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SOME BASIC QUESTIONS REGARDING LEGAL CLASSIFICATION FOR PROFESSIONAL AND SCIENTIFIC PURPOSES *

JEROME HALL†

IN AN occasional daydream I have enjoyed the vision of offering an adequate analysis of legal classification ten or more years from now—in the meantime, however, preserving a discreet silence in the world of hard reality. The exigencies of the times and the optimism of the committee 1 have conspired to accelerate the tempo of an ordered life and undoubtedly to compel the disclosure of many of its limitations. But while forewarning that little progress in the form of concrete results may be expected, I hope this untimely venturing will not discourage efforts to solve what, I am persuaded, are the major problems of law and social science. Indeed, I hope our discussion stimulates a fresh examination of these problems on a wide scale so that the work of each scholar may become more significant as a common enterprise reveals the prospect of lasting achievement.

Despite the bulk of the literature on legal classification,2 little attention has been devoted to such basic questions as—Why classify? What is to be classified? Which theories and methods are likely to guide us toward classifications which facilitate the work of practitioners and of legal scholars interested in a humanistic knowledge of law and in a science of law?

A law librarian said to me, “Why not expand the Index of Legal Periodicals? Why engage in the frustrating ordeal of classification?”

The question illuminated the limitations of our present situation in law and obviously called for clarification of the difference between an alphabetical arrangement and a classification.

The nature and functions of classification are well illustrated in chemistry and biology. For example, the periodic table of elements is a sum-

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1 I am especially indebted to Ervin Pollack and Willard Hurst, whose thoughtful perception of the importance and the difficulties of the project provided necessary encouragement.

2 The most helpful articles read were Kocourek, Classification of Law, 11 N.Y.U. L.Q.Rev. 319 (1934) and Pound, Classification of Law, 37 Harv.L.Rev. 933 (1924). Both articles are reprinted in part in HALL, READINGS IN JURISPRUDENCE (1938).
mary statement of the knowledge of basic uniformities and relations, which made it possible to anticipate the properties of unknown elements, improve existing knowledge of the definite proportions by weight of reacting substances, and predict the result of important experiments.

In biology,\(^3\) classification expands from species into genus, family, order, and phylum, each progressively wider and containing fewer items than the class below it. Throughout the history of classification in biology, from Aristotle to the “new systematics,” the effort has been to discover common properties, functions, and evolutionary origins. This has given rise to the issue of natural classifications versus artificial classifications but we can only note here that some of them have led to further understanding and discovery while others have not.\(^4\) Thus, although by comparison with scientific laws, classification is a “half-way house,” a distinguished scientist informs us that “many important biological discoveries rest entirely on systematic studies.”\(^5\)

Among the possible implications for legal classification are the following:

1. Classification must be a permanent on-going affair, which provides a number of suggestive alternatives.
2. The notion that any classification is as good as any other classification, that there are no standards to appraise a classification beyond the particular classifier’s interests, is false and it deters us from the search for the better classifications.
3. To fill the kind of role performed by species and element in their respective classifications, we must discover the basic distinctive unit or units which comprise the subject-matter of legal science.
4. We must divide the distinctive legal unit or units into many types on the basis of significant properties—i.e., the objective is not merely to pigeon-hole our data so that we can identify them but, also, to classify them in ways that facilitate the discovery of wider generalizations than those represented in the classification.

\(^3\)“Today ... systematics has become one of the focal points of biology. Here we can check our theories concerning selection and gene-spread against concrete instances, find material for innumerable experiments, build up new inductions ...” Julian Huxley, The New Systematics 1-2 (Huxley ed., 1940).

\(^4\)For example, divisions of plants into trees, shrubs, and herbs and according to the form of leaf were abandoned because they separated plants that were alike in very important respects. Linnaeus' classification by stamens and pistils selected a single factor whereas the progress of botany required that all the organs of plants and their functional interrelations be considered. The “new systematics” ranges farther yet and includes environmental facts and phylogenetic origin.

