

Law

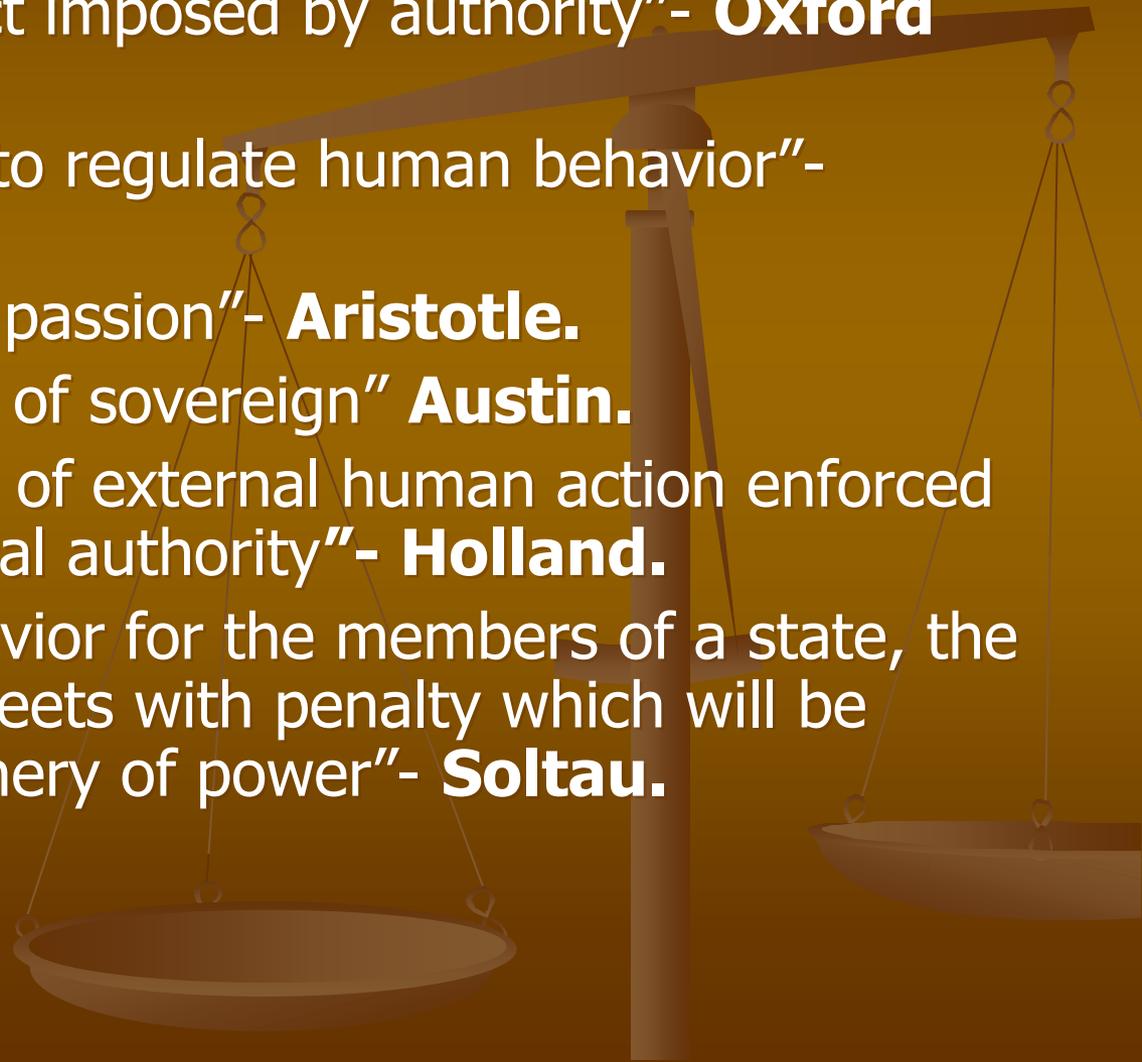


LAW

- **INTRODUCTION:**
 - One of the **fundamental concepts** in the study of political science.
 - Government cannot function without law.
 - **In a state law carries sovereignty.**
 - Any discussion of sovereignty involves the question of law.
 - **Law and state are inseparable.**
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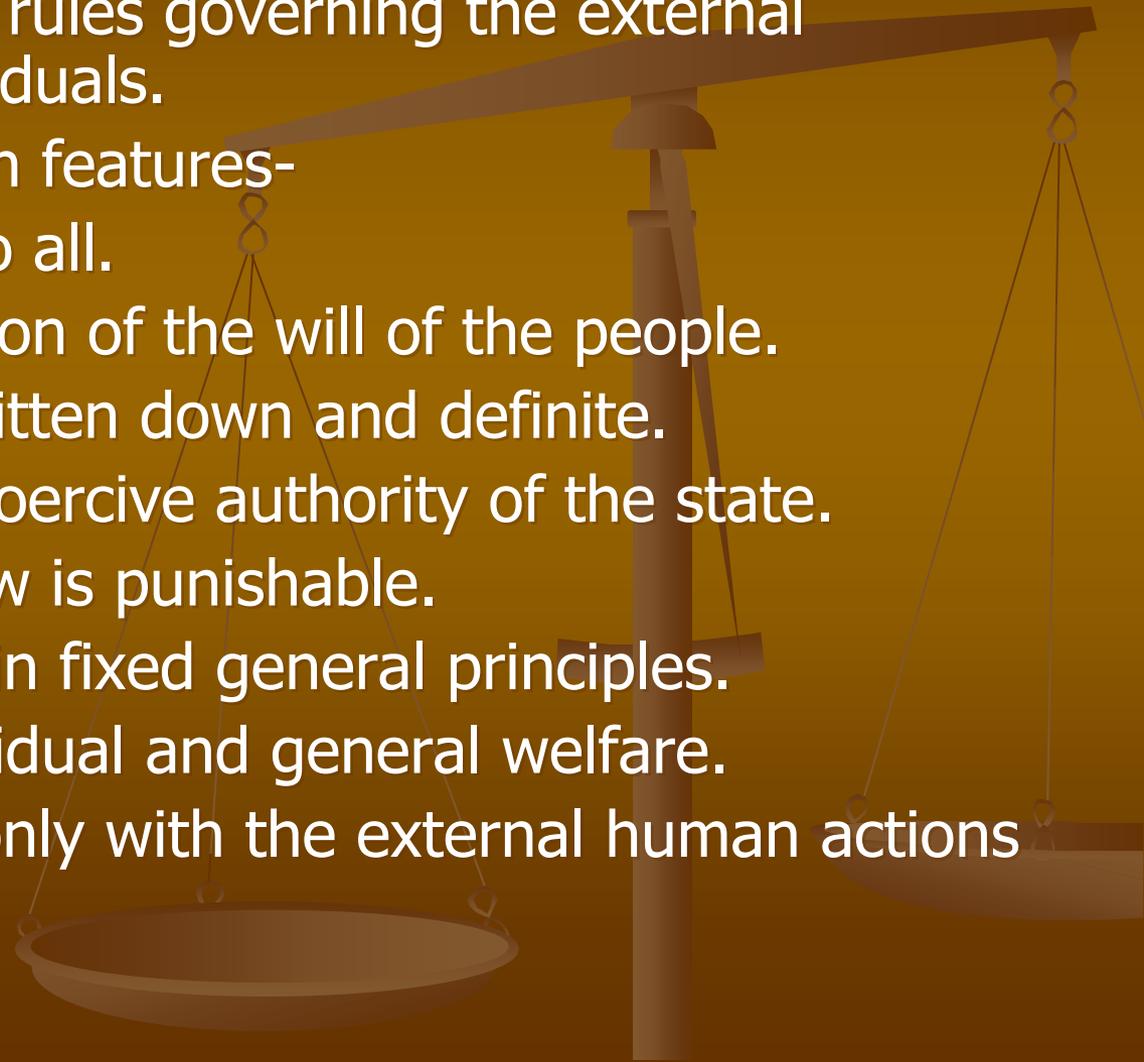
Definitions of law:

- “it is a rule of conduct imposed by authority”- **Oxford dictionary.**
- “it is a body of rules to regulate human behavior”- **Ordinary meaning.**
- “law is reason minus passion”- **Aristotle.**
- “law is the command of sovereign” **Austin.**
- “law is a general rule of external human action enforced by a sovereign political authority”- **Holland.**
- “law is a rule of behavior for the members of a state, the disregard of which meets with penalty which will be enforced by a machinery of power”- **Soltau.**



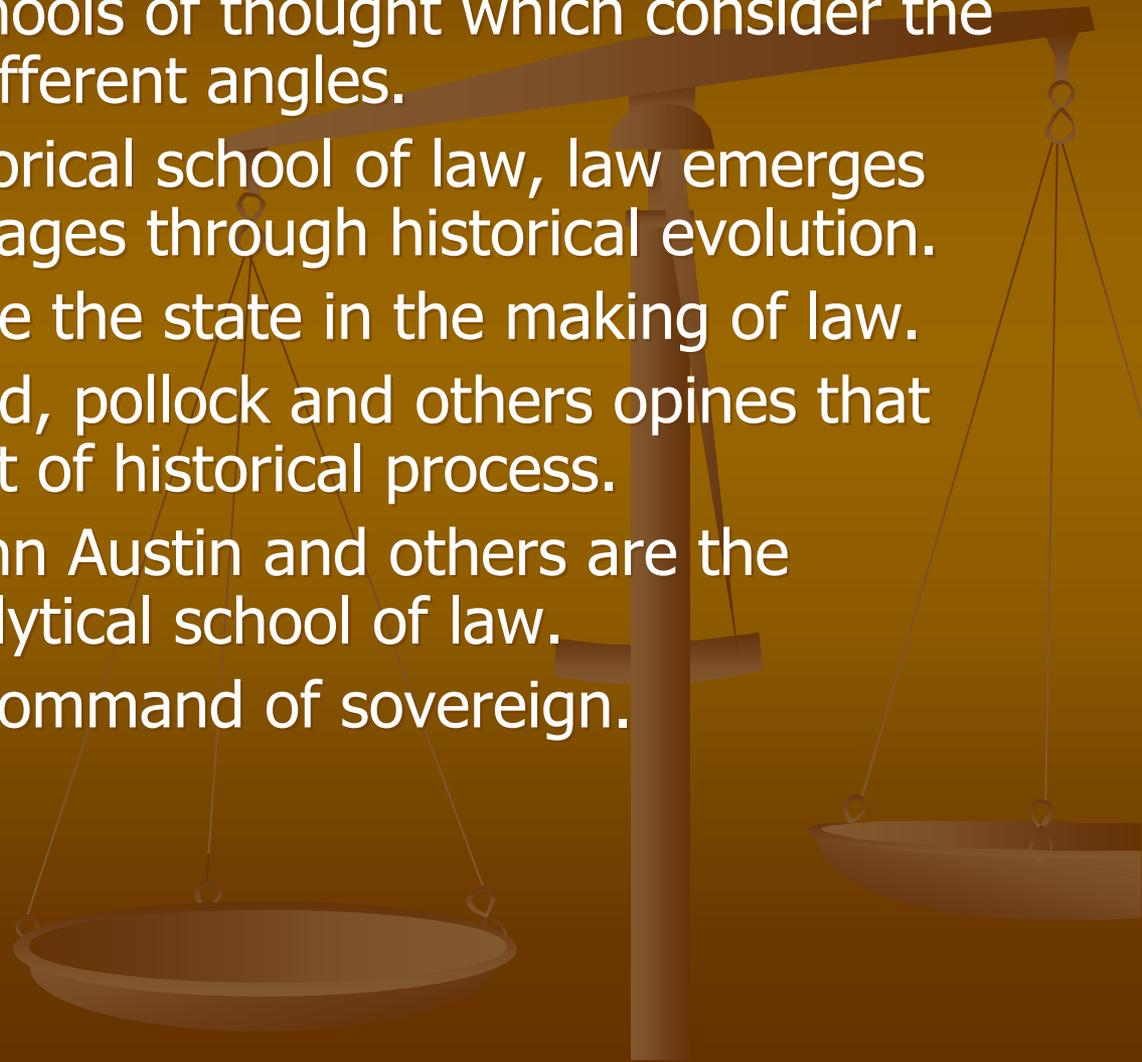
Features of law:

- Law is a set of social rules governing the external behavior of the individuals.
- Following are its main features-
- 1. law is applicable to all.
- 2. law is the expression of the will of the people.
- 3. law is precisely written down and definite.
- 4. law is backed by coercive authority of the state.
- 5. Any violation of law is punishable.
- 6. law contains certain fixed general principles.
- 7. End of law is individual and general welfare.
- 8. law is concerned only with the external human actions

