Understanding the Sociological School of Jurisprudence: Exploring the Intersection of Law and Society

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Abstract

The Sociological School of Jurisprudence is a unique perspective on the law that emphasizes the importance of studying the social and cultural context in which legal rules and institutions operate. This research paper seeks to provide a comprehensive understanding of the Sociological School of Jurisprudence by examining its historical origins, key concepts, and contemporary relevance. The paper begins with a discussion of the founding figures of the Sociological School, including Émile Durkheim, Max Weber, and Karl Marx, and their contributions to the development of this perspective. It then explores the core concepts of the Sociological School, such as legal culture, social norms, and the role of power in shaping legal institutions. The paper also examines the contemporary relevance of the Sociological School, with a focus on its application in areas such as critical race theory, feminist legal theory, and law and economics. The paper argues that the Sociological School of Jurisprudence offers a valuable framework for understanding the complex interactions between law and society, and has the potential to inform more just and equitable legal practices.

Keywords: *Sociological School Of Jurisprudence, Law And Society, Social Context, Legal Realism, Legal Pluralism, Legal Positivism, Critical Legal Studies, Social Justice.*

I.   Introduction

Law is a fundamental aspect of modern society, governing everything from commerce and property rights to criminal behaviour and human rights. However, the law is not created or applied in a vacuum; rather, it is shaped by and shapes the social and cultural context in which it operates. The Sociological School of Jurisprudence is a unique perspective on the law that emphasizes the importance of studying this context and the social factors that influence legal rules and institutions. The Sociological School emerged in the late 19th and early 20th centuries, as scholars such as Émile Durkheim, Max Weber, and Karl Marx sought to understand the relationship between law and society. They argued that law is not simply a set of abstract rules, but is deeply embedded in social norms, cultural values, and power relations. The Sociological School thus offers a critique of legal formalism, which views law as a self-contained system of rules and procedures, divorced from its social context. Today, the Sociological School remains an influential perspective within legal scholarship, with contemporary scholars using its insights to examine a range of legal issues, from the impact of race and gender on the law to the role of economic power in shaping legal institutions. By emphasizing the importance of understanding the social and cultural context of law, the Sociological School offers a valuable framework for promoting more just and equitable legal practices.

Reasons for the Emergence of the Sociological School[1]:

- Laissez-Faire is the most important reason for the creation of the sociological school of jurisprudence. It refers to the policy of minimum governmental interference when it comes to dealing with the economy, the society or the individuals. According to the Britannia dictionary, "Laissez-faire is the policy of minimum governmental interference in the economic affairs of individuals and society."
- It is due to the increasing importance of the practice of Laissez-Faire that this law rose to existence. However, due to the development and growth of laissez-faire, there seems to be a greater relevance and focus on individual growth. The Sociological school came out as a reaction against the laissez-faire because sociological school advocates the balance between the welfare of the state and individual interest.

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[1] Rajender Kumar (2019), Lucknow University, Sociological jurisprudence with Indian Perspective

- Pragmatists as well as progressives were reformer in orientation and shared an optimistic faith in the capacity of the social sciences to help identify justice and the public good, and the best means to achieve them. The basis of the socio-legal school is formed by the ideas of pragmatism, which are expressed in the functional and instrumental approach to the law.

II.   **Characteristics Of Sociological School Of Law:** Some of the main characteristics of the sociological school of jurisprudence include:

1. *Focus on social context:* The sociological school emphasizes the importance of social context in understanding the law. Legal rules are seen as being shaped by social, economic, and cultural factors, and the impact of these factors on the development and enforcement of the law is studied in depth.[2]

2. *Empirical research:* Sociological jurists believe that the study of law should be based on empirical research, and not just on abstract legal theory. They use a variety of research methods, including surveys, interviews, and case studies, to study the social and cultural factors that influence legal rules.[3]

3. *Interdisciplinary approach:* The sociological school of jurisprudence draws on insights from a range of disciplines, including sociology, anthropology, psychology, and economics. This interdisciplinary approach helps to provide a more comprehensive understanding of the role of law in society.[4]

4. *Critical perspective:* Sociological jurists often take a critical perspective on the law, questioning its underlying assumptions and exploring its social and cultural implications. They are particularly interested in studying how the law impacts different groups in society, and how it can be used to promote social justice.[5]

