

Introduction to American Legal Research

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PowerPoint Courtesy of
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Today we'll discuss...

- The structure of the legal system in the United States
- Primary American law and where to find it
- Secondary American sources and where to find them
- Major print and online sources

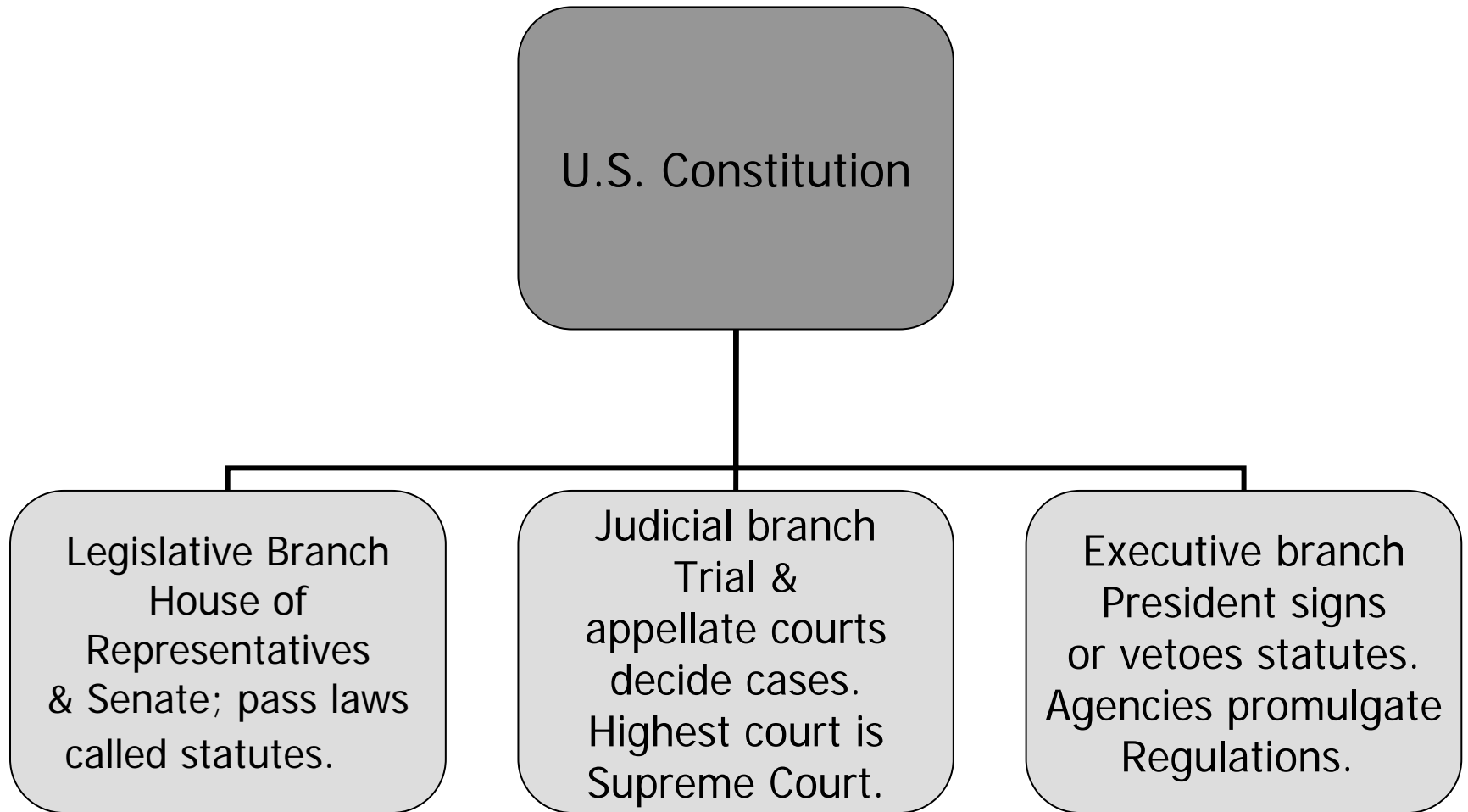
Recurring themes throughout...

