The second salient characteristic of law is that it is nonspecific with respect to functional content at lower levels. Functional content, understood in the usual sociological sense, refers to such categories as economic, political, and a variety of others. There is law defining the Constitution and political processes within it. There is a law of business and of labor and the relations of business to labor. There is a law of the family, of personal relationships, and a variety of other subjects. Indeed any social relationship can be regulated by law, and I think every category of social relationship with which sociologists are concerned is found to be regulated by law in some society somewhere.

It seems justified to infer from these considerations that law should be treated as a generalized mechanism of social control that operates diffusely in virtually all sectors of the society.

Law, of course, is not just a set of abstractly defined rules. It is a set of rules backed by certain types of sanctions, legitimized in certain ways, and applied in certain ways. It is a set of rules that stands in certain quite definite relationships to specific collectivities and the roles of individuals in them. Perhaps we can approach a little closer characterization of the place of law in a society by attempting to analyze some of these relationships, and by showing some of the conditions on which the effectiveness of a system of rules can be held to rest.

The Functions of Law and Some Structural Implications

Let us suggest that in the larger social perspective the primary function of a legal system is integrative. It serves to mitigate potential elements of conflict and to oil the machinery of social intercourse. It is, indeed, only by adherence to a system of rules that systems of social interaction can function without breaking down into overt or chronic covert conflict.

Normative consistency may be assumed to be one of the most important criteria of effectiveness of a system of law. By this I mean that the rules formulated in the system must ideally not subject the individuals under their jurisdiction to incompatible expectations or obligations—or, more realistically, not too often or too drastically. In the nature of the case, since they act in many different contexts and roles, individuals will be subject to many particularized rules. But the rules must somehow all build up to a single, relatively consistent system.

In this respect we may suggest that there are four major problems...
that must be solved before such a system of rules can operate determinately to regulate interaction. (Even though the questions are not explicitly put by the actors, an observer analyzing how the system operates must find some solution to each of them.)

The first problem concerns the basis of legitimation of the system of rules. The question is why, in the value or meaning sense, should I conform to the rules, should I fulfill the expectations of the others with whom I interact? What in other words is the basis of right? Is it simply that some authority says so without further justification? Is it some religious value, or is it that I and the others have some natural rights that it is wrong to violate? What is the basis of this legitimation?

The second problem concerns the meaning of the rule for me or some other particular actor in a particular situation in a particular role. In the nature of the case, rules must be formulated in general terms. The general statement may not cover all of the circumstances of the particular situation in which I am placed. Or there may be two or more rules, the implications of which for my action are currently contradictory. Which one applies and in what degree and in what way? What specifically are my obligations in this particular situation or my rights under the law? This is the problem of interpretation.

The third basic problem is that of the consequences, favorable or unfavorable, that should follow from conforming to the rules to a greater or lesser degree or from failing to conform. These consequences will vary according to the degrees of nonconformity and according to the circumstances in which, and reasons for which, deviation occurs. Under a system of law, however, the question of whether or not conformity occurs can never be a matter of indifference. This, of course, is the problem of sanctions. What sanctions apply and by whom are they applied?

Finally, the fourth problem concerns to whom and under what circumstances a given rule or complex of rules, with its interpretations and sanctions, applies. This is the problem of jurisdiction, which has two aspects: (1) What authority has jurisdiction over given persons, acts, and so on in defining and imposing the norms? (2) To which classes of acts, persons, roles, and collectivities does a given set of norms apply?

We may now attempt to say something about the conditions of institutionalizing answers to these questions in a large-scale, highly differentiated society. At the outset I want to suggest that a legal system must not itself be regarded in an analytical sense as a political phenomenon, although it must be closely related to political functions and processes. The two systems are most intimately related with respect to the problems of sanctions and of jurisdiction. Of these, the connection with respect to sanctions is in a sense the more fundamental.

We may speak of the existence of a continuum of sanctions, ranging from pure inducement to sheer and outright coercion. By inducement I mean the offer of advantages as a reward for actions that the inducer wishes his role-partner to perform. By coercion I mean the threat of negative sanctions for nonperformance of the desired course of action. Both inducement and coercion operate in all social relationships. The basis of the relation of law to political organization lies primarily in the fact that at certain points the question must inevitably arise as to the use of physical force or its threat as a means of coercion; that is, a means of assertion of the bindingness of the norm. If physical force is altogether excluded the ultimate coercive sanction is expulsion, as for example in the case of excommunication from the church. In many cases, however, expulsion will not be a sufficiently severe sanction to prevent undesirable action from taking place. And if it is not sufficient, resort must be had to force. Force is, at least in the preventive sense, the ultimate negative sanction.

