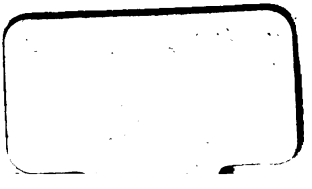

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THE SOURCES OF THE LAW OF ENGLAND.

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THE SOURCES OF THE LAW OF ENGLAND.

AN HISTORICAL INTRODUCTION TO THE STUDY OF ENGLISH LAW.

BY

DR. H. BRUNNER,

PROFESSOR IN THE UNIVERSITY OF BERLIN.

Translated from the German, with a Bibliographical Appendix,

BY

W. HASTIE, M.A.,

TRANSLATOR OF KANT'S 'PHILOSOPHY OF LAW;'
OUTLINES OF THE SCIENCE OF JURISPRUDENCE,' BY PUCHTA,
ETC. ETC.

EDINBURGH:
T. & T. CLARK, 38 GEORGE STREET.
1888.

'In England, as in Rome, the development of law has been unbroken in continuity, and has extended over a number of centuries. Based originally upon great and durable institutions, it has spontaneously expanded as the material and moral necessities of the growing nation required, till it presents at the present day the appearance of a vast, uniform, organic structure.'—SHELDON AMOS.

TRANSLATOR'S PREFATORY NOTE.

—o—

'PROFESSOR BRUNNER'S admirable outline of the Juristic Literature of England will be found to form an attractive and instructive means of passing from the study of General Jurisprudence to that of the special System of the English Law.'

In these words the Translator has already indicated his estimate of the value of Dr. Brunner's Sketch of the Literary History of the Law of England, and his view of the position which it seems fitted to take in a course of legal study.[1] The Sketch has been translated with the sanction of the learned Author; an occasional Note —consisting when possible of an illustrative quotation— and a Bibliographical Appendix have been added; and it is hoped and believed that the matter comprised in these few pages will prove an acceptable and useful

[1] *Outlines of the Science of Jurisprudence.* An Introduction to the Systematic Study of Law. Translated and Edited from the Juristic Encyclopædias of Puchta, Friedländer, Falck, and Ahrens. Edinburgh 1887 (p. 37, note).

guide to Students in approaching the living forms of the vast and varied system of the Law of England.

It seems undesirable and unnecessary to detain the Student by any prefatory detail. The scope and character of Dr. Brunner's Sketch will be at once apparent. Its clearness, its erudition, its comprehensiveness, cannot fail to be recognised. It embodies matter which might easily have been expanded into a considerable volume, but it is presented in such a succinct and perspicuous form that the Student may rapidly master it; and in doing so he cannot but gain definite direction and insight, whatever be the School of Law in which he may have been trained, or to which he may be giving his allegiance.

The little work presents an application of the Historical Method to the literary material of English Law. The late lamented Sir Henry Sumner Maine has done great service in familiarizing the English mind with the Historical Method, and his brilliant applications of it to the elucidation of early Custom and Law—Hindu, Roman, and Irish—have resulted in some of the most valuable contributions to the Juristic Literature of this generation. But the prosecution of the Method within the domain of ancient and modern English Law is still rather a desideratum than a realized fact. It is, however, generally acknowledged that there is no department of English Law that at present more clamantly

demands or will better repay careful cultivation. The distinguished Constitutional Historians have been leading the way by excellent works in their closely related sphere. Nor are there wanting practical evidences of a reviving and deepening interest in the jural development. Among these may be specially mentioned the founding last year of the Selden Society, which has for its object 'to encourage the study and advance the knowledge of the History of English Law,' and which has already given earnest of important and valuable work. In connection with the earlier periods of the Juristic Literature much has been accomplished by the persevering and laborious researches of such German scholars as Konrad Maurer, Reinhold Schmid, Phillips, Biener, Gundermann, Gneist, Liebermann, and the Author of this Sketch; and their efforts and products cannot be too highly praised. This little synopsis will be found well fitted to set the Student upon the line of these more elaborate investigations, as well as to quicken the interest of the general reader in the English juridical movement as a whole.

W. H.

May 1, 1888.

ADDENDA.

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Bracton's Note Book: A Collection of Cases decided in the King's Court. Annotated by a Lawyer of that name, seemingly by Henry of Bratton. Edited by F. W. Maitland, Reader of English Law in the University of Cambridge. 3 vols. London and Cambridge.—(Add to p. 25.)

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THE

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Section First.

THE ANGLO-SAXON LAW.[1]

THE Institutions of the Anglo-Saxons occupy in the History of English Law the same position as is held by the popular Laws in the legal history of the other German races. The independent development of the Anglo-Saxon system was interrupted by the Norman Conquest, but it has maintained itself in part along with the Norman innovations, and entered with them into the historical foundations of the present political and legal constitution of England. The riches of the Anglo-Saxon legislation in the five centuries from Æthelbirht to William the Conqueror, and the purely Germanic character of the Law,[2] which was not at all influenced by the Roman Law,[3] and

[1] [A reference to the Sources of the Laws of the Ancient Britons is appended to this Section.—TR.]

[2] ['The constitutional history of Germany is the hardest, as that of France is the easiest, subject of historical study. . . . England, although less homogeneous in blood and character, is more so in uniform and progressive growth. . . . If its history is not the perfectly pure development of Germanic principles, it is the nearest existing approach to such a development.'—Stubbs, *Constitutional History*, i. 6.]

[3] [The question of the influence of the Roman Law in the early British period, and of the survival of traces of that influence, is an interesting historical problem. Selden discussed the question with his characteristic erudition and ingenuity in his Preface to the *Fleta* (*infra*, p. 28), and

only in a very slight measure by the Canon Law, make it worthy of special study. At the same time, the Anglo-Saxon Legislation is of prime importance as a Source of Law, in its relation to the Germanic system generally, from its being expressed in the original language of the Anglo-Saxon peoples,[1] which in Germany did not begin to supersede the Latin till the Thirteenth Century. And finally, it is of special value from its presenting an uninterrupted series of legal Sources, whereas in the Germanic system elsewhere there is a gulf which it is difficult to fill in the legal history between the Ninth and the Thirteenth Centuries. All these circumstances indicate the importance, both practically and theoretically, of the Anglo-Saxon system of Laws.

Among the Anglo-Saxons, the institution of the law took place at the national Councils called *Witenagemotes*,[2]

maintained that the Roman Law had left no trace in England, and only reappeared in the 12th century after the scientific revolution of the School of Bologna. Savigny (in his *Geschichte des R. Rechts im Mittelalter*, ii. 159) examines the question with his usual thoroughness and care. After referring to Selden's view, he shows that there are traces in the National Laws from the time of the Normans that betray some knowledge of the Roman Law, and that some indications of its study are found in the 8th century. (Cf. Lerminier, *Histoire du Droit*, p. 237 et seq., and Cathcart's Introduction to his translation of Savigny's *History of the Roman Law*, vol. i.) Stubbs is more cautious in his negative than Prof. Brunner, summing up thus: 'The vestiges of Romano-British Law which have filtered through local custom into the common law of England, as distinct from those which were imported in the Middle Ages through the scientific study of law or the insensible infection of cosmopolitan civilisation, are infinitesimal.'—*Const. Hist.* i. 62.—Tr.]

[1] ['The English of Alfred's time is, except where the common terms of ecclesiastical language come in, purely Germanic.'—Stubbs, *Const. History*, i. 62.]

[2] [Witenagemot, from *Witana*, 'sapientes,' wise, and *gemot*, a meeting. 'It is not a collection of representatives; its members are the *principes*, the *sapientes*, the *comites* and counsellors of royalty, the bishops, the

at which the King took counsel with the nobles and wise men of the country, called the *Witan*, regarding the maintenance and strengthening of peace. As in the case of the national laws of the Germans, the laws of the Anglo-Saxons (Domas) partly fixed the already existing customary law and partly created new law.

The Sources of the Anglo-Saxon Law may be indicated most succinctly by following the groups into which they have been arranged by Gneist.

1. **The Old Kent Legislation.**—This embraces the Laws of Æthelbirht (560–616) regarding *Wergeld* [1] and 'compensations' or 'amends,' [2] and especially those relating to members of the body; the so-called Laws of Klother and Cadric (after 673) of a criminal and process nature; and lastly, the Laws of Wihtræd (696) regarding matters of ecclesiastical and criminal Law and manumissions.

2. **The Laws of Ine.**—Ine was king of Wessex or of the West Saxons (688–727), and his Laws are noteworthy from their greater range, as well as the circumstance that Wessex afterwards became the 'caput regni et legum' (Leges Henr. i. c. 70). This relation also explains the consideration which was given to their determinations, especially those relating to infringements of peace, in the later legislation.

3. **The Laws belonging to the period of the consolidated Kingdom.**—The Laws of Alfred of Wessex (871–901) belong to this period. They probably took their rise towards the end of his government, when, after his long wars with the Danes, he could think of re-establishing

ealdormen, and the King's *thegns*. The Witenagemot can never have been a large assembly.'—Stubbs.]

[1] ['Wergild, the payment for the slaying of a man.'—Stubbs.]

[2] ['Bot, amends, reparation. Lat. *Emendatio*.'—Stubbs.]

the condition of law that had been overturned. They contain in part a repetition of the Laws of Æthelbirht, Offa, and Ine. Legal regulations regarding 'Wergeld,' oaths, guarantees, and other matters, are also found in Alfred's Compact of Peace with the Danish chief Guthrum (880–890).—The Laws of Edward the Elder (901–924) contain two laws. The older one treats of purchase, legal denial, and perjury; and the later contains determinations of different kinds with a view to the preservation of peace.—The so-called Laws of Edward and Guthrum relate mainly to ecclesiastical relations.—The Laws of Æthelstan (924–940) arose in different Councils, the chronology of which cannot be exactly determined. They include the *Constitutio de decimis;* the *Concilium Great-Angleagense,* Æthelstan's most important law; the *Concilium Exoniense;* the *Concilium Fefreshamense* (decisions of a Witenagemote under reservation of the royal sanction); the *Concilium Thunresfeldense,* an enlarged confirmation of the decisions of Exeter and Fevresham; and lastly, the *Judicia civitatis Londoniæ,* an interesting legal monument, which among other things contains the statutes of the peace-guilds of London relating to the whole corporation.—The Laws of Edmund (940–946) consist of the *Concilium Londinense* on spiritual and temporal matters, and the *Concilium Culintunense* relating to theft.—The Laws of Edgar (959–975), among which are to be reckoned with great probability the *Constitutio de Hundredis,* and certainly the *Concilium Wihtbordestanense* and the *Concilium Andeferanense.*—The Laws of Æthelred (978–1016) close the series of the laws of the Anglo-Saxons that were established by national rulers. Out of the great number of these laws, the most important are the *Concilium Wudestockiense,* a

compact of peace with the Danes, the *Concilium Wanetungense*, the *Constitutiones* of 1008 and 1014, the *Concilium Ænhamense*, and the *Concilium apud Habam.*

4. **The Laws of Cnut** (1016–1035) are those that were passed at the *Concilium Wintoniense.* They are divided into *leges ecclesiasticæ* and *leges civiles*, and for the most part they repeat older Anglo-Saxon laws. The genuineness of the *Constitutiones de foresta* is disputed on good grounds, for although they are ascribed to Cnut, they already contain traces of the terminology of the Roman Law.

