

**LEGISLATIVE / JUDICIAL SYSTEMS
AND HINDUISM**

**Legislative and
Judicial Systems
and Hinduism**



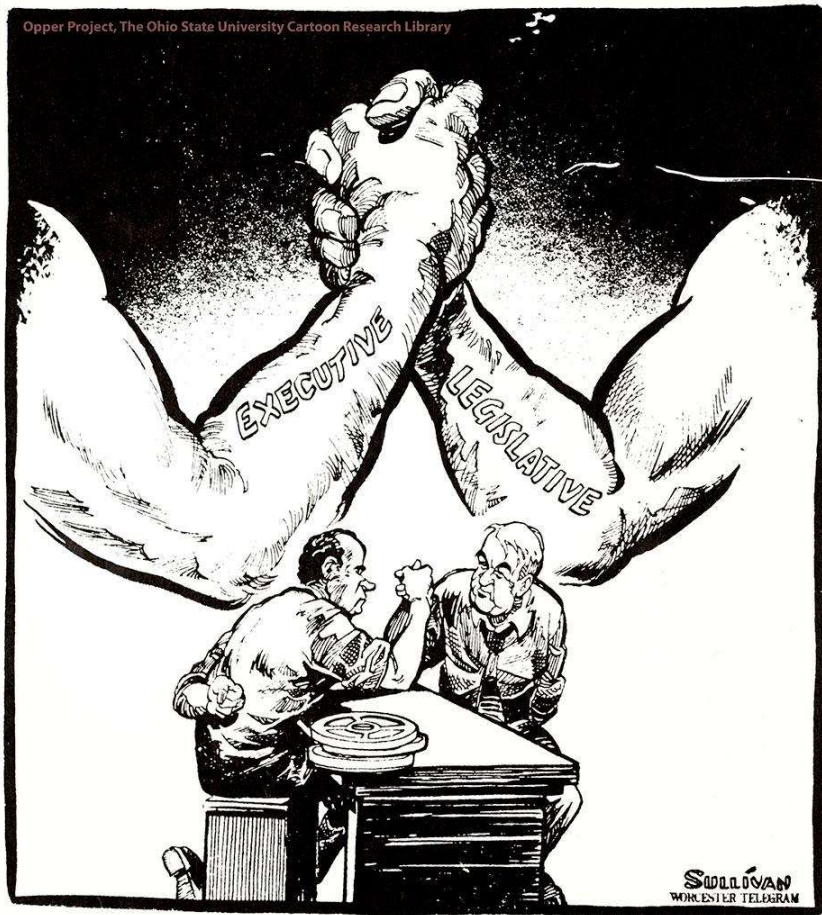
LEGISLATIVE / JUDICIAL SYSTEMS

Legislatures



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- Historical Background – a story of rise and fall in terms of power vis-à-vis executive branches, whether parliamentary or presidential.



Presidential vs. Parliamentary

- Presidential:
- Separation of Powers: Executive & Legislative
- President and Cabinet are **not** members of the legislature.
- Parliamentary:
- No separation between legislative and executive branches
- PM & Cabinet are MPs (members of Parliament)
- PM + Cabinet members + other senior MPs in the party = the “Government”



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The 19th century is particularly noteworthy in its struggle for greater legislative power, especially in the west.



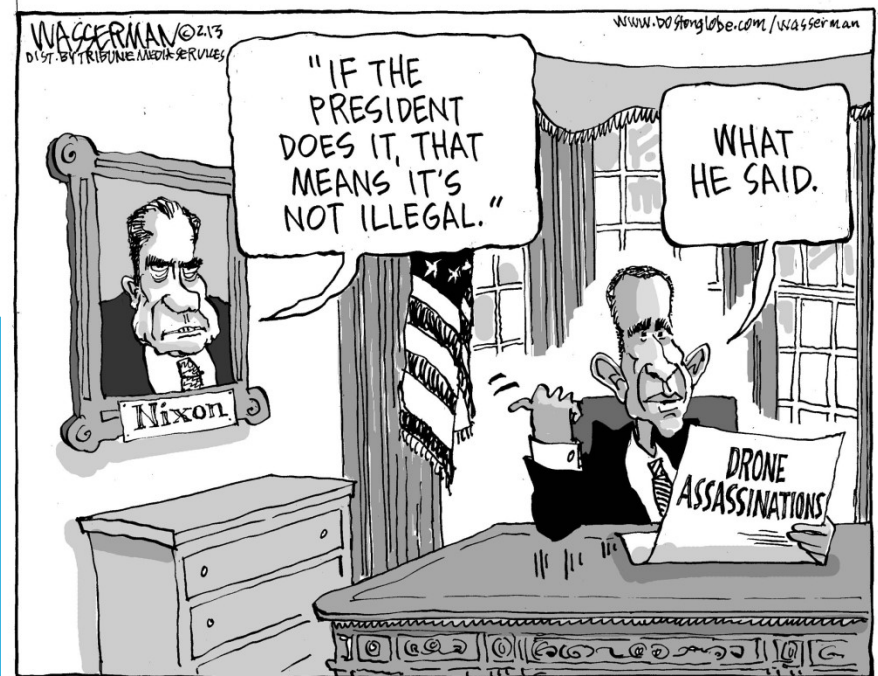
The parliamentary principle of vesting legislative power in the decision of the majority rejects the authority of the individual and puts a numerical quota of anonymous heads in its place. In doing so it contradicts the aristocratic principle, which is a fundamental law of nature.

— *Adolf Hitler* —

AZ QUOTES

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Note: **Heineman's** suggestion that only parliamentary democracies (i.e. those democracies not based on “separation of powers” as in the U.S. model) are losing power to the executive (see page 180), is probably not very accurate in light of recent U.S. history.



LEGISLATIVE / JUDICIAL SYSTEMS

I. Methods of Electing Legislators



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1. Single Member Districts – one representative per district and whoever wins the most votes (plurality not majority) wins all the votes (aka winner-take-all).

Vote for one option.

- Joe Smith
- John Citizen
- Jane Doe
- Fred Rubble
- Mary Hill

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Electoral Systems

Proportional Representation

1. Multi-member districts where political party gets seats proportional to the votes it got
2. A minimum % of votes required to win a seat

Rev Ty

2. Multimember Districts – more than one representative and seats are filled through proportional representation (PR).



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II. Roles of Legislators



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1. *Delegate* – acts to reflect as closely as possible the interests of his/her constituents.



