ILLUSTRATIONS OF ENGLISH HISTORY.

England under the Anglo-Saxon Monarchy.

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England under the Anglo-Saxon Monarchy: such is the subject with which I propose to begin my series of comments on English History. I wish to give a picture of the Anglo-Saxon institutions and laws, throwing as full a light as I may be able on those of which we find traces in our own present civil constitution. I intend also to point out some of those qualities of our Anglo-Saxon forefathers which are clearly reflected in the character of their descendants—the great body of the English people. The subject, though involved in some uncertainty, naturally has much interest for Englishmen of cultivated and inquiring minds.

In the treatment of it, our attention is first called to the Anglo-Saxon form of government, which, like our own, was of a mixed kind, regal, aristocratic and popular. The laws were made "by the King and his Witan," or wise men, the members of the old Anglo-Saxon Parliament, which was called the Witena-gemote. Thus the laws of Alfred begin, "I, Alfred, King, with my Bishops, Thanes, and Witan, ordain," etc. Nor was the power of the Witena-gemote limited to a share in legislation, including the occasional imposition of taxes, such as the Danegelt. In those days the distinction, familiar to ourselves, between the executive and legislative powers of the State was not accurately defined. The Witena-gemote acted concurrently with the King in declaring war, in making peace, in entering into treaties, in the appointment of the great functionaries of the kingdom, and in the general administration of public affairs.

Though, however, the authority of the King was thus constitutionally limited, it was practically much greater than we should suppose, or than is the case in modern England.

The enormous extent of his lands and possessions, far exceeding those even of the greatest landed proprietors

among his subjects, gave him a great additional weight in the State, especially as property appears to have carried with it greater importance than any other element of social distinction: and, as we may expect to find in the earlier stages of a nation's political progress, the power of an individual king would greatly preponderate, in proportion to his popularity or his capability for government. The Anglo-Saxon sovereigns received high-sounding titles, and were surrounded by much of the state and ceremonial pomp of royalty, borrowed, as it is thought, in a great degree from the forms of the lower Roman Empire. The crown was not strictly hereditary, though, with the sole exception of Harold's election, it always went to one of the race of Cerdic. Of a minor, as King, the Anglo-Saxons appear to have had but little notion, and if the immediate heir of a deceased King was in his minority, the crown passed on to the next adult male relative. It was in pursuance of this law that the great Alfred himself succeeded to the throne.

The Witena-gemote, or great council of the nation, met, as does our Parliament, every year—indeed, as often as three times in the year. It was composed, like our national legislature, of the spiritualty and temporalty, and consisted of the Bishops, some of the Abbots (there were even *Abbesses*, it appears, among its members), Eorldermen or Earls, and some of the greater Thanes or Lords, called "King's Thanes;" but whether it included any members of the class of Ceorls, or any representation of the Ceorls, is a long and doubtful dispute, into which I forbear to enter. I think, however, we may accept the conclusion of some writers that there was an indirect, but *virtual*, representation of the Commons in the presence of some of the chief magistrates of certain borough towns, those magistrates being in many cases *elected* by the householders.

In the institutions of these borough towns lay the very seeds from which, after the winter of the Norman Conquest, our national liberties began to spring up. Their constitution was apparently very democratic.*

* This statement, however, must be modified by the fact that the great proprietors in the borough towns apparently exercised much authority and influence in civic affairs.

At the Borough-motes (or meetings of the borough), all the affairs of the borough, judicial and administrative, were transacted, and all the free inhabitants of the town were voters. To this municipal constitution of the Anglo-Saxons we owe the "Scot-and-lot voters" and the "pot-wallopers," who in various of our present borough towns still exercise the parliamentary franchise, though the Reform Act of 1832 has provided for the extinction of these two kinds of qualification after the death of the persons who now enjoy it. You will ask, what are these qualifications? The "Scot-and-lot" voters are those who make any payment ("scot" means payment) towards the rates—who pay their *allotted* portion of those rates. The "potwallopers" are those who possess in the borough-town any tenement, however small; and the term is supposed to imply that the tenement need only be large enough to *boil a pot in*. In some borough towns every householder voted, previously to the Reform Act of 1832, for members of Parliament. There is no doubt that these franchises are of Anglo-Saxon origin; and when the borough had the right of electing its own magistrates, the possessors of these franchises would, doubtless, vote in the election, and thus, in the cases in which these magistrates were summoned to the Witena-gemote, there was some representation of the Commons in the national legislature.

