

Sociology and Law

Sociology and Law:
The 150th Anniversary of Emile Durkheim
(1858-1917)

Edited by

Maria Serafimova, Stephen Hunt, and Mario Marinov,
with Vladimir Vladov,
Consulting Editor and translations from Bulgarian

CAMBRIDGE
SCHOLARS

P U B L I S H I N G

Sociology and Law: The 150th Anniversary of Emile Durkheim (1858-1917),
Edited by Maria Serafimova, Stephen Hunt, and Mario Marinov,
with Vladimir Vladov, Consulting Editor and translations from Bulgarian

This book first published 2009

Cambridge Scholars Publishing

12 Back Chapman Street, Newcastle upon Tyne, NE6 2XX, UK

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

Copyright © 2009 by Maria Serafimova, Stephen Hunt, and Mario Marinov, with Vladimir Vladov,
Consulting Editor and translations from Bulgarian and contributors

All rights for this book reserved. No part of this book may be reproduced, stored in a retrieval system,
or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or
otherwise, without the prior permission of the copyright owner.

ISBN (10): 1-4438-0502-5, ISBN (13): 978-1-4438-0502-5

TABLE OF CONTENTS

Introduction	1
Maria Serafimova, Stephen Hunt, and Mario Marinov	

PART ONE: THE LAW AS A FORM OF SOCIAL SOLIDARITY

Legal Sociology: Its Modern Dimensions Sofka Mateeva	6
---	---

Legal-Sociological Parameters of the Fight Against Crime and Social Deviance Stefka Naumova	11
---	----

The Theory of State and Law In Post-Soviet Times: Some Reflections Orest Martyshin	23
---	----

Human Rights, Religion, Values and Power in the Period of Relativism Michaela Moravčíková	33
--	----

The Turnovo Constitution and the Establishment of Bonapartist Statehood in Bulgaria Georgi Naidenov	41
---	----

The Constitution as a Major External Institution: The Question of Legal Neo-Institutional Analysis in Economic Sociology Jeko Kiossev	48
---	----

Work Division, Domination and Solidarity In French Law Field: Scholars, Judges, and the National Judicial School's Public Contest Oral Exam Fernando Fontainha	55
--	----

The Creation of the “Proximity” Judges: A Public Policy Analysis of the French Judiciary Reform (2002-2006) Pedro Heitor Barros Geraldo	68
---	----

The Legal Consciousness of Civil Servants in the Context of Durkheim's Theory of Anomie Nadezhda Yonkova	78
PART TWO: ELEMENTARY FORMS OF NEW RELIGIOUS LIFE	
Too Much or Too Little? Durkheim's <i>Suicide</i> as a Model for Analysing New Religions Eileen Barker	94
The Elementary Forms of New Religious Life and the Law: "Sects", "Cults" and the Social Construction of Moral Panics Massimo Introvigne	104
Durkheimien Approaches to 'Implicit' and 'Quasi' Religiosity: Some Implications for an Analysis of World-Affirming New Religious Movements Stephen Hunt	116
Elementary Forms of New Religious Life in Bulgaria Mario Marinov	128
New Religiousness in Slovakia as one of the Factors of Postmodernism Lucia Grešková	139
The Place of Durkheim's Elementary Forms of Religious Life in the Development of the Sociology of Religion John Rex	153
Durkheim's Achievements in the Study of Religion Zoran Matevski and Etem Aziri	158
Durkheim's Contribution to the Analyses of the Religious Phenomenon Dushka Matevska	163
Strongholds of Solidarity Maria Serafimova	170

PART THREE: DIMENSIONS OF TOLERANCE

Paradise Lost or Barbarianism Returned: Durkheim and Contemporary Ethnic Conflict Stephan E. Nikolov.....	188
Ethical, Social and Legal Regulations in the Cyberspace Vladimir Dulov.....	199
Internet Blogs and Solidarity in Society Slavka Popova.....	211
A Comparative Analysis of Media Coverage of the Anomic Social Facts: Newspapers' Discourse in Romania and Canada Valentina Marinescu.....	216
The Right to Communication Dobrinka Peicheva.....	223
Sociology and Education in the Works of Durkheim Valentina Milenkova.....	235
Morals and Legitimacy in Civil Society: A New Perspective on the Connection Between Sociology and Morals, as Viewed in Modern Studies on Durkheim and His Attempt at Creating Moral Sociology Ralitsa Angelova.....	243
Moral Conformism: Its Modern Social-Epistemological Dimensions Angel Tzvetkov.....	254
How to Revive Solidarity Today? Iveta Yakova.....	259
Anomic Suicide in Contemporary Bulgarian Society Petrana Stoykova.....	268
Men on Maternity Leave Shaban Darakchi.....	278

INTRODUCTION

MARIA SERAFIMOVA, STEPHEN HUNT,
AND MARIO MARINOV

The works of Emile Durkheim have always attracted intellectual interest throughout the world. They have been republished, translated, interpreted, and remain a constant object of debate, commentary, and analysis. Durkheim has greatly influenced Ferdinand de Saussure, Claude Lévy-Strauss's structuralism, the comparative Indo-European research of Georges Dumézil, the system approach of Roland Barthes, even theoreticians of post-modernity like Michel Foucault, and many others. His place in the pantheon of social sciences is universally acknowledged. Yet our image of a brilliant scholar of this stature can, and should, be constantly enhanced.

