

Law evolution

Roman Law (449BC-529AD) but continued with both the Eastern Roman Empire (Byzantine) and rebirth of Holy Roman Empire approx. 800 by Pope's conniving.

It is the basis of **Civil law**, the most widely used legal system today. This helps explain the extensive Latin terminology.

Roman law remained in W. Europe, called various things through the 18th century under the Holy Roman Empire. It also influenced the laws of Europe and English Common Law.

In reality, Roman Law was a 'formalization' of the common law at the time and place (The Ancient Rome Empire).

*Canon Law/Ecclesiastical law is law that is internal to the church. It began in the 4th century?

There were some elements of Canon law that were mixed with Roman law to become 'Civil' law that was adopted by much of Europe and influenced English common law to a lesser extent (since England's legal system of Common law was more developed at the time Roman law was rediscovered).

Therefore, the English system of common law developed in 'parallel' with Roman-based civil law with some concepts of Roman law making their way into English Common Law.

Law Merchant/Lex Mercatorian (references of it going back to 1473) was a body of commercial law developed during the Medieval period. It evolved similar to English Common Law that allowed merchants to revive commerce that had fallen off significantly following the fall of the Western Roman Empire.

It was essentially a form of '**common law**' **specific to commerce!**

Eventually it made its way into English Law and was largely **merged with Common Law** over a period of many years, most notably by Lord Mansfield during the mid to late 1700s. The combination became the foundation of English Commercial Law.

'**Equity**' is the body of law developed in the **English Court of Chancery** and is **now administered concurrently with the common law**. The two bodies of law were **fused by the Judicature Reforms in the 1870s** in England. Over time, litigants began to seek relief against unfair judgments of the common law courts as equity courts were generally fairer. The Chancellors often had theological and clerical training and were well versed in Roman law and canon law. Over the course of a couple of hundred years Equity rules evolved and became quite popular and developed into a similar, parallel system to common law. A major difference is that it lacked strict rules and was much more subject to the beliefs and whims of the judge than common law. **In 1615, Attorney General, Sir Francis Bacon, concluded that in the event of any conflict between the common law and equity, equity would prevail**. Equity's primacy in England was later enshrined in the Judicature Acts of the 1870s which fused the courts of equity and the common law into one unified court system (although NOT the systems themselves).

Statute of Uses 1535: Use can be thought of as ‘benefit/ beneficial use.’ This gave rise to the distinction between ‘legal’ title and ‘equitable’ title/interests. Lawyers developed the concept of ‘Uses’ as a method to avoid paying taxes, it was a primitive form of ‘trust’ that they called ‘the use.’ It enabled one person (who was not required to pay tax) to hold ‘legal title’ of the land for the ‘use’ of another person. The effect was that the first person owned the land under common law and the second person had a right to use the land under the law of equity. The statute of 1535 was enacted by Henry VIII in an attempt to outlaw this practice to recover lost revenue. Lawyers countered this by ‘creating the use upon a use’ since the statute only recognized the first use.

In the US, the most important distinction between law and equity are the remedies available. The most common civil remedy of a court of ‘law’ is monetary damages. Equity has many additional options such as injunctions, decrees directing someone to either act or to forbear from acting. Such forms of relief can be more practical and valuable to a litigant. A general rule is that a litigant cannot obtain equitable relief unless there is ‘no adequate remedy at law.’

In the US, the federal courts and most state courts have merged law and equity in the courts of general jurisdiction, such as county courts. There was a serious push to merge them in the mid 19th century but the courts didn’t abandon the law & equity separation until the promulgation of the **Federal Rules of Civil Procedure in 1938**. Only three states still have separate courts for law and equity: Delaware, Illinois, and New Jersey.

**[explore injunctions under equity that have many uses both to compel an action and prohibit an action by an individual or entity. They have been used beneficially in environmental, civil rights, and employment discrimination among other things.]

*****Trusts and trust law.** Trusts have existed **since Roman times** and have become one of the most important innovations in property law. In Roman law they only had ‘testamentary trust’ created by wills, they did not have the concept of ‘inter vivos’ (living) trusts, these were created later under common law. Much of personal trust law was developed in England during the time of the Crusades (12th and 13th centuries). In medieval English trust law, the beneficiary was known as the cestui que use or trust.

The trust is widely considered to be the most innovative contribution of the English legal system! Today, trusts play a significant role in most common law systems.

Equity law in England centuries later created the ability to separate title into legal and equitable which is one of the key reasons that trusts are used so extensively.

Trustees may be held to a very high standard of care in their dealings to enforce their behavior. To ensure beneficiaries receive their due, trustees are subject to a number of ancillary duties in support of the primary duties, including duties of [openness](#) and [transparency](#), and duties of [recordkeeping](#), [accounting](#), and [disclosure](#). In addition, a trustee has a duty to know, understand, and abide by the terms of the trust and relevant law. The trustee may be compensated and have expenses reimbursed, but otherwise must turn over all [profits](#) from the trust properties and neither indebt nor riskily speculate on the trust assets without the written, clear permission of all of the adult beneficiaries.

There are strong restrictions regarding a trustee with a [conflict of interest](#). Courts can reverse a trustee's actions, order profits returned, and impose other sanctions if they find a trustee has failed in any of his or her duties. Such a failure is a civil **breach of trust** and can leave a neglectful or dishonest trustee with severe liabilities for the breach. It is highly advisable for settlors and in many cases trustees to seek qualified legal counsel (advice) before entering into or creating a trust agreement and trustees must take great care in acting or omitting to act to avoid unlawful mistakes.

Another way of looking at it: [add rights > power > laws to protect rights & power]

Laws are simply agreed upon rules that help to provide order among people. As far as I can tell, from the very beginning when humans appeared and had to interact with others, there became a need for rules to maintain some semblance of order and cooperation. Clearly, it would appear that virtually all animals also have various rules of conduct that they adhere to. The abilities to speak and later to write, are what seemingly set humans apart. Or perhaps it is just that we require more detailed rules or laws than the rest of the animal kingdom.

It begins with **Natural Rights**. The premise is that all creatures derive 'natural rights' from nature and nature's god. Many believe that this only applies to humans while others extend it to all creatures. Natural Rights are rights that are independent of the laws or customs of any particular culture or government. They are therefore universal, fundamental, and inalienable. They cannot be taken away although they can be forfeited or voluntarily waived.

Natural Law is the law or rules that go along with **Natural Rights**. Natural Laws & Natural Rights have been recognized since humans began to interact with other humans. **A simple summary of Natural Law is 'do no harm and cause no damage to property.'** This has been said numerous ways such as, **'do unto others as you would have them do unto you.'** This is the foundation of natural law and of every system of justice on Earth. It is about behaving 'honorably.' Rules, formalized into laws, were developed by people to spell out the obligations of people toward each other and provide ways to help enforce honorable behavior.

If someone overtly threatens your safety or that of a loved one, you are well within your natural rights to defend yourself by verbally and physically intervening. Few would argue against this basic right. How about if someone is polluting the water supply that others depend on? Would that qualify as something we could intervene to correct forcibly? I contend that it is once 'proper notice' has been given to the offending party confirming that they are aware that their actions are harming others. Of course, our intervention must be appropriate to counter the offense without committing a new offense and harming another in the process. That's where things can get tricky.

All law is based on **Natural Law** which is part of every sentient being's inheritance.

As people developed relationships with others, it evolved into what is called '**Common Law**' as it was commonly known to most, or all, and shared in common. This allowed a better chance of living in reasonable harmony with others.

Roman Law was the 'common law' of the Rome that developed over more than 1,000 years.

Canon Law was the 'common law' of the church, it applied to the clergy and members of the church.

Civil Law was originally a blend of **Roman law & Canon law**, this basically became the 'common law' of most of Medieval Europe after the fall of the Western Roman Empire and the rise of the Holy Roman Empire.

Law Merchant / Lex Mercatorium was the 'common law' of the merchants and commerce... it mainly had to do with commerce. It had to do with commerce wherever it occurred, land or sea. Eventually, it became more formalized and intertwined **Maritime & Admiralty laws** over time...

