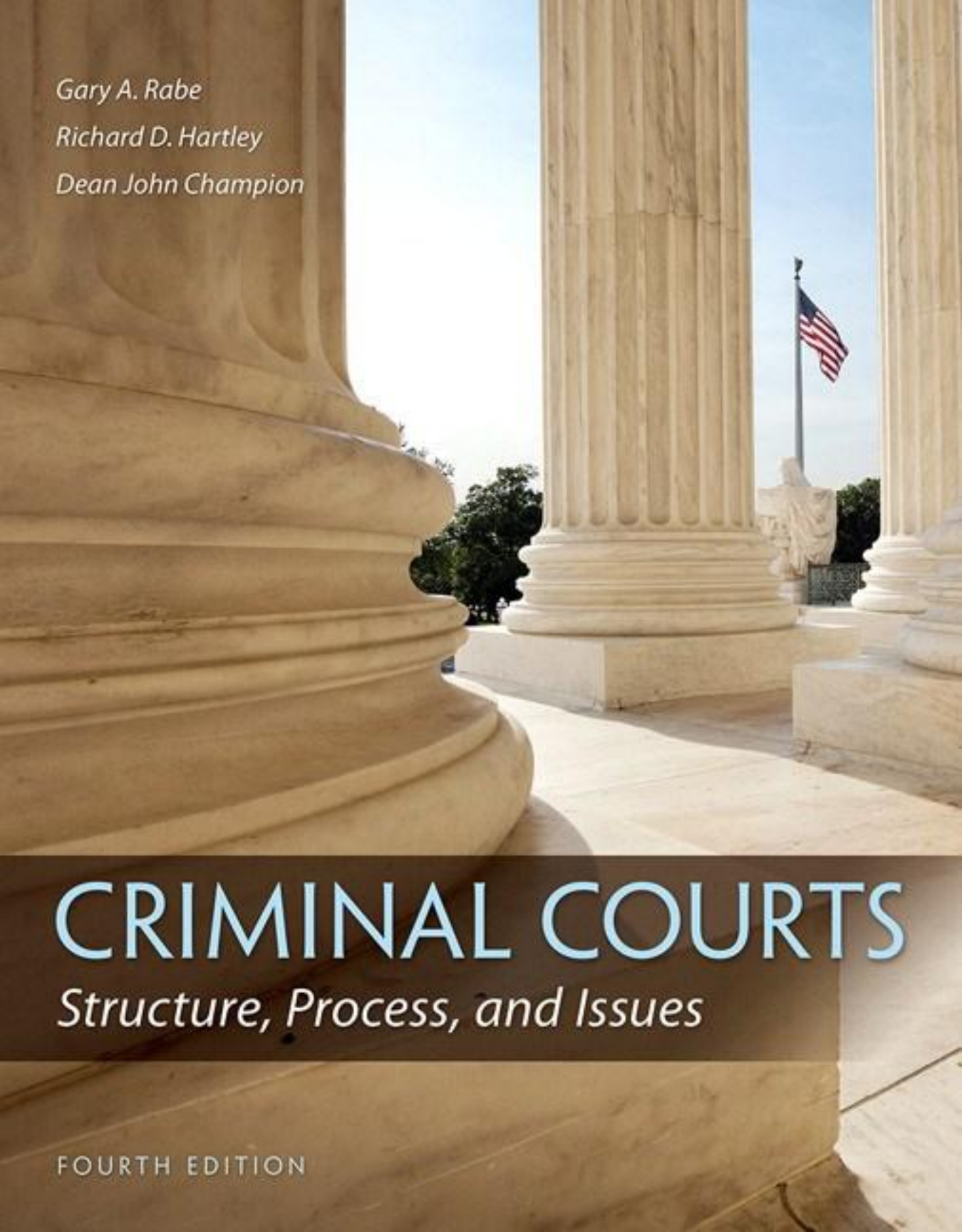
Gary A. Rabe
Richard D. Hartley
Dean John Champion



CRIMINAL COURTS

Structure, Process, and Issues

FOURTH EDITION

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STRUCTURE, PROCESS, AND ISSUES

Richard D. Hartley
University of Texas San Antonio

Gary A. Rabe
Minot State University

Dean John Champion

Pearson

330 Hudson Street, NY, NY 10013

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Preface

Criminal Courts: Structure, Process, and Issues (fourth edition) is a comprehensive examination of the U.S. Criminal Court systems, to include discussion of actors in the system with decision-making power, and case processing from the point when offenders are arrested and charged with crimes through the sentencing and appeals process. This book also deals with issues confronting the system from historical, philosophical, sociological, and psychological perspectives. Some of these include judicial activism and the Supreme Court, prosecutorial and judicial discretion, the right to legal representation, judicial misconduct, jury nullification, diversion and alternative programs, specialty courts, and the role of plea bargaining in our system of justice. Finally, throughout this work, there are comparisons of court ideals with actual court functioning. This is to give students a more straightforward look at how the courts in our criminal justice system operate as well as how the persons who work in the system sometimes follow the rules, and at other times they bend the rules. This is not to say that our system of laws and justice can be manipulated, even though that sometimes happens, but that much of the law is broad and ambiguous and actors in the system are given discretion to interpret it. The reality of the criminal justice system, including the criminal courts, is that often limited human and financial resources hinder actors' ability to invoke the formal legal system to its full extent. It is through this ideal versus reality lens that students will learn much about the structure and function of the U.S. Criminal Courts.

The opening chapter begins with an examination of law and its social and political origins as well as where and how courts and the legal system fit into the criminal justice system. Despite the different periods or eras into which world history has been divided by scholars, the pervasiveness and continuity of law are apparent. Laws have always existed in some form or another, but largely intended to fulfill the same general purposes regardless of the culture we choose to examine. The major functions of law are social control, dispute resolution, and social change. Over time, technological changes have occurred and social ideas have evolved, and this has contributed to new thinking about how persons should orient themselves to others. The courts have made landmark decisions related to what the constitution guarantees to persons and many social and legal issues have been addressed and restructured via the law; in some instances, liberating persons and their beliefs, and in others restricting previously tolerated behaviors.

Laws can also be differentiated according to whether they pertain to civil or criminal matters. Statements about what the law says and how we should comport ourselves in our daily lives or out in the community in the company of others are referred to as substantive law. In less complex social systems, substantive law tended to be espoused by the courts in the form of common law. Common law is based on traditions, dependent upon the particular needs and desires of groups of people living together in cities or towns. As our social systems have become increasingly complex, we have devised more elaborate legal schemes and more formal mechanisms to maintain the social order and regulate human conduct. How the law should be applied is the province of procedural law. The United States has one of the most complex and contrived legal systems. Today, there are all types of law pertaining to different aspects of our society. These laws are either civil or criminal, and increasingly, a whole body of law focuses upon administrative law.

It is a legal reality that the early applications of the law favored particular interests over others. Some persons believe that our laws have been created to preserve the status quo for those who possess political and economic power. Thus, there have been inherent disparities existing in how the law is applied and for whom it is implemented. Those suffering the most from legal disparities historically have been women, children, and minorities. In recent decades, sociolegal movements have prompted substantial social changes in response to disparate treatment of certain groups, and still there are groups today who believe their interests are not reflected in the current application of the law.

Understanding the laws of the United States begins with a critical examination and description of the dual court system that is present in the United States. The principal components of the dual court system are federal and state court apparatuses. Chapter 2 describes federal and state court organization, and various functions of these different types of courts. There are diverse court systems, and there is little continuity among the states concerning what these different courts should be called. We do not have a universal nomenclature that can be applied to all state and local courts at various levels. However, there is considerable continuity within the federal court system. Federal and state court jurisdictions are distinguished, and the processes and functions of different types of courts are described and discussed.

The court workgroup consists of the same types of actors, regardless of whether we are discussing federal or state jurisdictions. Whenever one or more laws are violated, prosecutors at the state or federal level act against alleged offenders to bring them to justice. Thus, Chapters 3 and 4 examine prosecutors and defense counsels in some detail, identifying their principal functions and duties. The U.S. Constitution and the Bill of Rights have vested all citizens with particular rights to ensure that they will be treated equally under the law. All persons who are charged with a criminal offense are entitled to counsel if they are obligated to appear in court to answer criminal charges. Under particular circumstances, anyone may enjoy the right to a jury trial comprised of one's peers. These are due process rights afforded to those accused of criminal acts. These due process rights and the roles and functions of both prosecutors and defense counsels are examined and discussed.

The judge is often seen as the most important actor in the court system. Judges oversee all court proceedings and make important decisions. Several types of systems are used for judicial selection. These systems are described. While legal backgrounds are strongly recommended for persons functioning as judges, it is not necessarily true that all judges have law degrees or legal training. Thus, different methods for selecting judges are explained, together with the strengths and weaknesses of these methods. Merit selection of judges now seems to be favored in many jurisdictions to try and seat the best qualified candidates as judges. There is still, however, a segment of the judiciary clearly lacking the qualifications and commitment to make good decisions. Judicial misconduct of various kinds will be described, and some of the remedies available to the public for recalling bad judges will be examined.

At the heart of our legal system is the jury process despite the fact that a very small percentage of cases actually result in a jury trial. In fact, juries account for only about 10 percent of all criminal cases that are pursued. Nevertheless, considerable time is devoted to examining the jury process and how jurors are selected. Juries are comprised of persons from the general population. Methods of jury selection vary greatly among jurisdictions. Both prosecutors and defense counsel conduct *voir dires* or oral questioning of prospective juries from a list of veniremen or a *venire*. Sometimes experts are used to assist as consultants, since some persons believe that jury selection can enhance the chances of a conviction or an acquittal. Various methods for discharging prospective jurors are examined, including challenges for cause and peremptory challenges. Various standards among the states and the federal system are described to show that there are different criteria applied

for determining the appropriate jury size and the process of jury decision making. The decision-making process of juries is examined in some detail, and the important topics of jury nullification and juror misconduct are explored.

For offenders who are prosecuted criminally for violating the law, the arrest and booking process are described in Chapter 7. The issue of bail is also discussed. An overview of bail decision making and bail bondspersons is provided. Bail has always been a controversial issue and critics assert that it is punishment against poor offenders who often cannot afford bail. The purposes and practices of bail, therefore, are also discussed in detail. Changing sentiments in some jurisdictions has led to bail reform in order that bail might be more affordable to all offenders and that jail and detention overcrowding might be alleviated.

The actual trial process is also illustrated. Those charged with crimes may undergo either bench or jury trials, where either a judge will decide their case or a jury will deliberate. The criminal trial process is described in some detail with various fictional scenarios that have paralleled some actual legal cases in the recent past. In any criminal trial, due process requires that we consider any defendant innocent of a crime until proved guilty beyond a reasonable doubt. This is a difficult standard to achieve in many cases. Prosecutors who pursue criminal cases against particular suspects believe that they can convince juries of the defendant's guilt. However, the defendant is represented by counsel who attempts to show that the defendant is innocent. Various witnesses are brought forth and testify, either for or against particular defendants. Some of these witnesses are eyewitnesses, while others are expert witnesses who testify about the quality and significance of collected evidence. Juries deliberate and decide one's guilt or innocence.

One, however, must also keep in mind that the most frequently used resolution strategy for criminal offenders is not a trial but plea bargaining, which is discussed in Chapter 8. Plea bargaining is a preconviction agreement between prosecutors, defense counsels, and their clients where guilty pleas are entered to criminal charges in exchange for some type of leniency. Plea bargaining results in a criminal conviction, but the penalties imposed are often less harsh compared with the penalties imposed through trial convictions. Different types of plea bargaining will be discussed. The pros and cons of plea bargaining are listed. Furthermore, some jurisdictions have abolished plea bargaining, and their reasons for doing so will be examined.

Regardless of whether offenders plead guilty through some type of plea bargain or are found guilty at trial, they will have a sentencing hearing. Sentencing hearings are conducted by trial judges. Sentencing hearings permit victims or relatives of victims to make victim impact statements in either verbal or written form. Others testify on behalf of defendants. Judges are the final arbiters and impose different sentences, depending upon the seriousness of the crime, one's prior record, and other factors. Several different types of sentencing systems that are used by U.S. courts today will be discussed. Chapter 9 examines these systems as well as the goals of punishment. In the event that convicted offenders are dissatisfied with the verdict, they are entitled to appeal their cases to higher courts. Judicial sentencing options, disparity in sentencing, and the appellate process are discussed in Chapter 10. Featured are death penalty cases, which are always automatically appealed. The appeals process is especially lengthy, and even those who are sentenced to death in states with capital punishment laws may not be executed for ten or more years.

A parallel system of justice exists for juvenile offenders. Thus, Chapters 11 and 12 examine the juvenile justice system with particular emphasis upon how the juvenile court system is structured and operated. A different language applies to juvenile processing, and various comparisons are made between the juvenile and criminal justice systems. Several important landmark juvenile cases are cited where they have been granted certain constitutional rights by the U.S. Supreme Court. Over time, juvenile courts have taken on the characteristics of criminal courts. Some persons believe that in several years, the juvenile court may be abolished and that a unified court for both juveniles and adults will emerge.

Not all persons charged with crimes are ultimately processed by the criminal justice system. Chapter 13 discusses how some offenders are diverted to civil courts or into civil dispute resolution programs where their cases can be concluded in noncriminal ways. Victims and offenders are often brought together in alternative dispute resolution actions, where victim compensation and restorative justice are sought as remedies for wrongdoing. In some states, various laws are being scrutinized for the purpose of changing them and causing criminal acts to become decriminalized through legislative changes. Thus, the process of alternative dispute resolution, pretrial diversion, and specialty courts will be examined.

Chapter 14 concludes with an examination of how the court process is influenced by the media. As our society has become increasingly complex in a technological sense, we have mastered ways of delivering information to more people through different mediums such as television and the Internet. At the same time that we have been increasingly exposed to what goes on in the courtroom, a major litigation explosion has occurred, where increasing numbers of lawsuits are filed. We have evolved into a very litigious society. One reason for the great increase in litigation is the great publicity derived from courtroom coverage by the media and the sensationalization of particular cases. Media in the courtroom will be explored, and the pros and cons of media coverage will be examined in terms of how public opinion is shaped.

Ancillaries and desirable features of this book include critical thinking exercises, a case study decision-making exercise, and numerous concept review questions at the end of each chapter. Key terms are boldfaced and listed in the margins throughout the text and revisited again at the end of the chapter; a comprehensive glossary of these and other terms is found in an appendix. Recently published readings are also suggested at the end of each chapter so that those interested in learning more about particular subjects can locate further reading for their edification and education. An up-to-date bibliography of both research publications and legal cases is provided in the end-of-book references to facilitate one's research and general study. A new feature to this edition is the use of boxed sections which discuss key cases and legal issues in each chapter. These are included to feature landmark cases and current issues or events that complement the text itself. Some of these key cases are considered landmark decisions which have had a great impact on criminal justice in action, and the real people and real events that take place in society every day. Chapter openers have also been included to heighten student interest in learning more about our court system and to provide them with real stories or snapshots of important knowledge about courts and the law.

While this book is coauthored, it is acknowledged that the final result is the work of many persons. We wish to thank Gary Bauer, Lynda Cramer and Jennifer Sargunar from Pearson for their patience and help in getting this fourth edition together. We are also indebted to the many reviewers who have made helpful suggestions and constructive criticisms for all editions of this work (Stephen Brodt, Ball State University–Muncie; Kristine Mullendore, Grand Valley State University–Grand Rapids; Timothy Garner, Ball State University–Muncie; Sylvia Blake-Larson, Tarrant County College; Scott Donaldson, Tarrant County College; Robert Greenwood, Madonna University; and Julie Raines, Marist College). Finally, special thanks to Judge Catherine Torres-Stahl for her comments and suggestions on this fourth edition, and UTSA Masters students Michelle Hill, Johannes Laven, and Thomas Garza for their assistance in finding sources, references, and suggested reading materials.

New to the 4th edition

- A revised introductory chapter discusses the criminal courts and their functions in the context of the larger criminal justice system to include a section on the relationship between the courts, and police and corrections agencies.

- Many new chapter openers have been added to introduce students to the main topic of the chapter.
- Boxed items in each chapter have been added under the themes of key cases and legal issues. Key cases succinctly list and describe the most important landmark cases that have been influential to the process and functioning of the courts and its key actors. Legal Issues boxes describe contemporary problems confronting the courts and ask students to opine about the best course of action for both policy and practice.
- Definitions for key terms are now listed in the margins of the chapters.
- Chapter summaries have been reorganized by learning objectives.
- New "What Do You Think" feature in each chapter prompts students to use critical thinking skills with real-world application.
- Policy-oriented critical thinking exercises and case study decision-making exercises have been added to complement the concept review questions at each chapter's end.
- Findings from contemporary and classic empirical research studies have been interspersed throughout the text to provide students with the knowledge of real-world functioning of courts and the criminal justice system.

