

The American Legal System  
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<https://www.youtube.com/watch?v=yHp7sMqPL0g>

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**Road Map**

- Overview and History
- Structure of US System
  - Branches of Government
  - US Federalism
- Protection of Rights
- The Courts in Practice

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### Overview and History

- Common Law
- Magna Carta
- The Declaration of Independence 1776
- The American Constitution 1789
- Federal government and state governments.
- Division of power
- Checks and balances

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### The Development of the Common Law

- Pre 1066. Anglo Saxon tribes- Fluid.
- Localized Government and Judiciary
- Customary Law- based upon Ecclesiastic Courts and local tradition and custom.
- Justice not terribly efficient

Adapted from, American Contract Law PPT, Crystal, N. U. So Carolina

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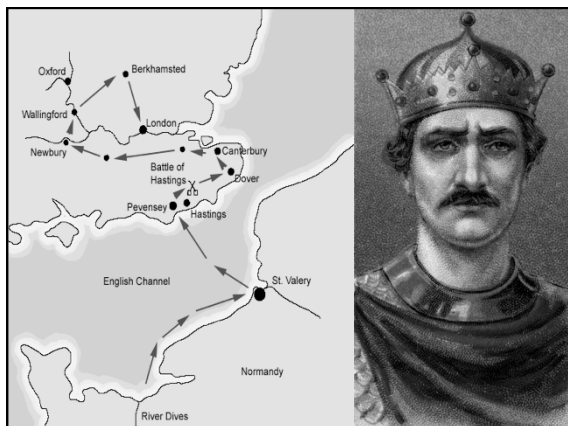
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**Historical Background**

- **Common Law Judges**
  - Very few - below 20- Itinerate
  - Met in London to compare notes.
  - Judges were often religious men.
  - Noble class.
- Doctrine of Stare Decisis (let the decision stand) developed.
- System of Appeals developed to provide a check and balance.

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**Historical Background**  
**–The Writs**

- System of notices and orders that required action by one party or another.
- A standard form that was easily recognizable and requested the Court to order another person do something very specific.
- These actions became formalized and became causes of actions. Very strict parameters for fit into which writ.
- If a party used the wrong writ, relief would be denied: If there is no writ there is no remedy.

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### Writ of Habeas Corpus

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### Declaration of Independence




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### Declaration of Independence

- When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.
- We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

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### Constitution

- 1789
- Article I: Congress
- Article II: President
- Article III: Courts

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### Bill of Rights

- Amendment I- Speech, Assembly and Religion
- Amendment II- Bear Arms
- Amendment III- Quartering Soldiers
- Amendment IV- Unreasonable search and seizure
- Amendment V- Silence
- Amendment VI fair Trial Rights
- Amendment VII- Civil Trial by Juries
- Amendment VIII- Inhumane Punishment
- Amendment XIII Slavery
- Amendment XIV Equal Protection Due Process
- Amendment XV Voting

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### State and Federal System

- Historically state and local government came first.
- The states have their own legislative, executive and judicial institutions
- State and local government control:
  - Criminal law
  - Highways
  - State income tax
  - Public schools and universities
  - Police and fire departments
  - Regulate business and supervise commercial affairs
- The Federal system of government controls:
  - Foreign policy, defense and monetary policy
  - Areas that cannot be regulated locally and statewise: interstate commerce, interstate crime, interstate environmental problems etc.

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**The Legislative Branch:**  
Congress Passes legislation and appropriates money

- The House of Representatives
- 435 members – according to the size of the state
- 2-year term
- The Senate
- 100 members -two from each state
- 6-year term

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**The Executive Branch: The Presidency**

- 4-year term - max two 4-year terms
- Protects the Constitution
- Proposes legislation
- Enforces the laws made by Congress
- Commander in Chief of the armed forces
- Appoints judges to Supreme Court (with the consent of the Senate)

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**The Executive Branch: The Cabinet**

- No mention of it in the Constitution
- Subordinate to the President
- Cabinet members recruited broadly, not necessarily party insiders

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### The Supreme Court

- 9 members
- Life term appointment
- Interprets and guards the Constitution
- Interprets the law
- Decisions of the Supreme Court are final
- In general it plays a conservative role, maintaining legal tradition

