

The History of the Courts

Lesson from the Courts in the Community curriculum

Find out more about [this program](#) and discover [additional lesson plans about how state courts operate](#).

Objective: Students will be able to explain the role of courts in a democratic society, the history of the Colorado courts and how those courts have evolved over time.

Inquiry Questions:

- What cultural and social forces impacted the development of Colorado's court system?
- What legal concepts were included in Colorado's court system?
- What are the main differences between Indigenous legal customs and Western legal customs?
- How does Western water law impact Colorado's water courts?
- What are the rights and responsibilities of people in the United States?
- How do the structures of the United States, state, and local governments impact democratic decision making?

Colorado Academic Standards

- **SS.HS.4.2.EOf.** Evaluate the role of the judicial system in protecting life, liberty, and property for all persons in the United States
- **SS.HS.4.2.EOj.** Describe the relationship of tribal governments with state and federal governments. Including but not limited to: The Ute Mountain Ute and Southern Ute tribal governments and the State of Colorado.

Activities: Teacher lecture (background material and timeline provided); class discussion (questions and topics suggested); and homework assignment

Materials: Printed articles

Grade Level: High School

Anticipated classroom time: 45-60 minutes

Teacher Background Information

Introduction

by former Colorado Court of Appeals Chief Judge Janice B. Davidson

When groups of citizens decide to delegate to a few other citizens the authority to resolve civic and private disputes, the latter group must carry with it the confidence of the people who gave them that power. Otherwise, the system will fall apart. It is the confidence in the integrity and impartiality of the judges who comprise the courts that is the true backbone of our court system. In order to keep that confidence, judges must be independent and work in an atmosphere of independence.

The need for judicial independence is most apparent when courts decide cases between individuals and the government and between branches of government. A judge must be free to rule against the governmental entity without fear of reprisal. Indeed, since World War II, although emerging countries have adopted the U.S. Constitution almost verbatim, each system has failed. The reason is the absence of an independent judiciary — there simply is no one to review what the other branches of government have done.



In order to secure the respect and trust of the people, judges also must be free from pressure from powerful non-governmental groups that may have an incentive to influence the outcome of cases. Thus, as former federal judge Avner Mikva said, “Judges must follow their oaths and do their duty, heedless of editorials, letters, telegrams, picketers, threats, petitions, panelists, and talk shows.”

Colorado used to elect its judges. However, like many other states, Colorado has recognized that a system of electing judges through the political process is antithetical to the concept of an independent judiciary. Thus, Colorado judges now are selected on merit and seek additional terms of office through nonpartisan retention elections. Insulating judges from the pressures of fundraising and campaigning helps to ensure that judges are beholden to no one. Similarly, evaluating judges on their performance and not on their politics helps to ensure that every person appearing in a Colorado court receives fair and impartial treatment. Indeed, as citizens become better aware how an independent judiciary increased their access to justice, they will increase their resolve to maintain an independent judiciary.

Western Concepts of Judicial Independence

Before the American Revolution, courts in the colonies were seen as instruments of oppression. Juries could be locked up until they reached the “right” decision. Judges were seen as puppets of the king. In fact, the Declaration of Independence criticized King George III for making “judges dependent upon his will alone for the tenure of their offices and the amount and payment of their salaries.”

This experience convinced our founders that Americans needed independent courts, courts that were protected from unreasonable searches, rigged trials, and other examples of overreaching government power. To guarantee rights such as freedom of speech and freedom of worship, and to make the rule of law a reality, the founders knew that judges had to be servants of law and the Constitution, not the political bosses, not the media, and not special interest groups. The Constitution protected judges from political and public pressure by:

- Specifying that they hold their office “during good behavior.” This means that their appointments are for life.
- Specifying that their salaries cannot be diminished during their tenure. This prevents Congress from retaliating against judges by cutting their pay.
- Making the removal process difficult (only on “impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors”).

These protections are still in place for federal judges. (While each state has its own judicial structure and constitutional provisions covering state judges, judicial independence is the cornerstone of all states’ judicial systems.)

