



LUND UNIVERSITY

Review of Organised Cooperation Facing Law: An Anthropological Study, by PER STJERNQUIST

Banakar, Reza

Published in:

Retfærd: Nordisk juridisk tidsskrift

2001

[Link to publication](#)

Citation for published version (APA):

Banakar, R. (2001). Review of Organised Cooperation Facing Law: An Anthropological Study, by PER STJERNQUIST. *Retfærd: Nordisk juridisk tidsskrift*, 24(2), 72-75.

Total number of authors:

1

General rights

Unless other specific re-use rights are stated the following general rights apply:

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal

Read more about Creative commons licenses: <https://creativecommons.org/licenses/>

Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

LUND UNIVERSITY

PO Box 117
221 00 Lund
+46 46-222 00 00

Per Stjernquist: Organised Cooperation Facing Law: An Anthropological Study

*Scripta Minora Regiae Societatis Humaniorum Litterarum
Lundensis 1999-2000:1. Stockholm, Almqvist & Wiksell
International. 78 pp.*

REZA BANAKAR

A social scientific examination of the interface of law and cooperative associations lies at the heart of Per Stjernquist's latest work. To accomplish this examination, Stjernquist, who is the professor emeritus of sociology of law at Lund University in Sweden, draws on a large number of studies of Swedish law and society, many of which he conducted himself (incredible as it might sound) during a period of 70 years. The temporal scope of the empirical data employed in this book is such, that it automatically captures some important developmental features of modern Sweden. At the same time, it maps out the contribution made by Stjernquist in the further development of the sociology of law in Sweden. Much of what he has achieved during his career as a researcher is summarised here in the briefest possible fashion.

In this study, Stjernquist advances a general thesis on the relationship between law and those future-oriented cooperative activities, that underpin the organization of society. There are at least four basic assumptions, which run through the chapters of

this book connecting them to one another. Firstly, it is argued that cooperation constitutes the basis of social organization; secondly, that cooperative undertakings are not generated by law but only supported by it; thirdly, that cooperation is initiated and developed by what Stjernquist calls «ordinary people», who are to be distinguished from policymakers, legislators and administrators, and in the course of their everyday struggles to make a living; and finally, the perspective of ordinary people on law and society, rather than the perspective of authorities, should inform our understanding of cooperative activities. In this sense, this study represents an examination of the law «from below», an approach, which in Stjernquist's view endows it with an anthropological quality.

The book is organized into 8 short chapters, each containing an essay in its own right on one specific aspect of law and cooperation, and two appendices containing a piece on the sociology of law and an obituary on the contribution of Aster Akalu to legal anthropology. Chapter One func-

tions as an introduction to the book. The author does, however, use the introduction to present and defend his choice of methodology. Chapters Two, Three and Four are intimately inter-related and investigate the role of law in the everyday life of ordinary people. The author moves swiftly from anthropological studies which highlight the inter-relatedness of cooperative association and the development of patterns of social behaviour to a historical study of Swedish legislation on sale of goods, and then, to formal and informal rules governing corporations. The notion of law, which is the object of analysis in these chapters, is intentionally limited to the type of law which emerges out of cooperation. This form of law has a direct impact on future-oriented cooperation and aims to stabilize, support and perhaps modify the existing social norms within associations. This is to be distinguished from the type of law, which is introduced by policymakers from above to change and regulate behaviour. This latter form of law, which Stjernquist calls «political laws», strives to change norms and conducts of organizations in order to solve social conflicts between different cooperative associations or strata of associations (such as holders of rural lands and urban people or consumers and producers). In these cases, Stjernquist argues that it is essential that the solution does not interfere with the customary ways of livelihood and does not undermine the social status of any of the parties involved. Chapters Five, Six and Seven (Chapter Eight contains the conclusions) examines this inter-organisational «peace-making» mechanism and the reactions to it. Here, Stjernquist makes use of his studies of Swedish forestry

laws, land laws and the Swedish Consumer Act.

