



INTRODUCTION TO LAW

Seventh Edition

Beth Walston-Dunham
John D. DeLeo, Jr.

INTRODUCTION TO **LAW**
SEVENTH EDITION

Beth **Walston-Dunham**

John D. **DeLeo, Jr.**



Australia • Brazil • Mexico • Singapore • United Kingdom • United States

***Introduction to Law,
Seventh Edition***

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*To Bobby, Sam, and Ben,
For continually introducing me to the singular importance of each and every day.*

Beth

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Washington. Byrd, 178 Wash.2d 611 (2013)
Miller v. Alabama, 132 S.Ct. 2455 (2012)

The purpose of this book is not to answer all of the student's questions about the law but to generate questions. As an introductory text, the goal of this book is to create an awareness of and appreciation for the effect that law has on virtually every facet of life and society. The chapters guide the student from a basic introduction of the rationale behind the structure of the U.S. system of government to a discussion of each major area of law in the legal system. Regardless of the initial reason for picking up this book, the intended outcome of reading for the student remains the same: to gain a better understanding of not only how but also why law is such an integral part of our professional and personal lives, and to gain some sense of the order and stability that law provides even as it remains adaptive to the ever-changing face of American society.

This text is aimed at the student who is studying law for the first time. Each chapter is designed to introduce the student to fundamental legal concepts and principles. Chapters 1 to 8 provide an introduction to the U.S. legal system, the manner in which law is created and administered, and certain considerations that affect legal disputes. The balance, Chapters 9 to 16, concentrate on different areas of law by exploring basic principles and terminology. The areas covered include tort, family, estates, property, contract, business, and criminal law and procedure. Chapter 7 addresses the roles of legal professionals and their support staff. Throughout the text, and specifically in Chapter 8, discussion is given to the ethical considerations that affect legal professionals and subjects of law.

CHANGES TO THE SEVENTH EDITION

The seventh edition updates the law and includes updated court cases. It also contains a series of writing assignments. To best utilize the legal skills discussed in Chapter 2, the writing assignments first direct the student to review the section "The Process of Legal Analysis" in that chapter. The writing assignments are designed to allow students to develop skills in legal writing and reasoning.

Chapter Format

Recent case law has been incorporated to provide a better view of the current position of courts across the nation. Chapter features include the following:

- A "news" article highlights the real-world application of the chapter topic.
- A **Chapter Outline** provides an introduction to the major topics that will be addressed.
- **Chapter Objectives** at the beginning of each chapter focus students' attention on the main elements they will learn.
- Hypothetical **Practical Applications** are interspersed through each chapter to illustrate chapter concepts. **Points for Discussion** follow the applications and provide a springboard for class discussion.
- Longer edited **Cases**, most of them new to this edition, are followed by questions that encourage students to consider the major issues in each case.
- **Assignments** throughout each chapter test students' knowledge by asking them to apply the chapter material.
- **Ethical Considerations** and **Ethical Circumstances** in each chapter provide insight relevant to the legal issues presented.

- A **Chapter Summary** ends each chapter with a brief review of the main points covered.
- **Key Terms** are set in boldface type and defined in the margin where they first appear within the chapter. For easy review, each chapter also ends with a list of the key terms that appear in the chapter.
- **Review Questions** follow the chapter material, giving students yet another opportunity to review the chapter content.
- **Writing Assignments** allow students to develop skills in legal writing and reasoning.
- **Internet Assignments** introduce students to the concept of Internet legal research.

SUPPORT MATERIALS

This seventh edition is accompanied by a support package that will assist students in learning and aid instructors in teaching:

INSTRUCTOR COMPANION WEBSITE

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Supplements At-A-Glance

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CHAPTER 1

The Historical Basis and Current Structure of the American Legal System

CHAPTER OBJECTIVES

After reading this chapter, you should be able to:

- Distinguish the positivist, naturalist, and sociological theories.
- Explain the role of political theories in the current system of American government.
- Discuss the weaknesses of the Articles of Confederation.
- Describe the function of each branch of government under the Constitution.
- Explain the differences between legislative, judicial, and administrative law.
- Distinguish the traditional and modern balance of application of laws.
- List the hierarchy of law.
- Explain the exception to the rule of hierarchy.

