ADAM PODGÓRECKI'S SOCIOLOGY OF LAW: THE INVISIBLE FACTORS OF THE FUNCTIONING OF LAW MADE VISIBLE

KLAUS A. ZIEGERT

The name of Adam Podgórecki is well known in the fairly small community of sociologists of law. He was a founder, in 1962, of the Research Committee on Sociology of Law of the International Sociological Association, and is still one of its most active members, thus playing a role in promoting the development of a field of sociological research that has been rather neglected on the international scene. And his own work in this area is also a milestone in contemporary Polish sociology of law. But most of his numerous publications (see references) have failed to reach a wider international public because they are written in Polish. His comprehensive writings are known outside Poland only in the most fragmentary fashion, primarily through the publications of the international comparative project on knowledge and opinion about law (the so-called KOL studies) (1973a), the research project on the attitudes of the Workers' Courts in Poland (1969b), and some abstracts of his longer work.[1]

Therefore it was high time that Podgórecki himself collected the research results and theoretical conclusions scattered throughout many books and articles, and presented a comprehensive outline of his thinking to Polish (1971a) and international (1974b; 1974c) scholars in the fields of the sociology and practice of law. It is worth pointing out that the English edition (1974c) of this attempt to synthesize his major ideas on research methodology and theory into a wider outlook on law and society is not just a translation of the Polish "outline of a sociology of law" published three years earlier (1971a), but a revised edition, abbreviated in some respects and enlarged in others.

Podgórecki's effort to adapt his work for an English-reading audience is symptomatic of his unique position. For if we ask what impact his ideas and concepts have had and can have on the development of research tools in the sociology of law (referring

I am grateful to Richard Abel for inviting me to undertake this review essay, and helping me to adapt it for an English-reading public.

1. These were mainly published in English in the *Polish Sociological Bulletin*, but some appeared in western journals, e.g., 1962a, 1964a, 1965a, 1966a, 1967a, 1968a, 1969a, 1970a, 1970b, 1972a, 1974a.

implicitly to the sociology of law in the western hemisphere, and mainly in the United States and Western Europe) we must bear in mind that Adam Podgórecki is a wanderer between two worlds, western capitalist and eastern socialist. This position must affect the nature of his scientific production. A person who bridges two worlds seldom satisfies the expectations of those whose loyalties belong exclusively to one or the other; yet he can serve to cross-fertilize the established ways of thinking in both worlds in a highly stimulating manner.

Podgórecki may not seem to have much to offer a reader who believes himself to be fully acquainted with the methodological and theoretical wisdom of recent sociological writing. The review of his book by Colin Sumner (1975) is a good example of this unduly parochial response to ideas that did not originate in the critic's own scientific culture. Sumner misunderstands Podgórecki's fundamental conception of how law functions in a given society in order to be able to stuff him into the functionalist box (which Sumner characterizes as Parsonian, though Podgórecki explicitly turns against Parsons and develops his theory from empirical findings) and to ridicule his research methods (which are indeed questionable). "Throughout this book Podgórecki displays a never-justified reverence for the capitalist sociology of the Cold War, eventually advocating the value of concepts of cognitive dissonance, status inconsistency and reference group for the sociology of law" (1975:247). Thus Podgórecki's goal—to use law as a means of social engineering once we have gained sufficient scientific knowledge about how it works—becomes in Sumner's eyes complicity in the efforts of the ruling classes to control the masses. Clearly Sumner is disappointed by the absence of Marxist components in Podgórecki's sociology of law, and cannot conceal his contempt for a Polish sociologist who analyzes a socialist society by combining the concepts of Petrażycki with those of empirical sociology (necessarily of western provenience). Finding no obvious Marxist legal theory in Podgórecki's work, Sumner concludes that a repressive socialist state is using Podgórecki as a sociologist of law to solve the basic problem of all repressive states: "How can law be used as an effective means of social control?" (1975:248). But what if Podgórecki, like Petrażycki many years earlier, "only" felt that Poland lacked an understanding of the social functions of law, so essential to a rational legal policy in a society in transition from capitalism to socialism—which was the situation in Poland after the Second World War? And what if Marxist theory—or its expression in legal theory, the theory of state and law—did not provide research instruments that

permit inquiry into the structure of law in a given society and the functioning of law in special social situations and with special legal programs? And finally, what if no large-scale empirical research had been conducted in Poland in the sociology of law, and little significant research had been done elsewhere?

Obviously the relation between scientific production and the society to which the scientist belongs is not as clean-cut as Colin Sumner likes to think. It is certainly true that the overall approach of the book impresses one as "old-fashioned," that the methods used—and consequently the results—are questionable, and that the theoretical conclusions Podgórecki reaches, as well as the assumptions with which he begins, must be discussed. But this is how science works. In what follows I will argue that even if one fails to agree with Podgórecki about either methodology or theory it is still worth listening to what he says about law and society, and about the importance of revealing the invisible structure of law which envelopes our everyday behavior but about which we know so little. Podgórecki's book is an interesting invitation to think about the functioning of law in society; there is no more important criterion for any scientific work.

I. ADAM PODGÓRECKI AND THE POLISH TRADITION IN SOCIOLOGY OF LAW

The development of the sociology of law in Poland corresponds to the painful history of Polish society. The end of the Second World War and the liberation from the Nazi regime was marked by the abrupt overthrow of bourgeois society and bourgeois values, which had developed in Poland until 1939, and their replacement by a socialist state on the Soviet pattern. This was accompanied by a transformation in the relationship between law and society, and in the jurisprudence that was used to describe it. In Poland, as in other socialist states, this new jurisprudence was the Marxist theory of state and law, i.e., the description and explanation of the functioning of law in society in terms of dialectical materialism. This approach is primarily philosophical; in Poland, at first, it was exclusively so. Following Hegel, it posits a necessary relationship between law in a society at a given point in time and the development of the state—a state which, in its very essence, is a class state, as Marx, Engels, and Lenin have shown. In such a state the ruling classes must use law as an instrument to retain their power: thus the feudal nobility used law against the progressive bourgeois class; the bourgeoisie, once victorious, against the working class; and the working class, after its successful revolution, against the forces of reaction (since it has no pro-

gressive successor). Finally, after the successful completion of all class struggles, the classless society would emerge following the transition from socialism to communism. Since it would need neither a coercive state nor its instrument—the law—the state would wither away and nothing would be left of law but "rules of communist social life" (cf. Kerimov, 1972:29). This macro-sociological approach of the theory of state and law certainly offered normative guidelines for political action, but the extent to which it advanced scientific explanation, and thus permitted prognoses about the way law might be used to build a socialist society, was severely tested in the first decades of the construction of People's Poland.

There had been considerable productivity in the social sciences during the years of the Republic, highlighted by the scholarship of Florian Znaniecki, Bronisław Malinowski, and Leon Petrażycki. The work of Petrażycki,[2] in particular, contained a methodology of legal science and legal policy that presented serious competition to the theory of state and law. So it is not surprising to find that a distinctively Polish tradition influenced the new concepts of the social reality of law. This influence was especially pronounced at the University of Cracow, where disciples of Petrażycki taught, such as Lande and Piętka, and where a group of Polish theorists and sociologists of law who are now well known developed their conceptual apparatus, among them Maria Borucka-Arctowa, Jan Górecki, Kazimierz Opałek, Adam Podgórecki, Francisek Studnicki, and Jerzy Wróblewski.

