# Theories and Concepts of Law

**What Is Law?**

* Jurisprudence – philosophical interpretations of the meaning and nature of law

**Ancient and Medieval Theories of Law**

* Until modern times, most theories of law could be grouped under two headings:
  + **Natural law** – the theory that human laws are derived from eternal and unchangeable principles that regulate the natural world, and that people can become aware of these laws through the use of reason (i.e. parents protecting their offspring)
  + **Positive law** – the theory that law is a body of rules formulated by the state, and that citizens are obliged to obey the law for the good of the state as a whole (i.e. traffic laws)

### Socrates

* 470-399 BCE
* Greek philosopher who lived in Athens during its golden age
* Through a process of dialectic (the process of clarifying an idea through discussion), Socrates would try to arrive at some agreement about a topic
* In 399 BCE, Socrates was put on trial on a number of charges relating to his teachings
  + Socrates’ defence was a clear and dramatic statement of the theory of natural law: that there is a moral imperative in the law, and it must guide people in right living

1. **Plato**

* Student of Socrates
* 427 – 347 BCE
* Plato thought that humans were social by nature and that organized society was a natural institution
  + Society did not exist for economic reasons alone but to help people develop the good life, the life that is led according to principles of justice
* For Plato, justice exists when all the powers of an individual or society are working together in harmony for the good of the whole – human laws must be based on knowledge of the eternal laws that rule the universe
* Law is closely associated with morality – the first and most basic law is to do good and avoid evil – all the rest of natural law flows from this basic premise

1. **Aristotle:**

* Student of Plato
* 384 – 322 BCE
* Agreed that humans are political animals – what sets humans apart from other animals is their reason, which allows them to tell the difference between good and bad, the just and unjust
  + The process of using reason to analyze the natural world from observation is known as **rationalism** and is the root of the modern scientific method
* Believed that morally speaking, people fell into three classes:
  + Some are born good
  + Some can be made good through education
  + The majority of people are ruled by their passions and education alone will not make them good – only law can do that – it is only through the fear of punishment that most people can be persuaded to follow reason and thus do what is right and avoid evil
* Believed that law had a moral purpose – it forced people to live according to their reason rather than their passions

### St. Thomas Aquinas

* 1224 – 1274
* A Dominican friar who taught at the University of Paris
* Lived during a time in the Middle Ages when the thought of Aristotle had just been rediscovered in Europe
* Identified four kinds of law:
  + **Eternal law** – body of laws by which God created the universe and keeps it in operation – this type of law exists outside time and will never change – can never be completely understood by humans
  + **Natural law** – the eternal law as it operates in humans and can be known by them – examples: parents should care for their children; each person should try to preserve his/her own life; people should do no harm to others; we should all assist the poor, the sick, and the elderly
  + **Divine positive law** – that part of the eternal law that has been revealed in the scriptures – this would include the Ten Commandments

**Human positive law** – consists of laws that human beings have made for the proper functioning of society and the state

* Agreed that human law has a moral purpose – thought that humans were created for a spiritual purpose – people should live in such a way that they will be united with God after death – for this reason the Roman Catholic Church is the ultimate authority on earth
* Thought that people are bound by conscience to obey a just law – an unjust law would not have this binding force – people are under no obligation to obey any laws that conflict with divine laws
* Defined human law in the following manner “Law is nothing else than an ordinance of reason for the common good, promulgated by him who has the care of the community”
  + The law is a product of human reason
  + It is made for the common good
  + It is made by the ruler, who must have the care of the community at heart
  + It is promulgated, or published, so that everyone knows it