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Elements of Bourdieu's Sociology of Law and Dispute Transformation

Olesen, Annette; Hammerslev, Ole

Published in:
Social & Legal Studies

DOI (link to publication from Publisher):
10.1177/09646639221115696

Publication date:
2023

Document Version
Accepted author manuscript, peer reviewed version

Accepted author manuscript of the article: Olesen, A., & Hammerslev, O. (2023).
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Social & Legal Studies, 32(2), 177-196. Copyright © The Author(s) 2022. DOI: https://doi.org/10.1177/09646639221115696

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Annette Olesen (contact author)

Fibigerstræde 13

9220 Aalborg

Denmark

+45 30250541

aol@socsci.aau.dk

Ole Hammerslev

Campusvej 55

5230 Odense

Denmark

+45 2496 1432

ohv@sam.sdu.dk

Annette Olesen, Associate Professor in Criminology and Sociology of Law, University of Aalborg, Denmark

Accepted author manuscript of the article: Olesen, A., & Hammerslev, O. (2023).
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Ole Hammerslev, professor of sociology of law, University of Southern Denmark,

ohv@sam.sdu.dk.

Accepted author manuscript of the article: Olesen, A., & Hammerslev, O. (2023).
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Abstract

The academic response to Bourdieu's sociology of law has mainly followed what could be called "the constitutive turn" in his engagement with the law, i.e., his Weberian focus on the role of legal professionals in state transformations. However, rereading Bourdieu's (1987) "The Force of Law" through the lens of its references and relating it to the sociology of law "of the moment" (ie that of the late 1980s), it becomes clear that Bourdieu's sociology of law is more sophisticated than has generally been acknowledged. Based on "the sociology of law of the moment", which engaged with dispute transformation, it is possible to reestablish a sociology of law in Bourdieusian sociology. In this article, we reread Bourdieu's 1987 article with a specific focus on the hitherto overlooked parts that elucidate dispute transformation, and we highlight Bourdieu's thoughts about this neglected branch of his sociology of law. We unpack one of Bourdieu's most central sources, Felstiner et al. (1981), by rereading it in the light of Bourdieu's sociological tools. Emphasizing Bourdieu's more implicit points about the pre-dispute phase accentuates how habitual dispositions and forms of capital have an impact on the possibilities available to citizens to transform a justiciable problem into a legal dispute by seeking help from lawyers.

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> Nothing is less "natural" than the "need for the law" or, to put it differently, than the impression of an injustice which leads someone to appeal to the services of a professional. (Bourdieu 1987: 833)

1. Introduction

The aim of this article is to discuss an implicit yet hitherto overlooked breadth in Bourdieu's sociology of law. Although Bourdieu never undertook systematic empirical studies of the legal field, he addressed law and legal professionals in a range of texts, most notably in "La force du droit" (Bourdieu 1986), which outlined a research program for the law.[1] Bourdieu's engagement with the law has been considered a rather unfulfilled research program (Lenoir 2006; Villegas 2004) and has not been cited as often as one might expect for a Bourdieu article (Dezalay and Madsen 2012).[2] The main critical response to and reinterpretation of Bourdieusian sociology of law has mainly followed what could be called "the constitutive turn" in Bourdieu's engagement with the law, i.e. Bourdieu's late (even thought it was implied in "The Force of Law") focus on law and lawyers. The focus had a sort of Weberian emphasis on how legal professionals took part in constructing and transforming states. Thus, the dominant empirical use of the Bourdieusian tools as well as the theoretical texts that have developed the Bourdieusian sociology of law have mainly focused on how lawyers and legal professionals have taken part in transforming and constructing national and transnational legal fields (see e.g. Hagan and Levi 2005; Dezalay and Garth 1996; 2010; Cohen 2007; Cohen and Vauchez 2007; Vauchez 2011; 2010; Madsen 2007; Hammerslev 2010; 2015; Dezalay 2020; Vauchez and France 2021). Such readings are understandable, since this interpretation and reading of the Bourdieusian sociology of law is in line with Bourdieu's later work on the transformation of the

[1] 'La force du droit' was translated into English and published as 'The Force of Law: Toward a Sociology of the Juridical Field' by Terdiman in 1987. For details about the genesis of the English version see [Redacted for peer review].

[2] It was cited 804 times according to a Web of Science reference search on 'Bourdieu' as author and 'The Force of Law' as title, conducted 2 November 2021.

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modern state (Bourdieu 2005a; 1998; 2005b; 2012; Arnholtz and Hammerslev 2013), but may also be related to the impact of Yves Dezalay's "constitutive" use of Bourdieu. In fact, Bourdieu refers to Dezalay's work in "The Force of Law" (1987). Dezalay was one of Bourdieu's collaborators (Lenoir 2006; Hammerslev and Arnholtz Hansen 2009) and, together with Bryant Garth, he developed groundbreaking work on transnationalisation of legal institutions and elite lawyers (Dezalay and Garth 2011; 2002; 1996). This form of sociology of law focuses, as do parts of Bourdieu's (1987) Force of Law-article, on the role of lawyers in the emergence of legal institutions and state transformations through import-export mechanisms. It can be considered as a form of sociology of law from above (Banakar 2014) or a sociology of elite lawyers (see also Moore 2001), with its focus on the role of elite lawyers in state transformations and developments of legal institutions, rather than a sociology of law that focuses on grievances, claims, and disputes or—in short—law from below (Banakar 2014). Focusing on the law from below, classic American legal consciousness studies with their roots in The Amherst Seminar on Legal Processes and Ideology (see Silbey 2018; Trubek & Esser 1989; Halliday and Schmidt 2009) found inspiration in Bourdieu's sociology. However, interestingly the most classic studies, such as Ewick & Silbey (1998), Sarat (1990) and Merry (1990), do not refer to Bourdieu's socio-legal article, but to his general sociology (see also Silbey 1992). Thus, Bourdieu's general sociology complements different branches of the sociology of law.