5. There are also several *private compilations*, which are to be regarded as sources of the Anglo-Saxon Law, although they were composed under the first Norman kings, partly from the intention of maintaining the continued existence of the old law in opposition to that of the conquerors. The **Pseudo-leges Canuti** are of subordinate importance, being a somewhat planless digest of Anglo-Saxon laws, part of which was taken from a source that is unknown to us. It is supposed that this collection originated in the time of Henry I. The so-called **Leges Henrici Primi** possess a far higher value. The designation of this law-book is derived from the first two chapters, which contain Henry's Charter of 1101, and a *privilegium* or Charter granted by him to London; and these have been placed by the author, after a short introduction, at the head of his work. The remaining part of the work has in many respects a compilatory character. Among other things, the author has made use of the Decree of Burchard of Worms, the Lex Salica, the Lex Ribuariorum and Frank Capitularies, but he has drawn most liberally from the Anglo-Saxon Laws, which were taken as the basis for his work in the Latin translation known as the 'vetus versio.'

Some of his positions contain Norman and not Anglo-Saxon law, and the author does not seem to be conscious of the fact. In the terminology many Norman expressions are already involved. The style is stilted; the text is frequently corrupt; and hence it is less appreciated as a law-book on account of its obscurities which defy all interpretation. The utilization of the sources of the Canon Law, the scholastic culture, and the want of a juristic method of thinking betrayed by the work, are grounds for supposing that it had a clerical author, while his preference for the Anglo-Saxon Law as the old traditional system, indicates that he was a born Anglo-Saxon. The date of its composition is disputed. It was formerly attributed to the reign of Stephen or of Henry II.; but Liebermann has lately made it extremely probable that the book as a whole was composed between the years 1108 and 1118.—The so-called **Leges Edwardi Confessoris** profess at their outset to be the result of an *Enquête* (inquisitio) which William the Conqueror caused to be made into the Anglo-Saxon Law by twelve sworn representatives in the fourth year of his reign. But the contents of the book show that it is a private compilation, undertaken from a learned interest, in the Twelfth Century prior to 1135, and that it gives a summary of the determinations found in the older Anglo-Saxon Sources.

6. There are also certain isolated Regulations and Directions of an uncertain date regarding 'Wergeld,' oaths, exorcism by ordeals, judicial formulæ, and other matters. Of these mention may specially be made of the so-called *Senatus-Consultum de Monteculis Walliæ* (Gerædnes betweox Dûnsêtan), a Law which regulated the intercourse on the frontier between the West Saxons and the Westphalian race of the Dunsetes; and also the

Rectitudines singularum personarum, a private composition regarding the burdens attaching to different kinds of goods.

7. Lastly, there are many other Documents which have been handed down from the Anglo-Saxon period, written partly in Latin and partly in Anglo-Saxon, and which contain without doubt many falsifications; but the testing of them is made difficult by the fact that the Anglo-Saxons were not guided by any fixed diplomatic rules in composition. Special importance is assigned to the documentary source called the Bôc, which relates to the possession of the soil. When the soil was acquired as property by *boc*, it was called *boc-land*, and it was again alienated and taken over into possession by transfer or delivery of the documentary record (*bok* or *bôc*) of the original acquisition.[1]

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[1] ['*Boc-land*, land the possession of which was secured by book, *i.e.* charter.' Bocland 'can produce the charter or book by which it is created,' or it is 'an estate created by legal process out of the public land. All the land that is not so accounted for is *folcland* or public land.' 'The different explanations of folkland and bookland, given at different periods, are collected by Schmid, *Gesetze*, p. 538.'—Stubbs' *Const. Hist.* i. 76, note (giving a summary statement of these explanations).—'From the beginning of the Tenth Century the expressions "bôc-land" and "folc-land" appear as the invariable equivalents of the *ager privatus* and the *ager publicus*.'—Gneist, *History*, p. 3.—TR.]

the Saxon, the Laws called Edward the Confessor's, the Laws of William the Conqueror and those ascribed to Henry the First, with a compendious Glossary, etc. . . . printed under the direction of the Commissioners on the Public Records of the Kingdom, Lond. 1840.' (Begun by R. Price, and after his death completed by Thorpe in Fol. and also in 2 vols. Oct.)—On the basis of the Record Commission Edition is founded the German Ed. by Reinhold Schmid: *Gesetze der Angelsachsen* (2 Ed. 1858), with German Translation, excellent Introduction on the history of the Sources, and valuable Glossary.—Selections from the English Translation of the Anglo-Saxon Laws are given in Stubbs' 'Select Charters and other Illustrations of English Constitutional History, 3 Ed. 1876.'

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[Sharon Turner, History of the Anglo-Saxons, 3 vols. 1799–1835.]

[C. J. Elton, Origins of English History, 1882.]

THE LAWS OF THE ANCIENT BRITONS.

[It did not fall within the scope of Dr. Brunner's Article to deal with the sources of the Laws of the Ancient Britons, but the recent and increasing historical and comparative interest in the primitive system necessitates a reference to the available means of studying its various forms.

[1. **The Ancient Laws of Wales** were published by the Record Commission in 1841, the year after the appearance of the *Ancient Laws and Institutes of England*, etc. (*ut supra*), under the title '*The Ancient Laws and Institutes of Wales*, comprising Laws enacted by Howell the Good, modified by subsequent regulations under native princes prior to the Conquest, etc., with an English Translation, Indexes, and Glossary,' 1 vol. fol. or 2 vols. oct. 1841. This critical and complete edition (by Aneurin Owen) supersedes the older edition by Wotton (*Leges Walliæ*, 1730), being founded critically upon the Latin recension of the 13th century and the three Welsh recensions. Howel *Dda* is said to have drawn up these Laws about 943. They are very extensive in their range, embracing Criminal, Private, and Process Law. No certain traces of Roman Law are found in them, but they have points of affinity to the old Anglo-Saxon Laws.—The fragments of Laws traditionally attributed to King Dyvnal Mœlmud, and referred to the fourth century B.C., are spurious.

[2. **The Ancient Laws of Ireland** have been similarly published as 'The Ancient Laws and Institutes of Ireland,' 4 vols. 1865–80. The significance and value of the ancient Laws of Ireland, called the *Brehon* Laws, have been pointed out and illustrated in a singularly interesting and suggestive way by Sir H. S. Maine, whose account of them, as thus published, is as follows: 'The ancient Laws of Ireland have come down to us in an assemblage of law-tracts, each treating of some one subject or of a group of subjects. The volumes officially translated and published contain the two largest of these tracts, the Senchus Mor, or Great Book of the Ancient Law, and the Book of Aicill. While the comparison of the Senchus Mor and of the Book of Aicill with other extant bodies of archaic rules leaves no doubt of the great antiquity of much of their contents, the actual period at which they assumed their present shape is extremely uncertain. Mr. Whitely Stokes, one of the most eminent of living Celtic scholars, believes upon consideration of its verbal forms that the Senchus Mor was compiled in or perhaps slightly before the eleventh century; and there appears to be internal evidence that allows us to attribute the Book of Aicill to the century preceding. The Senchus Mor expressly claims for itself a far earlier origin . . . it is far from impossible that the writing of the ancient Irish laws began soon after the Christianization of Ireland. . . . The tracts are of very unequal size,

and the subjects they embrace are of very unequal importance. . . . We, who are able here to examine coolly the ancient Irish law in an authentic form, can see that it is a very remarkable body of archaic law, unusually pure from its origin. It has some analogies with the Roman Law of the earliest times, some with Scandinavian Law, some with the law of the Sclavonic races, so far as it is known, some (and these particularly strong) with the Hindoo law, and quite enough with Old Germanic law of all kinds, to render valueless for scientific purposes the comparison which the English observers so constantly institute with the laws of England. It is manifestly the same system in origin and principle with that which has descended to us as the Laws of Wales; but these last have somehow undergone the important modifications which arise from the establishment of comparatively strong central government.' (*Early Hist. of Institutions*, sect. I.) (See also the Article 'Brehon Law' in the new Ed. of the *Encyclop. Britann.*)

[3. The ancient Celtic inhabitants of Scotland have not transmitted any body of Laws in the Gaelic language like those of the Welsh and Irish, and there are only a few later traces of such laws. The Picts and Scots, however, made considerable progress in civilisation, and their system of justice was undoubtedly the same in essentials as that of ancient Wales and Ireland. A Latin fragment, entitled *Leges inter Brettos et Scotos*, of later date, preserves a representation of a part of the early system of pecuniary mulcts or penalties, '*cro*,' but in a meagre form. If what we possess of the '*Leges inter Brettos et Scotos*' 'be all that ever existed, that code must have had a very limited range. The only thing dealt with is the pecuniary retribution for slaughter or personal injury.' J. Hill Burton, II. 62-3. 'In all Southern Scotland, we find hardly any traces remaining of a peculiar Scotch or Celtic Law distinguished from the customs of our Teutonic, our Saxon forefathers.' Cosmo Innes, *Legal Antiq.* 96. 'When all is told, Scotland has nothing to compare with the Irish *Annals* or the Welsh *Triads*. . . . It has no equivalent to the collection of laws contained in the *Senchus Mor* or *Kain Patrick* of Ireland and the Dimetian and Venedotian Codes of Wales.' Æneas J. G. Mackay (Art. *Scotland* in *Encyc. Britann.* XXI. 474). The *Leges inter Brettos et Scotos* are printed in Appendix III. to vol. I. of 'The Acts of the Parliament of Scotland' (Record Ed. 1844), in Latin, French, and A.-S.—On the ancient institutions of Celtic Scotland reference may be made to Chalmers' Caledonia; E. W. Robertson's Scotland under her Early Kings, 2 vols. 1862; W. F. Skene's Chronicles of the Picts, Chronicles of the Scots, and other early Memorials of Scottish History, 1867; and his Highlanders of Scotland, their origin, history, and antiquities, 2 vols. 1837; and J. Hill Burton's History of Scotland, vols. I. II.—Tr.]

Section Second.

THE ANGLO-NORMAN LAW.

1. From William I. to Henry II., 1066–1154.

THE Conquest of England showed the superiority of the political order of the Normans, with its feudal elements, to the political system of the Anglo-Saxons, that had fallen into decay from its being unable either to maintain the old federal foundations or to develop into the form of a feudal State.[1] The conflict of the two systems of Law began in consequence of the Conquest; and here, too, the Norman system proved itself in many respects the stronger. The principles of the Franko-Norman Law in the constitution and administration of the State, as well as in the private, criminal, and process law, obtained full authority in England. They were here developed as the 'Feudal System,' and in part to an extreme and pointed form such as they did not assume in the region where they had originated.

[1] ['The effect of the Norman Conquest on the character and constitution of the English was threefold. The Norman rule invigorated the whole national system; it stimulated the growth of freedom and the sense of unity; and it supplied, partly from its own stock of jurisprudence and partly under the pressure of the circumstances in which the conquerors found themselves, a formative power which helped to develop and concentrate the wasted energies of the native race.'—Stubbs, *Const. Hist.* i. 247.]

