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Putting Sociology Back into the Sociology of Law

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The recent publication of the second edition of Roger Cotterrell's introduction to the sociology of law offers one indication of the way in which sociology of law has now become a standard and accepted part of the curriculum in many law schools in Britain and the United States of America.[1] It also offers the latest in a long line of programmatic statements in relation to sociology of law, statements which have up till now tended to complain about the theoretical and methodological underdevelopment of the field, and to make unfavourable comparisons between sociology of law and other sub-disciplines of mainstream sociology.[2] Cotterrell advances a rather different conception of sociology of law from many of these authors, and explicitly rejects the view that development in the field of sociology of law needs to be measured by 'established disciplinary criteria'. My own view has more in common with earlier programmatic writings in relation to the field, in that I will be reviewing the current state of sociology of law from the perspective of someone working and teaching in the discipline of mainstream sociology. I hope, in doing so, that what I have to say will not seem too strange or provocative to a predominantly law school audience.

I will begin by providing a characterization of sociology as an academic discipline, concentrating on the way it is organized into a number of different research traditions, each of which holds a distinctive conception of topic, epistemology, theory, and method in relation to the study of the social world, and on the debate between action and structural approaches in the discipline. I will then provide a critical review of the current state of the sociology of law, suggesting that, from my point of view as a mainstream sociologist, the bulk of research in this field is characterized by assumptions derived from structural traditions in the discipline. I will also be suggesting that theorists and researchers in the sociology of law are only just beginning to appreciate the importance of long-standing debates in mainstream sociology over how best to conceptualize the relationship between structure and action, and the implications of such debates for the sociological study of law.

Finally, I will seek to illustrate this critique through looking at two recent

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texts that are widely considered as exemplars of the current state of research and theorizing in the field. The first text is Roger Cotterrell's introduction to sociology of law, a text I consider to be important in that it represents the way in which the subject is currently being taught and presented to students in many law schools.[3] The second text is the final chapter of the trilogy edited by Richard Abel and Philip Lewis which adopts a comparative approach towards the study of different legal professions.[4] This chapter is entitled 'Putting Law Back into the Sociology of Lawyers', and I will be arguing that one way to do so (although by no means the only one within sociology) might be to make more use of the theoretical and analytic resources of interpretive sociology. I will conclude by considering the prospects for the development of a more sociological sociology of law.

SOCIOLOGY AS A MULTI-PERSPECTIVAL DISCIPLINE

Perhaps the first thing students learn when encountering the discipline of sociology in secondary or higher education is the fact that it is a subject characterized by a number of different and distinctive ways of understanding and making sense of the social world. These different ways of thinking are usually presented in sociological textbooks as theoretical perspectives such as Marxism, feminism, post-structuralism, symbolic interactionism or ethnomethodology, each of which approaches the study of human behaviour in terms of a distinct conception of topic, theory, epistemology, and method.[5] Studying sociology at undergraduate level usually means developing a familiarity with these different ways of thinking, and also with methodological debates and arguments that cut across different perspectives. It is common, for example, to find introductory sociological texts organized around the distinction between 'consensus' and 'conflict' approaches in the discipline, or in terms of the distinction between approaches which focus on social structure, and approaches which are more concerned with the study of social action.

It is clearly impossible within the scope of this paper to provide a full characterization of the range of different theoretical positions within the discipline of sociology, or the distinctive questions they ask in relation to the social world. According to a widely used undergraduate textbook, this would involve examining the 'basic assumptions, key questions, concepts and types of solution/explanation' – in short, the distinctive methodologies – of different approaches and showing how they inform the methods used and the findings obtained in particular pieces of empirical research.[6]

Although my argument is that the importance of such distinctions is largely ignored or neglected by researchers working in the field of sociology of law, it seems important, however, in this introductory section, to do more than make the point that sociology is deeply divided along theoretical and perspectival lines. I also wish to begin to address how one line of division in

the discipline – what is sometimes termed the action-structure or, more commonly, the 'micro-macro' debate – is understood to be important by sociologists, and some of its implications for empirical research. I will be arguing later that most work in the sociology of law is informed by assumptions deriving from the macro side of sociology, and that different positions on the micro-macro continuum – ranging from the stance of interpretive sociologies, to recent (and not so recent) attempts to bridge or reconceptualize the gap between micro and macro levels – need to be taken more seriously by researchers working in this field.

