

## Difference between Common Law and Constitutional Law

*“Government is elected into ‘office’ not ‘power’ as they frequently like to claim. The ultimate constraint on the abuse of authority (office) is the people’s ability to withdraw their consent to being governed. We never give ‘power’ to those we elect; we merely give them authority to act on our behalf. We the PEOPLE have allowed today’s governing bodies to mutate into tyrannies, because they are ignoring the principles of consent and are securing ‘power’ for themselves.”*

**Key Difference:** Common Laws are the body of customary law, based upon judicial decisions and embodied in reports of previously decided cases, that have been administered by the common-law court. These laws are developed based on rulings that have been given in older court cases.

Constitutional Law is the body of law that defines the relationship between different entities within a nation, most commonly the judiciary, the executive, and the legislature bodies.

### Common Law History

Common law originated in the early Middle Ages in the King’s Court (Curia Regis), a single royal court set up for most of the country at Westminster, near London. Like many other early legal systems, it did not originally consist of substantive rights but rather of procedural remedies. Until the late 19th century, English common law continued to be developed primarily by judges rather than legislators.

The common law of England was largely created in the period after the Norman Conquest of 1066. The Anglo-Saxons, especially after the accession of Alfred the Great (871), had developed a body of rules resembling those being used by the Germanic peoples of northern Europe. Local customs governed most matters, while the church played a large part in government. Crimes were treated as wrongs for which compensation was made to the victim. These “laws” favored the ruthless Norman conquerors and subjugated their English people. Church and state were separate and had their own law and court systems which very often collided.

During the critical formative period of common law, under the King, common law became “Feudal land Law”, again favoring the politically powerful – the Feudal Lords. The emergence of improved remedies in the King’s Court during the late 12th century led to the elaboration and standardization of these rules, which marked the effective origin of the common law.

Through the 13<sup>th</sup> Century, the unity and consistency of the common law were promoted by the early dominant position acquired by the royal courts. Whereas the earlier Saxon witan, or king’s council, dealt only with great affairs of state, the new Norman court assumed wide judicial powers. Its judges (clergy and statesmen)

“declared” the common law from town to town. Local customs were ignored and the royal courts controlled “common Law” authority to favor the Royals and the Church claiming the “law” was universal law. Throughout the 13<sup>th</sup> century and into the 14<sup>th</sup> century “law” remained somewhat fluid and informal allowing judges to interpret the law as they saw fit or as they were directed to in whatever way benefited their Lords and royal councils even to a point of inequity and injustice to the people. This continued until the implementation of the “Law of Equity” (14<sup>th</sup> century) was implemented with its more strict rules of “Proof” and “Evidence”.

Under Edward I’s reign the office of judge was transformed from a clerical position into a full-time career. Admission to the bar (i.e., the right to practice as a “barrister” before a court) was made conditional on the legal knowledge of the applicant. Law thus began to emerge as a profession, which required permanent institutions and some kind of organized legal education.

By the 16<sup>th</sup> Century, case law was based upon previous decisions of cases, thus, case law became the typical form of English common law. Even with this graduating process of developing common law, history shows that throughout these early 15<sup>th</sup> and 16<sup>th</sup> centuries, the “Crown” often intimidated and corrupted justices, sheriffs, juries, and witnesses.

By the 17<sup>th</sup> Century, common law courts had transitioned into handling local civil jurisdiction cases while the Court of Chancery which functioned under procedures of Roman Law held jurisdiction over claims of the royalist party – Those of parliament enforcing the kings supremacy and the Church of England.

Major changes in Common Law did not take form until the late 1700’s where we see that movements were made to enable legislators—rather than courts—to make the law; and (2) the aims of law should vary with time and place. This resulted in a major trend in criminal procedure which provided better protection of the rights of the accused.

### **The development of common law in the United States**

Each colony passed its own statutes, and governors or legislative bodies acted as courts. This was the first initial true form of “Common Law”. Civil and criminal cases were tried in the same courts, and lay juries enjoyed wide powers. 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. The pioneer spirit favored 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. However, following the American Revolution, U.S. law became increasingly statutory, so that by the late 20<sup>th</sup> century legislation predominated over judge-made law. Hence the loss of true “common law” once again.

