

CHAPTER 1

THE HISTORICAL BASIS AND CURRENT STRUCTURE OF THE AMERICAN LEGAL SYSTEM

CHAPTER OUTLINE

The Historical Basis of American Law

- Before the Government
- The Results of the Revolution
- The Influence of Political Theories
- Balance as the Key to Success

The Modern Legal System

- The Sources of Law
- The Hierarchy of Law
- The Exception to the Rule of Hierarchy

LECTURE KEYS

1. Early American settlers came to escape religious persecution and take advantage of economic opportunities. Settlers used many of the laws of their homelands and brought their prevailing attitudes toward religion. Under these laws and attitudes, people were charged and punished by the government for committing acts that were regarded as sinful and thus illegal.
2. As the population grew, foreign governments increased their efforts to establish a formal and permanent influence in the New World by establishing government offices and authorities and imposing taxes on the rich natural resources and products of America.
3. Many of the colonists did not want to be under the rule of a foreign government that they believed would not be responsive to the will of the people and would not allow them to maintain the personal freedoms they had gained by leaving those countries in the first place.
4. The need to establish a permanent government structure in order to manage issues on a local basis, raise a military for defense, and avoid rule by another country was realized. Despite some movement toward creating many small independent nations, representatives of the colonies agreed success was more likely if there was a unified front.
5. The concept of crime being equal to what was considered wrong or sinful as defined by those in authority was based on the naturalist theory—a belief that all persons were born with the ability to distinguish the difference between right and wrong and the knowledge of their responsibility to act in the proper manner. See Practical Application 1.1 and the Point for Discussion.

6. Increases in population from different cultures with different mores, values, and rules resulted in a more diverse group of legal representatives and different opinions of right and wrong. This in turn led to the need for a more detailed and developed legal system.
7. The first formal and international action by the colonies as a collective group was their issuance of the Declaration of Independence. Today most Americans consider it the bedrock of our nation, but originally it was more or less a formality. Essentially, independence was in name only, and at first was defended by a largely unsophisticated, poorly armed, and disorganized band of citizens against the potential threat of Great Britain and other governments.
8. The new central government was guided by the adoption of the Articles of Confederation. The Constitution was not passed until 11 years later in September 1787.
9. The Articles of Confederation bore little resemblance to the current Constitution. Under the Articles of Confederation,
 - each state sent delegates as members of Congress who then nominated and elected a president among themselves;
 - the delegates wrote and passed all laws;
 - the delegates acted as judges in disputes among the states;
 - the delegates negotiated treaties; and
 - the duties assigned the president were to preside over sessions of Congress and act as an ambassador to, and receive representatives of, other governments' all legal disputes with respect to individuals continued to be dealt with by each state's own system of justice.
10. The Articles of Confederation and Congress were largely ineffective on a local level. The national government had none of the following:
 - Enforcement power
 - Judges
 - Jails
 - Ways to force collection of the monies that each state was supposed to contribute
 - Money of its own and no way to get it other than by voluntary contribution
 - Organization to support a national army
 - Staff of government employees to operate the government when Congress was not in session
11. An early and real issue for the permanent government was whether to allow the states to continue in existence in any sort of individual fashion. Several delegates, including some from the South, believed individual states should be abolished and all people and legal issues should be governed by a central authority. In history, small states within a country often ended up in conflict with one another. In this instance, however, the idea failed to gain popular support. The citizens were fiercely independent and sought to preserve as much personal freedom from government as possible.
12. Separate state governments and a unified national government with specific functions were created. The states were left intact to respond effectively and quickly to the needs of citizens and individual state economies. The national

government was formed to protect the fundamental rights of all citizens and ensure that state governments would not interfere with individual rights. The national government would also handle national issues such as interstate commerce, Indian affairs, immigration, and international issues such as treaties for trade and nonaggression.

