

Common Law Countries and independent Constitutional Courts

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Approximately **80 countries** follow the **common law system** either wholly or partially. This legal tradition originated in **England** and spread primarily through British colonization. While some countries maintain pure common law systems, others mix it with **civil law, customary law, or religious law**. Below are some examples:

Countries with Common Law Systems

1. **United Kingdom** (England and Wales, Northern Ireland; Scotland uses mixed law)
2. **United States** (except Louisiana, which has a mixed system)
3. **Canada** (except Quebec, which follows civil law for private matters)
4. **Australia**
5. **New Zealand**
6. **India** (along with personal laws like Hindu and Muslim laws)
7. **Pakistan**
8. **South Africa** (mixed with civil law traditions)
9. **Singapore**
10. **Malaysia**
11. **Hong Kong**

Characteristics of Common Law

- Judges have more authority to interpret laws and set precedents.
- Precedent (case law) plays a critical role: decisions by higher courts bind lower courts.
- Often adversarial: lawyers from opposing sides present their cases, and the judge acts as an impartial arbiter.

Regions with Mixed Legal Systems

Some countries adopt a **hybrid legal system**, combining elements of **common law** with **civil, customary, or religious laws**. Examples include:

- **Israel**: Common law with Jewish and Muslim personal laws.
- **Sri Lanka**: Common law mixed with Roman-Dutch law.
- **South Africa**: A blend of common law and Roman-Dutch law.

The exact number of countries fluctuates as some jurisdictions adopt reforms or modify their systems, but common law remains widespread globally due to its adaptability.

The **common law countries** do not have **specialized constitutional courts** like **France's Constitutional Council**. Instead, they integrate constitutional review into their **ordinary judiciary**, often with the **Supreme Court or High courts** acting as the primary arbiter of constitutional issues. However, a few common law countries or those with mixed systems have developed **separate constitutional courts** or courts with specialized constitutional functions.

Common Law Countries with Specialized Constitutional Courts

1. **South Africa**
 - **Constitutional Court of South Africa**: Established after apartheid in 1994, it specifically deals with constitutional matters, including the interpretation of the constitution and issues of human rights. South Africa is a mixed legal system with influences from both **Roman-Dutch law** and **common law**.

2. **India** (Quasi-constitutional model)

- Although **India** does not have a separate constitutional court, the **Supreme Court of India** plays a dual role. It acts as the apex court for both general appeals and constitutional issues. However, some scholars have proposed a dedicated constitutional court to alleviate its workload.

3. **Pakistan**

- The **Supreme Court of Pakistan** also acts as a de facto constitutional court, but Pakistan's **Federal Shariat Court** reviews laws for compliance with Islamic injunctions, somewhat resembling specialized constitutional functions.

4. **Myanmar**

- Myanmar, which has a mixed legal system, established a **Constitutional Tribunal** in 2011 to handle disputes about constitutional interpretation and power separation issues.

5. **Kenya**

- Kenya has a **Supreme Court** with exclusive jurisdiction on constitutional matters like disputes related to presidential elections and interpretations of the constitution.

Why Specialized Constitutional Courts are not established in Common Law Systems?

- **Judicial Review Tradition:** In most common law jurisdictions (e.g., **United States, UK, Canada**), the **highest courts** have inherent powers of judicial review to strike down unconstitutional laws, making a separate constitutional court unnecessary.
- **Decentralized Model:** Common law systems often allow lower courts to engage in constitutional interpretation, unlike the **centralized French model**, where only the Constitutional Council can decide constitutionality.

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