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I.

The reality of science is, like every reality – particularly every social reality – a construct. That is not the whole story; but it cannot be had as anything but a construct. Everything that can be known about reality is based on distinctions by the observer concerned; what it "really" or "in itself" is transcends any degree of distinction and therefore necessarily remains neither understood nor comprehensible. Reality objectifies itself to the extent that distinctions are given linguistic form. But these forms are socially determined. Accordingly, presuming attentiveness, anyone studying reality , has to do with his own and others' constructive accomplishments.

If one seeks the standpoint of the external observer and asks for structures that go beyond the actors' intentions of action (without necessarily having to forget these), then the reality of the science of administrative law can to a first approximation be described as a section of a cognitive and social network of communication in political and legal science. What is, accordingly, being considered is the incomprehensibly vast scene of de facto formation of opinion, over which any purely normative, epistemologically oriented theory of argumentation – whatever it may have undertaken in detail – can obviously be only partly in charge. Alongside and within the objective reasons, there are aspects operating that are alien to scientific teleology and methodology, for instance, even career interests. How these relate to each other in the process of formation of opinion and what the repercussions are for the content of administrative legal science is hard to establish and not apparent a priori or in general.

To gain enlightenment here, legal theory and sociology of knowledge have to be brought in. Sociology of knowledge treats science not merely as a system of thought, an autonomous collocation of theoretical objectivations, but also and primarily as a system of action in a context of non-theoretical references that mostly remain latent. It does not amount solely to an organizational and professional sociology, of whatever form, but takes the task primarily of throwing light on the interplay of cognitive and social standards that apply in science, confusing and beyond the vision of those involved as it is; including the implicit distinction between cognitive and social, a boundary which is by no means well defined. An investigation of communication in legal science from the sociology-of-knowledge viewpoint will therefore do well not to overlook legal theory – the branch of legal thought that deals more than any other with the cognitive

structures of legal science. But it cannot follow it blindly, since legal theory as such has a strongly normative interest intrinsic to it, indeed an interest in progress, which tempts towards the view of previous developments in legal science as basically the history of errors, or at best of pioneers. Pursuing a normative interest in an analysis in history of science may very well be justified, but must not lead to failure to see the factors empirically operating in the process of scientific communication, nor to distorting the paths of research.

Since, in the science of administrative law, administration, law and science – that is, three relatively autonomous areas of modern Western societies – come together, it seems appropriate to consult above all that part of sociologically illuminated legal theory that deals with how this functional differentiation is to be thought of systematically, what relative autonomy means more exactly, how it comes about and maintains itself and what it brings about.

II.

This range of problems has been approached recently particularly by Niklas Luhmann and Gunther Teubner with a new and pointed approach: a theory of social autopoiesis in general and legal autopoiesis in particular.

While from the viewpoint of the underlying biological theorem the human being is the autopoietic, i. e. self-producing and reproducing basic unit of society, so that social systems appear as "systems of linked individuals" and therefore precisely not as autopoietic systems, Luhmann (1983, 1984, 1986, 1987) has decoupled social systems from the human being as biological system and as system of consciousness. Henceforth communications were declared to be the basic units of social systems, and human individuals to be their environment. Communication in this sense is a systems operation. Since there are no systems operations outside the various system boundaries, social systems thus become conceived of as "operationally closed" or as it is also termed "communicatively closed", which does not rule out their "informational openness": while social systems reproduce themselves, they do so in response to their environment.

The interest that this approach may lay claim to for work in the sociology of knowledge lies in the fact that autopoiesis is regarded as possible for social sub-systems too, and specifically for them. This is admittedly a surprising hypothesis from the terminological starting point. For how are the autopoiesis of the whole of society and of sub-systems to be reconciled with each other? For sub-systems are conceptually nothing but parts of a super-ordinate system, so that sub-systemic communication cannot be

closed vis-à-vis the overall system, and is communicatively linked with other sub-systems, at least via the overall system. Accordingly, one might think, sub-systems cannot have any autopoiesis vis-à-vis the overall system that would endanger, still less disrupt, the overall system; in other words, second-order autopoiesis would be under a general reservation of successful first-order autopoiesis. There would then manifestly be two types of autopoiesis, which Luhmann's emphatically inflexible conceptualization does not seem to permit. The terminological doubts arising from this can be left aside for the moment. However, they point to the fact that the key problem of an autopoietic theory of social systems – from an empirical viewpoint too – lies in understanding the interference of social sub-systems, i. e. intersystem communication.

Teubner (1987b) has sought to cope better conceptually with the various degrees of autonomization of sub-systems, proposing a gradation of self-reference, autonomy and autopoiesis, defining the latter through three self-referential mechanisms: Self-reproduction of all system components, self-maintenance of a system and self-observation as control of self-reproduction. As regards legal dogmatics, which functions as the self-observing agency for law, he says that it has a share in both the legal system and the system of knowledge and is subject to corresponding constraints of linkage, but over and above that is still "swallowed up" in the "specific communication circuits" of other social sub-systems in respect of which the law takes on control functions, so that it has to take their "intrinsic logic", itself pursued in academic disciplines, into account (Teubner, 1987b: 436-438). Autonomy of law is said to mean not total independence from external causal influences, but their non-linear mode of operation on the basis of "modulated" transformation mechanisms within the system; the "incorporation of social meanings" into law is therefore said to be possible without loss of autonomy insofar as the "interventions fall under the reservation of legal type norming" (Teubner, 1987b: 440-441).

