SOCIOLOGY OF LAW IN SCANDINAVIA

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I. INTRODUCTION

THE WORKS REFERRED to in this article are in many ways dissimilar. Some of them deal with problems that have been raised within legal theory, concerning for instance the enforcement or the social consequences of certain rules of law, their aim being to contribute to the solution of these problems through the application of interview surveys or other research techniques developed in the social sciences. Others have sociological or psychological theory as their frame of reference. They look at legal institutions from the point of view of detached observers of certain types of human activity. This makes for great differences both in the design of research programmes and in the interpretation of data. There is, however, no clear line of demarcation between the two approaches. Much of the research has been done by scholars who have been trained both in law and in the social sciences, and who are more or less engaged in both these worlds of thought.

The expression *rettssosiologi* ("sociology of law") has in the last 15 years come into use as a common denominator of these different kinds of work. It will be used in the same broad sense in this article, covering quantitative fact-finding related to legal theories as well as sociological and psychological research in legal institutions.

Crimes and other types of deviant behaviour have for a long time attracted the interest of social scientists. Eilert Sundt (1817–1875),[1] the pioneer of sociology and social statistics in Norway, devoted himself to the study of gypsies and other vagrants. He made numerous journeys in different parts of the country, collecting data on the way of life of these people. Sundt paid much attention to their miserable social conditions, their crimes and immoral behaviour. He also made studies concerning drunkenness and immorality among the peasant population. Sundt's work was not, however, restricted to criminological problems, but covered much broader areas of social life.

In the course of the twentieth century, criminology has acquired the status of a separate science in all the Scandinavian countries,

[1] See Martin S. Allwood, *Eilert Sundt*, Oslo 1957.

and considerable research has been done, and is still being done, in this field. The concepts "criminology" and "sociology of law" overlap to a great extent, when the latter expression is used in the broad sense indicated above. Criminological research will, however, be only briefly considered in this paper, the aim of which is to comment on the existing tendencies to extend the contact between law and social science to other fields than that of crime.[2]

It is only in the last 10–15 years that these tendencies have manifested themselves in an amount of research worth mentioning. But the ground was already prepared, as a result of changes in the attitudes towards law and legal reasoning that had emerged earlier.

Around the turn of the century, legal positivism had a firm foothold in all the Scandinavian countries. Great emphasis was laid on the formation of concepts and general principles. Deductions from such concepts and principles played an important role in legal reasoning. In this century there has been a marked reaction against positivism and conceptual jurisprudence. Among the earliest opponents can be mentioned Viggo Bentzon in Denmark and Fredrik Stang in Norway, both of whom have had a substantial influence on the later development of legal thinking in these countries. The most vigorous attack on the older schools of thought, came, however, from the Uppsala school of philosophy in Sweden. Under the leadership of brilliant scholars like Axel Hägerström,[3] Vilhelm Lundstedt[4] and Karl Olivecrona,[5] the Uppsala school has denounced all the different versions of natural-law theories and legal positivism. The new ideas advocated by

[2] Historical and anthropological studies dealing with ancient law and primitive law have also been kept outside the framework of the present survey. This limitation is rather arbitrary, as many works in these fields—for instance the historical studies of Axel Hägerström, Karl Olivecrona, Svend Ranulf and C. W. Westrup, and the studies of E. A. Virtanen and others on Lapp and Karelian legal customs—are highly relevant to problems discussed in this paper.

[3] See Karl Olivecrona, "The Legal Theories of Axel Hägerström and Vilhelm Lundstedt", *Scandinavian Studies in Law* 1959, pp. 125 ff. Hägerström's principal works on moral and legal philosophy have been translated into English under the title *Inquiries into the Nature of Law and Morals*, ed. by K. Olivecrona, trans. by C. D. Broad, Uppsala 1953.

[4] See Olivecrona, *op. cit.* The most comprehensive account in English of Lundstedt's ideas is to be found in the posthumous work *Legal Thinking Revised*, Stockholm 1956.

[5] Olivecrona's principal work in English is *Law as Fact*, Copenhagen and London 1939. See also his comments on the theories of Petrazhitsky, Sorokin and Timasheff in "Is a Sociological Explanation of Law possible?", *Theoria* Vol. XIV 1948.

the adherents of this movement have some affinities with American legal realism, but there are also important differences.

A common feature of most new theories of law that have emerged in Scandinavia in this century is the strong emphasis on the relationship between law and society. It is frequently stressed that law is both a product of social forces and a factor that influences social life. This theory of the nature of law is often combined with a preference for teleological reasoning. In legal reasoning, evaluations of the supposed social consequences of the different rules or interpretations of law have largely replaced deductions from abstract principles. The tendency to emphasize social utility as the proper guide for legal reasoning stands out most strongly in the works of Vilhelm Lundstedt,[6] but to some extent it also characterizes the writings of many other authors, both inside and outside the Uppsala school.

These new attitudes towards law and legal reasoning have undoubtedly favoured the development of legal sociology. If law is to be regarded as a social institution, it seems quite natural to consult sociology and social anthropology on questions concerning its origin and development. The use of teleological methods in legal reasoning has also implications that may lead to contact with social science. When evaluations are tied to the social consequences that the decisions are expected to have, it seems reasonable to ask for empirical research in order to arrive at reliable hypotheses about the presupposed causal relations between law and society.

At the same time as considerations of this kind appeared in legal theory, sociology emerged as an academic discipline at some of the Scandinavian universities. Among those first to hold chairs in this subject were Theodor Geiger (1891–1952) in Denmark and Torgny T. Segerstedt in Sweden, both of whom have contributed much to the development of legal sociology. Some of Segerstedt's works will be mentioned in the next section. Geiger was profoundly interested in moral and legal philosophy. He also aimed at the foundation of a sociology of law. This purpose was made explicit in one of his works on jurisprudence.[7] Geiger did not venture into doing empirical research in the sociology of law,

[6] Olivecrona, "The Legal Theories of Axel Hägerström and Vilhelm Lundstedt", *op. cit.*, pp. 137 ff. See also Jan Hellner, "Legal Philosophy in the Analysis of Tort Problems", *Scandinavian Studies in Law* 1958, pp. 158 ff.

[7] Theodor Geiger, *Vorstudien zu einer Soziologie des Rechts*, Copenhagen 1947. See also the bibliography on Geiger's works in *Acta Sociologica*, Vol. I 1955, pp. 80 ff.

and it is doubtful whether his approach was the most fruitful, but he did much to arouse interest in the subject matter.

A survey of some of the research in sociology of law that has been done in the Scandinavian countries, will be given in the two following sections (II and III). The concluding remarks of the last section (IV) deal with questions concerning the relevance of such research for legislation and legal reasoning and for criminology.

