

FIFTH EDITION

LAW & Justice

An Introduction to the
American Legal System

HOWARD ABADINSKY

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PREFACE

This book offers a thorough examination of the system of justice used in the United States: civil and criminal, juvenile and therapeutic. It is designed for courses on the law and judicial process that transcend the disciplines of political science, sociology, and criminal justice. The writer has attempted to take advantage of his background in these disciplines to provide a comprehensive book that can be used alone or along with more particular treatments of the topics contained in this fifth edition.

The book opens with a chronology so students can more easily trace the evolution of law and justice and the important historical events related to them. It concludes with a glossary of key terms used in the text. There are related Internet sites and review questions at the end of each chapter that provide sources for further research and term assignments. The fifth edition has been updated and expanded into 14 chapters.

Chapter 1 prepares the reader for subsequent chapters by examining the problem of defining law, the unique philosophical role of natural law, and a modern society's need for rational law.

Chapter 2 examines and contrasts common law and equity with civil (code) systems of law. The chapter discusses statutory law, legal reasoning, case law, administrative law, and the application of law through a comparison of the inquisitional system used in continental Europe and the adversarial system used in England and the United States.

Chapter 3 is a history of the development of American law and justice from colonial times into the twenty-first century, providing a grounding for topics in later chapters.

Chapter 4 examines legal education, the law school curriculum, differences between law schools, and criticism of legal education. The chapter ends with a discussion of legal realism, critical legal studies, the law and economics perspective, and the emerging therapeutic jurisprudence.

Chapter 5 reviews the development of bar associations, the practice of law, and the stratification of the legal profession. The chapter ends with a discussion of federal legal services and attorneys practicing public interest law.

Chapter 6 reviews the history and development of court systems, the variety of ways in which they are organized, court administration, and reform.

Chapter 7 explores the appellate court process and judicial review, the issue of legitimacy, and the implementation of appellate decisions.

Chapter 8 examines the processes involved in interpreting statutes and the Constitution, issues such as plain meaning, originalism, textualism, and legislative intent. The chapter discusses the controversies surrounding the policy-making role of the judicial branch and the related issues of judicial restraint versus judicial activism.

Chapter 9 looks at judges, prosecutors, and criminal defense attorneys. The role of the trial judge is discussed and methods for selecting judges are compared and contrasted. The office of prosecutor is examined, including the ways in which it can be organized and their implications. The discussion of the criminal defense attorney—private counsel, public defender, court-appointed counsel—focuses on the very difficult problems encountered in the practice of criminal law.

Chapter 10 begins with a review of the evidence needed to convict in a criminal case, the due process guarantees to which every criminal defendant is entitled, and the relevant Supreme Court decisions that have affected defendant rights. The trial process is examined from pretrial activity, to the *voir dire* hearing, to the judge's charge to the jury. The differences between the indeterminate and various types of determinate sentencing are reviewed as a prelude to the presentence report and the sentencing hearing. The chapter ends with a discussion of probation, parole, and executive clemency.

Chapter 11 provides an in-depth examination of the method most frequently used to decide criminal cases, and the controversy surrounding plea bargaining.

Chapter 12 contrasts the civil trial process with the criminal trial and examines issues surrounding the contingency fee and class action lawsuits.

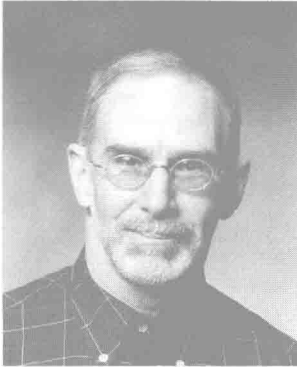
Chapter 13 examines the system of juvenile justice, the important Supreme Court decisions that have affected the juvenile court, the movement away from *parens patriae* and toward a justice model of responding to juvenile crime.

Chapter 14 examines alternative methods of dispute resolution in both civil and criminal matters, mediation and arbitration, and the emerging field of therapeutic justice.

The writer is grateful for the confidence shown in his work by Kim Davies, Prentice Hall Executive Editor. He would like to thank development editor Susan Beauchamp for her outstanding work on this edition. And a special thanks to production editor Naomi Sysak, and copyeditor Natalia Morgan, for their attention to detail and special care in editing this edition. A special thanks and recognition to Alex delCarmen, University of Texas–Arlington; Frank Afflitto, Arizona State University; Greg Plumb, Park University; and Kathleen Simon, Appalachian State University, for their careful review and suggestions for this edition.

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ABOUT THE AUTHOR



Howard Abadinsky is professor of criminal justice/law and society at Saint Xavier University/Chicago. He was an inspector for the Cook County Sheriff's Office for eight years and a New York State parole officer and senior parole officer for fifteen years. The author holds a B.A. from Queens College of the City University of New York, an M.S.W. from Fordham University, and a Ph.D. from New York University. He is the author of several books, including *Organized Crime*, 7th edition, *Probation and Parole*, 8th edition, and *Drug Abuse*, 4th edition.

