

Our Legal Heritage

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Table of Contents

<u>Our Legal Heritage</u>	1
<u>S. A. Reilly</u>	2
<u>Preface</u>	3
<u>Dedication</u>	4
<u>Chapter 1—The Times: before 600—</u>	5
<u>Chapter 2—The Times: 600–900—</u>	10
<u>Chapter 3—The Times: 900–1066—</u>	16
<u>Chapter 4—The Times: 1066–1100—</u>	23
<u>Chapter 5—The Times: 1100–1154—</u>	29
<u>Chapter 6—The Times: 1154–1215—</u>	39
<u>Chapter 7—The Times 1215–1272—</u>	50
<u>Chapter 8—The Times: 1272–1348—</u>	66
<u>Chapter 9—The Times: 1348–1399—</u>	79
<u>Chapter 10—The Times: 1399–1485—</u>	93
<u>Chapter 11—The Times: 1485–1509—</u>	103
<u>Chapter 12—The Times: 1509–1547—</u>	110
<u>Chapter 13—The Times: 1558–1603—</u>	119
<u>Chapter 14: Epilogue</u>	132

Our Legal Heritage

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- Preface
- Dedication
- Chapter 1—The Times: before 600—
- Chapter 2—The Times: 600–900—
- Chapter 3—The Times: 900–1066—
- Chapter 4—The Times: 1066–1100—
- Chapter 5—The Times: 1100–1154—
- Chapter 6—The Times: 1154–1215—
- Chapter 7—The Times: 1215–1272—
- Chapter 8—The Times: 1272–1348—
- Chapter 9—The Times: 1348–1399—
- Chapter 10—The Times: 1399–1485—
- Chapter 11—The Times: 1485–1509—
- Chapter 12—The Times: 1509–1547—
- Chapter 13—The Times: 1558–1603—
- Chapter 14: Epilogue

OUR LEGAL HERITAGE

The first thousand years: 600–1600
King Aethelbert–Queen Elizabeth

This book was donated by the author's family.

Preface

This was written to see what laws have been in existence for a long time and therefore have proven their success in maintaining a stable society. Its purpose is also to see the historical context in which our legal doctrines were derived. It looks at the inception of the common law system, the origin of the jury system, the meaning in context of the Magna Carta provisions, the emergence of attorneys, and the formation of probate law from church origins.

This book is a primer. One may read it without prior knowledge in history or law, although it will be more meaningful to lawyers than to non-lawyers. Since it defines terms unique to English legal history, it may serve as a good introduction on which to base further reading in English legal history. The meaning of some terms in King Aethelbert's code in Chapter 1 are unknown or inexact.

The chapters are sequential. The title of each chapter in the Table of Contents includes the time period covered. The title of each chapter denotes an important legal development of that time period.

Each chapter is divided into three sections: The Times, The Law, and Judicial Procedure. The law section is the central section. It describes the law governing the behavior and conduct of the populace. It includes law of that time by which people lived which is the same, similar, or a building block to the law of today. In earlier times this is both statutory law and the common law of the court. The Magna Carta, which is quoted in Chapter 7, is the first statute of the Statutes at Large. The law sections of Chapter 7—13 mainly quote or paraphrase most of these statutes or the Statutes of the Realm. Excluded are statutes which do not help us understand the development of our law, such as statutes governing Wales after its conquest and statutes on succession rights to the throne.

The first section of each chapter: The Times, sets a background and context in which to better understand the laws. The usual subject matter of history such as battles, famines, periods of corruption, and international relations are omitted as not helping to understand the process of civilization and development of the law in the nation of England.

The last section of each chapter: Judicial Procedure, describes the process of applying the law and trying cases for the relevant time period. It also contains some examples of cases.

For clarity and easy comparison, amounts of money expressed in pounds or marks have been converted to the smaller denominations of shillings and pence. There are twenty shillings in a pound. A mark is two thirds of a pound.

The sources and reference books from which information was obtained are listed in the bibliography instead of being contained in tedious footnotes.

Dedication

A Vassar College faculty member once dedicated her book to her students, but for whom it would have been written much earlier. This book "Our Legal Heritage" is dedicated to the faculty of Vassar College, without whom it would never have been written.

Chapter 1—The Times: before 600—

Clans, headed by Kings, lived in huts on top of hills or other high places and fortified by circular or rectangular earth banks behind which they could gather with their herds for protection. They lived in circular huts with wood posts in a circle supporting a roof. The walls were of wood and/or mud and straw. Sometimes there were stalls for cattle. Cooking was in a clay oven inside or over an open fire on the outside. Forests abounded with wolves, bears, wild boars, and wild cattle.

People wore animal skins over their bodies for warmth and around their feet for protection when walking. They carried small items by hooking them onto their belts.

Pathways extended through this camp of huts and for many miles beyond. They were used for trade and transport with pack-horses.

Men bought or captured women for wives and carried them over the thresholds of their huts. The first month of marriage was called the honeymoon because the couple was given mead, an alcoholic drink made from honey, for the first month of their marriage. A wife wore a gold wedding band on the ring finger of her left hand to show that she was married. Women wore other jewelry too, which indicated their social rank.

Women usually stayed at home caring for children, preparing meals, and making baskets. They also made wool felt and wove wool into cloth. Flax was grown and woven into linen cloth. The weaving was done on an upright or warp-weighted loom. People draped the cloth around their bodies and fastened it with a metal brooch inlaid with gold, gems, glass, and shell, which were glued on with glue that was obtained from melting animal hooves. They also had amber beads and pendants. They could tie things with rawhide strips or rope braids they made.

The King, who was tall and strong, led his men in hunting groups to kill deer and other wild animals in the forests and to fish in the streams. Some men brought their hunting dogs on leashes to follow scent trails to the animal. The men attacked the animals with spears and threw stones. They used shields to protect their bodies. They watched the phases of the moon and learned to predict when it would be full and give the most light for night hunting. This began the concept of a month.

If hunting groups from two clans tried to follow the same deer, there might be a fight between the clans or a blood feud. After the battle, the clan would bring back its dead and wounded. A priest officiated over a funeral for a dead man. His wife would often also go on the funeral pyre with him. Memorial burial mounds would be erected over the corpses or cremated ashes of their great men. Later, these ashes were first placed in urns before burial in a mound of earth or the corpses were buried with a few personal items.

The priest also officiated over sacrifices of humans, who were usually offenders found guilty of transgressions. Sacrifices were usually made in time of war or pestilence, and usually before the winter made food scarce, at Halloween time.

The clan ate deer that had been cooked on a spit over a fire, and fruits and vegetables which had been gathered by the women. They drank water from springs. In the spring, food was plentiful. There were eggs of different colors in nests and many rabbits to eat. The goddess Easter was celebrated at this time.

After this hunting and gathering era, there was farming and domestication of animals such as horses, pigs, sheep, goats, chicken, and cattle. Of these, the pig was the most important meat supply, being killed and salted for winter use. Next in importance were the cattle. Sheep were kept primarily for their wool. Flocks and herds were taken to pastures. The male cattle, with wood yokes, pulled ploughs in the fields of barley and wheat. The female goat and cow provided milk, butter, and cheese. The chickens provided eggs. Pottery was made and used for food preparation and consumption. During the period of "lent" [from the word "lenceten", which means spring], it was forbidden to eat any meat or fish. This was the season in which many animals were born and grew a lot.

Circles of big stones like Stonehenge were built so that the sun's position with respect to the stones would indicate the day of longest sunlight and the day of shortest sunlight. Between these days there was an optimum time to harvest the crops before fall, when plants dried up and leaves fell from the trees. The winter solstice, when the days began to get longer was cause for celebration. In the next season, there was an optimum time to plant seeds so they could spring up from the ground as new growth. So farming gave rise to the concept of a year.

Our Legal Heritage

There were settlements near rivers. Each settlement had a meadow, for the mowing of hay, and a mill, with wooden huts of families clustered nearby. Grain was stored in pits in the earth. Each hut had a garden for fruit and vegetables. A goat or cow might be tied out of reach of the garden. There was a fence or hedge surrounding and protecting the garden area and dwelling. Outside the fence were an acre or two of fields of wheat and barley, and sometimes oats and rye. These were usually enclosed with a hedge to keep animals from eating the crop. Flax was grown and made into linen cloth. Beyond the fields were pastures for cattle and sheep grazing. There was often an area for beehives.

Crops were produced with the open field system. In this system, there were three large fields each divided into long and narrow strips. Each strip represented a day's work with the plough. One field had wheat, or perhaps rye, another had barley, oats, beans, or peas, and the third was fallow. These were rotated yearly. Each free man was allotted certain strips in each field to bear crops. His strips were far from each other, which insured some very fertile and some only fair soil, and some land near his village dwelling and some far away. These strips he cultivated, sowed with seed, and harvested for himself and his family. After the year, they reverted to common ownership for grazing.

The plough used was heavy and made first of wood and later of iron. It had a mould-board which caught the soil stirred by the plough blade and threw it into a ridge. Other farm implements were: coulter, which gave free passage to the plough by cutting weeds and turf, picks, spades and shovels, reaping hooks and scythes, and sledges—hammers and anvils. Forests were cleared to provide more arable land.

The use of this open field system instead of compact enclosures worked by individuals was necessary in primitive communities which were farming only for their own subsistence. Each ox was owned by a different man as was the plough. Strips of land for agriculture were added from waste land as the community grew.

There were villages which had one or two market days in each week. Cattle, sheep, pigs, poultry, calves, and rabbits were sold there.

Flint was mined for arrowheads. People used bone and stone tools, such as stone hammers, and then bronze and iron tools, weapons, breast plates, and horse bits, which were forged by blacksmiths. Weapons included bows and arrows, daggers, axes, and shields of wood with bronze mountings. The warriors fought with chariots drawn by two horses. The horse harnesses had bronze fittings. The chariots had wood wheels, later with iron rims. When bronze came into use, there was a demand for its constituent parts: copper and tin, which were traded by rafts on waterways and the sea. Lead was mined.

Corpses were buried far away from any village in wood coffins, except for Kings, who were placed in stone coffins after being wrapped in linen.

With the ability to grow food and the acquisition of land by conquest, the population grew. There were different classes of men such as eorls, ceorls [free farmers], and slaves. They dressed differently. Freeman had long hair and beards. Slaves' hair was shorn from their heads so that they were bald. Slaves were chained and often traded. Prisoners taken in battle, e.g. Britons, became slaves. Criminals became slaves of the person wronged or of the King. Sometimes a father pressed by need sold his children or his wife into bondage. Debtors, who increased in number during famine, which occurred regularly, became slaves by giving up the freeman's sword and spear, picking up a slave's mattock [pick ax for the soils], and placing their head within a master's hands. Children with a slave parent were slaves. The slaves lived in huts around the homes of big landowners. Slaves often were used as ploughmen, sowers, haywards, woodwards, sheperds, goatherds, swineherds, oxherds, cowherds, dairymaids, and barnmen. A lord could kill his slave at will.

The people were worshipping pagan gods when St. Augustine came to England in 596 A.D. to Christianize them. King Aethelbert of Kent and his wife, who had been raised Christian on the continent, met him when he arrived. The King gave him land where there were ruins of an old city. Augustine used stones from the ruins to build a church which was later called Canterbury. He also built the first St. Paul's church in what was later called London. He conducted Easter ceremonies in the spring and Christmas ceremonies in winter. The word "Christmas" is short for "Christ's mass". Aethelbert and his men who fought with him and ate in his household [gesiths] became Christian.

Augustine knew how to write, but King Aethelbert did not. The King announced his laws at meetings of his people and his eorls would decide the punishments. He and Augustine decided to write down some of these laws,

Our Legal Heritage

which now included the King's new law concerning the church.

These laws concern personal injury, murder, theft, burglary, marriage, adultery, and inheritance. The blood feud's private revenge for killing had been replaced by payment of compensation to the dead man's kindred. One paid a man's "wergeld" [worth] to his kindred for causing his wrongful death. The wer of an aetheling was 1500s., of an eorl, 300s., of a ceorl, 100s., of a laet [agricultural serf in Kent], 40–80s., and of a slave nothing. At this time a shilling could buy a cow in Kent or a sheep elsewhere. If a ceorl killed an eorl, he paid three times as much as an eorl would have paid as murderer. The penalty for slander was tearing out of the tongue. If an aetheling were guilty of this offense, his tongue was worth five times that of a ceorl, so he had to pay proportionately more to ransom it.

—The Law—

"THESE ARE THE DOOMS [DECREES] WHICH KING AETHELBERHT ESTABLISHED IN THE DAYS OF AUGUSTINE

1. [Theft of] the property of God and of the church [shall be compensated], twelve-fold; a bishop's property, eleven-fold; a priest's property, nine-fold; a deacon's property, six-fold; a cleric's property, three-fold; church-frith [breach of the peace of the church; right of sanctuary and protection given to those within its precincts], two-fold [that of ordinary breach of the peace]; m....frith [breach of the peace of a meeting place], two-fold.

2. If the King calls his leod to him, and any one there do them evil, [let him compensate with] a two-fold bot [damages for the injury], and 50 shillings to the King.

3. If the King drink at any one's home, and any one there do any lyswe [evil deed], let him make two-fold bot.

4. If a freeman steal from the King, let him repay nine-fold.

5. If a man slay another in the King's tun [enclosed premises], let him make bot with 50 shillings.

6. If any one slay a freeman, 50 shillings to the King, as drihtin-beah.

7. If the King's ambiht-smith [smith or carpenter] or laad-rine [man who walks before the King or guide or escort], slay a man, let him pay a half leod-geld.

8. [Offenses against anyone or anyplace under] the King's mund-byrd [protection], 50 shillings.

9. If a freeman steal from a freeman, let him make threefold bot; and let the King have the wite [fine] and all the chattels [necessary to pay the fine].

10. If a man lie with the King's maiden [female servant], let him pay a bot of 50 shillings.

11. If she be a grinding slave, let him pay a bot of 25 shillings. The third [class of servant] 12 shillings.

12. Let the King's fed-esl [woman who serves him food or nurse] be paid for with 20 shillings.

13. If a man slay another in an eorl's tun [premises], let [him] make bot with 12 shillings.

14. If a man lie with an eorl's birele [female cup-bearer], let him make bot with 12 shillings.

15. [Offenses against a person or place under] a ceorl's mund-byrd [protection], 6 shillings.

16. If a man lie with a ceorl's birele [female cup-bearer], let him make bot with 6 shillings; with a slave of the second [class], 50 scaetts [a denomination less than a shilling]; with one of the third, 30 scaetts.

17. If any one be the first to invade a man's tun [premises], let him make bot with 6 shillings; let him who follows, with 3 shillings; after, each, a shilling.

18. If a man furnish weapons to another where there is a quarrel, though no injury results, let him make bot with 6 shillings.

19. If a weg-reaf [highway robbery] be done [with weapons furnished by another], let him [the man who provided the weapons] make bot with 6 shillings.

20. If the man be slain, let him [the man who provided the weapons] make bot with 20 shillings.

21. If a [free] man slay another, let him make bot with a half leod-geld of 100 shillings.

22. If a man slay another, at the open grave let him pay 20 shillings, and pay the whole leod within 40 days.

23. If the slayer departs from the land, let his kindred pay a half leod.

24. If any one bind a freeman, let him make bot with 20 shillings.

25. If any one slay a ceorl's hlaf-aeta [bread-eater; domestic or menial servant], let him make bot with 6 shillings.

26. If [anyone] slay a laet of the highest class, let him pay 80 shillings; of the second class, let him pay 60 shillings; of the third class, let him pay 40 shillings.

Our Legal Heritage

27. If a freeman commit edor–breach [breaking through the fenced enclosure and forcibly entering a ceorl's dwelling], let him make bot with 6 shillings.

28. If any one take property from a dwelling, let him pay a three–fold bot.

29. If a freeman goes with hostile intent through an edor [the fence enclosing a dwelling], let him make bot with 4 shillings.

30. If [in so doing] a man slay another, let him pay with his own money, and with any sound property whatever.

31. If a freeman lie with a freeman's wife, let him pay for it with his wer–geld, and obtain another wife with his own money, and bring her to the other [man's dwelling].

32. If any one thrusts through the riht [true] ham–scyld, let him adequately compensate.

33. If there be feax–fang [taking hold of someone by the hair], let there be 50 sceatts for bot.

34. If there be an exposure of the bone, let bot be made with 3 shillings.

35. If there be an injury to the bone, let bot be made with 4 shillings.

36. If the outer hion [outer membrane covering the brain] be broken, let bot be made with 10 shillings.

37. If it be both [outer and inner membranes covering the brain], let bot be made with 20 shillings.

38. If a shoulder be lamed, let bot be made with 30 shillings.

39. If an ear be struck off, let bot be made with 12 shillings.

40. If the other ear hear not, let bot be made with 25 shillings.

41. If an ear be pierced, let bot be made with 3 shillings.

42. If an ear be mutilated, let bot be made with 6 shillings.

43. If an eye be [struck] out, let bot be made with 50 shillings.

44. If the mouth or an eye be injured, let bot be made with 12 shillings.

45. If the nose be pierced, let bot be made with 9 shillings.

46. If it be one ala, let bot be made with 3 shillings.

47. If both be pierced, let bot be made with 6 shillings.

48. If the nose be otherwise mutilated, for each [cut, let] bot be made with 6 shillings.

49. If it be pierced, let bot be made with 6 shillings.

50. Let him who breaks the jaw–bone pay for it with 20 shillings.

51. For each of the four front teeth, 6 shillings; for the tooth which stands next to them 4 shillings; for that which stands next to that, 3 shillings; and then afterwards, for each a shilling.

52. If the speech be injured, 12 shillings. If the collar–bone be broken, let bot be made with 6 shillings.

53. Let him who stabs [another] through an arm, make bot with 6 shillings. If an arm be broken, let him make bot with 6 shillings.

54. If a thumb be struck off, 20 shillings. If a thumb nail be off, let bot be made with 3 shillings. If the shooting [fore] finger be struck off, let bot be made with 8 shillings. If the middle finger be struck off, let bot be made with 4 shillings. If the gold [ring]finger be struck off, let bot be made with 6 shillings. If the little finger be struck off, let bot be made with 11 shillings.

55. For every nail, a shilling.

56. For the smallest disfigurement of the face, 3 shillings; and for the greater, 6 shillings.

57. If any one strike another with his fist on the nose, 3 shillings.

58. If there be a bruise [on the nose], a shilling; if he receive a right hand bruise [from protecting his face with his arm], let him [the striker] pay a shilling.

59. If the bruise [on the arm] be black in a part not covered by the clothes, let bot be made with 30 scaetts.

60. If it be covered by the clothes, let bot for each be made with 20 scaetts.

61. If the belly be wounded, let bot be made with 12 shillings; if it be pierced through, let bot be made with 20 shillings.

62. If any one be gegemed, let bot be made with 30 shillings.

63. If any one be cear–wund, let bot be made with 3 shillings.

64. If any one destroy [another's] organ of generation [penis], let him pay him with 3 leud–gelds: if he pierce it through, let him make bot with 6 shillings; if it be pierced within, let him make bot with 6 shillings.

65. If a thigh be broken, let bot be made with 12 shillings; if the man become halt [lame], then friends must

Our Legal Heritage

arbitrate.

66. If a rib be broken, let bot be made with 3 shillings.
67. If [the skin of] a thigh be pierced through, for each stab 6 shillings; if [the wound be] above an inch [deep], a shilling; for two inches, 2; above three, 3 shillings.
68. If a sinew be wounded, let bot be made with 3 shillings.
69. If a foot be cut off, let 50 shillings be paid.
70. If a great toe be cut off, let 10 shillings be paid.
71. For each of the other toes, let one half that for the corresponding finger be paid.
72. If the nail of a great toe be cut off, 30 scaetts for bot; for each of the others, make bot with 10 scaetts.
73. If a freewoman loc-bore [with long hair] commit any leswe [evil deed], let her make a bot of 30 shillings.
74. Let maiden-bot [compensation for injury to an unmarried woman] be as that of a freeman.
75. For [breach of] the mund [protection] of a widow of the best class, of an eorl's degree, let the bot be 50 shillings; of the second, 20 shillings; of the third, 12 shillings; of the fourth, 6 shillings. [Mund was a sum paid to the family of the bride for transferring the rightful protection they possessed over her to the family of the husband. If the husband died and his kindred did not accept the terms sanctioned by law, her kindred could repurchase the tutelage.]
76. If a man carry off a widow not under his own protection by right, let the mund be twofold.
77. If a man buy a maiden with cattle, let the bargain stand, if it be without fraud; but if there be fraud, let him bring her home again, and let his property be restored to him.
78. If she bear a live child, she shall have half the property, if the husband die first.
79. If she wish to go away with her children, she shall have half the property.
80. If the husband wish to keep them [the children], [she shall have the same portion] as one child.
81. If she bear no child, her paternal kindred shall have the fioh [her goods] and the morgen-gyfe [morning gift; a gift made to the bride by her husband on the morning following the consummation of the marriage].
82. If a man carry off a maiden by force, let him pay 50 shillings to the owner, and afterwards buy [the object of] his will from the owner.
83. If she be betrothed to another man in money [at a bride price], let him [who carried her off] make bot with 20 shillings.
84. If she become gaengang, 35 shillings; and 15 shillings to the King.
85. If a man lie with an esne's wife, her husband still living, let him make twofold bot.
86. If one esne slay another unoffending, let him pay for him at his full worth.
87. If an esne's eye and foot be struck out or off, let him be paid for at his full worth.
88. If any one bind another man's esne, let him make bot with 6 shillings.
89. Let [compensation for] weg-reaf [highway robbery] of a theow [slave] be 3 shillings.
90. If a theow [a type of slave] steal, let him make twofold bot [twice the value of the stolen goods]. "

—Judicial Procedure—

If a man did something wrong, his case would be heard by the King and his freemen. His punishment would be given to him by the community.

There were occasional meetings of "hundreds", which were probably a hundred hides of land or a hundred families, to settle wide-spread disputes.

Chapter 2—The Times: 600–900—

People lived in villages in which a stone church was the most prominent building. They lived in one-room huts with walls and roofs made of wood, mud, and straw. Hangings covered the cracks in the walls to keep the wind out. Smoke from a fire in the middle of the room filtered out of cracks in the roof. Grain was ground at home by rotating by hand one stone disk on another stone disk. Some villages had a mill powered by the flow of water or by horses.

Farmland surrounded the villages and was farmed by the community as a whole under the direction of a lord. There was silver, copper, iron, tin, gold, and various types of stones from remote lead mines and quarries in the nation. Silver pennies replaced the smaller scaetts.

Everyone in the village went to church on Sunday and brought gifts such as grain to the priest. The parish of the priest was coextensive with the holding of one landowner. The priest and other men who helped him, lived in the church building. Some churches had lead roofs and iron hinges, latches, and locks on their doors. The land underneath had been given to the church by former Kings and persons who wanted the church to say prayers to help their souls go from purgatory to heaven and who also selected the priest.

The church baptized babies and officiated at marriage ceremonies. It also said prayers for the dying, gave them funerals, and buried them. A piece of stone with the dead person's name marked his grave. It was thought that putting the name on the grave would assist identification of that person for being taken to heaven. The church heard the last wish or will of the person dying concerning who he wanted to have his property.

Every man carried a horn slung on his shoulder as he went about his work so that he could at once send out a warning to his fellow villagers or call them in chasing a thief or other offender. The forests were full of outlaws, so strangers who did not blow a horn to announce themselves were presumed to be fugitive offenders who could be shot on sight. An eorl could call upon the ceorl farmers for about forty days to fight off an invading group.

The houses of the wealthy had ornamented silk hangings on the walls. Brightly colored drapery, often purple, and fly-nets surrounded their beds, which were covered with the fur of animals. They slept in bed-clothes on pillows stuffed with straw. Tables plated with silver and gems held silver candlesticks, gold and silver goblets and cups, and lamps of gold, silver, or glass. They used silver mirrors and silver writing pens. There were covered seats, benches, and footstools with the head and feet of animals at their extremities. They ate from a table covered with a cloth. Servants brought in food on spits, from which they ate. Food was boiled, broiled, or baked. The wealthy ate wheat bread and others ate barley bread. Ale made from barley was passed around in a cup. Mead made from honey was also drunk.

Men wore long-sleeved wool and linen garments reaching almost to the knee, around which they wore a belt tied in a knot. Men often wore a gold ring on the fourth finger of the right hand. Leather shoes were fastened with leather thongs around the ankle. Their hair was parted in the middle and combed down each side in waving ringlets. The beard was parted in the middle of the chin, so that it ended in two points. The clergy did not wear beards. Ladies wore brightly colored robes with waist bands, headbands, necklaces, gem bracelets, and rings. Their long hair was in ringlets and they put rouge on their cheeks. They were often doing needlework. Silk was affordable only by the wealthy.

Most families kept a pig and pork was the primary meat. There were also sheep, goats, cows, deer, rabbits, and fowl. Fowl was obtained by fowlers who trapped them. The inland waters yielded eels, salmon, and trout. In the fall, meat was salted to preserve it for winter meals. There were orchards growing figs, nuts, grapes, almonds, pears, and apples. Also produced were beans, lentils, onions, eggs, cheese, and butter. Pepper and cinnamon were imported.

Fishing from the sea developed in the 8th century, and yielded herrings, sturgeon, porpoise, oysters, crabs, and other fish. Whale skins were used to make ropes.

Hot baths were in common use. It was usual to wash one's feet after traveling and drying them with a rough wool cloth. Traveling a far distance was unsafe as there were robbers on the roads. Traveling strangers were distrusted. There were superstitions about the content of dreams, the events of the moon, and the flights and voices of birds were often seen as signs or omens of future events. Herbal mixtures were drunk for sickness and

Our Legal Heritage

maladies.

In the peaceful latter part of the seventh century, Theodore, who had been a monk in Rome, was appointed Archbishop and visited all the island speaking about the right rule of life and ordaining bishops to oversee the priests. However, this was difficult because the bishops spoke Latin and the priests of the local parishes spoke English. Theodore was the first archbishop whom all the English church obeyed. He taught sacred and secular literature, the books of holy writ, ecclesiastical poetry, astronomy, arithmetic, and sacred music. The learned ecclesiastical life flourished in monasteries. Theodore discourage slavery by denying Christian burial to the kidnapper and forbidding the sale of children over the age of seven. Hilda, a noble's daughter, became the first nun in Northumbria and abbess of one of its monasteries. There she taught justice, piety, chastity, peace, and charity. Several monks taught there later became bishops. Kings and princes often asked her advice.

Kings were selected from the royal family by their worthiness. Vikings made several invasions in the ninth century for which a danegeld tax on land was assessed on everyone every ten to twenty years. It was stored in a strong box under the King's bed. King Alfred the Great unified the country to defeat them. He established fortifications called "burhs", usually on hill tops or other strategic locations on the borders to control the main road and river routes into Wessex. The burhs were the first towns. They were typically walled enclosures with towers and several wooden thatched huts and a couple of churches inside. Earthen oil lamps were in use. The land area protected by each burh became known as a "shire". The country was called "Angle-land", which later became "England".

Alfred gathered together fighting men who were at his disposal, which included ealdormen's hearthband (men each of whom had chosen to swear to fight to the death for their earldorman, and some of whom were of high rank), shire thegns (local landowning farmers, who were required to bring fighting equipment such as swords, helmets, chainmail, and horses), and ordinary freemen, i.e. ceorls (who carried food, dug fortifications, and sometimes fought). Alfred had a small navy of longships with 60 oars to fight the Viking longships.

Alfred divided his army into two parts so that one-half of the men were fighting while the other half was at home sowing and harvesting for those fighting. Thus, any small-scale independent farming was supplanted by the open-field system, cultivation of common land, and a more manor-oriented and stratified society with the King and important families more powerful and the peasants more curtailed. The free ceorl of the older days became the bonded villein. The village community became a manor. But the lord does not have the power to encroach upon the rights of common that exist within the community.

In 886, a treaty between Alfred and the Vikings divided the country along the war front and made the wer of every free farmer, whether English or Viking, 200s. Men of higher rank were given a wer of 8 1/2 marks of pure gold.

King Alfred gave land with jurisdictional powers within its boundaries such as the following: "This is the bequest which King Alfred make unequivocally to Shaftesbury, to the praise of God and St. Mary and all the saints of God, for the benefit of my soul, namely a hundred hides [a hide was probably the amount of land which could support a family for a year or as much land as could be tilled annually by a single plow] as they stand with their produce and their men, and my daughter Aethelgifu to the convent along with the inheritance, since she took the veil on account of bad health; and the jurisdiction to the convent, which I myself possessed, namely obstruction and attacks on a man's house and breach of protection. And the estates which I have granted to the foundation are 40 hides at Donhead and Compton, 20 hides at Handley and Gussage 10 hides at Tarrant, 15 hides at Iwerve and 15 hides at Fontmell.

The witnesses of this are Edward my son and Archbishop Aethelred and Bishop Ealhferth and Bishop Aethelhead and Earl Wulfhere and Earl Eadwulf and Earl Cuthred and Abbot Tunberht and Milred my thegn and Aethelwulf and Osric and Brihtulf and Cyma. If anyone alters this, he shall have the curse of God and St. Mary and all the saints of God forever to all eternity. Amen."

Sons usually succeeded their fathers on the same land as shown by this lifetime lease: "Bishop Denewulf and the community at Winchester lease to Alfred for his lifetime 40 hides of land at Alresford, in accordance with the lease which Bishop Tunbriht had granted to his parents and which had run out, on condition that he renders every year at the autumnal equinox three pounds as rent, and church dues, and the work connected with church dues; and when the need arises, his men shall be ready both for harvesting and hunting; and after his death the property shall pass undisputed to St. Peter's.

Our Legal Heritage

These are the signatures of the councilors and of the members of the community who gave their consent, namely ..."

Alfred wrote poems on the worthiness of wisdom and knowledge in preference to material pleasures, pride, and fame, in dealing with life's sorrow and strife. His observations on human nature and his proverbs include:

1. As one sows, so will he mow.
2. Every man's doom [judgment] returns to his door.
3. He who will not learn while young, will repent of it when old.
4. Weal [prosperity] without wisdom is worthless.
5. Though a man had 70 acres sown with red gold, and the gold grew like grass, yet he is not a whit the worthier unless he gain friends for himself.
6. Gold is but a stone unless a wise man has it.
7. It's hard to row against the sea—flood; so it is against misfortune.
8. He who toils in his youth to win wealth, so that he may enjoy ease in his old age, has well bestowed his toil.
9. Many a man loses his soul through silver.
10. Wealth may pass away, but wisdom will remain, and no man may perish who has it for his comrade.
11. Don't choose a wife for her beauty nor for wealth, but study her disposition.
12. Many an apple is bright without and bitter within.
13. Don't believe the man of many words.
14. With a few words a wise man can compass much.
15. Make friends at market, and at church, with poor and with rich.
16. Though one man wielded all the world, and all the joy that dwells therein, he could not therewith keep his life.
17. Don't chide with a fool.
18. A fool's bolt is soon shot.
19. If you have a child, teach it men's manners while it is little. If you let him have his own will, he will cause you much sorrow when he comes of age.
20. He who spares the rod and lets a young child rule, shall rue it when the child grows old.
21. Either drinking or not drinking is, with wisdom, good.
22. Be not so mad as to tell your friend all your thoughts.
23. Relatives often quarrel together.
24. The barkless dog bites ill.
25. Be wise of word and wary of speech, then all shall love you.
26. We may outride, but not outwit, the old man.
27. If you and your friend fall out, then your enemy will know what your friend knew before.
28. Don't choose a deceitful man as a friend, for he will do you harm.
29. The false one will betray you when you least expect it.
30. Don't choose a scornful false friend, for he will steal your goods and deny the theft.
31. Take to yourself a steadfast man who is wise in word and deed; he will prove a true friend in need.

To restore education and religion, Alfred disseminated the Anglo-Saxon Chronicles, the Venerable Bede's Ecclesiastical History of the English Nation, the Providence of Boethius on the goodness of God, and Pope Gregory's Pastoral Care, which he had translated into English and was the fundamental book on the duty of a bishop, and included his duty to teach laymen. Alfred's advice to pastors was to live as they had been taught from books and to teach this manner of life to others. To be avoided was pride, the mind's deception of seeking glory in the name of doing good works, and the corruption of high office. Bede was England's first scholar, first theologian, and first historian. He wrote theological books and textbooks on grammar, rhetoric [public speaking and debating], arithmetic, and astronomy.

A famous poem, the oral legend of Beowulf, a hero who led his men into adventures and performed great feats and fought monsters and dragons, was put into writing with a Christian theme. In it, loyalty to one's lord is a paramount virtue. Also available in writing was the story of King Arthur's twelve victorious battles against the pagan Saxons, authored by Nennius.

There were professional story-tellers attached to great men. Others wandered from court to court, receiving

Our Legal Heritage

gifts for their story-telling. Men usually told oral legends of their own feats and those of their ancestors after supper.

Alfred had monasteries rebuilt with learned and moral men heading them. He built a strong wall with four gates around London, which he had conquered. He appointed one of his eorldormen to be alderman [older man] to govern London and to be the shire's earl. A later King built a palace in London, although Winchester was still the royal capital town.

Under the royalty were the nobles. An earl headed each shire. He led the array of his shire to do battle if the shire was attacked. He and the local bishop presided over shire meetings and meetings of the people. Reeves were appointed by the King as his representatives in the shires. The reeve took security from every person for the maintenance of the public peace. He also brought suspects to court, gave judgments according to the doom-books, delivered offenders to punishment. By service to the King, it was possible for a coerl to be given land by the King and thus rise to become a thegn. A thegn was a person with five hides of land, a church, a bell-house, a judicial at the burgh-gate, and an office or station in the King's hall. The King's thegns who got their position by fighting for the King came to be known as knights. Other thegns performed functions of magistrates. The thegns became a nobility which replaced the eorls. The wergeld of a thegn was six times that of a coerl. The sokemen were freemen who had their own land, chose their own lord, and attended their lord's court. A smallholder rented land of about 30 acres from a landlord, which he paid by doing work on the lord's demesne [household] land, paying money rent, or paying a food rent such as in eggs or chickens. Smallholders made up about two-fifths of the population. A cottager had one to five acres of land and depended on others for his living. Among these were shepherds, ploughmen, swineherds, and blacksmiths. They also participated in the agricultural work, especially at harvest time.

It was possible for a thane to acquire enough land to qualify him for the witan [King's council of wise men, which included archbishops, bishops, abbots, earls, chief landowners, and officers of the King's household]. Women could be present at the witenagemot [meeting of the witan, which met three times annually] and shire-gemot [meeting of the shire]. They could sue and be sued in the courts. They could independently inherit, possess, and dispose of property. A wife's inheritance was her own and under no control of her husband.

Marriage required the consent of the lady and her friends. The man also had to arrange for the foster-lean, that is, money for the support of expected children. He also declared the amount of money or land he would give the lady for her consent, that is, the morgengift, and what he would bequeath her in case of his death. If she remarried within a year of his death, she had to forfeit the morgengift.

Great men and monasteries had millers, smiths, carpenters, architects, agriculturalists, fishermen, weavers, embroiderers, dyers, and illuminators.

For entertainment, minstrels sang ballads about heroes or Bible stories, harpers played, jesters joked, and tumblers threw and caught balls and knives. There was gambling, dice games, and chasing deer with hounds.

Fraternal guilds were established for mutual advantage and protection. A guild imposed fines for any injury of one member by another member. It assisted in paying any murder fine imposed on a member. It avenged the murder of a member and abided by the consequences. It buried its members and purchased masses for his soul.

Merchantile guilds in sea-ports carried out commercial speculations not possible by the capital of only one person.

There were some ale-houses.

—The Law—

Alfred issued a set of laws to cover the whole country.

The importance of telling the truth and keeping one's word are expressed by this law: "1. At the first we teach that it is most needful that every man warily keep his oath and his wed. If any one be constrained to either of these wrongfully, either to treason against his lord, or to any unlawful aid; then it is juster to belie than to fulfil. But if he pledge himself to that which is lawful to fulfil, and in that belie himself, let him submissively deliver up his weapon and his goods to the keeping of his friends, and be in prison forty days in a King's tun: let him there suffer whatever the bishop may prescribe to him: ...".

The Ten Commandments were written down as this law:

"The Lord spake these words to Moses, and thus said: I am the Lord thy God. I led thee out of the land of the Egyptians, and of their bondage.

Our Legal Heritage

1. Love thou not other strange gods above me.
2. Utter thou not my name idly, for thou shalt not be guiltless towards me if thou utter my name idly.
3. Remember that thou hallow the rest—day. Work for yourselves six days, and on the seventh rest. For in six days, Christ wrought the heavens and the earth, the seas, and all creatures that are in them, and rested on the seventh day: and therefore the Lord hallowed it.
4. Honour thy father and thy mother whom the Lord hath given thee, that thou mayst be the longer living on earth.
5. Slay thou not.
6. Commit thou not adultery.
7. Steal thou not.
8. Say thou not false witness.
9. Covet thou not thy neighbour's goods unjustly.
10. Make thou not to thyself golden or silver gods."

If one deceives an unbetrothed woman and sleep with her, he must pay for her and have her afterwards to wife. But if her father not approve, he should pay money according to her dowry.

"If a man seize hold of the breast of a ceorlish woman, let him make bot to her with 5 shillings. If he throw her down and do not lie with her, let him make bot with 10 shillings. If he lie with her, let him make bot with 60 shillings. If another man had before lain with her, then let the bot be half that. ... If this befall a woman more nobly born, let the bot increase according to the wer."

"If any one, with libidinous intent, seize a nun either by her raiment or by her breast without her leave, let the bot be twofold, as we have before ordained concerning a laywoman."

"If a man commit a rape upon a ceorl's female slave, he must pay bot to the ceorl of 5 shillings and a wite [fine to the King] of 60 shillings. If a male theow rape a female theow, let him make bot with his testicles."

For the first dog bite, the owner pays 6 shillings, for the second, 12 shillings, for the third, 30 shillings.

An ox which gores someone to death shall be stoned.

If one steals or slays another's ox, he must give two oxen for it.

"If any one steals so that his wife and children don't know it, he shall pay 60 shillings as wite. But if he steals with the knowledge of all his household, they shall all go into slavery. A boy of ten years may be privy to a theft."

"If one who takes a thief, or holds him for the person who took him, lets the thief go, or conceals the theft, he shall pay for the thief according to his wer. If he is an ealdorman, he shall forfeit his shire, unless the King is willing to be merciful to him."

—Judicial Procedure—

Cases were held at monthly meetings of the community [folk—moot]. The King or his representative in the community, called the "reeve", conducted the trial by compurgation.

The one complaining, called the "plaintiff", and the one defending, called the "defendant", each told their story and put his hand on the Bible and swore "By God this oath is clean and true". A slip or a stammer would mean he lost the case. Otherwise, community members would stand up to swear on behalf of the plaintiff or the defendant as to their reputation for veracity. If these "compurgators" were too few, usually twelve in number, or recited poorly, their party lost.

If this process was inconclusive, the defendant was told to go to church and to take the sacrament only if he were innocent. If he took the sacrament, he was tried by the process of "ordeal". In the ordeal by cold water, he was bound hand and foot and then thrown into water. If he floated, he was guilty. If he sank, he was innocent. It was not necessary to drown to be deemed innocent. In the ordeal by hot water, he had to pick up a stone from inside a boiling cauldron. If his hand was healing in three days, he was innocent. If it was festering, he was guilty. A similar ordeal was that of hot iron, in which one had to carry in his hands a hot iron for a certain distance. Although the results of the ordeal were taken to indicate the will of God, the official conducting the ordeal could adjust its parameters so that a person with a guilty demeanor would be found guilty and a person with an innocent demeanor found innocent. The ordeal seems to favor the physically fit, because a person who was not fat would tend to sink and a person who was in good health would have prompt healing of burns. Presumably a person convicted of murder, i.e. killing by stealth, or robbery [taking from a person's robe, that is, his person or breaking into his home to steal] would be hung and his possessions conviscated.

Our Legal Heritage

The issue of rights to herd pigs to feed in certain woodland was heard in this lawsuit:

"In the year 825 which had passed since the birth of Christ, and in the course of the second Indiction, and during the reign of Beornwulf, King of Mercia, a council meeting was held in the famous place called Clofesho, and there the said King Beornwulf and his bishops and his earls and all the councilors of this nation were assembled. Then there was a very noteworthy suit about wood—pasture at Sinton, towards the west in Scirhylte. The reeves in charge of the pigherds wished to extend the pasture farther, and take in more of the wood than the ancient rights permitted. Then the bishop and the advisors of the community said that they would not admit liability for more than had been appointed in AÆthelbald's day, namely mast for 300 swine, and that the bishop and the community should have two—thirds of the wood and of the mast. They Archbishop Wulfred and all the councilors determined that the bishop and the community might declare on oath that it was so appointed in AÆthelbald's time and that they were not trying to obtain more, and the bishop immediately gave security to Earl Eadwulf to furnish the oath before all the councilors, and it was produced in 30 days at the bishop's see at Worcester. At that time Hama was the reeve in charge of the pigherds at Sinton, and he rode until he reached Worcester, and watched and observed the oath, as Earl Eadwulf bade him, but did not challenge it.

Here are the names and designations of those who were assembled at the council meeting ..."

Chapter 3—The Times: 900–1066—

There were many large land-owners such as the King, earls and bishops. Earls were noblemen by birth. A bishop was a church official who had oversight responsibility for all churches within his geographical area. The "bot" paid for injuring a bishop was the same as that for an earl. This indicates that their social rank was the same.

The lands of these lords were administered by freemen. They had wheat, barley, and rye fields, orchards, vineyards, and bee-keeping areas for honey. On this land lived not only farm laborers, cattle herders, shepherds, goatherds, and pigherds, but craftsmen such as goldsmiths, hawk-keepers, dog-keepers, horse-keepers, huntsmen, foresters, builders, weaponsmiths, embroiderers, blacksmiths, carpenters, tailors, salters, bakers, cooks, and gardeners. Blacksmiths made gates, hugh door hinges, lock, latches, bolts, and horseshoes. The lord loaned these people land on which to live for their life, called a "life estate", in return for their services. The loan could continue to their children who took up the craft. Mills were usually powered by water.

Clothing for men and women was made from wool, silk, and linen and was usually brown in color. Men also wore leather clothing, such as neckpieces, breeches, ankle leathers, shoes, and boots; and metal belts under which they carried knives or axes. They could wear leather pouches for carrying items.

Water could be carried in leather bags. Leather working preservative techniques improved so that tanning prevented stretching or decaying.

For their meals, people had drinking cups and bottles made of leather, and bowls, pans, and pitchers made by the potter's wheel. Water could be boiled in pots made of iron, brass, lead, or clay.

There was a great expansion of arable land. Kings typically granted land in exchange for services of military duties, repairing of fortresses, and work on bridges. Less common services required by landlords include equipping a guard ship and guarding the coast, guarding the lord, military watch, maintaining the deer fence at the King's residence, alms giving, and church dues. Since land was granted in return for service, there were limitations on its heritability and often an heir had to pay a heriot to the landlord to obtain the land.

An example of a grant of hides of land is: "[God has endowed King Edred with England], wherefore he enriches and honors men, both ecclesiastic and lay, who can justly deserve it. The truth of this can be acknowledged by the thegn AElsige Hunlafing through his acquisition of the estate of 5 hides at Alwalton for himself and his heirs, free from every burden except the repair of fortifications, the building of bridges and military service; a prudent landowner church dues, burial fees and tithes. [This land] is to be held for all time and granted along with the things both great and small belonging to it."

A Bishop gave land to a faithful attendant for his life and two other lives as follows: "In 904 A.D., I, Bishop Werfrith, with the permission and leave of my honorable community in Worcester, grant to Wulfsige, my reeve, for his loyal efficiency and humble obedience, one hide of land at Aston as Herred held it, that is, surrounded by a dyke, for three lives and then after three lives the estate shall be given back without any controversy to Worcester."

There were several thousand thegns, rich and poor, who held land directly of the King. Free farmers who had sought protection from thegns in time of war now took them as their lords. A free man could chose his lord, following him in war and working his land in peace. In return, the lord would protect him against encroaching neighbors, back him in the courts of law, and feed him in times of famine. These lords were the ruling class and the greatest of them sat in the King's council along with bishops, abbots, and officers of the King's household. The lesser lords were local magnates, who officiated at the shire and hundred courts.

The land of some lords included fishing villages along the coasts. Other lords owned land with iron-mining industries.

Some lords had markets on their land, for which they charged a toll [like a sales tax] for participation. There were about fifty markets in the nation. Cattle and slaves were the usual medium of exchange. Shaking hands was symbolic of an agreement for a sale, which was carried out in front of witnesses at the market. People traveled to markets on roads and bridges kept in repair by certain men who did this work as their service to the King.

Salt was used throughout the nation to preserve meat over the winter. Inland saltworks had an elaborate and specialized organization. They formed little manufacturing enclaves in the midst of agricultural land, and they

Our Legal Heritage

were considered to be neither manor nor appurtenant to manors. They belonged jointly to the King and the local earl, who shared, at a proportion of two to one, the proceeds of the tolls upon the sale of salt and methods of carriage on the ancient salt ways according to cartload, horse load, or man load. Horses now had horseshoes. The sales of salt were mostly retail, but some bought to resell.

At seaports on the coast, goods were loaded onto vessels owned by English merchants to be transported to other English seaports. London was a market town on the north side of the Thames River and the primary port and trading center for foreign merchants. The other side of the river was called Southwark. It contained sleazy docks, prisons, gaming houses, brothels, and inns.

Guilds in London were first associations of neighbors for the purposes of mutual assistance. They were fraternities of persons by voluntary compact to assist each other in poverty, including their widows or orphans and the portioning of poor maids, and to protect each other from injury. Their essential features are and continue to be in the future: 1) oath of initiation, 2) entrance fee in money or in kind and a common fund, 3) annual feast and mass, 4) meetings at least three times yearly for guild business, 5), obligation to attend all funerals of members, to bear the body if need be from a distance, and to provide masses for the dead, 6) the duty of friendly help in cases of sickness, imprisonment, house-burning, shipwreck, or robbery, 7) rules for decent behavior at meetings, and 8) provisions for settling disputes without recourse to the law. Both the masses and the feast were attended by the women. Frequently the guilds also had a religious ceremonial to affirm their bonds of fidelity. They readily became connected with the exercise of trades and with the training of apprentices. They promoted and took on public purposes such as the repairing of roads and bridges, the relief of pilgrims, the maintenance of schools and almshouses, and the periodic performance of pageants and miracle-plays.

Many of these London guilds were known by the name of their founding member. There were also Frith Guilds and a Knights' Guild. The Frith Guild's main object was to put down theft. Members contributed to a common fund, which paid a compensation for items stolen. Members with horses were to track the thief. Members without horses worked in the place of the absent horseowners until their return. The Knights' Guild was composed of thirteen military persons to whom King Edgar granted certain waste land in the east of London, toward Aldgate, for prescribed services performed. This concession was confirmed by Edward the Confessor in a charter at the suit of certain burgesses of London, the successors of these knights. But there was no trading privilege, and the Prior of Holy Trinity, Aldgate, became the sovereign of the Guild and the Aldermen ex officio of Portsoken Ward. He rendered an account to the Crown of the shares of tallage paid by the men of the Ward and presided over the Wardmotes. Every London merchant who had made three long voyages on his own behalf ranked as a thegn.

Later in the towns, there were merchant guilds, which were composed of prosperous traders, who later became landowners. Merchant guilds grew out of charity associations whose members were bound by oath to each other and got together for a guild-feast every month. Many market places were dominated by a merchant guild, which had a monopoly of the local trade. There were also some craft guilds composed of handicraftsmen or artisans. Escaped villeins, poor people, and traders without land migrated to towns to live, but were not citizens.

Edward the Confessor, named such for his piety, was a King of 24 years who was widely respected for his intelligence, resourcefulness, good judgment, and wisdom. His educated Queen Edith, whom he relied on for advice and cheerful courage, was a stabilizing influence on him. They were served by a number of thegns, who had duties in the household, which was composed of the hall, the courtyard, and the bedchamber. They were important men, thegns by rank. They were landowners, often in several areas, and held leading positions in the shires, although they were not sheriffs. They were also priests and clerics, who maintained the religious services and performed tasks for which literacy was necessary.

The court was host to many of the greatest magnates and prelates of the land at the time of great ecclesiastical festivals, when the King held more solemn courts and feasted his vassals. These included all the great earls, the majority of bishops, some abbots, and a number of thegns and clerics. Edward had a witan of wise men to advise him, but sometimes the King would speak in the hall after dinner and listen to what comments were made from the mead-benches. As the court moved about the country, many men came to pay their respects and attend to local business.

The main governmental activities were: war, collection of revenue, religious education, and administration of justice. For war, the shires had to provide a certain number of men and the ports quotas of ships with crews. The

Our Legal Heritage

King was the patron of the English church. He gave the church peace and protection. He presided over church councils and appointed bishops. As for the administration of justice, the public courts were almost all under members of Edward's court, bishops, earls, and reeves. Edward's mind was often troubled and disturbed by the threat that law and justice would be overthrown, by the pervasiveness of disputes and discord, by the raging of wicked presumption, by money interfering with right and justice, and by avarice kindling all of these. He saw it as his duty to courageously oppose the wicked by taking good men as models, by enriching the churches of God, by relieving those oppressed by wicked judges, and by judging equitably between the powerful and the humble.

A King's grant of land entailed two documents: a charter giving boundaries and conditions and a writ, usually addressed to the shire court, listing the judicial and financial privileges conveyed with the land. These were usually sac and soke [petty jurisdiction over inhabitants of the estate], toll and team [a share in the profits from trade conducted within the estate], and infangenetheof [the authority to hang and take the chattels of a thief caught on the property]. The writ was created by the Chancery, which had been established by the King to draft documents and keep records. The writ was a small piece of parchment addressed to a royal official or dependent commanding him to perform some task for the King. By the eleventh century, the writ contained a seal: a lump of wax with the impress of the Great Seal of England.

The town of Coventry consisted of a monastery manor and a private manor. The monastery was granted by Edward the Confessor full freedom and these jurisdictions: sac and soke, toll and team, hamsocne [the authority to fine a person for breaking into and making entry by force into the dwelling of another], forestall [the authority to fine a person for robbing others on the road], blodwite [the authority to impose a forfeiture for assault involving bloodshed], fihtwite [the authority to fine for fighting], weordwite [the authority to fine for manslaughter, but not for willful murder], and mundbryce [the authority to fine for any breach of the peace, such as trespass on lands].

Marriages were determined by men asking women to marry them. If a woman said yes, he paid a sum to her kin for her "mund" [jurisdiction or protection over her] and gave his oath to them to maintain and support the woman and any children born. As security for this oath, he gave a valuable object or "wed". The couple were then betrothed. Marriage ceremonies were performed by priests in churches. The marriage was written into church records. Friends witnessed the wedding and afterwards ate the great loaf, or first bread made by the bride. This was the forerunner of the wedding cake. They drank special ale, the "bride ale" (from hence the work "bridal"), to the health of the couple.

This marriage agreement with an Archbishop's sister provides her with land, money, and horsemen:

"Here in this document is stated the agreement which Wulfric and the archbishop made when he obtained the archbishop's sister as his wife, namely he promised her the estates at Orleton and Ribbesford for her lifetime, and promised her that he would obtain the estate at Knightwick for her for three lives from the community at Winchcombe, and gave her the estate at Alton to grant and bestow upon whomsoever she pleased during her lifetime or at her death, as she preferred, and promised her 50 mancuses of gold and 30 men and 30 horses.

The witnesses that this agreement was made as stated were Archbishop Wulfstan and Earl Leofwine and Bishop Aethelstan and Abbot Aelfweard and the monk Brihtheah and many good men in addition to them, both ecclesiastics and laymen. There are two copies of this agreement, one in the possession of the archbishop at Worcester and the other in the possession of Bishop Aethelstan at Hereford."

This marriage agreement provided the wife with money, land, farm animals and farm laborers; it also names sureties, the survivor of whom would receive all this property:

"Here is declared in this document the agreement which Godwine made with Brihtric when he wooed his daughter. In the first place he gave her a pound's weight of gold, to induce her to accept his suit, and he granted her the estate at Street with all that belongs to it, and 150 acres at Burmarsh and in addition 30 oxen and 20 cows and 10 horses and 10 slaves.

This agreement was made at Kingston before King Cnut, with the cognizance of Archbishop Lyfing and the community at Christchurch, and Abbot Aelfmaer and the community at St. Augustine's, and the sheriff Aethelwine and Sired the old and Godwine, Wulfheah's son, and Aelfsige cild and Eadmaer of Burham and Godwine, Wulfstan's son, and Carl, the king's cniht. And when the maiden was brought from Brightling Aelfgar, Sired's son, and Frerth, the priest of Forlstone, and the priests Leofwine and Wulfisige from Dover, and Edred, Eadhelm's son, and Leofwine, Waerhelm's son, and Cenwold rust and Leofwine, son of Godwine of Horton, and Leofwine the Red and Godwine, Eadgifu's son, and Leofsunu his brother acted as security for all this. And

Our Legal Heritage

whichever of them lives the longer shall succeed to all the property both in land and everything else which I have given them. Every trustworthy man in Kent and Sussex, whether thegn or commoner, is cognizant of these terms.

There are three of these documents; one is at Christchurch, another at St. Augustine's, and Brihtric himself has the third."

Nuns and monks lived in nunneries and monasteries on church land and grew their own food. The local bishop usually was also an abbot of a monastery. The priests and nuns wore long robes with loose belts and did not carry weapons. They cared for the sick and taught justice, piety, chastity, peace, and charity. Caring for the sick entailed mostly praying to God as it was thought that only God could cure. Slavery was diminished by the church by excommunication for the sale of a child over seven. The clergy taught that manumission of slaves was good for the soul of the dead, so it became frequent in wills. The clergy were to be celibate and not marry, but in lax times this rule was not followed.

The Archbishop of Canterbury began anointing new Kings at the time of coronation to emphasize that the King was ruler by the grace of God.

Illness was thought to be caused by demons. People hung charms around their neck for cure and treatments of magic and herbs were given. For instance, the remedy for "mental vacancy and folly" was a drink of "fennel, agrimony, cockle, and marche". Leeches were used for healing wounds, such as those from snake bites.

—The Law—

Every free man who did not own land had to find a lord to answer for him. The act of homage was symbolized by placing his hands within those of his lord.

Every lord shall be personally responsible as surety for the men of his household.

Every free man who owned land had to be in a local peace—pledge society, usually about ten men, [frankpledge], in which they served as personal sureties for each other's peaceful behavior. If one of them were accused of an offense, the others had to produce him in court or pay for the offense, unless they could prove that they had no complicity in it.

"And every man shall see that he has a surety, and this surety shall bring and keep him to [the performance of] every lawful duty.

1. And if anyone does wrong and escapes, his surety shall incur what the other should have incurred.

2. If the case be that of a thief and his surety can lay hold of him within 12 months, he shall deliver him up to justice, and what he has paid shall be returned to him."

Only a priest could declare a marriage. The groom had to bring friends to his wedding as sureties to guarantee his oath to maintain and support his wife and children. Those who swore to take care of the children were called their "godfathers".

"No woman or maiden shall be forced to marry a man she dislikes or given for money."

"Violence to a widow or maiden is punishable by payment of one's wergeld."

No man shall have more wives than one.

No man may marry among his own kin within six degrees of relationship or with the widow of a man as nearly related to him as that, or with a near relative of his first wife's, or his god—mother, or a divorced woman. Incest is punishable by payment of one's wergeld or a fine or forfeiture of all his possessions.

Grounds for divorce were mutual consent or adultery or desertion.

Adultery was prohibited for men as well as for women.

Prostitutes shall be driven out of the land or destroyed in the land, unless they cease from their wickedness and make amends to the utmost of their ability.

Neither husband nor wife could sell family property without the consent of the other.

If there was a marriage agreement, it determined the wife's "dower", which would be hers upon his death. Otherwise, if a man who held his land in socage [owned it freely and not subject to a larger landholder] died before his wife, she got half this property. If there were minor children, she got all this property.

Inheritance of land to adult children was by the custom of the land held. In some places, the custom was for the oldest son to take it and in other places, the custom was for the youngest son to take it. Often, the sons each took an equal portion by partition, but the eldest son had the right to buy out the others as to the chief messuage [dwelling and supporting land and buildings] as long as he compensated them with property of equal value. If there were no legitimate sons, then each daughter took an equal share when she married.

Our Legal Heritage

In London, one-third of the personal property of a decedent went to his wife, one-third went to his children in equal shares, and one-third he could bequeath as he wished.

"If a man dies intestate, his lord shall have heriot [horses, weapons, shields, and helmets] of his property according to the deceased's rank and [the rest of] the property shall be divided among his wife, children, and near kinsmen."

A man could justifiably kill an adulterer in the act with the man's wife, daughter, sister, or mother. In Kent, a lord could fine any bondswoman of his who had become pregnant without his permission [childwyte].

A man could kill in defense of his own life, the life of his kinsmen, his lord, or a man whose lord he was. The offender was "caught red-handed" if the blood of his victim was still on him. He could also kill a thief in the act of carrying off his property, e.g. the thief hand-habbende [a thief found with the stolen goods in his hand] or the thief back-berend [a thief found carrying stolen goods on his back]. Self-help was available for hamsocne [breaking into a man's house to assault him].

Cattle theft could be dealt with only by speedy pursuit. The law required that a person who had involuntarily lost possession of cattle should at once raise the hue and cry. All his neighbors were then under a legal duty to follow the trail of the cow to its taker.

Murder is punished by death as follows: "If any man break the King's peace given by hand or seal, so that he slay the man to whom the peace was given, both his life and lands shall be in the King's power if he be taken, and if he cannot be taken he shall be held an outlaw by all, and if anyone shall be able to slay him he shall have his spoils by law."

"If anyone by force break or enter any man's court or house to slay or wound or assault a man, he shall pay 100 shillings to the King as fine."

"If anyone slay a man within his court or his house, himself and all his substance are at the King's will, save the dower of his wife if he have endowed her."

No clergy may gamble or participate in games of chance.

Measures and weights of goods for sale shall be correct.

Every man shall have a warrantor to his market transactions and no one shall buy and sell except in a market town; but he shall have the witness of the portreeve or of other men of credit, who can be trusted.

No marketing, business, or hunting may be done on Sundays.

No one may bind a free man, shave his head in derision, or shave off his beard. Shaving was a sign of enslavement, which could be incurred by not paying one's fines for offenses committed.

"And if anyone is so rich or belongs to so powerful a kindred, that he cannot be restrained from crime or from protecting and harboring criminals, he shall be led out of his native district with his wife and children, and all his goods, to any part of the kingdom which the King chooses, be he noble or commoner, whoever he may be— with the provision that he shall never return to his native district. And henceforth, let him never be encountered by anyone in that district; otherwise he shall be treated as a thief caught in the act."

The Laws for London were:

"1. The gates called Aldersgate and Cripplegate were in charge of guards.

2. If a small ship came to Billingsgate, one half-penny was paid as toll; if a larger ship with sails, one penny was paid.

1) If a hulk or merchantman arrives and lies there, four pence is paid as toll.

2) From a ship with a cargo of planks, one plank is given as toll.

3) On three days of the week toll for cloth [is paid] on Sunday and Tuesday and Thursday.

4) A merchant who came to the bridge with a boat containing fish paid one half-penny as toll, and for a larger ship one penny."

5—8) Foreigners with wine or blubber fish or other goods and their tolls.

Foreigners were allowed to buy wool, melted fat [tallow], and three live pigs for their ships.

"3. If the town-reeve or the village reeve or any other official accuses anyone of having withheld toll, and the man replies that he has kept back no toll which it was his legal duty to pay, he shall swear to this with six others and shall be quit of the charge.

1) If he declares that he has paid toll, he shall produce the man to whom he paid it, and shall be quit of the charge.

Our Legal Heritage

2) If, however, he cannot produce the man to whom he paid it, he shall pay the actual toll and as much again and five pounds to the King.

3) If he vouches the tax-gatherer to warranty [asserting] that he paid toll to him, and the latter denies it, he shall clear himself by the ordeal and by no other means of proof.

4. And we [the King and his counselors] have decreed that a man who, within the town, makes forcible entry into another man's house without permission and commits a breach of the peace of the worst kind ... and he who assaults an innocent person on the King's highway, if he is slain, shall lie in an unhonored grave.

