

# *Macrosociological Theories of Law: A Survey and Appraisal*

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Macrosociological theories of law – the concept represents a part of the law, incorporate knowledge of the past one hundred and fifty years, which cannot be neglected. It represents a portion of knowledge which, in its formative era, with renewed efforts stormed the many times fortified gates of legal thinking from the outside, even if not in the hope of admittance, at least in the hope of a meeting that may then result in the establishment of contacts. However, due to the initiative of both sides, it has now become so deeply embedded in legal thinking that both sociology and legal science do battle to keep it within their own respective domain.

Therefore, for reasons of both history and multi-direction attachment, it is difficult to give an unambiguous definition of exactly what field of knowledge is actually covered by the macrosociological theories of law. It is possibly enough to say that in the 19th century the interest in facts (in the wake of positivism) also increasingly gained ground in social science thinking, and laid the foundations of the sociological discipline. The systematic analysis of inter-relationships between social facts soon led to comprehensive theoretical explanations in which the law was also given a distinguished place.<sup>1</sup> Before going any further, I feel three points about macrosociological theories of law should be taken into account.

First, the macrosociological theories of law *did not necessarily emerge because of legal prompting*. Most of the outstanding

achievements were embodied in works whose original viewpoint and main direction were not aimed at mapping out the social contexture of law and legal phenomenon. A few examples: Karl Marx's theory grew out of the analysis of the elements and socio-political environment of economy; Emile Durkheim sought the conceptual grasping of social fact; Max Weber evolved his theory in the hope to solve the riddle of bourgeois economic development; and Talcott Parsons started his research in the interest of defining the inter-relationship between social structure and social action. Therefore, it is a most characteristic view, also foreshadowing the framework of the future of legal thinking, that "the study of law can no longer be regarded as the exclusive preserve of legal professionals".<sup>2</sup> It has to be added, however, that it did not happen for the first time in the history of legal science. For one thousand and five hundred years, *theology* had had a similar role in determining the place of law in social totality, defining the conditions of its validity and legitimacy, and circumscribing its role and *raison d'être*. However, similarity is not restricted to the fact that both have tried to approach the domain and values of law from outside the law. We can also demonstrate a functional relationship between the teleology-based ideas of natural law, on the one hand, and sociology and law, on the other. This will be discussed in greater detail below. At the moment, I merely want to point out that the disciplines which are not primarily directed at the legal specificity but which research law *in unity with and as one of the components of social existence* (an element of the superstructure corresponding to the economic basis of society, Marx, a factor of social integration, Durkheim, a means of practicing power and, primarily, of economic rationalization, Weber, or a specific subsystem of society, Parsons) can be of considerable assistance in the exploration of the system of social relationships conditioning law.

Second, these theories *were not necessarily created on the basis of a generalization of microsociological analysis*. As do philosophical and other social pictures, macrosociological analysis can also be assumed to be influenced by historico-philosophical presumptions which play a role in the composition of a picture as a whole, that is, in the formulation of any primitive idea into a system. In other words, in the elaboration of its basic message. The posing of a question of this type has a special role to play in the attempts to reconstruct Marx's social theory. Namely, does it follow with logical rigour from the concrete economic analyses to be found in *A Contribution to the Critique of Political Economy* and in *Capital* what is known as Marx's theses? Or did possibly eschatological ideas, as

well as normative presumptions from Hegel's philosophy of history, help organize the issues of concrete economic analyses into a definite system of social theory?<sup>3</sup> As to Weber, literature is even more reserved. Although, hardly anybody did more to make the significance of bureaucratic phenomenon and rationalization understood, that deed is only partially attributed to the thinker's oeuvre and course of life, the stimulative force being seen in the Prussian enchantment to strict order and the Wilhelmian attitude which hardly flirted with democracy.<sup>4</sup> Does it mean that the objectivity of social science research can be questioned? Until a more convincing answer is found, I have to answer a definite "yes".<sup>5</sup> However, for me the genuine question is this: if the macrosociological theory of law is not necessarily a synthesis of microsociological analyses, then what makes it a sociological theory at all? Well, my answer may be rather weak, nevertheless not much more can be said except that it is its approach, the *desire to gain a comprehensive picture* of the structure and factors of social movement *by starting out from the inter-relationships of the social environment*.

Third, the concept of the macrosociological theory of law *cannot be limited to the sociology of law as a professional branch of sociology*. Not only because, historically speaking, the sociology of law is basically the product of the social conditions at the end of the past century: the shattering of the values thought to be eternal, evolved during the free competition period of societies development, the detachment of ideas and reality, and last but not least, the increasingly evident non-viability of the positivist approach preserving the traditional juristic world concept.<sup>6</sup> But first and foremost because, the macrosociological theory of law can also develop independently of any professional sociology (from economic, philosophical or even legal investigation) if its *approach or result* makes it that.<sup>7</sup>

In an effort to find an answer to the basic question of what the macrosociological theories of law have meant and what they do mean for legal thinking, I intend to discuss two problems. First, I review how the macrosociological approach has enriched traditional legal thinking (I). That enrichment substantiates the role the macrosociological theories of law have played and can play in extending beyond the juristic world concept and, which is the only alternative in the development of legal thinking, in its integration into social science thinking (II).

## I. Issues of the Macrosociological Theories of Law

The *traditional juristic approach* regards the law as a phenomenon that is able to stand by itself and be sufficient by itself. The formation of law is seen as valid if enacted by an authoritative state body; the functioning of law implies that the authoritative state body applies it by observing the corresponding regulations. The effect of the law is simply of no interest to the juristic world concept. The traditional approach is governed by a single viewpoint: conformity to the enactment of law, i.e. mere legality.

Regarding its essential points, this approach implies the same as the doctrine of legal positivism. However, whereas legal positivism took shape as a theory,<sup>8</sup> the juristic world concept was the *outcome of a given legal set-up*: a necessary accident, an *ideological complement*. Although Marx and Engels criticized it as the "juridical illusion" of the bourgeoisie at the level of a critique of ideology,<sup>9</sup> it was nevertheless the only approach and the only adequate world concept in which the domain of the law could be interpreted in accordance with the requirements set for the practicing of the legal profession.<sup>10</sup> For the juristic world concept projects as real what the law envisages ought to be realized regarding both its own formation and functioning. Therefore, its ideological criticism is justified, nevertheless that leaves untouched the roots of its necessary establishment as ideology. It does not affect the practical necessity that as long as the law requires *formal rule-conformism* on behalf of the jurist, the ideology of the practicing of the jurist's profession, which *presents this system of rules and its observance as a goal sufficient in/by itself*, also remains untouched.<sup>11</sup>

Well, the juristic world concept as an ideology, calling for a given activity and convinced of its correctness, obviously has to be separated from its interpretation as a theory. Because, *everything that has its place as defined by practical requirements in the juristic world concept as an ideology, turns to be a fallacy which disturbs cognition if it is interpreted as a theory*. The fallacies involved in the separation of "within the law" and "outside the law",<sup>12</sup> originate in the juristic world concept and almost logically follow from each other.

According to the first assumption, law is something that can be materially grasped and circumscribed: it can be reduced to the external formulation and objectification of a norm prescribing-/prohibiting/permitting a certain course of conduct – *the fallacy of something-likeness*. The second concerns the practical effect of the law interpreted in this way. It attributes the effect exclusively to the

norm, as its only and logically necessary determinant. It excludes the interplay of any other factor, the determination of the result by concrete conditions, and in this way, it fails to acknowledge the dynamism of the relationship between the norm and social practice – *the fallacy of state-likeness*.

The third assumption calculates the possibility of change in the relationship between norm and effect. According to its starting point, however, the legal process consists of one single factor, consequently any deviation is an internal affair of the legal sphere. Therefore, legal science can only have the task to assess realizations according to the law and according to social practice – *the fallacy of fact-likeness*. The fourth assumption – the basic one, which is the theoretical framework and justification of the former ones – suggests that there is a specific, self-governed domain, whose functioning is determined by its own rules, is therefore calculable and foreseeable and, as such, analyzable in itself – *the fallacy of distinction*.

When now I attempt to present some issues of the macrosociological theories of law that have brought about changes in approach, I have to make it clear that the mere questioning of the independence of the sphere "legal" by far does not mean the denial of the *peculiarity of the law*, or the indefinability of what is meant by "*distinctively legal*".<sup>13</sup> It merely means that the special sphere of the law cannot be deduced from itself, or interpreted by itself; *at any one time, it has to be analyzed as a component of its social environment*, therefore, the *basic regularities of its development and functioning need to be evolved from the examination of the social entity as a whole*.

The macrosociological theories of law are so multidimensional and composed of so many threads, that I have to confine myself to indicating only some specific dilemmas and lessons.

