LEGAL REALISM

FROM NATURAL LAW TO LEGAL REALISM

Natural Law?

FROM NATURAL LAW TO LEGAL REALISM

Order? Divine? Sovereign? Morality? Universal?

FROM NATURAL LAW TO LEGAL REALISM

Problems?

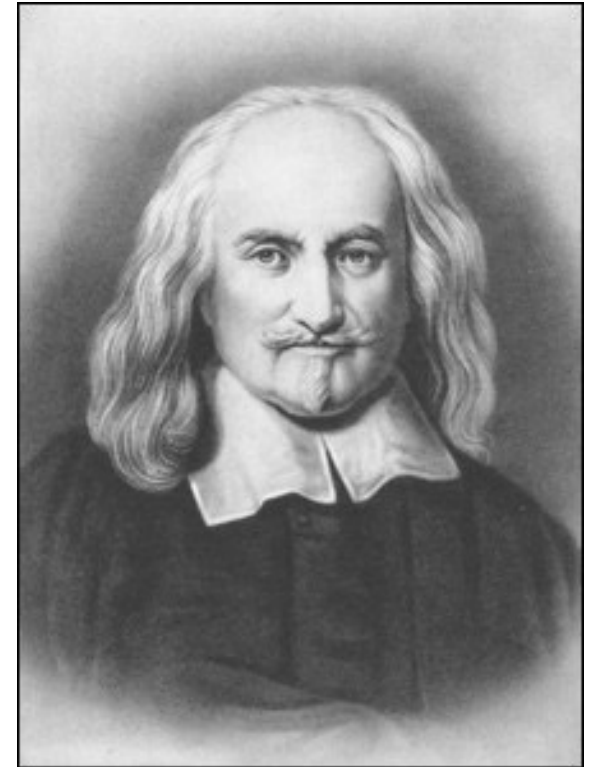# FROM NATURAL LAW TO LEGAL REALISM

Legal Formalism
- Response to problems of natural law
- Attempt to strengthen

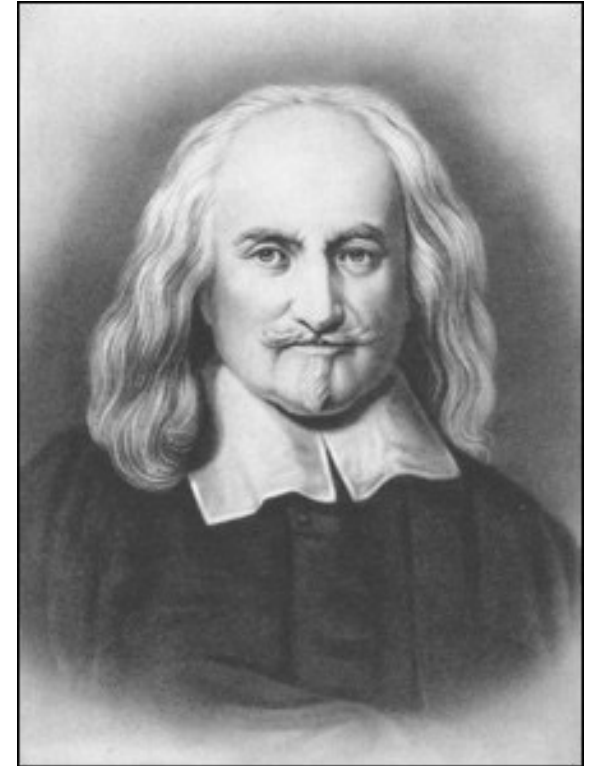# FROM NATURAL LAW TO LEGAL REALISM

Legal Formalism

- Thomas Hobbes
  - Law as **power of sovereign** (ruler, govt) **over subjects**
  - **Law** curbs insatiable desires prevents **"war of all against all"**

FROM NATURAL LAW TO LEGAL REALISM

Legal Formalism

- Thomas Hobbes
  - **Law**, separate from values, should be empirical, **scientific**

FROM NATURAL LAW TO LEGAL REALISM

Legal Formalism

- Problem?

FROM NATURAL LAW TO LEGAL REALISM

Legal Formalism (Example): **Federal Sentencing Guidelines**

- Require race, sex, national origin, or SES irrelevant in determination of sentence
  - Remain scientific: regard **precedent**, similarities for **comparable** sentences

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Legal Formalism (Example): Federal Sentencing Guidelines
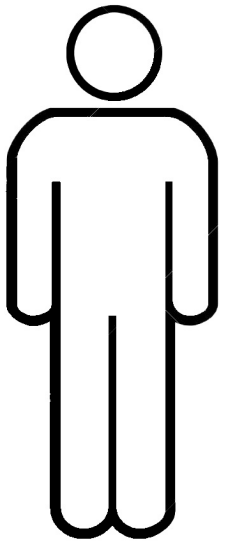
- Problem?