—Richard D. Hartley
Gary A. Rabe
Dean John Champion

About the Authors

Richard D. Hartley is an associate professor in the Department of Criminal Justice at the University of Texas at San Antonio. He holds a Ph.D. from the School of Criminology and Criminal Justice at the University of Nebraska at Omaha. He teaches courses relating to criminal courts and the administration of justice, as well as research methods for criminology and criminal justice. Dr. Hartley's research interests include prosecutorial and judicial discretion, and extralegal determinants of court decision-making practices. He has been involved with a number of National Institute of Justice-funded research projects for which he analyzed court outcomes, especially those for federal narcotics and immigration offenders, as well as the impact of veterans treatment courts on justice involved veterans. He holds professional memberships in the American Society of Criminology, the Academy of Criminal Justice Sciences, the Society for Empirical Legal Studies, and the European Society of Criminology. Dr. Hartley has also given lectures and collected data on court decisions in international venues in both Colombia and Spain. Some of his recent peer-reviewed publications appear in *Criminal Justice and Behavior, Criminal Justice Policy Review, Crime & Delinquency*, and *Justice Quarterly*.

Gary A. Rabe After serving for five years as the Vice President for Academic Affairs at Minot State University (MSU), Dr. Gary A. Rabe has returned to his academic appointment as a professor within the Department of Criminal Justice.

Dr. Rabe earned a Ph.D. in Criminology from the University Delaware, an M.A. in Criminology and Corrections from Sam Houston State University, and a B.S. in Criminal Justice from MSU. His professional experience includes Executive Director of the Rural Crime and Justice Center (MSU), Department Chair and Associate Professor of the Criminal Justice Center (MSU), Interim Dean of the College of Arts and Sciences (MSU), and Director of the Rural Law Enforcement Education Project at MSU. As Director of the Rural Crime and Justice Center, he was successful in obtaining over $8 million dollars in grants and contracts.

Dr. Rabe's professional memberships and services have included the National Consortium for White Collar Crime Research, the American Society of Criminology, the Law and Society Association, and the Academy of Criminal Justice Sciences. Dr. Rabe has served as a consultant to the Federal Law Enforcement Training Center and the National White Collar Crime Center, and served on the editorial board for the *Journal of Crime and Justice*. Dr. Rabe was recently reappointed by the Governor to a second consecutive four-year term on the North Dakota Commission on Alternatives to Incarceration. Dr. Rabe's academic areas of specialization include Criminological Theory, Criminal Justice Policy Evaluation, Rural Crime, Criminology, Corporate Crime and Sentencing, Courts, and Sociology of Law. He has coauthored three books and published several book chapters, articles, and technical reports.

Dean John Champion (1940–2009) was Professor of Criminal Justice at several universities, including Texas A&M International University, Minot State University, California State University-Long Beach, and the University of Tennessee-Knoxville. He received his Ph.D. from Purdue University and B.S. and M.A. degrees from Brigham Young University. He also completed several years of law school at the Nashville School of Law. Dr. Champion

was a prolific writer and has over 40 texts and/or edited works to his credit, a few of which were internationally recognized having been translated into Russian, Portuguese, Chinese, and Spanish.

He maintained membership in 11 professional organizations and was a lifetime member of the American Society of Criminology, Academy of Criminal Justice Sciences, and the American Sociological Association. He was a former editor of the Academy of Criminal Justice Sciences/Anderson Publishing Company Series on *Issues in Crime and Justice* and the *Journal of Crime and Justice*, and a contributing author for the *Encarta Encyclopedia 2000* for Microsoft. He was also a former Visiting Scholar for the National Center for Juvenile Justice and president of the Midwestern Criminal Justice Association.

Some of his published books for Prentice-Hall include *Crime Prevention in America* (2007); *Research Methods for Criminal Justice and Criminology 3/e* (2006); *The Juvenile Justice System: Delinquency, Processing, and the Law 5/e* (2007); *Corrections in the United States: A Contemporary Perspective 4/e* (2005); *Probation, Parole, and Community Corrections 5/e* (2008). His specialty interests included juvenile justice, criminal justice administration, corrections, and statistics/methods. Dr. Champion was a great advocate of student education and will be missed by all who knew him. His absence will especially be felt in the classroom and at the association annual meetings.

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1 Law

The Legal Battlefield

LEARNING OBJECTIVES

As a result of reading this chapter, you will have accomplished the following objectives:

1. *Apply your knowledge of what the law is and the role that courts play in various facets of our daily lives.*
2. *Compare and contrast the different functions of law, including social control, dispute resolution, and social change.*
3. *Understand the evolution of disputes and the formal resolution of them.*
4. *Identify the difference between substantive law and procedural law.*
5. *Summarize the different types of law, including common law, civil law, and criminal and administrative laws.*
6. *Draw appropriate conclusions about the different sociolegal perspectives on law, such as sociological jurisprudence, legal realism, critical legal studies, and feminist legal theory.*

Recently, a nonprofit organization called the Texas Sons of Confederate Veterans (Texas SCV) applied to the state to make available a specialty license plate that would be issued by the Texas DMV. The state rejected their application because the license plate proposed included confederate flags on it. The Texas DMV had a policy that it can refuse specialty license plates if they might offend some persons. The nonprofit sued, stating that their First Amendment rights were violated. The DMV argued, however, that license plates are considered "government speech," and therefore, the state can decide what messages to display on license plates. The Fifth Circuit Court of Appeals sided with the Texas SCV, ruling that the DMV discriminated against them by not approving their application to make the license plates available. The Supreme Court weighed in after appeal from the DMV and determined in a 5–4 decision that license plates are government speech, and therefore, the Texas DMV had the right to refuse the design submitted by the Texas SCV. Should states be able to determine what types of license plates they will issue? Does this, in your opinion, violate an individual's right to free speech? How is it that two different courts could come to two different decisions about this matter? Why did the Supreme Court have to make the decision in this case? What do you think? Was this about the nonprofit's ability to raise money through the license plate or was it truly that they wanted persons to be able to express their viewpoints through the specialty license plate? Couldn't the nonprofit sell bumper stickers that individuals could display next to their Texas license plates? Why are license plates regulated by the courts and bumper stickers not?

Introduction

When most persons think of the law, they conjure up ideas about rules of conduct for behavior that have been written down. This is what we would refer to as substantive law. The law, however, also is the structures, procedures, and persons who have the authority to put the law into practice. The law can mean different things for different people. Some might see the law as an avenue for redress of social ills in society. Others might believe that the law is used only as a means to maintain the *status quo* and the power of those in the ruling class. The law is both, and can be viewed in many ways by many different people. The law may be liberating to some and at the same time oppressive to others (Vago 2006). Indeed, in the United States, the law enabled and eliminated slavery, controlled and liberated women, and ruled for and against government control of people's lives. In the introductory example, the Supreme Court weighed in on what is allowable to be displayed on a state license plate. A Texas nonprofit felt that the state violated their First Amendment rights when it rejected their specialty license plate application because the design included confederate flags on it. The federal courts have the authority to decide disputes between the states as well as between the states and individuals, and private or nonprofit organizations. This example also shows that courts decide not only matters of crime and justice, but also matters about constitutional rights. Remember that the U.S. Constitution is the supreme law of the land, and the federal courts have the right to determine whether the rights and freedoms enumerated in the constitution have been violated by state laws, city and county rules, and even governmental and private institutions' policies. No matter how one views the law, the criminal courts are both the institution and the structure that bring the law to life, and the courts make important decisions that affect society and the lives of its citizens.

The criminal court system in the United States is very complex and can be a confusing system to study and understand. The federal government and each state have their own court structure and rules of procedure for implementation of the law. There are also

different punishment structures; there are indeterminate and determinate sentencing structures, as well as guideline-based systems, and depending on the court or the crime, there may also be statutes in place that guide punishment, such as habitual offender laws, truth in sentencing, or mandatory minimums. To be even more confusing, criminal courts may not be the only option for administering justice. Throughout the United States, there are also military courts, tribal courts, juvenile courts, and specialty courts such as drug courts or veterans courts. There is no uniformity in the courts and the sentencing structures they employ among the jurisdictions across the country, and therefore, the U.S. criminal court system can sometimes be very confusing.

The functions of criminal courts are more straightforward; most persons believe that the primary function of law is to maintain social order, and indeed, the law and court structure are charged with maintaining order. This is accomplished through the adversary system that characterizes the U.S. courts, and its adjudicative function. Throughout societies, the law vests considerable power in judges to impose punishment on convicted offenders. The instrument of law and punishment is the criminal justice system whose actors are responsible for apprehending offenders, charging them with crimes, ascertaining guilt, and meting out punishments. The adversary system of justice pits the prosecution against the defense in a search for the truth. Some, however, might question whether the system is adversarial as the relationship between the prosecution and defense seems to be more reciprocal than adversarial. In other words, the prosecution, defense, and judge (the courtroom workgroup) have broader common interests to efficiently process the court's caseload than to argue and search for the truth. This is exemplified by the fact that roughly 90 percent of cases are plea bargained rather than settled at trial. This notion of prosecution, defense, and judge being cooperative rather than adversarial is based upon the idea that the actors who practice the law must work together to efficiently process cases. Eisenstein and Jacob (1977) assert that the courtroom workgroup has many shared goals, and thus, working together is incentivized. The courtroom workgroup is more than just prosecution, defense, and judge, however, and includes bailiffs, clerks, and even defendants whose interactions on a daily basis affect court outcomes.

There are two broad philosophies regarding how courts function. One portrays a legal institution that focuses on rules and procedures and where justice is the ultimate goal, and the other depicts a community where interdependent actors rely on one another to perform their roles and where the nature of these relationships will influence processes and practices. Indeed, the formal rules and procedures are in place to guide the administration of justice, but courts are complex political institutions and different courtroom communities may dispense different kinds of justice.

Notwithstanding the manner in which one views the role and function of courts in society, there are several different kinds of laws or rules that attempt to govern our behavior and the way the citizenry conduct their lives. There are laws against many violations we may or may not know exist but are in place to protect us from things that may harm or injure us. Law is dynamic and has many definitions. What is against the law in one place or at one time may not be a violation in another place or at another time. What elements of a crime need to be proved to meet the different evidentiary standards? Different states and the federal government define crimes in particular ways. There is much variation among the states about the nature and seriousness of different types of offenses. There is also variation among different jurisdictions in the application of laws, even if they have the same or similar laws. This is referred to as interdistrict disparity. For example, if two persons commit the same federal narcotics violation and have similar backgrounds, but one is being convicted in district court in Texas and the other in district court in North Dakota, their sentences may be very different because of local court contexts (plea bargaining, departure rates, and prison overcrowding) even though they violated the same federal law.

There are also many definitional differences of criminal law in various places and also at various times. While these definitions are important to learn, it is also important to understand the different functions of law for a society as well as the consistency and inconsistency with which the law is applied. This chapter examines various perspectives regarding the purposes and functions of law. Law can be used as a means to regulate the behavior of society, it can be used to settle disputes between grieving parties, and it can be used to elicit change in current practices or ideas. This chapter also provides a framework for the evolution of disputes and their formal resolution. There are different stages in the evolution of disputes. Persons investigating this evolution are concerned with developing a conceptual framework in order to better understand which disputes will reach the courts for formal resolution. Different types of law are also described—substantive versus procedural law, common law, civil law, administrative law, and criminal law. Another section describes some of the more important contributions of sociolegal scholars like Oliver Wendell Holmes, Roscoe Pound, Karl Llewellyn, and Roberto Unger, as well as some feminist legal theorists who have investigated the interplay between law and society. Finally, some theoretical perspectives related to court decision-making processes and practices are offered.

What Is Law?

law the body of rules of specific conduct, prescribed by existing, legitimate authority in a particular jurisdiction and at a particular point in time.

Law is a set of rules defining behavior for a particular place and at a particular time. Law has been argued by some as an expression of the needs of the ruling class. Depending on your particular view of the legal system, law might be perceived as either liberating or oppressive, preserving the *status quo*, or providing the means and opportunity to challenge the existing social order. Law has been used to both perpetuate and eliminate slavery, dominate and liberate women, and convict and acquit the innocent. Law is related closely to all of these different definitions (Vago 2006).

The *Dred Scott* Case and the Law

The role of law was very apparent in the *Dred Scott* case, in which the slavery issue was challenged. This case was more about citizenship than slavery. Dred Scott was the slave of an army officer. The officer took Scott from Missouri, to Wisconsin, and eventually to Illinois. When Scott returned to Missouri, he claimed that he was no longer a slave because slavery was not recognized in either Wisconsin or Illinois. Therefore, an important constitutional question arose as to whether citizenship and freedom were vested in former slaves as the result of their relocating in states where slavery was prohibited. The U.S. Supreme Court heard and decided the case in 1857. Recognizing the rights of individual states, the U.S. Supreme Court held that citizenship was not a federal issue. Rather, the issue of slavery was to be determined by the individual states. Thus, according to this decision, Dred Scott was still considered a slave, since the U.S. Supreme Court chose not to interfere in states' rights. This decision encouraged antislave activists to make federal citizenship take priority over state citizenship. Subsequently, the efforts of these antislave activists resulted in the ratification of the Fourteenth Amendment. The Fourteenth Amendment established the primacy of federal citizenship and became the foundation by which many legal and social issues have been addressed by the U.S. Supreme Court (Vago 2006).

The Courts and the Criminal Justice System

Crime has been considered to be a major problem in society for some time and has been the focus of numerous government efforts throughout the history of the United States.

Even though crime, especially violent crime, has declined in the past three decades, crime and the criminal justice system still eat up a large portion of federal and state budgets. The cost for public safety in communities around the country as well as for incarcerating those who have been convicted of violating the law continues to rise, forcing many jurisdictions around the nation to rethink the administration of justice. Indeed, the criminal justice system is a major institution in society and is generally thought of as being made up of three entities: the police, the courts, and corrections. Of course, many more agencies and entities are involved in criminal justice, from bail bonding companies to substance abuse and mental health treatment providers, who all play important roles in ensuring that the system continues to operate. There is also interdependence among the agencies involved in the criminal justice system even though each entity's goals, objectives, and responsibilities might be different. The courts play a critical role in the criminal justice system because actions by the police and corrections agencies require, or are the result of, actions from the courts. Likewise, actions by the courts may be influenced by processes that the police and corrections undertake or implement. In this sense, the criminal justice system is a system that is codependent on the entities and actors involved for its continued functioning.

On the other hand, one could argue that the criminal justice system is very disjointed. The police, courts, and corrections rely on each other to do their jobs; however, there is no articulated coordination among them, and each has its own large hierarchical organization that is bureaucratic in nature. Each makes decisions that will affect its own workload and implements rules and procedures to achieve its particular goals. Each also competes for resources from the government and local counties and municipalities. Resources are usually in limited supply and each has to justify requests for increasing budgets. Police agencies want more police officers, courts want more prosecutors and judges, and corrections wants more jail and prison guards, and probation and parole officers.

Oftentimes, these fights are more political than logical or need-based. Since the terrorist attacks in 2001, for example, an increasingly larger share of the crime and justice budget has gone to law enforcement to combat terrorism and other crimes that fund criminal organizations. Meanwhile, many districts at the federal level are in need of increased numbers of judges, and many judgeships sit vacant as Congress is not moving to confirm the President's nominations. Funding for prisons and incarceration is also being reduced as many jurisdictions around the country are realizing the effects of an increased incarceration population and lengthy prison sentences. The get-tough movement and crime control era of the late 1980s and 1990s saw increasingly harsh and even draconian sentences meted out by the courts (truth in sentencing, three strikes, mandatory minimums, and habitual offender statutes are just a few of the tools that were enacted and utilized in an effort to curb crime by increasing punishment). This meant an exploding prison population, and now a recognition that incarceration is expensive, and not that effective, with recidivism rates somewhere around 66 percent for those released from prison. Now many jurisdictions are rethinking their responses to certain offenses, and increasingly using diversion, alternative dispute resolution, and treatment for certain offenders. As the focus of how to respond to crime shifts, so do the courts. Many jurisdictions now have several specialty, or problem-solving, courts to process certain types of cases or offenders as an alternative to traditional criminal court case processing.

The public has also become increasingly distrustful of the amount of tax dollars that are being spent by the criminal justice system with seemingly little effect on future crime and public safety. Criticisms of the way the criminal justice system operates and functions are nothing new, and have focused on one or more of the different components at different times. Although the current focus of criticisms is on discretion and its use and misuse and abuse by law enforcement, for the previous 25 years it was focused on the courts. Namely, judges and their wide-ranging discretion to hand out punishments that they deemed appropriate were the focus of major reforms at both the federal and state court levels. Prosecutors have also been the recipients of much scrutiny aimed at the great deal of power they

hold as the gatekeepers of the criminal justice system and their wide-ranging discretion over liberty, and in some cases, life.