II. PUBLIC OPINION AND BEHAVIOUR IN RELATION TO LAW

Torgny T. Segerstedt, who, as mentioned, is professor of sociology at the University of Uppsala, was among the first to take up problems concerning sociology of law. His main contributions to this field are theoretical studies dealing with the concepts of social norms, social control and uniform behaviour.[8] Rules and decisions of law are here regarded as instances of social norms which contribute to the creation of uniform behaviour. These works have been a source of inspiration to empirical investigations, dealing with the impact of law on behaviour and attitudes.

An interview survey, carried out by Segerstedt himself and associates, will be mentioned first.[9] The object of this investigation was the so-called "general sense of justice"—a concept which has played an important role in Scandinavian jurisprudence. The general sense of justice is often referred to as something that has to be taken into account in legal reasoning, or even as a source of law. Sometimes it is also presupposed that the general sense of justice can be influenced by law. This idea comes out strongly in theories advanced by Lundstedt and others, where it is maintained that one of the main effects of the criminal law, and also of the law of torts, is to create and reinforce moral convictions of what is right and wrong.

In Segerstedt's investigation "the general sense of justice" is

[8] Torgny T. Segerstedt, "Customs and Codes", *Theoria* Vol. VIII 1942, pp. 3 ff. and 126 ff., *Social Control as a Sociological Concept*, Uppsala 1948, "The Uppsala School of Sociology", *Acta Sociologica*, Vol. I 1955, pp. 85 ff. and "Kriminalsociologi" in Ivar Agge *et al.*, *Kriminologi*, Stockholm 1955, pp. 163 ff.

[9] Torgny T. Segerstedt *et al.*, "A research into the general sense of justice", *Theoria* Vol. XV 1949, pp. 323 ff.

defined as the common man's attitude towards legal rules, towards legal sanctions, towards criminal behaviour and towards criminals. The aim was to get information about these attitudes, to ascertain to what extent they were uniform and to explain the causes of such uniformity as was found to exist. Empirical data were obtained through interviews with samples of the population in certain areas of Sweden. There turned out to be differences in attitudes between urban and rural populations, between the sexes, and between different social classes. The general impression gained by Segerstedt and his associates from their investigation was, however, that the Swedish sense of justice was fairly uniform.[1]

The "sense-of-justice"-project was not completed, and no later research along the same lines has been done. There have, however, been carried out a number of investigations which deal not with the sense of justice in general but with the impact of some particular legal enactment upon the beliefs, attitudes, and actions of the population groups subjected to it.

The first Scandinavian study of this kind was carried out by Folke Schmidt and co-workers in 1946.[2] The purpose of this study was to find out to what extent the Swedish laws regulating hours of work and paid vacations for farm-workers were complied with, and to examine the causes of such compliance. Data were collected in visits to a number of farms situated within a certain area, the owner and one of the workers being interviewed in each case. It turned out that the working conditions at these farms conformed well with some of the statutory provisions (for instance those regulating hours of work), while other provisions were largely disregarded. This was the case with some of the provisions concerning overtime; for instance, the prescribed journal of such work was kept at only a minority of the farms. The workers' right to a vacation was commonly recognized, but it was often practised in a way contrary to the law. About one-third of the farmers shortened the required vacation period and gave additional payment in compensation, an arrangement that was in breach of the law even if the workers agreed to it.

The findings indicated that legal sanctions played an insignificant role as causes of observance of the law. Violations were

[1] Segerstedt, *op. cit.*, p. 325.

[2] Folke Schmidt, Leif Gräntze and Axel Roos, *Arbetstid och semester för jordbrukets utearbetare*, Lund 1946. A summary in English, "Legal working hours in Swedish agriculture", was published in *Theoria* Vol. XII 1946, pp. 181 ff.

punishable, and could also give rise to civil suits, but neither of these sanctions had been applied to the reported violations. The official agency in charge of labour-law enforcement *(Yrkesinspektionen)* seemed to have been rather ineffective in this field. The local inspector had visited some of the farms in the sample, but he had never found anything to criticize there. Nor did the workers themselves do anything to invoke legal sanctions. The reason would hardly be that this would have been too expensive or troublesome, as two towns in the neighbourhood had a free legal aid service, but rather that the workers did not even consider the matter. The interviews also revealed that only a minority of the farmers, and even fewer of the workers, knew that violations of the statute could be punished.

More important than legal sanctions were the activities of trade organizations. Both the farm workers' union and the employers' organization did much to inform their members about the labour legislation. They distributed annotated editions of the statute, sent out circulars and arranged meetings at which the provisions were discussed. The effect of these activities became apparent in the interviews, where organized farmers and farm-workers showed far better insight into the legal regulations than the unorganized farmers and workers. In addition to their information work, the trade unions often backed their members in negotiations with the employers concerning legal disputes. It should also be mentioned that the individual labourer had it in his power to give notice to quit if his employer failed to carry out the obligations imposed by the law. The scarcity of labour made this an effective sanction, and the interviews showed that it had been used successfully in some cases.

The means of law enforcement here mentioned seemed as a rule to be sufficient—if they were used. But in many cases of infringement nothing was done, because of ignorance of the legal rules, or because of a lack of interest in getting them enforced. In consequence, provisions which neither the workers nor their unions found it important to maintain—for instance the above-mentioned rule against voluntary relinquishment of vacation rights in exchange for extra pay—were frequently ignored.

Labour legislation was also the subject matter of a Norwegian investigation conducted a few years later.[3] In 1949 a statute

[3] Vilhelm Aubert, Torstein Eckhoff and Knut Sveri, *En lov i søkelyset*, Oslo 1952. See also Vilhelm Aubert "The Housemaid—An Occupational Role in Crisis", *Acta Sociologica*, Vol. I 1955, pp. 149 ff., "White-Collar Crime and

concerning the working conditions of domestic employees came into force in Norway. The statute regulated working hours, overtime and payment for such work, the employees' days out, their rights in case of illness and accident, and some other aspects of the employer-employee relationship. Most of these matters had not previously been regulated by statute. The research project, which was started in 1950, aimed at studying the impact of this law upon the working conditions of domestic employees in Oslo on the basis of interviews with housewives and employees from a probability sample of households. Great discrepancies between law and practice were found. Compensation for overtime in accordance with the statute was given in less than 30 per cent of the (143) households where overtime was worked, and the prescribed method of calculating the compensation was not used in a single case. The statutory limitation of working hours—to a maximum of 10 hours a day, meal-times included—was complied with in about one-half of the households. In the rest of the cases, the servants worked more than 10 hours a day, and 10 per cent of them worked 12 hours a day or more. Not all sections of the statute were so frequently broken as this. For instance, the practice as to "days off" was in conformity with the statute in 70–80 per cent of the households (out of a total number of 233).

Questions were also asked concerning knowledge of the statute. It turned out that the majority of the housewives and of the employees knew that the statute existed, but few could give any detailed account of the contents of the different rules.