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A Million Ways That Transparency Has Wrecked Congress

Delegates, Trustees & Transparency

If the public cannot follow all the votes,
then delegate democracy is a dangerous decision



2. *Trustee* – votes on the basis of his/her determination of the best interests of the constituency and the nation.



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3. Politico – moves from trustee to delegate, depending on the issue. A political opportunist.



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“What kind of nation is it...”

That spends far more to kill enemy combatants and Afghan and Iraqi civilians than to help its own citizens who live below the poverty line?

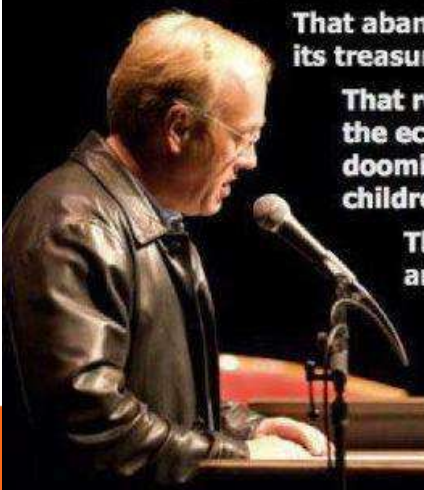

That permits corporations to hold sick children hostage while parents frantically bankrupt themselves to save their sons and daughters?

That abandons its unemployed while it loots its treasury on behalf of speculators?

That refuses to halt the destruction of the ecosystem by the fossil fuel industry, dooming our children and our children's children?

That ignores due process to torture and assassinate its own citizens?

That tosses its mentally ill onto urban heating grates?



CHRIS HEDGES

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4. *Constituency Service* (?) – when legislators use their position to deliver individual benefits to ????????????

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The Representational Role of Members of Congress

- How *should* an elected official represent his/her constituents?
- Trustee--representatives use their own best judgment
- Delegate--representatives vote the way their constituents want them to
- Politico--representatives act as trustee or delegate depending on the issue

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III. Bicameral Legislatures (two houses or chambers)



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1. Forms of Bicameralism

a. *Feudal* – such as the British House of Lords

b. *Federal* –
such as the
American
Senate.

2) American Bicameralism

- The House
 - 435 members, 2-year terms of office
 - Initiates all revenue bills, more influential on budget
 - House Rules Committee
 - Limited debates
- The Senate
 - 100 members, 6-year terms of office
 - Gives “advice & consent,” more influential on foreign affairs
 - Unlimited debates (**filibuster**)

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2. Bicameralism and Majority Rule – problems with representation when one house has power not based on majority.

Intentions of Founders

- ✓ Fear of excessive power in single institution
- ✓ Fear of mob rule by majority
- ✓ Concern over representation
- ✓ Solution to these concerns: bicameralism
 - ✓ 1. Creation of “upper house” in which senators elected by state legislatures rather than people.
 - ✓ 2. Representation concern settled by equal representation in the Senate and proportional in the House
- ✓ Belief that Congress would be dominant branch

(see article on website “What Dem

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IV. Internal Structure and Processes of Legislatures



LEGISLATIVE / JUDICIAL SYSTEMS

1. *Operation by Rules* – rules are not neutral and favor particular interests over others.

The Vested Interests And The Common Man



Thorstein Veblen

LEGISLATIVE / JUDICIAL SYSTEMS



2. *Operation by Committee* – this system allows for representative expertise and creates a “division of labor.”

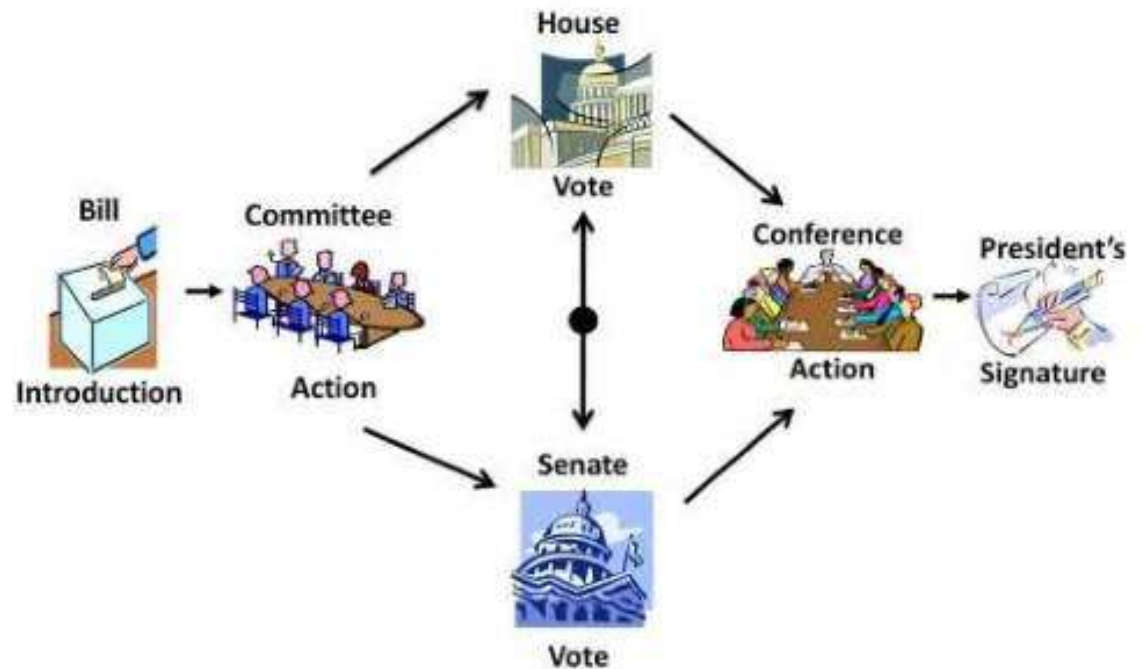
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V. Legislative Powers



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1. *Lawmaking* – actually legislatures do not usually initiate legislation, they instead *react* to proposals made by the executive.



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2. *Power to Remove Executive* – either by impeachment (our system) or by providing a majority for a new government (parliamentary systems).



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The Power of the Purse

- In addition to taxation, Congress has another important financial power: the power to spend Article I, Section 9
- **Appropriations** are public funds allocated for a particular purpose by a legislature.
- To fund any federal project, the government needs money, and Congress must approve this money.



