

# *Introduction*

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**I**N 2002, WE were fortunate to obtain the support of Hart Publishing to edit an advanced introduction to law and social theory that we know has helped many postgraduates and those teaching contextual courses in law schools over the last ten years. Despite the title of the first edition, the book was not really introductory. It contained authoritative review essays by experts who were knowledgeable about different theorists or had the experience of working within different theoretical traditions. These essays were organised into sections that grouped together theorists with comparable epistemological assumptions, in a similar way to how these are presented in textbooks on sociological theory. In addition, there were section introductions in which we tried as editors to explain and clarify what the reviewers covered in their introductions. The aim was to present the theoretical diversity of the field of law and society, to demonstrate how various sociolegal theories were related to—or distinguished themselves from—each other and to explore how one could conduct empirical research about law through employing the ideas rooted in different sociological traditions. More generally, however, we hoped to convey the pleasures and challenges of engaging with difficult ideas that can lead in a variety of directions.

We are pleased, ten years later, to have the opportunity to edit a second edition that makes it possible to cover some new topics and to allow the authors of different chapters to discuss some of the new theoretical literature and research studies published in different fields. It seems important to say that we see this book as supplementing, rather than replacing, the first edition. Although sociological theory does change, in the sense that each generation has to make sense of its own times, the main approaches have been around for some time. Because some readers may only see this edition, we have reprinted some of the original chapters with minor revisions. We have, though, recruited several new authors to give a different slant on particular theorists and traditions. Some contributors to the first edition have supplied new chapters. We have also commissioned chapters on a few new theorists and traditions, as well as some essays that apply different theories to particular topics such as globalisation and the legal profession.

In the introduction to the first edition, we felt it was important to convey the diverse character of the sociology of law through reviewing some debates in sociological theory. We have therefore provided a similar overview here, since this background helps in making sense of the relationship between different theories and traditions. We should add that these debates are not always mentioned or seen as important in law and society texts, because the distinctions are not seen as important, or they are seen as too difficult for law students, or because the authors are committed to a particular

viewpoint or perhaps have limited knowledge about other traditions. We will also explain the structure of this book and identify which chapters are new because they either address new topics or have different authors. Finally, we will make some general points about how to think about law sociologically, and we will also restate our views about the value of including contextual courses, particularly sociology of law, in the law school curriculum.

## 1. THE DIVERSE CHARACTER OF SOCIOLOGY OF LAW

The sociology of law, both as an academic discipline and an interdisciplinary field of research, embraces a host of disparate and seemingly irreconcilable perspectives and approaches to the study of law in society. This diverse character is celebrated by some scholars, who regard it as a source of theoretical pluralism and methodological innovation, and criticised by others, who see it as a cause of theoretical fragmentation, eclecticism and discontinuity in research.<sup>1</sup> Whether we approve of the theoretical diversity of the field of sociolegal research and view it as a source of innovation, or disapprove of it and describe it as ‘an incoherent or inconclusive jumble of case studies’, to borrow from Lawrence Freedman,<sup>2</sup> the fact remains that its diverse make-up entails a number of methodological challenges for students and researchers alike.<sup>3</sup> The present volume does not aim at resolving the problem of diversity and fragmentation in the field of sociolegal research, but instead hopes to offer insights into how various schools of thought, debate and discourse within the field have emerged. Although in the following we often refer to ‘sociology of law’ and borrow our main concepts and ideas from mainstream sociology, we nonetheless maintain that the thrust of our arguments is also applicable to sociolegal studies, law and society, or studies of law-in-society.

The sociology of law employs social theories and applies social scientific methods to the study of law, legal behaviour and legal institutions in order to describe and analyse legal phenomena in their social, cultural and historical contexts. It is therefore often considered as a subdiscipline of sociology or an interdisciplinary approach within academic law or legal studies. Whereas some sociolegal scholars, such as Mathieu Deflem, treat it as ‘always and necessarily’ belonging to the discipline of sociology,<sup>4</sup> others regard it as a field of research caught up in the disciplinary tensions and competitions between the two established disciplines of law and sociology.<sup>5</sup> Yet others regard it neither as a subdiscipline of sociology nor as a branch of legal studies, and instead present it as a field of research in its own right, within a broader social science tradition. For example, Roger Cotterrell describes the sociology of law, without reference

<sup>1</sup> Sociological studies of law have been criticised for being fragmented and theoretically undeveloped in relation to sociology. See A Hunt, *The Sociological Movement in Law* (London, Macmillan, 1978); M Travers, ‘Putting Sociology Back into Sociology of Law’ (1993) 20 *Journal of Law and Society* 438–51; R Banakar, *Merging Law and Sociology* (Berlin, Galda & Wilch, 2003).