\(^5\)John Smart, in The New Systematics, op. cit. supra, note 3, at 483. To the same effect is Turrill’s discussion, id. at 47. Of “... the purpose of all classification is to enable the classifier [or other scientist] to make inductive generalizations concerning the sense-data he is classifying.” Gilmour, Taxonomy and Philosophy, id. at 485.
5. A classification cannot be spun from thin air, but can only be invented concomitantly with the discovery of significant uniformities and relationships.

Since classification is an important part of science, any degree of it represents an advance over an aggregate of disconnected bits of knowledge, including indexes, and that applies to law and social science as well as to biology and chemistry. One enters disputed territory when he pushes beyond that. Conflicting perspectives toward the social disciplines lead to correspondingly divergent prognostications regarding scientific development there. I have tried elsewhere to resolve the principal issues formulated in terms of knowledge of problem-solving and of more rigorous scientific knowledge, and shall here assume only enough to justify a sustained interest in the more scientific aspects of the social disciplines without disputing whether these go to the "essence" of social knowledge or merely to the conditions of problem-solving.

In any case, it is impossible to maintain that there can be no classification in law, since existing branches of law bear ample evidence of ordering, limited though it be, which transcends mere cataloging or finding devices. For example, a criminal code exhibits logical interrelationships between the general and the special parts of the field. There is the unifying influence of contract, and there is important ordering in many other areas. To describe such organization as purely "formal" is ambiguous or even misleading. To say that we have a logical arrangement of legal ideas is pertinent, but it is necessary to appreciate, also, that those ideas are related to fact if we are interested in an empirical legal discipline and a representative classification. So much for general considerations regarding the significance and functions of classification.

We confront important, specific problems when we ask, "Do we need one classification for lawyers and another for legal scholars, or do subject-matter, problems, and functions require that there be a single classification for both groups?" In dealing with this question, it seems helpful to consider two basic distinctions: (1) that between the practice of law and the science of law, and (2) that between legal meanings and the verification of descriptive propositions.

The practice of law and the science of law, the practice of medicine and chemistry, engineering and physics, the social worker and social science—this list of paired terms suggests distinctions stemming from Aristotle's theoretical knowledge and practical knowledge. Descriptions of them include the following: Theoretical knowledge is pursued solely in order to know, whereas practical knowledge is sought for the sake of action or to influence action. Theoretical knowledge is of causes,
as practical knowledge is concerned with ends. Thus it seeks change, while theoretical knowledge is not directed toward or motivated by a desire for change or reform. The difficulty of fitting social science into this scheme results from the fact that although one distinguishes the physical sciences from the cultural disciplines, it is possible to work objectively in the latter also, i.e., to pursue knowledge for its own sake.

It is easier to distinguish both theoretical and practical knowledge, which are general, from a knowledge of particulars. For example, the lawyer is largely concerned with the unique aspects of particular cases, needs, and objectives, while the legal scientist is mostly concerned with classes and with wider generalizations. Thus one would allocate to a separate division of the classification that distinctive kind of know-how acquired by an experienced trial lawyer or negotiator—the expert's knowledge of the nuances of a situation, his eye to the incidence of minute data and signs, and his instinct for the correct, effective thrust in the particular case. This sort of knowledge, call it art or insight, must, it seems to me, be contrasted with that signified in scientific and statistical generalizations. Intermediate are historical knowledge and that provided in case studies of problem-solving.

The question of practitioners' versus scientists' needs may be explored further in relation to the problem of meaning and verification. Is the lawyer concerned with legal meanings, i.e., rules of law, while the legal scientist is concerned not only with legal meanings but also with the verification of relevant descriptive propositions?