Both the amount of knowledge and the degree of conformity with the law varied a great deal, but the variations in the two respects did not correspond: most regulations were broken as frequently by those who knew about them as by those who did not. This finding seemed to indicate that the statute had no significant influence on working conditions. Other information pointed in the same direction. There were reasons for believing that those statutory provisions which by and large were observed, were in conformity with older customs, whereas this was not the case with the provisions that were frequently broken.

How then is one to explain why the Norwegian Domestic Employees Act turned out to be less effective than the Swedish labour legislation investigated by Folke Schmidt?

Social Structure", *The American Journal of Sociology*, Vol. LVIII 1952, pp. 263 ff. (especially pp. 269 ff.) and "Lovgivningen i sosialpsykologisk belysning", *Socialt Arbeid* 1952 Nos. 9–10.

One reason that might be given is that the Norwegian statute lacked some of the legal sanctions usually found in labour legislation. It had a penal clause which was quite impracticable because criminal investigation had to be applied for by the employee, and because only persistent violations in spite of warnings were made punishable. The question of control had been considered when the statute was drafted, but the legislators had hesitated to provide for inspections in private homes. As already mentioned, the Swedish statute did not suffer from these shortcomings. But it is doubtful if this difference can account for the great differences in effectivity. Although the Swedish act provided for legal sanctions, these were not applied, and they seemed to be rather unimportant factors in producing observance of the law.

Differences between the two occupational groups—farm-workers and domestic servants—were probably more important. About half of the farm-workers were organized, and their trade union played an active role in law enforcement, whereas only one per cent of the domestic servants were union members. This reflects the isolated position of the domestic servants—only one working in each household. A lack of contact with one's fellow-workers is an impediment to the development of group solidarity, and it also impedes the spreading of knowledge about regulations concerning the occupation. The interviews also revealed an unwillingness on the part of many of the employees to use the statute as a means of improving their working conditions. This attitude was predominant in the older age-groups, where the traditional relationship of master and servant often prevailed. But the same lack of interest was also found among some of the younger employees whose ambitions were more in the direction of leaving their occupation than in that of improving it.[4]

A third possible explanation lies in the novelty of the Domestic Employees Act. It had only been in force for a year when the interviews were conducted, and some of its provisions presupposed radical changes in existing working conditions. It could be argued that it takes some time before people become acquainted with and accustomed to new rules of law, and that the outcome of the investigation did not exclude the possibility that the law in course of time could produce a considerable effect.

In order to test this possibility, a follow-up study was conducted

[4] A more elaborate discussion of these views is found in Vilhelm Aubert, "The Housemaid—An Occupational Role in Crisis", *loc. cit.*

in 1956—seven years after the enactment of the statute.[5] Substantially the same questionnaire as in 1950 was used in interviews with new probability-samples of housewives and domestic servants in Oslo and some other Norwegian cities and towns. It turned out that, broadly speaking, the working conditions of domestic employees in Oslo had changed very little in the period. Among the older age-groups (both of employees and of housewives), there was no significant change at all, whereas the younger age-groups showed a slight tendency towards a greater degree of conformity with some of the provisions of the statute.

Nor had the insight into the legal norms improved to any noteworthy extent. But there was a marked difference with regard to the *sources* of knowledge that had been operative. There were relatively fewer in 1956 than in 1950 who had got information about the statute through the press, the radio or other mass media. On the other hand, a higher percentage in 1956 than in 1950 had obtained their information from friends or acquaintances. In some of these cases the domestic employee had heard about the law from her employer, or vice versa. This shift in the relative importance of the two main sources of knowledge was in accordance with what could be expected. When a new statute of this type is prepared and enacted, it is usually commented on in the press and on the radio. This source of information will, however, dry up when the statute has been in force for some time, if no law-suit or other event that attracts the public's attention occurs. The transmission of information through personal contact between people has, on the other hand, a tendency to spread like ripples in the water. If this process once gets started, its effects are likely to increase in the course of time.

Contrary to what had been the case in 1950, there was in 1956 a fairly high correlation between the degree of knowledge of the legal rules and the tendency to act in accordance with them. The housewives who knew the rules broke them less frequently than those who were ignorant of them. The knowledge of the rules possessed by the domestic employees was also positively correlated with the degree of conformity.

These findings seem to indicate that there is a connection between the way knowledge is acquired and the influence it has on behaviour. The awareness of legal norms seems to have a

[5] The report of this investigation—which was made by the author of this article—has not yet been published.

stronger impact on the behaviour of people when it is learned in the circle of one's own acquaintances than if it is derived from mass media. If this explanation holds, our findings are in accordance with the current assumption in sociological theory that personal influence is more important than norms emanating from a distant source.[6]

One of the conclusions that can be drawn from the Swedish and Norwegian investigations of labour legislation is the rather trivial one that laws do not enforce themselves. Social reforms are not carried out automatically by the enactment of a law in which the goals are stated. Curiously enough, this sometimes seems to be forgotten when legislative programmes are advocated.

On the other hand, the investigations indicate that a law can have some effect without any intervention from the official law-enforcing agencies, if compliance is promoted by other forces. Support from organizations or from informal groups whose interests or ideals are in accordance with the law seems to be of great importance in such cases. The efficiency of this kind of law enforcement depends, however, on many largely unknown factors: How can the content of legal provisions best be communicated to people who are not lawyers? What motives for compliance with legal norms can be reckoned on? In what circumstances can those who are intended to be protected by a law be expected to claim their rights?

Questions of this kind are as a rule not considered when statutes are drafted or debated—not even when it seems quite obvious that the prospects of successful enforcement are far from good. This neglect is rather striking, as law-making in many other respects is characterized by careful considerations. Sometimes one gets the impression that what really counts for legislators is not the fulfilment of the expressed goals of the statute, but simply the enactment of a text in which certain ideals are announced in a solemn way. This may have been the case when the Norwegian Domestic Employees Act was enacted. The aim of this statute, which was to bring domestic employees up to approximately the same level as other employees with respect to professional status and working conditions, harmonized with ideals of equality and social progress prevalent in our society. It is quite natural that

[6] See for instance Paul F. Lazarsfeld, Bernard Berelson and Hazel Gaudet, *The People's Choice*, 2nd ed. New York 1948. With regard to law, a similar theory was advanced by Eugen Ehrlich in his pioneer work *Grundlegung der Soziologie des Rechts*, Munich & Leipzig 1913.

the legislators should have wanted to manifest their belief in these ideals. This is different from being ready to make the efforts necessary to provide for a real change in the working conditions of the majority of domestic employees. It is doubtful whether the legislators would have wanted to go as far as that, and it is understandable that the problems of enforcement were not faced.

