

COM 421 L2: Historical perspectives of various types of law

Common Law

Most nations today follow one of two major legal traditions: common law or civil law.

Common law refers to a legal system that relies on precedent, or judicial decisions from previous cases, as a primary source of law. In a common law system, laws are developed by judges through decisions in individual court cases, rather than through legislative statutes or regulations.

Common law is generally uncoded. This means that there is no comprehensive compilation of legal rules and statutes. While common law does rely on some scattered statutes, which are legislative decisions, it is largely based on precedent, meaning the judicial decisions that have already been made in similar cases. These precedents are maintained over time through the records of the courts as well as historically documented in collections of case law known as yearbooks and reports. The precedents to be applied in the decision of each new case are determined by the presiding judge.

Historical evolution

Anglo-Saxon England

Common law finds its origins in medieval England during the Anglo-Saxon period. Local customs and tribal laws governed various regions.

The concept of "folkright" emphasized the importance of local customs in resolving disputes.

Norman Conquest (1066):

After the Norman Conquest, William the Conqueror sought to centralize legal authority. He appointed royal judges to travel and apply a more consistent form of justice.

The blending of Norman and Anglo-Saxon legal traditions laid the groundwork for common law.

King's Courts:

Henry II (12th century) established royal courts that traveled throughout the kingdom. These courts applied a common set of legal principles.

The royal judges developed a body of legal decisions that formed the basis of common law.

Development of Precedent:

The doctrine of stare decisis, meaning "to stand by things decided," emerged. This principle involved judges following the decisions of previous cases with similar facts.

Precedent became a fundamental aspect of common law, providing consistency and predictability in legal decisions.

Year Books:

In the 13th and 14th centuries, legal scholars began compiling reports of cases known as Year Books. These records documented judicial decisions and contributed to the development of common law principles.

The Courts of Chancery:

While common law was developing, equity, or fairness, became an essential part of the legal system. The Courts of Chancery, separate from the common law courts, evolved to address cases where the strict application of common law would lead to injustice.

Growth of Legal Profession:

The legal profession expanded during the medieval period. Legal experts, including barristers and solicitors, played crucial roles in the development and application of common law.

The Glorious Revolution (1688):

The Glorious Revolution solidified the independence of the judiciary and the rule of law. The Bill of Rights in 1689 further emphasized individual rights and limited the powers of the monarchy.

Colonial Influence and Global Spread:

Common law was exported to English colonies, shaping legal systems in places like the United States, Canada, Australia, and parts of Asia and Africa.

Local adaptations and modifications occurred, but the core principles of common law persisted.

Modern Era:

In the modern era, common law has continued to evolve. Legislative enactments supplement common law, and courts interpret statutes while considering precedent.

Today, common law principles are a foundational element of legal systems in many countries, particularly those with a historical connection to British legal traditions.

Civil Law

Civil law is characterized by codification where laws are primarily derived from written statutes and codes. Codification refers to the process of collecting, organizing, and systematically arranging laws and legal principles into a comprehensive and unified legal code or set of statutes. The goal of codification is to create a clear and accessible body of law that covers various legal issues in a structured and coherent manner. Countries with civil law systems have comprehensive, continuously updated legal codes that specify all matters capable of being brought before a court, the applicable procedure, and the appropriate punishment for each offense. Such codes distinguish between different categories of law: substantive law establishes which acts are subject to criminal or civil prosecution, procedural law establishes how to determine whether a particular action constitutes a criminal act, and penal law establishes the appropriate penalty. In a civil law system, the judge's role is to establish the facts of the case and to apply the provisions of the applicable code. Though the judge often brings the formal charges, investigates the matter, and decides on the case, he or she works within a framework established by a comprehensive, codified set of laws. The judge's decision is consequently less crucial in shaping civil law than the decisions of legislators and legal scholars who draft and interpret the codes.

Historical evolution

Ancient Roman Period:

The roots of civil law can be traced back to ancient Rome, where the Roman legal system emphasized written laws and codification.

Roman jurists, such as Gaius and Justinian, contributed to the organization and compilation of legal principles.

Byzantine and Early Medieval Period:

The Byzantine Empire continued the Roman legal tradition, preserving and adapting Roman legal concepts.

In early medieval Europe, civil law principles coexisted with customary laws, and legal scholars began studying and applying Roman legal ideas.

