

A Legal System Develops in England

In many parts of Europe, rulers could do whatever they liked. If they wanted property, they took it. If someone argued with them too much, that person was tried for treason in a king's court, and if found guilty, he was hanged (if a commoner) or beheaded (if a nobleman). There was little effort made to decide who was innocent and should be freed, or who was guilty and deserved punishment.

In England, by the 13th century, some interesting changes were being made in law that had a great effect on the legal systems used later in the United Kingdom and the United States.

By the time Henry II became king in 1154, civil and criminal law had already been split. Civil law usually involves an argument over property, and the court's role is to be an umpire. For example in the case of *Smith v. Jones*, Smith is the plaintiff (the one who claims to have been wronged), and Jones is the defendant (the one accused). The court decides if Smith has a legitimate complaint. Criminal law covers actions by an individual that the government says cannot be allowed. In the terms of that time, the action violated the "king's peace." The punishment under criminal law for violating the "king's peace" was fine, imprisonment, or death. Henry ordered that every county have a jail.

The jury of that time was much different than our juries today. In 1166, Henry II ordered that each sheriff appoint 12 good men out of every 100 to be jurors. The jurors of that time investigated rumors they had heard about a local person who, for example, was stealing chickens. If they were convinced the person might have done it, the jury ordered the sheriff to arrest that person and bring him before the judge. These charges were called "presentments." In the 13th century, a second jury was formed; it was called a petit (petty) jury, and it, rather than a judge, decided guilt or innocence. However, most trials were decided by a judge.

Another of Henry's major changes was developing common law. It was so-named because law was intended to be the same in all of England. When a judge wanted to decide a case, he looked up opinions that had been given by judges in similar cases. If the judge saw something similar, but his case involved other facts that were different, he wrote up his opinion. At the end of a year, these opinions were gathered in the "Year Book."

Having men trained to deal with common law cases was necessary for the system to work. This training was provided in Gray's Inn, Lincoln's Inn, or the Inns of Court. Students read during the day and, at night, argued practice cases in "moot" trials. Three languages were needed: Latin for the official records, English to talk with the client, and Norman French for the courtroom. When the student was ready to argue a case in court, he was "called to the bar." Much of what we in America and England know as our law system goes back to ideas present around the year 1200.



An early English law court.

Name _____

Class _____

POINTS TO CONSIDER

1. Would you feel more comfortable having your case heard by a judge or by a jury? Why?

2. How does the job of a modern juror differ from that of a juror in the time of Henry II?

3. What skills were required of a lawyer at that time?

Name _____

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CHALLENGES

1. What are most civil cases about?

2. Who brings the case to court in a criminal case?

3. In the case of *White v. Black*, which one is being sued?

4. What were the punishments in criminal law for breaking the “king’s peace”?

5. What was the duty of a juror in the early days?

6. What were the charges brought against a person by the jury called?

7. What is the duty of a petit jury?

8. Where did a judge go to find out what previous judges had decided?

9. What were moot trials?

10. What languages did a lawyer need to know?