Throughout American history, the independence of the judiciary has protected individual liberties and prevented a tyranny of the majority. Examples include extending voting rights, ending segregation, and protecting the average citizen from unwarranted government intrusion.

Emerging democracies have looked to the U.S. system of an independent judiciary as a model. They are familiar with the “telephone justice” of dictatorships, in which a judge adjourns court to wait for the call that explains how to decide the case. Judicial independence assures that cases will be decided on their merits. Decisions are based on what is right and just under the constitution and law, not what is popular at the moment.

More information: https://www.americanbar.org/groups/public_education/resources/rule-of-law/rule-of-law-and-the-courts/



History of Colorado's Court System

For thousands of years, the population of what is now Colorado was mostly comprised of the Apache, Arapaho, Cheyenne, Pueblo, Shoshone and Ute tribes. The largest Indigenous group in the area was the Ute tribe, who developed systems of governing, policing, regulating land use and mediating conflict that were rooted in consensus-building and community involvement. Spanish explorers arrived in the 1600s, followed by people of Mexican heritage who settled in Trinidad and other areas of southern Colorado. These groups brought their own customs and systems of justice.

Through the Louisiana Purchase in 1803, the United States acquired territory including land that is now northern and eastern Colorado; a treaty in 1848 with Mexico transferred territory that is now southern and western Colorado to the United States. The U.S. government, eager to populate the new land with white settlers, encouraged migration to the newly acquired territory and made treaties with native populations to ensure that settlers could access this land. The government rarely adhered to these treaties and ignored Indigenous land use customs as it sought to overlay an economic system based on individual property ownership. Spanish and Mexican civil law that allowed women to own property was also ignored.

The discovery of gold in the territory in 1858 as well as jobs in mining operations drew thousands of white settlers, who soon established local governments and their own judicial system. In the mountains, "Miners Districts" sprung up whenever a large enough group of miners settled in one area, established boundaries, defined property rights, elected officers, set up courts, tried lawsuits and punished criminals. Among the first districts were Gold Hill near present day Boulder, Jackson's Diggins District in Clear Creek County, and Gregory District near Blackhawk, all established in 1859.

A fledgling judicial system along the Front Range developed more conventionally. Prior to 1861, most of what is now Colorado was part of Arapahoe County in the Territory of Kansas. In 1855, the Territory of Kansas' legislature appointed Allen P. Tibbitts as probate judge of Arapahoe County. Tibbitts was effectively Colorado's first judge, although he never visited Arapahoe County, much less held court here. He never claimed the bench because travel in this region could be treacherous.

In March 1859, the first court was established in "Pikes Peak Country." S.W. Wagoner was elected as its probate judge and a restlessness to secede from Kansas began to grow. An election on Oct. 24, 1859 established the extralegal Territory of Jefferson in what is now Colorado. This self-proclaimed government instituted the region's first Supreme Court with a chief justice and two associate justices. Within two months, Jefferson Territory's legislature expanded the judicial system to include district, county, and justice of the peace courts, in addition to the already established Supreme Court.

Many white residents refused to acknowledge this judicial system's presumed authority, or that of its courts. Inevitably, conflict arose between the Arapahoe County courts and the Jefferson territory courts. Neither had a good grip on its claimed jurisdiction, and criminals frequently slipped through gaping loopholes in the system. As a result, People's Courts emerged. These were not permanent, or even official institutions, but they were summoned by the upper class to deal with serious crimes, such as murders. The court followed general procedures, allowing for both prosecution and defense, but the sentence was usually death, and it was carried out immediately after the ruling.

After Kansas made the transition from territory to state in January 1861, people living in Jefferson Territory recognized the necessity, and inevitability, of coming under United States authority. An application for territorial status was filed, and in February 1861 Congress passed a bill creating the Territory of Colorado.



Immediately upon becoming an official territory, all existing governing entities ceded power to the new government. The territory was divided into three judicial districts. President Abraham Lincoln appointed three justices to the first legal Supreme Court in the territory. Chief Justice Benjamin F. Hall was given jurisdiction of the Denver District; Justice Charles Lee Armour, the Central City District; and Justice S. Newton Pettis, the Southern District, near Pueblo. The first case to be tried before the Supreme Court was *Gardner vs. Dunn* on appeal from Park County.