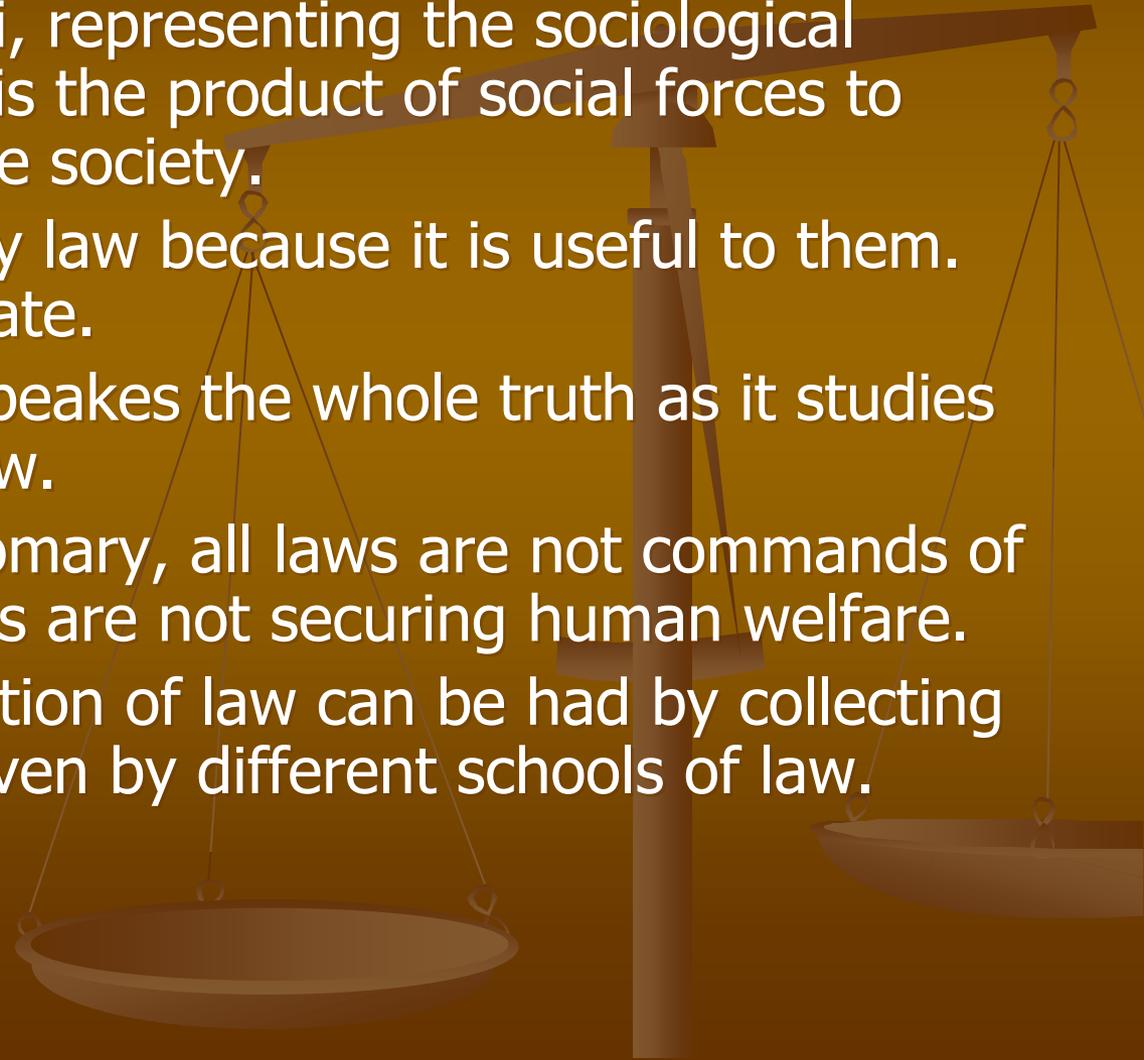


Nature of law:

- There are various schools of thought which consider the nature of law from different angles.
- According to the historical school of law, law emerges from customs and usages through historical evolution.
- They wanted to belittle the state in the making of law.
- Henry Maine, Maitland, Pollock and others opines that the law is the product of historical process.
- Jeremy Bentham, John Austin and others are the advocates of the analytical school of law.
- To them, law is the command of sovereign.

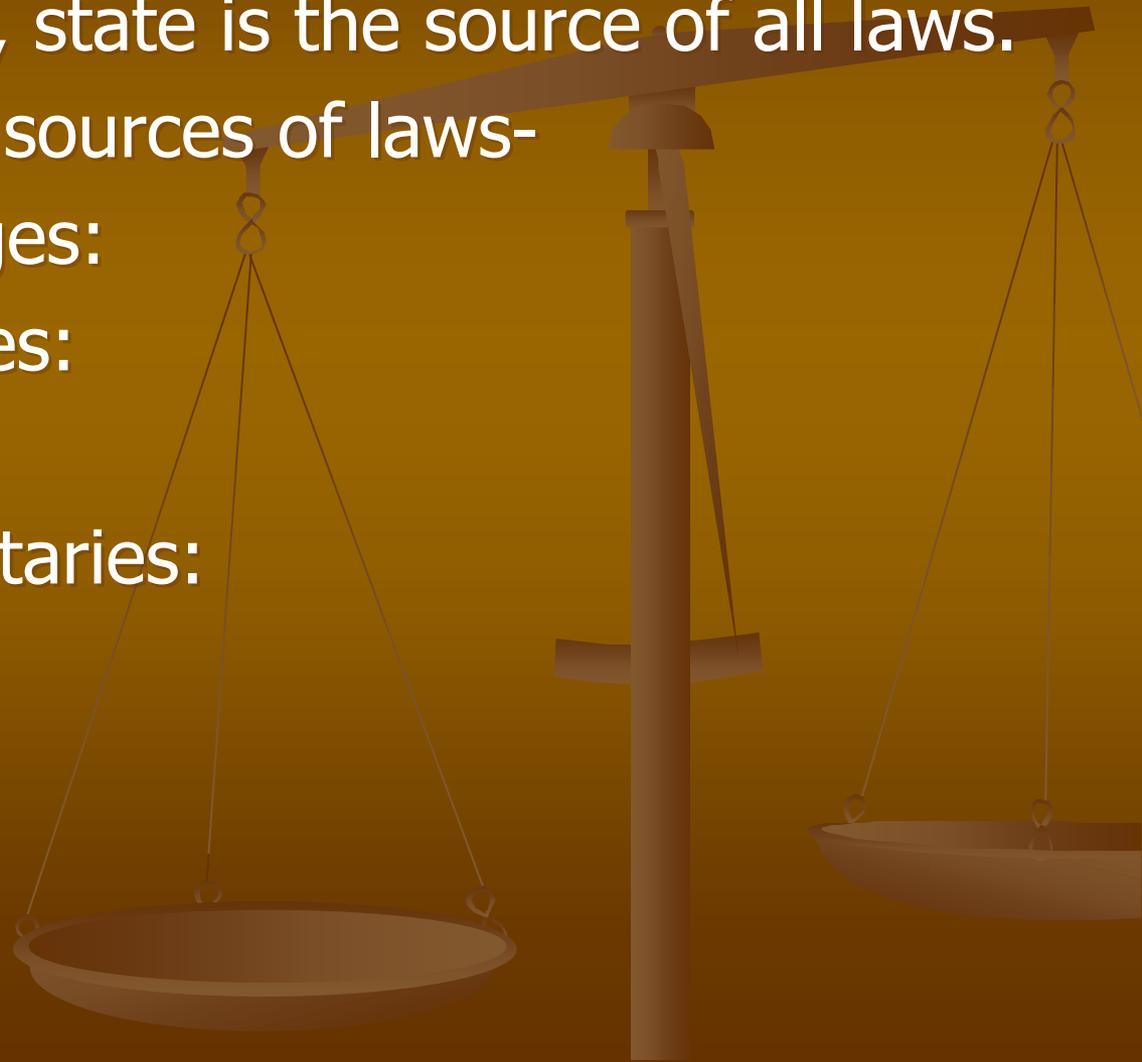


- In other words, they say sovereign is the source of all laws, they ignored the historical forces in the making of law.
- Duguit, Krabbe, Laski, representing the sociological school says that law is the product of social forces to meet the needs of the society.
- To them, people obey law because it is useful to them. Law is prior to the state.
- None of the school speaks the whole truth as it studies only one aspect of law.
- All laws are not customary, all laws are not commands of sovereign and all laws are not securing human welfare.
- An adequate explanation of law can be had by collecting the grains of truth given by different schools of law.



