SOCIOLOGY AND LAW

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Once there was a man who lost his ring in a dark alley. But instead of looking for the ring in the alley, he was found searching intently under a street lamp. Asked why he did not look for the ring in the alley, but under the street lamp, he said, "It is brighter here."

In a sense we are all like this man. The legal scholar is busy compiling and annotating the laws, the magistrate is busy making decisions, the policy maker makes policy, and the legislator makes laws. Off to one corner the professional social scientist is also busy. All, in a sense, is busy doing what he is doing on the basis of his own special insight or experience of the flux of social reality. But it is a rare occasion when one turns to the other for his own special knowledge of what is essentially the same material of interest: the habits, compulsions, foibles, and aspirations of a particular group of individuals living within a unique configuration of cultural and social demands. In this period in Philippine intellectual history when the various disciplines have just hoisted their own standards, it is rare for the practitioner to leave aside his specialized pursuit of knowledge in order to gain a view of the work of others, much less of the totality of knowledge pertaining to an entire society or culture that is the Philippines.

For this reason the organizers of these lectures, the "Order of the Purple Feather", are to be commended for giving this opportunity for the outsider to the law profession to offer his own perceptions of the nature of law and its relation to the culture from which it derives, and which it in turn gives its distinct cast and, perhaps, direction. Perhaps if we all look in the dark alley rather than under the street lamp we may still recover our lost rings, albeit in difficult country. Ideally, the lamp should illumine the dark alleys, too, so that we can say with Hauriou that a little Sociology leads away from the law but much Sociology leads back to it, and with Gurvitch, "a little law leads away from Sociology but much law leads back to it."[1] By then we shall have realized that a thoroughgoing understanding of our own narrow specializations requires relating it to others, making use of the insights of others in order to sharpen our own.

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[1] Georges Gurvitch, *Sociology of Law*, N.Y.: Philosophical Library, Inc., 1942, pp. 2, 3.

In the Philippines there has long been a wide gulf separating the study of law and the study of society and culture. This is due to a number of reasons. The sociologist and the social anthropologist is much to blame of course, for he has not often treated law adequately as a part of his objects of interest; whenever he has made a detailed examination of law, as some anthropologists do, it is customary law of the preliterate era in which he is interested. The relation, so far as we know, between customary law and constitutional and statutory law is tenuous, and thus presents an excellent area of inquiry for both social scientist and legal scholar. Where the study of law has been concerned with technique, statute, and with what Holmes called the probability of what the courts will do, then it is enough to learn the strategy of application, that is, to come up with reasonably safe predicitons when a particular legal statute would be relevant in particular situations. Learning this about law was important for professional and career purposes, not for one's general education or to gain a deeper understanding of one's society. The law was the law; one need not know anything further in order to pass the bar examinations, or to practice the profession. And because of the largely foreign sources of Philippine law, together with the fairly extensive body of cases and precedents which go with it, recalling Anglo-American, Spanish, Roman, and Spanish-American customary law, the study of law in the Philippines tends to deflect the scholar from a more detailed examination of the cultural matrix in which this law must operate. It is perhaps for this reason that the law has always given off an aura of mysticism in the Philippines; it has the quality of canonical mystery from which the average layman is barred, and which only a specially anointed fraternity is privileged to command. Indeed, for many people the law is a magic formula with which to exercise evil—in some cases, to mask wrong-doing. Upholding the letter of the law has acted in many cases to defeat its purpose, perhaps to serve the ends of a few, but in other cases simply as a manifestation of what Merton calls "ritualism," a form of deviance. It is probably this dissociation from the stream of daily life which has in turn led to the law's neglect by the social scientist.

Fortunately the neglect has mostly been retrospective, but not prospective. There are signs of a mutual awakening of interest; the scholar, armed with the legal concepts and substantive knowledge of law and its operations, is becoming aware of the intellectual effort to understand the complexity of social order, cultural integration, the dynamics of change and development, the interaction between personality and culture, and inter-group relations. It is anticipated that in the future a productive partnership of gains shall develop between the sociologist-anthropologist, and the legal

scholar. Contrary to Selznick's assertion,[2] the sociologist will *not* do well merely to tend his own garden, while his colleague the jurist, lawyer, or legal scholar is reaping a rich if wild harvest from a field of history, idiosyncratic experiences, and undeveloped conceptions of societal dynamics or cultural imperatives to nourish his law.