<sup>2</sup> LM Friedman, ‘The Law and Society Movement’ (1986) 38 *Stanford Law Review* 779.

<sup>3</sup> For a discussion, see R Banakar and M Travers, ‘Law and Sociology’ in R Banakar and M Travers (eds) *Theory and Method in Socio-legal Research* (Oxford, Hart Publishing, 2005).

<sup>4</sup> M Deflem, *Sociology of Law: Visions of a Scholarly Tradition* (Cambridge, Cambridge University Press, 2008) 3; for a similar approach, see also M Travers *Understanding Law and Society* (London, Routledge, 2009).

<sup>5</sup> Banakar, above n 1.

to mainstream sociology, as ‘the systematic, theoretically grounded, empirical study of law as a set of social practices or as an aspect or field of social experience’.<sup>6</sup> Cotterrell explains that academic lawyers interested in the study of law have often turned ‘to sociology of law to escape the narrow disciplinary outlook of academic law’,<sup>7</sup> which is why they do not wish to take refuge behind disciplinary walls, albeit those of legal studies or sociology. These researchers see the intellectual advancement in social studies as something which often occurs ‘by ignoring disciplinary prerogatives, boundaries and distinctions’.<sup>8</sup> Similarly, Masaji Chiba avoided limiting his definition of the subject to the narrow conception of sociology and argued that the word ‘sociology’ referred to ‘social sciences broadly’ when it was used in combination with ‘of law’.<sup>9</sup> Explicit in Cotterrell and Chiba’s definitions is the desire to maintain sociology of law as an intellectually open and methodologically inclusive approach to the study of law. The intellectual openness flagged and practised by many sociolegal scholars has a number of implications for the development of the field. Admittedly, it safeguards the methodological diversity of the field by providing a ‘space’ for new and innovative thinking and approaches, but it also gives sociolegal research a non-cumulative, discursively scattered and theoretically eclectic appearance.<sup>10</sup> In the following, we shall adopt a broad and inclusive concept of sociology which acknowledges the relevance of other social sciences—in particular social and cultural anthropology and political science—for the development of sociology of law. We also refuse to make a sharp distinction between sociology of law’s research interests and those of legal anthropology, law and politics, sociological jurisprudence, sociolegal studies, and the law and society movement in North America. Our argument is that an engagement with the central debates of social theory, in general, but with the theoretical concerns of mainstream sociology, in particular, is essential for the development of all social scientific studies of the law, irrespective of how ‘law’ and ‘social’ are conceptualised.

## 2. SOCIOLOGY OF LAW AND THE DEBATES WITHIN MAINSTREAM SOCIOLOGY

The starting point for sociology as a scientific discipline is the recognition that human beings are affected and shaped by—and yet at the same time influence—other people. Society exists before we are born and will be there after we die, so it was only natural for Durkheim to conceive it as having an independent existence, like the physical world, which could be studied using scientific methods. Moreover, the same can be said of the various organised and institutional groups that lay the foundations for social order in everyday life. The legal system consists, for example, of a set of institutions concerned with making and interpreting legal rules. Sociologists are interested in various groups

<sup>6</sup> R Cotterrell, ‘Sociology of Law’ in *Encyclopedia of Law and Society: American and Global Perspectives* (Thousand Oaks, CA, Sage, 2007) 1413.

<sup>7</sup> R Cotterrell, *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory* (Aldershot, Ashgate, 2006) 6.

<sup>8</sup> *Ibid.*

<sup>9</sup> M Chiba, ‘Introduction’ in *Sociology of Law in Non-Western Countries* (Oñati Proceedings 15, Oñati IISL, 1993) 12.

