judicial functions. The courts were rather simple institutions whose structure replicated English courts in form but not in substance. The numerous, complex, and highly specialized English courts were ill suited to the needs of a small group of colonists trying to survive on the edge of the wilderness, so the colonists greatly simplified the English procedures.

The county courts stood at the heart of American colonial government. Besides adjudicating cases, they also performed important administrative functions (Friedman 1985). As towns and villages became larger, new courts were created so people would not have to travel long distances to have their cases heard. Through the years, each colony modified its court system according to variations in local customs, different religious practices, and patterns of commercial trade. Those early variations in legal rulings and court structures have persisted and contribute to the great variety of U.S. court systems today (Glick and Vines 1973).

Early American Courts

After the American Revolution, the functions of state courts changed markedly. Their governing powers were drastically reduced and taken over by legislative bodies. The former colonists viewed judicial action as coercive, distrusted lawyers, and harbored major misgivings about English common law. They were not anxious to see the development of a large, independent judiciary. Thus, judicial decisions were often scrutinized by state legislatures, and in response to unpopular court decisions, some judges were removed from office or specific courts were abolished.

The distrust of the judiciary increased when courts declared unconstitutional legislative acts favoring free money. Such actions were a major source of political conflict between legislatures and courts representing opposing interests. Legislators were more responsive to policies that favored debtors, usually small farmers. Courts, on the other hand, reflected the views of creditors, often merchants. Out of that conflict over legislative and judicial power, though, the courts gradually emerged as an independent political institution.

Courts in a Modernizing Society

Rapid industrialization following the Civil War produced fundamental changes in the structure of American courts. Increases in population, the growth of cities, and the rise of industrialization greatly expanded the volume of litigation. Moreover, the types of disputes coming to the courts changed. Not only did the growth of industry and commerce result in disputes over this new wealth, but also the concentration of people in the cities (many of whom were immigrants), coupled with the pressures of industrial employment, meant the courts were faced with a new set of problems. The American courts, still reflecting the rural society of the early nineteenth century, were inadequate in the face of rising demands for services (Jacob 1984).

States and localities responded to the increased volume of litigation in a number of ways. City courts were created to deal with new types of cases in the urban areas. Specialized courts were formed to handle specific classes of cases (for example, small-claims courts, juvenile courts, and family relations courts). Additional courts were often created by specifying the geographic boundaries of a city court's jurisdiction. The development of courts in Chicago illustrates the confusion, complexity, and administrative problems that resulted from that sporadic and unplanned growth. In 1931, Chicago had 556 independent courts; the majority were justice of the peace courts that handled only minor offenses (Glick and Vines 1973).

In Chicago and elsewhere, the jurisdiction of those courts was not exclusive; that is, a case could be brought before a variety of courts, depending on the legal and political advantages that each one offered. Moreover, each court was a separate entity; each had a judge and a staff. Such an organizational structure meant there was no way to shift cases from an overloaded court to one with little to do. Each court also produced patronage jobs for the city political machines.

Courts Today: A Complex Court Structure

The haphazard expansion of the American court system resulted in an often-confusing structure. Each state system is different. Although some states have adopted a unified court structure, others still have numerous local courts with overlapping jurisdictions. Moreover, there may be major variations in court jurisdiction within a state: The jurisdiction of courts in one county may differ from those in the adjoining county. To examine the many state courts, it is useful to divide them into four levels: trial courts of limited jurisdiction, trial courts of general jurisdiction, intermediate appellate courts, and courts of last resort.

Trial Courts of Limited Jurisdiction: Lower Courts

At the first level are **trial courts of limited jurisdiction**, sometimes referred to as **inferior courts** or, more simply, **lower courts**. The country contains over 13,000 trial courts of limited jurisdiction, staffed by more than 18,000 judicial officers. Thus, the numerous lower courts constitute 85 percent of all judicial bodies in the United States. The number of trial courts of limited jurisdiction varies from none (in California, the District of Columbia, Illinois, Iowa, Minnesota, and Puerto Rico) to more than 2,000 (in New York and Texas). Several states, including California—which has one of the largest court systems in the world—have adopted a unified court system in which limited and general jurisdiction courts are combined. (See the section on trial courts of general jurisdiction.)