This may be a construction that is plain enough for legal dogmatic thought itself. And Teubner comes, after all, from legal dogmatics, where, as one can see from his most recent publications on company law, he very deliberately employs autopoietic legal theory in order to loosen up the sphere of what can be treated legally, expand the leeway for possibilities of dogmatic distinction and modify the plausibility of proposed solutions. It operates similarly in his positions in the de-regulation debate which have also met with legal policy interest, sparking off a broad discussion around the keyword "reflexive law" (for heavy criticism of this sort of transposition of concepts, see recently Druwe, 1988).

But with a sociological theory presuming to understand reality, it must be doubted whether it is appropriate to the phenomena to speak of autonomy even where it amounts solely to a sort of subsequent cladding round a dif-

ferentiation already existing externally, that is, a sort of mimicry effect. It appears as a formalism of only extremely limited reality content to assume dedifferentiation of the legal system only where the lawful/unlawful distinction is no longer used, and by contrast maintenance if not enhancement of its autonomy wherever reference to the logic of a social sub-system other than law ("other-reference") is brought about by changing legal programme structures while simultaneously maintaining compatibility with the fundamental legal code, the dominant lawful/unlawful difference, and therefore still within "self-reference" (Teubner, 1987b: 442-443). Here questions should be asked about the actual extent of substantial penetration or filtering effects between the legal system and its environment, and what is more, without evolutionist suppositions. Where Teubner (1988b: 231-234) speaks of a "turn toward autopoiesis" and takes the view that "evolutionary primacy passes over to internal structural determination" or that embedment in society-wide, specifically moral, religious or political, contexts is being "increasingly phased out in favour of internal references in the law", then these statements, as historical and empirical assertions about development, are not proven if understood to that degree of generality, and not very plausible either.

As a sphere of manifest system interference – which distinguishes it fundamentally from the type of knowledge of the modern natural sciences of the 19th and 20th centuries – legal dogmatics, particularly in public and administrative law, has available a range of concepts that are able to generate links to other social sub-systems and in part even have the explicit purpose of imperceptibly bringing back the principal differentiation of the legal system, lawful/unlawful, into its environment; without decisions being henceforth purely political, still less against the law, the distinction of lawful/unlawful always continues to be maintained – albeit with shifts in contents.

One example of this is the concept of human dignity in Art. 1 of the Bonn Basic Law and the notion of freedom and equality in Articles 2 and 3 interpreted in its light, which constitutes the conceptual framework for all fundamental rights and cannot deny its manifold pre- and extra-legal references. At this level, "operational closure" of the legal system can at best be suggested through a verification of belonging that remains at the semantic surface. The fact that such a suggestion is at all successful is specifically due to the Federal Constitutional Court's case law; its judgments have had a sort of innovatory value, i. e. once they have been adopted they enable one to content themselves with them as a legal basis without enquiring any further.

Before the introduction of the Basic Law and of constitutional case law, this range of issues was transcended in the changing combinations of "positivism" and "natural law theory" – put more generally, in the vary-

ing combinations of genuinely normative, empirical and formal logical elements of the view of law. Arguments from pure theory of knowledge have proved of only limited application here. There are practically no limits to the revival of apparently long exhausted elements of theory as long as they can be used functionally in the legal system. For the legal system, the change of teleologies and methodologies in legal science accordingly acts like a sort of breathing: an opening and closing of the legal discourse set going and controlled by jurists, which guarantees the stability without stagnation that is so important to them, and further ensures that the legal system plays a part in deciding as to its identity and its learning capacity.

Speaking of the legal system's "communicative closure" would accordingly be appropriate only in a sense that ultimately remains metaphorical: the law is fenced off from its environment, but fences can also act as sluices, i. e. places to pass through. Using another image, one could also speak of revolving doors, which are usually set up where there is a particularly clear distinction between inside and outside but rapid, smooth passage is nevertheless important. The case with the legal system is not one of closure in the sense of hermetic sealing, but closure following a process of opening. This sort of view admittedly softens the idea of strict autopoiesis and instead rehabilitates the old idea of the system open to the environment that it was believed had to be overcome.

Just as empirically unconvincing as the hypothesis of "communicative closure", and therefore also of the unity of the legal system, is the assumption of a unity of academic legal discourse as the legal system's agency of self-observation. Such a unity is admittedly readily assumed by legal theory as a matter of course, probably because their own manifest position seems to be rooted in it. But there is interpretation, utilization and also cognition of the law in extremely varied contexts, differently patterned institutionally and given a fluctuating stamp by the multiplicity of modes of cognition and conduct involved. Not a few misunderstandings in legal theoretical disputes derive from the fact that the hypostatized unity of the legal system, implicitly and without noticing, has differing types of legal discourse ascribed to it (here structuralist legal semiotics has brought new insights; cf. e. g. Goodrich, 1987, and recently vol. 8/1988 of the journal "Droit et Société", which contains several articles on "discours juridique").

For empirical historical research in administrative legal science this means that it cannot take over their academic postulate of unity, but must approach the access to the reality of administrative legal science in such a way that the interference of the legal system with other social sub-systems can be captured and also made visible in the reconstruction of segments of knowledge that derive from the existence of spatially or institutionally

specific legal discourses. Admittedly, this makes recourse to the level of action of scholars that underlies their communication – published texts – unavoidable; a level that remains excluded from view in Luhmann and Teubner because the concept of subject and of action has no place in their theory of social system.

III.

