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The social scientificization of legal science (and thus its actual creation in the future)

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Summary

A legal science that is consistent with the idea of science, i.e. as a social-scientific legal thinking, is only emerging and is currently limited to the auxiliary status of the rubric sociology of law. The legal dogmatic activities of law, which are now called legal science within the framework of the individual branches of law, are not sciences despite their high intellectual value, but are an indispensable part of the complex law. Legal dogmatics is not a science, but a layer of the legal system in modern Western countries. If we want to isolate the stages of the development of intellectual thinking about law into a science, we can highlight two major leaps in this process in the changes in the development of European law since the mid-17th century. In the first stage, the practical jurisprudence of the past was programmatically replaced by legal dogmatics, which had already claimed the term of legal science for itself since the beginning of the 19th century, and in the second stage, a truly social-scientific form of legal thinking emerged since the late 19th century and especially since the 20th century.

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Law is a social phenomenon, so it can be considered as a science only within the framework of the social sciences. This does not mean, of course, that law cannot be formulated and analyzed within the framework of other intellectual activities and that it does not have very important functions for the functioning of society. However, they must be analyzed separately and separated from the scientific - i.e., social scientific - intellectual activities of law. Thus, the intellectual activity of legal dogmatics in the field of substantive law requires the highest logical abilities and intellectual creativity and is in no way inferior to the intellectual achievements of the scientific (social science) activity of law. It is just that they offer other important functions for the functioning of modern law than the social scientific analysis of law. Likewise, the philosophy of law, with its analytical analysis of the values contained in the norms of law, their grouping, and the presentation of alternative systems of values - the background of the philosophy of law - presupposes a serious capacity for abstraction and logic, and contributes to the rationality of public debates on the durable elements of practical law and to the orientation of legal policy decisions within the framework of modern democracy. However, for the social scientific analysis of law, this activity can be as much a

subject and not a part of legal science as the observation and analysis of legislative processes in general.

If we want to isolate the stages in the development of intellectual thinking about law into a science, we can highlight two major leaps in this process in the changes in the development of European law from the middle of the 17th century. In the first phase, the practical jurisprudence of the past was programmatically replaced by legal dogmatics, which had already claimed the term of legal science for itself since the beginning of the 19th century first in Germany and then in other european countries, [1] and in the second phase, a truly social-scientific form of legal thought emerged since the late 19th century and especially since the beginning of the 20th century. [2] This was initially limited to the narrowly defined sociology of law, but from the 1960s onward, increasingly social science-oriented legal studies emerged, covering all aspects of legal thinking.

Already at this point it should be pointed out that these stages do not mean that the features of the earlier phase of intellectual thinking about law have disappeared and represent only historical memories of later periods. In the first case - the replacement of practical jurisprudence by legal dogmatic systematics as university legal science - a replacement has indeed taken place, but in such a way that the mass of ordinary university lawyers, apart from a few works of genuine legal dogmatics, are still really active only at the level of practical jurisprudence, teaching the textbooks written by others or based on their own intellectual work, which they have more or less copied themselves. However, only those who master and develop the widest possible range of legal doctrines and systems are legitimate legal scholars, and this is imitated by the mass of ordinary academics, even if they analyze law only at the level of practical jurisprudence. In other words, this change can be understood more as the disappearance of the organizing principles of the earlier phase as guiding principles, and the activity of the earlier practical jurisprudence in universities can no longer be presented as a legitimate activity in the later phase, so it is shamefully hidden and masked. The characteristics of this phase shift cannot be overlooked even today, as the demands and pressures of practical legal life continue to call for a greater focus of university legal education on practical problems of case resolution rather than on system dogmatic training.

However, the second phase shift - from legal-dogmatic systems thinking to the emergence of a social-scientific legal science - does not represent a replacement, but rather a step beside it. The activity of legal dogmatic systems thinking is essential for legal systems that are becoming increasingly complex and cover more and more areas of society, and its role is indispensable in law school education. Thus, there can be no question of "ejecting" from universities, which was programmatically pursued with practical jurisporudence under the influence of Savigny since the beginning of the 19th century in Germany, in this case. The question here is rather to what extent a healthy division of labor in legal education is possible. It should be raised, for example, that legal dogmatics textbooks should be supplemented by legal knowledge from a social science perspective. For example, in addition to the history of legal dogmatics of each branch of law, textbooks on the social history of change in legal dogmatics should be included in legal education in order to identify the causes of change in the categories of legal dogmatics, the spread of new categories and concepts, and the replacement of old categories and concepts by new ones. This second phase of change is, in my view, only in the middle of its course, and the proportion of this change, especially among university lawyers, is even smaller than that of the great systemic legal dogmatists in the largely purely practical university legal profession. However, especially in the highly competitive world of law in the United States, with its 200 or so law schools and hundreds of

[1] See Jan SCHRÖDER: Wissenschaftstheorie und Lehre der „praktischen Jurisprudenz" auf der deutschen Universitäten an dr Wende zum 19. Jahrhundert (Frankfurt am Main: Vittorio Klostermann Verlag 1979) 142.
[2] See Allen HUNT: The Sociological Movement in Law (London: Macmillan 1978) 11-35.

law journals, social scientific legal thinking is also very much present and spreading around the world, as are the results of that thinking and its scholarly insights. Let us take a closer look at the course of these transformations.

1. The renaming of jurisprudence to legal science

If we are to analyze the question of the academic status of intellectual legal thinking, we must first examine the concept of legal science itself. To do this, we must also go a step further and look at the idea of science itself as it was understood until the beginning of the modern era and how it changed in the years around 1600 and 1700. Simplifying the notion of science as it was understood until then, we can say that until then proving a statement to be true meant reducing it to a more comprehensive principle, ultimately a very comprehensive principle. The pursuit of truth, and thus the place of science, meant the realm of abstract principles. This changed only with the advent of scientific experimentation from 1600 onward, and the basis for proving truth increasingly became consistency with empirical events. Then, following Kantian epistemologies, the classification of pure experiential knowledge as a science could be recognized from the late 17th century only in connection with its incorporation into a unified theoretical system.

In this sense, when considering the history of the intellectual preoccupation with law, it should be noted that until 1700 it was not considered a science - and this can only appear as a devaluation in view of the increased prestige of the sciences since then - but as a practical craft. The art of interpreting legal rules and concepts and solving practical legal dilemmas was also the art of knowing Roman law, and no one considered it a science. According to *Annette Brockmöller*, the term "jurisprudence" at that time referred to practical legal knowledge rather than legal science, and the term "legal science" began to spread only in the second half of the 18. century and was not generally accepted until the 1790s: "Jurisprudence of positive law was merely the practical ability to interpret the law correctly and to apply it to occurring cases. It was considered a craft but not a science. In the last decade of the 18th century, the use of the term "legal science" becomes common to designate the discipline dealing with law, i.e. positive law, displacing the terms used until then: *Rechtsgelahrtheit*, and *Rechtsgelehrsamkeit*. "[3] At that time, only the abstract system of natural law principles was considered a science, but the idea of tracing the products of the practical-minded Roman jurists at the university back to these principles - and thus bringing them closer to science - did not arise. These university jurists taught and participated in university jurisprudence through the institution of file dispatch (*Aktenversendung*), primarily within the framework of the „*Spruchkollegium"*, although their main activity was also to provide advice and practical legal assistance. [4]

This changed around 1700, and in addition to the creation of legal concepts and legal interpretations oriented to the needs of legal practice, there was an increasing recognition that the creation of intellectual consistency and its integration into a comprehensive system was also the task of legal scholarship. On the other hand, from 1747, at least in Prussia, university

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[3] Annette BROCKMÖLLER: Die Entstehung der Rechtstheorie im 19. Jahrhundert in Deutschland (Baden-Baden: Nomos Verlagsgesellschaft 1997) 26.

[4] See John P. DAWSON: The Oracles of Law (Ann Abor: University of Michigan Law School 1968), illetve Ulrich FALK: „In dubio pro amico? Zur Gutachtenpraxis im gemeinen Recht" Forum Historiae Juris 2000/9. 2-32.

lawyers were excluded from the judiciary, and the procedure of sending files was prohibited.[5] This turn was accompanied by a return of legal practice to the principles of natural law, and this turn also brought with it a new, status quo-critical legal thinking, but the science-historical side of it was that it also brought with it the claim to the scienctific character of practical jurisprudence. In this process, the term "philosophy of law" was coined, which from the turn of the 19th century was increasingly used instead of the term "natural law" or "common sense". The transition in this area was marked by Kant's use of the term "philosophical jurisprudence" to designate a comprehensive theoretical system of law, which in the course of a few years was changed and shortened to "philosophy of law." (But even Hegel's 1821 work, later abbreviated as "philosophy of law," was given the full title "The Foundations of the Philosophy of Law or Grundriß des Naturrechts und der Staatswissenschaften!") The recognition of practical jurisprudence as a science of law was thus intimately connected with the legal philosophical foundation of positive legal analyses (or, as we say today, the sciences of the individual branches of law). In other words: What *Theodor Viehweg* analyzed and described in his 1952 work as the disappearance of legal topics and the historical development of a legal dogmatics with logical rigor from the late 16th century onward also marked the emergence of a jurisprudence based on a philosophy of law. [6]

Let us take a closer look at this process, in which jurisprudence oriented to practical law gradually developed into an abstract-conceptual system of law.

