

Origins of Law

by Sophia



WHAT'S COVERED

In this lesson, you will become familiar with the primary sources of law in the United States. Specifically, this lesson will cover:

1. Law vs. Social Customs

Where does the law come from? How do you know right from wrong? Certainly your caretakers taught you right from wrong when you were a child. Your teachers, community elders, and other people who were in the position to help shape your ideas about appropriate manners of behavior also influenced your understanding of which behaviors are acceptable and which are not.

Additionally, employers often have very firm ideas about how their employees should conduct themselves. Those ideas may be conveyed through employers' codes of ethics, employee handbooks, or organizational cultures.

Of course, actions that are considered “wrong” and inappropriate behavior are not always violations of the law. They may simply represent social norms.

➞ **EXAMPLE** It is generally not acceptable to ask strangers about their income. It is not illegal to do such a thing, but it is considered impolite. Imagine that you are interviewing for a position that you really want. Can you imagine yourself asking your potential employer how much money he or she makes? It would not be illegal for the employer to refuse to hire you based on your lack of social skills. However, it would be illegal for the employer not to hire you based solely on your race.

So what is the difference? One type of “right from wrong” is based on societal norms and cultural expectations. The other type of “right from wrong” is based on a source recognized as holding legitimate authority to make, and enforce, law within our society.

Someone may choose to ignore social customs, and there are usually negative social or professional consequences to doing so. A person who violates social customs may be considered a boor, or people may try to avoid that person because his or her actions and comments make others uncomfortable. However, no legal repercussions follow the violation of social customs.

Violations of law are different. Violating the law carries penalties, such as liability or loss of liberty, depending on the type of violation. While we may generally decide whether or not to conform to social customs, we are compelled to obey the law under threat of penalty.

2. Public vs. Private Law

Law can generally be classified as public law or private law. Public law applies to everyone. It is law that has been created by some legitimate authority with the power to create law, and it has been “handed down” to the people within its jurisdiction.

In the United States, the lawmaking authority itself is also subject to those laws, because no one is “above” the law. If the law is violated, penalties can be levied against the violator. These penalties are also “handed down” from some recognized source of authority, like the judiciary.

Of course, people in the United States may participate in many law-creating activities.

➞ **EXAMPLE** People may vote in elections for legislators, who, in turn, create legislation. Likewise, if people have a legal claim, their case may be heard by the judiciary.

It’s important to note, however, that not all law is public law. Private law is typically understood to be law that is binding on specific parties.

➞ **EXAMPLE** Parties to a contract are involved in a private law agreement. The terms of the contract apply to the parties of the contract, but not to anyone else. If the parties have a contract dispute, they will be able to use dispute-resolution methods to resolve it. This is because both parties of the contract recognize the judiciary as a legitimate authority that can resolve the contract dispute. However, regardless of the resolution, the terms of the contract and the remedy for breach will apply only to the parties of the contract and not to everyone else.

3. Procedural vs. Substantive Law

Additionally, some law is procedural and some law is substantive. **Procedural law** describes the legal rules that must be followed. In other words, it details the process or rules that are legally required.

➞ **EXAMPLE** The U.S. government must generally obtain a warrant before searching someone’s private home. If the process of obtaining the warrant is ignored or performed illegally, then procedural law has been violated.

Substantive law refers to the actual substance of the law or the merits of the claim, case, or action. Substantive law embodies the ideas of legal rights and duties, and is captured by our different sources of law, like statutes, the Constitution, or common law.

Let’s look at these two types in a little more depth.



TERMS TO KNOW

Substantive Law

The part of law that defines, creates, and describes rights and duties (as opposed to the procedural laws that merely govern how substantive laws are enforced.)

Procedural Law

Also called adjective or remedial law, the rules that govern the method of enforcement of substantive law.

3a Substantive Law

We are used to seeing laws as substantive; that is, there is some rule of conduct or behavior that is called for or some action that is proscribed (prohibited).

The substantive rules tell us how to act with one another and with the government.

IN CONTEXT

All of the following are substantive rules of law and provide a kind of command or direction to citizens:

1. Drive no more than fifty-five miles per hour where that speed limit is posted.
2. Do not conspire to fix prices with competitors in the U.S. market.
3. Do not falsely represent the curative effects of your over-the-counter herbal remedy.
4. Do not drive your motor vehicle through an intersection while a red traffic signal faces the direction you are coming from.
5. Do not discriminate against job applicants or employees on the basis of their race, sex, religion, or national origin.
6. Do not discharge certain pollutants into the river without first getting a discharge permit.

3b. Procedural Law

In contrast, procedural laws are the rules of courts and administrative agencies. They tell us how to proceed if there is a substantive-law problem.

IN CONTEXT

If you drive fifty-three miles per hour in a forty mile-per-hour zone on Main Street on a Saturday night and get a ticket, you have broken a substantive rule of law (the posted speed limit). Just how and what gets decided in court is a matter of procedural law:

- Is the police officer's word final, or will you go before a judge?
- If so, who goes first, you or the officer?
- Do you have the right to be represented by legal counsel?
- Does the hearing or trial have to occur within a certain time period?
- How long can the state take to bring its case?
- What kinds of evidence will be relevant?

In the United States, all state procedural laws must be fair, since the due process clause of the Fourteenth Amendment directs that no state shall deprive any citizen of "life, liberty, or property," without due process of law. (The \$200 fine plus court costs is designed to deprive you of property - your money - if you violate the speed limit.)

Federal laws must also be fair, because the Fifth Amendment to the U.S. Constitution has the exact same due process language as the Fourteenth Amendment. This suggests that some laws are more powerful or important than others, which is true.



SUMMARY

In this lesson, you learned that **the difference between the law and social customs** is that social customs often guide our ideas of right and wrong, but they are not enforceable by law. You also learned that **some laws are public**, meaning that they apply to everyone, and **some laws are private**, meaning that they apply only to specific parties. Likewise, there is an important **distinction between substantive and procedural laws**. Substantive laws dictate how we act with one another and with the government, while procedural laws refer to the rules of courts and administrative agencies.

Best of luck in your learning!

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