HOW I BECAME A SOCIOLOGIST OF LAW AND WHAT I DID WHEN ONCE I WAS (an essay in Whig autobiography*)

John Griffiths

He who can, does. *He who can, teaches.*
He who cannot, teaches. *He who cannot, does.*
[Shaw, 'Maxims for revolutionaries'[1]] [Griffiths, 'Maxims for intellectuals']

I was born in Berkeley, California, on 3 July 1940. At the time, my parents were working on their doctorates at the University of California, my father in history and my mother in physiology. Like many other members of my family over the past four generations, both of my parents were - except during World War II - associated with universities for their whole working lives.[2]

In America the life of a young academic family entails frequent moves over a large continent. I went to elementary and high school in Farragut (Idaho), Berkeley, Brussels (Belgium), Ramsgate (England), Berkeley again, and finally Vermont (Putney School). In 1958 I returned to Berkeley to attend the University of California.

1. University of California, 1958-1962

In 1958-1962 Berkeley was without a doubt the best place in the United States - and possibly in the whole world - for someone like me to be a

---

* This is a thoroughly revised, translated, and expanded version of a retirement lecture given on 11 April 2006 and later published in Dutch in *Recht der Werkelijkheid* 27: 23-42 (2006).

[1] In G.B. Shaw, *Man and Superman* (1903).

[2] My mother got her first university degree from the University of London (1937) and her MA (1942) and PhD (1953) in physiology from the University of California (Berkeley); she taught zoology at Farragut College (1947 - this was a temporary college for returning soldiers after WWII), was a research and teaching assistant at UC (1948-1955), taught at Lawrence College (lecturer, 1956-1959), and ultimately became a professor of zoology at the University of Washington (1959-1986). My father studied Greek at UC (1932-1936) and history at Oxford University (1936-1939), and got his PhD in history from UC (1942). He later taught history at Farragut College (1947), UC (1947-1955), Lawrence College (1955-1959), and the University of Washington (1959-1980), and after retiring in 1980 continued occasionally to teach graduate students at UW and the University of Arizona.

student. It was a fermenting cauldron of intellectual life and of social and political involvement together.

My original plan was to study medicine. In the United States medicine - like law - is a post-graduate study: one has to complete a four-year 'undergraduate' study first. But if one wants to get admitted to a medical school, a variety of undergraduate courses are more or less required. Hence, in my first year at Berkeley, I took courses in chemistry, math and zoology. Until the course in zoology I greatly enjoyed all of this, and I particularly remember the pure aesthetic pleasure I got from the 'periodic table of the elements' - a pleasure, as I discovered much later in life, that I share with many others. But zoology seemed to consist largely of memorizing the names of obscure bodily parts of flatworms and frogs. I decided to try something else. In retrospect one might say that my preference for theory over mere facts was already clear.[3]

I had to choose another subject to 'major' in (that is, to concentrate on in choosing the courses I wanted to take), and I chose philosophy, largely (as I remember) because of the freedom it offered to put together a program of study of my own liking. As it turned out, I could not have made a luckier choice and I took maximum advantage of the freedom offered. Apart from a few introductory courses[4] I took specialized courses (for

[3] Many years later I discovered to my delight that I share this preference with, among other people, Charles Darwin. See Darwin's letter to Fawcett (1861), which could have been my life-long intellectual motto:

> About 30 years ago there was much talk that geologists ought only to observe and not theorize; and I well remember someone saying that at this rate a man might as well go into a gravel-pit and count the pebbles and describe the colors. How odd it is that anyone should not see that all observation must be for or against some view if it is to be of any service.

[4] As far as I can recall, the only requirement that applied to all UC students at that time was an introductory course in either English or Speech. The latter was a peculiarity of Berkeley, dating back to a political schism of the original English Department at the time (I believe) of the 'loyalty oath controversy' (see D. Gardner, *The California Loyalty Oath Controversy*, University of California Press, 1967; G. Griffiths, *Venturing Outside the Ivory Tower: The Political Autobiography of a College Professor*, informally published, 1999). The course in English was essentially literary in orientation, that in Speech (taught in my case by prof. Jacobus ten Broeck) focused - despite the name - on essayistic writing, especially concerning constitutional questions. It was from ten Broeck that I was first exposed to the complexities of the requirements of equal protection and of freedom of speech, in particular to Meiklejohn's approach (see Alexander Meiklejohn, *Wikipedia*; A. Meiklejohn, *Free Speech and Its Relation to Self-Government*, Harper Bros., 1948). Meiklejohn's political and structural analysis (free speech as an intrinsic part of popular sovereignty in a democracy - freedom, hence, of speech on public issues) has always appealed to me more than Emerson's idea that what is essentially protected is the individual interest in self-expression of all sorts (T. Emerson, *The Theory of Freedom of Expression*, Random House 1970); compare C. Black, *Structure and Relationship in Constitutional Law*, Louisiana State Univ. Press, 1969).

graduate students) in, for example, Plato and - of great influence for the later development of my theoretical ideas about the sociology of law - Hobbes.[5] And apart from philosophy in a narrow sense, I took courses in Tolstoy and Dostoyevsky, Bach and Händel, nineteenth century European intellectual history, eighteenth century American political thought (I was particularly interested in the political ideas of Benjamin Franklin), and so forth. I took a course in philosophy of science from Paul Feyerabend,[6] which dealt mostly with the work of Karl Popper.[7] Thanks to Feyerabend I have throughout the rest of my intellectual life been a convinced Popperian, at least as far as the *logic* of an empirical science is concerned, although later on Kuhn[8] and many others made clear that the *practice* of science proceeds in quite a different way.

After receiving my bachelor's degree in 1962 I first thought I wanted to go further with political philosophy. But I was advised by Joseph Tussman[9] - from whom I had taken the graduate course on Hobbes - that a good law school would be a better place to do this than a department of philosophy or political science (in the US law is - like medicine - a post-graduate study). He recommended the Yale Law School in particular. I got accepted at Yale and was given almost complete financial support. And so, in the Fall of 1962, I moved from the West Coast to the East Coast to attend Yale Law School.[10]

---

[5] Hobbes' insight that all social order depends upon *rules* (which he refers to as commands) which are maintained by *groups* (which he refers to as a 'sovereign') is in my view essential to an empirical conception of 'law', hence to the sociology of law and sociology as a whole (see Griffiths, 'What is sociology of law?', forthcoming).

[6] See *Wikipedia*. Cf. P. Feyerabend, *Against Method: Outline of an Anarchistic Theory of Knowledge* (first edition in M. Radner & S. Winokur, eds., *Analyses of Theories and Methods of Physics and Psychology*, Minneapolis: University of Minnesota Press, 1970).

[7] K. Popper, *The Logic of Scientific Discovery* (London: Hutchinson, 1959).

[8] T. Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, rev. ed., 1970).

[9] See *Wikipedia*. Cf. J. Tussman, *Obligation and the Body Politic* (Oxford: Oxford University Press, 1960).

[10] Life at Berkeley had not been entirely academic. I was active in (and in my last year the president of) Stiles Hall, a student organization just off-campus, with its own building and activities and a commitment to freedom of speech far more principled than that of the University at the time: communists and Black Power advocates (such as Malcom X) were welcome to speak at Stiles, and via Stiles I got involved in various civil rights, peace, and agricultural labor activities (among them, the Students Committee for Agricultural Labor, of which I was president, and which at one point gave testimony to a California State Senate Committee investigating conditions among agricultural laborers in California's Central Valley: *California's Farm Labor Problems*, Report of the Senate Fact Finding Committee on Labor and Welfare, part 1, Senate of the State of California, 1961, p. 9; see also minutes of the Hearing held on 15 and 16 December 1960). I also participated in the San Francisco demonstrations against the US House Un-American Activities Committee, which was investigating communist activities in California with hearings in San Francisco. The demonstra-

2. Yale Law School, 1962-1965

Yale Law School was completely different from Berkeley - far more socially and intellectually 'elite' - but also a very challenging environment. In the steep hierarchy of American higher education, the good law schools were at the top, and Yale (together with Harvard) was at the top of the law schools. We were the *crème de la crème de la crème*, and well we knew it!

Before the Second World War - in the New Deal period - Yale Law School had been one of the breeding-places of Legal Realism. And although Legal Realism as a critique of legal formalism had largely worn itself out from its own success, the neo-gothic buildings of the Yale Law School still breathed out the rebellious, disrespectful, rather anarchistic spirit of the Legal Realists. I share the opinion of William Twining,[11] that there never was such a thing as a real Legal Realist philosophy of law, but nonetheless one can associate with the label a particular way of engaging in legal scholarship. Three characteristic ideas associated with the Legal Realists have had a major influence on my own thinking about law:

(1) **'**Formalism' was term of abuse at the Yale Law School. What was wrong with formalistic legal thinking was that it amounts to *thinking about something that only has meaning in relation to something else, without thinking about the something else*. Legal rules are intimately connected with all the relationships and interactions of human life. They can only be understood in the light of their significance for these relationships and interactions. This does not mean that law has no function of its own, but it does mean that that function cannot be considered in isolation from the relationships and interactions that it regulates.

The notion - to this day still occasionally defended - that it is possible to attribute a significance to legal rules that is independent of the role they play in social life, has always seemed to me rather silly. Looking back over my later work as a sociologist of law, it seems to me one long reac-

---

tions were later the subject of a propaganda film, *'Operation Abolition*' (Department of Justice, Federal Bureau of Investigation, 1960; available on youtube); although I was present at the events in the film, I seem to have escaped the cameras. At some point I was myself (as a member of SLATE, a student 'political party' active in campus politics) mentioned in a report on 'communist' activities by the state's equivalent of HUAC (*Un-American Activities in California*, Eleventh Annual Report of the Senate Fact-Finding Subcommittee on Un-American Activities, California Leslature, 1961, p. 46).

[11] W. Twining, *Karl Llewellyn and the Realist Movement* (London: Weidenfeld & Nicolson, 1973).

tion to the challenge thrown down by the Legal Realists. I have tried in a systematic way - and in particular on a solid theoretical foundation - to think about the relationship between law and the '*something else'* that gives to law whatever significance it possesses.

(2) We also learned not to take the meaning of abstract rules at face value: we stood firmly in the Legal Realist tradition of 'rule-skepticism'. The famous slogan, *Law is what the judge will do in fact,* [12] means, that you only really know what the law is on a particular subject if you know how a judge will apply it in an actual case. In other words, the meaning of a legal rule formulated in abstract terms is always problematic. Regarded as a *definition* of the concept 'law', such a slogan is not tenable.[13] But considered as a warning against the illusion that you have adequately analyzed a legal problem if you have found a legal rule that seems to 'fit' - or that knowing 'the law' on a subject means being able to reproduce the body of abstract rules that apply to that subject - the slogan does express an essential insight.

(3) We 'Yalies' were particularly pleased when, for a given seemingly intractable substantive legal problem, we could find a *procedural solution*. It is often, for example, impossible to think of a satisfactory definition of the key concept that determines the applicability of a given legal rule. Take, for example, the concept 'medical futility', a key concept of the law relating to medical decision-making at the end of life. If a given treatment would be - or has become 'medically futile' - a doctor must in principle not give it, even if the result of this will be the death of the patient. As a PhD student of mine, Sofia Moratti, shows in her dissertation *Foregoing Medically Futile Life-Prolonging Treatment in Dutch Neonatal Intensive Care Units,*[14] a great deal of energy has been invested in efforts to *define* the concept in a way that can be unambiguously applied in concrete cases. Without success. But might it nevertheless be possible to think of a satisfactory *procedure* through which a decision could be made in such a case? Another PhD student, Dick Kleijer, in his dissertation concerning decisions not to give (further) intensive-care treatment to a dying patient, describes a decision-making procedure in which the unavoidable subjectivity that resides in the concept 'futile' is compensated for by 'intersub-

[12] O.W. Holmes, 'The path of the law,' pp. 167-202 in *Collected Legal Papers* (Boston: Harcourt, Brace & Howe, 1920), p. 173: "The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law."
[13] See H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), p. 136 ff.
[14] Dissertation RUG, 2009.

jectivity': that is, by involving others than the responsible doctor alone in the decision-making process.[15]

Back to the Yale Law School. With the benefit of almost a half-century of hindsight, a few teachers seem to me to have had a lasting intellectual influence on my thinking about law, in particular Ronald Dworkin, Charles Reich and Joe Goldstein. I will discuss Dworkin's influence shortly. Reich was a fabulous teacher - the only one who in my experience as a student was ever spontaneously applauded at the end of a lecture (and this by a bunch of *blasé* Yale Law School students, and solely for the unique and sophisticated way in which he had analyzed a fundamental but intractable problem in American administrative law: the requirement of 'exhaustion of administrative remedies'). It was also in this period that Reich wrote what in my view is his most lastingly important article, 'The new property',[16] in which he analyzed the constitutional protection of property rights. Briefly summarized, his argument was that in a modern society rights to social insurance deserve the same protection against deprivation by the state as had rights to real property at the time the Constitutional protections of property rights were framed.[17] His analysis of property rights was essentially functional (secure access to resources is the foundation of personal autonomy and, in his view, that is what 'property' is all about). Because of its functional character, it enjoys considerable influence among legal anthropologists looking for a universal/comparative concept of property, one that does not simply and uncritically echo the legal concept of property current in a particular country.

