The development of Anglo-Saxon juris-prudence

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THE DEVELOPMENT OF ANGLO-SAXON JURISPRUDENCE.

The purpose of this thesis is to point out the development of Anglo-Saxon jurisprudence from the migration of the Angles and Saxons down to 1066. The law as set out here has been gathered from costumals, chronicles and charters, which although fragmentary, contain data sufficient to make the general legal principles clear and give to the student material enough for the purposes of historical inquiry.

The Teutonic occupation of Britain was a migration of folk that came from a settled country, where men lived in communities. (1). So the Angle-Saxon in England must have started with the same amount of organization that he possessed on the continent. (2). Accordingly the Anglo-Saxon had quit the pastoral life for life in fixed seats or communities organized into entities bound together by the ties of kindred. (3). The Angles and Saxons, and Jutes looking upon themselves as one people established a form of government like that which they knew while on the continent. (4).

1. THE ADMINISTRATION.

The whole general administrative machinery developed in a continuous and permanent fashion so as to fulfill the needs of the folk in preservation of morals and the administration of justice. Natural divisions of family and kin made way for artificial units known as the "tun", "scir", "hundred", and nation. A view of these administrative bodies with their organization and functions is necessary to an understanding of
the customals and will demonstrate the form of Anglo-Saxon government. Before proceeding with the law, the instruments by which the laws were made and executed will be described in the present chapter which treats of the family, hundred, "scir" and nation, and of the administrative officers of the land.

2. THE FAMILY.

The earliest fiscal unit in the Teutonic state was the family, which in organization was formed of a number of individuals treated as a collective entity. It formed a complete body distinct from the individual members. (5). The corporate nature of this body which was possessed of property rights, police and juridical powers was recognized at an early date when the laws made provisions for admission into the family so that strangers and men without a family could be connected with the family and partake of its social, economic and judicial privileges. (6). This idea of corporate existence in the family was carried through the development of the kin, tribe and nation. In legal contemplation the family was a definite body to which access was difficult; and it could not be forsaken or dissolved without special renunciation. (7). Misconduct on the part of a member of the family comprised the corporate entity and rendered it liable to the injured family. (8).

The aim of the family was mutual protection in the maintenance of natural rights. (9). A man's mainstay for the exaction of fines, the swearing of oaths, provisions in case of destitution, watching over his offspring after his death, was in his father's family. (10). Every person male or female
belonged to the paternal kindred. (11). The family and later the kindred regulated protection of the individual in regard to life, responsibility for misdeeds, participation in family affairs, wardship and marriage, and land settlement. (12).

Caesar noted that land holdings in common were divided according to families. (13). The mark, a community of families controlled definite tracts known as "mearc" land, while place names throughout England show that there were early settlements effected on the principle of allotment. (14).

The head of the family collected revenues and went to council; (15) he took up the enmities of his kin, thus forming the nucleus of a military. (16). With the family, the natural state of the free and unfree existed; for there the father was free and the wife and children were unfree as to the father. (17) Through the emancipation of the son the individual family became the basis of the kindred. (18). The son went forth and set up his own individual household and thus the family became the source of the kindred and the nation. (19).

3. THE HUNDRED.

The typical Anglo-Saxon hundred was a political organization made up of one hundred, or one hundred and eleven families for the purpose of gathering the host, collecting tribute and administering justice. (20). The idea was to centralize society by joining the family heads in a community in an artificial unit. (21).

The responsibility of the hundred was corporate according to the laws of Alfred, which made the hundred liable for
one-third of the "wer" in cases of aggravated crime. (22). But the hundred was also a territorial unit calculated according to the heads of the families. (23). Every man for legal purposes was to be located territorially so as to further police regulations and the keeping of the King's peace. (24). A domicile was thus provided for every man in the hundred so that he could be presented to the court when accused. (25). So the hundred was nothing more than an artificial unit; and fixed individuals in a domicile so that justice could be obtained and the King's peace maintained. Eadgar made the hundred responsible for crimes and breaches of peace by requiring the hundred man to raise the hue and cry against wrongdoers. (26). The hundred men were to do justice to the wrongdoers. If the offender was a thief, the "ceapgeld" was paid to the owner of the cattle and the rest was divided into two parts, one half to the hundred and one half to the lord. He who neglected the peace was fined 50 pence for the first offence; 60 pence for the second and one half of all he possessed for the third offence; while if he persisted in conniving at evil doing, he forfeited all that he had and became an outlaw. (27).

The presiding officer was the hundred man whose duty it was to summon the hundred "mot", hue and cry, and the "scir mot". The early hundred man was elected, but in the later period the feudal element controlled and he was appointed by the noble to whom the hundred belonged. (28).
4. THE SHIRE.

The early shire has been described as a union of two or more "mearcs" for religious and political purposes, (29), while according to Stubbs, the shire was a cluster of hundreds. (30). The shire became a definite territorial division with parishes, hamlets, liberties, wherein "borne" and "frith" were established by the witan to hold men in the same restrictions and responsibilities that had bound them to the natural family unit. (31).

The officers in the scir were the Ealdorman, (32), the reeve, and the bishop. During peace, the Ealdorman held court in the "scir mot", the head of the local judicial system of which the "mearc mot" was the foundation. (33). In time of war, the scirmen went to the host under the Ealdorman. (34). The Ealdorman and bishop together represented the scir in the witan, while the reeve represented the witan and the king in the shire as the administrative officer who executed justice and secured the rights of the king. (35). The counsellors of the scir were the freemen who declared the report of the shire. The judges were the folk assembled in the "mot".

5. THE NATION.

The union of scirs was the nation. At its head was the King who appeared as the representative of the unity of the race. The chief executive power was the national council, the "witenagemot", a body made up of lords ecclesiastical and secular. Each of the seven early kingdoms had its "witenagemot". The national council did not have its rise until
Wessex annexed the other kingdoms. (36). The first example of national unity was set by the church in its ecclesiastical council perfected by Theodore of Tarsus.

6. THE WITENA - GEMOT OR NATIONAL COUNCIL.

The witenagemot, which appears as "micel gemot,"lic gemot", was a development of the Council of the Nation as described in Tacitus. At an early period it was made up of the freemen of the Nation, but in King Ini's time it had become representative and was made up of arch-bishops, bishops and abbots, priests and deacons, sheriffs and ealdormen. In truth it was a council of the lords ecclesiastical and lords secular. (43).

The powers of the witenagemot were numerous according to the authentic records dating from Aethelbert's reign in 596–605 to Eadward. (44). The wisemen considered every public act which could be authorized by the King. They deliberated upon new laws to be added to the "falcriht". (45). During war, they perfected alliances and at the end of the war, they conducted peace treaties.

The Kings fate lay in their control, for they not only elected the King, but they deposed him when he usurped too much power. (46).

According to Canute's law they appointed prelates to vacant sees and levied taxes for secular and ecclesiastical institutions. (47). In judicial capacity they converted boc land into folc land and vica-versa; adjudged lands forfeited
to the King; and sat as supreme court in all civil and criminal cases. (48).

The chief powers retained were legislative and judicial, while all executive power centred in the King and the fiscal officers of the administration. The trineda necessitas and rents of the public lands were charged by the witenagemot for public expenses. Later the witenagemot possessed extraordinary taxing power as evidenced by imposing Danegeld and ship geld. So two shillings on every hide raised the Danegeld, while a contribution or a ship and equipment was levied upon a scir. (49). In Aethelred's time the greatest power lost was the control of the public lands which came to be in the King by the fiction that all lands were in the royal prerogative. (50).

The acts of the witan were a series of treaties of peace between all the associations, secular and ecclesiastical, that made up the state. (51).

7. OFFICERS IN THE ANGLO-SAXON ADMINISTRATION.

The King:- The first sovereign ruler of the Anglo-Saxons was Bretwalda, treated by Bede as a war chief, but now believed not to have been elected generalissimo of the Saxons. (52). Cerdric of Wessex who came up to the leadership in 579 A.D. was the first Anglo-Saxon ruler to whom the term King was applied (53), but by the seventh century the word King was used repeatedly in the laws to designate the head of the race. (54).

During the period ranging from the sixth to the eleventh century the Kings prerogative grew and widened so that many
regalia were in the crown. The idea that peace of the nation was the King's peace arose in Ini's reign and has persisted to this day. As conservator of the peace, the King called the army in time of war; he maintained the peace of the high roads of commerce by the use of guards placed in each district and along the coasts. (55).

The King's person and estates were protected in his private "grith" or peace which extended three miles, three furlongs, three acres, nine feet and nine barleycorns each direction from his "hus". (56). Anyone who fled to this "grith was allowed nine days grace. (57). He who broke the King's hall was liable to any doom which the King might decree. (59). Murder in the King's "tun" made the offender liable to fine which was payable to the King. (60).

The law making treason a capital offense (61) shows a distinct development, for the King had anciently a money value; the "wer" which was personal and in his kindred, and the "cynebot" the price of royalty, which was in the folk. (62).

The King was liable for the offenses of his servants. If his carpenter or courier slew a man, he paid one-half the "wer". (63). In turn, his servants were his and injuries to them incurred fines which were payable to the crown. So Aethelbert and his witan decreed that anyone who slept with the King's maiden should make 50 sc. "bota". (64). If she were a mere grinding slave "bot" was only 25 sc.; but if she were third class then "bot" was 12 sc. (65).

The King's permanent functions were priestly and judicial, while the military was temporary. (66). He called the assembly
of the witenagemot and sat at its head where he recommended grave causes. (67). In judicial capacity he sat as supreme judge over all subsidiary courts. (68). After the people has exercised the customary laws they called upon the King to execute their judgments. Whenever the law proved too heavy, a subject could seek mitigation of it from the King. (69). Ultimate appellate jurisdiction was in the King, but no one was to call upon the King before he exhausted the power of the lower courts. (70). Pardon of the offenders was in the royal prerogative. (71).