It is difficult, in considering this sort of methodological discussion within sociology, to avoid weighting the discussion towards my own bias, which is on the far micro side of the debate between micro and macro approaches in the discipline.[7] As an interpretive sociologist, my aim is to produce an account and description of everyday human activities – for example, the activities that take place inside the courts and legal offices – in a way that respects and addresses what is sometimes termed the 'actor's point of view'. Given this starting point, I have little interest in theories which begin with some synoptic view of society and then attempt to work down towards what they regard as a micro level which needs to be understood in the context of a theoretical understanding of 'society-conceived-as-a-whole'. On the other hand, I recognize that there exist within the discipline numerous ways of theorizing and conceptualizing the macro-micro divide, many of which acknowledge that it may be no easy matter to devise a theory that encompasses both the everyday understandings of people in day-to-day situations, and the structural context of wider society. The serious thought that is currently being directed towards finding some way of linking macro and micro levels of analysis is evident in the recent publication of a number of edited collections relating to the problem, as well as the sustained attention paid to it over a number of years by theorists such as Habermas, Giddens, Alexander, and Bourdieu.[8]

The complex issues arising from this debate between structure and agency can perhaps best be illustrated (given the length of this paper) by comparing my own interpretive research on the legal profession with the approach adopted by structural sociologists towards the same phenomenon. This will also serve to illustrate in a concrete way the distinctive approaches adopted by different sociological perspectives towards what, on the face of things, might appear to be the same social phenomenon.

As an interpretive sociologist, my aim in studying the legal profession was to produce an account of the day-to-day work of a firm of legal aid solicitors, in a way that addressed and respected the mundane and everyday character of that work for the people doing it.[9] This means that my work is best understood as informed by assumptions common to positions on the micro side of the macro-micro debate. I make no attempt, for example, to describe the structural context of legal work, or to locate this within some theoretically conceived notion of wider society. Instead, my analytic goal is to describe how law and legal practice are understood by clients and lawyers

themselves and how these understandings inform and constitute the daily round of activities inside the courts and legal offices. A similar analytic interest in the practical reasoning involved in legal work, and the self-explicating and self-describing character of legal settings can be found in the work of a number of different ethnomethodological traditions.[10]

The approach adopted by structural sociologists in relation to the legal profession is very different from my own, in that they necessarily start from a theoretically conceived model of social structure (which can be either a consensus or conflict model) and seek to explain the everyday activities of lawyers and clients in the light of that model. A good example of sociological work of this nature can be found in a well-known piece of research by Maureen Cain in which she argues that solicitors are best understood as 'conceptive ideologists' whose day-to-day work is concerned with the reproduction and legitimation of capitalism.[11] This is an ironic reading of legal work (in the sense that it is competitive with the way in which lawyers understand their own activities), and premised on the assumption, shared by most structural sociologies, but not by interpretive approaches, that sociologists have a more complete and scientific understanding of society and social structure than the people they study.

In presenting these two positions, my intention has not been to provide a systematic introduction to different micro and macro positions in sociology, but simply to note that such a line of division exists, and has implications for the way in which researchers in different traditions might be interested in the sociological study of law. The exercise is also helpful in illustrating the intractable nature of the methodological issues that continue to divide researchers working in different traditions in the discipline. Many researchers in structural sociological approaches are now claiming to have found a means of linking the levels of micro and macro analysis through using theoretical resources derived from the work of Giddens, Foucault, and Bourdieu. It is still, however, difficult to see, from the point of view of an interpretive sociologist, how work pursued under the auspices of this programme differs from previous structural sociological accounts, in that the concepts of 'habitus' or 'structuration' still stand in a competitive relationship with common-sense understandings and experience, and what Garfinkel terms the 'practical' character of human action is never described or addressed.[12]

Perhaps the only conclusion one should make is that different sociological traditions are still deeply divided over conceptions of theory, epistemology, and method, and that there are a number of legitimate ways of approaching the study of any substantive topic within sociology. This is certainly a widely accepted view within the discipline, although, as I will be arguing later, the sort of methodological and theoretical debates I have been reviewing do not usually inform research or theorizing in the field of sociology of law.

