

Law and Social Change (continued)

Review:

I. A structural functionalist perspective on law and social change (cf. evolutionary model)

origin of law is in custom, in non-legal institutions

law differs from custom - agency of enforcement

law restates custom for the specific purpose

of enabling legal institutions (institutions with power to use force)

to perform their tasks (Bohannon called this "double

institutionalization")

but, law is never a mere reflection of custom

duality of restatement ---> lag in time, translation effects

game of catch up and/or engine of change (*Friedman and Ladinsky*)(*Bohannon*)

Problem: is law a product of consensus? how does struggle and conflict
get express?

II. Conflict, Marxist perspectives on law and social change.

law is a device or instrument used by those in power to consolidate, expand or
defend their interests and sources of power

(*Chambliss, Law of Vagrancy; Hay; E. P. Thompson*)

Problem: does law automatically express interests of a "ruling" class? how do
we explain instances where law empowers or enables less powerful to secure
protection? Example, civil rights movement; ADA; affirmative action; abortion.

III. Pluralist, Weberian, and constitutive perspectives on law and social change.

law is a result of bargaining among more or less powerful parties; law "goes to"
different parties over time; (*Friedman and Ladinsky*)

law and society complex relationship of mutual constitution.

Power not perfectly reproduced (examples in *The Common Place of Law*)

In "remaking the world," (creating persons, rights) law creates new interests,
opportunities; creates and redistributes power.

IV. Ways in which law shapes society changes over time, therefore need to trace over time,
historical emergence and transformations.

Examples: Jerome Hall, Carrier Case

Friedman and Ladinsky, Law of Industrial Accidents

J. Gusfield, Temperance Movement

Napster (from your experience and reading of newspapers)

	Carrier Case	Industrial Accidents	Napster	Prohibition
What was the existing law?				
What changed and challenged old law?				
Who sought change? Who resisted change? Whose interests were Not represented?				
What legal actors were involved?				
What was the outcome?				
Who "won?"				
Time frame: how long before change? How long last?				
What was the scope of the legal change?				
Relationship between new law and "custom?" What role public opinion?				