

## The american philosophy of law: pragmatism, realism, and contemporary developments

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**Abstract.** The American philosophy of law differs significantly from its European counterparts by situating legal reasoning within lived experience rather than abstract rational systems. The intellectual source of this orientation lies in pragmatism, a philosophy that privileges the practical consequences of ideas. In legal theory, pragmatism has inspired skepticism toward formalism, emphasizing instead how law functions in society and how it shapes human conduct.

The American philosophy of law is distinguished by its pragmatic orientation, its skepticism toward abstract metaphysical systems, and its emphasis on the practical consequences of legal reasoning. Rooted in the broader intellectual movement of American pragmatism, it has evolved through the critical insights of legal realism and continues to influence contemporary debates in jurisprudence. This article explores the historical trajectory, main principles, and ongoing significance of the American philosophy of law, with particular attention to the contributions of Oliver Wendell Holmes Jr., Roscoe Pound, Karl Llewellyn, and contemporary critical legal theorists.

Building upon pragmatism, American legal realism emerged in the early twentieth century. Figures such as Karl Llewellyn and Jerome Frank argued that law is not simply a body of rules but a dynamic process involving judicial discretion, institutional practices, and social context. Legal realists emphasized that formal legal doctrines are often indeterminate and that outcomes depend on judges' interpretations, influenced by psychological, social, and political factors.

Parallel to realism, the sociological jurisprudence of Roscoe Pound highlighted law's role as a tool for social engineering. For Pound, law must adapt to changing social needs, functioning as an instrument of social control and reform rather than a rigid system.

Later in the twentieth century, American philosophy of law expanded into critical legal studies (CLS), feminist legal theory, and critical race theory (CRT). CLS scholars questioned the neutrality of law, arguing that legal reasoning often masks underlying power structures and serves ideological ends. CRT emphasized the ways in which race and systemic inequality shape legal institutions and outcomes.

Meanwhile, pragmatist influences persisted in the works of Richard Posner, a leading figure in law and economics, who argued that legal rules should be evaluated by their efficiency and practical impact rather than abstract moral ideals.

**Key words:** legal norms, natural law, pragmatism, realism, feminist jurisprudence, justice.

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**Американська філософія права: прагматизм, реалізм та сучасний розвиток**

**Анотація.** Американська філософія права суттєво відрізняється від своїх європейських аналогів тим, що розміщує юридичні міркування в межах життєвого досвіду, а не абстрактних раціональних систем. Інтелектуальне джерело цієї орієнтації лежить у прагматизмі, філософії, яка надає перевагу практичним наслідкам ідей. У правовій теорії прагматизм надихнув на скептицизм щодо формалізму, натомість наголошуючи на тому, як право функціонує в суспільстві та як воно формує людську поведінку.

Американська філософія права вирізняється своєю прагматичною орієнтацією, скептицизмом щодо абстрактних метафізичних систем та акцентом на практичних наслідках юридичних міркувань. Вкорінена в ширшому інтелектуальному русі американського прагматизму, вона розвивалася завдяки критичним поглядам на юридичний реалізм і продовжує впливати на сучасні дебати в юриспруденції. У цій статті досліджується історична траєкторія, основні принципи та постійне значення американської філософії права, приділяючи особливу увагу внеску Олівера Венделла Холмса-молодшого, Роско Паунда, Карла Ллевелліна та сучасних критичних теоретиків права.

Спираючись на прагматизм, американський юридичний реалізм виник на початку ХХ століття. Такі постаті, як Карл Ллевеллін та Джером Франк, стверджували, що право — це не просто сукупність правил, а динамічний процес, що включає судову дискрецію, інституційну практику та соціальний контекст. Правові реалісти наголошували, що формальні правові доктрини часто невизначені, а результати залежать від інтерпретацій суддів, на які впливають психологічні, соціальні та політичні фактори.

Паралельно з реалізмом, соціологічна юриспруденція Роско Паунда підкреслювала роль права як інструменту соціальної інженерії. Для Паунда право має адаптуватися до змінних соціальних потреб, функціонуючи як інструмент соціального контролю та реформ, а не як жорстка система.

