

Lawmaking

The laws that U.S. citizens are expected to obey come from many sources, including federal, state, and local governments. Constitutions set forth laws and establish the structure of government. Legislatures, of course, make laws. In some situations, voters can act directly as lawmakers. Administrative agencies also make many laws. Finally, laws are sometimes made by courts when they decide appeals.



Chapter Overview Visit glencoe.com and enter **QuickPass** code **StreetLaw8u1** for an overview, a quiz, and other chapter resources.

Legislatures

The U.S. Constitution divides the power to make laws between the federal government and the state governments. At both the federal and the state levels, legislatures are the primary lawmaking bodies. The U.S. Congress—the federal legislature—is made up of two houses. The Senate is composed of 100 members, with two from each state, and the House of Representatives has 435 members, with each state represented according to the size of its population. The U.S. Constitution gives Congress the power to pass certain laws that are binding on the people in every state. States have the power to pass laws that apply only within their boundaries.

The U.S. Capitol is home to the legislative branch of the federal government.





Segregated drinking fountains were common in the American South in the 1960s. *Why was the federal government concerned about this situation?*

The lawmaking authority of Congress is exercised through the passage of laws known as federal **statutes**. When Congress passes a federal statute, it affects people in every state. Federal statutes deal with issues of national impact, such as environmental quality, national defense, homeland security, labor relations, veterans affairs, public health, civil rights, economic development, postal services, federal taxes, and social security and other benefits programs.

The states' lawmaking powers are vested in their legislatures, which pass laws called state statutes. Except for Nebraska, every state has a two-house legislature. Most states' legislatures meet on an annual basis; in a few states, the legislatures meet every two years. States pass laws with statewide impact in such areas as education, transportation and traffic, state taxes, marriage and divorce, most criminal laws, and the powers and duties of state government officials. Although tribal governments of Native Americans vary, many place legislative authority, and sometimes executive authority, in a tribal council.

The power of the federal government to pass laws is limited. Congress cannot legislate unless given the power to do so in the Constitution. The states, on the other hand, have broader power to legislate. In general, the states have power to legislate in all those areas over which the national government was not granted power by the Constitution. For example, a state could not enter into a treaty with another country or coin money, as those are among the specific powers assigned to the national government. These powers are set forth in Article I, Section 8, of the Constitution.

In addition to the U.S. Congress and state legislatures, cities, towns, and counties also have lawmaking bodies such as county or city councils, boards of aldermen, and local boards of education. Local governments pass laws known as **ordinances** or regulations. Legislative issues that concern local governments include land use, parking, schools, and regulation of local business. Laws passed by local

governments apply only to a county, city, or town. Local lawmaking bodies receive the power to enact ordinances from the state. Many laws important in our daily lives are passed by local governments.

Sometimes federal laws conflict with state and local laws. For example, in the 1960s, federal laws against racial segregation in restaurants and hotels came into conflict with laws in some states that required separate accommodations for African Americans and whites. The courts ruled the state laws invalid based on Article VI of the Constitution, the **supremacy clause**, which states that “the Constitution and the Laws of the United States . . . shall be the supreme law of the land.” The Supreme Court has also ruled that Congress has sometimes passed laws about topics that are the proper focus of the states. These laws have been found to be an unconstitutional intrusion on the rights of states. Finally, there are a few topics for which both the federal government and the states have legislative power. For example, while most criminal laws are passed by state legislatures, Congress has passed a limited number of federal criminal laws.

Problem 2.1

Decide whether each of the following is a federal, a state, and/or a local law. Then give one example, not listed here, of a federal, a state, and a local law.

- a. No parking on the east side of Main Street between 4:00 P.M. and 6:00 P.M.
 - b. All persons between the ages of 6 and 16 must attend school.
 - c. Whoever enters a bank for purposes of taking by force or violence the property or money in custody of such bank shall be fined not more than \$50,000 or imprisoned not more than 20 years or both.
 - d. In order to sell any product on public streets, the seller must first apply for and receive a vendor’s permit.
 - e. No employer of more than 15 persons may discriminate on the basis of race, color, religion, sex, or national origin.
 - f. All persons traveling on interstate airline carriers are subject to search before entering the airplane departure area.
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Legislatures and other lawmaking bodies try to respond to the needs of the citizens they represent by introducing legislation in the form of **bills**. Bills are used to enact new laws or to amend or repeal old laws. Ideas for bills can come from legislators, the executive branch, individual citizens, citizens groups, businesses, or lobbyists representing specific interest groups. A bill passed by the legislature and not vetoed by the executive branch becomes a law.

