General

Post Views: 6797

The Development Of Common Law In England – From 1066 to the 19th Century

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In this article, Antony Moses discusses the Development Of Common Law In England From 1066 to the 19th Century.

Development Of Common Law In England

Common Law is the legal system, based upon the judicial decisions and embodied in reports of decided cases, that has been administered by the common-law courts of England since the Middle Ages and it has evolved into the legal system that we find in many of the Commonwealth countries and the United States. The common law provides a common set of rules that are used to solve problems. Being mainly based on a history of judges' decisions rather than relying on statutes and codes[ii], it stands in perfect contrast to the legal system derived from civil law, now widespread in Continental Europe and elsewhere.

Though the United Kingdom, from the standpoint of international law, is a unitary state, it comprises of three other legal systems followed in England and Wales, Scotland and Northern Ireland with the latter two also being influenced by the common law system in England(Wales started following the system from 1536).[iii] For the sake of simplicity and the other two derivative systems being negligently insignificant to the topic of this paper, apart from a historical standpoint, this paper shall solely concentrate on the development of the common law system in England.

The common law system in England began to develop after the Norman Conquest in 1066. Prior to the invasion, the island had been following the law of the Anglo-Saxons, who had their presence in the island since in the 5th Century AD. The Anglo-Saxon law, especially after the accession of Alfred the Great in 871 AD, consisted of a developed body of rules resembling those being used by the Germanic peoples of northern Europe.

By the Anglo-Saxon law, local customs governed most matters while the church played a large part in government. Crimes, which were often based upon blood feud, were treated as wrongs for which compensation was made to the victim. The Anglo-Saxon law was relatively free of the Roman influence found in continental laws and its influence was only exerted indirectly and primarily through the church and only with the Norman Conquest did the Roman law make its influence on the development of the laws of England. And thus with the Norman conquest began with the development of the common law system

EFFECTS OF THE NORMAN CONQUEST

The Norman conquest of 1066 is one of the turning points in the legal history of the English common law. William the Conqueror, the Duke of Normandy successfully invaded and killed the then King of England, Harold II, and therefore, William became the King of England by the right of conquest.

The Norman Conquest led to immense changes in the political, economic, social and legal scenario of the country. The invasion brought to the island a class of several capable administrators in the service of the King, many of whom has joined the conquest with this reward in mind and each of these feudal vassals were allotted land. And thus, with these feudal vassals owing allegiance to one lord, government was centralized under King William's rule. The English Kings went on establish a number of centralized institutions. One among the important centralized institutions was the King's Court or the Regis Curia. A bureaucracy, consisting majorly of Normans, was built up and the practice of maintaining records begun

The Normans had a developed customary law in Normandy. They had no professional lawyers or judges; instead, literate clergymen acted as administrators. Some of the clergy were familiar with Roman law and the Canon Law of the Christian Church, which was developed in the universities of the 12th century and therefore, Canon Law was applied in the English church courts.[iv] Roman law, which had already been preserved in the Canon Law by way of cultural influences, thus, made its influence on the development of the English Common law system.

Crimes, before the advent of the Normans, were based upon blood feud and the extraction of vengeance by the offendee over the offender and the culpable state of mind of the offender was not taken into consideration. The theology of the Canon law was based on the foundation that offences are committed with 'moral guilt' and thus, with its widespread administration in the legal system, these crimes were regarded as public crimes rather than as personal matters and the perpetrators were punished by death and forfeiture of property.

Though the Norman Conquest produced change in various scenarios, it did not bring an immediate end to the Anglo- Saxon law. Some elements of the Anglo- Saxon system such as juries, ordeals and the practice of outlawry survived. The revived Roman law was less influential in England than elsewhere, despite the Norman dominance in government. This was because the Anglo-Norman system had attained sophistication quite early. Thus, Norman custom was not simply transplanted to England but rather a new body of rules, based on local conditions, started emerging.[v]

CHANGE IN LAND LAWS IN ENGLAND

In early years, the English economy mainly depended on agriculture. Thus, Land was the most important form of wealth. Political power was largely based on landownership. The feudal system was

followed and the King was the lord of the land. Under the King came the aristocratic tenants in chief or intermediate tenants or mesne and under them came the tenant "in demesne" who actually occupied the property.

