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The Growth and Development of English Law

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Butler University Early Theses Collection

Summary

Volume of Collection

8 boxes, 154 folders

Collection Dates

1887 - 1911

Scope and Content Note

The collection contains early theses manuscripts from Butler University dating from 1887 until 1911 on subjects including Literature, Religion, Science, Greek and Latin. Until 1897 Butler required all students, including undergraduates, to write a theses statement in order to receive a degree. One year after Butler University joined the University of Indianapolis and became Butler College the theses requirement for undergraduate students was dropped. Postgraduate theses are available in this collection ending in 1911. While the majority of these manuscripts are handwritten, as early as 1908 graduate students were required to type theses statements.

THESIS of Willis M. Blount applying for the degree of

Bachelor of Arts from Putler College, University of Indianapoli.

--The Growth and Development of English Law.--

The English Constitution is the product of ages. Hased fund amentally on the manners and customs of Teutonic peoples it did not embrace principles so much as results of experiment. It had to pass through a formative stage which began before the custom of writing law and still continues, for the English Constitution has few barriers to ammendment. The main idea of the English people was and is still, reform.

In the year 50 A.D. Ceasar began the Roman conquest of Britain which was to last for nearly four centuries. The Romans introduced their customs and order as far as possible and sought to reduce the country to civilization. They were however, unable to conquer the whole of the island and their policy which took away savage strength of the Romanized district without adding a sufficient substitute, left it at the mercy of its surrounding enemies, when in 410 Honorius was compelled by domestic difficulties to withdraw his legions. The Britains finding themselves too weak to resist the onslaughts of their northern neighbors, the Picts, asked aid of three continental tribes, the Angles, Saxons and Jutes. These allies seeing how fair the land was coveted it, and began in their turn to harrass the Britains. This Saxon invasion unlike the Roman, did not seek to improve, but to exterminate the original inhabitants of the country. It was barbarous

which conquered homes for themselves and introduced their Teutonic customs. Owing to the hard struggle which these bands had to obtain a foot hold, there was none of that generosity exhibited in Britain which had characterized their continental invasions, but a harsh exterminating war.

Coming into the land as a mere destroyer the Teutons learned nothing from the natives, and under these circumstances Teutonic life in all of its purity took root in Britain: a Germany outside of Germany more German than Germany itself. In Europe the Teuton became socially subject to or at least absorbed into the older Roman civilization, but in Britain the Teutonic polity established in the annihilation of the conquered, has been able to survive in all its purity and to preserve its identity and even its intinets through the years of vicisitudes and growth through which t has passed. No nation, of course, can claim absolute purity of lood, but the identity is not lost so long as the paternal eleand is strong enough to absorb all infusing elements and to imress upon the nation as a whole its own image and instincts. This is certainly true of the Teutonic element in Britain. When he Dames came it was only to mingle and to blend with the English. The first really great struggle for English national existence came with the Normans, but here again the remarkable faculty the Teutonic blood had of finding affinities and kinship in opponents was clearly shown. The Normans, only Danes who had been coated

with a little French varnish, try as they would, which had many tain their popular type assumed in France and in the end had to see their Testuare sature triumph and themselves become true Englishmen.

The Teutonic political system as a whole rested upon the collective weight of the individual free men acting together in In expanding series of popular assemblies whose jurisdictions, beginning with the smallest local affairs so widened as to emtrace the gravest national concerns. The unit in the system consisted of a narrow tribal division, originaly uniter by finally iet, whose members possessed the power to regulate their own local and domestic interests. A group of such units constituted he next higher of larger political division, This combination epresents the erliest form of representative principles. The foundations of this government were so deeply rooted in the Teuonic mind that no change could displace them. When the Norman seized the supreme power the local Teutonic system remained unshaken. Upon this system the Norman conqueror built his cenralize administrative system as a super structure, and out of the union of the two systems has grown English law. Just as the romance words were woven into the woof and warp of the English ongue without in the least changing its original sturdiness and priginal strength, so the Norman ideas of law and administration vere assimilated by the primitive Teutonic principles and the modern constitution.

They has no applyten laws but their numbers were very powerful.

Tacitus mays: "customs prevail among the Germans and produce better morals and characters than laws among us." The marriage the was held very sacred, They usually had but one wife and infidely by on the part of either husband or wife was punished with death.

