

## The changing role of the law in interdependent society

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**Abstract:** The changing role of law in interdependent society is a classic work on contemporary thought. This changing role of law has complex interaction with social change, its intervention into economics and the environment, it balance public power and private rights, its place in the growth of international order, its own changing role in the interdependent society from ancient to till date, with insight, imagination and an exciting breadth of scholarship. Today alternatives of economic competition, public regulation and public enterprise examines the changing role of law in the society. "The impact of law in changing surroundings on some areas, such as family law, the last decade has brought fundamental changes in many countries, with respect to matrimonial disputes divorce, abortion, the status of illegitimate children, property, and other matters due to the local panchayat and land laws of different countries. The important thing is that some time law play an important role to change the society and some time society has great impact to change the law.

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### 1. Introduction:

From the very beginning of industrialization and urbanization in Europe, Bentham expected legal reforms to respond quickly to new social needs and to restructure society. He freely gave advice to the leaders of the French revolution, because *he believed that countries at a similar stage of economic development needed similar remedies for their common problems.* However, *Savigny believed that only fully developed popular customs could form the basis of legal change.* As customs grow out of the habits and beliefs of specific people, rather than expressing those of an abstract humanity, legal changes are codifications of customs, and they can only be national and never universal. There are two contrasting views on this relationship: Law is determined by the sense of justice and the moral sentiments of the population, and legislation can only achieve results by staying relatively close to the prevailing social norms. Law and especially legislation, is a vehicle through which a programmed social evolution can be brought about. In general, a highly urbanized and industrialized society like the US law does play a large part in social change, and vice versa, at least much more than is the case in traditional societies or in traditional sociological thinking. [eg. In the domain of intrafamily relations, urbanization, with its small apartments and crowded conditions, has lessened the desirability of three-generation families in a single household. This social change helped to establish social security laws that in turn helped generate changes in the labor force and in social institutions for the aged.]

### 2. The impact of Social changes on legal changes:

In a broad theoretical framework, social change has been slow enough to make custom the principal source of law. Law could respond to social change over decades or even centuries. Today the tempo of social change accelerated to a point where today's assumptions may not be valid even in a few years from now. The emergence of new risks to the individual as a result of the decrease of the various family functions, including the protective function, has led to the creation of legal innovations to protect the individuals in modern society. Eg provisions of workers compensation, unemployment insurance, old-age pensions. Many sociologists and legal scholars assert on the basis of a large amount of accumulated data that technology is one of the great moving forces for change in law in three ways: The computer and easy access to cyberspace, especially internet, also have inspired legislation on both the federal and the state levels to safeguard privacy, protects against abuse of credit information and computer crime.

### 3. The role of law in changing the social status:

The conversion of Rome from republic to empire could not have been accomplished except by means of explicit legal decree buttressed by the doctrine of imperial sovereignty. Law, far from being a reflection of social reality, is a powerful means of accomplishing reality – that is, of fashioning it or making it.

The Soviet Union succeeded in making enormous changes in society by the use of law.

In Spain law was used to reform agrarian labor and employment relations.

China also managed to moderate through law its population growth and as a result devote more of its resources to economic development and modernization.

Attempted social change, through law, is a basic trait of the modern world. Many authors consider law as a desirable necessary and highly efficient means of inducing change, preferable to other instruments of change. In present-day societies, the role of law in social change is of more than theoretical interest. In many areas of life such as education, race relations, housing, transportation, energy utilization, protection of the environment, and crime prevention, the law and litigation are important instruments of change. Law plays an important **indirect role** in social change by shaping various social institutions, which in turn have a **direct impact** on society. [eg. Mandatory school attendance upgraded the quality of the labor force, which in turn played a direct role in social change by contributing to an increased rate of industrialization. The law interacts in many cases directly with basic social institutions, constituting a direct relationship between law and social change]. Social change through litigation has always been an important feature in the US. Whether the change produced by such action is considered 'constructive' or 'destructive,' the fact remains that law can be a highly effective device for producing social change.

