

# LEGAL PHILOSOPHY

# IN BRIEF

## TEACHER RESOURCE

### Learning Objectives

- To introduce key ideas in the development of jurisprudence.
- To foster connections between Canadian law and its sources in legal thought.
- To have students apply their learning and develop critical thinking skills in the case study and discussion scenarios.

### Materials

- Copies of the student handout, *Legal Philosophy* (one per student)
- Copies of school handbooks or school codes of conduct (one per student)
- Philosophical schools of thought signage (one of each to be posted around the room)
- Copies of *Legal Philosophy: Schools of Thought* paper slips (one or more statements per student)
- Tape
- Copies of Expert Group Questions (one per group)
- Copies of *Legal Philosophy: Schools of Thought* graphic organizer (one per student)
- Copies of the cases summary, *R v Dudley and Stephens* case (one per student)
- Art supplies for use in the extension activity (optional)

### Teaching and Learning Strategies

1. The idea that what is 'moral' may or may not also be 'legal' is one of the enduring understandings associated with legal philosophy. Invite students to list actions that break social norms and decide whether these actions are moral or legal transgressions. Lead a group discussion based around how individuals and communities respond to these. For example, coughing in

public is a behaviour that might put others at risk, but is not addressed by law. Public smoking was once widely acceptable, but then became socially taboo and finally illegal in many places.

2. Assign the reading individually and have students consider the questions embedded in the handout. When students have finished reading, take up the answers as a class.

### Teacher's Key - Legal Philosophy Handout

- a) Do you think this makes people more or less happy?
  - Less happy: unpleasant nature of being forced against our will; the unfairness of age discrimination; separation from family; individual responses.
  - More happy: privacy from parents, peer interaction; becoming educated increases chance of rewarding work; school allows parents to work; individual responses.
- b) Do you think it makes Canadian society stronger?
  - Stronger: Better trained workforce leads to more stable and economically viable society.
  - Less strong: Forced compliance may lead to personal dissatisfaction and/or frustration with institutions.
- c) How well would schools function if students were not required to respect one another's property? What would happen?
  - Difficult to focus on studies, and feel secure in the environment. It is likely that a few instances of this social contract being broken would lead to ever-increasing breaches, making the school environment dysfunctional and unsafe.
- d) Review your school's code of conduct. Try to find an example of a rule that protects your right to your own property and one that challenges this right.

- Individual schools will vary – most have mechanisms against theft by other students, and recognize student lockers as an example of a relatively private space. However, most will also have prohibitions against carrying items in school that might be permitted outside of school, and many will explicitly state that school officials have the right to search student lockers under some conditions.

3. Tape the names of the four schools of thought on the board and distribute slips of paper with information from each school to students. Make tape available and have students place their statement under the school of thought that most accurately represents it. Once all of the statements have been added review each category and have a discussion about whether or not anything should be moved around.
4. Using the jigsaw strategy, arrange students into four 'home' groups and assign each person to be responsible for one of the four schools of thought. Have all of the students assigned to a particular school get together and form an 'expert' group. Assign the relevant expert group question(s) to each group and give students time to discuss their answers and record them in the space provided. Once students are finished, have them record the key ideas belonging to their school of thought in the graphic organizer.

## Teacher's Key - Expert Group Questions

### Natural Law

- a) Given this statement, how would natural law view compulsory schooling? Try to develop two opposite responses that both use natural law as justification.
  - **Pro:** It 'naturally' falls to parents to choose the skills their children will need and learn, so it is inappropriate for the government to make this choice.

- **Con:** All children will require certain shared skills. By taking charge of these, the government makes it easier for parents to focus on other responsibilities that are part of the 'natural' parent role.