Courts have also been a very political subject regarding the extent to which they make decisions that intrude on the lives of the citizenry; critics have accused some judges of legislating from the bench. Some recent SCOTUS (Supreme Court of the United States) decisions give examples of decisions that have an impact on society. For example, in *Evenwel v. Abbott*, the court decided that under the Equal Protection Clause of the Fourteenth Amendment, states can draw their legislative districts based on population, and in *Fischer v. The University of Texas*, the court decided that using race as a factor in the University's admission process did not violate the Fourteenth Amendment's Equal Protection Clause. In *Holt v. Hobbs*, the court decided that a restriction against prisoners growing beards violated inmates' rights to exercise their religion, and in *Obergefell v. Hodges*, the court decided that states were required to license and recognize same-sex marriages under the Fourteenth Amendment. All of these decisions will have some effect on people and what they can and cannot legally do in society. Often, these decisions also affect how some aspect of the criminal justice system will operate.

Determining precisely what the law should and should not be has proved to be elusive. Adamson Hoebel (1954) has said that seeking a precise definition of law is like the quest for the Holy Grail. Legislators, prosecutors, defense attorneys, judges, defendants, businesspersons, consumers, parents, students, priests, the wealthy, and the poor all have different perspectives about what the law is and how it should be applied. Despite these diverse views of the law, there are several fundamental assumptions about the functions of law.

▶ The Functions of Law

Various legal scholars have studied the functions of law in different social systems and at different points in time. Their many observations about the functions of law can be classified as (1) social control, (2) dispute resolution, and (3) social change.

Social Control

social control informal and formal methods of getting members of society to conform to existing norms.

Social control consists of efforts by society to regulate the behavior of its members. The most visible form of social control is the application of the law (e.g., being arrested, prosecuted, and sentenced). For most citizens, this method of control is often the subject matter of the evening news and only happens to other people who they believe deserve to be controlled by the state. We seldom realize that we are subject to these same social controls in our daily lives.

Legal scholars distinguish between informal and formal social controls. Informal social controls are an integral feature of the socialization process. From early childhood, we are constantly taught the norms of behavior that our parents and the social world expect of us. These norms are a product of cultural expectations regarding dress, language, and behavior and our biological capacity to comprehend and adapt to these expectations. These informal social controls are effective because we are rewarded or punished by people who are important to us. Such persons are known as significant others in our lives. Parents, teachers, and even friends and acquaintances are essential in developing a person's sense of right or wrong and will ultimately guide and form our future behaviors. It is through a system of rewards and punishments that these informal social controls become the tools that stop most people from engaging in behavior that would require invoking formal social control mechanisms. Formal social controls include the police, the courts, and corrections. The formal social controls most people think of include being arrested by the police and being prosecuted, convicted, and sentenced by the courts. For

most citizens, these formal social control mechanisms will never have to be utilized. This is because informal social controls and the socialization processes they foment are enough to keep most citizens law abiding.

Dispute Resolution

A second function of law is **dispute resolution**. Persons frequently engage in disputes with others. Spouses might disagree about the division of labor in their household. Employees may disagree with their employers about their work effectiveness and quality. Sometimes, disagreements occur among total strangers about how to drive on the interstate highways or how we or our children should behave in shopping centers or stores. Historically, persons involved in disputes have relied on informal methods for dispute resolution. In colonial times, families or individuals relied on their village elders to settle disputes. Not so long ago, disputes about many issues were considered private matters settled in nonlegal ways. In more recent decades, informal nonlegal resolutions of disputes have changed considerably. Increasingly, **disputants** rely on the legal system to resolve issues that once were settled privately. A major change in our social dynamics is largely responsible for this shift. Informal methods for dispute resolution used to be more effective in small, closely knit homogeneous societies. Often, the members of these communities were more closely related either through family ties or economically. Therefore, disputes were quite disruptive to the stability of the community and had to be resolved quickly. It was not deemed necessary to use legal means for resolving disputes because these disputes rarely rose to such formal levels.

dispute resolution civil action intended to resolve conflicts between two parties.

disputants opposing sides in a civil action or case.

One additional benefit of nonlegal methods to resolve disputes is that agreements are usually reached that are satisfactory to both parties. In traditional courtroom litigation, legal dispute resolution results in winners and losers. One side is usually dissatisfied with whatever decision was rendered, but tradition called for accepting that decision without further argument. However, as social systems became increasingly complex and heterogeneous, informal dispute resolution methods were less effective. There was no clear interdependence among the disputants, and the authority attempting to resolve the dispute was unclear. This social evolution generated more formal methods for dispute resolution, which gradually replaced less formal methods. Although formal, legal methods may settle the disputes to the satisfaction of the legal system, this doesn't necessarily mean that the dispute will never recur. It has been claimed, for instance, that a legal resolution of a conflict does not necessarily result in a reduction of tension or antagonism between the aggrieved parties (Vago 2006, 20). However, it is unlikely that most disputes are ever fully resolved; rather, they are temporarily quelled but eventually are resurrected into new conflicts and disputes.

Social Change

Social change is another important function of law. Social change is the use of the law to modify ideas and practices, either actively or passively through natural forces or deliberate social actions. Law is the principal avenue through which social ills and biases are resolved. Legislative bodies are responsible for most of the laws that society abides by, but the courts have been the mechanism by which the law is put into practice. In this sense, the judicial branch of the government plays an important part in the functioning of society. Judges decide what evidence will be admissible in court, and whether persons have violated the law. Circuit court and Supreme Court judges also produce social change with their legal decision making. Appellate court decisions decide correct interpretations and applications of the U.S. Constitution and other legal rules. Court rulings therefore sometimes establish precedents to which subsequent decisions must

social change process whereby ideas and/or practices are modified either actively or passively or naturally.

adhere. These precedents then become the foundation for establishment or transformation of social policy. Under common law and the principle of *stare decisis*, decisions become law. *Stare decisi*s literally means to stand by that which has been decided. This does not mean that all cases will be decided the same way, nor that a higher court cannot overturn the precedent. It simply means that courts will abide by the latest ruling on any given issue.

History is replete with examples of law used to effect social changes of various kinds. State legislatures continually implement new laws to change the existing social order. Legislative actions are diverse and change our lives in various ways. For instance, new laws passed by legislatures may require us to wear seat belts or pay increased taxes, may raise or lower the speed limit, or may declare new national holidays. Judges also create social change through their own interpretations of the law and how it should be applied. Thus, the precedents established by judges have formed the bases of changes in various social policies. These changes are the functional equivalent of law-making. Legislators regard this activity as **judicial activism** and are opposed to it, since they believe that legislatures, not the judiciary, should have the exclusive authority to make law. Beyond this, law is also a method by which to initiate broader societal changes. These processes demonstrate that the relationship between the law and the citizenry is not static but rather dynamic, and that social change arises out of continual iterations of policy and practice.

judicial activism judges' use of their power to accomplish social goals.

▶ The Evolution of Disputes

Disputes occur frequently, perhaps many times a day among individuals. We may have disputes with our spouses, children, coworkers, and bosses; however, we rarely rely on the legal system to resolve or settle these types of disputes. It is important to realize that many disputes follow particular patterns, and that a process for seeking legal remedies occurs only when several important factors converge. Some researchers have conceptualized the dispute process as consisting of various stages.

Naming, Blaming, and Claiming

Felstiner, Abel, and Sarat (1980) identify three stages in the evolution of disputes: (1) naming, (2) blaming, and (3) claiming. These researchers were concerned with developing a conceptual framework to understand the evolution of disputes before they reach the courts for formalized resolution. Their view of disputes starts with classifying injuries into either perceived or unperceived. For instance, sometimes we are victimized or injured but aren't aware that we have been victimized or suffering any loss or injury. If we never realize we have been victimized, then we cannot consider bringing a dispute. Have you ever wondered why all of the gasoline prices are the same in your neighborhood? Perhaps this reflects a free and open market where competition has driven gas prices down as far as the local market forces can sustain. Or maybe, all of the gas station owners have secretly conspired to set fuel prices at fixed levels so that they can all benefit from higher prices. The point is that you never know when this situation actually occurs and whether you are being victimized. Each time you refuel your vehicle, you may be benefitting from the free-market system, or you may be being victimized through price-fixing. Thus, you may be the unwitting victim of a crime. When this occurs, even though you are a victim, no dispute arises. However, when you are able to identify yourself as a victim through **naming**, this is the first stage in formulating a legitimate dispute. The second stage in the dispute process is **blaming**. This stage involves translating your victimization into a formal grievance. In order for this event to occur, you must blame someone else for your victimization. For example, smokers move from naming to

naming identifying a party in a legal action.

blaming a step in the dispute process whereby the victim singles out someone as a potential target for legal action.

blaming when they allege that the tobacco companies have failed to inform them about the hazards of smoking. The final stage in the formulation of disputes is **claiming**. This occurs whenever victims believe that they have been injured, have identified a particular victimizer (someone to blame), and formally express a grievance against the person or organization responsible for their victimization. In most cases, victims seek monetary remedies. These claims ultimately evolve into disputes when the claim is initially rejected by another person or an organization. Not surprisingly, most disputes do not result into formal lawsuits. Most injuries are never perceived, and if they are, it is difficult to identify a particular victimizer. Therefore, the courts are faced with and address only a small fraction of the disputes that evolve into formal complaints and where those involved seek legal remedies.

claiming the process in a dispute where a grievance is expressed and a cause of action is cited.

A similar typology of disputes has been developed by Nader and Todd (1978) and Nader (1979). Like Felstiner, Abel, and Sarat (1980), Nader and Todd describe three stages in the dispute process: (1) the grievance or pre-conflict stage, (2) the conflict stage, and (3) the dispute stage. The **grievance** or **pre-conflict stage** requires that individuals or groups must perceive that they have been involved in an unfair or unjust situation. If the grievance is not resolved at this stage, then it progresses to a **conflict stage** where the victims confront the party they believe is the cause of their victimization. The dispute fully evolves when it reaches the **dispute stage** and the dispute is made public.

grievance, grievance procedure formalized arrangements whereby institutionalized individuals have the opportunity to register complaints about the conditions of their confinement.

pre-conflict stage perception by individuals or groups that they are involved in a conflict situation where a legal resolution is sought.

conflict stage either a pretrial or an alternative dispute resolution phase where a plaintiff and a defendant confront one another and an accusation is made.

dispute stage public revelation of a dispute by filing of a legal action.

▶ Types of Law

Typologies of law are both important and necessary. Law varies according to who prosecutes, the nature and types of existing penalties, and a law's particular historical origins. A broadly applicable typology is difficult to develop that includes all types of law. A common distinction is made between **substantive law** and **procedural law**.

Substantive Law

Substantive law is the law in books. Substantive law is what the law says. Basically, this is the compilation of local, state, and federal laws created by legislatures. A law exists that defines when someone is under the influence of alcohol when operating a motor vehicle. All states now have .08 BAC as the intoxication standard. Thus, if a motorist has a BAC of .08 or higher, then the motorist is legally intoxicated. If the motorist has a BAC level of .07 or lower, then the motorist is not legally intoxicated. Persons who take money from others by force commit robbery. If they use a dangerous weapon in order to take money from others by force, they commit armed robbery. Laws exist that define these and other criminal acts. Many additional laws combine to form the substance of substantive law.

substantive law body of law that defines and prescribes the rights and obligations of each person in society.

Procedural Law

Procedural law or the process of law pertains to how the law is applied. Procedural law is also called the law in action. Procedural law specifies how police officers must obtain and execute a search warrant. It also details how witnesses should be sworn when testifying in court, how evidence should be admitted in the courtroom, and how jurors should return their verdicts.

procedural law rules that specify how the law should be implemented and applied against those who violate the law.

For example, Rule 4(b)(1) of the Federal Rules of Criminal Procedure regarding warrants states that a warrant must:

> (A) contain the defendant's name or, if it is unknown, a name or description by which the defendant can be identified with reasonable certainty; (B) describe the offense charged in

the complaint; (C) command that the defendant be arrested and brought without unnecessary delay before a magistrate judge or, if none is reasonably available, before a state or local judicial officer; and (D) be signed by a judge.

And, Rule 31, related to jury verdict, states:

(a) Return. The jury must return its verdict to a judge in open court. The verdict must be unanimous.

(b) Partial Verdicts, Mistrial, and Retrial.
  (1) *Multiple Defendants.* If there are multiple defendants, the jury may return a verdict at any time during its deliberations as to any defendant about whom it has agreed.
  (2) *Multiple Counts.* If the jury cannot agree on all counts as to any defendant, the jury may return a verdict on those counts on which it has agreed.
  (3) *Mistrial and Retrial.* If the jury cannot agree on a verdict on one or more counts, the court may declare a mistrial on those counts. The government may retry any defendant on any count on which the jury could not agree.

(c) Lesser Offense or Attempt. A defendant may be found guilty of any of the following:
  (1) an offense necessarily included in the offense charged;
  (2) an attempt to commit the offense charged; or
  (3) an attempt to commit an offense necessarily included in the offense charged, if the attempt is an offense in its own right.

(d) Jury Poll. After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity, the court may direct the jury to deliberate further or may declare a mistrial and discharge the jury.

Common Law

common law laws determined by judges in accordance with their rulings.

Another type of law is **common law**. Common law is whatever is prevalent, traditional, or customary in a given jurisdiction. It is the law of precedent. There are no specific statutes that govern particular situations. Judges decide cases by common law on the basis of whatever is customary or traditional, not what is written down or codified.

Common law originated in England. Common law is judicially created law compared with law made by legislatures. English judges would travel to different cities and towns and decide cases on their circuits. Their decisions and the sentences they imposed were a combination of existing precedent and local custom. Because customs vary, common law varies among jurisdictions. For example, a judge in one jurisdiction may find that local residents are very tolerant of political dissent. If a defendant is arrested and charged with political dissent in this jurisdiction, it may be customary for the judge to impose a lenient sentence. The judge will probably not impose a harsh sentence because the citizenry would oppose it. However, in another jurisdiction where political dissension is unpopular, a judge might impose a harsh sentence upon a political dissident and have substantial community approval.

Although American society has become formalized and the laws at all jurisdictional levels are largely codified, it is not the case that common law has ceased to exist. In the United States, more than a few jurisdictions have common law and utilize it. Also, they might supplement their common law with codified statutory law. For example, many urban areas do not condone prostitution, although some prostitution exists and is accepted informally. There is a certain area of town where prostitution exists. If prostitutes are arrested, they are fined a nominal amount and are soon back on the street engaging in more prostitution. In many rural areas of the United States, prostitution might be treated quite

BOX 1-1

LEGAL ISSUES: COMMON LAW IN ACTION

The Case of Ghen, the Whale Hunter

It happened in Massachusetts Bay. A whale hunter, Ghen, shot a whale with a bomb lance off the coast and the whale swam away and died about 25 miles from where it had been shot. Rich, a wandering beachcomber, came upon the dead whale lying on the beach. He stripped the blubber from the beached whale and converted the fat to oil, which he later sold at a nearby market. Subsequently, he bragged about his luck to others, and eventually, word reached Ghen about where his whale had gone. Ghen tracked down Rich and accused him of converting the whale remains for profit, thus denying Ghen any revenue from the whale he had shot. Rich refused to turn over the money he had received from the whale remains, arguing that he had found the whale, didn't know it was someone else's property, and did a lot of work converting the remains to fat. Ghen sued Rich, seeking to recover damages.

An interesting case was presented to the presiding judge. In the Cape Cod area, there were *no laws* governing whale rights. However, it was customary for those finding whales to alert the whale hunters where the whale had washed ashore so that the whale hunters could obtain the blubber and make valuable oil from the remains. The bomb lances used by different whalers were thus marked distinctively, so that anyone familiar with whaling knew whose lance it was and, thus, who owned the whale. In Massachusetts, the custom was that the original whale hunter who shot a whale possessed it through a type of ownership, regardless of where the whale eventually swam or washed ashore. When Rich found the beached whale, he either knew or should have known the proper procedure to follow regarding turning the whale remains over to the rightful owner. In this case, he ignored custom and precedent and converted the whale remains for his own benefit. Thus, the judge ruled against Rich and in favor of Ghen, who was subsequently reimbursed for his loss by Rich.

Electra Kay-Smith/Fotolia

The Case of Bradbury's Dead Sister

Bradbury lived in a large two-story building with his sister, Harriet, in a Maine community. During a particularly severe winter, his sister became ill and died in the apartment. Bradbury had little money and could not afford to pay for a funeral for his sister. Therefore, he concluded, he could dispose of his sister in the large apartment house furnace in the basement. He dragged her body to the basement, where he cremated it in the large furnace. Neighbors detected a foul odor and called police, who investigated. They determined what Bradbury had done and arrested him. At the time, there was no law or written statute prohibiting anyone from disposing of a dead body in an apartment furnace. However, the court determined that Bradbury had violated the common law, which spoke against indecent burials of dead bodies. The fact that Bradbury had indecently disposed of his sister's body and had not given her a decent Christian burial was sufficient to find him in violation of the prevailing common law.

In both the *Ghen* and *Bradbury* cases, no statutes existed during those times that prohibited the specific conduct described. In both cases, judges decided these matters strictly on the basis of prevailing precedent established by common agreement through common law. Today, in the United States, many states continue to have common laws, although statutory law has replaced much of it. At the federal level, there is no common law anymore, replaced entirely by statutory law.

