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The Concept of Norms in Sociology of Law

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1   Introduction

Over the last ten years Sociology of Law in Sweden, under the leadership of Håkan Hydén, has acted within the framework of the common theme of *norms*, engaging a large research group. The list of publications emerging from the project includes ten doctoral theses, a number of senior monographs, as well as numerous research reports, articles, and contributions to different anthologies. The scientific exchange also includes regular lectures and seminars with frequent elements of domestic and international guests. The amount of knowledge accumulated throughout this journey is immense – however in part disparate. The shortage of coherence is mainly a result of an intentional strategy not to form a common apparatus of definitions. Foremost the group has, in respect of the creative process, avoided establishing a common definition of the concept of norms. Given the historical circumstances this was probably the most sensible approach, especially since the surrounding social sciences hold a great number of different perspectives on norms (See for example a small sample of the extensive literature: Coleman, 1994; Hetcher & Opp, 2001; Posner, 2002; Sumner, [1907], 2002; Lewis, [1969], 2002; Ross [1910], 2002, Sugden, 2004; Bicchieri, 2006; Pound [1942], 2006; Posner 2007). It would seem irrational to exclude any of these perspectives at the initial stage. Both time and creative space have been necessary in order for the group to begin navigating the scientific field of social norms. However, now we move towards more stringent definitions. The increasing amount of empirical research projects that lay ahead raises new demands.

The aim of this article is to propose a *method* for creating a more coherent concept of norms – and to deliver a tentative and open suggestion on how to define norms in a way that might fit into the context of Sociology of Law (further on shortened, SoL). The idea is that the norm concept can be chiselled out through ontological analysis, and that this analysis can be conducted in a way that allow every aspects of the norm concept to be scrutinized separately. The result will in the best case scenario be a kind of 'open source' construction where every individual research project can formulate its view of the common concept. The suggested ontological analysis is mainly founded on The Aristotelian concepts of 'essence' and 'accident'. Thus the method is concerned with distinguishing between norm attributes that lie in their (the norms') nature (collectively they form the definition) and other attributes (that are essential for the categorisation of norms). We shall however begin with a short description of how we view the role of the norm concept in SoL.

2   Context and Ontological Issues

Sociology of Law as a science takes its departure from two distinct traditions and areas of concentration. First and foremost the discipline is a social science and has a sociological foundation. This gives SoL a solid anchorage in empirical and inductive method. Secondly the discipline is of course closely tied to the legal sciences. It is impossible to attain a deeper knowledge of the law without

acknowledging the internal nature of the legal system. This forms an assumption that SoL must be able to take both an inductive and a deductive approach when handling normative statements (legal rules). In a somewhat exaggerated sense, it could be said that SoL is supposed to explain normative structures from their material (empirical) context, something considered impossible by scientific philosophy since a long way back. Hans Kelsen (1881-1973) and Emile Durkheim (1858-1917) represent opposite traditions and their perspectives will be used to illustrate the problem. Taking these two traditions into consideration the norm concept appears almost impossible in SoL. Particularly when considering the thoughts of David Hume, Scottish philosopher (1711-1776), who claimed that the 'ought' can never be derived from the 'is'.

Whenever SoL is described in a general manner the presentation revolves around some variation of the theme: "deals with the relationship between law and society"[1] – a description as pedagogically efficient as hazardous. While this presentation makes SoL seem concrete and easy to grasp it runs the risk of hiding the very core question: what aspects of law and society are comparable? One consequence of neglecting that question is the constant problem of trying to make SoL legitimate to both legal and sociological academics. David Nelken has discussed this problem in terms of identifying different "truths about the law" (1993) and Roger Cotterrell comments: "In a rich discussion of relationships between law and scientific (including social science) disciplines, David Nelken describes the efforts of these disciplines to tell 'the truth about law' as being confronted now with law's own 'truth'. In other words, law has its own ways of interpreting the world. Law as a discourse determines, within the terms of that discourse, what is to count as 'truth' – that is, correct understanding or appropriate and reliable knowledge – for specifically legal purposes. It resists scientific efforts to describe consequences (for example, in economic cost-benefit terms, psychological terms of causes and consequences of mental states or sociological terms of conditioning social forces). None of these interpretations, it is claimed, grasps law's own criteria of significance." (1998) However, in the concept of norms lies the potential to supply a term that is accepted within both the legal field and the social sciences. A prerequisite for this, however, is that the concept is formulated so that it corresponds to the basic ontological presumptions of each respective field. In this text we will assert that the concept of norms is crucial when trying to understand the relationships between law and society and that the concept of norms is as central to SoL as for example the concept of attitudes is central to Social psychology. The idea of norms as a cardinal phenomenon in society is older than empirical social science itself. David Hume has been described as the thinker who was first to, in a

