Introduction to Legal Sociology in Switzerland

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Outline

1. What is legal sociology?

- Locating the discipline
- Method

2. Case study: interaction between law and society and prerequisites of direct democracy in Switzerland

- Sociological analysis of the autonomy of politics in Switzerland
- Preconditions and resources of direct democracy
- How does the Swiss Constitution enlist mass media to advance democracy?

What is Legal Sociology?

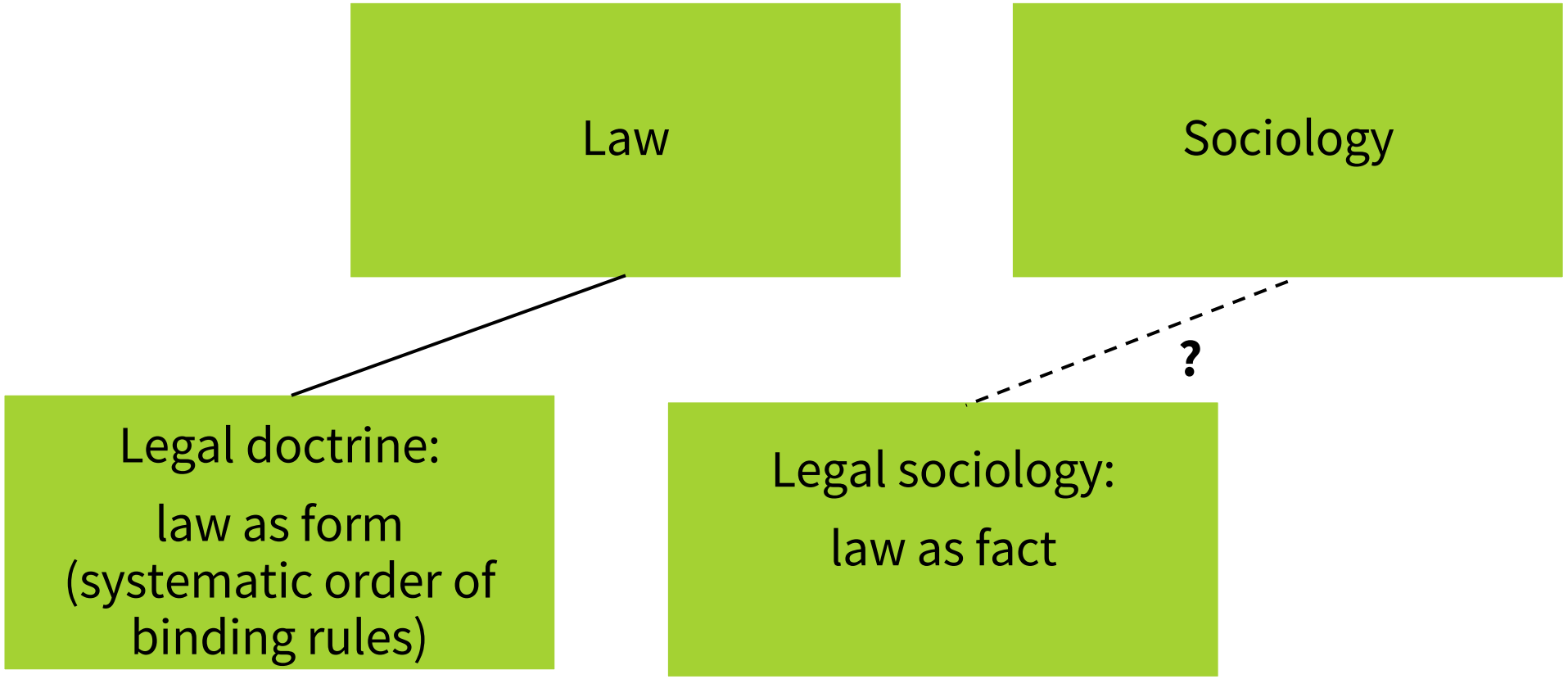
Fundamentals of Law - Disciplines

- Legal history (including Roman law)
- Legal philosophy
- Legal sociology

Fundamentals of Law - Disciplines

Sub-discipline	Question	Distinction
Legal history	Which law was applicable at an earlier time?	Applicable law/ old law
Legal philosophy	What is just/ right law?	Justice/ no justice
Legal sociology	**What is law? How does it emerge and function?**	**Law/ not law**