2 From practical jurisprudence to abstract legal dogmatics

Alongside the earlier practice-oriented academic legal activity and case-oriented jurisprudence, as a result of the turn to abstract-systematic legal thinking since the first decades of the 18th century, there arose the need to develop, alongside this new, leading theoretical jurisprudence, a practical jurisprudence that incorporated the practical tasks of any typical legal work into legal thinking and academic legal education. The main themes of the practical jurisprudence thus developed are: the *cautelar jurisprudence* (drafting typical types of contracts, both by concretizing the abstract rules of theoretical legal dogmatics and by introducing law students and lawyers to proven practical concepts, turns of phrase, and formulas); *defense jurisprudence*, with an exposition of the refined aspects, both in the practical application of procedural rules and in the use of proven tips and tricks; *referential jurisprudence*, which includes the most important tasks of the judiciary, refined aspects of document extraction, aspects of processing consultations, aspects of reaching a verdict, etc. . And also some other subjects, such as procedural law was included here at that time, which was only later recognized as part of theoretical jurisprudence.[7] The peak of this practical jurisprudence was around 1790-1810 with the introduction of some such subjects into university teaching, but as the pursuit of systematic jurisprudence continued to advance and jurisprudence ("Rechtsgelartheit" or "legal scholarship") evolved into a more rigorous legal science, it became increasingly controversial whether subjects dealing with such practical

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[5] See die Analyse über der Entscheidung von Samuel von Coceji, von dem dies verordnet wurde, Gerd KLEINHEYER - Jan SCHRÖDER: Deutsche Juristen aus fünf Jahrhunderten. 3. Auflage (Heidelberg: C. F. Müller Juristischer Verlag 1989) 61-64. p.

[6] See Theodor Viehweg: Topikund Jurisprudenz: Ein Beitrag zur rechtswissenschaftlichen Grundlagenforschung. Beck'sche Verlag. 1974.

[7] See Schröder 1979, 140-145. p.

stylistic aspects could have a place in legal scholarship and legal education. Thus, the name and the subjects gradually disappeared from the curricula of German law schools, leaving only procedural law, which, however, was classified as theoretical law. The smart manuals on the subjects of practical jurisprudence at that time were henceforth only working aids for practicing lawyers and have since been known as models of deeds, manuals for defense work, practical aids for drafting contracts. This knowledge can only be learned through practical application, and for this purpose it is better to practice under the supervision of an experienced lawyer, judge, etc. than through university teaching. Especially where in Germany a two-stage legal education had been established and the theoretical material of the first state examination was followed by a second stage of intensive legal practice organized outside the university and concluded with a second state examination, practical jurisprudence had already been discontinued in the universities in the 1850s. It survived only for a time where one graduated within the university and there was no second stage of practical legal education, but then this was only at a few universities in the German states, and later it was abolished here as well.

In the period of the emergence of practical jurisprudence, Wolffian theory dominated as the overarching theory from the middle of the 17th century, and it was mainly members of the Wolffian school, who were also the main theorists of practical jurisprudence, who formulated it as the overarching theme and its main internal subject, but the dominance of Kantian theory from the 1810s and the increasing criticism pulled the rug from under its feet. Wolff's notion of a demonstrative system still accommodated this, and his notion of a concept to speak of individual phenomena as well as general objects. Kant, on the other hand, acknowledged the possibility of a concept only for general objects and located the grasp of individual objects in the realm of sensibility; on the other hand, he made the application of general concepts to individual phenomena-or the bringing together of individual phenomena under an overall concept-not a faculty of reason, but of intellectual judgment (*Urteilskraft*). In his view, this faculty cannot be regulated but can only be developed by practice, and since it is an innate faculty, it can only be improved by practice. Thus Kant excluded from science the practical application of general concepts and rules.

Instead of the Latin jurisprudentia, which had been in use until then, Thomasius - who was also one of the main campaigners for the creation of a German scholarly language - often used the term *Rechtsgelahr(t)heit*, a word that appeared in the German language around 1600 and was used only sporadically. *Rechtsgelehrsamkeit* was a newer term, and while the former was used in the curriculum of the University of Göttingen until 1792, it was then used again, and from 1809 the term *Rechtswissenschaft* was used in the curriculum. *Rechtsgelehrsamkeit*, however, was also used earlier, from the early 1700s. For example, the famous Zedler dictionary of 1741 already lists the names of intellectual professions of law as follows: *"Rechtsgelehrsamkeit, Rechtsgelehrtheit, Rechtskunde, Rechtswissenschaft, Rechtsklugheit, Rechtslehre, Jurisprudenz, Jurisprudentia, Peritia Juris, Scientia Juris."* But even sporadically, the term "Rechtswissenschaft" was used to refer only to specific areas of legal knowledge, so that it was used in the plural as jurisprudence, and the term jurisprudence was used to refer to all theoretical legal activity in general, even in the late 1700s.

In the mid-1800s, practical jurisprudence was comprehensively presented, especially in the books of two authors, *Daniel Nettelbladt* and *Johann Stephan Pütter*. Nettelbladt, in his „Abhandlung der practischen Rechtsgelahrheit" (1764), delimited the inner objects of practical jurisprudence in such a way that one part of it dealt with already created legal acts, while the other area of practical jurisprudence was the creation of legal acts. However, there was another attempt earlier to divide it into judicial and non-judicial practical jurisprudence, which is almost the same in scope, since non-judicial jurisprudence means the creation of

legal acts (contracts, etc.), while judicial practical jurisprudence deals with the legal acts already created in litigation.

The main subjects of practical jurisprudence were:

Kautelarjurisprudenz, or iurisprudentia cavens, heurematica, cautelaris. (Justus Claproth wrote a book on this subject in 1765, entitled Aspects of the Correct and Prudent Formation of Civil Contracts. It is, in fact, a practical concretization of the contract theory of theoretical jurisprudence and has relatively few stylistic and typographical "refined" aspects. In other words, it differs little from the private law theory of contracts, but with a more practical legal approach to the presentation of the rules. Another difference is that the application of the rules is discussed using numerous examples (which in turn has been the subject of later debate about the extent to which examples can be used in theoretical academic treatises or whether it is a practical pedagogical application rather than a science).

Notarial art and the doctrine of voluntary mediation (in today's context: arbitration) were usually discussed together with the former.

Referring and decreeing art. It was intended to help judges and aspiring judges and to present in legal education the practical functioning of this legal activity and the aspects to be taken into account in it. Claproth also wrote a book on the subject, entitled "Principles of Vertification of Relations from Court Files," with chapters on topics such as "storytelling" (nowadays, factual description), aspects of file extraction, dealing with the expert opinions of referees, and judgment drafting, concluding with a discussion of the differences between first and second instance. At the end of a book of slightly more than 300 pages follows a rehearsal of about 400 pages (today: rehearsal file). Most aspects are not a concretization of procedural rules from practice, but advice of a rhetorical nature, similar to the advice in ancient oratorical manuals, with much quoting from Quintilian's Institutio Oratoria.

State and Chancery Practice. This is a presentation of the intelligent aspects of the work of officials in their various activities. Christian August Beck has written a book on this subject entitled "Versuch einer Staatspraxis" (Attempt at State Practice), which deals, among other things, with the various forms of address used by the various state dignitaries in their writings, the appropriate formulas and slogans for opening lines, and the clever turns of phrase for closing sentences. But the book also includes the aspects of speeches to be delivered at state activities, the stylistic rules, divided into speeches for delegates to imperial assemblies, speeches by state delegates abroad, speeches by members of the highest imperial courts, and so on. These are almost exclusively applied rhetoric and hardly the practical application of legal norms, although there are some, and they are a concrete expression of theoretical legal precedents, such as the order of deliberation of imperial bodies, cases requiring imperial approval and the rules for dealing with them, etc.

Archive and registry science: this deals with aspects of document management, filing and arrangement work in various legal works, e.g., providing cover sheets for individual documents, etc. Thus, these are intellectual activities that go beyond legal work and are only loosely related to aspects of theoretical legal science, even in the context of practical legal science.

Defense art. The art of defense played an important role in university legal teaching in the nineteenth century, and *C.J. Anton Mittelmeier*'s work *„Anleitung zur Vertheidigungskunst im deutschen Criminalprozesse und in dem auf Öffentlichkeit und Geschwornengerichte gebauten Strafverfahren mit Beispielen”*, published in 1814, was frequently published and disseminated until the 1850s. The introductory chapter is a brief description of the Criminal Procedure Code, the second a list of possible defense techniques and a description of when to use them, e.g., the most important cases of defense due to exclusion from court or procedural violations, the absence of a crime (legitimate self-defense, insanity, insanity of the accused, etc.), the clever aspects of mitigation.

Jan Schröder, a researcher on this subject, points out in his book that until the end of the 17th century, the ranking of academic subjects was not at all determined by their degree of scientificity, but by their usefulness for man's happiness, and that since man's spiritual salvation was most important, theology came first, followed by medicine and finally jurisprudence. [8] This changed with Kant's turn to science, and *Gustav Hugo* tried to conceptualize jurisprudence in terms of science. He tried to combine the intellectual study of positive and changing legal norms with philosophy, on the one hand, and with the study of historical foundations, on the other, and thus to arrive at a scientific intellectual activity of law. But he recognized only the philosophy of law and the history of law as a science, leaving the rest to the earlier jurisprudence as a craft.

Savigny followed Hugo but he already strove for the scientificity of law in the legal thinking on positive law. [9] According to the Kantian understanding of science, scientificity results from the fact that knowledge is systematic and logically grounded and necessarily follows from its causes. In the case of law, necessity was lacking due to the vagaries of the state legislative process, and Savigny sought to eliminate arbitrariness in defining the subject matter in order to make the study of law scientific. He achieved this by placing behind the arbitrary legislative material the enduring popular spirit (*Volksgeist*) and the systematic ideas of law formed from it, conceiving them as a given that the legislator could not transcend. This made possible the positive legal material based on it and the jurisprudence dealing with it as a science of law.

