

CHAPTER 2 – THEORETICAL PERSPECTIVES

Chapter Outline

- I. Evolution of Legal Systems
 - a. Primitive Legal Systems
 - b. Transitional Legal Systems
 - c. Modern Legal Systems
- II. Theories of Law and Society
 - d. The European Pioneers
 - e. Classical Sociological Theorists
 - f. Sociolegal Theorists
 - g. Contemporary Law and Society Theorists
- III. Current Intellectual Movements in Law
 - h. The Functionalist Approach
 - i. Conflict and Marxist Approaches
 - j. Critical Legal Studies Movement
 - k. Feminist Legal Theory
 - l. Critical Race Theory
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Chapter Summary

There is no single, widely accepted comprehensive theory of law and society. Although this field of study is large and complex, there are ways of categorizing specific law and society theories. The categories are generally subjective, but provide order to the numerous sociolegal theories.

Formal codified law in a society emerges when the social structure becomes so complex that informal mechanisms of social control are no longer adequate. Historically, this legal development has been closely related to industrialization, urbanization, modernization, and globalization. The general types of legal systems are primitive, traditional, and modern. All of these systems still exist in the world today, and can be distinguished by the relative development of informal and formal legal systems and social controls.

Most theorists agree that societal and legal complexities are interrelated; however, these theorists differ on the particular mechanisms of the relationship between law and society. Early European scholars based their legal theories on the idea of natural law. In the middle of the 18th century, theorists moved from the study of nature of law and began an analysis of positive law. These theorists include Baron de Montesquieu, Herbert Spencer, and Sir Henry Sumner Maine.

Sociologists have focused on the interrelation between legal institutions and the social order. These theorists were guided by social science principles in analyzing how legal institutions, social order, and social structure are related. These theorists include Karl Marx, Max Weber, and Emile Durkheim. Of these classical sociologists, Karl Marx is perhaps the most influential. Max Weber developed a typology

of legal systems which makes two fundamental distinctions of legal procedure and law: rational/irrational, formal/substantive.

Sociolegal theorists insist that law must be understood in the context of the realities of social life. These scholars analyze the influence of social sciences in their analysis of legal development. Such theoretical breakthroughs as public opinion in legal development, legal realism, and the trend of law have led to the modern understanding of law and society. Theorists such as Albert Dicey and Oliver Wendell Holmes, Jr., laid a foundation for contemporary legal scholars.

Currently, there are two widely accepted approaches to the study of law and society. Functionalism attempts to account for law in society within the overall framework of the theory that society consists of interrelated parts that work together for the purpose of maintaining internal balance. The conflict and Marxist approaches to the study of law in society are based on the assumption that social behavior can best be understood in terms of tension and conflict between groups and individuals in competition for economic resources. These approaches have influenced contemporary theoretical movements, such as critical legal studies, feminist theory, and critical race theory.

Learning Objectives

- Understand the evolution of legal systems.
- Be able to describe each type of legal system and the factors that distinguish each.
- Identify the major theories of law and society and the related theorists.
- Understand the relationship between societal and legal complexities.
- Describe the two widely accepted approaches to the study of law and society.

Critical Thinking Questions

1. How has the development of societies mirrored the development of law?
2. How does the social environment of the various theorists discussed affect their view of law in society?
3. What are the differences and similarities between the functionalist and conflict approaches?
4. To which theory of law and society do you most subscribe?

Activities for Classroom Participation

1. Divide class into groups of three that will be considered a primitive society. Have each group develop a basic set of laws for their society. Have each group examine how culture and custom has affected its set of laws.
2. Divide the class into groups of two. Assign each group a theory to research out of class. Randomly call two groups to debate their theory and take questions from the rest of the class.
3. Divide the class in two with one side to argue for a functionalist approach and the other a conflict approach. Present the groups with a topic to address from the point of view they are assigned. Example topics include abortion, speeding, murder, prostitution, and drug abuse.

Suggested Films or Weblinks

Sources:

The Encyclopedia of Law and Society online version:

<http://www.cas.sc.edu/socy/faculty/deflem/zencyL&Ssoclaw.html>

Richard Quinney at Borderland Books: <http://www.borderlandbooks.net/>

Meda Chesney-Lind webpage: <http://chesneylind.com/>

The Law and Society Association: <http://www.lawandsociety.org/>

The Center for the Study of Law and Society: <http://www.law.berkeley.edu/csls.htm>

Works of Oliver Wendell Holmes, Jr. : <http://www.gutenberg.org/browse/authors/h#a4722>

Works of Karl Marx: <http://www.gutenberg.org/browse/authors/m#a46>

Video:

Noam Chomsky: Conflict Theory: <http://www.youtube.com/watch?v=XR3jigR8FPc>

Richard Quinney: Peace Making Perspective in Criminal Justice:

<http://www.betochair.com/media/quinney-formal/>

Meda Chesney Lind: Bad Girls Go Wild? <http://www.betochair.com/media/meda/>

Audio only: Karl Marx - In Our Time: <http://www.bbc.co.uk/programmes/p003k9jg>