

**PART VI**  
**BRITISH COMMON LAW: FROM ALFRED**  
**TO THE REFORMATION**



## CH. 22: ENGLAND'S "GOOD KING ALFRED" AND HIS BIBLICAL LAWS

In 1892, the famous German church historian Rev. Professor Dr. J.H. Kurtz<sup>1</sup> called Alfred the greatest and noblest of all the kings which England has ever had. Alfred ruled from 871 to 901 A.D. He applied all the energy of his mind to the difficult problems of government; to the emancipation of his country by driving out the Danish invaders and robbers; and then to improving the internal condition of the land.

He achieved the latter by giving attention to agriculture, industry and trade; by a wise organization, legislation and administration; and by the founding of churches, monasteries and schools. He also furthered every scientific endeavour from a thoroughly national point of view, and indeed from the perspective of Christianity.

Alfred is perhaps best of all remembered for his famous law code. According to Sir Winston Churchill,<sup>2</sup> the roots of King Alfred's *Book of Laws* or *Dooms* came forth from the (as then already long-established) laws of Kent, Mercia and Wessex. All these attempted to blend the Mosaic Code with the Christian principles and old Germanic customs.

Churchill adds that the laws of Alfred, continually amplified by his successors, grew into that body of Customary Law which was administered [as the "Common Law"] by the Shire and Hundred Courts. Cf. Exodus 18:21f. That, under the name of the "Laws of St. Edward" [the "Confessor"] or as the A.D. 1042f last Anglo-Saxon Christian King of England or the Norman kings undertook to respect, after their 1066f invasion and conquest of England. Out of that, with much manipulation by feudal lawyers, the **Common Law** emerged or which was re-confirmed by the *Magna Carta* of 1215.

Churchill then draws the correct conclusion. For he states that the Christian culture of Alfred's Court and the result of Alfred's work or led to the future mingling of Saxon and Dane in a common Christian England.

### The early life and times of the English King Alfred the Great

Alfred's father was King Ethelwulf of Wessex (in the "Deep South" of Britain). He traced his own genealogy all the way back to Shem or and then, through the latter's father Noah, to Adam.<sup>3</sup> University of Wisconsin Law School's Smongenski Research Professor Warren W. Lehman records<sup>4</sup> that, likewise, King Alfred himself boldly traced his own genealogy or *via* the Scythians, to Japheth or and thus right back through Noah to Adam. Genesis 5:1-32 & 9:27 to 10:5 & First Chronicles 1:1-6 cf. Jeremiah 51:27f & Colossians 3:11.

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<sup>1</sup> J.H. Kurtz: *Church History*, Hodder & Stoughton, London, 1892, I pp. 541f.

<sup>2</sup> *Op. cit.*, II, p. 219.

<sup>3</sup> See Holinshed's *op. cit.*, I pp. 662f.

<sup>4</sup> *Op. cit.*, p. 29 n. 19.

Alfred was born in A.D. 849, at Wantage in Berkshire. This was in the very midst of the decades when the pagan Vikings from Scandinavia were constantly raiding Britain (and even England), destroying churches and libraries on a huge scale. Though only the fourth son of King Ethelwulf, Alfred showed much Christian dedication and religiosity even when but five years old. His father died in 858, when Alfred was only nine.

During the short reigns of his two elder brothers, almost nothing is heard about Alfred. All we know about him, are the later claims of his contemporary and biographer, the Welshman Asser (writing in Latin around 893) that the young Prince Alfred could recite many Anglo-Saxon poems by heart even before he was twelve. Only at that age did Alfred learn to read.

At the accession to the throne of the third brother Aethelred in 866, Alfred entered upon his own public career at the age of seventeen. It was then that he first started to deliver England from the Danes.<sup>5</sup>

It is with reference to Aethelred's reign that Asser applied to Alfred the unique title of *Secundarius*. This would indicate a position analogous to the Celtic *Tanist* ó a recognized "secondary" successor closely associated with the reigning Monarch.

Probably the *Witenagemot* or Parliament itself definitely sanctioned this arrangement. Consequently, we here have a constitutional monarchy ó representatively regulated.

In 868, when twenty years old, Prince Alfred married the daughter of an *Ealdorman* or Elder-man of the Gaini. This shows the non-snobbish and mobile nature of the Anglo-British society in Alfred's Wessex.

Alfred was then attacked by a grievous illness ó apparently a serious form of epilepsy. It lasted for at least the next twenty years. Nevertheless, from 870 onward, Alfred still waged many battles against the Danes.

There were nine major engagements, some ending in victories and some in defeats. In 871, Aethelred died ó and the youthful Alfred was called upon to assume all the burdens of "sole king" ó at the tender age of twenty-three.

After a temporary peace lasting some five years, the Danes broke through to the far southwest ó and even managed to seize Exeter. But Alfred blockaded them until they had to withdraw to Mercia (immediately north of Alfred's Wessex).

However, in 878 the Danes swooped upon Chippenham ó where Alfred had been observing Christmas. State the *Saxon Chronicles*: "Most of the people they reduced, except King Alfred.... He and his little band made his way...by wood and swamp.... After Easter, he...made a fort at Athelney, and from that fort kept fighting against the foe."

While once in hiding anonymously, he was over-preoccupied with military strategy. It is during this time that he is alleged to have neglected to keep his eye, as

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<sup>5</sup> Art. *Alfred, or Aelfred* (in *Enc. Brit.*, 14th ed., 1929, 1:588f); art. *Alfred the Great* (in *Enc. Amer.*, 1951, 1:380).

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he had undertaken to do, on some cakes being baked in a kitchen. Rebuked for his neglect by the kitchen-maid, the disguised King Alfred humbly apologized to her.

Yet all throughout that whole time, he was organizing for victory against the Danes. This is evidenced by another well-known story. He once disguised himself as a blind harpist. As such, he entered the camp of the Vikings ó though really in order to reconnoitre their situation.

In 878, Alfred's armies in Somersetshire and Wiltshire and Hampshire clashed against the Danes. At Edington, the English won a decisive victory. The Danes submitted and, by the *Treaty of Wedmore* ó their King Guthrum and about thirty of his Chiefs accepted Christian baptism. This was part of the surrender terms proposed by the Christian King Alfred.

By 879, not only all Wessex but also that part of Mercia to the west of the national highway known as Watling Street had been cleared of the invaders. While Eastern England from and including London and right up to the border of Scotland still remained in the hands of the Vikings ó the tide had in fact already turned.

Both Western England, and indeed also Western Europe itself, had now been saved from the danger of being annexed by Pagan Scandinavians. In this, Alfred had played perhaps the key role.

For the next few years, there was peace. However, when in 884 more Vikings landed in Kent ó the East-Anglian Danes revolted against the English. In his reprisals, Alfred captured London from the Anglo-Danes in 885, and established the treaty known as *Alfred and Guthrum's Peace* in 886. This materially modified the boundaries (previously set by the *Treaty of Wedmore*) in Alfred's favour.

There was a new lull. However, in 893 A.D., three hundred and thirty Danish ships sailed to England ó together with their women and children. They were thus obviously bent on further settlement in England, and also on the conquest of that country. Indeed, even while Danes under Haesten were negotiating with Alfred ó the Appledore Danes treacherously struck out from Southeastern England in a northwestward direction.

However, Alfred's eldest son Edward overtook and defeated them in Herefordshire. Retreating, the Danes were then further defeated in Essex.

Yet this was followed by still more fresh Danish attacks against Exeter ó and also from near London, westward right down the Thames valley. Again repulsed and then besieged, however, the Danes thereafter retired to Essex in 895.

The next year, Alfred cut off their ships twenty miles from London. The Danes now withdrew ó some to Northumbria, and others back to Europe. Alfred was still only forty-seven years old.