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1 Thomas Mathiesen, professor of Sociology of Law at Oslo University, has for example, with reference to the classical Scandinavian legal scientist Ragnar Knoph (1894-1938), demarcated Sociology of law to the study of three basic questions: (a) to what extent, and how (when applicable), does the rest of society influence legal rules, legal decisions and legal institutions; (b) to what extent, and how (when applicable), do legal rules, legal decisions and legal institutions influence the rest of the society; and (c) to what extent does there exist a reciprocal action between legal rules, legal decisions and legal institutions on the one hand and the rest of the society on the other.

serious fashion, describe the importance of norms ([1740], 2003). He did not, however, use the term norm. Instead he recognized *mutual rules* as the natural solution to problems that emerged when different shortages limited the access to resources in demand, given that morality essentially is a product of human selfishness. Hume's most important contribution to the understanding of norms is his famous thesis (Hume's law), which stipulates that you cannot derive *'ought'* from *is*. This thesis is still widely accepted and carries a high relevance to SoL. [2]

Emile Durkheim was the first scholar to formulate and practise an empirical science that had its point of departure in the understanding of normative structures in society. His use of the concept of *social facts* works as a guide to many scholars who are interested in social norms. The American sociologist George C. Homan (1910-1989) for example claimed that there are indeed social facts as Durkheim described – and that they do apply a significant force on individuals and their actions. He also claims that the best example of a social fact is a social norm and that norms within a specific group undoubtedly forces individuals to a degree of uniform behaviour. (Homan, 1969, s. 57). Durkheim himself argued that[3] "the first and most basic rule is to consider social facts as things." ([1895], 1982, s. 60) and that "To treat phenomena as things is to treat them as *data*, and this constitutes the starting point for science". ([1895], 1982, s. 69). By doing so Durkheim avoided the impediments of Hume's law. His position is that norms (although he did not name them so) are facts that can be studied as they interact with other facts in society (material and non material). A position that leads away from the study of human beings as mental figures. "Social phenomena must therefore be considered in themselves, detached from the conscious beings who form their own mental representations of them. They must be studied from the outside, as external things, because it is in this guise that they present themselves to us." (Durkheim, [1895], 1982, s. 70). Durkheim, in other words, places the forces of social life in an external (compared to individuals) structure of society. Furthermore, he makes an ontological statement through which he declares that the forces exist as things and that they in that sense are objective. The *ought* is thus linked to an individual level, and falls outside any sociological or social analysis. Durkheim's concept of social facts is broader than the modern concept of norms. However, it is clear that Durkheim's ontological and methodological analysis of social facts are highly relevant when trying to understand the concept of norms. Not solely because that would be a

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2   There are doubts about Hume's law – for example in the field of social psychology. Torgny T Segerstedt writes in his classical book *Reality and values* (1938, p. 240): The result of this analysis, and the earlier examination of emotion and the understanding of objects, must be that there is no use distinguishing between the immediate understanding of reality and the immediate understanding of values. There is no difference between the understanding of a thing as real and the understanding of a thing as valuable. Nothing will be regarded as real if it represents no value to the individual or the group.

3   Durkheim himself was of the opinion that it was Montesquieu who, through his philosophy cleared the way for Saint-Simon who was the first to start the real work with formulating a science about the social. Furthermore, Durkheim pointed out Comte as the one who brought order into the work of Saint-Simon.

recipe for success in terms of finding a scientific method that could capture norms, but because it would be the way to understand the ontology of the norms. However, when claiming that norms are things it is also understood that the most essential characteristic of those things is as carriers of normative messages. In other words norms in this perspective are objects (things) containing messages of how reality 'ought' to be.

The actual word norm was used for the first time in the English language in the Blackwood's Magazine by the English poet, critic and philosopher Samuel Taylor Coleridge (1772-1834) in 1821: "Each after its own norm or model". He derived it from the Latin language, where it meant a variety of things: etymological encyclopaedias often mention "square" used by carpenters for making right angles (synonymous with "regula"), or a rule, pattern or precept, such as was used by Marcus Tullius Cicero (106 BC - 43 BC) when he said: "hank normam, hank regulam, hank praescriptionem" or when he spoke in de Oratore, of the "very sharp norms" of musical rhythm. (Long, 2005). When the norm was first used in England it was to signify a pattern or standard. It entered into English language philosophical discourse when Edward Caird, philosopher and professor at the University of Glasgow (1835-1908) presented Kant's philosophy in 1877 and wrote: "The mind must find in itself the norm or principle of unity upon which it works." (Long, 2005).

