POLITICAL and CIVIC *Leadership*

A REFERENCE HANDBOOK

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Legal Systems

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Although not technically a legal term, the phrase *legal systems* conceptualizes the distinctive manner in which a particular society's laws are administered and depicts the various historical traditions, body of laws, procedures, and institutionalized functional units that form complex operational systems governing human interaction in a society. Although a review of legal systems does not necessarily speak to an analysis of specific laws or areas of the law (i.e., criminal law, property, torts, etc.), it nevertheless includes what occurs when individuals resolve or avoid disputes and the manner by which people may access the law and effectuate change therein. The phrase also connotes those rules that create and manage a society's unique interconnected institutions that are critical to the functioning of a legal system, including law enforcement agencies, prosecutors, courts, facilities, and corrections.

Throughout history, legitimate and pragmatic legal systems have assisted in the crafting of advanced societies and have been effective in both enforcing societal norms and in encouraging behavior that is consistent with such norms. These normative values are often grounded in ethical considerations, which are largely based on consistent and well-founded moral duties derived from principles of right and wrong. Such ethical norms include internally defined rules that govern the conduct of a person, profession, or society and provide a guide to one's life decisions. Although many laws incorporate basic ethical standards (i.e., calling on humans to refrain from theft, rape, murder, fraud, etc.), others may deviate from what a society considers moral and right (i.e., the condoning of slavery in the antebellum United States, imposition of apartheid in South Africa, etc.). To that end, legal systems are often the institutionalized by-products of societal change, and while most standard reviews classify the world's diverse legal systems into two to four (or more) general families of legal traditions (i.e., civil, common law, religious, pluralistic, etc.), the prevailing geopolitical world order—that of independent, sovereign nation-states that govern populations residing in a contiguous geographic area—combined countless structural and historic differences between and within states renders such categorization dubious.

The determinative concept of the modern international political order, state sovereignty, is a social principle describing the right of a legitimate government to exercise absolute and final social, political, legal, and economic authority and influence over its citizenry within a geographically defined political territory to the exclusion of other nation-states. Under principles derived from the Peace of Westphalia of 1648, states possess final lawmaking authority within their territory, are vested with the right to self-determination, may pursue their own monetary system and economic development, and may provide for their own defense and protection of their citizenry. They may also choose to exploit their own natural resources and to develop their own political and social structure as they see fit. Sovereign states are not subject to higher lawmaking authorities or political influence, are treated as equals with other states, and are obligated to respect the sovereignty and territorial integrity of other nations. Although many modern legal systems flow from civil or common law traditions, and despite appearances of regularity and uniformity between those nations that have inherited such systems, there exist as many legal systems in the world today as there are nations, each with substantial differences that serve to underscore notions of state sovereignty. Even within nations, legal systems are not always applied uniformly, and in many instances, regional derivations are permitted for cultural nuances and religious differences.

A basic understanding of legal systems is critical to functioning in a diverse, pluralistic global society and is important to understanding a sense of justice, securing the rule of law, and enforcing substantive rights. It also enables one to better conceptualize one's national laws, as well as foreign and international legal challenges. This is especially true concerning non-Western societies that have differing views of justice, including those cultures where economic or religious beliefs serve as the basis for the definition of justice. This chapter provides a brief overview of key legal concepts including the law, traditions of legal systems, constitutions, judicial independence, international law, and enforcement of rights. Students are advised to review the references at the close of the chapter for additional information and study.

Considerations on the Law, Generally

The study of legal systems underlies the systematic examination of the law itself, and although texts on legal theory and jurisprudence expound on the definition of the vexing term, *law*, it is, for the purposes of this review, more than a simple set of rules for society to follow. Established by lawmaking authorities in a society, laws exist as comprehensive general orders of a sovereign (i.e., king, dictator, government, etc.) imposed on subjects that bind individuals. Whether written or unwritten, laws are developed as a reflection of changes in society and are largely influenced by customary and moral obligations, natural instincts for survival, societal norms, and religious beliefs. They exist not only to protect individuals from harm but also to encourage individuals to refrain from, or engage in, behavior they might not do otherwise. Laws also serve as a society's chief method for advancing common ambitions and are particularly useful in those instances in which competing interests—between individuals and other individuals, government, or society as a whole—cannot be resolved peacefully and/or impartially.

Laws mark the limits of the power of individuals and governments to control the affairs of others and are the processes through which an individual's acts are judged and enforced by an external authority. They are generally interpreted and applied by an agency of a government, and although it is heavily debated as to whether laws proscribe obligations or merely threats of potential consequences as a form of psychological pressure, nearly all legal systems seek certain fundamental goals, including the maintenance of order, enforcement of the will of the people, and fair and just treatment for all. A government that impartially and objectively applies its respective rule of authority in the areas of individual liberty, lack of arbitrary exercise of power, fixed laws and limits on government, independent judicial processes, and equality before the law is seen as more legitimate and respectful of the rule of law.