The elimination of the concept of subject and of action from sociology is not, however, the general opinion. Instead, attempts are continuously being made – particularly in connection with the historical dimension of society – to get out of the contra-position of person and system, action and structure, micro and macro sociology etc., felt to be unfruitful. Recent analyses on the "rational choice" approach deriving from economics, for instance, endeavour, alongside and in aspects of structural history, to make the importance of intentions, acts of will, discursive elements and more or less rational individual criteria of decision (identity, consistence, optimization) visible and thereby portray individual rationality as the basis for collective action too, specifically action in a group small enough to be grasped (Taylor, 1987). Structure as simultaneously condition for and outcome of action is taken up with systematic claims by Anthony Giddens's social theory (1984), combining sociological tradition and the most recent approaches in the historical and social sciences. In German sociology too, not only do people in fact continue to think simultaneously in categories of structure and action, but they also endeavour conceptually to set up alternatives to Luhmann's radicality: thus e. g. Renate Mayntz (1988) in setting up the perspective of the actor, as expressed for instance in the tradition of cultural sociology, alongside the system perspective to supplement it (cf. also Schimank, 1988).

But there are also representatives of an autopoietically informed theory of social systems that see the relationship between individual and system differently from Luhmann, starting from the human individuals as autopoietic systems and building up social systems on them as the result of human interactions, and understanding society (itself no longer regarded as a system for lack of clearly defined boundaries) as a "network of social systems with the individuals as 'nodes'", with the network character coming about from the fact that "individuals simultaneously take part in constituting several social systems, thereby linking them up together" (Hejl, 1987: 129-130; Teubner seems, in his latest publication on the matter – 1988b: 25 –, to approach this view where he mentions as one possibility of systemic interference that "people act in various system contexts"; this formulation – not developed further systematically – is presumably no longer compatible with his initial thesis that people always belong only to the environment of social systems).

Specifically in the area of law and legal science this is an empirically more plausible view of things since it does not, simply from its theoretical approach, make more difficult the question of how far the relative autonomy of the legal system is handled individually by participants in legal communication and these actions display structural characteristics that are not to be sought in the legal system itself, but are conditioned by the interference of social sub-systems other than the law. To maintain the capacity for linkage of social sub-systems among each other, comprehensive individual role aggregation plays an important part: someone participates as manager of a firm in the economic system, as honorary judge in the legal system, as honorary professor of the legal faculty in the academic system and as party member in the political and administrative system. It is the individual human being who in belonging in role-governed fashion to the various sub-systems has to arrange the compatibility of information and communications to avoid schizophrenic identity and enrichingly bring these subjective arrangements of subrationalities into the processes of system communication in which he operates.

Also fruitful for empirical research, because of its combination of the system and action perspectives, is the cultural sociology of Pierre Bourdieu, who has since explicitly extended it to the legal sphere. The central concept is that of the "champ", which is supposed to serve to keep internal and external aspects of social sub-systems together. Within the "champ juridique" , legal rules and legal theories constitute a space of possibilities of development; the principle of actual developmental dynamics, however, lies outside this, namely in the sphere of the legal actors and legal institutions that are in competition with each other to determine the direction legal development will take (Bourdieu, 1986:4). Bourdieu therefore pleads for an analysis of legal discourse distinguished according to legal professions and their specific complexes of interests.

There are still other noteworthy possibilities of grasping the functions of the work of legal scholars for the legal system theoretically and making it accessible to empirical research. In the English-speaking area, for instance, one might refer to "critical legal studies", which are also sensitive to legal history (Gordon, 1983/84; Hunt, 1986; cf. also the controversy: An Exchange on Critical Legal Studies between Robert W. Gordon and William Nelson, in: Law and History Review, 6/1988, 139-186). In this connection one might further mention the very intensively pursued study of the "legal professions" that has been the particular merit of the American Bar Foundation (cf. only Abel, 1985); admittedly this is – because of the intellectual and institutional peculiarities of the common-law system – bound up with a remoteness from academe and from government on the basis of which a history of continental European administrative legal science could not be written (cf. the criticism, justified in that respect, by Rueschemeyer, 1986). But instead of going further into that too, let us

now take a glance at the empirical situation the study of which has been called for in the above theoretical considerations.

IV.

Particularly suitable for empirically disclosing the system - interference aspects of academic legal thinking is the legal professional journal, since it is not only university professors that contribute to this forum for formation of scientific opinion, but also administration officials, judges, advocates and other practitioners. For more detailed analysis, administrative legal professional journals from the years 1880 to 1914 have been selected, when administrative legal science in both France and Germany was going through its "classical" period, which played an important role for the identity and therefore also the developmental potential of present administrative legal science. This period serves as a reference point for its unity and autonomy and as a point of comparison by which its progress – or at any rate change – can be made visible.

Articles on administrative law were studied from the following journals: "Archiv für Öffentliches Recht", "Annalen des Deutschen Reiches für Gesetzgebung, Verwaltung und Statistik" and "Verwaltungsarchiv" for the German Reich,"Revue générale d'administration" and "Revue du droit public et de la science politique en France et à l'étranger" for France (on partial aspects see Heyen, 1986, 1988, 1989a; comprehensively and in detail Heyen, 1989b). Four time periods were evaluated: 1880-1884, 1890-1894, 1900-1904, 1910-1914. For the German Reich, there were 392 articles from within the country totalling some 14,000 pages; of these 85 were from universities (21%, and 25% of the pages), 63 from the courts (16% and 14% respectively) and 132 from the administration (33% and 32% respectively). For France there were 352 articles from inside the country with around 10,000 pages; of these 75 were from professors (21%, with 28% of the pages), 52 from judges (14% twice) and 142 from officials (40% and 36% respectively). Below we shall deal with the institutional differentiation in the profile of methods and topics of these articles.

