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### Anglo-Saxon Jurisprudence

Thomas M. Cooley

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T H E

**AMERICAN CYCLOPÆDIA:**

A

**Popular Dictionary**

OF

**GENERAL KNOWLEDGE.**

EDITED BY  
GEORGE RIPLEY AND CHARLES A. DANA.

*WITH SUPPLEMENT.*



VOLUME I  
A — A S H E R.

NEW YORK:  
D. APPLETON AND COMPANY,  
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LONDON: 16 LITTLE BRITAIN.  
1883.

governor. "The meeting of the hundred," says Lappenberg, "was held monthly for objects of voluntary and contentious jurisdiction. The presiding officer was the ealdorman, assisted by the bishop of the diocese and the principal thanes. The townships were represented by their reeves [sheriffs] and four deputies." In northern England a similar division was called a wapentake. A tithing was an association of freemen, who bound themselves to become surety for one another in case of misbehavior, and to aid in bringing to trial any one of their number who should commit a criminal offence. Every freeman was obliged by law to enroll himself in such an association.—Among the most cherished Anglo-Saxon institutions was also the *folcmote*. Authorities disagree somewhat as to the nature and privileges of the assemblies thus named, but the term seems to have been freely applied to large gatherings of freemen for counsel on public measures, rather than to any organized convention of the people. The right of meeting in folcmote seems to have corresponded exactly to the modern right of assembling in public gatherings, and of free debate.—See Palgrave's "Rise and Progress of England under the Anglo-Saxons" (London, 1832); Lappenberg's "History of England under the Anglo-Saxon Kings" (English translation by B. Thorpe, London, 1845); "Six Old English Chronicles," edited by J. A. Giles (London, 1848); J. M. Kemble's "Saxons in England" (London, 1849); Sharon Turner's "History of the Anglo-Saxons" (7th ed., London, 1852); "The Anglo-Saxon Chronicle," edited with a translation by B. Thorpe (London, 1861).—**Anglo-Saxon Church.** The Teutonic invaders of Britain, after the fall of the Roman empire of the West, were of course pagans, and, with the pride of a conquering in presence of a conquered race, would not receive Christianity from the Welsh Christians. Pope Gregory the Great sent a solemn embassy of 40 Benedictines to Ethelbert, king of Kent, who had espoused Bertha, a Frankish princess. St. Augustin, known as the apostle of the English, was at the head of it. The king consented to be baptized in 597, and Augustin was appointed archbishop of Canterbury. From Kent Christianity rapidly spread among the other Anglo-Saxon kingdoms. In 664 a union of all the churches in Britain was made by the exertions of Theodore, afterward archbishop of Canterbury, and in 668 the services of the church were made uniform over the island. Under Theodore there were an archbishop of York and 15 bishops. During the 8th and 9th centuries the Anglo-Saxon church enjoyed a degree of independence which was not quite canonical. By the aid of Dunstan in the latter part of the 10th century, it was brought into more complete harmony with the Roman see. This church produced the venerable Bede, St. Boniface, the apostle of the Germans, and many others who contributed to the cause of learning and the spreading of Christianity among the pa-

gan nations of the north. Its history has been carefully investigated by Soames, author of "The Anglo-Saxon Church" and "The Latin Church during Anglo-Saxon Times," and by Lingard, "Antiquities of the Anglo-Saxon Church."—**Anglo-Saxon Jurisprudence.** The memorials that have come down to us afford but an imperfect view of Anglo-Saxon laws. Codes are spoken of as having been promulgated by several of their kings, but these do not appear to have been a collection of all the laws in force, but rather such regulations as were new or little known, and which supplemented the body of laws contained in the unwritten customs with which the people were familiar. The very idea of a complete code would have been far in advance of the time. Ethelbert, king of Kent, is said to have published laws as early as A. D. 561. The first laws of much note were those of Ina, king of the West Saxons, after which we have the laws of Alfred, Edward his son, Ethelred, and Canute. The general features of all are similar; they are permeated with the prevailing superstition of the period; they consist in the main of regulations of police more or less barbarous in character, intermingled with moral and religious precepts derived from the ecclesiastics who framed them. The laws of Ina thus commenced: "First, we command that God's servants hold the lawful rule; after that we command that the law and doom of the whole folk be thus held," &c.; and among the first of the laws is one that if a slave be put to work on Sunday, he shall be free. The churls and their tenure, which is the origin of the modern copyholds, are referred to. The next important laws are those of Alfred, which became more famous than they deserved through the admirable manner in which they were administered by that monarch. The first attempt at settling an orderly course of procedure in administering justice was in the laws of Edward the Elder. While these prescribed the trial by ordeal in cases where compurgators did not come forward, yet they provided that trial should be by sworn witnesses as much as possible. The laws of Canute were more complete than any which preceded them, and better deserving the name of a code. They begin as follows: "Let God's justice be exalted; and henceforth let every man, both poor and rich, be esteemed worthy of folk-right, and let just doom be doomed to him." They prescribed regular terms of court, regulated weights and measures as well as moneys, and punished counterfeiters with the cutting off of hands. A freeman who was not infamous, and had never failed in oath or ordeal, could clear himself with a single oath; but others must furnish compurgators or submit to the ordeal. It has been a common supposition that Edward the Confessor promulgated a code of written laws, but of this there is no sufficient evidence. The Anglo-Saxons after the conquest exhibited a strong attachment to the laws of their last king, and the