The laws declare the King to be the guardian of the stranger. (72). So when a stranger was slain, the King had two-thirds of the “wer”; the son or relatives of the slain the other third; but if there were no relatives, the King had half and the lord half. (73). Eadward the Confessor’s law expressly states that the King was the guardian of the Jew. (74).

An important regalia in the crown was the coinage and the fixing of weights and measures. Eadgar called in the old and issued a new coinage in 975. (75). Aethelred strictly enjoined other moneyers beside the King; there was to be but one moneyer and but one money to pass through the Kingdom, one measure and one weight. (76).

The source of revenue were voluntary gifts, a share of booty gained in war, fines from offenders, forfeited lands and treasure trove. (77). The voluntary gifts were later exacted as regular taxes. (78).

The early King was one of the people, his lands were
private but by Cnut's time, the King was by a pure fiction owner of all public lands. (79). Aelfred and Cnut increased the number of royal vassals and by so doing augmented the power of royal and noble jurisdiction. Cnut arranged the Kingdom under four landed earls who by new investiture transmitted their authority to their children and by sub-infeudation really held in feudal tenure. (80). Another usurpation of authority that increased the King's prerogative was Cnut's practise of calling up suits by certiorari which had not exhausted the judicial power of the lower courts. (81). Such assumptions of power show a tendency toward over centralization in the crown.

8. THE EALDORMAN.

The dignitary next in order to the King in the Anglo-Saxon administration was the ealdorman who acted as the principal judicial and executive officer in a "scir". (82). The office was appointive for a life period throughout most of the Anglo-Saxon period, but in Cnut's time the office tended to become hereditary. (83). The placing of earls over several counties subordinated the ealdorman and lessened the dignity of his office.

The ealdorman's duties were to hold "scir mot" semi-annually where he and the bishops expounded both the law of God and of man. (84). Internal regulations and the functions of the high police were in this office as well as the guidance and the supervision of all police administration. (85). In court the ealdorman possessed full power of plea:
and proceeding to execution in civil and criminal cases. (86).
Under Aethelred, the Ealdorman's house was made a sanctuary
and any wrongdoer who fled to it had three days of respite. (87).
If the peace was broken there the offender paid a fine to the
owner. (88). The ealdorman was admonished to deal squarely or
lay himself liable to authority; he was to execute the law or
lose his office. (89).
9. THE GEREFA.

The gerefa or summoner, the common Anglo-Saxon name
for an administrative and executive officer, appeared in all
courts in various degrees of importance. (90). The "cynega
gerefa" administered sac and soc in the King's private lands and
sat in the appellate court, (91), the "wiv-gerefa" was the ward
of a manor; the "tun gerefa" was reeve of tun, vill or farm.
(92). But the typical reeve as treated in the laws was the
"scir gerefa", the head of the "scir gemot", the county court or
"folc mot". (93).

The reeve's duties were manifold. As judge in doom and
suit, the reeve was ordered to judge righteously, to fear not
to pronounce folc right, and to have a term for every suit. (94)
Every reeve held court once in four weeks so that all could
have justice. (96). So the reeve had a share of the executive
prerogative. (97). He executed all exactments, (98). and the
abotts on secular occasions were under his protection. (99). In
his executive capacity he took cognizance of the customary laws
as expounded by the folc in council. (100). As principal
fiscal officer the reeve levied fines and collected taxes and
heriots, and seized forfeited lands. (11). During Aelthelstan's reign the reeve collected church dues; later Eadgar, Cnut and Aethelred gave the reeve power to levy fines and inflict a heavy penalty for refusal to pay. (112). The "scir gerefa" as summoner not only acted as judge, but he was a juryman or witness of all bargains and sales of cattle so that he could warrant them. Aethelstan decreed, "let no man exchange any property without the witness of the reeve." (113). So Eadmund declared the law to be that no one should bargain for and buy strange cattle without the witness of the reeve. (114). Heavy penalties bound the reeve to performance of these duties. Removal from office and the payment of fines follow disobedience. (115). The gerefa who convicted at theft or at the escape of a thief was to forfeit all that he had. (116). Should he fail to judge fully according to the law, another reeve took his office. (117). The office was elective in early times, but following the rise of the King's royalty and the landed lords, it became appointive by the crown or the lord who owned the hundred. (118). Fines, gifts, and estates were in this office, and a share of the booty obtained while leading the scir men in the "fyrd" supported the reeve ship. (119).

10. ECCLESIASTICAL ADMINISTRATION.

The organization of the church grew up side by side with the state administration; "scirs" became archdeaconries; the hundreds, the deaneries of a later age; the township was the sphere of duty of a single priest; the Kingdom was the diocese of the bishop. (120). So Theodore of Tarsus besides uniting
England into a spiritual kingdom, placed a priest as representative of church organization in every township or bundle of townships. (121).

The Anglo-Saxon state recognized the bishop as one of its officers (122) whose duty it was to assist in the administration of justice, to guard against perjury, to superintend the ordeal, to guard against fraud, and to act as custodian of measures and standards. (123). So when the gerefa could not do justice and maintain peace in his jurisdiction, the bishop was especially commanded to enforce the fines which the King and the witan had apportioned to that officer. (124). Throughout the present thesis more of the concurrent action of the church and the state in the administration of justice will be noted.
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43. Kemble Vol.11,p.200 Preamble to Ini's Laws.
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69. Eadgar 2.
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71. Ini 6, 36; Aethelstan, 4, 5.
72. Aethelstan 14; Eadward, 12; Cnut, 40.
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THE LAW OF CRIME, TORTS, AND PROCEDURE.

The body of the Anglo-Saxon which concerns crimes and torts and the processes of the law in bringing offenders to justice is considerable in extent, in fact, it comprises most of the known costumals made by the Anglo-Saxon kings and their witenagemots. This part of the law is significant because it throws light upon the character of the old Anglo-Saxon and portrays his natural genius for government. The crimes legislated against we know must have been common enough to require legislative attention. The varied form and the rapid development of the law make clear the struggle that the authorities had as they set about to organize a system of law under which men could be constrained to keep the peace. The present chapter, devoted to the law of crimes and torts together with the law of procedure will aid the student to an understanding of the Anglo-Saxon in England and the condition of his government.

I. THE BLOOD-FEUD.

The blood-feud, a corollary of the natural right to self-preservation, was nothing less than the right to wage private warfare; it was the rule of the strong fist demanding retribution for crimes and injuries against the kindred. In theory, a crime was not against the individual, but against the kindred of the individual.

Within the kindred there was no feud, for the entity did not punish itself. There was no provision in custom for the punishment of the man who slew his brother. This is well portrayed in Beawulf when Haethelyn by his arrow brought down Hreth-
el's son. He missed the target and shot his brother. (1). "One brother killed the other with bloody dart, that was a wrong past all redemption. Anyway and everyway it was inevitable that the aetheling must quit life unavenged. The father's grief was likened to that of an old man who saw his young son ride on the gallows tree, forced to do nothing but wait while his son became food for ravens. (3). The father could not requite the feud though the slain son was never so beloved by him. (4). The grandsons of Ongentheow in Beowulf's paternal kindred had been outlawed; they were "wraec-maegas" (5) and they had cast off all relations with the Scyldings. They came to Heardred's court and while his guest, Heardred was slain by one of them, yet the slayer left the hall unavenged. (6). Murder within the kindred led to outlawry. Eadmund, a murderer, forfeited his tribal rights and Weohstan, a kinsman carried off his armor. (7) Although outlawed, the only vengeance that overcame him was "wyrd". Avengement followed Eadmund, but it came in the open fight. (8) In all the Anglo-Saxon there was no provision for the feud against the murderer who slew his kinsman. As late as Henry the First, it was enacted that he who slew his brother or either of his parents was to make penance worthy before God. If the kinsman of the dead man demanded compensation or vengeance, wisemen were to compound the judgment. From such a law it is apparent that the homicide of a kinsman was free from judicial interference. The punishment was spiritual penance under an ecclesiastical sponsor, except when there was an aroused and angered kin that demanded compensation. (9)

Early laws or costumals regulated the blood feud. Beginning with the laws of King Ini, there followed along series
of enactments attempting to curb private warfare and establish the king's peace. The feud was only to be taken to when compensation or justice was denied by the wrongdoing kin. The real principle that brought about the control of the feud was the fastening of all responsibility for crime upon the individual and the consequent emancipation of the kindred. Legislation during Alfred's time shows the entering wedge of the imperial power in its struggle to break down the feud. So the man fought without appealing to the authorities in Alfred's time was liable to severe punishment. (10)

He who knew that his foe was at home sitting was forbidden to fight before he had demanded justice. If the accuser besieged his enemy, he was to give him seven days before attacking him; and should the besieged surrender and give up his weapons after seven days, he was to have thirty days respite. Should the foe take to a church, he was to have seven days, but if the accuser could not besiege the foe therein, he could ride to the ealdorman and ask aid of him. If the ealdorman refused to aid him then he was to appeal to the king before he fought. So if a man came upon his foe by surprise to find him at home and willing to give up his weapons, he was to be kept safe for thirty days, but if he refused to give up his weapons, he could be attacked. Whoever attacked the foe after he had disarmed himself was to pay "wer" and "wite" besides forfeiting his "maegship". (II) Eadmund enacted that "henceforth anyone who slays another shall bear the feud himself unless he make full "wer within the next twelvemonth". If the kindred wished to forsake him, he was out of feud as long as no member of the kin should feed and harbor him. (I2) Wer, the price of a man, was regularly substituted
for blood in all of the later laws. "Buy off the spear or bear it", was a much used maxim in the time of Edward the confessor.

