

Public Law.

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COMMON LAW,

Public Law.—Finally, the common law was the basis of public law. It grew up in the king's court where legal, feudal, fiscal, and administrative matters were handled together by procedures which were predominantly legalistic. Thus it became possible for lawyers to regard even the royal prerogative as being a part of the common law with its content known and precisely defined.

Hence royal attempts to assert arbitrary powers were challenged and checked in the common-law courts. In the case of Hubert de Burgh (1234), it was already held that the king's sole command is not enough to outlaw a man; in David Marshal's case (1339), the same rule is expressed in terms of "due process"; in 1387 Richard II submitted to the judges some important questions as to his powers. When in the Tudor and Stuart periods claims were made to a mysterious extralegal "prerogative" in the crown, it was the common lawyers who resisted.

When Parliament itself made exaggerated claims, usually under the cloak of "privilege," it was the common-law courts who protected the subject, and down to the time of Blackstone, they still favored Coke's doctrine that the common law would "control" even acts of Parliament. These ideas were familiar in America, and made it easy to accept the system of fundamental constitutional law. ★