

# Critical Legal Studies

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# Critical Legal Studies

- Emerged during 1960s/1970s
- Response to legal formalism to transcend legal realism/relativity



# Critical Legal Studies

- Demystify the “lie” that Western legal systems were independent of bias
- Attacks legal formalism
  - that legal systems to deliver justice by applying rules and facts alone



# Critical Legal Studies

## Western Legal Scholars

- Rational, independent from social context and values, sterile
- Dedicated to objectivity, neutrality, certainty, precedent

## Critical Legal Scholars

- No distinction b/w law and politics
- Treating law in sterile ways ignores people's social embeddedness
- Ignores role of race, class, gender

# Critical Legal Studies

Critical Legal Scholars argue that...

- Claims of a law's "objectivity" mask reality of law
  - Biased in favor of powerful
  - Protects powerful against demands/threats of powerless
- Law serves to legitimize domination of powerless by powerful
- Discriminatory processes present in the practice of law:
  - Hegemony: government rule by active consent of oppressed
  - Reification: creation of structures, institutions, bureaucracies that prop up hegemony, limit agency
- Legal education should be reformed.
  - Harvard Law School -- the "standard" of traditional legal education -- was problematic
  - Failed to develop lawyers who think outside system

## Critical Race Theory

- Sees race as central to legal decision-making
- Ignoring race ignores context, disservice to legal system
- Challenges idea of law as neutral and colorblind

## Feminist Legal Studies

- Examines role of women/gender in legal practice/law
- Focuses on subordination, lack of equal rights, and discrimination
- Argues that patriarchal structures limit women's access/attention/rights

## Restorative Justice

- Redefines harmful behavior as violation of relationships b/w people
  - Not an offense against state
- Offenders accountable to communities & people they harmed
- About rebuilding trust, restoring emotional and material losses, with victims/communities
- Similar to mediation (victim-offender mediation/dialogue)
- Alternative to traditional approach to criminal justice\*\*

\*\*Traditional criminal justice is punitive. Concerned with what laws are broken, who broke them, and how they'll be punished.