SOME ASPECTS OF THE DISTRIBUTION OF GRADING APPEALS IN THREE DUTCH LAW FACULTIES

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This is a report of an examination of the judgments of appeal committies (*beroepscommissies*) in three Dutch law faculties: Groningen, Leiden and Utrecht.[1] The examination was conducted in connection with a reading seminar in sociology of law[2] whose subject was the recent book by Donald Black, *The Behavior of Law*.[3] The main purpose of the enterprise was to test that book in two ways: by seeing whether the general propositions in the book lend themselves to the logical deduction of specific predictions about the "behavior of law" within law faculties, and by seeing whether such predictions survive confrontation with empirical fact. The purpose of reporting the results here is also twofold: to give a concrete and simple example of one approach to the sociology of law (of which Black's book is the most important recent representative); and to recount some information which will likely appeal to the curiosity of anyone interested in the social organization of law schools. Both the "research" and this report of it are pretty crude affairs, and among other things I pass over in silence a number of theoretical and methodological problems in the interest of simplicity. I think that the power, and the difficulties, of Black's approach emerge—despite these limitations—quite clearly.

Donald Black is a strict "positivist" in his approach to the sociology of law, and has become in recent years one of the most interesting and uncompromising exponents of the positivist approach. The label "positivist" can mean a dozen or more things, some of them quite contradictory of each other, and is mainly used nowadays as a term of abuse. What I mean by it here is what Black means, when he uses it to describe himself.[4] The sociology of law

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1. There is no methodological rhyme or reason to this selection, and these faculties do not "represent" anything in particular. I happened to have strategically-located friends at Leiden and Utrecht, who afforded me access to the relevant files. I hereby thank them for their help.

2. Participants in this seminar were W. Kloosterman, H. de Man, J.W. Molenkamp, P. Roorda, and H. Zitman (students), and G. van Maanen. Working out the application of Black's theory to *beroepszaken* was a collective endeavor—hence the frequent use of "we" in this report. I bear sole responsibility, nevertheless, both for the interpretation of Black's theory and for the data contained in this report.

3. D. BLACK, THE BEHAVIOR OF LAW (1976).

4. *See* Black, *The Boundaries of Legal Sociology*, 81 YALE L.J. 1086 (1972).

is, in his view, an empirical science, essentially similar to any other empirical science. Its starting-point is the observation of *variation* in the empirical world. Like all other empirical sciences, the sociology of law consists of imposing order on that variation by establishing regularities in it. These regularities—or empirical *laws*—relate the value of one variable (*e.g.*, frequency of cigarette smoking) to the value of another (*e.g.*, risk of lung cancer). Such empirical laws (*e.g.*, the "law" of gravity) permit one to *predict* and to *explain* the value of a dependent variable if one knows the value of an independent variable with which it is regularly associated. For Black, unlike many other sociologists of law (or lawyers who profess an interest in the relations of "law and society," as it is usually expressed), the sociology of law has nothing to do with criticizing or evaluating the norms of a legal system, or the performance of such a system (*e.g.*, in terms of its "effectiveness"); nor is its purpose to discover or to establish the "essential functions" of law and legal systems. Such objectives may be worthwhile in themselves, but they are fundamentally different from the scientific enterprise of explaining variation in empirical reality.

Black goes one step beyond "positivism," as so far defined. Not only does he restrict his objective to explaining variation in the phenomenon of law (what he calls the "behavior" of law), but he excludes the *norms* of a legal system from his conception of law. His theory makes no attempt to explain variation in those norms, and ignores them as a possible part of the explanation for the behavior of legal officials. This sets him distinctly apart from lawyers, who, if they think sociologically at all, tend to think first of social explanations for normative change, and who in any case treat norms as sufficient explanations for official behavior.[5] Legal norms play no explicit part[6] at all in Black's theory.

Black defines "law" as a species of behavior—that of the legal officers of a state which interferes in the lives of citizens. Law, in this sense, is a quantitative variable: at some times and places there is more of that sort of official behavior than at others. A complaint is, according to Black, more law than no complaint; a trial is more law than no trial; a judgment for plaintiff is more law than a judgment for defendant; an appeal is more law than no appeal; etc. The objective of Black's approach is to predict, and thereby to explain, variation in the quantity of law, by correlating it with variation in the quantities of a number of social variables. Thus, roughly speaking, societies with more *stratification* (inequality of wealth) have more law. So do socieities with more *differentiation* (division of labor), more *culture* (symbolic representations—*e.g.*, languages, religions, scientific theories), and more *organization* (capacity for collective action). On the other hand, societies with more unofficial *social control* have less law.

