

INTRODUCTION TO LEGAL STUDIES

LAW IN SOCIAL LIFE

Review:

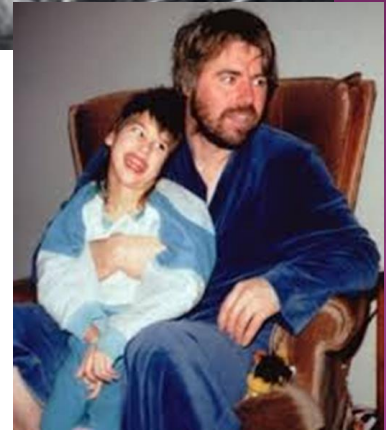
- Aristotle, natural and conventional law
- Fuller:
 - Valid law has an internal morality evident in, and inherent to, the craft of law making”
 - 8 minimum requirements of ‘internal morality’
- Finnis:
 - just laws’ are guided by moral principles which further the human good and encourage ‘human flourishing’
 - 7 basic forms of human flourishing



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- Law, morality and tragic choices
 - R. v. Dudley & Stephens
 - R. v. Latimer
- Are we bound to obey unjust laws?
- Is it always necessary to obey the law?



“Who is to be the judge of this sort of necessity? By what measure is the comparative value of lives to be measured?”

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Today: Law in Social Life

Readings:

Legal Studies Course Reader:

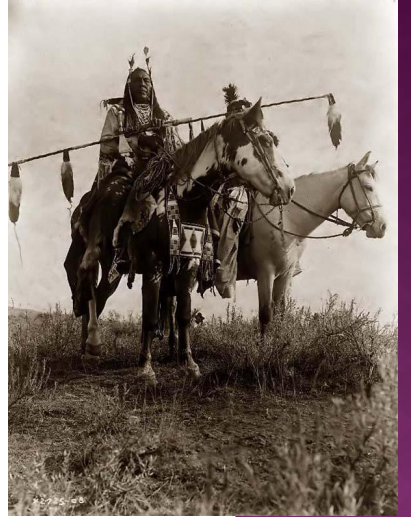
E. Adamson Hoebel, 'The Functions of Law', pp.4-7 (1a)

Karl N. Llewellyn & E. Adamson Hoebel, 'The Cheyenne Way', pp.7-9 (1b)

Nils Christie, 'Conflicts as Property', pp.9-12

Ruddell & Pavlich:

Realizing Sociological Jurisprudence, pp.154-169



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- ◉ What is law?
- ◉ What is law's function in society?
- ◉ What are the functions through which it executes those functions- that is, what does law look like?



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HOMELAND SECURITY



Fighting Terrorism Since 1492

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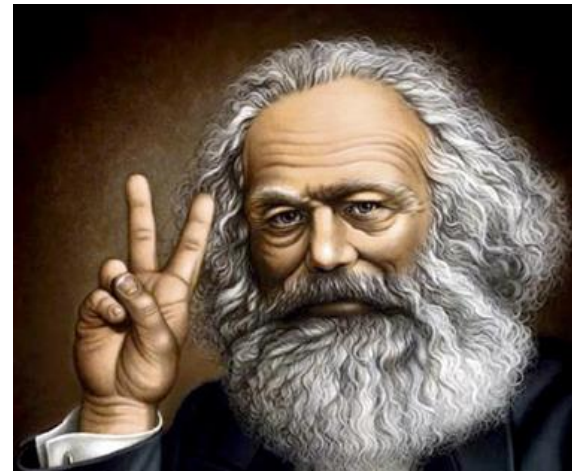


Max Weber:

“An order will be called law if it is externally guaranteed by the probability that coercion (physical or psychological), to bring about conformity or avenge violation, will be applied by a staff of people holding themselves specially ready for that purpose”

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Karl Marx:



Law as a “pervasive legitimizing ideology” that masks relationships of exploitation that are integral to capitalism

Rejected the notion that the “best possible society can be realized through state-mediated justice”.

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Donald Black:

“...law is essentially governmental social control”, that is, “the normative life of a state and its citizens”

Different societies will give rise to different laws and legal structures

Law is a ‘quantitative variable’

Is the relationship between law and crime inverse?

- ⦿ Not necessarily!
- ⦿ Smaller, homogeneous societies tend to have less conflict and thus require less formalized law
- ⦿ Larger, heterogeneous societies tend to have more conflict and require more formal law

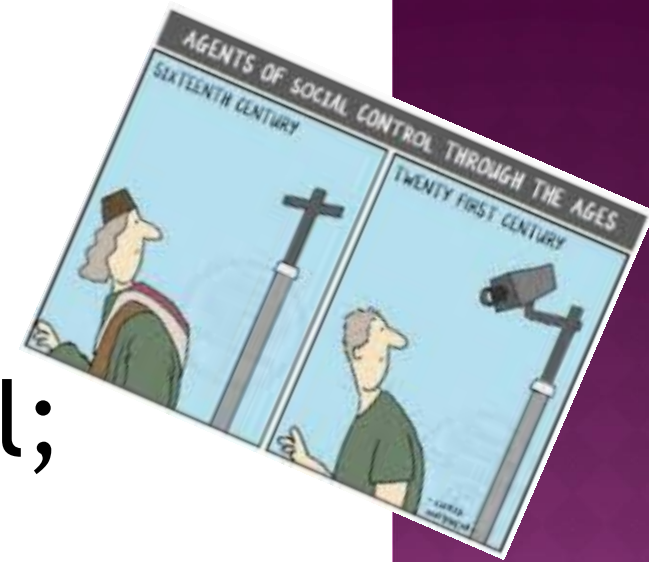
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Formal versus Informal Social Control;