One of the more overlooked parts of Bourdieu's sociology of law, which makes up a central concern in his "Force of Law" article, focuses on how laypeople's understandings of problem complexities are very different from those of professionals, and how a professional would translate "a perceived, or even unperceived, grievance into an explicitly attributable harm and thus convert a simple dispute into a lawsuit" (Bourdieu 1987: 833). Rereading Bourdieu (1987) through the lens of its references and relating the article to the sociology of law "of the moment" (in the late 1980s), it is clear that Bourdieu's sociology of law is more sophisticated than was evident from its reception, as discussed

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above, which may also explain why it has been referred to in recent legal consciousness studies (Young and Billings 2020), in studies of legal aid (*redacted for peer review*), etc. Without paying such particular attention to the articles and sources referenced by Bourdieu, one might assume that "The Force of Law" was simply French theory and consider it an example of the "deep structural differences in the very conceptions of law, state, and society between US law and society scholarship and French historical sociology in the tradition of Bourdieu" (Dezalay and Madsen 2012: 434ff.). However, rereading the articles referenced in "The Force of Law" challenges this perception, as Bourdieu refers to several articles, inter alia, from the path-breaking special issue of *Law & Society Review* (1981) on "Dispute Processing and Civil Litigation" (Grossman and Trubek 1981). The special issue encompasses articles concerning dispute transformation. One of the articles that Bourdieu refers to—and clearly bases his understanding on—is Felstiner, Abel and Sarat's seminal article "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming…" (1981). In the article, Felstiner et al. developed the concepts "naming", "blaming" and "claiming" to represent the legal transformation process in the pre-dispute phase, i.e. the phases that an (un)perceived injurious experience follows before it may (or may not) end up as a juridical dispute and ultimately be tried in court. The "naming, blaming, claiming" article is a canonised socio-legal text which has had great impact both inside and outside the sociology of law (*redacted for peer review*). It is among the five most cited articles from *Law & Society Review* (Savelsberg et al. 2016) and has been considered as "truly seminal research" (Collins 2018: 379).

Compared to his analysis of the dispute transformation process, Bourdieu was more explicit when it came to his examination of the development of legal fields in relation to the state, based on agents' forms of capitals and strategies.[3] We will, however, argue, that by putting American sociology of law

[3] For a short introduction to Bourdieu's theory and main concepts, see Terdiman (1987).

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"of the moment" (in the late 1980s) back into the Bourdieusian sociology of law, we obtain a more nuanced and deeper understanding of his socio-legal research program. We will further suggest that such a rereading contributes to an examination and discussion of the many complex layers of the dispute transformation process. Our rereading of Bourdieu's socio-legal text related to the American sociology of law "of the moment" carefully examines Felstiner et al.'s (1981) essential contribution to understanding dispute processing and civil litigation. Bourdieu ascribes importance to the transformation process because it is via this process that professionals in the legal field, through their legal capital, transform cases to be handled and supervised with the law and thus become part of the law.[4] If anything, it is the exception rather than the rule when a justiciable issue is transformed into a legal dispute and is resolved by a court. This emphasizes the importance of focusing on the pre-dispute phase. As early as 1960, Barton and Mendlovitz (1960: 30) characterised the fact that only a few cases end up in court as "… [the] 'iceberg problem' in the administration of justice", which was later confirmed by Best and Andreasen (1977) and by one of the articles in the special 1981 issue of *Law & Society Review* (Miller and Sarat 1981). In addition to the challenges of equal access to justice, leaving legal disputes unresolved can cause social, health and financial consequences for citizens (Currie 2007; Genn 1999; Genn and Paterson 2011). Therefore, knowledge about the pre-dispute phase can have significant individual and societal potential. The societal impact of studying the pre-dispute phase is, however, beyond the scope of this article.

The main purpose of this article is to discuss an implicit and overlooked breadth in Bourdieu's sociology of law, namely the dispute transformation process, to produce a more complete understanding of his socio-legal research program. Emphasizing Bourdieu's more implicit points

[4] It is important to note, however, that Bourdieu acknowledges that struggles within the juridical field happen not only in and between legal institutions such as courts, institutions of arbitration and mediation but also in everyday legal work in which lawyers, in-house council, legal aid workers, etc. negotiate cases.

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about the pre-dispute phase is done through a careful double reading. We reread Bourdieu (1987) with a specific focus on the parts that elucidate complex dispute transformation, which have hitherto been overlooked, and we try to highlight Bourdieu's points about this neglected branch of his sociology of law. At the same time, we examine one of Bourdieu's (1987) most central sources, Felstiner et al. (1981), by rereading it using Bourdieu's sociological tools and conceptions.

Section 2 below identifies and analyzes the dispute transformation process through a careful and accurate outline of Bourdieu's 1987 article. Section 3 discusses Bourdieu's analysis of the dispute transformation process in relation to Felstiner et al. (1981). The potential for a deeper understanding of the dispute transformation process is discussed in the final section, with some concluding remarks. This exercise goes beyond the theoretical; it provides a deeper understanding of the pre-dispute phase, in which the dispute transformation happens.