Meaning is a relation between a sign and something else. Thus, "offer," "acceptance," and "burglary" are signs which refer to certain actions, and their meaning is the relation of those terms to the respective actions referred to. Definitions and analyses contribute to the establishment of meanings, and meanings are further clarified by specifying more and nicer references to things denoted. This is a major function of case-law. Rules, particular descriptions, statistical generalizations, and scientific laws are meaningful propositions, while verification is the process of determining whether they are true. Its principal method in the natural sciences is observation to test their conformity with fact.

But in law the discovery of sound decisions includes the verification of standards, and trials verify assertions of fact. The case-law includes not only explications of the legal meanings but also a series of essays further verifying findings of fact and the validity of the values rep-

7Despite the controversial literature on meaning in relation to verification, it seems to me permissible here to assume that meanings can exist apart from their verification.
represented in the judgments. And the lawyer, engaged in drafting documents, statutes, and orders, in negotiation, trying cases, and anticipating probable court action, also analyzes official meanings, verifies the existence of many suppositions of fact, and he, too, participates in a critique of relevant values.

Can the work of the legal scientist be distinguished? The legal scientist is interested in many official meanings but he is also interested in non-official meanings derived, e.g., from social science; and beyond that, he is primarily interested in causes, historical developments, the process of problem-solving, and the co-variation of legal-meaning situations with other events. Quite different functions are involved in the art of persuasion and the solution of specific problems. And, in comparison with a legal scientist, a lawyer would make little use of knowledge of how law is learned, theories regarding the diffusion of legal systems, and generalizations of the type—legal evolution has been from status to contract. So, too, the lawyer concentrates on State law, whereas the scientist is also interested in the laws of sub-groups and in sanctions which differ from physical coercion by the State.

These, however, are matters of degree; indeed, it seems self-evident and trite that the more a practitioner knows about the above matters the more effective a lawyer he is. Accordingly, it seems to me that, except as regards the art of handling the unique aspects of particular problems, separation of the practice from the science of law is a concession to human limitations rather than a requirement of theory. If judges and lawyers were perfect, they would know all there is to be known regarding law, and the separation or distinction of functions in terms of concentration on legal meanings as opposed to that on verification would be indefensible. We would recognize that existing case-law represents a practical exclusion of relevant facts and ideas, and that there is no natural bifurcation between the islands of fact and knowledge supplied in the cases and the congruent cosmic facts and total knowledge. The human limitations being what they are, and the demands for the early peaceful resolution of the clash of interests continuing insistently to call for a modus vivendi, we are driven to a viable compromise. What this comes to is that (1) in theory, the lawyer is a legal scientist plus, and that, accordingly, there is no basis for two classifications; but (2) as a practical matter, it is necessary to distinguish the functions of the practicing lawyer from those of the legal scientist, and this justifies two types of classification. We should not forget the grounds of these conclusions and the consequent implications for the interrelation of legal knowledge and the presently recognized social sciences.
Those interrelations raise the principal problems which must be dealt with if we are to construct classifications which are responsive to the needs of cultural, social scientific studies of law. Discussing this question in his memorable address on stare decisis in 1928, Herman Oliphant "proposed...a radical reclassification of most of law in terms of the human relations affected by it." And he said, "The categories of that reclassification emerge from the suggested study of the whole social structure."  

It is significant that Oliphant did not provide any categories in terms of human relations or social structure. Much more significant is that he did not consider the role of legal rules in human relations or social structure. The first omission testifies to the lack of categories in the existing social sciences that are directly relevant to legal problems. The second (and I hope I am not mistaken here for I knew and admired Oliphant) reflected an anti-legal functionalism, which has important implications for the tasks of classification in an empirical legal discipline. Undoubtedly, however, Oliphant raised the important questions, and his challenge continues to face us. It has become a commonplace, e.g., that a contract between two individuals is a significantly different situation from one between an employer and a labor union or between an insurance company and an individual, and that the receipt of stolen property by a dealer in stolen goods and by a consumer involve very important social differences and human relations. The pertinent question is—how shall we deal with these differences as legal scientists and legal taxonomists?

