Origins of the American Legal System

Discovering Connections

ACTIVITY (PAGE 3)

There are no correct or incorrect answers to this exercise. The students are free to decide on the various events that shaped the legal history of their countries. Practicing attorneys and law students in their second year of legal study should have no difficulty with this. First-year law students might have more problems with it and will need guidance from you.

If you are working with students from the same country, the group work might go more smoothly because the weaker students will be helped by the stronger ones. If you have a mixed class (different countries), and there are at least two people from each country, it would be best to sort the students into groups by country. You will have to ensure that they discuss the issue in English.

If there aren't at least two students per country, then it is best to have mixed groups (from different countries) so that no one feels left out of the discussion. If necessary, students can draw on ideas from other students/countries to help them with their own legal history.

Mixed groups are also preferable if your students will not speak English to other students who speak their native language.

Legally Speaking

Conversation Model (page 4)

Listening Script
(At a panel discussion)

Taka: Good morning, ladies and gentlemen. Could you please take your seats? Thank you. My name is Taka Kurasawa. I'll be the moderator for this month's panel on the origins of American law. Would someone please close the door? Thank you. To save time, I'd like to begin by asking each of today's speakers to introduce themselves.

Yvonne: Hello, my name is Yvonne Arm. I'm professor of comparative law at Chickasaw University in Memphis, Tennessee. Thank you for inviting me to speak with you today.

Thomas: Morning. What? Oh, they can't hear me. Would you mind turning up the microphone? Oh, that's too loud. Please turn it down a bit. Thanks. Good morning. I'm Thomas Simone, senior editor at *Legal History Quarterly.* It's a pleasure to finally get the chance to see your beautiful city.

Jan: Hello. I'm Jan Trommel. This year, thanks to a grant from your organization and the University of Pilsen, I'm finishing up my dissertation on the influence of politics on elected judges in the United States. Thank you.

Answers for Conversation Model (page 4)

1. A panel discussion
2. The first speaker, Taka
3. No
4. He is trying to save time.
5. Comparative law at Chickasaw University in Memphis, Tennessee
6. The audience can't hear him because his microphone isn't turned up high enough.
7. He asks someone to turn up his microphone.
8. Because he is senior editor of *Legal History Quarterly*
   [*Language note:* Tell the students they can also write "senior editor at LHQ."]
9. Perhaps. He doesn't say. However, he is not currently working as an attorney. He is senior editor of *Legal History Quarterly.*
10. Those who are elected and not those who are politically appointed
11. He received a grant from the organization hosting the panel discussion and the University of Pilsen.

Applying Your Knowledge (page 4)

The students are free to choose from the list or use their imaginations and make up their own items. The solution is only an example of what the students could have chosen. The choices are a combination from the options given and additions similar to those that students might choose. (The answers are in bold.)

Speaker 1: (*Good evening*). My name is (*Thomas Wang*). I am (*president*) of (1—**the Law Society**). Welcome to our (2—**monthly**) meeting. Our (3—**chair***), (4—**Dahlia Tran**), will introduce (5—**tonight's**) speaker.

[**Note:* You might want to mention the use of politically correct language in the United States and how the term chair has replaced the use of *chairman* or *chairwoman* in most organizations.]

Speaker 2: Thank you, (6—**Tom**). It's (7—**a pleasure**) to introduce our speaker for (8—**this**) meeting. (9—**She**) is currently (10—**professor**) of (11—**law**) at (12—**the University of Shelby**) and was also (13—**founder**) (14—**of Dragonfly Software**). (15—**Join**) me in welcoming (16—**her**).

[*Note:* The use of *Tom* is an American usage at meetings that are informal or semiformal. Ensure that the tone of the student responses is consistent.]

Speaker 3: Thank you, (17—**Ms. Tran**) for that (18—**kind**) welcome. I'm pleased to (19—**once again**) have the (20—**chance**) to (21—**speak to**) this group.

