




# 法律英语

连宏 关鑫 主编



 中国政法大学出版社



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2014 · 北京

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图书在版编目（C I P）数据

法律英语 / 连宏，关鑫主编. —北京：中国政法大学出版社，2014. 4  
ISBN 978-7-5620-5338-5

I. ①法… II. ①连… ②关… III. ①法律—英语—教材 IV. ①H31

中国版本图书馆CIP数据核字(2014)第056486号

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出 版 者 中国政法大学出版社  
地 址 北京市海淀区西土城路 25 号  
邮寄地址 北京 100088 信箱 8034 分箱 邮编 100088  
网 址 <http://www.cuplpress.com> (网络实名：中国政法大学出版社)  
电 话 010-58908285(总编室) 58908334(邮购部)  
承 印 固安华明印业有限公司  
开 本 880mm × 1230mm 1/32  
印 张 5.5  
字 数 120 千字  
版 次 2014 年 4 月第 1 版  
印 次 2014 年 4 月第 1 次印刷  
定 价 22.00 元

## 序 言



随着中国社会经济的发展和国际地位的提高，中国的对外交往逐渐增多。这一趋势反映到法学教育中，使得对外国法律制度的学习以及对英文原版法律文献的阅读成为法学教育中必不可少的一部分。法律英语教学是实现上述目标的途径之一。法律英语是学习外国法律制度、法律思想和英文法律术语及法律文体的一门课程。

本教材以介绍美国的法律制度和法律思想为主，分为三个部分，共设十六章。第一部分主要介绍美国的法律制度和法律思想，包括美国法律制度概述、法律思想、联邦法院组织、各州法院组织、美国法律渊源、联邦法官、美国宪法、法律救济、律师和法律职业。第二部分是法学名著选读，选取了梅因的《古代法》、贝卡里亚的《论犯罪与刑罚》和孟德斯鸠的《论法的精神》中的部分内容，涵盖了三位思想家具有代表性的法律思想。前两部分的内容中，每一章后都附有本章学习中应思考的问题以及相应的扩展阅读，帮助学习者更深入地理解课文中的内容。第三部分是案例阅读，选取了四个案例，其中不乏在美国法律发展史上具有里程碑意义的经典案例，阅读者可以领略法官的语言魅力、思辨过程和法律推理的能力。教材的最后，

还附有美国联邦宪法正文及其修正案，这也是法律英语学习者应当阅读的经典文献。

本教材最突出的特点是在介绍美国的法律制度的同时，注重介绍对美国的法律文化和法律制度产生过深远影响的法律思想及其代表人物。在学习这些法律制度的同时，可以使我们更深入地理解美国的法律制度何以为今天的模式，其思想渊源从何而来。

本教材的编写者力图为学习者提供丰富的学习材料，并加上编写者的个人浅见。鉴于此，本书难免有不妥之处，敬请读者不吝赐教，提出宝贵意见。

连宏

2013 年 11 月 20 日

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## PART ONE | LEGAL SYSTEMS AND LEGAL THOUGHTS