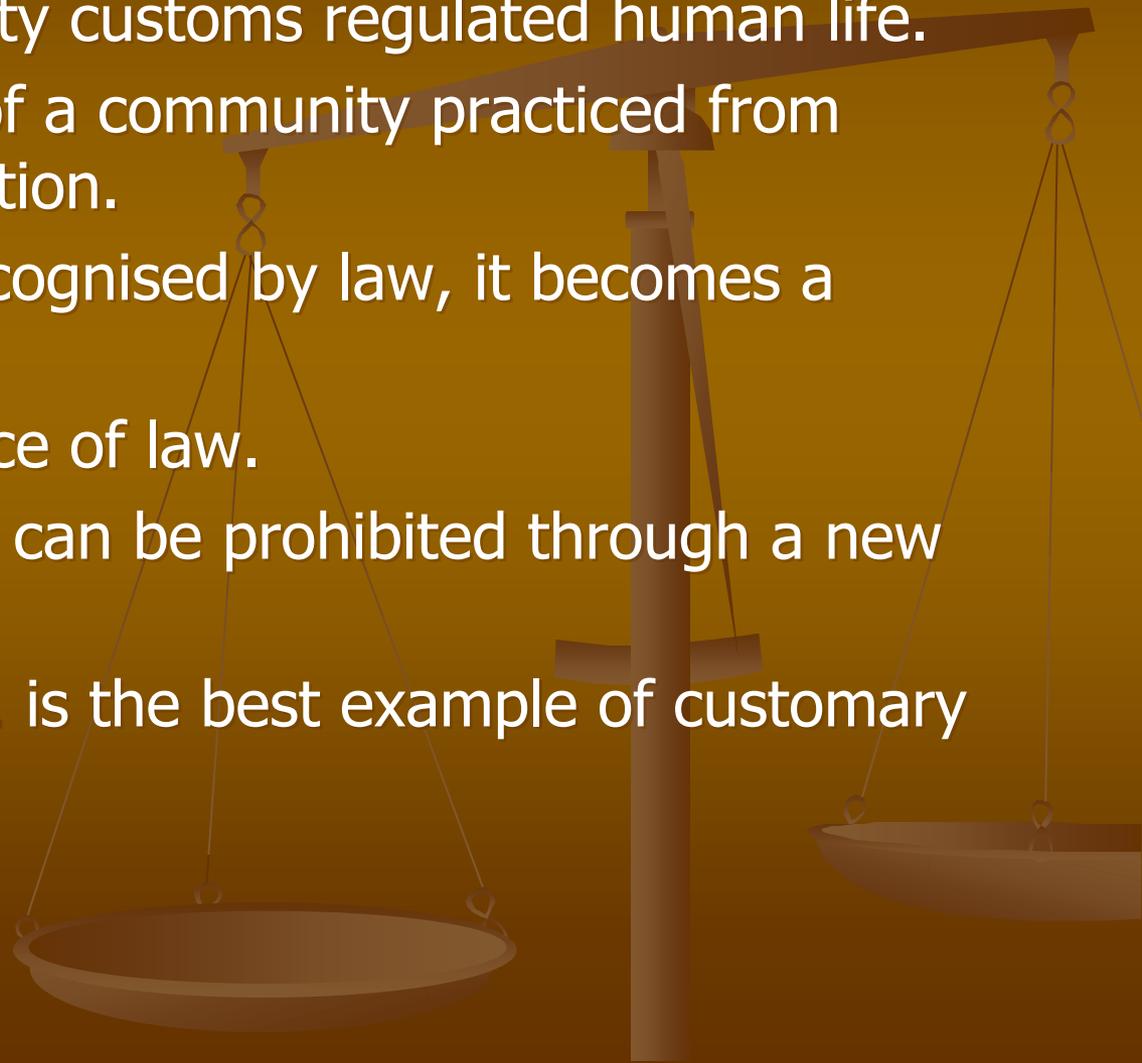
Sources of law:

- In the legal sense, state is the source of all laws.
- There are various sources of laws-
- Customs and usages:
- Religious principles:
- Judicial decisions:
- Scientific commentaries:
- Equity:
- Legislations:



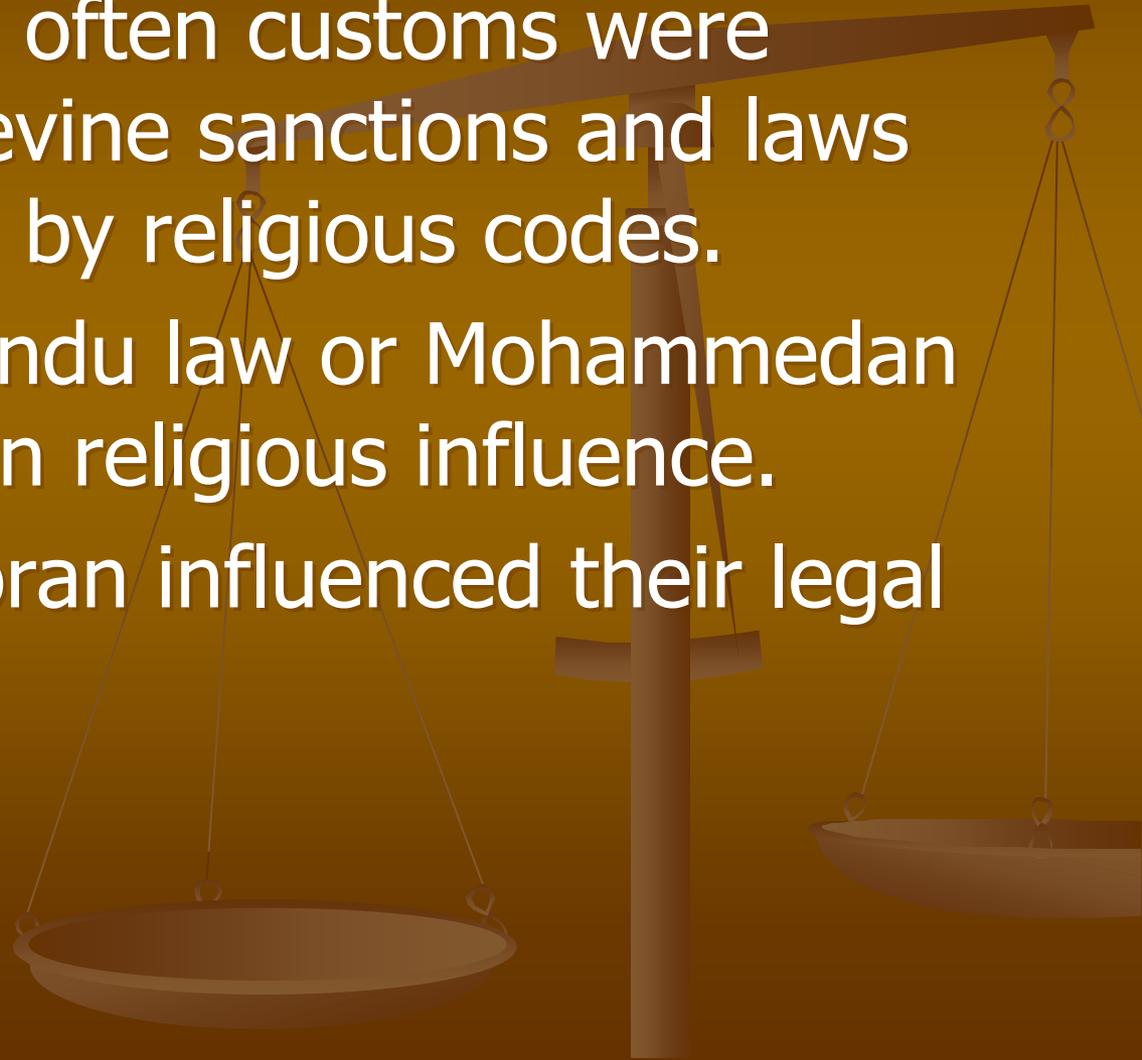
1. Customs and usages:

- In the primitive society customs regulated human life.
- Custom is the habit of a community practiced from generation to generation.
- When a custom is recognised by law, it becomes a customary law.
- It is the earliest source of law.
- Bad customs like sati can be prohibited through a new law.
- Common laws in U.K. is the best example of customary law.



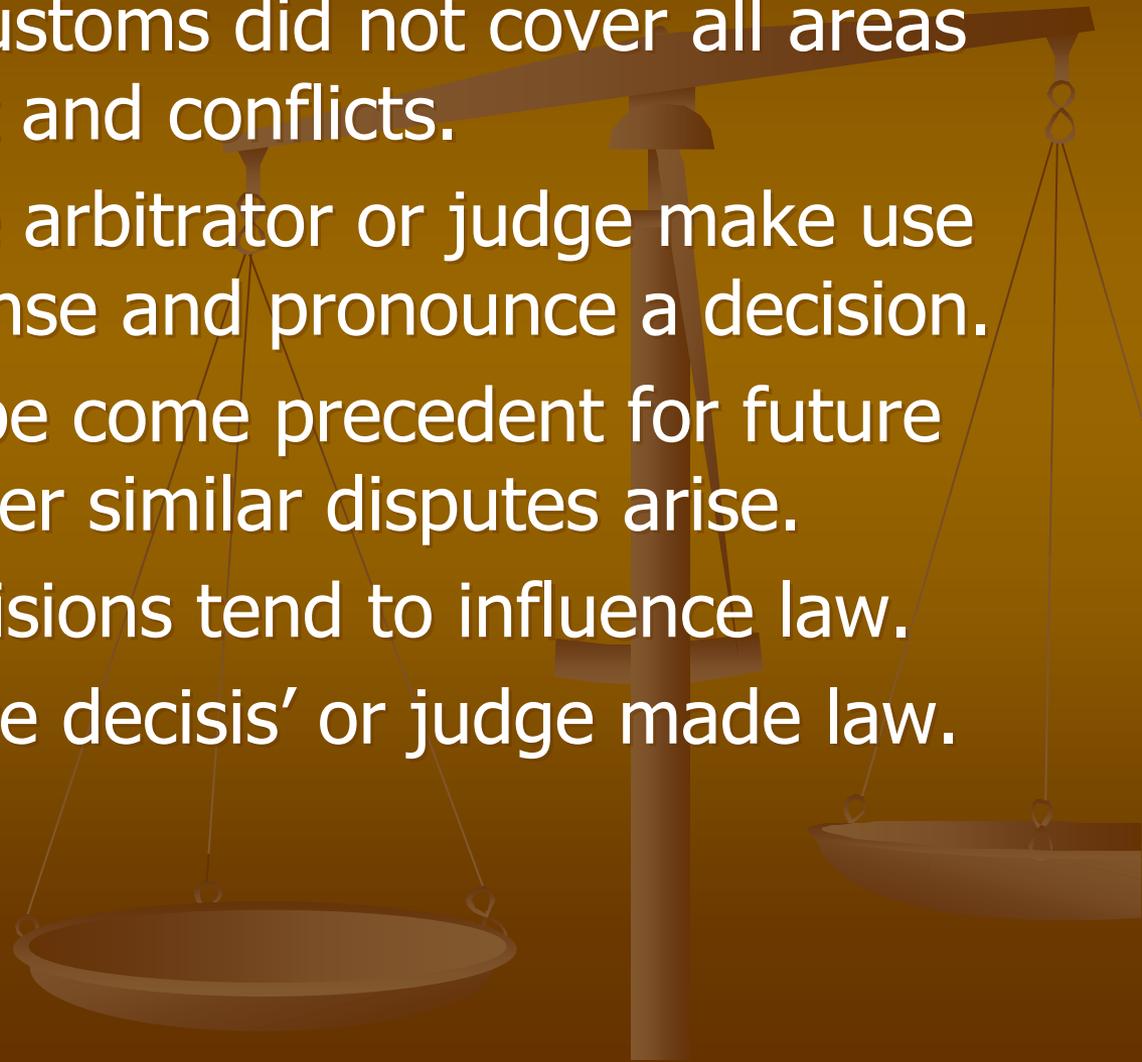
2. Religious principles:

- In earlier times, often customs were reinforced by divine sanctions and laws were influenced by religious codes.
- For example, Hindu law or Mohammedan law are based on religious influence.
- In Pak holy Quoran influenced their legal system.



