

# Sociology of law: theories and concepts



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## **Introduction**

The three classical thinkers of Sociology, Marx, Weber and Durkheim have one thing in common regarding the Sociology of Law; their theories were part and parcel of a more fundamental sociological perspective and theory of society. Marx will be the odd one among the three because, the work of Marx is on theoretical ground not evidently connected to the aspirations of sociology, but historically Marx's writings have informed a considerable body of sociological writings until this day. Marx made a contribution to social science by suggesting the instrumentalist theory of law in contributing to and justifying social inequality. Durkheim's work orients around the key dimensions of social issues as involving both factual and normative dimensions of society. Whereas Weber is considered as the founding father par excellence of the modern sociology of law. When Weber observed that social life in the modern era had become more and more rationalized in a purposive-rational sense, he not only contemplated the central role of economy, state, and bureaucracy, but along with it also discussed the role of law as the basis of modern political authority. Weber specifically outlined the characteristics of a formally rationalized legal system that is primarily guided by the application of procedure.

## **Sociology of Law**

The sociology of law is often described as a sub-discipline of sociology or an interdisciplinary approach within legal studies. While some socio-legal scholars see the sociology of law as “necessarily” belonging to the discipline of sociology, others see it as a field of research caught up in the disciplinary tensions and competitions between the two established disciplines of law

and sociology. Yet, others regard it neither as a sub-discipline of sociology nor as a branch of legal studies and, instead, present it as a field of research on its own right within a broader social science tradition. For example, Roger Cotterrell describes the sociology of law without reference to mainstream sociology as “ the systematic, theoretically grounded, empirical study of law as a set of social practices or as an aspect or field of social experience”.

Irrespective of whether the sociology of law is defined as a sub-discipline of sociology, an approach within legal studies, or a field of research in its own right, it remains intellectually dependent mainly on mainstream sociology, and to lesser extent on other social sciences such as social anthropology, political science, social policy, criminology and psychology, i. e. it draws on social theories and employs social scientific methods to study law, legal institutions and legal behaviour.

More specifically, the sociology of law consists of various sociological approaches to the study of law in society, which empirically examines and theorizes the interaction between law and legal institutions, on the one hand, and other (non-legal) social institutions and social factors, on the other.

Areas of socio-legal inquiry include the social development of legal institutions, forms of social control, legal regulation, the interaction between legal cultures, the social construction of legal issues, legal profession, and the relation between law and social change.

The sociology of law also benefits from and occasionally draws on research conducted within other fields such as comparative law, critical legal studies, jurisprudence, legal theory, law and economics and law and literature.

## **The Classical Thinkers**

The roots of the sociology of law can be traced back to the works of sociologists and jurists of the turn of the previous century. The relationship between law and society was sociologically explored in the seminal works of both Max Weber and Emile Durkheim. The works of Karl Marx was not immediately influential in the development of the sociology of law as no direct historical path led from his thought to subsequent sociological schools of thought. Marx's work was later appropriated by critical sociologists who sought to break with the consensual thinking that they felt characterized much of mainstream sociology in the years after World War II. The writings on law by these classical sociologists are foundational to the entire sociology of law today. A number of other scholars, mainly jurists, also employed social scientific theories and methods in an attempt to develop sociological theories of law. Notably among these were Leon Petrazycki, Eugen Ehrlich and Georges Gurvitch.

Marx's theory is not to be understood merely as a theory of the economy, for his analysis of capitalism is meant to provide the basis for an analysis of society. The economic organization of society is its material core from which all other social developments in matters of politics, culture, and law can be explained. This is summarized in Marx's famous dictum that the infrastructure of a society determines its superstructure. Thus, the division between the economic classes of owners and non-owners appears at the societal level as a class antagonism between the relatively small but powerful bourgeoisie and the relatively large but powerless proletariat. The bourgeoisie can articulate its economic power also at the political, cultural,

and legal level because of its control over all important institutions of society, such as government, the legal system, art science, and education. The economic, according to Marx, only the destruction of capitalism in favor of a communist mode of production, whereby the workers collectively own and control the means of production, would ensure a successful revolution of society into a more just social order.