Пізніше у ХХ столітті американська філософія права розширилася до критичних правових досліджень (КПР), феміністичної правової теорії та критичної теорії раси (КРР). Вчені КПР ставили під сумнів нейтральність права, стверджуючи, що правове мислення часто маскує основні структури влади та служить ідеологічним цілям. КРР наголошувала на тому, як раса та системна нерівність формують правові інститути та результати.

Тим часом, прагматичний вплив зберігався у працях Річарда Познера, провідної постаті в галузі права та економіки, який стверджував, що правові норми слід оцінювати за їхньою ефективністю та практичним впливом, а не абстрактними моральними ідеалами.

**Ключові слова:** правові норми, природне право, прагматизм, реалізм, феміністична юриспруденція, справедливість.

**Introduction**

The American philosophy of law is not a monolithic system but a diverse tradition that reflects the pragmatic and experimental spirit of American intellectual life. Unlike European traditions often grounded in natural law or rationalist constructions, the American approach emphasizes law as a social practice, subject to change, interpretation, and adaptation. Its hallmark is a focus on the living law – how legal norms function in concrete circumstances and shape human conduct.

Pragmatism arose as a distinct American response to both British empiricism and German idealism. Charles S. Peirce introduced the pragmatic maxim, proposing that the meaning of concepts lies in their conceivable effects on experience. William James radicalized this into a

pluralistic vision of truth as “what works” in practice, while John Dewey extended pragmatism into a comprehensive philosophy of democracy, education, and law [2].

For Dewey, law was not a fixed body of eternal rules but a flexible instrument of problem-solving within the social order. This understanding would later resonate strongly with legal theorists who sought to break away from the rigid formalism of nineteenth-century jurisprudence.

Oliver Wendell Holmes Jr., often regarded as the father of American legal pragmatism, articulated a new conception of law in his famous aphorism: “The life of the law has not been logic; it has been experience.” For Holmes, the law is best understood not as a deductive system but as a prediction of what courts will actually do. This perspective redefined legal reasoning as inherently practical, outcome-oriented, and historically conditioned. Holmes’ pragmatic realism challenged the classical view that legal reasoning could be reduced to the mechanical application of fixed principles.

### Results

O. W. Holmes’ most famous statement of his philosophy appears in *The Common Law* (1881), where he argued that legal rules emerge not from abstract reasoning but from experience, history, and social needs. According to Holmes, the law embodies the felt necessities of the time, the prevalent moral and political theories, and even the intuitions of public policy.

He emphasized the predictive character of law: from the perspective of the “bad man,” law is a system of predictions about what courts will do. This radically shifted jurisprudential focus from abstract ideals to practical outcomes [10].

Holmes’ pragmatic vision laid the groundwork for legal realism, a movement that would flourish in the early twentieth century. His recognition of judicial discretion, his emphasis on experience, and his skepticism about the determinacy of legal rules inspired realists such as Karl Llewellyn and Jerome Frank.

Holmes rejected the idea that judges merely apply rules to facts in a mechanical fashion. Instead, he saw judicial decision-making as a process informed by social context, policy considerations, and practical judgment.

On the Supreme Court, Holmes developed a reputation for concise, forceful opinions that reflected his philosophical commitments. Key aspects of his judicial philosophy include:

**Judicial restraint:** Holmes believed that courts should defer to legislative judgment unless laws clearly violated constitutional principles.

**Marketplace of ideas:** In his famous dissent in *Abrams v. United States* (1919), Holmes articulated the principle of free speech as a competition of ideas, laying the foundation for modern First Amendment jurisprudence.

**Skepticism of natural law:** Holmes distrusted appeals to higher moral principles, emphasizing instead the concrete realities of legal practice and democratic deliberation [11].

Holmes’ influence on American law and philosophy is profound. He is celebrated as a forerunner of legal realism, a defender of free speech, and a model of pragmatic jurisprudence. His ideas continue to resonate in debates about constitutional interpretation, the nature of judicial reasoning, and the relationship between law and society.

At the same time, critics argue that his skepticism toward moral reasoning in law risked reducing jurisprudence to a form of legal positivism that neglects questions of justice. Nonetheless, his vision of law as an evolving, experience-based practice remains a cornerstone of American legal philosophy.

Holmes’ insights found development in Roscoe Pound’s sociological jurisprudence, which conceived of law as a tool for social engineering. Pound emphasized the need for legal rules to adapt to changing social conditions, making pragmatism the cornerstone of progressive legal reform [10].