Adam Podgórecki is the closest link between the tradition established by Petrażycki and modern Polish sociology of law. He is not satisfied merely to incorporate the ideas of Petrażycki into his research, which all the scholars from the Cracow group do to a greater or lesser extent, and with the most divergent results. Rather, he tries to follow the scientific program, the "message," of Petrażycki's work within the framework of contemporary social science methodology and theory, seeking to continue Petrażycki's inquiry into the social nature of law and the tasks which a "real" legal science must set itself (1957a; 1962b; 1962c). Starting with this perspective, Podgórecki emerged on the international scene in

2. Since Petrażycki (1867-1931) occupies a central position in Podgórecki's work, it is worth mentioning that he led a very tragic life, which prevented him from becoming known to a wider public. When his productivity was at its height, he was living under the difficult conditions of the Russian revolutions, as a professor in St. Petersburg, and finally had to leave because of his political views. Only recently has his work gained the wider recognition it deserves, largely through the writings of his compatriots, Podgórecki and Jan Górecki (1975). See note 13, *infra*, for a further discussion of the influence of Petrażycki in the West.

1962 as one of the founders of the Research Committee on Sociology of Law of the International Sociological Association.

Since then he and the growing team of able researchers that he assembled have been engaged in a great many large-scale research projects on social-legal phenomena, facilitated by the wide variety of reforms that could be observed in the course of the attempt to construct a new society in Poland. These included studies of Workers' Courts, lay judges, elected representatives to the People's Council, the moral and legal values of the population, the prestige of law, and parental authority—to name but a few. Podgórecki's recent book (1971a, 1974c) summarizes the results of this research and the theoretical concepts that guided it, and deserves a thorough presentation.

II. THE SOCIOTECHNICAL APPROACH TO SOCIOLOGY OF LAW

Central to Podgórecki's position is his view that, although social conditions in Poland have changed fundamentally, legal science, even under the auspices of the theory of state and law, has not made any progress towards giving an adequate account of how law really functions in society. This conclusion is based on the judgment that the theory of state and law, though it claims to consider the social nature of law, still continues to base its statements on purely speculative assumptions. A legal policy grounded on such assumptions can make significant mistakes with far-reaching social consequences. For this reason research into the social reality of law and its effects cannot be entrusted to a legal science that perpetuates the myth "that existing law is efficient merely because it exists" (1974c:24). The aim of a realistic legal theory, and of the policies it recommends, should be

> to reveal as fully as possible the conditions for the efficiency of the working of law; it must be disclosed how the existing law interacts with various social and economic factors, enhancing or impeding, or even sometimes losing, its own effectiveness in the process. But it must also be made clear that law often happens not to be the proper instrument of social policy, and that some types of social change simply cannot be accomplished by means of legislative action. [1974c:24-25]

It is obvious that we cannot expect legal science to question altogether the effectiveness of law, and to examine other social structures that could, or already do, replace law in some areas of social life. Only a scientific perspective on law "from outside" could construct such a theory: this is the task of sociology of law. According to Podgórecki, it should furnish the

> theoretical knowledge enabling prediction of the effects of projected legal enactments. Such knowledge would encompass, above all, awareness of the actual motivations governing the behavior of

> the general population, as well as motivations typical of various narrower groups. For if legal precepts are meant to be incentives to certain kinds of behavior, they will be effective only if they animate motives conducive to that behavior. [1974c:27]
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> Lawful behavior can only result from our knowledge of human motives and of the means of influencing human conduct. Sociologists of law believe that the book learning of law fails to provide such knowledge and that there is an urgent theoretical and practical need to concentrate efforts towards a deeper understanding of these problems. [1974c:29]

Thus Podgórecki's goal is not only to cooperate with lawyers in order to achieve a more realistic evaluation of law's capacity to structure social behavior, but also to *replace* the legal theory of the legal sciences with a legal theory constructed by the social sciences. Podgórecki's expectations for the sociology of law are thus seen to be quite high. Which sociology, and especially which sociology of law, meets these high demands?

III. DEFINITIONS OF SOCIOLOGY OF LAW

Podgórecki's initial response to this question is rather pessimistic, as he reviews the history of the sociology of law from Aristotle to the Scandinavian school of legal realists, as well as contemporary international research.[3] Despite the wealth of theoretical and empirical work, Podgórecki finds no convincing overall solution to the problems that he places at the center of his sociology of law because previous theoretical approaches have been too general (and thereby too unrealistic to provide grounds for legal policy) and empirical research too sporadic and unsystematic.[4] Podgórecki leaves no doubt that he nevertheless favors an emphasis on empirical research and sees his task as the systematizing of that research along certain theoretical guidelines.

Podgórecki gives a more specific answer to the question—which sociology of law should replace dogmatic legal theory—in his definitions of the field.[5] The first definition,[6] which no longer satisfies him because it is too analytical, and thus too artificial, reads:

> The sociology of law has as its task not only to register, formulate and verify the general interrelations existing between the law and other social factors (law could then be regarded as an independent

3. A very interesting review of Polish sociology of law, which was part of this review in the Polish version (1971a:51-69), is unfortunately, but intentionally, omitted in the English edition. I shall return to a discussion of Polish sociology of law below.
4. His conclusion is hardly surprising, since it gives him a springboard from which to offer his own views. A sociologist could hardly begin a treatise by acknowledging that all the work had already been done.
5. The chapter that contains this was inserted into the English edition (1974c:32-47) and was not published earlier. It represents the most recent statement of Podgórecki's program of a sociology of law.
6. Compare Podgórecki (1962c:15). This definition was developed a decade earlier, and can thus be regarded as one of the theoretical guidelines of

> or dependent variable), but also to try and build a general theory to explain social processes in which law is involved and in this way link this discipline with the bulk of sociological knowledge. [1974c:33]

This definition is far too general to clarify the specific theoretical and methodological linkage between "the discipline" and general sociology.

In order to meet this shortcoming Podgórecki now offers more concrete illustrations of what he has in mind: research activities that cover a wide field of legal phenomena and their relation with society, using methods that an orthodox sociologist would not employ. These are the historical-descriptive method[7] (the evaluation of historical accounts of law and society, but not necessarily the quantitative analysis of the historical records left by ordinary social processes—births, weddings, etc.—in the fashion of contemporary cliometricians), the ethnographic-comparative method, the field research methods of social anthropology (disregarding the fact that legal social anthropology has its own methodological problems, see Roberts, 1976), the analysis of legal material, the experimental method, and the questionnaire and interview method (i.e., survey research). The scope of sociolegal research varies, depending on whether the approach is a diachronic comparison of legal rules, institutions, or total systems, a social anthropological study of a small-scale society, an empirical investigation of a particular institution within a complex legal system, or a psychological inquiry into the motives of legal behavior. The special field of law has much to offer general sociology, as long as the standards of research are adequate.