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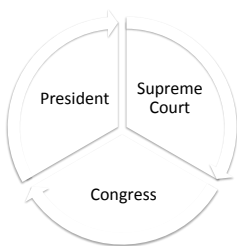
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### Checks and Balances



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**President:**  
Power to veto  
Issues executive orders  
Commander-in-chief  
Appoints Federal Judges  
Grants Pardons for offenses against the US

**Supreme Court:**  
Power to declare laws and presidential actions unconstitutional

**Congress:**  
Power of the purse  
Override presidential veto (2/3 majority)  
Impeachment  
Senate approves treaties and the president's appointments

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### Elections and Political Parties

- Winner-take-all-election system
- The Electoral College
- Two party system- both appealing to the middle of the political spectrum
- Balancing the ticket (President and Vice president)
- Voting patterns: splitting the ticket
- Voting for individuals rather than party slate

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### The Electoral College

- Representatives of the people in presidential elections
- 534 electors, corresponding to the numbers of Representatives and Senators
- 270 electoral votes guarantee the Presidency
- Each state votes as a single block (minus Nebraska and Maine) winner takes all
- Importance of Swing States and the big states

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### Democrats and Republicans And Their Voters

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|--|-----------------------------|
| • Democrats –                            | • Republicans-              |
| • majority of black voters               | • Protestant voters         |
| • Urban ethnics                          | • Business community        |
| • Blue collar workers                    | • Blue collar workers       |
| • Catholics                              | • Religious fundamentalists |
| • More women voters                      | • Whites                    |
| • Northeast, West, upper midwest, Hawaii | • Older men                 |

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### Democrats and Republicans and Their Policies

- Democrats
  - Support welfare programs
  - Keynesian economics and job creating programs
  - Social security, Medicare and Medicaid
  - Civil Rights legislation
  - Women's right to abortion
  - Gay Rights
  - Environment
- Republicans
  - Limiting federal regulation of business
  - Reduction in welfare spending
  - Anti-abortion
  - Religious fundamentalism
  - "Traditional" Values
  - Military
  - Anti-Immigration
  - Skeptical of Environmentalism
  - Anti Gay

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### Case Study: Brown v Board of Education

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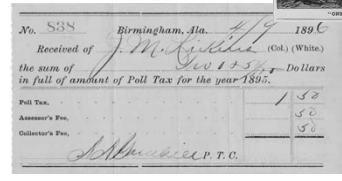
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By 1910, every state of the former Confederacy had adopted laws that segregated all aspects of life wherein blacks and whites might socially mingle or come into contact.



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### Plessy v Ferguson (1886)



- In 1890 a new law in Louisiana required railroads to provide equal but separate accommodations for the white, and colored, races.
- Outraged the black community decided to test the law.
- On June 7, 1892 Homer Plessy was jailed for sitting in the "White" car of the East Louisiana Railroad. Plessy was one-eighth black & seven-eighths white, but according to Louisiana law he was black.

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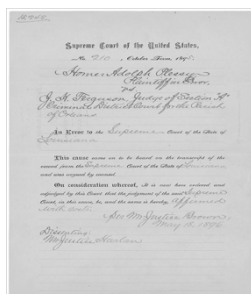
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### Plessy v. Ferguson

- Plessy went to court arguing that the Separate Car Act violated the thirteenth and fourteenth amendments.
- Unfortunately, the judge found that Louisiana had the right to regulate railroad companies that operated exclusively in Louisiana, and found Plessy guilty of refusing to leave the White car.




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### Plessy v. Ferguson

Plessy appealed to the Supreme Court of Louisiana, which upheld the original decision.

In 1896 the Supreme Court of the United States heard Plessy's case and found him guilty once again. This decision established the separate, but equal doctrine.

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### Separate but Equal US Supreme Court

- Justice Henry Brown wrote that the intention of the fourteenth amendment was not to abolish racial distinctions. Nor to establish social equality, but merely to establish political equality. Laws permitting and even requiring separation of races do not imply inferiority.
- The "separate but equal" doctrine strengthened segregation practices in schools and throughout public life.

