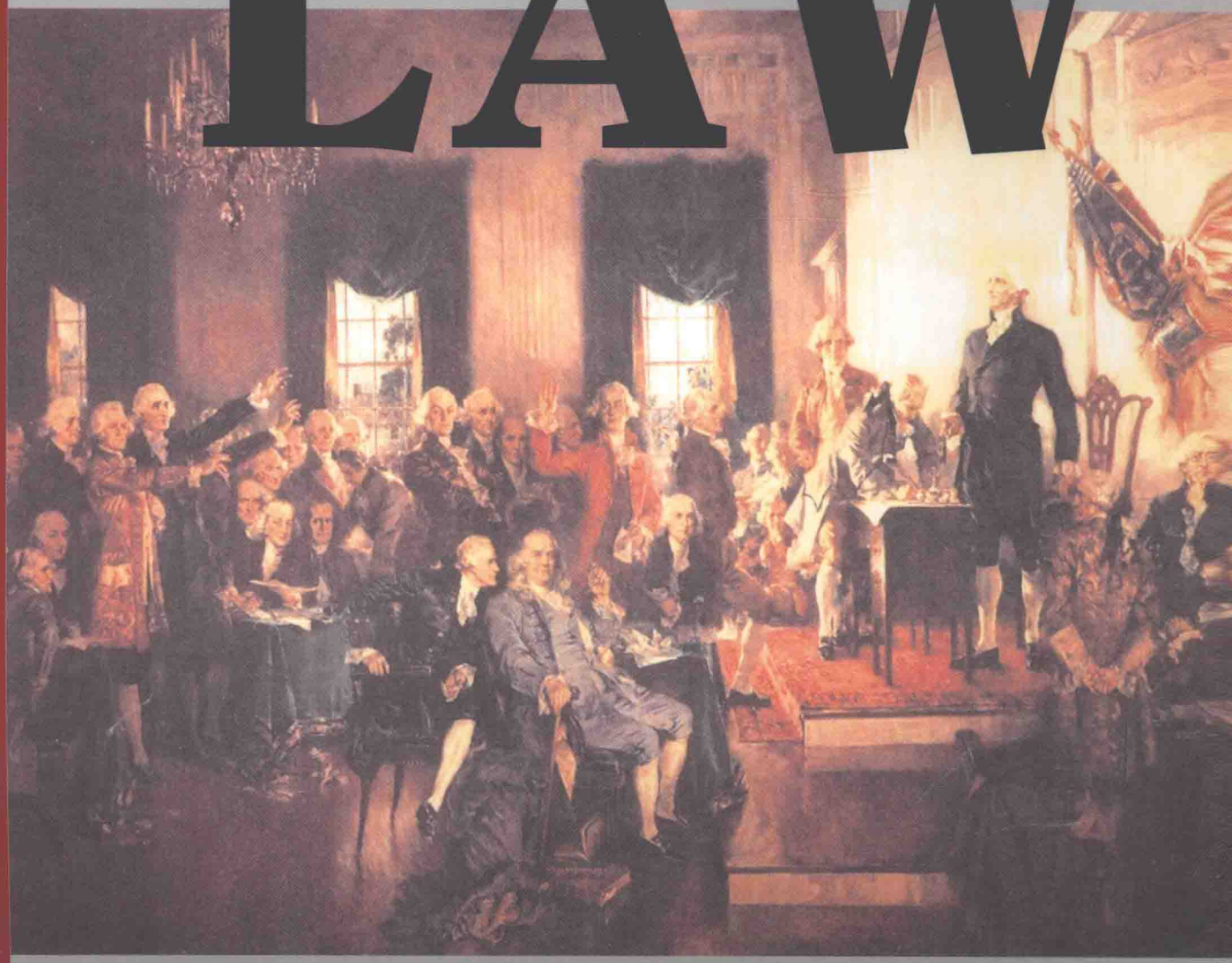
2008 EDITION

COMMUNICATION AND THE LAW



Communication Law Writers Group

W. Wat Hopkins
Editor

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COMMUNICATION AND THE LAW

2008 Edition

W. Wat Hopkins, Editor

VISION PRESS

Preface

The law is ever-changing.

While the guarantees of the First Amendment are provided in clear, succinct language, jurists, attorneys and free-speech advocates have come to learn that interpreting that language is often complicated. Communication law draws upon virtually every type and source of the law — from regulations to statutes, from contract law to constitutional law, from administrative law to the common law. In addition, each year Congress, regulatory agencies and the U.S. Supreme Court provide a wealth of information that those who follow communication law must locate, digest and come to understand.