13. The members of the Constitutional Convention agreed on three distinct branches of government, each with separate duties and all with the obligation to cooperate with and monitor the other branches to ensure that no one branch obtained too much power. This separation of powers was a direct attempt to prevent the monarchy type of government that so many colonists sought to avoid by coming to America.
14. The first branch of government created was the legislative branch and was called Congress.
 - Congress would be elected by the people (members of the House of Representatives directly by the people, and members of the Senate indirectly—that is, by state legislatures until the Seventeenth Amendment was ratified in 1913).
 - Congress would retain the sole authority to make statutory law. In this way, the people as a whole would always have significant influence in making the laws that all persons were required to follow.
15. The second branch of government created was the executive branch. The president was given authority to head the executive branch at the national level. This structure is paralleled in the states where each state executive branch is headed by a governor.
16. Under the Constitution, the president (the head of the executive branch)
 - is elected indirectly by the people through the electoral college;
 - has power to approve or reject laws passed by Congress, although the power is not absolute and the president cannot deny the authority of Congress to enact law if it is, in fact, the will of the majority that such law be enacted (rejection by the president of a law enacted by Congress is known as the *veto power* and can be overridden by a significant majority of Congress);
 - has several important functions with respect to foreign affairs; and
 - has the ultimate duty to enforce the laws of the United States.
17. The third and final branch of government was the judiciary, which was needed to protect the Constitution and serve as mediator of disputes. This branch of government has the authority and responsibility to interpret laws and protect the Constitution from violation by Congress, the president, or the states. Although the Constitution vests the ultimate authority to enforce laws in the president, in practice, the judiciary also assists in enforcement when the courts apply law to specific cases.
18. Independent operation of the branches but with the power of the branches to influence one another better protects one branch from obtaining too much power or using its power unwisely. Each branch can use its specially designated powers to make sure the other branches act within their constitutionally prescribed limits—checks and balances.

19. Congress, with the approval of the people, subsequently passed the Bill of Rights, which protects essential fundamental human freedoms from government infringement on those matters presumed to be inherently personal and a matter of choice for all human beings. The following rights are specifically protected:
- Freedom of speech, religion, and press; peaceable assembly; petitions for governmental change (First Amendment).
 - Right to bear arms (Second Amendment).
 - Freedom from unreasonable invasion of home by the government for purposes of search and seizure of persons or property, or occupation by military other than as prescribed (Third and Fourth Amendments).
 - Right to have an independent judicial magistrate determine if probable cause exists before a search or arrest warrant can be issued (Fourth Amendment).
 - Right not to be tried twice for the same crime (Fifth Amendment).
 - Right not to have persons or property seized without due process (Fifth Amendment).
 - Right to a speedy and public trial (Sixth Amendment).
 - Right to an impartial jury in the jurisdiction where the alleged crime occurred or the dispute is governed by common law (Sixth and Seventh Amendments).
 - Freedom from forced self-incrimination (Fifth Amendment).
 - Right to counsel in criminal prosecutions (Sixth Amendment).
 - Right of the accused to know of the crime alleged (Sixth Amendment).
 - Right of the accused to confront the witnesses for the prosecution (Sixth Amendment).
 - Right not to be subjected to excessive bail (Eighth Amendment).
 - Freedom from cruel or unusual punishment (Eighth Amendment).
 - Freedom from use of the Constitution to limit individual rights not mentioned (Ninth Amendment).
 - Right of the states to govern on matters not addressed in the Constitution or its amendments (Tenth Amendment).
20. The Supreme Court has been increasingly asked to resolve issues that determine the rights of persons to be free from governmental intrusion into their private lives. From time to time, additional language regarding these freedoms has been added through amendments to the Constitution as Congress and the people have deemed appropriate.
21. All law created in this country must be consistent with, and embody the spirit of, the rights guaranteed in the Constitution and its Bill of Rights. This includes legal standards issued by the executive branch to clarify and define statutory law, and those issued by the judiciary, which interprets and applies the law to individual situations.
- See the answers to Assignments 1.1 and 1.2.
22. The positivist theory proposes that a government should have a single entity to determine what is right and wrong as a matter of law and that it is not subject to question or challenge. This theory is evident in the court of last resort—the U.S. Supreme Court. Short of a constitutional amendment, the decisions of the Supreme Court are not subject to any other authority.