A CRITICAL VIEW OF THE CURRENT STATE OF SOCIOLOGY OF LAW

The multi-perspectival character of sociology as an academic discipline is recognized not only within the mainstream discipline, but also within the various sub-fields which have emerged as sociologists have become involved in the study of particular areas of social life. The undergraduate curriculum in a sociology department is likely to offer courses in such areas as the sociology of work and organizations, sociology of health and illness, sociology of racial and ethnic relations, sociology of crime, sociology of the media, sociology of knowledge, and sociology of education, and invariably one will find that the organization of these courses reflects a recognition of the perspectival character of the mainstream discipline.[13] There is, for example, a Marxist, interactionist, feminist, and structural-functionalist sociology of education, and it is possible to design a course that presents these perspectives in an even-handed way, or alternatively, one that adopts and promotes a particular point of view in relation to the literature. In the more developed areas of study, of which the sociology of education is certainly an example, there are a number of different textbooks and readers available for students and teachers, which tend to be written and produced by researchers working in different theoretical traditions in the discipline.

One subject which is not generally found on the curriculum in British departments of sociology (or at least does not have the status of a sub-discipline) is the sociology of law, although the subject does have a stronger institutional base, in terms of both teaching and research, inside law departments. This is evident both by the fact that courses in sociology of law are offered in many law departments, either as courses in their own right, or as part of courses in jurisprudence and legal theory, and also by the existence of a number of journals, based in or associated with law departments, which publish theoretical and empirical work relating to law and legal institutions by researchers working in a number of different disciplines including sociology. I have in mind here journals such as the *Journal of Law and Society*, *Social and Legal Studies*, and *International Journal of the Sociology of Law* in England, and the *Law and Society Review* and *Law and Social Inquiry* in America. There is also a considerable amount of international social scientific research on law pursued under the aegis of the Oñati Institute for the Sociology of Law and the American Law and Society Association. It is this body of research that I will be arguing is theoretically and methodologically underdeveloped from the perspective of mainstream sociology, not in terms of the theoretical and empirical contributions of particular researchers, but in terms of how the field as a whole compares to more developed sub-fields such as the sociology of education or the sociology of organizations.

In making this critique, it is worth beginning by making the obvious point that the vast bulk of research pursued internationally in relation to law and legal institutions is socio-legal rather than sociological in purpose and intent. 'Socio-legal studies' and 'sociology of law' have been distinct research

traditions in England and Wales since the late 1970s when a great deal of acrimonious debate took place in departments of law and sociology between liberal and radical critics of the existing social and legal order. According to Campbell and Wiles, liberals such as Abel-Smith and Stevens and Zander believed that it was possible to pursue 'social engineering through the existing legal order'.[14] Radicals, on the other hand, such as Bankowski and Mungham and Carlen took the view that Marxism as a science offered a more complete means of understanding the place of law in British society.[15] The aim of these writers was not simply to improve the existing social and legal order, but to explain that order, and to transcend it by critique.[16]

Despite the hope of contemporaries that there would be a convergence of the two approaches, the gulf between these two ways of studying law and legal institutions arguably remains as wide as ever, in that critical theorists in Britain still define what they are doing in relation to what they regard as the theoretically deficient and socially conservative character of socio-legal research.[17] The distinction between socio-legal and sociological research cannot, however, be understood simply in terms of a debate between liberal and radical critics of the existing legal order. Perhaps a better way of characterizing the difference, at least for the purposes of this paper, is to note that socio-legal studies, whether these are conservative, liberal or radical in political orientation, tend to use sociological theories and concepts in a pragmatic, *ad hoc* and instrumental way, rather than as part of a commitment to a principled and systematic investigation of social life. They also tend to adopt what Behrens usefully describes as an 'internal' lawyer's point of view of law and legal institutions, rather than the 'external' view afforded by different varieties of the sociological imagination.[18] In the rest of this paper, I wish to address the sort of work being pursued outside, and often in overt opposition to this applied or policy-oriented tradition of socio-legal research. It is this body of work that I will be terming 'sociology of law' and which I feel can usefully be compared in terms of theoretical and methodological development to other sub-disciplines within mainstream sociology.