Colorado was admitted to the union as a state on Aug. 1, 1876. The state's original constitution provided for a Supreme Court with a bench of three justices, as well as four judicial districts, with one judge serving each. The timeline below illustrates the early progression of the state's judicial structure.

Colorado Supreme Court

As discussed above, the history of Colorado's highest court began even before Colorado became the 38th state in the nation. The first Supreme Court was established in 1859 by the Territory of Jefferson, an extra-legal government existing prior to the Territory of Colorado. When Colorado became an official territory, a new Supreme Court was established. This court held its initial session in Denver on July 10, 1861. The court convened in a 7-by-9-foot room in the 12-by-25-foot Commonwealth Building on the corner of Larimer and 13th Street. In 1861 and its move into the State Capitol's north wing in the early 1890s, the court convened in many locations, including the Middal Building behind the Lincoln Hotel, the Old Planter's House on Blake and 16th, the Keller House on 11th, the Jackson Building on 18th and Larimer, George W. McClure's building on Larimer between 15th and 16th, and the corner of Lawrence and 15th.

In 1905, the court grew to seven justices (which is the court's current size) to help address the heavy caseload. These justices sit *en banc*, or in a full panel, for every case. Court of Appeals judges sit in panels of three to consider cases.

Colorado Court of Appeals

Colorado's Court of Appeals has a fragmented, yet fascinating, history. The first Court of Appeals was established in 1891 by the Colorado General Assembly for an indeterminate term to help the Supreme Court with its heavy caseload. This court consisted of three judges and lasted until 1904, when it was no longer believed to be necessary.

In 1913, a second Court of Appeals was created, this time with five judges, but with a pre-established term of only four years. Its mandate expired in 1917. In 1970, the third and present Court of Appeals was established, with six judges at its inception. In 1974, this number was increased to 10, and on Jan. 1, 1988, the number was increased to 13. Effective July 1, 1988, three additional positions were created by the General Assembly, bringing the number of judges to 16. The most recent court expansion became effective on July 1, 2008, bringing the number of judges to 22.

The court's location during its first two terms is unclear, but due to its close relationship with the Supreme Court, it may have been held in the same location. The third Court of Appeals began hearing cases in 1970 at the Supreme Court courtroom in the Capitol. When the court expanded to 10 judges in 1974, it moved to a new courtroom on the sixth floor of the Farmer's Union Building on 16th and Sherman. In 1977 it joined the Supreme Court in the former Colorado Judicial Department Building at 14th and Broadway. The court has since grown to 22 judges. The Judicial building was demolished in 2010; the Ralph L. Carr Judicial Center opened in 2012 to house both courts, the State Court Administrator's Office and all other state agencies with legal or court-related functions.