5. *Law as a tool for social change:* Finally, the sociological school of jurisprudence sees law as a tool for social change. By studying the social and cultural factors that shape legal rules, sociological jurists aim to identify ways in which the law can be used to promote social

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[2] Cotterrell, R. (2013). The Sociology of Law: An Introduction. Routledge.
Luhmann, N. (1985). A Sociological Theory of Law. Routledge.
[3] Black, D. (1976). The behavior of law. Academic Press.
[4] Abel, R. L. (1989). American lawyers. Oxford University Press.
[5] Ewick, P., & Silbey, S. S. (1998). The Common Place of Law: Stories from Everyday Life. University of Chicago Press.

progress and improve the lives of people in society.[6]

III. Contribution of Different Sociologists and Jurists:

Auguste Compte(1798-1857)

Auguste Comte is considered the founder of the discipline of sociology and his contributions to the development of sociology have been immense. However, Comte's role in the sociological school of jurisprudence is somewhat limited.Comte believed that sociology should be the foundation of all other sciences, including law. He saw law as an essential aspect of social order and stability, and he believed that the principles of sociology should be applied to the study of law.Comte's views on law and the role of the state in society were largely influenced by his belief in positivism. He believed that the law should be based on scientific principles and that the state should play a key role in shaping and enforcing the law.Comte's ideas had a significant impact on the development of sociology and the social sciences, including jurisprudence. However, his influence on the sociological school of jurisprudence was relatively limited compared to other scholars such as Emile Durkheim and Max Weber, who developed more comprehensive sociological theories of law and its role in society.[7]

Émile Durkheim(1858-1917)

Émile Durkheim, a founding father of sociology, made significant contributions to the sociological school of jurisprudence. He believed that law was not a fixed set of rules, but rather a reflection of social norms and values. Durkheim argued that law was essential to the functioning of society, as it provided a means of regulating behaviour and resolving disputes. His work on the sociology of law helped to establish the importance of studying the relationship between law and society. Durkheim believed that law was a reflection of the collective consciousness of society. In his book, "The Division of Labor in Society," Durkheim argued that social solidarity was based on shared values and norms, and that law played a crucial role in maintaining that solidarity[8]. He believed that the law was a means of expressing and enforcing those shared values, and that it played an important role in

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[6] Merry, S. E. (1990). Getting justice and getting even: Legal consciousness among working-class Americans. University of Chicago Press.

[7] Comte, A. (1838). Course of Positive Philosophy. Cambridge University Press.

[8] Durkheim, Émile. The Division of Labor in Society. Translated by George Simpson. Free Press, 1997.

shaping individual behaviour.

Durkheim also emphasized the importance of the social context in which law operates. He argued that the law was shaped by social forces, such as economic and political power, and that it reflected the interests of the dominant groups in society. He believed that the study of law should take into account the social and historical context in which it operates, and that legal systems should be analyzed as part of broader social structures and processes.Durkheim's contributions to the sociological school of jurisprudence have been highly influential in the development of legal sociology and the sociology of law. His work has inspired numerous studies of the relationship between law and society, and has helped to establish the importance of considering the social context in which legal systems operate.[9]

Criticism of Emile Durkheim:

Criticism of Durkheim's approach is that it overemphasizes the role of social norms and collective consciousness in shaping law. Durkheim argued that law reflects society's shared values and beliefs and helps maintain social order and solidarity. However, critics have argued that Durkheim's approach ignores the role of power and politics in shaping law and assumes a consensus of values and beliefs that may not exist. Another criticism of Durkheim's approach is that it does not take into account sufficient the complexity and diversity of modern societies. Durkheim's work mostly focused on small, homogeneous societies, and some scholars have argued that his theories may not apply to more complex and diverse societies that may have multiple competing norms and values. Finally, some scholars have criticized Durkheim's approach for neglecting the agency of individuals in the formulation of law. Durkheim's focus on collective consciousness and social norms can make it difficult for people to resist or challenge the law or try to change it through political action or other means.

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[9] Cotterrell, Roger. "Emile Durkheim and the Sociology of Law." In The Routledge Handbook of Law and Society, edited by Austin Sarat and Patricia Ewick, Routledge, 2015, pp. 68-81.