After a bill becomes a law, the people must obey it. Sometimes, though, the language of a law is open to differing interpretations. It is not always easy to know exactly what a law prohibits or allows. Disputes over what a law means frequently end up in court. A judge who interprets what the legislature means is determining **legislative intent**.



The Law Where You Live

Research to learn where on the Internet you can find a list and explanation of your state’s statutes.

The Unclear Law

The city of Beautifica has established a lovely park in the city. The city council wishes to preserve some elements of nature, undisturbed by city noise, traffic, pollution, and crowding. The park is a place where citizens can go and find grass, trees, flowers, and quiet. In addition, there are playgrounds and picnic areas, and at one time a road ran through the park. Now the road is closed. The city council has enacted a law requiring that all entrances to the park have the following sign posted: NO VEHICLES IN THE PARK.

Problem 2.2

The law seems clear, but some disputes have arisen over its interpretation. Interpret the law in the following cases, keeping in mind what the law says (the letter of the law) as well as the legislative intent. Examine each situation and decide whether or not the vehicle described should be allowed in the park. Write the reasons for your choices. When you finish analyzing all of the situations, rewrite the law to make it clearer.

- a. Tony lives on one side of the city and works on the other. He will save ten minutes if he drives through the park.
- b. To keep the park clean, trash barrels are located throughout the area. The sanitation



Park rules should be clear to everyone.

- c. department wants to drive a truck into the park to collect the trash from the barrels.
- c. Two police cars are chasing a suspected bank robber. If one police car cuts through the park, it can get in front of the suspect's car and trap it between the patrol cars.
- d. An ambulance is racing to the hospital with a dying patient. The shortest route is through the park.
- e. Elena wants to take her baby to the park in a stroller.
- f. A monument is being erected to the city's citizens who died in the Vietnam War. A tank, donated by the government, is to be placed beside the monument.
- g. Amul uses an electric wheelchair and wants to visit the park.

Drafting a Bill

No matter where the idea for a bill originates, eventually there must come a time when the bill is drafted—that is, when actual language is written. As you can see from The Case of the Unclear Law, even the simplest language might not be clear enough for people to understand. Legislation is often drafted and redrafted before being introduced and discussed by a legislative body. Despite these efforts, laws are sometimes difficult to read and understand. When misunderstandings occur, one of the basic purposes of law—letting

people know what conduct is expected of them or what conduct is prohibited—is lost. When drafting laws, it is useful to ask the following questions to evaluate whether problems are likely to result.

- Is the law written in clear language?
- Is the law understandable?
- When does the law go into effect?
- Does the law contradict any other laws?
- Is the law enforceable? If so, by whom?
- Are the penalties for breaking the law clear and reasonable?

In deciding what a statute means, judges must follow certain rules. One rule is that courts will not enforce laws that are so vague that it is unclear exactly what conduct is prohibited. For example, a law that stated “it shall be illegal to gather on a street corner without a good reason” would be considered too vague because the phrase “good reason” is not clear. Another rule says that if there is doubt as to the meaning of a word in a criminal statute, the word must be strictly interpreted against the government. This usually means that words are given their ordinary meaning by the court. These rules are meant to encourage lawmakers to write clear laws and to ensure that people are not punished for failing to obey an unclear law.

LAW AND DEMOCRACY *in Action*

Drafting a Law Simulation

The harmful effects of cigarette smoking, both for smokers and for those nearby, continue to make headlines. In your town there is a discussion about prohibiting smoking in certain places. Opinion on this issue is divided. Some restaurant employees want to work in healthier, smoke-free environments. Some restaurant owners are concerned that no-smoking rules will harm their businesses and might result in a loss of jobs. Some citizens believe that smoking should be banned in all public places, including stores, restaurants, workplaces, and even outdoor spaces such as parks.

Still others believe that these restrictions go too far and intrude on the rights of people using a lawful product (cigarettes). They believe that

economic forces, rather than government action, will bring the best results. Some restaurants, for example, will choose to be smoke-free in order to attract patrons who care about this issue.

