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Why Must Legal Ideas Be Interpreted Sociologically?

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Sociology of law and socio-legal studies are sometimes declared unable to give insight into the nature of legal ideas or to clarify questions about legal doctrine. The idea that law has its own 'truth' – its own way of seeing the world – has been used to deny that sociological perspectives have any special claim to provide understanding of law as doctrine. This paper tries to specify what sociological understanding of legal ideas entails. It argues that such an understanding is not merely useful but necessary for legal studies. Legal scholarship entails sociological understanding of law. The two are inseparable.

I. SOCIOLOGY OF LAW AND LEGAL IDEAS

A modern myth about sociological study of law survived until quite recently, encouraged from within legal philosophy and by some legal sociologists themselves. According to this myth an inevitable division of labour governed legal inquiry. While lawyers and jurists analysed law as doctrine – norms, rules, principles, concepts and the modes of their interpretation and validation, sociologists were concerned with a fundamentally different study: that of behaviour, its causes and consequences. Hence, the legal sociologist's task was solely to examine behaviour in legal contexts.[1] Sociology could contribute

1 See, for example, D. Black, *The Behavior of Law* (1976), treating legal sociology as the study of governmental social control. Correspondingly, Hans Kelsen wrote of sociology's role as that of inquiring 'into the causes and effects of those natural events that . . . are represented as legal acts.' See H. Kelsen, *Introduction to the Problems of Legal Theory* (1992) 13. In his final work, he asserted that such a legal sociology 'does not describe the law, but rather law-creating behaviour and law-observing or law-violating behaviour. See H. Kelsen, *General Theory of Norms* (1991) 301.

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little to the understanding of legal ideas, abstracted from their effects on specific actions. In this sense sociology of law conducted inquiries peripheral or even *external* to law as lawyers understood it. Legal sociologists often avoided lawyers' disputes or theories about the nature of doctrine as such.[2] They studied primarily practices of dispute processing, administrative activity or law enforcement, or social forces operating on legislation, especially as a result of the actions of particular law-making or policy-advocating groups.

That this division of labour was in no way inevitable is clear from the briefest glance at the work of the classic founders of sociology of law. While Max Weber saw sociology's object as the study of social action, he treated the nature of legal ideas and the variety of types of legal reasoning as central to his sociological concern with law.[3] Émile Durkheim intended that the enterprise of understanding law as doctrine should itself become a field of sociology, so that lawyers' questions would eventually be reformulated through sociological insight.[4] For Eugen Ehrlich, the lawyer's understanding of law would be simultaneously subverted and set on surer foundations by means of sociological inquiry into popular understandings of legal ideas.[5] Leon Petrazycki considered that law should be studied as a variety of forms of consciousness and understanding.[6] Equally, numerous contributions to legal philosophy, including modern realist jurisprudence in Scandinavia, the United States of America, and elsewhere, showed that jurists had serious concerns with behaviour in legal contexts in their efforts to grasp the nature of legal ideas.

To remove a focus on legal doctrine from sociological inquiry would prevent legal sociology from integrating, rather than merely juxtaposing, its studies with other kinds of legal analysis. Without this focus, sociological observation of behaviour might influence policy expressed in legal doctrine; but this would amount not to a sociology of law but to a diversity of sociological information presented to legal policy-makers.[7] The old claim that social science should be 'on tap rather than on top' in legal inquiries reflected the idea that sociology and other social sciences were debarred

2 Vilhelm Aubert's work provides a significant exception. See, for example, V. Aubert, 'The Structure of Legal Thinking' in *Legal Essays: A Tribute to Frede Castberg*, eds. J. Andenaes et al. (1963) 41–63; and C. M. Campbell, 'Legal Thought and Juristic Values' (1974) 1 *Brit. J. of Law and Society* 13–30.

3 M. Weber, *Economy and Society* (1968) part 2, ch. 8.

4 É. Durkheim, Letter to the Director of the *Revue néo-scholastique*, in É. Durkheim, *The Rules of Sociological Method and Selected Essays on Sociology and its Method* (1982) 260; É. Durkheim, *Textes 1: Élements d'une théorie sociale* (1975) 244.

5 E. Ehrlich, *Fundamental Principles of the Sociology of Law* (1936).

6 L. Petrazycki, *Law and Morality* (1955).

7 Nothing in this paper should be taken as denying the worth of sociological studies of behaviour in legal contexts. In my view, these kinds of studies have produced insights of the greatest significance and should continue to occupy a central place in social inquiries about law. My argument here is, however, that the sociological interpretation of legal ideas should have a central place within legal studies generally, and that it is important for socio-legal scholarship and for legal scholarship in general that this place should be claimed.

from offering insight into the *meaning* of law (as doctrine, interpretation, reasoning, and argument). Hence, in so far as proponents of legal sociology accepted the myth of an inevitable division of labour, they were tempted to argue defensively that lawyers' debates on doctrine were trivial or mystificatory, and that real knowledge about law as a social phenomenon was gained only by observing patterns of judicial, administrative or policing activity, lawyers' work and organization, or citizens' disputing behaviour. Correspondingly, opponents of legal sociology hastened to dismiss it as unable to speak about *law* at all; fated to remain for ever 'external' and thus irrelevant to legal understanding.

The assumption that there could be no serious rapprochement between legal and sociological views of law often depended on each side in the dispute characterizing the other in excessively positivistic terms.[8] Thus, jurists often ignored scholarship expressing well established sociological positions: for example, that action is to be understood in terms of its subjective meaning to those engaged in it; that social life is structured by symbols, or constituted as forms of collective understanding; that social order is explicable in terms of social rules continuously created and recreated in human interaction; or that society may be understood as a system of communication.[9] Similarly, social science sometimes treated lawyers' legal understanding as entirely positivistic. Law for the lawyer was often seen by sociologists as a kind of datum (rules or regulations). Social processes central to lawyers' experience – interpretation, argument, negotiation, presentation, influence, decision-making and rule-formulating – were often underemphasized in characterizing the lawyer's outlook on the nature of law as doctrine.

II. IS SOCIOLOGY'S 'TRUTH' POWERLESS?

Criticisms of legal sociology's capacity to understand legal ideas have become more sophisticated, though they have not changed their fundamental character. It is now widely accepted that sociological inquiry is valuable and necessary in illuminating the social or historical processes that shape legal doctrine. Hans Kelsen, for example, moved from a position largely dismissive of sociology's relevance in the study of legal ideas[10] to recognize an important role for legal sociology in explaining the causes and consequences of ideological phenomena reflected in law, and especially the idea of justice.[11] It is now evident that legal ideas can be understood as the outcome of

8 D. Nelken, 'The Truth About Law's Truth' in *European Yearbook in the Sociology of Law 1993*, eds. A. Febbrajo and D. Nelken (1994) 87–160, at 107.