Pound defined sociological jurisprudence as an approach that seeks to make law an effective instrument for achieving justice in society. He emphasized that legal rules and institutions must be judged by their social consequences rather than their internal consistency.

Central to his theory was the idea of social engineering: the law functions as a mechanism for harmonizing and balancing the various interests that arise within society. For Pound, these interests could be classified into three broad categories:

1. Individual interests (e.g., personal security, freedom of contract, property rights).
2. Public interests (e.g., the state's integrity, social order, public safety).
3. Social interests (e.g., general welfare, economic organization, cultural progress) [21].

The task of jurisprudence, he argued, was to develop doctrines and institutions that could balance these competing claims in a way that promotes social harmony and justice.

Pound's metaphor of law as social engineering emphasized the active role of legal institutions in shaping social relations. He rejected the view that law merely reflects existing social norms; instead, law should serve as a deliberate tool for advancing social progress [22].

This perspective had practical implications for legal education and reform. As dean of Harvard Law School (1916–1936), Pound modernized legal education by introducing courses that incorporated social sciences, reinforcing the idea that legal training must include an understanding of law's social function.

While often grouped with the legal realists, Pound maintained important differences from them. Realists such as Karl Llewellyn and Jerome Frank emphasized the indeterminacy of law and the psychological factors influencing judicial behavior. Pound, by contrast, insisted on law's capacity for rational and constructive development. He believed that although law must acknowledge its social context, it could and should serve as a systematic framework for balancing interests and promoting justice.

Thus, his sociological jurisprudence represents a middle path between rigid formalism and the skepticism of realism.

Pound's sociological jurisprudence has had lasting influence on both legal scholarship and practice. It anticipated later developments in policy-oriented jurisprudence, empirical legal studies, and law and society research. His insistence on interdisciplinary approaches also helped pave the way for contemporary critical theories of law, even though his normative optimism about social engineering differed from later critical perspectives [23].

In practical terms, Pound's ideas inspired reforms in areas such as administrative law, family law, and labor law, where the balancing of social interests is a persistent challenge.

Roscoe Pound's sociological jurisprudence marked a decisive break from legal formalism by reorienting law toward its social purposes. His vision of law as social engineering, aimed at balancing individual, public, and social interests, made him one of the most important architects of modern American jurisprudence. While later critical theories have challenged some of his assumptions, his insistence on law's embeddedness in social life and its responsibility for advancing justice remains an enduring legacy in the philosophy of law [21].

In the early twentieth century, legal realists such as Karl Llewellyn and Jerome Frank further radicalized Holmes' pragmatic insights. They rejected the notion that legal decisions could be deduced from general principles, instead arguing that judicial decisions are influenced by psychological, institutional, and social factors. Legal realism thus positioned itself as the direct legal embodiment of pragmatic philosophy, grounding law in practice rather than abstract theory.

Pragmatism continues to inform modern legal scholarship. Figures such as Richard Posner, associated with the law and economics movement, explicitly adopt a pragmatic stance by evaluating legal rules in terms of their efficiency and social consequences. Similarly, critical legal studies and critical race theory, while often radical in orientation, inherit pragmatism's suspicion of abstract universals and its insistence that law must be analyzed in terms of its real-world effects and embedded power structures [20].

Pragmatism provided the intellectual foundation for a distinctly American approach to legal philosophy. By emphasizing experience, social consequences, and adaptability, it offered a powerful alternative to rigid formalism and natural law theories. From Holmes and Pound to contemporary movements, the pragmatic orientation has ensured that American legal thought remains dynamic, socially engaged, and oriented toward problem-solving rather than abstract speculation.

Legal realism emerged in the 1920s and 1930s as a more radical application of pragmatic insights to law. Figures such as Karl Llewellyn and Jerome Frank argued that legal rules are often indeterminate and cannot fully explain judicial outcomes. Instead, they emphasized the role of judges' discretion, psychological influences, and institutional contexts in shaping legal decisions.

Karl N. Llewellyn (1893–1962), often regarded as the intellectual architect of legal realism, rejected the notion that law is a fixed body of rules. Instead, he argued that law must be understood as a dynamic process shaped by courts, institutions, and social needs.

