

Legislation and Other Sources of Law

by Sophia



WHAT'S COVERED

In this lesson, you will learn about additional sources of law in the United States outside of the Constitution. Specifically, this lesson will cover:

1. Statutory Law

Statutory law is law created by a legislative body. **Congress** is the legislative body at the federal level. The states also have legislative bodies, most of which are **bicameral**, like our federal system. The state legislatures' names vary by state.

➞ **EXAMPLE** In Indiana, the legislature is known as the General Assembly. In North Dakota, it is the Legislative Assembly. In New York, it is called the Legislature. Nevertheless, their purposes are the same. They are the legislative branches of their respective state governments.



TERMS TO KNOW

Statutory Law

Law created by a legislative body.

Congress

The legislative body at the federal level.

Bicameral

Legislative bodies such as Congress in the U.S. and Parliament in the United Kingdom that have 2 separate chambers. In the U.S., these are the House of Representatives and the Senate.

1a. Components of Congress

Congress is composed of a Senate, with 100 members, and a House of Representatives, with 435 members. The forefathers who wrote the Constitution deliberated and argued over how to compose the legislature, and the result is a deliberative body that doesn't always respond quickly to the will of the majority.

Since population numbers from the census taken every ten years determine how many House seats a state receives, smaller states are sometimes disproportionately represented in the Senate.

➞ **EXAMPLE** Alaska and Delaware have only one representative in the House, but each has two senators.

Senators serve six-year terms, and members of the House of Representatives serve two-year terms. There are

no **term limits** for either senators or members of the House.

One benefit of having no term limits is that institutional knowledge and wisdom can be carried forward in perpetuity. One drawback is that elected officials may hedge their votes on important issues in a calculated way, to ensure reelection. If term limits were imposed, then vote pandering would not be a problem, but the Congress would be forever laboring with inexperienced lawmakers.



TERM TO KNOW

Term Limit

A legal limitation to the number of terms a particular officeholder may serve in a particular public office.

1b. How a Bill Becomes a Law

A bill may be introduced in Congress through the Senate or through the House of Representatives. Both the House of Representatives and the Senate have many committees, and these are related to all areas under the purview of Congress to legislate.

After a bill is introduced, it is sent to an appropriate committee in the chamber of Congress where the bill originated. If the committee moves forward with the bill, it modifies the bill as it sees fit to do, and then it sends the bill to the house of origination (either the Senate or the House of Representatives) for a vote.

If the bill passes, then it is sent to the other house (again, either the Senate or the House of Representatives), where it undergoes the same process. If the other house votes to approve the bill, then the bill goes to the joint committee, which is composed of members of both the House of Representatives and the Senate, where final work is completed. After that, the bill is sent to Congress for a full vote. If the bill passes, it is sent to the President. If the President signs the bill, then it becomes a statute.

The President may veto a bill. A presidential veto is an executive “check” on the legislative body. However, if the president vetoes a bill, the legislature can override the veto by a supermajority vote of 2/3 of the House and the Senate. A congressional override is a legislative “check” on the executive branch. These checks are built into our U.S. Constitution.

1c. Limitations of Congress

Importantly, Congress may not act outside of its enumerated powers. Many people wrongfully believe that Congress can do anything. That is simply not true. Article I, Section 8, lists the enumerated powers of Congress.

Remember that any power not granted to the federal government by the U.S. Constitution is reserved to the states. This means that if Congress passed a law in an area that was actually reserved to the states to regulate, Congress would have acted outside the scope of its powers. If challenged, the law would be struck down by a court as unconstitutional.

As a practical matter, this means that many U.S. states have state laws that are very different from each other.

➞ **EXAMPLE** In Oregon, certain terminally ill patients may legally commit suicide under the state’s Death with Dignity Act. However, in many other states, such an act would be illegal.

2. Common Law

Common law is a very powerful and pervasive source of law, but little understood. Common law is judge-made law. Common law is a feature of most countries previously colonized by Great Britain, where it originated.

In continental Europe, an alternative system called civil law developed, where judges do not have the power to create law through interpretation. In civil law jurisdictions, only the legislature may create law. A jurisdiction is an area where power may be exercised.

In a common law system, when an appellate court hears cases and writes opinions, rules of law are created, formed, and shaped. After a particular legal issue has been decided in a jurisdiction, there is a high probability that subsequent cases that present the same legal issue will use the same rule of law generated from already-decided cases regarding the same legal issue.

