

Law and Society

Function of Laws (Week 1 reading)

Functions and Functionalism

- **Emile Durkheim (1858-1917)**, the pioneer of functionalism.
- According to his theories, which portray law as the symbol of social solidarity, one may distinguish the diverse shapes that law assumes historically based on the functions performed by the diverse sanctions through which societies react to deviance
- In **simpler societies**, held together by "mechanical" solidarity, one encounters deviance by repressive sanctions, functionally addressed to restore social links on a predominantly symbolic level. By contrast, in **more complex and differentiated societies**, whose solidarity is "organic," restitutive sanctions increasingly restore social links, as they are functionally addressed to act on a predominantly material level.
- **Talcott Parsons (1902–1979)**, the "primary function" of law is integrative and thus addressed "to mitigate the potential elements of conflict and to oil the machinery of social intercourse" He added, can only be performed successfully if four problems—also termed as functions—are solved: the legitimation of the legal system, the interpretation of legal rules, the efficiency of sanctions, and the organization of an independent jurisdiction.
- **Niklas Luhmann (1927–1998)**, He took a more neutral notion of function as "a regulative scheme of sense that organizes a range of reciprocally equivalent performances". Social systems exist in that they reduce social complexity and give some stability to social expectations. The legal system fulfills this function because it enables one to select between diverse choices on the basis of a binary code, "lawful" or "unlawful"

Ideologies Bias and Dysfunction

- **Eufunctions**: the positive contributions offered by an element of a social system
- **Robert Merton (1910–2003)**, some social institutions do not contribute to the welfare or equilibrium of a whole system of social relationships, because they perform "dys-functions" rather than eu-functions.

Ex. Italian government giving pardons for tax evasion at knock-down prices. It benefits certain political factions or groups, but beyond that it weakens the idea of equilibrium and idea the law is at its "best state"

Social Control

- **Roscoe Pound (1870–1964)** and **Julius Stone (1907–1985)** used social control as the top-down activity performed by governing elites to persuade or force people to conform their behavior to a law-and-order pattern and to refrain from threatening those in power.
- Not exclusively by Marxist writers such as **Ralph Miliband**, law is essentially a tool of minority domination wielded over majorities—the bourgeoisie over the proletariat, or the governors over the governed. Emphasizing the importance of repressive legal institutions, especially in penal law, they advance this theory vigorously in the radical currents of critical criminology.

Justice and Allocation

Readings In Law And Society

Rachel Sandford



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