CHAPTER OUTLINE

THE HISTORICAL BASIS OF AMERICAN LAW

Before the Government
The Results of the Revolution
The Influence of Political Theories
Balance as the Key to Success

THE MODERN LEGAL SYSTEM

The Sources of Law
The Hierarchy of Law
The Exception to the Rule of Hierarchy

The new government has finally been established. With the help of a committed military and citizenship, the Constitution was adopted and the first open elections were held. There is still unrest in many areas, and some conflicts continue. There are those who still maintain that a return to the former system of government is imminent and the best alternative for the public at large. However, the majority has spoken and established the new course for what promises to be a nation unlike any other that the people of this country have ever known. Many look forward to the freedoms they have only dreamt of in the past. The new Congress has convened and is in the process of passing legislation to give structure to the government and protect the rights of individuals. A judiciary has been appointed, and now hears the cases coming before them from the citizens. High ranking officials hope that after so many years of struggle it is only a matter of time until foreign military forces leave the soil of the burgeoning nation, and peace will finally reign over this battle scarred country.

“The Boston Revolutionary Herald, 1776”

THE HISTORICAL BASIS OF AMERICAN LAW

The historical path of democracy has been travelled many times since the creation of the American legal system. The newspaper article quoted at the beginning of this chapter could have been written about many new governments, including the ongoing struggle to maintain a democratic system in Iraq. The concept is relatively straightforward: Citizens want a just and proper governmental authority that addresses inequality, reveres individual rights, and protects the population as a whole. In this chapter, the focus is on how these goals have been approached through the methodical development of the American legal system despite sociological and economic changes. Subsequent chapters examine both the mechanical aspects of the American legal system and fundamental concepts in the most common areas of legal practice within the system.

Although the purpose of this text and this chapter is not to provide a course on American history, there are important facts to note. The longevity of the American legal system is derived from a complex equation that allows the laws to provide stability while also being responsive to the need for change. Understanding this basis, it is easier to see how and why the American government was established to withstand the tests of time.

Before the Government

The American legal system was not developed hastily. The first settlers in the New World had no intention of creating an entirely new legal system. Many came to escape religious persecution they had suffered in European countries where citizenship required adherence to the same religious principles held by those in power. Others came for economic opportunity and to break free of the strong class system in Europe. For most, a new governmental structure and independent nation was far down on the list of priorities, if it was on the list at all. For early settlers, most of whom had been urban dwellers, the priority immediately after arrival was, first and foremost, purely to survive in an environment that was hostile and strange.

As more and more colonists established their homes in America, issues of law began to arise. For more than a century, the immigrants and their descendants clung to the same principles and methods of law and order

that they or their ancestors had known in Europe, predominantly in England. These colonists adhered to many of the traditions of the laws of England, which were based upon the prevailing attitudes toward common English religious beliefs. Under these principles, known as the English Common Law, there were few widely published legal standards. People were charged and punished by the government for committing acts that were presumed to be known by all to be sinful and consequently illegal. As the American population grew, British and other European governments stepped up their efforts to establish a formal and permanent influence in America. These attempts included establishing the presence of foreign governments in the colonies by placing government officials there and attempting to enforce the laws of these foreign governments. Although the colonists were willing to adopt many legal principles, particularly from England, they were not interested in adopting a governmental structure that they felt was unresponsive to the will of the people. This was especially true because those foreign governments were the very structures the colonists had sought to avoid by coming to America.