Sources: From *Ghen v. Rich*, 8 F. 159 (1881) and *State v. Bradbury*, 136 Me. 347 (1939).

differently. If police arrested a prostitute, the prosecutor would be expected by the community to pursue the case against the prostitute as a serious crime. Therefore, certain crimes vary in their seriousness according to jurisdictional variations and prevailing customs and definitions of criminal conduct.

Civil Law

civil law all state and federal law pertaining to noncriminal activities, law that pertains to private rights and remedies.

preponderance of the evidence civil standard whereby the greater weight of the information is in favor of or against the defendant.

beyond a reasonable doubt standard used in criminal courts to establish guilt of criminal defendant.

Civil law originated in ancient Roman law. Contrasted with common law, civil law stresses codification. Early civil law existed as compilations of rules and laws that were made under the emperor Justinian. Rather than rely on local custom to resolve disputes, common-law judges would refer to the written law when deciding cases. Civil law in America is used to resolve disputes between private parties. Unlike criminal law, the private party originates a case against another person or an organization rather than the prosecutor. The penalties sought are typically monetary. If one party is found to be at fault, damages are assessed. These damages are largely financial. Another feature of civil law is the standard of proof. In a civil case, the plaintiff must prove that the defendant was negligent by a preponderance of the evidence, which means more than 50 percent. Most Americans were made aware of this difference in the case of O. J. Simpson. While O. J. Simpson was acquitted of murder charges in a criminal case in California in 1995, subsequently he was found at fault in the wrongful deaths of his former wife, Nicole Brown Simpson, and a friend, Ronald Goldman, in the civil case that followed. The media attributed the different outcomes in the two trials to the different standards of proof required for criminal and civil cases. In O. J. Simpson's criminal case, the more difficult standard of beyond a reasonable doubt caused jurors to question the evidence against him and find him not guilty of the crimes. However, in the civil case that followed, another jury believed the plaintiffs who asserted that Simpson was responsible for the two deaths. In the latter case, Simpson's culpability was demonstrated according to the civil standard of the preponderance of evidence or weight of the evidence, not the criminal standard of beyond a reasonable doubt.

Criminal Law

For many citizens, the evening news on television is their primary source of information about how the criminal justice system operates. Television dramas such as *Law and Order*, *CSI*, and *N.Y.P.D. Blue* feature stories about the legal system and do much to shape our views about criminal law. We might see a story where an offender is sentenced in California to life in prison because he stole golf clubs, or a story where a serial sex offender released by a parole board subsequently commits a new sex crime. For most people, the efficacy of the justice system is measured by the sound application of criminal laws or the poor application of these laws.

criminal law body of law that defines criminal offenses and prescribes punishments (substantive law) and that delineates criminal procedure (procedural law).

Criminal law is differentiated from civil law according to the following criteria:

	Criminal law	Civil law
Who is the victim	State	Individual
Who prosecutes	State	Individual
Possible punishments	Fine, probation, or imprisonment	Monetary awards

In both civil and criminal laws, the victim is a person or class of persons, such as an aggregate of smokers, inmates in a jail or prison facility, or persons who use marijuana. However, in criminal law the offense is regarded as so disruptive to the social order that society as a whole is the nebulous victim. This is because under criminal law, society is considered harmed by someone's illegal actions. In civil law, someone is the victim and

brings suit against the victimizer. Punishments under criminal law are more severe than the punishments prescribed under civil law. Persons convicted of crimes may be fined and/or incarcerated. The most severe form of criminal punishment is the death penalty. In civil cases, however, victimizers who are found liable are not imprisoned or put to death. In most instances, they are obligated to compensate victims for their losses and suffering. These penalties are monetary judgments or awards for damages.

Again, the O. J. Simpson case demonstrates this difference. If Simpson had been convicted in that criminal case, he would have been sentenced to prison. In the subsequent civil case against him, Simpson was found liable and ordered to pay damages. He was ordered by the court to pay $25 million in punitive damages, which were intended to punish him for his conduct, and he was further ordered to pay $8.5 million in compensatory damages, which were intended to compensate the families of his victims for their pain and suffering.

Administrative Law

Administrative law are rules and regulations that administrative agencies have set up to govern procedures for organizational behavior. While the other forms of law may not directly affect us in our daily lives, administrative law is pervasive and affects all of us in various ways. There are over 50 federal regulatory agencies that promulgate and enforce a diverse array of regulations. Other administrative agencies exist at the state and local levels. The result is an overwhelming amount of bureaucratic control. When we travel on an airline, for example, we are subject to the administrative rules developed by the Federal Aviation Administration. The food and drugs we consume are approved and regulated by the Food and Drug Administration (FDA). When we telephone others, this communication is regulated by the Federal Communications Commission. If we purchase a house, our actions are influenced by interest rates, which are indirectly related to the actions of the Federal Reserve.

administrative law the body of laws, rules, orders, and regulations created by an administrative agency.

An interesting example of the high degree of governmental regulation and control is given by Vago (2006). Vago indicates that a couple may be awakened by the buzz of an electronic clock or perhaps by a clock radio. This signals the beginning of a highly regulated existence for them. The clock or radio that wakes them is run by electricity provided by a utility company, regulated by the Federal Energy Regulatory Commission and by the state utility agencies. They listen to the weather report generated by the National Weather Service, part of the Commerce Department. When they go to the bathroom, they use products, such as mouthwash and toothpaste, made by companies regulated by the FDA. The husband might lose his temper trying to open a bottle of aspirin with a childproof cap, required by the Consumer Product Safety Commission (CPSC). In the kitchen, the wife reaches for a box of cereal containing food processed by a firm subject to the regulations of the United States Department of Agriculture (USDA) and required to label its products under regulations of the Federal Trade Commission (FTC). When they get into their car to go to work, they are reminded by a buzzer to fasten their seat belts, compliments of the National Highway Traffic Safety Administration. They paid slightly more for their car than they wanted to, because it contains a catalytic converter and other devices stipulated by the Environmental Protection Agency (EPA) (Vago 2006, 123–124).

▶ Sociolegal Perspectives and the Law

Just as there are various types of law, there are also many perspectives about the interaction between society and law. The analysis of the interaction of law and society has its early American roots in the writings of Oliver Wendell Holmes Jr., Louis Brandeis, and Roscoe

Pound. These authorities were among the first to criticize classical jurisprudence. Classical jurisprudence was concerned with applying a strict interpretation and application of the law. This formal and mechanical method of jurisprudence did not permit the courts to effect changes in social policy. Holmes, Brandeis, and Pound believed that law should be active and dynamic and useful for changing the social order. The perspective on law proposed by these authorities is sociological jurisprudence.

Sociological Jurisprudence

sociological jurisprudence view that holds that a part of law should be devoted to making or shaping public policy and social rules.

Sociological jurisprudence indicates that a part of law should concern itself with making social or public policy. Today this legal agenda is called judicial activism. Oliver Wendell Holmes believed that law should be responsive to and incorporate changing social conditions, although the legislature should remain the primary method of social change. Holmes said that "for the rational study of the law the black letter man may be seen as the man of the present, but the man of the future is the man of statistics and the master of economics" (Holmes 1897, 457). This statement suggests that law and/or judges should acknowledge and utilize social science to further develop and answer legally relevant questions.

The first person to use social science in litigation was Louis Brandeis. Brandeis embraced sociological jurisprudence and utilized social science to win cases. He often incorporated social science results into briefs to the court to bolster his arguments. One noteworthy case was *Muller v. Oregon* (1908), which involved a dispute about the working hours of women. Two years earlier, the case of *Lochner v. New York* (1905) was decided by the U.S. Supreme Court. The Court declared a statute unconstitutional that limited working hours to 60 per week. Aware of this case and holding, Brandeis believed that he had to show that it was harmful for women to work more than 60 hours per week. To substantiate his claim, Brandeis wrote a brief that included statements arguing that women were deleteriously affected by long hours of work. Brandeis used a variety of sources from labor statistics and statements from international conferences about labor legislation as his scientific sources. Dr. Theodore Wely has added that women bear the following generation whose health is essentially influenced by that of the mothers, and the state has a vital interest in securing itself for future generations capable of living and maintaining it (Wely 1904).

Breckenridge supported this sentiment by suggesting that the assumption of control over the conditions under which industrial women are employed is one of the most significant features of legislative policy. In many advanced industrial countries, the state not only prescribes minimum standards of decency, safety, and health, but also specifies minimal limits for wage earners. The state also takes cognizance of several ways for distinguishing sex differences and sex relationships. Furthermore, the state sometimes takes cognizance of the peculiarly close relationship that exists between the health of its women citizens and the physical vigor of future generations. It has been declared a matter of public concern that no group of its women workers should be allowed to unfit themselves, by excessive hours of work, by standing, or by other physical strain, for the burden of motherhood, which each of them should be able to assume. He adds that the object of such control is the protection of the physical well-being of the community by setting a limit to the exploitation of the improvident, unworkmanlike, unorganized women who are yet to be mothers, actual or prospective, of the coming generation (Breckenridge 1906).

The U.S. Supreme Court was persuaded by this argument and held that the adverse effects of women working long hours were detrimental to the public interest. There is no doubt that the justices of the U.S. Supreme Court were influenced by the social science evidence provided by Brandeis in his brief. The Court reasoned in *Muller* that a woman's physical structure and the performance of maternal functions place her at a disadvantage in

the struggle for subsistence is obvious. This is especially true when the burdens of motherhood are upon her. Even when they are not, by abundant testimony of the medical fraternity, continuance for a long time on her feet at work, repeating this from day to day, tends to have injurious effects on the body, and as healthy mothers are essential to vigorous offspring, the physical well-being of women becomes an object of public care in order to preserve the strength and vigor of the race (*Muller v. Oregon*, 1908).

Roscoe Pound elaborated on the purpose and goal of sociological jurisprudence in several of his essays. He recognized that law was not and could not be autonomous or influenced by social conditions. He wrote that the important part of our system is not the trial judge who dispenses justice to litigants, but rather the judge of the appellate court who uses the litigation as a means of developing the law (Pound 1912, 489). Pound developed five strategies by which sociolegal jurists could distinguish themselves from more traditional jurists. These strategies include the following:

1. They are looking more to the working of the law than to its abstract content.
2. They regard law as a social institution, which may be improved by intelligent human effort, and hold it their duty to discover the best means of furthering and directing such effort.
3. They stress upon the social purposes which law subserves rather than upon sanction.
4. They urge that legal precepts are to be regarded more as guides to results.
5. Their philosophical views are very diverse. (Pound 1912, 489–490)

These three legal scholars and practitioners represented a dramatic change in thinking about the law. They believed that classical jurisprudence and jurists should be the only ones to strictly apply existing law. These jurists believed that law and society were inextricably linked. One influenced the other. One was necessary for the other. Judges cognizant of or trained in sociological jurisprudence realized that one of the major functions of law was social change. Lawyers and jurists should apply law with the idea of fostering social change.

Legal Realism

Sociological jurisprudence provided the foundation for **legal realism**. This perspective is described in the early work of Karl Llewellyn (1931). Llewellyn had a broader agenda than his predecessors. He argued that law was dynamic and often inconsistent. Interestingly, the development of the National Reporter system published by West Publishing Company is believed to have contributed to this perspective. This is because the Reporter system disclosed that similar cases or existing legal precedents were actually applied or interpreted differently, depending upon the jurisdiction. Thus, it was that an appellate judge in California applied a particular legal precedent differently compared with how another appellate court judge in Texas applied the same legal precedent.

legal realism views that law and society are constantly evolving and that law should be the means to a social end rather than an end in itself.

Karl Llewellyn also believed that the existing understanding of law was inadequate. He believed that law and society were constantly evolving. Realists also believed that law should be the means to a social end rather than an end in itself. Realists were distrustful of legal rules and the perspectives of rule formation. Rather, they were interested in determining the effects of law (Llewellyn 1931).

Critical Legal Studies

Critical legal studies is one of the most dynamic and controversial perspectives on law. This movement began with a group of junior faculty members and law students at Yale in the late 1960s. In 1977, the group organized itself into the Conference of Critical Legal

critical legal studies movement recognizing that law is subjective rather than objective.

Studies, which presently has over 400 members and holds annual conferences that attract 1,000 or more participants (Vago 2006, 67).

The critical legal studies movement involves a thorough examination of the entire legal system. The theoretical underpinnings of critical legal studies are most often attributed to Roberto Unger. The critical legal studies movement had its origins in legal realism. Similarly, critical legal studies takes issue with formal rational law. Critical legal studies contends that we must recognize that the law is subjective rather than objective.

Critical legal scholars believe that law is not value-free. Essentially, these scholars believe that the law serves to preserve existing power relations in society. Law schools are structured to train students for hierarchy. In the classroom, students learn their social position during lectures. Law school teachers rely heavily on the Socratic method, whereby teachers ask students about different points of the law. The students, regardless of their responses, are always incorrect. The teacher relies on either lower or higher levels of abstraction to fit particular situations. Law schools justify this method because many law professors believe that it makes students think like lawyers. However, for many law school students, this process is a humiliating experience and serves to reinforce the hierarchy of law.

In order to remedy certain problems associated with acquiring a legal education, a radical restructuring of law school curricula and how law is taught is needed. In an ideal legal education, there would be few legal skills classes (e.g., learning legal rules and the categorization of cases), and the major focus in law school would be upon mastering social and political theory and an analysis of the existing social system (e.g., housing, welfare, and criminal justice).

Feminist Legal Theory

feminist legal studies views that women use a different type of logic than men when interpreting the law, favoring less litigation and more mediation.

Another perspective on the law has its origins in feminism. The diverse experiences of women and the law have evolved into various perspectives on the relationship between law and gender. The feminist's perspective of the law or **feminist legal studies** ranges from the radical to the pragmatic. Some feminists have examined how the law protects male interests. Some persons have argued that the law treats women as objects of men (Abrams 1995). Other feminists have examined how women have had an impact on the legal system. These investigations include research on the impact of women in law school and as attorneys (Chambers 1989) and as judges. The rationale for this view is that women reason differently from men, and therefore as lawyers and judges, women will use a different type of logic when applying the law. Women may be less adversarial and confrontational compared with men. This is quite possibly a positive result. The confrontational adversarial process has a winner and a loser. Women often express dissatisfaction with the win–lose nature of litigation because the real needs of the litigants are never addressed or accommodated. Rather, female lawyers might advocate a process involving less litigation and more mediation and fewer winner-take-all results (Menkel-Meadow 1986).

▶ Theoretical Perspectives of Criminal Court Decision-Making Practices

Decision-making practices of courtroom actors generally are viewed through two overarching theoretical perspectives. The first perspective posits that decisions are influenced primarily by the legally relevant factors in the case, such as the seriousness of the crime committed by the defendant and the defendant's prior criminal record. The idea that legally relevant factors are primary in the minds of prosecutors and judges when

making decisions is referred to as formal rationality (Dixon 1995). This theoretical perspective purports that the formal legal rules guide outcomes in the criminal court system and extralegal factors, such as gender, race/ethnicity, and socioeconomic status of the defendant, will have no influence on court decisions. The second theoretical perspective posits that outcomes in criminal court decision-making practices are the product of influence from both legal and extralegal factors. Under this perspective, referred to as substantive rationality, courtroom actors may rely on stereotypes of dangerousness and risk of defendants that are linked to extralegal factors. Judges and prosecutors therefore make decisions using both legal and extralegal factors, such as gender, race, social class, or other social positions. The first theoretical perspective, formal rationality, would predict that a defendant's gender, race/ethnicity, or social class would not influence decisions by the courts. The second perspective would predict that a defendant's gender, race/ethnicity, and socioeconomic status would in some circumstances have an effect on decisions surrounding criminal court outcomes.

Courtroom outcomes and the decision-making processes of courtroom actors, however, are complex issues. At the outset, the court structure in the United States is somewhat confusing, and there is little uniformity among jurisdictions. The law and courts are very important institutions in society. They are the structures and the avenue through which social control is maintained and social change is achieved. Without the courts and rules of criminal procedure, the law could not function. These systems, however, are not perfect; there have been criticisms levied at all stages of legal processes and all members of the courtroom workgroup. Legal scholars and academics will continue to study and research the law, the courts, and their decision-making practices. The decisions that are made and the processes that are implemented will continue to be examined and scrutinized to ensure that procedural rules are adhered to, and due process rights are being fulfilled. This examination and scrutiny is important because a system of law and an organized court structure are essential to the democratic ideals of the U.S. society.

Summary

1. *Apply your knowledge of what the law is and the role that courts play in various facets of our daily lives.*

The law is a set of rules defining behavior for a particular place and at a particular time. The law can be perceived as either liberating or oppressive, preserving the *status quo*, or providing the means and opportunity to challenge the existing social order. Law has been used to both perpetuate and eliminate slavery, dominate and liberate women, and convict and acquit the innocent.