1) If, before demanding justice, he has recourse to violence, but does not lose his life thereby, he shall pay five pounds for breach of the King's peace.

2) If he values the good-will of the town itself, he shall pay us thirty shillings as compensation, if the King will grant us this concession."

5. No base coin or coin defective in quality or weight, foreign or English, may be used by a foreigner or an Englishman.

Swearing a false oath or perjury is punishable by loss of one's hand or half one's wergeld.

—Judicial Procedure—

There were courts for different geographical communities.

In London, the Hustings Court met weekly and the folkmoot of all citizens met three times a year. Each ward had a criminal [leet] court.

The vill [similar to village] was the smallest community for judicial purposes. There were several vills in a hundred.

A King's reeve presided over local criminal and peace and order issues [leet jurisdiction] at monthly meetings of the hundred court. However, summary procedure was followed when a criminal was caught in the act or seized after a hue and cry. Every free man over age 12 had to be in a hundred. The hundred was a division of the shire [county]. Usually, the shire reeve, or "sheriff", held each hundred court in turn.

A shire [county] was a larger area of land, headed by an earl. All persons residing in the shire met twice a year. They were summoned together by the sheriff, who was appointed by the earl and the King. This court was primarily concerned with issues of the larger landowners. The earl usually took a third of the profits of the shire court.

A bishop sat on both the shire and the hundred court.

"No one shall make distraint of property until he has appealed for justice in the hundred court and shire court".

This lawsuit between a son and his mother over land was heard at a shire-meeting: "Here it is declared in this document that a shire-meeting sat at Aylton in King Cnut's time. There were present Bishop Aethelstan and Earl Ranig and Edwin, the Earl's son, and Leofwine, Wulfsgie's son, and Thurkil the White; and Tofi the Proud came there on the King's business, and Bryning the sheriff was present, and Aethelweard of Frome and Leofwine of Frome and Godric of Stoke and all the thegns of Herefordshire. Then Edwin, Enneawnes son, came traveling to the meeting and sued his own mother for a certain piece of land, namely Wellington and Cradley. Then the bishop asked whose business it was to answer for his mother, and Thurkil the White replied that it was his business to do so, if he knew the claim. As he did not know the claim, three thegns were chosen from the meeting [to ride] to the place where she was, namely at Fawley, and these were Leofwine of Frome and Aethelsige the Red and Winsige the seaman, and when they came to her they asked her what claim she had to the lands for which her son was suing her. Then she said that she had no land that in any way belonged to him, and was strongly incensed against her son, and summoned to her kinswoman, Leofflaed, Thurkil's wife, and in front of them said to her as follows: 'Here sits Leofflaed, my kinswoman, to whom, after my death, I grant my land and my gold, my clothing and my raiment and all that I possess.' And then she said to the thegns: 'Act like thegns, and duly announce my message to the meeting before all the worthy men, and tell them to whom I have granted my land and all my property, and not a thing to my own son, and ask them to be witnesses of this.' And they did so; they rode to the meeting and informed all the worthy men of the charge that she had laid upon them. Then Thurkil the White stood up in the meeting and asked all the thegns to give his wife the lands unreservedly which her kinswoman had granted her, and they did so. Then Thurkil rode to St. Aethelbert's minister, with the consent and cognizance of the whole assembly, and had it recorded in a gospel book."

Courts controlled by lords had various kinds of jurisdiction recognized by the King. "Sac and soc" included

Our Legal Heritage

the right to deal with land disputes. "Toll and team" included the right to levy tolls on cattle sales and to hold a hearing for men accused of stealing cattle. "Infangenetheof" gave power to do justice to a thief caught red-handed. Sometimes this jurisdiction overlapped that of the hundred court.

The King decided the complaints and issues of the nobility.

Chapter 4—The Times: 1066–1100—

William came from Normandy to conquer the nation. He claimed that the former King, Edward, the Confessor, had promised the throne to him when they were growing up together in Normandy if Edward became King of England and had no children. William's men and horses came in boats powered by oars and sails. The conquest did not take long because of the superiority of his military expertise to that of the English. He organized his army into three groups: archers with bows and arrows, horsemen with swords and stirrups, and footmen with hand weapons. Each group played a specific role in a strategy planned in advance. The English army was only composed of footmen with hand weapons and shields and was inexperienced.

Declaring the English who fought against him to be traitors, William declared their land confiscated. As William conquered this land, he parceled it out among the barons who fought with him. They again made oaths of personal loyalty to him [fealty]. They agreed to hold the land as his vassals with future military services to him and receipt of his protection [homage]. They held their land "of their lord", the King, by knight's service. The King had "enfeoffed" them [given them a fief: a source of income] with land. The theory that by right all land was the King's and that land was held by others only at his gift and in return for specified service was new to English thought.

The Saxon governing class was destroyed. The independent power of earls, who had been drawn from three great family houses, was curtailed. Most died or fled the country. The people were deprived of their most popular leaders, who were excluded from all positions of trust and profit, especially the clergy of all degrees.

The barons subjugated the English who were on their newly acquired land. There came to be a hierarchy of seisin [rightful occupation] of land so that there could be no land without its lord. Also, every lord had a superior lord with the King as the overlord or supreme landlord. One piece of land may be held by several tenures. For instance, A, holding by barons's service of the King, may enfeoff B, a church, to hold of him on the terms of praying for the souls of his ancestors [frank–almoin], and B may enfeoff a freeman C to hold of the church by giving it a certain percentage of his crops every year. There were about 200 barons who held land directly of the King. Other fighting men were the knights, who were tenants or subtenants of a baron. Knighthood began as a reward for valor on the field of battle by the King or a noble. Altogether there were about 5000 fighting men holding land.

The essence of Norman feudalism was that the land remained under the lord, whatever the vassal might do. The lord had the duty to defend the vassals on his land. The vassal owed military service to the lord and also the service of attending the courts of the hundred and the shire, which were courts of the King, administering old customary law. They were the King's courts on the principle that a crime anywhere was a breach of the King's peace.

This feudal bond based on occupancy of land rather than on personal ties was uniform throughout the realm. No longer could a man choose his lord and transfer his land with him to a new lord.

This uniformity of land organization plus the new requirement of every freeman to take an oath of loyalty directly to the King that would supersede any oath to any other man gave the nation a new unity.

Each tenant, whether baron or subtenant, had to pay an "aid" in money for ransom if his lord was captured in war, for the knighthood of his lord's eldest son, and for the marriage of his lord's eldest daughter. An heir of a tenant had to pay a heavy "relief" on succession to his estate. If an heir was still a minor or female, he or she passed into his lord's wardship, in which the lord had guardianship of the heir and possession of the estate, with all its profits. The estate of an heiress and her land was generally sold to the highest bidder.

English villeins on the land of the barons were subjugated into a condition of servitude and became "tied to the land" so that they could not leave the land without their lord's permission. They held their land of their lord, the baron. To guard against uprisings of the conquered people, the barons used villein labor to build about a hundred great stone castles, with moats and walls with towers around them, at easily defensible positions such as hilltops all over the nation.

The hall was the main building of the castle. The hall was used for meals and meetings at which the lord received homages, recovered fees, and held the view of frankpledge. There were trestle tables which could be

Our Legal Heritage

folded up, e.g. at night. At the main table, the lord and his lady sat on chairs. Everyone else sat on benches. Lighting was by oil lamps or candles on stands or on wall fixtures. There was an open hearth in the middle of the room, around which the floor was strewn with straw, on which common folk could sleep at night. The residence of the lord's family and guests was at a screened off area at the extreme end of the hall or on a second floor reachable by an outside stairway. Chests stored garments and jewels. Iron keys and locks were used for chests and doors. The great bed had a wooden frame and springs made of interlaced rope or strips of leather. It was covered with a feather mattress, sheets, quilts, fur covers, and pillows. Drapery around the bed kept out cold drafts and provided privacy. The lord's personal servants slept nearby on benches or trundle beds. There was a water bowl for washing in the morning. A chamber pot was kept under the bed for nighttime use. Hay was used as toilet paper. Sometimes there was a reservoir of water on an upper level with pipes carrying the water below. There were stools on which to sit. Chests and cupboards stored spices and plate. One-piece iron shears were available to cut cloth. Hand held spindles were used for weaving. Knights performing castle guard duty slept at their posts in the walls. There were toilets in the walls with a pit or shaft down the exterior wall. There was also a well, a chapel area, a cellar for provisions, and dungeons for prisoners. Stables and offices were sometimes built around the courtyard of the hall. Bathing was done in a wooden tub located in the garden in the summer and indoors near the fire in winter. The great bed and bath tub were taken on trips with the lord.

Markets grew up outside castle walls. Any trade on a lord's land was subject to "passage", a payment on goods passing through, "stallage", a payment for setting up a stall or booth in a market, and "pontage", a payment for taking goods across a bridge.

Norman customs were adopted by the nation. Everyone had a permanent surname indicating parentage, place of birth, or residence and this name was passed on to one's son. There were two meals a day: dinner and supper. The Normans washed their hands before and after meals and ate with their fingers. Feasts were stately occasions with costly tables and splendid dress. The Norman wore a cap or bonnet on his head, a shirt, a doublet over his shirt, a cloak with wide sleeves, hose and shoes. There were many colors worn, especially the doublet, which was made exactly to fit. Surcoats of royalty almost swept the feet while those of others reached scarcely half the way, so as not to impede them in their work. The robe or mantle of the King was embroidered with gold and lined with furs and swept the ground. There were practical jokes, innocent frolics, and witty verbal debating with repartee. A true and gentle knight showed devotion towards the ladies. The Norman gentleman wore his sword and his retainers carried spear and shield. They were clean-shaven. Anglo-Saxon men were compelled to shave their beards and whiskers from their faces, but they kept their custom of long hair flowing from their heads.

Those few coerls whose land was not taken by a baron remained free and held their land "in socage" and became known as sokemen.

Great stone cathedrals were built in fortified towns for William's Norman bishops, who replaced the English bishops. Most of the existing and new monasteries functioned as training grounds for scholars, bishops, and statesmen rather than as retreats from the world's problems to the security of religious observance. The number of monks grew as the best minds were recruited into the monasteries.

William made the church subordinate to him. Bishops were elected only subject to the King's consent. Homage was exacted from them. William imposed knight's service on bishoprics, abbeys, and monasteries, which was commuted to a monetary amount. Bishops had to attend the King's court. Bishops could not leave the realm without the King's consent. No royal tenant or royal servant could be excommunicated, nor his lands be placed under interdict, without the King's consent. Interdict could demand, for instance, that the church be closed and the dead buried in unconsecrated ground. No church rules could be made without his agreement to their terms. No letters from the Pope could be received without the King's permission.

Men continued to give land to the church for their souls, such as this grant which started the town of Sandwich: "William, King of the English, to Lanfranc the Archbishop and Hugoni de Montfort and Richard son of Earl Gilbert and Haimo the sheriff and all the thegns of Kent, French and English, greeting. Know ye that the Bishop of Bayeux my brother for the love of God and for the salvation of my soul and his own, has given to St. Trinity all houses with their appurtances which he has at Sandwich and that he has given what he has given by my license."

When the land was all divided out, the barons had about $\frac{3}{7}$ of it and the church $\frac{2}{7}$. The King retained $\frac{2}{7}$ for himself and his household, on which he built many royal castles and hundreds of manor houses throughout the

Our Legal Heritage

nation. He built the White Tower in London. He and his household slept on the upper floors and there was a chapel on the second floor and a dungeon below the first floor for prisoners. The other castles were often built at the old fortification burhs of Alfred. Barons and earls had castle-guard duty in them. William was constantly moving about the land from castle to castle, where he entertained his magnates and conducted public business, such as deciding disputes about ownership of land. Near these castles and other of his property, he designated many areas as royal hunting forests. Anyone who killed a deer in these forests was mutilated, for instance by blinding. People living within the boundaries of the designated forestland could no longer go into nearby woods to get meat or honey, dead wood for firing, or live wood for building. Swineherds could no longer drive pigs into the these woods to eat acorns they beat down from oak trees. Making clearings and grazing livestock in the designated forestland were prohibited. Most of the nation was either wooded or bog at this time.

London was a walled town of one and two story houses made of mud, twigs, and straw, with thatched roofs. There were churches, a goods market, a fish market, quays on the river, and a bridge over the river. Streets probably named by this time include Bread Street, Milk Street, Honey Lane, Wood Street, and Ironmonger Lane. Fairs and games were held outside the town walls in a field called "Smithfield". The freemen were a small percentage of London's population. There was a butchers' guild, a pepperers' guild, a goldsmiths' guild, the guild of St. Lazarus, which was probably a leper charity, the Pilgrims' guild, which helped people going on pilgrimages, and four bridge guilds, probably for keeping the wooden London Bridge in repair. Men told the time by sundials, some of which were portable and could be carried in one's pocket. London could defend itself, and a ringing of the bell of St. Paul's Church could shut every shop and fill the streets with armed horsemen and soldiers led by a soldier port-reeve.

William did not interfere with land ownership in London, but recognized it's independence as a borough in this writ: "William the King greets William, Bishop of London, and Gosfrith the portreeve, and all the burgesses of London friendly. Know that I will that you be worthy of all the laws you were worthy of in the time of King Edward. And I will that every child shall be his father's heir after his father's day. And I will not suffer any man to do you wrong. God preserve you."

So London was not subjected to the Norman feudal system. It had neither villeins nor slaves. Whenever Kings asserted authority over it, the citizens reacted until the King "granted" a charter reaffirming the freedoms of the city and its independence.

William was a stern and fierce man and ruled as an autocrat by terror. Whenever the people revolted or resisted his mandates, he seized their lands or destroyed the crops and laid waste the countryside and so that they starved to death. He had a strict system of policing the nation. Instead of the Anglo-Saxon self-government throughout the districts and hundreds of resident authorities in local courts, he aimed at substituting for it the absolute rule of the barons under military rule so favorable to the centralizing power of the Crown. He used secret police and spies and the terrorism this system involved. This especially curbed the minor barons and preserved the public peace.

The English people were disarmed. Curfew bells were rung at 7:00 PM when everyone had to remain in their own dwellings on pain of death and all fires and candles were to be put out, This prevented any nightly gatherings, assassinations, or seditions. Order was brought to the kingdom so that no man dare kill another, no matter how great the injury he had received. William extended the King's peace on high roads to include the whole nation. Any individual of any rank could travel from end to end of the land unharmed. Before, prudent travelers would travel only in groups of twenty.

William's reign was a time of tentative expedients and simple solutions. He administered by issuing writs with commands or prohibitions. These were read aloud by the sheriffs in the county courts and other locations. Administration was by the personal servants of his royal household, such as the Chancellor, steward, butler, chamberlain, and constable. The constable was in charge of the knights of the royal household. Under pressure from the ecclesiastical judges, William replaced the death penalty by that of the mutilation of blinding, chopping off hands, and castrating offenders. Castration was the punishment for rape. But these mutilations usually led to a slow death by gangrene.

The Normans used the Anglo-Saxon concepts of jurisdictional powers. Thus when William confirmed "customs" to the abbot of Ely, these were understood to include the following: 1) sake and soke—the right to hold a court of private jurisdiction and enjoy its profits, 2) toll—a payment in towns, markets, and fairs for goods and

Our Legal Heritage

chattel bought and sold, 3) team—persons might be vouched to warranty in the court, the grant of which made a court capable of hearing suits arising from the transfer of land, 4) infangenthef—right of trying and executing thieves on one's land, 4) hamsocne, 5) grithbrice— violation of the grantees' special peace, for instance that of the sheriff, 6) fihtwite—fine for a general breach of the peace, 7) fyrdwite— fine for failure to appear in the fyrd [national militia].

Every shire had at least one burh, or defensible town. Kings had appointed a royal moneyer in each to mint silver coins for local use. On one side was the King's head in profile and on the other side was the name of the moneyer. When a new coinage was issued, all moneyers had to go to London to get the new dies. William's head faced frontally on his dies, instead of the usual profile used by former Kings.

William held and presided over his council three times a year, as was the custom, at Easter, Christmas, and Whitsuntide. This was an advisory council and consisted of earls, greater barons, officers of the King's household, archbishops, and bishops. Its functions were largely ceremonial. William's will was the motive force which underlay all its action. The justiciar was the head of all legal matters and represented the King in his absence from the realm. The Treasurer was responsible for the collection and distribution of revenue. The Chancellor headed the Chancery and the chapel.

Sheriffs became powerful figures as the primary agents for enforcing royal edicts. They collected the royal taxes, executed royal justice, and controlled the hundred and shire courts. They also took part in the keeping of castles and often managed the estates of the King. Most royal writs were addressed to the sheriff and shire courts.

Royal income came from customary dues, profits of coinage and of justice, and revenues from the King's own estates. A threat of a Viking invasion caused William to reinstitute the danegeld tax. To impose this uniformly, he sent commissioners to conduct surveys by sworn verdicts of appointed groups of local men. A detailed survey of land holdings and the productive worth of each was made and compiled as the "Doomsday Book" in 1086. For instance, one estate had "on the home farm five plough teams: there are also 25 villeins and 6 cotters with 14 teams among them. There is a mill worth 2s. a year and one fishery, a church and four acres of meadow, wood for 150 pigs and two stone quarries, each worth 2s. a year, and two nests of hawks in the wood and 10 slaves." This estate was deemed to be worth 480s. a year.

Laxton "had 2 carucates of land [assessed] to the geld. [There is] land for 6 ploughs. There Walter, a man of [the lord] Geoffrey Alselin's has 1 plough and 22 villeins and 7 bordars [a bordar had a cottage and a small amount land in return for supplying small provisions to his lord] having 5 ploughs and 5 serfs and 1 female serf and 40 acres of meadow. Wood [land] for pannage [foraging by pigs] 1 league in length and half a league in breadth. In King Edward's time it was worth 9 pounds; now [it is worth] 6 pounds."

That manor of the town of Coventry which was individually held was that of the Countess of Coventry, who was the wife of the earl of Mercia. "The Countess held in Coventry. There are 5 hides. The arable land employs 20 ploughs. In the demesne lands there are 3 ploughs and 7 ploughs. In the demesne lands there are 3 ploughs and 7 bondmen. There are 50 villeins and 12 bordars with 20 ploughs. The mill there pay[s] 3 shillings. The woodlands are 2 miles long and the same broad. In King Edward's time and afterwards, it was worth 22 pounds [440 s.], now only 11 pounds by weight. These lands of the Countess Godiva Nicholas holds to farm of the King."

The survey shows a few manors and monasteries owned a salt-house or salt-pit in the local saltworks, from which they were entitled to obtain salt.

This survey resulted in the first national tax system of about 6s. per hide of land.

The courts of the King and barons became schools of chivalry wherein seven year old noble boys became as pages or valets, wore a dagger and waited upon the ladies of the household. At age fourteen, they were advanced to squires and admitted into more familiar association with the knights and ladies of the court. They perfected their skills in dancing, riding, fencing, hawking, hunting and jousting. Before knighthood, they played team sports in which one team tried to put the other team to rout. A knight usually selected a wife from the court at which he grew up.

The eldest son began to succeed to the whole of the lands in all military tenures.

Astrologers resided with the families of the barons. People went to fortune tellers' shops. There was horse racing and steeple races for recreation.

The state of medicine is indicated by this medical advice brought to the nation by William's son after treatment on the continent:

Our Legal Heritage

"If thou would have health and vigor Shun cares and avoid anger. Be temperate in eating And in the use of wine. After a heavy meal Rise and take the air Sleep not with an overloaded stomach And above all thou must Respond to Nature when she calls."

Many free sokemen were caught up in the subjugation by baron landlords and were reduced almost to the condition of the unfree villein. The services they performed for their lords were often indistinguishable. This formed a new bottom class as the population's percentage of slaves declined dramatically. However, the free man still had a place in court proceedings which the unfree villein did not.

William allowed Jewish traders to follow him from Normandy and settle in separate sections of the main towns. They loaned money for the building of castles and cathedrals. Christians were not allowed by the church to engage in this usury. The Jews could not become citizens nor could they have standing in the local courts. Instead, a royal justiciar secured justice for them. The Jews could practice their own religion.

William was succeeded as King by his son William II, who imposed on many of the customs of the nation to get more money for himself.

—The Law—

The Norman conquerors brought no written law, but affirmed the laws of the nation. Two they especially enforced were:

Anyone caught in the act of digging up the King's road, felling a tree across it, or attacking someone so that his blood spilled on it shall pay a fine to the King.

All freemen shall have a surety who would hand him over to justice for his offenses or pay the damages or fines due. Also, the entire hundred was the ultimate surety for murder and would have to pay a "murdrum" fine.

William made these decrees:

No cattle shall be sold except in towns and before three witnesses.

For the sale of ancient chattels, there must be a surety and a warrantor.

No man shall be sold over the sea. (This ended the slave trade at the port of Bristol.)

The death penalty for persons tried by court is abolished.

—Judicial Procedure—

"Ecclesiastical" courts were created for bishops to preside over issues concerning the cure of souls and criminal cases in which the ordeal was used. When William did not preside over this court, an appeal could be made to him.

The hundred and shire courts now sat without a bishop and handled only "civil" cases. They were conducted by the King's own appointed sheriff. Only freemen and not bound villeins had standing in this court.

William held court or sent the Justiciar or commissioners to hold his Royal Court [Curia Regis] in the various districts. The commissioner appointed groups of local men to give a collective verdict upon oath for each trial he conducted. A person could spend months trying to catch up with the Royal Court to present a case.

William allowed, on an ad hoc basis, certain high-level people such as bishops and abbots and those who made a large payment, to have land disputes decided by an inquiry of recognitors.

A dispute between a Norman and an English man over land or a criminal act could be decided by trial by battle. Each combatant first swore to the truth of his cause and undertook to prove by his body the truth of his cause by making the other surrender by crying "craven" [craving forgiveness]. Although this trial was thought to reflect God's will, it favored the physically fit and adept person.

London had its own traditions. All London citizens met at its folkmoot, which was held three times a year to determine its public officers, to raise matters of public concern, and to make ordinances. Its criminal court had the power of outlawry as did the shire courts. Trade, land, and other civil issues were dealt with by the Hustings Court, which met every Monday in the Guildhall. The city was divided into wards, each of which was under the charge of an elected alderman [elder man]. (This was not a popular election.) The aldermen had special knowledge of the law and a duty to declare it at the Hustings Court. Each alderman also conducted wardmoots in his ward and decided criminal and civil issues between its residents. Within the wards were the guilds of the city.

William made the hundred responsible for paying a murder fine for the murder of any of his men, if the murderer was not apprehended by his lord within a few days. The reaction to this was that the murderer mutilated the corpse to make identification of nationality impossible. So William ordered that every murder victim was assumed to be Norman unless proven English. This began a court custom in murder cases of first proving the

Our Legal Heritage

victim to be English.

The Royal Court decided this case: "At length both parties were summoned before the King's court, in which there sat many of the nobles of the land of whom Geoffrey, bishop of Coutances, was delegated by the King's authority as judge of the dispute, with Ranulf the Vicomte, Neel, son of Neel, Robert de Usepont, and many other capable judges who diligently and fully examined the origin of the dispute, and delivered judgment that the mill ought to belong to St. Michael and his monks forever. The most victorious King William approved and confirmed this decision."

Chapter 5—The Times: 1100–1154—

King Henry I, son of William of Normandy, furthered peace between the Normans and native English by his marriage to a niece of King Edward the Confessor called Matilda. She married him on condition that he grant a charter of rights undoing some practices of the past reigns of William I and William II. Peace was also furthered by the fact that Henry I had been born in England and English was his native tongue. Private wars were now replaced by mock battles.

Henry was a shrewd judge of character and of the course of events, cautious before taking action, but decisive in carrying out his plans. He was faithful and generous to his friends. He showed a strong practical element of calculation and foresight. He was intelligent and a good administrator. He had an efficient intelligence gathering network and an uncanny knack of detecting hidden plans before they became conspiratorial action. He made many able men of inferior social position nobles, thus creating a class of career judges and administrators in opposition to the extant hereditary aristocracy. He loved books and built a palace at Oxford to which he invited scholars for lively discussion.

Queen Matilda served as regent in Henry's absence. She was literate and a literary patron. Her compassion was great and her charities extensive. She founded a hospital and had new roads and bridges built.

Henry issued charters restoring customs which had been subordinated to royal impositions by previous Kings, which set a precedent for later Kings. His coronation charter describes certain property rights he restored after the oppressive reign of his brother.

"Henry, King of the English, to Samson the bishop, and Urse of Abbetot, and to all his barons and faithful vassals, both French and English, in Worcestershire, greeting.

[1.] Know that by the mercy of God and by the common counsel of the barons of the whole kingdom of England I have been crowned king of this realm. And because the kingdom has been oppressed by unjust exactions, I now, being moved by reverence towards God and by the love I bear you all, make free the Church of God; so that I will neither sell nor lease its property; nor on the death of an archbishop or a bishop or an abbot will I take anything from the demesne of the Church or from its vassals during the period which elapses before a successor is installed. I abolish all the evil customs by which the kingdom of England has been unjustly oppressed. Some of those evil customs are here set forth.

[2.] If any of my barons or of my earls or of any other of my tenants shall die his heir shall not redeem his land as he was wont to do in the time of my brother [William II (Rufus)], but he shall henceforth redeem it by means of a just and lawful 'relief'. Similarly the men of my barons shall redeem their lands from their lords by means of a just and lawful 'relief'.

[3.] If any of my barons or of my tenants shall wish to give in marriage his daughter or his sister or his niece or his cousin, he shall consult me about the matter; but I will neither seek payment for my consent, nor will I refuse my permission, unless he wishes to give her in marriage to one of my enemies. And if, on the death of one of my barons or of one of my tenants, a daughter should be his heir, I will dispose of her in marriage and of her lands according to the counsel given me by my barons. And if the wife of one of my tenants shall survive her husband and be without children, she shall have her dower and her marriage portion [that given to her by her father], and I will not give her in marriage unless she herself consents.

[4.] If a widow survives with children under age, she shall have her dower and her marriage portion, so long as she keeps her body chaste; and I will not give her in marriage except with her consent. And the guardian of the land, and of the children, shall be either the widow or another of their relations, as may seem more proper. And I order that my barons shall act likewise towards the sons and daughters and widows of their men.

[5.] I utterly forbid that the common mintage [a forced levy to prevent loss to the King from depreciation of the coinage], which has been taken from the towns and shires, shall henceforth be levied, since it was not so levied in the time of King Edward [the Confessor, before the Norman conquest]. If any moneyer or other person be taken with false money in his possession, let true justice be visited upon him.

[6.] I forgive all pleas and all debts which were owing to my brother [William II], except my own proper dues, and except those things which were agreed to belong to the inheritance of others, or to concern the property which

Our Legal Heritage

justly belonged to others. And if anyone had promised anything for his heritage, I remit it, and I also remit all 'reliefs' which were promised for direct inheritance.

[7.] If any of my barons or of my men, being ill, shall give away or bequeath his movable property, I will allow that it shall be bestowed according to his desires. But if, prevented either by violence or through sickness, he shall die intestate as far as concerns his movable property, his widow or his children, or his relatives or one of his true men shall make such division for the sake of his soul, as may seem best to them.

[8.] If any of my barons or of my men shall incur a forfeit, he shall not be compelled to pledge his movable property to an unlimited amount, as was done in the time of my father [William I] and my brother; but he shall only make payment according to the extent of his legal forfeiture, as was done before the time of my father and in the time of my earlier predecessors. Nevertheless, if he be convicted of breach of faith or of crime, he shall suffer such penalty as is just.

[9.] I remit all murder-fines which were incurred before the day on which I was crowned King; and such murder-fines as shall now be incurred shall be paid justly according to the law of King Edward [by sureties].

[10.] By the common counsel of my barons I have retained the forests in my own hands as my father did before me.

[11.] The knights, who in return for their estates perform military service equipped with a hauberk [long coat] of mail, shall hold their demesne lands quit of all gelds [money payments] and all work; I make this concession as my own free gift in order that, being thus relieved of so great a burden, they may furnish themselves so well with horses and arms that they may be properly equipped to discharge my service and to defend my kingdom.

[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 [William I] made with the counsel of his barons.

[14.] If since the death of my brother, King William [II], anyone shall have seized any of my property, or the property of any other man, let him speedily return the whole of it. If he does this no penalty will be exacted, but if he retains any part of it he shall, when discovered, pay a heavy penalty to me.

Witness: Maurice, bishop of London; William, bishop-elect of Winchester; Gerard, bishop of Hereford; Henry the earl; Simon the earl; Walter Giffard; Robert of Montfort-sur-Risle; Roger Bigot; Eudo the steward; Robert, son of Haimo; and Robert Malet.

At London when I was crowned. Farewell."

Henry took these promises seriously, which resulted in peace and justice. Royal justice became a force to be reckoned with by the multiplication of justices. Henry had a great respect for legality and the forms of judicial action. He became known as the "Lion of Justice".

The center of government was a collection of tenants-in-chief whose feudal duty included attendance when summoned and certain selected household servants of the King. When it met for financial purposes, Henry called it the Exchequer and it became a separate body. It received yearly from the sheriffs of the counties taxes and fines due to the Crown and also the income from royal estates, which were then comingled. Henry brought sheriffs under his strict control, free from influence by the barons.

A woman could inherit a fief if she married. The primary way for a man to acquire land was to marry an heiress. If a man were in a lower station than she was, he had to pay for his new social status as well as have royal permission. A man could also be awarded land which had escheated to the King. If a noble woman wanted to hold land in her own right, she had to make a payment to the King. Many widows bought their freedom from guardianship or remarriage from the King. Women whose husbands were at war also ran the land of their husbands.

Barons were lords of large holdings of farmland called "manors". Many of the lesser barons left their dark castles to live in semi-fortified stone houses, which usually were of two rooms with rug hangings for drafts, as well as the sparse furniture that had been common to the castle. There were shuttered windows to allow in light, but which also let in the wind and rain when open. The roof was of thatch or narrow overlapping wood shingles. The floor was strewn with hay and there was a hearth near the center of the floor, with a louvered smoke hole in the timber roof for escape of smoke. There were barns for grain and animals. Beyond this area was a garden, orchard, and sometimes a vineyard. The area was circumscribed by a moat over which there was a drawbridge to a gatehouse.

Our Legal Heritage

The smaller room was the lord and lady's bedroom. It had a canopied bed, chests for clothing, and wood frames on which clothes could be hung. Life on the manor revolved around the larger room, or hall, where the public life of the household was passed. There, meals were served. The daily diet typically consisted of milk, soup, porridge, fish, vegetables, and bread. Open hospitality accompanied this communal living. There was little privacy. Manor household villeins carried the lord's sheaves of grain to the manor barn, shored his sheep, malted his grain, and chopped wood for his fire. At night some slept on the floor of the hall and others, cottars and bordars, had their own dwellings nearby.

Games with dice were sometimes played. In winter, youths ice-skated with bones fastened to their shoes. They propelled themselves by striking the ice with staves shod with iron. On summer holydays, they exercised in leaping, shooting with the bow, wrestling, throwing stones, and darting a thrown spear. The maidens danced with timbrels.

The cold, indoors as well as outdoors, necessitated that people wear ample and warm garments. Men and women of position dressed in long full cloaks reaching to their feet, sometimes having short full sleeves. The cloak generally had a hood and was fastened at the neck with a brooch. Underneath the cloak was a simple gown with sleeves tight at the wrist but full at the arm-hole, as if cut from the same piece of cloth. A girdle or belt was worn at the waist. When the men were hunting or working, they wore gown and cloak of knee length. Humble folk also wore knee-length garments, with a band about the waist.

There was woodland, common pasture land, arable land, meadow land, and wasteland on the manor. The arable land was allotted to the villeins in strips to equalize the best and worst land and their distance from the village where the villeins lived. There was three way rotation of wheat or rye, oats or barley, and fallow land. Cows, pigs, sheep, and fowl were kept. The meadow was allocated for hay for the lord's household and each villein's. The villeins held land of their lord for various services such as agricultural labor or raising domestic animals. The villeins, who worked the farm land as their ancestor ceorls had, now were so bound to the land that they could not leave or marry or sell an ox without their lord's consent. If the manor was sold, the villein was sold as a part of the manor. The villeins worked about half of their time on their lord's fields [his demesne land], which was about a third of the farmland. This work was primarily to gather the harvest and to plough with oxen and to sow in autumn and Lent. Work lasted from sunrise to sunset and included women and children. Life expectancy was probably below thirty-five.

The villeins of a manor elected a reeve to communicate their interests to their lord, usually through a bailiff, who directed the labor. Sometimes there was a steward in charge of several of a lord's manors, who also held the manorial court for the lord. The steward held his land of the lord by serjeanty, which was a specific service to the lord. Other serjeanty services were helping in the lord's hunting expeditions and looking after his hounds.

The majority of manors were co-extensive with a single village. The villeins lived in the village in one-room huts enclosed by a wood fence, hedge, or stone wall. In this yard was a garden of onions, leeks, mustard, peas, beans, and cabbage and apple, pear, cherry, and plum trees, and bee-hives. The hut had a high-pitched roof thatched with reeds or straw and low eaves reaching almost to the ground. The walls are built of wood overlaid with mud or plaster. Narrow slits in the walls serve as windows. Which have shutters and are sometimes covered with coarse cloth. The floor is dirt and may be covered with straw or rushes for warmth. At one end of the hut was the family living area, where the family ate on a collapsible trestle table with stools or benches and used drinking horns and wooden bowls and spoons, along with jars and other earthenware. Their usual food was beans and peas, and some bacon, butter, cheese, and vegetables, bread made from a mixture of wheat, barley, and rye flour, and occasionally fish. They drank water, milk, buttermilk, apple cider, mead, and ale made from barley malt. Cooking was done over the fire with iron tripod and kettle. Most of the food was boiled. They slept on the floor or on benches. The villein regarded his bed area as the safest place in the house, as did people of all ranks, and kept his treasures there, which included his farm implements. Around the room are a couple of chests to store salt, meal, flour, a broom made of birch trigs, some woven baskets, the distaff and spindle for spinning, and a simple loom for weaving. All clothes were homemade. The man wore a tunic of coarse linen embroidered on the sleeves and breast, around which he wore a girdle of rope, leather, or folded cloth. Sometimes he also wore breeches reaching below the knee. The woman wore a loose short-sleeved gown, under which was a tight fitting garment with long loose sleeves. If they wore shoes, they were clumsy and patched. Some wore a hood-like cap. At the other end of the hut were the horses, cattle, pigs, and poultry. In the middle is a wood fire burning on a hearthstone. The smoke

Our Legal Heritage

rises through a hole in the roof.

The villein and his wife and children worked from daybreak to dusk in the fields, except for Sundays and holydays. He had certain land to farm for his own family, but had to have his grain milled at his lord's mill at the lord's price. He had to retrieve his wandering cattle from his lord's pound at the lord's price. He was expected to give a certain portion of his own produce, whether grain or livestock, to his lord. However, if he fell short, he was not put off his land. When his daughter or son married, he had to pay a "merchet" to his lord. He could not have a son educated without the lord's permission, and this usually involved a fee to the lord. His best beast at his death, or "heriot", went to his lord. If he wanted permission to live outside the manor, he paid "chevage" yearly. Woodpenny was a yearly payment for gathering dead wood. Sometimes a "tallage" payment was taken at the lord's will. The villein's oldest son usually took his place on his land and followed the same customs with respect to the lord. For an heir to take his dead ancestor's land, the lord demanded payment of a "relief", which was usually the amount of a year's income but sometimes as much as the heir was willing to pay to have the land. The usual aids were also expected to be paid.

Markets were about twenty miles apart because a farmer from the outlying area could then carry his produce to the nearest town and walk back again in the daylight hours of one day. In this local market he could buy foodstuffs, livestock, household goods, fuels, skins, and certain varieties of cloth.

The cloth was crafted by local weavers, dyers, and fullers, who made the cloth full and dense. Some cloth was sold to tailors to make into clothes. Butchers bought, slaughtered, and cut up animals to sell as meat. Some was sold to cooks, who sold prepared foods. The hide was bought by the tanner to make into leather. The leather was sold to shoemakers and glovemakers. Millers bought harvested grain to make into flour. Flour was sold to bakers to make into breads. Wood was bought by carpenters and by coopers, who made barrels. Tilers, oil-makers and rope-makers also bought raw material to make into finished goods for sale. Smiths, locksmiths, and wheelwrights worked over their hot fires.

The nation grew with the increase of population, the development of towns, and the growing mechanization of craft industries. There were watermills for crafts in all parts of the nation. There were also some iron furnaces.

Stone bridges over rivers could accommodate one person traveling by foot or by horseback and were steep and narrow.

Merchants, who had come from the low end of the knightly class or high end of the villein class, settled around the open market areas, where main roads joined. They had plots narrow in frontage along the road and deep. Their shops faced the road, with living space behind or above their stores. Town buildings were typically part stone and part timber as a compromise between fire precautions and expense.

Towns, as distinct from villages, had permanent markets. As towns grew, they paid a fee to obtain a charter for self-government from the King giving the town judicial and commercial freedom. These various rights were typically expanded in future times. Such a town was called a "borough" and its citizens or land-owning freemen "burgesses". They were literate enough to do accounts. Selling wholesale could take place only in a borough. The King assessed a tallage [ad hoc tax] usually at ten per cent of property or income. Henry standardized the yard as the length of his own arm.

London had at least twenty wards, each governed by its own alderman. Most of them were named after people. London was ruled by sixteen families linked by business and marriage ties. These businesses supplied luxury goods to the rich and included the goldsmiths [sold cups, dishes, girdles, mirrors, purses, knives, and metal wine containers with handle and spout], vintners [wine merchants], mercers [sold textiles, haberdashery, combs, mirrors, knives, toys, spices, ointments, and drugs], drapers, and pepperers, which later merged with the spicerers to become the "grocers". These businesses had in common four fears: royal interference, foreign competition, displacement by new crafts, and violence by the poor and escaped villeins who found their way to the city.

London in Middlesex county received this charter for self-government and freedom from the financial and judicial organization of the shire:

"Henry, by the grace of God, King of England, to the Archbishop of Canterbury and the bishops, abbots, earls, barons, justiciars, sheriffs and all his loyal subjects, both French and English, throughout the whole of England—greeting.

1. Be it known to you that I have granted Middlesex to my citizens of London to be held on lease by them and their heirs of me and my heirs for 300 pounds paid by tale [yearly], upon these terms: that the citizens themselves

Our Legal Heritage

[may] appoint a sheriff, such as they desire, from among themselves, and a justiciar, such as they desire, from among themselves, to safeguard the pleas of my Crown [criminal cases] and to conduct such pleas. And there shall be no other justiciar over the men of London.

2. And the citizens shall not take part in any [civil] case whatsoever outside the City walls.

1) And they shall be exempt from the payment of scot and danegeld and the murder fine.

2) And none of them shall take part in trial by combat.

3) And if any of the citizens has become involved in a plea of the Crown, he shall clear himself, as a citizen of London, by an oath which has been decreed in the city.

4) And no one shall be billeted [lodged in a person's house by order of the King] within the walls of the city nor shall hospitality be forcibly exacted for anyone belonging to my household or to any other.

5) And all the citizens of London and all their effects [goods] shall be exempt and free, both throughout England and in the seaports, from toll and fees for transit and market fees and all other dues.

6) And the churches and barons and citizens shall have and hold in peace and security their rights of jurisdiction [in civil and criminal matters] along with all their dues, in such a way that lessees who occupy property in districts under private jurisdiction shall pay dues to no one except the man to whom the jurisdiction belongs, or to the official whom he has placed there.

7) And a citizen of London shall not be amerced [fined by a court when the penalty for an offense is not designated by statute] to forfeiture of a sum greater than his wergeld, [hereby assessed as] 100 shillings, in a case involving money.

8) And further there shall be no miskenning [false plea causing a person to be summoned to court] in a husting or in a folkmoot [meeting of the community], or in any other court within the City.

9) And the Hustings [court] shall sit once a week on Monday.

10) And I assure to my citizens their lands and the property mortgaged to them and the debts due to them both within the City and without.

11) And with regard to lands about which they have plead in suit before me, I shall maintain justice on their behalf, according to the law of the City.

12) And if anyone has exacted toll or tax from citizens of London, the citizens of London within the city shall [have the right to] seize [by process of law] from the town or village where the toll or tax was exacted a sum equivalent to that which the citizen of London gave as toll and hence sustained as loss.

13) And all those who owe debts to citizens shall pay them or shall clear themselves in London from the charge of being in debt to them.

14) But if they have refused to pay or to come to clear themselves, then the citizens to whom they are in debt shall [have the right to] seize [by process of law] their goods [including those in the hands of a third party, and bring them] into the city from the [town, village or] county in which the debtor lives [as pledges to compel appearance in court].

15) And the citizens shall enjoy as good and full hunting rights as their ancestors ever did, namely, in the Chilterns, in Middlesex, and in Surrey.

Witnessed at Westminster."

The above right not to take part in any case outside the city relieved London citizens from the burden of traveling to wherever the King's court happened to be, the disadvantage of not knowing local customs, and the difficulty of speaking in the language of the King's court rather than in English. The right of redress for tolls exacted was new because the state of the law was that the property of the inhabitants was liable to the King or superior lord for the common debt.

Craft guilds grew up in the towns, such as the tanners at Oxford, which later merged with the shoemakers into a cordwainers' guild. There were weavers' guilds in several towns given royal sanction. They paid an annual tribute and were given a monopoly of weaving cloth within a radius of several miles. Guild rules covered attendance of the members at church services, the promotion of pilgrimages, celebration of masses for the dead, common meals, relief of poor brethren and sisters, the hours of labor, the process of manufacture, the wages of workmen, and technical education.

Newcastle-on-Tyne was recognized by the King as having certain customs, so the following was not called a grant:

Our Legal Heritage

"These are the laws and customs which the burgesses of Newcastle upon Tyne had in the time of Henry King of England and ought to have.

[1] Burgesses can distrain [take property of another until the other performs his obligation] upon foreigners within, or without their own market, within or without their own houses, and within or without their own borough without the leave of the reeve, unless the county court is being held in the borough, and unless [the foreigners are] on military service or guarding the castle.

[2] A burgess cannot distrain upon a burgess without the leave of the reeve.

[3] If a burgess have lent anything of his to a foreigner, let the debtor restore it in the borough if he admits the debt, if he denies it, let him justify himself in the borough.

[4] Pleas which arise in the borough shall be held and concluded there, except pleas of the Crown.

[5] If any burgess be appealed [sued] of any plaint, he shall not plead without the borough, unless for default of [the borough] court.

[6] Nor ought he to answer without day and term, unless he have fallen into 'miskenning'[error in pleading], except in matters which pertain to the Crown.

[7] If a ship have put in at Tynemouth and wishes to depart, the burgesses may buy what they will [from it].

[8] If a plea arise between a burgess and a merchant, it shall be concluded before the third ebb of the tide.

[9] Whatever merchandise a ship has brought by sea must be landed, except salt; and herring ought to be sold in the ship.

[10] If any man have held land in burgage for a year and a day, lawfully and without claim, he shall not answer a claimant, unless the claimant have been without the realm of England, or a child not of age to plead.

[11] If a burgess have a son, he shall be included in his father's freedom if he be with his father.

[12] If a villein come to dwell in the borough, and dwell there a year and a day as a burgess, he shall abide altogether, unless notice has been given by him or by his master that he is dwelling for a term.

[13] If any man appeal [sue] a burgess of any thing, he cannot do battle with the burgess, but the burgess shall defend himself by his law, unless it be of treason, whereof he is bound to defend himself by battle.

[14] Neither can a burgess do battle against a foreigner, unless he first go out of the borough.

[15] No merchant, unless he be a burgess, may buy [outside] the town either wool or leather or other merchandise, nor within the borough except [from] burgesses.

[16] If a burgess incur forfeit, he shall give six ounces [10s.] to the reeve.

[17] In the borough there is no merchet [payment for marrying off a daughter] nor heriot nor blodwite [fine for drawing blood] nor stengesdint [fine for striking with a stick].

[18] Every burgess may have his own oven and hand-mill if he will, saving the right of the King's oven.

[19] If a woman be in forfeit for bread or beer, no one ought to interfere but the reeve. If she forfeit twice, she shall be chastised by her forfeit. If three times, let justice be done on her.

[20] No one but a burgess may buy webs [woven fabrics just taken off the loom] to dye, nor make nor cut them.

[21] A burgess may give and sell his land and go whither he will freely and quietly unless there be a claim against him."

In the boroughs, merchant and manufacturing guilds controlled prices and assured quality. The head officer of the guild usually controlled the borough, which excluded rival merchant guilds.

Trades and crafts, each of which had to be licensed, grouped together by speciality in the town. Cloth-makers, dyers, tanners, and fullers were near an accessible supply of running water, upon which their trade depended. Streets were often named by the trade located there, such as Butcher Row, Pot Row, Cordwainer Row, Ironmonger Row, Wheeler Row, and Fish Row. Hirers of labor and sellers of wheat, hay, livestock, dairy products, apples and wine, meat, poultry, fish and pies, timber and cloth all had a distinct location.

The nation produced sufficient iron, but a primitive steel was imported. Steel was used for tools, instruments, weapons and armour.

Plays about miracles wrought by holy men or the sufferings and fortitude of martyrs were performed. Most nobles could read, though writing was still a specialized craft. There were books on animals, plants, and stones. The lives of the saints as told in the book "The Golden Legend" were popular. The story of the early King Arthur was told in the book "The History of the Kings of England". The story at this time stressed Arthur as a hero and

Our Legal Heritage

went as follows: Arthur became King at age 15. He had an inborn goodness and generosity as well as courage. He and his knights won battles against foreign settlers and neighboring clans. Once, he and his men surrounded a camp of foreigners until they gave up their gold and silver rather than starve. Arthur married Guenevere and established a court and retinue. Leaving Britain in the charge of his nephew Modred, he fought battles on the continent for land to give to his noblemen who did him service in his household and fought with him. When Arthur returned to Britain, he made battle with his nephew Modred who had crowned himself King. Arthur's knight Gawain, the son of his sister, and the enemy Modred were killed and Arthur was severely wounded. Arthur told his kinsman Constantine to rule Britain as King in his place.

The intellectual world included art, secular literature, law, and medicine. There were about 90 physicians.

Forests were still retained by Kings for their hunting of boars and stags. The bounds of the Forest were enlarged. They comprised almost one-third of the kingdom.

Barons and their tenants and sub-tenants were offered an alternative of paying shield money ["scutage"] of 2 marks per fee in commutation for and instead of military service for their fiefs. This enabled Henry to hire soldiers who would be more directly under his own control and to organize a more efficient army.

A substantial number of barons and monasteries were heavily in debt to the Jews. The King taxed the Jews at will.

During rivalry for the throne after Henry I's reign, the bishops gained some independence from the Crown and strengthened their ties with the Pope.

—The Law—

Henry restored the death penalty for thievery and robbery, but maintained William I's punishment of the mutilation of blinding and severing of limbs for other offenses.

The forest law stated that: "he that doth hunt a wild beast and doth make him pant, shall pay 10 shillings: If he be a free man, then he shall pay double. If he be a bound man, he shall lose his skin." A "verderer" was responsible for enforcing this law, which also stated that: "If anyone does offer force to a Verderer, if he be a freeman, he shall lose his freedom, and all that he hath. And if he be a villein, he shall lose his right hand." Further, "If such an offender does offend so again, he shall lose his life."

A wife's dower is one-third of all her husband's freehold land, unless his endowment of her at their marriage was less than one-third.

Counterfeiting law required that "If any one be caught carrying false coin, the reeve shall give the bad money to the King however much there is, and it shall be charged in the render of his farm [payment] as good, and the body of the offender shall be handed over to the King for judgment, and the serjeants who took him shall have his clothes."

Debts to townsmen were recoverable by this law: "If a burgess has a gage [a valuable object held as security for carrying out an agreement] for money lent and holds this for a whole year and a day, and the debtor will not deny the debt or deliver the gage, and this is proved, the burgess may sell the gage before good witnesses for as much as he can, and deduct his money from the sum. If any money is over he shall return it to the debtor. But if there is not enough to pay him, he shall take distress again for the amount that is lacking."

Past due rent in a borough was punishable by payment of 10s. as fine."

There are legal maxims which are becoming so well established and known that there will never be a need to write them down as statutes. As delineated by St. Germain in "Doctor and Student" in 1518, they are:

1. If a man steals goods to the value of 12d., or above, it is felony, and he shall die for it. If it is under the value of 12d., then it is but petit larceny, and he shall not die for it, but shall be punished at the discretion of the judges. This not apply to goods taken from the person, which is robbery, a felony punishable by death.
2. If an exigent, in case of felony, is awarded against a man, he has thereby forthwith forfeited his goods to the King.
3. If the son is attainted [convicted of treason or felony with the death penalty and forfeiture of all lands and goods] in the life of the father, and after he purchases his charter of pardon of the King, and after the father dies; in this case the land shall escheat to the lord of the fee, insomuch that though he has a younger brother, yet the land shall not descend to him: for by the attainder of the elder brother the blood is corrupt, and the father-in-law died without heir.
4. A man declared outlaw forfeits his profits from land and his goods to the King.

Our Legal Heritage

5. He who is arraigned upon an indictment of felony shall be admitted, in favor of life, to challenge the number of inquirers for three whole inquests peremptorily. With cause, he may challenge as many as he has cause to challenge. Such peremptory challenge shall not be admitted in a private suit because it is a suit of the party.

6. An accessory shall not be put to answer before the principal.

7. If a man commands another to commit a trespass, and he does it, the one who made the command is a trespasser.

8. The land of every man is in the law enclosed from other, though it lies in the open field and a trespasser in it may be brought to court.

9. Every man is bound to make recompense for such hurt as his beasts do in the growing grain or grass of his neighbor, though he didn't know that they were there.

10. He who has possession of land, though it is by disseisin, has right against all men but against him who has right.

11. The rents, commons of pasture, of turbary [digging turf], reversions, remainders, nor such other things which lie not in manual occupation, may not be given or granted to another without writing.

12. If a villein purchase lands, and the lord enter, he shall enjoy the land as his own. But if the villein alienates before the lord enters, he alienation is good. And the same law is of goods.

13. Escuage (shield service for 40 days) uncertain makes knight's service. Escuage certain makes socage.

14. He who holds by castle-guard, holds by knight's service, but he does not hold by escuage. He that holds by 20s. to the guard of a castle holds by socage.

15. A descent takes away an entry.

16. No prescription [assertion of a right or title to the enjoyment of a thing, on the ground of having had the uninterrupted and immemorial enjoyment of it] in lands makes a right.

17. A prescription of rent and profits out of land makes a right.

18. The limitation of a prescription generally taken is from the time that no man's mind runs to the contrary.

19. Assigns may be made upon lands given in fee, for term of life, or for term of years, though no mention be made of assigns; and the same law is of a rent that is granted; but otherwise it is of a warranty, and of a covenant.

20. He who recovers debt or damages in the King's court when the person charged is not in custody, may within a year after the judgment take the body of the defendant, and commit him to prison until he has paid the debt and damages.

21. If a release or confirmation is made to him who, at the time of the release made, had nothing in the land, the release or confirmation is void, except in certain cases, such as to vouch.

22. A condition to avoid a freehold cannot be pleaded without a deed; but to avoid a gift of chattel, it may be pleaded without deed.

23. A release or confirmation made by him, that at the time of the release or confirmation made had no right, is void in law, though a right comes to him after; except if it is with warranty, and then it shall bar him to all right that he shall have after the warranty is made.

24. If land and rent that is going out of the same land, comes into one man's hand of like estate, and like surety of title, the rent is extinct.

25. If land descends to him who has right to the same land before, he shall be remitted to his better title, if he will.

26. If two titles are concurrent together, the oldest title shall be preferred.

27. If a real action be sued against any man who has nothing in the thing demanded, the writ shall abate at the common law.

28. If the demandant or plaintiff, hanging his writ, will enter into the thing demanded, his writ shall abate.

29. By the alienation of the tenant, hanging the writ, or his entry into religion, or if he is made a knight, or she is a woman, and takes a husband hanging the writ, the writ shall not abate.

30. A right or title of action that only depends in action, cannot be given or granted to none other but only to the tenant of the ground, or to him who has the reversion or remainder of the same land.

31. In an action of debt upon an agreement, the defendant may wage his law: but otherwise it is upon a lease of lands for term of years, or at will.

32. The King may disseise no man and no man may disseise the King, nor pull any reversion or remainder out

Our Legal Heritage

of him.

33. The King's excellency is so high in the law, that no freehold may be given to the King, nor be derived from him, but by matter of record.

34. If an abbot or prior alienate the lands of his house, and dies, though his successor has right to the lands, yet he may not enter, but he must take legal action.

35. If an abbot buys a thing that comes to the use of the house, and dies, then his successor shall be charged.

Judicial activity encouraged the recording of royal legislation in writing which both looked to the past and attempted to set down law current in Henry's own day. The "Liberi Quadripartitus" aimed to include all English law of the time. This showed an awareness of the ideal of written law as a statement of judicial principles as well as of the practice of kingship. In this way, concepts of Roman law used by the Normans found their way into English law.

Church law required that only consent between a man and woman was necessary for marriage. There needn't be witnesses, ceremony, nor consummation. Consent could not be coerced. Penalties in marriage contracts were deemed invalid. Villeins and slaves could marry without their lords' or owners' permission. A couple living together could be deemed married. Relatives descended from the same great great grandfather could not marry, nor could relatives by marriage of the same degree of closeness. A legal separation could be given for adultery, cruelty, or heresy. Fathers were usually ordered to provide some sustenance and support for their illegitimate children. The court punished infanticide and abortion.

—Judicial Procedure—

Courts extant now are the Royal Court, the King's Court of the Exchequer, shire courts, and hundred courts, which were under the control of the King. His appointed justices administered justice in these courts on regular circuits. Also there are manor courts, borough courts, and ecclesiastical courts.

The King's Royal Court heard issues concerning the Crown and breaches of the King's peace, which included almost all criminal matters. The most serious offenses: murder, robbery, rape, abduction, arson, treason, and breach of fealty, were now called felonies. Other offenses were: housebreaking, ambush, certain kinds of theft, premeditated assault, and harboring outlaws or excommunicants. Henry personally presided over hearings of important legal cases. He punished crime severely. Offenders were brought to justice not only by the complaint of an individual or local community action, but by official prosecutors. A prosecutor was now at trials as well as a judge. Trial is still by compurgation.

These offenses against the King placed merely personal property and sometimes land at the King's mercy. Thus the Crown increased the range of offenses subject to its jurisdiction and arrogated to itself profits from the penalties imposed.

The Royal Court also heard these offenses against the King: fighting in his dwelling, contempt of his writs or commands, encompassing the death or injury of his servants, contempt or slander of the King, and violation of his protection or his law. It heard these offenses against royal authority: complaints of default of justice or unjust judgment, pleas of wrecks of ships, coinage, treasure-trove [money buried when danger approached], forest prerogatives, and control of castellation.

Henry began the use of writs to intervene in civil matters. These writs allowed people to come to the Royal Court on certain issues. He had some locally based justices, called justiciars. Also, he sent justices out on eyres [journeys], with wide responsibilities, to hear and decide all manner of Crown pleas. This brought royal authority into the localities and served to check baronial power over the common people. He created the office of chief justiciar, which carried out judicial and administrative functions.

The Royal Court also decided land disputes between barons. There was a vigorous interventionism in the land law subsequent to appeals to the King in landlord-tenant relations, brought by a lord or by an undertenant. Assizes [those who sit together] of local people who knew relevant facts were put together to assist the court.

Records of the verdicts of the Royal Court were sent with traveling justices for use as precedent in shire and hundred courts.

The King's Court of the Exchequer reviewed the accounts of sheriffs, including receipts and expenditures on the Crown's behalf as well as sums due to the Treasury, located still at Winchester. These sums included rent from royal estates, the Danegeld land tax, the fines from local courts, and aid from baronial estates. It was called the "Exchequer" because it used a chequered cloth on the table to facilitate calculation in Roman numerals of the

Our Legal Heritage

amount due and the amount paid. Its records were the "Pipe Rolls", so named because sheets of parchment were fastened at the top, each of which dropped into a roll at the bottom and so assumed the shape of a pipe.

The shire and hundred courts assessed the personal property of individuals and their taxes due to the King. The shire court decided land disputes between people who had different barons as their respective lords.

The Crown used its superior coercive power to enforce the legal decisions of other courts.

The shire courts heard cases of theft, brawling, beating, and wounding, for which the penalties could be exposure in the pillory or stocks where the public could scorn and hit the offender. It met twice yearly. If an accused failed to appear after four successive shire courts, he was declared outlaw at the fifth and forfeited his civil rights and all his property. He could be slain by anyone at will.

The hundred court heard neighborhood disputes, for instance concerning pastures, meadows and harvests. It policed the duty of frankpledge, which was required for those who did not have a lord to answer for him. It met once a month.

The free landholders were expected to attend shire, hundred, and baronage courts. They owed "suit" to it. The suitors found the dooms [laws] by which the presiding officer pronounced the sentence.

The barons held court on their manors for issues arising between people living on the manor, such as bad ploughing on the lord's land or letting a cow get loose on the lord's land, and land disputes. They also made the decision of whether or not a person was a villein or free. The manor court took over issues which had once been heard in the vill or hundred court. The baron charged a fee for hearing a case and received any fines he imposed, which amounted to significant "profits of justice".

Boroughs held court on trading and marketing issues in their towns such as measures and weights, as well as issues between people who lived in the borough. The borough court was presided over by a reeve who was a burghess as well as a royal official.

Wealthy men could employ professional pleaders to advise them and to speak for them in a court.

The ecclesiastical courts dealt with family matters such as marriage, annulments, marriage portions, legitimacy, wife-beating, child abuse, bigamy, adultery, incest, fornication, personal possessions, slander, usury, mortuaries, sanctuary, sacrilege, blasphemy, heresy, tithe payments, church fees, and breaches of promises under oath, e.g. to pay a debt, provide services, or deliver goods. It decided inheritance and will issues which did not concern land, but only personal property. This developed from the practice of a priest usually hearing a dying person's will as to the disposition of his goods and chattel when he made his last confession. It provided guardianship of infants during probate of their personal property. Trial was by compurgation. An alleged offender could be required to answer questions under oath, thus giving evidence against himself. The court's penalties were intended to reform and determined on a case-by-case basis. They could include confession and public repentance of the sin before the parish, making apologies and reparation to persons affected, public embarrassment such as being dunked in water (e.g. for women scolds), walking a route barefoot and clad only in one's underwear, whippings, extra work, fines, and imprisonment in a "penitentiary" to do penance. The ultimate punishment was excommunication with social ostracism. Then no one could give the person drink, food, or shelter and the only people he could speak to were his spouse and servants. Excommunication included denial of the sacraments of baptism, penance, eucharist, and extreme unction at death; which were necessary for salvation of the soul; and the sacrament of confirmation. However, the person could still marry and make a will. Excommunication was usually imposed for failure to obey an order or showing contempt of the law or of the courts. It required a due process hearing and a written reason. If this measure failed, it was possible to turn the offender over to the state for punishment, e.g. for blasphemy or heresy. Blasphemy [speaking ill of God] was thought to cause God's wrath expressed in famine, pestilence, and earthquake and was usually punished by a fine or corporal punishment, e.g. perforation or amputation of the tongue. It was tacitly understood that the punishment for heresy was death by burning. The state usually assured itself the sentence was just before imposing it. The court of the rural dean was the ecclesiastical parallel of the hundred court of secular jurisdiction and usually had the same land boundaries.

Chapter 6—The Times: 1154–1215—

King Henry II and Queen Eleanor, who was twelve years older, were both intelligent, educated, energetic, well-traveled, and experienced in affairs of state. Henry was the first Norman King to be fully literate. Eleanor often served as regent during Henry's reign and the reigns of their two sons: Richard, the Lion-Hearted, and John, a short man. After Eleanor's death, John's heavy-handed and arbitrary rule quickly alienated all sectors of the population, who joined to pressure him to sign the Magna Carta. Since John had extracted many heavy fines from barons by personally adjudging them blameworthy in disputes with others, the barons insisted on judgment by their peers under the established law of the courts. The story of Robin Hood portrays John's attempt to gain the crown prematurely while Richard was on the Crusades to recover Jerusalem for Christendom.

