



美国知识产权法律丛书



AN INTRODUCTION TO THE AMERICAN LEGAL SYSTEM



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Diane S. Kaplan | 著
(康大安)



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内容提要

本书用原汁原味的英语详细介绍了美国法律体系的起源、发展及实施现状,是读者兼具学习美国法律和提高法律英语水平的一本好书。

本书可作为大中专院校法律英语教科书。

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Diane S. Kaplan (康大安) 著

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邮 编: 100088

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邮 箱: hjb@cnipr.com

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PREFACE

An Introduction to the American Legal System presents the reader with the basic concepts of constitutional doctrine, legal theory, government structure, and political thought that inform the everyday thinking of an American lawyer. The book examines the United States legal system through historical events that have shaped American institutions of government, law, and politics. It demonstrates how the American legal system has accommodated social progress while maintaining the rule of law in an ever-changing and highly diverse nation.

Chapter 1 provides the reader with a brief history of the Constitution of the United States. It presents the historical events and philosophical doctrines that influenced the colonists' efforts to seek independence from England and, as thirteen colonies, unite as one nation under the Constitution. Chapters 2, 3, and 4 examine the distribution of powers among the three branches of the federal government. Chapter 2 describes the organizational structure, powers, and limitations on the powers of the Legislative Branch. Chapter 3 examines the Executive Branch and the nature of presidential authority. Chapter 4 explains the organization of the Judicial Branch, its jurisdictional authority, the significance of precedent, and the judiciary's role in developing national policy.

Chapter 5 explains the relationship between America's federal and state judicial systems. Chapter 6 presents the constitutional principles of separation of powers, checks and balances, and federalism by examining how these doctrines have influenced the relationships among the three branches of government. Chapter 7 uses the First

Amendment to examine the relationship between the rights and responsibilities of American citizens and the powers and restraints on the powers of the American government. Chapter 8 examines the criminal law system and the procedural due process protections the government must provide to criminal defendants.

It is my hope that this book will provide the reader with insights into the concepts, vocabulary, institutions, and power sharing arrangements that are necessary to achieve a basic understanding of the American legal system. I also hope that this concise but candid book will provide a valuable exchange of information that will encourage additional educational and cultural exchanges between our countries.

I am honored to have the opportunity to present this book to you. Thank you for being my reader.

Diane S. Kaplan

The John Marshall Law School

2011

TABLE OF CONTENTS

CHAPTER 1 A BRIEF HISTORY OF THE CONSTITUTION OF THE UNITED STATES	1
Constitutional History	2
The Declaration of Independence	4
The Revolutionary War	4
The Articles of Confederation	6
The Constitutional Convention	7
Ratifying the Constitution	11
The Bill of Rights	12
The Constitutional Plan of Government	14
The Preamble of the Constitution	16
CHAPTER 1 QUESTIONS	17
CHAPTER 2 ARTICLE I : THE LEGISLATIVE BRANCH	19
Article I Section 1: Congress	20
Shared Law-Making Power	20
Oversight Power	21
Investigative Power	21
Article I Section 2: The House of Representatives	21
Terms of Office	22
Qualifications	22
Apportionment	22
Elections	25
Vacancies	26
Leadership	26

2 AN INTRODUCTION TO THE AMERICAN LEGAL SYSTEM

Impeachment Power	27
Article I Section 3: The Senate	28
Terms of Office	28
Qualifications	29
Leadership	29
Impeachment Power	30
Article I Section 4: Elections and Annual Meetings	31
Article I Section 5: Internal Procedures	32
Internal Governance	32
Journal of Proceedings	33
Adjournment	34
Committees	34
Article I Section 6: Compensation, Immunity from Arrest, and Separation of Powers	35
Compensation	35
Immunity from Arrest	36
Conflicts of Interest	36
Article I Section 7: Revenue Bills, Presidential Veto, Checks and Balances	37
Revenue Bills	37
How Congress Enacts a Bill Into Law	37
How Congress Enacts a Bill Into Law	39
The Presidential Signature or Veto	42
Power Conflicts and Power Sharing Arrangements	43
Article I Section 8: Enumerated and Implied Powers of Congress	44
1. <i>The Power to Tax</i>	46
2. <i>The Power to Borrow Money</i>	47
3. <i>The Power to Regulate Commerce</i>	47
HEART OF ATLANTA MOTEL v. UNITED STATES	49
UNITED STATES v. LOPEZ	52

