



We the People

Taking a look at our rich “common law” heritage from England and examining its significance in American history.



Sir William Blackstone (1723–1780)

- English lawyer, judge, and Tory
- In 1753, he gave a lecture series on English law
- Wrote *Commentaries on the Laws of England* (1766)
- Teacher, lawyer, member of Parliament, Justice
- Heavily influenced John Jay, John Marshall, John Adams, Abraham Lincoln
- *Blackstone's Ratio*
- Check website to [read article](#) about Blackstone's influence on American history - answer questions in TEAMS.





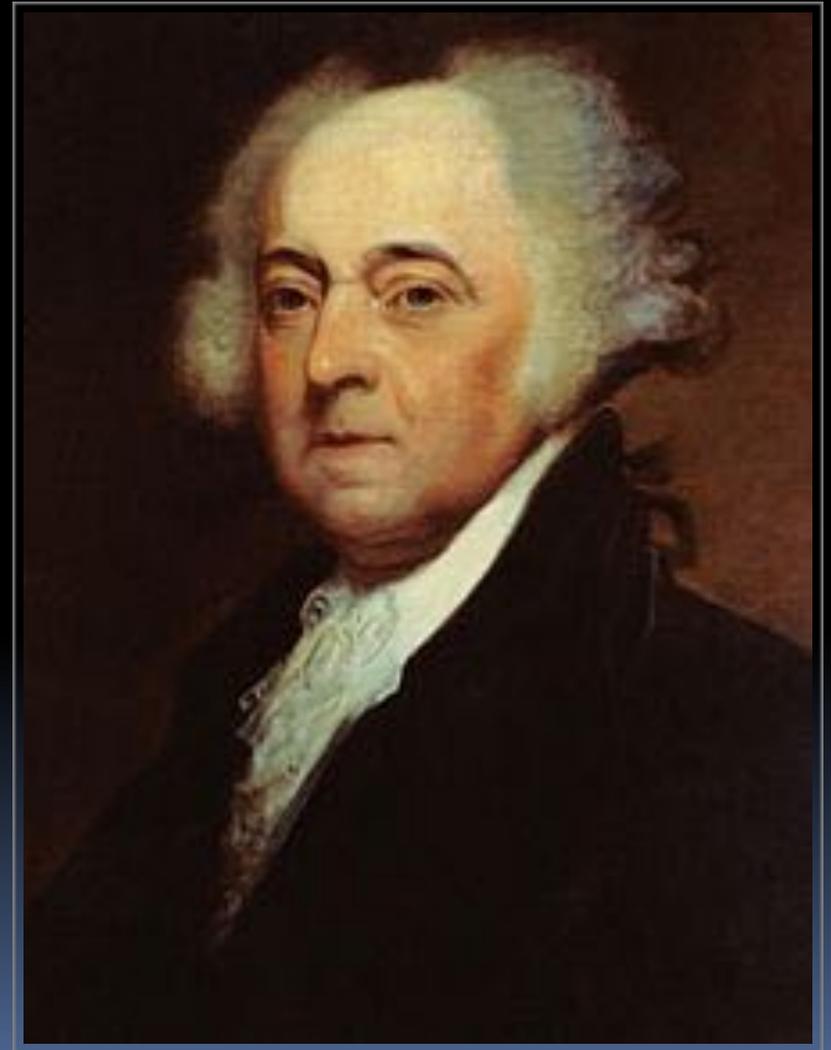
“O let me pierce the secret shade,
Where dwells the venerable maid!
There humbly mark, with rev’rent awe,
The guardian of BRITTANIA’S Law,
Unfold with joy her sacred page,
(The united boast of many an age,
Where mix’d, yet uniform, appears,
The wisdom of a thousand years),



In that pure spring the bottom view,
Clear, deep, and regularly true,
And other doctrines thence imbibe,
Than within the sordid scribe;
Observe how parts with parts unite,
In one harmonious rule of right;
See countless wheels distinctly tend,
By various laws, to one great end;
While mighty ALFRED'S piercing soul,
Pervades, and regulates the whole."

