

LEGAL SOCIOLOGY IN THE SYSTEM OF LEGAL SCIENCES

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Legal sciences (studies of law) are a comprehensive knowledge system of the state and law, expressing themselves through a synthesis of notions, categories and rules of the movements and developments of the state and law. In the great system of legal sciences in Vietnam, legal sociology, in spite of its new formation, plays a remarkable role. The question of carrying out extensive researches on legal sociology has only been raised up in our country recently. However, it is better late than never! The fact is that only when legal sociology is seen as a separate branch of science can legal sciences themselves carry out researches on several matters of legal sociology. In Vietnam, a lawyer might also be at the same time a sociologist. That is, any notions and phenomena studied in law are inseparable from the social basis and social factors which require, supervise, and criticise legal rules and their corresponding activities of the state.

However, although legal sciences employ the same methods as sociology does, including statistics, and surveying, etc., they cannot identically replace legal sociology. Legal sociology has its own subjects of study, its own status, roles and

properties in a close relationship with other legal sciences and sociologies. Legal sociology together with legal sciences build up general theories on the state and law, the history of states and laws in the world, and the history of the state and law in Vietnam; the history of political-legal doctrines, legal sociology, legal philosophy, comparative law, etc, which form a group of basic legal sciences. Sociology has a huge range of fields to study, which can cover the whole social picture starting from the legal points of view, and appear in any legal sciences and law relations.

Legal sociology takes what might originate and develop that influence and affect the law as its subjects of study. That is, it deals with the social foundations of the law, and its characteristics are determined by social factors. The study subjects of legal sociology need to be clearly defined in order to avoid any confusion with sociological methods employed in the study of law theories – the study of law in practice. In terms of its structure, legal sociology consists of two parts: a general part and a particular part. The former studies social foundations of the law, thoughts of the law, public opinions on the laws, social systems and social structures in the activities of the law mechanism, the system of social functions

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of the law, relations between public opinions and the law, prestige of the law; social objectives of law norms, and issues of legal predictions. The latter studies social categories regarding law building, execution and application of the law, law behaviours, and violence to the law, etc. Specific branches of legal sociology lay deeper emphasis on such particular fields as the law on administration, civilian law, and law on marriage and family, etc. Legal sociology belongs to a sub-system of basic legal sciences, which is related to all other branches of legal sciences. To this extent, it should be called **fundamental legal sociology** because its contents relate to all legal sciences corresponding to practical legal areas, including criminal law, civilian law, law on administration, law on commerce, law on marriage and family, etc.

Three important branches of legal sociology are law building sociology, sociology of law application, and sociology of legal behaviours. Legal sociology is an independent study among legal sciences, involving both sociology and law. For example, in the study of law adjusting mechanism, it is also necessary to study the mechanism of society adjustment. Law makers always expect execution of relevant individuals. However, the behaviours of individual are also influenced by many social norms, or even by non-norms such as arts, thoughts, reputations... One is probably likely to violate law just because of a backward custom of his; or he is probably likely to be

pushed to violate law because of a certain moral aspect. These practical issues cannot be ignored by law makers. On studying legal consciousness, such regularly affecting factors as characters, psychology, physiology, and physical and social surrounding environment should also be considered. On studying legal psychology, knowledge and approaches to legal sociology and legal sciences should be combined to build a more and accurate picture.

As a result, each legal issue is all the time controlled and influenced by social issues. On studying legal issues, in terms of both general and specific branches, we cannot ignore legal sociology and legal philosophy. In general, the function of legal sciences is to study the legal categories of phenomena of economy, politic, technology, etc., but not just restrict itself to explaining the articles in the law or legal institutions.

Legal philosophy, legal sociology and legal theories are accesses to the law. While legal sociology focuses on practical and present behaviours, legal philosophy supplies the capability of law conception. Philosophy is the science of conception; sociology is the science of behaviours and realities. Legal sociology has many relations with other branches of sciences such as criminology and criminal law, because these are such fields that need sufficient knowledge about human behaviours, individual responsibilities and reactions of the state. Laws belong not only to legal theories but also to

philosophy, sociology, psychology and other sciences. Philosophy studies the nature of the law; the study of legal theories studies the internal contents and mutual relationship of the legal norms; legal sociology studies the legal practices. The studies of law in Vietnam have recently paid attention to non-economic categories in the state and law, including the relations between the law and morality, communal conventions, customs, customary law, characteristics and psychology of individual and community and the effect of those on the law.