In spite of the efforts to put down the feud, it persisted in England until a late day. Indican, King of Mercia, marched into the province of the East Angles to avenge the death of Beornwulf, his predecessor. (13) Juulf, a noble thane, was killed and he was avenged by kinsmen who killed the bishop and all of his associates that had encompassed Juulf's death. (14) King William avenged the atrocious murder of these men by ravaging Northumbria the same year. (15) As late as the tenth century it took three counties to put down a feud that was being prosecuted by an angry kindred. (16)

2. THE WERGILD.

The wergild, the price of blood, an institution which aimed to establish society at the least possible sacrifice of individual freedom, is old in the Teutonic race. (17) This institution served to settle disputes when the persons were disposed to settle by the payment of composition. By ini's time, the feud was not to be pursued if the money were forthcoming. The early law shows a fine scale of compensation for all crimes and torts, for then, in legal contemplation, crimes were civil injuries and the idea was to make compensation to the injured kin. (18) Every man whether of high or low degree had his price which was payable to his paternal kindred. But it seems that the wrongdoer was from the first a public enemy; when he injured the kin, he injured a part of the public; after the rise of the King's peace, the offender injured all of the public.
The procedure in the payment of "wer" varied in the different kingdoms. King Alfred ordained that the slayer should pay pledge and man money to the paternal kindred in eight parts and to the maternal kindred in four parts. When this was done, the king's protection was established and all of either kindred's representatives, with their hands in common on one weapon engaged to the mediator that the protection should stand. Twenty one days later 70 scillings were due as pillory fine; in another twenty-one days, "man-bot" was due; twenty one days later the fight "wite" was paid, and in twenty one days more the first payment of the "wer" was made. Then after all the payments had been made, every one was to depart in peace if he desired full friendship. (19)

During Eadmund's reign, the payment of "wer" was made voluntary on the part of the kindred in order to avoid "manifold fightings". The kindred was permitted to disown the offender and thus free itself from the feud. So Eadmund ordained, "If anyone henceforth slay any man, let him bear the feud unless with the aid of his friends, he compensates with the full "wer", be he born as he may. "If his maegth forsake him and will not pay for him, then I will that all the kindred be free from the feud, if afterwards they do not give the culprit food and protection." (20) In Wessex, the pillory fine was first to be paid to the father or son, or brother, or whoever was nearest of kin to the father. On the twenty first day after that "man-bot" was paid; twenty one days later, the fight wite was paid. Then came the first payment of the "wer", which was paid out in regular three week terms. Following these payments, the kin of the dead man fixed a term for the delivery of 40 sheep reckoned at 2 scillings. At the last term a horse was to be given. (20) In respect
to wergild, the wife belonged to her own kindred, for her kindred paid wer for her homicides, while in case of the wife's murder, her "wer" went to her paternal kindred. (22).

The strength of the wergild system is seen in its influence on the church. The ecclesiastics struggled against secular custom for a time, but according to Egbert's dialogues it adopted the system of ranked and graded compensation. Bishops were ranked with princes; priests with thanes. A system of compurgation and gradation of oaths was adopted, and even though opposed to the solidarity and joint responsibility of the kindred, the church submitted to the system of placing money values on ecclesiastical ranks. (23).

3. HOMICIDE.

Homicide, the primal eldest crime, was legislated against early, and throughout the Anglo-Saxon period, the law shows a distinct development as the "witenagemot added provision after provision to the body of law in its effort to control homicide.

Before the eighth century the only punishments were death in the feud or compensation to the injured kindred. "Wer" was the price paid for a man according to his social standing. If any one with a following slew an unoffending man, the slayer paid "wer" as well as "wite", and every man in the party paid thirty scillings. (24). Should the slain be a six-hynde man, every follower paid sixty scillings and the slayer paid full "wer". (25). If the slain were a twelve-hynde man, each follower paid one hundred and twenty scillings and the slayer paid full "wer". (26).
Homicide was aggravated when done in the king's presence or in breach of his peace. (27) The taking of life by poison or witchcraft was punishable by death. (28) So homicide within the church walls was "botless" unless the king granted life in lieu of full "wer". (29)

The punishment varied with rank of the murderer. The owner of the slave who slew a man of an earl's degree paid 300 scilling and gave up the slave. (30) If the slain was a freeman the owner paid only 100 scilling and gave up the slave. (31) Should the slayer escape, the owner was obliged to pay two wergilds for the slave and prove by compurgators that he could not obtain the slayer. (32) The kinless man who murdered was paid for in one half "wer" by his guild brothers, and for the other half he was to flee. (33) If the kinless man was murdered, one half his "wer" went to his guild brothers and one half to the king. (34) If a man struck his slave and the slave lived three nights the owner was not guilty of murder for the slave was his own property, but if the slave died the same day, the owner was guilty of murder. (35) Whoever of freemen that killed a priest, deacon, or mank did penance according to a constituted scale of penitentials and paid the dead ecclesiast's price to the church. (36)

Homicide was justifiable when the slain man was an outlaw or fleeing thief. It was meritorious to kill a thief in the act of theft. Adulterers in the act of adultery could be killed by the father, brother, husband, or son of the woman. So the man could fight for his lord and the lord for his man. A man could fight for his kinsman who had been wrongfully attacked. (37)

The element of intent was first mentioned in the law...
of King Alfred. He who slew another should perish, but if the
killing was by necessity or unwillingly done, as God may have sent the
slain into his hands, the slayer was worthy of life and lawful
"bot" if he sought an asylum. (38)

In case of accidental death, fine was to be paid and the
thing that struck the slain person was handed over to the avenger
of blood as a guiltless thing. Alfred's law contains a provision to
the effect that when a tree fell upon and killed a man, it should
belong to the kindred of the dead man if they took it away within
thirty days. (39)

Accessories were punishable as well as the principal.
Under Eadward the Confessor, a wife, if accused of abetting her hus­
band in the perpetration of his crime, had to clear herself on
oath or at the fire. If she could not clear herself, she was made an
exile and all of her goods were forfeited. (40)

4. THE LAWS CONCERNING THEFT.
The lying was the crime most extensively legislated
against in the Anglo-Saxon period. Every witan increased the body
of law against thieving and sought to put down theft by the in­
fusion of drastic punishments. Under King Æthelbert, thieving
was punishable by tripled and quadrupled fines. The freeman that
stole from the King paid nine fold "bot"; the freeman that stole
from a freeman paid three fold "bot" and the King took all of his
chattels. (41) Every man was to be in a territorial fiscal unit or
security, every kindred was made responsible for the punishment of
its thieves, while every individual was authorized to take a thief dead or alive. The man who seized a thief in the woods and slew him, declared that he slew the man for a thief, and then no "wer" was payable. (42) Should the thief be seized and held, he was liable to death unless redeemed for his full price. (43) The person who seized the thief was bound to hold him, for if a man allowed a thief to escape he was liable to a fine; if the ealdorman let a thief escape, he lost his whole "scir". (44) To encourage the capture of thieves a reward of ten scillings was offered to the captor. (45) So the finder of stolen flesh was to have information money. (46) In the hundred, every hundred man had to join in the hue and cry or join in paying heavy fines if the thief escaped. (47)

The thief who made the payment of "wer" had to make restitution of the goods or be put in slavery to work out his debt. If the offender's family harbored him, it lost its freedom. (48) The wife could clear herself by swearing that she had nothing to do with the stealing. If the thief stole without the knowledge of his household, he paid a fine of sixty scillings; if the theft was with knowledge of his household, all were liable to be sold into slavery. (49)

Harboring a thief was a serious offense against the customary law. The lord who was privy to his theow's theft, forfeited the theow and was liable in his "wer" for the first offense; if he releated the offense he became liable in all of the goods that he had. The king's treasurer or reeve who connived with thieves was liable to removal from office and forfeiture of all that he possessed. (50) The person who harbored the lordless man was obliged to pay for him according to his "wer". (51) The ceorlisc
man who harbored a thief had the burden of clearing himself. (52) 
Harboring stolen goods made the person liable to a heavy fine. (53) 
The compounding of thefts by the receipt of stolen goods or money so as to suppress another's right made the compounder liable in his "wer". (54)

Cnut required every man above the age of twelve to swear that he would not be thief or be in collusion with thieves. (55) 
Under Ini, a boy of ten could be privy to a theft. (56) The man accused of theft was obliged to come to court, for several failures to answer made him liable as an outlaw. Evasion of justice and evil repute were conclusive proof of guilt. (57) Capture after evasion of the law led to mutilation. (58) All esmblances of theft were to be kept down, for every accusation had to be answered. Ini enacted that if afar-coming man journeyed through the woods or out of the highway, he was to shout or blow his horn or be taken for a thief. (59)

Man stealing made a man liable to forfeiture and death. The freeman who stole a man was obliged upon accusation, to clear himself by the required number of free compurgators. (60)

Thieving in a church made the thief liable to fine and the loss of the hand that did it unless he would redeem the hand by the payment of full "wer". (61) Stealing on Sunday, during Lent, or on Christmas, on Easter, or Ascencion Day was punishable by double fine. (62) If anyone in orders stole, he made "bot" as well as "wer". (63)

Thieving by breaking into a man's house any time through the night made the thief liable to death as an outlaw.
if he were killed any time through the night. (64)

The purchaser of cattle had to prove a good warranty when his title was assailed or stand guilty as a thief. If he falsely declared that he bought cattle with warranty, he was a thief and forfeited all of his goods. (65) So stolen property seized in the hands of a chapman had to be proved by good witnesses or the chapman stood liable as a thief. (66)

The chief obstacle to the enforcement of these laws against thieves was the powerful kindred. (67) To overcome this, it was enacted that the scir should be in a state of war before any kindred should stand out in defiance of the law. In London, the Judicia Civitatis Londonae, a guild for mutual protection, ordained that if a hundred proved too strong and refused to give up a thief that all the guild should ride against the kindred. (68)

The large number of punishments devised to put down thieving evidences the prevalence of the crime. Fines were made nine fold; full "wer" was demanded; the thief was sold into slavery. The slave who stole was flogged to death; women thieves were burned. (69) The capture of a thief could be sold into slavery beyond the seas; slain as an enemy of the state; or redeemed with the "wer". Death was a penalty demanded of thieves in the laws of Ini, Alfred, and Aethelstan. (71)

5. THE KING'S PEACE.

The idea that crimes were offences against society and that the offender must pay the penalty for his misdeeds was first mentioned in the laws of King Ini. Its development was
slower in England than on the continent, owing perhaps to the strength of the kindred and the persistency of the feud and the "war". (72) The King's Peace took its form in the system of mutual guarantee between the several parties that made up the state. (73) The first means devised to hold men in check was the organization of artificial units under the sanction of the authorities by which men were put under the direct and local officers. Guilds were made up of family heads and formed artificial fiscal units. (74) The "gegylda" were those that mutually vouched and paid for one another under a system of pecuniary mules. (75) Thus every man had a surety to protect him when accused, to present him to justice, and to pay for him when he was fined. (76) The frankpledge was abiding in groups of tens as mutual aids in the keeping of peace. (77) The result was that all freemen were bound together in a system of mutual guarantee.