Returning to the functions of the Witena-gemote, I may notice that the assembly was not only the national legislature and the King's administrative council, but the highest court of law and justice. Sometimes it took cognizance of important causes in the first instance; but it was the regular court of appeal from the courts immediately below it, the shire-motes or county courts. This attribute of the Witena-gemote as a judicial assembly was preserved after the Norman Conquest, in the great Council, or, as it was afterwards termed, Parliament, and, as we know, is continued to the present day, in the name of the "High Court of Parliament," and in the jurisdiction, both original and appellative, actually exercised by our House of Lords. It is to be observed that in Anglo-Saxon times, as in the earliest stages of almost all constitutional governments, the supreme national council was even more of what we should call a court of law

and justice than a legislative body; for the Witenagemote appears to have been rather occupied in interpreting and applying existing laws, than in framing new enactments, and to have made law chiefly by their decisions in particular cases, as is done in the present day by our courts of law, when the law has not been declared by the statutes of the realm.

I proceed to notice the political organization of the Anglo-Saxons, in respect to the several *divisions* of the country and its population, with their respective magistracies and assemblies. Local self-government, as distinguished from the action of the central power, was even a more characteristic feature of England before the Conquest than it is of England at the present day, although we have largely inherited it from our Anglo-Saxon forefathers, and are especially distinguished by it from other European nations. The kingdom was divided, as it still is, into shires (the word "shire" itself means "division"). The shires, after the Norman Conquest, were called counties also. Each shire had its chief magistrate, the eorlderman, an officer of great power and importance, appointed by the King, with or without (for the fact seems uncertain) the consent of his "Witan." The shire was divided into so many hundreds, the number of which is found to vary (for the same division of hundreds still exists) in different shires. The hundred was composed of ten tithings, each tithing having originally been an assemblage of ten families. The name of Tithing, denoting a village, is still to be met with in different parts of England. Shakespeare employs it in the play of "King Lear;" "Poor Tom, who is whipped from tithing to tithing, and stock-punished, and imprisoned." All the freemen in a tithing were bound for the good behaviour of each other, according to the ancient Anglo-Saxon law, called that of "frank pledge," to which I shall have occasion to revert hereafter. At the head of the tithing was an officer called "the tithing-man, or decenary, or head-borough," whose duty it was to preserve the peace of the tithing, and inspect the conduct of the inhabitants. The parish constable is the nearest approach we have to the tithing-man; in some parishes this officer is still called the head-borough. The hundred was presided over by its centenary or hundreden, and had its assembly called

the hundred-mote, consisting of the heads of the several tithings of which the hundred was composed. This hundred-mote may be regarded as the great scene of political and civil life and activity among our Anglo-Saxon forefathers. It was held once in each month. Every kind of trial, civil and criminal, took place at it; and bargains and sales, and all other legal transfers of property, were publicly attested before it, in memorial of the different transactions. Sometimes the adjacent hundreds associated themselves together for their common purposes, and had one joint *mote*, or meeting, among them. The hundreds thus combined were sometimes called the two hundreds or three hundreds, or even the eight hundreds, as the case might be (for the number varied), of such a district or town; sometimes they were called the "lathe," or the "rape," or the "wapentake," of such a locality. These divisions, with their respective names, have continued to the present day, and still serve some purposes of local jurisdiction. Thus, we find Sussex divided into rapes, such as the "Rape of Bramber;" the "Rape of Pevensey." Kent is made up of lathes, such as the "Lathe of Aylesford," containing fourteen hundreds; the "Lathe of Sutton," containing eight hundreds. Yorkshire consists of three great divisions, called "trithings," or, as the name is now corrupted, "ridings." Bucks is divided into several "three hundreds." On the other hand, Middlesex consists of six *separate* hundreds. I may mention that, to the north of the Trent, the name of "wapentake" often takes the place of "hundred." While these divisions of hundreds remain exactly as they were made by our Anglo-Saxon ancestors, the hundred-mote, the great assembly of their inhabitants, has long since fallen into disuse. Above the hundred-mote, in Anglo-Saxon times, was the shire-mote. It was held every month, or at least several times during the year; and, indeed, frequent assemblies for public purposes were thoroughly characteristic of the people. The shire-mote took cognizance of causes of all kinds, criminal, civil, and ecclesiastical. Over it the Eorlderman, or, in his absence, the Shire-reeve (sheriff), presided together with the Bishop. It consisted of the whole body of the thanes of the shire. Of the greater, or King's thanes, I have already spoken, as members of the Witena-ge-