Justinian Code (6th Century):

Emperor Justinian I's codification efforts resulted in the creation of the Justinian Code in the 6th century.

The Justinian Code became a foundational legal document and influenced legal developments in medieval Europe.

Medieval European Period:

During the medieval period, local jurisdictions in Europe developed their own legal traditions, combining customary laws with elements of Roman law.

Legal scholars played a role in interpreting and adapting legal principles.

Napoleonic Code Era (19th Century):

The Napoleonic Code, or the Civil Code of 1804, was a significant milestone in the evolution of civil law.

Napoleon Bonaparte's legal reforms aimed at unifying and simplifying French law, emphasizing clarity, equality, and individual rights.

Global Spread and Latin American Adoption (19th Century):

The Napoleonic Code and civil law principles influenced legal developments globally, especially in Latin American countries that adopted civil law systems during the 19th century.

Modern Period:

Civil law systems, characterized by comprehensive legal codes, became predominant in many countries, especially in continental Europe, Latin America, Asia, and parts of Africa.

Legal codes outlined rights, obligations, and procedures comprehensively.

International Influence (20th Century Onward):

Civil law principles continued to influence international legal developments, particularly in private international law and commercial law.

The global legal landscape reflects a mix of civil law and common law traditions.

Equity Law:

Equity law developed as a response to perceived shortcomings in the common law system. It developed as an alternative set of rules to the common law courts in areas to do with fairness and good conscience. It originated in the Court of Chancery in medieval England, where the Lord Chancellor administered justice based on principles of fairness and justice.

Maxims/ Principles of equity

Equity means the rules (equitable remedies) originally developed and administered by the Court of Chancery (equity court) which supplement common law rules and procedures. The maxims (principles) of equity are the rules which are applied by the equity courts, such as:

- ‘equity acts in personam’ (equity acts on the conscience, not the property)
- ‘equity aids the vigilant’
- ‘equity does nothing in vain’
- ‘equity follows the law’
- ‘equity never wants a trustee’
- ‘equity will not assist a volunteer’
- ‘one who comes into equity must come with clean hands’
- ‘one who seeks equity must do equity’
- ‘the person who is first in time has the stronger legal claim’ and ‘where the equities are equal, the law prevails’.

Equity can grant an injunction or an order for specific performance. These are called 'equitable remedies'.

The law of equity continues and is now fused with the common law, and both systems are administered by the same courts. Equitable principles (eg, concerning unconscionability; have made, and continue to make, an important impact on the development of modern law.

Medieval Origins (11th-12th Centuries):

Equity law has roots in medieval England, emerging as a response to the rigid and often harsh decisions of the common law courts.

Local courts administered justice based on customary laws, and individuals sought relief from the strictness of common law decisions.

Development of the Chancellor's Court (14th-15th Centuries):

The Chancellor's Court, headed by the Lord Chancellor, became a separate court in medieval England, dealing with matters of fairness and conscience.

The Chancellor applied equitable principles, aiming to provide justice in situations where common law remedies were inadequate.

Equitable Remedies (16th-17th Centuries):

During the 16th and 17th centuries, equity developed a distinct set of remedies, including injunctions, specific performance, and trusts.

Equity was often seen as a supplement to the common law, providing additional remedies and considerations of fairness.

Conflicts Between Common Law and Equity (17th Century):

Tensions between common law and equity led to conflicts. The common law courts were sometimes hesitant to enforce equitable remedies, creating legal uncertainty.

The Crown intervened to resolve conflicts through the King's Bench and Court of Chancery.

Judicature Acts (19th Century):

The Judicature Acts of 1873 and 1875 in England unified the common law and equity courts into a single system.

The Acts aimed to eliminate the need for parties to choose between the common law and equity, ensuring both sets of rules could be applied by the same court.

Equitable Principles in the United States:

In the United States, equity principles were integrated into the legal system, through the adoption of the Federal Rules of Civil Procedure in 1938. Prior to this, there was a historical division between courts of law (which administered legal remedies) and courts of equity (which administered equitable remedies). This separation was inherited from the English legal system. Through this courts were empowered to apply both legal and equitable remedies.

Equity courts in the U.S. addressed issues such as trusts, injunctions, and specific performance.

Modern Equity (20th Century Onward):

In modern times, equity principles continue to play a vital role in legal systems, especially in common law jurisdictions.