9 N. Luhmann, 'Communication as a Social System', in N. Luhmann, *Ecological Communication* (1989) 28–31.

10 Kelsen, op. cit. (1992), n. 1 (originally published 1934) 13–14.

11 H. Kelsen, 'The Pure Theory of Law and Analytical Jurisprudence' in H. Kelsen, *What is Justice? Justice, Law and Politics in the Mirror of Science* (1957) 266–87, at 270; H. Kelsen, *General Theory of Law and State* (1945) 174.

historical, cultural, political or professional conditions which sociological studies are able to describe and explain.

The most powerful current critique of legal sociology – the one which this paper seeks to examine and respond to – does not deny that sociological inquiry can, in its own ways, explain aspects of legal doctrine. It argues rather that sociology has *no privileged way of approaching legal ideas* – no specially powerful insight which can prevail over others. Because of this, it has no way of plausibly claiming that its interpretations are better than those which lawyers themselves can give. It therefore becomes an open question why a sociological view should be adopted in preference to any other. In other words, the claim is no longer that law cannot be understood in sociological terms. It is: why should we want to do so? What is to be gained by doing so, especially for lawyers, or other participants (for example, litigants or just lay citizens) in legal processes?

These questions are sharpened with additional claims. It is sometimes suggested that sociology is an exceptionally weak and inadequate explanatory discourse. For example, it is claimed to have 'an intriguing inability to constitute its field of study.'[12] The concept of 'the social' thus remains 'remarkably unexamined' in socio-legal studies and, it is said, no longer provides a focus for them.[13] On the other hand, law is now seen by those sceptical of sociology's interpretive capacities as having an intellectual power and resilience which protects it from social science's earlier 'imperial confidence' that it could know law better than law knew itself.[14]

In a rich discussion of relationships between law and scientific (including social science) disciplines, David Nelken describes the efforts of these disciplines to tell 'the truth about law' as being confronted now with law's own 'truth'.[15] What he means is that law has its own ways of interpreting the world. Law as a discourse determines, within the terms of that discourse, what is to count as 'truth' – that is, correct understanding or appropriate and reliable knowledge – for specifically legal purposes. It resists scientific efforts to interpret it away (for example, in economic cost-benefit terms, psychological terms of causes and consequences of mental states, or sociological terms of conditioning social forces). None of these interpretations, it is claimed, grasps law's own criteria of significance.

When law borrows from scientific disciplines or practices it appears to do so as it sees fit, taking what it deems useful, on its own conditions, for its own purposes.[16] Concepts borrowed are often transformed, turned into

12 P. Fitzpatrick, 'Being Social in Socio-Legal Studies' (1995) 22 *J. of Law and Society* 105–12, at 107.

13 id., p. 106.

14 D. Nelken, 'Can There Be a Sociology of Legal Meaning?' in *Law as Communication,* ed. D. Nelken (1996) 107–28, at 108–9.

15 Nelken, op. cit., n. 8, p. 107.

16 id., pp. 101–2.

'hybrid artifacts', tailored to legal use.[17] And law goes on the offensive. It provides its own explanations of the social world. It interprets social life in its own terms.[18] Law is said to provide truth for itself, for its purposes, which cannot be swept away by sociology, but with which sociology's interpretations are fated merely to co-exist. Because of this, sociology cannot reshape legal understanding; it provides at best a resource of ideas from which law may borrow if it finds reasons to do so. In a different sense from before, social science is again 'on tap, but not on top'.

From the standpoint of sociology the problem is not merely that its insights can be made to seem irrelevant to legal understanding. It is not just the unpleasantness of rejection that dominates this scenario, but also the frustration of attempting the impossible. The argument goes as follows. As sociology tries to understand law, law disappears, like a mirage, the closer the approach to it. This is because as sociology interprets law, law is *reduced to sociological terms*. It becomes something different from what it (legally) is; or rather, from what, in legal thought, law sees itself as being. How can legal ideas be understood sociologically without, in the process, being turned into sociological ideas?[19] The 'legal point of view', as Robert Samek called it in a neglected discussion of related themes,[20] disappears; subsumed into a sociological viewpoint and lost. It cannot be grasped sociologically because it is *not* sociological. It is a specifically *legal* point of view.

Legal sociology's potential is also challenged from another standpoint. For more than a decade, concern among progressive legal scholars has been less and less with how law is produced by society (the traditional outlook of legal sociology) and increasingly with the way 'society' is produced by law.[21] Not only can law stand alone from sociology with its own basis of understanding, taking or leaving social scientific insights as it sees fit, but it is said to be able also to create the central objects of inquiry – the very ontological basis – of sociology itself. According to some influential scholars,

17 G. Teubner, 'How the Law Thinks: Toward a Constructivist Epistemology of Law' (1989) 22 *Law and Society Rev.* 727–57, at 747.

18 Jan Broekman makes the claim forcefully:

> . . . those elements of social reality that are under the grip of legal thinking are *structurally altered*. Transformations have occurred. This simply means that the one reality is not the other. Legal provisions form a unique whole of its own kind which is a special category of human experience. One cannot understand a contract or a delict unless one recognizes one's being as *de iure*.

See J. Broekman, 'Revolution and Commitment to a Legal System' in *Enlightenment, Rights and Revolution: Essays in Legal and Social Philosophy*, ed. N. MacCormick and Z. Bankowski (1989) at 323.

19 Nelken, op. cit., n. 14, p. 112. For example, legal explanations of criminal conduct are in terms of responsibility. When the matter is considered sociologically in terms of causation of patterns of criminal activity through social or economic conditions, legal questions of responsibility may sometimes be partly or even wholly displaced.

20 R. Samek, *The Legal Point of View* (1974).

21 D. Nelken, 'Beyond the Study of "Law and Society"? Henry's *Private Justice* and O'Hagan's *The End of Law*' [1986] *Am. Bar Foundation Research J.* 323–38, at 325.

law has no need, and no possibility, of doing more than creating its own normative understanding of its social environment.[22] But, in a more radical view, law is also seen as responsible, partly at least, for *creating the social categories which sociology itself must work with*.

For example, the problematic idea of 'society' is said to be actually established by law's methods of determining social inclusion and exclusion. Peter Fitzpatrick argues that law renders society possible, 'thus reversing the foundational claims of the sociology of law'.[23] His assertion refers mainly to law's role in marking an identity for and boundaries of the entity thought of as political society. But, more generally, law can be considered to express or structure the experiences that make up the essential texture of social life. Far from law being coloured by the social context that sociology brought into legal study, context is 'assumed and reproduced in law as a bearer of traditions, or of ideological constructions, or forms of discourse.'[24] Thus, law, to a significant extent, actually constitutes social reality.

