

# OF DEMOCRATS & DICTATORS

## The Development of Law

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# Lesson 1

## The Rise of the Common Law

### Overview

This lesson introduces students to the common law of England.

First, students read about and discuss the origins of the common law in England, its main characteristics, and some of its differences from the French Civil Code. Then students read about and discuss how students studied the common law in Sir Edward Coke's time.

### Objectives

Students will be able to:

- Explain the two types of trials conducted by the Anglo-Saxons.
- Identify and describe the three main characteristics of common law.
- Explain several differences between common law and the French Civil Code.
- Describe how people became lawyers in Coke's time and what they studied.
- Explain what pleading is and how it was done in Coke's time.

### Preparation

Readings in the student text:

- "The Rise of the Common Law," pp. 6-8
- "Inns of Court," pp. 9-10

## Procedure

### I. Focus Discussion

A. Ask students: What are the sources of law in the United States?

Law comes from a variety of sources, among them are:

- **Legislative bodies:** Local city councils and county boards, state legislatures, the Congress.
- **Constitutions:** The U.S. and state constitutions.
- **International treaties** signed by the United States.
- **The decisions of courts.** State, federal, and particularly the U.S. Supreme Court make decisions that create law.
- **The common law of England.** This law has traditionally been considered a major source of law, and in most states it still holds sway unless it has been overturned by statutes.

B. Inform students that they are going to learn more about the common law and one of its greatest champions, Sir Edward Coke.

### II. Reading and Discussion—The Rise of the Common Law

A. Distribute *Of Democrats & Dictators* (student edition). Tell students that at the front of each unit is a list of vocabulary words with pronunciations and definitions. Tell them to consult the vocabulary as needed.

B. Ask students to read “The Rise of the Common Law,” pages 6–8. Ask them to look for:

- How trials were conducted in England before the common law developed.
- The main characteristics of common law.
- The differences between common law and the French Civil Code.

C. When students finish reading, hold a discussion using the questions on page 8.

1. Who were the Normans? What were trials like before the Normans came to England?

**The Normans were the French conquerors of England in 1066.**

**The Anglo-Saxons, the inhabitants of England before the Normans, had two types of trials:**

- Trial by oath.** The two disputing parties would gather people who would swear that they were right.
- Trial by ordeal.** In a trial by ordeal, a person charged with a crime would undergo a test, such as holding a hot iron and seeing whether the wound healed.

2. What is the common law? What are its three main characteristics?

**The common law was introduced to England by the Normans. It is the judge-made law common to all of England. It was created by the king’s courts in many decisions over time.**

**The common law has three main characteristics:**

- It employs a jury as the fact finder.**

- b. It is an accusatorial system (two sides present their cases before a neutral judge).
  - c. It is based on precedent. Courts follow their own previous decisions and those of higher courts.
3. From what you've read in this article, how is the common law different from the French Civil Code?

The article mentions three differences:

- a. The common law developed over a long period. The Civil Code was enacted in 1804.
- b. The common law exists in many decided cases. The Civil Code exists in one book.
- c. The common law is judge-made law. The Civil Code was enacted by a legislature.

### III. Reading and Discussion—Inns of Court

A. Ask students: Who was Edward Coke?

**Coke was a lawyer, judge, and member of Parliament who is considered one of the most important champions of liberty in English history.**

B. Tell students that Coke, like others who wanted to be lawyers, studied law as a young man. Ask students to read “Inns of Court” on pages 9–10. Ask them to look for:

- How people became lawyers in Coke’s time and what they studied.
- What pleading is and how it was done in Coke’s time.

C. When students finish reading, hold a discussion using the questions on page 10.

1. How did a person become a lawyer in Coke’s time? How is it different today in America?

**Coke’s time: A person had to attend one of the Inns of Court and after eight years of study be called to the bar. After practicing law 16 to 20 years, a lawyer might become a serjeant-at-law, a senior member of the bar.**

**U.S. today: Typically, a person must graduate from a four-year college, graduate from three years of law school, pass a state bar examination, and be cleared as fit to practice law by an ethics panel.**

2. What was the course of study at one of the Inns of Court? Based on what you know about law school in the United States today, how is the course of study different in the United States?