Equity / Equity Law was the 'common law' &/or 'common law alternative' developed by the Chancery to provide **more equitable relief** than the 'common law' of the day (although it varied based on the judge or chancellor). The Chancellor was considered the conscious of the monarch which led to the goal of achieving greater equity among the parties of a dispute.

Maritime Law was the 'common law' of the seafaring people who pretty much lived on and interacted on the sea... it had a great deal to do with commerce since most commerce involved transporting goods for sale or exchange...

Admiralty Law was the 'common law' of the navy (military) that patrolled and waged war on the seas...

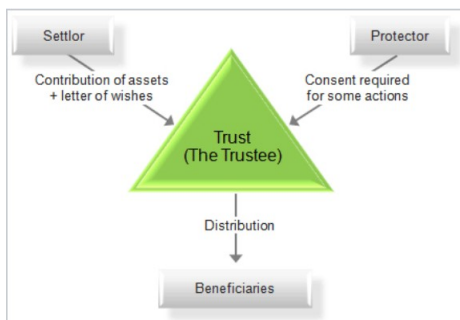
Trust Law was the 'common law' of how assets were placed in trust with another for the beneficial use of someone else (the beneficiary)...

All common laws evolved over time as society's norms changed. They also varied by culture and location. They were generally not written or codified, however, precedents were established and widely known.

Statutory law is an artificial, formalized form of law designed NOT to be so changeable or flexible. In some cases common laws are converted to statutes but most statutory laws are created by legislatures. They often truly only apply to the organization (corporation) that made them rather than the people. However, the vast majority of the people have been tricked into agreeing to comply with them.

Court decisions will modify how statutory laws are 'interpreted' based on opinions and this has the effect of altering or 'creating' laws from the bench or judiciary (however, this is not an authorized method of making law. Contrary to how common law evolved, and continues to do so, the courts, unlike the people, are not sovereigns and they are not authorized to make or

change laws. In common law, it is normal for things to shift gradually over time as the ‘decisions & opinions’ of the people change over time based on changing societal norms. In the case of the courts and new ways of interpreting laws, thereby altering them, it is due to the biases and various allegiances of the judges. The problems are: 1. Judges are all lawyers. 2. All people are inherently biased, lawyers even more so. 3. Lawyers & judges have divided allegiance (to the court/crown and secondarily to their client or duty to provide justice). 4. Judges are typically appointed for life. 5. Judges tend to be politically and ideologically quite biased. 6. Power corrupts, judges have too much power. 7. Therefore, most judges are corrupted over time.



Timeline of the evolution of law

1. **Natural Law led to the ‘Common Law.’** It was not written down but was well known by virtually everyone although it evolved over time based on local culture and traditions. All law was passed along via the oral tradition until it began to get too complex due to too many laws. Common Law still exists today and most law systems throughout history were based on ‘common, aka customary’ laws, rules, and principles.
2. In most cultures, **Written aka Codified Law** was instituted as laws became more numerous and complex (some cultures did continue the use of oral tradition, while most put them in written form).
3. **A Greatly Simplified History of the Evolution of Law:**
 - a. **2350 BC: Urukagina's Code:** This code has never been discovered but it is mentioned in other documents as a consolidation of existing "ordinances" or laws laid down by Mesopotamian kings. An administrative reform document was discovered which showed that citizens were allowed to know why certain actions were punished. It was also harsh by modern standards. Thieves and adulteresses were to be stoned to death with stones inscribed with the name of their crime. The code confirmed that the "king was appointed by the gods".
 - b. **2050 BC: Ur-Nammu's Code:** The earliest known written legal code of which a copy has been found, albeit a copy in such poor shape that only five articles can be deciphered. Archaeological evidence shows that it was supported by an advanced legal system which included specialized judges, the giving of testimony under oath, the proper form of judicial decisions and the ability of the judges to order that damages be paid to a victim by the guilty party. The Code allowed for the dismissal of corrupt men, protection for the poor and a

punishment system where the punishment is proportionate to the crime. Although it is called "Ur-Nammu's Code, historians generally agree that it was written by his son Shugli.

- c. **1850 BC: The Earliest Known Legal Decision:** A clay tablet reveals the case, in 1850BC, of the murder of a temple employee by three men. The victim's wife knew of the murder but remained silent. Eventually, the crime came to light and the men and woman were charged with murder. Nine witnesses testified against the men and woman and asked for the death penalty for all four. But the wife had two witnesses which told the court that she had been abused by her husband, that she was not part of the murder and that she was even worse off after her husband's death. The men were executed in front of the victim's house but the woman was spared.
- d. **Code of Hammurabi (1792-1750 BC):** oldest known set of written laws; Babylonian King Hammurabi; 282 laws based on retribution and restitution; many were quite harsh, stealing=death, hitting your parents=death.
- e. **Mosaic Law later renamed the Ten Commandments (?1500 BCE - 529 CE):** aka the Law of Moses; book of Exodus is based on these laws; difficult to date their origin.
- f. **The Laws of Ancient China (1140 BCE on):** For the most part, Western scholars ignore much of the history of China when discussing World history. China has a rich history of laws that is distinct from that of the west. Interestingly, there were two main types of law, 'official' and 'unofficial.' Official laws emanated from the emperor, there were two main categories, penal and administrative. Unofficial laws were the 'customary' or common laws of the people. Such customary/common law developed from 'rules' developed in localities or in merchant guilds.
- g. **Great Laws of Manu (1280-880 BCE):** India; The Laws of Manu is one of the main pillars of ancient Hindu Law, and is held in the highest reverence. Tradition says that Manu **wrote down the laws of Brahma in 100,000** Slokas which formed 24 books and a thousand chapters.
- h. **Draconian Constitution or Draco's code (620 BCE):** Greece; codified basic law due to unjust interpretations and modifications of oral law by Athenian aristocrats; Aristocrats typically had superior access to, or understanding of, the laws and used this to their advantage against the general populace leading to frequent violent feuds; Draco was hired to codify the various oral laws thereby making the laws accessible to all who were literate; 'Draconian' has become part of the English language as an example of something especially harsh as **MANY** of the laws carried the penalty of death.
- i. **Book of Leviticus (550 BCE):** the third book of the Old Testament or the Torah; instruction emphasize ritual, legal, and moral practices. The central message in the book of Leviticus is that **God, who is holy, requires his people to be holy**. It also shows that God graciously provides a means of atonement for sin through the sacrificial shedding of blood.
- j. **Roman Law (450 BCE):** codified/written; based on two main principles: All laws must be recorded; Judges could not determine if one was guilty or not guilty on their own, i.e., judges could not be trusted to interpret the law; Consisted of 12

tablets and posted publicly. It was spread throughout the world by the Roman Empire and is **the basis of most of our law today**. The first lawyers appeared in Roman times (seems like it was all downhill since).

- k. **Greek Law (400 BCE):** first set of laws that **involved people's opinions and rights**; jury system of citizens who could express their opinions in court; people allowed to make decisions about how the country would be run; did not include women and children. This Democratic system didn't work out so well for Socrates.
- l. **Code of Li k' vei (350 BCE):** China; written and codified, based primarily on robbery, theft, arrest, and prison.
- m. **Arthashastra (200 BCE):** Indian manuscript of 15 books; third and fourth books summarize laws and the court.
- n. **The Five Punishments (180-157 BCE):** Dynastic China; punishments for various crimes; they consisted of tattooing the face or forehead, cutting of the nose, amputation of one or both feet, castration, and death; later (581-907 CE) they were changed to penal servitude, banishment, death, or corporal punishment (whipping or flogging).
- o. **Justinian's Code (529 CE):** created by Byzantine Emperor Justinian who commissioned 10 men to clarify 1600 books of Roman Law spanning 1,000 years; serves as the basis for modern justice; the first legal code that emphasized equality under the law; it is the basis of civil and criminal law today and is the foundation for many legal systems in Europe. This is the origin of the word 'Justice.'
- p. **The Seventeen Article Constitution of Japan (604 CE):** Written by a Japanese prince regent, the Constitution shaped morality and law in Japan, a country which had just begun to develop and become literate. Some examples of its paternalistic clauses are: "peace and harmony should be respected because they are very important for intergroup relations"; "There are very few evil men. If we teach them (the Buddha beliefs), they may become obedient"; "equality, speediness and integrity should be maintained in court procedures" and "the basic philosophy in all matters should be "against privacy" and "toward public benefit". In it, one can observe that the emphasis of "Oriental law" which seeks to prevent disputes, whereas the "Western law" seeks to resolve disputes.
- q. **T'ang Code (653 CE):** The territory which is now China was, since time immemorial, occupied by feuding kingdoms. It was not until 221 BC that the king of "Ch'in" managed to defeat the kings of the other 6 kingdoms and unite China. After 400 years of unification, the Empire developed a Code of Law called the T'sang Code, which listed crimes and their punishment in 501 articles. The Code revised earlier existing Chinese codes and standardized procedures. For examples, there were only two ways to perform capital punishment on a convicted criminal: beheading or hanging.
- r. **Feudalism (1066):** England, King William following the Norman Conquest (Norman was derived from Northmen who were basically Vikings; the Norman

