THE SOURCES OF ENGLISH LAW.

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The three principal sources of English Law are the Saxon, Roman and Norman. From the customs and institutions of these three races, developed and strengthened through the slow process of centuries, are derived the English laws and institutions of today.

The original inhabitants of Britain were the Celts. The importance of the influence they exerted upon England will depend upon the nature of the Anglo-Saxon Conquest. Some historians claim that the Saxons amalgamated with the Celts, and others that the Celts were

either exterminated or driven from the land. The correct view is probably this — The Anglo-Saxons became almost the sole possessors of the regions occupied, and preserved in England their old Germanic maxims and usages of law, with very very little mixture of Celtic or Roman elements. This is an important point; because it explains that wide difference which separates the common law of England from the laws systems of continental Europe. The Saxons introduced almost a complete change in society, government and law. Very little trace of Celtic customs which

form the Welsh laws can be detected in the laws of England. Still the Anglo-Saxon blood has been everywhere diluted by a strong Celtic admixture, and whereas the laws and institutions of England are almost entirely free from Celtic influence, nevertheless the Celtic blood may have had a powerful influence upon the formation of the English character.

The Danish influence needs but a passing word. The Danes doubtless introduced many of their customs into England, which at length found way into the body of the English law. But Saxon and

Danes were from the same original stock, and hence we may assume considerable uniformity in their customs and usages. The Danish Conquest can therefore, have introduced but few innovations in the laws of England.

We now come to consider the most important source of English law, the Anglo-Saxon. The true foundation of English laws was laid between the fifth and sixth century, deep in the solid granite of Teutonic antiquity. The civilization of the time, crude as it was, contained the germinal elements of all future progress. The social and political

institutions of England can be traced almost entirely to the Anglo-Saxons. Their political government, their limited monarchy, their parliament, shires, hundreds and townships, are considered by leading historians to be of Anglo-Saxon origin. We cannot say that the finished system of English government was brought over ready made in the keels of Hengest and Horsa; but we will find in them the germs, the first principles from which English laws and government have been developed. Like a block of unhewn marble, they needed

the softning process of time, under the guidance of a master hand, to bring out the full beauty and strength of their genius.

Only a very general account of the laws and institutions of the Anglo-Saxons can be attempted here. The fundamental principles of the Anglo-Saxon government may be found among the Germans in the age of Tacitus. From him we learn that they were characterized by indomitable courage and zeal for liberty, together with the highest respect for woman, and a love of law and self-government. They had

kings or chieftains ruling with limited authority. The king was surrounded by a body of retainers who were reciprocally bound to each other in the relation of vassal and lord. They retained these customs in their new homes, and here in the process of time grew up among the Anglo-Saxons, the Feudal System. It is claimed by some historians that the Fudal System was introduced into England by the Normans. It is true that it did not exist in its most mature and oppressive form. The greatest law-writers of today claim that

Feudalism is a combination of barbaric usages and Roman law. England being less under the influence of Roman jurisprudence than the countries of continental Europe, it is natural that the Feudal System should be less rapidly developed. Still it is safe to say that the germs of the Feudal System existed among the Anglo-Saxons even in the earliest periods of their government.

We now pass to the distinctions of rank and the administration of justice. The free population among the Anglo-Saxons was divided into Eorls and Ceorls, the

men of noble and ignoble descent. Many of the former claimed to be the descendents of Odin, whom they worshiped as the God of Battles. The highest in rank among the earls was the cyning or king. The king as a rule was elected to the throne, the consent of the Witan always preceding his coronation. He was the supreme lord of the land, as well as the supreme judge, and received appeals from all the courts of the kingdom. The queen shared with the king the splendors of royalty. Next to the king, the highest order in the kingdom was

the ealdormen or earls. Their duties was to lead the armies of the shire to battle, to preside in the county courts, and enforce the administration of justice. Next in importance comes the thanes, who held positions of high rank in the kingdom. The reeves were also officers of high importance. They collected tolls, apprehended malefactors, and sometimes acted as the chief judges in the different courts. The ceorls, or men of ignoble descent consisted of two classes, one of which held land and were free, while the other class was legally annexed to the lands

of their lords. In other respects they were personally free, and had indeed certain rights recognized by law.