#### 4. The effectiveness of Law as an Instrument of Social Change:

Law must emanate from an authoritative and prestigious source. As an instrument of social change, law entails two interrelated processes: the institutionalization and the internalization of patterns of behavior.

**Institutionalization** of a pattern of behavior refers to the establishment of a norm with provisions for its enforcement.

**Internalization** of a pattern of behavior means the incorporation of the value or values implicit in a law (eg. Integrated public schools are 'good').

The extent to which law can provide an effectiveness for social change varies according to the conditions present in a particular situation. Even suggests that a law is likely to be successful to induce change if it meets the following seven conditions:-

Law must introduce its rationale in terms that are understandable and compatible with existing values.

Advocates of the change should make reference to other communities or countries with which the

population identifies and where the law is already in effect.

Enforcement of the law must be aimed at making the change in a relatively short time.

Those enforcing the law must themselves be very much committed to the change intended by the law.

The instrumentation of the law should include positive as well as negative sanctions.

The enforcement of the law should be reasonable, not only in the sanctions used but also in the protection of the rights of those who stand to lose by violation.

#### 5. The importance of law to give changing structure of society:

In many instances, the state of the art of social change endeavors is not methodologically sophisticated enough to distinguish clearly among casual, necessary, sufficient, and contributory conditions to produce desired effects in society. The advantages of law as an instrument of social change are attributed to the fact that *law in society is seen as legitimate, more or less rational, authoritative, institutionalized, generally not disruptive, and backed by mechanisms of enforcement.*

**Legitimate Authority** A principal advantage of law as an instrument of social change is the general feeling in society that legal commands or prohibitions ought to be observed even by those critical of the law in question. To a great extent, this feeling of obligation depends on respect for legitimate authority and the perception of power. Webber says that there are three types of legitimate authority.

**Traditional authority** bases its claims to legitimacy on an established belief in the sanctity of traditions and the legitimacy of the status of those exercising authority. The obligation of obedience is not a matter of acceptance of the legality of an impersonal order, but rather a matter of personal loyalty [Rule-of-elders].

**Charismatic authority** bases its claim to legitimacy on devotion to the specific and usual sanctity, heroism, or exemplary character of an individual and the normative patterns that are revealed or ordained. The charismatic leader is obeyed by virtue of personal trust in his or her revelation or exemplary qualities [Moses, Christ, Mohammed, Gandhi].

**Rational-legal authority** bases its claims to legitimacy on a belief in the legality of normative rules and in the right of those elevated to authority to issue commands under such rules. In such authority, obedience is owed to a legally established impersonal order. "Rational" people "voluntarily" make a "contract" that generates the impersonal legal order.

## 6. The binding force of law:

*Law is binding because most people in society consider it to be.* Some consider the content of the law to command obedience, which, in turn, is seen as a compelling obligation. The law achieves its claim to obedience, and at least part of its morally obligatory force, from a recognition that it receives from those, or from most of those, to whom it is supposed to apply. Even when laws are against accepted morality, they are often obeyed. The extermination of more than six million Jews in Nazi Germany, clearly the most extreme instance of abhorrent immoral acts, was carried out by thousands of people in the name of obedience to the law. Milgram contends that the essence of obedience is that individuals come to see themselves as instruments for carrying out someone else's wishes, and they therefore no longer view themselves as responsible for their actions. Under certain conditions many people will violate their own moral norms and inflict pain on other human beings, and that succinctly underlines the notion that most people willingly submit to authority and, by extension, the law.