## The military and political achievements of Alfred the Great

The *Encyclopaedia Britannica* attributes Alfred's successes to his character and generalship, as well as to the efficacy of his military reforms. These included the division of the *fyrd* or national militia into two parts, relieving each other at fixed intervals so as to ensure continuity.

They also included the establishment of fortified posts (or *burgs*) and garrisons at certain points. Indeed, they further embraced the enforcement among the lesser Nobles of the obligations of thanehood on all owners of five hides of land. This gave the king a nucleus of highly-equipped troops.

After the final dispersion of the Vikings, Alfred strengthened the Royal Navy. He himself designed its ships. He did so partly to repress the ravages of the Northumbrian and East-Anglian Anglo-Danes against the coast of Wessex. He also did this, partly to prevent the landing of fresh hordes of Vikings from Scandinavia.

Alfred then also established the Shire system in those parts of Mercia he acquired. In that sense, Alfred implemented the Shires, Hundreds and Tithings in Mercia. Naturally, he inherited this idea from Pre-Alfredian Christian kings of Wessex (such as Ine). Yet Alfred re-inforced it particularly from his own reading and massive study of Holy Scripture (Exodus 18:12-21f & Deuteronomy 1:13-16 *etc.*).

Like a second Moses, Alfred was personally involved in the administration of justice (Exodus 18:12-26). He was particularly concerned about the poor (James 1:27). He co-operated with his *Witenagemot* or Parliament; respected its rights; and even strengthened its power.

The famous sceptical historian Edward Gibbon claimed:<sup>6</sup> "The wise Alfred adopted as an indispensable duty the extreme rigour of the Mosaic institutions. That he did, tempering it also with the grace of the Gospel ó through the golden rule in the Sermon on the Mount, and through the apostolic injunctions at the Synod of Jerusalem. Matthew 7:12 and Acts 15:19-29 & 16:4-5.

Internationally, Alfred corresponded with Elias of Jerusalem. He sent ambassadors to Ireland and to Rome ó and even to India.

On the latter venture, even Gibbon comments:<sup>6</sup> "The Gospel was preached in India by [the Apostle] St. Thomas.... His shrine, perhaps in the neighbourhood of Madras, was devoutly visited [centuries later] by the ambassadors of Alfred.... Their return [to Britain] with a cargo of pearls and spices, rewarded the zeal of the English monarch.... Neither the author of the *Saxon Chronicle* [A.D. 883] nor William of Malmesbury...(in the twelfth century) were capable of inventing this extraordinary fact."

Closer home, Alfred improved relations first with the West-Brythons in Wales, and later with the North-Brythons in Cumbria. Throughout, he lived in harmony with the South-Brythons alias the Cornish Celts on his western border. Indeed, after defeating

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<sup>6</sup> E. Gibbon: *Rise & Fall of Rom. Emp.*, IV p. 115 & V p. 178.

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the Anglo-Danes ó Alfred sought their christianization, so as to promote a harmonious relationship with them too.

Seeking to promote a national educational system after the Vikings had wreaked havoc by burning down so many libraries, Alfred established a Court School. With such a dearth of English scholars still alive at that time, Alfred even imported internationally-famous scholars to teach there. Such included Asser from Wales and John Scotus Eriugena from Ireland ó as well as some from the Continent. For Alfred regarded access to public education, on a Christian foundation, as the birthright of every Englishman.

Though suffering from the great physical infirmity of epilepsy, Alfred left an enduring fame for unselfish devotion to the best interests of his people. He made collections of choice sentences from the Holy Bible and certain Church Fathers. He sent a copy of Gregory's *Pastoral Theology* to every diocese, for the benefit of the clergy.

Furthermore, Alfred translated fifty of the Psalms into Anglo-Saxon. It is due chiefly to his influence, that the Holy Scriptures and Service Books of this period were illustrated by so many vernacular glosses in England. Indeed, to promote moral lessons, Alfred even translated and circulated the Ancient-Greek *Parables of Aesop*.

### The extant writings of King Alfred the Great

Above all, Alfred put himself to school ó making a series of translations for the instruction of his clergy and people. Apart from his lost *Handboc* (a common-place anthology), his earliest work was his own *Preface* to the translation of the *Dialogues of Gregory*. That *Preface*, in Alfred's Anglo-Saxon, starts as follows:

ōIc AElfrede gyfendum Criste mid Cynehades maernesse geweodhadh haebbe cudhlice ongiten, and thurh haligra boca raedunge oft gehyred, thaet us an God swa micle healicnesse woruld gedhingdha forgifen haefdh. Is seo measte thearf thaet we hwilon ure mod gelidhian and gebigian to dham Godcundum and gastlicum rihte, betweoh thas eardhlican carfulnesse.... Ic thurh tha mynegunge and lufe getrymmed on minum mode hwilum gehicge tha heofenlican thing betweoh thas eordhlican gedrefednysa.ō

We shall now, immediately below, endeavour to give a flowing translation of the above ó into good modern English. Changing the word-order where necessary (in order to promote intelligibility), it would run as follows:

ōI Alfred, endowed with royal dignity by the grace of Christ, have truly understood and often heard through the reading of holy books that the one God has given to us so much greatness of earthly things. There is the greatest need that we for a time should soften and bend our mind to divine and spiritual services, amid this earthly care.... Being confirmed in my mind through this admonition and love, I for a time study these heavenly things amid these earthly troubles.ō

After Alfred's above-mentioned *Preface*, follows his very accurate translation into Anglo-Saxon and from the original Latin of Gregory's *Pastoral Care*. Alfred's own

*Introduction* thereto is one of the most interesting documents of his reign, and indeed of all English history. For there, Alfred expresses his desire that every freeborn youngster of England might learn to read English.

This was soon followed by Alfred's translation of the great African St. Augustine's A.D. 386 meditative *Soliloquies*. At that time, the king was but thirty-three.

His next work was his translation of the A.D. 414 *Universal History* by the well-known Spanish chronicler and scholar Orosius. In Alfred's omissions therefrom and additions thereto, he so remodels the original as to produce almost a new work.

This was then followed by Alfred's close translation from Latin into Anglo-Saxon of the A.D. 731 Bede's *Ecclesiastical History of England*. For Alfred wanted the English to understand in their own tongue how Christ's Church had grown in Britain since very early times, and how England had become a Christian Nation.

The famous modern church historian Rev. Professor Dr. Philip Schaff points out<sup>7</sup> that the Christian character of English legislation is due in large measure to the piety, animated by the spirit of justice and charity, of the Anglo-Saxon kings. As examples of this, Schaff then here specifies especially Alfred the Great; and, later, Edward the Confessor (1004-66). Alfred's *Dome-Book*<sup>8</sup> was lost during the irruptions of the Danes; but its text did survive in the improved *Code of Edward the Confessor*.

Alfred was for England what Charlemagne was for France. He was a Christian ruler, legislator, and educator of his people. He is esteemed the wisest, best and greatest king that ever reigned in England.

The grateful memory of his people ascribed to him institutions and laws, rights and privileges which existed before his time and which he indeed did codify. Yet in many respects, he was far ahead of his age. He collected the laws of the land, and remodelled both the civil and ecclesiastical organization of his kingdom.

*Alfred's Law Code* is introduced by the Ten Commandments and studded with other laws taken from the Holy Bible. It protects the stranger in England and in memory of Israel's sojourn in Egypt. It gives the Christian slave his freedom in the seventh year as the Mosaic Law gave to the Hebrew bondman. It protects the labouring man in his Sunday rest as Moses had done in respect of Saturday.