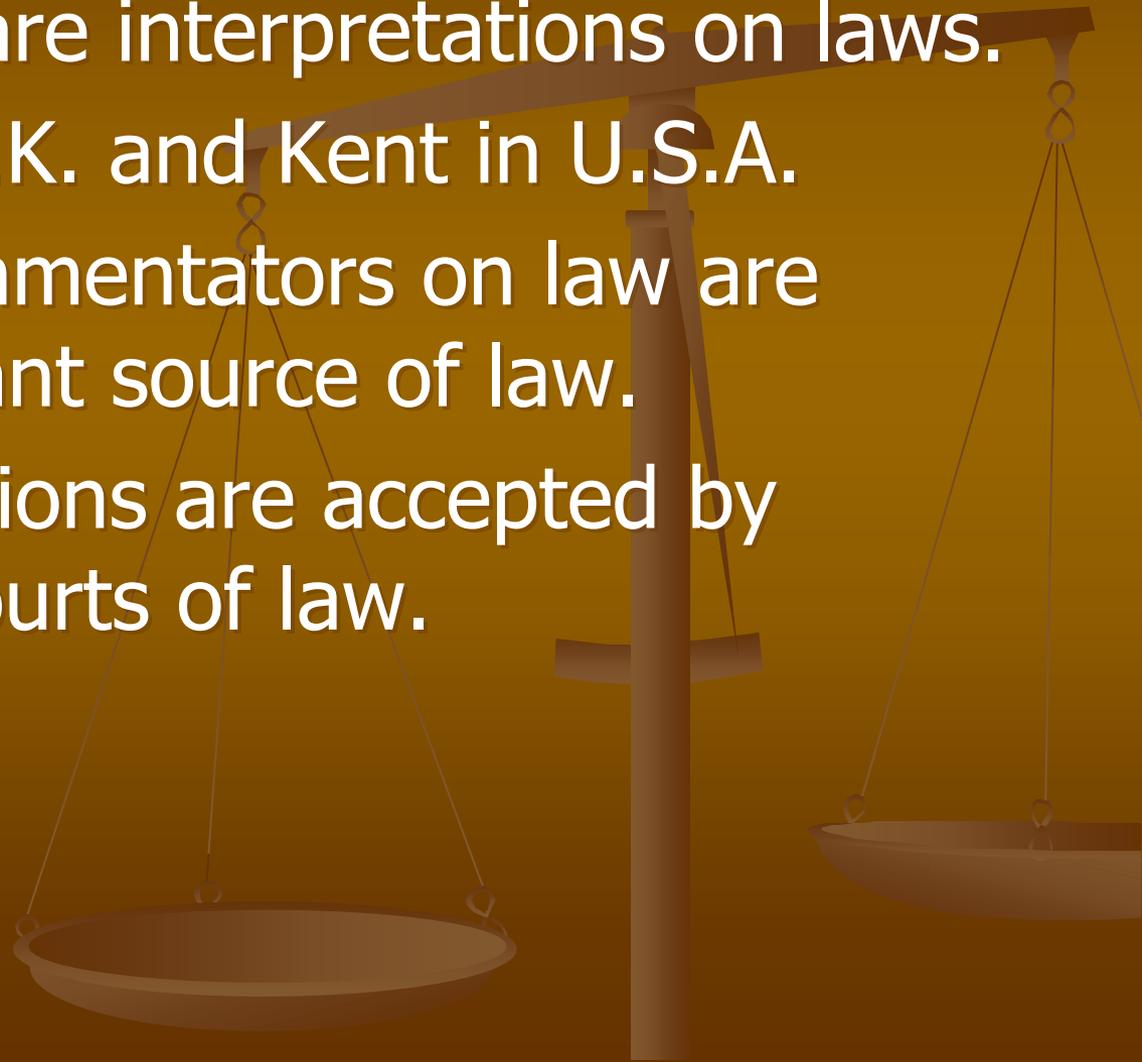
3. Judicial decisions:

- Existing laws or customs did not cover all areas of human conduct and conflicts.
- In such cases, the arbitrator or judge make use of his common sense and pronounce a decision.
- Such a decisions be come precedent for future guidance, whenever similar disputes arise.
- These judicial decisions tend to influence law.
- It is called as 'stare decisis' or judge made law.



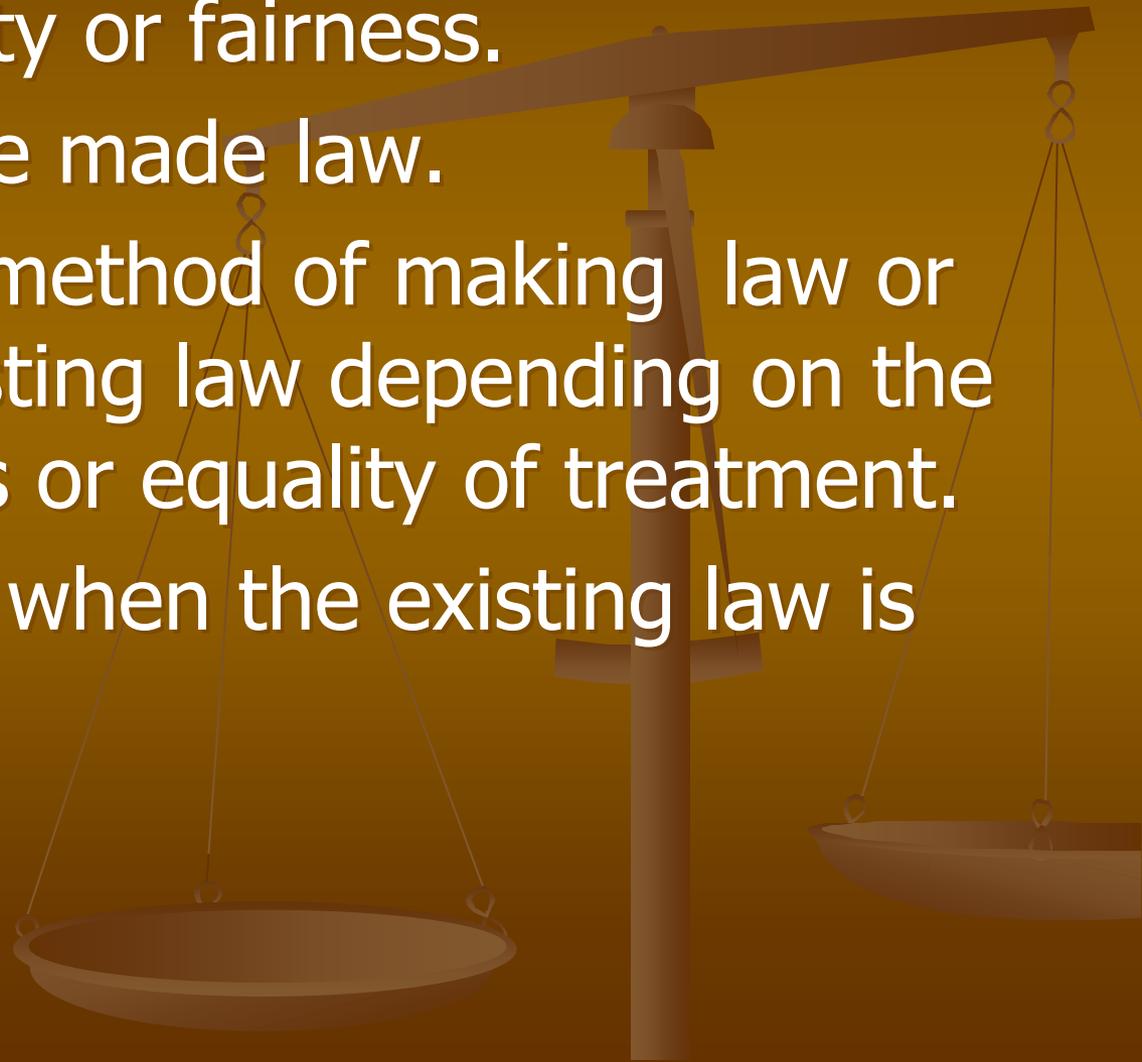
4. Scientific commentaries:

- Commentaries are interpretations on laws.
- Blackstone in U.K. and Kent in U.S.A.
- Opinions of commentators on law are another important source of law.
- Often their opinions are accepted by judges in the courts of law.



