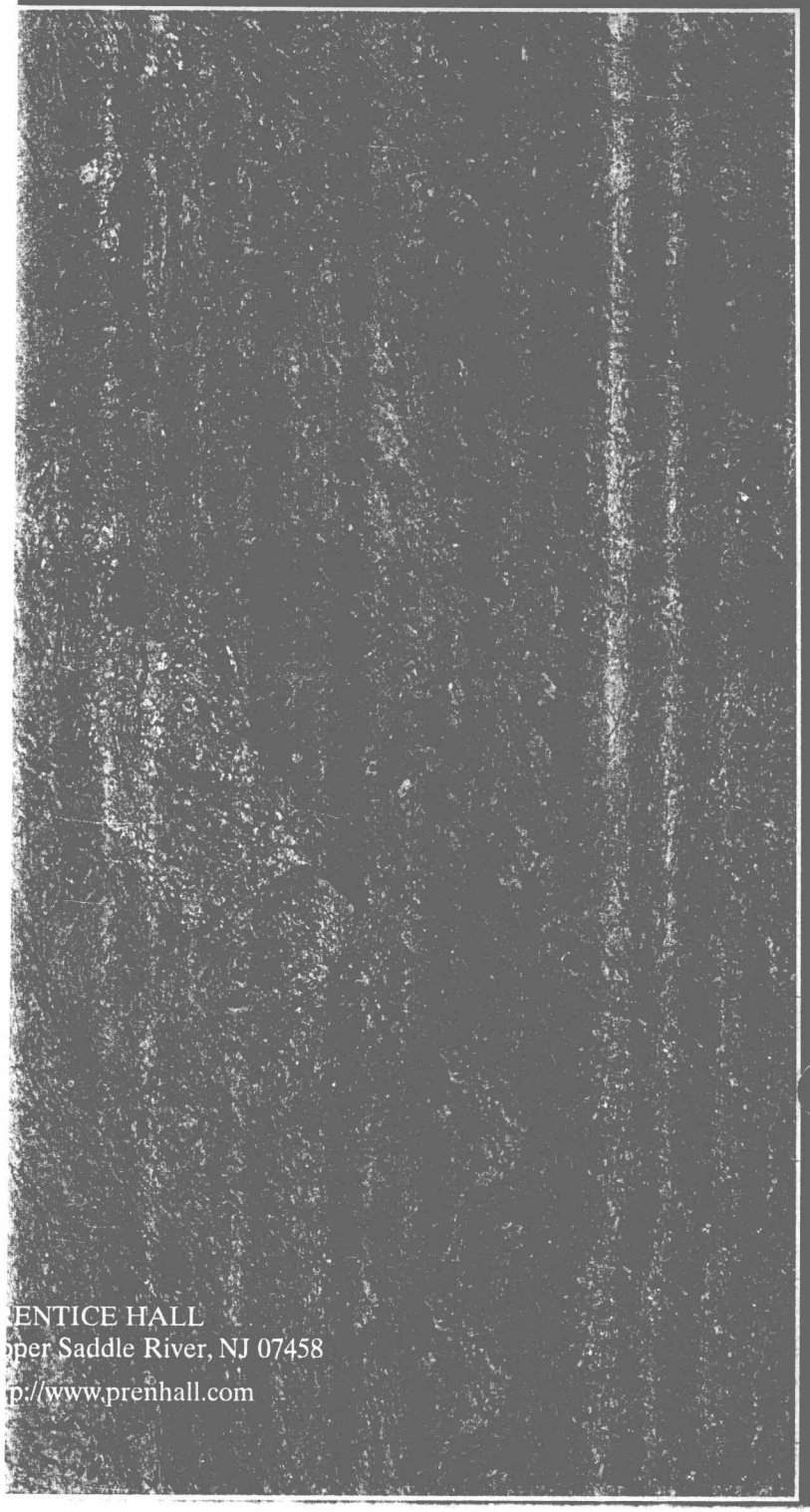
LAW AND SOCIETY

SIXTH EDITION

STEVEN VAGO



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Preface

Over the past two decades, the previous and progressively more comprehensive editions of this book not only became popular with law and society scholars, but were adopted as textbooks in more than 350 colleges and universities. Extra printings along the way confirmed the usefulness of the text and the growing interest in the subject matter. This sixth edition is a result of the wide acceptance and demonstrated utility of the earlier versions. While reflecting the intent, perspectives, and basic plan of preceding versions, this edition enhances the message with extensive new input. The material is reorganized and presented in a more integrated and relevant way for the benefit of students. The book is in tune with ongoing global changes in legal systems and extensively incorporates the most recent theoretical developments and the latest research results. Much of the book has been rewritten to further increase clarity and readability and to include new trends, concerns, and controversies. The temptation to engage in merely cosmetic changes that are common in revisions has been successfully resisted. Throughout the various revisions, my purpose remained the same: to prepare a book that is pedagogically sound, full with ideas and insights, informative and provocative to read, and distinctive in its coverage of the subject.

A substantial amount of new material has been included in this edition. The coverage now includes detailed and up-to-date discussions on the transformation of legal systems in Central and Eastern Europe and the former Soviet Union and some of the unintended consequences that promoted organized crime; critical race theory; community policing in Japan; trends in sentencing guidelines; and a variety of new developments in alternative dispute resolution and in the death penalty controversy. The many changes that have been suggested by students and reviewers have been considered and incorporated. All the chapters have been fully updated and expanded to reflect ongoing trends and current developments. There are close to 300 new

resources and references, a significantly expanded list of further readings at the end of each chapter, and I have greatly increased the number of cross-cultural illustrations. I made a point of further emphasizing clarity of language at the expense of professional jargon.

The objective of this book is to serve as an undergraduate text in one-term courses. Although the book was written primarily for college students, anyone with an interest in law and society will find it informative and provocative. The classroom tested and refined material has been organized and presented in a logical fashion, and each chapter builds on the previous one. Should one prefer a different organization of the contents, it would not detract from the value of the book. For example, if one desires, Chapter 3, Research Methods, can be read at the end of the book instead of after Theoretical Perspectives. For a quick chapter overview, some readers may want to look at the detailed summaries. The suggested further readings are designed to provide a starting point for interested readers to pursue further a particular topic and to reflect alternative perspectives.

As I noted in previous editions, the study of the interplay between law and society is fundamentally eclectic. Knowledge about it has accumulated haphazardly. Intellectual developments in the field are influenced by a number of theoretical perspectives, resulting in a variety of strains of thought and research. In a sense, once again, more questions will be raised than answered. The abundance of unanswered questions and unexpected developments keeps the study of law and society challenging and appealing.

