

Administrative Matters

- **First-week ToDos undone** (This is the 5th week!)
 - Still missing 2 Intakes (YB & ASV) & 8 Headshots (AA, EC, JC, YM, KS, LS, AS, ASV, EY)
- **Check grading sheet**
 - Quizzes & Attendance updated
 - 1st paper grades up tonight (3 so far?)
- **Look ahead & be strategic**
 - Readings this week & next tricky for papers?
 - Pick several about geometry, and submit early ☺

Law & Society

Sociology of Law Between the Classicists & the Contemporaries

Q1. Which theorist in today's Vago reading wrote 2 of the 3 required texts?

- A. **Black** 73%
- B. **Dacey** 7%
- C. **Godard** 3%
- D. **Holmes** 3%
- E. **Vago** 13%

How many papers have you submitted so far for this course?

- A. **0** 78%
- B. **1** 19%
- C. **2** 0%
- D. **3** 0%
- E. **4** 4%

Lecture Outline

- **History Overview**
 - Models & Overview (redux)
 - Course of Studies
 - Legal Formalism
- **Socio-legal Theory**
 - Sociological Jurisprudence
 - Legal Realism
 - Law and Economics
- **Contemporary Law & Society**

Admin Overview SLT-1 SLT-2 SLT-3 L&S

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

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Note on Vago

- **Three Sociological theorists (SLT) listed**
 - Dicey, Holmes, & Hoebel
- **But there are three *kinds* of SLT**
 - Those 3 had different (& differentiable) ideas (underlined on next slide, then slides on each)
 - Good (but not only) examples *for* those ideas
 - I want to emphasize *ideas* more than names

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History of Legal Sociology

- **Historical Theoretical Bases**
 - Natural Law
 - Legal Positivism (3)
 - Classical Sociology
 - Sociological Theory / Legal Realism
 - Contemporary L&S Theorists
- **Contemporary Intellectual Movements**
 - Functionalism
 - Conflict & Marxist Approaches
 - Critical Legal Studies
 - Feminist Theory
 - Critical Race Theory
 - “Structuralism” / Pure Sociology

Lect#7
Lect#8
Lect#9
Lect#10

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Course of Studies

	Scientific	Critical
Macro	1 Durkheim	2 Marx <u>Sociological Jurisprudence</u> <u>Law & Economics</u>
Micro	4 Anthro (Hoebel) Gluckman 60s research	3 <u>Legal Realism</u>

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Q2. How many socio-legal theorists were discussed in today’s reading?

A. 1 3%

B. 2 10%

C. 3 67%

D. 4 7%

E. 5 13%

0

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All Reply to Legal Formalism

- **Part of Legal Positivism**
 - But judicial, rather than legislative
 - The law is simply *applied*, by professionals
- **E.g. Felix Frankfurter**
 - “...as judges we are neither Jew nor Gentile, neither Catholic nor agnostic [and, presumably, neither Democrat nor Republican]. We owe equal attachment to the Constitution and are equally bound by our judicial obligations.”

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Sociological Jurisprudence

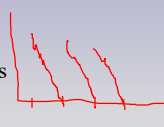
- **The Law Lives**
 - People obey law from generation to generation
 - even when norms, customs, morality change
 - Roscoe Pound (founder)
 - “law in action” vs. “law on the books”
 - Albert Dicey
 - “rule of law”: only punish criminals, no one above law, rights come from judicial precedent (not constitution)
 - statutory growth & legal evolution linked to popular opinion
 - Entrepreneurs = “preachers of truth” + “accidental conditions”
 - But judges are conservative, lag behind pub. op.
 - Eugene Ehrlich
 - Any law not regularly enforced is not part of the living law.

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Legal Realism

1. **Indeterminacy of law – esp Holmes**
 - Judges do more than apply law
 - They *make* law, w/ vast discretion
 - Gap between law in theory and practice/action
 - law in books (statutes, cases, etc.) not determine results of disputes
 - Extraneous factors
 - Jerome Frank: decision might be determined by meals (65%>0!)
2. **Interdisciplinary approaches to law**
 - Sociological & anthropological approaches to study of law
 - Across settings, legal variety is associated with social variety
3. **Legal instrumentalism**
 - Creatively interpret & apply law, for pub good & soc interests
 - Tool to achieve social purposes, balance competing interests



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Sociological Juris., cont'd

- **Non-mechanical jurisprudence**
 - Judges should break w/ precedent; judicial law superior to legislative
 - Selznick: if study a society, can discern its “legal needs”
- **Law ought to be made responsive to practical needs of society**
 - Any changes in society necessitate change in law.
 - law must be stable, but not stand still - Must adapt to environment
 - SJ could be followed logically to produce consistent results in cases
 - “social engineering” by policymakers
- **Pound pioneered use of soc.sci. (crim, psych, anthro) in law**
 - Sociological basis for legal arguments
 - *Not* a “radical” - opposed FDR’s New Deal
 - Firmly opposed to Marxist jurisprudence
 - personalities of judges, not ruling class, control mode of legal reform.

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Q3. Which of the “theorists” discussed was a Supreme Court justice?

- A. Black 7%
- B. Dicey 10%
- C. Holmes 67%
- D. Pound 10%
- E. Vago 7%

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Team Racing Scores



0	1	2	3	4
1.38	1.6	0	0	2

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Legal Realism, cont'd

- **Justice Oliver Wendell Holmes**
 - *The Path of Law* (1897)
 - Demystifies law as out of experience, not logic
 - Shows judges *make* (not just find) law
 - System doesn’t generate truth & justice
 - Denies mechanical logic, but suggests divinity
 - Ascertain hint of universality, an echo of the infinite
- **Others:**
 - Rodell – harsh critic of the “high-class racket”
 - 2 things wrong: style, content
 - Gluckman – anthro, 20th C - Found basic doctrines on reasonable choice

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