2. Bourdieu and "The Force of Law"

To understand the depth of Bourdieu's analysis of the dispute transformation process it is necessary to read it in relation to his entire socio-legal text. Thus, in the following we will outline Bourdieu's view on the dispute transformation process in relation to his overall research agenda of the law by applying a descriptive approach. The article's original title "La force du droit" (Bourdieu 1986) plays on a duality of meaning: the power of the law and legal force.[5]

"The Force of Law" article is divided into six subsections: after an introduction, which outlines the article's overall socio-legal research program, the second section discusses "the division of juridical labour" (Bourdieu 1987: 817) and competition in the juridical field for the "monopoly of the right to determine law" (Bourdieu 1987: 817). The third section discusses the institutionalization of the

[5] Derrida's title on his keynote presentation at a colloquium at Cardozo Law School in 1989 played on the same duality: "The Force of Law: The 'Mystical Foundation of Authority'" (Derrida 1992).

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monopoly of production and sale of legal services and the mechanisms that tend to reproduce the monopoly. It is in that third section that Bourdieu refers to Felstiner et al. (1981) and the pre-dispute phase: Bourdieu discusses how professionals transpose experiences of injustice into the language of the law. The fourth section considers the "power of forms", i.e., how the juridical form maintains the legitimacy of the law in relation to power relations in the entire juridical field and in relation to the field of power. The fifth section discusses how law as an active discourse has "the power of naming", as a form of symbolic power on behalf of the "sovereign vision of the State" (Bourdieu 1987: 838). In the sixth and final section Bourdieu discusses the effects of homology between the juridical field and other social fields.

In the introductory section, Bourdieu takes as his starting point one of the core discussions in the sociology of law: the duality of law (see e.g., Weber 1977; 1978; Habermas 1996; Banakar 2003). Insisting that law's internal operations are dependent on the structure of the juridical field and its position vis-à-vis the field of power, Bourdieu breaks with the "formalist" understanding of the law, which considers law to be more or less autonomous, perhaps most clearly illustrated by Kelsen's (1960) "pure theory of law". Bourdieu does not accept Luhmann's systems theory, in which law acts as a self-referential (autopoietic) system that does not differentiate between law as a symbolic structure and the mechanisms and institutions producing it (see e.g., Luhmann 1981; 1985). Bourdieu also breaks with "instrumentalist" sociological understandings of the law, which do not pay attention to how the internal operations of law are linked to law's relationship with its surroundings. Thus, Bourdieu criticizes Althusser's conclusions—and those of Marxism in general—about the symbolic meaning of law and jurisprudence as being a part of the superstructure legitimizing the economic structures of society and being determined by the base. Nor does he accept Foucault's discourse analysis (Hunt and Wickham 1994; Foucault 2002), which does not examine discourses in relation to the actors that produce and reproduce them in different, but very specific, historical social contexts.

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According to Bourdieu both perspectives are important in order to understand the force of the law but only if the sociology of law is able to encompass both viewpoints, since both approaches are mutually interdependent in the establishment of the force of the law.[6] In other words, Bourdieu's 1987 article discusses the force of the law and how law's strength is related to the balance of power in the legal field, how the legal field is homologous with other fields and dependent on (and co-producer of) the "state", and how the dispute transformation process is central for the function of the field. Thus, Bourdieu refocused the perspective from "law" to the legal field, which implies an ontological shift; instead of focusing on the being or essence of law and legal agents, the focus is now on the development (or construction) of the law seen in its socio-historical context (Hammerslev and Madsen 2006). According to Bourdieu, socio-legal analysis should focus on "the site of a competition for monopoly of the right to determine the law" (Bourdieu 1987: 817), i.e., field struggles are about being in a position to most autoritatively invoke the right to interpret the law correctly as a symbolic power in a field with clear professional hierarchies. These struggles are framed by judges, lawyers, legal scholars, and civil servants at different levels, by legal methodology and by hierarchies between the legal sources which legitimize legal decisions. Such a focus delineates how legal practices and discourses are constantly produced and reproduced by the structures of the field.

2.1 The Division of Juridical Labor

Bourdieu's discussion of the division of juridical labor builds on an analysis of the continuing struggle for the "monopoly to determine law" among legally educated actors, who use their officially

[6] Bourdieu emphasizes this point throughout his entire work when examining fields that—through socio-historical processes—have managed to appear autonomous and independent of their surroundings (see e.g. Bourdieu 2005c). This is another important but rather overlooked aspect of Bourdieu's sociology of law. In fact, Bourdieu enters and develops one of the key discussions within sociology of law, namely that about how 'the inside' and 'the outside' of the law are related. Bourdieu merges the two perspectives by focusing on the historical conditions that created the possibilities for developing the image of law's autonomy and relates it to the developments and strengths of other fields.

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recognized credentials to legitimately interpret the legal texts "sanctifying a correct or legitimized vision of the social world" (Bourdieu 1987: 817). Through an ongoing process of rationalization of the law, a differentiation happens between laypeople and legal professionals. According to Bourdieu, laypeople have spontaneous perceptions of fairness but are unable to use the language of the law, whereas professionals, because of their training, manage to base their judgements on legal norms. This increasing division between lay persons and professionals contributes to law's appearance as an autonomous system independent of individuals, other fields and power relations. In contrast to other interpretive sciences, such as literature, philosophy or modern theology, interpretation of the law has a practical dimension, in which jurisprudence and its questions about the conception of law's absolute autonomy plays a role even though this very scientific discipline reproduces law's self-representation as an autonomous system.

