

Chapter 1

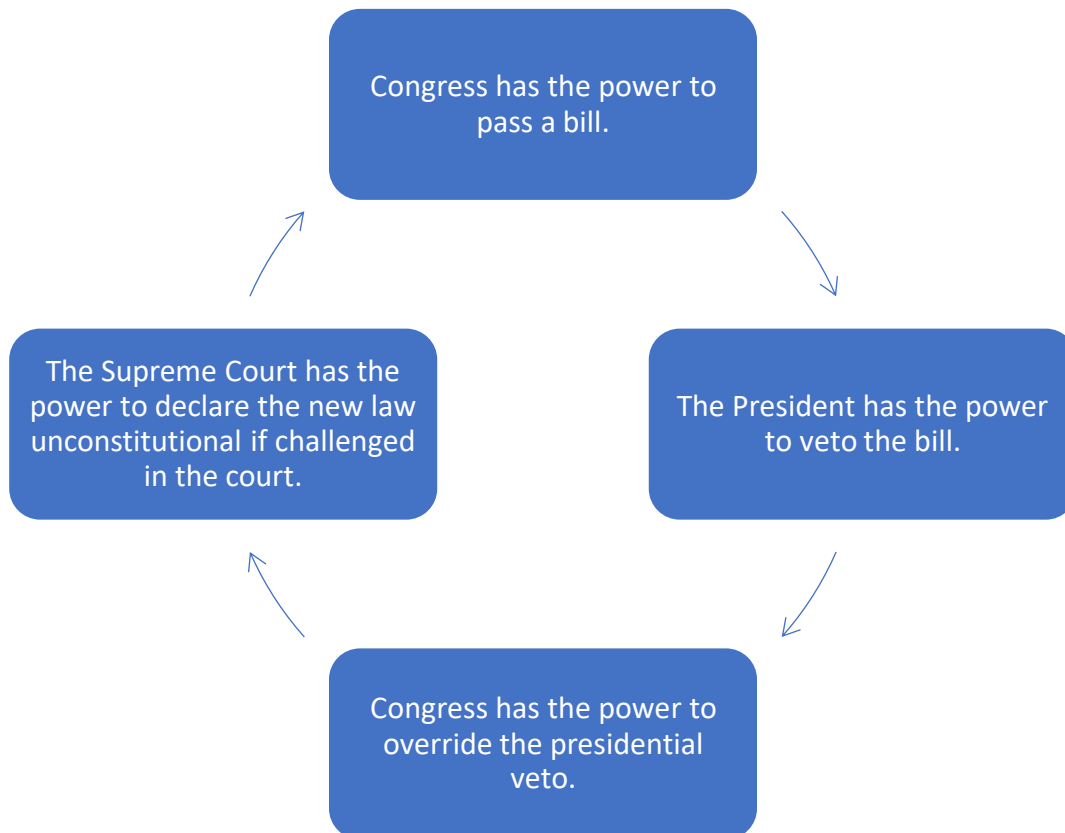
Introduction to the United States Legal System

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This chapter provides an overview of the United States legal system. The Constitution of the United States is “the supreme Law of the Land”; therefore, this primer on the U.S. legal system will begin with the importance of the Constitution, followed by discussion of the three branches of government, and conclude with sources of law.

The Constitution

Effective since 1789, the U.S. Constitution is the oldest functioning written government charter in the world. It is a governmental framework containing two important principles: (1) a system of checks and balances to guarantee that none of the three branches dominates the government; and (2) the distribution of power between national and state governments through a system known as federalism. The chart below illustrates one example of checks and balances. Notice the equality between the branches, as none of the three branches are more powerful than another.



Finding Illinois Law

The U.S. Constitution does much more than set up the three branches of government. Specifically, it sets the parameters of federal and state powers. The federal government only has the powers stated in the Constitution. Limitations on state powers are enumerated in Article I, Section 10, of Amendment X and broadly describes the powers reserved to the states as all “powers not delegated to the United States by the Constitution, nor prohibited by it to the States.” In practice, this means that federal courts hear disputes regarding federal statutes and the constitution. State courts hear disputes regarding state statutes, the state constitution, and issues governed by common law.

