

The Function of Law



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What is Law?

*“an order will be called law if it is **externally guaranteed** by the probability that **physical or psychological coercion will be applied** by a staff of people **in order to bring about compliance or avenge violation**”*

- Max Weber



What is Law?

A **system** of...

- ◆ rules
- ◆ administrative procedures

that **outlines** how to ...

- ◆ sanction rule-violators
- ◆ enforce the rules
- ◆ change the rules and procedures



But who/what creates law?

god/gods?

custom?

constitution?

the State?





What is Law?

Law implies the existence of a **government** (also called **the State**)

- ◆ Stateless societies have norms, customs, and other forms of social control, but not laws



Questions to Consider

*How does society make sure rules
are followed?*

*Who sets the rules and/or norms?
And whose interests do they
represent?*

*What does it take for a rule to
become a law?*



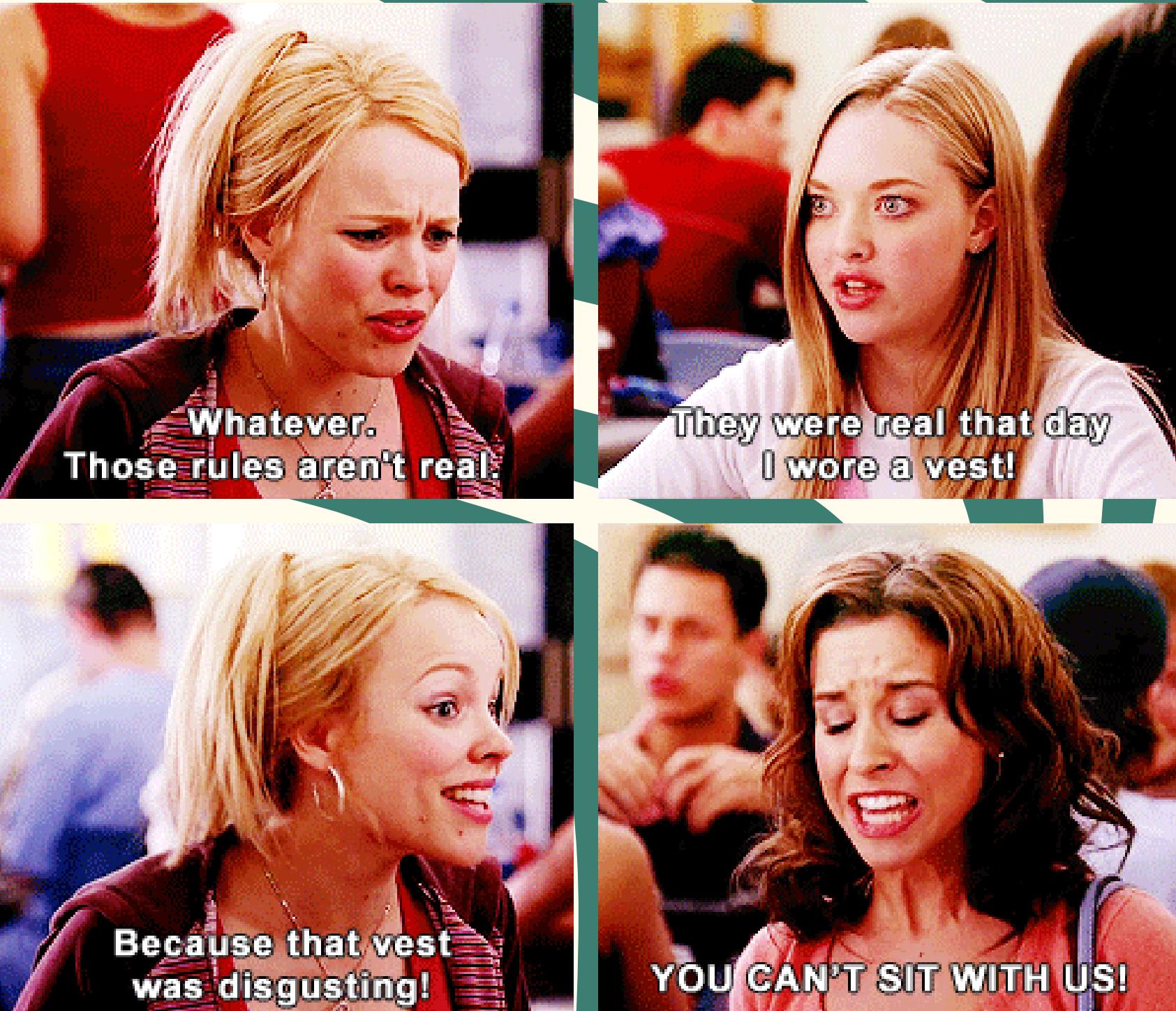
Law as Social Control

Informal Social Control

- ❖ Socialization, Family, Peers, Shaming
- ❖ <https://www.youtube.com/watch?v=dDAbdMv14ls>