23. Sociological theory suggests that people as a group determine what is and is not acceptable, based on the needs of society at the time. It holds that the law is in a constant state of change and adjusts accordingly to the needs of society.
24. The U.S. Constitution is the product of three philosophies: naturalist theory, positivist theory, and sociological theory. If citizens believe a law is wrong, they can lobby to have it changed. If they believe their elected representatives are not enacting laws that embody the beliefs of the people, they can elect new legislators. If the legislature passes a law that appears to violate the Constitution, citizens can challenge the law in those courts that have the power to resolve the issue by upholding the statute or invalidating it as unconstitutional.
25. Courts continually face the task of balancing competing interests. The traditional balance is the challenge facing every judge to enforce the laws to the extent necessary to protect the rights of the public while permitting the greatest amount of personal freedom possible for the individual. Simply stated, the traditional balance equals the rights of the people versus the rights of the individual.
26. In essence, the modern balance is the need to enforce existing legal principles based on the Constitution versus the need to adopt legal principles more reflective of current society. This balance has been accomplished without ever disturbing the fundamental structure set forth in the Constitution. Indeed, the modern balance is the ability to enforce law consistently while retaining enough flexibility to adapt to changes in societal standards.

See Practical Applications 1.2, 1.3, and 1.4 and the Points for Discussion.

27. The first government was a single Congress of senators and representatives from the 13 colonies (the Senate with two senators elected by each state legislature and the House of Representatives with members proportionate to the population of each state), a president whose role was still not well defined beyond basic duties listed in Article II of the Constitution, and a single court to serve as the judiciary for an entire nation.
28. Today, that same Congress includes more than 500 voting senators and representatives elected by the population of each of the 50 states. The presidency has developed into a complicated office that not only represents this country in foreign affairs but also oversees the administrative agencies of government and approves or rejects all acts of Congress. The federal judiciary has grown to include three separate levels: The Supreme Court, 13 U.S. circuit courts of appeals, and more than 90 U.S. district courts.
29. Law, which is also known as a legal standard or legal principle, comes in different forms and from different sources. It can apply to people in general, a particular group of citizens, or a specific person or entity such as a corporation.
30. *Statutory law* is enacted by a state legislature or by Congress. If a state legislature enacts a law, all persons and entities legally present in the state must obey it. If Congress enacts a federal law, all persons legally present in the nation are required to follow it. Once approved by the legislature, a statute will generally continue indefinitely as law until either the legislature repeals (deactivates) it or the high court of the state or federal government rules it unconstitutional.