Bourdieu finds that juridical language illustrates an *appropriation effect* embedded in the very logic of the juridical field's operations (Bourdieu 1987: 819), when it merges elements of everyday language with rhetoric of objectivity and impersonality. The appropriation contributes to two sets of effects: first, to a *neutralization effect* (Bourdieu 1987: 820) based, inter alia, on syntactical use of impersonal and passive sentence constructions; and second, to a *universalization effect*, created by concurrent procedures such as systematic use of the indicative mode "for the expressions of norms; the use of constative verbs in the present and past third person singular … and the recourse to fixed formulas and locutions, which give little room for any individual variation" (Bourdieu 1987: 820).[7] Through their practical legal sense, legal professionals take part in the ongoing rationalization process of legal work (Bourdieu 1987: 820).

[7] This is a classic socio-legal point based on Marx's work on the law (Hunt 1993).

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In the juridical field, division of labor has been developed between, on the one hand, legal science's theoretical advancement of the doctrine, and an interpretation of the doctrine aiming at solving disputes in practice on the other. The division of labor between theory and practice is crucial for the development of law. It is through struggles between legal actors that law's practical meaning is decided. But these struggles depend on the cases and legal negotiations coming to the field. The legal actors of the field direct their expertise for specific categories of clients (and, as we will see later, clients correspond to their lawyers' position in the social hierarchy). Bourdieu argues that the relative strength between different positions in the legal field manifests itself differently in different countries with different legal traditions; therefore, the examinations of legal fields should take into consideration the legal field's position seen in relation to the broader field of power. The "relative weight granted to 'the rule of law' or to governmental regulation, determines the limits of the power of strictly juridical action" (Bourdieu 1987: 823). In this regard, legal sources should be understood as "a reserve of authority providing the guarantee for individual juridical acts in the way a central bank guarantees currency" (Bourdieu 1987: 823).

2.2 The Institution of Monopoly

In section three of his 1987 article, Bourdieu discusses the dispute transformation process and refers extensively to the American sociology of law "of the moment". The discussion is a part of a greater argument about how legal professionals gained a monopoly on legal service, and how the structures of the field divide between professionals and laypeople. Due to their credentials and dispositions professionals are qualified to participate in this "game" while laypeople, "who, though they may find themselves in the middle of it, are in fact excluded" (Bourdieu 1987: 828) because they have not

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mastered the requisite legal competences (such as language and attitude) and lack formalized qualifications, such as a Master of Laws.[8]

According to Bourdieu a difference exists between lawyers' professional body of knowledge and non-lawyers' "simple counsels of common sense", "the revocation of their naive understanding of the facts" and "view of the case" (1987: 828). The difference between the legal expert and the client contributes to the production of a power relation in which "two systems of presuppositions, two systems of expressive intention – two world-views – are grounded" (Bourdieu 1987: 828–9). Bourdieu refers to linguistic theory to explain how lawyers succeed in appropriating ordinary language into the language of law. On the surface, ordinary language and the professional language of law resemble each other; however, language consists of several principles of perception and categories, which means that the same word can have different meanings depending on the social and mental spaces in which the word is used. Through language, law can—with the appropriation effect—neutralize and universalize the object and facts of the disputes in "de-realization" and "distancing" processes (Bourdieu 1987: 829) and thus transform the dispute to a conflict about rules mediated between professionals. Relying on the sources of law, lawyers can produce a "neutralizing distance" which is "a kind of functional imperative, but one which is inscribed at the deepest level of the habitus" (Bourdieu 1987: 830). Thus, when laypeople entrust their cases to lawyers, their ordinary experience and language describing the situation at stake is appropriated and redefined through the language and conventions of the law (Bourdieu 1987: 831). Lawyers retranslate the facts of the case through a "juridical construction", as Bourdieu calls it, in order to be able to litigate the case as a legal dispute through legal argumentation and the language of the law. In this process only the legally

[8] In other parts of his work, Bourdieu discusses how professions are historical constructs, developed in competition between different groups of suppliers of services (see especially Bourdieu and Wacquant 1992: 242).

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relevant facts of the dispute are abstracted and translated into the language of the law. Bourdieu relates this to his general theoretical framework:

> Shaped through legal studies and the practice of the legal profession on the basis of a kind of common familial experience, the prevalent dispositions of the legal habitus operate like categories of perception and judgment that structure the perception and judgment of ordinary conflicts, and orient the work which converts them into juridical confrontations. (Bourdieu 1987: 833)

The "collective labor of 'categorization'" (Bourdieu 1987: 833) transforms a perceived—or even unperceived injury—into an "explicitly attributable harm" (Bourdieu 1987: 833); thus, the dispute is transformed from a feeling of injustice to a legal dispute. The ability to sense or perceive an experience as an injury, which is the precondition for the dispute transformation, is unequally distributed among the population and depends, according to Bourdieu, on one's position in social space. If a justiciable problem should be categorized as legal, it needs to transform from "an unperceived harm into one that is perceived, named, and specifically attributed" (Bourdieu 1987: 833). This process "presupposes a labor of construction of social reality which falls largely to professionals" (Bourdieu 1987: 833).