Attempts to account for these and similar observations have led some sociologists and legal scholars to inquire into the *social functions* of law and legislation. The functional approach rests on the assumption that there is a feed-back from the effects of a social institution to the institution itself. The word "function" is often used to denote the effects that tend to reinforce the institution. These can be of different kinds. In some cases an institution functions because its explicit goals are realized. In other cases the goals are fulfilled to only a small extent, or not at all, but the institution still goes on because it has other reinforcing effects ("latent functions").[7] As already suggested, the investigated labour legislation can be regarded as an example of this. Even if these laws do not have the intended effects on working conditions, they may satisfy important needs by giving expression to certain ideals. This symbolic effect can serve as a latent function, accounting for the fact that new laws of the same kind are frequently produced without any serious inquiry into the possibility of getting them enforced.[8]

Poorly enforced laws and their latent functions were considered also in a study by Vilhelm Aubert concerning the attitudes of businessmen to price control and rationing.[9] The background of this investigation was Norwegian economic regulation in the early post-war period. Extensive price control and rationing was

[7] For an analysis of the concepts of "manifest" and "latent" functions see Robert K. Merton, *Social Theory and Social Structure,* Glencoe, Ill., 1949.

[8] See Aubert, Eckhoff and Sveri, *op. cit.*, pp. 170 ff. for an elaboration of this point of view and for references to the legislative history of the Domestic Employees Act.

[9] Full report in Vilhelm Aubert, *Priskontroll og rasjonering,* Oslo 1950. See also Vilhelm Aubert "Statsdirigering og rettsoppfatninger i det private næringsliv" *Statsøkonomisk Tidsskrift,* Oslo 1951, pp. 15 ff. A short comment on some of the results of the study is given in Vilhelm Aubert, "White-Collar Crime and Social Structure", *The American Journal of Sociology,* Vol. LVIII 1952, pp. 268 f. In his book, *Om straffens sosiale funksjon,* Oslo 1954, Aubert ventures on a broad survey of the different manifest and latent functions of criminal law. The theories advanced in this book are to some extent based on investigations mentioned in the present article, but a variety of other sources are also utilized.

established during the war because of the shortage of goods. In 1949–1950, when the study was made, these and a number of other regulations concerning business activities were still in force, and the extent to which the regulations should be upheld was an important issue of political debate. The Labour Government wanted to retain them as more or less permanent instruments of economic planning, whereas the Opposition regarded them as emergency measures which could be justified only in times of war and crisis.

The Government and its supporters often stressed the importance of this legislation and its enforcement. Nevertheless, the enforcement machinery worked rather slowly and inefficiently. Some efforts were made to improve it, but they were by no means sufficient. The number of violations recorded in the criminal statistics was great, and the number of undetected offences was probably even much greater. This lack of balance between the importance attached to the laws and the efforts made to enforce them indicates that they had a considerable symbolic effect.

For the Labour movement and the Government it supported, the legislation may—as is suggested by Aubert—have served as a symbol of the possession of an economic influence corresponding to their political power. The inefficiency of the enforcement may at the same time have served the function of pacifying the businessmen, and thereby of securing social peace. The point is, in other words, that unenforced laws may have the social function of preventing serious conflict between opposing ideological factions, by giving each of them some kind of satisfaction, one party being gratified by the enactment of the law, the other by its ineffectivity.[1]

The focus of the study is, however, not on these questions concerning social functions, but on businessmen's perceptions and attitudes. Interviews with probability samples from a number of sectors of business in Oslo made it evident that the attitude to price control and rationing was negative in general. But on a more specific level it was frequently admitted that parts of the legal structure were necessary. This ambivalence was even more marked in the attitudes displayed to violations

[1] Experience of American legislation and law enforcement has been interpreted in the same way. See especially Thurman W. Arnold, *The Symbols of Government,* New Haven, Conn. 1935, and *The Folklore of Capitalism,* New Haven, Conn. 1937.

and violators of the laws. On the one hand these were frequently condemned. On the other hand most of the persons interviewed defended and tried to justify many types of specific violations. They seemed to make a sharp distinction between what they regarded as harmless breaches of the law on the part of "well-established firms", and "real" offences which they strongly disapproved of. They claimed that most of these "real" offences were committed by "outsiders"—by, for instance, new, small or disreputable firms.

In his interpretation of these data, Aubert refers to the conflicting roles of the businessman. On the one hand he is expected to be, and wants to be, a respectable and law-abiding citizen. On the other hand he is a member of the business community, sharing its ideals of free enterprise and private initiative, and opposing the government's planning policy. The conflict between these two value-orientations is reflected in the ambivalent attitude to violations of the price-control and rationing regulations. From his loyalty towards the state and the law, the businessman acquires a disapproving attitude towards crime in general, whereas his loyalty towards business ideals tends to make him justify the specific legal offences here in question. The businessman's tendency to regard as crimes only some of the cases where the regulations are violated, may be regarded as a kind of adaptive reaction. It makes it possible for him to evade or disregard parts of the regulations, and to accept the fact that his colleagues are doing the same, without affecting his image of himself as a law-abiding and loyal citizen. At the same time this self-image is reinforced by his condemnation of the "outsiders" who break the regulations in "a really criminal" way.[2]

In a recent comment on some of the studies mentioned in this section, the Swedish legal scholar Per Stjernquist raises the question whether it is a useful starting-point for research in this field to ask about the effects of a statute.[3] Stjernquist's point is that law never operates alone, but in a field of social forces, and that the combined effects of all the factors influencing behaviour should be the object of study. The attempts that have been

[2] Similar tendencies to reach compromises which make the conflict less apparent are also found in other studies of conflicting social roles. See for instance Samuel A. Stouffer and Jackson Toby, "Role Conflict and Personality", *The American Journal of Sociology*, Vol. LVI 1951, pp. 395 ff., and Ragnar Rommetveit, *Social Norms and Roles*, Oslo 1955, pp. 65 ff.

[3] Per Stjernquist, "Gränsområden mellan rättsvetenskap och samhällsvetenskap", *Statsvetenskaplig tidskrift* 1958, pp. 141 ff.

made to isolate the effects of legal enactments have resulted in great difficulties, because it is seldom possible to arrange an experimental situation where the effects of non-legal forces are kept constant.[4] Stjernquist also expresses doubt concerning the theoretical and practical significance of the results which could be obtained through such investigations. A more fruitful approach to problems concerning the relation between law and behaviour would, according to him, be to take as the starting-point a certain field of uniform, or at least coordinated, human behaviour, and explore the causes of the behavioural patterns. All sources of influence—non-legal as well as legal—should be taken into account, and attention should be focussed on the combined effects of the different forces.[5]

The research programme suggested by Stjernquist is a rather ambitious one. It may be doubted whether it is within the power of the social sciences—at their present stage of development—to give any comprehensive explanation of such complex patterns of behaviour as, for instance, business activities or labour relations. But the underlying assumption—that the effect of law is intimately connected with non-legal sources of influence—seems in any case to be a sound guide for future research.