Sanctions for disobedience to the law are surely among the primary reasons that laws have binding force. "The law has teeth; teeth that can bite if need be, although they need not necessarily be bared." Sanctions are related to legal efficacy and are provided to guarantee the observance and execution of legal mandated to enforce behavior. To most people law is imposed externally in an almost coercive way. Today people are characterized by a "crisis of confidence" and alienation from social institutions because of uncontrollable economic conditions. Therefore, law is hardly an expression of their will. Few people participate in the formulation of laws and legislation. One of limitations of law as an instrument of social change is the possibility of prevailing conflict of interest. Other limitations related to the efficacy of law in social change include divergent views on law and the prevailing morality and about the values. The scarcity of resources causes conflicting interests. Decades ago, Karl Marx and Max Weber said that many laws are created to protect special economic interests. This is because economic interests are strong factors influencing the creation of laws. Weber recognized that besides economic interests law protects other interests too such as personal security, personal honor, and it guarantees political, ecclesiastical and other positions of authority and social preeminence.

## Weber emphasizes two points:

a) Conflict of interests provide the base for the formation of laws that bring change; so the stratification of society and the preferences of those who promulgate the changes determine the role of laws in social change.

b) Law as an instrument of social change can be seen as the organization of power and processes that protect special interests in society and result in social change. However, a distinction should be made between what people claim as their interests and what their "true" interests are. There are many examples when people are organized to protect what they conceive as their interests. Blacks have been instrumental in the passage of many civil rights laws. Farmers have affected laws dealing with migrant workers, farm subsidies, importation of food items, etc. so it is the division of society into the "powerful" and "powerless" that simple? The mechanisms of change through law include large segments of the population. Even in democratic countries, the large-scale participation of citizens in social change is not feasible; however, the lack of participation doesn't mean lack of representation.

## 7. The role of law in making policy:

The law by itself can't bring directed social change but it is one component of many policy instruments that must be used in combination. In the case of social problems like drug abuse, race relations, law can be used effectively as a policy instrument. But, sometimes in order to bring change law should be an ingredient of a larger policy (the Act of Economic Opportunity that attempted to decrease poverty in US).

Usually law is used as an instrument of social change outside of a broader policy framework in reform oriented litigation, such as the restrictions of 1992 on abortion. But, broader issues concerning environmental or natural resources management issues should be reformed using broader policy making frameworks.

Morality and Values: The cause and effect relationship between law and change is very difficult to identify because the ability of law to produce change is probabilistic, contingent and sequential because even though some changes can occur, other factors such as the morality and values of society affect the efficacy and time lag of laws in causing change. On certain issues like truth, individual liberty, etc., a shared morality and shared values are essential to unify the society. However, not all values are essential and those should be able to change. To cause change, a law should be supported by the society. Its efficacy in change is limited on moral issues in society. Examples are the ineffectiveness of

laws prohibiting adultery homosexual marriage or sexual abuse. The laws prohibiting many drugs, especially marijuana, have been called the “new prohibition” to underline similarity with laws prohibiting alcohol usage. It seems that laws on important drives are more difficult to apply than those on less compelling drives. Marijuana is seen a source of pleasure for many people therefore control should be imposed only against polluted merchandise. Morris Grinsberg suggests that laws should deal only with acts that can be precisely defined and with external observable acts; and the laws should as far as possible respect privacy.

Consequently, laws most likely change external behavior, which are consequently later on followed by changes in attitudes, values and morals. So the range of the “external” is enlarged and sometimes affects personal preferences and tastes. In contrast, William Graham Sumner said that laws can regulate only behavior and not values, morals and attitudes. Examples are laws asserting equality for blacks which were not accepted by whites for many generations. On the other hand, this law that required change in behavior has gradually changed attitudes too. Today, the idea of racial superiority is no longer characteristic of whites.

The law can change morality and values under specific conditions. Even though there aren't enough empirical studies it is true that the efficacy of law depends on its adaptation to morality and values if it aims change.

## RESISTANCE TO CHANGE

In most cases laws face resistance by members of society who find different reasons for their resistance such as their values, customs, or even the cost of change and sometimes because people feel threatened by the change. Knowing the conditions of change helps in the implementation of laws. *The factors that are a barrier to change are separated into social, psychological, cultural, and economic factors and all are interdependent.*

### 8. Discussion:

#### Social factors-

Vested interests-Change is opposed by individuals or groups who fear they will lose their power, prestige or wealth when the new law is introduced. Examples are vested interests of residents in a community who oppose zoning regulations or interstate highways, vested interests of faculty in getting research money, etc. Also, the efforts of the Soviet Union to assert independence of Moslem women against males were opposed by bands of males who murdered women that obeyed the law.