[15] D. Kleijer, *"Het wordt geregeld...." Een onderzoek naar (zelf)regulering bij het staken of onthouden van een levensverlengende behandeling op Intensive Cares in Nederland* (dissertation, RUG, 2005).

[16] C. Reich, 'The new property' (*Yale Law Journal* 73: 733, 1964). I had just become a member of the editorial board of the *Yale Law Journal* (see further on) and in that capacity spent long days and nights in the library of the Law School working on the editing of Reich's article. Partly as a result of this, we became good friends. A few years later, when I had become his colleague, Reich published an enormously successful book, *The Greening of America* (New York: Random House, 1970). In the period in which that book was written we had a great deal of contact with each other - both personal and political - and in the 'Acknowledgements' at the end of the book (p. 398) he includes me among friends who had 'influenced' it. Nevertheless, while I admired him greatly, I have never been nearly as enthusiastic about the book as were many others. It seemed to me the intellectual high-point of the exaggerated and naive optimism of the hippie-period, and I missed in it the sharpness and subtlety of his earlier legal thought.

[17] The 5th and 14th amendments prohibit the taking of 'property' by the federal government, respectively the states, without 'due process of law'. Decisions of the Supreme Court had held that payments from government social insurance programs were 'privileges' rather than 'property rights', and hence enjoyed only limited constitutional protection.

Joe Goldstein specialized in criminal law, family law and law-and-psychoanalysis. Because I have never felt the attraction of the last of these, it was in particular the self-assured interdisciplinary way that he spoke and wrote about family and criminal law that influenced my thinking.[18] Years later, Goldstein asked my wife and me to check the translation into Dutch of two books on legal interference in child-custody matters that he had written together with Anna Freud and Al Solnit: *Beyond the Best Interests of the Child* and *Before the Best Interests of the Child.*[19] The central idea of the two books is that legal intervention in the parent-child relationship almost always does more harm than good.

American legal education generally offered a great deal of freedom to choose the courses one wanted to take. Yale was extreme in this respect: only the four subjects of the first of six semesters (torts, contracts, constitutional law and civil procedure), plus later on two more (property and criminal law), were required. After the first semester, most legal subjects quickly gave rise to a sense of *déja vu*: we already knew the standard analytic steps of 'legal reasoning' and could apply them ourselves to each new topic. For some of us the result was that after the first year we looked around for something other than just another legal course.

One possibility was to create a new subject and persuade a professor to take responsibility for it. A friend and I - each interested in both criminal law and legal philosophy - noticed that Ronald Dworkin, in whose work we were very interested, by contrast with his own teacher H.L.A. Hart, never dealt with the philosophical foundations of the criminal law. We assembled a large pile of readings that seemed to us philosophically diffi-

[18] See, for example, his empirically based (I would say, sociological) article concerning decisions by the police to regard given conduct as 'not criminal', J. Goldstein, 'Police discretion not to invoke the criminal process, low visibility decisions in the administration of justice' (*Yale Law Journal* 69: 543, 1960). It was through Goldstein that I first came into contact with the writings of the sociologist Richard Schwartz (before my time, Schwartz had briefly been attached to the Yale Law School); Goldstein and Schwartz were co-authors of the textbook from which I learned criminal law: *Criminal Law – Problems for Decision in the Promulgation, Invocation and Administration of a Law of Crimes* (New York: Free Press, 1962), a book that even for that time carried the interdisciplinary approach to law to an exotic extreme. Schwartz' article 'Social factors in the development of legal control: a case study of two Israeli settlements' (*Yale Law Journal* 63: 471, 1954), has greatly influenced my approach to the sociology of law, something that is quite apparent from the frequency with which I have invoked it in my writing and from the fact that I have always used the article in teaching sociology of law.

[19] J. Goldstein, A. Freud & A.J. Solnit, *Beyond the Best Interests of the Child* (Free Press, 1973); *Before the Best Interests of the Child* (Free Press, 1979). Translated respectively: *De toverformule: in het belang van het kind* (Kluwer, 1979); *Wanneer de toverformule: criteria voor overheidsinterventie in het belang van het kind* (Kluwer, 1984).

cult and interesting and discussed these weekly with Dworkin over the course of one semester. The problems we addressed concerned not only the justification of punishment, but also difficult concepts in the philosophy of language (the concepts of 'act' and of 'intention', for example), matters that decennia later became highly relevant again in connection with the regulation of euthanasia.

It was easy to get permission to take graduate courses in other faculties. In this way, the list of courses I took at the Yale Law School includes a seminar in the History Department in medieval English constitutionalism (for which I spent many hours translating the 'articles of impeachment' of Richard II from the original Latin[20]) and, perhaps more directly relevant for my later work, a seminar in the Anthropology Department in anthropology of law given by the interesting - if highly eccentric - anthropologist Leopold Pospisil.[21] Apart from his own work (and his concept of law, similar to that of the Legal Realists: 'law' is the rules implicit in the decisions of persons whose authority enjoys general acceptance), Pospisil introduced me to Hohfeld's *Fundamental Legal Conceptions*.[22] Hohfeld makes a dizzying effort, using nothing more than abstract reasoning, to establish the fundamental concepts that in every conceivable legal system form the foundation of all legal reasoning. Later in life I came to think that any such attempt is, like searching for the fountain of youth, doomed to be disappointing. Hohfeld's idea, for example, that for every 'right' there must be a precisely corresponding 'duty', suffers from limitations characteristic of every effort to force the pluriformity of legal reality onto the Procrustes-bed of a formal analytic scheme. Nevertheless, I still find it useful to test an assertion about legal reality with Hohfeld's analytic acid: doing so always contributes to clear thought.

Apart from the educational program of the Law School - and almost as important for my own development - there was the opportunity to be a member of the Editorial Board of the *Yale Law Journal,* one of the most prestigious law journals in the United States and entirely run by law students.[23] Some members were appointed on the basis of their grades on

[20] Cf. Griffiths, 'Vertrouwen in de rechtspraak ['Trust in judges,' lecture Maastricht University, 14 Jan. 2011, in Forum Romanum, *Nieuwsbrief* 7, April 2011 (http://www.rechten.unimaas.nl/burpao/Forum%20Romanum/2011/nieuwsbrief%207%20-%20definitieve%20versie%20nieuwsbrief.pdf), referring to the fundamental constitutional idea of abuse of power, as manifest already in the deposition of Richard II in 1399.

[21] See L. Pospisil, *Anthropology of Law* (New York: Harper & Row, 1971).

[22] W. Hohfeld, *Fundamental Legal Conceptions, as Applied in Judicial Reasoning and Other Legal Essays* (New Haven: Yale University Press, 1919).

[23] Most or all American law schools publish a journal for which students are responsible.

the examinations at the end of the first semester, and I was among them, so I was a member of the editorial board for almost the whole of the three years that I was a student at Yale. In that capacity I acquired a considerable experience with both the technical and the substantive aspects of editing. This experience proved later on to be extraordinarily valuable, both in connection with my own writing but also as editor of the *Journal of Legal Pluralism* (and other publications such as *Recht der Werkelijkheid*), and as supervisor of (graduation) theses and PhD dissertations. The experience also formed the basis of my views concerning the teaching of writing skills. Apart from sloppy thinking, which is where many 'writing' problems originate, the biggest problem that many people have with writing is that they have not learned to read their own writing in a critical way - they simply do not see that what they had *intended* to express is not the same as what they *in fact* have committed to paper. In short, learning to write is to a large extent a matter of learning to read one's own writing as if someone else had written it. And two people, neither of whom can write well, can help each other by reading and giving critical commentary on each other's written work.

The law students who form the editorial board of an American legal periodical such as the *Yale Law Journal* must also contribute articles: at Yale it was customary that one first write a ‘Note’ and later a more ambitious ‘Comment’. My Note was ‘Charity versus social insurance in unemployment compensation laws’[24] and my Comment was ‘Extradition *habeas corpus*’.[25] The extraordinary length of these two contributions (29 and 57 pages) gives the lie to the notion that a ‘Note’ is of limited ambition and length and a ‘Comment’, while somewhat more ambitious, is still far more modest than the 'articles' that (mostly) professors publish. At least in the case of the *Yale Law Journal*, the notion must be taken with a substantial grain of salt.

Before moving on from Yale I should mention that in the Spring of my last year as a student, I went for a couple of days with Willard Taylor, a fellow student and life-long friend, to join the civil-rights demonstration in Selma, Alabama, subject of the recent film *Selma* (in which so far as I can tell, we do not appear!).

[24] *Yale Law Journal* 73: 357-388, 1963.
[25] *Yale Law Journal* 74: 78-135, 1964. *Habeas corpus* is an action to challenge allegedly illegal imprisonment, and 'extradition' refers to the duty of every state to arrest and return persons wanted by the legal authorities of another state. In practice, extradition *habeas corpus* was being used by persons in Northern states to challenge their impending extradition for trial or prison to a Southern state, on the ground that they would suffer unequal or otherwise unconstitutional treatment.

3. The United States Supreme Court 1965-1967

After three years of law school I was selected by Justice Goldberg of the US Supreme Court to be one of his two 'law clerks' for the next judicial year. But in the summer of 1965 - a few weeks after we began work for him - he gave in to pressure from President Johnson to become the US Ambassador to the United Nations.[26] Johnson nominated Abe Fortas to Goldberg's vacant seat on the Court, and Fortas agreed to Goldberg's request to take over his two brand-new law clerks. Although a clerkship was in principle for one year, Fortas soon asked us to stay on for a second year.[27]

The work of a law clerk at the Supreme Court was fascinating. Nevertheless, it was often difficult and even intellectually unpleasant to work for Fortas. This was certainly not because he was personally unpleasant to his clerks, but because he was so absorbed in his very close relationship with President Johnson, in particular in connection with the escalating war in Vietnam, that he had little time or attention for extensive discussion of the problems that arose in connection with the cases on which we worked for him. Furthermore, he occasionally operated at and even over the border of corruption, something that later cost him his position on the Court.[28] But what I found hardest to stomach in my daily work with Fortas was that - though gifted with a very sharp legal mind and an enormous store of legal knowledge and experience - he was deeply cynical about his function as judge. He embodied in practice what for even the most radical of the Legal Realists had been a provocative challenge: judicial

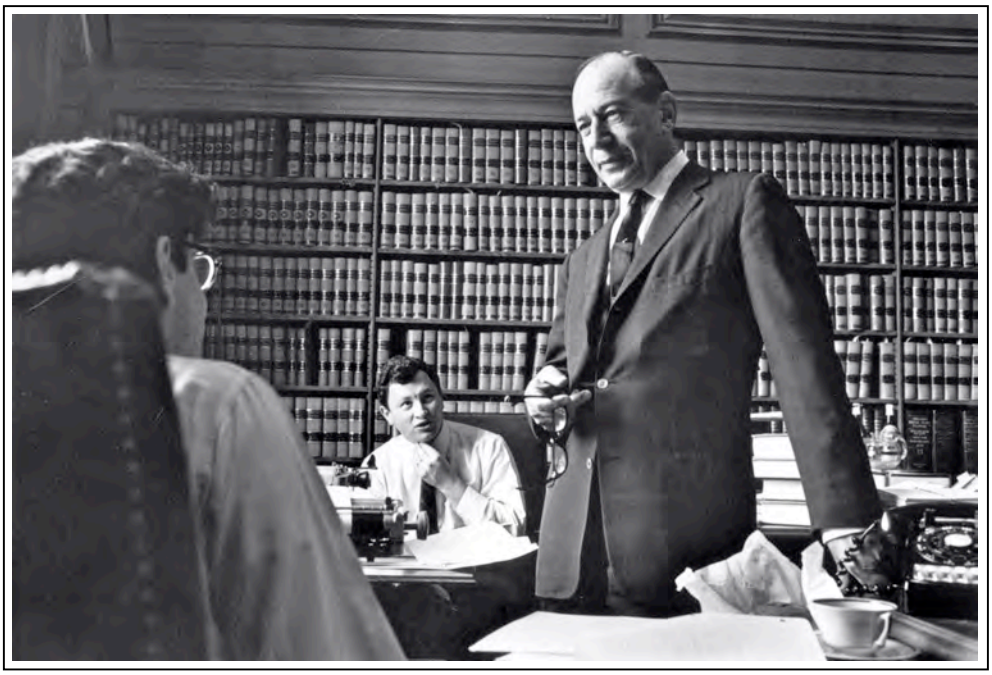
[26] It seemed to me at the time that Johnson had played on Goldberg's vanity, letting him believe that he would be in a position to influence American policy concerning the war in VietNam (which, we supposed, he secretly considered a terrible mistake).

Goldberg maintained contact with his former clerks after he left the Supreme Court - treating us all as a sort of family - and he included Dan Levitt and me in this 'family' even though we had actually only worked for him for a few weeks. In that brief period, one of the things he asked us to do for him was to select the most interesting recent literature on conflict of laws (so-called 'interest analysis', a fundamentally new approach) and put it in a box for him to take on vacation. The intellectual curiosity this reflected did not strike me as peculiar at the time, but we certainly missed it later on, as Fortas never gave a sign of the slightest interest in new legal ideas emerging from law schools.

[27] We understood that his motivation for this was a wish, as the most junior Justice, at least in his second year to have experienced clerks, and he may well also have felt unprepared to engage right away in the complex matter of choosing clerks for a subsequent year.

