


3-1-1986

## Origins of the Common Law (A Three-part Series) Part ITI: Common Law Under the Early Normans

David A. Thomas

Follow this and additional works at: <https://digitalcommons.law.byu.edu/lawreview>

 Part of the [Common Law Commons](#), [Comparative and Foreign Law Commons](#), and the [Legal History Commons](#)

---

### Recommended Citation

David A. Thomas, *Origins of the Common Law (A Three-part Series) Part ITI: Common Law Under the Early Normans*, 1986 BYU L. Rev. 109 (1986).

Available at: <https://digitalcommons.law.byu.edu/lawreview/vol1986/iss1/1>

This Article is brought to you for free and open access by the Brigham Young University Law Review at BYU Law Digital Commons. It has been accepted for inclusion in BYU Law Review by an authorized editor of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

Origins Of The Common Law  
(A Three-Part Series)  
Part III: Common Law Under the Early  
Normans\*

*David A. Thomas\*\**

While even school children know that Normans were once "Northmen," little else about these medieval marauders is commonly known. Their conquest of England in the eleventh century caused profound and permanent upheaval in English society, but how they carried out these changes is not well understood. Moreover, because most conspicuous common law developments came after the Norman conquest, it is important to learn how the Normans influenced those changes.

A principal thesis of the series and this article is that the source for most common law was wholly Anglo-Saxon; the Norman presence did little to alter the substantive features of the English legal system.

This article examines the origins of the Normans and the character of the society they established in Normandy. It will then show how their Continental traits, when transplanted into

---

\* This three-part series explores the earliest laws and customs that form the genealogy of Anglo-American common law. Those laws and customs that served the needs of a barbaric society gradually grew into a legal system that now governs the most complex activities in human history. Although much has been written on this theme, there persists a need to review traditional conclusions in light of more modern findings and interpretations. The first article in this series considered whether Roman law in ancient Britain continued into Anglo-Saxon times and thus directly influenced early common law developments. That article cited considerable evidence against such continuity. Thomas, *The Disappearance of Roman Law from Dark Age Britain*, 1984 B.Y.U. L. REV. 563. The second article in the series asserted that the original seeds of English common law were carried to Britain in the Germanic customs of the Anglian, Saxon, and Jutish conquerors of the Romano-Britons, and it traced the influence of the Viking settlers. Thomas, *Anglo-Saxon Antecedents of the Common Law*, 1985 B.Y.U. L. REV. 453. This third article describes influences on the common law introduced by the early Normans. This series covers the time period preceding the era in which the common law is traditionally thought to have developed.

\*\* Professor of Law, Brigham Young University. B.A., 1967, Brigham Young University; J.D., 1972, Duke University.

conquered England, vitalized the Anglo-Saxon legal system. Because of the abundant scholarly treatment of English law beginning with the reign of Henry II (1154-1189), this article covers only the period during which William the Conqueror and his three immediate successors reigned, prior to Henry II and the other so-called Angevin monarchs.<sup>1</sup>

## I. ORIGINS OF THE NORMANS

The Norman invasions fit squarely within the mainstream of Viking aggressions which afflicted Europe from the eighth through the eleventh centuries. Indeed, the Norman Conquest of England has been called "the last great Viking expansion."<sup>2</sup> Information about the acknowledged "founder" of the Normans comes from Scandinavian sagas which tell of an adventurer named Rolf,<sup>3</sup> and from Continental chronicles which refer to the same figure as Rollo.<sup>4</sup> Rolf/Rollo, hereafter referred to as Rollo, was a Norwegian<sup>5</sup> Viking pirate who operated in the Baltic in his early years. However, he was outlawed by the Norwegian king when, desperate for food, he raided cattle in Norway.<sup>6</sup>

Little is known of Rollo's activities in the first years of the tenth century, a time of violent unrest. After a stay in the Hebrides, he probably took part in raids of what is now western

1. Henry I (1100-1135), the youngest son of William the Conqueror, who was left without a legitimate male heir, married his daughter Matilda to Geoffrey Plantagenet, then heir to Anjou, an area south of Normandy. In 1133 Matilda bore Geoffrey a son, who in 1154 succeeded to the English throne as Henry II. Although Henry II could claim Norman descent from William the Conqueror through his mother, his Angevin father—and his wife, Eleanor of Aquitaine—gave him strong Continental ties. He is usually referred to as the first of the Angevin or Plantagenet monarchs of England. More significantly, his reign marked a return of order to England after the anarchic and confused reign of Stephen (1135-1154) and produced a consequent dramatic increase in legal activity. 1 *ENCYCLOPAEDIA BRITANNICA* s.v. *Anjou* 388 (Micropaedia 1975); 8 *ENCYCLOPAEDIA BRITANNICA* s.v. *Henry II* 758 (1975).

2. J. LINDSAY, *THE NORMANS AND THEIR WORLD* 4 (1974).

3. 1 S. STURLASON, *THE HEIMSKRINGLA: A HISTORY OF THE NORSE KINGS* 38-39 (S. Laing trans. 1907).