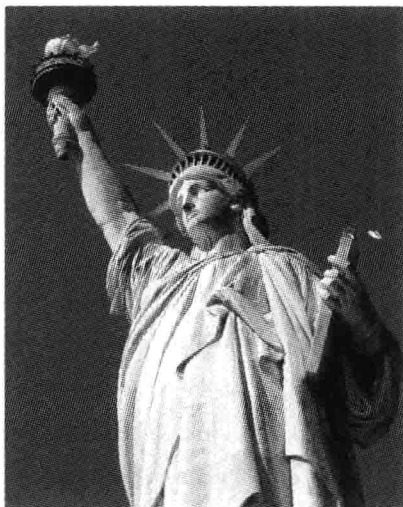


## Chapter 1

# Outline of the U. S. Legal System

### BACKGROUND KNOWLEDGE

与世界上的许多文明古国相比，美国是一个年轻的国家。在二百多年的历史发展中，其建构了一个多层级（layers）的法律制度。美国不仅有联邦法律和州法律的划分，各州法律也自成体系。这是因为美国是一个从 13 个殖民地的联合体发展而来的国家。美国是一个移民社会，17 世纪前期来到北美新大陆的欧洲移民大多数是为争取经济发展机会或逃避政治宗教迫害。他们具有强烈的个人价值观和自我保护意识，在骨子里也深深害怕并厌弃专制政体，他们要建立的是一个“自由”的国家。这些都深深影响着美国的法律制度，并成为今天美国法的精神和精髓。



## LEGAL TERMS

court 法院	jurisdiction 司法权, 管辖
decision 判决	legislative 立法的
party 当事人	executive 行政的
adjudicate 宣判, 裁决	congress 国会
legitimacy 合法性	administrative agencies 行政机关
federal 联邦	statutory law 成文法
state 州	Common Law 普通法
Constitution 宪法	

## TEXT

Every business day, courts throughout the United States render decisions that together affect many thousands of people. Some affect only the parties to a particular legal action, but others adjudicate rights, benefits, and legal principles that have an impact on virtually all Americans. Inevitably, many Americans may welcome a given ruling while others — sometimes many others — disapprove. All, however, accept the legitimacy of these decisions, and of the courts' role as final interpreter of the law. There can be no more potent demonstration of the trust that Americans place in the rule of law and their confidence in the U. S. legal system.

Much of the discussion explains how U. S. courts are organized and how they work. Courts are central to the legal system, but they are not the entire system. Every day across America, federal, state, and local courts interpret laws, adjudicate disputes under laws, and at times even strike down laws as violating the fundamental protections that the Constitution guarantees all Americans. At the same time,

millions of Americans transact their day-to-day affairs without turning to the courts. They, too, rely upon the legal system. The young couple purchasing their first home, two businessmen entering into a contract, parents drawing up a will to provide for their children — all require the predictability and enforceable common norms that the rule of law provides and the U. S. legal system guarantees.

This introduction seeks to familiarize readers with the basic structure and vocabulary of American law. Subsequent chapters add detail, and afford a sense of how the U. S. legal system has evolved to meet the needs of a growing nation and its ever more complex economic and social realities.

The American legal system has several layers, more possibly than in most other nations. One reason is the division between federal and state law. To understand this, it helps to recall that the United States was founded not as one nation, but as a union of 13 colonies, each claiming independence from the British Crown. The Declaration of Independence (1776) thus spoke of “the good People of these Colonies” but also pronounced that “these United Colonies are, and of Right ought to be, FREE AND INDEPENDENT STATES.” The tension between one people and several states is a perennial theme in American legal history. As explained below, the U. S. Constitution (adopted 1787, ratified 1788) began a gradual and at times hotly contested shift of power and legal authority away from the states and toward the federal government. Still, even today states retain substantial authority. Any student of the American legal system must understand how jurisdiction is apportioned between the federal government and the states.

The Constitution fixed many of the boundaries between federal and state law. It also divided federal power among legislative, executive, and judicial branches of government (thus creating a “separation of powers” between each branch and enshrining a system of “checks-and-balances” to prevent any one branch from overwhelming the others), each of which contributes distinctively to the legal system. Within that system, the Constitution delineated the kinds of laws that Congress might pass.

As if this were not sufficiently complex, U. S. law is more than the statutes passed by Congress. In some areas, Congress authorizes administrative agencies to adopt rules that add detail to statutory requirements. And the entire system rests upon the traditional legal principles found in English Common Law. Although both the Constitution and statutory law supersede common law, courts continue to apply unwritten common law principles to fill in the gaps where the Constitution is silent and Congress has not legislated.