Problem 2.3

You are a member of the citizens advisory group to your town council. Your group has been asked to draft a new ordinance dealing with smoking in public places.

- a. List the details that should be included.
- b. Create a draft of the ordinance, using the guidelines for drafting laws.
- c. Who would support your ordinance? Who would oppose it?

Clarity in legal language is important. For that reason, some legislatures now attempt to write in simple, clear English rather than traditional legal language. Those who favor this practice argue that laws have been written in language that is too complex and should instead be written so that a person of ordinary intelligence and education can understand what is expected.

Agencies

Many of the laws that affect you are made by government agencies. Legislative bodies usually deal with problems in only a general way. They authorize administrative agencies to develop rules and regulations to make laws more specific. These regulations influence almost every aspect of our daily lives and have the force of law. For example, Congress passed a law requiring safe working conditions in places of employment. To implement the law, Congress established the Occupational Safety and Health Administration (OSHA). This agency develops specific regulations governing health and safety on the job. These regulations dictate specifics, such as the height of guardrails in factories, the number of fire exits, and the type of safety equipment to be worn by employees in various occupations.

Another example of a government agency is the Environmental Protection Agency (EPA). It works with other federal agencies, state and local governments, and Native American groups to develop and enforce

regulations under existing environmental laws passed by Congress. The EPA sets national standards that help protect human health and safeguard the national environment, with enforcement delegated to state governments. The agency also works with industry and government at various levels on pollution prevention and energy conservation.

In response to the terrorist attacks of September 11, 2001, the federal government created new agencies and reorganized existing ones to increase homeland security. For example, in November 2002 President Bush signed a bill creating a new federal Department of Homeland Security. The department's primary mission is to help prevent, protect against, and respond to acts of terrorism on U.S. soil. An existing agency, the Department of Transportation (DOT), was also reorganized when the Transportation Security Administration (TSA) was created within DOT to protect the nation's transportation systems.

Specific rules and regulations are made by agencies such as the Occupational Safety and Health Administration (OSHA). *Why do you think this agency is needed?*





A scientist at the national Centers for Disease Control and Prevention conducts research to improve diagnostic tests for severe acute respiratory syndrome (SARS) and other respiratory diseases. *How do administrative agencies work to protect the well-being of individuals?*

When you travel by air, TSA employees screen you and your luggage to ensure the safety of your flight. TSA employees also monitor railroad and port facilities around the country.

The administrative agencies with the greatest impact on your daily life are those at the state and local levels. For example, a zoning commission and other local agencies where you live may have developed a plan that determines what kind of buildings can be located in specific parts of your town. A local agency may hold public hearings to determine whether a new restaurant can serve alcohol or feature live music. Your state or local school board may have taken some administrative action that allows your school to offer this Street Law course!

Administrative agencies, then, are really hidden lawmakers, enacting numerous rules and regulations that affect business and industry as well as individuals. For example, regulations govern the amount of pesticides that can be used on produce, the number of animals that can be killed by hunters, the ingredients that can be used in canned food, the costs of phone calls and electricity, the hours of operation for bars and restaurants, the qualifications of people employed in various professions, and hundreds of other issues. In addition to their lawmaking functions, agencies also administer government programs and provide many services.

Regulations issued by these agencies become law without being voted upon. However, agencies usually hold **public hearings** before issuing proposed regulations. These hearings give individuals or businesses an opportunity to express their views on the proposals. In addition, regulations proposed by the federal government must be published in a special newspaper called the *Federal Register*. This allows people to learn about and comment on proposed rules.



The Law Where You Live

Visit the official Web site of your state government. Note that your state has many agencies. Which state agencies are likely to be most important to you at some time in your life?

Some people criticize rules and regulations created by federal and state agencies. Critics argue that these agencies have created bloated bureaucracies and require wasteful paperwork, interfering with the efficient operation of the marketplace. Others say administrative regulations give meaning to laws passed by legislatures, protect consumers and workers, and are an essential part of modern life.

Problem 2.4

Complete one of the following exercises as a research project.