The first point to be noted is that the social differences do not dissolve the common bond in the above situations, namely, the law of contract and the law of receiving stolen property. This suggests that in our investigation of the facts, human relations, and social structure, we cannot lose sight of the law which guides our inquiry and determines the very selection of facts. Thus, the law of contract persists through very diverse factual configurations and the assessment of its significance varies in relation to the different contexts. There is no incompatibility between the perdurance of contract-law and its differential significance. Indeed, we speak of labor contracts, minors' contracts, married women's contracts, insurance contracts, and so on. Perhaps it is not premature to suggest an important consequence for the legal classification envisaged, namely, that it will extend from the widest abstractions

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9 It is curious that a brilliant scholar like Oliphant, who was insistent on the revival of the precise thinking of stare decisis, should have been uncritical of the shortcomings of social science.
of law applicable to all relevant situations to narrow rules which refer to particular types of fact.

With reference to the relation of law to social problems, it seems to me that our vision has been obscured by setting law in opposition to social significance, and legal knowledge in opposition to the social sciences. Social or factual differences in human relations and social structure can have only one relevance for the lawyer and legal scientist, namely, such difference as to require correspondingly different legal definitions and sanctions. Whatever goes on as tension between existing law and changing fact, the function of law is to handle social problems; hence the corollary of gaps and divergence is reform of law to represent the facts adequately. Certainly the precision of the legal instruments, when compared with such notions as "social control," is evident so that restatement of law in terms of social theory is dubious, at least. We also know, however, that the law contains fortuitous elements, and that there are lags and many opaque spots. But our functions as lawyers and legal scientists require not only that we begin our research with and from given legal rules but also that we terminate with legal rules, improved or found to be adequate.

Because law has been regarded as purely formal, especially since Kant, it has been thought that legal rules must be excluded from a classification representing an empirical legal discipline. For other reasons, also, inquiries directed toward a science of law have been concentrated on facts. Thus, since Jhering emphasis has been placed on the classification of factual interests. The supporting theses have been that law is purely formal or instrumental or merely an apparatus of compulsion and, in any of these views, the factual interests provide the only significant criteria. But classifications of interests or values have not won acceptance by lawyers as aids in their work nor has their usefulness in scientific research been exemplified. There must be good reasons for the failure of this approach.

The lawyer's thinking in terms of "cause of action," and the actual events which brought on the intervention of officials point to the primacy of harms and to the reasons for their precise formulation. Interests or values are derivative and they are apt to be expressed in generalizations which are too vague for intensive research. Compare, e. g., "the social interest in the general security," or the individual interest in "substance" or "the social interest in the security of acquisitions" (Pound) with the specificity of the social harms defined by the law of torts and crimes in terms of battery, larceny, robbery, and so on. The fact that harm and value, order and disorder, are correlative and that studies of both are required to provide a balanced picture does not entail that there is much
utility, for purposes of research and classification, in tabulations of wide
interests. And even with regard to the possible formulation of very
precise interests by close reference to legal rules it must be noted that
while legally defined harms reveal the operation of the sanctions and
thus the inclusive characteristics of law, there are serious difficulties in
the way of exhibiting the entire legal apparatus in studies of conform-
ity to law. The above matters are relevant to the feasibility of attempts
to provide the necessary classifications by focusing directly upon in-
terests.

But the most serious limitation of tabulations of interests is that they
miss the principal target, which must include law. At best, the inter-
est's road leads to social science which, like existing social science, is
not much concerned with law. But if we are to hold fast to the distinc-
tiveness of a science of law, including a cognate classification, there is
no escape from rules of law as an essential component of the subject-
matter of such a discipline. Nor can a classification of the knowl-
edge of law be built upon a foundation of prejudice against law or upon
a formalistic view of legal rules.

