THE AMERICAN LEGAL SYSTEM

Comparative
Comparing Judiciaries

THE JUDICIAL SYSTEM in the United States can best be described as a dual system consisting of the federal court system and the judicial systems of the fifty states, as illustrated in Figure 10.1 and also described in chapter 4. Cases may arise in either system. Both systems are basically three tiered. At the bottom of the system are **trial courts,** where litigation begins. In the middle are appellate courts in the state systems and the courts of appeals in the federal system. At the top of each pyramid sits a high court. (Some states call these supreme courts; New York calls it the Court of Appeals; Oklahoma and Texas call the highest state court for criminal cases the Court of Criminal Appeals.) The federal courts of appeals and Supreme Court as well as state courts of appeals and supreme courts are **appellate courts** that, with few exceptions, review on appeal only cases that already have been decided in lower courts. These courts generally hear matters of both civil and criminal law.

trial courts
Courts of original jurisdiction where cases begin.

appellate courts
Courts that generally review only findings of law made by lower courts.

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Global Perspective

Judicial Review

Constitutions are powerful documents. They establish who holds power in governments and where those powers begin and end. But, they are not necessarily unambiguous. Just what does "freedom of the press" mean? If Congress does not declare war, something it has done only five times and not since World War II, were the Korean War, Vietnam War, Persian Gulf War, and Iraq War all unconstitutional? Moreover, even when a constitution is clear as to what is meant by a word or phrase, it is not self-implementing. Some institution must have the binding authority to reach the conclusion that the constitution has been ignored or violated. That institution is the judiciary.

Constitutional democracies have taken two different approaches to creating courts with this power of judicial review. One approach is to give this power to the highest court in the country. The United States, Canada, India, and Australia employ this system. A second approach is to create a separate Constitutional Court, which exists apart from courts that hear criminal cases. Germany, France, Spain, and Greece use this judicial system. We can get a clearer idea of how the U.S. Supreme Court compares with other courts of final constitutional jurisdiction by taking a look at the German and Canadian examples—important points of comparison, since the United States was an important influence on each. In the case of Canada, it was the power of example, whereas in the case of Germany, American occupiers after World War II mandated the creation of a system of judicial review.

The Supreme Court of Canada has a chief justice and eight junior justices, all of whom are appointed by the governor-in-council. While Canada is an independent country, it is also part of the British Commonwealth, and the governor-in-council represents the British queen or king in Canada. The political reality is that the governor-in-council is a ceremonial figure and the actual selections are made by the prime minister. By law, three of the justices must come from Quebec, the predominately French province in Canada. By tradition, three judges come from Ontario, Canada's largest province; one comes from the Maritime provinces on the Atlantic Ocean; and two come from the Western provinces. Provincial superior court judges and lawyers who have belonged to a provincial bar for at least ten years are eligible to be selected.

The Supreme Court of Canada has both original jurisdiction for some cases and appellate jurisdiction. Most of its cases are heard on appeal, and decisions generally take the form of a single opinion written by the majority. Dissenting and concurrent opinions are also presented. For most of its history, the Supreme Court of Canada took a limited view of its power of judicial review and limited its decisions to questions of federalism. More recently it has begun to render decisions on matters of civil rights. Finally, in addition to making rulings of law, the Supreme Court of Canada also routinely gives advisory opinions on important political issues, unlike the U.S. federal courts.

The Constitutional Court of Germany is not part of the regular court system; instead, it is only a court of original jurisdiction on questions of constitutional interpretation. The full Constitutional Court is made up sixteen justices. In practice, it is divided into two panels of eight justices each. Three justices on each panel must be career judges, and the rest tend to be civil servants, politicians, or law professors. Justices serve a twelve-year term; they cannot be reappointed and must retire at age sixty-eight. Half are selected by a committee of the upper house of the German parliament that represents the states in the federal government, and the remainder are selected by a vote of all of the members of the lower house. In either case, in order to be selected, a candidate must receive a two-thirds vote.

A case comes before the Constitutional Court in three different ways. First, the federal government, a state government, or one-third of the members of the lower house of the German parliament can ask for a court ruling on the constitutionality of a law before it goes into effect. (The first chief justice of the United States, John Jay, rejected George Washington's request for this kind of advisory opinion.) Second, judges hearing a case in the regular court system can refer it to the Constitutional Court if they believe it raises constitutional issues. Third, and by far the most frequent way cases reach the Constitutional Court, petitions are filed by citizens. These cases of alleged violations of constitutional rights are screened by a committee of three justices and only about 3 percent are accepted.

Questions

1. Do you think the United States should create a separate constitutional court? Why or why not?
2. Which system for selecting justices do you think is best, the U.S., Canadian, or German approach? Explain your answer.

Jurisdiction

jurisdiction
Authority vested in a particular court to hear and decide the issues in any particular case.