3 The legal system thinking as the new legal science

First of all, it is useful to distinguish between legal science as an intellectually ordered set of propositions and the conception of the actual legal norms as a conceptual system. Originally, the creation of intellectual propositions as a system of meaning arose in theology at the end of the 13th century, essentially for doctrinal reasons, and in the 1600s it spread to all intellectual life, in jurisprudence thereafter mainly under the influence of *Samuel Pufendorf* and then *Christian Wolff.* [10] It was only through the influence of Savigny and especially Puchta that the idea of creating a non-contradictory systematic in law itself, which was to be transformed into a legal science from the beginning of the 19th century. (Although the tendency toward a more systematic intellectual coherence in the ordonnances (*ordonance*), which were enacted in France in response to the needs of French absolutism and were intended to regulate certain narrower areas of law, could already be observed there from the second half of the 16th century. [11]) The replacement of *legal topics* by dogmatic systems thinking thus took place in two stages, the first of which was the transformation of the intellectual preoccupation with law into an intellectual system, and the second of which was the starting point for intellectual impulses to strive for a conceptual sytematics in law itself. Just to illustrate, Niklas Luhmann sees this transformation from a "theoretical-analytical system" into a "concrete-empirical" system as a general phenomenon in the historical emergence of all social subsystems and

[8] Jan SCHRÖDER: Wissenschaftstheorie und Lehre der „praktischen Jurisprudenz" auf der deutschen Universitäten an dr Wende zum 19. Jahrhundert (Frankfurt am Main: Vittorio Klostermann Verlag 1979) 142

[9] See Jean Gaudemet: Histoire et systeme dans la méthode de Savigny. In ders.: Sociologie historique du droit. Presses Universitaires de France, Paris. 2000. 21-36. p

[10] See Eric Wolf: Grotius, Pufendorf Thomasius. Drei Kapitel zur Gestaltgeschichte des Rechtswissenschaft. J. C. B. Mohr und Siebeck Verlag. Tübingen. 1927.

[11] See John Dawson: The Oracles of Law. Ann Arbor. University of Michigan law School. 1968. 55-140. p.

emphasizes that the theoretical construction of a preliminary system picture and its dissemination in the second stage in the respective functional sphere is the rule and that it is therefore futile to discuss "merely" analytical versus concrete system conceptions in modern sociological systems theory.[12] To return to our original argument: The attempt to create and codify the "general part" in the codification of the individual fields of law starting in the second half of the 19th century, and its creation in the major codes of law created from the beginning of the 19th century, indeed represented the transition of the legal scientifical (initially legal education) system to the operative law, and thus the realization of the legal system.

While the emergence of the philosophy of law as a discipline from the systems of natural law and rational law kept the object of study in the analysis of the general principles and issues of law together with philosophical, moral and ethical issues, another intellectual tendency developed in parallel, which shifted the discussion of natural law-ethical issues more into the interior of law and tried to examine the overall context of law in the light of the issues arising there. This line of thought developed in the wake of Gustav Hugo, Savigny, Puchta, and Jhering, and became the elaborator of the content and internal themes of general legal theory alongside the line of legal philosophy established since Kant and Hegel by the end of the 19th century. Along this line, Jhering's student *Adolf Merkel* called the doctrine of the overarching questions of law *„general legal docntrines”*, and subsequently Julius Bergbohm, in his 1892 work against traditional (natural law) legal philosophy, continued to use alternately this name and *„general legal theory*”, and so it became widespread in the 20th century. Let us now take a closer look at this line.

Starting from natural law via the philosophy of law, Gustav Hugo began to develop a general theory of law as positive law, the theory of law, in the late 1790s. What were the intellectual elements in Hugo's theory that led him in this direction? Hugo, inspired by the historical perspective of the great work of Montesquieu, first broke with the prevailing attitude of his time, which confused Roman law with German law, which went beyond it, without historical consciousness, and discussed it in the light of practical legal problems, and tried to counter this confusion by a theoretical separation of legal history and valid and legally enforceable law. The latter - the comprehension of the law in force in a state - had not yet been fully achieved, and he included in substantive law both "legal truths" - in the later common term: legal norms - and jurisprudential ideas (i.e., the distinction between "de lege lata" and "de lege ferenda," which prevailed after this separation, was not yet clear in Hugo's writings!). In the course of developing his theory (approximately between 1785 and 1820), Hugo, in his struggle against the "universal validity" of natural law and in his search for the conditions of the law applicable in different countries, distinguishes, within the framework of a "positive philosophy of law", a "philosophical philosophy of law" in the narrower sense and a "dogmatic philosophy of law" and he analyzes both in terms of legal history and not deductively as definitions of natural law. He defines "philosophical legal philosophy" as the acquisition of knowledge from concepts, which, however, he conceives not as a priori concepts but as concepts derived from empirical historical reality. He divides the "dogmatic philosophy of law" into two parts, an empirical-dogmatic philosophy of law and a theoretical-dogmatic philosophy of law. One part consists of investigating which real legal truths (= legal norms) existed in different countries at different times and which effects they had under the specific conditions of the respective time and place. (Annette Brockmöller rightly notes that this is one of the first clear formulations of the later sociological approach to law [13]). The

[12] See Niklas LUHMANN: „Rechtstheorie im interdisziplinären Zusammenhang” In: Niklas LUHMANN: Ausdifferenzierung des Rechts. Beiträge zur Rechtssoziologie und Rechtstheorie. (Fankfurt am Main: Suhrkamp 1981) 191–241.

[13] BROCKMÖLLER, 58.

other part, the theoretical-dogmatic philosophy of law, is the one from which the subject of modern legal theory later developed.

To sum up, Hugo did not move from the natural law of his time to a philosophy of law in the same spirit, but deliberately chose the name "positive philosophy of law" and in the course of his theory he developed the themes of modern legal theory (concept of law, sources of law, separation of the law in force from legal history, etc.) in his writings more and more.

Carl Friedrich von Savigny, in his scholarly work beginning in 1802, essentially continued along the path already taken by Hugo, narrowing and deepening the departure he had made in several directions from the traditional natural law and legal philosophy approach to a more independent understanding of law and jurisprudence. And he did so so successfully that Hugo, although considered the greatest of his time and always regarded as such by Savigny himself, was almost completely forgotten by the end of the century because of the influence of Savigny's views. In the course of his corrections, Savigny developed a view of legal history that drew on the spirit of the people of the country in question and, most important for our topic, his focus on the systematic nature of law and thus his recognition of the importance of legal dogmatics. Whereas for Hugo legal history played the role of a mere specimen illustrating the different effects of the implementation of various legal solutions under different historical conditions, for Savigny legal history, like history as a whole, is formulated as a history of development, as a field of long-term tendencies.

Another deviation from Hugo is the systematic character of law. Hugo pursued systematics only in legal science - in the philosophy of positive law and its internal parts - but left law itself to the practical jurisprudence of the craft, as it had been for centuries in the practical, purposeful cultivation of Roman law. Savigny, on the other hand, saw it as his main task to investigate the order in law itself and to create it through lega science. Thus, legal dogmatics became central to Savigny as the developer of the concepts and categories of non-contradictory law, and he gradually realized in his work both the idea of non-contradictory law based on legal dogmatics and the linkage of legal science organized around this task of legal dogmatics.

4. The transformation of legal dogmatics into a social science

The beginnings of the social science of law, which developed alongside legal dogmatic systems thinking, can be traced back to *Rudolf von Jhering*, who, after beginning the first volume of his three-volume work *„Geist des römischen Rechts"* (Spirit of Roman Law) in 1852 as the culmination of legal dogmatic thinking at the time, completed the last volume in the 1860s as a pioneer of social science of law. In the 1870s, he developed a social theory of law in his major work *„Der Zweck im Recht"* (The Purpose in Law), and set out systematically to develop a new conception of law. In many ways, this became the inspiration for the development of sociological theory since Jhering's death in 1892, but from the point of view of narrow legal theory, it can be seen as the first theory of law designed as a social theoretical tableau. A few decades later, in 1913, *Eugen Ehrlich*, building on the results of the already burgeoning social sciences and sociology, coined the term "sociology of law" and developed a sociological conception of law at about the same time as *Max Weber*'s comprehensive social theory, including his sociology of state and law. At the same time, *Arthur Nussbaum* became known for his program of research on legal facts and became a pioneer of later empirical social scientific legal research. The sociology of law and, more broadly, the social scientific view of law, which had originally developed in the German-

speaking world, then migrated to the United States, where it was expanded to include the study of new legal phenomena, but also established itself in several European countries. Let us take a closer look at this process.

4.1.Jhering's social scientific approach to law

Jhering has dealt with the problem of jurisprudence - i.e. its dubious conformity to the criteria of a scientific ethos - in a study of his own. Here, however, I would like to present his social-scientific theory of law itself and, starting from it, analyze the path he has taken toward the social-scientific nature of jurisprudence.

Jhering, who began as a Roman jurist, had increasingly developed his intellectual centering on legal concepts into a general social-theoretical conceptual framework by the time of his second major work, *The Purpose in Law*, in the early 1870s. One of the consequences of this was that the role of the state became central to his thinking, and his stays in Vienna for several years (1868-1872) may have played a role in the development of this conceptual framework. It was in the intellectual climate of Vienna that the emphasis on the role of the state and central legislation in law became central throughout the German cultural area in the second half of the 19th century. (E.g., state and law faculties and legal disciplines were established here instead of German law faculties!). Jhering's openness to new intellectual impulses was also evident in an essay by the young Hungarian jurist *Gusztáv Schwarz*, and in his later study of Jhering and his life's work he highlights Vienna as the intellectual environment in which the new idea was born.[14] In any case, in the description of the first volume of *"Purpose..."* the coercive power necessary for the functioning of society, the state, increasingly takes the place of spontaneous and dispersed individual and small-community coercion in the course of historical development, and the functions of the human communities living in society, initially privately organized and exercised at a simple level (Jhering uses the term "purpose" for this as well!), are taken over by the state from a certain stage of development.[15] In the final perspective, all functions of society will be performed by the state: "If the conclusion from the past to the future is justified, at the end of all things the state will have absorbed into itself all social purposes."[16] Since society can already be understood only as a world society - a cup of tea contains all the production of China and India, world trade, the circulation of money, etc., etc. - there is pressure for expansion among states coping with the constraints of a regionally limited world society, and history is moving in perspective toward the emergence of a world state, Jhering said. Therefore, a state that assumes more and more social functions will eventually be called a world state and world society under total state organization.[17]

This new state-theoretical and social-theoretical background is the focus of Jhering's new concept of law. The coercive state is an increasingly important component of the functioning of society, and law is nothing other than the normative coercive order of society. Law here is no longer primarily a pyramid of concepts, as understood by the master Georg Friedrich Puchta, prominent in the dedication of the first volume of *"Geist....,"* but the coercion of the state itself: "Law is the epitome of the coercive norms in force in a state." [18]

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[14] See SCHWARTZ Gusztáv: „ Rodolphe Ihering et son oeuvre". Revue de Hongrie. (VI. évf.) 7.-12. sz 1913.
[15] Rudolf von JHERING: Der Zweck im Recht. Erste Band. (Leipzig: Druck und Verlag von Breitkopf und Härtel 1893) 306. p.
[16] JHERING, 307.p.
[17] JHERING, 311. p.
[18] JHERING, 320. p.