mote. They correspond with the greater barons of the times succeeding the Norman Conquest. The lesser thanes bear an analogy with the knights, or holders by knight's service, in the Norman polity, and are like them designated in Latin by the term "*milites.*" Thus composed, the shire-mote exercised its judicial functions, both in appeal from the hundred-mote, and in the first instance also; but, as regards the nature of the different causes which would come in the first instance, either before this assembly or before the hundred-mote, it would apparrently depend upon the rank of the parties, or the importance of the cause. From the decision of the shire-mote, which, however, was very highly regarded, appeal lay, as I have observed before, to the Witena-gemote, over which the King presided. Besides its judicial functions, the shire-mote had also the regulation of matters connected with the concerns of the shire, such as the muster of the military array, the reparations of roads and bridges, and the levying of rates for these purposes.

In comparing the present magnates and institutions of the shire or county with those of the Anglo-Saxon times, I will first observe that the eorlderman is now, in some degree, represented by the Lord Lieutenant of the county.

The office of the Anglo-Saxon eorlderman, transformed into that of the Norman Earl or Count, became, according to the usual tendency of feudalism, hereditary; but his official character, as chief magistrate of the county, appears to have ceased in the reign of Henry II.

In our own day the Lord Lieutenant, as the eorlderman of old, is appointed by the Crown for life only, and like his predecessor, has the command and ordering of the military array—the militia of the shire. The shire-reeve, however (originally the scir-gereefa) still subsists, under the slightly altered name of the sheriff, his office being called the shrievalty, while he retains many of the functions of his Anglo-Saxon predecessor. He is now, indeed, appointed by the Crown, whereas in those times he was, at first, elected by the freeholders of the shire, and afterwards appointed by the King, with or without (for it is not certain) the acceptance of the shire-mote. He is the second, or, as some think, the first man of the shire, and takes precedence of all its inhabitants. As

in Anglo-Saxon days, he presided over shire-motes in the absence of the eorlderman (which would be of frequent occurrence when, as in the later days of the Anglo-Saxon monarchy, the same eorlderman often had *several* shires under his jurisdiction), so, in our times, the sheriff summons and presides over meetings of the shire. These meetings, when held for the election of knights of the shire, as members of Parliament for the county are officially still called, are in law termed county courts; and it is the duty of the sheriff to hold them, and to direct and regulate their proceedings according to law. The sheriff also calls and presides at meetings of the shire held for other legal purposes, such as the presentation of addresses to the Crown, or petitions to the Houses of Parliament. A remnant of the judicial functions which the shire-reeve exercised in Auglo-Saxon times, subsisted till very lately in the form of a court of law, which the sheriff held with a jury of freeholders of the shire, to determine certain cases of disputed property in land, arising within the limits of his jurisdiction. And the sheriff, as the shire-reeve of old, is the chief executive officer of the Crown, and principal conservator of peace in the shire, and, as such, he is empowered upon occasion to summon to his aid any of the inhabitants of the shire. Of the ancient shire-mote both the judicial and administrative functions are still, in a great measure, exercised by a somewhat analogous assemblage, called the Court of Quarter Sessions. This court consists of all the Justices of the Peace, who, like the members of the ancient shire-mote, are in effect the principal inhabitants of the shire, and it is aided, in judicial matters, by a jury of the freeholders and occupiers of property of not less annual value than £20. It takes cognizance of all offences not capital, and of certain civil causes. It discharges also certain administrative functions, similar to those which I mentioned as belonging to the shire-mote of old, such as the reparation of bridges and roads, the management of the police of the shire, and the levying of rates for these purposes.