President John Adams

- “It is more important that innocence should be protected, than it is, that guilt be punished; for guilt and crimes are so frequent in this world, that all of them cannot be punished.... when innocence itself, is brought to the bar and condemned, especially to die, the subject will exclaim, 'it is immaterial to me whether I behave well or ill, for virtue itself is no security.' And if such a sentiment as this were to take hold in the mind of the subject that would be the end of all security whatsoever.”



English Common Law

- The “common law” protects people, their property, and their interests...
 - From domestic outlaws who threaten fellow citizens.
 - From dangerous outsiders who threaten the peace.
 - From their own government.
- Under “common law” ...
 - The law is supreme.
 - There can be no such thing as whim
 - Decisions are dictated by
 - Precedent – previous court decisions
 - God’s revealed law through scripture
 - Natural law or God’s law dictated to man by creation

English Common Law

The Common Law is not...

An accident of chance, circumstance, or convenience.

Civil law – or codified law.

Custom or accepted practice.

The Common Law does...

Have origins outside of itself.

Exist eternally as “natural law.”

Seek to protect its subjects.



English Common Law

- The “common law” is...
 - a body of general rules prescribing social conduct,
 - enforced by the ordinary royal courts,
 - characterized by the development of its own principles in actual legal controversies,
 - by the procedure of trial by jury,
 - and the doctrine of the supremacy of the law.

Alfred's *Dooms*

- The “common law” begins in England under Alfred the Great in the ninth century:
 - Successfully turned the Vikings out of England
 - Turned to the Holy Scripture for source of law:
 - Mosaic law
 - Ten Commandments
 - New Testament
 - Translated law into English – not Latin
 - Human law was tied to :
 - God's principles
 - The people over which it ruled



Alfred's *Dooms*

- As a prefix to the Doom's, Alfred attached the Ten Commandments
- "You shall do no injustice in judgment! You shall not be partial to the poor; nor defer to the great! But you are to judge your neighbour fairly!"
- Leviticus 19:15
- There were laws concerning
 - fornication with a nun
 - feuding with a neighbor
 - payment of debts
 - celebration of mass
 - fighting in the King's hall
 - plotting against a lord
 - stealing from the church
 - Lending a weapon for murder

The Magna Carta (1215)

- By early 13th century, the English monarchy had devolved into tyranny under King John I
 - Property seizures
 - Forced loans
 - Taxation
 - Denial of trial by jury
 - Corruption of justice
 - Floating courts
 - Arbitrary judgments
- Band of church leaders and petty nobles forced him to sign document in 1215 recognizing:
 - Property rights
 - Civil rights
- Putting such liberties in writing, once again, made them more secure and enduring



Henry de Bracton's *Note Book*

- 13th century justice on the King's Bench – Henry III.
- First significant commentary on English common law.
- Commented on the rule of law.
- Frequently and effectively used precedent in reaching his decisions as a justice.
- Famous for studies concerning *mens rea*



Continued...