Formal social control=Large, complex,
heterogeneous societies

Informal social control=Smaller, simpler,
homogeneous societies



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E. Adamson Hoebel:

“A social norm is legal if its neglect or infraction is regularly met, in threat or in fact, by the application of physical force by the application of physical force by an individual or group possessing the socially-recognized privilege of so-acting”

Hoebel 'legal' social norms characterized by:

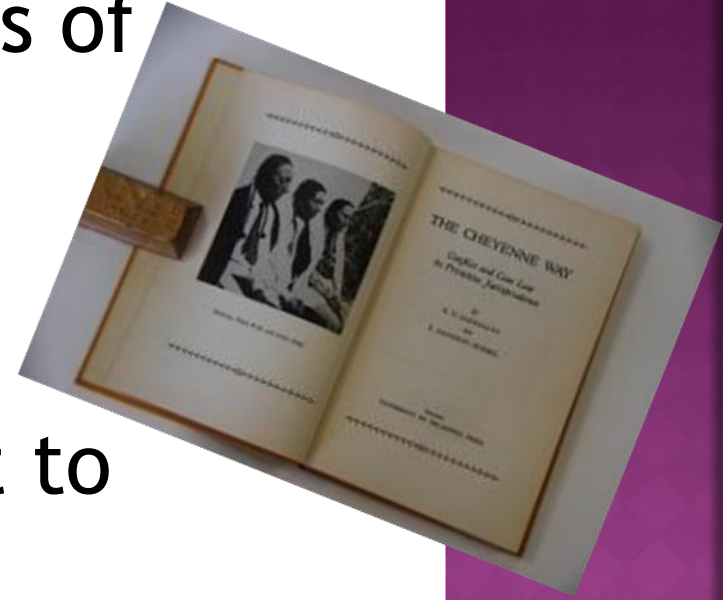
- ◉ Explicit rules of conduct
- ◉ Planned use of sanctions to support the rules
- ◉ Designated officials to interpret and enforce the rules, and often to make them

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Hoebel, the Cheyenne, and the four functions of law

- i. The definition of relationships among members of society
- ii. The allocation of authority and the right to exercise physical coercion as a socially-recognized privilege-right
- iii. The disposition of trouble cases as they arise
- iv. To adapt to change in social life and redefine relationships accordingly



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i. The definition of relationships among members of society

- The law specifies boundaries on acceptable behaviour
- Boundaries create predictability
- Predictability is necessary!!



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- ii. The allocation of authority and the right to exercise physical coercion as a socially-recognized privilege-right*

This function requires 3 acts:

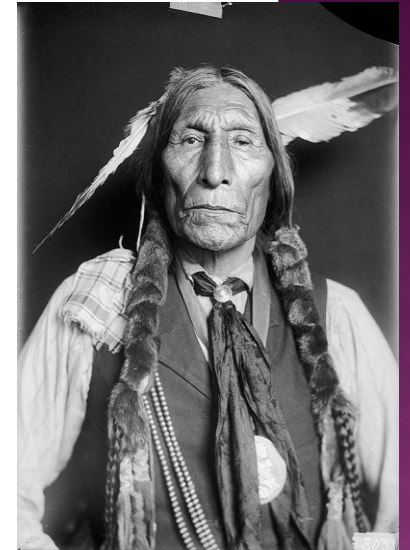
1. Allocation of authority
2. Determination of who may exercise physical coercion as a socially recognized privilege-right
3. Selection of the most effective sanctions



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- iii. The disposition of trouble cases as they arise
- Somebody/something has to “clean the case up”
- iv. To adapt to change in social life and redefine relationships accordingly
- The law must be mutable and both push and respond to social change



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So what do these functions look like in practice?

- ◎ The Case of Wolf Lies Down
 - The Facts
 - The Law
 - The Outcome



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The Case of Wolf Lies Down & The Four Functions of Law:

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The Case of Wolf Lies Down & The Four Functions of Law:

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Conflicts as Property:

- ◉ Nils Christie's 4 problems with modern, formal law and legal systems
 1. Courts are located outside the geography of daily life
 2. Courthouses are complex and difficult to navigate
 3. Parties are peripheral to legal proceedings
 4. Legal system steals disputes from disputants

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1. Courts are located outside the geography of daily life



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3. Parties are peripheral to legal proceedings
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The Big Picture:

- ◉ Modern, heterogeneous societies require more complex, formalized law
- ◉ Simple, homogeneous societies require less complex, informal law
- ◉ Law may look different in different societies, but it will always tend to perform the same functions
- ◉ Formal law is not always better law