Natural and positive law have, historically, been the two primary theories about law & justice. There are, however, many variations of these theories, incorporating elements of one or both of them. Indeed, other ways of thinking about laws have evolved within broader political and social theories, and are difficult to place in either of the two traditional schools of thought. Some of these approaches are summarized below.

Legal Formalism: Law as Science

In the eighteenth Century the famous British jurist, Sir William Blackstone (1723 – 1780), pronounced that judges do not make the law, they merely find it. This comment represents an attitude toward the law that grew in strength in Britain and the United States in the nineteenth century and persists today, especially in Britain and, to some extent, in Canada. Under legal formalism, also called Legal conservatism, all law is established and it is simply the role of the courts to discover the appropriate rule and to apply it. Conservative-minded judges are usually not interested in policy arguments that consider the social purposes and effects of the law. They feel that such matters are political concerns and should be left to elected legislators. Legal formalists argue that the almost scientific application of legal precedent to new cases gives determinacy, or certainty, and predictability to law.

The conservative formalist influence has remained strong in British and Canadian jurisprudence. In Canada, its influence can be seen in post Charter cases in which some conservative-minded judges here struggled with, and sometimes rejected, the new policy making role given to them under the Charter. In fact, much of the controversy surrounding the introduction of the Canadian Charter of Rights and Freedoms concerning the role of courts versus legislators as the appropriate forum for determining important questions of social policy.

Legal Realism

Legal realism developed during the twentieth century in reaction to the perceived deficiencies of legal formalism in explaining the role of judges. While the formalists view judges as merely appliers of rules, the realists contend that courts are the real authors of the law. In *legal realism*, law is not the expression of an ideal - what ought to be - but rather a description of what actually is. To this extent, realist views align with Austin and other believers in positive law. The realists' preoccupation is not so much with a critique of the laws' content but rather with explaining how that content is created, namely by judges.

One prominent legal realist, Jerome Frank, a former US Federal Court justice, stated that judges, like most human beings, approach problem solving backward. They form a broad conclusion and then search for premises or arguments to support it. He pointed out that lawyers know this process very well. Their clients' interests require them to begin with

the desired result and seek rules, principles, and arguments likely to support such a result.

Judges, Frank insisted, do not arrive at these tentative conclusions arbitrarily but rely on intuition or hunches. While they do not deny that rules of law and legal principles are involved, the realists say that these are not as important as the particular traits, dispositions, biases, and habits of judges. The value of precedents in providing coherence and predictability to law is thus illusory.

The Critical Legal Studies Movement

The critical legal studies movement holds that meaning depends on circumstances and human choice. Every act of interpretation, therefore, reflects a particular bias of the interpreters - for present purposes, the legislatures, courts, and tribunals. Members of the critical legal studies movement believe that no method of lawmaking is truly neutral. For them, law is about value choices. Adherents of the critical legal studies movement criticized the system of law promoted by legal positivists and conservative formalists for lack of rationality, consistency, and morality. Their criticisms are:

First, that it rests on the absurd notion that judges arrive at their decisions objectively rather than the realization that judicial decisions are the results of ideological struggles and historical accidents.

Second, that it's obsession with form over substance produces injustice. Liberal democracies, according to these critics, use the rule of law to reinforce the status quo and its assumptions of objectivity and neutrality, thus eliminating radical debate and real social change.

Third, that its premise that power can be impartial and impersonal is nonsense.

Finally, that the idea and features of the modern welfare state, which provides for its' needy citizens through pensions and so on, are inconsistent with the positive law concept that law governs everyone in a state neutrally, uniformly, and predictably. The welfare state introduced into the law considerable scope for relatively unconstrained discretion and individualization by judges and officials. More and more, critical legal studies adherents say, modern legislation and jurisprudence provide scope for courts to consider the public interest in arriving at their conclusions, which involve moral, political, and economic questions.

Feminist jurisprudence

In its broadest form, feminism represents a theory of power based on sexual objectification. Feminists argue that the male point of view historically has been forced on humans as the way of making sense of reality. In feminist jurisprudence, the state and all its features are viewed as male. The law sees and treats women the way men see and treat women. Feminist legal critics argue that laws have been framed to perpetuate patriarchy - male dominance of women and children. Even laws that seem to protect women, such as sexual assault laws, were originally conceived according to

male notions and to protect male interests. For example, while sexual assault laws arguably protect women from criminal conduct, the historical reasons for such laws, namely, the protection of a woman's reproductive organs from violation by a man who is not her husband, betrays maleness of the law's purpose. Amendments to the Canadian Criminal Code over the last decade, treating what was traditionally termed 'rape' as a crime of violence (now called sexual assault), illustrate the effectiveness of the feminist critique.

Feminist jurists view the 'objectivity' of the state and the law as a male norm that is used to perpetuate the status quo and the myth of equality. In the feminist world of law, passion, empathy, and the adoption of a female perspective in cases replace the highly prized male ideal of dispassionate neutrality. Feminist critics point out that male laws have ignored interests involving human dignity and favoured material or proprietary interests, as exemplified by public laws such as those governing sexual assault, abortion, and prostitution. The mere existence of laws governing or controlling abortion and prostitution speaks volumes according to feminist.

The control of male laws over female conduct relating to dominion over their bodies is a metaphor for male oppression generally. Even in private laws, for example, contract law, employment law, and family law, male interest have been historically protected, especially their right to oppress women, for example, by wife abuse and sexual assault and exploitation of women in the workplace.