While speaking of local divisions and jurisdictions of Anglo-Saxon days, I must not omit to mention that the essentials of the feudal system even then obtained in England, though not with the completeness of military discipline and centralization of Norman times; that there

were then what would be termed Lords of Manors; that the Lord and his dependants had, in accordance with the feudal theory, certain reciprocal duties; and that he held a "mote," or court, of which his free tenants (or, as they were called, his "men") were members. This court was termed, "the *hall-mote*"—sometimes, also, the court leet, or leet. Civil and criminal jurisdiction was exercised in it, according to the King's grant of that privilege. The language usually employed in granting the privilege of separate jurisdiction to a manor was the giving "soc, sac, toll, team, and infangtheof"—a legal formula which, as it often occurs in records before and after the Conquest, demands an explanation. The words signify the right of holding a court, to which all the freemen of the territory shall repair—"sac"; of deciding pleas therein—"soc"; of imposing fines according to the law—"team"; of taking tolls on the sale of goods—"toll"; and of punishing capitally a thief taken in the fact within the limits of the manor—"infangtheof." The same formula was also employed in Royal charters granting the like privileges in other cases, as to certain monasteries, and to borough-towns; and it throws much light on the nature of the powers possessed by the several local jurisdictions which abounded in Anglo-Saxon England. The court of "hall-mote" exists, in a shadowy remnant of its functions, under the name of the "court-leet," or "court-baron" (sometimes both courts are found), in the different manors of the kingdom. In it the Lord of the Manor, or his representative, together with the tenants of the manor, sit as judges. Their powers, however, only extend to matters connected with the manorial property, and much of their proceedings are merely affairs of form and antiquated custom. A manor, in these days, is simply a species of property. Formerly, as we have seen, a considerable jurisdiction also was attached to it. Even now, in many manors, the lord retains the profitable right of taking tolls upon goods exposed for sale in the market.

I have already spoken incidentally of the organization of the borough-towns; but their importance, as separate districts of the kingdom, with independent jurisdictions and magistracies of their own, like a number of little *republics*, requires, in this place, a further notice.

These towns were enclosed and fortified by walls and trenches. Each of them had usually, under the name of "borough-reeve" or "port-reeve," a chief magistrate, elected by all the free inhabitants, and exercising functions analogous to those which the "shire-reeve" discharged in the shire. Like all other civil associations into which the Anglo-Saxon people were organized, the borough-town had its public council, or "mote." This was called the "borough-mote," or "folk-mote," sometimes by a name familiar to ourselves, the "husting-mote." It was held commonly once a week. It consisted of the whole number of the citizens; and at it the affairs of the local community were discussed and settled. The place of its assembling was the Guild-hall —a familiar name at the present day in London and some other corporate towns, as denoting a public building appropriated to municipal purposes. In addition to the "borough-reeve," or "port-reeve" (for the title of Mayor, which now distinguishes the chief functionary of a borough-town, was introduced from France by the Normans), there were, in great borough-towns, Eorldermen, of whom our present Aldermen (with but a slight variation, as we see, of the original name) are the lineal successors. In fact, in some of our most ancient corporate towns (especially in London), we may still see much which has remained to us from the municipal institutions of the Anglo-Saxon period. Thus, in London, besides *Aldermen*, and the *Guildhall*, we have *Wardmotes* —the very word bespeaks its Anglo-Saxon origin; the City being divided into so many wards, each of which has its own "mote," or meeting of the free-men. The wards witness to the ancient practice of keeping *guard*, or, as it is called, "watch and ward," on the walls and fortifications—a practice which, in those unsettled times, both before and after the Conquest, was necessary for the security of the citizens, and which it was their privilege and duty, by royal grant, to execute for themselves. The wards were the several portions of the defences respectively allotted to the different Companies into which the whole number of the citizens was divided. These Anglo-Saxon boroughs had—as the same boroughs still have—the power of making *by-laws, i.e., borough laws*, for their own government. They also had their own inde-

pendent jurisdiction, civil and criminal—the latter extending even to capital offences. They have continued to the present day to exercise a criminal jurisdiction; though, by the Municipal Reform Act of 1835, which made some important alterations in their ancient privileges, that jurisdiction has been greatly retrenched and modified; while the City of London alone has been permitted to retain all its original privileges (judicial and other) intact. Having here dropped an allusion to recent regulations of the borough or corporate towns, I may simply add that, in principle, those regulations have reverted to the original popular constitution of these towns, which, chiefly under the policy of Tudor and Stuart times, had, in most instances, received more oligarchical forms of municipal government.