The Normans applied the Norman system of Law to their own mutual relations to each other in England. The relationships between Normans and Anglo-Saxons were, however, regulated by *special* legal determinations. The Anglo-Saxons were indeed guaranteed the unmodified continuance of their law in principle, but the result was what commonly happens in the case of mere concessions in principle. In practice, little attention was paid to the guarantee, for the movement of the actual relationships was stronger than the principle laid down. Normans formed almost exclusively the higher grade of society, and they possessed the greater part of the soil. They pressed into the Court of the King, while the Anglo-Saxons after fruitless revolts kept away in a discontented mood from the new order of things. The spiritual and secular offices were held by Normans. They formed the 'Curia Regis,'[1] and the highest court was thus given up to

[1] ['The Curia Regis, the supreme tribunal of judicature, of which the Exchequer was the financial department or session, was the court of the King, sitting to administer justice with the advice of his counsellors.'—Stubbs. In elucidation of this term and subsequent references, the following explanation may also be quoted: 'The organization of the justiciar's administration dates from the reign of Henry I., the chief systematizer of it being Roger, Bishop of Salisbury, whose family retained the direction of the machinery for nearly a century. The staff of the justiciar is a selection from the barons or vassals of the Crown who are more nearly connected with the royal household, or qualified by their knowledge of the law for the position of judges. These are formed into a supreme court attendant on the King, the *Curia Regis*, which, when employed upon finance, sits in the chamber and is known by the name of the *Exchequer*. The several members are called, in the Curia, justices, their head being the *capitalis justitiarius*, or chief justice; in the Exchequer, *barones* or *barones scaccarii*. . . . Henry II. found it necessary in 1178 to restrict the number of those who exercised their functions in the Curia to five. This limited tribunal is the lineal predecessor of the existing Courts of King's Bench and Common Pleas.'—Stubbs, *Select Charters*, ii. 23.]

the influence of the Norman Law, a fact which was of the greater importance as in England the practice of the royal tribunals, by an unexampled centralization of the administration of law, completely controlled the development of the legal system.

This process did not show itself in all its extent immediately after the Conquest. The Normanizing of the country and of its law went on gradually. Under William the Conqueror the legislation still moved on the lines of the Anglo-Saxon period. But the Latin then came in partially as the language of the law, till it completely supplanted the Anglo-Saxon. The Latin again began to be exchanged for the French from the time of Edward I., and from the reign of Richard II. it completely gave way to it.

Of William the Conqueror (1066–1087) we possess four laws. 1. The **Leges et consuetudines quas Willelmus rex post adquisitionem Angliæ omni populo Anglorum concessit tenendas.** To these laws may perhaps be referred the statement prefixed to the *Leges Edwardi*, that the Anglo-Saxon Law was established by an *inquisitio* ordained by William I. The determinations of these laws are for the greater part Anglo-Saxon, and only a few of them are new and bear upon the relationship between the Normans and the Anglo-Saxons. 2. **Willelmes Cyninges Asetnusse** (King William's Ordinances), a Law in the Anglo-Saxon language which regulates the procedure in legal processes between Normans and Anglo-Saxons. 3. **Carta Willelmi de quibusdam Statutis,** which we possess only in a revised form. 4. An **Ordinance** regarding the separation of the spiritual and temporal judicatory, regulating this point by the Continental principles in opposition to the Anglo-Saxon custom.

The **Domesday Book** originated towards the end of the reign of William as the result of an official Enquête. It is the 'Book of the Land of the Kingdom,' and it contains a specialization of the proprietory relations of the land for fiscal purposes. It was officially published in 1783 in two vols. folio; and in the year 1816 the Record Commission added two supplementary volumes.[1]

To the Financial Administration of the Normans in England we owe another important source of law, in which, although the fiscal point of view predominates, we find important points connected with the existence of legal institutions and principles, as it embraces the whole political and legal arrangement of the Normans. We refer to the Accounts of the Exchequer, which in England go farther back than those in Normandy, although they give less detail with regard to the Accounts of particular imposts.—The oldest English Treasury Roll dates from the thirty-first year of the reign of Henry I. **The Rolls of the Pipe** (Rotuli pipæ) have been published separately by the Record Commission. (Editions: Magnus Rotulus Scaccarii vel Magnus Rotulus pipæ, de anno 31; regni Henrici I. (ut videtur) 1130–1131, ed. Joseph Hunter, 1833. The Great Rolls of the Pipe for 2, 3, 4 Henr. II., 1155–1158, ed. Hunter, 1844. The Great Rolls of the Pipe for 1 Richard I. 1189–1190, ed. Hunter, 1844. Rotulus Cancellarii vel Antigraphum Magni Rotuli Pipæ de tertio anno regis Johannis (1201, 1202), London 1833. Rotuli de Liberate ac de Missis et Præstitis, regnante Johanne, cura Th. Duffus Hardy, 1844. Rotuli

[1] ['Next to the laws and charters of the early Kings, the record of local customs in Domesday Book (1086) is the source of the most certain information as to the common law of England before the Conquest.'—Stubbs. Cf. Sir H. Ellis, A general introduction to Domesday Book, 2 vols. 1833.]

de Oblatis et Finibus in turri Londinensi asservati tempore regis Johannis, accurante Th. Duffus Hardy, 1835.) The entries of the Liberate Rolls, referring to the borrowings of the English kings from the Italian merchants in the Thirteenth and Fourteenth Centuries, are explained and collected in a treatise by Edward A. Bond, entitled 'Extracts from the Liberate Rolls relative to Loans supplied by Italian merchants to the Kings of England in the 13. and 14. Centuries.' This treatise is contained in the 28th Volume of the Archæologia (1840), published by the Society of Antiquaries of London. The essay supplies excellent accounts of the credit system of the English kingdom, and valuable material for a history of bills of credit.

During the reign of Henry I.[1] (1100–1135) a Tractate was composed on the English Law, of which unfortunately only the Preface and a part of the First Book have been preserved. The author himself gives the following statement regarding the contents of this lawbook: 'Primus liber continet leges Anglicanas in Latinum translatas (a Latin translation of the laws of Knut, Conc. Winton.); Secundus habet quædam scripta temporis nostri necessaria; Tertius est de statu et agendis causarum; Quartus est de furto et partibus ejus.' The last three books, the second of which promised important information regarding the Anglo-Norman Law, have disappeared. Hopes of finding them were entertained by Cooper, as stated in his work, 'An account of the most important Public Records of Great Britain and the Publications of the Record Commissioners, 1832, vol. ii. 412,' where we have a reprint of the Preface and a detailed account of this lost Tractate.

[1] [On the Laws of King Henry I. see an interesting discussion in Robertson's 'Scotland under her early Kings,' vol. ii. Append. T.—Tr.]

A useful compilation of the older Anglo-Norman documents relating to the administration of justice in the Courts, and forming a *corpus placitorum* for the period from William the Conqueror down to 6 Richard I., has been published by Bigelow. It is entitled 'Placita Anglo-normannica, Law Cases from William I. to Richard I., preserved in historical records, 1879.' The collection is drawn only from printed sources. It is mainly composed of process reports of the English *Scriptores*, of royal process mandates or writs of procedure, and passages of the Domesday Book and of the Exchequer Rolls.

2. From Henry II. to about 1300.

The formation of Law received an enduring impulse during the reign of Henry II. (1154–89), who had been from 1150 Duke of Normandy, and the 'Capitalis Justitiarius Angliæ' under Stephen. The Constitutions of Clarendon (1164) and of Northampton (1176), of his time, are of epoch-making importance. It was Henry II. who, first in Normandy and then in England, introduced Recognition by Jury as an ordinary means of proving cases of a civil kind. Before this time, trial by jury had been only applied in exceptional cases; and by this step Henry II. laid the foundation for a development not only of the English process law, but also of the private law that had become intimately connected with it.[1] Founding upon isolated attempts of an older time, he further created the institution of Itinerant Justices (Justitiarii itinerantes, 'Justices of Eyre,' *i.e. in itinere*).

[1] ['Henry II., if not the inventor, was the great improver of the system of recognitions by jury. . . . Out of these recognitions arose the system of trial by jury.'—Stubbs.]

For the purpose of commissary exercise of the jurisdiction reserved for the King's Court, he divided the kingdom into great circuits, a measure which had its historical analogue in the organization of the ordinary *Missi* of Charlemagne. From the time of Richard I. (1189–99) there have been preserved the **Capitula Itineris**, or the instructions which were communicated to the Itinerant Justices, and in their form and contents they recall the Carolingian *Capitulare Missorum*. In connection with this innovation, a collegial administration of justice, called the *Bancum*, was separated from the time of Henry II., from the Exchequer; and during the reign of Richard I. a standing Court for common civil suits branched off from this Bancum in the 'Court of Common Pleas' (*Communia Placita*). 'The formation of Law in England,' says Gneist, 'thus came much earlier into the hands of technically-trained judges than on the Continent, and the customary Law became more definitely restricted than was ever the case in Germany.' Under Henry II. there also begins in England the literary cultivation of the Anglo-Norman Law, with the exception of the lost tractate belonging to the time of Henry I. This literary cultivation of the Law, by its dealing with the financial administration of the *Scaccarium*, and the procedure of the King's Court (Curia Regis), shows whence it received its impulse.

Following Gundermann, to whom we owe an excellent survey of the sources of English Law down to Henry VIII., the material coming into consideration for this period may be grouped under the following points of view:—Statutes; Judicial Sources; and Treatises on Law.

A. STATUTES.

The English Jurists divide the whole mass of their legal matter into Statute Law and Common Law, according as its origin is to be found in legislation or custom. This distinction, however, is not strictly adhered to, and the notion of the Common Law has other contrasts. The early institutions of the Norman Kings are reckoned among the sources of the Common Law. They are either *Constitutiones* (Assisæ[1]), promulgated by the King after consultation with the nobles, or they are called *Chartæ* (charters), which are special royal concessions granted in order to remedy certain complaints. The official edition of the Statutes arranges under the rubric of **Charters**, the Charters of Henry I. of 1101, those of Stephen, 'De libertatibus ecclesie Anglicane et regni' of 1136, and some without date, those of Henry II. without date, those of John, 'Ut libere sint electionis totius Anglie' of 1214, the 'Articuli Magne Charte libertatum' of 1214, the 'Magna Charta' of John of the 15th June 1215, the 'Magna Charta' of Henry III. of 1216, 1217, 1224–25, the 'Charta de foresta' of 1217, 1224–25, and the further confirmations of the last two laws.

The **Statutes** proper begin with the 'Provisiones de Merton' of the 20th year of the reign of Henry III. (1235–36), to which there is regularly prefixed the Magna Charta and the Charta de foresta in the Statute collection of the Charters. The 'Statutum de Marleberge' (Statute of Marlebridge), 1267, is further to be mentioned on account of its importance, and as belonging to the time

[1] ['*Assisa*, an Assize: (1) an assessment; (2) a law or edict; (3) a mode of trial prescribed by such a law; (4) the select body employed to carry out the trial; (5) the trial itself.'—Stubbs.]

of Henry III. Under Edward I. (1272–1307), 'the English Justinian,' the number of Statutes increased in such a measure that an enumeration of even the most important of them must be passed over here.[1] The reign of Edward I. was fruitful in reforms. England then laid the essential foundations of its subsequent constitution, and therewith the constitutional organism of its legislation. 'As the centre of the political government, there was then formed the *Continual Council* (afterwards the Privy Council), consisting of the spiritual and secular holders of the highest offices in the State. In consequence of special royal invitation, prelates and barons came periodically to join this Council, and they formed with it the *Magnum Concilium*, or Great Council of the Kingdom. Under Edward I. it further became the custom to summon deputies of the *Communitates*, or Representatives of the Counties and Cities, to hold a discussion regarding extraordinary contributions, and soon thereafter also for the confirmation of the laws, and for aid in connection with the troubles of the country; and from the time of Edward III. they were constituted as a special body. Thus was the external framework of an Upper and Lower House formed, and under their counsel and assent the kingdom formed the organic legislation of the current century.' (Gneist.)