The practical workings of the system were good. If the offending person escaped, his guarantors were liable unless they purged themselves on oath. (78) So if one was accused and he answered to trial, his guild brothers were his body of compurgators. (79) The most notable of all the ancient guilds was the Judicia Civitatis Londonensis, which was an organization for mutual protection and the prevention of theft. It was made up of artificial groups of tens called "hynds", supported by mutual guarantees and financed by a common purse. The strength of the organization is seen by its eighth clause, which declares that the members will force their rights against the powerful kindred living outside the city. (80) So if a breach of peace was comm-
itten within a town the inhabitants were to go in person and take the wrongdoers or their nearest of kin head for head. If the inhabitants would not go, the King went; if the King would not go, the whole district was to be in a state of war. (81)

In the general law, fighting or drawing weapons in the presence of the King so as to destroy his peace put the wrongdoer under the King's mercy. Also there were provisions against the lending of weapons with which some one could be killed. If a death followed the lending of an instrument of war the two parties were to join together in the payment of the "wer"; but if they could not be joined together, the burden was put upon the lender to pay one-third "wer" and one-third "wite".

The influence of the church is seen in the establishment of asylums for offenders. If anyone for whatever crime sought any one of the "mynsterhams" to which the King's feorm was an incident or any other free "hired" that was worthy of reverence, he was to have three days in which to protest himself unless he was willing to come to terms. While so protected no one should harm him under penalty of making "bot" with "wite" as well as "War". (82) Whoever broke the King's security was to pay fine for the plaint and five pounds of pence. An archbishop's protection was secured by three pounds "bot", whilst any other bishop's or ealdorman's "bot" was two pounds. (83) Every church hallowed by a bishop was a sanctuary, a refuge for fleeing criminals. If an offender reached a church no one was to drag him out for a period of seven days. Even though he committed more wrong there, he could live unless he fought his way out. As long
as he was sojourning there he was safe. While he was there, the church brethren, upon finding that they had need for the church were allowed to remove him to another house that had no more doors than the church. The church elder took care that the fugitive had no food for seven days. Should he give over his weapons they were to keep him for thirty days and then give notice to his kinsmen. (84)

These methods show the practical bent of the early Anglo-Saxon law makers. Their system effected the destruction of the kindred and put men on a mutual guarantee to keep the peace. The establishment of sanctuaries gave men time to reconsider their actions and allowed an interval for the angry passions of men to grow quiet. The authorities, both secular and ecclesiastical, worked out the idea of the King's peace.

6. ASSAULTS AND INJURIES.

The old Anglo-Saxon was held responsible for his torts and the torts of his chattels. He paid fines for his own trespasses and the trespasses of his cattle; he was liable for any injury that he caused whether it was willful, accidental or negligent. If he fought in another's house, he paid a fine for trespass. (85) When he called amob he paid a fine equal to "wer". (86) He who fought at the folc-mot paid a heavy fine. (87) It was trespass to pass over another's boundary or through another's fence. (88) But was made for injury to a field or a vineyard. (89)

Stealing or borrowing another's weapons or getting them
by fraud or force from an armourer, was often done to make false
evidence against the owner. (90) The armourer answered to the own-
er for the safe custody and return of weapons at all hazards. (91)
If a man furnished weapons to another in time strife though no
evil was done, the "bot" was six scilling. If "wegreof" was done,
"bot" was twenty scilling. Should a man be killed, "bot" was one-
half "wer". (92) So if a person set his spear at another's door
and left it there and another came up and took it to do harm, he
who took the weapon paid a fine and the owner had to clear himself.
(93)

The owner of cattle and dogs was liable for their
mischief. If A's ox gored a man or a woman to death, the ox was to be
stoned and its flesh was not to be eaten. Scienter on the lord's
part of the cruel nature of the ox, made him liable in his life or
to the payment of full "wer" according to the decree of the "witan".
(94) If A's ox wounded B's ox so that it died, A and B were to sell
the living ox and have the worth in common, but if A had scienter
he was to give B an ox for the one that he had lost. (95) If a
neat wounded a man, the owner gave up the animal and compounded for
its damages. (96) Liability for the damages done by dogs was set out
in a scale of compensation in the laws of King Alfred. Where
ceorls had a common pasture, the owner who did not fence was liable
for the damages done by his trespassing cattle. The owner who
found trespassing cattle on his land was to notify the owner of the
cattle. (97)

The liability for accident was measured according
to the nature of the act. If A had a spear over his shoulder and
any man was to spear himself upon it, A was to pay "wer" without "wite". Should the injured person stake himself before A's face, A was to pay full "wer". When accused of willfulness, A had to clear himself if the point were three fingers higher than the hindmost part of the shaft. If both ends were on a level, A did not have to clear himself. (98)

Æthelbert's law contains thirty nine clauses fixing compensation for the disfigurement of persons in quarrels and fights. The old Mosaic law of eye for eye, tooth for tooth, and hand for hand appears in the law of King Alfred. (99) A recital of the provisions in the law of King Æthelstan will show the principle much like that in the modern law of mayhem. Twelve scillings were paid for the loss of an ear; twenty five scillings were paid if deafness followed; and three scillings were paid if the ear were pierced. (100) If the nose were pierced, the fine was nine scillings. (101) So each of the four front teeth cost six scillings; the tooth next to them four scillings; and then all other teeth one scilling each. (102) In the same manner the fingers and the toes were protected. Compensation for the thumb was twenty scillings; the shooting finger eight scillings; the middle finger four scillings; the ring finger six scillings; and the little finger eleven scillings. (103) Thus the system covered any sort of physical injury. Whether or not the fine was paid as fixed damages is an open question, but since the sums paid went to the injured person, it is safe to presume that in legal contemplation they compensated the individual for his loss.
7. THE LAW CONCERNING INCESTUOUS PERSONS.

The sections concerning incestuous acts are found in the ecclesiastical divisions of the law. Although Tacitus praised the chastity of the Germans, and although pagan Anglo-Saxon poetry has no hint of unchastity, it is safe to say that unchaste acts were committed to some degree before the coming of Christianity. The church struck at fornication and adultery wherever it found it and it is possible that the stringent laws enacted in England through the influence of the church were made as precautionary measures. The church on the continent had no doubt legislated against the unchaste acts that were common among the southern Europeans and may have anticipated the same tendency toward unchastity among the Anglo-Saxons.

Fornication resulted in dire punishment for ecclesiasts and laymen. The priest who connived at fornication lost his ministry and was placed in the mercy of the bishop. All in holy orders who did not maintain chastity forfeited their worldly possessions and a consecrated burial place. So the layman who committed fornication with a nun was denied Christian burial. Forcing a nun was paid for by deep penance before God and the world. Men living in illicit intercourse were admonished to take to a righteous life or be separated from communion with the church. Foreigners were to cease fornication or quit the land with their goods and their sins.

Rape by a man upon a female slave was punished by a fine of five scillings and sixty scillings for "wite".
The crime was punishable in the same degree whether the woman was under age or an adult. (II1) The defiling of a widow was a great wrong punishable by heavy "bot". (II2)

Alfred and Guthrum in their peace ordained that if any adulterers were found in the land, that they were to be driven out so that the people could be cleansed, or they were to perish in the country unless they desisted and paid "bot". (II3)

The freeman guilty of adultery of adultery with a freeman's wife paid for his crime with "wer" and provided another wife with his own money. (II4) The King was to have the trunk and the bishop the limbs of adulterous persons in case "bot" was not made before God and man. (II5) Adultery in the law of Eadmund was punishable in the same degree as murder. (II6)

8. SLANDER AND PERJURY.

Slander, false accusation, and perjury were crimes punishable by fines and mutilation in the Anglo-Saxon law. Whoever slandered another in another's house and shamefully bespoke him there with abusive words paid one scilling fine to the owner of the house. (II7) Alfred, the truth-teller, paid it down that if anyone committed public slander, he was to suffer no less a penalty than the loss of his tongue. (II8) So under Eadgar, the false accuser with damage resulting to the accused, was punished by the removal of his tongue and the payment of "wer". (II9)

He who gave false witness or swore a false oath, was never a witness again. (II2) The perjurer should never be oath-worthy again and he was to lie unhallowed unless the bishop swore that the witness followed the counsel of his confessor in giving
the testimony. (21) In Eadmund's time, the perjurer was cast out of communion with God unless he did penance. (122) Falsehood according to the old practice led to much perjury and contempt for the church. (123) He who compounded for the "ceapgeld", compounded for the ordeal as he could and not for the "wite". (124) So, the offerer of false witnesses forfeited his witnesses for ever besides making himself liable to a fine of thirty scillinges. (125) From the earliest day, the Anglo-Saxon has insisted upon substantial justice based upon the truth of an issue between man and man.


