LEGAL HERITAGE AND CRITICAL LEGAL THINKING pdf

1: Critical legal studies - Wikipedia

Critical Legal Studies D [moderate] 5 Chapter 1 The Critical Legal Studies School of jurisprudence believes that: a. Free market forces and market efficiency are the most important principles underlying the law.

Influence[edit] Considered "the first movement in legal theory and legal scholarship in the United States to have espoused a committed Left political stance and perspective", [1] critical legal studies was committed to shaping society based on a vision of human personality devoid of the hidden interests and class domination that CLS scholars argued are at the root of liberal legal institutions in the West. Members such as Roberto Mangabeira Unger have sought to rebuild these institutions as an expression of human coexistence and not just a provisional truce in a brutal struggle [6] and were seen as the most powerful voices and the only way forward for the movement. Please help improve this section by adding citations to reliable sources. Unsourced material may be challenged and removed. May Learn how and when to remove this template message Although the intellectual origins of the critical legal studies CLS can be generally traced to American legal realism , as a distinct scholarly movement CLS fully emerged only in the late s. What started off as a critical stance towards American domestic politics eventually translated into a critical stance towards the dominant legal ideology of modern Western society. Drawing on both domestic theory and the work of European social theorists, the "crits" sought to demystify what they saw as the numerous myths at the heart of mainstream legal thought and practice. The British critical legal studies movement started roughly at a similar time as its American counterpart. However, it centered around a number of conferences held annually, particularly the Critical Legal Conference and the National Critical Lawyers Group. There remain a number of fault lines in the community; between theory and practice, between those who look to Marxism and those who worked on Deconstruction , between those who look to explicitly political engagements and those who work in aesthetics and ethics. Relation to American legal realism[edit] Critical legal studies had its intellectual origins in the American legal realist movement in the s. Prior to the s, American jurisprudence had been dominated by a formalist account of how courts decide cases, an account which held that judges decide cases on the basis of distinctly legal rules and reasons that justify a unique result. The legal realists argued that statutory and case law is indeterminate, and that appellate courts decide cases not based upon law, but upon what they deem fair in light of the facts of a case. Considered "the most important jurisprudential movement of the 20th century", [12] American legal realism sent a shock through American legal scholarship by undermining the formalist tenets that were long considered a bedrock of jurisprudence. Alan Hunt writes that the period "between the realism of the s and the emergence of critical legal studies in the late s has been a series of unsuccessful attempts to recover from the shock of realism some basis for a legal theory which articulates an image of the objectivity of the legal process, even though the explanation offered by post-realism had to be more complex than that provided by a doctrine of rule-following. According to Roberto Unger, the movement "continued as an organizing force only until the late s. Its life as a movement lasted for barely more than a decade. Some came from Marxist backgrounds--some came from democratic reform. Initially, the scholarly literature was produced by the same people who were doing law school activism. Critical legal studies is not a theory. I think you can identify some themes of the literature, themes that have changed over time. It showcases scholarship elaborated since its origins in the late s in areas such as legal philosophy , literature, psychoanalysis, aesthetics, feminism, gender, sexuality, post-colonialism, race, ethics, politics and human rights. They wanted to intervene in a particular circumstance A first theme is that contrary to the common perception, legal materials such as statutes and case law do not completely determine the outcome of legal disputes, or, to put it differently, the law may well impose many significant constraints on the adjudicators in the form of substantive rules, but, in the final analysis, this may often not be enough to bind them to come to a particular decision in a given particular case. Quite predictably, once made, this claim has triggered many lively debates among jurists and legal philosophers, some of which continue to this day see further indeterminacy debate in legal theory. Secondly, there is the idea that all "law is politics". This means that legal decisions are a form of political decision, but not that it is impossible to tell judicial and legislative acts apart. Rather, CLS have