[28] Concerning Fortas, see L. Kalman, *Abe Fortas* (New Haven: Yale University Press, 1990). I have personally never believed that the payments for more or less fictitious services that he accepted from various old cronies would have affected his judgment one way or the other if any of them had had a case before him. Unfortunately for him, that is not the test for the acceptability of such payments, a fact that he seemed incapable of appreciating.

decision-making is really just ordinary politics, the rest of 'legal reasoning' being mere 'decoration' whose function is to make the exercise of power seem, to the people at large, to be legitimate.[29] In terms that I later became familiar with in the Netherlands, Fortas practiced 'regressive legal reasoning': first determine the outcome and then look for plausible legal support. In one case he - jokingly, I suppose - was explicit about this: having decided how a case we were dealing with should be handled and having written the text of a judgment to that effect, he came to the office where we clerks worked, gave his text to me, and said: “John, decorate it!” That is to say: I was to produce the legal foundation - in



“John, decorate it!” (Justice A. Fortas, 1967).

footnotes - for a conclusion that, more or less independently of all that, had already been reached.[30]

[29] This view is most clearly expressed by the old Legal Realist (and former law partner of Fortas) Thurman Arnold in *The Symbols of Government* (New York: Harcourt, Brace & World, 1935). J. Frank also expressed himself in such terms: see e.g. *Law and the Modern Mind* (New York: Coward-McCann,1930) and *Courts on Trial* (Princeton: Princeton University Press, 1949).

[30] On the cynicism of some members of the Supreme Court, see B. Woodward and S. Armstrong, *The Brethren – Inside the Supreme Cour*t (New York: Simon & Schuster, 1979). I wrote a short review of this book in *NNR* (the predecessor of *Recht der Werkelijkheid)*, emphasizing - on the basis of my own direct experience - how true to life its portrait of the atmosphere at the Court was (*NNR* 1980/1: 81-82). In the case I refer to in the text Fortas' conclusion had not been reached in a legal vacuum but was informed by the briefs and legal argument in the case, as well as by his own considerable experience. But by contrast, for example with some other members of the Supreme Court, he was relatively uninterested in the quality of the legal reasoning in his written judgments, and it was very hard to persuade him, on 'legal' grounds,

In short, my experience at the Supreme Court made me ripe for persuasion by the arguments of Ronald Dworkin, due to appear in the years shortly thereafter.[31] Dworkin's approach emphasizes the judicial search for the 'right answer' to a legal question: the answer that reflects the 'rights' that the parties already had before the judge decides the case. This is an idea that on the one hand has nothing to do with judicial formalism and a mechanical approach to the application of rules, but that also does not sink into the quicksand of the Legal Realist proposition that judicial decision-making is really just a form of camouflaged politics.

Before leaving Washington,[32] something happened that has proven of fundamental importance to the rest of my life, including the fact that I later became a sociologist of law in Groningen: in early 1967 Fré le Poole (who is Dutch) and I decided to get married, which we did that summer after my stint at the Supreme Court was over. For the next ten years we continued to live in the United States (except for the period 1970-1972, when we were in Ghana), but she remained a Dutch citizen and we increasingly had the idea that we would prefer to live and raise our children in the Netherlands.

4. The Yale Law School, 1967-1970

After two years as a law clerk in Washington I decided to accept an offer to return to Yale as professor. The following three years proved very exciting, both politically and intellectually. The war in Vietnam - and opposition to the war - had reached a high point. Lyndon Johnson at first sought re-election in 1968, but a Don Quixote in the form of Senator Eugene McCarthy opposed Johnson in the first primary election, in New Hampshire. Yale Law School students were very actively involved in the McCarthy campaign there. The campaign was so successful - McCarthy getting almost as many primary votes as sitting-president Johnson - that Johnson decided not to stand for re-election.

---

to change his opinion. Legal reasoning always has a regressive or circular aspect, but some circles are smaller than others, and Fortas' circles were too small for my taste.

[31] R. Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977).

[32] During my stay in Washington, I was briefly involved in the earliest phase of what later became the NAACP's campaign to get capital punishment abolished. This involvement was, as I recall, largely due to the fact that I had as a law student done quite a bit of research on the constitutional prohibition of 'cruel and unusual punishment'. Although I hardly knew Fré le Poole at the time, I was aware of her interest in these sorts of matters, and I invited her to attend a mini-conference at which the possibilities of such a campaign were examined.

Apart from participation in demonstrations against the war, my own political activism took the form of uncovering and publicizing the 'law' governing selection for military service (the 'draft'), and in particular the legal possibilities for avoiding it. Many men in the age-group of university students were subject to the draft - two years of military service - but almost nothing was known about the legal rules relating to the draft. A handful of law school students and I created a new course, the 'Draft Law Seminar', and together we produced a series of memoranda on various topics, many of which were quickly published in newspapers and in legal periodicals.[33] Among other things, we had more or less by accident discovered, in the bowels of the University Library, a large body of administrative regulations that had lain dormant since the Second World War and were virtually unknown and inaccessible, even to practicing lawyers. The Draft Law Seminar - in communication with like-minded people at other law schools - created the subject of 'draft law' more or less out of nothing.

At the request of Yale University, I wrote a booklet on draft law for the benefit of Yale students, many of whom were having problems with the draft authorities.[34] Based on research done in the Draft Law Seminar, the booklet described the basic rules and procedures concerning selection for military service. More or less accidentally and essentially overnight it came to the attention of the national press and soon the university was swamped with literally thousands of requests for the booklet. A local minister assumed responsibility for later editions and ultimately the booklet was published commercially.[35]

I was also heavily involved in giving legal advice, both to Yale students and to lawyers and others throughout the country.[36] This direct legal involvement led to my first contribution to the sociology of law. Together with a student member of the Draft Law Seminar I interviewed Yale students (many of them graduate students) who were interrogated by the FBI after having publicly destroyed their military service cards.[37] My con-

[33] In particular, in the newly-founded *Selective Service Law Reporter*.
[34] Ultimately this became J. Griffiths, *The Draft Law - A 'College Outline' for the Selective Service Act and Regulations* (first edition, Yale University, 1968).
[35] 3d revised edition, with W. Heckman, New York: Barnes & Nobel,1970.
[36] I even - for the first and only time in my life - actually practiced law, representing a student in a case which we won at trial and on appeal (*Carey v. Local Board No. 2*, 412 Fed. 2d 71, 2d Cir. 1969).
[37] J. Griffiths & R. Ayres, 'A postscript to the Miranda Project: interrogation of draft protestors,' *Yale Law Journal* 77: 300-319, 1967. The theoretical conclusion was that when a police interrogation is carried on in a way that mimics a normal conversation, strong social norms make it difficult for a person who is politely asked a question simply to refuse to give an answer, even when he is properly advised by the interrogator of his right to remain silent and even if he has been emphatically advised in advance not to answer any questions (pp. 318-319):

temporaries among the Yale sociologists were green with envy when the key theoretical conclusion of the resulting article was cited in a book by the highly regarded sociologist E. Goffman.[38]

In the meantime, the 'Black Power' movement had reached the universities, and 'Women's Liberation' was challenging a whole range of established positions, opinions and taboos.[39] The 'cultural revolution' rejected boring bourgeois values with colorful clothing, long hair, loud music, heavy use of drugs, and a general lack of respect for elders and authority. This was the time of which Bob Dylan sang: "Something is happening here, but you don't know what it is, do you, Mr. Jones?" A substantial number of the middle-aged professors of the Yale Law School – among those under whom I had earlier studied - were Mister Joneses, and a huge generation gap was the result. In the course of the ensuing decennium this gap led in one way or another to the departure, voluntary or not, of practically all the colleagues of my generation.[40]

I taught a number of subjects, in particular Torts, Criminal Law and Family Law. But it was in this period that I began to devote serious attention to sociology of law. In the second half of the 1960s the Yale Law School was in the forefront of a renewed interest in the integration of various so-

---

> For full achievement [of the right to remain silent] a suspect needs even more than a sympathetic explanation before his interrogation - he needs a sympathetic advocate during the interrogation. Only in this way will most suspects be able to assert a measure of control over the situation, overcome inevitable nervousness, and avoid the impact of perceived (but irrelevant) social rules operating in a situation structured and manipulated by a professional interrogator.

[38] E. Goffman, *Strategic Interaction* (Philadelphia: University of Pennsylvania Press, 1969), p. 139.

[39] There were by this time more women students and much more feminism in the Law School's intellectual atmosphere than there had been when I was a student. A number of students organized a course with no instructor: 'Women and the Law'. The Law School did insist that the participants write an essay, which would be evaluated by a staff member. In the latter capacity I first met Pnina Lahav – recently graduated in Israel and, when last (many years ago) I heard, professor at de Boston University Law School. She wrote an essay on provisions of Israeli labor law that protected women. According to her these provisions were very effective. We had some vigorous arguments with each other about her conclusion. As a would-be sociologist of law I remained sceptical, but what did I know about the matter? A few years later she published an article of which the gist was, how bad the legal position of women in Israel actually was ('The Status of Women in Israel - Myth and Reality,' 22 *American Journal of Comparative Law* 107, 1974). Practical lesson: a highly developed legal-sociological instinct (that is to say: legal-sociological common sense, otherwise known as theory, however primitive) often permits an educated guess about a matter about which one knows next to nothing!

[40] See for a description of the generational purge at the Yale Law School, L. Kalman, *Yale Law School and the Sixties* (Chapel Hill: University of North Carolina Press, 2005).

cial scientific disciplines with legal scholarship. People from a variety of non-'legal' disciplines had been appointed to the law school's staff: economists, sociologists and anthropologists, psychiatrists and psychoanalysts, and philosophers. I was most interested in sociology and anthropology, and two new colleagues were of particular importance in that regard: Donald Black and Richard Abel. Black - now probably the world's most famous (or notorious, depending on your point of view) sociologist of law[41] - was at the time a post-doc at the Law School. Abel, just appointed professor in the Law School, had recently completed a period of legal-anthropological research in Kenya.[42] The two disagreed about practically everything and it was in an atmosphere of vigorous debate about fundamentals that I got my start as a sociologist of law. Despite their differences, however, they did share two key convictions which I quickly made my own and which have from then on characterized my approach to the sociology of law:

(1) Sociology concerns itself with *social facts* - how social life is organized and why that is as it is. Legal scholarship, by contrast, concerns itself with *norms:* how people ought to behave. The difference between the two is fundamental and only confusion results from disregarding it.

(2) The fundamental objective of every empirical science, and hence of sociology of law, is not *facts* but *theory*.

Because those two concepts - *fact* and *theory* - have played such an important role in my further intellectual life, I want to devote a few words to them here. That is fairly easy because, at least in my capacity as sociologist of law, I have rather primitive ideas in this regard. *Facts are simply facts*.[43] In response to colleagues who argue that 'facts are not facts' or

[41] Black's first book - of which the basic ideas were developing during the period that we were colleagues - had a permanent impact on my own thinking: D. Black, *The Behavior of Law* (New York, Academic Press, 1976). I still consider myself a disciple, at least as far as the fundamental points of departure of sociology of law are concerned; but many key aspects of his 'theory of law' are, in my view, simply untenable (to begin with, his 'norm-free' definition of law as 'governmental social control'). See further Griffiths, 'What is sociology of law?' (forthcoming).

[42] See R. Abel, *The Judicial Process in the Primary Courts of Kenya* (dissertation, University of London, 1974). Of his many publications, two particularly influenced the development of my own ideas about sociology of law: 'Law books and books about law' (*Stanford Law Review* 26: 175-228, 1973) and 'A comparative theory of dispute institutions in society' (*Law & Society Review* 8: 217-347, 1973).

[43] More precisely: a statement about a fact is true if it is the most reasonable judgment based on all the available evidence. See C. Becker, 'What are historical facts?' (1926; reprinted in *The Western Political Quarterly* 8: 327-340, 1955).

otherwise want to be profound and difficult about facts,[44] I think it suffices to quote the Leiden cosmologist Vincent Icke: *"Anyone who says he doesn't know what a fact is, is lying, unless he nonchalantly pours water in his gasoline tank."*[45] A more poetic but equally deadly reaction to someone who announces that all knowledge of facts is just a 'social construction' is given by James Thurber in his short story 'The Unicorn in the Garden': "*The unicorn is a mythical beast.'* [46]

Concerning 'theory' my convictions are similarly simple: *a theory is a generalization based on experience*. There is a Dutch expression that perfectly captures the idea: *"The donkey usually only bruises itself once on the same stone.'* [47] Why is that? Because from one painful experience the donkey has learned something general and assumes that bumping into that stone will also hurt a second time. A smart donkey carries the generalization further so that it applies to all stones, or all large and hard objects in general. When people speak of 'common sense' they are referring to even more general conclusions from experience, that is to say: theory. This sort of theory makes it possible to understand everyday occurrences, to predict them, and also to exercise influence on them. Theory in this sense is the basis of all intelligent behavior

Scientific theory is in effect nothing more than professionalized common sense: carefully formulated and testable generalizations based on experience and building upon previous, less general theory. It is in that last connection that, under the influence of Albert Klijn - with whom I have worked long and intensively over the past third of a century - I have come to appreciate the fundamental importance of a well-known statement attributed to Isaac Newton: "*If I have seen farther, it is by standing on the shoulders of giants."* Like common sense, a science is *cumulative*, and the accumulation resides not in a larger and larger body of facts but in the growth of theoretical insight.