It is interesting to note the many different forms of punishment inflicted by the authorities in their efforts to control the evil passions of men. The earliest form of punishment was the blood-feud. Following closely upon this came an authorized system of mulcts and fines based upon the social standing of the individual. The inefficiency of these forms of punishment led to the deprivation of property, the taking of life and mutilation. Forfeiture, a common enough punishment in later Anglo-Saxon times, was a direct outgrowth of the failure of fines to stop crime. (126) So forfeiture was a punishment for treason, fighting in the King's house, abetting a thief, and adultery. (127-8) Death by Alfred's time was the punishment for treason, willful murder, for cursing one's father and mother, stealing a freeman, or harboring exiles and thieves. (129) Pirates that were captured and brought to Alfred were hanged on the gallows tree, the common mode of execution. (130) Outlaw-
ry followed the murder of a kinsman, thieving, and failure to answer in the moot. The effects of outlawry were that the outlaw was an exile that could be killed with impunity. Mutilation was punishment in some of the lesser crimes. Aedgar was blinded by the order of Aethelred. (131) Aelphelm's murderers were blinded. (132) By the law of Cnut, hands were cut off, ears were slit, and upper lips were cut away. (133) The tongue that uttered slanderous words was cut out. (134) The male slave that was found guilty at the ordeal suffered branding and scourging; the female slave guilty at the ordeal was burned to death. (135) There is no doubt but that mutilation, which was of Hebrew origin, was brought into the Anglo-Saxon law after the introduction of Christianity.

Excommunication was a form of punishment used in perjury and fornication. (136) Imprisonment is not mentioned in the early laws, but in the People's Bank and Laws, imprisonment was a mode of punishment. (137)

The significant fact in the Anglo-Saxon scheme of police government was the small number of capital offences. The Anglo-Saxon would scourge, mutilate, and exact heavy fines even to the point of forfeiture of all goods, but the taking of life seems to have been contrary to his idea of justice except in the most extreme cases.

10. PROCEDURE.

The procedure by which suits were prosecuted in the Anglo-Saxon courts was stiff and uncompromising. Civil and criminal as well as secular and ecclesiastical cases, were not
distinguished; but in the old procedure there were principles that have persisted in the law to this day. Character was appealed to much as it is to-day in the common law courts. (138) He who proved to be dishonest was not oathworthy. Allmen were admonished to keep their oaths and their "weds". Only just dooms were to be pronounced as of folcl-right and every suit was to have a term. (139) The denier of justice was heavily fined; while he who evaded justice could be pursued and treated as an outlaw. (140) Repeated absences at "gemot" made the absentee liable in forfeiture. (141) If vengeance were taken before demand for justice, the damage had to be paid for. (142) Thus, though no prescribed method for coming to court was made in the law, the Anglo-Saxon was constrained to come when justice had to be passed upon under penalty of outlawry and the payment of fines.

The courts mentioned in the costumals are the county or "scir-mot", the hundred-mot, and the "tun-mot". In addition, the Witan and the King sat as the court of last resort, to be appealed to only when the justice of the lower courts had been exhausted. The "scir-mot" was the court of appeal next above the hundred court. (143) The regular term for the hundred court was once in four weeks; for the "tun-mot", every four months, and for the "sir-mot", twice a year. (144) The hundreds often united under the ealdorman of the "scir" and formed a subsidiary court. (145) The private jurisdiction was in the lord baron courts, a lord's court for tenants, the jurisdiction of which is spoken of as "sac and soc"; that is, it imported private jurisdiction and the right to take and enjoy the profits thereof.

The officers of the public courts and their dut-
ies have been explained in the chapter on administration.

A suit was started by the swearing of the foreoath and the depositing of a pledge. This was not necessary where the facts were definite, as where a party showed his wound in court. (I46) Where the claim was false, the party complaining was subject to a fine. (I47) Eadward demanded the tongue of the false accuser. (I48)

Pleading was done by a system of oath-helpers. A king's or a bishop's word was unimpeachable. A minster's "saldor" cleared himself in the same way as a priest, which was in holy garments before the altar, with the words, "I speak the truth in Christ, I do not lie. A cleric cleared himself as one of four of his like, with one hand on the altar and the other clerics standing by and accompanying the oath. A stranger cleared himself at the altar on his own oath. (I49) The freeman cleared himself by the proper number of compurgators and himself in an oath, each at the "tun" to which he belonged. (I50) The oath was the primary mode of proof that went to the justice of a claim. The number of compurgators varied according to the nature of the case and the rank of the parties concerned. (I51) The ceorligic man cleared himself at the altar with four of his kind. (I52) The oath to clear a "gesithound" man was greater and required more helpers. The terms "twelve hynde" and "two hynde" are connected with the system of oath helping. Their explanation can be sifted out of the laws themselves. In section 54 of the laws of King Ine, "hynden" refers to the set of oath helpers supporting a kinsman. The oath of thirty hides is the oath of the King's thane. The single oath of the twelve hynde man was ten hides; while the oath of himself and helpers was one hundred and
twenty hides. So twelve men, eleven besides the twelve hynde man, made up the full hynde. In order to have a standing in court, the twelve hynde man was obliged to have a fullm hynde, which, it can be seen, depended upon the completeness of the twelve hynde man's family. The two hynde man had to come into court with only one sixth as many helpers and his oath was only one sixth as valuable as the oath of the twelve hynde man. More of this distinction will be discussed in the chapter on social Anglo-Saxon England.

The accused who cleared himself through compurgators who swore to his innocence and good character, first went to the "mot" and there pleaded his innocence, and then proved his case with the aid of his oath helpers. An example of the practice in vouching to cattle warranty is set out in Dun Setas, where if the cattle were attached and the party had vouched to warranty, he made a deposit to insure an end to the suit. Then he who claimed the cattle, himself one of six, swore that they were stolen from him, and he who vouched warranty made oath alone that he vouched to warranty from the person that sold to him. (I53) If a priest were accused of evil practice, he celebrated mass and cleared himself on the housel with two of his fellow ecclesiasts. (I54) The deacon when accused in a simple suit, cleared himself with two deacons; if the suit were threefold, he cleared himself with six deacons. (I55)

Facts were inquired into to support a claim in cases of warranty in the title to cattle. (I56) So each township had to provide six sworn witnesses of sales so that the hundred ealdor could apply to them for testimony. (I57) So if a Kentish man bought a chattel in Londonwic, he had two or three worthy men to witness,
so that if it afterwards were claimed by another, he could vouch warranty by proving at the altar with the witnesses, that he bought the chattel openly in the "wic" with his own property. If lawful averment failed, he forfeited the cattle. (158) In proving title, witnesses were necessary to a warranty back to the fourth remove from the immediate purchaser. (159) A purchaser in case of the seller's death, proved his warranty at the seller's grave. (160)

All men were admonished to swear truthfully and to give honest testimony. If a man were constrained upon oath either to treason against his lord, or to any unlawful aid, then it was juster to belie than fulfill; but if a pledged himself to do a lawful act and then belied himself, he was to submissively deliver up his weapons and his goods to the keeping of his friends and be in prison forty days in the King's "tun". There the bishop was to prescribe punishment for him and his kinsmen were to feed him. If he were forced to come to court, his weapons and property were forfeited. If he broke prison and was recaptured, his punishment was forty days more in prison; but if he were not retaken, he suffered excommunication from all of Christ's churches. (161)

The ordeals of fire and water were employed to settle disputes and administer justice. These ordeals came to be the only method of procedure in cases of theft. They were used in the church under the supervision of the ecclesiastics. Every man accused had the choice of water or fire. (162) In trial by water, the minister of the bishop sat to see that justice was done. (163) In fact, whenever a justiciary held court, a minister of the bishop, was present to add the dignity of the church and the idea of God. (164) The
procedure in hot iron and water was as follows. After the fire was carried into the church, no one but the mass priest entered and there he measured off nine feet from the stake to the mark. The water was heated low to boiling in an iron, brass, lead, or clay kettle. If it were a single accusation, the hand of the accused man went after the stone up to the wrist; if it were three fold, up to the elbow. The hand thrust in was wrapped for three days before the covering was removed. The fine for refusing to proceed was 120 scillings. (165) The iron for the three fold ordeal weighed three pounds; the single accusation iron one pound. (166) "Wed" for the ordeal was made as follows. The accused went to the mass priest three days before the ordeal, where he was fed with bread, water, salt, and herbs. He attended mass upon each of the three days and went to house on the third. Then he swore not guilty. If the ordeal was water, he dived an ell and one half by the rope; if it were hot iron the hand was not to be undone for three days. (167) If a man were untrue to the hundred and three men together accused him, he went to the threefold ordeal. If the lord vouched that neither oath nor ordeal had ever failed the accused, the lord took two true men in the hundred who with him swore that neither oath nor ordeal had failed him, and that he had never paid money for thieving. If then the oath succeeded, the accused man chose either the ordeal or the pound worth aath. If he refused to take the oath, he went to the triple ordeal. The accused had five men with him, and if in the oath he were found foul, he paid double fine to the accuser and "wer" to the lord. (168)

The law exercised was customary. The people pass-upon custom and then called upon the King to execute their judgment. (169) The "Witan", the authoritative thanes of the "scir", expressed
their views. So the custom of the Scir was used as a means of determining rights. In every "tun" were standing committees of truthful men who acted as jurors or counsel for the presentment of custom. In appealed cases, the local custom formed the basis of the litigant's rights.

Penalties after adjudication were payable in seven days. Fines for breaches of peace were payable to the person whose peace had been broken. No procedure in the courts was permitted on church days; ordeals, oaths, and executions of criminals were prohibited.

The above procedure was crude, but designed as it was, to give effect to the laws, it contained principles that have remained in the English Common Law.
5. Beowulf. Line 2380.
9. Henry the First. Clause LXXXV.
15. Anglo-Saxon Chronicle. Chron. 1080 A.D.
19. Alfred and Guthrum. sect. 3.
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SOCIAL RANK IN ANGLO-SAXON ENGLAND.

Personal rank in Anglo-Saxon England was inseparably connected with land holding, for a person's social standing depended upon the amount of land he held. A man could, according to Schmid, have all the marks of a 12 hynde man, but if he did not have the land, he was but a ceorl. So the social classes, and the holding of land can be treated in one chapter.