One of legal positivism's leading representatives, Hans Kelsen introduced the word norm to the legal discourse as a central concept, and he made an opening towards integrating legal- and social sciences by introducing his "grundnorm" or *basic norm*. When explaining his *pure theory of law* he argues that law is a system of norms, norms being 'ought' statements describing certain modes of conduct. The legal system is in that sense a structure of legal 'oughts' rather than social facts as described by Emile Durkheim. Kelsen formulated his theory in polemic with the dominating discourse at that time, a discourse that he found to be hopelessly contaminated with political ideology and moralizing on the one hand, or with attempts to reduce the law to natural or social sciences, on the other hand (Marmor, 2002). He considered these approaches to be reductionisms in a way that he could not accept. Instead he argued that jurisprudence should be the pure theory of law because it aims at cognition focused on law alone. Kelsen was convinced that if the law is to be viewed as a unique normative practice, methodological reductionism should be avoided entirely. But this perspective is not only a question of method. Reductionism must be avoided because the law *is* a unique phenomenon, quite separate from morality and nature (Marmor, 2002). Furthermore Kelsen was influenced by Hume's law and firmly believed in the distinction between 'is' and 'ought', and in the impossibility of deriving 'ought' conclusions from factual premises alone. The consequences of this reasoning are intriguing. Kelsen was convinced that law can not be reduced to the natural actions or social and political contexts that give rise to it. The procedure of arguing, voting and so forth is not the actual law. The legal system consists essentially of 'ought' statements, and as such, they cannot be deduced from factual premises alone (Marmor, 2002). This perspective forced Kelsen to explain how law is possible. If it doesn't emerge from human actions and societal substances in a direct manner there must be another source. Kelsen's solution is the notion of an 'ought' presupposition at

the background, rendering the normativity of law. "As opposed to moral norms which, according to Kelsen, are typically deduced from other moral norms by syllogism (e.g., from general principles to more particular ones), legal norms are always created by acts of will. Such an act can only create law, however, if it is in accord with another 'higher' legal norm that authorizes its creation in that way. And the 'higher' legal norm, in turn, is valid only if it has been created in accordance with yet another, even 'higher' legal norm that authorizes its enactment. Ultimately, Kelsen argued, one must reach a point where the authorizing norm is no longer the product of an act of will, but is simply presupposed. This is what Kelsen called the Basic Norm. More concretely, Kelsen maintained that in tracing back such a 'chain of validity' (to use Raz's terminology), one would reach a point where a 'first' historical constitution is the basic authorizing norm of the rest of the legal system, and the Basic Norm is the presupposition of the validity of that first constitution." (Marmor, 2002). Whereas Durkheim avoided breaking Hume's law by claiming that social facts (such as legal norms) adhere to the 'is', Kelsen chose to claim that the law should in its entirety relate to the 'ought', and that the law takes it source not from a concrete context, but from a "basic norm" that belongs to the social 'ought'. In the following pages we will argue in favour of a norm concept that is capable of catching the 'ought' as well as the 'is', and that thereby can work as a link between the two dominating "truths" concerning the legal system. By agreeing with Durkheim as well as Kelsen, it is possible to avoid abuse of 'Hume's law'. Since norms are bearers of characteristics that represent both the 'ought' and the 'is', it is possible, through norm analysis, to derive the 'ought' of the legal system from the 'is' of society. Furthermore, we will present a third basic characteristic of norms, related to their relationship with cognitive processes. Unless the individual level is taken into consideration, it will not be possible to understand, for instance, enforcement.

3   Identifying the Essences of Norms

The world renowned philosophy professor Irving M. Copi wrote an often referred to article in 1954 called *Essence and Accident*. He argued that the notions of essence and accident play important unobjectionable roles in pre-analytic or pre-philosophical thought and discourse. According to Copi, the notions of essence and accident cannot be ignored by philosophers. They must either explain them or (somehow) explain them away. Our suggestion is that SoL embraces the notion of essence and accident, and explains them in the process of understanding the concept of norms. In Copi's view the conceptual pair is most appropriately discussed within the framework of a metaphysic of substance. The "Durkheimian" opinion on the ontology of norms allows us to regard social control as the result of substances (norms) in society. The natural path towards understanding and describing the concept of norms is thereby through the understanding of the essence and accident of norms. Finding the essences will be necessary when working on definition and the task of

categorisation demands an understanding of accident. Every essence can be scrutinised separately and new ones can be added in forthcoming work.

