Law and Social Change: relationship between law and society

I. Recall jurisprudential paradigms; the view from inside the law
   natural law theories
   legal positivism, analytical jurisprudence
   legal realism

   questions: how does law achieve justice?
   how does legal logic work?

II. Changing the focus and scope: emergence of a social science of law
    Social sciences emerged in 19th century as result of massive changes during previous century. Goal: to explain variation in social conditions and account for changes.

    Observed changes where they had been relatively constant for centuries:
    social structure (relationships, organization of roles, obligations)
    technology (plows, communication, weaving)
    culture (religion, leisure, folk tales)
    Changes in time and space (collapsed distances, world opened, people and things circulated), led to speed up in rates of change

    questions: how does the legal system work/ function?
    how does social change take place?
    what is the role of law in promoting or impeding social change?

III. Bohannan, "Differing Realms of the Law:" a structural functionalist perspective on law and social change.
    origin of law is in custom, in non-legal institutions
    law differs from custom - agency of enforcement
    law restates custom for the specific purpose
    of enabling legal institutions (institutions with power to use force)
    to perform their tasks (Bohannan called this "double institutionalization")
    but, law is never a mere reflection of custom
    duality of restatement ---> lag in time, translation effects
    game of catch up and/or engine of change

    Problem: is law a product of consensus? how does struggle and conflict get express?
IV. Maine (1822-1888), *evolutionary perspective* on law and social change

in general, evolutionary theories posit:

- analogies between human societies and biological species
- imply positive, progressive change, adaptation and efficiency
- acquire strong normative and functionalist tone
- substantively focused on the individual in history

influential attempt to apply evolutionary logic to development of law,

*Ancient Law* (1861)

three stages of development differ by way law made, justify authority,

and resolve conflicts

1) patrilineal, autocratic, no body of rules, no courts or even
   stable customs, case by case ad hoc, "khadi justice," divine
   right

2) shared authority among powerful group, rule on basis of custom
   collective memory, oral tradition, law is found

3) with invention of writing, get codes, recorded decisions, and
   notion of change as deliberate human action, not whim
   or tradition, possibility of ordering, hierarchical system

changes in content,

- from family to individual
- from status (position) to contract to agreement
  conveys responsibility, negotiation,

critique: political biases, rationale for existing system, free market economy

- only role of government and law guarantor of contracts
  empirical accuracy?
- never identified causal mechanism
IV. Emile Durkheim (1858-1917)

Major thesis: societies are essentially, and necessarily, moral.
"held together" by member’s commitments to shared values
law: is core expression of these values.

different social structures have different sorts of legal systems

Simpler societies with low division of labor (more alike than different)
a strong collective conscience, little or no individual identity,
solidarity based on similarity - (Mechanical solidarity - society is
"mechanically" reproduced in each individual)

law is repressive:
entire community is victim, moral boundaries transgressed
community participates in punishment
goal of punishment is to reestablish moral boundaries that have been
violated
little or no individualized punishment, focus not particularly on violator
who may be killed, expelled, or reintegrated (but not rehabilitated)

example: Scarlet Letter, Megan's Law

At the other end of a continuum,
Societies with complex division of labor, strong ethic of individualism, diverse,
heterogeneous populations
solidarity is tied to diversity which leads to interdependence
people don't FEEL connected, but they are (Organic solidarity, as parts of
complex interdependent whole, parts of the body cannot live without
each other)

law is regulatory, restitutive, compensatory:
individual punishments tailored to restore (rehabilitate) violator
fewer public rituals, citizens play less of a role, professional activity
ponit is to maintain order

How does change take place? changes in geographic mobility,
technology, social composition, and consequent division of labor.
HELP REDUCE CHILD SUPPORT ARREARS

BEFORE ENTERING THIS SECTION PLEASE GET THE GATOR

DOES YOUR BOSS KNOW WHAT SITES YOU VISITED?
PROTECT YOUR PRIVACY - DONT GET FIRED!
DOWNLOAD INTERNET ERASER - CLICK HERE

Please look at all the Pictures ... Many Deadbeat Parents use aliases or names other than what you may know them by ....

They Could be your neighbor, your co worker, your brother or sister and even your son or daughter.

“7410 P.N. – Clemency Sex Offenders.” Advertisement in a Newspaper.