Courts have the authority to apply equitable remedies alongside legal remedies, providing a more flexible and just approach to specific cases.

Equity in International Law:

The principles of equity have influenced international law, particularly in areas such as human rights and environmental justice.

Equity remains a valuable tool for addressing situations where legal rules may not offer adequate solutions.

Criminal Law

Criminal Law is the body of law defining crimes against the community at large, regulating how suspects are investigated, charged, and tried, and establishing punishments for convicted criminals.

The criminal law identifies, defines and declares the conducts that it seeks to prevent and prescribes the appropriate punishments for them too.

Wherever people organized themselves into groups or associations the need for some sort of rules to regulate behavior of the members of the group inter se has been felt, and where there were rules of the society, infringements were inevitable. And it was realized that there was the necessity of devising some ways and means to curb such tendencies in the society that lead to violation of its rules.

Branches of Criminal law: Criminal law in its wider sense consists of two branches.

a) Substantive Criminal Law,

b) Adjective/Procedural Criminal law.

‘The Substantive Criminal law’ lays down the principles of criminal liability, defines offences and prescribes punishments for the same. However, the substantive criminal law by its very nature

cannot be self-operative. A person committing a crime is not automatically stigmatized and punished. At the same time, generally, a criminal would not be interested in confessing his guilt and receiving the punishment. It is for this reason that ‘Procedural Criminal law’ has been designed to look after the process of the administration and enforcement of the substantive criminal law. In the absence of procedural criminal Law, the substantive criminal Law would be almost worthless

Historical evolution

Ancient Societies:

In ancient civilizations like Mesopotamia, Egypt, and Greece, crimes were often considered offenses against the gods rather than against individuals or the state.

Punishments were severe and focused on restitution or revenge rather than a systematic legal process.

Roman Law:

Roman law significantly influenced the development of modern legal systems. The concept of "jus civile" (civil law) emerged, emphasizing the importance of written laws.

Punishments were more standardized, and legal codes like the "Lex Aquilia" dealt with offenses against individuals.

Medieval Europe:

During the Middle Ages, the legal system was heavily influenced by feudalism and the church. Trials by ordeal and combat were common methods of determining guilt or innocence.

Gradually, monarchs sought to centralize legal authority, and early forms of common law emerged.

Common Law and Statutes:

In England, common law developed through judicial decisions and precedent. This period saw the establishment of more formal legal procedures.

The 12th century saw the emergence of the first criminal statutes, such as the Assize of Clarendon.

Renaissance and Enlightenment:

The Renaissance brought a revival of interest in Roman law and classical philosophy.

Enlightenment thinkers like Beccaria emphasized the need for proportionate punishment and fair legal procedures.

Legal reforms aimed at humanizing criminal justice systems gained traction.

19th Century:

The 19th century witnessed significant legal reforms. Many countries codified criminal laws, creating written statutes to replace common law traditions.

Penitentiaries were established, focusing on rehabilitation rather than just punishment.

20th Century:

The 20th century brought further developments in criminal law. Legal systems evolved to address new challenges such as organized crime, white-collar crime, and cybercrime.

The focus on rehabilitation continued, but there was also a resurgence of interest in deterrence and protecting society from offenders.

Contemporary Trends:

Modern criminal law systems focus on balancing punishment, deterrence, rehabilitation, and protecting individual rights.

International criminal law has developed to address transnational crimes and atrocities, with institutions like the International Criminal Court (ICC)

International Law:

International law is a system of rules and principles that govern the interactions and relationships between sovereign states, as well as other international entities such as intergovernmental organizations and, to a certain extent, individuals. It provides a framework for regulating state behavior, resolving disputes, and promoting cooperation on a global scale.

International legal personality refers to the entities or legal persons that can have rights and obligations under international law. 1. States; 2. International Organizations

international obligations (sources of law)

It is generally accepted that the sources of international law are listed in the Article 38(1) of the Statute of the International Court of Justice and include:

- a) international conventions (treaties), whether general or particular, establishing rules expressly recognized by the contesting states;
- b) international custom, as evidence of a general practice accepted as law;
- c) the general principles of law recognized by civilized nations;
- d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law

Historic evolution

Ancient and Medieval Foundations (Antiquity to 17th Century):

Ancient civilizations, including Greece and Rome, had rudimentary forms of treaties and agreements between sovereign entities.