31. Federal laws must be consistent with the U.S. Constitution, whereas state laws must be in accordance with both the state and the federal constitutions. Similarly, no state constitution can conflict with the U.S. Constitution. The provision of the U.S. Constitution declaring that federal laws take precedence over conflicting state laws is known as the *supremacy clause*.
See Exhibit 1.1: Sample Legislative Language.
32. The language of statutes is broad enough to include as many potential situations as possible. However, if a court determines that a law is written so vaguely that citizens cannot determine exactly what is and is not acceptable conduct, the law will not be upheld as valid. The Constitution guarantees the right to fair notice of what is considered illegal conduct and what is required in a particular situation.
33. In *judicial law*, the judiciary interprets law from other sources and has power on occasion to create legal standards known as case law. Judges may consider a legal standard and determine whether it was meant to apply to the circumstances of a particular case. Persons in similar situations may then look to the judge's decision to guide their own conduct. When no law exists, judges are responsible for making law or extending decisions of judges in previous similar cases.
34. The continuation of existing legal standards is commonly referred to as *stare decisis* (literally, "let the decision stand"). Following the same legal principles in similar cases gives consistency and stability. People can look to the past for guidance in what to expect from the courts in the future.
35. When a court applies *stare decisis*, it is following a precedent—that is, a previously established legal standard.
See "Case Briefs: Instructor Notes": *In the Matter of the Estate of Marc R. Beauregard*, 456 Mass. 161, 921 N.E.2d 954 (Mass., 2009).
36. In many sectors of our society and economy, large numbers of people or areas of commerce need specific guidelines. It would be unduly burdensome and increase the likelihood of inconsistent decisions from different judges in different areas if the judiciary had to handle all cases that arose. Yet the areas are so specific as to require attention from the government that would be too cumbersome of the Congress. The response to dilemmas of this sort has been the advent of *administrative law*.
37. The executive branch has the primary responsibility to determine when a law has been violated or whether the law is even applicable to a particular situation. Administrative agencies are overseen by the executive branch with direct influence by the Congress and the judiciary. At the federal level, the president is assisted by administrative agencies in carrying out the law enacted by Congress.
38. Administrative law primarily consists of two elements: administrative regulations (sometimes called rules) and administrative decisions. Administrative law is an extension of statutory law established by Congress. Failure to obey administrative law can result in penalties or even criminal prosecution.
39. Administrative agencies issue regulations or rules that more specifically define the broadly written statutes.

40. Administrative decisions issued for highly specific cases have the same effect of law as judicial or legislative law. These cases usually involve persons or entities that challenge the authority of the agency to issue or enforce a particular regulation.
See Exhibit 1.2: Entitlement of Tenants to Occupy.
41. U.S. law is governed by a distinct hierarchy. First in the hierarchy is the U.S. Constitution. Although technically the Constitution and its amendments are statutory law, they are considered superior to all other laws because they established the governmental structure and the process for creating all other laws.
42. Next in the hierarchy of laws are the legislative (statutory) acts of Congress. Statutes have greater weight than judicial or administrative law because statutes are enacted by Congress and state legislatures, which are composed of people elected by the people. Thus, statutes are most likely to represent the laws intended for and desired by the majority.
43. The judiciary has the authority to interpret legislation and to fill in gray areas where the law is unclear or nonexistent. The judiciary is also obligated to ensure that the law is consistent with the Constitution. When the judiciary determines that the law does not meet the requirements of the Constitution, it has the authority to declare the law invalid and thereby supersede the ordinarily superior statutory law.
44. Constitutionality is the only basis for judicial rather than statutory law controlling an issue.
45. Last in the hierarchy is administrative law. Administrative agencies assist Congress by issuing regulations and decisions that clarify and aid in the enforcement of statutes. However, Congress has the right to eliminate an agency or regulations that are inconsistent with legislative objectives. The judiciary also has the authority to overrule actions of an agency when such actions are unconstitutional.
See the answers to Assignment 1.3.

CASE BRIEFS: INSTRUCTOR NOTES

What follows is the case brief for the case included within the seventh edition text. They can be used to check case brief assignments or to quickly review the materials.

In the Matter of the Estate of Marc R. Beauregard, 456 Mass. 161, 921 N.E.2d 954 (Mass., 2009)

Facts: Decedent died unmarried and childless, leaving his parents as sole heirs. Plaintiff, who lived at the same address as decedent, produced a copy of decedent's will in which significant assets were bequeathed to plaintiff. Plaintiff filed a petition for probate of a "copy of a will" because the original will could not be located. Decedent's parents and siblings filed objections to the petition. The trial court applied the evidentiary presumption that when a will that was known to exist cannot be found, it is presumed the decedent destroyed the will with the intent to revoke it. The trial court found that decedent had indeed executed a will but that plaintiff failed to rebut

the presumption that decedent destroyed the will with the intent to revoke it. Plaintiff's petition was dismissed. Plaintiff appealed.

