ORIGIN'S OF ALL LAW[1]

ORIGIN OF CIVIL LAW

Rule by (*man*) Tyrants—Civil law is result oriented, seeking to achieve conformity to the will of the state as expressed in its legislation. The goal of the civil law is to insure obedience to the state's will. Civil-law courts venerate the legislative code.

ORIGIN OF COMMON LAW

Rule by God—Common Law is process oriented, focusing its attention on insuring the process due each party before the court. Common law trusts observance of due process to render up a true result. The goal of common law is to insure due process with a view toward justice. Common law courts allow the adversity afforded by due process to test legislation's application.

CREATION OF CITY OF BABYLON

3150 BC—Nimrod built the city and became the first King of Babel[2]

Babylon's inquisition purported to place the accused—body, soul and spirit—in the hands of his minion, acting as judge. The founding of Babylon gave rise to the systemizing of civil law's ideals: Administrative ease and expedient **Execution of the Ruler's will**.

753 BC—Romulus founded Rome and declared himself first king of Rome, which derived her religion, in kind, from the Babylonian mystery cults, keeeping it shrouded in secrecy by priestcraft.[3]

605 BC—King Nebuchadnezzar of Babylon[4]

306 AD—Constantine becomes Roman Emperor

337 AD—Following Constantine's rise to power, Roman emperors transferred the Babaylonian title and office pontifex maximus to the bishop of Rome. Civil law devotees later referred to this arrogation of power as the divine right of kings.

534 AD—Civil law's systemization, having first began at Babylon, Roman emperor Justinian first organized this tradition into a written Code and held it forth as a perfected body of law, containing approximately 4200 statutes compiled from various Roman codes.

CREATION OF THE NATION OF ISRAEL

1447 BC—Exodus Jehovah takes Israel out of Egypt and Israel receives Law.

Ex. 24:12 And the LORD said unto Moses, Come up to me into the mount, and be there: and I will give thee tables of stone, and a law, and commandments which I have written; that thou mayest teach them.

1407 BC - Israel's common law produces 400 years of prosperity

1007 BC—Israel appoints a king and falls from the grace of God and common law was lost until revived among the Germanic and Celtic tribes on the continent and in Britain around the birth of Jesus Christ.

200 AD – 400 BC—Commencing with intermittent raids, the Anglo-Saxons eventually migrated to Britain in successive waves with earnest intent to remain.

The Anglos, Saxons, and Jute's (Dane's) called their early tribal law the Volkriht; translated into literal English "folkright," (people's law or folk law), which has always existed because right and wrong have always existed in the eternal mind of God. In the Anglo's, Saxon's, and Dane's view, they could no more create law than they could create their God.

In the tribal conceptions of the Germanic nations life, no doubt, many of the principles which are now admired… Among these tribal conceptions was a fundamental ideal of "equal standing" before the law. They gave us counties,

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[1] **The material of this article** *from* BRENT ALLAN WINTERS, EXCELLENCE OF THE COMMON LAW (2009).
[2] **See Genesis 10**
[3] **Priestcraft:** [Webster's Dictionary 1828] PRIE'STCRAFT, noun [priest and craft]. The stratagems and frauds of priests; fraud or imposition in religious concerns; management of selfish and ambitious priests to gain wealth and power, or to impose on the credulity of others.
[4] **See Daniel 2**

1073 AD—Gregory VII, bishop of Rome, proclaims intention of taking jurisdiction of the entire earth and every aspect of human life. (New World Order). Gregory exercised Justinian's Digest code and in the 1080's founded the university at Bologna—the first European university to study that manuscript … a ratio scripta [reason written] as the Roman law was then called. … It was as though the Old Testament had suddenly been discovered for the first time by Christian theologians. Justinian's compilation was received in the same spirit as that in which a discovery of a copy of the long lost Old Testament might have been received.

As the controlling and unifying ingredient of education, Justinian's Code became the foundation of Rome's modern university system, now spread worldwide. Nowadays the notions of this Code hold sway over almost every people and nation, reaching even into the American Courts of our common-law country, albeit covertly, under the labels administrative law, admiralty law, canon law, and even chancery jurisdiction.