<sup>10</sup> For a discussion, see Banakar, above n 1.

working in legal institutions (lawyers, judges, clerks, police officers, etc) and in how laws are made through the legislative process. One encounters legal institutions and rules at various points in everyday life, from calling the police to getting divorced, setting up a company, or buying a house, and will come into contact with the technical specialists who know the law and decide upon disputes. A sociological approach to law is concerned with how this institution works and the relationship between law and other areas of social life. However, once one begins to think about law in this way, matters quickly become complicated. One classical challenge is posed by the realisation that although law is an institution produced through a series of interactions and processes, which can only be described as *social* and understood in the broader context of the society in which it operates, it is at the same time also a *system* with its own operations, forms of communications and above all a claim to autonomy from the social forces which produced it in the same place.<sup>11</sup> Had there not been some truth to law's claim to system autonomy, some argue, we could not distinguish legal norms from social or moral norms. Matters become even more complicated once we realise that there are also sociolegal approaches which do not define law and legality in terms of the legal system alone and argue that forms of legality may also emerge independently of the formal mechanisms of lawmaking, such as parliament and courts. One such approach is 'living law', inspired by Eugen Ehrlich's sociology of law, which is discussed in Chapter 2.

If you read sociology textbooks, it will be apparent that there are numerous ways of understanding the social world and thus describing and analysing the law. There are all kinds of divisions and subdivisions within particular traditions. There are also three general debates or concerns that cut across the whole subject: the 'consensus-conflict', the 'action-structure' debate and the challenge posed by postmodernism to sociology.

### The Consensus and Conflict Debate

Sociologists differ considerably in their political views or normative assumptions, which they might or might not articulate in political terms, but which nevertheless influence the way they understand society generally, view and describe social events and processes, and problematise and investigate social issues.<sup>12</sup> One influential body of social thought has argued that this must depend ultimately on maintaining a shared set of values. Law can be viewed along with education as a 'neutral framework' for holding society together.<sup>13</sup> If you take this view, then lawyers are not simply another occupational group—they are custodians of a cultural tradition that we take largely for granted.<sup>14</sup> Once law is explored from a consensus-oriented standpoint, it balances rights and obligations, protects us from crime and social harm, brings a degree of certitude to our collaborative and contractual relations, and facilitates the exchange

<sup>11</sup> The best modern proponent of this view is Niklas Luhmann, presented in Chapter 3.

<sup>12</sup> For a discussion, see R Banakar, 'Can Legal Sociology Account for the Normativity of Law' in M Baier, and K Åström (ed), *Social and Legal Norms* (Aldershot, Ashgate, 2013). E-copy at: <http://ssrn.com/abstract=2140756>.

<sup>13</sup> S Vago, *Law and Society* (Boston, Prentice Hall/Pearsons, 2012).

<sup>14</sup> See Chapter 18 on the legal profession.

of goods and services in a capitalist economy. Law also evolves over time in response to new social and economic circumstances,<sup>15</sup> although by definition it tends to lag behind social developments. Law's unwillingness to stay abreast of social developments demonstrates its inherent social conservatism; expressed differently, a law which adapts itself immediately to every large or small change in society would be, arguably, unable to preserve sociocultural values and norms and ensure continuity in social behaviour and relationships. Changes in family law, such as the recognition of partnership and same-sex marriage, and new legal concepts and ideas concerning civil rights and equal opportunity, to give a few examples, are often forced upon the law from without the legal system by social movements which engage in public political discourse.<sup>16</sup> However, the fact that the law allows new ideas and values to enter its internal domain of operations does not necessarily change the organisation of the law or modify the courts' practices, which creates a gap between legislation, or the intention of the legislature, and the practices of the courts. Hence, we find the classical distinction made by Roscoe Pound over a hundred years ago between 'law in the books' and 'law in action'.<sup>17</sup>

The most popular modern-day social theories take issue with the consensus-oriented view of society, arguing that it is not based on shared values but on the values and aspirations of culturally or economically dominant groups, which by imposing their own standards and worldviews on subordinate groups establish and legitimate their own power. Once law is viewed from this standpoint, it becomes ideological and an integral part of society's power structure. Marxist tradition, for example, saw the rule of law as a fraud imposed by force on the working classes. One can, however, use similar arguments in relation to any subordinate group, such as women (in traditional or early modernity), homosexuals or ethnic and religious minorities. The underlying assumption of conflict-oriented social theory is that these conflicts cannot be resolved without a major shift of economic and political power. Since the law is implicated in perpetuating hegemonic ideologies and subsequently social inequalities, it is part of the mechanisms generating social injustice. The solution to the problems of social injustice must therefore be sought outside the legal system.

