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Understanding of areas of law

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Understanding of areas of law

This book sheds light on the concepts of legal fields and explains the origin, history, branches, sources, principles, and theories of each legal field in a simple way. The book is written for young lawyers, students, teachers and all persons interested in the field of law.

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Introduction

Law is a tool that regulates the whole society. The law is a set of rules and regulations that govern the behavior of individuals and organizations within a society. It is designed to maintain order, protect individual rights, and promote justice. Laws can be created by various entities such as governments, courts, and international organizations. They can be written or unwritten, and they can be enforced through various means such as fines, imprisonment, or other penalties. There are different types of law, including criminal law, civil law, and administrative law. Criminal law deals with crimes such as murder, theft, and assault. Civil law deals with disputes between individuals or organizations, such as contract disputes or personal injury claims. Administrative law deals with the rules and regulations that govern government agencies and their actions. The law also includes various legal systems and traditions, such as common law, civil law, and religious law. These systems have different origins and approaches to interpreting and applying the law. Overall, the law plays a crucial role in regulating society and ensuring that individuals and organizations are held accountable for their actions. First of all, it is possible to strengthen knowledge by studying law in different areas. Before studying the fields of law, let's dwell on the question of why law is needed for society. Law is necessary for society because it provides a framework for resolving disputes, maintaining order, and protecting the rights of individuals and organizations. Without law, there would be chaos and confusion, and people would be left to settle disputes through violence or other means. The law also ensures that individuals and organizations are held accountable for their actions, and that justice is served in cases of wrongdoing. Additionally, the law provides a sense of security and predictability, allowing individuals and businesses to plan and make decisions with confidence. Overall, law plays a crucial role in promoting a stable and just society. Law refers to a set of rules and regulations that govern behavior in society. These rules are

enforced by the government and are designed to maintain order and protect the rights and interests of individuals and organizations. The law is a complex field that encompasses various areas, each with its own set of rules and regulations. Understanding the law is essential for navigating the legal system and protecting your rights and interests. Below, we present information on legal fields in an understandable form.

Civil law

Civil law is a legal system originating in mainland Europe and adopted in much of the world. The civil law system is intellectualized within the framework of Roman law, and with core principles codified into a referable system, which serves as the primary source of law. The civil law system is often contrasted with the common law system, which originated in medieval England. Whereas the civil law takes the form of legal codes, the law in common law systems historically came from uncodified case law that arose as a result of judicial decisions, recognising prior court decisions as legally-binding precedent.

Historically, a civil law is the group of legal ideas and systems ultimately derived from the Corpus Juris Civilis, but heavily overlain by Napoleonic, Germanic, canonical, feudal, and local practices, as well as doctrinal strains such as natural law, codification, and legal positivism.

Conceptually, civil law proceeds from abstractions, formulates general principles, and distinguishes substantive rules from procedural rules. It holds case law secondary and subordinate to statutory law. Civil law is often paired with the inquisitorial system, but the terms are not synonymous. There are key differences between a statute and a code. The most pronounced features of civil systems are their legal

codes, with concise and broadly applicable texts that typically avoid factually specific scenarios. The short articles in a civil law code deal in generalities and stand in contrast with ordinary statutes, which are often very long and very detailed.

Civil law is sometimes referred to as neo-Roman law, Romano-Germanic law or Continental law. The expression "civil law" is a translation of Latin jus civile, or "citizens' law", which was the late imperial term for its legal system, as opposed to the laws governing conquered peoples (jus gentium); hence, the Justinian Code's title Corpus Juris Civilis. Civil law practitioners, however, traditionally refer to their system in a broad sense as jus commune. The civil law system is the most widespread system of law in the world, in force in various forms in about 150 countries. It draws heavily from Roman law, arguably the most intricate known legal system before the modern era. In civil law legal systems where codes exist, the primary source of law is the law code, a systematic collection of interrelated articles, arranged by subject matter in some pre-specified order. Codes explain the principles of law, rights and entitlements, and how basic legal mechanisms work. The purpose of codification is to provide all citizens with manners and written collection of the laws which apply to them and which judges must follow. Law codes are laws enacted by a legislature, even if they are in general much longer than other laws. Rather than a compendium of statutes or catalog of case law, the code sets out general principles as rules of law. Other major legal systems in the world include common law, Islamic law, Halakha, and canon law.

Unlike common law systems, civil law jurisdictions deal with case law apart from any precedent value. Civil law courts generally decide cases using codal provisions on a case-by-case basis, without reference to other (even superior) judicial decisions. In actual practice, an increasing degree of precedent is creeping into civil law jurisprudence, and is generally seen in many nations' highest courts. While the typical French-speaking supreme court decision is short, concise and devoid of explanation or justification, in Germanic Europe, the supreme courts can and do tend to write more verbose opinions, supported by legal reasoning. A line of similar case decisions, while

not precedent perse, constitute jurisprudence constante. While civil law jurisdictions place little reliance on court decisions, they tend to generate a phenomenal number of reported legal opinions. However, this tends to be uncontrolled, since there is no statutory requirement that any case be reported or published in a law report, except for the councils of state and constitutional courts. Except for the highest courts, all publication of legal opinions are unofficial or commercial.

Civil law systems can be divided into:

- Those where Roman law in some form is still living law but there has been no attempt to create a civil code: Andorra and San Marino
- Those with uncodified mixed systems in which civil law is an academic source of authority but common law is also influential: Scotland and the Roman-Dutch law countries (South Africa, Zimbabwe, Sri Lanka and Guyana)
- Those with codified mixed systems in which civil law is the background law but has its public law heavily influenced by common law: Puerto Rico, Philippines, Quebec and Louisiana
- The Scandinavian legal systems, which are of a hybrid character since their background law is a mix of civil law and Scandinavian customary law and they have been partially codified. Likewise, the laws of the Channel Islands (Jersey, Guernsey, Alderney, Sark) mix Norman customary law and French civil law.
- Those with comprehensive codes that exceed a single civil code, such as France, Germany, Greece, Italy, Japan, Mexico, Russia, Spain: it is this last category that is normally regarded as typical of civil law systems, and is discussed in the rest of this article.

A prominent example of a civil law code is the Napoleonic Code (1804), named after French emperor Napoleon. The Napoleonic code comprises three components:

- The law of persons
- Property law, and
- Commercial law.

Another prominent civil code is the German Civil Code (Bürgerliches Gesetzbuch or BGB), which went into effect in the German empire in 1900. The German Civil Code is highly influential, inspiring the civil codes in countries such as Japan, South Korea and Switzerland (1907). It is divided into five parts:

1. The General Part, covering definitions and concepts, such as personal rights and legal personality;
2. Obligations, including concepts of debt, sale and contract;
3. Things (property law), including immovable and movable property;
4. Domestic relations (family law);
5. Succession (estate law).

Civil law takes as its major inspiration classical Roman law, and in particular Justinian law (6th century AD), and further expanded and developed in the late Middle Ages under the influence of canon law. The Justinian Code's doctrines provided a sophisticated model for contracts, rules of procedure, family law, wills, and a strong monarchical constitutional system. Roman law was received differently in different countries. In some it went into force wholesale by legislative act, i.e., it became positive law, whereas in others it was diffused into society by increasingly influential legal experts and scholars.

Roman law continued without interruption in the Byzantine Empire until its final fall in the 15th century. However, given the multiple incursions and occupations by Western European powers in the late medieval period, its laws became widely implemented in the West. It was first received in the Holy Roman Empire partly because it was considered imperial law, and it spread in Europe mainly because its students were the only trained lawyers. It became the basis of Scots law, though partly rivaled by received feudal Norman law. In England, it was taught academically at the universities of Oxford and Cambridge, but underlay only probate and matrimonial law insofar as both were inherited from canon law, and maritime law, adapted from lex mercatoria through the Bordeaux trade.

Consequently, neither of the two waves of Roman influence completely dominated in Europe. Roman law was a secondary source that was applied only when local customs and laws were found lacking on a certain subject. However, after a time, even local law came to be interpreted and evaluated primarily on the basis of Roman law, since it was a common European legal tradition of sorts, and thereby in turn influenced the main source of law. Eventually, the work of civilian glossators and commentators led to the development of a common body of law and writing about law, a common legal language, and a common method of teaching and scholarship, all termed the jus commune, or law common to Europe, which consolidated canon law and Roman law, and to some extent, feudal law.

An important common characteristic of civil law, aside from its origins in Roman law, is the comprehensive codification of received Roman law, i.e., its inclusion in civil codes. The earliest codification known is the Code of Hammurabi, written in ancient Babylon during the 18th century BC. However, this, and many of the codes that followed, were mainly lists of civil and criminal wrongs and their punishments. The codification typical of modern civilian systems did not first appear until the Justinian Code.

Germanic codes appeared over the 6th and 7th centuries to clearly delineate the law in force for Germanic privileged classes versus their Roman subjects and regulate those laws according to folk-right. Under feudal law, a number of private custumals were compiled, first under the Norman empire (Très ancien coutumier, 1200–1245), then elsewhere, to record the manorial—and later regional—customs, court decisions, and the legal principles underpinning them. Custumals were commissioned by lords who presided as lay judges over manorial courts in order to inform themselves about the court process. The use of custumals from influential towns soon became commonplace over large areas. In keeping with this, certain monarchs consolidated their kingdoms by attempting to compile custumals that would serve as the law of the land for their realms, as when Charles VII of France in 1454 commissioned an official custumal of Crown law. Two prominent examples include the Coutume de Paris (written 1510; revised 1580),

which served as the basis for the Napoleonic Code, and the Sachsenspiegel (c. 1220) of the bishoprics of Magdeburg and Halberstadt which was used in northern Germany, Poland, and the Low Countries.

The concept of codification was further developed during the 17th and 18th centuries AD, as an expression of both natural law and the ideas of the Enlightenment. The political ideals of that era was expressed by the concepts of democracy, protection of property and the rule of law. Those ideals required certainty of law, recorded, uniform law. So, the mix of Roman law and customary and local law gave way to law codification. Also, the notion of a nation-state implied recorded law that would be applicable to that state. There was also a reaction to law codification. The proponents of codification regarded it as conducive to certainty, unity and systematic recording of the law; whereas its opponents claimed that codification would result in the ossification of the law.

In the end, despite whatever resistance to codification, the codification of Continental European private laws moved forward. Codifications were completed by Denmark (1687), Sweden (1734), Prussia (1794), France (1804), and Austria (1811). The French codes were imported into areas conquered by Napoleon and later adopted with modifications in Poland (Duchy of Warsaw/Congress Poland; Kodeks cywilny 1806/1825), Louisiana (1807), Canton of Vaud (Switzerland; 1819), the Netherlands (1838), Serbia (1844), Italy and Romania (1865), Portugal (1867) and Spain (1888). Germany (1900), and Switzerland (1912) adopted their own codifications. These codifications were in turn imported into colonies at one time or another by most of these countries. The Swiss version was adopted in Brazil (1916) and Turkey (1926).

In theory, codes conceptualized in the civil law system should go beyond the compilation of discrete statutes, and instead state the law in a coherent, and comprehensive piece of legislation, sometimes introducing major reforms or starting anew. In this regard, civil law codes are more similar to the Restatements of the Law, the Uniform Commercial Code (which drew from European inspirations), and

the Model Penal Code in the United States. In the United States, U.S. states began codification with New York's 1850 Field Code (laying down civil procedure rules and inspired by European and Louisiana codes). Other examples include California's codes (1872), and the federal revised statutes (1874) and the current United States Code (1926), which are closer to compilations of statute than to systematic expositions of law akin to civil law codes.

For the legal system of Japan, beginning in the Meiji Era, European legal systems—especially the civil law of Germany and France—were the primary models for emulation. In China, the German Civil Code was introduced in the later years of the Qing dynasty, emulating Japan. In addition, it formed the basis of the law of the Republic of China, which remains in force in Taiwan. Furthermore, Korea, Taiwan, and Manchuria, former Japanese colonies, have been strongly influenced by the Japanese legal system.