The courts play a critical role in the criminal justice system because both law enforcement and corrections rely on, or implement decisions from, the courts. In this sense, the courts are an important component to the functioning of the larger criminal justice system. Judges and prosecutors are also actors in the system who have a great deal of discretion. They are both very powerful actors in the U.S. criminal court system because of their wide-ranging discretion over liberty, and in some cases, life.

Courts have also been revered and criticized regarding the extent to which they make decisions that intrude on the lives of the citizenry. Courts have made decisions that have altered the status and role of many different groups in society. The law has operated directly and explicitly to prevent persons from attaining independence, and deprived them of formal legal remedies. The law has been used to redress inequalities through affirmative action, for example, which provides in part for fair and equitable hiring or promotion practices. Determining precisely how the law should enter society and the lives of citizens has proved to be elusive. Legislators, prosecutors, defense attorneys, judges, defendants, businesspersons, consumers, parents, students, priests, the wealthy, and the poor all have different perspectives about what the law is and how it should be applied.

2. *Compare and contrast the different functions of law, including social control, dispute resolution, and social change.*

Law has a variety of functions. Law is often used as a method of social control or to regulate our behavior. For instance, the law regulates whether or not females have the right to have an abortion, whether patients can use marijuana for medicinal purposes, and whether physicians can legally assist persons in ending their lives. When someone violates the law, the law is used as a method to punish them for their past behavior and to control their future behavior.

Another function of the law is dispute resolution. The law serves as a guide for resolving disputes. When there is a dispute, the law is often used to resolve that dispute. The law provides for rules of evidence and procedures that are employed to hear and process disputes. For example, the law resolves whether or not a person has violated a property law if their tree grows too far into a neighbor's yard; the law resolves whether or not a toy company has produced a faulty toy that has led to child injury and whether they are responsible to pay damages.

Another function of the law is social change. In the United States, the law is often used as an agent of social change. State legislatures are constantly passing laws to change the existing social order. For example, the legislature passes a law allowing narcotics users to sue their dealers, the legislators in various states amend their drinking and driving laws and lower the legal blood alcohol limit to .08, or the Supreme Court decides that the death penalty as administered is unconstitutional. Legislative action or law has changed how we perceive and react to various criminal offenses as a society.

3. *Understand the evolution of disputes and the formal resolution of them.*

Disputes occur frequently, and we can recognize that disputes follow particular patterns, and that a process for seeking legal remedies occurs only when several important factors converge. Some researchers have conceptualized the dispute process as consisting of various stages; for example, the evolution of disputes can be characterized by naming, blaming, and claiming. Naming involves identifying a party in a legal action, blaming is the stage where a victim singles out someone as a potential target for legal action, and claiming is filing of a formal grievance against the person or party responsible for victimization. Not surprisingly, most disputes do not result into formal lawsuits. Most injuries are never perceived, and if they are, it is difficult to identify a particular victimizer. Therefore, the courts are faced with and address only a small fraction of the disputes that evolve into formal complaints and where those involved seek legal remedies.

4. *Identify the difference between substantive law and procedural law.*

The law can be categorized as either substantive or procedural. Substantive laws are the laws on the books, the laws created by the legislature of federal and state governments and also by local authorities. Therefore, substantive law is what the law says. Procedural law, on the other hand, is the process of the law, how the law is applied. Procedural law is sometimes referred to as the law in action. It gives, for instance, officers guidelines on how to get a search warrant. It gives judges guidelines on evidence that is and is not admissible in court. It gives prosecutors and defense attorneys rules for selecting jurors for particular cases. Both substantive and procedural laws are typologies or classifications of the law that tell us what the laws are, as well as how they are to be implemented.

5. *Summarize the different types of law, including common law, civil law, and criminal and administrative laws.*

Four types of law were identified. Common law originated in England and was made by judges who traveled in circuits and dispensed justice according to the customs common to the region. For this reason, common laws vary in different jurisdictions. Although in recent years we have tried to make what violates law and the punishments for those violations more uniform, common law still exists. For example, in certain jurisdictions in the country, the punishment for prostitution may amount to what is thought of as a slap on the wrist, where a prostitute is basically arrested, required to pay a fine, and is released back to the street to again engage in prostitution. However, the punishment for a conviction of prostitution in another area of the country may involve aggressive prosecution of prostitutes to send a message and act as a deterrent to going back on the streets. It may depend on the prosecutor's agenda; it may depend on the sentiment from the community. How vigorously certain violations of law will be pursued depends on a number of things; the fact is that this is a form of common law that differs across jurisdictions.

Civil law is codified or written and documented. Civil law originated in ancient Roman law. Unlike common law, judges refer to the written law when deciding cases; these decisions then become law. Civil law is used for dispute resolution among private parties. The penalties are typically monetary, and are not crimes against the state. In civil law, there is also a different standard of proof to be held liable for your actions; it is by a preponderance of the evidence.

Criminal law is differentiated from other types of law in that the society as a whole is a victim, and the government brings charges against the accused when a criminal law is violated. Punishments under criminal law are more severe than those under civil law, and could include imprisonment. Those convicted have to be found guilty beyond a reasonable doubt as opposed to the preponderance of evidence standard in civil court.

Administrative law is the body of law, rules, orders, and regulations created by administrative agencies. Although we may not think about it too often, administrative law affects our lives almost daily. A number of regulatory agencies at both the federal and state levels exist and impose a lot of bureaucratic control on our lives. Every time you drive down the street, pick up prescriptions from the pharmacy, or take a flight to visit friends and relatives, there are various regulations that you, and others, are adhering to in order to ensure everyone's safety. When you drive your car, rules from the National Highway Traffic Safety Administration stipulate that you should fasten your seat belt and be sure your car has had a safety inspection. When you go to the pharmacy, rules from the FDA provide guidelines for how many pills to take and other drugs to avoid because of possible interaction effects. When you go to the airport, the Federal Aviation Administration mandates that certain items will not be allowed on aircraft. All in all, our daily lives are greatly affected by rules put forth by administrative agencies.

6. *Draw appropriate conclusions about the different sociolegal perspectives on law, such as sociological jurisprudence, legal realism, critical legal studies, and feminist legal theory.*

Another important aspect of law is how it is dynamic in that it interacts with society. Four perspectives were presented exploring this interaction. Sociological jurisprudence believes that law should be concerned with making social or public policy. Oliver Wendell Holmes and Roscoe Pound were avid proponents of this perspective and believed that the law cannot be uninfluenced by, and must be responsive to, existing social conditions. Legal realism believes that law should be the means to a social end. Karl Llewellyn believed that law and society were constantly evolving, and that we should be mindful of the effects of law. Critical legal studies is a rather controversial perspective in that it believes that the law is subjective, not objective, and therefore is not value-free. In other words, Roberto Unger and other proponents believed that the law was used as an instrument to preserve the existing power relations in society. Feminist legal theory purports that the law is used to protect male interests, or treats women as the objects of men. Feminist theorists believe that women apply a different logic to law, and that the law may better serve society if it was less adversarial and confrontational. Each of these offer different perspectives on the interaction between law and society.

Key Terms

administrative law *13*
beyond a reasonable doubt *12*
blaming *08*
civil law *12*
claiming *09*
common law *10*
conflict stage *09*
criminal law *12*
critical legal studies *15*
disputants *07*
dispute resolution *07*
dispute stage *09*
feminist legal studies *16*
grievance *09*
judicial activism *08*
law *04*
legal realism *15*
naming *08*
pre-conflict stage *09*
preponderance of the evidence *12*
procedural law *09*
social change *07*
social control *06*
sociological jurisprudence *14*
substantive law *09*

Critical Thinking Exercises

1. To date, numerous states have put a proposal for legalizing marijuana on the ballot before residents for a vote. Other states have decriminalized possession of marijuana in small amounts. As a public policy issue, do you think marijuana should be legalized? How much crime would be eliminated through the legalization of marijuana? What are some of the consequences of decriminalization or legalization for the

criminal justice system? Should the same decriminalization be applied to other substances, such as heroin and cocaine?

2. Many decisions from the court affect how persons in the criminal justice system perform their jobs. Oftentimes, court decisions have a broader impact on the lives of citizens, such as mandating that states abide by certain rules, or directing what types of policies certain entities and businesses can have in place. Recent Supreme Court decisions, for example, have required that all states must license and recognize same-sex marriages under the Fourteenth Amendment (*Obergefell v. Hodges*), and decided that the University of Texas' policy using race as a factor in admission decisions is permissible under the Fourteenth Amendment's Equal Protection Clause (*Fischer v. The University of Texas*). What do you think of the court having broad powers to make decisions about what states must do and how entities such as universities can operate? Should states be able to decide what laws and rules and regulations they want to impose without fear of interference from the courts? Should universities and other public institutions be able to form their own policies to conduct business? Or do you think that the courts should ensure uniformity of the law and policies across the states and other public institutions?

Case Study Decision-Making Exercise

You may not remember the name Jack Kevorkian, but he was a doctor who assisted people who wanted to end their lives. He was a longtime advocate for euthanasia, a practice of ending one's life when one has a terminal illness and is suffering from intense pain. If there is no hope for survival or a prolonged useful life, many patients in this condition want to end their pain and suffering in the most painless way possible. Kevorkian supplied many terminally ill people with "suicide kits," and had to defend himself against various types of murder charges over the years. Many family members and the relatives of those who had terminated their lives with his assistance testified on his behalf. Living wills recorded on videotape from victims themselves have supported Kevorkian's arguments that he was simply helping to alleviate the pain and suffering of terminally ill patients. Eventually, he was convicted of murder in 1999 in Michigan for his role in the assisted suicide of one victim. Subsequent to Kevorkian's conviction, at least five states have passed some form of legislation allowing physician-assisted suicide in some form. What do you think? Do you believe that persons should be allowed to choose whether they live or die, if they are suffering from a terminally ill condition and are suffering and in great pain? Should the courts play a role in determining whether individuals should be able to get assistance from doctors in terminating their lives? What do you think about the fact that this is legal or illegal varies by state? Should rules regarding something like this be uniform across the country? Is this a moral issue? How should this be resolved?

Concept Review Questions

1. What is law? What are two different types of law? Differentiate between each.
2. What was the significance of the *Dred Scott* case?
3. What roles do the courts play in the criminal justice system?
4. What are the three functions of law?
5. What is the significance of the view containing naming, blaming, and claiming?
6. How does substantive law differ from procedural law? What do these different types of law govern? Explain.
7. What is common law? How do judges decide cases on the basis of common law?
8. What is meant by administrative law? Why is it important for social change?
9. What is sociological jurisprudence? How is sociological jurisprudence related to social change?
10. What is meant by legal realism? How does critical legal studies compare with legal realism?
11. How has feminism affected the development of law in the United States?

Suggested Readings

1. S. Barkan (2015). *Law and Society: An Introduction*. Routledge.
2. K. N. Llewellyn (2016). *The Common Law Tradition: Deciding Appeals* (Vol. 16). Quid Pro Books.
3. M. Arden (2015). *Common Law and Modern Society: Keeping Pace with Change*. Oxford University Press.
4. B. Leiter (2015). "Legal Realism and Legal Doctrine." *University of Pennsylvania Law Review*, University of Chicago, Public Law Working Paper No. 528. Available at SSRN: http://ssrn.com/abstract=2589327.
5. C. Sharp and M. Leiboff (eds.) (2015). *Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law*. Routledge.
6. M. D. Dubber (2014). "Critical Analysis of Law: Interdisciplinarity, Contextuality, and the Future of Legal Studies." *Critical Analysis of Law: An International & Interdisciplinary Law Review* 1:1.

Davidevison/Fotolia

2 The Structure of American Courts

LEARNING OBJECTIVES

As a result of reading this chapter, you will have accomplished the following objectives:

1. *Distinguish among the different ways to classify American courts, such as by jurisdiction, by its dual nature, and by type of court.*
2. *Recognize the different types of jurisdiction like subject matter, geographic, and hierarchical.*
3. *Explain how the United States has two court structures, a federal structure and a state structure.*
4. *Describe the difference between trial and appellate courts.*
5. *Compare and contrast the federal court structure, including, U.S. District Courts, U.S. Circuit Courts of Appeal, and the U.S. Supreme Court.*
6. *Summarize the state court structure, including courts of limited jurisdiction, courts of general jurisdiction, intermediate courts of appeal, and courts of last resort.*

Joe Garcia Espitia, who was charged in California with carjacking, rejected court-appointed counsel and elected to represent himself. As part of his case, he requested access to a law library while confined in jail prior to his trial, but these requests were denied. During his trial, he was allowed four hours of law library time just before closing arguments. He was found guilty and subsequently filed a federal *habeas corpus* motion declaring that his Sixth Amendment rights had been violated since he had been denied access to a law library. The district court rejected this appeal, but the court of appeals reversed stating that his Sixth Amendment rights were violated by denying him access to legal resources. The government appealed this appellate court decision and the U.S. Supreme Court decided to hear the case. In 2006, the U.S. Supreme Court reversed the court of appeals decision, holding that defendants do not have a clearly established right under federal law to access law libraries while they are in jail awaiting trial.

In another case, Jesse Montejo was arrested for murder and because he was indigent, he was given court-appointed counsel. Prior to meeting with his court-appointed attorney, however, Montejo gave his consent to be interrogated by police without his attorney present. The government used information from this interrogation against Montejo in court, and he was convicted. Montejo appealed that once he had been appointed an attorney, he could not be interrogated by police without that attorney. The Louisiana Supreme Court upheld the use of the interrogation evidence stating that Montejo consented to the interrogation and did not state that he wanted his counsel present. Montejo appealed to the Supreme Court and they upheld the Louisiana Supreme Court's decision stating that despite the fact that the government must ensure that defendants have waived their rights to counsel before interrogations take place, this does not mean that these interrogations cannot occur if a defendant has been appointed counsel but consents to interviews without them present.

How is it that in the above cases different courts made different decisions regarding the defendant or the case? How can one court say it is okay to deny access to legal resources such as a library or that it is okay to interrogate a defendant without the counsel being present and another court decide the opposite? Do different courts have jurisdiction over the same case, and can they over rule a previous court's decision? The structure of the U.S. court system is set up so that there is what is referred to as hierarchical jurisdiction. This means that certain courts have original jurisdiction to hear facts and try cases to determine guilt or innocence and other courts have appellate jurisdiction to determine whether or not an error was made, or whether the law was applied correctly by the lower court. Judges therefore at different courts utilize their understanding of constitutional and procedural laws to make these decisions. This process does not go on forever, most cases are not appealed, and those that are will eventually exhaust their right to appeal. The U.S. Supreme Court is the court of last resort for both the state and federal court systems, and although they hear very few cases, they have the final say in the cases that they do decide to hear.

Introduction

The American court system is one of the most confusing systems in the world. In many countries, the court structure is a centralized system that is very uniform and easy to understand. For people from other parts of the world, the American public, and even students studying the American court system, it is difficult to understand the structure and operations of U.S. courts. There are 51 different court structures in the United States. Each state and the federal government have their own structure and process for resolving disputes and prosecuting criminals. Some states have indeterminate sentencing; others

and the federal courts have determinate sentencing systems and sentencing guidelines. There are mandatory minimums, habitual offender statutes, and truth-in-sentencing laws in various jurisdictions that further complicate the U.S. system of courts and sentencing. Also, acquiring an awareness of only the state and federal court systems ignores other court systems, such as military tribunals, juvenile and family courts, probate courts, tribal courts, chancery courts, drug courts, and housing and land courts.

This chapter examines the structure of the American court system. It is beyond the scope of this book to list and describe all of the subtle differences of every type of court structure. Rather, this chapter will classify these court structures according to different jurisdictions and functions with the hope of providing students a better understanding of the American court system. This chapter will present three types of jurisdiction—geographic, subject matter, and hierarchical. The chapter also discusses the dual court system, meaning that in the United States, there is both a federal court structure and a state court structure. Finally, it will discuss the difference between trial courts and appellate courts, and the functions of each. The federal system is made up of U.S. District Courts, U.S. Circuit Courts of Appeal, and the U.S. Supreme Court. The state court system is characterized by courts of limited jurisdiction, courts of general jurisdiction, intermediate courts of appeal, and courts of last resort. We should not focus strictly on court names, however, since the meaning associated with a particular court name varies among counties and states. For example, it might be assumed that the Supreme Court is an appellate court of last resort at the state and federal levels. Most trial courts are called circuit courts or district courts. However, in New York, felony trials are within the purview of the Supreme Court. New York Supreme Courts are the functional equivalent of criminal courts in other states. They simply use the term "Supreme Court" for this type of court.

▶ Classifying America's Courts

jurisdiction the power of a court to hear and determine a particular type of case.

One way of classifying American courts is by **jurisdiction**. Jurisdiction is the legal authority or power of a court to hear specific kinds of cases. Jurisdiction varies most often according to where the offense occurred, the seriousness of the offense, or whether the case is being heard for the first time or on appeal. There are three types of jurisdiction: (1) subject matter jurisdiction, (2) geographic jurisdiction, and (3) hierarchical jurisdiction.

