

**LP 09/12 Week 1-2**

Devotion: ⁹ How can a young man keep his way pure? By living according to your word.

¹⁰ I seek you with all my heart; do not let me stray from your commands. ¹¹ I have hidden your word in my heart that I might not sin against you. ¹² Praise be to you, O LORD; teach me your decrees. ¹³ With my lips I recount all the laws that come from your mouth. ⁴ I rejoice in following your statutes as one rejoices in great riches. ⁵ I meditate on your precepts and consider your ways. ¹⁶ I delight in your decrees; I will not neglect your word.

Psalm 119

VIDEO: Motivational Video: It's Time to Work

<https://www.youtube.com/watch?v=A5migDz5JTc>

Attendance:

READ *JPA* Ch.1 Introduction

HW1 POST Use book and current event article to debate strengths/limitations dual court system.

1. Do the dual courts represent tension for local justice? and 2. How would the Marbury v. Madison (1803) impact Congress a current issue (pick an issue)? (250 words) – due SAT. 9/16

• Respond to another post. Offer facts, concepts, and insight in your response (50 words)

Lesson Goal: Meaning and history of American law

This LP introduces the definition of law, and the sources of law. In the U.S., the justice system is based on codified law which is enforced by police and governmental administrative agencies. The code is established by the legislature and administrative agencies, both empowered to protect the well-being of the country. The court system intends to ensure fair application of the law and related due processes. All three shape the laws that govern the nation. As you read, consider the flexible nature of the law, and how it reflects the current values of a nation.

Origins of law – Norse word: **log** (to lay down as in a decision) or **lag** (the concept of binding people together). The actual definition of the term: law, has been debated over the centuries, going back to Immanuel Kant.

Functional definition: “law can be conceived as simply a body of rules governing a social order” (p.2).

But the question arises, how does it differ from other governing ideas in society?

- Folkways – unplanned rules that are enforced by *ridicule or ostracism*
- Mores – stronger rules whose infraction is *frowned upon* more seriously
- Customs – rules of community that bodies are authorized to be enforced on *familial, community levels*: local and religious levels included.
- Enacted laws – rules deliberately set out by officials and explicitly carry the weight of **sanctions** by the community.

Max Weber – “laws are norms which are directly guaranteed by legal coercion” (p.2).

E. Adamson Heobel – “Law is distinguished from mere custom in that it endows certain selected individuals with the privilege-right of applying the sanction of physical coercion” (p.3).

CQ: What do you think the two ideas have in common?

Are you comfortable with either/both statements as a definition of “law?”

Activity: Work together to construct a definition of law – 5 minutes

DEF: “Law consists of norms, regularly enforced by coercion, by persons authorized by society, as applied by courts of law” (Abadinsky, 2010, p.4)

The scope of purpose of “law:”

1. Facilitate relationships between societal parties
2. Compel behaviors that are expected to be at the core of a society
3. Ensure protection or privilege for populations as guarantees (incl. social welfare).

4. Establish restrictions for governing/ administrative agencies/ legal bodies (corporations).

Lesson Goal: What is Natural Law?"

“At its core, natural law posits a belief that humans have an inborn notion of right [good] and wrong [evil] and therefore, the very essence of law does not rest upon the arbitrary will of the ruler or upon the decree of the multitude. While not requiring a belief in a deity, it refers to a higher law, primordial or law of nature – in other words, rules for living that are binding on all human societies” (p.5).

Thomas Aquinas in *Summa Theologica*, asserted that **positive law if it violates natural law is not valid**, is not a law, and is a corruption of law. **Positive law** refers to *issued/ declared* proclamations of law, i.e. man-made laws.

It is clear the “natural law was used to argue for the independence of the colonies from Great Britain.

<http://www.ushistory.org/declaration/document/index.htm>

The text states that “Natural law” attempts to **prompt conscience** into declaring right.

It also implies that there is a “social contract,” members of a society share these rights and the respect of being (p.8). This is also reflected in the writings of **John Locke** (1632-1704) the **sovereignty of the human being**.

In other words, each person has a right to self-determination, but it takes place within a social structure and understanding, i.e. “social contract” (not a real contract, a *shared understanding*).

The U.S. Judiciary had its roots in the Common Law of England

- This sense of justice was identified as equivalent with the sovereignty of England, it’s nation-state status
- Wherever British citizens went, they took the British system of law and justice with them.

https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3029&context=penn_law_review

The Criminal Court has three goals:

1. Administer/manage the justice system
2. Protect the individual rights of persons accused of crime
3. Provide an authority for controlling crime (CJ4, p. 2)

Lesson Goal: The Goals of the Justice System

- *Orientation goals:* Describe the *relationship between individual rights* granted citizens and the *response to solving criminal acts*.
- *Pragmatic (practice/practical) goals:* These goals are related to crime prevention (law enforcement), dealing with offenders (courts/prosecution), rehabilitating offenders (corrections).
- *Abstract (philosophical) goals:* These are ideals the justice system hopes to achieve and maintain, such as fairness, efficiency, effectiveness.
- *Standards:* These are related to ideals and go further to prescribe (not legally require) practices that guide courts, police, and appeals. For example, prioritizing trial schedules among cases, most violent harm come first, professional criminal, public official, etc..