Succession to tenancies was regulated by a system of different "estates" or right in land, which determined the duration of the tenant's interest. Mostly three types of tenancies existed ie. "fee simple" tenancies, " fee tail" tenancies and Life estates. Land held in "fee simple" meant that any heir could inherit, such as the land of one's uncle can be inherited by him whereas land held in "fee tail" could pass only to direct descendants. Life estates were tenancies that lasted only for one person's lifetime. Title to land was transferred by a formal ritual rather than by deed; this provided publicity for such transactions.[vi]

Most of the rules governing the terms by which land was held were developed in local lord's courts, which were held to manage the estates of the lord's immediate tenants. Improved remedies emerged in the King's Court during the late 12th century led to the elaboration and standardization of these rules which marked the effective origin of the common law

This change picked up pace in the 13th century and statutes were passed to this end to regulate matters of detail. For example, during the 13th century, the life tenant was forbidden to use the property in such a way as to damage it or to cause it to deteriorate unless the grant specifically allowed it. A significant proportion of disputed in the common-law courts were related to the occupation of land and thus, the land law was the earliest area of law to elaborate a detailed set of substantive rules, eventually summarized in the first "textbook" of English law, *Littleton's Tenures,* written by Sir Thomas Littleton and originally published in 1481.

ESTABLISHMENT OF A CENTRALIZED JUDICIARY

The consistent development of the common law was promoted by the early dominant position acquired by the royal courts. Whereas the early Saxon *Witenagemot*, or king's council, dealt only with affairs of the state, the new Norman Court of *Curia Regis* assumes wide judicial powers as well. The Normans, upon bringing in a centralized administration system over the land, brought in several centralized institutions. One among the important centralized institutions was the *Curia Regis* or the King's Court. The council of *Curia Regis* existed in two forms.

William insisted that he took England lawfully rather than by conquest[vii] and thus, the basis for the law remained the laws of Edward the Confessor. The powers of the sheriffs were retained as well as those of the communal courts (Hundred Courts and Shire Courts). The *curia regis* attempted to maintain continuity with its predecessor as the Norman Kings wanted to be seen as the lawful s[illegible]ors of Edward the Confessor.[viii]

The first was the great *curia regis* or Magnum Concillum, composed of the tenants-in-chief, the great officers of the king's court, and those ecclesiastics who held lands of the king. When not in session it was replaced by a smaller council which itself was in continuous session called the lesser or small *curia regis* made up of the king's officers of state and those magnates who were at court. The lesser *curia regis* was in essence the king's royal court and it followed the king in all his travels. The king, when travelling throughout his realm and as an integral part of the court, often heard suitors in person.[ix]

But, William himself did not make major changes to the actual law itself. Rather, Henry I and particularly Henry II were the main developers of common law. The very first judges, back in the 12th century, were court officials who had particular experience in advising the King on the settlement of disputes. From that group evolved the justices in eyre, who possessed a mixed administrative and judicial jurisdiction. These judges in 'Eyre', created by Henry II, were travelling judges going around investigating places at regular intervals. They would examine sheriff's accounts, coroner's activities, payment of taxes etc, as well as judicial work. Residents dreaded the Eyres, and even hid from them. [x] After the number of complaints, in 1178, Henry II chose five members of his personal household- two clergy and three lay-"to hear all the complaints of the realm and to do right"[xi] and made them stay at Westminster to hear complaints. Thus, the royal justice system was given consistency by the fact that sae judges acted as judges who went on Eyre. Therefore a consistent set of principles and procedures such as Common Law was able to develop.[xii]

