Chapter 1 : Difference Between UCC and Common law | Difference Between

Liberty or Laws? Justice or Despotism? by Gary Hunt July 10, When the colonies severed their allegiance to England, in , through the adoption of the Constitution in , they had to have some form of law upon which to deal with matters, both criminal and civil.

To do so, they adopted the Common Law of England, as it existed on July 4, This, then, became the foundation of laws upon which both the federal government and state governments began the process of developing their judicial systems. What is important to understand is that the laws that they adopted were concerned with Justice. That branch of government which is concerned in the trial and determination of controversies between parties, and of criminal prosecutions; the system of courts of justice in a government. An independent judiciary is the firmest bulwark of freedom. Through our history, there have been legal scholars who stand well above the current lot, in that their concern for justice was paramount in their considerations, and the subject of much of their scholarly writings. From Book 1 of those Commentaries, we find some familiar phraseology: What else did Sir Blackstone tells us about justice that was of extreme importance then, and should be equally so, now. When he discusses Felony Guilt, he states his understanding and then refers to another scholar, Sir Matthew Hale , from Book 4: All presumptive evidence of felony should be admitted cautiously; for the law holds it better that ten guilty persons escape, than that one innocent party suffer. Sir Matthew Hale lays down two rules: However, that discounts the fact that justice cannot change, only the misapplication of justice can change. That latter is quite simply defined as injustice. The Constitution provided two means by which the constitutionality of a law could be challenged. But, how can that provide for justice instead of simply the laws? Absent such protection from unconstitutional or unjust laws, the People would be subject to the whims of the legislators or administrative agencies, without recourse. That, as you will see, results in despotism. Revisiting the two methods, the former, habeas corpus, is a judicial function whereby an individual can challenge the constitutionality or the applicability to his person, of any law that has led to his incarceration. The latter is the collective group, the jury, judging they law, also, as to constitutionality and applicability, as well as justice. The government might argue that we left behind English Common Law so that we could adopt a better system. In the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact, except that the Court may pass upon the sufficiency of the evidence to sustain a conviction. Clearly, this article, this inherent right, is suggestive of the intent of the jury trial process, both in England and in the fledgling United States of America. Though not specifically expressed, the governments, both the states and the federal have not, for good cause, enacted a law prohibiting a jury from judging the law, as well as the facts. Instead, it has been left to the discretion of the judge to endeavor to deny that fundamental right, a right that serves not only the defendant, but the people as well. There have been periods in our history where nullification of laws by juries has resulted in the legislative branch realizing that the law enacted was not consistent with the will of the people, and then sought to repeal those laws. Here are two examples of such impact on such legislation. Many juries refused to convict violators of the laws enacted under the authority of the Amendment. Ultimately, this led to the repeal of the Amendment by the 21st Amendment The will of the People was heard and addressed. Next has to do with another law enacted under authority of the Constitution, the Fugitive Slave Act of In so doing, he gave us additional insight into the inherent right of the jury: But for their right to judge of the law, and the justice of the law, juries would be no protection to an accused person, even as to matters of fact; for, if the government can dictate to a jury any law whatever, in a criminal case, it can certainly dictate to them the laws of evidence. That is, it can dictate what evidence is admissible, and what inadmissible, and also what force or weight is to be given to the evidence admitted. And if the government can thus dictate to a jury the laws of evidence, it can not only make it necessary for them to convict on a partial exhibition of the evidence rightfully pertaining to the case, but it can even require them to convict on any evidence whatever that it pleases to offer them. That the rights and duties of jurors must necessarily be such as are here claimed for them, will be evident when it is considered what the trial by jury is, and what is its object. How is it possible that juries can do anything to protect the liberties of

the people against the government, if they are not allowed to determine what those liberties are? Any government, that is its own judge of, and determines authoritatively for the people, what are its own powers over the people, is an absolute government of course. It has all the powers that it chooses to exercise. There is no other or at least no more accurate definition of a despotism than this. On the other hand, any people, that judge of, and determine authoritatively for the government, what are their own liberties against the government, of course retain all the liberties they wish to enjoy. And this is freedom. At least, it is freedom to them; because, although it may be theoretically imperfect, it, nevertheless, corresponds to their highest notions of freedom. This has been accomplished by methods that absolutely reject the idea of justice. However, the legislature has no remedy, so case law prevails in our current judicial system. The second method, and extension of the first, is the discretion of the judge, who then determines who is right and who is wrong, assuming a role that should be the purview of the jury. However, that decision, what the law is, is made even before the jury hears the matter. Thus depriving the jury of the benefit of what a written law means, since the court has determined what instruction the jury will be given. The jury must come to a verdict, not on the written law, rather on what the court says that the written law says. Camp Lone Star â€" Act Two: The Contradictions Scene 3: It poisons the blessing of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed? For those who have read case law, many decisions are less than coherent; they are often nearly undecipherable and contradictory. They tend to change between court decision made upon the same statutory law, and are, quite frankly, outside of the mental capacity of most people to understand just what is, and what is not, the law.

Chapter 2 : Despotism | Definition of Despotism by Merriam-Webster

â€¢ The Roman republic's values, including rule of law, the rights of citizens, absence of pretension, upright moral behavior, and keeping one's word (along with a political system that offered some protection to lowed classes) provided a basis for rome's empire state building enterprise.