Conquest was supported by the Norman aristocracy & the papacy); he retained the Anglo-Saxon law and judicial system based on 'common law;' and instituted the rules/laws of feudalism that had to do with land ownership vs use (beneficial use by tenants aka peasants); it was ultimately a system of taxation without providing legal title or ownership; the King owned all the land and divided most of it among his lords or noblemen who held 'equitable' title that the king could take back as he desired. King William appointed judges to travel about and decide cases; cases with similar facts were decided in the same way based on precedent; this system is common law aka case law.

- s. **Magna Carta (1215):** one of the most monumental documents in known history; it laid out controls of the power and abilities of the crown and monarch; introduced concept of Habeas Corpus; made all people including the monarch accountable to the law; People's rights could not be changed without consent.
- t. **The Trial of Scotsman William Wallace (1306):**
- u. The Trial of Sir Thomas More (1535):
- v. **English Bill of Rights (1689):** the Declaration of Right was enacted by English Parliament; it asserted 'certain ancient rights and liberties'; Rights included freedom to elect members of Parliament without the king or queen's interference, freedom of speech in Parliament, Freedom from royal interference with the law, freedom to petition the king, freedom to bear arms for self-defense, freedom from cruel or unusual punishment and excessive bail, freedom from taxation by royal prerogative, without the agreement of Parliament, freedom of fines and forfeitures without a trial, freedom from armies being raised during peacetimes...
- w. **The Salem Witch Trials (1692):** In 1692, in the town of Salem, Massachusetts, USA, a group of young women accused several other women of practicing witchcraft or worship of the Devil. The accusations turned into a judicial frenzy and over 300 people were accused of witchcraft, of which 20 were executed including a priest. The extremity of the penalty turned many against the prosecution of witchcraft. There would be no more witchcraft trials in New England.
- x. South Carolina Slave Code (1740): This infamous legislation regulated the use of slaves and became the model for slavery in other states, until repealed as an effect of the American Civil War. "All Negroes, Indians ... and all their offspring ... shall be and are hereby declared to be and remain forever hereafter slaves; and shall be deemed ... to be chattels personal in the hands of their owners."
- y. Blackstone's Commentaries on the Laws of England (1765): This British barrister set about writing down the entire English law in a 4-volume set, in easy-to-read English, thus making the law suddenly accessible to the common man. His research also made the book a must-read for lawyers and law students alike. It was re-published many times. Through it, the English law was readily imported to the British colonies and in fact it is said that Blackstone's Commentaries was the law

in the American colonies for the first century of American independence. The Commentaries also allows us to witness the exact state of British law at that time on such things as the total legal submission of a wife to her husband, as was then considered natural law.

- z. **English & English-American Law (1775, 1791):** Major progress ensued with and following Revolutionary War, the Declaration of Independence, and the Bill of Rights; still considered the basis of civil rights and freedoms in America; the American Revolution inspired, to some degree, the French Revolution 1789; the French rose up against their king to end feudalism; helped lead to the concept of 'nation-states.'
- aa. **The Constitution for the united States of America (1787):** The 7 articles of the American Constitution were signed in Philadelphia in 1787 and formed the basis of the first republican government in the world. The Constitution defined the institutions of government and the powers of each institution, carefully carving out the duties of the executive, legislative and judicial branches. The Constitution also declared that it was paramount to any other law, whether federal or state, and it would override any other inconsistent law. The American Constitution served as a model for the constitutions of many nations upon attaining independence or becoming democracies.
- bb. **Through the Operation of Penal Law, A Country Is Formed (1788):** Sydney was the site of the first British settlement on Australia, which had been designated as a prime location as a British penal colony. For fifty years, Britain sent its worst men, who were quickly chained into work gangs and put to building roads and bridges. By 1821, there were 30,000 British settlers in the British commonwealth, of which 75% were convicts.
- cc. **The American Bill of Rights (1791):** With the ink barely dry on the Constitution (signed only four years earlier), American statesmen amended their supreme law by declaring the rights of free speech, freedom of the press and of religion, a right to trial by one's peers (jury), and protection against "cruel and unusual punishment" or unreasonable searches or seizures. The ten amendments of Bill of Rights became known as the First to Tenth Amendment(s) respectively. The Bill of Rights influenced many modern charters or bills of rights around the world.
- dd. **Marbury versus Madison (1803):** In this case, the Supreme Court upheld the supremacy of the Constitution and stated unequivocally that it had the power to strike down actions taken by American federal or state legislative bodies which, in its opinion, offended the Constitution. This has come to be known as the power of "judicial review". This case is considered by the legal profession to be the most important milestone in the history of American law since the Constitution.
- ee. **France & Napoleonic Code (1804):** commanded to be written and enacted by Napoleon after the French Revolution to unify French law; instituted in countries that Napoleon continued to conquer; it incorporated most parts of Roman law; later

named the French Civil Code; regulated wills, property, contracts, and family law; reflected aspects of the Germanic code of northern France and Justinian Code of Southern France; this became the model for most of Europe.

- ff. **The Geneva Convention (1864):** This agreement was designed to provide for minimal human rights in time of war such as the protection of military medical personnel and for the humane treatment of the wounded. It was later supplemented by a Prisoner of War Convention. Although frequently ignored in military operations, this document remains an important legal document which, for the first time ever, sets out rudimentary standards of human decency during war. [Technically, I believe that the Lieber Code did this a couple of years earlier.]
- gg. **The Thirteenth Amendment (1865):** By this change to the American Constitution, slavery was abolished in the USA.
- hh. **The Nuremberg War Crimes Trial (1945-46):** A special panel of eight judges convened in this German town to try Nazi officers for crimes against peace, crimes against humanity and war crimes committed during World War II. The judges came from the USA, Great Britain, France and the Soviet Union. Twenty-four Nazis were tried and twelve received death penalties (although one defendant, Hermann Göring, committed suicide hours before his execution). This trial was important as it showed that even in times of war, basic moral standards apply in spite of military law principles which oblige a subordinate officer to obey orders. "The true test," wrote the Tribunal, "is not the existence of the (superior) order but whether moral choice (in executing it) was in fact possible". The crimes included torture, deportation, persecution and mass extermination.
- ii. **The General Agreement on Tariffs and Trade (GATT) (1948):** The GATT was developed by the United Nations and has served as a catalyst for the lifting of legal barriers against the free movement of goods, services and people. Now under the auspices of the World Trade Organization, the implementation of GATT by almost all countries is causing commercial law interplay between differing legal systems and, in most cases, providing impetus for those legal systems to move towards similarity and compatibility. The GATT also shows a new emphasis of the development of law in the world: from military and basic rights to trade and economic matters.
- jj. **Universal Declaration of Rights (1948):** United Nations.

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Laws are essentially a set of rules with 3 main characteristics that make them different from simple rules:

1. Laws are rules established and enforced by govt.
2. Laws are mandatory.

3. Laws involve consequences.

Functions of law: establish rules of conduct; provide a system of enforcement; protect rights and freedom; protect society; resolve disputes.

Divisions of law: [ex Canada] Substantive & Procedural

Substantive law: laws that outline a person's rights and responsibilities; further divided into **Public and Private Law**.

Procedural Law: legal processes that protect and enforce our rights.