And to see the great change in Jhering's conception of law, it should be noted that, in contrast to the position of his 1858 volume *„Geist..."*, which set forth the pluralistic sociological basis of law, he now regards as law only those norms that are implemented in everyday life and secured by state coercion: "Even if they are actually followed in life, however unbreakably, they are not law."[19] Likewise, the norms called international law cannot really be considered as law, but only as moral demands, since a comprehensive world state cannot enforce this, and the existence of the size of force can only be a guarantee here, but then it is no longer a question of law, but of power. Thus, the state moves to the center of Jhering's thought, and law is seen as an instrument of coercive power that develops into a total state that increasingly organizes society. But of course, law is not only the state's instrument of subjugation, but also its instrument of discipline. The unrestrained and arbitrary use of force by the state, as we have known it since the beginning of history, is tamed by law, and the increasingly extensive coercive state becomes more and more a coercive force disciplined by law.

Another consequence of Jhering's departure from social theory is that he rejects the individualistic starting point of Roman law and adopts a methodologically collectivist position. From a scientific point of view, the fact that legal provisions formally confer rights and impose duties on individuals is only a means for individuals, who can only live through their community, to create the purposes and functions of the community's existence through their individual actions. Similarly, the norms of morality and custom are outside the law, although they are addressed to the individual, for the sake of maintaining society: "...all three have society as the subject of purpose, not the individual. With regard to this purpose, I call them social imperatives. "[20] The state is the custodian of collective society, and so in Jhering's new conception of law, the state and its legislation not only take the place of the juridical conceptual world of jurisprudence, but also change the orientation of law toward individuals and the way it assigns rights and duties to them. The legal norms are primarily addressed not to individuals but to the state bodies and it is precisely this that distinguishes them from the norms of morality and morals, which, although they also convey to millions of individuals the vital needs of the social collective, are not implemented in their actions under the pressure of the state. From the formal juristic point of view, i.e. only from the narrow function of the law, the implementation of the law by the state authorities in individual cases is important and the implementation of the norms in the actions of the citizens is only secondary, although from the fully sociological point of view the importance of the actual implementation of these legal norms in the actions of individuals also arises: "All legal imperatives without exception are primarily addressed to the authority: the entire Civil Code, the Criminal Code, all financial, police, military, and so on. laws and ordinances, they are all regulatives for the management of the state's coercive power." [21]

In the historical development of Europe, however, the coercive law of the coercive power state increasingly developed in several phases into a form in which the arbitrary commands of the formerly unrestricted state power for the individual case were only transformed into binding rules for a mass of cases when the state power no longer prescribed for the individual case but in the abstract for a group of cases what is legitimate and obligatory action. According to Roman legal history, this was enforced not by a multitude of individual imperial rescripts, but by life, for only in this way could the state determine its legal imperatives for millions of subjects, and thus the system of coercive norms came closer to the true form of contemporary law through the egoism of state power: "Self-interest drove violence to substitute for the more imperfect form the more perfect form: that of the abstract imperative.

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[19] JHERING, 323. p.
[20] JHERING, 331. p.
[21] JHERING, 338. p.

Egoism leads violence unnoticed into the orbit of law."[22] At this stage, however, law is still binding in only one direction, that of the subjects, and the state power that enacts legal norms is not itself bound by its own law; it is still a state of despotism, even if it is more disciplined. Already at this point the rights of the individual in the subjective sense become apparent, i.e. what he can do within the abstractly imposed legal norms, what freedom of action he has, but these granted freedoms of action are still very small and can be revoked at any time.[23] In the third stage, law becomes binding in both directions when it is binding not only on citizens but also on the authorities that enact it and when the rights of subjects are fully developed.

The motive for the development of the third stage is the same as that which promoted self-discipline in the second stage, transforming law from individual orders into a series of legal norms issued like a string. This is because it is in the self-interest of state power, which is designed to last, not to arbitrarily transgress the norms it imposes on itself, because this allows individuals to trust the legal norms that have been issued, to plan their lives, and to act more effectively. In this way, the collectivity represented by state power, and thus the state, will ultimately be stronger. The far-sighted self-discipline of the state that uses force is a law that is recognized as binding on itself, and from which it will not itself deviate until it has changed: "Law is the well-understood politics of force-not the short-sighted politics of the moment, of momentary interest, but the far-sighted politics that looks to the future and considers the end."[24] The guarantee for the effective maintenance of bilaterally binding law by the state is then the sense of law developed in the mass of citizens, through which people socialized in the community instinctively feel what is legitimate and binding in the given situation; on the other hand, they fight for their individual rights, which have now become de facto subject rights and which derive from the laws of the state, even if the legal process may mean more costs and more struggle than the right they thus recognize for themselves (the struggle for the right!). On the other hand, the separation of professional jurisdiction from the state authorities is a guarantee of the subordination of the state to the law. Although the authorities themselves create and amend the legal regulations, taking into account the concerns, objectives and functions of society as a whole, they do not consider them sacrosanct! -while the judiciary has only the task of complying with the legal regulations, and as long as the enacted regulations are not formally amended, it must compel the authorities to comply with them. Thus, a judiciary that is independent of the other main organs of the state is the basis of a bilaterally binding rule of law, which can be achieved by guaranteeing the irremovability of individual judges, the secrecy of elections, and adequate compensation guaranteed by law. [25]

The analysis so far in Jhering's new conception of law has shown the development of the external form of law, its transformation from an individual command into a norm and then subordination to the law of the state, which operates the state coercive order of law, creating a subjective legal dimension for individuals, its sedimentation in the sense of law, and the creation of a professional jurisdiction independent of state authorities as a further guarantee. The other side of this concept of law, namely the content of law, is the analysis of what determines the content of law. Is it possible to formulate a general theorem that can provide an answer to the content of law in any society? Jhering's first step in this direction is to break with the thesis of the uniform subordination of intellectual content to the criterion of theoretical truth, a thesis that has accompanied the research of legal scholars and jurists for centuries, and which, at a time when natural law thought was dominant in the 1700s, sought to identify in law the eternal and immutable elements necessary for science, precisely because of

[22] JHERING, 347. p.
[23] JHERING, 353. p.
[24] JHERING, 378. p.
[25] JHERING, 405. p.

the eternal character of natural law. But, on the other hand, Jhering's assumption of simple logical steps with legal concepts and principles in law was implicitly guided by it in his earlier period of thought, and the idea of a genuine "natural science of law" was born for him by it. Now, however, he broke with it because he came to the realization that truth can be postulated only in terms of the content of human knowledge, but that, unlike pure knowledge, action can never be evaluated in terms of truth but in terms of its purpose. In other words: Is it purposeful in terms of achieving the goal and does it really lead to the goal? While science is a general form of human knowledge, and thus truth is the measure and evaluation of theoretical knowledge, the norms of law are in the dimension of actions, and the content of norms can thus be evaluated not in terms of truth but in terms of expediency. In different societies, in different periods of time, the goals of individuals and human communities can only be goals under the given circumstances, so the content of legal norms is always relative, determined by the goals of the human community living under the given conditions of existence of the period. [26]

After this clarification, Jhering asks in what direction it is then possible to search for the purposes that lie behind the law of any society, and to give at least a general thesis for the direction of the search. His answer is that all the institutions of society exist and function for the purpose of securing the life of the human community of society (and of the individuals in that community), and that law always emphasizes as a goal to be achieved the securing of those conditions of life in society that require the coercive power of the centralized state: "I define law as the form of securing the conditions of life in society mediated by the coercive power of the state. "[27] These conditions are constantly changing with the possible changes in the natural conditions of existence, but history has shown that after the conditions of life of the more primitive human communities were reduced to mere food and clothing, the more advanced communities have increasingly found that, in addition to the physical conditions of life, spiritual, cultural, and religious activities are indispensable, and that these conditions of life are also part of the living conditions of society. Likewise, for each individual at this higher level, in addition to food, drink and clothing, the provision and protection of honor, love, meaningful activity, etc., etc., are indispensable.