There are two general points I feel can be made in relation to research in this field. The first is that sociology of law is far smaller in terms of its institutional base inside law and sociology departments than other sociological sub-disciplines such as the sociology of health and illness or the sociology of education. This alone probably accounts in large part for what various commentators have described as the fragmented and underdeveloped state of the field. The second is that, in so far as sociological research has been pursued on law, the bulk of this research has been informed by the assumptions of what in mainstream sociology would be termed structural consensus and structural conflict traditions. What is especially striking, if one compares sociology of law to almost any other sociological sub-field, is the absence of a strong tradition of interactionist or interpretive research, or at least the manner in which research of this nature is either ignored or marginalized in the way in which the subject is taught and presented to students. This is not the only absence in sociology of law – and I would also

want to draw attention to the marginality of feminist or post-structuralist approaches – but it is symptomatic of how the field appears theoretically and methodologically underdeveloped from the perspective of the mainstream discipline. I will now examine and develop this second point in relation to two texts which I will be treating as exemplars of the current state of theorizing and research in the sociology of law. The first is Roger Cotterrell's introduction to sociology of law; the second is Abel and Lewis' review of the sociology of lawyers and the legal profession entitled 'Putting Law Back into the Sociology of Lawyers'.[19]

A VIEW FROM THE LAW SCHOOL: ROGER COTTERRELL'S CONCEPTION OF THE SOCIOLOGICAL STUDY OF LAW

Perhaps the most striking feature of Roger Cotterrell's writings on sociology of law, at least from the perspective of a mainstream sociologist, is the distance Cotterrell wishes to maintain between sociology of law and what he calls 'academic sociology'. The other striking feature of Cotterrell's conception of the field is how far it adopts the assumptions of macro or structural approaches in sociology, and either ignores or marginalizes the possiblity of alternative conceptions of epistemology, theory, and method in relation to the sociological study of law. This, to me, illustrates the theoretically and methodologically underdeveloped state of sociology of law when compared to other sub-disciplines within sociology, although I recognize that Cotterrell's understanding of the relationship between law and sociology is very different from my own, and stems from his interests as a legal theorist rather than from a commitment to any theoretical tradition or perspective in the mainstream discipline.

Cotterrell's position on the relationship between law and sociology is clearly spelt out in the closing section of the latest edition of his introduction to the sociology of law. He suggests, for example, that sociology of law should not be viewed as 'an academic discipline or sub-discipline with specific methodological and theoretical commitments, but as a continually self-reflective and self-critical enterprise of inquiry aspiring towards ever broader perspectives on law as a field or aspect of social experience'.[20] The warrant for this view of the subject is set out in the introductory chapter of the book, and also at greater length in an article published in the *Journal of Law and Society* entitled 'Law and Sociology: Notes on the Constitution and Confrontations of Disciplines'.[21]

Cotterrell adopts a broadly Foucauldian view of the nature and constitution of academic disciplines in this article, treating them as 'knowledge-fields' formed by 'the technological necessities of power' in specific 'historical conditions'.[22] He views the discipline of law as being intimately bound up with 'the configurations of power in society'; and that its principal role is to serve 'the power relations which law embodies' as what he terms 'the unifier, rationalizer, second-guesser and apologist of legal doctrine'.[23] From Cotter-

rell's point of view as a legal theorist, there is a need to break down this orthodox conception of legal science, and to expose the relationship between law and power. In sociological terms, Cotterrell, as a legal theorist, views orthodox legal doctrine – with its claim that law is a self-sufficient and autonomous body of knowledge – as representing an ideology serving the interests of state power and regulation in modern society. Cotterrell's aim as a theorist is to challenge this ideology, and this object is clearly stated in the closing pages of the second edition of his introduction to the sociology of law. He states, for example, that:

> In focussing on the central institutions of state law – professional organisation; adjudication by the courts; and processes and agencies of enforcement – an attempt has been made to show the weakness of law's claim to autonomy, its interpenetration at all levels with more general structures of government power, wider currents of ideology, and diverse but often interconnected forms of knowledge usually considered external to law.[24]

Cotterrell's conception of the discipline of sociology is also developed in Foucauldian terms. In his view, academic sociology in its role as a policy science has, like legal science, often been drawn upon by government and the state as a 'technology of power or control'. This explains why much of research in Anglo-American sociology of law – by which he means research 'shaped by practical policy concerns of lawyers and leglislators' – has not challenged the claims and assumptions of orthodox legal science. Cotterrell also suggests, however, that there exists within sociology as a discipline 'the possibility of genuinely critical analysis of structures of power, present social conditions and existing forms of knowledge – including those of sociology-as-discipline itself'. It is this 'remarkable character of sociological inquiry' which, in his view, 'justifies the appeal made to it by legal scholars seeking to advance knowledge of law beyond the constraints of law-as-discipline'.[25]