Editions of the Statutes.—The Laws of William I. are embodied in the official English Edition. They are also given by Schmid, with the 'Laws of the Anglo-Saxons.' From William I. to the beginning of the collections of the English Statutes proper, the successive laws are

[1] [See Blackstone's clear and vigorous summary, Book IV. Chap. XXIII. § iii.—Tr.]

embodied in the *Codex legum veterum statutorum regni Angliæ ab ingressu Guilelmi I. usque ad A.* 9 *Henrici III.*, published by Sir Henry Spelman. This Codex is a compilation of fragments of the *scriptores*, of royal ordinances, privileges, constitutions, and such like, which Wilkins has printed from the posthumous papers of the author in his 'Leges Anglo-Saxonicæ;' and Houard, following him, has also reprinted them in the second volume of his *Anciennes Loix*. Better texts, although unfortunately without critical apparatus along with them, are presented in the more accessible collection drawn up from similar points of view by Professor Stubbs in his 'Select Charters,' 3rd ed. 1874. Valuable as this very useful collection is, it is, however, only to be regarded as a preparatory work, and a critical edition of the older Anglo-Norman *Assises* still remains an urgent want.— The whole body of the English Statutes, down to 1714, appears in the official edition from 1810–28, entitled '**The Statutes of the Realm**, from original Records and authentic MSS., printed by command of His Majesty King George the Third, in pursuance of an address of the House of Commons of Great Britain, from the earliest times to the end of the reign of Queen Anne,' 11 vols. in fol.[1] The first volume comes down to 50 Edward III. The most important of the older Statutes have been the subject of a celebrated Commentary by Sir Edward Coke in his 'Institutes of the Laws of England,' Part II.— Among the numerous Editions which have been published from the practical point of view, and which therefore leave out the antiquated Statutes, we may only mention

[1] [See C. P. Cooper's Account of the most important Public Records of Great Britain, and the Publications of the Record Commissioners, etc., 2 vols. 1832.—Tr.]

the 'Statutes at large from Magna Charta to the Union of the kingdom of Great Britain and Ireland,' by T. E. Tomlins and J. Raitby, London 1811, 4to, 10 vols.

B. JUDICIAL SOURCES.

1. **Writs** (Brevia).—There arose in the Royal Court of Justice in England, as in Normandy, an official mode of procedure which was able to supplant the formal popular processes of duel and oath. It was limited in principle to the *Curia Regis* and was introduced by royal mandates (writs, *brevia*), and in part it was also extended further. At first such writs were a favour dispensed by the King for money in special cases. From the time of Henry II. they became a generally accessible means of law, as the royal Chancery was directed in all cases to furnish such Writs according to established formularies, to parties desiring them under certain conditions. The legal significance of the Writ was different according to its purpose. It either turned upon bringing the process to the King's Court, and then the accused was summoned by a *Breve*, which commissioned the *Vicecomes*[1] to enjoin on the accused restitution of the object of the plaint; and in case of this not being done, he had to answer for himself before the royal Court. Such a *Breve* was called *a Writ of Præcipe*, and it had its antecedent and model in a Frank *Indiculus commonitorius*. Or again, the Vicecomes was commissioned by the *Breve* to institute a proof by jury (recognitio), and to summon those who had thus to take cognizance of the question submitted for proof (*Breve recognitionis*). Brevia could also be issued

[1] ['Vicecomes, a Sheriff. The word used after the Conquest to describe the *Scyr-gerefa*.'—Stubbs.]

on numerous other occasions. It is peculiar to the English Law, that even the procedure in accordance with the popular right, when it turned on possession of the soil, required to be introduced by a royal Breve. From the time of Henry II. it became a principle of law, that an accused person did not need to answer in the courts of the feudal lords in matters of controversy regarding possession of the soil unless a royal Breve were presented, which commissioned the lord of the court to administer the law; and in the case of such a Breve not being produced, the Vicecomes had to undertake the matter (*Breve de recto*, corresponding to a Frank *indiculus de justitia*). In so far as the Brevia served to introduce the process, there was developed in England a procedure that is comparable to the Roman formulary process. By the formulæ of the Writs, the actions under the English Law were individualized so that Bracton could say 'tot formulæ Brevium, quot sunt genera actionum.' The Brevia were divided into *Brevia formata* and *Brevia Magistralia*. The former were those for which the formulary was settled by law, the latter were attested by Chancery 'in consimili casu,' that is, in cases akin to those that had already been reviewed as *actiones utiles*, and this attestation was given to the plaintiff 'quia in novo casu novum remedium est apponendum,' a process which was expressly regulated by the Second Westminster Statute, 13 Ed. I. c. 24. A distinction was further made between *Brevia originalia*, which introduced the process, and *Brevia judicialia*, which came in during its further course. Numerous forms of Writs are found in Glanvill, and in the text-books of the Thirteenth Century. The *Statutum Walliæ* of 1284, which introduced the English process into Wales, is

particularly rich in these forms. In the following period there arose collections and editions of the Writs which will be afterwards referred to.

2. Records.—The Records are minutes regarding the transactions and decisions of the royal Tribunals which were officially taken and preserved in the several Courts for the purpose of definitely establishing the judicial acts. There is a great number of these from a very early period of English history. The following have been published: (1) 'Placitorum in domo capitulari Westmonasteriensi asservatorum abbreviatio temporibus regum Ric. I., Joh., Henr. III., Edw. I., Edw. II.' This is an extract from the Court Records which was made in the time of Queen Elizabeth and published in 1811 by Royal Commission. (2) Further we have the 'Rotuli curiæ regis, or the Rolls and Records of the Court held before the King's Justiciars,' published by Palgrave in 1835 (2 vols. 8vo), and 'containing the complete Records which have been preserved of the transactions before the Curia Regis and the Itinerant Judges from Richard I. to 1 John inclusive (vol. i. from the sixth year of King Richard I. to the accession of King John; vol. ii. the first year of King John).'

3. Reports.—The Reports are literary summaries or sketches which were not composed, like the Records, for the purpose of officially fixing the judicial acts, but as incidental indications of the actual facts that occurred, so that the points of view relevant for legal practice in a judicial transaction are thus made a matter of public knowledge. They accordingly contain only a short narrative of the facts upon which the chief importance is laid in the Records, while the argument of the parties and the grounds of judgment are given in more detail.

From the end of the reign of Edward I. to the close of the reign of Henry VIII., paid reporters were appointed by the State for the preparation of these Reports. From the time of Edward II. to that of Henry VIII., the Reports have been printed under the name of *Year-books*, with a few blanks here and there. The first complete Edition appeared in 1610. The defects of the existing Editions have been pointed out by Cooper in his 'Account of the most important Public Records, etc.,' vol. ii. 391. The older Reports belonging to the reign of Edward I. have been lately published with an English translation of the old French text: 'Year-books of the King Edward the First, edited and translated by Alfred J. Harwood, 30, 31 Edw. I., 1863; 32, 33 Edw. I., 1864; 20, 21 Edw. I., 1866,' in the *Rerum Britannicarum Medii Ævi Scriptores.*

C. TREATISES ON LAW (JURISTIC LITERATURE).

1. Dialogus de Scaccario.—The *Dialogus de Scaccario* is a Dialogue containing a treatise on the composition and administration of the Royal Exchequer, in which material is also found relating to private and process Law. 'It gives evidence of the early matured development of the art of administration in the Norman Commonwealth. It is a remarkable document, as showing the spirit of centralization and the official view of the State; and it is hardly possible to find anything else like it in the Middle Ages' (Gneist). The *Dialogus* was composed in 1178, or in the beginning of 1179, by Richard Fitz-Nigel, Archdeacon of Ely and afterwards Bishop of London. The son of one of the higher officials of the Exchequer, the author had grown up in the atmosphere

of the office in which he held the position of treasurer for forty years.[1] His communications rest upon the exactest knowledge of the usual practice of the *Scaccarium*, and they were meant to serve as a guide for the Exchequer officials. The 'Dialogus' has been printed as an appendix to the work of Madox on 'The History and Antiquities of the Exchequer of the Kings of England (London 1711 and 1769).' A similarly complete and somewhat purified text is given by Stubbs in his 'Select Charters,' pp. 168–248. A careful inquiry regarding the author and the origin and character of the work, along with a concise summary of its contents, has been published by F. Liebermann.[2]

2. **Glanvill.**—*Tractatus de Legibus et Consuetudinibus regni Angliæ tempore R. Henrici Secundi compositus justitiæ gubernacula tenente Ranulpho de Glanvilla.* This work was 'the first attempt in the way of a scientific elaboration of the legal material peculiar to any country in modern Europe' (Gundermann). The author, Ranulph of Glanvilla, was 'Capitalis Justitiarius Angliæ' (Great Justiciar) from 1180 to 1189. This tractate is limited to a precise exposition of the procedure in the Royal Court, and it was written between 1187 and 1189. It is to be found in Houard's Traités I. Separate editions have appeared in England in 1554 (by Staunforde), in 1604, in 1780, and in 1812 by J. Beames (translated with Notes).

3. **Bracton.**—**Henrici de Bracton,** *De legibus et consuetudinibus Angliæ, libri quinque.* Bracton was an

[1] ['This very important treatise is the work of Richard, Bishop of London, Treasurer of the Exchequer, son of Nigel, Bishop of Ely, his predecessor in the office, and great-nephew of Bishop Roger of Salisbury, the original organizer of the administration of that Court.'—Stubbs.]

[2] Einleitung in den *Dialogus de Scaccario*, 1875.

