



“LEGAL EAGLE!”

Basic Legal Context for Genealogists

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Laws define the actions and motivations of our ancestors on many levels. Understanding the laws that create the records is crucial to understanding your ancestor. With so many resources available to assist us, anyone can become a “legal eagle!”

WHY LEGAL CONTEXT MATTERS

Determining identities and establishing kinship—relationships between individuals and families—may rely on direct or indirect **evidence**.

- Although few *laws* directly reveal relationships, many *records* mandated by laws created “triggers,” motivating our ancestor to actions that created records of genealogical value.
- Records yield valuable information if we understand legal context and terminology.
- Records created by laws not only help us genealogically, they enhance our understanding of families and communities.

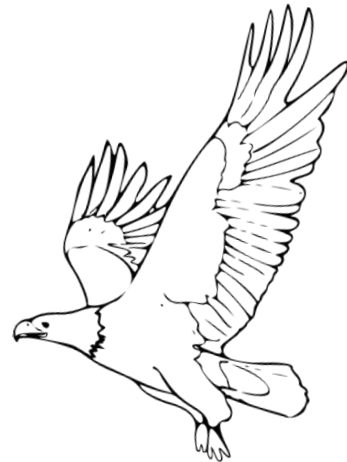
HISTORICAL LAW

Common law

America’s colonial laws and many state laws are based on English common law. **Common law** is comprised of custom and legal precedent based on ancient, unwritten laws of England. With roots in both ecclesiastical and secular law, it evolved over time, and differently, from one location to another, through court and legislative actions.

Our ancestors created genealogically significant records in response to common laws & customs, and in response to American laws built on common law traditions.

- Personal status changes: voluntary/involuntary
- Property ownership and usage
- Court actions & estates
- Military service
- Taxation



Civil law: A French model for governance

Napoleon Bonaparte authorized the creation of “civil law,” secular in nature and rooted in Roman legal concepts. Civil law was written as a code published in volumes. Legislatures modified the code over time to accommodate local needs. The French civil code addressed “three pillars” of society:

- **Individual liberty.** Free men were entitled to make individual contracts: purchase property, dispose of personal & real estate by deed or will, establishing businesses, etc.
- **Private property rights.** Anyone could own real property and use it as they saw fit. Property acquired in marriage was considered “community property.” Order of inheritance was spelled out by law, not alterable by contract or will.
- **Family.** Law defined marriage, divorce, adoptions, and other familial relationships; and required vital record-keeping. A marriage contract defined real and personal property ownership.

The idea of creating a written code was embraced by western societies, and contributed to modernization of American laws. Adaptations of civil law concepts are today found in French-heritage Louisiana and some Mississippi River valley communities.

AMERICAN STATUTE LAW

The governing system of the United States is built on concepts from both common law and civil law. The collective body of acts by American legislatures at all levels is known as “**statute law.**” Congress, state and territorial legislatures pass public laws that affect all citizens. They also pass private acts to address the needs of specific individuals & families.

Federal law

Federal records are authorized by acts of Congress. These statutes generate numerous records of genealogical value.

- *American State Papers*—thirty-eight volumes of legislative & executive documents of Congress, 1789–1838.
- *United States Congressional Serial Set*, began publication in 1817; contains the House and Senate Documents and the House and Senate Reports, usually from congressional committees working on proposed legislation.
- *United States Statutes at Large* and *United States Code*, federal statutes compiled in published volumes.

Federal departments also published legal guidelines for specific purposes.

Federal records

- Immigration and naturalization
- Census
- Federal land grants
- Military service & pensions
- Private acts

State & territorial statute law

States and territories pass laws that impact our ancestors on a local level. State laws authorize state census, vital records, property ownership & taxation, wills & probate, age requirements for military service, voting, marriage, etc., and much more. States compile and publish their laws.

- **Session laws**—compiled & published after each legislative session. This is the original record of each state’s statutes, listed chronologically by date of passage
- **State code** – compiled statutes in force at the time of publication, sometimes referred to as digests, organized topically in chapters & sections; cross references to earlier versions of the law
- **Statutes**—large compilations covering many legislative sessions over many years

State records

- Census
- Vital records—birth, marriage, death
- Militia and voting
- Property, taxation, and estates
- Criminal and civil court actions
- Private acts

UNDERSTAND THE LAW

In addition to government publications, privately published works & genealogical study aids provide insights into historical laws. Look for these online or at your local law library.

- **Legal dictionaries and encyclopedias** provide definitions and clarification of terminology.
- **Treatises** are authored discussions of legal facts, principles, and conclusions.
- **Case reporters** publish court case decisions at a county, state, regional, or federal level, often including cited statutes and argued opinions. **Digests** provide indexing for case reporters.
- **Law school reviews or journals** include articles of discussion in specific areas or cases of law and may focus on local topics.
- **Legal databases**, online by subscription, offer the ability to research legal issues and surnames.
- **Genealogical study aids** point the way towards helpful resources for finding and understanding records specific to our ancestors.

STRATEGIES FOR SUCCESS

1. Create a timeline for your ancestor. Note life events and stages of life that may “trigger” action.
2. Where do these events intersect with local, state or federal government?
3. Which level of government might create a record? What record would be created? What date was the record created?
4. Locate & study appropriate laws for legal & historical context.
5. Cite your sources! Use what you learn to create a follow-up research plan.

RESOURCES

All URLs valid as of 1 January 2021

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