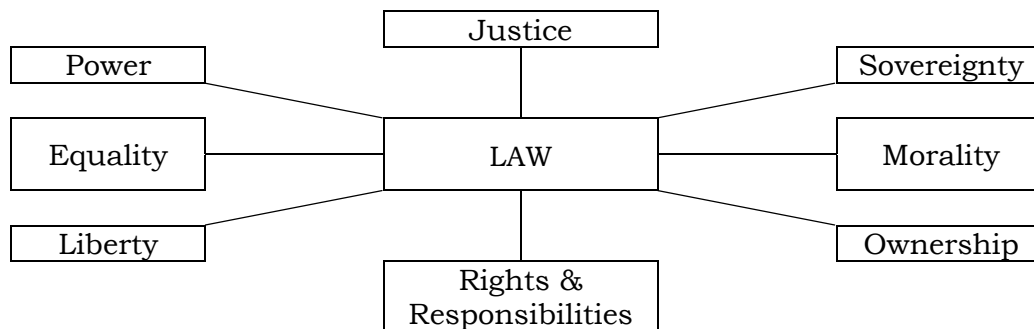


What is a Legal Concept?

- Abstract concept or idea composed of notions of equality, justice, legitimacy and morality among others.
- Difficult to define precisely – too dynamic.
- Just laws vs. unjust laws.
- Concepts are at the heart of our law and its philosophy.
- Product of human imagination – invented to help clarify, describe, and explain characteristics of certain phenomena.



Concept of Justice

- Degree of civilization equals the degree that laws are perceived to be “just”.
- Through striving to attain more enlightened notion of justice society also promotes the process of civilization.
- Varying interpretations of justice are largely theoretical.
- Unjust laws are those which do not conform to whatever values the society may apply in deciding what is just
- But societies always change and so will our concept of “just” and “unjust”

Two types of justice: Procedural and Substantive

- *Procedural Justice* involves the proper administration of rules – outlines the procedures that must be followed to enforce and administer the law.
- *Substantive Justice* is the actual law that specifies your rights and obligations: involves the criteria on which laws are based – society’s values.
- Justice as a Social Norm – Society’s sense of social justice depends upon the manner in which it effectively distributes power, wealth, security, rights and duties among its citizens
- “Whoever or whatever renders to every person his or her due, that person or thing is just” – an attitude, institution or law. A relationship in which every man is given his due is just”

1. Plato: *The Republic*
 - Justice should be administered without law
 - “Natural law”
 - “There is no wisdom in law”
2. Justinian I *Institutes* (AD 482 – 565)
 - Created text for lawyers
 - Roman law collected under Justinian Code
 - Law has two parts
 - A. Universal Laws = Natural law. Fundamental laws that are agreed to and obeyed by all people in society
 - B. Civil laws – Those laws which are particular to that society
 - Thought captivity and slavery were wrong
 - Tried to incorporate universal laws into civil law.
3. St. Augustine (AD 354 – 430) *City of God*
 - Presented the goodness of God
 - Equated Platonic justice – natural law- with Christian law or God’s law
 - Christian justice
 - The church had a moral duty to check abuses of government exercising a moral veto over their actions
 - “The only perfect law is eternal law- God’s law”
4. John Stuart Mill (AD 1806 – 1873) *On Liberty*
 - Developed the doctrine of utilitarianism – laws must be useful and beneficial
 - Greatest good for the greatest number of people should guide the formation of all laws
 - “Laws are right in proportion as they tend to promote happiness” where happiness not strictly based on emotion or sentiment rather it was morally directed and concerned with the well being of others
5. John Austin (AD 1790 – 1859) *The Province of Jurisprudence Considered*
 - Main purpose of government and law is for the “greatest possible advancement of human happiness”
 - Justice means legality and conformity to substantive laws
 - The function of the law is just as important as the quality of the law
 - The acts of an individual were to be tried against an objective measure – the law itself
 - Therefore ethics and morality play no part – too subjective.