

UNIVERSITY OF TRIER
International Legal Studies

English Legal System

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Session #4

Videos

<https://www.youtube.com/watch?v=go73m6STnjg> (“What is the Common Law?”)

<https://www.youtube.com/watch?v=bCFxajzP2E0> (“Common Law and Equity”)

The English Court System

- current structure dates from 1873
- 2-tiered-----*civil* and *criminal*
- reformed in 1971, 1981, 2005—now includes a *Supreme Court*, superceding the House of Lords as the highest court in the land

In general, two types of cases come before English courts:

1. “cases at first instance” (trial court)
2. “cases on appeal”

Hierarchy, starting from the bottom:

1. Magistrates’ Courts

- a. Deal only with cases at first instance (“original”)
- b. Hear both criminal and civil cases
- c. Civil? collections, family law
- d. Criminal? Petty crimes—can impose fines, short imprisonments
- e. Spread out all over the country
- f. Consist of a panel of three unpaid lay magistrates, assisted by the clerk of court (a lawyer)

2. County Courts

- a. Only local jurisdiction (county consists of districts which are grouped into circuits)
- b. Only cases at first instance
- c. Civil matters only and only up to a certain monetary amount
- d. Venue is proper where defendant is located or where alleged action occurred
- e. Presided over by circuit judge (lawyer), who may sit in several county courts

3. **Crown Court** (“Old Bailey”, when located in London)
 - a. Just one court, which can sit anywhere in the country
 - b. Criminal matters only (serious)
 - c. Hears cases in first instance, and appeals from magistrates’ courts
4. **High Court of Justice**
 - a. May be located anywhere in the country
 - b. Civil and criminal matters
 - c. Original and appellate jurisdiction
 - d. Staffed with “puisne judges”
 - e. Consists of 3 divisions:
 - i. *Queen’s Bench Division*
 1. Largest division
 2. For original jurisdiction, civil cases only
 3. For criminal appeals from magistrates’ courts and Crown Court
 - ii. *Chancery Division*
 1. Primarily a trial court
 2. Hears cases of property, mortgages, trusts, probate, bankruptcy, landlord/tenant, patents
 3. Hears bankruptcy appeals
 - iii. *Family Division*
 1. Original and appellate jurisdiction
 2. Cases concerning domestic relations
 3. Appeals come from Magistrates’ courts
5. **Court of Appeals**
 - a. London-based
 - b. Civil and criminal matters
 - c. Appeals only
 - d. Decisions are binding on all lower courts
 - e. Consists of 2 divisions:
 - i. *Civil Division*
 1. Discretionary court
 2. May allow or dismiss appeal, or hear only part of it
 - ii. *Criminal Division*
 1. Also discretionary
 2. May allow appeal and “quash” the conviction
 3. May order a whole new trial if new evidence is presented
6. **The Supreme Court and the House of Lords**
 - a. Until 2009, *House of Lords* was highest court
 - i. its “Appellate Committee” functioned as the highest court
 - ii. Members were known as “Law Lords”, who rarely participated in political debates/votes
 - iii. Appeals were heard by 5-9 of the “Law Lords”
 - iv. Each “Law Lord” prepared a written opinion, but case was decided by the majority
 - b. Post 20089, “Law Lords” were transferred to the new *Supreme Court*

- i. Replacements will be appointed directly by the House of Lords
 - ii. Discretionary court
 - iii. Hears civil, criminal, and devolution cases (is the [statutory](#) granting of powers from the [central government](#) of a [sovereign state](#) to government at a [subnational](#) level, such as a [regional](#), [local](#), or [state](#) level. It is a form of [decentralization](#). Devolved territories have the power to make [legislation](#) relevant to the area.)
 - iv. Decisions are binding on all lower courts
- 7. Privy Council**
- a. Functions as both an advisory body to the queen , and as an appellate court for ecclesiastic matters
 - b. Remains the highest court of appeals for British colonies
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Major English Legal Figures

Henry de Bracton (born ? Devon, England—died 1268, Exeter) was a leading medieval English jurist and author of *De legibus et consuetudinibus Angliae* (“On the Laws and Customs of England”), one of the oldest systematic treatises on the common law. While depending chiefly on English judicial decisions and the methods of pleading required by English judges, Bracton enlarged the common law with principles derived from both Roman (civil) law and canon law. *De legibus* shows the influence of several European continental jurists—notably Azzone (Azo), a Bolognese glossator of Roman law—and its style suggests that he was trained at Oxford, which then was the centre for the study of civil law in England. Bracton’s work did not have a lasting impact on studies of the common law on the European continent, a fact indicative of the comparative unimportance of systematic scholarly exposition of the common law.