Montesquieu (1689-1755)

Montesquieu's contributions to the sociological school of jurisprudence were significant and multifaceted. His major work, "The Spirit of the Laws," published in 1748, is considered a landmark in the history of jurisprudence and political theory. In this work, Montesquieu argued that law was not a set of abstract principles, but rather a product of social and historical circumstances. He emphasized the importance of context in the development and application of law, and advocated for the adaptation of legal systems to the specific needs and characteristics of each society. One of Montesquieu's key contributions to the sociological school of jurisprudence was his theory of the separation of powers. He argued that the power of government should be divided into three distinct branches - the legislative, executive, and judicial - each with its own sphere of authority and checks and balances on the others. This idea, which has been highly influential in modern constitutional theory, was based on Montesquieu's observation of the English system of government, as well as his study of ancient and contemporary political systems. Montesquieu also emphasized the importance of political institutions and social customs in shaping the development and application of law. [10]He argued that laws should reflect the particular needs and circumstances of each society, and should be adapted to the prevailing customs and mores. He wrote, "The laws of education ought to be relative to the principles of government. In monarchies, they should be directed to support the respect due to princes; in republics, to the love of the country." (Book V, Chapter 2).Montesquieu's approach to jurisprudence was highly influential in the development of modern legal systems. His emphasis on the importance of context and the adaptation of legal systems to local needs and circumstances has been echoed in the work of later sociological theorists such as Max Weber and Émile Durkheim. His ideas on the separation of powers were also highly influential in the development of modern constitutional theory, and were incorporated into the constitutions of many countries, including the United States and France.

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[10] Montesquieu, Charles de Secondat, Baron de. The Spirit of the Laws. Translated by Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone. Cambridge University Press, 1989.

Criticism of Montesquieu:

One criticism of Montesquieu's approach is that it relies too heavily on abstract principles and universal laws, rather than taking into account the specific social and historical contexts in which laws are developed and enforced. Montesquieu argued that laws should be based on general principles of justice and reason, not on specific social or historical circumstances. However, some scholars have argued that this approach can lead to a failure to pay attention to the social and economic factors that shape the development and implementation of law. Another criticism of Montesquieu's approach is that it fails to take into account the ways in which power and class interests shape law. Montesquieu believed that the separation of powers and the rule of law were necessary to protect individual liberty, but some scholars have argued that this idealistic view overlooks the ways in which powerful groups can use the law to protect their interests at the expense of others. Finally, some scholars have criticized Montesquieu's approach for neglecting the agency of individuals in the formulation of law. Montesquieu's focus on the separation of powers and the rule of law can make it difficult for people to resist or challenge the law or try to change it through political action or other means.

Eugen Ehrlich (1862-1922)

Eugen Ehrlich was an Austrian legal scholar and one of the most important figures in the development of the sociological school of jurisprudence. Ehrlich is considered the founder of the sociological school of jurisprudence. He believed that law is not just a set of rules and principles but a social phenomenon that arises from the customs and practices of society. He emphasized the importance of empirical research in studying law and society. Ehrlich argued that law should be studied as a living, dynamic entity that changes with social and cultural conditions. He also introduced the concept of "living law," which suggests that the law is not only made by lawmakers but also by the people who use it in their daily lives.[11] His ideas and contributions to legal theory

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[11] Eugen Ehrlich. "Fundamental Principles of the Sociology of Law." Translated by Walter L. Moll. Harvard University Press, 1936.

include:

The living law: Ehrlich introduced the concept of the "living law" which he defined as the law as it is actually practiced and enforced by people in society, rather than the law as it is written in legal codes or statutes. He believed that the living law was shaped by social norms, customs, and values and that it evolved over time to meet the changing needs of society.

Social reality: Ehrlich argued that law was a reflection of social reality and that it was shaped by the social and economic conditions of the time. He believed that law could not be studied in isolation from the broader social and economic context in which it was practiced.

Law and society: Ehrlich emphasized the importance of studying law as a social phenomenon, rather than as a purely technical or abstract discipline. He believed that the study of law should be closely linked to the study of society and that legal scholars should be aware of the social and economic factors that shape the law.

