

1.2: What Is Law and What Functions Does It Serve?

Generally, *a law* is a rule that binds everyone—individuals, institutions, and other entities—in a particular community.^[1] By contrast, *the rule of law* is a principle under which everyone is bound by laws that are (1) established by the government, (2) equally enforced, (3) adjudicated by an adjudicator: make a formal judgment or decision regarding a problem or disputed matter independently, and (4) consistent with one's rights and the principles underlying those rights.^[2] Also, under the rule of law, laws are public knowledge and should be clear in meaning to the community members are on notice of their governing authorities, expectations for conduct, penalties for conduct violations, and how to obtain redress for grievances.

Whether a city, a county, a state, a nation, or another type of community, a **legal system** that the community recognizes implements and governs the rule of law. The legal system and its laws can serve to (1) keep the peace, (2) maintain the status quo, (3) preserve individual rights, (4) protect identified marginalized groups, (5) promote social justice, and (6) provide for orderly social change. Some legal systems serve these purposes better than others.

Note

The United States legal system functions under the rule of law, and its authority originates from the US Constitution, which we will discuss further in later chapters.

Although a nation ruled by an authoritarian government may keep the peace and maintain the status quo, it may also oppress minorities or political opponents (e.g., China, Zimbabwe, or Syria). Under colonialism, European nations often imposed peace in nations whose borders were created by those same European nations. With regard to the functions of the law, the empires may have kept the peace—largely with force—but they changed the status quo and seldom promoted the native peoples' rights or social justice.

In nations with various ethnic and tribal groups, it is often difficult for a single united government to rule effectively. In Rwanda, for example, power struggles between Hutus and Tutsis resulted in the genocide of the Tutsi minority. In nations of the former Soviet Union, the withdrawal of a central power created power vacuums that were exploited by local leaders. When Yugoslavia broke up, the different ethnic groups—Croats, Bosniaks, and Serbs—fought bitterly rather than share power. In Iraq and Afghanistan, the blending of different groups of families, tribes, sects, and ethnic groups into an effective national governing body continues to be a challenge. These situations highlight the struggle of a nation to implement and maintain the rule of law.

Notes

1. *Law and the rule of law*. (n.d.). Judicial Learning Center.
2. *Overview - Rule of law*. (n.d.). United States Courts.

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