- Mirror image of federal and state legal structure
- Controlling authority (“what the law is”) constantly in flux
- Reliance on most current authority

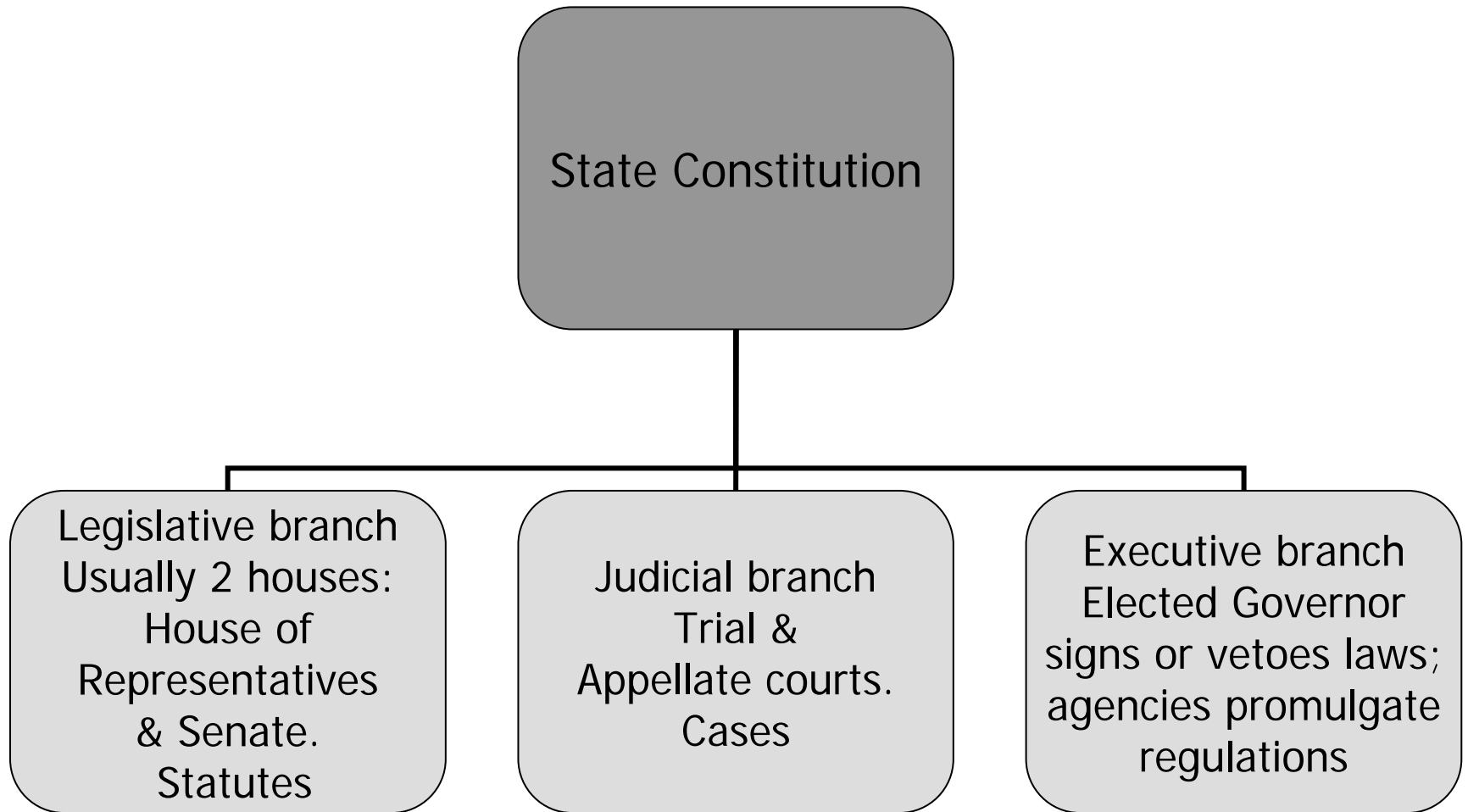
What is the legal system in the U.S.?

- Common law jurisdiction
- Federal system of government
 - 1 national system, created by the Constitution
 - 50 different state systems
- Government has 3 branches:
 - Legislative
 - Executive
 - Judiciary

Federal Government



Most state governments have a similar structure



What is a common law system?

- Body of law that originated in medieval England
- Common law system relies on...
 - ▣ Court opinions and the principle of *stare decisis* (“Rule of adherence to judicial precedents.” *Black’s Law Dictionary*, 8th ed.)
 - ▣ Statutes (also called laws, legislation, codes, acts of Congress)
 - ▣ Regulations (issued by state or federal agencies)
 - ▣ Interplay between statutes, regulations and court opinions.

Some differences between common and civil law systems

- “Codes” are subject compilations of laws
- No presumption that all statutes or “codes” cover all legal problems
 - ▣ Major areas of common law not governed by statute
- Uses principle of *stare decisis* (also called “binding precedent”)
- Judges interpret the law, don’t simply apply it
- Reliance on precedent
 - ▣ Looks to most recent “authority”

What are “primary legal materials”?

