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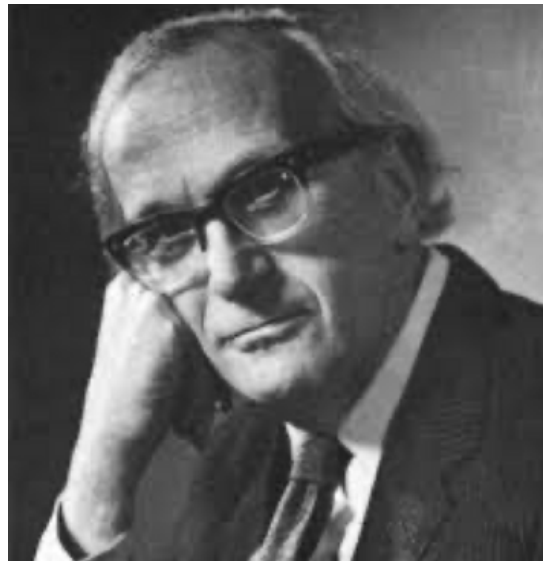
# SANCTIONS



If someone were to ask you what law is, the answer may be more elusive than you think. Of course, we all feel like we have an idea of what law is. We understand one another when we refer to it and we can communicate with one another with moderate success when we discuss the law. That being said, are we all talking about precisely the same thing? Is there some important meaning behind the word “law” that is getting lost in translation? After all, the word law is used to apply to a great many things, such as laws of science, natural laws, laws of the household, and the laws of a government. Even if we grant the fact that this may be a defect of language, a simple linguistic misapplication, if we narrow our focus purely to legislative law, we still run into some problems.

One of the first men to tackle the problem of defining law was John Austin in 1832. To Austin, the law is simply commands that come from a “sovereign,” commands that were backed by the promise of a sanction (punishment) for disobeying. Law is a rule of force; it is a somewhat arbitrary set of commands that must be obeyed. The inclusion of the “sovereign” is meant to represent the law-giver who is not subject to anyone else’s commands. Furthermore, these laws/commands are general in the sense that they apply to entire classes of things, not specific commands directed at any individual. Without delving into the minutia of Austin’s theory, he effectively holds that law is just what is obeyed under threat of sanction.

Quite some time later in the 1960s, H.L.A. Hart came along to upend the Austinian view of law by proposing an idea that rests on the rule of law. According to Hart, laws consist of primary rules (such as don't murder, don't steal, etc.) which are then modified and supported by secondary rules. In Hart's system, it is the law itself that rules, not any sovereign or specific governing body. What is important about Hart is that he believed the law had a kind of normative force. He claimed that the "good citizen" is a person who follows the law not because of the threat of sanction, but because it is the right thing to do. The law itself commands a kind of respect and duty to comply, not in any instrumental sense but because it has a kind of intrinsic value unto itself. Hart completely rejected Austin's idea of law being commands backed up by force alone and instead claimed that the law gave reason to follow it by itself.



Imagine you come to a red light in a deserted intersection out in the country at 3 a.m. There is no one around and you can see very far in every direction, so you are certain no cars are coming. Also, for the sake of argument, imagine that you know for certain that there are no cameras or police officers around. If you run the red light then you will not face any repercussions, and it is completely safe to do so. According to Austin, there is no real issue with running the red light since there is no possible sanction for doing so (and incidentally, you will not be putting yourself or anyone else at risk of harm). According to Hart, the fact alone that it is the law to remain stopped at a red light is enough reason to obey the law and not run it. Now, for Hart's explanation to work, it cannot be the case that you are stopped just due to habit, or because you are afraid of somehow receiving a sanction. In this case, you are completely certain you will receive no sanction at all. These are only two views out of many about what law is, but how you answer this question can help illuminate which side you are intuitively on and give a little insight into what you think law is. So, what would you do?