Subject Matter Jurisdiction

subject matter jurisdiction the types of cases or crimes that a court has authority to hear.

limited jurisdiction court is restricted to handling certain types of cases such as probate matters or juvenile offenses.

general jurisdiction power of a court to hear a wide range of cases, both civil and criminal.

Subject matter jurisdiction refers to the type of case the court has authority to hear. Usually, misdemeanors and preliminary hearings are processed or conducted by courts of **limited jurisdiction**. For example, if a person burglarizes a house and steals $499 worth of goods, the case typically will be heard by a court of limited jurisdiction (e.g., municipal court, city court, or county court). However, if the same person burglarizes the same house and steals $500 or more worth of goods, this case will likely be heard in a court of **general jurisdiction** (e.g., district court, circuit court, or superior court). Thus, the actual dollar value of property stolen determines whether the jurisdiction is limited or general. The greater the dollar value of property stolen, the more likely the case will be heard in a court of general jurisdiction. Courts of limited jurisdiction most often decide petty offenses where minor monetary sums are involved.

In many areas of the country, courts of limited jurisdiction are also responsible for processing the initial stages of felony cases. These courts usually issue warrants, conduct initial appearances, establish bail, and advise felony defendants of their rights and the charges they are facing, together with a date for a preliminary hearing to determine whether probable cause exists.

Geographic Jurisdiction

geographic jurisdiction the power to hear particular kinds of cases depending upon the legally defined boundaries of cities, counties, or states.

Geographic jurisdiction is determined by the political boundaries where the crime was committed. Geographic jurisdiction is the clearest type of jurisdiction to understand. A defendant's case will be heard by a court within the political boundary in which the offense occurred. If a crime is committed in a certain county, a county court will preside if there is a later trial. However, if the crime occurs in the city, then a city criminal court will preside. This, however, might also depend on the type of crime committed and which agency makes the arrest. In large cities, the sheriff's office and the city police department may both make arrests within the city limits that are within the county limits. There may also be federal agencies located in the city and county and the federal courts would also have geographic jurisdiction to hear a case where a federal crime was committed. Whether it is a county or state or federal offense might depend on the amount of money embezzled, and from which institution, or the amount of narcotics seized, for example. All three of these courts could hear the case as they would have jurisdiction but ultimately where the case is tried would depend on which agencies are involved. Often today local, state, and federal agencies work together in investigating certain types of crimes. If there is a lot of money taken or a large cache of drugs, it is likely that the federal courts would hear the case as the federal government has more resources and, in some cases, stiffer penalties. Thus, there are many geographic areas where court jurisdiction may be complex and overlapping compared with other jurisdictions.

There are other types of geographic jurisdiction besides the political boundaries of cities and counties. For instance, almost every Native American reservation and military base, fort, or installation is located within a particular state or territory. Thus, if someone commits a crime in Sequoia National Park in California, geography itself would seem to indicate that California would have jurisdiction. However, since Sequoia National Park is a federally protected area, the federal court has jurisdiction. Many offenses occurring in federally protected areas are heard by U.S. magistrates. Also, if a crime is committed by a military member on the premises of Lackland Air Force Base in Texas, it is not relevant that the crime has occurred within the geographic boundaries of Bexar County, Texas. Lackland Air Force Base is a federal military installation, and military police and courts will arrest, prosecute, and try criminal defendants. Texas state courts do not have jurisdiction in these cases, even though the land upon which the Air Base rests is centered within the geographical boundaries of Texas. Politically, the jurisdiction of Texas courts ends at the Air Force Base gates. To make this matter even more complex, if a crime is committed by a civilian on the Lackland Air Force Base, Federal District Court for the Western District of Texas would have jurisdiction over the case. In other words, the status of the offender (military or civilian) takes precedence over geographic jurisdiction.

Geographic jurisdiction may also be influenced by the perpetrator and victim (e.g., federal agent or federal property). For instance, in the case of *Morissette v. United States* (1952), Morissette, a civilian, was hunting deer one afternoon on a U.S. Army artillery range in Michigan. Although there were signs stating "Danger—Keep Out—Bombing Range," the area was known as good deer country and Morissette hunted there anyway. In the course of his hunting, he came across a number of spent copper bomb casings that appeared to be discarded. After a frustrating day of hunting, Morissette decided if he couldn't find a deer, he would offset some of his trip expenses by taking some of these casings and selling them for their copper value. He was arrested and charged with stealing U.S. government property. He was tried in federal district court and convicted, sentenced to imprisonment for two months, and fined $200. The U.S. Supreme Court reversed Morissette's conviction, holding that Morissette had no intention of committing a crime. Furthermore, he did not know that what he was doing was unlawful, and through his good

character and openness in the taking of the casings, he demonstrated that his action was not deliberately criminal. It is significant here that Morissette's case was not heard in a military tribunal. This is because Morissette was a civilian and not subject to military law and sanctions. If the perpetrator had been a soldier in the U.S. Army, however, the soldier would have been tried by a military court for the criminal trespass offense.

hierarchical jurisdiction distinction between courts at different levels, where one court is superior to another and has the power to hear appeals from lower court decisions.

trial courts courts where guilt or innocence of defendants is established.

appellate courts courts hearing appeals emanating from lower courts. These courts typically do not try criminal cases.

Judiciary Act of 1789 congressional act that provided for three levels of courts: (1) 13 federal district courts, each presided over by a district judge; (2) 3 higher circuit courts of appeal, each comprising 2 justices of the Supreme Court and 1 district judge; and (3) a Supreme Court, consisting of a chief justice and 5 associate justices.

federal district courts basic trial courts for the federal government that try all criminal cases and have extensive jurisdiction.

circuit courts courts with several counties or districts within their jurisdiction.

Supreme Court the federal court of last resort as specified by the U.S. Constitution; at the state level, any court of last resort in most kinds of cases.

Hierarchical Jurisdiction

Hierarchical jurisdiction is basically the difference between appellate and trial courts. Trial courts are often referred to as courts of fact, while appellate courts are referred to as courts of law. **Trial courts** are courts of fact because they are the forum where a judge or jury listens to the facts presented in the case and determines whether the defendant is guilty or not guilty. Trial courts are also responsible for sentencing the defendant. By contrast, **appellate courts** do not hear testimony or impose sentences. Appellate courts determine whether the law was applied correctly. For example, a trial court judge during the course of a trial may make many decisions regarding the admissibility of evidence and testimony. For each of these decisions, the judge relies on his or her understanding of constitutional and procedural laws. When a case is appealed, appellate court judges review whether trial court judges followed constitutional and procedural laws when they made their decisions. If the appellate court believes that the trial court followed these rules, the lower court's ruling will be upheld; if the trial court violated those rules, the lower court's ruling will be overturned and the case will be sent back down to the trial court for further action, such as a judge handing out a new sentence or a prosecutor deciding whether to retry the case.

▶ Federal Court Organization

Most courts in the United States trace their roots to the actions of colonists during the Constitutional Convention in the 1780s. Prior to the final vote on the Bill of Rights, convention delegates passed the **Judiciary Act of 1789**. Under the provisions of the Judiciary Act of 1789, three "tiers" of courts were created: (1) 13 **federal district courts**, each presided over by a district judge; (2) 3 higher-level **circuit courts**, each comprising two justices of the Supreme Court and one district judge; and (3) a **Supreme Court**, consisting of a chief justice and five associate justices.

The federal district courts were given jurisdiction in all civil and criminal cases. The circuit courts reviewed decisions of federal district courts, although they had some limited original jurisdiction. And finally, the Supreme Court was given jurisdiction that included the interpretation of federal legislation and balancing the interests between the state and the nation through the maintenance of the rights and duties of citizens. Figure 2-1 ■ shows the structure of the federal and state court systems.

The court system in the United States can be divided into two separate entities. One court system is at the federal level and consists of the U.S. Supreme Court, the U.S. Circuit Courts of Appeal, and the U.S. District Courts. The other court system is established through the authority of the states and consists of state and local courts. These court structures at the state and federal levels are referred to as a **dual court system**. In addition to adjudicating criminal cases, those in which a federal law violation has been alleged, the federal court system has the authority to hear cases identified by the Constitution. Article III, Section 2 of the Constitution identifies disputes that may be heard by federal courts. This includes cases in which the U.S. government or one of its officers is being sued. The Constitution also grants authority to the federal courts to hear cases, in the language of the Constitution, "Controversies between two or more states; between Citizens of

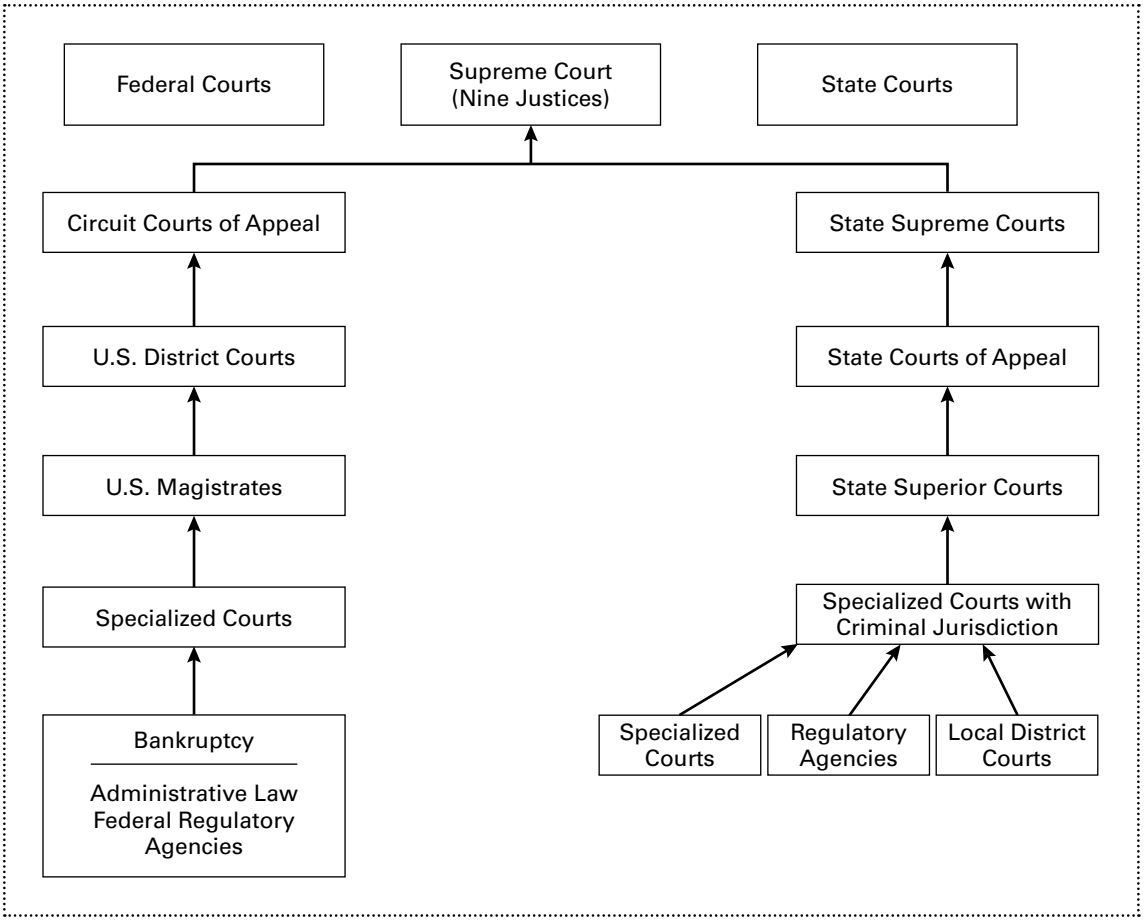

FIGURE 2-1 The Federal and State Court Systems

the same State claiming land under grants from other states." For example, one state might sue another state for importing hazardous waste. The case is heard at the federal level because the impartiality of the state courts in either state jurisdiction might be questioned.

The Constitution also extends federal court authority to hear cases involving counsels, ambassadors, and other public ministers. The federal courts are also authorized to hear cases involving laws enacted by Congress, treaties and laws related to maritime jurisdiction, and commerce on the high seas. Because of this authority, the federal courts often decide disputes involving interstate commerce. Congress has determined that some of these cases may also be heard by state courts, giving state and federal courts **concurrent jurisdiction**. An example is when a citizen from one state sues a citizen from another state. The case may be heard in the state courts or in a federal district court. However, the case will only be heard at the federal level if the amount of the dispute exceeds $75,000 (Title 28 U.S.C. §1332, 2007). Again, the amount of money involved in a dispute often determines which court will hear the case.

The federal courts therefore have a wide range of discretion and authority. Federal criminal courts decide whether someone has committed a crime and if so, what their punishment should be, and federal civil courts decide private disputes. Unbeknownst to many, the civil caseload actually comprises the majority of the federal court caseload.

dual court system a system consisting of a separate judicial structure for each state in addition to a national structure.

concurrent jurisdiction situation in which offender may be held accountable in several different jurisdictions simultaneously.

U.S. Magistrates

U.S. magistrate judges judges who fulfill the pretrial judicial obligations of the federal courts.

In 1968, Congress created the judicial office of federal magistrate. The magistrate's office was created to alleviate the workload of the U.S. District Court judges. In 1990, the position title was changed to magistrate judge. **U.S. magistrate judges** are appointed by the district judge and are assigned as either full-time or part-time magistrates depending on the caseload of the district court. Full-time magistrates are appointed to an eight-year term, whereas the terms of part-time magistrates are for four years.

Duties of the magistrate judge are similar to the duties of judges who serve in courts of limited jurisdiction at the state level. Magistrate judges hear disputes involving civil consent matters, misdemeanor trials, and the preliminary stages of felony cases, including preliminary hearing, pretrial motions, and conferences. In 2015, there were 536 full-time magistrate judges and 34 part-time magistrate judges.

U.S. District Courts

U.S. District Courts the basic trial courts for federal civil and criminal actions.

At the federal level, **U.S. District Courts** are courts of general jurisdiction. Most civil and criminal cases are tried and disposed of in the U.S. District Courts. Approximately 80 percent of all federal court cases are civil, while 20 percent are criminal. There are 94 district courts in the United States. Each state has at least one federal district court and these courts can also be found in the U.S. territories of Guam, Puerto Rico, the U.S. Virgin Islands, and the Northern Mariana Islands. Thirty-one states and the U.S. territories have only one U.S. District Court with the jurisdiction to hear federal cases. The remaining states have two or more federal district courts.

In 2015, there were 677 authorized federal judgeships in the 94 U.S. District Courts. As of the writing of this book, however, roughly 60 of these judgeships sat vacant awaiting Senate confirmation of individuals appointed by the president. Federal district judges are appointed by the president of the United States. They also serve life terms. Federal district judges who serve 10 or more years with good behavior are entitled to retire at their option anytime thereafter and receive their annual salary for life. In 2016, the annual salary for a U.S. District Court judge was roughly $200,000. Although judicial appointments are ideally made without regard to one's race, color, sex, religion, or national origin, these appointments are primarily political and reflect the interests and views of the president. The advice and consent of Congress is required for all such appointments. As such, in times when the political party of the sitting president and the political party that controls Congress are different, confirmations can be delayed despite the fact that well-qualified judges have been nominated for the federal judgeship that is vacant. As of the writing of this book, there were roughly 90 federal judicial vacancies with almost 60 of those positions having a nominee but due to a political gridlock in Congress, most are yet unconfirmed, including a nominee to fill a Supreme Court vacancy left by the death of Justice Antonin Scalia.

Criminal cases heard in federal district courts are commenced in the same way as cases are commenced in local and state courts. Federal law enforcement officers arrest suspects directly, or federal grand juries or federal prosecutors may issue indictments, presentments, or criminal informations against defendants. These defendants appear before magistrates where their bonds are established or where they are released on their own recognizance. Arraignment proceedings at the federal level are conducted in district courts by federal judges. Since arraignments include the entry of a plea by criminal defendants and the determination of a trial date, federal judges and their staffs can best determine an appropriate trial date because of the schedule of events on the federal court docket or calendar.

Again, federal judgeships are lifetime appointments. There is no mandatory retirement age, and federal district court judges may serve as long as they desire. This provision

TABLE 2-1 The 13 Judicial Circuits, Composition, and Number of Circuit Judges

Circuits	Composition	Number of circuit judges
District of Columbia	District of Columbia	11
First	Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island	6
Second	Connecticut, New York, Vermont	13
Third	Delaware, New Jersey, Pennsylvania, Virgin Islands	14
Fourth	Maryland, North Carolina, South Carolina, Virginia, West Virginia	15
Fifth	Canal Zone, Louisiana, Mississippi, Texas	17
Sixth	Kentucky, Michigan, Ohio, Tennessee	16
Seventh	Illinois, Indiana, Wisconsin	11
Eighth	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota	11
Ninth	Alaska, Arizona, California, Idaho, Montana, Nevada, Guam, Oregon, Washington, Hawaii	29
Tenth	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming	12
Eleventh	Alabama, Florida, Georgia	12
Federal	All Federal Judicial Districts	12
Total		179

Source: For more information, visit www.uscourts.gov and search for judgeships.

provides for an independent judiciary and allows judges to make decisions without the threat of being removed from office.

