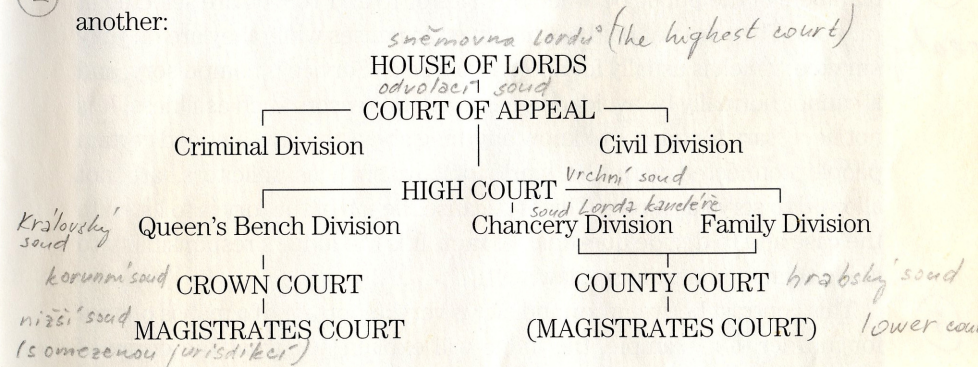


## 4 Judicial institutions

- ① In all legal systems there are institutions for creating, modifying, abolishing and applying the law. Usually these take the form of a hierarchy of courts. The role of each court and its capacity to make decisions is strictly defined in relation to other courts. There are two main reasons for having a variety of courts. One is that a particular court can specialize in particular kinds of legal actions—for example, family courts and juvenile courts. The other is so that a person who feels his case was not fairly treated in a lower court can appeal to a higher court for reassessment (although the right of **appeal** usually depends upon the **appellant** being able to show certain reasons for his dissatisfaction). The decisions of a higher court are binding upon lower courts. At the top of the hierarchy is a supreme lawmaking body, but the process of taking an action from a lower court to the highest court may be very time-consuming and costly.

### list. English courts

- ② We can use the English system as an example of how courts relate to one another:



In general, the division between civil and criminal law is reflected in this system. The Crown Courts, for example, deal exclusively with criminal matters, the County Courts, with civil. However, the Queen's Bench Division of the High Court considers appeals from lower criminal courts, as well as civil matters, and the Magistrates Courts, while mostly concerned with criminal cases, also deal with some civil matters. The highest court, the House of Lords, deals with all matters (including appeals from Scottish and Northern Irish courts).

- ③ A criminal case usually begins in a Magistrates Court. Having arrested someone suspected of committing a crime, the police must decide if they have enough evidence to make a formal accusation, or charge. If they

charge the suspect, they may release him on the condition that he appears on a certain date at a certain Magistrates Court. This is known as **unconditional bail**. However, the police may instead take the suspect to a magistrate so that he remains in custody until he next appears before a court. The magistrate may decide that it is not necessary to hold the suspect in custody and may agree to unconditional bail, or the magistrate may grant **conditional bail**—that is, release the suspect provided that he puts up some money as security or agrees to surrender his passport or some similar condition. As the lowest criminal court, a Magistrates Court is empowered to hear certain cases only. Some minor cases, such as parking violations, are dealt with only by the magistrates. Some serious crimes, like murder, cannot be heard by the magistrates and must go to the Crown Courts. And there are some offences where the defendant is given the choice of having his case heard in the Magistrates Court or the Crown Court. It takes much longer to have a case heard in the Crown Court, but some defendants prefer it because the facts of the case are decided by a **jury**, that is, ordinary members of the public.]

4 In a Crown Court trial there are twelve jurors. These are ordinary members of the public between the ages of 18 and 70 who are selected at random. They are not paid but are given expenses while they are on **jury service**, which is usually for about two weeks. Service is compulsory, and it cannot normally be avoided without a good reason, such as illness. It is not necessary for a juror to know anything about the law—indeed certain people connected with the world of law, such as solicitors, are not allowed to serve as jurors. This is because the job of the jury is to listen to the case and to decide questions of **fact**. It is the judge's responsibility to guide them on questions of law.