For these reasons a sharp line between the legal and the social can no longer be drawn; a 'more holistic understanding' is required.[25] Legal ideas constitute a form of social knowledge in themselves. The often neglected point that legal speculations once provided prototypes for early forms of social theory[26] acquires a new significance.

Certainly, some scholars in sociology of law continue to ask for evidence of law's ideological effects and to nurse doubts about law's capacity to influence social consciousness.[27] The demands and doubts are unsurprising given that the postulated direction of influence *from* legal ideas as shaping forces in social life fits uneasily with legal sociology's traditional assumption that society shapes law, and that effects of law on society are always specific matters for empirical study. But newer approaches to the relationship between the 'legal' and the 'social' refuse to see law and society as somehow

22 N. Luhmann, 'Closure and Openness: On Reality in the World of Law' in *Autopoietic Law: A New Approach to Law and Society*, ed. G. Teubner (1988) 335–48.

23 Fitzpatrick, op. cit., n. 12, p. 106.

24 Nelken, op. cit., n. 21, p. 325.

25 id., pp. 325, 338.

26 See D. R. Kelley, *The Human Measure: Social Thought in the Western Legal Tradition* (1990); W. T. Murphy, 'The Oldest Social Science? The Epistemic Properties of the Common Law Tradition' (1991) 54 *Modern Law Rev.* 182–215; S. P. Turner and R. A. Factor, *Max Weber: The Lawyer as Social Thinker* (1994).

27 L. M. Friedman, 'The Concept of Legal Culture: A Reply', in *Comparing Legal Cultures*, ed. D. Nelken (1997) pp. 33–9, at 37–9. In his paper, Friedman criticizes me for specifying the content of 'legal ideology in general' (p. 37), in other words, for appearing to essentialize legal ideology as something with a determinate, constant character in all times and places. But I offer no such specification and try to indicate only some particular ideological elements in contemporary Western law. There is surely no constant content of 'legal ideology in general'. The content of legal ideology may vary greatly from one legal environment to another. Neither does legal ideology necessarily form any kind of unity in relation to a particular legal system or society. See, generally, R. Cotterrell, *Law's Community: Legal Theory in Sociological Perspective* (1995).

separate or even competing spheres of influence. They more often treat as self-evident that law constitutes social life to a significant degree by influencing the meanings of basic categories (such as property, ownership, contract, trust, responsibility, guilt, and personality) that colour or define social relations. Hence, when the nature of socio-legal studies is considered, it is said to be no longer clear (and perhaps never was) whether the enterprise is legal, social or a mixture of the two.[28] The field remains undefined; conceptual clarity seems sacrificed to a need to avoid deep controversies about the foundations of social scientific inquiries about law.[29]

What then should be made of the effort to understand legal ideas (elements of legal doctrine and the reasoning and forms of interpretation that surround them) sociologically? This paper argues that the main problems, set out above, that are said to undermine this effort are in fact, despite their apparent seriousness, solvable or ultimately false. They do not stand in its way. But they do very properly demand that the nature, aims, and methods of sociological inquiry be clarified. Nevertheless, the claim to be made here is not merely that the effort to understand legal ideas sociologically is appropriate. My claim is that the *only* way to grasp these ideas imaginatively as ideas about the organization of the social world is through some form of sociological interpretation.

In the remainder of this paper an attempt is made to address the issues raised above for sociological understanding of legal ideas by analysing the two main apparent sources of difficulty to which these issues relate. The first of these is the nature of law's own 'truth' – its capacity to interpret the world in its own way. What is this 'truth' which, it is suggested, law produces or inhabits? What is to be made of the claim that law knows itself better than sociology can know it? Can we, indeed, speak of law 'knowing' or 'thinking' anything?[30] The second source of difficulty is the need to clarify what is meant by the effort to gain 'sociological understanding'. What kind of understanding is envisaged here? What is sociology's 'truth', or in Nelken's phrase, what kind of 'truth about law' can sociology offer? Does this, for example, imply a need to subsume law as a discipline under the hegemony of another academic discipline, such as sociology?

I argue that no such implication is required. Indeed, it would entirely miss the point. Disciplinary boundaries should be viewed pragmatically; indeed, with healthy suspicion. They should not be prisons of understanding. The term 'sociological' is necessary to keep firmly in mind certain definite foci in interpreting law, but these foci and their authoritative definition are not the property of any particular academic discipline. Participants in law – not just lawyers but all those who seek to use legal ideas for their own purposes, to promote or control the interests of others, or more generally for public

28 Fitzpatrick, op. cit., n. 12, p. 105.
29 Compare Nelken, op. cit., n. 14, p. 108.
30 Compare Teubner, op. cit., n. 17.

purposes of direction or control – understand legal ideas in practical terms. The aim in what follows is to show that the most practical view of legal ideas is one informed by sociological insight. Legal ideas are properly understood sociologically.

III. DOES LAW HAVE ITS OWN WAY OF SEEING THE WORLD?

In a recent paper, Jack Balkin offers an explanation of law's resilence when faced with the interpretive claims of other disciplines.[31] He argues, echoing earlier writers,[32] that law[33] is inherently weak as an academic field. It is highly susceptible to invasion by other disciplines. Although sociology is one such invader, the disciplines that, in the United States of America, have recently been most successful in invading law have been economics, history, philosophy, political theory, and literary theory.[34] Balkin's explanation of why law is so easily invaded is that it 'is less an academic discipline than a professional discipline. It is a skills-oriented profession, and legal education is a form of professional education.'[35] Law does not have a 'methodology of its own'[36] and borrows methodologies from any discipline that can supply them. On the other hand, because law is researched and taught in settings that are never far from the professional demands of legal practice, it cannot be entirely absorbed by any other discipline. Its professional focus compensates for the lack of a purely intellectual one.

Thus, even economic analysis of law, by far the most successful recent intellectual invader of the American law school, cannot completely colonize law because its disciplinary direction ultimately diverges from law's professional orientation. There simply is no place in the vocationally organized environment of academic law for the reproduction of the sophisticated research skills and statistical methods that the research culture of advanced economics requires. The law school thus takes what it needs from economics, or any other discipline, simplifying and packaging the insights or methods on offer and presenting them for law's own purposes. Law is continuously invaded but, Balkin asserts, cannot be conquered.

