

### I. Review where we have been

Classical, positive, and realist jurisprudence produced three insights  
law is a system of rules designed to constrain arbitrary power (set of rules  
about the use of force)  
gap between law on the books and law in action  
need to understand law as a social system

### II. The Realist legacy - social scientific studies of law - central insights:

- how action is organized matters
- how actors perceive and interpret situation matters (even if distorted and false) because they act on their interpretations

Method -locate action within context -  
micro/behavioral  
expand to macro

Functional analysis (a way of making sense of empirical observations)  
manifest functions - intended, purposes  
latent functions - unintended outcomes, contributions to system  
dysfunctions -

Functions of law (Llewellyn and Hoebel)  
social control - "to make men [sic] go around in more or less clear ways"  
dispute resolution - "to clean up social messes"  
authoritative distribute costs and benefits - available resource for social  
invention (Chayes)  
social change - policy

### III. Criminal Justice SYSTEM

#### A. General propositions:

1. A set of quasi independent sub - systems ,  
each of which gathers information and makes decisions about the criminal  
status of persons and behaviors,  
and, depending on decision, filters out of system or passes along through a  
a hierarchy of linked parts (similar to civil litigation pyramid),  
screening and reviewing decisions.
2. Structure, organization, interests and operating definitions of professional  
social control determine how many and what types of persons are prosecuted.
3. control lies with those with least legal authority.

4. Difference between reactive and proactive systems of control.

Example of how structure affects amount and character of crime. Reactive and proactive criminal process. Currie on witchcraft.

B. The subsystems:

1. Citizens initiate action in the criminal justice process: gatekeepers, bottom of the hierarchy; factors influencing citizen decisions to call the police:

- insurance coverage
- relationship between victim and offender
- social similarity
- victim attitudes toward police

2. Police: responsive criminal justice; little police-initiated criminal justice;

a) what factors influence police decision to arrest:

- seriousness of event
- amount of situational evidence
- victim/complainant preference
- deference and demeanor of suspect
- degree of deference expressed by complainant
- race of suspect and complainant?

b) Bittner on police: Florence Nightingale in Pursuit of Willie Sutton

function of police: (what falls within their purview)

"something that ought not to be happening and someone had better do something about it now"

- potential to turn into crime/danger

- situational management, not long term

police vs. others:

- low visibility/high visibility

- empowered to use situationally defined force/immediate

- object of others' force

- boring/volatile

contradictions of policing

- law & order, constraints

3. Prosecutor: organization demands, workload, plea bargaining process, racial discrimination in capital punishment.

4. Judges, appeals courts, corrections, parole.....

5. "Real Justice." Discussion.

Functions of the lower courts.

Feely, "The Process is the Punishment."

Emerson, "Holistic effects."