Henry II was a modest, courteous, and patient man with an astonishing memory and strong personality. He was indifferent to rank and impatient of pomp to the point of being careless about his appearance. He usually dressed in riding clothes and was often unkempt. He was thrifty, but generous to the poor.

Henry revived and augmented the laws and institutions of his grandfather, Henry I, and developed them to a new perfection. Almost all legal and fiscal institutions appear in their first effective form during his reign. For instance, he institutionalized the assize for a specific function in judicial proceedings, whereas before it had been an ad hoc body used for various purposes.

Henry's government practiced a strict economy and he never exploited the growing wealth of the nation. He abhorred bloodshed and the sacrifice of men's lives. So he strove diligently to keep the peace, when possible by gifts of money, but otherwise with armed force. Merchants with precious goods could journey safely through the land from fair to fair. Frankpledge was revived. No stranger could stay overnight (except for one night in a borough), unless sureties were given for his good behavior. A list of such strangers was to be given to itinerant judges.

Henry had character and the foresight to build up a centralized system of government that would survive him. He learned about the shires' and villages' varying laws and customs. Then, using the model of Roman law, he gave to English institutions that unity and system which in their casual patch-work development had been lacking. Henry's government and courts forged permanent direct links between the King and his subjects which cut through the feudal structure of lords and vassals.

He developed the methods and structure of government so that there was a great increase in the scope of administrative activity without a concurrent increase of personal power of the officials who discharged it. The government was self-regulating, with methods of accounting and control which meant that no official, however exalted, could entirely escape the surveillance of his colleagues and the King. At the same time, administrative and judicial procedures were perfected so that much which had previously required the King's personal attention was reduced to routine.

The royal household translated the royal will into action. In the early 12th century, there had been very little machinery of central government that was not closely associated with the royal household. Royal government was largely built upon what had once been purely domestic offices. Kings had called upon their chaplains to pen letters for them. By Henry II's reign, the Chancery was a highly efficient writing office through which the King's will was expressed in a flow of writs, and the Chancellor an important and highly rewarded official, but he was still responsible for organizing the services in the royal chapel. Similarly, the chamberlains ran the household's financial departments. They arranged to have money brought in from a convenient castle-treasury, collected money from sheriffs or the King's debtors, arranged loans with the usurers, and supervised the spending of it. It was spent for daily domestic needs, the King's almsgiving, and the mounting of a military campaign. But they were still responsible for personal attendance upon the King in his privy chamber, taking care of his valuable furs, jewels, and documents, and changing his bedlinens. There were four other departments of the household. The steward presided over the hall and kitchens was responsible for supplying the household and guests with food supplies. The butler had duties in the hall and cellars and was responsible for the supply of wine and ale. The marshall arranged lodgings for the King's court as it moved about from palaces to hunting lodges, arranged the pay of the household servants, and supervised the work of ushers, watchmen, fire-tenders, messengers and

Our Legal Heritage

huntsmen. The constable organized the bodyguard and escorts, arranged for the supply of castles, and mustered the royal army.

Henry brought order and unity by making the King's Royal Court the common court of the land. Its purpose was to guard the King's peace by protecting all people of free status throughout the nation. Heretofore, the scope of the King's peace had varied to as little as the King's presence, his land, and his highway. The royal demesne had shrunk to about 5% of the land. The Common Law for all the nation was established by example of the King's Royal Court.

A system of writs originated well-defined actions in the royal courts. This system determined the Royal Court's jurisdiction as against the church, lords, and sheriffs. It limited the jurisdiction of all other courts and subordinated them to the Royal Court. Inquests into any misdeeds of sheriffs were held, which could result in their dismissal.

Before Henry's reign, the church had become more powerful and asserted more authority. Henry tried to return to the concept of the King being appointed by God and as head of the church as well as of the state, as in Henry I's time. Toward this end, he published the Constitutions of Clarendon. But the Archbishop of Canterbury, Thomas Becket, refused to agree to them. The disagreement came to a head in Henry's attempt to establish the principle of "one law to all" by having church clerics punished by the civil courts as before, instead of having "benefit of clergy" to be tried only in ecclesiastical courts, even for secular crimes. Clerics composed about one-sixth the population. The church courts had characteristically punished with a fine or a penance, and at most defrocking, and never imposed a death penalty, even for murder. When Archbishop Becket was murdered and became a martyr, "benefit of clergy" became a standard right. Appeals could be made to the Pope without the King's permission. The King could take a criminal cleric's chattels, but not his life. However, though theoretically the bishops were elective, as a practical matter, the King appointed the bishops and the abbots.

Henry and Eleanor spoke many languages and liked discussing law, philosophy, and history. So they gathered wise and learned men about them, who became known as courtiers, rather than people of social rank. They lived in the great and strong Tower of London. On the west were two strongly fortified castles surrounded by a high and deeply entrenched wall, which had seven double gates. Towers were spaced along the north wall and the Thames River flowed below the south wall. To the west was the city, where royal friends had residences with adjoining gardens near the royal palace at Westminster. The court was a center of culture as well as of government. The game of backgammon was played. People wore belts with buckles, usually brass, instead of knotting their belts.

London extended about a mile along the river and about half a mile inland. Most of its houses were two stories, the ground floor having booths and workshops, and the upper floor living space. Walls between houses had to be stone and thatched roofs were banned because there had been many fires. There were over a hundred churches in the city, which celebrated feast days, gave alms and hospitality to strangers, confirmed betrothals, contracted marriages, celebrated weddings, conducted funerals, and buried the dead. Fish and no meat was eaten on Fridays and during lent. There was dark rye bread and expensive white wheat bread. Vegetables included onions, leeks, and cabbage. Fruits included apples, pears, plums, cherries, and strawberries. Water was obtained from streams running through the town to the river and from springs. There were craft guilds of bakers, butchers, clothworkers, and saddlers, as well as of weavers. Vendors, craftsmen, and laborers had their customary places, which they took up every morning.

Some vendors walked the streets announcing their wares for sale.

In London, bells heralded the start and finish of all organized business. At sunset, the gates of the town were closed for the night. Only the rich could afford wax candles; others had home-made tallow or fat lights which smelled and gave off smoke. Most people washed their bodies. Few babies survived childhood. If a man reached 30, he could expect to live until age 50. The sellers of merchandise and hirers of labor were distributed every morning into their several localities according to their trade. Outside one of the gates, a horse market was held every week. They wore horseshoes made of iron or of a crude steel. In other fields, countryfolk sold pigs, cows, oxen and sheep. London Bridge was built of stone with such a width that a row of wood houses and a chapel was built on top of it.

The weavers guild of London received a charter by the King in 1155, the first granted to any London craft: "Know that I have conceded to the Weavers of London to hold their guild in London with all the liberties and

Our Legal Heritage

customs which they had in the time of King Henry [I], my grandfather; and that none may intermeddle with the craft within the city, nor in Southwark, nor in other places pertaining to London except through them and except he be in their guild, otherwise than was accustomed to be done in the time of King Henry, my grandfather ...So that each year they render thence to me two marks [26s. 8d.] of gold at the feast of St. Michael. And I forbid that any shall do injury or contumely to them on this account under penalty of 10 pounds [200s.]. Witness T[homas], Chancellor, and Warinus, son of Gerard, Chamberlain, at Winchester." These liberties were: 1) The weavers may elect bailiffs to supervise the work of the craft, to punish defaulters, and to collect the ferm. The bailiffs were chosen from year to year and swore before the Mayors of London to do and keep their office well and truly. 2) The bailiffs may hold court from week to week on pleas of debt, agreements, covenants, and minor trespasses. 3) If any of the guild members are sued in any other court on any of the above pleas, the guild may challenge that plea to bring it to the guild court. 4) If any member is behind in his share of the payment to the King, the bailiffs may distrain his loom until he has paid this.

Paying an annual payment freed the weavers from liability to inconsequent royal fines. Failure to make this payment promptly might have led to loss of the right, hence the rigorous penalty of distraint upon the looms of individual weavers who fell into arrears.

The weavers' guild punished members who used bad thread in their weaving or did defective weaving by showing the default to the Mayor, with opportunity for the workman to make entreaty, and the Mayor and twelve members of the guild then made a verdict of amercement of 1/2 mark [6s. 8d.] and the workman of the cloth was also punished by the guild bailiffs according to guild custom.

The weavers' guild tradition of brotherliness among members meant that injury to a fellow weaver incurred a severe penalty. If a weaver stole or eloiigned [removed them to a distance where they were unreachable] any other weaver's goods falsely and maliciously, then he was dismissed from the guild and his loom was taken by the guild to fulfill his portion of the annual payment to the King. The weavers were allowed to buy and to sell in London freely and quietly. They had all the rights of other freemen of the city.

Thus from the middle of the 12th century, the weavers enjoyed the monopoly of their craft, rights of supervision which ensured a high standard of workmanship, power to punish infractions of their privileges, and full control of their members. In this they stand as the prototype of English medieval guilds. These rights represented the standard which all bodies of craftsmen desired to attain. The right of independent jurisdiction was exceptional.

London growth led to its replacing Winchester as the capital. Over its history, it generally chose or elected its own mayor every year. (This was not a popular election.) But there were many periods when royal authority was asserted over it.

On the north side of the city was a great forest with fields and wells where students and other young men from the city took walks in the fresh evening air. Vendors on the river bank sold cooked fish caught from the river and wine from ships and wine cellars.

London's chief magistrate was the port-reeve, who was appointed by the King, until 1191. Then the port-reeve was replaced by a mayor, who was elected yearly by the city wards. Each ward was headed by an alderman and there were city sheriffs and councilors. The mayors were typically rich merchant princes. There were three ways to become a citizen of London: being the son of a citizen, apprenticeship in a craft for seven years, and purchase of citizenship.

St. Barthomew hospital was established in London for sick pilgrims traveling to the shrine of Becket in Canterbury.

Trading was facilitated by the stabilization of the amount of silver metallic content of the English coinage, which was called "sterling" [strong] silver. The compass assisted the navigation of ships and London became a major trading center for foreign goods from many lands.

About 5% of the knights were literate. Wealthy men sent their sons to school in monasteries to prepare them for a livelihood in a profession or in trade or to the town of Oxford, whose individual teachers had attracted disciples for a long time. These schools grew up around St. Mary's Church, but had not been started by the church as there was no cathedral school in Oxford. Oxford had started as a burh and had a royal residence and many tradesmen. It was given its basic charter in 1155 by the King. This confirmed to it all the customs, laws and liberties [rights] as those enjoyed by London. It became a model charter for other towns.

Our Legal Heritage

Bachelors at Oxford studied the arts of grammar, rhetoric, and logic, and then music, arithmetic, geometry, and astronomy, until they mastered their discipline and therefore were authorized to teach it. Teaching would then provide an income sufficient to support a wife. The master of arts was analogous to the master craftsman of a guild. From 1190, the civil law was studied, and shortly thereafter, canon law. Later came the study of medicine. The use of paper supplemented the use of parchment for writing.

In this era, the English national race and character was formed. Stories of good King Arthur were popular and set ideals for behavior and justice in an otherwise barbaric age where force was supreme. His last battle in which he lay wounded and told a kinsman to rule in his place and uphold his laws was written in poem ("Layamon's Brut"). Romantic stories were written and read in English.

The only people distinguishable as Anglo-Saxon by their look and speech were manor villeins who worked the farm land, who composed over half the population. Intermarriage had destroyed any distinction of Normans by look or speech alone. Although the villeins could not buy their freedom or be freed by their lord, they became less numerous because of the preference of landowners for tenants motivated to perform work by potential loss of tenure. Also, the Crown's protection of all its subjects in criminal matters blurred the distinction between free and unfree men.

The boroughs were dominated by lords of local manors, who usually had a house in the borough. Similarly, burgesses usually had farmland outside the borough. Many boroughs were granted the right to have a common seal for the common business of the town. Each borough was represented by twelve reputable burgesses. Each vill was represented by a reeve and four reputable men. Certain towns sponsored great seasonal fairs for special goods, such as cloth. Less than 5% of the population lived in towns.

London guilds of craftsmen such as weavers, fullers, bakers, loriners (makers of bit, spurs, and metal mountings of bridles and saddles), cordwainers (makers of leather goods such as shoes), pepperers, and goldsmiths were licensed by the King, for which they paid him a yearly fee. There were also five Bridge Guilds (probably raising money for the future construction of London Bridge in stone) and St. Lazarus' Guild. The wealthy guilds, which included the goldsmiths, the pepperers, and three bridge guilds had landholding members who had been thegnes or knights and now became a class of royal officials: the King's minters, his chamberlain, his takers of wines, his collectors of taxes.

Sandwich was confirmed in its port rights by this charter: "Henry II to his sheriff and bailiffs of Kent, greeting. I will and order that the monks of the Holy Trinity of Canterbury shall have fully all those liberties and customs in Sandwich which they had in the time of King Henry my grandfather, as it was adjudged in pursuance of his command by the oath of twelve men of Dover and twelve men of Sandwich, to wit, that the aforesaid monks ought to have the port and the toll and all maritime customs in the same port, on either side of the water from Eadburge-gate as far as markesfliete and a ferry-boat for passage. And no man has there any right except they and their ministers. Wherefore I will and firmly command you and the men of Sandwich that ye cause the aforesaid monks to have all their customs both in the port and in the town of Sandwich, and I forbid any from vexing them on this account." "And they shall have my firm peace."

Henry gave this charter to the town of Bristol in 1164: "Know ye, that I have granted to my burgesses of Bristol, that they shall be quit both of toll [a reasonable sum of money or portion of the thing sold, due to the owner of the fair or market on the sale of things tollable therein. It was claimed by the lord of the fee where the fair or market was held, by virtue of a grant from the Crown either ostensible or presumed] and passage [money paid for crossing a river or for crossing the sea as might be due to the Crown] and all custom [customary payments] throughout my whole land of England, Normandy, and Wales, wherever they shall come, they and their goods. Wherefore I will and strictly command, that they shall have all their liberties and acquittances and free customs fully and honorable, as my free and faithful men, and that they shall be quit of toll and passage and of every other customs: and I forbid any one to disturb them on this account contrary to this my charter, on forfeiture of ten pounds [200s.]."

John, when he was an earl and before he became King, granted these liberties to Bristol about 1188:

- 1) No burgess may sue or be sued out of Bristol.
- 2) The burgesses are excused from the murder fine (imposed by the King or lord from the hundred or town where the murder was committed when the murderer had not been apprehended).
- 3) No burgess may wage duel, unless sued for death of a stranger.

Our Legal Heritage

4) No one may take possession of a lodging house by assignment or by livery of the Marshall of the Earl of Gloucester against the will of the burgesses (so that the town would not be responsible for the good behavior of a stranger lodging in the town without first accepting the possessor of the lodging house).

5) No one shall be condemned in a matter of money, unless according to the law of the hundred, that is, forfeiture of 40s.

6) The hundred court shall be held only once a week.

7) No one in any plea may argue his cause in mickenning.

8) They may lawfully have their lands and tenures and mortgages and debts throughout my whole land, [from] whoever owes them [anything].

9) With regard to debts which have been lent in Bristol, and mortgages theremade, pleas shall be held in the town according to the custom of the town.

10) If any one in any other place in my land shall take toll of the men of Bristol, if he does not restore it after he is required to, the Prepositor of Bristol may take from him a distress at Bristol, and force him to restore it.

11) No stranger—tradesman may buy within the town from a man who is a stranger, leather, grain, or wool, but only from a burgess.

12) No stranger may have a shop, including one for selling wine, unless in a ship, nor shall sell cloth for cutting except at the fair.

13) No stranger may remain in the town with his goods for the purpose of selling his goods, but for forty days.

14) No burgess may be confined or distrained any where else within my land or power for any debt, unless he is a debtor or surety (to avoid a person owed a debt from distraining another person of the town of the debtor).

15) They shall be able to marry themselves, their sons, their daughters and their widows, without the license of their lords. (Lords had the right of preventing their tenants and mesne lords and their families from marrying without his consent.)

16) No one of their lords shall have the wardship or the disposal of their sons or daughters on account of their lands out of the town, but only the wardship of their tenements which belong to their own fee, until they become of age.

17) There shall be no recognition [acknowledgement that something done by another person in one's name had one's authority] in the town.

18) No one shall take tyne [wooden barrel with a certain quantity of ale, payable by the townsmen to the constable for the use of the castle] unless for the use of the lord Earl, and that according to the custom of the town.

19) They may grind their grain wherever they may choose.

20) They may have their reasonable guilds, as well or better than they had them in the time of Robert and his son William [John's wife's grandfather and father, who were earls of Gloucester when the town and castle of Bristol were part of the honor of Gloucester].

21) No burgess may be compelled to bail any man, unless he himself chooses it, although he may be dwelling on his land.

We have also granted to them all their tenures, messuages, in copses, in buildings on the water or elsewhere to be held in free burgage [tenant to pay only certain fixed services or payments to his lord, but not military service (like free socage)]. We have granted also that any of them may make improvements as much as he can in erecting buildings anywhere on the bank and elsewhere, as long as the borough and town are not damaged thereby. Also, they shall have and possess all waste land and void grounds and places, to be built on at their pleasure.

Newcastle-on-Tyne's taxes were simplified in 1175 as follows:

"Know ye that I have granted and by this present charter have confirmed to my burgesses of Newcastle upon Tyne, and to all their things which they can assure to be their own, acquittance from toll and passage and pontage and from the Hanse and from all other customs throughout all my land. And I prohibit all persons from vexing or disturbing them therein upon forfeiture to me."

We grant to our upright men on Newcastle-on-Tyne and their heirs our town of Newcastle-on-Tyne with all its appurtenances at fee farm for 100 pounds to be rendered yearly to us and our heirs at our Exchequer by their own hand at the two terms, to wit, at Easter 50 pounds and at Michaelmas 50 pounds, saving to us our rents and prizes and assizes in the port of the same town.

Ranulph, earl of Chester, made grants to his burgesses of Coventry by this charter: "That the aforesaid

Our Legal Heritage

burgesses and their heirs may well and honorably quietly and in free burgage hold of me and my heirs as ever in the time of my father and others of my ancestors they have held better more firmly and freer. In the second place I grant to them all the free and good laws which the burgesses of Lincoln have better and freer. I prohibit and forbid my constables to draw them into the castle to plead for any cause, but they may freely have their portmote [leet court] in which all pleas belonging to me and them may be justly treated of. Moreover they may choose from themselves one to act for me whom I approve, who a justice under me and over them may know the laws and customs, and keep them to my counsel in all things reasonable, every excuse put away, and may faithfully perform to me my rights. If any one happen to fall into my amercement he may be reasonably fined by my bailiff and the faithful burgesses of the court. Furthermore, whatever merchants they have brought with them for the improvement of the town, I command that they have peace, and that none do them injury or unjustly send them into court. But if any foreign merchant shall have done anything improper in the town that same may be regulated in the portmote before the aforesaid justice without a suit at law."

Henry confirmed this charter of the earl's by 1189 as follows: I have confirmed all the liberties and free customs the earl of Chester granted to them, namely, that the same burgesses may well and honorably hold in free burgage, as ever in the time of the father of the beforesaid earl, or other of his ancestors, they may have better or more firmly held; and they may have all the laws and customs which the citizens of Lincoln have better and freer [e.g. their merchant guilds; all men brought to trade may be subject to the guild customs and assize of the town; those who lawfully hold land in the town for a year and a day without question and are able to prove that an accuser has been in the kingdom within the year without finding fault with them, from thence may hold the land well and in peace without pleading; those who have remained in the town a year and a day without question, and have submitted to the customs of the town and the citizens of the town are able to show through the laws and customs of the town that the accuser stood forth in the kingdom, and not a fault is found of them, then they may remain in peace in the town without question]; and that the constable of the aforesaid earl shall not bring them into the castle to plead in any case. But they may freely have their own portmanmote in which all pleas appertaining to the earl and to them may be justly treated of. Moreover they may choose one from themselves to act for the earl, whom I approve, who may be a justice under the earl and over them, and who to the earl may faithfully perform his rights, and if anyone happen to fall into the earl's forfeiture he shall be acquit for 12 pence. If by the testimony of his neighbors he cannot pay 12 pence coins, by their advice it shall be so settled as he is able to pay, and besides, with other acquittances, that the burgesses shall not provide anything in corrody [allowance in food] or otherwise whether for the said earl or his men, unless upon condition that their chattels shall be safe, and so rendered to them.

Furthermore, whatever merchants they have brought with them for the improvement of the town they may have peace, and none shall do them injury or unjustly send them into suit at law. But if any foreign merchant has done anything improper in the town that shall be amended [or tried] in the portmanmote before the aforesaid justice without a suit. And they who may be newcomers into the town, from the day on which they began to build in the town for the space of two years shall be acquit of all charges.

Mercantile privileges were granted to the shoemakers in Oxford thus: "Know ye that I have granted and confirmed to the corvesars of Oxford all the liberties and customs which they had in the time of King Henry my grandfather, and that they have their guild, so that none carry on their trade in the town of Oxford, except he be of that guild. I grant also that the cordwainers who afterwards may come into the town of Oxford shall be of the same guild and shall have the same liberties and customs which the corvesars have and ought to have. For this grant and confirmation, however, the corvesars and cordwainers ought to pay me every year an ounce of gold."

A guild merchant for wool dominated and regulated the wool trade in many boroughs. In Leicester, only guildsmen were permitted to buy and sell wool wholesale to whom they pleased or to wash their fells in borough waters. Certain properties, such as those near running water, essential to the manufacture of wool were maintained for the use of guild members. The waterwheel was a technological advance replacing human labor whereby the cloth was made more compact and thick, "fulled". The waterwheel turned a shaft which lifted hammers to pound the wet cloth in a trough. Wool packers and washers could work only for guild members. The guild fixed wages, for instance to wool wrappers and flock pullers. Strangers who brought wool to the town for sale could sell only to guild members. A guildsman could not sell wool retail to strangers nor go into partnership with a man outside the guild. Each guild member had to swear the guildsman's oath, pay an entrance fee, and subject himself to the

Our Legal Heritage

judgment of the guild in the guild court, which could fine or suspend a man from practicing his trade for a year. The advantages of guild membership extended beyond profit in the wool trade. Members were free from the tolls that strangers paid. They alone were free to sell certain goods retail. They had the right to share in any bargain made in the presence of a guildsman, whether the transaction took place in Leicester or in a distant market. In the general interest, the guild forbade the use of false weights and measures and the production of shoddy goods. It maintained a wool-beam for weighing wool. It also forbade middlemen from profiting at the expense of the public. For instance, butchers' wives were forbidden from buying meat to sell again in the same market unless they cooked it.

A baron could assemble an army in a day to resist any perceived misgovernment by a King. Armed conflict did not interfere much with daily life because the national wealth was still composed mostly of flocks and herds and simple buildings. Machinery, furniture, and the stock of shops were still sparse. Life would be back to normal within a week.

Henry wanted to check this power of the barons. So he restored the older obligation of every freeman to serve in defense of the realm, which was a military draft. At the King's call, barons were to appear in mail suit with sword and horse, knights in coat of mail with shield and lance, freeholders with lance and hauberk {coat of armor}, burgesses and poorer freemen with lance and helmet, and such as millers with pike and leather shirt. The master of a household was responsible for every villein in his household. Others had to form groups of ten and swear obedience to the chief of the group. This was implemented in a war with France.

However, the nobility who were on the borders of the realm had to maintain their private armies for frequent border clashes. The other nobility now tended towards tournaments with mock battles between two sides.

A new land tax replaced the Danegeld tax. Freeholders of land paid taxes according to their plowable land ("hidage", by the hide, and later "carucage", by the acre). It was assessed and collected for the King by knights with little or no remuneration. The villein class, which in theory included the boroughs, paid a tax based on their produce ("tallage"). Merchants were taxed on their personal property, which was determined by an inquest of neighbors. Clergy were also taxed. This new system of taxation increased the royal income about threefold.

—The Law—

The peace of the sheriff still exists for his shire. The King's peace may still be specially given, but it will cease upon the death of the King.

Law required every good and lawful man to be bound to follow the hue and cry when it was raised against an offender who was fleeing. The village reeve was expected to lead the chase to the boundary of the next jurisdiction, which would then take the responsibility to catch the man.

No one, including the lord of a manor, may take land from anyone else, for instance, by the customary process of distress, without a judgment from the Royal Court. This did not apply to London, where a landlord leasing or renting land could take distress in his fee.

No one, including the lord of a manor, shall deprive an heir of the land possessed by his father, i.e. his birthright.

A tenant may marry off a daughter unless his lord shows some just cause for refusing to consent to the marriage. A tenant had to pay an "aid" to his lord when the lord's daughter married, when the lord's son was knighted, or when the lord's person was ransomed.

A man [or woman] may not will away his land, but he may sell it during his lifetime.

The land of a knight or other tenant of a military fee is inherited by his eldest son. The socage land of a free sokeman goes by its ancient custom before the Norman Conquest.

If a man purchased land after his marriage, his wife's dower is still one-third of the land he had when they married, or less if he had endowed her with less. But he could then enlarge her dower to one-third of all of his lands. The same rule applied if the man had no land, but endowed his wife with chattel or money instead.

Dower law prevented a woman from selling her dower during the life of her husband. But he could sell it or give it away. On his death, its possessor had to give the widow the equivalent worth of the property.

A widower had all his wife's lands by curtesy of the nation for his lifetime to the exclusion of her heirs.

The Capital Messuage [Chief Manor] could not be given in dower or divided, but went in its entirety to its heir.

Heirs were firstly sons, then daughters, then grandsons per stirpes, then granddaughters per stirpes, then

Our Legal Heritage

brothers, and then sisters of the decedent. Male heirs of land held by military service or sons of knights who were under the age of twenty—one were considered to be in custody of their lords. The lord had wardship over the heir's land, excluding the third that was the widow's dower for her life. He had to maintain the heir in a manner suitable to his dignity and restore to him when he came of age his inheritance in good condition discharged from debts. Male heirs of sokemen who were under the age of fifteen were in the custody of their nearest kindred. The son of a burgess came of age when he could count money, measure cloth, and manage his father's concerns.

Female heirs remained in the custody of their lords until they married. The lord was bound to find a marriage for his ward when she became fourteen years of age and then deliver her inheritance to her. She could not marry without her lord's consent, because her husband was expected to be the lord's ally and to do homage to him. But if a female heir lost her virginity, her inheritance escheated to her lord.

Bastards were not heirs, even if their father married their mother after their birth.

Any adult inheriting land had to pay a "relief" to the lord of the land. For a knight's fee, this was 100s. For socage land, this was one year's value. The amount for a barony depended upon the King's pleasure.

Heirs (but not widows) were bound to pay the debts of their fathers and ancestors. A man who married a woman who had inherited land could not sell this land without the consent of its heirs.

When a man dies, his wife shall take one-third and his heirs shall take one-third of his chattels [moveables]. The other third he may dispose of by will. If he had no heirs and no will [intestate], all his chattels would escheat to his lord. Any distribution of chattels would take place after all the decedent's debts were paid from the property.

A will required two witnesses. The testator could name an executor, but if he did not, the next of kin was the executor. A will could not be made by a man on his death bed because he may well have lost his memory and reason. Also, he could not give to a younger son if in so doing, he would deprive his lawful heir. But he could give a marriage gift to a daughter regardless of the lawful heir.

Usury was receiving back more than what was lent, such as interest on a loan of money. When a usurer died, all his moveables went to the King.

A villein may not buy his own freedom (because all that he has is his lord's), but may be set free by his lord or by someone else who buys his freedom for him. He shall also be freed if the lord seduced his wife, drew his blood, or refused to bail him either in a civil or criminal action in which he was afterwards cleared. But a freed villein did not have status to plead in court, even if he had been knighted. If his free status were tried in court, only a freeman who was a witness to his being set free could avail himself of the duel to decide the issue. However, if the villein remained peacefully in a privileged town a year and a day and was received into its guild as a citizen, then he was freed from villeinage in every way.

A freeman who married a villein lost his freedom. If any parent of a child was a villein, then the child was also a villein.

All shipwrecked persons shall be treated with kindness and none of their goods or merchandise shall be taken from them.

If one kills another on a vessel, he shall be fastened to the dead body and thrown with it into the sea.

If one steals from another on a vessel, he shall be shaven, tarred and feathered, and turned ashore at the first land.

Passage on the Thames River may not be obstructed by damming up the river on each side leaving a narrow outlet to net fish. All such weirs shall be removed.

—Judicial Procedure—

Henry II wanted all freemen to be equally protected by one system of law and government. So he opened his court, the Royal Court, to all people of free tenure. A court of five justices professionally expert in the law sat in permanence, traveled with the King, and on points of difficulty consulted with him. Other professional justices, on eyre [journey], appeared periodically in all shires of the nation. They came to perform many tasks besides adjudging civil and criminal pleas, including promulgating and enforcing new legislation, seeking out encroachments on royal rights, reviewing the local communities' and officials' performance of their public duties, imposing penalties for failure to do them or for corruption, gathering information about outlaws and non-performance of homage, and assessing feudal escheats to the Crown, wardships to which the King was entitled, royal advowsons, feudal aids owed to the King, tallages of the burgesses, and debts owed to the Jews. assessing feudal escheats to the Crown, wardships to which the King was entitled, royal advowsons, feudal aids

Our Legal Heritage

owed to the King, tallages of the burgesses, and debts owed to the Jews; The decision-making of justices in eyre begins the process which makes the custom of the Royal Court the common law of the nation. The shire courts, where the travelling justices heard all manner of business in the shires, adopted the doctrines of the Royal Court, which then acquired an appellate jurisdiction. The three royal courts and justices in eyre all drew from the same small group of royal justices.

Henry erected a basic, rational framework for legal processes which drew from tradition but lent itself to continuous expansion and adaptation.

The Royal Court was chiefly concerned with 1) the due regulation and supervision of the conduct of local government, 2) the ownership and possession of land held by free tenure, 3) the repression of serious crime, and 4) the relations between the lay and the ecclesiastical courts.

The doctrine of tenure applied universally to the land law formed the basis for judicial procedure in determining land rights. Those who held lands "in fee" from the King in turn subinfeudated their land to men of lesser rank. The concept of tenure covered the earl, the knight (knight's service), the church (frank-almoyn), the tenant who performed labor services, and the tenant who paid a rent (socage). Other tenures were: serjeanty [providing an implement of war or performing a nonmilitary office] and burgage. All hold the land of some lord and ultimately of the King.

Henry was determined to protect lawful seisin of land and issued assizes [legal promulgations] giving the Royal Court authority to decide land law issues which had not been given justice in the shire or lord's court. These included issues of disseisin [ejectment] of a person's free tenement or of his common of pasture which belonged to his freehold. Though this petty assize only provided a swift preliminary action to protect possession pending the lengthy and involved action [grand assize] on the issue of which party had the juster claim or ultimate right of seisin, the latter action was only infrequently invoked. The temptation of a strong man to seize a neighbor's land to reap its profits for a long time until the neighbor could prove and enforce his right was deterred. Any such claim of recent dispossession [novel disseisin] had to be made within three years of the disseisin.

An assize [now a judicial body] of recognition viewed the land in question and answered these questions of fact: 1) Was the plaintiff disseised of the freehold in question, unjustly and without judgment? 2) Did the defendant commit the disseisin? Testimony of a warrantor (or an attorney sent by him in his place) or a charter of warranty served to prove seisin by gift, sale, or exchange. No pleadings were necessary and the action could proceed and judgment given even without the presence of the defendant. The justices amerced the losing party with a monetary penalty. A successful plaintiff might be awarded damages to compensate for the loss of revenue. Eventually royal justices acquired authority to decide the ultimate question of right to land using the grand assize and the alternative of an assize instead of the traditional procedures which ended in trial by battle.

There was also a writ for issues of inheritance of land. By law the tenure of a person who died seised of a tenure in a lord's demesne which was hereditary [seisin of fee] returned to the lord, who had to give it to the heir of the decedent. If the lord refused and kept it for himself or gave it to someone else, the heir could sue in the Royal Court, which would decide whether the ancestor was seised as of fee in his demesne, if the plaintiff was the nearest heir, and whether the ancestor had died, gone on a crusade but not returned, or had become a monk.

Issues of seisin were brought to the Royal Court by a contestant in a local court who "put himself [or herself] upon the King's grand assize". Then his action would be removed to the Royal Court. The assize would consist of twelve knights from the district who were elected by four knights and who were known as truthful men and who were likely to possess knowledge of the facts.

The tenant could object to any of the twelve knights for just cause as determined by the court. Each of the twelve gave an oath as to whether the plaintiff's or the defendant's position was correct. If any did not know the truth of the matter, others were found until twelve agreed [the recognitors] in favor of one side. Perjury was punished by forfeiture of all one's goods and chattels to the King and at least one year's imprisonment.

Alternately, the tenant-defendant could still choose trial by duel. A duel was fought between the parties or their champions. The losing party of a duel had to pay a fine of 60s.

However, if the parties were relatives, neither the assize nor the duel was available to them, but the matter had to be decided by the law of inheritance. Nor was burgage tenure usually decided by assize.

This assize procedure extended in time to all other types of civil actions.

Also removable to the Royal Court from the shire courts were issues of a lord's claim to a person as his vassal

Our Legal Heritage

(duel not available), service or relief due to a lord, dower rights, a creditor's refusal to restore a gage [something given as security] to a debtor who offered payment or a deposit, money due to a lender, a seller, or a person to whom one had an obligation under a charter, fish or harvest or cattle taken from lands unjustly occupied, cattle taken from pasture, rights to enjoy a common, to stop troubling someone's transport, to make restitution of land wrongfully occupied, to make a lord's bailiff account to him for the profits of the manor.

A person who felt he had not had justice in the manor court could appeal to the King for a writ of right after the manor court's decision or for a writ praecipe during the manor court's proceeding.

The Royal Court also decided disputes regarding baronies, nuisance or encroachments on royal land or public ways or public waterways, such as diverting waters from their right course and issues of nuisance by the making or destroying of a ditch or the destruction of a pond by a mill to the injury of a person's freehold. Other pleas of the Crown were: insult to the royal dignity, treason, breaches of safe-conducts, and injury to the King's servants.

Henry involved the Royal Court in many criminal issues, formerly decided in the shire and hundred courts. To detect crimes, he required royal officers to routinely ask selected representatives: knights or other landholders, of every neighborhood if any person were suspected of any murder, robbery, etc. A traveling royal justice or a sheriff would then hold an inquest, in which the representatives answered by oath what people were reputed to have done certain crimes. They made such inquiries through assizes of presentment, usually composed of twelve men from each hundred and four men for each township. (These later evolved into grand juries). These assizes were an ancient institution in many parts of the country. They consisted of representatives of the hundreds, usually knights, and villages who testified under oath to all crimes committed in their neighborhood, and indicted those they suspected as responsible and those harboring them. What the assize did was to insist upon the adoption of a standard procedure everywhere systematically. The procedure was made more regular instead of depending on crime waves. If indicted, the suspected persons were then sent to the ordeal. There was no trial by compurgation, which was abolished by Henry. If determined guilty, he forfeited his chattels to the King and his land reverted to his landlord. If he passed the ordeal but was ill-famed in the community, he could be banished from the community. Later the ordeal was abolished.

As before, a person could also be brought to trial by the accusation of the person wronged. If the accused still denied the charge after the accuser testified and the matter investigated by inquiries and interrogation and then analyzed, a duel was held, unless the accuser was over the age of sixty or maimed, in which case the accused went to the ordeal.

Criminal matters such as killing the King or sedition or betraying the nation or the army, fraudulent concealment of treasure trove [finding a hoard of coins which had been buried when danger approached], breach of the King's peace, homicide, murder (homicide for which there were no eye-witnesses), burning (a town, house, men, animals or other chattel for hatred or revenge), robbery, rape and falsifying (e.g. false charters or false measures or false money) were punishable by death or loss of limb. House-breaking, harboring outlaws, the royal perquisites of shipwreck and the beasts of the sea which were stranded on the coast were also punishable in the Royal Court.

The Royal Court had grown substantially and was not always presided over by the King. To avoid court agents from having too much discretionary power, there was a systematic procedure for bringing cases to the Royal Court. First, a plaintiff had to apply to the King's Chancery for a standardized writ into which the cause had to fit. The plaintiff had to pay a fee and provide a surety that the plea was brought in good faith. The progress of the suit was controlled at crucial points by precisely formulated writs to the sheriff, instructing him for instance, to put the disputed property under royal protection pending a decision, to impanel an assize and have it view the property in advance of the justices' arrival, to ascertain a point of fact material to the plea, or to summon a 'warrantor' to support a claim by the defendant.

The Royal Court kept a record on its cases on parchment kept rolled up: its "rolls". The oldest roll of 1194 is almost completely comprised of land cases.

Anyone could appoint an agent, an "attorney", to appear in court on his behalf, it being assumed that the principal could not be present. The principal was then bound by the actions of his agent. The common law system became committed to the "adversary system" with the parties struggling judicially against each other.

The Royal Court took jurisdiction over issues of whether certain land was civil or ecclesiastical [assize utrum], and therefore whether the land owed services or payment to the Crown or not. It also heard issues of

Our Legal Heritage

disturbance of advowson, a complex of rights to income from a church and to the selection of a parson for the church [assize of darrien presentment]. Many churches had been built by a lord on his manor for his villeins. The lord had then appointed a parson and provided for his upkeep out of the income of the church. In later times, the lord's chosen parson was formally appointed by the bishop. In the twelfth century, many lords had given their advowsons to abbeys.

As before, the land of any person who had been outlawed or convicted of a felony escheated to his lord. His moveable goods and chattels became the King's.

The manor court heard cases which arose out of the unfree tenures of the lord's peasantry.

The honorial court, part of the manor court, heard distraint, also called "distress", issues. Distraint was a landlord's method of forcing a tenant to perform the services of his fief. To distrain by the fief, a lord first obtained a judgment of his court. Otherwise, he distrained only by goods and chattels without judgment of his court. A distraint was merely a security to secure a person's services, if he agreed he owed them, or his attendance in court, if he did not agree that he owed them. Law and custom restricted the type of goods and chattels distrainable, and the time and manner of distraint. For instance, neither clothes, household utensils, nor a riding horse was distrainable. The lord could not use the chattels taken while they were in his custody. If cattle in custody were not accessible to the tenant, the lord had to feed them at his expense. The lord, if he were not the King, could not sell the chattel. The action of replevin was available to the tenant to recover property which had been wrongly distressed. This court also determined inheritance and dower issues.

The court of the vill enforced the village ordinances. The hundred court dealt with the petty crimes of lowly men in the neighborhood of a few villis. The shire and borough courts heard cases of felonies, accusations against freemen, tort, and debts. The knights make the shire courts work as legal and administrative agencies of the Crown.

Admiralty issues (since no assize could be summoned on the high seas), and tenement issues of land held in frankalmoin where the tenant was a cleric were heard in the ecclesiastical courts.

The church copied the assize procedure developed by the Royal Court to detect ecclesiastical offenses. Trial was still by compurgation. Bishops could request the Chancery to imprison an offender who had remained excommunicant for forty days, until he made amends. Chancery complied as a matter of course. This went on for six centuries.

The delineations of jurisdiction among these courts was confused and there was much competing and overlapping of jurisdictions. However, the court could appoint arbitrators or suggest to the parties to compromise to avoid the harshness of a decisive judgment which might drive the losing party to violent self-help.

The office of coroner was established in the last years of Richard's reign to determine if sudden deaths were accidental or due to murder.

Chief Justice Ranulph Glanville wrote a treatise on the writs which could be brought in the Royal Court and the way they could be used. It was a practical manual of procedure and of the law administered in the Royal Court.

Chapter 7—The Times 1215–1272—

Baron landowners' semi-fortified stone manor houses were improved and extended. They were usually quadrangular around a central courtyard. Ceilings were now made of tiles supplied by the tile craft, which baked the tiles in kilns or over an open fire. Sometimes the lord had his own parlor, with a sleeping loft above it. Having a second floor necessitated a fireplace in the wall so the smoke could go up two floors to the roof. Other rooms each had a fireplace. Windows of large houses were of opaque glass supplied by a glass-making craft. The glass was thick, uneven, and greenish in color. The kitchen was often a separate room because of the hazard of fire and had a furnace and ovens. Sometimes there was a separate room for a dairy.

The barons now managed and developed their estates to be as productive as possible, often using the successful management techniques of church estates. They kept records of their fields, tenants, services owed by each tenant, and duties of the manor officers, such as supervision of the ploughing and harrowing. Annually, the manor's profit or loss for the year was calculated. Most manors were self-supporting except that iron for tools and horseshoes and salt for curing usually had to be obtained elsewhere. Wine, tar, canvas and millstones were imports from other countries. Sheep were kept in such large numbers that they were susceptible to a new disease "scab".

Manors averaged about ten miles distance between each other, the land in between being unused and called "wasteland". Statutes after a civil war proscribing the retaking of land discouraged the enclosure of waste land.

Some villeins bought out their servitude by paying a substitute to do his service or paying his lord a firm (from hence, the words farm and farmer) sum to hire an agricultural laborer in his place. This made it possible for a farm laborer to till one continuous piece of land instead of scattered strips.

Looms were now mounted with two bars. The clothing of most people was made at home, even sandals. The village tanner and bootmaker supplied long pieces of soft leather for more protection than sandals. Tanning mills replaced some hand labor. The professional hunter of wolves, lynx, or otters supplied head coverings. Every village had a smith and possibly a carpenter for construction of ploughs and carts. The smith obtained coal from coal fields for heating the metal he worked. Horse harnesses were home-made from hair and hemp.

Most men wore a knife because of the prevalence of murder and robbery. It was an every day event for a murderer to flee to sanctuary in a church, which would then be surrounded by his pursuers while the coroner was summoned. Usually, the fugitive would confess and agree to leave the nation and never return.

It had been long customary for the groom to endow his bride in public at the church door. This was to keep her and her children if he died first. If dower was not specified, it was understood to be one-third of all lands and tenements.

The county offices were: sheriff, coroner, escheator, and constable or bailiff. There were 28 sheriffs for 38 counties. The sheriff was a political appointee of the King and employed a deputy or undersheriff, who was a lawyer, and clerks. If there was civil commotion or contempt of royal authority, the sheriff had power to raise a posse of armed men to restore order [posse comitatus: power of the county]. There were about five coroners in each county and they served for a number of years. They were professionals chosen locally under the sheriff's supervision. The escheator was appointed annually by the Treasurer to administer the Crown's rights in feudal land in the county. The constables and bailiffs operated at the hundred and parish level to detect crime and keep the peace. They assisted sheriffs and Justices of the Peace, organized "watches" for criminals and vagrants at the village level, and raised the "hue and cry" along the highway and from village to village in pursuit of offenders who had committed felony or robbery in their districts.

Everyone was taught to read and write in English. Even obscure villages gathered children together for this schooling. Boys of noblemen were taught reading, writing, Latin, a musical instrument, athletics, riding, and gentlemanly conduct. Girls were taught reading, writing, music, dancing, and perhaps household nursing and first aid, spinning, embroidery, and gardening. Girls of high social position were also taught riding and hawking. Grammar schools taught, in Latin, grammar, logic [dialectic], and rhetoric [art of public speaking and debate]. The teacher possessed the only complete copy of the Latin text, and most of the school work was done orally. Though books were few and precious, the students read several Latin works. Girls and boys of high social

Our Legal Heritage

position usually had private teachers for grammar school, while boys of lower classes were sponsored at grammar schools such as those at Oxford. Discipline was maintained by the birch or rod.

There was no examination for admission as an undergraduate to Oxford, but a knowledge of Latin with some skill in speaking Latin was a necessary background. The students came from all backgrounds. Some had their expenses paid by their parents, while others had the patronage of a churchman, a religious house, or a wealthy layman.

A student at Oxford would become a master after graduating from a seven year course of study of the seven liberal arts: [grammar, rhetoric (the source of law), Aristotelian logic (which differentiates the true from the false), arithmetic, including fractions and ratios, (the foundation of order), geometry, including methods of finding the length of lines, the area of surfaces, and the volume of solids, (the science of measurement), astronomy (the most noble of the sciences because it is connected with divinity and theology), music, and Aristotle's philosophy of physics, metaphysics, and ethics; and then lecturing and leading disputations for two years. He also had to write a thesis on some chosen subject and defend it against the faculty. A Master's degree gave one the right to teach. Further study for four years led to a doctorate in one of the professions: theology and canon or civil law.

There were about 1,500 students in Oxford. They drank, played dice, quarreled a lot and begged at street corners. There were mob fights between students from the north and students from the south and between students and townsmen. But when the mayor of Oxford hanged two students accused of being involved in the killing of a townswoman, many masters and students left for Cambridge. In 1214, a charter created the office of Chancellor of the university at Oxford. He was responsible for law and order and, through his court, could fine, imprison, and excommunicate offenders and expel undesirables such as prostitutes from the town. He had authority over all crimes involving scholars, except murder and mayhem. The Chancellor summoned and presided over meetings of the masters and came to be elected by indirect vote by the masters who had schools, usually no more than a room or hall with a central hearth which was hired for lectures. Students paid for meals there. Corners of the room were often partitioned off for private study. At night, some students slept on the straw on the floor. Six hours of sleep were considered sufficient.

In 1221 the Friars established their chief school at Oxford. They were bound by oaths of poverty, obedience, and chastity, but were not confined within the walls of a monastery. They walked barefoot from place to place preaching. They begged for their food and lodgings. They replaced monks, who had become self-indulgent, as the most vital spiritual force among the people. In 1231, the King ordered that every student must have his name on the roll of a master and the masters had to keep a list of those attending his lectures.

The first college was founded in 1264 by Walter de Merton, former Chancellor to the King, at Oxford. A college had the living arrangements of a Hall, with the addition of monastic-type rules. A warden and about 30 scholars lived and ate meals together in the college buildings. Merton College's founding documents provided that: "The house shall be called the House of the Scholars of Merton, and it shall be the residence of the Scholars forever. . . There shall be a constant succession of scholars devoted to the study of letters, who shall be bound to employ themselves in the study of Arts or Philosophy, the Canons or Theology. Let there also be one member of the collegiate body, who shall be a grammarian, and must entirely devote himself to the study of grammar; let him have the care of the students in grammar, and to him also let the more advanced have recourse without a blush, when doubts arise in their faculty. . . There is to be one person in every chamber, where Scholars are resident, of more mature age than the others, who is to make his report of their morals and advancement in learning to the Warden. . . The Scholars who are appointed to the duty of studying in the House are to have a common table, and a dress as nearly alike as possible. . . The members of the College must all be present together, as far as their leisure serves, at the canonical hours and celebration of masses on holy and other days. . . The Scholars are to have a reader at meals, and in eating together they are to observe silence, and to listen to what is read. In their chambers, they must abstain from noise and interruption of their fellows; and when they speak they must use the Latin language. . . A Scrutiny shall be held in the House by the Warden and the Seniors, and all the Scholars there present, three times a year; a diligent enquiry is to be instituted into the life, conduct, morals, and progress in learning, of each and all; and what requires correction then is to be corrected, and excesses are to be visited with condign punishment. . ."

Issues frequently argued concerned the newly discovered philosophies of Aristotle vis a vis the accepted Christian philosophy. Aristotle emphasized the intellectual use of reason as a road to understanding whereas the

Our Legal Heritage

church had always taught that understanding came from revelation by God.

Roger Bacon, an Oxford master, applied mathematical knowledge to natural phenomena such as metal work, mineral work, the making of weapons, agriculture, and the remedies and charms of wizards and magicians. He studied angles of reflection in plane, spherical, cylindrical, and conical mirrors, in both their concave and convex aspects. He did experiments in refraction in different media, e.g. air, water, and glass, and knew that the human cornea refracted light and that the human eye lens was doubly convex. (However it was another 400 years before the discovery of the image on the retina.) He comprehended the magnifying power of convex lenses and conceptualized the combination of lenses which would increase the power of vision by magnification. Soon afterwards, eyeglasses were available to correct farsightedness.

Bacon studied gravity and the propagation of force, specifically illustrated by the radiation of light and heat. He realized that rays of light pass so much faster than those of sound or smell that the time is imperceptible to humans. He knew that rays of heat and sound penetrate all matter without our awareness and that opaque bodies offered resistance to passage of light rays. This was the beginning of the science of physics.

He took the empirical knowledge as to a few metals and their oxides and some of the principal alkalis, acids, and salts to the abstract level of metals as compound bodies the elements of which might be separated and recomposed and the general concept of generation of liquids, gases, and solids, which was the beginning of the science of chemistry. He made experiments that led the way to saltpeter being made to explode, which led the way to the formulation of gunpowder. He believed that the principle of explosive energy would one day carry ships across the seas without sails and propel carriages down the streets, and flying machines. He knew the power of parabolic concave mirrors to cause parallel rays to converge after reflexion to a focus and was familiar with work done to produce a mirror that would induce combustion at a fixed distance.

He studied man's physical nature, health, and disease, the beginning of the science of biology and medicine. He opined that the use of talismen was not to bring about a change, but to bring the patient into a frame of mind more conducive to physical healing.

Bacon studied different kinds of plants and the differences between arable land, forest land, pasture land, and garden land.

Like other educated men of his day (and those of the 13th through the 16th century), he believed that the earth was the center of the universe and in astrology, that is, that the position of the stars and planets influenced man and other earthly things. For instance, the position of the stars at a person's birth determined his character. The angle and therefore potency of the sun's rays influenced climate, temperament, and changes of mortal life such as disease and revolutions. There was a propitious time to have a marriage, go on a journey, make war, and take herbal medicine or be bled by leeches, the latter of which was accompanied by religious ceremony. Cure was by God, with medical practitioners only relieving suffering. Pressure and binding were applied to bleeding. Arrow and sword wounds to the skin or to any protruding intestine were washed with warm water and sewn up with needle and silk thread. Ribs were spread apart by a wedge to remove arrow heads. Fractured bones were splinted or encased in plaster. Dislocations were remedied. Hernias were trussed. Bladder stones blocking urination were pushed back into the bladder or removed through an artificial opening in the bladder.

Bacon studied the planetary motions and astronomical tables to forecast future events. He did calculations on days in a month and days in a year which later contributed to the legal definition of a leap year. He knew about magnetic poles attracting if different and repelling if the same and the relation of magnets' poles to those of the heavens and earth. He calculated the circumference of the world and the latitude and longitude of terrestrial positions, which was the beginning of the study of geography. He foresaw sailing around the world and pointed the way to the Copernican astronomy, which was founded on the concept of the earth and planets revolving around the sun.

His contribution to the development of science was abstracting the method of experiment from the concrete problem to see its bearing and importance as a universal method of research. He advocated changing education to include studies of the natural world using observation, exact measurement, and experiments.

The making and selling of goods diverged e.g. as the cloth merchant severed from the tailor and the leather merchant severed from the butcher. These craftsmen formed themselves into guilds. They sought charters to require all craftsmen to belong to the guild of their craft, to have legal control of the craft work, and be able to expel any craftsman for disobedience. These guilds determined the wages and working conditions of the craftsmen

Our Legal Heritage

and petitioned the borough authorities for ordinances restraining trade, for instance by controlling the admission of outsiders to the craft, preventing foreigners from selling in the town except at fairs, limiting purchases of raw materials to suppliers within the town, forbidding night work, restricting the number of apprentices to each master craftsmen, and requiring a minimum number of years for apprenticeships. In return, these guilds assured quality control. In some boroughs, they did work for the town, such as maintaining certain defensive towers or walls of the town near their respective wards. In some boroughs, fines for infractions of these regulations were split between the guild and the government.

This jurisdiction was sought from the towns governments, which were controlled by the merchant guilds, with great difficulty. In London, this power was broken in 1261 by the craftsmen forcing their way into the town-mote. By this brute show of strength, they set aside the opinion of the magnates and selected their own candidate to be mayor.

The citizens of London had a common seal for the city. London merchants traveled throughout the nation with goods to sell exempt from tolls. Most of the London aldermen were woolmongers, vintners, skinnners, and grocers by turns or carried on all these branches of commerce at once. There are three inns in London. Hospitals such as "Bethlehem Hospital" were established in London. Only tiles were used for roofing in London, because wood shingles were fire hazards and fires in London had been frequent. Some areas near London are disclaimed by the King to be royal forest land, so all citizens could hunt there and till their land there without interference by the royal foresters.

A gold penny waminted, which was worth 2s. of silver. Jews were allowed to make loans with interest up to 2d. a week for 20s. lent.

Ships had two masts, decks, and cabins. On the coasts there were lights and beacons. Harbors at river mouths were kept from silting up. Ships were loaded from piers. The construction of London Bridge had just been finished. Coal was mined. Bricks began to be imported for building.

Newcastle-on-Tyne received these new rights:

1. And that they shall justly have their lands and tenures and mortgages and debts, whoever owes them to them.
2. Concerning their lands and tenures within the town, right shall be done to them according to the custom of the city Winton.
3. And of all their debts which are lent in Newcastle-on-Tyne and of mortgages there made, pleas shall be held at Newcastle-on-Tyne.
4. None of them shall plead outside the walls of the City of Newcastle-on-Tyne on any plea, except pleas of tenures outside the city and except the minters and my ministers.
5. That none of them be distrained by any without the said city for the repayment of any debt to any person for which he is not capital debtor or surety.
6. That the burgesses shall be quit of toll and lastage [duty on a ship's cargo] and pontage [tax for repairing bridges] and have passage back and forth.
7. Moreover, for the improvement of the city, I have granted them that they shall be quit of year's gift and of scotale [pressure to buy ale at the sheriff's tavern], so that my sheriff of Newcastle-on-Tyne or any other minister shall not make a scotale.
8. And whosoever shall seek that city with his merchandise, whether foreigners or others, of whatever place they may be, they may come sojourn and depart in my safe peace, on paying the due customs and debts, and any impediment to these rights is prohibited.
9. We have granted them also a merchant guild.
10. And that none of them [in the merchant guild] shall fight a duel.

The King no longer lives on his own from income from his own lands, but takes money from the treasury. Elected men from the baronage met with the King and his council in several conferences called Parliaments to discuss the levying of taxes and the solution of difficult legal cases, and to receive petitions. Statutes were enacted. Earl Montfort and certain barons forced King Henry III to summon a Parliament in 1265 in which the common people were represented officially by four knights from every shire [county] and two burgesses from every borough.

—The Law—

Our Legal Heritage

The barons forced successive Kings to sign the Magna Carta until it became the law of the land. It became the first statute of the official statute book. Its provisions express the principle that a King is bound by the law and is not above it. However, there is no redress if the King breaches the law.

The Magna Carta was issued by John in 1215. A revised version was issued by Henry III in 1225 with the forest clauses separated out into a forest charter. The two versions are replicated together, with the formatting of each indicated in the titles below.

{Magna Carta—1215} Magna Carta—1215 1225 MAGNA CARTA—1225

{John, by the grace of God, King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou: To the Archbishops, Bishops, Abbots, Earls, Barons, Justiciaries, Foresters, Sheriffs, Reeves, Ministers, and all Bailiffs and others, his faithful subjects, Greeting. Know ye that in the presence of God, and for the health of our soul, and the souls of our ancestors and heirs, to the honor of God, and the exaltation of Holy Church, and amendment of our realm, by the advice of our reverend Fathers, Stephen, Archbishop of Canterbury, Primate of all England, and Cardinal of the Holy Roman Church; Henry, Archbishop of Dublin; William of London, Peter of Winchester, Jocelin of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, and Benedict of Rochester, Bishops; Master Pandulph, the Pope's subdeacon and familiar; Brother Aymeric, Master of the Knights of the Temple in England; and the noble persons, William Marshall, Earl of Pembroke; William, Earl of Salisbury; William, Earl of Warren; William, Earl of Arundel; Alan de Galloway, Constable of Scotland; Warin Fitz-Gerald, Peter Fitz-Herbert, Hubert de Burgh, Seneschal of Poitou, Hugh de Neville, Matthew Fitz-Herbert, Thomas Basset, Alan Basset, Philip Daubeney, Robert de Roppelay, John Marshall, John Fitz-Hugh, and others, our liegemen: }

HENRY BY THE GRACE OF GOD, KING OF ENGLAND, LORD OF IRELAND, DUKE OF NORMANDY AND GUYAN AND EARL OF ANJOU, TO ALL ARCHBISHOPS, BISHOPS, ABBOTS, PRIORS, EARLS, BARONS, SHERIFFS, PROVOSTS, OFFICERS AND TO ALL BAILIFFS AND OTHER OUR FAITHFUL SUBJECTS WHICH SHALL SEE THIS PRESENT CHARTER, GREETING.

KNOW YE THAT WE, UNTO THE HONOR OF ALMIGHTY GOD, AND FOR THE SALVATION OF THE SOULS OF OUR PROGENITORS AND SUCCESSORS KINGS OF ENGLAND, TO THE ADVANCEMENT OF HOLY CHURCH AND AMENDMENT OF OUR REALM, OF OUR MEER AND FREE WILL, HAVE GIVEN AND GRANTED TO ALL ARCHBISHOPS, BISHOPS, ABBOTS, PRIORS, EARLS, BARONS, AND TO ALL FREE MEN OF THIS OUR REALM, THESE LIBERTIES FOLLOWING, TO BE KEPT IN OUR KINGDOM OF ENGLAND FOREVER.

[I. A CONFIRMATION OF LIBERTIES]

First, we have granted to God, and by this our present Charter confirmed, for us and our heirs forever, that the English Church shall be free and enjoy her whole rights and her liberties inviolable. {And that we will this so to be observed appears from the fact that we of our own free will, before the outbreak of the dissensions between us and our barons, granted, confirmed, and procured to be confirmed by Pope Innocent III the freedom of elections, which is considered most important and necessary to the English Church, which Charter we will both keep ourself and will it to be kept with good faith by our heirs forever.} We have also granted to all the free men of our realm, for us and our heirs forever, all the liberties underwritten, to have and to hold to them and their heirs of us and our heirs.

[II. THE RELIEF OF THE KING'S TENANT OF FULL AGE]

If any of our earls, barons, or others who hold of us in chief by knight's service dies, and at the time of his death his heir is of full age and owes to us a relief, he shall have his inheritance on payment of [no more than] the old relief; to wit, the heir or heirs of an earl, for an entire earldom, 100 pounds [2,000s.]; the heir or heirs of a baron of an entire barony, {100 pounds} 100 MARKS [67 POUNDS OR 1340s.]; the heir or heirs of an entire knight's fee, 100s. at the most [about 1/3 of a knight's annual income]; and he who owes less shall give less, according to the old custom of fees.

[III. THE WARDSHIP OF AN HEIR WITHIN AGE. THE HEIR A KNIGHT]

BUT IF THE HEIR OF SUCH BE UNDER AGE, HIS LORD SHALL NOT HAVE THE WARD OF HIM, NOR OF HIS LAND, BEFORE THAT HE HAS TAKEN OF HIM HOMAGE. If, however, any such heir is under age and in ward, he shall have his inheritance without relief or fine when he comes of age, THAT IS, TWENTY-ONE YEARS OF AGE. SO THAT IF SUCH AN HEIR NOT OF AGE IS MADE A KNIGHT, YET

NEVERTHELESS HIS LAND SHALL REMAIN IN THE KEEPING OF HIS LORD UNTO THE AFORESAID TERM.

[IV. NO WASTE SHALL BE MADE BY A GUARDIAN IN WARD'S LANDS]

The guardian of the land of any heir thus under age shall take therefrom only reasonable issues, customs, and services, without destruction or waste of men or goods. And if we commit the custody of any such land to the sheriff or any other person answerable to us for the issues of the same land, and he commits destruction or waste, we will take an amends from him and recompense therefore. And the land shall be committed to two lawful and discreet men of that fee, who shall be answerable for the issues of the same land to us or to whomsoever we shall have assigned them. And if we give or sell the custody of any such land to any man, and he commits destruction or waste, he shall lose the custody, which shall be committed to two lawful and discreet men of that fee, who shall, in like manner, be answerable to us as has been aforesaid.

[V. GUARDIANS SHALL MAINTAIN THE INHERITANCE OF THEIR WARDS AND OF BISHOPRICKS, ETC.]