These constitute the totality of the conditions of life that determine the goals of the human community of any society, but of which law includes as goals to be achieved only those conditions of life that require the coercive order of the state, which exercises violence in society. What are these, and what is the general relationship between the distribution of those who require coercion and those who do not? To answer this question, Jhering divides the conditions of existence into three categories: some that can be met entirely outside the law, some that can be met with legal assistance, and some that can be met only through the state and its coercive law. The first is that which is already implanted in man by nature, so that these goals, which are necessary for the existence of society, are realized by individuals without any external impulse or coercion. This is the instinct implanted in man for the preservation of life and the species, which need not be imposed on the individual by coercive law, although here, too, state norms arise by way of exception, e.g., the punishment of illegitimacy and childlessness for the production of offspring necessary for the military force which is the strength of the community, or the punishment of suicide in case of failure of the instinct for the preservation of life. The second area, which is essentially based on the voluntariness of people but requires legal support, is that of labor and commerce, in which the instinct for self-preservation and the acquisitive instinct based on it form the basis, but which could not be undisturbed without the guidance of legal norms. However, if, for example, commerce is well conceived and competition works in a given field, then controlling the

[26] JHERING, 439. p.
[27] JHERING, 443.

human acquisitive instinct will lead to better results than imposing something on traders through government coercion. In other words, legal regulation here should rather provide for the conditions of competition and leave the rest to the selfishness of individual traders. [28] Finally, the conditions of life that can be maintained only by the state and its coercive law are the purposes that must preclude, in the relations between men, the killing or wounding of another in a quarrel, the gratuitous appropriation of another's property, the nonpayment of taxes to the state for the maintenance of the common affairs of the community, and so on. Thus, what the individual has no intrinsic incentive to do, but without which society could not exist, must be taken up by the legal constraints of the state and put into practice. Here we find the purpose of the law and the goals behind particular pieces of legislation.

In order to bring the purposes underlying law into a comprehensive scheme, Jhering first reinterprets the concept of legal subjects, which are bearers of rights, established in jurisprudence, and replaces it with subjects of purpose, which create the conditions for life in society. In addition to individuals (natural persons) and associations, churches, and the state (legal persons), he introduces the category of society as a purpose subject, which represents an indeterminate whole, and sees all institutions and legal provisions of law organized around these five subjects: "The whole of law is based on the five purpose subjects; they are the personal purpose centers of the whole of law, around which all institutions and provisions of the same are grouped. The whole life of society presents itself in the relations, purposes, tasks of these five objects of purpose; it is the scheme of purposes of law valid for eternity." [29] With this change, the law appears not as the rights and duties of the subjects of law, but as the means of realizing the conditions of life of society, and the subjects of law are not the bearers of law, but the workers in the conditions of life of society (Instead of "subjects of purpose" we could use our modern terms to express Jhering's idea, and rather speak about the "functional units" of society). Note also that Jhering later reduces the five to three, ordering the basic categories of law around the purpose-subjects of society, the individual and the state, the associations around the private associations, the functions (purposes) of the churches around the state. The legal categories of the disposition of things (property, trusts, servitude) and the categories of duties and obligations between the individual, the state and society (private law duties and state duties) are analyzed in relation to these three major functional units for the provision of the living conditions of society; the area of crimes is then analyzed in relation to the violation of legal norms that constitute the living conditions of society.

1) Property and servitude, the legal categories of the disposition of property, are the means of securing the economic conditions of life in society, and society could not exist harmoniously without either form of individual property, state property, or social property. For example, if the use of roads, bridges, etc. were not socially owned and individual ownership governed this, community interaction would be unprofitable and therefore would have to be socially owned. Similarly, the state can only perform its functions for society as a whole if it has the means and property to do so. In other words, all three forms of ownership are essential to the functioning of society. The foundation's orientation toward society as an indeterminate group of people - to which everyone belongs without restriction - constitutes another legal category of the disposition of property, and this orientation toward everyone distinguishes it from an association, which operates only for a specific group of members. Especially in the case of charitable foundations, this character of foundations emerges, but also in the case of other foundations, there is always some form of orientation towards society as a whole, e.g. through the awarding of a scholarship, the operation of a picture gallery, a library, a university, etc., from which no one belonging to the social group in question can be excluded beyond the requirement of an admission and use stop.

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[28] JHERING , 459. p.
[29] JHERING, 465. p.

2) Jhering takes a broad view of the legal categories of obligation and, in addition to the law of obligations, which as a rule belongs to private law, also considers the obligation relationship between the state and the individual as a subcategory of it. Of the three target groups (or, as we say today, functional units), the term "debt relations" has come to refer to legal ties between individuals based on voluntary obligations, and this is the realm of private law. However, when the state enters into legal relationships established by such a voluntary commitment, it too, represented by the Ministry of Finance, becomes a subject of private law. Only when the state pursues a specific purpose for society as a whole and interacts with individuals for this purpose do obligations of a public-law nature arise that are not private-law obligations, e.g., the payment of taxes, and the enforcement of these obligations is not by way of private-law litigation but by other legal procedures. Jhering distinguishes between the German terms "obligation" and "duty," the content of which can be interpreted as "voluntary private obligation" and "civic duty" to the state. He also gives the example of a voluntary private obligation being transformed into a civic duty by the private parties disputing a contractual obligation in court, so that after a final judgment the disputing party now has a civic duty to fulfill the disputed private obligation (the obligation has become a duty!), and thus the state is already compelled to enforce it.

3) In the area of criminal offenses, Jhering first analyzes the inadequacy of the existing definitions of criminal offenses. He still considers the common definition of a criminal offense as an act of public authority punishable by law, i.e., an act that violates criminal law, to be correct, but this only reflects the external side of criminal offenses; the internal content has not yet been tapped. Previous attempts assumed that the crime is a violation of the rights of the person concerned, but this is not correct, because there are a number of crimes in which there is no such violation, for example, blasphemy or offenses against public morals; or it was said that the crime is a violation of the freedom granted by the state in substance, but there are a number of crimes in which there is no violation of freedom. But it is not better to say that it is a violation of the rule of law, because all private crimes are also violations of the rule of law, but they can not be considered crimes.[30] What can take their place is what is the purpose of the law in other parts of it, namely, to secure the conditions of life in society as a whole, and in the case of criminal offenses it is only the way in which this security is provided that differs from the rest of the law. So the question is: what is this particular way? It is nothing other than the way of securing the conditions of life through punishment. Why is it necessary to bring about a punitive solution and apply it instead of the other legal sanctions? The answer lies in the fact that in certain cases the securing of the conditions of life without law is replaced by the securing by legal coercion, because the natural incentives implanted in the individual are not sufficient, and where the milder coercion and the sanction of the rest of the law are not sufficient, but the conditions of life of the society are seriously damaged, it is necessary to resort to the securing by punishment. This also means that the means of punishment should be avoided as much as possible, just as the law itself should be used only where it cannot be achieved without it. This is because the instruments of criminal law also reduce the vitality of society (punishment is costly, the offender is excluded from the regeneration of society, etc.). However, if the damage caused by the act exceeds a certain level of the living conditions of society, there is nothing to prevent the state, as the representative of the totality of society in a broader sense, from criminalizing such an act. Jhering resolutely opposes jurisprudential categorizations that attempt to limit the state's power to punish, e.g., that certain areas belong to private law and therefore only private law sanctions are possible there. What must be protected by criminal law is a purely political question, so that if a condition of life is deemed important in a society and cannot be

[30] JHERING, 483-484. p.

adequately protected by private law, criminal law must be resorted to. Product piracy, for example, has reached such proportions in Germany today, Jhering said, that German goods are slowly being squeezed out of world markets because all the credit for German production has been lost. It would have been much better if the German state had cracked down on producers, with the prospect of prison sentences, and we would be in a better position today because private sanctions were not enough.[31]

One of the effects of Jhering's analyses, then, is to remove the conceptual constraints on state action in criminal law and to subject criminal law to free state legislation. In place of the established doctrines of crime, he then attempts to create conceptual legal boundaries that concretize the overall purpose of the law (securing the conditions of life in society) in terms of criminal law. The starting point is that crime is an attack on the conditions of life in society and that, in order to prevent this through the threat of punishment, the state must focus on two dimensions to determine the nature and severity of the punishment to be imposed for each crime. Jhering echoes the idea, long prevalent in criminal law, that the punishment for crime should be understood like the price of a commodity in commerce, and that the more expensive the commodity, the higher the price. If we open the penal code of a society of a particular era, he says, we can see in the amount of punishment imposed a measure of where the victim's conditions of life stood in the value judgments of that society. The higher the value of a condition of life, the higher the price or penalty for its violation. Another factor that determines the level of punishment is the perpetrator and the degree of danger that the crime poses to the particular sphere of life. If it is a repeat offender, the danger of his crime is greater, just as a group or organized crime deserves a higher penalty than a lone offender, or a reckless crime deserves a lesser penalty than an intentional crime. Jhering points out that the judge must never take into account the danger of the specific offense, but rather the measure determined by the legislature in the abstract after a general assessment for the entirety of the offense, and is bound by this abstract assessment. The individual act is only a concrete example of this, but the task of the judge is not to weigh the concreteness, but to concretize the decision of the legislator on the general level.[32] (Reference is made to the later continuation of Jhering's analysis of criminal law, where this has already been turned into its opposite!)