Podgórecki also gives examples of the kinds of behavior that the sociology of law should investigate: value systems, the process of socialization in the law, social determinants of the law, social modifiers of the law, and the dynamics of legal institutions (1974c:43). Here again he sees an opportunity for the sociology of law to contribute to the development of general sociology, by using socialization theory, the model of subcultural value systems (reference groups), organization theory, and multivariate analysis. In this way Podgórecki hopes that both "vegetating sociological theory" and the legal sciences, including legal policy (which for Podgórecki is "social engineering through the law"), will receive new stimuli through a set of middle-range theories (1974c:45).

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the numerous empirical research projects conducted by Podgórecki in the following years.

7. In a separate chapter, which somewhat overlaps the new chapter on the definition of the sociology of law, Podgórecki describes these methods and thereby introduces his own research and the relevant theoretical conclusions. For the historical method he looks to the writing of an early Polish political thinker.

He therefore advances his second definition of the sociology of law:

> The sociology of law consists not only of the bare application of sociological methods of the old problems of the philosophy of law. The sociology of law in its mature version would be an empirical replacement of jurisprudence. Attempts to deal with the traditional problems of jurisprudence from the viewpoint of the sociology of law would open a rich new area to research. The sociology of law brings something unique to general sociology: new notions which have potential explanatory power and a new sense of the integrity of the social system. And, finally, the sociology of law is now a field which is broader than it was traditionally perceived. The studies on the functioning of the law take into consideration not only sociological methods, but also such methods as the historical, statistical, comparative, experimental, anthropological, etc. The approach which is now needed is more comprehensive, more holistic. Therefore, it is not ruled out that the sociology of law should now have the name of anthropolgy of law. [1974c:47]

We are certainly curious to see whether Podgórecki can carry out this ambitious program of a sociology of law—to become a science on mankind—and by what means.

IV. METHODS AND FINDINGS

The second part of his book is devoted to this task. Naturally Podgórecki did not list research methods at random, but rather selected those he has used intensively. Nevertheless, he is not concerned with research techniques but introduces findings and theoretical explanations in the course of describing how he reached them. Indeed, one finds the bulk of his work described under the several methodologies advanced.[8] This corresponds perfectly to the way in which Podgórecki works: the very essence of sociology of law for him is empirical research with a rather loose theoretical structure consisting mainly of Petrażycki's ideas on the functioning of law and various social-psychological hypotheses. From there Podgórecki eventually arrives at theoretical conclusions about how legal norms are accepted by members of society. The forms and degree of acceptance and the factors hindering acceptance are treated as feedback for the legislator who, with the help of the sociologist of law, can learn whether those legal norms, and law in general, work. Social-psychological data on attitudes are used to measure the degree to which law is functional. The main question, then, is whether one can obtain an objective picture of the social structure of law by collecting subjective reports on how legal impact is experienced.

Thus the central topic in the discussion of the historical-descriptive method, for instance, is not research techniques for

8. The chapter on the ethnographic comparative method was written by Jacek Kurczewski, a disciple of Podgórecki.

diachronic analysis but Podgórecki's reflections upon the writings of Andrzej Frycz Modrzewski (a Polish nobleman who lived from 1503 to 1572 and was a scholar, diplomat, and political thinker), who saw law as "sociotechnique"—or in Pound's terminology (which Podgórecki prefers) as social engineering by law. This concept was first developed by Petrażycki, who sought to put legal policy on a more rational basis through scientific research. Podgórecki now tries to show that Modrzewski, an astute social observer, had already gained insights into how social behavior could be stimulated or suppressed by the wise use of instruments (by "the strong power of the king") and how legal institutions and procedures should be structured in order to be most effective. It is certainly remarkable that Modrzewski should, in the sixteenth century, argue for the replacement of the prevailing adversarial system by an accusatorial procedure—a change that did not occur in Poland until after the Second World War, but which is "today one of the bases of both the civil and the criminal procedure in the socialist system" (1974c:64). Yet Modrzewski's view is not that surprising, given his contacts with the Protestant philosophers of Germany and Switzerland, if one examines the influence of puritan ethics on both systems with the help of an analysis of wider ranging historical materials.

Another example of Podgórecki's inductive method—presenting theoretical ideas by showing how he has arrived at them—is the chapter he calls questionnaire and interview methods. Anyone who expects to learn something about the use of those research instruments to study law and society will be disappointed. For instead of methods, he discusses the major findings of several nationwide interview projects in Poland concerning the new divorce law (1962: 2,355 subjects), parental authority (1963: 2,723 subjects),[9] the prestige of law (1964: 2,820 subjects), legal and moral attitudes (1966: 3,167 subjects), and knowledge of the law (1970: 2,197 subjects). It is self-evident that a succession of studies with these unusually high numbers of respondents yields interesting insights into public opinion about and attitudes toward the law and toward basic moral issues. The central finding of these studies is that

> the law—the legal norm—[is] . . . changed or modified by individual preferences, traits or characteristics . . . only three variables significantly modify attitudes toward the law, and these are not the classical sociological ones, but rather subjective-personality variables. Those subjects who manifest some elements of insecurity, maladjustment, or severe upbringing are inclined to accept capital punishment; such established and traditional variables as age, socio-

9. This is modeled after a similar American study, Cohen *et al.* (1958).

> economic status and education do not have any significant influence. [1974c:88]

What is stated here with regard to the question of capital punishment holds true for all other studies on attitudes toward and opinions about law: the personal factor plays an important role in the acceptance or nonacceptance of norms, even if it is not decisive. The finding is certainly linked to the widely criticized method of asking for opinions and trying to deduce corresponding attitudes: the respondent's reaction, which is being measured, is essentially a reaction to the questionnaire. But this objection is discussed no further by Podgórecki. Instead he offers a theory that would explain the functioning of law in terms of a loose juxtaposition of three different social structural elements: the type of socioeconomic relations in a given society, the kind of subculture "functioning in the framework of a given socio-economic system," (1974c:87) and finally the personalities of the individuals in the social system. There is little information about how these factors are related to each other. The model suggests a hierarchical order in which socioeconomic factors have the most fundamental effect on the functioning of law, which is then influenced, positively or negatively, by the value systems of various subcultures, which in turn leave room for the influences of individual personality.

It is obvious, however, that the use by Podgórecki and his research teams of questionnaires and interviews to measure opinions and attitudes is best suited to grasp the existence of the personal factor. This is demonstrated by what Podgórecki calls "global research," which takes into consideration

> the legal system as a whole, focusing on several important elements of the system. This type of study investigates problems relating to the whole system: its prestige; its social, political and moral acceptance; and differences in acceptance and prestige in different areas (civil, criminal and behavioral subsystems, and so on). [1974c:87]

Prestige and acceptance are subjective categories and accordingly are studied by asking persons in various social settings how they feel about them. This was done in the studies on the knowledge, evaluation, and prestige of the law. The results proved the importance of the personal factor and made it seem worthwhile to go deeper into a social-psychological study of the relation of norm acceptance and personality structure.