During the revolutionary era that began in the mid-18th century, the colonists realized that they had to establish some form of permanent governmental structure if they were to avoid rule by another country. Our modern structure derives from a combination of factors that influenced those who were responsible for establishing the American government. The founders' foresight is evidenced by many of the laws and procedures they created that remain in place more than two centuries later.

Initially, the colonists' primary legal concern was to deter and punish criminal acts as a means of maintaining order. As mentioned earlier, the founders sought to prosecute and punish those who committed what were seen as crimes against morality—religiously based morals presumed to be held by most of the population. Many of those in positions of authority in the new government were also members of the new American aristocracy. The focus of law in early American society was thus an attempt by this aristocracy to impress its perception of right and wrong on the working classes and to punish those whom the wealthy and powerful perceived to be improper or sinful. Therefore, the original system of justice in America was based on a somewhat simplistic theory of right and wrong. This theory, also known as the **naturalist theory**, was based on the belief that all persons are born with not only the ability to distinguish the difference between right and wrong but also the knowledge that they are responsible for acting in the proper manner. However, the population increased, industry advanced and expanded, cultures mixed, and vast numbers of individuals with different opinions of right and wrong came together in communities. These developments rendered obsolete a justice system predicated on simple aristocratic beliefs of right and wrong. The American people required a more detailed legal system that included written legal principles that could be applied, fairly and equitably, to a myriad of circumstances and the entire population.

naturalist theory

Philosophy that all persons inherently know the difference between right and wrong.

PRACTICAL APPLICATION

1.1

In 2002, an American missionary set out for a remote area of an impoverished country. Because her assignment was for a continuous period of seven years, she took along a great many items, such as nonperishable foods, clothing, medical supplies, and so on, that she anticipated she would need for personal use over such a long time. The organization that sponsored her also planned to send regular shipments of supplies

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to help the local population. Shortly after the missionary arrived, she returned to her new home one day and found that most of her supplies and personal things were gone. Because the local minister was the only one with ready access to her home and storage area, she went to him first. He acted surprised and insulted that she would accuse him of stealing, although he freely admitted taking her property. His explanation was that, as members of the same religious community and as Christians, he just assumed that she wanted to share her wealth, both with him and with all those less fortunate in the area. He did not see his action of coming in and taking the property as wrong in any way.

Point for Discussion: Even today, cultural differences in the definitions of acceptable conduct can be profound, even among members of the same religion. Can you identify any such differences that exist today, or that may have existed at the time of American colonization, that could have legal ramifications?

As mentioned, with an increase in population and industry came nearly simultaneous attempts by other nations to control the colonies. Initially, the colonies fought this control as individual governments, without ties to the other colonies, but the colonists quickly realized that if any of them were to succeed against the attempts of others to take control, especially the British, the colonies must become unified.

The Results of the Revolution

At the time of the Revolution (the War of Independence), the colonies came together and issued their Declaration of Independence. Enforcement of such a document was not an easy task for a largely unsophisticated, poorly armed, and disorganized band of citizens, who were matched against the armies and navies of Great Britain and any other country that might want to attempt to increase its power and position on the world stage. Nevertheless, the people formed a central government made up of individual states. Today most Americans consider the Declaration of Independence the bedrock of our nation, the document that established the moment at which America became an independent nation. In reality, the document was not initially taken that seriously by other governments. At best, it was considered more a declaration of war by a small group of people against the most powerful government, army, and navy of the world.

Nevertheless, the new Americans set out to establish a long-standing and powerful nation of their own. What many do not realize is that this new government was guided for 11 years by a document known as the Articles of Confederation. The United States Constitution as we know it today was not passed until September 1787, near the end of the revolutionary era. The Articles of Confederation bore little resemblance to the current Constitution. Under the Articles, each state sent delegates to act as members of a Congress; the delegates then nominated and elected a president from amongst themselves. The delegates passed laws, acted as judges in disputes among the states, negotiated treaties, and served as the government for the new nation. The president was assigned the duties of presiding over sessions of Congress, as well as acting as an ambassador to, and receiving representatives of, other governments. All legal disputes with respect to individuals continued to be dealt with by each state's own system of justice.

