

# LEGAL THEORY STATEMENTS

**TASK** SORT THE STATEMENTS BELOW INTO THE 4 THEORY CAMPS — *POSITIVIST / NATURAL LAW / REALIST / CRITICAL LEGAL THEORY* — BY CUTTING OUT EACH STATEMENT AND PLACING IT UNDER ONE OF THE 4 LEGAL THEORY CAMPS

## CAMP # 1 POSITIVIST

## CAMP # 2 NATURAL LAW

## CAMP # 3 REALIST

## CAMP # 4 CRITICAL LEGAL THEORY

- *Instead of expressing rationality, the law reproduces political and economic power.*
- *Law provides an objective measure of judgement.*
- *Legal institutions are systematically biased against women to gain positions of power & prestige.*
- *The pursuit of true justice is most critical.*
- *The law must have a social purpose that jives with political and moral intuitions.*
- *The law maintains social inequality by advancing the interests of powerful groups over the interests of marginalized groups.*
- *Courts are not constrained by rules, rather judges exercise discretion much more than is generally believed.*
- *Law's primary purpose is to preserve the right to life and liberty.*
- *Obeying the law prevents harm.*
- *Ultimately, this theory regards the law as problematic in the sense that it reproduces the oppressive nature of society.*
- *What is morally right is to ask what is reasonable.*
- *A violation of the law means punishment according to what the law says (strict interpretation).*
- *Law plays a key role in women's subordinate status.*
- *What naturally is, ought to be.*
- *Law is meant to apply to courses of action possible within normal human interactions.*

- *Who creates the law and who interprets the law is an important question to pose.*
- *The law and its interpretation and application are subjective in nature and this reality must be recognized by judges.*
- *The inequalities in the economic system reinforced by law.*
- *There is a body of moral truths that, if we apply our reasoning minds, we can all discover.*
- Law is a human creation that provides the greatest good for the greatest number.
- "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
- Law is for the good of the state by providing social cohesion and a single interpretation of the law.
- Human reason is based on universal ideas of right and wrong.
- Judges use discretion and creativity in interpreting and applying the law.
- Far from being a determinate, coherent body of rules and doctrine, the law is depicted as uncertain, ambiguous and unstable.
- Law is neither neutral nor objective, rather concepts like equality under the law and rule of law are a legal fiction.
- Law has no moral purpose or relationship to conscience.
- "the master's tools will never dismantle the master's house". (Audre Lorde)
- Interpreting law means applying the written law to new fact patterns.
- Important in judgement to consider both the letter of the law (meaning) and the intent of the law (purpose).
- Law is an instrument of oppression by men against women.
- 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.
- If written law violates reason, written law is invalid.
- Law is meant to control the dark side of human nature.
- 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.

- Purpose of law is to protect individuals from injustices and bad law.
- Law is a good thing because it brings about good consequences that satisfy interests.
- Presents a more sociological account of the law in action (sociological & psychological factors directly influence judicial decision-making).
- 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 has a moral purpose, to persuade people to follow reason and thus, what is right and wrong.
- Argues that since laws reflect individual values, they can contain the biases of powerful social groups.
- Law is a construct that must have a foundation in what is regarded as reality (what "is" not what "ought to be").
- 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.
- Any law that undermines or contradicts natural justice is not valid to the extent it does so.
- Law is simply a tool to deepen the status quo of the capitalist class holding power over the working class.
- Important to consider the circumstances within which the law was meant to function.
- Law is simply class rule that enables the wealthy and protects the interests of the economic elite.