"Daniel Webster. James Otis, and Sir Edward Coke all pointed out that the mere fact of enactment does not and cannot raise mere statutes to the standing of law. Not everything which may pass under the form of statutory enactment can be considered the Law of the Land. "

16 Am Jur, 2nd Sec.547

16 Am Jur, 2nd; SS: 114: Constitutional Law:

An important cannon of construction is that constitutions must be construed with reference to the common-law, since, in most respects, the federal and state constitutions did not repudiate, but cherished the established common law. This fact has been taken into consideration by the courts in construing certain clauses in a state constitution, such as the provision securing the right to a jury trial.

... in interpreting the Federal Constitution recourse may still be had to the aid of the common law of England.

... without reference to this common law, the language of the Federal Constitution could not be understood. This is due to the fact that the instrument & the plan of the government of the United States were founded on the common law as established in England at the time of the Revolution.

Therefore, it is a general rule that phrases in the Bill of Rights taken from the common law must be construed in reference to the latter. ... Other areas of the Federal Constitution which have been considered by the Supreme Court in the light of the common law include the provisions on citizenship; due process; and the Presidents pardoning power under Article II SS 2.

... The common law to be applied in construing constitutional provisions must be correlated in time with the Constitution, and cannot be a common-law principle which was evolved or changed after the adoption of the organic law. Where the scope and meaning of a constitutional provision depend upon the common-law rule existing at the time of its adoption, the rule is to be determined as it existed at that time, without respect to subsequent changes therein.

... the doctrine which justifies recourse to the common law for constitutional construction ... must yield to more compelling reasons whenever they exist.

It is a cardinal rule of construction that a constitution must be construed as to give effect to the intention of the people who adopted it, and ... it will be construed with reference to the doctrines of the common law ... .

The application of the doctrine is further subject to the qualification that the common-law rule, if and when invoked, shall be one not rejected by our ancestors as unsuited to their civil or political condition. Not all English practices prior to the American Revolution should be thought to be part of American constitutional law, for if that were so, the procedure of the first half of the 17th century would be fastened upon the American jurisprudence like a straightjacket, only to be unloosened by constitutional amendment. Further-more, many English common-law practices were exceedingly primitive, especially in the area of First Amendment freedoms ... Eighteenth century English or colonial law should never stand in the way of the Supreme Court fashioning a new rule to better reflect the more humane values of a maturing society.

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Further, in another section:

"The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose; since unconstitutionality dates from the time of it's enactment, and not merely from the date of the decision so branding it. An unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.

Such an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority to anyone, affords no protection, and justifies no acts preformed under it . . .

A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby.

No one is bound to obey an unconstitutional law and no courts are bound to enforce it."

Sixteenth American Jurisprudence,
Second Section, Page 177

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19 Am Jur 2nd Sec 113:

"An important cannon of construction is that **constitutions must be construed with reference to common law, since,** in most respects, **the federal & state constitutions did not repudiate but cherished the established common law** ... It has been said that without reference to this common law the language of the federal constitution could not be understood."

19 Am Jur 2nd Sec 136:

In interpretation of constitutions, questions frequently arise whether certain sections are mandatory or discretionary ...{[I]t **is the general rule to regard constitutional provisions as mandatory,** & not to leave any discretion to the will of a legislature to obey or disregard them ... **So strong is the inclination in favor of** giving obligatory force to the terms of the **organic law** that it has even been said that **neither by the courts nor by any other department of the government may any provision of the constitution be regarded as merely discretionary,** but that **each & every one of its provisions should be treated as imperative & mandatory,** without reference to rules distinguishing between discretionary & mandatory statutes." [Summarizing State ex rel, Childs v Sutton, 63 Minn 147, 65 NW 262; State ex rel Dalton v Dearing, 364 Mo 475, 263 SW 2d 381] ...".

(more, see site in Oregon Notebook)

Free Justice and Open Courts; Remedy for All Injuries.
American Jurisprudence Constitutional Law, §326.

In most of the state Constitutions there are provisions, varying slightly in terms, which stipulate that justice shall be administered to all without delay or denial, without sale or prejudice, and that the courts shall always be open to all alike.

These provisions are based largely upon the Magna Charta, chap. 40, which provides; We will sell to no man. We will not deny to any man either justice or right.

The chief purpose of the Magna Charta provision was to prohibit the King from selling justice by imposing fees on litigants through his courts and to deal a death blow to the attendant venal and disgraceful practices of a corrupt judiciary in demanding oppressive gratuities for giving or withholding decisions in pending causes.

It has been appropriately said that in a free government the doors of litigation are already wide open and must constantly remain so.

The extent of the constitutional provision has been regarded as broader than the original confines of Magna Charta, and such constitutional provision has been held to prohibit the selling of justice not merely by magistrates but by the State itself.