Variously called county, city, district, justice of the peace, magistrate, municipal, or probate courts, the lower courts decide a restricted range of cases. Most are created by local government—city or county—and, therefore, are not part of the state judiciary. Thus, lower courts are typically controlled only by the local governmental bodies that create and fund them. The lower courts are rarely **courts of record**; that is, no official verbatim transcript is kept of the witnesses' testimony or the judges' rulings. Appeals of lower-court decisions are heard in a trial court of general jurisdiction, not in a state's appellate courts. Such an appeal is termed **trial de novo** because the case must be heard again in its entirety, taking the testimony of the same witnesses and hearing the

identical arguments of the attorneys as the lower court did. The caseload volume of the lower courts is staggering—more than sixty-five million matters a year, representing two-thirds of all trial court business. An overwhelming number of these lower-court cases (more than fifty million in 2005) are traffic related (Table 4.1).

Criminal Cases

On the criminal side, the lower courts hear an eclectic mix of ordinance violations and misdemeanor criminal cases. Thus, these courts process the millions of Americans accused each year of disturbing the peace, shoplifting, public drunkenness, and speeding. Generally, lower courts are restricted to imposing a maximum fine of $1,000 and no more than a year in jail. In some states, though, they are authorized to levy fines as high as $5,000 and to sentence defendants to up to five years in prison. (Later, this chapter will discuss in greater detail the quality of justice dispensed by the nation's lowest and most neglected courts.)

In addition, many lower courts are responsible for the preliminary stages of felony cases: After a felony arrest, a judge in a trial court of limited jurisdiction will hold arraignments, set bail, appoint counsel for indigents, and conduct preliminary examinations. Later, the case is transferred to a trial court of general jurisdiction for trial (or plea) and sentencing.

Civil Cases

On the civil side, the lower courts decide a range of disputes that may include torts, contracts, real property, and sometimes even domestic relations cases. The determination of whether a civil case is heard by a limited or a general jurisdiction court is made by the amount of damages being requested—smaller amounts (for example, generally up to $10,000) go to limited jurisdiction courts, and larger amounts go to general jurisdiction courts. A large category of cases falls under the label **small claims**—which refers not to a substance but to a process. Small claims involve cases under a certain money limit, which ranges from a low of $1,500 in some states to a high of $15,000 in Delaware, Georgia, and Tennessee (the median is $3,000). In most states, streamlined procedures to provide quick, inexpensive processing by dispensing with written pleadings, strict rules of evidence, and the right to trial by jury have been adopted (Goerdt 1992). Accordingly, small-claims cases are less formal and less protracted than other civil cases.

TABLE 4.1 Case Filings in State Trial Courts, 2005 (in millions)

	Traffic	Civil	Criminal	Domestic	Juvenile	Total
General/unified jurisdiction	14.0	7.5	6.6	4.1	1.4	33.7
Limited jurisdiction	41.3	9.2	14.2	1.6	0.8	67.1
Total	55.3	16.7	20.8	5.7	2.2	100.8

Source: R. LaFountain, R. Schauffler, S. Strickland, W. Raferty, and C. Bromage, *Examining the Work of State Courts, 2006* (Williamsburg, Va.: National Center for State Courts, 2007).

Ten states do not allow lawyers, and most (forty-one) do not allow jury trials. Small claims constitute a large portion of civil filings every year; thus, they are examined in greater depth in Chapter 11.

TRIAL COURTS OF GENERAL JURISDICTION: MAJOR TRIAL COURTS

At the second level are the **trial courts of general jurisdiction**, usually referred to as **major trial courts**, which currently number more than 2,000 and are staffed by over 11,000 judicial officers (*Examining the Work of State Courts* 2007). The phrase *general jurisdiction* means that these courts have the legal authority to decide all matters not specifically delegated to the lower courts. The division of jurisdiction between the lower courts and the major trial courts is specified by law—statutory or constitutional or both. The names used for these courts in all states are listed in Table 4.2. Anyone interested in understanding the judicial process as it is carried out in the fifty states (and the District of Columbia and Puerto Rico) should be aware of the great variation in court names and functions. Tables 4.2, 4.3, and 4.4 profile the court systems of the United States to highlight that variation.