Although it is generally accepted that there is a need for law in the operation of modern society, the development of a society's individual laws and the policies it emphasizes varies between jurisdictions. Even in cases in which governments equitably apply the law, the role of the individual and his or her government and the role of discerning an appropriate response to unjust laws and use of authority have been long debated. Civil disobedience, often used in nonviolent resistance movements, includes openly and peacefully disobeying a law to protest that law's unjustness or unfairness on the grounds of political or moral principle. Although evidence of civil disobedience dates back thousands of years, it was popularized in modern times as a concept in Henry David Thoreau's 1848 essay "Civil Disobedience," in which he refused to pay taxes to protest the Mexican–American War, the institution of slavery, and the degradation of Native American rights. Unlike scofflaw behavior in which someone unjustifiably habitually ignores or does not comply with certain laws, civil disobedience is largely seen as ethical only where a written law is in conflict with natural law, there exists no political recourse available to change the law, objection is made in a nonviolent manner, and the objector is willing to accept punishment for violating the law by seeking to morally educate the public. Notable acts of civil disobedience include actions by Mahatma Gandhi in South Africa and during the Indian independence movement, the U.S. civil rights movement of the 1950s and 1960s (which included infamous sit-ins, freedom rides, illegal marches, tearing up of draft cards, etc.), the Tiananmen Square march of 1989, and more recently, the 2009 Iranian election protests. In the academic setting, civil disobedience by high school and college students has long been employed to air grievances against war (i.e., student walk-outs during the Vietnam era) or to bring about large-scale political or social change (i.e., to promote increased diversity in the student body) or macrolevel economic changes (i.e., living wage increases for campus employees, lower tuition, etc.).

An understanding of the nature and functions of law as well as one's ability to avail oneself of rights and remedies through the legal process and its institutions is a way for individuals to protect themselves and to understand the opportunities for effectuating change. For those legal professionals specially trained and directly charged with enforcement and preservation of legal systems, including judges, attorneys, and law enforcement officers, the ability to advise on legal issues; with impartially evaluating how the law and sets of facts benefits and harms citizens; and with responding to legal quandaries is critical. Whether defending a client accused of a criminal act or settling a dispute between landowners, effective navigation through legal channels depends on one's analytical ability, knowledge of the law, familiarity with legal processes, and decisiveness. Because the general public and clients look to attorneys and judges for guidance, analysis, and technical

advice, those within the legal profession often serve as natural leaders and they play a major role in preserving and enhancing a society's justice system. Legal professionals must not only develop ethical public service leadership skills, but such skills must be nurtured over time and individuals must be empowered to practice such skills, lessons, and strategies both to achieve their professional potential and for the betterment of the legal profession and society as a whole.

Traditional Classifications of Legal Systems

As mentioned above, the world's legal systems are frequently categorized into four major legal traditions that reflect varying attitudes about the nature of law, the organization of legal systems, and how the law should be applied and developed. Legal traditions develop out of individual cultural and historical perspectives, and although notions of state sovereignty often render conventional categorizations inefficient, for the purposes of this review, legal systems include civil law, common law, customary law, and institutionalized religious-based law. In some instances, such as Namibia, Cyprus, and Malaysia, so-called mixed or pluralistic legal systems have evolved out of the fusion of customary, civil, common law, and/or religious-based systems.

Civil Law

Rooted in Latin theories of legislative expression, the civil law system is the most commonly used legal system in the world and is based on the primacy of codified written laws, which refers to the process by which a customary law is enacted in statutory form. This system is predominantly found in continental Europe, as well as most of Africa, South America, and Asia, and evolved from the Roman need to impose law and order on an expanding empire and with it the superiority of the state over its citizenry. Ancient Roman Empire codes, notably the Institutes of Justinian (which presented the first systematic treatise on Roman law), were largely a mixture of custom and interpretation of the will of gods by magistrates. Individuals were viewed subject to the sovereign state, which delineated rights and responsibilities through statutes with respect to public or private realms of life.

Although King Phillip of Spain's 1573 "Spanish Laws of the Indies" were notable from a civil law perspective for governing the settlement of Spanish colonial possessions in the Americas, the civil law had its most successful rebirth in 1804 following the French Revolution when Napoleon sought to unite France administratively by overhauling France's disparate feudal laws and unifying them into one comprehensive body of French law. The result, the 2,281-article Napoleonic Code, is considered the first successful codification and reorganization of laws since the Institutes of Justinian and incorporated elements of relevant Roman law and formerly codified French customs.

Napoleon's code divided civilian rights and responsibilities among civil, commercial, and criminal codes, and its clarity and accessibility have greatly influenced the establishment of civil law legal systems in many other countries, primarily in those areas of the world that once formed a part of the Spanish and French empires. Some common law nations, including the United States, have codified their respective criminal law statutes in the form of a penal code. The Napoleonic Code remains the French civil code today and afforded all French citizens, regardless of class, clarity and accessibility in understanding the law, thereby permitting them to become familiar with the principles that govern their society.