January 28, by Piyali Syam As lawyers know, legal systems in countries around the world generally fall into one of two main categories: There are roughly countries that have what can be described as primarily civil law systems, whereas there are about 80 common law countries. The main difference between the two systems is that in common law countries, case law â€" in the form of published judicial opinions â€" is of primary importance, whereas in civil law systems, codified statutes predominate. But these divisions are not as clear-cut as they might seem. In fact, many countries use a mix of features from common and civil law systems. Understanding the differences between these systems first requires an understanding of their historical underpinnings. As these decisions were collected and published, it became possible for courts to look up precedential opinions and apply them to current cases. And thus the common law developed. Civil law in other European nations, on the other hand, is generally traced back to the code of laws compiled by the Roman Emperor Justinian around C. Authoritative legal codes with roots in these laws or others then developed over many centuries in various countries, leading to similar legal systems, each with their own sets of laws. Lawyers still represent the interests of their clients in civil proceedings, but have a less central role. As in common law systems, however, their tasks commonly include advising clients on points of law and preparing legal pleadings for filing with the court. But the importance of oral argument, in-court presentations and active lawyering in court are diminished when compared to a common law system. In addition, non-litigation legal tasks, such as will preparation and contract drafting, may be left to quasi-legal professionals who serve businesses and private individuals, and who may not have a post-university legal education or be licensed to practice before courts. In contrast, in a common law country, lawyers make presentations to the judge and sometimes the jury and examine witnesses themselves. In these cases, lawyers stand before the court and attempt to persuade others on points of law and fact, and maintain a very active role in legal proceedings. And unlike certain civil law jurisdictions, in common law countries such as the United States, it is prohibited for anyone other than a fully licensed lawyer to prepare legal documents of any kind for another person or entity. This is the province of lawyers alone. As these descriptions show, lawyers almost always have a significant role to play in formal dispute resolution, no matter in which country they practice. But the specific tasks assigned to them tend to vary quite a bit. And outside the courtroom, tasks typically performed by lawyers in one country may be performed by skilled laypeople in another. Each country has its own traditions and policies, so for those who wish to know more about the role of legal practitioners in a particular nation it is important to do additional research. To provide readers with a jumping-off point, here are a few examples of countries that primarily practice common law or civil law.

DOWNLOAD PDF V. 2. DESPOTISM, TO LAW, COMMON.

Chapter 3 : History of Despotism|Despotism Origin

5 Ratings Â· 2 Reviews Radhika Singha looks at law-making as a cultural enterprise, one in which the colonial authorities were compelled to draw upon normative codes of rank, status, and gender so as to realign them to a new, more exclusive definition of the state's sovereign right.

The same thing was done, if I remember right, by the Founder of Christianity. Possession is nine points of it, which thou hast of me. Self-possession is the tenth. It should be the creed of our political faith. They are not the mark of weakness, but of power. They speak more eloquently than ten thousand tongues. They are the messengers of overwhelming grief, of deep contrition, and of unspeakable love. Other times, he, obviously, is advanced as the highest example of professionalism. He is probably an excellent illustration of the ability of a lawyer in that era to combine aspects of commercialism, competence and dignity in the practice of law. Professional Policy Considerations It is not to be won by trifling favors, but by lavish homage. The Tudor monarchs sent to prison jurors who refused to convict, and Napoleon caused them to be selected by his agents. If it had been as easy to remove the jury from the customs as from the laws of England, it would have perished under the Tudors, and the civil jury did in reality at that period save the liberties of England. A person who draws a mathematically precise line between an unwarranted assumption and a foregone conclusion. First came the one that I plannedâ€”as I thought, logical, coherent, complete. Second was the one actually presentedâ€”interrupted, incoherent, disjointed, disappointing. The third was the utterly devastating argument that I thought of after going to bed that night. Accept only good cases; 2. Settle the good cases; and 3. There is a tiny splinter group, of course, that believes that you can do these things. Among them are a few Texas oil millionaires, and an occasional politician or businessman from other areas. Their number is negligible and they are stupid. Talm Seek justice for all. Champion the cause of those who deserve redress for injury to personal property. Promote the public good through concerted efforts to secure safe products, a safe work place, a clean environment, and quality healthcare. Further the rule of law in a civil justice system, and protect the rights of the accused. Advance the common law and the finest traditions of jurisprudence. He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries. He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation: For depriving us in many cases, of the benefits of Trial by Jury: Those who clearly recognize the voice of their own conscience usually also recognize the voice of justice. Our defense is in law and order. Adages and Proverbs, , Lord Mansfield â€” Barnet â€” The law is not concerned with trifles. The more laws, the less justice. Where the law is uncertain, there is no law. One lawyer makes work for another. A lawyer and a wagon wheel must be well greased. When you pay too much you lose a little money. When you pay too little you sometimes lose everything because the thing you bought was incapable of doing the thing it was bought to do. The common sense law of business balance prohibits paying a little and getting a lot. There are law students to be arrested. In a word, a third part of the city is surely involved. The richest, most attractive, most prominent of the clergy are already executed. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. Are you trying to show contempt for the court? Flower Bell Lee [played by Mae West]: That institution, gentlemen, is a court. Our courts have their faults, as does any human institution, but in this country our courts are the great levelers, and in our courts all men are created equal. It is the judgment of the jury, and not the judgment of the court, which is to assess the damages in actions for personal torts and injuriesâ€¦. The damages, therefore, must be so excessive as to strike mankind, at first blush, as being beyond all measure, unreasonable and outrageous, and such as manifestly show the jury to have been actuated by passion, partiality, prejudice, or corruption. In short, the damages must be flagrantly outrageous and extravagant, or the court cannot undertake to draw the line; for they have no standard by which to ascertain the excess. Deep conviction and warm feeling are saying their last say with knowledge that the cause is lost. The voice of the majority may be that of force triumphant, content with the plaudits of the hour, and recking little of the