TABLE 4.2 Major Trial Courts in the United States

Name of Court	States
Circuit court	Alabama, Arkansas, Florida, Hawaii, Illinois, Indiana,[a] Kentucky, Maryland, Michigan, Mississippi, Missouri, Oregon,[b] South Carolina, South Dakota, Tennessee,[c] Virginia, West Virginia, Wisconsin
Circuit court and family court	Hawaii
Court of common pleas	Ohio, Pennsylvania
District court	Colorado,[d] Idaho, Iowa, Louisiana,[e] Minnesota, Montana,[f] Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Texas, Utah, Wyoming
Superior court	Alaska, Arizona,[b] California, Connecticut, Delaware,[g] District of Columbia, Georgia, Maine, Massachusetts, New Hampshire, New Jersey, North Carolina, Rhode Island, Vermont,[h] Washington
Supreme court	New York[i]

[a]Indiana also uses superior and probate courts.
[b]Oregon and Arizona also use a tax court.
[c]Tennessee also uses probate, chancery, and criminal courts.
[d]Colorado also uses the Denver Probate, Juvenile, and Water Court.
[e]Louisiana also uses a juvenile and family court.
[f]Montana also uses the Water and Worker's Compensation Court.
[g]Delaware also uses a chancery court.
[h]Vermont also uses district and family courts.
[i]New York also uses county courts.
Source: Court Statistics Project, *State Court Caseload Statistics, 2006* (Williamsburg, Va.: National Center for State Courts, 2007).

TABLE 4.3 State Intermediate Courts of Appeals in the United States

Name of Court	State (Number of Judges)
Appeals court	Massachusetts (25)
Appellate court	Connecticut (9), Illinois (52)
Appellate division of superior court	New Jersey (34)
Appellate divisions of supreme court	New York (55)
Appellate terms of supreme court	New York (15)
Circuit court of appeals	Puerto Rico (33)
Commonwealth court	Pennsylvania (9)
Court of appeals	Alaska (3), Arizona (22), Arkansas (12), Colorado (16), Georgia (12), Idaho (3), Indiana[a] (15), Iowa (9), Kansas (14), Kentucky (14), Michigan (28), Minnesota (16), Mississippi (10), Missouri (32), Nebraska (6), New Mexico (10), North Carolina (15), Oregon (10), South Carolina (9), Tennessee[b] (12), Utah (7), Virginia (11), Washington (22), Wisconsin (16)
Courts of appeal	California (105), Louisiana (53), Ohio (68)
Courts of appeals	Texas (80)
Court of civil appeals	Alabama[b] (5), Oklahoma[b] (12)
Court of criminal appeals	Alabama[c] (5), Tennessee[c] (12)
Court of special appeals	Maryland (13)
District courts of appeal	Florida (62)
Intermediate court of appeals	Hawaii (4)
Superior court	Pennsylvania (15)
None	Delaware, District of Columbia, Maine, Montana; Nevada, New Hampshire, North Dakota, Rhode Island, South Dakota, Vermont, West Virginia, Wyoming

[a]Indiana also uses a tax court.
[b]Civil only.
[c]Criminal only.
Source: Court Statistics Project, *State Court Caseload Statistics, 2006* (Williamsburg, Va.: National Center for State Courts, 2007).

The geographical jurisdictions of the major trial courts are typically defined along existing political boundaries, counties primarily. Each court has its own support staff consisting of a clerk of court, a sheriff, and so on. In most states, the trial courts of general jurisdiction are also grouped into judicial districts or circuits. In rural areas where districts or circuits encompass several adjoining counties, the trial court judges are true generalists who hear a wide variety of cases. They literally "ride the circuit," holding court in different counties on a fixed schedule. More populated counties have only one circuit or district court for the area, often with numerous judges. Here, judges are frequently specialists assigned to hear only certain types of cases, such as criminal, family, juvenile, and civil. Table 4.1 provides workload data on the major trial courts.