The organization of the book is in itself a theoretical and methodological statement of sociological importance in so far as it draws attention to the need to clearly distinguish between the social origins of various categories of law and forms of legal regulation. As demonstrated by Stjernquist, how the law has come about—whether it emerged from below to support and stabilize the *internal* organization of cooperative actions and relations, or was introduced from above to change behaviour or resolve inter-organizational conflicts—ultimately determines the extent to which it embodies the interest and values of the wider community. At the risk of oversimplification, just how the law is generated is decisive not only for its implementation, but also for its reception by the community. Hence, the relationship between the social origins of the law and its intentions (to whom it is addressed and what it tries to protect, regulate or change) will set the limits of its efficacy.

This essentially methodological distinction has profound consequences for the way we approach such issues as legitimacy, justice, morality, attitude to law etc. In effect, Stjernquist questions all sweeping analyses of law and morality, so popular within jurisprudence, arguing that we need to have at least two separate discourses on law and morality: one, on law emerging from cooperation, the other on law arising out of political interests and introduced from above by legislators, policymakers, courts, etc. It is tempting to interpret Stjernquist as if he is arguing for the need to sociologically distinguish between private and pub-

lic, or civil and criminal law. However, none of these traditional legal terms and demarcations capture the sociological complexity of the distinction made between law emerging out of cooperation and law introduced by the State for policy purposes.

Stjernquist seems to be ultimately concerned with locating the place of law in the everyday life of ordinary people. Therefore, he devotes much of his attention to investigating the manner in which law may be utilized to facilitate, or alternatively impede, the cooperative efforts of ordinary people to organize their everyday life. The questions he poses and the answers he offers successfully utilize and develop insights intrinsic to Eugen Ehrlich's living law, Malinowski's understanding of social order, and Nonet and Selznick's concept of «responsive law». By taking us through modern Sweden's experience of legal regulation, Stjernquist demonstrates vividly that the activities, goals, and aspirations of ordinary men and women, social groups, communities, associations, and enterprises play a decisive role in how the law is formed, transformed, produced, and reproduced over time. Expressed in terms reminiscent of Ehrlich, official legal rules are only a part of what people take into consideration when planning their everyday cooperations, transactions, and interactions. Social or customary norms («living law» if you will) growing informally out of the activities of communities and associations of people are also taken into account. These customary norms define patterns of behaviour and set the bases for future interactions and organised activities of individuals and groups. The legal rules are frequently developed or brought about intentionally to protect and assist these patterns of action,

which emanate from the informal and often spontaneous attempts to organize social life.

If I were to have reservations about Stjernquist's general approach in this book, it would be related to his brevity of expression, which at times, I believe, takes an extreme form. The author covers the experiences of 70 years of fruitful socio-legal research in 78 pages. As a result the empirical material is presented in passing and little space is devoted to extremely important methodological issues arising out of this material. Similarly, the theoretical insights are dealt with in such haste that it hardly leaves any space for reflection on what they might mean for current socio-legal research. I can imagine that this aspect of the book might place many of its important contributions outside the reach of those who are not already familiar with Stjernquist's work. Also, related to this extreme brevity of expression, we find another problem. Stjernquist makes no references to more recent theoretical work within mainstream sociology, which *might* have assisted him to carry some of his concerns further. Stjernquist is interested in how social and legal norms are employed by ordinary people to create organisational structures over time. This concern is addressed by a number of sociologists, such as Giddens, Bourdieu and Beck, just to name a few. According to Giddens' structuration theory, for example, norms, which also happen to be the focus of Stjernquist's study, become one among many resources used by the «agency» (i.e. the social position which is occupied by Stjernquist's «ordinary people») to produce and reproduce structures in time and space. Since Stjernquist abstains from employing such theoretical frameworks, which are

designed in an attempt to link agency and structure, he subsequently tells us *why* social and legal norms are generated, leaving us to wonder *how* this generation links the activities of the ordinary people to the creation and maintenance of the organisational structures, relations and processes, through which their future-oriented cooperative activities are realized.

Having said that, there is little doubt as to the importance of Stjernquist's contribution to the sociology of law and social

policy research. Through his empirical and theoretical work Stjernquist has, indeed, laid a lasting foundation for the sociological studies of the law.

Forfatteropplysninger:

Reza Banakar is the Paul Dodyk Research Fellow at the Oxford Centre for Socio-Legal Studies and Senior Research Fellow in Law at Harris Manchester College, University of Oxford.