Llewellyn distinguished between law in books and law in action. The former refers to statutes and formal doctrine, while the latter captures how rules are applied in practice. For Llewellyn, the true meaning of law emerges only when it is studied within the lived reality of legal institutions [15].

Although skeptical of rigid formalism, Llewellyn maintained that judicial behavior is not entirely unpredictable. He emphasized that judges operate within professional traditions, institutional frameworks, and shared patterns of reasoning that provide a degree of stability.

Echoing pragmatist influences, Llewellyn viewed law as a tool for achieving social ends. He championed reforms such as the Uniform Commercial Code, which demonstrated his commitment to making law more responsive to commercial realities and public needs [16].

Jerome Frank (1889–1957), another central realist thinker, advanced a more radical critique by focusing on the psychological dimensions of judicial decision-making.

In his seminal work *Law and the Modern Mind* (1930), Frank argued that the belief in law as a system of certain and predictable rules is a “basic legal myth.” He insisted that judicial decisions are influenced less by abstract doctrines and more by the personalities, emotions, and subconscious predispositions of judges [6].

Frank distinguished between rule-skepticism (doubt about the determinacy of legal rules) and fact-skepticism (doubt about judicial fact-finding). He highlighted the uncertainty inherent in assessing witness credibility, evidence, and procedural contexts, suggesting that legal outcomes are often indeterminate at their core.

Frank's focus on psychology anticipated later developments in law and behavioral sciences. His insistence that judicial decisions are shaped by human limitations revealed the gap between formal legal ideals and actual judicial practice [7].

Although both Llewellyn and Frank are identified as legal realists, their approaches diverged in important ways:

**Scope of Skepticism:** Llewellyn's skepticism was methodological and institutional, aimed at making law more pragmatic and predictable in practice. Frank's skepticism was psychological, stressing the fundamental uncertainty of legal outcomes.

**Attitude Toward Reform:** Llewellyn remained optimistic about the constructive potential of legal reform, as evidenced in his work on the Uniform Commercial Code. Frank, more radical, emphasized the limits of reform and the inevitability of indeterminacy.

**Legacy:** Llewellyn is remembered for institutional and doctrinal contributions, while Frank is credited with exposing the deep human and psychological dimensions of judicial decision-making.

The contributions of Llewellyn and Frank have shaped several strands of modern legal philosophy:

Empirical Legal Studies: Llewellyn's insistence on studying law in action prefigured empirical approaches to law and society.

Critical Legal Studies: Frank's radical skepticism anticipated later critiques of legal determinacy in the 1970s and 1980s.

Law and Psychology: Frank's focus on the psychology of judging influenced the development of behavioral jurisprudence and cognitive studies of law [13].

Together, their theories established a framework that challenged legal orthodoxy, encouraged interdisciplinary engagement, and reshaped the philosophy of American law.

Karl Llewellyn and Jerome Frank represent two distinct yet interconnected currents within American legal realism. Llewellyn's institutional realism emphasized law's pragmatic and instrumental function, while Frank's psychological realism highlighted its indeterminacy and human dimension. Their combined legacy lies in revealing law as a living, contested practice, rooted not in abstract logic but in the complexities of human behavior and social institutions.

Legal realists rejected the notion that legal reasoning was mechanical or neutral, insisting instead that law is an evolving practice deeply influenced by social forces. Their slogan – "law in action, not law in books" – captured the essence of their critique [12].

Although criticized for its apparent skepticism, legal realism had a profound impact on American jurisprudence, laying the groundwork for later critical movements, including law and economics, critical legal studies, and critical race theory.

While pragmatism, legal realism, and sociological jurisprudence developed along different lines, they share a common rejection of formalism and a focus on law as a living practice embedded in experience. Pragmatism provided the philosophical foundation, realism applied it to the analysis of judicial behavior, and sociological jurisprudence framed law as a tool for social policy.

Together, they redefined American legal philosophy, establishing a tradition that remains influential. Contemporary movements – such as law and economics, empirical legal studies, and critical legal theory – continue to draw upon the pragmatic, realist, and sociological orientations introduced in the early twentieth century.

The rise of pragmatism, legal realism, and sociological jurisprudence marked a profound transformation in American legal thought. By moving beyond abstract formalism and emphasizing the dynamic, practical, and social dimensions of law, these traditions established a uniquely American approach to jurisprudence. Their enduring influence underscores the continuing relevance of a legal philosophy grounded in practice, adaptability, and the realities of human experience [13].