Back to Yale: In the three years that I worked at the Yale Law School, not only the sociology of law but also legal philosophy - in particular in the person of Ronald Dworkin - was of great influence on my intellectual development. Apart from a large number of fundamental ideas on which I

[44] Cf. K. Schuyt, *Filosofie van de sociale wetenschappen* (Leiden: Martinus Nijhoff, 1986). I briefly set out my own convictions concerning facts in 'Wat is rechtssociologie?' in J. Griffiths, ed., *De sociale werking van recht* (Nijmegen: Ars Aequi Libri, 3e druk 1996, pp. 6-14).
[45] V. Icke, *Dat kan ik me niet voorstellen* (Amsterdam: Contact, 2009), p. 107
[46] J. Thurber, 'The unicorn in the garden,' in *Fables for Our Time & Famous Poems* Illustrated (1940).
[47] *De ezel stoot zich in het gemeen slechts één keer aan dezelfde steen.*

wholeheartedly agreed with his approach and his conclusions, Dworkin rejected in an insistent but for me unpersuasive way the fundamental starting point of a sociological approach to law: that norms and facts must and can be distinguished. From that time on I have continued to seek ways to keep my old love for philosophy consistent with my decision to pursue the sociology of law, that is to say, the empirical study of law.

Shortly after my arrival in Groningen I wrote an extensive review of Dworkin's first book, *Taking Rights Seriously*.[48] In that review I defend the proposition that his analysis of legal reasoning - in which the key idea is that such reasoning has as its central operative assumption that for every legal question there is a 'right answer' - can be read not only in the normative sense Dworkin intended but also in an empirical sense. Considered empirically, Dworkin gives the best analysis I know of the social process of legal reasoning: all those who participate seek to establish that the result they defend best fits with the whole of existing law - they point to the relevant body of earlier facts (in the form of legal decisions in fact taken or legal arguments in fact made and accepted). The Legal Realist idea, that legal reasoning is really just a disguised form of policy making, fails to do justice to that social reality. Dworkin was not happy with my interpretation of his elegant normative theory as a description of empirical facts. Only at the end of my career, in '*What is sociology of law?',* did I finally solve - at least to my own satisfaction - the problem of the empirical status of rules (legal or otherwise) and thereby of the possibility of an empirical social science of law.

In connection with my years at the Yale Law School I should mention 'Critical Legal Studies' (CLS), an intellectual movement that emerged in this period among young academic lawyers in the United States. One of my earliest writings – 'Ideology in criminal procedure'[49] - apparently belonged for years to the canon of CLS. But in fact CLS never held much

[48] 'Legal reasoning from the external and the internal perspectives' (*New York University Law Review* 53: 1124-1149, 1978; earlier version: *Nederlands Juristenblad* 54: 237-247).

[49] 'Ideology in criminal procedure, or, A third 'model' of the criminal process' (*Yale Law Journal* 79: 1388-1474, 1970). The other important publication from my Yale period (apart from publications concerning military service, referred to above) was 'The limits of criminal law scholarship - a review essay on H. Packer, *The Limits of the Criminal Sanction* (Stanford: Stanford University Press, 1968).' (*Yale Law Journal* 79: 1388-1474, 1970). Because Packer enjoyed a considerable national reputation, and was furthermore a personal friend of several senior professors at the Yale Law School, and my review was very critical of his book (among other things, I showed that the heart of his argument was taken over without acknowledgement from the writings of H.L.A. Hart), this review may well have contributed to the rather unpleasant way my tenure at the Yale Law School came to an end in 1970.

appeal for me. The 'crits', as they called themselves, were consumed with 'unmasking' the law and in particular legal scholarship, which in effect meant showing for legal texts that '*what you see is not what you get*'. To the extent CLS was politically 'left' - that is, socially critical - it did not appeal to me because my whole life I have held old-fashioned leftist ('materialistic') views: I have always thought that the problems of the poor, of colored people, of immigrants, and of women, largely have to do with their *concrete socio-economic situation* and are not attributable to 'false consciousness': supposed confusions in their own or anyone else's heads. On the other hand, to the extent CLS was seen as a movement in legal theory, it seemed to me reactionary: internally focused on legal texts rather than externally focused on law as a social phenomenon with practical consequences. In my view, progress in legal theory had to be sought by throwing open the intellectual doors to empirical, social-scientific approaches to law, and in particular to sociology of law.

I should mention one more intellectual influence that dates back to my period at the Yale Law School. One of the headings under which legal scholarship was opening up to a social-scientific perspective was that of 'law and development', influenced by a central idea of Max Weber's sociology of law: that the fundamental character of a legal system (its 'formal-rational' character) is an important condition of economic development. This seemed to imply that one could contribute to improving conditions in the Third World by helping countries there to develop law of a 'Western' type.[50] The idea of being involved in 'law and development' appealed to me: it promised a bit more adventurous life than one spent teaching law in a comfortable but rather stuffy position at Yale. In the Spring of 1970 the opportunity arose to teach law at the law faculty of the University of Ghana. My wife and I chose to seize the chance.

When we returned to the United States two years later I decided not to return to Yale where, as part of what later became a purge of virtually all of the younger faculty,[51] I had not been given the permanent appoint-

[50] In the United States, 'Western law' was thought to refer in particular to American law (in the United Kingdom, it referred to English law!). In retrospect, I find the whole idea of 'law and development' introverted and chauvinistic, and not restrained by much awareness of the relevant history of legal thought, such as, for example, the extensive writings of the Dutch 'adat-law school' concerning the problems of transplanting Western law into a non-Western context. See concerning the 'adat-recht school', Griffiths, 'Recent anthropology of law in the Netherlands and its historical background,' pp. 11-66 in K. von Benda-Beckmann & F. Strijbosch, ed., *Anthropology of Law in the Netherlands: Essays on Legal Pluralism* (Dordrecht: Foris Publications, 1986), p. 18 ff.

[51] See L. Kalman, *Yale Law School and the Sixties: Revolt and Reverberations* (Chapel Hill: UNC Press, 2005).

ment I had been led to expect when first I accepted a position at Yale. Instead of accepting a stigmatic continuation of my non-tenured position, I decided to accept an offer of a tenured position at the Law School of New York University. My association with Yale thus finally came to an end in 1970.

5. The University of Ghana, 1970-1972

My work at the Faculty of Law of the University of Ghana consisted largely of teaching, both of criminal and of constitutional law. My wife (who had completed a full legal education in both the Netherlands and at Yale) taught comparative law - no luxury for Ghanaian lawyers since Ghana is surrounded on three sides by former French colonies.

Teaching constitutional law was made difficult by the inaccessibility of specifically Ghanaian legal materials (cases; constitutions and colonial constitutional instruments). A Ghanaian colleague, S.O.G. Gyandoh Jr., and I managed after exhaustive searching to put together an extensive collection, which we had privately printed for the benefit of our students: The *Sourcebook of the Constitutional Law of Ghana*.[52] It became very successful, not only for our educational purposes but also for legal (and judicial) practice. Many years later, Gyandoh - together with a younger colleague (a former student of ours), Kofi Kumado - brought out a second edition in five thick volumes![53] My own modest contribution to this second edition I had made already in the 1970s when I managed to spend several days in the Colonial Records Office in London, searching for constitutional instruments (largely in the form of Royal Instructions to newly appointed governors: the functional predecessors of a modern constitution).

In addition to this work on Ghanaian constitutional law I began a research project into murder prosecutions. I cannot remember what questions I hoped to be able to answer by poring through police and prosecutorial dossiers in various areas of the country. In retrospect it does not surprise me a bit that just looking around for 'facts' never lead me to anything, and apart from a purely legal article on the requirement of a ‘volun-

[52] S.O. Gyandoh & J. Griffiths, *Sourcebook of the Constitutional Law of Ghana*, Publications of the Faculty of Law, University of Ghana, 1972 (vol. I, *The Constitutions: 1925 to the Present*; vol. II [2 vols.], *The Cases: 1872 through 1970*).
[53] K. Kumado & S.O. Gyandoh Jr., *Gyandoh and Griffiths’ Sourcebook of the Constitutional Law of Ghana*, 2nd ed., 2009 (Accra: Black Mask Ltd.), 5 vols.

tary act' in Ghanaian criminal law,[54] all the time I spent on this research was essentially wasted.

Intellectually the most enriching experience of my period in Ghana was the direct exposure to the anthropology of law. I read much of the extensive anthropological literature on what, until independence in 1957, had been the British 'Gold Coast Colony'. The legally pluralistic character of Ghanaian society became particularly concrete through my supervision of the research of a brilliant student, Sylvanus Tiewul. Tiewul's research concerned the 'constitutional' relationships in the society from which he came: the Dagarti of northwest Ghana. This so-called 'stateless' society had earlier been the subject of research by the well-known English anthropologist Jack Goody.[55] A great deal was therefore known (in the literature) about the Dagarti. But Goody was not an anthropologist of law and had therefore not dealt with precisely those questions that interested us: What are the 'legal' relationships at the level of the village (there were hardly any regulated relationships at a higher level, except those of the colonial and post-colonial state). Who has any authority? And in particular (here you see the influence of the Legal Realists), what happens in case of disagreement and conflict? Tiewul did the field research (I went with him on one occasion). My role was - apart from introducing Tiewul to the literature and peppering him with theoretically-based questions - largely that of devil's advocate: every assertion he made was met by a barrage of sceptical questions and this went on until he was able to convince me.[56]

My disenchantment with the whole idea of 'law and development'[57] – a disenchantment which ultimately led to my inaugural lecture in Groningen, to which I will turn shortly - began in Ghana. The idea that the investments that are needed for economic development (the unspoken assumption being that this will necessarily be on a capitalist basis) will only be made if potential investors enjoy the legal security offered by what Weber called a 'formal-rational' legal system, was amply falsified by the history of the socio-economic development of Ghana, in particular of co

[54] J. Griffiths, 'The requirement of a "voluntary act" in the Ghanaian law of criminal responsibility' (*University of Ghana Law Journal* 10: 149-169, 1973).
[55] See J. Goody, *Death, Property and the Ancestors* (Tavistock Publications, 1962).
[56] Sylvanus' research was not finished when I left Ghana, and he never finally finished it. His life later on took other directions than legal scholarship, and ultimately he worked for the United Nations in New York. He died at a tragically young age. I have had few students from whom I learned as much and who meant so much to me.
[57] Many years later I specifically addressed the idea ('Recht en ontwikkeling [Law and development]' (*Recht en kritiek* 1983/2: 175-191).

Sylvanus Tiewul (kneeling, left, behind boy) with his family,
Nandom, Ghana, 1972.

coa production.[58] In retrospect, I came to regard our time in Ghana as above all a contribution my own development.

In the Fall of 1972 I worked at the Law Faculty of the University of Leiden. I had got to know prof. T. Koopmans of Leiden in Ghana when he was visiting the University of Ghana to arrange an exchange project between the two law faculties. He had arranged for me to spend a semester in Leiden en route back to the United States from Ghana and to lead a seminar on African constitutional law for staff members preparing for participation in legal development projects in Africa. One interesting project that arose during the seminar was to explore whether the problem of constitutional instability in countries that frequently experience unconstitutional changes of regime (after a *coup d'état*, for example) might be addressed by means of a substantively 'empty' constitution that could accommodate itself to regime-change without having to be jettisoned. Such a constitution would provide for a structural framework (legislative, executive and judicial powers; continuity of existing law; and so forth),

[58] See in particular P. Hill, *The Migrant Cocoa Farmers of Southern Ghana* (Cambridge: Cambridge University Press, 1970). Hill, herself an economist, shows on the basis of anthropological field research that the phenomenal economic success of cocoa-production in Ghana - something that required huge investments over many years before any returns were seen - was realized on the basis of local customary law. This is all very reminiscent of the so-called 'England problem' with Weber's theory. Weber himself believed that England lacked 'formal-rational' law although capitalism first emerged there. Later on, the ‘Japan problem’ arose, and even later the ‘Macaulay problem’ became apparent. In short, the idea that economic exchange is dependent on the threat of legal coercion seems to be amply falsified.

and a few fundamental principles (for example, the rule of law and the requirement that new laws be published). The idea was to make constitutional continuity so attractive that the perpetrators of a *coup* would be prepared to fit their new regime into the existing constitutional framework. Unfortunately, the life of the student responsible for writing up the results of our collective reflection took another course and nothing more ever came of the project.

6. New York University, 1973-1976

I began work at the Law School of New York University in January of 1973. Apart from teaching the basic introductory Torts course and, together with a colleague, developing and teaching a new Introductory Course, I for the first time taught what was becoming my own specialty: sociology of law.

