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AN EVOLUTION OF LEGAL SYSTEMS: A COMPARISON OF 5TH CENTURY BCE
ATHENS AND MEDIEVAL BRITAIN POST 1066

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This thesis aims to identify similarities and differences between societies that established new legal systems with the founding of a new form of government. In 5th century BCE, the Greek city-state of Athens had just defeated the Persian Empire and was thriving in a time of peace. With the creation of democracy and the new government that was controlling Athens, a new legal system was implemented that allowed for greater amounts of public participation. Looking forward to the 11th century CE, William of Normandy in 1066 conquered England, resulting in a new government with a new king. This change in rule required the Normand regime, therefore, had to establish a new legal system to aid them in controlling their new domain. Though societies dealt with new governments that established new legal systems, the influences on the societies differed. While Athens defeated outside invaders and the people of Athens established the government, the English lost to invaders and an outside force, the Normans, established the government. By comparing two societies that implemented legal change during times of stress and governmental changes, one can develop a better understanding of how legal systems were established.
# TABLE OF CONTENTS

ACKNOWLEDGEMENTS .................................................................................. iii

Chapter 1 Athens and Law of the High Classical Period ........................................ 1

- Laws and Regulations ................................................................................. 4
  - Citizenship Laws ..................................................................................... 4
  - Inheritance Laws .................................................................................... 6
  - Impiety Laws .......................................................................................... 8
- Structures and Institutions ........................................................................ 12
  - The Formation of the Jury ..................................................................... 12
  - Case Presentation: Public versus Private ................................................ 13
- Influence on Society and Culture ................................................................. 15
  - Presentation through Theater: *the Oresteia* ....................................... 16
  - Presentation through Theater: *Antigone* ......................................... 18
- Chapter Summary ...................................................................................... 19

Chapter 2 England and Law Post 1066 ............................................................. 22

- Laws and Regulations ................................................................................. 25
  - Citizenship and Nobility Laws .............................................................. 25
  - Inheritance Laws .................................................................................... 28
  - Religious Laws ....................................................................................... 31
- Structures and Institutions ........................................................................ 34
  - The Court System .................................................................................. 34
  - *Domesday Book* ................................................................................ 36
- Influence on Society and Culture ................................................................. 39
  - Presentation through Literature: The Song of Roland .......................... 39
  - Presentation through Literature: Layamon’s Brut .................................. 41
- Chapter Summary ...................................................................................... 43

Chapter 3 Comparing Legal Systems: Athens versus England ......................... 46

- Analysis of Laws Implemented .................................................................... 48
- Differences in Structure and Institution .................................................... 51
- The Impacts on Society and Culture .......................................................... 53
- Final Conclusions ..................................................................................... 55

BIBLIOGRAPHY ........................................................................................... 58
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Chapter 1
Athens and Law of the High Classical Period

“Laws are made to instruct the good, and in the hope that there may be no need of them; also to control the bad, whose hardness of heart will not be hindered from crime.”

-Plato

During the fifth century BCE, the city-states in the area now known as Greece* were in a state of transformation that affected culture socially, politically and economically. At the beginning of the century, many of the Hellenic city-states and provinces around the eastern Mediterranean were confronted by the Persians one of the most powerful groups in the Middle East at that time. At this time, the Persian Empire was ruled by the Achaemenid Dynasty, which was founded by Cyrus the Great. Cyrus “assembled and persuaded” the Persian tribes to revolt and become one united domain, thus he controlled most of the Middle East, parts of Asia and the edges of Eastern Europe. Out of the many Greek city-states, that Athens had, perhaps, the most influence over the Hellenized provinces coveted by the Persians, thus resulted in Athens eventually becoming the primary target and adversary of the Persians in the Greco-Persian War. After Athens supported the provinces that rebelled against the Persians in the Ionian Revolts, a period of history in which several city-states in Turkey rebelled against the Persian rule, the

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* Due to changes in geographical names over time, geographic terms will be used in their modern form.

Persians turned their attention toward Athens and wanted vengeance against the Athenians interfering in their affairs.

The conflicts that occurred between Persia and Athens – the Battle of Marathon, the sacking of Athens, the Battle of Thermopylae, and the final battles of Salamis and Plataea – became historical battles that were remembered, even today. Athens emerged from the conflicts with Persia as a dominating power, with a strong navy and extensive alliances with other Greek city-states such as Sparta, thus lead Athens to have held a place of supremacy within the Delian League. The Delian League at this time was creating alliances among the city-states, including those, such as Thebes, that had sided with the Persians during the war, and was supported in the Mediterranean due to Athens large navy. After the conflict of the Persian War, Athens reformed many of its institutions and practices, including its government administration and legal systems. One of the results of these reforms was the establishment of a new type of political system in Athens, the beginning of the origins of Athenian democracy.

Democracy allowed for land owning males from Athens to control government, which previously had been more limited, with a larger focus on the class and wealth of the population, rather than equality. Changing to a more inclusive government required Athens to revise the legal system that was established prior to the Classical period. With a government that allowed for more rights and powers, Athens required a legal system that could protect the rights of the citizens. As discussed below, the legal system became quite a bit more complex.

Laws and regulations during this time influenced the inclusive government, for example, and citizenship laws established requirements limiting who could participate in government. In

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4 At the Battle of Marathon, Athens requested Spartan aid. Sparta, however, did not supply aid Athens before due to religious celebrations. As a result, in future battles, such as the Battle of Thermopylae, Sparta joined in alliance with Athens.
contrast, the creation of inheritance laws that allowed for the creation of wills or the establishment of juries to allow citizens to partake in the courts increased freedom and participation. In addition, the establishment of judicial institutions, such as juries and private versus public cases, allowed for the members of Athenian society to have control within the court systems and during trials. Finally, the way legal changes influenced society and culture during this time – such as economic influence or cultural influences, such as on theater – demonstrated how these changes affected the population. Sources for these changes within the legal system of Athens in the Classical period were demonstrated in a variety of literary documents, including court cases, accounts from philosophers, and in theatrical plays. While some of these changes to the legal system seemed to prevent legal freedom, these changes overall allowed for greater amounts of participation in government by the citizens of Athens.

To help better understand how Classical Athens as a society was affected by large amounts of stress and by the change in the new legal system, one must examine laws and regulations created during this time, study structures and institutions created for this new legal system, and inspect how these new legal systems were presented to the public and interfered with the day to day lives of peoples living in this society. Laws that dealt with citizenship, inheritance, and impiety were central in the development of this new legal system, and some of the best sources for understanding the changes to this legal system came from literary sources.
Laws and Regulations

Citizenship Laws

Prior to the Classical period, the legal system of Athens was based on other legal systems, specifically the Draconian legal system and the laws of Solon. In the Archaic period, the primary set of laws were the Draconian laws, most of which were repealed during the 6th century BCE, which resulted in a lack of knowledge on the laws, besides the homicide laws.\(^5\) The information on this law system that has been preserved, details the hierarchy of government, which was centered on the status of an individual.\(^6\) In the 6th century BCE, these laws were repealed by Solon, who divided the population into classes based on wealth allowed only the top classes to control government, however, all male Athenian citizens were able to repeal the decisions of magistrates.\(^7\) These changes to legal reforms during the 6th century aided in the legal changes that occurred during the rise of democracy in the 5th century.

To understand how the Athenian legal system was affected by stress and change, one must examine several laws and regulations that were produced during this time. At a time in which a new type of government was formed in order to protect the society from civil strife, it was argued by important philosophers such as Plato, Aristotle, and Thucydides that the polis, or city-state, required a strong legal system to protect the stability of the social order.\(^8\) Important figures in Athenian society making note of the importance of these laws on Athens was crucial because this emphasized that the changes to the legal system were needed to accompany the new

government. Because Athens was using a type of government that allowed for citizens to have more influence within government, a critical portion of the laws that had to be created during the fifth century revolved around who was and was not considered a citizen.

During the fifth century BCE, one of the most important political figures in Athens was Pericles, a politician, and orator. Pericles has been credited with creating laws, expressing interest in the arts, and governing Athens at the beginning of the Peloponnesian War. Circa 451/450 BCE, Pericles was responsible for writing the law of Athens that determined who was a citizen.9 Fortunately, Aristotle gave a description of the written by Pericles law, stating that citizenship was open to those who were of “citizen-birth by both parents,” and went on to explain how young men could finalize their citizenship and become active citizens after the age of 18. 10 By having specific requirements for citizenship, including what the men needed to accomplish before being considered full citizens, Athens guaranteed that not only did they know exactly who was and was not a citizen, but it also ensured that the citizens that who would be participating in and helping run the government would be well educated on the way that the system was run.

This led to complications regarding whom had previously been considered a citizen. Prior to this law, all that was needed for a person to be considered a citizen was that their father was a citizen of Athens. However, the change to the law, specifically that the mother also had to be from Athens, prevented many people from having citizenship who may have had it previously. For example, the mother Pericles’ own children, was from Corinth, therefore, his

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children were not citizens. 11 This showed that despite having been an important politician with his family, like his father, and having been involved in Athenian politics, this law limiting who could participate in government also had influence over all of those in Athens, not just the lower classes. These changes to the citizenship laws offered stability for the city-state but also prevented some free men from having a role in the government. By changing citizenship requirements, the new Athenian government was able to provide itself with a strong foundation despite the many stresses and changes in the world surrounding them during the 5th century. And by ensuring that all members of Athenian society were equally affected by these laws, this guaranteed that all classes of society had an equal opportunity to be citizens so long as they met the requirements of citizenship.