The founders quickly realized that the Articles of Confederation and the Congress formed under them were largely ineffective. The national government had no "enforcement power": It had no independent judges, no jails, and no way to force collection of

the monies each state was supposed to contribute. Moreover, there was no money or organization to support a national army. Nor was there a staff of government employees to operate the government when Congress was not in session. The president was only the head of a small group of delegates, not the leader of the nation. Clearly, if such a nation was to succeed, then a much more organized system would have to be created.

Interestingly, one of the very first real issues that arose in creating a permanent government was whether to allow the states to continue in existence in any sort of individual fashion. Several delegates, including some from the South, believed that the individual states should be abolished and that all people and all legal issues should be governed by a central authority. In history, small states within a country had often ended up in conflict with one another, undergoing power struggles and other clashes that produced civil war and, in turn, vulnerability to attack by other nations. However, in America the idea failed to gain popular support because the settlers were fiercely independent and sought to preserve as much personal freedom from government as possible. In the end, a system consisting of separate state governments and a national government with specific functions was created. The states were left intact because they could respond effectively and quickly to the needs of their citizens and each individual state's economy.

Keep in mind that mass transit and communication were virtually nonexistent at that time, and that a distant national government was seen as being uninformed about and properly uninvolved in matters of local concern. The national government was formed to protect the fundamental rights of all citizens and ensure that the state governments would not interfere with individual rights. The national government would also handle broader issues such as interstate commerce, Indian affairs, immigration, and international issues such as treaties for trade and nonaggression. What emerged was a system of federalism wherein the federal government was given certain powers and the states retained theirs, except those powers that were made exclusive to the federal government. This division of power between two separate governments serves as a check on power much mirroring the establishment of three separate branches of the federal government.

ESTABLISHMENT OF BRANCHES OF GOVERNMENT. Once it was decided that the government would take the form of a single nation with individual statehood, a Constitutional Convention set out to create a structure for the new federal government. The Constitutional Congress drafted the Constitution, which clearly defined the powers and limitations of the national and state governments with respect to each other and to individual citizens. The members of the Constitutional Congress agreed that there would be three distinct branches of government, each with separate duties and all with the obligation to cooperate with and monitor the other branches to ensure that no one branch obtained too much power. This separation of powers was a direct attempt to prevent the development of the monarchy-type government that so many colonists had rejected by coming to America.

The first branch of government created by the Constitutional Convention was the legislative branch. This Congress would be elected by the people (directly for the House of Representatives but indirectly for the Senate, whose members were elected by the state legislatures until the Seventeenth Amendment was ratified in 1913). Congress would retain the sole authority to make statutory law. In this way, the people as a whole would always have significant influence in establishing the laws that all persons were required to follow. As set out by the Constitution, only Congress, and no other branch, has the power to create statutory law. In the past, when any other governmental source attempted to create statutory law, the law has been struck down as being in violation of what is known as the *delegation doctrine*. The delegation doctrine is based on the fundamental constitutional principle that Congress cannot delegate or give away its authority to make statutory law; thus, law-making power remained

closely connected to the will of the people. Chapter 4 specifically and more fully discusses the development and application of the delegation doctrine.

The executive was the second branch of government specified by the Constitution. The president was given authority to head the executive branch at the national level. This is paralleled in the states, with each state executive branch headed by a governor. Under the Constitution, the president is elected indirectly by the people through the Electoral College. Each state is entitled to appoint a number of electors equal to the state's total number of senators and representatives in Congress. A person cannot serve as both a member of Congress and an elector. Each state legislature determines the manner in which its electors are selected. The electors vote and elect the president by a majority. Generally, the electoral vote reflects the popular vote. If no one person gains a majority of the electoral vote, the House of Representatives is responsible for electing the president. The details of the electoral process can be found in Article II of the Constitution (Appendix). Chapter 4 also discusses the executive branch.