Issue: Whether the trial court erred in finding that plaintiff failed to rebut the presumption that the will that was known to exist and could not be found was destroyed by decedent with the intent to revoke the will.

Law: Where a will once known to exist cannot be found after the death of the testator, there is a presumption that it was destroyed by the maker with an intent to revoke it. *Miniter v. Irwin*, 331 Mass. 8, 9 (1954)

It must be demonstrated by a preponderance of the evidence that the testator did not destroy the will with the intent of revoking it. *Matter of the Estate of Leggett*, 584 So. 2d 400, 403 (Miss. 1991)

Rule: The trial court found that decedent was young, healthy, and fully competent at the time of his death, so it is unlikely he lost the will. The trial court further noted that there was a brief time between the date the will was executed and the decedent's death, which left little time to lose the will. The trial court made its decision to deny petition for probate based on its finding that plaintiff failed to rebut by a preponderance of the evidence the presumption that the will that could not be located was destroyed by the decedent with the intent to revoke it.

Affirmed.

ASSIGNMENT 1.1

Consider the following situations and identify which parts of the Bill of Rights would allegedly protect the behavior.

1. The right to have a parade to celebrate Gay Pride.
Answer: First Amendment's right to peaceable assembly.
2. The right to not be forced to pray, or participate in prayer, in a public school.
Answer: First Amendment's freedom to establish religion.
3. The right to refuse entry to one's home by a government official who does not have a warrant.
Answer: Fourth Amendment's freedom from unreasonable search.
4. The right to refuse to answer questions by the police.
Answer: Sixth Amendment's right to counsel in criminal prosecutions.
5. The right to be released from jail before trial if the defendant deposits a sum with the court that is reasonably expected to deter the defendant from fleeing the jurisdiction or committing additional crimes.
Answer: Eighth Amendment's right to bail that is not excessive under the circumstances.
6. The right to set fire to an American flag in a public place as a political statement.
Answer: First Amendment's right to free speech.
7. The right of media to be present during the trial in a criminal prosecution.
Answer: Sixth Amendment's right to a public trial.

8. The right to carry or own multiple registered weapons.
Answer: Second Amendment's right to bear arms.
9. The right of a defendant to refuse to testify in a criminal trial against himself or herself.
Answer: Fifth Amendment's freedom from forced self-incrimination.
10. The right of a defendant charged with sexual assault to force the alleged victim to testify at trial and answer questions about the allegations.
Answer: Sixth Amendment's right of confrontation of witnesses for the prosecution.

ASSIGNMENT 1.2

Identify five modern-day situations where the rights of an individual are at odds with the rights of the public as a whole.

Answer: Responses will vary but should reflect the boundary between individual freedoms and the best interests of society.

Example: The right of a motorcyclist to choose whether to wear a helmet versus the right of the public to protect themselves from the costs to the government in providing long-term care for individuals who sustain severe brain and other serious related injuries as a result of a motorcycle accident in which the injured individual did not wear a helmet.

ASSIGNMENT 1.3

Examine the following situations and explain which source of law would most appropriately deal with each situation.

1. The criteria used to determine whether an individual is placed on the "No Fly List" for passengers traveling by air.
Answer: Because ensuring the safety of air travelers is the responsibility of federal law enforcement agencies, these administrative agencies would create the criteria used to determine the No Fly List. However, because the list raises civil liberties and due process concerns, due in part to the potential for ethnic, religious, economic, political, or racial profiling and discrimination, the judiciary is likely to be asked to determine whether the criteria used to determine the No Fly List violate constitutional rights.
2. The definition of what constitutes driving under the influence.
Answer: Operating a vehicle on public roads affects virtually all citizens. As a result, the legal standards would generally be statutory. However, the specific circumstances of an individual accused of having violated those laws would be most properly addressed by a judge who could consider all of the relevant facts of the particular situation.