Meanwhile, the curiae soon became so loaded down with judicial work that the work gradually came to be delegated to special group of judges, later known as the Court of King's Bench. These judges went to provincial towns "on circuit" and took the law of Westminster (the location of the king's court) everywhere with them, both in civil and in criminal cases. The King's bench usually heard matters like trespass and felonies that affected the King's peace.[xiii] Local customs received lip service but the royal courts controlled them and often rejected them as unreasonable or unproved. Thus, Common law was presumed to apply everywhere until a local custom could be proved.[xiv] The Curia similarly turned over the growing burden of financial affairs to a body , later known as the English Exchequer or the Court of Exchequer.[xv] The members of the court were known as 'justices' and in the king's absence the justiciar presided over the court. A further step was taken by Henry II. In 1178 he appointed five Curia members to form a special court of justice which came to be known as the Court of Common Pleas. Initially, this court's justices like the other members of the Curia, followed the king's court from place to place, but Magna Carta (1215) provided for the court's establishment in one place and it thus became a stationary judicial body. Similarly, the Court of King's Bench also developed out of the Curia Regis. This court continues to move about with the monarch until the 14th Century, at which time it too lost its close connections with the King and became one of the Superior Courts of Common law in England.[xvi]

By the 13th Century, gradually, the *curia regis* began to branch off into entities which formed into other institutions and three central courts- Exchequer, Common Pleas and the King's Bench applied the

common law. Although the same law was applied in each court, they vied in offering better remedies to litigants in order to increase their fees.

The court machinery for civil cases was built around the writ system. Each writ was a written order in the king's name issued from the king's writing office, or chancery, at the instance of the complainant and ordering the defendant to appear in the royal courts or ordering some inferior court to see justice done. It was based on a form of action and the right writ had to be selected to suit that form. Royal writs had to be used for all actions concerning title to land.

About the time of Edward I (reigned 1272–1307), the executive and advising duties of the Curia Regis came to be handled by a select group, the king's secret council, which later came to be called the Privy Council. From the Privy Council there later developed the Cabinet[xvii] and the great *curia regis* after taking on representative elements formed into Parliament.[xviii]

This early centralization also diminished the reception of Roman law in England, in contrast to most other countries of Europe after the decline of feudalism. The expression "common law," devised to distinguish the general law from local or group customs and privileges, came to suggest to citizens a universal law, founded on reason and superior in type.[xix]

BRACTON AND THE INFLUENCE OF ROMAN LAW

Under Henry III (1216–72), an unknown royal official prepared an ambitious treatise, *De legibus et consuetudinibus Angliae* ("On the Laws and Customs of England"). The text was later associated with the royal judge Henry de Bracton, a well-known legal scholar and clergyman and he was assumed to be its author.[xx] The text is one of the oldest systematic treatises on the common law and his scholarly work contributed to the development of common law after the 12th and 13th Century.

It was modelled on the Institutiones (Institutes), the 6th Century Roman Legal Classic by Justinian I and shows some knowledge of Roman Law.[xxi] The book exhibits a structural similarity to Justinian's *Institutes* in that Books I, II and III to folio 104a are divided into the law of persons, things and actions.[xxii] However, its character was English. Bracton enlarged the common law with principles derived from both Roman law and Canon law. His work also made use of the Roman concept of natural law and regarded the King as subject to law. He did not suggest any effective remedy for a breach of law by the King but he argued that "counts and barons are the King's masters, who must restrain him if he breaks the law".[xxiii]

Bracton's work became a powerful compilation of case law which came at the end of a period of rapid growth. Bracton abstracted several thousand cases from Court records (plea rolls) as the raw material fo book. The plea rolls formed an almost unbroken series from 1189 and included the writ, pleadings, verdict and judgement of each civil action.[xxiv] His work cited about five hundred

decisions and resulted in forty to fifty manuscripts. His work was also memorable because it displayed much more than the facts and the decision often incorporated the arguments of the parties. It gave English law one authority upon many matters which were outside the routine of the practising lawyers of the 13th, 14th and 15th centuries.[xxv]

Bracton introduced the common law approach of Mens Rea, the intention to commit the crime in English Law. His work was strongly filled with canonist concepts and in his book, *On the Laws and Customs of England,* he greatly emphasized on the culpable state of mind while fixing criminal responsibility.