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5. The so-called "legal realists" are a conspicuous exception to this generalization. In their view, legal norms are of relatively little importance in predicting the behavior of legal officials such as judges. *See, e.g.*, J. FRANK, LAW AND THE MODERN MIND (1935); K. LLEWELLYN, THE BRAMBLE BUSH (2d ed. 1951).

6. "Explicit part," I say, because I am suspicious that in Black's conception of the "state" and of "officials" a normative element remains lurking.

Black's theory also predicts the distribution of law *within* a society. Persons of high *rank* (wealth) have more law among themselves than persons of low rank: that is to say, their relations among one another are more subject to control by state officials. Taking the "deviant" as the person against whom a legal act is directed, and the "victim" as the person on whose behalf such an act takes place, there is more *downward law* (high rank victim and low rank deviant) than *upward law*; the amount of downward law varies directly with the distance in rank between victim and deviant, while the amount of upward law varies inversely with that distance. Thus, if you hold the rank of the victim constant, the higher the rank of the deviant, the less law; on the other hand, if you hold the deviant's rank constant, the higher the rank of the victim, the more law. Similar propositions concerning the "behavior of law" within a society are developed by Black for the other social variables (culture, organization, etc.).[7] This capsule summary of Black's theory is very abstract, and perhaps difficult for the uninitiated reader to follow, but the rest of this article serves as an illustration of the way his theory works.

We took three Dutch law faculties as "societies"[8] and applied Black's hypotheses to the behavior of their main legal institution: the appeal available to students who have a "legal" objection to some decision taken against them (*e.g.*, a grade on an examination). The student can complain against the adverse decision to a *beroepscommissie*, which hears the case and renders judgment. The procedure is quite formal.

From here on, "Q" will mean the quantity of law (in Black's sense), measured *per capita* (except when "total Q" is referred to). Black says that the quantity of law is measurable, and he refers to some of its components, as we have seen, but he does not say how those components can be made commensurable. We simply decided to count a complaint as 1 unit of Q and a judgment for the victim (student) as 3.[9] We derived the following twelve predictions about Q from Black's hypotheses:[10]

1. *Q* (*medewerker* [junior faculty]) > *Q* (*hoogleraar*/*lector* [professor]). This is on the ground that a *hoogleraar* is generally of higher *rank*, more *organized*, and more *cultured* (educated) than a *medewerker*. If one assumes that

7. In addition, Black's theory seeks to explain the "style" of law (penal, compensatory, therapeutic, or conciliatory) using the same social variables. We are not concerned with this aspect of his theory here.

8. This is not really proper, in Black's terminology, since "law" is restricted to social control by officials of the state. But all of his propositions are supposed to apply equally to non-state social control, so it is only in the use of the word "law" that I deviate from Black.

9. These numbers are purely arbitrary. We originally intended to treat a hearing by the *beroepscommissie* as 2 units of Q—but since every complaint led to a hearing, this was merely redundant and we decided to drop hearings as a separate component of Q.

10. For a variety of reasons it proved infeasible to test Black's hypotheses concerning variations in the quantity of law between societies. Could one describe a faculty of letters as having more (or less) *culture* than a law faculty? Is a medical faculty more *stratified* than a law faculty (because of the greater income differential between students and instructors) or less so (because of the expectation of a smaller income differential)? Resolution of such problems of derivation was unnecessary, in the end, because we could not in any case obtain records from other faculties in the time available to us.

those factors are more or less constant for victims (students) in their relation to deviants (instructors), then the *upward distance* is greater in the case of a *hoogleraar* than in the case of a *medewerker*, and Q should therefore be less.

2. *Q (solo instructor) > Q (group of instructors).* This is on the ground that a group is more *organized* than a single instructor. Holding the *organization* of the victim constant, *upward distance* is greater in the case of a group of deviants, and Q therefore less.

