



Oyez, Oyez, “O yes”

American Legal Language
and the Influence of the French

BY L. SUSAN CARTER

Our era owes much to the Anglo-Normans of a millennium past. The establishment of political, ecclesiastical, and financial institutions in England, as well as a sense of nationhood and a flexible legal structure are, in some measure, attributable to William the Conqueror and his descendents of French and Norse heritage. Of the many institutions they influenced, perhaps none was so deeply affected as the law. And in the realm of law, among the firmest impressions was in the language of the law used in much of the English-speaking world today.

William's conquest in 1066 C.E. heralded significant changes in the English systems that had been influenced heavily by Germanic roots. First affected by the Romans, the Britons of the island were then far more profoundly changed by the Jutes, Angles, and Saxons during the three centuries that followed the Romans' departure in the late 5th century. The new invaders brought their Germanic language and governance systems with them, only to face invasions by the Danes of the 9th and 10th centuries (Lyon 21). The defeat of the Saxon king Harold at Hastings initiated the most resounding changes in England, and in fairly short order.

Part of the genius the Normans brought with them was their mastery of administration. Within twenty years of the victory at Hastings, there was a reasonably full accounting of the realm. The *Domesday Book* was designed to allow William an annual view of the revenues he might expect; it is also an invaluable document that describes life and language in England in 1086 (Heer 347).

While the Normans were substantially advanced in administration, William I understood that existing Anglo-Saxon law was superior to that of the Normans. Though from common roots, the English had developed their legal precepts beyond those of the Normans. Also, it was written (Lyon 181). Indeed, the administration of law was, in itself, a form of governance for the English. Wisely, William I retained the *corpus* of English law; after all, legitimizing his claim to the throne rested upon recognizing the rule of law in place in England at the time. His argument, backed by force, was that he, and not Harold, was entitled to succeed Edward the Confessor as king (Kempin 7).

William kept both the substance and the process of Anglo-Saxon law. The shire, hun-

dred, and borough courts remained. Further, he validated the extant customary law as well as the "ancient rights and customs" of the king (Heer 348). For a period of time though, the law was applied differentially to Norman and Englishman. In 1074, Ordericus Vitalis described a dual system that had Saxon earl Waltheof tried according to one set of laws and Norman earl Roger of Hereford tried under another. The personal law that the Normans used, however, soon became too cumbersome to apply and territorial law, which extended to all of England, prevailed (Lyon 182).

In contrast to the Norman approach, the language of the Anglo-Saxon law and courts was the vernacular, Old English. The "dooms" (laws) that formed the structure of Anglo-Saxon jurisprudence were plentiful and have survived, providing excellent non-narrative sources about the legal system in England during more than four centuries prior to the Norman conquest. Among the earliest are the dooms of Ethelbert of Kent, the first Christian king. His compilation of centuries-old customary law in 602–603 C.E. was expanded by other Kentish kings during the 7th century. Among the most thorough and impressive of pre-conquest laws are those of Alfred of Wessex at the end of the 9th century. Edward the Elder, Aethelstan, Edgar, Edmund, and Ethelred the Unready also promulgated laws, as well as Canute during the first third of the 11th century (Lyon 4). This was the bounty that William I inherited.

In the decades immediately following the conquest, French was not used as the language of law. Nor is there documentation of any formal instruction in French in any school, and only one English-French legal glossary exists from that time. Following the

reigns of William I and William II, though, written French emerged as important means of communication in England (Kibbee 11). French, along with British Latin, which was the chief language of the law, became the language of record for much of official life through the late 14th century.

A significant increase in the use of French as the language of governance and law took place during the reign of Henry II. He issued the first of three property writs in 1166, in French. The "Assize of Novel Disseisin"—the writ of the newly dispossessed of land—was central to establishing a solitary system of legal appeal throughout the realm. Each freeman now could take his claim to a royal French-speaking court (Kibbee 15). Anyone wishing to seek a higher review was forced to do so in French, and courts below were left to address issues presented by the royal court that was employing French.

Henry II's innovations extended beyond the promulgation of new writs. He and his ministers used the oral presentation and the brief royal writ, increasingly in French, to create precedent. There is record of only eight enactments during his reign. The vast reach of his change in the rule of England was accomplished through the legal system in his own language. Indeed, so successful was the domination of the law courts by French that it remained in use until after Charles II in the middle of the 17th century (Baker 9). It was not officially withdrawn as the court language until 1731 (Kibbee 15).

There are five reasons that French, and not English, replaced Latin as the legal language of England beginning in the late 12th century: (1) the reforms begun under Henry II, including the Assize of Novel Disseisin, opened the door of royal French-speaking courts to all; (2) the laity, who were not particularly well-versed in Latin but spoke French, the chief language of the literate, assumed clerical roles at law; (3) there was a growing literacy and interest in French literature overall; (4) the social structure was changing such that it favored French; and (5) the expanding wool trade with the Flanders and Picardy brought new requirements for speaking, contracts and documents, and litigation in French. Further, the legal system in France had recently changed from Latin to the vernacular (Kibbee 28).