About five years ago I had occasion[3] to plead for the inclusion of courses on law in the Bachelor's degree program in the University of the Philippines. Today, the situation not having changed in this respect, the need still exists; but in addition I would urge the A.B. in Sociology as a valuable preparation for a career in law, either in its practice or for research.

What is the relevance of sociological knowledge to the study of law? For the student of primitive groups one moves easily from the analysis of the legal systems such as may exist, to the analysis of the total culture, and *vice-versa,* for they are in a continuum; the distinction between what is legal and what is not is considered necessary only for the student who is accustomed to the thought-ways of modern societies. While the distinctions in the primitive reality are blurred, the sociologist-anthropologist is aware that the continued welfare of the social entity before him rests on its ability to regulate the conduct of its members in fairly predictable patterns, adjudicate any conflicts that break out, and define relationships among members through a recognizable procedure and through an acknowledged agent, often vested with coercive means. Thus law, viewed in this fashion, cannot be understood apart from behavior; the analysis of law becomes the analysis of the rules or norms sanctioning behavior, indeed, an analysis of those conditions deemed central to the problem of order and sanity in that group.

The study of modern or modernizing societies, of which the Philippines is an example, reveals a loss of intimacy between common, everyday behavior of men, and the body of norms which constitute law. Apart from the fact that the corpus of laws may have been partly derived from foreign sources, it is also increasingly true that the diversification of groups, interests, and goals has increased the gap between the citizen and much of the law as exist. Much law may concern institutions and areas of interest that will never overlap with those of many individuals, who therefore may never even hear of the existence of these laws. Such laws may grow and proliferate through some sheer, inner logic of their own, unrelated to the social reality for which they are presumably promulgated. It is for this reason that lawyers are apt to begin treating law as a

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[2] Philip Selznick, "Sociology of Law," in *Sociology Today,* Merton, R.K. *et al.,* eds., N.Y.: Basic Book, Inc., 1959, p. 117.

[3] R. Santos Cuyugan, "On the Teaching of Law in the Undergraduate Curriculum," in *Your University,* I (October 1961), pp. 40-51.

thing-in-itself, a disembodied phenomenon, or as mentioned earlier, as a mystery religion with its own ritual and associated beliefs. The compulsion to treat law *qua* law takes the scholar away from the turbulence of society, and sometimes to a pre-occupation with the logic or language of law (analytic jurisprudence and legal positivism). In the attempt to counteract this tendency, the notion of law as an immanent principle of life (natural law) has been brought up to date with the extreme operational position of Holmes, that law is what the courts, judges, and other legal officers do. The effort to keep the anthropological vision whole and steady, on the other hand, is reflected in the development of the sociological jurisprudence of Pound, Cardozo, Brandeis and Frankfurter. Pound, for instance, established the distinctions between the administering of law, and the law itself; the legal order, and jural values (or the "ideal element in law"); rigid, statutory law and flexible law. A Sociology of Law is first glimpsed by Cardozo in his statement

> ... back of precedents are the basic juridical conceptions, which are the postulates of juridical reasoning, and further back are the habits of life, the institutions of society, in which these conceptions had their origin and which by a process of interaction they have modified in turn.[4]

In a similar vein, MacIver relates law to society but also differentiates law from the other regulating mechanisms of the social system.

> ... there is a vast number of conventions and customs and understandings of every kind and range, that regulate the more intimate workings of the system. No government makes these, no court applies them, no political executive enforces them. There is a margin at which enforcement operates, there are frontiers of conformity set by the effective law. But this kind of law, voluminous as it is in the law-books, neither comprehends nor regulates the vast traffic of society.[5]

These conventions and customs, together with "effective law" or statutory law, are norms which are *derived from* jural postulates (basic value-premises) which are the foundations of all types of order in a particular society. Thus, statutory law is a specification, a manifestation, of a basic value-position; insofar as it is rigidly enforced, the value-position is considered important. Conversely, a basic and important value-position spawns any number of laws, as the social value revolving around the concept of property has given rise to a number of laws intended to safeguard property rights, inheritance, etc. Jural postulates, often implicit rather than explicit, are the bases for flexibility in the law, *e.g.*, conflicting interpreta-

[4] Benjamin Cardozo, *The Nature of the Judicial Process*, New Haven: Yale Univ. Press, 1921, p. 20.

