Magna charta libertatum and Common Law

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People and Law

- According Aristotle, man is a “social animal”. He cannot live alone and **sets up relationships** with *other people*. Due to these, **conflicts of interest** can happen really often and they should be solved by something that always warrants each **claim** (right). As matter of the fact, Cicero said “*ubi societas ibi ius*” (**if there's a society, law will be there**).
- **Law will reflect people nature, traditions and history.** For this reason, English-speaking-countries law is different – for example – from European continental countries law.

Civil Law

In European continental countries there is the Civil Law. This system takes as its major inspiration **Roman law**, and in particular the *Corpus Juris Civilis*. Ancient Romans began giving citizens an accessible and written collection codified of the laws (**codes**) which apply to them and which judges must follow.

Civil Law proceeds from **abstractions, formulates general principles**. It holds **legislation** as the primary source of law, and the court system is composed of **judges who interpret** law.

Common law

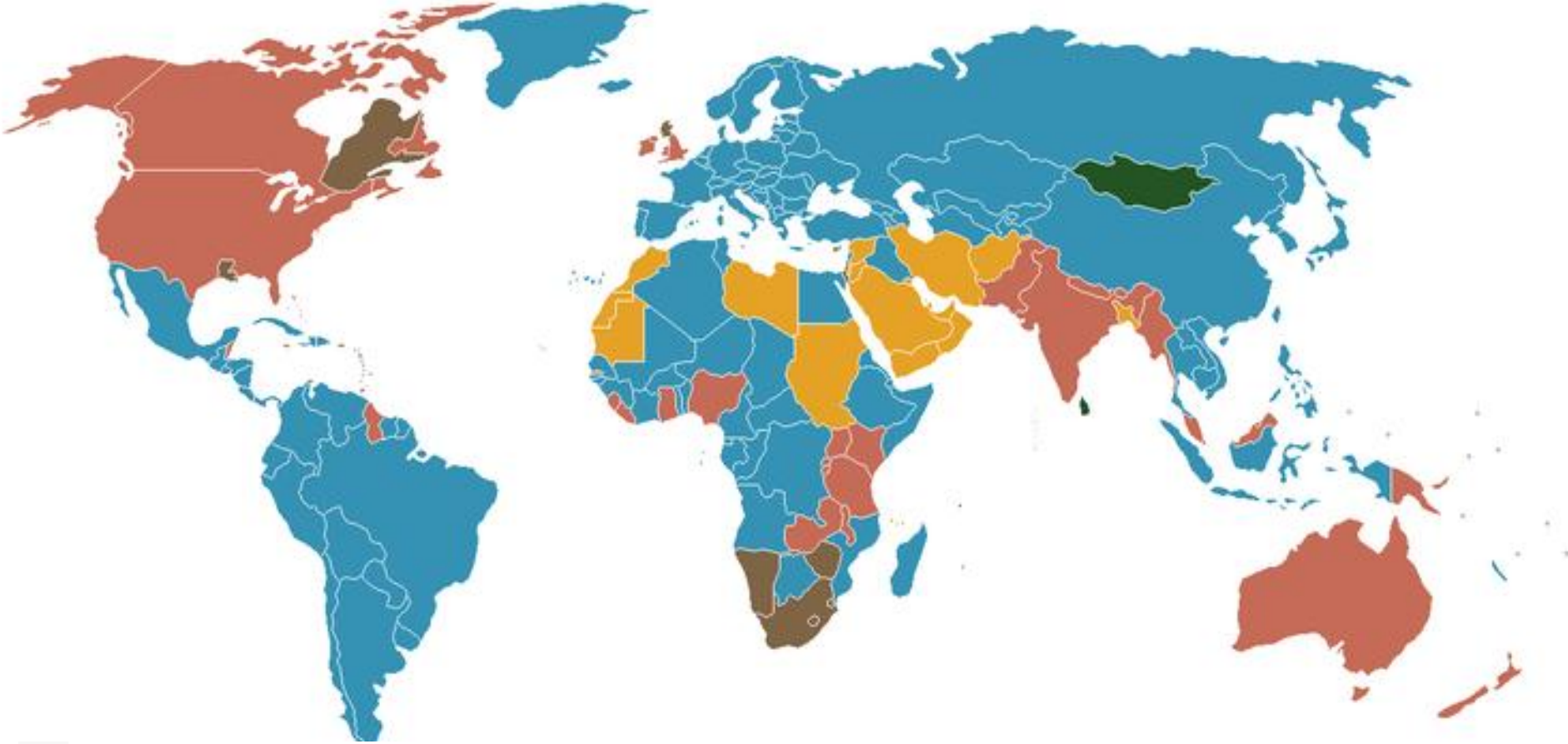
- Among Anglophone countries (Great Britain, ex English colonies and Commonwealth) there is the Common Law.
- This system is based on **case law**, so it is developed **by** judges through **decisions** of courts and similar tribunals rather than through legislative statutes. By the legal principle "*stare decisis et non quieta movere*" judges must **follow prior decisions (precedents)**, collected in *reports*.
- Doctrine is less important than in the Civil Law and **codes don't exist**.
- Lawers got a **practical** training.
- It was not influenced by Roman Law.