Writing a book always requires the cooperation, support and encouragement of many people. Prentice Hall reviewers Richard H. DeLung, Wayland Baptist University, Edward J. Shaughnessy, John Jay College of Criminal Justice, and Earl Smith, Wake Forest University, made insightful and valuable suggestions. I also thank the many students (who over the years read and commented on and constructively criticized the multiple versions of the manuscript) for their no-nonsense feedback, demand for clarity, aversion to redundancy, reluctance to take things for granted, and willingness to talk back to their professor. Once again, I had the distinct pleasure of working with production editor and supervisor Kim Gueterman who was instrumental in organizing, coordinating, and getting this manuscript off the ground. I am especially appreciative of the work of Donna Mulder who did a superb job of editing this manuscript. The index was expertly prepared by Aristide Sechandice. As with the preceding editions and other scholarly endeavors, this work could not have been realized without the generous pecuniary, moral, and spiritual support of the Vago Foundation, which alone provided the necessary infrastructure, secretarial services, library assistance, and magnanimously covered all expenses incurred in the preparation of this book.

Steven Vago
St. Louis

CHAPTER 1

Introduction

At the dawn of the new millennium, law increasingly permeates all forms of social behavior. Its significance and pervasiveness resonate on all walks of life. In subtle and, at times, not so subtle ways, a complex and voluminous set of laws governs our every action. It determines registration at birth and the distribution of possessions at death. Laws regulate prenuptial agreements, marriage, divorce, and the handling of dependent children. Laws set the speed limit and the length of school attendance. Laws control what we eat and where and what we buy and when, and how we use our computers. Laws protect ownership and define the boundaries of private and public property. Laws regulate business, raise revenue, provide for redress when agreements are broken, and uphold social institutions, such as the family. Laws protect the prevailing legal and political systems by defining power relationships, thus establishing who is superordinate and who is subordinate in any given situation. Laws maintain the status quo and provide the impetus for change. Finally, laws, in particular criminal laws, not only protect private and public interests but also preserve order. There is no end to the ways in which the law has a momentous effect upon our lives.

The principal mission of this book is to serve as a text in undergraduate courses on law and society. The large number of predominantly recent references cited also makes the text a valuable source for both graduate students engaging in research on the sociology of law; instructors who may be teaching this subject for the first time; and anyone else wanting to gain greater insight and understanding of the intricacies of law and society. Because the book has been written originally for the undergraduate student, I opted for an eclectic approach to the often controversial subject matter without embracing or advocating a particular position, ideology, or theoretical stance. To have

done so would have been too limiting for a text because important contributions would have been excluded or would have been considered out of context. Thus, the book does not propound a single thesis or position; instead, it exposes the reader to the dominant theoretical perspectives and sociological methods used to explain the interplay between law and society in the social science literature. Should any reader care to follow up on a theoretical perspective or practical concern, or advocate or defend a certain position, the chapter topics, references, and suggested further readings will provide the necessary first step toward the further exploration of most law and society related issues.

OVERVIEW

In every society there are mechanisms for the declaration, alteration, administration, and enforcement of the rules by which people live. Not all societies, however, utilize a formal legal system (courts, judges, lawyers, and law enforcement agencies) to the same degree. Traditional societies, for example, may rely almost exclusively on custom as the source of legal rules and resolve disputes through conciliation or mediation by village elders, or by some other moral or divine authority. As for law, such societies need little of it. Traditional societies are more homogeneous than modern industrial ones. Social relations are more direct and intimate, interests are shared by virtually everyone, and there are fewer things about which to quarrel. Because relations are more direct and intimate, nonlegal and often informal mechanisms of social control are generally more effective.

As societies become larger, more complex, and modern, homogeneity gives way to heterogeneity. Common interests decrease in relation to special interests. Face-to-face relations become progressively less important, as do kinship ties. Access to material goods becomes more indirect, with a greater likelihood of unequal allocation, and the struggle for available goods becomes intensified. As a result, the prospects for conflict and dispute within the society increase. The need for explicit regulatory and enforcement mechanisms becomes increasingly apparent. The development of trade and industry requires a system of formal and universal legal rules dealing with business organizations and commercial transactions, subjects that are not normally part of customary or religious law. Such commercial activity also requires guarantees, predictability, continuity, and a more effective method for settling disputes than that of trial by ordeal, trial by combat, or decision by a council of elders. As one commentator has noted: "The paradox . . . is that the more civilized man becomes, the greater is man's need for law, and the more law he creates. Law is but a response to social needs" (Hoebel, 1954:292).

In the eloquent words of Oliver Wendell Holmes (1881:5), "The law embodies the story of a nation's development through many centuries" and

every legal system stands in close relationship to the ideas, aims, and purposes of society. Law reflects the intellectual, social, economic, and political climate of its time. Law is inseparable from the interests, goals, and understandings that deeply shape or compromise social life (Sarat and Kearns, 1998). It also reflects the particular ideas, ideals, and ideologies that are part of a distinct "legal culture"—those attributes of behavior and attitudes that make the law of one society different from that of another, that make, for example, the law of the Eskimos different from the law of the French (Friedman, 1998).

In sociology, the study of law embraces a number of well-established areas of inquiry (Cotterrell, 1994). The discipline is concerned with values, interaction patterns, and ideologies that underlie the basic structural arrangements in a society, many of which are embodied in law as substantive rules. Both sociology and law are concerned with norms—rules that prescribe the appropriate behavior for people in a given situation. The study of conflict and conflict resolution are central in both disciplines. Both sociology and law are concerned with the nature of legitimate authority, the mechanisms of social control, issues of human rights, power arrangements, the relationship between public and private spheres, and formal contractual commitments (Baumgartner, 1999; McIntyre, 1994; Selznick, 1968:50).

Historically, the rapprochement of sociology and psychology along with other social sciences (Roesch et al., 1999) and law is not novel. Early American sociologists, after the turn of the twentieth century, emphasized the various facets of the relationship between law and society. E. Adamson Ross (1922:106) considered law as "the most specialized and highly furnished engine of control employed by society." Lester F. Ward (1906:339), who believed in governmental control and social planning, predicted a day when legislation would endeavor to solve "questions of social improvement, the amelioration of the conditions of all the people, the removal of whatever privations may still remain, and the adoption of means to the positive increase of the social welfare, in short, the organization of human happiness."

The writings of these early sociologists have greatly influenced the development of the school of legal philosophy that became a principal force in American sociological jurisprudence. [Sociological jurisprudence is the study of law and legal philosophy, and the use of its ideas in law to regulate conduct (Lauderdale, 1997:132). It is based on a comparative study of legal systems, legal doctrines, and legal institutions as social phenomena and considers law as it actually is—the "law in action" as distinguished from the law as it appears in books.] Roscoe Pound, the principal figure in sociological jurisprudence, relied heavily on the findings of early sociologists in asserting that law should be studied as a social institution. For Pound (1941:18), law was a specialized form of social control that exerts pressure on a person "in order to constrain him to do his part in upholding civilized society and to deter him from antisocial conduct, that is, conduct at variance with the postulates of social order."