Although one might assume that 'consensus' and 'conflict' theorists are forever talking past each other, or are engaged in bitter political arguments, the main trend in social theory in the past fifty years has been in fact towards a compromise or synthesis between the two traditions. Here one might note that in the 1960s and 1970s there seemed to exist greater opportunities to transform society through youthful protests, social movements and industrial militancy. Moreover, the Soviet Union was still a superpower committed to supporting socialist revolution across the world. Today, on the other hand, neither anticapitalist protests nor Islamic fundamentalism appear to pose much of a threat to the neoliberal ideology of Western countries. Furthermore, neither the Arab Spring of 2010 nor in fact the Islamic Revolution which took place

<sup>15</sup> See T Parsons, 'A Sociologist Looks at the Legal Profession' in *Talcott Parsons: Essays in Sociological Theory* (Toronto, Collier-Macmillan, 1964) 370–85.

<sup>16</sup> See M Antokolskaia, 'Comparative Family Law: Moving with the Times' in E Özücü and D Nelken (eds), *Comparative Law: A Handbook* (Oxford, Hart Publishing, 2007) 241–62, 241; and R Banakar, 'When Do Rights Matter?' in S Halliday and P Schmitt, *Human Rights Brought Home* (Oxford, Hart Publishing, 2004).

<sup>17</sup> R Pound, 'Law in Books and Law in Action' (1910) 44 *American Law Review* 12–36.

in Iran much earlier in 1979, and which for the first time established Islam as a state ideology and a basis for political action, were anticapitalist movements. They were, instead, social movements for democracy and a reaction against authoritarian rules, dictatorships, systematic human rights violations, political corruption and forms of neocolonialism.<sup>18</sup> Protest movements of various types have not died away and continue to make their voices heard, while the financial global crisis of 2007/08 has again demonstrated systemic flaws and fundamental internal contradictions, continuously threatening the integrity of the capitalist system from within. This does not mean that we are at the 'end of history', since we can still organise politically around all kinds of issues. However, it does mean that many contemporary theorists accept the values of liberal capitalism, whereas they were more critical towards established institutions, including the legal system, during the 1960s.

### The Action–Structure Debate

Another reason why 'consensus' and 'conflict' traditions have tended to converge is because, despite their political differences, they are two sides of the same coin and, thus, adopt much the same approach to thinking about the social world. The key concepts one finds in liberal thinkers like Parsons and Luhmann, left-leaning liberals like Giddens, Bourdieu and Habermas, but also in hard-line Marxists like Althusser is that society can be understood as a system in which different elements can be related together. The terminology and the focus of analysis differ, so in Parsons and Luhmann one finds a focus on 'systems', whereas Bourdieu emphasises 'fields', Habermas 'communicative action' and Althusser 'practices'. The common objective, however, is to produce a grand, synoptic model of society that explains how different institutions fit together and how the whole changes over time.

The most systematic theory also addresses the relationship between the individual and society. Parsons offers the fullest and most explicit discussion, arguing that human beings acquire goals and values (eg a respect for the law) in the course of socialisation. The problem here is how to account or allow for 'free will' while at the same time retaining the notion of a social system. Anthony Giddens is one of the latest theorists to attempt to incorporate 'action' and 'structure' in the same theory, through his concept of the 'duality of structure'.<sup>19</sup> The basic idea is that social structures such as institutions are produced by people through their actions, but that these actions are constrained by the structural resources available to the actor (which can include cultural as well as material means).<sup>20</sup>

There are, however, difficult issues which are not resolved fully by attempts to solve

<sup>18</sup> The fact that they do not appear to have realised their democratic goals, however, is another matter, which cannot be explored here due to lack of space.