[5] R. M. MacIver, *The Web of Government*, N.Y.: The MacMillan Co., 1947, pp. 63, 64.

tions, differences in operational procedures by courts, and in the changes in the law itself. For instance, Article 311 of the Revised Civil Code of the Philippines represents a change in the conception of the mother's parental authority from subsidiary to joint — a clear recognition of the importance laid to reckoning descent through both the male and the female lines (bilaterality) in the Filipino family, a value-position which has remained unshaken despite centuries of the Spanish imposition of patrilineal descent.

It is in the analysis of these jural postulates underlying the law where the sociologist of law (*i.e.*, the sociologist interested in the law, and the jurist interested in the societal matrix of law) can most fruitfully begin his inquiry. Such an analysis puts law in touch with its origins and sources, and avoids the circular reasoning of *legal realism*, for it gives the jurist an anchor other than the law itself, which in legal realism is defined in circular fashion as the "decisions of the jurist." Thus, the decisions of the jurist cannot be explained by the law, but by something else; to the sociologist of law, this something else relates to some prior imperative of the culture.

Legal behavior as a limited sub-class of all behavior backs law into a specialized corner of society, to be trotted out only on special occasions. When are these occasions? Some may answer, when ritual and formulae are needed, as when the Constitution is invoked, or when the legislature passes laws that are patently unenforceable, *e.g.*, prohibition, the tax census, anti-graft, etc. There are both positive as well as deviant functions for these instances. But law has many faces, some of them of pivotal concern for the society. These are important because their non-observance is a threat to the welfare of the entire society or to significant portions thereof. In such cases any infraction is met with sanctions, more or less severe, wielded by agents whose authority is established by the society.[6] This notion of law affords it the function of a mechanism for social control.

With reference to "technical" crime, on the other hand, there appears to be no palpable threat to the common welfare, but merely the possibility of a breakdown of technically prescribed procedure made necessary by the growing complexity of organizations, or by shifts in goals, of which many people remain unaware. Many a law-breaker may not be conscious of having broken a law. Here law may be regarded at times as a creative force that can shape new social relations and structures; this function of law differentiates the modern from the more traditional society. On the nega-

[6] E. Adamson Haebel, *The Law of Primitive Man*, Cambridge, Mass.: Harvard University Press, 1954, Chapter 2.

tive side it is in this area of public law where a great many opportunities for ritualism exist, in which means are too often construed as ends, and where the peculiar manifestation of "legalism" is all too often evident.

The Sociology of Law looks back and looks forward, under as well as over, in resolving the overall problem of the establishment and the maintenance of the social order. In this endeavour the jurist becomes his own sociologist.

> The jurist can no longer make a single step without doing the work of a sociologist, without calling in the sociology of law. And since this last, as a methodical science, is often absent from legal education and never occupies the place to which it is entitled, we see here and there the birth of spontaneous sociology of law in the work both of legal theorists and judges.[7]

Sometimes, however, the failure of the jurist as sociologist becomes the basis for controversial decisions.[8]

Law has other dimensions which may excite the sociologist of law. Common law, judicial decisions, statutory law, the legislative process, the administrative apparatus, are problem areas of the social order. Often, when they are treated in this light, they leave the domain of technical law and enter sociology proper.

Of crucial importance in the future partnership between sociology and legal studies is the growing power and sophistication of sociological research methodology and techniques, but even more important, a realization among legal scholars of the need to come to terms with the problems of a changing society. In the United States this partnership is most fruitfully at work in the analysis of legislation and judicial decisions pertaining to race relations, urban renewal, and technological change — "like any other inquiry, legal reasoning cannot but accept the authority of scientifically validated conclusions regarding the nature of man and his institutions."[9] Quantitative research techniques — surveys, polls, and experiments — have been used to ascertain subjective meanings of specific rules, the social composition of the bench, career lines and the self-images of lawyers, legal expectations of differing social classes, effects on legal doctrines of value-systems, on stratification, collective behavior, demographic trends, social organization, problems of consensus, and the ways by which a community organizes itself for some purpose or goal.[10] Anthropological field techniques

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[7] Gurvitch, *op. cit.*, p. 13.

[8] A recent Supreme Court of the Philippines' decision citing "statistical probabilities" as a basic premise take no account of the biasing effects of cultural patterns.

[9] Selznick, *op. cit.*, p. 125.