Formal Social Control

- ❖ Laws, Law Enforcement, Prison, Detainment



Law as Social Control

Law is defined as:

- ◆ “*a system of rules that have been formulated through a government process, regardless of whether that government is a democracy, a republic, or a monarchy.*”



Law is formal social
control enforced by a
government

Types of Law

Civil Law

- ◆ Accumulated written formal codes from earlier civilizations
- ◆ Legislated statutes passed by democratic governments (statutory law)
- ◆ Orders that come from the executive branch of government (executive orders)

Common Law

- ◆ Judge/court-made
- ◆ Adjudication of individual cases based on past precedent



Other Types of Law

Public

Regulates structure of government

Regulates individuals' relationship with the state
(e.g. criminal & constitutional law)

Private

Regulates relations between individuals (e.g.
contract law, marriages, family law, property law)



Criminal Law



- ◆ A code that specifies actions (or omissions) that constitute a crime
- ◆ Defines crimes and punishments
- ◆ Defines how crimes are adjudicated (e.g., steps in a trial, jury selection, etc.)



Criminal Law

outlines the **Pyramid of Crime**

- ◆ Degree of harm caused
- ◆ Extent of consensus among society that harm produced by the offender is serious
- ◆ Degree of societal response



What is a Crime?

*An intentional **act** or **omission** in violation of criminal law
committed without defense or justification, and sanctioned by the
state as a felony/misdemeanor*





What is Law for?

Regulation of the relations between people, in three areas...

Social Control

- ◆ helping members of society **conform** to normative expectations

Dispute Resolution

- ◆ helping solve **conflicts** between individuals

Social Change

- ◆ helping regulate **fairness** amongst members of society



Social Control

Informal

Norms ✨

Formal

✨ Laws & Law Enforcement



Informal Social Control

Norms

- ◆ tell us to act
- ◆ are society's rules about right and wrong behavior
- ◆ tell us what we should or should not do



Formal Social Control

Law Enforcement

- ◆ Federal: FBI, DEA, ICE, Secret Service, U.S. Marshalls, Dept. of Homeland Security
- ◆ Local: Sheriff, City Police Department, Highway Patrol





The Function of Law

Why do legal systems exist?

Why do institutions (e.g. churches, universities, governments, law) exist?

Why do legal systems exist?

Functionalists say these institutions exist because they...

- ◆ perform certain functions that keep society running smoothly
- ◆ contribute to equilibrium of society
- ◆ have beneficial, positive, or prosocial effects for entirety of society



Why do legal systems exist?

Functionalists like Émile Durkheim say...

- ◆ *law serves the purpose of maintaining solidarity or cohesion within a society*



Why do legal systems exist?

Functionals like Talcott Parsons say...

◆ *law solves four (4) problems within society:*

- *Clarifies rules*
- *Legitimizes extant practices that ensured adherence to rules*
- *Makes sanctioning efficient*
- *Organizes loose or independent jurisdictional practices*



Why do legal systems exist?

Functionals like Niklas Luhmann say...

- ◆ *law is a regulatory scheme that organizes behavior*
- ◆ *law reduces complexity and gives stability to social expectations*



Why do legal systems exist?

Others, like Roscoe Pound, view law as social control, but one built for domination, and say...

- ◆ law is a top-down activity performed by elites that forces people to conform to “orderly” behavior
- ◆ law serves to limit threats to those in power
- ◆ law is a tool for elite group domination over non-elites, on that does not always apply to elites

*law is also **dysfunctional**, because it does not operate for the benefit of or equilibrium for society as a whole*



Why do legal systems exist?

Others, like Lawrence Friedman, view law serving a justice function, and say...

- ◆ law serves a distributive function to help allocate economic, political, and social resources in a world where resources are scarce



Law in Practice: Stop and Frisk

Found unconstitutional by a federal judge in 2013

- ◆ violated the Fourth Amendment – protects against unreasonable searches & seizures by the government
- ◆ violated the Fourteenth Amendment – Equal protection clause

Judge found NYPD resorted to “*a policy of racial profiling...that has led to officers’ routinely stopping blacks and Hispanics who would not have been stopped if they were white.*” ([Goldstein 2013](#))