English Judge under Henry III. (1216–1272), and it is the standpoint of the practically trained jurist that appears everywhere in his extensive work. His name has been frequently distorted by copyists into 'Brycton,' 'Briton,' and such like, although he himself occasionally refers to incorrectly written forms of it as an example of the grounds that may be advanced for the invalidity of a writ. Horwood, in his preface to the 'Year-books, 20 and 21 Edw. I.,' remarks that the correct form of the name must have been 'Bratton.' According to Güterbock, the book was written between the years 1256 and 1259. Like Glanvill's work, it expounds only the law and procedure of the King's Court and of the Missatic Courts. It gives the most extensive exposition of the English Law that the Middle Ages have to show; and it is distinguished by rich casuistic details, and by the careful reproduction of the judicial decisions on individual cases of law. An English writer has counted that there are not less than 484 such cases referred to. In both of the relations indicated, the English jurisprudence has found its first typical expression in Bracton. In another connection Bracton stands alone in the literature of English Law, namely, in relation to the influence which he allows the Roman Law to have upon his exposition. In the Twelfth Century the Roman Law had obtained a transitory but careful cultivation in the University of Oxford, where it was taught by Vacarius. The doctrines of the Roman Law have unquestionably influenced the older English Law-books, especially as to the precision of their juristic ideas and their method of treatment; but in no English jurist does the first freshness of this impulse make itself so distinctly seen as in Bracton. The definitions of the general legal ideas, the divisions of the

Science, and the terminology of the subject, as found in Bracton, are related in many respects to the Roman and Canon Law, and he must have drawn his knowledge of them either directly from the Corpus juris civilis, the Decretum, and the Decretals, or from Azo's Summa of the Codex and the Institutions.[1]

On the other hand, the cases are extremely rare, in which Bracton leaves the ground of the law that was practically valid in England, in consequence of the Roman point of view. Bracton's book on the Laws first appeared in 1569 in folio. The quarto edition of 1640 is an unchanged reprint of the folio edition. A new critical edition, with an account of sources and an English translation, based upon the oldest manuscripts, and the first printed edition of 1569, has been published by Sir Travers Twiss (1878–80). See also C. Güterbock's 'Bracton and his Relation to the Roman Law,' translated by B. Coxe (American transl.), 1866.[2]

[1] [The influence of the Roman Law in determining or guiding the earliest products of the Juristic literature of England, is a subject of interest as well as of difficulty. It may be held that some knowledge of the Roman Law accompanied the application of the Canon Law in England in the 11th Century. Savigny refers to the knowledge possessed by William of Malmesbury († 1141) of the Visigothic *Lex Romana*, early in the 12th Century. Magister Vacarius, a contemporary of the first Glossators, taught the Roman Law at Oxford in 1149, and published his *Summa Pauperum in Legibus* as an aid to poor students in studying it. Stephen, moved by the complaints of the practical lawyers, forbade the teaching of the Roman Law in the kingdom, but Vacarius is again found teaching it in 1170. (Cf. Savigny, *Geschichte d. R. R. im Mittel.* B. ii. 61, iii. 476, iv. 422–430, 436.)—On the Study and Influence of the Roman Law in England, Warnkönig also refers to two instructive Articles by Phillips and Biener in the *Zeitschrift für Gesetzgebung und Rechtswissenschaft des Auslands*, B. i. 400, and xix. 157.—Tr.]

[2] Güterbock, Henricus de Bracton und sein Verhältniss zum Römischen Rechte, 1862. [Cf. two Articles on Bracton in the *Law Quart. Rev.* vol. i. 1885.]

4. Fleta. — **Fleta** *seu commentarius Juris Anglicani.* This is the work of an unknown jurist, and it owes its name to having been composed in the Fleet prison (Tractatus . . . Fleta merito appellari poterit quia in Fleta . . . fuit compositus). It was written about the year 1290, or, as Güterbock believes, somewhat after 1292. For the most part it consists of an Extract from Bracton, which is often in the same words, while it reduces Bracton's work to about a third of its extent. But it also makes use of Laws passed after Bracton's time; and it completes his exposition otherwise in essential points. The *Fleta* was printed in 1647 and in 1685. Selden's valuable *Dissertatio historica ad Fletam* has been appended to both editions.[1] An incomplete reprint is given in Houard's *Traités sur les coutumes Anglonormandes III.*

5. Thorton. — The law-book of Gilbert of Thorton, entitled *Summa de legibus et consuetudinibus Angliæ*, etc., belongs to the year 1292. The author was 'Capitalis Justitiarius Angliæ' under Edward I., and, as he states himself, his wish was to produce a compendium of Bracton's extensive work. At the outset Thorton promises to give an account of the post-Bractonian legislation, but this is not found in the work. Thorton's *Summa* has not yet been printed, but accounts of it are given by Selden in his *Dissertatio ad Fletam.*

6. Britton.—A law-book on the Laws and Customs of England current under the name of Britton, takes a more independent relation to Bracton than the two last-mentioned works, yet it has sometimes been groundlessly represented as an excerpt from Bracton, or as a revision of his exposition. According to the investigations of the

[1] [Selden's Dissertation, translated by R. Kelham, 1771.]

latest editor, it owes its origin to the project of Edward I. to produce a digest of the English Law somewhat after the manner of the Institutes of Justinian. The work is not composed in the manner of a law-book, but introduces its legal propositions as by authority of the legislator in such phrases as *nous voloms, nous grauntoms,* etc. The author, Britton, is supposed to have been a clerk employed in the service of the Crown.[1] As the statute *Quia emptores terrarum,* 18 Ed. I., is cited as *une novele constitution,* Britton must have written soon after 1290. In the form in which it appears it must have been composed later than the Fleta. It is the oldest English law-book in the French language. The earlier editions of 1540 and 1640 have now been superseded by the careful edition of Nichols, with English translation, references to the parallel passages of Bracton, the Fleta, and the Statutes, and with glossary and index. [Bretton: The French Text carefully Revised, with an English Translation and Notes. By F. N. Nichols. 2 vols. Oxford 1865.]

7. **Hengham.**—Ralph of Hengham's *Summa magna et parva* is a tractate of smaller compass than Britton's work, and dating likewise from the time of Edward I. Its object was to complete Bracton's work in connection with the doctrine of *Defautes* and *Essonies.* It is printed as an appendix to Fortescue's Works in the edition of 1737, folio.

8. **Fet assevoir.**—The editions of the Fleta have as an appendix a small old French treatise which begins with the words *Fet assevoir.* Its contents relate to the form of legal process or procedure.

[1] [The work has also been attributed to John de Bretton, Bishop of Hereford.—Tr.]

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G. Crabb, History of the English Law. 8vo, 1829. Somewhat superficial.

W. Stubbs, Constitutional History of England, 3 Vols., 2 Ed. 1877. The third Vol. comes down to the death of Richard III.

Phillips, Englische Reichs- und Rechtsgeschichte, seit der Ankunft der Normannen. 2 B. 1829. Down to 1789.—Gans, Das Erbrecht in weltgeschichtlicher Entwicklung, IV. 250 *et seq.*—Savigny, Geschichte des R. R. IV. Anhang 24.—Biener's Das Englische Geschwornengericht (1852) gives a survey of sources, and is an important work on the History of the English Jury.—Gundermann's Englisches Privatrecht, I. (1864), treats at considerable length of the Sources of the Common Law, especially with reference to Private Law and Procedure.—Gneist's History also arranges the sources of the Law in groups at the beginning of the principal chapters.

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Useful notices are found in the *Bibliotheca Legum Angliæ*, Part II., containing a general account of the Laws and Law-Writers of England, from the earliest times to the Reign of Edw. III. Compiled by Ed. Brooke, Lond. 1788. Valuable later material is supplied by Cooper in his 'Account of the most important Public Records,' etc., above referred to (2 Vols. 1832). A Summary Survey is given by Blackstone, I. Introd. Sect. 3, which is reproduced with additions and improvements in Stephen's 'New Commentaries,' p. 41 *et seq.*

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[**Mediæval Latin Terms**, etc.—Sir H. Spelman, Glossarium Archaiologicum, continens Latino-barbara, Peregrina, Obsoleta et Novatæ Significationis Vocabula, etc. 3 Ed. Fol. 1687. See also for Du Cange, etc., the Note at p. 204 of the *Outlines of Jurisprudence*.—Tr.]

Section Third.

THE LAW OF ENGLAND FROM THE FOURTEENTH CENTURY TO BLACKSTONE, 1327–1765.

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A. THE MODERN STATUTES.

Statutes.—The series of the modern English Statutes begins at a time when the principles of the English system of Right regarding the constitutional establishment of the Laws, were not yet fully formed. By reference to this fact the Statutes are divided into the *Statuta vetera* and the *Statuta nova.* The boundary line between them is formed by the accession of Edward III. (1327), on the assumption that from this date the modern conception of the Statute was essentially established. This assumption is not quite correct as a matter of fact, for the parliamentary constitution was already established in its main features under Edward I., while the Rights of Parliament in regard to legislation were not expressly recognised till after Edward III. On the other hand, there emerges after the time of Edward III. a distinct separation of *Statutes* and *Ordinances* resting on the fact that the decrees of Parliament, which were meant to be of permanent validity, were received into the officially recorded *Statute Rolls.* Where a Record was not em-

bodied in the Statute Rolls, a decision was called an Ordinance in the special sense. As a matter of fact, the term 'Ordinance' is uncertain and unsettled, some regarding it as an imperfect Statute, and others as a temporary Law. The correct view seems to be that the relation between Law and Ordinance was from the outset concurrent.

From 4 Hen. VII. (1485–1509), the language of the Law became again exclusively English. The Statutes of the Realm from this period are completed by the addition of those of the time of the Commonwealth as contained in the *Acts and Ordinances during the Usurpation, from* 1649 *to* 1656, *by Henry Scobell, London* 1650, *fol.* The transactions of the Privy Council, which have been already referred to, have been edited by Sir Harris Nicolas as *Proceedings and Ordinances of the Privy Council of England, commencing* 10 *Ric. II.* (1386) *to* 33 *Hen. VIII.* (1641), 7 *vols.* 8*vo*, 1834 *to* 1837. *The Parliamentary Rolls*, or the Register of the Decrees and important Proceedings of Parliament, have been printed as *Rotuli Parliamentorum ut et petitiones et placita in Parliamento*, 6 vols. 1832. The official *Journals of the House of Lords* begin with 1 Hen. VIII., and the *Journals of the House of Commons* with 1 Edw. VI.—The modern Statutes completing the collection of Tomlins and others, are contained in *The Statutes of the United Kingdom of Great Britain and Ireland, by George Rickards*, etc., 23 vols. (down to 31, 32 Victoria, 1867–68).[1]

[1] [The following paragraph has been introduced into the Text for convenience of survey and reference, mainly from Sweet's Catalogue, which may be consulted for further details.—Tr.]

[EDITIONS OF THE ENGLISH STATUTES, INCLUDING THE MODERN STATUTES.

1. **Statutes of the Realm,** from Original Records and Authentic Manuscripts, printed by Order of Parliament, containing the Statutes from Henry III. to 13 Anne, preceded by a Complete Series of the Charters of the Forest, from 1 Henry I. to 29 Edw. I. ; with Appendices of Facsimiles of Ancient Charters and Records. 9 vols. fol. 1811–1822. With Alphabetical and Chronological Indexes.

2. **Ruffhead's Edition.** Statutes at Large, from Magna Charta to 41 Geo. III. (1800), with a Preface, additional References, and Marginal Notes, etc. By O. Ruffhead. 18 vols. 4to, 1769, etc.—Edition by C. Runnington, 14 vols. 4to, 1786, etc.—New Edition by Tomlins and Raitby, 1811, etc. 10 vols. Continuation from the Union (41 Geo. III.) to 32 and 33 Vict. (1869), by Raitby, Simons, and Rickards, 29 vols. 1804–69.

3. **Statute Law Committee Edition.** The Revised Edition of the Statutes, A.D. 1235–1868. Prepared under the direction of the Statute Law Committee. Published by Authority. 15 vols. 1870–78. ['Chronological Table and Index of Statutes, from 1235 to date of Publication.' A convenient and useful book of reference indicating all the Statutes, with their dates, subjects, and subsequent modifications, by repeal or otherwise. A triennial Publication. 10th Ed. 1887.]