Interest in law among sociologists grew rapidly after World War II. In the United States, some sociologists became interested in law almost by accident. As they investigated certain problems, such as race relations, they found law to be relevant. Others became radicalized in the mid- and late 1960s, during the period of the Vietnam War, and their work began to emphasize social conflict and the functions of stratification in society. It became imperative for sociologists of the left to dwell on the gap between promise and performance in the legal system. By the same token, those sociologists defending the establishment were anxious to show that the law dealt with social conflict in a legitimate fashion. At the same time, sociological interest in law was further enhanced by the infusion of public funds into research evaluating a variety of law-based programs designed to address social problems in the United States (Ross, 1989:37). These developments provided the necessary impetus for the field of law and society, which got its start in the mid-1960s with the formation of the Law and Society Association and the inauguration of its official journal, *Law & Society Review* (Abel, 1995:9; *Law & Society Review,* 1995:5).

Nowadays, a number of universities offer undergraduate, graduate, or joint degree programs in law and society, such as the School of Justice Studies at Arizona State University, the Jurisprudence and Social Policy at University of California–Berkeley, the Department of Law, Jurisprudence and Social Thought at Amherst College, University of Wisconsin, and University of Massachusetts–Amherst. There are also a number of major research institutes such as the Center for Law and Society at Berkeley, the Institute for Law and Society at New York University, and the Institute for Legal Studies at the University of Wisconsin (Abel, 1995:10).

But interest in law and society is not confined to the United States. Adam Podgorecki, a Polish sociologist, has analyzed a number of distinct national styles in social science work related to law. Scandinavian scholars have emphasized the social meaning of justice. In particular, they have investigated knowledge of the law and attitudes toward it. Italian social scientists have been concerned with empirical investigations of judges and the process of judging. With the end of the Soviet Union, the legitimacy of its law also died. Russian social scientists are now looking into the processes involved in the transformation of socialist legal systems into more Western, market-oriented ones with studies on privatization, joint ventures, leadership successions, and the reintroduction of juries in criminal cases. German sociologists are studying the sociolegal implications of reunification, changing demographic composition of the population due to immigration, and the ways of coping with economic contrast and rising nationalism. Additionally, there is a flourishing interest in law and society in Japan, initiated by the many problems Japan experienced with the reception of European law and more recently by the growing anti-Japan sentiments brought about by perceptions of "unfair" trade practices. Both nationally and internationally, a number of organizations have been formed and centers established to study the multifaceted interaction between

law and society (Rehbinder, 1975:13–48). Most recently, the International Institute for the Sociology of Law was founded in 1988 by the International Sociological Association (Research Committee on Sociology of Law) and the Basque government. The institute is located in the Old University of Onati (Spain), and by the mid-1990s it had a full-fledged masters program and an International Doctorate in Sociology of Law program with a long list of applicants anxious to gain admission.

Few sociologists concerned with the study of law and society would question Eugen Ehrlich's oft-quoted dictum that the "center of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself" (Ehrlich, 1975: Foreword). I share I. D. Willock's (1974:7) position that "in so far as jurisprudence seeks to give law a location in the whole span of human affairs it is from sociology that it stands to gain most." Sociological knowledge, perspectives, theories, and methods are not only useful but also axiomatic for the understanding and possible improvement of law and the legal system in society.

But the study of law by sociologists is somewhat hampered by difficulties of interaction between sociologists and lawyers. Language-based approaches to issues are different in the two professions (Conley and O'Barr, 1998) and as Edwin M. Schur correctly notes, "In a sense . . . lawyers and sociologists 'don't talk the same language,' and this lack of communication undoubtedly breeds uncertainty in both professions concerning any involvement in the other's domain, much less any cooperative interdisciplinary endeavors." He goes on to say: "Sociologists and lawyers are engaged in quite different sorts of enterprises," and notes that "the lawyer's characteristic need to make decisions, here and now, may render him impatient with the sociologist's apparently unlimited willingness to suspend final judgment on the issue . . ." (Schur, 1968:8). The complexity of legal terminology further impedes interaction. There is a special rhetoric of law (Sarat and Kearns, 1994) and it has its own vocabulary; terms like *subrogation* and *replivin* and *respondant superior* and *chattel lien* abound. Lawyers use a special arcane writing style, at times replete with multiple redundancies such as *made and entered into, cease and desist, null and void, in full force and effect,* and *give, devise and bequeath.* Not surprisingly, "Between specialized vocabulary and arcane style, the very language of the law defies lay understanding" (Chambliss and Seidman, 1982:119). There is a move underway to combat such legalese, and lawyers and law schools are beginning to learn that good English makes sense (Gest, 1995).

Problems of interaction are also brought about and reinforced by the differences in professional cultures (Davis, 1962). Lawyers are advocates; they are concerned with the identification and resolution of the problems of their clients. Sociologists consider all evidence on a proposition and approach a problem with an open mind. Lawyers to a great extent are guided by precedents, and past decisions control current cases. In contrast, sociologists empha-

size creativity, theoretical imagination, and research ingenuity. Law represents specific individuals and organizations within the legal system (Walker and Wrightsman, 1991:179). The pronouncements of law are predominantly prescriptive: They tell people how they should behave and what will happen to them if they do not. In sociology, the emphasis is on description, on understanding the reasons why certain groups of people act certain ways in specific situations. The law *reacts* to problems most of the time; the issues and conflicts are brought to its attention by clients outside the legal system. In sociology, issues, concerns, and problems are generated within the discipline on the basis of what is considered intellectually challenging, timely, or of interest to funding agencies.

These differences in professional cultures are, to a great extent, due to the different methods and concepts lawyers and sociologists and other social scientists (see, for example, Mattei, 1997) use in searching for "truth." Legal thinking, as Vilhelm Aubert (1973:50–53) explains, is different from scientific thinking for the following reasons:

1. Law seems to be more inclined toward the particular than toward the general (e.g., what happened in a specific case).
2. Law, unlike the physical and social sciences, does not endeavor to establish dramatic connections between means and ends (e.g., the impact the verdict has on the defendant's future conduct).
3. Truth for the law is normative and nonprobabilistic; either something has happened or it has not. A law is either valid or invalid (e.g., a person did or did not break a law).
4. Law is primarily past and present oriented and is rarely concerned with future events (e.g., what happens to the criminal in prison).
5. Legal consequences may be valid even if they do not occur; that is, their formal validity does not inevitably depend on compliance (e.g., the duty to fulfill a contract; if it is not fulfilled, it does not falsify the law in question).
6. A legal decision is an either-or, all-or-nothing process with little room for a compromise solution (e.g., litigant either wins or loses a case).

Of course, these generalizations have their limitations. They simply highlight the fact that law is an authoritative and reactive problem-solving system that is geared to specific social needs. Because the emphasis in law is on certainty (or predictability or finality), its implementation often requires the adoption of simplified assumptions about the world. The lawyer generally sees the law as an instrument to be wielded, and he or she is more often preoccupied with the practice and pontification of the law than with its consideration as an object of scholarly inquiry.

