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The Sociology of Law Potential:
Exploring Its Scientific Landscape

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Introduction

The Sociology of law (SoL) is an island of investigation squeezed between two large academic territories: the legal and the social sciences. They represent different knowledge interests based on separate ontologies, which make the epistemologies incommensurable. Law is an open normative science using interpretative, deductive methodology, while sociology has an empirical ontology built on social science methodologies in epistemological respect. The theoretical discourse to try to integrate legal dogmatic and sociology must be regarded as a dead end (Banakar 2003, Cotterrell 2006, Nelken 2009, chs. 10 & 11). The same can be said about the discussion in order to overcome the inside/outside dichotomy in SoL; these perspectives cannot merge (Banakar 2003:18). The inside perspective refers to knowledge <u>in</u> law, while the outside perspective is a question of knowledge <u>about</u> law. We can here talk about two different realities of law: one based on the internal operations, practices, concepts and perceptions, the other focusing on law´s interaction with its societal environment (Banakar 2001:14). The first reality belongs to mainstream legal science and is in its epistemological part of no interest for SoL, while the second reality is the knowledge field for SoL, which is not relevant either for legal science.

SoL has a territory of its own, which is huge and to a large extent undetected and unknown. The purpose of this article is to investigate this varied landscape that is the home turf of Sociology of Law and explore the Field's contribution to knowledge. What makes it a separate entity? What is its potential?

SoL has two sides, one facing the legal science and the other facing the social sciences. It deals with law but without adding to the mainstream legal science, legal dogmatic. SoL of law

uses social science theory and methods in order to study legal matters from a social and a societal perspective. This hybrid has led to a discussion about the identity of SoL (Banakar 1998). Legal dogmatic focus on the rule of law, while Socio-legal studies have its knowledge interest on the role of law. SoL both complements and competes legal dogmatic in analyzing and understanding law and legal decision-making and it complements social science in understanding legal phenomena in their social and societal implications. From its vantage point, SoL traces a lot of gaps and cracks in the legal landscape. Filling these gaps belong to the potential for SoL.

How SoL differs from the Legal Science

Sociologists of Law and legal scholars share the law as their object of study, but they for mentioned reasons approach it in different ways. While the latter concentrate on its internal operations, practices, concepts and perceptions, the former focus on the interaction between law and its wider societal environment. For SoL law embedded in an institutional practice, which inofficially might influence decision-making, while legal science is independent of considerations regarding law´s surroundings. Legal science has the ambition to uncover the content of law in specific cases, i.e., how the wording of legal provisions or precedents should be interpreted. The understanding of a certain phenomenon is determined deductively using legal sources. Thus, the limits for what be discovered are set in advance. The map so to speak is already constructed. SoL, in contrast, is an open-ended field concerned foremost with the background or genesis of law and its consequences. The focus lies on the growth of law and the functions of legal regulation. SoL uses an inductive methodology aimed at relating empirical findings to theory. Defining its scientific map becomes an exploratory exercise. The more empirical findings being added the richer its contours become.

Shedding light on murky areas of the law

SoL approaches the law from an external vantage point, which means that it registers things that the lawyer involved with the dogmatic fails to see and appreciate. For example, in relation to civil law, SoL is interested in how contracts used by the parties, not about interpretation of legal texts. In the case of criminal law, the interest for SoL understanding the origins of the norms that define what is right and wrong in society, not about the criminals. Civil and criminal law are both reactive in that they actualize ex post manner when conflicts occur without being solved spontaneously (Hydén & Hydén 2019). As rules of the game, these provisions should be as precise as possible. Administrative law is different. Its origin lies in the public sphere. The political system conveys via law tasks to the executive, the

adiministrative system of public authorities about what should be performed and how. As such, administrative law is goal-oriented and applied ex ante. It is a question of steering in advance, not judging ex post. This part of the legal system requires social science method, i.e. SoL. Administrative law contains provisions telling professional civil servants with different specialities what to do. Decisions are not taken based on legal considerations but on other professional knowledge. Medical personal decide the use of Health Care legislation, educators about School and educational matters, environmental scientist about environmental legislation, etc. Here is a potential for empirical SoL research to fil in and map out how this kind of legislation is applied and with what results, a set of issues which for epistemological reasons is left untouched in legal dogmatic´s deductive orientation.

One reason for establishing SoL as a discipline relates to the need for other methods than legal dogmatic in relation to regulation about implementation and evaluation research. It was an answer to the tremendous growth of administrative and intervening law during the 1970s and onwards. Professor Per Stjernquist who was the one introducing SoL in Sweden focused in his research on the implementation of the laws in the Forest (Stjernquist 1973). However, we face a paradox, the politicians do not ask for that kind of research and education. They seem not interested in research pointing out if the aims and goals of the legislation fulfilled or not. Law has a symbolic value and is a part of the games played on the political arena.

The SoL approach to law becomes especially relevant in the case of what I call “intervening law” (Hydén 1978, Hydén 2022), which is a mix of civil, criminal, and administrative law. This type of law is typically protective of public interests. Examples include labor laws to defend workers, environmental laws to protect nature, consumer legislation to safeguard customers, and discrimination laws to shield minorities. The source of this legislation is the conflict between incompatible interests inherent in modern society. The intervening rule serves as a balancing norm; i.e., it prescribes what interests are to be protected and weighed against each other during the conflict resolution process, but it does not provide instructions for how to do so. Here are similarities to what Gunter Teubner has described in terms of reflexive law (Teubner 1983, Rogowski 2013). In such cases, society must resort to alternative mechanisms in the political arena. Anyhow, this represent an interesting area for SoL to explore.