The guardian, so long as he shall have the custody of the land, shall keep up and maintain the houses, parks, fishponds, pools, mills, and other things pertaining thereto, out of the issues of the same, and shall restore to the heir when he comes of age, all his land stocked with {ploughs and tillage, according as the season may require and the issues of the land can reasonable bear} PLOUGHS AND ALL OTHER THINGS, AT THE LEAST AS HE RECEIVED IT. ALL THESE THINGS SHALL BE OBSERVED IN THE CUSTODIES OF VACANT ARCHBISHOPRICKS, BISHOPRICKS, ABBEYS, PRIORIES, CHURCHES, AND DIGNITIES, WHICH APPERTAIN TO US; EXCEPT THIS, THAT SUCH CUSTODY SHALL NOT BE SOLD.

[VI. HEIRS SHALL BE MARRIED WITHOUT DISPARAGEMENT]

Heirs shall be married without loss of station. {And the marriage shall be made known to the heir's nearest of kin before it is contracted.}

[VII. A WIDOW SHALL HAVE HER MARRIAGE, INHERITANCE, AND QUERENTINE. THE KING'S WIDOW, ETC.]

A widow, after the death of her husband, shall immediately and without difficulty have her marriage portion [property given to her by her father] and inheritance. She shall not give anything for her marriage portion, dower, or inheritance which she and her husband held on the day of his death, and she may remain in her husband's house for forty days after his death, within which time her dower shall be assigned to her. IF THAT HOUSE IS A CASTLE AND SHE LEAVES THE CASTLE, THEN A COMPETENT HOUSE SHALL FORTHWITH BE PROVIDED FOR HER, IN WHICH SHE MAY HONESTLY DWELL UNTIL HER DOWER IS ASSIGNED TO HER AS AFORESAID; AND IN THE MEANTIME HER REASONABLE ESTOVERS OF THE COMMON, ETC.

No widow shall be compelled to marry so long as she has a mind to live without a husband, provided, however, that she gives security that she will not marry without our assent, if she holds of us, or that of the lord of whom she holds, if she holds of another.

[VIII. HOW SURETIES SHALL BE CHARGED TO THE KING]

Neither we nor our bailiffs shall seize any land or rent for any debt as long as the debtor's goods and chattels suffice to pay the debt AND THE DEBTOR HIMSELF IS READY TO SATISFY THEREFORE. Nor shall the debtor's sureties be distrained as long as the debtor is able to pay the debt. If the debtor fails to pay, not having the means to pay, OR WILL NOT PAY ALTHOUGH ABLE TO PAY, then the sureties shall answer the debt. And, if they desire, they shall hold the debtor's lands and rents until they have received satisfaction of that which they had paid for him, unless the debtor can show that he has discharged his obligation to them.

{If anyone who has borrowed from the Jews any sum of money, great or small, dies before the debt has been paid, the heir shall pay no interest on the debt as long as he remains under age, of whomsoever he may hold. If the debt falls into our hands, we will take only the principal sum named in the bond.}

{And if any man dies indebted to the Jews, his wife shall have her dower and pay nothing of that debt; if the deceased leaves children under age, they shall have necessities provided for them in keeping with the estate of the deceased, and the debt shall be paid out of the residue, saving the service due to the deceased's feudal lords. So shall it be done with regard to debts owed persons other than Jews.}

[IX. THE LIBERTIES OF LONDON AND OTHER CITIES AND TOWNS CONFIRMED]

Our Legal Heritage

The City of London shall have all her old liberties and free customs, both by land and water. Moreover, we will and grant that all other cities, boroughs, towns, and ports shall have all their liberties and free customs.

{No scutage or aid shall be imposed in our realm unless by common counsel thereof, except to ransom our person, make our eldest son a knight, and once to marry our eldest daughter, and for these only a reasonable aid shall be levied. So shall it be with regard to aids from the City of London.}

{To obtain the common counsel of the realm concerning the assessment of aids (other than in the three aforesaid cases) or of scutage, we will have the archbishops, bishops, abbots, earls, and great barons individually summoned by our letters; we will also have our sheriffs and bailiffs summon generally all those who hold lands directly of us, to meet on a fixed day, but with at least forty days' notice, and at a fixed place. In all such letters of summons, we will explain the reason therefor. After summons has thus been made, the business shall proceed on the day appointed, according to the advice of those who are present, even though not all the persons summoned have come.}

{We will not in the future grant permission to any man to levy an aid upon his free men, except to ransom his person, make his eldest son a knight, and once to marry his eldest daughter, and on each of these occasions only a reasonable aid shall be levied.}

[X. NONE SHALL DISTRAIN FOR MORE SERVICE THAN IS DUE.]

No man shall be compelled to perform more service for a knight's fee nor any freehold than is due therefrom.

[XI. COMMON PLEAS SHALL NOT FOLLOW THE KING'S COURT]

People who have Common Pleas shall not follow our Court traveling about the realm, but shall be heard in some certain place.

[XII. WHERE AND BEFORE WHOM ASSIZES SHALL BE TAKEN. ADJOURNMENT FOR DIFFICULTY]

{Land assizes of novel disseisin, mort d'ancestor and darrein presentment shall be heard only in the county where the property is situated, and in this manner: We or, if we are not in the realm, our Chief Justiciary, shall send two justiciaries through each county four times a year [to clear and prevent backlog], and they, together with four knights elected out of each county by the people thereof, shall hold the said assizes in the county court, on the day and in the place where that court meets.}

ASSIZES OF NOVEL DISSEISIN, MORT D'ANCESTOR SHALL BE HEARD ONLY IN THE COUNTY WHERE THE PROPERTY IS SITUATED, AND IN THIS MANNER: WE, OR IF WE ARE NOT IN THE REALM, OUR CHIEF JUSTICIARY, SHALL SEND JUSTICIARIES THROUGH EACH COUNTY ONCE A YEAR, AND THEY TOGETHER WITH KNIGHTS OF THAT COUNTY SHALL HOLD THE SAID ASSIZES IN THE COUNTY.

{If the said assizes cannot be held on the day appointed, so many of the knights and freeholders as were present on that day shall remain as will be sufficient for the administration of justice, according to the amount of business to be done.}

AND THOSE THINGS THAT AT THE COMING OF OUR FORESAID JUSTICIARIES, BEING SENT TO TAKE THOSE ASSIZES IN THE COUNTIES, CANNOT BE DETERMINED, SHALL BE ENDED BY THEM IN SOME OTHER PLACE IN THEIR CIRCUIT; AND THOSE THINGS WHICH FOR DIFFICULTY OF SOME ARTICLES CANNOT BE DETERMINED BY THEM, SHALL BE REFERRED TO OUR JUSTICES OF THE BENCH AND THERE SHALL BE ENDED.

[XIII. ASSIZES OF DARREIN PRESENTMENT]

ASSIZES OF DARREIN PRESENTMENT SHALL ALWAYS BE TAKEN BEFORE OUR JUSTICES OF THE BENCH AND THERE SHALL BE DETERMINED.

[XIV. HOW MEN OF ALL SORTS SHALL BE AMERCED AND BY WHOM]

A free man shall be amerced [made to pay a fine to the King] for a small offence only according to the degree thereof, and for a serious offence according to its magnitude, saving his position and livelihood; and in like manner a merchant, saving his trade and merchandise, and a villein saving his tillage, if they should fall under our mercy. None of these amercements shall be imposed except by the oath of honest men of the neighborhood.

Earls and barons shall be amerced only by their peers, and only in accordance with the seriousness of the offense.

{No amercement shall be imposed upon a cleric's lay tenement, except in the manner of the other persons

Our Legal Heritage

aforesaid, and without regard to the value of his ecclesiastical benefice.}

NO MAN OF THE CHURCH SHALL BE AMERCED EXCEPT IN ACCORDANCE WITH THE SERIOUSNESS OF THE OFFENCE AND AFTER HIS LAY TENEMENT, BUT NOT AFTER THE QUANTITY OF HIS SPIRITUAL BENEFICE.

[XV. MAKING OF BRIDGES AND BANKS]

No town or freeman shall be compelled to build bridges over rivers OR BANKS except those bound by old custom and law to do so.

[XVI. DEFENDING OF BANKS]

NO BANKS SHALL BE DEFENDED, FROM HENCEFORTH, BUT SUCH AS WERE IN DEFENCE IN THE TIME OF KING HENRY [II] OUR GRANDFATHER, BY THE SAME PLACES AND IN THE SAME BOUNDS AS IN HIS TIME.

[XVII. HOLDING PLEAS OF THE CROWN]

No sheriff, constable, coroners, or other of our bailiffs shall hold pleas of our Crown [but only justiciars].

{All counties, hundreds, wapentakes, and tithings (except our demesne manors) shall remain at the old rents, without any increase.}

[XVIII. THE KING'S DEBTOR DYING, THE KING SHALL BE FIRST PAID]

If anyone holding a lay fee of us dies, and our sheriff or our bailiff show our letters patent [public letter] of summons for a debt due to us from the deceased, it shall be lawful for such sheriff or bailiff to attach and list the goods and chattels of the deceased found in the lay fee to the value of that debt, by the sight and testimony of lawful men, so that nothing thereof shall be removed therefrom until our whole debt is paid; then the residue shall be given up to the executors to carry out the will of the deceased. If there is no debt due from him to us, all his chattels shall remain the property of the deceased, saving to his wife and children their reasonable shares.

{If any free man dies intestate, his chattels shall be distributed by his nearest kinfolk and friends, under supervision of the Church, saving to each creditor the debts owed him by the deceased.}

[XIX. PURVEYANCE FOR A CASTLE]

No constable or other of our bailiffs shall take grain or other chattels of any man without immediate payment, unless the seller voluntarily consents to postponement of payment. THIS APPLIES IF THE MAN IS NOT OF THE TOWN WHERE THE CASTLE IS. BUT IF THE MAN IS OF THE SAME TOWN AS WHERE THE CASTLE IS, THE PRICE SHALL BE PAID TO HIM WITHIN 40 DAYS.

[XX. DOING OF CASTLE-GUARD]

No constable shall compel any knight to give money for keeping of his castle in lieu of castle-guard when the knight is willing to perform it in person or, if reasonable cause prevents him from performing it himself, by some other fit man. Further, if we lead or send him into military service, he shall be excused from castle-guard for the time he remains in service by our command.

[XXI. TAKING OF HORSES, CARTS, AND WOOD]

No sheriff or bailiff of ours, or any other man, shall take horses or carts of any free man for carriage without the owner's consent. HE SHALL PAY THE OLD PRICE, THAT IS, FOR CARRIAGE WITH TWO HORSES, 10d. A DAY; FOR THREE HORSES, 14d. A DAY. NO DEMESNE CART OF ANY SPIRITUAL PERSON OR KNIGHT OR ANY LORD SHALL BE TAKEN BY OUR BAILIFFS.

Neither we nor our bailiffs will take another man's wood for our castles or for other of our necessities without the owner's consent.

[XXII. HOW LONG FELONS' LANDS SHALL BE HELD BY THE KING]

We will hold the lands of persons convicted of felony for only a year and a day [to remove the chattels and moveables], after which they shall be restored to the lords of the fees.

[XXIII. IN WHAT PLACE WEIRS SHALL BE REMOVED]

All fishweirs [obstructing navigation] shall be entirely removed by the Thames and Medway rivers, and throughout England, except upon the seacoast.

[XXIV. IN WHAT CASE A PRAECIPE IN CAPITE IS NOT GRANTABLE]

The writ called "praecipe in capite" shall not in the future be granted to anyone respecting any freehold if thereby a free man may not be tried in his lord's court.

[XXV. THERE SHALL BE BUT ONE MEASURE THROUGHOUT THE REALM]

Our Legal Heritage

There shall be one measure of wine throughout our realm, one measure of ale, and one measure of grain, to wit, the London quarter, and one breadth of dyed cloth, russets, and haberjets, to wit, two {ells} YARDS within the selvages. As with measures so shall it also be with weights.

[XXVI. INQUISITION OF LIFE AND LIMB]

Henceforth nothing shall be given or taken for a writ of inquisition upon life or limb, but it shall be granted freely and not denied.

[XXVII. TENURE OF THE KING IN SOCAGE AND OF ANOTHER BY KNIGHT'S SERVICE. PETIT SERJEANTY.]

If anyone holds of us by fee farm, socage, or burgage, and also holds land of another by knight's service, we will not by reason of that fee farm, socage, or burgage have the wardship of his heir, or the land which belongs to another man's fee. Nor will we have the custody of such fee farm, socage, or burgage unless such fee farm owe knight's service. We will not have the wardship of any man's heir, or the land which he holds of another by knight's service, by reason of any petty serjeanty which he holds of us by service of rendering us knives, arrows, or the like.

[XXVIII. WAGES OF LAW SHALL NOT BE WITHOUT WITNESS]

In the future no bailiff shall upon his own unsupported accusation put any man to trial or oath without producing credible witnesses to the truth of the accusation.

[XXIX. NONE SHALL BE CONDEMNED WITHOUT TRIAL. JUSTICE SHALL NOT BE SOLD OR DELAYED.]

No free man shall be taken, imprisoned, disseised OF HIS FREEHOLD OR LIBERTIES OR FREE CUSTOMS, OR BE outlawed, banished, or in any way ruined, nor will we prosecute or condemn him, except by the lawful judgment of his peers or by the law of the land.

To no one will we sell [by bribery], to none will we deny or delay, right or justice.

[XXX. MERCHANT STRANGERS COMING INTO THIS REALM SHALL BE WELL USED]

All merchants shall have safe conduct to go and come out of and into England, and to stay in and travel through England by land and water, to buy and sell, without evil tolls, in accordance with old and just customs, except, in time of war, such merchants as are of a country at war with us. If any such be found in our realm at the outbreak of war, they shall be detained, without harm to their bodies or goods, until it be known to us or our Chief Justiciary how our merchants are being treated in the country at war with us. And if our merchants are safe there, then theirs shall be safe with us.

{Henceforth anyone, saving his allegiance due to us, may leave our realm and return safely and securely by land and water, except for a short period in time of war, for the common benefit of the realm.}

[XXXI. TENURE OF A BARONY COMING INTO THE KING'S HANDS BY ESCHEAT]

If anyone dies holding of any escheat, such as the honor of Wallingford, Nottingham, Boulogne, {Lancaster,} or other escheats which are in our hands and are baronies, his heir shall not give any relief or do any service to us other than he would owe to the baron, if such barony had been in the baron's hands. And we will hold the escheat in the same manner in which the baron held it. NOR SHALL WE HAVE, BY OCCASION OF ANY BARONY OR ESCHEAT, ANY ESCHEAT OR KEEPING OF ANY OF OUR MEN, UNLESS HE WHO HELD THE BARONY OR ESCHEAT ELSEWHERE HELD OF US IN CHIEF.

Persons dwelling outside the forest need not in the future come before our justiciaries of the forest in answer to a general summons unless they are impleaded or are sureties for any person or persons attached for breach of forest laws.

[XXXII. LANDS SHALL NOT BE ALIENED TO THE PREJUDICE OF THE LORD'S SERVICE]

NO FREEMAN FROM HENCEFORTH SHALL GIVE OR SELL ANY MORE OF HIS LAND, BUT SO THAT OF THE RESIDUE OF THE LANDS THE LORD OF THE FEE MAY HAVE THE SERVICE DUE TO HIM WHICH BELONGS TO THE FEE.

{We will appoint as justiciaries, constables, sheriffs, or bailiffs only such men as know the law of the land and will keep it well.}

[XXXIII. PATRONS OF ABBEYS SHALL HAVE THE CUSTODY OF THEM WHEN VACANT]

All barons who had founded abbeys of which they have charters of English Kings or old tenure, shall have the custody of the same when vacant, as is their due.

Our Legal Heritage

All forests which have been created in our time shall forthwith be disafforested. {So shall it be done with regard to river banks which have been enclosed by fences in our time.}

{All evil customs concerning forests and warrens, foresters and warreners, sheriffs and their officers, or riverbanks and their conservators shall be immediately investigated in each county by twelve sworn knights of such county, who are chosen by honest men of that county, and shall within forty days after this inquest be completely and irrevocably abolished, provided always that the matter has first been brought to our knowledge, or that of our justiciars, if we are not in England.}

{We will immediately return all hostages and charters delivered to us by Englishmen as security for the peace or for the performance of loyal service.}

{We will entirely remove from their offices the kinsmen of Gerald de Athyes, so that henceforth they shall hold no office in England: Engelard de Cigogne, Peter, Guy, and Andrew de Chanceaux, Guy de Cigogne, Geoffrey de Martigny and his brothers, Philip Mark and his brothers, and Geoffrey his nephew, and all their followers.}

{As soon as peace is restored, we will banish from our realm all foreign knights, crossbowmen, sergeants, and mercenaries, who have come with horses and arms, to the hurt of the realm.}

{If anyone has been disseised or deprived by us, without the legal judgment of his peers, of lands, castles, liberties, or rights, we will immediately restore the same, and if any disagreement arises on this, the matter shall be decided by judgment of the twenty-five barons mentioned below in the clause for securing the peace. With regard to all those things, however, of which any man was disseised or deprived, without the legal judgment of his peers, by King Henry [II] our Father or our Brother King Richard, and which remain in our hands or are held by others under our warranty, we shall have respite during the term commonly allowed to the Crusaders, excepting those cases in which a plea was begun or inquest made on our order before we took the cross; when, however, we return from our pilgrimage, or if perhaps we do not undertake it, we will at once do full justice in these matters.}

{Likewise, we shall have the same respite in rendering justice with respect to the disafforestation or retention of those forests which Henry [II] our Father or Richard our Brother afforested, and concerning custodies of lands which are of the fee of another, which we hitherto have held by reason of the fee which some person has held of us by knight's service, and to abbeys founded on fees other than our own, in which the lord of that fee asserts his right. When we return from our pilgrimage, or if we do not undertake it, we will forthwith do full justice to the complainants in these matters.}

[XXXIV. IN WHAT ONLY CASE A WOMAN SHALL HAVE AN APPEAL OF DEATH]

No one shall be arrested or imprisoned upon a woman's appeal for the death of any person other than her husband [since no woman was expected to personally engage in trial by battle].

[XXXV. AT WHAT TIME SHALL BE KEPT A COUNTY COURT, SHERIFF'S TURN AND A LEET (COURT OF CRIMINAL JURISDICTION EXCEPTING FELONIES)]

NO COUNTY COURT FROM HENCEFORTH SHALL BE HELD, BUT FROM MONTH TO MONTH; AND WHERE GREATER TIME HAS BEEN USED, THERE SHALL BE GREATER. NOR SHALL ANY SHERIFF, OR HIS BAILIFF, KEEP HIS TURN IN THE HUNDRED BUT TWICE IN THE YEAR; AND NO WHERE BUT IN DUE PLACE AND ACCUSTOMED TIME, THAT IS, ONCE AFTER EASTER, AND AGAIN AFTER THE FEAST OF SAINT MICHAEL. AND THE VIEW OF FRANKPLEDGE [THE RIGHT OF ASSEMBLING THE WHOLE MALE POPULATION OVER 12 YEARS EXCEPT CLERGY, EARLS, BARONS, KNIGHTS, AND THE INFIRM, AT THE LEET OR SOKE COURT FOR THE CAPITAL FRANKPLEDGES TO GIVE ACCOUNT OF THE PEACE KEPT BY INDIVIDUALS IN THEIR RESPECTIVE TITHINGS] SHALL BE LIKEWISE AT THE FEAST OF SAINT MICHAEL WITHOUT OCCASION, SO THAT EVERY MAN MAY HAVE HIS LIBERTIES WHICH HE HAD, OR USED TO HAVE, IN THE TIME OF KING HENRY [II] OUR GRANDFATHER, OR WHICH HE HAS SINCE PURCHASED. THE VIEW OF FRANKPLEDGE SHALL BE SO DONE, THAT OUR PEACE MAY BE KEPT; AND THAT THE TYTHING BE WHOLLY KEPT AS IT HAS BEEN ACCUSTOMED; AND THAT THE SHERIFF SEEK NO OCCASIONS, AND THAT HE BE CONTENT WITH SO MUCH AS THE SHERIFF WAS WONT TO HAVE FOR HIS VIEW-MAKING IN THE TIME OF KING HENRY OUR GRANDFATHER.

[XXXVI. NO LAND SHALL BE GIVEN IN MORTMAIN]

Our Legal Heritage

IT SHALL NOT BE LAWFUL FROM HENCEFORTH TO ANY TO GIVE HIS LAND TO ANY RELIGIOUS HOUSE, AND TO TAKE THE SAME LAND AGAIN TO HOLD OF THE SAME HOUSE. NOR SHALL IT BE LAWFUL TO ANY HOUSE OF RELIGION TO TAKE THE LANDS OF ANY, AND TO LEASE THE SAME TO HIM OF WHOM HE RECEIVED IT. IF ANY FROM HENCEFORTH GIVE HIS LANDS TO ANY RELIGIOUS HOUSE, AND THEREUPON BE CONVICTED, THE GIFT SHALL BE UTTERLY VOID, AND THE LAND SHALL ACCRUE TO THE LORD OF THE FEE.

{All fines unjustly and unlawfully given to us, and all amercements levied unjustly and against the law of the land, shall be entirely remitted or the matter decided by judgment of the twenty-five barons mentioned below in the clause for securing the peace, or the majority of them, together with the aforesaid Stephen, Archbishop of Canterbury, if he himself can be present, and any others whom he may wish to bring with him for the purpose; if he cannot be present, the business shall nevertheless proceed without him. If any one or more of the said twenty-five barons has an interest in a suit of this kind, he or they shall step down for this particular judgment, and be replaced by another or others, elected and sworn by the rest of the said barons, for this occasion only.}

{If we have disseised or deprived the Welsh of lands, liberties, or other things, without legal judgment of their peers, in England or Wales, they shall immediately be restored to them, and if a disagreement arises thereon, the question shall be determined in the Marches by judgment of their peers according to the law of England as to English tenements, the law of Wales as to Welsh tenements, the law of the Marches as to tenements in the Marches. The same shall the Welsh do to us and ours.}

{But with regard to all those things of which any Welshman was disseised or deprived, without legal judgment of his peers, by King Henry [II] our Father or our Brother King Richard, and which we hold in our hands or others hold under our warranty, we shall have respite during the term commonly allowed to the Crusaders, except as to those matters whereon a suit had arisen or an inquisition had been taken by our command prior to our taking the cross. Immediately after our return from our pilgrimage, or if by chance we do not undertake it, we will do full justice according to the laws of the Welsh and the aforesaid regions.}

{We will immediately return the son of Llywelyn, all the Welsh hostages, and the charters which were delivered to us as security for the peace.}

{With regard to the return of the sisters and hostages of Alexander, King of the Scots, and of his liberties and rights, we will do the same as we would with regard to our other barons of England, unless it appears by the charters which we hold of William his father, late King of the Scots, that it ought to be otherwise; this shall be determined by judgment of his peers in our court.}

[XXXVII. SUBSIDY IN RESPECT OF THIS CHARTER, AND THE CHARTER OF THE FOREST, GRANTED TO THE KING.]

ESCUAGE [SHIELD MILITARY SERVICE] FROM HENCEFORTH SHALL BE TAKEN AS IT WAS WONT TO BE IN THE TIME OF KING HENRY [II] OUR GRANDFATHER; RESERVING TO ALL ARCHBISHOPS, BISHOPS, ABBOTS, PRIORS, TEMPLERS, HOSPITALLERS, EARLS, BARONS, AND ALL PERSONS AS WELL SPIRITUAL AS TEMPORAL; ALL THEIR FREE LIBERTIES AND FREE CUSTOMS, WHICH THEY HAVE HAD IN TIME PASSED. AND ALL THESE CUSTOMS AND LIBERTIES AFORESAID, WHICH WE HAVE GRANTED TO BE HELD WITHIN THIS OUR REALM, AS MUCH AS PERTAINS TO US AND OUR HEIRS, WE SHALL OBSERVE.

{All the customs and liberties aforesaid, which we have granted to be enjoyed, as far as it pertains to us towards our people throughout our realm, let all our subjects, whether clerics or laymen, observe, as far as it pertains toward their dependents.}

AND ALL MEN OF THIS OUR REALM, AS WELL SPIRITUAL AS TEMPORAL (AS MUCH AS IN THEM IS) SHALL OBSERVE THE SAME AGAINST ALL PERSONS IN LIKE WISE. AND FOR THIS OUR GIFT AND GRANT OF THESE LIBERTIES, AND OF OTHER CONSTRAINED IN OUR CHARTER OF LIBERTIES OF OUR FOREST, THE ARCHBISHOPS, BISHOPS, ABBOTS, PRIORS, EARLS, BARONS, KNIGHTS, FREEHOLDERS, AND OUR OTHER SUBJECTS, HAVE GIVEN UNTO US THE FIFTEENTH PART OF ALL THEIR MOVEABLES. AND WE HAVE GRANTED UNTO THEM ON THE OTHER PART, THAT NEITHER WE, NOR OUR HEIRS, SHALL PROCURE OR DO ANY THING WHEREBY THE LIBERTIES IN THIS CHARTER CONTAINED SHALL BE INFRINGED OR BROKEN. AND IF ANY THING BE PROCURED BY ANY PERSON CONTRARY TO THE PREMISES, IT SHALL BE HAD OF NO

FORCE NOR EFFECT.

{Whereas we, for the honor of God and the reform of our realm, and in order the better to allay the discord arisen between us and our barons, have granted all these things aforesaid. We, willing that they be forever enjoyed wholly and in lasting strength, do give and grant to our subjects the following security, to wit, that the barons shall elect any twenty-five barons of the realm they wish, who shall, with their utmost power, keep, hold, and cause to be kept the peace and liberties which we have granted unto them and by this our present Charter have confirmed, so that if we, our Justiciary, bailiffs, or any of our ministers offends in any respect against any man, or transgresses any of these articles of peace or security, and the offense is brought before four of the said twenty-five barons, those four barons shall come before us, or our Chief Justiciary if we are out of the realm, declaring the offense, and shall demand speedy amends for the same. If we or, in case of our being out of the realm, our Chief Justiciary fails to afford redress within forty days from the time the case was brought before us or, in the event of our having been out of the realm, our Chief Justiciary, the aforesaid four barons shall refer the matter to the rest of the twenty-five barons, who, together with the commonalty of the whole country, shall distrain and distress us to the utmost of their power, to wit, by capture of our castles, lands, and possessions and by all other possible means, until compensation is made according to their decision, saving our person and that of our Queen and children; as soon as redress has been had, they shall return to their former allegiance. Anyone in the realm may take oath that, for the accomplishment of all the aforesaid matters, he will obey the orders of the said twenty-five barons and distress us to the utmost of his power; and we give public and free leave to everyone wishing to take oath to do so, and to none will we deny the same. Moreover, all such of our subjects who do not of their own free will and accord agree to swear to the said twenty-five barons, to distrain and distress us together with them, we will compel to do so by our command in the aforesaid manner. If any one of the twenty-five barons dies or leaves the country or is in any way hindered from executing the said office, the rest of the said twenty-five barons shall choose another in his stead, at their discretion, who shall be sworn in like manner as the others. In all cases which are referred to the said twenty-five barons to execute, and in which a difference arises among them, supposing them all to be present, or in which not all who have been summoned are willing or able to appear, the verdict of the majority shall be considered as firm and binding as if the whole number had been of one mind. The aforesaid twenty-five shall swear to keep faithfully all the aforesaid articles and, to the best of their power, to cause them to be kept by others. We will not procure, either by ourself or any other, anything from any man whereby any of these concessions or liberties may be revoked or abated. If any such procurement is made, let it be null and void; it shall never be made use of either by us or by any other.}

{We have also fully forgiven and pardoned all ill-will, wrath, and malice which has arisen between us and our subjects, both clergy and laymen, during the disputes, to and with all men. Moreover, we have fully forgiven and, as far as it pertains to us, wholly pardoned to and with all, clergy and laymen, all offences made in consequence of the said disputes from Easter in the sixteenth year of our reign until the restoration of peace. Over and above this, we have caused letters patent to be made for Stephen, Archbishop of Canterbury, Henry, Archbishop of Dublin, the above-mentioned Bishops, and Master Pandulph, for the aforesaid security and concessions.}

{Wherefore we will that, and firmly command that, the English Church shall be free and all men in our realm shall have and hold all the aforesaid liberties, rights, and concessions, well and peaceably, freely, quietly, fully, and wholly, to them and their heirs, of us and our heirs, in all things and places forever, as is aforesaid. It is moreover sworn, as will on our part as on the part of the barons, that all these matters aforesaid shall be kept in good faith and without deceit. Witness the above-named and many others. Given by our hand in the meadow which is called Runnymede, between Windsor and Staines, on the fifteenth day of June in the seventeenth year of our reign.}

THESE BEING WITNESSES: LORD S. ARCHBISHOP OF CANTERBURY, E. BISHOP OF LONDON, F. BISHOP OF BATHE, G. OF WINCESTER, H. OF LINCOLN, R. OF SALISBURY, W. OF ROCHESTER, X. OF WORCESTER, F. OF ELY, H. OF HEREFORD, R. OF CHICHESTER, W. OF EXETER, BISHOPS; THE ABBOT OF ST. EDMONDS, THE ABBOT OF ST. ALBANS, THE ABBOT OF BELLO, THE ABBOT OF ST. AUGUSTINES IN CANTERBURY, THE ABBOT OF EVESHAM, THE ABBOT OF WESTMINSTER, THE ABBOT OF BOURGH ST. PETER, THE ABBOT OF REDING, THE ABBOT OF ABINDON, THE ABBOT OF MALMBURY, THE ABBOT OF WINCHCOMB, THE ABBOT OF HYDE, THE ABBOT OF CERTESEY, THE ABBOT OF SHERBURN, THE ABBOT OF CERNE, THE ABBOT OF ABBOREBIR, THE ABBOT OF

Our Legal Heritage

MIDDLETON, THE ABBOT OF SELEBY, THE ABBOT OF CIRENCESTER, H. DE BURGH JUSTICE, H. EARL OF CHESTER AND LINCOLN, W. EARL OF SALISBURY, W. EARL OF WARREN, G. DE CLARE EARL OF GLOUCESTER AND HEREFORD, W. DE FERRARS EARL OF DERBY, W. DE MANDEVILLE EARL OF ESSEX, H. DE BYGOD EARL OF NORFOLK, W. EARL OF ALBEMARLE, H. EARL OF HEREFORD, F. CONSTABLE OF CHESTER, G. DE TOS, H. FITZWALTER, R. DE BYPONTE, W. DE BRUER, R. DE MONTEFICHET, P. FITXHERBERT, W. DE AUBENIE, F. GRESLY, F. DE BREUS, F. DE MONEMUE, F. FITZALLEN, H. DE MORTIMER, W. DE BEUCHAMP, W. DE ST. JOHN, P. DE MAULI, BRIAN DE LISLE, THOMAS DE MULTON, R. DE ARGENTEYN, G. DE NEVIL, W. DE MAUDUIT, F. DE BALUN, AND OTHERS. GIVEN AT WESTMINSTER THE 11TH DAY OF FEBRUARY THE 9TH YEAR OF OUR REIGN.

WE, RATIFYING AND APPROVING THESE GIFTS AND GRANTS AFORESAID, CONFIRM AND MAKE STRONG ALL THE SAME FOR US AND OUR HEIRS PERPETUALLY, AND BY THE TENOUR OF THESE PRESENTS, DO RENEW THE SAME; WILLING AND GRANTING FOR US AND OUR HEIRS, THAT THIS CHARTER, AND ALL SINGULAR HIS ARTICLES, FOREVER SHALL BE STEDFASTLY, FIRMLY, AND INVIOLABLY OBSERVED; AND IF ANY ARTICLE IN THE SAME CHARTER CONTAINED, YET HITHERTO PERADVENTURE HAS NOT BEEN KEPT, WE WILL, AND BY ROYAL AUTHORITY, COMMAND, FROM HENCEFORTH FIRMLY THEY BE OBSERVED.

Statutes which were enacted after the Magna Carta follow:

Nuisance is recognized by this statute: "Every freeman, without danger, shall make in his own wood, or in his land, or in his water, which he has within our Forest, mills, springs, pools, clay pits, dikes, or arable ground, so that it does not annoy any of his neighbors."

Anyone taking a widow's dower after her husband's death must not only return the dower, but pay damages in the amount of the value of the dower from the time of death of the husband until her recovery of seisin.

Widows may bequeath the crop of their ground as well of their dowers as of their other lands and tenements.

Freeholders of tenements on manors shall have sufficient ingress and egress from their tenements to the common pasture and as much pasture as suffices for their tenements.

"Grain shall not be taken under the pretense of borrowing or the promise of after-payment without the permission of the owner."

"A parent or other who forcefully leads away and withholds, or marries off, an heir who is a minor (under 14), shall yield the value of the marriage and be imprisoned until he has satisfied the King for the trespass. If an heir 14 years or older marries without his Lord's permission to defraud him of the marriage and the Lord offers him reasonable and convenient marriage, without disparagement, then the Lord shall hold his land beyond the term of his age, that, of twenty one years, so long that he may receive double the value of the marriage as estimated by lawful men, or after as it has been offered before without fraud or collusion, and after as it may be proved in the King's Court. Any Lord who marries off a ward of his who is a minor and cannot consent to marriage, to a villain or other, such as a burgess, whereby the ward is disparaged, shall lose the wardship and all its profits if the ward's friends complain of the Lord. The wardship and profit shall be converted to the use of the heir, for the shame done to him, after the disposition and provision of his friends." (The marriage could be annulled by the church.)

"If an heir of whatever age will not marry at the request of his Lord, he shall not be compelled thereunto; but when he comes of age, he shall pay to his Lord the value of the marriage before receiving his land, whether or not he himself marries."

"Interest shall not run against any minor, from the time of death of his ancestor until his lawful age; so nevertheless, that the payment of the principal debt, with the interest that was before the death of his ancestor shall not remain."

The value of debts to be repaid to the King or to any man shall be reasonably determined by the debtor's neighbors and not by strangers. A debtors' plough cattle or sheep cannot be taken to satisfy a debt.

The wards and escheats of the King shall be surveyed yearly by three people assigned by the King. The Sheriffs, by their counsel, shall approve and let to farm such wards and escheats as they think most profitable for the King. The Sheriffs shall be answerable for the issues thereof in the Exchequer at designated times. The collectors of the customs on wool exports shall pay this money at the two designated times and shall make yearly accounts of all parcels in ports and all ships.

Our Legal Heritage

By statute leap year was standardized throughout the nation, "the day increasing in the leap year shall be accounted in that year", "but it shall be taken and reckoned in the same month wherein it grew and that day and the preceding day shall be counted as one day."

"An English penny, called a sterling, round and without any clipping, shall weigh 32 wheat grains dry in the middle of the ear."

Measurements of distance were standardized to twelve inches to a foot, three feet to a yard, and so forth up to an acre of land.

Goods which could only be sold by the standard weights and measures (such as ounces, pounds, gallons, bushels) included sacks of wool, leather, skins, ropes, glass, iron, lead, canvas, linen cloth, tallow, spices, confections cheese, herrings, sugar, pepper, cinnamon, nutmeg, wheat, barley, oats, bread, and ale. The prices required for bread and ale were based on the market price for the wheat, barley, and oats from which they were made.

The punishment for repeated violations of required measures, weights, or prices of bread and ale by a baker or brewer; selling of spoiled or unwholesome wine, meat, fish by brewers, butchers, or cooks; or a steward or bailiff receiving a bribe was reduced to placement in a pillory with a shaven head so that these men would still be fit for military service and not overcrowd the jails.

Forest penalties were changed so that "No man shall lose either life or member [limb] for killing of our deer. But if any man be taken and convicted for taking our venison, he shall make a grievous fine, if he has anything. And if he has nothing to lose, he shall be imprisoned for a year and a day. And after that, if he can find sufficient sureties, he shall be delivered, and, if not, he shall abjure the realm of England."

The Forest Charter provided that: Every freeman may allow his pigs to eat in his own wood in the King's forest. He may also drive his pigs there through the King's forest and tarry one night within the forest without losing any of his pigs. But people having greyhounds must keep them out of the forest so they don't maim the deer.

The Forest Charter also allowed magnates traveling through the King's forest on the King's command to come to him, to kill one or two deer as long as it was in view of the forester if he was present, or while having a horn blown, so it did not seem to be theft.

After a period of civil war, the following statutes were enacted:

"All persons, as well of high as of low estate, shall receive justice in the King's Court; and none shall take any such revenge or distress by his own authority, without award of our court, although he is damaged or injured, whereby he would have amends of his neighbor either higher or lower." The penalty is a fine according to the trespass.

A fraudulent conveyance to a minor or lease for a terms of years made to defraud a Lord of a wardship shall be void. A Lord who maliciously and wrongfully alleges this to a court shall pay damages and costs.

If a Lord will not render unto an heir his land when he comes of age or takes possession away from an heir of age or removes anything from the land, he shall pay damages.

Kinsmen of a minor heir who have custody of his land held in socage shall make no waste, sale, nor destruction of the inheritance and shall answer to the heir when he comes of age for the issues of the land, except for the reasonable costs of these guardians.

No lord may distrain any of his tenants. No one may drive animals taken by distraint out of the shire where they have been taken.

"Farmers during their terms, shall not make waste, sale, nor exile of house, woods, and men, nor of any thing else belonging to the tenements which they have to farm".

Henry de Bracton, a royal judge and the last great ecclesiastical lawyer, wrote an unfinished treatise: A Tract on the Laws and Customs of England, systematizing and organizing the law of the court rolls with definitions and general concepts and describing court practice and procedure. It was influenced by his knowledge of Roman legal concepts, such as *res judicata*, and by his own opinions, such as that the law should go from precedent to precedent. He also argued that the will and intent to injure was the essence of murder, so that neither an infant nor a madman should be held liable for such and that degrees of punishment should vary with the level of moral guilt in a killing. He thought the deodand to be unreasonable.

Bracton defines the requirements of a valid and effective gift as: "It must be complete and absolute, free and

Our Legal Heritage

uncoerced, extorted neither by fear nor through force. Let money or service play no part, lest it fall into the category of purchase and sale, for if money is involved there will them be a sale, and if service, the remuneration for it. If a gift is to be valid the donor must be of full age, for if a minor makes a gift it will be ineffective since (if he so wishes) it shall be returned to him in its entirety when he reaches full age. Also let the donor hold in his own name and not another's, otherwise his gift may be revoked. And let him, at the least, be of sound mind and good memory, though an invalid, ill and on his death bed, for a gift made under such conditions will be good if all the other [requirements] of a valid gift are met. For no one, provided he is of good memory, ought to be kept from the administration or disposition of his own property when affected by infirmity, since it is only then that he must make provision for his family, his household and relations, given stipends and settle his bequests; otherwise such persons might suffer damage without fault. But since charters are sometimes fraudulently drawn and gifts falsely taken to be made when they are not, recourse must therefore be had to the country and the neighborhood so that the truth may be declared."

In Bracton's view, a villein could buy his own freedom and the child of a mixed marriage was free unless he was born in the tenement of his villein parent.

—Judicial Procedure—

The Royal Court split up into several courts with different specialties and became more like departments of state than offices of the King's household. The judges were career civil servants knowledgeable in the civil and canon law. The Court of Common Pleas heard civil cases brought by one subject against another. Pursuant to the Magna Carta, it sat only at one place, Westminster Hall in London. Its records were the *de banco* rolls. The Court of the Exchequer with its subsidiary department of the Treasury was in almost permanent session at Westminster, collecting the Crown's revenue and enforcing the Crown's rights. The Court of the King's Bench (a marble slab in Westminster upon which the throne was placed) traveled with the King and heard criminal cases and pleas of the Crown. Its records were the *coram rege* rolls. The title of the Chief Justiciar of England changed to the Chief Justice of England.

Appeals from these courts could be made to the King and his council.

Crown pleas included issues of the King's property, fines due to him, murder (a body found with no witnesses to a killing), homicide (a killing for which there were witnesses), rape, wounding, mayhem, consorting, larceny, robbery, burglary, arson, poaching, unjust imprisonment, selling cloth by non-standard widths, selling wine by non-standard weights.

Royal judges called justices in eyre traveled to the shires every seven years. There, they gave interrogatories to local assizes of twelve men to determine what had happened there since the last eyre. Every crime, every invasion of royal rights, and every neglect of police duties was to be presented and tried. The assize ultimately evolved into the jury of verdict, which replaced ordeal, compurgation, and battle as the method of finding the truth. Suspects were failed until their cases could be heard and jail breaks were common.

Royal coroners held inquests on all sudden deaths to determine whether they were accidental or not. If not, royal justices held trial. They also had duties in treasure troves and shipwreck cases.

The hundred court decided cases of theft, viewing of boundaries of land, claims for tenurial services, claims for homage, relief, and for wardship; *enfeoffments* made, battery and brawls not amounting to felony, wounding and maiming of beasts, collection of debts, trespass, *detinue* and covenant, defamation, and enquiries and presentments arising from the assizes of bread and ale and measures.

Still in existence is the old self-help law of *hamsocne*, the thief hand-habbende, the thief back-berend, the old summary procedure where the thief is caught in the act, Aethelstan's laws, Edward the Confessor's laws, and Kent's *childwyte* [fine for begetting a bastard on a lord's female bond slave]. Under the name of "*actio furti*" [appeal of larceny] is the old process by which a thief can be pursued and goods vindicated. As before and for centuries later, the *deodand* [any personal chattel which was the immediate cause of death] was forfeited "to God". These chattel were usually carts, cart teams, horses, boats, and mill-wheels.

Five cases with short summaries are:

CASE: "John Croc was drowned from his horse and cart in the water of Bickney. Judgment: *misadventur*. The price of the horse and cart is 4s.6d. 4s.6d. *deodand*."

CASE: "Willam Ruffus was crushed to death by a certain trunk. The price of the trunk is 4d., for which the sheriff is to answer. 4d. *deodand*."

Our Legal Heritage

CASE: "William le Hauck killed Edric le Poter and fled, so he is to be exacted and outlawed. He was in the tithing of Reynold Horloc in Clandon of the abbot of Chertsey (West Clandon), so it is in mercy. His chattels were 4 s., for which the bailiff of the abbot of Chertsey is to answer."

CASE: "Richard de Bregssells, accused of larceny, comes and denies the whole and puts himself on the country for good or ill. The twelve jurors and four vills say that he is not guilty, so he is quit."

CASE: William le Wimpler and William Vintner sold wine contrary to the statute, so they are in mercy.

Other cases dealt with issues of entry, i.e. whether land was conveyed or just rented; issues of whether a man was free, for which his lineage was examined; issues of to which lord a villein belonged; issues of nuisance such as making or destroying a bank, ditch, or hedge; diverting a watercourse or damming it to make a pool; obstructing a road, and issues of what grazing rights were conveyed in pasture land, waste, woods, or arable fields between harvest and sowing. Grazing right disputes usually arose from the ambiguous language in the grant of land "with appurtenances".

Courts awarded specific relief as well as money damages. If a landlord broke his covenant to lease land for a term of years, the court restored possession to the lessee. If a lord did not perform the services due to his superior lord, the court ordered him to perform the services. The courts also ordered repair by a lessee.

Debts of country knights and freeholders were heard in the local courts; debts of merchants and burgesses were heard in the courts of the fairs and boroughs; debts due under wills and testaments were heard in the ecclesiastical courts. The ecclesiastical courts deemed marriage to legitimize bastard children whose parents married, so they inherited chattels and money of their parents. Proof was by compurgation, the ordeal having been abolished by the Church.

Trial by battle is still available, although it is extremely rare for the duel to actually take place.

The manor court imposed penalties on those who did not perform their services to the manor and the lord wrote down the customs of the manor for future use in other courts.

By statute, no fines could be taken of any man for fair pleading in the Circuit of Justiciars, shire, hundred, or manor courts.

Various statutes relaxed the requirements for attendance at court of those who were not involved in a case as long as there were enough to make the inquests fully. And "every freeman who owes suit to the county, tything, hundred, and wapentake, or to the Court of his Lord, may freely make his attorney attend for him."

In Chancery, the court of the Chancellor, if there is a case with no remedy specified in the law, that is similar to a situation for which there is a writ, then a new writ may be made for that case. (By this will later be expanded the action of trespass, which even later has offshoots of misdemeanor and the tort of trespass.)

Chapter 8—The Times: 1272–1348—

King Edward I was respected by the people for his good government, practical wisdom, and genuine concern for justice for everyone. He loved his people and wanted them to love him. He came to the throne with twenty years experience governing lesser lands on the continent which were given to him by his father Henry III. He gained a reputation as a lawgiver and as a peacemaker in disputes on the continent. He had close and solid family relationships, especially with his father and with his wife Eleanor, to whom he was faithful. He was loyal to his close circle of good friends. He valued honor and adhered reasonably well to the terms of the treaties he made. He was generous in carrying out the royal custom of subsidizing the feeding of paupers. He visited the sick. He dressed in plain, ordinary clothes rather than extravagant or ostentatious ones. He disliked ceremony and display.

At his accession, there was a firm foundation of a national law administered by a centralized judicial system, a centralized executive, and an organized system of local government in close touch with both the judicial and the executive system. To gain knowledge of his nation, he sent royal commissioners into every shire to ask about any encroachments on the King's rights and about misdeeds by any of the King's officials: sheriffs, bailiffs, or coroners. The results were compiled as the "Hundred Rolls". They were the basis of reforms which improved justice at the local as well as the national level. They also rationalized the array of jurisdictions that had grown up with feudal government. Statutes were passed by a Parliament of two houses, that of lords and that of an elected [rather than appointed] commons, and the final form of the constitution was fixed.

Wardships of children and widows were sought because they were very profitable. A guardian could get one tenth of the income of the property during the wardship and a substantial marriage amount when the ward married.

Most earldoms and many baronages came into the royal house by escheat or marriage. The royal house employed many people. The barons developed a class consciousness of aristocracy and became leaders of society. Many men, no matter of whom they held land, sought knighthood. The King granted knighthood by placing his sword on the head of able-bodied and moral candidates who swore an oath of loyalty to the King and to defend "all ladies, gentlewomen, widows and orphans" and to "shun no adventure of your person in any war wherein you should happen to be". A code of knightly chivalry became recognized, such as telling the truth and setting wrongs right. About half of the knights were literate. In 1278, the King issued a writ ordering all free-holders who held land of the value of 400s. to receive knighthood at the King's hands.

At the royal house and other great houses gentlemanly jousting competitions, with well-refined and specific rules, took the place of violent tournaments with general rules. At these knights competed for the affection of ladies by jousting with each other while the ladies watched. Courtly romances were common. If a man convinced a lady to marry him, the marriage ceremony took place in church, with feasting and dancing afterwards. Romantic stories were at the height of their popularity. A usual theme was the lonely quest of a knight engaged in adventures which would impress his lady.

The dress of the higher classes was very changeable and subject to fashion as well as function. Ladies no longer braided their hair in long tails, but rolled it up in a net under a veil, often topped with an elaborate and fanciful headdress. They wore non-functional long trains on their dresses and dainty shoes. Men wore a long gown, sometimes clasped around the waist. Overcloaks were often lined or trimmed with native fur such as squirrel. People often wore solid red, blue, or green clothes. Only monks and friars wore brown. The introduction of buttons and buttonholes to replace pins and laces made clothing warmer. The spinning wheel came into existence.

While the great barons lived in houses built within the walls of their castles, most barons and knights lived in unfortified or semi-fortified houses with two rooms. There were ornaments for the tables and more wall hangings.

Wardships of children and widows were sought because they were very profitable. A guardian could get one tenth of the income of the property during the wardship and a substantial marriage amount when the ward married.

Queen Eleanor, a cultivated, intelligent, and educated lady from the continent, fostered culture and rewarded

Our Legal Heritage

individual literary efforts, such as translations from Latin, with grants of her own money. She patronized Oxford and Cambridge Universities and left bequests to poor scholars there. She herself had read Aristotle and commentaries thereon, and she especially patronized literature which would give cross-cultural perspectives on subjects. She was kind and thoughtful towards those about her and was also sympathetic to the afflicted and generous to the poor. She shared Edward's career to a remarkable extent, even accompanying him on a crusade. She had an intimate knowledge of the people in Edward's official circle and relied on the advice of two of them in managing her lands. She mediated disputes between earls and other nobility, as well as softened her husband's temper towards people. Edward granted her many wardships and marriages and she arranged marriages with political advantages. She dealt with envoys coming to the court. Her intellectual vitality and organized mentality allowed her to deal with arising situations well. Edward held her in great esteem. She introduced to England the merino sheep, which, when bred with the English sheep, gave them a better quality of wool. She and Edward often played games of chess and backgammon.

Farm efficiency was increased by the use of windmills in the fields to pump water and by allowing villeins their freedom and hiring them as laborers only when needed. There was enough grain to store so that the population was no longer periodically decimated by famine. The population grew and all arable land in the nation was under the plough. Harvests were usually plentiful, with the exception of two periods of famine over the country due to weather conditions. Then the price of wheat went up and drove up the prices of all other goods correspondingly.

Although manors needed the ploughmen, the carters and drivers, the herdsmen, and the dairymaid on a full-time basis, other tenants spent increasing time in crafts and became village carpenters, smiths, weavers or millers' assistants. Trade and the towns grew.

Money rents often replaced service due to a lord, such as fish silver, malt silver, or barley silver. The lord's rights are being limited to the rights declared on the extents [records showing service due from each tenant] and the rolls of the manor. Sometimes land is granted to strangers because none of the kindred of the deceased will take it. Often a manor court limited a fee in land to certain issue instead of being inheritable by all heirs. Surveyors' poles marked boundaries declared by court in boundary disputes. This resulted in survey maps showing villages and cow pastures.

The revival of trade and the appearance of a money economy was undermining the long-established relationship between the lord of the manor and his villeins. As a result, money payments were supplementing or replacing payments in service and produce, as in this manor's holdings, when 3d. would buy food for a day:

"Extent of the manor of Bernehorne, made on Wednesday following the feast of St. Gregory the pope, in the thirty-fifth year of the reign of King Edward, in the presence of Brother Thomas, keeper of Marley, John de la More, and Adam de Thruhleghe, clerks, on the oath of William de Gococumbe, Walter le Parker, Richard le Knyst, Richard the son of the latter, Andrew of Estone, Stephen Morsprich, Thomas Brembel, William of Swynham, John Pollard, Roger le Glide, John Syward, and John de Lillingewist, who say that there are all the following holdings:... John Pollard holds a half acre in Aldithewisse and owes 18d. at the four terms, and owes for it relief and heriot. John Suthinton holds a house and 40 acres of land and owes 3s. 6d. at Easter and Michaelmas. William of Swynham holds one acre of meadow in the thicket of Swynham and owes 1d. at the feast of Michaelmas. Ralph of Leybourne holds a cottage and one acre of land in Pinden and owes 3s. at Easter and Michaelmas, and attendance at the court in the manor every three weeks, also relief and heriot. Richard Knyst of Swynham holds two acres and a half of land and owes yearly 4s. William of Knelle holds two acres of land in Aldithewisse and owes yearly 4s. Roger le Glide holds a cottage and three roods of land and owes 2s. 6d. Easter and Michaelmas. Alexander Hamound holds a little piece of land near Aldewisse and owes one goose of the value of 2d. The sum of the whole rent of the free tenants, with the value of the goose, is 18s. 9d. They say, moreover, that John of Cayworth holds a house and 30 acres of land, and owes yearly 2s. at Easter and Michaelmas; and he owes a cock and two hens at Christmas of the value of 4d. And he ought to harrow for two days at the Lenten sowing with one man and his own horse and his own harrow, the value of the work being 4d.; and he is to receive from the lord on each day three meals, of the value of 5d., and then the lord will be at a loss of 1d. Thus his harrowing is of no value to the service of the lord. And he ought to carry the manure of the lord for two days with one cart, with his own two oxen, the value of the work being 8d.; and he is to receive from the lord each day three meals at the value as above. And thus the service is worth 3d. clear. And he shall find one man for two days, for

mowing the meadow of the lord, who can mow, by estimation, one acre and a half, the value of the mowing of an acre being 6d.: the sum is therefore 9d. And he is to receive each day three meals of the value given above. And thus that mowing is worth 4d. clear. And he ought to gather and carry that same hay which he has cut, the price of the work being 3d. And he shall have from the lord two meals for one man, of the value of 1 1/2 d. Thus the work will be worth 1 1/2 d. clear. And he ought to carry the hay of the lord for one day with a cart and three animals of his own, the price of the work being 6d. And he shall have from the lord three meals of the value of 2 1/2 d. And thus the work is worth 3 1/2 d. clear. And he ought to carry in autumn beans or oats for two days with a cart and three animals of his own, the value of the work being 12d. And he shall receive from the lord each day three meals of the value given above. And thus the work is worth 7d. clear. And he ought to carry wood from the woods of the lord as far as the manor, for two days in summer, with a cart and three animals of his own, the value of the work being 9d. And he shall receive from the lord each day three meals of the price given above. And thus the work is worth 4d. clear. And he ought to find one man for two days to cut heath, the value of the work being 4d., and he shall have three meals each day of the value given above: and thus the lord will lose, if he receives the service, 3d. Thus that mowing is worth nothing to the service of the lord. And he ought to carry the heath which he has cut, the value of the work being 5d. And he shall receive from the lord three meals at the price of 2 1/2 d. And thus the work will be worth 2 1/2 d. clear. And he ought to carry to Battle, twice in the summer season, each time half a load of grain, the value of the service being 4d. And he shall receive in the manor each time one meal of the value of 2d. And thus the work is worth 2d. clear. The totals of the rents, with the value of the hens, is 2s. 4d. The total of the value of the works is 2s. 3 1/2 d., being owed from the said John yearly. William of Cayworth holds a house and 30 acres of land and owes at Easter and Michaelmas 2s. rent. And he shall do all customs just as the aforesaid John of Cayworth. William atte Grene holds a house and 30 acres of land and owes in all things the same as the said John. Alan atte Felde holds a house and 16 acres of land (for which the sergeant pays to the court of Bixley 2s.), and he owes at Easter and Michaelmas 4s., attendance at the manor court, relief, and heriot. John Lyllingwyst holds a house and four acres of land and owes at the two terms 2s., attendance at the manor court, relief, and heriot. The same John holds one acre of land in the fields of Hoo and owes at the two periods 2s., attendance, relief, and heriot. Reginald atte Denne holds a house and 18 acres of land and owes at the said periods 18d., attendance, relief, and heriot. Robert of Northehou holds three acres of land at Saltcote and owes at the said periods attendance, relief, and heriot. Total of the rents of the villeins, with the value of the hens, 20s. Total of all the works of these villeins, 6s. 10 1/2 d. And it is to be noted that none of the abovementioned villeins can give their daughters in marriage, nor cause their sons to be tonsured, nor can they cut down timber growing on the lands they hold, without license of the bailiff or sergeant of the lord, and then for building purposes and not otherwise. And after the death of any one of the aforesaid villeins, the lord shall have as a heriot his best animal, if he had any; if, however, he have no living beast, the lord shall have no heriot, as they say. The sons or daughters of the aforesaid villeins shall give, for entrance into the holding after the death of their predecessors, as much as they give of rent per year. Sylvester, the priest, holds one acre of meadow adjacent to his house and owes yearly 3s. Total of the rent of tenants for life, 3s. Petronilla atte Holme holds a cottage and a piece of land and owes at Easter and Michaelmas—; also, attendance, relief, and heriot. Walter Herying holds a cottage and a piece of land and owes at Easter and Michaelmas 18d., attendance, relief, and heriot. Isabella Mariner holds a cottage and owes at the feast of St. Michael 12d., attendance, relief, and heriot. Jordan atte Melle holds a cottage and 1 1/2 acres of land and owes at Easter and Michaelmas 2s., attendance, relief, and heriot. William of Batelesmere holds one acre of land with a cottage and owes at the feast of St. Michael 3d., and one cock and one hen at Christmas of the value of 3d., attendance, relief, and heriot. John le Man holds half an acre of land with a cottage and owes at the feast of St. Michael 2s., attendance, relief, and heriot. Hohn Werthe holds one rood of land with a cottage and owes at the said term 18d., attendance, relief, and heriot. Geoffrey Caumbreis holds half an acre and a cottage and owes at the said term 18d., attendance, relief, and heriot. William Hassok holds one rood of land and a cottage and owes at the said term 18d., attendance, relief, and heriot. The same man holds 3 1/2 acres of land and owes yearly at the feast of St. Michael 3s. for all. Roger Doget holds half an acre of land and a cottage, which were those of R. the miller, and owes at the feast of St. Michael 18d., attendance, relief, and heriot. Thomas le Brod holds one acre and a cottage and owes at the said term 3s., attendance, relief, and heriot. Agnes of Cayworth holds half an acre and a cottage and owes at the said term 18d., attendance, relief, and heriot. Total of the rents of the said cottagers, with the value of the hens, 34s. 6d. And it is to be noted that all the said cottagers shall do as regards giving their

Our Legal Heritage

daughters in marriage, having their sons tonsured, cutting down timber, paying heriot, and giving fines for entrance, just as John of Cayworth and the rest of the villeins above mentioned. "

The above fines and penalties, with heriots and reliefs, are worth 5s. yearly.

Most villeins did not venture beyond their village except for about ten miles to a local shrine or great fair a couple times a year. Often one village was divided up among two or more manors, so different manorial customs made living conditions different among the villagers. Each villein had his own garden in which to grow fruit and vegetables next to his house, a pig (which fattened more quickly than other animals), strips in the common field, and sometimes an assart [a few acres of his own to cultivate as he pleased on originally rough uncultivated waste land beyond the common fields and the enclosed common pastures and meadows].

People told time by counting the number of rings of the church bell, which rang on the hour. Every Sunday, the villagers went to church, which was typically the most elaborate and centrally located building in the village. Their religion brought comfort and hope of going to heaven after judgment by God at their death if they avoided sin. On festival days, Bible stories, legends, and lives of saints were read or performed as miracle dramas. They learned to avoid the devil, who was influential in lonely places like forests and high mountains. At death, the corpse was washed, shrouded, and put into a rectangular coffin with a cross on its lid. Priests sang prayers amid burning incense for the deliverance of the soul to God while interring the coffin into the ground.

A villein could be forever set free from servitude by his lord as in this example:

"To all the faithful of Christ to whom the present writing shall come, Richard, by the divine permission, abbot of Peterborough and of the Convent of the same place, eternal greeting in the Lord:

Let all know that we have manumitted and liberated from all yoke of servitude William, the son of Richard of Wythington, whom previously we have held as our born bondman, with his whole progeny and all his chattels, so that neither we nor our successors shall be able to require or exact any right or claim in the said William, his progeny, or his chattels. But the same William, with his whole progeny and all his chattels, shall remain free and quit and without disturbance, exaction, or any claim on the part of us or our successors by reason of any servitude forever.

We will, moreover, and concede that he and his heirs shall hold the messuages, land, rents, and meadows in Wythington which his ancestors held from us and our predecessors, by giving and performing the fine which is called merchet for giving his daughter in marriage, and tallage from year to year according to our will,—that he shall have and hold these for the future from us and our successors freely, quietly, peacefully, and hereditarily, by paying to us and our successors yearly 40 s. sterling, at the four terms of the year, namely: at St. John the Baptist's day 10s., at Michaelmas 10s., at Christmas 10s., and at Easter 10s., for all service, exaction, custom, and secular demand; saving to us, nevertheless, attendance at our court of Castre every three weeks, wardship, and relief, and outside service of our lord the King, when they shall happen.

And if it shall happen that the said William or his heirs shall die at any time without an heir, the said messuage, land rents, and meadows with their appurtenances shall return fully and completely to us and our successors. Nor will it be allowed to the said William or his heirs to give, sell, alienate, mortgage, or encumber in any way, the said messuage, land, rents, and meadows, or any part of them, by which the said messuage, land, rents, and meadows should not return to us and our successors in the form declared above. And if this should occur later, their deed shall be declared null, and what is thus alienated shall come to us and our successors ...

Given at Borough, for the love of Lord Robert of good memory, once abbot, our predecessor and maternal uncle of the said William, and at the instance of the good man, Brother Hugh of Mutton, relative of the said abbot Robert, A.D. 1278, on the eve of Pentecost."

Villeins who were released from the manorial organization by commutation of their service for a money payment took the name of their craft as part of their name, such as, for the manufacture of textiles, Weaver, Draper, Comber, Fuller, Napper, Cissor, Tailor, Textor; for metal-work, Faber, Ironmonger; for leatherwork, Tanner; for woodwork, building and carpentry, Carpenter, Cooper, Mason, Pictor; for food-production, Baker, Pistor. Iron, tin, lead, salt, and even coal were providing increasing numbers of people with a livelihood.