The early Kentish law recognized three main classes each of which was divided into three grades. The distinction seems to have been made for the purposes of estimating personal rank and tribal qualifications without making distinction of wealth or connections with royalty. Section 16 of Aethelbert's law names "bireles" or cupbearers of the first, second, and third class; while Section 11 mentions grinding slaves of the first and third class. So the "mund" of the best earlcund widow was 50 scillings; second rank 20sc.; and third rank 12 scillings. (2). The main divisions in Wessex were ceorl, freeman, and thane. (3). Below these classes were the unfree and the theowmen or slaves.

An explanation of the terms used in describing the classes will do away with confusion. The natural division of free and unfree which first existed in the single family, persisted throughout the whole Anglo-Saxon period, but within the free classes were 12 hynde, 6 hynde and 2 hynde men; there were thanes, freemen and ceorls. So in Aelfred's law a man was said to be "gesithcund" class. Among the unfree were the geburs, cotter tenants, and theowmen or slaves.
Chief among all freemen was the hlaford in Wessex and the earl in Kent. The hlaford who had certain jurisdictional power over his men carried over in a large scale the patriarchal jurisdiction of the private family. In Ini's law, he was the protection of the freemen of the lower degree who did not own lands; he was patron to the underlings. He supplemented the kindred for the protection of criminals against violence and collected a share of the fines raised for breaches of peace. (4). The hlaford had police powers, for he was bound to support the government by watching the conduct of his clients and producing them when there was need of it before the courts. (5). The hlaford enjoyed higher privileges than the freemen, for he took part in the Witan while his class executed the general will. (6). From his class was chosen judge, priest and King, and the tendency from the earliest period was for the noble man to rise and the freeman to diminish in the same proportion. (7). The forces that lead to leadership in the noble class were the natural desire for leadership, destruction of the ties of kindred resulting in the rise of individual lords, and the governmental policy in police and local matters. (8). This class was responsible for the persistence of Roman estates in English custom. The lords were the holders of vast tracts of land; (9) they systematized the natural divisions of free and the unfree so that by the Danish period there were traces of "nulle terre sans seigneur". (10). The laws assisted the lords by establishing a "landrica" over free and servile population. (11). By the 11th century the average Englishman
had a jurisdictional lord over him. (12). The aristocratic
superstructures laid as early as Aethelbert's reign were favor-
ed by laws and customs as well as the natural aptitude for
leadership.

The highest class of freemen next to the lords was the
thegn or knight. This class is known in the Wessex laws as
gesithcund and 12 hynde. The average gesithcund man or thegn
held 10 hides of land, though not all gesithcund men were land-
holders, for by section 51 of Ini's laws a gesithcund man not
holding land was bound to attend the "fyrd." Some of the
qualifications for the status of thegn were a coat of mail, a
hemlet, and overgelded sword. The services of the thegn,
according to the Rectitudines Singularum Personarum were to
accompany the King on his military expeditions, to aid in the
building of castles and "brig bote". The thane was a soldier
first and a landlord second, for if he failed to attend the
"fyrd" he lost his land. (13). As landlord, he had to make
provisions for the cultivation of the land. If he had 20
hides of land, 12 were to be "gesettes"; if he had 10 hides,
6 were to be "gesettes". He furnished the tenant and upon the
tenant's death all reverted to the thane. (14). Also the
thegn was a courtier and had direct relationship with the King
by doing service for him in the hall. (15). As agent for the
government, he was a sort of potentate in local affairs where
he ruled his dependents and peasant neighbors in matters of
justice and police. (16).
The six hynde man appears in Aelfred's law as a land-holder. (17). He was a stronger in blood and was described as "wealh"; E., one of those not recognized as of Anglo-Saxon blood. The "wealh" be section 24 of Ini's law became six hynde when acquired 5 hides of land; that is, by acquiring the land, he moved half way up the social scale with a wer-gild one half that of the thegn. The explanation of one half wer gilds and 6 hynde, according to Seebolm, is found on the continent. Under the Lex Salica, the Gallo Roman, a stronger in blood, had a "wer" one half that of the Ingenius. It is clear that half wergilds were extant upon the continent and it is very probable that the Anglo-Saxon custom had its origin in the earlier continental system.

The ceorl and the 2 hynde man were the same. Alfred's law of section 10 and 18 describe the ceorl as the smallest of the landholders; in sections 29, 30, and 31 the smallest landholder is spoken of as two hynde. So according to the law the ceorl and the two hynde man were the same in regard to landholding, and since the two hynde man was a gafol paying tenant, it follows that the ceorl was gafol paying. This class will be fully discussed in the system of landholding.

Differences in landholding made real distinctions in the military of the Anglo-Saxon. The holders of 5 hides made up the standing army. (17). The virgaters of bovaters made up the "fyrd", a cumbrous and slow body used for local service. (18). And right here in the rise of the landed military, the separation of the military and laboring classes took place. (19). The warrior class rose while the virgaters became more and
more like labourers; they lost their character as soldiers and became identified with the land. (20).

The "comes" or "gesid", described as the military by Kemble, was a body of the younger sons of nobles who were given food and raiment by the King who became to them "beaga brytta", or "beah gifa" (21). The relation of this body to the King was fealty; the idea of freedom gave way to the idea of honour. (22). The property held by the "comes" consisted of horses and weapons which were "here geatwe", the modern heriot. (23).

The free classes in Anglo-Saxon England were not inflexible for every acquisition of land affected a corresponding rise in social position. (24). The holding of one hide moved the "wealh" up to the ceorlisc class; five hides raised the Englishman to 12 hynde and the Welisc man to six hynde, while both were rendered followers of the King by direct service. (25). The thegn who thrrove so that he served the King and rode with the King's household, if he then had a thegn who followed him to the King's "hut" and had five hides of land and who served the King in the hall, and went three times with his errand to the King might thereafter represent the King by his foreoath or various needs and his plaint lawfully conduct wherever he aught. (26). The thegn who thrrove so that he became an earl was worthy of earl rights. (27). Alfred increased the number of thegns by conferring thegn privileges and enforcing the obligations of thegnhood upon all owners of five hides of land. (28). The ceorl who prospered so that he had fully five hides of land, a church, or King's hall, bell
house and "burh geat" was worthy of thegn right. (29).

But even though a ceorl throwe so that he had a hemlet, a coat of mail, and a sword ornamented with gold, if he did not have the land he was nevertheless a ceorl. So if the sons or grandsons of a ceorl prospered so that they had the land, they were to be gesithcund. (30).

Before passing to the unfree classes, we will note the provisions made for the relationship of man and wife. Although the spear and spindle distinction was made early in Anglo-Saxon history, and although society for a woman as far as she represented by a man, yet there is a body of law recognizing certain rights in the domestic relations. Marriage in Kent was a fair bona fide contract between the kindred. The law ordained that if a man bought a maid, the purchase was to stand if he made with bona fides, but if there was guile, he was to bring her home again and get his money back. (31). So if a man carried off a maid by force he was to pay a heavy fine and afterwards buy the woman from her owner. (32). If she was betrothed to another in money he made "bot" in 20 sc. (33). Ini ordained that if a man bought a wife and the marriage did not take place that he was to make "bot". (34). He who betrothed a woman gave security for keeping her according to God's law as a husband should his wife. (35). The bridegroom declared what he would grant the wife if she chose his will and what he would grant her if she lived longer than he lived. (36). This agreed, she was presently entitled to one half the property and to all if they had children, providing she did not
marry again. (37). It was also to be looked into before marriage that the contracting parties, through kinship, were not too nearly allied. (38). At the nuptial ceremonies there was by law, in the 11th century, a mass-priest who with God's blessing bound the union to all prosperity. (39).

The widow had her permanent dower in goods, and her maritagium given to her by written deeds or proved by the production of witnesses. She had her "morgengyft" and a third part of all joint acquisitions besides her clothes and her bed, but she received nothing for what had been consumed in charity or common necessity. (40). In Kentish law, the widow in case of issue, received one half of the property. (41). Cnut made a law requiring every widow to remain unmarried for a twelve month of pain of forfeiting her "morgengyfu" and all her property by her first husband. And even if she were taken by force yet unless she was willing to go home again from the man, she was to forfeit. (42). In case the married woman died before her husband, the property that she brought and that given her by her husband went back to her paternal relatives. (43).

The child in Anglo-Saxon law was given into the custody of the mother and the guardianship of the paternal kin. If a husband died, with wife and child living, the child followed the mother and sufficient guard to keep his property until he was 10 years of age was kept by the paternal kindred. (44). Ini gave the child to the mother who was to receive 6s. for fostering it, and a cow in summer, and an ox in winter. (45). Widows were not to be injured on pain of death. (46). They had
a reasonable time in which to pay heriots and if the head of the family fell on the field of battle in the presence of his lord, heriots were entirely excused. (47).

The father had absolute control of the child even to its life. So it follows he could sell it into slavery. (48). Late in the Anglo-Saxon period, the selling of children into bondage was so prevalent that it was legislated against. (49). In law the child followed the father just as it does in common law to-day. So if a wife returned to her kindred she could not take the children if the husband wanted them. (50). Step children, were protected from injury but illegitimate children could be sold into bondage. (51). The wer for an illegitimate child was paid to the lords and the King, for the illegitimate child was nullius filius. (52).

The classes of the unfree consisted in the gafoI paying tenants, which will be described in the chapter on landholdings and the theow or slave. The slaves were by fortune of war; slaves because of bankruptcy, and slaves ex natura. (53). Liberty was forfeited for crimes, and in war, the victor had the right to the life of the vanquished. So he had a right to the person of the vanquished. (54). The wite theow was a person who had once been free, but who from debt and calamity had sunk into thraldom. So forfeiture of all possessions led to servitude. (55).

In contemplation of law the slave was much like a chattel. The lord collected damages if his slave were injured or slain. If the lord slew his slave, it was his own loss. (56).
The slaves were cultivators, shepherds, ploughmen and goat-herders. These do not seem to burdensome occupations but Aelfric in his dialogues has the theow say, in regard to his work, "Micel gedeorf hit ys".

