

3.1: Functions and Limitations of Law

Law is a formal means of social control. Society uses **laws** (rules designed to control citizen's behaviors) so that these behaviors will conform to societal norms, cultures, mores, traditions, and expectations. Because courts must interpret and enforce these rules, laws differ from many other forms of social control. Both formal and informal social control have the capacity to change behavior. Informal social control, such as social media (including Facebook, Instagram, and Twitter) has a tremendous impact on what people wear, how they think, how they speak, what people value, and perhaps how they vote. Social media's impact on human behavior cannot be overstated, but because these informal controls are largely unenforceable through the courts as they are not considered the law.

Law and legal rules promote social control by resolving basic value conflicts, settling individual disputes, and making rules that even our rulers must follow. Kerper (1979) recognized the advantages of law in fostering social control and identified four major limitations of the law. First, she noted, the law often cannot gain community support without support of other social institutions. ^[1] (Consider, for example, the United States Supreme Court (Court) case of *Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 483 (1954), which declared racially segregated schools unconstitutional. The decision was largely unpopular in the southern states, and many had decided to not follow the Court's holding. Ultimately, the Court had to call in the National Guard to enforce its decision requiring schools to be integrated.) Second, even with community support, the law cannot compel certain types of conduct contrary to human nature. Third, the law's resolution of disputes is dependent upon a complicated and expensive fact-finding process. Finally, the law changes slowly. ^[2]

Lippman (2015) also noted that the law does not always achieve its purposes of social control, dispute resolution, and social change, but rather can harm society. He refers to this as the "dysfunctions of law."

"Law does not always protect individuals and result in beneficial social progress. Law can be used to repress individuals and limit their rights. The respect that is accorded to the legal system can mask the dysfunctional role of the law. Dysfunctional means that the law is promoting inequality or serving the interests of a small number of individuals rather than promoting the welfare of society or is impeding the enjoyment of human rights." ^[3]

Similarly, Lawrence Friedman has identified several dysfunctions of law: legal actions may be brought to harass individuals or to gain revenge rather than redress a legal wrong; the law may reflect biases and prejudices or reflect the interest of powerful economic interests; the law may be used by totalitarian regimes as an instrument of repression; the law can be too rigid because it is based on a clear set of rules that don't always fit neatly (for example, Friedman notes that the rules of self-defense do not apply in situations in which battered women use force to repel consistent abuse because of the law's requirement that the threat be immediate); the law may be slow to change because of its reliance on precedent (he also notes that judges are also concerned about maintaining respect for the law and hesitate to introduce change that society is not ready to accept); that the law denies equal access to justice because of inability to pay for legal services; that courts are reluctant to second-guess the decisions of political decision-makers, particularly in times of war and crisis; that reliance on law and courts can discourage democratic political activism because individuals and groups, when they look to courts to decide issues, divert energy from lobbying the legislature and from building political coalitions for elections; and finally, that law may impede social change because it may limit the ability of individuals to use the law to vindicate their rights and liberties. ^[4]

1. Kerper, H. B. (1979). *Introduction to the criminal justice system* (2nd ed.). West Publishing Company. ↩
2. Kerper, H. B. (1979). *Introduction to the criminal justice system* (2nd ed., pp. 11). West Publishing Company. ↩
3. Lippman, M. R. (2015). *Law and society* (pp. 11). Thousand Oaks, CA : SAGE Publications. ↩
4. Lippman, M. R. (2015). *Law and society* (pp. 25). Thousand Oaks, CA : SAGE Publications. ↩

This page titled [3.1: Functions and Limitations of Law](#) is shared under a [CC BY-SA](#) license and was authored, remixed, and/or curated by [Alison S. Burke, David Carter, Brian Fedorek, Tiffany Morey, Lore Rutz-Burri, & Shanell Sanchez \(OpenOregon\)](#) .

- [3.1: Functions and Limitations of Law](#) by Alison S. Burke, David Carter, Brian Fedorek, Tiffany Morey, Lore Rutz-Burri, & Shanell Sanchez is licensed [CC BY-SA 4.0](#).