In relation to the fineness of differentiation of method, no excessive claims should be placed on a quantitative analysis. Any great administrative jurist, if one looks more closely, has at bottom a method of research in administrative law peculiar to him alone. In the context of a biography, full justice can be done to this sort of individuality. But even in a comparison between two such individualized methods, reductions have to be made deriving from the comparative perspective of the observer. In comprehensive descriptions in methodological history, these reductions are pursued still further to make the general view easier. One talks about

schools, periods etc. Such average quantities are indispensable in a quantitative analysis too. The extent of reduction depends ultimately on the object of investigation.

Since in the years from 1880 to 1914, on the prevailing view, a "cleansing" of administrative legal thinking from legal policy and legal historical aspects is supposed to have come about, in the direction of legal positivism, this constitutes a useful starting point for drawing up a methodological profile. Three descriptors were set up: "dogmatic", "historical", "political". A text is called dogmatic where it deals with administrative law in force; historical where it deals with administrative law that was was once in force but is no longer; political where it concerns administrative law to apply in future, whether the law in force is to be changed or to be maintained. The basis for the allocation is the intention of the article's author; accordingly, the question whether he might allege something to be law in force when it is not and this allegation derives from a more or less unconfessed legal policy intent is left out of consideration. The three descriptors mentioned may occur separately or in combination. On their basis, a total of 7 classifications are conceivable.

In developing suitable descriptors for the thematic profile, the problem lies in the fact that they have to break down the great area of administrative law adequately and at the same time in a way practical for quantitative analysis. The descriptors used (a total of 20) are oriented partly to administrative tasks, partly to administrative organization and partly to sets of problems in administrative legal dogmatics. As many descriptors can be employed as justified by the content. Multiple allocations are therefore not only possible but the general rule.

The subsequent consideration of topic profile is confined to those descriptions that most frequently occur and have thus proved to be the most important: "administrative organization" (general internal state administration, including the organization of consulates, railways, posts, chambers of professions and state supervision in general); "public service" (government officials, and also judges and honorary officers, and additionally questions of training); "finances" (state expenditure of every type, including service obligations except for military service, budget and accounts, questions of currency, the national lottery and public savings banks); "police" (general public safety and order, including criminal police law, civil status and registration, including public honours and questions of freedom of movement and emigration); "trade" (craft, industry and mining, energy supplies, commerce and banks, insurance, liberal professions); "social law" (the poor and health, orphan care, work safety and employee insurance, employment procurement); "local administration" (the whole law on the organization and action of municipalities and municipal associations); "administrative legal protection" (both within the

administration and in the administrative courts, but without military or church courts); "general administrative law" (legal sources, basic concepts – e. g. public law, statute, legal person, administrative act etc. -, legal institutions that extend over various areas, e. g. public ownership).

How system interference is reflected in administrative legal science is clear from figures 1-3 for the methodological profile, which will now be explained (calculated on the basis of the arithmetic mean of number of articles and number of pages, represented in percentages) and figure 4 for the thematic profile (calculated according to number of articles only). The exact statistics can be found in Heyen, 1989b.

Methodological profile of administrative law articles from universities (Uni), justice (Jur) and administration (Adm), compared with total profile in France (F) and the German Reich (D), 1880-1914