argued that while the form may differ, both are based around the construction and maintenance of a form of social space. The argument takes aim at the positivist idea that law and politics can be entirely separated from one another. A more nuanced view has emerged more recently. A third strand of the traditional CLS school is that far more often than is usually suspected the law tends to serve the interests of the wealthy and the powerful by protecting them against the demands of the poor and the subaltern women, ethnic minorities, the working class, indigenous peoples, the disabled, homosexuals, etc. This claim is often coupled with the legal realist argument that what the law says it does and what it actually tends to do are two different things. Many laws claim to have the aim of protecting the interests of the poor and the subaltern. In reality, they often serve the interests of the power elites. This, however, does not have to be the case, claim the CLS scholars. There is nothing intrinsic to the idea of law that should make it into a vehicle of social injustice. It is just that the scale of the reform that needs to be undertaken to realize this objective is significantly greater than the mainstream legal discourse is ready to acknowledge. Furthermore, CLS at times claims that legal materials are inherently contradictory, i. They are able to make decisions based on reason that is detached from political, social, or economic constraints. CLS holds that individuals are tied to their communities, socio-economic class, gender, race, and other conditions of life such that they cease to be autonomous actors in the Kantian mode. Rather, their circumstances determine and therefore limit the choices presented to them. People are not "free"; they are instead determined in large part by social and political structures that surround them. Increasingly, however, the traditional themes are being superseded by broader and more radical critical insights. Interventions in intellectual property law , human rights , jurisprudence , criminal law , property law , international law , etc. Equally, CLS has introduced new frameworks to the legal field, such as postmodernism , queer theory , literary approaches to law, psychoanalysis , law and aesthetics , and post-colonialism. This section does not cite any sources. May CLS continues as a diverse collection of schools of thought and social movements. In the American legal academy its influence and prominence seems to have waned in recent years. However, offshoots of CLS, including critical race theory continue to grow in popularity. Associated schools of thought, such as contemporary feminist theory and ecofeminism and critical race theory now play a major role in contemporary legal scholarship. An impressive stream of CLS-style writings has also emerged in the last two decades in the areas of international and comparative law. Various research centers and institutions offer CLS-based taught and research courses in a variety of legal fields including human rights, jurisprudence, constitutional theory and criminal justice. Law and Critique is one of the few UK journals that specifically identifies itself with critical legal theory. In America, The Crit is the only journal that continues to explicitly position itself as a platform for critical legal studies. However, other journals such as Law, Culture and the Humanities, Unbound:

LEGAL HERITAGE AND CRITICAL LEGAL THINKING pdf

2: To Question Law, Without Condition

ESSENTIALS OF BUSINESS AND ONLINE COMMERCE LAW 1st Edition by Henry R. Cheeseman Chapter 1 Legal Heritage and Critical Legal Thinking What Is Law? Law consists of rules that regulate the conduct of individuals, businesses, and other organizations within society It is intended to protect persons and their property against unwanted interference from others Law forbids persons from engaging in.

To establish oneself between adversaries, at the centre and above them, to impose a general law on each and to found an order that reconciles: At issue, rather, is the positing of a right marked by dissymmetry, the founding of a truth linked to a relation of force, a weapon-truth and a singular right. It became the way we live, the institutional framework of our society, how we understand and imagine our relations with others and the world. Neoliberal capitalism formed the real, its institutions the symbolic and its ideology the imaginary orders of our societies in the last 40 years. A deeper affinity, an alliance, brought together greedy economic policies, political and legal moralisation and biopolitical governance. Law, a privileged but not exclusive area for our intervention, is no longer the form or the instrument, the tool or restraint of power. Law has started becoming the very operation, the substance of power. Legal form is squeezed and undermined by the privatization of public areas of activity and the simultaneous publicisation of domains of private action. Legal content, on the other hand, becomes co-extensive with the operations of power. The global biopolitical turn and the new humanitarianism mean that the main normative claims of modern law, typically human rights, have now become an integral part of power relations, that they precede, accompany and legitimise the penetration of all parts of the world by the new order. Law acts as an empty signifier that attaches to everything from pavement walking, the ever-present CCTV cameras surveillance being the new vis anglais , to Iraqi liberation. It is auto-poetically reproduced in a loop of endless validity but is devoid of sense or signification. But the signs from Athens and France, from Iceland and the G20 protests are positive. Over the last few months, this model of capitalism, deregulated, free-market, greedy, based on financial gambling, cheap credit and disregard for any value other than profit has come to a crashing end. Bail outs, nationalisation, regulation aim at saving capitalism from its self-generated implosion. At the same time, they have delivered a huge blow to free market idolatry. The crisis of the economic model, something accepted as the indispensable benevolent background of life, gives us a unique opportunity to examine the totality of the settlement of the last 40 years. The best time to demystify ideology is when it enters into crisis. At this point, its taken for granted, natural, invisible premises come to the surface become de-naturalised, objectified and can be understood for that first time for what they are, ideological constructs. The aim of critical legal thinking is precisely to start this process and to examine recent institutional strategies as the indispensable companion of neo-liberalism. This is our time, the time of protest, of change, the welcoming of the event. Critical legal theory must be re-linked with emancipatory and radical politics. We need to imagine or dream a law or society in which people are no longer despised or degraded, oppressed or dominated and from that impossible but necessary standpoint to judge the here and now. Legal critique is the companion and guide of radical change.