<sup>19</sup> The structure–action, or structure–agency, debate should not be confused with discussions on the possibility of micro–macro integration, which according to Randall Collins concerns if 'one type of explanation takes priority over the other, or whether the two types can be integrated into a combined theory. The question of agency and structure is not an explanatory question but an ideological one. It is an argument to show that human beings control their own destinies; it is a defence of free will.' R Collins, 'The Romanticism of Agency/Structure versus the Analysis of Micro/Macro' (1992) 40 *Current Sociology* 77.

<sup>20</sup> A Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (Cambridge, Polity Press, 1986, reprint).

the action–structure problem. Twentieth-century critics, such as the ethnomethodologist Harold Garfinkel, have argued that systems theory seems to require human beings who are ‘cultural dopes’. Besides the question of ‘free will’, this kind of theorising also offers an impoverished view of human action. It cannot address, for example, how people account for their actions by giving reasons, or how they make judgements about other people. From this perspective, the initial focus on structure prevents theorists from seeing what lawyers, judges or police officers are doing in their day-to-day activities, but there is also a deeper issue here which goes back to nineteenth century debates about the nature of sociology. Admirers, like Durkheim, of natural sciences argued that sociology should produce causal laws through observing patterned human conduct: there was no reason to investigate how people understood their own actions. By contrast, the hermeneutic tradition in Germany argued that this was an inappropriate way of studying human beings. Unlike the objects studied by natural scientists, human beings can think, experience emotions and have free will, which is why sociology has to be concerned with interpretation and meaning.

This nineteenth-century debate has never been resolved, despite many attempts by theorists such as Giddens and Habermas to combine or reconcile the two traditions. One can see that any systems theory must be based ultimately on a Durkheimian conception of sociology as a science, since it looks at human beings from the outside, but this can be contrasted with interpretive sociology, such as symbolic interactionism and ethnomethodology, which address how people understand and justify their own actions. There is no need in these traditions to make ironic contrasts between our superior knowledge, and the limited or imperfect understanding of the people we study as sociologists. Instead, the objective is to explicate and describe common-sense knowledge.

### The Poststructuralist and Postmodern Challenge

Poststructuralism and postmodernism may in retrospect turn out to have represented only a short-lived, *fin-de-siècle* movement, one that can perhaps be explained best as the response of utopian left-wing intellectuals to the fall of communism. Nonetheless, it is important to recognise the immense difficulties that they have created for sociology. Just as systems theorists felt they had made some progress in producing a model of society that combined insights and ideas from the old consensus and conflict traditions and which solved the action–structure problem, the discipline came under attack from a different direction. A group of mainly French philosophers set out to trash the Enlightenment assumptions underpinning sociological inquiry, including the ideas that the application of reason and science can produce truth and progress (an idea which is widely shared in many academic disciplines) and that it is possible to produce objective or unproblematic descriptions through using social scientific methods.

Although poststructuralism does have implications for conducting empirical research, it is best understood as a philosophical critique that makes us question the authority and coherence of classic texts. Like other radical movements in the discipline, it has been absorbed and tamed largely by mainstream theorists, and subversive thinkers such as Foucault are most usually understood in law and society circles as

saying something similar to Marx.<sup>21</sup> Both poststructuralism and postmodernism have exerted influence on the development of critical legal studies (CLS), feminism, theories of sexuality and legal pluralism, and more recently on parts of legal philosophy.

According to postmodernists, while modernity prolongs the aspirations of the Enlightenment and thus reproduces the values of universalism and reason, postmodernity denotes the dawn of a generically new age characterised by uncertainty, fragmentation and discontinuity. This marks a radical break from the totalising constraints of the metanarrative of reason (totalising knowledge, truths and beliefs) which constitute classical modernism. These metanarratives make foundational claims, in that they provide a unifying system of thoughts into which all other ideas can be ordered and their truthfulness and historical direction assessed. Consequently, metanarratives provide a means of social control, manipulation, oppression and marginalisation, and therefore they should be *deconstructed*.<sup>22</sup>

