

FOUNDATIONS OF LAW

1.1 - LAW...WHO NEEDS IT?

What if...

What if people could do **WHATEVER** they wanted, **WHEN** they wanted, **WHERE** they wanted, and **HOW** they wanted? What would society look like? Chances are, society would look chaotic and disorganized. Why? People are different from one another and, if given the opportunity to do whatever they wanted, they would each act only according to their own desires, and not consider anyone else's desires or opinions. A society founded on such unregulated behaviour of its citizens would look like complete disorganization, or anarchy. **Anarchy** is a state of disorder in a society resulting from a lack of government authority. No person or property is completely safe in a system of anarchy.

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On the other hand, laws exist to maintain peace and order in society by establishing a structure of acceptable behaviour. Through this structure, laws are designed to protect people, property, and the rights of people.

Rules vs Laws

It is important to understand, that not all guidelines governing human behaviour are laws. For example, rules are not laws. There may be rules in a hockey game, and rules in a school; but these are not laws. Laws apply to everyone in a society, whereas rules in hockey or school apply only to those people participating in the hockey game, or are students of the school. Another key difference between rules and laws is that laws are enforced by the courts, but rules are not. Essentially, all laws are rules; but, not all rules are laws.

Definition of Law

So, what then is law...exactly? Law may be defined in a number of different ways. For the purposes of this text however, **law** is considered to be the regulation of life in society based on principles of reason and fairness. Laws don't stay the same forever. Instead, the law changes continually. Law evolves to reflect both the increase in population, and the increase in the complexity of modern societies.

law...the regulation of life in society based on principles of reason and fairness

Law and Morality

Law and morality are connected. **Morality** is a system of values that outlines concepts of right and wrong, as well as good and bad behaviours. Every society designs and enforces its own laws. These laws tend to reflect the standards of morality that the society's

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citizens value. So, in this way it could be said that laws, for the most part, reflect the moral standards of the society at that time.

Law and Justice

“We demand justice!!”, might be a protest cry heard from a mob of angry demonstrators, but what is this thing called ‘justice’? Essentially, justice means to act ‘justly’. Hmm...that didn’t help much. Instead of trying to define justice, perhaps it is more effective to discuss what justice looks like. According to Blair, Costiniuk, Moles, O’Malley, and Wasserman (2009), justice in a legal context has four key characteristics.

The first characteristic is that all legal cases should be treated alike, and that different cases should be treated differently. For example, two cases where a person dies should be treated ‘alike’, in that the court should determine whether there was any wrongdoing resulting in each death. However, if one death was determined to be a murder, while the other was a death resulting from natural causes; then only the murder would be examined through the legal system. Second, a law is seen as unjust if it discriminates on the basis of irrelevant characteristics. Irrelevant characteristics are any facts that are not directly related to the legal issue at hand. Third, justice should be impartially applied, regardless of a person’s position or financial status. People that are rich or powerful are often thought to have an advantage in the legal system; but just laws prevent people such as this from having any legal advantage. Finally, justice suggests that the law conforms to society’s values and beliefs. This means that the law should reflect what the citizens think is important. So then, the law is considered to be ‘just’ when it displays these four fundamental characteristics of justice.

characteristics of justice:

- all cases treated alike - but treat different cases differently
- laws shouldn’t discriminate based on irrelevant characteristics
- laws shouldn’t be influenced by a person’s power or wealth
- the law should conform to society’s values and beliefs

Why Study Law?

If the law reflects what society considers to be important at the time, then the study of law is important - allowing citizens to be better equipped to contribute to positive change in the society, as well as to live satisfying and productive lives. The study of law essentially becomes the study of people, their values, and how they solve conflicts.

REFERENCES

Blair, A., Costiniuk, W., Moles, G., O’Malley, L., & Wasserman, A. (2009). *Law in Action*. Don Mills, ON: Pearson Education Canada.