4. <i>The Powers to Naturalize and Establish Bankruptcy Laws</i>	55
5. <i>The Powers to Coin Money and Develop Standards for Weights and Measures</i>	55
6. <i>The Power to Protect Intellectual Property</i>	55
7. <i>The Power to Establish a Federal Court System</i>	56
8. <i>The Power to Declare War</i>	56
9. <i>The Power to Maintain an Army and a Navy</i>	57
10. <i>The Power to Command the National Guard</i>	57
11. <i>The Power to Make all Laws Necessary and Proper to Execute Congress's Enumerated Powers</i>	57
MCCULLOCH v. MARYLAND	58
Article I Section 9: Limits on Congressional Powers	62
Article I Section 10: Limitations on State Powers	64
CHAPTER 2 QUESTIONS	66
CHAPTER 3 ARTICLE II: THE EXECUTIVE BRANCH	67
Article II Section 1: The Office of the President	68
The President	68
CLINTON v. JONES	70
The Vice President	78
The Electoral College	79
Political Parties	81
Presidential Qualifications	83
Removal and Succession	83
Compensation	84
The Oath of Office	84
Article II Section 2: Presidential Powers	85
Commander-In-Chief: The Power to Command the Military	85
The Power to Administer the Executive Branch	88
1. <i>The Cabinet</i>	88

4 | AN INTRODUCTION TO THE AMERICAN LEGAL SYSTEM

2. <i>The Executive Office of the President</i>	91
The Pardon Power	93
The Treaty Power	94
The Appointment Power	95
Recess Appointments	96
Article II Section 3: Presidential Duties	97
The Duty to Give a State of the Union Address to Congress	97
The Duty to Convene and Adjourn Congress	98
Diplomatic Duties	98
Law Enforcement Duties	99
Watergate	99
UNITED STATES v. NIXON	103
Article II Section 4: Impeachment	108
CHAPTER 3 QUESTIONS	110
CHAPTER 4 ARTICLE III: THE JUDICIAL BRANCH	113
Article III Section 1: The Establishment of the Federal Judicial System	114
The United States District Courts	115
The United States Circuit Courts of Appeals	115
Map of the Thirteen Federal Judicial Circuit Courts	116
The United States Supreme Court	117
1. <i>Opinions</i>	118
2. <i>Precedent</i>	119
BROWN v. BOARD OF EDUCATION OF TOPEKA	120
3. <i>Judicial Independence</i>	125
Article III Section 2: Federal Jurisdiction	126
Marbury v. Madison	128
MARBURY v. MADISON	130
Constitutional Interpretation	135
Article III Section 3: Treason	137

The Court's Role in Making National Policy	138
CHAPTER 4 QUESTIONS	141
CHAPTER 5 THE AMERICAN SYSTEM OF COURTS	143
The Adversarial System	145
Organization of the State and Federal Court Systems	147
Trial Courts	148
1. <i>The Courtroom</i>	148
2. <i>The Judge</i>	150
3. <i>The Parties and Witnesses</i>	150
4. <i>The Evidence</i>	152
PEOPLE v. BELGE	154
5. <i>The Jury</i>	156
Appellate Courts	157
1. <i>The Appeal Process</i>	157
2. <i>Precedent</i>	158
The Supreme Courts	159
Bush v. Gore	160
GEORGE W. BUSH v. ALBERT GORE, Jr.	161
CHAPTER 5 QUESTIONS	166
CHAPTER 6 THE CONSTITUTIONAL DOCTRINES OF SEPARATION OF POWERS, CHECKS AND BALANCES, AND FEDERALISM	167
The War Power: Checks and Balances and Separation of Powers	170
Youngstown Sheet & Tube Co. v. Sawyer	170
YOUNGSTOWN SHEET & TUBE Co. v. SAWYER	171
RASUL v. BUSH	174
HAMDY v. RUMSFELD	178
Federalism and Checks and Balances	189
The Civil War and the Post Civil War Constitutional Amendments	191