morrow. The dissenter speaks to the future, and his voice is pitched to a key that will carry through the years. Cardozo, Law and Literature 36 It shall be unlawful for any teacher in any of the Universitis [sic], Normals and all other public schools of the State which are supported in whole or in part by the public school funds of the State, to teach any theory that denies the story of the Divine Creation of man as taught in the Bible, and to teach instead that man has descended from a lower order of animals. At the next session you may ban books and the newspapers. Soon you may set Catholic against Protestant and Protestant against Protestant, and try to foist your own religion upon the minds of men. If you can do one you can do the other. Ignorance and fanaticism is ever busy and needs feeding. Always it is feeding and gloating for more. Today it is the public school teachers, tomorrow the private. The next day the preachers and the lecturers, the magazines, the books, the newspapers. After while, your honor, it is the setting of man against man and creed against creed until with flying banners and beating drums we are marching backward to the glorious ages of the sixteenth century when bigots lighted fagots to burn the men who dared to bring any intelligence and enlightment and culture to the human mind. Our First Amendment was a bold effort to adopt this principle â€" to establish a country with no legal restrictions of any kind upon the subjects people could investigate, discuss and deny. The Framers knew, better perhaps than we do today, the risks they were taking. They knew that free speech might be the friend of change and revolution. But they also knew that it is always the deadliest enemy of tyranny. With this knowledge they still believed that the ultimate happiness and security of a nation lies in its ability to explore, to change, to grow and ceaselessly to adapt itself to new knowledge born of inquiry free from any kind of governmental control over the mind and spirit of man. Loyalty comes from love of good government, not fear of a bad one. But there is never a cause contested, the result of which is not mainly dependent upon the skill with which the advocate conducts his cross-examination. The most cautious cross-examiner will often elicit a damaging answer. Now is the time for the greatest self-control. If you show by your face how the answer hurt, you may lose your case by that one point alone. How often one sees the cross-examiner fairly staggered by such an answer. He pauses, perhaps blushes, and after he has allowed the answer to have its full effect, finally regains his self-possession, but seldom his control of the witnessâ€¦. We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished emblem represents. There are bad people in it, Mr. Richard, but if there were no bad people, there would be no good lawyers. You can only be free if I am free. Nothing chills nonsense like exposure to the air. Do you belong in Journalism? We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly. If it were, the laws would lose their effect, because it can always be pretended. Grant, First Inaugural Address, 4 Mar. A man who qualifies himself well for his calling never fails of employment in it. Warren, quoted in W. You might just as well pack up your books now and leave the school. Searching for quotations on lawyers, I found this on your site: The city called Philadelphia in Bible times is the city now known as Amman, Jordan.

Chapter 4 : The Despotism of an Irrational Oligarchy Â« Stepping Out Of The Boat

We would like to show you a description here but the site won't allow us.

Both are unwritten law; both claim to be anchored in reason and to discern principles of right and wrong; both have been invoked by judges to confine if not simply void acts of positive legislation, and derided by others who oppose such action. There is in fact a deep affinity between common law and natural law, but it is better at the outset to describe their differences, and best to do this historically. Indeed, starting from the past rather than from nature is already a characteristic means of distinguishing common law from natural law. Common law is first and foremost the customary law of England, as applied in the courts of law. As written records came to be made of the decisions of the royal courts, judicial precedents, seen as the most authoritative evidence of a custom, were held to have the force of law: Common law judges decide cases on the basis of the specific facts in light of all applicable law. Before a trial, the accused is ordinarily entitled to be released on bail and in general to have the privilege of the writ of habeas corpus, guaranteeing that there be no imprisonment without a trial. After a trial, he cannot be tried again for the same offense nor punished in any way except as specified by law, and he has, besides, a right to appeal his verdict. In civil trials at common law, many of these rules are altered, because both parties are equal before the law and either might have initiated proceedings in a dispute. The standard of judgment in civil trials is preponderance of the evidence, and the judgment typically awards monetary damages. Juries were traditionally involved in civil cases as well as criminal ones, though they are increasingly less common in the former. Still, the right to appeal remains intact, and even more than in criminal cases, where crimes are now defined by code rather than by precedent, similar civil cases typically establish the parameters for decision in subsequent cases, unless there is in the circumstances something genuinely new. There is much about common-law due process that is not strictly speaking a requirement of natural law: Nevertheless, in at least three ways natural law seems particularly evident in common-law thinking. Moreover, the centrality of the jury at common law suggests deference to common sense at the center of the system and thus constitutes a restraint on elite theorizing and on partisan will. A second natural-law moment in common law appears in the process of reasoning by appellate courts. In most legal disputes that are appealed, both sides can argue precedents in their favor; the issue is which set of precedents forms the better analogy to the pattern of facts in the case at hand. For example, is an exchange of instant messages more like a phone conversation, which sometimes cannot alter a written contract, or is it like an exchange of written documents, which can? Is a motor home more like a house, and thus entitled to constitutional protection from warrantless searches, or more like a motor vehicle, searchable upon reasonable suspicion? It is no accident that these examples involve technological change, for that seems to be a common source of genuinely new cases. Where, by contrast, the issue suggests a reinterpretation of established precedent, the common law presumes in favor of the tried and true over innovation. Natural law, though in principle anchored in immutable human nature, does not forbid all change in positive law and may even command it: The basic idea is that the law will brook no contradiction within itself, not that judges need be set up as philosopher-kings to ensure the rule of abstract reason; common law judges try first to reconcile apparent contradictions and accommodate all the various sources of law that apply to a particular case. Part of the reasonableness of common law is that its judges traditionally did not see their jurisdiction as unlimited; on the contrary, judges can rule only in cases properly presented before them, and the remedies they can impose for the injustices they find are likewise defined and limited by law. In England and in some of the states, separate courts of equity were established for special circumstances where the operation of strict law was thought to work an injustice; in federal law, the same judges were made responsible for law and equity, but until the s the process for filing a case at law and that for moving a bill of equity were entirely distinct. Moreover, although common law courts are courts of general jurisdiction, they have usually co-existed with other specialty courts responsible for distinct areas of law such as admiralty or martial law. In England, where there is an established church, ecclesiastical courts were likewise separate, while the American tradition of religious liberty allows ecclesiastical law to operate within denominations without state interference, provided

civil law itself is not breached. Constitutional law was always more closely entangled with common law. But the Americans also inherited from the British the tradition of declaring constitutional principles in writingâ€”a tradition that extended back at least to Magna Carta and forward to the English Bill of Rights â€”and not a few provisions of the latter appear in almost unaltered form in the early American constitutions and in the Bill of Rights that figures so prominently in American constitutional law today. In discussing common law in relation to natural law, more has been said about common-law process than about substantive rules of law, many of whichâ€”for example, the law of coverture in marriage, or various tenures for the holding of real propertyâ€”have been radically changed, often by legislation. American judges never held the common law to have been imported intact, but rather only insofar as applicable to American circumstances and as unaltered by local legislation. The English themselves, as long ago as the 17th century, used the analogy of the Argoâ€”the ship of the ancient hero Jason whose planks were replaced one by one while at seaâ€”to explain how the common law can remain constant even as its particular rules are altered to adapt to changing circumstances. In seeking to discover law in the context of settling rights in particular cases, looking to established rules and precedents while keeping in mind the basic maxims of justice, common law judges did not make natural law their only point of reference, but they also did not treat it as something they were free to ignore. This is not the only way a legal order can respect natural law, but it is a legitimate way, and one that has contributed to keeping natural law a living force in the English and American constitutional traditions. Clarendon Press, , vol. Wesleyan University Press, ; orig. Hart, The Concept of Law Oxford: Oxford University Press, , ch. The traditional citation of the famous passage is 8 Co. University of Chicago Press, ; orig.

