Our Legal Heritage

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

- After independence, laws and practices continued in effect until superseded by subsequent legislation.

- Thus, some ancient British laws continue in effect in this country, including the Rule Against Perpetuities and the Statue 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
- The legislature passes a law
- It goes into effect once approved by the governor or president or king.

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

  - Brought ruling class of Normans into England and imposed French or Norman Laws on England
More British History

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• Magna Carta (Great Charter)

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• Promises to respect ancient rights
• Commitment of Monarch to rule of Law
• Magna Carta in Historical Perspective
Henry II

- King of England, late 12th Century
- Established Courts
  - 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

- Sam has a grievance against Richard
- 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.
The Writ

- The writ would take the form of a letter to the Sheriff ordering him to fetch Richard before the King’s Justice (when the Judge was holding court in the County)
- To answer the charge (summarized in the complaint) brought against him.
- The Sheriff was to return the writ.

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.

When the Judge Came to Town

- The judge would select a jury, whose job was then as now, to consider the facts and render a verdict on the facts.

Suppose Sam had accused Richard of plowing his field.
What the Jury Did

• The judge would ask the jury whom they remember had been plowing the field since “ancient times”. (i.e, as long as they could remember)

• The jury, all locals, would argue the facts amongst themselves and then render a decision on the fact.

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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