3. *Q (politically unintegrated instructor) > Q (politically integrated instructor).* This follows from Black's proposition that the quantity of law varies inversely with the *integration* of the deviant, if the *integration* of the victim is held constant. "Integration" is closeness to the functional center of the life of a society, which for a law faculty we took to be indicated by participation in committees and the like; we assumed that the victims' (students') *integration* was constant.[11]

4. *Q (some instructors) > Q (average instructor).* This follows from Black's proposition that the quantity of law varies inversely with the *respectability* of the deviant, if the *respectability* of the victim is held constant. "Respectability" is diminished by prior subjection to *social control* (including law), and we measured it by the number of previous appeal cases (*beroepszaken*). We assumed that the victims' *respectablity* was constant.

5. *Q (doctoraal student) > Q (candidaats student). Candidaats* students are in the first two years of the law program while *doctoraal* students are in the advanced program of the last three years. Holding the *culture* of the deviant (instructor) constant, the quantity of law varies directly with the *culture* of the victim. This prediction is the analog, for students, of prediction 1 above.

6. *Q (group of students) > Q (solo student).* Holding the *organization* of the deviant constant, the quantity of law varies directly with the *organization* of the victim. This prediction is the analog, for students, of prediction 2 above.

7. *Q (optional subject) > Q (required subject).*

8. *Q (non-legal subject) > Q (legal subject).* Predictions 7 and 8 follow from Black's proposition that the quantity of law varies inversely with the *conventionality* of the deviant, if the *conventionality* of the victim is held constant. "*Conventionality*" is a measure of the frequency in a society of a particular kind of *culture*. We took optional and non-"legal" subjects (and their instructors) to be less *conventional* in a law faculty than required, "legal" subjects. We assumed that the victims' (students') *conventionality* was constant.

9. *Q (oral examination) > Q (written examination).*

10. *Q (oral exam without witness) > Q (oral exam with witness).* Predictions 9 and 10 follow from the proposition that the quantity of law varies inversely with the quantity of other *social control*. We took other *social control* to be lower on oral than on written examinations, and lower on oral examina-

11. There is no need to be more precise—or to give a justification for this interpretation of "integration"—since this prediction turned out to be untestable anyway. Furthermore, we lacked information concerning the "integration" (as interpreted) of the instructors concerned, especially at the other law faculties.

tions where only the examiner and the student are present than where a third person (co-examiner) is present.

11. *Q (after WUB) > Q (before WUB).*

12. *Q (1972-73 and 1973-74) > Q (other academic years).* Predictons 11 and 12 are on the ground that students are more *organized* and more *integrated* under the new intra-university political structure required by the WUB (Law on Reform of University Governance, 1970) than they were before, and that in the years 1972-73 and 1973-74 they were at a particularly high level of *organization*, according to the students in the seminar.

The overall data for the three law faculties are as follows:[12]

Table 1. Total Beroepszaken

	Totals		*Exams*		*Col. Doctum*		*Administrative*		*Yearly Avg.*	
	cases	*students*	*cases*	*students*	*cases*	*students*	*cases*	*students*	*cases*	*students*
Groningen (1971/72-1976/77)	14 [15[a]]	26 [29[a]]	8	17	2	2	4 [5[a]]	7 [10[a]]	2.3 [2.5[a]]	4.3 [4.8[a]]
Leiden (1972/73-1976/77)	11	17	11	17	0	0	0 [1[b]]	0 [1[b]]	2.2	3.4
Utrecht (1973/74-1976/77)	12	12	10	10	0	0	2 [4[c]]	2 [4[c]]	3	3

Notes to Table 1:

a) One case, involving three students, was handled by the Faculty Council; it was otherwise identical to one of the "administrative" cases, involving four students.

b) This case primarily concerned an examination, but a request was also made for administrative exemption from a study program rule.

c) These cases concerned examinations, but also involved an examination committee as a secondary party.