Practical Editions. Chitty and Lely's Edition.—Collection of Statutes of Practical Utility, arranged in Alphabetical and Chronological Order, with Notes thereon. 4th Ed. containing the Statutes and Cases to end of 1880. 6 vols. 8vo, 1880. Annual Continuation from 1880 by J. M. Lely. — W. Paterson, Practical Statutes, with Introduction, Notes, Tables of Statutes repealed, etc. 1850, etc.—TR.]

B. JUDICIAL SOURCES. WRITS, RECORDS, AND REPORTED CASES.

The Fourteenth Century and the first half of the Fifteenth Century worked upon the magnificent literary products of the Thirteenth Century. It was not till the second half of the Fifteenth Century that there again arose important books on Law which superseded the older works. In following the growth of Law from the Four-

teenth Century down to that date, we are almost exclusively confined to the Judicial Sources.

Writs.—As the number of available *Writs* (Brevia de cursu) always grew in extent, it was felt necessary to collect them together. Such a collection arose in the time of Edward III. It explains the application of the Writs, and is known by the name of the *Old Natura Brevium.* In 1531 there appeared a formal official collection, entitled the *Registrum Brevium omnium tam originalium quam judicialium.* An extract from this work is contained in the frequently published *New Natura Brevium* of Fitzherbert, 1534 (9th Edition 1794, with a Commentary attributed to Lord Hale).

Records.—The Judicial Records of this period are still unprinted. Even the *Abbreviatio* closes with Edward II. The publication of the older Records is regarded as desirable, with the view of facilitating the understanding of the *Year-books.* These Records were long kept in the Latin language, and Latin continued to be employed even after 1362, when the judicial French was supplanted by English.

Reports.—The official *Reports* terminate in the time of Henry VIII. From that date their place is taken by private works, when voluntary Reporters supplanted the official Reporters. The great importance assigned to Precedents in England is evident from the fact that jurisprudence not only drew its material for independent works from these Reports, but its cultivators employed themselves most diligently in the composition, elaboration, and utilization of the Reports. The number of these Reporters is great, and the most distinguished names in English Jurisprudence are represented among them. Among the earlier Reporters, Dyer and Plowden are held in particular

respect. The first place of rank is held by Sir Edward Coke, who attained to such authority that *his* works are still quoted without prefixing his name, a distinction which no English jurist shares with him. His Reports occupy thirteen volumes, of which the last two appeared after his death. Among the Reporters that came after Coke, mention may be made of Croke, Yelverton, Hobart, Saunders (edited with notes by Williams and Platteson), Vaughan, and Levens.[1]

[MODERN LAW REPORTS.[2]

The Reports of the principal English Courts can only be summarily indicated here.

House of Lords. Reports from 1694, beginning with Shower, fol. 1740. (New Ed. 1876.)

Privy Council. From 1809 (Acton), including Indian Appeals.

Chancery. From 1557 (Cary and Choyce), including Cases and Appeals.

Rolls Court. From 1829. **Vice-Chancellor's Courts.** From 1815.

King's Bench and Queen's Bench. From State Trials in 1163 ; Year-books, 1292, etc.

Common Pleas. From 1486. **Bail Court.** 1819–1848.

Exchequer. From 1220. **Exchequer Equity.** 1817–1841.

Nisi Prius. 1657–1867. **Ecclesiastical.** From 1702. **Probate and Divorce.** From 1858.

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[1] [Cf. Sir G. Cooke, Reports and Cases of Practice in the Courts of Common Pleas in the Reigns of Anne, Geo. I. and II., together with the Rules, Orders, and Notices in the said Court from 35 Henry VI., and in the K.B. from 2 James I. to 1742. 2 vols. 1747. 3rd Ed. 1872. Also his Special Reports in Chancery, 1736. R. W. Bridgman, Short View of Legal Bibliography, containing Observations on the Reporters, etc., 1807.—F. F. Heard, Curiosities of the Law Reporters (American), 1881.—Tr.]

[2] [This reference to the English Law Reports has also been introduced into the Text. A full indication of all the Reports, with the names of the Reporters, is given by Sweet, whose Headings are here followed. The Student should obtain some familiarity with the Statutes and Reports, by direct personal examination of them, as soon as possible.—Tr.]

Admiralty. From 1776. **Bankruptcy.** From 1810.

There are also Special sets of Reports of **Railway and Canal Cases**; **Mercantile Cases**; **Election Cases**; **Registration Cases**; **Magistrates' Cases**; **Crown Cases**; **Patent Cases**; **Tithe Cases**; **Star-Chamber Cases**; **Parliamentary and Military Cases**; **Real Property and Conveyancing Cases**, etc.

Digests of the Reported Cases.—Coventry and Hughes, Analytical Digested Index to the Common Law Reports, Henry III.-Geo. III. (1756), 2 vols. 1828.—R. A. Fisher, Digest of the Reported Cases, 1756-1870, 5 vols. 1870. Continued by Chitty and Mews, 1870-1880. Fisher's Consolidated Supplement, 1870-1880.—Mews' Fisher's Digest, 1756-1883, 7 vols. 1884.

Current Reports of Cases in all Courts.—Law Journal, 1823-31, New Series from 1832.—Law Times, from 1845. The Law Reports (1865-1875), New Series from 1876. The Weekly Reporter, from 1853.—TR.]

C. THE JURISTIC LITERATURE (BOOKS ON LAW).

Mirrour aux Justices.—Among the Law-books of this period we have the *Mirrour aux Justices*, which, however, belongs by its characteristics to the previous age. It was composed by Andrew Horne, who was Chamberlain or town-clerk of London under Edward II. (1307-1327). The heterogeneous contents of the work have provoked a great difference of opinion regarding it, and readily suggests the idea that the author employed some older work on Law that is unknown to us. The statements which it makes regarding the historical origin of certain legal institutions bear a mythical character in many respects, and they are therefore to be employed only with great caution. The fifth Section of the work presents an interesting criticism of the abuses of the Common Law, especially with reference to the *Magna Charta* and the Statutes of Merton, Marlbridge, and of the time of Edward I. The *Mirrour* was printed in 1642, 1646, and 1649. An English translation was made by William Hughes in

1768, which has been republished in 1840.[1] Houard gives the first four of the five Sections in the fourth Volume of his *Traités.*

After a long pause, the English Jurisprudence started again with renewed energy in Fortescue's *De laudibus legum Angliæ* and Lyttleton's *Tenures.*

Fortescue.—Sir John Fortescue was at first an Attorney, and in 1442 he became Chief Justice of the King's Bench under Henry VI. The part he took during the Wars of the Roses in favour of the House of Lancaster compelled him to retire to France. About the year 1453 he is found with the Queen and Prince Edward in the province of Berry. Here in exile (from which he did not return to England till 1471), he wrote for the education of the heir to the throne his chief work, *De Laudibus Legum Angliæ* (c. 1453). He gave it the form of a Dialogue between the Heir-apparent and a Chancellor,—a position to which Fortescue was himself at last appointed, without, however, entering upon his dignity. The book is written in a popular style, and it aims at the two objects of clearly explaining the special characteristics and advantages of the English Law in relation to the Roman Law, and of pointing out the bright aspects of a constitutionally limited monarchy in contrast to a despotic government. Not a few of the positions which were set forth originally by Fortescue in the form of general principles, have since become political axioms. He is held in high repute on the Continent as the divining precursor of that series of modern writers who, by referring to the superior characteristics of English Law, have led to the reception of

[1] [A. Horne, Mirror of Justices, to which is added the Diversity of Courts and their Jurisdiction, Translated into English by M. Hughes, 8vo, 1768.]

English institutions on the Continent. The edition of the work which is held in highest esteem is that of 1737, in folio. A new edition (of the original Latin Text, and the English Translation of 1775) appeared in 1825, with notes by Amos; and it has been again republished at Cincinnati in 1874 with an English translation by Francis Gregor.

Lyttleton.—Thomas Lyttleton (or Littleton) († 1481), a contemporary of Fortescue, produced in his *Tenures* an epoch-making exposition of a subject belonging to the department of private Law. In this work, founding upon the material that had been accumulating in numerous Reports, Lyttleton explains the doctrine of possession as applied to the ground and soil. The work took form, according to Coke, after the fourteenth year of the reign of Edward IV. (1461–1483), and it obtained such authority that Coke describes it as 'the most perfect and absolute work that ever was written in any human science.' Coke further states that no judgment was known to him that was in opposition to any of Lyttleton's views. The oldest Edition of the work is assigned by some writers to the year 1481, and hence the *Tenure* must have been printed soon after the introduction of the art of printing into England. Coke published an English translation of the old French Text, along with a Commentary upon it, and in this form the *Tenures* ruled the practice and study of English Law somewhat like a code, till the time of Blackstone. The old French Text, with English Translation and Notes, was again published by Tomlins in 1841.[1] Coke's Edition will be again referred to. (Compare Foss, *Judges*, iv. 436.)

[1] [Lord Littleton: His Tenures, French and English; With the Ancient Treatise of the Old Tenures and the Customs of Kent. By T. E. Tomlins, 1841.]

Doctor and Student.—A work by Chr. Saint Germain, of the time of Henry VIII., and entitled *Dialogus de fundamentis legum Angliæ et de conscientia*, was widely circulated, and has been often republished. It contains a Dialogue between a Doctor of Theology and a Student of English Law, and it aims at giving a philosophical foundation for the legal institutions of England. The oldest Edition is of the year 1523. The book was translated into English, and has been very often republished under the name of 'Doctor and Student.' The Edition of 1787 bears the title, 'Doctor and Student; or Dialogus between a Doctor of Divinity and a Student of the Laws of England concerning the Grounds of those Laws, together with Questions and Cases concerning the Equity thereof' (18th Edition, corrected and improved by William Muchall, 1815).

Fitz-Herbert. — Anthony Fitz-Herbert, the author of the *New Natura Brevium*[1] († 1538), has also acquired a reputation by a series of special works on the constitution of the courts, and especially by his *Grand Abridgement*, an elaboration of Year-books. [La Graunde Abridgement, collecte par le Judge tres reverend Monsieur Anthony Fitz-Herbert, etc. Fol. 1565.]

Staunforde. — Sir William Staunforde or Stamford († 1558) wrote between 1554 and 1556 a much esteemed work on Criminal Law and Criminal Process, entitled the *Pleas of the Crown.* This work is distinguished by the fact that not merely the Reports but the law-books of the Thirteenth Century were diligently used in composing it. Staunforde was also the first who edited Glanvill's Tractate; and he further composed a treatise, *De prero-*

[1] [9th Edition, 2 vols. 1794.]

gativa Regis, which has usually been appended to the editions of his *Pleas of the Crown.*

Sir Thomas Smith.—An excellent summary exposition of the political and legal Constitution of England in the time of Elizabeth, was published in 1565 by Sir Thomas Smith, in his short *De republica Anglorum.* This little work contains, among other things, a sketch of the Civil and Criminal Procedure, and its very lively style of exposition is strongly flavoured with classical quotations. In trying to write Latin in the greatest possible purity, Smith has substituted classical terms for the English legal expressions, so that the 'Coroner' is termed *quæstor homicidii*, and the 'Justice of the peace,' *Eirenarchus;* the King's Bench is designated the *Subsellia regia*, and so on. His exposition was afterwards expanded on many points by others.

