Law, Culture and Society

Legal Ideas in the Mirror of Social Theory

Roger Cotterrell

Law, Culture and Society
Legal Ideas in the Mirror of Social Theory

ROGER COTTERRELL
Queen Mary and Westfield College,
University of London, UK

ASHGATE

© Roger Cotterrell 2006

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

Roger Cotterrell has asserted his moral right under the Copyright, Designs and Patents Act, 1988, to be identified as the author of this work.

Published by
Ashgate Publishing Limited
Gower House
Croft Road
Aldershot
Hampshire GU11 3HR
England

Ashgate Publishing Company
Suite 420
101 Cherry Street
Burlington, VT 05401-4405
USA

Ashgate website: http://www.ashgate.com

British Library Cataloguing in Publication Data
Cotterrell, Roger (Roger B. M.)
Law, culture and society : legal ideas in the mirror of social theory. - (Law, justice and power series)
1.Sociological jurisprudence 2.Law and the social sciences
I.Title
340.1'15

Library of Congress Cataloging-in-Publication Data
Cotterrell, Roger (Roger B. M.)
Law, culture and society: legal ideas in the mirror of social theory / by Roger Cotterrell.
p. cm. -- (Law, justice, and power)
Includes bibliographical references and index.
ISBN 0-7546-2505-2 (hardback) -- ISBN 0-7546-2511-7 (pbk.)
1. Sociological jurisprudence. 2. Law--Philosophy. 3. Comparative law--Sociological aspects. I. Title. II. Series.

K370.C68 2006
340'.115--dc22

2006003910

ISBN-10: 0 7546 2505 2 (hardback)
ISBN-13: 978 0 7546 2505 6 (hardback)

ISBN-10: 0 7546 2511 7 (pbk.)
ISBN-13: 978 0 7546 2511 7 (pbk.)

Printed and bound in Great Britain by TJ International Ltd, Padstow, Cornwall.

Contents

Introduction: Approaching Law		1
PART 1: Perspectives (Legal and Social Theory)		**13**
1	Law and Social Theory	15
2	Legal Philosophy and Legal Pluralism	29
3	Why Must Legal Ideas be Interpreted Sociologically?	45
4	A Legal Concept of Community	65
PART 2: Applications (Comparative Law and Culture)		**79**
5	The Concept of Legal Culture	81
6	Law in Culture	97
7	Is There a Logic of Legal Transplants?	109
8	Sociology and Comparative Law	127
9	Interpretation in Comparative Law	145
Conclusion: Frontiers of Community		161
Bibliography		*171*
Index		*189*
About the Author		*199*

Introduction

Approaching Law

Points of Contact

This book argues that an adequate understanding of legal ideas – for lawyers, no less than for other citizens – is impossible without adopting a sociological perspective, a perspective informed by social theory. Social theory seeks to explain the nature of the social in general terms. It considers the general character of social relations, social institutions and social change. The book's main aim is to show what such an approach to legal study entails and how it can illuminate basic problems, familiar to legal scholars, in interpreting and analysing contemporary law and studying its effects.

The focus of the book is on legal doctrine – rules, procedures, principles, normative concepts and values in law and the specialized modes of reasoning applied to these. What makes doctrine 'legal' is its institutionalization: the fact that it is created, interpreted or enforced in certain socially established ways, through the use of recognized procedures and agencies. So, law is taken here to be institutionalized doctrine (see further Cotterrell 1995: Chapter 2). My concern is with the sociology of legal ideas, but not only with legal ideas that are familiar to lawyers. From a sociological viewpoint, there may be more to law than the legal doctrine that lawyers recognize and work with. Law as institutionalized doctrine can be found outside the 'official' legal system of the state. Law, in some sense, may flourish in social sites and settings where lawyers or police never venture. Equally, it could be a mistake – looking at matters sociologically – to think that the state legal system is necessarily a unified entity. The law created, interpreted and enforced by the state is itself sometimes subject to fierce internal conflict or competition, with different agencies of the state adopting different legal positions, or with potential contradictions unrecognized or unresolved. The coexistence, and sometimes conflict, of legal regimes and sources of legal authority in the same society is a central idea of 'pluralist' views of law, and a legal pluralist view – explained and defended in Chapter 2 – is part of the sociological perspective relied on in this book.

