

# The Study Of Law In A Social Context

Law is of an essentially social character. The set of legal norms enacted by the legislator for the orderly regulation of social relationship between the several members of the community, serves to co-ordinate human activity. Therefore law should in no way be regarded as a static set of legal rules, but as a continuous socio-legal process. The study of law in this sense: as a continuous evolution, as found interpreted, applied created and evolved to the point when it acquires legally binding validity, ought to be encouraged. Such a study may perhaps lead us to a systematic knowledge of the impact of law on social conduct and may possibly show us how society, through its various manifestations, helps to fashion the legal norms which, in turn, come to be enforced by organized society.

The study of written general legal norms as applied to the individual exigencies, as tempered by the judge's sense of equity would therefore help us to understand:—

- i) how legal norms in fact function in the community for which they have been enacted; and
- ii) how social organization in turn helps to fashion and temper the legal process itself.

Although legal norms, as part of the established social rules, serve to co-ordinate social relationships, they do not operate automatically. They function successfully or otherwise, in so far as the community or its several component individuals appeal to them, interpret them and finally apply them to their social exigencies.

The numerous studies carried out in

other countries have proved instrumental in establishing the following general principle: at each point at which the legal system is linked to the larger society, the legal processes at that point necessarily reflect the structure of the larger society. At each point

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therefore where the law is in any way linked to the larger community the legal process betrays the impact of stratification, the division into social strata with varying degrees of prestige.

In this way the jury — an institution purposely designed to link the legal process to the community — is specifically conceived to protect the ordinary man from arbitrary action by irresponsible or unresponsive officials. But although the jury is a democratic institution, it necessarily reproduces the stratification obtaining in a given community and thus the stratification system of the community affects the legal process through these jury men. (1)

It would not therefore be amiss to attempt through empirical investigation a scientific study about the people who are usually called to serve on juries, their social conditions, and how far a given social background would exert influence on the deliberations of jurymen. It would be indeed interesting to establish the extent to which such persons apply the written legal norms and how far they rely on their personal intuitive sense of justice during their delibera-

tions. One should seek to understand the obscure consequences of a trial by jury on the actual operation of our system of criminal law, and subordinately, the extent to which this process is accounted for in the pattern of social life.

It has been established that stratification influences the legal process at other points at which the legal system comes into contact with the larger society. The selection of members of the legal profession and selection of claims to be litigated have both been proved to be influenced by social stratification. It is logical therefore to conclude that by shaping and establishing the raw materials with which the legal system has to operate, social stratification tends to play an important and significant role in the moulding of the entire legal process. (2)

The study of law as a process necessarily leads one into the problem of "conceptual" as opposed to "functional" rights. The critics of purely conceptual theory have always asserted that law is not a system of dead written norms or logically related concepts and rules. On the contrary law is intended to achieve important social purposes. Judicial interpretation of the existing law is an essentially creative activity. It is the classical way of the adaptation of law to contemporary social ends because it is necessarily responsive to social needs and pressures. However such an activity should be systematically channeled and effectively controlled that it may serve arising social functions. The study of law as functional rights in the last analysis, is not a mere critical attack upon rigid conceptualism, but a positive attempt to understand how written law is applied to implement social aims through the imposition of control by the political enforcement of legal norms.

For this reason it would be interesting to attempt a study of the impact of

law on conduct. This impact is not to be confined to the results obtained from enforcement of the law by administrative authority. It would be feasible to see how far private groups utilize the law to secure their private interest. However the really important question is not whether law can affect conduct, but rather under what conditions, law affects conduct and through which mechanism is such influence of the law exerted. Indeed the effectiveness of the law in changing conduct may not depend entirely either on the degree to which the law corresponds to the obtaining social attitudes in the community or on the severity of the penal sanctions applied to enforce the law.

In respect of community attitude the best one can say is that the notion is intricate and knotty. One has to distinguish between various community attitudes towards any given law and more especially in respect of the necessity or desirability of such a law, its fairness, the right of the legislator to enact such a law and finally whether it remains equitable when applied to particular instances.

Modern Scholars have further distinguished between the willingness of the community to obey the law from its desire to obey such a law. People may not like to pay taxes but the legitimate right of the state to impose them has not been generally challenged. (3)

Moreover it is important to appreciate that the community is not a homogeneous group of individuals. Several factions may exist forming a complicated network of opposed interests, beliefs, and patterns of conduct with varying degrees of organization. What may seem to one sector as illegitimate and unfairly onerous may be regarded by another group as an indispensable condition for the effective and ethical development of the community. Therefore one must first try to under-

stand the relevant features of any given community before attempting to evaluate the effect any given law is going to have on conduct. This helps one in establishing whether certain specialized groups have a vested interest in seeing the law adequately implemented, whether such groups are adequately organized to press their respective demands, and if so organized whether they have access to effective channels of influence on the country's administrative and political set up.

In the same way it is necessary to identify in the community any group of potential violators and discover any defensive strategies, if any, which may be resorted to by such groups.

Thus, although generally law is a response to attitudes somewhere in the community, to establish its effectiveness it is essential to determine the degree to which religious, cultural and political leverage is available to its upholders, as a result of their influential position in the administrative and organizational set-up.

Social organization, many times, provides us with the answer behind the success of modern state governments, as for instance, in collecting taxes. This cannot be easily explained in terms of public acceptance.

The modern governments' highly suc-

cessful implementation of such laws as income tax is largely due to the increasingly organised systems of access to tax payers. Indeed this has been successfully implemented through the application of systems of reporting and withholding of the income of others by private citizens at strategic check points in the community.

Law must therefore be understood as an essentially social process but this implies that legal norms acquire a new, functional meaning as they are used, applied, interpreted and ultimately, through regular and habitual use, embodied in the institutional structure of society. Life in the modern state is essentially organised around fundamental institutions which provide coherence to organized life in the community. Such institutions are defined and regulated by law. It would be interesting to draw up an account of the manner in which those engaged in application and interpretation of the law and private groups or individuals use the law to establish and regulate conduct through the gradual evolution of social institutions.

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- (1) Bias, Probability and Trial by Jury — W.S. Robinson American Sociological Review, XV 1950
  - (2) Leon Mayhew — Law and Equal Opportunity. Harvard University Press 1968
  - (3) Leon Mayhew — Sociology of Law.