[*Note:* You may wish to explain to the students that it is often wisest to ask an American directly what he or she wishes to be called. Tell the students, "if you are afraid that you might insult a person you have just met by using his or her given (first) name, call that person Mr. or Mrs. X. If it is appropriate for you to call that person by his or her first name, he or she will normally say, 'Just call me. . . .' Of course, you must do the same if it is appropriate. There must be a large status difference (e.g., president of a large company and her administrative assistant) before it is appropriate for you to remain Mr. or Ms. and for you to call the other person by his or her first name."]

Legal Thumbnail

Exercise A. Review and Discussion

(page 7)

1. Possible answers:
   - It would be more fragmented, perhaps more like the European Union or ASEAN. The states would have retained more power, and the United States might never have become a world power.
   - Since the states were not required to follow federal law, independent nations might have eventually developed. For example, the South might have succeeded in its bid for secession from the Union.

2. Possible answers:
   - There might have been concern about abuse of power by a central authority figure.
   - Each state was jealous of its own powers, and to have a federal executive officer might have diminished some of that power.
   - Switzerland has a federal president on a rotating basis, one with very limited power base.
   - Although not a nation, the European Union also has a rotating "Head of State" with only limited power.

3. Possible answers:
   - Conflicts between the states could arise, especially if the dispute involved the states themselves, such as conflicts over water rights or state boundaries.
   - There might have been more limited opportunities for citizens of different states to obtain justice in the courts.
   - Differing state laws might have led to a total fragmentation of the U.S. legal system. Due to the supremacy of the U.S. Constitution and promulgation of model codes, state laws, though still different, are much more similar than they would have been without the U.S. Constitution.
   - Political squabbling (arguing) might have led to lack of conclusion on different issues or separation of the United States into different nations.

Exercise B. System Comparisons and Discussion

(page 8)

As you read the students' responses, you should look mainly for clarity and register. Since they should be writing to a senior member of the firm, the students should avoid informal language or slang in such an email. Remember that if you don't understand the process as it is described by the students, then the recipient wouldn't either even if he or she is an attorney since systems are so different.

Sample answer based on an American system:

> You asked how a new law in the United States is reviewed. Since there are both state and federal laws, I can only give you a very generic answer.
>
> Generally, once a state or federal law has been adopted, it can only be challenged by those affected filing suit in a responsible court. Challenging a law can be complex since a state law may be also be challenged at the federal level if there is a federal question.
>
> There is no way for the supreme court of one of the 50 states or the Supreme Court of the United States to reach down and look at a new law until a complaint has reached them. However, it is possible to ask a responsible court to issue an injunction preventing the enforcement or implementation of a new law while a court challenge is underway. An injunction is not automatic, and even if issued, it can be overturned by a higher court.
>
> If you would like more specific information about a specific state or a federal law, please let me know and I will be glad to give you more specific information. (187 words)

Exercise C. Paraphrasing

(page 8)

1. Sample paraphrase: To become a Senator, a person must be at least 30 years old, have been a U.S. citizen for at least nine years, and legally reside in the state he or she is to represent.

   [*Cultural note:* Unlike in many countries, there is no requirement to register any change of address even if you move from one state to another,

so proving legal domicile in a specific state is more complicated in the United States than other countries.]

2. *Note:* Working in pairs seems to work best for this exercise. You might want to discuss the punctuation and how it affects the meaning. Each time there is a semicolon, it is as if the phrase "Congress shall make no law respecting . . ." has been repeated. So there are actually three parts separated by semicolons:
   1. religion
   2. freedom of speech and press
   3. right of assembly and petition

Sample paraphrase: Congress shall not pass laws that interfere with religious freedom, freedom of speech, the right of assembly, or the right to petition any branch of the government to remedy wrongs.

Exercise D. System Comparisons and Discussion

(page 11)

1. In this case, students can use informal phrases. For example, in the sample answer, we use comparisons to a soccer match that would be inappropriate in a formal answer. However, clarity is still crucial. Again if you don't understand the process, the recipient wouldn't either.