- a. Find an article in your local paper about an administrative agency. What is the agency's name? What does it do? Is it part of the federal, state, or local government? What does the article say about the agency?
 - b. Find evidence of an agency at work in your community. What agency is acting? What action is the agency taking? Is there any way for the public to have an impact on the agency? If so, how? Is the agency part of the federal, state, or local government?
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Courts

Law is also made by courts. Think about courtroom scenes you have watched on television. These courts were conducting **trials**. The person who loses a trial can sometimes ask a higher court to review and change the result of the trial. These higher courts are called **appeals** or **appellate courts**. When an appeals court decides a case, it issues a written opinion that sets a **precedent** for similar cases in the future. All lower courts in the jurisdiction where the precedent was issued must follow it. For example, if a state's supreme court ruled that the state's constitution required that school funding be equalized throughout the state—richer and poorer school districts would each have to spend the same amount per student—then all lower courts in that state would have to follow that precedent.

International Lawmaking

International law is usually defined as the law that applies to the conduct of countries. It is most often made when national governments make treaties with each other or with a group of countries. A **treaty** is an agreement or contract between countries. These treaties are sometimes created by the joint action of countries or by actions taken by the United Nations. Various international laws, usually made by treaty, regulate commerce among countries, refugees crossing national borders, ownership of property including copyrights and patents, the environment, and many other areas. The U.S. Constitution provides that treaties are the supreme law of the land if they are signed by the president and then ratified by a two-thirds majority of the U.S. Senate.

Treaties are also used to determine whether one country has a legal obligation to return someone accused of a crime or terrorist act to another country. The process in which one country asks another to surrender a suspected or convicted criminal is called **extradition**. According to international law, each country is assumed to have authority over the people within its borders. To overcome this assumption, most countries have signed extradition treaties with other countries. The United States does not have extradition treaties with a number of countries, however, including China and North Korea.



Important international law has been made by a series of treaties, signed since 1950 by various European countries, which formed the European Union (EU). These treaties established a European Parliament, which has the power to make laws that promote political and economic cooperation in Europe. A very visible example of this has been the EU's agreement to have a new common currency called the euro. By 2008, twenty-seven countries belonged to the European Union, and three others were candidates for entry into the EU. Countries that join retain most of their sovereign power to make laws that are binding within their borders. However, in order to benefit all member countries, they do give up power in selected areas by delegating some lawmaking authority to a Europe-wide organization.

The United Nations (UN), formed in 1945 and headquartered in New York City, has nearly 200 member countries, as well as many affiliated organizations such as the Commission on Human Rights, United Nations Educational, Scientific, and Cultural Organization (UNESCO), International Monetary Fund (IMF), World Trade Organization (WTO), World Health Organization (WHO), United Nations Children's Fund (UNICEF), International Labour Organization (ILO), and the World Bank. The UN also maintains a system of international courts and has become the most important institution in the area of international law. Countries that join the United Nations agree to abide by the provisions of its charter.

The United States was one of the founding members of the UN, and has been its biggest financial supporter. Many people in the United States, however, have criticized the UN for being inefficient, bureaucratic, and slow to act, often wasting time and money. Others criticize the United States for not fully supporting UN actions, especially when most UN member countries do not agree with U.S. policy.

The process of European integration has resulted in the creation of the European Parliament, the body that passes the majority of European laws. *Why are so many countries eager to join the EU?*



The United Nations building in New York City is the center of the organization's activities, which support global cooperation and world peace. *How does the UN influence international law?*

Problem 2.5

The government of an African country has been very corrupt for many years and has violated the human rights of many of its citizens by jailing and executing opposition leaders who are all from one ethnic group. The United States and most other countries have been critical of this government for its actions. The opposition groups in the country want to overthrow the government. The government reacts by rounding up and executing hundreds of members of the ethnic group leading the opposition.

The United States and many other governments around the world speak out against this. The United Nations is considering a resolution authorizing sending UN troops into the country to stop what some are calling genocide, the systematic killing of an ethnic or cultural group. Some member countries believe the UN should not interfere militarily in the internal affairs of another country.

The UN Charter (Article 55) states: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

Article 56 states that all members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55.

- a.** If you were the president of the United States, would you instruct our UN delegate to support the resolution authorizing the UN to send troops into this African country? Explain.
 - b.** Assume the U.S. government does not think sending troops is the best way to solve this problem, but more than two-thirds of the countries in the UN vote in favor of the resolution. Should the United States contribute troops to the UN effort? Explain.
 - c.** After a presidential election and change of administrations in the United States, assume the U.S. government believes that forceful action must be taken against this African government, but most other governments come to believe that the UN should not take joint action in this case. Should the United States take action alone?
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