The lowest species of jurisdiction among the Anglo-Saxons was the "sac and soc". These courts absorbed much of the business which would otherwise have been carried to the courts of the hundred and the county courts. The next highest court was the moot of the hundred which assembled every month. Of still higher dignity was the shire-moot or county court. It convened twice a year, and was presided over by the

bishops or ealdorman. They were the most important tribunals in the country.

Superior in dignity and power to the foregoing, and the supreme court of the kingdom was the Witan or Witenagemote, the socalled assembly of the Wise men. This assembly is considered by leading Authorities to be the progenitor of the English House of Lords. The Witan was presided over by the king. The principal attendants were the bishops, earls and thanes. The legislative powers of the assembly have never

born accurately determined. They elected a king in case of a vacancy of the crown, and in some cases had the right to depose him. The king consulted the assembly on all important measures of government. The Witan was the supreme court in all civil and criminal cases, and received appeals from all the lower courts of the kingdom. It was their duty to provide for the general defence of the country, to prevent crime and punish criminals, and to enforce the due administration of justice. On the whole its powers were

greater than those of the modern parliament.

The administration of justice in those semi-barbarous times was naturally rude and simple. The proceedings before their courts would shock our modern sense of justice. The general acceptance of bribes and the illegality of the judicial decisions would have been ill-suited to an advanced state of civilization. Still as Lingard says: "These ancient courts still exist under different names, and the intelligent observer may discover in their proceedings the origin of several institutions

which now mark the administration of justice in English tribunals!" The laws of Edward the Confessor embody the principles of the Anglo-Saxon law. Those laws gave rise to the common law of England, by which is meant according to Blackstone, that ancient collection of unwritten maxims and usages, which receive their binding power and the force of law from long and immemorial usage, and their universal reception throughout the kingdom. The wise, strong, liberty-loving principles of the common law, a direct

inheritance from our Anglo-Saxon fore-fathers, have preserved the political liberties of the English people, and secured for them the blessings of a free government.

We will now consider the extent to which the principles of the Roman law have influenced the laws of England. There can be no doubt that English law is more largely indebted to the Romans than is generally supposed. The military power of Rome had declined, but her civilization was far in advance of the nations of northern Europe. The barbarians felt a certain

pride in imitating Roman civilization, and in this way many Roman customs were introduced into English law. It is true that the ancient laws of England, and especially the great principles of the common law were very deeply rooted in the affections of the people, and hence England was less influenced by Roman law than the nations of continental Europe. The Anglo-Saxons clung tenaciously to their old traditions of Teutonic liberty, and strove to retain the primitive customs of their ancestors. Still so powerful an institution as the Roman

law must have influenced every nation with which it came in contact. As Puchta says: "It was not through any external power, but by the force of scientific conviction, that the Roman law, just as the philosophy of the Greeks and the masterpieces of the ancient world, formed an entrance into modern life".

The ecclesiastical laws of England are almost entirely modeled on the civil laws. The bishops and clergy were a very powerful class in England during the middle ages, and their influence was always exerted

in favor of the civil and canon laws of Rome. England is also indebted to Rome for her marriage laws, the laws of wills and the nomenclature of relationships. The commercial law, the law of contracts, and more especially the great principles of international law in England have been greatly influenced by Roman jurisprudence. Amos says: "Foreign law and international law can be studied through no other medium than the Roman law." The Roman law today in America is the foundation of the laws of Louisiana,

Canada and Mexico, and all the Republics of South America, and no impartial inquirer can doubt its influence upon the common law of England and the United States. In our devotion to Anglo-Saxon liberty we are apt to underestimate the importance of external influences. The Roman law has been pronounced the noblest and most valuable production of the uninspired human intellect, and surely it is no disgrace to acknowledge its influence upon the growth and development of the English

law.