**Inns of Court: The students studied:**

- **Case reports.** These consisted of Year Books (before 1500) and more formal case reports on the decisions and reasoning of judges.
- **Legal treatises.** Essays on decisions and the law.
- **Pleading.** Each cause of action required a different writ.

**Law school in the United States: Most law schools use the case method. Students read, discuss, and argue about cases from different areas of law.**

3. What is pleading? How was it done in Coke’s day?

At the beginning of a case, the formal statements spelling out the plaintiff's and defendant's side of the case to the court.

By Coke's time, the pleading was done on paper. The plaintiff wrote the facts in a complaint, and the defendant responded with a written answer. If the defendant believed the facts in the complaint did not state a cause of action, he could file what was known as a demurrer. The court would rule on the demurrer.

4. What statement of Bracton deeply influenced Coke? What does this statement mean? Do you agree with it? Explain.

The statement was that the king should bow only to God and the common law.

It means that the king is under the rule of God and the common law. It is a statement against the absolute power of kings.

A basic tenet of American democracy is that everyone, including the most powerful people in our society, must obey the law.

# Unit 1

## Sir Edward Coke and the Common Law



In 1066, William of Normandy defeated Harold II, the English king, at the Battle of Hastings. This is a section of the Bayeux Tapestry, which depicts the Norman conquest. The tapestry, created within years of the battle, measures 20 inches by 230 feet.

## The Rise of the Common Law

The English common law is one of the two great systems of law in the Western world. The other is the French Civil Code. The common law exists in England and in those countries that were once its colonies—the United States, Canada, Australia, New Zealand, India, and other countries. Much of the rest of the world uses law based on the French Civil Code.

The Civil Code was enacted in France in 1804. All the law is written in one book. The common

law is based on the decisions of judges in individual cases. The law grew slowly, case by case. It is judge-made law.

The common law began shortly after A.D. 1066, the date of the Norman conquest of England. William, the Duke of Normandy, crossed the channel from France and became king of England. He appointed his judges to the already-existing courts of the Anglo-Saxons. The German Anglo-Saxons themselves had conquered the land six centuries earlier.

The Anglo-Saxon courts featured trial by oath and trial by ordeal. In a trial by oath, the two disputing parties would gather as many people as

## Vocabulary

**accusatorial system** (ə KŪZ ə tɔr ē əl SIS təm) n. Also known as the adversary system. In this system of justice, the two opposing parties present evidence. A judge runs the trial but does not investigate the case or otherwise play an active role.

**barrister** (BÄR ə stər) n. A member of the bar; an attorney permitted to try cases in court. (Used in Britain.)

**capital offense** (KAP ə təl ə FENS) n. A crime punishable by death.

**cause of action** (KOZ UV AK shən) n. The facts that give rise to a legal basis to sue.

**contempt of court** (kən TEMPT UV KORT) n. Showing disrespect for the court or failing to follow a court order. Punishable by a fine or jail time.

**cross-examine** (KROS ig ZAM in) v. To question the other party's witness in court.

**demurrer** (də MER ər) n. An objection that a pleading does not state a cause of action recognized by the law.

**equity** (EK wi tē) n. A system of justice parallel to the common law. Developed by the Court of Chancery, it was based on principles of good faith and fair dealing derived from Roman law.

**grand jury** (GRAND JER ē) n. A group of citizens responsible for determining whether the prosecution has enough evidence against a defendant to justify holding a trial. It meets in secret, and the prosecutor presents evidence to it.

**habeas corpus** (HÄ bē əs COR pəs) n. A writ, or court order, for the executive (police, prosecutors, prison officials) to produce a prisoner in court and justify the legality of the imprisonment. (Latin for "you have the body.")

**indictment** (in DĪT mənt) n. A grand jury's formal charge against a defendant confirming that sufficient evidence exists to justify holding a trial.

**injunction** (in JUNK shən) n. A court order telling a party to refrain from doing something or to perform a specific action.

**Magna Carta** (MAG nə CAR tə) n. Written in 1215, it is one of England's most important documents enshrining liberty. (Latin meaning "great charter.")

**maxim** (MAK sim) n. A basic principle or rule.

**parchment** (PARCH mənt) n. A sheet made from sheep or goat skin to write or paint on.

**perjury** (PER jə rē) n. The act of lying under oath; telling a lie or misleading someone when you have sworn to tell the truth.

