

REALIST SCHOOL OF JURISPRUDENCE

Realism - Relating to the world as it actually operates.

Realist school studies law in its actual working and rejects the traditional definition of law that it is a body of rules and principles which are enforced by courts.

It studies not only the judgements of the courts but also the human factor in the judges and lawyers, the forces which influence the judge in reaching their decisions.

This school says that law is not the rules and principles, law is what the judges decide. (it is variable, depends on various factors)

It is both a mix of Analytical positivist approach and sociological approach.

Analytical positivist in the sense that this school also focuses on what law is and not what the law ought to be, though the ultimate aim is to reform but for that one needs to know what the law is.

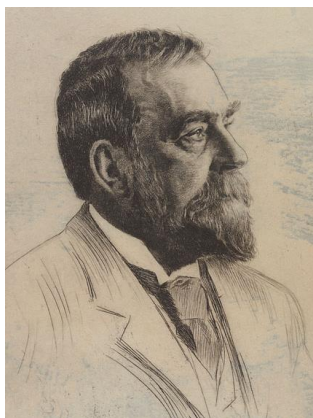
Sociological in the sense that it acknowledges that there are many factors which influence the law and realists are interested in finding out those sociological factors.

Realist School is also known as an Offshoot of Sociological School

Roscoe Pound has defined Realist School as: *"Fidelity to nature, accurate reordering of things as they are, as contrasted with things as they are imagined to be, or wished to be or as one feels they ought to be."*

In Realist school we have 'American Realists' and 'Scandinavian Realists'

AMERICAN REALISTS

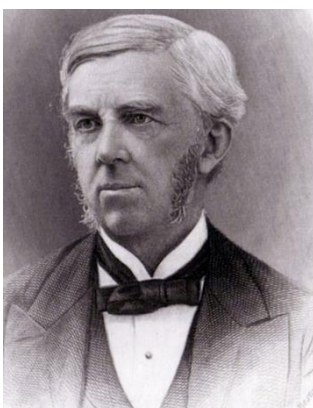


John Chipman Gray

Centrality of the role of Judges: All law is Judge made law. Legislation is therefore no more than a source of law:

It is the courts that 'put life into the dead words of the statutes'.

Oliver Wendell Holmes



Prediction theory of law: Law is not defined until the judge decides the case, Law can only be defined as a prediction of how the courts behave. Law does not have any teeth until the judge decides something.

The lawyer, the client, the defendant all are termed as a '**Bad Man**' in this theory because they all don't care about the ethics or principles of natural law, they just care that they stay out of jail and payment of damages.

Rules are general propositions; they are incapable of providing answer the infinite multitude of possible disputes. 'General propositions, do not decide concrete cases'



Jerome Frank

Called himself a '**constructive legal sceptic**' (a sceptic is a person who questions or doubts accepted opinions)

He said that there are only two groups of realists, Rule sceptics and Fact Sceptics.

Rule Scepticism: Rejecting legal rules, questioning whether rules, if they exist, in practice play the part originally ascribed to them.

Fact Scepticism: Rejects the idea of certainty In establishing facts in courtroom, the facts on which the rule shall be applied. Scepticism over possibility of making any realistic assessment of the likely outcome of cases owing to the virtual impossibility of knowing in advance what facts will emerge during the trial and how these will be interpreted by the court.

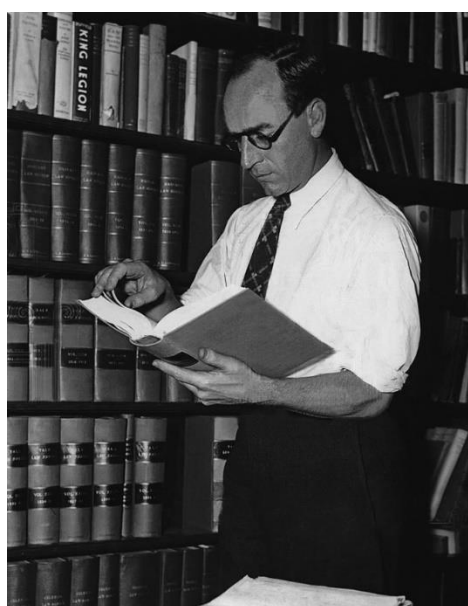
Judge and jurymen may have bias towards a race, sex, religion but there are unconscious biases also towards certain people which could influence the judge. A catholic judge could fail to separate his personal views from the decision of whether abortion should be legalized or not.