Chapter 5 : Liberty or Laws â€“ Justice or Despotism - Redoubt News

despotism, government by an absolute ruler unchecked by effective constitutional limits to his power. In Greek usage, a despot was ruler of a household and master of its slaves.

Definitions[edit] The term common law has many connotations. The first three set out here are the most-common usages within the legal community. Other connotations from past centuries are sometimes seen, and are sometimes heard in everyday speech. For example, the law in most Anglo-American jurisdictions includes " statutory law " enacted by a legislature , " regulatory law " in the U. Examples include most criminal law and procedural law before the 20th century, and even today, most contract law [22] and the law of torts. This body of common law, sometimes called "interstitial common law", includes judicial interpretation of the Constitution , of legislative statutes, and of agency regulations , and the application of law to specific facts. Civil law judges tend to give less weight to judicial precedent, which means that a civil law judge deciding a given case has more freedom to interpret the text of a statute independently compared to a common law judge in the same circumstances , and therefore less predictably. For example, the Napoleonic code expressly forbade French judges to pronounce general principles of law. Common law systems trace their history to England, while civil law systems trace their history through the Napoleonic Code back to the Corpus Juris Civilis of Roman law. This split propagated to many of the colonies, including the United States. For most purposes, most jurisdictions, including the U. Nonetheless, the historical distinction between "law" and "equity" remains important today when the case involves issues such as the following: Courts of equity rely on common law principles of binding precedent. Archaic meanings and historical uses [edit] In addition, there are several historical but now archaic uses of the term that, while no longer current, provide background context that assists in understanding the meaning of "common law" today. In one usage that is now archaic, but that gives insight into the history of the common law, "common law" referred to the pre-Christian system of law, imported by the Saxons to England, and dating to before the Norman conquest , and before there was any consistent law to be applied. It is both underinclusive and overinclusive, as discussed in the section on "misconceptions". While historically the ius commune became a secure point of reference in continental European legal systems, in England it was not a point of reference at all. The term "common law" was used to describe the law held in common between the circuits and the different stops in each circuit. By the early 20th century, largely at the urging of Oliver Wendell Holmes as discussed throughout this article , this view had fallen into the minority view: Holmes pointed out that the older view worked undesirable and unjust results, and hampered a proper development of the law. All three tensions resolve under the modern view: Common law, as the term is used among lawyers in the present day, is not frozen in time, and no longer beholden to 11th, 13th, or 17th century English law. Rather, the common law evolves daily and immediately as courts issue precedential decisions as explained later in this article , and all parties in the legal system courts, lawyers, and all others are responsible for up-to-date knowledge. Among legal professionals lawyers and judges , the change in understanding occurred in the late 19th and early 20th centuries as explained later in this article , [7] though lay dictionaries were decades behind in recognizing the change. The common law is not "unwritten". Common law exists in writingâ€”as must any law that is to be applied consistentlyâ€”in the written decisions of judges. Rather, the common law is often anti-majoritarian. Then, one must locate any relevant statutes and cases. Then one must extract the principles, analogies and statements by various courts of what they consider important to determine how the next court is likely to rule on the facts of the present case. Later decisions, and decisions of higher courts or legislatures carry more weight than earlier cases and those of lower courts. Then, one applies that law to the facts. In practice, common law systems are considerably more complicated than the simplified system described above. The decisions of a court are binding only in a particular jurisdiction , and even within a given jurisdiction, some courts have more power than others. For example, in most jurisdictions, decisions by appellate courts are binding on lower courts in the same jurisdiction, and on future decisions of the same appellate court, but decisions of lower courts are only non-binding persuasive authority. Interactions between common law, constitutional law , statutory law and

