

As you begin your study of law you will probably ask yourself this question. Unfortunately there is no one clear answer. Some attempted definitions are outlined below. They may help you clarify your position on the law.

Austin

“The law is what the sovereign commands, and...on the other hand, nothing can be law which is not commanded by the sovereign.” Austin defined the law “as the command of the sovereign body... (where) these commands were backed by threats of sanctions to be applied in the event of disobedience.”

Erllich

The rules, etc., which actually order or regulate a society; in particular the rules which constitute the inner ordering of associations (ie., corporations, churches, family etc.) that regulate society... the inner order of associations represents true law (ie., ‘living law’) as opposed to lawyers’ law...this would give the appearance that any social control of a group, association or institution constitutes law.

Finnis

There are human goods that can be secured only through the institutions of human law, and requirements of practical reasonableness that only those institutions can satisfy.

Weber

An order shall be called law when it is guaranteed by the likelihood that (physical or psychological) coercion aiming at bringing about conduct in conformity with the order, or at avenging its violations, will be exercised by a staff of people especially holding themselves ready for this purpose.

Holmes

The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by law.

Timasheff

Considers law as existing in any societal group or association which has a body of norms backed by the authority of the group or association.

Davis

Law is the formal means of social control that involves the use of rules that are interpreted and are enforceable by the courts of a political community.

Marx

A coercive system devised to maintain the privileges of the propertied class. Law arises from the economy and is an institutionalized ideology which allows the elite to control the masses ... in order to understand the legal concept, one must examine the bases of power in society, the societal social stratification structure, and examine the structure of the state.

Parsons

A set of rules backed by certain types of sanctions, legitimized in certain ways and applied in certain ways. Law should be treated as a generalized mechanism of social control that operates diffusely in all sector of society...Law concerns patterns, norms and rules that are applied to the acts and to the roles of people and to the collectivities of which they are members...

The primary function of legal system is integrative as it serves to mitigate potential elements of conflict and maintains social intercourse. A second function of law is legitimation (i.e., enactment of statutes by duly authorized bodies using proper procedures). A third function of law is interpretation, the interpretative function has two aspects: rule focused (i.e., integrity of the rule system) and client focused (i.e., relation of rules to individuals, groups and collectivities upon whom they impinge).

Selznick

Law is ...a general element in the structure of many different groups and associations in society, not limited to the political structure of the state. The law is an important agency of social control but is oriented more toward the persuasive than toward the coercive end of the social control continuum. Thus law can be seen as the normative system of societal group, associations and institutions.

Concise Oxford Dictionary

Body of enacted or customary rules recognized by a community as binding.

1. Consider the definitions offered by Erlich, Timasheff and Selznick. What is common to these definitions? Are the definitions offered by these writers near to what we normally think of as “law”? If not, why are the rules of a church, for example, not the same as rules of “law”? What is lawyers’ law?
2. Consider the definitions offered by Davis, Parsons and Holmes. What is common to these definitions? What does Parsons mean when he says law consists of rules “applied in certain ways”? Is there a difference between Holmes and Davis? Is it possible to have “law” without courts? What is a court?
3. Compare the definitions of Weber and Austin. How important is the element of “coercion” in the definition of law? Is the element of coercion in itself sufficient to define law? Contrast the emphasis of Parsons. Is the “integrative” function of law consistent with Webers’ approach?
4. Compare the views of Marx, Austin and Finnis. How are these views different? Marx has a very different view from the other writers. What is the main difference?
5. In his book *The Concept of Law* Professor Hart asked the question “what is law?” but refused to give an answer. He said “...nothing concise enough to be recognized as a definition could provide a satisfactory answer to it. The underlying issues are too different from each other and too fundamental to be capable of this sort of resolution.” Do you agree? Explain.
6. What is law? How would you define “law”? Why?