During the twelfth century, the bishop of Rome declared himself God's sovereign on earth with plenary power over all other kings. Armed with this notion, Rome again attempted to assert the civil (city) law in England. Nevertheless, the common law had persuaded King Henry II that the common law was best for England and not Rome's pope, the holy Roman emperor, or Rome's canon law. Henry II effectively rested his argument on principles of Anglo-Saxon common law, saying that his authority as king of England was subject to the advice and consent of the English nobility, not an Italian bishop. Over time, the Roman popes persistently attempted to enforce civil law in England by ruling through Rome's legates: the pope appointed priests to salaried positions in England from continental Europe, and especially France, even while England was at war with France. Many of these priests collected large salaries from England without ever setting foot on English soil.

Under Roman law, and systems derived from it, a trial ... in some countries even today, is an inquisition. The judge makes his own investigation into the civil wrong or the public crime, and such investigation is largely uncontrolled. The suspect can be interrogated in private. There is no sheriffs, courts, the Jury and the militia; and real property law, which is fundamental to understanding the common law.

The Anglo-Saxon "people's law" with its ideals of government limited by individual rights to exercise responsibilities, would have undoubtedly given way to their god of fate called wyrd, in English spelled weird, meaning super-natural, hereinafter God.

To the pre-Christian Germanic man, God was in the power of arbitrary fate, believing that once fate (wyrd) decreed a doom, it was unchangeable—decisive, conclusive, final. The pre-Christian Anglo-Saxon tribes of Continental Europe worshipped unpredictable fate (wyrd). Once fate (wyrd) was decreed judgment (doom) it was too late for salvation. Then upon migrating to Britain these tribes learned of Jesus Christ and the Bible taught the Anglo-Saxons that Christs saves the doomed one.

The pagan Anglo-Saxons had discovered and put into practice the elements of the common law. Following their migration to the British Island, the Word of God nurtured these precepts and replaced their false gods with the God of the the Bible.

496 AD—The earliest known record of Anglo-Saxon folk law issued on the European Continent under King Clovis, following his conversion to Jesus Christ.

865 AD—Earliest known record of the Anglo-Saxons' compilation of Volkriht (folk law) issued by Ethelbert, Christian king of Kent.

The ancient folk law not only hit the perpetrator where it hurt (the money bag) and, therefore, was a deterrent, but also compensated the victim. Neither the Volkriht nor the Bible advocates a prison system to punish or deter crime.

Christianity adopted the Volkriht of the Anglo-Saxon, which England later called the common law. Being an Island, Britain continued to provide an insulated environment. This insulation assisted the common law in warding off the onslaughts of civil law. The genus of common law's nature is that it demands conflict: it draws life and strength from adversity. The common law used competition to enhance its essence, strengthen its identity, and expand its influence.

The Anglo-Saxon earls (elders) elected each of their kings, who served at their pleasure, and whom they permitted to rule, enact laws, and levy taxes, but only by the earls' advice and with their consent. They decided cases in moot (collective assembly) voting. Magna Carta affirmed this

recognized right to remain silent; he must answer all questions put to him. His right to be represented by a legal advisor is restricted. He is barred from confronting his accusers; witnesses against him can testify in secret and in his absence. And only when these processes have been accomplished is the accusation or charge against him formulated or published. Thus often arises secret intimidation, enforced confessions, torture, and blackmailed pleas of guilty.

custom with common law's trial by jury and the grand jury, which rises out of the People.

1215 AD Magna Carta - First recording of the Grand Jury (25 sovereigns) arising out of the sovereign to returned sovereignty to the People. Rome knew that as long as England was subject to the king, Rome could control England if it had control of that king. The thirteenth century judge, Henry de Bracton reminded his countrymen of the common law's biblical ideals: "applying it to the particular dispute before the court *"... English justice advanced cautiously. And: Even . . . Magna Carta did not ... attempt to proclaim any broad general principles . . . because both sovereign and subject were in practice bound by the Common Law, and the liberties of Englishmen rested not on any enactment of the State, but on immemorial slow-growing custom declared by juries of free men who gave their verdicts case by case in open court. The King himself ... ought ... to be under the law, because the law made the King ... That ... [the King] ought to be under the law is clearly shown by the example of Jesus Christ ... [who] used, not force of His power, but the counsel of His Justice ... that He might redeem those who were under the Law.*" De Bracton affirms three common law fundamentals. First, the king is under the law, as are all men; second, the Creator, not the king, is the source of law; third, the common law, following the example of our God's Word, distinguishes between power, which is raw force, and counsel, which is persuasion. A common law court of record traditionally delivers an opinion accompanied by reasons fashioned to persuade.