FROM NATURAL LAW TO LEGAL REALISM

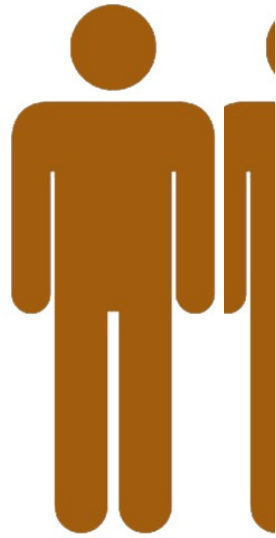Legal Formalism (Example): Federal Sentencing Guidelines

- Sentencing disparities
  - Death penalty: race/sex of victims
    - Those charged w/ **killing white victims were 4.3 times as likely to get death penalty** compared to those who killed black victims

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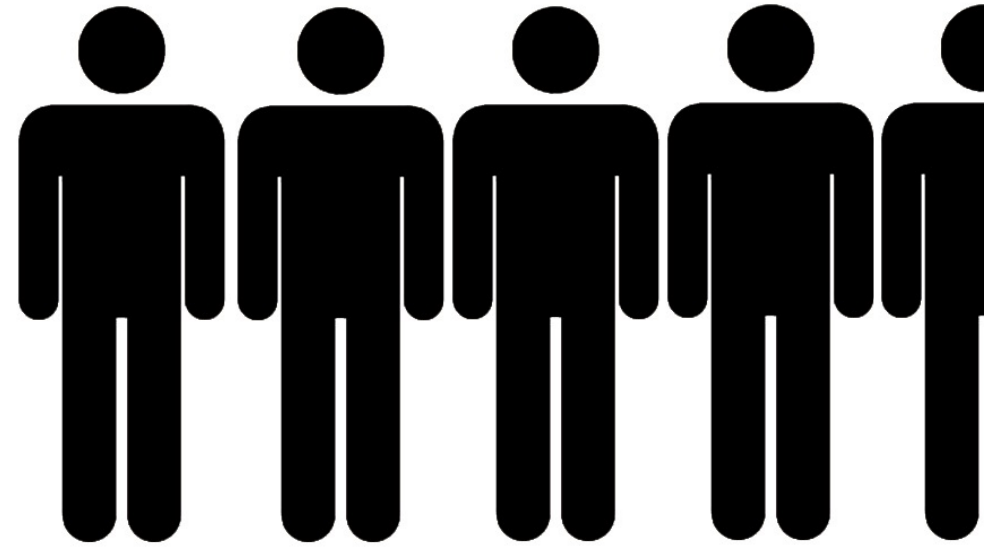
Legal Formalism (Example): Marijuana Arrests (San Diego)