This is an essentially sociological account of law's disciplinary resilience, in terms of the organization of legal education, professional training, and the recruitment and socialization of law professors. Consequently, the

31 J. M. Balkin, 'Interdisciplinarity as Colonization' (1996) 53 *Washington and Lee Law Rev.* 949–70.

32 See, for example, R.A. Posner, 'The Decline of Law as an Autonomous Discipline 1962–1987' (1987) 100 *Harvard Law Rev.* 761–80.

33 Balkin's discussion is limited to the United States context, but the analysis seems more generally applicable.

34 Balkin, op. cit., n. 31, p. 965.

35 id., p. 964.

36 id., p. 966.

account is susceptible to sociological rebuttal. Balkin does not explain any reasons inherent in the nature of legal ideas or understanding as to why law cannot be conquered by social science. The factors are merely organizational. The law school environment and the legal profession provide this resistance. He offers no argument as to why these organizational factors must continue to operate. Indeed, law is portrayed as so weak as a discourse that it invites continuous change in the way it is taught, learned, and understood. Balkin gives no reason why American law schools should not ultimately turn into graduate schools in applied economics (and it can be recalled that Harold Lasswell and Myres McDougal once seriously advocated[37] turning them into advanced schools of policy science). If law has no special characteristics as a discourse, method or body of knowledge, it is unclear why law schools must continue to take their current form. Balkin's argument does not explain law's resilience.

In making the claim that law is 'not, strictly speaking, an academic subject',[38] Balkin means that it lacks a methodology of its own. But, in fact, law in contemporary Western societies does embody quite specific methods of intellectual practice: for example, methods of presenting a case in court, of drafting a brief, of marshalling evidence, of citing and reasoning with precedents. A stronger claim for law's weakness would be that it lacks any of the usual intellectual marks of disciplinarity: controlling master theories, distinctive methods of intellectual debate, established paradigms of research practice, familiar epistemological and ontological positions or controversies.[39] But it might be said that law has *some* important indicators of its own intellectual outlook or orientation. For its purposes they count as providing coherence for its practices. These indicators give it a way of interpreting the world; at least the world as it exists in relation to law's purposes.

The strongest current arguments for law's capacity to declare sociological understanding of legal ideas irrelevant are arguments emphasizing these kinds of indicators. In one way or another, these indicators make possible what Nelken terms 'law's truth'. When attempts are made to specify the indicators, however, they seem remarkably limited. They may amount to no more than a consistent focus in any context on marking a distinction between the 'legal' and the 'illegal'; right and wrong in terms of specifically legal definitions.[40] Otherwise, law might be said to be distinctively concerned with institutional rather than brute facts, and with considerations of authority, integrity, fairness, justice, acceptability, and practicability. It has to use 'arbitrary cut-off points' in argument, and often chooses not to look behind its presumptions. It seeks to provide certainty and to relate to common sense.

37 H.D. Lasswell and M.S. McDougal, 'Legal Education and Public Policy: Professional Training in the Public Interest' (1943) 52 *Yale Law J.* 203–95.

38 Balkin, op. cit., n. 31, p. 966.

39 Compare Cotterrell, op. cit., n. 27, ch. 3.

40 N. Luhmann, 'The Coding of the Legal System' in *State, Law and Economy as Autopoietic Systems*, ed. G. Teubner and A. Febbrajo (1992) 145–85.

It may adopt or reject scientific (including social scientific) knowledge or reasoning in order to pursue these objectives. It gathers and presents facts in ways tailored to adjudicative needs.[41] It operates by means of practical reasoning and argumentation that may be more or less specific to its governmental, dispute processing or social control tasks. But any enumeration of characteristics of law's truth will miss the point for 'what truth means for law is the result of its own processes.'[42] 'Ultimately,' as Arthur Leff puts it, 'law is not something we know but something that we do.'[43] It is not grasped by description from 'outside' but by working and thinking within it.

But does this argument really go much further than Balkin's more directly stated point that law's social conditions of practice determine the forms of knowledge appropriate to it? The difference seems to be that it is not just the law school, the profession, and constraints on the professoriat that are said to reproduce law's ways of interpreting the world. It is apparently law in a more abstract sense that does this. Changing any of the specific social settings of law that Balkin emphasizes would not alter the fact that the legal point of view is distinctive.

Thus law tends to become, in arguments about 'law's truth', an abstract site of understanding removed from particular kinds of social locations. For some writers, such as Niklas Luhmann, law's truth is that of a communication system not tied to any specific empirical settings. These scholars treat law as a discourse but typically do not stress the potential diversity of legal discourses of particular lawyers in particular courts, particular claimants or defendants in relation to specific claims, or particular political actors pursuing their special interests or projects or promoting their particular values. Law in some abstract sense is presented as having a unified, cohesive mode of understanding, a distinctive viewpoint, or a specific style of interpretation or reasoning.

From a sociological standpoint, however, it is an empirical question how far and in what forms this cohesion, distinctiveness or specificity may exist. Lawyers operating between different legal systems can experience different 'truths' of law, and sometimes have difficulty in establishing a shared discourse. Even within the same system, outlooks on almost all matters legal may sometimes differ radically as between different participants in legal processes. As Balkin suggests, there may be much disagreement on matters of method no less than on the interpretation of particular matters of doctrine. And it contributes little to envisage all these actual or potential disagreements as part of an ongoing conversation on the justice or integrity of law. Such a conversation may exist only because the structure of political power forces those who wish to have access to or protection from that power to adjust their claims and arguments. It may force them to press these claims

41 See, generally, Nelken, op. cit., n. 8, pp. 99–100.
42 id., p. 103.
43 Quoted id., p. 99.

and arguments in ways that distort the particular legal 'truth' which they would otherwise wish to express.

Law's basic 'truth' may be merely the *provisional, pragmatic consensus* of those legal actors who are perceived at any given time to be supported by the highest forms of authority within the legal system of the state. Another way of putting the matter would be that there is no 'law's truth', no single legal point of view, but only the different – sometimes allied, sometimes conflicting – viewpoints expressing the experience, knowledge, and practices of different legal actors and participants. What links all of these as 'legal' in some official sense is their varied relationships with matters of government and social control and with institutionalized doctrine bearing on these matters.

Undoubtedly law is presented professionally as a more or less unified, specialized discourse. But, as Balkin notes, it is an intellectually vulnerable, open discourse, liable to invasion by many kinds of ideas, including sociological ones. Ultimately, it is given discursive coherence and unity only because its intellectual insecurity, its permanent cognitive openness, is stabilized by *political fiat*.[44] The political power of the state which guarantees the decisions of certain official legal interpreters, puts an end to argument, determines which interpretive concepts prevail, asserts favoured normative judgments as superior to all competing ones, and guarantees normative closure by the threat of official coercion.[45] The *voluntas*, or coercive authority, of law, centralized by political structures and organized through legal hierarchies, stabilizes and controls potentially unlimited, often competing and conflicting, elaborations of *ratio* – reason and doctrinal principle – in a host of diverse sites and settings of legal argument and interpretation.