To be able to recognize perpetrated injustice requires a "feeling that one has rights". Hence the specific power of legal professionals consists in revealing rights, and revealing injustices by the same process', or manipulating "legal aspirations—to create them in certain cases, to amplify them or discourage them in other" (Bourdieu 1987: 833–4).[9] With reference to Mather and Yngvesson's (1981) article from the special issue of *Law & Society Review*, Bourdieu finds that legal professionals interpret "problems expressed in ordinary language as *legal* problems, translating them into the

[9] For an extreme example of this, see Mertus (2004).

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language of the law and proposing a prospective evaluation of the chances for success of different strategies" (Bourdieu 1987: 834). This is a part of lawyers' expansion work, which produces the need for their services. Bourdieu further refers to the contributions of Mather and Yngvesson (1981), Felstiner et al. (1981) and Coats and Penrod (1981) from the special issue, and outlines several reasons why lawyers aim to construct disputes: first, due to financial interests; second, their ethical and political dispositions; third, their "social affinities with their clients"; and fourth, "their most specific interests, those which are defined by their objective relations with other professionals" (Bourdieu 1987: 834).

The way the legal field functions "tends to impose the effect of closure, visible in the tendency [of] judicial institutions to produce truly specific traditions, in categories of perception and judgment which can never be completely translated into those of the nonprofessional. Juridical institutions produce their own problems and their own solutions according to a hermetic logic unavailable to laypeople" (Bourdieu 1987: 834).

The professionals take ownership of the cases from their clients and thus also "the mastery of the situation" (Bourdieu 1987: 834) when clients' understanding and mental space change: a change that is closely related to changes in the social spaces that the dispute moves through. "The field transforms their prejuridical interests into legal cases and transforms into social capital the professional qualifications that guarantees the mastery of the juridical resources required by the field's own logic" (Bourdieu 1987: 834).

Thedevelopment of the legal field is related to "the institution of a professional monopoly over the production and sale of the particular category of products' legal services" (Bourdieu 1987: 835). Lawyers' legal expertise ensures control over access to the field when they decide "which conflicts deserve entry, and determining the specific *form* in which they must be clothed to be constituted as properly legal arguments" (Bourdieu 1987: 835). With reference to Abel (1981) and the market

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closure theory, Bourdieu discusses how such professional construction work is also a process of "appropriative constitution" (Bourdieu 1987: 835), where the size of the profit depends on the degree to which the lawyers can control access to the field.[10] In continuation of this, laypeople are excluded from taking part in the field. In other words, "a process *of circular reinforcement* goes into action: every step toward the 'juridicization' of a dimension of practice creates new 'juridical needs'" (Bourdieu 1987: 836).

2.3 The Power of Naming

For a number of reasons, the courts are key institutions in the juridical field: first, because of the position of the courts in the social and state hierarchy; second, because they create precedents; and third, because they are the ultimate dispute handling institution. A court's judgement expresses specific worldviews and distributes symbolic and material resources. Bourdieu argues that a trial represents "a paradigmatic staging of the symbolic struggle inherent in the social world" (Bourdieu 1987: 837). The judicial power enforces and legitimizes through judgements specific worldviews, as the decisions transcend individual judges and transfer symbolic power to the state. Thus, the state holds the monopoly on the legitimized symbolic violence. According to Bourdieu, the ruling belongs to "the class of *acts of naming* or of *instituting*. The judgment represents the quintessential form of authorized, public, official speech which is spoken in the name of and to everyone" (Bourdieu 1987: 838). Law produces effects in the society it is produced by. The law, or its representation, "ratifies and sanctifies the doxic view of the divisions of the social world by representing this view with the perceived objectivity of orthodoxy. Such an act is a veritable act of creation which, by proclaiming

[10] Abel (1988; 1989) examined the development of lawyers primarily in the USA and in England and Wales. Abel argued that the professions, through market control, strive for social closure. Abel focused on how successful lawyers were to control access to the profession (production of producers) and how successful the profession was in controlling competition inside the profession (production for producers).

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orthodoxy in the name of and to everyone, confers upon it the practical universality of that which is *official*" (Bourdieu 1987: 839).

2.4 The Power of Form and the Effects of Homology

Bourdieu argues that law and legal actors are ascribed legitimacy. However, this legitimacy is based neither on the professions' perception about law being an "expression of universal and eternal values, transcending any individual interest" (Bourdieu 1987: 841) nor on the effects of power and stakeholder interest. To understand the legitimacy, it is necessary to "take account of the *totality of objective relations* between the juridical field and the field of power and, through it, the whole social field" (Bourdieu 1987: 841).

As in other fields, actors in the legal field have a proximity of interests, a professional collegiality, and through specific processes of socialization, where the educational field plays the most important role in installing similar habitual dispositions and worldviews in each of the individual actors. Despite law's apparent neutrality, a community exists between the different positions in the field and between the different fields and the actors' trajectories. Through its formalized form, juridical work produces different effects. The law has the effect of preserving existing structures; the use of precedent "ties the present continuously to the past" (Bourdieu 1987: 845), and guarantees that what is to follow will closely resemble that which has already happened, and that any evolution will be "in a language that conforms to the past" (Bourdieu 1987: 845). This produces a universalization—or normalization—which resembles the dominating public view. And it is through this universalization that symbolic domination, i.e., the legitimacy of the social order, can be enforced and reproduced in differentiated societies (Bourdieu 1987: 846). Similar to other fields producing symbolic goods, there is no one unique creator (Bourdieu 1995; 1997) in the legal field. Thus, the actual producer of law is not

> the legislator but the entire set of social agents. Conditioned by the specific interests and constraints associated with their positions within different social fields … these agents

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> formulate private desires or grievances, transform them into "social problems," and organize the presentations … and the pressures … designed to push them forward (Bourdieu 1987: 847).