Positively, *Alfred's Code* restrains bloodthirsty passions of revenge by establishing fines for offences. Negatively, it enjoins the "golden rule" viz. not to do to any man what we would not have done to us. Thus Professor Schaff. Indeed, *Alfred's Code* was the first in Wessex which never discriminated between Englishman and Brython.

Perhaps the most interesting of Alfred's works, is his translation of Boethius's *Consolation of Philosophy* and the most popular philosophical manual of the early mediaeval period. Here Alfred deals very freely with the original. There is much in the work solely by Alfred, and highly characteristic of his genius. Such includes the following oft-quoted sentence: "My will was to live worthily as long as I lived; and after my life to leave to them who would come after me, my memory in good works."

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<sup>7</sup> P. Schaff: *Church History*, Eerdmans, IV:619f & IV:394f.

<sup>8</sup> Alias: *Liber Justicialis*.



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The last of Alfred's writings is one to which he gave the title *Blostman* or *-Bloomsø* (alias *Anthology*). Most of the first half is based mainly on the *Soliloquies* of Augustine of Hippo. The rest is drawn from various sources, and contains much that is Alfred's own and which is highly characteristic of him.

The last words of it form a fitting epitaph for that noblest king of England. There, Alfred declares: "He seems to me a very foolish man and very wretched, who will not increase his understanding while he is in the World and [who would not] ever wish and long to reach that endless life where all shall be made clear."

Beyond all the above, Alfred also certainly promoted the writing of the *Saxon Chronicle* and the *Saxon Martyrology*. Indeed, they would hardly have been written without him. More importantly, it was he who wrote the first prose version of the initial fifty Psalms in Anglo-Saxon.

Alfred died either in 900 or in 901. As the *Encyclopaedia Britannica* correctly concludes: "Alike for what he did and for what he was, there is none to equal Alfred in the whole line of English sovereigns. No monarch in history ever deserved more truly the epithet of the Great."<sup>9</sup>

### Alfred on the history of Britain before the Anglo-Saxons arrived

Around A.D. 885, Alfred the Christian King of Wessex gave a very interesting account of the history of Celtic Britain even before his own Anglo-Saxons arrived there from A.D. 390 and especially from A.D. 449 onward. That history is contained in Alfred's *Orosius* and his *Bede*.

Professor Brewer notes<sup>10</sup> that even more than a century before Alfred, the early history also of Celtic Britain is alluded to by the earliest Anglo-Saxon historian, Bede of Northumbria and in his A.D. 731 *Ecclesiastical History*. Those allusions follow chiefly Jerome's version of the approximately A.D. 313 *Chronicle* of Eusebius and the A.D. 414 *Universal History* of Orosius (which mentions events right down to that very year).

Significantly, the *History* of Orosius had been commended very warmly even by the latter's own famous contemporaries Augustine of Hippo and Jerome of Bethlehem more than four centuries before Alfred.<sup>11</sup> In translating the histories of the A.D. 414 Orosius and the 731 Bede, the A.D. 880 King Alfred himself added also other material to them, and amalgamated it into them. Such other material included that concerning the history of Ancient Britain from soon after the time of Noah, and until the coming to England of the Anglo-Saxons from A.D. 390 onward.

In Alfred's own rather free translation of Orosius, from Latin into Anglo-Saxon, he himself calls<sup>12</sup> the region to the north of Noah's Ararat in the Caucasus: "Ealdan

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<sup>9</sup> Art. *Alfred, or Aelfred* (in *Enc. Brit.*, 14th ed., 1929, 1:590).

<sup>10</sup> Hume's *op. cit.*, p. 19.

<sup>11</sup> See Giles's ed. of *The Whole Works of King Alfred the Great*, AMS Press, New York, 1969, II, pp. 10f.

<sup>12</sup> *Ib.* (Alfred's *Orosius*), in I p. 34.

*Sciththianö* (alias ðOld Scythiaö). It is significant that Alfred regards himself and his fellow Anglo-Saxons as being of Scythian descent, and that he places Old Scythia in the region just to the north of Noah's Ararat in the Caucasus. Genesis 8:4; 9:18-27; 10:1-5.

This ðOld Scythiaö Alfred distinguishes from **New Scythia** or *Scotia Major*. By the latter, Alfred means not Scotland but Ireland and ðthe islands [such as the Hebrides and the isles of Man and Anglesey] between Ireland and this landö (*viz.* ðthis landö of Britain, including England).

Indeed, Alfred further distinguishes both ðOld Scythiaö (in Eurasia) and *Scotia Major* or Scotie Ireland ó from *Scotia Minor*. The latter is what we today call Scotland. Ireland, in his own Anglo-Saxon, Alfred calls<sup>13</sup> ðIghbernia thaet we Scotland hatathö ó meaning ðHibernia which we [Anglo-Saxons] call Scotlandö alias the land of the (Iro)-Scots.

This shows that Alfred's 880 A.D. Anglo-Saxons (and his biographer Asser's 880 A.D. Brythonic Welshmen) ó unlike modern Englishmen and modern Irishmen and modern Scots and modern Welshmen ó were still calling Ireland ðScot-landö alias the land of the Scots. What we now call Scotland, both the Anglo-Saxons and their Brythonic Welsh contemporaries were then still calling Britain (or North Britain).

Also Barrister-at-Law Flintoff states<sup>14</sup> that Alfred ó in his English translation of Orosius ó calls the ancient Iro-Scots ðScyttamö alias Scythians. *Cf.* Colossians 3:11. Thus, to Flintoff, Alfred's ð[New] Scotlandö ó in contrast to ðOld Scotlandö alias ðEaldan Sciththianö in the Caucasus ó is equivalent to ð[New] Sciththianö alias ð[New] Scyth-land.ö

That ðNew Scythiaö had been established by the Iro-Scots first in Ireland. Only later had they extended it also to Scotland. Even in Alfred's day, it was still centred in Ireland rather than in what is now called Scotland.

Too, in King Alfred's version of Bede's A.D. 731 *Ecclesiastical History of the English Nation*,<sup>15</sup> Alfred states that ðBritain is an island of the Ocean, which was of yore named Albion.... In the beginning, the Britons alone were the first inhabitants of this island ó from whom it received its name....

ðThen it happened afterwards that the nations of the Picts came from the land of the Scythians [near the Caucasus] in ships, and then ran round all the coast of Britain till they came up into Scot-land [*viz.* Ireland], and there found the Scotie people and begged of them a seat and dwelling-place.ö When the Iro-Scots refused this to the Picts, the latter went off and settled in the Orkneys. Soon thereafter, they further settled especially in what is now Northeastern Scotland.

In that same work, Alfred also states:<sup>16</sup> ðThe Island ðBritainö was unknown to the Romans, until Caius Caesar by surname Julius sought it with an army...sixty winters ere Christ's coming.... After that, Claudius the emperor...again led an army into

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<sup>13</sup> *Ib.*, I:3,18,28.

<sup>14</sup> *Op. cit.*, pp. 16f.

<sup>15</sup> Bede: *op. cit.*, I:1-6.

<sup>16</sup> *Op. cit.*, I:2-4.

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Britain [during 43 A.D.]... Then Nero [from 54 to 68 A.D.] took to the empire, after Claudius Caesar.... He lost the rule of Britain.ö

Alfred's last sentence here, seems to indicate his perception that either Claudius (against Caradoc) or Nero (against Boadicea) **lost *de facto*** control of much of Britain ó at least for a while. Or perhaps the Anglo-British Alfred here also meant that the Pagan Romans then began to lose Britain again ó increasingly, even to the Britons.

Certainly the Christian Alfred principally meant that the pagan Romans then began to lose their rule over Britain, increasingly ó to King Jesus. For Alfred adds: öThen it was from Christ's **hither**-coming, 156 years.... Lucius King of Britain...prayed and entreated...he might be made a Christian.... And then the Britons received baptism and Christ's Faith ó and held that in mild peace, until Diocletian's time [290f A.D.]....