In this period I began on a theoretical adventure - exploring the idea of legal pluralism and its implications - that lasted for many years and led to a large number of publications.[59] I had, as noted earlier, been confronted with the phenomenon of legal pluralism during my period in Ghana, both in everyday Ghanaian legal practice (and hence in conversations with Ghanaian colleagues, especially one specialized in commercial law, as well as in the prosecution and police files I studied in the course of my research into murder) and in the legal-anthropological literature and Sylvanus Tiewul's research. After I returned to the United States I became editor-in-chief of *African Law Studies,* which shortly thereafter got renamed the *Journal of Legal Pluralism.*

The idea of legal pluralism turned out to be central to the further development of my thought about law and sociology. The very idea removes the traditional anchor of the concept of law in the state. How is it possible to define the concept of law, for sociological purposes, if one rejects the idea that the state is the only source of law but at the same time refuses to appeal to normative ideas about what ought to be 'the law'? I finally managed to solve this problem - which had bedeviled the anthropology

[59] See in particular, 'What is legal pluralism?' (*Journal of Legal Pluralism* 24: 1-55, 1986) and 'Legal Pluralism' (pp. 8650-8654 in N.J. Smelser en P.B. Bates, ed., *International Encyclopedia of the Social and Behavioral Sciences*. Oxford: Elsevier, 2001). I applied the basic idea to the study of dispute processes in 'The general theory of litigation – a first step' (*Zeitschrift für Rechtssoziologie* 5: 145-201, 1984), and to the social effects of legal rules in 'The social working of legal rules' (*Journal of Legal Pluralism* 48: 1-84, 2003).

of law for about a century - during my period in Groningen, with the help of a 'non-taxonomic' concept of law.[60]

7. Groningen, 1977-2005

In the mid-1970s, Dutch law faculties decided to establish professorships in sociology of law.[61] In the summer of 1976, while we were on vacation in the Netherlands, I more or less out of the blue[62] received a telephone call from prof. Michiel Scheltema of the University of Groningen asking me if I might be interested in appointment to a professorship in sociology of law. I hardly knew where Groningen was, but my wife and I decided I ought at least to take a look, so I travelled up for a meeting with the appointments committee. The position sounded attractive, the committee apparently found me acceptable,[63] and shortly thereafter I heard that I had been appointed to the new chair.

My appointment as professor of sociology of law began on the first of January 1977. Since the professorship was a newly created one, the situation in the Faculty of Law, as far as sociology of law was concerned, was close to absolute zero: no staff, nothing in the educational program,

[60] I first developed the basic idea in 'The division of labor in social control' (in D. Black, ed., *Toward a General Theory of Social Control, Vol. I, Fundamentals* (New York: Academic Press, 1984, pp. 37-70); it receives its final form in 'What is sociology of law?' (forthcoming).

[61] The Social Sciences Division (SWR) of the Royal Dutch Academy of Sciences (KNAW) had several years earlier given an advice to that effect ('Nota betreffende de ontwikkeling der rechtssociologie in Nederland.' Amsterdam ,1962).

[62] I had earlier responded to an advertisement in the *New York Review of Books* for such a position at the University of Amsterdam. In that connection, I had asked prof. Tim Koopmans - whom I knew in connection with our stay in Ghana (see section 6 above) - whether he would be prepared to be a reference. His answer was that he would certainly be prepared, but that he did not think I should want the position in Amsterdam for reasons he would divulge should it ever become relevant, which he did not expect to happen. I never heard from the UA and in the end no one was appointed at that time. Some time later, Koopmans was the chairman of a national commission on privacy, of which prof. Scheltema of the Law Faculty of the University of Groningen was a member, and apparently when the latter asked him if he knew anyone Groningen might consider for its new chair in sociology of law, Koopmans gave him my name.

[63] I remember hardly anything of the meeting with the committee, except that after the formal part of the meeting was over the chairman - prof. Röling, whose name meant nothing to me at the time - asked me what I thought about Henry Kissinger. To be honest? or: To be diplomatic? It all depended on who Röling was! And I had no idea. I remember thinking in a flash: 'when in doubt, one may as well tell the truth'. So I more or less blurted out: 'I think he should be prosecuted as a war criminal.' As it turned out, this unwitting answer was right in the bull's-eye. For a whole variety of reasons (geographic being perhaps the most important: Röling's office was outside of the central city, where mine was, so I rarely saw him) we never became close colleagues, but he remained someone whom I greatly admired.

Retirement lecture (11-4-06), with inaugural lecture (19-9-78) on the screen

no shared idea in the faculty as to what sociology of law actually was.[64] It was up to me - together, of course, with colleagues at other Dutch universities - to determine what sociology of law amounted to.

As I now look backward at the subject that - over a period of some 30 years - I helped to develop in the Netherlands, there are two perspectives from which I can do so: on the one hand, an institutional perspective (what institutional structures have I, together with others, managed to create?) and on the other hand, a scientific perspective (to what questions and with the help of what theories have I addressed myself in my research and teaching, and what has that brought forth?).

I leave the institutional side for what it is, not because institutionalization is unimportant but because I do not find looking back at the political history of academic institutions and scientific organizations particularly stimulating.[65] The *scientific* developments of the last 30 years in sociolo-

[64] A lucky accident of room-assignment put me in the near neighborhood of Jan Pen (an internationally well-known economist whose professorship was in the Law Faculty) and Bob Bakels (professor of labor law and a member of the SWR that had recommended the creation of professorships in sociology of law, see note 61), both of whom did have ideas about - and a lively curiosity concerning - the sociology of law. I also profited in the early years from the interest of Gerrit van Maanen, then a staff member for legal philosophy (later professor of law in Maastricht).

[65] Apart from the many inevitable disappointments in this regard, there are several accomplishments I look back upon with considerable satisfaction, in particular the success with which I sought to promote the integration of the sociology of law with

gy of law, by contrast, interest me greatly. In retrospect, the period before I arrived in Groningen I now regard as a long preparation for what I later did there. The foundation for all of the central ideas that have guided my work in Groningen was laid earlier. Once in Groningen - and with the benefit of fruitful interaction with others - I was in a position to develop those ideas further and, most importantly, to put them to work and to the test in empirical research and in the formulation of theory. If I impose a bit of order on what I have done, it seems to me a great deal of it fits neatly under a few general topics.

But first I want to mention three strategic points of departure that have influenced all my work.

In the first place, in research and in the formulation of theory I have consistently had a preference for the micro-level: for putting the behavior of an individual in a concrete social situation central. To explain this preference in strategic terms, I like to invoke a metaphorical comparison: the problem of predicting the weather. Weather is very predicable on the short term (a few days) and the long term (over the course of a year). But to predict it a couple of weeks in advance is almost impossible. This unpredictability on the medium term exists despite the fact that the physical and chemical processes that determine the weather are well known. The problem is that on the medium term a vast number of essentially unknowable variables can exert influence: the infamous butterfly in the African jungle can cause it to rain in Amsterdam some days later.[66] I believe that the social sciences, as these are often practiced, look much too much like weather-prediction on the medium term: the study of social processes at the level of a society as a whole continually runs up against the fact that the relevant variables are too many and too unknown to permit much by way of prediction or explanation. The prediction of social developments on the medium term is thus doomed to failure.

I believe that it is therefore a wise strategy to build sociology up on the basis of solid theoretical insight at the micro-sociological level. It is possible to arrive at good theory if one limits oneself to the behavior of people in specific social circumstances and over a relatively short term. That is what I have generally tried to do. The 'social working' approach to the effects of (legal) rules, on which I worked over the last 15 years or so of

---

adjoining disciplines, in particular the anthropology of law. The most obvious example of success in this regard is the Dutch-Flemish professional Association for the Social-Scientific Study of Law (VSR) and its journal *Recht der Werkelijkheid*.

[66] An article on the problem of weather-prediction greatly stimulated my thinking in this regard. See H. Tennekes, 'Hoe voorspelbaar is het weer?' (*Intermediair*, 6 April 1984).

my period in Groningen, seeks to avoid the old and completely fruitless approach to the 'effectiveness of law' - an approach that after a century or more has hardly produced a single general proposition - in favor of the more fundamental, and in principle answerable, question: how is it possible that a person can 'follow' a rule? and when might we suppose that such rule-following will occur?[67]

A second general strategic idea that has had much influence on my approach to the sociology of law is that the various social sciences relevant to understanding the social working of law ought to be integrated in both theory and research. I have sought in various capacities to promote such an integrated approach. As a teacher and as a researcher I have always tried to let the choice of the literature and the theory I use be determined by the question before me and not by the highly arbitrary borders between academic disciplines. In our reader for the introductory course on sociology of law we included articles by leading economists, anthropologists, philosophers, sociologists and psychologists. When I retired in 2005 the book was in its fourth edition and was in use in several other law faculties besides Groningen. It gave law students a broad acquaintance with classical contributions to our understanding of the social working of law, contributions that had theretofore not generally been included in the sociological canon.[68]

My third strategic preference is for a comparative approach. Long before Els Baerends - who almost from the beginning worked in our department as an anthropologist of law[69] - brought it to my attention, I was a firm believer in the proposition: *He who knows one society, knows no society.*[70] Social-scientific theories are in principle universal: they apply everywhere, or they are untrue. As the philosopher of science Gerard de Vries

[67] See 'The social working of legal rules.' (*Journal of Legal Pluralism* 48: 1-84, 2003). Rule-following I consider the 'direct effect' of a rule, and I argue that theory concerning direct effects is feasible - by contrast with theory concerning the 'indirect effects of rules (i.e. the social consequences of rule-following), about which nothing general can be said, every sort of indirect effect (such as the reduced accident rate, and the lower CO2 production, resulting from drivers not exceeding the speed-limit) requiring a separate theory.

[68] J. Griffiths & H. Weyers, ed., *De sociale werking van recht. Een kennismaking met de rechtssociologie en rechtsantropologie* (Nijmegen, Ars Aequi Libri, 2005; earlier editions appeared in 1987, 1992 and 1996).

[69] Her dissertation, based on field research in Togo (1969-71, 1977-78), deals with the role of indebtedness in social relationships; it makes significant contributions to a variety of important theoretical topics: exchange/indebtedness theory, litigation theory, legal pluralism and informal social control. E. A. Baerends, *The One-Legged Chicken in the Shadow of Indebtedness: Indebtedness and Social Relationships among the Anufom of Northern Togo* (dissertation RUG, 1994).

[70] Fahrenfort, quoted by A. Köbben, 'De vergelijkende methode in de volkenkunde,' in *Van primitieven tot medeburgers* (Assen: Van Gorcum, 1974, p. 24).

once put it, "If a Japanese says, 'I have discovered this or that about an electron,' you cannot answer: 'Yes, you have that sort of thing with Japanese electrons.'"[71]

Having said these three things about fundamental scientific strategy, I would like to say a few things about the most important topics to which I have directed my scientific attention over the last 30 years.

(1) 'Effectiveness'

In 1978 I presented myself formally to the Dutch academic community in an inaugural lecture (see the photo at the beginning of section 8 above) that sought finally to bury the 'instrumentalist' perspective that considers legal rules as tools to produce desired social effects.[72] The title was *Is Law Important?*, and summarized roughly the answer to the question was 'no', at least not when the importance of law is conceived of in an instrumentalist way. I described the whole question of legal 'effectiveness' as outdated and uninteresting. I apparently felt the need to emphasize that whatever I was going to do, it would in any case not be research into the 'effectiveness' of law.

The fact is, nevertheless, that despite what I announced in 1978, from the early 1990s onward in both empirical research and in the formulation of theory I devoted most of my attention to the question of the effects of legal rules. I will return to that after a brief look at the subjects that had my attention in the intervening years.

(2) Legal pluralism

In the early years I particularly sought contact with colleagues who shared my primary social-scientific interest, anthropology of law. We were a rather small group - in the Netherlands, in particular Govert van den Bergh, Fons Strijbosch, and Franz and Keebet von Benda-Beckman - but we carried on an international paradigm-struggle to get the basic idea of legal pluralism generally accepted.[73] And we were successful. Nowadays not only virtually all anthropologists of law but also many sociologists of law and even a large number of enlightened legal scholars find it self-evident that in every society multiple, often conflicting forms of

[71] Gerard de Vries, lectures on the philosophy of science (personal communication).
[72] *Is Law Important?* (Deventer: Kluwer 1978; revised version in *New York University Law Review* 54: 339-374, 1978).
[73] Outside the Netherlands, colleagues such as Gordon Woodman and Frank Snyder (VK), Rick Abel and Marc Galanter (US), were important allies.

law coexist. In the service of the struggle for general acceptance of this idea (and of its profound consequences) I wrote a programmatic article that set out all of the arguments that I and others had proposed: 'What is legal pluralism?'[74] This article had a great deal of influence internationally and gave rise to some heated polemics.[75] Looking back, I find the article a bit heavy and pedantic: a 'period-piece' from a time long gone by. It elucidates and defends a concept, but does nothing with it. In my own case, the theoretical harvest only came much later, when earlier conceptual work with the idea of legal pluralism turned out to be of critical importance for research and theory concerning the social working of law.

(3) Conflict processes

After I had disposed of the question of legal effectiveness in my inaugural lecture (at least for the time being and to my own satisfaction), I needed another theoretical focus for research. In the anthropology of law in that period, the study of dispute processes was particularly popular. It seemed to me an interesting area for empirical research and theory. In 1983 I wrote a prolegomenon for a general theory concerning the life-history of 'conflicts'; it was an effort to bring together into one coherent whole all of the theoretical insights that were current in the literature[76] and that I and others working with me used and refined in the course of two large-scale empirical research projects on which we were engaged in the 1980s.

