


UNIVERSITY OF RWANDA
LAW AND SOCIETY
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LAW AND SOCIETY

- ❑ At the end of the course, students are expected to be able to explain how law affects the **society and its culture and vice-versa**.
- ❑ They should also be able to analyze economic, social, political and cultural factors that affect changes and evolution of the law in society.

UNIT I : ABOUT SOCIOLOGY

The current scheme of things in modern societies is that they have what they call law, and this is as earlier asserted by Thomas Hobbes, because law appears to be an indispensable means to create and maintain peace and stability in society (Th. Hobbes, 1640).

But what is actually meant by law? How does it maintain peace and stability? A better answer can be found in the sociology of law which views law as a **field or aspect of social experience**, identifying this field in terms of social control, dispute resolution, social change and other characteristic social phenomena.

Sociology of law may be understood as the effort and aspiration to develop systematic, empirically oriented and theoretically guided knowledge of law as a social phenomenon.

Thus, sociology of law is concerned with how law works in practice. It does not focus on law in the books but on law in action.


For example, sociology of law does not ask the question what legal consequences are in the breach of a contract, but asks the question whether parties name a specific (lack of) action in terms of breach of contract. It is possible that parties do not think in legal terms, but only in economic or social terms, like a breach of contract as an economical loss or an untrustworthy party.

ABOUT SOCIOLOGY OF LAW

The sociologist has an external perspective, he takes a view 'from outside'. This goes without saying that the sociologist of law can use a different concept of law.

The focus on the practice of law includes the **societal influences on law and the influence of law on society.**

This implies all kinds of research topics, such as: Which norms do the actors share? Who has access to justice? Are there other, more effective ways for dispute settlement? Are there other structures of social control which make law less/more relevant? When the law claims that everyone is equal, **is this true in actual life?**



SOCIOLOGY AND OTHER DISCIPLINES

- **SOCIOLGY AND PHYSCHOLOGY**
- **SOCIOLOGY AND ATHROPOLOGY**
- **SOCIOLOGY AND PHILOSOPHY**
- **SOCIOLOGY AND CRIMINOLOGY**



MAJOR TERMS IN SOCIOLOGY

1. CULTURE
 2. NORMS
 3. PRACTICES
 4. BELIEFS
 5. CUSTOM
 6. RELIGION
 7. FOLKWAYS
 8. HABITS
 9. VALUES
 10. STATUS
- 

CONT..

10. TRADITION

11. LANGUAGE

12. TRIBE

13. RACE

14. ETHNICITY

15. POWER

16. CLAN

17. NATION

18. A PEOPLE

19. CIVILISATION


20. A STATE



CONT.....

1. Social change
2. Deviance
3. Crimes with out victims
4. Socio-legal research
5. Sociological interpretation
6. Community Policing
7. Society
8. Socialisatio

UNIT 2 : SOCIO LEGAL RESEARCH

- Research methods in socio-legal studies. what is meant by socio-legal research and its differentiation from doctrinal research in law through its empirical study of legal phenomena in a broader context in order to identify their social effects and policy implications.
 - Enable you to engage with the empirical reality of the operation of law and legal structures ('law in action' as opposed to 'law in the books') and will promote a contextual understanding of legal studies through an interdisciplinary approach using social science research methods as a mode to conduct legal inquiry.
 - Interrogate law through the use of other disciplines such as sociology, social theory, political theory, feminist theory, critical race theory, philosophy, economics and genocide studies. Examples of socio-legal research in the areas of social, political and economic regulation and governance together with the fields of gender, sexuality and will be examined.
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SOCIAL LEGAL THEORY

- NATURAL LAW
- POSITIVE LAW
- CRITICAL LEGAL STUDIES
- LEGAL REALISM
- MARXISM
- SOCIOLOGICAL



SOCIOLOGICAL JURISPRUDENCE

1. sociological jurists are concerned more with the working of law rather than with the nature of law. They regarded law as a body of authoritative guides to decision and of the judicial and administrative processes rather than abstract content of authoritative precepts.
2. It considers law as a social institution which can be consciously made and also changed, modified or retained on the basis of experience. In other words, it synthesizes both the analytical and historical approach to the study of law.
3. Sociological Jurists lay emphasis upon social purposes and social goals and expectations which are the law subserves rather upon sanctions and coercive character of law.
4. Sociological jurists look on legal institutions, doctrines and precepts functionally and consider the form of legal precepts as a matter of means only to satisfy greatest good of the greatest number.

SOCIOLOGICAL VIEWS OF LAW

- a. That law is not unique but only one of the social control norms;
- b. That the socio – economic problem of the present time cannot be solved by means of the existing law;
- c. That the laws in the books and statutes containing formal rules, legislations and expositions of particular subjects is not where the real law in society is to be found;
- d. That the law is not an absolute and static body of rules in themselves but are relative to time, place and society; that there is such a thing as 'social justice'. However, view differ greatly as to what constitutes social justice and the achievement thereof.