   Sample answer based on the American system:

   > Ivana, John said you wanted to know about the role of the judge in the American court. I'm sure you've seen lots of TV and movies and know that American judges don't normally ask witnesses questions directly. Really, American judges are a bit like referees in a soccer match who try to make sure everybody plays by the rules. But many judges can be really hard on witnesses, the courtroom audience, or the lawyers if they try to cause problems or waste time. They occasionally even put lawyers and witnesses in jail for "contempt of court." Hope that helps. (98 words)

2. Student resource. If you are teaching in a civil law country, the judge takes a more active role in the trial than in the United States. The attorneys have a more passive role. (How are judges chosen in your system? Are they elected as many American judges are? Are they chosen by politicians as other judges are in the United States? Unlike in many

countries, in the United States there is no school that prepares a lawyer to be a judge. In fact, it was and still is possible to be a judge without being a lawyer, although this is changing.)

3. The trials in the United States, both civil and criminal, are adversarial rather than inquisitorial. Basically this means that the attorneys have a more active role and the truth is expected to emerge through the argument between the two sides. In an inquisitorial system, the questioning by the judge, especially in criminal trials, is supposed to lead to the truth. The attorneys play a less active role. In terms of the codification issue, since U.S. attorneys are required to analogize their case to others, there is perhaps more room for creative argument.

Exercise E. Case Hypotheticals and Discussion

(page 13)

1. At first glance it doesn't look very good for the client, so the students would have to read the case closely to convince the judge that there are differences between their case and the one that has already been decided. If the case is from another jurisdiction, that will also make a difference. Then the case is not binding on the court but merely persuasive authority. This is discussed further in the next part of the legal thumbnail.

   Even though the differences are minor, there are some that can be found by the students. Your client is going 10 mph below the speed limit, indicating that he is a careful driver. Since he has been taking the prescription medicine for two weeks, it could be that he has noticed no side effects, so that might not hurt his case.

   We don't know about the mechanical condition of the car in the other case, but questions to consider when trying to distinguish the cases might be the following. (1) How old were the cars? and (2) How well had they been maintained?

2. Once you have outlined the differences, it would be easy to write an informal email. This is a sample answer (242 words) for this case, which we will call the Ricks case:

   > Thanks for calling me about the Ricks case. We'll need to distinguish our client's case from the case cited by the executrix's attorney. First, fortunately, the cited case is just persuasive since it's from another state. Also, in the other case, the man was driving right at the speed limit (35mph), but our client was actually driving 10 mph below the speed limit because the street was crowded. That should help us prove that he is a careful driver. Next, we need to find out how old and what kind of a car the

other person had. That might make a difference. It may also be our client's car has had a history of locking column locks. We'll have to investigate that. Also, we will need to determine if the other man kept his car as well maintained as our client did. I know the other side will try to bring in the prescription medicine issue, but since he'd been taking the prescription medicine for two weeks before the accident, I don't think this will cause us any problems. He followed the warning and made sure that he didn't drive until he knew how the medicine affected him. If you can think of any other issues that will help our client or that we need to be able to refute, drop me a quick email or call me. Thanks.

Cliff

Exercise F. Paraphrasing and Discussion

(page 14)

2. a. at the beginning c. be flexible and tolerant e. way people think/act
   b. remember d. ever-changing society
3. Student resource. The following information might be helpful to you in leading a discussion. Who are the parents of a child in the case of surrogate motherhood? Currently in the United States, the law varies considerably from one state to another. However, in a 1998 California case [*Buzzanca v. Buzzanca,* 61 Cal.App.4th 1410, 72 Cal.Rptr. 280 (1998)], the court found the parents to be those who had contracted with the surrogate mother to bear the child.

   The following is an excerpt from the *Buzzanca* case, which you may want to use in class.