4. See Dudo, *De Moribus et Actis Primorum Normanniae Ducum*, in *HISTORIAE NORMANNORUM SCRIPTORES ANTIQUI* 70 (Andreas Duchesnius ed. 1619). A brief but helpful discussion of the source chronicles and of Dudo's unreliability is found in R. BROWN, *THE NORMANS AND THE NORMAN CONQUEST* 24-25 & n.18 (1969).

5. Rollo's Norwegian origin is not certain, but seems probable. Douglas, *Rollo of Normandy*, 57 *ENG. HIST. REV.* 417, 423 (1942).

6. J. LINDSAY, *supra* note 2, at 18; 1 S. STURLASON, *supra* note 3, at 38-39.

France during the early 900's.<sup>7</sup> It is also reported that he visited the Danish king Guthrum in England at about this time.<sup>8</sup>

In the next decade Rollo helped lead several attacks in the area of modern Normandy and attempted an unsuccessful siege of Paris. Possibly he also directed colonization by Norse settlers in territories brought under his control. By 911 the Frankish king Charles III (the Simple), struggling to hold together remnants of the Carolingian Empire, was will to enter into a pact with Rollo even after defeating him in battle at Chartres.<sup>9</sup> Reportedly, Rollo agreed to be baptized, to marry Charles' daughter, and to give homage to Charles; in return he obtained formal control over the areas of Rouen, Lisieux, Evreux, and some minor additional territory—all later known as Upper Normandy.<sup>10</sup> After 911, Rollo expanded his control west into the districts of Bayeux and Sees, and after 924 his son moved into the Avranches and Coutances districts, which added Lower Normandy to the territory.<sup>11</sup>

The population thus brought under Norse control was probably Celtic, but had become considerably Romanized by the fourth century when Saxons and Franks invaded.<sup>12</sup> The Saxons and Franks mingled with the people but did not impose their language upon them. The Vikings who later intruded under Rollo may have included Norwegians as early raiders and commanders, but most of the settlers were Danish.<sup>13</sup> Instead, the invaders adopted French language and customs, while remaining a separate ruling class.

As a subsequent ruling class, the Normans continued consolidating their control throughout the tenth century and were generally successful in remaining independent of the aggressive Frankish and Breton princes who surrounded Normandy. Rollo died circa 925-927<sup>14</sup> and was succeeded by his son William I

---

7. J. LINDSAY, *supra* note 2, at 19; I S. STURLASON, *supra* note 3, at 39.

8. J. LINDSAY, *supra* note 2, at 18.

9. *Id.* at 15.

10. *Id.*; Dudo, *supra* note 4, at 79-84. The generous detail Dudo provides of the agreement and its precedent circumstances was probably partially fabricated. See Douglas, *supra* note 5, at 428-29. However, the occurrence of these events generally is not disputed.

11. J. LINDSAY, *supra* note 2, at 17; J. LE PATOUREL, *THE NORMAN EMPIRE* 5-11 (1976).

12. J. LINDSAY, *supra* note 2, at 16.

13. Douglas, *supra* note 5, at 423-24.

14. *Id.* at 434-35.

(Longsword). William was murdered in 943, but had arranged the previous year for the succession of Richard I (the Fearless), his son by a Breton concubine.<sup>15</sup> Although Richard was bilingual like his father and grandfather and maintained Scandinavian connections and culture, he reigned over a Norman state that now took on definite form, and settled in as part of Frankish politics.<sup>16</sup> After his long reign ended with his death in 996, his oldest son, Richard II, also illegitimate,<sup>17</sup> succeeded him in 998. During Richard II's reign, the conflicts between Christians and pagans were generally resolved in favor of Christianity, and feudal rules and relationships were significantly refined.<sup>18</sup> Upon his death in 1026, Richard II was succeeded by his legitimate son Richard III, who died that same year after falling ill during a feast.<sup>19</sup> Richard III's brother Robert took over in 1027 and soon thereafter sired a son by a Falaise peasant girl.<sup>20</sup> In 1034 Robert made his vassals do homage to this illegitimate son, who was only six years old, and then turned Normandy over to the boy and left on a pilgrimage to Jerusalem. When Robert died during his return journey, the boy became William II, seventh duke of Normandy<sup>21</sup> and eventually "the Conqueror" and king of England. William was born only little more than a century after his Viking great-great-grandfather Rollo formalized the Norman presence in France. Even his grandfather Richard I had still maintained Norse language and customs. Norman contribution to English law after the Conquest is thus better understood in the context of its Scandinavian origins.