3. Control of Revenue – the proverbial “power of the purse”!

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4. Oversight of the Bureaucracy

Congress and The Bureaucracy

▶ Oversight

- Congress has the responsibility to exercise legislative oversight over the federal bureaucracy.
- Congress uses the following methods to oversee the federal bureaucracy:
 - Exercising budgetary control by setting aside funds for each agency.
 - Holding hearings and conducting investigations.
 - Reorganizing an agency.
 - Setting new guidelines for an agency.
 - Spreading out responsibilities in order to prevent any one agency from becoming too powerful.

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Judicial Systems



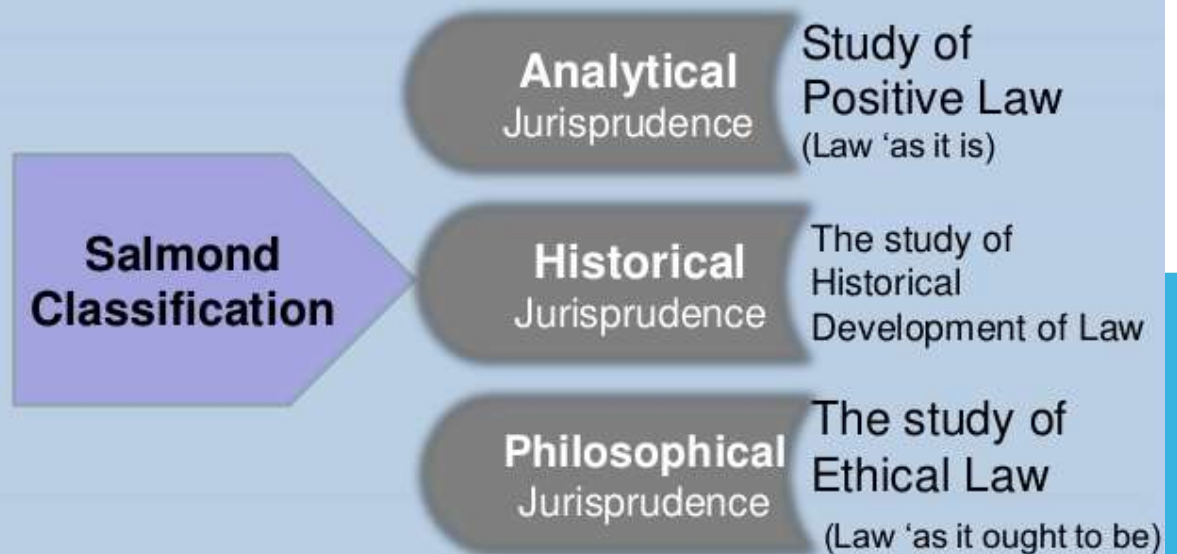
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The study of legal systems, philosophy, and processes is known as *jurisprudence*. Students of jurisprudence debate the role of courts in society.

What is Jurisprudence?

An Introduction

Classification of Jurisprudence



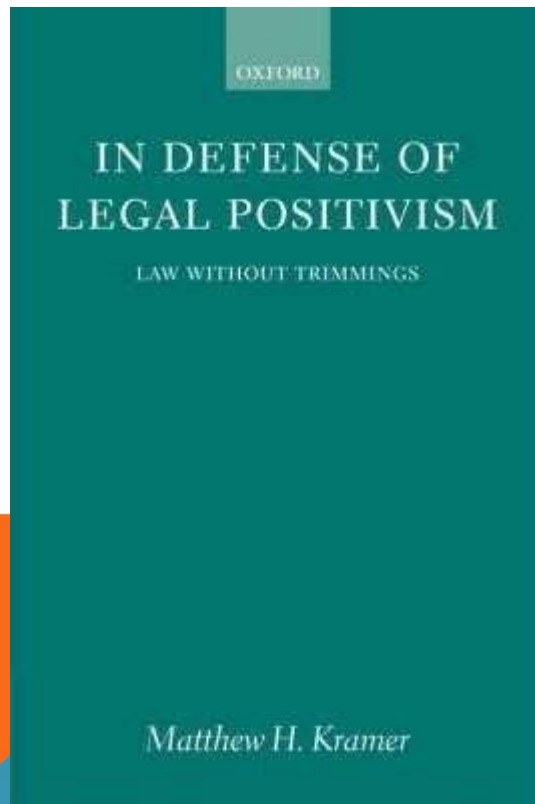
LEGISLATIVE / JUDICIAL SYSTEMS

I. Legal Theory



LEGISLATIVE / JUDICIAL SYSTEMS

1. *Legal Positivism* – argues that the law (and thus the courts) have no higher end than simply to implement government policy, whatever that policy may be.



Legal Positivism Defined

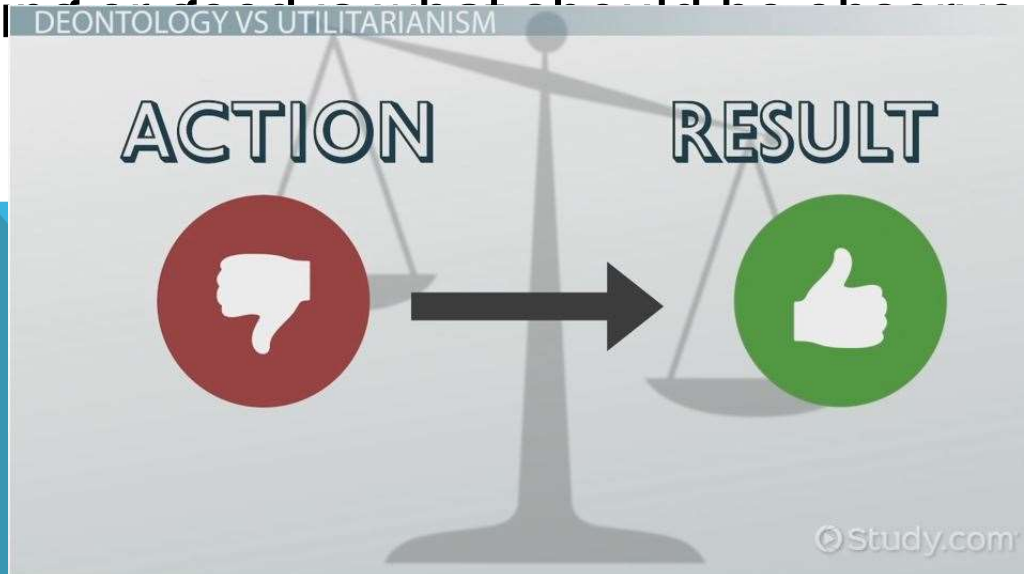
- ‘the belief in a strict separation should be maintained between the law as it is, and the law as it ought to be. The task of courts, then is to pronounce the law, as found in legislative texts and previous court decisions, and not to pronounce on questions of political morality’ – Henk Botha

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2. *Theories of Value* – which values should be used as standards for the law as determined by courts.

a. Deontologists – believe that there is universal values of right and wrong that the law and courts should observe.

b. Utilitarians – believe there are no “higher” values to guide law. Whatever most people find satisfying or useful should be the standard.