Law and social theory (which can be taken here to include all broad theoretically-oriented sociological studies)[1] sometimes seem like oil and water – impossible to mix; or like chalk and cheese – indigestible if combined. But as modes of analysis they have some important characteristics in common.

---

1 The close but changing relations of sociology as an academic field and social theory are discussed in Chapter 1.

试读结束，需要全本PDF请购买 www.ertongbook.com

Law is a mode of practical analysis of social life. Lawyers seek to systematize law's interpretations of the social. Like social theory, law generalizes and conceptualizes social relations, actions, circumstances and institutions in abstract terms so that they can be considered systematically. By this means legal doctrine recognizes similarities between actions and situations and defines differences between them. Lawyers see justice as a matter of treating like cases alike and unlike cases differently. The art of law is to judge reliably which are like cases and which are unlike. To treat unlike cases as similar or to deal differently with identical situations is unjust. To do justice is to categorize and to act consistently on the basis of the categorizations made.

Social theory has no direct link with the promotion of justice. The responsibility of the social theorist is to understand – not control, shape or judge – the social. But social theorists are often driven by images of what they think a good or better society could be. As Chapter 1 explains, they have often aimed to understand the nature and destiny of the 'modern' forms of social life that arose with Western urbanization, industrialization and secularization. And it seems hard to separate this quest for understanding from implicit or explicit judgments about the virtues or defects of modern society, or its contemporary postmodern transformations. Students of the classics of social theory are familiar with Max Weber's anguished ambivalence about modernity's 'iron cage' of efficiency-driven routine, Emile Durkheim's intense commitment to moral individualism and social solidarity, Ferdinand Tönnies' measured nostalgia for elements of a lost pre-modern world of close-knit communities, and Karl Marx's angry condemnation of what he saw as the inherent inhumanity of modern capitalism. Images of justice and its elusiveness have often been real for social theorists, as for lawyers.

There are also important parallels in method, as between legal analysis and social theory. Both require rigour in the definitions and conceptualization they use, and both must define and conceptualize very elusive aspects of human behaviour. Both must, to some extent, systematize experience and be empirical in orientation, basing their analyses on observation of occurrences in the social world. In different ways they have to make sense of the strategies and the accidents of history. They have to interpret interests, intention, causation and chance (Turner and Factor 1994). Both also require a kind of foresight about the social; an imagination about social possibilities, about the range of variation of social phenomena. Without such an imagination in legal analysis, wise rule-making to govern the future is impossible.

As will be seen in subsequent chapters, legal analysis focuses most readily on what it takes to be rational – especially instrumentally driven – action. And it has particular difficulties in dealing with matters of affect (that is, the emotion that lies behind or gives rise to action). Social theory has often seemed to have a similar emphasis. The sociology of emotions is a relatively undeveloped field. Yet both law and social theory need to recognize and address the non-rational or perhaps *differently* rational aspects of social life. This is why rational choice (economic) models of action have not been generally accepted as adequate foundations for either legal analysis or social theory (although interesting and striking exceptions exist,

especially in the US).[2] Law and social theory both have to find ways to understand the ambiguous, complex meanings of social action, and to recognize that social relations can be of radically different types. So they must abstract from the infinite variety of social circumstances, producing generalized analyses and interpretations than can make sense of the bewildering complexity of the social.

Small wonder, then, that law and social science have sometimes been seen as *in competition*, offering rival ways of interpreting the social world.[3] Social scientists have often declared law unimportant as an object of study for them, insofar as they have claimed to be able to explain legal phenomena without recourse to lawyers' categories of juristic understanding. Correspondingly, lawyers have often rejected social science as irrelevant to the kind of explanations and understandings they seek. Sociologists (on this juristic view) have interpreted the social world; the lawyer's job is to regulate it and make its wheels turn, developing legal ideas about the social as required to achieve necessary results. These rivalries are discussed in Chapter 1.

Nowadays, however, the fact that there are strong links (in terms of areas of interest, practical aims and even methods of practice) between legal studies and social research is relatively widely accepted. And interest in social theory among legal scholars has grown as social theory has come to be seen no longer as 'owned' solely by the academic discipline of sociology, but as a more general resource for all scholars who need to be able to make sense of social life in systematic, empirically informed ways.