[10] Hans Zeisel, "Sociology of Law," in *Sociology in The United States of America*, Zelterberg, Hans L., ed., Paris: UNESCO, 1956, pp. 56-58.

have been found useful in relating the legal mechanisms with social structure and the dynamics of decision-making the local community. An important new branch of sociology, the sociology of formal organizations, has helped in the understanding of extra-legal processes in informal systems of interaction, reinforcing or undermining formal rules; in this, the limits of law as well as of the courts have been critically examined.

Selznick envisions three stages of development in relating sociology to the study of law: the first, when legal scholars become imbued with sociological insights, for example, the group basis of behavior; the second, when sociological methods are brought to bear in the investigation of legal problems; the third, when the larger questions of social order, justice, morality, and reason are examined on the basis of the work done in the second stage.[11]

The unique history of multiple exposure to alien codes of law in the case of the Philippines challenges the sociologist of law with a number of unresolved problems of legal and social order. The pre-occupation with statutory law, reflecting the attempt to come to terms with western codes, has resulted in the neglect of jural postulates of customary law or of common law, leaving them to the occasional anthropologist, who in turn has tended to study only minority cultural groups. Thus a large gap in the sociological and legal literature exists concerning the interplay between customary law and the constitutional, statutory law. There are indeed conflicts among statutory laws themselves, because of the continued dynamism of cultural demands, *e.g.*, Article 219 of the New Civil Code, which reads, "Mutual aid, both moral and material, shall be rendered among members of the same family. Judicial and administrative officials shall foster this mutual assistance." Such a statute spells trouble even if other statutory provisions exclude the legality of nepotism.

In a developing society such as the Philippines, the positive functions of law which give it the power to prescribe change and redefine social relations, the fundamental questions of legality, order, reason and justice may first have to be settled before the mechanics of law can be fully understood. This is because of the lack of fit between the "traffic of society" and the legal system, a lack of fit between ideal elements in the existing laws and the jural postulates of Philippine society. Many questions of truly fundamental importance are unresolved, for in an astounding number of cases the same sense of legality, the same sense of justice, as obtain in western societies, is merely assumed and not tested. Yet anyone who has followed the vagaries of the operations of laws, from legislatures

[11] Selznick, *op. cit.*, *vassim.*

to police agencies to local courts and to the highest tribunals in those countries will not fail to note the agonies which attend the whole complex process. Here in the Philippines the way the community responds to law or to infringements of it, *e.g.*, the absence of community sanction, even just a faint sense of outrage, where we expect it most, or the all-too-frequent and ritualistic appeal to law without the corresponding community action, is strongly indicative of a mal-integrative fit between the legal system and the rest of socio-cultural reality. Where the fundamental notions of justice are unassimilated, where legality is half-defined, the chances of the accused or of the aggrieved will naturally rest on highly erratic, even personal, criteria. This is perhaps the reason why litigation as much as new laws has been such a force in inducing or frustrating social change as it has been in Philippine society. For it is in litigation where law is pulled down from its sacred precincts to the rough and tumble world of the relations between judge and accused, between judge and accuser, between accuser and accused, and of course, the relations among their lawyers, and between the lawyers and judges, thus permitting the sub-legal norms and values of the community to operate under the umbrella of the legal apparatus. But since the ends of justice must be served in terms of the letter of the law, the lawyers play a crucial role in translating statutes into acceptable premises for action or decision. For many lawyers, this role does not go far beyond technical expertise and the ability to use the mechanics of law to advantage.

If, herefore, the legal profession is to transcend the role of mechanic or "fixer," and live up to the expectations of a society that ranks the profession high among all the other professions, and makes membership in it an important criterion in the selection of the national leadership, it must in the future be ready to examine ultimate questions of social order, if it is to maintain its favored status in this society. The profession, in other words, must develop its own scholars, for it is too often forgotten that law is also an intellectual enterprise. The investigation of these basic problems of society is as much a task for the legal mind as it is for the social scientist, as much a speculative one as it needs empirical methods, so that in this effort the philosopher of law will be as useful as the sociologist of law. For in the final analysis all—the philosopher, the legal scholar, and the sociologist — will address himself to the same basic questions: varying notions of order, the image of law and authority, the problem of consensus, relations among individuals, among groups, the relationship between the individual and society. Ideally, such problems are best approached with the armamentaria of many disciplines.