The United States still operates from the original Constitution, though twenty-seven amendments have been added since ratification. All fifty U.S. states have their own constitution, and each state exercises its own discretion as to the writing, amending, enforcing, and rewriting of that constitution. For example, Illinois has held six Constitutional Conventions, but only four Illinois Constitutions have been ratified by popular vote in 1818, 1848, 1870, and 1970.

The Constitution of the State of Illinois models the Illinois government after the government of the United States in that Illinois has a bicameral legislature, a judicial branch, and an executive branch of government.

Please make use of the resources listed throughout this primer to learn more about the Constitution, the branches of government, and the sources of law.

Resources on the Constitution of the United States and the Illinois Constitution	
Illinois Digital Archives	Find PDFs of constitutions and constitutional conventions in Illinois.
Illinois General Assembly	Find the current (1970) Illinois Constitution.
Library of Congress	Find primary sources from the drafting of the U.S. Constitution.
Constitution Annotated (Congress.gov)	Find analysis and interpretation of the U.S. Constitution.
The National Archives	Find images and transcripts of documents such as the U.S. Constitution, the Declaration of Independence, and the Bill of Rights.
U.S. Government Manual	Find the U.S. Constitution and a listing of persons filling federal offices along with their contact information.
Ben’s Guide to the U.S. Government for Kids	Find explanations of the U.S. government for kids of all grade levels.

The Three Branches of Government

For both the United States government and the Illinois government, the three branches are coequal in power and separate in functions. The Legislative Branch enacts the law, the Executive Branch enforces the law, and the Judicial Branch interprets the law. They are explained here in order of their appearance in both constitutions: the Legislative Branch, the Executive Branch, and the Judicial Branch.

The Legislative Branch

The Legislative Branch enacts statutory law by passing identical bills through both the Senate and the House of Representatives. In the U.S. Congress, representation in the Senate is equal among the states with each state having two Senators. Representation in the House of Representatives is based on state population, with Illinois having 18 U.S. Representatives. This bicameral system is also found in the Illinois General Assembly. The Illinois Senate has 59 members and the Illinois House of Representatives has 118 members.¹ See [Chapter 3: Statutes](#) for a detailed explanation of how a bill becomes a statute.

Resources on the Legislative Branch	
Illinois General Assembly	Find Illinois Public Acts, bills, and transcripts for the Illinois Senate and Illinois House of Representatives.
How Our Laws Are Made	Find detailed descriptions of each step of the legislative process for the U.S. Congress.
Congress.gov	Find Public Laws, Congressional debates, committee reports, and the Congressional Record of the U.S. Congress.
U.S. House of Representatives	Find information on U.S. House representatives, leadership, committees, votes, calendars, and reports.
U.S. Senate	Find information on U.S. Senate members, leadership, committees, votes, calendars, and reports.
govinfo	Find U.S. Congressional committee reports, bills, and the Congressional Record.

The Executive Branch

It is the job of the Executive Branch to enforce the laws using federal or state regulations. Statutes can be broadly written, so administrative actions fill in the gaps to give citizens and administrations specific details as to compliance with the law. The Executive Branch of the United States is led by the President, and the executive for the State of Illinois is the Governor. There are respectively federal and state administrative agencies to assist each executive in the “faithful” execution of the laws. See [Chapter 5: Administrative Law](#) for discussion on administrative rules and regulations.

¹ U.S. Constitution, art. 1, sec. 10 and the Constitution of the State of Illinois, art 4, sec. 1.

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Resources on the Executive Branch	
The Federal Register	Find the daily publication of documents from various government agencies including addresses, letters, notices, proposed rules, final rules, vetoes, and presidential documents.
The National Archives	Find online editions of the public papers and photographic portfolios of the current and historical Presidents dating back to 1991. See a Federal Depository Library for print editions.
The White House	Find information on the current presidential administration.
Illinois.gov	Find information on the Illinois Executive Branch.

Judicial Branch

The Judicial Branch has adjudicative powers for actual controversies; it issues no advisory opinions. Illinois courts consist of the Illinois Supreme Court, Appellate Courts, and lower circuit courts. The federal judicial system includes the U.S. Supreme Court, the U.S. District Courts, and the U.S. Courts of Appeals. The Supreme Court of the United States is the highest court in the land and the only federal court provided by the U.S. Constitution. Jurisdiction for this high court includes cases involving foreign ambassadors, cases between states, and cases that have been appealed through the lower federal courts. All inferior courts are bound by the decisions of the Supreme Court. See [Chapter 4: Cases](#) for discussion on the judicial system and common law.