Seen in sociological perspective, this is the nature of law's truth as a unified, distinctive discourse; a contingent feature of particular social environments. Sociological interpretation both reveals law's character and is, like many other forms of knowledge, available to enrich law's debates, colour its interpretations, and strengthen or subvert the strategies of control to which legal discourse is directed. Sociological insight is simultaneously inside and outside legal ideas, constituting them and interpreting them; sometimes speaking through them and sometimes speaking about them; sometimes aiding, sometimes undermining them. Thus a sociological understanding of legal ideas does not reduce them to something other than law. It expresses their social meaning *as law* in its rich complexity.

At the same time, as noted earlier, law defines social relations and influ-

44 Compare Hobbes's formulation: 'It is not wisdom, but authority that makes a law.' See T. Hobbes, *A Dialogue Between a Philosopher and a Student of the Common Law*, ed. J. Cropsey (1971) 55.

45 Thus, as Robert Cover puts it, the problem that requires a court to make an authoritative legal ruling is not that the law is unclear but that there is *too much law*. Courts (and especially the ultimate courts of appeal in a legal system) exist 'to suppress law, to choose between two or more laws, to impose upon law a hierarchy.' See R. Cover, 'The Supreme Court 1982, Foreword: *Nomos* and Narrative' (1983–4) 97 *Harvard Law Rev.* 4–68, at 40.

ences the shape of the very phenomena that sociology studies. Thus legal and other social ideas interpenetrate each other. A line between law and society is, as has been seen, no longer capable of being sharply drawn. Law constitutes important aspects of social life by shaping or reinforcing modes of understanding of social reality. It would be remarkable if the power of law as officially guaranteed ideas and practices could have no such effects. One might indeed wonder what law as an expression of power is for, if not for this. But a sociological perspective makes it possible to *observe and understand* this effect of legal discourses and situate it in relation to the social effects of other kinds of ideas and practices. Law constitutes society in so far as it is, itself, an aspect of society, a framework and an expression of understandings that enable society to exist. A sociological perspective on legal ideas is necessary to recognize and analyse the intellectual and moral power of law in this respect. To interpret legal ideas without recognizing, through sociological insight, this dimension of them would be to understand them inadequately. It would be to treat them as less significant and less complex than they are made to appear in a broader sociological perspective.

IV. WHAT IS A SOCIOLOGICAL PERSPECTIVE?

Is it, however, really necessary to invoke the word 'sociological' here? Why privilege sociology? Nelken[46] argues that sociology is sometimes presented as supreme only by downgrading law's disciplinary status. He doubts that sociology can ultimately transcend its own methods of argument and style. The legal sociologist may stand too close to sociology to understand law. And, in any case, why should a sociological, rather than, for example, an economic or psychological viewpoint be favoured?[47] Why should sociology impose *its* understandings? On the other hand, if it does not do so, its analyses of law can be criticized as being parasitic on law's own definitions of 'the legal'.[48]

But most of these problems surely disappear once it is recognized that use of the word 'sociological' does not imply adherence to the distinct methods, theories or outlook of the academic discipline called sociology. It is appropriate to claim that a sociological perspective is indispensible in orienting oneself, whether for practical (participatory) or theoretical purposes, to contemporary law as a social phenomenon. But the term 'sociological' must be taken in a methodologically broad and, at the same time, theoretically limited sense. This rejects any implication of attachment to a specific social scientific or other discipline. Sociological understanding of legal ideas is

46 Nelken, op. cit., n. 8, p. 125; Nelken, op. cit., n. 14, p. 115.

47 id. (1994), p. 125.

48 C. Pennisi, 'Sociological Uses of the Concept of Legal Culture' in *Comparing Legal Cultures*, ed. D. Nelken (1997) 105–18, at 107.

transdisciplinary understanding.[49] But it is properly termed sociological because it consistently and permanently addresses the need to reinterpret law *systematically and empirically* as a *social* phenomenon. This terminology also suggests, however, that a legal outlook can itself be sociological, involving a systematic, empirical view of the social world, though it need not be so. As noted earlier, sociological understanding is simultaneously inside and outside legal ideas.

The essence of a sociological interpretation of legal ideas lies in three postulates. First, law is to be seen as an entirely *social* phenomenon; law as a field of experience is to be understood as an aspect of social relationships in general, as wholly concerned with the co-existence of individuals in social groups. Secondly, the social phenomena of law must be understood *empirically* (through detailed examination of variation and continuity in actual historical patterns of social co-existence, rather than in relation to idealized or abstractly imagined social conditions). And thirdly, they must be understood *systematically*, rather than anecdotally or impressionistically; the aim is to broaden understanding from the specific to the general. It is to be able to assess the significance of particularities in a wider perspective; to situate the richness of the unique in a broader theoretical context and so provide orientation for its interpretation.

A sociological perspective could be defined and clarified in relation to other perspectives that are relevant to law. Literary fiction, for example, undoubtedly provides much insight into social relations in novels or short stories. But it does not usually claim to offer systematic interpretation of social phenomena. Its great power is in the rich presentation of particularity in a way that evokes general interest. The telling of stories, the evocation of mood, character and circumstances can present human individuality as simultaneously a matter of unique and universal experiences.[50] Fiction can offer to the reader a means of reflecting on the nature of the social world. It does this when it inspires the conviction that its ideas extend social experience – the experience or observation of the reader, either direct or vicarious.

Fiction contributes to sociological ideas when it creates in the reader the sense that its stories, characterizations, and evocations, or certain elements in them, can be used to interpret or inform aspects of social experience. The reader may empathize with characters or imagine situations as if they were presented as factual reports of experience. Empathy and imagination supply empirical reference for fiction, and give it its power to supply insight into 'the human condition' in some sense. Thus fiction presupposes for its success some plausible reportage of human experience. Hence the line between fiction and non-fiction is itself problematic. But a story or a characterization – whether fictional or non-fictional – does not, in itself, provide the means

49 Cotterrell, op. cit., n. 27, ch. 3.

50 Compare É. Durkheim, *Textes 2: Religion, morale, anomie* (1975) 323–4.

for generalizing from the particular; hence it typically remains an unsystematic, untheorized account of individual or social circumstances. It offers, at its best, a richly detailed presentation of particularities of human experience, made profound by its capacity to attract empathy and engagement.