regulatory law also give rise to considerable complexity. The common law evolves to meet changing social needs and improved understanding [edit] Nomination of Oliver Wendell Holmes to serve on the U. Oliver Wendell Holmes, Jr. First, common law courts are not absolutely bound by precedent, but can when extraordinarily good reason is shown reinterpret and revise the law, without legislative intervention, to adapt to new trends in political, legal and social philosophy. Second, the common law evolves through a series of gradual steps , that gradually works out all the details, so that over a decade or more, the law can change substantially but without a sharp break, thereby reducing disruptive effects. For these reasons, legislative changes tend to be large, jarring and disruptive sometimes positively, sometimes negatively, and sometimes with unintended consequences. One example of the gradual change that typifies evolution of the common law is the gradual change in liability for negligence. Thus, only the immediate purchaser could recover for a product defect, and if a part was built up out of parts from parts manufacturers, the ultimate buyer could not recover for injury caused by a defect in the part. In an English case, Winterbottom v. Wright , [48] the postal service had contracted with Wright to maintain its coaches. Winterbottom was a driver for the post. When the coach failed and injured Winterbottom, he sued Wright. The Winterbottom court recognized that there would be "absurd and outrageous consequences" if an injured person could sue any person peripherally involved, and knew it had to draw a line somewhere, a limit on the causal connection between the negligent conduct and the injury. The court looked to the contractual relationships, and held that liability would only flow as far as the person in immediate contract "privity" with the negligent party. A first exception to this rule arose in , in the case of Thomas v. Thomas relied on this reason to create an exception to the "privity" rule. In, , New York held in Statler v. Yet the privity rule survived. In Cadillac Motor Car Co. However, held the Cadillac court, "one who manufactures articles dangerous only if defectively made, or installed, e. Finally, in the famous case of MacPherson v. The facts were almost identical to Cadillac a year earlier: It may be that Statler v. If so, this court is committed to the extension. The defendant argues that things imminently dangerous to life are poisons, explosives, deadly weaponsâ€”things whose normal function it is to injure or destroy. But whatever the rule in Thomas v. Winchester may once have been, it has no longer that restricted meaning. A scaffold Devlin v. Smith, supra is not inherently a destructive instrument. It becomes destructive only if imperfectly constructed. A large coffee urn Statler v. What is true of the coffee urn is equally true of bottles of aerated water Torgesen v. We have mentioned only cases in this court. But the rule has received a like extension in our courts of intermediate appeal. Pelham Hod Elevating Co. We are not required at this time either to approve or to disapprove the application of the rule that was made in these cases. It is enough that they help to characterize the trend of judicial thought. We hold, then, that the principle of Thomas v. Winchester is not limited to poisons, explosives, and things of like nature, to things which in their normal operation are implements of destruction. If the nature of a thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger. Its nature gives warning of the consequences to be expected. If to the element of danger there is added knowledge that the thing will be used by persons other than the purchaser, and used without new tests then, irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully. There must be knowledge of a danger, not merely possible, but probable. MacPherson takes some care to present itself as foreseeable progression, not a wild departure. Cardozo continues to adhere to the original principle of Winterbottom , that "absurd and outrageous consequences" must be avoided, and he does so by drawing a new line in the last sentence quoted above: Rather, the most important factor in the boundary would be the nature of the thing sold and the foreseeable uses that downstream purchasers would make of the thing. The example of the evolution of the law of negligence in the preceding paragraphs illustrates two crucial principles: This is the reason that judicial opinions are usually quite long, and give rationales and policies that can be balanced with judgment in future cases, rather than the bright-line rules usually embodied in statutes. Publication of decisions[edit] All law systems rely on written publication of the law, [53] so that it is accessible to all. Common law decisions are published in law reports for use by lawyers, courts and the general public. As newer states needed law, they often looked first to the Massachusetts Reports for authoritative precedents as a basis for their own common law. West Publishing in Minnesota is the largest private-sector publisher of law reports in the United States.

Government publishers typically issue only decisions "in the raw," while private sector publishers often add indexing, editorial analysis, and similar finding aids. Interaction of constitutional, statutory and common law[edit] In common law legal systems, the common law is crucial to understanding almost all important areas of law. For example, in England and Wales , in English Canada, and in most states of the United States , the basic law of contracts , torts and property do not exist in statute, but only in common law though there may be isolated modifications enacted by statute. As another example, the Supreme Court of the United States in , [55] held that a Michigan statute that established rules for solemnization of marriages did not abolish pre-existing common-law marriage , because the statute did not affirmatively require statutory solemnization and was silent as to preexisting common law. In almost all areas of the law even those where there is a statutory framework, such as contracts for the sale of goods, [56] or the criminal law , [57] legislature-enacted statutes generally give only terse statements of general principle, and the fine boundaries and definitions exist only in the interstitial common law. To find out what the precise law is that applies to a particular set of facts, one has to locate precedential decisions on the topic, and reason from those decisions by analogy. In common law jurisdictions in the sense opposed to "civil law" , legislatures operate under the assumption that statutes will be interpreted against the backdrop of the pre-existing common law. Just as longstanding is the principle that "[s]tatutes which invade the common law In such cases, Congress does not write upon a clean slate. In order to abrogate a common-law principle, the statute must "speak directly" to the question addressed by the common law. For example, in most U. Codification is the process of enacting a statute that collects and restates pre-existing law in a single documentâ€”when that pre-existing law is common law, the common law remains relevant to the interpretation of these statutes. In reliance on this assumption, modern statutes often leave a number of terms and fine distinctions unstatedâ€”for example, a statute might be very brief, leaving the precise definition of terms unstated, under the assumption that these fine distinctions will be inherited from pre-existing common law.

Chapter 6 : Common Law and the Law of Reason | Natural Law, Natural Rights, and American Constitution

Despotism summary is an overview about its definition, advantages, disadvantages, origin, etc. The word despotism has originated from English, French language(s). A despot has absolute control over people.

The quarrel of despotism 1The nature of despotism is monarchy without legality: Its principle is that very passion that caused everyone, like an animal, in the state of nature, to flee another, i. Montesquieu doubtless retains certain traits of the tyrant, entirely subjugated to Eros whom he could satisfy only in dissimulation and fear Republic, e, bc: But the important point is elsewhere: If one cannot ever predict what the despot by name is going to want, nor who his successor will be, nor when that will be, one can then, quite certainly, predict that he too will be a despot. Such a power is certainly completely absolute and thus despotic insofar as its subjects are slaves, in other words without any juridical means of resistence; it is consequently arbitrary also since the sovereign there recognizes no law. But that does not suffice to make it a tyrannical power since the arbiter, who is absolutely sovereign, can make maximal use of his formidable prerogatives to recompense and punish without delay those who so deserve, without any imperium in imperio being able to claim to stop him for egoistical reasons of a body. Despotic and arbitrary power can be that of reason as well as caprice. To identify it with despotism rightly so called, Montesquieu will have to retain only the second possibility, which is to deny the advantages of absolute power. There it polemically designates the abusive tyrannical use of royal power in the denunciation of which are again found most un-homogeneous political forces: And it is no doubt the distinctive feature of a rhetoric of opposition to advance qualifications, or rather disqualifications, of which the unity is strictly negative: Against despotism, Montesquieu does not undertake to legitimize any kind of right of resistance, he scans for empirical points of resistance. The economics of despotic power 6To pretend that despotism constitutes in itself a full-fledged regime implies that one is in a position to demonstrate its positivity or, if you wish, its laws, on condition of distinguishing here the objective and subjective genitives: From this imperative necessarily flow two inverse and complementary processes Grosrichard, , p. In the second place, the centrifugal movement of authority: That means that, from the prince to the lowliest functionary, each one passes off all power, in such a way that the latter bears down as if out of control onto the slave subjects instead of, in moderate governments, in one form or another, mediations mitigating its transfer: The despot then is no longer anything but a function, an authority in the name of which one governs, but which never governs itself: It results from this that the only stable constraints that subsist are necessarily infra-juridical: They weigh on despotism. But it is still not contradictory that the one begins the other. The simplification of the laws, indeed, is the beginning of their disappearance: And it is with much consistency that Montesquieu justifies a contrario the complexity and slowness of law: But that does not mean that despotism legislates right and left, that the law encodes all behavior; it means that power there is exercised only by simple and hideous penal laws, in other words by torture. Such laws are doubly arbitrary: And of course that must be understood the other way around as signifying: The despotic horizon 13Because despotism makes the despot, it is not merely an accident the causes of which would stem from the psychology of the latter; it constitutes on the contrary the natural horizon of moderate governments. In fact, if the Greek and Roman republics knew freedom, it was at the cost of an unnatural effort, in other words contrary to the local nature of things â€" whence their famous comparison with monastic orders V, 2. But it turns out this remnant of freedom is itself fragile: The answer is first this: That is where the change reverses into corruption for that is where the best laws suddenly become the worst: From the fact that there exist some good governments, it naturally follows that a passage can be made without regret from one to another and that therefore there exist neutral transformations; from the fact that there exists a government worse than the others, there exist catastrophic transformations. And this is where the decisive question indirectly appears: A question which as we have seen was not one of law but of fact. But by dissociating the same monarchy from despotism as two quite distinct species of government, Montesquieu seemed, by a new bias, to disqualify, if not monarchy per se, at least what the partisans of absolutism designated by that term. And Dupin, in And that implies three indissociable theses. Secondly, at bottom he amalgamates absolute monarchy and tyranny,