An antidote for that might be a good dose of Platonism which would
encourage one to regard legal ideas as realities. In Plato's Laws we
find practically all of the basic ideas of our own legal system, e. g.,
contract, property, crime, tort, public law, damages, and procedure.
These ideas, more than 2,300 years old, are entitled to respect. That
is to say, at least the hypothesis should be entertained that these basic legal
ideas are sufficiently durable to form essential aspects of the subject-
matter to be classified by legal scientists.

One may well wish to go beyond Platonism and view legal rules as in-
tegrated in factual "collective representations" or "social consciousness,"
as did Durkheim. I think we can profitably advance beyond that to the
insight that law has a factual dimension. In any case, whether we
take the position that law is about fact or that law coalesces with fact
or that law, itself, has a factual dimension, we are on the way toward
a defensible functionalism and the kind of a classification which is rep-
resentative of an empirical legal discipline.

In the light of these perspectives, we may reappraise so-called "formal"
legal classification and also consider the classification of relevant bodies
of knowledge. Let me first say, in order to suggest a rounded program,
that we must classify: (1) the rules, doctrines, and principles derived
from the authoritative materials; (2) the case-law and the treatises; (3)

10 An attempt to formulate affirmative precise values to balance the harms
described in the law of torts and crimes will illustrate another aspect of the
problem.
cultural and scientific study of law, within which I include jurisprudence; (4) the social science literature dealing directly with legal rules or parts of them, e.g., that on monopoly, strike, boycott, insanity, intoxication, and so on; and (5) the non-legal disciplines and sciences which can be drawn upon to derive fuller descriptions of relevant fact and better discussions of theory than can be found in the cases and professional treatises.12

How shall we proceed to achieve the first objective, i.e., classification of rules, doctrines, and principles? If you wish to explain something to a student you are apt to introduce contrasting situations into a single discussion. In torts a teacher compares compensatory damages with punitive damages, and in contracts he may consider cases of unjust enrichment to distinguish quasi-contracts. In criminal law he may compare crimes with torts, and he may deal with so-called “public welfare offenses” because that makes for significant instruction or because he has accepted a traditional version of the course. Pedagogical influence also accounts for the omission of the simplest rules as well as for the repetition of difficult ones. Convenient division of a field among colleagues and theories of the order of learning are other criteria which have determined the content and organization of the courses in the law school curriculum.

But if one’s objective is scientific classification, he cannot tolerate substantial differences within a single class. Inclusiveness, economy of statement, and mutual exclusiveness impose their limitations. Accordingly, efforts to construct a scientific classification would require the critical working-over of every course in the curriculum and of all practitioners’ fields of law.

The magnitude of this phase of the task, alone, is indicated when we recall the development of the American law school curriculum. For example, in the early years of the Harvard Law School there were courses only in Real Property, Equity, and Constitutional Law, and in the 1870’s there were approximately twenty courses, which did not include torts, quasi-contracts, municipal corporations, suretyship, trusts, insurance, trade-regulation, and others.13 These and many other courses which have found familiar places in the curricula are responses to practical needs. But, although science takes account of practical needs, the respective criteria are apt to be quite different.

12 “Classification is central and basic to the whole problem of bibliographic organization, and far more fundamental than it has ever been to present library practice.” Shera, Classification as the Basis of Bibliographic Organization, in Bibliographic Organization 92 (Shera and Egan ed., 1951).

13 Kocourek, supra, note 2, at 332.
In reworking the law of each course and of the recognized professional fields to discover as unified a body of law as is possible, it is important to remember that eight or nine basic legal conceptions are among the oldest things in history. I refer to contract, crime, property, person, family, procedure, and probably tort, and public, as contrasted with private, law. The fact that these are the grand divisions of practitioners' law need not deter us; and the persistence of these basic ideas over thousands of years emphasizes their social significance. Besides, we have little choice as to where to begin. The initial effort, at least, must be to classify the contents of the courses in the curricula, present practitioners' fields, and other smaller segments of law in relation to the above eight or nine basic legal ideas. This would require a careful analysis of each course, branch, and segment of the law.