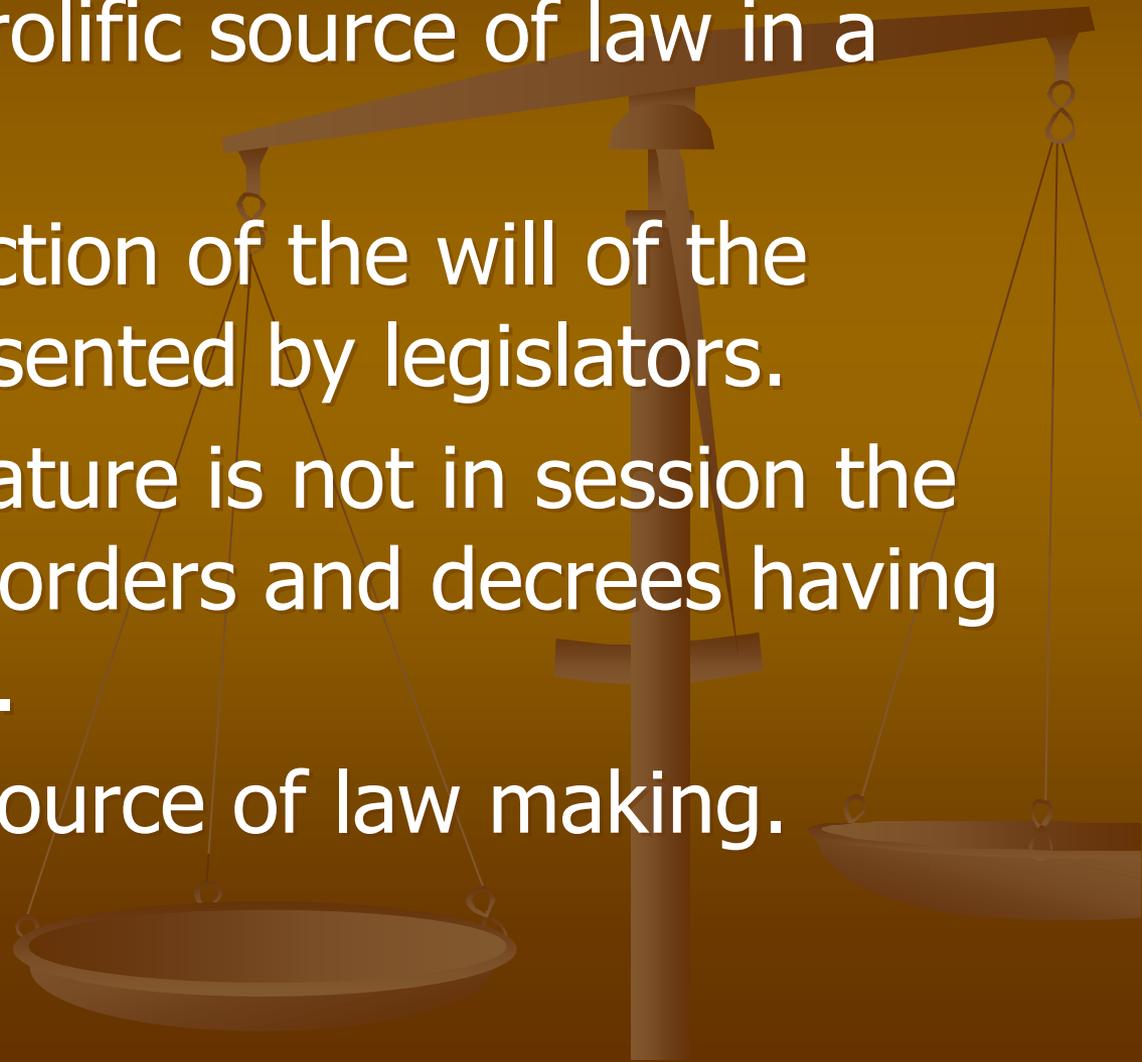
5. Equity:

- It means equality or fairness.
- It is also a judge made law.
- It is a informal method of making law or altering the existing law depending on the intrinsic fairness or equality of treatment.
- It provide relief when the existing law is silent.



6. Legislation:

- It is the most prolific source of law in a modern state.
- Law is the reflection of the will of the people as represented by legislators.
- When the legislature is not in session the executive issue orders and decrees having the force of law.
- It is the direct source of law making.



Kinds of law:

- Mac Ivers classification of law-



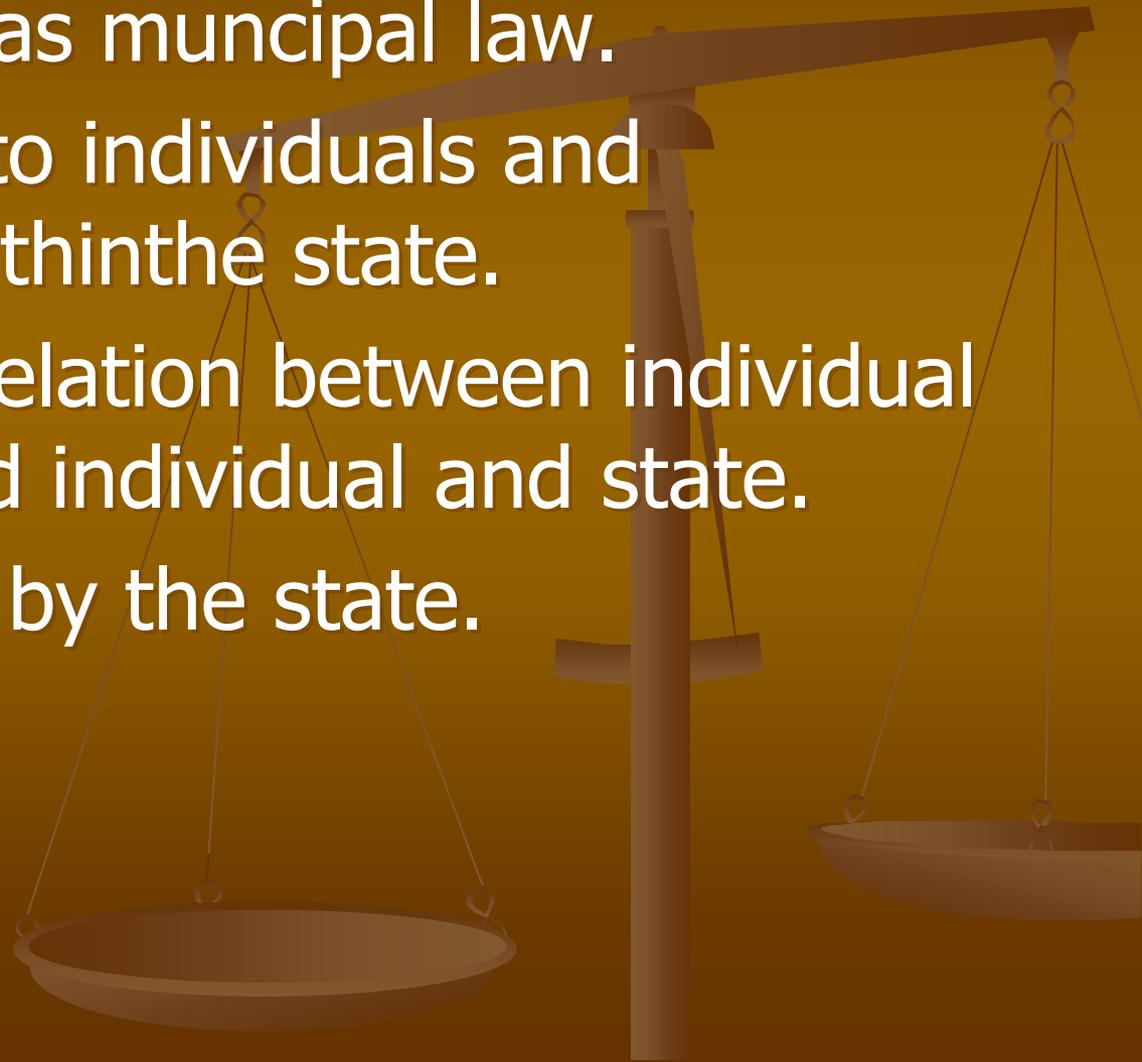
Classification of law:

- National law
- International law
- Constitutional law
- Administrative law
- Ordinary law
- Public law
- General law
- Private law



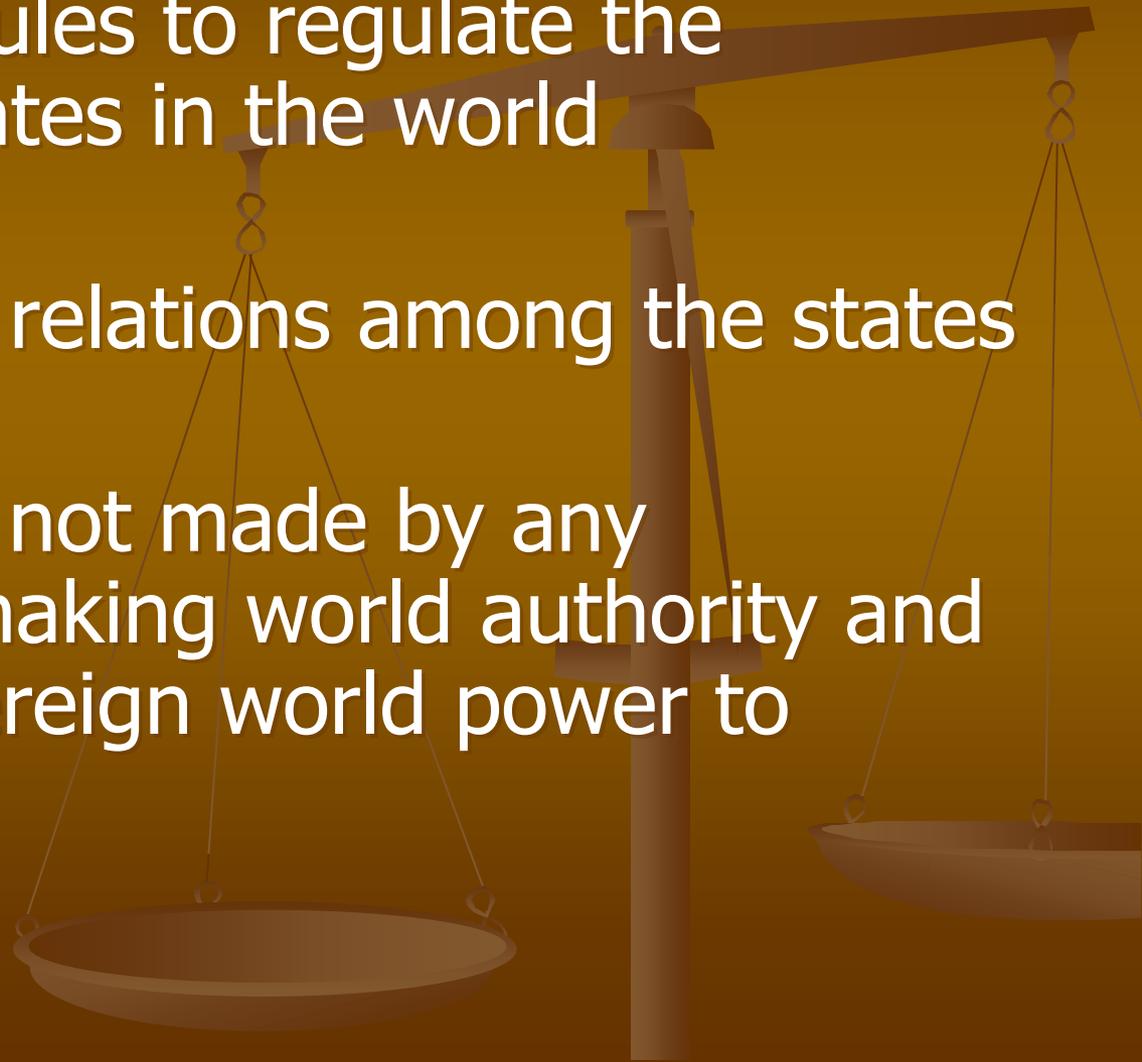
1. National law:

- It is also called as municipal law.
- Law applicable to individuals and associations within the state.
- It governs the relation between individual to individual and individual and state.
- It is formulated by the state.



2. International law:

- It is a body of rules to regulate the behaviour of states in the world community.
- It regulates the relations among the states themselves.
- These rules are not made by any sovereign law making world authority and there is no sovereign world power to enforce them.



3. Constitutional law:

- It is the fundamental law of the land.
- It determines the structure of the state and defines the scope and nature of governmental authority.
- It may be written/unwritten, enacted or evolved.