So the law – and the interpretation of the law – continues to change.

The publication of the first edition of *Communication and the Law* in 1998 marked the beginning of an effort to keep up with that change in a concise, readable way. Sixteen authors – among them some of the leading communication law scholars in the country – agreed to update the text annually and to work for its continued improvement.

While authorship has changed – indeed, the number of authors has increased from sixteen to nineteen – the commitment to the comprehensive review of the law and to the continuing improvement of the textbook has not changed, as this, the eleventh edition of *Communication and the Law,* reflects.

In addition to its comprehensive overview of communication law, this edition of the text discusses some significant events that have had an impact on communication law over the past year. And it continues to follow the evolution of changes that occurred in recent years.

Specifically, this edition discusses a number of cases that had not been decided a year ago. Indeed, this edition of *Communication and the Law* has references to more than 100 cases not mentioned in earlier editions. Some of those cases are discussed substantively, some marginally, but all demonstrate that the law must be continually updated.

The continually evolving law related to broadcasting and cable regulation – specifically related to cross-ownership, media mergers and government regulation of joint cable-Internet issues – is updated, as are sections of the text related to copyright, student expression and confidential sources.

The terrorist attacks of September 11, 2001, also continue to have considerable impact on how government agencies handle information and how the public responds to access, to criticism of the government and to other speech-related issues. Those issues are discussed at several places in the text.

This edition of the textbook is better than the first, but it can be better still. We continue to need the help of our readers. This edition was barely in the mail to the publisher before we began planning the 2009 edition. If you have comments or if there are changes you would like to see, don't wait — let us know now. Our goal is to provide a comprehensive, readable text that is concise but complete. The e-mail address of each author accompanies that author's biography at the end of the book. If you have comments, please let us know.

A number of people played a big part in making *Communication and the Law* possible. I would like to thank longtime friend and colleague David Sloan of the University of Alabama and Joanne Sloan of Vision Press for suggesting the project to me, for encouraging its completion and for their continued support. The eighteen people who, with me, make up the Communication Law Writers Group have been a pleasure to work with. I thank them for their willingness to engage in this venture and for their willingness to work hard to see it through.

As always, I am thankful for my colleagues in the Department of Communication at Virginia Tech, a wonderfully supportive group that makes it a pleasure to go to work each day. Finally, I owe special thanks to the members of my family, especially to my wife, Roselynn, for continued love and support. They make it a pleasure to go home each day.

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December 2007
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The Law in Modern Society

By Thomas A. Schwartz

Headnote Questions

- What is law?
- What are the sources of U.S. law?
- What is the difference between a trial court and an appellate court?
- What are the basic steps in a court case?
- How are judges chosen?

"The language of the law," the erudite American jurist Learned Hand said in 1929, "must not be foreign to the ears of those who are to obey it."[1] He meant that the law ought to be clearly written and that, in a democracy, everyone should know the law. Law is too important to be left only to lawyers. Unfortunately, Americans today can hardly be expected to "know" the law, given its amount and density. Also of concern, they tend to know little about the nature and process of law and the officials and institutions that create, administer, interpret and enforce it.

To understand communication law — or any other area of the law — students need an introduction to the law generally. That is the purpose of this chapter. Although the law is a complex subject, its basics will be presented here so readers will have a framework within which to put any particular aspect of communication law.

Like the society it serves, law is dynamic. It is important to come to terms with the fundamentals of communication law, but it is also important to understand the forces that create and sustain the law, forces that inevitably will change the law, and how legal change comes about.

This chapter first offers some definitions and probes some of the assumptions of the legal system. The chapter then discusses how law is organized and the institutions that make, apply and interpret the law.

[1] Learned Hand, *Is There a Common Will? in* THE SPIRIT OF LIBERTY: PAPERS AND ADDRESSES OF LEARNED HAND 56, 56 (1952).

THE NATURE OF LAW

"Law" seems to have an unusual number of meanings. The law is usually defined as the rules of conduct established and enforced by authority in a society. The law of a society is one of its most fundamental characteristics; the kind and amount of behavior a society prescribes and proscribes for its members reveal much about the nature of that society. Also telling is how and why the law is applied and obeyed. Attitudes toward legal systems range from anarchism to authoritarianism.

The term "law" is also frequently used to refer to a particular law, usually an act or statute passed by a legislative body. When people say, "It's the law," however, they may be referring to any sort of official policy, whether it more technically should be called a court decision, administration regulation or municipal ordinance. When they use the word "law," people may also mean jurisprudence – the study of the law. Law in this sense refers to what law schools train lawyers to do: It is the profession of lawyers and judges.