By 1245 Bracton was an itinerant justice for King Henry III, and from about 1247 to 1257 he was a judge of the Coram Rege (“Before the Monarch”), which afterward became the Court of Queen’s (or King’s) Bench. Like most other English lawyers of his time, he was a priest; from 1264 he was chancellor of Exeter Cathedral. In 1884 a manuscript collection of about 2,000 English law cases, evidently by Bracton, was discovered. Called the *Note-Book*, it was edited by the British legal scholar Frederic Maitland and published in 1887.

Sir Edward Coke

Sir Edward Coke was born on February 1st, 1552. Coke was educated at Norwich Grammar School and went to Trinity College, Cambridge. Coke trained as a lawyer and he was called to the Bar in 1578. By 1594, under the patronage of Lord Burghley (Coke had married Burghley’s grand daughter Elizabeth) he had become Attorney-General. Coke was knighted for his services in 1604. In 1606, Sir Edward became Chief Justice of the Common Pleas and in 1613, he was appointed to be the Chief Justice of the King’s Bench.

As a judge, Coke defended the Common Law as interpreted by Parliament and he viewed Common Law as being superior to any law laid down by ecclesiastical or prerogative courts such as the High Commission and the Council of the North. James I was greatly angered and perturbed that a very senior law man believed that common law was superior to the king. In 1613, James promoted Coke to be the Chief Justice of the King's Bench. Whilst professionally an elevation in status, the position was less well paid than his previous post. James had sent out a warning to Coke to 'toe the party line' or suffer the consequences. Coke failed to come to heel. He continued to speak out that Common Law as interpreted by Parliament was superior to the Royal Prerogative.

In 1616, Coke refused to delay a hearing (the *Commendams Case*) so that James could speak to the judges involved in the case. In the previous year, he had not supported the king's desire that he, the king, should be allowed to speak to judges individually before a case was heard. Coke believed that this gave the king too much of an opportunity to influence the outcome. James dismissed Coke from his post in November 1616 for insubordination.

Coke's removal from his position on the King's Bench was a serious blow to his social and professional standing. To regain this standing, in 1617 he married off his daughter Frances to the Viscount Purbeck – John Villiers, the brother of the Duke of Buckingham. Within a year, Frances had left Purbeck and gone to live with the son of the Earl of Suffolk – a Howard. The Howard's fall from political power was a result of the social and political advance made by Buckingham.

From Buckingham's point of view, for Coke's daughter to leave his brother for a Howard was unforgivable. However, Coke blamed the separation on John (who has been described by J P Kenyon as having the reputation of a "mental defective") and Buckingham who had pushed his brother nearly as far up the social ladder as was possible. Coke decided that the only way to get back at Buckingham was via the House of Commons. James's 3rd parliament was from 1621 to 1622. This gave Coke the opportunity he needed.

England at that time was suffering from economic ills especially in the cloth trade that were affecting many in the country from the workers to the gentry. It was in the House of Commons that the gentry had the base to express their concerns. All that they needed was a man who could lead them and Sir Edward Coke provided that leadership and drive.

There may well have been an element of personal revenge for Coke taking this role. However, by 1621, there was a clear wedge between the king, his courtiers and the Commons. It also became clear that the traditional loyalty a monarch could expect from the Lords no longer existed. In the Lords, the Earl of Southampton led opposition to all that Buckingham stood for. A combined Commons and Lords presented the king with a formidable opponent, especially after Coke revived the old

practice of impeachment – putting on trial before the Lords people indicted by the Commons. Coke was prominent in starting the impeachment proceedings against Mompesson and Mitchell (monopolists) and the Lord Chancellor Francis Bacon for bribery.

Coke was also vociferous in speaking out against Buckingham's Spanish match policy. This raised a very serious question - did the Commons have the right to discuss foreign policy? James believed that they did not and that they could only do so if they had the king's permission. Coke believed that it was an "ancient and undoubted birthright" of the Commons to do so. On December 18th, 1621, the Commons voted on the issue in the 'Protestation'. On December 30th, 1621, James himself tore out of the House of Commons Journal any reference to the 'Protestation'. Three days earlier Coke had been arrested and he spent the next eight months in the Tower of London.

In James's 4th Parliament (February 1624 to March 1625), Coke supported the war with Spain and he gave his backing to the impeachment of the Lord Treasurer, Lionel Cranfield.