Many new boroughs were founded as grants of market rights by the King grew in number. These grants implied the advantage of the King's protection. In fact, a certain flooded town was replaced with a new town planned with square blocks. It was the charter which distinguished the borough community from the other communities existing in the country. It invested each borough with a distinct character. The privileges which the

Our Legal Heritage

charter conferred were different indifferent places. It might give trading privileges: freedom from toll, a guild merchant, a right to hold a fair. It might give jurisdictional privileges: a right to hold court with greater or less franchises. It might give governmental privileges: freedom from the burden of attending the hundred and county courts, the return of writs, which meant the right to exclude the royal officials, the right to take the profits of the borough, paying for them a fixed sum to the Crown or other lord of the borough, the right to elect their own officials rather than them being appointed by the King or a lord, and the right to provide for the government of the borough. It might give tenurial privileges: the power to make a will of lands, or freedom from the right of a lord to control his tenants' marriages. It might give procedural privileges: trial by battle is excluded, and trial by compurgation is secured and regulated. These medieval borough charters are very varied, and represent all stages of development and all grades of franchise. Boroughs bought increasing rights and freedoms from their lord, who was usually the King.

In the larger towns, where cathedrals and public building were built, there arose a system for teaching these technical skills and elaborate handicraft, wood, metal, stained glass, and stone work. A boy from the town would be bound over to a particular workman, who supplied him with board and clothing. After a few years of this apprenticeship, he became a journeyman and perfected his knowledge of his craft and its standards by seeing different methods and results in various towns. He was admitted as a master of his trade to a guild upon presenting an article of his work worthy of that guild's standard of workmanship: his "masterpiece". The tailors' guild and the skinners' guild are extant now.

When guilds performed morality plays based on Bible stories at town festivals, there was usually a tie between the Bible story and the guild's craft. For instance, the story of the loaves and fishes would be performed by the Bakers' or Fishmongers' Guild. The theme of the morality play was the fight of the Seven Cardinal Virtues against the Seven Deadly Sins for the human soul, a life-long battle.

A borough was run by a mayor elected usually for life. By being members of a guild, merchant-traders and craftsmen acquired the legal status of burgesses and had the freedom of the borough. Each guild occupied a certain ward of the town headed by an alderman. The town aldermen made up the town council, which advised the mayor. Often there were town police, bailiffs, beadles [messengers], a town-cryer, and a town clerk. No longer were towns dominated by the local landowners.

In London by this time there was a wall with four towers surrounding the White Tower, and this castle was known as the Tower of London. Another wall and a moat were built around it and it has reached its final form. Hovels, shops, and waste patches alternated with high walls and imposing gateways protecting mansions. The mansions had orchards, gardens, stables, brewhouses, bakeries, guardrooms, and chapels. London streets were paved with cobbles and sand. Each citizen was to keep the street in front of his tenement in good repair. Later, each alderman appointed four reputable men to repair and clean the streets for wages. Prostitutes were expelled from the city because the street with their bawdy houses had become very noisy.

London had twenty four wards. The aldermen for the first time included a fishmonger in 1291. The Fishmongers were the only guild at this time, besides the weavers, which had independent jurisdiction, as they had transferred control of their weekly hall moot from a public official to themselves. Craftsmen began to take other public offices too. Other city offices were: recorder, prosecutor, common sergeant, and attorneys. Each ward chose certain of its inhabitants to be councilors to the aldermen. This council was to be consulted by him and its advice to be followed. Admission to freedom of the city [citizenship] was controlled by the citizens. Apprentices had to finish their terms before such admission. Craftsmen had to have sureties from their crafts as of 1319. No longer could one simply purchase citizenship. Only freemen could sell wares in the city, a custom of at least two hundred years.

In 1275, a goldsmith was chief assay-master of the King's mint and keeper of the exchange at London. The King gave the Goldsmiths' Company the right of assay [determination of the quantity of gold or silver in an object] and required that no vessels of gold or silver should leave the maker's hands until they had been tested by the wardens and stamped appropriately. In 1279, goldsmith William Farrington bought the soke of the ward containing the goldsmiths' shops. It remained in his family for 80 years. A patent of 1327 empowered the guild to elect a properly qualified governing body to superintend its affairs, and reform subjects of just complaint. It also prescribed, as a safeguard against a prevailing fraud and abuse, that all members of the trade should have their standing in Cheapside or in the King's exchange, and that no gold or silver should be manufactured for export,

Our Legal Heritage

except that which had been bought at the exchange or of the trade openly.

There was a problem with malefactors committing offenses in London and avoiding its jurisdiction by escaping to Southwark across the Thames River. So Southwark was put under the jurisdiction of London for peace and order matters by grant of the King. London forbade games being played because they had replaced practice in archery, which was necessary for defense.

Exports and imports were no longer a tiny margin in an economy just above the subsistence level. Raw wool, cloth, grain, and herring were exported. Wine, silk, timber, furs, rubies, emeralds, fruits, raisins, currents, pepper, ginger, and cloves were imported. They were transported in ships with two masts upon which sails could be furled and which had the recently invented rudder. Many duties of sheriffs and coroners were transferred to county landowners by commissions. In coastal counties, there were such commissions for supervising coastal defense and maintaining the beacons. Ports had a vigilant coastguard and well-maintained harbors, quays, and streets. A customs revenue was collected on exports and imports.

Women could inherit land in certain circumstances. Some tenants holding land in chief of the King were women.

Regulation of trade became national instead of local. Responsibility for the coinage was transferred from the individual moneyers working in different boroughs to a central official who was to become Master of the Mint. The round half penny and farthing [$\frac{1}{4}$ penny] were created so that the penny needn't be cut into halves and quarters anymore.

Edward called a meeting of representatives from all social and geographic sectors of the nation at one Parliament to determine taxes due to the Crown. He declared that "what touches all, should be approved by all". He wanted taxes from the burgesses in the towns and the clergy's ecclesiastical property as well as from landholders. He argued to the clergy that if barons had to both fight and pay, they who could do no fighting must at least pay, and compelled them to renounce all Papal orders contrary to the King's authority. This new system of taxation began the decline of the imposition of feudal aids, scutages, and carucage. The aids of the boroughs, counties, and church had been negotiated by the Exchequer with the reeves of each town, the sheriff and shire courts of each county, and the archdeacons of each diocese.

This Model Parliament of 1295 was composed of the three communities. The first were the lords. Because of the increase of lesser barons due to a long national peace and prosperity, the lords attending were reduced in numbers and peerage became dependent not on land tenure, but on royal writ of summons. The second community was the clergy, represented by the bishops of each diocese. They later declined to attend. The third community was the commons. It was composed of two burgesses elected by principal burgesses of each borough and two elected knights representing each county. The common people now had a voice in law-making. The first legislation proposed by the commons was alteration of the forest laws governing the royal pleasure parks. Such a statute was passed in a bargain for taxes of a percentage of all moveables, which were mostly foodstuffs and animals.

Parliament soon was required to meet once or twice yearly. Lawmaking is now a function of Parliament, of which the King's council is a part, instead of a function of the King with his council and judges. However, legislation may be passed without the consent of the commons. Also, there was no convention that agreement or even the presence of representatives was required for legislation. The Chief Justices still had, as members of the council, a real voice in the making of laws. The King and his justices might, after a statute has been made, put an authoritative interpretation upon it.

Most petitions to Parliament were private grievances of individuals, including people of no social rank, such as prisoners. Other petitions were from communities and groups.

The commons became a permanent and distinct body with its own clerk in Edward III's reign.

The export of wool had increased and Parliament made permanent customs duties on the export of wool, woolfells, and hides at 6s. 8d. per sack, which was collected at each of the thirteen ports.

Sheriffs were elected in their own counties rather than appointed by the King as of 1297.

Lawyers are now drawn from the knightly class instead of ecclesiastical people. Law no longer belongs to the church, but to the knightly class of landed gentlemen. The Inns of Court in London provide legal education and certify members to the bar.

From 1299, statutes were recorded in a Statute Roll as they were enacted.

Our Legal Heritage

By the end of the thirteenth century, the King's wardrobe, where confidential matters such as military affairs were discussed in his bedroom, became a department of state with the privy seal. It paid and provisioned the knights, squires, and sergeants of the King and was composed mostly of civil servants. It traveled with the King. The other two specialized administrative bodies were the Exchequer, which received most of the royal revenue and kept accounts at Westminster in London, and the Chancery, which wrote royal writs, charters, and letters.

As of 1336, importing foreign cloth or fur, except for use by the King's family, was prohibited, as was the export of unwoven wool. Later, this was relaxed and a customs tax of 33% was imposed on wool exported. Foreign cloth-workers may come to live in the nation, be granted franchises, and shall be in the King's protection. No cloth may be exported until it is fulled.

Edward I confirmed the Magna Carta. He also agreed not to impose taxes without the consent of Parliament after baronial pressure had forced him to retreat from trying to increase, for a war in France, the customs tax on every exported sack of wool to 40s. from the 6s. 8d. per sack it had been since 1275. The customs tax was finally fixed at 10s. for every sack of wool, 2s. for each tun of wine, and 6d. for every pound's worth of other goods. A tax system of "tenths and fifteenths" levied on moveables or chattels every year also came into being. Never again did a King impose a tax without the consent of Parliament. Edward also confirmed the Forest Charter, which called for its earlier boundaries. And he agreed not to impound any grain or wool or and like against the will of the owners, as had been done before to collect taxes. Lastly, he agreed not to impose penalties on two earls and their supporters for refusing to serve in the war in France.

There was a recoinage due to debasement of the old coinage. This increased the number of coins in circulation. The price of wheat went from about 7s. in 1270 to about 5s. per quarter in 1280. Also the price of an ox went from 14s. to 10s. From 1280 to 1290, there was runaway inflation.

As before, inadequate care and ignorance of nutrition caused many infant deaths. Accidents and disease were so prevalent that death was always near and life insecure. Many women died in childbirth.

Under Edward II, all citizens of London had to be enrolled in the trade guild of their craft.

To support a war with France, Edward III created the staple system, by which wool exports were taxed through his officials only at the designated staple port. Certain large wool merchants were allowed to create a monopoly on the export of wool. Also under Edward III, Flanders weavers were encouraged to come to England to teach the English how to weave and finish fine cloth. A cloth industry grew with all the manufacturing processes under the supervision of one capitalist manufacturer, who set up his enterprise in the country to avoid the regulations of the towns. The best places were hilly areas where there were many streams and good pasture for flocks of sheep. He hired shearers to cut the nap as short as possible to give a smooth surface, then spinsters to card and spin the wool in their country cottages, then weavers, and then fullers and dyers to come to fulling mills established near streams for their waterpower. Fulling became mechanized as heavy wooden hammers run by water-power replaced feet trampling the cloth covered with soap or fuller's clay, until it became thick and smaller. The shaft loom was a technological advance in weaving. This loom was horizontal and its frames, which controlled the lifting of the warp threads, could each be raised by a foot treadle. This left both hands free to throw and catch the shuttle attached to the woof thread. Also many more weaving patterns became possible through the use of different thread configurations on the frames.

—The Law—

Edward I remodeled the law in response to grievances and to problems which came up in the courts. The changes improved the efficiency of justice and served to accommodate it to the changing circumstances of the social system. These statutes were:

"No man by force of arms, malice or menacing shall disturb anyone in making free election [of sheriffs, coroners, conservators of the peace by freeholders of the shire]."

"No city, borough, town, nor man shall be amerced without reasonable cause and according to the severity of his trespass. That is, every freeman saving his freehold, a merchant saving his merchandise, a villein saving his waynage [implements of agriculture], and that by his peers."

No distress shall be taken of ploughing cattle or sheep.

Young salmon shall not be taken from waters in the spring.

No loan shall be made for interest.

If an heir who is a minor is married off without the consent of the guardian, the value of the marriage will be

Our Legal Heritage

lost and the wrongdoer imprisoned. If anyone marries off an heir over 14 years of age without the consent of the guardian, the guardian shall have double the value of the marriage. Moreover, anyone who has withdrawn a marriage shall pay the full value thereof to the guardian for the trespass and make amends to the King. And if a Lord refuses to marry off a female heir of full age and keep her unmarried because he covets the land, then he shall not have her lands more than two years after she reaches full age, at which time she can recover her inheritance without giving anything for the wardship or her marriage. However, if she maliciously refuses to be married by her Lord, he may hold her land and inheritance until she is the age of a male heir, that is, twenty one years old and further until he has taken the value of the marriage.

Aid to make one's son a knight or marry off his daughter of a whole knight's fee shall be taken 20s., and 400s.[yearly income from] land held in socage 20s. [5%], and of more, more; and of less, less; after the rate. And none shall levy such aid to make his son a knight until his son is 15 years old, nor to marry his daughter until she is seven year old.

A conveyance of land which is the inheritance of a minor child by his guardian or lord to another is void.

Dower shall not abate because the widow has received dower of another man unless part of the first dower received was of the same tenant and in the same town. But a woman who leaves her husband for another man is barred from dower.

A tenant for a term of years who has let land from a landlord shall not let it lie waste, nor shall a landlord attempt to oust a tenant for a term of years by fictitious recoveries.

When two or more hold wood, turfland, or fishing or other such thing in common, wherein none knows his several, and one does waste against the minds of the others, he may be sued.

Lands which are given to a man and his wife upon condition that if they die without heirs, the land shall revert to the donor or his heir, may not be alienated to defeat this condition.

If a man takes land in marriage with a wife, and she dies before him, the land will revert to the donor or his heir, unless they have a child, in which case the husband will have the land by the courtesy of the nation for his life before it reverts to the donor or his heir.

A free tenant may alienate his land freely, but if the alienation was for an estate in fee simple [to a man and his heirs], the person acquiring the land would hold of the land's lord and not of the person alienating the land. (This halted the growth of subinfeudation and caused services as well as incidents of aids, relief, escheat, wardship, and marriage to go directly to the Chief Lord. It also advantaged the Crown as overlord, which then acquired more direct tenants.)

One may create an estate which will descend in unbroken succession down the line of inheritance prescribed in the original gift as long as that line should last, instead of descending to all heirs. The successive occupants might draw the rents and cut the wood, but on the death of each, his heir would take possession of an unencumbered interest, unfettered by any liability for the debt of his ancestor or by any disposition made by him during his lifetime e.g. a wife's estate in dower or a husband's estate in courtesy. If there was no issue, it reverted to the original donor. (This curtailed the advantage of tenants of the greater barons who profited by increased wardships and reliefs from subinfeudation from subdivision and better cultivation of their land while still paying the greater barons fixed sums. This statute [Quia Emptores] that protected reversionary estates incidentally established a system of entails. This new manner of holding land: "fee tail", is in addition to the concepts of land held in fee simple and land held for life. Interests in remainder or reversion of estates in land replace the lord's tenurial right to succeed to land by escheat if his tenant dies without heirs.)

In Kent, all men are free and may give or sell their lands without permission of their lords, as before the Conquest. (Since Kent was nearest the continent, money flowed between England and the continent through Kent. So Kent never developed a manorial system of land holding, but evolved from a system of clans and independent villages directly into a commercial system.

Anyone disseising another whereby he also robs him or uses force and arms in the disseisin shall be imprisoned and fined. The plaintiff shall recover seisin and damages.

"All must be ready at the command and summons of sheriffs, and at the cry of the country, to sue and arrest felons as necessary as well within franchise as without." Otherwise, he shall be fined. A Lord defaulting shall lose his franchise to the King. A Bailiff defaulting shall be imprisoned a year as well as fined, or be imprisoned two years if he cannot pay the fine. A sheriff, coroner, or any other bailiff who conceals a felony will be imprisoned

Our Legal Heritage

for a year and pay a fine, or be imprisoned for three years if he cannot pay the fine.

Villeins must report felons, pursue felons, serve in the watch, and clear growth of concealing underwood from roads. They must join the military to fight on the borders when called. Desertion from the army is punishable.

Accessories to a crime shall not be declared outlaw before the principal is proven guilty. (This made uniform the practice of the various shires.)

Only those imprisoned for the smaller offenses of a single incidence of petty larceny, receipt of felons, or accessory to a felony, or some other trespass not punishable by life or limb shall be let out by sufficient surety. Prisoners who were outlawed or escaped from prison or are notorious thieves or were imprisoned for felonious house-burning, passing false money, counterfeiting the King's seal, treason touching the King himself, or other major offenses or have been excommunicated by the church may not be released.

Killing in self-defense and by mischance shall be pardoned from the King's indictment. Killing by a child or a person of unsound mind shall be pardoned from the King's indictment. (But a private accuser can still sue.)

Any man who ravishes [abducts] any woman without her consent or by force shall have the criminal penalty of loss of life or limb. (The criminal penalty used to be just two years in prison.)

Trespasses [serious and forcible breaches of the peace] in parks or ponds shall be punished by imprisonment for three years and a fine as well as paying damages to the wronged person. After his imprisonment, he shall find a surety or leave the nation.

"Forasmuch as there have been often times found in the country devisors of tales, where discord, or occasion of discord, has many times arisen between the King and his people, or great men of this realm; For the damage that has and may thereof ensue, it is commanded, that from henceforth none be so hardy to tell or publish any false news or tales, whereby discord or occasion of discord or slander may grow between the King and his people, or the great men of the realm." Anyone doing so shall be imprisoned until he brings into the court the first author of the tale.

A system of registration and enforcement of commercial agreements was established by statute. Merchants could obtain a writing of a debt sealed by the debtor and authenticated by royal seal or a seal of a mayor of certain towns, and kept by the creditor. Failure to pay a such a debt was punishable by imprisonment and, after three months, the selling of borough tenements and chattels and of shire lands. During the three months, the merchant held this property in a new tenure of "statute merchant". (Prior to this, it was difficult for a foreign merchant to collect a debt because he could not appear in court which did not recognize him as one of its proper "sutors" or constituents, so he had to trust a local attorney. Also, the remedy was inadequate because the history of the law of debt was based on debt as a substitute for the blood feud, so that failure to pay meant slavery or death. Also a debtor's land was protected by feudal custom, which was contrary to the idea of imposing a new tenant on a lord.)

"In no city, borough, town, market, or fair shall a person of the realm be distrained for a debt for which he is not the debtor or pledge."

Anyone making those passing with goods through their jurisdiction answer to them in excess of their jurisdiction shall be grievously amerced to the King.

No market town shall take an outrageous toll contrary to the common custom of the nation.

Since good sterling money has been counterfeited with base and false metal outside the nation and then brought in, foreigners found in the nation's ports with this false money shall forfeit their lives. Anyone bringing foreign money into the nation must have it examined at his port of entry. Payments of money shall be made only by coin of the appropriate weight delivered by the Warden of the Exchange and marked with the King's mark. (A currency exchange was established at Dover for the exchange of foreign currency for English sterling.)

The silver in craftwork must be sterling and marked with the Leopard's Head. The gold in craftwork must meet the standard of the Touch of Paris.

The assize of bread and ale had been and was enforced locally by local inspectors. Now, the Crown appointed royal officers for the gauge of wines and measurement of cloths. Edicts disallowed middlemen from raising prices against consumers by such practices as forestalling or engrossing and price regulation was attempted. For instance, prices were set for poultry and lamb, in a period of plenty (1299). Maximum prices were set for cattle, pigs, sheep, poultry, and eggs in 1314, but was hard to enforce. In London examples of prices set are: best hen 3d.2q., best wild goose 4d., best rabbit 4d., best kid 10d., best lamb 4d., best fresh herrings 12 for 1d., best pickled herrings 20 for 1d., best haddock 2d., best fresh salmon 3s.,

Our Legal Heritage

Freemen may drive their swine through the King's demesne Forest in order to agest them in their own woods or elsewhere. No man shall lose his life or limb for killing deer in the Forest, but instead shall be grievously fined or imprisoned for a year.

The Forest Charter allowed a man to cut down and take wood from his own woods in the King's forest to repair his house, fences, and hedges. He may also enclose his woods in the King's forest with fences and hedges to grow new trees and keep cattle and beasts therefrom. After seven years growth of these new trees, he may cut them down for sale with the King's permission.

Each borough has its own civil and criminal ordinances and police jurisdiction. Borough courts tended to deal with more laws than other local courts because of the borough's denser populations, which were composed of merchants, manufacturers, and traders, as well as those engaged in agriculture. Only borough courts have jurisdiction over fairs. In some boroughs the villein who resides for a year and a day becomes free. There are special ordinances relating to apprentices. There are sometimes ordinances against enticing away servants bound by agreement to serve another. The wife who is a trader is regarded in many places as a *femme sole*. There may be special ordinances as to the liability of masters for the acts of their apprentices and agents, or as to brokers, debt, or earnest money binding a bargain. The criminal and police jurisdiction in the borough was organized upon the same model as in the country at large, and was controlled by the King's courts upon similar principles, though there are some survivals of old rules, such as mention of the *bot* and the *wer*. The crimes committed are similar to those of the country, such as violence, breaches of the assize of bread and beer, stirring up suits before the ecclesiastical courts, digging up or obstructing the highway, not being enrolled in a tithing, encroachments upon or obstructions of rights of common. The most striking difference with the country at large are the ordinances on the repair or demolition of buildings, encroachments on another's building, fires, and nuisances. Specimens of other characteristic urban disputes are: selling bad food, using bad materials, unskillful or careless workmanship, fraudulent weights and measures, fraud in buying and selling, forestalling or regrating, acting in a way likely to endanger the liberties of the borough, usury, trading without being a citizen, assisting other unlicensed persons to trade, unlawfully forming a guild, complaints against various guilds in which trade might be organized. Since the ordinances were always liable to be called in question before the King's courts, they tended to become uniform and in harmony with the principles of the common law. Also, trading between boroughs kept them knowledgeable about each other's customs and conditions for trade, which then tended to standardize. Boroughs often had seals to prove communal consent and tended to act as a corporate body.

Borough ordinances often include arson such as this one: "And if a street be set on fire by any one, his body shall be attached and cast into the midst of the fire." Robbery by the miller was specially treated by an ordinance that "And if the miller be attainted of robbery of the grain or of the flour to the amount of 4d., he shall be hanged from the beam in his mill."

In London, an ordinance prescribed for bakers for the first offense of making false bread a forfeiture of that bread. For the second offense was prescribed imprisonment, and for the third offense placement in the pillory. A London ordinance for millers who caused bread to be false prescribed for them to be carried in a tumbrel cart through certain streets, exposed to the derision of the people.

By statute, no one may make a gift or alienation of land to the church. An attempt to do so will cause the land to escheat to the lord, or in his default, to the King. Religious houses may not alienate land given to them by the King or other patrons because such gifts were for the sake of someone's soul. An attempt to do so will cause the land to revert to the donor or his heir. If the church did not say the prayers or do the other actions for which land was given to it, the land will revert to the donor or his heir. The church shall send no money out of the nation.

"Concerning wrecks of the sea, where a man, a dog, or a cat escape alive out of the ship, that such ship nor barge nor anything within them shall be deemed wreck, but the goods shall be saved and kept by view of the Sheriff, Coroner, or the King's Bailiff". If anyone proves the goods were his within a year and a day, they shall be restored to him without delay. Otherwise, they shall be kept by the King. "And where wreck belongs to one other than the King, he shall have it in like manner". If he does otherwise, he shall be imprisoned and pay damages and fine.

Some statutes applied only to Kent County, which had a unique position between London and the continent. One could sell or give away his land without the consent of one's lord. The services of the land, however, could only be sold to the chief lord. Inheritance of land was to all sons by equal portions, and if there were no sons, then

Our Legal Heritage

to all daughters in equal portions. The eldest brother has his choice of portion, then the next oldest, etc. The goods of a deceased person were divided into three parts after his funeral expenses and debts were paid. One third went to the surviving spouse. One third went to the deceased's sons and daughters. One third could be disposed by will of the decedent. If there were no children, one half went to the spouse and one half went according to will. If an heir was under 15 years old, his next of kin to whom inheritance could not descend was to be his guardian. A wife who remarried or bore a child lost her dower land. A husband lost his dower if he remarried. If a tenant withheld rent or services, his lord could seek award of court to find distress on his tenement and if he could find none, he could take the tenement for a year and a day in his hands without manuring it. If the tenant paid up in this time, he got the tenement back. If he didn't within a year and a day, however, the lord could manure the land. A felon forfeited his life and his goods, but not his lands or tenements. A wife of a felon had the dower of one half or her husband's lands and tenements.

The common law recognized the tort of false imprisonment if a man arrested as a felon, a person who was not a felon.

Ecclesiastical courts were successful in their competition with the secular courts for jurisdiction over testamentary [concerning wills] and intestate succession [no will] to chattels. Its law made a woman's chattels the property of her husband upon marriage. She also lost all power over her land during marriage. A husband became liable for his wife's torts. Promises under oath were not recognized for married women.

Land may not be alienated to religious bodies in such a way that it would cease to render its due service to the King.

—Judicial Procedure—

The writ of Quo Warranto [by what right] is created, by which all landowners exercising jurisdictions must bring their ancestors' charters before a justice in eyre for the Common Pleas for examination and interpretation as to whether they were going beyond their charters and infringing upon the jurisdiction of the Royal Court. As a result, many manor courts were confined to seigneurial matters and could no longer view frankpledge or hear criminal cases, which were reserved for the royal courts. In the manor courts which retained criminal jurisdiction, there was a reassertion of the obligation to have present a royal coroner, whose duty it was to see that royal rights were not infringed and that the goods of felons were given to the Crown and not kept by the lords.

The supreme court was Parliament. Next were the royal courts of the King's Bench, Common Pleas, and the Exchequer, which had become separate, each with its own justices and records. The Court of Common Pleas had its own Chief Justice and usually met at Westminster. This disadvantaged the small farmer, who would have to travel to Westminster to present a case. The Court of the King's Bench heard criminal cases and appeals from the Court of Common Pleas. It traveled with the King. There were many trespass cases so heard by it in the reign of Edward I. In criminal cases, witnesses acquainted with particular facts were added to the general assize of twelve men from each hundred and four men from each town.

The most common cases in the Court of Common Pleas were "detinue" [wrongful detention of a good or chattel which had been loaned, rented, or left for safe-keeping with a "bailee", but belonged to the plaintiff], "debt" [for money due from a sale, for money loaned, for rent upon a lease for years, from a surety, promised in a sealed document, or due to arbitrators to whom a dispute had been submitted] and "account" [e.g. by bailiffs of manors, the guardian in socage, and partners]. It also heard estovers of wood, profit by gathering nuts, acorns, and other fruits in wood, corody, yearly delivery of grain, toll, tronage, passage [pawnage], keeping of parks, woods, forests, chases, warrens, gates, and other bailiwicks, and offices in fee.

The justices in eyre gradually ceased to perform administrative duties on their eyres because landed society had objected to their intrusiveness.

Breaches of the forest charter laws were determined by justices of the King's forest, parks, and chases, along with men of assize.

Coroners' inquest procedures were delineated by statute and included describing in detail in the coroner's rolls every wound of a dead body, how many may be culpable, and people claiming to have found treasure who might be suspects.

There were local courts of the vill, borough, manor, hundred, county, sheriff, escheator, and royal bailiff, with overlapping jurisdictions.

In the manor courts, actions of debt, detinue, and covenant were frequent. Sometimes there are questions of a

Our Legal Heritage

breach of warranty of title in agreements of sale of land. Accusations of defamation were frequent; this offense could not be taken to the King's court, but it had been recognized as an offense in the Anglo-Saxon laws. In some cases, the damages caused are specifically stated. For instance, defamation of a lord's grain cause other purchasers to forbear buying it. There are frequent cases of ordinary thefts, trespasses, and assaults. The courts did rough but substantial justice without distinction between concepts such as tort and contract. In fact, the action of covenant was the only form of agreement enforceable at common law. It required a writing under seal and awarded damages. Their law was not technical, but elastic, and remedies could include injunctions, salary attachment, and performance of acts.

The precedent for punishment for treason was established by the conviction of a knight, David ab Gruffydd, who had turned traitor to the Welsh enemy during the conquest of Wales and plotted to kill the King. He was condemned to be dragged at the heels of horses for being a traitor to his knightly vows, hanged by the neck for his murders, cut down before consciousness left him to have his entrails cut out for committing his crimes during the holy week of Easter, and his head cut off and his body divided into four parts for plotting against the King's life. The head and body sections were placed in public view at various locations in the nation. Prior to this the penalty was imprisonment usually followed by ransom.

Trial by battle is now limited to certain claims of enfeoffment of large land holding and is barred for land held in socage, burgage, or by marriage. Assize is the usual manner of trial, but compurgation remains in the borough court long after it becomes obsolete in the royal courts. Defendants no longer request assizes but are automatically put to them.

Numerous statutes protect the integrity of the courts and King's offices by double and treble damages and imprisonment for offenses such as bribery, false informers, conspiracy to falsely move or maintain pleas, champerty [giving an interest in the outcome of a case to a person for his assistance in litigating it], conflict of interest by court officers by having a part in the business or thing at issue. There had been many abuses, the most common of which was extortion by sheriffs, who jailed people without cause to make them pay to be released.

The King reserved to himself and his council in its judicial capacity the correction of all breaches of the law which the lower courts had failed to remedy, whether from weakness, partiality, or corruption, and especially when the powerful barons defied the courts.

The Court of Hustings in London is empowered to award landlords their tenements for which rent or services are in arrears if the landlord could not distrain enough tenant possessions to cover the arrearages.

Wills are proven in the Court of Husting, the oldest court in London, which went back to the times of Edward the Confessor. One such proven will is:

"Tour (John de La)—To Robert his eldest son his capital messuage and wharf in the parish of Berchingechurch near the land called 'Berewardesland'. To Agnes his wife his house called 'Wyvelattestone', together with rents, reversions, etc. in the parish of S. Dunstan towards the Tower, for life; remainder to Stephen his son. To Peter and Edmund his sons lands and rents in the parish of All Hallows de Berhyngeschurch; remainders over in default of heirs. To Agnes, wife of John le Keu, fishmonger, a house situate in the same parish of Berhyng, at a peppercorn [nominal] rent."

The Court of the Mayor of London heard diverse cases, including disputes over goods, faulty goods, enhancing the price of goods, using unlawful weighing beams, debts, theft, distrains, tavern-brawling, bullying, and gambling. The following four cases pertain to customs, bad grain, surgery, and apprenticeship, respectively.

"John le Paumer was summoned to answer Richer de Refham, Sheriff, in a plea that, whereas the defendant and his Society of Bermen [carriers] in the City were sworn not to carry any wine, by land or water, for the use of citizens or others, without the Sheriff's mark, nor lead nor cause it to be led, whereby the Sheriff might be defrauded of his customs, nevertheless he caused four casks of wine belonging to Ralph le Mazun of Westminster to be carried from the City of Westminster without the Sheriff's mark, thus defrauding the latter of his customs in contempt of the King etc. The defendant acknowledged the trespass. Judgment that he remain in the custody of the Sheriff till he satisfy the King and the Court for offense."

"Walter atte Belhaus, William atte Belhous, Robert le Barber dwelling at Ewelleshalle, John de Lewes, Gilbert le Gras, John his son, Roger le Mortimer, William Ballard atte Hole, Peter de Sheperton, John Brun and the wife of Thomas the pelterer, Stephen de Haddeham, William de Goryngg, Margery de Frydaiestrate, Mariot, who dwells in the house of William de Harwe, and William de Hendone were attached to answer for forestalling all

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kinds of grain and exposing it, together with putrid grain, on the pavement, for sale by the bushel, through their men and women servants; and for buying their own grain from their own servants in deception of the people. The defendants denied that they were guilty and put themselves on their country. A jury of Richard de Hockeleye and others brought in a verdict of guilty, and the defendants were committed to prison til the next Parliament."

"Peter the Surgeon acknowledged himself bound to Ralph de Mortimer, by Richard atte Hill his attorney, in the sum of 20s., payable at certain terms, the said Ralph undertaking to give Peter a letter of acquittance [release from a debt]. This Recognizance arose out of a covenant between them with regard to the effecting of a cure. Both were amerced for coming to an agreement out of Court. A precept was issued to summon all the surgeons of the City for Friday, that an enquiry might be made as to whether the above Peter was fitted to enjoy the profession of a surgeon."

"Thomas de Kydemenstre, shoemaker, was summoned to answer William de Beverlee, because he did not clothe, feed and instruct his apprentice Thomas, William's son, but drove him away. The defendant said that the apprentice lent his master's goods to others and promised to restore them or their value, but went away against his wish; and he demanded a jury. Subsequently, a jury of William de Upton and others said the apprentice lent two pairs of shoes belonging to his master and was told to restore them, but, frightened by the beating which he received, ran away; further that the master did not feed and clothe his apprentice as he ought, being unable to do so, to the apprentice's damage 40d., but that he was now in a position to look after his apprentice. Thereupon Thomas de Kydemenstre said he was willing to have the apprentice back and provide for him, and the father agreed. Judgment that the master take back the apprentice and feed and instruct him, or that he repay to the father, the money paid to the latter, and that he pay the father the 40d. and be in mercy."

A professional class of temporal lawyers is prominent in the nation. They were educated and certified at the new Inns of Court in London. Some are employed by the King. Judge tend to be recruited from among those who had passed their lives practicing law in court, instead of from the ecclesiastical orders. Men learned All lawyers were brought under the control of the judges.

There are two types of attorneys: one appears in the place of his principal, who does not appear. The appointment of such an attorney is an unusual and a solemn thing, only to be allowed on special grounds and with the proper formalities. The other type of attorney accompanies his client to court and advocates his position with his knowledge of the law and his persuasiveness.

The great litigation of the nation is conducted by a small group of men, as is indicated by the earliest Year Books of case decisions. They sit in court and one will sometimes intervene as *amicus curiae*. Parliament refers difficult points of law to them as well as to the judges. In 1280, the city of London made regulations for the admission of both types of attorneys to practice before the civic courts, and for their due control. In 1292 the King directed the judges to provide a certain number of attorneys and apprentices to follow the court, who should have the exclusive right of practicing before it. This begins the process which will make the attorney for legal business an "officer of the court" which has appointed him.

Because the common law and its procedures have become technical and rigid, the Chancery was given equity jurisdiction by statute in 1285. In Chancery, if there is a case with no remedy specified in the law, that is similar to a case for which there is a writ, then a new writ may be made for that case. These were called "actions on the case". This added to Chancery's work of now hearing petitions of misconduct of government officials or of powerful oppressors, wardship of infants, dower, rent charges, fraud, accident, and abuse of trust. Also, Parliament may create new remedies.

Disputes within the royal household were administered by the King's steward. He received and determined complaints about acts or breaches of the peace within twelve miles around the King's person or "verge". He was assisted by the marshall in the "court of the hall" and by the clerk of the market when imposing fines for trading regulation violations in the "court of the market".

Chapter 9—The Times: 1348–1399—

Waves of the black death, named for the black spots on the body, swept over the nation. The first wave of this plague, in 1348, decimated the population by about one half in the towns and one third in the country. People tried to avoid the plague by flight. The agony and death of so many good people caused some question their belief in God. Thus begins a long period of disorganization, unrest, and social instability. Customary ways were so upset that authority and tradition were no longer automatically accepted. Fields lay waste and sheep and cattle wandered over the countryside. Local courts could not be held. Guilds and rich men made contributions to the poor and ships with provisions were sent to various parts of the country for the relief of starving people.

Farm workers were so rare that they were able to demand wages at double or triple the pre-plague rate. The peasants had become nomadic, roaming from place to place, seeking day work for good wages where they could get it, and resorting to thievery on the highways or beggary where they could not. The Robin Hood legends were popular among them.

They spread political songs among each other, such as: "To seek silver to the King, I my seed sold; wherefore my land lieth fallow and learneth to sleep. Since they fetched my fair cattle in my fold; when I think of my old wealth, well nigh I weep. Thus breedeth many beggars bold; and there wakeneth in the world dismay and woe, for as good is death anon as so for to toil."

Groups of armed men took lands, manors, goods, and women by force. The villeins agreed to assist each other in resisting by force their lords' efforts to return them to servitude. Justices became afraid to administer the law. Villeins, free peasants, and craftsmen joined together and learned to use the tactics of association and strikes against their employers.

The office of Justice of the Peace was created for every county to deal with rioting and vagrants. Cooperation by officials of other counties was mandated to deal with fugitives from its justice.

When there were attempts to enforce the legal servitude of the peasants, they spread rhymes of their condition and need to revolt. A secret league, called the "Great Society" linked the centers of intrigue. A poll tax for a war with France touched off a riot all over the nation in 1381. This tax included people not taxed before, such as laborers, the village smith, and the village tiler. By this time, the black death had reduced the population from 5 million to 2 1/2 million. It was to rise to 4 million by 1600.

Mobs overran the counties around London. The upper classes fled to the woods. But the Chief Justice was murdered while fleeing. Written records of the servitude of villeins were burned in their halls, which were also looted. Prisoners were released from jails. The archbishop, who was a notoriously exploitive landlord, and the Treasurer were beheaded on Tower Hill and their heads were posted over London Bridge. The villeins demanded that service to a lord be by agreement instead of by servitude, a ceiling on rents of 4d. per acre yearly, abolition of a lord's right for their work on demand (e.g. just before a hail storm so only his crops were saved), and the right to hunt and fish.

The revolt was suppressed and its leaders punished. Also, the duty to deal with rioting and vagrants was given to royal judges, sheriffs, mayors, bailiffs, and constables as well as the Justices of the Peace. There was a high constable in each hundred and a petty constable in each parish. Justices of the peace could swear in neighbors as unpaid special constables when disorder broke out.

The sheriff was responsible for seeing that men of the lower classes were organized into groups of ten for police and surety purposes, and for holding of hundred and shire courts, arresting suspects, guarding prisoners awaiting trial, carrying out the penalties adjudged by the courts, and collecting Crown revenue through his bailiffs. Royal writs were addressed to the sheriff. Because many sheriffs had taken fines and ransoms for their own use, a term limit of one year was imposed. Sheriffs, hundreders, and bailiffs had to have lands in the same shires or bailiwicks [so they could be held answerable to the King].

Efforts were made to keep laborers at the plough and cart rather than learn a craft or entering and being educated by the church. The new colleges at the universities ceased to accept villeins as students.

Due to the shortage of labor, landlords' returns had decreased from about 20% to 5%. But some found new methods of using land that were more profitable than the customary services of villeins who had holdings of land

Our Legal Heritage

or the paid labor of practically free men who paid a money rent for land holdings. One method was to turn the land to sheep—breeding. Others leased their demesne land, which transferred the burden of getting laborers from the landlord to the lessor—tenant. The payment was called a "farm" and the tenant a "farmer". First, there were stock—and—land leases, in which both the land and everything required to cultivate it were let together. After 50 years, when the farmers had acquired assets, there were pure land leases. The commutation of labor services into a money payment developed into a general commutation of all services. Lords in need of money gladly sold manumissions to their villeins. The lord and lady of some manors now ate by themselves in a private parlor with a fireplace of its own and the great hall was deserted.

Some farmers achieved enough wealth to employ others as laborers on their farms. The laborers lived with their employer in his barn, sleeping on hay in the loft, or in mud huts outside the barn. The farmer's family lived at one end of the barn around an open fire. Their possessions typically were: a chest, a trestle table, benches, stools, an iron or bronze cauldron and pots, brooms, wooden platters, wooden bowls, spoons, knives, wooden or leather jugs, a salt box, straw mattresses, wool blankets, linen towels, iron tools, rushlightholders, and livestock. Some farmers could afford to have a wooden four—posted bedstead, hens, geese, pigs, a couple of cows, a couple of sheep, or two plow oxen. They ate dark bread and beans and drank water from springs. Milk and cheese were a luxury for them. Farming still occupied the vast majority of the population. Town inhabitants and university students went into the fields to help with the harvest in the summer.

Town people had more wealth than country people. Most townspeople slept in nightgowns and nightcaps in beds with mattresses, blankets, linen sheets, and pillows. Beds were made every morning. Bathing was by sponging hot water from a basin over the body, sometimes with herbs in it, rinsing with a splash of warm water, and drying off with a towel. There were drapery—rugs hung around beds, hand—held mirrors of glass, and salt cellars. The first meal of the day was breakfast, which broke the fast lasting the night. Meals were often prepared according to recipes from cook books which involved several preparation procedures using flour, eggs, sugar, cheese, and grated bread, rather than just simple seasoning. Menus were put together with foods that tasted well together and served on plates in several courses. Table manners included not making sounds when eating, not playing with one's spoon or knife, not placing one's elbows on the table, keeping one's mouth clean with a napkin, and not being boisterous. There were courtesies such as saying "Good Morning" when meeting someone and not pointing one's finger at another person. King Richard II invented the handkerchief for sneezing and blowing one's nose. There were books on etiquette.

There were extremes of fashion in men's and women's clothing including tight garments, pendant sleeves down to the ground, coats so short they didn't reach the hips or so long they reached the heels, hoods so small they couldn't cover the head, and shoes with long curved peaks like claws at the toes. Some women painted their faces and/or colored their hair. There were hand—held glass mirrors. Some people kept dogs purely as pets.

New burgesses were recruited locally, usually from within a 20 mile radius of town. Most of the freemen of the larger boroughs, like Canterbury and London, came from smaller boroughs. An incoming burgess was required to buy his right to trade either by way of a seven year apprenticeship or by payment of an entry fee. To qualify, he needed both a skill and social respectability.

Towns started acquiring from the King the right to vacant sites and other waste places, which previously was the lord's right. The perpetuity of towns was recognized by statutes of 1391, which compared town—held property to church—held property. The right of London to pass ordinances was confirmed by charter. Some towns had a town clerk, who was chief of full—time salaried officers. There was a guildhall to maintain, a weigh—house, prison, and other public buildings, municipal water supplies, wharves, cranes, quays, wash—houses, and public lavatories.

After the experience of the black death, some sanitary measures were taken. The notorious offenders in matters of public hygiene in the towns, such as the butchers, the fishmongers, and the leather tanners were assigned specific localities where their trades would do least harm. The smiths and potters were excluded from the more densely populated areas because they were fire risks. In the town of Salisbury, there was Butcher Row, Ox Row, Fish Row, Ironmongers' Row, Wheelwrights' Row, Smiths' Row, Pot Row, Silver Street, Cheese Market, and Wool Market.

Fresh water was brought into towns by pipe or open conduit as a public facility, in addition to having public wells. In London, a conduit piped water underground to a lead tank, from which it was delivered to the public by

Our Legal Heritage

means of pipes and brass taps in the stone framework. This was London's chief water supply. Water carriers carried water in wooden devices on their backs to houses. The paving and proper drainage of the streets became a town concern. Building contracts specified the provision of adequate cesspits for the privies at town houses, whether the toilets were built into the house or as an outhouse. Also, in the better houses, there grew a practice of carting human and animal fecal matter at night to dung heaps outside the city walls. Country manor houses had toilets on the ground floor and/or the basement level. Stairwells between floors had narrow and winding steps.

In all towns, the organization of craft associations spread rapidly downwards through the trades and sought self-government. Craft guilds were gaining much power relative to the old merchant guilds in governing the towns. The greater crafts such as the fishmongers, skinnners, and the corders organized and ultimately were recognized by town authorities as self-governing craft guilds. The guild was not necessarily associated with a specific product. For instance, a saddle and bridle were the result of work of four crafts: joiner (woodworker), painter, saddler (leather), and lorimer (metal trappings).

In London in 1392 craft guilds included: baker, fishmonger (cut up and sold fish), fruiterer, brewer, butcher, bird dealer, cook, apothecary (sold drugs he had ground up), cutler (made knives and spoons), barber, tailor, shoemaker, glover (made gloves), skinner (sold furs), girdler (made girdles of cloth to wear around one's waist), pouchmaker, armorer, sheathmaker, weaver, fuller (made cloth full and dense), painter, carpenter, joiner (woodworker, including furniture), tiler, mason (cut stone for buildings), smith (made metal tools for stonemasons and builders), tallow chandler (made candles), wax chandler (made candles), stirrup maker, spurrier (made spurs), and hosteler (innkeeper). However, the merchant guilds of the goldsmiths, vintners (sold wine), mercers (sold cloth), grocers, and drapers (finished and sold English cloth) were still strong. The goldsmiths, tailors, skinnners, and girdlers bought royal charters, which recognized their power of self-government as a company and their power to enforce their standards, perhaps throughout the country. There were paint mills and saw mills replacing human labor. Women who spent their days spinning with the new spinning wheel were called "spinsters".

Many of the guilds bought sites on which they built a chapel, which was later used as a secular meeting place. The guild officers commonly included an alderman, stewards, a dean, and a clerk, who were elected. The guild officers sat as a guild court to determine discipline for offences such as false weights or measures or false workmanship or work and decided trade disputes. The brethren in guild fraternity were classified as masters, journeymen, or apprentices. They were expected to contribute to the support of the sick and impoverished in their fellowship. Their code required social action such as ostracizing a man of the craft who was living in adultery until he mended his ways.

The rules of the Company of Glovers were:

1. None but a freeman of the city shall make or sell gloves.
2. No glover may be admitted to the freedom of the city unless with the assent of the wardens of the trade.
3. No one shall entice away the servant of another.
4. If a servant in the trade makes away with his master's chattels to the value of 12d., the wardens shall make good the loss; and if the servant refuses to be judged by the wardens, he shall be taken before the mayor and aldermen.
5. No one may sell his goods by candle-light.
6. Any false work found shall be taken before the mayor and aldermen by the wardens.
7. All things touching the trade within the city between those who are not freemen shall be forfeited.
8. Journeymen shall be paid their present rate of wages.
9. Persons who entice away journeymen glovers to make gloves in their own houses shall be brought before the mayor and aldermen.
10. Any one of the trade who refuses to obey these regulations shall be brought before the mayor and aldermen.

Cordwainers [workers in soft cordovan leather from Spain, especially shoes] of good repute petitioned the city of London in 1375 for ordinances on their trade as follows:

"To the mayor and aldermen of the city of London pray the good folks of the trade of cordwainers of the same city, that it may please you to grant unto them the articles that follow, for the profit of the common people; that so, what is good and right may be done unto all manner of folks, for saving the honor of the city and lawfully governing the said trade.

Our Legal Heritage

In the first place—that if any one of the trade shall sell to any person shoes of bazen [sheep-skin tanned in oak or larch-bark] as being cordwain, or of calf-leather for ox-leather, in deceit of the common people, and to the scandal of the trade, he shall pay to the Chamber of the Guildhall, the first time that he shall be convicted thereof, forty pence; the second time, 7s. half a mark; and the third time the same, and further, at the discretion of the mayor and aldermen.

Also—that no one of the trade shall keep house within the franchise if he be not free [invested with the rights or privileges] of the city and one knowing his trade, and that no one shall be admitted to the freedom without the presence of the wardens of the trade bearing witness to his standing, on the pain aforesaid.

Also—if any one of the trade shall be found offending touching the trade, or rebellious against the wardens thereof, such person shall not make complaint to any one of another trade, by reason of the discord or dissension that may have arisen between them; but he shall be ruled by the good folks of his own trade. And if he shall differ from them as acting against right, then let the offense be adjudged upon before the mayor and aldermen; and if he be found rebellious against the ordinance, let him pay to the Chamber the sum above mentioned.

Also—that no one of the trade shall entice or purloin the servant of another from the service of his master by paying him more than is ordained by the trade, on the pain aforesaid.

Also—that no one shall carry out of his house any wares connected with his trade for sale in market or elsewhere except only at a certain place situated between Soperesland and the Conduit; and that at a certain time of the day, that is to say, between prime [the first hour of the day] and noon. And that no shoes shall exceed the measure of seven inches, so that the wares may be surveyed by the good folks of the trade, because of the deceit upon the common people that might ensue and the scandal of the trade, on the pain aforesaid.

Also—that no one shall expose his wares openly for sale in market on Sundays at any place, but only within his own dwelling to serve the common people, on the pain aforesaid.

Also—that if any one sells old shoes, he shall not mix new shoes among the old in deceit of the common people and to the scandal of the trade, on the pain aforesaid."

Smithfield was a field outside the city gates at which horses were sold and raced. In 1372, the horsedealers and drovers petitioned for a tax on animals sold there to pay for cleaning the field. The city ordinance reads as follows: "On Wednesday next after the Feast of St. Margaret the Virgin came reputable men, the horsedealers and drovers, and delivered unto the mayor and aldermen a certain petition in these words: 'To the mayor, recorder, and aldermen show the dealers of Smithfield, that is to say, the coursers and drovers, that for the amendment of the said field they have granted and assented among them that for the term of three years next ensuing after the date of this petition for every horse sold in the said field there shall be paid one penny, for every ox and cow one half-penny, for every eight sheep one penny, and for every swine one penny by the seller and the same by the purchaser who buys the same for resale.' Afterwards, on the eleventh day of August in the same year, Adam Fernham, keeper of the gaol at Newgate, Hugh, Averelle, bailiff of Smithfield, and William Godhewe, weaver, were chosen and sworn faithfully to collect and receive the said pennies in form aforesaid and to clean the field of Smithfield from time to time during such term of three years when necessary."

Some London houses were being made from stone and timber and even brick and timber, instead of just timber and mud. However, chimneys were still a luxury of the rich. There were windows of glass and a guild of glaziers was chartered by the King. Many single-roomed houses added a second-floor room for sleeping, which was approached by a wooden or stone staircase from the outside. Goods were displayed on a booth outside the door of the house or hung in the windows. They were stored at night in the cellar. Over the booths swung huge signs, which had to be nine feet above street level to allow a man on horseback to ride underneath. There were no footpaths. Street repair work for wages was supervised by a stone master. The streets sloped down from the middle so that the filth of the streets would run down the sides of the road. Dustmen collected rubbish from the streets and pigs and geese were no allowed to run at large in the streets, but had to be fed at home.

Aldermen were constantly making rounds to test measures and weights, wine cups, the height of tavern signs, and the mesh of the fishing nets, which had to be at least two inches wide. They saw that the taverns were shut when curfew was rung and arrested anyone on the street after curfew who had a weapon. Wards provided citizens to guard the gates in their respective neighborhood and keep its key.

The city was so dense that nuisance was a common action brought in court, for instance, vegetable vendors near a church obstructing passageway on the street or plumbers melting their solder with a lower than usual shalt

Our Legal Heritage

of the furnace so smoke was inhaled by people nearby.

Crime in London was rare. Murder, burglary, highway robbery, and gross theft were punishable by hanging. Forgery, fraud, was punishable by the placement in the pillory or stocks or by imprisonment. Perjury was punished by confession from a high stool for the first offense, and the pillory for the second. Slander and telling lies was punished by the pillory and wearing a whetstone around one's neck.

Prominent Londoners sought to elevate their social position by having their family marry into rural landowners of position.

Many master freemasons left the country for better wages after their wages were fixed by statute. The curvilinear gothic style of architecture was replaced by the perpendicular style, which was simpler and cheaper to build. Church steeples now had clocks on them with dials and hands to supplement the church bell ringing on the hour.

Towns recognized surgery as a livelihood subject to admission and oath to serve the social good. Master surgeons were admitted to practice in 1369 in London in full husting before the mayor and the aldermen and swore to: faithfully serve the people in undertaking their cures, take reasonably from them, faithfully follow their calling, present to the said mayor and aldermen the defaults of others undertaking, so often as should be necessary; to be ready, at all times when they should be warned, to attend the maimed or wounded and others, to give truthful information to the officers of the city as to such maimed, wounded, or others whether they be in peril of death or not, and to faithfully do all other things touching their calling.

Only women were allowed to be present at a birth, at which they spread the knowledge of midwifery. As usual, many women died giving birth. Various ways to prevent pregnancy were tried. It was believed that a baby grew from a seed of the father planted in the woman's body.

Infant mortality was especially high in boroughs and burgess family lines usually died out. A three-generation family span was exceptional in the towns, despite family wealth.

After the plague, gentlemen no longer had their children learn to speak Norman. The grammar schools taught in English instead of Norman. Bishops began to preach in English. Twenty years later, English became the official language of the courts and of Parliament.

A will in 1389 in which a wealthy citizen arranges for one son to become a lawyer and the other a merchant: "Will of William de Tonge, citizen of London: One hundred marks [1,333s.] each to my two sons. And I will that my said two sons shall live upon the profits of the money bequeathed to them above until the age of twenty years. And if my said two sons be well learned in grammar and adorned with good manners, which shall be known at the end of twenty years, and the elder son wish to practice common law, and if it is known that he would spend his time well in that faculty, I will that over and above the profit of the said one hundred marks he shall have yearly from my rents for the term of seven years five marks [67s.]. And if he should waste his time aforesaid, or if he should marry foolishly and unsuitably, I will that he receive nothing more of the said five marks.

And if younger son wishes to attend the University of Oxford or to establish himself well in the mystery of a merchant after the age of twenty years, and [if] there be knowledge of his praiseworthy progress in his faculty or his carefulness in trading ... I will that he shall receive five marks yearly in the manner described above for his maintenance, over and above the profit of the said one hundred marks to him bequeathed, for the space of seven years; and if he behave himself otherwise, I will that thereupon he be excluded from the said five marks. And in case the said bequest of 200 marks [2,667s.] to him and his brother shall be annulled so that he shall have nothing therefrom ... then the said 200 marks shall be spent upon all the yearly chaplains who can be had to celebrate divine service in the church of All Hallows for my soul."

England was still an agricultural rather than a manufacturing country. Imported were cloth, silks, linen, velvets, furs, glass, wines, candles, millstones, amber, iron, and mercury. Exported were wool, leather, lead, tin, and alabaster for sculpturing. But the Merchant Adventurers now manufactured cloth good enough for export and began to buy up raw wool in such quantity that its export declined.

An Oxford theologian and preacher, John Wyclif, voiced the popular resentment of the materialism of the church, benefit of clergy, immorality of priests, and the selling of indulgences and pardons. He argued against the supremacy of the papal law over the King's courts and against payments to the papacy. He opined that the church had no power to excommunicate. The Friars had become mere beggars and the church was still wealthy. He proposed that all goods should be held in common by the righteous and that the church should hold no property

Our Legal Heritage

but be entirely spiritual. He believed that people should rely on their individual consciences. He thought that the Bible should be available to people who could read English so that the people could have a direct access to God without priests or the Pope. Towards this end, he translated it from Latin into English in 1384. His preachers spread his views throughout the country. The church then possessed about one-third of the land of the nation.

Stories were written about pilgrimage vacations of ordinary people to religious sites in England. Geoffrey Chaucer's "Tales of the Canterbury Pilgrims" portrayed characters of every social class, including the knight with his squire, abbot, prioress, nun, priest, monk, friar, poor parson of the country, summoner (who enforced the jurisdiction and levied the dues of the church courts), pardoner (sold pardons from the Pope), scholar, lawyer, doctor, merchant, sailor, franklin, yeoman, haberdasher, tapestry-maker, ploughman, cook, weaver, dyer, upholsterer, miller, reeve, carpenter.

It told stories about a beautiful and virtuous wife disliked by her mother-in-law, the difficulty of marriage between people of different religions, the hatred of a poor person by his brother and his neighbor, rich merchants who visited other kingdoms, the importance of a man himself following the rules he sets for other people's behavior, the spite of a man for a woman who rejected him, the relative lack of enthusiasm of a wife for sex as compared to her husband, a mother giving up her own comfort for that of her child, the revenge killing of a murderer by the dead man's friends, the joy of seeing a loved one after years of separation, that life is more sad than happy, that lost money can be retrieved, but time lost is lost forever.

Other stories in the Canterbury Tales were about two men who did not remain friends after they fell in love with the same woman, about a child who preferred to learn from an older child than from his school-teacher, about a wife who convinced her husband not to avenge her beating for the sake of peace, about a man who woke up from bad dreams full of fear, about a man wanting to marry a beautiful woman but later realizing a plain wife would not be pursued by other men, about a man who drank so much wine that he lost his mental and physical powers, about a woman who married for money instead of love, about a man who said something in frustration which he didn't mean, about a person brought up in poverty who endured adversity better than one brought up in wealth, about a wife who was loving and wise, about a good marriage being more valuable than money, about a virgin who committed suicide rather than be raped, about a wife persuaded to adultery by a man who said he would otherwise kill himself, about three men who found a pile of gold and murdered each other to take it all, about an angry man who wanted to kill, about a malicious man who had joy in seeing other men in trouble and misfortune, about a man whose face turned red in shame, about a wife expecting to have half of what her husband owned.

Will Langland's poem "The Vision of William Concerning Piers Plowman" portrays a pilgrimage of common people to the shrine of Truth led by a virtuous laborer. Mystics wrote practical advice with transcendental teaching, for instance "Scale of Perfection" attributed to Walter Hilton and "Cloud of Unknowing". Richard Rolle wrote about spiritual matters, probably the "Prick of Conscience". Richard de Bury wrote "Philobiblon" about book lovers. Jean Froissart wrote the "Chronicles" on knights. Courtly ideals were expressed in "Sir Gawaine and the Grene Knyght", wherein the adventures of the hero, an Arthur knight, are allegorical in the struggle against the world, the flesh, and the devil (1370). "Pearl" eulogized all that is pure and innocent on the event of the death of a two year old child. Paper supplemented parchment, so there were more books.

Political songs and poems were written about the evil times of King Edward II, the military triumphs of King Edward III, and the complaints of the poor against their oppressors, such as "Song of the Husbandman". John Gower wrote moralizing poems on the peasant's revolt, the sins of the clergy and lawyers, and the bad rule of King Richard II. Robin Hood ballads were popular. The minstrel, who was a honorable person, replaced the troubadour of older times.

There were many colleges at Oxford and Cambridge due to the prohibition of gifts to the church. Laymen instead of ecclesiastics were appointed as Chancellor. The Masters at Oxford got rid of ecclesiastical supervision by a bishop and archdeacon by 1368. One could be admitted as a student at age thirteen.

A Bachelor of Arts degree was granted after four years of study and an oral exam. Required reading in 1340 for the Bachelor's Degree was Aristotlean logic and a selection from these works: "Of Heaven and Earth", "On the Soul", "Of meteors", "Of Birth and Decay", "Of Feeling and What is Felt", "Of Memory and Recollection", "Of Sleep and Waking", "Of the Movement of Animals", "Of Minor Points in Natural History".

A Master of Arts degree could be awarded after three more years of study and teaching. A Doctorate degrees

Our Legal Heritage

in theology required ten more years of study. A Doctorate in civil or canon law required eight more years. A man with a degree in canon law who wanted to practice in a certain bishop's court had to first satisfy this bishop of his competence. The guilds gave rise to the Inns of Court in London. They used the Register of Writs, the case law of the Year Books, and disputation to teach their students.

For a doctorate in medicine from Oxford or Cambridge, five more years plus two years of practice were required. Surgery was not taught because it was considered manual labor. Humans were thought to be influenced by four humors: sanguine, phlegmatic, choleric, and melancholic. Urinalysis and pulse beat were used for diagnosis. Epilepsy and apoplexy were understood as spasms inside the head. It was known what substances served as laxatives and diuretics. Teeth were extracted, eye cataracts were removed with a silver needle, and skin from the arm was grafted onto a mutilated face.

Englishmen who had collected books on philosophy, medicine, astronomy, and history and literature books from the continent gave their collections to the universities, which started their libraries. Marco Polo's discoveries on his journey to China were known.

The requirements of elementary and higher studies were adjusted in 1393 and began the public school system. William of Wykeham's school, St. Mary College of Winchester in Oxford was the prototype. The curriculum was civil law, canon law, medicine, astronomy with astronomical instruments that were made, theology, and the arts. The arts text books were still grammar, logic, Donatus, and Aristotle. Many laymen were literate, for instance country gentry, merchants, and craftsmen. Laymen instead of clerics were now appointed to the great offices of state.

Parliament was composed of representatives from 100 boroughs and 37 shires. Merchants were entering Parliament and paid much of the taxes. Some were created Earls and appointed as ministers to the King. Edward III did not summon anyone to his council who did not have the confidence of the magnates [barons, earls, bishops, and abbots]. Under him, the commons took a leading part in the granting of taxes and the presentation of petitions.

King Richard II exiled Henry of Lancaster, forbade his inheritance, and took his property. This made all propertied men anxious. The "Merciless Parliament" of 1388 swept out King Richard II's friends. Parliament threw Richard II into prison and elected Lancaster to be King Henry IV. This action established clearly that royal decrees were subordinate to parliamentary statutes. The House of Commons became very powerful.