COMTE ON LAW

Comte had stated that the advancement of knowledge could be through only “observation and experiment” and he furnished a classification of the social sciences that was hierarchical.

Comte considered it most fruitful to apply the scientific method to sociology despite the inherent difficulty. He compartmentalized sociology into two i.e., social statics and social dynamics all emanating from his description of sociology as the science of social order and progress.

He saw society as an object constantly in development which if viewed in a scientific way could have its growth harnessed for one purpose: progress. The object of the sociological school was to work out in a scientific way the process of determining the variables by which society functioned with regards to law and vice versa.



EMERGENCE OF SOCIOLOGICAL SCHOOL

- i) Mental bankruptcy of analytical approach to meet the social demands of modern society.
- ii) Conflicts between individual interests and social interests and the need to reconcile them.
- iii) Inter – connection between law and society.
- iv) Works of the earliest pioneers of the new interests in society, i.e., Bentham, Renner, Weber and other etc.

SOCIOLOGY OF LAW DIFFERED FROM SOCIOLOGICAL JURISPRUDENCE

Sociology of law, on the other hand, is a descriptive study of law and legal institutions of a given society.

As Roscoe Pound rightly remarked, sociology of law is mainly a descriptive study of law in a theoretical manner. It treats law as just one of the several aspects of society and therefore has a secondary position as compared to society which is the main theme of sociology. Thus strictly speaking, sociology of law is just a branch of sociology.

According to Hall, sociology of law is a theoretical science which consists of generation regarding social phenomenon, so far as they refer to contents, purposes, application and effects of legal rules.

According to Dr. Timasheff, "sociology of law exists as a distinct science whereas sociological jurisprudence is merely a branch of science of jurisprudence. However, both consider society as the matrix of their common interest."



SOCIOLOGICAL JURISPRUDENCE DIFFERED FROM SOCIOLOGY OF LAW

Though it is difficult to draw a hard and fast line of demarcation between the two because of their identical subject matter they do differ in respect of their theme and approach to law.

Sociological Jurisprudence is a functional study of law applied to concrete social problems in order to make law an effective instrument of social control for harmonizing the conflicting interest of individuals in the society.

In this sense law has a wider connotation and includes judicial decisions and administrative processes used for reconciling the competing interests of the people. It is for this reason that sociological jurisprudence has also been called as functional jurisprudence or jurisprudence of interests or jurisprudence of social engineering.





FOUNDERS OF SOCIOLOGY- KARL MARX – CONFLICT THEORY

In Marx conflict theory of society the engine of progress is the constant struggle of the powerless against the powerful. Key concepts are conflict, revolution, the fight against oppression and exploitation, emancipation of disadvantaged groups. Under capitalism the exploitation of the workers, who only have their labor force to sell, is the basis of the economic system. The powerless must organize themselves. As individuals they are weak, but because they are many, they can develop power. They must take collective action in order to gain power in the future.

According to Marx one's economic position determines one's vision on society. If you are rich you want the government to protect your rights and properties against the claims of the poor. If you are poor, you want the government to redistribute wealth and power. The rich see the status quo as a just (legal) order, the poor see it as an unjust (legal) order.

The function of law is to legitimize the oppression of the poor. Private property and freedom of contract are just means to keep the present ordering of society in pace. Equality before the law is a lie

EMILE DURKHEIM -HARMONY

Durkheim has a complete different theoretical perspective on society: harmony and division of labor (specialization) leads to progress. He compares society to the human body in which each part (heart, eye legs etc.) has a specific function that is needed for the body as a whole to live and survive. Societies realize progress through specialization: they become richer if they specialize in the activities in which they perform well.

In Durkheim's vision law is the '**conscience collective**' that keeps society together. This is necessary because the big danger of too much specialization is 'anomie', as society is falling apart. Law reflects the collective norms that create social cohesions of society. Law functions as a collective conscience and is of a retributive character.

MAX WEBER -RATIONALIZATION

Weber describes the development of societies in terms of rationalization. In pre-modern societies decisions were taken on the basis of witchcraft, signs of God, sacred traditions etc. People lived in small communities with close personal ties. Modern capitalism changes all this: two rational tendencies dictate the direction of society: scientific discoveries allowed mankind to reign over nature (medical science and diseases) and economical cost- benefit analysis driven by profit maximisation is the engine for economic growth and progress.