- *Note Book* contained accounts from 2,000 cases “selected to illustrate the law at its best.”
 - His work in English common law foreshadowed and would become the basis of the doctrine of *stare decisis*.
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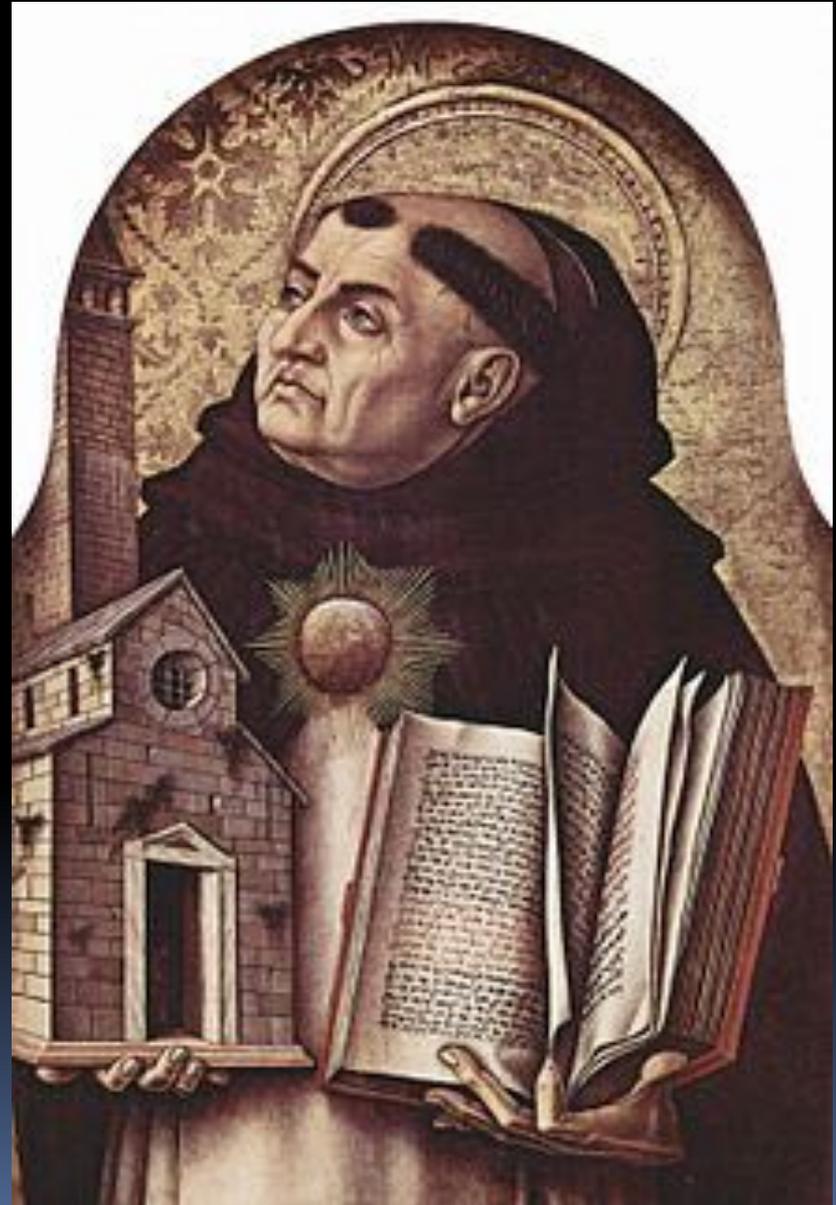