So the roles of Parliament and the King's council are starting to differentiate into legislative and executive, respectively. The legislative function is law-making and the executive is regulation-making that refines and effectuates the laws of Parliament. But the legislative, executive and judicial authorities have not as yet become so completely separated that they cannot on occasion work together.

At the 1376 Parliament, ("the Good Parliament") the Commons, which formerly had only consented to taxes, took political action by complaining that the King's councilors had grown rich by war profiteering at the cost of impoverishing the nation and the people were too poor to endure any more taxation for the war and held a hearing on malfeasance of two ministers. The Parliament found the charges proved and dismissed them from office. This established the constitutional means for impeachment and removal of ministers. The commons demanded that its members be elected by shire citizens rather than appointed by the sheriff. Actions of this Parliament were undone a few months later.

There was a standard form of direct taxation voted by Parliament, which was normally 1/10 of the value of all moveables in towns and royal domains and 1/15 in the country.

From 1150 to 1400, resistance was an ordinary remedy for political disagreements. If a popular leader raised his standard in a popular cause, an irregular army could be assembled in a day. (There was no regular army, since England was protected by the sea from invasion.) So misgovernment by a King would be quickly restrained. Society recovered quickly from conflict and civil war because the national wealth consisted chiefly in flocks and herds and in the simple buildings inhabited by the people. In a week after armed resistance, the peasant was driving his team. There was little furniture, stock of shops, manufactured goods, or machinery that could be destroyed.

The feudal army was summoned for the last time in the 100 year war with France, which began in 1337. In it the English longbow was used to pierce French knights' armor. Gunpowder and guns and cannon were introduced in 1338. They became common by 1372 and foresaw the end to the competition between the strength of arrows to

Our Legal Heritage

pierce and the heaviness of armor to resist. Featherbeds and blooded horses were favorite spoils of war brought back to England.

Many lords got men to fight with them by livery and maintenance employment agreements such as this one of 1374: "Bordeaux, February 15. This indenture, made between our lord King John [of Gaunt, of Castile, etc.] of the one part and Symkyn Molyneux, esquire, of the other part, witnesses that the said Symkyn is retained and will remain with our said lord for peace and for war for the term of his life, as follows: that is to say, the said Symkyn shall be bound to serve our said lord as well in time of peace as of war in whatsoever parts it shall please our said lord, well and fitly arrayed. And he shall be boarded as well in time of peace as of war. And he shall take for his fees by the year, as well in time of peace as of war, 133s. ten marks sterling from the issues of the Duchy of Lancaster by the hands of the receiver there who now is or shall be in time to come, at the terms of Easter and Michaelmas by even portions yearly for the whole of his life. And, moreover, our lord has granted to him by the year in time of war 67s. five marks sterling by the hands of the treasurer of war for the time being. And his year of war shall begin the day when he shall move from his inn towards our said lord by letters which shall be sent to him thereof, and thenceforward he shall take wages coming and returning by reasonable daily [payments] and he shall have fitting freightage for him, his men, horses, and other harness within reason, and in respect of his war horses taken and lost in the service of our said lord, and also in respect to prisoners and other profits of war taken or gained by him or any of his men, the said our lord will do to him as to other squires of his rank."

A navy was formed with over 200 ships selected by the English admirals acting for the King at the ports. Men were seized and pressed into service and criminals were pardoned from crimes to become sailors in the fleet, which was led by the King's ship. They used the superior longbow against the French sailor's crossbow. In 1372, the Tower of London had four mounted fortress cannon and Dover had six.

The war's disruption of shipping caused trade to decline. But the better policing of the narrow seas made piracy almost disappear.

In 1363, Calais, a continental town held by the English, became the staple town for lead, tin, cloth, and wool and was placed under a group of London capitalists: the Merchants of the Staple. All exports of these had to pass through Calais, where customs tax was collected.

Waterpower was replacing foot power in driving the mills where cloth was cleaned and fulled [thickened].

Bethlehem Hospital was used from 1377 to house the mentally ill.

—The Law—

After the Black Death of 1348 these statutes were enacted:

High treason was defined by statute in 1352 as levying war against the King, aiding the King's enemies, compassing or imagining the death of the King, Queen, or their eldest son and heir, or violating the Queen or the eldest unmarried daughter or the wife of the King's eldest son and heir, making or knowingly using counterfeits of the King's great or privy seal or coinage, or slaying the Chancellor, Treasurer, or any justice in the exercise of their duty. The penalty was forfeit of life and lands. During the reign of King Richard II, who was later disposed, high treason was extended to include making a riot and rumor, compassing or purposing to depose the King, revoking one's homage or liege to the King, and attempting to repeal a statute. But these extensions were repealed after he was deposed.

Petit treason was defined by statute and included a servant slaying his master, a wife her husband, or a man his lord, to whom was owed faith and obedience.

No one shall tell false news or lies about prelates, dukes, earls, barons, and other nobles and great men or the Chancellor, Treasurer, a Justice, Clerk of the Privy Seal, Steward of the King's house whereby debates and discords might arise between these lords or between the lords and the commons. Cases shall be tried by the King's Council, which included the Chancellor, Treasurer, and chief justices.

Preachers drawing crowds by ingenious sermons and inciting them to riot shall be arrested by sheriffs and tried by the ecclesiastical court.

Any stranger passing at night of whom any have suspicion shall be arrested and taken to the Sheriff.

No man shall ride with a spear, upon pain of forfeiting it.

No servant of agriculture or laborer shall carry any sword or dagger, or forfeit it, except in time of war in defense of the nation. He may carry bow and arrow [for practice] on Sundays and holy days, when he should not play games such as tennis, football, or dice.

Our Legal Heritage

No one may enter another's land and tenements by strong hand nor with a mob, upon pain of imprisonment and ransom at the King's will.

Charters, releases, obligations, [quit-claim deeds] and other deeds burnt or destroyed in uprisings shall be reissued without fee, after trial by the King and his council. Manumissions, obligations, releases and other bonds and feoffments in land made by force, coercion or duress during mob uprisings are void.

Men who rape and women consenting after a rape shall lose their inheritance and dower and joint feoffments. The husbands, or father or next of kin of such women may sue the rapist by inquisition, but not by battle. The penalty is loss of life and member.

The Statute of Laborers of 1351 required all workers, from tailors to ploughmen, to work only at pre-plague wage rates and forced the vagrant peasant to work for anyone who claimed him or her. It also encouraged longer terms of employment as in the past rather than for a day at a time. Statutory price controls on food limited profits to reasonable ones according to the distance of the supply. Later, wages were determined in each county by Justices of the Peace according to the dearth of victuals while allowing a victualler a reasonable profit and a penalty was specified as paying the value of the excess wages given or received for the first offense, double this for the second offense, and treble this or forty days imprisonment for the third offense.

A fugitive laborer will be outlawed, and when found, shall be burnt in the forehead with the letter "F" for falsity.

Children who labored at the plough and cart or other agriculture shall continue in that labor and may not go into a craft.

A statute of 1363 designed to stop hoarding various types of merchandise until a type became scarce so to sell it at high prices, required merchants to deal in only one type of merchandise. It also required craftsmen to work in only one craft as before (except women who traditionally did several types of handiwork). This was repealed a year later.

Where scarcity has made the price of poultry high, it shall be lowered to 8d. for a young capon, 7d. for an old capon or a goose, 9d. for a hen, and 10d. for a pullet.

The fares for passage on boats on fresh waters and from Dover to the continent shall remain at their old rate.

Any merchant selling at a fair after it has ended will forfeit to the King twice the value of that sold.

Anyone finding and proving cloth contrary to the assize of cloth shall have one—third of it for his labor.

No shoemaker nor cordwainer shall tan their leather and no tanner shall make shoes, in order that tanning not be false or poorly done.

The staple was reinstituted by statute of 1353 after an experiment without it, in which profits of a staple went to staples outside the nation. The rationale for the staple was to facilitate inspection of quality and the levy of customs. Wool, woolfells, leather, and lead sold for export had to go through the staple town. The penalty was forfeiture of lands, tenements, goods, and chattel. (The staple statute remained basically unchanged for the next 200 years.) The mayor and constables of the staple were elected annually by the native and foreign merchants of the place. The mayor gave validity to contracts for a set fee, by seal of his office. He and the constables had jurisdiction over all persons and things touching the staple, which was regulated by the Law Merchant in all matters of contract, covenant, debt, and felonies against foreign merchants. A Hue and Cry was required to be raised and followed for anyone taking a cart of merchandise or slaying a merchant, denizen [resident alien] or alien, or the town would answer for the robbery and damage done.

All denizen [foreigner permitted to reside in the realm with certain rights and privileges] and alien merchants may buy and sell goods and merchandise, in gross, in any part of the country, despite town charters or franchises, to anyone except an enemy of the King. They may also sell small wares: victuals, fur, silk, cover chiefs, silver wire, and gold wire in retail, but not cloth or wine. They must sell their goods within three months of arrival. Any alien bringing goods to the nation to sell must buy goods of the nation to the value of at least one-half that of his merchandise sold. These merchants must engage in no collusion to lower the price of merchandise bought, take merchandise bought to the staple, and promise to hold no staple beyond the sea for the same merchandise. An amendment disallowed denizens from taking wools, leather, woolfells, or lead for export, but only strangers.

Towns failing to bring disturbers of this right to justice shall forfeit their franchise to the King and pay double damages to the merchant. The disturber shall be imprisoned for a year.

Cloth may not be tacked nor folded for sale to merchants unless they are opened to the buyers for inspection,

Our Legal Heritage

for instance for concealed inferior wool. Workers, weavers, and fullers shall put their seals to every cloth. And anyone could bring his own wools, woolfells, leather, and lead to the staple to sell without being compelled to sell them in the country. Special streets or warehouses were appointed with warehouse rent fixed by the mayor and constables with four of the principal inhabitants. Customs duties were regulated and machinery provided for their collection. No one was to forestall or regrate, that is, buy at one price and sell at a higher price in the same locale. Forestallers were those who bought raw material on its way to market. Regrators were those who tried to create a "corner" in the article in the market itself.

Anyone may ship or carry grain out of the nation, except to enemies, after paying duties. But the council may restrain this passage when necessary for the good of the nation. Any merchant, privy or stranger, who was robbed of goods on the sea or lost his ship by tempest or other misfortune on the sea banks, his goods coming to shore could not be declared Wreck, but were to be delivered to the merchant after he proves ownership in court by his marks on the goods or by good and lawful merchants.

All stakes and obstacles set up in rivers impeding the passage of boats shall be removed.

Imported cloth shall be inspected by the King's officials for non-standard measurements or defects [despite town franchises].

No one shall leave the nation except at designated ports, on pain of one year's imprisonment.

English merchants may carry their merchandise in foreign ships if there are no English ships available.

Social distinctions by attire were mandated by statute of 1363. A servant, his wife, son, or daughter, shall only wear cloth worth no more than 27s. and shall not have more than one dish of meat or fish a day. Carters, ploughmen, drivers of the plough, oxherds, cowherds, shepherds, and all other people owning less than 40s. of goods and chattels shall only wear blanket and russet worth no more than 12d. and girdles of linen according to their estate. Craftsmen and free peasants shall only wear cloth worth no more than 40s. Esquires and gentlemen below the rank of knight with no land nor rent over 2,000s. a year shall only wear cloth worth no more than 60s., no gold, silver, stone, fur, or the color purple. Esquires with land up to 2,667s. per year may wear 67s. cloth, cloth of silk and silver, miniver [grey] fur and stones, except head stones. Merchants, citizens, burgesses, artificers, and people of handicraft having goods and chattels worth 10,000s. shall wear cloth the same value as that worn by esquires and gentlemen with land or rent within 2,000s. per year. The same merchants and burgesses with goods and chattels worth 13,333s. and esquires and gentlemen with land or rent within 400s. per year may not wear gold cloth, miniver fur, ermine [white] fur, or embroidered stones. A knight with land or rents within 2,667s. yearly are limited to cloth of 80s., but his wife may wear a stone on her head. Knights and ladies with land or rents within 8,000s. to 20,000s. yearly may not wear fur of ermine or of letuse, but may wear gold, and such ladies may wear pearls as well as stones on their heads. The penalty is forfeiture of such apparel. This statute is necessary because of "outrageous and excessive apparel of diverse persons against their estate and degree, to the great destruction and impoverishment of all the land".

If anyone finds a hawk [used to hunt birds, ducks, and pheasant] that a lord has lost, he must take it to the sheriff for keeping for the lord to claim. If there is no claim after four months, the finder may have it only if he is a gentleman. If one steals a hawk from a lord or conceals from him the fact that it has been found, he shall pay the price of the hawk and be imprisoned for two years.

No laborer or any other man who does not have lands and tenements of the value of 40s. per year shall keep a greyhound [or other hound or dog] to hunt, nor shall they use nets or cords or other devices to take [deer, rabbits, conies, nor other gentlemen's game], upon pain of one year imprisonment.

No man shall eat more than two courses of meat or fish in his house or elsewhere, except at festivals, when three are allowed [because great men ate costly meats to excess and the lesser people were thereby impoverished].

No one may export silver, whether bullion or coinage, or wine except foreign merchants may carry back the portion of their money not used to buy English commodities. The penalty for bringing false or counterfeit money into the nation is loss of life and member. An assigned searcher [inspector] for coinage of the nation on the sea passing out of the nation or bad money in the nation shall have one third of it. No foreign money may be used in the nation.

Each goldsmith shall have an identifying mark, which shall be placed on his vessel or work only after inspection by the King's surveyor.

No one shall give anything to a beggar who is capable of working.

Our Legal Heritage

Vagrants begging in London were banned by this 1359 ordinance: "Forasmuch as many men and women, and others, of divers counties, who might work, to the help of the common people, have betaken themselves from out of their own country to the city of London and do go about begging there so as to have their own ease and repose, not wishing to labor or work for their sustenance, to the great damage of the common people; and also do waste divers alms which would otherwise be given to many poor folks, such as lepers, blind, halt, and persons oppressed with old age and divers other maladies, to the destruction of the support of the same—we do command on behalf of our lord the King, whom may God preserve and bless, that all those who go about begging in the said city and who are able to labor and work for the profit of the common people shall quit the said city between now and Monday next ensuing. And if any such shall be found begging after the day aforesaid, the same shall be taken and put in the stocks on Cornhill for half a day the first time, and the second time he shall remain in the stocks one whole day, and the third time he shall be taken and shall remain in prison for forty days and shall then forswear the said city forever. And every constable and the beadle of every ward of the said city shall be empowered to arrest such manner of folks and to put them in the stocks in manner aforesaid."

The hundred year cry to "let the King live on his own" found fruition in a 1352 statute requiring consent of the Parliament before any commission of array for militia could be taken and a 1362 statute requiring purchases of goods and means of conveyance for the King and his household to be made only by agreement with the seller and with payment to him before the King traveled on, instead of at the low prices determined unilaterally by the King's purveyor.

Every man who has wood within the forest may take houseboot and heyboot in his wood without being arrested so long as it take such within the view of the foresters.

English was made the official language of the courts, replacing French and Latin, and schools in 1362 and of Parliament, replacing Anglo-Norman, in 1363.

No fecal matter, dung, garbage, or entrails of animals killed shall be put into ditches or rivers or other waters, so that maladies and diseases will not be caused by corrupted and infected air. The penalty is 400s. to the King after trial by the Chancellor.

Gifts or alienation of land to guilds, fraternities, or towns are forbidden. Instead, it escheats to its lord, or in his default, to the King.

No man will be charged to go out of his shire to do military service except in case of an enemy invasion of the nation. Men who chose to go into the King's service outside the nation shall be paid wages by the King until their return.

Admiralty law came into being when ancient naval manners and customs were written down as the "Black Book of the Admiralty". This included the organization of the fleet under the Admiral, sea-maneuver rules such as not laying anchor until the Admiral's ship had, engagement rules, and the distribution of captured goods: one-fourth to the vessel owner, one-fourth to the King if the seamen were paid by the King's wages, and the rest divided among the crew and Admiral. Stealing a boat or an anchor holding a boat was punishable by hanging. Stealing an oar or an anchor was punishable by forty days imprisonment for the first offense, six months imprisonment for the second, and hanging for the third. Desertion was punishable by loss of double the amount of wages earned and imprisonment for one year. Cases were tried by jury in the Admiral's court.

Wines, vinegar, oil and honey imported shall be gauged by the King's appointees.

A man may not hire another man to fight in his place in a quarrel, except one living in his household or his esquire.

—Judicial Procedure—

The office of Justice of the Peace was developed and filled by knights, esquires and gentlemen who were closely associated with the magnates. There was no salary nor any requirement of knowledge of the law. They were to pursue, restrain, arrest, imprison, try, and duly punish felons, trespassers, and rioters according to the law. They were expected to arrest vagrants who would not work and imprison them until sureties for good behavior was found for them. They also were empowered to inspect weights and measures and enforce the new law against hiring another to fight one's quarrel. Trespass included forcible offenses of breaking of a fence enclosing private property, assault and battery, false imprisonment, and taking away goods and chattels.

Private suits for murder or personal injury were falling into disuse and being replaced by the action of trespass.

Our Legal Heritage

Pardons may be given only for slaying another in one's own defense or by misfortune [accident], and not for slaying by lying in wait, assault, or malice aforethought.

Justices of Assize, sheriffs, and Justices of the Peace and mayors shall have power to inquire of all vagabonds and compel them to find surety of their good bearing or be imprisoned.

Treason was tried in Parliament, by bill of "attainder". It was often used for political purposes. Most attaints were reversed as a term of peace made between factions.

A reversioner shall be received in court to defend his right when a tenant for a term of life, tenant in dower, or by the Law of England, or in Tail after Possibility of Issue extinct are sued in court for the land, so as to prevent collusion by the demandants.

A person in debt may not avoid his creditors by giving his tenements or chattels to his friends in collusion to have the profits at their will.

Where there was a garnishment given touching a plea of land, a writ of deceit is also maintainable.

Actions of debt will be heard only in the county where the contract was made. The action of debt includes enforcement of contracts executed or under seal, e.g. rent due on a lease, hire of an archer, contract of sale or repair of an item. Thus there is a growing connection between the actions of debt and contract.

Executors have an action for trespass to their testators' goods and chattels in like manner as did the testator when alive.

If a man dies intestate, his goods shall be administered by his next and most lawful friends appointed. Such administrators shall have the same powers and duties as executors and be accountable as are executors to the ecclesiastical court.

Children born to English parents in parts beyond the sea may inherit from their ancestors in the same manner as those born in the nation.

A person grieved by a false oath in a town court proceeding may appeal to the King's Bench or Common Pleas, regardless of any town franchise.

The Court of the King's Bench worked independently of the King. It became confined to the established common law. The King proclaimed that petitions for remedies that the common law didn't cover be addressed to the Chancellor, who was not bound by established law, but could do equity. With the backing of the council, he made decisions implementing the policy of the Statute of Laborers. Most of these concerned occupational competency, for instance negligent activity of carriers, builders, shepherds, doctors, clothworkers, smiths, innkeepers, and jailers. For instance, the common law action of detinue could force return of cloth bailed for fulling or sheep bailed for pasturing, but could not address damages due to faulty work. The Chancellor addressed issues of loss of wool, dead lambs, and damaged sheep, as well as dead sheep. He imposed a legal duty on innkeepers to prevent injury or damage to a patron or his goods from third parties. A dog bite or other damage by a dog known by its owner to be vicious was made a more serious offense than general damage by any dog. A person starting a fire was given a duty to prevent the fire from damaging property of others. These new forms of action came to be known as *assumpsit*, which provided damages for breach of an oral agreement and a written agreement without a seal, or trespass on the case, which did not require the element of force of the trespass offense.

Decisions of the common law courts are appealable to Parliament, which can change the common law by statute.

No attorney may practice law and also be a justice of assize.

Champerty [an outsider supporting or maintaining litigation in which there is an agreement for him to share in the award] is forbidden because court officials have maintained and defended a party which has resulted in another party being cheated out of his land.

Whereas it is contained in the Magna Carta that none shall be imprisoned nor put out of his freehold, nor of his franchises nor free custom, unless it be by the law of the land; it is established that from henceforth none shall be taken by petition or suggestion made to the King unless by indictment of good and lawful people of the same neighborhood where such deeds be done, in due manner, or by process made by writ original at the common law; nor that none be out of his franchise, nor of his freeholds, unless he be duly brought into answer and forejudges of the same by the course of law. (forerunner of indictment grand juries and trial juries for criminal cases)

There were so many cases that were similar to, but not in technical conformity with, the requirements of the

Our Legal Heritage

common law for a remedy by the reign of Edward III, that litigants were flowing into the Chancery, which had the power to give swift and equitable relief.

The King will fine instead of seize the land of his tenants who sell or alienate their land, such fine to be determined by the Chancellor by due process.

The King's coroner and a murderer who had taken sanctuary in a church often agreed to the penalty of confession and perpetual banishment from the nation as follows: "Memorandum that on July 6, [1347], Henry de Roseye abjured the realm of England before John Bernard, the King's coroner, at the church of Tendale in the County of Kent in form following: 'Hear this, O lord the coroner, that I, Henry de Roseye, have stolen an ox and a cow of the widow of John Welshe of Retherfeld; and I have stolen eighteen beasts from divers men in the said county. And I acknowledge that I have feloniously killed Roger le Swan in the town of Strete in the hundred of Strete in the rape of Lewes and that I am a felon of the lord King of England. And because I have committed many ill deeds and thefts in his land, I abjure the land of the Lord Edward King of England, and [I acknowledge] that I ought to hasten to the port of Hastings, which thou hast given me, and that I ought not to depart from the way, and if I do so I am willing to be taken as a thief and felon of the lord King, and that at Hastings I will diligently seek passage, and that I will not wait there save for the flood and one ebb if I can have passage; and if I cannot have passage within that period, I will go up to the knees into the sea every day, endeavoring to cross; and unless I can do so within forty days, I will return at once to the church, as a thief and a felon of the lord King, so help me God.'"

Property damage by a tenant of a London building was assessed in a 1374 case: "John Parker, butcher, was summoned to answer Clement Spray in a plea of trespass, wherein the latter complained that the said John, who had hired a tavern at the corner of St. Martin-le-Grand from him for fifteen months, had committed waste and damage therein, although by the custom of the city no tenant for a term of years was entitled to destroy any portion of the buildings or fixtures let to him. He alleged that the defendant had taken down the doorpost of the tavern and also of the shop, the boarded door of a partition of the tavern, a seat in the tavern, a plastered partition wall, the stone flooring in the chamber, the hearth of the kitchen, and the mantelpiece above it, a partition in the kitchen, two doors and other partitions, of a total value of 21s. four pounds, 1s. 8d., and to his damage, 400s. 20 pounds. The defendant denied the trespass and put himself on the country. Afterwards a jury ... found the defendant guilty of the aforesaid trespass to the plaintiff's damage, 40d. Judgment was given for that amount and a fine of 1s. to the King, which the defendant paid immediately in court."

The innkeeper's duty to safeguard the person and property of his lodgers was applied in this case:

"John Trentedeus of Southwark was summoned to answer William Latymer touching a plea why, whereas according to the law and custom of the realm of England, innkeepers who keep a common inn are bound to keep safely by day and by night without reduction or loss men who are passing through the parts where such inns are and lodging their goods within those inns, so that, by default of the innkeepers or their servants, no damage should in any way happen to such their guests ...

On Monday after the Feast of the Purification of the Virgin Mary in the fourth year of the now King by default of the said John, certain malefactors took and carried away two small portable chests with 533s. and also with charters and writings, to wit two writings obligatory, in the one of which is contained that a certain Robert Bour is bound to the said William in 2,000s. and in the other that a certain John Pusele is bound to the same William in 800s. 40 pounds ... and with other muniments [writings defending claims or rights] of the same William, to wit his return of all the writs of the lord King for the counties of Somerset and Dorset, whereof the same William was then sheriff, for the morrow of the Purification of the Blessed Mary the Virgin in the year aforesaid, as well before the same lord the King in his Chancery and in his Bench as before the justices of the King's Common Bench and his barons of his Exchequer, returnable at Westminster on the said morrow, and likewise the rolls of the court of Cranestock for all the courts held there from the first year of the reign of the said lord the King until the said Monday, contained in the same chests being lodged within the inn of the same John at Southwark

And the said John ... says that on the said Monday about the second hour after noon the said William entered his inn to be lodged there, and at once when he entered, the same John assigned to the said William a certain chamber being in that inn, fitting for his rank, with a door and a lock affixed to the same door with sufficient nails, so that he should lie there and put and keep his things there, and delivered to the said William the key to the door of the said chamber, which chamber the said William accepted...

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William says that ... when the said John had delivered to him the said chamber and key as above, the same William, being occupied about divers businesses to be done in the city of London, went out from the said inn into the city to expedite the said businesses and handed over the key of the door to a certain servant of the said William to take care of in meantime, ordering the servant to remain in the inn meanwhile and to take care of his horses there; and afterwards, when night was falling, the same William being in the city and the key still in the keeping of the said servant, the wife of the said John called unto her into her hall the said servant who had the key, giving him food and drink with a merry countenance and asking him divers questions and occupying him thus for a long time, until the staple of the lock of the door aforesaid was thrust on one side out of its right place and the door of the chamber was thereby opened and his goods, being in the inn of the said John, were taken and carried off by the said malefactors ... The said John says ...[that his wife did not call the servant into the hall, but that] when the said servant came into the said hall and asked his wife for bread and ale and other necessities to be brought to the said chamber of his master, his wife immediately and without delay delivered to the same servant the things for which he asked ... protesting that no goods of the same William in the said inn were carried away by the said John his servant or any strange malefactors other than the persons of the household of the said William."

On the Coram Rege Roll of 1395 is a case on the issue of whether a court-crier can be seized by officers of a staple:

"Edmund Hikelyng, 'criour', sues William Baddele and wife Maud, John Olney, and William Knyghtbrugge for assault and imprisonment at Westminster, attacking him with a stick and imprisoning him for one hour on Wednesday before St. Martin, 19 Richard II.

Baddele says Mark Faire of Winchester was prosecuting a bill of debt for 18s. against Edmund and John More before William Brampton, mayor of the staple of Westminster, and Thomas Alby and William Askham, constables of the said staple, and on that day the Mayor and the constables issued a writ of *capias* against Edmund and John to answer Mark and be before the Mayor and the constables at the next court. This writ was delivered to Baddele as sergeant of the staple, and by virtue of it he took and imprisoned Edmund in the staple. Maud and the others say they aided Baddele by virtue of the said writ.

Edmund does not acknowledge Baddele to be sergeant of the staple or Mark a merchant of the staple or that he was taken in the staple. He is minister of the King's Court of his Bench and is crier under Thomas Thorne, the chief crier, his master. Every servant of the court is under special protection while doing his duty or on his way to do it. On the day in question, he was at Westminster carrying his master's staff of office before Hugh Huls, one of the King's justices, and William took him in the presence of the said justice and imprisoned him.

The case is adjourned for consideration from Hilary to Easter."

Chapter 10—The Times: 1399–1485—

This period, which begins with the reign of the usurper King, Henry IV, is dominated by war: the last half of the 100 year war with France, which, with the help of Joan of Arc, took all English land on the continent except the port of Calais, and the War of the Roses in England. The barons and earls returned from France with their private fighting units. Nobles employed men who had returned from fighting to use their fighting skill in local defense. All the great houses kept bands of armed retainers. These retainers were given land or pay or both as well as liveries [uniforms or badges] bearing the family crest. They came to fight for the cause of one of the two royal family lines competing for the throne. In the system of "livery and maintenance", if the retainer was harassed by the law or by enemies, the lord gave him protection [maintenance].

In both wars, the musket was used as well as the long-bow. Cannon were used to besiege castles and destroy their walls, so many castles were allowed to deteriorate.

Barons and earls settled their disputes in the field rather than in the royal courts. And men relied increasingly on the protection of the great men of their neighborhood and less on the King's courts for the safety of their lives and land. Local men involved in court functions usually owed allegiance to a lord which compromised the exercise of justice. Men serving in an assize often lied to please their lord instead of telling the truth. Lords maintained, supported, or promoted litigation with money or aid supplied to one party to the detriment of justice. It was not unusual for lords to attend court with a great force of retainers behind them. Royal justices were flouted or bribed. The King's writ was denied or perverted. For 6–8s., a lord could have the King instruct his sheriff to impanel a jury which would find in his favor. A statute against riots, forcible entries, and, excepting the King, magnates' liveries of uniform, food, and badges to their retainers, except in war outside the nation, was passed, but was difficult to enforce because the offenders were lords, who dominated the Parliament and the council.

Since the power of the throne changed from one faction to another, many bills of attainder caused lords to lose their lands to the King. Fighting between lords and gangs of ruffians holding the roads, breaking into and seizing manor houses, and openly committing murders continued. The roads were not safe. People turned to mysticism to escape from the everyday violent world. They had no religious enthusiasm, but believed in magic and sorcery.

With men so often gone to fight, their wives managed the household alone. The typical wife had maidens of equal class to whom she taught household management, spinning, weaving, carding wool with iron wool-combs, heckling flax, embroidery, and making garments. There were foot-treadles for spinning wheels. She taught the children. Each day she scheduled the activities of the household including music, conversation, dancing, chess, reading, playing ball, and gathering flowers. She organized picnics, rode horseback and went hunting, hawking to get birds, and rabbit-ferreting. She was nurse to all around her. If her husband died, she usually continued in this role because most men named their wives as executors of their wills with full power to act as she thought best.

For ladies, close-fitting jackets came to be worn over close-fitting long gowns with low, square-cut necklines and flowing sleeves, under which was worn a girdle. All her hair was confined by a hair net. Headdresses were very elaborate and heavy, trailing streamers of linen. Some were in the shape of hearts, butterflies, crescents, or long cones. Men also were wearing hats rather than hoods. They wore huge hats of velvet, fur, or leather. Hair was short and later shoulder-length. They wore doublets with thick padding over the shoulders or short tunics over the trucks of their bodies. Their sleeves were long concoctions of velvet, damask, and satin, sometimes worn wrapped around their arms in layers. Their legs were covered with hose, often in different colors. Shoes were pointed with upward pikes at the toes. At another time, shoes were broad with blunt toes. Both men and women wore much jewelry and ornamentation. Cooking and the serving of meals was also elaborate. There were many courses of a variety of meats, fish, stews, and soups, with a variety of spices. The standard number of meals was three: breakfast, dinner, and supper. The diet of an ordinary family such as that of a small shopholder or yeoman farmer included beef, mutton, pork, a variety of fish, both fresh and salted, venison, nuts, peas, oatmeal, honey, grapes, apples, pears, and fresh vegetables. Cattle and sheep were driven from Wales to English markets. This droving lasted for five centuries.

Many types of people besides the nobility and knights now had property and thus were considered gentry: female lines of the nobility, merchants and their sons, lawyers, auditors, squires, and peasant-yeomen. The

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burgess grew rich as the knight dropped lower. The great merchants lived in mansions which could occupy whole blocks. Typically, there would be an oak-paneled great hall, with adjoining kitchen, pantry, and buttery on one end and a great parlor to receive guests, bedrooms, wardrobes, servants' rooms, and a chapel on the other end or on a second floor. The beds were surrounded by heavy draperies to keep out cold drafts. Master and servants ceased to eat together in the same hall. In towns these mansions were entered through a gate through a row of shops on the street. A lesser dwelling would have these rooms on three floors over a shop on the first floor. An average Londoner would have a shop, a storeroom, a hall, a kitchen, and a buttery on the first floor, and three bedrooms on the second floor. Artisans and shopkeepers of more modest means lived in rows of dwellings, each with a shop and small storage room on the first floor, and a combination parlor-bedroom on the second floor. The humblest residents crowded their shop and family into one 6 by 10 foot room for rent of a few shillings a year. All except the last would also have a small garden. The best gardens had a fruit tree, herbs, flowers, a well, and a privy. There were common and public privies for those without their own. Kitchen slops and casual refuse continued to be thrown into the street. Floors of stone or planks were strewn with rushes. There was some tile flooring. Most dwellings had glass windows. Candles were used for lighting at night. Torches and oil-burning lanterns were portable lights. Furnishings were still sparse. Men sat on benches or joint stools and women sat on cushions on the floor. Hall and parlor had a table and benches and perhaps one chair. Bedrooms had a curtained bed and a chest. On the feather bed were pillows, blankets, and sheets. Better homes had wall hanging and cupboards displaying plate. Laundresses washed clothes in the streams, rivers, and public conduits. Country peasants still lived in wood, straw, and mud huts with earth floors and a smoky hearth in the center or a kitchen area under the eaves of the hut.

In 1442, bricks began to be manufactured in the nation and so there was more use of bricks in buildings. Chimneys were introduced into manor houses where stone had been too expensive. This was necessary if a second floor was added, so the smoke would not damage the floor above it and would eventually go out of the house.

Nobles and their retinue moved from manor to manor, as they had for centuries, to keep watch upon their lands and to consume the produce thereof; it was easier to bring the household to the estate than to transport the yield of the estate to the household. Also, at regular intervals sewage had to be removed from the cellar pits.

Jousting tournaments were held for entertainment purposes only and were followed by banquets of several courses of food served on dishes of gold, silver, pewter, or wood on a linen cloth covering the table. Hands were washed before and after the meal. People washed their faces every morning after getting up. Teeth were cleaned with powders. Fragrant leaves were chewed for bad breath. Garlic was used for indigestion and other ailments. Feet were rubbed with salt and vinegar to remove calluses. Good manners included not slumping against a post, fidgeting, sticking one's finger into one's nose, putting one's hands into one's hose to scratch the privy parts, spitting over the table or too far, licking one's plate, picking one's teeth, breathing stinking breath into the face of the lord, blowing on one's food, stuffing masses of bread into one's mouth, scratching one's head, loosening one's girdle to belch, and probing one's teeth with a knife.

Fishing and hunting were reserved for the nobility rather than just the King.

As many lords became less wealthy because of the cost of war, some peasants, villein and free, became prosperous, especially those who also worked at a craft, e.g. butchers, bakers, smiths, shoemakers, tailors, carpenters, and clothworkers.

An agricultural slump caused poorer soils to fall back into waste. The better soils were leased by peasants, who, with their families, were in a better position to farm it than a great lord, who found it hard to hire laborers at a reasonable cost. Further, peasants' sheep, hens, pigs, ducks, goats, cattle, bees, and crop made them almost self-sufficient in foodstuffs. They lived in a huddle of cottages and pastured their animals on common meadows. They subsisted mainly on boiled bacon, an occasional chicken, worts and beans grown in the cottage garden, and cereals. They wore fine wool cloth in all their apparel. Brimless hats were replacing hoods. They had an abundance of bed coverings in their houses. And they had more free time. Village entertainment included traveling jesters, acrobats, musicians, and bear-baiter. Playing games and gambling were popular pastimes.

Most villeins were now being called "customary tenants" or "copy-holders" of land because they held their acres by a copy of the court-roll of the manor, which listed the number of teams, the fines, the reliefs, and the services due to the lord for each landholder. The Chancery court interpreted many of these documents to include

Our Legal Heritage

rights of inheritance. The common law courts followed the lead of the Chancery and held that copyhold land could be inherited as was land at common law. Evictions by lords decreased.

The difference between villein and free man lessened but landlords usually still had profits of villein bondage, such as heriot, merchet, and chevage.

A class of laborers was arising who depended entirely on the wages of industry for their subsistence. The cloth workers in rural areas were isolated and weak and often at the mercy of middle-men for employment and the amount of their wages.

Rural laborers went to towns to seek employment in the new industries. They would work at first for any rate. This deepened the cleavage of the classes in the towns.

The townspeople did not take part in the fighting of the War of the Roses. Many boroughs sought and obtained formal incorporation with perpetual existence, the right to sue and be sued in their own name. Often, a borough would have its own resident Justice of the Peace. Each incorporation involved a review by a Justice of the Peace to make sure the charter of incorporation rule didn't conflict with the law of the nation. Henry IV granted the first charter of incorporation. A borough typically had a mayor accompanied by his personal sword-bearer and serjeants-at-mace bearing the borough regalia, bailiffs, a sheriff, and chamberlains or a steward for financial assistance. At many boroughs, aldermen, assisted by their constables, kept the peace in their separate wards. There might be coroners, a recorder, and a town clerk, with a host of lesser officials including beadle, ale-tasters, sealers, searchers [inspectors], weighers and keepers of the market, ferrymen and porters, clock-keepers and criers, paviers [road pavers], scavengers and other street cleaners, gatekeepers and watchmen of several ranks and kinds. A wealthy borough would have a chaplain and two or three minstrels.

In all towns, the wealthiest and most influential guilds were the merchant traders of mercers, drapers, grocers, and goldsmiths. From their ranks came most of the mayors. Next came the shopholders of skinners, tailors, ironmongers, and corvisors [shoemakers]. Thirdly came the humbler artisans, the sellers of victuals, small shopkeepers, apprentices, and journeymen on the rise. Lastly came unskilled laborers, who lived in crowded tenements and hired themselves out. The first three groups were the free men who voted and paid the tax of scot and lot, and belonged to guilds.

In the towns, many married women had independent businesses and wives also played an active part in the businesses of their husbands. Wives of well-to-do London merchants embroidered, sewed jewelry onto clothes, and made silk garments. Widows often continued in their husband's businesses, such as managing a large import-export trade, tailoring, brewing, and metal shop. Socially lower women often ran their own breweries, bakeries, and taverns. It was possible for wives to be free burgesses in their own right in some towns.

Some ladies were patrons of writers. Some women were active in prison reform in matters of reviews to insure that no man was in jail without due cause, overcharges for bed and board, brutality, and regulation of prisoners being placed in irons. Many men and women left money in their wills for food and clothing for prisoners.

There was much overlapping in the two forms of association: the craft guild and the religious fraternity.

Paved roads in towns were usually gravel and sometimes cobble. They were frequently muddy because of rain and spillage of water being carried. Iron-shod wheels and overloaded carts made them very uneven. London was the first town with paviers. They were organized as a city company in 1479. About 1482, towns besides London began appointing salaried road paviers to repair roads and collect their expenses from the householders because the policy of placing the burden on individual householders didn't work well. London streets were lighted at night by public lanterns, under the direction of the mayor.

The King granted London all common soils, improvements, wastes, streets, and ways in London and in the adjacent waters of the Thames River and all the profits and rents to be derived therefrom. Later the King granted London the liberty to purchase lands and tenements worth up to 2,667s. yearly. Each ward nominated two men for alderman, the final choice being made by the mayor and the other aldermen.

There were many craft guilds. In fact, every trade of twenty men had its own guild. The guild secured good work for its members and the members maintained the reputation of the work standards of the guild. Bad work was punished and night work prohibited as leading to bad work. The guild exercised moral control over its members and provided sickness and death benefits for them. Apprentices were taken in to assure an adequate supply of competent workers for the future. When these apprentices had enough training they were made journeymen with a higher rate of pay. Journeymen traveled to see the work of their craft in other towns. Those

Our Legal Heritage

journeymen rising to master had the highest pay rate.

But the guilds were being replaced by associations for the investment of capital. In associations, journeymen were losing their chance of rising to be a master. Competition among associations was starting to supplant custom as the mainspring of trade.

The Merchant Adventurers was chartered in 1407. A share in the ownership of one of their vessels was a common form of investment by prosperous merchants. By 1450, they were dealing in linen cloths, buckrams [a stiffened, coarse cloth], fustians [coarse cloth made of cotton threads going in one direction and linen threads the other], satins, jewels, fine woolen and linen wares, threads, drugs, wood, oil, wine, salt, copper, and iron. They began to replace trade by alien traders. (The history of the "Merchant Adventurers" was associated with the growth of the mercantile system for more than 300 years. It eventually replaced the staples system.)

In London, shopkeepers appealed to passers-by to buy their goods, sometimes even seizing people by the sleeve. The drapers had several roomy shops containing shelves piled with cloths of all colors and grades, tapestries, pillows, and 'bankers and dorsers' to soften hard wooden benches. A rear storeroom held more cloth for import or export. Many shops of skimmers were on Fur Row. There were shops of leather-sellers, hosiers, gold and silver cups, and silks. At the Stocks Market were fishmongers, butchers, and poulterers. London grocers imported spices, canvas, ropery, drugs, unguents, soap, confections, garlic, cabbages, onions, apples, oranges, almonds, figs, dates, raisins, dye-stuffs, woad, madder, scarlet grains, saffron, iron, and steel. They were retailers as well as wholesalers and had shops selling honey, licorice, salt, vinegar, rice, sugar loaves, syrups, spices, garden seeds, dyes, alum, soap, brimstone, paper, varnish, canvas, rope, musk, incense, treacle of Genoa, and mercury. The Grocers did some money-lending, usually at 12% interest. The guilds did not restrict themselves to dealing in the goods for which they had a right of inspection, and so many dealt in wine that it was a medium of exchange.

Grocers sold herbs for medicinal as well as eating purposes. Breadcarters sold penny wheat loaves. Foreigners set up stalls on certain days of the week to sell meat, canvas, linen, cloth, ironmongery, and lead. There were great houses, churches, monasteries, inns, guildhalls, warehouses, and the King's Beam for weighing wool to be exported. The Mercers and Goldsmiths were in the prosperous part of town. The Goldsmiths' shops sold gold and silver plate, jewels, rings, water pitchers, drinking goblets, basins to hold water for the hands, and covered saltcellars. The grain market was on Cornhill. Halfway up the street, there was a supply of water which had been brought up in pipes. On the top was a cage where riotous folk had been incarcerated by the night watch and the stocks and pillory, where fraudulent schemers were exposed to ridicule.

Outside the London city walls were tenements, Smithfield cattle market, Westminster Hall, green fields of crops, and some marsh land.

On the Thames River to London were large ships with cargoes; small boats rowed by tough boatmen offering passage for a penny; small private barges of great men with carved wood, gay banners, and oarsmen with velvet gowns; the banks covered with masts and tackle; the nineteen arch London Bridge supporting a street of shops and houses and a drawbridge in the middle; quays; warehouses, and great cranes lifting bales from ship to wharf. Merchant guilds which imported or exported each had their own wharves and warehouses. Downstream, pirates hung on gallows at the low-water mark to remain until three tides had overflowed their bodies.

The large scale of London trade promoted the specialization of the manufacturer versus the merchant versus the shipper. Merchants had enough wealth to make loans to the government or for new commercial enterprises. Some London merchants were knighted by the King. Many bought country estates and turned themselves into gentry.

In schools, there was a renaissance of learning from original sources of knowledge written in Greek and rebirth of the Greek pursuit of the truth and scientific spirit of inquiry. There was a striking increase in the number of schools founded by wealthy merchants or town guilds. Merchants tended to send their sons to private boarding schools, instead of having them tutored at home as did the nobility. At the universities, the bachelor's degree came into existence to denote a preliminary stage in the course of becoming a master.

The book "Sir Gawain and the Green Knight" was written about an incident in the court of King Arthur and Queen Guenevere in which a green knight challenges Arthur's knights to live up to their reputation for valor and awesome deeds. The knight Gawain answers the challenge, but is shown that he could be false and cowardly when death seemed to be imminent. Thereafter, he wears a green girdle around his waist to remind him not to be

proud.

Other literature read included "London Lickpenny", a satire on London and its expensive services and products, "Fall of Princes" by John Lydgate, social history by Thomas Hoccleve, "The King is Quair" by King James I of Scotland about how he fell in love, "The Cuckoo and the Nightengale", and "The Flower and Leaf" on morality as secular common sense. Chaucer, Cicero, and Ovid were widely read. Malory's new version of the Arthurian stories was popular. Margery Kempe wrote the first true autobiography. She was a woman who had a normal married life with children, but one day had visions and voices which led her to leave her husband to take up a life of wandering and praying in holy possession. The common people developed ballads, e.g. about their love of the forest, their wish to hunt, and their hatred of the forest laws.

About 30% of the people could read English. Books were bought in London in such quantities by 1403 that the organization of text–letter writers, book–binders, and book sellers was sanctioned by ordinance. "Unto the honorable lords, and wise, the mayor and aldermen of the city of London, pray very humbly all the good folks, freemen of the said city, of the trades of writers of text–letter, limners [illuminator of books], and other folks of London who are wont to bind and to sell books, that it may please your great sages to grant unto them that they may elect yearly two reputable men, the one a limner, the other a text–writer, to be wardens of the said trades, and that the names of the wardens so elected may be presented each year before the mayor for the time being, and they be there sworn well and diligently to oversee that good rule and governance is had and exercised by all folks of the same trades in all works unto the said trades pertaining, to the praise and good fame of the loyal good men of the said trades and to the shame and blame of the bad and disloyal men of the same. And that the same wardens may call together all the men of the said trades honorably and peacefully when need shall be, as well for the good rule and governance of the said city as of the trades aforesaid. And that the same wardens, in performing their due office, may present from time to time all the defaults of the said bad and disloyal men to the chamberlain at the Guildhall for the time being, to the end that the same may there, according to the wise and prudent discretion of the governors of the said city, be corrected, punished, and duly redressed. And that all who are rebellious against the said wardens as to the survey and good rule of the same trades may be punished according to the general ordinance made as to rebellious persons in trades of the said city [fines and imprisonment]. And that it may please you to command that this petition, by your sages granted, may be entered of record for time to come, for the love of God and as a work of charity."

The printing press was brought to London in 1476 by a mercer: William Caxton. It supplemented the text–writer and monastic copyist. It was a wood and iron frame with a mounted platform on which were placed small metal frames into which words with small letters of lead had been set up. Each line of text had to be carried from the type case to the press. Beside the press were pots filled with ink and inking balls. When enough lines of type to make a page had been assembled on the press, the balls would be dipped in ink and drawn over the type. Then a sheet of paper would be placed on the form and a lever pulled to press the paper against the type. Linen usually replaced the more expensive parchment for the book pages.

The printing press made books more accessible to all literate people. Caxton printed major English texts and some translations from French and Latin. He commended different books to various kinds of readers, for instance, for gentlemen who understand gentleness and science, or for ladies and gentlewomen, or to all good folk. There were eyeglasses to correct near–sightedness.

Old–established London families began to choose the law as a profession for their sons, in preference to an apprenticeship in trade. Many borough burgesses in Parliament were lawyers.

Many carols were sung at the Christian festival of Christmas. Ballads were sung on many features of social life of this age of disorder, hatred of sheriffs, but faith in the King. The legend of Robin Hood was popular. Town miracle plays on leading incidents of the Bible and morality plays were popular. Vintners portrayed the miracle of Cana where water was turned into wine and Goldsmiths ornately dressed the three Kings coming from the east. Short pantomimes and disguising, forerunners of costume parties, were good recreation. Games of cards became popular as soon as cards were introduced. The king, queen, and jack were dressed in contemporary clothes. Men bowled, kicked footballs, and played tennis. May Day was celebrated with crowns and garlands of spring flowers. The village May Day pageant was often presided over by Robin Hood and Maid Marion.

The church was engendering more disrespect. Monks and nuns had long ago resigned spiritual leadership to the friars; now the friars too lost much of their good fame. The monks got used to life with many servants such as

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cooks, butlers, bakers, brewers, barbers, laundresses, tailors, carpenters, and farm hands. The austerity of their diet had vanished. The schedule of divine services was no longer followed by many and the fostering of learning was abandoned. Into monasteries drifted the lazy and miserable. Nunneries had become aristocratic boarding houses. The practice of taking sanctuary was abused; criminals and debtors sought it and were allowed to overstay the 40-day restriction and to leave at night to commit robberies. People turned to the writing of mystics, such as "Scale of Perfection" and "Cloud of Unknowing", the latter describing how one may better know God.

People relied on saint's days as reference points in the year, because they did not know dates of the year. But townspeople knew the hour and minute of each day, because mechanical clocks were in all towns and in the halls of the well-to-do. This increased the sense of punctuality and higher standards of efficiency.

Important news was announced and spread by word of mouth in market squares and sometimes in churches. As usual, traders provided one of the best sources of news; they maintained an informal network of speedy messengers and accurate reports because political changes so affected their ventures.

A royal post service was established by relays of mounted messengers. The first route was between London and the Scottish border, where there were frequent battles for land between the Scotch and English.

The inland roads from town to town were still rough and without signs. A horseman could make up to 40 miles a day. Common carriers took passengers and parcels from various towns to London on scheduled journeys. Now the common yeoman could order goods from the London market, communicate readily with friends in London, and receive news of the world frequently. Trade with London was so great and the common carrier so efficient in transporting goods that the medieval fair began to decline. First the Grocers and then the Mercers refused to allow their members to sell goods at fairs. There was much highway robbery. Most goods were still transported by boats along the coasts, with trading at the ports.

Embroidery was exported. Imported were timber, pitch, tar, potash [for cloth-dyeing], furs, silk, satin, gold cloth, damask cloth, furred gowns, gems, fruit, spices, and sugar. Imports were restricted by national policy for the purpose of protecting native industries.

Single-masted ships began to be replaced by a two or three masted ship with high pointed bows to resist waves and sails enabling the ship to sail closer to the wind. The increase in trade made piracy, even by merchants, profitable and frequent until merchant vessels began sailing in groups for their mutual protection. The astrolabe was used for navigation by the stars.

Consuls were appointed to assist English traders abroad.

Henry IV appointed the first admiral of the entire nation and resolved to create a national fleet of warships instead of using merchant ships. In 1417, the war navy had 27 ships. In 1421, Portsmouth was fortified as a naval base.

For defense of the nation, especially the safeguard of the seas, Parliament allotted the King for life, 3s. for every tun of wine imported and an additional 3s. for every tun of sweet wine imported.

The most common ailments were eye problems, aching teeth, festering ears, joint swelling and sudden paralysis of the bowels. Epidemics broke out occasionally in the towns in the summers. Leprosy disappeared.

Hospitals were supported by a tax of the King levied on nearby counties. The walls, ditches, gutters, sewers, and bridges on waterways and the coast were kept in repair by laborers hired by commissions appointed by the Chancellor. Those who benefited from these waterways were taxed for the repairs in proportion to their use thereof.

Alabaster was sculptured into tombs surmounted with a recumbent effigy of the deceased, and effigies of mourners on the sides. Few townsmen choose to face death alone and planned memorial masses to be sung to lift his soul beyond Purgatory. Chantries were built by wealthy men for this purpose.

Gold was minted into coins: noble, half noble, and farthing.

The commons gained much power in Parliament under Henry IV because he needed so much taxes that the commons had a hold over him. Also, as a usurper King, he did not carry the natural authority of a King. The lords who helped his usurpation felt they should share the natural power of the kingship. Also, the commons gained power compared to the nobility because many nobles had died in war. Shakespeare's histories deal with this era. The Commons now has a speaker.

The Commons established an exclusive right to originate all money grants to the King in 1407. The commons announced its money grant only on the last day of the parliamentary session, after the answers to its petitions had

Our Legal Heritage

been declared. It tied its grants by rule rather than just practice to certain appropriations. For instance, tonnage and poundage were appropriated for naval defenses. Wool customs went to the maintenance of Calais, a port on the continent, and defense of the nation. It also put the petitions in statutory form, called "bills", to be enacted without alteration. It forced the King's council appointees to be approved by Parliament, and auditors to be appointed to audit the King's account to ensure past grants had been spent according to their purpose.

This was the first encroachment on the King's right to summon, prorogue, or dismiss a Parliament at his pleasure, determine an agenda of Parliament, veto or amend its bills, exercise his discretion as to which lords he summoned to Parliament, and create new peers by letters patent [official public letters].

The King lost Parliamentary power. The magnates asserted that their attendance at one Parliament established a hereditary right to attend the others. The consent of the Commons to legislation became so usual that the judges declared that it was necessary. In 1426, the retainers of the barons in Parliament were forbidden to bear arms, so they appeared with clubs on their shoulders. The clubs were forbidden and they brought in stones concealed in their clothing.

The authority of the King's privy seal had become a great office of state which transmitted the King's wishes to the Chancery and Exchequer, rather than the King's personal instrument for sealing documents. Now the King used a signet kept by his secretary as his personal seal. The position of secretary rose in power under Edward IV.

King Edward IV introduced an elaborate spy system, the use of the rack to torture people to confess, and other interferences with justice, all of which the Tudors later used.

King Richard III prohibited the seizure of goods before conviction of felony. He also liberated the unfree villeins on royal estates.

It was declared under Parliamentary authority that there was a preference for the Crown to pass to a King's eldest son, and to his male issue after him. Formerly, a man could ascend to the throne through his female ancestry as well.

—The Law—

The forcible entry statute is expanded to include peaceful entry with forcible holding afterwards and to forcible holding with departure before the justices arrived. Penalties are triple damages, fine, and ransom to the King. A forceful possession lasting three years is exempt.

Women of age fourteen or over shall have livery of their lands and tenements by inheritance without question or difficulty.

Purposely cutting out another's tongue or putting out another's eyes is a felony [penalty of loss of all property].

No one may keep swans unless he has lands and tenements of the estate of freehold to a yearly value of 67s., because swans of the King, lords, knights, and esquires have been stolen by yeomen and husbandmen.

The wage ceiling for servants is: bailiff of agriculture 23s.4d. per year, and clothing up to 5s., with meat and drink; chief peasant, a carter, chief shepherd 20s. and clothing up to 4s., with meat and drink; common servant of agriculture 15s., and clothing up to 3s.4d.; woman servant 10s., and clothing up to 4s., with meat and drink; infant under fourteen years 6s., and clothing up to 3s., with meat and drink. Such as deserve less or where there is a custom of less, that lesser amount shall be given.

For laborers at harvest time: mower 4d. with meat and drink or 6d. without; reaper or carter: 3d. with or 5d. without; woman laborer and other laborers: 2d with and 4d. without.

The ceiling wage rate for craftsmen per day is: free mason or master carpenter 4d. with meat drink or 5d. without; master tiler or slater, rough mason, and mesne carpenter and other artificers in building 3d. with meat and drink or 4d. without; every other laborer 2d. with meat and drink or 3d. without. In winter the respective wages were less: mason category: 3d. with or 4d. without; master tiler category: 2d. with or 4d. without; others: 1d. with or 3d. without meat and drink.

Any servant of agriculture who is serving a term with a master and covenants to serve another man at the end of this term and that other man shall notify the master by the middle of his term so he can get a replacement worker. Otherwise, the servant shall continue to serve the first master.

No man or woman may put their son or daughter to serve as an apprentice in a craft within any borough, but may send the child to school, unless he or she has land or rent to the value of 20s. per year. [because of scarcity of laborers and other servants of agriculture]

No laborer may be hired by the week.

Our Legal Heritage

Masons may no longer congregate yearly, because it has led to violation of the statute of laborers.

No games may be played by laborers because they lead to murders and robberies.

Apparel worn must be appropriate to one's status to preserve the industry of agriculture. The following list of classes shows the lowest class, which could wear certain apparel:

1. Lords—gold cloth, gold corses, sable fur, purple silk
2. Knights—velvet, branched satin, ermine fur
3. Esquires and gentlemen with possessions to the value of 800 s. per year, daughters of a person who has possessions to the value of 2,000s. a year—damask, silk, kerchiefs up to 5s. in value.
4. Esquires and gentlemen with possessions to the yearly value of 800s. 40 pounds—fur of martron or letuse, gold or silver girdles, silk corse not made in the nation, kerchief up to 3s.4d in value
5. Men with possessions of the yearly value of 40s. excluding the above three classes—fustian, bustian, scarlet cloth in grain
6. Men with possessions under the yearly value of 40s. excluding the first three classes—black or white lamb fur, stuffing of wool, cotton, or cadas.
7. Yeomen—cloth up to the value of 2s., hose up to the value of 14s., a girdle with silver, kerchief up to 12d.
8. Servants of agriculture, laborer, servant, country craftsman — none of the above clothes

Gowns and jackets must cover the entire trunk of the body, including the private parts. Shoes may not have pikes over two inches.

Every town shall have at its cost a common balance with weights according to the standard of the Exchequer. All citizens may weigh goods for free. All cloth to be sold shall be sealed according to this measure.

There is a standard bushel of grain throughout the nation.

There are standard measures for plain tile, roof tile, and gutter tile throughout the nation.

No gold or silver may be taken out of the nation.

The price of silver is fixed at 30s. for a pound, to increase the value of silver coinage, which has become scarce due to its higher value when in plate or masse.

A designee of the King will inspect and seal cloth with lead to prevent deceit. Cloth may not be tacked together before inspection. No cloth may be sold until sealed.

Heads of arrows shall be hardened at the points with steel and marked with the mark of the arrowsmith who made it, so they are not faulty.

Shoemakers and cordwainers may tan their leather, but all leather must be inspected and marked by a town official before it is sold.

Cordwainers shall not tan leather [to prevent deceitful tanning]. Tanners who make a notorious default in leather which is found by a cordwainer shall make a forfeiture.

Defective embroidery for sale shall be forfeited.

No fishing net may be fastened or tacked to posts, boats, or anchors, but may be used by hand, so that fish are preserved and vessels may pass.

No one may import any articles which could be made in the nation, including silks, bows, woolen cloths, iron and hardware goods, harness and saddlery, and excepting printed books.

The following merchandise shall not be brought into the nation already wrought: woolen cloth or caps, silk laces, corses, ribbons, fringes, and embroidery, gold laces, saddles, stirrups, harnesses, spurs, bridles, aundirons, gridirons, locks, hammers, pinsons, fire tongs, dripping pans, dice, tennis balls, points, purses, gloves, girdles, harness for girdles of iron latten steel tin or of alkemine, any thing wrought of any tawed leather, towed furs, buscans, shoes, galoshes, corks, knives, daggers, woodknives, bodkins, sheers for tailors, scissors, razors, sheaths, playing cards, pins, pattens, pack needles, painted ware, forcers, caskets, rings of copper or of latten gilt, chaffing dishes, hanging candlesticks, chaffing balls, sacring bells, rings for curtains, ladles, scummers, counterfeit basons, ewers, hats, brushes, cards for wool, white iron wire, upon pain of their forfeiture. One half this forfeiture goes to the King and the other half to the person seizing the wares.

No sheep may be exported, because being shorn elsewhere would deprive the King of customs.

No wheat, rye, or barley may be imported unless the prices are such that national agriculture is not hurt.

Clothmakers must pay their laborers, such as carders and spinsters, in current coin and not in pins and girdles and the like.

Our Legal Heritage

The term "freemen" in the Magna Carta includes women.

The election of a knight from a shire to go to Parliament shall be proclaimed by the sheriff in the full county so all may attend and none shall be commanded to do something else at that time. Election results will be sealed and sent to Parliament.

To be elected to Parliament, a knight must reside in the county and have free land or tenements to the value of 40s. per year, because participation in elections of too many people of little substance or worth had led to homicides, assaults, and feuds. (These "yeomen" were about one sixth of the population. Most former voters and every leaseholder and every copyholder were excluded. The requirement lasted for 400 years.)

London ordinances forbade placing rubbish or dung in the Thames River or any town ditch or casting water or anything else out of a window. The roads were maintained with tolls on carts and horses bringing victuals or grains into the city and on merchandise unloaded from ships at the port. No carter shall drive his cart more quickly when it is unloaded than when it is loaded. No pie bakers shall sell beef pies as venison pies, or make any meat pie with entrails. To assist the poor, bread and ale shall be sold by the farthing.

Desertion by a soldier is penalized by forfeiture of all land and property.

The common law held that a bailee is entitled to possession against all persons except the owner of the bailed property.

Former judge Sir Thomas Littleton wrote a legal textbook describing tenancies in dower; the tenures of socage, knight's service, serjeanty, and burgage; estates in fee simple, fee tail, and fee conditional. For instance, "Also, if feoffment be made upon such condition, that if the feoffor pay to the feoffee at a certain day, etc., 800s. forty pounds of money, that then the feoffor may re-enter, etc., in this case the feoffee is called tenant in mortgage, ... and if he doth not pay, then the land which he puts in pledge upon condition for the payment of the money is gone from him for ever, and so dead as to the tenant, etc."

Joint tenants are distinguished from tenants in common by Littleton thus: "Joint-tenants are, as if a man be seised of certain lands or tenements, etc., and thereof enfeoffeth two, or three, or four, or more, to have and to hold to them (and to their heirs, or letteth to them) for term of their lives, or for term of another's life; by force of which feoffment or lease they are seised, such are joint-tenants. ... And it is to be understood, that the nature of joint-tenancy is, that he that surviveth shall have solely the entire tenancy, according to such estate as he hath, ..." "Tenants in common are they that have lands or tenements in fee-simple, fee-tail, or for term of life, etc., the which have such lands and tenements by several title, and not by joint title, and neither of them knoweth thereof his severalty, but they ought by the law to occupy such lands or tenements in common pro indiviso, to take the profits in common. ...As if a man enfeoff two joint-tenants in fee, and the one of them alien that which to him belongeth to another in fee, now the other joint-tenant and the alienee are tenants in common, because they are in such tenements by several titles, ..."

