

Introduction: Pierre Bourdieu: from law to legal field

This special issue of *Retfærd* is dedicated to the sociology of law of one of the great social theorists of the late 20th century, the French sociologist Pierre Bourdieu (1930-2002). In his extensive catalogue of publications Bourdieu provided the outline of a sociology of the *legal field*. Moreover, in his many studies of other social fields and especially in his in-depth analyses of the State, he addressed law and the legal profession as key elements of the development of modern society.¹ Yet, as Remi Lenoir

points out in the first article in this issue, Bourdieu's encounter with law remained for a number of reasons a somewhat unfulfilled research programme, which has provided grist to the mill for a growing number of socio-legal studies.

Bourdieu's polycentric approach – consisting of a interconnected set of research tools and a variety of methods – contains untapped intellectual resources for studying the social world of law, a social field characterised by strong inherited categories of perception and apprehension, global orthodoxies and resource-full lawyers, judges and jurists trained in inventing and defending legal essentials – from which they earn their keep.² One of Bourdieu's fundamental concerns was to escape 'essentialist thought', which according to him was prevalent in all social universes, and especially in fields of cultural production such as the legal field. The essences – or universals – at stake in the legal field are, in fact, legal norms and prescriptions presented as 'neutral common goods'. Yet, as Bourdieu suggested, jurists are perpetually

1 Bourdieu outlined a sociology of the juridical field in 'The Force of Law: Toward a Sociology of the Juridical Field' (1987). In several articles Bourdieu discusses how to approach the State, which includes the law. (See, for example, Bourdieu 1998; Bourdieu 2005a; Bourdieu 2005b). He also points to law in his magus opus, *The State Nobility* (1996b). (See also Wacquant 1993). Bourdieu's more theoretical perspectives, which also deal with regulation and the law, were published over a considerable span of time (Bourdieu 1977; Bourdieu 1990; Bourdieu 2000). He examined different social fields such as the academic field (Bourdieu 1988), the field of literature and the arts (Bourdieu 1996a), the economic field (Bourdieu 2005c), which also deals with the State and the law. His general approach and development is presented in *An Invitation to Reflexive Sociology* (Bourdieu – Wacquant 1992). See also one of the most comprehensive and impressive books on

Bourdieu, Broady's *Sociologi och Epistemologi: Om Pierre Bourdieus författarskap och den historiske epistemologi* (1991).

2 On this question see Madsen's article in this issue and (Hammerslev 2005).

engaged in social struggles in order to produce visions and definitions of the world that are most congruent with their own particular interests. Using the alleged neutrality of law, jurists tend to *produce* the effects they profess to *describe*.

Following Bourdieu, the scientific undertaking of the sociology of law is to expose the most profoundly buried structures constituting the legal universe and the 'mechanisms' which tend to ensure its reproduction or transformation (Bourdieu 1996b, p. 7). In other words, a Bourdieuan sociology of law seeks to 'establish the truth of these struggles over truth and to grasp the objective logic behind the way the stakes and camps, the strategies and victories, are determined.' (Bourdieu 1996a, p. 298).

Bourdieu's encounter with the law is a continuation of his more general theoretical and methodological explorations. For the sake of clarification, we can briefly outline some of the basic 'principles' of Bourdieuan sociology.

Firstly, according to Bourdieu, the social universe exists both as 'social structures' and 'mental structures' (see, for example, Bourdieu 1984; Bourdieu 1996b). The former is the system of distribution of resources – material, social, educational, cultural, etc. (forms of capital) – whereas the latter is the system used to classify practical activities, into feelings, thoughts, taste, judgements and decisions, for example. Since the legal universe, like other social universes, exists in this dual space consisting of objective systems of *positions* and subjective systems of *dispositions* embodied in the agents, a double reading – objectivist and subjectivist – is an implicit

element of this approach (Bourdieu 2000, p. 188ff.). Secondly, the impact of this double reading is that the approach seeks to examine the social conditions governing the possibility for specific *legal practices*. This involves *systematic empirical analysis* of existing practices and beliefs of individuals and institutions involved in or associated with the law. Subsequently, it implies an uncovering of the visions and divisions of these agents and of how they have been inculcated with categories, viewpoints, skills etc. required to play the game of law. In other words, it requires that the sociologist go beyond the abstract, universal and orthodox ideals promoted in law, philosophy, political science etc. and instead focus on the ways in which all forms of distinctions between dominant and dominated agents are produced and reproduced.