THE SOURCES OF LAW

All American law can be organized according to its sources. Any particular policy affecting communication may be categorized, roughly in the order in which the categories evolved, as common law, equity law, statutory law, constitutional law, administrative law or international law.

Common Law

"Case law" refers to a body of law in which courts have applied the principles established in precedents. "Common law" refers specifically to a body of law in which courts create precedential principles. The term "common law," however, has come to embrace both meanings.

In the Twelfth Century, England began creating a system of local courts and law for resolving disputes between common people. Judges assigned to these courts were charged to determine and apply local customs and values to resolve the conflicts. Consistency became a prized feature of the common law. In the name of fairness, a kind of conflict resolved one day naturally should be resolved the same way the next day, the next year and, perhaps, indefinitely. For a community to be stable, law should be stable, too.

Thus developed the powerful common law principle known as *stare decisis*, part of a Latin phrase meaning that once established, a legal decision should not easily be changed. When a common law court makes a decision, a precedent is necessarily set. Courts within the same jurisdiction are required to reckon with that precedent in deciding similar cases. Today, one of the main functions of courts is to decide which precedents are applicable and how they apply to particular cases. Lawyers find precedent and argue that it should be construed in favor of their clients; judges determine the correct interpretation of precedent. Judges working in the common law tradition do not impose their own sense of right, good or wisdom but rather attempt objectively to find the correct law and apply it to the facts of a particular case. Common law judges are reluctant to reverse precedents.

Colonial America was subject to English common law, and a reformed system continues in modern American courts. Thoroughly researched opinions that American jurists write may still use British common law precedent as authority. Many areas of modern law are controlled principally by common law, sometimes called "judge-made" law. The development of this law, obviously very important in society, is generally left to the courts by the other branches of government. Other sources of law usually are not specific enough to handle each aspect of every dispute that arises in courts. Thus, judges have to make law to fill in the gaps.

The decisions and accompanying opinions — written rationales for the decisions — of courts are recorded and maintained chronologically. The reports of many trial courts and almost all appellate courts are continuously published according to jurisdiction in consecutive volumes of books called "reports" or "reporters." These bound reports constitute the seemingly endless rows of books on shelves in law libraries, law offices and courtrooms. Because these reports are organized by jurisdiction and chronologically, they would be impractical for use without the work of researchers who organize the law according to subject matter.

A number of these important analyses of English common law were performed near the turn of the Eighteenth Century. For instance, Sir William Blackstone, the first professor of law at Oxford University, collated English common law. The resulting set of volumes, which became known as *Blackstone's Commentaries*, organized the law according to subject matter, including the law of freedom of speech and the press. These scholarly collections and analyses of the law for use by lawyers and judges are referred to as legal "treatises." Almost as authoritative as the law itself are the treatises, called "restatements," that the American Law Institute publishes.

As readers will discover, the common law plays a central role in the law of communication, probably most prominently in the areas of libel and invasion of privacy.

Equity Law

The United States also inherited the law of equity from England, where equity courts were established as early as the Fourteenth Century. Judges in equity courts, unlike common law judges, were empowered to use general principles of fairness, rather than custom or precedent, in resolving problems. Equity solutions to problems brought to these courts, however, were to be supplemental to the common law, not to supersede it. Issues in equity normally are too difficult to address with other kinds of law.

Equity actions by courts are usually in the form of what are called "extraordinary writs." The best known is the writ of *habeus corpus*, provided for in Article I of the U.S. Constitution. It is an order from a court to determine the status of a person detained by authorities. Extraordinary writs, most commonly in the forms of temporary or permanent injunctions or restraining orders, are judicial orders requiring people to do something that they do not want to do or stopping them from doing something that they want to do. Violation of such a court order would be a serious matter that can result in severe punishment.

Readers will see the law of equity at work in a number of cases in this book. For example, the famous Pentagon Papers case was instigated by an injunction a U.S. District Court judge issued requiring the *New York Times* to discontinue publishing a classified government history of American involvement in the Vietnam War. The case climaxed when the U.S. Supreme Court ordered that the injunction be lifted.[2]

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[2] New York Times Co. v. United States, 403 U.S. 713 (1971).

Statutory Law

America is a republican democracy. A succinct definition of a democracy is a political system in which citizens vote in regular elections. A republic is a democracy in which the majority rules through the representatives who are elected by the voters to represent them in political institutions. Representatives at the municipal, county, state and national levels meet regularly to enact legislation that reflects the will of the electorate. This legislation is statutory law.