—Judicial Procedure—

People took grievances outside the confines of the rigid common law to the Chancellor, who could give equitable remedies under authority of a statute of 1285 (described in Chapter 8). The Chancery heard many cases of breach of faith in the "use", a form of trust in which three parties were involved: the owner of land, feoffees to whom the owner had made it over by conveyance or "bargain and sale", and the beneficiary or receiver of the profits of the land, who was often the owner, his children, relatives, friends, an institution, or a corporation. This system of using land had been created by the friars to get around the prohibition against owning property. Lords and gentry quickly adopted it. The advantages of the use were that 1) there was no legal restriction to will away the beneficial interest of the use although the land itself could not be conveyed by will; 2) it was hard for the King to collect feudal incidents because the feoffees were often unknown 3) the original owner was protected from forfeiture of his land in case of conviction of treason if the Crown went to someone he had not supported. Chancery gave a remedy for dishonest or defaulting feoffees.

Chancery also provided the equitable relief of specific performance in disputes over agreements, for instance, conveyance of certain land, whereas the common law courts awarded only monetary damages by the writ of covenant.

Chancery ordered accounts to be made in matters of foreign trade because the common law courts were limited to accounts pursuant to transactions made within the nation. It also involved itself in the administration of assets and accounting of partners to each other.

Our Legal Heritage

The Chancellor took jurisdiction of cases of debt, detinue, and account which had been decided in other courts with oathhelping by the defendant. He did not trust the reliance on friends of the defendant swearing that his statement made in his defense was true. An important evidentiary difference between procedures of the Chancery and the common law courts was that the Chancellor could orally question the plaintiff and the defendant under oath. He also could order persons to appear at his court by subpoena [under pain of punishment].

Whereas the characteristic award of the common law courts was seisin of land or monetary damages, Chancery often enjoined certain action. Because malicious suits were a problem, the Chancery identified such suits and issued injunctions against taking them to any court.

The Chancery was given jurisdiction by statute over men of great power taking by force women who had lands and tenements or goods and not setting them free unless they bound themselves to pay great sums to the offenders or to marry them. A statute also gave Chancery jurisdiction over servants taking their masters' goods at his death.

Justices of the Peace, appointed by the Crown, investigated all riots and arrested rioters, by authority of statute. If they had departed, the Justices certified the case to the King. The case was then set for trial first before the King and his council and then at the King's Bench. If the suspected rioters did not appear at either trial, they could be convicted for default of appearance. If a riot was not investigated and the rioters sought, the Justice of the Peace nearest forfeited 2,000s. Justices of the peace were not paid and need not have a legal background. For complex cases and criminal cases with defendants of high social status, they deferred to the Justices of Assize, who rode on circuit once or twice a year.

Manor courts still formally admitted new tenants, registered titles, sales of land and exchanges of land, and commutation of services, enrolled leases and rules of succession, settled boundary disputes, and regulated the village agriculture.

All attorneys shall be examined by the royal judges for their learnedness in the law and, at their discretion, those that are good and virtuous shall be received to make any suit in any royal court. The attorneys shall be sworn to serve well and truly in their offices.

Attorneys may plead on behalf of parties in the hundred courts.

A qualification for jurors was to have an estate to one's own use or one of whom other persons have estates of fee simple, fee tail, freehold in lands and tenements, or freehold, which was at least 40s. per year in value. In a plea of land worth at least 40s. yearly or a personal plea with relief sought at least 800s., jurors had to have land in the bailiwick to the value of at least 400s., because perjury was considered less likely in the more sufficient men.

Jurors were separated from witnesses.

Justices of the Peace were to have lands worth 267s. yearly, because those with less used the office for extortion and lost the respect and obedience of the people.

A Sheriff was not to arrest, but to transfer indictments to the Justices of the Peace of the county. He had to reside in his bailiwick. The sheriff could be sued for misfeasance such as bribery in the King's court.

Chapter 11—The Times: 1485–1509—

Henry and other exiles defeated and killed Richard III on Bosworth field, which ends the War of the Roses. As King, Henry VII restored order to the nation. He was readily accepted as King because he was descended from both royal lines who were fighting each other and married a woman who also was in the royal bloodline. Henry was intelligent and sensitive. He weighed alternatives and possible consequences before taking action. He was convinced by reason on what plans to make. His primary strategy was enacting and enforcing statutes to shore up the undermined legal system, which includes the establishment of a new court: the Court of the Star Chamber, to obtain punishment of persons whom juries were afraid to convict. It had no jury. The Star Chamber was the room in which the King's council had met since the 14th century. In his reign of 24 years, Henry applied himself diligently to the details of the work of government to make it work well. He strengthened the monarchy, shored up the legal system to work again, and provided a peace in the land in which can later flourish a renaissance of the arts and sciences, culture, and the intellectual life.

The most prevalent problems were: murder, robbery, rape or forced marriage of wealthy women, counterfeiting of coin, extortion, misdemeanors by sheriffs and escheators, bribing of sheriffs and jurors, perjury, livery and maintenance agreements, idleness, unlawful plays, and riots. Interference with the course of justice was not committed only by lords on behalf of their retainers; men of humbler station were equally prone to help their friends in court or to give assistance in return for payment. Rural juries were intimidated by the old baronage and their armed retinues. Juries in municipal courts were subverted by gangs of townsmen. Justices of the Peace didn't enforce the laws. The agricultural work of the nation had been adversely affected.

Henry made policy with the advice of his council and implemented it by causing Parliament to enact it into legislation. He dominated Parliament by having selected most of its members. Many of his council were sons of burgesses and had been trained in universities. He chose competent and especially trusted men for his officers and commanders of castles and garrison. The fact that only the King had artillery deterred barons from revolting. Also, the baronial forces were depleted due to war. If Henry thought a magnate was exercising his territorial power to the King's detriment, he confronted him with an army and forced him to bind his whole family in recognizances for large sums of money to ensure future good conduct. Since the King had the authority to interpret these pledges, they were a formidable check on any activity which could be considered to be disloyal. The earl of Kent, whose debts put him entirely at the King's mercy, was bound to "be seen daily once in the day within the King's house". Henry also required recognizances from men of all classes, including clergy, captains of royal castles, and receivers of land. The higher nobility now consisted of about twenty families. The heavy fines by the Star Court put an end to conspiracies to defraud, champerty, livery, and maintenance. The ties between the nobility and the Justices of the Peace had encouraged corruption of justice. So Henry appointed many of the lesser gentry and attorneys as Justices of the Peace. Also he appointed a few of his councilors as non-resident Justices of the Peace. There were a total of about thirty Justices of the Peace per county. Their appointments were indefinite and most remained until retirement or death. Henry had yeomen serve as personal bodyguards night and day.

Many bills of attainder caused lords to lose their land to the King. Most of these lords had been chronic disturbers of the peace. Henry was also known to exhaust the resources of barons he suspected of disloyalty by accepting their hospitality for himself and his household for an extended period of time.

Henry built up royal funds by using every available procedure of government to get money, by maximizing income from royal estates by transferring authority over them from the Exchequer to knowledgeable receivers, and from forfeitures of land and property due to attainments of treason. He also personally reviewed all accounts and initialed every page, making sure that all payments were made. He made a regular practice of ordering all men with lands with 800s. 40 pounds per year to receive knighthoods or pay a high fee. As a result, the Crown became rich and therefore powerful.

Queen Elizabeth was a good influence on Henry's character. Her active beneficence was a counteracting influence to his avaricious predisposition. When Henry and his Queen traveled through the nation, they often stopped to talk to the common people. They sometimes gave away money, such as to a man who had lost his

Our Legal Heritage

hand. Henry paid for an intelligent boy he met to go to school.

Henry had the first paper mill erected in the nation. He fostered the reading of books and the study of Roman law, the classics, and the Bible. He had his own library and gave books to other libraries.

The age of entry to university was between 13 and 16. It took four years' study of grammar, logic, and rhetoric to achieve the Bachelor of Arts degree and another five before a master could begin a specialized study of the civil law, canon law, theology, or medicine. Arabic numbers replaced Roman numerals, making multiplication and division possible. Humanist studies were espoused by individual scholars at the three centers of higher learning: Oxford University, Cambridge University, and the Inns of Court in London. The Inns of Court attracted the sons of gentry and merchants pursuing practical and social accomplishments. The text of 'readings' to members of the inns survive from this time. In the legalistic climate of these times, attorneys were prosperous.

The enclosure of land by hedges for sheep farming continued, especially by rich merchants who bought country land for this purpose. Often this was land under the plough. The tenants at will were thrown off it immediately. That land held by copyholders of land who had only a life estate, was withheld from their sons. Only freeholders and copyholders with the custom of the manor in their favor were secure against eviction. The real line of distinction between rural people was one of material means instead of legal status: free or unfree. On one extreme was the well-to-do yeoman farmer farming his own land. On the other extreme was the agricultural laborer working for wages.

Other land put to use for sheep breeding was waste land. There were three sheep to every person. The nearby woodlands no longer had wolves or lynx who could kill the sheep. Bears and elk are also gone.

There were still deer, wild boar, wildcats and wild cattle in vast forests for the lords to hunt. Wood was used for houses, arms, carts, bridges, and ships.

The villages were still isolated from each other, so that a visitor from miles away was treated as warily as a foreigner. Most people lived and died where they had been born. A person's dialect indicated his place of origin. The largest town, London, had a population of about 70,000. Other towns had a population less than 20,000. The population was increasing, but did not reach the level of the period just before the black death.

In most large towns, there were groups of tailors and hatmakers, glovers, and other leatherworkers. Some towns had a specialization due to their proximity to the sources of raw materials, such as nails, cutlery, and effigies and altars. Despite the spread of wool manufacturing to the countryside, there was a marked increase of industry and prosperity in the towns. The principal streets of the larger towns were paved with gravel. Guild halls became important and imposing architecturally.

London had some houses of stone and timber and some mansions of brick and timber clustered around palaces. In these, bedrooms increased in number, with rich bed hangings, linen sheets, and bolsters. Bedspreads and nightgowns were introduced. Fireplaces became usual in all the rooms. Tapestries covered the walls. Carpets were used in the private rooms. Some of the great halls had tiled floors. The old trestle tables were replaced by tables with legs. Benches and stools had backs to lean on. Women and men wore elaborate headdresses. There are guilds of ironmongers, salters, and haberdashers [hats and caps]. On the outer periphery are mud and straw taverns and brothels.

The Tailors' and Linen Armorers' Guild received a charter from the King as the "Merchant Tailors" to use all wares and merchandise, especially wool cloth, as well wholesale as retail, throughout the nation. Some schooling was now being made compulsory in certain trades; the goldsmiths' company made a rule that all apprentices had to be able to read and write.

The Merchant Adventurers created a London fellowship confederacy to make membership of their society and compliance with its regulations binding on all cloth traders. Membership could be bought for a large fee or gained by apprenticeship or by being the son of a member.

Foreign trade was revived because it was a period of comparative peace. The nation sought to sell as much as possible to foreign nations and to buy at little as possible and thereby increase its wealth in gold and silver, which could be used for currency.

There are more navy ships, and they have cannon. Ships weighed 200 tons and had twice the cargo space they had previously. Their higher prows made them better able to withstand gales. The mariners' compass with a pivoted needle and compass card was introduced. Ships had three masts; the three sails make possible the use of almost any direction of wind to go in the direction sought. This opened the seas of the world to navigation.

Our Legal Heritage

Adventurous seamen went on voyages of discovery, such as John Cabot to North America in 1497, following Italian Christopher Columbus' discovery of the new world in 1492.

There were morality plays in which the seven deadly sins: pride, covetousness, lust, anger, gluttony, envy, and sloth, fought the seven cardinal virtues: faith, hope, charity, prudence, temperance, justice, and strength, respectively, for the human soul. The play "Everyman" demonstrates that every man can get to heaven only by being virtuous and doing good deeds in his lifetime. It emphasized that death may come anytime to every man, when his deeds will be judged as to their goodness or sinfulness. Card games were introduced.

—The Law—

Royal proclamations clarifying, refining or amplifying the law had the force of parliamentary statutes. One of the first things Henry did as King was make this proclamation against false rumors in 1486: "Forasmuch as many of the King our sovereign lord's subjects [have] been disposed daily to hear feigned, contrived, and forged tidings and tales, and the same tidings and tales, neither dreading God nor his Highness, utter and tell again as though they were true, to the great hurt of divers of his subjects and to his grievous displeasure: Therefore, in eschewing of such untrue and forged tidings and tales, the King our said sovereign lord straitly chargeth and commandeth that no manner person, whatsoever he be, utter nor tell any such tidings or tales but he bring forth the same person the which was author and teller of the said tidings or tales, upon pain to be set on the pillory, there to stand as long as it shall be thought convenient to the mayor, bailiff, or other official of any city, borough, or town where it shall happen any such person to be taken and accused for any such telling or reporting of any such tidings or tales. Furthermore the same our sovereign lord straitly chargeth and commandeth that all mayors, bailiffs, and other officers diligently search and inquire of all such persons tellers of such tidings and tales not bringing forth the author of the same, and them set on the pillory as it above said."

Statutes included:

Lords holding castles, manors, lands and tenements by knight's service of the King shall have a writ of right for wardship of the body as well as of the land of any minor heir of a deceased person who had the use [beneficial enjoyment] of the land for himself and his heirs as if the land had been in the possession of the deceased person. And if such an heir is of age, he shall pay relief to the lord as if he had inherited possession of the land. An heir in ward shall have an action of waste against his lord as if his ancestor had died seised of the land. That is, lands of "those who use" shall be liable for execution of his debt and to the chief lord for his relief and heriot, and if he is a bondsman, they may be seized by the lord.

Any woman who has an estate in dower, or for a term of life, or in tail, jointly with her husband, or only to herself, or to her use, in any manors, lands, tenements, or other hereditaments of the inheritance or purchase of her husband, or given to the said husband and wife in tail, or for term of life, by any of the ancestors of the said husband, or by any other person seised to the use of the said husband, or of his ancestors, who, by herself or with any after taken husband; discontinue, alienate, release, confirm with warranty or, by collusion, allow any recovery of the same against them or any other seised to their use, such action shall be void. Then, the person to whom the interest, title, or inheritance would go after the death of such woman may enter and possess such premises. This does not affect the common law that a woman who is single or remarried may give, sell, or make discontinuance of any lands for the term of her life only.

All deeds of gift of goods and chattels made of trust, to the use of the giver [grantor and beneficiary of trust], to defraud creditors are void.

It is a felony to carry off against her will, a woman with lands and tenements or movable goods, or who is heir-apparent to an ancestor. This includes taking, procuring, abetting, or knowingly receiving a woman taken against her will.

A vagabond, idle, or suspected person shall be put in the stocks for three days with only bread and water, and then be put out of the town. If he returns, he shall spend six days in the stocks. (A few years later this was changed to one and three days, respectively.) Every beggar who is not able to work, shall return to the hundred where he last dwelled, is best known, or was born and stay there.

No one may take pheasants or partridges by net snares or other devices from his own warren [breeding ground], upon the freehold of any other person, or forfeit 200s., one half to the owner of the land and the other half to the suer. No one may take eggs of any falcon, hawk, or swan out of their nest, whether it is on his land or any other man's land, on pain of imprisonment for one year and fine at the King's will, one half to the King, and

Our Legal Heritage

the other half to the owner of the land, or owner of the swan. No man shall bear any English hawk, but shall have a certificate for any hawk imported, on pain for forfeiture of such. No one shall drive falcons or hawks from their customary breeding place to another place to breed or slay any for hurting him, or pay 200s. after examination by a Justice of the Peace, one half going to the King and one half to the suer.

Any person without a forest of his own who has a net device with which to catch deer shall pay 200s. for each month of possession. Anyone stalking a deer with beasts anywhere not in his own forest shall forfeit 200s. Anyone taking any heron by device other than a hawk or long bow shall forfeit 6s.8d. No one shall take a young heron from its nest or pay 10s. for each such heron. Two justices may decide such an issue, and one tenth of the fine shall go to them.

No man shall shoot a cross-bow except in defense of his house, other than a lord or one having 2,667s. of land because their use had resulted in too many deer being killed. (The long-bow was not forbidden.)

No beasts may be slaughtered or cut up by butchers within the walls of a town, or pay 12d. for every ox and 8d. for every cow or other beast, so that people will not be annoyed and distempered by foul air, which may cause them sickness.

No tanner may be a currier [dyed tanned leather] and no currier may be a tanner. No shoemaker [cordwainer] may be a currier and no currier may be a shoemaker. No currier shall curry hides which have not been tanned. No tanner shall sell other than red leather. No tanner may sell a hide before it is dried. No tanner may tan sheepskins.

No long bow shall be sold over the price of 3s.4d.

Good wood for making bows may be imported without paying customs.

No grained cloth of the finest making shall be sold for more than 16s., nor any other colored cloth for more than 11s. per yard, or forfeit 40s. for every yard so sold. No hat shall be sold for more than 20d. and no cap shall be sold for more than 2s.8d., or forfeit 40s. for each so sold.

Silver may not be sold or used for any use but goldsmithery or amending of plate to make it good as sterling, so that there will be enough silver with which to make coinage.

Each feather bed, bolster, or pillow for sale shall be stuffed with one type of stuffing, that is, dry pulled feathers or with clean down alone, and with no sealed feathers nor marsh grass, nor any other corrupt stuffings. Each quilt, mattress, or cushion for sale shall be stuffed with one type of stuffing, that is, clean wool, or clean flocks alone, and with no horsehair, marsh grass, neatshair, deershair, or goatshair, which is wrought in lime-fats and gives off an abominable and contagious odor when heated by a man's body, on pain of forfeiture of such.

Salmon shall be sold by standard volume butts and barrels, or forfeit 6s.8d. Large salmon shall be sold without any small fish or broken-bellied salmon and the small fish shall be packed by themselves only, or forfeit 6s.8d. Herring shall be sold at standard volumes, or forfeit 3s.4d. The herring shall be as good in the middle and in every part of the package as at the ends of the package, or forfeit 3s.4d. Eels shall be sold at standard volumes, and good eels shall not be mixed with lesser quality eels, or forfeit 10s. The fish shall be packed in the manner prescribed or forfeit for each vessel 3s.4d.

Fustians shall always be shorn with the long shear, so that it can be worn for at least two years. If an iron or anything else used to dress such injures the cloth so that it wears out after four months, 20s. shall be forfeited for each default, one half to the King and the other half to the suer.

Pewter and brass ware for sale shall be of the quality of that of London and marked by its maker, on pain of forfeiture of such, and may be sold only at open fairs and markets or in the seller's home, or forfeit 200s. If such false ware is sold, its maker shall forfeit its value, one half to the King and one half to the searchers. Anyone using false weights of such wares shall forfeit 20s., one half to the King and one half to the suer, or if he cannot pay this fine, to be put in the stocks until market day and then be put in the pillory all the market time.

No alien nor denizen [foreigner allowed to reside in the nation with certain rights and privileges] may carry out of the nation any raw wool or any woolen cloth which has not been barbed, rowed, and shorn.

Silk ribbons, laces, girdles, and corsos of silk may not be imported, since they can be made in the nation.

No one shall import wine into the nation, but on English ships, or forfeit the wine, one half to the King and one half to the seizer of the wine.

No one may take out of the nation any [male] horse or any mare worth more than 6s.8s. or under the age of three years, upon pain of forfeiture of such. However, a denizen may take a horse for his own use and not to sell. This is to stop losing horses needed for defense of the nation and to stop the price of a horse from going up.

Our Legal Heritage

Freemen of London may go to fairs and markets with wares to sell, despite the London ordinance to the contrary.

Merchants residing in the nation but outside London shall have free access to foreign markets without exaction taken of more than 133s. sterling by the confederacy of London merchants, which have increased their fee so much, 400s., that merchants not in the confederacy have been driven to sell their goods in London for less than they would get at a foreign market. Exacting more is punishable by a fine of 400s. and damages to the grieved party of ten times the excess amount taken.

For the privilege of selling merchandise, a duty of scavage shall be taken of merchant aliens, but not of denizens. Any town official who allows disturbing of a person trying to sell his merchandise because he has not paid scavage, shall pay a fine of 400s.

Coin clipped or diminished shall not be current in payment, but may be converted at the King's mint into plate or bullion. Anyone refusing to take coins with only normal wear may be imprisoned by the mayor, sheriff, bailiff, constable or other chief officer. New coins, which have a circle or inscription around the outer edge, will be deemed clipped if this circle or inscription is interfered with.

The penalty for usury is placement in the pillory, imprisonment for half a year, and a fine of 400s. (The penalty was later changed to one half thereof.)

—Judicial Procedure—

These changes in the judicial process were made by statute:

The Chancellor, Treasurer, keeper of the King's privy seal, or two of them, with a bishop selected by them, and a temporal lord of the King's council selected by them, and the two Chief Justices of the King's Bench shall constitute the court of the Star Chamber. It shall have the authority to call before it by writ or by privy seal anyone accused of "unlawful maintenances, giving of liveries, signs and tokens, and retainers by indentures, promises, oaths, writings, or otherwise embraceries of his subjects" and witnesses, and impose punishment as if convicted under due process of law. These laws shall now be enforced: If a town does not punish the murderer of a man murdered in the town, the town shall be punished. A town shall hold any man who wounds another in peril of death, until there is perfect knowledge whether the man hurt should live or die. Upon viewing a dead body, the coroner should inquire of the killers, their abettors, and anyone present at the killing and certify these names. In addition, the murderer and accessories indicted shall be tried at the King's suit within a year of the murder, which trial will not be delayed until a private suit is taken. If acquitted at the King's suit, he shall go back to prison or let out with bail for the remainder of the year, in which time the slain man's wife or next of kin may sue. For every inquiry made upon viewing a slain body coroners shall be paid 13s.4d. out of the goods of the slayer or from a town not taking a murderer, but letting him escape. If the coroner does not make inquiry upon viewing a dead body, he shall be fined 100s. to the King. If a party fails to appear for trial after a justice has taken bail from him, a record of such shall be sent to the King.

If a Justice of the Peace does not act on any person's complaint, that person may take that complaint to another Justice of the Peace, and if there is no remedy then, he may take his complaint to a Justice of Assize, and if there is not remedy then, he may take his complaint to the King or the Chancellor. There shall then be inquiry into why the other justices did not remedy the situation. If it is found that they were in default in executing the laws, they shall forfeit their commissions and be punished according to their demerits.

Justices of the Peace shall make inquiry of all offenses in unlawful retaining, examine all suspects, and certify them to the King's Bench for trial there or in the King's council, and the latter might also proceed against suspects on its own initiative on information given.

Perjury committed by unlawful maintenance, embracing, or corruption of officers, or in the Chancery, or before the King's council, shall be punished in the discretion of the Chancellor, Treasurer, both the Chief Justices, and the clerk of the rolls.

The Star Chamber, Chancellor, King's Bench and King and council have the power to examine all defendants, by oath or otherwise, to adjudge them convicted or attainted. They can also be found guilty by confession, examination, or otherwise. If a defendant has denied doing the acts of which he is convicted, he is subject to an additional fine to the King and imprisonment.

Violations of statutes may be heard by the Justices of Assize or the Justices of the Peace, except treason, murder, and felony.

Our Legal Heritage

Actions on the case shall be treated as expeditiously in the courts of the King's Bench and his common bench as actions of trespass or debt.

Proclamation at four court terms of a levy of a fine shall be a final end to an issue of land, tenements, or other hereditaments and the decision shall bind persons and their heirs, whether they have knowledge or not of the decision, except for women in covert [under the protection of a husband] who were not parties, persons under the age of twenty-one, in prison, out of the nation, or not of whole mind, who are not parties. These may sue within five years of losing such condition. Also, anyone not a party may claim a right, title, claim, or interest in the said lands, tenements, or other hereditaments at the time of such fine recorded, within five years after proclamations of the fine.

A defendant who appeals a decision for the purpose of delaying execution of such shall pay costs and damages to the plaintiff for the delay.

No sheriff, undersheriff, or shire clerk shall enter any complaints in their books unless the complaining party is present. And no more complaints than the complaining party knows about shall be entered. The penalty is 40s. for each such false complaint, one half to the King and the other half to the suer after examination by a Justice of the Peace. This is to prevent extortion of defendants by false complaints. The justice shall certify this examination to the King, on pain of a fine of 40s. A bailiff of a hundred who does not do his duty to summon defendants shall pay a fine of 40s. for each such default, after examination by a Justice of the Peace. Sheriffs' records of fines imposed and bailiffs' records of fines collected may be reviewed by a Justice of the Peace to examine for deceit.

Any sheriff allowing a prisoner to escape, whether from negligence or for a bribe, shall be fined, if the prisoner was indicted of high treason, at least 1,333s. for each escape. However, if the prisoner was in their keeping because of a suspicion of high treason, the fine shall be at least 800s.; and if indicted of murder or petite treason, at least 400s.; and if suspected of murder or petite treason, 200s.; and if suspected of other felonies, 100s.

Any person not responding to a summons for jury service shall be fined 12d. for the first default, and 2s. for the second, and double for each subsequent default.

A pauper may sue in any court and be assigned an attorney at no cost to him.

A Justice of the Peace to whom has been reported hunting by persons disguised with painted faces or visors or otherwise, may make a warrant for the sheriff or other county officer to arrest such persons and bring them before the justice. Such hunting in disguise or hunting at night or disobeying such warrant is a felony. This is to stop large mobs of disguised people from hunting together and then causing riots, robberies, and murders.

Benefit of clergy may be used only once, since this privilege has made clerics more bold in committing murder, rape, robbery, and theft. However, there will be no benefit of clergy in the case of murder of one's immediate lord, master, or sovereign. (This begins the gradual restriction of benefit of clergy until it disappears.)

For an issue of riot or unlawful assembly, the sheriff shall call 24 jurors, each of lands and tenements at least 20s. of charter land or freehold or 26s.8d. of copyhold or of both. For each default of the sheriff, he shall pay 400s. And if the jury acquits, then the justice, sheriff, and under-sheriff shall certify the names of any jurors maintained or embraced and their misdemeanors, or forfeit 400s. Any person proved to be a maintainer or embracer shall forfeit 400s. to the King and be committed to ward.

The principal leaders of any riot or unlawful assembly shall be imprisoned and fined and be bound to the peace with sureties at a sum determined by the Justices of the Peace. If the riot is by forty people or heinous, the Justices of Peace shall certify such and send the record of conviction to the King.

The penalty for giving or taking livery is 100s. per month. The penalty for causing oneself to be retained is 40s. per day.

The King's steward, Treasurer, and comptroller have authority to question by twelve discreet persons any servant of the King about making any confederacies, compassings, conspiracies, or imaginations with any other person to destroy or murder the King or one of his council or a lord. Trial shall be by twelve men of the King's household and punishment as by felony in the common law.

When a land holder enfeoffs his land and tenements to people unknown to the remainderman in tail, so that he does not know who to sue, he may sue the pernor [receiver] of the profits of the land and tenements for a remedy. And the pernors shall have the same advantages and defenses as the feoffees or as if they were tenants. And if any deceased person had the use for himself and his heirs, then any of his heirs shall have the same advantages and defenses as if his ancestor had died seised of the land and tenements. And all recoveries shall be good against all

Our Legal Heritage

pernors and their heirs, and the feoffees and their heirs, and the co-feoffees of the pernors and their heirs, as though the pernors were tenants indeed, or feoffees to their use, or their heirs of the freehold of the land and tenements.

If a person feoffs his land to other persons while retaining the use thereof for himself, it shall be treated as if he were still seised of the land. Thus, relief and heriot will still be paid for land in socage. And debts and executions of judgments may be had upon the land and tenements.

The penalty for not paying customs is double the value of the goods.

The town of London shall have jurisdiction over flooding and unlawful fishing nets in that part of the Thames River that flows next to it.

The city of London shall have jurisdiction to enforce free passage of boats on the Severn River in the city, interruption of which carries a fine of 400s., two-thirds to the King and one third to the suer.

Jurors impaneled in London shall be of lands, tenements, or goods and chattels, to the value of 133s. And if the case concerns debt or damages at least 133s, the jurors shall have lands, tenements, goods, or chattels, to the value of 333s. This is to curtail the perjury that has gone on with jurors of little substance, discretion, and reputation.

A party grieved by a false verdict of any court in London may appeal to the Hustings Court of London, which hears common pleas before the mayor and aldermen. Each of the twelve alderman shall pick from his ward four jurors of the substance of at least 2,000s. to be impaneled. If twenty-four of them find that the jurors of the petty jury has given an untrue verdict, each such juror shall pay a fine of at least 400s. and imprisonment not more than six months without release on bail or surety. However, if it is found that the verdict was true, then the grand jury may inquire if any juror was bribed. If so, such juror bribed and the defendant who bribed him shall each pay ten times the amount of the bribe to the plaintiff and be imprisoned not more than six months without release on bail or surety.

The church may punish priests and clerics for any adultery, fornication, incest, or any other incontinence of the flesh, by imprisonment.

Other changes in the judicial process were made by court decision. For instance, the royal judges decided that only the King could grant sanctuary for treason and not the church. After this, the church withdrew the right of sanctuary from second time offenders.

The King's council has practically limited itself to cases in which the state has an interest, especially the maintenance of public order. Chancery became an independent court rather than the arm of the King and his council. In Chancery and the King's Bench, the intellectual revival brought by humanism inspires novel procedures to be devised to meet current problems in disputed titles to land, inheritance, debt, breach of contract, promises to perform acts or services, deceit, nuisance, defamation, and the sale of goods.

A new remedy is specific performance, that is, performance of an act rather than money damages.

Evidence is now taken from witnesses.

Various courts had overlapping jurisdiction. For instance, trespass could be brought in the Court of Common Pleas because it was a civil action between two private persons. It could also be brought in the Court of the King's Bench because it broke the King's peace. It was advantageous for a party to sue for trespass in the King's court because there a defendant could be made to pay a fine to the King or imprisoned, or declared outlaw if he did not appear at court. In a couple of centuries, trespass on the case will extend all over the previous common law including assumpsit, ejectment, trover, deceit, libel, slander, battery, and assault. And the rigid writs with specific forms of action for common law cases will fall into disuse.

Parliament's supremacy over all regular courts of law was firmly established and it was called "the high court of Parliament", paradoxically, since it came to rarely function as a law court.

The humanist intellectual revival also caused the church courts to try to eliminate contradictions with state law, for instance in debt, restitution, illegitimacy, and the age of legal majority.

Chapter 12—The Times: 1509–1547—

Renaissance humanism came into being in the nation. In this development, scholars in London, Oxford, and Cambridge emphasized the value of classical learning, especially Platonism and the study of Greek literature as the means of better understanding and writing. They studied the original Greek texts and became disillusioned with the filtered interpretations of the church, for example of the Bible and Aristotle. There had long been displeasure with the priests of the church. They were supposed to preach four times yearly, visit the sick, say the daily liturgies, and hear confessions at least yearly. But there were many lapses. Many were not celibate, and some openly lived with a woman and had children. Complaints about them included not residing within their parish community, doing other work such as raising crops, and taking too much in probate, mortuary, and marriage fees. Probate fees had risen from at most 5s. to 60s. in the last century. Mortuary fees ranged from 1/3 to 1/9 of a deceased person's goods. Sanctuary was abused. People objected to the right of arrest by ecclesiastical authorities.

Also, most parish priests did not have a theology degree or even a Bachelor's degree, as did many laymen. In fact, many laymen were better educated than the parish priests. No one other than a laborer was illiterate in the towns.

Humanist grammar [secondary] schools were established in London by merchants and guilds. Classical Latin and Greek were taught and the literature of the best classical authors was read. Education was opened up to women. Secondary education teachers were expected to know Latin and Greek and have studied the ancient philosophers, history, and geography. The method of teaching was for the teacher to read text-books to the class from a prepared curriculum. The students learned how to read and to write, to develop and amplify a theme by logical analysis, and to essay on the same subject in the narrative, persuasive, argumentative, commending, consoling, and inciting styles. Disobedience incurred flogging by teacher as well as by parents. Spare the rod and spoil the child was the philosophy. There were two week vacations at Christmas and at Easter.

Oxford University was granted a charter which put the greater part of the town under control of the Chancellor and scholars. The mayor of Oxford was required to take an oath at his election to maintain the privileges and customs of the university.

The physicians of London were incorporated to oversee and govern the practice of medicine. A faculty of physicians was established at Oxford and Cambridge. Only graduates of the new College of Physicians or of Oxford or Cambridge may practice medicine or surgery.

Geoffrey Chaucer's "Canterbury Tales" was a popular book. Through Chaucer, London English became a national standard and the notion of "correct pronunciation" came into being.

The discoveries and adventures of Amerigo Vespucci, a Portuguese explorer, were widely read. The North and South American continents were named for him.

London merchant guilds started to cease to be trading organizations and began to be identified mainly with hospitality and benevolence. The leading men of these guilds were generally aldermen and the guilds acted like municipal committees of trade and manufactures. Then they acted like a state department for the superintendence of the trade and manufactures of London. They were called Livery Companies and categorized their memberships in three grades: mere membership, livery membership, and placement on the governing body. Livery membership was distinguished by having the clothing of the brotherhood and were usually those who bought membership and paid higher fees because they were richer. Most of these companies had almshouses attached to their halls for the impoverished, disabled, and elderly members and their widows and children. For instance, many members of the goldsmiths had been blinded by the fire and smoke of quick silver and some members had been rendered crazed and infirm by working in that trade. The pensions of the liverymen were larger than those of mere members and they generally had a right to a place at those banquets which are chartered franchises, and they are invited by the governing body, as a matter of favor, to other entertainments. The freedom and rights of citizenship of the city could only be obtained through membership in a livery company.

There are 26 wards of London as of 1550. This is the number for the next four centuries. Each has an alderman, a clerk, and a constable.

Our Legal Heritage

Though there was much agreement on the faults of the church and the need to reform it, there were many disagreements on what philosophy of life should take the place of church teachings. The humanist Thomas More was a university trained intellectual. His book "Utopia", idealized an imaginary society of pagans living according to the principles of natural virtue. In it, everything is owned in common and there is no need for money. There is agreement that there is a God who created the world and all good things and who guides men. But otherwise people choose their religious beliefs and their priests. From this perspective, the practices of current Christians, scholastic theologians, priests and monks, superstition, and ritual look absurd. He encouraged a religious revival. Aristotle's position that virtuous men would rule best is successfully debated against Plato's position that intellectuals and philosophers would be the ideal rulers.

More plead for proportion between punishment and crime. He urged that theft no longer be punished by death because this only encouraged the thief to murder his victim to eliminate evidence of the theft. He opined that the purpose of punishment was to reform offenders. He advocated justice for the poor to the standard of justice received by the rich.

Erasmus, a former monk, visited the nation for a couple of years and argued that reason should prevail over religious belief. He wrote the book "In Praise of Folly", which noted man's elaborate pains in misdirected efforts to gain the wrong thing. For instance, it questioned what man would stick his head into the halter of marriage if he first weighed the inconveniences of that life? Or what woman would ever embrace her husband if she foresaw or considered the dangers of childbirth and the drudgery of motherhood? Childhood and senility are the most pleasant stages of life because ignorance is bliss. Old age forgetfulness washes away the cares of the mind. A foolish and doting old man is freed from the miseries that torment the wise and has the chief joy of life: garrulousness. The seekers of wisdom are the farthest from happiness; they forget the human station to which they were born and use their arts as engines with which to attack nature. The least unhappy are those who approximate the naiveness of the beasts and who never attempt what is beyond men. As an example, is anyone happier than a moron or fool? Their cheerful confusion of the mind frees the spirit from care and gives it many-sided delights. Fools are free from the fear of death and from the pangs of conscience. They are not filled with vain worries and hopes. They are not troubled by the thousand cares to which this life is subject. They experience no shame, fear, ambition, envy, or love. In a world where man are mostly at odds, all agree in their attitude towards these innocents. They are sought after and sheltered; everyone permits them to do and say what they wish with impunity. However, the usual opinion is that nothing is more lamentable than madness. The Christian religion has some kinship with folly, while it has none at all with wisdom. For proof of this, notice that children, old people, women, and fools take more delight than anyone else in holy and religious things, led no doubt solely by instinct. Next, notice that the founders of religion have prized simplicity and have been the bitterest foes of learning. Finally, no people act more foolishly than those who have been truly possessed with Christian piety. They give away whatever is theirs; they overlook injuries, allow themselves to be cheated, make no distinction between friends and enemies, shun pleasure, and feast on hunger, vigils, tears, labors, and scorn. They disdain life, and utterly prefer death. In short, they have become altogether indifferent to ordinary interests, as if their souls lived elsewhere and not in their bodies. What is this, if not to be mad? The life of Christians is run over with nonsense. They make elaborate funeral arrangements, with candles, mourners, singers, and pallbearers. They must think that their sight will be returned to them after they are dead, or that their corpses will fall ashamed at not being buried grandly. Christian theologians, in order to prove a point, will pluck out four or five words from different places, even falsifying the sense of them if necessary, and disregard the fact that the context is irrelevant or even contradicts the point. They do this with such brazen skill that our lawyers are often jealous of them.

Lawyer Christopher St. German wrote the legal treatise "Doctor and Student", in which he deems the law of natural reason to be supreme and eternal. The law of God and the law of man, as enunciated by the church and royalty, merely supplement the law of natural reason and may change from time to time. Examples of the law of reason are: It is good to be loved. Evil is to be avoided. Do unto others as you would have them do unto you. Do nothing against the truth. Live peacefully with others. Justice is to be done to every man. No one is to wrong another. A trespasser should be punished. From these is deduced that a man should love his benefactor. It is lawful to put away force with force. It is lawful for every man to defend himself and his goods against an unlawful power.

Like his father, Henry VIII dominated Parliament. He used this power to reform the church of England in the

Our Legal Heritage

1530's. The Protestant reformation cause had become identified with his efforts to have his marriage of eighteen years to the virtuous Catherine annulled so he could marry a much younger woman: Anne. His purported reason was to have a son. The end of his six successive wives was: divorced, beheaded, died; divorced, beheaded, survived. Henry VIII was egotistical, arrogant, and self-indulgent. This nature allowed him to declare himself the head of the church of England instead of the pope.

Henry used and then discarded officers of state e.g. by executing them for supposed treason. One such was Thomas Wolsey, the son of a town butcher, was another supporter of classical learning. He rose through the church, the gateway to advancement in a diversity of occupations of clergy such as secretary, librarian, teacher, lawyer, doctor, author, civil servant, diplomat, and statesman. He was a court priest when he aligned himself with Henry, both of whom wanted power and glory and dressed extravagantly. But he was brilliant and more of a strategist than Henry. Wolsey was a reformer by name and started a purge of criminals, vagrants and prostitutes within London, bringing many before the council. But most of his reforming plans were not brought to fruition, but ended after his campaign resulted in more power for himself. Wolsey rose to be Chancellor to the King and Archbishop of York. As the representative of the Pope for England, he exercised almost full papal authority there. But he controlled the church in England in the King's interest. He was second only to the King. He also came to control the many courts. Wolsey centralized the church in England and dissolved the smaller monasteries, the proceeds of which he used to build colleges at Oxford and his home town. He was an impartial and respected judge.

When Wolsey was not able to convince the pope to give Henry a divorce, Henry dismissed him and took his property, shortly after which Wolsey died.

The King replaced Wolsey as Chancellor with Thomas More, after whom he made Thomas Cromwell Chancellor. Cromwell was the son of a clothworker and a self-taught lawyer, arbitrator, merchant, and accountant. Like Wolsey, he was a natural orator. He drafted and had passed legislation that created a new church of England. He had all men swear an oath to the terms of the succession act. Thomas More was known for his honesty and was a highly respected man. More did not yield to Henry's bullying for support for his statute declaring the succession to be vested in the children of his second marriage, and his statute declaring himself the supreme head of the church of England, instead of the pope. He did not expressly deny the supremacy act, so was not guilty of treason under its terms. But silence did not save him. He was attainted for treason on specious grounds and beheaded. His conviction rested on the testimony of one perjured witness, who misquoted More as saying that Parliament did not have the power to require assent to the supremacy act because it was repugnant to the common law of Christendom.

Through his host of spies, Cromwell heard what men said to their closest friends. Words idly spoken were tortured into treason. Henry had many bills of attainder passed by Parliament. Silence was a person's only possibility of safety. Fear spread through the people.

Cromwell developed a technique for the management of the House of Commons which lasted for generations. He promulgated books in defense of royal spiritual authority, which argued that canon law was not divine but merely human and that clerical authority had no foundation in the Bible. A reformed English Bible was put in all parish churches. Reformers were licensed to preach. Cromwell ordered sermons to be said which proclaimed the supremacy of the King. He instituted registers to record baptisms, marriages, and burials in every county, for the purpose of reducing disputes over descent and inheritance. He dissolved all the lesser monasteries.

When Cromwell procured a foreign wife for Henry whom Henry found unattractive, he was attainted and executed.

Thomas Cranmer, Archbishop of Canterbury, wrote the first English Common Book of Prayer. With its use beginning in 1549, Church services were to be held in English instead of Latin. The mass, thought to be a miracle performed by priests, was to be replaced by communion shared by all. The mass, prayers for souls in purgatory, miracles, the worship of saints, and pilgrimages to shrines such as that of Thomas Becket, were all to be discontinued. Imprisonment or exile rather than death was made the penalty for heresy and blasphemy, and also for adultery.

After the King dissolved the greater monasteries, he took and sold their ornaments, silver plate and jewelry, lead from roofs of their buildings, and finally much of the land itself. He took away from the church control of Bethlehem Hospital, a madhouse for the mentally ill known as "Bedlam".

Our Legal Heritage

Henry used the proceeds from the sale of the monasteries for building many new palaces and wood ships for his navy. In war, these navy ships had heavy guns which could sink other ships. In peace time, these ships were hired out to traders.

The former land of the monasteries, about 30% of the country's land, was sold and resold or leased. Some went to entrepreneurial cloth manufacturers, who converted the buildings for the manufacture of cloth. They bought the raw wool and hired craftsmen for every step of the manufacturing process to be done in one continuous process. This was faster than buying and selling the wool material between craftsmen who lived in different areas. Also, it was more efficient because the amount of raw wool bought could be adjusted to the demand for cloth.

Many landowners now could live in towns exclusively off the rents of their rural land. Rents were increased so much that tenants could not pay and were evicted. They usually became beggars or thieves. Much of their former land was converted from crop raising to pasture for large herds of sheep. Arable farming required many workers, whereas sheep farming required only one shepherd and herdsman. Villeinage was now virtually extinct. There were exceptional profits made from the export of wool cloth. But much raw wool was still exported. Its price went up from 6s.8d. per tod in 1340 to 20s.8d. in 1546.

There was steady inflation. Landlords made their leases short term so that they could raise rents as prices rose.

At least 85% of the population still lived in the country. Rich traders built town or country houses in which the emphasis was on comfort and privacy. There was more furniture, bigger windows filled with glass, wallpaper, and formal gardens. Some floors were tiled instead of stone or wood. They were still strewn with straw. The owners ate in a private dining room and slept in their own rooms with down quilts. Their soap was white. They had clothing of white linen and white wool, leather slippers, and felt hats.

The King, earls, who ruled counties, and barons, who had land and a place in the House of Lords, still lived in the most comfort. The King's house had courtyards, gardens, orchards, wood-yards, tennis courts, and bowling alleys.

Lawyers had more work with the new laws passed to replace the canons of the church. They played an important role in town government and many became wealthy. They acquired town houses in addition to their rural estates.

The walls of the towns were manned by the citizens themselves, with police and watchmen at their disposal. In inns, travelers slept ten to a bed and there were many fleas and an occasional rat or mouse running through the rushes strewn on the floor. The inn provided a bed and ale, but travelers brought their own food. Each slept with his purse under his pillow.

In markets, sellers set up booths for their wares. They sold grain for making oatmeal or for sowing one's own ground. Wine, butter, cheese, fish, chicken, and candles could also be bought. Butchers bought killed sheep, lambs, calves, and pigs to cut up for selling. Tanned leather was sold to girdle-makers and shoemakers. Goods bought in markets were presumed not to be stolen, so that a purchaser could not be dispossessed of goods bought unless he had knowledge that they were stolen.

The ruling group of the towns came to be composed mostly of merchants, manufacturers, lawyers, and physicians. Some townswomen were independent traders. The governed class contained small master craftsmen and journeyman artisans, small traders, and dependent servants. The major streets of London were paved with stone, with a channel in the middle. More water conduits from hills, heaths, and springs were built to provide the citizens of London with more water.

The idea of competition appeared. Each man sought to be richer than his neighbors.

The cloth, mining, iron, and woodcraft industries employed full-time workers on wages.

Land held in common was partitioned. There were leases of mansion houses, smaller dwelling houses, houses with a wharf having a crane, houses with a timber yard, houses with a garden, houses with a shed, shops, warehouses, cellars, and stables. Land with a dye-house or a brew-house were devised by will along with their dying or brewing implements. There were dairies making butter and cheese.

The knights had 70% of the land, the nobles 10%, the church 10%, and the King 5%.

Citizens paid taxes to the King amounting to one tenth of their annual income from land or wages. The national government was much centralized and had full-time workers on wages. A national commission of sewers continually surveyed walls, ditches, banks, gutters, sewers, ponds, bridges, rivers, streams, mills, locks,

Our Legal Heritage

trenches, fish-breeding ponds, and flood-gates. When low places were threatened with flooding, it hired laborers, bought timber, and hired carts with horses or oxen for necessary work. Mayors of cities repaired water conduits and pipes under the ground in their cities.

Most people dressed according to the apparel laws, which were updated from time to time. They used tin or pewter dishes, platters, goblets, saucers, spoons, saltcellars, pots, and basins. They used soap to wash themselves, their clothes, and their dishes. They had bedcovers on their beds. Cloth bore the mark of its weaver and came in many colors. Cloth could be held together with pins that had a shank with a hook by which they were closed. People went to barbers to cut their hair and to extract teeth. They went to people experienced with herbs, roots, and waters for treatment of skin conditions such as sores, cuts, burns, swellings, irritated eyes or scaly faces. For more complicated ailments, they went to physicians, who prescribed drugs and medicines. They bought drugs and medicines from apothecaries and pharmacists. They burned wood logs in the fireplaces in their houses. So much wood was used that young trees were required by statute to be given enough lateral space to spread their limbs and were not cut down until mature.

All people generally had enough food because of the commercialization of agriculture. Also, roads were good enough for the transport of foodstuffs thereon. Goods were also transported by the pulling of barges on the rivers from paths along the river.

Church reforms included abolishing church sanctuaries. Benefit of clergy was restricted. Archbishops were selected by the King. Decisions by archbishops in testamentary, matrimonial, and divorce matters were appealable to the Court of Chancery instead of to the pope. The clergy's canons were subject to the King's approval.

—The Law—

A person having land in socage or fee simple may will and devise his land by will or testament in writing.

A person holding land by knight's service may will and devise by his last will and testament in writing part of his land to his wife and other parts of his land to his children, as long as 1/3 of entailed land is left to the King.

Anyone serving the King in war may alienate his lands for the performance of his will, and if he dies, his feoffees or executors shall have the wardship of his heir and land.

A person who leases land for a term of years, even if by indenture or without a writing, may have a court remedy as do tenants of freehold for any expulsion by the lessor which is contrary to the lease, covenant, or agreement. These termers, their executors and assigns, shall hold and enjoy their terms against the lessors, their heirs and assigns. The lessor shall have a remedy for rents due or waste by a termor after recovering the land as well as if he had not recovered the land.

A lord may distrain land within his fee for rents, customs, or services due without naming the tenant, because of the existence of secret feoffments and leases made by their tenants to unknown persons.

Anyone seised of land to the use or trust of other persons by reason of a will or conveyance shall be held to have lawful seisin and possession of the land, because by common law, land is not devisable by will or testament, yet land has been so conveyed, which has deprived married men of their courtesy, women of their dower, the King of the lands of persons attainted, the King of a year's profits of the of felons, and lords their escheats.

A woman may not have both a jointure and dower of her husband's land. (Persons had purchased land to hold jointly with their wives)

A sale of land must be in writing, sealed, and registered in its county with the clerk of that county. If the land is worth less than 40s. per year, the clerk is paid 12d. If the land exceeds 40s. yearly, the clerk is paid 2s.6d.

An adult may lease his lands or tenements only by a writing under his seal for a term of years or a term of life, because many people who had taken leases of lands and tenements for a term of years or a term of lives had to spend a lot for repair and were then evicted by heirs of their lessors.

A husband may not lease out his wife's land.

No woman covert, child, idiot, or person of insane memory may devise land by will or testament.

The land of tenants-in-common may be partitioned by them so that each holds a certain part.

No bishop or other official having authority to take probate of testaments may take a fee for probating a testament where the goods of the testator are under 100s., except that the scribe writing the probate of the testament may take 6d., and for the commission of administration of the goods of any man dying intestate, being up to 100s, may be charged 6d. Where the goods are over 100s. but up to 800s. sterling, probate fees may be 3s.6d. at most, whereof the official may take 2s.6d. at most, with 12d. residue to the scribe for registering the

Our Legal Heritage

testament. Where the goods are over 800s. sterling, probate fees may be 5s. at most, whereof the official may take 2s.6d. at most, with 2s.6d. residue to the scribe, or the scribe may choose to take 1d. per 10 lines of writing of the testament. If the deceased had willed by his testament any land to be sold, the money thereof coming nor the profits of the land shall not be counted as the goods or chattel of the deceased. Where probate fees have customarily been less, they shall remain the same. The official shall approve and seal the testament without delay and deliver it to the executors named in such testaments for the said sum. If a person dies intestate or executors refuse to prove the testament, then the official shall grant the administration of the goods to the widow of the deceased person, or to the next of kin, or to both, in the discretion of the official, taking surety of them for the true administration of the goods, chattels, and debts. Where kin of unequal degree request the administration, it shall be given to the wife and, at his discretion, other requestors. The executors or administrators, along with at least two persons to whom the deceased was indebted, or to whom legacies were made, or, upon their refusal or absence, two honest kinsmen, shall make an inventory of the deceased's goods, chattels, ware, merchandise, as well moveable as not moveable, and take it upon their oaths to the official.

No parish priest or other spiritual person shall take a mortuary or money from a deceased person with moveable goods under the value of 133s., a deceased woman covert baron, a child, a person keeping no house, or a traveler. Only one mortuary may be taken of each deceased and that in the place where he most dwelled and habited. Where the deceased's moveable goods are to the value of 133s. or more, above his debts paid, and under 600s., a mortuary up to 3s. 4d. may be taken. Where such goods are 600s. or more and under 800s., mortuary up to 6s.8d. may be taken. Where such goods are 800s. or above, mortuary up to 10s. may be taken. But where mortuaries have customarily been less, they shall remain the same.

Executors of a will declaring land to be sold for the payment of debts, performance of legacies to wife and children, and charitable deeds for the health of souls, may sell the land despite the refusal of other executors to agree to such sale.

A man may not marry his mother, step-mother, sister, niece, aunt, or daughter.

Only marriages which have not been consummated may be dissolved by annulment.

The entry of an apprentice into a craft shall not cost more than 2s.6d. After his term, his entry shall not be more than 3s.4d. This replaced the various fees ranging from this to 40s.

No master of a craft may require his apprentice to make an oath not to compete with him by setting up a shop after the term of his apprenticeship.

No alien may take up a craft or occupation in the nation.

No brewer of ale or beer to sell shall make wood vessels or barrels, and coopers shall use only good and seasonable wood to make barrels and shall put their mark thereon. Every ale or beer barrel shall contain 32 of the King's standard gallons. The price of beer barrels sold to ale or beer brewers or others shall be 9d.

An ale-brewer may employ in his service one cooper only to bind, hoop and pin, but not to make, his master's ale vessels.

No butcher may keep a tanning-house.

Tanned leather shall be sold only in open fairs and markets and after it is inspected and sealed.

Only people living in designated towns may make cloth, to prevent the ruin of these towns by people taking up both agriculture and cloth-making outside these towns.

No one shall shoot in or keep in his house any hand-gun or cross-bow unless he has 2,000s. yearly.

No one may hunt or kill rabbits in the snow since their killing in great numbers by men other than the King and noblemen has depleted them.

No one shall take an egg or bird of any falcon or hawk out of its nest on the King's land. No one may disguise himself with hidden or painted face to enter a forest or park enclosed with a wall for keeping deer to steal any deer or rabbit.

Ducks and geese shall not be taken with any net or device during the summer, when they haven't enough feathers to fly. But a freeholder of 40s. yearly may hunt and take such with long bow and spaniels.

No one may sell or buy any pheasant except the King's officers may buy such for the King.

No butcher may kill any calf born in the spring.

No grain, beef, mutton, veal, or pork may be sold outside the nation.

Every person with 36 acres of agricultural land, shall sow one quarter acre with flax or hemp-feed.

Our Legal Heritage

All persons shall kill crows on their land to prevent them from eating so much grain at sowing and ripening time and destroying hay—stacks and the thatched roofs of houses and barns. They shall assemble yearly to survey all the land to decide how best to destroy all the young breed of crows for that year. Every village and town with at least ten households shall put up and maintain crow nets for the destruction of crows.

No land used for crop—raising may be converted to pasture.

No woods may be converted to agriculture or pasture.

No one shall cut down or break up dikes holding salt water and fresh water from flooding houses and pastures.

No one shall dump tin—mining debris, dung, or rubbish into rivers flowing into ports or take any wood from the walls of the port, so that ships may always enter at low tide.

A person may lay out a new highway on his land where the old one has been so damaged by waterways that horses with carriages cannot pass, with the consent of local officials.

Only poor, aged, and disabled persons may beg. Begging without a license is punishable by whipping or setting in the stocks 3 days with only bread and water.

Alien palm readers shall no longer be allowed into the nation, because they have been committing felonies and robberies.

Butchers may not sell beef, pork, mutton, or veal from carcasses for more than 1/2 penny and 1/2 farthing [1/4 penny] per pound.

French wines may not sell at retail for more than 8d. per gallon.

A barrel maker or cooper may sell a beer barrel for 10d.

No longer may aliens bring books into the nation to sell because now there are sufficient printers and book—binders in the nation.

No one may buy fresh fish other than sturgeon, porpoise, or seal from an alien to put to sale in the nation.

Every person with an enclosed park where there are deer, shall keep two tall and strong mares in such park and shall not allow them to be mounted by any short horse, because the breeding of good, swift, and strong horses has diminished.

A man may have only as many trotting horses for the saddle as are appropriate to his degree.

No one may maintain for a living a house for unlawful games such as bowling, tennis, dice, or cards. No artificer, craftsman, husbandman, apprentice, laborer, journeyman, mariner, fisherman may play these games except at Christmas under his master's supervision. Noblemen and others with a yearly income of at least 2,000s. may allow his servants to play these games at his house.

Hemp of flax may not be watered in any river or stream where animals are watered.

No one shall sell merchandise to another and then buy back the same merchandise within three months at a lower price. No one shall sell merchandise to be paid for in a year above the sum of 200s. per 2000s. worth of merchandise. No one shall sell or mortgage any land upon condition of payment of a sum of money before a certain date above the sum of 200s. per 2000s. per year.

No one shall commit forgery by counterfeiting a letter made in another person's name to steal any money, goods, or jewels.

No one shall libel by accusing another of treason in writing and leaving it in an open place without subscribing his own name to it.

If any servant converts to his own use more than 40s. worth of jewels, money, or goods from caskets entrusted to him for safekeeping by a nobleman or other master or mistress, it shall be a felony.

If a person breaks into a dwelling house by night to commit burglary or murder, is killed by anyone in that house, or a person is killed in self—defense, the killer shall not forfeit any lands or goods for the killing.

Killing by poisoning shall be deemed murder and is punishable by death.

A person who has committed a murder, robbery, or other felony he has committed shall be imprisoned for his natural life and be burned on the hand, because those who have been exiled have disclosed their knowledge of the commodities and secrets of this nation and gathered together to practice archery for the benefit of the foreign realm. If he escapes such imprisonment, he shall forfeit his life.

A person convicted or outlawed shall be penalized by loss of life, but not loss of lands or goods, which shall go to his wife as dower and his heirs.

Buggery may not be committed on any person or beast.

Our Legal Heritage

No one shall slander or libel the King by speeches or writing or printing or painting.

No one shall steal fish from a pond on another's land by using nets or hooks with bait or by drying up the pond.

The mayor of London shall appoint householders to supervise watermen rowing people across the Thames River because so many people have been robbed and drowned by these rowers. All such boats must be at least 23 feet long and 5 feet wide.

No man shall take away or marry any maiden under 16 years of age with an inheritance against the will of her father.

Any marriage solemnized in church and consummated shall be valid regardless of any prior contract for marriage.

Sheriffs shall not lose their office because they have not collected enough money for the Exchequer, but shall have allowances sufficient to perform their duties.

Butchers, brewers, and bakers shall not conspire together to sell their victuals only at certain prices. Artificers, workmen and laborers shall not conspire to work only at a certain rate or only at certain hours of the day.

No one shall sell any woolen cloth that shrinks when it is wet.

Only artificers using the cutting of leather, may buy and sell tanned leather and only for the purpose of converting it into made wares.

A beggar's child above five years may be taken into service by anyone that will.

Cattle may be bought only in the open fair or market and only by a butcher or for a household, team, or dairy, but not for resale live.

Butter and cheese shall not be bought to be sold again except at retail in open shop, fair, or market.

No man may enter a craft of cloth-making until he has been an apprentice for seven years or has married a clothiers' wife and practicing the trade for years with her and her servants sorting the wools.

No country person shall sell wares such as linen drapery, wool drapery, hats, or groceries by retail in any incorporated town, but only in open fairs.

For every 60 sheep there shall be kept one milk cow because of the scarcity of cattle.

No clothier may keep more than one wool loom in his house, because many weavers do not have enough work to support their families. No weaver may have more than two wool looms.

No cloth-maker, fuller, shearman, weaver, tailor, or shoemaker shall retain a journeyman to work by the piece for less than a three month period. Every craftsman who has three apprentices shall have one journeyman. Servants in agriculture and bargemen shall serve by the whole year and not by day wages.

There shall be a sales tax of 12d. per pound of wool cloth goods for the Crown.

All people shall attend church on Sundays to remember God's benefits and goodness to all and to give thanks for these with prayers and to pray to be given daily necessities.

Anyone fighting in church shall be excluded from the fellowship of the parish community.

No one shall use a rope or device to stretch cloth for sale so to make it appear as more in quantity than it is.

No one may sell cloth at retail unless the town where it was dressed, dyed, and pressed has placed its seal on the cloth. Cloth may not be pressed with a hot press, but only with a cold press.

Offices may not be bought and sold, but only granted by justices of the royal courts.

No one going from house to house to repair metal goods or sell small goods he is carrying may do this trade outside the town where he lives.

No one may sell ale or beer without a license, because there have been too many disorders in common alehouses. Offenders may be put in the town or county jail for three days.

French wine may not be sold for more than 8d. per gallon.

Only persons with yearly incomes of 1,333s. or owning goods worth 13,333s. may store wine in his house and only for the use of his household.

No one may sell forged iron, calling it steel, because the edged tools and weapons made from it are useless.

Parish communities shall repair the highways for four days each year using oxen, cart, plough, shovels, and spades.

The children of priests are declared legitimate so they may inherit their ancestor's lands. The priests may be tenants by courtesy after the death of their wives of such land and tenements that their wives happened to be

Our Legal Heritage

seized of in fee simple or in fee tail, during the spousals.

—Judicial Procedure—

Doctors of the civil law may practice in the church or Chancery courts.

Justices shall tax inhabitants of the county for building jails throughout the nation, for imprisonment of felons, to be kept by the sheriffs and repaired out of the Exchequer.

Piracy at sea or in river or creek or port are adjudicated in shires because of the difficulty of obtaining witnesses from the ship, who might be murdered or who are on other voyages on the sea, for adjudication by the admiral.

Piracy and murder on ships is punishable by death only after confession or proof by disinterested witnesses.