The Critical Legal Studies (CLS) movement, which emerged in the 1970s, was one of the first systematic attempts to challenge the foundations of modern jurisprudence. Inspired by legal realism and leftist political theory, CLS scholars argued that legal reasoning is deeply indeterminate and often serves to legitimize social and economic inequalities.

Key figures such as Roberto Mangabeira Unger, Duncan Kennedy, and Mark Tushnet emphasized that legal doctrines cannot be understood apart from the political struggles and ideological contexts that shape them. CLS challenged the liberal conception of law as a system of neutral principles, insisting that law is inherently political.

Although CLS lost momentum by the 1990s, its insights profoundly influenced subsequent critical approaches, particularly feminist and race-conscious jurisprudence.

Feminist legal theory developed as both a critique of male-centered legal structures and a constructive project aimed at reshaping law to better reflect women's experiences. Scholars such as Catharine MacKinnon argued that law has historically perpetuated patriarchy by ignoring gendered power relations, particularly in areas such as sexual harassment, reproductive rights, and family law [17].

Feminist jurisprudence has taken multiple forms:

Liberal feminism seeks equality within existing legal frameworks.

Radical feminism critiques the structural nature of patriarchy and its embedding in legal institutions.

Postmodern feminism questions universal categories such as “woman,” focusing instead on intersectionality and difference [17].

These perspectives highlight the role of law in both reproducing and potentially dismantling gender hierarchies.

Critical Race Theory (CRT), emerging in the late 1980s and 1990s, foregrounds the role of race and systemic racism in American law. Founders such as Derrick Bell, Kimberlé Crenshaw, and Richard Delgado argued that racism is not an anomaly but a structural and enduring feature of legal institutions.

CRT introduced influential concepts such as intersectionality (Crenshaw), which highlights how overlapping systems of oppression – race, gender, class – shape legal outcomes. It also critiques “colorblind” legal doctrines that ignore systemic inequality [3].

CRT remains a vital and controversial force in American legal discourse, influencing debates on affirmative action, policing, immigration, and education.

In contrast to critical movements, law and economics, pioneered by scholars such as Richard Posner and Guido Calabresi, applies economic reasoning to legal problems. This approach evaluates legal rules in terms of efficiency, cost-benefit analysis, and incentive structures.

Although criticized for reducing law to market rationality, law and economics has become highly influential in areas such as antitrust, contract law, and torts. Its pragmatic orientation reflects continuity with the American realist and pragmatic traditions, though it diverges from critical approaches by embracing rational-choice theory and utilitarian efficiency [1].

A further contemporary development is the rise of empirical legal studies, which emphasizes data-driven research into how law operates in practice. This approach builds on the realist and sociological traditions, providing quantitative evidence about the effects of legal rules, judicial behavior, and institutional dynamics.

Interdisciplinary approaches have also expanded, incorporating insights from philosophy, political theory, sociology, and cultural studies. These developments broaden the scope of legal philosophy, making it responsive to complex social realities [2].

Finally, contemporary American legal philosophy has absorbed postmodern critiques that question the stability of meaning, legal subjectivity, and the possibility of universal justice. Thinkers influenced by Michel Foucault and Jacques Derrida have highlighted the discursive and power-laden nature of legal concepts.

Moreover, globalization and transnational law have pushed American legal philosophy into new terrains, requiring engagement with international human rights, comparative law, and global justice.

### Conclusions

Modern American philosophy of law is characterized by plurality and contestation. Critical legal studies, feminist jurisprudence, and critical race theory have exposed law’s entanglement with power and inequality, while law and economics, empirical studies, and interdisciplinary methods have sought to enhance the functional effectiveness of legal systems. Together, these developments testify to the vitality of American jurisprudence, its responsiveness to changing social conditions, and its enduring commitment to interrogating law not as an abstract system but as a dynamic practice embedded in human life.

The American philosophy of law represents a distinctive contribution to global jurisprudence, marked by its pragmatism, realism, and critical reflexivity. It offers a powerful alternative to formalist traditions by situating law within the flux of human experience and social change. As legal systems confront new challenges – from digital technology to global

justice – the pragmatic and realist orientation of American legal thought remains profoundly relevant.

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