



SENATOR MATT BARTLE

District 8 – Capitol Building, Room 319 Jefferson City, MO 65101

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Contact: Todd Scott
(573) 751-1464 / (888) 711-9278

The Rule of Law and the Chasing of Foxes

The year was 1805. The lawyers for both parties had made compelling cases and the court was sharply divided on this vexing question involving the private property rights of a citizen. The justices had studiously examined the works of great legal minds, written hundreds of years before, and had pored over the decisions of other courts to see if any guidance could be gleaned. The legislature had never considered such a case as this, so no direction could be found in the statute books. Finally, the judges issued their decision—a decision that is required reading for thousands of young law students, even today.

The court was apologetic to the plaintiff, admitting that the defendant had certainly been rude, but despite his behavior, they must rule in his favor. He could keep the fox.

Yes, this landmark decision stemmed from a simple dispute between two hunters. Just before Mr. Post and his pack of hounds could catch their wily quarry, Mr. Pierson stepped in and bagged the fox—claiming it for his own.

Far from being merely an entertaining story, this case illustrates one of our nation's most important and valuable traditions—the role of common law. While most students today are taught how legislators and governors (or Congress and the President at the federal level) craft laws, often overlooked is the fact that much of American law is never voted on or debated in the legislature. Instead, this foundation of our law—called the common law—is composed of thousands of court decisions, such as the one concerning Pierson's fox, fitted together and cemented by the collective work of Western judges going back hundreds of years—long before the U.S. Constitution was written.

Some may be surprised to find that the rulings of English judges from the 1600s are still very much a part of Missouri's law today. In fact, if you look at the first page of Missouri's written law—the Revised Statutes—you will find that the laws of England, and its common law as of the fourth year of King James I, are still in effect unless they are contradicted by the Constitution or an act of Congress or the state legislature.

So what is common law and why do we still follow it? The answer to the first question is rather straightforward—as mentioned above, the common law is the body of law resulting from court decisions built up over time as judges grappled with everyday situations like that of two hunters arguing over who owns a fox pelt. This is important, because these decisions ultimately set precedents for future courts (under a principle called *stare decisis*, future judges are obligated to follow earlier decisions).

Answering the second question—why we still follow the common law—is more complicated and I would like to discuss it over the next couple of weeks. For now, suffice it to say that common law is one

of our nation's most priceless possessions. While not perfect, it is an exceptional blend of common sense and morality gleaned from our nation's distinct history, our understanding of man's place in the universe and of respect for the unalienable rights of the individual.

In closing, I would also like to take a moment to recognize our courageous veterans. November 11, Veterans Day, was set aside as a day to honor the individuals who have put their lives on the line to defend and protect this nation. We owe them our sincere gratitude and respect for their noble sacrifices.

If you have any comments or questions about this week's column or any other matter involving state government, please do not hesitate to contact me. You can reach my office by e-mail at matt_bartle@senate.mo.gov or by phone at (888) 711-9278. My web address is <http://www.senate.mo.gov/bartle>.

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