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II. Legal Systems



LEGISLATIVE / JUDICIAL SYSTEMS

1. *Common Law* – composed of judicial decisions and subject to continual revision. Relies primarily on the principle of *precedent* (stare decisis).



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SOMETIMES WE MUST
LOOK BEYOND THE LAW'S
LETTER TO REALIZE **JUSTICE**
AND THE **COMMON GOOD**, A
VIRTUE KNOWN AS **EQUITY**.

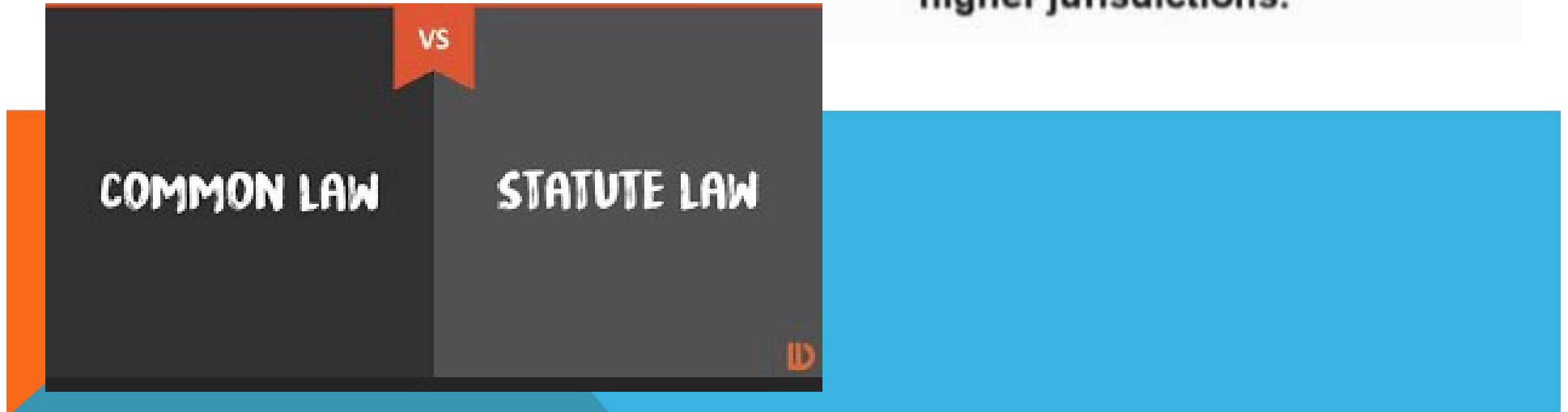
2. *Equity Law* – laws that allow courts to halt actions whose consequences might not be fixable. Makes common law more flexible in its application.

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3. *Statute Law* – laws that are written and passed by legislatures.

Statutory Law – Statutory law is written law that is formed by the legislative branch as opposed to “administrative law” by the executive branch or “common law” by the judiciary branch.

Statutes may be created by the federal government, state government or by local municipalities. Statutes of lower jurisdictions are subordinate to those of higher jurisdictions.



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Civil Law

Civil Law provides remedies to individual victims, which are recognized by statutes or decided cases. The Civil Law creates a framework which delivers the rights and obligations of individuals in their dealings with one another.



4. *Code Law* – also called “civil law” it provides a more comprehensive statement of law for a nation than does statute law

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III. Levels of Legal Authority



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1. *Constitutions* – generally the fundamental or supreme law of the land.

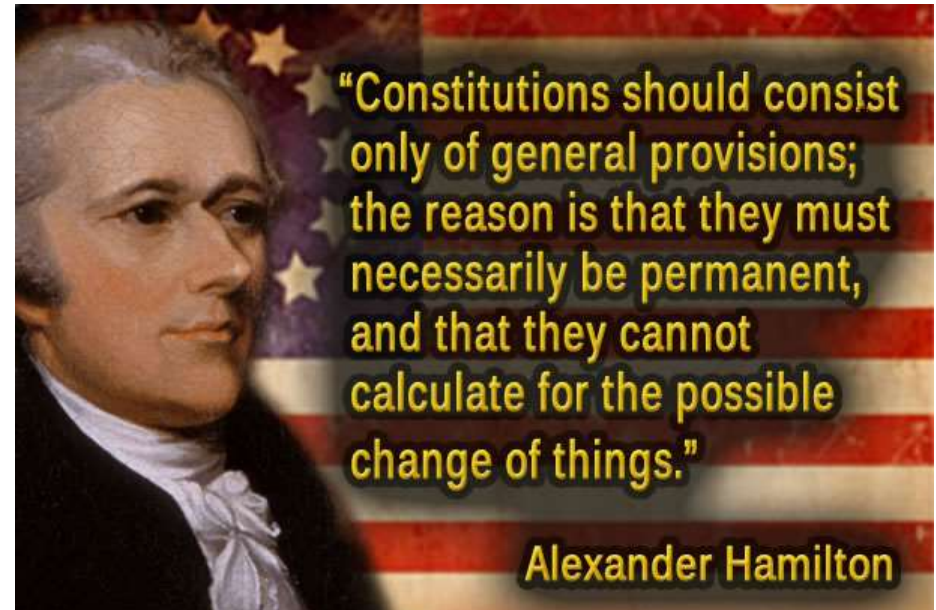


We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Section 3. The Senate shall be composed of two Senators from each State, chosen by the Legislature of the State in which they may be, who shall hold their Offices for six Years, and until their Successors be chosen; but no Senator shall be chosen for more than two Terms; and immediately after every second Term they shall be divided so that one-third may be chosen every second Year; and if Vacancies happen, they shall be filled in the Manner in which the Legislatures of the States may direct. The actual Enumeration of the whole Number of Persons shall be taken within three Years after the first Meeting of the Congress under this Constitution.