One might characterize typical orientations of many intellectual disciplines specifically in relation to the systematic, empirical and social aims and orientation of sociological inquiry. By contrast with the latter, theology's dominant concerns, for example, are not entirely social. A focus on relationships between human beings may be derived from a primary focus of the relation of humans to spiritual things – 'the central mystery of faith and unbelief'.[51] The approach is only partly empirical, in the senses referred to earlier; but usually generalized and often systematic and theoretically oriented.[52] Much the same contrast with sociological inquiry might be sketched in very broad terms as regards philosophy as a discipline. Perhaps the most basic focus here is on self-knowledge,[53] systematic reflection on general human experience in all its forms, not all of this experience necessarily being encompassed in social relations and not all being capable of illumination through empirical study.

Art's aesthetic creations do not offer systematic insight into the nature of the social world. 'For the artist, there are no laws of nature or history that must always be respected',[54] but the insights inspired may nevertheless be powerful when the observer of art or the participant in artistic experience finds points of real or imagined empirical reference on which the power of artistic creativity is sensed as focusing. Again, history is usually determinedly empirical and richly related to the understanding of social life, but may limit its effort to be explicitly systematic or generalized in its portrayal of 'the social', in order to achieve a multifaceted insight into particular people, actions, developments or events similar to that offered by the rich evocations and descriptions of great fiction.

As a final example, economics combines a concern with the empirical and a determinedly systematic and theoretical outlook with its own distinctive focus on the social. But, for all the contemporary claims of some economists to be able to analyse every aspect of social life in rational choice terms, economic analysis concerns itself with only certain aspects of social relations, or tends to reduce their complexity to a single model or strictly limited range of models.[55] From many legal participant perspectives, and certainly from sociological perspectives, these models appear inadequate to encompass the *entirety* of legal aspects of social life.

Approaches to legal inquiry that are set up as in some way *opposed* to sociological perspectives are, *to the extent that they are presented in this*

51 S. Neill, *The Interpretation of the New Testament 1861–1961* (1966) 347.

52 See, for example, id., pp. 336–48.

53 E. Cassirer, *An Essay on Man* (1944) 1.

54 É. Durkheim, *Moral Education* (1961) 270.

55 Compare A. Rosenberg, 'Can Economic Theory Explain Everything?' (1979) 9 *Philosophy of the Social Sciences* 509–29.

competitive way, often ultimately more restricted forms of understanding of law as a social phenomenon to the extent that they actually exclude sociological insight in certain ways. Otherwise, most productively, these other approaches are best seen as allied with and (in so far as they seek to offer social insight) even appropriately organized by means of a (perhaps implicit) sociological perspective. They should be treated as specialized co-workers with sociological inquiry.

Equally, sociological inquiry needs to be open and receptive to a variety of forms of legal inquiry that are not generally thought of as sociological. It must recognize their special power and merit and draw from and interact with them. Sometimes, indeed often, these forms of inquiry produce sociological insights while declaring justifiably that their ideas and approaches are directed to quite different purposes, and founded on quite different bases, from those that they associate with sociological studies.

A sociological perspective is thus not exclusive of or separate from the perspectives offered by the various disciplines mentioned above. Indeed, it may be contributed to by all of them, and by others. And it does not need to derive or seek its justification from the traditions of academic sociology, which nevertheless provide much important material to inform it. It is justified by the fact that for practical purposes law is appropriately understood as a social phenomenon, a phenomenon of *collective human life*: an expression and regulation of communal relationships; a means of codifying, being systematically aware of, working out, planning, and co-ordinating the relationships of individuals who co-exist in social groups. One important aspect of this is that, in some respects (but not all), law is thought of – and experienced – as an external, constraining force on the individual: a social fact, in Durkheim's sense.[56] Something set apart from individual life, and acting on it as a social force.

Again, for practical purposes of thinking and working with law, understanding it as an aspect of society and using that understanding to control conditions of social life as best they may be controlled, it is essential that understanding of law should be *systematic and general*, theorized and organized. At the very least, this is necessary to manage both legal doctrinal and social complexity. Theorizing legal ideas is not a separate enterprise from theorizing the nature of social life. It is an aspect of a single but unending endeavour. Because systematic understanding of law is necessary, systematic understanding of social phenomena generally is required. A sociological perspective must, by its nature, seek an integrated, continually broadening view of what it studies.

Finally, such a perspective needs to be *empirically grounded* – based on observation of the diversity and detail of historical experience. Speculation about the nature of or the meaning of legal ideas which does not relate its inquiries to historical experience in this way is impractical and may lack

56 Durkheim, op. cit. (1982), n. 4.

point since it ignores the specificity of the contexts in which the meanings of legal doctrine are shaped. Thus, while the demand for systematic understanding exerts pressure towards generalization and the broadening of perspectives, the requirement for empirical foundations of understanding exerts pressure to reject broad speculation which ignores or generalizes beyond what the detail of particular experience and observation can support as plausible.

Is the claim that law should, as a practical matter, be understood in a perspective that emphasizes the social, the systematic, and the empirical a philosophical or an empirical claim? Ultimately it is a claim that thinking about law in this way offers the most general possibilities for encompassing the widest range of participant perspectives on law. Thus, it is an empirical claim since it makes assertions about the nature of legal experience. At the same time it can be considered a philosophical claim because it asserts that legal experience is usefully interpreted in a certain light; in relation to certain constant concerns, elaborated in many different ways in different times and places. For example, it is possible to think of law in an asocial manner, as a kind of pure calculus unrelated to any idea of social relations. But it is hard to do so and for most legal participants – that is, people who have experience of law or involvement with it in some way – it may be difficult to see great value in doing so.

Again, it is possible to renounce any connection between law and a wish to make knowledge systematic. Weber wrote of 'kadi justice' as a form of legal interpretation or decision-making that rejects any aspiration to subsume particular instances within general categories.[57] Yet most legal experience of which we have historical and contemporary knowledge seems to value the aspiration towards system in law – whether as rational codification, wise consistency in the administering of justice, the citizen's or subject's ability to predict legal outcomes, aspirations towards simplicity or clarity in legal doctrine, an effort towards standardization or unification of law, or the control of arbitrariness. The aspiration has not always been for rational systematization, and rationality takes different forms. Sometimes the aspiration goes no further than a demand for some stability or certainty of outcome; or some possibility of generalization. But in most legal experience, this aspiration towards system is present in some form and is recognized in the development of law and its practice.