Instead of fitting these considerations on personality structure into the three variables of his model, Podgórecki prefers to introduce "additional elements" which "can be operationally defined and empirically isolated": the "invisible factors" of "principled and instrumental attitudes, social and individualistic orientations in ethics, and directions of affiliation" toward subgroupings (1974c:97). Here again Podgórecki offers a mixed bag of so-

cial-psychological and theoretical approaches but gives no clues as to which version he adopted and how they fit together. So we can only guess that the additional elements for "one more step toward an adequate theory of the functioning of the law" (1974c:97) are called invisible in relation to such "visible" personal factors as sex, age, status, profession, etc. These latter factors do not make the acceptance or nonacceptance of norms visible, i.e., they do not explain it, even though research results show, for example, that women and people with higher education are more likely to accept a given norm. Podgórecki's hypothesis is that the invisible factors cut across these "visible" personal factors and indicate the fundamental orientation of a person, which in its turn decides whether that person—female or male, old or young, educated or uneducated—accepts a legal norm or refuses to do so. But since personality structure is not independent of social structure, "visible" personal factors and invisible factors correlate. Podgórecki finds, for instance, that age, security, and a good life-adjustment are correlated with a principled attitude toward legal norms, whereas both increased education and insecurity and lack of good life-adjustment are correlated with a more instrumental attitude (1974c:99-100). With respect to the second invisible factor—a social versus an individualistic ethical orientation—Podgórecki finds lower education, a rank-and-file position, insecurity, and poor adaptation to life correlated with an individualistic orientation, and higher education, a managerial position, feelings of security, a better adaptation to life, and a principled attitude toward norms correlated with a more social orientation. Social orientations toward ethics and a principled attitude toward legal norms are in turn correlated with legalistic behavior, whereas individualism and instrumentalism are correlated with antilegalism. Finally, the direction of group affiliation also influences legalistic or antilegalistic sentiment:

> The legal system usually represents the interests of the entire social system, but an affiliation with this or that group does not necessarily mean that the intensity and direction of this affiliation will at the same time strengthen an adherence to the global social system and consequently produce support for its legal system. Affiliation with a group that is in opposition to other social groups or to society as a whole could produce the reverse effect. [1974c:104]

Findings on opinions and attitudes can easily be limited by ethnocentrism. However, in collaboration with researchers from continental Europe (and also Brazil) Podgórecki has developed a comparative approach in order to test the validity of his hypotheses concerning the effect of visible and invisible personal factors on the acceptance of legal and moral norms. Podgórecki calls this approach a "federalistic" one (in contrast to an "a-prioric-

centralistic" one) since research similar to the Polish studies on knowledge and opinion about law was conducted independently in several European countries,[10] and the results then used as pilot studies for a cooperative comparative study in Denmark, West Germany, the Netherlands, and Poland. An "a-prioric-centralistic" study,[11] Podgórecki points out, would not be sufficiently flexible to take into consideration the specific characteristics of the various legal and normative systems in different societies, and its results would be

> rather vague . . . it can be doubted whether basic characteristics that are ambiguous in their meaning can be reasonably compared at all. [1974c:109-10]

By contrast,

> co-operative investigations allow the peculiarities of various social systems and of the legal systems functioning within them to be grasped more systematically and with greater precision. [1974c:114]

On the basis of empirical evidence, Podgórecki offers a number of more general observations, such as:

> In questions of procedure and order officers of the law more strongly condemn cases of misbehavior than does the average population, which in turn more strongly condemns them than do those who break the law. [Observation III, 1974c:112]
>
> A high level of moral indignation together with its formalization in regulations of the penal law brings about the demand for legal sanctions; a high level of moral indignation which is not formally confirmed by law does not bring about such a demand. [Observation V, 1974c:113]

We should bear in mind that all these findings are drawn from opinion surveys, with the familiar limitation that it is "difficult to determine, how far the answers can be taken seriously" (1974c:123). Thus, though most of Podgórecki's theoretical work is based on these studies, he calls for supplementary studies by other methods in order to test the "validity and objectivity of the results of opinion polls" (1974c:124).

These other methods could be the "monographic method," "the statistical method," "the analysis of legal materials," and "the experimental method." Again, Podgórecki is not primarily concerned with methodological issues, but is using these categories to present and discuss theoretical concepts. So the "monographic method" is actually a report on the use of participant and open observation in special institutions in order to achieve a more complex notion of the organization and the structure of that institution.[12] His object, however, is not the institution

10. The chapter on this comparative approach is basically the same in both editions, since in 1974 it was still reported as being "mostly in the planning stage" (1974c:107; cf. 1971a:201). The European studies have since been published separately (1973a).
11. Such as that suggested by William M. Evan (1966).
12. Here Podgórecki follows the example of Peter Blau's famous study of administration (1955).

as such, but special groups inside institutions and their attitudes and value-systems: lay assessor judges in one study, and juvenile prisoners in a study of the phenomenon of so-called "second life." This research is presented in order to show the importance of the second of Podgórecki's three categories of factors that influence the functioning of law: the reference group's value system. Thus, although the participation of lay judges in actual decisionmaking is very restricted, they exercise a significant influence over the outcome because, by the mere fact of their presence and their critical observation of procedure, they function as a "control reference group" (1974c:135).

In his study of the "second life," Podgórecki gives a detailed and rather lengthy description of the observations of S. Jedlewski (1966) on teenagers in various types of correctional, reformatory, and penal institutions. Social life in seclusion from the outer world generates forms of hierarchy and stratification which have to compensate for the deprivation of satisfactory goal achievement. But this "second life" also oppresses the majority of the prisoners and instills firm patterns of behavior, which are difficult to overcome and hinder a positive resocialization therapy. Therefore it is important to study the patterns of the second life in order to control, and possibly eliminate, this informal system of value and behavior which is opposed to any other socialization measures. According to Podgórecki both the study of lay assessor judges and that of the second life meet the criteria of the sociology of law: "an interesting descriptive diagnosis has been produced, a theoretical explanation has been offered, and suggestions have been made which could contribute to the lessening or elimination of some of the undesirable phenomena" (1974c:148).