In recent years, as noted above, postmodernism has spread among certain socio-legal and even legal researchers, who often engage in social critiques of the law at a normative level. These scholars either have little interest in empirical research or actively seek to undermine the truth claims of empirical methods which are linked to the metanarratives of sociology. For these scholars postmodernism provides a new understanding of the operations of the legal system in terms of law's discursive practices and draws attention to the serious shortcomings of simplistic structuralist models which continue to dominate legal studies.<sup>23</sup> At the same time postmodernism has also been criticised; its critics question its transformative potential and its ability to offer an alternative practical vision of economy and polity.<sup>24</sup>

### 3. THE STRUCTURE OF THE BOOK

As in the first edition, there are numerous traditions that we have been unable to cover, and the reader will again notice some obvious omissions. There are still no chapters on Donald Black, on Talcott Parsons and structural functionalism.<sup>25</sup> There are also no chapters on legal consciousness or empirical legal studies, which have become influential movements in American law schools.<sup>26</sup> This may, of course, reflect our own theoretical bias and the company we keep, but the choice of theorists and topics is also constrained by the structure of the book. As in the first edition, we consider groups of

<sup>21</sup> For a recent study, see B Golder and P Fitzpatrick, *Foucault's Law* (London, Routledge, 2009).

<sup>22</sup> J Derrida, 'Force of Law: The "Mystical Foundation of Authority"' in D Cornell et al (eds), *Deconstruction and the Possibility of Justice* (London, Routledge, 1992) 2.

<sup>23</sup> Imaginative, albeit eclectic, postmodern theorising may be found in the works of Gunther Teubner and Andreas Philippopoulos-Mihalopoulos, both of whom conflate Luhmann's autopoiesis (which was developed theoretically and without empirical input) and postmodern theories. See G Teubner, 'Self-subversive Justice: Contingency or Transcendence Formula of Law?' (2009) 72 *Modern Law Review* 1–23, 9; A Philippopoulos-Mihalopoulos, 'Between Law and Justice: A Connection of No-Connection in Luhmann and Derrida' in KE Himma (ed), *Law, Morality, and Legal Positivism* (ARSP Beihefte, Stuttgart, Franz Steiner Verlag, 2004).

<sup>24</sup> JF Handler, 'Postmodernism, Protest, and the New Social Movements' (1992) 26 *Law and Society Review* 697–731, 727.

<sup>25</sup> For an example, see WM Evan, *Social Structure and Law: Theoretical and Empirical Perspectives* (New York, Sage, 1990).

<sup>26</sup> P Ewick and S Silbey, *The Common Place of Law: Stories From Everyday Life* (Chicago, University of Chicago Press, 1998).

theorists that have something in common and which align with contrasting traditions, rather than trying to do everything, or suggesting that it is desirable or possible to create a grand synthetic theory (although some sociologists, including Parsons, have tried to do this).

In this edition, we start with a section on the classical sociology of law which contains the challenging discussion of law in classical social theory by Alan Hunt, published in the first edition, but also a new review by Javier Treviño on the sociological jurists Pound, Ehrlich and Petrażycki. Then we have a section on systems theory. The last edition contained an interesting introduction to Niklas Luhmann by Klaus Ziegert, and in this edition we have an equally authoritative new review by Michael King, which represents a somewhat different presentation of Luhmann's systems theory. There is also a chapter on Jürgen Habermas by Mathieu Deflem (in the first edition this was authored by Bo Carlsson).

The next sections on critical approaches and postmodernism, which were also in the first edition, now include some new chapters and authors. In the section on critical theory, we have reprinted Robert Fine's review of Marxism. This is an example of an insightful and demanding review that would not be improved by, for example, discussing the global financial crisis or new theoretical work. We have included an abridged version of a previously published paper by Mikael Madsen and Yves Dezalay on Pierre Bourdieu, which in some ways develops the ideas presented in the first edition. Then, there is a new chapter on feminist legal theory by Harriet Samuel (Ruth Fletcher authored the chapter in the first edition), which provides an authoritative and up-to-date overview of the research and theoretical developments within law and feminism, as well as a new chapter on critical race theory by Angela Harris.