I shall now speak of the laws and judicial practices of our Anglo-Saxon ancestors. Of these, none has attracted more attention than the celebrated law of "frank-pledge." "Frank-pledge" was a custom by which, while every freeman above the age of twelve years was obliged to belong to some tithing, or hundred, or borough town, all the other members of such association were pledges, or securities, for his abiding the course of justice. The way in which "frank-pledge" operated was as follows:—When a member of the tithing or other district bound in frank-pledge was guilty of an offence against the law, the other members were bound to produce him to receive his trial and punishment. If, however, by their connivance or negligence, he were permitted to escape from justice, they would have to make up the fine due to his crime, in case that he should not have left behind him goods of an amount sufficient for the payment of the fine. Thus, every one associated with others in frank-pledge was bound, in the share of the fines he might have to bear for the offences of his fellows, to observe their conduct, and prevent the escape of an offender. Lawless and turbulent indeed must that state of society have been which can have suggested so rude a kind of police regulations for its amendment!

A remnant of the old law of frank-pledge still subsists in the liability incumbent upon the hundred (or shire) to make good to an inhabitant the damages inflicted upon his property by a riotous assemblage. I

would add, upon the general subject of frank-pledge, that its institution is ascribed (though with doubtful accuracy) to the great Anglo-Saxon legislator, Alfred.

For understanding the methods in which justice was administered by our Anglo-Saxon forefathers, it is necessary to be acquainted with their legal classification. The whole free population (for there was a large class of slaves, or, as they were called, "theowes") was divided into two great classes—that of the "Eorls," and that of the "Ceorls." The "eorls" were the nobility and the gentry; the "ceorls" (we have the word still subsisting in the altered form of "churl") were the commonalty. The "eorls" were again divided into "twelfth hindmen," or King's thanes, and "six hindmen," or lesser thanes. The "ceorls" were also called "two hindmen." I may mention, in passing, that, as a general rule, every ceorl, though a freeman, was obliged to be dependent upon some lord (Anglo-Saxon, "hlaford"); nor does any notion of degradation appear to have attached, on this account, to the condition of the class. However, it seems that there were a few ceorls more fortunate than the rest, who, by the indulgence of their lords, had obtained personal independence, and even some small landed property. These are called, in Domesday Book, "socmen," and are to be considered the originals of our English yeomen—a class of men who exhibit much of the frank and sturdy natures of their Anglo-Saxon forefathers. These "socmen," however, in the legal division of the population, and for judicial purposes, would still be classed as "ceorls," or "two hindmen." Now, it was according to a man's position, as a member of one of these classes of "twelfth hindmen," "six hindmen," or "two hindmen," that his oath in support of the innocence or guilt of an accused person was valued at the trial. The oath, indeed, of a King, or that of a Bishop, was considered of itself conclusive of the question; but a "twelfth hindman's" oath was worth the oaths of two "six hindmen;" and the oath of a "six hindman" equivalent to the oaths of three "two hindmen."

According as the aggregate value of the oaths, thus estimated, preponderated on either side of a trial, the innocence or guilt of the accused was established; so that a sort of judicial arithmetic settled the question.

Again, the punishments of Anglo-Saxon times were usually pecuniary. Even murder was atoned for by money; and the lives of the different members of the community were valued in money according to their respective rank as described above. Thus, the life of a "twelfth hindman" was valued at 12,000 shillings; that of a "six hindman" at 6,000 shillings; whilst the estimate of a "ceorl's" life rose no higher than 200 shillings. This price of a man's life was called "Weregild," which his slayer would be obliged to pay.* The amount of the "weregild" was given to the kinsfolk of the slain man, in commutation for the vengeance which they would otherwise have taken on the slayer, like the "avenger of blood" according to the law of Moses. If, after receiving the compensation of "weregild," any of the murdered man's relatives still proceeded to take the life of the murderer, the relative would have to pay "weregild" for the murderer's life. Hence, this law of "weregild" appears to have been intended, not only to check murder in the first instance, but also the retaliatory act. Practically, it would often be a matter of consideration with a man meditating a deed of blood, and prepared to pay the "weregild," whether the relatives of his intended victim would be able to pay "weregild" for murdering him in revenge; and the decision of this question might determine him to the commission or omission of the deed. In fact, murder was a crime which might be perpetrated with comparative impunity by those who could afford this indulgence of their malignity. Besides this "weregild," a fine, or "wite," was also paid to the King for murder, as for other offences. Indeed, it appears that, for burglary or robbery, the "wite" extended to a forfeiture of all the criminal's property to the King, as is now the case in felony. A criminal who was unable to pay a "weregild," or "wite," was invariably reduced to the rank of a "theow"—a miserable condition; from which, however, he might be ransomed by his kindred within the space of a year.

