**Sociology of Law**

The beginnings of sociology of law can be traced to Montesquieu's De l'espirit des lois (1748). Montesquieu still discussed law partly in terms of natural law but he also described and compared the laws of different societies and related the differences to the diversity of conditions both geographical and social of these societies.

From the middle of the 19th century with the emergence of sociology as a distinct discipline the sociological study of law progressed rapidly although it assumed diverse forms. Marx and later Marxists undertook their critique of law as an ideology that conceals class divisions at the same time as it promotes the interests of the dominant class. A major work of Marxist scholar Karl Renner, 'The institutions of Private law and their social functions,' examines how the functions of legal norms which regulate property, contract, succession and inheritance change with changes in the economic structure of capitalist society, yet without necessarily altering the formulation of the legal norms themselves which thus come to obscure the significant social relationships of developed capitalism. Many other sociologists like Comte, Spencer and Maine were influenced by the German historical school of jurisprudence founded by Savigny.

H.S Maine in his Ancient Law made a distinction between static and progressive societies and argued that the movement of progressive societies has hitherto been a movement from status to contract. He meant that the individual is steadily substituted for the family as the unit of which civil laws take account. Maine considered that these changes were brought about by non-legal factors since social necessities and social opinion are always more or less in advance of law and he examined under three headings legal fictions, equity and legislation the agencies by which in progressive societies law is brought into harmony with society.

Emile Durkheim's conception of the development of law is similar in important respects to that of Maine for his distinction between repressive and restitutive law resembles that between status and contract. Repressive law is characteristic of societies in which the individual is scarcely distinguished from the group to which the individual belongs while restitutive law is typical of modern societies in which the individual has become a distinct legal person able to enter freely into contractual relationships with other individuals.

L.T Hobhouse in conformity with his general evolutionist approach dealt with the development of law and justice from private redress and the blood feud, through the stage of composition for offences to the stages of civilized justice. Hobhouse records not only the establishment of the notion of individual responsibility but also the influence of increasing class differentiation until recent times. He also discusses changes in the character of punishment and examines the relations between law, religion and morals.

Max Weber's studies of law showed a much clearer understanding of the nature of law than those of earlier sociologists and they have had greater influence in the growth of a sociological jurisprudence since Weber's conception of law as being concerned with the adjustment of conflicting interests. Weber was also interested in the classification of types of law and in the development of law in western societies. He conceived this development as an increasing rationalization of law, accompanying the general rationalization of life in industrial societies as a result of the growth of capitalist economic enterprise and of bureaucracy. According to Max Weber law is an order the validity of which is guaranteed by the probability that deviation will be met by physical or psychic sanction by a staff specially empowered to carry out this sanction.

In modern civilized societies laws are enacted by the state to control the individual. The transition from custom to law is just a part of the general rationalization in modern society. Sumner has defined the term law as codified mores. Kant defined law as a formula that expresses the necessity of an action. According to Green law is a more or less systematic body of generalized rules balanced between the fiction of performance and the fact of change governing specifically defined relationship and situations and employing force or the threat of force in defined and limited ways. According to Maclver and Page law is the body of rules that are recognized, interpreted and applied to particular situations by the courts of state.

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There is a marked disagreement among the scholars as to what the law is. There is no single definition of law that will encompass preliterate legal arrangements like the Code of Hammurabi and law in modern civilization. As Maclver puts it the law of the savage is not our law. Those who take juristic view of law define it as the command of the sovereign or the dictates of the state. Those taking the sociological view define law as the rules of right conduct. The problem here is shall we keep the word law for the specialized system with their codes; their apparatus for setting disputes and the penalties for those who have broken the rules or shall we regard these as mere specializations of a similar kind of control which may be found in unorganized forms or in organized forms but without what we ordinarily think of as legal sanctions.

Those who hold the former view argue that jurisprudence makes it convenient to use the word law in a specialized sense while the advocates of the latter view hold that primitive people had something which may be called law and that the rules of voluntary associations like trade union, club, university, family as much regulate the behavior of man as the law of the land. Enactment or enforcement by the state should not be considered essential elements of law. Pollock writes if we look away from such elaborate systems as those of a late Roman Empire and of modern western governments, we see that not only law with a great deal of formality has existed before the state had any adequate means of compelling its observance and indeed before there was any regular process of enforcement at all. This means that two views may be taken of law. In a wider sense it included all the rules of conduct observed by men as a matter of habit. It may mean the body of rules that are recognized or made by the state and interpreted by the courts of the land. Custom becomes law when the state is prepared to enforce it as a rule binding on citizens. The term law can be interpreted as rules enacted or at least interpreted and enforced by special agencies of the state. Main characteristics of law are

* Laws are the general conditions of human activity prescribed by the state for its members.
* Law is law only if enacted by a proper law making authority. It is a product of conscious thought: planning and deliberate formulation.
* Law is definite, clear and precise.
* Law applies equally to all without exception in identical circumstances
* The violation of law is followed by penalties determined by the authority of the state.
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* [How Law is different from Custom](https://www.sociologyguide.com/sociology-of-law/how-law-is-different-from-custom.php)
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* [IMMANUEL KANT (1724-1804)](https://www.sociologyguide.com/sociology-of-law/immanuel-kant-1724-1804.php)
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