To provide a specific illustration, not of a perfectly executed design, but of a sustained effort to organize a single course, may I report a venture in criminal law. To come directly to the conclusions reached—the criminal law was divided into three parts: rules, doctrines, and principles, the order representing progressively wider generalization. Starting with the various specific crimes, I found that each crime was definable partly in terms peculiar to it and partly in terms designating what is common to all the crimes. Thus, I found that to define burglary, e.g., it was necessary to state the rules distinguishing that crime from all other crimes (breaking and entering a dwelling house in the nighttime with felonious intent) and the doctrines which define certain other aspects of burglary as well as of all other crimes, e.g., the doctrines of insanity, mistake of law and fact, coercion, etc. Only after both the particular rules and all the doctrines are stated is any crime defined; and after all the rules and doctrines are stated, all the crimes are defined. An additional step was then taken, namely, to derive the principles of the criminal law by abstracting from both rules and doctrines. These principles were found to be legality, conduct, harm, concurrence of conduct and harm, mens rea, causation, and punishment, with one or two others as close competitors. In short, rules and doctrines comprise minimal complete statements of the criminal law, while principles generalize regarding common aspects of both the rules and the doctrines.

See the writer's General Principles of Criminal Law, Ch. 1 (1947) and his Cases and Readings on Criminal Law and Procedure (1949).

15 "Rule" has been defined above as those relatively narrow propositions which state the particular aspects of legal-meaning situations. But it will be noted, e.g., that the rule defining the specific aspects of burglary contains several terms which must be defined—"breaks," "enters," and so on. These terms are parts of the rule, and the rule is not stated until all its parts are defined and referred to authoritatively included fact-situations.
I should think the same scheme could be applied in torts, which, like crimes, is focused on harms. It might be more difficult to apply it to contracts, although it and other fields of law can be restated to focus on breaches or other harms. There may be other ways of handling this problem. The emphasis on harms is not intended to exclude other approaches but to indicate that the problems confronting us compel a choice between rigorously described criteria, which narrow the field but promise an organization of knowledge within those limits, and wide criteria, which may be very important with regard to the functions of lawyers, but do not lead to organized knowledge. In any case, to trace the ramifications of contract, alone, would require an extensive survey, e.g., of sales, negotiable instruments, labor, and insurance.

These references suggest that the largest part of the law of contracts concerns particular types of contract-situations, i.e., it consists of rules which would find a place in the classification at the same level as the rules defining the specific aspects of the various crimes. The doctrines of contract law, e.g., those concerning mistake, misrepresentation, duress, undue influence, and perhaps impossibility, as well as those of other fields of law, would have the same logical status as that of the doctrines of criminal law; the like would apply to the principles of the different fields of law. And from the principles of the major divisions of law, one might ascend to a very few propositions which, abstracted from all the principles, would be intermediate between them and law, the ultimate category.

Since we cannot have a classification in exclusively factual terms without losing the distinctiveness of law, the pertinent question is whether, clinging to the legal meanings, we can also represent the significance of factual differences. I think that can be done by adequate differentiation of the rules in the classification, i.e., at the level where the significant particularities of fact are represented in relevant law. And the law allocated to the narrowest classes of significantly different types of fact would be stated only in the relevant rules. If this method succeeded, we should avoid the common criticism aimed at functionalism, namely, that it requires a repetition of all the law relevant to the particular association or institution, a criticism which was facilitated because pedagogy was confused with scientific inquiry.

Let us assume that we were able to work our way through and from the basic legal categories, contract, property, crime, tort, etc., in the above indicated, or other, ways. It is evident that this procedure would result in classes of legal subjects which were quite different from existing law school courses and practitioners' fields. For example, public welfare offenses and ordinary negligence would be excluded from the
classified criminal law, not as a social reform but by the inexorable march of logic consequent on basic incompatibilities between the properties of the recognized bulk of criminal law and the above noted segments. Labor law might not appear in the classification at all, replaced perhaps by labor contracts, labor torts, labor crimes, etc. An ordered field of public law might emerge from the existing arrangements. Scientific needs and specifications demand a unified subject-matter, and we would have to conform to them even though our first efforts resulted in an uncomfortably large “miscellaneous” receptacle.