Coke was to become a major thorn in the side of Charles I and the Duke of Buckingham from the first days of Charles's first Parliament. He led a movement that voted in customs revenue for the king for just one year instead of for the life time of the king, as was the tradition. Coke used his legal knowledge to start impeachment proceedings against Buckingham that only failed as Charles prorogued Parliament.

Coke did not sit in the second parliament of Charles (February to June 1626) as he had been appointed a sheriff, along with other opposition leaders. This meant that he could not be a MP - though that did not stop Coke turning up at the Commons with what he deemed 'evidence' that stated that he could serve as a MP.

Coke retired in 1629 and died on September 3rd, 1634. It is claimed that his wife said: "We shall never see his like again, praises be to God."

Sir William Blackstone

The famous English jurist Sir William Blackstone (1723-1780) is remembered for his *Commentaries on the Laws of England*, the first attempt since the 13th century to provide a comprehensive treatment of English law.

William Blackstone was born in Cheapside, London, on July 10, 1723, the posthumous son of Charles Blackstone, a merchant. He was educated at the Charterhouse School and at Oxford and entered the Middle Temple in London in 1740. He was elected a fellow of All Souls, Oxford, in 1744 and received the bachelor of civil law degree in 1745. Although he was admitted to the bar in 1746, he had limited success in practicing law and continued to hold several university posts and to lecture on English law. Shortly thereafter, Blackstone was appointed to the newly

created Vinerian chair. In 1761 he was elected to Parliament and also received a patent of precedence giving him the rank of king's counsel. He resigned from his chair in 1766 due to his success at the bar that year, and in 1770 he was appointed a judge in the Court of Common Pleas, where he served, with no special distinction, until his death.

Commentaries on the Laws of England

Blackstone was the first since Henry de Bracton in the 13th century to present an encompassing treatment of English law. The *Commentaries* (1765-1769), which grew out of Blackstone's university lectures, is a very readable elementary text. Although its scheme of organization is borrowed from an earlier work by Sir Matthew Hale, *Analysis of Law*, it represents a radical departure from contemporary legal thought, which tended to treat the law as a catalog of unrelated writs and statutes. In *Commentaries*, Blackstone blended the intellectual traditions of the common law with those of 17th- and 18th-century English political philosophy. Blackstone had only a vague grasp of systematic conceptions of law, and he was in fact frequently illogical, inconsistent, and uncritical. His purpose, however, was simply to provide literate men with entertaining and persuasive explanations of the existing legal order rather than to construct a critical and consistent jurisprudence. *Commentaries* performed a service for society and should be regarded more as a handbook for the layman than as a legal treatise.

In his treatment of law Blackstone argued a division between natural and positive (municipal) law by insisting on the existence of a natural law and maintaining that positive law which is not in accord with the principles of natural law is not law at all. But he held that there are few such principles and that most positive law concerns matters on which natural law is silent. Rights and wrongs are objects of law; rights are of persons or things, while wrongs are either public or private. Evidently, he regarded the law of gravitation, the law of England, and the law of nature as examples of the same principle, that is, the imposition of rules by a superior power on its subjects.

Blackstone's lack of precise terminology and use of loose phraseology result in contradictions. When he borrowed the scholastic definition of positive law, "a right or just ordinance commanding what is right and forbidding what is wrong," he deliberately struck out "right or just." Thus it is not clear whether he meant that whatever the law commands is right or that only laws that command what is morally right are really laws. He also reasserted the traditional equation of natural law with common law. Thus he did not directly face up to the problem of whether men only have those rights which the law gives them or whether law is simply the acknowledgment by the state of the natural rights inherent in each individual. According to Blackstone, Englishmen enjoyed only those rights which the common law proclaimed, but in fact Englishmen had created the common law to proclaim their rights.

Areas of Influence

Blackstone was active in the prison-reform movement, worked against the tendency to extend the list of capital offenses, and was critical of the poor laws. In some technical areas, such as contract laws, his thinking was in advance of that of most of his contemporaries.

He conceived his task as being educational reform rather than the building of a philosophic system. In the 18th century the Inns of Court had practically ceased to play their traditional role in legal education, and apprenticeship had largely replaced academic training. Blackstone gave the first regular university lectures on English law and sought not only to provide formal instruction for prospective lawyers but to present the basic elements of common law as an integral part of the academic education of English gentlemen.

In the United States, Blackstone's example contributed significantly to the development of law schools, and during the Revolutionary and postrevolutionary periods the *Commentaries* was the most widely read law text in America. After 1850 United States lawyers no longer tried to copy Blackstone, for living law was being shaped by the local institutions. By the middle of the 20th century few Americans had read Blackstone, even as a classic, but he remains a symbol for American lawyers.