The last principal source of the English law is the Norman. The Norman Conquest may seem in some respects identical with the Danish, both races belonging to the Low Germanic and Scandinavian stock. But there is this important difference. The Danes came direct from their northern homes, while the Normans dwelt in France nearly two centuries before the Conquest of England. During this time, under the influence of the Romance nations, they had become almost a

new people in language, laws and institutions.

The changes introduced into England by the Norman Conquest is a much disputed point. By some it is claimed that the Saxons were not only bowed down, but utterly crushed beneath the Norman yoke; that the Conquest swept away in a common ruin the laws and institutions of the English people. This is a great mistake. England never had a formal exchange of one system of laws for another. Law in those days meant custom. A code of laws

was existing customs put into writing. The cry was never for new laws. It was for the better observance of the old. The Normans before the Conquest never possessed a written code of laws. They, doubtless possessed many customs and usages peculiar to themselves. But the theory that attributes to William a complete change in the old laws of England is a mere fiction. The Norman Conquest, instead of wiping out the laws that existed before it, did but communicate a certain infusion which was quickly absorbed and assimilated in

the pre-existing mass. William, instead of introducing new laws, restored the ancient laws of Edward the Confessor. There was a decided change in the local and national administration, in the social condition of the people, and in the relation of England to continental Europe. England became a strong centralized government, with entirely new relations between king and subject. The feudal changes introduced by William everywhere tended to strengthen the royal prerogative. The natural tendency of feudalism is to a divided

land with a weak central government. William checked such tendencies, while by making every lord and vassal swear homage to himself, he succeeded in establishing strong centralized power. The Norman Conquest did not destroy the ancient laws of England. It did change the spirit of the administration of justice, and prepare the way for endless changes in the laws themselves. The distinct changes in the laws were silent and gradual. As Freeman says: "They were the gradual developments of later times,

whom the Norman as well as the Englishman found himself under the yoke of a foreign master".

Such is a brief account of the sources of English law. Our facil seems to stand out with great clearness. That is the great variety of influences that have contributed to the formation and development of English institutions. It is well that this should be so. As Blackstone says: "By the intermixture of adventitious nations, the Romans, the Celts, the Saxons, the Danes, and the Normans; they must

have introduced and incorporated many of their own customs with those that were befor established; thereby improving the texture and wisdom of the whole by the accumulated wisdom of diverse particular countries." "Our laws" says Lord Bacon "are as mixed as our language; and as our language is so much the richer, so our laws are the more complete".

We have innovated largely upon the laws of our English ancestors, not only in minute details but in fundamental principles. The laws have been

improved by the reason, wisdom, humanity and experience of modern times. It is impossible that rules, maxims and usages which were suited to a age comparatively dark and barbarous, should be fitted to our present advanced state of society. We must have laws consistent with our condition and high destinies. The ancient common law of England has not only been said to embody "the gathered wisdom of a thousand years" but also to be "the perfection of reason". Americans are called upon especially to revere it as the guardian of our liberties.

But let us remember that "if hoary antiquity and unbounded veneration had been allowed to preclude scrutiny, the philosophy of Aristotle would still enslave the human mind". The antiquity of the law does not prove its intrinsic excellence. Our ancestors adopted it from necessity, and we have been steadily modifying it to suit our condition. Our opinions, habits and political institutions have entirely changed, and hence a corresponding change in the laws is made necessary. Great respect is always due to past ages. But let that

disposition of mind which
desires no change become universal,
and the progress of human
improvement would cease.
There is a golden mean between
these two extremes. It is that
disposition of mind which
neither revers what is old
nor admires what is new,
because it is old or new, but
submits every question to the
test of strict examination upon
its intrinsic merits.