Perhaps the question most frequently asked of any sociologist interested in law is, "What are you doing studying law?" Unlike the lawyer, the sociologist needs to "justify" any research in the legal arena and often envies colleagues in law schools who can carry out such work without having to reiterate its relevance or their own competence. Yet, this need for justification

is not an unmixed evil because it serves to remind the sociologist that he or she is not a lawyer but a professional with special interests. Like the lawyer, the sociologist may be concerned with the understanding, the prediction, and perhaps even the development of law. Obviously, the sociologist and the lawyer lack a shared experience, a common quest. At the same time, increasingly, sociologists and lawyers work together on problems of mutual interests (such as research on jury selection, conflict resolution, delinquency, crime, demographic concerns, and consumer problems) and are beginning to see the reciprocal benefits of such endeavors. Sociologists also recognize that their research has to be adopted to the practical and pecuniary concerns of lawyers if it is to capture their interest. In view of the vocational orientation of law schools and the preoccupation of lawyers with legal doctrine, it is unlikely that research aimed at theory building will attract or retain the attention of most law students and professors (Posner, 1996:327–330).

WHAT IS LAW?

In everyday speech, the term *law* conjures up a variety of images. For some, law may mean getting a parking ticket, not being able to get a beer legally if under age, or complaining about the local "pooper-scooper" ordinance. For others, law is paying income tax, signing a prenuptial agreement, being evicted, or going to prison for growing marijuana. For still others, law is concerned with what legislators enact or judges declare. Law means all these things and more. Even among scholars, there is no agreement on the term. The purpose here is to introduce some of the classic and contemporary conceptualizations of law to illustrate the diverse ways of defining it.

The question "What is law?" haunts legal thought, and probably more scholarship has gone into defining and explaining the concept of law than into any other concept still in use in sociology and jurisprudence. Comprehensive reviews of the literature by Ronald L. Akers and Richard Hawkins (1975:5–15), Lisa J. McIntyre (1994:10–29), and Robert M. Rich (1977) indicate that there are almost as many definitions of law as there are theorists. E. Adamson Hoebel (1954:18) comments that "to seek a definition of the legal is like the quest for the Holy Grail." He cites Max Radin's warning: "Those of us who have learned humility have given over the attempt to define law." In spite of these warnings, law *can be* defined. In any definition of law, however, we must keep Julius Stone's (1964:177) admonition in mind that " 'law' is necessarily an abstract term, and the definer is free to choose a level of abstraction; but by the same token, in these as in other choices, the choice must be such as to make sense and be significant in terms of the experience and present interest of those who are addressed."

In our illustrative review of the diverse conceptualizations of law, let us first turn to two great American jurists, Benjamin Nathan Cardozo and Oliver

Wendell Holmes. Cardozo (1924:52) defines law as "a principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the courts if its authority is challenged." Holmes (1897:461) declares that "the prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law." For Holmes, judges make the law on the basis of past experience. In both of these definitions, the courts play an important role. These are pragmatic approaches to law as revealed by court-rendered decisions. Although implicit in these definitions is the notion of courts being backed by the authoritative force of a political state, these definitions of law seem to have a temporal character: What is the law at this time?

From a sociological perspective, one of the most influential conceptualizations of law is that of Max Weber. Starting with the idea of an *order* characterized by legitimacy, he suggests: "An order will be called *law* if it is externally guaranteed by the probability that coercion (physical or psychological), to bring about conformity or avenge violation, will be applied by a *staff* of people holding themselves specially ready for that purpose" (Weber, 1954:5). Weber argues that law has three basic features that, taken together, distinguish it from other normative orders, such as custom or convention. First, pressures to comply with the law must come externally in the form of actions or threats of action by others regardless of whether a person wants to obey the law or does so out of habit. Second, these external actions or threats always involve coercion or force. Third, those who implement the coercive threats are individuals whose official role is to enforce the law. Weber refers to "state" law when the persons who are charged to enforce the law are part of an agency of political authority.

Weber contends that customs and convention can be distinguished from law because they do not entail one or more of these features. Customs are rules of conduct in defined situations that are of relatively long duration and are generally observed without deliberation and "without thinking." Customary rules of conduct are called usages, and there is no sense of duty or obligation to follow them. Conventions, by contrast, are rules for conduct and they involve a sense of duty and obligation. Pressures, which usually include expressions of disapproval, are exerted on individuals who do not conform to conventions. Weber (1954:27) points out that unlike law, a conventional order "lacks specialized personnel for the implementation of coercive power."

Although a number of scholars accept the essentials of Weber's definition of law, they question two important points. First, some contend that Weber places too much emphasis on coercion and ignores other considerations that may induce individuals to obey the law. For example, Philip Selznick (1968; 1969:4–8) argues that the authoritative nature of legal rules brings about a special kind of obligation that is not dependent on the use or threat of coercion or force. Many laws are obeyed because people feel it is their duty to obey. The second point concerns Weber's use of a special staff. Some scholars

claim that Weber's definition limits the use of the term *law* in cross-cultural and historical contexts. They argue that the word *staff* implies an organized administrative apparatus that may not exist in certain illiterate societies. E. Adamson Hoebel (1954:28), for instance, proposes a less restrictive term by referring to individuals possessing "a socially recognized privilege," and Ronald L. Akers (1965:306) suggests a "socially authorized third party." Of course, in modern societies, law provides for a specific administrative apparatus. Still, these suggestions should be kept in mind while studying the historical developments of law or primitive societies (see, e.g., Pospisil, 1971; 1978).

From a different perspective, Donald Black (1976:2; 1989:121; 1998:1–26), a leading figure in law and society studies, contends that law is essentially governmental social control. In this sense, law is "the normative life of a state and its citizens, such as legislation, litigation, and adjudication" (Black, 1976:2). He maintains that several styles of law may be observed in a society, each corresponding to a style of social control. Four styles of social control are represented in law: penal, compensatory, therapeutic, and conciliatory. In the penal style, the deviant is viewed as a violator of a prohibition and an offender to be subjected to condemnation and punishment (e.g., a drug pusher). In the compensatory style, a person is considered to have a contractual obligation and, therefore, owes the victim restitution (e.g., a debtor failing to pay the creditor). Both of these styles are accusatory in which there is a complainant and a defendant, a winner and a loser. According to the therapeutic style, the deviant's conduct is defined as abnormal; the person needs help, such as treatment by a psychiatrist. In the conciliatory style, deviant behavior represents one side of a social conflict in need of resolution without consideration as to who is right or who is wrong (e.g., marital disputes). These last two styles are remedial, designed to help people in trouble and ameliorate a bad social situation. Elements of two or more of these styles may appear in a particular instance, for example, when a drug addict is convicted of possession and is granted probation contingent upon his or her participation in some kind of therapy program.

