Why We Have Laws

What is the purpose of laws?

Have you ever wondered why certain laws exist? Why, for example, do many states require children to wear bicycle helmets? More injuries from bicycling than any other sport send children aged 5 to 14 to hospital emergency rooms. Using a bicycle helmet greatly reduces the risk of head injury. As you can see, helmet laws are meant to protect you from getting hurt. Laws affect nearly everything we do—the food we eat, how we drive our cars, how we buy and sell things, and so much more.

Keeping the Peace

Laws are sets of rules that help people get along. People, organizations, and governments deal better with one another when they follow the same rules. Laws establish which actions a society permits and which it does not. They set the rules for working out civil disagreements over money, property, and contracts.

Laws also help keep the peace and prevent criminal acts. The police and the courts enforce the law. If you break the law, you can expect to be punished. Laws set punishments to discourage potential criminals.

What Makes a Law a Good Law?

Some laws are better than others. Good laws share certain characteristics. Such laws are

- fair
- reasonable
- understandable
- enforceable

A fair law gives equal treatment to all people who are in similar situations. Thus, a rule that says only tall people are allowed to ride on a public bus and short people must walk would not be fair.

Good laws are not only fair, but also reasonable. In England in the 1700s, if you stole a loaf of bread you might have had your hand cut off. In some ancient cultures, crimes such as stealing or causing a public disturbance were punishable by death. Today we view such harsh punishments as unreasonable because the punishment does not seem appropriate. That is, it does not fit the crime.

Moreover, good laws are understandable. If a law is not easy to understand, people might disobey it without realizing they are doing so. Of course, ignorance of a law is no excuse for breaking that law. Still, if laws are too complicated, people might break them unintentionally.

Finally, good laws are enforceable by local communities, state authorities, or federal authorities. People tend to obey laws they understand and believe to be reasonable and fair. The government's ability to enforce a law often depends on the people's willingness to obey it.

Making Connections How do laws help people live together peacefully?

Florida CONNECTION

The Laws of Florida

In 2010, the Florida state legislature passed nearly 300 laws. They covered topics as diverse as hurricane relief, elevator safety, and state parks. Go to the Florida Department of State archives Web site to learn how many laws the Florida legislature passed this year. Under Quick Links, go to General Laws. Make a list of five laws that interest you.

Development of the Legal System

What early legal systems influenced the laws we live by today?

The writers of the U.S. Constitution based the nation's system of laws on ideas, traditions, and laws passed down from generation to generation. Some of these ideas date back thousands of years.

Scholars believe that some kind of law existed in even the earliest human societies. It is thought that prehistoric people used unwritten rules of behavior. These rules helped them avoid or cope with social conflict. The earliest laws were probably passed orally from one generation to the next. Over time, people began to write down their laws.

**Code of Hammurabi**

The earliest example of a written code of law was developed in Babylonia, an ancient Middle Eastern empire. In about 1760 B.C., the legal decisions of King Hammurabi ( Hammurah-bbee) were collected and carved into a large stone pillar. They were written in the Akkadian language in wedge-shaped script called cuneiform. The code included laws related to the family, marriage and adoption, slavery, and agricultural and business practices. It also set prices for goods and services. By today's standards, the Code of Hammurabi laid down very severe penalties.

"If fire break[s] out in a house, and some one . . . take[s] the property of the master of the house, he shall be thrown into that self-same fire."

---Code of Hammurabi, c. 1760 B.C.

**Israelite Law**

The Israelites were another ancient people who lived near the eastern Mediterranean coast. They followed a different set of written laws. These laws forbade acts such as murder and theft. Under our modern laws, these acts are also crimes.

**Roman Law**

The most important laws that developed in the Western world came from ancient Rome. The first code of Roman law was published in 450 B.C. Over centuries, the Roman senate adopted a great many laws. Roman judges wrote commentaries on them, which often became part of the law. As the Roman Empire grew, its laws spread to parts of Europe, Africa, and Asia.