The "experimental method" is exemplified by the study of "social courts." It is obvious that this is not an experiment in the "clinical" sense, but rather an attempt to try out an institution, in the "broader and more liberal usage of the word 'experiment' " (1974c:150). But even this form of quasi-experimenting, in which a new institution is created and researchers observe and report its impact, is rare enough in the field of law, which seems too delicate to allow much controlled reform. The intended function of this new institution is described by Podgórecki as follows: "a 'social court' is a jury composed of a number of the employees of a company, summoned to judge minor offences committed by their colleagues but having vague penalty competence (not able to use fines or jail terms as punishments)" (1974c:285, n.2). The goal was to replace ordinary criminal procedure for petty offenses with a process that would be located at the offender's place of work. In

order to test a large number of working hypotheses on the functioning and social impact of the new institutions various research techniques were employed, including interviews, questionnaires, document analysis, content analysis of press material, and participant observation. Surprisingly, the officials who initiated the experiment did not rely on the findings of the study when they came to evaluate the experiment, and the bill on social courts which they enacted clearly opposed some of the suggestions the sociologists had made on the basis of their findings. This is a crucial experience for the sociology of law, from which Podgórecki concludes:

> It only means that, on the one hand, sociologists have been unable to translate their results into recommendations which could have been directly assimilated and accepted by the legislative agency, and, on the other, that the legislators, undertaking the difficult and complicated task of giving legal shape to a new institution, might seek help mainly from their traditional partners. This finding requires that both sides, scientists and policy-makers alike, try to evolve the relevant "relay roles," whose task it would be to translate the results of social researches into a language familiar to legislators, as well as to inform scientists which problems are actually significant and vital for the lawmakers. [1974c:160]

The "statistical method" is illustrated by reflections on the issue of capital punishment. Criminal statistics have always been used in arguments both for and against capital punishment. Podgórecki demonstrates that comparison of statistical data, although it claims to be a "precise method," is not sufficient for the formulation of legal policies in social matters which are "extremely complex at [their] roots." The deterrent effect of capital punishment is highly questionable and cannot be demonstrated from statistical data alone (1974c:175).

Finally, the analysis of legal material is exemplified in a study of lawsuits against journalists, commissioned by the Cracow Center for Press Research and carried out by a research team led by Podgórecki. Although Polish law provides both criminal penalties and civil remedies (damages, injunctions) against libel, in practice criminal procedures are more common. The aim of the study was therefore to ascertain the outcome of suits against journalists, and determine whether libel suits represented a "genuine danger to the news trade" (1974c:177). Since almost all data necessary to answer these questions are contained in the court records, these constitute the central source of information in a study of this kind; however, there are technical difficulties concerning access to the files and the selection of cases. The study showed that libel prosecutions are not as numerous as the press tries to suggest through its wide coverage of this subject, and that journalists stand a fairly good chance of winning their cases. However, the outcome depends on

the social position and rank of the person "attacked" by the journalists:

> A general conclusion seems to follow that in the course of court proceedings the important thing is not only—as generally in life—what is said but also who says it and from what social position. [1974c:183]

V. THEORETICAL CONSIDERATIONS

It has been pointed out several times that Podgórecki does not draw a sharp line between research tools (i.e., methods) on the one hand, and theoretical conclusions on the other. He always advances theories about the nature and structure of law as he reflects upon the different methodological approaches employed by concrete research projects. But Podgórecki does not stop there. Dealing with the various facets of the appearance of law in society in this essayistic manner is a method in itself. Podgórecki mistrusts any closed system or grand theory of law, such as the Marxist theory of state and law, because its synthetic ambitions compel it to neglect empirical findings to a large extent. Unlike general sociology, which can be more academic, sociology of law must construct theories that have been or can be tested empirically so that they may form a meaningful bridge to legal policy, the ultimate aim of scientific knowledge about law and society. Therefore it is necessary

> to base the analytic definitions not upon private terminological intuitions but rather on an analysis of operational definitions (i.e., those adopted for concrete considerations and researches) and on the results of empirical investigations of public opinion. [1974c:190]

Thus theory is incremental: it can only be collected bit by bit as it is drawn from empirical research.

Therefore Podgórecki's presentation of his theoretical conclusions is as much a mixed bag as his presentation of methods and results, only roughly divided into reflections on the concept of a legal norm, anomie, conformism, legalism, and theories of the functioning of law. However, we do find here all the theoretical ingredients of Podgórecki's sociology of law. First of all, there is Leon Petrażycki's definition of law as a social-psychological experience of the relations with other people that is partly imperative and partly attributive. In Petrażycki's interpretation "imperative" means the experience of obligation and "attributive" the experience of a right or claim.

> In effect, a law is that which has to do on the one hand with someone's obligation to do (or to desist from doing) something, and on the other with someone else's demand that the action or desisting identified by the obligation be carried out. [1974c:191]

One important merit of this definition is that it enables us to distinguish between legal and moral norms: moral experience is

limited to a sense of obligation, whereas legal experience combines that sense with a claim of right by another.

This definition of law is clearly inadequate because it neglects the element of coercion by the state. (Nor is it an exhaustive statement of Petrażycki's theory, as Podgórecki shows later.) However, a concept of law as state coercion would not comprehend the whole field of law in action either. Podgórecki gives examples of legal action without state sanction, drawn from Poland and also from the literature of social anthropology of law, which reveal the

> shortcomings of the classical definitions of law, which regard coercion by state as an essential element. The empirical studies, however minor, clearly point out the need to look at the notion of law from a new and different viewpoint. [1974c:194]

For those who have read this far in Podgórecki's book, the viewpoint will not be new. His research on the attitudes of the Polish population toward legal and moral norms has shown three major tendencies:

1 A legal condemnation of definite actions always entails their moral condemnation, while the reverse is not always true: a moral condemnation need not entail a demand for a legal sanction against these actions.
2 The stronger the moral condemnation (after a peculiar, qualitatively identifiable barrier has been crossed) the stronger is also the legal condemnation.
3 Minions of the law who are engaged in demanding the strict obedience of the formal and structural requirements of the legal system are apt to condemn less strongly than others the breaking of basic norms in social interaction. [1974c:195-96]

Behavior can be divided into three categories in terms of whether it is regulated only by moral norms, only by legal norms, or by both. Moral norms clearly cover a wider field of human action. The attitude of legal officials demonstrates that this relationship between law and morals is variable: their intimate knowledge of the inner workings of the legal system leads them to view law more instrumentally and to experience, and express, less moral outrage when confronted with a breach of a legal norm. What Podgórecki wants us to see is the subjective relationship between the personal normative structure of each individual in a social setting and the legal and moral normative systems which society formulates. Or, in Podgórecki's own words:

> *law is a psycho-social phenomenon, a socially coherent relationship between obligation and claim, inculcated by internalization.* [1974c:197]

The fundamental pattern of coherence—"the unifying and motivating social link" (1974c:197)—is the principle of "*do ut des*," which strikes a balance between mutual obligations and claims in horizontal interactions (as suggested half a century earlier by another internationally recognized Polish social scientist,

Bronisław Malinowski). However, Podgórecki recognizes that other elements are relevant in vertical interactions, where there is imbalance in the system of obligations and claims: privilege (too many claims and not enough obligations) and its inverse, obedience.

The concepts of anomie, conformism, and legalism, developed from the work of Durkheim and Merton, are also used to advance the description and explanation of variation in the acceptance and rejection of norms. The basic assumption here is that legal and moral norms are but fractions of the total set of normative systems and must be analyzed as they interact with the latter. Individual adjustment to social life alternates between acceptance and rejection of cultural ends and institutionalized means, producing responses which Merton (1959) has characterized as conformism, innovation, ritualism, withdrawal, and revolt. Piotr Sztompka (1967), a Polish sociologist, expanded this typology by adding such concepts as real conformism (the contents of a norm are accepted in a noninstrumental, principled way with reference to some supreme or absolute value), legalism (formal acceptance of a norm), opportunism (noninstrumental rejection of the contents of a norm) and contraformism (conduct of an individual in opposition to a norm). These basic concepts were modified further by Podgórecki in the course of his studies on attitudes of the population toward moral and legal norms, by the suggestion of additional criteria:

> consistency or inconsistency in behavior with the generally accepted social values;
> inner motivation, inducing acceptance or rejection of these values;
> the principal, [*sic*; read: principled] or instrumental attitude;
> the functioning or lack of personal variables. [1974c:203]

For example, "three basic and separate versions of legalism" emerged in Podgórecki's study of the prestige of law (1974c:208). Law is accepted as a matter of principle, a means to reach personal or social ends, or an authoritarian device. Each response is related to a distinctive personality structure.