A fundamental part of the ontology is the attempt to describe what is in a being's essence, and what exists through accident. Essence is a philosophical term that is closely tied to the concepts of eternity and existence. If a being loses its essence, it seizes to exist as itself. An often quoted example of this is human reason, as humans are defined as beings with an ability to reason. Attributes of essence are eternal as opposed to phenomena, which are temporal (herein termed accidents). Phenomena (or accidents), philosophically, are attributes that are not essential for a being's nature or existence. The term is derived from Latin translations of Aristotle, and touches upon ontological descriptions of things and their nature. The accident of a being is considered to counterpart its essence. The attribute of a car being *the colour black* is an accident, since this attribute does not affect the being's existence as a car, whereas the *ability to move on its own* is one part of the car's essence. If a being is devoid of one or more of its natural attributes, the being is said to have an ontological privation; in other words, it lacks a part of its being. An ontological privation does not make the being seize to exist in an ontological sense, but merely that it lacks this attribute. A blind person, for example, has an ontological privation since being able to see is a part of human nature, but the person does not seize to be human because of it. For the norm concept in SoL, the question of ontological privation attains a primary importance. If any of the essence-related attributes of a norm is missing, it means that one is dealing with a special case that probably requires deeper explanations. The question of when a norm seizes to be a norm as a result of the lack of basic attributes will probably be as difficult to tackle as, for instance, determining when a human being seizes to be human as a result of being robbed of human attributes. Interesting in this discussion is that the concept of inhuman is reserved for descriptions linked to a lack of empathy and solidarity. In other words the attributes linked to an 'ought' draw the borderlines between human and inhuman. There would appear to be more understanding with a human lacking the attributes linked to an 'is'. This probably works the same for norms—if a norm is robbed of its 'ought', it most likely seizes to be seen as a norm.

Regarding the norm concept it is necessary apart from linguistics, also to use semiotics(from the Greek *semeion*, meaning sign) as a starting point. Semiotics is the study of signs or sign systems. The most obvious and also the most conventional area of study is spoken and written language, but in contrast to semantics, from a semiotic viewpoint the definition is broader and may include pictures, traffic signals, wrestling, symptoms of illness etc. The scientific discipline is sometimes also called semiology. Modern semiotics is an independent discipline building partly on Peirce's studies of the relationship between different signs (1991) and partly on Saussure's studies of the "social lives" of signs (2006)[4]. The term, however, was used by Locke as early as at the end of the seventeenth century. A sign consists of two parts: the word/picture and the concept/idea. Take for example the word 'tree'. The word and what you

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4   Other important contributors in the field are Morris, Barthes, Lévi-Strauss och Eco.

see in front of you when you read the word combine to form one sign. The two parts do not exist independently but only exist together. However, it is the relationship between them that create a meaning. If we stop to look at the norm concept, the word is 'norm' and the concept 'instruction'. The first ontological essence of norms is therefore that they are (a) behavioural instructions (imperatives). This essence can unquestioningly be accepted within the framework of Kelsen's 'legal' norms. He views the legal system as a system of 'oughts', and it is for Kelsen as if norms become norms exactly because they are action instructive. But this is also an essence that is acceptable from a socio-scientific and sociological perspective. Durkeim claims that norm (or in reality social facts) are things in the sense that they can be viewed through their signs.

An important task for the ontology is to determine in what way different types of being exist. The starting point then is that all forms of being can be categorised, and that it can be understood *what the existence entails* for different types of being. There is also a differentiation between real and fictitious beings. A common differentiation is into the following four categories: (1) physical objects; (2) psychological beings such as souls and apparitions; (3) abstracts such as numbers and geometric shapes; and (4) phenomena at the limits of perception. The question is where norms are placed in this context. They are neither physical objects nor phenomena at the limits of perception. We are rather dealing with psychological and abstract beings. This does not exclude, however, parallels to physical things. Elementary for physical objects is the *longevity of their perceived existence*. They look the same to different witnesses at different times, and these witnesses can confirm each others' observations. The same applies to norms; they are inter-subjective in character. They are perceived and experienced similarly by the people subjected to them. Norms exist in a social context. Also, the longevity of our experiences of them make us confirm their existence. This gives us the second essence of the norm concept, namely that norms (b) are socially reproduced. For example, a mountain slope cannot be a norm in and of itself—despite that fact that it provides information that forms a guide and basis for action. It can probably be claimed that a mountain slope represents an imperative (for example: "Walk around me"), but it is not until an opinion as how to relate to the slope is reproduced socially, that it becomes meaningful to speak of a norm. In a similar manner, an individual person's 'commands' do not become a norm until an opinion as how to react upon the command is spread. A judicial rule that hasn't been spread in a social context therefore lacks a norm defining attribute. This second essence-defined attribute is highly natural to the social sciences, and that the imperative is given a social context is completely in line with for example Durkheim. In contrast it is probable that Kelsen would ignore this type of descriptions—to Kelsen the legal system is solely a system of action guidance ('oughts'). However, the fact that SoL needs to study the spread of norms does not mean that Kelsen's view of the legal system is violated—given that the prerequisite of norms being guides for action is intact. A lawyer can accept that norms are spread without compromising his basic view on norms (this is not legally relevant, however).

