in particular, as simply uninteresting. So, the paper treated dominant Anglophone legal philosophy as largely irrelevant to the theoretical needs of legal practice and scholarship, and saw socio-legal studies as potentially able to fill this theoretical vacuum. But I have taught jurisprudence throughout my teaching career; I did not want to give up on juristic theory.

What is missing from the paper, and what I have recently sought to make explicit, is the idea of a different kind of theory, distinct from dominant kinds of legal philosophy and also from scientifically committed sociological theory. The missing element is a specifically *juristic* body of theory having different aims from (yet necessarily drawing extensively from) both legal philosophy and legal sociology. When the paper was written, jurisprudence was widely assumed to be merely a synonym for legal philosophy. If jurisprudence was treated as anything else (for example, as jurists’ practical speculations rather than philosophers’ debates) it was thought to lack intellectual credibility.

But I now think – and the argument is made out in my *Sociological Jurisprudence* book – that jurisprudence, critically committed to certain values that combine to

²³ Roger Cotterrell, *Sociological Jurisprudence: Juristic Thought and Social Inquiry* (Routledge 2018).

indicate a flexible but demanding *working idea* of law, can be an important conduit between law as juristic practice (an entirely normative enterprise) and socio-legal studies and sociology of law (as scientifically-oriented enterprises of explaining the socio-legal world). I have borrowed from Gustav Radbruch's immensely subtle, yet modest and undogmatic juristic theory to sketch a value-oriented working idea of law that, avoiding essentialism, gives a realistic, adaptable template for organising the ever-changing diversity of juristic experience and concerns.²⁴ A renewal of jurisprudence as deeply receptive to social scientific insight and not confined by the disciplinary protocols and intellectual bounds of philosophy is needed. It offers a rediscovered means for normatively-oriented doctrinal legal analysis (the law school's primary focus) to link theoretically with the rich resources of empirical socio-legal scholarship.

²⁴ Gustav Radbruch, 'Legal Philosophy', in J Hall and others (eds) *The Legal Philosophies of Lask, Radbruch and Dabin* (K Wilk tr, Harvard University Press 1950) 43.