They are very hard drinkers and desperate gamblers often staking their freedom on a throw of the dice box. To violate the right of Mospitality was considered a sacrilege, a stranger was housed and assisted on his journey. Their punishments were peculiar and effective. If a man committed a crime against civil law he was house on a high tree, if against moral law he was smothered in the had.

The Teutonic state was divided into two divisions, first the "mark" corresponding to our township, second, the "hundred" small lar to our county. The whole fabric rested on the two ideas of rank and the possession of land. These two ideas are so intermingled that they can hardly be separated. As a man who was not free could hold no land, so the freeman who held no land could not enjoy his privileges no matter how high his rank. There were four classes of men, first nobles, second freemen, third freedmen fourth slaves. The freeman was the basis of the system and had certain rights and privileges. He received a due portion in the annual allotment of land, could participate in all assemblies, could bear arms on all occasions, could wage private was to

defend his life, honor and private property, could wear look hair and could exact "wormile" or blood money. The noble while his political status was i no wise superior to the simple freemans, had socially certain other rights and dignities. In medate a not le took precedence of a freeman, he was often chosen for a leager in time of war and had a higher wergild than a freehal... A nobles son was like a freemans son, however, in all respects. He was not recognized by the state until he attained his majority. At that time the state emancipated him and he belonged hencefor 1. not to his family, but to his state. This ceremony of emancipation consisted of being invested with a sword and spear and hav-138 an allotment of land given him. The freedmen were but little better than the slaves, they obtained no rank in their masters household, and possessed no political rights. The slaves were of two classes: first the agrarian, generally conquered natives who furnished their master a fixed amount of grain, cattle and clothing in return for which they were given a house and farm and were seldom published- the second class represented conditions of servitude, and was treated with less consideration than animals. This class was made up chiefly of criminals and of gamblers who had sold themselves into servitude.

The dwelling place of any one division or community, consisting of a village, arable lands, common or pasture lands, was
called a mark, something marked out or defined from the fact it
was at once time it was surrounded by a hedge. In the center of

the mark, was located the swelling in which the Larken dwelt in their horester's surrounded by their enclosures and subturing and it is important in this connection to understant that a typical German village was not so closely laid out as a modern town, at that instigated by his inherent jealous, each man sure unded hisself with quite a yard or parch. With advancement in the path of civilization the principle of collective ownership naturally gave to individual ownership. This transition has taken place in most of the country settled by the Aryan race.

In the course of time as the adventage gained by the amalgamation of families into marks became apparent- unions were formed of two or more marks, into a pagus or shire, known someti es as a hundred. Just as the "mark moot" had charge of the affairs of the mark, an assembly consisting of a chief and one hundred assistants all chosen from the body of the people and called the "hundred moot", administered justice and took care of the affairs of the hundred. From the hundred grew the i ea if the state. Two or more huncreds banded togther for natual profile. tion and benefit and formed a state. The idea of popular assers blics extended here also and an asembly called the "witenagemot" gathering of wise men, and corresponding to the mark and hundred moots held the supreme power. Each higher moot berved as a court of appeal for the one lower, but the hundred moot met mainly for the purpose of judicial administration, and the witenagement for political action. All the matter presented to the assembly was

carefully propored before hand by a committee or consoil, compared of magnitudes of princeps, who also decide all minor matters, reserving only the greater ones for the consideration of the assembly. When the proper time arrived the ebate was opened by the chief, then the rest were heard in turn according to rank on military or oratorical fame. Nothing but persuasion was allowe. The assent of the people was expressed by clashing of arms, the dissent by loud murnurs or hisses. The magistrates, who resemble our justices of peace were chosen at this time and place, for the assembly had jurisdiction over both civil and criminal cases.

Although the German system of land division was introduced into Britain new conditions conduced to a different ownership of land and to the growth of great estates. Gradually the system of come on cultivation was abandoned and the annual allotment made permanent. This change began with the arable lands and extended finally to the pasture lands. Each family held its allod or property, the homestead and share of arable lands. This possession was for a long time considered inalienable, but finially as the homestead began to be administered by a single individual, the head of the family, it was held that they were alienable with the consent of the family. The consent of the king and witemagement could, however, take the place of that of the family. As wills began to be instituted by the church and family lands became subject to devise. At the time when documentary evidence is first found, large estates existed, over which a single can