Even small things like mood of the judge, what he ate for breakfast, how tired he is can influence his judgement.

American Realists defined law as the decisions of the judge but here Frank described the decision as based upon **R x F (rules x facts)**

But here the R (rules) and F (Facts) both are variables and can't be properly ascertained. So, by definition law is uncertain.

In his book '**Law and the Modern mind**' he said that "*Certainty of law is a legal myth*" 'Father Complex' makes a man think that law is certain, just like a child puts its trust in the power and wisdom of the father to provide an atmosphere of security. The Adult puts its trust in stability and immutability of human institutions and in the certainty of their decisions to provide an aura of security.



Karl Llewellyn

Defined law as an institution, a very complex institution, this institution not only has a body of rules based on a large number of principles but it also used precedents and ideology, it contains many practises, some of which are flexible and some are rigid.

Law is little more than putty in the hands of a judge who is able to shape the outcome of a case based on personal biases

SCANDINAVIAN REALISTS

Rationalists: Those who believe that truth can be achieved by application of human reason, by application of a priori reasoning, which is the notion that knowledge can be acquired by pure thought only.

Empiricists: They believe that nothing can be known to be true that does not rest on the experience of the senses.

What is common in all Scandinavian realists given below is that they all deny the existence of a science of 'justice' (Because it can't be identified with your senses (empiricism))

Scandinavian realists believed in only verifiable knowledge and rejected all metaphysical knowledge which is not verifiable and all objective values of morality.

Axel Hagestorm



Father of Scandinavian Realism.

Said that *"All Metaphysical concepts are sham concepts they are mere word play"*

For example: What is a right?

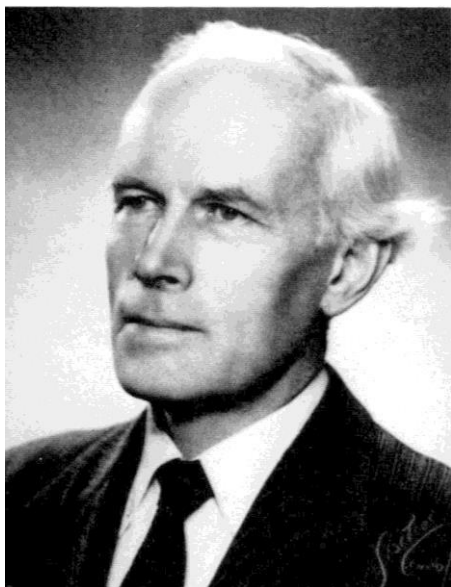
When we say a person has a right, we mean:

1. The person shall obtain the advantage to which he claims to be entitled under that right.
2. Will obtain from the courts a power of compulsion, provided that he fulfils the courts obligations.

But what if the person is unable to fulfil the courts obligation, does he not have any right then? Even if he fulfils the obligations there is no certainty that the court will rule in his favour.

Thus, in reality there 'is' no right but only there 'ought' to be a right.

Karl Olivercrona



Content of a rule of law is '*an idea of an imaginary action by a judge in an imaginary situation*'

Such imaginary situations are taken as models for actual conduct when corresponding situation arises in real life.

Laws are commands (do this/don't do this) but not in the normal sense, in normal sense command is given by one person to another person. But in case of law command is made independently of any personal relationship. So Olivercrona calls laws as Independent Imperatives.

To give law a binding force there is a psychological pressure, when a new law is made some formality is done so that people have a psychological effect that a formality is complete (voting in legislature, signing of a bill) therefore a legal event has occurred that has binding force.

To keep the psychological effect, Force is applied by the administration like police measures, fines, punishments. It would be more correct to say that body of rules summed up as law consists chiefly of rules about force.

Rules are divided into:

Primary: Which prescribe conduct.

Secondary: Consequences of disobedience.

On Morality he said:

Morality also is developed under the influence of law.

Morality is influenced by the law because the law has always been there, it is the existence of law and knowledge of the force that lies behind it, that 'is one of the chief factors in the moulding of our moral standards and not the other way round.



Alf Ross

What are norms?

For something to be called norm, it has to have the idea of a requirement and should also be followed by the populace. So according to Ross a norm is a directive which stands in correspondence to social facts.

There are two sets of norms in society,

1. Norms demanding citizens to behave in a certain way
2. Norms prescribing the legal machinery under what conditions coercive sanctions shall be imposed.

These two sets are made so that citizens could understand that there are some rules directed towards them breaking of which would give grounds for the reaction of authorities.