U.S. Circuit Courts of Appeal

In the early years of the United States, there were only three circuit courts of the United States without any permanent personnel. Two Supreme Court justices and a federal district judge comprised the transient judiciary of the circuit courts. These judges were called circuit riders. These judges were obligated to hold 28 courts per year. This created considerable hardship because transportation was poor and it was difficult to travel great distances. Furthermore, since federal district judges were a part of the original circuit judiciary, this placed them in the prejudicial position of reviewing their own decisions.

Over the next two centuries, numerous changes occurred in circuit court structure. Several reforms such as the Judiciary Act of 1891 or the **Evarts Act** were introduced to create what is the current scheme for federal appellate review. In 2009, there were 13 **U.S. Circuit Courts of Appeal** at the federal level (these include the District of Columbia and federal circuits) with 179 circuit court judges in practice. These are shown in Table 2-1 ■. These circuit court geographical boundaries are also shown in Figure 2-2 ■.

Typically, circuit courts hear cases with three-judge panels. In certain circuits, the volume of cases may be such that several three-judge panels may be convened simultaneously. These three-judge panels hear appeals from decisions in U.S. District Courts. On rare occasions, a case may be heard ***en banc***. This is where the entire aggregate of judges in the circuit hears and decides the case appeal. Usually, appeals heard *en banc* involve important constitutional issues, and input from a larger number of judges is deemed important.

Like district court judges, appellate judges are appointed for life by the president and confirmed by the Senate. One of these judges is designated as the chief judge. Usually, the chief judge is the one with the greatest seniority and who is also under 65 years of age.

Evarts Act introduced in 1891 and sponsored by New Jersey lawyer William M. Evarts, this act created circuit courts of appeal to hear appeals emanating from the U.S. District Courts.

U.S. Circuit Courts of Appeal the federal circuit courts of appellate jurisdiction. There are 13 circuit courts of appeal zoned throughout the United States and its territories.

en banc "in the bench." Refers to a session of the court, usually an appellate court, where all of the judges assigned to the court participate.

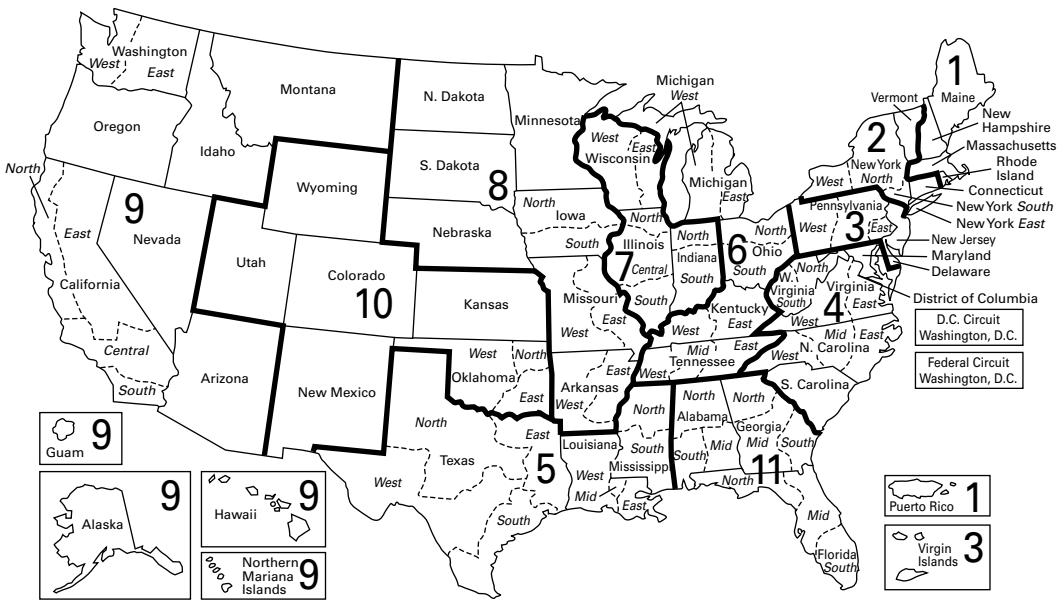

FIGURE 2-2 District and Appellate Court Boundaries
Source: Administrative Office of the United States Courts.
Note: The large numerals indicate the court of appeals, and the broken lines represent jurisdiction boundaries of district courts.

Chief judges perform additional duties apart from hearing cases, and their maximum term is seven years. In 2016, annual salary of circuit court judges on the U.S. Circuit Courts of Appeals was about $215,000.

Each of the circuit courts of appeal has appellate jurisdiction for all federal district courts in the particular circuit. For instance, the Eleventh Circuit Court of Appeals includes Alabama, Florida, and Georgia. These states are divided into several divisions, each containing one or more federal district courts. When a defendant wishes to appeal a decision of any federal district court within Alabama, Florida, or Georgia, the appeal is directed to the Eleventh Circuit Court of Appeals.

While all circuit courts of appeal have appellate jurisdiction from all final decisions from district courts, there are occasions where a direct review may be made by the U.S. Supreme Court. Panels of three circuit judges must convene at regular intervals to hear appeals from federal district courts. Of course, if a defendant disagrees with the decision of a circuit court, the U.S. Supreme Court is the court of last resort for appeals.

The U.S. Supreme Court

U.S. Supreme Court court of last resort; final and highest court that decides particular issues, usually issues with constitutional significance.

The court of last resort at the federal level is the **U.S. Supreme Court**. It is the only court specifically mentioned in Article III, Section 1 of the Constitution. The Constitution states that "the judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish." Like all of the other federal courts, U.S. Supreme Court justices hold their positions for life. They are nominated and appointed by the president, with Senate confirmation. The Supreme Court consists of eight associate justices and one chief justice. The chief justice has the additional responsibility of conducting conferences, supervising the federal judiciary, and

assigning the task of writing various case opinions to a member of the judicial majority. Each of the associate justices is assigned to one of the appellate circuits for emergencies, such as death penalty appeals. In 2016, the annual salary of U.S. Supreme Court chief justice was just over $260,000 and for the associate justices it was almost $250,000.

The U.S. Supreme Court has both **original jurisdiction** and **exclusive jurisdiction** over (1) all actions or proceedings against ambassadors or public ministers of foreign states; and (2) all controversies between two or more states. Original jurisdiction means the court may recognize a case at its inception, hear that case, and try it without consultation with other courts or authorities. Exclusive jurisdiction means that no other court can decide certain kinds of cases except the court having exclusive jurisdiction. A juvenile court has exclusive jurisdiction over juvenile matters, for example. The adult criminal courts have no juvenile jurisdiction.

original jurisdiction first authority over a case or cause, as opposed to appellate jurisdiction.

exclusive jurisdiction specific jurisdiction over particular kinds of cases. Family court, for example, may have exclusive jurisdiction to hear child custody cases.

The Case of *Marbury v. Madison* (1803)

One of the most important decisions that established review powers for the U.S. Supreme Court was the case of *Marbury v. Madison* (1803). This case was a political conflict between the Federalists and anti-Federalists. Outgoing president John Adams made several new circuit court appointments and signed commissions for their appointment on his last day of office. However, Secretary of State James Madison withheld the processing of these commissions, anticipating a new president and a change in political party where party appointments could be made instead of the old administration appointees. This was an obvious attempt to create additional judicial appointments from party members favorable to the incoming president. One of these appointments was William Marbury, who petitioned the U.S. Supreme Court to force Secretary of State Madison to issue his new appointment. Chief Justice John Marshall ruled in Marbury's favor and issued a writ of *mandamus* to compel the Secretary of State to issue the commissions authorized by ex-president John Adams. Thus, the right of **judicial review** established the power of the U.S. Supreme Court to review and determine the constitutionality of acts of Congress and the executive branch.

judicial review the authority of a court to limit the power of the executive and legislative branches of government by deciding whether their acts defy rights established by the state and federal constitutions.

The Supreme Court is the ultimate reviewing body regarding decisions made by lower appellate courts or state supreme courts. The Supreme Court is primarily an appellate court, since most of its time is devoted to reviewing decisions of lower courts. It is the final arbiter of lower court decisions unless Congress declares otherwise. Congress may change existing constitutional amendments or other acts. The U.S. Supreme Court meets for 36 weeks annually from the first Monday in October until the end of June (U.S. Code, Title 28, Sec. 5, 2007).

The U.S. Supreme Court is in session from the first Monday of October until the preceding day the next year. The year of the annual session is the year when the session is commenced. When the U.S. Supreme Court convenes in October 2016, all cases decided during that term are considered as cases decided during the 2016 term, even though a particular case might not be heard until May or June 2017.

Annually, the court receives about 7,000 appeals. Most appeals are disposed of when the U.S. Supreme Court decides not to hear the case because of the subject matter, or if it is not significant enough to merit court review. The decision to hear a case is made when the justices meet to review all cases. In order for all of the justices to hear a particular appeal, the case must pass a screening, which is known as the **Rule of Four**. This means that at least four of the nine justices must agree that the case has constitutional merit or national importance and that it should be heard by the entire court. If a case receives four or more votes from the justices, it is placed on the docket and scheduled to be heard. Only about 150 cases annually pass the Rule of Four and are placed on the docket for an opinion.

Rule of Four U.S. Supreme Court rule whereby the Court grants *certiorari* only on the agreement of at least four justices.

The primary method that cases reach the Court is through a petition known as a **writ of *certiorari***. This is an order issued by the Supreme Court to the lower court to send the record for review. When the Court decides to hear a case, it is scheduled for written and

writ of *certiorari* an order of a superior court requesting that the record of an inferior court (or administrative body) be brought forward for review or inspection. Literally, "to be more fully informed."

oral arguments by the opposing lawyers. The written arguments are filed with the Court and made available to the public. In some cases, other interested parties may file briefs for the Court to hear, on behalf of other parties. These types of filings are called **amicus curiae** briefs. *Amicus curiae* means "a friend of the court," and refers to a broad class of briefs that may be filed by one party on behalf of one or more other parties. For instance, an *amicus curiae* brief was filed on behalf of Gary Gilmore, a convicted murderer in Utah, by Amnesty International, an organization opposed to capital punishment. The brief was on behalf of Gilmore, who was scheduled to be executed. The brief sought relief in the form of a stay of Gilmore's execution, until the U.S. Supreme Court had time to hear and consider new arguments for why the death penalty should not be imposed in Gilmore's case. Although the brief was successful, in that it gave Gilmore several additional weeks, Gilmore did not wish to pursue further appeals. He declared that he wanted to die, and that the state should be allowed to execute him, despite the objections of Gilmore's family and Amnesty International. Gilmore was subsequently executed by a Utah firing squad.

amicus curiae
a friend of the court. These briefs are designed to present legal arguments or facts on behalf of someone else.

Appearances by attorneys before the U.S. Supreme Court are highly regimented by prevailing protocol. The attorneys for the opposing sides are permitted 30 minutes each to present oral arguments. Green, yellow, and red lights similar to those that regulate automobile traffic flash for the different litigants. A green light means oral argument may proceed. A yellow light flashes when the 30-minute oral argument time limit is approaching. And a red light means that the oral argument terminates. During this time, justices are allowed to ask questions of the attorneys presenting the oral arguments. After oral arguments, the justices schedule a meeting, which is called a case conference. In this meeting, the justices take an initial position.

Traditionally, if the chief justice is in the majority, this justice assigns the writing of the majority opinion to one of the other majority justices. The senior justice for the minority or dissenting opinion assigns the writing of this opinion to one of the dissenting justices. The writing of the opinion may be quite complicated, especially when the justices on both sides have conflicting opinions about the case. For instance, not all of the majority justices may believe the case should be decided in a given way for the same reasons. Thus, each majority justice may write an independent opinion about why the justice voted a certain way. Accordingly, dissenting justices do not have to agree about why they dissent. Thus, several dissenting justices may write independent opinions about why they dissented. These opinions make for interesting reading for Supreme Court historians and others, since often the personal views of justices are made evident in their opinions.

When the topic of the opinion is controversial, such as a case involving abortion or the death penalty, each justice expresses different views about the issue. For example, in *Furman v. Georgia* (1972), all justices wrote separate opinions. In most cases, the opinion goes through several drafts before it is approved by the majority or dissenting justices, and before it is subsequently made available to the public. Unlike cases heard at the appellate level, the U.S. Supreme Court hears all cases *en banc*. All nine justices hear the case.

There are exceptions. Sometimes, a death or resignation from the U.S. Supreme Court may leave the court with seven or eight members temporarily, until a new justice or justices can be appointed. During the time interval when the Court does not have nine justices, it may still convene and hear and decide appeals. A majority of justices is still required, although a majority is more difficult to achieve. Eight justices may divide equally on a given issue, with a 4–4 vote. Such a vote results in no decision rendered about that particular appeal. Five or more justices are required to support any appeal. When a 4–4 vote occurs, the case is simply discarded and not scheduled for rehearing. The litigants may bring the case before the U.S. Supreme Court again, provided that they raise a different and meaningful issue as the basis for challenging a lower court decision. And the Rule of Four exists for all new case filings, regardless of whether a particular case has been previously heard. Four or more justices must agree to hear the case before it will be docketed.

State Court Organization

Studying the American courts would be relatively easy if we didn't have to consider state court organization. But as we have seen, states such as Tennessee provide numerous different court structures and jurisdictions to create some complexity. And each state is different from the others in state court organization and function. Thus, we must add to the federal system the different court systems found in all 50 states. Figure 2-3 ■ shows the federal court system.

The organization and functions of the 50 different state court structures are diverse and complex. For example, Massachusetts has a supreme judicial court, appeals court, superior court, district court, probate/family court, juvenile court, housing court, municipal court, and land court. By contrast, South Dakota has only a two-tiered system with a circuit court and a supreme court. State courts often have overlapping and conflicting jurisdictions. The state courts are also very busy with variable caseloads. Millions of cases are filed and disposed of each year. In 2003, over 100 million disputes were heard by state courts (Schauffler, LaFountain, Kauder, and Strickland 2004). Most of these cases (about 40 percent) were traffic offenses. Caseloads in all five categories (criminal, civil, domestic relations, juvenile, and traffic) have continued to increase over the past several years (Schauffler et al. 2004). Figure 2-4 ■ shows a basic state court system. Not all states follow this particular diagram, with some states having separate criminal and civil appellate levels. But generally, this model is representative of most state court systems.

A more elaborate type of state court system is referred to as the traditional court model or the Texas model. This type of court system is illustrated in Figure 2-5 ■. It provides more extensive detail than the state court organization depicted in Figure 2-4 ■.