Marx did not develop a comprehensive perspective on law and his ideas on law are scattered throughout his writings. Marx's theory of the state provides the most useful entry into his perspective on law. Congruent with his materialist perspective, Marx asserts that the economic conditions of society determine what type of state will develop, which in a capitalist society implies that the state will be controlled by the bourgeoisie as an instrument to secure economic rights and to moderate class conflict. For him the capitalist state represents and secures the power of the dominant economic class which now also becomes the politically dominant class. Interestingly, Marx argues that the democratic republic, rather than being a more egalitarian form of the capitalistic state, for it totally disregards the property distinction that have arisen under capitalism.

Marx's notion on law is instrumentalist, similar to that of his notion of state. He views the legal system in function of its role as an instrument of control serving bourgeois interests. Rather than abiding by a principle of the rule of law that holds that it is just for the law to be applied equally and fairly to all, Marx maintains that capitalist law actually enhances the conditions of inequality that mark capitalist society. Marx contends that the capitalist legal system contributes to inequality because capitalist law establishes and

applies individualized rights of freedom, which benefit those who own while disfavoring those who are without property. The formal equality that is granted in law by treating the various parties that are in contract with one another or with the state as equal contributes to sustain and develop the economic inequalities that exist among legal subjects. Legal doctrine justifies the practices of capitalist law on the basis of a notion of justice claimed to be universally valid but which in actuality serves the interests of only the dominant economic class. The ideology of capitalist law is ultimately accepted widely even among those members of society who are economically disadvantaged and thus additionally subject to the inequalities brought about by the legal system.

For Max Weber, a so-called “ legal rational form” as a type of domination within society, is not attributable to people but to abstract norms. He understood the body of coherent and calculable law in terms of a rational-legal authority. Such coherent and calculable law formed a precondition for modern political developments and the modern bureaucratic state and developed in parallel with the growth of capitalism. Central to the development of modern law is the formal rationalisation of law on the basis of general procedures that are applied equally and fairly to all. Weber specifically outlined the characteristics of a formally rationalized legal system that is primarily guided by the application of procedures. His analysis of law is an intrinsic part of his sociology, in terms of both its perspective of the study of society and its theoretical propositions on the conditions of modern society. Modern rationalised law is also codified and impersonal in its application to specific cases. In general, Weber’s standpoint can be

described as an external approach to law that studies the empirical characteristics of law, as opposed to the internal perspective of the legal sciences and the moral approach of the philosophy of law.

Weber developed his perspective on law as part of a more general sociology. In the systematic nature and comprehensive scope of its contribution, Weber's analysis is rivaled only by that of Emile Durkheim, whose sociology of law was likewise part and parcel of a more fundamental sociological perspective and theory of society.

Emile Durkheim wrote in *The Division of Labour in Society*, that as society becomes more complex, the body of civil law concerned primarily with restitution and compensation grows at the expense of criminal laws and penal sanctions. Over time, law has undergone a transformation from repressive law to restitutive law. Restitutive law operates in societies in which there is a high degree of individual variation and emphasis on personal rights and responsibilities. For Durkheim, law is an indicator of the mode of integration of a society, which can be mechanical, among identical parts, or organic, among differentiated parts such as in industrialized societies. Durkheim also argued that a sociology of law should be developed alongside, and in close connection with, a sociology of morals, studying the development of value systems reflected in law.

At sociology's heart is a concern for morality. For Durkheim, society cannot exist without moral bonds, whether these are bonds of shared belief or of mutual commitment reflecting the interdependence of individuals or social groups. Moral ideas are neither innate in the individual nor to be deduced

from abstract first principles. They are inspired by the empirical conditions of social life in particular times and places. To understand those conditions and the forces that shape social development is rationally to appreciate morality's demands. Morality provides the normative framework of stable social relationships. In modern society these relationships are primarily domestic, economic and occupational and political relationship of citizenship. Morality expresses the requirements of living together in particular environments; 'the domain of the moral begins where the domain of the social begins' (Durkheim, 1961: 60). For Durkheim, "Moral ideas are the soul (l'ame) of the law"(1909: 150). Law expresses what is fundamental in any society's morality. So the study of law like that of morality is central to sociology.

## **Conclusion**

Among the three classic thinkers Marx did not focus on law to any degree of intellectual satisfaction, while the sociological contributions of Weber and Durkheim are not only influential but foundational to the sociology of law.