In A.D. 527, Justinian I became ruler of the Eastern Roman Empire, also known as the Byzantine (By-zhahn-teen) Empire. By that time, law in the empire was in a state of confusion. In A.D. 533, Justinian simplified Roman law into an orderly body of rules. This set of laws, called the Justinian Code, became the basis of law for the Byzantine Empire. It also became part of the laws of the Roman Catholic Church, known as canon law. Although canon law dealt with church rules and regulations, it influenced legal procedures outside the church.

**Napoleonic Code**

The Justinian Code eventually shaped the laws of many European countries, such as France. In 1804 the French emperor Napoleon Bonaparte carried out a major reform of France's laws. As the ancient Romans had done, Napoleon brought his unified law code, or Napoleonic Code, to the lands he controlled. In addition, many other places in Europe and South America based their laws on the Napoleonic Code.

In 1825 the state of Louisiana wrote a set of laws based on the Napoleonic Code. The Louisiana Territory had been under French rule before the United States bought it in 1803. Although they have been revised over the years, the laws of Louisiana still bear their Napoleonic origins.

**English Common Law**

The most important influence on the American legal system is English law. The English system of common law is based on court decisions rather than on a legal code. The system involves analyzing how a previous judge applied a law and then applying it in the same manner.

Common law developed after 1066. At that time, conquerors from northern France, the Normans, took control of England. They set up a new royal family. The English kings began to send judges into the countryside. The judges held trials to carry out the law. Judges decided a new case by following precedent, or the rulings set forth earlier in similar cases.

Precedents are legal opinions that become part of the common law. In this way, laws became unified, or common to all regions.

The English blended Roman law and canon law into the body of common law. The law came to incorporate basic principles of individual rights. These principles include the idea that a person should be considered innocent until proven guilty.

Because it is based on the decisions of judges, common law is considered judge-made law. It was the main source of laws in England for hundreds of years. Over time, the English Parliament gained the power to create laws as well. Laws created by legislative bodies such as Parliament are known as statutes. Although statutes passed by Parliament came to play an increasing role in the legal system, common law remained the foundation of English law.

When English settlers came to North America in the 1600s and 1700s, they brought with them their traditions of common law and individual rights. Both became key parts of the basic laws of the new nation, the United States. They continue to play a key role in the U.S. judicial system today.

**Making Connections** How are Roman law, the Justinian Code, and the Napoleonic Code related?
Types of Laws

What types of laws exist in the American legal system?

If you watch the local television news or read the newspaper, you have probably seen stories about crimes. Criminal laws prohibit, or ban, such acts as theft or drunk driving. Other kinds of laws deal with disputes between people (or groups of people) or between the government and its citizens. These are known as civil laws. Another branch of laws is called public laws. These regulate how individuals deal with the government. They also regulate the organization and conduct of the government. You learned about public laws earlier.

Criminal and civil laws directly affect all Americans. These laws help maintain a peaceful and orderly society. People who break these laws are likely to find themselves in a courtroom.

Criminal Law

Criminal laws seek to protect public safety. Crimes are graded as either felonies or misdemeanors. Murder, robbery, and other serious crimes are felonies. Felonies have serious consequences for the victim and the criminal. Misdemeanors are lesser offenses, such as vandalism or stealing low-cost items. Typically, misdemeanors carry a fine or a jail sentence of less than one year.

Crimes against property are the most common type of crime. They do not involve force or the threat of force against the victim. These include crimes in which property is destroyed, damaged, or stolen. Stealing a bike, shoplifting, identity theft, and setting fires are examples of crimes against property.

Civil Law

Civil Laws do not concern society at large or criminal offenses. Rather, they are about disputes between people or groups. A civil case may be a disagreement over a broken contract. For example, suppose you order something from a mail-order catalog and charge it to your credit card. The mail-order company has, in effect, made a contract with you. If you do not receive the item, the company has broken the contract. You can take the company to court and get your money back.