Public law; 3 types: Criminal (offenses against society and their punishments), Constitutional (outlines structure and powers of govts), Administrative (relationships between citizens and government agencies)

Private law; 5 types:

1. **Tort:** a person is held responsible for damage caused to another; 'tort' is Latin for 'a wrong.'
2. **Family:** deals with various relationships of family life (ex. marriage).
3. **Contract:** outlines requirements for legally binding agreements.
4. **Property:** outlines relationship between individuals and property.
5. **Labor:** outlines relationship between employers and employees.

In ancient societies, customs and beliefs made up the law. Customs were not written down and were passed on by word of mouth. As populations increased and governing structures became more complex, laws also became more complex and the importance of writing out (codifying) laws became more important. Codification is simply a written collection of laws.

Misc from slideplayer.com/slide/17901872/

Property: Is a collection of Rights, not a collection of things!

What is a right: the legally recognized ability to exercise power and control over an action or an object.

What is the law: rules by

Last Time – We Spoke About:

- Website: www.bobfarley.org
- Your Biography: If you haven't already, please hand it in.
- Property: *Is a collection of Rights, not a collection of things*
- What is a Right: *The legally recognized ability to exercise power and control over an action or an object*
- What is the Law: *Rules by which civilization is ordered.*
- Laws: *Constitution, Statutes, Case Law Regulations and Executive Orders*
- Sovereignty: *In the United States it vest in the People themselves.*
- Structure of Government:
 - > Adams: Pre-Declaration "Thoughts on Government"
 - > Federal: President, Congress (Senate/House), Judiciary (Supreme Court)
 - > State: Governor, Legislature (Senate/Assembly), Judiciary (Court of Appeals)
- Founders: Devoted to Property Rights
- Exercise: How A Bill Becomes A Law

2

Tonight – We Will Speak About:

- The Importance of Property
- The Evolution of Property Rights in Law
How the Law and Property are Intertwined
- Anglo-American Legal History
How Property Rights Became a Fabric of Law
- Blackstone and Colonial Perspective:
Making Property Rights Part of America
- Property Rights in American Law:
Life, Liberty and the Pursuit of ... Property!

The Evolution of Property Rights and the Law

- This is a survey of the History of Anglo American Law
- But this as this is a course in the law of property, you may have questioned:
- Why should we learn about:
 - Roman Codes,
 - The British Monarchy and Common Law,
 - Colonial Legislatures, and
 - The formation of Constitutions and State Legislatures?
- Is this not a course on land transactions, mortgages, bailments, gifts and real and rental property relationships?
- What does the heck does the first have to do with the second?

5

The Evolution of Property Rights and the Law

- This is a concept not for the intellectually lazy.
- Indeed from first blush, you may not grasp the reason why we must learn about the history of Anglo American Law to understand property.
- The simple answer is that to truly understand the law of property, **we must understand the law itself, for property and the law are intertwined, with each developing from the other.**
- So **if we want to understand property, we need to understand the law.**
- **If we want to understand the law, we need to know how it developed.** Thus a understanding of property, requires a review of legal history.
- Once we grasp the legal history, the difficult concepts of property law, all start to make sense and fall into place.

6

What do Rights, Law and Constitutions have to do with Property?

- Our next two classes might seem like they have nothing to do with property, but let me assure you dear students, they have absolutely everything to do with property.
- To truly understand property, it is necessary to think of it in terms of a collection of rights, not a collection of things.
- To truly understand rights, one must understand the law that protects those rights.
- To truly understand the law, one must understand the constitutions under which the law maintains its framework.
- Accordingly Rights, Law and Constitutions are the three pillars upon which property is supported.

7

Are you a sailboat or are you a submarine?

- Well my dear students, let me address your burning curiosity as any good professor of law would do, by asking a question of my own.



8

Sailboat Students

- A **sailboat** student simply skims the tides of knowledge.
- Merely reacting to the waves of information before them, they fail to truly comprehend the conditions the sea of learning presented during their trip.
- **Sailboat students** are mere passengers on the adventure, never bothering to ask what causes such conditions below the surface upon which they travel.
- Consequently, the **sailboat student** leaves their vessel at the end of the journey without ever asking what lies beneath the surface of the water. They **sadly lose the opportunity to make the deep discoveries** that their adventure offers.

9

Submarine Students

- Conversely, the **Submarine student** longs to not only enjoy the beauty of cruising the surface, but also **dares to venture into watery depths of understanding**.
- By permitting themselves to at times be immersed in the knowledge of the subject waters before them, **they choose the journey of full perspective learning**, weathering the storms of uncertainty, by **diving into the information of the deep**.
- **Those brave students**, dedicated enough to wear **the dolphin insignia upon their lapel of learning**, are rewarded with the exhilaration of **understanding and knowledge**, grasping the opportunity of **discovery and enrichment**.

10

Which are You?

- For those of you courageous and dedicated enough to become submariners, I urge you to thoroughly complete our reading assignments posted to our website.
- There you can take the plunge into the full depths of understanding.
- For those of you more inclined to a sailboat adventure, however, please know that we will do our best here in class to serve as an effective tour guide for our adventure into the Law of Property.
- As a lawyer, however, I must advise you all of a caveat. It is my experience, that reading is indeed the gateway to learning. It can, like few other mediums, transport our minds to the wonderful world of understanding and comprehension.

You show me a gifted, educated person, I'll show you a reader.

11

So What is Property?

And so before we begin our adventure to discover just what property is ...

We must think about the meaning of property

What it really is and means!!!

14

Let's Continue on our Adventure in the Law

- As we spoke briefly the last time, **any true understanding of the law of property** requires at least **a basic understanding of the concept of the law**.
- For as Professor Friedman so accurately points out in his landmark work **"A History of the American Law", the law, and our conception of property rights, evolved together**.
- The **Law** and **Property Rights** are integrated and intertwined.
- In so many ways, they formed the basis for each other.
- In their early days they were virtually inseparable.

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Studying the Law of Property as an Adventure in the Law

To start this Adventure we need to know:

What is the "Law"?

We need to find out, we need to discover this answer.

And just how do we do that?

Well, we need to learn that good law students, like good adventures and explorers, develop a well earned love for books.

For Books are the treasure trove of answers.

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- And so,

What is the "Law"?



- The "Law" has been defined by Black's Law Dictionary as follows:
 - "That which is laid down, ordained, or established.
 - A rule or method according to which a phenomena or actions co-exist or follow each other.
 - Law, in its generic sense, is a body of rules of action or conduct proscribed by controlling authority, and having binding legal force. ...
 - Law is a solemn expression of the will of the supreme power of the state."
- Perhaps the simplest description of the Law, however, is that:

"Law is the Rules by which civilization is ordered."

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The Chief Elements / Components of the Law are:

- 1. Rules
 - 2. Pronounced, laid down and/or issued by a controlling authority;
 - 3. That are consistent and lasting; and
 - 4. That are enforceable and followed by the governed.
- Early laws were simply directives from a king or sovereign.
 - Modern Laws are Enacted by a Legislature
(In America that is Congress for the Federal Government and State Legislatures for State Governments)

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Priority of Laws:

- 1. Constitution:** Established by Convention of Elected Delegates to provide governmental framework and protections of individual rights, they are supreme to all other laws as interpreted by the Courts
 - 2. Statute:** Laws passed (enacted) by an elected legislative body (Congress or State Legislature) and signed into law by the Executive (President or Governor).
 - 3. Regulation:** Promulgated by government (Executive) agencies to amplify or clarify their authority as provided in statute or constitution.
 - 4. Executive Order:** Issued by Executive (President or Governor) as an instruction to their agencies on how to execute a procedure or law.
- ❖ **Case Law or Common Law -**
Decisions issued by courts which provide legal rules by:
1. Interpretation of a Constitution, Statute, Regulation or Executive Order, or
 2. Clarifying or creating law pursuant to past court decisions.

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The Evolution of Rights

- So it has become apparent – if you want to understand Property you need to understand Rights.
- So lets begin our understanding into the true meaning of property law, by performing a review of the evolution of Rights. Where they came from and what they mean.
- As we venture into our journey of understanding to explore the History of the Law. Now we will examine that same history with respect to the concept of Rights.
- For without the vehicle of the law and the enforcement and protection its offers, the legal concept of Rights (and the just expectations upon which they are based) would not exist.

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The Evolution of Rights

A. The Concept of Right

In order to properly view property as a collection of rights, exactly what a right is, and where it came from, needs to be understood.