Sir Edward Coke.—Edward Coke became the most celebrated authority among the English Jurists. His work has been already partly referred to. He was born in 1552, became Attorney-General in 1594, Chief Justice of the Common Pleas in 1606, and Chief Justice of the King's Bench in 1613. In 1616, however, he lost the King's favour and his official position, partly in consequence of the rivalry and hostility of his opponent, Sir Francis Bacon. His chief works are the *Reports*[1] already mentioned, and his *Institutes of the Laws of England.* The 'Institutes' appeared in 1628. The title they bear is not very suitable to their contents. They consist of four parts. Part I. contains a Commentary on Lyttleton's 'Tenures,' which has been frequently republished, as by Hargrave and Butler, who

[1] [Reports from 14 Eliz. to 13 Jac. I. Ed. by Thomas and Fraser, 6 vols. 1826.]

accompany their edition with valuable notes.[1] Part II. presents a detailed Commentary on the Magna Charta and on the other old Statutes, but it wants systematic arrangement. Part III. gives an exposition of the Criminal Law (*placita coronæ*). Part IV. treats of the constitution of the Courts. The Institutes are usually cited under the contraction *Inst.*, with the number of the volume prefixed and that of the page following. All that a purely commentating method can accomplish has been achieved by Coke in the fullest measure. His works are distinguished by depth and erudition, but not by any particular display of genius.

Hale, Comyns, and Hawkins.—Of the jurists after Coke and before Blackstone, we can only mention here Matthew Hale, William Hawkins, and John Comyns. Sir Matthew Hale († 1676) lived in the time of Cromwell, and although a Royalist he was appointed Judge in the Court of Common Pleas owing to his juristic reputation. He composed the *History of the Common Law* already mentioned,[2] and a work on Criminal Law, entitled *History of the Pleas of the Crown* (Historia Placitorum Coronæ), which was first published in 1739, and edited (with continuation) in two Volumes with Notes by Dogherty in 1800.[3] He also wrote an *Analysis of the Law*, a

[1] ['Coke upon Littleton. The First Part of the Institutes of the Laws of England; or, A Commentary upon Littleton by Lord Coke, revised and corrected, with Additions of Notes, References, and proper Tables, by F. Hargrave and C. Butler, including also the notes by Lord Hale and Lord Chancellor Nottingham, 19th Ed. 2 vols. 1832.'—The Second, Third, and Fourth Parts of the Institutes, pub. in 4 vols. 1817.—We may also note: W. Hawkins, Abridgement of Coke upon Littleton, with notes, etc., by J. Rudall, 8th Ed. 1822. G. Fisk, Analysis of Coke on Littleton, including the Notes of Lord Hale, etc, 1824.]

[2] [Ed. by C. Runnington, 6th Ed. 1820.]

[3] [There is also an important American Edition, with references to the

work which became the basis of Blackstone's Commentaries.—William Hawkins comes also into consideration on account of a work on Criminal Law and Criminal Process, entitled *Treatise of the Pleas of the Crown, or a system of the principal matters relating to that subject,* which was published by him in 1716 (8th ed. 1824, revised by Curwood, with additions by Leach).[1]—Sir John Comyns († 1740) is celebrated on account of his Reports (1744),[2] and still more for his *Digest of the Laws of England,* 1762, a work which is distinguished by depth, method, and precision (5th ed., by A. Hammond, 8 vols. 1822).

Blackstone.—The literature of English jurisprudence entered a new stadium with the *Commentaries on the Laws of England* by Sir William Blackstone (1723–1780). Blackstone began his professional work as an Advocate. He then entered on an academical career, being appointed in 1758 to the Chair of English Law, which had been endowed in the University of Oxford by Viner, a jurist and author of a voluminous *Abridgment of Law and Equity.* He was afterwards actively engaged again as an Advocate and as a Member of Parliament, and at last held the office of Justice in the Court of Common Pleas. Corresponding to his training and experience in life, he combined in his works the insight of the practical Lawyer with the culture of the theoretical Jurist. His 'Commentaries' grew out of his Academic Lectures. They

English and American decisions, and a Life of the Author, by Stokes and Ingersoll, 2 vols. 1847.—There is a Life of Sir M. Hale by J. B. Williams, 1835.]

[1] [See also reference to his *Abridgment of Coke, supra,* p. 42*n*.]

[2] [Reports in K. B., C. P., and Exch. (William III.–Geo. II.). Ed. by Rose, 2 vols. 1792.]

are not a mere commentary upon English Law, but are rather a systematic exposition of it. In his arrangement he followed Sir Matthew Hale,[1] and the parts on Public Right betray the influence of Montesquieu. The First Volume treats of '*The Rights of Persons*;' the Second Volume treats of '*The Rights of Things*' (including Obligations); the Third Volume treats of '*Private Wrongs*' (of a Civil kind); and the Fourth Volume treats of '*Public Wrongs*' (Crimes, Penalties, and Criminal Process). The other subjects of the legal system—Political Right, Ecclesiastical Right, and Judicial Right—are not worked in the happiest way into this scheme.—The first edition of the 'Commentaries' appeared in 1765–1769, and Blackstone himself made little alteration in the later editions.[2] The clearness and lucidity of his exposition, the scientific thoroughness of his mode of treatment, and the avoidance of all cumbrous erudition, as well as his intellectual control of the extensive material, have procured for the work a world-wide reputation. Blackstone did not write specially for Advocates, but rather for the educated public generally. In consequence of this, he was the first who succeeded in lifting the English Jurisprudence out of its isolation, and putting it upon the

[1] ['The order adopted by Blackstone is, in all its principal lineaments, derived from the Analysis of Hale.'—Stephen.]

[2] [Besides the *Commentaries*, Blackstone's other works are:—1. 'TRACTS, Chiefly relating to the Antiquities and Laws of England; containing—1. An Analysis of the Law of England (1754); 2. An Essay on Collateral Consanguinity (1750); 3. Considerations on Copyholders (1758); 4. Observations on the Oxford Press; 5. An Introduction to the Great Charter; 6. Magna Carta and Carta de Foresta (1759), 3rd ed. 1771.'—2. 'REPORTS in K. B. and C. P. from 1746 to 1779 (Ed. with additional Notes, etc., by C. H. Elseley, 2 vols. 1827).' He also wrote some fugitive pieces of poetry, etc. (See Life by Clitherow (1781) prefixed to early editions.)—TR.]

level of general culture. The Historian of Law may, indeed, find his historical surveys sometimes shallow and erroneous, from the present standpoint of his science; and the Jurist who has been trained in the School of the Roman Law, will seek for strict systematization in vain. And yet it may be boldly asserted that none of the modern Systems of Law can show such a complete and rounded exposition, on the whole, as the English system possesses in Blackstone. To foreigners he has, on this account, become the representative of the English Jurisprudence. It is mainly from him that the knowledge of English Law has been drawn on the Continent. In America, he is recognised as the repository of the Common Law.—In England, the study of Law is still mainly based upon his Commentaries.[1] The work has gone through more than twenty editions in English. For a time the attempt was made to indicate the changes that had arisen in the English Law by notes, additions, and corrections on new editions of Blackstone. This was done in particular by Christian, who edited it from the twelfth to the fifteenth editions.' The substantial changes and innovations on the legislation after 1815 then made it necessary to revise the text of the Commentaries themselves. The best of these elaborations is that of Stephen, whose *New Commentaries on the Laws of England, partly founded on Blackstone*, furnish the best survey of the present state of the Law of England. The original text of Blackstone has been again edited by Robert Malcolm Kerr. Extracts from Blackstone have been frequently published, and of these we may mention that

[1] ['The celebrated treatise of Blackstone still remains without a rival as an introductory and popular work on the laws of England.' Serj. Stephen.—Burke said it ought to be 'the first study of every young man.']

which was published by Foss, under the name of John Gifford, in 1820, *Blackstone, abridged and adapted to the existing law, by Samuel Warren* (2nd ed. 1856), and Kerr's *Students' Blackstone*, which has appeared in several editions.

The period of the uncontested supremacy of the Common Law appears to be now passing away in England as elsewhere. The idea of Codification, which has been cropping up since the sixteenth century, has assumed tangible shape in the most recent times, as it has been found requisite to consolidate the Statutes regarding particular matters, especially in Criminal and Process Law. Comprehensive reforms have thus been carried out in the way of legislation. The importance of the Statutes as a source of Law, has thus been considerably increased in comparison with the Common Law. By the reforms of the judicial arrangements that were lately resolved upon, and which have been already in part carried out, the development of English Law has been turned into entirely new paths. In consequence of the *Supreme Court of Judicature Act* of 1873, a single Supreme Court of Judicature has taken the place of the various tribunals. The abolition of the Court of Chancery, as a separate Court, has also broken the point of old traditional contrast between Common Law and Equity.[1]

This survey of the Sources of English Law requires to be completed by a reference to the authority of particular Customs or Local Laws, the proof of which, as a rule, is established in the manner of the French

[1] ['Under the Judicature Act, 1873, the Court of Chancery is to be known as the Chancery Division of the High Court of Justice.']

Enquête par turbe by the decision of twelve sworn men. There is the peculiarity in certain courts that the Roman and Canon Law receives application in them, while the Common Law of England has nevertheless repudiated the reception of foreign Laws. These Courts are the *Court of Chivalry* (a military tribunal), the *Admiral Court* (which deals with cases that occur on the high seas), the *University Courts*, and the *Curiæ Christianitatis* (the spiritual courts). With the extension of the English power, the English law has also been extended to the annexed neighbouring countries, and in particular to Wales and Ireland. In each of these countries, however, the Common Law has maintained its independent position and growth. The material of the sources of law for each of these countries is almost as comprehensive as that of Old England itself. But a reference to Stephen's New Commentaries, and to Gundermann's *Englisches Privat-Recht*, must here suffice with regard to the Sources of Law outside of England proper.

HISTORICAL WORKS ON THIS PERIOD.

Reeves' *History of the English Law* deals with this period down to the close of the reign of Elizabeth. Crabb is very summary from that date. Accounts of the juristic writers, who were also judges, will be found in E. Foss's work on *The Judges of England, with Sketches of their Lives*, 9 vols. 1848–64; [and his *Biographia Juridica:* A Biographical Dictionary of the Judges of England from the Conquest to the Present Time, 1066–1870].

The following works may be also consulted:—Warren's Guide to Law Studies, 3rd ed. 1863; T. C. Anstey's Guide to the History of the Laws and Constitution of England, 1845; [Sir R. K. Wilson's *History of Modern English Law*, 1875; and the *Bibliotheca Legum Anglicæ*, and other Catalogues, referred to in the *Outlines of the Science of Jurisprudence*, p. 219].

BIBLIOGRAPHICAL APPENDIX.

ARRANGED BY THE TRANSLATOR.

CONTENTS OF BIBLIOGRAPHICAL APPENDIX.

BIBLIOGRAPHICAL GUIDE TO THE STUDY

OF THE

LAW OF ENGLAND AS IT EXISTS AT PRESENT.[1]

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I.—GENERAL WORKS ON THE WHOLE LAW.

1. Commentaries.

Kerr's Blackstone. Commentaries on the Laws of England, by Sir William Blackstone, Knt. A new edition adapted to the present state of the Law, by Robert Malcolm Kerr, LL.D. 4 vols. 4th ed. 1876.