Locating the Discipline between Law and Sociology



Law, Sociology and Legal Sociology

- Eugen Ehrlich (Europe) and Roscoe Pound (USA): Law as a sub-domain of sociology
- The problems of this view
- The paradox of a sociological analysis of law
- Unfolding the paradox

Methodological Questions

- From observing and describing facts….
- ….to prescribing normative ends
- The step from «is» to «ought»

The Importance of Social Theory

- What is a theory?
- What is a *social* theory?
- Inductive and deductive theories

Case Study

Interaction between law and society and prerequisites of direct democracy in Switzerland

Sociological Analysis of Political Autonomy in Switzerland

- Autonomy of politics: the view of Niklas Luhmann
- Society as an autopoietic system
- Sub-systems of society include economy, law, politics, science etc.
- The code of politics
- The function of politics is “providing the capacity that is required for assuring collectively binding decisions”

Differentiation of Politics as an Autonomous System

- Bourgeois state
- Bourgeois constitutional state
- Democratic constitutional state
- Instruments of direct democracy in Switzerland

Societal Preconditions of Direct Democracy

“It is hardly possible to overrate the value, in the present low state of human improvement, of placing human beings in contact with persons dissimilar to themselves, and with modes of thought and action unlike those with which they are familiar… Such communication has always been, and is peculiarly in the present age, one of the primary sources of progress.”

John Stuart Mill (1848)

Enlarged Mentality (*erweiterte Denkungsart*)

“Through always impartially looking at my judgements from the perspective of others I hope to get a third point which is better than my previous one.”

Immanuel Kant (1790)

Resources of Direct Democracy and Institutions for Their Renewal

- Citizen’s knowledge about institutions of democracy and a minimum understanding of the most important financial, economic, environmental, cultural and social policy correlations
- The system of public education (Articles 19 and 61a to 68 of the Constitution)
- Radio and Television have to advance democracy (Article 93 of the Constitution)

How Does the Swiss Constitution Enlist Public Service Broadcasting to Advance Democracy?

Article 93 Radio and television

[2] Radio and television shall contribute to education and cultural development, to the free shaping of opinion and to entertainment. They shall take account of the particularities of the country and the needs of the Cantons. They shall present events accurately and allow a diversity of opinions to be expressed appropriately.

The Role of the Swiss Broadcasting Corporation (SRG)

- Article 24 of the Federal Act on Radio and Television (RTVA): comprehensive public service mandate of the SRG
- What does it include?
- What does the SRG receive in return?

Public Service Broadcasting and the Internet

- Empiric research: media consumption Switzerland primarily takes place on the Internet
- Advertising revenues migrate to the Internet
- Does PSB still matter?

Personalisation Technologies and the Public Service Mandate

- AI-driven personalisation technologies: how do they work?
- Leading to filter bubbles and fragmented public spheres?
- “Login alliance” of major media companies in Switzerland (OneLog)
- What is the aim?

Assessing the SRG’s Participation in OneLog

- Perspective of the SRG
- Perspective of consumers
- Perspective of democracy and societal cohesion

Summary

- Legal sociology as an empiric sub-discipline of the law
- Method: observation of the law from an external perspective and re-import of the gained knowledge into the law
- Legal sociology allows analysing interrelations between democratic politics, mass media, and constitutional law and the challenges of AI-driven personalisation technologies
- Online content personalisation is in potential conflict with the SRG’s public service mandate