Sociology of law: Ehrlich is credited with founding the field of sociology of law. He believed that legal scholars should use sociological methods and concepts to study the law and that the law should be studied as a social institution rather than as a set of abstract principles.

Legal pluralism: Ehrlich recognized that law was not uniform but was rather a complex mixture of different legal systems and practices. He argued that legal pluralism was a natural and necessary feature of modern societies and that legal scholars should study the interactions between different legal systems.

Overall, Eugen Ehrlich's contributions to the sociological school of jurisprudence have had a significant impact on legal theory and practice. His ideas have influenced legal systems around the world and have helped to shape our understanding of the relationship between law, society, and culture.[12]

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[12] Eugen Ehrlich, Fundamental Principles of the Sociology of Law (Transaction Publishers, 2016).
Roger Cotterrell, "Eugen Ehrlich," in The Oxford Handbook of Legal Studies, ed. Peter Cane and Mark Tushnet (Oxford: Oxford University Press, 2003).

Criticism of Ehrlich:

One criticism of Ehrlich's approach is that it overlooks the role of power and politics in shaping the law. Ehrlich argued that law is the product of social customs and practices and reflects the shared values and beliefs of society. However, some scholars have argued that this approach ignores the ways in which power and politics can shape the development and implementation of law. Another criticism of Ehrlich's approach is that it focuses too heavily on the social and historical context of law and neglects the importance of legal principles and doctrine. Ehrlich emphasized the importance of studying legal practices and customs in their social and historical context, but some scholars have argued that this ignores the importance of legal principles and doctrines in shaping law. Some scholars have criticized Ehrlich's approach for neglecting the agency of individuals in the formulation of law. Ehrlich's focus on social conventions and practices can complicate the ways in which individuals can resist or challenge the law or seek to change it through political action or other means.

Leon Duguit (1859-1928)

Leon Duguit was a French jurist who was an important figure in the sociological school of jurisprudence. His contributions to this field are significant, and some of them are:
Social solidarity: Duguit believed that the law was not just a set of rules and principles but a means of maintaining social solidarity. He argued that law should be used to promote the interests of the community as a whole rather than just the interests of individuals. He believed that the law should reflect the values and aspirations of society and that it should be used to promote the social welfare of all.

Law as a social function: Duguit believed that the law was a social function rather than a tool of government. He argued that the law should be used to promote social harmony and that the government's role should be limited to facilitating this process. He believed that the law should be

created and enforced by the community rather than just the government.[13]

"Non-ownership" theory of property: Duguit's most significant contribution to legal theory is his theory of property. He believed that property rights were not absolute and that they should be subject to social control. He argued that property was a social institution and that it should be used to promote the welfare of the community rather than just the interests of the individual. He believed that the government had a duty to regulate property rights to ensure that they were being used for the benefit of society as a whole.

Critique of individualism: Duguit was highly critical of individualism and believed that it was a major obstacle to social progress. He argued that individualism was a threat to social harmony and that it led to social inequality and injustice. He believed that the law should be used to promote the common good and that individual rights should be subordinated to the welfare of society as a whole. Overall, Duguit's contributions to the sociological school of jurisprudence have had a significant impact on legal theory and practice. His ideas have influenced legal systems around the world and have helped to shape our understanding of the relationship between law, society, and the individual.[14]

Criticism of Leon Duguit:

One criticism of Duguit's approach is that it tends to focus too much on the idea of the social interest as the basis for legal norms, and neglects other important factors such as individual rights and freedoms. Duguit believed that the law should serve the common good and protect the interests of society as a whole, but some scholars have argued that this emphasis on the social interest can lead to a neglect of individual rights and liberties. Another criticism of Duguit's approach is that it is overly prescriptive, and fails to account for the complexities of legal practice and the diverse social contexts in which law is enforced. Duguit believed that legal norms should be based on objective social facts, and that legal reasoning should be based on scientific principles rather than subjective interpretations. However, some scholars have argued that this approach neglects the diverse social and cultural contexts in which law is enforced, and can lead to an overly rigid and inflexible legal

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[14] Leon Duguit, Law in the Modern State (Chicago: University of Chicago Press, 1921).
Leon Duguit, The Social Function of Property (London: Stevens & Sons, 1919).

system.

