

Anglo-Saxon Law

Anglo-Saxon law is the name generally used to refer to the legal system that prevailed in Britain for approximately the five centuries before the Norman Conquest in 1066. It was the law of the Germanic tribes that ruled the nation following their victory over the Danes. It had much in common with the jurisprudence of related peoples on the Continent, and many customs of Anglo-Saxon law evolved into a form that survives in English and American common law. Still the system was appropriate for a rural, essentially tribal, society in which magic and ritual played much more of a role than reason and science. In what courts there were, usually bodies convened by the local temporal or spiritual noble, the primary mode of proof was by oath, and an oath that went not to the truth of a specific fact but to the justice of the claim or defense as a whole. If the oath was performed properly, with the right number of oath helpers, who were also required to perform flawlessly, the oath was conclusive. If the oath was inconclusive, however, the court resorted to other ancient forms of proof, such as the ordeal. In two of the most popular ordeals, the hot water and the hot iron ordeals, the offender would be made to plunge his or her hand into boiling water or to grasp a red hot iron, and the manner in which the wound healed demonstrated guilt or innocence. In this way, divine providence was asked to indicate the manner in which cases would be decided.

*Too many there be to whom a
dead enemy smells well, and
who find musk and amber in
revenge.*

SIR THOMAS BROWNE

There were few official sanctions for failure to comply with judicial procedures, although the device of "outlawry" was sometimes used. An "outlaw" put himself out of the protection of the laws and could normally be killed by anyone, without fear of official or unofficial retribution. All of an outlaw's goods would also be forfeit to the king. Criminal offenses at Anglo-Saxon law included murder, theft, wounding, treason, and the "contumelious outrage of binding a free man, or shaving his head in derision, or shaving off his beard." Imprisonment was rarely used as a means of punishment. Instead, those guilty of the worst crimes suffered capital punishment or were placed into slavery.

For all but the very worst crimes, however, defendants or their kinsmen could offer restitution by paying specified sums to the injured parties. Restitution even extended to many cases of murder, with the payment for that offense called by the Anglo-Saxon name *wergeld*. A person's *wer*, or worth, varied with his or her station—a member of the nobility, a free person, or a slave. A person's *wer* also determined the amount of fine levied if he or she failed to perform a public duty or committed an offense against public order. There was no jury discretion in matters of damages, with compensation specified in particular cases by preexisting ordinance, custom, or statute. As the concept of *wer* indicates, the Anglo-Saxon legal system was based on a very stratified society with status often depending on individuals' relationships to the land or to their lord. Slavery was very common, and slave traders operated from English ports, bringing slaves to and from Britain.

Manumission was also practiced and seems to have resulted in the integration of freed slaves into the general community. Laws of contract were virtually nonexistent, and the law of property depended principally upon possession.

To an American law student, Anglo-Saxon law might have antiquarian interest only, except for a vital link between that law and current United States law. When the American colonies were established, the rules that governed decisions in cases that were heard in the various colonial courts were the precedents established by the "common law" of England, which included many rules derived from Anglo-Saxon law. Even after the United States of America was proclaimed an independent nation, the rules of decision in the courts continued to be built upon the old English precedents.

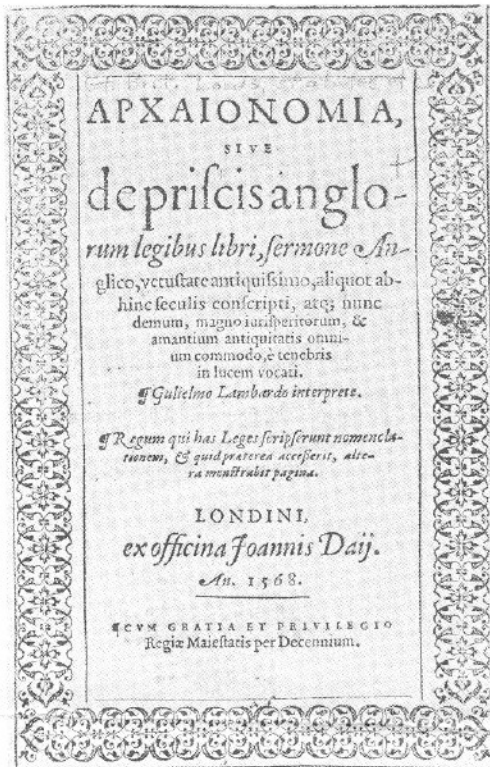
Not only did Anglo-Saxon law, through the later English common law, give us a wealth of precedent for the new nation, but it also bequeathed to us two separate judicial systems that looked at "law" in different ways. The "common-law courts," the more ancient of the two, comprised all cases (with few exceptions) where monetary damages were awarded. Since the earliest times these cases were presided over by judges specially trained in the legal doctrines. If a plaintiff's injury could be expressed in monetary terms, and if a monetary judgment would satisfy or vindicate the plaintiff's rights, then the common-law system heard the case. On the other hand, if the plaintiff requested that the defendant be ordered to do (or refrain from doing) something, other than payment of monetary damages, or sought relief not available through the rigidly conducted common-law courts, then the plaintiff had to bring a suit in the "equity" courts. The equity courts arose in England in response to the fact that the common-law courts could not provide for all judicial redress required under all circumstances.