5 This contrast between law and fact is very important. If a man is on trial for murder, for example, the judge will explain just what the crime of murder means in English law and what the prosecution has to prove. He will explain how the trial will be conducted, summarize the evidence, and tell the jurors what factors they should consider in making their decision. These are questions of law. However, whether the defendant did in fact commit murder or not is a question of fact to be decided by the jurors themselves. It is necessary for at least ten of the twelve to agree.

### International comparisons

6 In some countries such as France (where there are nine jurors), the judges and jurors decide the case together. In the United States juries not only

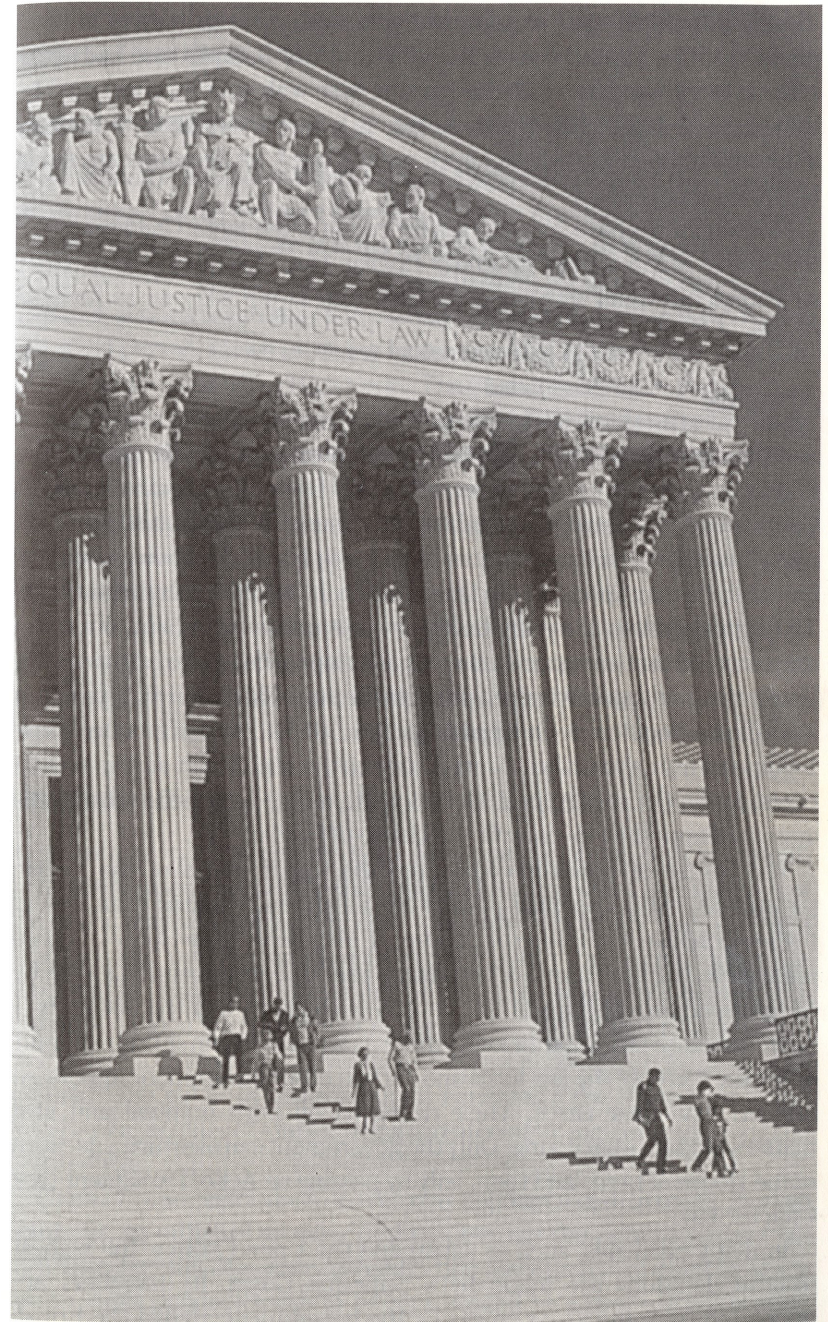


Figure 4.1 The U.S. Supreme Court.