A law is not only the framework for behaviours, but also the reflection of social-economic processes and mental tendencies. Law has to utilize not only the power of rights but also the power of thoughts and spirits; otherwise it might become powerless. Law can only be real and powerful when it is accepted and self-consciously executed by people. Law should include customs to be implemented comprehensively. The relations and influences between legal culture and other social-cultural forms come from the general relationship of the legal and social norms, other social relations and legal consciousness in the relationship with other forms of social consciousness. The society is not only an operation of economic systems but also a complexity of abundant relationship, mutual relations of economic factors and non-economic factors and culture. Non-economic factors affect the law in a diversified unity. Traditional solutions are always the basic contents of

non-economic solutions in developing strategies.

Legal sciences need to expand their research areas to the effects of law on the society, which also means researches on the structures and functions of the law. Laws should reflect exactly social realities, match people's intellectual standards, and help improve people's legal consciousness. Sociology studies the relationship between the law and society, and between the functions of the law and the processes of realizing legal norms in people's behaviours. In a broad sense, the influences of the law consist of social controls on the law, and the influences of the law on relations in the society. Legal sociology has characteristics of a multi-discipline, lying on the border of legal sciences and sociology. Legal sociology bases itself on the notions, categories and legal regulations which are established by legal sciences, putting them into practice to estimate and study them. On studying legal sociology in terms of legal relations, it is necessary to follow the conceptions of legal theories on legal relations such as subjects, legal rights and duties. For example, in villages, daily civilian relations on service contracts, transport contracts, etc., are hardly based on legal foundations at all. They have both the characteristics of market economy and deep characteristics of the communal life.

Legal theories are the combination of such theories which are resulted from the methods employed in philosophy, studies of law and sociology. At the present time,

no branches of science can be autonomous and built up without multi-disciplinary methods. On studying legal practices, it is necessary to apply the concepts of legal theories and legal sociology. For example, on studying the power and effectiveness of legal regulations on female labours, we cannot restrict the study to the figures relevant to legal areas or legal execution only.

Legal sociology should employ legal concepts, but not their own concepts which are different from those forming legal sciences. On studying issues of legal theories, issues of legal sociology should also be employed. For example, the study of legal functions cannot be restricted to approaching the functions withdrawn from the nature of the law; legal sociological approaches cannot be ignored. It is essential to combine legal sociology with other legal sciences, but not simply to employ the methods of legal sociology in legal theories. Legal sociology, as an independent branch of study, helps research realities more accurately, more lively, and more convincingly. Only on these foundations can legal sciences and other sciences build scientific bases for policy formation, and for the building and execution of law. Therefore, the study of legal theories, though employing legal sociological methods, cannot replace legal sociology.

In legal sciences at the present time, off-branching and multi-disciplinary are strong tendencies. Let us take the study of human body as an example. Just dividing

a body into smaller parts, though necessary, is not enough. It is essential to connect these parts to study at levels of multi-disciplinary and inter-disciplinary for a whole picture of a body. A developing system of legal sciences must contain off-disciplinary, multi-disciplinary and inter-disciplinary both inside and outside of other branches of science. Legal sociology can soon gain its strength if extending its cooperation with other inter-branches and multi-branches.

The functions of legal sciences are not restricted to helping proving scientific basis for law and politic formation, but more importantly, are to provide scientific basis for the implementation, popularization and graduation of law, which means not only making law but also executing it. We are just considering making law, while putting it into effect still needs much more attention. As a matter of fact, in order to put the law in force, we have to survey the needs and attitudes by people towards the law, and their material and spiritual lives. According to some surveys, people tend to be aware of the general regulations of the law, but not its details. However, the violence of law is just caused by this reason. In many cases, people may violate the law due to the influence of their existing customs, though they may be fully aware of that particular legal regulation. To this extent, law is also an effective supervising tool. Law, in this approach, has two important functions: to organize and supervise, based on persuading and forcing. In other approaches, law may have other functions.

To achieve this, in terms of legal sociology, it is essential to study the influencing mechanism on the society of law, the regular effecting factors to the law such as customs, moralities, religions, sciences, technologies... That is, it is required to approach the social environment

of the law. Therefore, different from the study of legal mechanism of legal activities, social mechanism of the law aims to clarify external social factors that, however, have strong effects on legal mechanism.

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XÃ HỘI HỌC PHÁP LUẬT TRONG HỆ THỐNG PHÁP LÝ

PGS.TS. Hoàng Thị Kim Quế

Khoa Luật, Đại học Quốc gia Hà Nội

Xã hội học pháp luật là một khoa học có đặc điểm liên ngành giữa lí luận pháp lí và xã hội học. Đối tượng nghiên cứu của xã hội học pháp lí là cơ sở pháp luật trong hoạt động và thực thi pháp luật; hình thành nên ý thức và văn hóa pháp lí. Trong thời gian tới, chúng ta nên quan tâm nhiều hơn đến việc nghiên cứu xã hội học pháp lí để góp phần vào việc xây dựng các chính sách và pháp luật hiện hành ở Việt Nam.