It is apparent from the above table that *beroepscommissies* are used for a greater variety of matters in some faculties than in others. In order to simplify the discussion hereafter, and to render the figures for the faculties as comparable as possible, I shall put to one side (except where expressly noted) the cases involving matters other than the giving and grading of examinations within the faculties. Before leaving that group of cases, however, it is worth noting a few things about them. First, at Groningen there are two cases involving the grading of the *Colloquium Doctum* (an examination required for admission to a law faculty of students without the normal academic preparation); both were won by the appealing student. Second, at Groningen and, to a lesser extent, Utrecht the *beroepscommissies* are used to review what I call "administrative" decisions—decisions concerning the application to individual students of rules concerning the academic program (*e.g.*, whether a course taken at another university satisfies a requirement; whether a student can be allowed to proceed to

12. It is by no means certain that the files we examined were complete for the years covered.

the *doctoraal* phase of law study in light of his or her grades on examinations in the *candidaats* phase; whether the time limit for taking an examination has passed). The defendant in such cases is either an examination committee or (at Groningen) the Study Advisor. At Utrecht one of two such cases was won by the appealing student; at Groningen two of four such cases (of which one involved four students) were won by the appealing student.[13] These success rates for "administrative" and *Colloquium Doctum* cases are, as we shall see, strikingly high. They tend to support conclusions concerning the explanation of *beroepszaken* to which I shall come on the basis of the data from appeals against examination results.

As to the cases involving examinations, the overall results are as follows:

Table 2. Beroepszaken Concerning Examination Results

	Cases	*Students*	*Judgment for student*[a]	*Success rate (per case)*
Groningen	8	17	1	13%
Leiden	11	17	2	18%
Utrecht	10	10	5	50%

Note to Table 2:
a) All of these cases involved solo appellants.

The relatively high chance of success for an appealing student at Utrecht is striking; nothing in the design of this small study permits so much as a guess at an explanation (supposing the differences not to be due to chance).

Practically all of the cases involve groups of instructors, not individuals.[14] This is true of all cases from Leiden, all but one from Utrecht, and all but two (with three unclear cases) from Groningen. The typical defendant is a *vakgroep* (department). This makes it impossible to test the first three predictions, which involve comparisons of the Q of instructors of different rank and integration, and of solo and group instructors. The fourth prediction, that the Q for certain instructors would be higher than the average Q, has to be reformulated in terms of *vakgroepen*. I shall return to it, in that form, below.

Practically all of the cases involve written examinations; there is one exception at Utrecht and two at Groningen. There is not a single case in which there had been no witness present. It is therefore impossible to test the tenth prediction, comparing the Q of oral examinations with and without witnesses, and essentially impossible to test the ninth, comparing written with oral examinations. It is worth noting that the appealing student did win the one case at Utrecht (his complaint was that a different instructor from the one whom he

13. Three of five, involving eight of ten students, if the connected case that was handled by the Faculty Council (see note (a) to Table 1) is included.

14. It is frequently not altogether clear from the judgments precisely who was involved in the event which is the subject of complaint. There may have been more groups than we realized, it being possible that in some cases only one member of the *vakgroep* concerned had appeared at the hearing and no mention was made of the other members of the group.

had expected gave him the examination, which had been specially arranged after he had failed three successive written examinations; the *beroepscommissie* ordered him admitted to the next following written examination). One of the two cases at Groningen involved a complaint that an oral examination had not been recorded, and that not enough time to answer had been allowed. Two of the three cases, thus, are connected with the idea that other social control is lower in oral than in written examinations.

The fourth prediction, reformulated in terms of *vakgroepen* instead of individuals, is confirmed by our data: some *vakgroepen* do have a much higher than average Q. In Black's theory, the "quantity of law" varies inversely with the respectability of the deviant (holding that of the victim constant). It appears that law faculties typically have "unrespectable" *vakgroepen*, who attract more than their share of "law" ("unrespectability" being established, for our purposes, by their exposure to previous *beroepszaken*).[15] The data are as follows (treating any *vakgroep* with a total Q of more than 1 as above average):

Table 3. Total Q of Vakgroepen with Above-Average Q ("Unrespectable Vakgroepen")

	Groningen	*Leiden*	*Utrecht*
Vakgroep A	*13* (10×1 + 3)	*8* (7×1 + 1)	*7* + [3] (3+3 + 1)
Vakgroep B	*2* + [9] (1+1) + [(3×3)]	*5* (3+1+1)	*6* (3+1+1+1)
Vakgroep C	*1* + [13] [(4×3 + 1)]	*5* (3+1+1)	*3*
Vakgroep D	——	*2* (1+1)	*3*

Note to Table 3: Figures in parentheses indicate composition of total Q in terms of individual cases; figures in brackets indicate "administrative" cases which primarily concern a particular *vakgroep*.