**Inheritance Laws**

In addition to the citizenship laws that were created and altered during the 5th century, another key law that was created in Athens during the 5th century dealt with the importance of inheritance and succession with regard to property. With earlier inheritance laws within Athens created during the 6th century by Solon, succession in Classical Athenian law followed a similar pattern. Preference was given to males and children of males over females within a family, even if this resulted in the person who inherited being further away in relation to the deceased than if a female relative were to inherit. 12 This pattern of males gaining access to the property in a specific order ensured that the property traveled through the male line. That also ensured that the males

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were more likely to be more particular in choosing who to marry to ensure that their children were citizens of Athens.

Before Solon’s laws regarding inheritance, Athenians were likely not allowed to make wills, and his new regulations allowed for men “to make a will, dispose of one’s property by will.”

A will allowed for an itemized list of the assets for each estate had and what was to occur to each portion of an estate. An example of this itemization is expressed in the speech of Demosthenes in 364/363. He stated that his father, “left two manufactories, in each of which a considerable trade was carried on…. Besides this, he left ivory and iron,” as well as many other types of good that were to be used in the manufacturing process. Leaving such a detailed type of list as a will for successors helped to ensure the inheritance laws of ancient Athens were followed after the death of the male of the family.

Interestingly, though, this form of inheritance allowed the basis for Athenian testamentary law to remain in place, allowing for men to choose who their estate and property went to once they died, whether to legitimate sons or adopted children. These laws stated that as long as sons were adopted, both the adopted children, as well as the legitimate sons, would be included in the will, both inheriting before illegitimate children. However, though this law was initially created in the 6th century BCE, this law was also highly relevant during that the 5th century with relation to the citizenship laws that were created.

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Because Solon’s laws allowed for men to specify who would inherit their estates after their deaths, this allowed not only for legitimate sons to be able to inherit, but also allowed for illegitimate as well as adopted children to inherit before other members of the family. The citizenship laws that stated that citizens required both parents be citizens of Athens and the maintenance of these laws in regards to inheritance allowed for those who were not considered citizens to be able to gain some forms of property that they themselves would likely not be able to have access to due to not being citizens. Without this law, it was likely that there had been even greater implications of the citizenship laws that Pericles created, which meant that these laws ensured greater liberty for the people of Athens.

**Impiety Laws**

In addition to the citizenship and inheritance laws a final series of laws created during the 5th century in Athens that strongly impacted the lives of the Athenians were the regulations with regards to impiety. In modern times, no surviving legal definitions of impiety have survived, and many scholars believe that they may have never existed.\(^{17}\) Despite the lack of evidence of impiety laws created in the 5th century, there have been many surviving legal cases specifically from the 5th century and “attested prosecutions” for “impiety,” which present evidence for specific laws and regulations that may have existed and perhaps even created during this time. These cases were processed as assessable lawsuits without penal limits, meaning that the penalty could be anything, even so far as death.\(^{18}\) This had a serious impact on the way religion was

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\(^{17}\) Phillips. *The Law of Ancient Athens.* 408

practiced within the city. And the establishment of a new legal system would have made it easier
to ensure that the laws in regards to religion were followed, in ways that would not have been
possible prior to the changes to the legal system.

One example of these religious regulations involved olive trees, which in Athens were
considered sacred. This was due in part because of an olive branch on the origin myth of Athens
when Athena presented the people of Athens with an olive tree and resulted in her being selected
as the patron goddess of the city. Aristotle wrote in his work *Athenian Constitution* that olive oil
was sacred; it was to be collected and sent into the treasury’s storage only by the archon, who
was to handle the sacred oil the entire time they were in power. 19 The fact that the olive oil
could only be trusted to a citizen with a position of high authority demonstrates how important
these trees were to those in Athenian society.

An ancient court case preserves a defense speech written by Lysias, who had been
accused of destroying a sacred olive tree, discussed that “a person who so desired to avoid both
lawsuits and anxieties by leading a quiet life,” but he that had fallen victim to accusations of
removing an olive tree from its location on his land. 20 He went on to state that not only were
these accusation slanderous, but after making the initial allegation against him, the accusers
attempted to make “inquiry of the men who had bought the produce of the sacred olives.” 21 This
meant that those who accused him had tried to use these allegations falsely to try other people.
However, once they were unable to use this accusation to prove that he was guilty, the accusers
retracted their allegations and went back to the initial charges of destroying a sacred icon. 22

University Press, 1930.) 147.
Lysias believed that those accusing him thought that the original allegation was more difficult to disprove and therefore easier for them to make a case. This example illustrated the laws and regulations that surrounded the religious aspect of society in Ancient Athens and how the laws affected the personal lives of the citizens. This case study presented from the personal viewpoint of the accused provides insight into the way in which the so-called impious were charged with crimes and that the court's beliefs influenced the outcome of the trials.

Another very important court case in fifth-century Athens that dealt with allegations with regards to impiety was the case and eventual execution of the philosopher Socrates. A dramatic dialogue in the play *Euthyphro* written by Plato, a former student of Socrates, portrayed a dramatized version of Socrates during the trials that led to his execution. The fictional version of Socrates stated that a charge had been brought against him, but the “Athenians don’t call it a lawsuit… but an indictment.” Socrates went on to say that he was being brought to trial by a man who “knows how the young men are being corrupted, and who’s corrupting them,” for inventing gods, because he supposedly was creating gods and ignoring the old gods, which Socrates specified was why he was brought to trial. Socrates did admit to worshipping *daimons* that were the children of the gods, often nymphs or nature gods; this, in turn, meant that he must believe in those gods. Socrates also stated that if he was corrupting the youth, whether intentionally or unintentionally, the law did not require for him to be brought to trial, especially considering he did believe in the gods. Evidence from Socrates’ trial and eventual execution

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helps provide evidence that these accusations of impiety were often used as justifications for other “crimes” or to cover vendettas of those who had brought the charges against the accused. These texts also helped give more concrete evidence for the laws and regulations that were created in regards to impiety that records and texts for no longer exist, considering the trials for these types of cases occurred during the fifth century. While many of these charges appeared to allow for biased cases, the cases nonetheless helped to prove that important figures, such as Socrates, were also being placed on trial, not just the ordinary citizens.

Between the laws and regulations regarding citizenship, inheritance, and impiety, the importance to uphold these laws in a time of change and stress left an important influence on the structures and institutions that were needed for this evolving legal system. While citizenship laws did prevent many members of Athenian society from being citizens, these laws did ensure that the requirements for citizenship were the same for all members, regardless of class or wealth. In addition, the laws in regards to inheritance helped to ensure that the owners of the property had some choice as to what would happen to their estates once they were gone. Finally, while no written records survived, the laws regarding impiety, are presented in the information on cases from that time, and demonstrate how even key figures from society could be tried in the court systems, demonstrating further forms of equality. These three imperative types of law and regulation changes that occurred during the 5th century demonstrate that while there were limitations to the new laws, there was more generally equality and freedom in Athens than before the 5th century.
Structures and Institutions

The Formation of the Jury

After understanding what types of laws and regulations were created during the Classical period in Ancient Athens, one must look at the structures and institutions that were created for this new legal system during times of such stress and change. During this point in Athenian history, there was a large increase in population, accompanied by an increase of court cases. In order to accommodate this increase in court cases, a new structure of the judicial system was created to ensure that the cases were examined by other citizens. The jury consisted of a representative group of citizens; each year 6,000 men were chosen to be jurors, each of whom had to be at least be 30 years of age and citizens. Though the court did not sit every day, those who did sit on the jury during the year were given pay as compensation. Many scholars believe that this was to ensure that even the poor citizens of Athens would participate in juries.

A key example of how important this compensation became for the poorer class comes from Aristophanes’ work, Wasps, an old comedy that critiques Athenian judicial institutions, primarily the law courts. It is focused primarily on a father and his son and how the influence of the new court system affected their lives. In the comedy, during a discussion between a father and his son, when the son asks about what they would do if the court was not held that day, and the father replies that he really did not, “know where our dinner will come from,” without the pay from sitting on the jury. This piece of theater presented to the public demonstrated how greatly many Athenians began to rely on the jury system, not only for the judicial aspect but also

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for the economic aspect. Every year after the jurors for the year were selected, they were divided into 12 panels, and during each case, a number of panels were selected to sit on the court during a trial. Separating those selected into different panels ensured that the citizens sitting during a trial differed and were not consistently drawn from the same group of people. This new way of ensuring a fair number of a spokesperson from within the population of Athens led to a more representative type of cases and presentation in judicial courts.

**Case Presentation: Public versus Private**

In addition to the wider use of jurors during in the 5th century, another key aspect of the courts was the presentation of cases, of special significances were the differences between public and private trials. Though trials in earlier times, like Solon’s, were easier to establish and bring to court, assembling a jury for a trial was often an extensive and tedious task. Because of this, it was often easier to have a small trial that did not require a jury. If the case brought against the defendant was not considered a community trial, and if both sides of the case were in agreement on the decision provided by a third party who was under an oath, then the case could be settled within a private court setting. If, however, the disagreement could not be settled, or if the case was considered to be too “important” to not be assessed by a jury, then under the city-states’ authority, a court date and jury were established to hold a public trial. Because public trials required a jury, these cases could be seen more open and equal for those involved, therefore more inclusive like democracy, and connect the importance of community within the judicial

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system. However, because the citizens were able to have more than just one type of trial, Athenians were able to better represent themselves within the judicial system. Types of cases, as well as the establishment of juries, allowed the people of Athens to be able to have a say in defending themselves as well as ensuring justice for themselves.