3. An individual is arrested after purchasing eggs, then hatching and raising several baby chicks to use in a home school science project on the basis they violated a law prohibiting harboring livestock within city limits. At 4 months of age, and the end of the experiment, the chicks were given to a farmer.

Answer: The legal standards with respect to what types of activities are allowed within city limits would be best addressed by an elected body (e.g., zoning committee) representing the residents of that city. This would ensure that the standards are consistent with the best interests of the majority of the residents.

INTERNET ASSIGNMENT 1.1

Locate the official government Web site for each branch of state government where you live.

Answers will vary.

INTERNET ASSIGNMENT 1.2

Using the Internet, determine whether the constitution for your state has been amended, and if so, when.

Answers will vary.

PRACTICAL APPLICATION 1.1

Point for Discussion: Even today, cultural differences among even members of the same religion can be profound in terms of the definitions of acceptable conduct. Can you identify any similar differences that exist today, or that may have existed at the time of American colonization, that could have legal ramifications?

Conflicting views toward abortion are a strong illustration of how cultural differences among members of the same religion have legal ramifications. As an example, throughout Christianity, there is a shared belief that life is valued and should be protected. However, within Christianity there are intensely conflicting views about whether a pregnant woman has a right to make decisions that affect her body or whether her rights are superseded by the right of her unborn child to survive.

Christians within cultures that have a more liberal viewpoint are more likely to support a woman's right to choose, and those within cultures that have a more conservative viewpoint staunchly support the right to life. Legislatures have grappled with the issue and passed laws that they believe reflect the values of the majority of the community. The U.S. Supreme Court has examined those laws closely, most famously through *Roe v. Wade*, and has nullified any laws that it finds violate the rights of individuals as guaranteed in the Constitution.

Other examples of cultural differences include conflicting views toward gay marriage, physician-assisted suicide, and the death penalty.

PRACTICAL APPLICATION 1.2

Point for Discussion: What do you think of the reasoning of the Justice in explaining the balance that must be struck when competing values are in conflict?

A well-structured argument will take into account on the one hand, the business owner's right to be free to think, to believe any way they wish and to pray to the God of their choosing. On the other hand, we must realize that the law in New Mexico grants the customers the right to engage in the commercial market place free from discrimination.

PRACTICAL APPLICATION 1.3

Point for Discussion: At what point should someone's personal right to bear arms become limited?

Although an individual's right to bear arms is guaranteed by the Second Amendment, that individual right cannot infringe upon the right of people to live safely and without fear. If an individual is stockpiling large amounts of weapons, ammunition, and explosives, that poses a danger to the people around him or her if an accident occurs and sets off an explosion. More troubling is the possibility that the individual could intentionally use the weapons and explosives to fend off what he or she perceives are attacks on his or her freedom. In this case, it is the responsibility of the government—through legislative laws, judicial overview, and administrative law enforcement—to curtail the rights of the individual to protect rights of society as a whole.

PRACTICAL APPLICATION 1.4

Point for Discussion: Was it prudent of the Court to act as it did, or should it have waited for the democratic processes at the state level to play out on this issue?

A well-structured discussion will recognize the right of states to pass laws to protect the health and safety of its citizens. Marriage has been an area where states have traditionally enacted laws that regulate who can lawfully marry. However, the Supreme Court has the obligation to interpret the Constitution. In doing so, the Court must look to the nation's values, history traditions, and changing societal norms to protect groups that have been disfavored under the current law.

REVIEW QUESTIONS

1. **What was the structure of the U.S. government under the Articles of Confederation?**

The United States operated in a singular government structure under the Articles of Confederation. Each state sent delegates as members of Congress, who then nominated and elected a president among themselves. The delegates passed laws, acted as judges in disputes among the states, negotiated treaties, and served as the government for the new nation. The president presided over the sessions of Congress as head of the delegates and acted as an ambassador for the nation.