Some authors consider civil law the foundation for socialist law used in communist countries, which in this view would basically be civil law with the addition of Marxist-Leninist ideals. Even if this is so, civil law was generally the legal system in place before the rise of socialist law, and some Eastern European countries reverted to the pre-socialist civil law following the fall of socialism, while others continued using a socialist legal systems.

The term civil law comes from English legal scholarship and is used in English-speaking countries to lump together all legal systems of the jus commune tradition. However, legal comparativists and economists promoting the legal origins theory prefer to subdivide civil law jurisdictions into distinct groups:

Napoleonic: France, Italy, the Netherlands, Spain, Chile, Belgium, Luxembourg, Portugal, Brazil, Mexico, other CPLP countries, Macau, former Portuguese colonies in India (Goa, Daman and Diu and Dadra and Nagar Haveli), Malta, Romania, and most of the Arab world (e.g. Algeria, Tunisia, Egypt, Lebanon, etc.) when Islamic law is not used. Former colonies include Quebec (Canada) and Louisiana (U.S.).

The Chilean Code is an original work of jurist and legislator Andrés Bello. Traditionally, the Napoleonic Code has been considered the

main source of inspiration for the Chilean Code. However, this is true only with regard to the law of obligations and the law of things (except for the principle of abstraction), while it is not true at all in the matters of family and successions. This code was integrally adopted by Ecuador, El Salvador, Nicaragua, Honduras, Colombia, Panama and Venezuela (although only for one year). According to other Latin American experts of its time, like Augusto Teixeira de Freitas (author of the "Esboço de um Código Civil para o Brasil") or Dalmacio Vélez Sársfield (main author of the Argentinian Civil Code), it is the most important legal accomplishments of Latin America.

Cameroon, a former colony of both France and United Kingdom, is bi-juridical/mixed

Germanistic: Germany, Austria, Switzerland, Latvia, Estonia, Roman-Dutch, Czech Republic, Russia, Lithuania, Croatia, Hungary, Serbia, Slovenia, Slovakia, Bosnia and Herzegovina, Greece, Ukraine, Turkey, Japan, South Korea, Taiwan and Thailand,

South Africa, a former colony of the Netherlands and later the United Kingdom, was heavily influenced by English colonists and therefore is bi-juridical/mixed.

Nordic: Denmark, Finland, Iceland, Norway, and Sweden

Chinese (except Hong Kong and Macau) is a mixture of civil law and socialist law. Presently, Chinese laws absorb some features of common law system, especially those related to commercial and international transactions. Hong Kong, although part of China, uses common law. The Basic Law of Hong Kong ensures the use and status of common law in Hong Kong. Macau continues to have a Portuguese legal system of civil law.

However, some of these legal systems are often and more correctly said to be of hybrid nature:

Napoleonic to Germanistic influence: The Italian civil code of 1942 replaced the original one of 1865, introducing German elements as a result of its World War II Axis alliance. This approach has been imitated by other countries, including Portugal (1966), the Netherlands (1992), Brazil (2002) and Argentina (2014). Most of them have

innovations introduced by the Italian legislation, including the unification of the civil and commercial codes.

Germanistic to Napoleonic influence: The Swiss civil code is considered mainly influenced by the German civil code and partly influenced by the French civil code. The civil code of the Republic of Turkey is a slightly modified version of the Swiss code, adopted in 1926 during Mustafa Kemal Atatürk's presidency as part of the government's progressive reforms and secularization.

Some systems of civil law do not fit neatly into this typology, however. Polish law developed as a mixture of French and German civil law in the 19th century. After the reunification of Poland in 1918, five legal systems (French Napoleonic Code from the Duchy of Warsaw, German BGB from Western Poland, Austrian ABGB from Southern Poland, Russian law from Eastern Poland, and Hungarian law from Spisz and Orawa) were merged into one. Similarly, Dutch law, while originally codified in the Napoleonic tradition, has been heavily altered under influence from the Dutch native tradition of Roman-Dutch law (still in effect in its former colonies). Scotland's civil law tradition borrowed heavily from Roman-Dutch law. Swiss law is categorized as Germanistic, but it has been heavily influenced by the Napoleonic tradition, with some indigenous elements added in as well.

Louisiana private law is primarily a Napoleonic system. Louisiana is the only U.S. state whose private civil law is based heavily on the French and Spanish codes, as opposed to English common law. In Louisiana, private law was codified into the Louisiana Civil Code. Current Louisiana law has converged considerably with American law, especially in its public law, judicial system, and adoption of the Uniform Commercial Code (except for Article 2) and certain legal devices of American common law. In fact, any innovation, whether private or public, has been decidedly common law in origin. Quebec law, whose private law is also of French civil origin, has developed along the same lines, adapting in the same way as Louisiana to the public law and judicial system of Canadian common law. By contrast, Quebec private law has innovated mainly from civil sources. To a lesser extent, other states formerly part of the Spanish Empire,

such as Texas and California, have also retained aspects of Spanish civil law into their legal system, for example community property. The legal system of Puerto Rico exhibits similarities to that of Louisiana: a civil code whose interpretations rely on both the civil and common law systems. Because Puerto Rico's Civil Code is based on the Spanish Civil Code of 1889, available jurisprudence has tended to rely on common law innovations due to the code's age and in many cases, obsolete nature.

Several Islamic countries have civil law systems that contain elements of Islamic law. As an example, the Egyptian Civil Code of 1810 that developed in the early 19th century—which remains in force in Egypt is the basis for the civil law in many countries of the Arab world where the civil law is used— is based on the Napoleonic Code, but its primary author Abd El-Razzak El-Sanhuri attempted to integrate principles and features of Islamic law in deference to the unique circumstances of Egyptian society.

Japanese Civil Code is considered a mixture drawing roughly 60% from the German civil code, roughly 30% from the French civil code, 8% from Japanese customary law, and 2% from English law. Regarding the latter, the code borrows the doctrine of ultra vires and the precedent of Hadley v Baxendale from English common law system.

Criminal law

Criminal law is the body of law that relates to crime. It prescribes conduct perceived as threatening, harmful, or otherwise endangering to the property, health, safety, and moral welfare of people inclusive of one's self. Most criminal law is established by statute, which is to say that the laws are enacted by a legislature. Criminal law includes the punishment and rehabilitation of people who violate such laws.

Criminal law varies according to jurisdiction, and differs from civil law, where emphasis is more on dispute resolution and victim compensation, rather than on punishment or rehabilitation. Criminal procedure is a formalized official activity that authenticates the fact of commission of a crime and authorizes punitive or rehabilitative treatment of the offender.

The first civilizations generally did not distinguish between civil law and criminal law. The first written codes of law were designed by the Sumerians. Around 2100–2050 BC Ur-Nammu, the Neo-Sumerian king of Ur, enacted written legal code whose text has been discovered: the Code of Ur-Nammu although an earlier code of Urukagina of Lagash (2380–2360 BC) is also known to have existed. Another important early code was the Code of Hammurabi, which formed the core of Babylonian law. Only fragments of the early criminal laws of Ancient Greece have survived, e.g. those of Solon and Draco.

In Roman law, Gaius's Commentaries on the Twelve Tables also conflated the civil and criminal aspects, treating theft (furtum) as a tort. Assault and violent robbery were analogized to trespass as to property. Breach of such laws created an obligation of law or vinculum juris discharged by payment of monetary compensation or damages. The criminal law of imperial Rome is collected in Books 47–48 of the Digest. After the revival of Roman law in the 12th century, sixth-century Roman classifications and jurisprudence provided the foundations of the distinction between criminal and civil law in European law from then until the present time.

The first signs of the modern distinction between crimes and civil matters emerged during the Norman Invasion of England. The special notion of criminal penalty, at least concerning Europe, arose in Spanish Late Scholasticism (see Alfonso de Castro), when the theological notion of God's penalty (poena aeterna) that was inflicted solely for a guilty mind, became transfused into canon law first and, finally, to secular criminal law. Codifiers and architects of Early Modern criminal law were the German jurist Benedikt Carpzov (1595-1666), professor of law in Leipzig, and two Italians, the Roman judge and lawyer

Prospero Farinacci (1544-1618) and the Piedmontese lawyer and statesman Giulio Claro (1525-1575).

The development of the state dispensing justice in a court clearly emerged in the eighteenth century when European countries began maintaining police services. From this point, criminal law formalized the mechanisms for enforcement, which allowed for its development as a discernible entity. Criminal law is distinctive for the uniquely serious, potential consequences or sanctions for failure to abide by its rules. Every crime is composed of criminal elements. Capital punishment may be imposed in some jurisdictions for the most serious crimes. Physical or corporal punishment may be imposed such as whipping or caning, although these punishments are prohibited in much of the world. Individuals may be incarcerated in prison or jail in a variety of conditions depending on the jurisdiction. Confinement may be solitary. Length of incarceration may vary from a day to life. Government supervision may be imposed, including house arrest, and convicts may be required to conform to particularized guidelines as part of a parole or probation regimen. Fines also may be imposed, seizing money or property from a person convicted of a crime. Five objectives are widely accepted for enforcement of the criminal law by punishments: retribution, deterrence, incapacitation, rehabilitation and restoration. Jurisdictions differ on the value to be placed on each.

- **Retribution** – Criminals ought to Be Punished in some way. This is the most widely seen goal. Criminals have taken improper advantage, or inflicted unfair detriment, upon others and consequently, the criminal law will put criminals at some unpleasant disadvantage to "balance the scales." People submit to the law to receive the right not to be murdered and if people contravene these laws, they surrender the rights granted to them by the law. Thus, one who murders may be executed himself. A related theory includes the idea of "righting the balance."
- **Deterrence** – Individual deterrence is aimed toward the specific offender. The aim is to impose a sufficient penalty to discourage the offender from criminal behavior. General deterrence aims at

society at large. By imposing a penalty on those who commit offenses, other individuals are discouraged from committing those offenses.

- **Incapacitation** – Designed simply to keep criminals away from society so that the public is protected from their misconduct. This is often achieved through prison sentences today. The death penalty or banishment have served the same purpose.
- **Rehabilitation** – Aims at transforming an offender into a valuable member of society. Its primary goal is to prevent further offense by convincing the offender that their conduct was wrong.
- **Restoration** – This is a victim-oriented theory of punishment. The goal is to repair, through state authority, any injury inflicted upon the victim by the offender. For example, one who embezzles will be required to repay the amount improperly acquired. Restoration is commonly combined with other main goals of criminal justice and is closely related to concepts in the civil law, i.e., returning the victim to his or her original position before the injury.

Many laws are enforced by threat of criminal punishment, and the range of the punishment varies with the jurisdiction. The scope of criminal law is too vast to catalog intelligently. Nevertheless, the following are some of the more typical aspects of criminal law.

Elements - The criminal law generally prohibits undesirable acts. Thus, proof of a crime requires proof of some act. Scholars label this the requirement of an actus reus or guilty act. Some crimes – particularly modern regulatory offenses – require no more, and they are known as strict liability offenses (E.g. Under the Road traffic Act 1988 it is a strict liability offence to drive a vehicle with an alcohol concentration above the prescribed limit). Nevertheless, because of the potentially severe consequences of criminal conviction, judges at common law also sought proof of an intent to do some bad thing, the mens rea or guilty mind. As to crimes of which both actus reus and mens rea are requirements, judges have concluded that the elements

must be present at precisely the same moment and it is not enough that they occurred sequentially at different times.