An excellent example of how the 5th-century court system likely worked comes from the tragedy written by Aeschylus, the only extant trilogy, the *Oresteia*. Particularly important is the final play, the *Eumenides* or the Furies. In ancient Greece, the courts in Athens centered around one location, the Areopagus and the council that resided there held a very important role. The Areopagus was a hill to the west of the Acropolis, a location in the very center of ancient Athens right next to the ancient Agora. The council was originally considered the group that had control over the legal system, and by the 5th century BCE, it had control over trials dealing with extreme cases, particularly murder. The final tragedy of the *Oresteia* trilogy, the *Eumenides* took place at the Areopagus.

The *Oresteia* trilogy focused on the mythological Mycenaean King Agamemnon, his wife, Clytemnestra, and their son, Orestes. The first play, *Agamemnon*, focused on the king who had just returned from the mythological war of Troy, and on Clytemnestra murdering him as revenge for killing their daughter and gaining power. It is followed by the *Libation Bearers*, in which Orestes, with the guidance of Apollo, god of oracles, murdered his mother to avenge his father. Finally, at the beginning of the *Eumenides*, Orestes in speaking with Apollo, discussing what to do after he has murdered his mother, Clytemnestra, at the order of Apollo, resulting in being haunted by the furies, who seek justice for Clytemnestra. Apollo suggests going to

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Athens, the city of Athena, the goddess of wisdom and knowledge, and presenting his case before her, where he would be judged by Athenian men for what Apollo had commanded him to do.\textsuperscript{38} It was here that Athena heard the story of what Orestes did to his mother and decided to select a jury of the “finest of my citizens who will strive to return an honest verdict, uphold their pledge, and deliberate with judicial minds,” and that they would the first consistent jury to judge for harsh crimes such a murder.\textsuperscript{39} As a play written that describes a trial, especially a mythological trial that claimed to be the first murder court with a jury, in which the primary force in judgment was the goddess of the city, the \textit{Eumenides} demonstrates how the court was conducted in the eyes of the citizens. It offers details about how the case was presented when the jury voted, and how future trials, especially murder trials were to be conducted from that point forward.

\textbf{Influence on Society and Culture}

A final important feature of the legal system that was created in Athens during the Classical period that must be inspected was the ways in which the new legal system was presented to the public and influenced the lives of the peoples living within this society. With a focus on the participation of citizens in government, that resulted in the public controlling politics, including trade.\textsuperscript{40} As a result, according to Aristotle, roughly 20 thousand men earned their living through tribute, taxation or money that was brought in by the city-state, adding to the

\textsuperscript{38} Aeschylus. \textit{Oresteia: The Furies}.\textsuperscript{*} 126 – 127.
citizens’ desire to participate in political and governmental life.\textsuperscript{41} In addition, because many outside figures had important deals with the Athenian judicial and court systems, this resulted in an even larger influx of goods and wealth from outside sources.\textsuperscript{42} This change in the economy due to laws and regulations, as well as participation from many different groups likely, allowed for the Athenian Empire to eventually grow to the point that it reached at the end of the 5\textsuperscript{th} century BCE. Laws and regulations having a direct influence on the economic changes with Athens predict that the wealth and prosperity that occurred in Athens during this time coincides with the changes to the judicial system. The direct effects of laws such as the citizenship law and preventing those who may have previously considered from being citizens, greatly impacted the ways in which the citizens of Athens lived, but it also affected how they viewed the Athenian way of life.

**Presentation through Theater: the Oresteia**

Another critical aspect for understanding how these new political and judicial laws and changes were being presented to and thought about by the citizens within Athens. One important way of demonstrating the legal system to, the citizens in a public way was by, drawing from information and inferences evident in the tragedies written for the festival of Dionysus. As previously mention, the *Oresteia* was an excellent primary source for surmising features of the Athenian legal system in Athens during this time. Not only for the fact that source gives specifics as to how judicial practices took form but, it also provides an in-depth source for examining

\textsuperscript{41} Boedeker, *Democracy, Empire, and the Arts in Fifth-century Athens*. 20 – 21.
\textsuperscript{42} Boedeker, *Democracy, Empire, and the Arts in Fifth-century Athens*. 25.
public perceptions. In the beginning of the final play, Orestes begged Apollo to save him from the torment of the furies and yet Apollo was not able to rid him of them because it was the oracle of Apollo that called for Clytemnestra’s death.\textsuperscript{43} By presenting the idea that neither a prince nor a god was able to solve a problem and therefore they must turn to the courts of Athena, and therefore to Athens, the \textit{Eumenides} began to form the idea that the Athenians believed that Athens and its judicial system were superior to other forms. Even though Apollo, the god of oracles and patron god of Delphi, influenced Orestes to commit the crime, Apollo did not possess the wisdom to understand what repercussions these actions would have for Orestes. Athena, goddess of wisdom, however, was able to logically comprehend what had occurred, and Athens, as the city of Athena, would also have more wisdom than other city-states as Athena had over other gods.

Furthermore, when presenting the cases before Athena, Orestes presented his side first and was very logical, trying to gain favor with Athena, a process similar to the opening arguments in a courtroom today.\textsuperscript{44} In contrast, the Furies, performed a “binding dance” with “malignant music,” displaying a more emotional presentation that did little to persuade Athena or give any information in regards to what their side of the argument it.\textsuperscript{45} This presentation of logic versus emotion demonstrates that the citizens of Athens believed that the new form of justice worked far better in that it offered a concise perspective and showed thought and reason, which was the foundation of learning and discussion in Athens. By presenting these views that Athena and Athens had superior judicial and governmental systems over the other Greek city-states, the

\textsuperscript{43} Aeschylus. \textit{Oresteia: The Furies}.\textsuperscript{*} 125.
\textsuperscript{44} Aeschylus. \textit{Oresteia: The Furies}.\textsuperscript{*} 129 – 130.
\textsuperscript{45} Aeschylus. \textit{Oresteia: The Furies}.\textsuperscript{*} 130 – 131.
Eumenides constructs an image for the Athenian citizens that their judicial system and
government were the best options and they took pride in them.

Presentation through Theater: Antigone

In addition to the play Oresteia by Aeschylus, another critically important work that
demonstrates certain aspects of the legal system to the citizens in a public way was Antigone, a
play written about the daughter of Oedipus, with the events having taken place after the events of
Oedipus Rex. Oedipus was the king of Thebes who was known for a self-fulfilling prophecy, in
which he killed his father and the married his mother, producing 4 children, Eteocles, Polynices,
Antigone, and Ismene, all of whom were products of incest. When Oedipus dies in exile, his
sons were set to take his place as king of Thebes, sharing their rule. However, Eteocles became
unwilling to share the throne with Polynices, who, as a result, declared war on Eteocles and the
city of Thebes. Within Antigone, Creon, the newly appointed king of Thebes, made a claim that
under his rule he would change the laws; he then made a decree that Antigone’s brother
Polynices was not to be buried due to his treason against the city of Thebes. Antigone,
however, broke this law and buried her brother, and when confronted by Creon, she stated that
she has not broken a law because it was in the gods’ laws that men be buried.

46 Harris, Edward Monroe. Democracy and the Rule of Law in Classical Athens: Essays on Law, Society,
59 – 60.
debated over if Creon or Antigone were at fault. However, one position that has arisen was the idea that “both sides are at fault,” due to both sides breaking some form of law.\textsuperscript{49} By writing this type of argument, Sophocles opened up two discussions – first about whether or not the state or governments laws overrode the laws of tradition and religion, and second whether or not previously established laws held precedence over new laws.\textsuperscript{50} Presenting these questions of religion and tradition to the citizens of Athens, Sophocles allowed for Athenians to contemplate whether or not their new form of government, not simply a new ruler such as in Antigone, had rules and regulations in place to ensure that certain traditions and established laws remained protected. This contemplation over their new legal system allowed for the citizens to take into account changes to governments and how they could protect themselves from changes that may have interfered with their traditions.

\textbf{Chapter Summary}

Examining the changes to laws and regulations, structures and institutions, and the legal influence on public life presents a better understanding of how the legal system in Classical Athens changed during the fifth century. With the changes made to the citizenship laws created during the 5\textsuperscript{th} century, Athens was able to keep better accounts and to better educate those who were citizens. However, the law also prohibited and prevented participation by some of those who had been previously considered citizens. Inheritance laws allowed for wills to be created by property owners and ensured that not only legitimate but also possibly illegitimate family

\textsuperscript{49} Harris. 	extit{Democracy and the Rule of Law in Classical Athens: Essays on Law, Society, and Politics}. 43.
\textsuperscript{50} Harris. 	extit{Democracy and the Rule of Law in Classical Athens: Essays on Law, Society, and Politics}. 48, 58.
members had the ability to inherit. The laws regarding impiety were often large matters, such as the trial of Socrates, but there was a possibility that these laws were often used by the complainants as false charges.