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3: New Critical Legal Thinking: Law and the Political, 1st Edition (Paperback) - Routledge

Biology Forums - Study Force is the leading provider of online homework help for college and high school students. Get homework help and answers to your toughest questions in biology, chemistry, physics, math, calculus, engineering, accounting, English, writing help, business, humanities, and more.

Many countries in Europe still follow the civil law system. Businesses that are organized in the United States are subject to its laws, but not to the laws of other countries in which they do business. Promoting social justice is not a function of the law. According to the analytical school of thought, the law is formed by logic. Supreme Court has ruled that it is improper for a party to be convicted in a criminal case if another party involved in the same criminal activity has been acquitted. Shaping moral standards is not a function of the law. In the case of Ashcroft, Attorney General v. According to Anotole France, the law should apply equally to the rich and the poor. T [easy] 1 Chapter 1 Schools of Jurisprudential Thought The proponents of feminist legal theory argue that women should have superior rights to men in some circumstances due to the past unequal treatment of women. F [moderate] The Natural Law School of jurisprudence believes that the law should be based on morality and ethics. The Historical School of jurisprudence believes that changes in societal norms are eventually shown in the law. Further, these scholars depend on precedent to solve modern problems. The Sociological School of jurisprudence does not emphasize the following of precedent. The Command School of jurisprudence believes that the law commands the ruling class, thus the law should not change when there is a change in the ruling class. Proponents of the Critical Legal Studies School argue for great subjectivity in decisions made by judges. The Law and Economics School of jurisprudential thought holds that rights are not worth protecting if it is too costly from an economic viewpoint to do so. In the past the law did not allow married women in the United States to own property. The belief that the law is a way to form social behavior and reach sociological goals stems from the Historical School of jurisprudential thought. F [difficult] History of American Law The English law courts could only award monetary damages. The English law courts emphasized legal procedure over the merits of the individual case. In most states today the law courts and equity courts remain separate so that both legal and equitable remedies can honor the tradition of the English common law court. F [moderate] 2 Chapter 1 In general, the courts in a civil law system play a much larger role in making law than in a common law system. F [easy] Sources of Law in the United States The supreme law of the land is the Constitution. The federal government has any power that the U. Constitution does not give to the states. Codes consist of statutes that have been organized by topic. A set of state or federal laws that describes conduct that must be followed by those the statute was designed to protect is known as a statute. The doctrine of stare decisis provides that each court decision is independent and should stand on its own. The list of actions a person must not perform. A body of rules of action or conduct prescribed by controlling authority. The acts a person must perform in order to ensure fairness. Optional rules for members of society to follow or ignore as they see fit. Which of the following is not a general function of the law? Maintaining the status quo. When statutes are passed only after considerable study, debate, and public input, this is an example of which function of the law? B [moderate] 3 Chapter 1 What was the U. Because one of the defendants had been found guilty, both should have been found guilty. Because one of the defendants had been found not guilty, they both should have been found not guilty. Because of the inconsistent outcomes, a third combined trial was ordered to reconcile the different outcomes. The decisions in both cases were thrown out, making it possible, though not mandatory, that one or both defendants would have to face another trial. This simply underscores the fact that there is always the possibility that different juries might reach different results in a given situation. According to Judge Jerome Frank, uncertainty in the law: Is an unfortunate accident. Should be avoided whenever possible. Is of immense social value. Does not exist in the U. The concept of flexibility in the law is best illustrated by: The use of precedent to decide similar cases in similar ways. Passing statutes that purposely do not address precisely how they would apply in all situations. The use of appointed judges rather than elected judges. Imposing mandatory penalties for criminal violations. Setting a fixed amount of damages applicable to all wrongful death cases. Which doctrine was overturned in the case of Brown v. The