III. LAW-MAKING AND LAW ENFORCEMENT

Legislative processes and factors determining the decisions of legislators have been studied from many different angles by historians, political scientists and legal scholars. The approach

[4] In Scandinavia no attempt has been made to use a rigid experimental design in research on the effects of legal regulations. From the U.S.A., however, Underhill Moore's study on parking can be mentioned as an example. A full report on this study is to be found in Underhill Moore and Charles C. Callahan, *Law and Learning Theory*, New Haven, Conn. 1943; comments also in Underhill Moore's article in the symposium *My Philosophy of Law, Credos of Sixteen American Scholars*, Boston, Mass., 1941.

[5] Some minor studies where the problem is stated in a way similar to that suggested by Stjernquist have already been made. One of them is reported in Folke Schmidt, "Arbetsgivarens skadeståndsansvar vid olycksfall i arbete", *Försäkringsjuridiska föreningens publikation nr. 10*, Stockholm 1953. In this study Schmidt attempts to record the various legal, moral and economic motives behind precautionary measures taken by manufacturers in order to prevent accidents in their plants. Interviews with a number of manufacturers and factory inspectors indicated that the possibility of being held liable for damages was of minor importance compared with other motives.

has in most cases been either historical or comparative.[6] A great deal of the information collected through such studies seems to have relevance from a sociological point of view also, but sociologists have so far made but little use of these sources of knowledge.

The questions are also touched upon in some of the studies referred to in the preceding section. The main purpose of these studies was to investigate possible relationships between law and the behaviour of ordinary people. One of the results, however, was the revealing of important discrepancies between the declared aims of the law-makers and the effects of the laws; this gave rise to certain assumptions concerning the factors determining legislation.[7]

Not much more has been done in this field. From the point of view of legal sociology, the legislative process is largely an unexplored field in which uncoordinated knowledge and untested assumptions call for theoretical integration and for further research.

In recent years a greater amount of attention has been paid to court decisions and the behaviour of other law-enforcing agencies. The sociological interest in this field partly owes its origin to discussions among legal scholars concerning the nature of the judicial process. In the course of the present century, traditional theories of judicial decision-making as a more or less mechanistic application of rules and principles have lost much of their foothold. It is admitted that judges have strong feelings of loyalty towards the law, but it is regarded as questionable whether law guides decisions to the extent asserted by legal positivism. Some of the most influential legal scholars have emphasized the vagueness, ambiguity and incompleteness of legal precepts. They have also analysed the legal technique of argumentation, and have found it much more flexible than it pretends to be.[8] An implication of this view is that other factors than the traditional sources of law have to be taken into account if one wants to know what determines the decisions of the courts.

Similar problems concerning the causes of traffic accidents have also been investigated. See Bengt Lindegård, G. Eberhard Nyman and Ulf Persson, "Olycksfåglar i stadstrafik", *Socialmedicinsk tidskrift* 1957 No. 8.

[6] A recent comparative study, paying some attention to sociological points of view, is Otto Brusiin, *Zum Ehescheidungsproblem*, Hyvinkää, Finland, 1959, where divorce laws and their relationship with prevalent ideologies in different countries are analysed.

[7] See the remarks *supra*, pp. 41 ff., on the latent functions of laws.

[8] See particularly Alf Ross, *Om ret og retfærdighed*, Copenhagen 1953, pp. 128 ff.

Influence from common law countries, especially the U.S.A., has also been powerful in increasing the interest taken in the judicial process, and in suggesting new ways of regarding it. In the years since the second world war Scandinavian jurisprudence has to some extent shifted its orientation from the European continent to England and U.S.A. and has become familiar with the ideas advanced by the legal realists, as well as with the statistical analysis of judicial behaviour carried out in the United States.

The various Scandinavian investigations in this field differ from one another a great deal, with regard both to the theoretical orientation and to the methods employed.

Experimental methods have been used in a Danish work by W. E. von Eyben.[9] For the purpose of studying practices in the meting out of punishment, von Eyben constructed a number of moot-cases with short descriptions of the offenders and the offences. These summaries were submitted to a number of judges in Holland, Norway and Sweden as well as Denmark (in which country nearly all the trial court judges were approached). The judges were asked to estimate what the sentences in the cases described would be within their district. There proved to be great individual variations in the estimates. The Danish answers on one case varied from 80 days' conditional imprisonment to 18 months' unconditional imprisonment. These were the two extremes, but variations between 3–4 months' conditional imprisonment and 12 months' unconditional imprisonment in the same case occurred relatively frequently. The variability was about the same in Norway as in Denmark, somewhat lower in Sweden, and higher in Holland.

In his evaluation of the data, von Eyben points out that the impression derived from a description of a case will always be incomplete compared with the impression derived by a judge sitting in court. The same description may give rise to different pictures of the case in the minds of different readers. This probably makes for greater variability in the experiment than there would have been in real court situations. In spite of this source of error, the experiment seems to give sufficient proof of great individual differences between judges working under the same criminal code as regards their meting out of punishment. The purpose of the study was limited to this investigation of

[9] W. E. von Eyben, *Strafudmåling*, Copenhagen 1950, pp. 10 ff., 169 ff. and 467 ff.

interpersonal variability. It did not aim at any further exploration of the social or psychological bases of the decisions.

Individual differences between judges are dealt with also in a study by Vilhelm Aubert on Norwegian court decisions concerning the rights of conscientious objectors to refuse to perform military service.[1] According to a statute of June 17, 1937, such a right shall on application to the Ministry of Justice be granted a person if there is "... reason to believe that it is contrary to his earnest convictions to perform military service of any kind". Objectors who have failed to apply, or whose application has been rejected by the Ministry, will be prosecuted if they persist in their refusal to perform military service. If, however, the court finds that the defendant has "earnest convictions" of the type mentioned above, he is to be acquitted. Those who in this way are recognized as conscientious objectors, either by the Ministry of Justice or by the court, are transferred to compulsory non-military work for a period of time somewhat longer than the ordinary military service.

The investigation covered all cases of this type which Norwegian courts had decided in the years 1947–54, with the exception of cases from the northernmost part of the country (Finnmark). The total number of cases investigated was 246,[2] distributed among the five military courts—one for each part of the country—which at that time had jurisdiction in these cases.[3] The characteristics of each case were classified (coded) according to a scheme covering the following three groups of items: (1) name of the court and the judge, time and outcome of the case, (2) the objector's age, occupation, income and previous military service if any, and whether application for exemption had been made to the Ministry of Justice, (3) characteristics of objector's convictions as described by the court (whether religious, moral or political, whether rational or emotional, to what extent it was a product of environmental influence etc.). On the basis of these classifications the material was analysed statistically with special regard to possible connec-

[1] Vilhelm Aubert, "Krigsrettsdommene i militærnektersaker", *T.f.R.* 1956, pp. 403 ff.

[2] The total number of conscientious objectors in this period was much higher. Most of them were transferred to non-military work after making application to the Ministry of Justice, and they were therefore not brought before the court.

[3] In 1957 military courts were abolished in time of peace, and cases of the type here dealt with were transferred to the ordinary criminal courts.

tions between the outcome of the cases and the different distinguishing marks here mentioned.