Land held by tenants in common may be partitioned by court order, because some of these tenants have cut down all the trees to take the wood and pulled down the houses to convert the material to their own use.

Persons worth 800s. a year in goods shall be admitted in trials of felons in corporate towns although they have no freehold of land.

Each justice of the high courts may employ one chaplain.

The Privy Council took the authority of the star court, which organized itself as a specialty court. Also, a specific group of full-time councilors heard pleas of private suitors.

The bishops, nobility, and Justices of the Peace were commanded to imprison clergy who taught papal authority. Justices of the Peace and sheriffs were to watch over the bishops. The Justices of Assize were to assess the effectiveness of the Justices of the Peace as well as enforce the treason act on circuit.

The criminal court had no jury and went outside the common law to prosecute political enemies.

Since the nation was now peaceful, expediency was no longer needed, so judicial procedures again became lengthy and formal with records.

All pleadings and usually testimony was put into writing in Chancery court.

Witnesses could be sworn in to state pertinent facts necessary for full understanding and adjudication of cases, because they are reliable now that there is no livery and maintenance and because jurors no longer necessarily know all the relevant facts.

Chapter 13—The Times: 1558–1603—

Queen Elizabeth I was intelligent, educated, and wise about human nature. When young, she was a brilliant student. Then, she studied much history, philosophy, and oratory. She wrote in English, Latin, French, and Italian. She read Greek, including the Greek Testament, Greek orators, and Greek dramatists at age seven, when the first professorship of Greek was founded at Cambridge University. Book-learning was one of her highest values throughout her life. She had good judgment in selecting her ministers and advisors for her Privy Council. Like her father and grandfather, she dominated Parliament.

She was so influenced by her reading of Cicero that she acquired his style of writing. Her Chief Secretary William Cecil was so guided by Cicero's "Offices" that he carried a copy in his pocket. Cicero opined that government officials' duty was to make the safety and interest of citizens its greatest aim and to design all their thoughts and endeavors without ever considering personal advantage. Government was not to serve the interest of any one group to the prejudice or neglect of the rest, for then discord and sedition would occur. Furthermore, a governor should try to become loved and not feared, because men hated those whom they feared, and wished dead those whom they hated. Therefore obedience proceeding from fear could not last, whereas that which was the effect of love would last forever. An oppressor ruling by terror will be resented by the citizens, who in secret will choose a worthier person. Then liberty, having been chained up, would be unleashed more fiercely than otherwise. To obtain the peoples' love, a governor should be kind and bountiful. To obtain the peoples' trust, a governor should be just, wise, and faithful. To demonstrate this, a governor should be eloquent in showing the people an understanding better than theirs, the wisdom to anticipate events, and the ability to deal with adverse events. And this demonstration should be done with modesty. One cannot get the peoples' trust by vain shows, hypocritical pretenses, composed countenances, and studied forms of words. The first goal of a governor is to take care that each individual is secured in the quiet enjoyment of his own property. The second goal is to impose taxes that are not burdensome. The third goal is to furnish the people with necessities. The law should be enforced keeping in mind that its fundamental purpose is to keep up agreement and union among citizens.

Elizabeth cared deeply for the welfare of all citizens of whatever class. She was sensitive to public opinion and wanted to be loved by her people, which she was. She was frugal and diplomatically avoided unnecessary wars, saying that her purse was the pockets of her people. England was a small Protestant nation threatened by the larger Catholic nations of France and Spain. Elizabeth flirted with foreign princes to make them waste their time trying to get England by marrying her instead of by war. Her promotion of commercial speculations diffused a vast increase of wealth among her people. Her good spirits and gayness created a happy mood in the nation. The Elizabethan era was one of general prosperity.

Elizabeth dressed elaborately and fancifully in dress as well as in head apparel. Her dresses were fitted at the waist with hoops in the skirt holding it out. There were two layers of skirt with the top one parted to show the bottom one. The materials used were silks, satins, velvets, and brocades. On her dress were quiltings, slashings, and embroidery. They were covered with gold ornaments, pearls, and gems from America. Ladies discarded their simple dresses for elaborate ones. Married women curled their hair and wore it in high masses on their heads. They wore hats both indoors and outside. Single women did not wear hats, but had long, flowing hair and low cut dresses showing their bosoms. Both gentlemen and ladies wore large, pleated collars around their necks, perfume, and high-heeled shoes. Gentlemen's sleeves, doublet, and cloak were ornamented and their silk or velvet hats flamboyant, with feathers. There were various artistic beard cuts and various lengths of hair, which was often curled and worn in ringlets. They now wore breeches and stockings instead of long hosen. Both men and women wore silk stockings and socks over them and then boots. Coats dipped in boiled linseed oil with resin served as raincoats. Fashions changed every year. When Elizabeth became old, she had a wig made to match her youthful long red hair. Other ladies began wearing wigs.

Since so many of the women who spent their days spinning were single, unmarried women became known as "spinsters".

Children were given milk at meals for good growth. It was recognized that sickness could be influenced by diet and herbs. Sickness was still viewed as an imperfect balance of the four elements of air, water, fire, and earth

Our Legal Heritage

in a person.

There were many lifestyle possibilities in the nation: independently wealthy with 40s. yearly or goods worth 200s.; gentleman, that is one who owned land or was in a profession such as an attorney, physician, priest or who was a university graduate, government official, or a military officer; employment in agriculture, arts, sciences; employment in households and offices of noblemen and gentlemen; independent farmers with their own farm; fisherman or mariner on the sea or apprentice of such; employment by carriers of grain into cities, by market towns, for digging, seeking, finding, getting, melting, fining, working, trying, making of any silver, tin, lead, iron, copper, stone, coal; glassmaker.

Typical wages in the country were: fieldworkers 2–3d. a day, ploughmen 1s. a week with board, shepherd 6d. a week and board, his boy 2 1/2 d., hedgers 6d. a day, threshers 3–7d. depending on the grain, thatching for five days 2d., master mason or carpenter or joiner 4d. a day and food or 8d. without food, a smith 2d. a day with food, a bricklayer 2 1/2 d. a day with food, a shoemaker 2d. a day with food. These people lived primarily on food from his own ground.

There was typical work for each month of the year in the country: January—ditching and hedging after the frost broke, February—catch moles in the meadows, March—protect the sheep from prowling dogs, April—put up hop poles, sell bark to the tanner before the timber is felled, fell elm and ash for carts and ploughs, fell hazel for forks, fell sallow for rakes, fell horn for flails, May—weed and hire children to pick up stones from the fallow land, June—wash and shear the sheep, July—hay harvest, August—wheat harvest, September and October—gather the fruit, sell the wool from the summer shearing, stack logs for winter, buy salt fish for Lent in the town and lay it up to dry, November—have the chimneys swept before winter, thresh grain in the barn, December—grind tools, repair yokes, forks, and farm implements, cover strawberry and flower beds with straw to protect them from the cold, split kindling wood with beetle and wedge.

There was a wave of building and renovation activity in town and country. Housing is now, for the first time, purely for dwelling and not for defense. A scarcity of timber caused proportionally more stone to be used for dwelling houses and proportionately more brick to be used for royal palaces and mansions. The rest of the house was plaster painted white interspersed with vertical, horizontal, and sloping timber painted black. The floors were stone or wood, and sometimes tile. They were often covered with rushes or plaited rush mats. Some private rooms may have carpets on the floor. Most houses had several brick chimneys and clear glass in the windows. There were fireplaces in living rooms, dining rooms, kitchen, and bedrooms. Some gentry used forks for eating. On the table was a fancy salt cellar and pepper. Breakfast was substantial, with meat, and usually eaten in one's bedroom. Rooms were more spacious than before and contained furniture such as chests, cupboards, tables, stools and benches with backs and cushions, sometimes with arms, and occasionally wardrobes for clothes. Windows had curtains. Carpeting covered tables, chests and beds. Bedrooms all led out of each other. Often family members, servants, and friends shared the same bed for warmth or convenience. Each bedroom typically had a cabinet with a mirror and comb on top. Toothpicks were use often. One brushed his teeth with tooth soap and a linen cloth, as physicians advised. Each bedroom had a pitcher and water bowl for washing in the morning, and a bed—pan for nighttime use. Elizabeth had a room just for her bath. Walls were smoothly plastered or had carved wood paneling to control drafts. Plastered ceilings and a lavish use of glass made rooms lighter and cozy. Broad and gracious stairways replaced the narrow winding stone steps of a stairwell.

Most dwellings were of brick and stone. Only a few were of wood or mud and straw. The average house was now four rooms instead of three. Yeomen might have six rooms. A weaver's house had a hall, two bedrooms, and a kitchen besides the shop. Farmers might have two instead of one room. A joiner [woodworker who finishes interior woodwork such as doors and makes furniture] had a one-room house with a feather bed and bolster. Even craftsmen, artificers and farmers had feather beds on bed frames with pillows and hung tapestry to keep out the cold in their single story homes. They also had pewter spoons and plates, instead of just wood or earthenware ones. Richer farmers would build a chamber above the hall, replacing the open hearth with a fireplace and chimney. Poorer people favored ground floor extensions, adding a kitchen or second bedchamber to their cottages. Kitchens were often separate buildings to reduce the risk of fire.

More than medieval castles and manor houses, mansions were designed with privacy in mind. The great hall was not abandoned, but the family used it as an eating place only on rare occasions. Instead they withdrew to the parlor and great chamber, while their servants lived in turrets or attics and continued to eat in the hall. The

Our Legal Heritage

distinction between parlor and great chamber was that the former was for domestic use and the latter for entertaining. Parlors were situated on the ground floor: the family lived and relaxed there, and had informal meals in a dining parlor. The formal or "state" rooms were on the first floor, usually comprising a great chamber, a withdrawing chamber, one or more bedchambers, and a long gallery. The idea of a long gallery was copied from Henry VII and was used for exercise, recreation such as music and dancing, and private conversations. Each room had carved chairs and cabinets. A noble or gentleman's house had not only a garden for the kitchen and orchards, but formal gardens of flowers and scrubs. Grown were apples, plums, pears, apricots, peaches, walnuts, filberts, almonds, figs, capers, oranges, and lemons. Trees were planted and grafted.

A noble lord made written rules with penalties for his country household, which numbered about a hundred, including family and servants. He enforced them by fines, flogging, and threats of dismissal. The lady of the house saw that the household, held together as an economic and social unit. The noble's family, guests, and the head servants, such as chaplain and children's tutor, dined together at one table. The family included step children and married sons and daughters with their spouses. They drank from drinking cups of clear glass. They ate with silver spoons. Chandeliers of candles lit rooms. A silver salt cellar was on the table, which was covered with a linen cloth. The lady of the house sat in a chair at the end of the table and was served first. After the upper table was served, the food was sent to the servants: serving men and women, bakers, brewers, cooks, pot cleaners, laudresses, shepherds, hogherds, dairy maids, falconers, huntsmen, and stable men. What was left was given to the poor at the gates of the house. The biggest meal of the day was dinner, served at noon. There were sandglass clocks. For amusement, the house was occasionally handed over to a lord of misrule for twelve days.

Farmers' wives used looms as well as spinning wheels with foot treadles. Due to new grass and root crops, animals could be kept through the winter. Therefore, salted meat and salted fish were no longer the staple food of the poorer people during the winter. Farm laborers ate soup, porridge, milk, cheese, bacon, and beer or mead (depending on the district), and dark barley or rye bread, which often served as his plate. Gentlemen ate wheat bread.

By 1600 basement services were frequently found in town houses built on restricted sites. Lastly, provision of water supplies and improved sanitary arrangements reflected concern with private and public health. There was virtually no drainage. In the case of town houses, some owners would go to considerable effort to solve drainage problems, often paying a cash composition to the civic authorities, but sometimes performing some service for the town at Court or at Westminster in return for unlimited water or some drainage. Most affluent households, including the Queen's moved from house to house, so their cesspits could be cleaned out and the vacated buildings aired after use. A few cesspits were made air-tight. Otherwise, there was extensive burning of perfumes. Refuse was emptied out of front doors and shoveled into heaps on street corners. It was then dumped into the river or along the highways leading out of town. People put on perfume to avoid the stench. Near the end of the century, the first water-closet was built, which provided a clean latrine all year round.

The value of grain and meat rose compared to wool. Grain became six times its value in the previous reign. Wool fell from 20s.8d. per tod in 1546 to 16s. in 15s. So sheep-farming, which had taken about 5% of the arable land, was supplanted somewhat by crop-raising and the rural population could be employed for agriculture. In some places, the threefold system of rotation was replaced by alternating land used for crops with that used for pasture. The necessity of manuring and the rotation of crops and grasses such as clover for enrichment of the soil was recognized. Wheat, rye, barley, peas, and beans were raised. There was much appropriation of common land by individual owners by sale or force. Many farms were enclosed by fences or hedges so that each holder could be independent of his neighbors. A laborer could earn 6d. a day in winter and 7d. a day in summer. Unfree villeinage ceased on the royal estates. But most land was still farmed in common and worked in strips without enclosure. Prosperous traders and farmers who owned their own land assumed local offices as established members of the community.

The population of the nation was about five million, where it remained for the next 2 1/2 centuries. 90% of the population lived in the countryside and 5% in the London and 5% in the other towns. Over half the population of the nation were on the margin of subsistence. Life expectancy was 40 years of age.

Most of London was confined within the city wall. There were gardens both inside and outside the walls, and fields outside. No part of the city was more than a ten minute walk to the fields. Some wealthy merchants had four story mansions or country houses outside the city walls. Goldsmiths' Row was replete with four story houses. A

Our Legal Heritage

few wealthy merchants became money-lenders for interest, despite the law to the contrary. The mayor of London was typically a rich merchant prince. Each trade occupied its own section of the town and every shop had its own signboard, for instance, hat and cap sellers, cloth sellers, grocers, butchers, cooks, taverns, and book-sellers. Many of the London wards were associated with a craft, such as Candlewick Ward, Bread St. Ward, Vintry Ward, and Cordwainer Ward. Some wards were associated with their location in the city, such as Bridge Ward, Tower Ward, Aldgate Ward, Queenhithe Ward, and Billingsgate Ward. People dwelled at the back or on the second floor of their shops. In the back yard, they grew vegetables such as melons, carrots, turnips, cabbages, pumpkins, parsnips, and cucumbers; herbs; and kept a pig. Hyde Park was the Queen's hunting ground. London had a small zoo of ten animals, including a lion, tiger, lynx, and wolf.

Life in London was lived in the open air in the streets. The merchant transacted business agreements and the lawyer saw his clients in the street or at certain pillars at St. Pauls' Church, where there was a market for all kinds of goods and services. Some gentlemen had offices distant from their dwelling houses such as attorneys, who had a good income from trade disputes and claims to land, which often changed hands. Plays and recreation also occurred in the streets, such as performances by dancers, musicians, jugglers, clowns, tumblers, magicians, and men who swallowed fire. The churches were continuously open and used by trades and peddlers, including tailors and letter-writers. Soldiers, adventurers, physicians, apprentices, prostitutes, and cooks were all distinguishable by their appearances. An ordinance required apprentices to wear long blue gowns and white breeches with stockings, with no ornamentation of silk, lace, gold or silver and no jewelry. They could wear a meat knife, but not a sword or dagger. Apprentices lived with their masters and worked from 6 or 7 a.m. to 9 p.m. Some people knitted wool caps as they walked to sell when finished. Large merchant companies had great halls for trade, such as the mercers, grocers, drapers, fishmongers, and goldsmiths. The other great guilds were the skinners, merchant tailors, haberdashers, salters, ironmongers, vintners, and clothworkers. Smaller guilds were those of the bakers, weavers, fruiterers, dyers, Thames watermen and lightermen, carpenters, joiners, turners, and parish clerks. The guilds insured quality by inspecting goods for a fee. From 11571, merchants could meet at the Royal Exchange building for business purposes. Its great bell rang at midday and at 6 p.m.

Taverns served meals as well as ale. They were popular meeting places for both men and women of all backgrounds to meet their friends. Two taverns in particular were popular with the intelligentsia. Music was usually played in the background and games were sometimes played.

The main thoroughfare in London was still the Thames River. Nobles living on the river had their own boats and landings. Also at the banks, merchants of all nations had landing places where ships unloaded, warehouses, and cellars for goods and merchandise. Swans swam in the clear bright water. Watermen rowed people across the river for a fee. On the south bank of the river were theaters, outlaws, cutpurses, prostitutes, and prisons. In the summer, people ate supper outside in public. Refuse is still thrown into the streets. At night, the gates of the city were closed and citizens were expected to hang out lanterns. The constable and his watchmen carried lanterns and patrolled the streets asking anyone they saw why they were out so late at night. There were a few horse-drawn coaches.

The Queen's Privy Council fixed wages and prices in London, advised Justices of the Peace on wages elsewhere, and controlled exports of grain to keep prices down and supplies ample. There were labor strikes in some towns for higher wages after periods of inflation. In 1591, London authorities rounded up the sturdy vagabonds and set them to work cleaning out the city ditches for 4d. per day.

Most of the men in Elizabeth's court had attended a university, such as the lawyer and writer Francis Bacon and the sea-fighter and writer Walter Raleigh, who had a humble origin. Many wives and daughters of Privy Councilors attended the Queen in her privy chamber. Most of the knights or gentlemen of the royal household were also members of Parliament or Justices of the Peace for certain districts in the counties. The court did not travel as much as in the past, but became associated with London. Elizabeth took her entire court on summer visits to the country houses of leading nobility and gentry.

Secular education and especially the profession of law was the route for an able but poor person to rise to power, rather than as formerly through military service or through the church.

The first stage of education was primary education, which was devoted to learning to read and write in English. This was carried out at endowed schools or at home by one's mother or a tutor. The children of the gentry were usually taught in their homes by private teachers of small classes. Many of the poor became literate enough

Our Legal Heritage

to read the Bible and to write letters. However, most agricultural workers and laborers remained illiterate.

The next stage of education was grammar [secondary] school. There a student was taught rhetoric (e.g. poetry, history, precepts of rhetoric, and classical oratory), some logic, and Latin and Greek grammar. English grammar was learned through Latin grammar and English style through translation from Latin. Literary criticism was learned through rhetoric. The secondary student and the undergraduate were tested for proficiency by written themes and oral disputations, both in Latin. Grammar schools were headed by schoolmasters. There were so many secondary schools established by merchants and guilds that every incorporated town had at least one. The middle classes from the squire to the petty tradesman were brought into contact with the best Greek and Roman writers. A typical schoolday lasted from 7:00 am to 5:00 PM. Flogging with a birch rod was used for discipline. Some students learned this material from a tutor rather than school.

The government of Oxford University, which had been Catholic, was taken from the resident teachers and put into the hands of the Vice-Chancellor, Doctors, Heads of Colleges, and Proctors. Then Oxford became a hotbed of Puritanism. Cambridge already had a strong reformed element from Erasmus' influence. Oxford University and Cambridge University were incorporated to have a perpetual existence for the virtuous education of youth and maintenance of good literature. The Chancellors, masters, and scholars had a common seal. Undergraduate students entered at age 16 and resided in rooms in colleges rather than in scattered lodgings. Each undergraduate student had a tutor and those not seeking a degree could devise his own course of study with his tutor's permission. Many students who were working on the seven year program for a Master's Degree went out of residence at college after the four year's "bachelor" course. Students had text books to read rather than simply listening to a teacher read books to them. Oxford was authorized to and did acquire its own printing press. Examination was still by disputation. Students acted in Latin plays. If a student went to a tavern, he could be flogged. For too elaborate clothing, he could be fined. Fines for absence from class were imposed.

All students had to reside in a college or hall, subscribe to the 39 articles of the university, the Queen's supremacy, and the prayer book. Meals were taken together in the college halls. The universities were divided into three tables: a fellows' table of earls, barons, gentlemen, and doctors; a second table of masters of arts, bachelors, and eminent citizens, and a third table of people of low condition. Professors, doctors, masters of arts and students were all distinguishable by their gowns.

Undergraduate education was considered to be for the purpose of good living as well as good learning. It was to affect the body, mind, manners, sentiment, and business. The university curriculum included Latin and Greek languages and was for four years. The student spent at least one year on logic (syllogizing, induction, deduction, the thirteen classical fallacies, and the application of logic to other studies), at least one year on rhetoric, and at least one year on philosophy. The latter included physics, metaphysics, and ethics (domestic principles of government, military history, diplomatic history, and public principles of government), and mathematics (arithmetic, geometry, algebra, astronomy, music, optics).

About 1564, the curriculum was changed to two terms of grammar, four terms of rhetoric, five terms of dialectic (examining ideas, opinions logically), three terms of arithmetic, and two terms of music. There were now negative numbers, irrational numbers, and imaginary numbers. Also available were astrology, and alchemy, cultivation of gardens, and breeding of stock, especially dogs and horses. Astronomy, geometry, natural and moral philosophy, and metaphysics were necessary for a master's degree.

There were graduate studies in theology, medicine, music, and law, which was a merging of civil and canon law together with preparatory work for studying common law at the Inns of Court in London. Medical texts were Hippocrates and Galen. These viewed disease as only part of the process of nature, without anything divine. They stressed empiricism, experience, collections of facts, evidences of the senses, and avoidance of philosophical speculations. Galen's great remedies were proper diet, exercise, massage, and bathing. Greek medicinal doctrines were assumed, such as preservations of the health of the body was dependent on air, food, drink, movement and repose, sleeping and waking, excretion and retention, and the passions.

In London, legal training was given at the four Inns of Court. Many young gentry were educated there and later became members of Parliament or Justices of the Peace. They often also studied and attended lectures on astronomy, geography, history, mathematics, theology, music, navigation, foreign languages, and lectures on anatomy and medicine sponsored by the College of Physicians. A tour of the continent became a part of every gentleman's education.

Our Legal Heritage

All forms of English literature were now in print, except for plays. The idea of Copernicus published in 1543 that the earth revolves around the sun in a solar system was considered along with the prevailing belief that the earth was at the center.

Many people kept diaries. Letter-writing was frequent at court. There was much reading of romances, jest books, histories, plays, prayer collections, and encyclopedias. In schools and gentry households, favorite reading was Edmund Spenser's "Faerie Queen" about moral virtues and the faults and errors which beset them, Erasmus' New Testament, "Paraphrases", "Colloquies", and "Adages", Sir Thomas North's edition of Plutarch's "Lives of the Noble Grecians and Romans", Elyot's "The Book Named the Governor", and Hoby's translation of "The Courtier". At a more popular level were Caxton's "The Golden Legend", Baldwin's "Mirror for Magistrates", sensational stories and pamphlets, printed sermons, chronicles, travel books, almanacs, herbals, and medical works. English fiction began and was read. At the lowest level of literacy were ballads describing recent events. Next to sermons, the printing press was kept busiest with rhymed ballads about current events. Printed broadsheets on political issues could be distributed quickly.

William Shakespeare, a glove-maker's son, wrote plays about historical events and plays which portrayed various human personalities and their interactions with each other. They were enjoyed by all classes of people. His histories were especially popular. The Queen and various earls each employed players and actors, who went on tour as a troupe and performed on a round open-air stage, with people standing around to watch. In London, theaters such as the Globe were built specifically for the performance of plays, which had been performed at inns. There were costumes, but no sets. Ordinary admission was 2d. Before being performed, a play had to be licensed by the Master of the Revels to make sure that there was nothing detrimental to the peace and public order. The common people still went to morality plays, but also to plays in which historical personages were portrayed, such as Richard II, Henry IV, and Henry V. Some plays were on contemporary issues. Musicians played together as orchestras. Music and singing was a popular pastime after supper; everyone was expected to participate. Dancing was popular with all classes. Gentlemen played cards, dice, billiards, tennis, and fencing.

Sports included tennis, wrestling, football between villages with the goal to get the ball into one's own village, fencing, and games at horseback. Country people had music, dancing and pantomime shows with masks. There were many tales involving fairies, witches, devils, ghosts, evil spirits, angels, and monsters enjoyed by adults as well as children. There were parties for children.

The merry guild-feast was no longer a feature of village life. There were fewer holidays and festivals. The most prosperous period of the laborer was closing. An agricultural laborer's yearly wage was about 154s., but his cost of living, which now included house rent, was about 160s. a year. In 1533, daily wages in the summer for an agricultural laborer were about 4d. and for an artisan 6d. In 1563 in the county of Rutland, daily wages for laborers were 7d. in summer and 6d. in winter; and for artisans were 9d. in summer and 8d. in winter.

Because physicians were allowed to dissect corpses, there were anatomy textbooks and anatomy was related to surgery. A visit by a doctor cost 13s.4d. Melancholia, which made one always fearful and full of dread, and mania, which made one think he could do supernatural things, were considered to be different types of madness from infirmities of the body.

There were endowed hospitals in London for the sick and infirm. One hospital was headed by the physician who was to discover the circulation of the blood. There were others for orphans, for derelict children, and for the destitute. They worked at jobs in the hospital according to their abilities. There was also a house of correction for discipline of the idle and vicious by productive work.

At given times, everyone was to throw buckets of water onto the street to cleanse it. During epidemics in towns, there was quarantine of those affected to stay in their houses unless going out on business. Their houses were marked and they had to carry a white rod when outside. The quarantine of a person lasted for forty days. The straw in his house was burned and his clothes treated. People who died had to be buried under six feet of ground.

Communities were taxed for the upkeep and relief of the prisoners in the jails in their communities.

Church services included a sermon and were in accordance with a reformed prayer book and in English, as was the Bible. Communion of participants replaced mass by priests. Elizabeth was not doctrinaire in religious matters, but pragmatic. She always looked for ways to accommodate all views on what religious aspects to adopt or decline. Attendance at state church services was enforced by fines. People could hold what religious beliefs they would, even atheism, as long as they maintained an outward conformity. For instance, babies were to be

Our Legal Heritage

baptized before they were one month old or the parents would be punished.

There was difficulty persuading educated and moral men to be ministers. This led to the growth of the Puritan movement. The Puritans complained that the church exerted insufficient control over the morals of the congregation. They thought that ministers and lay elders of each parish should regulate religious affairs and that the bishops should be reduced to an equality with the rest of the clergy. The office of archbishop should be eliminated and the head of state should not necessarily be governor of the church. Their ideas of morality were very strict and even plays were thought to be immoral.

The debased coinage was replaced by a recoinage of newly minted coins with a true silver weight.

Goldsmiths, who also worked silver, often acted as guardians of clients' wealth. They began to borrow at interest at one rate in order to lend out to traders at a higher rate. This began banking.

There was chartering of merchant companies and granting of exclusive rights to new industries as monopolies. Some monopolies or licenses were patents or copyrights. Others established trading companies for trade to certain foreign lands and supporting consular services. New incorporated companies were associations of employers and often included a number of trades, instead of the old guilds which were associations of actual workers. Town government was often controlled by a few merchant wholesalers. The entire trade of a town might be controlled by its drapers or by a company of the Merchant Adventurers. The charter of the latter as of 1564 allowed a common seal, perpetual existence, liberty to purchase lands, and liberty to exercise their government in any part of the nation. There were policies of insurance given by groups of people for losses of ships and their goods.

There were monopolies on cloth, tin, starch, fish, oil, vinegar, and salt. New companies were incorporated for many trades, the ostensible reason being the supervision of the quality of the wares produced in that trade. (Shoemakers, haberdashers, saddlers, and curriers exercised close supervision over these wares.) They paid heavily for their patents or charters.

Patents were for a new manufacture of an improved older one and determined the wages of its trades.

The prosperous merchants began to form a capitalistic class as capitalism grew. Competition for renting farm land, previously unknown, caused these rents to rise. The price of wheat rose to an average of 14s. per quarter, thereby encouraging tillage once more. There was steady inflation.

The breed of horses and cattle was improved and more intelligent use was made of manure and dressings. New vegetables, gotten from the continent, included carrots and celery. Hops to flavor beer came into use.

There are locks and canals as well as rivers. At London Bridge, water-wheels and pumps are installed. There are now four royal postal routes from London to various corners of the nation. Horses are posted along the way for the mail-deliverer's use. However, private mail still goes by packman or common carrier. There were compasses with a bearing dial on a circular plate with degrees up to 360 noted. The nation's inland trade developed a lot. There were many more wayfaring traders operating from town inns. There were new industries such as glassware, iron, brasswares, alum and coppers, gunpowder, papeer, coal, and sugar. Coal was used for fuel as well as wood, which was becoming scarce. Small metal goods, especially cutlery, was made, as well as nails, bolts, hinges, locks, ploughing and harrowing equipment, rakes, pitch forks, shovels, spades, and sickles. Lead was used for windows and roofs. Copper and brass were used to make pots and pans. Pewter was used for plates drinking vessels, and candlesticks. Iron was used for fire-backs, pots, and boilers. Also in use was canvas, lead, and rice. Competition was the mainspring of trade and therefore of town life.

Parliament enacted laws and voted taxes. The Queen, Lords, and Commons cooperated together. There was little dissension or debating. There were many bills concerning personal, local, or sectional interests, but priority for consideration was given to public measures. The knights in the commons were almost invariably from the county's leading families and chosen by consensus in the county court. The commons gradually won for its members freedom from arrest without its permission and the right of punishing and expelling members for crimes committed. Tax on land remained at 10% of its estimated yearly income. The Queen deferred to the church convocation to define Christian faith and religion, thus separating church and state functions.

The Treasury sought to keep a balanced budget by selling royal land and keeping Crown expenditures down. The Crown carried a slight debt incurred before the Queen's accession.

After exhausting every other alternative, the Queen agreed on the execution of Mary, Queen of Scots, for being involved in a plot to assassinate her and claim the throne of England.

Francis Drake sailed around the world from 1577 to 1580. Walter Raleigh made an expedition to North

Our Legal Heritage

America in 1584 and named Virginia in honor of the Queen, who was a virgin. Drake and Raleigh plundered Spanish ships for American gold and silver, much of which was used to pay for the war with Spain, which planned to invade England, even after the unsuccessful attempt by the Spanish Armada in 1588. The two hundred English ships were built to sink other ships rather than to board and capture them. The English guns outranged the Spanish guns. So the smaller English ships had been able to get close enough to the big Spanish troop-transport galleons to shoot them up without being fired upon. The direction of the wind forced the Spanish galleons northward, where most of them were destroyed by storms.

The puritan movement included William Brewster, an assistant to a court official who was disciplined for delivering, upon pressure from the council, the Queen's signed execution order for Mary of Scotland after the Queen had told him to hold it until she directed otherwise.

—The Law—

Wearing of velvet or embroidery is restricted to those with an income over 40,000s. The wearing of satin or silk is restricted to those with an income over 20,000s.

No one shall make false linen by stretching it and adding little pieces of wood, which is so weak that it comes apart after five washings.

Timber shall not be felled to make logs for fires for the making of iron.

No one may take small fish to feed to dogs and pigs. Only nets with mesh leaving three inches spaces may be used to catch fish.

No attainder shall result in the forfeiture of dower by the offender's wife nor disinheritance of his heirs.

The following statute of artificers regulated labor for the next two centuries:

No master or mistress may employ a servant for a term less than one year in the crafts of clothiers, woolen cloth weavers, tuckers, fullers, clothworkers, sheermen, dyers, hosiers, tailors, shoemakers, tanners pewterers, bakers, brewers, glove-makers, cutlers, smith, farriers, curriers, saddlers, spurriers, turners, cappers, hatmakers, feltmakers, bowyers, fletchers, arrow-head-makers, butchers, cooks, or millers, so that agriculture will be advanced and idleness diminished. Also, every craftsman unmarried or under age 30 who is not working must accept employment by any person needing the craft work. Also, any common person between 12 and 60 who is not working must accept employment in agriculture. And, unmarried women between 12 and 40 may be required by town officials to work by the year, the week, or day for wages they determine.

All artificers and laborers hired by the day or week shall work from 5 am to 7 PM. All artificers must labor at agriculture at haytime and harvest to avoid the loss of grain or hay. Every householder who raises crops may receive as an apprentice a child between 10 and 18 to serve in agriculture until he is age 21. A householder in a town may receive a child as an apprentice for 7 years, but merchants may only take as apprentices children of parents with 40s. freehold. (This was designed to inhibit migration to the towns.)

No one may be a craftsman until he has served seven years as an apprentice. These artificers may have children as apprentices: smith, wheelmaker, ploughmaker, millmaker, miller, carpenter, rough mason, plasterer, a timber sawer, an ore burner, a lime burner, brickmaker, bricklayer, tilemaker, tiler, layer of slate roofs, layer of wood shingle roofs, layer of straw roofs, cooper, earthen potter, linen weaver, housewife who weaves wool for sale or for household use.

Fish, but no meat, may be eaten on Wednesdays so that there will be more fishermen and mariners and repair of ports. (This was done because fishing had declined since the dissolution of the monasteries. Eating fish instead of meat in Lent in the springtime remained a tradition.)

For repairing of highways, the supervisors may take the rubbish or smallest stones of any quarry along the road in their precinct.

Embezzlement or theft by a servant of his master's goods of 40s. or more is a felony.

No one shall forge a deed of land, charter, sealed writing, court roll or will.

No one shall libel or slander so as to cause a rebellion.

Cut-purses and pick-purses shall not have benefit of clergy.

A debtor may not engage in a fraudulent collusion to sell his land and goods in order to avoid his creditors.

A person robbing a house of 5s. by day when no one is there shall not have benefit of clergy, because too many poor persons who cannot hire a servant to look after their house when they go to work have been robbed.

The price of barrels shall be set by mayors of the towns where they are sold.

Our Legal Heritage

No man under the degree of knight may wear a hat or cap of velvet. Caps may not be made of felt, but only knit wool. Only hats may be made of felt. This is to assist the craft of making wool caps.

Rugs shall weigh 44 pounds at least and be 35 yards at least in length and at most 3/4 yard wide.

The incorporated company of ship masters may erect beacons and marks on the seashores and hills above, because certain steeples and other marks used for navigation have fallen down and ships therefore have been lost in the sea.

There shall be one sheriff per county, because now there are enough able men to supply one per county.

Trials of noblemen for treason shall be by their peers.

A native or denizen merchant in wholesale or retail goods who leaves the nation to defraud his creditors shall be declared a bankrupt. The Chancellor may conduct an investigation to ascertain his land, house, and goods, no matter who may hold them. They shall be appraised and sold to satisfy his debts.

Loan contracts for money lent may not be for more than 200s. for each 2000s. yearly. All loans of money or forbearing of money in sales of goods for less than this shall be punishable by forfeit of the interest only.

Every person over 7 years of age shall wear a wool knitted cap on Sundays, except maidens, ladies, gentlewomen, noble persons, and every lord, knight, and gentlemen with 2,667s. of land.

No cattle may be put in any enclosed woods that have been growing less than five years. At the end of five years growth, calves may be put in. At the end of six years growth, cattle may be put in.

The mother and reputed father of any bastard who has been left to be kept at the parish where born must pay weekly for the upkeep and relief of such child, so that the true aged and disabled of the parish get their relief and to punish the lewd life.

No master at a university may lease any land unless 1/3 of it is retained for crop-raising to supply the colleges and halls for food for their scholars.

Persons with 100s. in goods or 40s. in lands shall find two able men in their parish community to repair the highways yearly.

Landowners of Oxford shall be taxed for the repair of the highway and bridge there.

Woods around London shall not be felled to be converted to coals for iron-works because London needs the wood to make buildings and for fire-places.

Every melter and maker of wax from honeycombs shall put his mark on every piece of his wax to be sold. Wrought wax such as in lights, staff-torches, red wax or sealing wax, book candles, or searing candles shall bear its maker's mark. All barrels of honey shall bear the mark of the honeymaker.

Wool cloth, cotton cloth, flannel cloth, hose-yarn, hats, and caps shall be dyed black only with dye from the woad plant and not with any false black dye.

No one shall take or kill any pheasants with nets or devices at nighttime because such have become scarce.

Lands, tenements, goods and chattels of accountants teller, or receiver who are in debt may be obtained by court order to satisfy the debt by garnishing the heir of the debtor after the heir has reached 21 and for the 8 years next ensuing.

Fraudulent and secret conveyances made to retain the use of one's land when one sells the land to a bona fide purchaser for value in fee simple, fee tail, for life, for lives, or for years are void.

No new iron mills or furnaces for making or working of any iron or iron metal shall be established in the country around London and the owners of carriages of coals, mines and iron which have impaired or destroyed the highways shall also carry coal ashes, gravel, or stone to repair these highways or else make a payment of 2s.6d. for each cart load not carried.

No one shall bribe an elector to vote for a certain person for fellow, scholar, or officer of a college, school, or hall or hospital so that the fittest persons will be elected, though lacking in money or friends, and learning will therefore be advanced.

Cottage and dwelling houses for workmen or laborers in mineral works, coal mines, or quarries of stone or slate for the making of brick, tile, lime, or coals shall be built only within a mile from such works. Dwelling houses beyond this must be supported by four acres of land to be continually occupied and manured as long as the dwelling house is inhabited or forfeit 40s. per month to the Queen. Cottages and dwelling houses for sailors or laborers working on ships for the sea shall be built only within a mile of the sea. A cottage may be built in a forest or park for a game-keeper of the deer. A cottage may be built for a herd-man or shepherd for the keeping of

Our Legal Heritage

cattle or sheep of the town. A cottage may be built for a poor, lame, sick, aged, or disabled person on waste or common land. More families than one may not be placed in one cottage or dwelling house.

A vagabond or mighty strong beggar [able to work] shall be whipped.

Any person with land in fee-simple may establish a hospital, abiding place, or house of correction to have continuance forever as a corporation for the sustenance and relief of the maimed, poor, or disabled people as to set the poor to work. The net income shall not exceed 40,000s. yearly.

Troops of vagabonds with weapons in the highways who pretend to be soldiers or mariners have committed robberies and murders. So all vagabonds shall settle down in some service or labor or trade.

Pontage [toll for upkeep and repair of bridges] shall be taken at certain bridges: carts 2d., horse and pack 1d., a flock of sheep 2d.

Crown officials such as treasurers, receivers, accountants, and revenue collectors shall not embezzle Crown funds and shall be personally liable for arrears.

Churchwardens of every parish shall oversee the poor in their parish. They shall, with consent of the Justices of the Peace, set to work children whose parents cannot maintain them and also set to work married or unmarried persons who have no trade and no means to maintain themselves. Churchwardens shall tax every inhabitant, including parson and vicar and every occupier of land and houses as they shall think fit. There will be a convenient stock of flax, hemp, wool, thread, iron and other necessary ware and stuff to set the poor on work. There will be competent sums of money for the relief of the lame, impotent, old, blind, and others not able to work, and also for the putting out of children to be apprentices. Child apprentices may be bound until 21 years of age or until time of marriage. They shall account to the Justices of the Peace for all money received and paid. The penalty for absence or neglect is 20s. If any parish cannot raise sufficient funds, the Justices of the Peace may tax other nearby parishes to pay, and then the hundred, and then the county. Grandparents, parents, and children of every poor, old, blind, lame, or impotent person not able to work, being of sufficient ability, shall at their own charge, relieve and maintain every such poor person in that manner and according to that rate as Justices of the Peace of that county determine, or forfeit 20s. per month. Two Justices of the Peace may commit to jail or house of correction persons refusing to work and disobedient churchwardens and overseers. The overseers may, with the consent of the lord of the manor, build houses on common or waste land for the poor at the expense of the parish, in which they may place more than one family in each houses.

Every parish shall pay weekly 2–10d. toward the relief of sick, hurt, and maimed soldiers and mariners. Counties with more than fifty parishes need pay only 2–6d. The county treasurer shall keep registers and accounts. Soldiers begging shall lose their pension and shall be adjudged a common rogue or vagabond subject to imprisonment and punishment.

Defendants may not petition to remove a case to the Westminster courts after a jury is selected because such has resulted in unnecessary expense to plaintiffs and delay for defendants in which they suborn perjury by obtaining witnesses to perjure themselves.

Sheriffs summoning defendants without a writ shall pay 200s. and damages to the defendant, and 400s. to the King.

Persons stealing crops from lands or fruit from trees shall be whipped.

Since administrators of goods of people dying intestate who fail to pay the creditors of the deceased often can't pay the debts from their own money, the people (who are not creditors) receiving the goods shall pay the creditors.

Persons forcibly taking others across county lines to hold them for ransom and those taking or giving blackmail money and those who burn barns or stacks of grain shall be declared felons and shall suffer death, without any benefit of clergy or sanctuary.

A proclamation in 1601 reformed the hated monopolies.

—Judicial Procedure—

Jurors shall be selected from those people who have at least 80s. annual income instead of 40s. because sheriffs have been taking bribes by the most able and sufficient freeholders to be spared at home and the poorer and simpler people, who are least able to discern the causes in question, and most unable to bear the charges of appearance and attendance in such cases have been the jurors.

Defendants sued or informed against upon penal statutes may appear by attorney so that they may avoid the

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inconvenience of traveling a long distance to attend and put to bail.

No only sheriffs, but their employees who impanel juries or execute process in the courts shall take an oath of office.

A hundred shall answer for any robbery therein only if there has been negligence or fault in pursuit of the robber after a hue and cry is made because the past law has been too harsh and required payment for offenses from people unable to pay who have done everything reasonable to catch the robber.

The Star Chamber became the central criminal court after 1560, and punished perjury, corruption, and malfeasance throughout the legal system.

Suits on titles to land were restricted to the common law courts and no longer to be heard in the Star Chamber, Chancery court, or in the Court of requests.

The Queen's Privy Council frequently issued orders to Justices of the Peace, for instance to investigate riots and crimes, to enforce the statutes against vagrancy and illegal games, to regulate alehouses, to ensure that butchers, innkeepers, and victuallers did not sell meat on fish days, and to gather information needed from the counties.

The Judges of Assize rode on circuit twice a year to enforce the criminal law and reported their assessment of the work of the Justices of the Peace back to the Privy Council. Accused people could wait for years in jail before their case was heard.

The Privy Council investigated sedition and treason, security of the regime, major economic offenses, international problems, civil commotion, officials abusing their positions, and persons perverting the course of justice. The formal trials of these offenses would be held elsewhere.

The duty to hear and determine felonies was taken from Justices of the Peace by 1590. The Judges of Assize did this work.

The Justices of the Peace decided misdemeanors such as abduction of heiresses, illegal entry, petty thievery, damage to crops, fence-breaking, brawling, personal feuds, drunken pranks, swearing, profanation of the Sabbath, alehouse nuisances, drunkenness, perjury, and malfeasance by officials.

The Justices of the Peace had administrative duties in control of vagrancy, upkeep of roads and bridges, and arbitration of lawsuits referred to them by courts. They listed the poor in each parish community, assessed rates for their maintenance, and appointed overseers to administer the welfare system, deploying surplus funds to provide houses of correction for vagrants. Raw materials such as wool, flax, hemp, and iron were bought upon which the able-bodied unemployed could be set to work at the parochial level. They determined wages in their districts with no statutory ceiling on them. There were about 50 Justices of the Peace per county. All were unpaid. They performed these duties for the next 200 years.

Pleadings had to be in writing and oral testimony was given by sworn witnesses. Case decisions are in books compiled by various reporters who sit in on court hearings rather than in year books.

In the common law courts, the action of assumpsit for enforcing certain promises is used more than the action of debt in those cases where there is a debt based on an agreement. The essential nature of "consideration" in contract is evolving from the procedural requirements for the action of assumpsit. Consideration may consist in mutual promises, a precedent debt, or a detriment incurred by one who has simultaneously received a promise related to the detrimental action. Consideration must be something, an act, or forbearance of an act that is of value. For instance, forbearance to sue a worthless claim is not consideration.

The abstract concept of contract as an agreement between two parties which is supported by consideration is developing as the number of various agreements that are court enforceable expands. For instance the word "consideration" is used in *Hayward's Case* in 1595 in the Court of Wards on the construction of a deed. Sir Rowland Hayward was seised in fee of the Doddington manor and other lands and tenements, whereof part was in demesne, part in lease for years with rents reserved, and part in copyhold, by indenture, "in consideration of a certain sum of money" paid to him by Richard Warren and others, to whom he demised, granted, bargained and sold the said manor, lands and tenements, and the reversions and remainders of them, with all the rents reserved upon any demise, to have and to hold to them and their assigns, presently after the decease of Sir Rowland, for the term of 17 years. It was held that the grantees could elect to take by bargain and sale or by demise, each of which had different consequences.

In another case, A delivered 400s. to B to the use of C, a woman, to be delivered to her on the day of her

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marriage. Before this day, A countermanded it, and called home the money. It was held in the Chancery Court that C could not recover because "there is no consideration why she should have it".

In a case concerning a deed, A sold land to B for 400s., with confidence, that it would be to the use of A. This bargain "hath a consideration in itself ... and such a consideration is an indenture of bargain and sale". It was held that the transaction was not examinable except for fraud and that A was therefore estopped.

A court reporter at the King's Bench formulated two principles on consideration of the case of Wilkes against Leuson as: "The heir is estopped from falsifying the consideration acknowledged in the deed of feoffment of his ancestor. Where a tenant in capite made a feoffment without consideration, but falsely alleged one in the deed on an office finding his dying seised, the master of the wards cannot remove the feoffees on examining into the consideration, and retain the land until and though the heir tended, still if he do not prosecute his livery, the Queen must admit the feoffees to their traverse, and to have the farm, The court reporter summarized this case as follows: Wilkes, who was merchant of the staple, who died in February last past, made a feoffment in the August before his death to one Leuson, a knight, and his brother, and another, of the manor of Hodnel in the county of Warwick; and the deed,(seen) for seven thousand pounds [140,000s.] to him paid by the feoffees, of which sum he made acquittance in the same deed (although in fact and in truth not a half-penny was paid), gave, granted, and confirmed c "habendum eir et hoeredibus suis in perpetuum, ad proprium opus et usum ipsorum A. B. et C. in perpetuum," and not "hoeredum suorum," together with a clause of warranty to them, their heirs and assigns, in forma proedicta: and notwithstanding this feoffment he occupied the land with sheep, and took other profits during his life; and afterwards his death was found on a diem clausit extremum by office, that he died seised of the said manor in fee, and one I. Wilkes his brother of full age found his next heir, and a tenure in capite found, and now within the three months the said feoffees sued in the court of wards to be admitted to their traverse, and also to have the amnor in farm until And although the said I. Wilkes the brother had tendered a livery, yet he had not hitherto prosecuted it, but for cause had discontinued. And whether now the master of the wards at his discretion could remove the feoffees by injunction out of possession upon examination of the said consideration of the said feoffment which was false, and none such in truth, and retain it in the hands of the Queen donec et quousque was a great question. And by the opinion of the learned counsel of that court he cannot do it, but the Queen is bound in justice to give livery to him who is found heir by the office, or if he will not proceed with that, to grant to the tenderers the traverse, and to have the farm, the request above mentioned. And this by the statutes ... And note, that no averment can be allowed to the heir, that the said consideration was false against the deed and acknowledgment of his ancestor, for that would be to admit an inconvenience. And note the limitation of the use above, for divers doubted whether the feoffees shall have a fee-simple in the sue, because the use is not expressed, except only "to themselves (by their names) for ever;" but if those words had been wanting, it would have been clear enough that the consideration of seven thousand pounds had been sufficient, for the law intends a sufficient consideration by reason of the said sum; but when the use is expressed otherwise by the party himself, it is otherwise. And also the warranty in the deed was "to them, their heirs, and assigns, in form aforesaid," which is a declaration of the intent of Wilkes, that the feoffees shall not have the use in fee simple; and it may be that the use, during their three lives, is worth seven thousand pounds, and more And suppose that the feoffment had been "to have to them and their heirs to the proper use and behoof of them the feoffees for the term of their lives for ever for seven thousand pounds," would they have any other estate than for the term of their lives in the use? I believe not; and so in the other case.

A last example of a case concerning consideration is that of Assaby and Others against Lady Anne Manners and Others. The court reporter characterized the principle of the case as: "A. in consideration of his daughter's marriage covenants to stand seised to his own use for life, and that at his death she and her husband shall have the land in tail, and that all persons should stand seised to those uses, and also for further assurance. After the marriage he bargains and sell with fine and recovery to one with full notice of the covenants and use; this is of no avail, but on the death of A. the daughter and her husband may enter." The court reporter summarized this case as follows: A. was seised of land in fee, and in consideration of a marriage to be had between his daughter and heir apparent, and B. son and heir apparent of C. he covenanted and agreed by indenture with C. that he himself would have, hold, and retain the land to himself, and the profits of during his life, and that after his decease the said son and daughter should have the land to them and to the heirs of their two bodies lawfully begotten, and that all persons then or afterwards seised of the land should stand and be seised immediately after the marriage

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solemnized to the use of the said A. for the term of his life, and after his death to the use of the said son and daughter in tail as above, and covenanted further to make an assurance of the land before a certain day accordingly and then the marriage took effect; and afterwards A. bargained and sold the land for two hundred marks (of which not a penny is paid) to a stranger, who had notice of the first agreements, covenants, and use, and enfeoffed divers persons to this last use, against whom a common recovery was had to his last use; and also A. levied a fine to the recoverers before any execution had, and notwithstanding all these things A. continued possession in taking the profits during his life; and afterwards died; and the son and daughter entered, and made a feoffment to their first use. And all this matter was found in assize by Assaby and others against Lady Anne Manners and others. And judgment was given that the entry and feoffment were good and lawful, and the use changed by the first indenture and agreement. Yet error was alleged. The judgment in the assize is affirmed.

The famous Shelley's Case stands for the principle that where in any instrument an estate for life is given to the ancestor, and afterwards by the same instrument, the inheritance is limited whether mediately, or immediately, to his heirs, or heirs of his body, as a class to take in succession as heirs to him, the word "heirs" is a word of limitation, and the ancestor takes the whole estate. For example, where property goes to A for life and the remainder goes to A's heirs, A's life estate and the remainder merge into a fee in A.

Edward Shelley was a tenant in tail general. He had two sons. The older son predeceased his father, leaving a daughter and his wife pregnant with a son. Edward had a common recovery (the premises being in lease for years) to the use of himself for term of his life, after his decease to the use of the male heirs of his body, and of the male heirs of the body of such heirs, remainder over. After judgment and the awarding of the writ of seisin, but before its execution, Edward died. After his death, and before the birth of his older son's son, the writ of seisin was executed. The younger son entered the land and leased it to a third party. Afterwards, the son of the older son was born. He entered the land and ejected the third party. It was held that the younger son had taken quasi by descent until the birth of the older son's son. The entry by the older son's son was lawful. The third party was lawfully ejected. (Shelley's Case, King's Bench, 1581, English Reports—Full Reprint, Vol. 76, Page 206.)

Chapter 14: Epilogue

William Brewster and William Bradford and other puritans and pilgrims sailed on ships such as the Mayflower to found a colony in North America in 1607. England developed a commonwealth of countries around the world, including Canada, Australia, New Zealand, and India.

In the time period after 1600, there developed free trade, democracy, political parties, secret ballots, policemen, Francis Bacon's advocating of induction in science, Periodic Chart of chemical elements, calculus and differential equations, college degrees in biology, chemistry, and physics, Isaac Newton's theory of gravity, Albert Einstein's theory of relativity, the experimental method, computers, decoding of the DNA sequence, Charles Darwin's evolution, Louis Pasteur's germ theory of disease, Galileo's telescope, Hubble telescope, Big Bang Theory, antibiotics to cure and surgery to replace body parts, quantum theory, cold water in pipes to homes, central heating, apartment high rises, business skyscrapers, electricity, electric lights, electric sewing machines, industrial revolution factories, labor strikes, cars, tractors, ice boxes and refrigerators, telephones, central heating with radiators, heated water in taps, hot water heaters by gas, gas ovens, humidifiers, upholstered couches and chairs, canned food, zippers, velcro, trains, ships by steam and then motors, wall-to-wall carpeting, microscope, microwave ovens, umbrellas, contraceptive pill, popular elections, airplanes, photography, record players, potatoes, corn, chocolate, frozen food, radio, television, plastics, ready to wear clothes, political parties, submarines, statistics, economics, multinational corporations, weather forecasting, braille, airplanes, space ship to moon, banks, annuities, factory assembly lines, washing machines, dishwashers, sewing machine, microwave ovens, copier machines, DNA evidence, daily newspapers, nuclear bomb and nuclear energy, guided missiles, stock market, quartz watches, museums, bicycles, popular election, frozen sperm for artificial insemination, investment advice, retirement planning, pensions, amusement parks, catalogue buying, labor contracts, dictionaries, childrens' summer camps, stocks and bonds, teenage culture, concrete, synthetic materials, typewriters, cardboard boxes, advertising, invitro fertilization, factory assembly line, gene-mapping, animal cloning, internet, hiking and camping trips, world travel vacations, telegraph, word processing, gas, oil, couches, research, television, radio, credit cards, toothbrushes, dental floss, buses, subways, chinaware, telephones, camcorders, mass production, nursing homes, cameras, copy machines, wheelchairs, hospital operations, artificial limbs, organ transplants, pharmacies, public libraries, children's playgrounds, cosmetic surgery, wrist watches, physical exercising equipment, vitamin pills, sports clubs, condominiums, anesthetics, physical exams, microscopes, observatories, radar, sonar, opera, nutrition, psychiatry, supermarkets, disability and life insurance, magazines, daily newspapers, liability insurance, chemical fertilizers, DDT, trash pick-up, electronic mail, record players, video tape recorders, retirement homes, movies;, planned obsolescence, boxspring mattresses, brain scans, xrays, inoculations, vaccines, penicillin, organized professional sports, dry cleaners, railroads, foreign embassies, veterinarians, drug abuse, wage garnishment, fire engines, tractors, lawnmowers, breeding zoos, museums, world wars, nuclear deterrence, fingerprinting, forensic evidence, toxic waste, acid rain, archeology, zippers,

In this time period the development of law includes abolition of feudal wardships, married women's property act, mandamus, statute of frauds, rule against perpetuities, mandatory secondary education, the tort of negligence, the concept of duty of due care, kidnapping, false impersonation, liens, obscenity, partnership, pensions, trademarks and unfair competition, privacy, freedom of thought, freedom of speech, freedom of the press, copyrights and patents, bankruptcy, civil rights, union organizing laws, laws on discrimination due to race, sex, ethnic or national origin, disability, age, and sexual preference, sexual harassment and stalking laws, product liability, international law, no-fault divorce, best interest of child in custody disputes, child labor laws, environmental laws protecting air and water quality, workers compensation, unemployment compensation, controlled substances, intellectual property law, Coke's treatise on law, and Blackstone's treatise on law.

Judicial procedure includes grand juries, which hear evidence, court transcript by court stenographers, discovery, and depositions.

Our Legal Heritage

Sovereigns of England

-Name-	-Accession-
Egbert	802
Aethelwulf	839
Aethelbald	858
Aethelbert	860
Aethelred	865
Alfred the Great	871
Edward the Elder	899
Aethelstan	924
Edmund	939
Eadred	946
Eadwig	955
Edgar	959
Edward the Martyr	975
Aethelred the Unready	978
Edmund Ironside	1016
Canute	1016
Harold I Harefoot	1035
Hardicanute	1040
Edward the Confessor	1042
Harold II	1066
William I of Normandy	1066
William II	1087
Henry I (and Matilda)	1100
Stephen	1135
Henry II (and Eleanor)	1154
Richard I	1189
John	1199
Henry III	1216
Edward I (and Eleanor)	1272
Edward II	1307
Edward III	1327
Richard II	1377
Henry IV	1399
Henry V	1413
Henry VI	1422
Edward IV	1461
Edward V	1483
Richard III	1483
Henry VII (and Elizabeth)	1485
Henry VIII	1509
Mary	1553
Elizabeth I	1558
James I	1603

Bibliography

1. Ancient Laws and Institutes of England, Printed by command of his late majesty King William IV under the direction of the Commissioners of the Public Records of the Kingdom, Vol 1; 1840.
2. The Laws of the Kings of England from Edmund to Henry I, A.J. Robertson, 1925.
3. The Statutes of the Realm
4. Statutes at Large
5. A Treatise of the Lawes of the Forest, John Manwood, 1615
6. History of English Law; William Holdsworth
7. History of English Law, Pollack and Maitland
8. Anglo-Saxon Charters, A. J. Robertson, 1939

Our Legal Heritage

9. Franchises of the City of London, George Norton, 1829
10. Borough Customs Vol. 1, Selden Society
11. Royal Writs in England from the Conquest to Glanvill, Selden Society
12. Lawsuits in time of Wm I, Selden Society
13. Treatise on the laws and customs of the realm of England, Ranulph D. Glanvill, 1189
14. Calendar of Wills, Court of Husting, London; Ed. Reginald R. Sharpe
15. Calendar of Early Mayor's Court Rolls of the City of London, AD 1298-1307, Ed. A. H. Thomas
16. Legislation of Edward I, T.F.T. Plunkett, 1949
17. English Historical Documents, Ed. David Douglas
18. Bracton on the Laws and Customs of England, Henry of Bratton, 1257
19. Chaucer's World, Edith Richert, 1948
20. John, King of England, John T. Appleby, 1958
21. A Collection of Eighteen Rare and Curious Historical Tracts and Pamphletts, Edinburgh, Priv. Print.
22. Doctor and Student, Christopher St. Germain, 1518
23. Readings in Western Civilization, George Kuoles, 1954
24. Social England, Ed.: H.D. Traill, St. John's College, Oxford; Vol. 1 and 2, 1894.
25. Augustine of Canterbury, Margaret Deanesly
26. The Venerable Bede, Ecclesiastical History of the English Nation (Bede was a monk who lived from 673-735)
27. Political History of England; T. Hodgkin
28. Alfred the Great, Helm
29. Domesday, A Search for the Roots of England, M. Wood
30. The English Church 1000-1066; F. Barlow
31. Life on the English Manor; H.S. Bennet; 1967
32. The English Medieval Town; Colin Platt; 1976
33. Pelican History of England
34. The Gild Merchant, Gross
35. Life and times of Roger Bacon
36. Oxford Book of Oxford, Morris
37. A History of Oxford Univeristy, Green
38. Lives of the Lord Chancellors, Campbell, 1880
39. Tudor England, John Guy, 1988
40. A History of Technology, Charles Singer
41. Edward I, Michael Prestwich, 1988
42. Franchises of the City of London, George Norton, 1829
43. The Works of Alfred
44. Salisbury Plain, R. Whitlock, 1955
45. William the Conqueror, F.M. Stenton
46. Life of William the Conqueror, T. Roscoe, 1846
47. Elizabeth I, Anne Somerset, 1992
48. Queen Elizabeth, Katherine Anthony, 1929
49. Industry in England, H.deB. Gibbons, 1897
50. Henry II, W. L. Warren, 1973
51. Edward I, L.F. Salzman, 1968
52. The Yorkist Age, Paul Kendall, 1962
53. Edward the Confessor, Frank Barlow
54. The Livery Companies of the City of London, W. Carew Hazlitt, 1892
55. The Parliamentary Representation of the City of Coventry, Thomas Walker Whitley, 1894
56. The Government of England under Henry I, Judith Green, 1986
57. Lives of the Queens of England, Agnes Strickland, 1878
58. The Oldest Version of the Customs of Newcastle, C. Johnson, 1925
59. Charter of Henry II to the Burgesses of Newcastle, A. M. Oliver, 1175
60. The Charters and Letters Patent Granted by the Kings and Queens of England to Bristol, Samuel Seyer, 1812
61. London Weavers' Company, Francis Consitt, 1933

Our Legal Heritage

62. Chronicles and Memorials of Great Britain and Ireland During the Middle Ages: Letters and Papers of Richard III and Henry VII
63. Gilds and Companies of London, George Unwin, 1966
64. The Scholastic Curriculum of Early Seventeenth-Century Cambridge, William Costello, 1958.
65. Open Fields, Charles Orwin, 1938
66. Reign of Henry VII, R. Storey, 1968
67. Sons of the Conqueror, G. Slocombe, 1960
68. The Anglo-Norman Nobility in the Reign of Henry I: The Second Generation, Charlotte Newman, 1988
69. The Birth of Britain Vol. 1, Winston S. Churchill, 1956
70. From Alfred to Henry III, 871-1272, Christopher Brooks, 1961
71. History of the English People, John R. Green, 1916.
72. A Social and Industrial History of England, F.W. Tickner, 1929
73. The English, Norman F. Cantor, 1967
74. Elizabethan Life in Town and Country, M. St. Claire Byrne, 1925
75. The Elizabethan World, Edited by Norman Kotner, 1967
76. The Spirit of the Classical Canon Law, Richard Helmholz, 1996