legality of poll taxes. The permissibility of separate but equal facilities. Allowing only white males to vote. The acceptability of paying women less than men for comparable work. Differential working hours for male and female factory workers. B [easy] Schools of Jurisprudential Thought One of the goals of feminist legal theory is to: Place as many women in legal decision-making roles as possible. Ensure that law schools graduate approximately equal numbers of men and women. Usher in an era where women hold the bulk of the power in the legal system. Ensure that there are no areas in the law where women and men are treated differently. C [difficult] 4 Chapter 1 Documents such as the U. The Natural Law School. Proponents of which school s of jurisprudential thought are unlikely to adhere to precedent in making decisions? The Sociological School only. The Critical Legal Studies School only. Someone who believes that law is a reflection of those in power, believes in which school of jurisprudential thought? Which of the following is most consistent with the Natural Law School of jurisprudence? Law is based on moral and ethical principles of what are right, and it is the job of men and women, through study, to discover what these principles are. The law is a reflection of society, thus the law must change naturally as society changes over time. The laws of man are secondary to the laws of nature, and thus the laws of nature take precedence whenever the laws of man are in conflict with the laws of nature. By applying the rules of logic to specific cases, the logical, or natural, result will be obtained. Laws must first and foremost respect, preserve, and promote the preservation of the environment and life in all its forms. Critical Legal Studies D [moderate] 5 Chapter 1 The Critical Legal Studies School of jurisprudence believes that: Free market forces and market efficiency are the most important principles underlying the law. Past court decisions must be analyzed and criticized in developing new law. Subjective decision making by judges based on general notions of fairness is appropriate. The purpose of law is to serve as an official voice of criticism of those in power. Judges should employ the same critical methods of analyzing cases in the courtroom that law schools use in teaching the law to students. The school of jurisprudence that believes that free market forces should determine the outcomes to lawsuits is: The Critical Legal Studies School. The Law and Economics School. Which of the following is true about the Law and Economics School of jurisprudence? It is also known as the Chicago School. It promotes the use of economic principles in resolving cases, so long as the case is one involving business. It would say that a case that no lawyer would take on a contingent fee basis should be brought by an attorney who is paid by the state. It holds that antitrust cases should be vigorously prosecuted in order to protect the economic viability of smaller firms. A [moderate] History of American Law

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4: Critical Legal Thinking

The American legal system is one of the most comprehensive, fair, and democratic systems of law never developed and enforced Flexibility of the Law U.S. law evolves and changes along with the norms of society, technology, and the growth and expansion of commerce in the United States and the world.