Durkheim was able to achieve what Saint-Simon and Auguste Comte before him were not. He was the first academic sociologist, the first professor of sociology and, thanks to his forceful presence in academe, he gave the science of sociology the status of a legitimate, autonomous and respected university discipline.

Of all Durkheim's conceptual frameworks that which is perhaps best known framed social reality as a moral, social environment consisting of supra-individual norms for thought and action. Institutions make the reality of these norms possible. All human behaviour is determined by institutions and norms that regulate human behaviour. In that sense Durkheim spoke of artefacts, not natural facts.

Institutions and norms determine the relationships between people and their collective representations, beliefs, and sentiments. Law, morals and other spheres of the social order are generated within and by society, that is, they produce and represent the substance of the social order. Social reality thus has a supra-individual reality with a constraining effect on individuals.

Durkheim asserted that the work of the sociologist is different from that of the statesman. The essential question he raised concerned the relationships between the individual person and social solidarity. Why is it

that the more independent and individually orientated people become, the more they are closely dependent on society? Here was a new form of social solidarity, a purely moral phenomenon, which, in itself, was not accurately observable and especially not measurable.

The only power that can serve as moderator for the selfishness of individuals is the power of the encompassing group; and the only power – in turn – that plays the role of moderator for the selfishness of a group is that of a wider encompassing group. Indeed, wherever there is social solidarity, its presence is displayed through perceptible consequences, and despite its immaterial nature, solidarity does not remain in a purely potential state.

For this ‘internal’ fact that escapes us we may substitute an ‘external’ fact signifying the former; thus we can study the internal through the external. Law is such a visible external symbol. Durkheim reaches the interesting conclusion that penal law is more or less religious in its nature, for at its core lies a feeling of respect for a force higher than that of individual persons. Whatever be the particular symbolic form whereby it is perceived by the mind, it is perceived in any case as a transcendent force, and the feeling for such an object is precisely what lies at the basis of religiousness.

The foremost duty of every society is to create a set of morals, but Durkheim warns that such a task cannot be achieved in the scholar’s quiet study...

Between 29th-31st May, 2008, the Sociology Department at the Faculty of Law and History of Southwest University Neofit Rilski held its third international conference on “Sociology and Law”; the conference was dedicated to the 150th anniversary of the birth of Emile Durkheim, the great classic innovator of sociology.

The three main sessions of the conference were as follows: *THE LAW AS A FORM OF SOCIAL SOLIDARITY*, *ELEMENTARY FORMS OF NEW RELIGIOUS LIFE*, and *DIMENSIONS OF TOLERANCE*. The sessions passed amidst exceptional interest on the part of the participants and in an atmosphere of cooperation and dialogue. Presented in this collection are the papers read at the conference by scholars of different countries and of various institutional background and worldview, united by the desire to analyze, interpret and present, each from his/her perspective, the ideas of Emile Durkheim. The authors are scholars of Sociology, Law, Political Science, History, Religious Studies, Media Studies, Public Relations from Bulgaria, the United Kingdom, Slovakia, Macedonia, Italy, France, Brazil, Romania, Russia.

Most of the texts deal with the relations between Sociology and Law and refer to Emile Durkheim's academic heritage in dealing with specific problems in their respective societies and fields of study.

Topics range from theoretical issues of Socio-Legal Studies and Law, to analyses of constitutions, case studies from the judicial system and civil servants. A special attention is given to the study of new religious movements from a sociological and legal point of view and to Emile Durkheim's place in the Sociology of Religion. Other topics cover contemporary ethnic conflict, cyberspace, media, morality, education, gender studies, etc.

The type of academic readership this book will appeal to includes sociologists, lawyers, anthropologists, historians, scholars in cultural studies, religious studies, students, researchers, etc.

The works of the classics of sociology are ever vital components constituting modernity. Different, new readings of Machiavelli and Montesquieu, of Rousseau and Voltaire, of Durkheim and Weber, of Freud and Marx, are always possible. These rich facets of advancing thought constantly reveal their inexhaustible potential.

PART ONE

THE LAW AS A FORM OF SOCIAL SOLIDARITY

LEGAL SOCIOLOGY: ITS MODERN DIMENSIONS

SOFKA MATEEVA

A historical overview of some of the fundamental sociological theories of the middle of the 19th to the end of the 20th century would show that problems related to law have always been present in one form or another and in various degrees of concreteness within the fields addressed by sociology. The negative attitude to law displayed by some representatives of early positivism may be explained by the liberal character of their philosophical, social and political views, which naturally clashed with conservative attitudes regarding the change and development of the system of law in those times.

Similarly to alchemy, positivist social theories possess a fundamental virtue with regard to the development of science. Like the alchemists, positivists based their thinking on an erroneous methodological approach, but in their concrete research work they were able to elaborate methods and techniques of analysis that are still successfully being used today: the methods of the positivists have proven well adapted to the needs of applied sociology in all its fields. Unfortunately, positivists were not able to detach themselves from their deeply ingrained views about the conservative character of the legislation in force in their times and in previous social formations. They never overcame the notion that law had always been at the service of the tyranny whereby those in power imposed upon society their personal interests and the interests of their own class, social rank, and family. That is why positivists tended to view law in general in a very negative light. They failed to perceive the constructive and positive role that law could play in the life of society when, in place of the despotic legal order determined by class interests, it became possible to establish democratic governance and to build up sufficiently reliable mechanisms for regulating without conflict the public interests and the mutual relations in society.