Jhering then classifies crimes according to the already elaborated categories of crimes based on violations of the conditions of life of society: violations of the conditions of life of the individual, then of the state, and finally the categories of crimes that constitute violations of the conditions of life of society in the narrower sense. Another common subdivision scheme within these three target groups is the aspect of violation of physical, economic and spiritual-ideal conditions of life. In the case of individuals, the violation of physical living conditions is exemplified by murder and bodily harm; in the case of economic living conditions, theft, extortion, and fraud are examples; in the ideational-spiritual aspect, we see crimes that violate the individual's freedom, honor, or family; and in the same way, most of the known crimes are also found in the aspects of living conditions of the state and society. It is important to note that Jhering's explanation of certain crimes is always analyzed as ultimately aimed at ensuring the functioning of society more broadly, even when it is aimed at individuals, e.g., the prohibition of abortion is not explained on the basis of an individualistic "right to life" (i.e., the right to be born), but on the basis that the life of the offspring is the indispensable condition of life for society as a whole. Thus, the unborn child is not simply an unchosen part of the mother's body, but a guarantee of the conditions of life for society. "Even before the child is born, society reaches out to protect and desire it. "The child you carry in

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[31] JHERING, 487. p.
[32] JHERING, 491. p.

your womb"-the law calls out to the mother-"belongs not only to you but also to society; woe to you if you interfere with its rights." [33]

In a broader sense, it should be pointed out that for Jhering the social conditions of life are not explained by individual rights, especially not by rights that are innate and inalienable to man, but that these appear only as reflexes of positive law, that is, as subjective rights. They are therefore, of course, important for the functioning of practical law, but not as the ultimate theoretical explanation of rights. His theory does not offer an individualistic explanation of society and law, and in his time he classifies the exaltation of the individual and his rights above all else as a delusion caused only by superficial appearances. Thus, the belief in the absolute limitlessness of property and the rights of the owner in our time, he argues, was created by the deceptive surface effect that the selfish use of the owner in most cases invisibly secures the interests and living conditions of society as a whole. But the theory of law should not transform this deceptive surface effect into an inviolable property right ("You can do what you want with your property, you can destroy it!) because the final standard is always the conformity with the living conditions of society: "Only the fact that already the own interest determines the owner to make of his property regularly that use which corresponds as well as his own to the interest of society, causes that society with its requirements is so little visible in property". [34] Among the Germans, *Wilhelm von Humboldt* expounded the error of the individualistic view at the level of social philosophy - admittedly in his youth and later, with a mature mind, he distanced himself from it, Jhering notes with satisfaction - and among the English, *John Stuart Mill*, and the error of these views is then analyzed for pages in Jhering's first volume of *"Purpose...."* [35]

Behind the legal provisions that confer rights on individuals, then, there is a system of social purposes that always represent the conditions of life in society, and therefore, theoretically, individual rights and legal institutions can always be judged in light of the conditions of life in that society. To understand some of the later implications of Jhering's theory of law, it should be noted that while he attempted to tie judges to the text of the law whenever this aspect was explicitly addressed in his book *„Purpose..."*, he implicitly created the dual theoretical dimension of the difference between the surface determinations of legal norms and their underlying purposes. In this way, judges are led to consider as the basis of their decision the purpose they may have hidden behind the explicit provision of the law, rather than the explicit provision of the law itself.

4.2 The emergence of social science legal research.

Law, then, in the normative dimension of its function, is a social phenomenon, like other fields of activity with a social function, e.g., economics, art, science, politics, etc., and all legal phenomena, like other social phenomena, can be studied from the point of view of facts. This is the essence of the social science approach in jurisprudence and can be formulated as a field of analysis in terms of social facticity and causality or effects, in contrast to the approach of positivist jurisprudence or legal philosophy. For example, whereas the legal dogmatist of civil law examines a statutory provision on pledge or surety from the point of view of how these contractual securities fit into the framework of the dogmatics of existing contract law as a whole, the sociological approach asks how frequently pledge or surety is used as a

[33] JHERING, 517. p. p.
[34] JHERING, 519. p.
[35] JHERING, 538-551. p.

contractual security in everyday contractual practice. Or, which social groups have favored this form of pledge and surety in everyday contractual practice, and what social interests would be served by alternative arrangements in this area? Thus, in the sociological approach to law, we move from the normative dimension to the factual dimension, to the dimension of conflicts of interest, social causes and effects, when analyzing legal norms and legal phenomena. If we look at sociological studies from this point of view and the different sociological research directions, we can distinguish between a narrower and a broader meaning of the sociological study of law. The sociology of law in the narrower sense still focuses on legal norms as the normativist legal sciences, and it is no coincidence that the sociology of law emerged in the last decades of the 19th century. The sociology of law emerged only for the analysis of these issues. In a narrower sense, it is concerned with legal norms and legal provisions, just as the normativist legal sciences are, but with their actual observance rather than with normative-conceptual coherence and possible logical contradictions. Or it asks what social interests and political forces have shaped the legal norms under study and which political forces serve to dominate or which social groups are subordinated and disadvantaged by the legal norms under study in social struggles.

But we are still in the narrow sense of social scientific legal science when the analysis examines how a large code of law, created many decades ago, has undergone changes in the past in terms of legal dogmatic constructions due to the power and interests of social groups, and what social forces were protected by this code when it was created, and what social forces were protected by changes in social dominance during the transformation process? These sociological analyses of law are united by their focus on legal norms. They could be historical sociology of law, such as *Jean-André Arnaud*'s analysis of the French Code Civil, in which he shows the effects of increasing state-capitalist dominance after its emergence from liberal-capitalist ideals through changes in the Code Civil and, in particular, through the reinterpretation practices of the Court of Cassation, France's highest court. [36] Equally typical, however, is *Morton Horwitz*'s large historical-legal-sociological tableau of the development of American law over the past two hundred years, which describes American legal history as the emergence of the dominance of commercial finance capital after the early dominance of agrarian-industrial capitalist groups. In contrast, traditional nomativist legal history analyzes the same events as a history of changes in legal dogma and the elimination of potential contradictions.

In addition to historical sociological analyses of law, another area of sociology of law in the narrower sense is the study of the actual enforcement of the laws in force today. While the first method involves visiting libraries and archives and examining historical analyses and factual reports, the second method involves preparing empirical questionnaires and interviewing those affected by the legislation in question using precise sociological methodology, while also closely examining statistical data in the area in question. In this way, we can determine how frequently certain provisions of a broader piece of legislation are enforced. For example, we can determine that certain provisions of criminal law are rarely or never enforced by the relevant police and law enforcement agencies, and that the acts prohibited by these provisions are common practices in life that are virtually unpunished, and that people may not even be aware that they are acts that should be punishable.

In addition to sociological legal science in the narrow sense, which focuses on legal norms, its extended form goes beyond legal norms and includes the entire legal sphere with all its phenomena in its analysis. It could also be called the sociology of the legal system, in addition to the narrower sociology of legal norms. This broader sociology of law includes, for example, the study of the various professions in the legal system and their relationships to one

[36] Jean-André ARNAUD: Essai d'analyse structurale du Code Civil francais. Le regle du jeu dans la paix bourgeoise (Paris: Libraire Generale de Droit et de Jurisprudence 1973)

another. Which profession dominates the legal system in a particular country and what influence does it have on the law? Is it dominated by the university legal profession, as was the case in Germany for many centuries, or by a group of lawyers, the "barristers," as was also the case in England for many centuries? And from these facts, conclusions can be drawn about how law works in a particular country and how it has changed. In German law, for example, the dominance of university professors has given an important role to conceptual legal dogmatics, which has led to the creation of extensive codes based on abstract legal concepts. In English law, the almost complete absence of academic jurisprudence for many centuries led to the failure to create a legal dogmatics of abstract legal concepts and to the development of casuistic, case-based jurisprudence, which was later continued by the advent of parliamentary legislation. However, the sociology of law in the broader sense is also concerned with the social origins of the judiciary, their affiliation or nonaffiliation with political groups, and thus attempts to draw conclusions about the functioning of the legal system in each country. Sociology of law more broadly is also concerned with analyzing statistics on caseload trends and attempts to link caseload trends in a particular area of law to socioeconomic changes. For example, the decline in state control and governance and the concomitant increase in the regulatory role of the market in a wide range of social areas has led to a sharp increase in the number of civil and commercial lawsuits, while the dominance of the central government organization of society has resulted in a decline in the frequency of lawsuits. This research is also known as the "sociology of procedural law," while the former is known as the "sociology of the legal profession." They are all distinguished by their inclusion in the broad sociology of law, the sociology of the legal system.

In recent decades, comprehensive law school education in most countries of the world has led to a tremendous expansion of academic legal scholarship, and increased research capacity has led to the sociological study of more and more new legal phenomena. In addition, ministries of justice and other judicial administrations in several countries have established special departments for sociological research in law, both in the narrower sense of sociology of law (e.g., on the actual enforcement of particular laws) and in the broader area of sociological research in law on the legal system as a whole. From a different perspective, the number of studies and works in the sociology of law is expanded by the fact that some of those who were traditionally engaged in theoretical research on law or legal theory are now conducting research in the normative dimension as well, while incorporating an analysis of the sociological dimension of law. As a result of the extensive research in the sociology of law in the United States, there are now a number of studies on the sociology of law in several major world languages, particularly English. These materials provide us with a range of contexts for understanding how law works, which, together with the results generated by the normative dimension of theoretical jurisprudence, give us a deeper insight into law.

4.3 The Development of the Sociological Approach to Law

The term "sociology of law" first appeared in *Eugen Ehrlich*'s 1913 book "Grundlegung der Soziologie des Rechts," but the sociological consideration of law was already "in the air" because at that time (1911-13) *Max Weber* wrote a sociological analysis of law as part of his great synthesis "Economy and Society." But *Arthur Nussbaum* also published his summary work on legal factual research in 1914, which also outlined a factual, sociological study of legal phenomena. It was no accident that all three authors were German and that the development of the sociology of law was initially seen as a German affair. English legal

scholarship was virtually nonexistent in the nineteenth century because of its legal development limited to court decisions, and U.S. legal scholarship, which grew out of English legal development, was still in its infancy at that time. French legal scholarship was also developing with difficulty, and German legal scholarship had the largest academic community of university lawyers. However, the trends and insights developed here were very quickly transferred to legal research in other countries.

It was no accident that German legal theory provided the impetus for the development of the sociology of law at the beginning of the 20th century. This was because two lines of development that were evident in several European countries were particularly pronounced in Germany. First, a strong legal dogmatic doctrinal system was developed in the course of the 19th century, drawing on the earlier development of the law of judges to deal with increasingly complex conceptual contexts. As a result, the regulation of life situations was largely abstracted, and abstract rules and legal concepts were combined into a self-contained conceptual system. Under the guidance of law professors, lawyers then used this abstract legal conceptual system to observe the thousands of concrete life situations in which judges had to decide every day, but this closed conceptual system tended to become detached from everyday situations. This was one of the tensions that began to develop between certain legal circles thinking in a normative conceptual context of law and other groups of lawyers (and non-lawyers) paying attention to real life situations.