The lion's share of the nation's judicial business exists at the state, not the federal, level. More than 100 million civil and criminal cases are filed each year in the nation's state courts, compared with just over 300,000 cases in the federal district courts (over

TABLE 4.4 State Courts of Last Resort in the United States

Name of Court	State (Number of Judges)
Court of appeals	District of Columbia (9), Maryland (7), New York (7)
Court of criminal appeals	Oklahoma (5), Texas (9)
Supreme court	Alabama (9), Alaska (5), Arizona (5), Arkansas (7), California (7), Colorado (7), Connecticut (7), Delaware (5), Florida (7), Georgia (7), Hawaii (5), Idaho (5), Illinois (7), Indiana (5), Iowa (7), Kansas (7), Kentucky (7), Louisiana (7), Michigan (7), Minnesota (7), Mississippi (9), Missouri (7), Montana (7), Nebraska (7), Nevada (7), New Hampshire (5), New Jersey (7), New Mexico (5), North Carolina (7), North Dakota (5), Ohio (7), Oklahoma[a] (9), Oregon (7), Pennsylvania (7), Puerto Rico (7), Rhode Island (5), South Carolina (5), South Dakota (5), Tennessee (5), Texas[a] (9), Utah (5), Vermont (5), Virginia (7), Washington (9), Wisconsin (7), Wyoming (5)
Supreme court of appeals	West Virginia (5)
Supreme judicial court	Maine (7), Massachusetts (7)

[a]Civil appeals only.
Source: Court Statistics Project, *State Court Caseload Statistics, 2006* (Williamsburg, Va.: National Center for State Courts, 2007).

one million if bankruptcy filings are included). Moreover, the types of cases filed in the state courts differ greatly from those going to the federal courts. Litigants in federal courts are most often big businesses and governmental bodies. In sharp contrast, litigants in state courts are most typically individuals and small businesses.

Criminal Cases

Federal courts hear a high percentage of white-collar crimes, whereas state courts decide primarily street crimes. The more serious criminal violations are heard in the trial courts of general jurisdiction. The public associates felonies with crimes of violence, such as murder, robbery, and rape, but 90 percent of criminal violations heard by state courts are nonviolent crimes, such as burglary and theft (discussed in Chapter 8). In addition, state courts must process an increasing number of drug-related offenses, ranging from the simple possession of small amounts of illicit drugs to the sale of large quantities of cocaine and heroin. In an analysis of thirteen states for the period 1976–2002, the National Center for State Courts reports that felony dispositions have increased 124 percent (*Examining the Work of State Courts* 2003). Most criminal cases (77 percent) do not go to trial, because the defendant pleads guilty. Thus, the dominant issue in the trial courts of general jurisdiction is not guilt or innocence but, rather, what penalty to apply to the guilty.

Civil Cases

In major trial courts, civil cases outnumber criminal cases by two to one (regardless of the media focus on criminal cases). Press attention also suggests that personal injury lawsuits dominate civil filings. In reality, tort cases make up only a relatively small

percentage of the docket, about 5 percent! The most common types of civil litigation illustrate the diversity of people and issues in state civil courts: domestic relations, estate, personal injury, and contracts.

Domestic relations cases filed in the major trial courts include issues such as petitioning for divorce, determining child custody, setting levels of child support, allocating economic resources (homes, cars, and savings accounts), and, in some states, providing for spousal support (alimony and the like). Domestic relations cases account for about 30 percent of case filings. In recent years, the percentage of domestic relations cases has remained relatively unchanged.

Estate cases (often referred to as **probate**) are the second most common type of case filed in the states' major trial courts. For those who made a will before their death, the courts supervise the distribution of assets according to the terms of the will. For those who failed to make out a will before dying, the courts determine which heirs will inherit the estate. Most estate matters, therefore, present the judge with little if any controversy.

Personal injury cases constitute the third most common type of case filings. Tort law covers a wide range of legal injuries. Most involve a physical injury, which can vary from a sprained ankle to wrongful death. Although tort cases may involve a wide range of activities, most stem from accidents involving motor vehicles. Tort cases constitute only about 5 percent of all filings in trial courts of general jurisdiction, but they are the most likely to go to trial. Nearly two-thirds of all cases going to trial in general jurisdiction courts involve tort claims (Ostrom, Kauder, and LaFountain 2001). Though increasing recently by small amounts, the overall rate of tort filings for the past decade appears to be mostly steady, perhaps because of tort reform. Despite that, media coverage of a "litigation explosion" continues.