The classical thinkers of sociology naturally viewed law as being connected with society and regarded it as a particular variety of “spiritual

social facts” (E. Durkheim), as “legally protected interest” (R. Jering), as “the human inclination to imitation” (G. Tarde). What is important and noteworthy about these doctrines is that they viewed law as a codified system of legal norms, as a social phenomenon that performed certain very specific public functions and interacted with the other social phenomena in society.

In earlier sociological theories the question of the delimitation of legal sociology as a separate scientific field had not been raised. This was natural and understandable, for sociology itself had considerable difficulty in establishing social science as an independent field.

The Russian scholar S. Muromtsev was the first to categorically assert that law must be studied as a social phenomenon when examining and analyzing the causes of its emergence and development. According to him, dogmatic law can develop successfully only when connected with sociology. He was even convinced that the theory of law was essentially a sociological discipline. As for the sociological study of law, S. Muromtsev clearly asserted this could be pursued only in the framework of a separate scientific discipline. His views set the beginning of legal sociology as an independent scientific discipline.

We should immediately stress that, in scientific circles, the separation and establishment of legal sociology as an interdisciplinary field situated at the borderline between law and sociology and having points of contact with nearly all other social sciences, has not been a smooth-going and unquestioned process. The causes for its problematic status are numerous and varied, but two of them merit special attention. The first cause is that law, as a science, but also in practice, is a quite differentiated field, one to which only the “initiated” have access, i.e. those professionally engaged in it. For the majority of people law and the administration of justice are mostly the activities of law enforcement and judicial organs and institutions, activities with which people generally endeavour to have as little contact as possible. In everyday perceptions and with regard to scholarly partnership and interaction between non-jurist professionals and the professional group of jurists, there is even today an element of reserve displayed towards the legal sphere. There is still no full understanding of the need to understand law as an essential, though certainly not the sole, regulator of social relationships in the context of modern democratic civil society.

The second cause is that, regrettably, law is still perceived as something constant, and not as a dynamically changing normative system, the mission of which is to assist in the harmonious development of social relations in the context of contemporary democratic principles and norms

of governance of social life. This deformed and evidently unfounded view still provokes reserve in some specialists in the fields of law and sociology alike, and makes them hesitate to proceed clearly and categorically when working in such an interdisciplinary field.

In this sense legal sociology, as an independent scientific discipline, is still far from definitely established. On the one hand a claim has long since been made for its presence among other independent sciences and social science disciplines; it can be said to have gained acceptance by the scientific community. But on the other hand, research in the field of legal sociology, both at the theoretical and applied level, still does not meet the needs of society in terms of scope, contents, scale, and depth.

Of course, gradually and consistently, legal sociology has become firmly established in its theoretical and practical aspect. There is no doubt it has a sufficiently well-defined field of research, its own research tasks, and a set of methodological tools corresponding to these tasks.

There is still an on-going debate as to whether it belongs to the field of law or of sociology. Both viewpoints have their justifications and arguments. Unquestionably legal sociology deals with law, and in this perspective it can be defined as a juridical discipline. At the same time it can be regarded as part of the general field of sociology, inasmuch as it employs many of the basic methods and research techniques of this science.

Here it is important to consider another viewpoint, which, if adopted, may put an end to this obviously unproductive academic debate. This perspective concerns the assessment of the current needs of social practice for an active study of the problems that, by definition, belong to the field of legal sociology. The development of democratic processes in contemporary society requires that law be viewed as a dynamically changing system devoted to adequately meeting new social demands when various social interests are brought into balance and harmonized (unlike systems where they are crudely imposed).

When this requirement is seriously set in a practical perspective, the need inevitably arises to expand and enrich the methodology, the set of topics, and the information provision on which are based the conceptions and concrete programmes for renewal of the legal norms and principles currently in force. In that case law will objectively require a wider interaction (at the theoretical and practical level) not only with sociology, but with most of the other social sciences and disciplines dealing with human behaviour in society and with analysis and assessment of social realities. In this perspective we may estimate as constructive the idea that

legal sociology is an independent scientific discipline of an interdisciplinary kind.

It is a known fact that the study of processes and phenomena pertaining to a given social sphere nearly always has an organic connection with knowledge of the general and particular laws of social development, as well as of the borderline problem fields, which, by definition are the subject of other social sciences and disciplines. That is why, in parallel with the regularities identified in the given social sphere that is the concrete object of study, it is almost always necessary to take into account and analyze other regularities pertaining to the borderline fields. If every social science or discipline were limited only to the study of its own narrowly defined field of activity, there would be many blanks left in social science, and this would impair the overall view of social life in society and naturally hamper the practical activity of studying social relationships. In this connection D. Kerimov has stressed that “Everyone who strives for real collaboration between sciences in the framework of a complex systematic study of his/her “own” respective science, is forced to pass through “borderline zones”, to move through “neutral fields” towards his/her partners”^{*}.