(A) *Law and positive law* are categories that cannot be made equal. According to a witty formulation, the boundaries of the law have to be drawn "infinitely" *beyond* its formal sources, but at the same time *within* the "entirety" of human relations.<sup>14</sup> The law is what is officially enacted (*positive law*) or recognized (*customary law*) as the law; and at the same time, also what is officially carried out in the name of the law (*judicial and administrative practice*). Obviously, the advance in approach does not lie in the simple fact that the concept of law is extended, i.e. that in addition to the law as declared (*law in the books*), the law as practiced (*law in action*) also asserts itself as the law.<sup>15</sup> Rather, it lies in the fact that *the emphasis has been shifted from the "designated" vehicles of normativity to its actual*

*functioning*, in other words, *from the subject of mediation to the process of mediation itself*. Semantically it sounds as a paradox, however, as a gesture of change, the statement of Karl Llewellyn is justified: "Law' without effect approaches zero in its meaning".<sup>16</sup>

The shift in emphasis took place in the most spectacular way in the American realist movement. However, theoretically it was rather founded in the ethnological, anthropological and sociological experiments, started in the last third of the past century, which had sought normativity in the social reality itself, i.e. in social relations, the regularities of human commerce. The research of legal development and of primitive law was so challenging that, in addition to speculative theories, from the turn of the century it has led to the establishment of solid sociological principles. To mention only some of them: *in addition to the positive law*, Leo Petrazycki explores the intuitive law;<sup>17</sup> in the norms of folkways, William Graham Sumner identifies the source which *fosters* the law;<sup>18</sup> Eugen Ehrlich points out that the intuitive law is basically *identical* with the norms of folkways, in so far as *living law* is the law proper, and the abstract *state-enacted law* and the *jurist's law* serving to resolve concrete conflicts only provide its framework with artificial guarantees.<sup>19</sup> And all that was but the beginning. To differentiate it from the moral, Petrazycki concludes that every legal relationship consists of mutually interdependent and complementary systems of rights and duties. That is the *imperative-attributive* basic structure characterizing every law, according to which the same activity generates a feeling of duty in somebody and a feeling of right in somebody else. That realization of *reciprocity* will serve as the core of Bronslaw Malinowski's famous definition of law – with the addition that "a body of binding obligations regarded as right by one party and acknowledged as duty by the other, kept in force by the specific mechanism of reciprocity and publicity inherent in the structure of... society."<sup>20</sup> Further syntheses are also based on the critical development of this.<sup>21</sup>

Investigation starting out of the norm-structure as the vehicle of normativity is replaced by the analysis of functions which (a) refer to the legal as their basis (*judicial and administrative practice*), (b) attribute themselves to the effect of legal practice (*civic law-abiding*), or (c) otherwise perform social functions which resemble the former one (*primitive law, customary law*). Both the extension of the concept and the enrichment of approach are certainly unavoidable. They are obviously tempting as well. Nevertheless, all this will only amount to a theoretically founded answer if one also clarifies what has happened to normativity. On the basis of literature available so

far, it would seem that reductionist thinking, the *ad regressum* argument, is the only feasible road. Nevertheless, I think that to rely upon it is at least doubtful.

*Formal validity*, for example – which qualifies the product of any contents of some formally defined state authorities following a formally defined procedure as the law – is known to have been an outcome of European development during the past century.<sup>22</sup> In former stages of development, as well as in other cultures, the *validity of contents* specified by the traditional and the practiced (e.g. by the quality of the "old good" in Europe during the Middel Ages) was dominant. The relative nature of this development and its character as a mere shift in emphasis are illustrated by the fact that legal development has always been characterized by *duality*: written and unwritten, official and unofficial law, as well as the changing ratio of their role.<sup>23</sup> A recent attempt claims to have found the source of specially legal normativity in the reinstitutionalization of custom.<sup>24</sup> It is a thought-provoking, nevertheless uncertain answer among others, because it establishes a chronological order and causal connection between custom and law, seeing the law's primitive form and predecessor in custom, and because its speculative nature only puts off the question. Others look for actual specificity, and try to circumscribe the legal by the structure consisting of secondary norms grounding (i.e. granting certainty and authority to, and legitimatizing) the primary norm.<sup>25</sup>

In the final analysis, all these explanations – the ethnological-anthropological generalizations and the theories looking for specificity in the mechanism of the formation of a legal system – somehow motivate around *authority*: they identify what makes the norms (or their practice) distinctively legal and having authority. However, the search for authority naturally leads one to choose an extremist alternative. Accordingly, either the existence of legal phenomenon has to be tied to the presence of the *state*,<sup>26</sup> or it has to be pointed out that any conceivable circumscription of authority is so uncertain that it can only lead to a blurring of the boundaries of the legal,<sup>27</sup> to its dissolution in *pan-jurism* which tends to perceive something legal in everything and anything. Obviously, any of these extremist alternatives would be a non-historical choice. Adherence to a theory of the legal system which lies in recognition by the state would eliminate the bulk of legal development from legal history, and it would fail to provide an explanation for validity in Rome prior to the imperial period, in European development in the Middle Ages and even in most of the modern times, in the four-thousand years of

development of Chinese law, or in the traditional system of the Afro-Asiatic regions.

Without attempting to give a definite answer here and now, I agree with the view of Leopold Pospisil: if we wish to draw the conceptual boundaries of a theory of law in space and time, instead of "firm lines" we can at most denote some "zones of transition".<sup>28</sup> It goes without saying that this is a basic methodological problem of every concept-formation. Obviously, the more we link the concept of law to *modern* law, the richer its content becomes, but the less operational it is: it can be applied to the past only through extrapolation so that it gives a distorted picture. On the other hand, the more universal we make law, the more operational it becomes for the purposes of comparative historical investigation, but the less it explains since it also has to relate as much about history.<sup>29</sup> Therefore, in addition to giving a possibly substantial answer to the underlying question, a theory of law also is a methodological choice, a result of linguistic *convention*, what concept we apply.

(B) Under any circumstances, the *relationship between the law and the state* is a watershed. It implies a dual question: (a) in what way and with what certainty can it be stated that the *law is linked to the state*? (b) in what way and with what certainty can it be stated that the alleged unity of the state also involves a *unity of the law and order*? An answer to the first question infers the interpretation of the nature of the basic systems of regulations of the *ancient societies* prior to the appearance of the state, of the *primitive societies* not organized into a state formation, of the *large organizations* beside the state (within the state and outside the state), as well as – only as a purely ideological presupposition of some philosophies of history – of the *communistic societies* following the withering away of the state.

An answer to the second question infers the clarification of what the *unity of the state* lies in? In the organization manifest in the harmonious functioning of power, or in the ultimate – objective – unity of the practicing of power? Furthermore: is the *legal system*, as a system living in social practice ("the functional system of society's legal phenomena"), organized into a really harmoniously functioning one, or is it only the final result of its functioning which makes it conceivable as a system? And similarly: does the unity of the legal system, interpreted in any of these ways, necessarily imply the unity of the system of law as a system of norms ("a system of norms evolved according to determined socio-historical particularities"),<sup>30</sup> or can the eventual unity of the legal system also merge from the co-

existence (confrontation, competition) of several systems of law?

Well, the root of the problem in this case also lies in the certainty of the trend and achievements of bourgeois development of the last centuries: they were asserted by flashing them back to the early past. Therefore, the task of the sociological approach covers a certain kind of social historical reconstruction. Namely, to evolve its concepts from their actual development, to formulate their laws from their functional interrelations, and to study the supporting ideologies and their coverage of reality on the basis of the role they are playing.

Accordingly, the first conclusion is that the *modern* structure, serving for us as a natural base of comparison, is historically *particular*. Or, *the linking of the law and the state together, and the recognition of a single system of law within the state are the product of the past few centuries leading to modern statehood in the Western sense*. Consequently, from the point of view of the critique of ideology, the *monist ideology* absolutizing this development is merely the redrafting of the late absolutistic ideas within the range of Jacobinist thoughts.<sup>31</sup> From a sociological point of view, what is of prime interest here is that ideology is not simply the synonym of false consciousness, because the monist concept expressed a real historical necessity. *The road to ruling political activity as a state activity led through the monopolization of the basic functions of the law – to settle conflicts (administration of justice) and, then, to enact the law (law-making) – as part of the centralization efforts of the state: to use the law as a means of state politics, in the interest of consciously planning and influencing social relationships*. The second conclusion follows from the first one: since it is only a particular trend of development, one can only speak of approaching to or withdrawing from the goal set as ideal, but certainly we cannot regard either the complete étatisation of the law, or a complete lack of this as an absolute and self-evident value, or standard of value.

(a) Concerning the *relationship between the law and the state*, the novelty of the sociological approach does not simply lie in the terminological extension of the boundaries of law. The really novel and lasting moment of the sociological approach lies in the analogous investigation of the non-state systems of regulations – primitive law, canon law, and systems of norms of large organizations – within the state law. Although I regard the concept of "private legal systems"<sup>32</sup> as excessive and it is hardly probable that theory will ever accept the internal norms of the clubs, associations, companies, institutions, trade unions and monopolies as law, nevertheless, *the analogous analysis of their functioning with the law* can certainly bring about

new realizations, as well as likely alternatives for the future law.

(b) Concerning the possibility of co-existence of *several systems of law within a single legal system* sociological analysis forces open doors. Because, *any system of law is by itself a contradictory unit, developing through tensions and conflicts, and reproducing itself through its own contradictions.*<sup>33</sup> That contradiction also emerges in the structure of the legal system itself, if several systems of law – due to historical reasons – form a "mere... co-existence of laws" (pluralism), or – due to disturbances of modernization and adaptation – form "laws that are correlated and realize a dynamic unity with one another" (doubling).<sup>34</sup> Historical jurisprudence has already explored the co-existence of customary laws with the state law in Ancient Times and the Middle Ages, the internal complexity of the classical Roman law, the parallel administration of justice by common law and equity in Britain, as well as the continued existence of the old beside the new even amidst revolutionary development. Comparative jurisprudence has already analyzed the plurality of the mixed legal systems (mainly in colonial societies), as well as their external artificial doubling. Finally, legal theory has already studied the legal, quasi-legal or illegal qualities of these phenomena.<sup>35</sup> Under such conditions, the task of the sociological approach lies in the clarification of *how these systems, in their co-existence and competition full of conflicts, can serve the ultimate function of law: the integration of society.* Last but not least, the co-existence of the systems of norms also reveals that the possibilities of political integration are limited, and no identical legal rationality corresponds to political rationality. Namely, *legal rationality can also appear in a series of partial rationalities competing with each other.*<sup>36</sup>

(C) The sociological approach sees much more in the law than official enactment, a mere product of the state. For it, *the law is a social process*, which (a) cannot be reduced to a speculative operation defined by a logical conclusion, and (b) cannot be isolated from its conditioning and shaping social environment. This is reflected in one of the basic statements of legal sociology, formulated by Ehrlich as a research program in the preface to his classical work: "At the present as well as at any other time, the center of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decisions, but in society itself."<sup>37</sup> The social nature of law is carried by social conditions; men shape social conditions; consequently, these relationships themselves are also reflected in human activity.

