
Unit 1: An Introduction to Law

Part 1: Law – It's Purpose and History

1.2 - Early and Modern Legal History

In the beginning...

...societies made laws...

BUT

societies change...

...SO...

LAWS CONSTANTLY CHANGE/EVOLVE

Timeline of Early Legal History

- 1700s BCE -- Code of Hammurabi (Babylon)
 - 1300s BCE -- Biblical/Mosaic law (Hebrew people)
 - 450 BCE -- Twelve Tables (Roman)
 - 400 BCE -- jury system introduced (Greece)
 - 100 CE -- Roman law spreads throughout Europe...law becomes a profession
 - 527 CE -- Justinian's Code (Roman)
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Code of Hammurabi



- One of earliest sets of recorded laws
 - Written by Hammurabi, King of Babylon (1792-1750 BCE) in modern-day Iraq
 - Contains over 300 simple laws
 - Laws reflect patriarchal (male-dominated) society
 - Hierarchy of power: gods - King - male nobles - wives and children of nobles - poor - slaves
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Code of Hammurabi (continued)



- Codification of country's laws under headings like "family", "criminal", "civil"
 - Penalties quite harsh - Example: death penalty for robbery, "an eye for an eye", hand cut off for striking a parent
 - Emphasized *retribution* instead of *restitution*
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Retribution

...criminal sentence focused on punishment

Restitution

...criminal sentence focused on restoring, or paying back the victim

Mosaic Law



- Law given to the Hebrew people (1300s BCE)
 - Found in the first 5 books of the Old Testament part of the Bible

 - Summary of this law is in **the Ten Commandments**
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Mosaic Law (continued)



- Differences b/w Mosaic Law & Hammurabi's Code:
 - Mosaic leaned **more towards restitution** (paying fines instead of being killed for a crime)
 - Mosaic more concerned with **punishing deliberate acts**, instead of accidents
 - Mosaic had **less concern for status** and wealth...more value given to poor people
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Greek Law



- Some city-states in Ancient Greece (like Athens) were democracies but only a small number of “citizens” had political rights. Women, children, slaves and outsiders were excluded
 - 400 BCE All citizens (wealthy men) expected to vote and do **jury duty**. Juries ranged from 101, 505, or 1001 citizens.
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Jury

...a group of people that hears a legal case, and determines guilt/innocence, and sometimes sentences

Greek Law (continued)



- If a woman was on trial, she could not speak for herself (citizens had to speak for her).
 - If found guilty, both the accused and the accuser suggested a sentence and the jury voted on it.
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Roman Law

- Twelve Tables – one of the first legal codes in Roman Law
 - Roman law became basis for law for **Western Europe**
 - Emphasis on **equity** > law should be fair and just & all people are equal under the law
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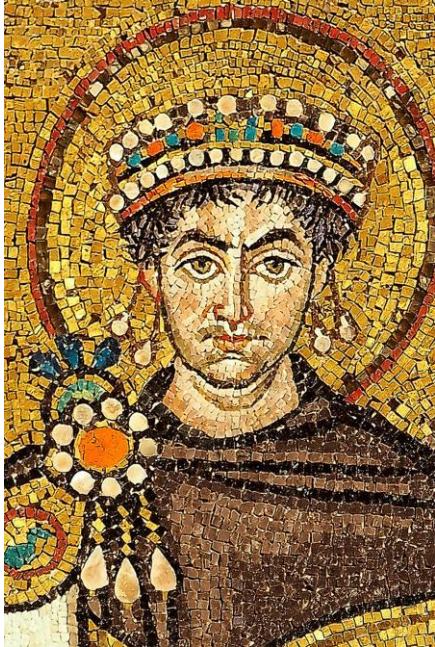
Roman Law

- Roman law founded on key principles:
 - the law must be **recorded**
 - justice shouldn't be left to **judges alone** to interpret
 - **Lawyers** evolved from Roman legal practice
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Lawyer

...expert in the practice of law...developed from the Roman legal experience

Justinian's Code



- Roman Empire split into Eastern & Western parts in 395CE. Justinian was emperor of Eastern or Byzantine empire from 527-565 CE
 - He had 1000 years of Roman laws codified as the Justinian Code, a collection of past Roman laws, opinions from legal experts, and new laws he enacted.
 - **The Justinian Code emphasized equality under the law.**
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Key Contributors to Modern Law in Canada