From this viewpoint legal sociology can be considered an interdisciplinary field of scientific knowledge that combines the cognitive resources of jurisprudence and of sociology. In this aspect, appellations such as “legal sociology”, “sociology of law”, “juridical sociology”, etc., can be deemed synonymous.

Although legal sociology is a relatively new scientific field, it has already achieved, according to A. Podgurecki, one of the international coordinators and founders of legal sociology, an adequate level of theoretical maturity and a firm position. Thus it is able to successfully study the operation of law in its empirical dimensions and formulate empirically verifiable hypotheses about how law impacts on social reality and vice versa.

In specialized literature the limits of legal-sociological knowledge are a fundamental issue: this is an exceptionally important problem, and one that is still being debated. According to Podgurecki, the main research topic of legal sociology is legal norms in their connection with moral norms. This is certainly an important aspect of the field of legal sociology, but it is definitely not, nor can it be, the only one. Most authors share the view that there are three directions of research in legal sociology. They

^{*} Kerimov, D. A. *Problems of the general theory of law and state*, vol. 4, *The state ruled by law* (Moscow, 2 002), 161 (in Russian)

are: 1) the social determination of law; 2) the social mechanism of the effect of law, and 3) the effectiveness of legislation and administration of justice. According to the Bulgarian author S. Naumova, the scope of legal-sociological research should be considerably wider.

Despite the difference of views between various authors, it is evident that legal sociology has a wide research field, which offers good opportunities for theoretical analysis but also for fruitful empirical research work. Particularly interesting in the theoretical and applied aspect are issues related to: 1) the study of objective normative structures of social life and of the mechanisms for normative self-regulation of the separate social systems; 2) characterizing the legal nature of the social norms actually functioning in society, norms that need to be legally regulated; 3) clarifying the social determination of legislation and its social legitimization; 4) specifying the mechanisms by which social conflicts are resolved through coordination – aided by law – of the various existing interests; and a number of other similar problems.

Regardless of its location – whether in the field of law or of sociology – legal sociology is certainly devoted to solving interesting and exceptionally complicated problems. These problems have arisen as a result of the changes in social reality, and there is an insistent need that they be studied in depth and resolved in the interest of social practice. Hence the issue today is not whether but how specialists in the field of law and of sociology will organize their collaboration and interaction in order to respond to the real needs of their time. Any other position on the matter would be unproductive and would greatly delay the development of social science in this exceptionally important sphere, development that involves our understanding the changes brought about by the democratization of social life today.

The changes in social life within present-day civil society are occurring in a scope and at a scale never witnessed before in the history of human civilization. Social sciences, particularly law and sociology, cannot silently pass by the problems engendered by these changes and leave the task of resolving them to some future generation of scientists and specialists. These circumstances afford an exceptional opportunity for legal sociology to assert itself conclusively as an independent scientific discipline and to really offer the kind of scientific analyses and research that is expected of it.

LEGAL-SOCIOLOGICAL PARAMETERS OF THE FIGHT AGAINST CRIME AND SOCIAL DEVIANCE

STEFKA NAUMOVA

The problems of crime as a social phenomenon have always been in the focus of attention of all civilized societies. In modern societies crime has attained global dimensions and is taxing the resistance capacity of politicians, legislators, and specialized state organs alike. The emergence of new forms of criminal behaviour at the end of the 20th and beginning of the 21st century has even provoked changes in the terminology of specialists in criminology¹ and has raised the need for uniting efforts in the search for adequate methods of counteracting this particularly dangerous social phenomenon.

In theory and practice adequate clarity is still lacking as to whether it is for law alone that the new forms of social deviance (especially corruption and corruption-related crime) are a specific object of research, and, hence, of a practical strategy for restriction. Many and various problems are related to crime, which is indisputably a social phenomenon that until recently remained outside the field of vision of pure legal science (theory and legislature).

In the following analysis attention is focused on the legal-sociological aspect of the problem, inasmuch as the purely legal and criminological aspects of fighting crime have traditionally been set apart. We have nowise attempted to set in contrast the positivistic-legal and the legal-sociological

¹ Increasingly used in contemporary criminological literature are terms such as “globalization of crime”, “transnationality of modern crime”, “consolidation of crime”, etc. The reader will find detailed analyses of contemporary forms of organized crime and research in this area in: Stankov, B. *Organized Crime*. Sofia: Albatros Pbls., 2000 (in Bulgarian); Cf. also Boyadjieva, Y. “International Cooperation in Restricting Organized Crime and Money Laundering.” *Information Bulletin. Scientific Research Institute of Criminology and Criminal Law at the Ministry of Internal Affairs*. (in Bulgarian)

method of study; the aim has been to find common points of contact in the conceptual and practical applied aspects of the matter. Nor will we envisage a “complementary” (as laymen in the field of sociology of law might see it) empirical analysis of data from concrete research; instead, this is a conceptual presentation of a scientific thesis in the context of *theoretical legal-sociological analysis*. More specifically, crime and its concrete forms are viewed within the framework of the theory of the social structure of society, together with its particular set of categories, which are at times quite different from that of legal positivism. Moreover, legal-sociological analysis, having many points in common with the criminological approach, offers after all the possibility, even though as a matter of convention in scientific classification, to delimit more clearly the three basic research spheres: law (the legal approach), criminology (the criminological approach), and legal sociology (the legal-sociological approach). Such an approach is also needed for identifying and distinguishing the basic forms of counteraction against crime and other forms of social deviance. In this sense legal-sociological analysis is indisputably the widest conceptual framework for encompassing various social phenomena, including the phenomenon of crime. Criminology predominantly studies the conditions and causes of crime; as for law (criminal and criminal procedure), here the issue can be reduced to the finding of adequate legislative solutions, inasmuch as penal responsibility is indeed a very important, but *certainly not the only possibility for fighting crime*.