Differences

between ***Common Law*** *and* ***Civil Law***

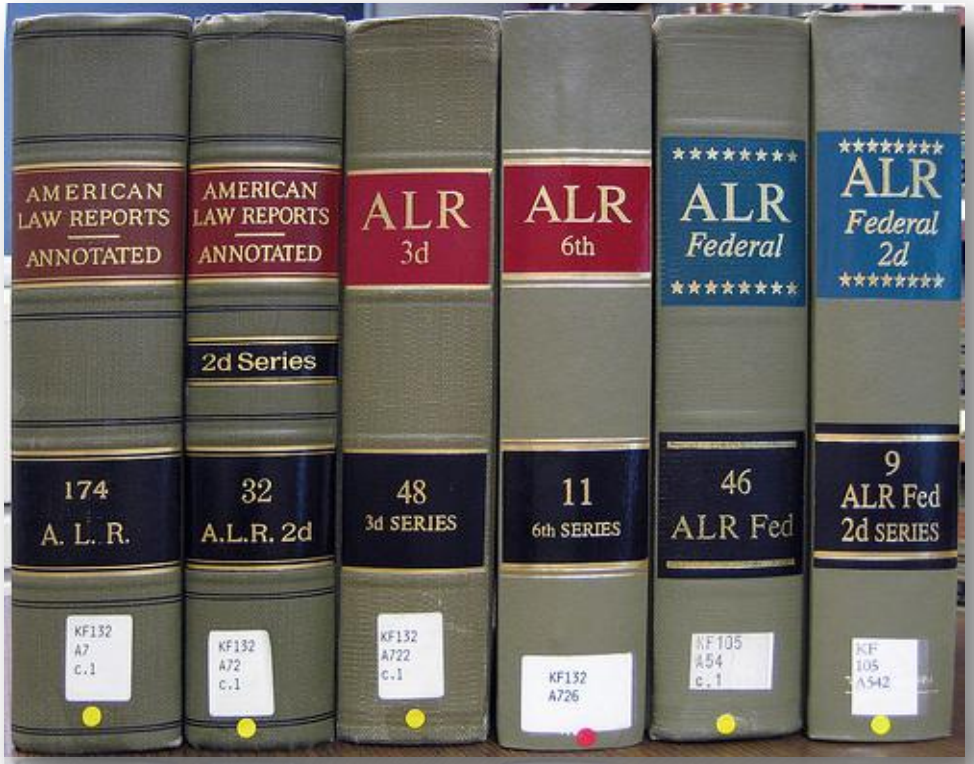
Civil law	Common Law
• **Legislation** as primary source • **Presence of codes of written laws** developed by abstracts • Judges **interpret** laws and can **defy** precedents • Lawers studied the law **doctrine**	• **Judges decisions (cases)** as primary source • *Reports* with **precedent decisions** about a **specified subject**; **unwritten laws** • Judges **create** laws, but they must **follow precedents** • Lawers get **practical training**

