

# The Development of English Law in the Middle Ages and the Relationship with Henry de Bracton

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## Abstract

In Britain under the monarchy, the development of law is inseparable from kingship and history. British law in the Middle Ages experienced a period of rapid development, it included the Early Germanic law, Canon law, Roman law, Common law. Their main ideas are all condensed together to promote the formation of a new concept of the law. Different laws reflect different cultures and histories, and will also change with the progress of history. There are many famous scholars studying in law in this medieval period, such as the famous judge, Henry Bracton. He writes a lot about the law in the middle ages and also how it is developed and why it becomes the law now we see. However, In medieval England, due to the beginning of royal rule, many different legal systems were formed, such as the Canon law... During the transition from the formation of the law in the Middle Ages to the modern law, the ideology continued to merge and progress. In short, the history of royal power is closely related to the development of law.

## Keywords

The development of the law; The formation of a new concept of law; The history of royal power; The famous judge Henry Bracton's research.

## 1. Introduction

From a historical perspective, the rise of British kingship is started in Anglo-Saxon period. And was officially established in the Norman Dynasty. In a sense, the Germanic factor laid the foundation of the British legal tradition. The second is the Roman factor. It is generally believed that the common law system is different from the civil law system, but this does not mean that the law of the Middle Ages in England is not affected by Roman law. "In Britain, the influence of Roman law is no exception." [1]. The British legal system in the Middle Ages experienced a process from scattered local common law to common law throughout the country. Accompanying the formation of the British legal system is the process of feudalization of British society. An interesting fact is that the British people actually started to study their country's legal history after 1850. In the Middle Ages, because there were different small countries, different regions had many different legal systems. In British, There is a concept that not only is no one above the law, but everyone, from the prime minister to the common people, is governed by the common law and lives under the jurisdiction of the common courts, and everyone is equal before the law. It also preserved the essence of the ancient Germanic conception of freedom-personal freedom, local autonomy, and independence from any interference except court interference. Henry Bracton is a famous justice as well as a clergyman. In his works, he not only analyzes a large number of common law cases, but also expresses his views on kingship. This concept is concentrated in "The king must not be under man but under God and under the law." [2]. The basis for his idea of kingship was actually the actual process of the development of British kingship since Norman conquered Britain. Britain in the Middle Ages was a big stage for kings, nobles and churches to compete, benefits make the three different combinations in different periods, later, the citizen class also joined in. The church was formed

in large numbers due to the spread of missionaries, and its powers are also increasing. In the land survey in 1086, "approximately one-quarter of the country's land belongs to the king, one-quarter belongs to the church, and one-half belongs to the secular aristocracy." [3]. In fact, at this time, a large part of the law will be changed due to the existence of the church and by the time of King John, Innocent III happened to be the Pope of Rome, and he made the power of the Pope reach its peak. The nobles rebelled and the king was at a disadvantage, so he was forced to sign a 'Magna Carta' to recognize the freedom of the church. So the Magna Carta signed at this time is an effective legal document, but in fact it was forced to form due to political changes. The formation of law is actually a reflection of historical and political changes.

## 2. The History of law and Political Change in the Middle Ages

The medieval period began in the 5th century when the ancient Roman Empire was in faded and ended in the 15th century in the Renaissance, which lasted about 1,000 years. In the Nordic region, the Jutes, Saxons and others began to invade Great Britain continuously in tribes. Britain produced Anglo-Saxon and affiliated kingdoms, and began its early rule, which is also the beginning history of English law. Their original family system and the principle of adjusting social relations by blood relationship were broken. Instead, it relies on customs and habits to adjust social life, and at this time the beginning of customary law is formed. "The fragments of the early Anglo-Saxon laws that are now retained are essentially custom. They all claim that customary law decisions are derived from custom, and their most important characteristics are acceptability and flexibility." [4]. In terms of social management, they manage social affairs in the form of popular assemblies. Before starting the meeting, they had to gather a lot of people, all seated with weapons. After the host declared silence, they elected someone to speak as a representative. If everyone agreed with him, they would wave their weapons to express their agreement. What's interesting is that they think this is a respectful way of approval. Customary law can clearly see customs in the convictions, for example, for some serious crimes, they will let the prisoner hang on a tree or thrown into a swamp, while for some misdemeanors, a few cattle and sheep will be fined, half of which will be attributed to the country and the other half to the victim and their families. Customary law constitutes the English law in the early Middle Ages, but it is unwritten. It is the stable opinions, opinions and etiquette formed in long-term interactions, usually preserved through formulas and ballads.