1. Legal-sociological conception of social deviance

The analysis of contemporary forms of crime requires a preliminary brief overview of the emergence of the notion of *social deviance* in legal-sociological theory and practice.

The representatives of legal-sociological and criminological science usually indicate Emile Durkheim as the founder of the general conception of social pathology and social deviance. It is precisely in the framework of this conception that new elements were later included, such as “corruption”, “organized crime”, “Mafia”, “money-laundering”, etc. Durkheim introduced the concept of “anomie”, meaning by it a situation in which the varied functions within the social structure do not work synchronically. This concept, first presented in *De la division du travail social*², in its first variant referred to the social division of labour, which

² Durkheim, Emile. *De la division du travail social*. Paris: Alka, 1893.

does not produce social solidarity but manifests the rise of conflict between various functions (or organs). In his later studies Durkheim described anomie as a condition of society where norms are lacking. In seeking the causes of social anomie (normlessness), Durkheim looked to the very structure of society: he tried to identify and classify various social phenomena within it as “normal” or “pathological”. In fact, by applying his well-known “rules of sociological method” precisely to the sphere of law as a basic social fact, Durkheim succeeded in discovering adequate explanations for the social origin of deviant behaviour. Proceeding from the belief that law (which he called a social fact) is indeed the phenomenon with the most intense social impact, Durkheim reached the conclusion that *legal norms could serve as criteria* for classifying behaviour (which he referred to in his terminology as “the state of things”) as normal or deviant.³

Merton’s model of deviant behaviour is almost entirely based on Durkheim’s conception of anomie, but he further develops and enriches it in view of contemporary characteristics of social structure. Merton agreed that there are situations where individuals or social groups regard the value and obligatory characteristics of norms with a decreased degree of respect. Together with this, he indicated social structure as the factor determining the motivation of human behaviour. According to Merton there are two main elements of this structure that exercise pressure or determine the concrete orientations in the sphere of behaviour. These are the culturally determined (in sociological terms) goals, and the institutionalized means for goal attainment.

E. Lemert made a critical analysis of Merton’s theory and indicated that the model proposed by Merton oversimplified the complex process of choice. Lemert pointed out that individuals in modern society operate with a great amount of values and norms, which tend to clash with one another. Moreover, the individual, being simultaneously a member of several

³ Merton, Robert K. “Social Structure and Anomie” *American Sociological Review*, 1938; 3; Merton, R. K. *Social Structure and Anomie*. 1957; Merton, R. K. “Continuities in the Theory of Social Structure and Anomie”, *Social Theory and Social Structure*. New York, 1957; Merton, R. K. “Anomie, Anomia and Social Interaction: Context of Deviant Behavior” in Clinard, M. B. (ed.) *Anomie and Deviant Behaviour*. New York, the Free Press, 1964; Merton, R. K. *Social Theory and Social Structure*. Enlarged Edition. (New York: The Free Press, 1968) p. 58-61; Merton, R. K. *Sociological Ambivalence and Other Essays*. (New York: The Free Press, 1976) p. 125-128; Parsons. T. *The Social System*. New York, 1951; Parsons, T., E. A. Shils (eds) *Toward a General Theory of Action*. New York, 1951.

groups with separate value systems, is under constant pressure due to these differences between values and norms. This contradiction between interests, values and norms (including legal norms) can be a source of deviance. Individual behaviour (whether conforming or deviant) is, according to Lemert, a chance result of the total pressure of the various groups and their norms. When in a pressure situation, a person rarely resorts to a plainly deviant course of behaviour. Instead the individual tends to follow a line of behaviour that holds a potential risk of deviance.⁴

A. Cohen, who is a proponent of the broad view that social deviance is any divergence from social norms, attempts to distinguish between social deviance (a divergence from social norms) and crime (a divergence from legal norms). He defines social deviance in the context of legal-sociological and criminological categories, which inevitably reduce the analysis to the problem of a distorted legal and moral consciousness.⁵ In his studies of the sub-culture of criminals, Cohen stresses the connection 'social inadaptability - frustration - aggression - deviant behaviour'. Unlike Merton in his model, Cohen tries to come down to the empirical level and present a wide schema of different forms of deviant behaviour: he includes the legal factor as a component among the mechanisms that form attitudes and motives of deviant behaviour.

The theory of social deviance is equally attentive to the importance of the legal factor in the general context of social structure in which the causes of deviant behaviour are rooted. In this perspective the theory of social disorganization is drawn closer to the model whereby it is possible to distinguish more accurately between deviant behaviour and violation of the law, between social pathology and crime, between concrete criminal deeds and some new forms of social pathology, which undoubtedly possess juridical characteristics, but the explanation of which cannot fit into the framework of purely juridical analysis; the classical example of such a form is corruption.

