



Admin Theory History Postivism Classical Conc

## Lecture Outline

- Theoretical Variation
  - Valuation, Scale, Explanation
- History of the Field
  - Overview of Legal Sociology
- Pre-Classical Pioneers
- Classical Sociology
- Models of Law

Sociology of Law w/ Ellis Godard @ CSUN 7

## History of the Field

From Legal Philosophy to Sociology of Law

Sociology of Law w/ Ellis Godard @ CSUN 4

Admin Theory History Postivism Classical Conc

## Variations in Theory

- Value orientation
  - Scientific = value-neutral
  - Critical = value-centric
  - Selznick: distinction is “sophomoric” b/c overlap ☹
  - Black: *critical*, b/c overlap is *imagined* (sophomoric ☺)
- Scale of Analysis
  - Micro: case
  - Macro: society/history/epochs/eras
  - Meta: middle or mediating (Merton vs Turner)
  - None: some approaches apply to *any* of those

Sociology of Law w/ Ellis Godard @ CSUN 8

Admin Theory History Postivism Classical Conc

## What music do you prefer?

0%	A.	Classical
4%	B.	Country
38%	C.	Hip hop / Rap
0%	D.	Jazz
13%	E.	Pop
17%	F.	R&B
8%	G.	Reggae
13%	H.	Rock
0%	I.	Worldbeat
0%	J.	Silence

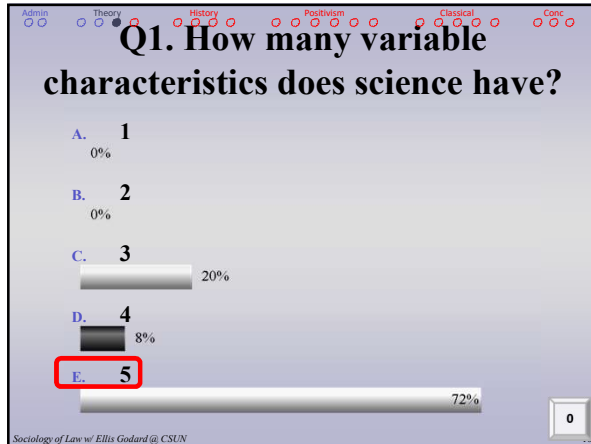
Sociology of Law w/ Ellis Godard @ CSUN 9

Admin Theory History Postivism Classical Conc

## Variations in Theory, II

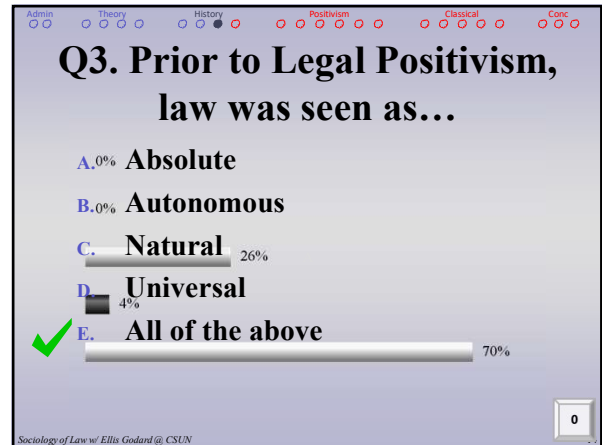
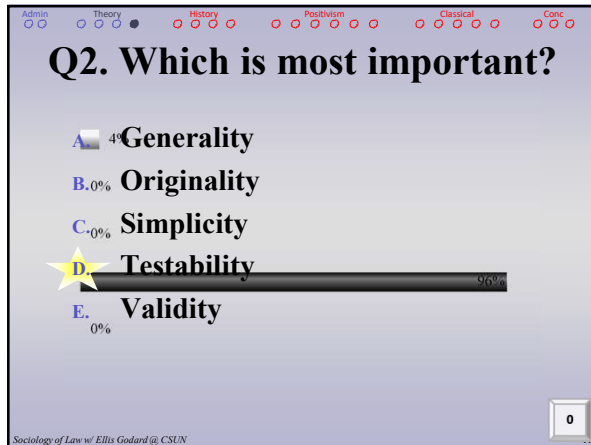
- Explanatory Features
  - Simplicity (aka Parsimony)
  - Generality (in time, place, & space)
  - Testability (aka Falsifiability) !!!
  - Validity (aka “Truth value”)
  - Originality (aka Creativity)
- Each is a variable (not a dichotomy)
- Each is predictable – varies curvilinearly w/ researcher’s distance form the subject