Other types of civil cases include contract cases, where one party claims that the other party failed to live up to the terms of a contract and asks for monetary damages as compensation, and property rights cases, which typically involve mortgage foreclosures.

Intermediate Courts of Appeals

A century ago, state court systems included only a single appellate body—the state court of last resort. Like their federal counterparts, state courts experienced a significant growth in appellate cases that threatened to overwhelm their state supreme courts. Officials in thirty-nine states responded by creating **intermediate courts of appeals**, or ICAs (Table 4.3). The only states that have not followed suit are either sparsely populated or geographically compact. These courts must hear all properly filed appeals. Subsequent appeals are at the discretion of the state supreme court. Thus, a decision by the state's intermediate appellate court is the final one for most cases.

The structure of the intermediate courts of appeals varies in several ways. Twenty-four states organize their ICAs on a statewide basis, and the rest on a regional basis. In most states, these bodies hear both civil and criminal appeals. Alabama and Tennessee, however, have separate courts of appeals for civil and criminal cases. The number of intermediate courts of appeals judges ranges from a low of 3 in Idaho to a high of 105 in California. Like their federal counterparts, these courts typically employ rotating three-judge panels for deciding cases.

The ICAs handle the bulk of the caseload in the appellate system, and their workload has increased dramatically in the last decade. States created these courts and allotted them additional judgeships in hopes of relieving the state supreme courts from crushing caseloads, only to find that the ICAs experience the same problems (Chapter 13). Numerous efforts are being made to increase the efficiency of the appellate process, but not all agree on where to draw the line between needed efficiencies and the requirement that justice be done.

Criminal defendants are increasingly likely to appeal their convictions but find appellate courts markedly unsympathetic to their legal arguments. Even though appellants in civil cases are more likely to persuade a panel of three judges that the trial court erred, trial court decisions are typically affirmed. As discussed later, the intermediate appellate courts represent the final stage of the process for most litigants—only a relative handful of cases will be heard by the state's highest appellate court.

Courts of Last Resort: State Supreme Courts

The court of last resort is generally referred to as the **state supreme court**. The specific names, however, vary from state to state, and to further complicate the picture, Texas and Oklahoma have two courts of last resort—one for civil appeals and one for criminal appeals. The number of supreme court judges varies from a low of five to as many as nine; the most common number is seven (see Table 4.4). Unlike the intermediate appellate courts, most of these courts sit **en banc** (that is, all judges hear all cases), though a few use rotating panels for some cases. All state supreme courts have a limited amount of **original jurisdiction** in dealing with matters such as disciplining lawyers and judges. In most states, the high court has primarily **discretionary jurisdiction**, much like the U.S. Supreme Court. It selects a small number of cases to hear, but those cases tend to have broad legal and political significance. In states without an intermediate court of appeal, however, the supreme court has no power to choose which cases will be placed on its docket.

The state supreme courts are the ultimate review board for matters involving interpretation of state law. The only other avenue of appeal for a disgruntled litigant is the U.S. Supreme Court, but successful applications are rare and must involve important questions of federal law. Although state supreme courts vary greatly in the details of their internal procedures used to decide cases, most are roughly similar to the U.S. Supreme Court.

State Supreme Courts: A Research Agenda

During the last two decades, political scientists have increasingly turned their attention to studying state supreme courts (Hall 2001). State supreme courts have become important policy makers (Bosworth 2001) and are historically understudied because political scientists have focused almost exclusively on the federal courts. State supreme court research

is directed at getting beyond the simple description of these legal entities. The focus is on explaining why state supreme courts operate the way they do. For example, Langer (2002) examines how state supreme courts interact with other branches of government using a separation-of-powers framework. She finds that the justices' ideology, along with institutional aspects of the courts, helps us understand why the courts reach the decisions they do. Such research is often referred to as neo-institutionalist, and the researcher focuses on such institutional characteristics as selection method and size of court to explain the behavior of state supreme courts. Researchers such as Melinda Hall and Paul Brace have exploited this approach to show us that there is much to understand about state courts of last resort, including that state supreme court justices react to both case facts and institutional constraints (Brace and Hall 1997; Brace, Langer, and Hall 2000; Hall 1992, 2001). These authors were instrumental in the establishment of the State Supreme Court Data Project, which currently contains valuable information on all fifty state courts and is a useful research tool (http://www.ruf.rice.edu/~pbrace/statecourt).