Jaycee was born because Luanne and John Buzzanca agreed to have an embryo genetically unrelated to either of them implanted in a woman—a surrogate—who would carry and give birth to the child for them. After the fertilization, implantation, and pregnancy, Luanne and John split up, and the question of who are Jaycee's lawful parents came before the trial court.

Luanne claimed that she and her erstwhile husband were the lawful parents, but John disclaimed any responsibility, financial or otherwise. The

woman who gave birth also appeared in the case to make it clear that she made no claim to the child.

The trial court then reached an extraordinary conclusion: Jaycee had no lawful parents. First, the woman who gave birth to Jaycee was not the mother; the court had—astonishingly—already accepted a stipulation that neither she nor her husband were the "biological" parents. Second, Luanne was not the mother. According to the trial court, she could not be the mother because she had neither contributed the egg nor given birth. And John could not be the father, because, not having contributed the sperm, he had no biological relationship with the child.

We disagree. Let us get right to the point: Jaycee never would have been born had not Luanne and John both agreed to have a fertilized egg implanted in a surrogate.

The trial judge erred because he assumed that legal motherhood, under the relevant California statutes, could only be established in one of two ways, either by giving birth or by contributing an egg. He failed to consider the substantial and well-settled body of law holding that there are times when fatherhood can be established by conduct apart from giving birth or being genetically related to a child. The typical example is when an infertile husband consents to allowing his wife to be artificially inseminated. As our Supreme Court noted in such a situation over 30 years ago, the husband is the "lawful father" because he consented to the procreation of the child. (See *People v. Sorensen* (1968) 68 Cal.2d 280, 284–286, 66 Cal.Rptr. 7, 437 P.2d 495.)

The same rule which makes a husband the lawful father of a child born because of his consent to artificial insemination should be applied here—by the same parity of reasoning that guided our Supreme Court in the first surrogacy case, *Johnson v. Calvert* (1993) 5 Cal.4th 84, 19 Cal.Rptr.2d 494, 851 P.2d 776—to both husband and wife. Just as a husband is deemed to be the lawful father of a child unrelated to him when his wife gives birth after artificial insemination, so should a husband and wife be deemed the lawful parents of a child after a surrogate bears a biologically unrelated child on their behalf. In each instance, a child is procreated because a medical procedure was initiated and consented to by intended parents. The only difference is that in this case—unlike artificial insemination—there is no reason to distinguish between husband and wife. We therefore must reverse the trial court's judgment and direct that a new judgment be entered, declaring that both Luanne and John are the lawful parents of Jaycee.

4. This is a sample answer (216 words). Notice that it expresses opinions coupled with facts.

> It was really nice talking with you last night. I enjoyed our conversation about the relationship between advances in science and changes in the law. I thought I would follow up our conversation with these thoughts. It seems to me that our courts need to have the most up-to-date scientific information available when they make decisions. For example, now that we can do DNA testing on small samples, several people serving life sentences for rape or other crimes have been freed when the DNA test proved that they could not have committed the crime.
>
> Even commercial law has to change. DVD producers can put small programs on their disks that can identify the exact computer that is used to make an illegal copy of the disk. That information should be used in court.
>
> In fact, the very definition of life is changing. We can now determine with reasonable certainty if someone has suffered brain death. Now the laws need to deal with that fact and decide what we as a society want to do in these cases.
>
> I hope these examples help you see why I said that science can't be "pure." Every new advance in science carries a societal consequence. Maybe we can have lunch next week when you are back in town and continue our conversation.
>
> Joan

Exercise G. Case Hypotheticals and Writing

(page 17)

1. Facts that can be broadened or left out.

Fact	Leave Out or Broaden	Change To
armed robbery	neither	stays the same
young law student	broaden	person
bad eyesight	leave out	
law library	leave out	
six-foot-tall blond woman	leave out	
very realistic toy gun	broaden	something that would appear to a reasonable person to be a weapon
threaten to shoot him in the leg	broaden	threaten
law books	leave out	

2. Sample Answer: The court held that a person is guilty of armed robbery when the person who is robbed is threatened with what would appear to a reasonable person to be a weapon.