### Legal Positivism

- a) How do you think a legal positivist would justify compulsory schooling?
  - The law is to be followed no matter what, in order to ensure social life remains orderly. Compulsory schooling means an educated population that will be productive stable members of society. Also, allowing parents to choose not to follow this law could lead to unfairness, resentment and instability.
- b) How moral is Canada's legal system? How does it compare to other countries?
  - Canada's legal system probably does fairly well in international perspective. Depending on prior knowledge, students may cite examples of unjust laws currently or previously in effect, such as exclusion of women from citizenship, legal slavery, internment of Japanese Canadians, and so on. It may be useful to contrast these examples with countries that more blatantly permit human rights violations.
- c) How similar are school rules to laws?
  - Encourage students to answer this by applying the criteria for laws in general to the question of school rules. They are decided by formal institutions, written down, and school authorities play the role of government authorities. Furthermore, there are clearly outlined, formal sanctions attached to breaking the rules. The difference is largely one of severity.

### Legal Realism

- a) Do you believe cell phone use changed dramatically between 2007 and now? Does the change in policy reflect change in the community?

- Prevalence has not dramatically increased, but it has been very high the whole time. The major change lies in 1) the difficulty of controlling their use and 2) the proliferation of application-based technologies that might facilitate teaching and learning. What was only possible with a laptop a few years ago is now possible with a handheld device. In this sense, the policy does reflect social change.
- b) Should all teachers be required to permit the use of cell phones in class? Explain.
- The implication of the above is that rules should reflect local needs when possible. This means that in situations where access to the technology is poor and uneven, the potential benefit is outweighed by the risks. However, within relatively uniform areas, there may be a risk of fairness in student learning if some teachers allow it while others do not.
- c) Imagine you are the policy/lawmaker in this case: What are some of the pros and cons of allowing cell phones to be used in classrooms? What rules should be made to control how they are used in classrooms?
- There are many, but the basic distinction is one between potential for engaged learning versus the potential for student distraction. The value of assistive technology for differentiated instruction versus the potential risk to student safety in a real-time internet-connected and relatively unmonitored classroom is another issue.

## Critical Legal Theory

- a) From what perspective was this law written? What groups did it privilege and what groups did it marginalize?
- This clause served to privilege middle to upper class males while marginalizing the interests of females. During this time, well off males were responsible for the governance of Canada and as such, their specific personal, class-based and gender-based experiences could have influenced the ways certain social issues were treated. For

example, women were not universally given the right to vote in federal elections in Canada until 1919, and were excluded from voting in Quebec provincial elections until 1940.

- b) How did the historical ideology surrounding the treatment and status of women influence the creation or interpretation of this law?
- Historically, women have been viewed as second class citizens, more as “children” than free and responsible individuals. Women were to be “protected” by their families (their father or brothers) and upon marriage, were considered to be under the wing of their husband. In addition, strict binary gender roles existed within many societies, where men were considered to be logical and rational, and women, innately emotional. This ideology supported the belief that women were not intelligent enough to make decisions.
- c) How might the lack of female voices (and perspectives) in the higher ranks of government and decision making serve to further marginalize women?
- Without female perspectives in positions of authority, laws and principles were biased. Take for instance the divorce law in Canada. A woman, who out of necessity was forced to live apart from her husband for three years to obtain a divorce (prior to 1968) may have experienced social and economic marginalization. Attached to social stigma would be the lack of a two party income (or perhaps a lack of total income) which would further force her deeper within a powerless space in society.

5. Have students return to their home groups and discuss each school of thought. Each expert should explain what their school of thought is about and how they would answer their assigned questions from that perspective. Students can use the graphic organizer to record the key points about each philosophical perspective. Give students time to compare and contrast the various schools of thought. Debrief as a class.

6. In expert groups, have students read the case summary, *Eating the Cabin Boy: R v Dudley and Stephens*, and respond to it from their assigned perspective. Have students share their results with the class.

## Extension

Create a slogan! Each of the schools of thought contains an italicized 'tag-line' that represents its main idea or way of thinking. Individually or in small groupings, ask students to act in the role of a 'marketer' for one of the philosophies, and generate a new tag-line and accompanying image to comprise a persuasive print-style advertisement for that school of thought. Display student work in the classroom.