Under the civil law system, judicial precedent in the form of judicial opinion, scholarly treatises, and prior interpretations of law are accorded less weight than legislative statutes. Laws promulgated under civil law legal systems can be amended only by legislative fiat, and civil law judges do not create new rights or laws, but merely review and apply the laws set forth by the legislature. Although civil law courts must sometimes interpret the law, any interpretations that serve to diminish gaps in the law are not permitted (though this concept is more theoretical than pragmatic). This aspect of the civil law system stands in contrast to the Anglo-Saxon principle of judge-made (common) law in which judges may make decisions of legislative import with the force of law. Further, a judge's decisions are not bearing on future court cases as questions of law are reexamined anew each time they arise.

Civil law legal systems make heavy use of the inquisitorial system of justice for settling disputes between parties, and judges play an active role in investigating the circumstances of a case and discerning the truth by gathering evidence and questioning witnesses. Unlike the adversarial system in which two parties each may provide incomplete evidence and have the ability to suppress unfavorable information from reaching the adjudicator, inquisitorial systems favor arbitrators discovering information regarding the truth themselves, presumably creating one unbiased volume of evidence that is to be utilized in their decision. Unlike common law systems, lawyers act in advisory capacities to their clients, and civil law cases are usually settled out of court unless a judge is convinced of the guilt of the accused and evidence supports a conviction. Jury trials, which are decided by a panel of judges or assessors, are rarely used in civil law systems and exist merely to review discrepancies in the written record. Civil law is also used extensively in parts of many common law countries, including Quebec and Puerto Rico. In the United States, Louisiana's legal system is notable for being strongly influenced by Roman, Spanish, and French civil law, though legislative amendments have diminished the differences between Louisiana law and that of the other 49 states. As a former Spanish and French colony,

Louisiana adopted its Louisiana Civil Code in 1808, and rulings from its judges derive from the direct interpretation of the law rather than interpretations from prior court decisions.

Common Law

Used heavily in Great Britain, the United States, and in those nations that trace their legal heritage to Great Britain (i.e., Australia, Pakistan, New Zealand, India, Ghana), common law legal systems refer to precedent-based systems of jurisprudence grounded in legal decisions developed through pronouncements of courts and tribunals rather than through legislative statutes or executive action. Developed as a means to protect the rights and property of individuals against the state, common law legal systems evolved following the Norman Conquest in 1066 CE, under King Henry II, and supplanted disparate tribal customary laws and arbitrary judicial administration interpreted by feudal lords and county courts. The common law system originated the King's Bench, the Exchequer, and the Court of Common Pleas, with three general areas of private law—property, contracts, and torts—largely forming the basis of common law legal systems.

Common law can also refer to the body of judge-made, precedent-based decisions within a legal system that is based on the traditions and customs of the people, is dependent on prior decisions, and is binding upon future decisions. Such judicial determinations held to be of equal dignity with legislatively imposed, codified statutory law, and in making their determinations on the merits of individual cases, judges must review prior decisions in similar cases, including the policy and rules used to explain their outcome, relevant statutes, and legal treatises. Of particular importance, judges must review past precedent; where there is no prior authoritative statement on a particular issue or area of the law, judges are endowed with the authority and duty to create binding legal precedent.

Common law courts are endowed with the ability to interpret the law in accordance with societal norms and cultural or philosophical advances, and to "legislate from the bench." This aspect of common law systems forms a key component of U.S. judicial power as specified in Article III of the U.S. Constitution, which enables courts to act as a check on legislative and executive power. Increasingly over the past century, however, legislatures have sought to lessen the ability of courts to interpret statutes by adopting or repealing a statute or ordinance, by passing an amendment to clarify the meaning of an existing statute, or by changing their respective nation's constitution. In many cases, such legislative acts were in direct response to an unfavorable judicial outcome, thereby effectively nullifying prior court decisions. Nevertheless, the common law method of reasoning by analogy (a trait shared to a certain extent with Islamic-based Sharia law) remains the primary method by which common law judges review cases and interpret the law.

Common law justice is achieved through the process of investigation rather than the application of a code or statute, and judges are to evaluate the specific circumstances of a particular case and apply those principles that are applicable in making a decision. In the event an area of the law or case with analogous facts has previously been decided by a court with mandatory jurisdiction, the principle of *stare decisis* holds that lower or subsequent common law courts are obligated to follow the prior court's precedent by applying the prior decision to the case at hand and reaching a similar outcome. Theoretically, the judicial reasoning underpinning interpretations of individual legal issues is strengthened over time by the similarity of cases and provides predictability and stability to the legal system. Though *stare decisis* does not prohibit judges from disagreeing with prior decisions, it strongly encourages them not to do so.

