# SOCIOLOGY OF LAW AND (RE) DESIGNING A LEGAL REALITY

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*March, 2018; 3 (1)*


## ABSTRACT

Sociology of law is not a static science discipline, it changes as right and changes are happening ever faster. It is not limited to what constitutes only the law, rules and institutions, but encompasses all the more or less colored rights - legal and social injustice. Since this is the right, which is derived from the pluralism of legal sources, but only partially legitimate sources, a more dynamic subject that is problematic to comprehend. The difficulties grow even if the right as such is not observed, is not through the form of legal science interpreted, but in the dominant understandings of the applicable law. But that is the task of sociology of law. It deals really with the real right, as well as with the real application of rights, and with the reality whose regulation is the purpose of modern law. These three areas of ontology of rights are not always clearly separated. The difficulties faced by sociologists to investigate the right, due to the fact that they are viewed in a practical context as legitimate right, have actually been increased rather than diminished. This is more fully manifested in the example of legal reality as the reality of the application of legitimate rights. For political reality, as a reality of the emergence of legal norms, nothing less is to be divided into a public and shady reality. For reality, whose decor is the purpose of law, this dichotomy has always been considered a characteristic. Under the light of the discursive public, the actors manifest their dedication to the law; violation of the law, however, happens latently. It is therefore complex to explore the valid law in "light" and "shadowy", and thus the research of sociology of law is constantly confronted again.


**Key words:** sociology of law, legal reality, shaping of rights, the validity of rights, discourse of the public**.**


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**Article type:**

1.02 General scientific articles

**UDK:** 316.334.4

**Date of received:**
January 4, 2018

**Date of acceptance:**
February 16, 2018

**Declaration of interest:**
M.K., E.K., the authors reported no conflict of interest related to

## METHODOLOGY AND SCOPE

In this study literature reserach was examined. Study does not include any empirical research methods. The research is based on the Sociology of law, legal reality, other shaping of rights, the validity of rights disccused in law science. Study will be focus on the sociology of law and it's impact of re (desining) legal reality. After that will be made general assesment of the research topic.

## INTRODUCTION

The text titled "Sociology of Law and (Re) Designing a Legal Reality" discusses the role of sociology of rights in the formulation and interpretation of legal reality in a functionally differentiated society. Approaches, concepts, and models are changing relatively quickly, and hypotheses are often denied by new questions and new hypotheses before they come into theoretical discourse and empirically explicitly verified and confirmed.

Sociology of law is not a static scientific discipline, it changes as well as law and changes are happening more and more dynamically. Collections of laws, this is true for the emergence of rights and its interpretation. The increasing complexity of a functionally differentiated society puts ever greater demands on the law.

Sociology of law is not only a theoretical discipline, it contains an intent to acquire empirically verifiable and usable (sa) knowledge. It is about collecting, researching and analyzing data and knowledge about how law institutions function, concrete correlation of social movements and legal rules, relations of laicist and discursive public with respect to law and legal institutions, the meaning and meanings attributed by the addressee to their own legal reality, and specific problems of the legal profession, the selection of judges, legal ethics (Hesse, 2004: 14). Such research can help to illustrate the difference in the intrinsic legal logic and social reality in which the right is formulated and the right to focus on greater understanding of one's own social and contextual conditionality.

The efficiency of the law is increasingly dependent on the content of legal rules, and more relevant are the methods of producing rules. That the right has its own positive and secular character is the achievement of the

modern era. The number of legal sources from which the law itself arises, as well as the number of legal rules, is also increasing. Furthermore, one could start from the fact that the view on the law and the sociology of rights could have a secure foothold in the adopted and published laws by the parliament.

Then, the distinction between laws in formal and material terms should be abstracted, but only in order for both of them to be accepted as an expression of a valid law. Similarly, in addition to legislation, executive power with administrative law appears as a legislator - an addressee of law, although it has nothing to look for in the strictly observed constitutionally regulated principles of the division of powers. A conscientious remark that administrative law, as the law of the executive power, has the character of an exception and that, through the norms of legislation, it is strictly limited, it has long since been overcome and denounced through reality (Hesse, 2004: 11).

The principle of the division of power is thus the first example of the difference between the practice and the program, with which sociology of law always meets again. This difference is precisely the basis of the legal science field. The area and those who deal with it live. The right in modern terms is a targeted rational understanding of the norm as an instrument for achieving social regulation of legal reality (Henecka, 2000: 65). The process of rationalization and mediation of rights has several features that give new and higher instrumental rights to a functionally differentiated society.

## UNDERSTANDING OF LEGAL REALITY

The law belongs to all communications, "which are law-oriented, whereby the rules of the law are reflected in the institutionalization process precisely on the implemented social integration" (Habermas, 1995: 108). The law, according to Jürgen Habermas, is also interpreted as an integral part of the world of life. It is based on and reproduced to the world and finds that connection to the scientific and linguistic system, which constitutes the everyday life, and "also brings messages of this origin and form, in which they for the special codes of administration (power) and economy (money) remain comprehensible.