The Lower Courts: A Closer Look

Although the cases heard in the nation's lowest tribunals are minor, these judicial bodies are nonetheless quite important, for it is here that the vast majority of ordinary citizens (some sixty million) have contact with their nation's judiciary (Table 4.1, page 98). Overall, three out of four cases filed yearly in state court are decided in the less prestigious trial courts of limited jurisdiction. The caseload numbers are truly staggering: 40 million traffic violations, 14 million criminal cases, 9 million civil matters, and just over 1.5 million juvenile cases.

For decades, the problems of the lower courts have been at center stage in the efforts of reformers to improve the nation's judiciary. What troubles court reformers the most is the apparent lack of the adversary model of justice. Defendants are rarely represented by an attorney, trials are rare, and judgments are often entered with lightning speed. Informality, rather than the rules of courtroom procedure, predominates. Is that justice? Nearly forty years ago, the President's Commission on Law Enforcement and Administration of Justice (1967, 128) asked that question and expressed outrage:

> The commission has been shocked by what it has seen in some lower courts. It has seen cramped and noisy courtrooms, undignified and perfunctory procedures, and badly trained personnel. It has seen dedicated people who are frustrated by huge caseloads, by the lack of opportunity to examine cases carefully, and by the impossibility of devising constructive solutions to the problems of offenders. It has seen assembly-line justice.

The nonjudicial atmosphere of lower-court proceedings, it is said, does little to instill respect for the law in the minds of defendants, plaintiffs, and witnesses. Yet, these courts have been treated as a judicial stepchild and have suffered from long-term neglect (Ashman 1975).

Few doubt that the lower courts do not always administer justice as well as they might, but two major factors affect their work. First, they are not simply major trial courts with a higher volume of less serious cases. Lower courts demonstrate greater flexibility because the judges and the prosecutors focus directly on trying to produce substantive justice, rather than just adhering to procedures. Second, lower courts exhibit immense variation. For example, the drug courts found in the nation's largest cities operate very differently from justice of the peace courts located in rural areas. The dominating factor, then, is that the lower courts are locally controlled and are not generally part of the state judiciary. Stated another way, the lower courts truly reflect local customs. Given this wide-ranging disparity, it is best to consider several different categories of lower courts existing in the United States: justice of the peace courts, municipal courts, and juvenile courts. Each occupies a very different position within the judiciary and, therefore, warrants separate treatment.

Justice of the Peace Courts

Lower courts in rural areas are historically called **justice of the peace courts**, and the officeholder is usually referred to simply as a **JP**. This system of local justice traces its origins to fourteenth-century England, when towns were small and isolated. The JP system developed as a way to dispense simple and speedy justice, with local landowners (squires) deciding disputes more according to their knowledge of the local community than to their reading in the law.

In some ways, the small-town flavor of the JP system persists today (even in large urban places such as Harris County, Texas, which includes Houston). In the past, the vast majority of JPs were part-time nonlawyers who conducted court at their regular places of business—in the back of the undertaker's parlor, at the front counter of the general store, or next to the grease rack in the garage. Today, however, JPs tend to be more professional and hold court in a courthouse or another government building. A common list of qualifications might include the following for the state of Texas.

> To be eligible to hold the office of justice of the peace, a person must:
>
> - be a citizen of the United States;
> - be at least 18 years of age on the day the term starts or on the date of appointment;
> - not have been determined mentally incompetent by a final judgment of a court;
> - not have been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities;
> - as a general rule, have resided continually in Texas for one year and in the precinct for the preceding six months; and
> - must not have been declared ineligible for the office.
>
> (State of Texas Justice of the Peace Manual 2002)

Today, many of the JPs have been replaced with magistrates. Magistrates assume the same kinds of responsibilities as traditional JPs but do not use that title. Magistrates are more likely to be appointed than elected and tend to have better training than JPs. For example, North Carolina's justices of the peace were phased out in 1968–1970 and replaced with magistrates who are required to have more education and are appointed