öBritain too was then raised very high ó in much belief and confession of God.ö Here Alfred's love of Britain ó and indeed also his own increasing consciousness of himself belonging to the then-emerging Anglo-British nation ó is quite apparent.

Continues Alfred:<sup>17</sup> öPeace lasted in the churches of Christ which were in Britain.... Constantius...held and ruled the kingdom, a mild man and good.... [He] died in Britain, and left his kingdom to his son Constantine, the good Emperor [313f A.D.].... Eutropius writes that Constantine was born in Britain.ö

Alfred further writes: öWhen it was about 407 years after [our] Lord's incarnation..., the city of Rome was broken into by the Goths.... From that time, the Romans ceased to reign in Britain.... [Around 416,] Bishop Palladius was first sent to the Scots [*viz.* the Irish] who believed in Christ.ö

**King Alfred on the history of Britain since  
the arrival of the Anglo-Saxons**

Once again, when writing about the history of Britain from the time of the A.D. 390f and 449f arrival of the Anglo-Saxons onward, the A.D. 881f Alfred by no means confines himself to the accounts given by (Orosius and) Bede. For the Wessex king adds valuable information especially about events in the subsequent history of Britain he knew had elapsed there since the A.D. 731 Bede ó and until the time of Alfred's own writings around A.D. 881f.

Thus Alfred goes on:<sup>18</sup> öThe Britons...went into the hands of their foes.... It then pleased them all, with their king named Vortigern, that they should call and invite the nation of the Saxons from the parts beyond sea for their help. It is certain that this was ordained by the Lord's might.

öThen it was about 449 years from [our] Lord's incarnation that...the [Anglo-Saxon] nation of the English [Angles] and Saxons was invited by the foresaid king, and came to Britain.... They came from the three strongest nations of Germany ó that is, from the Saxons, the Angles, and the Geats [or Jutes]....

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<sup>17</sup> *Ib.*, I:8-13.

<sup>18</sup> *Ib.*, I:14f.

öThe Saxons sought causes and opportunities...from the Britons...not unlike that by which the Chaldeans long ago burnt the walls of Jerusalem and destroyed the kingly buildings with fire for the sins of God's people.... So here...by the righteous judgment of God nearly every city and land was forharried.ö

Yet, continues the Anglo-British Alfred,<sup>19</sup> the Christian Britons then made a comeback against the Non-Christian Anglo-Saxons. For öafter the [Anglo-Saxon] army...had driven and scattered the inhabitants of this Island, then began they piecemeal to take mind and main...and all with one-minded consent prayed for heavenly help.... Their general and leader at that time was Ambrosius, by surname Aurelianus [Embres Erryll]. He was a good man.

öIn this man's time [from about 460 till around 500 A.D.], the Britons took might and main.... He called them forth to fight, and promised them victory; and they also in the fight, through God's help, got the victory. Then, from that time ó sometimes the Britons, sometimes the Saxons, obtained the victory: until the year of the besetting of Baddesdown, when they [the Christian Britons] made a great slaughter among the Englishö around 516 A.D.

Subsequently, however, öthe Britons...vexed themselves with intestine broils, and sunk themselves in many sins.ö<sup>20</sup> As a result, God used Alfred's own Anglo-Saxon ancestors to overthrow those backslidden Britons.

However, continues Alfred:<sup>21</sup> öwhen according to forthrunning time it was about 592 from Christ's hithercoming..., Gregory...took to the bishophood of the **Roman** Church.... He was admonished...that he should send Augustine [alias Austin of Rome] and many other monks with him...to the English nation.... Then began they [the monks] to fear and dread the journey, and thought it wiser and safer for them that they should rather return home than seek the barbarous and fierce and unbelieving peopleö [viz. the Anglo-Jutes].

öThen straightway sent Augustine...to the Pope that he might humbly intercede for them, that they might not need to go upon a journey so perilous.... Then St. Gregory sent a letter to them, and exhorted...that they should humbly go into the work.... Teachers began to meet and sing and pray and do mass-song and teach men and baptize, until the king [of the Anglo-Jutes] was converted to the faith.... Gregory likewise at the same time sent a letter to King Ethelbeht, and along with it many worldly[!] gifts of diverse sorts.

öThen it was,ö concludes the West-Saxon Christian Alfred,<sup>22</sup> öthat Augustine with the help of [the **Anglo-Jutish**] King Ethelbeht invited to his speech the Bishops and Teachers of the Celtic **Britons** ó in the place which is yet named Augustine's Oak, on the borders of the [Celto-British] Hwicci and the [Anglo-English] West-Saxons.... When they had held long conference and strife..., they [the Celto-British Proto-Protestant Culdee Christians] could not yield any things to Augustine's instruction, nor to his prayers, nor to his **threats** and those of his companions.ö For those British

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<sup>19</sup> *Ib.*, I:16.

<sup>20</sup> *Op. cit.*, I:22 (Alfred's chapter heading).

<sup>21</sup> *Ib.*, I:23,26,32f.

<sup>22</sup> *Ib.*, II:2-4.

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Christians thought<sup>23</sup> their own customs and institutions better than [that] they should agree with those of the new Papacy in Rome.

Then the Britons also acknowledged...that they could not, without the consent and leave of their people, shun and forsake their **old** customs. They requested that again another Synod should be [assembled], and they would then attend it with more counsellors.

When that accordingly was set, seven Bishops of the [non-papal] Britons came and all the most learned men who were chiefly from the city of Bangor [alias The Big Seminary].... When they had come to the Synod-place, the [papal legate and Roman Catholic] Archbishop Augustine was sitting on his seat. When they saw that he rose not up for them, they quickly became angry and upbraided him [as being] haughty.

The Archbishop [Austin the Romanist] said to them [the Proto-Protestant Brythons]: In many things you are contrary to our customs.... Celebrate Easter at the right time! Fulfil the ministry of Baptism, through which we are born as God's children, after the manner of the holy Roman and Apostolic Church! And thirdly, preach the Word of the Lord to the English people with us! They [the Celto-British Presbyters, however,] said that they would do none of these things nor would have him [the Romish Austin] for an Archbishop.

About 280 years later, Alfred of Wessex (still flanked by Celtic Culdee Britons immediately to her west and to her north), had herself become a Christian State. This had occurred as a result of the work of Proto-Protestant Brythonic and English Evangelists and through Roman Catholic Missionaries from Kent, from Italy, and from elsewhere in Europe.

Clearly, Alfred of Wessex himself strove to develop a Biblical view of history. He was, to a remarkable extent, consistently Christian in all that he did. Indeed, according to the Elizabethan chronicler and historian Holinshed,<sup>24</sup> it was Alfred who began the University of Oxford around A.D. 875.

**The sceptical historian Sir David Hume  
on the importance of King Alfred**

The historian Hume explains<sup>25</sup> that during the time of Alfred, Wessex was again invaded by a great fleet and army under Guthorm or Guthrum (in Danish *Gormhinrige*). The Danes, notwithstanding the superiority of their numbers, were soon put to flight with great slaughter.

Alfred spared their lives, and even formed a scheme for converting them. He required, as a pledge of their submission, that they should embrace Christianity. Guthrum, with thirty of his officers, had no aversion to the proposal. So they were admitted to Baptism.

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<sup>23</sup> Anglo-Saxon: *letton*.

<sup>24</sup> *Op. cit.* I 247f & 619f.

<sup>25</sup> *Op. cit.*, pp. 44f.

After the treaty with Guthrum, Alfred enjoyed tranquillity for some years. He employed the interval in restoring order to his dominions. He died on October 26th 901 A.D., in the vigour of his age and the full strength of his faculties. After a glorious reign of thirty years and a half, he deservedly attained the appellation of Ælfred the Great and the title of Founder of the English Monarchy.