Historically, in the US, law had performed the function of a referee in a free economy and was called in to apply generally accepted ideas of right and wrong to individual disputes. Today, unfortunately, law has evolved to form an instrument of governmental policy or results from social and political pressures on the government. Law, therefore,

is now increasingly administrative. The United States is a private corporation that can make all the codes for its own purposes and subjects - "citizens" (review the definition of "citizen" in Ballentine's Law Dictionary). This not only violates common law but it is diametrically opposed to Divine Law and Natural Law.

Common law is often used interchangeably with Natural law; however, they're not one and the same. Natural law is that all rights are essential or permanent by divine virtue of human existence. Whereas with common law, there is no list of common laws. It is simply the recognizable rights by individuals in a society that the governments and judges are willing to acknowledge and enforce. Common law in its most basic form can be broken down to two widely used phrases, treat others as you would like to be treated; and no harm, no foul (crime).

The idea is that we are all free to do as we please so long as it does not cause harm to other people on their property. And if everyone lives by this golden rule, then there is no need for any codes or statues to be imposed on us by any "government" (by the way, most governments are actually nothing more than gigantic private corporations which we all have experienced are very practiced in violating our God-Given Rights!).

As our state and our country are returned to a "Constitutional Government" – The Republic for the United States of America – Common Law will take on the characteristics that our forefathers intended in that it will not violate Divine Law or the Constitution, regardless of what part of the country you are in or what social pressures in a particular area desires to dictate.

Laws play an important part in the society. Imagine a world without laws, it would be complete chaos. People would do as they wish and there would be no consequences. Hence, laws were established to ensure that everyone has a strict moral code that they must follow. Certain things such as stealing and murdering are not correct. Laws also ensure that people that disobey the laws must pay for their crimes and that no criminal is above the law, no matter what their social standing is. Common law and constitutional law are two types of laws that often confuse people that are not well-versed with the law books. These are two different aspects of law.



Common Laws are laws that have come about by having been enacted on based on previous court rulings. These laws are developed based on rulings that have been given in older court cases. Common laws are also known as case law or precedent. In a common law system, the judge's task is to "discover" the law—meaning that he develops rules from certain principles and precedents. These rules can be written as well as unwritten. In a common law justice system, the laws of a country depend on the rulings or

decisions of courts or other tribunals, where it is believed justice prevailed. The general principal of this system is that similar cases with similar facts and issues should not be

treated differently. If there is a dispute between laws, the authority or precedent looks to past cases and must provide the same reasoning and decision that was provided in the first case. The laws can also be altered and evolved based on the circumstances. The judges also have the authority to create new laws. Many countries live in common law systems or mixed systems.

Our Constitution, however, does not task our judges with “discovering” the law or crafting the right result in accordance with “natural law or the law of reason.” **The U.S. Constitution confines the power to make (or “discover” law, and the power to interpret it to the legislative and judicial branches, respectively.** This separation is intentional. In *Federalist #47*, James Madison emphasized the centrality of separating legislative and judicial power in preserving self-rule when he quoted Montesquieu as saying: “Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for *the judge* would then be *the legislator*.”



Constitutional Law is the body of law that defines the relationship between different entities within a nation, most commonly the judiciary, the executive and the legislature bodies. *These rules state the basic human rights of the man and women of that state, including rights to own property, freedom of speech, etc.* The main purpose of the constitutional law is to govern the law making bodies in the nation. It gives them set boundaries of the laws they cannot violate. For example, the law makers cannot violate the public’s rights to do certain

things such as freedom of speech, right to petition, freedom of assembly, etc. The constitutional law of a country can be changed if the government falls or changes. Additions can also be made to the constitution in form of amendments.

In short, common law are the laws that are developed based on old court decisions, while constitution laws are laws that were established when the constitution of the land was written. Both the laws are used for governing the people and giving them with certain rights.

*Erie Railroad v. Tompkins*, 304 US.64 (1938) makes plain that the federal courts have no power to create a general federal common law.

**Historically, Common law has led to unfair marginalization or disempowerment of certain groups of people whether they are outdated or biased, past decisions continue to shape future rulings and they continue until societal changes prompt a judicial body to overturn the precedent or the legislative branch of government codifies a civil law.**

## KEY TAKEAWAYS

- Common law, also known as case law, is a body of unwritten laws based on legal precedents established by the courts.
- Common law draws from institutionalized opinions and interpretations from judicial authorities and public juries.

