NOTES

50 Important Jurisprudence Thinkers and Their Theories for CLAT PG

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Jurisprudence questions in CLAT PG reward one skill above all: matching a thinker to an idea and then to the right school. This guide covers **50 important jurisprudence thinkers, grouped by school, with the core theory of each and the Indian authority that best illustrates it.** Read it with our complete FAQ guide to mastering jurisprudence and the quick revision notes on jurisprudence for CLAT PG 2027, which handle the doctrine side of the syllabus.

A. Natural Law and the Social Contract

Natural law holds that law is tied to reason or morality, so a rule can fail as law if it is deeply unjust. Our notes on the schools of jurisprudence place this school first for good reason, since every later school reacts to it.

1. **Aristotle (384-322 BC):** According to him **justice can be subdivided into distributive justice involving distribution of goods in accordance with merit and corrective justice that corrects wrongs.** He defined law as reason devoid of passion and interpreted **equity as law correction** in cases when law fails in its generality.
2. **Cicero (106-43 BC)**: In his work *De Re Publica* he stated that true law is nothing **but right reason consistent with nature and universal.** It is crucial since it possesses the feature that makes it either impossible for any legislator to abrogate it which makes him a Roman forerunner of the idea of human law transcending all.
3. **St. Thomas Aquinas (1225-1274)**: He stipulated in his *Summa Theologica* the ranks of **legal types such as eternal, divine or natural and human laws.** According to him every human law **contradicting natural law constitutes a departure from the concept of law and ceases to have binding power** in conscience but at the same time he permits any contravention of law to avoid scandals or disorder.

4. **Hugo Grotius (1583-1645):** He believed that **natural law remains valid even without God,** since it comes from human reason and sociability. He wrote *De Jure Belli ac Pacis (1625),* which became the foundation of modern international law.
5. **Thomas Hobbes (1588-1679):** In *Leviathan*, without government there exists a state of war; so people give their rights to the absolute sovereign in order to feel secure. **His interpretation of law as the command of the sovereign anticipates Austin.**
6. **John Locke (1632-1704):** In his ***Two Treatises of Government*** showed how **government should be based on consent and natural rights to life, freedom, and property.** Furthermore, there exists the right to oppose the government in case of the breach of trust. This reasoning can also be seen in Article 21 according to what was said in the case Maneka Gandhi v. Union of India (1978).
7. **Jean-Jacques Rousseau (1712-1778)**: In Social Contract, **the sovereignty is thought to be in the general will of the people**, which is more than just a total of private will. This idea can also be found in the opening statement of our Preamble.
8. **Rudolf Stammler (1856-1938):** He discussed "natural law with variable content" stating that **justice is an unchanging aim**, while the understanding of what is just varies with time and society. His social ideal was a community of free-willing people.
9. **Lon L. Fuller (1902-1978):** In his book *The Morality of Law (1964)* elaborated his *eight principles of inner morality of law: generality, publicity, non-retroactivity, clarity, consistency, possibility of compliance, constancy, and congruence of the rule and the action of the legal officials.* Retroactive laws contradict this principle, as evidenced by Article 20(1).
10. **John Finnis (b. 1940):** In *Natural Law and Natural Rights (1980)* presents the idea of **basic goods such as life, knowledge, play, aesthetic experience, friendship, practical reason, and religion.** The main aim of the law is public good, although unjust laws may be valid as positive laws with a limited ethical impact.
11. **Gustav Radbruch (1878-1949):** He used to defend the idea that the positive law is superior in force to the unjust law unless the law is intolerably unjust. The Radbruch formula is similar to the shift from the case of ADM Jabalpur v. Shivkant Shukla (1976) 2 SCC 521 to the case of K.S. Puttaswamy v. Union of India (2017) 10 SCC 1.

B. Analytical Positivism

Positivists separate what law is from what it ought to be. For the working definitions you will need, keep our guide to important definitions in jurisprudence open beside this section.