The merits of this prince, both in private and public life, may with advantage be contrasted with those of any monarch which the annals of any age or nation can present us. When Alfred came to the throne, he found the nation sunk. Alfred himself complained that on his accession, he knew few even of the clergy south of the Thames and not many in the northern parts who could interpret the Latin service. So he invited the most celebrated scholars from all parts of Europe to establish schools for the instruction of his people.

The most effectual expedient employed by Alfred for the encouragement of learning, was his own example. He employed himself in the pursuit of knowledge. He usually divided his time into three equal portions. One was devoted to sleep, food, and exercise; another to study and devotion; a third to the despatch of business. He translated into Anglo-Saxon the *Histories* of Orosius and of Bede. To these must be added a version of Boethius's *Consolation of Philosophy*, besides several other translations which he either made or caused to be made from the *Confessions* of Augustine, Gregory's *Pastoral Instructions*, and his *Dialogues*, &c.

Alfred was not negligent in encouraging the mechanical arts. He introduced and encouraged manufactures, and suffered no inventor or improver of any ingenious art to go unrewarded. He prompted men of activity to betake themselves to navigation, to push commerce into the most remote countries, and to acquire riches by promoting industry among their fellow-citizens.

He set apart a seventh portion of his own revenue for maintaining a number of workmen, whom he constantly employed in rebuilding the ruined cities and monasteries. Alfred was long regarded as the greatest prince that had appeared in Europe for several ages, and as one of the wisest and best that ever adorned the annals of any nation.

Alfred's great reputation had caused many of the institutions prevalent among the Anglo-Saxons, the origin of which is lost in remote antiquity, to be ascribed to his wisdom. Such includes the division of England into Shires, Hundreds, and Tithings; the law of frank-pledge; and trial by jury.

However, even his *Code of Laws* (which he undoubtedly promulgated) was little more than a new collection of the laws of Aethelberht, Offa, and Ina into which, with the assistance of his *Witan* of wise-men, he inserted a few enactments of his own. Thus Sir David Hume.

### The History Professor John Richard Green on the Laws of Alfred the Great

Professor J.R. Green records<sup>26</sup> that in 876, the Danish fleet appeared. When a treaty with Alfred won their withdrawal, they allied themselves with the Welsh. Alfred girded himself. The Danes withdrew to Gloucester. But Alfred marched through Wiltshire on the Danes. After a siege of fourteen days, he forced them to surrender.

The memory of the life and doings of the noblest of English rulers, has come down to us living and distinct. There is the moral grandeur of his life. He lived solely for the good of his people.

He is the first instance in the history of Christendom of a ruler who put aside every personal aim or ambition, to devote himself wholly to the welfare of those whom he ruled. In his mouth, *to live worthily* meant a life of justice, temperance, and self-sacrifice.

Warrior and conqueror as he was, he set aside at thirty the dream of conquest, to leave behind him the memory not of victories but of *good works* of daily toils by which he secured peace, good government, and education for his people. He provided against invasion from the sea by the better organization of military service, and by the creation of a fleet.

The country was divided into military districts of each five hides (or fields) sending an armed man at the king's summons and providing him with food and pay. To win the sea was a harder task than to win the land, and Alfred had not merely to organize but actually to create a fleet. However, he steadily developed his new naval force.

The defence of his realm thus provided for, Alfred devoted himself to its good government. In the reorganization of public justice, his main work was to enforce submission to the justice of Hundred-Moot and Shire-Moot alike upon Noble and *Ceorl* alias Churl or Freeman.

Both Earls (alias Counts in their Counties) and Churls (alias Freemen in their Family-meetings) were to submit to the adjudications of both the *Thousand* and the *Hundred* (*cf.* Exodus 18:21). Both Earl and Churl were to respect the decisions or the *deemings* (or *dooms*) of both the Elders or Alder-men of the Folk-Meetings and the Sheriffs or Shire-Reeves of the Counties *so* that...any of them would grant **that** to be true doom, which by the *Ealdormen* and Reeves had been judged for doom (thus Alfred's biographer the A.D. 893 Brythonic Welshman Asser).

All the law-dooms of his land that were given in his absence, Alfred used to question keenly of what sort they were, just or unjust. And if he found any wrongdoing in them, he would call the Judges themselves before him. *Cf.* Exodus 18:21*f.*

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<sup>26</sup> *Op. cit.*, pp. 47*f.*

“Day and night,” says his biographer the Brython Asser, he was busied into the correction of local injustice. “For in that whole kingdom, the poor had no helpers or few, save the king himself.”

Of new legislation, the king had no thought. “Those things which I met with,” he tells us, “either of the days of Ine my kinsman or of Offa King of the Mercians or of Athelberht [King of Kent] who first among the English race received Baptism or those which seemed to me rightest, those I have gathered; and rejected the others.”

Yet, unpretentious as Alfred’s work might seem, its importance was great. With it began the conception of a National Law. The Codes of Wessex, Mercia, and Kent [now] blended in the *Doom-Book* of a common England. Thus Professor Green.

### **Professor Green on King Alfred’s many other accomplishments**

All the “*Angel-cyn*” (or “English-kind”) turned to Alfred or according to the *Saxon Chronicle* or “save those that were under bondage to Danish men.” Professor Green explains that the king turned again to his work of restoration. He found time, amidst the cares of State: for the daily duties of religion; for converse with strangers; for study and translation; for learning poems by heart; for planning buildings and instructing craftsmen in gold-work; for teaching even falconers and dog-keepers their business.

Yet his mind was far from being imprisoned within his own island. He listened with keen attention to tales of far-off lands: to the Norwegian Othere’s account of his journey round the North Cape to explore the White Sea; and to Wulfhere’s cruise along the coasts of Estonia. Envoys bore his presents to the churches of India and Jerusalem.

Alfred was pre-eminently a man of business or careful of detail, laborious and methodical. He carried in his bosom a little hand-book in which he jotted down things as they struck him or now a bit of family genealogy; now a prayer; now a story such as that of Bishop Ealdhelm singing sacred songs on the bridge.

Each hour of the king’s day had its peculiar task. There was the same order in the division of his revenue and in the arrangement of his Court. But active and busy as he was, his temper remained simple and kindly.

Tradition told of his genial good-nature, of his chattiness over the adventures of his life, and above all of his love for song. In his busiest days, Alfred found time to learn the old songs of his race by heart or and bade them be taught in the palace-school. He found comfort in the music of the Psalms.

What he aimed at, was simply the education of his people. Alfred desired that at least every free-born youth who possessed the means, should “abide at his book till he can well understand English writing.”

He himself superintended a school which he had established for the young Nobles of his Court. He found none to help him in his educational efforts but a few Presbyters



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who remained in the fragment of Mercia which had been saved from the invaders ó and the Welsh Bishop Asser.

Alfred resolved to throw open to his people in their own tongue the knowledge which had till then been limited to the Clergy. He took his books as he found them. They were the popular manuals of his age: the compilation of Orosius (which was then the one accessible book of *Universal History*); the *English History* of his own people, by Bede; the *Consolations* of Boethius; the *Pastorals* of Gregory.

He translated these works into English. But he was far more than a translator. He was an editor for the people. Here he omitted; there he expanded.

He enriched Orosius by a sketch of the new geographical discoveries in the North. He gave a West-Saxon form to his selections from Bede. In one place, he stops to explain: his theory of government; his wish for a thicker population; his conception of national welfare as consisting of a due balance of Presbyters, Soldiers and Freemen.

The mention of Nero spurs Alfred to an outbreak on the abuses of power. The cold providence of Boethius, gives way to an enthusiastic acknowledgement by Alfred of the goodness of God.