Highlighting the limits of law

Legal dogmatics takes law for granted. It does not address the basic question whether the

courts or public authorities really follow the law and take decisions accordingly. Law does not function in a vacuum. Its interpretation is subject to influences that may undermine a strict dogmatic approach. One example is the Swedish Compensation Act, which regulates the use of public funds to pay people, who are unemployed. The law professor, Anna Christensen found in a comprehensive study the application of the law much too inconsistent compared to the wording of law (Christensen 1980**)**. Another Swedish case relates to the inpatient care of psychiatrically ill persons. The sociology professor, Antoinette Hetzler concludes in her study that the criteria set out in the law are rarely used (Hetzler 1978). Other criteria, including social factors, weigh heavier in the final decision about these patients. More recent example is Lena Svenaeus' study and analysis of violations of the equal pay principle in the Swedish labor market despite the prohibition of wage discrimination (Svenaeus 2017). There always seems to be something more important than implementing an equal pay reform, Svenaeus notes. At the same time, Svenaeus points out welfare is failing due to mis-valued and underpaid care work. Another similar type of study can be found in relation to studies of the application of migration law (Lundberg 2021).

These studies follow a tradition of interest in equality before the law (Lernestedt 2015). The Norwegian Sociologist, Vilhelm Aubert pioneered this kind of studies in the 1970s (Aubert 1976). Comparing social status to punishment in all criminal cases in six district courts in the Eastland region of Norway in the 1950s, Aubert found significant variations between judges and courts sentencing similar cases. The mentioned kind of studies have not been followed up, but represents a wide area of potential studies within SoL. The notion that the law is not always fair is the fundamental premise of the Critical Legal Studies movement (Unger 1986 & 2015). In its perspective and that of the Scandinavian Legal Strategy movement, justice is something to fight for (Bottomley & Joanne, eds., Hydén 1982, Widerberg 1976).

How it differs from the Social Sciences

The Sociology of Law is not only examining the law and its function in society. Its interest extends to the study of normative orders in other social and economic contexts (Hyden 2022, ch 1). As a science in which norms serve as the analytical tool, explaining motives becomes paramount. Norms are carriers of motives. In this respect, SoL complements social science by putting forward motives as an independent variable on a collective level with high explanatory value. Legal science does address motive to some extent. In criminal law, for example, motive plays a role for defining most crimes. It features also in the context of

administrative law. For instance, it is not possible to decide whether an object constitutes waste simply by looking at it. Whether it does, depends on the owner's intention: will he keep it or not? (RÅ 1976:5, Hydén 2022:135). The point here is that by focusing on the motives and subjective factors behind action SoL fills a gap in knowledge formation.

Finding patterns in the landscape

Because norms are abstract, they are not easy to find. They only be detected in an indirect manner through a three-pronged research process. The first step is to find and identify patterns or regularities in society. Once patterns identified, the second step is to determine how a specific pattern emerges. We then have the key to find the underlying norm, the reason why the pattern arises. The third and final step of the process addresses the why question: why do norms look like they do. This involves exploring the motives that sustain norms and carry them further. The outcome of a norm application is ultimately dependent on the possibilities of carrying out what the norm prescribes. The limits of these possibilities depend on knowledge set by systems that humans have created to satisfy their needs.

The study of norm systems constitutes a niche not covered by legal and social science researchers. It contributes to knowledge formation in several ways. In contemporary society, norms as expectations are not only a question of social interactions or cultural habits, more and more related to systemic imperatives where technology such as AI and the market are primary drivers. By combining elements of both actor theory and systems theory the voluntary Will in a science of norms is articulated and asserted by individuals and groups but overdetermined by more or less anonymous sources related to systemic demands. The norms on a collective level define the playing field the individuals have to stick to.

Conclusions

The Sociology of Law with its focus on norms approaches the study of human action and behavior in ways that complement what the legal and social sciences do. By uncovering underlying motives for action through a focus on norms, SoL adds valuable insights for understanding not only how law functions in society but also how norms help sustain specific systems guided by knowledge or other criteria. In a modern society, the understanding of norms has to be extended to cover also expectations, which stems from the rationality of different systems. In these cases, sanctions are not uphold either by the State apparatus or by

social control. The sanctions for norm violations are embedded in the norm itself (Hydén 2022:7.2.1.).

Technology leaves tracks of specific behavioral norms explaining by technical changes. Chamorro-Premuzic talks about humans in the AI age (Chamorro-Premuzic, 2023). He claim that we are only focused on what algorithms and artificial intelligence want us to focus on. Tracing results from personalized searches, a website algorithm selectively guesses what information a user would like to have and encapsulates the user in a filter bubble (Bozdag 2013). The behavior impact and normative consequences AI has on us is huge, according to Chamorro-Premuzic.

As this article has tried to demonstrate, the scientific map that constitutes the guide for SoL research is both wide and varied. Being a young field, much remains to be investigated. One such area is the close historical connection between the stage and formation of society and the development of norms. To what extent are they the product of material forces? For its future development, SoL has a valuable interdisciplinary potential. It responds to the present need for inter- or multidisciplinary perspectives by being synergetic. This is especially important as researchers contemplate transiting from a deconstructing, reductionist science to a constructive, holistic science. SoL provides the tool for this purpose with its scientific norm perspective based on as many points of contact with other disciplines as possible. The concept of norms in the wider sense argued for here, constitutes perhaps the most valuable tool for a synthesizing science by level the scientific playing field providing a common denominator, norms.

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