2. What political theories influenced the structure of the U.S. government?

The three theories that influenced the structure of the U.S. government are as follows:

- a. naturalist theory—based on the belief that all persons are born with the ability to distinguish between right and wrong and the knowledge that they are responsible for acting in the proper manner;
- b. positivist theory—proposes that a government should have a single entity to determine what is right and wrong as a matter of law; and
- c. sociological theory—holds that the law is in a constant state of change and adjusts according to the needs of society.

3. How does the U.S. Constitution guarantee that power will not fall into the hands of one person?

The U.S. Constitution guarantees that power will not fall into the hands of one person by establishing three distinct branches of government:

- a. legislative branch—Congress is elected directly by the people and has the sole authority to make statutory law;
- b. executive branch—the president is indirectly elected by the people through the electoral college and has the power to (i) approve or reject acts of Congress, though the power is not absolute, (ii) represent the country in foreign affairs, and (iii) enforce the laws of the United States;
- c. judicial branch—the judiciary has the responsibility to interpret the laws and protect the Constitution from violation by Congress, the president, or the states.

Through a system of checks and balances, these three branches operate independently but with the power to influence each other, ensuring that one branch does not gain too much power.

4. Explain how each political theory appears in modern-day government.

The naturalist theory is reflected in the language of the U.S. Constitution and especially the Bill of Rights, which state what was and continues to be fundamentally fair. The positivist theory is also apparent in the U.S. Constitution and Bill of Rights, which contain statements indicating an ultimate authority that interprets the laws and decides how they should be enforced. The U.S. Supreme Court is an example of positivist theory. Short of a constitutional amendment, decisions by the U.S. Supreme Court are not subject to any other authority. The sociological theory is evident in government structure in the way society influences the government and laws by electing members of Congress, selecting the president, and even approving or rejecting constitutional amendments and certain other laws. As society's needs change, the flexible system of government allows passage of laws and election of representatives who will enact laws suited to the changing times.

5. The flexibility and stability elements of the modern balance express what goals of the judiciary?

Modern balance reflects the goal of the judiciary to balance the need for consistency and stability against the need for a flexible and adaptive government. In essence, it is the need to enforce existing legal principles based on the Constitution versus the need to adopt legal principles that are more reflective of current society.

6. **The individual elements and the elements of the people as a whole of the traditional balance represent what goals of the judiciary?**

Traditional balance reflects the goal of the judiciary to allow maximum personal freedom without detracting from the welfare of the general public. Simply put, it is the Rights of the People versus the Rights of the Individual.

7. **Explain the difference between *stare decisis* and precedent.**

Stare decisis, which literally means “let the decision stand,” holds that following the same legal principles in similar cases gives the legal system consistency. When a court applies *stare decisis* and follows the same type of ruling as issued in a previous, similar case, it is following a precedent, which is a previously established legal standard.

8. **Give two characteristics of each type of legal standard: statute, case, and regulation. (An example of a characteristic would be the source of the legal standard.)**

Two characteristics of statutes, case law, and regulations: Statute:

- a. Statutes are enacted by federal and state legislatures.
- b. Statutes are broadly to apply to all persons.

Case law:

- a. Opinions issued by the judiciary in legal disputes have the effect of law.
- b. In case law, members of the judiciary interpret the law and apply it to individual circumstances based on legal principles in previous, similar cases.

Regulation:

- a. Regulations are issued by administrative agencies under the direction of the executive branch.
- b. Regulations more specifically define broadly written statutes.

9. **What is the only situation in which judicial decision is more powerful than a statute?**

The only situation in which a judicial decision is more powerful than a statute is when the judiciary determines that the law does not meet the requirements of the Constitution.

10. **Why does the executive branch have the power to create administrative law through administrative agencies?**

The executive branch has the power to create administrative law through administrative agencies because the Constitution gives it the duty to enforce the law. This involves determining whether a law has been violated or whether it is even applicable to a particular situation.