> If law is accepted as a matter of principle the view is that it has an autonomous value; if law is generally accepted by well-adjusted people the idea is that law can be an effective means of controlling others, as well as oneself; obedience to law expressed by respect for superiors is the attitude of people with authoritarian propensities, who are apt to be afraid of power or, to release anxiety, are likely to identify themselves with power. [1974c:208]

In other words, law is such a general normative structure that it may complement each of a variety of personal adaptations to social life without losing its legal-normative character.

For Podgórecki, this correspondence between the social structure of law and individual personality structures is the clue to theories of the functioning of law. It is hardly accidental that his

search for "adequate" theory in the sociology of law, which began with an instrumental perspective, ends by describing law as a "psycho-social phenomenon." This is further evidence of the deep impression that Leon Petrażycki, the "great Russo-Polish master," had on Podgórecki. The presentation of "theories of the functioning of law" is largely devoted to a discussion of Petrażycki's ideas on law and society. Indeed, Podgórecki's work may be seen as an attempt to test empirically Petrażycki's theory on the imperative-attributive character of law.

It is not clear to what extent Petrażycki influenced sociological theories of law at the turn of the century. It could well be that Eugen Ehrlich, the Scandinavian realists of the Uppsala School, and naturally Roscoe Pound, had access to his work.[13] His synthesis of the main ideas of social-psychological theory, his knowledge of other social sciences, especially economics, and his interest in improving the scientific quality of jurisprudence, certainly made him their ally indirectly, and his very substantial and stimulating ideas on law and society have clearly influenced others, in addition to Podgórecki (see Górecki, 1975; Langrod and Vaughan, 1970; Opałek, 1969; Borucka-Arctowa, 1974). But his theories never really caught on in western sociology of law, partly because his unorthodox vocabulary was drawn from neither legal nor social science but constructed afresh to fit the new interdisciplinary subject matter, and partly because his writings were only available in German, Russian, and Polish. This lack of influence is somewhat surprising, nevertheless, in view of the vigorous propagation of his principal ideas by social scientists such as Sorokin, Gurvitch, and Timasheff, who came from a similar ideological and cultural background—the enlightened Russian bourgeoisie—but who, by emigrating to the west, were in a better position to contribute to the development of both sociology and the sociology of law.[14]

Though Petrażycki never used the term sociology of law, his view of the functioning of law in society was definitely sociological, linking a Russian philosophy of morality and altruistic love (influenced by V. Solovev)[15] with concepts drawn from psycholo-

13. Petrażycki's first published work was an analysis of civil law (1892, 1893-95). His theoretical works were published later, mainly in Russian (1908, 1909-10), but partly in German, and finally, after 1917, in Polish. His main work was not translated into English until 1955. However, Timasheff had written about him earlier (1947; see also 1955); and subsequently other English-speaking authors commented on him, e.g., Lazerson (1951), Northrop (1956), Clifford-Vaughan and Scotford-Norton (1967).
14. It is remarkable, however, how isolated Pitrim A. Sorokin has been in sociology (e.g., 1937, 1947a, 1947b), and Georges Gurvitch (1945, 1947) and N. Timasheff (1939, 1957) in sociology of law.
15. See Sorokin's discussion of Petrażycki (1954).

gy, sociology, and legal science, all of which were part of his theory of social development. Law, in this framework, is an instrument of social technology; but it can succeed only if legal policy is based on scientific findings rather than on normative postulations, as it had been. This requires a thorough knowledge of the social mechanisms of the functioning of law.

Petrażycki begins by defining three kinds of adaptive behavior: philocentric—adaptation by a species to physical and social conditions; sociocentric—construction of value-systems in social groups; and egocentric—socialization through emotional (i.e., noncognitive) impulses in the personality structure.[16] The process of social change is governed by Petrażycki's principle of "unconsciously congenial" adjustment, which coordinates the different levels of adjustment into collective behavior. Two central collective features in this process are law and morality, offering normative guidelines for individual conduct and for the welfare of the group as a whole. However, law and morality serve two different functions in society: morality creates an attitude of obligation whereas law stimulates the feelings of right and claim.

The functional diversity has a historical counterpart: law changes according to the development of the societal structure. We can distinguish three main tendencies in the historical processes of change in the legal system. First, there is a tendency toward increasing demands: "As time passes, law and the legal constitution require increasingly more from individuals, quantitatively as well as qualitatively" (Podgórecki, 1974c:217). Secondly, there is a tendency to change the motivational stimuli: technology and organization increasingly diversify the normative structure of law. Finally, there is a tendency for internalized pressures toward conformity with law to diminish: law becomes increasingly released from moral precepts and thus more freely available for instrumental use. Once law is seen as a central mechanism for behavioral coordination, it follows that law

> acts at any moment and in various social contexts in the most numerous human interrelations occurring all the time everywhere (like unconflicting contracts, transactions, offers, determinations of terms, conditions of payments, agreements, loans, etc.). [1974c:219]

This view is clearly distinguished from the notion that law is the regulation of conflict. For Petrażycki

> [c]ases which reach judges, solicitors or administrative officials are peculiar, ambiguous, and pathological—they are instances of the abnormal functioning of law. They reflect behavior in which the normal (usually unperceived, automatic, smooth) legal routines

16. Timasheff and Podgórecki point out that Petrażycki thus formulated the theory of conditioned reflexes before the Russian psychologist Pavlov made his discoveries.

> have failed. Clashes, challenges, and competitive violations of norms occur, bearing the need to resort to specialized agencies for solutions. [1974c:219]

Law, and for that matter morality, is generated by social organization on the one hand and the individual's personal adjustment to relations of obligation and claim on the other. It thus has two sources: the positive law (statutes, customs, judicial practices, contracts, *communis opinio doctorum*, etc.), and the intuitive law, which derives its binding force from the mere apprehension of the normativity of a social relationship. Petrażycki further distinguishes between official law (used by courts and other state institutions) and unofficial law (used by institutions that are not part of the state). As N. Timasheff states, the two classifications are

> independent of one another so that according to Petrażcki, law may be (1) positive and official; (2) positive and unofficial; (3) intuitive and official; and (4) intuitive and unofficial. [1955:xxviii]

Only the first definition coincides with the conventional meaning of law; but it misses the actual social range of the functioning of law, which is much wider. As Podgórecki points out:

> A reasonable legal policy cannot neglect the implications of intuitive law if legislative activity is to be effective. [1974c:221]