What is emerging from this discussion is that Cotterrell, as a legal theorist, has very much an instrumental, and, in some respects, unashamedly eclectic interest in sociology as an academic discipline. This comes over clearly in the concluding section of his article in which he suggests that 'the best prospect of overcoming the prisons of our limited disciplinary modes of thought' about both 'legal phenomena' but also 'the societies in which they exist' lies in what he terms 'enlightenment' rather than 'engineering' sociology. He also suggests, by way of definition, that this includes making use of 'theoretical resources from, for example, Foucault, Habermas, Luhmann, many varieties of Marxist thought, and numerous other classic and contemporary works of European social theory'.[26] At the same time, he makes the valid claim, as a legal theorist, that law in the sense of legal ideas and doctrine is not taken seriously enough by most academic sociologists as 'central to the task of sociological understanding of contemporary life'.[27] This explains why Cotterrell's conception of sociology of law is necessarily as a trans-disciplinary field of study – concerned with what he terms, in the concluding section of his introductory text, 'the critique of law's self-images' – rather than as a sub-field of academic sociology.

While one can admire the scholarly way in which Cotterrell advances this

argument, and the way in which he advances, in his introductory text, a sophisticated analysis of the ideological character of legal doctrine, the result is not a balanced guide to the way in which different traditions in the mainstream discipline might approach the sociological study of law. It is also noticeable that the sort of methodological debates between micro and macro approaches that have so concerned the mainstream discipline are largely ignored in the way the subject is presented to students. Interpretive approaches, such as symbolic interactionism and ethnomethodology, are reviewed and summarized, but the overall bias of the text is towards the structural-conflict position in sociology. This is not necessarily a criticism of Cotterrell, who is only reflecting the marginal status of interpretive approaches within the field, but the heavy perspectival bias of the only introductory text available for students provides a graphic illustration of the isolation of sociology of law from debates and developments taking place in the mainstream discipline.

A FURTHER INDICATION OF THE MACRO-BIAS OF SOCIOLOGY OF LAW: THE CASE OF THE SOCIOLOGY OF LAWYERS AND THE LEGAL PROFESSION

The second text I wish to consider as representative of the current state of research and theorizing in the sociology of law is the concluding chapter of the monumental trilogy edited by Abel and Lewis which examines the history and structure of the legal profession in nineteen different countries.[28] This chapter is entitled 'Putting Law Back into the Sociology of Lawyers' and suggests that the macro focus of research in the trilogy needs to be supplemented by research that examines the nature of legal work, the lawyer-client relationship, and the content of legal knowledge. While I welcome the agenda proposed in this chapter, I still wish to suggest that the way in which this shift in research focus is conceived, and the absence of any indication that Abel and Lewis are aware of the debate between macro and micro approaches in relation to the study of law, further indicate the extent to which the assumptions of structural traditions in sociology dominate research on lawyers and the legal profession.

The central theme running through the individual contributions to the Abel and Lewis trilogy is the way in which lawyers as an occupational group have achieved, and, in countries like Britain and America, are now struggling to maintain, a privileged market position in relation to other occupational groups. In the words of Abel and Lewis:

> . . . we concentrated on such questions as the number of lawyers, their backgrounds and education, barriers to entry and limitations on practice, functional subdivisions and social stratification, career paths, structures of practice, and collective organisation and governance.[29]

They go on to suggest, however, that it might be interesting to pursue other research questions in relation to the legal profession, and that this would

involve asking what is distinctive about the work of lawyers as an occupational group, rather than 'tracing the ways in which lawyers resemble other professionals'.[30] This, in their view, would involve pursuing empirical research into 'what lawyers know; what they do; and how they relate to the society, polity and economy'.