Legal Participants and their Viewpoints

Chapter 3 addresses directly the question of the relation of juristic and sociological perspectives on law. When the essay on which it is based first appeared in print it attracted a detailed, typically thoughtful reply from David Nelken (1998), and a brief discussion here, based on some themes in his critique, may clarify ideas that underlie many arguments in this book.

I argue in Chapter 3 (against Nelken and others) that law has no uniform way of looking at the world, no 'truth' of its own, that can be set directly against sociological understandings. Certainly, legal analyses often seem distinctive and (from some perspectives) sometimes eccentric or ignorant. But it is not 'law' that has these understandings, as if law had some outlook or point of view of its own, as a unified discourse or system of communication. Legal ideas are the varied understandings of lawyers, judges and other participants in legal processes (for example – to take a random selection – administrators, business executives, criminals, legislators, prisoners, trade unionists, campaigners, members of ethnic minorities, taxpayers and

---

2 Economic analysis of law is a flourishing field in some American law schools. In social theory, rational action theory (related to rational choice theory in economics) has been a focus of recent discussion in both Britain and the US.

3 Cf. Nicholas Timasheff's (1939: 45) much-quoted statement (referring primarily to the writings of Auguste Comte) that sociology 'was born in the state of hostility to law'.

asylum seekers). Lawyers, too, are diverse, with various kinds of practice, experience and aims, and different legal understandings, seeing different 'truths' in and through law. Law may appear differently from the vantage point of different courts, and certainly of different kinds of state agencies. So, legal understandings are *people*'s understandings; a diversity of people to be studied sociologically – that is, through systematic, empirical study of their social actions and networks of social relations.

Non-lawyers sometimes see a special distinctiveness of law which practising lawyers themselves (often concerned on their clients' behalf with ending or avoiding disputes or setting up deals, arrangements and structures) do not. At least in the Anglo-American common law world, there has been increasing recognition of the 'porosity' of law as a form of knowledge or reasoning. It has few distinctive methods of argument, analysis or decision-making, but its formal procedures are supposed to (and in a perfect legal system would) make the common-sense consideration and resolution of practical problems as workable as possible, in situations where those problems may be very complex, where there are strong conflicts of view, or where much is at stake (financially or in terms of personal well-being). State law seems strong and distinctive as a discourse because political authority guarantees and controls it, but perhaps not really because of anything inherent in law as a system of communication. Hence, as Eugen Ehrlich (1936) insisted (in his seminal work published just before the First World War), law (in some form) lives in all human associations. Putting the matter differently, wherever community exists, so does law. Law is a dimension of social relations of community. It is not set apart, uniquely confronting society, but is an aspect of social life; a field of social experience focused on problems of governmental organization and regulation.

Thus, intellectually, law and social theory might be brought into relation with each other more easily than is sometimes supposed, but this does not mean that there are few practical obstacles to doing so. There are strong *political* interests in maintaining law's apparent self-sufficiency and pre-eminence as a normative discourse or knowledge-field. By contrast, sociology and social theory have no such basic importance to the state and the political order. Sociology is buffeted by adverse reactions to its natural tendency to dig out social evidence inconvenient to various sections of society, or it is undermined by its low status among the established academic fields because of its critical tendencies and the controversial nature of its subject matter. Academic sociology is surely fated to be law's poor relation in terms of practical power and status. Yet sociology as a resource (unconfined by the departmental or disciplinary boundaries of the academy) remains available to help to shore up some of law's intellectual weaknesses when processes of legitimation for the legal order or for legal studies falter for some reason (Cotterrell 1995: Chapter 3). And as regulatory demands on law increase, the incentives for law and social research of many kinds to form alliances may well continue to grow.

Chapter 3 argues that if the sociological study of legal ideas has an allegiance it is to law itself, not to the academic discipline of sociology. This argument has been sharply criticized for seeming to make the sociological study of law subordinate to lawyers' concerns – even making it a kind of sociological jurisprudence (Nelken 1998:

410). But this would be true only if allegiance to law meant allegiance to *lawyers* or to the *state legal system*. There is no retreat to sociological jurisprudence (that is, to social science employed merely as reformist, technical or rhetorical support for state legal regulation) if law is always conceptualized in a wide, pluralistic sociological perspective, in the mirror of social theory. Law viewed in this way is not just what lawyers do, or the legal ideas that lawyers professionally manage, though it certainly includes lawyers' law.