Kerr's Edition of the Commentaries supersedes former editions, of which the most important are those of Coleridge (1825), Hovenden and Ryland (1836), Chitty, Hargrove, Sweet, and Welsby (1844), Stewart (1854), and Brown and Hadley (1869).

Important and useful *American* Editions are those of Charswood (1859), Cooley (1872), and Chase (with Notes and References to American Decisions, 1877).

Students' Editions and Analyses.

The Student's Blackstone. Being the Commentaries of the Laws of England of Sir William Blackstone, Knt. Abridged and adapted to the present state of the Law. By R. M. Kerr. 10th ed. 1887. Warren's Select Extracts from Blackstone's Commentaries, with Questions, 1837. American: F. S. Dickson, Analysis of Blackstone's Commentaries, 1873. M. D. Ewell, Review of Blackstone's Commentaries, 1882.

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[1] This bibliographical indication of Contemporary Literature on the principal Topics of English Law aims only at guiding Students to leading works of recognised authority. For other works in detail, reference may be made to Stevens & Sons' *Catalogue of Modern Law Books* (1888), and to Sweet's *Complete Catalogue* (1886).

Mr. Serjeant Stephen's New Commentaries on the Laws of England. Partly founded on Blackstone, 10th edition, by Archibald Brown. 4 vols. 1886.

Stephen's *New Commentaries* are universally recognised as the standard general work on the present state of the Law of England. The text of Blackstone forms the basis of the work, and it is retained as far as possible, but under considerable modifications of the original arrangement, the additions being intercalated and marked by [ ]. The general Synopsis may be here quoted for comparison with Blackstone's own arrangement (*supra*, p. 44), and as a conspectus of the whole contents of the Law of England. 'The entire arrangement of the work is as follows (in 6 Books): I. Of Personal Rights. II. Of Rights of Property—1. As to Things real; 2. As to Things personal. III. Of Rights in Private Relations—1. Between Master and Servant; 2. Between Husband and Wife; 3. Between Parent and Child; 4. Between Guardian and Ward. IV. Of Public Rights—1. As to Civil Government; 2. As to the Church; 3. As to the Social Economy of the Realm. V. Of Civil Injuries, including the mode of Redress. VI. Of Crimes, including the modes of Prosecution.'

Students' Helps.—E. H. Bedford's Student's Guide to Stephen's Commentaries. 3rd ed. 1884. Gibson's Guide to Stephen's Commentaries. 5th ed. 1885.

2. Dictionaries.

Wharton's Law Lexicon. A Dictionary of the Law, explaining the Technical Words, etc. Forming an Epitome of the Law of England, 7th ed., by J. M. Lely, 1883.

Sweet's Dictionary of English Law. Containing Definitions, Rules of Law, with Historical and Etymological Notes. 1882.

A. Brown, New Law Dictionary and Institute of the whole Law. 2nd ed. 1880.

Rawson's Student's Pocket Law Lexicon. 2nd ed. 1884.

Mozley and Whiteley's Concise Law Dictionary. 1876.

Older Law Dictionaries by J. Cowell (1727), T. Cunningham (1782), G. Jacob (1810), T. Blount (1817), G. Taylor (1823), Sir T. E. Tomlins (1835), H. J. Holthouse (1846).

II.—STATUTE LAW.

Collections and Editions of the Statutes. See above, p. 36.

Statutes for Students.

J. C. Harrison, The Student's Statutes. 1885.

J. T. Haynes, The Student's Statutes. 3rd ed. 1884.

E. C. Thomas, Leading Statutes Summarised. For Students. 1878.

Construction and Interpretation of Statutes.

Sir H. Thring, Practical Legislation, or the Composition and Language of Acts of Parliament. 1878.

H. Hardcastle, Treatise on the Rules which Govern the Construction and Effect of Statutory Law. 1879.

Sir P. B. Maxwell, On the Interpretation of Statutes. 2nd ed. 1883.

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Sovereign.	Began to Reign.	Years of Reign.	Sovereign.	Began to Reign.	Years of Reign.
William I.	1066, Oct. 14	21	Henry VIII.	1509, April 22	38
William II.	1087, Sept. 26	13	Edward VI.	1547, Jan. 28	7
Henry I.	1100, Aug. 5	36	Mary	1553, July 6	6
Stephen	1135, Dec. 26	19	Elizabeth	1558, Nov. 17	45
Henry II.	1154, Dec. 19	35	James I.	1603, March 24	23
Richard I.	1189, Sept. 23	10	Charles I.	1625, March 27	24
John	1199, May 27	18	[Commonwealth]	1649, Jan. 30	11]
Henry III.	1216, Oct. 28	57	Charles II.[1]	1660, May 29	37
Edward I.	1272, Nov. 20	35	James II.	1685, Feb. 6	4
Edward II.	1307, July 8	20	William and Mary	1689, Feb. 13	14
Edward III.	1326, Jan. 25	51	Anne	1702, March 8	13
Richard II.	1377, June 22	23	George I.	1714, Aug. 1	13
Henry IV.	1399, Sept. 30	14	George II.	1727, June 11	34
Henry V.	1413, March 21	10	George III.	1760, Oct. 25	60
Henry VI.	1422, Sept. 1	39	George IV.	1820, Jan. 29	11
Edward IV.	1461, March 4	23	William IV.	1830, June 26	7
Edward V.	1483, April 9	..	Victoria	1837,[2] June 20	..
Richard III.	1483, June 26	3			
Henry VII.	1485, Aug. 22	24			

[1] Charles II. ascended the throne 29th May 1660, but the years of his reign are computed from the death of Charles I., January 30, 1649, so that 1660, the year of the Restoration, is styled in the statutes the 12th of Charles II. (12 Cha. 2, 1660).

[2] 1837 is reckoned in the statutes as Will. IV. and 1 Vict.; 1838 is 1 and 2 Vict. So whenever the session of Parliament continues beyond the year of reign current at its opening into the next current year of reign, its statutes are dated by two regnal years.

For **Editions of Statutes**, see p. 34. For **Law Reports**, see pp. 36, 37.

ABBREVIATIONS USED IN LAW REPORTS AND TEXT-BOOKS.

A. (a.), B. (b.)	A. front, B. back of a leaf.
A., An., Anon.	Anonymous.
Abr. Ca. Eq.	Abridgment of Cases in Equity.
A. C.	Appeal Court, Chancery.
App. Cas.	Appeal Cases, Law Reports.
B. or B. C.	Common Bench.
B. C. R.	Bail Court Reports.
B. R.	King's Bench Reports.
Banc. Sup.	Upper Bench.
C. Cod.	Corpus or Codex Juris Civilis.
C. B.	Common Bench Reports.
C. C.	Chancery or Crown Cases.
C. C. A.	County Courts Appeal.
C. C. R.	Crown Cases Reserved.
C. L. R.	Common Law Reports.
C. P.	Common Pleas.
Ca. C. L.	Cases in Crown Law.
Ca. temp.	Case in time of.
Cam. Scacc.	Exchequer Chamber.
Ch. Ca.	Cases in Chancery (Ch. = Choice).
Ch. R. Ch. Pre.	Reports in Chancery. Precedents do.
Co.	Coke's Reports.
Co. P. C.	Coke's Pleas of the Crown.
D. Dig.	Digest or Pandects.
E. E. & A.	Easter. Eccles. and Admiralty Reports.
Eq. Cas. Abr.	Equity Cases Abridged.
Eq. Rep.	Equity Reports.
F.	Consuetudines Feudorum.
Ff.	Pandectæ Juris Civilis.
Gl.	Glossa. A Gloss. Interpretation.
H. Hil.	Hilary Term.
H. L.	House of Lords.
H. P. C.	Hales' Pleas of the Crown.
I. R. C. L.	Irish Reports, Common Law Series.
In F. In Pr.	*In fine. In principio.*
Inst. i. 2. 3.	Justinian's Institutes, Lib. i. tit. 2. sec. 3.
1, 2. Inst.	1, 2. Coke's Institutes.
I. Ctus.	Jurisconsultus.
Jur.	Jurist Reports.
K. B.	King's Bench.
L. J. L. Mag.	Law Journal. Law Magazine.
L. Rev. L. T. Law Rec.	Law Review. Law Times. Law Recorder.
L. R.	Law Reports.
Law Rep. Ad. & Eq.	Admiralty and Ecclesiastical Reports.
Law Rep. C. C.	Crown Cases Reserved.
Law Rep. Ch.	Chancery Appeal Cases.
Law Rep. C. P.	Common Pleas Cases.
Law Rep. H. L.	English and Irish Appeal Cases, House of Lords.
Law Rep. P. C.	Privy Council Appeal Cases.
Law Rep. P. & D.	Probate and Divorce Cases.
Leg. Int. Leg. O.	Legal Intelligence. Legal Observer.
Lib. Ass.	Liber Assisarum, Year Book, pt. 5.
Lib. Feudo.	Liber Feudorum (at end of Corpus J. C.).
Lib. Int.	Liber Intrationum.
Lib. Plac.	Liber Placitandi.
Lib. Reg.	Register Book.
Lit.	Littleton's Reports C. P.
Long Quinto.	Year Book, pt. 10, K. B.
M. Mich.	Michaelmas Term.
Mod. Ca.	Modern Cases in Law and Equity.
Mod. Int.	Modus Intrandi.
Mod. Rep.	Modern Reports K. B.
N. C.	Notes of Cases.
N. R.	Not Reported.
N. S.	New Series.
N. Nov.	Novella (Juris Civilis).
No. N.	Novæ Narrationes.
N. P. C.	Nisi Prius Cases.
Ord. Ch.	Orders in Chancery.
P. C.	Pleas of the Crown.
P. C. Act.	Probate Court Act.
P. D.	Probate Division.
P. Pas.	Easter Term.
P., p., Pl. pla.	Placita.
P. R. C. P.	Practical Register in Common Pleas.
Pr. Ch.	Precedents in Chancery.
Pr. Reg. Ch.	Practical Registry in Chancery.
Q.	Quorum.
Q. B.	Queen's Bench Reports, N. S.
Q. B. D.	Queen's Bench Division, L. R. N. S.
Q. War.	Quo Warranto.
Quinti Quinto.	Year Book, 5 Hen. V.
R.	Resolved. Repealed.
R. S. L.	Reading Statute Law.
Rep. (1. 2, etc.).	Coke's Reports.
Rep. Ch. Rep. Q. A.	Reports in Chancery. Reports *temp.* Queen Anne.
Roll. R. Roll. Abr.	Rolle's Reports. Rolle's Abridgment.
Ry. F.	Rymer's Fœdera.
S., Sec., §.	Section.
S. B.	Upper Bench.
S. C.	Same Case.
S. C. C., Sel. Ca.	Select Chancery Cases.
S. P.	Same Point or Principle.
Scac.	Scaccaria Curia—Court of Exchequer.
Sem.	Semble (Fr.), Seems.
St. Tri.	State Trials.
T. R.	Teste Rogo—Term Reports K. B.
T. E. R., T. R. E.	Tempore Edwardi Regis.
Trin.	Trinity Term.
U. K.	United Kingdom.
Vet. Entr.	Old Entries.
W. 1. W. 2.	Westminster Statutes.
W. N. W. R.	Weekly Notes. Weekly Reporter.
Y. B.	Year Book.

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