Trials among the Anglo-Saxons were conducted in the following manner before the shire-mote and the

* In many cases, the amount of a man's "weregild" would be his fine for an offence against the law.

hundred-mote; and of course proceedings of a similar kind, *mutatis mutandis*, went on before the hall-mote and the borough-mote. It appears that on judicial occasions the shire-reeve presided at the hundred-mote. As soon as this body had assembled (and the same held good with respect to the shire-mote), the shire-reeve, with the twelve eldest thanes (the number varied, but it was usually either a measure or multiple of the favourite number twelve) went out to inquire into all offences committed within the jurisdiction of the "mote," having first been sworn "not to foresay (*i. e.*, present) any one who was innocent, not to conceal any one who was guilty." We may, in passing, observe that here we evidently have the origin of our grand jury, which is composed of twenty-four of the principal freeholders of the shire, and before which every criminal case is brought before it can come to trial, the grand jury simply ascertaining whether there are sufficient grounds to sustain on a trial the charge brought against the prisoner. If the grand jury find that the grounds are sufficient, they, as the phrase is, "present a true bill against him;" if not, they are said to "ignore the bill," and the prosecution is dropped. However, in Anglo-Saxon judicature, on their mere presentment of an accused party as guilty, he was often condemned at once by the hundred-mote, or shire-mote, as the case might be. If, however, doubts still existed of his guilt, his plea of "not guilty" was admitted, and his hlaford, or lord (if he were subject to one) was called upon to speak to his character upon oath.

The effect of the lord's oath upon the issue of the case will be presently seen in the course of the trial. The accused was then at liberty to prove his innocence, either by the "purgation" of "lada," or swearing, or by the ordeal of fire or hot water. Of this ordeal it is not my purpose to speak, except to mention that it ceased not long after the Norman Conquest, when the trial by wager of battle came to be substituted for it. In the purgation by lada or oath the accused began by calling upon God to witness his innocence of the crime laid to his charge. He then brought forward his "compurgators," or, as they were also called, his "oathsmen," who, after hearing the testimony brought against him, swore, if they

thought proper, that "they believed his oath to be upright and clean." It was required that these compurgators should be his neighbours, or, at least, resident within the jurisdiction of the court or mote before which the trial took place, that they should be freeholders who never had been arraigned for theft or convicted of perjury, and who were then acknowledged by all present for "true men." The number of these compurgators varied according to the custom of the district. It was usually either twelve, or a multiple of twelve; but it was always increased, if the testimony of the lord, given, as I have mentioned above, to the character of the accused, were wanting, or proved unfavourable. If the oaths of the compurgators, valued, as above-mentioned, by the social rank of the persons, preponderated in his favour over the oaths of the accusers, he was acknowledged as innocent of the crime; if they were overbalanced by the oaths on the contrary side, his guilt was considered as proved; or, if the persons, whom he had brought forward to be his compurgators, refused, after hearing the evidence, to make the above-named oath to their belief in the truth of *his* oath, their mere refusal was regarded as conclusive of his guilt.

In this practice of "compurgation" we have the rudiments, and not much more than the rudiments, of the trial by jury. The terms "oathsmen" and "jurors" are, of course, equivalent, and our jurors give their verdict on oath. Jurors of the present day must be freeholders, or occupiers of a certain amount of tenure, in the shire in which the offence was committed, and their number is twelve. It appears that in Anglo-Saxon times it was usually required that the oathsmen should be of the same hundred with the accused. This requirement continued in force till the reign of Edward III., when a statute was passed ordaining that not more than six need be of the same hundred with the accused. Afterwards, by a statute of Elizabeth, two only of the same hundred were required to be on the jury. And, lastly, by a statute of George III., the necessity that any of the jurors should be of the same hundred was abolished.

Jurors of the present day are sworn judges of the fact; in those days they were rather sworn witnesses for the prisoner, or something between witnesses and judges,