Anglo-Saxon common law is heavily associated with the adversarial system in which two parties—each representing opposing sides in a dispute—orally argue against one another before an impartial judge or jury with the expectation that any information gleaned from each presentation will reveal the truth of a dispute. Because there are two sources of information (one for each opposing party to a dispute), the role of lawyers is typically greater than that under civil law systems in which the judge acts as the primary investigator. The adversarial system allocates the burden of proof on each party to make its case, and as a result, each side engages in a competition to put forth strong evidence and a convincing argument. As opposed to courts under the civil law inquisitorial system, each side in a common law dispute gathers all evidence and calls witnesses, which may be challenged through counterevidence and cross-examination. Unlike civil law legal systems, decision makers under common law need not acquire first-hand knowledge of a situation, as arbitrators can use only information presented by each side in making their decisions.

Customary Law

An expression of a community's morals and societal norms, customary law largely grew out of the need for naturally evolving legal systems in precolonial African, South American, and Asian societies and is defined as rules of obligation, custom, morality, and religion shared within a community. Because of the prevalence of illiteracy in many non-Western and Islamic cultures prior to the 19th century, customary legal systems necessarily derived from traditional practices, consistent behavior, and responses to a given set of matters over a long period of time that were observed by substantial portions of a community. As a result, customary law maxims evolved with a society's particular needs, political developments, and influence from outside groups over the course of many centuries and were transferred between generations through a community's oral culture and sometimes enshrined in religious tradition.

Such extra-legal behavioral patterns and customary practices provided the genesis of common law and civil law legal systems, and even under modern legal systems, disputes are often resolved based on traditions and standards that are derived from a society's customary practices. Further, many codified legal systems include customary law derivatives that have been codified in a nation's civil law or incorporated into the legal norms and practices of modern nation-states.

As customary law societies generally lack a central governing authority between settlements or villages ensuring consistency and uniformity, customary law is extremely diverse between cultures and proves particularly useful in those instances in which noncustomary legal systems cannot provide redress for customary offenses recognized by the community (i.e., disrespect for elders, dress codes, engaging in sacred rituals or practices in public, nonmarital relations with women, etc.). Customary systems assist in fashioning local precepts of right and wrong, maintain peace between communities, and due to the familiarity of shared values within a community, are considered legitimate by its members. Because customary laws are unwritten, this legal system has the distinction of involving average citizens in a direct role in the evolution of a community's moral and legal values and at least theoretically is derived from a consensus of those whom it governs. This is not to say that customary law is derived from a necessarily democratic process, but it is characterized by decentralized, unwritten procedures and practices that are orally transferred. Further, few customary law societies accord individuals within a community the status of judge, or equivalent legal specialist; however, chiefs, older citizens, and other authority leaders within a community are accorded some measure of legal expertise by virtue of their venerated status.

In many African societies, customary law was (and in some cases, remains) the primary source of law for communities, binding the upper echelon of a community, including kings and chiefs. African customary law largely drew from an emphasis on collective responsibility, respect for the elderly, and collective property rights and was later influenced by both Western and Islamic legal traditions through colonialism and religious conversion. African customary law was unwritten except in those areas that came under Islamic influence and ultimately codified various portions of Islamic law. During Africa's colonial period in the 19th and 20th centuries, the influence of Western civil and common law legal systems on indigenous colonial subjects was often slow and tedious as tribal relationships and practices, including witchcraft, were particularly alarming to the Europeans. To compensate, the British introduced so-called repugnancy clauses that identified certain aspects of indigenous customary law culture that were to be applied as law within the colonial system. Such clauses were gradually repealed following the independence of nations throughout the 1950s through the 1970s. Interestingly, in recently independent countries in Africa and Asia, many of which fought long-waged campaigns to achieve majority rule or independence, many have retained—albeit with parochial customary modifications—certain legal traditions and laws practiced by their colonial predecessors.

Although some assert the results of globalization and outward pressure-influence render customary law obsolete, customary legal systems continue to have meaning and strength for many groups. In certain instances, indigenous societies have maintained their own legal traditions and customs for thousands of years. For example, with a largely nomadic populace and despite a written constitution and laws, Mongolia's estimated 300,000 nomadic farmers continue to enjoy access to open fields and pastures during the summer months under customary law, while legislatively passed statutes assign property rights to grazing lands to individuals during the winter months.