## NOTES:

1. The Declaration of Independence: When armed conflict between bands of American colonists and British soldiers began in April 1775, the Americans were ostensibly fighting only for their rights as subjects of the British crown. By the following summer, with the Revolutionary War in full swing, the movement for independence from Britain had grown, and delegates of the Continental Congress were faced with a vote on the issue. In mid-June 1776, a five-man committee including Thomas Jefferson, John Adams and Benjamin Franklin was tasked with drafting a formal statement of the colonies’

intentions. The Congress formally adopted the Declaration of Independence — written largely by Jefferson — in Philadelphia on July 4, a date now celebrated as the birth of American independence.

2. separation of powers: the doctrine under which the legislative, executive, and judicial branches of government are not infringe upon each other's constitutionally vested powers.

3. checks-and-balances: the powers ( as judicial review, the presidential veto, and the congressional override) conferred on each of the three branches of government by which each restrains the others from exerting too much power.

### QUESTIONS ABOUT THE TEXT:

1. Americans place trust in the rule of law and their confidence in the U. S. legal system, don't they?

2. Which branch does interpret laws, adjudicate disputes under law in U.S. ?

3. Where did the legal authority shift toward?

4. How many branches of federal government?

5. What does the entire American legal system rest upon?

### SUPPLEMENTARY READING

Federalism — the relationship between federal and state government

#### **I . Powers of federal government**

The government of the United States of America is the federal government of the republic of fifty states that constitute the United States, as well as one capital district, and several other territories. The federal government is composed of three distinct branches:

legislative, executive and judicial, whose powers are vested by the U. S. Constitution in the Congress, the President, and the federal courts, including the Supreme Court, respectively. The powers and duties of these branches are further defined by acts of Congress, including the creation of executive departments and courts inferior to the Supreme Court.

#### Powers of Congress

The Constitution grants numerous powers to Congress. Enumerated in Article I, Section 8, these include the powers to levy and collect taxes, to coin money and regulate its value, to provide for punishment for counterfeiting, to establish post offices and roads, to promote progress of science by issuing patents, to create federal courts inferior to the Supreme Court, to combat piracies and felonies, to declare war, to raise and support armies, to provide and maintain a navy, to make rules for the regulation of land and naval forces, to provide for arming and disciplining the militia, to exercise exclusive legislation in the District of Columbia, and to make laws necessary to properly execute powers. Over the two centuries since the United States was formed, many disputes have arisen over the limits on the powers of the federal government. These disputes have often been the subject of lawsuits that have ultimately been decided by the United States Supreme Court.

#### Powers of the executive branch

The executive power in the federal government is vested in the President of the United States, although power is often delegated to the Cabinet members and other officials. The President and Vice President are elected as running mates by the Electoral College, for which each state, as well as the District of Columbia, is allocated a

number of seats based on its representation ( or ostensible representation, in the case of D. C. ) in both houses of Congress. The President is limited to a maximum of two four-year terms. If the President has already served two years or more of a term to which some other person was elected, he may only serve one more additional four-year term.

#### Powers of the judicial branch

The Judiciary explains and applies the laws. This branch does this by hearing and eventually making decisions on various legal cases. Article III section 1 of the Constitution establishes the Supreme Court of the United States and authorizes the United States Congress to establish inferior courts as their need shall arise. Section I also establishes a lifetime tenure for all federal judges and states that their compensation may not be diminished during their time in office. Article II section 2 establishes that all federal judges are to be appointed by the president and confirmed by the United States Senate.

### **II. Powers of state government**

States have very broad powers to make laws that apply within the state boundaries. They cannot, however, make laws that conflict with federal laws in areas that are preempted by the federal government. Preempted means that the federal government has the exclusive right to regulate a particular subject area. Some subject areas that cannot be regulated by states are out in Article I, section 10 of the Constitution, including such activities as entering into treaties, coining money, and passing ex post facto laws. Ex post facto laws make a person criminally responsible for an act that was committed



before the act was made a crime. Areas that are commonly regulated by states include criminal conduct, contractual relationships, civil tort liability, and forms of business such as partnerships and corporations.