The existence of physical objects can be confirmed simply through the use of our senses. I can see a cherry. I can also hear it if I throw it at the window. I can

feel it if I press it against the forehead, and I can taste it if I eat it. The testimonies of the senses are interpreted by the mind as corresponding with each other. Everything points at the same cherry, and therefore we acknowledge its presence. For intellectual and abstract concepts such as norms, the corresponding process is termed cognition. This is a psychological term that in short functions as a collective term for our thought processes. Cognition and perception are the active psychological processes as we interpret the information collected through the senses[5]. The difference between physical objects and norms is that the latter exist as linguistic and semiotic signs, and can only be perceived in terms of their effects. The branch of cognitive science called situated cognition views thought processes as a type of dynamic system where the brain controls the body's interactivity with the surrounding world. In situated cognition there is a basic distinction between signals that describe reality and signals that describe human opinions. In both cases the result may be that the individual experiences these signals as an expectation to act in a certain manner. Thus we have established the third essence of norms namely that norms are (c) the individual's understanding of surrounding expectations regarding their own behaviour. Through this third essence the socio-legal norm concept is shifted towards social psychology. It is important to point out, however, that the third essence must be interpreted so it is not confused with the attitude concept. The psychological definition of attitude is that it provides a positive or negative feeling before a so called attitude object. Apart from the affective component, attitudes are also said to include cognitive and behavioural components. The affective component consists of positive or negative emotions associated with the attitude object. The behavioural component is linked both to our intentions to act in a certain manner, and our actual actions in relation to the attitude object. The cognitive component involves positive and negative thoughts about the attitude object (Eisle, 2003). Attitude are to a great extent formed during childhood and provide the individual with cognitive rules of thumb, helping the individual to manoeuvre in a complex environment without the need to 'think through' every move. When a norm corresponds with an individual's attitude, the norm is said to have been internalised. This third essence is also irrelevant from a purely judicial perspective. Since the legal system from Kelsen's perspective is a highly autonomic system consisting of 'oughts, the question of the individuals' understanding is irrelevant. Even from a Durkheimian social science perspective, it is still doubtful whether it is useful. Durkheim was clear in his view that sociology is the science of the shared and not of the individual. For SoL, however norms are only interesting as long as they influence human behaviour. Therefore the link between the general norm and the individual behaviour has to be elaborated. The question, how is the norm imposed on or transferred to the individual, has to be understood. We will come back to that question.

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5 Atoms are physical objects as well, but still carry a different ontological status. For hundreds of years, they existed only in theory, but in the last hundred years, atoms have come in closer reach of our senses.

4   Accidental Attributes

The aspiration of this article is mainly to create conditions for a more cohesive definition of the norm concept. Focus has therefore been on determining which of the norm attributes are essence-oriented, and we found three such attributes. Accidental attributes should not be regarded as less important. Rather it seems that the greater scientific challenge lies in analysing the accidental norm attributes, which is necessary in order to, for example, try to categorise the norms.[6] In this lies for example a description of what separates legal norms from social norms, or whether technical norms constitute its own category etc. At Lund university, the work within SoL of understanding norms and implementing analyses has often taken a standpoint from a norm model focusing on three fundamental areas within which accidental attributes are found: (a) the cognitive context in which the norm is active; (b) the system conditions that apply to the relevant situation; and (c) the values associated with the imperative. The result becomes a description of the environment from which the norm originates and a deepened knowledge about the norms' driving forces.[7] The lack of a common view on what essentially constitutes a norm has made it difficult though to draw any general conclusions. Hopefully a clearer norm concept will also be able to cast new light on the accumulated knowledge.

It is obvious that the characteristics of norms differ in relation to their accidental attributes. The accidental attributes are related to factors like background and contexts, which afford them different characteristics. These characteristics make it possible to classify the norms in certain categories and thereby accumulate knowledge in relevant respects. There is in the present stage of the development of a Norm Science a need for a taxonomic approach before we can elaborate more on a pure theoretical basis. The most important step for the time being is to create a firm understanding about what we mean with the concept of norm, how we can categorize a norm and what characteristics follow with different types of norms.

The first step in a taxonomic sense is to enumerate different types of norms and thereafter relate the essential and accidental attributes to these norms. When we should list different norms, we make use of our experience of the norms

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6   A first attempt at categorising norms was conducted by William Graham Sumner ([1907], 2002) in his work *Folkways – A Study of Mores, Maners, Customs and Morals*. Sumner's categories have afterwards been criticised for being arbitrary.