One of the most striking results of this analysis was the great differences which were found between the decisions of the five courts. Three of the courts (in Eastern and Western Norway) convicted less than 5 per cent of the defendants (out of a total number of 152), the remaining 95 per cent were recognized as *bona fide* conscientious objectors. One court (Southern Norway) convicted about 30 per cent (total number 26), and the fifth (Northern Norway) convicted about 60 per cent (total number 68). To some extent these differences were probably due to objective differences between the cases in the five jurisdictions. For one thing, religious[4] objectors were almost always acquitted in all jurisdictions, and this category constituted a lower percentage of the defendants in Southern Norway and Northern Norway (where the rate of acquittals were lowest) than in the other jurisdictions. But even if this is taken account of, there remain great differences which—at least partly—must be ascribed to the personality and other characteristics of the judges. This assumption is supported by the fact that the rate of convictions within the same jurisdiction varied between the different judges. In the military court of Northern Norway, for instance, one judge had convicted as many as 24 of the 32 defendants he had tried, whereas two other judges had only convicted 4 out of 11 and 9 out of 25 respectively.

The outcome of the cases did not correlate so closely with the opinions of the courts. Certain characterizations of the defendants' motives for refusing to perform military service occurred with approximately the same frequency in connection with convictions as with acquittals, and were used as arguments for both alternatives. Statements that the defendant had been influenced by his environment may be mentioned as an example of arguments with this ambiguous status. Similarly, the ability of the defendant to give rational reasons in support of his refusal was sometimes used as an argument for acquittal, and sometimes as an argument for conviction. The only clear-cut connection found between the descriptions of defendants' convictions and the outcome of the

[4] The classification of an objector as "religious" depended upon whether *the court* had described his conviction as a religious one. It may therefore be doubted if this characterization is a purely objective one. The possibility cannot be excluded that the court's description of the conviction (as "religious" or "non-religious") to some extent depended upon whether *for other reasons* it wanted to acquit the defendant or convict him.

cases was the already mentioned tendency to be more ready to acquit defendants classified as "religious" than others. For such discrimination between religious and non-religious convictions there was no support in the text of the law,[5] and the courts did not expressly say that the distinction had legal relevance. The tendency to discriminate came out strongly, however, in the statistical analysis.[6]

Some of the findings of this investigation concerning the impact of the personality of the judges and concerning the loose relationships between opinions and decisions run counter to what is commonly believed about the functioning of courts. It should, however, be borne in mind that the cases studied by Aubert are of too exceptional a kind to warrant generalizations about the judicial process. The method applied, however, seems to be a promising tool for further studies of court decisions, even if it has some limitations. One of them is mentioned by Aubert. He points out that the classification of isolated statements, which is a requirement for the type of statistical analysis used, involves a breaking up of the patterns of reasoning. In this way an important clue to the understanding of court opinions is lost.

An interesting attempt to combine statistical methods with traditional legal analysis of court decisions is made by Lennart Geijer and Folke Schmidt in a study of the law-making function of the Swedish Labour Court.[7] This court was established in 1928, coincident with the recognition of collective agreements by the Swedish legal system.[8] It has jurisdiction *inter alia* over legal controversies between trade unions or members of such unions on the one side, and employers or their associations on the other side, concerning claims founded on collective agreements. These controversies cannot be brought before the courts of general jurisdiction, and there is no appeal from the Labour Court to any superior court. The Court is composed of three professional judges appointed by the

[5] Some arguments in support of this discrimination can, however, be found in the legislative history of the statute. But these arguments are hardly decisive.

[6] That there may be differences—like the one here demonstrated—between what courts *do* and what they *say* they are doing, was emphasized by some of the American legal realists. See for instance Herman Oliphant, "A Return to Stare-Decisis", *American Bar Association Journal*, Vol. 14 1928, pp. 72 ff.

[7] Lennart Geijer and Folke Schmidt, *Arbetsgivare och fackföreningsledare i domarsäte*, Lund 1958.

[8] See Axel Adlercreutz, "The Rise and Development of the Collective Agreement", *Scandinavian Studies in Law* 1958, pp. 9 ff.

Government and four lay judges, of whom two are nominated by the employers and two by the trade unions.[9]

The period of thirty-odd years which has elapsed since the establishment of the Court has been one of growth and development for Swedish labour law. Disputed matters of great importance have been solved, the network of legal rules has been extended and refined, and the ideological discrepancies between the parties are less conspicuous than they were in 1928. The main purpose of the study was to throw light on the part played by the court in this development, with particular regard to the impact on law of ideologies originating from the labour movement, from the employers and from society as a whole.

As a first step of the investigation, Folke Schmidt undertook a statistical analysis of the 2858 cases decided by the Court in the years 1929–53.[1] The analysis included data on the parties, the outcome of the cases, the number of cases in which dissenting opinions were rendered, and the grouping of the judges in such cases.

Cases decided in the three years 1931, 1941 and 1951 were selected for a more detailed analysis which also took into account the reasons given in the opinions. The statistical investigation was followed up by an exhaustive legal analysis of the development of case law on matters where the opinions of the judges had been divided.

Both types of analysis indicated a trend towards reconciliation and integration of legal ideas. The proportion of decisions with dissenting opinions decreased from 40–44 per cent in the first years (1929–31) to 10–17 per cent in the last years (1947–53). This development seemed to be due to a corresponding decrease in the number of controversial questions—a decrease which in turn seemed to be due partly to a tendency among dissenting judges to abandon their opposition after some time, and join with the majority when new cases concerning the same issue arose. Geijer and Schmidt also found support for the assumption that a general development towards shared frames of reference had

[9] Sometimes the lay judges have a legal training, but this is not required by law.

[1] A preliminary report in German was published in *Rivista di diritto internazionale e comparato* 1955, pp. 330 ff. Another report is found in *Nordisk sommer-universitet 1954*, Copenhagen 1955, pp. 203 ff. together with a corresponding analysis of the decisions of the Finnish Labour Court by Jorma Vuorio. For the full report see Geijer and Schmidt, *op. cit.*, pp. 9 ff.

taken place. On the one hand, parts of the respective ideologies of the labour movement and of the employers had been moulded into rules of law. On the other hand, norms maintained by society as a whole, demanding regard for law and industrial peace, undoubtedly had an impact on both parties.

The existence of the Court seemed to have promoted this development. The trade unions, which had been against its establishment, soon discovered its usefulness as a means of getting their claims enforced. This made it easier for them to accept the decisions, even when these were in favour of the employers. The employers and their organizations had from the very beginning welcomed the Court, and this attitude seems to have been reinforced with time.

In addition to this elucidation of the Court's law-making function, the study also gave valuable indications concerning the differences between the lay and the professional judges with regard to voting behaviour and patterns of legal reasoning.