1. **Jeremy Bentham (1748-1832):** He based the **law on the theory of utility which analyzes actions according to their capacity to achieve the greatest happiness for the most people.** He referred to natural rights as "nonsense on stilts" and advocated for codification and reform in the area of legislation.
2. **John Stuart Mill (1806-1873):** In *On Liberty* (1859), he proposed the harm principle: ***the state may restrict a person's freedom only when it is needed to prevent the infliction of harm upon other people.*** This principle has been used in the case of Navtej Singh Johar v. Union of India (2018) 10 SCC 1.
3. **John Austin (1790-1859):** In *The Province of Jurisprudence Determined (1832),* he described the **law as the command of a sovereign who is backed up by some sanctions.** The sovereign is a person or body who is usually obeyed but who does not obey. India's sovereign is limited by the Constitution and derives its power from Article 245, which means this approach does not work well.
4. **Wesley Newcomb Hohfeld (1879-1918):** He differentiated the vague term "right" into four pairs of legal relations: **right and duty, privilege and no-right, power and liability, and immunity and disability.**
5. **Hans Kelsen (1881-1973):** His *Pure Theory of Law* keeps the law intact from morality and sociology. There is a hierarchy of norms, where every norm gets validity from a superior one, until the basic norm (grundnorm) comes. Article 13 and Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225 are the typical illustrations in the Indian context.
6. **H.L.A. Hart (1907-1992):** The *Concept of Law (1961)* did away with the notion of command and thus initiated the idea of rules. There are *primary rules that place obligations, whereas there are also secondary rules which are rules of recognition, change, and adjudication, which can be regarded as the basis of legal system.* Article 141, which makes the Supreme Court's law binding, is an example of recognition and adjudication. The internal point of view and the open texture of laws were underlined by Hart.
7. **Joseph Raz (1939-2022):** Raz makes an argument that the **law claims legitimate authority and his proposition is also that the existence of laws is dependent on social sources rather than on moral grounds; this is known as sources theory.** Moreover, his service

conception reveals that authority is legitimate when it makes it easier for the people to follow the reasons already given to them.

C. Historical School

The historical school treats law as a product of a people's history and custom. Compare it with the other schools in our guide to jurisprudence and its schools.

1. **Montesquieu (1689-1755):** *The Spirit of the Laws* explains the relationship among the legislature and geography, culture, and political system. The theory of separation of powers is more famous and used in the case of Ram Jawaya v. State of Punjab.
2. **Friedrich Carl von Savigny (1779-1861):** He stated that the **law developed in the spirit of the people (Volksgeist)** and it is similar to language. In a pamphlet published in 1814, he opposed codification. Section 3(a) of Hindu Marriage Act, 1955 shows the influence of the theory of Savigny.
3. **Georg Friedrich Puchta (1798-1846):** Being a student of Savigny, he stated that **customary law is the main source of law,** based on which statutes and legal literature were created. According to him, law is a reflection of people's opinions.
4. **Henry Maine (1822-1888):** In Ancient Law, he argued that **societies develop from status to contract.** He worked as a Law Member in the Council of the Viceroy of India and his theory helped to formulate colonial laws.

D. Sociological School

This school looks at law as a social fact and asks what it does.

1. **Auguste Comte (1798-1857):** He established sociology and made use of a scientific method to study societies. **His principle of three stages (theological, metaphysical and positive)** was influential in the field of sociology during the post-Comte period.
2. **Émile Durkheim (1858-1917):** In The Division of Labour in Society he argued that **law can be regarded as an indicator of social solidarity.** He distinguished repressive law (criminal) by means of which primitive societies with mechanical solidarity are governed, whereas restitutive law (civil) belongs to complex societies with organic solidarity.