The president has the power to approve or reject laws passed by Congress. The power is not absolute, however, and the president cannot deny Congress's authority to enact law if it is, in fact, the will of the majority that such law be enacted. Rejection by the president of a law enacted by Congress is known as an *exercise of the veto power*; a veto can, however, be overridden by a significant majority of Congress. The president also has several important functions with respect to foreign affairs and the ultimate duty to enforce the laws of the United States—the latter has grown to be one of the most important presidential responsibilities. Consequently, federal law-enforcement agencies are considered part of the executive branch. A similar structure is in place at the state level between the governor and state law-enforcement personnel. The various powers and functions of the executive branch are discussed further in Chapter 4.

Finally, the Constitutional Convention determined that a third and separate branch of government was needed to protect the Constitution, serve as a mediator of disputes among the states, and adjudicate cases against the government by its citizens; hence, the delegates wrote the Constitution so as to establish the judicial branch. This arm of government has the task of judicial review, as well as the authority and responsibility to interpret laws and protect the Constitution from violation by Congress, the president, or the states. Although the Constitution vests the ultimate authority to enforce laws in the president, in practice the judiciary also assists in enforcement when the courts apply law to specific cases.

THE BILL OF RIGHTS. The three separate but related branches of government were designed to protect against a small number of individuals gaining power over the entire population. By having the branches operate independently from, but with the power to influence, one another, the people are better protected from one branch obtaining too much power or using its power unwisely. Through this system of *checks and balances*, each branch can use its specially designated powers to make sure the other branches act within their constitutionally prescribed limits.

In addition to the Constitution, which provided the governmental framework, the Congress, with the approval of the people, subsequently passed the Bill of Rights, which protects what are considered to be fundamental human rights and freedoms. The Bill of Rights, now enshrined in the first ten amendments to the Constitution, protects all citizens from government infringement on those matters that are presumed to be inherently personal and a matter of choice for all human beings. The following rights are specifically protected:

- Freedom of speech, religion, and press; peaceable assembly; petitions for governmental change (First Amendment)
- Right to bear arms (Second Amendment)

- Freedom from unreasonable invasion of one's home by the government for purposes of search and seizure of persons or property or for occupation by the military other than as prescribed (Third and Fourth Amendments)
- Right to have an independent judicial magistrate determine if probable cause exists before a search or arrest warrant can be issued (Fourth Amendment)
- Right not to be tried twice for the same crime (Fifth Amendment)
- Right not to have persons or property seized without due process (Fifth Amendment)
- Right to a speedy and public trial (Sixth Amendment)
- Right to an impartial jury in the jurisdiction where the alleged crime occurred or where the dispute is governed by common law (Sixth and Seventh Amendments)
- Freedom from forced self-incrimination (Fifth Amendment)
- Right to counsel in criminal prosecutions (Sixth Amendment)
- Right of the accused to know of the crime alleged (Sixth Amendment)
- Right of the accused to confront the witnesses for the prosecution (Sixth Amendment)
- Right not to be subjected to excessive bail (Eighth Amendment)
- Freedom from cruel or unusual punishment (Eighth Amendment)
- Freedom from use of the Constitution to limit individual rights not mentioned therein (Ninth Amendment)
- Right of the states to govern matters not addressed in the Constitution or its amendments (Tenth Amendment)

The Bill of Rights establishes the standards of fundamental fairness under which the government must deal with its citizens. These standards have always been and will always be protected by the U.S. Supreme Court as long as the U.S. Constitution stands. But what has changed over time is the way in which these rights are defined and interpreted, based on changes in American society, government, culture, and law.

