



Will Common Law Survive in England?

The Lord Chief Justice queried: "Are we becoming so focused on Strasbourg and the Convention that instead of incorporating Convention principles within and developing the common law according to a single coherent unit, we are allowing the Convention to assume an unspoken priority over the common law? Or is it that we are just still on honeymoon with the Convention?"



He then gave a warning,

We must beware. It would be a sad day if the home of the common law lost its standing as a common law authority.

Am I alone in thinking that we are being presented with far too many authorities, both our own and from Europe, which do not bind us at all domestically? Perhaps we should reflect on the way in which I detect that our Australian colleagues (and those from other common law countries) seem to be claiming bragging rights as the custodians of the common law.

This trend noted by the Chief Justice gained momentum when the Human Rights Act became effective in 2000. Ironically, English common law has been a powerful agent of protecting what the U.S. Supreme Court in decades past has called "ordered liberty," which uses reason and common sense to retain individual rights within a framework of representative government.

American liberties are in many cases derived from English common law, well understood by our Founding Fathers. The trial of Peter Zenger in 1735 was a formative moment in American jurisprudence. The rights of Zenger to publish, and the use of the jury to rule against the wishes of the judge, were both firmly based upon English common law traditions. John Adams, who famously defended British soldiers tried after the Boston Massacre, felt that this use of the rights of the accused under English common law was of the highest importance.

Every state in the union [bases its interpretation](#) of law upon English common law except Louisiana, which relies upon the French civil law system. As well, the federal judicial system also relies upon English common law. The foundational principles of the U.S. government, enshrined in the Constitution and Bill of Rights, derived in many cases from the English common law, which included such seminal documents as the Magna Carta, the Petition of Rights, and the (English) Bill of Rights.

As the nations of Europe accede more and more sovereignty to supra-national entities and lose their historic systems of rights, traditions, and jurisprudence, constitutionalists in this country are stressing the increasing importance of U.S. citizens working to preserve their heritage as the best anchor for American liberties.

Photo of Lord Chief Justice Igor Judge: AP Images



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