Occupy Central protestor Take your time but be quick about it, because you do not know what awaits you Jacques Derrida. The movement is now in a period of reflection and consolidation, searching both for new strategies of engagement and, perhaps even, a sense of its soul or animating force. These are more quotidian times, far removed from those exceptional days in August last year. But for how long? And who will determine the moment when such questions are closed? Where and to whom might one address such questions? It is, as such questions circulate, that the question of the university itself is being asked. Professor Chan, a vocal pro-democrat, is supposedly tipped to take on a high-level managerial job within the University. These clumsy efforts in propaganda seek to compound an existing campaign directed against fellow HKU lecturer, Benny Tai, a key figure in the Occupy Central movement. This all follows comments made by Hong Kong Chief Executive, C Y Leung, that criticised a recent student newspaper for publishing an article that discussed Hong Kong independence. These are unambiguous attempts to encroach on the institutional affairs of the university. We wait to see their long-term effects; given their heavy-handedness and general stupidity, these might well be nil. Nonetheless, these events prompt old questions that require renewed thought. In the current predicament it is legal academics, in particular, that must repose these questions. In the common law tradition, legal study has a particularly vexed relationship with the academy. In England, the traditional home of legal training was the hallowed Inns of Court. Aristotelian logic, rhetoric, dialectics and Roman law. Seeking to preserve the purity of English law, with a heritage that supposedly stretched to antiquity, legal education and training in the common law world has always been anxious of the university, unsure of its own position in relation to scholarship. Are legal academics servants of the law or servants of knowledge? Do they answer to the profession or the university? The legal academy has been left as something of a chimera, enmeshed in practice at the same time seeking credibility as a scholarly pursuit. And these questions are precisely the questions asked within the university. This simple but profoundly important claim is the subject of a lecture by Jacques Derrida: Its necessary tie to the public sphere means that the university will always have to answer to a multiplicity of interests and forces: The university without condition is impossible. That which allows for unconditionally free expression and thought sunders the institution from within. To be open to everything and be, in principle, able to say everything, the university must be open to its own destruction. It is this impossibility of the university, the fact that it is a site of radical questioning and doubt that makes it so precious. But this preciousness is not without precariousness. What I want to suggest here is that recent events in Hong Kong make it clear that such a site, a site of impossible freedom, must be maintained and nurtured through institutions that resist forces which aim to close this free play of thought that animates the university. It is this defence of the institutional, to which legal academics must answer: For Derrida the fate of the university lies in the hands of the humanities, for it is within these disciplines that questions of truth, critique, the nature of the public sphere, the question of the human, humanism and humanity, as well as the question of the university itself, are all put in question. It is the humanities that have the intellectual resources to maintain the university to come. But what of law and the law school? As is well known, the relationship between law and the humanities is a contested issue. Not only straddling practice and scholarship, law within the university finds itself pulled in at least three directions: It would be foolish, and self-contradictory, to use this space to champion one of these approaches over another. To question law, without condition, is to necessitate a plurality of approaches to the subject. Nonetheless, it is worth remembering the relatively recent shift in legal studies away from its humanistic roots towards professional training. The first European university in Bologna was established as a law school devoted to classical humanistic learning, nurtured by theological and philosophical traditions. Students, trained in grammar, dialects and rhetoric, viewed law as instrumental in effecting and reproducing the social bond and, through the law, sought to connect the secular with the holy,

philosophy with matters of governance. However, it is not the rich history of the humanistic study of law that gives the legal academy such potency today, but its heterogeneity. Octopus-like in reach, contemporary law schools are qualified to intervene in all aspects of political, ethical, social and intellectual life. This plurality, however, should not mask one centrally important role that lawyers and legal academics can play in maintaining the vitality of the university, to sustain a space that aspires to be without condition. Lawyers, it seems to me, are uniquely placed to be guardians of the university without condition. When it comes to understanding the nature of limits, regulation and order, lawyers come into their own. Today Hong Kong finds itself at a critical juncture. Difficult questions lie ahead, for all parties, pro-democrat or otherwise. We must maintain the university as a space preserved for free thinking and open exchange. The institutional and regulatory expertise of legal academics finds its force at the borders of the university, within its negotiations with the public sphere with which it must always be in dialogue. It calls for renewed reflection on the nature of the offices of lawyer, professor and jurisprudent. It calls for us to ask questions of the law, without condition and to commit ourselves to maintaining a space where the hope of free thought remains alive. Daniel Matthews is Assistant Professor of Law at the University of Hong Kong where he teaches and researches in law and literature and jurisprudence. Jacques Derrida, Without Alibi Stanford: Stanford University Press, ,

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5: Thinking Like a Lawyer - Laws of Wisdom