Legislative bodies — city councils, county commissions, state assemblies and Congress, for example — tend to follow strict procedures to create statutory law. Students of politics have a good sense of how ideas typically become laws. In Congress, a representative or senator may propose a law in the form of a bill, which may be referred by congressional leadership to an appropriate committee for consideration. The committee may refer the bill to a subcommittee. The subcommittee examines the bill, perhaps by holding hearings or undertaking other studies. After this review, the subcommittee may vote on whether to recommend to the full committee that the bill — amended or not — be enacted as a statute. If the majority of the subcommittee members vote in favor of the bill, the committee may conduct additional deliberations before voting on whether to recommend the bill to the full chamber of Congress.

The full chamber may have additional discussion of the bill before voting on whether to enact it as law. In a bicameral legislature, such as Congress, a similar bill has usually followed a similar process in the other chamber. If the legislation is approved in the other chamber but in a different form, representatives of each chamber meet to work out the differences. Any compromises in Congress must be approved by both the House of Representatives and the Senate. Upon adoption, a bill is referred to the president, who has the power to veto it. Congress can override the veto by a two-thirds vote of each chamber.[3] Rescinding laws requires the same process. All states except Nebraska have bicameral legislatures, while local governments tend to have unicameral councils or commissions.

Other sources of law are apt to be deferential to statutory law because it is seen as the will of the people in a democracy. Statutory law, however, must be consistent with the Constitution and applied, enforced and interpreted by the executive and judicial branches of government. A state statute applies only to people in the state wherein it was adopted and must be consistent with both the federal and the state's constitutions; a federal statute applies to all people in the United States and must be consistent with the federal Constitution.

Statutory law plays an important role in communication law. State and federal legislation is key to understanding the law of obscenity, electronic media, intellectual property, marketing and journalistic privilege.

Constitutional Law

America's most important contribution to thought about law in society is the written constitution. After the American Revolution, each of the thirteen states wrote and ratified a document that was intended to be a kind of powerful contract between the people and government. Carrying the idea of democracy to a new and original extreme, the state constitutions vested sovereignty in the people through the constitutions and designated public officials and government bodies as public servants.

Based on the model of the early state constitutions, the U.S. Constitution, written in 1787 and ratified in 1789, became a model for constitutions of other nations and for states that subsequently joined the union. The U.S. Constitution is made up of the Preamble, seven articles and twenty-seven amendments. The most important parts are the first three articles and the Bill of Rights, the first ten amendments.

Important to understanding American constitutional law is the concept of "limited government." The experience that led to the American Revolution taught the constitutional framers not to trust centralized power. They intended to create governments that would be explicitly excluded from almost all aspects of an individual citizen's life. Governments would be assigned only those functions in society that citizens could not perform for themselves. The Constitution was the device for the assignment of specific powers to government. The assumption was that government was powerless to do anything that it was not entitled to do in the Constitution.

Article I of the U.S. Constitution establishes Congress and enumerates its powers, including the powers to tax and mint money, declare war and regulate interstate commerce. Article II establishes the presidency and enumerates its powers, including leading the military, establishing foreign policy and appointing government officers. Article III establishes the federal judiciary and enumerates its powers, including hearing cases involving federal and international matters and disputes between states and between citizens of different states. According to the theory of limited government, all other powers are retained by the states, or no government can exercise those powers.

Since the framers believed that the federal government literally could not exercise any powers not enumerated in the

[3] *See* U.S. CONST. art I, § 7, cl. 3.

Constitution, they rejected efforts to include a listing of individual rights and liberties, including freedom of speech or the press, that the government should be forbidden to abridge. Including such provisions in the Constitution, however, proved to be politically popular. In its first session, Congress approved twelve constitutional amendments, ten of which were ratified as the Bill of Rights, including the famous First Amendment provisions for freedom of religion and expression.

FEDERAL JUDICIAL POWER

Article III, Section 2 of the U.S. Constitution provides that "the judicial Power shall extend to all Cases ... and Controversies":

1. "arising under this Constitution, the Laws of the United States, and Treaties made, ..."
2. "affecting Ambassadors, other public Ministers and Consuls, ..."
3. "of admiralty and maritime jurisdiction, ..."
4. "to which the United States shall be a Party, ..."
5. "between two or more States, ..."
6. "between a State and Citizens of another State, ..."
7. "between Citizens of different States" [also known as "diversity-of-citizenship" cases], ...
8. "between Citizens of the same State claiming Lands under the Grants of different States, ..."
9. "between a State, or Citizens thereof, and foreign States, Citizens or Subjects, ..."