Thus if rules are taken sufficiently seriously, inevitably the question will sometime be raised of resort to physical sanction in a preventive context. On the other hand, the use of force is perhaps the most serious potential source of disruption of order in social relationships. For this reason in all ordered societies there is at least a qualified monopoly of the more serious uses of physical force. This monopoly is one of the primary characteristics of the political organization, in its more highly developed forms leading up to the state. If, then, it becomes necessary in certain contingencies to use or threaten physical force as a sanction for the enforcement of legal norms, and if the legitimate use of physical force is monopolized in the agency of the state, then the legal system must have an adequate connection with the state in order to use its agencies as the administrators of physical sanctions.

The problem of jurisdiction is obviously closely linked with that of sanctions. One of the main reasons that the jurisdiction of political bodies is territorially defined is precisely the importance of the use of physical force in their functioning. Physical force can be applied only if the individual to whom it is directed can be reached in a physical location at a given time. It is therefore inherently linked to territoriality of jurisdiction. Hence a legal system that relies at certain points on the sanctions of physical force must also be linked to a territorial area of jurisdiction.

A further source of linkage between law and the state requires me to say a word about the imperative of consistency. On the level of
the content of norms as such, this imperative exerts a strong pressure toward universalism (a trait that is inherent in systems of law generally). I spoke above of consistency from the point of view of not subjecting the same individual to contradictory rules. The opposite of this imperative is the recognition that, when a rule has been defined as a rule, it must be impartially applied to all persons or other social units that fall within the criteria that define the application of the rule. There are inherent limitations in systematizing legal systems, that is, in making them consistent, if this criterion of universalistic application cannot be followed.

In its practical implication this criterion of universalism, however, connects closely with territoriality, because it is only within territorial limits that enforcement of universalistically defined rules can effectively be carried out. It follows from these considerations that enforcement agencies in a legal system are generally organs of the state. They carry a special political character.

Enforcement agencies are, however, ordinarily not the central organs of the state. They are not primarily policy-forming organs but rather are organs that are put at the service of the many different interests that are covered by the rules of a legal system. The fact that even the enforcement agencies are not primarily political is vividly brought out by their relations to the courts. In most legal systems what they may do, and to a considerable degree how they may do it, is defined and supervised by the courts. Where enforcement agencies gain too strong a degree of independence of the courts, it may be said that the legal system itself has been subordinated to political considerations, a circumstance that does occur in a variety of cases.

The interpretive and legitimizing functions in law are even less directly political than are the sanctioning and the jurisdictional functions. First let us take the legitimation function, which concerns to an important degree the relation and the distinction between law and ethics.

We may say that, in the deeper sense, the lawyer as such tends to take legitimation for granted. It is not part of his professional function, whether as attorney or as judge, to decide whether the existence of a given rule is morally or politically justified. His function rather concerns its interpretation and application to particular cases. Even where, as under a federal system, there may be certain problems of the conflict of laws, it is the higher legal authority—for example, that of the Constitution—that is the lawyer’s primary concern, not the moral legitimation of the Constitution itself. Nevertheless, the legal system must always rest on proper legitimation. This may take forms rather close to the legal process itself, such as the question of enactment by proper procedures by duly authorized bodies. For example, legislatures are responsible to electorates. But in back of proper procedures and due authorization of law-making bodies lies the deeper set of questions of ultimate legitimation.

In the last analysis this always leads in some form or other either to religious questions or to those that are functionally equivalent to religion. Law from this point of view constitutes a focal center of the relations between religion and politics as well as other aspects of a society.

Turning now to “interpretation,” it must be noted that here again there are two basic foci of this function. One concerns the integrity of the system of rules itself; it is rule-focused. The other concerns the relation of rules to the individuals and groups and collectivities on whom they impinge. In a legal sense this latter function may be said to be client-focused. Taken together in these two aspects, the interpretive function may be said to be the central function of a legal system.

The first, the rule-focused aspect of the law, is primarily the locus of the judiciary function, particularly at the appellate levels. The second is the focus of the functions of the practicing legal profession. With respect to the judiciary certain sociological facts are saliently conspicuous. Wherever we can speak of a well-institutionalized legal system, the judiciary are expected to enjoy an important measure of independence from the central political authority. Of course, their integration with it must be so close that, for example, practically always judges are appointed by political authority. But usually (unless holding office for specified terms) they enjoy tenure, they are not removable except for cause, and it is considered most improper for political authority to put direct pressure on them in influencing their specific decisions. Furthermore, though not a constitutional requirement in the United States it is certainly generally practiced that judges, the more so the higher in the system, must be lawyers in a professional sense. This is not a function ordinarily open to the ordinary lay citizen.