Bracton had an impact on judges as well as lawyers in his time. He stressed the king's need to choose capable men to be judges since they were acting in his place. Bracton chose the words of Ulpian (Pandects 1.1.1) to describe the legal profession: \"Ius dicitur ars boni et aequi, cuius merito quis nos sacerdotes appellat: iusticiam namque colimus et sacra iura ministramus.\" (Law is called the good and just art, whose priests we are deservedly called: for we worship Justice and minister the sacred laws.)[xxvi]

EARLY STATUTE LAW

The *Magnum Concilium* or the greater *curia regis* was the platform where, the King sought consultation and consent from the nobility and the senior clergy in major decision. Eventually this system of consultation and consent broke down and it often became impossible for the government to function effectively. John, who was king from 1199 to 1216, aroused such hostility from many leading noblemen that they forced him to agree to Magna Carta in 1225. The Magna Carta promised the protection of church rights, protection for the barons from illegal imprisonment, access to swift justice, and limitations on feudal payments to the Crown. John's refusal to adhere to this charter led to civil war (First Barons' War).[xxvii]

The *Magnum Concilium* evolved into the Parliament of England. Initially, parliaments were mostly summoned when the King needed to raise money through taxes. Following the Magna Carta this became a convention. But once again, Henry III refused to abide by this tradition and faced severe rebellion from the English noblemen, particularly from one Simon de Montfort, Earl of Lanchester and in 1258, Henry was forced to swear and uphold the Provisions of Oxford, superseded, the following year, by the Provisions of Westminster. This effectively abolished the absolutist Anglo-Norman monarchy, giving power to a council of 15 barons, and providing for a thrice-yearly meeting of Parliament to monitor their performance.

Henry obtained a papal bull in 1263 exempting him from his oath and both sides began to raise armies a[illegible]1264, Henry and his son Prince Edward were defeated and taken prisoner by Montfort's army.

Following Edward's escape from captivity, Montfort was defeated and killed at the Battle of Evesham in 1265.[xxviii]

Edward I (1272-1307), successor of Henry III, the roles of the Parliament in the government of the English kingdom increased, as Henry was keen to unite his subjects in order to restore his authority and not face rebellion as was his father's fate.[xxix] Edward I has been called the English Justinian because his enactments had such an important influence on the law of the Middle Ages. Edward's civil legislation amended the unwritten common law and it remained as the basic statute law for centuries.

Four of Edward's statutes revolutionized the existing legal system in England. The first Statute of Westminster (1275) made jury trial compulsory in criminal cases and altered land law. The Statute of Gloucester (1278) limited the jurisdiction of local courts and extended the scope of action for damages. The second Statute of Westminster, a very long enactment, instituted four main changes:

- It confirmed the estate tail in land
- It made land an asset for purpose of paying of paying judgement debts (i.e. those debts judged to exist by a court)
- It liberalized appeals to high circuit courts and
- It improved the law of administration of assets on death.

The statute of 1920 barred the granting of new feudal rights, except by the crown, and made all land held in fee simple (land inherited) freely transferable by denying interference any relatives or feudal lords.

The statutes issued prior to the statute of 1290 are sometimes treated as common law rather than statute law. These laws tended to restate the existing law or give it a more detailed expression. Thus, a new law was never made. The judges of those times did not always adhere closely to the words of the statute but tried to interpret it as how they would interpret the general law on that subject. Some statutes were passed but never put into force, while other seem to have been quietly ignored. But, it is clear that, well into the 14th century, the royal council was able to dictate new remedies and to preserve existing remedies.[xxx]

EMERGENCE OF LAWS OF EQUITY

The laws of equity developed because legal rules cannot be formulated to deal adequately with every possible contingency and their mechanical application can sometimes result in injustice. Until the end of the 14th century, the law in England was relatively fluid and informal. But as the law became firmly established, strict rules of proof began to cause hardship. Visible factors of proof, such as the open p[illegible]ion of land and the use of wax seals on documents were stressed and thus, secret trusts and informal contracts were not recognized.