In addition to the laws and regulations that were created or utilized during this time, the importance of the structures of the legal system that was being changed during this time was crucial. It was at this point that the jury system was introduced, in which all citizens of Athens had a chance to participate in the judicial system. In addition to juries, citizens also controlled the structure of the judicial court system by having access to both public as well as private trials. An excellent example of how a court during the classical period was run or was at least based off of can be found in the final tragedy of the trilogy, the *Oresteia*, in which Athena helps settle a court case against Orestes for killing his mother. Another key example of a demonstration of how the new legal systems impacted the lives of the citizens of Athens can be found within the tragedy *Antigone*, bring up the matter as to whether or not newer laws within this new government trump prior laws and regulations.

Finally, in addition to laws such as the citizenship laws or inheritance laws that had direct consequences for the citizens, changes to the legal system also had indirect consequences. One example was the impact it had on the economy since the new system encouraged citizens to become more involved and many laws and regulations in regards to economy and trade aided the citizens in gaining more personally wealth for themselves and the city-state. Another important aspect with how these changes affected the lives of the people of Athens deals with how the citizens viewed these changes to the judicial system and how these changes were presented to the public.
While several aspects appeared to prevent government participation such as specific guidelines for citizenship, many aspects, such as the formation of juries, the laws surrounding inheritance, or the presentation of a legal change in literary works like the *Oresteia* or the *Antigone*, demonstrated ways in which the new legal system was inclusive. One of the first legal systems to allow for so many different forms of inclusion into the judicial process was key to aiding democracy. Having provided the members of the society more ways protect the freedoms presented in democracy, the changes to the legal system were crucial in protecting the new form of government. Overall, had it not been for the legal changes developed during that time, democracy in Classical Athens may not have protected the rights of its citizens and lead to civil strife.

These aspects of the judicial system, created during the founding of democracy in Athens during the 5th century, have direct connections to democracy. Because democracy was created during a time of stress and changes, a result of the changes in power, as well as the conflict with the Persians. Another civilization that had similar changes to the judicial system during a time of stress and change was Mediaeval Britain after 1066 CE and the conquest of William of Normandy. While similar in many ways, these groups were also very different, with Athens introducing a new government from within, the British were introduced to a new government from an external power. By comparing these two civilizations, one can better understand how large amounts of stress and change to a new government, and how that influences the judicial system of this government.
Chapter 2
England and Law Post 1066

“They must, therefore, be restrained by the strong hand of justice, and compelled to walk in the right way by the reins of discipline.”

-Ordericus Vitalis on the rule of William I

During the Middle Ages, kingdoms and ruling governments within Europe were vastly different from one another. However, few were as unique as England. An island separated geographically from the majority of Western Europe, a number of external populations, from the Romans to the Anglo-Saxons, to the Vikings, and eventually, the Normans, had influenced England during the Middle Ages. At the middle of the 11th century, the rule of the Anglo-Saxon kings of England was ending. While the Anglo-Saxon government was considered advanced for its time; by modern standards, the government was undeveloped and retained its control over the population with the threat of brute force.

When Edward the Confessor, the last of the West Saxon kings, was crowned in 1042 as the successor to his half-brother Harthacanute, he was supported by many, including his brother-in-law Harold Godwinson, who would succeed him. Harold Godwinson came from an important family in Sussex, and his father Godwin had been a close minion of King Cnut. This base of

power allowed Harold a large influence on the royal courts.\textsuperscript{53} When Edward the Confessor died in 1066, Harold had enough power that, although Edward had living relatives who could succeed him, Harold was able to assume the throne with only slight dissent from the north within England.\textsuperscript{54} The greatest threat to Harold’s reign came from William of Normandy or William the Bastard, who believed he was the rightful successor of Edward the Confessor.

Because the king had no direct descendants or heirs, in 1051, Edward nominated William of Normandy as his successor. In addition to kinship as cousins, there was William’s age, military, and political experience.\textsuperscript{55} According to Norman Historians, Harold even acknowledged William’s claim to the English Throne. Both the Bayeux Tapestry and the historian William of Poitiers record that, during a visit to France, Harold made an oath to William over relics, accepting that William was the true successor of Edward the Confessor.\textsuperscript{56} When Harold assumed the throne, disregarding his supposed oath, William took action. While Harold was in the north facing the invasion of the Norwegian King Harald Hardrada in the autumn of 1066, William sailed to England and landed in the south, forcing Harold to travel quickly to Hastings, where William defeated his exhausted troops.\textsuperscript{57} With Harold defeated, William was free to take over England as the king. Because of his connections in France as the Duke of Normandy, Frankish customs heavily influenced his administration. Not only did he establish a new system of nobility with French nobles, but his position as a vassal of the king of France resulted in contributions to the ways in which William governed.

\textsuperscript{53} Thomas. \textit{The Norman Conquest: England after William the Conqueror}. 15.
\textsuperscript{54} Thomas. \textit{The Norman Conquest: England after William the Conqueror}. 18.
\textsuperscript{56} Douglas. \textit{English Historical Documents}. 235.
\textsuperscript{57} Everley, Corey. \textit{A Medieval Influence: How the Normans Influenced Great Britain}. (State College, May 5, 2015.) 3.
For a new government formed by a group from an external society, it was important that William retain as much power and control over; for this, Norman kings of England were known as “disagreeable men, masterful, stern and cruel.” The laws and regulations created by the Normans during this time influenced who was involved within the government, for example, when William established his court, he created a new system of nobility consisting primarily of fellow francophone-speakers, rather than the native population. The Normans changed the judicial system in the formation of the courts. The separation of England and Normandy by the English Channel together with the large territorial extent of the former meant that King William had to rely on his nobles to administer justice or devote his entire energies to personal adjudication. Many of these changes allow us define the authority of William and the Norman monarchy. Not only did they allowed for greater participation on the part of the nobility, but that contribution required more information about the practices of the government. Finally, the legal changes affected the population and the way legal changes influenced society and culture – such as on the literature that was written during this time – are found in a variety of literature, including legal cases, personal accounts from nobility, and contemporary stories.

In order to understand how the society of England after 1066 was affected by the changes created by a new government with new legal systems, we must look at the laws and regulations created during this time, study structures and institutions created for this new legal system, and inspect how these new legal systems were presented to the public and interfered with the day to day lives of peoples living in this society. Through an examination of the laws that dealt with

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58 Poole, Austin Lane. From Doomsday Book to Magna Carta, 1087-1216. 2nd Ed. (Oxford at the Claredon Press: 1955.) 97.
citizenship, inheritance, and religion that were created during this time can help one better understand the changes that occurred in the legal system during this time.

Laws and Regulations

Citizenship and Nobility Laws

Before the Norman Conquest, the Anglo-Saxons kings had a unique government that allowed for strong enforcement of legal policies. England had a large amount of wealth, mainly because of the importance of maritime commerce and number of ports that allowed for places such as London to become an important commercial center, especially during the 11th century. With the large quantities of wealth the English processed, the English king had large amounts of control over its military and, sequentially, the government. To retain this control over the government, the kings during this time would have required a strong legal system.

Edward the Confessor created a framework of laws that defined his rule for later generations. During the reign of King Edward the Confessor, law codes based on earlier legal materials were written. They, in turn, were used for the creation of later words, such as the twelfth century *Leges Edwardi Confessoris* “the Laws of Edward the Confessor,” creating a fictitious historical document that gives some insight into the real laws created during that time. Because these laws were created after the rule of Edward the Confessor, the Conquest heavily influenced these texts. However, they do suggest some signs of “continuity,” that the laws implemented and recorded by William and the Norman government retained characteristics of

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the previous government.\textsuperscript{62} This was important for William because aided him in implementing his personal laws more quickly as well as asserting his claim to the throne.

William inherited an interesting predicament; who would he place in positions of power? Initially, William had intended to allow “the customs of Edward the Confessor,” meaning that he planned to retain many of Edward’s laws, and retain the customs regarding the English Nobility.\textsuperscript{63} However, during the fighting against Harold Godwinson, many of the English nobility had fought, and, as noted by William of Poitiers, “the blood-stained battleground was covered with the flower of the youth and nobility of England.”\textsuperscript{64} Forfeits, grants, and deaths meant that by 1086 the majority of the 200 or so members of the nobility in England were not England and were almost exclusively from the francosphere.\textsuperscript{65} This large shift within 20 years of the Norman rule illustrates an important reorganization within English society generally. Another important aspect was that William, a vassal of the French king, gained more freedom and influence, which allowed his own nobility to have better control over their own position.\textsuperscript{66} With the majority of land owned by the king, but regranted to the nobility, they were able to hold a large influence over the way government was run.

William left in place several regulations for the nobility from the earlier regime because the new nobility consisted of an external population, although he fashioned several new concepts for the nobility. One important concept introduced to the nobility after the Norman Conquest was

\textsuperscript{62} Wormald, and Baxter. The Making of English Law: King Alfred to the Twelfth Century. 132.

\textsuperscript{63} Matthew. The Norman Conquest. 141.


\textsuperscript{65} O’Brien. God’s Peace and King’s Peace: The Laws of Edward the Confessor. 9.

\textsuperscript{66} O’Brien. God’s Peace and King’s Peace: The Laws of Edward the Confessor. 12.
that of “chivalry” and the equality between nobles. Though this concept was not the same as “chevalerie,” it required the nobles to provide some form of respect for one another. Even if someone of “gentle birth” was defeated, as a noble, they were still above people of “low-status” and were to be treated with respect. While this might have been a way for William to control his nobility, this certainly was a way for the nobility to ensure that other nobility does not diminish their property and position. Furthermore, this code allowed the nobility to prevent feuding amongst families and form strong coalitions, which would have aided them in gaining more power. By forming alliances, the nobility would have been able to request support from one another and, therefore, have more control over their domains. The nobility gained so much power that when Henry II was in power about 100 years later, it was argued that the king needed consent from the nobility to implement new laws. This strengthening of power for both the nobility as well as for the monarchy would have been crucial in ensuring that the new government retained control over the population. The implementation of a new system of nobility and the codes that accompanied them allowed for a group other than the monarchy to have power in England during this time.