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2. Statute and Administrative Law

Examples of Administrative Law

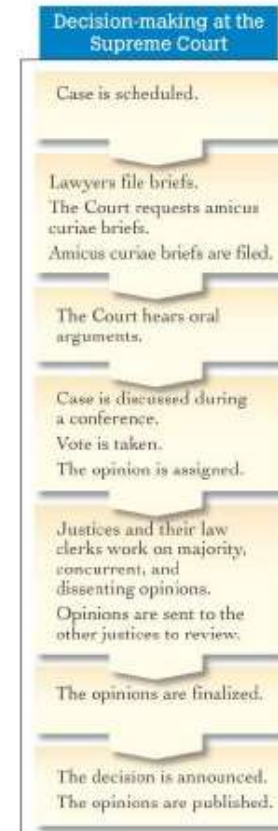
- Minimum Wage in Illinois
 - \$8.25 per hour for those 18 and old
 - Under 18 may be paid \$7.75
- FCC (Federal Communications Commission)
 - It is a violation of federal law to air **obscene** programming at any time. It is also a violation of federal law to air **indecent** programming or **profane** language during certain hours.

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3. *Judicial Decisions*

The Decision Making Process

- **Brief:** documents with legal arguments for a side
- **Precedent:** similar case that has already been decided
- **Amicus Curiae Brief:** friend of the court
- **Swing Vote:** decides a tie
- **Opinion:** legal reasons for a decision
 - Unanimous opinion
 - Majority opinion
 - Concurring opinion
 - Dissenting opinion



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IV. Judicial Structure



LEGISLATIVE / JUDICIAL SYSTEMS

1. *A Model Structure* – basic model has three levels:
 - a. General courts of original jurisdiction (single judge).
 - b. Immediate courts of appeal (multi-judge).
 - c. Supreme Court (multi-judge).



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V. Judicial Review



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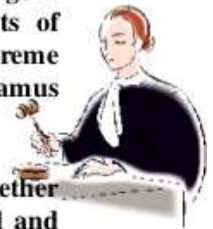
Judicial Review is the power of a court to hold a statute or executive act null and void because it violates the country's constitution.

Marbury v. Madison

The power of judicial review was established in *Marbury v. Madison*. In this case the constitutional issue involved was that the judiciary act of 1789 gave the supreme court original jurisdiction in cases involving the writs of mandamus, however the constitution describes the cases which supreme court has the original jurisdiction, and does not include the mandamus cases.

There were two questions in front of Chief Justice Marshall; first, whether an act repugnant to the constitution can become the law of the land and second, can a court decide whether a law violates the constitution or not.

The Chief Justice Marshall observed that the constitution is the fundamental and paramount law of the nation and therefore an act repugnant to the constitution is void. Also it is the duty of the court to apply the constitution and disregard the act or statute contrary to the constitution, given by the constitution under the supremacy clause.



In the U.S. this power was assumed in 1803 in the case of *Marbury v. Madison*

LEGISLATIVE / JUDICIAL SYSTEMS

Although there is no constitutional or statutory basis for the U.S. Supreme Court to hold acts of the president or Congress unconstitutional, the American people have never seriously questioned the Court's power to exercise judicial review....



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VI. Changing Perspectives on the Courts



LEGISLATIVE / JUDICIAL SYSTEMS

1. *Traditional Approach* – focuses on the evolution of legal doctrine.



LEGISLATIVE / JUDICIAL SYSTEMS

2. *Behavioral Approach* – focuses on the behavioral components of the judicial process (backgrounds of judges and processes by which they are selected).



LEGISLATIVE / JUDICIAL SYSTEMS

3. *Judicial Policy Approach* – focuses on the policy results of a certain court's decisions.



HINDUISM

Upanishadic Hinduism



HINDUISM

2. A very diverse tradition with a wide range of practices and beliefs making generalizations nearly impossible.

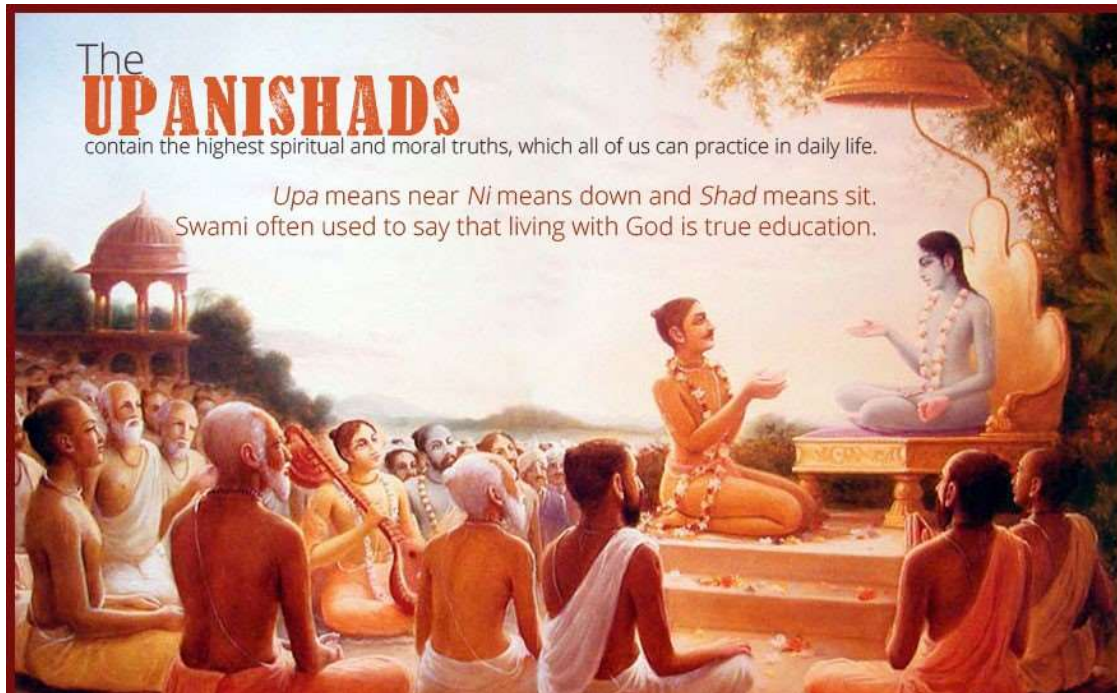


HINDUISM

3. Even the term “Hinduism” is largely a Western construct which refers to the dominant religion of India and surrounding regions.



HINDUISM



4. Still, if one text must be identified, the principle foundation can be found in the *Upanishads*.



HINDUISM

I. Theory of the Universe



HINDUISM



The Upanishads do not reveal the life of any teacher, but simply teach principles.