- The legal concept of "right" is a relatively recent one, that was **not fundamentally expressed until after the rise of English jurisprudence.**
- Indeed, according to Susan Ford Wiltshire (Chair of the Classical Studies Department of Vanderbilt University) **"Theories of rights assume a dignity of persons and a status of individuals that did not exist in the classical world".**
- Prior to the predominance of English jurisprudence, **the legal status of an individual was determined by their relationship with the state.**
- As English jurisprudence developed however, with both the events surrounding the **Magna Carta** and the establishment of the **Common law**, the law began to see a "slow transition from a state defined, to **an individual-defined, political identity**", driven primarily by a new belief in **the concept of natural law.**

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The Evolution of Rights

A. The Concept of Right - Continued

- **First Greece**
The first step toward the development of the concept of rights can be traced back to ancient Athens, when the Greeks "invented the revolutionary idea that **human beings are capable of governing themselves through laws of their own making**".
- **Then Rome**
Thereafter, the development of the concept of rights gained a significant boost, through the Romans and **their creation of a complex and sophisticated legal system.**



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The Evolution of Rights

A. The Concept of Right - Continued

• Then England

Despite this foundation, however, the concept of "right" that we know today, did not begin to truly emerge, until after the establishment of **English jurisprudence**, and upon such time, as under its influence, the unification of political thought between **clerics and legal scholars** occurred, to create the **concept of natural law**.



• The Rise of Individual Rights

The 13th century was especially important for the development of "rights" as we know them today. The first transformation occurred during the early middle ages, which saw the replacement of a person's classical legal status through the state with a new similar bind with the Roman Catholic church.

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The Evolution of Rights

A. The Concept of Right - Continued

• The Rise of Individual Rights - Continued

By the time of the 13th century, the establishment of English jurisprudence, as influenced by the occurrence of certain political and social events, **(such as the establishment of the common law court system, trial by jury, and the signing of the Magna Carta)** began to change this perspective.

• The Age of Deep Thinkers

Along with these political and social events, came the rise of a new clerical-legal philosophy **(Men like Thomas Aquinas, William Ockham and John Wycliffe that started to impart human beings as instruments of God with fundamental, individual natural rights).**

These developments proved earth shattering and began to put mankind on the legal path to "rights"

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The Evolution of Rights

A. The Concept of Right

I. The Rise of English Jurisprudence

1. Roman Law
2. The Development of English Common Law
3. The Magna Carta
4. Clerical Philosophy and the Recognition of Natural Law
 - **Magna Carta**
 - **4th Lateran Council**
 - **Thomas Aquinas**
 - **William Ockham**
 - **John Wycliffe**

II. The Social Contract Theory

III. The Definition of Right

IV. John Locke and the Pronouncement of Property Rights

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The Evolution of Rights

B. The Definition of Right

When the legal concept of right became recognized under English jurisprudence, what exactly did they mean by the term "right"?

How could this idea, this term, be defined?

According to William Blackstone, author of the famous Commentaries on the Law of England, a treatise often referred to as "the Bible of the Law", the legal definition of the word "Right" represents the closest English translation of the Latin term "jus" (from which the term justice is derived), and essentially means:

"the abstract sense of law".

For our purposes, however, perhaps the best and most effective understanding of what the term "Right" actually means, can be seen from the writings of the Scottish philosopher and legal commentator, James Mill.

Mill saw "rights" in terms of a claim based upon a legally justified expectation (which explains how rights progressed from the Rules of Roman law, to the public expectations produced from Common law decisions and the pronouncement of the Magna Carta, and then through the individualist centered citizenship of the clerical-legal philosophers).

From Mill's writings, a corresponding definition of the term "Right", can accordingly be derived to be:

"The legally recognized ability to exercise power and control over an action or object".

28

What is the "Law"?



- Remember our simple definition:

“Law is the Rules by which civilization is ordered.”

Part One : The History of Anglo American Law

- So where do we begin our history?
- Simple, at the beginning.
- But before we start, like any great adventure, we need a roadmap, to tell us where we are going.

Roadmap to Legal History

Rome (753 B.C. to 476 A.D.)

- 753 BC The city of Rome is founded by Romulus and Remus.
- 612 BC The first Olympic Games are held in Olympia, Greece.
- 509 BC Lucius Brutus founds the republic and expels the Etruscans and Tarquin the Proud from Rome.
- 450 BC The Twelve Tables of Law are written down and become the code of civil law.
- 43 BC Caesar crosses the Rubicon, beginning the end of the Roman Republic.
- 42 BC Caesar becomes the first dictator, and in March is killed by Brutus and Cassius.
- 27 BC Augustus is made Rome's first emperor.
- 41 AD Brutus is considered the first Emperor Caligula, and General Aulus Plautius serves as his first Roman Governor.
- 410 AD Rome is sacked by Alaric, King of the Visigoths.
- 476 AD Rome is sacked by Gothic King of the Visigoths.
- 476 AD Romulus Augustulus is deposed, traditionally considered the end of the Western Roman Empire and the beginning of the Middle Ages.

England (43 AD to 1776 AD)

- 43 AD Britain is conquered under Emperor Claudius, and General Aulus Plautius serves as its first Roman Governor.
- 408 AD Romans withdraw most forces from Britain to supply troops for defense of Rome.
- 410 AD British independence movement begins to grow with diminished Roman domination.
- 486 AD Former Roman Caesarius Arthur the Great leads British troops in victory over Saxons at Mount Badon commencing his reign.
- 502 AD Arthur killed in Battle of Camlann, ending his reign.
- 602 AD King Egbert conquers the Wessex of Wessex.
- 1014 AD Danes invade England, commencing the reign of Svein Forkbeard and the Danish Dynasty.
- 1042 AD Normans conquer the British Isles with William the Conqueror.
- 1134 AD Henry II succeeds to the throne, establishing the Common Law and Abolishes Trial by Combat and Ordeal.
- 1154 AD Richard I succeeds Henry, participates in Crusades.
- 1199 AD John succeeds Richard.
- 1215 AD King John signs Magna Carta at Runnymede - First British Revolution.
- 1558 AD Elizabeth I becomes Queen.
- 1607 AD Virginia Colony established, converted to Major Protestant.
- 1620 AD Plymouth Settlement Established pursuant to the Mayflower Compact.
- 1629 AD Massachusetts Bay Colony Established.
- 1642 AD Oliver Cromwell commences Second British Revolution.
- 1660 AD Charles II restores monarchy, Second British Revolution.
- 1689 AD New Government commences Third British Revolution - Rules as Lord Protector.
- 1689 AD James II deposed as "Old Pretender" and William III is made King - Third British Revolution.
- 1701 AD George III succeeds his father as King.
- 1787 AD Bill of Rights Prohibits the Congress from the Law of England.
- 1787 AD Parliament Enacts the Townsend Acts.
- 1776 AD American Colonies declare Independence.

America (1776 AD to Present)

- 1776 AD American Colonies declare Independence.
- 1777 AD British and Americans sign the Treaty of Paris, awarding America its Independence.
- 1787 AD British and Americans sign the Constitution in Philadelphia.
- 1788 AD New York is the last state to ratify the Constitution (16 and RI ratify in 1789 and 90).
- 1791 AD First High Court Government takes Office.
- 1803 AD Kentucky's Mission establishes the Doctrine of Judicial Review.
- 1803 AD Chief Justice Marshall establishes the Doctrine of Judicial Review.
- 1807 AD United States declares war on Britain.
- 1845 AD 10th Amendment Ratified.
- 1850 AD 11th and 12th Amendments ratified, and Federal Reserve Established.
- 1862 AD Supreme Court decides Ex Parte Quirin.
- 1868 AD Supreme Court decides Ex Parte Milligan.
- 1868 AD Supreme Court upholds Brown v. Board of Education.
- 1902 AD 22nd Amendment Ratified.

So Where Do We Start?

Where do we begin our adventure?

Where did the Law first begin, first start, first evolve?