In 1018, the Danish Knuth specified the famous 'Knuth Code' in the history of British legal system, which combined the Nordic customary law and Anglo-Saxon customary law. J·H Baker said that "the word law was introduced into English by the Danes at the time." [5]. After the Norman invasion, no major changes were made to customary law but inherited. The English customary law in the early and mid-period merged the customary laws of the Danes and Normans and was based on Anglo-Saxon. They actually all belong to the Germanic tribe, which shows the biggest factor of the law in England.

Religion is also a big factor. In 597 AD, Augustine was ordered by the Pope to lead 40 priests to England to preach. Christianity began to spread to England and many people believed in this religion. The church began to form in this context. At the same time, the king and nobles donated a large amount of land to the church in order to obtain the support of the church, although William I strengthened the control of the church after the Norman conquest, and controlled the priest's authority. However, William II had extremely distrust of religion, and he deprived the church of the interests of the church, and even the position of the archbishop was left empty for four years. In Stephen's time, the king was weak and sick, and the country was turbulent. The church took advantage of this to expand its power. During Henry II's time, the king had a fierce conflict with Archbishop Beckett and ended with Beckett's martyrdom, so Henry II had to make concessions. On various historical foundations and backgrounds, the Papal Revolution at the

end of the 11th century made the church independent of the government, and believed that the church was superior to the government, establishing a pyramidal hierarchy of ordinary priests, bishops, archbishops, and popes. From a legal perspective, religion and law should be mutually reinforcing. The law gives religion its sociality, and religion gives the law the sacredness of the spirit, direction, and the law to gain respect.”[6]. The Papal Revolution led to the first modern Western legal system, the formation of the new canon law. There are many forms of canon law, among which the Bible is the main source of canon law. In terms of civil law, birth registration, family, marriage, etc. will all be adjusted by civil law and it can be seen that it involves all aspects of people's lives. King Ethelbert of Kent promulgated the first statutory law called 'Ethelbert Code' in England under the influence of Archbishop Augustine.[7]. Similarly, Roman law also had a huge impact on later generations. Although the United Kingdom is not in the Roman legal system, it is inevitably affected by it. During that period, judicial power was almost monopolized by clergy, and these educated people naturally instilled Roman law into English law. After the 11th century, the Roman law revival movement generally emerged in the European continent and the United Kingdom was inevitably affected by this. At the same time, the concept of 'right' produced during this period has had a profound impact.

## 2.1. Characteristics of the Legal System

In the early common law, the process of disputes was like this. The parties were applying for corresponding writs according to the nature of the different cases they received. Each different kind of writ corresponds to a different set of procedures. After the trial is executed, the parties begin to exercise their rights. This is the feature of procedure before rights. Lawyers and those who perform legal affairs are different from others at this time. What they need to master includes a lot of procedures and trends, so that they gradually become a position that is not capable of ordinary people. The second is the tradition of following convention. The antiquity of the law is an important source of his authority. The whole process of the law is superimposed by natural science and social traditions. Professor Cohen pointed out that "In the medieval concept, everything that has existed for a long time is fair, and anything that is fair can be traced back to the order of things that have existed for a long time." [8]. Although the king continued to expand the jurisdiction of the central government after the establishment of the three central courts, it was impossible for most local parties to submit cases to the royal family. In order to strengthen local jurisdiction, circuit courts were created. The judge will judge the case according to the previous customary law precedent, and at the same time cancel some unreasonable places for national unification, so that the common law is formed. Secondly, the British law at that time was also characterized by multiple. Many people think that this feature is due to the different habits and management rules of different tribes before the formation of unity in the United Kingdom. In the Middle Ages of England, the two legal systems of ecclesiastical law and secular law can also reflect this characteristic in the same society. "The church is opposed to the kingship, the kingship is opposed to the city, and the city is opposed to the lord." [9]. Similarly, the tradition of legal protection of the interests of the subject is also a long-standing feature. Subject interests include not only the subjects of the relative royal power, but also the serfs and religious people under the relative lords. Gives people the right to resist and boycott, making it more open and free. But it is still actually limited rights and hierarchical rights. The king's tradition under the law is also a major feature. Although the king has the right to rule, he must abide by the law. Also, before he is enthroned, the council of saints will vote to his succession and declare compliance with the law in the coronation oath. If the king fails to fulfill his obligations, he will face the danger of hanging his head. This is actually a very common situation. The customary law comes from society rather than the king's order. This characteristic of preceding the king's power caused restrictions on the king's power from the very beginning. Whether it is the previous common law or customary law, the king must abide by and enforce it.

