

## Common Law

## Our Legal Heritage

- Until 4 July 1776, this country was a realm of George III, subject to British practices and British Laws.

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  - Thus, some ancient British laws continue in effect in this country, including the *Rule Against Perpetuities* and the *Statute of Frauds*.
- We also inherited the tradition of Legislative and Common Law.

## Legislative Law

- Laws passed by Parliament
- The United States Congress
- State Legislatures

## The Procedure

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- It goes into effect once approved by the governor or president or king.

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- While the only way to overrule a veto by a King of England was via beheading, we have a less bloody procedure: both the US Congress and the State Legislatures have procedures to override a veto by the executive.

## A Little British History

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- Then Saxons
  - Brought rich Saxon tradition of self government and laws to England.

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- Then Saxons
- William, Duke of Normandy, “The Conqueror”
  - Brought ruling class of Normans into England and imposed French or Norman Laws on England

## More British History

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- Commitment of Monarch to rule of Law
- Magna Carta in Historical Perspective

## Henry II

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  - The justices established permanent bases in London, and toured the country, enforcing the law.
  - Objective was to have a law common throughout England.

## The Procedure

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- Sam writes the King explaining his grievance (usually a grievance about property rights or feudal obligations)

## The Writ

- The King (more precisely his clerks) would then issue a *writ* (or writing) to the local Sheriff.
- Over 400 forms of writs.

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Most of these writs are quite obscure, have long disappeared from use, though some, such as the writs of *Habeas Corpus*, and *Mandamus* survive today.

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Suppose Sam had accused Richard of plowing *his* field

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The jury was all composed of locals who knew the facts.

## An Aside

- Modern practice of excusing jurors who knew the parties would have seemed strange at that time: how could a jury decide the facts if it did not know the parties intimately?

## The Decision

- Once the jury rendered a verdict, the judge would then decide, by saying that “given these facts, the law is....”
- If Sam had been plowing the field since ancient times, it was his.

## Judicial Records

- Judges did keep records on parchment rolls carried around on the backs of mules. Thus consulting the law books and judicial rulings was a difficult task; judges rendered decisions on their own understanding of the law.

## Common Law

- This was the Common Law, or **the law enforced throughout England.**

More to Come

End

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