2. The legal factor and social deviance

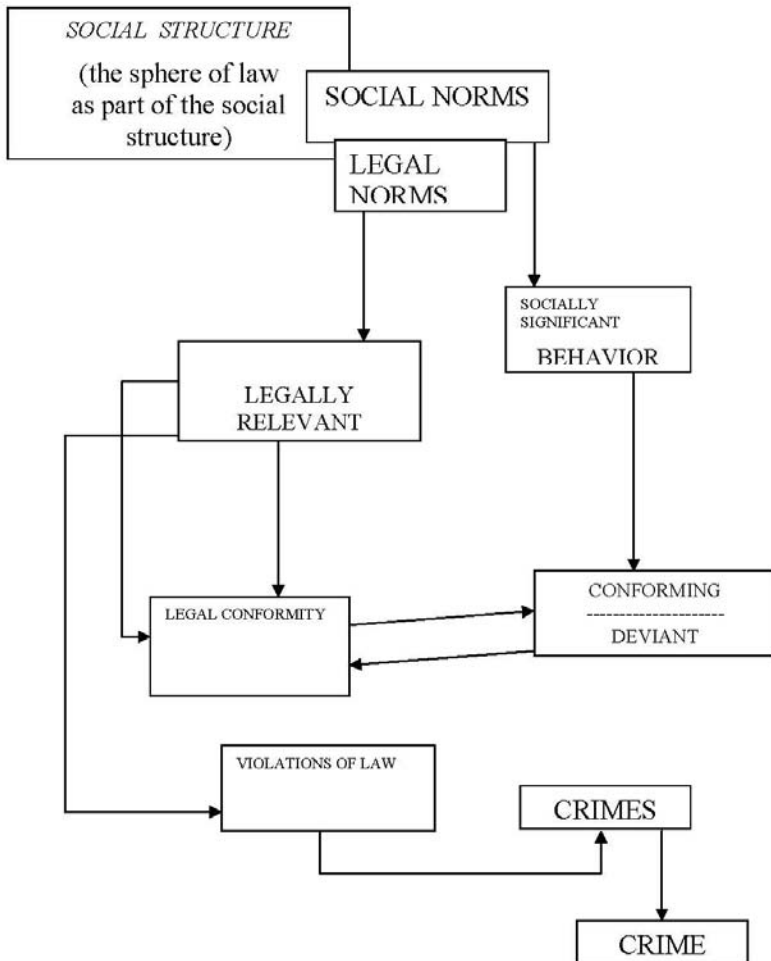
Social conformity is broader than legal conformity. Deviations from certain social norms are social deviance, but legal conformity is not always equal to social conformity. At the legal-sociological level it is important to

⁴ Lemert, E. *Human Deviance, Social Problems and Social Control*. New York, 1967

⁵ Cohen, A. *Delinquent Boys. The Culture of the Gang*. Glencoe, 1955.

ascertain the mutual connection between the “legal factor” and the concrete socially measurable parameters of the phenomenon.

Schematically, this model can be represented thus:



By using this model it is easier to identify the social-legal characteristics and the possible range between the various manifested forms of social deviance.

We can distinguish three basic categories of social deviance in which the legal factor is clearly indicated:

A) Forms of deviance that indisputably hold a higher degree of threat to the public and for which there is no doubt that the traditional legal responsibility is of a penal kind;

B) Forms of deviance regarding which lawmakers periodically change their views, moving between tolerant and rigorist attitudes.

C) Forms of deviation of a disputable kind, to which the classical schema applies of reprehensibility in the perspective of other normative systems (ethics, religion, customs), but for which the application of penal responsibility is not the most effective method of counteraction.

Legal-sociological research is focused chiefly on identifying the specific characteristics of those forms of social deviance for which clear and unequivocal criteria for legal definition have not yet been established and hence an adequate strategy for counteraction against their most dangerous form, crime, has not yet been devised.

3. Social disorganization and pathology of institutions

The theory of criminal behaviour, as part of the theory of social disorganization, varies within a rather wide range. It is at a much later stage that the theory came to focus on the problem of the connection between law and the different manifestations of corrupt behaviour.

We speak of pathology of institutions in cases when the social disorganization and social deviance have penetrated into certain government structures, when the holders of power positions in the different branches (legislative, executive, and judiciary) are a source or a channel of deviant behaviour. Moreover the scope may vary: ranging from bureaucracy, to which Weber was the first to draw attention, passing through *white-collar crime*⁶, and encompassing forms of deviance like

⁶ The concept of *white-collar crime* is thought to be relatively new in criminological theory, even though the need for introducing it became obvious as early as 1907, as Ross pointed out. (Ross, E.A. *Sin and Society*. Boston: Houghton, Mifflin, 1907); it was confirmed in the 1930s by Morris (Morris, A. *Criminology*. New York: Appleton, 1934), and it acquired the features of a science thanks to E. Southerland. (Southerland, E. *White-collar Criminality*. 1940). Cf. also Aubert, V. "White-collar Crime and Social Structure", *American Journal of Sociology*, 58, p. 263-271.

corruption, organized crime (Mafia-type organizations), which is a conglomerate of institutional and non-institutional forms of social behaviour, “woven” into the social structure in such a way that pathology becomes the norm.