- The laws themselves
- May be constitutions, statutes, regulations, court opinions
- May be state or federal
- Mandatory authority within the jurisdiction
- Persuasive authority outside the jurisdiction

Constitutions: Federal

- U.S. Constitution

- ▣ Provides for “separation of powers” by forming three branches of federal government

- ▣ Available online at

- <http://www.findlaw.com/casecode/constitution/>

Constitutions: State

- States also have constitutions
 - ▣ In the Law Library at “State Coll” in the “annotated code” of each state
 - ▣ Online at
<http://www.law.cornell.edu/states/listing.html>

Statutes: Federal

- Federal statutes: Laws passed by both houses of the U.S. Congress and signed by the President
 - ▣ The President may also “veto” a law
 - ▣ Congress may override the President’s veto
 - ▣ The U.S. Supreme Court may later declare a law unconstitutional
 - ▣ This is “separation of powers”!

Statutes: Federal

- Federal statutes are published chronologically in the *Statutes at Large* as “Public Laws”
 - ▣ In the Law Library at “Fed Coll”
 - ▣ Public laws online from 1973/1974 to current at <http://thomas.loc.gov/bss/d110/d110laws.html>
- Federal statutes are also published in the *United States Code*, arranged by subject
 - ▣ In the Law Library at “Fed Coll”
 - ▣ Online at <http://www.gpoaccess.gov/uscode/>

Statutes: State

- State statutes: Passed by both houses of the state legislature and signed by the governor
 - ▣ The governor may veto the law
 - ▣ The legislature may override the veto
 - ▣ The state Supreme Courts or *the U.S. Supreme Court* may later declare the law unconstitutional

Statutes: State

- State statutes are published chronologically as “Session Laws”
- State statutes are also published in subject compilations called “codes”
 - ▣ In the Law Library at “State Coll”
 - ▣ Online at <http://www.law.cornell.edu/states/listing.html>

Regulations: Federal

- Administrative agencies have been given authority by Congress to...
 - ▣ Issue regulations to administer the day-to-day implementation of complex legislation
 - ▣ Adjudicate disputes in the first instance
- Some agencies are...
 - ▣ Department of Energy
 - ▣ Department of Agriculture
 - ▣ Department of Defense
 - ▣ And others...

Regulations: Federal

- To become law, regulations are proposed and made public in the *Federal Register*
- Then go through a period of public comment
- And are published as a final rule in the *Federal Register*
- Regulations may later be found illegal by federal courts, or may be voided by statute

Regulations: Federal

- Federal regulations are published chronologically in the *Federal Register*
 - ▣ Online at <http://www.gpoaccess.gov/fr/>
- Federal regulations are also published by subject in the *Code of Federal Regulations*
 - ▣ In the Law Library at “Fed Coll”
 - ▣ Online at <http://www.gpoaccess.gov/cfr/>

Regulations: State

- State agencies also issue regulations
- State regulations are published in administrative “codes” and registers
 - ▣ In the Law Library at “State Coll”
 - ▣ Online at <http://www.law.cornell.edu/states/listing.html>
 - Select individual state & browse for Administrative Code

To sum up...

- So far we've seen...
 - ▣ Primary legislative materials
 - Constitutions
 - Statutes
 - Regulations

- Now we'll look at...
 - ▣ Primary judicial materials
 - Court opinions

Court System: Federal

- District Courts
 - Trial court level
 - Usually do not publish opinions
- Circuit Courts of Appeal
 - 12 circuits, including D.C.
 - Map: <http://www.law.emory.edu/index.php?id=2997/>
 - Appellate jurisdiction
 - Usually publish opinions
- Supreme Court of the United States
 - Appellate jurisdiction over Circuit Courts and state courts
 - Almost always publish opinions

Court System: State

- State circuit or district courts
 - ▣ Trial court level
 - ▣ Rarely publish opinions
- State Court of Appeal
 - ▣ Appellate jurisdiction
 - ▣ Usually publish opinions
- State Supreme Court
 - ▣ Appellate jurisdiction
 - ▣ Almost always publish opinions
 - ▣ Decisions can be appealed to U.S. Supreme Court

Court opinions are primary materials too!