Another way of looking at the respectability factor is to ask how much of the total Q for each faculty would be left if the high scoring *vakgroepen* were eliminated, as shown in Table 4. In short, three or four "unrespectable" *vakgroepen* in each faculty account for practically all total Q, for practically all cases, and for practically all appealing students. By definition, such *vakgroepen* include all which lost their only case to the appealing student (since we defined "unrespect-

15. The prediction, strictly speaking, should be that for every increment of Q to which a *vakgroep* is exposed, its risk of a further increment of Q increases. Our data are too skimpy to approach in that way. The lightning-rod, clustering of cases approach which we used should give a rough approximation. The point is that we make no assumptions about *why* the first unit of Q occurred, nor about any special behavior of the *vakgroep* concerned thereafter. Unrespectability, however it should happen to come about initially, brings with it "more law," no matter how the deviant concerned behaves (or, more precisely, holding that behavior constant).

able" as having a total Q higher than 1); but only two *vakgroepen*, both at Utrecht, are "unrespectable" solely by having lost a single case. (See Table 3.) If these two *vakgroepen* were reclassified as "respectable", then the above figures for Utrecht "without UV" would become Q = 7, cases = 3, and students = 3 (there would be no "administrative" cases). This is a considerable change, but it would still leave two *vakgroepen* accounting for about two thirds of the cases, the students, and the total Q.[16]

Table 4. Influence of Unrespectable Vakgroepen ("UV") on Total Q

	Total Q		*Cases*		*Students*	
	with UV	*without UV*	*with UV*	*without UV*	*with UV*	*without UV*
Groningen	19	3	8	3	17	3
	[41]	[3]	[11]	[3]	[25]	[3]
Leiden	21	1	11	1	17	1
Utrecht	20	1	10	1	10	1
	[23]	[1]	[11]	[1]	[11]	[1]

Note to Table 4: Figures in brackets include "administrative" cases which primarily concerned a particular *vakgroep*.

It should be emphasized that all of the more or less obvious explanations for the apparent phenomenon that unrespectability (as defined) attracts law (as defined) are not *alternatives* to Black's basic hypothesis, but merely suggestions as to the various mechanisms by which the fundamental correlation which he asserts may come about. One also should not leap to the conclusion that it is attributes (let alone, *undesirable* attributes) of the behavior of the *vakgroepen* concerned which are at the root of the matter. Black does not deny, of course, that the behavior of a person may affect the "quantity of law" he experiences. But Black does argue that if you take two people whose behavior is identical, the more integrated and conventional of the two will (as deviant) experience less law. And, in fact, six of the eleven *vakgroepen* concerned are in one way or another peripheral to the core of conventional professional legal education. Similarly, if a respectable and an unrespectable *vakgroep* engage in precisely the same behavior, Black's theory predicts that the Q of the latter will be higher.

The "quantity of law" varies directly, according to Black, with the extent to which victims are organized (if the organization of the deviants is held constant). We deduced that the Q for students appealing in groups should be higher than the Q for those who appeal singly. We could not test the sixth prediction, to that effect, for lack of a sufficient number of groups of students: none at Utrecht, one at Leiden, and three (of which two were "administrative"[17]) at Groningen. On the other hand, those last two were both won by the appealing students. They were, in fact, two different aspects of the notorious

16. The *vakgroepen* concerned account for only a small proportion of all examinations. Thus their *per capita* Q is—although we did not attempt to compute it directly—obviously much higher than average.

"case of the *drilboor*," involving a claim that construction work outside the examination room had adversely affected the students' ability to concentrate; one group of students sought relief via the Faculty Council and another group via the *Beroepscommissie*. One's subjective impression in reading the documents concerned is that the fact that groups were involved, and two groups at that, did influence the outcomes of the cases.

Another way to test the effect of organization among students is to see whether variations in total Q over time correlate with variations in the general level of organization of the student body. The students with whom I did this study predicted a relatively high Q for the academic years 1972-73 and 1973-74 in Groningen as reflected in prediction twelve. Graph 1 shows the variation in total Q over the academic years for which records were available from the three faculties (including, here, the "administrative" but not the *Colloquium Doctum* cases). The numbers involved, and the time covered, are too short to permit much of a judgment. It does look as if Q varies regularly with academic year, and this may well have something to do with the level of organization of students. Groningen was, in this period, one year out of phase with the other two law faculties and did indeed, as the students had predicted, have a peak in 1973-74, while Leiden and Utrecht had theirs in 1974-75.