Like the saying states: **All Roads Lead to Rome**

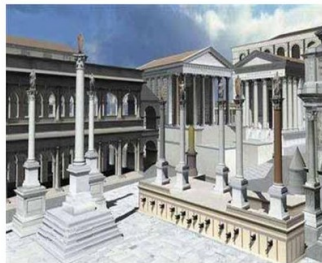
Rome

The concept of a body of law (**Rules by which civilization is ordered**) first emerged in **Rome**.

For **Rome** was the first real society to **embrace the idea of continuity**.

They were the first civilization to openly recognize that the culture of **Rome** itself was **greater and more eternal than any one king or emperor**.

Law became an extension of this view.



Roman Citizens were very well versed in the **law**.

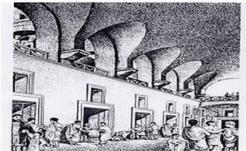
They took it seriously and believed in its value and purpose.

Like so many other Roman institutions it was developed as a tool.

A tool to **order their civilization** and conquests.

Rome Continued:

- Rome** was an empire based upon trade and its military.
- The law helped both these institutions **promote civilization** across the then known world by:
 - instilling both consumer and merchant confidence, and
 - providing a consistent template for the governance and operation of conquered lands and peoples.



- The **Law of Rome**, often referred to as the **Code** due to its written history, helped to make the Roman Empire the Greatest of its Time.

Just what were these Roman Legal Institutions?

(The First Three Branch Government)

1. Executive – The Emperor



2. Legislative – The Senate



3. Judicial – The Courts



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Rome Continued

- Rome developed a **quasi legislative body known as the Senate** (Started as representatives of the 100 most prominent families to advise the Emperor)
- They also established **a system of Courts** to arbitrate disputes. (Judges appointed by the Emperor)
- The **Roman concept of the Law, put down in Code**, was still largely *the edicts of the Emperor*.
- As such, any precedent was solely based upon the *emperor's respect for his predecessors*.

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Rome Continued

- Through its law and the concept of continuity and respect for the legal principles established in the Empire, Rome became the center of civilization, wealth and Trade for the entire known world.
- **Roman Law and the Code it produced was centered upon property rights.**
- These legally protected property rights allowed the Roman economy to flourish, businesses to develop, and trade to dominate all other nations and peoples.
- The *Roman* concept of the *Law*, invented corporations, established trade standards, punished those who did not respect property rights and recognized concepts such as ownership, possession, use, exclusion and transfer of private property.
- Like the great architecture for which it is known, **Rome developed a system of law that was timeless and has lasted throughout the ages.**

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So once again ...

Why is this important to Property Law?

Because History Counts in Law –

To know where we are

We need to know where we've been

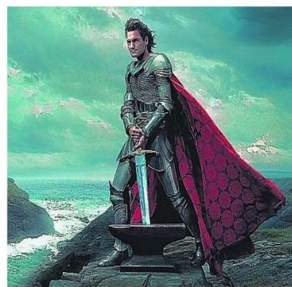
39

So on to Gaul (England)

So Let's Go to the Time of King Arthur

Who was Arthur?

- A Roman Soldier
- King of Britain
- Promoter of the Roman Code
- Known for
 - Equality,
 - Rule of Law,
 - Freedom and
 - Military Strength



40

England: A Roman Heritage in the Law

- The fact that England was conquered by the Romans instilled the philosophy of respect for the law.
- By the time the Roman Empire fell and left England on its own to fend for itself, the tradition of respect for the law, had already taken hold for hundreds of years.
- Arthur as King, the embodiment of English pride and values, was a Roman Soldier, whose respect for the law was embodied by his oath and character.



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England: A Roman Heritage in the Law

- Like many other former *Roman* colonies, *England* began to develop its own system for making and enforcing the Law.
- Although *largely rejecting the Roman Code* itself, **the Roman template and idea of the Law being the basis for civilization, and of its need for respect, was an unquestioned value of the English people.**
- **Englishmen** could disagree over who should make the law, or what laws should be made, but always **held dear the concept of the Law itself.**

42

To Understand American Law We Need to Know English Law

- As Professor Friedman opines, *the Law we know today as Americans is descended from England.*
- *England*, was a conquered colony of the *Romans*.
- As a result, *England* had nearly a millennium of history of *respect* for a system of *Law*, before the modern country even came of age.
- That concept, became engrained in the very nature and ideas of the *English speaking peoples*, and carries itself down to this very day.

44

Early English Legal History

- Remember, in the early years of its civilization, *England* was a part of the *Roman Empire* (43 AD to 410 AD).
- After the *Romans* left, native Englishmen, who had been affiliated with *Rome*, such as soldiers, magistrates, or local governors, took power.
- These men honored the *Roman* tradition of the *Rule of Law*.
- One such man was *Arthur*, a former *Roman* Soldier, upon whom the King Arthur legends are based.



45

Understanding our Law through the prism of the Law of England

- So to learn about the *Law of Property*, where do we start?
- Well a good place to start as Americans, is *the first real battle for Property Rights in England.*
- And that my dear students was *the Magna Carta.*



46



1215

- The year is 1215 A.D.
- John I is on the throne
- It is the time of the Crusades and all the known World has been at War
- 800 years had passed since the fall of the *Roman Empire* and occupied *England* to the time of 1215.
- And nearly 800 years have passed since that time until the present day.

47

Medieval England

- The times are tumultuous
- *England* faces many challenges, both economic and security.
- The country is really not yet a nation, but is struggling to gain an identity.
- It's the age of knights and kings, castles and swords.
- To truly understand the times, however, lets review a bit of *England's* history.



48

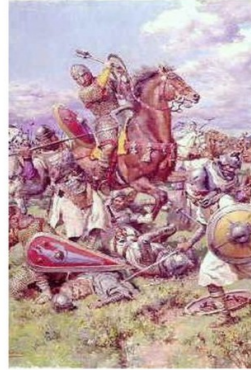
The Saxons Take Control

- These English leaders, who were heavily influenced by Roman tradition and culture, only ruled, however, for a brief time.
- Around 500 AD, Viking based Saxon tribes invaded *England* and began to occupy the country.
- By 1066 these Anglo-Saxon tribes, who by such date were residents of England for 500 years, were led by *King Harold*.
- *Harold* had loose control over the country with his strongest hold over the region now known as London.



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Enter William the Conqueror



- In 1066, *William the Conqueror*, a man of Viking descent, had just returned from the crusades as a knight.
- The illegitimate son of a French Nobleman, with little prospects from a feudal farming society, he decided to leave his home in Normandy, France, to seek fame, riches and adventure.
- An experienced soldier, he had an idea: To raid and conquer, the nearby Island of Brittan, across the English Channel.
- A natural born leader, *William* raised a substantial army from towns nearby his Norman village and sailed across the Channel, seeking to recreate the glory of his Viking heritage.

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William Conquers

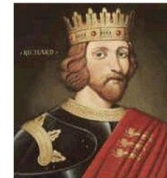
- He did just that.
- Confronting the ruling Anglo-Saxon armies at Hastings, England, *William's* forces defeated the defenders, killing their King *Harold* with an arrow through his eye.
- Organizing England, and consolidating his power throughout his new country, *William* proved to be a fine administrator, treating the people with a firm but fair hand.
- During his reign he built the famed tower of London and began to transform his new capital into a true city.
- Upon his death in 1087, he left the throne to his nephew *Stephen*.



51

The Aftermath of William

- After the reign of *Stephen*, in 1154 *Henry the Second*, and his Wife *Eleanor of Aquitaine*, took over England, Normandy, and Aquitaine (which belonged to *Eleanor*) comprising not only England but also half of modern France as well.
- *Henry* was a strong king. He also spent time organizing England, as well as fighting against the French, as well as against his Wife who actually led a rebellion against him.
- When *Henry* died, he left the throne to his son *Richard*.
- *Richard*, known popularly as *Richard the Lionhearted*, was a handsome, noble and brave.
- Leading English forces for the 3rd Crusade, *Richard* left his younger brother *John* in charge during his absence.



52

The Reign of John I

- When times turn bad, leaders get vilified.
- We may remember *John* from the stories of *Robin Hood*, whereby the bad *John* rules with corruption while the good *Richard* is away fighting for God and Country.
- We may also remember his mother, *Eleanor*, as the evil Dark Haired Queen from the story of *Snow White*. *Richard*, of course, was *Prince Charming*.
- While *Richard* was away, *John* was forced to levy heavy and oppressive taxes to pay for the Crusade as well as his brother's ransom due to capture. A man with bad political instincts, his Court was filled with the corrupt and incapable.



