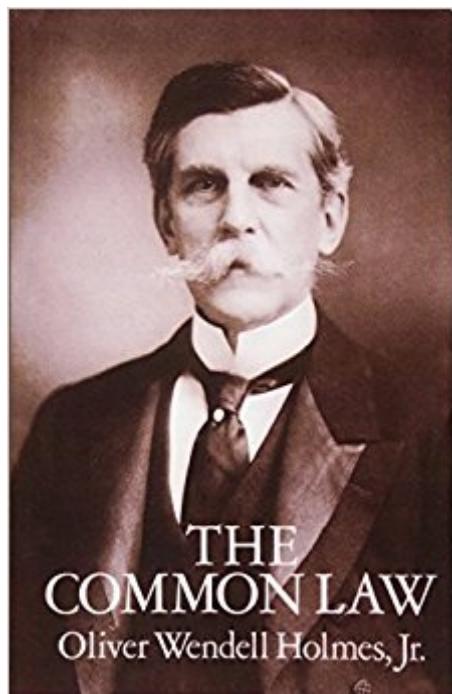


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# The Common Law



## Synopsis

Oliver Wendell Holmes, Jr. (1841–1935) is generally considered one of the two greatest justices of the United States Supreme Court, Chief Justice John Marshall being the other. In more than 2000 opinions, he delineated an impressive legal philosophy that profoundly influenced American jurisprudence, particularly in the area of civil liberties and judicial restraint. At the same time, his abilities as a prose stylist earned him a position among the literary elite. In *The Common Law*, derived from a series of lectures delivered at the Lowell Institute in Boston, Holmes systematized his early legal doctrines. The result was an enduring classic of legal philosophy that continues to be read and consulted over a century later. Beginning with historical forms of liability (thought to have originated in the desire for vengeance in ancient Roman and Germanic blood feuds), the book goes on to discuss criminal law, torts, bails, possession and ownership, contracts, successions, and many other aspects of civil and criminal law. Encompassing Holmes's profound, wide-ranging knowledge of the law in its historical aspects, yet written in a manner easily accessible to the layman, *The Common Law* provoked this observation from another famed jurist: "The book is a classic in the sense that its stock of ideas has been absorbed and become part of common juristic thought" — they placed law in a perspective which legal scholarship ever since has merely confirmed." — Felix Frankfurter, *Of Law and Men*. Now the influential ideas and judicial theory of Oliver Wendell Holmes, Jr. can be studied and appreciated in this superb edition — the only one in print — of his magnum opus. This edition also features a new introduction by Professor Sheldon M. Novick, author of *Honorable Justice: The Life of Oliver Wendell Holmes*. First published in 1881, this book is still indispensable reading for lawyers, political scientists, historians, general readers — anyone interested in the origins, development, and continuing evolution of the laws that govern human society.

## Book Information

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## Customer Reviews

Although the opening paragraphs of Holmes' magnum opus, "The life of the law has not been logic; it has been experience," along with a few other bon mots throughout, have been the most readily quoted parts of the book, in the Common Law Holmes embarked on a new way of assessing how judges make decisions. Over the course of twelve lectures, Holmes lays out his view that judges have slowly moved away from a purely superstitious and formalistic method of deciding cases to one which accounts for the broad array of social, economic, and political questions that face a culture, along with its legal ones. This theory gave birth to a new school of jurisprudence now referred to under the vague name of legal realism. Along with his advocacy for this theory, Holmes sought to add his own ideas on how to develop the law, such as interpreting a criminal defendant's state of mind to determine when his actions qualify as an attempt to commit a crime. The book itself is exceptionally dense and requires a significantly broad legal history background to fully appreciate its efforts. Holmes was among the first legal scholars to make use of the medieval English year books (something he regrettably receives little credit for) and the reader will encounter frequent citations to their pages. Early on he has some interesting comments about deodands and later on torts & contracts. The scope of this work is made all the more impressive by the fact that completed it shortly before his fortieth birthday. In addition to the original text, there is a useful introduction by Holmes' biographer G. Edward White and also the annotations Holmes made in his personal copy of the work. The only regrettable feature of this new edition is that it changes the numbering of the pages compared to prior editions, and hence makes cross-referencing of citations in other pieces of scholarship difficult. That said, the numbering is not so different that it is more than approximately a half-dozen pages off, so if you know what you are generally looking for, it is easily located. This is not a work meant to be read quickly, but if you are looking for the preeminent American legal publication of all time, look no further.

This is a new edition of the Harvard version of Justice Holmes' classic "The Common Law." It supercedes an earlier HUP edition published in 1963 which was edited by the esteemed Holmes scholar, Mark DeWolfe Howe. The original and continuing publisher of the official version of the book (first published in 1881) is Little, Brown. This edition is edited and has a fine brief introduction

by Ted White, the current leading Holmes scholar, who teaches at the law school of the University of Virginia, and has written (among other books on the Justice) "Justice Oliver Wendell Holmes: Law and the Inner Self," certainly our finest and most interesting biography of the Justice. Like its predecessor HUP volume, this edition contains the important marginal notes that Holmes entered into his own copy of the book (now in the HLS library), which do not appear in the official Little, Brown editions. Also included is Howe's "Glossary of Legal Terms." Professor White has added an illuminating chronology of the Justice's life, a helpful short bibliography, as well as his perceptive 26-page introduction. The typography is far superior to the earlier HUP edition. The only problem I can recount is that this edition (as was the case with Howe's edition) does not contain facsimile pages, so that the reset pages do not match the Little, Brown page numbers. Almost all citations to the book found in the literature cite to the Little, Brown version--so this is somewhat a disadvantage. Unfortunately, not even Professor White's additions can make this an easy and readable book. I venture to suggest that very few of those who call themselves students of Holmes (including myself) have read much of the book. Moreover, having been published in 1881, it was long ago subplanted by more recent research in the field. Nonetheless, as White points out in his introduction, there are nuggets here for those interested in Holmes' view of the law, which in large measure sparked a few legal revolutions, including sociological jurisprudence and legal realism to name just two. This new edition makes this classic available in a reasonably-priced and pleasant format for those with the endurance to read it.

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