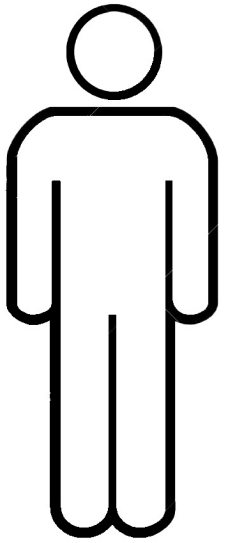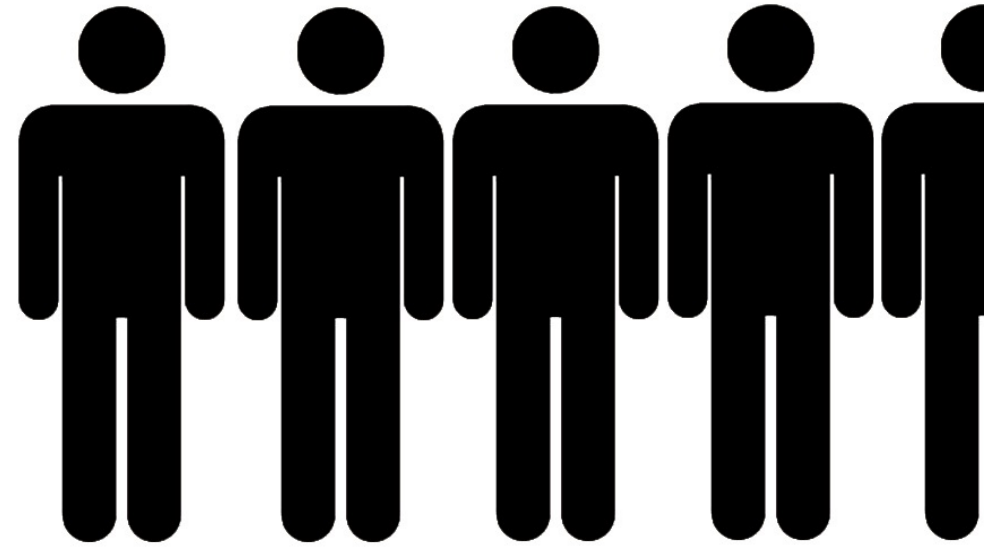1   1.2   4.5
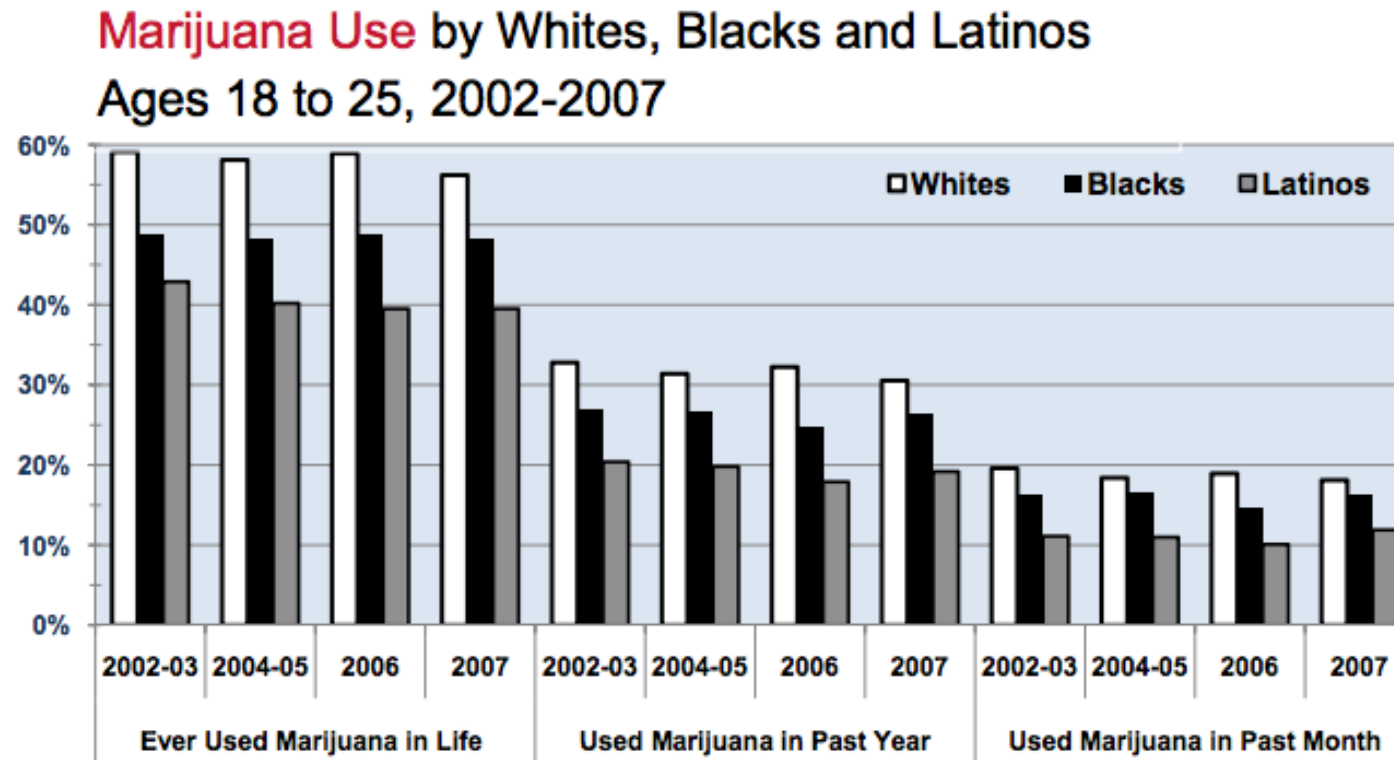
FROM NATURAL LAW TO LEGAL REALISM

Legal Formalism (Example): Marijuana Arrests (U.S.)

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FROM NATURAL LAW TO LEGAL REALISM

Legal Formalism (Example): Marijuana Arrests (U.S.)

Marijuana Use by Whites, Blacks and Latinos Ages 18 to 25, 2002-2007

FROM NATURAL LAW TO LEGAL REALISM

Legal Formalism

- Problems w/ making "empirical" justifications for universal application?

FROM NATURAL LAW TO LEGAL REALISM

Legal Realism

- Saw problems in formalist approach
- Criticism of formalist thinking
- Response to legal formalism

FROM NATURAL LAW TO LEGAL REALISM

Legal Realism

- Views law as <u>not</u> based on sovereign, or natural order, or as result of **scientific logic**, or precedent

- Similar cases would have drastically different outcomes

FROM NATURAL LAW TO LEGAL REALISM

Legal Realism

- Law is a process

- Focuses on "real" reasons judges decide cases
  - Decisions not only based on legal reasoning

- Law **not** completely understood/developed **by applying deductive formal logic**

FROM NATURAL LAW TO LEGAL REALISM

Legal Realism

- Argues that legal theories, **doctrines**, precedent, **did not determine the outcome of decisions**

- Deductive approaches, **formalism**, **didn't reflect reality of law as practiced in courts**

FROM NATURAL LAW TO LEGAL REALISM

Legal Realism

- **Realities** of social, political, environmental, economic contexts shape decisions
- Judges' **experiences** shape decisions

FROM NATURAL LAW TO LEGAL REALISM

Schenck v. United States

FROM NATURAL LAW TO LEGAL REALISM

Legal Realism

- Purpose:
  - Develop perspective that would **explain how judges arrive at decisions**
  - Also, one that would **assist**, rather than hinder **arrival at decisions**

    - Allow inclusion of **experience** and **context**