**plaintiff** (PLĀN tf) n. The party suing the defendant in a lawsuit.

**pleading** (PLĒD ɪŋ) n. The formal statement, usually written, spelling out the plaintiff's or defendant's case to the court.

**precedent** (PRES i dənt) n. An issue of law previously decided by a court that other courts must follow.

**proclamation** (prok lə MĀ shən) n. An official announcement.

**Raleigh** (ROL ē) Sir Walter Raleigh (1554–1618), English explorer, soldier, and writer.

**subpoena** (sə PĒ nə) n. An order to appear in court to testify. (Latin for "under penalty.")

**tort** (TORT) n. A wrongful act (other than breach of contract) that serves as the basis for a lawsuit. The wrongful act usually must be done intentionally or negligently.

**Tower of London** (TOW er UV LUN dən) A fortress in London used as a jail for important prisoners.

**Pronunciation Key:** bat, āte, are, däre, den, ēgo, new, her, bit, ĩce, ĩrritate, box, nō, born, oil, out, but, ūse, chum, she, thin, *th*e, zh sound in treasure or mirage; ə is the uh sound in unaccented syllables.

possible to swear that their side was right. In a trial by ordeal, a person charged with a crime would undergo a test. For example, the person might have to hold a hot iron. If after three days the wound healed, the person was innocent. If it didn't heal, the person was guilty.

The Normans tried to centralize justice in the kingdom by sending out judges from the king's courts. They traveled on circuits, dispensing justice. Gradually, these courts replaced all the Anglo-Saxon courts. These were the courts of the common law, the law common to all of England.

As it took shape, the common law had three defining characteristics. One was the jury system. The Normans brought a primitive form of the jury system with them. Over time, it developed into two kinds of juries. One was the jury of 12 members, which heard evidence and gave a verdict in a trial. The other was the grand jury, which heard evidence to determine whether there was enough evidence to try someone for a crime. If it found sufficient evidence, it issued an indictment.

Another feature of the common law was the accusatorial system. The judge acted like a referee in court between two battling parties. The judge did not conduct an investigation. The parties had to present the evidence.

The final main characteristic of the common law was precedent. Once a court decided a case, it made law. The court should follow its prior decisions and the decisions of higher courts. Such a system required that judges and lawyers know about other decisions. This knowledge gradually became available through treatises on law and reports on cases.

Thousands of people built the common law. One of the most important was Sir Edward Coke—lawyer, judge, and member of Parliament. Many people who knew him considered him arrogant and narrow. He lived in Elizabethan England. Yet he never attended a play by Shakespeare or any other playwright. He knew little outside his main focus—the common law.

English historian George M. Trevelyan called Coke “one of the most disagreeable figures in our history” and also “one of the most important champions of our liberty.” Coke lived at a pivotal time in England's history. King James and his successor, King Charles, were asserting their right to rule absolutely. Parliament was challenging the king's power. Coke began his career advocating for the monarchy. He ended it advocating that everyone, including the king, should be under the rule of law.

## For Discussion

1. Who were the Normans? What were trials like before the Normans came to England?
2. What is the common law? What are its three main characteristics?
3. From what you've read in this article, how is the common law different from the French Civil Code?



# Inns of Court

Edward Coke was born in 1552 in Norfolk, a county in eastern England. His father was a lawyer, and Coke also wanted to practice law. He attended Cambridge University and then went to the Inner Temple, one of the so-called Inns of Court.

In 1291, King Edward I had ordered that only a select few could serve as lawyers before the king's courts. Within a few years, the Inns of Court were established for training lawyers. They were located within walking distance of the king's courts at Westminster Hall in London. Students lived, studied, and debated with one another at the inns. They often attended court to watch lawyers in action. The inns had the exclusive authority to grant someone permission to practice law in court. (This was known as calling someone to the bar.)

Coke threw himself into studying law. The course of study lasted typically eight years. One of the things that law students studied was Year Books. These recorded the decisions and arguments in the king's courts. They were created each year from 1291 to 1535. They were so detailed that they often captured exchanges between judges and attorneys. The Year Books helped lawyers cite previous court decisions in their arguments. By Coke's time, legal arguments were long and filled with citations of court decisions.