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69 Poole, Austin Lane. From Doomsday Book to Magna Carta, 1087-1216. 10.
Inheritance Laws

Due to the changes that were made to the nobility of England by the Normans, the issue who owned land in England and how inheritance was handled became an important topic. Together with the substitution of the original English nobility of earls and thanes to the Norman counts, barons and dukes, the control of the majority of land in England had been transferred to foreigners, an attempt on the part of William the Conqueror to gain loyal men to serve him in the military if needed.\(^70\) Though the control of the land ultimately belonged to the king, this change of authority from English to Norman resulted in disputed titles amongst the Normans for the land that was removed from the control of the English.\(^71\) To prevent further disputes amongst the nobility as well as provide the new nobility with some forms of legitimacy, the revision of inheritance laws during this time was imperative.

When the Norman arrived in England, they already had begun developing a concept of heritability, from father to son, making family succession the norm.\(^72\) This was important because it allowed families to transfer intact large amounts of power and wealth accumulated from generation to generation. However, it has been argued that the inheritance rules from this period were not uniform. It has been argued that the “tenant’s heir had no rights in the land but merely a claim to succeed.”\(^73\) This definition of succession during this time is important not only for the land the nobility allowed their tenants to use but also for the nobles’ claims to the land that they controlled. Much as William was a vassal of the king of France because he was the Duke of Normandy, all nobility under the English government were vassals or tenants of


\(^{71}\) Hollister. *The Impact of the Norman Conquest*. 103.


William. Because the king ultimately controlled the land, which had been given to the new Norman nobility, and the nobility had the authority to grant or remove land from their tenants a noble family could still potentially lose its land. Therefore, while the nobility had more authority over their tenants, they did not have total independence from the monarchy.

Of course, sometimes-younger sons inherited from their father’s, but it was rare.74 One of the best-known exceptions came within the family of King William. His second son William “Rufus” inherited the kingship of England while his eldest son Robert “Curthose” inherited the duchy of Normandy. Even though it can be argued that Normandy was more important than England to William, as the eldest son, Robert should have had both regions under the customs of primogeniture. More telling about the flexibility of these new laws was that William Rufus’ heir was not Robert, but the youngest brother Henry, the future Henry I. Few instances in which younger sons inherited land ahead of elder brothers demonstrated that those who owned land or any form of property had some say in the ways in which their property was distributed. This influence over the inheritance suggested that the nobles might have still had influence over what happened to their property despite the fact that the monarchy had ultimate control. These rules concerning the inheritance of land were important for those of Norman England, especially the nobility, because they helped define who was in control over the lands that they were given after the Norman Conquest.

Another important legal factor in deciding inheritance and land control was how the issue who was the immediate successor was from a family. Different texts from that period provide different insights into how a successor was decided. The *Leges Henrici*, a text that dates approximately 60 years after the Norman Conquest deals with legal customs in England during

the reign of Henry I, that relatives “up to the fifth joint might succeed ‘by hereditary right.’” The closest heirs were sons and daughters and those more distant heirs were chosen in “order of decreasing proximity,” with aunts and cousins as the last possible heirs, as was similar in Ireland and Wales. These texts demonstrated the importance for having someone to inherit after someone dies in the family, even if it happens to be women or distant relatives.

One example of inheritance within England after the Norman Conquest can be shown in the lay of *La Fresne* by Marie de France, a French woman who lived in England during the 12th century. The poem tells the story of a young woman, La Fresne (“The Ash Tree”), nobly born who was abandoned as an infant. When La Fresne and the man she loved, Gurun, are unable to marry due to her status in society, La Fresne’s twin sister, whom her parents raised, became betrothed to Gurun. It was not until after the revelation of La Fresne’s identity as a noble that she was allowed to marry Gurun and become an “heiress to half” of her families’ estate. This poem demonstrated the importance of inheritance among the nobility and how status within society affected how land was inherited. In addition, this emphasis on the right to inherit also emphasizes the importance of nobility within English society after the Norman Conquest.

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78 De France and Slavitt. *The Lays of Marie De France*. 40 – 43.
Religious Laws

A final series of regulations after the Norman Conquest in England were the regulations with regards to religion. When William assumed power in England in 1066, he began to portray himself as a “protector of the clergy, benefactor of churches and just governor of his people,” to promote himself in a way that would gain favor among his subjects. With religion being an integral part of most societies in Europe during this time, control of the church allowed William to have additional influence over the people of England.

When William initially assumed power in 1066, the church in England was considered to be in danger and therefore, was easily controlled; the majority of church officials swore loyalty to the new king relatively quickly. After his coronation, William promised to defend the English churches as well as their clergy, which assumed that William had control over the church. Though he promised to protect the clergy, eventually William decided to modify the formation of the church, and he began by removing the native bishops and abbots from the churches and replacing them with Norman bishops and abbots, with many of the bishops came from his personal household. This specific appointment of church officials demonstrated that William was selecting church officials to aid him in his political power. William was looking for people with specific qualities: respectable conduct, sympathy toward religious reforms, administrative experience, and, if possible, prior military experience. By changing the clergy within the church to those loyal to him, William not only would have control over the land he

redistributed amongst the nobility, but he also would have gained control of the lands that the church controlled at this time. In addition, by installing new clergy that was loyal to his rule that also had administrative and military experience, William could utilize their influence on the population via persuasion and force. How this worked in practice is clear from the late eleventh-/early twelfth-century *Life of Bishop Wulfstan of Worcester*, a hagiographical account of one of two Anglo-Saxon bishops who survived King William’s renovations. The narrative stresses Wulfstan’s personal virtues and administrative ability, especially the management of his representatives.\footnote{William of Malmsbury, *Life of Wulfstan of Worcester*, ed. R.R. Darlington, Camden Society 11 (London 1928) 58.}

William himself could not create ecclesiastical reforms due to the Gregorian Reform Movement that freed the church from “lay ascendancy”\footnote{Gaudmet, J. “Gregorian Reform.” (*New Catholic Encyclopedia*. 2nd ed. Vol. 6. Detroit: Gale, 2003.) 469.}, yet many of the clergy William appointed to positions of power implemented many different rules that affected the church in England. One of William’s most important appointments was Lanfranc as archbishop of Canterbury. Lanfranc was known as an excellent theologian and teacher and had even been recommended to William by the Pope. He was also unworldly and pliable, which would be perfect for William to retain control over the church.\footnote{Barlow. *William the First and the Norman Conquest William I. and the Norman Conquest*. 141.} After the Norman Conquest, there was a revival of the church councils to introduce general reforms to the church, and in 1075, Lanfranc hosted his first council to begin to introduce reforms.\footnote{Matthew. *The Norman Conquest*. 210.} The following year, Lanfranc began to introduce canonical uniformity commonplace in churches in Normandy such as Rouen and Lisieux to churches such as Winchester, the de facto capital at the time, and all over England,
thus creating a type of consistency and unity amongst William’s lands.\textsuperscript{89} Afterwards, Lanfranc began to create new decrees for the church that would unify it further.

Prior to this point, the church in England had very little legislation, primarily because each archbishop created his own set of legislation.\textsuperscript{90} This lack of unity among the churches presented problems for enforcing church doctrine in England at that time. Though the concept of unifying the church in England began before he assumed authority, Lanfranc arrived with a “theory of metropolitan power” that he had developed using the resources from his legal training and following the example of ducal rule in Normandy.\textsuperscript{91} During this time, Lanfranc introduced canon law into England, consisting of the laws, rules, and regulations regarding administration and ceremonial practices of the Roman Catholic Church.\textsuperscript{92} Lanfranc accomplished this successfully through church councils, which were being reorganized, to adjudicate and apply the pertinent aspects of canon law.\textsuperscript{93} Establishing uniform Canon Law ensured that everyone within the English church was following the same system, and therefore, would have ensured that the archbishop of Canterbury (i.e. Lanfranc) remained the primary source of authority for the church.

With Lanfranc’s legislation, there was a clear reformation of diocesan administration, a formation of ecclesiastical courts, and the authority of the bishops was enforced by canon law, giving them more control within the church\textsuperscript{94}. The introduction of this legislation by Lanfranc not only granted more authority within the church in a hierarchy, it also ensured that each church

\textsuperscript{89} Barlow. *William the First and the Norman Conquest William I. and the Norman Conquest*. 145.
\textsuperscript{90} Barlow. *William the First and the Norman Conquest William I. and the Norman Conquest*. 145 – 146.
\textsuperscript{91} Matthew. *The Norman Conquest*. 175.
\textsuperscript{94} Barlow. *William the First and the Norman Conquest William I. and the Norman Conquest*. 146 – 147.
was administered in the same manner. In addition, because Lanfranc was in a seat of authority above this new hierarchy system and loyal to William, the king had more direct access to control over the churches in England than previously, despite the Gregorian Reforms preventing laymen direct authority over the church.