So too with a concern for the empirical. Like the concerns with the social and the systematic, this can be considered a fundamental component of most legal experience in all times and places for which knowledge is available. Law is often created in substantial ignorance of the empirical conditions of its application. It might be supposed that this has been a problem for all legal systems and societies beyond a certain size and level of social complexity. Yet most legal experience recognizes or is connected with circumstances

57 Weber, op. cit., n. 3. pp. 976–8.

of interpretation and application of legal ideas to specific instances. Law is generally understood as significant in experience only if applied and related to specific contexts. In some sense this is the other side of law as system: law as the 'wilderness of single instances'. It can be claimed that the effort to draw legal ideas from practices of resolving problems in particular empirical settings or to adapt and refine these ideas in application to such problems has been at the heart of most participant experience of law. It is possible to think of law in isolation from specific empirical references and the effort at systematization continually pulls law away from the particularities of context. But most legal experience does not avoid some concern for the empirical as a central aspect of law.

The task of interpretation in law, which might also be thought of as a fundamental aspect of legal experience, can be seen in this light as part of the never-ending activity of balancing the empirical and systematic, and doing so by drawing on continually changing conceptions of law's nature as a social phenomenon; its nature as an aspect of social life, to be related to other aspects. Legal interpretation in this sense is the aspect of legal participation that is concerned with reconciling or balancing concerns with the social, the systematic and the empirical in law.

V. HOW SHOULD LEGAL IDEAS BE INTERPRETED?

The term 'sociology of law' remains useful as a label for identifying a vitally important body of research on legal processes and as an important focus of self-identification for scholars committed to extending this research. But it is a somewhat unsatisfactory and misleading term when it is used to refer to the sociological study of legal ideas. It often suggests a sub-discipline or a specialism, a branch of sociology or a distinct compartment of legal studies. In considering the interpretation of legal ideas it would be better to speak of sociological perspectives or insights, or sociological understanding or interpretation.

Sociological interpretation of legal ideas is not a particular, specialized way of approaching law, merely co-existing with other kinds of understanding. Sociology of law in this particular context is a transdisciplinary enterprise and aspiration to broaden understanding of law as a social phenomenon. It certainly insists on its criteria of the social, the systematic, and the empirical, reflecting – as will be further illustrated subsequently – the conviction that these criteria are inscribed in some sense and in some degree in participant understandings of the nature of law itself as a social phenomenon. It seeks to go beyond many such understandings. But sociology of law is otherwise *inclusive* rather than exclusive. Sociological insight is found in many disciplinary fields of knowledge and practice.

If sociological inquiries about law have an intellectual or moral allegiance, then this is to law itself – that is, to its enrichment through a radical broaden-

ing of the perspectives of the varied participants in legal processes, practices, and forms of knowledge.[58] Sociological inquiry is critical because it insists that the legal perspectives of many of these participants (whether lawyers or non-lawyers) are *insufficiently* systematic and theoretically informed or sensitive to empirical variation, and have *too narrow* an awareness of law's social character. But it is also constructive because it cannot merely condemn existing legal ideas without also asking at all times how law might be *reinterpreted* and so re-imagined and reshaped consistently with its social character, when understood better in a broader sociological perspective.

It should be clear that the discussion above of sociological understanding of legal ideas takes for granted the need to reject the familiar dichotomy between internal and external views of law, or between insider and outsider perspectives. This dichotomy is familiar within legal philosophy. Its assertion is a device that accompanies the false assertion of the uniqueness of 'law's truth'. As Nelken properly points out,[59] the internal-external distinction is, for the most part, merely a feature *internal* to lawyers' thinking. It reflects especially a professional self-image in terms of a special kind of reasoning and understanding.[60] When legal thinking is understood sociologically, the distinction disappears between internal (legal participant) views of law and external (for example, social scientific observers') views. It is replaced by a conception of partial, relatively narrow or specialized participant perspectives on (and in) law, confronting and being confronted by, penetrating, illuminating, and being penetrated and illuminated by, broader, more inclusive perspectives on (and in) law as a social phenomenon.[61]

It might be asked what happens to justice and legal values in sociological

58 Compare Hubert Rottleuthner's assertion, in an address to lawyers, that:

> sociological research can . . . help us to look beyond our daily routines . . . As sociologists of law we go beyond the individual field of experience . . . we transcend the individual perspective . . . we establish correlations systematically instead of relying on unproved everyday theories. And by using a different frame of reference we point out new aspects to which inadequate attention has been given in your legal practice . . . we offer a cognitive background for your daily work.

See H. Rottleuthner, 'Sociology of Law and Legal Practice' in *Legal Culture and Everyday Life*, ed. A-J. Arnaud (1989) 77–84 at 79, 82. These claims seem justified apart from the suggestion that sociological knowledge contrasts with *unproven* theories. I prefer to say that it cannot provide 'proof' but rather potential enlightenment – a deeper understanding – by reinterpreting everyday understandings in a broader, more systematic, more consciously empirical perspective. And, of course, it offers this not just for lawyers but for legal participants generally.

59 Nelken, op. cit., n. 8, pp. 111–2.

60 Cotterrell, op. cit., n. 27, ch. 5.

61 In this context Philip Lewis's concept of 'representations' – forms of understanding ('description and accounts') present in legal thinking with regard to social institutions, practices and relations – seems useful. It highlights types of social knowledge that become a part of legal thought, so that, to this extent, legal and social understanding blend into each other as inseparable. See P. Lewis, 'Notes for a Socio-Legal Jurisprudence', in *European Yearbook in the Sociology of Law 1988*, ed. A. Febbrajo et al. (1988) 209–26.

understanding. Can a sociological understanding of legal ideas address questions of justice? The answer is, clearly, yes. It was noted earlier that sociological insight should both inform and interpret legal ideas. The question of whether sociology is 'inside' or 'outside' law becomes redundant. It is both inside and outside; and so the inside-outside demarcation is meaningless in this context.[62] The line between law and society, and thus between legal and sociological interpretation becomes indistinct. Law constitutes society in certain respects; social understanding informs law in certain ways. But in so far as sociological interpretation of legal ideas relates them to the entire context of social relationships in general it focuses attention on the patterning of those relationships, which is the specific concern of justice.

Justice is a perception of social relations in balance. It is one aspect of a sense of social cohesion or integration.[63] The radical broadening of perspective which sociological interpretation seeks makes it possible to enrich understandings of the social conditions of justice. The consistent focus of sociological inquiry on the social, the systematic, and the empirical provides the essential dimensions of this enriched understanding. Sociological inquiry cannot abolish disagreement as to what justice demands in any particular situation. But it can reveal the meaning of justice claims in a broader perspective by systematically analysing the empirical conditions that provide postulates underlying these claims.