The lay judges were responsible for by far the greater number of dissenting opinions, and the dissents were practically always in favour of their "own" party, i.e. when dissenting the two members nominated by trade unions voted pro-labour, and the two employer-nominated members voted pro-management. And if one member of the group dissented, usually both did, sometimes alone, and sometimes together with one of the professional judges. With the exception of certain cases concerning closed shop agreements, it never occurred that the employer- and employee-nominated judges together composed the majority of the Court, with the three professional judges dissenting.

These data indicate that the background of the lay judges to some extent determined their voting. One gets an impression of the strength of this tendency by calculating the dissent rates of the two groups of lay judges in cases where their "own" party was the loser. The rate was 38 per cent for the labour-nominated judges, and 21 per cent for the employer-nominated.

The tendency to vote in favour of one's "own" party does not necessarily imply conscious partiality. Geijer and Schmidt give it as their impression that the lay judges aimed at objectivity and legality. They were, however, influenced by—and had internalized —ideas of right and justice originating in labour and management circles respectively. These ideas were to some extent in mutual conflict with each other, and also with norms held by professional judges. The different social orientations of the judges seemed to

have been operative, not only with regard to questions of law, but also in cases where the Court split on questions of fact.

In the first years of the Court's history the labour-nominated judges seemed to have had greater difficulty than the employer-nominated ones in accepting the decisions of the Court, which at that time were rather strongly influenced by individualistic and liberalistic ways of thought. The development outlined above was largely due—according to Geijer and Schmidt—to the incorporation into the legal system of norms originating in the labour-movement.

The three investigations of judicial processes so far mentioned illuminate in different ways how individual judges may react differently to the same set of facts. The study of Geijer and Schmidt, as well as that of Aubert, also takes up questions concerning the causes of these differences and both studies point to the diverging social orientations of judges as one determining factor. In this respect the two studies have some relevance for the questions investigated by Segerstedt[2] concerning "the general sense of justice". They indicate that the idea of a "*general* sense of justice" may give an oversimplified picture of the variety of different beliefs and attitudes related to law and justice in a given society.

In Geijer's and Schmidt's study, divergencies between the judges with regard to social orientation are related to differences in their social background. It is assumed that social influences to which the judges have been exposed in their capacities as employers, trade union leaders or government officials are internalized into ideas of law and justice, and that this to a great extent influences their decision-making in court.

A similar model of social impact on decision-making processes is applied in the last piece of work to be mentioned here: a general study of official behaviour in the field of law, written by the Danish scholar Verner Goldschmidt.[3] Observations made in Greenland, where Goldschmidt has been engaged in a unique chain of activities, constitute the empirical basis of his work. In 1948–49 he visited Greenland with a group of experts studying the legal customs of the indigenous population, as well as the impact of Danish legal regulations and Danish culture in general.[4] On the basis of this research work a new criminal code for Greenland

[2] See *supra*, pp. 34 f.
[3] Verner Goldschmidt, *Retlig adfærd*, Copenhagen 1957.
[4] See Goldschmidt's article in *N.T.f.K.* 1950, pp. 12 ff.

was enacted in 1954.[5] This code is in many respects remarkable. It makes use of a flexible reaction system with a variety of different sanctions, adapted to the Greenlanders' conditions of life and their ways of thinking. From the point of view of social science it is also noteworthy that the code has a clause providing for regular research into the effects of its provisions. Goldschmidt took part in drafting the code, and he has since as a civil servant and as a judge in Greenland been engaged in its administration, as well as in the research into its effects.

The book on official behaviour which Goldschmidt published in 1957 is not a description of legal customs in Greenland, but a general study of the impact of social pressure on the decisions of judges, police officers and other persons engaged in law enforcement. The work is based on sociological and psychological theory,[6] and its aim is to build up a conceptual framework which can serve as a guide for further empirical research. Data from Greenland, as well as from law enforcement in Denmark, are used as illustrations only.

In Goldschmidt's scheme the official decision-maker is a person exposed to pressure from a variety of "norm-senders", who expect him to behave in specific ways. The legislature, the upper courts, his superiors and colleagues, as well as his clients, neighbours, friends and family, can be norm-senders in this respect. The expectations which are perceived by the official ("experienced norms") can have a direct impact on his behaviour. In the long run they can also change his attitudes and beliefs in such a way that he will act in accordance with the expectations without feeling himself exposed to any pressure.

In many cases there will be a cross-pressure caused by divergencies between the different expectations. Illuminating examples are found in the material from Greenland, where the meeting of indigenous and European cultures makes for important divergencies in attitudes towards law and law enforcement. Many police officers and other law officials are native Greenlanders with ties of loyalty to their own community as well as to their Danish superiors and to the legal regulations.

As will be remembered, problems concerning norm- (or role-)

[5] See Goldschmidt's article *ibid.* 1954, pp. 133 ff. and pp. 242 ff.

[6] Goldschmidt relies to a great extent on American sociology and psychology (Parsons, Newcomb, Sherif, Stouffer and Tolman), and he is also indebted to Scandinavian writers in these fields, particularly Franz From, *Om oplevelsen af andres adfærd,* Copenhagen 1953, and Ragnar Rommeltveit, *Social Norms and Roles,* Oslo 1953.

conflicts have also been examined in some of the studies previously mentioned, especially in Aubert's investigation of the attitudes of businessmen towards price-control and rationing regulations (*supra* pp. 41 ff.), and in Geijer and Schmidt's study of trade union leaders and employers as judges (*supra* pp. 49 ff.). It seems to be a trait common to all these conflict situations that the persons exposed to divergent norms, tend to find compromises which make the conflict less apparent and more tolerable. The data on law enforcement in Greenland provide interesting illustrations of this tendency. In some cases compromises—similarly to what was found in Aubert's investigation—were reached through a distorted perception of the norms. Examples are given of far-fetched analogies and grave misinterpretations in the application of legal regulations, giving the decisions the appearance of being in conformity with the regulations as well as with the norms of the local community.

IV. CONCLUDING REMARKS

There is no reason to believe that, in any foreseeable future, sociology of law could replace the more traditional ways of dealing with legal problems. The very fact that law is related to almost all fields of social life, and that it is ready to answer questions concerning the most complicated social problems and conflicts, makes such a replacement inconceivable. The store of knowledge so far yielded by the social sciences is meagre compared with the vast scope of the problems here involved.

Sociological research in the field of law is therefore no threat to the legal profession, whose expertise will certainly continue to be needed. Nor is there any reason to believe that the role of politicians in law-making will become superfluous. What is possible, however, is that the findings of research projects will be utilized by politicians and lawyers, and that the contact of such people with social science will influence their conceptions of law and their ways of reasoning.

To what extent this will happen is hard to say. It depends not only upon what social science can yield, but also upon the attitudes towards this kind of research prevailing among legal, administrative and political decision-makers. Will they find it

worth while to consult the social sciences? And, if they do, how reliable and how relevant to their decision-making will they consider the findings?

