The development of common law in the United States and other jurisdictions

The first English settlers on the Atlantic Seaboard of North America brought with them only elementary notions of law. Colonial charters conferred upon them the traditional legal privileges of English citizens, such as habeas corpus and the right to trial before a jury of one's peers. However, there were few judges, lawyers, or lawbooks, and English court decisions were slow to reach them. Each colony passed its own statutes, and governors or legislative bodies acted as courts. Civil and criminal cases were tried in the same courts, and lay juries enjoyed wide powers. English laws passed after the date of settlement did not automatically apply in the colonies, and even presettlement legislation was liable to adaptation. English cases were not binding precedents. Several of the American colonies introduced substantial legal codes, such as those of Massachusetts in 1648 and of Pennsylvania in 1682.

- By the late 17th century, lawyers were practicing in the colonies, using English lawbooks and following English procedures and forms of action. In 1701 Rhode Island legislated to receive English law in full, subject to local legislation, and the same happened in the Carolinas in 1712 and 1715. Other colonies, in practice, also applied the common law with local variations.
- Many legal battles in the period leading up to the American Revolution (1775–83) were fought on common-law principles, and half of the signatories of the Declaration of Independence were lawyers. The Constitution of the United States itself uses traditional English legal terms.

- After 1776, anti-British feelings led some Americans to advocate a fresh legal system, but European laws were diverse, couched in foreign languages having unfamiliar turns of thought, and unavailable in textbook form. Blackstone's *Commentaries*, reprinted in America in 1771, was widely used, even though new English statutes and decisions were officially ignored.
- In the 1830s two great judges, James Kent of New York and Joseph Story of Massachusetts, produced important commentaries on common law and equity, emphasizing the need for legal certainty and for security of title to property. These works followed the common-law tradition, which has been fundamental in the United States except in Louisiana, where French civil law has survived.
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- The common law was also adopted in other areas settled by the British. In Australia, New Zealand, British Canada, and many colonies in Africa, the common law was applied without any rival. But elsewhere, notably in India, South Africa, and Quebec, allowance had to be made for existing legal systems. In the 19th century there were notable experiments in India with codifying the common law. Until the 20th century there was little independence in the legal systems of the Commonwealth; the Judicial Committee of the Privy Council, sitting in London, acted as the supreme court of appeal for all overseas jurisdictions. As a result of political independence, Commonwealth countries subsequently rejected the jurisdiction of the Privy Council, with the consequence that significant differences developed between jurisdictions even in areas of traditional common law.

American innovations

- The American states viewed law as a cementing force and used it to facilitate cooperation in the face of the hazards of nature and other difficulties arising in the development of the new continent. Special laws were developed to deal with timber, water, and mineral rights. Simple procedures were followed. Dogma was rejected in favour of personal experience and experiment, and old decisions soon became outdated. The pioneer spirit favoured freedom and initiative and distrusted central authority and a paternal government. Homespun local justice was preferred, as was the common sense of the local jury. For a time, some of the colonies even tried to base their law on the Bible. But, even when English law reasserted itself, many of its institutions were rejected. Upon death intestate, for example, all of the children inherited land and not just, as in England, the eldest son. Freehold title was the rule, not long leases under landlords. Church courts did not exist.