## II. SKETCH OF SCANDINAVIAN LAW

The Vikings were divided into classes of nobility, freemen, and slaves, as was common in all Germanic societies.<sup>22</sup> In early Viking times, before feudal tendencies were manifest, land held by members of the upper two classes was held jointly by the family, albeit under the father's direction. Upon the father's

---

15. J. LINDSAY, *supra* note 2, at 53-55.

16. Douglas, *The Rise of Normandy*, 57 *PROC. BRIT. ACAD.* 101, 107-08, 112 (1942).

17. J. LINDSAY, *supra* note 2, at 57.

18. *Id.* at 57-58; D. DOUGLAS, *THE NORMAN ACHIEVEMENT: 1050-1100* 24-25 (1969); Douglas, *supra* note 16, at 114-15.

19. D. DOUGLAS, *WILLIAM THE CONQUEROR* 31-32 (1964); J. LINDSAY, *supra* note 2, at 70.

20. D. DOUGLAS, *supra* note 19, at 15.

21. *Id.* at 35-37.

22. J. BRONSTED, *THE VIKINGS* 238-42 (K. Skov trans. 1965).

death, the oldest son inherited the entire holding, but had to compensate younger brothers for their shares.<sup>23</sup> Thus financed, younger sons tended to colonize new areas or to strike out on voyages of trade or piracy.<sup>24</sup>

The land was free from obligations to lords, but an owner might assume personal dues in return for protection or support. Such lordship arrangements were personal and could be transferred to other lords without affecting the rights in land. One could also obtain land by becoming a follower of a chief, who would administer justice, give support in disputes, and distribute shares of spoils.<sup>25</sup> Women could also own and inherit land.<sup>26</sup>

Divorce was easily obtained by either spouse, and illegitimacy was common.<sup>27</sup> Indeed, blurred distinctions between marriage and concubinage sometimes led to succession by illegitimate sons, as abundantly manifested in the Norman ducal genealogy.<sup>28</sup>

Assemblies of free men, called Things, were common in all Nordic societies. These gatherings in each province pronounced judgments and administered the law in the area. Although the rulers dominated such assemblies, they were still bound to consult them.<sup>29</sup>

Other traits common to Germanic societies, such as the responsibility of an entire kindred for individual offenses of its members, and compensations for such offenses based on *wergild*,<sup>30</sup> were in full force in Scandinavia. As elsewhere in northern

23. J. LINDSAY, *supra* note 2, at 26. In addition to compensatory payments for their shares of the family estate, the younger brothers also received shares of other assets.

24. *Id.* at 25-26; J. BRONSTED, *supra* note 22, at 24-25.

25. J. LINDSAY, *supra* note 2, at 26.

26. This is illustrated by a runic inscription found at Hillersjö, Uppland, Sweden:

Germund married Gerlög, when she was a maiden. Later they had a son, before Germund was drowned. The son died later. Then she married Gudrik. They had children. Of these only a girl lived; she was called Inga. Ragnfast of Snottsta married her. Afterwards he died, and their son after him. And the mother inherited from her son. Inga afterwards married Erik. Then she died. Then Gerlög inherited from Inga, her daughter.

O. KLINDT-JENSEN, *THE WORLD OF THE VIKINGS* 138 (1967).

27. J. BRONSTED, *supra* note 22, at 42; J. LINDSAY, *supra* note 2, at 27.

28. Of the seven Norman rulers between Rollo and William II (the Conqueror), three (Richard I, Richard II, and William II) are known to have been illegitimate. See *supra* notes 15, 17, & 19 and accompanying text.

29. J. BRONSTED, *supra* note 22, at 242-43; O. KLINDT-JENSEN, *supra* note 26, at 178-83; J. LINDSAY, *supra* note 2, at 27-28.

30. See Thomas, *Anglo-Saxon Antecedents of the Common Law*, 1985 B.Y.U. L.

and western Europe, kings attempted to restrict blood feud vengeance and to regulate assessment and payment of wergild fines for offenses. Generally, this regulation tended to fix responsibility for offenses more on the individual offender than on the entire kindred. This might be achieved by requiring the offender himself to pay a portion of the wergild or by restricting the extent of family relationship included in the kindred.<sup>31</sup>

The people's way of life had a natural influence upon local legal customs. For example, farm implements were left in the fields overnight to save time during short harvest seasons, and laws imposed severe penalties for their theft. Other laws imposed firm obligations upon neighbors to assist those who otherwise could not get their harvest in on time.<sup>32</sup> Similarly, when wintering ships were pulled up into sheds for storing and repairs, laws limited rights of such laying-up and required neighboring farmers to help pull under some circumstances.<sup>33</sup> Presumably, extensive Norse trading led to many legal customs regulating merchant activities.

### III. CHANGES IN NORMAN LEGAL CUSTOMS AFTER SETTLEMENT

Some fundamental changes in Norman legal customs between 911 and 1066 can be identified, even though documentation is virtually nonexistent. At first, Rollo's followers insisted on preserving their equal social status.<sup>34</sup> Also, until the early years of Richard II's reign (from about 998 on), widespread non-feudal land holding, peasant independence, and pagan creeds persisted in Normandy.<sup>35</sup> However, because the Normans had to fit into emerging French society, they gradually adopted a new language and lessened their pirate activity. Constant threats from aggressive neighbors in adjacent lands, not separated by any natural barriers, created pressures to feudalize—that is, to seek security in submitting lands and lives to powerful warrior lords. Normans who recognized these inexorable forces more

---

REV. 453, 468-69.