Timeline of state's judicial structure

- 1876** – 4 judicial districts; 1 judge in each
- 1881** – 7 judicial districts; 1 judge in each
- 1887** – 9 judicial districts; 1 judge each, except Arapahoe County (incl. Denver) with 2
- 1891** – 13 judicial districts; first Court of Appeals
- 1893** – 2nd judge given to Pueblo area
- 1895** – 2nd judge given to Colorado Springs area
- 1905** – Supreme Court given 7 justices; first Court of Appeals abolished
- 1913** – Second Court of Appeals established for a four-year life
- 1917** – Second Court of Appeals abolished
- 1921** – 14 judicial districts
- 1945** – 15 judicial districts
- 1953** – 16 judicial districts
- 1958** – 18 judicial districts
- 1963** – 22 judicial districts, the present number
- 1969** – Colorado water courts established by the Water Right Determination and Administration Act, a state law that created seven water divisions based on the drainage patterns of Colorado's rivers.
- 1970** – Third and current Court of Appeals was established
- 1977** – Supreme Court and Court of Appeals moved into current building
- 2002** – 273 judges statewide: 7 Supreme Court justices, 16 in the Court of Appeals, 118 in district courts, and 132 in county courts
- 2008** – 304 judges statewide: 7 Supreme Court justices, 22 in the Court of Appeals, 164 in district courts and 111 in county courts.
- The General Assembly approves, and the Governor signs into law, a bill authorizing financing for the construction of a new headquarters for the Supreme Court, Court of Appeals, State Court Administrator's Office, and all other state agencies with legal or court-related functions and expands the number of Court of Appeals Judges to 22.
- 2010** – The appellate courts move out of the Judicial Building at 14th and Broadway, and that building and the adjacent Colorado History Museum are demolished to make room for construction of the Ralph L. Carr Judicial Center. The appellate courts and State Court Administrator's Office temporarily relocate to the Denver Post Building at Colfax and Broadway.
- 2012** – The appellate courts and Office of the State Court Administrator move into the Ralph L. Carr Colorado Judicial Center.
- 2016** – 331 judges statewide: 7 Supreme Court justices, 22 Court of Appeals judges, 188 in district courts and 114 in county courts
- 2020** – 339 judges statewide: 7 Supreme Court justices, 22 Court of Appeals judges, 196 in district courts and 114 county court judges.
- 2024** – 378 judges statewide: 7 Supreme Court justices, 22 Court of Appeals judges, 210 district court judges and 139 County Court Judges
- 2025** – The legislature creates a 23rd Judicial District, which opens in Jan. 2025. The current 18th Judicial District, comprising Arapahoe, Douglas, Elbert and Lincoln counties, split into two judicial districts. Douglas, Elbert and Lincoln counties became part of the newly created 23rd Judicial District, and Arapahoe County remained in the 18th District.



Tribal Courts

Modern tribal courts were established in the United States in 1934 with passage of the Indian Reorganization Act. Tribes were encouraged to enact their own laws and establish their own governments, constitutions and justice systems. Many tribes, impoverished from years of Indian policy that had decimated their communities and culture, couldn't afford to adopt their own tribal codes or develop courts and chose to operate under provisions of the Code of Federal Regulations (CFR). Additional federal laws were passed to establish and strengthen tribal courts and police departments.

Today, there are 400 tribal justice systems in the United States; they operate separately from the federal and state courts and are governed by tribal law. There are two tribal courts in Colorado: the Southern Ute Indian Tribal Court in Ignacio and the Ute Mountain Ute Agency (Southwest Region) in Towaoc. These courts exercise and protect the sovereignty and jurisdiction of the tribes, providing a forum for the enforcement of tribal law and the administration of justice, while honoring tribal culture. Based in tribal traditions, they focus on restorative justice and communal resolution.

Class activity

1. Begin class by giving the students this scenario: You are a white settler who has recently arrived in the foothills (or mountains) of the western territory. As more people arrive, they start to have disagreements among themselves. What would you do to solve this problem?
2. Provide an overview of the evolution of Colorado's courts and development of tribal courts, using the content provided above. Alternatively, have the students read the history out loud in groups.
3. Hold a class discussion stemming from the following questions:
 - a. What do you think about the early systems of justice in Colorado (i.e. Indigenous tribal law, Miners Courts, People's Courts)?
 - b. What are similarities and differences between how Indigenous people's solved problems and how Miners and People's courts solved problems.
 - c. How would you have solved the justice problems that arose among settlers and Indigenous peoples, or the conflict between the Territory of Jefferson and Arapahoe County?
4. Discuss what a typical disagreement in territorial times might have been and how would you resolve it with no Western legal system yet in place.
5. Discuss the impact of the Colorado court system on Indigenous ways of life.

Homework assignment

1. Have students research systems of justice that arose before the Territory of Colorado.
2. Have them address one of the following questions:
 - a. Choose one early system of justice that arose before the Territory of Colorado and critique it. Compare that system to what you would have done in a situation where settlers were arriving in the area and wanted to solve disputes.
 - b. Compare one of the early systems of justice in this area to the existing system of justice. In what ways are they similar? In what ways are they different?