Ongoing formalization in the field ensures that the actors "may count on a coherent and inescapable norm. They therefore may calculate and predict both the consequences of adherence to the rule and the effects of transgressing it" (Bourdieu 1987: 849). Thus, law and its procedures serve to produce predictability.[11] To obtain an image of law's symbolic power it is, according to Bourdieu, necessary to examine "the homology between different classes of producers and sellers of legal services and different classes of clients" (Bourdieu 1987: 850). Actors in the legal field have the inclination to interact with actors at the same structural level in the social space, which contributes to a reproduction of these levels. Thus, the juridical field's internal protocols and assumptions are organized like any social field.

Whilst we have placed an emphasis on dispute transformation in the above reading of Bourdieu (1987), it may still be considered an accurate summary. Based on this, we will discuss Bourdieu's analysis of the dispute transformation process in some depth in relation to Felstiner et al.'s (1981) article "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming…" which has been of vital importance to the sociology of the law "of the moment".

3. The Pre-Dispute Phase: Naming, Blaming and Claiming

While reading Bourdieu (1987) it becomes clear that one of his key references to American sociology of law was Felstiner et al.'s (1981) article about the pre-dispute phase. Felstiner et al.'s (1981) socio-legal contribution was the culmination of an increasing interest from within the areas of anthropology and sociology of law in how disputes might or might not end up in legal institutions. By examining,

[11] Predictability is a core concept in the sociology of law. It has been used by e.g., Weber (1978), Durkheim (1984) and Luhmann (1993) in their studies of the role of law.

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among other issues, how social processes and different actors affect the development of injurious experiences in the pre-dispute phase, an increasing number of studies aimed at developing typologies to better understand and explain complex pre-dispute transformations (Schwartz and Miller 1964; Felstiner 1974; Abel 1974; Galanter 1974; Grossman and Sarat 1975; Spitzer 1983). Moreover, research on the pre-dispute phase was generally aimed at investigating how legal and social categories and everyday practices mirror social structures (Black 1976; Spitzer 1983). In other words, the pre-dispute studies were contributing to a new research agenda about how justiciable problems are dynamic and constructed phenomena which transform as they progress through different phases and ultimately might transform into legal disputes in legal dispute institutions (see e.g., Gulliver 1969; Snyder 1981). These studies wanted to refocus the dominant view of legal research that saw disputes as a relevant research object only when they had developed into cases in court or even when they had been settled and decided by the courts. The renewed focus on disputes considered them as social constructs with a historical and social background (Abel 1974; Nader and Todd 1978; Snyder 1981). Felstiner et al. argued that the pre-dispute transformation was a sequential process going through three (ideal type) phases: naming, blaming, and claiming.

Felstiner, Abel and Sarat have stressed that they were unfamiliar with Bourdieu's general sociology when they published "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming …" (*redacted for peer review*) but it is clear from our close reading of both pieces that Bourdieusian sociology coheres well with the American sociology of law "of the moment", in particular with Felstiner et al.'s (1981) contribution.[12] This congruity may also be one of the reasons why Bourdieu was inspired by the analytical framework in Felstiner et al. (1981)..

[12] As Sarat has stated: 'It's ["The Emergence and Transformation of Disputes: Naming, Blaming, Claiming ..."] been easily adaptable (…) We offered a conceptual framework, that's all (…) our article didn't have a disciplinary home, it was eclectic' (*redacted for peer review*).

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By reading the central American socio-legal source references cited by Bourdieu in "The Force of Law" (1987), in particular Felstiner et al. (1981), it becomes easier to comprehend Bourdieu's understanding of dispute transformation. In the following sections we aim to outline Felstiner et al.'s (1981) understanding of dispute processing and dispute resolution, in order to unpack Bourdieu's (1987) sociology of law and thus reinstate in his socio-legal article a sociology of law that focuses on dispute transformation.

3.1 The Injured Person's Categories of Perception and Naming of a Problem

The first stage of the pre-dispute phase, according to Felstiner et al. (1981), is "naming", in which a justiciable legal issue expressed in ordinary language may be transformed from an "unperceived injurious experience" (1981: 634) into a recognized and named injurious experience. The term "unperceived injurious experience" was adopted by Bourdieu in the English translation of "The Force of Law". Felstiner et al. (1981) believe that the naming phase is the most critical in the transformation process and they note that "the level and kind of disputing in a society may turn more on what is initially perceived as an injury than on any later decision" (Felstiner et al. 1981: 635). The naming phase is characteristically very complex, which also makes it complicated to examine. The phase is person-dependent, because the emergence or absence of the development of disputes is mainly dependent on the individual person's attributions. Felstiner et al. relate the attributions or experiences of causality to the individual's social position, including educational level, social network, position on the labor market, legal consciousness, previous experiences with the legal system, etc. (Felstiner et al.1981: 633, 635−6). In other words, experiences can be understood differently depending on the individual's continuous cumulated experiences. How the person experiences the incident can be understood as inconstant, since how the person perceives the experience can change over time, in accordance with the development of the individual and according to new input which changes the way the individual categorizes that experience. Thus, without using the Bourdieusian tools—or theory

if one prefers—Felstiner et al.'s understanding of the pre-dispute phase is parallel to Bourdieu's understanding that the very process of qualifying or categorizing an incident as a problem depends on the individual's pre-understanding and possibilities of categorizations, which are in turn based on the individual's forms and strength of capital as well as their position in the social space. Such an understanding of habitus is implicit in the entire backlist of Bourdieu's work (see e.g., Bourdieu 1977; 1990).