Resources on the Judicial Branch	
<i>BNA's Directory of State and Federal Courts, Judges, and Clerks</i>	Find contact information on justices and clerks as well as organizational charts of court hierarchies.
Illinois Courts	Find dockets, opinions, and court rules from the Illinois Judicial Branch.
Oyez Project	Find recordings of oral arguments, transcripts of cases, and virtual tours of the Supreme Court of the United States.
PACER	Find public access to court electronic records (fee involved).
Supreme Court of the United States	Find the calendar of the Supreme Court, reported opinions, biographies of the Justices, and court rules.
U.S. Code, Title 28	Find codified U.S. laws, particularly related to the federal judicial system.
Court Listener	Find free access to opinions from state and federal courts.

Sources of Law

Each of the three branches of government produces law. The Legislative Branch produces bills and statutes, the Executive Branch produces regulations, and the Judicial Branch produces case law. Some of these sources are online in an official format, but for others, a trip to the library is necessary. The Federal Depository Library Program makes sources of law available to the public. Even if the library belongs to a private institution, if it is a member of the FDLP program, the public may enter free of charge. For example, in Illinois, Northwestern University is a private university, but because the Deering Library as well as the Pritzker Legal Research Center of Northwestern University are members of the Federal Depository Library program, the public may enter and use the government documents section of those two Northwestern University libraries. See the chart below for sources of law and visit fdlp.gov/about-the-fdlp/federal-depository-libraries to find your local Federal Depository Library.

	Legislative Branch (Statutes)	Judicial Branch (Court Opinions)	Executive Branch (Regulations)
Federal	U.S. Code	<ul style="list-style-type: none"> • U.S. Reports (U.S. Supreme Court opinions) • Federal Reporter (U.S. Court of Appeals opinions) 	Code of Federal Regulations
Illinois	Illinois Compiled Statutes	<ul style="list-style-type: none"> • Illinois Reports (Illinois Supreme Court opinions) • Illinois Appellate Court Reports (Illinois Appellate court opinions) 	Illinois Administrative Code

Primary and Secondary Sources

A legal researcher must note the difference between primary and secondary sources of law. Primary sources are the law. Examples of primary sources include statutes, cases and regulations. Secondary sources are not the law, but they are *about* the law. Secondary sources serve to provide explanation, commentary, or analysis about the primary sources that are produced directly by a governing body.

One example of a secondary source is a journal article. Legal periodicals offer new scholarship and often offer the opinion of the author. Legal journals are generally published by professional associations for attorneys such as the American Bar Association or by law schools. For a comprehensive listing of periodicals, see the *Index to Legal Periodicals & Books*.

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In addition to journal articles, there are several other examples of secondary sources: legal dictionaries, legal encyclopedias, and treatises. A legal dictionary defines legal terms and phrases. Legal encyclopedias are a good place to start a legal research project because they offer background information on a topic. A treatise is a legal resource on a specific area of law such as contracts or criminal law. Treatises can include books that are a single volume or multiple volumes, but they are more narrowly focused than an encyclopedia because a treatise usually covers only one topic. All secondary sources are useful for their summaries or analysis of the law, but they are also good sources to find citations to relevant primary sources.

The Constitution itself is a primary source. A law review article discussing a new interpretation of the Constitution is a secondary source. As a rule, secondary sources are not used as authority in documents submitted to a court. Courts prefer to see citations to primary law such as statutes and cases. However, if an attorney wished to persuade a judge to follow a new interpretation of the law, a law review article could be cited as a secondary, persuasive authority. See the chart below for examples of primary and secondary sources.

Examples of Primary and Secondary Sources	
Primary	Constitutions Case law Legislation Executive materials Regulations Treaties
Secondary	Dictionaries , such as: <i>Black's Law Dictionary</i> and <i>Ballentine's Law Dictionary</i> Treatises , such as: <i>Corbin on Contracts</i> , <i>Search and Seizure: A Treatise on the Fourth Amendment</i> , <i>Illinois Practice Series</i> , and <i>Illinois Law and Practice</i> Encyclopedias , such as: <i>American Jurisprudence 2d</i> and <i>Illinois Jurisprudence</i>