7   Håkan Hydén has published a number of works on this subject, for example the book *Normvetenskap* (2002). Some other examples: Per Wickenberg has studied norm supporting structures in relation to the introduction of environmental themes in schools (1999). Minna Gillberg has studied how activities in environmental work are norm building; in other words, norm build on each other and thus establish new practices (1999). Matthias Baier has studied and described norm structures in the tunnel project through Hallandsåsen i Southern Sweden and compared it with the legal structure (2003). Patrik Olsson has studied how legal ideals in the form of children's rights face a norm building reality in Paraguay (2004). Staffan Friberg describes norm building processes through user cooperation (2006), and Helena Hallerström has researched principals' norms in leadership situations in the development of schools (2006).

existing in society. Following that strategy we spontaneously will find legal norms, social norms, technical norms, economic norms and bureaucratic norms. Other norms can easily be identified. We use these as prominent examples of norms. The organising principle lying behind this classification can be said to be the function or the raison d' etre of the norm; legal norms have a legal function, social norms are fulfilling social functions, economic norms are telling us what to do in an economic sense, etc. This gives us certain categories which we can set up in one dimension and then relate these norms to the essential and the accidental attributes. We have commented on the essential attributes above. If we continue by looking for accidental attributes we find aspects like the presence of sanctions (related to the third essential attribute, i.e. how the surrounding expectations are realised), the origin of the norm (i.e. where does the imperative come from), the context or arena in which the norm is socially reproduced, if the norm is system-oriented or value-oriented, the internal function of the norm, the purpose of the norm, etc. In this way we can set up a norm classification scheme or a matrix where we can correlate different norms with corresponding essential and accidental attributes.

NORM	Essential attributes			Accidental attributes					
TYPE	Imperative	Socially reproduced	Surrounding expectations	Sanctions	Origins	Arena	System oriented	Value Oriented Internal functions etc.	Etc.
Norm Type 1 Legal									
Norm Type 2 Social									
Norm Type 3 Technical									
Norm Type 4 Economical									
Norm Type 5 Bureaucratic									

Figure 1. Norm classification system.

To elaborate a bit on these accidental attributes the following comments can be made. Many scholars, not least in the legal science, might regard sanctions as an essential condition for the norm concept. In our understanding it is not. Sanctions might be inbuilt in the norm, as in system-oriented norms. This category of norms are a consequence of the rationale the system is built upon. To give a pregnant example we can look at technical norms, for instance in relation

to building of houses or cars or whatever. If you as a constructor do not follow the instructions stemming from the strength of materials or other laws of nature, you are deemed to fail in your mission. The sanction has not to be articulated, it is more or less an automatic consequence of deviations from the norm. The same can be said about economic behaviour according to the rationale of the market or another economic system. If you do not invest in accordance with the imperatives of the market, you are expected to fail and lose money, contrary to the rationale of the economic system. Even rules and norms which are about definitions have no explicit sanction, but they are imperatives, which are socially reproduced and expressions for the expectations from the surrounding environment. The sanction can here be said to be indirect. If you do not accept the imperative in terms of a definition, you are out and without possibilities of communication and action within that sector of society where this definition belongs to. We can thus conclude that there are many ways in which the expectations of the surrounding environment might appear and be made clear for the individual actor.

The origin of a norm is a fundamental distinction when making categories of different norms. Thus, if a norm emanate from a public institution within the political system, we deal with legal norms or rules. They have in its turn certain attributes in terms of being formalised, belonging to a certain science, used by a special profession, etc. (Hydén 2002, ch 4, Posner & Rasmusen, 1999). We put norms having their origin within the social system in the category of social norms. These norms may also assert themselves within the operation of a practice guided primarily by other systems but can then be said to have their origin from the social system. Social interaction must be separated from professional communication and considerations following the logic of another system within an economic or technical practice. Norms belonging to the technical system actualizes as enabling or constraining imperatives within the new technology or as conditions derived from natural laws in relation to mechanical constructions within the industrial production. It is though important to keep in mind that the technical arrangement as such do not constitute the technical norm. The imperative has to be socially reproduced in such a way that it represents the individuals' understanding of surrounding expectations regarding their own behaviour. Thus the imperative does not consist of the technical arrangement in itself but of the expectations created by it among those individuals that are relevant in the context or practice in which the norm operates.

Another accidental attribute to the norm is the arena in which the norm is socially reproduced and where the expectations emerge. It might be in the courts and public authorities as in relation to legal rules. These play also a role in daily life of a company and private life, but are then combined with other imperatives. Social norms are mainly operating in social spheres, like the family life, in the neighbourhood, within the circles of NGOs and leisure activities. You can, however, sometimes find social norms intervene in situations related to legal rules or economic and even technical norms. It depends on the strength and outcome of these other norms. If they collide with social life social norms tend to be invoked. Both economical and technical norms operate in professional

arenas, like business life. Ecological norms have their arena in the borderline of business and nature. It is when the human economic activities impinge on nature in one way or another that the articulation of ecological norms take place. This can be a part of a legal case, or in relation to environmental impact assessments, in a public hearing or in the mass media. On the whole, mass media plays an important role in mediating values and opinions in relation to certain events. This state of affairs lay the foundation for imperatives, which due to the social reproduction following on the views of mass media, give rise to surrounding expectations.

