
FOUNDATIONS OF CANADIAN LAW – STUDY GUIDE

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1. THEORIES OF LAW → JURISPRUDENCE

- Law is not a discrete set of principles without a context.
- Legal systems are built around ideas that are historically and culturally specific.
- Our Anglo-Canadian system of law, based largely on the English common law system, and Quebec civil law reflects our Canadian values.
- Positivism and natural law focus on law & justice
- Feminism and Critical Legal Studies critique liberal basis of law and relationship to justice; present alternative visions of justice
- Law and economics focuses on efficiency rather morality; looks to explain law in operation

POSITIVISM AND NATURAL LAW

- About law and morality – how close should they be connected?
- Positivism: separation of law and morality – no reference to what is just or legitimacy of law
- Natural law: laws are not just official rules but those that connect to moral truths
- Both are theories that describe what law is, not what they ought to be
 - Other theories more normative

POSITIVISM:

Basis of Positivism from philosopher John Austin, 18th century, who proposed basic theories of law:

1. that law is a command issued by the “uncommanded commander”—the sovereign;
2. that such commands are backed by threats; and
3. a sovereign is one who is habitually obeyed.

= Law is created by humans who have a sovereign power they must obey – this is where law comes from and why people follow it