Law understood sociologically in a broad sense is *the regulation of communities* through institutionalized doctrine. Some social relations and networks of community are within lawyers' everyday experience and of much concern to them professionally, but others are not. Hence, allegiance to law is not allegiance to the lawyer's professional world. If anything, it is allegiance to an idea of peaceful, stable regulation of social life, and to aspirations for justice in the life of communities.

The object in confronting law with social theory, studying it in sociological perspective, is not, then, to try 'to understand law better than it understands itself' (cf. Nelken 1998: 409), because law, itself, can understand nothing (it is not a person), and law's innumerable professional and non-professional participants understand law's meanings in many different ways. The aim of a sociological perspective should be to broaden participant understandings of law, and of the social interpreted in law, so as to enable people to know better the society they live in, and (amongst other things) to regulate it in a better informed way. Sociology and social theory do not dictate what should be regulated and how, but they can clarify the contexts in which decisions about regulation must be made.

David Nelken (1998: 417–18, 425–6) doubts that a broader perspective is necessarily better than a narrower participant perspective fitted to the task in hand. Certainly, at least in the common law world, lawyers' typical methods involve narrowing issues to make them manageable, and avoiding broad generalization; focusing on the present case, here and now, and not on an infinity of possibilities. But a sharp, exclusive focus on particular problems is not made impossible or even more difficult by adopting a broader social perspective. Viewing matters in broadening perspective entails, however, that any limiting of issues is *deliberate*, a considered choice made as a way of managing a well-recognized social complexity. It should not be a default position reflecting and justifying social ignorance. A broadening of perspectives does not invalidate narrower participant perspectives, but should contextualize and clarify them. A sociologically informed lawyer is not necessarily a less able lawyer, just as a citizen who reads social theory ought not to be disabled thereby from engaging in everyday social relations! On the contrary, surely both may hope to gain new insight into the meaning of their everyday practices through a broadened perspective.

Another related point deserves mention here. This book argues, often implicitly, against disciplinarity; that is, against a strong concern with the integrity or distinctiveness of intellectual disciplines. Thus, sociology of law (especially sociological understanding of legal ideas) is not, in my view, a sub-discipline of the academic discipline of sociology. To see it that way would be (as Chapter 3 argues)

to belittle the wide aspirations of the modern founders of sociological inquiries about law. Law is too important socially to be treated as a sub-field 'imprisoned' in a parent discipline (academic sociology) that has very little interest in it today. Many researchers (including me) who came to sociology of law to escape the narrow disciplinary outlook of academic law, which they experienced as undergraduates, are unlikely to want to seek refuge behind other disciplinary walls. Intellectual advance in social studies now often occurs by *ignoring* disciplinary prerogatives, boundaries and distinctions. The need is not, however, to 'weaken' the ties of sociolegal studies to academic sociology (cf. Nelken 1998: 412, suggesting I advocate this). It is to ensure that those inevitable ties in no way hamper imaginative inquiries across *all* available sources of social insight.

As Nelken (1998: 412) notes, however, 'it is not so easy to become undisciplined'. For myself, there is nothing to be gained by disowning academic traditions (of law and sociology) that have provided an intellectual formation; and it is also important to respect different methodological practices that allow research to be organized and evaluated. But these considerations should not limit research aspirations in any way. The literature of sociolegal research now gives researchers a wealth of theories, hypotheses, methods and exemplars to build on. The canon is multidisciplinary and includes much work that defies any useful disciplinary categorization. It invites, through its very existence, legal scholars to read their way on to the broad, imaginative vistas of social theory, and social theorists to explore the sometimes richly precise social observation promised by the lawyers' method of detail.

Clearly not all lawyers are interested in sociological perspectives (in the wide transdisciplinary sense of 'sociological' that this book adopts in Chapter 3), but I think that the best, the most imaginative and practical-minded, often are. They wish to use legal doctrine to achieve social effects (if only as regards the immediate social relations that involve their clients). Thus, they need to understand law sociologically in a broad sense. Correspondingly, sociologists and social theorists achieve little in studying law if they fail to enter into the minds of legal participants (including lawyers) – thinking with and through law as institutionalized doctrine. In this context, juristic and professional sociologists' points of view are part of a vast continuum of participation in, and observation of, law.