In countries with political minorities, especially those in which such minorities constitute the indigenous population, some population groups have recently been permitted to pursue minimal levels of self-determination with respect to the legal standards to which they should be held. Although the need for granting self-management in the realm of legal affairs is rapidly diminishing in many places as indigenous populations are increasingly assimilated into the mainstream population and social norms of their respective country, other places witness an increasing international trend toward granting indigenous people the right to self-determination and customary law legal systems. In many instances, the recognition of customary principles is seen as a way to compensate indigenous peoples for systematic discrimination and past colonial wrongs and as an attempt to increase legitimacy of a government by a historically skeptical population and to reestablish the relationship between indigenous and nonindigenous peoples. At the forefront of the so-called indigenous rights movement, Australia, in March 2009, endorsed the UN Declaration on the Rights of Indigenous Peoples, which establishes guiding principles and standards for individual rights, dignity, cultural differences, and survival among the world's estimated 370 million indigenous peoples. Australia has increasingly favored recognizing aboriginal customs and law as a means of addressing perceived racism and police abuse, and under Australian aboriginal law, an emphasis is placed on the well-being of individuals and relationships, the process of mediation, and consultation in managing and resolving conflicts involving all community members. In the United States, federally recognized Native American tribes have been entitled to invoke binding customary law as recognized by tribal courts since the 1930s, which often invoke customs and religion in deciding cases.

Religious-Based Legal Systems

Largely drawn and applied from those religious traditions and texts in which knowledge—believed to be revealed

by God—governs all legal affairs and human interactions, institutionalized religious-based legal systems include systems based on Islamic law, Jewish law, Canon law, Hindu law, and more. Under religious-based systems, laws, procedures, and decision makers are to varying degrees influenced by religious thought, and such systems may be institutionalized and codified or may instead simply be practiced privately by a faith's adherents. Israel, a diverse society comprised of Jews, Muslims, Christians, and other small communities, retains a pluralistic legal system based on a combination of civil, common, and religious law. Israeli law grants certain recognized religious groups permission to pursue their own basic legal institutions and religious tribunals whose judges receive state support and administer their respective religious laws. Jewish religious law is nevertheless widely applied in the arena of family law (related marriages, divorce, and custody), and is conspicuous in legislative enactments promulgated by the Israeli parliament (the Knesset), including the 1950 "Law of Return," which allows for the immigration of Jewish foreign nationals to Israel to be granted citizenship purely based on religious affiliation. In addition, Israeli law provides that principles of Israeli heritage shall govern in judicial determinations in the event no answer is found in case law or statutes.

Hindu legal systems, largely based on the Manusmriti (an important Hindu metrical text), were recognized by the British as early as 1772 as part of its colonial legal system in India, particularly in the realm of family law. The influence of Hindu law waned following the establishment of the secular Republic of India, which imposed a legal system based on English common law. Nevertheless, modern Hindu law is recognized by the 1950 Constitution of India, and smaller village tribunals are permitted to try cases according to customary and religious law.

In recent decades, the most prominent religious-based legal system has been the application of Sharia law in many majority-Muslim countries, and Western academic interest in understanding Sharia law has grown considerably since the events of September 11, 2001. Sharia, a comprehensive body of Islamic law founded upon the teachings of God (Allah) and the religious texts of the Islamic faith (i.e., the Holy Koran and the Sunnah), is seen as divinely inspired and is largely based on basic, universally accepted values that aim to promote balance in life, including good conduct, justice, fairness, and improvement of people's relationships with God. Grounded in religious precedent and legal reasoning by analogy, Sharia governs the various public and private aspects (including politics, economics, family, social issues) of many Muslims, has been institutionalized in several Islamic nations (most notably Iran), and continues to be practiced by Muslims in private settings throughout the world.

The Islamic Republic of Iran, a constitutional Islamic republic, imposed Sharia as a legal system following the nation's 1979 Islamic Revolution and concurrent overthrow of the Shah. Iran's system is notable for codifying Sharia law and is governed by religiously educated Islamic scholars. Iranian courts are based on the inquisitorial system where judges serve as prosecutor and jury, and separate clerical courts have been established for religious officials, while special Islamic revolutionary courts try offenses thought to undermine the stability of the Islamic Republic. Iran's justice system has been criticized by Western commentators as being discriminatory against women, excessive in the use of the death penalty, and harsh on political dissenters, homosexuals, and those who criticize clerical rule. In addition, Iran (along with Saudi Arabia) has been notable in enforcing hijab, the Islamic dress codes for women and men.

Sharia has played a prominent role in the current affairs of other nations as well. Since the adoption of a new constitution and the restoration of civilian rule in 1999 in Nigeria, Muslim politicians have gained popularity by seeking to extend Sharia law over civil and criminal aspects of life as an alternative to perceived corrupt secular legal systems. Under a peace deal between the Pakistani government and the Taliban in Pakistan's Swat Valley, the Pakistani government permitted the Taliban to impose Sharia law in early 2009, which prompted mixed reactions from citizens and led to international concern over the closing of women's schools, extreme punishments, and ongoing violence. Notable among majority-Muslim countries, Turkey abolished Sharia law under the rule of Kemal Ataturk in 1926 to "Westernize" the country.