We have already above touched upon the accidental attribute, system-orientation. It goes for imperatives which can be derived from the rationale of the system involved, such as economics, technique, bureaucracy, etc. The imperatives are often articulated in different relevant sciences, like business administration, civil engineering, political science. The social reproduction is determined both by education and by professional knowledge. In contrast to system-orientation, value-oriented norms are articulated and uphold within the social system, as mentioned above. Parents, partners, relatives, neighbours and friends are here important representatives for the environment that put pressure on the individual to act in a certain way. Social norms are most often about how to behave properly in relation to other people, in traffic, as a mate and friend, etc. But it can also be about nice social behaviour, i.e. behaviour following good values and high moral standards. But moral or good values per se do not constitute the norm. It has to be socially reproduced and of such distribution that it can be said to be an expression of the surrounding expectations.

If we look at functions as an accidental attribute, characteristics as constitutive, regulative and intervening functions are relevant. These functions are derived from an internal normative perspective. Different norms can also be said to have significant external functions, i.e. they fulfil certain roles in society. Then we approach the classification of norms in terms of legal, social, technical, economic, bureaucratic, etc. norms. We can also regard the addressee of the norm as distinctive in relation to different accidental attributes. Thus, it makes a difference if the norm points out who is going to act, who has the competence and authority to act according to the norm, competency norms, or if the norm tell us how we are expected to act, i.e. procedural guidance how to handle a certain situation. We can here talk about procedural norms. Finally we can distinguish a third category having the function of telling us what to do according to the norm. This last aspect is about the material content of the norm, the action guidance.

5   Some Reflections on Methodological Issues within SoL

We have concluded in this article that SoL as a discipline has its roots in two completely different epistemological systems, sociology and legal science. This has caused problem over the years. Above all SoL has had difficulties in articulating a paradigm of its own and thereby been confusing in relation to methodological issues. Sociologically oriented SoL has not been accepted within legal science and legally based SoL has not been legitimate within sociology. This dilemma has been called the double isolation of SoL. The problem is

accentuated when the two epistemological systems compete in the explanaitions of one and the same problem. One of the most important aspects of SoL is that it complements legal science by bringing up other aspects of law compared to main stream legal science. While main stream legal science is focussing on the proper interpretation and application of law in individual cases, SoL asks questions like, why do we have law, what is lying behind certain provisions, etc. and questions about consequences and functions of law. What does it mean for certain groups in society, for the environment, or the efficiency, etc. that we have regulated some activities via legal norms?

Traditional legal science and SoL – which also in its parts can be said to belong to the sphere of legal science in a broader sense – compete with each other in the understanding of what is actually deciding in legal decision making. Clashes arise when the empiric sociology is brought together with legal dogmatics. The two scientific bransches represent such diverse perspectives on reality that they cannot at all accept the conclusions of each other as relevant. It is with this background SoL in Lund has developed the idea that the concept of norms has the potential of reconcile the differences between sociology and main stream legal science (Hydén 2002, Svensson 2008). A refinement of the concept of norms might contribute to both sciences. The idea is that norms ontologically represent attributes which can be investigated and analysed by using the inductively inspired empirical methods of SoL as well as the deductively based conclusions within legal dogmatics. Norms, for instance legal norms, can fairly well be analysed and understood by empirical sociology due to their social reproduction, while legal dogmatics can cope with the same phenomenon as imperatives which can be related to other norms and imperatives.

If one wants to understand how norms and legal rules affect behaviour, one has to study the norms as expressions of the individuals' understanding of the surrounding expectations regarding their own behaviour. This means that we cannot – as the usual procedure – try to find out about the interviewee's opinion about things at matter, but instead ask how the interviewee thinks about the opinion from relevant persons in the surrounding environment, what they think about proper behaviour and also relate this to how much the interviewee assess the opinion of these different relevant persons in the environment (Svensson 2008, cf Ajzen & Fischbein 1975).

If norms are conceived as having the three essential attributes we have described in this article, it would be possible to illuminate different aspects of norms from respective epistemological system. Sociology can focus the guidance influence on human behaviour and on social aspects, while legal dogmatics can systematize the imperatives as such and the normative dimension. SoL still though faces the problem to understand law from both the perspective of the internal premises and the external context. How would it be possible to combine the inductive methods of sociology with the deductive methods of legal dogmatics? One way to do this is to try to figure out how reality would look like in the perspective of law, i.e. if we "translate" law to reality, and thereafter compare that picture with how reality stands out in the sociological construction based on empirical studies. The scientific outcome lies in the comparison of the two pictures. Expressed in another way, the normatively determined picture

from legal science might not correspond to the empirical answer from sociology. This kind of studies within SoL has mainly been geared to the application of law within public authorities and the result has been labelled the difference between law in books and law in action, i.e. law understood from legal dogmatics says one thing, but does something else in practice. In this way SoL has been related to legal dogmatics and the purpose has mainly been to articulate some kind of societal critique. The ambition with SoL as a norm science is, however, to articulate what Manuel Castells has described in terms of project identities (Castells 1997). This requires that SoL is able to skip the bifurcated research strategy, where deductively generated results are matched against inductive conclusions and move towards integrating and abductive research strategies (Baier 2003, Baier & Svensson 2004).