The third feature of such analyses that it is important to stress is the role of symbolic power. According to Bourdieu, symbolic power is the 'invisible power which can be exercised only with the complicity of those who do not want to know that they are subject to it or even that they themselves exercise it.' (Bourdieu 1991, p. 164) Symbolic power necessitates a set of *rules of the game* and the researcher has to be careful not to become a part of the game and so be seduced by and ensnared in the symbolic struggles that the research attempts to analyse. And it is here the manoeuvre of *double rupture* comes into play. This means, on the one hand, that the researcher has to break with the pre-constructions that dominate the area of study and, on the other, that he or she should try to break with his/her own pre-understandings of the

social realm under investigation (Bourdieu *et al.* 1991; Bourdieu – Wacquant 1992).

This leads to the fourth point, namely the call for a *double historicisation* both of the tradition and of the application of the tradition. Bourdieu is questioning traditional thought and practice through a fundamental historicisation of everything related to law (the legal profession, legal education, legal institutions, the State, vocabulary, etc.). But to historicise is not merely to relativise these legal products, noting that they have specific meaning within a certain historical context; it also implies 'giving them back their necessity by tearing them out of the indeterminacy which stems from a false eternalisation and relating them back to the social conditions of their genesis.' (Bourdieu 1996a, p. 298).

In law, we generally find that little effort is made to describe how law is constructed. Those who push legal reforms typically seek to make the desired reform appear to be necessary and legitimate, or in the words of Bourdieu 'they make the virtue to a necessity'. Legal discourse rarely mentions the lawyers behind the law. An important contribution of the Bourdieuan sociology of law is, in fact, to put the legal agents back into the socio-legal research, and to ask how certain laws, institutions, legal *foci*, etc. take shape. Under which conditions do they emerge? And which resources did the promoters of the ideas behind them draw upon? But it is not the agent *per se* that is the interesting factor, for the agent operates in relation to other agents within a field. It is therefore necessary to examine law and legal agents using the notion of a *field*. Moreover, with the notion of field it becomes possible to 'by-

pass the opposition between internal reading and external analysis without losing any of the benefits' of the two approaches (Bourdieu 1996a, p. 205). The consequences for such a sociology of law is to replace ontological questions of law – questions such as what is law, what is the legal profession, which codes does the law follow, etc. – with the historical question of the genesis of the universe in which the value of law is ceaselessly produced and reproduced in a veritably continuous creation. And it is this shift in perspective we want to emphasise with the title of this issue of *Retfærd*, 'From Law to Legal Field'.

Content

In the first article *Pierre Bourdieu and the Law: An Intellectual and Personal Encounter*, Remi Lenoir, outlines Bourdieu's engagement with law both from a theoretical and personal point of departure. Lenoir, who worked closely with Bourdieu for many years, explains Bourdieu's understanding of law in relation to his larger research agenda and in relation to his own background and career. In the article Lenoir explains Bourdieu's research tools and brings them into play in relation to the law. In a final section Lenoir seeks to combine a brief analysis of Bourdieu's own background and career with the way in which he generally perceived the world of law.

In an extension of Lenoir's article, Mikael Rask Madsen elegantly develops the Bourdieuan *reflexive sociology* as a *reflexive sociology of law* capable of examining the internationalisation of legal fields by means of qualitative research strategies (see also

Madsen – Dezalay 2002). Drawing on empirical work, Madsen explains how the sociology of law can gain by using the concept of field to study processes of the Europeanization and internalization of law. Madsen lays the methodological and conceptual framework for the two ensuing articles.