### 3. Bracton's Concept of Kingship

Henry Bracton is born in 1210 and died in 1268, he was an English cleric and jurist. He was originally an assistant to Justice William Raleigh and began serving as a judge of the Henry III Circuit Court in 1245, and became a judge of the Throne Court from 1248 to 1257. He is proficient in Roman law and canon law and held many important positions at the same time, so he can have a lot of mastery and understanding of the British legal system, so he wrote a famous book called "On English Law and Customs" hailed by Maitland as the "Medieval Roses and Flowers"[10]. He has a great status in the Church, it's not sure where actually he was born but we can guess that just a village called "Broad Town", he is not a literati at the first time but a justice in 1245. From 1248 to 1268, he is the justice in the assize of southwestern countries the whole time, he has an esoteric research in the law, but we still can't be sure that if he's gone has done something about the politics, because it just happened in the year when the Second Baron's War started. There are 2 elders gave Bracton a lot of suggestion and lead him to become a better person like what he did now, he also wrote something on kingship arguing that a ruler should be called king only if he obtained and exercised power in a lawful manner and that really changes a lot of people's idea at that time. There is a historical background that after William was crowned, he deprived many monasteries and cities of freedom and privileges. He also ordered the prohibition of public gatherings to prevent rebellion, and conducted an inventory of the population and land, thus forming the British feudal system. Thus, the unique feudal principle was formed, namely, 'my vassal's vassal is still my vassal'. During this period, the royal power was gradually consolidated. But in the later Henry II period, the nobles rebelled, and the nobles at this time became the biggest obstacle to the royal power. From Magna Carta to Oxford Ordinance the royal power was gradually controlled by the feudal aristocracy. However, Bracton's idea of kingship is mainly based on Anglo-Saxon political traditions and Christian political theology. Bracton was also influenced by John's writings, and at the same time inherited John's idea of kingship and divine power, and repeatedly emphasized that "The king is God's vicar"[11]. The king must be under God. He also thinks the emperor is blessed by God, and the power of the emperor comes from God. He advocated that God will punish tyrants who cannot maintain peace and justice. The emperor is God's agent only when he maintains justice. Once he moves toward injustice and uses violence to rule the people, the kingship loses its legitimacy. He also believes that kingship is based on the law which is generated by the will of God, and the law is used to regulate people and everything, so that everyone can get what they have. The law should be completed by the nobles and the king through repeated deliberations, not the king's will alone. Bracton believes that, first, the royal power must be restricted by God and nobles, and secondly, the church and the law. The legitimacy of royal power is the foundation of royal power, which embodies his understanding and thinking on the social and political conditions of the British in the 13th century. His concept of kingship became one of the important ideological sources for the development of modern British constitutionalism.

### 4. About the Book Henry Bracton

About this book, this is a really famous and important historical work, but some details show that this work is not done by himself alone, his job is mostly to collect some papers and his assistant helps him to combine those jobs together and then they write the book, even though this book is still the one of the most famous and important books about the laws. Actually some case study is not allowed to publish, so during that war he was forced to give those things out, because he is familiar with the Body of Civil Law, so he can have a quite good explanation about the nature of law and civil law. He also collects some lawyer's notes to help him explain the laws at that time well, he judges all the defenses and gives his own opinion, nowadays we can find the first version is published in 1268, the year when he dies.