but the true monarchy is absolute without necessarily being tyrannical: But, in a letter to Risteau on 19 May , he will reply very differently: One can of course reconcile the two affirmations by maintaining that pure despotism is a methodological abstraction without for that being an ideological illusion. But the step from the one to the other is quickly made and it is hard to see what, here, aside from travel narratives which must be understood as we saw earlier, could empirically guarantee the abstractionâ€¦ 21At bottom, the revolutionary critics will be content to overturn the absolutist arguments. If Montesquieu was wrong to distinguish between monarchy and despotism, it was not because the monarchy which he abusively called despotic needed to be saved; it was because, on the contrary, from the point of view of the republic, every monarchy is despotic. Liberty or despotism, independence or tyranny, equality or servitude, these are the two great characters, the two great demarcations of governments. Thus what efforts Montesquieu had to make to posit the boundaries between despotism and temperate monarchy. Garnier, , 2 vol. Desaint et Saillant, Pierre Francastel, Paris-The Hague: Voltaire Foundation, , p. Lucette Valensi, Venise et la Sublime Porte: PUF, , chapter VI. Presses de Sciences Po, , p.

Chapter 7 : The New Despotism - Wikipedia

Despotism Leaders. A common factor between all the types of government is that, they need leaders in order to advocate their ideologies. For a country to accept a type of government, it is necessary that they know the concept of that government.

Most nations today follow one of two major legal traditions: The common law tradition emerged in England during the Middle Ages and was applied within British colonies across continents. The civil law tradition developed in continental Europe at the same time and was applied in the colonies of European imperial powers such as Spain and Portugal. Civil law was also adopted in the nineteenth and twentieth centuries by countries formerly possessing distinctive legal traditions, such as Russia and Japan, that sought to reform their legal systems in order to gain economic and political power comparable to that of Western European nation-states. To an American familiar with the terminology and process of our legal system, which is based on English common law, civil law systems can be unfamiliar and confusing. Even though England had many profound cultural ties to the rest of Europe in the Middle Ages, its legal tradition developed differently from that of the continent for a number of historical reasons, and one of the most fundamental ways in which they diverged was in the establishment of judicial decisions as the basis of common law and legislative decisions as the basis of civil law. Common law is generally uncodified. 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. As a result, judges have an enormous role in shaping American and British law. Common law functions as an adversarial system, a contest between two opposing parties before a judge who moderates. A jury of ordinary people without legal training decides on the facts of the case. Civil Law, in contrast, is codified. 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: 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 following sections explore the historical roots of these differences. Basilica of San Vitale, Ravenna, Italy. The term civil law derives from the Latin ius civile, the law applicable to all Roman cives or citizens. Its origins and model are to be found in the monumental compilation of Roman law commissioned by the Emperor Justinian in the sixth century CE. While this compilation was lost to the West within decades of its creation, it was rediscovered and made the basis for legal instruction in eleventh-century Italy and in the sixteenth century came to be known as Corpus iuris civilis. Succeeding generations of legal scholars throughout Europe adapted the principles of ancient Roman law in the Corpus iuris civilis to contemporary needs. Medieval scholars of Catholic church law, or canon law, were also influenced by Roman law scholarship as they compiled existing religious legal sources into their own comprehensive system of law and governance for the Church, an institution central to medieval culture, politics, and higher learning. By the late Middle Ages, these two laws, civil and canon, were taught at most universities and formed the basis of a shared body of legal thought common to most of Europe. The birth and evolution of the medieval civil law tradition based on Roman law was thus integral to European legal development. It offered a store of legal principles and rules invested with the authority of ancient Rome and centuries of distinguished jurists, and it held out the possibility of a comprehensive legal code providing substantive and procedural law for all situations. As civil law came into practice throughout Europe, the role of local custom as a source of law became increasingly importantâ€”particularly as growing European states sought to unify and organize their individual legal systems. Throughout the early modern period, this desire generated scholarly attempts to systematize scattered, disparate legal provisions and local customary laws and bring them into harmony with