3. **Rudolf von Jhering (1818-1892):** In *Law as a Means to an End* he viewed law as a means of preserving social order through coercion of the state. In Struggle for Law (1872) he insisted that individuals should fight for their own rights.
4. **Eugen Ehrlich (1862-1922):** He identified state law and living law - law as it functions in real life. He was convinced that the future of law would depend on society.
5. **Max Weber (1864-1920):** He divided authority into traditional, charismatic and legal-rational types of authority. He related the concept of modern law to legal-rational authority and suggested that rationality in law is connected with law's application in the process of decision-making.
6. **Léon Duguit (1859-1928): He did not recognize subjective rights and sovereign power but identified law with social solidarity.** State exists primarily for providing public services and its power is legitimate only inasmuch as it accomplishes that purpose.
7. **Roscoe Pound (1870-1964):** He **described law as social engineering, where jural postulates work for balancing the individual interests, interests of the community, and the interests of social life in general.**M.C. Mehta v. Union of India (1987) 1 SCC 395 is a perfect example of his distinction, as the Court formatted a completely new interpretation of tort liability for the new economic conditions.

E. American and Scandinavian Realism

Realists study what courts and officials do. Our article on legal realism under jurisprudence covers the debates in more detail.

1. **Oliver Wendell Holmes Jr. (1841-1935):** He defined **law as a formula of the behavior of judges as would be seen by the so-called bad man.** From his point of view, the principle of common law requiring performance of a contract is equivalent to a duty to compensate for losses, as demonstrated in Section 73 of Indian Contract Act.
2. **John Chipman Gray (1839-1915):** He believed that **law is a statement made by judges regarding law in his book** *The Nature and Sources of the Law.* A statute can only be regarded as a source of law after it has been put into operation by a court.
3. **Benjamin Cardozo (1870-1938):** In his book *The Nature of the Judicial Process* (1921), presents judges that **use logic, historic facts, customs, and sociology while making judicial decisions.** The case Vishaka vs. State of Rajasthan is a good example of Indian

judicial practice of filling the existing gaps in the law.

4. **Karl Llewellyn (1893-1962):** He defined **law as something being done by officials while resolving disputes.** The Bramble Bush (1930) shows the importance of studying law from the practical point of view.
5. **Jerome Frank (1889-1957):** He placed emphasis on his concept of fact skepticism in *Law and the Modern Mind (1930)* **judges and juries are unpredictable when determining factual premises**, which means outcomes cannot be identified through rules alone. Therefore, legal psychology is of greater importance than taking legal doctrine into consideration.
6. **Alf Ross (1899-1979):** The Scandinavian realist defined **valid law in On Law and Justice (1953) as law that courts apply because of a social obligation**. Valid law means predicting judicial behavior.
7. **Axel Hagerstrom (1868-1939): The founder of Uppsala School** denied such ideas as natural rights and the will of the state and treated legal terms as nonsensical unless they refer to observable facts.
8. **Karl Olivecrona (1897-1980):** In his work *Law as Fact* he defined law as a set of independent imperatives. He claimed that the orders of a sovereign are replaced by his law.

F. Theories of Justice and Rights

1. **John Rawls (1921-2002):** A *Theory of Justice was written* in the year of 1971. It presents its ideas on what principles would be adopted by individuals from behind a veil of ignorance. As per Rawls **two basic principles equal basic liberties and difference principle which permits inequality only in favor of disadvantageous people**. This idea is echoing through Articles 15 and 16 and in the case of Indra Sawhney v. Union of India.
2. **Robert Nozick (1938-2002):** In the book named *Anarchy, State, and Utopia published in 1974,* Nozick defended **minimal State and entitlement theory of justice based on fair acquisition, fair transfer, and rectification of past wrongs.** Property as core aspect contrasted in the light of Article 300A.
3. **Amartya Sen (b. 1933):** The *Idea of Justice published in 2009* argued against finding a perfectly just society and suggested evaluating existing alternatives based on the capability approach. This approach focuses on what people are able to do and to be. This perfectly matched the Court's interpretation of the term livelihood in the case of Olga Tellis v. Bombay

Municipal Corporation (1985) 3 SCC 545.