3.2 The Injured Person's Social Position and Blaming of the Problem

In the second stage of Felstiner et al.'s problem transformation, the perceived injurious experience may develop into a problem that the injured person considers resolvable (Felstiner et al. 1981). Felstiner et al. define this phase as "blaming", as in this phase the injured person articulates the injurious experience to one or more audiences and directs the accusations toward another legal or physical person: the wrongdoer. Since the blame now is directed toward a specific (legal) person, the problem is identified and separated from other problems. Thus, the blaming phase develops implicitly from the injured person's perspective and builds on an understanding that the injured person has experienced a problem and finds that it can be resolved through legal avenues. If the injured person names the problem but does not blame anyone, it is not possible to transform the problem into a legal case. In Bourdieusian terms, the blaming of a problem is dependent on the injured person's possible categories of perceptions and dispositions mediated by habitus. Felstiner et al. expand on how the naming phase can develop differently by noting that the individuals' perceptions can change during the process, as indeed can the number of injured parties, and the parties who caused the damage. Reflecting their background in the American legal system, they give as an example an individual case transforming into a class action lawsuit, where the council and clients can change during the process. Bourdieu does not explicitly consider these points, but it can be deduced that such development patterns are dependent on the field structure and the legal possibilities that the specific field mirrors.

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Indeed, Bourdieu discussed how disputes change depending on the social spaces that the dispute moves through.

The parties involved in the dispute are of course the most central agents in the transformation process. Felstiner et al. note that "Their behavior will be a function of personality as it interacts with prior experience and current pressures. Experience includes involvement in other conflicts; contact with reference groups, representatives, and officials; and familiarity with various forms of dispute processing and remedies" (Felstiner et al. 1981: 640). Felstiner et al. further argue that "Personality variables that may affect transformations include risk preferences, contentiousness, and feelings about personal efficacy, privacy, independence, and attachment to justice (rule-mindedness). Both experience and personality are in turn related to social structural variables: class, ethnicity, gender, age" (Felstiner et al. 1981: 640). This is in parallel and equivalent to Bourdieu's outline of a sociology of law in which personality, perceptions, legal consciousness etc. direct practices through habitus and dispositions, and social variables are seen through various forms of capital. However, in addition to how the parties' different habitus and dispositions can affect the transformation process, Felstiner et al. also discuss how the parties' relationship can have an impact on the transformation process. The problem transformation can develop differently depending on the social arena—or life sphere—in which the parties have met, and in which arena the dispute emerged. Moreover, their relative status is also significant in relation to the development of the dispute and in relation to the legal strategies the parties may choose, including the degree of "hostility" between them and whether the relationship has been characterized by previous disputes.

Involved parties can also often include one or several mediating audiences. According to Felstiner et al. an audience can consist both of peers and professionals such as lawyers, physiatrists, social workers, police, or unions. Such audiences can, in different ways, help the injured party to understand the problem and respond to it (Felstiner et al. 1981: 644–5). Professional audiences who have

experience with problem handling can, according to Felstiner et al., exercise their power, for example, by defining the problem and laying out different aims and strategies to resolve the dispute (Felstiner et al. 1981: 642, 644–7). Thus, the audience can affect how a named problem can transform into an actual accusation. According to Felstiner et al., the audience's contribution to the understanding and handling of the problem depends on several things, including finances, the composition of the personnel, branding and reputation at stake taking the case and the success rate for such cases (Felstiner et al. 1981: 647). In Bourdieu's sociology of law, lawyers are (of course) core actors in dispute transformations, since they interpret law in relation to practice and thus legalize problems formulated in everyday language. Through legal categorization, lawyers can take over the cases from clients and carry out the "blaming" of the problem using appropriate legal terminology.

3.3 The Injured Person's Options and Placement of Responsibility of a Problem

After the blaming phase comes the third stage: claiming. Claiming occurs when the injured person, who has named and blamed a justiciable problem, charges a (legal) person with having caused the problem and claims compensation (Felstiner et al. 1981: 635−6). If the wrongdoer takes responsibility for the problem, it is possible for the problem to be guided into alternative normative systems or non-legal avenues (e.g. mediation), or even for it to be "lumped" if the injured party does not take the case forward for any reason. If, however, the wrongdoer refuses to take responsibility for the injured party's problem, the case can transform into a legal case, to be resolved by legal institutions. As in the blaming phase, Felstiner et al. argue that different audiences can have an impact on the claiming phase as they can, for example, change the ownership of the conflict (Christie 1977), change the balance of power in the communication between the lawyer and client, or change the form and language of the arguments supporting the case (Felstiner et al. 1981: 647–8, 652). With reference to Parsons (1952), Felstiner et al. note that the lawyers play key roles as gatekeepers to legal institutions. Moreover, lawyers have important roles in the dispute-resolution process (Felstiner et al. 1981: 645).