Finally, some scholars have criticized Duguit's approach for neglecting the role of power and politics in shaping the law. Duguit believed that legal norms should be based on objective social facts and scientific principles, but some scholars have argued that this approach neglects the ways in which power and politics can shape the development and enforcement of the law.[15]

Roscoe Pound (1870-1964)

 Roscoe Pound was an American jurist who made significant contributions to the sociological school of jurisprudence. He believed that law should be studied not only as a set of rules and procedures, but also as a social institution that reflects and shapes the values and beliefs of a particular society. Here are some of Pound's key contributions to the sociological school of jurisprudence:

Social engineering approach: Pound developed the idea of "social engineering," which he saw as a way of using law to promote social welfare and the public good. He believed that lawyers and judges should work to shape and reform the legal system in order to achieve broader social goals, such as economic justice and the protection of individual rights.

Jurisprudence of interests: Pound emphasized the importance of understanding the interests that underlie legal disputes, arguing that law is ultimately a means of resolving conflicts between different social groups. He believed that legal decisions should be based on a careful analysis of the competing interests at stake, and that the law should be used to promote social harmony and cooperation.[16]

Sociology of law: Pound was also interested in the social and cultural factors that shape legal institutions and practices. He believed that law cannot be understood in isolation from its social context, and that legal scholars should use sociological methods to study the ways in which law is shaped by broader social and economic forces.

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[15] Krygier, M. (1988). The Critical Legal Studies Movement and the Sociology of Law. The American Journal of Comparative Law, 36(4), 653-673.

[16] Pound, R. (1910). The scope and purpose of sociological jurisprudence. Harvard Law Review, 23(8), 591-619.

Legal realism: Finally, Pound was associated with the legal realist movement, which emphasized the importance of empirical research and practical experience in legal scholarship. He believed that legal theory should be grounded in the realities of legal practice, and that lawyers and judges should be more focused on achieving practical outcomes than on adhering to abstract legal principles.

Overall, Roscoe Pound's contributions to the sociological school of jurisprudence have had a lasting impact on legal theory and practice. His ideas continue to be studied and debated by legal scholars around the world, and his emphasis on the social and cultural dimensions of law has helped to shape our understanding of the legal system as a complex and dynamic social institution.[17]

Max Weber(1864-1920)

Max Weber was a German sociologist and political theorist who made significant contributions to the sociological school of jurisprudence. Here are some of Weber's key contributions to this school of thought:

Bureaucracy: Weber's work on bureaucracy is one of his most important contributions to the sociological study of law. He argued that modern legal systems are characterized by the development of complex bureaucratic structures, which are necessary for the efficient administration of justice. He also analyzed the ways in which bureaucracy can create tensions between formal rules and the practical demands of day-to-day legal work.

Legal rationalism: Weber also developed the concept of legal rationalism, which emphasizes the importance of rational, systematic thinking in the law. He argued that legal systems are based on a set of abstract, formal rules that are applied in a consistent and predictable way, regardless of individual circumstances. This approach to law is often contrasted with more traditional or customary forms of legal reasoning.

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[17] Pound, R. (1923). The need of a sociological jurisprudence. The Yale Law Journal, 32(8), 609-629.

Social stratification: Weber's analysis of social stratification has also had an important influence on the sociological study of law. He argued that legal systems are closely linked to broader patterns of social inequality, and that the law often reinforces existing power structures. He also examined the ways in which social class, status, and other factors can influence legal outcomes.

Ideal types: Finally, Weber is known for his use of ideal types, which are abstract models or categories that help to explain complex social phenomena. He used this approach to develop a typology of legal systems, which he classified into three main categories: traditional, rational-legal, and charismatic.

Overall, Max Weber's contributions to the sociological school of jurisprudence have helped to shape our understanding of the complex relationship between law and society. His ideas continue to be influential in contemporary debates about the role of law in modern societies.[18]

Criticism of Max Webber:

One criticism of Weber's approach is that it focuses too much on the role of ideas and culture in shaping law and ignores other important factors such as economic and political power. Weber believed that legal norms shape cultural ideas and values and that law reflects a society's dominant cultural worldview. However, some scholars have argued that this approach ignores the ways in which economic and political power can shape the development and application of law.