Significant Muslim minorities in Western countries have also recently begun to petition for the imposition of Sharia law in their local communities as a way to maintain social cohesion for those members of society that have difficulty in adapting to secular Western legal systems. Over the past decade in Great Britain, for example, Muslim minorities have advocated for the imposition of Sharia law as it relates to family law and inheritance, so long as punishments are not in contravention to British law. As a result, Sharia courts began operating in 2007 as arbitration tribunals, which are binding with the assent of both parties to a case and are enforceable through county courts and Britain's High Court. Similarly, Jewish Beth Din courts have also operated in Great Britain as arbitration tribunals for more than a century.

Constitutions

A constitution is a written or unwritten framework of legal and nonlegal rules designed to prescribe the form and nature of a government, including its founding values, principles, and fundamental rules of governance. Constitutions not only allocate powers between people and their government as well as between national governments and their administrative subdivisions (i.e., states, provinces, districts, etc.), but also establish accountability between governmental branches (i.e., executive, legislative, and judicial), and most empower citizens by limiting the exercise of

governmental authority through the protection of individual rights.

Although early Sumerian and Grecian legal codes provided prototypes for the law of governments and accorded citizens individual rights, the foundation for modern constitutions is found in the adoption of Great Britain's Magna Carta, endorsed by King John in 1215, which, though not a constitution per se, nevertheless limited the authority of the British monarch and shifted the balance of power from the king and nobility to a House of Commons. Over the past century, the world has witnessed three successive waves of constitution making, including following World War II and the advent of the cold war, the fall of colonialism in Africa, South America, and Asia, and in relation to the newly independent Soviet successor states in the early 1990s. Most constitutions drafted following World War II include sections carving out basic rights for individuals, while some constitutions, including Germany's Basic Law (*Grundegestz*), prohibit any amendments that may conflict with fundamental human rights and liberty. Iran's constitution is notable for establishing three branches of government and subjecting the actions of all three to the supervision of an absolute religious leader. Notable for its concept of supreme law in relation to the parliament being the fundamental source of British sovereign power, Great Britain is notable for having a largely unwritten constitution, consisting of a mixture of statutory law, common law, normative principles governing interactions between officials, and a large body of legal treaties referred to as "Works of Authority."

Constitutions that establish federal systems of government provide for the distribution of sovereign power between a national government and its constituent states (i.e., the U.S., German, and Canadian constitutions), while a unitary constitution vests all sovereign power within a national government (i.e., the constitutions of France, Spain, and Great Britain). Confederate constitutions (i.e., U.S. Articles of Confederation, the constitutions of the Iroquois Nation, and Switzerland) allocate(d) the majority of sovereign power within subnational states.

Often drafted or amended as the result of fundamental political change (i.e., a revolution, transfer of power, end of colonial rule), constitutions are flexible instruments and often reflect the dynamic historical and political environment in which they were conceived. Mechanisms for amending constitutions seek to guard against rapid, hastily conceived changes in laws and increase the stability and legitimacy of government, and such provisions are usually included in the body of the constitution, permitting changes via a set legislative process. Some constitutions, including those of Hungary and South Africa, are capable of being easily amended by the legislature via simple legislative majority, while other constitutions, including those of the United States, have more entrenched amendment requirements and are usually capable of being amended only by a more difficult, specially prescribed way. To encourage only those changes that are well conceived and contemplated, some constitutions further necessitate approval by the citizenry in addition to the government.

Most constitutions establish a legal body of last resort (often called supreme, high, or constitutional courts) to safeguard constitutional rights by reviewing the compatibility of legislation with the principles and provisions of a constitution, interpreting constitutional provisions, and hearing grievances that concern constitutional rights and liberties. These courts typically have final review authority and may be empowered to hear a diversity of issues, or specially constituted to hear only cases dealing with the constitution (i.e., South African Constitutional Court, German Constitutional Court).

United States

The fundamental law of the United States, the U.S. Constitution exists as a social contract between the people of the United States and its government and holds sacrosanct the idea that legitimate government must be derived from the consent of the governed. The U.S. Constitution has greatly influenced the spread of democracy throughout the world and has set forth a series of values that have formed the fundamental tenets of U.S. society, including the idea that government and each individual will abide by certain rules in order to maximize freedom and security, inures to the benefit of society. The Constitution also provides the framework for U.S. government and to foster a system of checks and balances to prevent any one branch from becoming too powerful. The Constitution allocates governmental powers between three branches of the federal government (executive, legislative, and judicial) and between the federal and state governments. The first 10 amendments to the Constitution, known as the Bill of Rights, allocates powers between U.S. citizens and their government by limiting governmental power and protecting the essential rights and liberties of the citizens of the United States. These rights include the freedoms of religion, speech, press, peaceable assembly, protection against cruel and unusual punishment, protection from deprivation of life, liberty, or property without the due process of law, the right to remain silent, and the security of persons and protections against unreasonable searches and seizures.