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After the Civil War, the southern states scrambled to recover and keep the public school system alive. Ultimately this effort created a dual educational system based on race.

Schools were anything but equal



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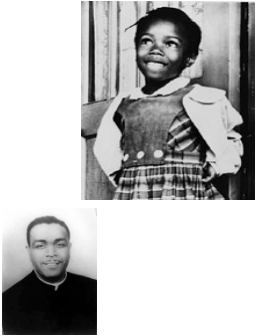
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**Brown v. Board of Education of Topeka, Kansas**

- Argued: Dec. 8, 1952
- Reargued: Dec. 7, 1953
- Decided: May 17, 1954

• Key Players

- Thurgood Marshall
- Rev. Oliver Brown
- Linda Brown
- Chief Justice Earl Warren



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**Brown v. Board of Education of Topeka, Kansas**

**Several Cases Were Combined into One**

- Delaware – Belton v Gebhart
- Kansas – Brown v Board of Education
- South Carolina – Briggs v Elliot
- Virginia – Davis v County School Board of Prince Edward County
- Washington, DC – Bolling v Melvin Sharpe

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**Brown v. Board of Eduaction**

- Facts:
- Issue:
- Rule(s):
- Analysis
- Conclusion

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### Brown v. Board of Education

- Impact:
  - Legal:
    - Desegregation
    - Housing,
    - Transportation
  - Institutional Impact
  - Societal Impact

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### Freedom Riders



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### Dr. Martin Luther King Jr.



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**Part II**  
**Rights in practice**

- Marriage Equality: *Obergefell v. Hodges* (2015)
- Facts:
  
- Law:
  
- Holding:

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**What is at stake?**

- The Government Accounting Office estimated that there are more than 1100 benefits for married couples:
  - Social Security benefits,
  - veterans' benefits,
  - health insurance,
  - Medicaid,
  - hospital visitation,
  - estate taxes,
  - retirement savings,
  - pensions,
  - family leave,
  - immigration law

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***Obergefell v. Hodges* (2015)**

- Systemic issues:
  - Federalism
    - Judicial
    - Political
  - Meaning and scope of the 14<sup>th</sup> Amendment

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***Obergefell v. Hodges (2015)***

- Background cases: 14<sup>th</sup> and 9<sup>th</sup> Amendments
- Windsor v United States (2013) (DOMA)
- Bower v Hardwick (1986)
- Lawrence v Texas (2003)
  
- Griswald v Connecticut (1965)
- Eisenstadt v Baird (1972)
- Roe v Wade (1973)

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***Obergefell v. Hodges (2015)***

- Background:
  
- Vermont
- DOMA (Defense of Marriage Act)

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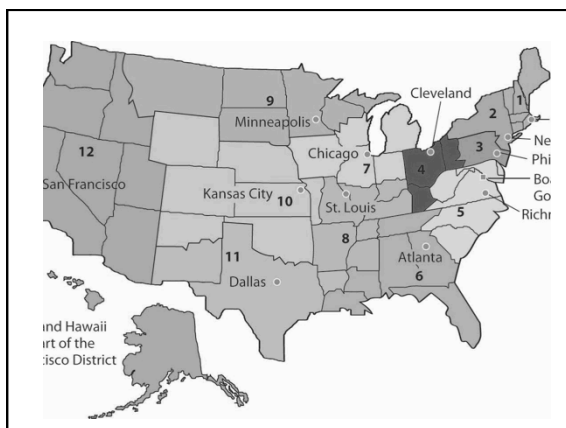
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### *Obergefell v. Hodges (2015)*

- Aftermath:
- Kentucky
- Alabama
- Religious Freedom Legislation

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### Juries in the US

- Competence for Criminal Law
- Competence of Criminal Law Jury
- Role of Judge
- Vocabulary:
  - Grand Jury
  - Petit Jury
  - Voir dire
  - Challenges
  - Prosecutor
  - Defense: Public Defender/Legal Aid
  - Plea bargaining

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### 6th Amendment

- In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence

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### 5<sup>th</sup> Amendment

- No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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### Grand Jury

- 24 citizens
- Time length
- Charge crimes
- Majority
- Rights of Defendant in Grand Jury