The foregoing definitions illustrate some of the alternative ways of looking at law. It is the law's specificity in substance, its universality of applicability, and the formality of its enactment and enforcement that set it apart from other devices for social control. Implicit in these definitions of law is the notion that law can be analytically separated from other normative systems in societies with developed political institutions and specialized lawmaking and law-enforcement agencies. The paramount function of law is to regulate and constrain the behavior of individuals in their relationships with one another. Ideally, law is to be employed only when other formal and informal methods of social control fail to operate or are inadequate for the job. Finally, law can be distinguished from other forms of social control primarily in that it is a formal system embodying explicit rules of conduct, the planned use of sanctions to ensure compliance with the rules, and a group of authorized officials

designated to interpret the rules and apply sanctions to violators (Davis, 1962:39–63). From a sociological perspective, the rules of law are simply a guide for action. Without interpretation and enforcement, law would remain meaningless. As Henry M. Hart (1958:403) points out, law can be analyzed sociologically as a "method" of doing something. In this context, law can be studied as a social process, implemented by individuals during social interaction. Sociologically, law consists of the behaviors, situations, and conditions for making, interpreting, and applying legal rules that are backed by the state's legitimate coercive apparatus for enforcement.

TYPES OF LAW

The content of law may be categorized as *substantive* or *procedural*. *Substantive* laws consist of rights, duties, and prohibitions administered by courts—which behaviors are to be allowed and which are prohibited (such as prohibition against murder or the sale of narcotics). *Procedural* laws are rules concerning just how substantive laws are to be administered, enforced, changed, and used by players in the legal system (such as filing charges, selecting a jury, presenting evidence in court, or drawing up a will).

At times a distinction is made between *public* law and *private* law (Johnson, 1977:59–60). *Public* law is concerned with the structure of government, the duties and powers of officials, and the relationship between the individual and the state. "It includes such subjects as constitutional law, administrative law, regulation of public utilities, criminal law and procedure, and law relating to the proprietary powers of the state and its political subdivisions" (Davis, 1962:51). *Private* law is concerned with both substantive and procedural rules governing relationships between individuals (the law of torts or private injuries, contracts, property, wills, inheritance, marriage, divorce, adoption, and the like).

A more familiar distinction is between *civil* law and *criminal* law. As noted, *civil* law, as private law, consists of a body of rules and procedures intended to govern the conduct of individuals in their relationships with others. Violations of civil statutes, called *torts*, are private wrongs for which the injured individual may seek redress in the courts for the harm he or she experienced. In most cases, some form of payment is required from the offender to compensate for the injury he or she has caused. Similarly, one company may be required to pay another a sum of money for failing to fulfill the terms of a business contract. The complainant firm is thus "compensated" for the loss it may have suffered as a result of the other company's neglect or incompetence. *Criminal* law is concerned with the definition of crime and the prosecution and penal treatment of offenders. Although a criminal act may cause harm to some individual, crimes are regarded as offenses against the state or "the people." A crime is a public, as opposed to an individual or private, wrong. It is the state, not the harmed individual, that takes action against the offender. Furthermore, the action taken by the state differs from that taken by the plaintiff in a civil case. For example, if the case involves a tort, or civil injury, compensation equivalent to the harm caused is levied. In the case of crime, some form of punishment is administered. Henry M. Hart suggests that a crime ". . . is not simply antisocial conduct which public officers are given a responsibility to suppress. It is not simply any conduct to which a legislature chooses to attach a 'criminal' penalty. It is a conduct which, if duly shown to have taken place, will incur a formal and solemn pronouncement of the moral condemnation of the community" (1958:404). In Hart's view, both the condemnation and the consequences that follow may be regarded as constituting the punishment. Occasionally, a criminal action may be followed up by a civil suit such as in a rape case in which the victim may seek financial compensation in addition to criminal sanctions.

A distinction can also be made between civil law and common law. In this context, civil law refers to legal systems whose development was greatly influenced by Roman law, a collection of codes compiled in the Corpus Juris Civilis (Code Civil). Civil-law systems are codified systems, and the basic law is found in codes. These are statutes that are enacted by national parliaments. France is an example of a civil-law system. The civil code of France, which first appeared in 1804, is called the Code Napoleon and embodies the civil law of the country. By contrast, common law resisted codification. Law is not based on acts of parliament but on case law, which relies on precedents set by judges to decide a case (Friedman, 1998). Thus, it is "judge-made" law as distinguished from legislation or "enacted law." Law in the United States may be further divided into the following branches: constitutional law, case law, statutory law, executive orders, and administrative law. Constitutional law is a branch of public law. It determines the political organization of the state and its powers while also setting certain substantive and procedural limitations on the exercise of governing power. Constitutional law consists of the application of fundamental principles of law based on that document, as interpreted by the Supreme Court. Case law is enacted by judges in cases that are decided in the appellate courts. Statutory law is legislated law—law made by legislatures. Executive orders are regulations issued by the executive branch of the government at the federal and state levels. Finally, administrative law is a body of law created by administrative agencies in the form of regulations, orders, and decisions. These various categories of laws will be discussed and illustrated later in the text.

MAJOR LEGAL SYSTEMS

In addition to the types of law, there is a large variety of legal systems (see, for example, Johansen, 1998). The dominant legal systems that exist in various forms throughout the world are the Romano-Germanic (civil law), common

law, socialist law, and Islamic law (David and Brierley, 1985). The Romano-Germanic systems predominate in Europe, in most of the former colonies of France, Germany, Italy, Spain, Portugal, and Belgium, and in countries that have westernized their legal systems in the nineteenth and twentieth centuries. Common-law systems are predominant in English-speaking countries. Islamic systems are found in the Middle East and some other parts of the world to which Islamic religion has spread. Socialist legal systems prevail in the People's Republic of China, Vietnam, Cuba, and North Korea. Remnants of socialist systems are still found in the former Soviet Union and Eastern European countries.

Romano-Germanic System

The Romano-Germanic, or civil, law refers to legal science that has developed on the basis of Roman *ius civile* or civil law (Abel and Lewis, 1988, Vol. 2). The foundation of this system is the compilation of rules made in the sixth century A.D. under the Roman emperor Justinian. They are contained in the Code of Justinian and have evolved essentially as private law, as means of regulating private relationships between individuals. After the fall of the Roman Empire, the Code of Justinian competed with the customary law of the Germanic tribes that had invaded Europe. The code was reintroduced in law school curricula between A.D. 1100 and 1200 in northern Europe, then spread to other parts of the continent. Roman law thus coexisted with the local systems throughout Europe up to the seventeenth century. In the nineteenth century, the Napoleonic codes and, subsequently, the code of the new German Empire of 1900 and the Swiss code of 1907 are examples of the institutionalization of this legal system.

Codified systems are basic laws that are set out in *codes*. A *code* is simply a body of laws (see, for example, Kevelson, 1994). These are statutes enacted by national parliaments that arrange whole fields of law in an orderly, comprehensive, and logical way. Today most European countries have national codes based on a blend of customary and Roman law that makes the resulting systems members of the Romano-Germanic legal tradition.