At first equity was dispensed by the king himself, for example, under Anglo-Saxon law, to compel redress against defendants protected by a powerful noble. Eventually the duty passed to the king's chancellor, and, finally, in the fourteenth and fifteenth centuries, there had grown up another specialized judicial system, the equity courts, or Courts of Chancery. These courts provided a simple remedy addressed to the defendant—either do what the court says, or go to jail. Once in jail, the defendant had the "keys in his pocket" to leave; he or she could leave providing he or she carried out the court's order. The order of the court could be to convey a unique piece of land to the plaintiff (sometimes money cannot be the equivalent of land because of its uniqueness), or to pay alimony to the plaintiff (even today, a spouse who refuses to pay alimony can be put in jail by the equity court), or to refrain from violating the plaintiff's rights in some specific way. Today, for example, U.S. equity courts often have the responsibility to see to it that schools are desegregated (the busing of schoolchildren is a direct function of the orders of U.S. equity courts upon school officials and administrators).

The Anglo-Saxon system of Germanic laws was often remarkably different from the contemporary laws of other parts of continental Europe. The latter were more closely influenced by Roman law, whereas English laws, like the Scandinavian, were the expression of Teutonic legal thought. Thomas Jefferson, among other early Americans, venerated this legal system, believing that the Teutonic influence emphasized popular participation and liberty more than the authoritarian beliefs of the Normans. Jefferson's views on the "purity" of the Anglo-Saxon common law may have been extraordinarily incorrect, however, given the Anglo-

All laws are useless, for good men do not need them and bad men are made no better by them.

PLUTARCH



Courtesy of the University of Minnesota Law School

The first printed collection of Anglo-Saxon laws was *Apxaionomia*. Translated and edited by William Lambarde, the book was published in London by John Day in 1568. It gave the Anglo-Saxon text with a parallel translation in Latin. The first English translation of these laws was published in 1840.

Saxon system's tolerance of slavery, its preoccupation with status, and its lack of any really "popular" institutions.

Like sources of law today, the Anglo-Saxon laws could be found in statutes, in authoritative statements of custom, and in various compilations of legal rules and enactments. Many royal proclamations or provisions of treaties made up the first category. In the second category, a prominent example of a compilation of local customs was the Domesday Book, a collection of Anglo-Saxon "dooms" or laws ordered by the Normans. In the third, there were many manuals on various practices, such as the formalities of betrothal, the duties of judges, collections of oaths, and so on. The various provisions of the criminal law, including lists of fines, punishments, outlawry, confiscation, and rules of procedure, far exceeded in number and detail the provisions of the civil law. It is some measure of the change in the legal order that while Anglo-Saxon law had no real conception of contract, and almost no sophistication in the law of property, modern common-law jurisprudence relegates criminal matters to a position of minor importance and is preoccupied with the rules of commerce, manufacture, trade, and administration. Finally, while the foundation of the old laws was the spiritual power of the church, and the legal system made little or no attempt to separate religious from secular rights and duties, modern Anglo-American jurisprudence takes as a central tenet the separation of church and state.

*For such law as man giveth
other wight,
He should him-seiven usen it by
right.*

CHAUCER

Bibliography: Frederick Pollock and Frederic W. Maitland, *The History of English Law*, 2d ed., vol. 1 (1968), pp. 25-63; T. F. T. Plucknett, *A Concise History of the Common Law*, 5th ed. (1956), pp. 6-10 and sources cited there.