for it was after hearing the evidence that they either made, or simply refused to make, oath, in support of the prisoner's oath that he was not guilty. The oaths of the compurgators in the prisoner's favour were tantamount to the "not guilty" of our juries; their refusal to swear to his innocence was, in effect, equivalent to our verdict of "guilty." In fact, as I before remarked, the compurgators, or oathsmen, were something between witnesses for the prisoner and our modern jurors; and the predominance of either of these two characters would much depend upon the method in which the compurgators were elected, which differed in various districts of Anglo-Saxon England. Sometimes they were chosen by the prisoner himself, in which case they would be rather witnesses for him, as they would, notwithstanding that they had heard the evidence, be probably biassed in his favour, being his own friends. In other districts they were chosen by lot, or by the court, from among the freeholders of the hundred, just as in our days the jurymen are chosen by the sheriff from among the freeholders and others of the shire; in which case the ancient oathsmen more nearly resemble our jurymen. The resemblance of this mode of trial with our own will appear the greater from the fact that the oathsmen were taken from the class, whether of ceorls or eorls, of which the accused was a member. This practice of the trial of a man by his equals was one of those ancient institutions for which, under Norman rule, the English people persevered in contending, and we find that they secured an express guarantee in the clause of Magna Charta, which provides that no freeman shall be punished, except "*per judicium parium.*"*

I need hardly say that this practice has continued without interruption to the present day.

As in Anglo-Saxon days, our whole population is legally classified into the nobility and commonalty; and, while the nobility or lords are tried, for felonious crimes at least, by none other than their peers the lords, all other members of the community are tried by a jury of commoners. It may also be observed that, of the practice

* Some writers, however, interpret these words as having reference to trials in the Baronial Courts.

by which the accused party often chose his own oathsmen, we seem to have some trace remaining in the power possessed by a prisoner to "challenge," that is, to reject, a certain number of the jury as prejudiced against him.

Trial by jury grew into the present exact and regular form gradually in the course of centuries after the Norman Conquest; but it is plainly derived from the old Anglo-Saxon method of compurgation.* As the validity of oaths was the keystone of the judicial system of the Anglo-Saxons, they wisely guarded the sanctity of an oath by treating perjury as a crime of the most heinous kind. A perjurer was classed with witches, murderers, and the worst members of society.

I shall now briefly speak of the tenure and incidents of landed property among the Anglo-Saxons, as some traces of their customs in this matter have continued to our days. All the land in the kingdom, excepting the royal and ecclesiastical property, was divided into "folcland" and "bocland." "Folcland" was land held in common by the "folk" or people of a district; and of this tenure of land we have at the present day considerable remains in the *commons*, as they are termed, or pasture lands which belong *in common* to all the inhabitants of certain parishes. "Bocland" was land granted away from the common stock by the King and his Witan to particular persons for their private property; and it was so called from having been conveyed by "boc" (book) or written grant. Bocland was forfeited to the Crown by the owner's treachery or even cowardice in war, as well as, apparently, by some other delinquencies.

Various services or payments were attached to the tenure of land. Those which most commonly, indeed almost universally, prevailed, were the following three, comprised under the name of *trinoda necessitas*:—

1. *Military service.*—Every owner of land was obliged, according to the extent of his possessions, to provide for the equipment of so many fighting men.

2. *The construction and reparation of bridges*, to which all landholders had to contribute in proportion to their property.

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* Some legal antiquarians refer the origin of trial by jury to Norman times.

3. *The building and repairing of fortifications and walls* for the defence of the country.

In our own day, while the first and third of these charges fall on the general taxation of the country, the second still remains as a burden on landed property, and is provided for by rates levied in each shire by the Court of Quarter Sessions. While this threefold charge was attached to the possession of land in all cases but the very rare one of special exemption from military service, it appears that, according to the circumstances of the tenure, there were often other dues from landed property. The most essential part of the feudal system prevailed, though how extensively we know not, in the Anglo-Saxon times. Even the term "vassal"—in Latin, *vassalis*—appears in several of their remaining documents. Consequently, many of the services and dues, and certainly the heriot or fine, which accrued when any heir succeeded to a property held under a lord, were payable by those who held land under this kind of tenure. I may mention that the "heriot" still continues to be paid to the lord in many manors throughout the country.

There were also dues attached to land for the repairs of ecclesiastical buildings; and to this fact we may trace the origin of our church-rates, which are a tax levied on all the holders of property in a parish, for the maintenance of the parish church and the expenses incident to divine service.

The custom of gavelkind, or the equal division of landed estate among the sons of the deceased owner—a custom derived, as we may gather out of Tacitus, from the ancient Germans—prevailed in some parts of the Anglo-Saxon kingdom, and we find it in force at the present day in Kent. Another custom of inheritance, which still continues in certain localities, especially within the limits of Sussex, obtained in various districts of Anglo-Saxon England—the custom of "Borough English"—according to which the *youngest* son of a family inherited the whole of a landed estate—a strange law, which nothing can have perpetuated amongst us but that extreme attachment to antiquity which has always distinguished our race.