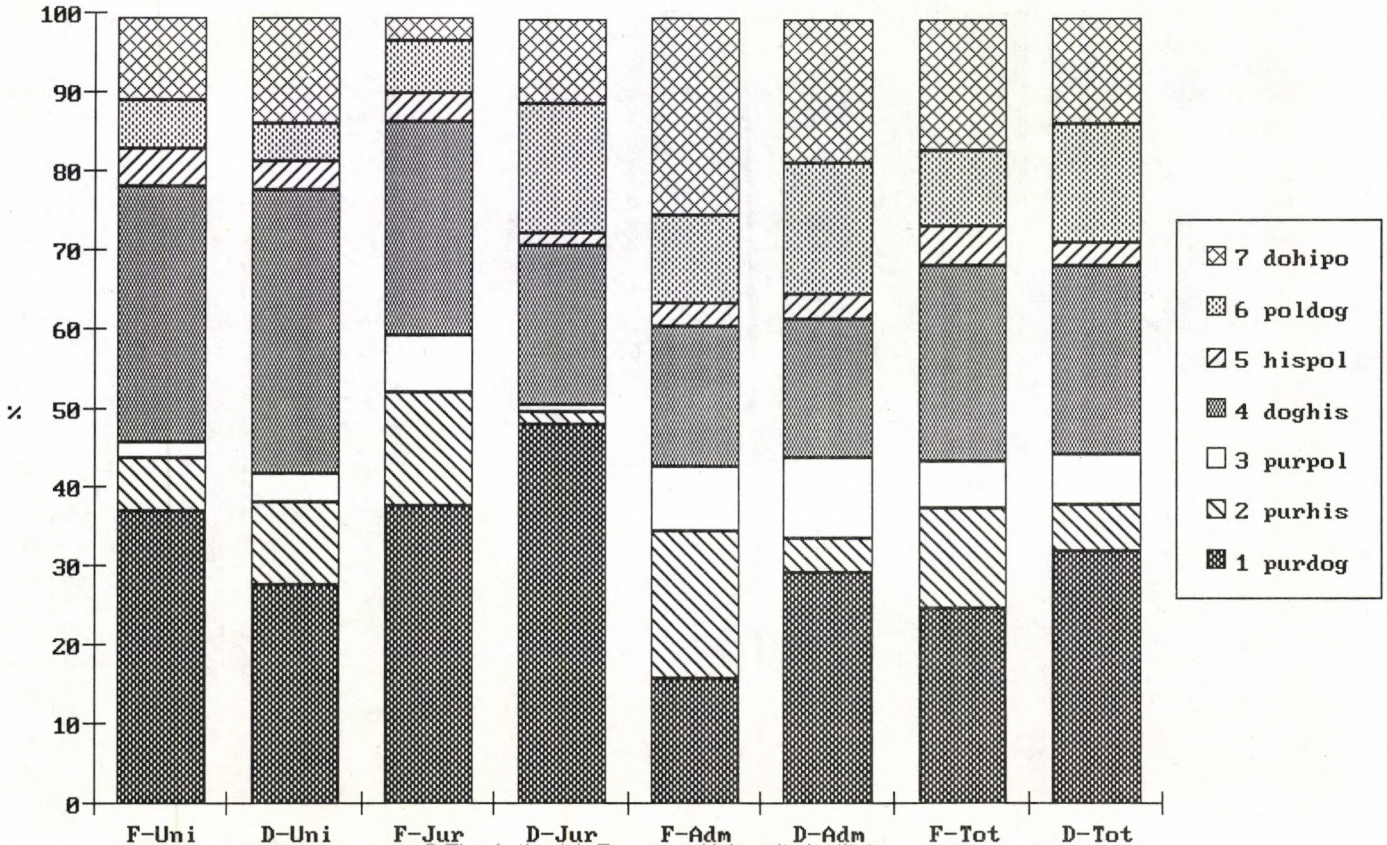


Figure 2
Aggregate of dogmatic, historical and political aspects of methodological profile shown in Fig. 1 (I)

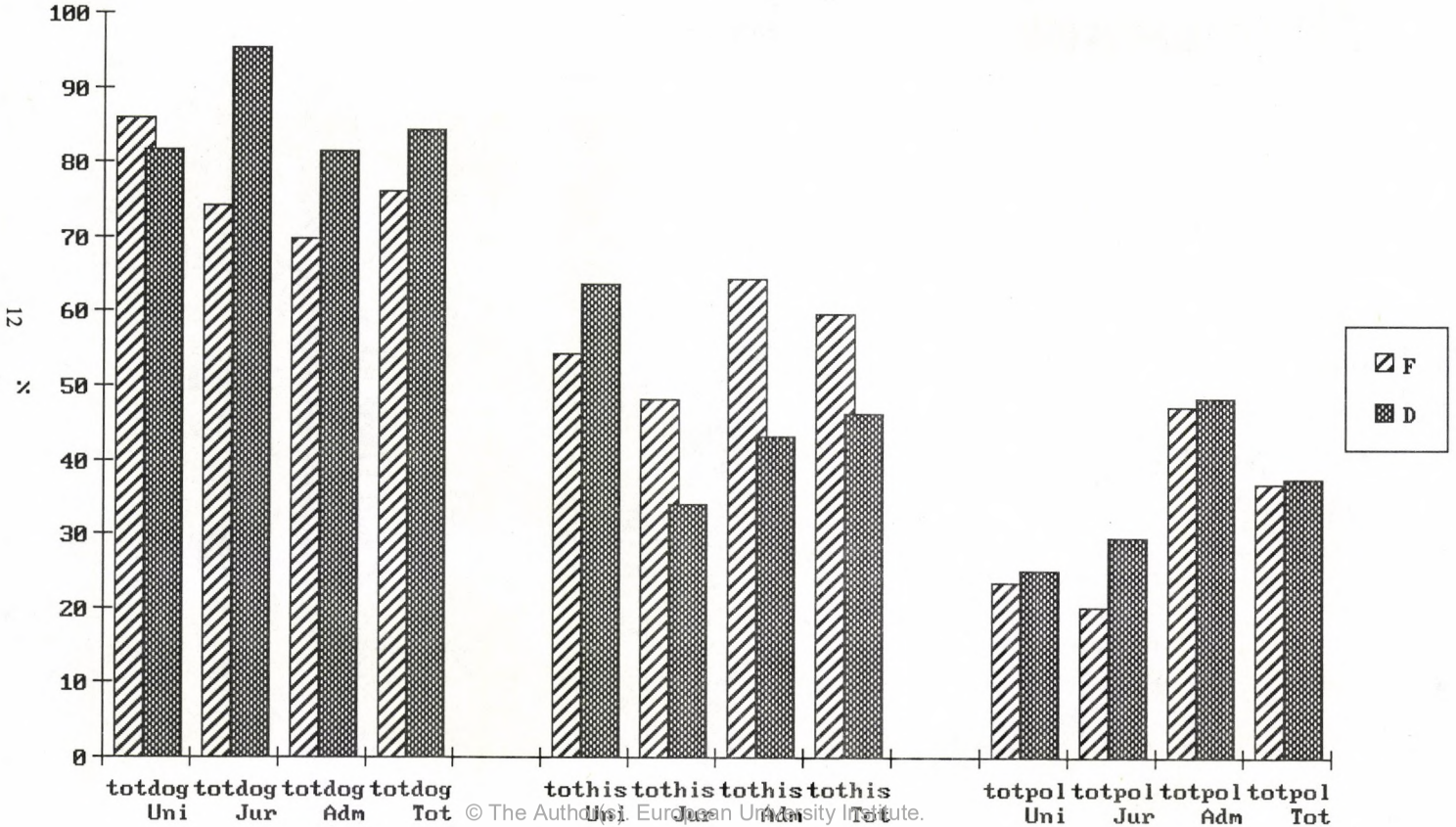


Figure 3

Aggregate of dogmatic, historical and political aspects of methodological profile shown in Fig. 1 (II)