The fact that Abel and Lewis are interested in this research agenda as structural sociologists is evident from the way in which they stress the interrelationship of all three topics: 'knowledge with activity; social structure, state formation and economy with each other; and all three with what lawyers know and do'.[31] This is, of course, a perfectly legitimate way in which to theorize about lawyers and the legal profession. Once again, however, it is worth remembering that there are many alternative ways of approaching the topic of the legal profession within mainstream sociology and, as I have already indicated, there must be some doubt, from the perspective of interpretive sociology, whether the manner in which lawyers and clients understand their everyday activities can be adequately addressed from a theoretical starting point which adopts a synoptic view of society. It is also worth noting that the sort of questions that a feminist or post-structuralist researcher might wish to pursue in relation to the topics of law, legal work, and the legal profession would have little in common with the agenda suggested by Abel and Lewis.[32]

This admittedly represents the partisan response of an interpretive sociologist to the current state of the sociology of the legal profession, but it is interesting to note that the multi-perspectival character of mainstream sociology makes it possible to take issue with Abel and Lewis from many different points of view. Miek Behrens – a micro-theorist with a very different conception of theory, method, and epistemology from my own – has suggested that the sociology of the legal profession, as represented by the Abel and Lewis trilogy, 'hardly deserves the name "sociology".' This is because, in her view, 'the objective of sociology, like all scientific enterprises, is explanation and ultimately prediction, on the basis of empirically testable theory'.[33] This positivist understanding of theory and method is another legitimate starting point for research in the discipline, and Behrens outlines how it might be possible to overcome what she describes as a 'theoretical and empirical impasse in the sociology of the legal profession' through pursuing micro-sociological research informed by what she terms 'a theory of litigation'. My own position would be that there is a 'theoretical and empirical impasse' in the way she suggests, but that the way out lies in researchers becoming more aware of the different possibilities open to them within mainstream sociology, including the option of adopting an interpretive approach towards law and legal phenomena.

THE PROSPECTS FOR A MORE SOCIOLOGICAL SOCIOLOGY OF LAW

The case I have been trying to develop in a preliminary way in this paper is that the sociology of law, as currently taught in law schools, represented in textbooks, and published in socio-legal and law and society journals, can be criticized for being both theoretically and methodologically undeveloped from the standpoint of research and theorizing within mainstream sociology. Although I have confined my observations to Cotterrell's introductory text on sociology of law, and the final chapter of the third volume of Abel and Lewis's *Lawyers in Society*, similar criticisms could be made of most current work in the sociology of law, and would, no doubt, also apply to the manner in which the subject is currently being taught to undergraduate students in many law schools.

The main example I have used in illustrating this state of theoretical and methodological underdevelopment is the lack of interest shown by textbook writers or researchers in engaging with the methodological and theoretical debates associated with the action-structure or micro-macro debate within sociology. This, in my view, has led to the privileging of structural approaches in pursuing empirical research on law and legal institutions, and to the neglect by researchers, textbook writers, and teachers of interpretive traditions such as symbolic interactionism and ethnomethodology.[34] However, what seems equally evident in reading even the best recent empirical studies which are informed by assumptions derived from structural-consensus or structural-conflict sociology, is that the methodological and theoretical issues which concern theorists and researchers within the mainstream discipline are seldom pursued or addressed in a thorough-going manner within the sociology of law. It is, for example, striking how the challenges posed by post-structuralist thinkers to Marxist theories of ideology have occasioned much debate and discussion among mainstream sociologists attempting to develop a viable post-Marxist position on theory and politics, but have so far made little impact on the manner in which researchers uncritically combine resources from Marx and Foucault in pursuing research and theorizing on law and legal institutions.[35]

These criticisms of sociology of law are by no means new in that a number of other writers have also noted the theoretically and methodologically underdeveloped nature of the field over the last thirty years. Roman Tomasic, in his trend report for the International Association for the Sociology of Law in 1985, noted that the 'sociology of law has experienced considerable difficulty in generating a broad range of sociological theories'.[36] Grace and Wilkinson, writing in a polemical vein as interpretive sociologists in 1978, bemoaned the fact that 'sociology is an unknown quantity in much of the contemporary sociology of law'.[37] The large number of programmatic statements which continue to be made in relation to the field (including, of course, the statement made in this paper), combined with the relative scarcity of good empirical work on law and legal institutions from any theoretical

perspective, still suggests that the sociology of law is at an early stage of development, at least from the perspective of the mainstream discipline.