Before closing this sketch of Anglo-Saxon England, I shall devote a short space to the manners, habits,

notions, and sentiments of our Anglo-Saxon forefathers, calling especial attention to the strong "family likeness" in all these points, which may be observed in the character of their descendants, who form the mass of the English nation.

The Anglo-Saxons appear to have been marked by a truthfulness, simplicity, and frankness, of speech and dealing. Their regard for oaths, on the validity of which their judicial proceedings so greatly depended, as we have seen, is an argument for their veracity; and the severe penalties with which they fenced round the sanctity of an oath must have greatly tended to strengthen this point of their character. Their legal processes were devoid of that chicanery and artifice which the more subtle Normans introduced into the courts of law; and their public policy contrasted in the same way with the duplicity and ill-faith of their Norman conquerors. It is no undue self-laudation to ascribe to their descendants, the English people, in an eminent degree, the same qualities of truthfulness, straightforwardness, and honesty; nor is it to cherish too sanguine a confidence if we express the hope that no refinements of advanced civilization, no conventions of an artificial state of society, may impair this great moral strength and ornament of our nation.

We may notice, also, as characteristic of the Anglo-Saxons, a social, genial temper, and generous habits of hospitality. This part of the picture has its darker shade, for it must be admitted that their convivial habits too often degenerated into an excess and grossness which strongly contrasted with the temperance and refinement of the Norman invaders, and which earned the contempt of the latter. The good and bad qualities of our Anglo-Saxon ancestors in this respect may be said to have their full representation in the England of the present day.

But there is a native quality of the ancient English people, which is liable to no drawbacks in our estimate, which happily distinguishes their descendants at least equally with them, and to which the greatness, the wealth, the prosperity, the political happiness of the English nation are in no small degree to be attributed. The *steady, patient, and persevering character* of the Anglo-Saxons is evidenced by many signal instances in their history, as by their unyielding contests against the

invading Danes, in spite of frequent disaster and defeat; by their stubborn resistance to the Norman invaders on the field of Hastings; at Ely, under the brave Hereward; and in many other equally unsuccessful struggles; and still more by the indomitable constancy with which, after their subjugation, and under the greatest discouragements, they adhered to their native language, and cherished the ancient laws and customs of their race, losing no opportunity that was offered of obtaining their restoration, and gradually wresting it, bit by bit, from the divisions and exigencies of the conquering race. To this their steady tenacity of purpose in struggling for the restoration of their ancient laws, we owe our political inheritance—the present liberties and institutions of England.

The commercial spirit of the Anglo-Saxons, which contrasted with the contempt for trade felt under the influence of feudalism by continental nations, and which is so conspicuous a characteristic of their English descendants, is witnessed to by many facts, among which we may mention the world-wide importance which London had even then attained as a port, and the extensive trade carried on with Flanders, France, and Germany—the great wealth in precious metals and other foreign commodities, the products of commerce, which the Normans found in England, and from which they derived an enormous booty—and the Anglo-Saxon law (of Athelstan), by which a merchant who had made three voyages was raised to the dignity of a thane. Associated with this love of commerce, as both a cause and consequence, was the great consideration attached to wealth above the position of mere nobility of birth, which latter was little regarded, except when connected with wealth. Thus, Godwin, Earl of Kent, was the foremost man of his times although he was not of very high extraction.*

Though we have derived from the Normans much more consideration for "blood" than our Anglo-Saxon ancestors appear to have entertained, yet much of their superior respect for wealth characterizes their English descendants, and it is not uncommon to see the large landowner, or the successful trader, in consideration of his wealth, raised to the ranks of the aristocracy.

* Indeed, if a ceorl became possessed of about 600 acres, with a church and mansion of his own, he was entitled to the dignity of a thane.

In conclusion, we may say, that in the manners and customs of the Anglo-Saxons we clearly see the original of the character which is impressed upon their descendants at the present day—just as in the Anglo-Saxon language is found the staple of our own language. Though the character of the English people has, of necessity, been somewhat altered by the hand of time, by the infusion of fresh blood, by advanced civilization, extended intercourse with other nations, and the improvements of art, learning, and science, yet many substantial points of resemblance—nay, of identity—may be discerned, on a careful comparison of modern *England* with the *Engleland* of the days before the Norman Conquest.