

JURISPRUDENCE

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T1 INTRODUCTION

WHAT IS IT?

- Is also referred to as legal theory and legal philosophy
- It tries to answer fundamental questions about law
- It is the theory of law: the study of law, legal systems and their philosophical basis [dictionary pg 330]
 - So it is impacted by:
 - Social theory
 - Economic theory
 - Political theory
- It is considering these theories and determines if ideas of law, justice and the legal system are just under them.
- Ideas about rights, justice and how the legal system works
- The theorists talk about judicial discretion: that is do they have it, do they have a strong discretion to make law or a weak one to determine the outcome?
- Focused on western legal thought
- Most theorists from a CL background- we infuse their ideas.
- Always ask can we apply their theories to other legal systems.

TYPES

	Descriptive theory	Normative Theory	Critical Legal Theory
	** often hard to separate/find a distinction See Dworkin-law of integrity- the law should 'fit' & 'justify' the legal materials- descriptive & normalist		No universal law agreeable to rational deduction
Aim	Explain what the law is, why & its consequences	What the law should be	Law is based on reason
Concerned with	Facts	Values (moral & political)- utilitarianism	Logic and structure of society is what the law is based on.
What does it do?	• Provides a theory to explain a doctrine- for example if the courts limit free speech, the doctrine of freedom of expression may be justified for existing • Tries to explain what the law is (for example Marxist theory-gives an	• Evaluates the law as either 'ideal' (would lead to best legal system if achievable) or 'non-ideal' (constraints on them such as enforcing them)	• As it comes from society, it is essentially a set of beliefs/prejudices (the law is) which says that the injustices by society are ok (legitimizes them) • The law is politics, so is not neutral... it is biased.