When English courts held jury trials, appointments of commissioners or magistrates (judges for pre-trial matters) were only of Serjeants-at-Law from the royal courts, but not from the Roman priests. This was because the priests' civil law disallowed trial by jury, while common law courts' policy has always been to preserve the right to trial by jury and the liberties it affords. Even today, lawyers in civil law countries-called civil lawyers or civilians-sometimes stand in scorn that in common law countries, individuals untrained in law and impaneled as jurors, have authority to determine the facts of a case. They are further indignant that jurors can take naked power to sit in judgment over the law, by declaring a law unlawful as applied, without fear of lawful reprisal.

In a 1789 letter to Abbe Arnold, Thomas Jefferson wrote: "*It is left . . . to the juries, if they think the permanent judges[406] are under any bias whatever in any cause, to take on themselves to judge the law as well as the fact. They never exercise this power but when they suspect partiality in the judges; and by the exercise of this power they have been the firmest bulwarks of English liberty*."

The difference between a common lawyer and a civil lawyer is not that they do not see eye to eye on this or that particular thing, but rather, but that they are looking in different directions to discover the source of law. The civil lawyer looks subjectively to the reasoning of man, as expressed in and extrapolated from the civil law code; the common lawyer has traditionally looked objectively to the unchanging truth, consonant with the Creator's revelation. Thinking as a common lawyer demands a new way of thinking, that is, a change of mind, which rejects the mind of man as the ultimate source of law.

The transplantation of the Anglo-Saxons' Volkriht to England allowed development of common-law ideals, owing to the infusion of the Christian Scriptures, coupled with the impelling power of God's Spirit. These factors, combining produced the audacious activity necessary to solidly found the common law. Fundamental to this establishment was the development of the common law's procedure, now called due process: the processes of government owed to each person and intended to slow the operation of government's machinery in order to provide ample opportunity for individuals to discern nefarious activity, assuring that even the weakest will not be exploited.

God is the ultimate source of all liberty. And the indispensable first principles of our liberties spring from neither our Constitution nor, reaching further back, from Magna Carta, but from the mind of God who has imprinted His ideals in the desires of men. In history's record, the channel of our common law is traceable to Anglo-Saxon England, as was pointed out by one of America's Founders, Justice James Wilson of the United States Supreme Court. In July of 1793, in his charge to members of a federal Grand Jury, he stated, "*The basis of the American judicial institution, and indeed the basis of any civilized system of jurisprudence is the common law*." Distinguishing the American ideals of common law from the English common law, Justice Wilson continued: "*American common law is closer to the common law of the ancient Anglo-Saxons than it is to that of the Normans. The Anglo-Saxons, like the Americans, had a more expansive notion of individual liberty… The common law is of origin divine*."

Winston Churchill observed that the American War for Independence was an extension of the English Revolution of over a century before, including the subsequent signing of the English Petition of Rights in 1629, and followed by the English Bill of Rights of 1689. The English Revolution was an attempt to preserve the rights earlier sustained at Runnymede Meadow with the signing of Magna Carta; but reaching back even further, the signing of Magna Carta in 1215 reinforced common-law rights as they had existed in old Anglo-Saxon England. As important as all these events are, none of these events mark the source of our common-law liberties. Indeed, God is sovereign over the affairs of men. He is the source of liberties that emanate, by His grace, from the fountainhead of His Person and eternal Word, with which the ideals of our common-law tradition are consonant.

After the Norman invasion of 1066, Rome devised schemes and attempted to manipulate or force England to adopt civil law. Impelled by different forces, the struggle continues even today in common-law jurisdictions, such as England and the United States, through persistent encroachment of administrative law.

