

THE SOCIOLOGY OF LAW

(General reading: Hunt, *The Sociological Movement in Law* (1978); Cotterrell, *The Sociology of Law* (1992) seems legal system is closed off from rest of world- requires the mastery of a set of terms and way of speaking, socially linguistically, normatively closed off from outside world.; Tomasic, *The Sociology of Law* (1985); Wacks, *Understanding Jurisprudence* (2005) ch. 7; Defflem, *Sociology of Law: Visions of a Scholarly Tradition* (2008))

The autonomy of law. (Sociology of law rejects the account of the autonomy of law at the heart of analytical legal positivism.

Four connections between law and society:

(a) Justice and legitimacy; firstly there seems to be a relationship between justice and law- law aims to be just (as NL tell us)- must reflect the standard fo those being subjected to coercion by law. Democratic process determines the content of law- our view of citizens are fed through. We might start to think if law fails to be just and legitmite- people might stop following- theres a broader sense if law fails to connect to our personal views on how society should be run, it CANNOT OPERATE.

(b) Co-ordination; law is isolated, but in itself has a function, according to some theories- co-ordinates society. Law has social role.

(c) Purposivity; law, is capable of pushing societies in certain directions- could PROHIBIT alcohol, etc 1920s

(d) Integration) as societies become morally diverse, becomes more fragmented. More pluralistic. Religion and morality are not able to form cohesive bond which can pull society together in the way they used to. WE ARE LEFT WITH LAW- the only way society can be glued together. The only way we can establish general standrs that can govern our conduct.

Sociology of law reflects on these relationship.

- Sociological jurisprudence- range of theories offered by legal philosophers about the relationship between law and society.
- Habermas and Durkheim primarily sociologists looking at laws role in modern society.

Friedrich Karl von Savigny (1779-1861) (*Volkgeist*)

- Writing on issues of role and function of law in maintaining societies.
- Savigny argued customary law (common law) alongside language, was *volkgeist* (the spirit of the people) was being wiped away by a civil code and legislation- problem is once law become a code- it becomes disconnected from people and their culture.
- Savigny said law exists 2 ways- exists customary norms in minds of people AND in form of state law and legislations (applied by specialist lawyers and officials) etc,

Sociology Of Law Sociological Review Monography 23

Michael Hoelscher



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