Common-Law System

Common law is characteristic of the English system, which developed after the Norman Conquest in 1066. The law of England as well as those laws modeled on English law (such as the laws of the United States, Canada, Ireland, and India) resisted codification. Law is not based on acts of parliament but on case law, which relies on precedents set by judges in deciding a case (Friedman, 1998). Thus, it is "judge-made" law as distinguished from legislation or "enacted" (statutory) law. The doctrine of "precedent" is strictly a common law practice. The divisions of the common law, its concepts, substance, structure, legal culture, vocabulary, and the methods of the common-law lawyers and judges are very different, as will be demonstrated throughout the book, from those of the Romano-Germanic or civil law systems (see. for example, Abel and Lewis, 1988, Vol. 1).

Socialist Legal System

Although there are multiple versions of it, the origins of the socialist legal system can be traced back to the 1917 Bolshevik Revolution, which gave birth to the Union of Soviet Socialist Republics. The objectives of classical socialist law are threefold. First, law must provide for national security. Ideally, the power of the state must be consolidated and increased to prevent attacks on the socialist state and to assure peaceful coexistence among nations. Second, law has the economic task of developing production and distribution of goods on the basis of socialist principles so that everyone will be provided for "according to his needs." The third goal is that of education: to overcome selfish and antisocial tendencies that were brought about by a heritage of centuries of poor economic organization.

The source of socialist law is legislation, which is an expression of popular will as perceived by the Communist Party. The role of the court is simply to apply the law, not to create or interpret it. Socialist law rejects the idea of separation of powers. The central notion of socialist law is the notion of ownership. Private ownership of goods has been renamed *personal ownership*, which cannot be used as a means of producing income. It must be used only for the satisfaction of personal needs. Socialist law is unique with respect to "socialist" ownership, of which there are two versions: collective and state. A typical example of collective ownership is the *kolkhozi*, or collective farm, which is based on nationalized land. State ownership prevails in the industrial sector in the form of installations, equipment, buildings, raw materials, and products. In a socialist legal system, the real question of property is not who owns it, but by whom and how such property is exploited (David and Brierley, 1985). Versions of this type of legal system still exist in China, Cuba, North Korea, and Vietnam (see, for example, Zatz, 1994).

The collapse of communism in the Soviet Union and the former Eastern bloc countries, the dissolution of the political and economic institutions that guaranteed the conservation of communist structures, the reintroduction of a multiparty system, and general democratization of political life had immediate implications for the socialist legal system (Tismaneanu, 1992). These developments brought about by transitions require a reconceptualization of the basic notions of property, authority, legitimacy, and power, and even of the very idea of law (see, for example, Elster, 1995).

As part of the unexpected and unforeseen dramatic transformations now taking place in Eastern Europe and the former Soviet Union (Collins, 1995), the newly established independent states are experimenting with workable

alternatives to the socialist rule of law in their attempts to create a climate for a system of laws receptive to and facilitative of democratic forms of market economies and civil liberties (Alexander and Skapska, 1994; Bryant and Mokrzycki, 1994; Milor, 1994). Although the problems involved in the transition vary from country to country according to unique historical and political circumstances, all the states face common concerns, such as establishment of a new political ideology, creation of new legal rights, the imposition of sanctions on former elites, and new forms of legitimization. Among the practical problems are the creation of new property rights; the attainment of consensus in lawmaking; the formulation and implementation of new laws on such matters as privatization; joint ventures; restitution for and rehabilitation of victims of the overturned regime; revision of criminal law; the rise of nationalistic, antiforeign, and anti-Semitic sentiments; and multiparty electoral behavior. There is also a whole slate of legal issues previously denied public attention by socialist law, such as prostitution, drug abuse, unemployment, and economic shortages. There are also significant structural changes taking place that are composed of newly democratic parliamentary lawmaking, conversion of the judicial system, and the awakening of alternative political parties. There are, finally, concerns with the development of new law school curricula, selection of personnel, and replacement or resocialization of former members of the Communist Party still occupying positions of power.

So far, the transition has been slow and uneven with limited scope. There has been no effort to remove judges who grew up under the old regime. The constitutions have yet to be revised, although there is much talk about them (Klingsberg, 1992). There is a shortage of defense attorneys (Erlanger, 1992). As of November 1993, Russian law permits accused criminals to request a trial by jury (Stead, 1994). Perhaps the biggest task facing the new lawmakers is the creation of a legal climate aimed at stimulating foreign investments. Westerners need to be assured about the safety of their investments, which requires the creation of a legal infrastructure based on democratic principles. New laws are needed on repatriation of profits, property rights, privatization, and the movement of goods.

But the greatest challenge confronting the post-Communist regimes is the reduction of crime (see, for example, Perlez, 1995). In Russia and in its former satellites, the Soviet criminal code has not been significantly altered and it resulted in some unexpected developments. It is better suited to catch political dissidents than to inspire respect for law and order. The laws were aimed at defending the totalitarian state, not the individual. Presidential decrees and legislative acts have expanded the boundaries of life—from the right to buy and sell property to the freedom to set up banks and private corporations—but the notoriously inefficient courts have no legal basis for interpreting these decrees, much less enforcing them. Consequently, the police cannot formally tackle organized criminal activity because under present law only individuals can be held criminally culpable. Not surprisingly, the number of organized

criminal groups in Russia more than quadrupled during the first half of the 1990s (Gaddy et al., 1995; Ryan and Rush, 1997).

Criminal groups now operate in every region and the *Mafiya* is ubiquitous internationally and nationally (Handelman, 1995). For example, prostitution networks in Western Europe, involving several hundreds of thousands of women each year from former Soviet bloc countries, are mostly run by Russians and Ukrainians and generate huge profits. They collect several thousand dollars per woman at each stage of her odyssey (passport, journey, placement, etc.) and "middlemen" average about $20,000 per person (Paringaux, 1998:18).

In cities all across the nation, gangs operate with near impunity, practicing fraud and extortion, conducting illegal trade, bribing and corrupting officials, and viciously murdering anyone who gets in their way. One base of support for the Russian Army's invasion of Chechyna in late 1994 was competing crime syndicates elsewhere in Russia (Meier, 1995). In 1993, Russia saw 335,000 crimes officially designated as racketeering and nearly 30,000 premeditated murders. In Moscow, the slaughter included over 1,400 gangland assassinations, with probably thousands more that went unrecorded. By the end of the first quarter of 1994, the toll was running at 84 murders a day, giving Russia the dubious distinction of surpassing the U.S. homicide rate—in fact, more than doubling it. The bulk was contract killings due to conflicts in commercial and financial activities (Viviano, 1995).

Almost every small business across Russia pays protection money to some gang, vast fortunes in raw materials—from gold to petroleum—are smuggled out through the porous borders in the Baltics by organized groups that have bribed their way past government officials, and ministries and municipal governments peddle property and favors. Official corruption is rampant and along with tax instability, licensing confusion, and disregard for intellectual property rights, they serve as disincentives to the kind of private Western investment Russia needs to create jobs and a functioning market economy (Erlanger, 1995).