The parties who had lost a suit on one of these grounds or who could not obtain an appropriate writ petitioned the king for an order compelling his to do as morality and good conscience. The King used to transmit such petitions to his highest administrative official, the Chancellor. The Chancellor dealt personally with petitions for relief, probably as early as the reign of Richard II (1372-99).

The Chancellor's special procedure for dealing with these petitions was fundamentally different from that of the royal courts. Proceedings began with bills being presented by the plaintiff in the vernacular language, not Latin; the defendant was then summoned by a writ of subpoena to appear for personal questioning by the Chancellor. Refusal to appear or to satisfy a decree was punished by imprisonment. Because the defendant could file an answer, a system of written pleadings developed.[xxxi] The defendant had to make a sworn statement to the chancellor about the whole affair and give answers under oath to his questions. The Chancellor decided all matters of fact and law by himself without a jury, and the decision he eventually reached was executed by a process involving heavy penalties.

The Chancellor decided each case on its merits and had the right to grant or refuse relief without giving reasons. Common grounds for relief, however, came to be recognized. They included fraud, breach of confidence, attempts to obtain payment twice, and unjust retention of property. After 1529, the first secular Lord Chancellor, Thomas Moore, was appointed, equity began to follow the model of the Common Law and developed rules and doctrines, originally in a very fluid and uncertain form, to which the Chancellor had recourse when similar fact situations arose. Regular publication of the Chancellor's decisions began towards the end of the 16th Century and before long he felt almost as bound by precedent as the judges of the Common Law courts.

Gradually, his activity came to be seen as being more and more *judicial* and his office became separate Court of Chancery. After 1730, he was accompanied by his immediate subordinate, the Master of the Rolls. In the 18th Century it was beyond doubt that 'equity' was as much fixed by decisions and made itself part of the Common Law.[xxxii]

INNS OF COURT AND THE YEARBOOKS

During Edward I 's reign , the office of judge was transformed from a clerical position into a full-time career. Admission to the bar was made conditional on the legal knowledge of the applicant. Law thus began to emerge as a profession, which required permanent institutions and some kind organized legal education.

As the legal profession grew, the more experienced barristers were admitted to the dignity of serjeant-at-law and later banded together with the judges, who were appointed from their ranks, at Serjeants' Inns in London. There, burning legal problems were informally discussed, and guidance was given to a[illegible]erning the decisions of actual or likely cases. The four Inns of Court (Gray's Inn, Lincoln's Inn, Inner Temple and Middle Temple) evolved from the residential halls of junior barristers to become the

bodies of officially recognized as having the right to admit persons to the bar. Education consisted of attending court, participating in simulated legal disputes (moots), and attending lectures (readings) given by senior lawyers.

Bar students, therefore, had to make notes in court of actual legal arguments in order to keep abreast of current law practices. These notes varied widely in quality, depending on the ability of the notetaker and the regularity of his attendance, and starting in about 1280 they seem to have been copied and circulated. In the 16th century they began to be printed and arranged by regnal year, coming to be referred to as the Year Books.

The Year Book reports were usually written in highly abbreviated law French. They did not always distinguish between the judges and barristers and often simply referred to them by name. The actual judgment also was often omitted, the interest centring rather upon the arguments presented by barristers in court. Although previous decisions were not generally binding, great attention was paid to them, and it appears that the judges and barristers referred to earlier Year Books in preparing their cases. Thus, case law became the typical form of English common law.[xxxiii]

RISE OF PREROGATIVE COURTS

The accession of Henry VII in 1485 was followed by the creation of a number of courts that stood outside the common law system. This act mirrored developments in Europe where Renaissance had begun a new era of learning amongst the people, which promoted the growth of bureaucratic written process as opposed to oral proceedings of the customary common law. The newer courts were described as prerogative courts because they were identified with the royal executive power (though some had statutory origin). [xxxiv]In other words, a prerogative court is a court through which the discretionary powers, privileges and legal immunities reserved to the sovereign were exercised.