Actus reus - An English court room in 1886, with Lord Chief Justice Coleridge presiding Actus reus is Latin for "guilty act" and is the physical element of committing a crime. It may be accomplished by an action, by threat of action, or exceptionally, by an omission to act, which is a legal duty to act. For example, the act of A striking B might suffice, or a parent's failure to give food to a young child also may provide the actus reus for a crime. Where the actus reus is a failure to act, there must be a duty of care. A duty can arise through contract, a voluntary undertaking, a blood relation with whom one lives, and occasionally through one's official position. Duty also can arise from one's own creation of a dangerous situation. On the other hand, it was held in the U.K. that switching off the life support of someone in a persistent vegetative state is an omission to act and not criminal. Since discontinuation of power is not a voluntary act, not grossly negligent, and is in the patient's best interests, no crime takes place. In this case it was held that since a PVS patient could not give or withhold consent to medical treatment, it was for the doctors to decide whether treatment was in the patient's best interest. It was reasonable for them to conclude that treatment was not in the patient's best interest, and should therefore be stopped, when there was no prospect of improvement. It was never lawful to take active steps to cause or accelerate death, although in certain circumstances it was lawful to withhold life sustaining treatment, including feeding, without which the patient would die. An actus reus may be nullified by an absence of causation. For example, a crime involves harm to a person, the person's action must be the but for cause and proximate cause of the harm. If more than one cause exists (e.g. harm comes at the hands of more than one culprit) the act must have "more than a slight or trifling link" to the harm. Causation is not broken simply because a victim is particularly vulnerable. This is known as the thin skull rule. However, it may be broken by an intervening act (novus actus interveniens) of a third party, the victim's own conduct, or another unpredictable event. A mistake in medical

treatment typically will not sever the chain, unless the mistakes are in themselves "so potent in causing death."

Mens rea - is another Latin phrase, meaning "guilty mind". This is the mental element of the crime. A guilty mind means an intention to commit some wrongful act. Intention under criminal law is separate from a person's motive (although motive does not exist in Scots law). A lower threshold of mens rea is satisfied when a defendant recognizes an act is dangerous but decides to commit it anyway. This is recklessness. It is the mental state of mind of the person at the time the actus reus was committed. For instance, if C tears a gas meter from a wall to get the money inside, and knows this will let flammable gas escape into a neighbour's house, he could be liable for poisoning. Courts often consider whether the actor did recognize the danger, or alternatively ought to have recognized a risk. Of course, a requirement only that one ought to have recognized a danger (though he did not) is tantamount to erasing intent as a requirement. In this way, the importance of mens rea has been reduced in some areas of the criminal law but is obviously still an important part in the criminal system. Wrongfulness of intent also may vary the seriousness of an offense and possibly reduce the punishment but this is not always the case. A killing committed with specific intent to kill or with conscious recognition that death or serious bodily harm will result, would be murder, whereas a killing effected by reckless acts lacking such a consciousness could be manslaughter. On the other hand, it matters not who is actually harmed through a defendant's actions. The doctrine of transferred malice means, for instance, that if a man intends to strike a person with his belt, but the belt bounces off and hits another, mens rea is transferred from the intended target to the person who actually was struck. Note: The notion of transferred intent does not exist within Scots' Law. In Scotland, one would not be charged with assault due to transferred intent, but instead assault due to recklessness.

Strict liabilitycan - can be described as criminal or civil liability notwithstanding the lack of mens rea or intent by the defendant. Not all crimes require specific intent, and the threshold of culpability required may be reduced or demoted. For example, it might be sufficient to show

that a defendant acted negligently, rather than intentionally or recklessly. In offenses of absolute liability, other than the prohibited act, it may not be necessary to show the act was intentional. Generally, crimes must include an intentional act, and "intent" is an element that must be proved in order to find a crime occurred. The idea of a "strict liability crime" is an oxymoron. The few exceptions are not truly crimes at all – but are administrative regulations and civil penalties created by statute, such as crimes against the traffic or highway code.

Fatal offenses - A murder, defined broadly, is an unlawful killing. Unlawful killing is probably the act most frequently targeted by the criminal law. In many jurisdictions, the crime of murder is divided into various gradations of severity, e.g., murder in the first degree, based on intent. Malice is a required element of murder. Manslaughter (Culpable Homicide in Scotland) is a lesser variety of killing committed in the absence of malice, brought about by reasonable provocation, or diminished capacity. Involuntary manslaughter, where it is recognized, is a killing that lacks all but the most attenuated guilty intent, recklessness. Settled insanity is a possible defense.

Personal offense - Many criminal codes protect the physical integrity of the body. The crime of battery is traditionally understood as an unlawful touching, although this does not include everyday knocks and jolts to which people silently consent as the result of presence in a crowd. Creating a fear of imminent battery is an assault, and also may give rise to criminal liability. Non-consensual intercourse, or rape, is a particularly egregious form of battery.

Property often - is protected by the criminal law. Trespassing is unlawful entry onto the real property of another. Many criminal codes provide penalties for conversion, embezzlement, theft, all of which involve deprivations of the value of the property. Robbery is a theft by force. Fraud in the UK is a breach of the Fraud Act 2006 by false representation, by failure to disclose information or by abuse of position.

Participatory offenses - Some criminal codes criminalize association with a criminal venture or involvement in criminality that does not actually come to fruition. Some examples are aiding, abetting,

conspiracy, and attempt. However, in Scotland, the English concept of Aiding and Abetting is known as Art and Part Liability. See Glanville Williams, Textbook of Criminal Law, (London: Stevens & Sons, 1983); Glanville Williams, Criminal Law the General Part (London: Stevens & Sons, 1961).

Mala in se v. Mala prohibitaprohibita - While crimes are typically broken into degrees or classes to punish appropriately, all offenses can be divided into 'mala in se' and 'mala prohibita' laws. Both are Latin legal terms, mala in se meaning crimes that are thought to be inherently evil or morally wrong, and thus will be widely regarded as crimes regardless of jurisdiction. Mala in se offenses are felonies, property crimes, immoral acts and corrupt acts by public officials. Mala prohibita, on the other hand, refers to offenses that do not have wrongfulness associated with them. Parking in a restricted area, driving the wrong way down a one-way street, jaywalking or unlicensed fishing are examples of acts that are prohibited by statute, but without which are not considered wrong. Mala prohibita statutes are usually imposed strictly, as there does not need to be mens rea component for punishment under those offenses, just the act itself. For this reason, it can be argued that offenses that are mala prohibita are not really crimes at all.

Constitutional law

Constitutional law is a body of law which defines the role, powers, and structure of different entities within a state, namely, the executive, the parliament or legislature, and the judiciary; as well as the basic rights of citizens and, in federal countries such as the United States and Canada, the relationship between the central government and state, provincial, or territorial governments. Not all nation states have codified constitutions, though all such states have a jus commune, or

law of the land, that may consist of a variety of imperative and consensual rules. These may include customary law, conventions, statutory law, judge-made law, or international rules and norms. Constitutional law deals with the fundamental principles by which the government exercises its authority. In some instances, these principles grant specific powers to the government, such as the power to tax and spend for the welfare of the population. Other times, constitutional principles act to place limits on what the government can do, such as prohibiting the arrest of an individual without sufficient cause.

In most nations, such as the United States, India, and Singapore, constitutional law is based on the text of a document ratified at the time the nation came into being. Other constitutions, notably that of the United Kingdom, rely heavily on uncodified rules, as several legislative statutes and constitutional conventions, their status within constitutional law varies, and the terms of conventions are in some cases strongly contested.

Constitutional laws can be considered second order rule making or rules about making rules to exercise power. It governs the relationships between the judiciary, the legislature and the executive with the bodies under its authority. One of the key tasks of constitutions within this context is to indicate hierarchies and relationships of power. For example, in a unitary state, the constitution will vest ultimate authority in one central administration and legislature, and judiciary, though there is often a delegation of power or authority to local or municipal authorities. When a constitution establishes a federal state, it will identify the several levels of government coexisting with exclusive or shared areas of jurisdiction over lawmaking, application and enforcement. Some federal states, most notably the United States, have separate and parallel federal and state judiciaries, with each having its own hierarchy of courts with a supreme court for each state. India, on the other hand, has one judiciary divided into district courts, high courts, and the Supreme Court of India.

Human rights or civil liberties form a crucial part of a country's constitution and uphold the rights of the individual against the state. Most jurisdictions, like the United States and France, have a codified

constitution, with a bill of rights. A recent example is the Charter of Fundamental Rights of the European Union which was intended to be included in the Treaty establishing a Constitution for Europe, that failed to be ratified. Perhaps the most important example is the Universal Declaration of Human Rights under the UN Charter. These are intended to ensure basic political, social and economic standards that a nation state, or intergovernmental body is obliged to provide to its citizens but many do include its governments. Canada is another instance where a codified constitution. with the Canadian Charter of Rights and Freedoms, protects human rights for people under the nation's jurisdiction.

Some countries like the United Kingdom have no entrenched document setting out fundamental rights; in those jurisdictions the constitution is composed of statute, case law and convention. A case named Entick v. Carrington is a constitutional principle deriving from the common law. John Entick's house was searched and ransacked by Sherriff Carrington. Carrington argued that a warrant from a Government minister, the Earl of Halifax was valid authority, even though there was no statutory provision or court order for it. The court, led by Lord Camden stated that, "The great end, for which men entered into society, was to secure their property. That right is preserved sacred and incommunicable in all instances, where it has not been taken away or abridged by some public law for the good of the whole. By the laws of England, every invasion of private property, be it ever so minute, is a trespass... If no excuse can be found or produced, the silence of the books is an authority against the defendant, and the plaintiff must have judgment."

The common law and the civil law jurisdictions do not share the same constitutional law underpinnings. Common law nations, such as those in the Commonwealth as well as the United States, derive their legal systems from that of the United Kingdom, and as such place emphasis on judicial precedent, whereby consequential court rulings (especially those by higher courts) are a source of law. Civil law jurisdictions, on the other hand, place less emphasis on judicial review and only the parliament or legislature has the power to effect law. As a

result, the structure of the judiciary differs significantly between the two, with common law judiciaries being adversarial and civil law judiciaries being inquisitorial. Common law judicatures consequently separate the judiciary from the prosecution, thereby establishing the courts as completely independent from both the legislature and law enforcement. Human rights law in these countries is as a result, largely built on legal precedent in the courts' interpretation of constitutional law, whereas that of civil law countries is almost exclusively composed of codified law, constitutional or otherwise.

Another main function of constitutions may be to describe the procedure by which parliaments may legislate. For instance, special majorities may be required to alter the constitution. In bicameral legislatures, there may be a process laid out for second or third readings of bills before a new law can enter into force. Alternatively, there may further be requirements for maximum terms that a government can keep power before holding an election. Constitutional law is a major focus of legal studies and research. For example, most law students in the United States are required to take a class in Constitutional Law during their first year, and several law journals are devoted to the discussion of constitutional issues. The doctrine of the rule of law dictates that government must be conducted according to law. This was first established by British legal theorist A. V. Dicey.

Dicey identified three essential elements of the British Constitution which were indicative of the rule of law:

1. Absolute supremacy of regular law as opposed to the influence of arbitrary power;
2. Equality before the law;
3. The Constitution is a result of the ordinary law of the land.

Dicey's rule of law formula consists of three classic tenets. The first is that the regular law is supreme over arbitrary and discretionary powers. " man is punishable ... except for a distinct breach of the law established in the ordinary legal manner before the ordinary courts of the land. The second is that all men are to stand equal in the eyes of the law. "...no man is above the law...every man, whatever be his rank

or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals"

The third is that the general ideas and principles that the constitution supports arise directly from the judgements and precedents issued by the judiciary. "We may say that the constitution is pervaded by the rule of law on the ground that the general principles of the constitution... are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the courts".

Separation of powers is often regarded as a second limb functioning alongside the rule of law to curb the powers of the government. In many modern nation states, power is divided and vested into three branches of government: The legislature, the executive, and the judiciary are known as the horizontal separation of powers. The first and the second are harmonised in traditional Westminster system.

Vertical separation of powers is decentralisation. Election law is a subfield of constitutional law. It includes the rules governing the process of elections. These rules enable the translation of the will of the people into functioning democracies. Election law addresses issues who is entitled to vote, voter registration, ballot access, campaign finance and party funding, redistricting, apportionment, electronic voting and voting machines, accessibility of elections, election systems and formulas, vote counting, election disputes, referendums, and issues such as electoral fraud and electoral silence.