As to the question of relevance it should be borne in mind that science—social as well as natural—limits its outlook to causal and functional relations. Such relations are also taken into account by legislators, administrators and judges in so far as their decisions are based on means–ends hypotheses. As previously mentioned, there has been a growing tendency in Scandinavian law to use—or at least to advocate the use of—this utilitarian type of reasoning. But notwithstanding this development the means–end argument is by no means the sole way of legal reasoning. Arguments referring to intrinsic values (i.e. to something having value independent of its consequences) and to relationships of justice or equality between the act and the legal reaction to it still play a prominent part as bases of decisions in the field of law.

With regard to the arguments last mentioned, social science has very little to offer. It is prepared to deal with value judgments and with the sense of justice as psychological facts, and to study their functional relationships with other psychological or social facts. It is also concerned with the means–end hypotheses underlying instrumental value judgments. But to test the validity of a pure value judgment or the correctness of an assertion that something is just or unjust is today outside the scope of social science. This will probably be the case in the future also, unless the scientific way of reasoning should undergo radical changes.

It should perhaps be added that even some of the utilitarian arguments which are used in law and politics seem to be more or less immune from influence by social research. One reason may be that the references made in such arguments to assumed effects of the decisions are too vague to allow of any empirical test. Some of the very broad and indefinite statements frequently found in Scandinavian discussions concerning the effects of criminal law and of the law of torts seem to be of this kind. In other cases the reason may be that realization of the aims referred to is not after all the main concern of the decision-makers. In spite of the utilitarian appearance of the arguments, their function may be rather to express certain ideals than to assert real means–ends hypotheses. Some illustrations are given in the discussion (*supra*, pp. 40 ff.) on the latent functions of legislation.

Arguments having no relation at all, or at most a dubious relation, to the types of problems with which the social sciences

are concerned seem to play an important part in political, and perhaps even more in legal, decision-making today. What the future development will be is hard to say. On the one hand, there seems to have been a general trend towards utilitarianism and empiricism in our culture during the last few decades. It may be that this trend will continue, and that legal and political thinking gradually will have to yield to it. On the other hand, there seem to be factors connected with politics, and perhaps even more strongly with law, which tend to counteract such a development.

The last point is—as far as law is concerned—emphasized in a recent article by Vilhelm Aubert, comparing the legal and the medical profession with regard to ways of thinking and evaluating.[7] In addition to the diversity and complexity of legal problems previously referred to, Aubert also points to other characteristics of law that seem incompatible with a purely utilitarian and empirical approach. Among these characteristics of law are the reliance on force, and the safeguards by which the application of force has been surrounded in modern society, as well as the ideal of equality before the law.

Whereas the relevance of sociology of law for legal and political decision-making can be disputed, its *relevance for criminology* is obvious, both disciplines being concerned with causal and functional explanations of behaviour related to law. There have been tendencies to isolation and one-sidedness in criminology, but the present trend in the Scandinavian countries is towards broadening the frame of reference for interpretation of data concerning crime. There is reason to believe that research in sociology of law has contributed to this development.

One point of view, which comes out most strongly in the works of Segerstedt,[8] but which is also emphasized by other Scandinavian criminologists, is that observance and non-observance of law are two aspects of the same problem. Research into the causes of observance of law will, according to this view, also give a clue to the understanding of non-observance; the implication being that criminology should study the behaviour of ordinary law-abiding citizens as much as that of criminals. The

[7] Vilhelm Aubert, "Legal Justice and Mental Health", *Psychiatry: Journal for the Study of Interpersonal Processes*, Vol. 21 1958, pp. 101 ff.

[8] Torgny T. Segerstedt, "Kriminalsociologi" in Ivar Agge *et al.*, *Kriminologi*, Stockholm 1955, pp. 163 ff., and "The Uppsala School of Sociology", *Acta Sociologica*, Vol. 1 1955, p. 89.

studies referred to in section II of the present article (pp. 34 ff.) concerning the impact of law on behaviour and its relation to other motivating factors are highly relevant from this point of view.

Another extension of the frame of reference of traditional criminology is due to the observation that it is sometimes too one-sided to interpret criminality merely as a deviation from social norms. The criminal deviates from the laws of society, but in doing so he may be conforming with the norms of his own social group. He may even be under a strong social pressure to act as he does. This point of view is elucidated in the study referred to above (*supra*, pp. 41 ff.) on the attitudes of businessmen to breaches of price-control and rationing regulations, as well as in studies dealing with more traditional types of crimes.[9]

Tendencies towards a more radical reorientation of criminological reasoning have also appeared. These tendencies have been induced by two sets of experiences. One is the observation made in many fields of law, and supported by some of the studies referred to above, that only a small fraction of the offences committed are known to the police, and an even smaller fraction are punished. This is not a new discovery, but its implications for the interpretation of criminal statistics have frequently been disregarded. The statistical data are functionally related, not only to the real amount of criminality, but also to the activities of law-enforcing agencies like the police and the courts, and—of course—to legislation. Variations found in the statistical figures over a period of time, or between countries, districts, sexes, income classes or other groups with certain attributes, may equally well be due to variations in one as variations in the other of the two groups of phenomena. Considerations of this kind, together with the growing interest in research into the behaviour of officials, have led some scholars to the conclusion that criminology should direct attention to official behaviour as well as to criminal behaviour—and particularly to processes of interaction between these two poles. This way of stating the problem is advocated by Aubert in the article on white-collar crime previously mentioned, where he says:

[9] See for instance Nils Christie, "Varetektsfangers forventninger og innstillinger til straff", *N.T.f.K.* 1955, pp. 210 ff., particularly pp. 228 f., where ample evidence is given of social norms calling for illegal drinking behaviour in groups of vagrants.

> One main obstacle to the development of a fruitful theoretical orientation is to be found in the tendency to treat criminal behaviour, on the one hand, and the system of legal sanctions, on the other, as two separate problems. In our opinion, crime and punishment are most fruitfully handled as two aspects of a group process or two links in a specific type of social interaction.[1]

Similar views have since been advanced by Goldschmidt,[2] Christie[3] and others.

That the type of research with which we have been concerned has affected criminological theory is not surprising, in the light of the close institutional relationship between crimes and other aspects of law. The importance of this research *for social science in general* is harder to evaluate. It seems, however, unlikely that an intimate contact with the field of law will leave sciences like sociology and psychology totally unchanged. Law, as C. H. Pritchett has remarked, is too important a matter to be left to the lawyers.[4]

[1] Vilhelm Aubert, "White-Collar Crime and Social Structure", *The American Journal of Sociology*, Vol. LVIII 1952, p. 263.
[2] Goldschmidt, *op. cit.*, pp. 188 ff.
[3] Niels Christie, "Synspunkter på kriminologien", *N.T.f.K.* 1958, pp. 120 ff.
[4] C. Herman Pritchett, *The Roosevelt Court*, New York 1948, Preface, p. xi.