In so far as the language of law can be fungated as a transformer in the universal flow of communication between subsystems and the world of life, a limited ethical communication is limited to the sphere of the world of life "(Habermas, 1995: 108). According to German sociologist Claus Rolshausen, "Modern" political power in the forms of positive law can be developed into a legal authority. Its formal legal organizations are secured through threats by sanctions. On the other hand, the right serves the organization and management of institutional power.

Hence, the real medium through which communicative power is transformed into an institutional one. The idea of a state governed by the rule of law is to require that, through the code of power. The administered administrative system be connected to a legally applied communicative power and keep away from the influence of social power and from the real power of realization of privileged interests. On this basis, a balance between the three forces of social integration is formed in the rule of law: money, power and solidarity. Right (whose violation is punishable by sanctions) and power are constituted mutually. In terms of power and legal codes that are legitimately applied to the ancestral rights, they need to bring together each other mutually (Rolshausen, 1997: 165).

The exercise of political power is legitimized by law, which arises from a deliberately formed legitimacy. Institutionalization of procedures and communication conditions are for this assumption.

Applied law sociology is not only the sociological application of law but also the application of sociology. Applied law sociology is not only the sociological application of law but also the application of sociology. In this context, it is also the applied law policy because it is "decision-oriented decision-making" process. The legal policy questions and decides which legal means and which legal ways to access in achieving of societal goals (Rehbinder, 2015:25).

Humans, corporations and laws are part of a bigger social complex that contributes towards how we think, act and conceptualise our world. This means that neither the hard laws, the architecture of our lives, nor the soft code, the social norms, languages, metaphors and conceptions alone can constitute our reality. It should be borne in mind, in this context, that metaphorical concepts depend for their coherence and persuasiveness on the motivating social contexts that ground meaning, and that therefore legal change, too, is contingent on. Therefore constrained by, the social practices and forms of life that give law its shape and meaning (Larsson, 2013:292).

## SOCIOLOGY OF LAW AND LEGAL REALITY

In this way, as the law, which originates from several legal, but only partially legitimate sources, is an ever more dynamic object that is difficult to understand. So does the difficulties, if the right as such is not observed, therefore not through the form that the legal science interprets it, but in the dominant notions of legitimate law. But it is a methodological theoretical task of the sociology of law. It deals with the reality from which it originates, as well as with the actual application of rights, and with the reality whose regulation is the purpose of the law. These three areas of ontological reality of the law are not always clearly epistemologically separated.

Sociology of law seeks to theoretically and empirically conceive and explain the relationship between a law and a functionally differentiated society. Further, investigates the order of legal institutions, the social interaction of individuals and groups that come in contact with legal institutions, and the meaning attributed to the legal right by their acceptors. (Işıktaç Koloş: 2015:6).

Niklas Luhman, in the 1990s, vainly tried the legal profession of consciousness on the common denominator of a single profession, in order to ensure transparency in the legal reality (Baer, 2011: 106). What was not achieved at the time, today seems particularly impossible. All the more obvious are specificities within certain professions. The interest of lawyers as a unified interest versus the economic and political environment of the ruling norms and expectations is becoming less and less relevant. Hence, the interest of lawyers is increasingly economicized and politicized, and so it is also particularized. Professional reality and legal education are changing. It is encouraged to recognize ignorant knowledge, not only of scientific, but also of journalism and literature (Baer, 2011: 32).

The principle of the division of powers, not only the executive but also the judiciary deny. It is of increasing importance for the existence of rights. In many cases courts have become the highest authority for legitimate law issues. Whether their activity in the individual is perceived as an interpretation of the law or the formation of rights is of secondary significance. Since today's dominant interpretations of the law have long ago created the impression that there is no clear boundary between interpretation and law-making (Horster, 2009: 576).

In one way or another, the impact of the judiciary converts the legislative right into judicial practice. There is an increasingly common situation, and especially in the case of "complex cases", that the decision on constitutional law is crucial. It is a common law of a state, no matter where it origina-

tes subordinated and modified through international law, primarily through the law of the European Union. This supremacy of European Union law on the national law of the member states is yet another example of the distinction between reality and program. Hence, through the supremacy of the European Union law for every democracy, the constitutional principle of the parliament is only indirectly touched, because the European Union, although it has a parliament, is not a EU law law. It's more bureaucracy from Brussels (Hesse, 2004: 12).

Legal reality is not considered as a profession only from a position of occupation, but also as an institutional as a office, a joint stock company, as a management, a court, a state apparatus etc. In every institutionally understood reality, the interest of secrecy is promoted. Especially within the state administration is of particular importance, because state secrets are protected by sanctions of criminal law. Beyond this, primarily a non-politically oriented context, the bureaucratic and judicial reality is connoted with the tendency of secrecy. The legal profession has the task of integrating a legal subsystem in order to maintain its authority and autonomy in fulfilling its functions in relation to other subsystems within a functionally differentiated society. Structural and functional imperatives of the legal subsystem are: 1. integration of legal doctrine, practices and procedures into a coherent doctrinal and institutional system; 2. achievement of goals - organization of legal doctrine, practices and procedures to meet legislative objectives; 3. Maintaining behavioral patterns - maintaining the legal tradition and establishing the value of the legal profession and legal subsystem; 4. adaptation - meeting the needs of clients and the rightful address. The legal sub-system is specifically aimed at achieving a functional precondition for integration by facilitating and harmonizing the relationships between individual subsystems, thereby creating a social balance (Henecka, 2000: 135).