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Thinking Like a Lawyer By: The ability to reason is critical to the development of our full potential and protection of our social liberties. The growth of importance of lawyers and the law over the last few centuries has a deeper meaning. A fundamental shift in history has taken place and thinking has become the primary human function. The roles in society where independent thinking are valued, such as science and the law, have grown tremendously because of this inner shift in emphasis. Of course Man has always been a thinker. The function has always been there, and there have always been a few people who sought individual understanding. But only recently has society tolerated the fulfillment of this basic human need, much less given it special significance and value. Prior to the Renaissance blind faith in the church and unthinking obedience and loyalty to the state, the king, were demanded of everyone. Then came the Magna Carta and the beginning of legal constraints on the otherwise absolute dictatorial powers of royalty. The profession of the law was re-born in England after long absence since the days of the Roman Empire and the likes of Cicero and Marcus Aurelius. The law and its servants were starting to have power as society moved from a feudal system of dictatorship to an urban system of law. Today lawyers are still the butt of many good lines, but the rule of law has brought down the kings, lawyers are all too plentiful and prosperous, and the rule of law in some countries is strong. Moreover, scientists in white coats have largely replaced the clergy in terms of respect and awe shown by the common modern man. Until the last few hundred years, individual independent thinking - thinking like a lawyer - was discouraged. Individual thought was considered futile, counter-productive, even evil insofar as the big questions were concerned. Socrates was put to death for his rational challenge to the religious dogma of the day, the worship of the gods of Zeus, Athena, et al. Then Bruno was burned alive at the stake in when he refused to recant his radical writings as to the Earth revolving around the Sun in a larger Universe. Thousands of others, so-called witches and wizards, were tortured and killed in the middle ages for their free-thinking magic. For most of recorded history independent thinking was extremely dangerous. That is why the First Amendment of the United States Constitution - guaranteeing free thinking and free speech - was such a revolutionary law when enacted, and why it was, and still is, so important to us all. In the pre-law days, independent thinking was controlled by a select religious elite in society, such as priests or elders. They created the particular religious dogma of the day, and so controlled the thoughts and beliefs of everyone else. A person was expected to accept and have blind faith in the religion, dogma, creed or belief into which they were born, be it the Bible, Torah, Koran, Bahadva Gita, Zeus, I Ching, Marxism, or whatever. As a result, although knowledge was transmitted, personal understanding of the basic issues was missing in most cultures for all but an elite few. Only recently, with the advent of science and the law, is individual thinking tolerated, sometimes even encouraged. Still, even today the intellectual freedoms guaranteed by the First Amendment are unheard of in most countries of the world. Thinking is an innate human capacity, but it has to be trained, purified, developed, and strengthened to function properly. Ask anyone who has survived law school - famous for its Socratic method and relentless grilling of students by sadomasochistic law Professors - learning to think for yourself can be a real ordeal. You come here with your skull full of mush and our job is to make you think like a lawyer. In one of the few books ever written about legal thinking, Logic For Lawyers: Aldisert explains that the basic purpose of his book is to get you thinking about thinking. Just what is thinking? Recognition of our ignorance of the exact nature of the mental process is an important first step in learning how to think. Without this preliminary realization it is very difficult to escape from the various forms of pseudo-thinking we have inherited from the past, the mental processes, or "mush", that commonly masquerade for thinking, but are not. Pseudo-thinking includes undisciplined mental processes such as haphazard associations, and blind repetition of the thoughts of others. Thinking is not just talking to oneself. Thinking is the particular mental event within our stream of consciousness and verbal chatter wherein a connection is made, an insight is gained into an order behind phenomena, a relationship. Judge Aldisert defines legal thinking as pondering a given set