- Common laws sometimes prove the inspiration for new legislation to be enacted.

**The Constitution of the United States for America** (began on May 25, 1787 ratified it on May 29, 1790).

***The Supreme Law of the land (\*\*LAW= Land, Air, Water)***

In the United States, the supreme law of the land is the Constitution and any constitutional amendments. This power overrides the rest of the law and government and determines how much power they have.

It is typically an outline of the basic nature of a country, including aspects of the nation that are meant to be permanent such as the form of government, citizens' rights, and governing processes and having such, ensures that the spirit and identity of a country remain consistent for future generations.

Having experienced tyranny in the colonies and chaos in the confederacy, the Founding Fathers knew that the country needed a carefully drafted balance between the two extremes and a system that would lead to prosperity.

### **Balance of Power**

The government and the people had shown their potential to skew that balance of power and threaten the nation's well-being.

**The United States Constitution reigning supreme over both was the perfect solution.**

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The main purpose of the constitutional law is to govern the law making bodies in the states and the nation. It gives them set boundaries of the laws they cannot violate. For example, the law makers cannot violate the public's rights to do certain things such as freedom of speech, right to petition, freedom of assembly, or pass illegal mandates, etc. The constitutional law of our country can be changed if the government falls or changes. Additions can also be made to the constitution in form of amendments.

In short, common law are the laws that are developed based on old court decisions, while constitution laws are laws that were established when the constitution of the land was written. Both the laws when implemented properly are used for governing the people and giving them certain rights.

The original Constitution detailed exactly how the national government was to be run and each colony/state ratified the US Constitution and their State Constitutions. This

unity of states revolved around the concept of checks and balances within the government.

Accordingly, any person or group of people acquiring too much power was perceived to be the greatest danger to the state and nation's longevity.

### **Creating a balance**

This balance was accomplished through the division of power between the three branches of government:

- The legislative branch creates federal law.
- The executive branch enforces them.
- The judicial branch interprets them.

These laws can sometimes take the form of constitutional amendments, but no matter what, the federal government and each state government can neither repeal nor modify the original Constitution.

### **Legislative Branch**

The legislative branch is divided into two houses in a system known as a bicameral legislature. In the Senate, states get equal representation with two senators each. In the House of Representatives, states' representation is based on their respective populations. Together, the two houses form Congress, and create the federal statutes of the United States.

Within DeJur Government, a Senator is called Statesman and a representative of Congress is called a Delegate. Their responsibilities, according to the Constitution are pretty much the same – Representation Of the PEOPLE. However, under the De Facto government we have experienced and witnessed the abuses of the De Facto government perverting their authority and subjecting the “We the PEOPLE” to abusive tyrannical oppression. Failing to serve we the PEOPLE and becoming self-serving politicians.

### **The Executive Branch**

The executive branch consists of the President, the Vice President, and the Cabinet of officials appointed to assist and advise them.

The President and Vice President can interact with Congress, but their main job is to manage and direct the rest of the national government and the military.

### **The Judicial Branch**

Lastly, the judicial branch consists of the country's court system, which delivers justice in the United States. The Supreme Court is the highest court, which hears especially significant cases at a federal level.

## **The Bill of Rights**

The second part of the original Constitution is known as the Bill of Rights, drafted by Founding Father James Madison, which includes the first ten amendments. They are considered amendments because they were not part of the original draft.

When the Constitution was submitted to the states for ratification following the Constitutional Convention, they would not approve it unless citizens were guaranteed specific rights that stemmed from the core values upon which the country was founded.

According to the Declaration of Independence, the underlying belief is that all people are created equal and deserve the rights to life, liberty, and the pursuit of happiness.

That noble ideal served as the foundation for the Bill of Rights, which stands shoulder-to-shoulder with the rest of the Constitution.

### ***Federalist #47, James Madison emphasized the centrality of separating legislative and judicial power in preserving self-rule***

**Federalist No. 47** is the forty-seventh paper from [The Federalist Papers](#). It was published on January 30, 1788 under the pseudonym [Publius](#), its actual author was [James Madison](#).

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**L**and: Common Law

**A**ir: The nature of matters that deal with energy, spirit and intellect.

**W**ater: Admiralty Law – The law of the Sea