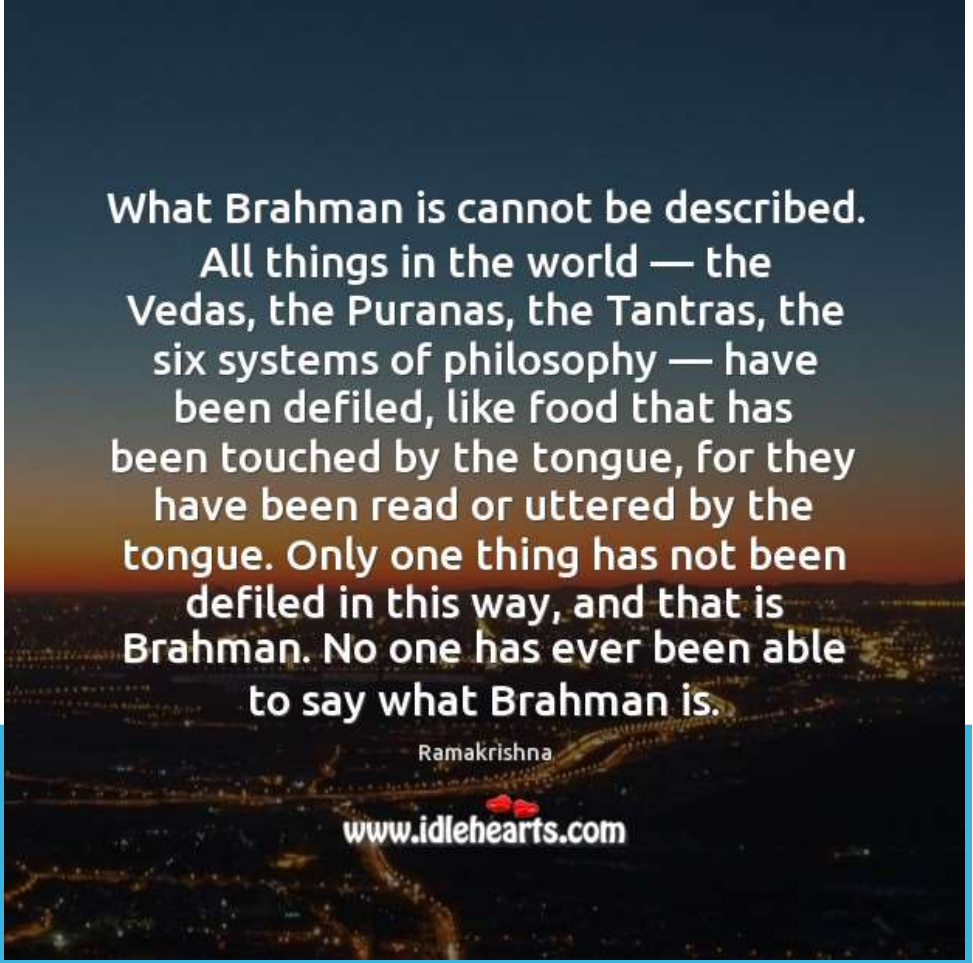
— Swami Vivekananda —

AZ QUOTES

1. The most important philosophical tenet of the *Upanishads* is that there is a single, unifying principle underlying the entire universe.

HINDUISM

2. What lies at the end of this unifying principle is known as *brahman*, a word whose root meaning is “grow,” “increase,” or “expand,” but which ultimately translates to “ultimate reality” or the absolute ground of being.

A quote about Brahman overlaid on a night cityscape. The text is white and centered on a dark background. The city lights are visible in the lower half of the image.

What Brahman is cannot be described. All things in the world — the Vedas, the Puranas, the Tantras, the six systems of philosophy — have been defiled, like food that has been touched by the tongue, for they have been read or uttered by the tongue. Only one thing has not been defiled in this way, and that is Brahman. No one has ever been able to say what Brahman is.

