Where laws come from

People often ask: where does law come from? How is law made? Is there an overall 'plan' or 'big picture' when making laws? These are among the most important questions we can ask. To do so, we need to consider, to some extent, the history of law.

1066 and the development of the common law

A practical point in time to begin our discussion is the years following 1066 when William the Conqueror defeated King Harold, the last AngloSaxon king, at the Battle of Hastings. Up until that time there was no unified law of England. Rather, Northumbrian law prevailed in the north, Mercian law in the midlands of England, and Wessex law in the west of England. Wales had its own highly developed legal system from the time of Hywel Dda in the 10th century, laws from his reign being referred to as Cyfraith Hywel (the law of Hywel). Even after annexation by England, Wales retained many of its laws. After being crowned Prince of Wales, Owain Glyndŵr established the first Welsh Parliament at Machynlleth. However, Glyndŵr's reign was short lived, but not forgotten. Today, with the exercise of its devolved powers by the Welsh parliament, it can be safely said that Welsh law is once again a living reality.

William's great grandson, Henry II, decided that England needed a single central government and, with this, a single system of laws. This was a very practical and sensible idea, and one from which we have benefited for centuries: instead of imposing a system of laws from the top, he sent out justices to the different parts of the country, there to observe how cases were decided. Upon their return, these justices were able to see what the different systems of law had in common, hence deriving the notion of the 'common law', which eventually emerged after about 200 years.

The main idea behind the common law is to provide certainty. It should be possible to predict how a court would judge a particular matter, based on their previous decisions. In this way, a body of law was built up using the system of precedent, in other words the law was based on what judges had decided in previous cases. Some very old cases are still good law, i.e. they provide a precedent to judges when tackling a new case. England and Wales have 'exported' the common law system to many countries including Ireland, Australia, the United States, and so on. However, many countries prefer to have all their laws written down in statutes or

'codes'. France, for example, still relies heavily on the Code Napoleon, devised over 200 years ago.

effect, a body of law was built up on a system of precedent, also known as *stare decisis*. This same system of precedent still applies today in all common law jurisdictions, all of which descended from the English courts. We will be discussing precedents in the next section. This is in contrast to the system known as civil law, which is what prevails in most other European countries where the court makes its decision based upon statute. All of France's statutes, as an example of this, are codified into the Code Napoléon (now known as le Code Civil).

The origins of Parliament

Prior to the arrival of William the Conqueror the Saxon kings relied on the *Witenagemot*, the 'meeting of wise men', for counsel. William's C*uria Regis* (council of the king) replaced the Witenagemot, which is a predecessor of Parliament. By the time Edward I was on the throne in the early part of the fourteenth century, laws were being made by Parliament which, in addition to the presence of nobles and churchmen, now also included commoners. The bicameral model was adopted at an early stage: nobles and ecclesiastics in one chamber, commoners in the other. Parliament underwent many changes in the centuries which followed, most notably in the time of Henry VIII and during the period known as the Commonwealth. When the monarchy was restored, the monarch's powers were considerably reduced: England now had a constitutional monarchy. The next major change was the Union of England and Wales with Scotland, bringing the Parliament of Great Britain into being.

How Parliament makes laws

The origins of a proposal for legislation come from many sources, including the public, pressure groups, opposition parties, and – chiefly – the government of the day. Before legislation is drafted, government will often hold a consultations. The next step is to formulate the proposal into a bill. The minister of the relevant department will draw up a series of instructions as to what the bill should contain and this will be passed to specialist lawyers, known as parliamentary counsel, to draft into the form of a bill.

The stages of a Bill

A Bill, once drafted, is closely examined by both Houses of Parliament. Bills can start either in the Lords or the Commons. After the early stages, the Bill moves from its original chamber

to the other chamber. Any bill to do with money, socalled ‘money bills’ such as the act of parliament which the Chancellor bases the annual Budget on, is always started in the Commons. The Lords are not allowed to oppose a money bill, although they may suggest amendments. The MPs are in charge of the money!

You may have heard the terms ‘first reading’, ‘second reading’ and so on. The first reading is when the title of the Bill is read out to the members of either the Lords or the Commons, depending on where the bill originates. After the first reading the Bill is printed and distributed to members of both Houses. The speaker, in each House, will set a date for the Second Reading.

Second Reading: This is a debate on the main aspects of the Bill. In the Lords the debate is not followed by a vote, but the Commons will sometimes follow its debate with a vote.

After the second reading, the Bill enters the committee stage, which is a detailed analysis of every line of the bill, and during which amendments are proposed, and at the end of which a vote is taken. The Third Reading then takes place. Members do not debate the Bill at the Third Reading, they only vote on it. Further amendments may still take place in the Lords. Any such amendments have to be approved by the Commons. Both Houses have to agree the content of a Bill before it is finally passed. Sometimes, the Lords may decide to reject a Bill, though their powers to do so are limited: for example, if a Bill contains proposals which were in the Government’s election manifesto it would be rare for the Lords to vote against it at a second or third reading. Once a Bill passes through all the stages, it is submitted to the Monarch for Royal Assent. It now becomes an Act of Parliament – it is ‘enacted’. Some provisions in an Act may not commence immediately upon enactment.

As an example of an act which is not yet in force, consider the Easter Act. For some reason, Parliament has decided not to try to fix the date of Easter Sunday but, rather, has repeatedly decided to leave that matter to the Church. This is still the case more than nine decades after the Act was passed in 1928.

Next: The parts of an act of parliament