Although the conditions are chaotic, the authors of a recent paper in the influential *Brookings Review* contend that many Russians believe that organized crime is beneficial for the economy (Gaddy et al., 1995). Businesspeople perceive organized crime as a necessary evil. Although it is hard to acknowledge, the Mafia confers certain benefits. The protection rackets offer security against other types of "disorganized" crime that might affect their clients. Dispute resolution is another Mafia service. But perhaps the biggest contribution of the Mafia to orderly market transactions is contract enforcement. In today's Russia, contracts have little force. Failure to adhere to a contract—to pay for goods or services ordered or delivered—exacts virtually no official sanctions. Close to half of the aggregate volume of accounts receivable in all Russian industry are delinquent. Because the Russian state is unwilling or unable to provide public enforcement of private contracts, the interim

alternative is to privatize enforcement. It is one of the private solutions businesspeople use when they need protection for their transactions. It also makes a nice argument in support of functionalist theorizing in sociology.

Islamic Legal System

Islamic law, unlike the previously discussed systems, is not an independent branch of knowledge. Law is integral to Islamic religion (Al-Azmeh, 1988; Lippman et al., 1988). Islam means "submission" or "surrender" and implies that individuals should submit to the will of God. Islamic religion states what Muslims must believe, and includes the *Shari'a* ("the way to follow"), which specifies the rules for believers based on divine command and revelation. Unlike other systems of law based on judicial decisions, precedents, and legislation, Islamic law is derived from four principal sources. They include the *Koran*, the word of God as given to the Prophet. This is the principal source of Islamic law. The second source is the *Sunna*, which are the sayings, acts, and allowances of the Prophet as recorded by reliable sources in the Tradition (*Hadith*). The third is *judicial consensus*; like precedent in common law, it is based on historical consensus of qualified legal scholars, and it limits the discretion of the individual judge. *Analogical reasoning* is the fourth primary source of Islamic law. It is used in circumstances not provided for in the Koran or other sources. For example, some judges inflict the penalty of stoning for the crime of sodomy, contending that sodomy is similar to the crime of adultery and, thus, should be punished by the same penalty the Koran indicates for adultery. In the same vein, a female would get half the compensation a male would receive for being the victim of the same crime because a male is entitled to an inheritance twice that of a female. In addition to these principal sources, various supplementary sources, such as custom, judge's preference, and the requirements of public interest, are generally followed.

Shari'a legal precepts can be categorized into five areas: acts commanded, recommended, reprobated, forbidden, and left legally indifferent. Islamic law mandates rules of behavior in the areas of social conduct, family relations, inheritance, and religious ritual, and defines punishments for heinous crimes including adultery, false accusation of adultery, intoxication, theft, and robbery. For example, in the case of adultery, the proof of the offense requires four witnesses or confession. If a married person is found guilty, he or she is stoned to death. Stones are first thrown by witnesses, then by the judge, followed by the rest of the community. For a woman, a grave is dug to receive the body. The punishment for an unmarried person is 100 lashes (Lippman et al., 1988:42). For theft, the penalty of hand amputation is often used. Even grooming can be a man's undoing. In Afghanistan, as the ruling Taliban interpret the Koran, an adult male is obliged not only to grow a beard but also to leave the hairy underbrush unmolested by scissors. Patrols from the General Department for the Preservation of Virtue and Prevention of Vice are getting tough on trimmed beards in Kabul and now snatch violators from the bazaars and take them to a former maximum security prison for ten days of religious instructions (Bearak, 1998).

Such practices must be examined within the philosophy of Islam and in the spirit of true theoretical inquiry for justification—or even understanding, for Islamic justice is based on religious and philosophical principles that are quite alien to most Western readers (Souryal and Potts, 1994). Punishments and rules not defined by historical sources of Shari'a are left to decision by contemporary government regulations and Islamic judges. This practice permitted an evolution of Shari'a law to reflect changing social, political, and economic conditions.

It is important to remember that the sanctions attached to the violation of Islamic law are religious rather than civil. Commercial dealings, for example, between Muslims and Westerners are covered by governmental rules comparable to administrative law in the United States. The fundamental principle of Islam is that of an essentially theocratic society, and Islamic law can be understood only in the context of some minimum knowledge of Islamic religion and civilization. Thus, care should be exercised in discussing or analyzing components of Islamic law out of context and in isolation.

FUNCTIONS OF LAW

Why do we need law, and what does it do for society? More specifically, what functions does law perform? As with the definition of law, there is no agreement among scholars of law and society on the precise functions, nor is there consensus on their relative weight and importance. A variety of functions is highlighted in the literature (see, for example, Aubert, 1969:11; Bredemeier, 1962:74; Mermin, 1982:5–10; Nader and Todd, 1978:1; Pollack, 1979:669; and Sampford, 1989:116–120) depending on the conditions under which law operates at a particular time and place. The recurrent themes include social control, dispute settlement, and social change. I shall now consider them briefly. These functions of the law will be examined in detail in the chapters dealing with social control, conflict resolution, and social change.

Social Control

In a small, traditional, and homogeneous society, behavioral conformity is ensured by the fact that socializing experiences are very much the same for all members. Social norms tend to be consistent with each other, there is consensus about them, and they are strongly supported by tradition. Social control in such a society is primarily dependent upon self-sanctioning. Even on those occasions when external sanctions are required, they seldom involve

formal punishment. Deviants are mostly subjected to informal mechanisms of social control, such as gossip, ridicule, or humiliation. Although these exist, banishment or forms of corporal punishment are rare.

Even in a complex, heterogeneous society, such as the United States, social control rests largely on the internalization of shared norms. Most individuals behave in socially acceptable ways, and, as in simpler societies, fear of disapproval from family, friends, and neighbors is usually adequate to keep potential deviants in check. Nevertheless, the great diversity of the population; the lack of direct communication between various segments; the absence of similar values, attitudes, and standards of conduct; economic inequities, rising expectations and the competitive struggles between groups with different interests have all led to an increasing need for formal mechanisms of social control. Formal social control is characterized by "(1) explicit rules of conduct, (2) planned use of sanctions to support the rules, and (3) designated officials to interpret and enforce the rules, and often to make them" (Davis, 1962:43).

In modern societies, there are many methods of social control, both formal and informal. Law is considered one of the forms of formal social control. In the words of Roscoe Pound (1941:249): "I think of law as in one sense a highly specialized form of social control in developed politically organized society—a social control through the systematic and orderly application of the force of such a society."

Lawrence M. Friedman calls attention to two ways in which law plays an important role in social control:

> In the first place, legal institutions are responsible for the making, care and preservation of those rules and norms which define deviant behavior; they announce (in a penal code, for example) which acts may be officially punished and how and which ones may not be punished at all. In the second place, the legal system carries out many rules of social control. Police arrest burglars, prosecutors prosecute them, juries convict them, judges sentence them, prison guards watch them, and parole boards release them. (1977:11)

Of course, as we shall see, law does not have a monopoly on formal mechanisms of social control. Other types of formal mechanisms (such as firing, promotion, demotion, relocation, compensation manipulation, and so forth) are found in industry, academe, government, business, and various private groups (Selznick, 1969).