By examining the genesis of the legal field in India during the British colonial period, Yves Dezalay and Bryant Garth analyse the structuration of the legal field in India. The article demonstrates how the law has for a considerable period been part of a broader struggle relating to the construction of the Indian State, and how legal institutions and legal notions such as corruption became part of this struggle. Dezalay and Garth's article further illustrates how the Bourdieuan approach provides adequate research tools for empirical research regarding subjects unable to be classified either as law or politics.

Ole Hammerslev examines the processes of the re-emergence of an international field of legal assistance. Hammerslev argues that the fall of the Berlin wall marked a new boom in legal assistance programs promoting the rule of law. The arrival of American commercial lawyers moving quickly into Eastern Europe in order to assist in the development of the States gave such lawyers a dominant position in the field. Hammerslev brings the concept of field into play by showing how these commercial lawyers did not create legal assistance programmes in isolation or as unique creators. On the contrary they were dependent on other positions in the field.

In their study of international legal educational strategies in Sweden, Mikael Bör-

jesson and Donald Broady suggest that there is a need for an international rethink of national legal education. For Bourdieu education was generally an area of considerable interest, as he demonstrated how educational institutions are at the heart of the reproduction of social distinctions within modern society (Bourdieu – Passeron 1996; Bourdieu 1996b). In the tradition of the sociology of law, legal education has remained a sub-field of studies of the legal profession. Generally, legal education has mainly been seen as the phase in which students are socialised into legal thinking. Whereas such studies have been markedly national in their outlook, Börjesson and Broady focus on the internationalisation of legal education and its strategic and social implications. Using correspondence analysis, they demonstrate how the internationalisation of legal education in Sweden is mostly a national affair, because most students go abroad on short exchange programs, which provide an added value to their domestic diplomas. Such international investments are not, however, equally distributed among law students. Students with economic and cultural privileges are overrepresented in transnational further education. Moreover, such investments reflect the prestige of national universities. Leading universities in Sweden have exchange agreements with other prominent universities in Europe and the US, which means in practice that social hierarchies are reproduced and even strengthened through the exchange programs. Their study not only challenges a number of myths concerning equal opportunities and social mobility in Swedish society, it also points to changes in legal

studies that relate to other areas marked by internationalisation.

As a final chapter, Professor Margareta Bertilsson has written a critical yet highly constructive critique of a Bourdieuan sociology of law. Taking as a starting-point the ~~articles included in this issue, she chal-~~lenges the Bourdieuan tendency to downplay the complexity of law. She suggests reconsidering the insights of, for example, Luhmann or Weber, who propose going even deeper into the many layers of law. Arguing for the importance of more normative approaches to law such as these, she nevertheless acknowledges the methodological value of Bourdieuan sociology in the context of the law.

In a short note, the Danish artist Jakob Kolding, who has illustrated the front page, presents his work. Kolding focuses on the expansion of the global Western (US) city. With the advent of offices and businesses into city centres previously dominated by slums and industry, life and the comprehension of life changes. The new cities mark a global shift in the division of labour. Yet Kolding does not only point to the export of architecture but also to the export of social and mental structures. He examines global means of domination by physical and social control alongside methods of defining power and looks at the relation between urban planning and economy, politics and ideology. Moreover he examines the impact of the symbols of deviance on modern urban life, with its prohibitions and monitoring elements. This contribution can be seen in relation both to Bourdieu and to Sassen (Sassen 2001).

By outlining different theoretical and methodological approaches of the Bourdieuan sociology of law, we hope this issue of *Retfærd* will inspire further research in the area of the sociology of law in terms both of new research questions and of how such questions can be approached methodologically. Moreover, with this volume we hope to push the debate onwards by showing that the sociology of law is alive and kicking and that one of the great modern sociologists can be used to provide a framework capable of taking socio-legal research a step further. Because we believe in the value of this special issue we have, as an exception, chosen to publish all the articles in English in order to reach a wider audience.

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