The first project dealt with the functioning of the complaint procedure under the then law on administrative appeals and it was largely carried out by members of the department of administrative law, under the leadership of Marten Oosting. Between 1979 and 1984 Bert Niemeijer and I were also involved. The project produced a formidable body of information concerning the functioning of the complaint procedure at the level of city governments, in particular the extent to which it was successful in solving problems and hence eliminating the need for administrative ap-

[74] 'What is legal pluralism?' (*Journal of Legal Pluralism* 24: 1-55, 1986). This article derived from two earlier oral presentations:

(1) A talk I gave at a conference on 'Staatsrecht en minderheidsgroepen' at Leiden University on 6 April, 1979, entitled 'The legal integration of minority groups set in the context of legal pluralism'.

(2) A paper ('What is legal pluralism?') presented at the 1981 Annual Meeting of the Law and Society Association, Amherst College, Amherst Mass. USA, June 12-14, 1981.

[75] See in particular B. Tamanaha, 'The folly of the 'social scientific' concept of legal pluralism' (*Journal of Law and Society* 20: 192-217, 1993).

[76] J. Griffiths, 'The general theory of litigation – a first step' (*Zeitschrift für Rechtssoziologie* 5: 145-201, 1983).

peals.[77] We focused on cases arising out of applications for building permits.

The most interesting theoretical experience took place before the empirical research had even begun. In the negotiations with officials of the government ministry that was financing the research, I took the position that the research could not be limited to the life histories of formal complaints. I argued that the most important single theoretical insight of the literature on conflict processes was that an individual case can only be understood if one begins with how a conflict first emerged in the course of social exchange and follows its life history step-by-step from that point onward until the conflict has essentially disappeared from the social stage. But the officials knew better: they were only really interested in the so-called 'filter function' of the complaints procedure, that is to say, the extent to which, thanks to this preliminary relatively informal procedure, the number of formal administrative appeals could be reduced. In their opinion, only cases in which a complaint had in fact been made were relevant, since only such cases could lead to a formal administrative appeal. They were not interested in spending money to satisfy the ivory-tower curiosity of a professor.

As ‘junior partner’ in the research team I did not want to cause trouble with the ministry that was funding it, so I did not pursue the matter at that time. But in the course of the research itself we did not keep to the restriction the ministry's officials sought to impose. This 'scientific disobedience' was fortunate since our theoretical insight proved correct: differences between cities in the number of administrative appeals they produced could not be understood without taking account of what had taken place *before* a formal complaint was made. The city responsible for the smallest number of administrative appeals was one in which the 'filter' of the complaints procedure had not disposed of a single complaint, all of which had led to an appeal. How was such a thing possible? The answer was simple: the city in question had organized an informal procedure that preceded the submission of a formal request for a building permit. Extensive consultation took place, leading to a request that in effect had already been agreed upon. Almost all formal requests were therefore quickly granted. Only a very small number of cases proved insoluble and in those cases the request for a permit was rejected and a formal complaint was made. Because such a case had already been extensively considered in the informal procedure, there was essentially no room left for a solution at the level of the city and the complaint procedure 'filtered'

[77] See C. Breeuwsma c.s., *Beeld van de Arob-bezwaarschriftenprocedure* (Deventer: Kluwer, 1982); C. Breeuwsma c.s., *Arob-praktijken* (Deventer: Kluwer, 1984).

none of them out: they all went on to a formal appeal. In this way, a very low level of administrative appeals was entirely consistent with a negligible 'filter-function'. In short, the functioning of the complaints procedure turned out to be highly dependent on precisely what one would have expected on the basis of 'litigation theory' but which we were not supposed to have studied at all: social processes preceding the emergence of a formal conflict.

This experience has always stayed with me as an example of two general propositions. One is from Leibniz via Marx: *There is nothing more practical than a good theory.* The other is my own: *The problem with policy-oriented research is that policy-makers cannot pose good empirical questions.* This is because their focus is on the policy question that interests them and not on the theoretical insights required for formulating an empirical question in a useful way. The most important contribution that a social scientist can make to research concerning social policy often lies not so much in doing empirical research but in improving a poorly formulated question. But, as in our case, the arrogance of people who think they are being 'practical' rather than 'theoretical' often stands in the way of precisely such a contribution.

Niemeijer's later dissertation (1991) carried the administrative appeals project further, using a small number of case studies to show how litigation theory - enriched with some important refinements - could be used to explain variation in the life-histories and outcomes of conflicts over building plans.[78]

The second large-scale study of conflict processes concerned the ways in which divorcing parents arrange for the visitation rights of the non-custodial parent. The project was largely financed by the Ministry of Justice. It emerged out of the graduation thesis of Margaretha Pot, who as a student-assistant had carried out empirical research under my supervision shortly after I joined the Law Faculty in Groningen.[79] She studied a random sample of files of the local court. Whereas the public discussion of visitation rights tended to assume that judicial involvement was limited to problematic cases in which the parents could not agree, Pot's research showed that such cases accounted for fewer than half of all cases in the court files. Since visitation judgments are in practice almost unenforceable, the motivation of the parents who request or resist such an order needs explanation. Pot distinguished three: an essentially symbolic

[78] B. Niemeijer, *Geschillen over bouwplannen* (Kluwer, 1991).
[79] M. Pot, *De gebruikers van het rechtsinstituut 'de omgangsregeling'* (*Rechtssociologische Mededelingen,* Nr. 3, 1979*)*.

way of 'hurting' the other parent, a request for 'help' from the judge from parents who cannot agree on the frequency of visitation themselves, and hope that the fact that visitation is ordered by a judge will prevent disputes in the future. She concluded that further research into the reasons for requesting visitation orders, and the processes that lead to such requests, would be useful. And the public discussion of such orders should abandon the assumption that enforceability is the essence of what the parties seek.

Pot's thesis was the basis for the first large-scale research project of the new department of Sociology of Law. This 'visitation-rights project' had its theoretical roots in 'litigation theory' on the one hand and in the 'communication theory' of clinical psychology on the other. Among others, Eddy Hekman, Dolf Spaak, Miek Berends, Janneke Rozema and Gijs Verkruisen were involved as researchers.[80] Miek Berends' observation study of the interaction between divorcing parents and their lawyers ultimately led to her dissertation.[81] And I myself wrote articles on the role of lawyers and of judges in visitation conflicts.[82] Eddy Hekman - together with Albert Klijn (of the Ministry of Justice) - later did a study of the Groningen 'Divorce Bureau', which sought to put into practice an alternative, non-litigious way of managing conflicts between divorcing parents.[83] But ironically, one of the most striking conclusions of the visitation-rights research was that the most effective form of intervention in cases of (potential) conflict over visitation was 'normative intervention' relying on legal norms (as exemplified by divorce lawyers, judges, and the child-protection authorities - Raad voor de Kinderbescherming).

[80] The project produced a final report (J. Griffiths, E. Hekman & S. Spaak, *De totstandkoming van een bezoekregeling na echtscheiding. Volledige eindverslag van het omgangsregeling onderzoek* (Groningen: Faculteit der Rechtsgeleerdheid, 1986)) together with a summary in J. Griffiths & E. Hekman, *De totstandkoming van een bezoekregeling bij echtscheiding* (Den Haag: Coördinatiecommissie Wetenschappelijk Onderzoek Kinderbescherming, 1985). There were also research reports on the role of schools, pastors, family doctors, and neighborhood police. Curiously - typically, I would say - none of all this is even referred to, let alone made use of, in later 'policy-oriented' research (see E.S. Kluwer, *Het ouderschapsonderzoek: een aanpak bij vechtscheidingen* (Raad voor de Rechtspraak, Research Memoranda Nr. 1, 2013). Cf. the related research of Hekman, E.G.A. & Klijn, A.,*Scheidingsmanieren: Het Buro Echtscheiding Groningen als experiment in multidisciplinaire vroeghulp* Arnhem: Gouda Quint, 1989).

[81] M. Berends, *De interactie tussen advocaten en hun echtscheidingsclienten - Verslag van een Observatiestudie* (Rechtssociologische Mededelingen nr. 11, 1984); *Geschilbeslechters. De advocatuur door een andere bril bekeken* (Groningen: Wolters-Noordhoff, 1993).

[82] 'What do Dutch lawyers actually do in divorce cases?' (*Law & Society Review* 20: 135-175, 1986) and 'De rol van de rechter bij de totstandkoming van bezoek na echtscheiding' (*Tijdschrift voor Familie- en Jeugdrecht* 9: 3-16, 1987).

[83] E.G.A Hekman & A. Klijn, *Scheidingsmanieren. Het Buro Echtscheiding Groningen als experiment in multidisciplinaire vroeghulp*. Arnhem: Gouda Quint, 1989.

Students carried out a number of other research projects concerning conflict processes of various sorts: conflicts over the occupation of empty buildings for use as housing ('*kraken*'),[84] conflicts that arise between institutional participants in the process of realizing social housing projects,[85] and the role in rent-control conflicts of the official 'advisory committees'.[86]

In the empirical research for his dissertation, Gijs Verkruisen took the key theoretical point of departure of my article - that theory concerning conflict processes must start with the earliest beginnings of a 'conflict' in social life - and carried it much further than I had done. He showed that to understand the life-histories of conflict processes one cannot treat them as beginning - as I had done - with 'conflicts', but must take as the point of departure potentially 'unpleasant experiences'. His research on (potential) conflicts between doctors and patients over medical treatment explored the changing ways a potentially unpleasant experience is characterized by those involved - and in particular, the reasons for the changes in characterization - in the course of social interaction. His empirical research showed how important the very earliest stages can be for whether a conflict arises and how it develops. [87]

(4) Social working

Toward the end of the 1980s I more or less accidentally returned to the theme that I thought I had buried forever in my inaugural lecture: what is the importance of (legal) rules in social life? This accident largely determined my research and theoretical work for the remaining 20 years of my academic career. This is what happened. In 1987 I was asked by the editors of the *Nederlands Juristenblad* (a weekly legal periodical) to discuss as an 'outsider' the current debates and developments concerning the legalization of euthanasia. I could not claim any specifically relevant knowledge or expertise, and my interest in the subject was at the time that of a reader of the daily newspaper. The subject did not appear on its face to possess any special appeal from the point of view of the sociology of law. I cannot remember why I agreed to the invitation.

---

[84] A. Sijbrandij & K. Wentholt, *Het RKZ en het Oude Politieburo: De Ontwikkeling van Twee Kraakkonflicten in de Stad Groningen*. Graduation Thesis, 1983).
[85] J. Rozema, *Structurele Verhoudingen in de Sociale Woningbouw in Groningen* (Graduation Thesis 1978, *Rechtssociologische Mededelingen* nr. 12).
[86] See P. Banda & N. Roos, *Het gebruik van de huuradviescommissie als conflict-instantie* (*Rechtssociologische Mededelingen* nr. 10, 1983).
[87] W.G. Verkruisen, *Dissatisfied Patients – Their Experiences, Interpretations and Actions* (dissertation Groningen, 1993).

However that may be, it turned out to be a golden opportunity. The public and political debates concerning the legalization of euthanasia were fascinating from a whole range of points of view: philosophical, ethical, political and so forth. But when once I began to look at the matter seriously from the perspective of sociology of law, what struck me most was how limited the general insight was into the social reality about which such intense (albeit, in the Dutch case, almost always civilized) debates were taking place. There was practically no indication that the participants had any thought for the impact that their divergent positions were having or would have in the practical context of medical behavior. That a doctor must decide how to act in a social context that confronts him or her with all sorts of considerations besides those of the applicable law - supposing that he or she even knows, with any sort of accuracy, what the law permits or requires – was for someone like me who was steeped in the nature and importance of legal pluralism self-evident, even before I knew anything more about actual medical practice. But the notion apparently had hardly occurred to the various participants in the debates. Most of them seemed to be making the classical mistake against which the Legal Realists had railed: thinking about something which only has meaning in relation to something else, without thinking about the something else.

As far as I can remember, it was in this context that I first used the expression 'social working'. In the article I wrote for the *Nederlands Juristenblad* I called for careful attention to the complexity of the ways in which legal rules - whatever they might be - might influence the behavioral decisions of doctors. [88] That plea, and its implications, largely determined my intellectual life in the years that followed.

Shortly thereafter, I for the first time dealt in a systematic theoretical way with the idea of the ‘social working’ of legal rules, this in the context of an article on the contribution of legislation to the emancipation of socially disadvantaged groups.[89] And at the end of the 1980s Petra Oden carried out empirical research for her dissertation on the social working of preferential-treatment policy intended to improve the position of women on the labor market.[90] Her research concerned in particular the appointment in 1985 of heads of the newly formed elementary schools (*basisscholen*).

[88] ‘Een toeschouwersperspectief op de euthanasie discussie’ (*Nederlands Juristenblad* 62: 681-693, 1987).
[89] ‘De sociale werking van rechtsregels en het emancipatoire potentieel van wetgeving’ (pp. 27-46 in T. Havinga en B. Sloot, ed., *Recht: bondgenoot of barrière bij emancipatie*. Den Haag: Vuga, 1990).
[90] P. Oden, *Voorkeursbeleid op lokaal niveau* (dissertation RUG; Groningen: Wolters-Nordhoff, 1993).

Oden's findings strengthened my conviction that only attention focused specifically on the concrete social context within which the relevant behavior takes place - what I came in that period to refer to as the 'shop-floor' of social life - and in particular for the social organization of that 'shop floor' and the non-legal rules that are effective there - would make it possible to overcome the *échec* of instrumentalistic effectiveness research.