of facts so as to perceive their connection. This realization of a connectedness or unity is what is meant by a "thought". The thought can be in words, symbols, or numbers, and can also be in geometric patterns, images, tones, colors, movements or kinesthetic processes. The act of making these associations is thinking. The fragmentation of consciousness noted earlier makes real thinking all the more difficult. It is very hard to make connections when you are looking at disjointed snapshots instead of a movie. Many of the possible associations will escape you, pass you by. In essence thinking relates one or more things with one or more other things. The word "things" is here used in its most general sense as an all-inclusive noun, including not only material objects, but also ideas, people, or "anything". As a lawyer would say, it is all part of the case. The word, "relate", is used in the sense of connect or compare: Real thinking is the function of relating, comparing and contrasting through number, geometry, language, images, tones, colors and physical symbols to gain understanding and knowledge. As Judge Aldisert so aptly puts it, legal reasoning depends upon the power of seeing logical connections in the cases, of recognizing similarities and dissimilarities. This is a basic law of consciousness which will be discussed later in greater detail. The other functions are sensing, feeling and willing. Briefly, "sensing" is the basic intake of data and perceptions, pure unprocessed information; the facts of the case. When thinking properly - like an ideal lawyer - your thinking is independent, grounded in the evidence sensing and the equities feeling , and leading to just decisions willing. Thinking requires data of some sort from the sensing function to process. It has to have something to think about, even if it is an abstract pattern or number. Body, Soul and Spirit. Again, the laws of the three realms of consciousness will be discussed in detail later, but in short, the realms follow the classic tripartite division. Body is the realm of the material world, of property. Soul is the realm of energy and life, including psyche and personality. Spirit is the realm of ideas, qualities, cognition and mentation. Thinking puts "things" from one or more of the realms into relationships with each other. For instance, in the abstract qualitative realm of spirit, thinking puts ideas into relationships. In the energetic soul realm it relates people and beings, and in the realm of the body, it makes connections between material things. Most people do not realize the full potential of thinking. They falsely limit it to abstract connections made with words and number - the spiritual connectors. But important thinking can also occur with connectors in the soul and body realm. For instance, Einstein admitted that his most important thought was visual and kinesthetic. He visualized an image of a photon traveling at the speed of light. This imagery thinking then led to his mathematical breakthroughs of light bending and the equivalence of matter and energy. Many other examples of imagery thinking can be given from the history of science. Perhaps the most famous example is the eureka experience of the German scientist, Friedreich Kekule, in He had been thinking long and hard of the then biggest problem in chemistry, the structure of the benzene molecule. The answer finally came to him while he was almost dozing on a horse-drawn tram. He had a kind of a dream where he thought of an image of dancing atoms in various arrangements. Then he saw the image of a snake eating its tail in a slowly revolving chain of atoms. He instantly realized the solution to the problem was a hexagonal ring of carbon atoms, where the head and tail of the ring were attached like the snake in his dream image. All organic chemistry is now based on this breakthrough. The history of thought teaches us that thinking need not be just left-brained and linear, depending only on analysis, logic, words and number. Thinking can also be right-brained and analogical, relying on images, tones, colors and other pre-verbal or trans-verbal connections and constellations. The law also uses both kinds of thinking. Most legal arguments are based upon the use of prior cases where the facts and law were similar to the case in contention, but not identical. The lawyer then argues for the application of the rule of law used in the prior similar case based upon its analogy to the case at hand. It is reasoning by example from case to case. As Judge Aldisert puts it: The process involves the doctrine of precedent in which a proposition descriptive of the first case is made into a rule of law and applied to a similar situation Although the applicability of a rule of law to a given case does depend on the degree of analogy that can be drawn, the "dynamic quality" of law is affected by more than the presence of novel facts in new cases. Often, more than one rule suggests itself as precedent; more than one principle arguably applies. Here, value judgments play a major part in the development of the common law. In this way the law grows and is flexible. It is based on precedent, but is not locked in by it. The "logic of the law" uses both the past and the present, both analogy and inductive-deductive logic, law and equity, the left

and right brains. The logic of personal growth must do the same. A twofold process of purification and education is involved. Thinking must be separated from the other functions and disciplined by logic, evidence and precedent. To think without purpose or discipline - that is, to simply put one thing in relation to another in a haphazard fashion, without reference to the evidence, logic or the law - is not real thinking. It is uneducated, useless, or worse. It does not lead to understanding and knowledge.

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6: Critical Legal Thinking - GNHRE