The Peace of Westphalia in 1648 marked a significant development, as it recognized the concept of state sovereignty and laid the groundwork for modern international relations.

Emergence of Treaty Law (17th-18th Centuries):

The Treaty of Westphalia set a precedent for diplomatic relations and the conclusion of treaties between states.

Treaties became a primary source of international law, governing issues such as borders, trade, and alliances.

Development of the Law of the Sea (17th-19th Centuries):

Maritime issues gained prominence, leading to the emergence of the law of the sea. The Hugo Grotius treatise "Mare Liberum" (1609) argued for the freedom of the seas, influencing later discussions on maritime law.

19th-Century Codification and Diplomatic Conferences:

The 19th century saw efforts to codify and systematize international law. The Brussels Conference of 1874 focused on rules of war, and the Hague Conferences of 1899 and 1907 addressed issues like disarmament and the laws of war.

Post-World War I and the League of Nations (20th Century):

The aftermath of World War I led to the establishment of the League of Nations in 1920, with the goal of preventing future conflicts.

The League's Covenant and treaties like the Treaty of Versailles reflected a growing recognition of the need for international cooperation and legal frameworks.

Post-World War II and the United Nations (1945):

The United Nations (UN) was established in 1945 to promote international cooperation and prevent conflicts.

The UN Charter, signed in San Francisco in 1945, became a foundational document for international law, outlining principles of state sovereignty, collective security, and human rights.

Human Rights and Decolonization (Mid-20th Century):

The Universal Declaration of Human Rights (1948) and subsequent human rights conventions marked a turning point in recognizing and protecting individual rights globally.

Decolonization efforts in the mid-20th century led to the emergence of new states and reshaped the landscape of international law.

International Criminal Law (Late 20th Century):

The establishment of international criminal tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Court (ICC), marked a significant development in holding individuals accountable for war crimes and crimes against humanity.

Contemporary Challenges (21st Century Onward):

The 21st century has seen ongoing efforts to address new challenges in international law, including cybersecurity, climate change, and global health crises.

Treaties, conventions, and international organizations continue to play a crucial role in shaping and enforcing international legal norms.

Public and Private Law:

The division between public and private law has persisted in various legal systems. Public law deals with matters involving the state and its citizens, such as constitutional and administrative law. Private law governs relationships between private individuals, including contract and property law.

Historical evolution

Ancient Societies:

In ancient civilizations, laws were often a mix of religious, moral, and customary rules.

Rulers had authority to regulate public matters, while private disputes were often resolved through community or familial mechanisms.

Roman Law:

Roman law made a distinction between public and private matters.

Public law (jus publicum) included issues related to the state, while private law (jus privatum) dealt with relationships between individuals.

Medieval Europe:

Feudal societies in medieval Europe had decentralized legal systems.

Royal authority and feudal lords had jurisdiction over public matters, while local customs governed private disputes.

Common Law and Equity (England, 12th-19th Centuries):

In medieval England, common law courts primarily dealt with private disputes, while equity courts addressed matters of fairness and conscience.

The division between public and private law wasn't as distinct; the Crown played a significant role in both.

Emergence of Nation-States (16th-17th Centuries):

The rise of nation-states led to the development of centralized legal systems.

Monarchs asserted control over public law matters, while private law cases continued to be heard in common law and equity courts.

Codification Movements (19th Century):

The 19th century witnessed codification movements in various countries.

Civil codes were created, often distinguishing between public law (administrative law, constitutional law) and private law (contract law, property law).

Rise of Administrative Law (Late 19th Century - Early 20th Century):

The growth of the administrative state led to the development of administrative law, regulating the actions of government agencies.

Administrative law became a crucial aspect of public law.

International Law and Organizations (20th Century Onward):

International law emerged to regulate relationships between sovereign states, falling under the realm of public law.

International organizations, like the United Nations, influenced global governance and international law.

Expansion of Human Rights (Mid-20th Century Onward):

Human rights law became a significant component of public law, addressing the relationship between individuals and the state.

Global and regional human rights conventions were established.

Contemporary Legal Landscape (21st Century):

Legal systems worldwide have a complex mix of public and private law.

Issues like environmental law, intellectual property, and technology law often bridge the gap between public and private spheres.