

What is the fundamental nature of law? Justice?

What is the fundamental meaning of legal concepts?

Legal theory has a decisive role to play in defining and defending the values and ideals that sustain our way of life.

★ No society can properly be understood or explained without a coherent conception of its law and legal system.

★ The social, moral, and cultural foundations of the law, and the theories that explain them, are no less important than the law's 'black letter.'

★ **STARTING POINT** – the definition of law itself
source? popular culture?

Problems in Legal Theory

two of the most significant and difficult –

1. RIGHTS

2. JUSTICE

others

3. DOCTRINE OF PRECEDENT

4. MORAL DUTY TO OBEY

5. CONCEPT OF LEGAL PERSONALITY

6. THEORIES OF PUNISHMENT

7. CONCEPT OF HARM

8. CONCEPTS OF FREEDOM AND AUTHORITY

9. ROLE OF JUDICIARY AND JUDGEMENT

Legal Theory

descriptive

- seeks to explain **what the law is, and why, and its consequences.**
- about facts.
- how does legal theory explain case law?
- e.g., Marxist theory – law as expressing the interests of the ruling class.

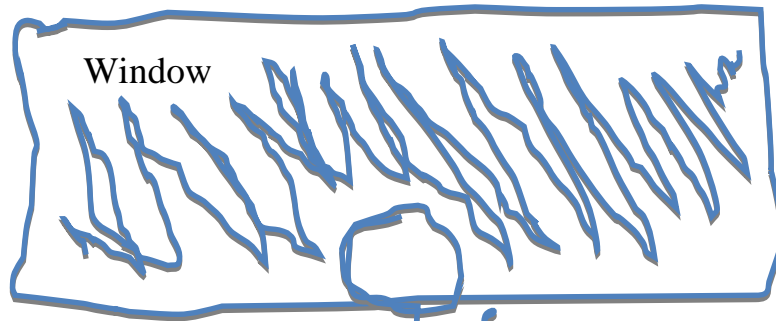
normative

- concerned with **what the law ought to be.**
- about values.
- what legal rules would create the best legal system if it were politically achievable?
- e.g., critical legal theory – law is neither neutral nor objective.

Schools of Legal Theory

School of Legal Thought	Theorists
Legal Positivism & Legal Formalism	Hobbes, Locke, Rousseau, Bentham, Austin, J.S. Mill, Hans Kelsen, H.L.A. Hart
Legal Utilitarianism	Bentham, J.S. Mill, J. Rawls
Legal Realism & Pragmatism	Oliver Wendell Holmes, William James, K. Llewellyn, Jerome Frank, L.L. Fuller
Natural Law	Socrates, Plato, Aristotle, Cicero, Justinian, Saint Augustine, Thomas Aquinas, Patrick Devlin, Shariah, Fiqh
Neo-Natural Law	Ronald Dworkin and J. Rawls
Legal Marxism & Economic Analysis of Law	Marx, Richard Posner
Legal Feminism	Catharine MacKinnon, Andrea Dworkin, Lenore Walker, Susan Estrich, Susan Orkin, Patricia Hill-Collins, Demita Frazier
Critical Legal Theory	Noam Chomsky, D. Kairys
Critical Race Theory	Patricia Williams, Anthony P. Farley
First Nations Legal Theory	Taiaiake Alfred, Mary Ellen Turpel

Legal Reelism: Movies as Legal Texts



Lowell Bergman
Producer
60 Minutes

Mike Wallace
Host
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Executive
Producer
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