53

John's Ineptitude and Bad Luck

- In 1199, *Richard*, who had briefly returned to the throne, died.
- *Richard's* last few years had been blessed with good harvests and no war.
- Upon *Richard's* death *John* once again assumed the role of King.
- Almost immediately, *John* once again presided over bad times.
- The economy crashed, France repeatedly attacked, and war returned to the country.
- Taxes were oppressive, corruption became rampant, and things fell into chaos.
- Under the feudal system over which *John* ruled, the king was the unquestioned authority (The Divine Right of Kings). Landed Barons were vassals to the king, and their wealth was shared in tribute to him.
- By 1215, *John's* reign began to weigh to strongly upon the English people.
- In addition to being a bad leader, *John* appears as a nasty, suspicious kind of person.
- Worst of all *John* suffered by comparison. Compared to *Philippe Augustus*, who was king of France at the same time, *John* looked weak, corrupt and inept.



54

The Coming Storm of the Rebellion

- In the constant battle between France and England, King Phillippe of France chose to support the claims of Arthur, John's nephew, to inherit the throne of Normandy.
- John tried to solve this problem by capturing Arthur and having him killed, but this murder understandably upset the lords of Normandy and Anjou.
- They decided they would rather be ruled by Phillippe than by John, and so they agreed to fight on Phillippe's side in a war with England.
- By 1204 John's forces lost most of his land in France.
- It is interesting to note, that this loss really began to unite England as a people, but not behind John. For once the French land was lost, the English really began to think of themselves as different from the French people.
- It was also about this time that English first started to really take shape as the language of England. (Before John, all the lords in England all spoke French.)
- By 1215 the people of property, desperate to protect their interests, had had enough.

55

Enough is Enough

- By 1215 the Barons (Lords) of England had endured enough.
- Fearful that France would invade and impoverish them by seizing their lands and wealth, they raised an army to rebel against the King.
- On June 15, 1215, their forces confronted King John at Runnymede, and forced him to put his seal on the Magna Carta (the Great Charter).



56

The Magna Carta is Signed

- The Magna Carta established one of the foremost foundations of modern British law.
- The US Constitution and its Amendments (the Bill of Rights) viewed it as a guiding document for the further expansion of the rights and liberties of the people and the limitation of the power of government.
- Containing 63 clauses, this landmark document:
 - Created a council to the King (a forerunner to parliament),
 - Promised all freemen access to courts and a fair trial,
 - Specified many property rights from infringement by the king and his agents,
 - Eliminated unfair fines and punishments,
 - Gave certain legal powers to the Catholic Church, and
 - Addressed many lesser issues.
- Due to the nature of the feudal society, it did not abolish involuntary servitude.

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The Magna Carta Today

- Today a copy of the **Magna Carta** can be seen on display in Washington D.C., due to a loan to the national archives
- It is but another example of how **property rights** and the **Law** have an intertwined history.
- If it were not for their fear losing their **property rights**, landed barons of **England** never have rebelled against the King.
- It was the protection of these **property rights** that led to the establishment of the first constitutional document of **England**, upon which **our rights and laws are based**.



58

The Effects of the Magna Carta

- Since the time of the **Magna Carta** our system of modern **Anglo-American Law** has evolved to flow from three sources.

1. Constitutional Law
2. Statutes (Laws made by Elected Legislatures)
3. Case Law (Laws made by Judges).

59

Constitutions

- Constitutions establish the framework of Government.
- Under the British system they flow from the **Magna Carta** and then a Series of other similar King issued charters.
- The **United States Constitution**, the first of its kind, arose out of our of representational government, through **adoption** by a convention of elected delegates and then **ratification** by elected state legislatures.

60

Statutes

- **Statutes in England** came from **Parliament**, an elected national legislature, which evolved from the council established under the **Magna Carta**.
- In the **United States**, **Statutes** came from (first colonial then state) **legislatures**, and after the ratification of the federal constitution, from **Congress** (our national legislature) as well.
- In our country we have a **federal system**:
 - Where **Congress** enacts statutes (of limited subject matter jurisdiction) for the entire nation, and
 - Where **state legislatures** enact statutes (of more general jurisdiction) for the people of their state.

61

Case or Common Law

- **Case (or common) law** in **England** came from the **Royal Courts**. Decisions of judges, reported and published with respect to specific cases.
- In the **United States** we have **Federal and State Courts**.
 - **Federal**: US Supreme Court, US Court of Appeals, and the Federal District Courts
 - **New York State**: Court of Appeals, Appellate Division of the Supreme Court, and the Supreme Court (located in each County of the State).

62

1215: Fourth Lateran Council

- In 1215 Pope Innocent III convened the **Fourth Lateran Council to Determine Church Policy on a number of issues**
- **This Council Recommended**:
 - **Ending Trial by Combat** – Where Parties would actually fight to determine guilt or liability
 - **Ending Trial by Ordeal** – Where Defendants would be physically challenged to determine guilt or liability.
- **This Council thereby helped to lead the way to reform the judicial systems across the world.**


63

Evolution of English Law

- From 1215 until the English Civil War in 1642 and the Glorious Revolution in 1688, the English Common Law was the force that developed most of the law in England
- With the challenges to the Monarchy in the English Civil War and the Glorious Revolution (conflicts basically arising out of religious controversies) the law of England began to transform away from the monarchy and toward Parliament.
- **The Rise of Parliament resulted in the rise of statutes, as this body began to codify rules and enact more and more English Law.**
- This rise in statutes would bring on conflict in the British Colonies, especially in America.

64

English Colonial America

- The **law of early America** was based largely upon the **law of England**. 
- We were, of course prior to the Revolution, **English subjects**.
- Our founders initially spoke of redressing their grievances under a format of the **"Rights of Englishmen"**
- In Colonial America, there was very little **statutory law**, and even after the US and State Constitutions, most law was still based upon **English Court precedent**. Indeed statutes were looked upon with a skeptical eye.
- For it should be remembered that the **Quartering Act, Stamp Act and the Townsend Acts** were all statutes, and an igniting reason for the Revolution to occur in the first place.

65

Don't Tread on Me

- Early **Americans** were practical sorts.
- They wanted the Government to deliver the mail, defend the shores, **PROTECT MY PROPERTY RIGHTS**, and stay the heck out of my life.
- That is why most of the early statutes, and the vast majority of case law decisions, were **about property**.
- **Property in England** was power.
- It was the **property class** that **litigated**, about their **property rights**, and it was **these disputes that made the law**.
- So too in **America**. Although land was much more plentiful here than back in **England** (one of the main reasons for immigration) **property (especially land) meant life**. We were an agrarian society, where **land translated into food and wealth**.



66

The Development of American Law

- 1776 American Colonies declare Independence
- 1777 Articles of Confederation proposed
- 1783 British and Americans sign the Treaty of Paris, awarding America its Independence.
- 1787 Colonies convene a Constitutional Convention in Philadelphia
- 1788 New York is the last state to ratify the Constitution (NC and RI ratify in 1789 and 90)
- 1789 Newly Elected Federal Government Takes Office
- 1791 Bill of Rights Ratified
- 1803 Marbury v. Madison establishes the Doctrine of Judicial Review
- 1833 Certain States advance the Doctrine of Nullification
- 1857 Dred Scott v. Sanford declares slaves property
- 1865 13th Amendment Ratified
- 1913 16th and 17th Amendments Ratified, and Federal Reserve Established
- 1942 Supreme Court decides Ex Parte Quirin
- 1942 Supreme Court decides Wickard v. Filburn
- 1954 Supreme Court decides Brown v. Board of Education
- 1992 27th Amendment Ratified

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Mr. Blackstone

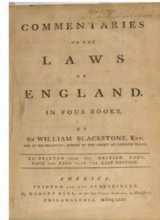
- But with communication slow, with courts far apart and their decisions not available to the masses, what could be done?
- Enter **Blackstone** and his **Commentaries on the Law**.