The laws and regulations regarding the nobility, inheritance, and religion implemented after the Norman Conquest needed to be upheld in the time of change and stress that influenced the structures and institutions controlling this evolving legal system. While the changes to nobility did remove power from the original nobility, these changes did allow for all nobility to have the same rights and privileges and aided in forming strong relationships in this newly forming government. In addition, while the laws regarding inheritance did take away rights from the “tenants,” it did allow the nobility to retain control over their lands. Finally, the changes to the clergy allowed for unity within the church to ensure that the new government retained control over many different areas of the country. These three important types of law and regulation changes that occurred after 1066 demonstrated that while the lower classes in England did not gain new rights, there was more unity and control over the government in England after the Norman Conquest.

**Structures and Institutions**

*The Court System*

The types of laws and regulations created after the Norman Conquest in 1066 in England leads to an examination of the court system that was used during this time to understand how the laws and regulations were enforced. As the Duke of Normandy and King of England, William
needed to establish control over two dissimilar legal systems. This could be quite basic; William’s domain was controlled in Normandy by ducal agents that placed the population at the “mercy of the Duke,” but in England, William’s legislation placed the civilians at the mercy of the king. The difference to contemporaries was vast because a duke had none of the sacral aspects of a king, whose person was inviolate and whose commands were believed to reflect divine instruction. There was also the matter of geography, because the size of William’s new kingdom made it impossible for him to have total control over all court cases during this time. The answer to this dilemma was “seigniorial jurisdiction,” in which every noble exercised the right over his tenants in a court system using forms that imitated those in the king’s courts. This resulted in local courts handling many different forms of disputes, primarily because the different forms of dispute came through the local courts first. While this type of appointment to power was not new for the nobility, because the nobility at that time consisted of an external population, giving this group power such as this over the legal system could have potentially caused problems within the population. At this time the boundaries between the secular and ecclesiastical were very flexible. Returning to the Life of Wulfstan, the saint is forced to admonish the knights who attended the bishop’s court and became so drunk that they started a brawl.

However, just because the nobility had control over the legal system did not mean that William was removed from what was occurring in the court systems. William was more likely to interfere with local courts due to the disorder brought on by the conquest.

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communication between the king’s court and the local courts was essential. To complete this, a strong hierarchical system for control of land was required, which aided in reaffirming the societal positions of everyone within the government.\footnote{Harding. \textit{The Law Courts of Medieval England}. 38 – 39.} The king was required to provide justice to those who appeared in court, however, rather than constructing specific courts for different circumstances, the king preferred to instruct the existing court."\footnote{Harding. \textit{The Law Courts of Medieval England}. 36.} One example of this is the record of a plea to the court of William I held at a “court at Laycock, a manor of William Eu,” which documents the details of the case and those who were involved in the case, from the nobility involved to the clergy that participated.\footnote{Harding. \textit{The Law Courts of Medieval England}. 134.} This case, while presided over by William, still occurred within the original court at Laycock, and the surviving account records that many different barons and earls were involved during the case. The king also provided the sheriffs, who were responsible for overseeing the lords within the courts, with information on particular cases.\footnote{Harding. \textit{The Law Courts of Medieval England}. 36 – 37.} This suggests that while the king wanted to have the most amount of control, due to the logistics regarding the size of England, he was willing to allow others to have a more hands-on approach than he did in many instances. By surrendering some control while still overseeing what occurred within his legal system under the laws and regulations he created.

\textit{Domesday Book}

Despite the new influx of people into England and the previous wealthy economic state of England before the Conquest, at the beginning of the Norman rule, England’s economy was in a state of disarray. King William commissioned a survey of his domain in 1086 known as “The
Great Book of Winchester” but more popularly called *Domesday Book*. Why it was considered necessary are explained by several notes regarding the “wasted” state of much of the manor lands and the many entries describing the destruction of settlements in the countryside.\(^{104}\) This change in economic standing would have had an impact on the way in which William established his rule and the ways in which the nobility was able to gain power.

Once William assumed power in England and began to redistribute the land amongst new Norman nobles, it was important that the new government had a record of what the landowners and nobility owned within England during this time so that the taxes could be collected. In 1086, William assembled a large group of men who swore an oath to him to collect the information he desired for the survey.\(^{105}\) The inquest came after a discussion held during council at Gloucester at Christmas time in 1085, where William decided to enquire specific details about the resources of the kingdom and who controlled the resources.\(^{106}\) Jurors, as representatives of each hundred, provided information used in documenting testimony of what resources were in the kingdom.\(^{107}\) The jurors were given a specific list of questions that they were to answer.\(^{108}\) For our purposes the two most important ones were “who held the land in the time of King Edward” and “who holds it now.”\(^{109}\) Despite *Domesday Book* being a financial document, those questions show the importance of population change, especially among the *bellatores* or aristocrats after the Norman Conquest. This information would have been crucial in making sure that William was able to

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\(^{109}\) Darby. *Domesday England*. 4
retain control over all of those who held land. This use of the jurors to collect information, while allowing for some form of representation, was influenced by their personal relationships between them and the nobility. Even though the jurors were representative of the population, unlike previous types of jurors, those collecting information for *Domesday Book* were creating a financial document that could be used for later legal purposes.

*Domesday Book* is one of the most informative descriptions of England after the Norman Conquest that provides information on how the society changed and how the Normans were able to assimilate into the new society that they belonged to.\(^{110}\) The specific list of questions that the jurors were required to ask ensured that William understood exactly who had control of his kingdom. In addition, this text also helped preserve information on familial ties and inheritance succession that was occurring among noble families during that time.\(^ {111}\) *Domesday Book* allowed William to have a better understanding of what was occurring among the noble families that he had given positions of power. In fact, due to the information that was recorded in the book and the economic, social, and legal implications it had on England, *Domesday Book* was seen as a book of judgment, “comparable to the Book by which one day all will be judged” and went on to become the limit of legal memory after the Norman Conquest.\(^ {112}\) Becoming the basis for legal memory at the would allow for William to ensure that court cases were handled in the same fashion and were following the same system of laws that were established after the Normans conquered England.

\(^{111}\) Hallam and Bates. *Domesday Book*. 122.
Influence on Society and Culture

Literature gives an important insight into how legal changes actually worked in post-conquest England. Despite the new influx of people into England and the previous wealthy economic state of England before the Conquest, at the beginning of the Norman rule, England’s economy was in a state of disarray. When William had Domesday Book created, there were several notes regarding the “wasted” state of much of the manor lands, many entries discussing the destruction of settlements in the countryside. This change in economic standing would have had an impact on the way in which William established his rule and the ways in which the nobility was able to gain power. The direct effects of laws such as the nobility laws and the reorganization of authority and land greatly affected the ways in which the people of England lived, but it also affected contemporary culture, such as literature.

Presentation through Literature: The Song of Roland

One literary example from this period that had important on Norman England is Le Chanson de Roland or The Song of Roland. Originally an oral epic poem, the story of Song of Roland reportedly traces back to the 8th century and the rule of Charlemagne, when Charlemagne’s nephew was killed when his rear-guard was returning from battle. Though the story was a well-known epic throughout much of Europe, it was not formally written down for over 300 years, after the Norman invasion, and many indications suggest that the writer was a Norman due to the language and style used within the poem and that the poem traveled into

England in Anglo-Norman, the dialect of French that those who moved after the conquest were known for using. This suggests that when William introduced his nobility into England that, in addition to language and other cultural examples, that they brought with them literature.

Because the epic began as an oral poem, it is likely that events that occurred during the time of writing may have influenced certain aspects of the story. Sometime after the Battle of Hastings, rumors began to arise that minstrels sang the *Song of Roland* before William and the Normans, the concepts of bravery, nationhood, and loyalty supposedly providing inspiration for the advancing Normans. In the *Song of Roland*, Roland, the nephew of Charlemagne died fighting against Arabic forces in the Pyrenean pass, preventing the Arabs from entering France and refusing surrender. Comparing William and his troops to Charlemagne, a man who became the first Holy Roman Emperor and his loyal troops that died to protect their “nation” would have presented William as an excellent leader to follow. This would have given William further control over the government and aided in ensuring his new subjects followed the new legal system established. Another important aspect within the Song of Roland that can be compared to the Norman society established in England is the emphasis on feudalism. Within the Song of Roland, there is a strong emphasis on hierarchy, with Charlemagne being the leader at the top, and to protect the nation, the hierarchy needed to be followed. This emphasis on hierarchy, with a strong leader at the top presented to the public, would have ensured that the new nobility laws and authority were followed. In order to present these two connections

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between the Song of Roland and the Normans, it is likely that the epic poem was altered in a way to encourage loyalty and nationhood among William’s subjects.

Considering that the original written version of the tale was in Anglo-Norman, it is likely that the Norman Conquest influenced the writing because William was Duke of Normandy and was influential in the lives of the people there as well as in England. In addition, the similarities in the story between William and Charlemagne as well as the representation of the feudal system suggests that this piece of literature may have aided in enforcing the new legal changes regarding the nobility and the authority of William. Using an important piece of literature to influence society, therefore, may have resulted in some alterations in the poem before being written down. These influences on literature due to the changes that were occurring within England are critical because it would not only affect those within England but in the case of *The Song of Roland*, it would also influence other European societies.

Presentation through Literature: Layamon’s Brut

In addition to the *Song of Roland*, another important piece of literature reflecting changes in political and judicial systems is *Layamon’s Brut, A history of the Britons*. Probably written by English priest Layamon during the rule of King Henry II, Layamon’s *Brut* provides a fictional account of the history of England, tracing the origins of the Britons to Ancient Greece. While written far later than *The Song of Roland*, Laymon’s *Brut* still would have been impacted by the Norman Conquest. The book, the book was heavily influenced by the French text, *Roman de Brut*, as well as by Anglo-Norman writer Geoffrey on Monmouth’s *Historia Regum*

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These influences of French text created a link between the relationship that developed between England and France after the Norman Invasion.