If sociological interpretation of legal ideas is to be characterized in these ways, can we say anything concrete and specific about its *methods*? As noted earlier, settled methodology is the unifying feature which, according to Jack Balkin, law so crucially lacks. Can such a settled methodology be attributed to sociological inquiry?

The answer must recognize a crucial claim made earlier. This is that, if sociological inquiry about legal ideas is to be treated as having any specific intellectual allegiance, it is to law as a social phenomenon, not to an academic discipline of sociology or to any other social science discipline. Hence the sociological understanding of legal ideas reflects methodologically law's own fragmentary and varied methodological characteristics as understood by those who participate in or are affected by legal practices. This is inevitable because of the interdependence of legal and sociological understanding referred to earlier. Sociological interpretation extends legal analysis; it broadens the perspectives of legal participants.

It does not necessarily *replace* those perspectives or *contradict* them by the use of a specific methodology foreign to the diverse methods already used by legal participants. If it did so *generally* this would be to replace law with sociology; to fall into the trap which, as noted earlier, has been said by some commentators to ensnare all sociological attempts to grasp law's

62 See R. Cotterrell, 'Law and Community: A New Relationship?' (1998) *Current Legal Problems*, forthcoming.

63 Compare É. Durkheim, *The Division of Labour in Society* (1984) 77.

truth. Thus, the methodology of sociological understanding of legal ideas is the deliberate *extension* in carefully specified directions of the diverse ways in which legal participants themselves think about the social world in legal terms. It seeks radically to extend the already partially systematic and empirical characteristics of this legal thinking, and thereby sets out to transform legal ideas by reinterpreting them.

An illustration may help to clarify this argument. The English law of trusts has developed a strange impasse in one narrow and somewhat arcane area of legal doctrine. While property can be held on trust by trustees to benefit individuals or groups of individuals in a wide variety of ways, English law, unlike some other common law jurisdictions, has declared that property may not be held on trust for abstract non-charitable purposes – for example, to promote press freedom, or sport outside an educational context.

When it is asked why English law takes this particular stance on private purpose trusts and how the law in this area should be developed in the light of the precedents, answers are not particularly straightforward. The cases refer to particular private purpose trusts as illustrations, and offer various reasons for a tradition of judicial hostility to them. The matter is dealt with by the courts partly by looking at what has been decided in the past, partly by detailing technical problems that would be faced by law if private purpose trusts were to be declared generally valid (for example, problems of enforcement), and partly by offering policy arguments about the social or economic rights and wrongs of allowing particular kinds of trusts to be set up.

Legal thinking in this area is empirical up to a point, looking at what has been decided and the specific judicially stated circumstances in which particular decisions were taken. It considers how law in this area has been and can be enforced. It tries also to be systematic, seeking general principles which can unite the judicial approaches taken (but it ultimately admits failure, declaring that cases in which some private purpose trusts have been upheld are anomalous). It is also aware of the nature of the law in this field as an expression of social relations. Thus, it considers policy; for example, the social and economic pros and cons of restrictions on alienation of property and of particular kinds of testamentary freedom. But legal analyses do not seem to remove the deep-rooted controversies surrounding the law in this area. Commentators take a variety of positions on the issues, some supporting the general legal hostility to private purpose trusts, others declaring it unjustified. And the controversy has continued for decades. In other jurisdictions matters have been dealt with by legislative reform.

A sociological approach to doctrine in this area attempts to extend established methods of legal thought in new, relatively unfamiliar ways.[64] First, it puts the development of doctrine into a far wider historical context,

64 R. Cotterrell, 'Some Sociological Aspects of the Controversy Around the Legal Validity of Private Purpose Trusts' in *Equity and Contemporary Legal Developments*, ed. S. Goldstein (1992) 302–34; R. Cotterrell, 'Trusting in Law: Legal and Moral Concepts of Trust' (1993) 46 *Current Legal Problems* 75–95.

noting the changing social and economic contexts in which trust law as a whole has developed. By this means it suggests that the institution of the trust has been thought of in ways that have changed radically over time. This change becomes recognizable when attention shifts from the development of a particular line of precedents, as in orthodox legal analysis, to changing patterns of legal ideas about the nature of trusting relationships seen as interrelated with broader social, economic, and moral ideas. Thus, the inquiry broadens the idea of law as a social phenomenon by treating legal ideas as an aspect of social ideas in development. This is not to reduce the former to the latter, but to see each as inseparable from the other.

Similarly, empirical inquiry is broadened beyond the observation of previous decisions to include much wider observation of the particular social contexts and implications of these decisions. It considers their relation with other legal developments in areas that may be legally distinct from but socially interconnected with the area of private purpose trusts, viewed as an area of legally structured social relationships. Thus, sociological inquiry seeks a broader, systematic view of the law by reinterpreting the relationships of ideas which the lawyer identifies. It puts them into an intellectual context that allows the identification of other relationships and other connections. And these in turn help to explain the law as it stands and point to ways of rethinking and developing it.

When sociological inquiry is used in the ways outlined above it ceases to appear as the pursuit of a methodology alien to law, or the invocation of a competing academic discipline with the aim of colonizing law. It is seen as the radical extension and reflexivity of legal participants' understanding of law. Viewed in this way, it appears as a necessary means of broadening legal understanding – the systematic and empirical understanding of a certain aspect of social life which is recognized as 'legal'.

It procedes from participant understandings, but because it seeks to *systematize* legal understanding beyond the needs of particular participants, it goes beyond their perspectives. For example, it certainly does not reject – but does not treat (for its purposes) as adequate – personal or anecdotal accounts of legal experience, particular narratives which cannot be generalized. Because it treats very seriously the requirement that systematizations of legal or social knowledge must be grounded in *empirical* observation, it resists speculations that it considers as taking inadequate account of empirical variation. And because it emphasizes law's character as a *social* phenomenon, it examines law's social character far more extensively and broadly than most participants need to do. Hence, for example, it is led to extend its conception of the legal as a social phenomenon beyond the forms of law familiar to lawyers or some other categories of legal participants.[65]

65 Some sociological theories of legal pluralism offer the clearest examples here. They often suggest a vast *diversity* of legal knowledge, consciousness, authority, and experience which tends to be obscured by the orthodox typical focus of lawyers' practice and legal education on uniform law applied by official national and state courts. See Cotterrell, op. cit., n. 62.

Viewed in this way the enterprise of sociological interpretation of legal ideas is not a desirable supplement but an essential means of legal understanding. Legal ideas are a means of structuring the social world. To appreciate them in this sense and to recognize their power and their limits, is to understand them sociologically.