In the struggle against feudalism, those opposed to the despotism

of the owners of power raised the banner of the law into the mist of the supra-personal. However, as soon as they themselves started practicing the law, they had to realize that the norms fixed in the books were identical with life itself only in the honeymoon period of wedlock. After that, there again necessarily appears on the stage the demiurges of the process, making and also suffering it: man. "Our government is not a government of laws" – as the sobering statement goes<sup>38</sup> – "but one of laws through men". That is theoretically expressed by several schools of legal sociology according to which it is procedure,<sup>39</sup> or at least justifiability<sup>40</sup> that conveys the legal character; what is more, *eventus iudicii*, the possibility of verdict is presented as a criterium of distinction from the non-legal, as a specific feature of the law.<sup>41</sup>

Therefore, the oeuvre of the law does not lie in itself, and it cannot be perceived in itself. It is a formation which *automatically points beyond itself: to the eventuality of becoming a social process*. (Only this way it is accomplished by being transformed into a social category: as shaper of social existence, into its constituting element.)

(a) *For the juristic world concept, the law does not mean more in its process than the law as enacted. It is merely a logical derivative*, (which can only be of one issue if it strictly follows its own rule). This means the following: in the case of a given fact and a given law, the same conclusion should be reached by any judge, or by all the officials of any judiciary - irrespective of the age and culture they live in, the origin and party affiliation they have, as well as the social and economic environment in which they pass their judgement. This world concept is expressed for example, through the formal conception of comparative law, which attributes identical content to the identical conceptual expression of a norm - disregarding the huge possible differences of its social environment, as well as its political and legal reality. This is a *geometrico* approach that has been around since the *Age of Enlightenment*.<sup>42</sup>

The sociological approach offers a completely different picture of law. According to it, the full personality participates in the law, and the law is also the imprint of the whole history and culture of a nation. The *norms* are only signs which *by themselves mean nothing: they become alive only in the living practice of society*. "The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, institutions of public policy, avowed or unconscious, even the prejudices which judges share with their fellowmen, have had a good deal more to do than a logical syllogism in determining the

rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with if it contained only the axioms and corollaries of a book of mathematics."<sup>43</sup> This formulation spoke against the fallacy of logic (i.e. the certainty of logic and the degradation of the administration of justice to a mechanical function),<sup>44</sup> it did not seek to limit the *control function* of logic. A still valid lesson involved is that legal process has to be analyzed as one which takes place in a real social and human environment, in which *the organizational framework of decision-making*,<sup>45</sup> as well as the human factor that cannot be calculated in a formal-axiomatic way also have an influential role at decisive points.<sup>46</sup>

Therefore, *logic* appears as a special means of *organization, standardization and control*. Its role is manifested in how *social problems are filtered through normative concepts and structures, and transformed into legal problems*, and how *the decisions concerning legal problems are justified by referring to such concepts and norm-structures*. Sociology interprets all this as *programmed decision*, which realizes its own rationality through conformity to the programme elaborated in the course of the official norm-creation. And it refers any question related to the concrete evaluation of the concrete problem to the sphere of the interpretation of the law, attributing the emerging questions to the clauses in the programme qualified as known.<sup>47</sup> (The same idea has been formulated in the ontological reconstruction of law. Accordingly, law is a specific complex of mediation which has its *own system of fulfilment* - only this enables it to fulfil its function of mediation. Transformation takes place by *first rephrasing the social conflicts as conflicts within the law, and then* - operating with valid legal enactments and finding a logically justifiable solution - refining them into sham-conflicts.<sup>48</sup>

(b) If the processes, presented as purely logical by the official ideology of the law, one by one turn out to be social regarding all their essential specifications, then it provides further convincing proof of the extent of participation of social environment in the life of the law. For example: 1) Every decision is an *alternative*, thereby representing a socially conditioned choice between several possibilities. 2) The law is a practical means, objectified through its linguistic expression, therefore its actual existence is sensibly influenced by the *social conventions* concerning its meaning and application. 3) The maintaining and shaping role of the social practice is especially strongly manifested in the case of the legal

profession, as a separate stratum, whose duty following from the social distribution of work is to provide for making the law a social process as well as for its continuous reproduction. 4) The legal profession may actually have a determining role in social systems where it has its *own power base*, or where the legal system asserts itself as a *procedurally independent sub-system* within the political one.<sup>49</sup>

The participation of social environment in the life of the law at both micro and macro levels, regarding both the legal profession and all those the law is addressed to, is determining to the extent that *the law, isolated from them and reduced to its bare norm-structure, almost becomes a simply meaningless abstraction*. A few examples to illustrate the role of environment: without a simultaneous transformation of society, the official law could not have become living law in South-East-Europe, Galicia or Serbia at the turn of the century;<sup>50</sup> the reception of the law ordered in the interest of modernization could but lead to the doubling of the law in Turkey a few decades ago, or in Ethiopia hardly a decade ago;<sup>51</sup> at the same time, the formation of the law if it does not adhere to the traditional non-legal norm-systems, can be ineffective, as it has been in the case of Japan.<sup>52</sup>

A known example of the role of the legal profession in the formation of law can be seen both in Ancient Rome and during the Middle Ages in Europe. Here the opinion of a jurisconsult or a specialist contributed to the innovations made in law. The field of activity of the jurisconsult and of the professor of law merged into the practicing lawyer. They in their turn contributed to a procedural approach to law (as well as to the conception of law) not as a general norm, but as norm set to individual cases as in Britain in modern times.<sup>53</sup> Similarly, an indication of the role of social environment in law can be gleaned by examining the hesitancy of individuals within business to take risk. Thus interests are forwarded through litigation and the advancement of contractual law.<sup>54</sup>

(D) The unambiguous lesson to be drawn from the argumentation above is that law in all its aspects is a social phenomenon. Even the features which seem to be specifically legal are socially conditioned, and can only be interpreted in their social context. In the final analysis - one cannot speak of a clear-cut distinction between such spheres as "inside the law"/"outside the law". One cannot draw boundaries for something "distinctively legal". Furthermore, it has also become clear that the conceptual extent of the law is wider than what seems to be suggested by its official enactment and ideology. It

only becomes an absolute function of the state when the intention of the political sphere to fully integrate society is crowned with total success. At the same time, according to its real existence, the law is a social process which is something more and else than a simple logical consequence of its official enactment: in its practice, it is determined by its social and human environment, in its existence, it is linked to the existence of society, and in shaping the legal profession, it has a decisive role. All these realizations also have an impact on the conceptual grasping of law. The sociological approach implies that *law is a complex dynamic unity of different aspects and elements of reality* – therefore, it cannot be reduced to any of its components. In other words, the existence of law opens up through the movements of aspects and components that strengthen and cross each other; law is a functional unity that reproduces itself in the course of continuous easing and reproduction of tensions and conflicts.

It is by far not a new realization in legal thinking that the concept of law should reflect the complexity of legal phenomenon.<sup>55</sup> Nevertheless, most analyses of law fail because researchers only take account of methodological problems dealing with different levels of law.<sup>56</sup> Methodologically, according to a macrosociological approach, law must be conceptualized as an intertwined unity of at least four components, none of which can be disregarded in the search for knowledge of the legal complex. These four components are 1) the *norm-structure*, 2) the *formation of consciousness* directly conditioning and resulting from the norm-structure, 3) the *social reality* carried and issued by the norm-structure, and 4) the *legal profession* responsible for establishing, as well as continuously reproducing the trappings surrounding law.

The law conceived of as a complex is obviously a wider phenomenon than the total sum of the officially proclaimed and/or actually considered rules of decision. Within the legal complex, it is naturally necessary to distinguish the rules and to judge the functioning of the whole complex on the basis of these rules.<sup>57</sup> However, the law as a functioning unit cannot be deduced from any of its individual components, nor can it be interpreted. Or, the law conceived of as a complex presupposes a *dual approach*, which asserts itself also in reality. For the *functioning of the law can and must be evaluated on the basis of how far the officially proclaimed and actually considered rules of decision coincide with or deviate from each other*. At the same time, it has to be understood that this is a legal/juristic evaluation: *an internal affair of the legal complex*. It

becomes socially relevant only in so far as the actual functioning leaves the system of fulfilling the law unsatisfied. In other words, the difference between the officially enforced and the actually considered rules of decision becomes so dominant – that it already questions the "distinctively legal" character of the complex.<sup>58</sup>

(E) The sociological approach is emphatically interested in the components, possible role and actual limits of the law conceived of as a specific technique of social influence. Naturally, its method is not to project firm theses onto the law, which are drawn from a closed world concept,<sup>59</sup> instead comparative historical investigations and case studies provide the starting point.