By the time of the Reformation in the 16th Century, the crown's prerogative powers had grown considerably. Certain courts had developed out of the king's council (Curia Regis) to give the king's relief in those cases in which the common law courts had failed to provide adequate remedy or in those areas which the court did not deal. Those courts became permanent specialized institutions, such as the Court of Star Chamber, which dealt with offences against public order; the Court of High Commission, which was established to enforce the Reformation settlement; the Court of Requests, a poor-man's court that handled small-claims cases; and the Court of Chancery, which was essentially a court of equity.[xxxv]

The Council of the North at York was set up by statute in 1537, and the Council of Wales and the Marches at Ludlow were confirmed by statute in 1543. The Court of Requests was given regular status b[illegible]dministrative action in 1493. The Court of Star Chamber, once thought to have been given its authority by a statute of 1487, is now believed to have evolved from the royal council, which began

acting as a judicial committee in the early 16th century.The High Court of Admiralty developed under royal prerogative in the 14 the Century and by the statute of 1391, it was confined to cases that arose at sea. All these courts competed for business with the existing common-law courts, which led the latter to develop new remedies that proved more effective and expeditious than those previously available, particularly with regard to the action of trespass.[xxxvi]

The costs of procedure were lower than in common-law proceedings and it was designed to accommodate small civil claims by the poor and fines and sentences of imprisonment were the usual punishment.[xxxvii]

By the early 17th Century, the prerogative courts had provoked oppositions from the common-law courts, as they had made the common law courts lose business and the common law courts saw any further extension of their jurisdiction as a threat to the survival of common law. This opposition reached its zenith at the time when the parliamentary forces were enraged at the determination of Charles I (reigned 1625–49) to govern without Parliament and at his use of the prerogative courts to enforce his religious and social policies. Consequently, with the exception of the Chancery, which had developed important procedures in the areas of trust with which the common-law courts refused to deal, most prerogative courts were either abolished by the Parliament or ceased to exist after the Restoration of the monarchy in 1660. The sole prerogative court to survive the Restoration in some form was the Court of Requests, which was itself abolished by the end of the 17th century.

CONTRIBUTIONS OF SIR EDWARD COKE

An account of the development of common law would be incomplete without mention of Sir Edward Coke. Sir Edward Coke was an English Barrister, judge and later, opposition politician and is considered to be the greatest jurist of the Elizabethan and Jacobean Eras. As a barrister he took part in several notable cases, including Slade's Case, a precedent in the law of contract, before earning enough political favour to be elected to Parliament, where he served first as Solicitor General and then as Speaker of the House of Commons.[xxxviii]

As Chief Justice, Coke restricted the use of the ex officio (Star Chamber) oath and, in the Case of Proclamations and Dr. Bonham\'s Case, declared the King to be subject to the law, and the laws of Parliament to be void if in violation of \"common right and reason\".[xxxix] He disapproved of legislation by proclamation, of dispensation from the law in individual cases, and of the mushrooming jurisdictions of the prerogative courts. He helped draft the Petition of Right in 1628.[xl] His works were used to justify the right to silence.

During his time as a Member of Parliament, he campaigned for the Statute of Monopolies. The Statute re[illegible]ed the ability of the monarch to grant patents. Coke is best known in modern times for his *Institutes* and his *Reports. The Institutes of the Laws of England,* published between 1628 and 1644

dealt with the law of real property, medieval statutes, criminal law(pleas of the crown) and jurisdiction of the courts.[xli] The series of legal treatises are recognized as a foundational document of the common law and they have been cited in cases decided by the Supreme Court of United States[xlii], such as *Roe v Wade**[xliii]*** and *United States v. E.C. Knight Co.**[xliv]***Coke's *Institutes* are quoted at some length for their definition of monopolies.

Coke's 11 volumes of Reports were published between 1600 and 1615 and two posthumous volumes followed.[xlv] The *Reports* were an archive of judgements from cases he had participated in, watched or heard of.[xlvi] Coke commented rather than reported and the volumes supply a copy of the court record of each case. It was the only formal series of collected law cases available at the time and his reports formed the main source for the citation of cases for many years. Thus, his greatest works restated the common law in acceptable form and did much to preserve it.