ADDITIONAL INDIVIDUAL RIGHTS. In recent years, the Supreme Court has been increasingly asked to resolve issues that determine the rights of persons to be free from governmental intrusion into their private lives. Issues have ranged from abortion, to the rights of law-enforcement officials to search and seize persons and evidence of criminal activity, and even to the death penalty. Frequently, news reports discuss Supreme Court opinions that define the boundaries between government obligations and individual freedoms with respect to the Bill of Rights. From time to time, additional language regarding these freedoms has been added through more amendments to the Constitution as Congress and the people have deemed appropriate.

The Constitution and its Bill of Rights were created more than 200 years ago, not only to establish a new government but also to serve as the foundations of modern-day law. Every time Congress passes a statute, the executive branch enforces a law, or the judiciary interprets a law applicable to a situation or an individual, such action must be taken in accordance with the requirements of the Constitution and its amendments. All law created in this country must be consistent with, and embody the spirit of, the rights guaranteed in the Constitution and its amendments. The Constitution and its amendments continue to be responsible for giving definition to the rights of citizens and governments alike. More recently, the courts have, in high-profile opinions, used the Constitution and its amendments to prevent police from invading the privacy of individuals without a warrant; allow people the right to publicly express their religious and political beliefs; encourage the public to take an active role in

government through elections, petitions, and peaceful protests; and protect those who might otherwise be treated in a disadvantaged or unfair way because of traits associated with race, religion, background, and physical/mental condition. In a case that was both high profile and hotly debated, the Supreme Court in *Obgerfell v. Hodges* ruled that the Fourteenth Amendment of the Constitution requires states to recognize same-sex marriage on the same footing as opposite-sex marriage. *Obgerfell* will be discussed further in Chapter 10.

PRACTICAL APPLICATION

1.2

Sometimes Courts must decide between competing interests and values. A New Mexico company refused to photograph a same-sex marriage on religious grounds. New Mexico has a law that stated it was illegal to discriminate on the basis of sexual orientation. The New Mexico Supreme Court ruled that enforcing the law does not violate the freedom of religion of the Jonathan and Elaine Huguenin (the owners of the company).

One Justice wrote separately on this sensitive issue.

In 1943 during the darkest days of World War II, the State of West Virginia required students to salute the American flag and decreed that refusal to salute would “be regarded an Act of insubordination,” which could lead to expulsion for the student and criminal action against the parent. *W. Va. State Bd. of Educ. v. Barnette* (1943). Some students refused to salute, believing as Jehovah’s Witnesses “that the obligation imposed by law of God is superior to that of laws enacted by temporal government.” The Jehovah’s Witnesses, without any desire to show disrespect for either the flag or the country, interpret the Bible as commanding, at the risk of God’s displeasure, that they not go through the form of a pledge of allegiance to any flag. Jonathan and Elaine Huguenin see themselves in much the same position as the students in *Barnette*. As devout, practicing Christians, they believe, as a matter of faith, that certain commands of the Bible are not left open to secular interpretation; they are meant to be obeyed. Among those commands, according to the Huguenins, is an injunction against same-sex marriage. Their refusal to do business with the same-sex couple in this case, no matter how religiously inspired, was an affront to the legal rights of that couple, the right granted them under New Mexico law to engage in the commercial marketplace free from discrimination. The Huguenins are free to think, to say, to believe, as they wish; they may pray to the God of their choice and follow those commandments in their personal lives wherever they lead. The Constitution protects the Huguenins in that respect and much more. But there is a price, one that we all have to pay somewhere in our civic life. In the smaller, more focused world of the marketplace, of commerce, of public accommodation, the Huguenins have to channel their conduct, not their beliefs, so as to leave space for other Americans who believe something different. That compromise is part of the glue that holds us together as a nation, the tolerance that lubricates the varied moving parts of us as a people. That sense of respect we owe others, whether or not we believe as they do, illuminates this country, setting it apart from the discord that afflicts much of the rest of the world. In short, I would say to the Huguenins, with the utmost respect: It is the price of citizenship.

Point for Discussion: What do you think of the reasoning of the Justice in explaining the balance that must be struck when competing values are in conflict?