31. O. KLINDT-JENSEN, *supra* note 26, at 178. A description of these practices appears most clearly in contemporary England, through the second set of the laws of Edmund. See 2 F. LIEBERMANN, *DIE GESETZE DER ANGELSACHSEN* 186-91 (1960).

32. J. LINDSAY, *supra* note 2, at 27.

33. *Id.* at 48-49; H. SHETELIG & H. FALK, *SCANDINAVIAN ARCHAEOLOGY* 352 (E. Gordon trans. 1937).

34. J. LINDSAY, *supra* note 2, at 65.

35. *Id.* at 59-60; Douglas, *supra* note 16, at 111-15, 118-19.

readily accepted feudal landholding, the French language, and Christianity. This caused a substantial split with more traditional Normans, particularly with peasants who were losing their independence.<sup>36</sup>

Richard I (942-996), apprehensive of French hostility, took the first halting steps toward feudalism. Military service began to be organized on the basis of feudal duties, replacing the traditional calling up of all freemen. As a result, some allodial (nonfeudal) tenures were changed to feudal tenures and many free peasants lost their independent status.<sup>37</sup> A serious but unsuccessful revolt of free peasants under the subsequent reign of Richard II was probably a protest against these changes, and undoubtedly slowed the spread of feudalism to the lower classes.<sup>38</sup> The eventual result was a Norman feudalism with a highly organized military structure, but with servile status less pervasive than elsewhere in France.

It is estimated that 100 to 120 feudal baronies existed under Richard I.<sup>39</sup> A vassal of one of these barons would have held his land as a tenant-at-will, a tenure known in Roman law as a *precarium*.<sup>40</sup> By the time of Richard II, a vassal who swore fealty to a lord would receive an interest in land known as a *beneficium* under Roman law, which granted the right to hold property for life. As developments which had already taken place during the Carolingian Empire were imitated in Normandy, the vassal's interest evolved into the hereditary fief, or *feudum*, which descended from father to son.<sup>41</sup> In return for giving up the right to revoke the land grant, the lord eventually gained the right of wardship, the right to a succession duty upon inheritance, and the right to choose a husband for a vassal's heiress.<sup>42</sup>

36. R. BROWN, *supra* note 4, at 39-40; J. LE PATOUREL, *supra* note 11, at 286-90; J. LINDSAY, *supra* note 2, at 59-60.

37. R. BROWN, *supra* note 4, at 40. Douglas cautions against assuming a wholesale adoption of feudal tenures during this time. Douglas, *supra* note 16, at 118-19.

38. J. LINDSAY, *supra* note 2, at 59-60.

39. *Id.* at 59; see generally Douglas, *The Earliest Norman Counts*, 61 *ENG. HIST. REV.* 129-56 (1946) (explaining that, despite civil wars, the cohesion of the Norman counts greatly contributed to the Norman achievement).

40. J. LINDSAY, *supra* note 2, at 69; see also 1 F. POLLOCK & F. MAITLAND, *THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I* 67-72 (2d ed. 1909).

41. J. LINDSAY, *supra* note 2, at 69. Norman magnates were inheriting their land by 1075. *Id.* at 133.

42. 1 F. POLLOCK & F. MAITLAND, *supra* note 40, at 325-29; see also J. LINDSAY, *supra* note 2, at 69.



Vassals' duties were only gradually defined,<sup>43</sup> but at least the most important nobles and churches in Normandy before the Conquest held their land by some sort of military tenure, that is, subject to the duty to provide the services of a specific number of knights.<sup>44</sup> Military tenures are hardly evident before 1047 and were probably developed largely by William, in response to the serious threats against his early rule.<sup>45</sup>

The fief—land tenure derived from military service—played an important part in William's military resources. Under some conditions, he could summon every man with a knight's fee; on less serious occasions he called up only some men holding military tenures, and only for forty days' service. Under the worst circumstances, he could call out all free tenants.<sup>46</sup> The system in Normandy was still being shaped at the time of the Conquest, although William did much to spread the principle of a fixed rate of knight service.<sup>47</sup> Subinfeudation further complicated military tenures: a vassal owing five knights might let his land out to others for ten; a tenant might hold land from several lords or might hold a fraction of a knight's fee. Vassals who made grants in subinfeudation held a relationship to their tenants similar to the duke's relation to themselves.<sup>48</sup>

Over all of these baronies and vassals, Richard I and his successors administered certain functions through viscounts. Viscounts, on behalf of the duke, exercised control over bishoprics (the church organization had weakened during widespread civil strife), troops, revenue, administration of justice, and castles.<sup>49</sup> Usually only leading barons would be appointed viscounts, and the office gradually became a hereditary right of certain feudal families. Viscounts paid rent for their appointments, and then, with responsibility for tax collection, kept any extra revenue they could obtain.<sup>50</sup>

43. R. BROWN, *supra* note 4, at 39, 41.

44. D. DOUGLAS, *supra* note 19, at 101-03.

45. *See id.* at 98-103.