Administrative law

Administrative law is the division of law that governs the activities of executive branch agencies of government. Administrative law concerns executive branch rule making (executive branch rules are generally referred to as “regulations”), adjudication, and the enforcement of laws. Administrative law is considered a branch of

public law. Administrative law deals with the decision-making of such administrative units of government that are part of the executive branch in such areas as international trade, manufacturing, the environment, taxation, broadcasting, immigration, and transport. Administrative law expanded greatly during the 20th century, as legislative bodies worldwide created more government agencies to regulate the social, economic and political spheres of human interaction. Civil law countries often have specialized administrative courts that review these decisions.

Unlike most common law jurisdictions, most civil law jurisdictions have specialized courts or sections to deal with administrative cases that as a rule apply procedural rules that are specifically designed for such cases and distinct from those applied in private law proceedings, such as contract or tort claims.

In Brazil, administrative cases are typically heard either by the Federal Courts (in matters concerning the Federal Union) or by the Public Treasury divisions of State Courts (in matters concerning the States). In 1998, a constitutional reform, led by the government of President Fernando Henrique Cardoso, introduced regulatory agencies as a part of the executive branch. Since 1988, Brazilian administrative law has been strongly influenced by the judicial interpretations of the constitutional principles of public administration (art. 37 of Federal Constitution): legality, impersonality, publicity of administrative acts, morality and efficiency.

In Chile the President of the Republic exercises the administrative function, in collaboration with several Ministries or other authorities with ministerial rank. Each Ministry has one or more under-secretary that performs through public services the actual satisfaction of public needs. There is not a single specialized court to deal with actions against the Administrative entities, but instead there are several specialized courts and procedures of review. Administrative law in the China was virtually non-existent before the economic reform era initiated by Deng Xiaoping. Since the 1980s, China has constructed

a new legal framework for administrative law, establishing control mechanisms for overseeing the bureaucracy and disciplinary committees for the Chinese Communist Party. However, many have argued that the usefulness of these laws is vastly inadequate in terms of controlling government actions, largely because of institutional and systemic obstacles like a weak judiciary, poorly trained judges and lawyers, and corruption. In 1990, the Administrative Supervision Regulations and the Administrative Reconsideration Regulations were passed. The 1993 State Civil Servant Provisional Regulations changed the way government officials were selected and promoted, requiring that they pass exams and yearly appraisals, and introduced a rotation system. The three regulations have been amended and upgraded into laws. In 1994, the State Compensation Law was passed, followed by the Administrative Penalties Law in 1996. Administrative Compulsory Law was enforced in 2012. Administrative Litigation Law was amended in 2014. The General Administrative Procedure Law is under way.

In France, there is a dual jurisdictional system with the judiciary branch responsible for civil law and criminal law, and the administrative branch having jurisdiction when a government institution is involved. Most claims against the national or local governments as well as claims against private bodies providing public services are handled by administrative courts, which use the Conseil d'État (Council of State) as a court of last resort for both ordinary and special court. The main administrative courts are the tribunaux administratifs and papali courts are the cours administratives d'appel. Special administrative courts include the National Court of Asylum Right as well as military, medical and judicial disciplinary bodies. The French body of administrative law is called "droit administratif".

Over the course of their history, France's administrative courts have developed an extensive and coherent case law (jurisprudence constante) and legal doctrine (principes généraux du droit and principes fondamentaux reconnus par les lois de la République), often before similar concepts were enshrined in constitutional and legal texts. These principes include:

- Right to fair trial (droit à la défense), including for internal disciplinary bodies
- Right to challenge any administrative decision before an administrative court (droit au recours)
- Equal treatment of public service users (égalité devant le service public)
- Equal access to government employment (égalité d'accès à la fonction publique) without regard for politica.
- Freedom of association (liberté d'association)
- Right to entrepreneurship (Liberté du Commerce et de l'industrie, lit. freedom of commerce and industry)
- Right to legal certainty (Droit à la sécurité juridique)

French administrative law, which is the founder of Continental administrative law, has a strong influence on administrative laws in several other countries such as Belgium, Greece, Turkey and Tunisia.

In Germany administrative law is called "Verwaltungsrecht", which generally rules the relationship between authorities and the citizens. It establishes citizens' rights and obligations against the authorities. It is a part of the public law, which deals with the organization, the tasks and the acting of the public administration. It also contains rules, regulations, orders and decisions created by and related to administrative agencies, such as federal agencies, federal state authorities, urban administrations, but also admission offices and fiscal authorities etc. Administrative law in Germany follows three basic principles.

- Principle of the legality of the authority, which means that there is no acting against the law and no acting without a law.
- Principle of legal security, which includes a principle of legal certainty and the principle of non-retroactivity
- Principle of proportionality, which means that an act of an authority has to be suitable, necessary and appropriat

Administrative law in Germany can be divided into **general administrative law** and **special administrative law**. Administration procedural law (Verwaltungsgerichtsordnung [VwGO]), which was

enacted in 1960, rules the court procedures at the administrative court. The VwGO is divided into five parts, which are the constitution of the cour, action, remedies and retrial, costs and enforcement 15 and final clauses and temporary arrangements. In absence of a rule, the VwGO is supplemented by the code of civil procedure (Zivilprozessordnung [ZPO]) and the judicature act (Gerichtsverfassungsgesetz [GVG]). In addition to the regulation of the administrative procedure, the VwVfG also constitutes the legal protection in administrative law beyond the court procedure. § 68 VwVGO rules the preliminary proceeding, called "Vorverfahren" or "Widerspruchsverfahren", which is a stringent prerequisite for the administrative procedure, if an action for rescission or a writ of mandamus against an authority is aimed. The preliminary proceeding gives each citizen, feeling unlawfully mistreated by an authority, the possibility to object and to force a review of an administrative act without going to court. The prerequisites to open the public law remedy are listed in § 40 I VwGO. Therefore, it is necessary to have the existence of a conflict in public law without any constitutional aspects and no assignment to another jurisdiction. The social security code (Sozialgesetzbuch [SGB]) and the general fiscal law are less important for the administrative law. They supplement the VwVfG and the VwGO in the fields of taxation and social legislation, such as social welfare or financial support for students (BaFÖG) etc.

The special administrative law consists of various laws. Each special sector has its own law. The most important ones are the

- Town and Country Planning Code (Baugesetzbuch [BauGB])
- Federal Control of Pollution Act (Bundesimmissionsschutzgesetz [BImSchG])
- Industrial Code (Gewerbeordnung [GewO])
- Police Law (Polizei- und Ordnungsrecht)
- Statute Governing Restaurants (Gaststättenrecht [GastG]).

In Germany, the highest administrative court for most matters is the federal administrative court Bundesverwaltungsgericht. There are federal courts with special jurisdiction in the fields of social security law (Bundessozialgericht) and tax law (Bundesfinanzhof).

In Italy administrative law is known as Diritto amministrativo, a branch of public law whose rules govern the organization of the public administration and the activities of the pursuit of the public interest of the public administration and the relationship between this and the citizens. Its genesis is related to the principle of division of powers of the State. The administrative power, originally called "executive", is to organize resources and people whose function is devolved to achieve the public interest objectives as defined by the law. In the Netherlands administrative law provisions are usually contained in the various laws about public services and regulations. There is however also a single General Administrative Law Act (Algemene wet bestuursrecht or Awb), which is a rather good sample of procedural laws in Europe. It applies both to the making of administrative decisions and the judicial review of these decisions in courts. Another act about judicial procedures in general is the Algemene termijnenwet (General time provisions act), with general provisions about time schedules in procedures. On the basis of the Awb, citizens can oppose a decision (besluit) made by an administrative agency (bestuursorgaan) within the administration and apply for judicial review in courts if unsuccessful. Before going to court, citizens must usually first object to the decision with the administrative body who made it. This is called bezwaar. This procedure allows for the administrative body to correct possible mistakes themselves and is used to filter cases before going to court. Sometimes, instead of bezwaar, a different system is used called administratief beroep (administrative appeal). The difference with bezwaar is that administratief beroep is filed with a different administrative body, usually a higher ranking one, than the administrative body that made the primary decision. Administratief beroep is available only if the law on which the primary decision is based specifically provides for it. An example involves objecting to a traffic ticket with the district attorney (officier van justitie), after which the decision can be appealed in court. Unlike France or Germany, there are no special administrative courts of first instance in the Netherlands, but regular courts have an administrative "chamber" which specializes in administrative appeals. The courts of

appeal in administrative cases however are specialized depending on the case, but most administrative appeals end up in the judicial section of the Council of State (Raad van State). In Sweden, there is a system of administrative courts that considers only administrative law cases, and is completely separate from the system of general courts. This system has three tiers, with 12 county administrative courts (förvaltningsrätt) as the first tier, four administrative courts of appeal (kammarrätt) as the second tier, and the Supreme Administrative Court of Sweden (Högsta Förvaltningsdomstolen) as the third tier. Migration cases are handled in a two-tier system, effectively within the system general administrative courts. Three of the administrative courts serve as migration courts (migrationsdomstol) with the Administrative Court of Appeal in Stockholm serving as the Migration Court of Appeal (Migrationsöverdomstolen). In Taiwan the recently enacted Constitutional Procedure Act in 2019 (former Constitutional Interpretation Procedure Act, 1993), the **Justices of the Constitutional Court** of Judicial Yuan of Taiwan is in charge of judicial interpretation. As of 2019, this council has made 757 interpretations. In Turkey, the lawsuits against the acts and actions of the national or local governments and public bodies are handled by administrative courts which are the main administrative courts. The decisions of the administrative courts are checked by the Regional Administrative Courts and Council of State. Council of State as a court of last resort is exactly similar to Conseil d'État in France. Administrative law in Ukraine is a homogeneous legal substance isolated in a system of jurisprudence characterized as: (1) a branch of law; (2) a science; (3) a discipline. In common law countries Generally speaking, most countries that follow the principles of common law have developed procedures for judicial review that limit the reviewability of decisions made by administrative law bodies. Often these procedures are coupled with legislation or other common law doctrines that establish standards for proper rulemaking. Administrative law may also apply to review of decisions of so-called semi-public bodies, such as non-profit corporations, disciplinary boards, and other decision-making bodies that affect the legal rights of members of a particular group or entity.