6 | AN INTRODUCTION TO THE AMERICAN LEGAL SYSTEM

The Supremacy Clause and Medical Marijuana	193
The Full Faith and Credit Clause and Same-Sex Marriage	194
Contemporary Federalism	195
CHAPTER 6 QUESTIONS	196
CHAPTER 7 THE CONCEPT OF RIGHTS AND THE FIRST AMENDMENT	
	197
The First Amendment	199
Freedom of Religion	199
WISCONSIN v. YODER	201
UNITED STATES v. LEE	209
Freedom of Speech	214
Protected and Unprotected Speech	214
TINKER v. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT	216
MORSE v. FREDERICK	223
Freedom of the Press	232
The Pentagon Papers	233
NEW YORK TIMES CO. v. UNITED STATES	234
The Judith Miller Case	239
In re: GRAND JURY SUBPOENA, JUDITH MILLER	242
CHAPTER 7 QUESTIONS	249
CHAPTER 8 THE CONCEPT OF RIGHTS AND THE CRIMINAL COURT PROCESS	
	253
What is A Crime?	255
Elements of a Crime	255
Categories of Crimes	256
Pre Trial Investigation	257
The Grand Jury or Preliminary Hearing	257
The Arrest	258
<u>Miranda</u> Warnings	259
The Right to Counsel	261
GIDEON v. WAINWRIGHT	263

Clarence Gideon's <i>In Forma Pauperis</i> Petition	266
The Booking	271
Pre Trial Judicial Proceedings	271
The Bail Hearing	271
The Arraignment Hearing	272
Plea Bargaining	272
Constitutional Rights at Trial	274
The Fourth Amendment	274
The Fifth Amendment	276
1. <i>The Double Jeopardy Clause</i>	276
2. <i>The Privilege Against Self-Incrimination</i>	277
The Sixth Amendment	277
1. <i>Speedy Trial</i>	277
2. <i>Public Trial</i>	278
3. <i>Impartial Jury</i>	278
4. <i>Right of Confrontation</i>	279
5. <i>Right to Counsel</i>	279
Trial Procedures	279
Jury Selection	279
Opening Statements	280
The Prosecution Case	281
The Defense Case	281
Closing Arguments	282
Jury Instructions	282
Jury Deliberations	283
Post Trial Criminal Procedures	284
Sentencing	284
ROPER v. SIMMONS	286
Appeal	306
CHAPTER 8 QUESTIONS	307
APPENDICES	309
APPENDIX A The Constitution of the United States	309

APPENDIX B	The Declaration of Independence, July 4, 1776	329
APPENDIX C	Map of the United States	335
GLOSSARY		336
CHAPTER FOOTNOTES		356
BIBLIOGRAPHY		360
LIST OF PHOTOS, ILLUSTRATIONS, AND HEADINGS		364

CHAPTER 1

A BRIEF HISTORY OF THE CONSTITUTION OF THE UNITED STATES

Chapter 1 presents the historical events that led to the founding of the new American nation in 1776 and the adoption of the Constitution as its foundational law. It explains how the Constitutional plan of government divides federal power among the Legislative, Executive, and Judicial Branches. It also presents the first ten amendments to the Constitution, known as The Bill of Rights, that were adopted to protect the states and the people from the very powerful federal government created by the Constitution.

本章以历史事件为线索，讲述了1776年新的美利坚民族的建立过程，以及作为基本法的美国宪法的诞生过程。阐明了宪政法案如何将联邦权利划分为立法、行政和司法三权，还说明了前十项宪法修正案（或称为“权利法案”）是如何在宪法赋予强大权力的联邦政府中保护美国各州政府和人民的。

The Constitution of the United States of America (Appendix A) is the foundational and supreme law of the nation. The Constitution establishes the structure of the federal government, distributes power among its three *branches**, and defines the rights and liberties of the American people. Any law passed by either the *federal* government or any of the fifty state governments that is inconsistent with the Constitution is unconstitutional and void.