All other matters are reserved for state courts.

Most cases in federal courts involve items 1, 4 and 7.

The Constitution, according to Article VI, is "the supreme Law of the Land," which has come to mean that any conflicting source of law must yield to constitutional law. Because the Constitution is brief and often ambiguous, however, its provisions are subject to multiple interpretations. What one person considers an exercise of First Amendment-protected "freedom of speech" may not be to another person.

Through their assertion of the power to declare statutory law inconsistent with constitutional law,[4] the courts, especially the U.S. Supreme Court, are decisive in explaining and applying the Constitution. When reviewing a challenge to the constitutionality of a government action, the Court explains what the Constitution means, thus producing constitutional law. As Chief Justice Charles Evans Hughes once observed, the "Constitution is what the judges say it is."[5]

The Constitution can be amended either by calling a new constitutional convention, which has never happened, or by a vote of two-thirds of each of the houses of Congress and three-fourths of the state legislatures.[6]

Constitutional law, of course, provides the theoretical umbrella for all law, including communication law. Virtually every law affecting communication is ultimately answerable in some form to constitutional law. Most important are the Supreme Court's constitutional theories based on the First Amendment clauses protecting the rights of free speech, free press, assembly and petition. This terse constitutional language has generated countless court decisions and opinions explaining what those words mean.

Administrative Law

The nature of American life changed dramatically during the Industrial Revolution. In the decades following the Civil War, the national economy became dependent less on agriculture and more on manufacturing. Farmers went to work in factories. Immigration increased, with diverse populations streaming into the expanding cities and generating new political issues. Public services and mass communication and transportation took prominent places in commercial and social life.

As the economy became more centralized, industrialists and financiers came to dominate society, including politics and government. Farmers, small business owners and others in middle income groups became increasingly agitated over the behavior of monopolies that dictated wages and prices. Markets and governments seemed controlled by a wealthy few. Political groups calling themselves "populists" and "progressives" emerged to seek political change. Frustrated in its appeals to corrupt, reactionary and incompetent legislatures, executives and courts, the progressive movement pushed the concept of administrative law for reforming government.

The progressives reasoned that if unregulated capitalism resulted in reduced competition in the marketplace of goods and services, then the economy should be regulated by the government to ensure free enterprise. Some midwestern states first experimented with the idea of administrative law by regulating aspects of intrastate commerce. Then, in 1887,

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[4] Perhaps the most famous decision in U.S. constitutional history is *Marbury v. Madison,* 1 Cranch 137 (1803). In his opinion for the Court, Chief Justice John Marshall asserted the power of the U.S. Supreme Court to deem congressional enactments unconstitutional. At best, Article III of the Constitution is ambiguous as to whether the framers meant that the Court should have such power.

[5] Speech at Elmira, N.Y., May 3, 1907.

[6] *See* U.S. CONST. art V.

Congress created the first federal administrative agency, the Interstate Commerce Commission, to regulate commerce between states. Beginning in the 1910s, Congress created dozens of so-called "independent" agencies to regulate specific aspects of commerce; among these agencies are the Federal Communications Commission, the Federal Trade Commission and the Securities and Exchange Commission.

Framers of federal administrative law meant for commissioners to be apolitical experts in the fields they regulate. Instead of being elected in a political process that might be captured by the industries being regulated, a commissioner is appointed by the president to a fixed term, although the Senate can veto appointments. Congressional legislation attempts to restrict politics in the appointment process by limiting the number of members of one political party on a commission. On the five-member FCC, for example, a maximum of three can be from the same political party. Administrative law was to be created by people trained and experienced in the often complex issues of finance and technology that the appointees would address.

Administrative law is a creature of administrative agencies, most of which, unlike other political institutions, have quasi-legislative, quasi-executive and quasi-judicial powers. In short, an administrative agency can pass its own laws, execute those laws and adjudicate disputes over enforcement, unrestricted by considerations of the separation of powers that limit Congress, the president and the courts. The FCC can enact regulations affecting broadcasting licensees, punish an offending licensee and hear and resolve a challenge by the licensee to the regulations or enforcement. The sum total of the rules, regulations, decisions and other policy-making of these agencies make up the body of administrative law.

Also important to understanding federal administrative law is how it is affected by Congress, the president and the courts. Congress empowers the agencies through statutes. An agency can exercise only the power granted by the agency's enabling legislation. Federal agencies also are governed by the Administrative Procedures Act of 1946, which requires that agencies be fair and reasonable.[7] In addition, congressional legislation funds the agencies, and Congress sometimes threatens what it considers agency misbehavior with budget cuts. The agencies are accountable to the president most directly through the appointment of agency members. Decisions of the agencies can be appealed to federal courts which try to be deferential to the expertise of the agencies but also can rule agency actions to be unconstitutional or otherwise invalid.