As Alfred writes, his large-hearted nature flings off its royal mantle. He talks man to man. "Do not blame me," he prays with a charming simplicity, "if any know Latin better than I. For every man must say what he says, and do what he does, according to his ability."

Simple as was his aim, Alfred created English literature. Before him, England possessed noble poems in the work of Caedmon. But the mighty roll of the books that fill her libraries, begins with the translations of Alfred ó and, above all, with the *Saxon Chronicle* of his reign. The writer of English history may be pardoned if he lingers too fondly over the figure of the king ó in whose court, at whose impulse, it may be in whose very words ó English history begins. Thus Professor Green, in his book *A Short History of the English People*.

Stronger still are Professor Green's statements in his other work, *The Conquest of England*. There, he insists<sup>27</sup> that Alfred stands in the forefront of his race. For he is the noblest, as he is the most complete, embodiment of all that is great.

Religion, indeed, was the groundwork of Alfred's character. His temper was full of piety. Everywhere, throughout his writings that remain to us, the very thought of God stirs him to outbursts of ecstatic adoration.

Yet of the narrowness, the want of proportion, the predominance of one quality over another which commonly goes with an intensity of religious feeling or of moral purpose ó Alfred showed no trace. Vexed as he was by sickness and constant pain, not only did his temper take no touch of asceticism ó but, instead, a rare geniality.

Little by little men came to recognize in Alfred a ruler of higher and nobler stamp than the World had seen. Never (since Jesus) had it seen a king who lived only for the

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<sup>27</sup> J.R. Green: *The Conquest of England*, New York, 1884 ed., pp. 179f.

good of his people. Thus Professor Green. Yet such the World could then ó and can still now ó see in that King Alfred.

### George Jowett and William of Malmesbury on King Alfred

George Jowett explains<sup>28</sup> that the *Anglo-Saxon Chronicle* was created by King Alfred the Great in 871 A.D. He commissioned monastic scholars to translate, from documentary evidence, the history of Ancient Britain into the Saxon tongue.

England's later historians Capgrave and Kemble both wrote that Alfred was given great credit for creating laws, institutions, and reform. Yet what he really did, was to restore and enforce the ancient British practices of law, order and religion ó all of which had been in existence for many centuries before his time.

This is borne out by an old record in which it states that Alfred ordered the ancient laws of Dunwal [Moelmud] to be codified into the Saxon tongue. Dunwal(lon) was the greatest of the kings of Early Britain, and certainly the greatest lawmaker in Brythonic history.<sup>29</sup> He is recorded as Dunwall the Lawmaker ó who lived and reigned around 510f B.C.

The mediaeval historian William of Malmesbury<sup>30</sup> informs us that in the year of our Lord's incarnation 872, Good King Alfred the Great, the youngest son of Ethelwulf ó who had before received the royal unction ó acceded to the sovereignty. The king himself was present in every action, ever daunting the Danish invaders and at the same time inspiring his subjects with the signal display of his courage.

The king is to be admired and celebrated with the highest praise. He, amid the sound of trumpets and the din of war, enacted statutes by which his people might equally familiarize themselves to religious worship and to military discipline.

He appointed -Centuriesø (which they call *Hundreds*) and -Decennariesø (or *Tythings*) ó so that every Englishman, living according to law, must be a member of both. Cf. Exodus 18:21f & Deuteronomy 1:13f. If anyone was accused of a crime, he was obliged immediately to produce persons from the *Hundred* and *Tything* to become his surety (cf. bail). Whosoever was unable to find such surety ó must dread the severity of the laws.

By this regulation, King Alfred diffused peace throughout the country. He confirmed the privileges of the churches, and sent many presents into India ó a matter of astonishment even in the present time. The king gave his whole soul to the cultivation of the liberal arts. His own book or manual he called in his vernacular tongue: *Handboc*. Alfred's manual appears to have contained psalms, prayers and texts of Scripture etc. He died ó just as he had begun a translation of the Psalms. Thus Malmesbury.

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<sup>28</sup> *Op. cit.*, pp. 144f.

<sup>29</sup> E.O. Gordon's *Prehistoric London* pp. 101-104; R.W. Morgan's *History of Britain* pp. 42-46.

<sup>30</sup> *Op. cit.*, pp. 113-20.

### Various other historians (from Huntingdon to Pauli) on King Alfred

A slightly later mediaeval historian, Henry of Huntingdon, writes<sup>31</sup> that when the kings of Wessex acquired the ascendancy over the rest, they established a monarchy throughout the island. They then divided it into thirty-seven counties.

In the first year of King Alfred (A.D. 872), the Anti-English Danes came to London, and wintered there. In the fourth year of King Alfred (A.D. 875), the Danish King Healfdene marched into Northumbria. Some of the people fled to King Alfred, who concealed himself in the woods with a small band of followers.

As the historian A.E. Freeman observes,<sup>32</sup> King Alfred was a prince who was never cast down by adversity and never lifted up to insolence in the hour of triumph. Indeed, there is no other name in history to compare with his. For, in Freeman's opinion,<sup>33</sup> Alfred was the most perfect character in history and a saint without superstition; a scholar without ostentation; a conqueror whose hands were never stained by cruelty.

The renowned historian Leopold von Ranke declares in his great work on *World History*<sup>34</sup> that Alfred was one of the greatest figures in the history of the World. High praise indeed of an Englishman and coming from a German.

The *Encyclopedia Americana* qualifies<sup>35</sup> this praise, by saying it should be borne in mind that it is not the magnitude of Alfred's military achievements nor the extent of the country he governed that lift him into the ranks of the World's great men. It is the beauty and moral grandeur of his character.

In him were combined the virtues of the scholar and the patriot; the efficiency of the man of affairs with the wisdom of the philosopher and the piety of the true Christian. His character, public and private, is without a stain. His whole life was one of enlightened and magnanimous service to his country.

Even the sceptical Edward Gibbon explains<sup>36</sup> that the wise Alfred adopted, as an indispensable duty, the rigour of the Mosaic institutions. Thomas the Apostle and Missionary to India was famous as early as the (*circa* A.D. 385) time of Jerome.<sup>37</sup> At the end of the ninth century, Thomas's shrine was devoutly visited by the ambassadors of Alfred.

Under both pressure from the papacy and savagery from Scandinavia, Europe was sinking deeper and deeper into the dark ages. However, Rev. Professor Dr. Kenneth Scott Latourette makes some very pertinent remarks and in his famous book *History of Christianity*. In what have appeared to many to be the darkest hours for the Christian Faith and explains Latourette<sup>38</sup> and in England, in a remote corner of Christendom during

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<sup>31</sup> *Op. cit.*, pp. 5f & 147f.

<sup>32</sup> Cited in *Hist. Hist.*, XVIII, p. 74.

<sup>33</sup> A.E. Freeman: *History of the Norman Conquest*, 3d ed., 1877, I:49.

<sup>34</sup> L. von Ranke: *Weltgeschichte*, VI:2:46.

<sup>35</sup> Art. *Alfred the Great*, in *Enc. Amer.*, 1951 ed., I:380.

<sup>36</sup> *Op. cit.*, IV p. 115 & V p. 178.

<sup>37</sup> Jerome: *To Marcella*, epist. 148.

<sup>38</sup> K.S. Latourette: *Hist. of Christianity*, Eyre & Spottiswoode, London, 1955, p. 367.

the last three decades of the ninth century, Alfred the Great persuaded the important Viking leader King Guthrum to accept Christian Baptism.

Alfred brought about a religious and intellectual revival which on a smaller territorial scale was not unlike the earlier one on the Continent under the Carolingians. Indeed, precisely England now became the chief source of the Missionaries who ultimately won the pagan people of Scandinavia to the Christian Faith ó and instructed them in it.