Although the legislative branch of the U.S. government, Congress, possesses primary lawmaking authority, British common law legal systems originally served as each state's original body of law prior to the establishment of the United States. Though subsequent legislative enactments have gradually replaced and superseded a significant body of common law, case law nevertheless remains important in the U.S. justice system. In addition, administrative law has seen tremendous growth since World War II and describes the process by which executive branch agencies at all levels of government adopt rules and regulations that have the force of law. Because legislative bodies typically do not have the time or the expertise to address the various facets of technically

complex topics (i.e., economics, industry, science, etc.), they frequently permit or require executive agencies to adopt detailed rules to implement particular policies. Examples include environmental protection, automobile fuel efficiency, workplace safety, and food safety.

Judicial Independence

Judicial independence, based on British constitutional principles of separation of powers, is a concept in which the judicial branch of government, or those branches or agencies of government that perform adjudicative functions, is politically insulated and functionally autonomous from the legislative and executive branches. It exists as a principle that is critical to a democratic society and human rights and encourages autonomy in the discharge of judicial functions. Nonindependent judiciaries render checks and balances between governmental branches ineffectual. Judicial independence can also mean independence of judicial decisions within a judicial system, that is, between superior and inferior judges.

It also means that all members of society, including the legislature and executive, must be held accountable under the law. Courts must be free to provide all members of society fair public hearings via a competent and independent tribunal, must make decisions based on direct investigation and interpretations of the facts without resorting to improper influences and must be free to exercise judicial discretion in rendering a decision no matter how unpopular such a decision may be. Although technically complete judicial independence is unlikely to ever be achieved given the roles of the legislature and executive in the judicial appointment process, any outside force that may inhibit judicial independence—including unjust laws that prohibit judges from acting independently, use of the courts for political ends, interpretation of laws based on political dictates, improper influence by the government or police, or influence by nongovernmental actors (i.e., the press, criminal threats, opposition political parties)—should be prohibited.

Judicial tenure is a basic requirement for ensuring judicial independence, and judges must have security of tenure, economic security (i.e., adequate pay, allowances, benefits, pensions, etc.), and physical security that is not dependent on the outcome of cases. Furthermore, a nation's judiciary must posses adequate financing for facilities and staff so as to effectively render decisions (i.e., courts must be adequately staffed, court facilities must be functional, etc.), and judges must enjoy immunity from prosecution for decisions they render in the due course of the execution of their authority. In the United States, federal court judges are appointed for life, with appointments made by the president upon the advice and consent of the Senate. Although federal judicial salaries cannot be decreased while serving, salaries for state judges are generally set by legislatures who keep them low due to fear of reprisal from their voters. All states have protections guarding against salary decreases.

Although nations differ in the level of independence afforded their respective judiciaries, concerns over judicial independence are particularly pronounced in those nations that have recently experienced transformative social and political change, namely authoritarian countries (Burma), formerly communist countries (Russia), and in former colonies (Zimbabwe). Brave judges routinely brave security threats, removal from office, and executive and legislative pronouncements that effectively eliminate the activities of the court system. In other instances, judges may enjoy high levels of judicial autonomy, but may nevertheless be deferential to ruling parties. Issues of judicial independence have also been raised in two former Asian colonies, Hong Kong and Macao, following their 1997 and 1999 retrocession from the British and Portuguese government (respectively) to China.

Enforcing Rights

Courts

An alternative that society developed to resolving conflict by violence, courts are tribunals created to administer justice under the law and may decide civil or criminal disputes, award damages, impose punishments, or other appropriate relief. Courts are often used when two or more parties cannot resolve a criminal or civil dispute internally and subsequently ask a judge to craft a fair resolution based on the merits of each claim. Judges are accordingly called to apply the law to the facts and make a determination by balancing the interests of the individuals, governmental entities, business entities, or organizations. Litigation describes a controversy before a court in the form of a lawsuit and due to the emotional, time, and financial costs associated with litigation, the mere threat of a lawsuit often encourages many to settle or discontinue their disputes outside of a court. Litigation typically involves attorneys, pleadings, written and oral discovery, motions, and trial. Although the rules vary by nations and types of court, under a typical lawsuit, a party's complaint is first heard at the trial level in which witnesses testify and evidence is proffered, while appellant courts review decisions, transcripts, and possible errors of the trial court. Rules are generally the same from one court to another; however, the procedures governing litigation depend on the area of the law and the court in which a lawsuit is filed. Although lawsuits and conventional court proceedings were originally generally used only as a last resort, they have become an automatic first step for many.

Alternative Dispute Resolution

Less formal mechanisms for conflict resolution, collectively known as alternative dispute resolution (ADR),

are increasingly used as a supplement or accessory to conventional courtroom methods for a wide variety of subject matters. ADR typically provides prompter resolution of disputes, reduced legal costs (i.e., preparing briefs and discovery), increased confidentiality (most ADR decisions are closed and decisions are not generally released to anyone but the parties), greater control by the decision maker who mediates or arbitrates the dispute, flexible rules, and direct contact between opposing parties. As our increasingly litigious society has contributed to the caseload of traditional courts, ADR has gained in popularity over recent years and has been encouraged (in some places mandated) prior to resolution of conflicts at trial.