While administrative decision-making bodies are often controlled by larger governmental units, their decisions could be reviewed by a court of general jurisdiction under some principle of judicial review based upon due process (United States) or fundamental justice (Canada). Judicial review of administrative decisions is different from an administrative appeal. When sitting in review of a decision, the Court will only look at the method in which the decision was arrived at, whereas in an administrative appeal the correctness of the decision itself will be examined, usually by a higher body in the agency. This difference is vital in appreciating administrative law in common law countries. The scope of judicial review may be limited to certain questions of fairness, or whether the administrative action is ultra vires. In terms of ultra vires actions in the broad sense, a reviewing court may set aside an administrative decision if it is unreasonable (under Canadian law, following the rejection of the "Patently Unreasonable" standard by the Supreme Court in Dunsmuir v New Brunswick), Wednesbury unreasonable (under British law), or arbitrary and capricious (under U.S. Administrative Procedure Act and New York State law). Administrative law, as laid down by the Supreme Court of India, has also recognized two more grounds of judicial review which were recognized but not applied by English Courts, namely legitimate expectation and proportionality. The powers to review administrative decisions are usually established by statute, but were originally developed from the royal prerogative writs of English law, such as the writ of mandamus and the writ of certiorari. In certain common law jurisdictions, such as India or Pakistan, the power to pass such writs is a Constitutionally guaranteed power. This power is seen as fundamental to the power of judicial review and an aspect of the independent judiciary. In the United States, many government agencies are organized under the executive branch of government, although a few are part of the judicial or legislative branches. In the federal government, the executive branch, led by the president, controls the federal executive departments, which are led by secretaries who are members of the United States Cabinet. The many independent agencies of the United States government created by statutes enacted

by Congress exist outside of the federal executive departments but are still part of the executive branch. Congress has also created some special judicial bodies known as Article I tribunals to handle some areas of administrative law. The actions of executive agencies and independent agencies are the main focus of American administrative law. In response to the rapid creation of new independent agencies in the early twentieth century (see discussion below), Congress enacted the Administrative Procedure Act (**APA**) in 1946. Many of the independent agencies operate as miniature versions[citation needed] of the tripartite federal government, with the authority to "legislate" (through rulemaking; see Federal Register and Code of Federal Regulations), "adjudicate" (through administrative hearings), and to "execute" administrative goals (through agency enforcement personnel). Because the United States Constitution sets no limits on this tripartite authority of administrative agencies, Congress enacted the APA to establish fair administrative law procedures to comply with the constitutional requirements of due process. Agency procedures are drawn from four sources of authority: the APA, organic statutes, agency rules, and informal agency practice. It is important to note, though, that agencies can only act within their congressionally delegated authority, and must comply with the requirements of the APA. At state level the first version of the Model State Administrative Procedure Act was promulgated and published in 1946 by the Uniform Law Commission (ULC), in which year the Federal Administrative Procedure Act was drafted. It is incorporated basic principles with only enough elaboration of detail to support essential features, therefore it is a "model", and not a "uniform", act. A model act is needed because state administrative law in the states is not uniform, and there are a variety of approaches used in the various states. Later it was modified in 1961 and 1981. The present version is the 2010 Model State Administrative Procedure Act (**MSAPA**) which maintains the continuity with earlier ones. The reason of the revision is that, in the past two decades state legislatures, dissatisfied with agency rule-making and adjudication, have enacted statutes that modify administrative adjudication and rule-making procedure. The American

Bar Association's official journal concerning administrative law is the Administrative Law Review, a quarterly publication that is managed and edited by students at the Washington College of Law. Stephen Breyer, a U.S. Supreme Court Justice from 1994 to 2022, divides the history of administrative law in the United States into six discrete periods, in his book, Administrative Law & Regulatory Policy (3d Ed., 1992):

6. English antecedents & the American experience to 1875
7. 1875 – 1930: the rise of regulation & the traditional model of administrative law
8. 1930 – 1945: the New Deal
9. 1945 – 1965: the Administrative Procedure Act & the maturation of the traditional model of administrative law
10. 1965 – 1985: critique and transformation of the administrative process
11. 1985 – ?: retreat or consolidation

The agricultural sector is one of the most heavily regulated sectors in the U.S. economy, as it is regulated in various ways at the international, federal, state, and local levels. Consequently, administrative law is a significant component of the discipline of agricultural law. The United States Department of Agriculture and its myriad agencies such as the Agricultural Marketing Service are the primary sources of regulatory activity, although other administrative bodies such as the Environmental Protection Agency play a significant regulatory role as well.

International law

International law (also known as public international law and the law of nations) is the set of rules, norms, and standards generally recognised as binding between states. It establishes normative

guidelines and a common conceptual framework for states across a broad range of domains, including war, diplomacy, economic relations, and human rights. Scholars distinguish between international legal institutions on the basis of their obligations (the extent to which states are bound to the rules), precision (the extent to which the rules are unambiguous), and delegation (the extent to which third parties have authority to interpret, apply and make rules).

The sources of international law include international custom (general state practice accepted as law), treaties, and general principles of law recognised by most national legal systems. Although international law may also be reflected in international comity — the practices adopted by states to maintain good relations and mutual recognition — such traditions are not legally binding. International law differs from state-based legal systems in that it is primarily, though not exclusively, applicable to states, rather than to individuals, and operates largely through consent, since there is no universally accepted authority to enforce it upon sovereign states. States may choose to not abide by international law, and even to breach a treaty but such violations, particularly of customary international law and peremptory norms, can be met with disapproval by others and in some cases coercive action ranging from diplomatic and economic sanctions to war. The relationship and interaction between a national legal system and international law is complex and variable. National law may become international law when treaties permit national jurisdiction to supranational tribunals such as the European Court of Human Rights or the International Criminal Court. Treaties such as the Geneva Conventions require national law to conform to treaty provisions. National laws or constitutions may also provide for the implementation or integration of international legal obligations into domestic law.

The modern term "international law" was originally coined by Jeremy Bentham in his 1789 book Introduction to the Principles of Morals and Legislation to replace the older law of nations, a direct translation of the late medieval concepts of ius gentium, used by Hugo Grotius, and droits des gens, used by Emer de Vattel. The definition of international law has been debated; Bentham referred specifically to

relationships between states which has been criticised for its narrow scope. Lassa Oppenheim defined it in his treatise as "a law between sovereign and equal states based on the common consent of these states" and this definition has been largely adopted by international legal scholars. There is a distinction between public and private international law; the latter is concerned with whether national courts can claim jurisdiction over cases with a foreign element and the application of foreign judgments in domestic law, whereas public international law covers rules with an international origin. The difference between the two areas of law has been debated as scholars disagree about the nature of their relationship. Joseph Story, who originated the term "private international law", emphasised that it must be governed by the principles of public international law but other academics view them as separate bodies of law. Another term, transnational law, is sometimes used to refer to a body of both national and international rules that transcend the nation state, although some academics emphasise that it is distinct from either type of law. It was defined by Philip Jessup as "all law which regulates actions or events that transcend national frontiers".

A more recent concept is supranational law, which was described in a 1969 paper as "relatively new word in the vocabulary of politics". Systems of supranational law arise when nations explicitly cede their right to make decisions to this system's judiciary and legislature, which then have the right to make laws that are directly effective in each member state. This has been described as "a level of international integration beyond mere intergovernmentalism yet still short of a federal system". The most common example of a supranatural system is the European Union. The origins of international law can be traced back to antiquity. Among the earliest recorded examples are peace treaties between the Mesopotamian city-states of Lagash and Umma (approximately 3100 BCE), and an agreement between the Egyptian pharaoh, Ramesses II, and the Hittite king, Ḫattušili III, concluded in 1279 BCE. Interstate pacts and agreements were negotiated and agreed by polities across the world, from the eastern Mediterranean to East Asia. In Ancient Greece,

many early peace treaties were negotiated between its city-states and, occasionally, with neighbouring states. The Roman Empire established an early conceptual framework for international law, jus gentium, which governed the status of foreigners living in Rome and relations between foreigners and Roman citizens. Adopting the Greek concept of natural law, the Romans conceived of jus gentium as being universal. However, in contrast to modern international law, the Roman law of nations applied to relations with and between foreign individuals rather than among political units such as states.

Beginning with the Spring and Autumn period of the eighth century BCE, China was divided into numerous states that were often at war with each other. Rules for diplomacy and treaty-making emerged, including notions regarding just grounds for war, the rights of neutral parties, and the consolidation and partition of states; these concepts were sometimes applied to relations with barbarians along China's western periphery beyond the Central Plains. The subsequent Warring States period saw the development of two major schools of thought, Confucianism and Legalism, both of which held that the domestic and international legal spheres were closely interlinked, and sought to establish competing normative principles to guide foreign relations. Similarly, the Indian subcontinent was divided into various states, which over time developed rules of neutrality, treaty law, and international conduct, and established both temporary and permanent embassies.

Following the collapse of the western Roman Empire in the fifth century CE, Europe fragmented into numerous often-warring states for much of the next five centuries. Political power was dispersed across a range of entities, including the Church, mercantile city-states, and kingdoms, most of which had overlapping and ever-changing jurisdictions. As in China and India, these divisions prompted the development of rules aimed at providing stable and predictable relations. Early examples include canon law, which governed ecclesiastical institutions and clergy throughout Europe; the lex mercatoria ("merchant law"), which concerned trade and commerce; and various codes of maritime law, such as the Rolls of

Oléron—which drew from the Byzantine Rhodian Sea Law—and the Laws of Wisby, enacted among the commercial Hanseatic League of northern Europe and the Baltic region.

In the Islamic world, Muhammad al-Shaybani published Al-Siyar Al-Kabīr in the eighth century, which served as a fundamental reference work for siyar, a subset of Sharia law, which governed foreign relations. This was based on the division of the world into three categories: the dar al-Islam, where Islamic law prevailed; the dar al-sulh, non-Islamic realms that concluded an armistice with a Muslim government; and the dar al-harb, non-Islamic lands which were contested through jihad. Islamic legal principles concerning military conduct served as precursors to modern international humanitarian law and institutionalised limitations on military conduct, including guidelines for commencing war, distinguishing between civilians and combatants and caring for the sick and wounded.

During the European Middle Ages, international law was concerned primarily with the purpose and legitimacy of war, seeking to determine what constituted "just war". The Greco-Roman concept of natural law was combined with religious principles by Jewish philosopher Maimonides (1135–1204) and Christian theologian Thomas Aquinas (1225–1274) to create the new discipline of the "law of nations", which unlike its eponymous Roman predecessor, applied natural law to relations between states. In Islam, a similar framework was developed wherein the law of nations was derived, in part, from the principles and rules set forth in treaties with non-Muslims.

The 15th century witnessed a confluence of factors that contributed to an accelerated development of international law. Italian jurist Bartolus da Saxoferrato (1313–1357) was considered the founder of private international law. Another Italian jurist, Baldus de Ubaldis (1327–1400), provided commentaries and compilations of Roman, ecclesiastical, and feudal law, creating an organised source of law that could be referenced by different nations. Alberico Gentili (1552–1608) is considered a founder of international law, authoring one of the earliest works on the subject, De Legationibus

Libri Tres, in 1585. He wrote several more books on various issues in international law, notably De jure belli libri tres, which provided comprehensive commentary on the laws of war and treaties.[citation needed] Francisco de Vitoria (1486–1546), who was concerned with the treatment of indigenous peoples by Spain, invoked the law of nations as a basis for their innate dignity and rights, articulating an early version of sovereign equality between peoples. Francisco Suárez (1548–1617) emphasised that international law was founded upon natural law and human positive law.

Dutch jurist Hugo Grotius (1583–1645) is widely regarded as the father of international law,[37] being one of the first scholars to articulate an international order that consists of a "society of states" governed not by force or warfare but by actual laws, mutual agreements, and customs.[citation needed] Grotius secularised international law;[38] his 1625 work, De Jure Belli ac Pacis, laid down a system of principles of natural law that bind all nations regardless of local custom or law.[37] He inspired two nascent schools of international law, the naturalists and the positivists.[39] In the former camp was German jurist Samuel von Pufendorf (1632–1694), who stressed the supremacy of the law of nature over states.[40][41] His 1672 work, Of the Law of Nature And Nations, expanded on the theories of Grotius and grounded natural law to reason and the secular world, asserting that it regulated only external acts of states.[40] Pufendorf challenged the Hobbesian notion that the state of nature was one of war and conflict, arguing that the natural state of the world is actually peaceful but weak and uncertain without adherence to the law of nations. The actions of a state consist of nothing more than the sum of the individuals within that state, thereby requiring the state to apply a fundamental law of reason, which is the basis of natural law. He was among the earliest scholars to expand international law beyond European Christian nations, advocating for its application and recognition among all peoples on the basis of shared humanity.[citation needed. In contrast, positivist writers, such as Richard Zouche (1590–1661) in England and Cornelis van Bynkershoek (1673–1743) in the Netherlands, argued that international law should derive from the actual

practice of states rather than Christian or Greco-Roman sources. The study of international law shifted away from its core concern on the law of war and towards the domains such as the law of the sea and commercial treaties. The positivist school grew more popular as it reflected accepted views of state sovereignty and was consistent with the empiricist approach to philosophy that was then gaining acceptance in Europe. Since international law exists in a legal environment without an external power able and willing to compel compliance with international norms, enforcement of international law is different from in the domestic context. In many cases, enforcement takes on Coasian characteristics, where the norm is self-enforcing. In other cases, defection from the norm can pose a real risk, particularly if the international environment is changing. When this happens, and if enough states (or enough powerful states) continually ignore a particular aspect of international law, the norm may actually change according to concepts of customary international law. Prior to World War I, unrestricted submarine warfare was considered a violation of international law and ostensibly the casus belli for the United States' declaration of war against Germany. By World War II, however, the practice was so widespread that during the Nuremberg trials, the charges against German Admiral Karl Dönitz for ordering unrestricted submarine warfare were dropped, notwithstanding that the activity constituted a clear violation of the Second London Naval Treaty of 1936. Though states (or increasingly, international organizations) are usually the only ones with standing to address a violation of international law, some treaties, such as the International Covenant on Civil and Political Rights have an optional protocol that allows individuals who have had their rights violated by member states to petition the international Human Rights Committee.