The parliament's right to enter secret bureaucracies through investigative committees is subject to party calculations and loses it in effect. Since some parts of the bureaucratic, especially judicial reality, are subject to discursive publicity in treatment and reasoning, they partially block internally motivated secrecy interests. Decisive for institutional practice is less of what kind of external program is subordinated, but more that will be internal implications for achieving organizational goals. There, where keeping secrets serves the organizational purpose, it will be practiced there. Then the view of internal practices will be blocked by external observers, like in a "black box". Or, it will be subject to virtual transparency due to the coercion of outside actors for the greater public (Hesse, 2004: 13).

Thus, the legal reality is publicly presented, similar to political, cultural, social, actually staged and arranged. Hence, the facts are really divided

into "play" for the laicist audience in front of the scenes and the real life of social actors behind the scenes. In the roles played by actors in the imagined direction on the public scene, and on those who play the hidden, following, in addition, different rules of action and behavior (Röhl, 1987: 600).

As a consequence, the legal reality is determined by the division of informal decision-making and their public reasoning. Therefore, the study of the right teaching of the finalist interpretation of the law is still very important. By now he was referring to the form of a written statement of reasons. Future lawyers, at the time of the studies, and especially when preparing for a bar examination, practice to use the explanation of their decisions as a means of persuading others to accept their actions and the results of their work (Baer, 2011: 141).

For this purpose, the connections with real treatment and real decision-making are concealed. With the intent of caricating, three types of judgments can be spoken: written, oral, and real. But this caricature has the real basis, which is simply explained. The decision-making rules affect the internal procedures for finding a solution to the problem. The rules of reasoning, however, have the task of making the found solutions to an acceptable laicist public or assuring the public that they are true and just.

Here, the sociologist of the law who seeks to investigate legal reality encounters, in fact, virtual frameworks of reasoning of legal reality, but does not encounter "the reality as such." He learned a large part of the laicist public, although it may still not have been established a "firm rule" that behind each qualification is the opposite, that certain political statements are relativized from the point of view of their final character.

It should be oriented to the practice of presenting decisions. They usually appear in the form of pure legal texts and form a significant part of the legal reality. This, however, means searching for the practice of writing decisions, which in principle can not be reconstructed through purely legal practice. If a sociologist does not know the law, then he misses the essential preconditions to truly understand what is happening in front of the scenes. Political controversies end up in courts, deciding on them judges, and not elected representatives. The actors resort to court suits as a means of eliminating political opponents, accusing them of corruption (Röhl, 1987: 602).

## CONCLUSION

Through the reform of law studies, mediation, rhetoric, conversation and other competencies have become key qualifications. Obviously this is about improving the ability of verbal communication with other actors of legal reality. This is especially noted akrilly in political activities of substitution of rights as a means of solving communication problems, or at least with the goal of relativizing its meaning. More or less vigorously promoting "negotiation" of a dispute, until a "truce" is achieved; that, if possible, the right is not used at all, or that the right is used only formally, so that the end of the dispute can be documented (Hesse, 2004: 14).

It is not justified to say that education in the skills of verbal communication increases the transparency and fairness of legal reality. There remains the dominance of the organizational purpose and its power over the programs, along with the emergence of new communication techniques of representation and interpretation of rights. At the same time, there is a tendency for informal action and negotiation, with the simultaneous exclusion of the laicist and discursive public, even there, such as criminal proceedings, where the same public is in principle of great importance. And new key qualifications, as they are taught and transmitted, are subordinate to organizational goals. Likewise, like verbal communication, either public or informal, it is oriented towards organizational goals and acceptability of results rather than transparency of procedures (Hesse, 2004: 14).

The sociologist's difficulty in investigating the factual nature of the law is, due to the fact that it is observed in a practical context as a valid law, actually increased rather than decreased. This more extensively manifests itself on the example of legal reality as the reality of the origination, application and interpretation of rights. In terms of special sociology, sociology of law is the application of empirical sociological methods to legal problems. For the political reality, as the reality of the creation of legal norms, nothing is less true that it is divided into a public and shadow side. For a social reality, the purpose of which is the law, this dichotomy has always been regarded as a characteristic. Under the light of a laicist or discursive public, the rights actors manifest their commitment to the law; The violation of the law, however, is hidden. Therefore, it is complex to investigate valid law in "light" and "shadowy", and thus the way of research in the sociology of law is repeatedly confronted. The solution is not that sociology of law focuses on the current state of discipline. Methodological approaches, theoretical concepts and epistemological models are changing relatively quickly, and often proven hypotheses through new questions and new hypotheses are opposed before they come to theoretical debate and are empirically confirmed.

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