Ramakrishna

www.idlehearts.com

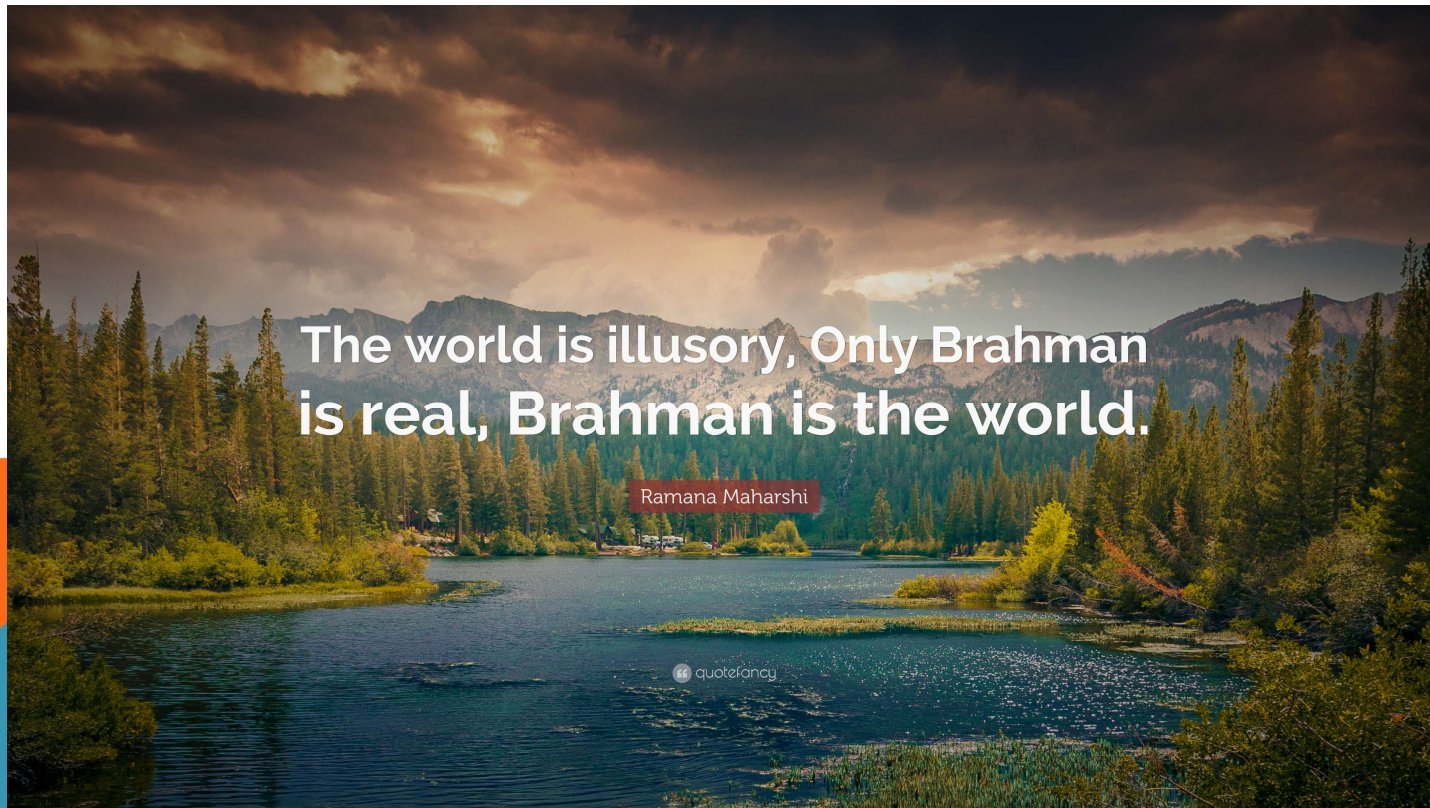
HINDUISM

3. In the beginning of time there was nothing but a single unitary principle (*brahman*), but it divided itself out of loneliness into male/female and thus began to create a universe of diverse forms. As a theory of the universe it thus recognizes the simultaneity of unity and diversity.



HINDUISM

4. And yet, there are passages that suggest that *brahman* is inexpressible and impossible to define and completely beyond the world we experience with our senses.



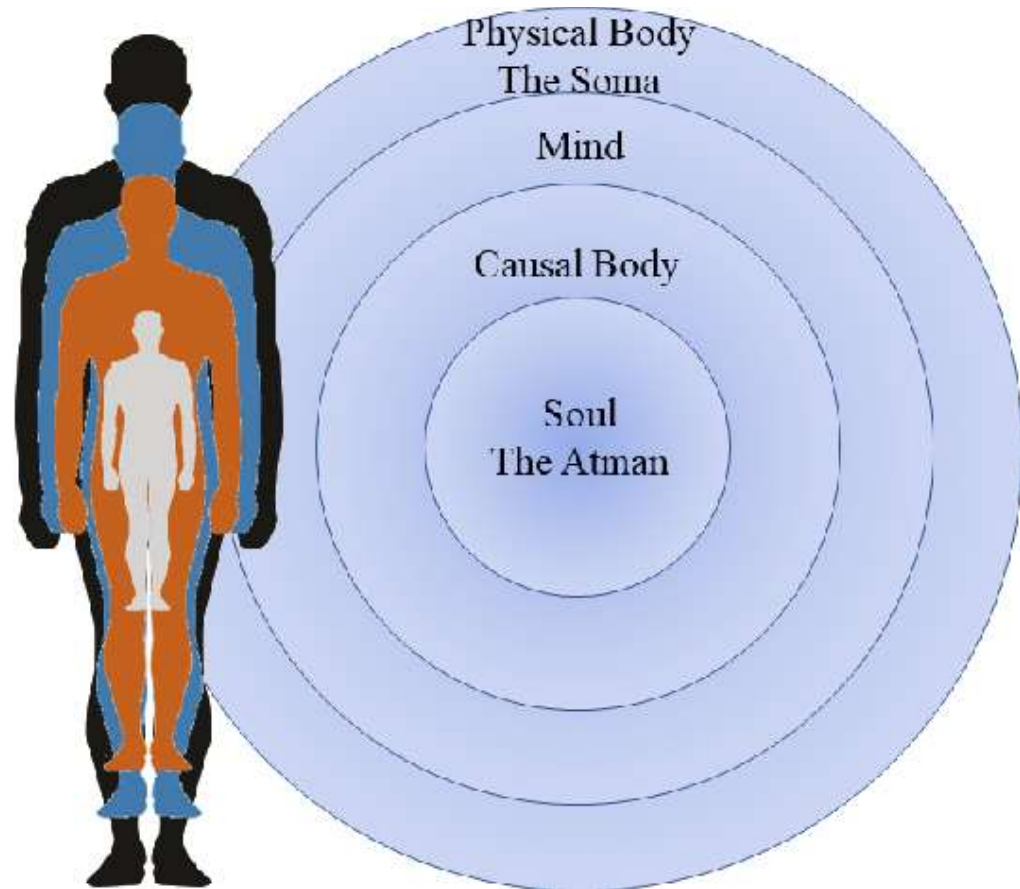
HINDUISM

II. Theory of Human Nature



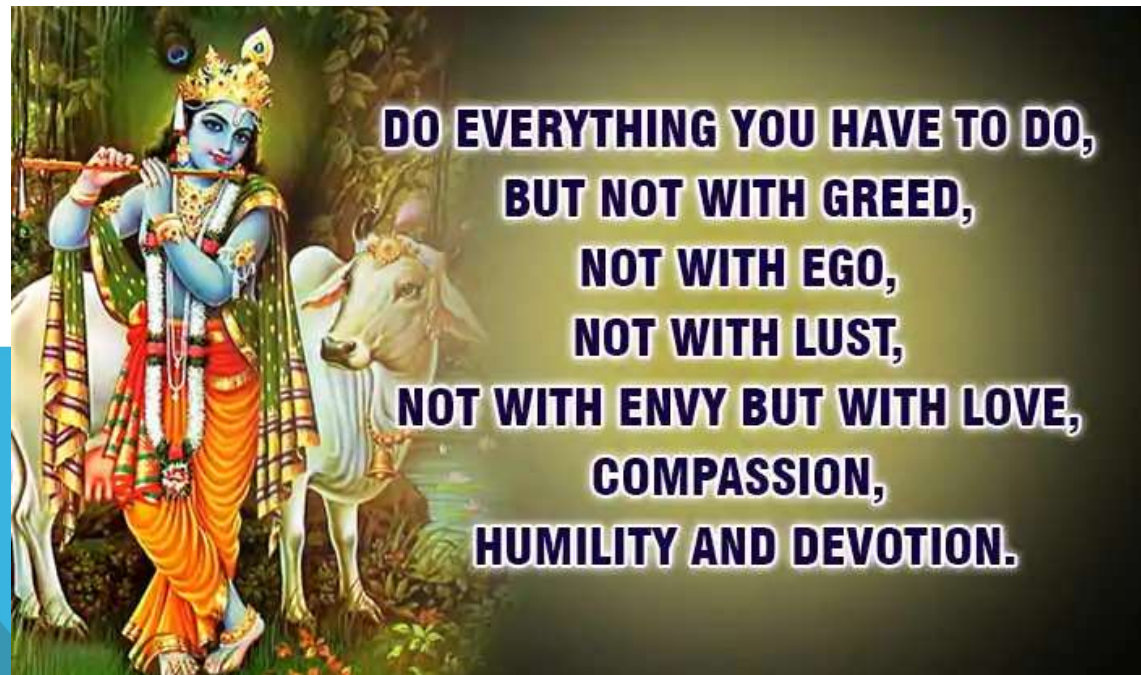
HINDUISM

1. The ultimate self (*atman*), is not an autonomous entity operating independently from other beings but is part of a larger interrelated network of reality.