The French that evolved in the law courts was drawn heavily from Norman and not Central (Parisian) French. The French spoken and written in legal proceedings in 13th century England reflected the base of power from which it came, the post-conquest Norman French. It was a dynamic, if corrupt, iteration of the language that has come to be known as "Law French" (Baker 11). This distorted dialect, based on Norman French, ultimately became an artificial language with a vocabulary that increasingly absorbed English words, because the clerks who strove to record it in court—often on the fly—devised hybrid phrases and a shorthand that allowed them to capture the proceedings in writing. Law French, as such, persisted for centuries, despite its surreal qualities and its arcane nature. Though Law French as a language of the court ceased to be used officially in the first third of the 18th century (370 years after Parliament barred the use of French in that body in 1362) many of the words that were a part of the language remain in current Anglo-American law.

Words from Law French that are currently part of the legal lexicography include: attainder, demurrer, disclaimer, joinder, merger, ouster, remainder, remitter, render, reverter, and tender. Past participles were transformed into substantives: debtee, lessee, mortgage, payee, and vouchee (Baker 17). Law French has also deposited in present-day legal terminology several phrases that are inverted noun phrases, including "attorney general" and "fee simple."

There are yet other forms of French that evolved into Law French and remain part of the Anglo-American legal vocabulary. Pronouns and some adjectives were taken from the indirect case of Old French and used as nominatives: *autrui*, *celuy*, *cestuy*, *nully*, and *qui*. Examples of the use of these words in phrases that can still be found today are *pur auter vie* and *cestuy que use* (Baker 18).

The array of Law French used in the contemporary legal setting is fairly remarkable. The section for the letter "A" in the 4th edition of *Black's Law* contains 2351 words beginning with that letter. Of that number, approximately 350 are words or phrases that could be considered Law French, of Anglo-Norman origin. The count of legal words and terms derived from French would in-

crease several-fold if all the English words of French origin were included.

The review of Law French words and phrases beginning with the letter "A" is interesting. They include some that are in common use and others that are fairly archaic. By way of example, one can find *a luy et a ses heires a tous jours*, *abus de confiance*, *adeu*, *advoutrer*, and *acquets* as well as the more frequently used *accrocher*, *affiant*, *appointee*, *amercement*, *arrest*, *apprehend*, *assault assignee*, and *appellee*.

In addition to the words cited above, there are several other prominent Law French terms in regular use.

- *attorney*—one appointed to act for another
- *autrefois acquit*—previously acquitted of a crime
- *bailiff*—in American law, the marshal of the court, mainly charged with keeping order
- *cestui que trust*—occasionally shortened to *cestui*, the beneficiary of a trust
- *cy-pres doctrine*—the power of the court to transfer the property of one charitable trust to another then the first one may be defunct or inoperable
- *defendant*—part against whom civil proceeding or criminal action is brought
- *en banc*—the entire bench of sitting appellate judges
- *escheat*—reversion of unclaimed property to the state
- *estate*—the interest that one has in real or personal property
- *estoppel*—prevention of a party from contradicting a previous position to the detriment of another
- *felony*—a crime of a more serious nature
- *laches*—civil loss of rights through a failure to act in a timely fashion
- *mortgage*—formerly a "dead pledge" that allowed the owner to stay in a property held in security by another

- *oyez*—often calqued as "hear ye!" and the traditional cry for the opening of a court session, especially the U.S. Supreme Court in this country
- *peine forte et dure*—strong and hard pain, originally the use of stones to torture the prisoner into confession or death
- *plaintiff*—originator of a civil cause of action
- *prochain ami*—the "next friend" or one who takes legal action on behalf of another who is incapacitated
- *profit a prendre*—the fruits of the real property, such as mineral rights
- *replevin*—a suit to recover unlawfully taken personal property
- *tort*—a wrong
- *venireman*—a member of a panel of jurors
- *venue*—the geographical division in which an action is brought to trial
- *voir dire*—court's questioning of a potential juror

Two words on the list above are of interest, for substantially different reasons.

"Oyez" has taken on a highly particularized meaning and is found in a very special setting. "Bailiff" has a long history and a very broad pattern of use that has taken it beyond Law French and into common usage.

"Oyez" is the opening cry of the Marshal of the United States Supreme Court. The phrase is sounded to bring the courtroom to attention and to order. Pronounced "o-yay" or "o-yez" the word is chanted three times. It comes from the Latin verb *audire*, "to hear" and entered Middle English through Anglo-Norman French. "Oyez" is, in fact, the plural imperative of *oyer*, also "to hear." It first appeared in written English in 1425, when French was still the language of the English courts (Law Library, U.C. Davis).

The word "bailiff" derives from Latin *bajulus*, "to carry a load" and passes through Middle Latin, *bajulare* to Old French, *baillier*,

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where the verb is nominalized. The word arrived with the Normans and entered Middle English as *bailif* and *bailie* to become the *bailiff* of the present day (Middle English Dictionary).

The substantial extent of French, the French of Anglo-Normans, is acknowledged and accepted by linguists and practitioners of law. The terms and phrases from nearly 800 years ago are employed as a matter of course, are routine and, indeed, raise little attention. Yet it is striking to step back and appreciate the source and the wealth of this rich and quirky Law French vocabulary. But for invaders from the northwestern coast of France during the middle of the 11th century, English law and its language would be strongly Germanic and not nearly so varied. How curious that today we rely on archaic and arguably corrupt French to frame our legal arguments. It is just this kind of example, though, that underscores the absolute wealth of the English law and language with its capacity to adopt and to adapt. ♦

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