Before a state or federal court can hear a case, it must have **jurisdiction,** which means the authority to hear and decide the issues in that case. The jurisdiction of the federal courts is controlled by the U.S. Constitution and by statute. Jurisdiction

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is conferred based on issues, money involved in a dispute, or the type of offense. Procedurally, we speak of two types of jurisdiction: original and appellate. **Original jurisdiction** refers to a court's authority to hear disputes as a trial court and may occur on the federal or state level. For example, the rape case against Los Angeles Laker Kobe Bryant was begun in a Colorado state trial court of original jurisdiction. In contrast, the legal battle over the constitutionality of the McCain-Feingold federal campaign finance reform law was begun in federal district court. More than 90 percent of all cases, whether state or federal, end in the court of original jurisdiction. **Appellate jurisdiction** refers to a court's ability to review cases already decided by a trial court. Appellate courts ordinarily do not review the factual record; instead, they review legal procedures to make certain that the law was applied properly to the issues presented in the case.

original jurisdiction
The jurisdiction of courts that hear a case first, usually in a trial. Courts determine the facts of a case under their original jurisdiction.

appellate jurisdiction
The power vested in an appellate court to review and/or revise the decision of a lower court.

Criminal and Civil Law

Criminal law is the body of law that regulates individual conduct and is enforced by the state and national governments.[13] Crimes are graded as felonies, misdemeanors, or offenses, according to their severity. Some acts—for example, murder, rape, and robbery—are considered crimes in all states. Although all states outlaw murder, their penal, or criminal, codes treat the crime quite differently; the penalty for murder differs considerably from state to state. Other practices—such as gambling—are illegal only in some states.

criminal law
Codes of behavior related to the protection of property and individual safety.

Criminal law assumes that society itself is the victim of the illegal act; therefore, the government prosecutes, or brings an action, on behalf of an injured party (acting as a plaintiff) in criminal but not civil cases. For example, the murder charges against Scott Peterson, who was charged with killing his wife, Laci, was styled as *The State of California* v. *Scott Peterson*. Criminal cases are traditionally in the purview of the states. But, a burgeoning set of federal criminal laws is contributing significantly to delays in the federal courts.

Civil law is the body of law that regulates the conduct and relationships between private individuals or companies. Because the actions at issue in civil law do not constitute a threat to society at large, people who believe they have been injured by another party must take action on their own to seek judicial relief. Civil cases, then, involve lawsuits filed to recover something of value, whether it is the right to vote, fair treatment, or monetary compensation for an item or service that cannot be recovered. Most cases seen on television shows such as *Judge Judy* are civil cases.

civil law
Codes of behavior related to business and contractual relationships between groups and individuals.

Before a criminal or civil case gets to court, much has to happen. In fact, most legal disputes that arise in the United States never get to court. Individuals and companies involved in civil disputes routinely settle their disagreements out of court. Often these settlements are not reached until minutes before the case is to be tried. Many civil cases that go to trial are settled during the course of the trial—before the case can be handed over to the jury or submitted to a judge for a decision or determination of responsibility or guilt.

Simulation
You Are a Young Lawyer

Each civil or criminal case has a plaintiff, or petitioner, who brings charges against a defendant, or respondent. Sometimes the government is the plaintiff. The government may bring civil charges on behalf of the citizens of the state or the national government against a person or corporation for violating the law, but it is always the government that brings a criminal case. When cases are initiated, they are known first by the name of the petitioner. In *Marbury* v. *Madison,* William Marbury was the plaintiff, suing the defendants, the U.S. government and James Madison as its secretary of state, for not delivering his judicial commission.

During trials, judges often must interpret the intent of laws enacted by Congress and state legislatures as they bear on the issues at hand. To do so, they read reports, testimony, and debates on the relevant legislation and study the results of other similar

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During a news conference in October 2003, George Jackson talks about the alleged racial discrimination that he and his wife experienced while dining at a Cracker Barrel restaurant. Jackson and ten other African Americans filed a federal discrimination suit against Cracker Barrel, alleging that they received poor service compared to that of whites at some of the chain's restaurants in the South. The suit was settled in August 2004 when Cracker Barrel promised to take a number of steps to end its discriminatory practices but did not admit any wrongdoing and will pay no fines or penalties.

legal cases. They also rely on the presentations made by lawyers in their briefs and at trial.

Another important component of most civil and criminal cases is the jury. This body acts as the ultimate finder of fact and plays an important role in determining the culpability of the individual on trial. The composition of juries has been the subject of much controversy in the United States. In the past, women and blacks often were excluded from jury service because many states selected jurors from those registered to vote. Although the Supreme Court ruled in 1888 that African American citizens could not be barred from serving as jurors,[14] it was not until 1975 that the Court extended this ruling to women.[15]

Until recently, however, it was not all that unusual for lawyers to use their peremptory challenges (those made without a reason) systematically to dismiss women or African Americans if they believed that they would be hostile to their case. In two opinions, however, the Supreme Court concluded that race or gender could not be used as reasons to exclude potential jurors.[16] Thus, today, juries are much more likely to be more representative of the community than in the past and capable of offering litigants in civil or criminal trial a jury of their peers.

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