Sociology of Law w/ Ellis Godard @ CSUN 9



### Natural Law (Greek)

- **Absolute & Autonomous**
  - Unrelated to structure & function of society
  - Involves appeal to higher (?) principles of justice
  - What judges pretend, lawyers portray, you imagine
- **Aristotle: universal validity**
  - free from passion
- **Aquinas: natural; part of *human nature***
  - “participation w/ eternal laws of God”
- **Displaced by**
  - historical/evolutionary
  - legal positivism



### History of Legal Sociology

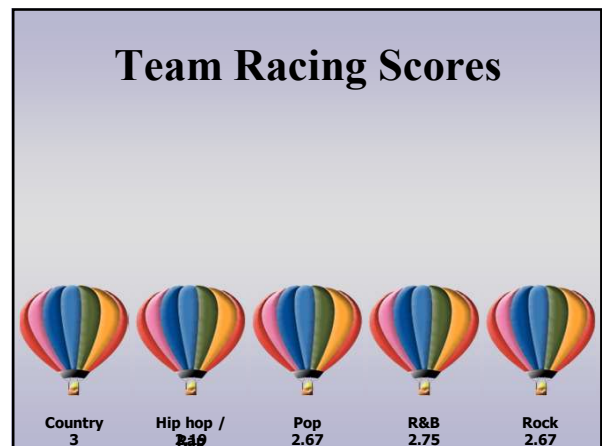
- **Historical Theoretical Bases**
  - Natural Law
  - Legal Positivism (4)
  - Classical Sociology (3)
- **Contemporary Intellectual Movements**
  - Sociological Theory / Sociological Jurisprudence
  - Contemporary Law and Society Theorists

Lect#7

Lect#8

Lect#9

Lect#10



Admin Theory History **Positivism** Classical Conc

## Legal Positivism

- **Separation thesis**
  - Laws are rules made by human beings
  - Legal validity exists, but is situated contextually
    - no *inherent* or *necessary* connection to ethics, justice, or morality
- **4 early flavors**
  - Legal Philosophy
  - Legal Dynamics
  - Legal Evolution
  - Historical School

Sociology of Law w/ Ellis Godard @ CSUN 16

Admin Theory History Positivism **Classical** Conc

## Legal Evolution (Spencer)

- **Natural selection & survival of fittest – in law**
  - Differentiation, individuation, div. of labor
  - Progress from homogeneity to heterogeneity
- **Two primary stages**
  - Primitive military form
    - War, compulsion, and status regulate
  - Higher industrial form
    - Peace, freedom, & contracts as controls
    - Increase in liberty, decrease in government
- Matches Durkheim’s view (law gets less repressive)
  - both were wrong (backwards!)
- **Laissez-faire legal doctrines**
  - Vs. public programs to alleviate plight of the weak
  - “unwarranted interference” (V) w/ Darwinian nature

Sociology of Law w/ Ellis Godard @ CSUN 19

Admin Theory History Positivism **Classical** Conc

## Bentham: Legal Philosophy

- **Philosopher of utilitarianism**
  - Drew from Hobbes (“nasty, brutish, and short”)
- **Distinguished 2 studies of law**
  - "expositors" explain the law in practice
    - What is it, how’s it done
  - "censors" criticize law in practice
    - Vis-a-vis notions of what it ought to be
- **Philosophy of Law addresses practice**
  - *explain* the “real laws of the expositors”, rather than the criticisms of the censors
  - Why is law as it is (why are the laws what they are)

Sociology of Law w/ Ellis Godard @ CSUN 17

Admin Theory History Positivism **Classical** Conc

## Legal Historicism (Maine)

- **Ancient Law**
  - Patterns recur in similar circumstances
    - E.g. Roman & English feudalism
- **Historical School**
  - Shift from Family to Contracts
    - Ascribed to achieved status

Sociology of Law w/ Ellis Godard @ CSUN 20

Admin Theory History Positivism **Classical** Conc

## Legal Dynamics (Montesquieu)

- **Spirit of Laws (1748)**
  - Law = particularistic to a given culture
    - Result of customs, phys. environ., antecedents
  - Law = *relative* (no good/bad laws) !!
- **Separation of Powers (political theory)**
  - Legislative: enact new laws
  - Executive: enforce & administer via policies
  - Judiciary: interpret enactments & admin.
- **Great title, but *not* about scientific prediction**
  - Esp of cases – broad macro definitional idea