(a) In the broadest sense, *the maintenance of public order, the resolving of conflicts and the shaping of social conditions* are the three basic functions of law. The historic changes are mostly reflected by the shifts in the proportions and emphases of these functions. Namely, in the first periods of legal development, the function of law to shape social conditions was only a by-product – the existence of law centred around the resolving of conflicts. The former function came to the foreground only when law became a direct means of politics. It was only then, in the course of Western development in the modern times, that *law-making and law-application* became formally separated and hierarchically arranged – with law-making taking the lead and pushing back law-application into an almost mechanical reflex role. The sociological approach, differentiating between manifest and latent functions, perceived that this shift in emphasis will continue because it realizes that in the process of law-application there is a continuous reshaping of the law and thus treats law application as a surviving latent function.<sup>60</sup>

(b) In the exploration of the system of relationships of the law, the most promising directions of research have been defined by the studies placing law in *the total system of social influence*. The characterization of law as *social engineering* serves to emphasize the role of law in shaping society, to see law as conscious planning.<sup>61</sup> To explain this aspect of law, a sociological theory of law within a system of *social control* has been developed. There are different criteria used to define law as a sub-system of a system of social control. Regarding the functioning of a system of social control, law is the most effective device and other aspects of social control are seen as subordinate to law;<sup>62</sup> whereas regarding its organization, law represents an organization form which may be called *governmental*.<sup>63</sup> Irrespective of its merits, this approach studies the law, through interactions, as already within a system of means of social

influence. The theory which conceives of law as *a mechanism of social integration* builds on the key role of law in those interactions. Integration may mean the oiling of the machinery of social intercourse,<sup>64</sup> the co-ordination of social functions,<sup>65</sup> as well as the harmonization of the self-regulating sub-systems of social cooperation.<sup>66</sup> In this approach, the interaction of means is completed with the interaction of functions. Finally, integration is approached from a political point of view when law is considered *a sub-system within the political system*. In addition to an attempt at a synthesis between the instrumental and the functional interactions, this approach also reckons with the relative autonomy of the legal complex. The conception of law as a political sub-system implies that it is considered *not only a means of policy but also a result*.<sup>67</sup>

(c) In the description of social influence of law, sociology necessarily looks farther ahead than the traditional juristic world concept. The latter is satisfied with presenting conducts qualified as obligatory, permissible or prohibited to be a goal by itself. At the same time, sociology arrives at the surprising conclusion that law can serve the fulfilment of the *most different functions*. In that variety of roles,<sup>68</sup> the legally qualified conduct can only play the role of an instrument. Notwithstanding that the relationship between the social task to be fulfilled and the legal means may be so complex that *the goal itself to be realized with the help of the instrument has only an instrumental role*. This happens in cases when the main social motive of a regulation is only an additional effect in legal procedure.<sup>69</sup>

At the same time, this plurality of roles, which seems to be unlimited in theory, in fact covers very limited social possibilities. I do not simply have in mind the dangers of social planning and intervention increased to cosmic dimensions by F.A. Hayek.<sup>70</sup> Instead, I bear in mind the fact that it is merely *a wishful thinking or fiction to presume* – and mainly to consistently realize – *central foresight in the real practice of social planning and intervention*. The same applies to the idea of presuming "the good legislator" (which presumes the practical interpretation of legal rules).<sup>71</sup> Practice at any time, however, merely indicates *the objective presence of a system having but loose inter-connections and weak organization*. This is also indicated by the viewpoint according to which "the rather incoherent practice – co-ordinated only by its linkage to the status quo – of the continuous changing of the details can be observed, which recoils from a comprehensive, structural transformation of the law, since nobody can foresee the consequences."<sup>72</sup> Therefore,

what takes place is an objective system-effect, in which even the best enactment becomes degraded into a function of the total motion of the system (including its inertia as well).<sup>73</sup> (It is another question that sociology here realizes something that has already been established by ontological reconstruction. Accordingly, social existence comes into being through teleological projections putting casual lines in motion. These, following their own laws, go beyond the original projections.)<sup>74</sup>

Regarding the social functions, a traditional differentiation in sociology mentions *instrumental* and *symbolic* functions.<sup>75</sup> Symbolic is obviously the opposite of the instrumental – but one must remember that the symbolic itself can also be instrumental, merely within a different aspect, for example, as an ideological function. In addition to the functioning of law in its entirety also as ideology,<sup>76</sup> it has to be realized that *merely symbolic legal enactments also play a role in social change*: they can enhance the sense of legitimacy in a given direction, thereby providing means for implementation, while making the opposite direction more defenseless and vulnerable.<sup>77</sup> Therefore, regarding the classification of regulations, I would rather suggest one, which in the first place differentiates between (1) *real* and (2) *substitute* forms. The latter can be (2.1) *voluntarist* and (2.2) *alibi* regulation. The voluntarist one is characterized by the fact that although it attempts to play a real role of shaping, it is unable to fulfil such a role due to violation of the natural limits of regulation. Whereas the alibi regulation in advance abandons the fulfilment of any intended role of shaping. The giving up of this can manifest itself in (2.2.1) *sham-regulation*, or in the fact that (2.2.2) *the regulation itself is instituted as a substitute activity*. It is a sham-regulation if the form involved is false, as this is unsuitable to legally influence behaviour. It can be unsuitable, because (2.2.2.1) it contains no rule of conduct, only political-ideological *declarations*, or (2.2.2.2) it contains rules of conduct which *by themselves are not justifiable*, or enforceable. On the other hand, one can speak of substitute activity manifesting itself through regulation, if instead of a concrete measure implemented in the given area, legal regulation is provided as a substitute for the necessary reform.<sup>78</sup>

The utilization of legal means as a surrogate has a varied past. From the point of view of sociology, the manifestations of prime interest are not the ones which conceal political compromises and serve ambiguous regulation (as it can best be observed in the preambles of constitutions),<sup>79</sup> but the ones which involve almost conscious tendencies of making different alibi regulations the main

content of law-making. This happens at times when – due to belated development – state policy comes under extreme pressure, which then leads to an excessive use of the law, and the direction of organic changes to inorganic, (forced courses) partly strengthens the voluntary features and partly allows for the temptation of alibi regulation. Although, the consequences manifest themselves only in the long term, they do so without mercy. This involves a loss of the general prestige of the law which is believed to be balanced by regulations following each other at an accelerated pace, but being increasingly ineffective in their enforceability.<sup>80</sup>

(d) All this obviously raises the question of the *social limits of law*. It was clear already to Max Weber that the technological values of Western legal development – *rationalization* and *formalization* – can also turn into their opposite if their adequate measure was upset. The adequate measure is all the more important, because other investigations have revealed that rationality by itself shows ambivalent features. Although, it implements a rational arrangement in a given direction, at the same time, it *increases the irrationality of the non-rationalized* in any other direction. In addition, rationalization – implemented in one direction – by itself is ambivalent, in so far as it *homogenizes its object* in accordance with the given (mainly economic) calculation. And each and every homogenization is also a distortion.<sup>81</sup> Over-regulation and over-formalization can only lead to *sham-rationality, which in its final outcome is expressed in the impossibility of even the existing rationality, resulting from the anarchic functioning of the system*. Therefore, the law – both as a means of social influence and as an institutional system implementing that influence with its own apparatus – has to explore all the stimulative factors and hindering limits, which determine the success (framework and conditions) of its activity. This obviously extends beyond the problem of rationality in the technological sense. It is the problem of the *parallelisms, tensions and conflicts of the rationalities of different (economic, political, etc.) content*, and only a social science approach can successfully explore its components.<sup>82</sup>

(F) The questions raised above gradually lead to the investigation of *the law as an alternative means*. In the spirit of "dubito ergo sum" (I am doubtful, therefore I am), law already questions itself – but only in order to reassert itself through its position in the social history of legal development. At the same time, the raising of this question leads us the farthest away from the juristic world concept, because it puts not only the social inter-relationships of law, but also

its historical bases in another light.

Therefore, it has to be taken as a natural outcome that the sociological approach questions the traditional theory of legal evolution. A few examples to this effect: The comparative historical anthropological investigations have revealed that *custom* cannot be considered the logical antecedent of *law*,<sup>83</sup> due to the historical character of their relationship. In other words, they can also exist side by side, fulfilling qualitatively different tasks.<sup>84</sup> Also it has turned out that *tradition* - that was for Weber the petrification of past to be exceeded, the very opposite to *rationality* - may carry historically verified and traditionalized rationality. Considering this quality and due to its rationality, it is worthy of preserving.<sup>85</sup> Or, as a round-off of debates on the driving force and mechanism of legal development, it has been proved that the inertia, inherent in the traditionalization of the distinctively legal - i.e. the largely general and almost limitless transplantation, borrowing or re-interpretation of *time-honoured regulations and institutionalized solutions* - can sometimes play a unique role.<sup>86</sup> Finally, the Marxian typification based on the underlying *socio-economic formation* turns out to be applicable - from outside, (within a certain totality concept) to the law as well. At the same time, however, it has no extra distinct characteristic of law. Moreover, the underlying socio-economic formation fails to answer the question of differing legal cultures as well as of the basic inter-relationships between the forms of social organization, for example, the ones between the two products of bureaucratic organization spanning from feudal absolutism to socialism in practice, the *modern statehood* and the *modern formal law*.<sup>87</sup>

If there is anything common in all these results, then it lies in the final analysis that they reflect the reappraisal of the *differing*, the *different*, the *past*. They reflect the realization of values that may lead to a satisfactory explanation of the phases of legal development,<sup>88</sup> and at the same time, provide models, references or alternatives to the renewal of our legal culture and set-up.

From a legal point of view, alternativity has two meanings. (a) One concerns the ways that are feasible and available simultaneously with the existing law. In the case of a conflict of interests, the choice of *litigation is merely a strategic alternative to a variety of other modes of pressing interests*. It is a specifically formalized and secured procedure whose precondition is that the *power factors* involved in the affair *are disregarded as to the benefit of the normatively relevant issues*.<sup>89</sup> There immediately emerges the

question of who should be included as the third party resolving the conflict: the neutral *judge* with fixed proceedings, the outsider *mediator* with free proceedings, or the *administrator* with free proceedings, but using his power, too.<sup>90</sup> Or the resolving of the conflict should be left to the interested parties themselves – to the limited, but voluntary application of legal means in their continuous and mutually interdependent relationship, i.e., basically, to their inter-solidarity (as it is largely customary in business life)?<sup>91</sup> At the same time, it is by far not always the party involved in the dispute who can freely decide on the alternative. This decision can be dependent on belonging to a group, or the continued existence of traditions to the extent that in certain cases it can be stated with considerable probability in advance: the law will be automatically pushed into the periphery.<sup>92</sup>

(b) The other meaning of alternativity concerns the *historical typifying* of law, the *possibilities of replacing and exceeding* its given form. I have in mind endeavours to convey the basic trends of legal development on the basis of a macrosociological theory. At the same time, these endeavours do not seek to describe the stages of development: they merely intend to characterize certain trends which they regard as determining. Thus they set up ideal types, which are also common in that they apply a treble division, and the middle type represents the present. Accordingly, the present is the product of having exceeded the past, which at the same time requires to be exceeded now. A few examples: the typification relying on the conceptual differentiation by Ferdinand Tönnies, envisages the three trends of legal development in the *bureaucratic-administrative* past, in the (*Gesellschaft*-type) present conveying *individualist* values, and in the (*Gemeinschaft*-type) future which again places *communal* values in the forefront.<sup>93</sup> Another typification is based on the legal potentials of social control. It views the main trends in the *bureaucratic law* acting as a *regulatory* power, in the *legal order* asserting the specifically legal values as *autonomous* values, and finally in the development of the *customary order of mutual social interactions*.<sup>94</sup> A third typification starts out from the technological orientations of legal means, and it defines the alternatives of development as the possibilities of the *repressive*, the *autonomous* and the *socially responsive* law.<sup>95</sup> Finally, the fourth typification, which rather indicates the directions of renewal of the existing legal set-up, differentiates among the *technocratic*, the *legalist* and the *communal* possibilities of choice.<sup>96</sup> Well, at least in some of their elements, all these types obviously exist side by side in each and

every legal system, and have a role in this or that particular area. At the same time, it is equally obvious that the legal arrangements of different periods are characterized by the domination of one of the types.