Henry de Bracton's *Note Book*

- “The king himself...ought not be under man but under God, and under law, because the law makes the king. Therefore, let the King render back to the law what the law gives to him, namely, dominion and power; for there is no king where will, and not law, wields dominion.”
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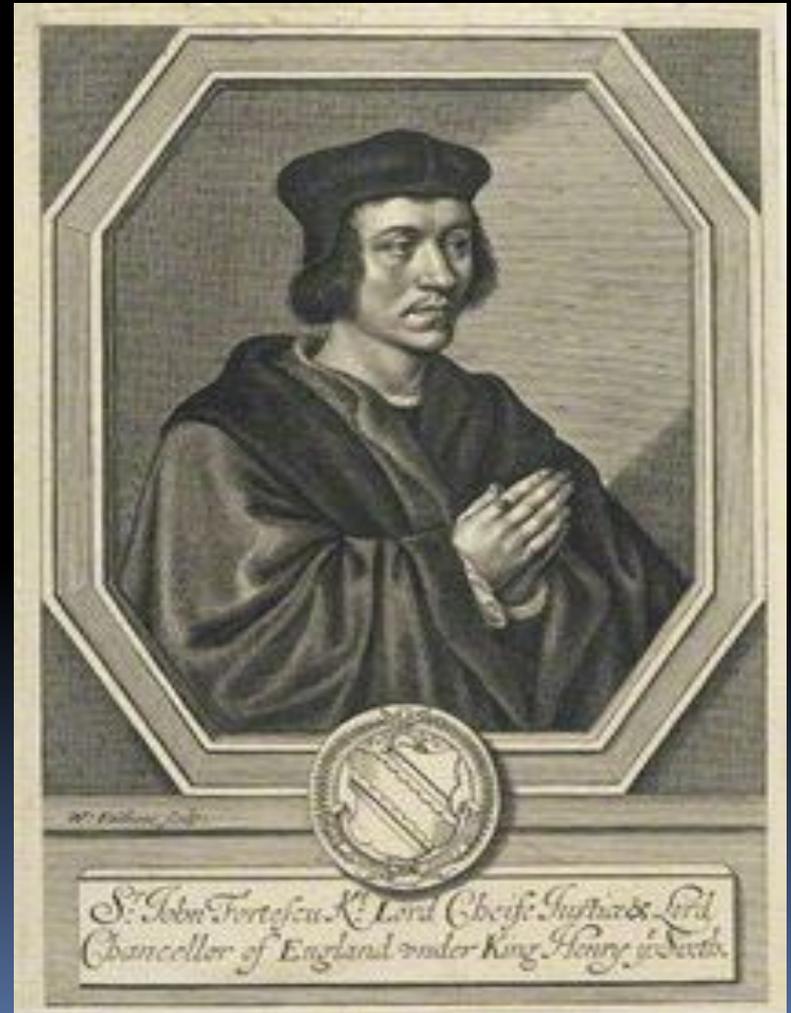
St. Thomas Aquinas' *Summa Theologica*

- Written in the 13th century and became a classic
- Studied throughout Europe by the 15th century
- “every human law that is adopted has the quality of law to the extent that it is derived from natural law. But if it disagrees in some respect from the natural law, it is no longer a law, but a corruption of law.”



John Fortesque's *In Praise of the Laws of England*

- 15th century judge and scholar
- Cemented the “sovereignty of the law” doctrine
- Compared English government with its limited monarchy and rule of law to that of France where king’s ruled arbitrarily – Divine Right Theory





Continued...

- Liberty was more secure in England than in France
 - Demonstrated how the natural law together with the laws of Scripture had given birth to England's common law system
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The Petition of Right (1628)

- Presented to King Charles I by Parliament in 1628
- Edward Coke led the charge against the king
- The Petition of Right
 - Reasserted the protections of the Magna Carta
 - contains restrictions on non-Parliamentary taxation,
 - forced billeting of soldiers
 - imprisonment without cause
 - use of martial law
 - Set the stage for the English Civil War
 - Leads to the execution of King Charles I
 - Ushers in the Glorious Revolution in 1689

Sir Edward Coke (1552–1634)

- Edward Coke, judge and legislator,
 - continually checked the King and Parliament whenever either challenged the rule of law.
 - He wrote *Institutes of the Laws of England*, a classic multi-volume history of England's common law system
 - “An Englishman's home is his castle.”



The English Bill of Rights (1689)

- William and Mary come to the throne after the Glorious Revolution in England:
 - Freedom from royal interference with the law. Though the sovereign remains the fount of justice, he or she cannot unilaterally establish new courts or act as a judge.



Continued...

- Freedom from taxation by Royal Prerogative. The agreement of parliament became necessary for the implementation of any new taxes.
 - Freedom to petition the monarch.
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English Bill of Rights (1689)

- Rights and freedoms continued...
 - Freedom from the standing army during a time of peace. The agreement of parliament became necessary before the army could be moved against the populace when not at war.



Continued...

- Freedom for Protestants to have arms for their own defense, as suitable to their class and as allowed by law.
 - Freedom to elect members of parliament without interference from the sovereign.
 - Freedom of speech and debates; or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.
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