International legal theory comprises a variety of theoretical and methodological approaches used to explain and analyse the content, formation and effectiveness of international law and institutions and to suggest improvements. Some approaches center on the question of compliance: why states follow international norms in the absence of a coercive power that ensures compliance. Other approaches focus on the

problem of the formation of international rules: why states voluntarily adopt international law norms, that limit their freedom of action, in the absence of a world legislature; while other perspectives are policy oriented: they elaborate theoretical frameworks and instruments to criticize the existing norms and to make suggestions on how to improve them. Some of these approaches are based on domestic legal theory, some are interdisciplinary, and others have been developed expressly to analyse international law. Classical approaches to International legal theory are the Natural law, the Eclectic and the Legal positivism schools of thought.

The natural law approach argues that international norms should be based on axiomatic truths. The 16th-century natural law writer, Francisco de Vitoria, a professor of theology at the University of Salamanca, examined the questions of the just war, the Spanish authority in the Americas, and the rights of the Native American peoples. In 1625 Hugo Grotius argued that nations as well as persons ought to be governed by universal principle based on morality and divine justice while the relations among polities ought to be governed by the law of peoples, the jus gentium, established by the consent of the community of nations on the basis of the principle of pacta sunt servanda, that is, on the basis of the observance of commitments. On his part, Emmerich de Vattel argued instead for the equality of states as articulated by 18th-century natural law and suggested that the law of nations was composed of custom and law on the one hand, and natural law on the other. During the 17th century, the basic tenets of the Grotian or eclectic school, especially the doctrines of legal equality, territorial sovereignty, and independence of states, became the fundamental principles of the European political and legal system and were enshrined in the 1648 Peace of Westphalia.

The early positivist school emphasized the importance of custom and treaties as sources of international law. In the 16th-century, Alberico Gentili used historical examples to posit that positive law (jus voluntarium) was determined by general consent. Cornelius van Bynkershoek asserted that the bases of international law were customs and treaties commonly consented to by various states, while John Jacob

Moser emphasized the importance of state practice in international law. The positivism school narrowed the range of international practice that might qualify as law, favouring rationality over morality and ethics. The 1815 Congress of Vienna marked the formal recognition of the political and international legal system based on the conditions of Europe.

Modern legal positivists consider international law as a unified system of rules that emanates from the states' will. International law, as it is, is an "objective" reality that needs to be distinguished from law "as it should be". Classic positivism demands rigorous tests for legal validity and it deems irrelevant all extralegal arguments.

Environmental law

Environmental laws are laws that protect the environment. This includes environmental regulations; laws governing management of natural resources, such as forests, minerals, or fisheries; and related topics such as environmental impact assessments. Early examples of laws designed to preserve the environment for its own sake or for human enjoyment are found throughout history. In the common law, the primary protection was found in the law of nuisance, but this only allowed for private actions for damages or injunctions if there was harm to land. Thus, smells emanating from pigsties, strict liability against dumping rubbish, or damage from exploding dams. Private enforcement, however, was limited and found to be woefully inadequate to deal with major environmental threats, particularly threats to common resources. During the "Great Stink" of 1858, the dumping of sewerage into the River Thames began to smell so ghastly in the summer heat that Parliament had to be evacuated. Ironically, the Metropolitan Commission of Sewers Act 1848 had allowed the Metropolitan Commission for Sewers to close cesspits around the city

in an attempt to "clean up" but this simply led people to pollute the river. In 19 days, Parliament passed a further Act to build the London sewerage system. London also suffered from terrible air pollution, and this culminated in the "Great Smog" of 1952, which in turn triggered its own legislative response: the Clean Air Act 1956. The basic regulatory structure was to set limits on emissions for households and businesses (particularly burning of coal) while an inspectorate would enforce compliance. Environmental law has developed in response to emerging awareness of and concern over issues impacting the entire world. While laws have developed piecemeal and for a variety of reasons, some effort has gone into identifying key concepts and guiding principles common to environmental law as a whole. The principles discussed below are not an exhaustive list and are not universally recognized or accepted. Nonetheless, they represent important principles for the understanding of environmental law around the world.

Environmental law principles:

Sustainable development-Defined by the United Nations Environment Programme (UNEP) as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs," sustainable development may be considered together with the concepts of "integration" (development cannot be considered in isolation from sustainability) and "interdependence" (social and economic development, and environmental protection, are interdependent).[18] Laws mandating environmental impact assessment and requiring or encouraging development to minimize environmental impacts may be assessed against this principle. The modern concept of sustainable development was a topic of discussion at the 1972 United Nations Conference on the Human Environment (Stockholm Conference), and the driving force behind the 1983 World Commission on Environment and Development (WCED, or Bruntland Commission). In 1992, the first UN Earth Summit resulted in the Rio Declaration, Principle 3 of which reads: "The right to development must be fulfilled so as to

equitably meet developmental and environmental needs of present and."

Equity-Defined by UNEP to include intergenerational equity – "the right of future generations to enjoy a fair level of the common patrimony" – and intragenerational equity – "the right of all people within the current generation to fair access to the current generation's entitlement to the Earth's natural resources" – environmental equity considers the present generation under an obligation to account for long-term impacts of activities, and to act to sustain the global environment and resource base for future generations. Pollution control and resource management laws may be assessed against this principle.

Transboundary responsibility-Defined in the international law context as an obligation to protect one's own environment, and to prevent damage to neighboring environments, UNEP considers transboundary responsibility at the international level as a potential limitation on the rights of the sovereign state. Laws that act to limit externalities imposed upon human health and the environment may be assessed against this principle.

Public participation and transparency-Identified as essential conditions for "accountable governments,... industrial concerns," and organizations generally, public participation and transparency are presented by UNEP as requiring "effective protection of the human right to hold and express opinions and to seek, receive and impart ideas,... a right of access to appropriate, comprehensible and timely information held by governments and industrial concerns on economic and social policies regarding the sustainable use of natural resources and the protection of the environment, without imposing undue financial burdens upon the applicants and with adequate protection of privacy and business confidentiality," and "effective judicial and administrative proceedings." These principles are present in environmental impact assessment, laws requiring publication and access to relevant environmental data, and administrative procedure.

Precautionary principle-One of the most commonly encountered and controversial principles of environmental law, the Rio Declaration formulated the precautionary principle as follows:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. The principle may play a role in any debate over the need for environmental regulation.

Prevention-The concept of prevention ... can perhaps better be considered an overarching aim that gives rise to a multitude of legal mechanisms, including prior assessment of environmental harm, licensing or authorization that set out the conditions for operation and the consequences for violation of the conditions, as well as the adoption of strategies and policies. Emission limits and other product or process standards, the use of best available techniques and similar techniques can all be seen as applications of the concept of prevention.

Polluter pays principle-The polluter pays principle stands for the idea that "the environmental costs of economic activities, including the cost of preventing potential harm, should be internalized rather than imposed upon society at large." All issues related to responsibility for cost for environmental remediation and compliance with pollution control regulations involve this principle.

International environmental law:

Global and regional environmental issues are increasingly the subject of international law. Debates over environmental concerns implicate core principles of international law and have been the subject of numerous international agreements and declarations. Customary international law is an important source of international environmental law. These are the norms and rules that countries follow as a matter of custom and they are so prevalent that they bind all states in the world. When a principle becomes customary law is not clear cut and many arguments are put forward by states not wishing to be bound. Examples of customary international law relevant to the environment include the duty to warn other states promptly about icons of an environmental nature and environmental damages to which another state or states may be exposed, and Principle 21 of the Stockholm Declaration ('good neighbourliness' or sic utere).

Given that customary international law is not static but ever evolving and the continued increase of air pollution (carbon dioxide) causing climate changes, has led to discussions on whether basic customary principles of international law, such as the jus cogens (peremptory norms) and erga omnes principles could be applicable for enforcing international environmental law. Numerous legally binding international agreements encompass a wide variety of issue-areas, from terrestrial, marine and atmospheric pollution through to wildlife and biodiversity protection. International environmental agreements are generally multilateral (or sometimes bilateral) treaties (a.k.a. convention, agreement, protocol, etc.). Protocols are subsidiary agreements built from a primary treaty. They exist in many areas of international law but are especially useful in the environmental field, where they may be used to regularly incorporate recent scientific knowledge. They also permit countries to reach an agreement on a framework that would be contentious if every detail were to be agreed upon in advance. The most widely known protocol in international environmental law is the Kyoto Protocol, which followed from the United Nations Framework Convention on Climate Change.

While the bodies that proposed, argued, agreed upon, and ultimately adopted existing international agreements vary according to each agreement, certain conferences, including 1972's United Nations Conference on the Human Environment, 1983's World Commission on Environment and Development, 1992's United Nations Conference on Environment and Development, and 2002's World Summit on Sustainable Development have been particularly important. Multilateral environmental agreements sometimes create an International Organization, Institution or Body responsible for implementing the agreement. Major examples are the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the International Union for Conservation of Nature (IUCN). International environmental law also includes the opinions of international courts and tribunals. While there are few and they have limited authority, the decisions carry much weight with legal commentators and are quite influential on the development of international environmental law. One of the biggest challenges in international decisions is to determine an adequate compensation for

environmental damag. The courts include the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS), the European Court of Justice, European Court of Human Rights and other regional treaty tribunal.

Africa-According to the International Network for Environmental Compliance and Enforcement (INECE), the major environmental issues in Africa are "drought and flooding, air pollution, deforestation, loss of biodiversity, freshwater availability, degradation of soil and vegetation, and widespread poverty." The U.S. Environmental Protection Agency (EPA) is focused on the "growing urban and industrial pollution, water quality, electronic waste and indoor air from cookstoves." They hope to provide enough aid on concerns regarding pollution before their impacts contaminate the African environment as well as the global environment. By doing so, they intend to "protect human health, particularly vulnerable populations such as children and the poor." In order to accomplish these goals in Africa, EPA programs are focused on strengthening the ability to enforce environmental laws as well as public compliance to them. Other programs work on developing stronger environmental laws, regulations, and standards.

Asia-The Asian Environmental Compliance and Enforcement Network (AECEN) is an agreement between 16 Asian countries dedicated to improving cooperation with environmental laws in Asia. These countries include Cambodia, China, Indonesia, India, Maldives, Japan, Korea, Malaysia, Nepal, Philippines, Pakistan, Singapore, Sri Lanka, Thailand, Vietnam, and Lao PDR.

European Union-The European Union issues secondary legislation on environmental issues that are valid throughout the EU (so called regulations) and many directives that must be implemented into national legislation from the 27 member states (national states). Examples are the Regulation (EC) No. 338/97 on the implementation of CITES; or the Natura 2000 network the centerpiece for nature & biodiversity policy, encompassing the bird Directive (79/409/EEC/ changed to 2009/147/EC) and the habitats directive (92/43/EEC). Which are made up of multiple SACs (Special Areas of Conservation, linked to the habitats directive) & SPAs (Special Protected Areas, linked to the bird directive), throughout Europe.