The most striking in all these attempts is the fact that the arrangements of the past are described as structures asserting an outside regulatory wish of a purely power nature. And each of them specified the present to be exceeded by the features of the modern formal law. And concerning the future, each of them sets the goal of loosening the formal characteristics of law, building on the potentialities of an integral communal attitude, and giving priority to the democratic forms and the non-lawyer's professional considerations as opposed to the purely hierarchic normative structures. This implies a criticism primarily directed against the hardly limited continued domination of the *bureaucratic social organization*, which has once developed modern statehood and modern formal law.

At the same time, it is far from being certain that a radical change is expedient or feasible at all. The need of search for alternative forms has in a more modest way been expressed in the literature. For example, when it assessed the ancient – in certain civilizations, still existing – forms of *conflict-resolution without pre-determined and pre-fixed rules of decision* as the possibilities of the future;<sup>97</sup> when it tried to *withdraw certain types of cases from formal legal regulation*;<sup>98</sup> when it attempted at *bringing closer legal language to the questions to be solved*, so as to be able to better grasp the substance of the case through "socially adequate" legal concepts;<sup>99</sup> or when it suggested a renewal of legal procedure in a way that formal justification of the decision by reference to legal rules would no longer be enough: a *justification of* (economic, political, etc.) *contents* is required before a formal justification of the considered decision could be done.<sup>100</sup>

## II. The Role of the Macrosociological Theories in the Social Science Foundation of Legal Thinking

The common feature of the different theoretical approaches surveyed above has been that they have presented law in unity with social environment as embedded in the process of social existence. They have possibly expressed also the fact that the exceeding of juristic world concept requires more than mere intention: it also presupposes

an enrichment and change in approach. Past experiences have proved that, for example, the mere assertion of the social character of law does not lead to such an exceeding. In this respect, one can often meet with two characteristic manifestations. One (a) is the pronouncement that Marxism from the very beginning *automatically* covers the sociological approach, therefore the demand of a radical exceeding cannot even emerge.<sup>101</sup> The other (b) is the pronouncement that although there is a need for the sociological approach, its utilization is only conceivable within – and *subordinated to* – the traditionally legal one.<sup>102</sup> In their actual formulation, these are the internal dilemmas of Marxist legal thinking; however, the lessons involved are of universal significance.

The reasoning according to which (a) *Marxism from the very beginning, automatically covers the sociological approach*, can be proved both philologically and theoretically. However, the question is not what sort of inner potential Marxism has, but what it provides in concrete form here and now. This is a simple question of fact, but only a weak answer can be given to it. For example, that the first ontological reconstruction of the methodological thought of Marxism only came almost 85 years after Marx's death, and now, another good 15 years later, there is only a single area where it passed almost completely unnoticed – and it is philosophy. Although, György Lukács was serious not only about his own ontological breakthrough, but with it and through it, also about a general renaissance of Marxism. He was serious about "the elaboration of sciences of a universal nature on Marxist bases", which "today is only a task, and not some sort of already existing and accomplished result", is a *topical* "scientific obligation" which "can make fruitful the life of whole generations".<sup>103</sup> Well, obviously no standard work on the social theory foundation of Marxist legal thinking, that could be compared to Lukács Ontology, has yet appeared – there have only been partial attempts. And as a theoretical heritage, there is only what is called the *socialist normativism* which is the product of wishful thinking imbued with ideological-political postulates. In the unconditional respect for what may ideologically exist at the time and in the complete disregard for law and specifically legal values, socialist normativism went as far as to debate whether – without concretizing it as the law of capitalism, socialism, or of some other formation – law in general as a common concept of the kind (*genus proximum*) can prove to be an intelligible concept at all.<sup>104</sup>

And as to the second reasoning according to which (b) *the sociological approach can only have a subordinate place in legal*

*science*, the anxiety felt over the specifically legal approach is in itself justified. Because, the lesson of the past is well-known: in the spirit of the neo-Kantian methodological purity, normativism has emptied itself – by acknowledging only the values and eliminating the facts from the sphere of its investigation – in the same way as legal sociology has almost sterilized itself by attempting to banish normative qualities from the sphere of its attention.<sup>105</sup> Therefore, the signalling of the danger is fully justified. However, this in return does not justify the theory of law becoming a servant of the considerations of legal policy, accepting its postulates as an unquestionable starting point, and in this way becoming purely ideological – as was the case with socialist normativism. And a theory of law translates such postulates into linguistic convention, if it accepts as legal only what has the stamp of *state recognition*, or – which is synonymous with this – if it fails to investigate sociologically the actual sources of the law, or the role that the different manifestations of the semi-legal and quasi-legal play in the sphere of the legal. Such a theory of law knows the sociological approach only as an analysis of the *antecedents and resultants of official law-making*. An implied condition of all this is that law-making is regarded as the exclusive source of the law, and in this capacity, as sacred. It needs legal sociology, though not as a method of cognition, but only as a practical aid to promote the success of the "realization" of the legislator's "will".

What, in the light of the neo-Kantian methodological purity, was only conceivable as the "synoptical" projection of fact and norm on each other,<sup>106</sup> (or as the analysis of the "normative model" and its "actual accomplishment" viewed "in their mutual inter-connection"),<sup>107</sup> is now the natural starting point of any legal sociological investigation. At the same time, in the relationship between fact and norm the decisive factor is not simply that "the phenomenon itself is defined by – it does not exist apart from – values to be realized."<sup>108</sup> A manifestation of this type should rather be interpreted as the struggle of legal sociology for its own preservation as sociology of *law*, for safeguarding its "distinctively legal" – and, alongside it, normative – character. For in the relationship between fact and norm, the decisive is not the mere fact of dualism, and even less so the naming of the predominant side in that relationship; rather it is the recognition of the *unbreakable mutual interdependence of social facts, on the one hand, and social norms and values, on the other*. It is the recognition that *in view of all their significant features, norms and values are social categories*: they only

exist in a form concretely conditioned, and made sensible and interpretable socially.<sup>109</sup>

At this point, legal sociology provides a promotive stimulus when it defines its subject in that "it is mainly the ideological criticism of the existing legal systems."<sup>110</sup> Nevertheless, in my opinion, one cannot speak here of simply "gaining a perspective", or jockeying for position "outside" the system of legal norms – i.e. of a purely "external" relationship in whose framework the subject of investigation is : how the motives of an ideological (= class) character infiltrate into legal reasoning, turning what – in the formal regulation – was an entity free of contradictions into contradictory social content.<sup>111</sup> At least in the course of macrosociological analysis, it is necessary to return to the Marxian concept of ideology,<sup>112</sup> and *the law itself – a form of consciousness present as a medium of social activity – has to be subjected to ideological criticism*. This means that, *placing the qualifications given of itself by the law into a social context*, an answer has to be sought to the question of (1) *how these qualifications are transformed into ideal and standard*; and (2) *how they are transformed into a social force having an institutionalized effect, into a component of a formal significance of the operation of the social total complex*.

In this way, the requirements set against the macrosociological theories are contradictory. On the one hand, the greatest possible *openness in approach* is desirable, and on the other, a *sensitive guarding of the specificity of law*. And in the same way: no macrosociological theory may set the claim that other theories should hold more of or regard as different their *historico-philosophical presuppositions* (escathological motives, ideological-political preconceptions) as "grand hypothesis".<sup>113</sup> At the same time, it can be assumed that not only the macrosociological theories of law of the past had presuppositions behind them, but as a matter of fact, it is simply necessary to have such presuppositions to help channel thinking: to seek its place in the extremely complex and flexible system of our knowledge, belief and activity. Therefore, it is a desire worthy of respect that the ultimate synthesis of legal sociology – compared to the deductively "applied" conclusions of some social theories – should consistently be based on proven theses and empirically verified partial results.<sup>114</sup> Nevertheless, permit me to express the view that this is only an *ideal*, which can only be approached at most, and even that approaching - and in our own interest - can only be done with *moderation*.

To give an example: the desire formulated in contemporary

writings of American legal sociology in view of ensuring a consistent separation of science and policy, infatuated with the technocratic idea,<sup>115</sup> does not and cannot mean a valuative difference of any theory. And there is an old dilemma behind the glaze of novelty, formulated (almost 80 years ago) as a question of reversing the direction of the line of thinking of Felix Somló, a Hungarian philosopher and sociologist of law: *the fuller immanent perfection the sociological theory achieves, the more exposed and instrumental it becomes in the hands of any policy, if it is not supported by the foundation of a theory of values, which sees more in social intervention than simple technique, and therefore it also obstructs the possible basis, trend and goal of its utilization.*<sup>116</sup> And with that I have arrived back at the mutual interdependence of fact and value.

From the point of view of the social science foundation of legal thinking, I see the role of the macrosociological theories of law in their novel approach rather than in the maturity of their achievements so far. However, I am of the view that this is not insignificant for the present; and it is everything for the future that the desirable result really comes about.