3 key contributors:

- British law
 - French law
 - Indigenous law
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Timeline of Modern Legal History

- 1066 CE -- Feudal Law established in England by William the Conqueror
 - 1100s CE -- Henry II of England reforms law and establishes the jury system
 - 1215 CE -- King John of England signs Magna Carta...established Rule of Law
 - 1450 CE -- Great Binding Law established by Iroquois Confederacy
 - 1804 CE -- Napoleonic Code goes into effect in France
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Early British Law



- After Romans left England (around 410 CE), Britons turned to God to determine guilt/innocence
 - Believed that God would naturally punish guilty people...innocent people wouldn't be harmed

Early British Law (cont.)

Trial by Oath & Trial by Ordeal



- Believed that God would reveal guilt/innocence through a test of 'chance'
 - trial by combat
 - trial by oath-helping
 - trial by ordeal
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Trial by Combat



...determining guilt or innocence by fighting a duel...survivor is innocent



THE
LAST
DUEL

EXTENDED CLIP

Trial by Oath-Helping



...determining guilt or innocence by having people swear an oath before God that the accused was innocent

trial by ordeal



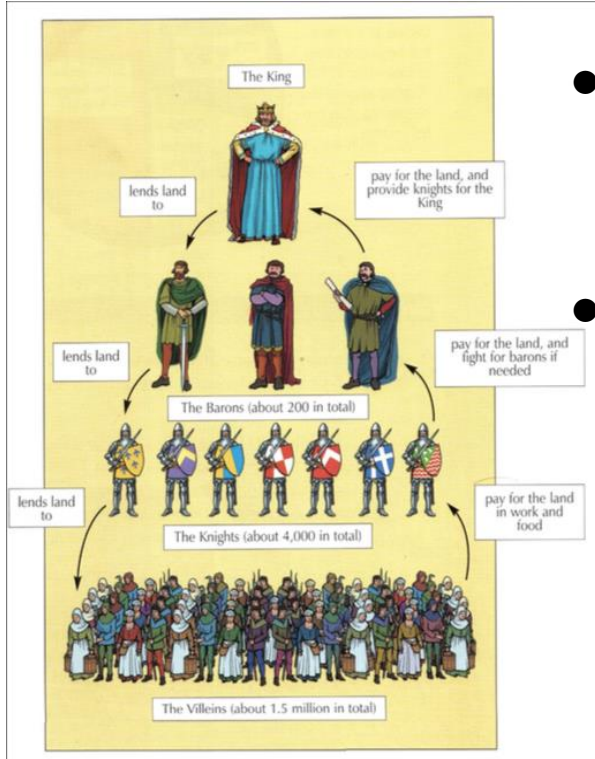
...determining guilt or innocence by torturing accused person...if they survived, they were considered innocent...if they died, they were considered guilty



Opposing Sides

- legal system is based on two parties arguing their opposing points
 - the three previous tests of chance (trial by ordeal, trial by combat, trial by oath-helping) helped to establish adversarial system
 - 2 opposing sides + 1 judge
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Feudal Law



- **William the Conqueror**, Duke of Normandy (France) invaded England in 1066, and made himself King
 - Established a feudal system of law and government
- **Feudalism...**
 - King divides country into parcels - appoints a nobleman to be in charge of each parcel - nobleman become King's vassals (servants), and fight for the King if necessary
 - Noblemen then allowed peasants to live on their land and farm it - in exchange, the peasants acted as vassals to the noblemen - even acting as an army for the noblemen