Another development besides the first was the activation of the legislature in the second half of the 19th century. This development, along with the gradual development of law based on judicial decisions, created a new body of law that differed from the nature of previous law in one very important respect. While the legal norm based on the development of judicial law came into being only gradually and only when a large number of judges had begun to follow a consolidated norm, was - in retrospect! - taken up as a compulsory legal norm, the norms created by deliberate legislation hover over society immediately after their promulgation and but they are not yet followed by the public at large. Of course, the machinery and apparatus of the modern state can ensure that newly created legal norms spread in a short time. But if such norms are enacted in large numbers, without taking into account that in real life hundreds of thousands and millions of people routinely follow norms that run counter to them, then such law will become bloated and remain only on the "paper" of the statute book, and the new legal norms enacted in legislation will not prevail in everyday life.

These, then, were the two new developments in German law at the beginning of the 20th century, and the idea of the sociology of law arose in response to them. The lasting influence was achieved by Eugen Ehrlich and Max Weber, let's look at their analysis.

Ehrlich distinguished between three types of law, social law, juridical law, and state law, and he held that the three types of law emerged in this order throughout history. Social law arises in small groups of individuals, if they persist even a little. Thus in family communities, in circles of friends, and in a wide variety of small human communities. Within these communities, norms emerge in interactions, and members of the group are expected to act according to those norms in a given situation. "Social law," then, emerges spontaneously within society as a whole, and it is this law that gives people the greatest stake in guiding their behavior. In early societies, this kind of law was the whole law, but at a more advanced level, frictions and conflicts between small groups lead to judicial bodies that decide on these conflicts, and these are later deposited as norms that govern subsequent judicial decisions. This is judicial law, i.e., the norms for judicial decision-making to resolve conflicts. However, Ehrlich says, this is secondary to people's lives, because it is a rare occurrence in life that people have to go to court over a conflict, and much of life is still governed by social law. Finally, a third type of law is state law, a completely new phenomenon that intervenes in the life of society through conscious legislation and shapes the interactions between people.

Ehrlich considers this last type of law to be of secondary importance and explains its prevalence in his time by a social crisis situation and thus only a temporarily greater role of state law, but predicts a decline in its importance in later times. On the other hand, he sets limits to this type of law by saying that state law can only follow what social law has already more or less spread, and that it can therefore only play a subsequent sanctioning role, but cannot proclaim as state law a norm that contradicts social law. State law can only recognize social law, but it has no chance to act against it out of pure coercion. For if this is the case, Ehrlich argues, it remains only on the paper of the code and does not become a "living right." It should be noted that Ehrlich lived in the Austro-Hungarian Empire in the region between Galicia and Bukovina, on the border of the Empire, where Rusyns, Romanians, Poles, Hungarians, and other ethnic groups lived side by side largely according to their own customs. In this situation, Ehrlich was well able to perceive the central Viennese law codes that remained on paper alongside the customary law that was actually followed. However, this problem is not so acute in all modern legal systems, but still such problems exist and in this way Ehrlich's influence has been maintained until today.

In this thematization by Ehrlich, however, both deliberate state legislation and legal dogmatics, which provides a legal conceptual world free of contradictions, have been completely eclipsed. Legal development in the past century has not borne out Ehrlich's prediction, and the role of state legal development has not only receded into the background, but has increased enormously in the shaping of law. However, the dilemma Ehrlich pointed out of "staying on paper" if the law changes too much too fast has persisted ever since and should be kept in mind by legislators. Another conceptual flaw is that the role of legal dogmatics is neglected and only the role of concrete norms of conduct is emphasized. This problem arises from Ehrlich's deeper understanding of society, which goes back to the vision of society outlined by August Comte in the early 19th century. This conception viewed social reality and social phenomena as causal laws of natural reality. It did not understand the intellectual and cultural formalization of social reality and its fixation in symbols, words, concepts, images and norms. Social phenomena and the boundaries between them therefore appear to him as physical facts. This was the reason why Ehrlich did not understand the meaning of conceptual systems and why he despised and rejected legal dogmatics as a system of conceptual relations. But even if this rejection was too radical, the misleading of lawyers trapped in a closed legal world of meaning could very well expose it in everyday life situations, and this in turn has had a lasting impact on Ehrlich to this day.

Max Weber made none of Ehrlich's mistakes and recognized the importance of both state law and legal dogmatics in his conception. This also follows from their different social theoretical foundations. For Weber broke fundamentally with the earlier mechanistic conception of social reality as identical with nature and placed the meaningful construction of the structure of sociality at the center of his social theory. Against this background, he was better able to appreciate the growing intellectual complexity of modern societies and the inadequacy of earlier forms of higher-level law formation. It follows: While Ehrlich, on the basis of legal historical material, affirms the predominance of social customary law, Weber, also on the basis of legal historical analysis, emphasizes the rationality of newer forms of legal development and recognizes the devaluation of earlier customary law formation. [37] In the course of modern social development, the state monopoly of coercion establishes itself, replacing the earlier dispersed possibilities of force, and the consciously created legal norms of the established state apparatuses are disseminated in modern societies by means of coercion. For Weber, this is the rationality of modern law, but also the higher rationality of law based on an abstract conceptual system of law that most clearly reveals the existence of

[37] Max WEBER: Wirtschaft und Gesellschaft. Grundriss de verstehende Soziologie. 5. Auflage. Mohr Siebeck. Tübingen. 181-199.p

complex social relations. Therefore, he recognizes that any new legal norm must fit into the non-contradictory conceptual system of law, and that this gives the legal norm its proper, ideological validity. In addition, however, Weber, like Ehrlich, sees that this does not answer the question of the comprehensibility of the norm in everyday situations, and therefore separately recognizes the factual or sociological validity of legal norms, i.e., the importance of their comprehensibility in everyday situations. It can be seen, then, that while Ehrlich emphasizes only the latter, Weber can also address it and the level of legal dogmatic validity.

After the two "founding fathers," new sociological theories of law continued to emerge in the first half of the twentieth century, but they generally nuanced the approaches they outlined. Arthur Nussbaum's 1914 program of "legal fact-finding," for example, complemented the predominantly legal-historical analysis of the two Founding Fathers by systematically incorporating the facts of life relevant to the newly created laws into the legal-sociological perspective and developing an analysis of the actual effects of the created laws. [38] In this way, Nussbaum developed a practical-operational dimension to legal sociological research, whereas the orientation of the founders, who tended to look back into the legal historical past or, in Weber's case, even beyond it to the general level of social theory, did not allow for this. Under Nussbaum's influence, an Institute for Legal Factual Research was finally established in Germany in the early 1970s in the Ministry of Justice, which in the years that followed led to systematic factual research in several important areas of legal life. This has since been of enormous importance for the knowledge of the actual life of the law.

In France, *Georges Gurvitch* founded a systematic sociology of law beginning in the early 1930s that argued strongly against Ehrlich's conception but, like Ehrlich, emphasized the social formation of law outside the state. [39] The Hungarian *Barna Horváth*, in his sociology of law published in Germany in 1934, also repeats in many respects the spontaneous formation of law through customary law as opposed to state statutory law advocated by Ehrlich. [40] However, *Theodor Geiger*, who was of German origin but worked in Denmark for most of his career, also describes Ehrlich's path of social law formation with different emphases. [41]

Ehrlich's sociology of law also enjoyed great success in the United States in the 1930s, and after his work was translated, he became one of the founding authors of the then-burgeoning movement of legal realism. Max Weber, on the other hand, did not become known as a sociologist of law in the United States until the 1950s, in the course of his later acquaintance with general sociology. However, because the focus of legal sociological research was on legal phenomena more closely intertwined with everyday life, such as judicial decision making, rather than state legislation, it can be argued that Ehrlich's sociology of law had a greater influence on later legal sociological thought than Weber's more balanced view of law, which emphasized the importance of state legislation and formal legal terminology.

In the legal science that emerged in the United States at the end of the nineteenth century, the study of law in terms of social facts took its place relatively early alongside the dogmatic aspects of law. A pioneer was *Roscoe Pound*, who as early as 1908 pointed out the inadequacy of a "mechanical jurisprudence" limited to the internal context of law and argued for including, alongside the paper of law, the analysis of law as applied in practice. In many ways, the distinction between the "law in the book and the law in deed" anticipated Eugen

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[38] Siehe Thomas RAISER: Rechtssoziologie (Frankfurt am Main: Alfred Metzner Verlag 1987) 17.; bzw. Hans RYFFEL: Rechtssoziologie Eine systematische Orientierung.(München: Luchterhand 1986) 39-50.

[39] RYFELL (34.lj.) 60-63. ill. Jean CARBONNIER: Sociologie juridique (Paris: Quadrige/Presse Universitaires de France 1994) 111-114.

[40] See Barna HORVÁTH: Probleme der Rechtssoziologie. Duncker und Humblot. (Taschenbuch) 1971.

[41] See RAISER (lj.34.) 98-104.

Ehrlich's distinction between the "law on paper" and the "living law," and Pound understood his own concept of law as "sociological jurisprudence. " [42] Pound arrived at this insight primarily on the basis of Rudolf von Jhering's late work by opposing the closedness of the conceptual world of law and emphasizing the goals and interests behind legal norms. Later, when Pound became familiar with Eugen Ehrlich's basic sociology of law and the concept of "living law," he strongly advocated Ehrlich in the United States. His own theoretical foundations, however, were of little importance due to his conceptual slippage and slips in later years, and he was more of a propagandist for a sociological view of law.[43] However, his long academic career, spanning the development of the sociology of law from the early to mid-twentieth century, and his academic leadership role contributed significantly to the promotion of the sociological view of law. Since the early 1930s, Roscoe Pound has been considered a pioneer of the legal realism movement, although Pound was a fierce critic of its concept of the exclusivity of the judge's law.