A final idea for testing the influence of organization on Q was to look at the impact of the WUB, supposing it to have increased the level of organization. We also supposed that it increased the degree of integration of students in law faculties—another reason why Q after WUB should be higher than Q before WUB, as provided in the eleventh prediction. Unfortunately, for us, the various reorganizations called for by the WUB did not, *de facto*, take place at any clearly identifiable time, and furthermore, the advent of the WUB is fairly closely associated with the formal institutionalization of *beroepscommissies* (or, at least, the maintenance of careful records thereof). Being unable to fix a date for a before-and-after comparison, or to disentangle cause (WUB) from effect (*beroepszaken*), we could not test the prediction.

There remain for discussion the predictions concerning the influence of the examination subject on Q. Unconventional subjects (*i.e.*, in a law faculty, non-"legal" subjects, which we interpret broadly as covering everything that does not involve the exposition of the rules, etc., of a specific area of contemporary positive law—Roman Law, Introduction to Law, Legal History, Economics, etc., are all non-"legal" in this sense, although they are all required subjects) should have a higher Q than conventional subjects. They do:

Table 5. Total Q of Conventional and Unconventional Subjects

	Groningen	*Leiden*	*Utrecht*
Legal	6	2	7
Non-legal	14	19	13

17. One of these was, strictly speaking, not a *beroepszaak* at all. *See* note (a) to Table 1.

Essentially the same picture appears if one looks at numbers of cases, or numbers of students involved:

Table 6. Numbers of Cases and Students, by Conventional and Unconventional Subjects

	Groningen		*Leiden*		*Utrecht*	
	cases	*students*	*cases*	*students*	*cases*	*students*
Legal	6	6	2	2	3	3
Non-legal	3	12	9	15	7	7

Of course, these totals by themselves are not necessarily interesting: one would want to know what sort of proportion they bear to the total number of courses of the one or the other sort, or to the total number of students enrolled in such courses (*i.e.*, *per capita* Q, not total Q). We made no effort to estimate such figures. The influence of unconventionality appears clearly enough anyway: if we make the crude assumption that more "legal" than non-"legal" courses are offered, and are taken by more students, then the total Q for "legal" courses should be higher than for non-"legal" courses—if the *per capita* Q were equal, that is, if conventionality made no difference. But it apparently does make a difference. The Q *per examinandum* is plainly higher for non-"legal" subjects. So is the Q *per case*: inspection of tables 5 and 6 reveals that only in one faculty (Utrecht) is the Q *per case* for "legal" subjects greater than 1, while in every case, for non-"legal" subjects, it is far greater than 1; it is also greater than 1, in every case, *per appealing student*.

We predicted that the Q of *doctoraal* students would be higher than that of *candidaats* students (on the ground of a smaller cultural distance between the former and their instructors), and that the Q for optional subjects would be greater than that for required subjects (on the ground that the former are less conventional, in Balck's sense). Predictions five and seven, as it turned out, were quite wrong:

Table 7. Total Q, Candidaats vs. Doctoraal Students and Required vs. Optional Subjects

	Groningen	*Leiden*	*Utrecht*
Candidaats	17 (6/15)	12 (8/8)	13 (7/7)
Doctoraal	2 (2/2)	9 (3/9)	7 (3/3)
Required	17 (6/15)	12 (8/8)	19 (9/9)
Optional	2 (2/2)	9 (3/9)	1 (1/1)

Note to Table 7: Figures for cases and students, respectively, are given in parentheses.

Most of the total Q is accounted for by *candidaats* students in required courses (the same is true for the total number of cases and, except in Leiden, for the total number of students—one large group of seven members, in an optional *doctoraal* subject, is responsible for the deviation in the Leiden figures). Brief inspection of Table 7 reveals that as a practical matter "*candidaats*" and "required" are almost synonymous in our data: only at Utrecht were there appeals (two—both successful) against required courses in the *doctoraal* program. This is partly because we did not treat as "required," courses which are in fact required within a given major (*studierichting*)—had those, also, been treated as "required," the falsification of prediction seven, that the Q for optional subjects would be greater than that for required subjects, would have been even more striking. Once again, the analysis should really have been done *per examinandum* or *per case*, but it seems sufficiently obvious that that would not alter the result.