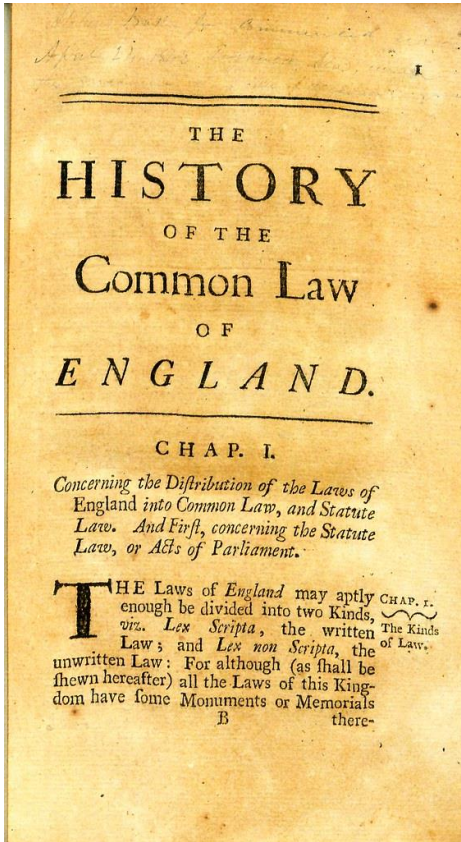
Noblemen as Judges

- In feudal law, noblemen acted as judges for disputes that occurred in their territory
 - this system was flawed...some noblemen were just and fair...others were cruel and unfair
 - For many years, citizens accepted this system because they believed King had **divine right** to be King
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British People Protest



- Eventually, British citizens had enough of the injustices from noblemen judges...they started to protest
 - **King Henry II** acted on these protests
 - Appointed **judges** to travel around hearing cases all over England (instead of the noblemen)
 - These judges met in London occasionally to discuss and record cases - making their future decisions more consistent
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Common Law

- As more legal decisions in England were recorded and discussed among judges...a system of common law emerged
 - A common law system is based on **precedent and case law**
 - Common law, precedent, and case law are **VITAL** components of our current legal system
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Case Law

...recording case details and decisions to use as precedents for future cases

Common law

...system where legal decisions are based on similar cases that have been decided in the past

Precedent

...legal decision that sets the standard for similar cases in the future

Rule of Law & Magna Carta



- Judges helped to improve the legal system but...
 - King John (1199-1216) still “above the law”
 - The noblemen forced King John to sign the **Magna Carta** (1215 CE)
 - This formed basis of **rule of law** = everyone, even rulers, must obey the law and equality, and people’s legal rights could not be changed without their consent.
 - Also granted **habeas corpus**
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Magna Carta

...charter document that guaranteed basic rights;
including right to justice, and the right to a fair trial

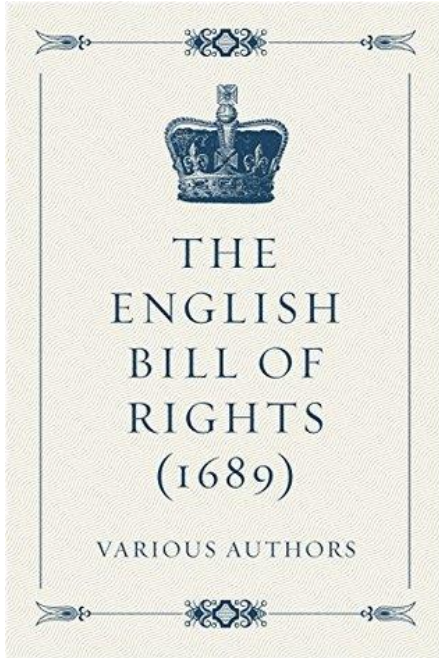
Rule of Law

...all people and organizations are accountable to the law, and the law is fairly structured and enforced

Habeas Corpus

...right of arrested person to be promptly brought before judge, instead of being detained without cause

Parliament & Statute Law



- In England around 1265, King Henry III forced to create the first **Parliament**.
 - Parliament helped make laws (or **statutes**) for the country
 - - 1689, Parliament passed the **English Bill of Rights**.
 - free speech, free elections, freedom of assembly, etc
 - gave parliament **power over the monarchy**
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Napoleonic Code - 1804

- Napoleon Bonaparte led writing of Napoleonic Code after the French Revolution (1789)
 - Formed the basis of French civil law
 - Legal standard in the Code was clear, easy to understand, and unbiased
 - Applied to property rights, wills, contracts, family law
 - Quebec civil law is based on Napoleonic Code

The Great Binding Law



- Indigenous communities across North America had established governments, religions, social structures, and legal systems prior to British and European settlement.
 - Laws and customs passed down through generations by oral tradition
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The Great Binding Law



- Around 1450, five groups formed the Haudenosaunee Confederacy
 - A sixth group joined (becoming known as the Six Nations)
 - Recorded the Great Binding Law (or Gayanashagowa)
 - Outlined rights, responsibilities, and duties and included laws.
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