A Framework of Community

While the first three chapters of Part 1 explore various dimensions of a sociologically oriented legal theory, and the relations of law and social theory more generally, Chapter 4 introduces the central conceptual framework used, in the rest of the book, in studying more concrete issues about legal doctrine and its social consequences and contexts. For convenience, I call this framework a law-and-community approach to legal studies. An earlier collection of my adapted essays was entitled *Law's Community* (1995) and some of its chapters explore the usefulness of ideas of community for legal inquiries. They provide some groundwork for the present

volume. But it was only in the year after *Law's Community* appeared that I developed what I now think is a defensible concept of community for the specific purposes of legal studies. The concept, and an outline of the framework of inquiry that it suggests, was first set out in spring 1996 in a paper which now appears in revised form as Chapter 4. So, as regards its analysis of legal ideas in terms of community, the present book starts from the exact point at which *Law's Community* left off.[4]

A main problem with the concept of community is that it is often much too vague to be empirically useful in sociological inquiry or applicable in doctrinal legal analysis. It is a woolly, fuzzy idea that contrasts unfavourably with both the attempted precision of modern juristic categories and the rigorous concepts needed in developing worthwhile social theory. A second major problem of 'community' is that it is weighed down with valuations. Whatever it may be, community is usually considered 'good' and its absence a matter for regret. The 'loss of community' literature in sociology professionally repackages aspects of a diffuse popular lament for an imagined, disappeared world: village life; strong kinship ties; reliable neighbourliness; God-fearing, industrious settlements; cherished traditions; safe streets, and so on. A theoretically valuable concept of community must free itself from the myths and romanticism that cling to these associations. It has to be a notion flexible enough in its social imagery to be applicable to the complex, diverse, mobile and individualistic populations of advanced twenty-first-century societies.

Chapter 4 presents an approach to community as a legally relevant concept that attempts to meet this specification. The main motivation for invoking community is a sense that old concepts of 'law and society' or 'law in society' no longer adequately represent law as a social phenomenon. Society – understood typically as the politically organized society of the nation state – has become a less obviously useful concept in recent decades, with the growth of transnational networks of cultural and economic relations of many kinds, and with the development of multiculturalism. Community, appropriately conceived, can represent vital kinds of social relations that take the form of networks or groups not necessarily bounded by a 'society'; fluctuating, forming and reforming, crossing national or political boundaries, having overlapping memberships, conflicting, cooperating or merely coexisting.

A key to developing a concept of community with this flexibility is the use of Max Weber's sociological method of ideal (or pure) types. Thus, the emphasis is on pure, basic, abstract types of community that, in actual social life, are usually found only in elaborate networks and combinations. This approach makes it possible to do two important things: (1) to keep clearly in mind the complexity and variability of contemporary social relations, rarely static for long, and the multiplicity of group memberships and of people's social interactions; and (2) to distinguish with a degree of analytical rigour a strictly limited number of irreducible, contrasting types of

4 The emphasis in *Law's Community* on mutual interpersonal trust as the basis of community, and on community seen as 'basic orientations of social interaction' rather than 'a sociological object' (Cotterrell 1995: 328–31), is fundamental also in the present book.

试读结束，需要全本PDF请购买 www.ertongbook.com

social bonds and to explore the special problems of regulation that apply to each of these.

A law-and-community approach, as proposed here, is, thus, an attempt to examine problems, conditions and consequences of legal regulation by developing the idea that each pure type of community may have its own distinctive regulatory aspects. In studying how law can regulate networks of social relations that develop as combinations of types of community in actual social life, it may be possible to clarify a very complex sociolegal picture by clearly separating out for analytical purposes the various legal aspects of community.

This approach can be presented less abstractly by applying it in a range of specific contexts of legal inquiry. This is what most of the chapters in Part 2 seek to do. They apply the law-and-community approach to consider, for example, how far it is possible to predict the success or otherwise of legal transplants – the carrying of legal ideas from one legal system to another – (Chapter 7), and what possibilities and constraints attach to time-honoured (but now increasingly favoured) comparative law projects of unifying or harmonizing law across national boundaries (Chapter 9). The law-and-community approach can also be used as a way of reformulating and perhaps throwing a different light on current ideas about the nature, aims and responsibilities of comparative legal studies (Chapters 8 and 9). Thus, applications of the idea of community make it possible to reconsider the kinds of authority comparative lawyers can rely on in recommending legal reforms based on foreign legal models. It is possible to discuss in new ways the place of values, beliefs, traditions and shared historical experiences as underpinnings of law, as well as the conditions under which law promotes or constrains globalization, and how far it can express, promote or protect various aspects of culture.