These theorists all have a structural bias, in that they start with a view of society as a whole and explain the actions of individuals within this framework. They can be contrasted with Bruno Latour's actor network theory and the interpretive tradition, which in different ways focus on individual actions and how they produce society. Max Travers supplies a review of symbolic interactionism and ethnomethodological research since the first edition. There is a new chapter on Latour written by Frédéric Audren and Cédric Moreau de Bellaing. To complicate matters further, the last chapter in this section by Stewart Macaulay and Elizabeth Mertz on the new legal realism, also new for this edition, attempts a synthesis or reconciliation of the different positions. For postmodernism, we have reprinted the chapter on Foucault by Gary Wickham and a revised version of Shaun McVeigh's chapter on postmodernism and common law which appeared in the first edition. We have, though, included a new chapter on post-colonial theories of law by Eve Darian-Smith.

The book concludes with a section in which we use law in the late modern world as a theme to bring together different traditions. We have printed a new chapter by Anne Griffiths on legal pluralism, which should be read alongside her introduction in the first edition of this text, and there is a new essay on globalisation by Ralf Michaels and a new chapter by Reza Banakar reviewing law in late modern society. Ole Hammerslev has supplied a new chapter considering different theoretical approaches to the legal profession. Finally, we have reprinted with minor revisions David Nelken's chapter from the first edition on comparative studies of law.

## 4. UNDERSTANDING LAW FROM A SOCIOLOGICAL PERSPECTIVE

In presenting these reviews, we should acknowledge that not all are written by sociologists—there are chapters by anthropologists (Darian-Smith, Nelken), by a legal theorist (Michaels) and by scholars interested in cultural studies and philosophy (Harris, McVeigh), which demonstrates that the boundaries between disciplines can be blurred in law and society studies, and some would argue that it should develop as an interdisciplinary field. However, our own interest in this collection lies in demonstrating and explaining the distinctive character of different sociological traditions and how they can be used to investigate law. Law is, of course, a complex social institution that is of central importance in modern societies. These chapters are worth reading because they show how a range of theorists and traditions approach law and understand the relationship between law and society. Further to the inclusion of contributors from different fields, it is also important to note that they do not simplify difficult ideas—there is nothing simple about the way in which Luhmann or Habermas understand law, or the ethnomethodologists, or Marxist and feminist theory, or post-modernism, so those who are new to the field have to spend some time getting to know these traditions to appreciate what they have achieved and to understand the differences between them.

Although there are significant differences, the different sociological approaches also have something important in common: they make it possible to investigate and understand law as a social institution, even as a form of reasoning. There are, of course, other ways of doing this in legal education, including offering courses in policy-oriented sociolegal studies, critical legal studies or disciplines in the humanities such as philosophy or cultural studies, and some of these courses can be quite political, in the sense of promoting different varieties of critical theory. By contrast, sociology asks students to reflect on the place of law in society through considering different theoretical traditions and perspectives. This in itself leads to students thinking about law critically (in our view a desirable educational outcome). Moreover, even if it has no direct practical value, sociological research makes one think about institutions and social processes in a way that is not possible through studying doctrinal (or black letter) subjects. Along with other contextualists influenced by Karl Llewellyn and Roscoe Pound, we would argue that studying sociology of law will make you a better lawyer.

In the first edition of this book we advanced this view in the introduction, and in the conclusion we even suggested that the law school curriculum should include courses on research methods and encourage students to conduct empirical research. Naturally, we were aware that nothing much would change, since there remain compelling institutional reasons why law schools should offer mainly doctrinal courses rather than looking critically at the nature of law and the place of lawyers in society.<sup>27</sup> What we could not have predicted is that law schools are facing profound challenges that might lead to even fewer contextual courses being offered. The legal profession

<sup>27</sup> We should hasten to add that a few textbooks have been published recently catering for multidisciplinary research in law. But these remain few in number. See eg M McConville and WH Chui, *Research Methods for Law* (Edinburgh, Edinburgh University Press, 2010); R Cryer et al, *Research Methodologies in EU and International Law* (Oxford, Hart Publishing, 2011).

and courts also seem to be facing difficulties, partly because the state cannot properly fund legal services. Even corporate lawyers are affected by the uncertain economic outlook. Looked at more positively, social change often generates sociological reflection and eventually some kind of political response. In these circumstances, we would recommend sociology of law as a means of understanding changes in law as a social institution, even though none of the theorists or traditions reviewed in this book supplies definitive answers.