

# Civil Law and Common Law

## ■ Civil Law

- Origins are in Roman jurisprudence
- It is a CODE, detailed and all-encompassing set of rules and regulations
- Legal scholar oriented, meaning that philosophical foundations tie the system together and make it make sense.
- Judges, by contrast, are rote applicators of the law. They find and apply the law.

## ■ Common Law

- Origins are in the English tradition
- Think about Great Britain's constitution and constitutional law...what is it?
- It is, essentially, judge-made (note relationship to legal positivism...)
- Legal custom and tradition become the law
- Stare decisis is key.
  - Pros and cons of stare decisis?

# On Common Laws C

**Joacim Rocklöv**



## **On Common Laws C:**

**Thomas Hobbes: Writings on Common Law and Hereditary Right** Thomas Hobbes, 2005-03-03 This volume in the Clarendon Edition of the Works of Thomas Hobbes contains A dialogue between a philosopher and a student of the common laws of England edited by Alan Cromartie supplemented by the important fragment on the issue of regal succession Questions relative to Hereditary Right discovered and edited by Quentin Skinner The former work is the last of Hobbes s major political writings As a critique of common law by a great philosopher it should be essential reading for anybody interested in English political thought or legal theory Although it was written when Hobbes was at least eighty it is a lively piece of work that goes beyond a recapitulation of earlier Hobbesian doctrines not least in applying his central ideas to the details of the English constitution This edition supplies the extensive annotation on matters of legal and historical detail that is required by non specialist readers it also assists students by offering cross references to other treatises Cromartie s introduction is an authoritative account of seventeenth century thinking about the common law and of Hobbes s shifting attitudes towards it It has often been suspected that the book was motivated by fear of being burned for heresy Cromartie disentangles the complex evidence scattered across a number of late works that documents this fear s development and shows why the philosopher s acute anxieties eventually led him to write a legal treatise In clarifying these questions the edition casts fresh light upon his attitude to law and sovereignty The second piece takes the form of a question put to Hobbes about the right of succession under hereditary monarchies together with Hobbes s response The question is in the handwriting of the fourth Earl of Devonshire the son of the third Earl whom Hobbes had tutored in the 1630s He asks Hobbes whether an heir can be excluded if he is incapable of protecting his prospective subjects The question of exclusion became the most burning issue in English politics in the course of 1679 when a bill to exclude the future James II was introduced into the House of Commons Hobbes answers with a robust defence of hereditary right in the course of which he also makes some important general observations about the concept of a right The manuscript is also of special interest as it constitutes Hobbes s last word on politics It was almost certainly written in the summer of 1679 less than six months before Hobbes s death

Thomas Hobbes: Writings on Common Law and Hereditary Right Alan Cromartie, Quentin

Skinner, 2005-03-03 This volume in the Clarendon Edition of the Works of Thomas Hobbes contains A dialogue between a philosopher and a student of the common laws of England edited by Alan Cromartie supplemented by the important fragment on the issue of regal succession Questions relative to Hereditary Right discovered and edited by Quentin Skinner The former work is the last of Hobbes s major political writings As a critique of common law by a great philosopher it should be essential reading for anybody interested in English political thought or legal theory Although it was written when Hobbes was at least eighty it is a lively piece of work that goes beyond a recapitulation of earlier Hobbesian doctrines not least in applying his central ideas to the details of the English constitution This edition supplies the extensive annotation on matters of legal and

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