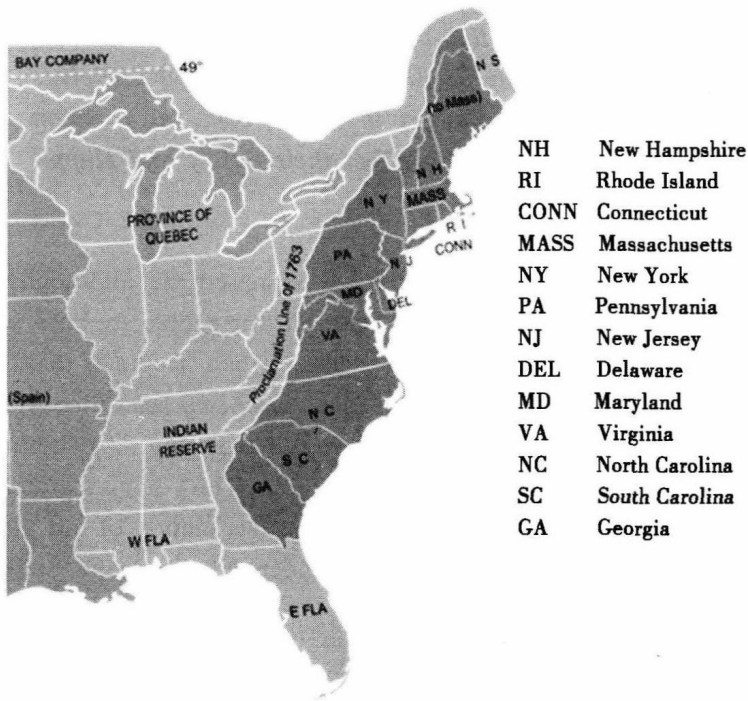
Constitutional History

America's story began in the early 1600s when England sent settlers across the Atlantic Ocean to colonize the North American Continent. The English settlers, along with people from Europe, Africa, and the Caribbean, lived in *colonies* (settlements) along the eastern coast of North America under English rule. Initially, England and the colonies enjoyed mutually beneficial and harmonious relations. England provided the colonies with military protection, a monetary system, and a market for trade, but imposed few taxes or regulations and did not significantly interfere with colonial governance. This relationship began to deteriorate, however, when George III became the King of England in 1760 and imposed a regime of burdensome laws, trade restrictions, and taxes on the colonies.

The colonists quickly became resentful of the new King and his new laws and taxes, which they considered oppressive, and which they believed had been imposed upon them without representation in the British Parliament. The slogan, "No Taxation Without Representation" became the colonists' rallying cry for independence from England. During a famous incident called "The Boston Tea Party", a band of colonists in Boston, Massachusetts protested against a British tax on tea by dressing up like American Indians, boarding the British

* Italicized words are defined in the Glossary

ships that had transported the tea, and dumping the tea overboard. George III retaliated against this protest by passing a series of laws that the colonists referred to as “The Intolerable Acts of 1774”. One of these laws created a naval blockade of Boston Harbor that prevented all ships from entering or leaving until the colonists repaid England for the destroyed tea. Another law required the colonists to provide housing within their homes to the British soldiers sent by the King to quash their rebellion. Contrary to George III’s expectations, The Intolerable Acts failed to quash the colonists’ rebellion. Instead, the more England demanded obedience and loyalty from the colonists, the more the colonists demanded freedom and liberty from England.



The 13 Colonies

The Declaration of Independence

In 1776, the thirteen British colonies declared their independence from England in a document titled “The Declaration of Independence.” (Appendix B). The Declaration stated:

We hold these truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness.

The Declaration of Independence expressed the philosophy of John Locke, an Englishman who believed that people are born with natural and inalienable rights to life, liberty, and happiness that cannot be denied by government. Under the *inalienable rights* theory, the people are justified in rebelling against and replacing a government that fails to recognize and protect these rights. The colonists united around the inalienable rights theory and the Declaration of Independence as they commenced a war of independence from England in 1775.

The Revolutionary War

At first, George III believed that England could easily quash the