ADR typically encompasses three forms, which may be combined to fit the particular needs of each party. Under negotiation, disputing parties voluntarily meet to discuss their problems and informally attempt to reach a settlement of the problems without third party participation to facilitate the process or impose a resolution. Mediation—also known as facilitated negotiation—involves an experienced, neutral, and trained third party, or mediator, who attempts to facilitate dispute resolution by effectively interacting with disputing parties, identifies the strengths and weaknesses of each side, and efficiently develops an acceptable nonbinding, durable, and structured settlement for both parties. Courts often refer parties to mediation before permitting them to seek arbitration or litigation. A popular ADR method, arbitration, is characterized by typically voluntary participation and is often mandated in contracts or agreements prior to conventional court proceedings. An arbitration panel of one to three persons (usually one of which is an attorney) is engaged by one or both parties to act as a private judge, hold informal hearings, listen to both sides, and provide an accounting of what transpired. Like traditional court proceedings, parties present evidence, question witnesses, and testify. The arbitration panel's findings are usually binding with limited rights of appeal to courts.

International Law

International law imposes relatively few obligations on nation-states; nevertheless, it has become important in analyses of legal systems since World War II and includes those rules and agreements that are applicable to interactions between two or more nations. All international law is directed toward those sovereign nation-states that comprise the international community, and often arises due to transboundary problems that require collective action. No world government or supranational administrative entity is vested with the right to pass or enforce international laws; rather, participation in international lawmaking is nonmandatory and consensus based and does not typically involve coercive enforcement. The United Nations plays the predominant role in crafting international polices and law, and its subsidiary agencies facilitate negotiation and deliberation on international issues, prepare draft treaties and conventions, and adopt resolutions and model guidelines on an array of economic, scientific, and environmental issues (i.e., the Nuclear Test Ban Treaty, Kyoto Protocol, Chemical Weapons Convention, etc.). The International Court of Justice plays a major role in the development of international law, and serves as both a tribunal for the settlement of international disputes and an advisory body to the United Nations. It applies international custom, general principles of law, and treaties when reviewing decisions. Although not usually accorded a formal participatory role in international lawmaking, nonstate actors, most notably nongovernmental organizations, and corporations play a dynamic role in international lawmaking—a role that has increased over the past few decades as advances in technology and the rise of multinational corporations have taken hold.

From an evolutionary standpoint, international law is not as advanced as laws and systems promulgated at the national level, predominantly due to the notion of independent and sovereign nation-states. Under international law, nation-states must consent to any relinquishment of their sovereignty, and international law invariably creates a fundamental tension between independent states and the need to address cross-boundary issues through bilateral or multilateral agreement. Furthermore, actions at the nation-state level are required to transform international policy into binding law at the domestic level. Each nation is responsible for ensuring it does not run afoul of its international obligations, and states that object to the imposition of a law can either object or later withdraw their consent to be bound. Sovereign states both enact and enforce international law. For example, those nations that have assented to joining the United Nations have consented to allowing the UN Security Council to wage war and maintain international peace and security on their behalf. Although nations that have joined in the European Union enjoy full powers in the arena of national defense, they have nevertheless assented to diminished sovereignty in areas of economic policy and trade.

Several forms of international law create binding obligations on nation-states, the most common being treaties. Treaties (also known as agreements, pacts, covenants, etc.) are one or more voluntary written agreements governed by international law that create binding obligations between two or more nation-states. Treaties derive their legitimacy and authority from the parties to the agreement, and signatories manifest their intent to be bound by the treaty's usually narrow obligations devised in response to a cumulative or systematic problem. Treaties are negotiated, adopted, ratified, and domesticated—a process that may take years or decades (as in the case of the U.S. ratification of the Kyoto Protocol). Treaties may be used to solve a variety of international challenges, to conclude wars (e.g., Treaty of Paris of 1783, Treaty of Versailles of 1919, etc.), to establish peace or trade pacts between nation-states

(e.g., Morocco-American Treaty of Friendship of 1786, North American Free Trade Agreement of 1994, etc.), to address prisoners of war and battlefield casualties (e.g., the Geneva Conventions of 1864, 1960, 1929, and 1949), or to establish alliances or provide for mutual assistance in the event of war (Franco–Soviet Treaty of Mutual Assistance of 1935, North Atlantic Treaty Organization of 1949, Warsaw Pact of 1955, etc.). In addition to treaties, international law is also furthered by customary practices of regular behavior by states (commonly referred to as custom), which are generally accepted rules of conduct binding on all nations, as well as general principles of international law, which serves to augment deficiencies in international law not encompassed by treaties or custom. International organizations can also be established for economic or military purposes, including the European Union, the North American Free Trade Agreement, and the Southern African Development Community.

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