Around 1500, more formal case reports started replacing the Year Books. These were like today's case reports, showing the decisions of the cases and the reasoning of the judges. They did not report on the back and forth arguments in the courtroom. Coke at the end of his career wrote 11 volumes of case reports, commenting on the common law. The case books helped the common law's practice of relying on precedent, the rulings in previous cases.



An 1830 drawing of Lincoln's Inn, one of the four Inns of Court. The inns had the exclusive authority to train lawyers.

Like other law students, Coke studied legal treatises. One was *De legibus et consuetudinibus Angliae* (on the laws and customs of England). It was written in Latin by Henri de Bracton (1215–1268), a judge on Court of Common Pleas. Bracton retrieved the decisions of cases recorded on rolls of parchment. He wrote down the decisions and reasoning of 2,000 cases. Also a priest, Bracton classified the decisions according to the categories of Roman law. One conclusion of Bracton deeply influenced Coke: The king must bow to God and the common law.

Students also studied pleading. The common law required different writs (court orders) for each cause of action. For example, to sue for breach of contract required one type of writ. To sue someone who stole a pig required another. Each writ gave rise to different procedures, which made the common law difficult to understand.

Originally, pleading was done orally in front of the court. The plaintiff stated his version of the facts of the case. If these facts failed to state a cause of action, the case was dismissed. If they did state one, then the defendant was supposed to answer. He could deny the facts or assert a special defense. Once the judge settled the pleading, court clerks recorded them on parchment. The

pleadings framed the issues of fact for the jury to decide.

By Coke's time, paper had replaced the far more expensive parchment, and the pleadings were done on paper instead of orally. The plaintiff wrote the facts in a complaint, and the defendant responded with a written answer. If the defendant believed the facts in the complaint did not state a cause of action, he could file what was known as a demurrer. The court would then rule on the demurrer.

Pleading was complex and could have serious consequences on a case. If, for example, the written pleading differed from the proof offered at trial, the case would be dismissed.

When Coke was called to the bar in 1578, he was one of just 200 lawyers in all of England. An advocate needed to know three languages. One was Norman French. The Year Books until 1400 were published in that language. Another was Latin, because the court record was written in it. The third was English, which the clients spoke and which had become in Coke's time the language for arguing in court (replacing Norman French).

The members of the bar were known as barristers. After 16 to 20 years of practice, a barrister could be named a serjeant-at-law, a senior member of the bar. From the serjeants-at-law, the king picked the judges of his courts.

## For Discussion

1. How did a person become a lawyer in Coke's time? How is it different today in America?
2. What was the course of study at one of the Inns of Court? Based on what you know about law school in the United States today, how is the course of study different in the United States?
3. What is pleading? How was it done in Coke's day?
4. What statement of Bracton deeply influenced Coke? What does this statement mean? Do you agree with it? Explain.

# The Evolution of the Jury System

Coke returned to Norfolk to begin practicing law. He quickly earned a reputation as a great trial lawyer. One case gained him fame throughout England. It was *Wolfe v. Shelley*, and as every law student today knows, it established the *Rule in Shelley's Case*. Although the case involved a technical issue of land law, it drew great attention throughout England. The queen felt the issue so important that she directed all the judges on the Queen's Bench to meet to hear the case. When Coke won the case, he was looked on as one of the best lawyers in the land.

Coke's success got the attention of the queen. In 1592, Queen Elizabeth named him solicitor general. The following year, he was elevated to attorney general, the government's top attorney.

During Coke's term as attorney general, he worked tirelessly for the interests of the monarch, first Queen Elizabeth and then her successor, James I.

James disliked Parliament intensely. Referring to Parliament, James once remarked: "I am surprised that my ancestors should ever have allowed such an institution to come into existence." James wanted to assume absolute power in the kingdom. Coke as attorney general assisted him in his efforts.

Coke prosecuted a series of libel cases against those who had insulted the crown. Most notable, however, were several high-profile treason cases he pursued. One of the most famous was the Gunpowder Plot. A group of Catholic radicals, distressed about how members of their religion were treated, had planned to blow up Parliament and the new king. One of the plotters, Guy Fawkes, was captured on November 5, 1606. This date is still celebrated in England with bonfires, fireworks, and burned effigies of Fawkes. Fawkes was prosecuted by Coke, convicted, and executed.