46. J. LINDSAY, *supra* note 2, at 130; F. STENTON, *THE FIRST CENTURY OF ENGLISH FEUDALISM: 1066-1166* 13-14 (1961).

47. D. DOUGLAS, *supra* note 19, at 97-98. "The principle of a fixed rate of knight service was doubtless inherited by William, but he certainly did much to regularize and extend it." J. LINDSAY, *supra* note 2, at 131.

48. J. LE PATOUREL, *supra* note 11, at 289-90.

49. *See id.* at 258-60; D. DOUGLAS, *supra* note 19, at 139-44; Douglas, *supra* note 39, at 152-53.

50. J. LINDSAY, *supra* note 2, at 139; T. BAKER, *THE NORMANS* 25 (1966); D. DOUGLAS, *supra* note 19, at 139. The practice of "farming" referred to by Douglas obligated the

The dukes took other actions to increase order and stability in Norman society. For example,

[p]rivate war could not be outlawed, but was strictly limited. It needed a ducal licence; the duke set its rules and claimed the right to supervise campaigns. Devastation of opponents' property in land disputes was forbidden, as were assaults and ambushes in ducal forests. Arms, horses or property of a man captured in a bloodfeud might not be retained. A licence was needed for the building of a castle. We do not know the exact date at which many of these regulations came in, but they formed the system that was steadily extended from Richard II to William II.<sup>51</sup>

Information on other aspects of Norman law during this time is even scantier. Rights of barons to hold local courts were firmly controlled by the duke, but otherwise no details are known. As there was no written law before the Conquest, the Norman dukes administered customary law. They did not issue writs or charters, and the documents that were drawn up recorded gifts already made orally. The most serious cases—murder, assault, arson, and rape—were heard by the duke although sometimes he appointed others to hear such cases. By 1091 baronial jurisdiction had been granted over assault, rape, and arson. Although criminal justice may have followed the system of compurgation by oath common to Germanic peoples, no evidence of this has appeared. It is also not known whether juries were used among the pre-Conquest Normans. However, the ordeal, including ordeal by battle, was used.<sup>52</sup>

Ordeals were particularly conspicuous at the baronial councils convened by the dukes at festival times. Such councils, in addition to conducting trials by ordeal, resolved high-level disputes, decided whether to wage war, and occasionally proclaimed a ducal heir.<sup>53</sup> In 1047 William was instrumental in having a provincial council of ecclesiastical and lay magnates adopt the so-called "Truce of God," which restricted private warfare.<sup>54</sup> This

---

viscounts to pay a sum certain to the duke, which the viscount was then entitled to collect from the people in his jurisdiction. See also R. BROWN, *supra* note 4, at 54. As a rule, the amount of the viscount's collections exceeded the required ducal payment.

51. J. LINDSAY, *supra* note 2, at 69.

52. *Id.* at 136-38.

53. *Id.* at 136-37; see also R. BROWN, *supra* note 4, at 54, 145-46.

54. D. DOUGLAS, *supra* note 19, at 44, 51-52.

revealed William's penchant for involving and controlling the church in his administrative affairs.

#### IV. LAW IN ENGLAND AFTER THE NORMAN CONQUEST

It is difficult for us, viewing the Norman Conquest after the passage of nearly a millennium, to appreciate the monumentality of the Norman achievement or the disastrous consequences it held for the English. The stronger central rule which eventually rose from the Norman intrusion tends to obscure the decades of uncontrolled murder, oppression, rapine, humiliation, famine, and fear which the Norman invaders brought to much of England. Often, when the Norman barons could no longer find affluent Englishmen to pillage, they quarreled and fought among themselves, usually scourging the lands, manors, and peasants belonging to their opponents. Small wonder, then, that after numerous unsuccessful regional rebellions, the English, seeking relief from civil unrest, gave their allegiance to the Norman king rather than to discontented local magnates. This fitful struggle between forces of chaos and those of control inexorably influenced English law and government.

##### A. *Land Tenures and Feudalism*

While the traditional local land tenures were left intact, most English land changed lords during the period following the Conquest. In 1066, 4,000 to 5,000 Englishmen held estates of the king, which the Normans later called "manors." By the time of the Domesday Book survey twenty years later, only eight per cent of the land was left in the hands of English nobility. By this time, in 1086, William had granted land to 1400 or 1500 tenants-in-chief, of whom approximately 180 were truly significant landholders. About 8,000 men held land as subtenants.<sup>55</sup> Domesday Book also reveals, however, that the *local* landholding tenures and customs were meticulously investigated, recorded, and claimed by the Normans, who described such tenures in terms with which they were familiar.<sup>56</sup>

The grants to the Norman tenants-in-chief were, of course, not affected by local tenures and customs. Rather, they were made in terms of services specifically described by William. At

---

55. See D. DOUGLAS, *supra* note 19, at 268-75; J. LINDSAY, *supra* note 2, at 284-85; C. MOYNIHAN, *INTRODUCTION TO THE LAW OF REAL PROPERTY* 2-7 (1962).

