



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 Origin of an Orderly Society

Last week we started talking about the common law and how it serves as a foundation for our judicial system. Common law is the body of law resulting from court decisions built up over time as judges wrestled with everyday issues affecting ordinary citizens, and in Missouri—and in almost every other state—the common law as it existed hundreds of years ago in England is still the law of the land, as long as it does not interfere with the Constitution or any other state or federal statute.

We left off last week asking this question: Why do we still follow common law? There are many reasons, but among the most important is the fact that the law—as handed down to the newly formed American nation—formed a strong framework upon which an orderly, stable society could be built. It was, for the most part, rational and predictable. While it did not originally protect the rights of all people equally (most notably women and minorities), it contained the seeds of what would later blossom into guarantees of equal protection under the law, and ultimately, its failings were corrected by the common sense of the American people.

To appreciate why traits such as reliability, predictability and equal protection of every citizen's rights are so important, one need only to pick up a newspaper or watch the news. Many parts of the globe continue to suffer the effects of weak or faulty judicial systems. Where the law is weak or the people do not trust it to be fairly enforced, entire nations descend into anarchy and chaos. In such a society commerce and innovation cannot thrive, children cannot be educated and government can only rule by force. In many cases, these nations are plagued by poverty and civil unrest.

In other places, the law is not based on a moral and equitable view of the rights of mankind, and so its protections are not extended to those of particular races, genders or religious beliefs. Rationality and equity in the law are replaced by the creed, beliefs and biases of the ruling class and discrimination against certain groups becomes normal and acceptable. These societies willingly sacrifice the talents and potential of large sectors of their population and starve themselves of the prosperity that is common in more open societies.

Our nation has been blessed in many ways by our legal heritage. For starters, the customs that eventually became the rule of law were often based on principles most human beings can rationalize as being “just” and “right.” Cases were often decided by English judges who held to a Judeo-Christian tradition and recognized a divine order to the universe. Likewise, common law was developed by judges who held to principles of natural law—the belief that certain universal rights and norms exist by nature and are not merely created by the state. Judicial decisions were made with an awareness of the natural

order of the universe and the idea that man was designed to fit within that pre-established order. After the Middle Ages, natural law morphed into the idea of natural rights, where philosophers such as John Locke and Voltaire argued that man had certain self-evident rights, chief among them the rights to life, liberty and property.

Through the common law, local customs became nationalized and consistent. This lent a sense of predictability to the judicial system and it helped create a society that was predictable and orderly. Controversies were decided by the tried and true rule of law—not at the whim of a ruler or even by isolated local customs.

The common law system, developed over hundreds of years, helped lay the groundwork for Western society and provided a strong foundation for our nation's judicial system. From this foundation—built with respect for individual liberties and property rights—commerce and innovation were encouraged to develop, helping to carve America's place in history as a country where anything is possible.

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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