It is, of course, still possible to adopt the view from within the law school that sociology of law should best develop as an inter-disciplinary subject, and that there is no need for teachers or researchers to become involved in the theoretical, epistemological, and methodological debates that characterize research and theorizing within mainstream sociology. This, however, is by no means the only way in which the subject might develop, and my aim here has been to encourage researchers and teachers in law departments to reflect further on the relationship between the disciplines of law and sociology, and to consider what it might mean to develop a more sociological sociology of law.

NOTES AND REFERENCES

1 R. Cotterrell, *The Sociology of Law: An Introduction* (1986).

2 These include statements by R. Tomasic, *The Sociology of Law* (1985), C. Grace and P. Wilkinson, *Sociological Inquiry and Legal Phenomena* (1978), and the contributions in A. Podgorecki and C. Whelan, *Sociological Approaches to Law* (1981).

3 Cotterrell, op. cit., n. 1.

4 R. Abel and P. Lewis (eds.), *Lawyers in Society, Vol. 3: Comparative Theories* (1989).

5 See, for example, M. Haralambos and M. Holborn, *Sociology: Themes and Perspectives* (1991), the principal text used to teach 'A'-level sociology in British secondary schools, and E.C. Cuff, W.W. Sharrock, and D. Francis, *Perspectives in Sociology* (1992), a widely used text at undergraduate level. For examples of two widely used texts which are used to teach sociological theory courses in American higher education (and contain extensive discussion of the nature of different sociological perspectives and paradigms), see G. Ritzer, *Sociological Theory* (1988) and G. Ritzer (ed.), *Frontiers of Sociological Theory: The New Syntheses* (1990).

6 Cuff, Sharrock, and Francis, id., p. 13.

7 It is worth noting that the casting of this debate in terms of a contrast between 'macro' and 'micro' approaches, is itself contested by some theoretical traditions who argue that this concedes too much ground to the assumptions of structural sociology. See, for example, the discussion in W.W. Sharrock and D.R. Watson, 'The Incarnation of Social Structures' in *Actions and Structure*, ed. N. Fielding (1988).

8 Recent collections include those edited by K. Knorr-Cetina and A. Cicourel, *Advances in Social Theory and Methodology* (1981); S.N. Eisenstadt and H.J. Helle, *Macro-Sociological Theory: Perspectives on Sociological Theory* vol. 1 (1985); H.J. Helle and S.N. Eisenstadt, *Micro-Sociological Theory: Perspectives on Sociological Theory* vol. 2 (1985); and Fielding, op. cit., n. 7. A useful beginner's summary can be found in ch. 14 of Ritzer, op. cit. (1988), n. 5 which is entitled 'The Emergence of a Central Problem in Contemporary Sociological Theory'.

9 M. Travers, 'The Reality of Law: An Ethnographic Study of an Inner-City Law Firm', unpublished Ph.D. thesis, University of Manchester (1991); M. Travers, 'Persuading the Client to Plead Guilty: An Ethnographic Examination of a Routine Morning's Work in the Magistrates' Court', Manchester Sociology Occasional Paper Series No. 33 (1992); M. Travers, 'The Phenomenon of the Radical Lawyer' (1994) *Sociology* [forthcoming].

10 A recent review of the ethnomethodological literature relating to law enforcement and criminal law can be found in S. Hester and P. Eglin, *A Sociology of Crime* (1992). This text is arguably the best current example of an uncompromisingly sociological approach to teaching the sociology of criminal law, and deals in a systematic way with the different ways

in which the three traditions of structural-conflict theory, symbolic interactionism, and ethnomethodology have treated law and legal institutions as sociological topics. For an earlier statement which outlines the relevance of ethnomethodology for the study of law and legal institutions, see J.M. Atkinson, 'Ethnomethodological Approaches to Socio-Legal Studies' in Podgorecki and Whelan, op. cit., n. 2.

11 M. Cain, 'The General Practice Lawyer and the Client: Towards a Radical Conception' (1979) 7 *International J. of the Sociology of Law* 331.

12 H. Garfinkel, *Studies in Ethnomethodology* (1967).

13 For a good example of a textbook that adopts this approach, see G. Burrell and G. Morgan, *Sociological Paradigms and Organisational Analysis* (1979).

14 C.M. Campbell and P. Wiles, 'The Study of Law in Society in Britain' (1976) 10 *Law and Society Rev.* 547; B. Abel-Smith and R. Stevens, *Lawyers and the Courts* (1967); M. Zander, *Lawyers and the Public Interest* (1968).