The quest for “the one in the many” among the miscellanies would continue. For the ideal toward which the ordering of the various branches of the law moves must be that of a single complete code, in which each rule, doctrine, and principle, as well as the subordinate subrules and the few superior conceptions, find their correct place. As a matter of fact, I see no prospect of ever achieving more than the organization of eight or nine major divisions and discovering some important interrelations among them. But even the partial successes will reveal many interrelationships among the legal ideas; and since these ideas are fused in certain situations, we may discover factual and value connections among them, regarding which we do not have the slightest inklings at present.

While efforts to systematize legal ideas were in progress along the indicated channels, parallel studies would deal with the other types of literature, listed above. If, as was said there, judicial opinions include brief essays which contribute importantly to the social disciplines and are entitled to especially careful study because they are directly focused on legal problems, it is misleading to speak of their relation to social science as if the two were quite different kinds of knowledge. Apart from the difference noted above and some others to be stated shortly, the principal difference is that the social science expressed in the cases is authoritative. That provides a practical ground for separating them in a lawyer’s library. But in the tribunal of knowledge, authoritative truth is no different from plain truth, although, of course, if the inquiry concerns the influences on official conduct, authority must be considered.

To direct the work of classification, attention may be drawn more specifically to some proven methods of discovering the fuller knowledge of legal-meaning situations than is provided in the case-law. The first method is to go from the severely abstracted factual situations, denoted in legal rules and briefly amplified in the opinions, to the social sciences

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16 “Dealing as it does mainly with human behavior, the law very likely has more to teach psychology than to learn from it. The law has had a long history and very able students and practitioners.” Edward L. Thorndike, Man and His Works 193 (1943).
in order to construct the relevant full-bodied factual situations, for example, from the rules of law denoting abnormal mental conditions to psychiatry for detailed descriptions of those fact-situations, from legal tests of intoxication to the abundant data collected in the literature on alcoholism, from rules defining monopoly to facts presented in economic studies of monopoly and free competition, from the various criminal harms to criminology, and so on.

Another method is to go from the social theory found in cases and treatises to the non-legal social sciences for more adequate interpretations and the thorough discussions of relevant theories. These methods imply that there can be no mere lifting of the social sciences into the arena of law; instead, what is called for is an imaginative reworking, refinement, and reconstruction of the extant social disciplines to bring them to bear on legal problems. For what we need is an adequate socio-legal discipline.

Such a discipline would include specific answers to such problems as, What are the major approaches to law? What do the mid-twentieth century practitioner and legal scholar want to know about law or about the law of property, contracts, torts, and so on? In answering those questions without benefit of such a discipline, I have stressed the method of going from rules of law and judicial opinions to the social sciences. I now wish to consider starting from the social sciences and viewing rules, judicial opinions, and legal problems from the perspectives found there.

First to be recognized is that, despite the fact that modern social science has largely ignored legal problems, the best work in the social sciences has much to offer legal scholarship. For example: (1) Social science includes illustrations of methods of research which can be adapted to socio-legal research. (2) Social science suggests the kinds of knowledge we seek, e. g., histories, case studies, descriptions of problem-solving, statistical generalizations, and scientific laws. (3) Social science is the repository of social theories which, though not suggested by legal problems and processes, can be applied to them. (4) By use of social science data and theories we can discover and describe relevant social problems, which are often only hinted at in legal literature. (5) While the legal materials are largely concerned with harms\(^\text{17}\) and conflict, the social sciences also deal with conformity and order. Studies

\(^{17}\) The approaches via harms and the problems relevant to them seem to me the most promising ones with reference to the objectives of legal science, including classification. But I should like to see other approaches taken and pursued with a view to discovering their relevancy for legal science. For example, it would be interesting to know where such studies would terminate which concentrated on lawyers' functions in inventing structures of future action, negotiation, drafting instruments, statutes, and court orders, trying cases, and doing appellate work.
of important processes such as the psychology of learning law, the diffusion of legal systems, and many types of institutional behavior must depend rather largely on the social sciences for data and findings to balance those presented in law.