## Notes

1. See, regarding the classical development, e.g., Gurvitch, Georges, *Sociology of Law*, London, Routledge & Kegan Paul 1947, ch. 1, and regarding modern developments and trends, Podgórecki, Adam and Whelan, Christopher J. (ed.), *Sociological Approaches to Law*, London: Croom Helm 1981.
2. Hunt, Alan, *The Sociological Movement in Law*, London: Macmillan 1978, p.1.
3. Cf., e.g., Popper, K.R., *The Open Society and its Enemies*, II, London: Routledge & Kegan Paul 1945, especially ch. 21; Tucker, Robert C., *Philosophy and Myth in Karl Marx*, London: Cambridge University Press 1962; Kolakowski, Leszek, *Main Currents of Marxism*, I, Oxford: Clarendon Press 1978, especially ch. XVI para. 2.
4. Cf., e.g., Bendix, Reinhard, *Max Weber, An Intellectual Portrait*, London: Methuen 1966, especially ch. XV; Aron, Raymond, *Les étapes de la pensée sociologique*, Paris: Gallimard 1967, ch. on Weber, especially para. 6; and the sharp leftist statements, such as Walton, Paul, "Max Weber's Sociology of Law: A Critique", in: *The Sociology of Law*, ed. Pat Carlen, Sociological Review Monograph 23, 1976, following Lukács, György, *Die Zerstörung der Vernunft* (1954), ch. VI, para. 3.
5. E.g., "Proceedings of the Symposium on Scientific Objectivity", *Danish Yearbook of Philosophy* 14 (1977), Copenhagen: Munksgaard 1978.

6. In its first definite formulation cf. Kulcsár, Kálmán, *A jogszociológia problémái* (The Problems of Legal Sociology), Budapest: Közgazdasági és Jogi Kiadó 1960, ch. I.
7. I am aware of the questionable nature of such a statement, nevertheless I risk the opinion that, e.g., Unger, Roberto Mangabeira, *Law in Modern Society*, New York: The Free Press 1976, and even the achievements embodied in works, such as – on the side of law – Allott, Antony, *The Limits of Law*, London: Butterworths 1980, or – on the side of philosophy – Lukács, György, *A társadalmi lét ontológiájáról* (Zur Ontologie des gesellschaftlichen Seins) I-III, Budapest: Magvető 1976 (in some of its parts and contexts, in the first place) in the developments by vol. II, ch. II [Die Reproduktion] should in the final analysis be qualified as macrosociological theories of law.
8. Regarding its social conditions, cf. especially Krystufek, Zdeněk, *Historické základy právního pozitivismu* (Les fondements historiques du positivisme juridique), Praha: Academia 1967.
9. Marx, Karl and Engels, Frederick, "The German Ideology" (1844), in their *Collected Works*, Moscow: Progress 1975, p. 91. Cf. also Engels, Friedrich, "Juristen-Sozialismus", *Die Neue Zeit*, 2 (1887) cf. Marx, Karl and Engels, Friedrich: *Werke*, 21, Berlin: Dietz 1979, p. 491.
10. I have to note here that although Engels has not realized its necessity as an ideology, he did recognize clearly the *ontological relationship between the dominating position of the official ideology of the legal profession*. "But once the state has become an independent power *vis-a-vis* society, it produces forthwith a further ideology. It is indeed among professional politicians, theorists of public law and jurists of private law that the connection with economic facts gets lost for fair. Since in each particular case the economic facts must assume the form of juristic motives in order to receive legal sanction; and since, in so doing, consideration of course has to be given to the whole legal system already in operation, the juristic form is, in consequence, made everything and the economic content nothing. Public law and private law are treated as independent spheres, each having its own independent historical development, each being capable of and needing a systematic presentation by the consistent elimination of all inner contradictions." Engels, Frederick: "Ludwig Feuerbach and the End of Classical German Philosophy" (1886), in Marx, Karl and Engels, Frederick: *Selected Works*, Moscow: Progress 1968, p. 617.
11. Cf. Varga, Csaba, "Towards a sociological concept of law – an analysis of Lukács's ontology", *International Journal of the Sociology of Law*, 9 (1981) 2, p. 173 or, in a more detailed manner, Varga, Csaba, *The Place of Law in Lukács's World Concept*, Budapest: Akadémiai Kiadó 1985, ch. V. para. 4.
12. Cf. Varga, Csaba, "Domaine "externe" et domaine "interne" en droit", *Revue interdisciplinaire d'Etudes juridiques*, (1985) No. 14.
13. Selznick, Philip, "The sociology of law", in: *International Encyclopedia of the Social Sciences*, 9 (ed.) David L. Sills, New York, etc.: Macmillan and the Free Press 1968, p. 51 ff.
14. Carbone, Jean, *Flexible droit*, Paris: Librairie Générale de Droit et de Jurisprudence 1976, ch. I, para. 8.
15. For the first use of the concepts, cf. Pound, Roscoe, "Law in books

- and law in action", *American Law Review*, XLIV (1910).
16. Llewellyn, Karl N., "Some realism about realism", (1931), in; *The Sociology of Law*, ed. Rita James Simon, San Francisco: Chandler 1968, pp. 42-43.
  17. Petrazicky, Leo, *Teoriia Prava i gosudarstva v svjazi s teoriej npravstvennosti*, (Theory of State and Law in Connection with the Theory of Morality), I-II, St. Peterburg: Markusheva 1907.
  18. Sumner, William Graham, *Folkways*, New Haven: Yale University Press 1906.
  19. Ehrlich, Eugen, *Grundlegung der Soziologie des Rechts*, Munich and Leipzig: Duncker und Humblot 1913.
  20. Malinowski, Bronislaw, *Crime and Custom in Savage Society*, (1926), London, Routledge 1961, p. 58.
  21. In the comparative theory of Leopold Pospíšil (*Anthropology of Law – A Comparative Theory*, New York, etc.: Harper and Row 1971, ch.3.), for example, authority, the intention of universal application, obligation (the right-obligation cluster), and sanction are the components of the legal character.
  22. In a sociological interpretation and context, cf. Luhmann, Niklas, "Positivität des Rechts als Voraussetzung einer modernen Gesellschaft", in: *Die Funktion des Rechts in der modernen Gesellschaft*, ed. Rüdiger Lautmann, Werner Maihofer, Helmut Schelsky, *Jahrbuch für Rechtssoziologie und Rechtstheorie* 1, Bielefeld: Bertelsmann 1970, para. III.
  23. This duality is formulated as a question of norm-objectification by Varga, Csaba, *Codification as a Socio-Historical Phenomenon*, Budapest: Akadémiai Kiadó, forthcoming.
  24. Bohannan, Paul: "Law and Legal Institutions", in: *International Encyclopedia of the Social Sciences* 9, p.75.
  25. Hart, H.L.A., *The Concept of Law*, Oxford: Clarendon Press 1961. ch. V, para. 3, and in a sociological re-interpretation, Selznick, p. 52.
  26. Naturally, by itself, this is also an *ad regressum* reasoning. Because, in this case, it should be pointed out: since when and following the establishment of what conditions can one speak of state. Only after an answer to this, one could turn to the question proper: what reasons account for the failure to qualify as legal the system of regulation which does not have a state – in the sense of the definition above – behind it, but which fully fulfils the basic function of resolving conflicts, as well as making regulation in its own environment.
  27. Hoebel's late definition, e.g., spoke about "the legitimate use of physical coercion by a socially authorized agent". It stated: "A social norm is legal if its neglect or infraction is regularly met, in threat or in fact, by the application of physical force by an individual or group possessing the socially recognized privilege of so acting." Hoebel, E. Adamson, *The Law of Primitive Man – A Study in Comparative Legal Dynamics*, Cambridge (Mass.): Harvard University Press 1954, pp. 26 and 28.
  28. Pospíšil, ch. 3 and 5, as well as, in a critical re-assessment, Varga, Csaba, "Antropológiai jogelmélet? Leopold Pospíšil és a jogfejlődés összehasonlító tanulmányozása" (*Anthropological Jurisprudence? Leopold Pospisil and the Comparative Study of Legal Development*), *Állam- és Jogtudomány*, XXVIII (1986) 1.
  29. Of course, the dilemma emerges in the course of the reconstruction of

- the Marxian methodological concept as well. Recently, e.g., in connection with the concept of *social class*, Daniel Deák, *Redistribució és szocializmus* (Redistribution and Socialism), Budapest: Institute of the Social Sciences of the Central Committee of the Hungarian Socialist Workers' Party 1982, attempted to clarify how the concept emerging from Marx's analyses is related to the definition given by Lenin. The author comes to the conclusion that the Marxian concept of social class is only operational within the classical capitalism as a community of commodity producers based on market regulation; its application to other systems involves artificial extrapolation.
30. As to the differentiation between "system of law" and "legal system", cf. Kulcsár, Kálmán, "Historical Development of the Law-Applying Functions", in *Droit hongrois - droit comparé* (Hungarian Law - Comparative Law), ed. Zoltán Péteri, Budapest: Akadémiai Kiadó 1970, p. 53.
  31. Cf. especially Gurvitch, Georges, *Expérience juridique et philosophie pluraliste du droit*, Paris: Pédone 1935.
  32. Evan, William M., "Public and Private Legal Systems", in *Law and Sociology*, ed. William M. Evan, New York: The Free Press of Glencoe 1962.
  33. Cf., on the side of the sociology of law, Lévy-Bruhl, Henri, "Tensions et conflits au sein d'un même système juridique", *Cahiers Internationaux de Sociologie*, XXX (1961), and on the side of the theory and logic of law, Perelman, Chaïm (ed), *Les antinomie en droit*, Bruxelles: Bruylant 1965.
  34. Eörsi, Gyula, *Comparative Civil (Private) Law*, Budapest: Akadémiai Kiadó 1979, section 268, p. 463.
  35. Cf., e.g., Pólay, Elemér, *Differenzierung der Gesellschaftsnormen im antiken Rom*, Budapest: Akadémiai Kiadó 1964; Gilissen, J. (ed.) *Le pluralisme juridique*, Bruxelles: Université Libre 1971; and Hooker, M.B., *Legal Pluralism - An Introduction to Colonial and Neo-Colonial Laws*, Oxford: Clarendon Press 1975.
  36. As to the possible conflicts of diverging kinds of rationalization characteristic of different social spheres, cf. Kulcsár, Kálmán, "Social Planning and Legal Regulation", *Acta Juridica Academiae Scientiarum Hungaricae*, XIX (1977) 3-4, para. 1-2.
  37. Ehrlich, note 19, transl. W.L. Moll, *Fundamental Principles of the Sociology of Law*, Cambridge (Mass.): Harvard University Press 1936, p. XIV.
  38. Llewellyn, p. 38.
  39. Horváth, Barna, *Rechtssoziologie*, Berlin-Grunewald: Verlag für Staatswissenschaften und Geschichte 1934.
  40. Kantorowicz, Hermann, *The Definition of Law*, ed. A.H. Campbell, Cambridge: Cambridge University Press 1958, p. 78 ff.
  41. Carbonnier, Jean, *Sociologie juridique*, Paris: Presses Universitaires de France 1978, ch. 2, part I, para. 2.
  42. Regarding its problematic nature, cf. Villey, Michel, "Histoire de la logique juridique", *Annales de la Faculté de Droit et des Sciences économiques de Toulouse*, XV (1967) 1, and Perelman, Chaïm, "Désaccord et rationalité des décisions", in his *Droit, morale et philosophie*, Paris: Librairie Générale de Droit et de Jurisprudence 1968.