Dispute Settlement

As Karl N. Llewellyn so aptly put it:

> What, then, is this law business about? It is about the fact that our society is honeycombed with disputes. Disputes actual and potential, disputes to be settled and disputes to be prevented; both appealing to law, both making up the business of law. . . . This doing of something about disputes, this doing of it reasonably, is the business of law. (1960:2)

By settling disputes through an authoritative allocation of legal rights and obligations, the law provides an alternative to other methods of dispute resolution. Increasingly, people in all walks of life let the courts settle matters that were once resolved by informal and nonlegal mechanisms, such as negotiation, mediation, or forcible self-help measures. It should be noted, however, that law deals only with disagreements that have been translated into legal disputes. A legal resolution of conflict does not necessarily result in a reduction of tension or antagonism between the aggrieved parties. For example, in a case of employment discrimination on the basis of race, the court may focus on one incident in what is a complex and often not very clear-cut series of problems. It results in a resolution of a specific legal dispute but not in the amelioration of the broader issues that have produced that conflict.

Social Change

Many scholars contend that a principal function of law in modern society is social engineering. It refers to purposive, planned, and directed social change initiated, guided, and supported by the law. Roscoe Pound captures the essence of this function of law in stating:

> For the purpose of understanding the law of today, I am content to think of law as a social institution to satisfy social wants—the claims and demands involved in the existence of civilized society—by giving effect to as much as we need with the least sacrifice, so far as such wants may be satisfied or such claims given effect by an ordering of human conduct through politically organized society. For present purposes I am content to see in legal history the record of a continually wider recognizing and satisfying of human wants or claims or desires through social control; a more embracing and more effective securing of social interests; a continually more complete and effective elimination of waste and precluding of friction in human enjoyment of the goods of existence—in short, a continually more efficacious social engineering. (1959:98–99)

In many instances law is considered a "desirable and necessary, if not a highly efficient means of inducing change, and that, wherever possible, its institutions and procedures are preferable to others of which we are aware" (Grossman and Grossman, 1971:2). Although some sociologists disagree with this contention (for example, Quinney, 1974), law is often used as a method of social change, a way of bringing about planned social change by the government. Social change is a prominent feature of modern welfare states. For example, part of the taxes a government collects goes to the poor in the form of

cash, food stamps, medical and legal benefits, and housing (Friedman, 1998). I shall return to this social change function of the law in the discussion of law and social change in Chapter 8.

DYSFUNCTIONS OF LAW

Although law is an indispensable and ubiquitous institution of social life, it possesses—like most institutions—certain dysfunctions that may evolve into serious operational difficulties if they are not seriously considered. These dysfunctions stem in part from the law's conservative tendencies, the rigidity inherent in its formal structure, the restrictive aspects connected with its control functions, and the fact that certain kinds of discriminations are inherent in the law itself.

The eminent social scientist Hans Morgenthau (1993:418) suggests that "a given status quo is stabilized and perpetuated in a legal system" and that the courts, being the chief instruments of a legal system, "must act as agents of the status quo." Although this observation does not consider fully the complex interplay between stability and change in the context of law, it still contains an important ingredient of truth. By establishing a social policy of a particular time and place in constitutional and statutory precepts, or by making the precedents of the past binding, the law exhibits a tendency toward conservatism. Once a scheme of rights and duties has been created by a legal system, continuous revisions and disruptions of the system are generally avoided in the interests of predictability and continuity. Social changes often precede changes in the law. In times of crisis, the law can break down, providing an opportunity for discontinuous and sometimes cataclysmic adjustments. Illustrations of this include the various first-aid legal measures used during an energy crisis, such as the rationing of gasoline purchases.

Related to these conservative tendencies of the law is a type of rigidity inherent in its normative framework. Because legal rules are couched in general, abstract, and universal terms, they sometimes operate as straitjackets in particular situations. An illustration of this is the failure of law to consider certain extenuating circumstances for a particular illegal act, for example, stealing because one is hungry or stealing for profit.

A third dysfunction of the law stems from the restrictive aspects of normative control. Norms are shared convictions about the patterns of behavior that are appropriate or inappropriate for the members of a group. Norms serve to combat and forestall anomie (a state of normlessness) and social disorganization. Law can overstep its bounds, and regulation can turn into overregulation, in which situation control may become transformed into repression. For example, in nineteenth-century America, public administration was sometimes hampered by an overrestrictive use of the law, which tended to paralyze needed discretionary exercises in governmental power (Pound, 1914:12–13).

Donald Black's (1989) contention that certain kinds of discrimination are inherent in law itself can also be construed as a fourth dysfunction. Rules, in principle, may apply to everyone, but legal authority falls unevenly across social place. A quote from his recent book, *Sociological Justice*, aptly illustrates this point: "The law in its majestic equality . . . forbids the rich as well as the poor from sleeping under bridges, begging in the streets, and stealing bread" (1989:72). He argues that social status (regardless of race), the degree of intimacy (for example, family members versus friends versus strangers), speech, organization, and a number of other factors all greatly influence the use and application of law. For example, when a black person is convicted of killing a white person in America, the risk of capital punishment far exceeds every other racial combination. In Ohio, the risk of capital punishment is approximately 15 times higher than when a black is convicted of killing another black; in Georgia, over 30 times higher; in Florida, nearly 40; and in Texas, nearly 90 times higher. Similarly, sentencing for negligent homicide with a car is by far the most severe when the victim's status is higher than that of the offender's (1989:10).

Undoubtedly, the list of dysfunctions of law is incomplete. One may also include a variety of procedural inefficiencies, administrative delays, and archaic legal terminologies. At times justice is denied and innocent people are convicted (Yant, 1991). There is the cost of justice to the middle class and its unavailability to the poor, to the consumer, and to minority group members. Questions also can be raised regarding the narrowness of legal education and the failure of ethical indoctrination, laws being out-of-date, inequitable criminal sentencing, lack of clarity of some laws resulting in loopholes and diverse interpretations, and the dominating use of law by one class against another (Rostow, 1971; Strick, 1977). Finally, critics of the law point to the current rage for procedure and to "government by judges" as being particularly dysfunctional in a world as complex as ours (Crozier, 1984:116–117).

PARADIGMS OF SOCIETY

Sociological discussions of law in society often take place in the context of one of two ideal conceptions of society: the *consensus* and the *conflict* perspectives. The former describes society as a functionally integrated, relatively stable system held together by a basic consensus of values. Social order is considered as more or less permanent, and individuals can best achieve their interests through cooperation. Social conflict is viewed as the needless struggle among individuals and groups who have not yet attained sufficient understanding of their common interests and basic interdependence. This perspective stresses the cohesion, solidarity, integration, cooperation, and stability of society, which are seen as united by a shared culture and by agreement on its fundamental norms and values.