15 Z. Bankowski and G. Mungham, *Images of Law* (1976); P. Carlen, *Magistrates' Justice* (1976).

16 Campbell and Wiles, op. cit., n. 14, p. 549.

17 This distinction between socio-legal and sociological research is also a useful way of making sense of the European and American literature on law and legal institutions, although the terms 'sociology of law', 'socio-legal research', and 'law and society studies' tend to be used interchangeably by American researchers who in Britain would be clearly recognized as belonging to one of Campbell and Wiles' two camps. S. Silbey and A. Sarat's article, 'Reconstituting the Sociology of Law: Beyond Science and the State' in *The Politics of Field Research: Beyond Enlightenment*, eds. D. Silverman and J. Gubrium (1989) is a good example, in that they attack Amercian applied and policy-oriented research in a similar fashion to the way in which Marxist sociologists of law used to attack British socio-legal researchers in the 1970s.

18 M. Behrens, 'Review Essay: An Elusive Profession? Lawyers in Society' (1992) 26 *Law and Society Rev.* 161. The distinction between 'internal' and 'external' points of view is also discussed in Hester and Eglin, op. cit., n. 10, pp. 1-3.

19 Cotterrell, op. cit., n. 1; Abel and Lewis, op. cit., n. 4.

20 Cotterrell, id., p. 310.

21 R. Cotterrell, 'Law and Sociology: Notes on the Constitution and Confrontations of Disciplines' (1986) 13 *J. of Law and Society* 9.

22 id., p. 10.

23 id., p. 18.

24 Cotterrell, op. cit., n. 1, p. 312.

25 Cotterrell, op. cit., n. 21, p. 12.

26 id., p. 27.

27 id.

28 P. Abel and P. Lewis, *Lawyers in Society, Vol. 1: The Common Law World* (1988); P. Abel and P. Lewis, *Lawyers in Society, Vol. 2: The Civil Law World* (1988); P. Abel and P. Lewis, *Lawyers in Society, Vol. 3: Comparative Theories* (1989).

29 Abel and Lewis, op. cit., n. 4, p. 479.

30 id.

31 id.

32 For examples of feminist research and theorizing on law and legal institutions, see, for example, C. Smart, *The Ties that Bind: Law, Marriage and the Reproduction of Patriarchal Relations* (1984), and *Feminism and the Power of Law* (1989). For an example of an empirical study that employs a Foucauldian approach towards the study of law and the legal profession, see S.E. Merry, *Getting Justice and Getting Even: Legal Consciousness among Working Class Americans* (1990).

33 Behrens, op. cit., n. 18, p. 167.

34 This neglect is perhaps only to be expected of researchers who disagree on principled grounds with the theoretical and methodological assumptions informing this variety of sociological work. It is, however, evident that even research studies which are compatible in

terms of analytic goals and assumptions have so far failed to address or engage with the considerable body of ethnomethodological research that now exists on law and legal institutions. See, for example, J. Morison and P. Leith, *The Barrister's World* (1992). This recent study begins to develop a theory of law as rhetoric, persuasion, and negotiation, drawing upon interviews with barristers on the nature of legal practice, but contains no discussion of ethnomethodology other than a passing reference on p. 194.

35 This criticism can be made of Cotterrell's introductory text, op. cit., n. 1, pp. 297–8, and of empirical studies associated with the Amherst Seminar on Legal Ideology and Legal Processes (see, for example, Merry, op. cit., n. 32, and B. Yngvesson, 'Making Law at the Doorway: The Clerk, the Court and the Construction of Community in a New England Town' (1988) 22 *Law and Society Rev.* 409). For a recent discussion of the challenges posed by post-structuralist theories to Marxist theories of ideology, see M. Barrett, *The Politics of Truth: From Marx to Foucault* (1991).

36 R. Tomasic, op. cit., n. 2, p. 1.

37 Grace and Wilkinson, op. cit., n. 2, p. 1. This text offers a diametrically opposed conception of sociology of law to that of Cotterrell in that the authors argue for the reorientation of sociology of law in an interpretive direction. My own view as an interpretive sociologist is that what is required is not the reorientation of sociology of law in one direction (also arguably one reading of the Cotterrell text) but for a greater appreciation on the part of the structural approaches that currently dominate the sub-discipline of the possibility of pursuing the systematic study of law from many different points of view.