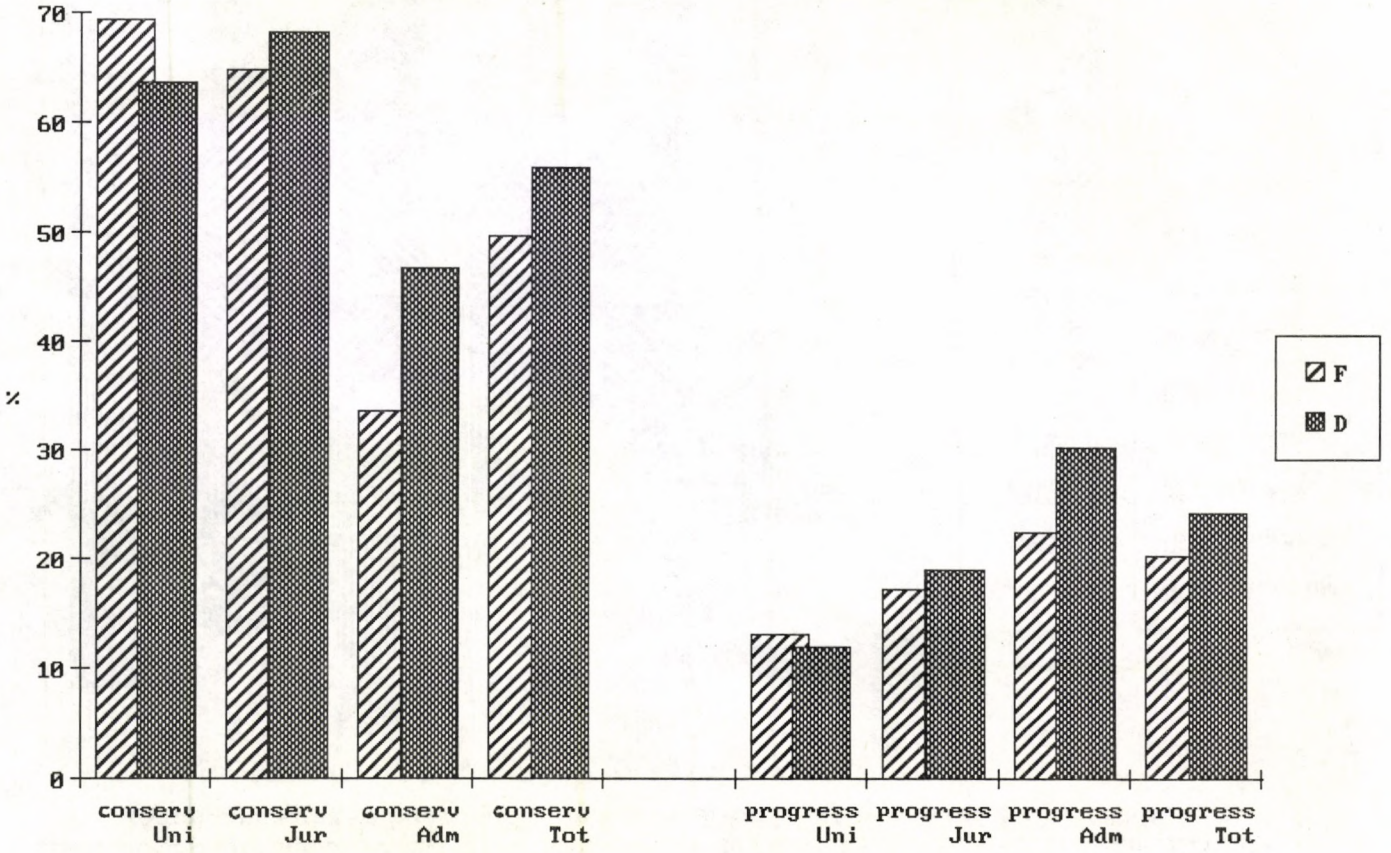
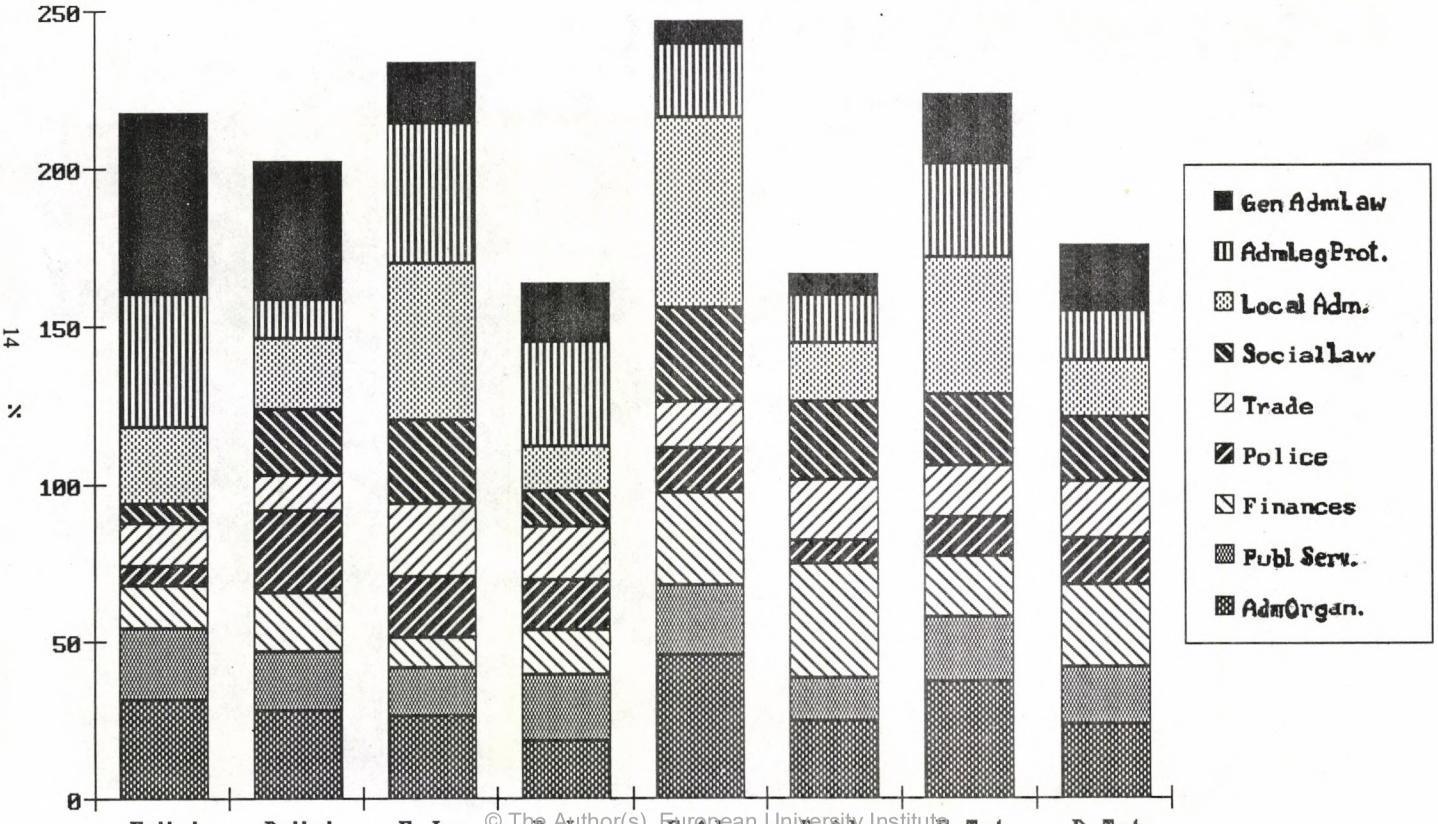