Administrative law has a prominent place in the study of communication law. As examples, the FCC broadly regulates electronic media, the FTC regulates advertising and other marketing practices, and the SEC regulates communication by publicly held companies. Virtually every communication business must attend to at least some administrative law.

International Law

Formal relationships between independent nations are governed by treaties, agreements that establish policies for how societies can interact politically and economically. Designated the commander in chief and head of state by Article II of the U.S. Constitution, the president has much unilateral authority to conduct American relations with other nations, but Article I empowers Congress to fund transnational initiatives, declare war and approve treaties. Article III grants federal courts exclusive jurisdiction to hear cases involving U.S. foreign affairs.

The United States has entered into numerous world and regional covenants subjecting the nation and its citizens to policies of various multinational organizations, the most important of which is the United Nations. The U.N. Charter commits member nations to participate in efforts to foster peace and prosperity throughout the world. The Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, European Convention for the Protection of Human Rights and American Convention on Human Rights are examples of international and regional agreements that assert that human rights such as freedom of expression ought to be protected by governments.

Treaties such as the North American Free Trade Agreement between Canada, Mexico and the United States have important implications for both the amount and kind of communication between nations and the protection of freedom of expression in each nation. More specifically, agreements such as the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights attempt to establish harmonious policies for the international treatment of intellectual and creative property. (Intellectual property is discussed in Chapter 7.)

The development of new communication technology breaks down political and other barriers between nations, raising questions about international communication far faster than policy-making bodies can provide satisfactory answers. There is no doubt that international law will become increasingly influential as a source of communication law. (The regulation of new communication technologies is discussed in Chapter 12.)

Virtually every law examined in this book can be catego-

[7] 5 U.S.C. § 551 (1994).

rized into one of these six sources of law. When thinking about any particular law, a student should consider where it fits in the larger scheme of the law.

COURTS

The focus of most interest in the law is the courtroom. Law schools train lawyers principally for careers in courts, not legislatures or administrative agencies whose members are not required to have law degrees. To practice law in most American courts, a person must have graduated from a law school, be licensed and be a member of the local bar.

Courts are at the center of the study of U.S. law for many reasons. Unlike judges of almost every other nation, American judges are vested with wide political authority. Through the power of judicial review — the ability to deem laws unconstitutional (and to have their decisions taken seriously) — courts are the ultimate forums for the resolution of disputes, whether between private or public parties. In theory at least, even the most powerful must answer to the least powerful in courts. Congress, the president and the states have largely acceded to the courts the ability to square other laws with the Constitution. "In truth, few laws can escape the searching analysis of judicial power for any length of time," asserted Alexis de Tocqueville, the prescient French observer of early America, "for there are few which are not prejudicial to some private interest or other, and none which may not be brought before a court of justice by the choice of parties, or by the necessity of the case."[8]

As primary guardians of the Bill of Rights, the courts are protectors of individual rights and liberties, perforce an antimajoritarian responsibility. The courts, however, tend to be cautious in exercising the power of judicial review. In its history, the U.S. Supreme Court has declared unconstitutional only about 100 acts of Congress and 1,000 acts of state and local governments.[9] The courts seem sensitive to the undemocratic image of an un-elected government body ruling invalid a law passed by elected representatives. Judges may also be aware, at least subconsciously, that their existence and funding depend on the legislatures. The power of the courts is sometimes called "the judicial myth" because courts actually have few resources to require obedience of their decisions. Courts generally have only public esteem as political capital.

A court hearing a case is supposed to resolve a carefully framed question in a genuine dispute between two or more parties, finding for one of them. The court should be apolitical, fair and principled in making a decision. The court is expected to follow strict legal procedure to ensure impartiality for all parties and fully to explain the rationale for the decision in a public document called the court's opinion. These decisions and opinions of American courts are not only important sources of law guiding everyday life but also of authoritative American political philosophy.

Jurisdiction

Perhaps the most important way to distinguish between courts is by their jurisdiction, that is, their power to hear and rule in a case. "Jurisdiction" usually refers to the subject matter (the kinds of legal issues) on which a court is entitled to rule, or to geography, places or types of parties over whom a court has authority. One fundamental distinction to be made in considering court jurisdiction is between trial courts and appellate courts; almost all American courts are either courts of original jurisdiction or appellate jurisdiction.