The famous modern Welsh historian and writer G.M. Trevelyan observes<sup>39</sup> that Alfred the Great is naturally to be compared to Charlemagne ó the European Continent's Charles the Great. Each had many-sided talents. If Alfred's lot was cast in narrower geographic limits than the "Napoleonic" arena of Charlemagne's activities ó his work has lasted longer. He and his sons made Anglo-Saxon and Celto-Briton in England one for ever. The memory of Charlemagne, however, does not suffice to unite Germany and France.

Atlanta's Emory University Law Professor Dr. Harold J. Berman states<sup>40</sup> in his landmark book *Law and Revolution* that it is important not to confuse Germanic Christianity with modern Western [Roman Catholic] Christianity. It was, in fact, much closer to Eastern Orthodoxy. The Laws of [the Germanic] King Alfred start with the Ten Commandments; a restatement of the Laws of Moses; and a summary of the Acts of the Apostles.

Alfred died in 901 A.D. Precisely a millenium later in 1901 A.D., Lord Rosebery<sup>41</sup> said of him at Winchester during the celebration of the Alfred Millenary that with his name England now associates her metropolis, her fleet, her literature, her laws, her first foreign relations, and her first efforts at education. Alfred is, in one sentence, the embodiment of her civilization.

The great German historian and writer Reinhold Pauli said of Alfred that the qualities of his mind were those of a statesman and a hero. The most unshakable courage was most certainly the first component of his being.

He also possessed a decided turn for invention. The pillars on which the church at Athelney was built; the long ships he constructed; the manner in which he turned a river from its natural course; and his ingenious clock of tapers with which to measure the passage of time ó afford us just as convincing evidence of his powers of thought, as do the battles which he gained.

Elevated by his piety above all his subjects and contemporaries, no one could be farther than he was from becoming a weak bigot. It is also impossible to draw a parallel between the A.D. 872f Alfred and the 1060f Edward the Confessor.

Edward lost his kingdom to the originally-Scandinavian Normans. Alfred kept his from the paganly-Scandinavian Danes ó by the aid of his sword, and a firm reliance on the Almighty. Thus Pauli.

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<sup>39</sup> G.M. Trevelyan: *Op. cit.*, p. 78.

<sup>40</sup> H.J. Berman: *Law and Revolution*, 1983, pp. 63f.

<sup>41</sup> Cited in *Hist. Hist.*, XVIII, pp. 90f.

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Of Alfred, Francis Palgrave declares in his *History of the Anglo-Saxons*<sup>42</sup> that he knew he could not be furthered in his attempts to govern well ó except by the continual aid of Providence. With this full sense and conviction of his own utter weakness and inability to help himself, Alfred began his reign. Thereby he was enabled to acquire a better reputation than any other monarch of Western Christendom.

**Introductory remarks about King Alfred's *Law Code***

Attenborough, in his important work *Laws of the Earliest English Kings*,<sup>43</sup> explains that there is no record of any further legislation in Wessex for nearly two centuries after the promulgation of *Ine's Law Code* around 688f A.D. The next is that of Alfred the Great ó who became king in 871, and died about the year 901.

*Alfred's Law Code* is preceded by a long introduction.<sup>44</sup> This contains translations of the Ten Commandments and many other passages from the book of Exodus.<sup>45</sup> It is followed by an excerpt from Christ's Sermon on the Mount and also by a brief account of apostolic history (with quotations from the apostolic book of Acts).<sup>46</sup> There, Alfred stresses the õjots and tittlesõ alias the *minutiae* of God's Law (Matthew 5:17f); the "Golden Rule" (Matthew 7:12); and the God-inspired decision of the First General Assembly of the Christian Church, to teach God's Law also in the congregations of Christ (Acts 15:20f & 16:4f).

Then, Alfred traces the growth of Church Law ó as laid down by Ecclesiastical Councils, both Ecumenical and English.<sup>47</sup> The concluding words<sup>48</sup> of his introduction then state that compensations for misdeeds on the part of men were ordained at many such councils ó and written in their records with varying provisions.

The next paragraph<sup>49</sup> is very important. For there, Alfred acknowledges his indebtedness to the laws of Ine ó as well as to those of the Mercian King Offa (which are now lost), and those of Aethelberht of Kent (the first Christian king in England). In all the extant manuscripts of *Alfred's Code* (as preserved in the *Law Code of Edward the Confessor*), the *Law Code of Ine* is added as an appendix to that of Alfred.

Dr. J.A. Giles has an appropriate *Introductory Note to the Laws of King Alfred the Great*. There, Giles rightly remarks<sup>50</sup> we may reasonably conjecture that a king so devoted to books and so anxious for the improvement of his people would be likely to take an active part in constructing a body of laws for the guidance of his subjects.

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<sup>42</sup> Cited in *Hist. Hist.*, XVIII, pp. 75 & 625.

<sup>43</sup> *Op. cit.*, pp. 34f.

<sup>44</sup> Chs. 1-48.

<sup>45</sup> Chs. 20-23.

<sup>46</sup> Acts ch. 15.

<sup>47</sup> Ch. 49:1-7.

<sup>48</sup> Ch. 49:8.

<sup>49</sup> Ch. 49:9.

<sup>50</sup> J.A. Giles *Introduct. Note Alfred's Laws* (in ed. R.D. Giles's *Whole Works of King Alfred*, AMS Press, New York, II p. 119).

His laws were historically Scriptural ó and are also existentially relevant even today. The philological reader who may choose to scrutinize the ðdeemingsø or the ðdoomsø of Alfred ó *Aelfreds domas* ó will be astonished and pleased to observe how nearly we still speak in the language of our forefathers who lived more than a thousand years ago. Indeed, it can also be seen how clearly they in turn spoke in the language of the Holy Bible ó written some 800 to 2200 years yet earlier.

Alfred's *Dooms* (alias ðDeemingsø or ðJudgmentsø) start with an almost literal transcript of the Decalogue. His code then continues with many selections from the *Mosaic Code* ó chiefly from Exodus chapters 21 to 23, and only very slightly modified.

It was, however, also uniquely English ó and in no way Continental. As Henry Adams wrote in his essay *The Anglo-Saxon Courts of Law*,<sup>51</sup> English Law offered an equal resistance to both the good and the bad of Frankish Law. For it resisted both the equity and the despotism of Charlemagne.

In his famous book *Ancient Laws and Institutes of England*, Thorpe points out<sup>52</sup> that Alfred's *Dooms* include also the *Law Code of Ine*. They are followed by a copy of the A.D. 878 *Peace Treaty* between Alfred and Guthrum. Thorpe believes that the extant manuscripts where these so occur, were written for use in Wessex. Another collection, however ó with Offa's *Institutes* appended in like manner ó was destined for the inhabitants of Mercia (or at least that part of it occupied by Alfred). Thus Thorpe.

We ourselves now translate the initial ðDoomsø or ðDeemingsø or ðJudgmentsø of Alfred, into modern English, as follows:

### **Details of the foundational laws of King Alfred in his *Code***

Here are some excerpts from the *Code of Alfred*: ðThe Lord spoke these words to Moses, and said: ðI am the Lord your God. I led you out of the lands and out of the bondage of the Egyptians.

ð1. Do not love other strange gods before Me! 2. Do not call out My Name in idleness; for you are not guiltless with Me, if you call out My Name in idleness! 3. Mind that you hallow the rest-day! You must work six days; but on the seventh you must rest! For in six days Christ made Heavens and Earth, the seas, and all the shapen things in them; but He rested on the seventh day. Therefore, the Lord hallowed it. 4. Honour your father and your mother whom the Lord gave you ó so that you may live longer on Earth! 5. Do not slay! 6. Do not commit adultery! 7. Do not steal! 8. Do not witness falsely! 9. Do not unrighteously desire your neighbour's goods! 10. Do not make gold or silver gods for yourself!ö See: Exodus 20:3-17.