rational principles of civil law and natural law. Historical development of English Common Law Originally issued in the year , the Magna Carta was first confirmed into law in This exemplar, some clauses of which are still statutes in England today, was issued by Edward I. National Archives, Washington, DC. English common law emerged from the changing and centralizing powers of the king during the Middle Ages. After the Norman Conquest in , medieval kings began to consolidate power and establish new institutions of royal authority and justice. New forms of legal action established by the crown functioned through a system of writs, or royal orders, each of which provided a specific remedy for a specific wrong. The system of writs became so highly formalized that the laws the courts could apply based on this system often were too rigid to adequately achieve justice. In these cases, a further appeal to justice would have to be made directly to the king. Courts of equity were authorized to apply principles of equity based on many sources such as Roman law and natural law rather than to apply only the common law, to achieve a just outcome. Courts of law and courts of equity thus functioned separately until the writs system was abolished in the mid-nineteenth century. Even today, however, some U. Likewise, certain kinds of writs, such as warrants and subpoenas, still exist in the modern practice of common law. An example is the writ of habeas corpus, which protects the individual from unlawful detention. Originally an order from the king obtained by a prisoner or on his behalf, a writ of habeas corpus summoned the prisoner to court to determine whether he was being detained under lawful authority. Habeas corpus developed during the same period that produced the Magna Carta, or Great Charter, which declared certain individual liberties, one of the most famous being that a freeman could not be imprisoned or punished without the judgment of his peers under the law of the landâ€”thus establishing the right to a jury trial. In the Middle Ages, common law in England coexisted, as civil law did in other countries, with other systems of law. Church courts applied canon law, urban and rural courts applied local customary law, Chancery and maritime courts applied Roman law. Only in the seventeenth century did common law triumph over the other laws, when Parliament established a permanent check on the power of the English king and claimed the right to define the common law and declare other laws subsidiary to it. This evolution of a national legal culture in England was contemporaneous with the development of national legal systems in civil law countries during the early modern period. But where legal humanists and Enlightenment scholars on the continent looked to shared civil law tradition as well as national legislation and custom, English jurists of this era took great pride in the uniqueness of English legal customs and institutions. That pride, perhaps mixed with envy inspired by the contemporary European movement toward codification, resulted in the first systematic, analytic treatise on English common law: The American legal system remains firmly within the common law tradition brought to the North American colonies from England. Yet traces of the civil law tradition and its importance in the hemisphere maybe found within state legal traditions across the United States. Many of the southwestern states reflect traces of civil law influence in their state constitutions and codes from their early legal heritage as territories of colonial Spain and Mexico. And while Blackstone prevails as the principal source for pre-American precedent in the law, it is interesting to note that there is still room for the influence of Roman civil law in American legal tradition. The founding fathers and their contemporaries educated in the law knew not only the work of English jurists such as Blackstone, but also the work of the great civil law jurists and theorists. Indeed, a famous example of its use is the case of Pierson v. Post, in which a New York judge, deciding on a case that involved a property dispute between two hunters over a fox, cited a Roman law principle on the nature and possession of wild animals from the Institutes as the precedent for his decision. Post is often one of the first property law cases taught to American law students. Cases such as these illuminate the rich history that unites and divides the civil and common law traditions and are a fascinating reminder of the ancient origins of modern law. Download a printable PDF with more information, including images, glossary and bibliography.

Chapter 8 : Despotism | Define Despotism at theinnatdunvilla.com

common law was the product of judges, Roman private law the work of jurists and that the obvious differences in approach are to be attributed to that fact.

Manly mouth, when anonymous e. Mainly mouse, when outta da house. Can beat the stuffing out of a turkey. Big man, in a bunch. All americans need to watch this update: This film is so prescient of what is wrong with American government and its destructive effect on its citizens and the world today. Since end or ww2 we have been regressing towards a totalitarian police state. And our government is an imperialist empire, just more subtle than that of Stalin, Hitler and Mao. Many will be surprised of the outrageous covert and overt deadly operations the US "deep state" has perpetrated. Of course the US and its lapdogs view national or international law "as just a piece of paper". And the overthrow of peaceful social democrat Salvador Allende in is just one of many examples. Kissinger and Pinochet rot in hell, among other "leaders" lieing despots of USA in the past decade or so. NewHampshireBoy - favoritefavoritefavoritefavorite - August 25, Subject: In terms, fairly well done. Reading all of the previous comments here I was struck by the nonsensical comments from those on the left and right. As far as I am concerned, the left-right paradigm is a bunch of unadulterated bullcrap. I am 65 and a US Navy veteran and feel that America is finished, past the tipping point in fact. We are headed for full fledged police state status and I could care less if its orientation is left or right. When the secret police come to take you away to be tortured or worse will it make any damned difference? Despotism from Encyclopaedia Britannica Films I give this film historic educational film four stars. Learn the truth about WWII TIMES articles too get a slap of reality The war united classes and different social groups. It stregthened ties and social capital was probably never greater for the allies. After all, when you all have a big boogeyman to depose Hitler , it gives everone a common enemy to unite against. But sadly today, a film like this would never be made for the masses, especially made for "classroom" consumption. It simply demystifies too much what governments are doing behind closed doors. Governments are trying to act more and more like corporations -- top-down autoritarian dictatorships. Interesting how "free democratic" countries allow these private corporations to exist in their democracies. Their organizational models are completely contradictory to one another. People must thank "Encyclopaedia Britannica Films" for having made this. It simplifies very complex concepts into something anyone can understand. Something so clever, and to the point. Despotism - wherever an HOA corporation burdens property This film does an excellent job of identifying characteristics of despotism. So when is the government going to stop mandating that all new housing be placed under the despotic control of an HOA corporation? Why should developers be permitted to impose involuntary membership HOA corporations? Apparently the existing governments prefer despotism to be the model for the future. Maximara - favoritefavoritefavoritefavorite - July 7, Subject: Interesting though somewhat outdated A very interesting film that has one major flaw. Critical thinking is crippled not so much by control but by overload. The film presents four scales for judging whether or not a certain society is despotic. Scenes are shown of home grown despotisms, such as the political boss who has city government in his pocket. I want to be rerpesented and respected every day. I Want to be in that dialog. Titus Prime - favoritefavoritefavoritefavoritefavorite - January 25, Subject: Proof of the first law of Communication First off. This film is not leftist nor is it conservative, or independent. It is a statement of social measurements. Based on our experiance as a nation seeking freedom from the topic. One we had escaped ourselves to create this nation. Many of the people who are alive today to read this comment on this forum are alive because we as a people became involved. While I wont go into the sickening overly egotistical idea that we were some sort of selfless heroes of the world. It is still a fact that we did fight. We gave all and we destroyed a threat so powerful that its own people had become blinded to what they had become. It would not have happened like that at all if not for the arrogance of those hard marching conquerors. The idiocy of poking the one sleeping beast left in play by destroying our ocean trade vessels. Even back then we waited until they attacked the money before we got up and did something about it. This film and those like them. Do as fine a job of reporting facts as can be done without losing the importance of the concepts involved. Made for the very

