

Contents

1	Introduction: Emerging Legal Uncertainty	1
1	Methodology	5
1.1	Socio-Legal Methodology	5
1.2	The “Separation Thesis”	9
1.3	Disembeddedness of Modern Law	9
1.4	The “Gap” Problem	11
2	Uncertainty and Irrationality	12
3	Late Modernity	16
	References	17
2	Conflict and Competition Between Law and Sociology	21
1	Law and Sociology	22
1.1	Jurisprudence, Legal Studies and Legal Practice	22
1.2	Law as a System of Rules	24
1.3	Rule-Based Reasoning	25
1.4	The Consequences of Globalisation	27
1.5	Doctrinal Methodology	29
2	The Sociological Imagination	32
3	Can Law and Sociology Learn from Each Other?	36
	References	38
3	Social Scientific Studies of Law	41
1	Approaches to the Study of Law in Society	41
1.1	The Sociology of Law	42
1.2	Law and Society Studies	45
1.3	Sociological Jurisprudence	46
1.4	Socio-Legal Studies and Legal Policy Research	48

2	Top-Down and Bottom-Up Approaches	50
3	The “Gap” Problem	52
3.1	Various Forms of the “Gap”	52
3.2	Alternatives to the “Gap”	54
	References	56
4	Whose Experience Is the Measure of Justice?	59
1	The Ethical Form of Judgement	60
2	Law’s Claim to Correctness	63
3	The Separation Thesis	68
4	Reflections	69
	References	74
5	On the Paradox of Contextualisation	77
1	Galligan’s Project	81
1.1	Developing Hart’s Concept of Law	81
1.2	From Rules to Rulings	81
1.3	The Social Context of Rules	83
1.4	Why Do We Need Legal Rules?	85
2	Taking the Law Seriously	87
2.1	Two Points of Disagreement	87
2.2	Are Legal Rules the Focal Point of Legal Experience?	90
2.3	The Plurality of Experiences	92
3	Having One’s Cake and Eating It	94
	References	96
6	A Note on Franz Kafka’s Concept of Law	99
1	Heimat	101
2	Chewing Sawdust	103
3	The Castle	106
4	Subversion	109
5	Paradoxes	111
6	The Desire for Justice	113
7	Kafka’s Law	117
	References	120
7	The Politics of Legal Cultures	123
1	Three Case Studies on Law, Culture, Gender and Religion	125
1.1	The Bolsheviks’ Modernisation	125
1.2	The Sandviken Case	127
1.3	Incorporating Aspects of Sharia into UK Law	129
2	Monolithic and Plural Conceptions of Legal Cultures	133
3	Living Law and Cultural Diversity	137
3.1	Ehrlich’s ‘Living Law’	137
3.2	Kelsen’s Critique of Ehrlich	139
4	<i>Steppenwolf</i>	140
	References	142

8	Comparative Law and Legal Cultures	145
1	Studying Similarities or Differences?	146
2	Contextualisation	148
2.1	Contextualising Laws	148
2.2	Rethinking Comparative Law	151
2.3	The Politics of Difference	153
2.4	Not Everything Is Culturally Determined	155
3	Towards a Meta-Methodological Framework	157
3.1	Culture	157
3.2	Limits of the Top-Down Approach	160
3.3	Combining the Top-Down and Bottom-Up Perspectives	161
	References	166
9	A Case-Study of Non-Western Legal Systems and Cultures	169
1	Prologue: One Word	169
2	Reckless Driving and Legal Culture	171
3	Iranians' Perceptions of Driving	174
3.1	Interviews in Shiraz	174
3.2	Preliminary Reflections	176
3.3	Interviews in Tehran	179
3.4	Driving Habits and Legal Culture	181
4	Iranian State, Law and Society from a Historical Perspective	182
4.1	State and Society in Iran	182
4.2	Iranian Individualism	183
5	Epilogue: Towards a Culture of <i>Qānon</i>	185
	References	186
10	The Shift to Risk Management	189
1	Three Cases of Anti-Terrorism	192
1.1	The Terrorist from Alva	192
1.2	The Lyrical Terrorist	194
1.3	The Youngest British-Born Terrorist	197
1.4	The Urge to Transgress Boundaries	198
1.5	The Anti-Terrorism Legislation	199
1.6	Symbolic Effects of Anti-Terrorism Legislation	201
1.7	Stop and Search Powers	202
1.8	The Culture of Control	203
1.9	The Human Rights Act	204
2	Islamophobia	206
2.1	A Growing Culture of Hostility	206
2.2	Alarming Rhetoric	208
3	Constructing an 'Enigma'	209
4	Managerialism	210
	References	211

11	Norms and Normativity in Socio-Legal Research	215
1	Normativity	215
1.1	Internal and External Aspects of Norms	215
1.2	Normativity Beyond Social Norms?	218
1.3	What Is Unique About the Law?	220
2	Justice as Law's Primary Source of Normativity	223
2.1	Defining Justice	223
2.2	Justice as Law's Contingency Formula	225
2.3	The Inter-Connectedness of Law and Justice	226
2.4	Risk Management Strategy's Normativity	227
3	Dealing with the Normativity of Justice	229
3.1	Facts and Values in Social and Legal Research	229
3.2	Scientific Methodology	232
3.3	Concluding Remarks	236
	References	236
12	The Changing Horizons of Law and Regulation: From an Industrial to a Post-Industrial, Digital Society	241
1	Law and Social Engineering in Industrial Society	243
1.1	Classical Socio-Legal Theory	243
1.2	The Rise and Fall of the Welfare State	247
1.3	From Social Integration to Market Integration	250
2	Ideology, Law and Technology	252
2.1	From Telegraphy to Digital Communication	252
2.2	Reducing the Social World to a Binary Baseline	254
2.3	Social Media and Reflexivity	255
2.4	The Neo-Liberal Ideology	257
3	Law and Regulation in a Global Society	258
3.1	New Public Spaces and Forms of Community	258
	References	262
13	Law and Regulation in Late Modernity	265
1	Regulating Global Corporations?	266
2	Reflexivity	268
2.1	When Controlling Risks Generates More Risks	268
2.2	How Could They Act in Such an Unrestrained Fashion?	271
2.3	From Community to Transitory Social Networks	274
3	The Transformation of the State	276
3.1	A Shift to Risk Management	278
4	Late Modern Law	280
4.1	When Law Loses a Clear Concept of the Social	280
4.2	Using Law to Generate Uncertainty	281
4.3	The Possibility of Social Change	282
	References	285
	Index	289