FURTHER GROWTH OF STATUTE LAW

In the latter part of the 16th Century, the king exercised his power to issue proclamations to invoke emergency measures, to establish detailed regulations, especially on economic matters and to grant royal charters to trading companies. The Parliament, by virtue of its lawmaking powers, established the king's supremacy over the Church of England. Statutes also regulated exports and imports, controlled farming, and defined unfair competition.

Other important statutory innovations during these years were the Statute of Monopolies (1623), which made monopolies contrary to the law and a statute of 1601 became the basis of the privileges enjoyed by charitable trusts. The passing of the Poor Laws in the late 16th Century remedied the neglect of the poor caused by the dissolution of the monasteries.

In 1623-24, the principle of limitation of actions by lapse of time was introduced into the law of contract and tort. During the time of Commonwealth (1649-60), many reform projects were drafted. These reforms included supplying counsel to prisoners, modernizing the land and law procedure and permitting civil marriages. These reforms were carried out into action during the 19th century.

An another outstanding enactment was the Statute of Frauds in 1677. Passed in the later Stuart period, the statute was the result of the response to the growth of literacy and the prevalence of perjury and fraud. The Statute required wills and contracts for the sale of goods and lands (of more than a certain amount) to be in writing. Thus, these statutes, though in their unrefined jurisprudence, are the predecessors to the modern contract and tort laws.[xlvii]

DEVELOPMENT OF THE LAW OF TRUSTS

The main development in the latter part of the 17th Century was in the law of trusts. It was a common practice in the English feudal society for a vassal to transfer his land to a 'trustee'. This system was usually followed to evade feudal taxation, but it also enabled wills of land to be made. "Death Duties" were also to be paid by a man's heirs if he died while he was the legal proprietor. However, this could be avoided if the land was transferred to another person prior to that person's death. The use of the land was transferable as long as the transferee of such a use or '*trust*' observed the owner's wishes regarding the land while the vassal lived. The beneficiary of such use usually stayed on the land as the apparent owner, though the trustee held the legal title. The common law courts recognized the trustee as the only owner, so the beneficiary had to go to the Court of Chancery to remedy this situation and thus, slowly the Chancellor refined this principle into very detailed rules and came to be utilized extensively.

Gradually, in the reign of Richard III (1483-85), a statute was passed which allowed the beneficiary to transfer the property and in 1536, the statute of Uses revested the legal title in the beneficiary. After the passing of this statute, the beneficiary was considered to be the legal owner of the land and thus, became liable to feudal dues and ultimately, this maximized the crown's income from feudal taxation.

Following the statute, old-style uses could not be created. But it was revived from the late 16th century as the modern law of trust in the Court of Chancery, first for trusts involving money and leases and finally for trusts of land itself. It aimed to separate the legal and beneficiary titles but it was adapted to many other ends, such as giving property to clubs and other incorporated bodies and to churches. In modern times, the law of trusts can be described as one of the most important features to the style of Common Law.[xlviii]

INFLUENCE OF BLACKSTONE

Sir William Blackstone had an extraordinary influence in the development of common law. Born in 1723, he became the first person to lecture on English Law at an English University. His most influential work, the *Commentaries on the Laws of England,* published between 1765 and 1769*,* is considered to the leading work on the development of English Law. It was the first methodical treatise on the common law suitable for a lay readership since at least the Middle Ages. It was an explanation to an obscure law and Blackstone sought to make it seem rational, just, inevitable that things should be how they were. The work is divided into four volumes, *on the rights of persons, the right of things, of private wrongs* and *of public wrongs.*

Of the Rights of Persons dealt with family and public law; *Of the Rights of Things* gave a brilliant outline of real-property law; *Of Private Wrongs* covered civil liability, courts and procedure; and *Of Public Wrongs* was an excellent study of criminal law.