- Principle of “stare decisis” is significant in American law
 - ▣ Key difference between common and civil law systems
- “Stare decisis is the doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same point arises again in litigation.” Black’s Law Dictionary, 8th ed.
- Mandatory within the jurisdiction, persuasive outside of the jurisdiction

Locating court opinions

- Federal and state court opinions published chronologically in “reporters”
- No subject compilations!
- “Digests”: Subject index to court opinions
- Westlaw <https://lawschool.westlaw.com/> and Lexis <https://www.lexis.com/> are better for case finding than print digests
- “Annotated codes”: Summaries of court opinions construing statutes follow each statutory section

Court Opinions: Federal

- U.S. Supreme Court opinions published in *United States Reports*, *Supreme Court Reporter*, *Supreme Court Reports (Lawyers Ed.)*
 - ▣ In Law Library at “Fed Coll Repts”
 - ▣ Online at <http://www.supremecourtus.gov/>
- Circuit Court opinions published in *Federal Reporter and District court opinions*, specialty court opinions published in *Federal Supplement*
 - ▣ Both in Law Library at “Fed Coll Repts”

Court Opinions: State

- Published in state reporters
 - ▣ In Law Library at “State Coll”
 - ▣ Online at
<http://www.law.cornell.edu/states/listing.html>

Court opinions must always be “updated”...

- Must determine whether the case is still “good law”
 - ▣ Case has not been overturned by another case or abrogated by a statute
- Use *Shepard’s* or *KeyCite*
 - ▣ Online versions on Reference computers
 - ▣ Also available within Lexis (*Shepard’s*) and Westlaw (*Keycite*)

To review...

- Common law jurisdiction
- Mirror-image structure of federal and state legal systems
- Primary materials: the law itself
 - ▣ Legislative materials
 - ▣ Judicial materials
- Now let's talk about the process of American legal research...

How do I start researching a point of American law?

- Use “secondary sources”
 - ▣ Explain, describe, discuss the law
 - ▣ Not the law itself; cannot generally be cited to a court
- Researchers use secondary sources to...
 - ▣ Start research when unfamiliar with an area of law
 - ▣ Obtain a detailed understanding of an area of law
 - ▣ Find citations to major primary sources in an area of law, as a starting point in research

What are “secondary sources”?

- Books (also called “treatises”)
 - ▣ Use online library catalogs or Law Library Book Lists
<http://lexcalibur.lib.law.umich.edu/screens/booklists.html> (Law Library Home > Catalog Tab > Book Lists)
- Legal encyclopedias
 - ▣ In Law Library at “Ref Coll”
- “Restatements of the Law”
 - ▣ In Law Library at “Ref Coll”
- Articles in law reviews and journals
 - ▣ To locate, use periodicals indexes or search full text in Lexis or Westlaw

Online Library Catalogs



- The Law Library's catalog, <http://lexcalibur.lib.law.umich.edu/>



- The University Libraries catalog, <http://mirlyn.lib.umich.edu/>



- Kresge Business School Library catalog, <http://lib.bus.umich.edu/>

Major Legal Periodical Indexes and Databases

- Index to Legal Periodicals and Books (print and online)
- Index to Foreign Legal Periodicals (print and online)
- Current Law Index (print)/LegalTrac (online)
- Hein Online (online only)
- Print in Law Library at “Ref Coll”
- Online links at Law Library Home > All E-Resources > Browse by... Categories > Journal Indexes
<http://lexcalibur.lib.law.umich.edu/search/m?Journal+Indexes>

General Internet Sources for American Legal Research

- FindLaw: <http://www.findlaw.com/>
- GPOAccess: <http://www.gpoaccess.gov/>
- Cornell Legal Information Institute:
<http://www.law.cornell.edu/>
- For more information and sites, see “Legal Research on the Internet” guide:
<http://www.law.umich.edu/library/students/research/Pages/workshopmaterials.aspx>

LexisNexis Academic

- <http://libproxy.law.umich.edu:2048/login?url=http://web.lexis-nexis.com/universe>
- Law Reviews
- Federal and State Cases and Codes (Statutes)
- Shepard's Citations
- Also has Tax Law, Patents, and Foreign Law databases
- Access available on campus. You may use law library computers to access LN Academic
- Consult LN tutorials for detailed help
- Related Products: LexisNexis Congressional, Statistical, State Capital

To review...

- The “process of American legal research”:
- To start researching American law, use secondary sources
- Secondary sources lead you to primary sources
- Research in primary sources leads you to additional primary sources

If you have questions about any aspect of legal research...

- Come to the Law Library Reference Desk! Open 7 days a week, 9 a.m. till midnight
- Use “Ask a Law Librarian” email reference service: askalawlibrarian@umich.edu



- Use the Law Library’s Online Tutorials and Audio Tours



Questions?