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Bourdieu's view aligns with this, but for Bourdieu lawyers are both gatekeepers to the legal field in relation to the cases, as they transform justiciable problems into legal disputes, possibly even litigation, and also control the field for newcomers who try to enter the legal field (this is equivalent to Abel's (1988) neo-Weberian market control theory). Bourdieu and Felstiner et al. agree, however, that lawyers partly create the needs that they satisfy. Thus, in legal dispute-resolution institutions and especially in the courts, cases can go through yet another transformation "because the substantive norms they apply differ from rules of custom or ordinary morality, and their unique procedural norms may narrow issues and circumscribe evidence" (Felstiner et al. 1981: 647). According to Felstiner et al. "the esoteric nature of court processes and discourse, and the burdens of pretrial procedure", which is related to the monopoly of lawyers, means that "the attitude of disputants may be altered by their minimal role in the courtroom and the way they are treated there" (Felstiner et al. 1981: 648). With reference to Christie (1977), Felstiner et al. find that lawyers and the state "expropriate" the involved parties' "property", i.e., the conflict. In this way Felstiner et al. are in agreement with Bourdieu, who also references Christie (1977), and finds that lawyers transform cases from their original basis to fit into the form and language of the law, thus distancing the injured party from the transformed case. Like Bourdieu, Felstiner et al. find that lawyers act differently, using different types of legal strategies, depending on which type of clients they negotiate with: i.e., they distinguish between individuals and legal persons and their position in the social hierarchy (Felstiner et al. 1981: 646). Lawyers offer a forum for testing the reality of the clients' perspective by helping them "identify, explore, organize, and negotiate their problems; and give emotional and social support to clients who are unsure of themselves or their objectives" (Felstiner et al. 1981: 646). There also seems to be unanimity between Bourdieu and Felstiner et al. when it comes to the role of lawyers in transforming simple problems articulated in everyday language into legal disputes formulated in the language of the law. Lawyers are considered to be the most important actors in the transformation of problems to

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legal disputes, a position they hold due to their professional knowledge and facility with the language of the law.

4. Conclusion

By reading Bourdieu's central socio-legal references to the groundbreaking *Law & Society Review* special issue about the pre-dispute phase—and in particular Felstiner et al. (1981)—it becomes clear that Bourdieu was inspired by the sociology of law "of the moment" and its focus on the pre-dispute phase. This perspective underlines how simple problems and (un)perceived injurious experiences can be transformed into legal issues by allowing lawyers to expropriate the problems and translate them into the language of the law in preparation for their resolution in legal dispute institutions, such as the courts. Both Bourdieu and Felstiner et al. look at legal problems as products of social and historical processes with different actors who manage to name problems and affect the transformation process depending on their position in social space. Both Bourdieu and Felstiner et al. understand simple problems as social constructs emerging in other spheres than the legal, in which they can—depending on the involved parties' understandings, categorization, dispositions and networks—be transformed into legal disputes which most often are mediated by professional legal experts. The dispute transformation is thus dependent on the legal possibilities for action embedded in legal sources, the forms and language of law and the autonomy of the juridical field and specific field trajectory.

A co-reading of Felstiner et al. (1981) and Bourdieu (1987) emphasizes the relative significance of the individual's habitual dispositions and their specific situation in particular social spaces for the possibilities of a problem formulated in everyday language to be transformed into a legal dispute and in the end develop into a case in legal dispute institutions, and in particular the courts. Where Bourdieu only discusses the pre-dispute phase to a limited degree, Felstiner et al.'s primary focus is on the chronological, linear dispute transformation through the three pre-dispute phases of "naming, blaming, and claiming". Felstiner et al. discuss how the relationship between the involved parties and

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their context in relation to the dispute matters in the different phases. Yet, they do not relate their analytical framework to a greater theoretical perspective. Likewise, only to a limited extent does Bourdieu include in his socio-legal research program the position of the injured party's social position in social space, social capital, legal consciousness and general realm of comprehension and categorization possibilities—even though it is included in his broader scientific work. However, Bourdieu is quite explicit when the focus is on the hierarchies and homologies structuring the possibilities for legal and non-legal actions and strategies. Since Bourdieu's mission is to discuss the institutionalization of the force of law, he leaves the draft analysis of the very process of legal transformation as relatively implicit. Therefore, one may be led to assume that Bourdieu goes from a relatively simple pre-dispute phase to the legal phase, in which the dispute has been named, blamed and claimed and the dispute is litigated in court. But by co-reading Bourdieu (1987) with one of his most important references, Felstiner et al. (1981), the complexity and significance of the pre-dispute phase is rendered visible also in Bourdieu's sociology of law.

Such a reading re-establishes a sociology of law in Bourdieu's work. and accentuates his sociology of law in relation to sociology of law from below. For instance, in Ewick and Silbey's (1998) classic study of legal consciousness, they refer to Bourdieu's sociology and develop the notion of "schemata" to explain, what Bourdieu would call habitus, i.e. the embodied structures guiding our practices. With the development of the legal consciousness literature (Young and Billings. 2020, Hertogh 2009; 2018) the approaches to grasp citizens' translation of law into various forms of practices are related to our reading of Bourdieu's sociology of law. Thus, a broader understanding of Bourdieu's sociology of law can pave the way to e.g. studies of citizens' mobilization of law and their barriers to justice combining legal consciousness with a focus on citizens and their audience, who help transforming their problems into the language of law. With Bourdieu, this pre-dispute or dispute phase should be seen in relation to citizens' and their audience' position in social space. These parallel and intertwined

theoretical socio-legal tools can bring new light to e.g. the infrastructure of official state dispute resolution institutions, acknowledging that before disputes end up in court, in welfare state councils or in other dispute resolution institutions, the dispute process has been long. In other words, by reinstalling a sociology of law in Bourdieu's workIt illustrates how his oeuvre can be used to reconsider why relatively few simple (justiciable) problems transform into legal disputes, despite the extensive focus on legal dispute institutions in Western and international contexts to close the access to justice gap.

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