A civil case brought before a court is called a lawsuit. This is a legal action to seek a remedy for harm that has been done. People who think they have been wronged take action by filing a lawsuit. The government cannot bring such a case.

Military Law

Military law is a set of statutes that apply to those serving in the armed forces of the United States. These laws also apply to civilians who work for the military. People subject to these statutes also have to follow the civil laws. Military laws concern such acts as disobeying or showing disrespect to superior officers, physically striking superior officers, desertion, and mutiny. People accused of serious offenses may end up at court-martial. This is a court, made up of officers, that tries those accused of breaking military laws.

Sources of Law

Laws that govern our lives and protect our rights come from many sources. These include

- the U.S. Constitution
- state constitutions
- statutes
- case law
- administrative agencies

The U.S. Constitution is the most important source of law in the United States. It is the supreme, or highest, law of the nation. Although each state has its own state constitution, no state or local law may conflict with the U.S. Constitution.

Constitutional law deals with the structure and meaning of constitutions. Constitutional cases decide the limits of the government’s power and the rights of the individual.

A statute is a law written by a legislative branch of government. The U.S. Congress, state legislatures, and local legislatures write thousands of statutes. Statutes regulate our behavior in many ways. They set speed limits, minimum wages, and rules for food inspection, to name a few. Statutes are also the source of many of the rights and privileges we take for granted, such as the right to a free public education.

Case Law
As you have read, judicial precedent plays an important role in our justice system. Often, especially in civil cases, a judge decides the outcome of a case. Judicial decisions carry the weight of law. Sometimes a case cannot be decided by existing statutes. In such situations, judges look to precedent to make a decision. Law established by judicial decision is called case law.

Administrative Law

Administrative law refers to the rules and regulations that the executive branch makes to carry out its job. The federal and state constitutions give legislatures the power to create administrative agencies. Many agency rules and regulations carry the weight of law. For example, the Federal Aviation Administration might issue an order requiring airlines to install a new type of safety device. Such a regulation would be an administrative law.

Identifying What is the most important source of law in the United States?

21st Century SKILLS
Compare and Contrast
Create a two-column graphic organizer to help you compare and contrast civil and criminal law.

Why It MATTERS
Student Government
Laws in our country are in place to maintain a peaceful and orderly society. Just like these laws, school rules ensure the safety and security of students.
Make a list of some of the rules in your school. Add a few rules that you think should also be on the list and explain why.

LESSON 1 REVIEW

Review Vocabulary

1. How are common law and precedent related?

LAFS.68.RH.2.4

2. What is a statute?

LAFS.68.RH.2.4

3. What is the difference between case law and administrative law?

LAFS.68.RH.2.4

Answer the Guiding Questions

4. Explaining What are some reasons that society needs laws?

SS.7.C.3.10

5. Making Connections What role did English common law have in the United States?

SS.7.C.3.10

6. Identifying What is the difference between civil and criminal laws?
Under the American system of justice, the U.S. Constitution protects the rights of individuals.

Basic Legal Rights

**What basic legal rights are provided to all Americans?**

In many American schools, school officials or police officers sometimes search students' lockers, book bags, and other belongings. They cannot, however, look through students' things whenever they wish. This is because you are protected from such unreasonable searches by the U.S. Constitution. The Constitution establishes this and many other important rights concerning individuals and the law.

**Protections Against Unlawful Imprisonment**

One of the most important protections, found in Article I, is the **writ of habeas corpus.** Habeas corpus (HAY-bee-uhhs KAWR-puhs) is a Latin phrase that roughly means "you should have the body." This odd phrase refers to the practice of bringing a prisoner ("the body") before a judge to justify his or her imprisonment. In the United States, a prisoner has the right to ask for a writ of habeas corpus. The writ is a court order. It requires a prison official to bring the prisoner before a judge. The judge will then decide whether the accused was lawfully imprisoned. Habeas corpus safeguards individuals against being kept in jail unlawfully.