There are two ingredients in a court case: the facts and the law. Trial courts find facts and apply the law. An appellate court reviews only the trial court's application of the law; the appeals court is generally powerless to seek new evidence or directly apply the law to the case under review. Appeals courts affirm or reverse trial court verdicts; they do not issue new verdicts. Most American court systems consist of trial courts ("law-applying and fact-finding" courts), intermediate appellate courts ("law-reviewing" courts) and courts of last resort. As courts of last resort, the federal and state supreme courts usually have limited, if any, original jurisdiction. They mainly deal with petitions to review reviews of law by other appellate courts.

Courts will have either general or limited subject-matter jurisdiction. A general jurisdiction court handles a wide array of criminal and civil matters. A limited-jurisdiction court may be created to handle only, for example, tax issues, bankruptcy issues or juvenile issues.

Federal Courts

Article III of the Constitution says little about the number and sorts of federal courts, mentioning "one supreme Court" and "such inferior courts as the Congress may from time to time ordain and establish." With the Judiciary Act of 1789, as amended, and other legislation, however, Congress has developed an elaborate federal judiciary.

When Congress creates courts under Article III, a resulting court is called an "Article III court." When a federal court is created by way of other constitutional provisions, it is

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[8] ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 75 (New American Library 1956) (1835, 1840).

[9] *See* LAWRENCE BAUM, THE SUPREME COURT 167 (6th ed. 1998).

THE AMERICAN JUDICIAL SYSTEM

FEDERAL COURTS		STATE COURTS
	Courts of Last Resort	
Supreme Court		Supreme Court*
	Intermediate Appellate Courts	
Courts of Appeals		Courts of Appeal**
	Trial Courts of General Jurisdiction	
District Courts		Circuit Courts***
	Trial Courts of Limited Jurisdiction	
Court of Federal Claims		*Examples:*
Court of International Trade		Family Court
Court of Appeals for Veterans Claims		Juvenile Court
Rail Reorganization Court		Small Claims Court
Tax Court		Traffic Court

* In Maryland and New York, this court is called the Court of Appeals, and in Maine and Massachusetts, the Supreme Judicial Court. Texas and Oklahoma have both supreme courts and courts of criminal appeals as courts of last resort.

** Eleven states do not have intermediate courts of appeals. Twelve states call these courts by variations on this name, e.g., the Maryland Court of Special Appeals, the Florida District Court of Appeals and the Pennsylvania Superior Court.

*** Names of state trial courts include Circuit Court (18 states), District Court (16 states), Superior Court (13 states), Court of Common Pleas (Ohio and Pennsylvania), Supreme Court (New York) and Trial Court (Massachusetts). Vermont has both a District Court and a Superior Court.

called a "non-Article III court." Article III provides that judges assigned to Article III courts have lifetime tenure, meaning they hold office until they die, are impeached and convicted or choose to retire (at age sixty-five with at least fifteen years of service or age seventy after at least ten years of service). A non-Article III judge may serve a term specified in the law that established the judge's court.

Examples of non-Article III courts are the Court of Federal Claims, the Court of Appeals for the Armed Forces and the Tax Court. These courts have specific jurisdiction suggested by their names. Article III courts include the district courts, courts of appeals and U.S. Supreme Court.

U.S. District Courts

The ninety-four district courts are the federal courts of original jurisdiction. At least one is located in each state, Puerto Rico and the District of Columbia. As many as four are located in each of the most populous states. The number of judges assigned to each court ranges from two to twenty-eight, depending on the amount of work in the court. Normally, one judge presides in a case, with or without a jury, but a three-judge panel may be assigned to decide a case in special circumstances.

There are 610 judgeships in the fifty states and territories and fifteen in the District of Columbia. Each district also is assigned at least one magistrate, bankruptcy judge, marshal, clerk, U.S. attorney (federal prosecutor), probation officer and reporter. One of the judges in each district is appointed the chief judge to handle administrative matters.

In recent years, the district courts have heard an annual average of about 275,000 civil cases and 45,000 criminal cases. It takes about three and one-half years to dispose of a criminal felony case and seven years for a civil case. About half the civil cases involve contract and liability law. Half of the criminal cases involve narcotics, fraud and drunk driving and other traffic offenses.

U.S. Courts of Appeals

The current system of the federal courts of appeals was established by Congress in 1891.[10] These courts take appeals of decisions of the district courts and federal agencies. Except when the Supreme Court agrees to review decisions of appeals courts, the lower decisions are final. Since the Supreme Court in recent years has been granting full review to fewer than 100 of about 7,000 petitions it receives each term, clearly the courts of appeals are, as a practical matter, the courts of last resort in the federal judiciary.