decide if the defendant is guilty but sometimes also have a say in what punishment he should receive. Before World War II, Japan also had a jury system, but it was often criticized for the ease with which jurors could be bribed. Now Japan, like South Korea, is a rare example of a modern industrialized country where jurors are not used: all decisions are made by professional judges.

7 Most countries have special rules for young defendants. Children under ten cannot stand trial at all under English law. Juveniles (those under seventeen) are dealt with in special Magistrates Courts known as Juvenile Courts.

## Appeals

8 A defendant found guilty by the magistrates may appeal against the finding or against the punishment to the local Crown Court, and the Crown Court judge will hear the appeal without a jury. If a defendant has good reason to believe the magistrates have made a mistake about a point of law, then he may appeal to the Queen's Bench Division of the High Court. The appeal system is mostly for the benefit of the defendant, but there are cases of the prosecution successfully appealing for a more severe punishment. In Japan it is even possible for the prosecution to appeal that a not-guilty decision be changed to guilty.

9 Appeals from the Crown Court go first to the High Court and, in special cases, to the Court of Appeal. Occasionally, a case is carried through this system of appeal all the way to the House of Lords.

10 The House of Lords is considered the upper house of the British parliament, but its political powers are much more limited than that of the lower house, the House of Commons. Members of the House of Lords are not elected but consist of hereditary peers, peers appointed for life by the government, bishops of the Church of England, and the law lords—peers appointed for life after long service as lawyers. When sitting as a court of appeal it is only the law lords and certain other government-appointed officials who hear cases. Their decisions on both criminal and civil matters bind all other courts. Only the government can overturn a decision of the House of Lords and then, only by passing an Act of Parliament (see Chapter 10).

11 In many countries, such as Japan and the United States, the highest judicial decisions are made by a Supreme Court. Its members are appointed from the lower courts by the government. Unlike the British House of Lords, Supreme Courts are entirely concerned with legal

matters (including the legality of government acts) and have no role in legislation (see Chapter 10).

## Lower courts

12 Apart from the limited civil functions of Magistrates Courts (for example, prevention of family violence), the lowest court in a civil action is a County Court, of which there is one in every town in England and Wales. The judges are always professionals. They may hear matters such as contract and tort disputes, actions regarding claims to land or those regarding the property of a dead person. Cases involving larger amounts of money are heard by one of the divisions of the High Court. The Chancery Division, for example, deals with disputes about trusts, the property of the dead and bankruptcy, among other things. Appeals from the High Court, and most appeals from the County Courts, go to the Court of Appeal.

13 Some County Courts have authority to grant divorces, but when one of the parties disputes the divorce, it must be transferred to the Family Division of the High Court.

14 In addition to the courts mentioned above, there are numerous special courts which have been established to make decisions in particular types of dispute. For example, special industrial tribunals deal with disputes over contracts and sexual discrimination in employment matters.

## Restrictions

15 In Britain, as in other nations with democratic systems of government, most court cases are open to the public. This means that any member of the public may witness a court case, although he does not have the right to speak and may be ordered from the court if he tries to interrupt proceedings. But there are some proceedings which are closed. For example, a judge may order that no member of the public be present in a case where a child is giving evidence of sexual abuse which he or she has suffered. The public is also sometimes excluded if the judge feels that a witness or a member of a jury is being threatened by someone watching the proceedings.

16 There are also restrictions on who may conduct a case in court. In most countries, an ordinary member of the public has the right to present his own case himself. However, although this sometimes happens in lower courts, most people choose to be represented by a professional lawyer, especially in a higher court.