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### Petit Jury

- Role
- 6-12 jurors
- One case only
- "jury nullification"
- Verdict
- Hung Jury
- Conviction/Acquittal
- Unanimous
- Juries in Capital Cases

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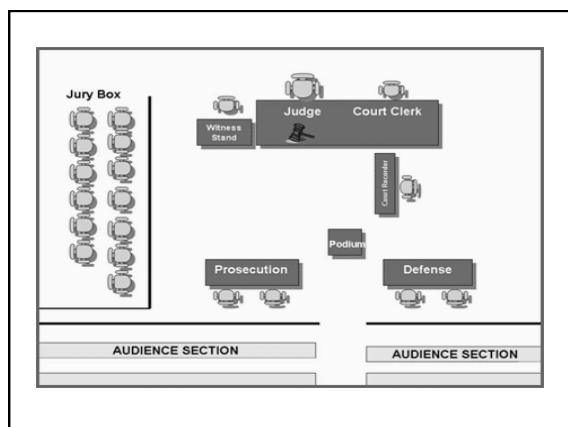
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Efficacy of Juries

Pros                      Cons

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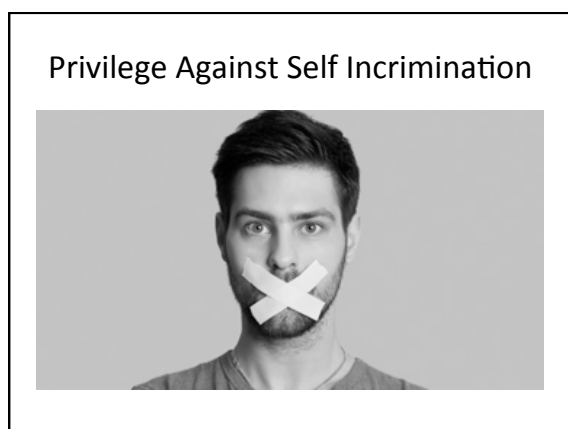
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### Fifth Amendment

- No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury....; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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### The Confession and Self-Incrimination



- Confession must be voluntary.
- Request for Attorney? Landmark case - Miranda v. Arizona

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### Miranda Rights

- Right to remain silent.
- Anything said can and will be used against defendant.
- Right to a (free) attorney.

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### Miranda

- Courts ruled that the very nature of police interrogation is coercive.
- Not Specifically mandated by the Constitution.
- Defendant does not have to be told of the crime being investigated.
- Cops can lie.



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### Custody & Interrogation



- Suspect must feel she is not free to leave.
- Police Station interview v. non-Police Station
- Police Actor must initiate questions.
- **Must be invoked.**
- No compulsion to testify. No inference.

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### Covered by 5<sup>th</sup>?

- Handwriting ?
- Fingerprints ?
- Blood?
- Encryption Key?

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### At Trial

- Defendant cannot be compelled to testify.
- Prosecutors cannot tell the jury that the defendant refused to cooperate with police?
- A judge tell a jury to draw no inference from whether a suspect testifies or not?

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### At Trial



- Who decides whether a defendant will testify?
- What if the defendant refuses to answer questions on the stand?
- Can the defendant be impeached with an illegally obtained confession?

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### Voluntariness

- Defendant's personal characteristics.
- Nature of the detention.
- Manner of Interrogation.
- Use of force, threats, promises, or deception.



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### Miranda

- Relation to fair trial and presumption of innocence
- Trial Strategy:
  - Notice v. Voluntariness
  - Exclusion, Suppression, or "lying cop"
- False Confessions.
- Defending a real case *People v. Johnson*

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### Self Incrimination in the UK/Europe

- Source: No specific enumerated Right before 2000 (HRA) – Common Law Principle
- Criminal Justice and Public Order Act 1994
  - Adverse inference based upon common sense
- Rice v. Connolly (1996)
- Regina v Argent (1997)

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### Self Incrimination in the UK

- Under Police and Criminal Evidence Act 1984, adverse inference if:
  - D. fails to mention any fact which he later relies upon and which in the circumstances at the time the accused could reasonably be expected to mention;
  - D. fails to give evidence at trial or answer any question;
  - D. fails to account on arrest for his presence at a place.

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