For governing the society bureaucracy became the most appropriate form of guiding society: formal organizations, led by experts and based on strict rules and hierarchy replace traditional forms of governance by kings and other traditional rulers. The function of law is to enforce promises, so we can enter into contracts with people we don't know. Weber saw also the disadvantages of rationalization: the iron cage. Modern society is cold and rational, personal emotions and traditions don't count anymore and the individual lives a rich but isolated life.



UNIT 3 : LAW AND SOCIOLOGICAL CONTROL

The first function law fulfills is social control. But does existence of rules guarantee peaceful existence of the society? Who is to ensure compliance with legal rules? This Part attempts to answer these questions and many others related to social control. Social control theorists are interested in learning **why people conform to norms**.

They ask why people conform in the face of so much temptation, peer pressure, and inducement. However, a conception of social control is sometimes puzzling.

One may be bound to ask what social about the control of law, and how are we to identify its manifestations? Is all law committed to social control



CONT

The effectiveness of law as an instrument of social control depends on the assumptions lawmakers and implementers have about human behavior. For instance, tax laws offer a good example of the difficulties in trying to anticipate what people will do in response to various legal requirements.

It is therefore important to understand tax compliance drawn from behavioural decision theory. Here comes the issue of rationality, strategies people use to make taxpaying decisions, distinguishing between norm-processing and outcome-processing strategies.

Social control theorists further argue that the more involved and committed a person is to conventional activities, the greater the attachment to others (such as family and friends), the less likely that a person is to violate the legal norms of society.

UNIT 4 : LAW AND DISPUTE RESOLUTION

Conflict is inevitable; it is inherent to the human nature. Its management calls for the intervention of law, and here comes another important function of law which is the orderly and practical settlement of disputes within the society.

The objective of this part is to examine the question of why, how, and under what circumstances laws are used in disagreements between individuals, between individuals and legal persons, and between legal persons themselves.

A number of various terms are used in sociology of law in this perspective. There are terms such as conflict resolution, conflict regulation, conflict management, dispute processing, dispute settlement or simply disputing. It's however worth noting that they are all meant to describe the role of law in controversies, and they can be used more or less interchangeably.

DISPUTE CATEGORIES

- Typology of litigants
- Disputes between individuals
- Disputes between individuals and legal persons
- Disputes between legal persons.



CONT,

- Litigation
- Arbitration
- Conciliation
- Negotiation

Specific : Gacaca, Abunzi, inteko z'abaturage, KIAC...etc



UNIT 5 : LAW AND SOCIAL CHANGE

Can **social change** have a meaning if it is not underpinned by the law? when a society looks to make changes in its governance, no matter how those changes are conceived or promulgated, they must be sustained by legislation that creates a firm and lasting framework—that enshrines change within a shared system of norms and aspirations.

By “**social change**” one should understand the progressive change or positive changes that are proposed or introduced because they are intended to improve something.

But in all these changes, what is the role played by law? Under which social conditions laws emerge and are changed? To what extent can law be a **resource** to implement social change?

CONT.

While reflecting on these questions, it is important not to forget that law is regarded as both an effect and a cause of social change. We therefore need to analyze this theme by considering two aspects: law as an implement of social change, and various factors that have an influence on law as an agent of social change .

Domestically we might be speaking about new approaches to the treatment of homelessness in society, or new strategies of fighting corruption and genocide ideology. On the international scene, we might be addressing such issues as regulations affecting personal mobility within national borders.



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THEMES

- Social change as a cause of legal change
- Law as an implement of social change
- Advantages of law in creating social change
- Limitations of law in creating social change
- Resistance to social change.




UNIT 6 : LEGISLATION

Who is THE Legislator?

- ‘legislation is representation’
- President and Ministers
- Parliament
- Interest groups
- Local decentralized autonomous entities

In a democracy we are obliged to obey the laws made by the legislator (Parliament and Executive), because they have got their mandate via elections. Citizens can vote on some other party in a new election, if we are not satisfied with our ‘representatives’.



CONT,

In a democracy people are 'ruled by themselves' That is meant by legislation is representation.

The majority decides in a democracy, the outcomes of legislative deliberations are binding on all of us, also if we don't agree.

If we disobey legislation, the state is legitimized to use force against us.

Effects of legislation Text: Some functions of legislation (V. Aubert)

Implementation

Compliance

Enforcement

Repressive, autonomous and responsive law (Nonet and Selznick)



CONT

Legislation is the first and most important pillar under the rule of law.

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Legislation is very complicated in Rwanda: three languages and three traditions (civil law, common law, traditional legal values. It is a 'hybrid' or a 'cocktail' .

The fact that Rwanda wants to be an active partner of the international legal community (United Nations, East African Community) adds to the complexity of legislation: Treaties and EAC rulemaking. Rwanda has lost part of its autonomy.




