

Password: L&D2223

Oct 7, 2022

Understanding Legal Systems

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