

LEGAL THEORY STATEMENTS

TASK SORT THE STATEMENTS BELOW INTO THE 4 THEORY CAMPS — *POSITIVIST / NATURAL LAW / REALIST / CRITICAL LEGAL THEORY*

CAMP # 1 POSITIVIST

- Law is a human creation that provides the greatest good for the greatest number.
- Law is for the good of the state by providing social cohesion and a single interpretation of the law.
- Law has no moral purpose or relationship to conscience.
- Interpreting law means applying the written law to new fact patterns.
- A violation of the law means punishment according to what the law says (strict interpretation).
- Law is meant to control the dark side of human nature.
- Law's primary purpose is to preserve the right to life and liberty.
- Law provides an objective measure of judgement.
- Obeying the law prevents harm.
- Law is a good thing because it brings about good consequences that satisfy interests.

CAMP # 2 NATURAL LAW

- Human reason is based on universal ideas of right and wrong.
- Purpose of law is to protect individuals from injustices and bad law.
- Law has a moral purpose, to persuade people to follow reason and thus, what is right and wrong.
- Any positive law that undermines or contradicts natural law is not valid to the extent it does so.
- The pursuit of true justice is most critical.
- If written law violates reason, written law is invalid.
- There is a body of moral truths that, if we apply our reasoning minds, we can all discover.
- What naturally is, ought to be.

→ What is morally right is to ask what is reasonable.

CAMP # 3 REALIST

- Law is a construct that must have a foundation in what is regarded as reality (what "is" not what "ought to be").
- Presents a more sociological account of the law in action (sociological & psychological factors directly influence judicial decision-making).
- Important in judgement to consider both the letter of the law (meaning) and the intent of the law (purpose).
- Important to consider the circumstances within which the law was meant to function.
- Judges use discretion and creativity in interpreting and applying the law.
- Law is meant to apply to courses of action possible within normal human interactions.
- The law must have a social purpose that jives with political and moral intuitions.
- The law and its interpretation and application are subjective in nature and this reality must be recognized by judges.
- Courts are not constrained by rules, rather judges exercise discretion much more than is generally believed.

CAMP # 4 CRITICAL LEGAL THEORY

- "the master's tools will never dismantle the master's house". (Audre Lorde)
- Those with a great deal of power in society are not likely to give people with less power the means to make social change.
- Law is a powerful tool, and this theory extends the ideas of law's social purpose to form a strong critique of the law's effect on society.
- Argues that since laws reflect individual values, they can contain the biases of powerful social groups.
- Scholars, such as, Noam Chomsky, Patricia Williams, Anthony Paul Farley, Taiaiake Alfred argue that while the law appears to offer justice for all, in practice it is a tool most easily used by people who already have a high degree of power and status.
- The law maintains social inequality by advancing the interests of powerful groups over the interests of marginalized groups.
- Focuses on bias and discrimination in the law concerning gender, race, ethnicity, religion, economic class, sexuality and disability.
- Disputes what is taken to be the natural order of things, be it patriarchy, the construction of race, or the free market.
- Far from being a determinate, coherent body of rules and doctrine, the law is depicted as uncertain, ambiguous and unstable.
- Instead of expressing rationality, the law reproduces political and economic power.
- Law is neither neutral nor objective, rather concepts like equality under the law and rule of law are a legal fiction.
- Ultimately, this theory regards the law as problematic in the sense that it reproduces the oppressive nature of society.
- Law is simply a tool to deepen the status quo of the capitalist class holding power over the working class.

- The inequalities in the economic system reinforced by law.
- Law is simply class rule that enables the wealthy and protects the interests of the economic elite.
- Law is an instrument of oppression by men against women.
- "If you want to know who is being hurt in society, look at what is being done, and to whom, in pornography and then go look for them in other places in the world." Catharine MacKinnon
- Legal institutions are systematically biased against women to gain positions of power & prestige.
- Law plays a key role in women's subordinate status.
- Who creates the law and who interprets the law?