conqueror caused a compilation of them to be made; but it contained little of importance, or that would be likely to be thought important by the people beyond a recognition of their right to assemble in full folcmote to elect their sheriff and discuss public affairs. The meagre character of the Saxon compilations is accounted for by the fact that the great body of their law, like that of the English law to this day, consisted of unwritten customs and usages with which the people were familiar, and which the conqueror did not attempt to set aside. Many of these customs, as well as the divisions of the country for administrative and judicial purposes, were of Roman origin. Justice was administered in local courts, of which the chief were the *hundredgemote* or *wapentake*, held by the sheriff and bishop for the trial of criminal causes in every hundred—the sheriff presiding assisted by the bishop on the trial of offences in general, and the bishop with the assistance of the sheriff when offenders against the church were to be dealt with; and the *scyregemote* or county court, which was the principal court of civil jurisdiction, and whose judges were the freemen and landholders of the county, presided over by the earl or sheriff, assisted by the bishop. The Saxons appear to have accepted the idea that the king was the fountain of justice, but his intervention was not often invoked except to set the courts in motion when justice was delayed or refused. From the rude trials by witnesses in their popular tribunals was developed at length the orderly system of trial by jury. The "Mirror of Justice" enumerates several judges who were hanged in Alfred's reign for causing prisoners to be executed who were not convicted by the unanimous verdict of twelve sworn men. The most remarkable feature of Anglo-Saxon criminal law was the scale of compensation prescribed for the commission of homicide and other crimes. Even the life of the king was rated at a money value, which under the laws of Athelstan was 30,000 *thrymsæ*, each *thrymsæ* being worth four pence; while that of an earl was 15,000, and so on down to a common person, rated at only 267. The ears, the teeth, the limbs had each their separate value, and the place where an offence was committed was sometimes an aggravation requiring an additional penalty. The compensation or *were* was payable to the injured person, or, in cases of homicide, to the immediate family of the deceased, or, if he had none, to his other relations. If the offender was unable to pay, he was liable to death, but was allowed to submit to the loss of limb or other corporal infliction instead. Torture to extract evidence was unknown among the Anglo-Saxons. Immunity seems to have been extended in some cases to those who in the heat of passion excited by the chase of an offender should slay him upon the spot, while the irregular infliction of punishment in cold blood upon a detected criminal was visited

with extreme penalties. An offender fleeing to sanctuary was allowed protection during his stay there, whatever his crime might have been. Lands among this people appear to have been held by a species of feudal tenure, and were descendible to all the sons, or, as some writers think, to all the children equally, and they were conveyed either by writing or by ceremonies conducted in the presence of witnesses, designed to give publicity to the transfer. A collection of the laws of the Saxon kings was made by Lambard in the time of Queen Elizabeth, under the title of *Archæionomia*, which was afterward republished by Dr. Wilkins, and also more recently under the title of "Anglo-Saxon Laws and Institutes," edited by Benjamin Thorpe (London, 1840).

**ANGLO-SAXONS, Language and Literature of the.** The language of the German tribes who conquered and peopled Britain in the 5th and 6th centuries was by them called *Anglisc*, *Englisc* (English); but since English has become so widely different from its mother speech, the name Anglo-Saxon has come into use for the old language. This language was a growth on the island of Britain from the collision of many dialects spoken by the invading tribes. The Celts used a very different kind of speech, so that the Celtic affected the Anglo-Saxon as the tongues of the aborigines of America have affected our English; it gave a good many geographical names, and but few other words. The new language was shaped to literary use by ecclesiastics who wrote and spoke Latin, and a large part of the literature is translated or imitated from Latin works. Hence it contains many words from Latin and frequent imitations of Latin idiom, and it attained the power to render Latin with more accuracy and ease than any other Germanic tongue of its time. The Danes also contributed something to it, especially to the Northumbrian dialect. But it is after all a true Low German speech, closely akin to Frisic, Old Saxon, Dutch, and Platt-Deutsch. The talk in the harbors of Antwerp, Bremen, and Hamburg is said to be often mistaken by English sailors for corrupt English. These Low German tongues are akin to the High German on one side and to the Scandinavian on the other, and these all with the *Mæso-Gothic* constitute the Teutonic class of languages, which belongs, with the Latin, Greek, Slavic, Sanskrit, and the like, to the Indo-European. The invading tribes had writing of their own in characters called *runes*, but the literary remains are almost all in an alphabet known as the Anglo-Saxon, the letters of which, except three, are Roman characters, with some fanciful variations. Thorn (þ) and wæn (ƿ) are runes, and edh (ð) a crossed *d*. Occasionally *k*, *q*, *v*, *z* get into the manuscripts, mostly in foreign words, and *uu* or *u* for *p*. The Semi-Saxon has a peculiar character for *j* (ȝ). The vowels were pronounced nearly as they now are in German: *a* as in *far*; *â* as in *fall*;