Figure 4

Thematic profile of administrative law articles from universities (Uni), justice (Jur) and administration (Adm), compared with total profile in France (F) and the German Reich (D), 1880-1914



V.

1. Figure 1 shows for both France (F) and the German Reich (D) that the average methodological profile (tot) is significantly different if one considers the institutional background of the articles' authors, that is, their differing ties to sub-systems. A particularly striking methodological discrepancy is that between articles by judges and high officials.

For the German Reich, it is to be stressed that among professors (uni), the dogmatic, historical and political sections are in a clear sequence. There is a strikingly strong position for "dogmatic + historical" (doghis). Judges (jur) give the dogmatic view, i. e. the law that happens to be in force, still more importance than the professors, particularly clearly in the strong emphasis on the "purely dogmatic" approach (purdog), while historical and political elements follow at equally large distance, with the political parts – specifically in the combination "dogmatic + political" (poldog) – notably reaching a higher level than for professors. Administrative officials (adm) by contrast show a clearly different methodological profile. They have just as strong an orientation to the positive law as professors but they attribute twice as much weight to its political evaluation, as emerges from the highly developed use of the "purely political" approach (purpol). History seems to be rather in the background, although it is given more attention than by judges.

For France, it should be stressed that dogmatic method has the clear preference of the universities. In the administration by contrast historical aspects have an almost equal position alongside dogmatic ones, even if this largely takes place by separating them out in the form of "purely historical" articles (purhis). Still more striking is that the political assessment of the law in force is given twice as much weight as by the universities. Justice is clearly closer in its scholarly position to the university than to the administration. The distance from the administration becomes very clear in the rejection of the overall perspective preferred by the latter, "dogmatic + historical + political" (dohipo), and in the strong stress on a "purely dogmatic" (purdog) view, which scarcely lags behind the combination "dogmatic + historical" (doghis) in importance.

As regards the comparison between the two countries, it should be noted that in a total view of all articles dealt with (tot) the methodological structures are similar. The same is essentially true for production of university articles, though with noteworthy departures. While the French professors are more strongly "purely dogmatic" (purdog) oriented than their German colleagues, the converse is the case for "purely historical" (purhis) and "dogmatic + historical" (doghis). Both justice and the administration by contrast differ considerably in methodological approach in the two countries. German judges operate more selectively: "purely his-

torical" (purhis), "purely political" (purpol) and "historical + political" (hispol) play practically no part for them, which cannot be said of the French judges. Among officials, finally, in France the weight attaching to "purely historical" (purhis) and "dogmatic + historical + political" (dohipo) is striking, and in German the weight of "purely dogmatic" (purdog) and "political + dogmatic" (poldog). The distinction between university and administration is also manifested, as far as the methodological approach is concerned, in France in the dogmatic and in Germany in the historical aspects. Taken all that, the German administration seems less historically aware in academic terms but with rather more of a future orientation than the French one.

2. To improve the overview, it seems appropriate to combine the individual methodological classifications in accordance with the basic distinctions (figure 2). In the area "total dogmatic" (totdog), French university teachers have a rather more positive-law view than German ones (an inheritance from the École de l'Exégèse), while justice and administration in France have a remarkably less positive-law approach in France than in Germany. The positive-law approach is more or less equally developed by university teachers and administrative officials in Germany, while in France there is a marked difference here. In the "total historical" area (tothis), German professors are clearly more committed than the French (an inheritance from the Historical School). There is a still more marked imbalance, admittedly, in justice and above all in the administration, but this time in favour of the French side. The historical view of administrative law is accordingly differently centred in the German Reich than in France. In the "total political" (totpol) area, finally, Germany and France are at more or less the same level in university and administration; in France the difference between the two institutions is rather greater.