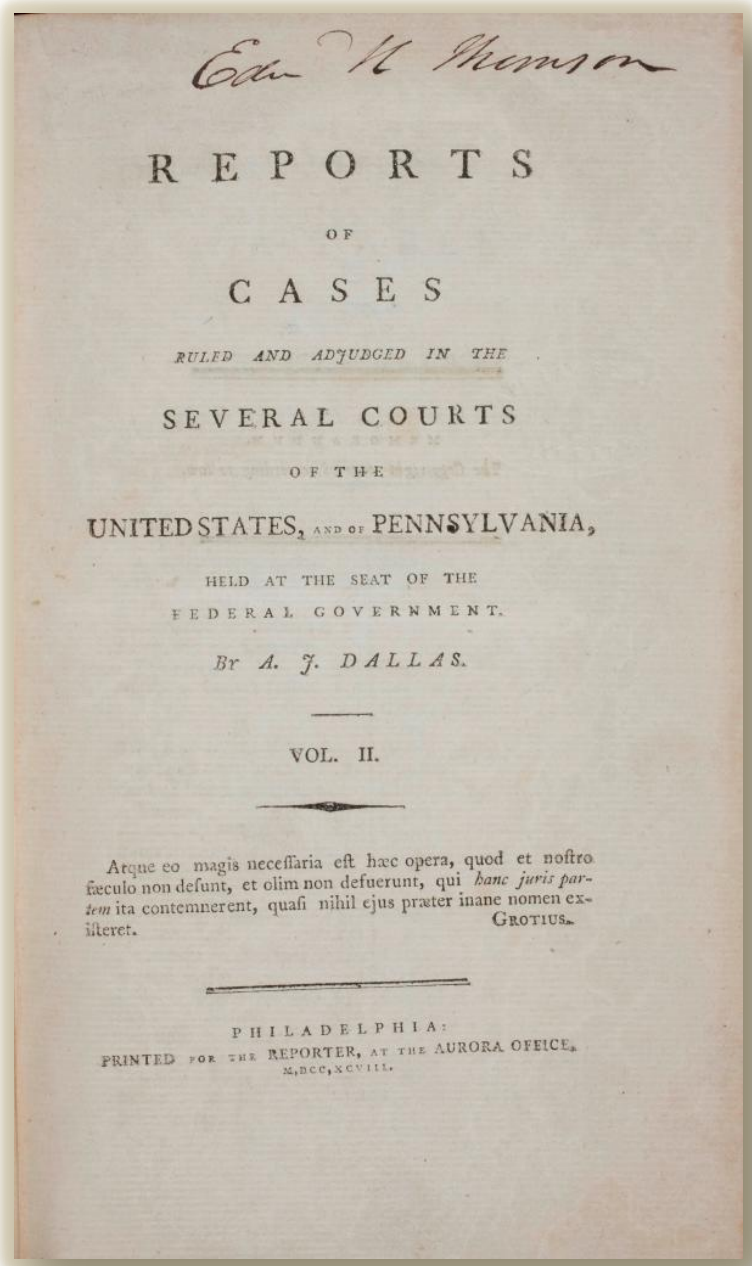
Legal systems **World Map**



- *Civil law*
- *Common law*
- *Civil law and Common law*
- *Custom law*
- *Figh*

Images: *Reports*





Edw H Thomson

REPORTS

OF

CASES

RULED AND ADJUDGED IN THE

SEVERAL COURTS

OF THE

UNITED STATES, AND OF PENNSYLVANIA,

HELD AT THE SEAT OF THE

FEDERAL GOVERNMENT.