43. Holmes, O.W., *The Common Law*, Boston: Little, Brown 1881, p. 1.
44. "The fallacy to which I refer is the notion that the only force at work in the development of the law is logic." Holmes, O.W., "The Path of the Law", in *The Sociology of Law*, ed. Simon, p. 25.
45. Cf., e.g., Kulcsár, Kálmán, "Situation in the Law-Application Process", *Acta Juridica Academiae Scientiarum Hungaricae*, XII (1970) 1-2.
46. A corresponding development in the systems of legal logic is the gaining ground of the so-called *anti-formalist trends*. As to the basis of the formalist and anti-formalist trends, as well as the socio-historical limitations of their way of raising the question, cf. Varga, Csaba, "Law and its Approach as a System", *Acta Juridica Academiae Scientiarum Hungaricae*, XXI (1979) 3-4, or reprinted in *Informatica e Diritto*, VII (1981) 2-3, para. 3. As to the logical reconstruction of legal reasoning taking into consideration the human-social factor as well, cf. Varga, Csaba, "On the Socially Determined Nature of Legal Reasoning", *Logique et Analyse* (1973), No. 61-62, or reprinted in *Etudes de logique juridique* V, ed. Chaïm Perelman, Bruxelles: Bruylant 1973, para. 3.
47. Luhmann, para. VI. In fact, Luhmann does not address the subject; he gives a sociological description of the *operational model corresponding to the European ideal of legality*. According to his formulation, *only the programmes have rationality of their own*; the rationality of the decisions programmed lies exclusively in their *conformity* to the former. At the same time, the whole of his description is based on the category of *normative expectations*. Its essence is that the possibly contradictory facts of practice do not change at all the content of the expectation (Luhmann, para. I). In this case, reduction to the already known in the process of interpretation has the same role as refining to a sham-conflict in the ontological explanation. Namely, that in the spirit of the ideology and formal requirement of legal security, the normative character (or, at least, the normative appearance) of the expectation should be maintained under any and every condition; also in the case, if *concealed* in the interpretation, possibly a *transformation into cognitive*, i.e. a change in the programme takes place in the course of adjudication.
48. Cf. Varga, Csaba, "Towards a Sociological Concept of Law - An Analysis of Lukács's Ontology", p. 173.
49. The sources of these theses are rather divergent. For my own survey, a prime source was Lukács, *A társadalmi lét ontológiájáról* (Zur Ontologie des gesellschaftlichen Seins), especially vol. II, ch. II, and Mayhew, Leon, "The Legal System", in *International Encyclopedia of the Social Sciences* 9, p. 62.
50. As a background literature, see Stjernquist, Per, "Political Use of Legal Forms", in *Scripta Minora*, Skrifter utgivna av Kungl. Humanistiska Vetenskapssamfundet i Lund, 1968-1969/1.
51. As a background literature, cf. Sauser-Hall, Georges, "La réception des droits européens en Turquie", *Recueil de Travaux publié par la Faculté de l'Université de Genève*, 1938, and Vanderlinden, Jacques, *Introduction au droit de l'Éthiopie moderne*, Paris: Librairie Générale de Droit et de Jurisprudence 1971.
52. Cf., as the most striking example, Awaji, Takehisa, "Les japonais et le droit", *Revue internationale de Droit comparé*, XXVIII (1976) 2, or, from the viewpoint of sociology, Chica, Masaji, "The Unofficial Jural

- Postulates Underlying Attitudes Towards Law", *Zeitschrift für Rechtssoziologie*, III (1982) 1.
53. Cf., first of all, Weber, Max, *Rechtssoziologie*, ed. Johannes Winkelmann, Neuwied: Luchterhand 1960.
  54. Cf., e.g., Macaulay, Stewart, "Non-Contractual Relations in Business: A Preliminary Study", *American Sociological Review*, XXVII (1963) 1.
  55. According to the famous definition by Roscoe Pound (*Jurisprudence I*, St. Paul: West 1959, ch. 6), e.g., the law is a complex compounded of social control, rules of the positivist law and the process of decision.
  56. K. Opalek ("The Complexity of Law and the Methodology of its Study", "*Scientia*": *Revue internationale de Synthèse scientifique*, LXIII [1969] May-June), e.g., mentions the level of phenomenon and meaning, whereas Jerzy Wróblewski ("The Theory of Law - Multilevel, Empirical or Sociological?" *Poznan Studies in the Philosophy of the Sciences and the Humanities*, V (1979) 1-4, para. 20) speaks of logical-linguistic, sociological, psychical and axiological levels.
  57. Criticism of the legal sociological trends often claims that the overdominance of factuality leads to value indifference: normativity gets dissolved in everyday practice. The same has recently been said about the American movement of realism by Robert S. Summers (*Instrumentalism and American Legal Theory*, Ithaca: Cornell University Press 1982).
  58. I have attempted to make such distinction in several of my earlier works as well, cf. Varga, Csaba, "Towards the Ontological Foundation of Law: Some Theses on the Basis of Lukács's Ontology", *Rivista internazionale di filosofia del Diritto*, LX (1983) I, para. 6 and 7; Varga, Csaba, "A jog mint felépítmény" (Law as Superstructure), *Magyar Filozófiai Szemle*, XXX (1986) 1-2, part IV.
  59. As a characteristic example to this effect, cf. Kelsen, Hans, "The Law as a Specific Social Technique", in his *What is Justice? Collected Essays*, Berkeley and Los Angeles: University of California Press 1960.
  60. E.g., Kulcsár, Kálmán, "A jogalkalmazás funkcionális elemzésének problémái" (The Problems of a Functional Analysis of the Application of Law), *Állam- és Jogtudomány*, XII (1969) 4, p. 610.
  61. Pound, Roscoe, *An Introduction to the Philosophy of Law* (1922), New Haven and London: Yale University Press 1954, p. 47.
  62. Pound, Roscoe, *Social Control Through Law*, New Haven: Yale University Press 1942.
  63. Black, Donald, "The Boundaries of Legal Sociology", in *The Social Organization of Law*, ed. Donald Black and Maureen Mileski, New York and London: Seminar Press 1973, p. 50 ff.
  64. Parsons, Talcott, "The Law and Social Control", in *Law and Sociology*, p. 58.
  65. Bredemeier, Harry C., "Law as an Integrative Mechanism", in *Law and Sociology*.
  66. Sajó, András, *Társadalmi szabályozottság és jogi szabályozás* (Social Regulatedness and Legal Regulation), Budapest: Akadémiai Kiadó 1978, p. 36 ff.
  67. E.g., Shapiro, Martin, "Political Jurisprudence", *Kentucky Law Journal*, LII (1964), and Kulcsár, Kálmán, "A politikai és a jogi rendszer" (The Political and the Legal System), in his *Társadalom*,