Another criticism of Weber's approach is that it is too abstract and theoretical and does not take into account the concrete realities of jurisprudence or the various social contexts in which the law is applied. Weber's theories emphasize the importance of abstract concepts such as legal rationality and the rule of law, but some scholars have argued that this approach ignores the complex and messy facts of jurisprudence and can lead to an overly idealized and unrealistic view of law. Finally, some

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[18] Weber, M. (1922). Economy and Society: An Outline of Interpretive Sociology. Berkeley: University of California Press.
Weber, M. (1958). The Rational and Social Foundations of Music. New York: Free Press.

scholars have criticized Weber's approach for ignoring the role of social conflict and struggle in the formation of law.

Weber believed that legal norms reflect a society's dominant cultural worldview, but some scholars have argued that this approach ignores the ways in which social conflict and struggle can shape the development and enforcement of law.

Leon Petrazycki (1867-1931)

Leon Petrazycki was a Polish lawyer, philosopher, and sociologist who made significant contributions to the sociological school of jurisprudence. He is known for his work on the psychology of law and for his development of the concept of "law as experience."Petrazycki argued that law should be understood as a social and psychological phenomenon, rather than simply a set of rules or principles. He believed that legal norms and institutions were shaped by the experiences and beliefs of individuals and communities, and that the study of law should therefore involve an analysis of human psychology and social relations. Petrazycki's ideas are most fully developed in his book, "Law and Morality" (1908), in which he presents his concept of "law as experience." According to Petrazycki, the experience of law is shaped by a variety of factors, including culture, religion, social class, and individual personality. He argued that legal norms and institutions cannot be fully understood without taking into account the lived experiences of the people who are subject to them. Petrazycki's work on the psychology of law also had a significant influence on the development of legal psychology as a discipline. He emphasized the importance of studying the mental processes involved in legal decision-making, and he argued that psychological factors, such as emotions, biases, and values, play a crucial role in shaping legal outcomes. Overall, Petrazycki's contributions to the sociological school of jurisprudence have had a lasting impact on legal scholarship and continue to be influential today. His emphasis on the social and psychological dimensions of law has inspired generations of legal scholars to study law as a dynamic and complex social phenomenon.[19]

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[19] Petrazycki, L. (1908). Law and Morality. London: Oxford University Press.
Banakar, R. (2010). Law and Sociology. In R. Banakar & M. Travers (Eds.), An Introduction to Law and Social Theory (pp. 71-96). Oxford: Hart Publishing.

Criticism of Leon Petrazycki:

Criticism of Petrazycki's approach is that it can be too focused on psychology and individual subjective experiences, and neglects broader social and structural factors that shape the law. Petrazycki emphasized the importance of understanding the psychological and emotional experiences of individuals within legal systems, and how these experiences influence the development and enforcement of the law. However, some scholars have argued that this approach neglects the broader social and structural factors that shape legal norms and practices, such as economic relations, political power, and cultural values. Another criticism of Petrazycki's approach is that it can be too deterministic, as he emphasized the role of collective unconsciousness and social psychology in shaping legal norms and practices. Petrazycki argued that legal norms were shaped by the collective experiences and emotions of a society, and that individuals were largely passive participants in this process. However, some scholars have criticized this approach for neglecting the agency of individual actors, and the ways in which they can challenge and reshape legal norms through their actions and interactions.Some scholars have criticized Petrazycki's approach for its limited account of the role of power and conflict in shaping the law. While Petrazycki acknowledged the importance of power and conflict in shaping legal norms and practices, some scholars have argued that his approach neglects the ways in which power relations can be contested and challenged, and how social conflict can shape the development and enforcement of the law.[20]

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[20] Cotterrell, R. (2013). The Sociology of Law: An Introduction. Routledge.

IV.   Conclusion

In conclusion, the sociological school of law provides a powerful lens through which to analyze the role of law in society. This approach highlights the social, economic and cultural factors that shape legal norms and practices, questioning traditional legal positivism and opening new avenues of research. Studying the main figures and ideas of the sociological school of law, we saw how this approach   evolved over time and made significant contributions to the field of jurisprudence. Although not without its critics, the sociological school of law has fundamentally changed the way we think about law and society and continues to shape ongoing debates in legal theory and practice. Looking to the future, it is clear that the sociological approach will remain an important tool for understanding the complex and constantly changing relationship between law and society.