EU legislation is ruled in Article 249 Treaty for the Functioning of the European Union (TFEU). Topics for common EU legislation are:

- Climate change
- Air pollution
- Water protection and management
- Waste management
- Soil protection
- Protection of nature, species and biodiversity
- Noise pollution
- Cooperation for the environment with third countries (other than EU member states)
- Civil protection

Middle East-Environmental law is rapidly growing in the Middle East. The U.S. Environmental Protection Agency is working with countries in the Middle East to improve "environmental governance, water pollution and water security, clean fuels and vehicles, public participation, and pollution prevention."

Oceania-The main concerns about environmental issues in Oceania are "illegal releases of air and water pollutants, illegal logging/timber trade, illegal shipment of hazardous wastes, including e-waste and ships slated for destruction, and insufficient institutional structure/lack of enforcement capacity". The Secretariat of the Pacific Regional Environmental Programme (SPREP) is an international organization between Australia, the Cook Islands, FMS, Fiji, France, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, PNG, Samoa, Solomon Island, Tonga, Tuvalu, USA, and Vanuatu. The SPREP was established in order to provide assistance in improving and protecting the environment as well as assure sustainable development for future generations.

Australia-Commonwealth v Tasmania (1983), also known as the "Tasmanian Dam Case", was a highly significant case in Australian environmental law. The Environment Protection and Biodiversity Conservation Act 1999 is the centrepiece of environmental legislation in Australia. It sets up the "legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places" and focuses on protecting world

heritage properties, national heritage properties, wetlands of international importance, nationally threatened species and ecological communities, migratory species, Commonwealth marine areas, Great Barrier Reef Marine Park, and the environment surrounding nuclear activities. However, it has been subject to numerous reviews examining its shortcomings, the latest taking place in mid-2020. The interim report of this review concluded that the laws created to protect unique species and habitats are ineffective.

Brazil-The Brazilian government created the Ministry of Environment in 1992 in order to develop better strategies for protecting the environment, using natural resources sustainably, and enforcing public environmental policies. The Ministry of Environment has authority over policies involving environment, water resources, preservation, and environmental programs involving the Amazon.

Canada-The Department of the Environment Act establishes the Department of the Environment in the Canadian government as well as the position Minister of the Environment. Their duties include "the preservation and enhancement of the quality of the natural environment, including water, air and soil quality; renewable resources, including migratory birds and other non-domestic flora and fauna; water; meteorology;" The Environmental Protection Act is the main piece of Canadian environmental legislation that was put into place March 31, 2000. The Act focuses on "respecting pollution prevention and the protection of the environment and human health in order to contribute to sustainable development." Other principle federal statutes include the Canadian Environmental Assessment Act, and the Species at Risk Act. When provincial and federal legislation are in conflict federal legislation takes precedence, that being said individual provinces can have their own legislation such as Ontario's Environmental Bill of Rights, and Clean Water Act.

China-According to the U.S. Environmental Protection Agency, "China has been working with great determination in recent years to develop, implement, and enforce a solid environmental law framework. Chinese officials face critical challenges in effectively implementing the laws, clarifying the roles of their national and provincial governments, and strengthening the operation of their legal system." Explosive economic and industrial growth in China has led

to significant environmental degradation, and China is currently in the process of developing more stringent legal controls.[51] The harmonization of Chinese society and the natural evironment is billed as a rising policy priority.

Congo (RC)-In the Republic of Congo, inspired by the African models of the 1990s, the phenomenon of constitutionalization of environmental law appeared in 1992, which completed an historical development of environmental law and policy dating back to the years of independence and even long before the colonization. It gives a constitutional basis to environmental protection, which traditionally was part of the legal framework. The two Constitutions of 15 March 1992 and 20 January 2002 concretize this paradigm, by stating a legal obligation of a clean environment, by establishing a principle of compensation and a foundation of criminal nature. By this phenomenon, Congolese environmental law is situated between non-regression and the search for efficiency."

Ecuador-With the enactment of the 2008 Constitution, Ecuador became the first country in the world to codify the Rights of Nature. The Constitution, specifically Articles 10 and 71–74, recognizes the inalienable rights of ecosystems to exist and flourish, gives people the authority to petition on the behalf of ecosystems, and requires the government to remedy violations of these rights. The rights approach is a break away from traditional environmental regulatory systems, which regard nature as property and legalize and manage degradation of the environment rather than prevent it.

The Rights of Nature articles in Ecuador's constitution are part of a reaction to a combination of political, economic, and social phenomena. Ecuador's abusive past with the oil industry, most famously the class-action litigation against Chevron, and the failure of an extraction-based economy and neoliberal reforms to bring economic prosperity to the region has resulted in the election of a New Leftist regime, led by President Rafael Correa, and sparked a demand for new approaches to development. In conjunction with this need, the principle of "Buen Vivir," or good living – focused on social, environmental and spiritual wealth versus material wealth – gained popularity among citizens and was incorporated into the new constitution.[58]

The influence of indigenous groups, from whom the concept of "Buen Vivir" originates, in the forming of the constitutional ideals also facilitated the incorporation of the Rights of Nature as a basic tenet of their culture and conceptualization of "Buen Vivir."

Egypt-The Environmental Protect Law outlines the responsibilities of the Egyptian government to "preparation of draft legislation and decrees pertinent to environmental management, collection of data both nationally and internationally on the state of the environment, preparation of periodical reports and studies on the state of the environment, formulation of the national plan and its projects, preparation of environmental profiles for new and urban areas, and setting of standards to be used in planning for their development, and preparation of an annual report on the state of the environment to be prepared to the President."[60]

India- In India, Environmental law is governed by the Environment Protection Act, 1986.[61] This act is enforced by the Central Pollution Control Board and the numerous State Pollution Control Boards. Apart from this, there are also individual legislations specifically enacted for the protection of Water, Air, Wildlife, etc. Such legislations include :

- The Water (Prevention and Control of Pollution) Act, 1974
- The Water (Prevention and Control of Pollution) Cess Act, 1977
- The Forest (Conservation) Act, 1980
- The Air (Prevention and Control of Pollution) Act, 1981
- Air (Prevention and Control of Pollution) (Union Territories) Rules, 1983
- The Biological Diversity Act, 2002 and the Wild Life Protection Act, 1972
- Batteries (Management and Handling) Rules, 2001
- Recycled Plastics, Plastics Manufacture and Usage Rules, 1999
- The National Green Tribunal established under the National Green Tribunal Act of 2010[62] has jurisdiction over all environmental cases dealing with a substantial environmental question and acts covered under the Water (Prevention and Control of Pollution) Act, 1974.
- Water (Prevention and Control of Pollution) Cess Rules, 1978
- Ganga Action Plan, 1986

- The Forest (Conservation) Act, 1980
- Wildlife protection Act, 1972
- The Public Liability Insurance Act, 1991 and the Biological Diversity Act, 2002. The acts covered under Indian Wild Life Protection Act 1972 do not fall within the jurisdiction of the National Green Tribunal. Appeals can be filed in the Hon'ble Supreme Court of India.
- Basel Convention on Control of TransboundaryMovements on Hazardous Wastes and Their Disposal, 1989 and Its Protocols
- Hazardous Wastes (Management and Handling) Amendment Rules, 2003

Japan-The Basic Environmental Law is the basic structure of Japan's environmental policies replacing the Basic Law for Environmental Pollution Control and the Nature Conservation Law. The updated law aims to address "global environmental problems, urban pollution by everyday life, loss of accessible natural environment in urban areas and degrading environmental protection capacity in forests and farmlands."

The three basic environmental principles that the Basic Environmental Law follows are "the blessings of the environment should be enjoyed by the present generation and succeeded to the future generations, a sustainable society should be created where environmental loads by human activities are minimized, and Japan should contribute actively to global environmental conservation through international cooperation." From these principles, the Japanese government have established policies such as "environmental consideration in policy formulation, establishment of the Basic Environment Plan which describes the directions of long-term environmental policy, environmental impact assessment for development projects, economic measures to encourage activities for reducing environmental load, improvement of social infrastructure such as sewerage system, transport facilities etc., promotion of environmental activities by corporations, citizens and NGOs, environmental education, and provision of information, promotion of science and technology."

New Zealand-The Ministry for the Environment and Office of the Parliamentary Commissioner for the Environment were established by the Environment Act 1986. These positions are responsible for advising the Minister on all areas of environmental legislation. A

common theme of New Zealand's environmental legislation is sustainably managing natural and physical resources, fisheries, and forests. The Resource Management Act 1991 is the main piece of environmental legislation that outlines the government's strategy to managing the "environment, including air, water soil, biodiversity, the coastal environment, noise, subdivision, and land use planning in general."

Russia-The Ministry of Natural Resources and Environment of the Russian Federation makes regulation regarding "conservation of natural resources, including the subsoil, water bodies, forests located in designated conservation areas, fauna and their habitat, in the field of hunting, hydrometeorology and related areas, environmental monitoring and pollution control, including radiation monitoring and control, and functions of public environmental policy making and implementation and statutory regulation."

Singapore-Singapore is a signatory of the Convention on Biological Diversity; with most of its CBD obligations being overseen by the National Biodiversity Reference Centre, a division of its National Parks Board (NParks). Singapore is also a signatory of the Convention on International Trade in Endangered Animals, with its obligations under that treaty also being overseen by NParks. The Parliament of Singapore has enacted numerous pieces of legislation to fulfil its obligations under these treaties, such as the Parks and Trees Act, Endangered Species (Import and Export) Act, and Wildlife Act. The new Wildlife (Protected Wildlife Species) Rules 2020 marks the first instance in Singapore's history that direct legal protection has been offered for specific named species, as listed in Parts 1-5 of the Rules' schedule.

Intellectual property law

Intellectual property (IP) is a category of property that includes intangible creations of the human intellect. There are many types of intellectual property, and some countries recognize more than others. The best-known types are patents, copyrights, trademarks, and trade secrets. The modern concept of intellectual property developed in England in the 17th and 18th centuries. The term "intellectual property" began to be used in the 19th century, though it was not until the late 20th century that intellectual property became commonplace in most of the world's legal systems. The main purpose of intellectual property law is to encourage the creation of a wide variety of intellectual goods. To achieve this, the law gives people and businesses property rights to the information and intellectual goods they create, usually for a limited period of time. This gives economic incentive for their creation, because it allows people to benefit from the information and intellectual goods they create, and allows them to protect their ideas and prevent copying. These economic incentives are expected to stimulate innovation and contribute to the technological progress of countries, which depends on the extent of protection granted to innovators. The *intangible* nature of intellectual property presents difficulties when compared with traditional property like land or goods. Unlike traditional property, intellectual property is "indivisible", since an unlimited number of people can "consume" an intellectual good without its being depleted. Additionally, investments in intellectual goods suffer from appropriation problems: Landowners can surround their land with a robust fence and hire armed guards to protect it, but producers of information or literature can usually do little to stop their first buyer from replicating it and selling it at a lower price. Balancing rights so that they are strong enough to encourage the creation of intellectual goods but not so strong that they prevent the goods' wide use is the primary focus of modern intellectual property law. The Statute of Monopolies (1624) and the British Statute of Anne (1710) are seen as the origins of patentlaw and copyright respectively, firmly establishing the concept of intellectual property.

"Literary property" was the term predominantly used in the British legal debates of the 1760s and 1770s over the extent to which authors and publishers of works also had rights deriving from the common law of property (Millar v Taylor (1769), Hinton v Donaldson (1773), Donaldson v Becket (1774). The first known use of the term intellectual property dates to this time, when a piece published in the Monthly Review in 1769 used the phrase. The first clear example of modern usage goes back as early as 1808, when it was used as a heading title in a collection of essays.

The German equivalent was used with the founding of the North German Confederation whose constitution granted legislative power over the protection of intellectual property (Schutz des geistigen Eigentums) to the confederation. When the administrative secretariats established by the Paris Convention (1883) and the Berne Convention (1886) merged in 1893, they located in Berne, and also adopted the term intellectual property in their new combined title, the United International Bureaux for the Protection of Intellectual Property. The organization subsequently relocated to Geneva in 1960 and was succeeded in 1967 with the establishment of the World Intellectual Property Organization (WIPO) by treaty as an agency of the United Nations. According to legal scholar Mark Lemley, it was only at this point that the term really began to be used in the United States (which had not been a party to the Berne Convention), and it did not enter popular usage there until passage of the Bayh–Dole Act in 1980.