The common mode of dealing with the criminal slaves was to turn him over to the offended kin. The owner of the slave that had murdered was duty bound to set him free and hand him over to the offended kindred. (57). If a "wite theow" slew an Englishman the owner delivered him up and gave 60 sc. for his life. If the owner would not give that sum for the slave, he was obliged to enfranchise him. (58). In Ini, the "wite theow" who stole himself away was to be hanged and nothing was to be paid to the lord. If anyone slew the "wite theow" nothing was done to the kindred unless they redeemed him within 12 months. (59). Since the slave could not pay money for his petty crimes, he paid in his hide with the lash. (60). For theft, men slaves might be flogged to death; the women might be burned. (61). Where a group of slaves had committed a crime, one of the group, chosen by lot, suffered for the sins of all. (62).

The slave had no part in the self-government of the people. He could not own property, either by acquisition or by inheritance. (63).

The later law concerning the slave was decidedly humanitarian. In Ini, all men of Wessex were ordered not to sell a countryman beyond the seas even though he be a slave or justly condemned to slavery. Christian men by Aethelred's and Cnut's
law were not to be sold to the heathen. (64). Alfred set out at section 11 that if anyone bought a christian slave, the slave was to serve 6 years and then be folk free, but if he wished to stay with his lord, the theow's ear was to bored through and through in taken of his slavery. The church got a respite for the slave on the Sabbath and on high church festivities. (65). The lord who compelled his slave to work between sunset on Saturday and sunset on Sunday forfeited the slave, (66), who became folk free. (67). Alfred gave the slave the power to bequeath whatever property had been given him for God's sake or that he may have earned in his momentary leisure. (68). In the late Saxon period the slave could buy his own freedom. (69). A third party could buy him for manumission. (70).

Whoever gave freedom to his man at the altar made his man folk free, but the freedom giver kept the wergild and the mund of the slave. (71). The act of emancipation was at first completed in the presence of the community so that all claims to the freedman were estopped. (72). Later the act of emancipation was done at the altar. (73). All civil rights did not follow emancipation, for the lord kept the inheritance, the wergild, and the "mund" of the emancipated slave. (74). As late as the time of the Norman conquest, a lady Æaftlaeda directed the manumission of those of her slaves who had bent their heads in the evil day. (75).
2. LAND HOLDINGS IN ANGLO SAXON ENGLAND.

The earliest landholdings in Anglo-Saxon England was in common under the Anglo-Saxon community, but individualistic tendencies and the lax social organizations in old English society led to inequalities in the holding of the land. (1). The law tried to prevent the individualistic tendencies by holding the tribe together and by the formation of guilds as substitutes for kindreds, (2), but the system of patronage which had started early persisted and flourished. (3). The hlaford as early as Ini was given man money. (4). So the hlaford was duty bound to act for his man. This showed a relationship of lord and man. (5). This relation required a fixed system on account of all sorts of material obligations. With the start of the system, patronage struck root and developed into a lasting lordship over freemen and their lands. (6). Other tendencies toward patronage and the establishment of inequalities were the church, (7), and the institution of aristocratic society on a territorial basis. (8). Patrimonial justice was founded early, the householder within his own close had coercive powers over all who dwelt therein; the lord within his own domains had coercive and judicial power over those who dwelt thereon. (9). So with the increase of the peasant class on the lord's estates caused an increase of legal business for manorial courts and the direct preference of the prescriptive use of sac and soc increased the application of patriarchal jurisdiction. (10).

Before proceeding with the "ham" or manor we will set out briefly the common form of landholding. The oldest form
was the mark, the community of householders in a voluntary association for the purpose of cultivating the land. (11).

The earliest Anglo-Saxon community was bound to the soil as a condition indispensable to the enjoyment of freemen privileges. (12). This mark was followed by the "tunship," a more compact fiscal unit, made up of families. The tunship was a fiscal police unit that in later Anglo-Saxon times became the unit for the payment of revenue and the maintenance of the peace. It was looked upon as a territorial unit made up of "hieviscs" or hides. (13). So tribute was imposed upon the shires from above; then partitioned among the hundreds, and finally apportioned among the shires. (14). Hidage and Danegeld were crushing burdens that finally rested upon the township among the share holders in the scot and lot. (15). The proprietary and economic holdings in the township was share holding. The shares were organic parts that stood in organic relationship to the composite unity of the "tun". (16). The "tun" was in fact a number of equal shares called hides arranged in hides, half hides and virgates and quarter hides or bovates. (17).

The early hide was not a measure of land for it was variable. It was a fiscal unit and was called "wer hide" and "geld hide" as distinguished from the real hide. (18). So an estate might have paid geld enough for only one third of a hide and not have been composed of land enough for five ploughs. (19). The government placed so many hides upon a district and lengthened or increased the burden of taxation with the hide as the official fiscal unit. (20). The field hide was the original family holding. The unit for the single household in the
Domesday book, the normal hide, was 120 acres. The occasional mention of hides among the hundred by Bede presents single instances. (21). The apportionment was made according to the actual agrarian facts and the hide, half hide, virgate and bovate were actual territorial units. (22). An acre was the square measure of the field; the bovate was the share equal to the work of one ox in the team of a plough, the "yoke" pointed to the work of four ox abreast and the acres tilled by them. The bovate and yardland designated the holding of the peasant.

The hide was the unit of ownership. (23). Reckoned in the work of ox teams, the hide was only slightly variable while if spoken of in terms of a household it varied much in size. (24) Bede, in "Tribal Hidage" a document much of the same nature as the Domesday book, spoke of a greater number of hides than there were in the time of Domesday. These two official tests show that the hide tended to be come smaller as the population increased, although in legal contemplation 120 acres comprised this family share. Land was folkland, bocland, and laenland. Folcland was the general name for all estates save the aloid of the first markmen. It was land held in common and was subject to rents and reversions. (25). The burden of folcland were military service, repair of roads, watch and word, and in royal hunting, conroy of messengers, harboring of the King and provisions for horses, hawks and hounds. (26).

The power of disposal of folcland was in the King and the witan and the passing of title was by some form of livery of seisin. The common grant was to the person who had done
great public service, (27), and it was so granted as early as the writing of Beowulf. (28). Later hereditary estates were created out of it with the result that the state lost its reversion. By the custom of the folk there could be no alienation from the community by the kindred and when the individualistic tendency in land holding arose in folk land, the consent of the interested relatives of the actual holder was necessary if it were given, or sold, or still more devised out of the natural order of succession. (29).

The common pretext upon which folkland was converted into "foc land" was the erection and endowment of a religious house. The result of such conversion was the destruction of the reversion, with escheat only upon the destruction of the particular house. (30). Thus says Bede, the land was freed from earthly warfare and earthly service to be employed in heavenly warfare. "Boc land", relieved from burdens, was a species of land- holding guaranteed by deed or book; protected by ecclesiastical anathemas, royal authority, the solemn presence of witnesses and the consent of the family." This was the terra testamentales of the Anglo-Saxon. (31). The owner could alienate it by his will and he could defeat the heir. (32). When folkland was changed to bocland a record was made by the witan. (33). This form of land holding increased with the rise of the lord and the religious house. Grants were made in groups of ten shares or multiples of ten as evidenced by Ini's grant to Aldhelm and Ini to Glastonbury. Bocland was subject to recall and could be reconverted into folkland. It was burdened with military service and was in instances made
subject to conditions of remainder and reversion. (33).

Laenland was a modern lease hold relationship. The land was rented for a period with labour rent as the ordinary consideration. The period was for years and at will. The rights of the reversioners were intact and could not be forfeited by the act of the tenant. (34). By the 10th century it was common to extend laenland to estates for life or lives. (35). Rent was returned yearly in kind and consisted of ale, oxen, fishes, cheeses, corn and meal. (36).

But in all tenures the idea was to hold the unit intact. In servile or colonary tenements the lords power regulated succession and restricted the holding into a single heir. (37) Whenever there was partition it was always regular so there were eight heirs to a hide; four to a half hide; two to a virgate and one to a bovate. Beyond this number, where the landed estate was one hide, none of the heirs took. (38). The system called "gabernschafen" on the continent and gavel-kind in Kent was the best system for the times for it legalized the unions of coheirs for the carrying on of husbandry arrangements on share land. (39). So the alienation of land was restricted to the particular holding. There was to be no breaking up of shares by giving, selling, or devising the lands, for restriction of family rights forbade it. (40). The chief forces making for private disposition of lands were the church and the King who used the land largely in the re-numeration of the services. (41).

The existence of earls, and kings and men's "hams" and "tuns" in 602 A.D. shows the early establishment of manorial.
states. (42). "Hams" and "tuns" in Aethelbert's time were in the control of individuals. (43). What was called a "ham" or "tun" in the law, was in reality a manor in the Norman sense of the word; an estate with a village community on it under a lord's jurisdiction. (44). The lord held a certain number of hides part of which were "gesettes" land, cultivated by the "gebur" and cotter tenant. The theory was that the lord put a gebur in as tenant; that when the gebur died the lord put in his successor. The son of the gebur was generally put in by the lord, and so grew up a crude system of primo geniture among the rent paying tenants on the early Anglo-Saxon manors. (45).

The open field system was a peculiar union of individual and community privileges within the manor. The holding of each virgater were little divisions of acres, half acres and furlongs the open fields were numbers of strips of arable land separated by turf balks scattered over unfenced fields, copyhold and freehold side by side and husbandry was controlled by rules concerning the rotation of crops. (46). Each virgater had thirty small strips scattered throughout the arable land of the manor, while the possession shifted from owner to owner. (47). As soon as the crops were taken the arable land reverted into common pasture. This limited the individual rights to the single year and one crop, after which the community asserted its rights until another growing season. (48). So the pasture kept balance between agriculture and cattle raising. There was a duty to maintain a fairly equal driving of cattle on the fallow. (49).