It is not by accident that the Watergate affair seems to have been the dividing line between the theoretical perspective and the concrete parameters used in describing corruption as a complex social phenomenon that, if left uncontrolled, threatens to overturn the structure of society, so that pathology will be the norm.

It was not very long ago that the pathology of institutions became the object of both theoretical and empirical analysis. It was not studied earlier, because in general the functioning of institutions has always contained a bureaucratic element that can hardly be placed in the category of anomie. Besides, even if the construction ‘individual-oriented ethics – group-oriented ethics’ is assumed as an initial scheme, it would be hard to find an objective criterion for determining whether the functioning of a given institution is normal (corresponding to commonly accepted values) or pathological.⁷

It is important to ascertain how legal institutions (in the broadest sense) can become a source of social deviance or else how they themselves can contain an element of dysfunction, which leads to growing social deviance in the legal sphere. But the question remains open regarding the social characteristics of exercising power. This element goes beyond the purely juridical analysis of institutional activity.

4. Legal and extra-legal measures for counteracting crime and social deviance

Social deviance is a characteristic marker of contemporary industrial society. It is not by accident that in legal-sociological and criminological literature the term “fight”, “elimination”, “overcoming”, etc., have been forsaken with respect to crime and other forms of social deviance. Moreover the parameters of the phenomenon are constantly changing and legislation itself is faced with a complex dilemma: to criminalize or to de-criminalize.

In the legal-sociological aspect it is necessary to establish what the role of legal and extra-legal mechanisms may be for mastering and controlling those manifestations of social deviance that threaten the stability and integrity of society.

⁷ Podgorecki, A. Patologia dzalania instytucji. (In: Zagadnienia patologii..., p. 183).

Every society has some kind of legal system which, to various degrees, satisfies public expectations regarding order, justice, and the balancing of interests. To a great degree society, self-organized as a state, strives to sustain the principles of the supremacy of the Constitution and of law, and this serves as the chief guarantee that the sovereign (the people) possesses defence mechanisms against social anomie. In the context of its legal interpretation, the question seems elementary: as long as there are legitimate mechanisms for a likewise legitimate legislation, the risks of deviance are reduced to a minimum. But this is only seemingly so. *Even in the best organized society, the legitimacy of law can be questioned by the very creators of law or by those who apply it.* In a sociological aspect there are at least two possible directions for reasoning on the problem. On one hand the Constitution and the legislation based on it are factors guaranteeing the legitimate stability of society and avoidance of social anomie. On the other hand the realities of life produce ever new social relations, new systems of values, and hence, new forms of social disorganization and disintegration. Consequently, law can only “correct” the possible misbalance, and it does so either preventively or subsequently.

At the concrete juridical level things have an even more pragmatic dimension. Legislation in itself cannot restrict social deviation as if by waving a magic wand. What is worse, law itself can at times be a source of deviance: this may occur in periods of total change (for instance the transition from a centralized to a market economy), but also in periods of relative stability, when the clashes of values, hidden from the view of the large social structures, arise and come to the fore, so that even smouldering contradictions may lead to a breakdown of the whole social system. In such cases law is not able to prevent the larger conflict, which now becomes a secondary source of change; in its turn, change engenders new relationships and the need for a new legal regulation.

Crime is not merely the accumulation of legally defined deeds in penal law. This is particularly true with regard to forms of crime like corruption (which is not simply the sum of passive and active bribery), international terrorism, mass suicides committed under the influence of religious sects, etc. This places lawmakers in a complicated situation: they have to find the distinguishing criterion for achieving a balance between legal and extra-legal sanctions. There are cases when a legislator changes his stand many times over regarding certain deeds. As an example, it would suffice to indicate the all too rigorist attitude long prevalent in the past among legislators *regarding homosexuality*. In modern penal laws we see a more tolerant attitude.

When we refer to law as a source of social deviance, we should have multiple factors in mind. The existence of a number of legal institutes or regulations (for instance in the field of tax legislation, regime of licensing, over-complicated regime of authorization etc.) are preminent sources of corruption, tax evasion, or other deviant behaviour.

It is not by accident that in the latest research on social deviance, poverty is one of the most often discussed problems. In Durkheim's view, poverty is a normal social fact⁸. According to most of the major sociological doctrines, it is an element of the social structure, and social inequality is a condition of the existence of society.⁹ Opinions are divided in the legal-sociological doctrines. Poverty (social inequality) is in itself perceived by some as a pathological phenomenon. According to others poverty (social inequality) generates a secondary pathology: crime, alcohol abuse, aggressive behaviour, etc.¹⁰ The thesis that economic factors (poverty in this case) are criminogenic can hardly be empirically refuted, but in any case research on the issue is continuing. *Many studies focus on the connection between poverty and corruption; it is considered that the poorer a society, the greater the risk of corruption behaviour. But there is sufficient proof of the reverse thesis: for instance the sensational scandals concerning corruption among representatives of the European Commission or other accusations against well-known politicians in developed Western countries.*

4.1. From conceptual analysis to legal definitions of the basic forms of social deviance

There are two ways in which legislation can have an impact on the process of restricting crime and social deviance: by striking the right

⁸ Durkheim, E. *Les regles de la methode sociologique...*, p. 47

⁹ Considering the phenomenon of poverty in terms of social reintegration, G. Fotev points out: "Poverty can be treated as a pathological social fact if its weight (the number and degree of poverty) go beyond the social norm and becomes a risk to the stability of the social order and the constitution of the society in question. When poverty and social exclusion are perceived as a legitimate and normal social fact, a theoretical abstraction is made from the purely moral consideration of the issue. Fotev, G. *Crisis of Legitimacy*. (Sofia: University Pbls. St. Kliment Ohridski, Academic Pbls. Prof. Marin Drinov, 1999), p. 200.