HINDUISM

The self as ego (*ahamkara*), is identified with the physical body and social environment. But this is not the “true” self. The “essential” self is defined at the *atman*. The essential self transcends individuality, limitation, suffering, and death.



HINDUISM

3. The primary aim of the *Upanishads* is to help you bring about a shift from your transient ego self associated with the body, to the eternal and infinite self (**atman is Brahman!**)

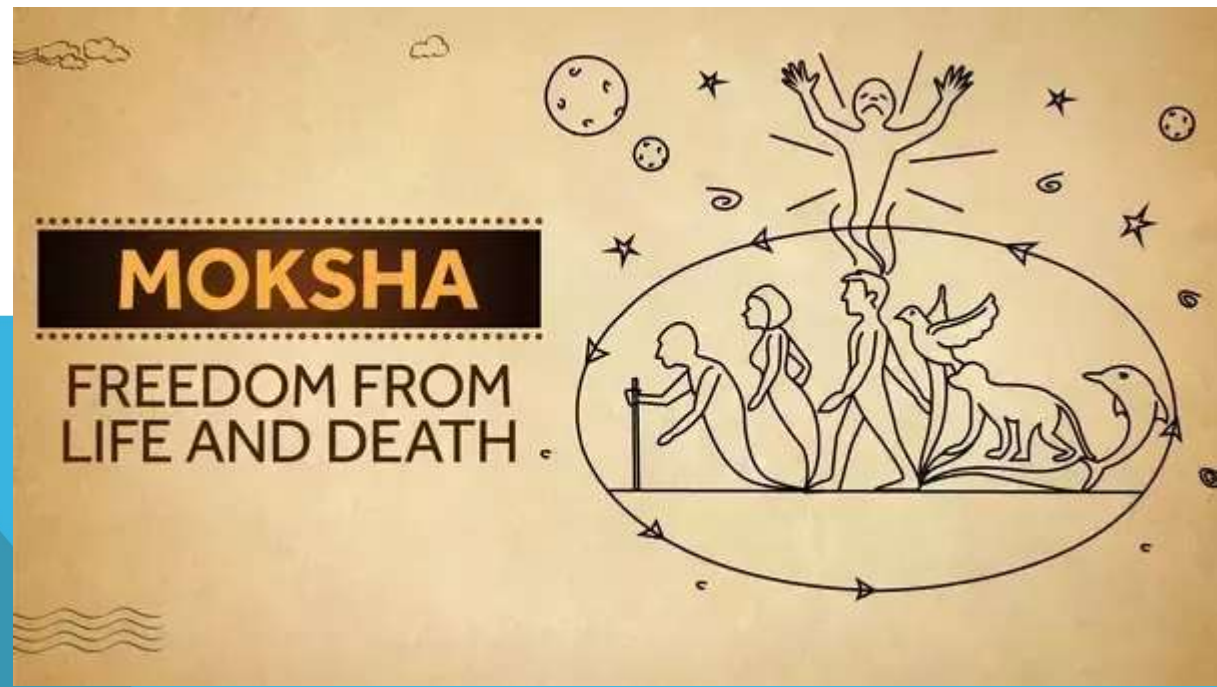
Brahman and Atman



- When a person understands the relationship between Atman and Brahman, that person achieves perfect understanding and release from this world.
- Usually does not come in one lifetime.

HINDUISM

4. After death there are two primary paths. One is reincarnation into another life form, the other is achievement of *moksha* or “liberation” from the ongoing cycle of death and rebirth. Only those who are meditation masters achieve *moksha* (which all beings strive to achieve).



HINDUISM

III. Diagnosis



HINDUISM

1. The main problem with our existence is that we are ignorant of the true nature of reality. This ignorance of the true nature of reality is tantamount to ignorance of the true nature of ourselves.



Who but the Atman is capable of removing the bonds of ignorance, passion and self-interested action?

~ Adi Shankara

HINDUISM

2. As creatures of infinity stuck in highly conditioned and finite possibilities, we spend our lives overwhelmed and blinded by our own egos (*ahamkara*), the result of this being “alienation” from others, from the source of life, from the One, and even from our true self.



And what causes fear? Ignorance of
our own nature.

— *Swami Vivekananda* —

AZ QUOTES

HINDUISM

3. This leads the human condition to one of fragmentation, isolation, and loneliness – and our social world filled with crime, hostile conflict, self-centeredness, and plagued with existential anxiety.

MY EGO IS MY IDENTITY. MY
EGO IS NOT 'ME'. BECAUSE I LIVE
IN IGNORANCE, WHO I AM I
CANNOT SEE.

-RiR Atman In Ravi

[Ownquotes.com/quote/146284](https://ownquotes.com/quote/146284)

HINDUISM

IV. Prescription



HINDUISM

1. The *Upanishadic* path to freedom involves acquiring a *special* kind of knowledge. The way to achieve that is to let go of any attachment to ordinary ways of knowing.



David Frawley

“ The Upanishads do not ask us to convert others but to understand ourselves through critically examining the very foundation of our own being and consciousness. ”

HINDUISM

2. Study scripture and become an expert “scholar” – but also maintain the healthy inquisitiveness of a child.



HINDUISM

V. Critical Discussion



HINDUISM

1. Can philosophically oriented people accept scripture (as found in the *Upanishads*) as a reliable source of truth?



HINDUISM

2. In contrast to many of the theories discussed, Vendanta philosophy does not have much to say about social and political struggles and reforms related to practical morality. In other words, it doesn't give us a lot of practical advice for getting along in our society.



HINDUISM

3. Very little discussion of women and the poor.

What is the Caste System?

- The Indian society is divided into groups based on a person's birth, wealth, or occupation.
- *Adhering to the rules of the caste system was of high importance in the Aryan society.*
- *The highest ranking of India's caste system was made up of priests, called Brahmins.*

The Untouchables are the lowest in the caste system