Intellectual property rights include patents, copyright, industrial design rights, trademarks, plant variety rights, trade dress, geographical indications, and in some jurisdictions trade secrets. There are also more specialized or derived varieties of sui generis exclusive rights, such as circuit design rights (called mask work rights in the US), supplementary protection certificates for pharmaceutical products (after expiry of a patent protecting them), and database rights (in European law). The term "industrial property" is sometimes used to refer to a large subset of intellectual property

rights including patents, trademarks, industrial designs, utility models, service marks, trade names, and geographical indications.

Violation of intellectual property rights, called "infringement" with respect to patents, copyright, and trademarks, and "misappropriation" with respect to trade secrets, may be a breach of civil law or criminal law, depending on the type of intellectual property involved, jurisdiction, and the nature of the action.

As of 2011, trade in counterfeit copyrighted and trademarked works was a $600 billion industry worldwide and accounted for 5–7% of global trade. During the 2022 Russian invasion of Ukraine, IP has been a consideration in punishment of the aggressor through trade sanctions, has been proposed as a method to prevent future wars of aggression involving nuclear weapons, and has caused concern about stifling innovation by keeping patent information secret.

Aviation law

Aviation law is the branch of law that concerns flight, air travel, and associated legal and business concerns. Some of its area of concern overlaps that of admiralty law and, in many cases, aviation law is considered a matter of international law due to the nature of air travel. However, the business aspects of airlines and their regulation also fall under aviation law. In the international realm, the International Civil Aviation Organization (ICAO) provides general rules and mediates international concerns to an extent regarding aviation law. The ICAO is a specialized agency of the United Nations.

In the United States and in most European nations, aviation law is considered a federal or state-level concern and is regulated at that level. In the U.S., states cannot govern aviation matters in most cases directly but look to federal laws and case law for this function instead. For

example, a cour recently struck down New York's Passenger Bill of Rights law because regulation of aviation is traditionally a federal concern.[citation needed] Aviation law, however, is not in the United States held under the same federal mandate of jurisdiction as admiralty law; that is, while the United States Constitution provides for the administration of admiralty it does not provide such for aviation law. States and municipalities do have some indirect regulation over aviation. For example, zoning laws can require an airport to be located away from residential areas, and airport usage can be restricted to certain times of day. State product-liabilities law are not pre-empted by federal law and in most cases, aviation manufacturers may be held strictly liable for defects in aviation products.

Space law, which governs matters in outer space beyond the Earth's atmosphere, is a rather new area of law but one that already has its own journals and academic support. Much of space law is connected to aviation law.

Roman law and other ancient land systems generally granted all rights in airspace to the owner of the underlying land. The first law specifically applicable to aircraft was a local ordinance enacted in Paris in 1784, one year after the first hot air balloon flight by the Montgolfier brothers. Several court cases involving balloonists were tried in common law jurisdictions during the 19th century.

Development of public international law. Balloons were used in the Franco-German War of 1870–71, and the First Hague Conference of 1899 set a five-year moratorium on the use of balloons in combat operations, which was not renewed by the Second Hague Conference (1907). Prior to World War I, several nations signed bilateral agreements regarding the legal status of international flights, and during the war, several nations took the step of prohibiting flights over their territory. Several competing multilateral treaty regimes were established in the wake of the war, including the Paris Convention of 1919, Ibero-American Convention (1926) and the Havana Convention (1928). The International Air Transport Association (IATA) was founded in 1919 in a conference at The Hague, to foster cooperation between airlines in various commercial and legal areas.

The lack of uniformity in international air law, particularly with regard to the liability of international airlines, led to the Warsaw Convention of 1929.

The Chicago Convention on International Civil Aviation was signed in 1944, during World War II. It provided for the establishment of the International Civil Aviation Organization as a unit of the United Nations devoted to overseeing civil aviation. The convention also provided various general principles governing international air service.

The Tokyo Convention of 1963 enacted new international standards for the treatment of criminal offenses on or involving aircraft. The Montreal Convention of 1999 updated the carrier liability provisions of the Warsaw Convention, while the Cape Town Treaty of 2001 created an international regime for the registration of security interests in aircraft and certain other large movable assets.

Development of national regulations. The United Kingdom enacted the Air Navigation Act 1920, which formed the basis of aviation regulation in the United Kingdom and its colonies.

In the United States, the Air Mail Act of 1925 and the Civil Aeronautics Act of 1938 formed the early basis for regulation of domestic air transportation. The United States established a Federal Aviation Agency in 1958, which became the Federal Aviation Administration, a unit of the newly formed United States Department of Transportation, in 1967. The Airline Deregulation Act of 1978 was a watershed in the U.S. air transportation industry, and it greatly increased the regulatory workload of the FAA as new operators were allowed to apply for operating certificates.

The Russian Soviet Federative Socialist Republic declared sovereignty over its airspace and enacted basic aviation regulations in 1921, forming a state-owned Civil Air Fleet in 1923 which became known as Aeroflot in 1932. Other communist states followed a similar pattern in establishing state-controlled entities for civil aviation, such as the Civil Aviation Administration of China in the People's Republic of China and Interflug in East Germany.

Japan enacted a legal regime governing civil aviation in 1952, after a brief moratorium during the occupation that followed World War II.

While the early domestic air travel market was lightly regulated and highly competitive, the government implemented a regulation system in 1970 which limited service to three carriers (Japan Airlines, All Nippon Airways and Japan Air System), with largely separate markets and strictly regulated fare levels that minimized competition. Pressure from the United States, which sought to introduce new U.S. carriers to the transpacific market in the 1980s, led Japan to gradually deregulate its market in the form of cheap packaged-tour fares and an increased international role for ANA in the 1980s and 1990s, followed by the advent of new domestic carriers such as Skymark Airlines and Air Do.

Law of the sea

Law of the sea is a body of international law governing the rights and duties of states in maritime environments. It concerns matters such as navigational rights, sea mineral claims, and coastal waters jurisdiction. While drawn from a number of international customs, treaties, and agreements, modern law of the sea derives largely from the United Nations Convention on the Law of the Sea (UNCLOS), effective since 1994, which is generally accepted as a codification of customary international law of the sea, and is sometimes regarded as the "constitution of the oceans". Law of the sea is the public law counterpart to admiralty law (also known as maritime law), which applies to private maritime issues, such as the carriage of goods by sea, rights of salvage, ship collisions, and marine insurance.

Among the earliest examples of legal codes concerning maritime affairs is the Byzantine Lex Rhodia, promulgated between 600 and 800 C.E. to govern trade and navigation in the Mediterranean. Maritime law codes were also created during the European Middle Ages, such as the

Rolls of Oléron, which drew from Lex Rhodia, and the Laws of Wisby, enacted among the mercantile city-states of the Hanseatic League.

However, the earliest known formulation of public international law of the sea was in 17th century Europe, which saw unprecedented navigation, exploration, and trade across the world's oceans. Portugal and Spain led this trend, staking claims over both the land and sea routes they discovered. Spain considered the Pacific Ocean a mare clausum—literally a "closed sea" off limits to other naval powers—in part to protect its the possessions in Asia.[4] Similarly, as the only known entrance from the Atlantic, the Strait of Magellan was periodically patrolled by Spanish fleets to prevent entrance by foreign vessels. The papal bull Romanus Pontifex (1455) recognized Portugal's exclusive right to navigation, trade, and fishing in the seas near discovered land, and on this basis the Portuguese claimed a monopoly on East Indian trade, prompting opposition and conflict from other European naval powers.

Amid growing competition over sea trade, Dutch jurist and philosopher Hugo Grotius—considered the father of international law generally—wrote Mare Liberum (The Freedom of the Seas), published in 1609, which set forth the principle that the sea was international territory and that all nations were thus free to use it for trade. He premised this argument on the idea that "every nation is free to travel to every other nation, and to trade with it." Thus, there was a right to innocent passage over land and a similar right of innocent passage at sea.

The first attempt to promulgate and codify a comprehensive law of the sea was in the 1950s, shortly after the Truman proclamation on the continental shelf. In 1956, the United Nations held its first Conference on the Law of the Sea (UNCLOS I) in Geneva, Switzerland, which resulted in four treaties concluded in 1958:

- Convention on the Territorial Sea and Contiguous Zone, entry into force: 10 September 1964
- Convention on the Continental Shelf, entry into force: 10 June 1964

- Convention on the High Seas, entry into force: 30 September 1962
- Convention on Fishing and Conservation of Living Resources of the High Seas, entry into force: 20 March 1966

The Convention on the Continental Shelf effectively codified Truman's proclamation as customary international law. While UNCLOS I was widely considered a success, it left open the important issue of the extent of territorial waters. In 1960, the UN held a second Conference on the Law of the Sea ("UNCLOS II"), but this did not result in any new agreements. The pressing issue of varying claims of territorial waters was raised at the UN in 1967 by Malta, prompting in 1973 a third United Nations Conference on the Law of the Sea in New York City. In an attempt to reduce the possibility of groups of nation-states dominating the negotiations, the conference used a consensus process rather than majority vote. With more than 160 nations participating, the conference lasted until 1982, resulting in the UN Convention of the Law of the Sea, also known as the Law of the Sea Treaty, which defines the rights and responsibilities of nations in their use of the world's oceans.

UNCLOS introduced a number of provisions, of which the most significant concerned navigation, archipelagic status and transit regimes, exclusive economic zones (EEZs), continental shelf jurisdiction, deep seabed mining, the exploitation regime, protection of the marine environment, scientific research, and settlement of disputes. It also set the limit of various areas, measured from a carefully defined sea baseline.

The convention also codified freedom of the sea, explicitly providing that the oceans are open to all states, with no state being able to subject any part to its sovereignty. Consequently, state parties cannot unilaterally extend their sovereignty beyond their EEZ, the 200 nautical miles in which that state has exclusive rights to fisheries, minerals, and sea-floor deposits. "Innocent passage" is permitted through both territorial waters and the EEZ, even by military vessels, provided they do no harm to the country or break any of its laws.

The convention came into force on 16 November 1994, one year after it was ratified by the 60th state, Guyana; the four treaties concluded in the first UN Conference in 1956 were consequently superseded. As of June 2019, UNCLOS has been ratified by 168 states. Many of the countries that have not ratified the treaty, such as the U.S., nonetheless recognize its provisions as reflective of international customary law. Thus, it remains the most widely recognized and followed source of international law with respect to the sea.

Between 2018 and 2020, there is a conference on a possible change to the law of the sea regarding conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (General Assembly resolution 72/249)

Although UNCLOS was created under the auspices of the UN, the organization has no direct operational role in its implementation. However, a specialized agency of the UN, the International Maritime Organization, plays a role in monitoring and enforcing certain provisions of the convention, along with the intergovernmental International Seabed Authority (ISA), which was established by the convention to organize, regulate and control all mineral-related activities in the international seabed area beyond territorial limits. UNCLOS established the International Tribunal for the Law of the Sea (ITLOS), based in Hamburg, Germany, to adjudicate all disputes concerning the interpretation or application of the convention (subject to the provisions of Article 297 and to the declarations made in accordance with article 298 of the convention). Its 21 judges are drawn from a wide variety of nations. Because the EEZ is so extensive, many ITLOS cases concern competing claims over the ocean boundaries between states. As of 2017, ITLOS had settled 25 cases.

Other types of intergovernental organizations enforcing the law of the sea include UN FAO regional fishery bodies and arrangements, as well as UNEP regional seas conventions and action plans.

Maritime law. Law of the Sea should be distinguished from maritime law, which concerns maritime issues and disputes among private parties, such as individuals, international organizations, or corporations. However, the International Maritime Organisation, a UN agency that plays a major role in implementing law of the sea, also helps to develop, codify, and regulate certain rules and standards of maritime law.

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