Article I also forbids the government from issuing bills of attainder and ex post facto laws. A **bill of attainder** is a law that punishes a person accused of a crime without a trial or a fair hearing in court. An **ex post facto law** is a law that would allow a person to be punished for an action that was not against the law when it was committed. *Ex post facto* means "after the fact."

**Administration of Justice**

The Constitution also makes sure that the government respects our individual rights as it carries out the law. After the Civil War, the Fourteenth Amendment granted civil rights to formerly enslaved people. This amendment requires the states to treat all people equally under the law. It bans unequal treatment based on factors such as gender, race, and religion. Since the 1950s, the amendment has been used to challenge policies that discriminate against minorities and women.

The Fourteenth Amendment also strengthens the Fifth Amendment right of due process. **Due process** means that the government may not take our lives, liberty, or property without following legal procedure. For example, a person accused of a crime must have the opportunity for a trial by jury.

*Explaining* How does the Constitution protect you from unlawful imprisonment?

The Rights of the Accused

**What legal protections does the U.S. Constitution offer a citizen who is accused of a crime?**

Have you ever seen a movie in which police officers read suspects their rights? This reading gives suspects the protection of the U.S. Constitution.

The Constitution makes sure that people accused of crimes receive fair treatment. They must also have every chance to defend themselves. The rights it grants are based upon the **preumption** of innocence. A person is believed to be innocent until proven guilty in a court of law.

**Fourth Amendment Rights**

The Fourth Amendment protects citizens against "unreasonable searches and seizures." It gives Americans the right to be secure in their homes and property. No police officer or other government agent can search your home or take your property without probable cause, or a valid reason. If law officers want to search your home for evidence of a crime, they must first get a search warrant. A **search warrant** is a judge’s authorization for a search. It describes the exact place to be searched and what objects may be seized, or taken. Police must show the judge that they have probable cause to obtain a search warrant.

If police find evidence of a crime through an illegal search, the evidence may not be used in court. The 1961 Supreme Court case **Mapp v. Ohio** ruled that illegally obtained evidence will be excluded, or barred, from a state court trial. Such evidence had already been banned from a federal court trial. This rule is known as the **exclusionary rule.** In other words, evidence gained in a way that violates the Fourth Amendment may not be used in a trial.

**Fifth Amendment Rights**

The Fifth Amendment states that no person can be forced "to be a witness against himself" in a criminal case. It protects individuals against self-incrimination. This means that individuals do not have to answer questions that might show they were involved in a crime.

Before the 1960s, police often pressured suspects to confess to a crime before they saw a lawyer or appeared in court. This practice ended in 1966 with the Supreme Court case **Miranda v. Arizona.** The Court ruled that police must inform suspects of their right to refuse
to answer police questions.

The case began in 1963, when Arizona resident Ernesto Miranda was convicted, or found guilty, on charges of kidnapping and other serious crimes. His conviction was based on a confession he had made while in police custody. Miranda appealed his conviction. He claimed that he did not know that he had the right to remain silent and to have a lawyer with him while the police questioned him.

The Arizona Supreme Court rejected Miranda's appeal. Miranda next appealed his conviction to the U.S. Supreme Court. The nation's highest court agreed to hear his appeal. In a landmark 5–4 decision, the court ruled in Miranda's favor. They threw out his conviction and ordered that he be given a new trial. In the new trial, the prosecution would not be allowed to present Miranda's confession as evidence. Despite his new trial, Miranda was found guilty.

The Court's decision, however, had a far-reaching effect. It required police nationwide to follow certain new procedures. These procedures are designed to protect a suspect's Fifth Amendments rights. They are also designed to ensure that any confession the police obtain can be used in court. Before they can question a person in their custody, police must now issue what is known as a Miranda Warning. The Miranda Warning informs suspects that

- they have the right to remain silent
- anything they say may be used against them as evidence
- they have the right to an attorney; if they cannot afford one, the court will provide one

The Fifth Amendment also protects the accused from double jeopardy. Jeopardy means "to be put at risk of criminal penalty." A person who is tried for a crime and found not guilty may not be tried again for the same crime.