There were two systems for the rotation of crops, the
three field and the two field. The three field system was a rotation from winter seed, wheat, sprind seed, barely or oats, and fallow. By the two field system there was alternate crop and fallow. There was a small body of custom concerning woods, enclosures and meadows. Trees in private woods were specially protected, but householders had the right to cut for heybote and housebote. (50). The tree was appraised according to its value in the feeding of the swine and each tenant was allowed a certain number of swine in the mast bearing woods (51). The enclosing of lands came into direct opposition with the pastoral interests of community holders. (52). But hedges and fences were kept, for by the Kentish law, parceners were enjoined to keep up hedges for the protection of meadows. (53).

We now come to the rent paying tenants upon the manors and will note their duties and mode of settlement; the common thing was for the lord to put the "gebur" upon a yardland consisting of 30 scattered strips. The tenat was furnished with oxen and seed. (54). So the "gebur" got two oxen, one cow, six sheep, and seven acres sown in his yardland or virgate. (55)

If a man agreed for a yardland at a fixed gafal, he did not need to take it upon him if the lord would not give him a dwelling. (56). The relationship between lord and tenant was one of lord and man. If the tenat went away from his lord and stole himself away into another shire, he was to go back to his lord and pay a fine of 60 sc. (57). The services of the gebur were two fold. He paid "gafal" or tribute in money or kind and also in work at plowing, sowing and reaping. (58).

Gafolyth was as follows; michaelmas he paid gfolpence;
martinmas, 23 sesters of barley and two hens; Easter on sheep; 3 acres sown; hearth penny; six loaves to the swineherd. (59).

Extra special services were in the form of week work. The gebur was to work for a week work, two days at such work as he was bid throughout the year, and from Candlemas to Easter, three days. (60)

So every week the gebur was to work as bid except three weeks, one at midwinter, Easter, and at Gang day. (61).

Similar to the gebur, but humbler in station, was the cotter tenant. The nature of his work was ordinary labor for the lord, for having no oxen. The cotter tenant could not plough. He paid week work, hearthpenny and church scot at Martinmas. (62). The services were gathered by the King's tun gerefa whose duty it was to care for the land. (63).

Should a service payer persist in neglecting to pay his lord's "gafal" he was liable to forfeiture of goods and to death. (64).

Special workers in the village were shepherds and swineherd who attended flock and droves and collected grass-gafal.

Greaves had charge of the fields, impounded trespassing cattle and managed drainage. "Woodweard" looked after the woods, cutting of timber, the use of underwood, and the gathering of brushwood. The hedgeguard had charge of the hedges and balks in the open field practice. (65).

The idea of the old Anglo-Saxon manor can be had by a rough description of the work done and the services performed. The manor at Tydenham was Saxon since 577 A.D., and was given by the King Edwy to the abbey of Bath in 956 A.D. So the services arose while the manor was royal. The record shows, at Dydenhamme 30 hides, 9 of "inland and 21 of "gesettes".
The geneat at Dydenhamme worked as well offland as on land, whichever he was ordered to do, and he rode, and carried loads, and drove droves. (66). The "gebur" ploughed 1/2 acre as week work and, himself prepared the seed in the lord's barn for weir building; he made 40 large rods, or one load of small rods, or he built 8 yokes and wattled three ebbs of acre fencing; he did fifteen yards of ditching fifteen yards. He made one rod of burh fence, reaped 1/2 acre; mowed one-half a sester of honey at hamma; 6 sesters of malt at Martinmas, and one clew of good net yarn. (67).

Services on a manor of King Alfred were performed. Every hide paid 40 sc. at the harvest equinox, and six church mittans of ale, and three sesters of bread. Three acres were to be ploughed in their proper times; three pounds of barley; one half an acre of mowing and the ricking of hay. The holder was split four loads of gefal wood, and do sixteen yards of fencing, and at Easter pay two ewes with two lambs, while sheep were to be worked and sheared in the right season. (68).
2. Aethelbert 75.
3. Ini, 45, 30, 63. Aelfred, 18, 10, 29, 39.
4. Ini, 63.
9. Vinogradoff, " " " " " " p 221.
10. Vinogradoff, " " " " " " p 216.
13. Ini $1.
17. Vinogradoff, " " " " " " p 218.
18. Vinogradoff, " " " " " " p 218.
19. Vinogradoff, " " " " " " p 220.
20. Vinogradoff, " " " " " " p 219.
27. North People's Laws. 5.
31. Aethelbert 77
32. Aethelbert 82
33. Aethelbert 83.
34. Ini 27.
35. Eadmund 11, 1.
36. Eadmund 11, 3.
37. Eadmund 114.
38. Eadmund 9, Ethelred VI. 12.
40. Ethelred's Compact with Olaf. 22 and 23.
41. Aethelbert 78.
42. Cnut 74 - 75.
43. Ethelred 87
44. Hlothhaere 6, Kemble Vol. I. p 259.
45. Ini 38.
46. Ini 34.
47. Cnut 103.
50. Aethelbert 80.
52.
57. Legis Henri 70 - 5.
Hlothhaere 1, 3.
58. Ini  74.
61. Aethelstan  111, 6.
66. Ini  3
67. Cnut  45
68. Alfred  43.
71. Hlothhaere  8.
73. Kemble  Vol. I, p 224  "  "  "
74. Wibtrard  8.
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39. Vino gradoff p 206. " " " " "
40. Vino gradoff p 208. " " " " "
41. Vino gradoff p 209. " " " " "
42. Seebolnm p 179. English Village Community.
43. Aethelbert Sect. 3, 5, 13, 17.
44. Seebolnm p 147. English Village community.
45. Seébolnm p 177. " " "
46. Seebolnm p 13. " " "
47. Seebolnm p 206. " " "
49. Vino gradoff p 182.
52. Vino gradoff p 173. " " " " "
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55. Seebolnm p 138. " " "
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The student of Anglo-Saxon law and legal institutions is impressed with the continuity of the system. The whole scheme moved on and developed with idea of unity. The feudal system has its crude beginnings in the time of Ini. Already the relation of lord and man was being formed. By the seventh century manors and vast estates were held in mortmain. The beginnings were small, but by the eleventh century, the feudal system was well on its way; the relationship of lord and man was established; the individual had been emancipated and looked to the lord or the central government to keep the peace.

The early Anglo-Saxon king had little real power, for the executive authority was widespread among the ealdormen and the reeves. By the eleventh century, the King was treated as the head of the nation. Such powerful regalia as the ownership of all public lands, the right to take cases out of the law courts, and the right to settle lords on estates were in the crown in the time of Cnut.

The early distinctions between social classes were determined by the holding of the land rather than by blood relationship. The result was that social classes were not fixed; men could rise or fall in social standing with the increase or decrease of their alodial holdings. A ceorl of one generation might have children and grandchildren that were "gesithcund" in the second or third generation; a twelve hynde man might through the loss of his property by whatever means, become a "wite-theow", and all of his sons and daughters born while he was in bondage would be slaves ex natura. They in turn might be manumitted and after a generation or two
the "wite-theow's" offspring might rise again to be "gesithound". As long as property was the test for social standing, men did not remain fixed in one class unless they retained their hold on the land.

The first intimation that blood would come to be the test for social standing is found in the crude primo-geniture that grew up among the tenants on the Anglo-Saxon manors. There the son followed the father so often that a custom grew up on some manors that the offspring should follow the ancestor. The next development that tended to fix the test of blood for social standing took place in the time of Cnut when the few landed lords handed their estates down to their eldest son. The change in landholding by which the land was taken out of the hands of the folk and placed in the hands of landed proprietors with the subsequent rise of primogeniture hastened the feudal system more than any other development for it tended to fix the social classes so that the relation of lord and man could not be altered.

The most significant development in the landholding was the breaking down of folkholdings by the conversion of folkland into bocland which resulted in taking the land out of the folk and placing it under the control of the church and the private lord. Thus the reversion was established in the private lord and vast estates were held in mortmain by the church. This development aided the rise of the individual for men no longer had the family or folk relation to rely upon but were obliged to turn to the central government for the protection of their personal and property rights. As the kindred weakened, the state increased in power.
The discussion of the laws of crime and torts and the part that the church in making and executing the laws played seems to lead to the conclusion that the church was not only responsible for the increase in crime, but that the church was harsh and brutal in its punishments. But there are more cogent reasons for the increase of crime in Anglo-Saxon England. The increase in population, in property rights and personal relations in new and varied pursuits are all matters that tend to account for the rise of torts to the person and to property. The breaking down of the kindred and the consequent freedom of the individual, the rise of the central power and its efforts to establish the King's peace are elements to be considered in the study of the forms of punishment employed by the authorities. These punishments were imposed by the Witenagemot which was made up of the ecclesiastical and the secular authorities who gave their sanction to the laws. It is hard to say that the church was responsible for the many punishments imposed upon criminals. The better conclusion is that the church and the state worked together to establish the King's peace in Anglo-Saxon England.

The essential part that the church took in the secular government was to add dignity to the law courts and see that justice was performed there. The church was the first sanctuary to which the criminal could flee; the altar was the place where the slave was manumitted. The marriage ceremony was sanctified by the church which sought to add dignity and stability to the domestic relations. The church must be considered in the study of all branches of the Anglo-Saxon law, for as shown in the body of this thesis, the church men took an active part in the legislative, executive, administrative,
and judicial branches of the government.

Some of the most notable survivals in the common law from the early Anglo-Saxon law were the relation of lord and man, villenage on manors, mortmain lands in the church, primogeniture in remare, heriots, marriage under the sanctity of the church, and the presence of the lords ecclesiastical in the main legislative body in the government.

The essential fact in the development of the Anglo-Saxon law is that there was a steady and uninterrupted growth based on custom. There were no sudden changes in policy or in the form of the government. Such growth accounts for the stability of the laws and their persistence in the Anglo-Saxon scheme of government.
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