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Blackstone's Commentaries

- **Sir William Blackstone** was an **jurist and professor** who produced the historical and analytic **treatise on the law** known as **Commentaries on the Law of England**.
- First published in four volumes between 1765 and 1769. It had an extraordinary success.
- A baseline **"Bible of the law"** of his time, these famous **Commentaries** still remain an important source on classical views of the common law and its principles.
- It was **used** not only through out **England** but through out the **United States** as well.



69

Common (Case) Law in the United States

- Over time, the United States, through its State and Federal Courts, began to build a substantial body of law.
- This law was reported and memorialized through published decisions of judges, following the concept of precedent, known as **Stare Decisis (let the decision stand)**.
- Using the Commentaries of Blackstone, as well as the previous case decisions of Judges, Courts found a bench mark to decide new ones.
- Decisions of first impression sought to apply and a other legal principles, especially in the cases of equity.



70

American Jurisprudence

- **Both British and American law depended heavily upon custom as well as precedent to decide cases.**
- **What was customary, necessary, practical and popular found its way into the law by way of reported court decisions.**
- **With elected judges and empanelled juries this reflection of society came to be placed in its law.**



71

Law vs. Equity

- In Early America, as in England, Courts were divided between law and equity.
- **Courts of Law** had jurisdiction over **money matters**.
- **Equity Courts** had jurisdiction over **injunctive relief** (non money matters)
- Especially with equity cases, the social American norms of fundamental fairness crept into the cases to decide the outcomes.
- By 1800, the Courts of Law and Equity were merged in most jurisdictions.

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Most Lawsuits in Early America Involved Property Rights

- Regardless of the claim, until the later part of the 20th century, litigation was rare and utilized almost exclusively, by the wealthy over serious disputes.
- **Most often these issues were over property.**
- As a result, **Property rights** decided the **law**, shaped the **law**, and were shaped and formed by it.
- Therefore it can therefore easily be seen that **most law involving property rights is state law**, and that **property and the law evolved together** and are intertwined.

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The Rise of Legislation

- As America grew in its separation from England, and its young state legislatures began to deliver on the representational needs of their constituents, our national aversion to statutes began to ease.
- As a result, after the turn of the 19th century, state legislatures began to become more active, gradually enacting more laws through codification (statutory enactment) then was developed through case law by litigation.
- **Property rights** as in court decisions, became a major concern of state legislatures, and as such, incumbent with this growth in statutory enactments, a significant body of statutes regarding property rights joined that already in place under the common law



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Use Both Belts and Suspenders

- Today Property Rights are protected via two mechanisms in the law – case (common law) and statutes enacted by the state legislature.
- In New York State, a line of case law dating back from colonial times protects private property rights.
- Additionally, a series of state statutes, enacted by the New York State legislature, also provides a wide array of property protections for personal property rights.
- Lastly, the New York State and United States Constitutions also protect many private and public property rights providing a three tier protection level for every citizen.
- Accordingly nearly all property law is state law.



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Property is a Fundamental Right

- Property is a foundational element of all law.
- To truly understand property, it is necessary to think of it in terms of a collection of rights, not a collection of things.
- Property rights are the very lynchpin of our liberty: They form a fundamental element of our freedom.
- Under our system of laws, property rights reside in the individual: They are personal and unique.
- Long recognized as inherent to our humanity, our right to exclude, possess, use and transfer private property, is a quintessential component that defines our modern society and its quality of life.

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Property is a Fundamental Right Protected by Law

- Ours is a nation of laws, not a nation of men.
- Think about freedom and you ultimately get back to property rights.
- The unrestrained use and enjoyment of property is ingrained in our very being as Americans.
- Recognize property rights, and you promote freedom.
- Protect property rights and you facilitate liberty.
- Take away property rights, and you take away an individual's freedom.
- Limit property rights, and you limit an individual's liberty.
- Restrict or impair property rights, and you diminish a person's quality of life.

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The Intertwinement of Property Rights and the Law

- Last time we spoke of the evolution of Rights – how they came to develop into what we see today.

Our Simple Definition of Right:

The Legally recognized ability to exercise power and control

- We then discussed, how to protect those rights, such as property, governments were instituted amongst men, to develop laws.

Our Simple Definition of Law:

Rules by which civilization is ordered

- Our legal history then evolved laws to protect our rights, that in the Anglo-American system, focused on the rights of the individual.

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The Intertwinement of Property Rights and the Law

- Earlier we saw how our Anglo-American law developed from:
 - *Rome: A concept of continuity – the legal system built the empire*
 - *Early England: A Roman colony governed by respect for the law*
 - *Norman England: Feudalism where reciprocal oaths became rights*
 - *Medieval England: Rights & liberties were embodied by the Magna Carta*
 - *Enlightenment England: The rise of the Common law and English rights*
 - *Colonial America: The rights of Englishmen transformed to Americans*
 - *The Early United States: Constitutional rights & transported Common law*
 - *The Mature United States: Constitution, Common law & the rise of statutes*

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The Development of American Property Rights and Law

Part A: The Legal Importance of America's and New York's Legacy of Distrust of Power

- **Property Rights = Freedom:** The Founders understood that the lynchpin of liberty was the proper management of power.
- **A Practical First Hand Experience:** This was not just a philosophical understanding, born from reasoned scholarship in the enlightenment. It was a practical, first hand understanding as well.
- **America – A Freedom Laboratory:** As witness to history, the founders saw with their own eyes, as America was transformed. From 1763 to 1776, the American Colonies transitioned from a prosperous, free and growing land, to that of a jurisdiction facing the wrath of the most powerful nation on earth.

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The Development of American Property Rights and Law

Part A: The Legal Importance of America's and New York's Legacy of Distrust of Power – Protecting Rights

- **Founders Understood – Government's Purpose is to Protect Rights:** From the very beginning it was all about rights and building a legal system to protect those rights.
- **Property Rights are Key to Freedom:** The first of all those rights in the minds of our founders, was always property.
- **The Meaning of Property:** For as we know by now, property is a collection of rights, not a collection of things.
- **Government of Law Not Men:** The building of freedom and liberty, and allowing the free exercise of those property rights, meant a need for a government of law, not men, that would respect and protect rights, and was limited with true checks and balances and separation of powers.

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The Development of American Property Rights and Law

Part 7: The Declaration of Independence – Spawning A Nation

Declaration of Independence:

- The Declaration created a nation of ideals:
 - **A nation of laws and not men.**
 - **A nation evolved from the principles of the enlightenment.**
- It outlined a concept of principles, not finalized government.
- Unrealized until the War was Won.
- Would have never worked without the personalities involved.
- A special time in history.

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The Development of American Property Rights and Law

Part 7: The Declaration of Independence – Continued

Declaration of Independence:

The Declaration states that:

“When in the Course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness”

These are perhaps the most beautiful and personally empowering words in human history. 83

The Development of American Property Rights and Law

The Federal Constitution’s Separation of Powers

• **The Key to Liberty:** The founders felt that freedom and liberty of the individual are best preserved by **limited government, where sovereignty vests in the people not the government**, and which is **in a republican form, with three, independent, separate branches**.

• **The Key to Understanding Property:** To understand property, it must be seen through a prism of rights. Such requires an understanding of:

- > what a right is,
- > what the law is that protects property rights, and
- > how protecting property rights an essential element to freedom.

• **Freedom + Protection of Property Rights:** The founders understood, that if you want freedom, set up a system to protect property rights. That system requires the power of government to be limited, and it express purpose to be to protect and not infringe on people’s rights.

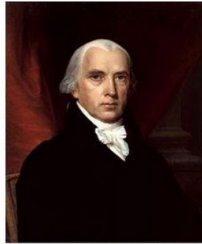
“A government big enough to give you everything you want, is also big enough to take from you everything you have.” Gerald R. Ford – Address to Congress – August 12, 1974. 84

A Venture into Critical Case Law

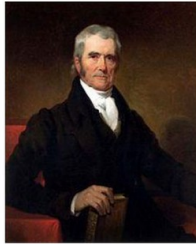
• The Case of Marbury v. Madison



William Marbury



James Madison



John Marshall

The Decision that Changed the Legal World! 85

This site is definitely worth looking at; U of SC Law Library; guid to international and foreign law research; <https://guides.law.sc.edu/c.php?g=315476&p=2108388>

Explains briefly the 5 major types of law and what countries use which system, include a map.