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In doing so, you are better able to understand what the author is saying and to formulate questioning thoughts. Critical thinking demonstrates that you have understood the article and can apply it to the world around you. Being curious causes you to ask questions such as: Critical thinking is an exercise in analysis and logic. You are trying to show where the author is strong has considered other theories or used methodologically strong measures to draw conclusions. While reading jot down the questions that arise when you consider how the article integrates with other knowledge you have about conflict resolution or in general. Instead, they reflect your experience, knowledge, training, and worldviews. Remember, your personal opinions and values ultimately come into play when you adopt a particular theoretical orientation or model of practice â€" be explicit about your theoretical assumptions. They should not, however, inhibit the process of thinking critically. What is the issue or research question being raised by the author? What assumptions has the author made? What is the author saying? What is his or her position or main argument? What conclusions has the author reached? What concepts or theories does the author rely upon? However, you have not critically read or critiqued the author. You would want to ask questions such as: What are the strengths of this article? How might the ideas and perspectives help me to work in the field of conflict studies? What are the limitations of this article? What does the author not say? What questions am I left with after reading the article? The following are some common weaknesses in written arguments: What theoretical viewpoint has the author taken i. How good is the evidence in terms of: What words or phrases are ambiguous, and what are understandable? Are there fallacies in the reasoning, or is the logic clear, unambiguous and effective? Are there rival causes? Are there value, class or cultural conflicts, and how has the author dealt with them? Are the statistics clear and understandable or deceptive or misleading? What other facts or figures might have been included? What other conclusions might one reach in looking at the same information? For further information on critical readings see Avery, et al. You might also want to refer to Browne, M. Keeley, Asking the Right Questions: A Guide to a Critical Thinking, 4th Edition. Power means the ability to unilaterally bring about outcomes and is desirable as it reduces vulnerability. Hence, the object of most commercial enterprises is dominance or winning, and winning is infinitely preferable to losing The man is then unable to use the money to make an illicit real-estate transaction and loses considerable money as a result. The man is angered by this and wants some form of compensation, yet is unable to pursue litigation, due to the illicit nature of the intended transaction. The example is used to describe the role, interest-based mediation could assume in focusing each party on their actual needs and the needs of the other so that they could achieve a mutually beneficial outcome. Our economy has inherent contradictions. For example, to keep the rate of profit high grain has been dumped into the ocean in mass quantities. Special ships in the United States have been designed for this purpose. That being said, Chornenki does advocate an approach to commercial mediation that presents problem-solving in a less positional manner and makes clients responsible for outcomes. Her other case study examples clearly illustrate the positive difference genuine problem solving has made for clients. Watkins and Rosegrant would value her interest-based mediation model. Both articles discuss the role of power and the power of the mediator to influence a shift from distributive bargaining to integrative or principled bargaining, the power-with concept being advocated by Chornenki. For her, the phenomenon of power-with must prevail for commercial users of mediation. What that really means is providing less service and assistance with few benefits to the individual. The challenge for business advisors must be to balance these internal conflicts â€" the pursuit of short-term profit with long term investments and sustainability. The purpose here is not to make judgements about the nature of business and how business people solve their problems. Chornenki argues that it is necessary for participants to suspend reliance on unilateral influence and control if commercial mediation is to be successful. With its emphasis on information exchange, power-with as opposed to raw unilateral influence and control and recognition interest based mediation may, in fact, require a stretch that is uncomfortable or unacceptable for many commercial parties p. The norm-educating

model has a less easily understood relationship to social norms. After reading her article I remain concerned that an issue affecting social consciousness, for example human rights, becomes marginalized in a private process of mediation. A person may file a complaint at Human Rights, and if interdependent goals exist also pursue mediation for conflict resolution. How will society self-monitor, or gage levels of discrimination, violence, social injustice or equity if a growing trend is disputants channelling into a private process. What set of criteria to determine the most responsive and appropriate approach exists? I have a second concern. If the mediator has the responsibility to use norms as an educational vehicle, what if the norms are wrong, or the wrong norms are used for that case? Waldman appears similarly concerned suggesting that the norm-educating model is only appropriate in situations where relevant norms may be disregarded without weakening the ideals upon which government and legal structure are based. These are weighty concerns especially since norms are perpetuated through a subjective process by the mediator. Might not a non-dominant cultural group may have their norms disregarded when they should not. Waldman does not talk about a cultural norm. For example, the scenario given to support the norm generating model centres on an older lady and her neighbour who is a young male. Suppose the lady is of traditional East Indian origin and the mediator is not familiar with this culture. Clearly this would have implications for the mediation process. In East Indian culture the female is the dominated figure in relationships and will often live in the shadow of the male figures in her life. Due to this cultural experience she more likely to agree to the options provided by the male disputant and her needs may be overlooked. The mediator in this case may unintentionally reinforce cultural constraints as the woman is once again led to concede to the male. Does mediation in this case really afford her autonomy and self-determination? Taking culture into account, Faure would encourage Waldman to avoid from the start dominating American perspectives and not just include culture as a component of conflict but to assume all factors are culturally driven and therefore potentially different from one culture to another p. Ross would agree with Faure. Rubin and Associates, Conflict, Cooperation and Justice. Interpretations and Interests in Comparative Perspective. Yale University Press,

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Method of thinking that consists of investigating, analyzing, evaluating, & interpreting information to solve a legal issue or case. Socratic Method Process that consists of a series of questions & answers & a give-and-take inquiry & debate between a professor & students.

8: Critical Thinking - Department of Law and Legal Studies

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9: "Critical Thinking and the Law" by J.P. "Sandy" Ogilvy and Dannye Holley

chapter 1 legal heritage and critical legal thinking true/false questions what is law? 1. The law in the United States has been influenced by English, French, and Spanish law.

LEGAL HERITAGE AND CRITICAL LEGAL THINKING pdf

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