- politike, jog* (Society, Politics, Law), Budapest: Gondolat 1974.
68. E.g., Nader, Laura, "The Anthropological Study of Law", *American Anthropologist*, LVII (1965) 1.
  69. In the mirror of example, cf. Diamond, Stanley, "The Rule of Law Versus the Order of Custom", in *The Rule of Law*, ed. Robert Paul Wolff, New York: Simon and Schuster 1971, para II.
  70. In the first place, cf. Hayek, F.A., *The Road to Serfdom* (1944), London and Henley: Routledge and Kegan Paul 1979, and, as embedded in a broader social theoretical frame, Hayek, F.A., *Law, Legislation and Liberty*, London: Routledge and Kegan Paul 1982.
  71. Bobbio, Norbert, "Le bon législateur", in *Le raisonnement juridique*, ed. Hubert Hubien, Bruxelles: Bruylant 1971.
  72. Luhmann, pp. 187-188.
  73. E.g., Sajó, András, "Preliminaries to a Theory of Law-Observance", *Acta Juridica Academiae Scientiarum Hungaricae*, XIX (1977) 3-4.
  74. Lukács: *A társadalmi lét ontológiájáról* (Zur Ontologie des gesellschaftlichen Seins) III, p. 195 ff.
  75. Gusfield, J.R., *Symbolic Crusade - Status Politics and the American Temperance Movement*, Urbana, 1966, as quoted by Hunt.
  76. Cf., e.g., Peschka, Vilmos, "A jog mint ideológia" (Law as Ideology), *Állam- és Jogtudomány*, XXIV (1981) 4.
  77. E.g., Selznick, p. 57.
  78. It has to be noted that Peter Noll ("Symbolische Gesetzgebung", *Zeitschrift für Schweizerisches Recht*, C [1. Halbband] [1981] 4), has also discussed the question, studying some of the occurrences which I have described as sham-regulation.
  79. E.g., in the mirror of the preambles of non-socialist constitutions, Varga, Csaba, "A prambulumok problémája és a jogalkotási gyakorlat" (The Problem of Preambles and the Practice of Law-Making), *Állam- és Jogtudomány*, XIII (1970) 2, part II, ch. A.
  80. Cf., e.g., Kulcsár, Kálmán, "Politics and Law-Making in Central-East-Europe", in *Legal Theory - Comparative Law: Studies in Honour of Professor Imre Szabó*, ed. Zoltán Péteri, Budapest: Akadémiai Kiadó 1984, part II, para. 1 and 4.
  81. Zaccaria, Giuseppe, "Razionalità, formalismo, diritto: riflessioni su Max Weber", *Sociologia del Diritto*, VIII (1981) 1.
  82. Regarding basic experiences in comparative analysis, cf. Allott (and as to its theoretical reconsiderations, Varga Csaba, "A jog és korlátai: Allott a hatékony jogi cselekvés hatásairól" [Law and its Barriers: Allott on the Limits of Efficacious Legal Action], *Állam- és Jogtudomány*, XXVIII [1985] 2), whereas mainly in the mirror of Hungarian case studies, Kulcsár, Kálmán, *Gazdaság, társadalom, jog* (Economy, Society, Law), Budapest: Közgazdasági és Jogi Kiadó 1982.
  83. As it is postulated, e.g., by the theory of double institutionalization (cf. note 24).
  84. Diamond, especially pp. 117-126.
  85. Munoz, Louis J., "The Rationality of Tradition", *Archiv für Rechts- und Sozialphilosophie*, LXVII (1981) 2.
  86. Watson, Alan, *Legal Transplants - An Approach to Comparative Law*, Edinburgh: Scottish Academic Press 1974, and Watson, Alan, *Society and Legal Change*, Edinburgh: Scottish Academic Press 1977.
  87. E.g., Varga, Csaba, "Moderne Staatlichkeit und modernes formales

- Recht", *Acta Juridica Academiae Scientiarum Hungaricae*, XXVI (1984) 1-2, and Varga, Csaba, "Logic of Law and Judicial Activity – A Gap between Ideals, Reality and Future Perspectives", in *Legal Development and Comparative Law*, ed. Zoltán Péteri and Vanda Lamm, Budapest: Akadémiai Kiadó 1982.
88. The typification of the systems of law is based on the traditions of their cultural values by Léontin-Jean Constantinesco ("Die Kulturkreise als Grundlage der Rechtskreise", *Zeitschrift für Rechtsvergleichung*, XXII [1981] 3), and it was characterized by the degree of complexity demonstrable in the social relations' and functions by Richard D. Schwartz and James S. Miller ("Legal Evolution and Social Complexity", *The American Journal of Sociology*, LXX [1964]).
  89. "... one of the functions of formal legal procedure is to compel the parties to legal disputes to mold their concrete conflicts into issues subject to normative settlement. In so doing, the parties are forced to isolate normative issues and eliminate extraneous power factors. Power factors come to be defined as being outside of the scope of inquiry...". Mayhew, p. 63.
  90. Eckhoff, Torstein, "The Mediator, the Judge and the Administrator in Conflict-Resolution", *Acta Sociologica*, X (1966) 1-2.
  91. Macaulay; Kurczewski, J. and Frieske, K., "Some Problems of the Legal Regulation of the Activities of Economic Institutions", *Law and Society Review*, XI (1977); Falk-Moore, S., *Law as Process*, London: Routledge and Kegan Paul 1978.
  92. The group may mean a specific activity, denomination, ethnic unit, etc. Regarding its appearance on a mass scale influencing almost the whole of society, in a case showing extremist example concerning the success of modernization and the integration of traditions into the forms of modernization, cf. Kawashima, Takeyoshi, "Dispute Resolution in Contemporary Japan", in *Law in Japan*, ed. Arthur T. von Mehren, Harvard: Cambridge University Press 1963.
  93. Kamenka, Eugene and Tay, Alice Erh-Soon, "Beyond Bourgeois Individualism – The Contemporary Crisis in Law and Legal Ideology", in *Feudalism, Capitalism and Beyond*, ed. E. Kamenka and R. Neale, London: Edward Arnold 1975; Kamenka, Eugene and Tay, Alice Erh-Soon, "Social Traditions, Legal Traditions", in *Law and Social Control*, ed. E. Kamenka and A.E.-S. Tay, London: Edward Arnold 1980.
  94. Unger, ch. 2 and 3.
  95. Nonet, Philippe and Seznick, Philip, *Law and Society in Transition – Towards Responsive Law*, New York: Harper and Row 1978, ch. II-IV.
  96. Galanter, Marc, "Legality and its Discontents – A Preliminary Assessment of Current Theories of Legalization and Delegalization", in *Alternative Rechtsformen und Alternativen zum Recht*, ed. Erhard Blankenburg, Ekkehard Klaus and Hubert Rottleuthner, Jahrbuch für Rechtssoziologie und Rechtstheorie VI, Opladen: Westdeutscher Verlag 1980.
  97. E.g., Dekkers, René, "Justice bantou", *Revue Roumaine des Sciences sociales: Série de Sciences juridiques*, XII (1968) 1; David, René, "Deux conceptions de l'ordre social", in *Ius Privatum Gentium: Festschrift für Max Rheinstein I*, Tübingen: Mohr 1969.
  98. The transfer of certain state tasks (e.g. social security) to the competency of trade unions, the so-called social courts, and other

delegalization and decriminalization experiences (often resulting only in the doubling of both rules and institutions) have a significant socialist literature; however, no comprehensive sociological assessment has yet been made. Regarding Western attempts, with a critical edge, cf. Abel, Richard L., "Delegalization – A Critical Review of Its Ideology, Manifestations and Social Consequences", in *Alternative Rechtsformen und Alternativen zum Recht*.

99. Luhmann, Niklas, *Rechtssystem und Rechtsdogmatik*, Stuttgart: Kohlhammer 1974.
100. E.g., Wasserstrom, Richard A., *The Judicial Decision – Toward a Theory of Legal Justification*, Stanford: Stanford University Press 1961, ch. 7; and Bolding, Per Olof, "Reliance on Authorities or Open Debate? Two Models of Legal Argumentation", in *Scandinavian Studies in Law* 13, Stockholm: Almqvist & Wiksell 1969.
101. E.g., the majority of the Marxist reports at the conference of the Research Committee of the Sociology of Law of the International Sociological Association at Balatonszéplak, Hungary 1976: *Sociology of Law and Legal Sciences*, ed. Kálmán Kulcsár, Budapest: Institute of Sociology of the Hungarian Academy of Sciences 1977, part 1.
102. E.g., *Symposium international sur la méthodologie des sciences juridiques*, ed. Radomir D. Lukic, Belgrade: Académie Serbe des Sciences et des Arts (Classes des Sciences sociales) 1973, especially p. 356.
103. Lukács, Georg, "Postscriptum 1957 zu: Mein Weg zur Marx", in his *Schriften zur Ideologie und Politik*, Neuwied und Berlin: Luchterhand 1967.
104. E.g., Szabó, Imre, *Jogelmélet (Legal Theory)*, Budapest: Közgazdasági és Jogi Kiadó 1977, para. 1.
105. Cf., e.g., Nonet, Philippe, "For Jurisprudential Sociology", in *The Sociology of Law – A Social-Structural Perspective*, ed. William M. Evan, New York: The Free Press 1980, p. 58.
106. Horváth, Barna, *A jogelmélet vázlata (An Outline of Legal Theory)*, Szeged 1937, p. VIII.
107. Horváth, Barna, *Jogelmélet és társadalomelmélet (Legal Theory and Social Theory)*, Szeged 1935, p. 7.
108. E.g., Selznick, Philip, "Sociology and Natural Law", in *The Social Organization of Law*, p. 26.
109. An appropriate characterization is given by Kálmán Kulcsár (*A jogszociológia alapjai [The Foundations of Legal Sociology]*, Budapest: Közgazdasági és Jogi Kiadó 1976, p. 336, note 1), when he writes as follows: "the essence of the sociological approach in the Marxist science of law is that *instead of a manifestation pro or contra, in addition to or beyond the positivist law, it 'sociologically' views the positive law itself as a form, i.e. in its social content, substance, context and function.*"
110. König, René, "Das Recht im Zusammenhang der sozialen Normensysteme", in *Studien und Materialien zur Rechtssoziologie*, ed. Ernst E. Hirsch and Manfred Rehbinder, Kölner Zeitschrift für Soziologie und Sozialpsychologie, Sonderheft Nr. 11, Opladen: Westdeutscher Verlag 1967, section III.
111. *Ibid.*
112. As to the Marxian concept of ideology, see Marx, Karl, "Preface to 'A Contribution to the Critique of Political Economy'" (1859), in

Marx, Karl and Engels, Frederick, *Selected Works*, p. 182, and as to its ontological interpretation, Lukács, *A társadalmi lét ontológiájáról* (Zur Ontologie des gesellschaftlichen Seins) III, p. 10 ff. These concepts are reviewed and re-interpreted in a jurisprudential and political context by Varga, Csaba, "La séparation des pouvoirs – idéologie et utopie dans la pensée politique", *Acta Juridica Academiae Scientiarum Hungaricae*, XXVII (1985) 1-2, pp. 246 f.

113. Carbonnier, *Flexible droit*, p. 5.
114. Podgórecki, Adam, "Towards a General Theory in the Sociology of Law", in his *Law and Society*, London: Routledge and Kegan Paul 1974.
115. Black, Donald, "The Boundaries of Legal Sociology", in *The Social Organization of Law*, especially para. I, III and IV.
116. Cf., Varga, Csaba, "Somló Bódog jegyzetei Arisztotelész állam-bölcséletéről (Felix Somlós Posthumous Commentaries on Aristotle's Political Philosophy)", *Magyar Filozófiai Szemle*, XXV (1981) 6, pp. 816-817.