Culture and Comparison

This suggests a very ambitious agenda. The studies collected in Part 2 are merely exploratory essays in these fields of inquiry. What most directly links them as regards subject matter is a focus on law's relations with culture and on comparative legal studies. Culture and especially legal culture have become important foci for the emerging field of comparative sociology of law, in which David Nelken has been a pioneer. The paper on which Chapter 5 is based was originally written at his invitation. To my regret, I found that the brief given, to examine the concept of legal culture in recent sociology of law, led me to very negative conclusions. For reasons explained in Chapter 5, I think the concepts of culture and legal culture are of limited *explanatory* value for sociolegal studies. As many anthropologists and sociologists have noted, culture is an amorphous term, covering an indeterminate range of phenomena: it is a kind of aggregate, useful to refer in general terms to a broad swathe of experiences or impressions of a place or time. But it does not indicate precise variables. Chapter 5 is solely concerned with the use of concepts of culture and legal culture in the literature of sociology of law, but lawyers, especially

comparative legal scholars, have also begun to use these ideas frequently and Chapter 6 addresses the various juristic aspects of culture.

Chapter 5 was written (as a conference paper) before the law-and-community approach used elsewhere in this book began to emerge. It is one of the few almost entirely negative and critical studies I have written. After the completion of the original paper, I wanted to find a much more positive, constructive approach that would unambiguously recognize the growing importance of culture as a focus for legal studies but would avoid the disabling problems (which Chapter 5 emphasizes) of vagueness and imprecision in discussions of the idea of culture. Chapter 6 sketches a more positive approach of this kind. As with Chapter 5, the paper on which Chapter 6 is based was written in response to a specific invitation, with an assigned title. The late Aleksander Peczenik's invitation to me to give a plenary lecture on 'Law in Culture' at the IVR Congress in Lund in 2003 offered an opportunity to rethink the idea of culture using a law-and-community approach. The chapter disaggregates 'culture' into elements of tradition, beliefs and values, affect and instrumentality that are the basis of different types of community. It remains to be seen whether such a breaking down of culture into community-focused components with relatively distinct legal attributes proves useful in dealing with matters of legal culture. But directions for further research are indicated, the complexity and contradictions of law's relations with culture are demonstrated via the typology of community, and some crucial reasons for this situation are explained.

Chapter 8 (like all other chapters except Chapter 5) relies on the law-and-community framework but it is focused less directly on this than is most of the rest of Part 2. The main concern of Chapter 8 is to make direct connections between the development of comparative legal studies, on the one hand, and sociology of law, on the other. The chapter claims (as many comparative lawyers have done) that there need be no incompatibility between the aims of comparative legal studies and legal sociology. In fact, the whole of Part 2 is concerned in one way or another with the nature, outlook or projects of comparative law as a research field; several chapters are based on papers addressed primarily to audiences of comparative law specialists.

Comparative law seems to me at present to be a relatively open research field, in which collaboration with legal sociologists and social theorists is being encouraged by some leading comparative law scholars. The experience I have found – as a legal theorist and legal sociologist – of being welcomed into certain debates about comparative legal studies in recent years is reminiscent of the openness I found in British sociology as an organized research enterprise, when I first became involved with it in the second half of the 1970s.

It might be said that this kind of openness (the opposite of rigid disciplinarity) is symptomatic of a research field that is institutionally vulnerable, with its collective self-confidence shaken. That was true of sociology in some respects in the late 1970s, as it has been at other times, and similar worries about the situation of comparative law as a research field are often expressed in the literature (Ewald 1995a: 1961–5). However, my overwhelming impression of sociology (especially social theory),

when I first encountered it, was that it was a rich, exciting, scholarly, imaginative and promising field (it still seems that way, despite too much mediocre research production). In a somewhat similar way, comparative law now appears as a field of great intellectual significance and very exciting possibilities. It is centrally placed to study the trajectories of proliferating transnational law and transnational legal aspirations, as well as the increasing significance of the relations of law and culture. Chapter 8, besides emphasizing some remarkable early links between comparative law and sociology of law, urges much more extensive communication between comparative legal scholars and legal sociologists. They share responsibility for work at the cutting edge of contemporary legal inquiry.