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LAW AND JUSTICE CHRONOLOGY

1950–1792 B.C.E.	Hammurabi
1200–1080	Moses
621	Draco's law
638–558	Solon's law
450	Twelve Tables of Rome, a written code
384–322	Aristotle
300	Greek Stoics
106–43	Roman statesman Marcus Tullius Cicero
533 C.E.	Code of Justinian
1086	Origins of English common law
1225–1274	Thomas Aquinas
1492	Columbus reaches the Americas
1607	Jamestown, the first English settlement in America, is established
1620	Mayflower lands at Plymouth
1765	Blackstone's Commentaries on the Laws of England
1776	Declaration of Independence
1781	Articles of Confederation ratified
1783	Revolutionary War ends
1787	Philadelphia Convention
1788	<i>Federalist Papers</i> ; Constitution ratified
1789	Judiciary Act sets the Supreme Court's membership at six and creates three circuit courts; French Revolution begins
1791	Bill of Rights ratified

1793	<i>Chisholm v. Georgia</i> (states can be sued in federal court by citizens of other states)
1798	Eleventh Amendment ratified (in a reaction to <i>Chisholm</i> , affords states sovereign immunity)
1803	<i>Marbury v. Madison</i> (power of judicial review)
1804	Napoleonic code
1816	<i>Martin v. Hunter's Lessee</i> (upheld the appellate jurisdiction of the Supreme Court as the "final word" over all federal <i>and</i> state courts)
1819	<i>McCulloch v. Maryland</i> (extends the power of the federal government by discovering the Constitution's "implied powers")
1820	Missouri Compromise (Maine is admitted as a free state and Missouri as a slave state, and slavery is banned in much of the Louisiana Purchase)
1824	<i>Gibbons v. Ogden</i> (asserts the federal government's supreme authority over the regulation of interstate commerce)
1829–1837	Jacksonian era
1833	<i>Barron v. Baltimore</i> (Bill of Rights does not apply to states)
1848	"Field Code" of civil procedure enacted in New York
1857	<i>Scott v. Sanford</i> (while a state can confer citizenship on a Negro, this does not affect his status in another state nor does it give rise to a claim of constitutional protection even within the granting state)
1861–1865	Civil War
1868	Fourteenth Amendment ratified (applies Bill of Rights to states)
1870	Christopher Columbus Langdell at Harvard
1873	<i>Slaughterhouse Cases</i> (recognition of "states' rights" against federal authority)
1875	Judiciary Act (provides federal courts with extensive jurisdiction)
1876	Reconstruction Era ends
1879	West Publishing Company establishes the <i>National Reporting System</i>
1890	Sherman Antitrust Act (criminalizes restraint of trade/monopoly)
1895	<i>United States v. E.C. Knight & Co.</i> (limits the application of the Sherman Antitrust Act)
1896	<i>Plessy v. Ferguson</i> ("equal but separate" accommodations for the whites and blacks is reasonable)
1905	<i>Lochner v. New York</i> (New York statute providing maximum hours for bakers is unconstitutional)
1908	<i>Adair v. United States</i> (Congress has no power with respect to union activities)
1914	War begins in Europe; <i>Weeks v. United States</i> (establishes exclusionary rule in federal cases)
1917	Russian Revolution; United States enters First World War

1918	First World War ends
1919	<i>Schenck v. United States</i> (limits free speech when there is “a clear and present danger”)
1920–1933	Prohibition
1920	Nineteenth Amendment grants women the right to vote
1928	Mussolini dictatorship
1929	Great Depression begins
1932	Franklin D. Roosevelt elected president; Norris–La Guardia Act (strips federal courts of their power to issue injunctions in labor disputes); <i>Powell v. Alabama</i> (if a defendant in a capital case lacks an attorney and a fairly chosen jury, he or she cannot be convicted)
1933	Hitler named chancellor
1935	Wagner (National Labor Relations) Act (gives explicit protection to the rights of workers to organize)
1937	Court packing plan
1939	War begins in Europe
1940	<i>Minersville School District v. Gobitis</i> (requiring pledge of allegiance in school is constitutional)
1941–1945	Second World War
1943	<i>West Virginia Board of Education v. Burnette</i> (overturns the 1940 <i>Gobitis</i> decision)
1944	<i>Korematsu v. United States</i> (upholds a relocation order for Americans of Japanese ancestry)
1950–1953	Korean War
1952	<i>Youngstown Sheet and Tube Co., et al. v. Sawyer</i> (rules that President Truman had acted beyond his constitutional authority in seizing steel mills during the Korean War)
1953	Earl Warren appointed to Supreme Court
1954	<i>Brown v. Board of Education</i> (school segregation is unconstitutional)
1957	Federal troops sent to Little Rock, Arkansas, to enforce <i>Brown</i>
1961	<i>Mapp v. Ohio</i> (applies the exclusionary rule to the states)
1961–1973	Vietnam War
1962	<i>Baker v. Carr</i> (Gerrymandering unconstitutional—“one person, one vote”); <i>Engle v. Vitale</i> (prescribed religious ceremonies in public schools are unconstitutional)
1963	<i>Gideon v. Wainwright</i> (states must provide counsel for all indigents in felony cases)
1965	<i>Griswold v. Connecticut</i> (“right to privacy” voids statute prohibiting birth control devices)
1966	<i>Miranda v. Arizona</i> (prior to questioning, the police must warn a suspect of the right to remain silent)

1967	<i>In re Gault</i> (extends due process protections to juvenile court)
1969	Warren Burger appointed Chief Justice
1973	<i>Roe v. Wade</i> (strikes down laws prohibiting abortion)
1974	<i>United States v. Nixon</i> ; President Nixon resigns
1986	William Rehnquist appointed Chief Justice
1989	Dismantling of the Berlin Wall presages the collapse of European communism
1991	Soviet Union dissolved
1992–2000	Decisions favoring states' rights; <i>Miranda</i> reaffirmed
2001	<i>Bush v. Gore</i> ends the presidential recount in Florida

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