The above indications of methods of using non-legal knowledge are not intended to be exhaustive, but to signify how it can be surveyed and employed to construct an empirical legal discipline and also aid legal taxonomists to discover and formulate suggestive terms. The principal negative implication is avoidance of the obvious catch-alls, such as psychology of law, sociology of law, economics and law, and so on. We should keep before us the distinctiveness of an empirical legal discipline and seek the relevant knowledge, which is often distributed among several of the existing social sciences and humanities.

Fortunately, we already have a goodly number of books and essays whose authors have grappled with important phases of these problems. I refer to the cultural, social scientific studies of law, within which I include not only the entire field of jurisprudence but also legal history and studies which represent parts of legal science rather than theories about it. This literature provides the best laboratory for a preliminary determination of what problems, terms, and theories reflect the interests of an increasing number of legal scholars. It is possible that all of the basic approaches to law can be found in existing literature representing a broadly conceived science of law.

In order to avoid misunderstanding, however, and in view of the fact that most of the discussion has been devoted to social science, legal and non-legal, it should be stated that science is only one among several basic approaches and that social science includes perspectives which are not rigorously scientific. It seems to me that the fundamental approaches to law are those of empirical knowledge, broadly interpreted, logic, ethics, and ontology (i.e., basic conceptions). This is no discovery of mine but, except for the last category, only represents an application to law of the Stoic classification, which survived longer than any other scheme; e.g., it is repeated almost verbatim by Locke. I think as good a beginning as any can be found in the Stoic classification of knowledge although the final outcome might well be a classification which only remotely resembled it. Significant disputes regarding logic and the relations of language to that discipline would need to be resolved in the light of legal problems. And my preference for allocating

18 "Legal science" in this context includes studies in the psychology, anthropology, economics, etc., of law.
19 Cf. HERBERT BLUMER, AN APPRAISAL OF THOMAS AND ZNANIECKI'S THE POLISH PEASANT IN EUROPE AND AMERICA (1939).
20 Cf. the writer's Introduction to THEFT, LAW AND SOCIETY (2d ed., 1952).
problems concerning basic legal conceptions to a separate division implies that the invention and criticism of ultimate ideas is not a function of logic. Epistemology also raises difficult issues, which some may think require a separate category.

The almost unlimited range of thought which would need to be surveyed in thorough persistent efforts to classify law and the knowledge relevant to the fullest understanding of it holds no hope of speedy or easy solution. From Plato to Comte, Spencer, Karl Pearson, and the current groping in UNESCO for universal bibliographies, the organization of all knowledge has challenged the imagination and equipment of ambitious philosophers. Scholars interested in legal science and classification cannot remain aloof from that difficult inquiry, although I agree with Pearson that "nowadays . . . [A]n adequate classification could only be reached by a group of scientists having a wide appreciation of each other's fields, and a thorough knowledge of their own branches of learning." This emphasis on cooperation is a fitting conclusion of these remarks. I wish to add only that the challenge to solve the important problems of classification not only facilitates cooperation but also provides the best opportunities for expanding the knowledge of law.

21 "Law is the totality of life, but seen from a specific viewpoint." Quoted by N. S. Timasheff, An Introduction to the Sociology of Law 343 (1939). Cf. Descartes, "By the science of Morals, I understand the highest and most perfect which, presupposing an entire knowledge of the other sciences, is the last degree of wisdom." The Method, Meditations and Philosophy of Descartes 292 (Veitch ed. 1901).