If England had adopted civil law at the Normans' conquest, the English monarchy would have become absolute. Some English monarchs labored to accomplish this; but ultimately they all failed. In theory, since Anglo-Saxon times, the law has bound the kings of England as much as it has bound other Englishmen; even thegns[5] ruled their manors by consent of the local Witan. Because of civil law's influence in Normandy, the kind of monarchy the Normans brought to England exercised more power than the Anglo-Saxon monarchy. To the Normans' credit, however, once in England, they claimed to follow the Anglo-Saxons' ideals for law and government: the king was subject to the law, and the law confined his authority to the advice and consent of the nobles. Among William I's early acts, in order to insure order and inculcate good faith while distributing power, was his affirmation of the Anglo-Saxons' requirement that each able-bodied man be armed: every real property owner and shopkeeper was required to maintain a long bow and a minimum of forty arrows. Just over 150 years following the Norman Conquest, Magna Carta reaffirmed that it is unlawful for the king to levy taxes without the nobility's consent. In later years nevertheless, Charles I tried to levy taxes without Parliament's consent; Parliament beheaded him. Magna Carta also forbade the king from harming any freeman except by consent of that man's peers or equals: independent jurors of the same legal standing as the accused.

Thomas Beckett became Rome's tool for Rome's ambitions. He opposed his one-time friend King Henry II-champion of the common law in this struggle. Henry II suffered the frailties of humanity, but overwhelmed with

[5] **Thegn** or Thane, is an Anglo-Saxon title (Anglo-Saxon: þeg(e)n, Danish: degn, Old High German: degan, Old Norse: **thegn** or "king's follower") meaning an attendant, servant, retainer or official, usually in a military sense similar to the later "knight."

the gift of energy, was inclined to attend to the weightier matters of England's welfare. The triumph of the common law over the civil law was Henry's focus in Beckett's struggle with him. Henry sought to strengthen and preserve the common law for future generations by taking steps that would define the common law as it progressed. During his administration, he insisted that the courts hammer out and more precisely fashion all of the major writs and forms of action that order the basis of modern common-law procedural conventions and substance. Throughout England's courts, Henry II further standardized the use of writs, allowing record keeping, and recordation of opinions rendered for access as authority. With mandatory record keeping of judicial findings, systematized for ready access, the courts preserved in writing the unwritten customs and case precedents, allowing scrutiny, precision, and consistency in application. Stare decisis - the common law's polestar and claim to sure-footedness—now increasingly rested custom on the acuteness of written articulation.

Americans nowadays find that our House of Representatives, as well as our judiciary, subverted by enemies foreign and domestic, have achieved de facto control of our courts,[6] unlawfully turning them into administrative, bureaucratic, chancery courts,[7] thereby moving America under civil law. We the People of the several united States, under the Unified United States Common Law Grand Jury, insist on returning our courts back to the first principles of our common law.

A prerequisite for a court case requires an affidavit of an injured party.

Common Law Courts require a sheriff (Constitutional officer), coroner (discovers the nature of death), magistrate (moves the case along and certifies the jury's decision), tribunal (the People) and the opposing parties.

[6] **Beginning with** U.S. v. Caroline Products Co., 304 U.S. 144 (1938) (called the switch in time that saved nine).

[7] **Court of Chancery** A court having the jurisdiction of a chancellor; a court administering equity and proceeding according to the forms and principles of equity. In England, prior to the judicature acts, the style of the court possessing the largest equitable powers and jurisdiction was the "high court of chancery." In some of the United States, the title "court of chancery" is applied to a court possessing general equity powers, distinct from the courts of common law. See Parmeter v. Bourne, 8 Wash. 45, 35 P. 586; Bull v. International Power Co., 84 N.J.Eq. 209, 93 A. 86, 88. The terms "equity" and "chancery," "court of equity" and "court of chancery," are constantly used as synonymous in the United States. It is presumed that this custom arises from the circumstance that the equity jurisdiction, which is exercised by the courts of the various States, is assimilated to that possessed by the English courts of chancery. Indeed, in some of the states it is made identical therewith by statute, so far as conformable to our institutions. See Wagner v. Armstrong, 93 Ohio St. 443, 113. N.E. 397, 401. CHANCELLOR. In American law, this is the name given in some states to the judge (or the presiding judge) of a court of chancery.