From this short sketch of the main ideas of Petrażycki it is clear that Podgórecki owes a great deal to what he calls "perhaps the most developed theory on the social influence and functioning of law, although perhaps not of its social origin" (1974c:223). But Podgórecki is also aware that Petrażycki's theory "expresses a faith in the powerful and socially beneficial role of law" (1974c:223-24), which may not be justified empirically, and that Petrażycki, lacking sufficient knowledge of social organization and social structure, may have been too eager to project psychological concepts of individual behavior onto a social phenomenon. Podgórecki therefore uses Petrażycki's model to systematize his own empirical observations on the functioning of law. His theory, as we have discussed it above, groups the factors that contribute to, or hinder, the individual's acceptance of legal norms into three categories of variables—socioeconomic, subcultural, and personal—which bear a striking resemblance to Petrażycki's three kinds of social adjustment—philocentric, sociocentric, and egocentric. This theory may well tell the legislator

> where to look for the social environments and individuals who are apt to fulfill the directives of law and, also, where resistance may arise. [1974c:236]

But from the perspective of the theory of law it leaves open a more fundamental question: why does Podgórecki equate the acceptance of law with the functioning of law. The answer may lie in his

view of the tactical role of sociology of law in fulfilling the function of sociological knowledge.

VI. LEGAL POLICY

Once again we have to begin with Petrażycki in order to understand Podgórecki. Petrażycki did not set out to construct a social theory of the functioning of law. Indeed, he was trained as a dogmatic lawyer—though one who reached maturity during the competition between idealism and positivism in Russian philosophy of law (see Timasheff, 1955:xvii-xix). His outstanding performance in the fields of dogmatic Roman and civil law so distinguished him that he was invited to take part in a seminar in Berlin for "professorial aspirants" arranged by the Russian Ministry of Education. Here he came into contact with the "task of the century" in German jurisprudence, the draft of a new Civil Code. As a critical, outside observer he was sensitive to the shortcomings of lawyers as legislative draftsmen. They concentrated almost exclusively on dogmatic and logical systematization of traditional legal rules, instead of recognizing the purposiveness of law and using the burgeoning social sciences, especially political economy, sociology, and psychology, in order to read the signs of the times and to construct the new code accordingly. He expressed his disappointment with the total failure of the German lawyers to consider legal policy, and offered his own draft of what he thought that policy should look like, which appeared as an appendix to his work on civil law (1893-95: vol. 2, 437-628). Having argued there that a legislator should possess scientific knowledge of the social reality of law before promulgating rules that called for behavior whose effects he was unable to control, and having maintained that such a scientific description of the social reality of law was nowhere in sight, he himself undertook the task of providing it.

It is surprising, then, that more than half a century later Podgórecki can address the same critical reproaches at legal science. Yet there are three good reasons why Petrażycki's cause again needs a champion. First, for historical and political reasons, legal science and legal policy have not developed into social science and social policy. Second, for all his creativity, Petrażycki offered a very partial view of law and society, and tended to fill the gaps with an idealized vision of the ultimate social destination of law. Third, and most important, Petrażycki could only engage in speculation where contemporary social science methodology can provide more definite answers that have been tested empirically.

Thus Podgórecki also made legal policy his first and primary objective; sociology of law, the modern equivalent of Petrażycki's

peculiar ethico-psychology of law, remains a by-product, if an important one. This is true even though the "by-product" becomes predominant because of its scientific scope, which ultimately transposes the "main product" into a social science frame of reference. However, the clear subordination of pure sociology of law to the applied social science of legal policy influences Podgórecki's choice of topics, methods and theories. Subordinated to the sociotechnical determination of legal policy, sociology of law is required to accept law as its topic, employ the measurement of attitudes and opinions as its method, and strive for a "middle-range" synthesis, like the model of the three levels of functioning of law, as its theory. But one should not forget the aims of legal policy:

> Legal policy as a science of rational social change, obtained by means of law, based on generally accepted social values and on the store of knowledge about social behavior, is concerned with formulating directives for the planning and realization of social change. A reasonable lawmaker who intends to use legal policy as his guide ought to take into consideration three basic principles of effective legislation: (1) the legislative principles (legal-political principles in the proper sense); (2) the principles of codification; and (3) the principles of codificatory technique. [1974c:242-43]

The extraordinary complexity of "the store of knowledge about social behavior" is shown by the fact that Podgórecki devotes to it almost all of his research work and all but one chapter of his book. Significantly he did not call his work "Legal Policy" but "Law and Society"—a title reminiscent of the principal work of Petrażycki, "Law and Morality" (1955).[17]

VII. ADAM PODGÓRECKI'S CONTRIBUTION TO THE SOCIOLOGY OF LAW

The extensive corpus of Adam Podgórecki's work in the field of sociology of law, which could be presented here only in a very cursory manner, shows the importance of his position in the study of law and society. He seeks both to advance the sociotechnical formulation of a rational legal policy and to contribute to the development of theory in sociology of law. This is certainly very ambitious, but it also has drawbacks: it is difficult to serve two masters at the same time. However, we must bear in mind the specific historical situation of the legal sciences in Poland after the Second World War and the need for effective legal instruments that could be used to construct the new society of People's Poland. In this context, we can understand Podgórecki's emphasis on legal

17. This is the title of the English translation by H.W. Babb; the original Russian title is more academic: *The Theory of Law and State in Connection with a Theory of Morality* (1909-10). But the title of Petrażycki's English translation corresponds to the essence of his work as well as Podgórecki's title does to his book.

policy and his conception of sociology of law as an empirical science of legal phenomena which, through the measurement of knowledge, opinions, and attitudes towards law, can provide immediate answers to the urgent questions concerning the capacity of law to be effective in society. Podgórecki is by no means alone in this undertaking in Poland. However, his attempt to combine Petrażycki's thoughts on legal policy with empirical microsociology is quite controversial, despite the practical results he seems to offer (cf. Borucka-Arctowa, 1973:151; Sokolewicz and Zawadzki, 1973:142, 144; Ziembiński, 1975:33-37). Although all Polish sociology of law derives from the tradition of Petrażycki and his Cracow disciples, Lande and Piętka, and tends to stress applied research, there is an important division concerning its relation to other legal and social sciences. This difference finds its institutionalized expression in the main centers of research in the sociology of law in Poland: the chairs of the theory of state and law at the Universities of Cracow and Poznań (Professors Maria Borucka-Arctowa and Zygmunt Ziembiński, respectively) are part of the faculty of law, whereas the institute under the direction of Professor Adam Podgórecki at the University of Warsaw belonged to the faculty of philosophy and sociology.[18] A particularly important role in stimulating and coordinating research projects in the field of sociology of law is also played by the Institute for Legal Sciences of the Polish Academy of Sciences (Instytut Nauk Prawnych, PAN). All this indicates that the sociology of law is seen principally as a vital complement to the legal sciences in developing legal policy and testing the efficacy of legal institutions (laws, regulations, new courts, new political bodies, etc). And the nature of empirical research in Poland confirms this impression (see Borucka-Arctowa, 1973; Podgórecki, 1968c). This subordination of the sociology of law to the legal sciences, this relegation to the status of an auxiliary tool for lawyers and legislators, is related to, indeed a consequence of, the fact that the Marxist theory of state and law is the fundamental theoretical orientation of sociological research in the field of law and society. As I have tried to suggest in this article, Podgórecki's concept of sociology of law opposes this view in two essential respects:

(1) Podgórecki wants to *replace* the "speculative" theory of state and law with sociology of law; and
(2) Podgórecki does not accept an a priori "great" theory (of which the theory of state and law is an example)

18. Podgórecki is presently working on a broader concept of the sociotechnical approach to the social sciences at the Centre for Socio-Legal Studies in Oxford. Although he has long been controversial in the

> from which hypotheses could be deduced and tested empirically, but proposes, instead, a scheme of induction from empirical research leading to middle-range sociological theories which might ultimately be synthesized into a general theory.[19]

Given the present state of social science research in the field of law in Poland (as well as elsewhere), Podgórecki's approach seems to be far too ambitious, as Petrażycki's attempt to revolutionize legal science proved to be. The sociology of law cannot now, or in the foreseeable future, displace the theory of state and law. Podgórecki's aim of developing a general sociology is inadequately served by his choice of means: the microsociological results and models he offers are still far from a sufficient description or explanation of the legal structure of society, despite the many isolated, invisible facets of the functioning of law he makes visible through empirical social research. His findings on knowledge, opinions, and attitudes about law can only have a limited impact upon general sociology, "vegetating" though it may be,[20] since it is from general sociology that he borrowed his methods and theories almost two decades ago. By its very essence, Podgórecki's contribution is on a different level. As a scientist who works on the borderline between legal and social science, and with a knowledge of both "socialist" and "capitalist" social theory, his concepts cut across the established ideas and theoretical foundations. Podgórecki is bitterly skeptical about the value of both traditional legal science (within which he includes the theory of state and law as a successor to traditional jurisprudence, at least in its method) and modern social science; he is equally critical of the "speculations" of philosophy of law and the "rhetorics" of sociological theory.[21] This makes him appear a sober positivist, but again his writings reveal a special kind of idealism: the fascination he feels for the secret but organized working of law and morality in society, and his credo that a rational apprehension of the functioning of law and morals can permit social change for the better. In order

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academic life of the People's Republic, he has not resigned from his professorship at the University of Warsaw.

19. He seeks to do this in the last chapter of *Law and Society*, entitled "Towards a General Theory in the Sociology of Law" (1974c:261-78), which first appeared as a programmatic article in Polish (1973c).
20. Podgórecki even goes so far as to criticize Polish general sociology rather harshly for not being up to international standards (1976a).
21. In this he joins the numerous critics of Talcott Parsons:
    > Despite an abundance of rhetoric and stale verbiage, structuralism has been unable not only to explain more complicated elements of social structure but also to give even a vague definition of its own approach. [1974c:105]

    One wishes that he had read and understood Parsons better than that.

to adapt the ideas and concepts of others for the use of sociology of law, Podgórecki must be provocative: in a way he is a "methodical anarchist."

The reception of Podgórecki's work has been either highly selective, as in Poland itself as well as other socialist countries, or very limited, as in Western Europe. The reasons for the response differ from country to country, but the results are practically the same: Podgórecki's concepts are not widely known among sociologists of law outside Poland because of the language barrier;[22] and where they are known they do not fit into the scheme of legal and sociological research. However, both Adam Podgórecki, sociologist of law, and his empirical findings—which are "interesting information"—seem to be more widely known than his theoretical concepts.

Polish sociology of law has already been described as the coordination of "concrete sociolegal studies" with the theory of state and law, rather than the institutionalization of a specialized field. The same is true of the sociology of law of most socialist countries, especially the USSR (see Javič, 1970; Lukovskaja, 1972:118). In these countries, Podgórecki's work is seen as an erroneous attempt to segregate what is merely an auxiliary research activity from the essential guidance of legal science and the theory of law and the state (see Lukovskaja, 1972:118). Nevertheless, there is great interest in the technical aspects of his research: the methodological importance of his "concrete sociolegal studies" is stressed, to the extent that they are consistent with the theory of state and law (see Kazimirčuk and Tichomirov, 1973; Kazimirčuk and Pavlov, 1971), and his work on opinions about law is emphasized (see Safarov, 1975). There are many different reasons for the limited impact of Podgórecki's findings on West European sociology of law. First, the relationship between the sociology of law and legal science, though problematic, does not have a similar ideological significance in Western Europe, and therefore receives less attention. Therefore, a synthesis of sociotechnical questions concerning legal policy with sociology of law is unusual and marginal. Second, contemporary European research in the sociology of law is primarily concerned with the critical analysis of the use and users of law, and of social differences in access to law. This concept of "democratization" of law is rather different from Podgórecki's interest in the acceptance of law. It is therefore difficult

22. Although until recently his principal books were written in Polish, some of his major articles were published in English, French, and German. However, these mainly reported his research results, and did not discuss general concepts. Sociologists of law in Western Europe and the United States know him primarily through his activities in the International Sociological Association's Research Committee on Sociology of Law.

to see how Podgórecki's message of social change through law can be adapted to the research topics of the sociology of law in Western Europe. Third, Podgórecki's microsociological approach to the functioning of law does not appear adequate for a full understanding of the relationship between legal and social structure. The definition of law, based on the principle of accepted reciprocity with loosely connected "additional constructions," and the three-level hypothesis of the functioning of law with loosely connected invisible factors, are basically sociopsychological attempts at explaining the functioning of law. These may be seen both as too limited, because they omit the many variables of social organization and legal structure, and as too idealistic, because they rely on individual acceptance of law as the main index that it is functioning, despite our knowledge that it is not individual acceptance which makes the law work or fail to work, but the social conditions under which the individual lives. In the end, Podgórecki has given us a sociology of law that is centered around law, not society; he tends to forget the society behind the law.

However, it would be a mistake to neglect the rich experience which Adam Podgórecki has collected. One of the principal shortcomings of science is that we tend to pay too little attention to theoretical concepts and empirical findings that cut across our own. But the findings of others are an essential fertilizer for one's own ideas. Podgórecki's thoughts, which extend the tradition of Leon Petrażycki, and the empirical results of his research in Poland deserve a more thorough and systematic evaluation, as well as a confrontation with different theoretical and methodological approaches. An attempt in this direction, linking Podgórecki's research findings with general systems theory (which he, however, holds in contempt), has shown promising results and is being developed further (Ziegert, 1975: 172-231). The English edition of Podgórecki's main work, which now permits easier access to his ideas, will certainly stimulate further discussion of the contributions of this important researcher in the field of sociology of law.

So Petrażycki and Podgórecki are certainly not "Poland's answer to Pound and Parsons"[23] but, like the latter, are sociological theorists of law in their own right, thinkers who are badly needed because they ask for more than social science is—yet—able to give. There cannot be enough such theorists to help to make visible the many invisible factors of the legal structures in our societies.

23. As Colin Sumner puts it rhetorically, and not without a certain irony (1975:247).

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