3. A further form of combination of the data seems appropriate (figure 3). Firstly, the "purely dogmatic" and "dogmatic + historical" methods can be combined as a special unit. This combination is characterized by the orientation to the law in force, and it is in order to understand it better that historical considerations are brought in. Such an attitude to administrative law can be termed "conservative-descriptive". Secondly, "purely political", "historical + political" and "political + dogmatic" can be combined in a unit. This combination is characterized essentially by the orientation to the legal policy aspect of the argument, and it is in this connection that historical or dogmatic considerations are brought in. This sort of attitude to administrative law can be termed "progressive-evaluative", in the borderline case also including the desire for the legal policy status quo or even the restoration of a past state of law. One might frequently also interpret the overall perspective "dogmatic + historical + political" in the sense. But here there is an ambiguity so that it seems preferable to leave it alone.

In the "progressive-evaluative" approach (progress) the proportion of professors in Germany and France is equally low. Among German administrative officials by contrast it is rather more strongly marked than among the French, so that the heavy difference between university and administration in Germany comes more strongly to the fore here too. At the same time, however, the "conservative-descriptive" approach (conserv) in the German administration plays a markedly greater part than for the French. This may at first sight seem a contradiction, but can be explained from the definition of the descriptors "conservative-descriptive" and "progressive-evaluative", which denote contrary but not contradictory viewpoints, that is, do not cover the whole spectrum of possible descriptions. The German administration goes more strongly for this alternative than does the French, for which the overall perspective "dogmatic + historical + political" (dohipo) is also of importance. It is striking that in both countries academe and justice are together clearly distinguished in respect to the "conservative-descriptive" approach from the administration, while for the "progressive-evaluative" approach justice is at a level of proportions between academe and administration.

VI.

The fact that institutional background marks not only the methodological profile but also the thematic profile is made clear by figure 4. The differing height of the "towers" is to be explained by the admissibility of multiple classifications. French articles on average have more descriptors than German ones, that is are more varied thematically and less specialized.

Accordingly, for the production of administrative-law articles by universities (uni), justice (jur) and administration (adm) there are thematic characteristics that embrace both countries too. For professors, general administrative law is characteristic, for judges administrative legal protection and for officials finance and social law, along with a markedly slight interest in general administrative law. As national peculiarities one might note the comparatively high importance of administrative legal protection for the French professors, of police and social law for German professors, of social law and local administration for French judges, of the public service, administrative organization and local administration for French officials and of finance for German officials.

As regards the thematic structure of general administrative law to which the decisive importance attaches in both France and Germany for building up an autonomous administrative legal science, a few important common factors can be established. Among these – though this admittedly does not emerge from figure 4 – is on the one hand a strong attractive power vis-

à-vis administrative legal protection, on the other no less important impetus towards taking a distance from finance, welfare and local administration, all of them areas in which in the 20th century non-legal administrative science has taken shape (details in Heyen, 1989b: 142-145).

The topics can of course be brought into relationship not only with the institutional background of the article writers but also with the methodological perspectives used by them (statistical indications in Heyen, 1989b: 138). The "conservative-descriptive" approach takes on its greatest importance in Germany in relation to the following areas (only those also considered in figure 4 are mentioned): general administrative law, administrative legal protection, police and public service. For the "progressive-evaluative" approach these are: social law, trade, finance and local administration. In France the corresponding legal areas for the "conservative-descriptive" approach are: general administrative law, administrative legal protection, police and local administration; for the "progressive-evaluative" approach: public service, social law, finance and trade. By comparison with the German Reich it is striking that there is overwhelming structural concord except for local administration, which in centralist France constitutes a politically sensitive topic, and the public service, which around the turn of the century in Germany had long been statutorily regulated and had contributed not a little to the building up of German general administrative law, while in France it still constituted an object of legal policy disputes.

VII.

To sum up:

On the example of a quantitative analysis of administrative legal professional journals from France and Germany, the administrative legal systems of which have decisively influenced continental European developments in administrative law, it has been demonstrated above that the administrative legal science of professors, judges and administrative officials is characterized by specific methodological and thematic profiles. These differ from each other to such an extent that it seems justified to speak of a social segmentation of academic legal discourse based on system interference. The social sub-systems of law, politics/administration and science that come together in administrative legal science enter through the actors professionally operating in them into a scholarly discourse that externally seems to be unitary but internally remains appropriately structured in accordance with the institutional differences in the range of authors and addressees. At the same time it indicates negotiating positions and accordingly prepares for institutionally effective interactions, going beyond intellectual analyses. Members of universities, judi-

ciary and and the administration take from this discourse essentially only what meets their own criteria of selection. Accordingly, if the possibilities of administrative legal thought declared to be scholarly and therefore detached from immediate constraints of action develop in texts on a basically equal footing, nevertheless their chances of effect and influence depend on the broader context, determined by multiple socially and politically institutionalized imbalances.

It is, accordingly, not possible to speak of administrative legal science as a self-observation agency of the legal system alone. It is in part always also a self-observation agency of other social sub-systems (particularly the political-administrative system) and can therefore be conceived of only as a precarious unity, exposed to the danger of fragmentation. It accordingly seems more appropriate from a historical and empirical viewpoint to continue seeing the law of modern Western societies as a system open to the environment and take the theory of legal autopoiesis as a challenge to take the mechanisms operating in the production and maintenance of law autonomy seriously and to study them with attention and precision.

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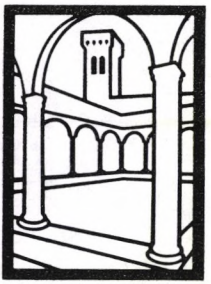

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