Furthermore, the judicial function as part of the attorney’s function is centered in a special type of social organization: the court. This is an organization that directly institutionalizes the process of arriving at decisions. This is done, of course, through the bringing of cases to the court for adjudication, in the course of which not only are the rights and obligations of individual petitioners settled but the rules themselves are given authoritative interpretations. We might perhaps say that authoritative interpretation in this sense is perhaps the most important of the judicial functions.

With respect to the legal profession in the sense of the practicing attorney, there is a conspicuous dual character. The attorney is, on the one hand, an officer of the court. As such he bears a certain
public responsibility. But at the same time, he is a private adviser to his client, depending on the client for his remuneration and enjoying a privileged confidential relation to the client. This relation between lawyer and client parallels, to an interestingly high degree, that between physician and patient, its confidential character being one of the principal clues to this parallel. It is focused, however, on situations of actual or potential social conflict and the adjudication and smoothing over of these conflicts. It is not primarily person-oriented as the health-care functions are, but rather social relationship-oriented.

Performance of the interpretive function is facilitated, we have said, by such structural devices as “judicial independence” from political pressure, professionalization of the judicial role, and institutionalization of the decision-making process. These general kinds of structural facilities, however, are not sufficient to prevent the interpretive role from being the focus of certain inherent strains; and certain more specific mechanisms are required to check a tendency toward deviant reactions to the strains.

Law and Other Mechanisms of Social Control

Despite these general ways in which lawyers, as professionals, contribute to social control, it is important to note certain crucial differences between law and other control mechanisms. A useful point from which to approach the distinction, and from which to make clear its functional importance, is the set of remarks made above in connection with the functions of legitimation and interpretation.

From the combination of the interpretive function and that of legitimation, we may begin to understand some of the reasons for the emphasis in the law on procedural matters. As Max Weber put it, “the rationality of law is formal rather than substantive.” Certainly one of the basic conceptions in our Anglo-Saxon legal systems is that of due process. Here, of course, it even goes to the point where the question of substantive justice may not be an issue, and injustice may have no legal remedy so long as correct formal procedure has been observed. It may be noted that if pressure becomes strong with reference to either the question of enforcement or the question of legitimation, it may operate against the integrity of the procedural traditions and rules. People who are sufficiently exercised about questions of substantive justice and injustice are often not strong respectors of complicated legal procedure. Similarly, if disobedience to law is sufficiently blatant and scandalous, there may be a demand for direct action that altogether by-passes the rules of procedure.

From this point of view, it may become evident that the prominence of and the integrity of a legal system as a mechanism of social control is partly a function of a certain type of social equilibrium. Law flourishes particularly in a society in which the most fundamental questions of social values are not currently at issue or under agitation. If there is sufficient acute value conflict, law is likely to go by the board. Similarly, it flourishes in a society in which the enforcement problem is not too seriously acute. This is particularly true where there are strong informal forces reinforcing conformity with at least the main lines of the legally institutionalized tradition. In many respects, modern England is a type case of this possibility.

Law, then, as a mechanism of control may be said to stand in a position midway between two other types of mechanisms:

(a) On the one hand, there are two classes of mechanisms that focus primarily on the motivation of the individual: those that operate through the media of mass communication—through the distribution and allocation of information and the concomitant emotional attitudes; and those that operate more privately and subtly in relation to the individual. Though there are many of these latter mechanisms, a particularly conspicuous one in our own society, administered by a sister professional group, is that of therapy. The line of distinction between questions that can be handled by legal procedure and those that involve therapy is a particularly important one.

(b) In another direction, the law must be distinguished from those mechanisms of social control that focus on the solution of fundamental problems of value orientation involving basic decisions for the system as a whole, rather than regulation of the relations of the parts to each other. Politics and religion both operate more in this area, and because of this difference it is particularly important to distinguish law from politics and religion.

Finally, it may perhaps be suggested that law has a special importance in a pluralistic liberal type of society. It has its strongest place in a society where there are many different kinds of interests that must be balanced against each other and that must in some way respect each other. As I have already noted, in the totalitarian type of society, which is in a great hurry to settle some fundamental general social conflict or policy, law tends to go by the board.

Both individually and collectively, law imposes restraints on precipitate and violent action. I might recall the words with which the recipients of law degrees are greeted by the President of Harvard University at every commencement. He says, "You are now qualified to help administer those wise restraints which make men free."
Note

1. Of course it is better adapted to some problems of social control than to others. It is notorious that the more refined and settled sentiments of individuals cannot be controlled by legal prescription. Nevertheless, it is one of the most highly generalized mechanisms in the whole society. It is located primarily, as I said, on the institutional level. It is not isolated but is one of a family of mechanisms of control. At the end of this discussion I will sketch its relations to one or two others.