

Password: L&D2223

The Law v. The Code

The Law

The Code

What are legal systems?

People

Laws

Institutions

Institutions serve to legitimize, enact, and enforce laws

The two main legal models

Civil law: Parliaments enact legislation

Common law: judges make law by adjudicating cases

The Constitution: is above the law, says how laws must be enacted, and usually requires that laws against the constitution be struck down

Common law countries: have narrow—but growing numbers of—statutes

The two main models when it comes to data

United States

The Federation has

- *limited legislative powers*
- *its own judiciary*

Each State has

- *broad legislative powers*
- *its own judiciary*

Most legislation that is relevant is state legislation

Exception: *Federal Trade Commission regulations*

European Union

EU has

- *limited powers*
- *the Court of Justice*

States have

- *most powers*
- *the bulk of the judicial activity*

Most rules that are relevant are EU rules

The Types of Laws

EU Treaties

EU regulations: create immediately enforceable rights

EU directives: address states. After the deadline, sufficiently precise rules are immediately enforceable

Why the EU is so powerful?

“Direct effect” doctrine

“EU law supremacy” doctrine

Why the Court of Justice of the EU is so important?

The preliminary ruling procedure:

- a domestic case starts
- the local judge thinks that EU law is involved
- EU law is ambiguous
- the local judge suspends the proceedings and requests the CJEU to issue a preliminary ruling
- the domestic trial resumes and the local judge will enforce the EU rule as interpreted by the CJEU

The Regulatory State and the Technocratic Institutions

USA: The Federal Trade Commission

EU: The Privacy Authority

At the State Level: Privacy Authorities

Such institutions often have: regulatory, executive, and judicial powers

CHINA

The Central State and the Local Government

The Communist Party's Rule

Regulating by principles and instructions

An Additional layer of complexity in Europe: The European Convention and the European Court of Human Rights



Art 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Art. 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The European Court of Human Rights' powers

It intervenes after the exhaustion of domestic remedies

It addresses complaints against States

Its rulings establish obligations, but hardly have direct effects within state jurisdictions

How Privacy Was Born



The Development of Privacy & Dignity

From Places...

To People...

From Protecting People from Private Powers...

To Protecting People from Public Powers

From People to Information

The Barbra Streisand Effect & the Paradox of Privacy



The Shield of Privacy: which limits? The Proportionality Scrutiny

Other interests can prevail over privacy—it depends on the jurisdiction

(es. Intellectual property)

Proportionality scrutiny: it is a means to assess the legitimacy of a solution

The structure of proportionality

1. Is the goal of a measure lawful?
1. Does the measure truly pursue the goal it purports to pursue?
1. Is the measure the least restrictive means to achieve the goal?
1. Do the benefits outweigh the damages?