Sociology of Law w/ Ellis Godard @ CSUN 18

Admin Theory History Positivism **Classical** Conc

## Q4. Which approach could predict the outcome of a particular legal case?

A. Legal Philosophy

B. Legal Dynamics 48%

C. Legal Evolution 4%

D. Historical School 4%

E. None of the above 32%

Sociology of Law w/ Ellis Godard @ CSUN 2

Admin Theory History Positivism Classical Conc

## Classical Approaches

- **Legal institutions tied to social order**
  - Forms, content, and concepts are historically situated, and evolve
- **Conventional names**
  - Marx
  - Weber
  - Durkheim

Sociology of Law w/ Ellis Godard @ CSUN 22

Admin Theory History Positivism Classical Conc

## Weber, cont'd

- **Types of administration of justice**
  - Kahdi – in *Shari'a*, from *Koran*
  - Empirical – rely on analogies & precedents
  - Rational – bureaucratic adherence to “eternal characteristics”
- **Modern law = formal, rational, bureaucratic**
- **Evaluation**
  - Not scientific – *ideal* types, & didn't recognize discretion
  - But 1<sup>st</sup> in print for value-free teaching

Sociology of Law w/ Ellis Godard @ CSUN 25

Admin Theory History Positivism Classical Conc

## Marx: Class Model

- **Dialectical materialism**
  - Base: Mode of production (technical & social relations)
  - Superstructure: everything else
- **Two-class model of social evolution**
  - People don't have a choice, & don't recognize position
  - Bourgeois advantages = outrage vs. decency
- **Economic determinism**
  - Law = product of economic forces
  - Tool of ruling class to further its dominance
  - Will “with away” in future community society
- **Not testable – interpretivist narrative**

Sociology of Law w/ Ellis Godard @ CSUN 23

Admin Theory History Positivism Classical Conc

## Durkheim: Law & Solidarity

- **Evolution of social bonds**
  - *The Division of Labor in Society* (1864)
    - Mechanical solidarity in simple, homogenous societies
    - Organic solidarity where differentiation through DOL
  - Specialization weakens solidarity
    - Shift from loose/familial to formally organized
- **Evolution of criminal law**
  - Law = measure of solidarity in society
    - Mechanical societies have penal law
    - Organic societies have restitutive (compensatory)
  - Contracts regulate by addressing individuals, not social order
- **Wrong on 2 counts**
  - Order wrong: primitive societies are the *least* penal
    - Penalty increases with social distance, not closeness
  - Relation wrong: simpler not -> more repressive
    - Differentiation and complexity critical for repression

Sociology of Law w/ Ellis Godard @ CSUN 26

Admin Theory History Positivism Classical Conc

## Weber: Typology of Law

- **2 variables:**
  - Legal principles – rational vs irrational
  - Procedures = formal or substantive
- **4 “ideal types”**
  - Irrational-formal: divination of emotional rules
    - oracles/divinity > ordeals, duels, etc. – emotional
  - Rational-substantive: empirical creation by *casuistic* officials
    - ethical, utilitarian, pragmatic, and/or practical
  - Irrational-substantive: commanded by militaries & theocracies
    - Charisma > power; centralization, secularization, & patrimonialism
  - Rational-formal: systematic, formalized, professionalization

Sociology of Law w/ Ellis Godard @ CSUN 24

Admin Theory History Positivism Classical Conc

## Models of Law

- **Jurisprudential model**
  - Technically similar cases treated same
  - *No* legal system operates that way
- **Sociological Models**
  - Case handling varies by structure of case
  - Varieties start next time, esp.:
    - Realism
    - Critical Studies
    - Structuralism

Sociology of Law w/ Ellis Godard @ CSUN 27

Admin Theory History Postivism Classical Conc

**Q5. Which theorist argued that legal institutions are tied to the social order?**

A. Durkheim  
B. Marx  
C. Weber  
✓ D. All of the above 68%  
E. None of the above 0%

0

Sociology of Law w/ Ellis Godard @ CSUN

Admin Theory History Postivism Classical Conc

### Team Scores

Points	Team	Points	Team
4	R&B		
3.67	Pop		
3.67	Rock		
3.5	Jazz		
3.5	Reggae		

Sociology of Law w/ Ellis Godard @ CSUN 30