Exercise H. Case Hypotheticals and Role Play

(page 21)

Divide your students into pairs or teams, depending on class size. Then assign one of the scenarios to each pair or team of students. Each team will present its argument to the class, who as a group will then vote on whether there was reasonable cause to enter the premises without "knocking and announcing."

When having the class vote, it is sometimes better to have the students vote anonymously by secret ballot, so that there is no pressure to support or attack fellow classmates. A breakdown of the scenarios is as follows.

a. Hot pursuit. Probably acceptable to enter without knocking and announcing.

b. Valid arguments on both sides. Taken in terms of balancing the right to privacy with public safety, the police officer might have been able to knock and announce prior to entering rather than kicking down the door.

c. If it is the police officer's duty to check on whether the doors of businesses are locked at night, then he might have a reason to enter without knocking. However, you must balance this duty and the right to privacy against the safety concerns of the police officer if he knocks and announces prior to entry.

d.
- The police probably could have knocked and announced. However, because the band was considered armed and dangerous, there is also a strong argument in favor of no knock and announce.
- Make sure that the students don't mix the issues. American students would probably want to discuss whether the evidence that was found at the wrong house can be used. Is that an issue in your system? What are the limitations on the admissibility of evidence?

e.
- Note the difference between the search warrant in the other scenes and an arrest warrant here.
- A false identification by the arresting officer can invalidate an arrest. In the case of *Richards v. Wisconsin* in Exercise L, there was also a false identification in a search warrant case, but the U.S. Supreme Court held that the entry was lawful (no knock and announce needed) under the facts of that case.

Exercise I: Case Comparisons

(page 22)

1. • The case-by-case exception means that each case is looked at specifically and no category of cases is exempted from the requirement to knock and announce.
   • The blanket exception means that the courts/legislature permit exceptions to the knock and announce rule by category, such as in all drug cases.
2. • High risk of injury to the police officers
   • Potential for disposal of the drugs
3. Since the search warrant had already been issued, the public interests outweighed the minimal privacy interests that were infringed in this case.
4. No adherence to the knock and announce principle
5. It was also based on a violation of the knock and announce principle and a motion to suppress evidence obtained because that principle was violated.

Exercise J: Oral Argument

(page 23)

Students have to invent questions and answers based on the *Wilson and Richards* cases. Provide them with proper terminology for addressing a judge and an attorney in a formal situation: Your Honor or Judge ___(last name)_____and Mr. or Ms. __(last name)__.

There are no right or wrong answers. The students should use the cases to develop their arguments. Possible questions/statements for the attorney/judge are included for you to give to students who may be having difficulty with the exercise.

Judge

- Ms. Smith, you realize that the court must be especially careful to balance the constitutional right to privacy against public safety issues, don't you?
- Why is it so important in this case that the police not be required to knock and announce?
- All decisions must be made on a case-by-case basis. In this instance, you have/have not convinced me that countervailing law enforcement interests outweigh/do not outweigh the privacy interests of the suspect, Ms. Wilson.

Prosecuting Attorney

- Your Honor, we would like to request a no knock and announce search warrant in the case of Sharlene Wilson. She is an armed and dangerous drug dealer, and we are concerned for the safety of the police officers carrying out the search.
- During a meeting with our informant, she was carrying a semiautomatic pistol and threatened to kill the informant.
- Of course, there is also the possibility that Ms. Wilson will have time to destroy the evidence if the officers knock and announce.

Exercise K. Legal Vocabulary

(page 23)

Legal Vocabulary—Other terms may be acceptable. The answers come directly from the legal thumbnail in Level III.

1. ratified
2. settled
3. reconciling
4. reciprocity
5. established
6. remanded
7. appellee
8. probable cause
9. suppress