purpose of warning themselves to watch out for the dangers of becoming something you cannot perceive easily as evil. I do not now, nor have I ever thought the Germans were evil. We fought its wrath and confusions and overcame it by virtue of our own core values, hard work, sacrifice and blood. If your really think this film is a depiction of "Radical propaganda! A typical eat-the-rich liberal film by socialists from The sender can clarify and simplify all they want. The data and its meaning is always controlled by the receiver" I am very sorry. I dont know how or when your minds became so clouded as to not understand the definition of the words you wave around so easily. You are using them incorrectly, please read a dictionary. You rant and rave calling people marxist and a whole host of angry things. But if you were to read and understand the definition of the words your using, you would understand why those you oppose get mad and call you ignorant. I am not angry at you. I am very upset that you have been misled so terribly. It means exactly what it says, freedom. Freedom to be yourself within a society of equal respect. The tools to remove tyranny through mutual understanding and collaboration towards our future. Conservative means to manage without waste your resources. It has nothing at all to do with actively hating people you dont know because of personal differences. Nor does it involve destroying your environment to enhance the wealth of people who care nothing for the world they live on or the people living on it. This is just two major concepts of social interaction and governing. How can you attack one of them with a completely twisted and incorrect definition as your basis for contention? You actually are proving the point of this film. The only tools at your disposal, misdirection, distraction, reversal of blame, and of course, complete lack of any facts to base any of it upon. In turn when asked to expand your statements you will do anything but stay on the topic of discussion. Anything but admit you may be wrong. Its ok to be wrong. Its how we learn what is right. If people refuse to be wrong to the point of murdering strangers as a means of justifcation for thier deception, what then would you call them? You are exacerbating the situation. Deceiving yourself, and the blood of those people is on yours, and my hands. I will return with a new short film to post on this subject. I have little faith anyone will become aware because of it. But I cannot stand by and watch my own people become the evil they fought so hard to remove from this world. NBachers - favoritefavoritefavoritefavoritefavorite - October 9, Subject: Freeper propaganda trolls invade Archive. Ron Raygun - favorite - January 16, Subject: Some 60 years after the film debut. Unfortunately, this Northeast part of America and its liberal educators have produced some of the most power-hungry despots in history. The film is a training film for despots. Regulus - favoritefavoritefavoritefavoritefavorite - July 26, Subject:

Chapter 9 : Bertrand Binoche, Despotism | A Montesquieu Dictionary

In civil law, the constitution is generally based on a code of laws, or codes applying to specific areas, like tax law, corporate law, or administrative law. Contracts Freedom of contract is very extensive in common law countries, i.e., very little or no provisions are implied in contracts by law.

In his letter, Jefferson made a famous observation: Where, in the performance of its judicial duties, the Court decides a case in such a way as to resolve the sort of intensely divisive controversy reflected in Roe and those rare, comparable cases, its decision has a dimension that the resolution of the normal case does not carry. Windsor , and now with Obergefell v. Little needs to be said about this latest decision by the Court. This Court has a propensity to make things up as they go along, to satisfy their policy preferences or to follow public opinion. There is no question that over the past few years, public opinion has shifted strongly in favor of redefining marriage. But the resolution of such a weighty policy argument should not be left to the least democratic branch of the government. It should be hashed out in the rough and tumble of politics. But democracy is apparently no longer an option, when the post-modern Zeitgeist of sexual liberationism demands its way. And so, we should really stop pretending. This entry was posted on Friday, June 26th, at 2: You can follow any responses to this entry through the RSS 2. Both comments and pings are currently closed. I must live and speak as a Roman Catholic. It is clear that we are a sick, sick country. We have turned our backs on God, defiantly rebelled against his natural laws, embrace this disobedience under the banner of a deadly sin and demand that our mayhem be celebrated and approved. Peter Damian, pray for us. Protect our priests who lead through the narrow gate. Give us the grace to be faithful in the face of what is to come. Peter Rox June 27, at 3: The Court had no influence on the Catholic Church over the years turning away people from marriage because one was not Catholic, because they were not contributing enough in collections, because one was divorced to get away from an alcoholic or abusive spouse, because the bride was pregnant, because they would not take a full six month course from a priest about marriage, even though the Church has no credibility on sexual matters. The reasons are a great many of converging factors, but many of these are the fault of those who rule the Church, too often out of touch with their flocks, and too unwelcoming and judgmental on baptized Catholics who should be always welcome without requiring spiritual perfection. The hierarchy and clergy are totally wrong in working to convince civil authorities to do their work for them. So what if a court, or a government enacts a law or comes to a decision? Our Church stupidly gave up long ago on seeking spiritual conversions of individuals, and looks instead for compulsory adherence to law enacted by government. Why bother with parishes at all when we can just have the bishops and their lobbyists try to enact and enforce laws that they want. The many causes that have led us to the condition that laypersons are no long staying in the Church or listening to it need to be admitted. Wagging pointed fingers is not a remedy. They marched on through their clerical and hierarchal ranks with real world experiences, totally insular. The work of the Holy Spirit among the laity was totally stifled or discouraged, with our cleric always maintaing total control. Present management has left a mess. The Archbishop of Dublin, Ireland wisely encouraged thoughtful reflection by Church leaders to examine what they are doing wrong to bring about all of the above. Lay persons are resoundingly rejoicing the way things have been done. We all need to learn more tolerance in the church, and to accept more variation on all levels. Spiritual conversion is a process, and the spiritual life is progress, not perfection. And please, we need to kern to live as Americans in a diverse society. The Catholic Church can not claim to have so many answers for all of society. A great many religions come to different conclusions on many issues, and we need to respect that.