Acknowledgements

This book reflects my work since the mid-1990s on the sociological study of legal ideas. The texts of previously published essays have been adapted as necessary to form the basis of chapters but the original arguments of those essays have not been changed. A few references to sources (for example, superseded editions of books) have been updated, and passages have been abbreviated and altered to avoid repetition. Limited editing has been done in some places for purely stylistic reasons, but generally I have left the original texts to speak for themselves. Cross-references between chapters mainly correspond to references in the original publications, but the form of the cross-references has often been changed for consistency and continuity. New linking introductions now preface chapters, and section or sub-section headings have been added in Chapters 6, 7 and 8 and altered in Chapters 4 and 9.

I have accumulated many debts in working on the ideas in this book. David Nelken first invited me to write about legal culture and, by doing so, started me on inquiries that have been important for this book. Beyond that, I have treasured his warm friendship and close intellectual comradeship in sociology of law (even when we disagree!) for more than two decades. I am grateful for consistent support over the years from Michael Freeman, Sir Neil MacCormick, the late Per Stjernquist, Phil Thomas and William Twining, and from many colleagues at Queen Mary and Westfield College. Others who have helped, through their interest, enthusiasm and ideas, during the past decade when I have been working on the substance of these chapters include Reza Banakar, Zenon Bankowski, Peter Fitzpatrick, Lawrence Friedman, Volkmar Gessner, Andrew Harding, Ralph Henham, Nicola Lacey, Pierre Legrand, Werner Menski, Alan Norrie, Esin Örücü, the late Aleksander Peczenik, W.S.F. (Bill) Pickering, Jiří Přibáň, Austin Sarat, Philip Selznick, Gunther Teubner, Wibren Van Der Burg, Paul Van Seters and Willem Witteveen. The most important debt by far is to Ann Cotterrell, who has improved the material in this book through her careful criticism, and who provides support and encouragement for all my work.

The permission of copyright holders to republish material in adapted form is acknowledged with thanks: Blackwell Publishing (Chapters 1, 3 and 6); Oxford University Press (Chapter 2); Canadian Law and Society Association (Chapter 4);

David Nelken and (original publisher) Dartmouth Publishing Company (Chapter 5); Oñati International Institute for the Sociology of Law and (original publisher) Hart Publishing (Chapter 7); Cambridge University Press (Chapter 8); Institute of Advanced Legal Studies, London, and (original publisher) Kluwer Academic Publishers (Chapter 9). The following previously published essays have been adapted for this book: 'Law in Social Theory, and Social Theory in the Study of Law' in A. Sarat (ed.), *Blackwell Companion to Law and Society* (New York: Blackwell, 2004) pp. 5–29 (Chapter 1); 'Law and Community: A New Relationship?' in M.D.A. Freeman (ed.), *Legal Theory at the End of the Millennium: Current Legal Problems*, vol. 51 (Oxford: Oxford University Press, 1998) pp. 367–91 (Chapter 2); 'Why Must Legal Ideas Be Interpreted Sociologically?' (1998) **25** *Journal of Law and Society* 171–92 (Chapter 3); 'A Legal Concept of Community' (1997) **12** *Canadian Journal of Law and Society* 75–91 (Chapter 4); 'The Concept of Legal Culture' in D. Nelken (ed.), *Comparing Legal Cultures* (Aldershot: Dartmouth, 1997) pp. 13–31 (Chapter 5); 'Law in Culture' (2004) **17** *Ratio Juris* 1–14 (Chapter 6); 'Is There a Logic of Legal Transplants?' in D. Nelken and J. Feest (eds), *Adapting Legal Cultures* (Oxford: Hart, 2001) pp. 71–92 (Chapter 7); 'Comparatists and Sociology' in P. Legrand and R. Munday (eds), *Comparative Legal Studies: Traditions and Transitions* (Cambridge: Cambridge University Press, 2003) pp. 131–53 (Chapter 8); 'Seeking Similarity, Appreciating Difference: Comparative Law and Communities' in E. Örücü and A. Harding (eds), *Comparative Law in the Twenty-First Century* (The Hague: Kluwer, 2002) pp. 35–54 (Chapter 9). The material in the Introduction and Conclusion is previously unpublished.

PART 1
Perspectives
(Legal and Social Theory)

试读结束，需要全本PDF请购买 www.ertongbook.com