#### Social class-

In highly stratified societies, people of upper classes oppose changes because they fear losing privileges over the lower classes. Ex: in Pakistan people of different classes can go to the same schools, draw water from the same well etc. generally working class people supports changes while the lower and upper classes resist changes.

#### Ideological resistance-

It is quite widespread. Example: resistance of Catholic Church to laws and legislation on the removal of some restrictions on abortion and birth control. In 1982 a pill that ended pregnancy within weeks was developed in France. By 1990s it was available in France, Sweden and Britain But protests of antiabortionists and threats of US citizens no to use products of the company that sold the pill stopped its spread. From 2000 this pill has been approved in US. Usually religious assumptions, interpretations on power, security are not open to change.

#### Organized Opposition-

Sometimes individual resistance to change can be organized and channeled into social movements or lobbyists. Ex: John Birch Society has opposed acceptance and legal protection of pornography. The lack of opposition can be fatal as the example of Jews who didn't organize resistance.

#### Psychological factors-

##### Habit

Habits are behaviors that people are accustomed to and are comfortable with and as such habits resist change. Customs are collective habits of a society and trying to change them requires a reorientation of values and behaviors of society. Ex; introducing the metric system US was resisted.

##### Motivation

Is very important in accepting change through law. Some motivations are related to culture and may allow change and some focus on preserving status quo. Some motivations are universal such as the desire for prestige and economic gain but if those are threatened, change is resisted.

##### Ignorance

Is often the cause of prejudice and is related to the fear of the new. Ex: many individuals assumed that citrus fruit caused problems to the digestive tract Once it was proved otherwise, the resistance to citrus fruit faded.



**Selective perception**

Even in really law is intended to be universal, the perception of people on law is *selective* and varies with economic, cultural and demographic variables and also with attitudes, needs and values of people. A change is accepted easily if it is related to the interests of people and supports their values. Ex: in India law provides distribution of family-planning info and supplies. But many villagers refuse using contraceptives because they think the law aim to stop birth completely. The laws should be formulated clearly so there in misunderstanding by people.

**Moral development**

The obedience to law relies highly on a sense of obligation. Moral codes are another factor. Lawrence Kohlberg defines 6 stages of moral development:

1. **Obedience and punishment** - involves respect to superior authorities and avoidance of trouble **pre-moral stage**
2. **Instrumental relativism**- people try to satisfy needs by negotiating with others **pre-moral stage**
3. **Personal concordance** - people adhere to prevailing norms and comply with the majority
4. **Law and order** - people respect those in authority and focus on doing their duty
5. **Social contract** - contracts are used for commitments and people respect them
6. **Individual principles** - include conscience, mutual trust and respect as principles of behavior

If this theory is true, the law is limited on the stage of moral development of citizens which should be considered depending on their social class. If the majority is stages 1 and 2, institutional enforcement is used to maintain order. In stages 3 and 4 law is more limited and in 5 and 6 even more limited. But this depends on the conformity of law with beliefs and values of society.

**Cultural factors****Fatalism**

Many cultural people believe they have no control over their lives and God or evil spirit causes

everything. They don't use fertilizers because they believe God is responsible for their success. They resist change because it is human-enacted and not from divine origin.

**Economic factors**

Today Limited economic resources and high costs are often a barrier to change. Change through law is very costly because of the instrumentation of legislation, administrative ruling or court decisions that are all costly. For ex. federal regulations have increased the costs of institutions of higher education thus, resist further changes and require modification of current regulations. The distribution of costs and benefits also effects resistance. If they are equally distributed there is little resistance but if benefits are low and costs are concentrated, resistance is high. Generally economic factors are decisive in affecting resistance to change. No matter how much somebody wants something if economic sacrifice is too great or they can't afford it, change doesn't occur.

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