Review the HOMEWORK Due today.

VIDEO: PBS Report on autopsy on Michael Brown shooting – 2:34 min.

<https://www.youtube.com/watch?v=QnZzBlfqY>

VIDEO: Obama response to Grand Jury’s acquittal of Officer Darren Wilson in the death of Michael Brown.

<https://www.youtube.com/watch?v=O2BBAfWucaE> - 9:35 min

Is there a fairer way to judge these incidents?

Modern Criminal Justice

- Based on the “adversarial model” that allows both sides of a case to be debated and defended using **rules of evidence**.
- The *rules of evidence* became **articulated through court cases/decisions** that interpreted the U.S. Constitution Bill of Rights (first 10 Amendments).
- The **rules of due process** that come out of court cases/decisions *restrict the government’s actions* when prosecuting a crime.

- **Charges** (formal proposals of guilt) also called indictments, are brought to the court by prosecutors or by grand juries.
- **The burden of proof** to pronounce someone as guilty of a crime is on the prosecution, therefore, a defendant (the accused) is “innocent until proven guilty.” In criminal court cases the “level of proof” required to pronounce someone as guilty of a crime is “proof beyond a reasonable doubt.”
- **The verdict of guilty** in minor crimes can be determined by a judge/magistrate, in felony cases as well, if requested by the defendant, HOWEVER, it is the common practice that determinations of guilt are carried out by evidence presented to a “jury of peers,” and this same group deliberates and determines if the burden of proof is enough for a verdict of “guilty” (beyond a reasonable doubt) or “not guilty” (there was insufficient proof, in total to believe guilt beyond *any reasonable doubt*).
- **Sentencing** is prescribed based on court cases/decisions, and recommendations issued to judges/courts though legislation known as Acts. For example, the U.S. Supreme Court determined that life imprisonment without possibility of parole violates the 8th Amendment of the U.S. Constitution “cruel and unusual punishment,” when applied to youth who have committed homicide (*Graham v. Florida*, 2010).

What is the dual court system? This concept applied to the separation of *federal from local government courts* based on the 10th Amendment exclusion. The three segments of the criminal justice system together work on two levels for each, **federal** and **local** (this refers to *non-federal*, and includes state, county, village, etc.). In other words, federal police/laws, federal courts, federal prisons, and the local governments can operate these three separately from the federal government, in fact, they cannot impede on the federal courts powers, **this known as federalism**.

What are the types of law in the U.S.? (*JPA*, Read Ch. 1)

1. **Constitutional law** – First, the formation and criteria for governing are outlined (articles), second, the roles and authority of government bodies are explained. Third, court rulings (legal components of government established by the Constitution) comprise interpretations of the Constitution which shape the application of government authority and individual liberties.
2. **Legal Code** – written text that defines violations, levels of infraction, and range of penalty for violation
3. **Statutory law** – legislation that provides restrictions or benefits to the respective jurisdiction, for example, taxation, building, safety or health compliance, education, etc.
4. **Administrative law** – Regulations that are passed by public agencies, usually related to safety or service to communities. Compliance is required of *specialized* service industries or public and private agencies, for example health or utilities industries, companies, within the jurisdiction. Administrative law includes *executive orders*, these are signed into law by administrative executives, for example Presidents, Governors, Mayors, federal and State agency Directors.
5. **Court rulings** – All government and court rulings can be reinterpreted in light of the Constitution, as well as overridden by bodies authorized by the Constitution, for example, *Roe v. Wade* (1973) is often challenged by legislators, courts, and executive orders, and then ruled on by Courts. These three bodies of the government common in all levels of U.S. federal and State jurisdictions is referred to as the balance of powers.

What does the term litigation (litigious) mean?

DEF: Litigation refers to parties *submitting to the authority of courts* to determine outcomes of disagreements. Often, courses are settled before the process is complete with a decision, for example, settling out of court means the parties settle their disagreement by a self-imposed contract.

DEF: Arbitration: refers to a third party authorized to settle a dispute, these are legally binding but NOT court decisions settled by a judge or jury. Many professional contracts are settled by arbitration, for example, agreements between NFL team owners and the NFL Players Association. Another example of binding arbitration is the category of reality judge programs, *Judge Judy*, *Caso Cerrado*, etc.

National litigation rates per capita (per every 1,000 people in the population, *Doe Legal Journal*, 2012):

U.S. 74.5

Germany 123.2

Sweden 111.2

Israel 96.8
Austria 95.9

CQ: Is the law flexible in its application?

The “Rule of Law” refers to the absolute sovereignty of the approved legal code, as opposed to *arbitrary* power (*what* can be done) or *arbitrary* application (*who* it is applied to).

In fact, many codes have *statutes of limitations* (when or for how long a period after the claimed violation takes place that a person can be charged with the crime), this puts the burden for charging on *investigators and the prosecution*.

What are statutes of limitations?

Rules that address charging someone with a crime – for example, time and other limiting factors

WEBSITE: RAINN State by State Guide to Statutes of Limitations

<https://www.rainn.org/state-state-guide-statutes-limitations>

Look up the following:

What are the statutes of limitation for sexual assault in Alabama?

What are the statutes of limitation for murder/homicide in New York?