By A. J. DALLAS.

VOL. II.

Atque eo magis necessaria est hæc opera, quod et nostro sæculo non desunt, et olim non defuerunt, qui *hanc juris partem* ita contemnerent, quasi nihil ejus præter inane nomen existeret. GROTIUS.

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Common law
Birth and **Medieval history**

- Before the Norman conquest in 1066, **justice was administered by bishops and the sheriffs**, exercising both ecclesiastical and civil jurisdiction.
- Henry II (1154) institutionalized common law by creating a **unified** system of law "common" to the country through **incorporating and elevating local custom to the national, ending local control and peculiarities, eliminating arbitrary remedies.**
- Judges were sent by king to solve disputes. Then, their decision, after they had been discussed and approved among king and other judges, were filed and must have been followed in the future as **precedents**, according to the "*stare decisis*"
- By this system of precedent, decisions became ossified, and so the pre-Norman system of **disparate local customs was replaced by a consistent system of law that was common throughout the whole country.**
- Henry II's creation of a powerful and unified court system, which curbed somewhat the power of canonical (church) courts, brought him (and England) into **conflict with the church**, most famously with Thomas Becket, the Archbishop of Canterbury.

Magna Charta Libertatum

- Magna Carta was issued in Runnymede, on 15/06/1215, and reissued later in the 13th century in modified versions which omit certain temporary provisions, including the most direct challenges to the monarch's authority. The charter first passed into law in 1225.
- The 1215 Charter required King John of England to proclaim certain liberties, and accept that his will was not arbitrary, for example by explicitly accepting that no "freeman" (in the sense of non-serf) could be punished except through the law of the land, a right which is still in existence today (*habeas corpus* principle).
- Magna Carta was the first document forced onto an English King by a group of his subjects (the barons) in an attempt to limit his powers by law and protect their privileges. It was preceded and directly influenced by the 1100 Charter of Liberties, when King Henry I had specified particular areas where his powers would be limited.

Due process right

Habeas Corpus Principle

Clause 29 (clause 39 in the 1215 charter)

29. NO Freeman shall be taken or imprisoned, or be diseased of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the Law of the land. We will sell to no man, we will not deny or defer to any man either Justice or Right

Magna Charta: English Constitution?

- Lots of people consider **Magna Charta** as the **United Kingdom Constitution**. **It's not really true.**
- Due to the Common Law, in UK **there is not a real written Constitution**, that defines clearly the political structure and people claims.
- In UK there is an ***uncodified* (unwritten) Constitution**, as "evolution" of laws and conventions over centuries, that **includes**, anyway, **written sources** (key statutes) like principles as well.
- Among these, there are *Magna Charta*, *Petition of Right* (1628), *Bill of Right* (1689) and other statutes. The last ones are the Constitutional Reform Act (2005) and the Government of Wales Act (2006).
- Magna Charta **influenced** other countries written Constitutions birth (**especially USA one**).
- Nowadays, some English people want to have a **written** Constitution, fearing that the current situation doesn't really protect their claims. Anyway, **monarchy in UK is something that belongs to people mentality and it is not vulnerable like other "young" Constitutions**. **The most part of people does not feel this need because this kind of Constitution is old and is part of the history**

Common Law VS Civil Law

- **What's the best law system? What's the best among Common Law and Civil Law?** It's quite impossible to state.
- First of all, if one was better that the other, **the worst would be replaced by the better.**
- They continue living together **due to the people history and traditions.**
- Anyway, **Civil Law can produce a "legislative stratification", or rather a build-up, a disarray, of laws about the same subject.** Common Law **simplifies the Law "block" and avoid the stratification** (thanks to *precedents*). It's not a problem of the law system, but it's the legislator fault. It's possible to put in order current laws and this operation is named "better regulation"
- **It's quite impossible thinking to bring Common Law to current countries with Civil Law because this would require sure conventions and principles that a past with an other kind of law system doesn't allow to have.**