56. D. DOUGLAS, *supra* note 19, at 310.

the highest levels, grants were usually made in terms of military services. In order to meet their obligations to the king, tenants-in-chief often made grants of their holdings to others.

These early fiefs at all levels were probably granted orally before witnesses, without charters or writs.<sup>57</sup> Creation of such fiefs also brought English and Norman feudal practices into confrontation. The Anglo-Saxon feudal relationship arose in a ceremony which Domesday Book refers to as *commendatio*, in which the lord promised protection and support in court. In return, the thegn receiving the land might pledge various combinations of services, agree to obtain approval before alienating land, or bind himself to the lord's court jurisdiction.<sup>58</sup> The Norman counterpart to *commendatio* was the homage ceremony, which by 1066 had begun to emphasize military tenures in grants to the chief vassals.<sup>59</sup> As was noted earlier in this series, parallel forms of military tenure existed among the Anglo-Saxons before the Conquest.<sup>60</sup>

Other feudal parallels are found in Norman feudal reliefs, which appear similar to the English heriot,<sup>61</sup> and in the fact that in both countries failure to perform military duties resulted in forfeiture of land.<sup>62</sup> Also, the average five hide landholding of the English fyrd soldier was the same as the typical holding of the post-Conquest Anglo-Norman knight.<sup>63</sup> Inheritability of property interests existed in both England and Normandy in 1066,<sup>64</sup> although the concept had progressed further in Normandy. English lands granted anew by William were free from customs of inheritance, such as were attaching to lands in Normandy. Nevertheless, inheritability of English lands progressed

---

57. J. LINDSAY, *supra* note 2, at 284.

58. F. STENTON, *ANGLO-SAXON ENGLAND 483-84* (1943); *see also* R. BROWN, *supra* note 4, at 86-87.

59. J. LINDSAY, *supra* note 2, at 284-85.

60. THOMAS, *supra* note 30, at 499-501. *But see* R. BROWN, *ORIGINS OF ENGLISH FEUDALISM* 83 (1973) (advancing a narrow concept of feudalism and denying the existence of military tenures in pre-Norman England).

61. J. LINDSAY, *supra* note 2, at 285; 2 W. HOLDSWORTH, *A HISTORY OF ENGLISH LAW* 75 (1923).

62. J. LINDSAY, *supra* note 2, at 285. This point is illustrated by the massive forfeitures to William of lands held by Englishmen who opposed him during the Conquest. *See* C. MOYNIHAN, *supra* note 55, at 2.

63. J. LINDSAY, *supra* note 2, at 285.

64. *See supra* notes 40-42 and accompanying text. THOMAS, *supra* note 30, at 497-99.

out of impulses identical to those on the Continent, and was widely established by the beginning of the twelfth century.<sup>65</sup>

### B. *Local Government and Administration*

No more typical example of the interplay of English and Norman impulses can be found in the changes in royal administrative practices after the Conquest. William took over English governmental institutions intact, but by 1071 he had brought local administration entirely into Norman hands. He achieved this primarily by strengthening the office of sheriff so that it functioned much like the Norman viscount, although it was much more subordinate to the king. Anglo-Norman sheriffs were less independent than Norman viscounts because those who obtained the offices were usually from the lesser nobility, were changed often, and did not inherit their positions.

Although traditional enforcement duties increased naturally with the growth of feudal dues and forest laws, the most important growth in the office's power was the increased scope of its judicial role. Royal writs could command a sheriff to bring a case to the royal court or, in the days before rounds by royal justices were common, could order him to hear and decide the case himself.<sup>66</sup>

### C. *Royal Courts*

The Norman administrative practice that had the most direct effect on the common law's growth was the royal court. Although it is difficult to find precise information on this institution, it appears that in the early years the court usually consisted of servants who performed judicial, financial and other administrative functions, and who usually witnessed the royal writs.<sup>67</sup> Occasionally added to this ministerial group would have been some members of the greatest nobility, companions or confidants of the king, who discussed issues of the realm. Such groups would not have been a formal court of law; nevertheless, the court issued writs and judgments. Writs extant from this time are brief and cite no rules or guidelines, only commands. However,

---

65. J. LINDSAY, *supra* note 2, at 288.

66. See D. DOUGLAS, *supra* note 19, at 305-06.

67. J. LE PATOUREL, *supra* note 11, at 138 n.1, 139, 155-57.

we can be sure that the king often discussed with the barons such matters as the disposal of escheated fiefs, the settlement of conflicting claims to estates, and the marriage of heiresses; the decisions thus taken in the end determined the lines on which feudal practice was to develop.<sup>68</sup>