Several scenes illustrate influence the Normans and their government had on this piece of literature. One deals with the founding of the legendary round table, all under the reign of Arthur. Although a well-known legend, in Layamon’s version, Arthur founds the round table under an oath of all of his nobility after a rebellion occurred. Under the oath, all of the nobility, no matter the order in the hierarchy, swore an oath to one another and that they would not rebel again. Interestingly, in the story, Arthur himself swears not to break this oath. This supports the laws and regulations created for the nobility after the Norman Conquest to ensure equality, with all nobility swearing the same oath. In addition, it provides the nobility with some authority by having the king pledge the same oath. The text, however, does make sure to mention the different forms of nobility, such as earls, barons, and knights, and that they are to not rebel against Arthur, so even though there were some forms of equality, there still was still a hierarchy, much like the Normans. Of course, the tale of Arthur falls primarily in legend, which suggests that this example was directly influenced by the changes to the nobility and the laws regarding noble equality established after the Norman Invasion.

While not definitive, these examples, coupled with the fact that Layamon was said to be a priest, who often had political knowledge during that time, suggests that Layamon himself was heavily influenced by the changes introduced by the Normans, if not simply for the reforms brought to the church. In addition, the name Layamon itself has ties to judicial systems, as the

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120 Layamon, and Bzdyl. Layamon's "Brut": A History of the Britons. 11.
name is derived from the Norse word for lawyer. Despite having been written roughly over 100 years after the Norman Invasion, context clues about the writing of Layamon’s Brut demonstrates how much the changes to the legal system after the Norman Invasion influenced culture in England.

Chapter Summary

Investigating the changes to the laws and regulations, structures and institutions, and the legal influence on public life demonstrates a better understanding of how the legal system in Medieval Britain changed after the Norman Conquest in 1066. Because of the changes that were made to the nobility during the 11th century, the monarchy of England was able to hold more control over the nobility as well as over their tenants. The law did remove power from the original English nobility, by implementing the Norman nobility, so that there was unity throughout the new government. In addition, the Norman nobility implemented several new codes that gave the nobility specific privileges, such as the “chevalerie” that required the nobles to respect one another and prevented feuding between noble families. Inheritance laws granted the nobility and the monarchy more legal control over their tenants, suggesting that the tenant did not have the “right” to inherit but was allowed, this centralized the control of the land of England. The laws regarding religion at the time directly reflected the changes to the clergy in the churches in England, implementing canon law of the Roman Catholic Church that placed all churches under the same laws, which allowed the church to accumulate the control over the citizens and land of the church in a structured hierarchy.

Besides the laws and regulations from this time, the importance of the structures of the legal system that was changed during this time was critical. Though the court did retain many of the original features, because of the introduction of the new nobility, the ducal courts began to handle different types of disputes. In addition, while the king did retain the majority of power over the legal system at this time, documents suggest that William preferred to observe and make suggestions rather than always personally oversee the court cases. Another structure that was important was the creation of *Domesday Book*, a survey that documented the property of the people of England for William the Conqueror. *Domesday Book* utilized jurors, a representative group that gathered specific information to document that was used for later legal connections, and eventually became a point of legal memory after the Conquest.

Lastly, in addition to the creation of laws such as nobility laws or inheritance laws that had a direct impact on the lives of citizens, changes to the political and legal system had an impact on cultural life as well. Another important aspect of how these changes affected the culture of England around the 11th century is seen in literary sources. One example is the *Song of Roland*, written down during this time. Due to the similarities of the story to the events of William and the Normans, may have been altered to ensure loyalty to the new legal system and government.

The shifting from the English nobility to the Norman nobility appears initially to remove power from the nobles in favor of the king. However, upon further inspection, evidence shows that William allowed the nobility to retain and even gain many different rights that allowed them to have a greater participation in government and the legal system. An external population arriving and taking control would require a strong support system, and that is what William created by appointing those whom he saw as appropriate to positions of power. He was able to
maintain control of a rather large kingdom while allowing some other members of society to be involved in the government.

Although similar to Classical Athens and its changes to the judicial system during the formation of a new government, England after the Norman Invasion also has many key differences. Even though both lands had new forms of government that were founded during times of stress from external powers, their judicial systems are not identical. By comparing the two civilizations and the legal systems they established when creating a new government, one can better understand how large amounts of stress and changing to a new government can influence the judicial systems established.
Chapter 3
Comparing Legal Systems: Athens versus England

“Unlimited power is apt to corrupt the minds of those who possess it; and this I know, my Lords, that where law ends, there, tyranny begins.”

-William Pitt

Legal systems were crucial aspects of any government, allowing the government control over those under its protection. Yet not all historical legal systems were the same. So why is there a need to compare different legal systems? What information does it provide? There are of course many factors that influence the ways in which governments create legal systems. Comparision of two legal systems that underwent similar forms of influence; permit one to understand whether or not the development of legal systems has consistency across different populations. This can be determined by examining the similarities and differences between multiple facets of the legal systems. Because these comparisons are looking to determine if there is consistency among different legal systems, the specific systems examined may be chosen from different geographical and temporal positions. Two such legal systems that were under similar types of influences are Classical Athens during the 5th century BCE and Medieval England after 1066 CE.

Classical Athens in the 5th century BCE and Medieval England after 1066 CE had one main point of similarity, and that is there were under stress from an external population, which resulted in a new government and new legal system. The Persians, the dominant force in the Middle East at the time, had pursued Athens in the 5th century BCE. Though it took several years and the sacking of the city-state, Athens was able to repel the Persian forces from Greece eventually. Athens reformed its government, establishing democracy and a legal system that reflected these changes. In England in the 11th century, in contrast, after the death of Edward the Confessor, it was invaded by the Normans led by William the Conqueror. William claimed he possessed the right to the throne over Harold Godwinson, and upon invading England, William assumed the throne of England, thus forming a new reigning government and legal system.

To determine if societies that create new political and legal systems under external stress such as Athens in the 5th century BCE and England after 1066 CE, one must compare the laws and regulations implemented during the times of change, structures and institutions created to enforce the new legal system, and the influence on the societies and cultures. By examining similar laws from these times, such as laws regarding certain types of citizenship, inheritance and religious matters, a closer comparison of the two different societies can be made. It is important to note that while the legal changes in England influenced literary sources, the majority of the sources for the legal system are in the form of legal documents and first-hand accounts. This contrasts to Athens, where some of the best sources for understanding the legal system are present within the literary sources, with far less legal documentation. This contrast in types of sources can influence the ways in which the materials between the two periods are interpreted.
Analysis of Laws Implemented

Before examining specific aspects of the legal systems and how they compare, it is important to address some distinct fundamental differences between the governments and legal systems established in Athens during the 5th century BCE and England after the Norman Invasion in 1066 CE. First, it is important to identify what group was placing stress on the government when changes to the political and legal systems occurred. The Athenians, while fighting in a war with the Persians, were ultimately able to defeat the Persians and retained control over the city-state. The English, in contrast, were invaded by the Normans who succeeded in conquering England, meaning that England was governed by an external population. This difference could influence the ways in which the government implemented laws on the population.

The first type of laws from Ancient Athens in the 5th century BCE and Medieval England post-1066 CE are the laws regarding citizenship and status within the society. In Athens during the 5th century, a series of laws written by the political figure, Pericles, that detailed the requirements for citizenship within Athens. These laws included the requirement for both parents to have been citizens and the active age for government participation being 18. While this prevented some from being active members in government, these changes created stability in Athens and ensured that all members of Athenian society were equally affected by the laws.

In England after 1066 CE, the rules and regulations that were established in regards to citizenship primarily dealt with the nobility. While William intended to retain the English nobility, eventually due to forfeits, grants, and deaths, the majority of the nobility was replaced

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within 20 years by Normans. A code that this group of nobility imposed was “chevalerie,” a code that demanded respect for the nobility. While the introduction of a new group of nobility allowed William to have more control over his new kingdom and the new nobility gained their own form of equality, it did reduce the rights from the original nobility.

Another type of law that can be compared to the two societies are the laws regarding inheritance. In Athens, the laws established a formal line of succession that ensured the males of a family were able to inherit. In addition, the laws regarding inheritance in Athens also ensured the family’s right to inherit due to the creation of wills. These helped ensure that a family would be able to inherit and would not lose their property, therefore, protecting the rights of those in the city-state.

The inheritance laws in England, while utilizing a family line of succession; it was not formalized, but rather a social norm. The primary regulations in regards to inheritance at this time pertained to the control of the lords over their tenants’ land, which states that the tenants did not have complete rights to the land, only the rights to “succeed.” An example of the importance of inheritance is in Marie de France’s La Fresna, in which a young woman’s role as a noble is crucial for allowing her to inherit as well as to marry within society. The nobilities control over land allows them to have more control than they may have had prior but prevented those below them in status from enjoying the same equality.

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The final type of laws compared from Athens and England pertain to laws regarding religion. In Athens, the primary laws regarding religion death with the punishment of impiety, with punishments that could even include death.\(^{134}\) These laws were shown to affect everyone within the society, including philosopher Socrates, who was trialed and executed for accusations regarding worshiping false gods.\(^{135}\) This suggests that laws such as these influenced all members of society, including those who held positions of authority, creating equality.

