Encyclopedia Americana,
International Edition, 1963.
Common Law / Historical Survey / Anglo-Saxon Law

"The texts of the Anglo-Saxons were much copied and used even after the Norman Conquest, and as late as the 12th century, the law generally in force was still essentially Anglo-Saxon, ...The pre-Conquest kings, like all Christian Rulers, admitted a general responsibility for law and order, but did not claim more than a vague supervision. They avoided the direct administration of the law in all but the most exceptional cases, leaving local institutions to apply traditional rules and procedures which evidently varied from place to place."

Norman Law. The Norman Kings took a much more active view of their duties and interfered freely in the administration of Justice. First they had to tame the sheriff, who dominated the county (shire) court, so as to prevent him becoming an over-powerful magnate - and this without at the same time crippling an essential local institution. By Issuing writs authorizing the sheriff to do justice in the county court in the kings name, the king finally subjected the country to strict control. To subdue the local courts, strongholds as they were of the old Anglo-Saxon law, was only half the battle, for a central court was essential if that control was to be effective. Here the Normans broke with the old traditions, and invited the public to litigate in the kings court. ... By these means Henery II erected the most centralized judicial system of all of Europe.

... Through this closely knit system of central and local courts, the crown thus became the fountain of justice, dispensing a law which was "common"to all the land. The common law is therefore the expression of royal centralization at he expense of local institutions, and its origin in the principles and practices developed by the kings courts, particularly the court of Common Pleas. ... Already in the 12th century it was becoming an acknowledged principle that none need answer claims against him ... unless made by a royal writ. Thus the crown secured a monopoly ...."

The arrival of the Normans brought trial by battle, ... In actions such as debt, trial could often be by the archaic "wager of law" or compurgation, a relic of the Anglo-Saxon times, whereby the debtors oath, supported by a number of oath-helpers, was decisive. ... In Criminal Proceedings, Grand Juries - which may have existed even before the Conquest in some parts of the Country, were organized by Henery II to present suspects who were subsequently tried by ordeal. ... Thomas Jefferson fancied the laws of the Anglo Saxons.

Early Feudal Law - Feudalization was much accelerated by the Conquest, when the king made such extensive grants of land and of lordship over the land of other people, that it became a fact ... that all land was held directly or indirectly by the crown ... Law of Tort - The line between crimes and civil wrongs or torts was drawn somewhat late. Anglo-Saxon law awarded punishments and damages simultaneously ..."

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Much Fuller Text Quotation from:
Encyclopedia Americana, International Edition, 1963.
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"The main features of Anglo-Saxon Law ... are known to us from texts dating from about 600 A.D. onwards . In general, they resembled the group of barbarian laws which grew up in northern France and Germany and Scandinavia, where invaders of the same or related stocks had made their homes. ... The texts of the Anglo-Saxons were much copied and used even after the Norman Conquest, and as late as the 12th century, the law generally in force was still essentially Anglo-Saxon, and administered in the Anglo-Saxon Courts of the Shire and the Hundred. The pre-Conquest kings, like all Christian Rulers, admitted a general responsibility for law and order, but did not claim more than a vague supervision. They avoided the direct administration of the law in all but the most exceptional cases, leaving local institutions to apply traditional rules and procedures which evidently varied from place to place.

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"... Already in the 12th century it was becoming an acknowledged principle that none need answer claims against him ... unless made by a royal writ. Thus the crown secured a monopoly of the most important sort of civil litigation.

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"Law of the Land - During the Middle Ages, the only portion of common law which was at all highly developed, was the law of the land. Land was then the only form of property on which a modest fortune could be based., and from the richest to the poorest, every family depended directly upon the land for its economic basis. Lawyers inevitably devoted much their keenest thought to establishing the law of real property.

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"Public Law - Finally, the common law was the basis of public law. ... royal attempts to assert arbitrary powers were challenged and checked in the common-law courts. ... When in the Tudor and Stuart periods claims were made to a mysterious "prerogative" of the crown, it was the

common lawyers who resisted. When Parliament itself made exaggerated claims, usually under the cloak of “privilege” it was the common-law courts who protected the subject, and down to the time of Blackstone, they still favored Coke’s doctrine that the common law would “control” even the acts of parliament. These ideas were familiar in America, and made it easy to accept the system of fundamental constitutional law.”

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