Common and Civil Law

Common Law

- The Common Law is the basis of law in
  - Great Britain (UK and Ireland)
  - US (except Louisiana)
  - Canada (except Quebec)
  - Australia and New Zealand
  - Many Former British Colonies

Civil Law

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  - The Code Napoleon, drafted in France in 1804, repealed common law and put the code into effect.
  - It is based on the old Roman Civil Law, which dates back to the time of the Roman Empire.

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  - Thus a distinction between Common Law countries like the US and UK and Roman Law countries like continental Europe.
  - Roman Law vs. Saxon Law
  - Thus a distinction between Common Law countries like the US and UK and Roman Law countries like continental Europe.
Some Differences

• In Common Law countries, the emphasis is on what other cases say and whether they are relevant to the particular facts at hand.

• In Civil Law countries, the argument is on the statutes themselves: that is, what is the meaning of the words themselves?

The Adversarial Process

• We have an adversarial process. The judge is a referee. In Civil Law Countries, the judge is an inquisitor, who actively runs the process.

• In this country, the judges find the law and the juries find the facts (subject to the right of both parties to waive the right to a trial by jury).

The UK has abolished the right to trial by jury in most civil trials. Civil law countries generally do away with juries altogether.

The Oxford English Dictionary (OED) and the French Academy.
Is the Gap Narrowing?

• Yes
  – The Uniform Commercial Code and
  – Various restatement of Contract and Tort codes.
• But we still have an important tradition of judge-made law.

End

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