



1900

## 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.

T H E S I S of Willis M. Blount applying for the degree of  
Bachelor of Arts from Butler College, University of Indianapolis.

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

The English Constitution is the product of ages. Based fundamen-  
tally 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 amendment. The main idea of the English  
people was and is still, reform.

In the year 50 A.D. Caesar began the Roman conquest of Brit-  
ain which was to last for nearly four centuries. The Romans in-  
troduced 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 suf-  
ficient substitute, left it at the mercy of its surrounding en-  
emies, 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 in-  
vasion unlike the Roman, did not seek to improve, but to extermi-  
nate the original inhabitants of the country. It was barbarous

and pagan. The Saxons came across the channel in small companies 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 instincts through the years of vicissitudes and growth through which it has passed. No nation, of course, can claim absolute purity of blood, but the identity is not lost so long as the paternal element is strong enough to absorb all infusing elements and to impress upon the nation as a whole its own image and instincts. This is certainly true of the Teutonic element in Britain. When the Danes 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 garnish, try as they would, could not maintain their peculiar type assumed in France and in the end had to see their Teutonic nature 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 an expanding series of popular assemblies whose jurisdictions, beginning with the smallest local affairs so widened as to embrace the gravest national concerns. The unit in the system consisted of a narrow tribal division, originally united by family ties, whose members possessed the power to regulate their own local and domestic interests. A group of such units constituted the next higher or larger political division. This combination represents the earliest form of representative principles. The foundations of this government were so deeply rooted in the Teutonic mind that no change could displace them. When the Normans seized the supreme power the local Teutonic system remained unshaken. Upon this system the Norman conqueror built his centralized 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 tongue without in the least changing its original sturdiness and original strength, so the Norman ideas of law and administration were assimilated by the primitive Teutonic principles and the modern constitution.

The rare traits of the Teutons were peculiar and powerful. They had no written laws but their customs were very powerful. Tacitus says: "customs prevail among the Germans and produce better morals and characters than laws among us." The marriage tie was held very sacred, they usually had but one wife and infidelity on the part of either husband or wife was punished with death. They were very hard drinkers and desperate gamblers often staking their freedom on a throw of the dice box. To violate the right of hospitality 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 hung on a high tree, if against moral law he was smothered in the mud.

The Teutonic state was divided into two divisions, first the "mark" corresponding to our township, second, the "hundred" similar 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 war to



defend his life, honor and private property, could wear long hair and could exact "wergild" or blood money. The noble while his political status was in no wise superior to the simple freeman, had socially certain other rights and dignities. In debate a noble took precedence of a freeman, he was often chosen for a leader in time of war and had a higher wergild than a freeman. 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 henceforth not to his family, but to his state. This ceremony of emancipation consisted of being invested with a sword and spear and having 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 punished- 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 dwelling in which the Aryan dwell in their hamlets surrounded by their enclosures and outbuildings. It is important in this connection to understand that a typical German village was not so closely laid out as a modern town, but that instigated by his inherent jealousy, each man surrounded himself with quite a yard or perch. 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 advantage gained by the amalgamation of families into marks became apparent unions were formed of two or more marks, into a pagus or shire, known sometimes 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 idea of the state. Two or more hundreds banded together for mutual protection and benefit and formed a state. The idea of popular assemblies extended here also and an assembly called the "witenagemot" gathering of wise men, and corresponding to the mark and hundred moots held the supreme power. Each higher moot served as a court of appeal for the one lower, but the hundred moot met mainly for the purpose of judicial administration, and the witenagemot for political action. All the matter presented to the assembly was



carefully prepared before hand by a committee or council, composed of magistrates or princeps, who also decided all minor matters, reserving only the greater ones for the consideration of the assembly. When the proper time arrived the debate was opened by the chief, then the rest were heard in turn according to rank and military or oratorical fame. Nothing but persuasion was allowed. The assent of the people was expressed by clashing of arms, the dissent by loud murmurs 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 common 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 finally 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 witenagemot 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 man