This policy is known as *stare decisis*, or “let the decision stand.” This is how a **precedent** is formed, though precedents may shift or change over time. Precedents also may be entirely overturned, though that is rare. Precedents and *stare decisis* allow us to anticipate the behavior of others and to gauge the legality of our own actions.

Legal reasoning is used by attorneys to argue for a particular outcome in a case and by judges when rendering decisions. At its most basic form, legal reasoning involves first identifying the legal question, which is the issue in dispute. Then, the rule of law that applies to that issue is identified. The rule of law may be drawn from precedent, for example, or it may come from a statute or the Constitution.

The facts of the case are analyzed against the rule of law to reach a supportable conclusion. This method of legal reasoning is referred to as the F+ IRAC method, which is an acronym for facts, issue, rule, analysis, and conclusion.

Common law is also important in those many areas that are reserved to the states to regulate.

➔ **EXAMPLE** A state may exercise its police powers to regulate the safety, health, and welfare of its citizens. The laws implemented in these areas may give rise to laws in divergent areas, such as property law (e.g., zoning regulations), so-called vice laws (e.g., restrictions on vice business activities in certain areas or during certain days), and domestic relations (e.g., laws relating to marriage and adoption).

It should be noted that precedents vary among different jurisdictions because precedents created by one jurisdiction are not binding in other jurisdictions.



TERMS TO KNOW

Common Law

Court-created law; the body of court decisions creating precedents by which future cases will also be decided.

Precedent

A previous decision made by a court that serves as a basis for decisions going forward. In future cases where the same or similar set of facts and legal issue are presented, the court will typically follow the precedent.

Legal Reasoning

Reasoning done using several methods, the most basic of which is the syllogism: A conclusion is drawn from the premises. The premises are the facts and the rule of law that applies to such facts.

Together, they form a logical conclusion. Example: All motorists are required by the law to stop at the stop sign. Joe did not stop but drove straight through the stop sign. Therefore, Joe broke the law.

3. Administrative Law

Finally, we consider one last vast source of law that comes from regulations put forth by the many governmental agencies that exist in state and federal governments. This body of law is known as **administrative law**.

Most administrative agencies are created by the legislature. At the federal level they are created by Congress, and at the state level they are created through the state legislative bodies. Administrative agencies may be thought of as a delegation of congressional authority to area experts in particular fields, so that those experts can engage in limited lawmaking, adjudicative procedures, and investigations within their particular purviews.

Laws made by administrative agencies are called rules or regulations. Administrative agencies are created by **enabling legislation**, which sets forth the agencies' jurisdictional boundaries, rule-making procedures, and other information relating to the agencies' scopes of power.

Enabling legislation simply means that the elected legislature (i.e., Congress) passes legislation enabling an executive agency to create rules and regulations that have the force of law, but the agency is never allowed to go beyond its original grant of power by the enabling legislation.

➞ **EXAMPLE** Congress passed the Food, Drug, and Cosmetic Act and created the agency called the FDA, the Food and Drug Administration, which takes on the role of creating and enforcing regulations related only to food, drugs, and cosmetics. The FDA is authorized by Congress to make rules regarding controlled substances. Although the FDA officials are appointed, not elected, to their positions, Congress has delegated this authority to them, and is also empowered to remove such authority.



TERMS TO KNOW

Administrative Law

A body of laws put in place by unelected government officials, also known as rules and regulations by a government agency.

Enabling Legislation

Acts of Congress that create administrative agencies (typically serving under the executive branch of government) to carry out laws passed by Congress. This type of legislation allows the agency to only act consistently with such power to make rules, laws, and decisions as granted by Congress in the enabling legislation.



SUMMARY

In this lesson, you learned that **statutory law** is law that is created by a legislative body. At the federal level, this legislative body is Congress. The **components of Congress** include the Senate and House of Representatives. **A bill becomes a law** once it has passed through the Senate, House of Representatives, and Congress, and has received approval from the President.

Congress is limited in its power when it comes to laws at the state level.

Common law, composed of the body of court decisions made by the judicial branch of government, also has the force of law, but generally, these decisions are only binding within the geographical jurisdiction they cover. **Administrative law** consists of rules and regulations enacted by government agencies, created by Congress at the federal level and state legislatures at the state level.

Best of luck in your learning!

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