At the three great church festivals, the king also assembled his great court, consisting of all his principal tenants-in-chief. This council, a natural extension of the Anglo-Saxon *witan*, also heard important cases and is the direct ancestor of the English Parliament.<sup>69</sup>

#### D. Judicial Activity

Inevitably, judicial administration more methodical than the impromptu gatherings of nearby nobles became necessary. This was achieved, albeit only incidentally, in connection with steps taken to deal with financial matters. The king's agent or deputy over financial matters came to be called the chief justiciar, or Justiciar of All England. He often presided over court gatherings at Easter and Michaelmas which accepted and audited money returns from sheriffs and other officers.<sup>70</sup> The justiciar also resolved disputes arising from these accounts before the barons of the exchequer.

By the time of William II (1087-1100), justiciars had been appointed over shires to perform judicial and fiscal functions.<sup>71</sup> Also, because the king had to resolve disputes between tenants-in-chief, a judge, or justiciar—appointed as the king's agent, but still acting within the old Anglo-Saxon framework—tried such cases, which were commenced by royal writ:

The hearings were held at the full meetings of the shire courts where local men, including Englishmen, could pronounce on the custom of the country. Thus native tradition and feudal law were able to some extent to merge. There was not always time to examine the many witnesses closely. So the method used was of a sworn verdict being given by a group of men whom the court appointed. We cannot find a definite precedent in Normandy, though the Franks were familiar with the

68. J. LINDSAY, *supra* note 2, at 324-25.

69. *Id.* at 325. The early developments which eventually resulted in forming a parliament are described in 1 F. POLLOCK & F. MATTLAND, *supra* note 40, at 198-200.

70. See J. LINDSAY, *supra* note 2, at 327; see also 1 F. POLLOCK & F. MATTLAND, *supra* note 40, at 156-59; J. LE PATOUREL, *supra* note 11, at 143-45, 274.

71. F. WEST, *THE JUSTICIARSHIP IN ENGLAND 1086-1232* 10-13 (1966).

idea of a collective verdict, as also were the most populated parts of the Danelaw [in England]. The origins of the jury are lost in obscurity, but the wide use of it certainly goes back to William; *Domesday Book* was compiled from the verdicts of juries all over England.<sup>72</sup>

The Domesday Book survey was undoubtedly prompted in part by the need to settle numerous disputes which had claimed the attention of king and justiciars. Eventually, Henry II removed local justiciars and replaced them with a system of itinerant justices.<sup>73</sup> Henry also greatly increased the use of writs and sworn juries.<sup>74</sup>

Writs, of course, had been a prominent feature of Anglo-Saxon administration.<sup>75</sup> For the first four years of his reign, William retained Edward's clerks, who attended both the king and his justices. These clerks and their successors functioned under the chancellor, who was in charge of religious services and writing activities. William soon expanded the use of writs, using them as a method of quickly sending commands throughout England. These writs were authenticated by the seal of the chancellor.<sup>76</sup>

Except for these rather subtle changes of practice at high administrative levels, the Anglo-Norman kings made no significant changes in the court system or procedures of the Anglo-Saxons. Even William's most important judicial contribution, establishing separate bishop's courts to enforce canon law as he had in Normandy, was aimed at reforming the church, not at improving the legal system.<sup>77</sup>

### *E. The Laws of the Normans in England*

Although much of early Norman legal activity in England is lost from history, perhaps more has been preserved than is the case for other governments of that period. William was keenly aware of the legal issues affecting his claim to the English throne

72. J. LINDSAY, *supra* note 2, at 328-29.

73. J. LE PATOUREL, *supra* note 11, at 260.

74. 1 F. POLLOCK & F. MAITLAND, *supra* note 40, at 138-53.

75. Thomas, *supra* note 30, at 488.

76. J. LINDSAY, *supra* note 2, at 327; see also D. DOUGLAS, *supra* note 19, at 147-48, 292-93.

77. *Writ of William I concerning spiritual and temporal courts (1072-1076, and probably April 1072)*, 2 ENGLISH HISTORICAL DOCUMENTS 604-05 (D. Douglas ed. 1953) [hereinafter cited as DOCUMENTS].

and was eager to promote the continuity of life and law that only a legitimate successor could provide. At his coronation ceremony in Westminster Abbey, he swore "he would rule justly and with kingly care the whole people placed under him, that he would make and keep right law, and that he would utterly prohibit all spoliation and unrighteous judgments."<sup>78</sup>

Only a few charters, writs, and legal decrees are known to have been issued during William I's reign.<sup>79</sup> At an early date, the decrees were compiled into a single document, known as "The Laws of William the Conqueror." The decrees effected no noteworthy change in English legal tradition. Indeed, their most important provision, clause seven, quoted in full below, secures to the people their ancient legal customs. These decrees may be summarized as follows:

1. A wish for reverence for God, faith in Christ, and peace between English and Normans.
2. All freemen will affirm by oath their loyalty to William.
3. Special protection is given against murders of Normans, including fines to be paid by the entire hundred where the killing occurred.
4. Normans are to pay "scot and lot" according to English law.
5. Cattle sales are to be in cities before witnesses.<sup>80</sup>
6. Trial by battle is available in disputes between English and Normans.
7. "This also I command and will, that all shall have and hold the law of King Edward in respect of their lands and all their possessions, with the addition of those decrees I have ordained for the welfare of the English people."
8. The frankpledge system is imposed, securing court appearances when summoned.
9. Slaves are not to be sold outside the country.
10. Punishment is to be by blinding and mutilation rather than by execution.<sup>81</sup>

---

78. *Select passages from the annals ascribed to "Florence of Worcester,"* 2 *id.* at 204, 214.

79. See editor's introduction to *The "Laws of William the Conqueror,"* 2 *id.* at 399.

80. This provision is similar to some of the old Anglo-Saxon dooms of *The Laws of Aethelstan (II)*, in *THE LAWS OF THE EARLIEST ENGLISH KINGS* 133 cl. 10, 141 cl. 24 [ca. 925-39] (F. Attenborough ed. 1922 & reprint 1974).

81. *The "Laws of William the Conqueror,"* 2 *DOCUMENTS, supra* note 77, at 399-400.



The other very important early Anglo-Norman legal document is the "Coronation Charter" of Henry I, believed to have influenced the Magna Carta.<sup>82</sup> This document, summarized below, also preserves the old English laws, especially in clause thirteen, which is quoted in full:

1. The Church is to be free of certain abuses and oppressions to which it was formerly subject.
2. Only just reliefs are to be charged for redemption of a decedent's land.
3. The king will not require payment for his counsel in marriage matters; widows will not be given in marriage without their consent.
4. Widows with minor children shall retain dowry and marriage portion, and will not be given in marriage without their consent.
5. Special taxes to compensate for depreciated coinage will no longer be levied.
6. Many pleas and debts owed to his brother the late king are forgiven.
7. Disposition of movable property belonging to a baron who dies intestate.
8. Forfeitures by barons need be covered by movable property only to the amount of the forfeiture.
9. All murder-fines incurred before the coronation are remitted; all future murder-fines are to be paid according to the law of King Edward.
10. The forests of William I are retained.
11. Men holding land in military tenure for knight service are exempted from taxes and other services, so that they may properly equip themselves.
12. "I establish a firm peace in all my kingdom, and I order that this peace shall henceforth be kept."
13. "I restore to you the law of King Edward together with such emendations to it as my father made with the counsel of his barons."
14. Property seized since the death of William II shall be returned.<sup>83</sup>

Both of the above documents exemplify the lack of original

---

82. J. LINDSAY, *supra* note 2, at 250-51.

83. *The "Coronation Charter" of Henry I (5 August 1100)*, 2 DOCUMENTS, *supra* note 77, at 400-02.

Norman contribution to English law. These documents, as well as the low level of legislative activity by these Norman rulers, who were preoccupied with self-preservation, confirm that the legal foundation of the old English state is the principal source of common law. Although it is pointless to speculate on the nature of legal developments had there been no Norman Conquest, it seems clear that the early Norman contributions to English law were those of emphasis and energy, rather than of creativity and originality. By the time Henry II and his Angevin successors came to the throne, the shock of the Conquest and its violent wounds to English society had been absorbed and England was prepared to nurture the profound flourishing of common law that soon followed.

## V. CONCLUSION

With the advantages of historical hindsight and the ability to assess Norman activities throughout Europe, it can now be said that Normans excelled at adopting and adapting cultures of the peoples they dominated. Despite the fact that the transition from the rough Viking traditions and tongue to Gallo-Frankish ways was still relatively recent to them in the eleventh century, they assimilated the old English ways basically intact.

The Normans almost never consciously innovated. Instead, they reacted to challenges by employing means readily suggested or available. The outstanding example of this process is the introduction of feudal military tenures into Continental Norman landholding, the systematic use of such tenures by William to create a stable military force for Normandy, and William's further refinements of uniformity in applying these military tenures to an existing set of English tenures.

In England, Norman kings specifically promised to continue observing the English laws current in 1066, together with their own decrees. The Normans' own laws and imported customs did not vary the mass of English customary law; only establishment of separate church courts, and introduction of ordeal by battle and some tenorial incidents could be said to be outside the English legal tradition. Moreover, the Domesday Book survey and associated jury procedure authenticated English customary law. In their administrative practices, however, the Normans were catalytic. Increasingly powerful sheriffs, justiciars, and royal courts thrust the new central royal power into the shires and brought uniformity into property rights.

When the Angevin kings discovered law as a means of extending royal power, they fashioned and affixed their decrees with tools readied by their Norman predecessors. Anglo-Saxon law, given form through institutions of English government, and refined and ordered by Norman administrative practices, became the essence of the emerging common law.