What should one make of the falsification of predictions five and seven? One could perfectly well ascribe our numbers to chance. If one prefers to regard them as describing reality, two approaches are possible. One is to consider Black's theory as, in important respects, wrong. The other is to question the process by which our predictions were deduced from his theory. Our intuition was that our results probably pretty well correspond with reality and therefore ought not to be ascribed to chance, and our inclination was to question our deduction rather than Black's theory.

In looking at the data, it seemed to us that an entirely different explanation—in terms of organization instead of in terms of cultural distance and conventionality—was staring us in the face. Most of the cases involve required courses, even when courses required within a given *studierichting* are treated as optional. In a number of the judgments it appears that the appealing student is faced not only with a failure in a required subject, but also (because of the time requirements for completion of various aspects of the study program) with a loss of the validity of all the other examinations successfully completed; in other cases, it is the single failure involved which prevents the student from going on to the next stage of his or her study. We did not come across a single case of appeal against a non-failing grade. Appeals are used, in short, not for student grievances against examination results generally, but only when the rules of the system leave a student no other escape. So long as it is possible to go on, or to take an examination again, or to take another subject instead, very few students appeal.

If one takes the extent to which a student's freedom of action is restrained by institutional rules (high in the *candidaats* program generally, and with respect to required courses, and often accentuated by ancillary rules concerning progress within the study program) as an aspect of institutional *organization*—as manifesting collective action instead of individual choice—then one would predict, from Black's hypothesis that law varies directly with organization, precisely the results which our study produced. The high Q for cases involving examination committees, study advisors, and the *Colloquium Doctum*, already noted, also points to the predictive importance of the variable of organization, as here interpreted.

The foregoing "data," primitive as they are, do not "prove" (or "disprove") anything, of course. The purpose in assembling and analyzing them was primarily to illustrate an approach to the sociology of law—a conception of what the empirical study of law consists of and a particular strategy of analysis. There are difficulties with Black's formulation of that strategy—with his hypotheses. In the immediately foregoing paragraphs we saw one such difficulty: it is not always clear how one should deduce specific predictions from Black's general hypotheses (which seem, furthermore, sometimes in conflict with each other).[18] But the basic idea of his theory is more important than its occasional failings of detail. That basic idea is that empirical science consists of *explanation*, and that explanation entails the testing of predictions which employ variables that are general enough to apply to the whole range of phenomena being studied (*i.e.*, in the case of law, to all sorts of law, at all times, and in all places). That basic idea, and the powerful effort Black makes to carry it out, seem to me so important an advance over the various particularistic, impressionistic and subjective approaches to the sociology of law, on the one hand, or non-empirical, ideological—often essentially theological—speculative approaches, on the other hand, that despite its failings it still seems to me one of the most stimulating modern contributions to the field.

Suitably deployed, Black's theory permits one to explain a great deal of the behavior of the appeals process in law faculties in terms which connect that process with all other legal phenomena. To the extent that the numbers we have recorded are not aberrational, they reflect a pattern of variation in the phenomena of "law" which, Black argues (supported by an almost encyclopedic reference to earlier studies), characterizes "law" wherever and whenever it appears. As we predicted from Black's more general hypotheses concerning the "behavior of law," *beroepszaken* are predominantly associated, in each law faculty, with a handful of "unrespectable" *vakgroepen*. They are also associated with less conventional subjects. And they are associated with organization among the students. We were wrong in predicting that *beroepszaken* would be associated with the *doctoraal* phase and with optional subjects; reconsideration of our deduction of that prediction from Black's theory, in light of the data, led to a revised prediction which fits our data very well, and which it would be interesting to test in another law faculty, namely: *beroepszaken* are associated with the level of organization of the study program, that is, with the extent to which the rules of that program give the student little escape (other than an appeal) from the consequences of an unsatisfactory performance on an examination.

18. One of the weaknesses of Black's book lies in his neglect of the requirements of the deductive process. He presents his hypotheses in a way which often permits contradictory predictive deductions (*e.g.*, is an instructor, or a student, more "integrated" in an educational institution?—one can imagine plausible arguments either way). He also says very little about the relationships among his hypotheses; those concerning culture and conventionality, on the one hand, and organization on the other, lead in opposite directions in the case of *beroepszaken*, and nothing in his book helps one to deal with such a situation.