Abduction as a research perspective can be said to be based on pragmatism in putting the practical solution in the forefront. The American philosopher Charles S Peirce (1839-1914) has shown how pragmatically oriented research can use abductive inferences in order to reach valid conclusions when either deduction nor induction help us (Peirce 1990). Peirce claims that abductive conclusions are based on insights combined with common sense reasoning built on both induction and deduction. Margareta Bertilsson has reflected on the character of Peirce's abductive conclusions (Bertilsson 2003). She regard the method as revolutionary. Despite the supposed trivial character of the semi-logical operations it can in a scientific context contribute a lot. The premises in an abductive conclusion might be built on empirical observations while within the logic of a syllogism. But the abductive logic has not the pregnancy of the deductive method, where two true statements take us to an absolute truth. The validity of abductive conclusions is built on them being reasonable. This is of great importance for SoL. We can not observe social norms in the same way as we can identify and study the legal rules. However, we can introduce the understanding of a social norm operating in the field where the legal rule is meant to regulate and in this way explain why the behaviour we have observed with inductive empirical methods is not in congruence with the expected behaviour from an analysis of the legal deduction. Still more important is that the abductive approach gives us the opportunity to consider how changes of the social norms can increase or decrease the compliance of behaviour compared to the legal rule. Abduction can therefore be said to function as a pragmatic link between knowledge based on deduction and induction.

6   Conclusions

The norm concept is the individual concept that might contribute the most to the research field of SoL and should therefore be held equally important as for example the attitude concept does for Social Psychology; or for that matter, money for Economic Science and politics for Political Science. The reason is that the norm concept is able to bridge the classic gulf between the two dominating perspectives on the legal system that SoL is concerned with. On the one hand there is Kelsen's perspective on the legal system that teaches us that the legal system consists only of 'oughts' arranged into special hierarchies, and

on the other hand Durkheim's perspective, claiming that the legal rules, like other social facts, are things and can be related to 'is'. For SoL, which links the legal system to other social structures, the problem becomes intricate in that Hume learns us that 'ought' never can be derived from 'is'. A socio-legal norm concept must thus be able to concurrently handle an internal, legal view on standards *and* an external, social science based, view on norms. For this to work, the norm concept must be able to link itself to an individual level; otherwise we will lose the – for SoL – essential link to enforcement. It is thus possible to identify a number of specific requirements that can be placed on a Socio-legal norm concept. The method for translating these requirements into an operational definition goes for us via Aristotelian concept pair of essence and accidence. Initially, one must understand that certain attributes that can be linked to norms is not decisive for what constitutes the norm's nature. That a norm is nationally widespread is not, for example, normally in a norm's nature, many norms are less widespread than that. These attributes, which are not in the nature of the norm, must be sorted away through a defining process. Left over will be a number of attributes that apply for all norms. In our case, we have found three properties that are either linked to the 'ought' in that (a) they are behavioural instructions (imperatives), or linked to the 'is' in that (b) they are socially reproduced, or finally to the individual in that (c) they are the individual's understanding of surrounding expectations regarding their own behaviour. However, one should note that norms in certain cases may also lack one or more of the essence-linked attributes. This is referred to as an ontological privation. For example, a legal adviser treats a legal rule as a norm, even though it may only correspond against the first attribute as a behavioural instruction (most legal rules, however, correspond to all three). The legal adviser will then be dealing with a norm that is an ontological privation. For a social psychologist it is sufficient that an individual has encountered an expectation on his or her behaviour in order to assert that the social psychologist has to do with a norm. We argue that this is also an ontological privation. Methodologically the norm concept view, we advocate, poses certain special requirements on norms. If one wants to examine norms on the basis that they are behavioural instructions (imperatives), on the basis of the conditions drawn up by the courts, one must make use of a deductive legal method. If one wants, on the other hand to examine norms on the basis that they have a temporal and special spread and that they are socially reproduced, one must use an inductive method. The fact that norms also can be related to individuals' views does not make the matter less complicated. Norms cannot, in other words (given that the socio-legal norm concept is applied), be examined on the basis of themselves through a purely deductive or inductive method. Probably it will be necessary to alternate between deductive and inductive processes and perhaps it will be even more important to incorporate abductive research strategies.

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