The shortcomings of the *Commentaries* were offset by its style and intelligibility and lawyers and laymen alike came to regard it as an authoritative exposition of the law. In the following century, the fame of Blackstone was even greater in the United States than in his native land. After the American Declaration of Independence, the *Commentaries* became the chief source of knowledge of English Law in the New World.[xlix]

INFLUENCE OF JEREMY BENTHAM

Following the social turmoil of the French Revolution (1789) and the economic upheaval of the Industrial Revolution, there were many demands for reforms to modernize the law. Jeremy Bentham spearheaded this reform movement and was determined to reform the whole law along radical lines. Bentham disliked the picture of the law that he had heard presented in Blackstone's lectures and he worked to make law less technical and more accessible to the people.

Bentham is best known for his work, *An Introduction to the Principles of Morals and Legislation,* published in 1789. By virtue of his utilitarian analysis, he advocated two basic changes in the legal system: 1) In order to achieve the greatest happiness for the greatest number, he advocated that legislators, rather than courts, should make the law; and 2) He advocated that the aims of law should vary with time and place. He said that mankind was governed by two sovereign motives, pain and pleasure; and the principle of utility recognized this state of affairs. He deduced from the principle that, since all punishment involves pain and is therefore evil, it ought only to be used " so far as it promises to exclude some greater evil".

The fame of the Principles spread widely and rapidly. Bentham was made a French citizen in 1792, and his advice was respectfully received in most of the countries of Europe and in the United States. Although he wanted most of all to be allowed to draw up a legal code for his own or some foreign country, his practical influence was far more indirect and derived largely from the diffusion of utilitarian ideas during the 19th century.[l]

THE JUDICATURE ACT

The Judicature Act of 1873 was an act of Parliament that created the Supreme Court of Judicature and also enhanced the role of the House of Lords to act as a court of appeal. The Act was a bold attempt to reduce the confusion and the consequent inefficiency of the courts that had specific powers of jurisdiction throughout England.[li]

By the Act of 1873, the Court of Chancery, the Court of the King's or Queen's Bench, the Court of Common Pleas, the Court of Exchequer, the High Court of Admiralty, the Court of Probate and the Court of Divorce and Matrimonial Causes were consolidated into the Supreme Court of Judicature. It

was subdivided into two courts: the "High Court of Justice" with original jurisdiction and the "Court of Appeal".

The objects of the act were threefold:

- To combine the historically separate courts of common law and equity;
- To establish for all divisions of the new Supreme Court a uniform system of pleading and procedure; and
- To provide for the enforcement of the same rule of law in those cases where equity and common law recognised different rules.

Many legal historians today point to the act of 1873 as the first step toward the modernization of the courts of England and Wales. The Courts Act of 1971 continued the modernization with the abolition of quarter sessions and assizes.

CONCLUSION

There is no doubt that the invasion of the Normans in 1066 was indeed a game changer in the field of law. New customs and new systems evolved by virtue of the invasion. The establishment of an early centralized judiciary and the unification of the court system by reforms resulted in the growth of a law common to the entire realm. The Common law system developed gradually and new rules and techniques were introduced every century. The establishment of the Inns of Court and the English Bar further established law as a profession. These advancements further rooted the development of the common law system in England and thus, England was inoculated against the Continental Law.

The legal system, propagated to the world by the British Empire, now is widespread throughout the world. About one-third of the world's population live in common-law jurisdiction or in systems mixed with civil war including the United Kingdom, India, the United States (both the federal system and 49 of its 50 states), Pakistan, Nigeria, Bangladesh, Canada (both the federal system and all its provinces except Quebec), Malaysia, Ghana, Australia, Sri Lanka, Hong Kong, Singapore, Burma, Ireland, Israel, New Zealand, Papua New Guinea, Jamaica, Trinidad and Tobago, Cyprus, Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Marshall Islands, Micronesia, Nauru, Palau, South Africa, Zimbabwe, Cameroon, Namibia, Liberia, Sierra Leone, Botswana, Guyana, and Fiji.

[i] 2nd year Student at the National University for Advanced Legal Studies (NUALS) Kochi.

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1 COMMENT

Ash November 7, 2019 at 1:50 pm

This article is amazing! My Legal History Exam is in a few days and this was such great revision on virtually all the content I need to know. Thank you so much.

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