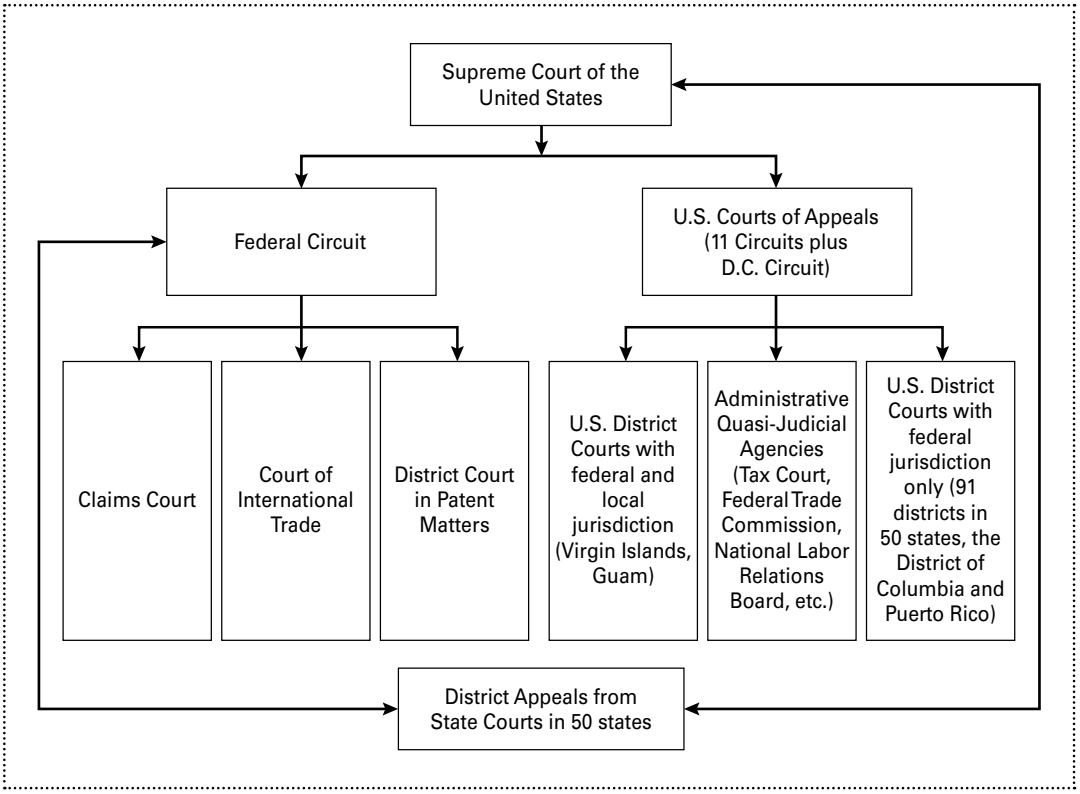

FIGURE 2-3 The Federal Court System

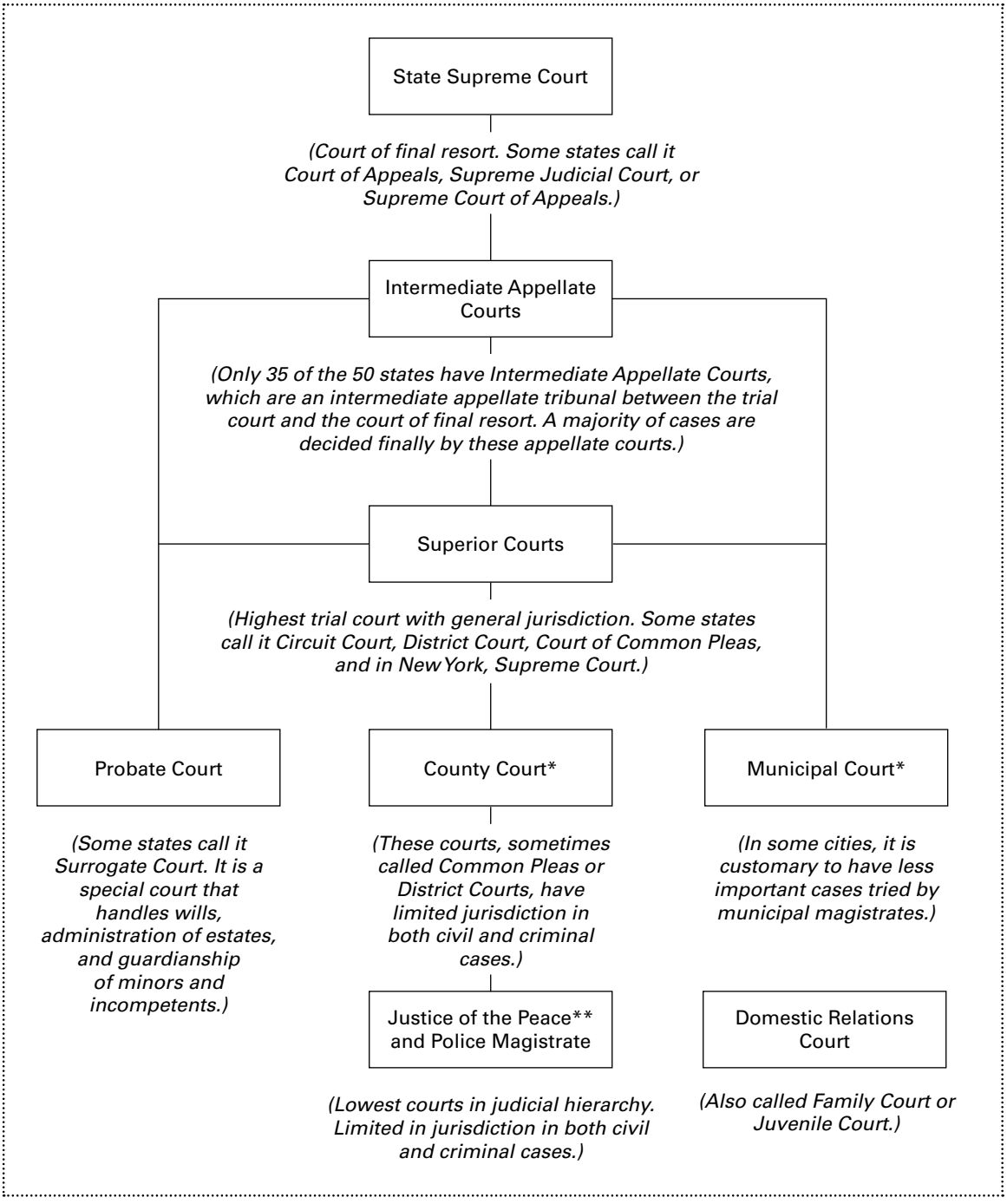

FIGURE 2-4 The State Judicial System

*Courts of special jurisdiction, such as probate, family, or juvenile courts, and the so-called inferior courts, such as courts of common pleas or municipal courts, may be separate courts or part of the trial court of general jurisdiction.

**Justices of the peace do not exist in all states. Where they do exist, their jurisdictions vary greatly from state to state.

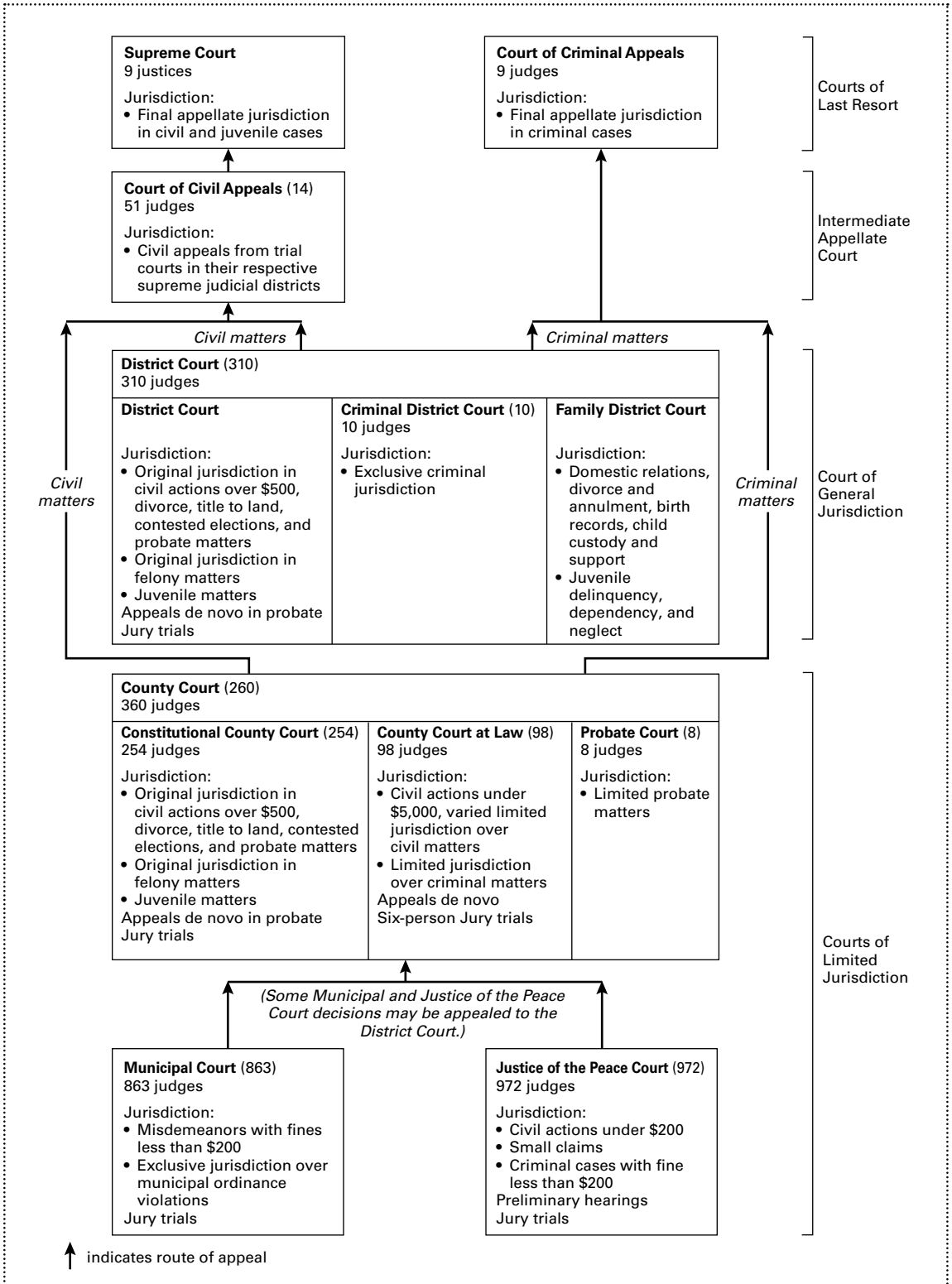

FIGURE 2-5 The Traditional Court Model (Texas Model)

Other types of court organizational systems have been proposed in past years. For instance, Ezra Pound advocated a simple model, consisting of a supreme court as the highest court, a major trial court, and a minor trial court. The American Bar Association has proposed its own simplified court organizational structure, modifying the Pound model by adding an intermediate appellate court. A later version of court organization devised by the American Bar Association envisioned a three-tiered system, with a supreme court at the top, an intermediate appellate court in the middle, and a trial court at the bottom.

Many jurisdictions do not require that judicial officers have a law degree. In fact, 36 states do not require that judges in a court of limited jurisdiction must be educated in the law. One reason is that many judges are elected rather than appointed or through some other form of merit selection. In short, these judges need to convince the electorate that they have the ability to serve rather than be legal practitioners with professional credentials. The lack of education and knowledge of the judicial process among many state court judges has caused a number of problems. Most of these courts are not courts of record, so it is difficult to monitor their activities formally. Because many elected judges do not know the limits of their authority or are unfamiliar with the processes of the judicial system, many states have established a legal training requirement for newly elected judges. Most of these judges are required to attend a legal training seminar sponsored by the state judicial conference or a committee or program sponsored by the Administrative Office of the U.S. Courts.

Despite provisions for the legal training of new judges in most jurisdictions, research about courts of limited jurisdiction has revealed that more than few inequities exist. Some of these injustices, such as judicial incompetence, have been highlighted in U.S. Supreme Court cases. For example, the U.S. Supreme Court was confronted with the matter of judicial competence in the case of *North v. Russell* (1976). Judge Russell worked in the coal mines of Kentucky after he dropped out of high school. Later, he was elected as a judge and presided over the case of Lonnie North, who had been accused of drunk driving. Judge Russell denied North's request for a jury trial, did not inform North of his right to counsel, and denied North's right to appeal the subsequent decision. Judge Russell listened only to the arresting officer's version of the incident and did not permit North testify on his own behalf and provide his version of events. Judge Russell sentenced Lonnie North to 30 days in jail when the statute provided a maximum sentence of a fine and no jail time. In this case, North's conviction was set aside by the U.S. Supreme Court and Judge Russell was criticized for his incompetence.

What Do You Think?

The U.S. Supreme Court decides many important cases annually. Most of these involve constitutional issues. Compared with Congress, the country's law-making body, the U.S. Supreme Court interprets the constitution and how the law should be applied. For example, some of their recent decisions have included a 9–0 decision overruling a small town in Arizona that had an ordinance placing different limits on political and ideological signage citing that the city ordinance violates the First Amendment, a 5–4 decision upholding the right of the state of Texas to reject issuing specialty license plates with the confederate flag on them, a 5–4 decision upholding the right under the Constitution of same-sex couples to marry, and a 9–0 decision stating that prison officials in Arkansas violated inmates' religious freedoms by not allowing them to grow beards. To some, these may not seem like important matters but to the various individuals citing constitutional rights violations they are very significant. What do you think about these SCOTUS decisions regarding same-sex marriage, town ordinances about religious signs, license plate preferences, and inmates who want to grow beards? Do you think these powers are within the scope of authority originally vested in the U.S. Supreme Court? Should the U.S. Supreme Court be subject to the scrutiny of other bodies, such as the executive branch or Congress?

State courts generally have a four-tiered court structure. These tiers are (1) courts of limited jurisdiction, (2) courts of general jurisdiction, (3) intermediate courts of appeal, and (4) courts of last resort.

Courts of Limited Jurisdiction

Courts of limited jurisdiction have the greatest variability among the states. These courts hear minor offenses such as violations of traffic laws, minor civil cases, and infractions. They also perform other administrative duties. Courts of limited jurisdiction comprise about 80 percent of the total number of state courts. They are the courts with the greatest caseloads in the nation. In 2009, of the roughly 106 million cases processed in state courts (including both criminal and civil cases), about 70 million, or 66 percent, were disposed of in courts of limited jurisdiction (LaFountain, Schauffler, Strickland, Gibson, and Mason 2011). On the average, they process over 50 percent of all cases brought before the state courts. The District of Columbia, Iowa, South Dakota, Idaho, and Illinois are the only states without courts of limited jurisdiction.

State courts of limited jurisdiction have many different names. Most of these courts are called municipal courts, county courts, city courts, or justice of the peace courts. Other courts are specialized courts of limited jurisdiction. Some of these courts might be called juvenile courts or family courts, probate courts, and courts of workers' compensation. Recent caseload estimates indicate that traffic cases between 1994 and 2003 in municipal courts comprised the largest percentage of incoming cases. These courts continue to be busy with heavy caseloads because of increases in all other types of cases, not just those involving traffic violations (Schauffler et al. 2004).

BOX 2-1

LEGAL ISSUES: TECHNOLOGY AND ACCESS TO THE FEDERAL JUDICIARY

Technological advances have affected all of us in some way. The federal judiciary is not immune to this trend. Since the 1990s, the federal court has made available to the public a number of resources to access information about the cases before the Court and the decisions reached by the Court. The service offered allows the public to obtain information about the actions of the Court without ever stepping foot inside the courthouse. Some of the services offered by the Court are as follows:

The U.S. Supreme Court Electronic Bulletin Board System

The U.S. Supreme Court Electronic Bulletin Board System (EBBS) service provides online access to the court docket, opinions, argument calendar, rules, and bar information forms. Additional information includes general and tour information and special notices.

Enzozo/Fotolia

The U.S. Supreme Court Clerk's Automated Response System

The U.S. Supreme Court Clerk's Automated Response System (CARS) provides callers with information

(continued)

about the status of cases by instructing callers to respond to telephone prompts.

Appellate Bulletin Board System

The Appellate Bulletin Board System (ABBS) is a source of information about judicial opinions offered to the public by federal circuit courts of appeal. These courts offer the public access to court decisions, argument calendars, case dockets, reports, notices, and press releases. Information can be downloaded and viewed online by computer users. Currently, there is a $.60 per minute fee for this service.

Public Access to Court Electronic Records

The Public Access to Court Electronic Records (PACER) is a service that allows users to dial into the bankruptcy court computer to access information about cases and decisions. Again there is a $.60 per minute charge. Users must first register with the PACER service center before they can use this service. Many district and circuit courts have established toll-free numbers to users where additional costs of long-distance telephone calls are not incurred.

Party/Case Index

In 1977, the courts started a new service that would allow users to conduct searches of the bankruptcy court by party name or Social Security number. Searches can also be conducted to locate civil or criminal cases or cases beginning to be appealed. The search will retrieve the case filing date and filing location.

Electronic Filing and Attorney Docketing Service

The Electronic Filing and Attorney Docketing Service (EFADS) is another service that is being tested in selected district courts. This service allows attorneys to submit pleadings and other docket entries through the Internet. The case file and official docket can be viewed online or downloaded electronically.

Should all courts attempt to make access to information easier via various technological advances?

Courts of General Jurisdiction

courts of record any legal proceedings where a written record is kept of court matters and dialogue.

general trial courts any one of several types of courts, either civil or criminal, with diverse jurisdiction to conduct jury trials and decide cases.

Courts of general jurisdiction have jurisdiction over all major civil and criminal cases. These cases would include any felony or misdemeanor cases as well as criminal appeals from limited jurisdiction courts. These courts also differ from courts of limited jurisdiction because they are courts of record and general trial courts. They are courts of record because a record is made of all of the proceedings. Various methods are used to make records of these proceedings. Court reporters use tape recorders and several other devices to record whatever is said. With a few exceptions, courts of general jurisdiction are called circuit courts, district courts, superior courts, courts of common pleas, and supreme courts. A list of names of these courts for the different states is provided in Table 2-2 ■.

TABLE 2-2 Courts of General Jurisdiction for Each State*

Circuit court	Alabama, Arkansas, Florida, Hawaii, Illinois, Indiana,[a] Kentucky, Maryland, Michigan, Mississippi, Missouri, Oregon, South Carolina, South Dakota, Tennessee, Virginia, West Virginia, Wisconsin
Superior court	Alaska, Arizona, California, Connecticut, Delaware, District of Colombia, Georgia, Maine, Massachusetts, New Hampshire, New Jersey, North Carolina, Puerto Rico, Rhode Island, Vermont,[b] Washington
District court	Colorado, Idaho, Iowa, Kansas, Louisiana, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Texas, Utah, Wyoming
Court of common pleas	Ohio, Pennsylvania
Supreme Court	New York[c]

*Compiled by authors.
[a]Indiana has both circuit courts and superior courts.
[b]Vermont has superior courts and district courts.
[c]New York also has county courts.