The Fifth Amendment entitles people accused of serious federal crimes to be brought before a grand jury. A grand jury is a group of 12 to 23 citizens that hears evidence presented by a prosecutor. It decides whether the government has enough evidence to bring a suspect to trial. If the grand jury finds enough evidence to justify a trial, it indicts, or formally charges, the suspect. In some states, a preliminary hearing is used instead of a grand jury indictment.

Sixth Amendment Rights

The Sixth Amendment grants the accused the right to be defended by a lawyer. In the 1963 Supreme Court case Gideon v. Wainwright, the Court said that the amendment means that if a defendant cannot afford a lawyer, the state must provide one. Before this ruling, the federal government provided lawyers for poor defendants in federal cases. Some states, though, provided a lawyer only for crimes punishable by death. As you have read, the Supreme Court in the Miranda decision felt that a lawyer was necessary to protect a suspect against self-incrimination.

The accused have the right to know the accusations against them. They can question witnesses against them in court. They have the right to be tried by an impartial, or fair, jury. The jury is made up of people who know no one in the case and who do not have an opinion about it. Jurors are usually chosen from the area where the crime was committed.

The Sixth Amendment also guarantees the right to a speedy and public trial. This protects defendants from being held in jail for an unreasonably long time. It also means that trials should not be closed to the public or the news media.

Today, many cases do not go to trial. Instead, the prosecutor and the defendant agree to a plea bargain. A plea bargain is an agreement in which the defendant pleads guilty to a reduced charge. In return, the defendant receives a lighter sentence than he or she would get if found guilty of the original charge.

Eight Amendment Rights

The Eighth Amendment outlaws excessive, or extreme, penalties. It forbids "cruel and unusual punishments." A punishment may not be out of proportion to the crime. For example, a life sentence for shoplifting would be excessive.

Some people believe that the death penalty is cruel and unusual. In 1972 the Supreme Court ruled in Furman v. Georgia that the death penalty as then carried out was unconstitutional. The justices did not say that the death penalty itself was cruel and unusual. Instead, they found that it was being applied unequally. It unfairly targeted African Americans and the poor. Such unequal application of the law is a violation of the Fourteenth Amendment. After the Furman decision, states revised their death penalty laws to meet the Court's guidelines.

The Eighth Amendment also prohibits excessive bail. Bail is a sum of money that serves as a security deposit. An arrested person can pay a court to be let out of jail while awaiting trial. When the defendant shows up for trial, the money is returned. In setting the amount of the bail, the judge looks at the seriousness of the crime, the criminal record of the accused, and the ability of the accused to pay bail.

**Explaining** Explain why illegally obtained evidence cannot be used in court.
murdering a white man in Pompano Beach. Marshall argued that the men’s confessions had been obtained through police pressure. The Court agreed. It ruled that the confessions could not be used as evidence and overturned the men’s convictions.

LESSON 2 REVIEW

Review Vocabulary

1. How does the Constitution’s Article I ban on *ex post facto laws* protect people?

LAFS.68.RH.2.4

2. What does the exclusionary rule prevent? How does the use of search warrants support this rule?

LAFS.68.RH.2.4

3. What is the purpose of the *Miranda Warning*?

LAFS.68.RH.2.4

4. What do courts expect an accused person will do in return for *bail*?

LAFS.68.RH.2.4

Answer the Guiding Questions


SS.7.C.2.5

6. *Finding the Main Idea* How do Fourth Amendment rights keep Americans secure in their homes?

SS.7.C.2.4

7. *ARGUMENT* Is the death penalty cruel and unusual punishment, and therefore a violation of the Eighth Amendment? Describe your reasoning in an essay.

SS.7.C.2.4