What did Oden's research show? In the first place that at least in this case preferential treatment was addressed to the wrong problem - *selection* for the position as school-head - whereas the problem lay at the earlier stage of *solicitation.* Only the heads of the former kindergartens (*kleuterscholen*) and primary schools (*lagere scholen*) were eligible to appointment as head of a new elementary school. But very few of the eligible women (mostly former heads of kindergartens) solicited. When Oden addressed her attention to the question, *why* so few women solicited, it appeared that the decision whether or not to apply was strongly influenced by non-legal norms in the immediate social surroundings, both at home and at work, of potential applicants.

A second development in this same period further stimulated my interest in the 'social working' approach to legal rules. Like many other changes of course in my intellectual life, this one had both an accidental character and a long pre-history. In connection with the two years we spent in Ghana I have already said something about my (sceptical) interest in the role of law as an instrument for social development. Shortly after I arrived in Groningen I became a member of the university's Working Group on Developmental Questions.[91] In the early 1990s this Working Group was approached by the Tropenbos Foundation, which on behalf of several Ministries financed research into the protection of tropical forests. Much of this research was essentially technical (forestry and so forth), but Tropenbos was interested in whether we would like to submit proposals for social-scientific research.

I submitted a proposal to study the role of law in the protection of the tropical forest, the proposal was approved, and Ecuador was ultimately chosen as the place to carry out the research. One part of the project concerned the behavior of small farmers from the Ecuadorean Andes who migrated to the tropical forest of Ecuador's Amazon area and who were considered responsible for a substantial part of the deforestation

[91] The Working Group was presided over by prof. Röling, who had been the chairman of the committee that recommended my appointment, see note 63. Later on, I became the chairman.

taking place there. The central idea of the 'social working' approach was our point of departure: if you want to know what effect a legal rule will have on the behavior of the actors on a particular 'shop floor', you have to put yourself in their position, that is, you have to consider their behavior in the context of the concrete considerations with which they are confronted.

In the literature on the 'effectiveness' of law, strong local groups - and their 'customary law' - are often given the blame for the ineffectiveness at the local level of formal legal rules such as those of the Ecuadorean Forest Law, which had been intended as an instrument to protect the tropical forest. But despite my own attachment to the idea of legal pluralism, we were forced to conclude that there was hardly any local customary law among the migrant farmers in the Amazon area. The problem was just the other way around. It was not that the local social organization of farmers was so strong that they could ignore the law of the state in favor of their own local 'law', but on the contrary that it was too weak to enforce the rules of any law at all. One of our conclusions was that government policy should be addressed to the strengthening of local farmers' organizations, in the hope that it would thereafter be possible to secure their cooperation in maintaining the rules of the Forest Law. There were in fact some practical possibilities for doing so.[92] This idea was a nice application of a thesis of Sally Moore, a legal anthropologist whose work I have always admired: that if people obey formal law this is generally the result of the same social processes that in other circumstances lead to disobedience.[93] Or, as I put the point a decade later, it is society that regulates the effectiveness of law.[94]

In the meantime, my article calling for systematic attention to the 'social working' of the legal rules governing euthanasia had resulted in a number of possibilities for empirical research.[95] Later on we expanded our focus to include a variety of other sorts of medical behavior that are expected to lead to the death of the patient. And thus grew up the MBPSL[96] research group in whose middle I worked for the last 15 years of my professional career. Together we were very productive: of books, disserta-

[92] See T. Taale en J. Griffiths, ed., *The Role of Law in the Protection of the Tropical Forest in Ecuador's Amazon Region* (Final Report submitted to Tropenbos Foundation, 1995).
[93] S. Moore, 'Law and social change: the semi-autonomous social field as an appropriate subject of study' (*Law & Society Review* 7: 719-746, 1973).
[94] 'The social working of legal rules' (*Journal of Legal Pluralism* 48: 1-84, 2003, p.66).
[95] Much of this research was made possible by grants from the Dutch Foundation for Scientific Research (NWO) and the Ministry of Justice.
[96] Medical Behavior that Potentially Shortens Life (later re-christened as Regulation of Socially-Problematic Medical Behavior).

tions, articles, lectures, presentations at congresses, contributions to legislative processes in the Netherlands and elsewhere, and so forth.

The first major production of the research group was a book, *Euthanasia and Law in the Netherlands,*[97] followed by Heleen Weyers' dissertation on the process of legal change in the Netherlands concerning euthanasia.[98] Ten years after the first book came a successor, in which Belgium was treated extensively and a number of other European countries more briefly: *Euthanasia and Law in Europe*.[99] And members of the research group had in the meantime produced four dissertations based on original and methodologically and theoretically creative research: Cristiano Vezzoni, on the legal status and social practice of 'advance directives' (written refusals of life-extending treatment); Dick Kleijer, on the self-regulation of withholding or stopping treatment in Dutch intensive care units; Donald van Tol, on the different ways in which doctors and lawyers (in particular, prosecutors) classify the various sorts of medical life-shortening behavior, and the significance of this for the social working of euthanasia law; and Sofia Moratti, on the concept 'medically futile treatment' and its application in Dutch neonatal intensive care units.[100]

Van Tol's analysis of the classification of behavior by different participants in the regulation of euthanasia makes a very important contribution to social-working theory. 'Cognitive solidarity' among members of different groups (in this case, professionals: doctors and prosecutors) leads them to classify the same behavior (e.g. stopping a life-prolonging treatment) in radically different ways which imply the applicability of different (legal) rules and hence different conclusions as to what, precisely, a doctor has 'done' and whether it was legal or not. Since the legal regulation of euthanasia depends largely on self-reporting of their behavior by doctors, such differential classification necessarily implies legal ineffectiveness (and radically misleading cause-of-death statistics), at least from the perspective of prosecutorial classification: doctors report as 'natural deaths' (which therefore usually receive no further legal attention) cases that prosecutors regard as 'killing' (justifiable or not) and that they would

[97] J. Griffiths, A. Bood & H. Weyers, *Euthanasia and Law in the Netherlands* (Amsterdam University Press, 1998).
[98] H. Weyers, *Euthanasie: het proces van rechtsverandering* (dissertation RUG 2002; Amsterdam University Press, 2004).
[99] J. Griffiths, M. Adams & H. Weyers, *Euthanasia and Law in Europe* (Oxford: Hart Publishing, 2008).
[100] C. Vezzoni, *The Legal Status and Social Practice of Treatment Directives in the Netherlands* (Edwin Mellen Press, 2008); D. Kleijer, see note 15; D. van Tol, *Grensgeschillen. Een rechtssociologisch onderzoek naar het classificeren van euthanasie en ander medisch handelen rond het levenseinde* (dissertation RUG, 2005); S. Moratti, see note 14.

want to examine for legality. In short, the social working of a rule requires not only knowledge of the rule, but also that actors classify the relevant situations in the way the rule-maker contemplated, and Van Tol shows that in fact, there can be radical differences, without the various actors being aware of this at all.

The MBPSL Research Group in 2003

Workweek Chazeras 2003. Clockwise from top left: Graciela Nowenstein, Jellienke Stamhuis, Dick Kleijer, Winnie Schrijvers, Albert Klijn, Donald van Tol, Heleen Weyers, Rob Schwitters, Kim Goossens, Cristiano Vezzoni, and at the bottom, myself.

The central questions that unified the various pieces of the research program were these: to what extent are the applicable legal rules responsible for the behavior that one observes in medical practice? how does this influence come about? and what are the implications of the answers to these two questions for the choice of a particular sort of regulation. As far as that last question is concerned the answer was short and simple: our research findings confirmed time and again the proposition that the crim-

inal law is an unsuitable instrument for keeping medical behavior within acceptable bounds.

In the later years of the MBPSL research program, we became increasingly interested in the phenomenon of 'self-regulation', by which we referred to the situation in which it is social organizations active on the shop-floor of social life that assume primary responsibility for regulating the behavior of their members (see further, paragraph 10).[101] The following thesis seemed to be reaffirmed wherever one looked: the more that actors on the shop-floor are involved in the design and maintenance of a rule of behavior, the more this rule will in fact govern actual behavior. Without the active support of doctors and nurses, euthanasia law on the medical shop-floor is just as toothless as the Ecuadorean Forest Law - which lacked the support of local farmers - was in the jungle of Ecuador's Amazon Region.

That last remark leads me to a reflection on one of the things I enjoy most about theory. When people in the early 1990s asked me what sort of things I as a sociologist of law was doing research on, I enjoyed answering that I was primarily involved in two projects. One concerned the regulation of euthanasia in the Netherlands, the other the protection of the tropical forest in Ecuador. Most people reacted with surprise: they could not immediately see much connection between the two projects. Provocatively, I would observe that for me, they were as similar as two peas in a pod. The expected reaction of disbelief gave me the opportunity to explain that as far as the underlying theory was concerned - by which I meant the theory of 'social working' - all of the superficial differences between the two situations were irrelevant. The problem was the same: when does a rule have an effect on behavior? It is theory that makes it possible to see how much a Dutch hospital and a village in the Amazonian forest have in common. That looking at social life through the lens of theory permits one to see similarities between superficially very different social situations has fascinated me throughout my scientific life.

- ***(5) Legal Policy***

From time to time I have addressed myself to questions of legal policy that are at most indirectly connected with the sociology of law: questions,

[101] See J. Griffiths, 'Self-regulation by the Dutch medical profession of medical behavior that potentially shortens life' (pp. 173-190 in H. Krabbendam & H.-M. ten Napel, eds., *Regulating Morality: A Comparison of the Role of the State in Mastering the Mores in the Netherlands and the United States*. Antwerpen/Apeldoorn: Maklu, 2000). I later integrated the idea of self-regulation into the general argument of 'The social working of legal rules' (*Journal of Legal Pluralism* 48: 1-84, 2003).

that is, on which I cannot claim any special expertise. One such article, in particular, brought me a certain popularity among judges and others concerned with the functioning of Dutch courts: 'The court as a bicycle factory'.[102] I argued that the authors of a research report of the Social and Cultural Planning Bureau concerning the 'productivity' of courts wrongly defined the 'product' as consisting of decided cases (thereby limiting themselves to the *special effects* of judicial behavior and overlooking the *general effects*, i.e. the maintenance and continual adjustment of the law).[103]

In later articles I returned to the question, what is it that is important about judicial decision-making - that goes beyond the mere disposition of cases? I argued in several articles that the Dutch literature and the whole public debate about courts and their place in society, tends overlook how socially precarious judicial decision-making is: the direct exercise of the power of the state over individuals. It is not for nothing that such risky behavior is carefully canalized, ritualized, depersonalized: the judge must be seen to act in a formal - official - capacity, since his or her exercise of power would be unacceptable if done by a mere individual. This last idea I developed most fully in a pair of articles dealing with the notion, widespread among politicians and policy-makers and in the press, that there was a crisis of 'trust' (*vertrouwen*) in the courts. I argued that the concept of 'trust' was so poorly defined and the data that allegedly supported this notion so poorly analyzed, that the findings were essentially meaningless, and in any case did not show an alarming lack of 'trust' in Dutch judges, and that the various remedies being suggested (in general: a decrease in formality and ritual) would if anything have precisely the opposite effect.[104]

In 1995 the editors of the *Nederlands* Juristenblad asked me to write a piece for them on the American jury.[105] The immediate occasion for the editors' request was the jury verdict in the OJ Simpson case (in which a

[102] 'De rechtbank als fietsenfabriek.' *Nederlands Juristenblad* 66: 129-130 (1991).
[103] They also wrongly limited their analysis to decided cases, ignoring all cases that end in a settlement, and in their conclusions (additional financing would not improve 'productivity') they confused 'productivity' with 'production'.
[104] 'Recht-spraak is geen gewoon-spraak' (in A.W. Koers c.s. ed., *Waar staat de ZM?*, the Hague, 1996); 'Eenoog koning in het land van 'De Rechtspraak'' (in R. Flach c.s., ed., *Amice. Opstellen aangeboden aan prof. mr. G.R. Rutgers*, Deventer: Kluwer, 2005); 'Vertrouwen in de rechtspraak' (*Nederlands Juristenblad* 86: 1028-1031, 2426-2430, 2011).
[105] 'De jury als spiegel voor Nederland' (*Nederlands Juristenblad* 70: 1359-1363, 1995); see also 'Dutch political culture as reflected in the mirror of the jury' (*Maastricht Journal of European and Comparative Law* 1997/4: 153-160.

jury acquitted the famous football player for a murder it seemed obvious he had committed). The gist of my argument was that the horror many Dutch people express at the idea of leaving serious matters to a small group of ordinary citizens says more about the Dutch than it does about the jury - just as American horror at the 'inquisitorial' character of European criminal trials tells us more about Americans than about the fairness of such a procedure. If we leave aside the simple errors of fact on both sides (the Dutch, for example, tend to ignore the key role of the judge in a jury trial), the equal and opposite horrors come down to the degree to which political culture on the two sides of the Atlantic Ocean is populist. If Dutch political culture is moving in the direction of populism (at the time, for example, referenda seemed to be becoming increasingly popular) - if the profound Dutch confidence in expertise is waning - then, I argued, we can expect a declining inclination to leave serious matters to 'experts' like judges, and therefore increasing support for institutions such as the jury. The article for several years secured my reputation in the Dutch media as the person to telephone whenever juries were in the news.