UNIT 7 : THE JUDICIARY

Judges make binding decisions that must be obeyed by everyone. Judges have a special authority, but it is not self-evident that their decisions get a proper follow up.

Political legitimacy: do the other organs of the state obey the judge? How can a citizen execute a judgment against the mayor of Butare if the bailiff is employed by that Mayor? Separation of powers between the three branches of government is a delicate issue in every country.

Legal legitimacy: are the judges really experts in all fields of the law? Are they specialized enough to make good decision in complicated insurance law questions? If judges make legal mistakes – for instance in EAC law – there is a problem.

Sociological legitimation: Does the winner of the case really what the judged decided? You can have a legal victory in court, but when the judgment cannot be executed, it is just a piece of paper and is worthless for the winning party. Execution of judgments by bailiffs is a problem in Rwanda.



CONT

The independence of judges has different aspects.

What makes a judicial decision 'just'? Two theories:

Procedural: the judge cannot find the truth, he has tools to decide a case: listening to both parties, applying legal rules and placing the burden of proof to one of the parties, but that is all.

Material justice: The judge must do everything he can to find out what really happened, new scientific techniques help (DNA). If a judge has made a mistake, the case must be re-openend.



CONT,

Another way of looking at the quality of your judicial system is comparing it to other countries. Three dimensions are important

Rectitude of decision: i.e. applying the right rules to the real facts

Costs: access to the court not only for the rich

Time: 'Justice delayed is justice denied'

Every country must find a just balance between those three.

If the courts do not perform their societal duties well, we look for alternatives, such as: Arbitration for the commercial world, Mediation: Abunzi, Labor Inspectors

Mediation: people remain owners of their problems, they negotiate a solution themselves, with the help of a facilitator.



UNIT 8 : THE *BAR, LAWYERS, ADVOCATES*

The Bar association as a professional organization :

- Self-regulation of professionals
- Entrepreneurship

Advocates are like judges independent, but in a different way. They are independent of the State, because they must defend their clients **AGAINST** the state .

This is also a pillar under the rule of law. They have professional privileges that the State must respect. Advocates cannot be obliged to tell to the judge what their client has told them.

Advocate is a liberal profession: an elite of educated specialists with special knowledge, privileges and monopolies (like doctors). They have a public task, but operate as entrepreneurs. Their clients pay advocates. This raises the question of access to justice for the poor (lawyers are expensive).



CONT : ACCESS TO JUSTICE FOR THE POOR

There is a legal aid 'gap': the way the bar is organized has the danger that legal assistance is only available for the rich. That violates the principle of equality before the law. There are two policy reactions of the state: 1: Judicare: The state subsidizes certain vulnerable groups by paying their advocate a moderate salary for each case.

And 2: easy accessible offices, specialized in legal question for poor people (land law!). They are for free. What the poor can do to improve their legal position is to organize themselves and fight collectively for their rights. This is sometimes more effective, than complaining on a case-by-case basis. One can use paralegals and modern ICT like Internet and mobile phones.



QUESTIONS

“Telling you which definition to accept would be like telling you which religion to practice”. Explain why.

Choose your favourite law definition and explain your choice. (According to Max Weber, Law has three basic features that, if taken together, distinguish it from other normative orders (ie custom or convention).

Explain (What functions does law perform in society?

What can be the probable sources of dysfunctions of law?

Society is conceived in two perspectives: Consensus perspective and Conflict perspective. What is the difference between the two?

Explain Weber's typology of legal systems.

What is meant by Marx's theory of law?



CONT;

Explain the four styles of social control represented in law, as asserted by Donald Black

Methods of informal social controls are best exemplified by folkways and mores. What does this mean?

Taking the example of the 'old lady network' used in China as a means of grass-roots social control, describe the social control in Rwandan communities ?

What type of society imposes formal social control on their citizens? Give examples of crimes without victims that normally occur in the Rwandan society

"In principle, in a democratic society, tradition and values affirm that dissent is appropriate." Discuss.

Give illustrations in the UR campus life of "two types of sanctions, five controllers that administer sanctions and make rules, and five types of rules"



CONT;

Though societies may have different preferences over methods of dispute resolution to use, it is asserted that there are two principal forms of resolving legal disputes throughout the world. Explain.

What is the difference between 'Primary resolution processes' and 'Hybrid resolution processes'?

Based on what you've learned about law & dispute resolution, what method(s) does the Office of the Rwandan Ombudsman often use to settle disputes? Do you think it's (they're) the most useful in resolving disputes?

In recent years, Rwanda has made a lot of legal and judicial reforms, do you think that all these changes were caused by social changes? If yes, what are they?

Some people have started expressing their disagreement on the Government policy of moderating the population growth through law, what do you think is the reason behind?.

Discuss the advantages of law in creating social change in the Rwandan context.