There are 179 judgeships in eleven numbered multi-state

[10] Everts Act of 1891, 28 U.S.C. ch. 3 (1994).

THE U.S. COURT CIRCUITS AND DISTRICTS

FIRST CIRCUIT—The districts of Maine, Massachusetts, New Hampshire, Rhode Island and Puerto Rico.

SECOND CIRCUIT—The districts of Connecticut, Eastern New York, Northern New York, Southern New York, Western New York and Vermont.

THIRD CIRCUIT—The districts of Delaware, New Jersey, Eastern Pennsylvania, Middle Pennsylvania, Western Pennsylvania and Virgin Islands.

FOURTH CIRCUIT—The districts of Maryland, Eastern North Carolina, Middle North Carolina, Western North Carolina, South Carolina, Eastern Virginia, Western Virginia, Northern West Virginia and Southern West Virginia.

FIFTH CIRCUIT—The districts of Eastern Louisiana, Middle Louisiana, Western Louisiana, Northern Mississippi, Southern Mississippi, Eastern Texas, Northern Texas, Southern Texas and Western Texas.

SIXTH CIRCUIT—The districts of Eastern Kentucky, Western Kentucky, Eastern Michigan, Western Michigan, Northern Ohio, Southern Ohio, Eastern Tennessee, Middle Tennessee and Western Tennessee.

SEVENTH CIRCUIT—The districts of Central Illinois, Northern Illinois, Southern Illinois, Northern Indiana, Southern Indiana, Eastern Wisconsin and Western Wisconsin.

EIGHTH CIRCUIT—The districts of Eastern Arkansas, Western Arkansas, Northern Iowa, Southern Iowa, Minnesota, Eastern Missouri, Western Missouri, Nebraska, North Dakota and South Dakota.

NINTH CIRCUIT—The districts of Alaska, Arizona, Central California, Eastern California, Northern California, Southern California, Hawaii, Idaho, Montana, Nevada, Oregon, Eastern Washington, Western Washington, Guam and Northern Mariana Islands.

TENTH CIRCUIT—The districts of Colorado, Kansas, New Mexico, Eastern Oklahoma, Northern Oklahoma, Western Oklahoma, Utah and Wyoming.

ELEVENTH CIRCUIT—The districts of Middle Alabama, Northern Alabama, Southern Alabama, Middle Florida, Northern Florida, Southern Florida, Middle Georgia, Northern Georgia and Southern Georgia.

DISTRICT OF COLUMBIA CIRCUIT—District of Columbia.

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circuits and the District of Columbia Circuit. Each circuit has one appeals court with six to twenty-eight permanent judgeships, depending on the docket size. Rather than involve all of the judges in every decision, an appeals court normally assigns a case to a three-judge subcommittee, called a "panel." When the entire court assembles to decide a case, it is said to act *en banc*.

About 62 per cent of the 45,000 appeals court petitions each year involve civil matters. About 25 per cent are criminal cases, and 10% are administrative cases. Only about 15 per cent of the petitions result in formal hearings before the appeals courts.

A chief judge is assigned in each appeals court to handle administrative work for the circuit. In addition, a Supreme Court justice is chosen to be the supervising "circuit justice" for each circuit.

U.S. Supreme Court

The Supreme Court of the United States, the federal court of last resort, is the only court specifically mentioned in Article III of the Constitution, but little else is said in the Constitution about how the Court was to be structured or how it was to conduct its work. Through legislation, Congress established the office of the Chief Justice of the United States and determined the number of justices, which was set at nine in 1869. A Supreme Court term opens on the first Monday in October, according to statute, and usually concludes at the end of June.

In the past thirty years, the annual number of petitions reaching the Court has grown from about 1,000 to about 7,000. The Court gave full-dress treatment to a peak of 174 cases in each of the 1982 and 1983 terms, but in recent terms, the Court has decided fewer than 100 cases per term this way.

Notice that the title of the federal judiciary's chief administrative officer is the "Chief Justice of the United States," not the "Chief Justice of the U.S. Supreme Court." The associate justices do not regard the chief justice as their boss. Rather, the chief justice is the head of the federal judiciary, chair of the Federal Judicial Conference (the policy-making body for the federal courts) and in charge of administrative matters for the Supreme Court, including its building. Also, the justices have agreed, the chief justice is the chair of the conferences of the justices in deciding cases and presides at public hearings for the Court. The chief justice is in a better