4. **Ronald Dworkin (1931-2013):** In *Taking Rights Seriously* (1977) and *Law's Empire* (1986) he **attacked Hart's rule-based model by showing that judges also rely on principles**. He argued for law as integrity and for rights as trumps over collective goals. Some scholars compare this to the structural reasoning in Kesavananda Bharati.

G. Marxist, Critical, Feminist, and Economic Approaches

1. **Karl Marx (1818-1883):** He believed that the **law was an element of the superstructure that stands upon the economic foundation and meets the needs of the bourgeoisie** However, Article 39 embraces a different approach, namely, a reformist one.
2. **Michel Foucault (1926-1984)**: In the book *Discipline and Punish published in 1975,* he connected the **notion of power with the idea of knowledge, demonstrating how institutions such as prisons function in regard to the malleability of bodies.** His understanding of prison power provides an explanation of such cases as Sunil Batra v. Delhi Administration (1978) 4 SCC 494.
3. **Duncan Kennedy (b. 1942):** Being one of the most remarkable representatives of the Critical Legal Studies movement, **he claims that legal reasoning invariably has an element of indeterminacy and, therefore, is based on ideological choices.** In his opinion, legal education teaches students to follow a hierarchy.
4. **Catharine MacKinnon (b. 1946):** Thanks to her dominance theory, which has become popular nowadays, she considers **sex discrimination as subordination rather than a mere difference.** Her works laid the foundation for sexual harassment to be recognized as sex discrimination, which was later applied in the case Vishaka and Joseph Shine v. Union of India (2019) 3 SCC 39 and similar ones.
5. **Richard Posner (b. 1939):** In *Economic Analysis of Law* (1973) he argued that many **common law rules tend toward economic efficiency and that judges should favour wealth maximisation.** The idea of efficient breach of contract comes from this tradition.

H. Indian Thinkers

1. **Kautilya (4th century BCE):** The *Arthashastra* identifies four sources of law, i.e., **religious law (dharma), evidence and process (vyavahara), custom and tradition (charitra), and**

royal edicts (rajashasana). While the king is charged with enforcing laws through danda, he is also expected to adhere to dharma.

2. **Manu (text from 200 BCE to 200 CE):** In the Manusmriti, **dharma is the source of law which is derived from the Vedas, the Smritis, the virtuous people's actions, and conscience.** There are criticisms of its gender and social hierarchy. Its impact on Hindu laws is evident in the Hindu Succession Act, 1956, which marks an important departure from this tradition.
3. **B.R. Ambedkar (1891-1956):** He asserted that political democracy cannot remain stable without **social democracy that is founded on liberty, equality, and fraternity. His notion of constitutional morality** paved the way for judgments like Navtej Singh Johar and Article 17, which abolishes untouchability.
4. **V.R. Krishna Iyer (1915-2014):** As a judge, **he advocated for the jurisprudence of social justice, wherein due process and punishment result in dignity of life.** His judgments in State of Rajasthan v. Balchand (1977) 4 SCC 308 and Municipal Council, Ratlam v. Vardhichand (1980) 4 SCC 162 are exemplary.

Quick Revision

School	Core idea	Key thinkers
Natural law	Law answers to reason or morality	Aquinas, Grotius, Fuller, Finnis
Analytical positivism	Law is a matter of source, not merit	Austin, Kelsen, Hart, Raz
Historical	Law grows from a people’s custom	Savigny, Puchta, Maine
Sociological	Law serves social ends and interests	Jhering, Ehrlich, Duguit, Pound
Realist	Law is what courts and officials do	Holmes, Gray, Llewellyn, Frank, Ross

Continue Reading

Revise further with our FAQ guide to mastering jurisprudence, the list of important definitions in jurisprudence, and the quick revision notes for CLAT PG 2027. For the school-wise view, see schools of jurisprudence, jurisprudence and its schools, and legal realism under jurisprudence.