Religion laws in England during the 11\(^{th}\) century, in contrast, primarily dealt with the changes to the clergy from English to Norman and the monarchies control over the church.\(^{136}\) With the introduction of the new clergy, especially the appointment of Lanfranc, a series of reforms that unified the church under a system hierarchy, that was influenced by the implementation of canon law or the laws of the Roman Catholic Church.\(^{137}\) While this allowed for William to have more control over the church, it also limited the amount of freedom that others could have in the church.

When considering these three types of laws presented and comparing the laws in Athens and England, the evidence suggests that while the laws in England may have been required for rule over such a large kingdom, unless a person was an elite, either in religion or nobility, there was far less equality. In contrast, in Athens, although only some people were considered citizens, the laws established during this time applied to all classes, regardless of status or wealth, providing a type of equality in the new democracy.

Differences in Structure and Institution

After comparing the laws and regulations created during times of governmental and legal change in Ancient Athens and Medieval England, one should examine the structures and institutions that were created during these times. In Ancient Athens, due to an increase in court cases, the judicial system required that other citizens, forming a jury, examine cases. Every year, 6,000 male citizens over the age of 30 were chosen to be jurors and were given pay compensation for every day they sat in court.138 This compensation to the citizens for the work done on juries was best demonstrated in Aristophanes’ Wasps, which showed the reliance a poor father and his family had on the court system.139 By allowing all social classes of people to participate on juries, and especially selecting those on the jury at random ensured that everyone in Athens had equal chances for participation in the legal system.

Jurors were also found in England after 1066, especially in regards to Domesday Book, a document cataloging the property distribution among the nobility. When William began the great inquest in 1086, he assembled a large group of men that swore an oath to him to collect the information he required.140 This collection of jurors was comprised of representatives of every hundred, and those selected were heavily influenced by the nobility.141 Though the group of jurors was selected for representation, due to the influence of nobility and that the jurors were responsible for collecting information that may have legal implications rather than directly

138 MacDowell. The Law in Classical Athens. 33 – 34.
139 MacDowell. The Law in Classical Athens. 35.
dealing with court cases removes the concept of equality that was so important when Athens was implementing a jury system.

Another important aspect in the structures of the legal system in Athens is the differences between different types of cases. During this time, there were two forms of cases, private – court cases that could be settled without the intervention of a jury and were often more personal disputes – and public – cases that required a third party to develop a decision or the case was considered to be too “important.”142 The presence of two different legal courts that allowed different cases to be presented and examined allowed the Athenians to be able to better represent themselves within the judicial system.

In contrast, the courts established in England after the Norman Conquest directly reflected the changes in nobility. Due to the large size of England, William the Conqueror could not have total control of everywhere at once and required his nobility to use “seigniorial jurisdiction,” and the control of the tenants to run the court systems.143 Though William was more likely to interfere in local courts than previous kings were, sources suggested that the king preferred to instruct the courts, rather than lead them.144 This suggests that these courts were run by the nobility to decrease court size. Each shire had important legal systems required to run; its government because only the nobility and the king ran different courts. The common people were not able to be involved in the day to day processes.

142 MacDowell. The Law in Classical Athens. 203 – 204.
143 Harding. The Law Courts of Medieval England. 34.
144 Harding. The Law Courts of Medieval England. 36.
The Impacts on Society and Culture

A final important aspect of society is the influences on culture, especially literature. In Athens, the primary form of literature was through theater. And every year during the festival of Dionysus, a series of three plays were shown to the male citizens of Athens. Within these plays that political statements were often made and addressed. An example of this is from the Antigone, the tragedy of the daughter of Oedipus. Within the story, Antigone goes against the new ruler, her uncle Creon, and buries her dead brother against the decree he established. This act of defiance raises the question whether it is right to break the laws if the laws are unjust. This would inspire the audience to question what was occurring within the political and legal systems, especially considering the changes that were occurring during the time the tragedy was performed. Another example of a discussion of the legal system in Athens through tragedy occurs within the Oresteia, in the final play, the Furies. This critique is far more apparent, portraying a court case in which Orestes and Apollo versus the Furies. The case, being overseen by Athena, in which she had both sides present their sides in a courtroom style. This direct representation of the legal system from this time and the authority presented by Athena during the court case demonstrated the legal power of Athens.

In contrast, examples of popular literature from Medieval England do not expressly discuss the changes to law within the literature, but are serious reflections of the changes to the law. For example, the Song of Roland, an epic poem that traces its originals to the 700s, was written down during this time in Anglo-Norman, the language of the French population in

146 Harris. Democracy and the Rule of Law in Classical Athens: Essays on Law, Society, and Politics. 43.
England.\textsuperscript{148} The \textit{Song of Roland} the importance of William and the Normans to Charlemagne as well as noting the importance of feudalism within the piece demonstrates This suggests that the movement of the nobility as a result of the Norman Invasion had a larger impact on outside cultures and societies, due to the possibility that the epic was altered to aid the Normans in enforcing their legal and government systems. Another example of literature affected was \textit{Layamon's Brut}. Written as a fictive account of British history, this piece of literature was heavily influenced by French text, \textit{Roman de Brut}, as well as by Anglo-Norman writer Geoffrey of Monmouth’s \textit{Historia Regum Britanniae}.\textsuperscript{149} Inspired by two French influenced texts, it is unlikely that this history of England beginning with traces to the Greeks and moving onto the settlement of the Romans in England would have had such influences had the Normans not conquered England. In addition, scenes within the text, such as the formation of the round-table in which Arthur and all of his nobles swore an oath show influence from the legal changes.\textsuperscript{150} In that particular instance, the swearing of the oath demonstrates the equality among the nobility, an important legal change after the Normand invasion. However, the text also makes note that the oath was sworn to Arthur, leaving the king still at the center of the government.\textsuperscript{151} These changes in the literature due to the government were important factors in the development of culture during that time.

\textsuperscript{148} Crosland. \textit{The Song of Roland}. (New York: Cooper Square, 1967.) ix – x.
\textsuperscript{149} Layamon, and Bzdyl. \textit{Layamon’s “Brut”: A History of the Britons}. 11.
\textsuperscript{150} Layamon, and Bzdyl. \textit{Layamon's "Brut": A History of the Britons}. 214
\textsuperscript{151} Layamon, and Bzdyl. \textit{Layamon's "Brut": A History of the Britons}. 214
Final Conclusions

One must compare the laws and regulations implemented during the times of change, structures and institutions created to enforce the new legal system, and the influence on the societies and cultures to determine if societies that create new political and legal systems while under large amounts of external stress such as Athens in the 5th century BCE and England after 1066 CE. Overall, the examination of the laws that were implemented in these two societies during the times of political change suggests that while Athens did have some restrictions for who could participate in government, as long as they fulfilled the requirements, anyone could participate in the legal system despite their position in society. In contrast, the laws implemented within England were in favor of the elites, even ensuring equality amongst them, but the laws did not provide any type of equality for the rest of the population. Though the inheritance laws both had rules regarding the order of inheritance, the laws in Athens ensured inheritance through the creation of wills but the laws in England actually gave more authority to the landowner and removed power from the tenants. Lastly, the laws regarding religion in Athens, while so extreme in some circumstances that punishment required death, alternatively provided equality within society for those who could have been and were tried. In contrast, in England, the laws regarding religion, while important for reform within the church, influenced the positions within the church, which were an elite class.

The structures and institutions implemented during 5th century BCE Athens, such as the creation of juries selected randomly from male citizens and the implementation of public versus private courts suggested that public participation in the legal systems was an important aspect of life in Athens during that time. In contrast, the use of courts by the nobility as representation for the king and the assemblage of jurors with ties to the nobility for the creation of Domesday Book
suggested that while those in the nobility had a large amount of freedom and control of the legal system, everyday people from the population did not participate in the legal system. In addition, the influence on culture differed between both societies. Although both had examples of literature that was influenced by the changes to the legal system, Athens had literature that discussed the actual events and changes in the legal system within the work, the English literature, with both examples of fictitious legends, the writing of the stories were changed and the plot of traditional stories were altered to influence the audience they were intended for.

Most of these comparisons suggested that, while certain groups such as the nobility had equality in the legal system in England after the Norman invasion, the citizens of Athens appeared to have more opportunities to be involved in the developing legal system. Because of this, while the types of laws implemented were similar, due to the “strict” nature of the English laws compared to the Athenian laws, the English society at this time has less equality for much of the population than Athenian society had been over 1000 year before. The difference for equality present within the political and legal systems could be traced to the type of government that was in power. Athens at that time was beginning to develop democracy, which would allow for all involved in the society to participate. England, however, was under the control of a monarchy, and while it was a representative monarchy, with the nobility and the clergy having some control, the ultimate leader of the society at this time was still the king. In addition, the size of the area in which the government had to control varied considerably. Athens was a large city-state compared to England, which was an entire portion of an island that was divided into several different segments. While Athens did go on to hold large amounts of control over provinces, forming what many consider an Athenian Empire, as these locations were not within the city-state itself, the rights and laws that permitted citizens’ rights in Athens were not given to
those in the provinces. Overall, the evidence suggested while societies forming a new
government and legal system under periods of stress from external populations had similarities,
they are ultimately affected by additional pressures, such as government type or size of the state.
BIBLIOGRAPHY


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