Some people says that “ twice in the history of England has an Englishman had the motive , the courage , the power to write a great reasonable book about English law as a whole” all the people have a really high judgement for Henry because of what he did, but this is also the professor in Harvard ‘s translation ‘s job , that together make the book be a epic work,he entered king’s service in 1239 and a justice of King’ bench from 1248 to 1257, he go a paper dispensation and that permitted him to hold 3 benefits on royal treasury.And his treatise began to assume shape in 1245 and revised later in 1256 , as a royal judge,he has the power to the rolls that recorded the earlier proceedings, but in the last letter which a brother judge wrote wanted directing Bracton to return all such rolls to the treasury forth with. In the book there are some marks made by red pen which is quote the cases, Bracton was popular , as the continued existence of nearly fifty medieval manuscripts of his treatise indicates.

## 5. Conclusion

Generally speaking, the British kingship has undergone great changes under the development of law and society. From "kingdom supremacy" to "law supremacy",the view of the king under the law is also reflected in Roman law. In the Middle Ages, it was both the germination of law and the formation of legal tradition. From Anglo-Saxon law, Norman law, to customary law, Roman law, there has been a gradual formation of written laws, including the emergence of the first constitution.However,these are the foundations of the development of British law, while also continuing some traditions. Also,from the perspective of royal power, the rule of the king and the acquisition of royal power may violate the law, but in fact, the royal power is still restricted by the law to varying degrees and we can say that kingship and law are inseparable. On the other hand, the development of British law is closely related to the historical and political background,the rise of the Christian church, the struggle of the nobility, Invasions and wars of different nations...all have a great influence on the development of law. In the Middle Ages, Britain’s unique tradition of restricting power through justice turned the legal system into an institutional culture and at the same time made it more stable also produce greater historical influence, which also turns the concept of the rule of law into people’s belief in the rule of law. Formed a unique political system in the UK. About Bracton,as a judge, Bracton’s concept of kingship has adapted to the requirements of the emerging bourgeoisie to restrict kingship and implement the rule of law. He proposed that the king should be under the law, which has strict limits on the actual legitimacy of power. The restriction of power and the protection of rights under the law are the essence of modern British constitutionalism.At the same time, Bracton has also become one of the important sources of influence on British legal thought. In summary, the development of law is closely related to history and politics. Any political change will bring about legal innovation, but the formation of legal traditions began to have this concept in the Middle Ages.The tradition of law and the essence of culture have been handed down. In fact, the British view of law "restricting power by justice" is also changed from the previous concept of "the king is under the law", and the basic concept has not changed. In the reform and development of the law, many people have put forward great ideas and made contributions to this. Bracton is one of them. He laid the foundation for the concept that royal power is restricted by law. In the long river of history, everything is changing rapidly, and the law will continue to be adjusted in real time, but the essence of tradition will not change. Law is also a record formed by a country and it is a valuable historical legacy left over to the present and can continue to develop.

## References

- [1] Ye.Q. (1999) An Analysis of the Characteristics of the Development of Western European Legal System in the Middle Ages[J].Journal of Nanjing Normal University, column(6).

- [2] George E. Woodbineed.S.(1968) Bracton on Laws and Customs of England. Harvard publishing, P33.
- [3] Ma.K(2005) British Feudal Society Studies[M], Peking University Press, Shanxi, P132.
- [4] Chen.H.(2001),British legal history, Qilu Publishing, Shandong, P4.
- [5] Baker.J.H(1979) An Introduction to English Legal History, London, P3.
- [6] Harold.J.B. Law and religion, Law Publisher, Hartford, PP38-39.
- [7] Brown.A.L.(1989) The Governance of Late Medieval England. Stanford, PP.1271—1461.
- [8] Fritz K.(1939) Kingship and law in the middle ages. Oxford publishing .Bonn, P151,152
- [9] Ho.J .(2001) Western Europe and China in the Period of Social Transformation, Jinan Publishing, Tianjin.P100.
- [10] Pollock .F Maitland.F.W.(1944) British Legal History volume 1, P206, Richardson .H.G ,Azo Drogheda and Bracton, English Historical Review, volume 59, P27.
- [11] George.E. W. (1899) Bracton on British Law and Customs, volume 2.P20,33,166.