It should also be noted that the spread of social science jurisprudence, the sociology of law, came to a halt in Europe beginning in the 1930s after the rise of dictatorial forms of government, and the focus shifted to the United States. It was not until the mid-1960s that this approach began to regain a foothold here, but then in many respects under the impetus of the now established American sociology of law.

5. Summary

Law is a social phenomenon, and therefore a legal science consistent with the idea of science can only be a social science. This, as shown, has appeared in greater dimensions in recent decades, but in the internal theory of law as a discipline it is conceived only as a "sociology of law" complementary to the "proper" (legal dogmatic) science of law. But on the contrary, legal dogmatics is not a science, but a layer of the more complex Western legal systems, a system of conceptual relations that emerges above the rule layer of legal systems. The science of law can be only the observation and analysis of it, not the legal dogmatic activity itself. Thus, the analysis of changes in legal concepts and categories, the analysis of the social processes underlying these changes, and the analysis of the social effects of particular legal concepts and categories in relation to other categories can only take place here. [44] Just as the legislative creation (as norm-setting) and judicial application (as norm-application) of certain rules of substantive law are only part of the functioning of law, legal dogmatics is also part of the legal system and only the intellectual activities that examine the decision-making process itself, including the reasons for the creation of certain legal rules, the interests and positions of the dominant social groups that actually represent those rules, the alternatives that were eclipsed in the creation of those rules, and the positions and interests of other social groups that would have been better supported by those rules, can be included in legal science. Likewise, it is scientific if the analysis of the judiciary's application of the law reveals and presents not only the methods of legal interpretation used, but also the structural determinants of judicial decision-making itself, the selection of the judiciary and the political values of its internal groups, the structural links and demarcations between the judiciary and other groups of jurists, the resulting consequences for judicial decisions, comparative analyses of all these

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[42] See Allen HUNT: The Sociological Movement in Law (London: Macmillan 1978) 11-35.
[43] HUNT, 32.
[44] See Hans HATTENHAUER: Grundbegriffe des Bürgerlichen Rechts. Historisch-dogmatische Einführung (Zweite vollständig überarbeitete und erweiterte Auflage) (München: Verlag C. H. Beck 2000).

aspects between countries, etc. These are now carried out sporadically from the point of view of one country and one area of law, but the problem is that, apart from the sporadic nature of the studies, they are still isolated in a sociology of law that is considered a minor subject. However, the intellectual activities in each field of law can function as a jurisprudence only if the sociology of private law, the sociology of criminal law, the sociology of constitutional law and state administration, etc. are added to and interwoven and integrated with the hitherto dominant analyses of the law of the subject.

Undoubtedly, the genuinely social science branches of law are becoming much more complex than the current textbooks, which are limited to the legal dogmatics of the subject, and it can be argued that their focus should be more separated from the needs of basic legal education. Presumably, these complex and multifaceted analyses should be introduced into master's and doctoral legal education rather than undergraduate legal education. Law students and law clerks who have already completed undergraduate studies would have a better chance of being taught multidimensional legal analyses grounded in social theory.

In conclusion, I would like to state that the legal science, which is in line with the idea de science, i.e. a social scientific legal science, is only emerging and currently only has the status of an auxiliary science under the heading of sociology of law What is now called normative, positivist science of the individual branches of law is not a science, despite its high intellectual value, but an indispensable part of complex law. Legal dogmatics is not a science, but a layer of modern Western law.

6. Outlook: the disciplines of social science jurisprudence

Despite the removal of the status of legal science, legal dogmatics must continue to function, because only with the help of its well thought-out concepts and categories can the many thousands of legal rules be formulated more or less uncontroversially in the increasingly complex legal systems, the norms be amended and applied in the cases that arise. Likewise, future lawyers must learn not only the applicable law, but also the intellectual context of the individual branches of law, which are based on more stable conceptual systems of legal dogmatics. Social scientific legal science does not replace the legal dogmatics of the branches of law and their academic textbooks, but merely adds a new dimension to them. Basic legal education could remain unchanged and be based on today's conceptual systems of legal dogmatics - beginning with a short one-semester introductory course on legal history and a one-semester introductory course on legal theory - and only after completion of the roughly three-year basic course should the roughly two-year social scientific legal education be added. With a more rational restructuring, the current five-year legal education in most countries of Western legal culture would not even have to be extended in order to be able to speak in the future of a true legal scientific education beyond today's legal dogmatics.

Instead of a legal dogmatics approach that focuses on the norms and their conceptual context, a social scientific legal education focuses on the selection processes (creation) of these norms and the accompanying legal dogmatics conceptualization processes or the judicial decision-making processes by which legal disputes are decided in individual cases. In short, the focus is on the decision-making activities rather than the norms. Indeed, the legal norm and the normative system are only an abbreviated expression, a static exhaustion of what law is in its entirety. This abbreviation is necessary, however, to provide a comprehensive overview of law to the thousands of lawyers who are engaged in decision making on a daily basis. It is, to use Niklas Luhmann's phrase, a reduction of complexity that enables the

average person to navigate the complex world, and in this case, the average lawyer to have a clear overview of the whole in which he or she acts as a small dot by omitting the multiple interdependencies. However, the legal scholar, freed from the daily legal workload, who can devote his entire day - and before that his entire legal studies - to understanding and paying attention to the multiple interdependencies, must break away from a simplistic approach reduced to a world of norms (legal dogmatics) and see the law in the context of the decision-making processes to create those norms and the judicial decision-making processes to apply them in the case.

In order to prevent a common misunderstanding and misrepresentation, it is necessary to point out a distinction made by legal sociology manuals that fight against the legal dogmatic narrowing the meaning of legislation - and try to make a place for themselves in research and universities - by conceptualizing their own object as the interaction of law and society. There is law-which is researched by traditional legal science-and the sociology of law, which, according to this distinction, opens up the understanding of law to society. With Luhmann, on the other hand, it can be argued that law itself is society and that it is therefore a matter of studying society in law itself. This thematization opens up the interior of law to social scientific legal science and makes legal dogmatic activity itself the object of research. It is equally misleading, and reinforces the status of sociology of law as an auxiliary science of law, to conceive of sociology of law as an "empirical legal science" alongside "theoretical" legal science. A fully developed sociological legal science is as concerned with theoretical contexts as it is with legal dogmatic intellectual activities. Yes, it analytically explores these intellectual activities themselves. Thus, it is misleading to relegate it to the purely empirical level. Social-scientific legal theory encompasses the whole of law and all its activities. Consistently implementing this idea, Luhmann, in the last summary works of his life, discarded the false dichotomies of "law and society," "economy and society," "science and society," etc., and replaced them with book titles such as "The Law of Society," "The Economy of Society," "The Science of Society."

With these introductory remarks, it can be started to decipher the internal disciplines of social scientific legal science. The object here is the existing legal order and the scientific observation includes the analysis of the system of norms and legal dogmatic concepts of the individual branches of law, including the Constitution and the Constitutional Court, which form the top layer of the legal order. In other words, the legal dogmatics of the branches of law would be not abolished, but would continue to be the subject of research. Thus, the sociology of private law, the sociology of criminal law, the sociology of administrative law, the sociology of constitutional law, etc. could follow the legal disciplines of today. But they should also be complemented by the broader analyses of the social science of law. For example, in addition to analyzing separately the decision-making processes of criminal judges, civil judges, administrative judges, and constitutional judges and the factors that determine structural decision-making in each country, the sociology of the judiciary in each country in general and the interconnectedness or even disconnectedness between the judiciary and other groups of lawyers in each country and the impact of these differences on judicial decision-making processes should also be examined. In other words: In addition to the analysis of decision-making processes in the narrow sense, there must always be an analysis of the sociology of the legal profession and, within that, of the sociology of the individual professional groups, and thus an assessment of the interrelationships between the decision-making processes of the individual legal professional groups.

In such a view of the legal system in the broader sense, the fragmentation of lawyers groups into closed criminal lawyers, private lawyers, administrative lawyers etc. groups and, on the other hand, the interweaving of the individual branches of law with these isolated groups of specialized jurists will be observed, as is the case in continental Europe. But if, in

addition to the subdivision of the branches of law, the generalist judiciary is maintained, this will prevent the complete fragmentation of the legal profession into closed professional groups, as is the case in the United States. The analysis of this can be called the sociology of the organization of the branches of law.

It is in this broadened field of scientific disciplines of law that the field of legal history really opens up, for it has always belonged to sociological legal scholarship, or at least the great basic works of legal history of the last century have always analyzed the changes in law in a socio-historical context. Thus, such a legal history is not limited to the great laws of successive kings, but examines in a separate dimension the processes of development of professional lawyers in successive historical epochs, the emergence of certain legal professions or the reasons for their absence in certain countries and their substitutes here. But also, beyond the legal norms, the historical emergence of the legal dogmatics of the individual legal denominations that systematized them, and the analysis of the broader intellectual-cultural changes that made this possible. That is, the history of law and the legal profession, and the history of legal dogmatics, including the development of the main categories of criminal law dogmatics and private law dogmatics, with a description of the differences between them in different countries. In this field, of course, there is already much collected material, although much of it is lacking in legal history research in Hungary. Although, for example, *György Bónis*' small monograph on medieval legal scholars could serve as a starting point for such research.

Finally, the general social theory of law could be a complementary subject to contemporary legal philosophies and theories among the disciplines of social science jurisprudence as a final subject to complete the two-tiered education of lawyers. Jhering's theory, as presented here, and *Niklas Luhmann*'s legal theory, as developed in recent decades, are all precursors. But the prolific research of U.S. Judge *Richard Posner* is also an example today. However, future research in social science jurisprudence, as it unfolds more systematically, can provide an even more solid foundation for this.