¹⁰ Cf. Tarkovska, E. "In Search of an Underclass in Poland" *Polish Sociological Review*, 1(125), 1999, p. 3-17; Grotowska-Leder, J. "The Permanence of Poor Status: The Temporal Aspects of Poverty". *Polish Sociological Review*, 1(125), 1999, p. 17-37.

balance of criminalization and through a wise application of penalties. It is well-known that the weight of the penalty is not where the re-socializing effect lies.

What does have great importance for stimulating or restricting social deviance is the moral norms and values established over the ages, but also current public opinion, the development of institutions of civil society, the attained degree of legal consciousness (that of the legislator as well as that of the people to whom legal norms are addressed).

This is the point of connection between legal decisions, public opinion and the concrete social-political situation. There is one other essential element: the need for going beyond the framework of national legislation to the perspective of European standards. The public interest is considered to be a generally applicable criterion: this is a sufficiently reliable category when criminalizing certain deeds defined within the sociology of law as forms of social pathology.

The criminological aspect of restricting social deviance (especially the new forms of crime indicated above) has been quite well researched. In the legal-sociological perspective there are several crucial problems which indeed make up a relatively clear picture of the specifics of the sociological method in this sphere. Of course, there is no unbridgeable gap between the criminological and the legal-sociological methods, but they do present some differences.

In this connection there is, first of all, the issue of the anticipating role of legal-sociological analysis for identifying the factors or trends which, at a given time, provoke a growth of social pathology, of which global crime is part;

In second place, it is within the framework of legal-sociological analysis that the issue is set regarding the already well-established models used for analyzing society, models which can directly be projected onto modern methods of analyzing crime and other forms of deviance, or can be used in perfecting penal and penal procedure legislation;

Thirdly, there is the classical issue of the role of public opinion as a specific manifestation of legal consciousness in assessing crime (the size, degree of risk for a concrete society, the reversal of values, etc.).

In this respect periodical research serves to a great degree as a corrective for legislators and for civil society in general.

To the first of these aspects we should refer a number of theoretical and practically applied achievements of sociology of law, which have proven their validity immediately or in time. Definitely numbering among these achievements are the studies on ethnocentrism as a specific psychological attitude in the framework of the classical division of social

groups into “in-groups” and “out-groups”¹¹, an attitude connected with certain forms of social deviation. Falling within this aspect is the anticipating legal-sociological analysis on problems of organized crime as a sociological category, corruption as a social-legal phenomenon, Mafia-like groups as a dysfunctional element in the sociological structure, the growth of drug addiction among minors, violence against children, etc.

Under the second aspect we refer the applicability of categories of legal sociology to matters of penal law. The categories in question are: social group, reference group, social stratification, ethnocentrism, individual legal consciousness, resocialization, and others. The results obtained in this area are either attempts at introducing these categories in penal legislation (the penal code and the penal procedure code) or the creation of adequate legal definitions. Undoubtedly, the penal code itself can be viewed as a certain hierarchy of values, and in this sense, every change in this direction reflects a change in public legal consciousness. Sociology of law has long ago given an unambiguous definition of the above-mentioned concepts, and, through its specific methods, has studied their importance for restricting social deviation and crime in the context of the sociological structure. Much later these concepts were used in the doctrine of penal law or as legal definitions.

We should also emphasize the importance of the Criminal Law Convention on Corruption of the Council of Europe (Dec. 12, 1999), ratified by the Republic of Bulgaria, which, as is well-known, refers to a number of other forms besides active and passive bribery, and a number of possible subjects of corruption. Here we should also indicate the activities of Transparency International, which are unique in structure and extent, as well as the ever wider measures taken in the framework of national and international anti-corruption policy. Progress has clearly been made by the legal defining of the concepts of “organized criminal group” (the new section 20 of art. 93 of the Penal Code), “human traffic” (the new section IX of Chapter II), by the introduction of “probation”, a long debated and analyzed matter in legal-sociological and criminological studies.

The third specific aspect is the study of public opinion as a specific form of legal consciousness.

¹¹ For more details, cf. Naumova, S. *Sociology of Law* (Sofia: Yurispress, 2000), p. 108ff (in Bulgarian)

Conclusion

Within the general system of counteracting crime, the specific features of penal law measures have always been a focus of legal-sociological studies. However, sociology of law studies the role of legal coercion in the context of the general concept of social control through law in taking into account the perpetual modification of the principle *ubi societas ibi ius*. This brings to the fore the study of the dynamics of social relationships that engender the dynamics of the legal system. Without a clear picture of the state of public and individual legal consciousness, without delineating the parameters of the connection 'power -realization of power - conformism - deviance', we cannot succeed in creating rational models of counteraction against those forms of social pathology which, once they become a norm of conduct, may lead to the total disruption of humanity's hierarchy of values, which serves as a backbone for society in general.