I should also note that many of the things I wrote in connection with the MBPSL program, discussed above, concerned legal policy, in particular the unsuitability of the criminal law for keeping medical behavior at the end of life within civilized bounds.[106]

8. Students

The story of my years in Groningen would be radically incomplete without mentioning my students, in particular (but not only) their role in my scientific development, and mine in theirs. In the first place, there was the role of generations of law students who were present at lectures I gave in a variety of locations - in particular, in the later years, in the magnificent Martinikerk (church). Their contribution there was both passive and indirect. I learned a great deal about the sociology of law in the course of selecting and preparing the required readings (including a considerable amount of translation[107]) and preparing lectures. If you want to

[106] See paragraph 8(4) above. The article that directly led to MBPSL program was written at the request of the editors of the *Nederlands Juristenblad* and was essentially addressed to legal policy ('Een toeschouwersperspectief op de euthanasie discussie,' *Nederlands Juristenblad* 62: 681-693, 1987); see also e.g. 'Euthanasie: legalisering of decriminalisering?' *Nederlands Juristenblad* 72: 619-627 (1997), 'Euthanasie: een verlanglijst voor de wetgever,' *Nederlands Juristenblad* 935-942 (1998).

[107] See J. Griffiths & H. Weyers, *De sociale werking van recht - een kennismaking met de rechtssociologie en rechtsantropologie* (Nijmegen, Ars Aequi Libri, 4e ed. 2005), which includes 16 of our translations of fundamental contributions to the sociology of law.

try to teach something, you first have to get your own mind in order: out of the virtually endless amount of material you might expose your students to, you have to make a coherent selection that will 'work' in educational practice.[108] This applies to a course as a whole, but even more importantly to every individual lecture: the real point of a good lecture is not so many tidbits of information, but rather the imposition of analytic order on a body of knowledge. To be able to do this you have to make sure, first of all, that you really do understand the material yourself. This is no easy assignment. If you try to think about how to explain something to another person, you often discover how chaotic your own ideas about the subject really are.[109] Although I taught introductory sociology of law for several decades, I have never given the same lecture twice. Every year I produced extensive notes for each lecture, but I was never able to re-use my notes from the year before, precisely because my own ideas were continuously in a process of development and I was never satisfied with what I had said earlier about a subject. And for me, the most exciting moment in lecturing was always the discovery, in the midst of explaining a difficult point, that what I had wanted to say about it actually could not withstand critical analysis. Then I had to think of a better explanation there, right on the spot. I believe that a considerable part of my own intellectual development had its origin in what I came up with in the heat of the moment.[110] In short, I have always learned a great deal from teaching. How much the students learned, it is impossible for me to say - except that a number of very good students later worked with me in con-

[108] This is where one of the fallacies lie of so many modern higher-education managers, who so like to appoint people 'from practice' as teachers. In my experience, most such appointments turn out to be failures and the reason is that education demands an expertise of its own: the fact that someone possesses a great deal of practical knowledge does not mean that he or she knows how to organize that knowledge for educational purposes.

[109] This is one of the reasons why I have never been enthusiastic about university education based on readers composed by others for the national market, in particular if such a reader consists largely of secondary readings rather primary source material. The teacher who gives lectures 'out of the book' suffers from the illusion that he is thereby saved the trouble of having himself to have an overview of the subject as a whole and to impose his own order upon it. I do not believe good academic education based on such an illusion is possible.

[110] Small courses and seminars were - especially in the early years - also very important for my development as a sociologist of law. The first seminar I gave in Groningen (in reality, what I did was largely just facilitative) involved a collective close reading of Donald Black, *The Behavior of Law* (Orlando: Academic Press, 1976), which had just appeared. Among others, Gerrit van Maanen (see note 64 above) participated (as a staff member) in the seminar; in that connection he wrote a critical review of Black (*Recht & Kritiek*, 1977: 224-228). The participants in the seminar also carried out a very modest research project: we 'tested' Black's theory by applying it to the faculty procedure by which students who objected to their grade on an examination could appeal the examiner's decision (see Griffiths, 'Some aspects of the distribution of grading appeals in three Dutch law faculties,' *Ars Aequi* 26: 693-708, 1978).

nection with their graduation theses or dissertations, and as student assistants participated in my own writing and research, and in those capacities showed themselves to have become valued collaborators and sparring-partners

As I have described above (paragraph 8(3)), the first large-scale research project on which I worked - the visitation-rights project - emerged directly out of the graduation thesis of Margaretha Pot. But it has been especially as student-assistants that I have intensively worked together with students. This has, in my view, always been a very important part of my work. Those who worked for me as student assistants over the years were always directly involved in the preparation of teaching materials and in research. They were responsible, for example, for the initial translation of readings from English into Dutch.[111] But their involvement in empirical research was particularly important. The first project in which student assistants collaborated concerned access to legal assistance, the most prominent topic in Dutch sociology of law in the 1970s and 1980s, largely under the influence of Schuyt, Groenendijk and Sloot*, De Weg naar het Recht (1976)*.[112] Whereas research elsewhere focused largely on the impact of economic inequality on the use of lawyers, we tried in Groningen to get a grip on two other factors: the geographic distance between those seeking and those offering legal assistance,[113] and the availability of alternatives (in particular, legal assistance to their members by trade unions[114]).

[111] Jellienke Stamhuis deserves special mention for her outstanding translation of those parts of H.L.A. Hart, *The Concept of Law*, that are of particular importance for the sociology of law, an undertaking from which we both learned a great deal. Of the 15 translated texts in the final edition of our textbook, student assistants were directly involved in 14.

[112] Deventer: Kluwer, 1976. I described our 'Groningen' approach in a review of their book: 'The distribution of legal services in the Netherlands' (*Journal of Law and Society* 4: 260-286, 1977).

[113] Pieter Huisman and Bert Niemeijer carried out this research. The results were published in *Rechtssociologische Mededelingen* nrs. 1 & 2 and in B. Niemeijer, 'De invloed van afstand op het gebruik van kosteloze juridische dienstverlening' (*Recht en Kritiek* 3: 228-296, 1979). Albert Klijn, over the years the most important and persistent researcher in this area, in an overview of the theoretical advances made during 20 years of research into the use of legal assistance, pays special attention to our research into the factor geographic distance (see A. Klijn, 'Vraag en aanbod op de markt voor rechtshulp,' pp. 235-238 in J. Griffiths, *De Sociale Werking van Recht*, 3e ed., 1996, Nijmegen: Ars Aequi Libri, pp. 191-254).

Other research concerning legal assistance was carried out by students: P. Goossens, J. Jaspers & M. de Vos, *Tussen nulde- en tweede lijn. Een onderzoek naar het functioneren van de Buro's voor Rechtshulp in Groningen en Drenthe* (Rechssociologische Mededelingen nr. 8, 1982);

[114] A. Snoek, *Korrespondenten van het Buro voor Arbeidsrecht te Groningen. Eerstelijns rechtshulpverleners vroeger en nu* (*Recht en Kritiek* 1980/4, 489-495).

Two student-assistants – Cecile Andringa[115] and Alette Arendshorst[116] - carried out research into contractual relationships between, respectively, the purchasing departments of governmental agencies and suppliers, and pop musicians and recording companies. The idea was to test Macaulay's theory concerning 'non-contractual relations' in contexts other than that of the American business world where Macaulay had done his research.[117] Their research made clear that Macaulay's explanations for the behavior of American businessmen in the 1950s have a far broader application than the specific social field from which they arose. Andringa's findings were particularly interesting. They showed that a 'non-contractual' approach to the enforcement of contractual agreements was just as characteristic of government procurement contracts as it had been in Macaulay's research, and for precisely the same reasons (in particular, the perceived importance of reciprocal flexibility in long-term relationships). For many years I regularly invoked her research - in lectures, for example - to illustrate the general character of scientific theory. Her findings were also a perfect illustration of the theory-less way in which government agencies carry out 'research'. The data Andringa analyzed had been collected by a governmental agency responsible for calling attention to the waste of public resources. The government researchers believed that their findings demonstrated a shocking lack concern for the effective use of public funds (by contrast with the 'efficiency' of the private sector, where contracting parties supposedly strictly enforced their contracts). With Macaulay in the back of one's mind, what the data actually showed was that both businessmen and governmental purchasing departments have a more sophisticated - or, at least, a very different - conception of 'efficiency' from that of simplistic 'free market' economists.

Jellienke Stamhuis, also a student assistant, carried out research concerning the internal ethical code of Shell. In a graduation thesis that followed, she expanded on the idea of 'self-regulation' (see paragraph 8(4) above) and gave it a clear theoretical definition. This lead to an article that was published in a special issue of *Recht der Werkelijkheid* that she edited together with Heleen Weyers (a member of the Department of Legal Theory).[118] William de Vreede's graduation thesis on self-regulation

[115] *De rol van het contractenrecht bij het inkoopbeleid van de Rijksoverheid* (graduation thesis, January 1997). Andringa analyzed data gathered by the Algemene Rekenkamer (General Accounting Office) with regard to the preparation and execution of procurement contracts by the central government administration.
[116] A.M. Arendshorst, *De werking van het contractenrecht in een deel van de Nederlandse platenindustrie* (graduation thesis, April 1998).
[117] See S. Macaulay, 'Non-contractual relations in business: a preliminary study' (*Law and Society Review* 28: 55-67, 1963).
[118] See H. Weyers & J. Stamhuis, ed., *Zelfregulering* (Reed Business Informatie, 2003, special issue of *Recht der Werkelijkheid*).

by the pharmaceutical industry of its relationship with family doctors, which similarly had its beginnings in the context of a student-assistantship, was published in the same issue, which further included a description by Triny van der Ploeg of the process by which the ultimate regulation of life-shortening treatment in neonatology was produced by the professional group itself, a description by Willemijn van den Berg of the internal self-regulation of a student association, and an article by Nicolle Zeegers, a member of the Department of Legal Theory, on the place of self-regulation in the context of the regulation of reproductive technology. Jeanne Mifsud, a PhD candidate in the Department, whose dissertation research concerned self-regulation on the internet,[119] gave a preliminary analysis of her findings in the special issue,

In short, in 30 years we managed to carry out a large amount and considerable variety of empirical research, all of which took place in connection with and contributed to the development of a number of theoretical themes and in this way to the growth of the sociology of law as a serious scientific discipline. Some of the work I did myself, but at least as important was the work that graduate and undergraduate students and I did together. Looked at in retrospect, sociology of law in Groningen, as that matured over the period 1977-2005 was a collective product, in which students, graduate students and researchers played a very active part. I believe that is how it should be in an institution of higher education.

9. Whig autobiography

The expression ‘Whig history’ refers to an ahistorical way of describing historical developments.[120] The past is seen as a series of steps in the direction of the present. The Whig historian overlooks the fact that - from the perspective of actors in the past itself - at many points what in retrospect appear as logical steps forward, or as necessary turning points, at the time seemed more or less accidental, or at least unpredictable, and a variety of possible futures would have seemed possible.

Looking backward at one's own life tends to have the same characteristic: one forgets 'the road not taken’[121]. Only things that can be seen as steps in a logical march toward the present get a place in the story. Even the mishaps are seen in retrospect as lucky accidents. In short, if one is not careful autobiography will often have the character of Whig history.

[119] J.P. Mifsud Bonnici, *Self-regulation in Cyberspace* (dissertation RUG 2007).
[120] See *Wikipedia*, ‘Whig history’.
[121] Robert Frost, 'The Road Not Taken,' in *Complete Poems of Robert Frost* (New York: Holt, Rinehart & Winston, 1949, p. 131).

Despite the obvious dangers, I have self-consciously described my intellectual life as a sequence of (generally happy) accidents that all seem to have been aimed at what I ultimately became. This applies to many of my experiences at university, law school and thereafter as a professor first of law and later of sociology of law. But the overwhelming role of chance began with the time and place of my birth and the family into which I was born. I obviously had no role in these at all, and I think it would be wrong to overemphasize the role of conscious, well-informed choice in most of what happened to me thereafter.

I have always been very attracted to the central point of Rawls' political philosophy, namely that the personal capital that one acquires at birth - including one's family, health and personal capacities such as intelligence - are not something that one 'deserves'. In themselves they do not afford any justification for unequal chances in life.[122] That thought gnaws at my conscience every time I hear someone assert - as if it were self-evident - that people have a right to more than their share of some social good (health care, education, housing, whatever) so long as they pay for it themselves. If one sees one's life, not as a succession of free choices in the direction of a comfortable social position one has 'earned', but as a succession of happy or unhappy accidents in the direction of privileged circumstances to which one has no real moral claim, this would seem at the very least to require a certain modesty.

[122] J. Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).

The Department of Legal Philosophy and Sociology of Law [later, the Department of Legal Theory] in 1991, at Café Hammingh in Garnwerd.

From left to right: myself, Gijs Verkruisen, Fietje Huber, Karin Nijenhuis, Bart Labuschagne, Anne Ruth Mackor, Theo Harms, Yt Algera [secretary], Pauline Westerman, Bert Niemeijer, ??, Damiaan Meuwissen, Sjaak Koenis, Janneke Rozema, Petra Oden, Jolien Oldenbeuving[†], ??, Els Baerends [†].