ð11. These are the judgments which you must appoint. If anyone buys a Christian bondsman [or slave],<sup>53</sup> let him be bonded for six years ó but the seventh, he must be

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<sup>51</sup> H. Adams: *The Anglo-Saxon Courts of Law* (in *Essays...to C.W. Eliot*, p. 35).

<sup>52</sup> B. Thorpe: *Ancient Laws and Institutes of England*, Record Commissioners, Eyre & Spottiswoode, London, 1940, 1840, I-II.

<sup>53</sup> *theow*.

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freely unbought. With such clothes as he went in, with such must he go forth. If he himself had a wife [previously] ó she must go out with him. However, if his overlord gave him a wife ó she and her bairn [must] go to the overlord. If, however, the bondsman then says, -I do not wish to go away from my overlord; nor from my wife; nor from my bairn; nor from my goodsøó let his overlord then bring him to the door of the church and drill his ear through with an awl, as a sign that he should be a bondsman ever since!ö See: Exodus 21:2-6.

ö12. Though anyone sells his daughter as a maidservant ó let her not at all be a bondswoman like other women! Nor may he sell her to foreigners. But if he who bought her does not respect her ó let her go free, [even] among foreigners. If, then, he [her overlord] allows his son to cohabit with her ó let him give her marriage-gifts, and see to it that she receives clothes and the dowry which is the value of her maidenhood. Let him give her that. If he do none of these things to her ó then she is free.ö See: Exodus 21:7f.

ö13. The man who intentionally slays another man ó let him suffer death [Genesis 9:5-6]. He, however, who slay him out of necessity or unwillingly or involuntarily ó as when God may have sent him into his power, and when he had not lain in wait for him ó he is worthy of his living and lawful fine, if he [the involuntary manslaughterer] seeks asylum. But if any one presumptuously and wilfully slays his neighbour through guile ó drag him from My altar, so that he should suffer death!ö See: Numbers 35:11-33.

ö14. He who smites his father or his mother ó shall suffer death. 15. He who steals a Freeman and sells him, and it be proved against him, so that he cannot clear himself ó let him suffer death. 16. If any one smites his neighbour with a stone or with his fist ó if he [the one smitten] may go forth, even though only with the help of a staff: get him medicine; and do his work for him, while he himself cannot.ö See: Exodus 21:12-16.

ö17. He who smites his own bondservant or bondswoman ó if he or she does not die the same day but still lives for two or three nights ó he is not at all so guilty [of death]: for it was his own chattel. However, if he or she die the same day ó put the guilt upon him [the overlord].ö See: Exodus 21:20-21.

ö18. If anyone, while fighting, hurt a pregnant woman ó let him pay a fine for the hurt, as the evaluators determine. If she die ó let him pay soul with soul.ö See: Exodus 21:22-23.

ö19. If anyone puts out another's eye, let him give his own for it: tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe.ö<sup>54</sup> See: Exodus 21:24-25.

ö20. If anyone smite the eye out of his manservant or his maidservant, so that he makes them one-eyed ó for that, he must free them. If he then knocks out a tooth ó let him do the same.ö See: Exodus 21:26-27.

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<sup>54</sup> *lael for lael.*

ō21. If an ox gores a man or a woman so that they die ó let the ox be stoned to death; but do not let its flesh be eaten. The owner is guiltless, if the ox gored two or three days earlier and the owner did not know about it. However, if he did know about it, and if he did not want to impound it ó and if it then slew either a man or a woman ó let it be destroyed with stones, and let the owner of the slain or the gored bondsman be paid whatever the council finds to be right. If it gore a son or a daughter, it is worthy of the same judgment. However, if it gored a bondsman or bondsmen ó let thirty shillings of silver be given to the overlord, and let the ox be destroyed with stones.ö See: Exodus 21:28-32.

ō22. If anyone digs a water-pit; or unties a tied-up animal, and does not tie it up again ó let him pay for whatever [animal] falls therein; and let him have the dead one.ö See: Exodus 21:33-34.

ō23. If an ox wounds another man's ox so that it dies, let them sell the [live] ox and share its value ó and, similarly, also the meat of the dead one. However, if the owner knew that the ox was goring, but did not wish to restrain it ó let him give another ox for it, and keep all the meat for himself.ö See: Exodus 21:35-36.

### **Further details of the case laws of Ancient Israel used by Alfred**

ō24. If anyone steals another's ox, and slays or sells it ó let him give two for it; and four sheep for one. If he does not have anything to give ó let he himself be sold for the fee.ö See: Exodus 22:1.

ō25. If a thief breaks into a man's house at night, and he be slain there ó he [the slayer] is not guilty of manslaughter. If he does this after sun-rise, he is guilty of manslaughter; and he himself shall then die ó unless he slew out of necessity. If he [the thief] be caught red-handed with what he previously stole ó let him pay twofold for it.ö See: Exodus 22:2-4.

ō26. If anyone harms another man's vineyard or his acres or any of his lands ó let him pay the fine as men value it.ö See: Exodus 22:5.

ō27. If fire be kindled to burn right<sup>55</sup> ó let him who tindered the fire then pay a fine (*bot*) for the mischief.ö Here, for "fine" Alfred uses the Anglo-Saxon word *bot* (compare the word "booty"). See: Exodus 22:6.

ō28. If anyone entrust livestock to his friend ó if he [the friend] himself steals it, let him pay for it twofold. If he does not know who stole it, let him clear himself [from the accusation] that he committed a fraud. However, if it were quick [alias "live"] cattle ó and if he says that the army took it; or that it died of itself; and if he has a witness ó he need not pay for it. If he, however, has no witness ó and if he [the loser] does not believe him [the custodian] ó let him then swear.ö See: Exodus 22:7-11.

ō29. If anyone deceives an unwedded woman and sleeps with her, let him pay for her ó and have her afterwards as his wife. However, if the woman's father does not

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<sup>55</sup> *ryht*.



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want to let her go ó let him [the seducer] give money, according to her dowry.ö See: Exodus 22:16-17.

ö30. Do not let women live who are wont to receive enchanters and conjurers and witches.ö See: Exodus 22:18. Note: these sorcerers and practitioners of witchcraft were usually also murderers and/or kidnapers.

ö31. Let him who has intercourse with cattle,<sup>56</sup> suffer death.ö See: Exodus 22:19. Note: modern departures from the capital punishments in this and in the previous and in the subsequent provisions, are departures **not just** from the Holy Bible ó but **also** from the Ancient Common Law.

ö32. Also let him who offers sacrifices to the gods ó except to God alone ó suffer death.ö See: Exodus 22:18-20. Note: the cruel earlier extermination by (degenerate) unitarian Judaists or Muslims and also by polytheistic Pagans even of **private** worshippers of the Triune Jehovah as the one and only True God ó is here replaced by the humane judicial punishment according to (regenerate) Trinitarian Law not of those who are private but rather of those who are **public** worshippers of false gods.

ö33. You must not vex strangers and those who come from afar ó for you were strangers, long ago, in the land of the Egyptians.ö See: Exodus 22:21. Note: not the unitarian mediaeval Jews but the trinitarian Anglo-Britons are here regarded as the legal continuation of the Ancient Israelites.

ö34. You must not scathe widows and step-children, nor harm them anywhere. However, if you do otherwise ó they cry out to Me, and I hear them; and then I slay you with My sword. Thus ó I make **your** wives to be widows, and **your** bairns to be step-children!ö See: Exodus 22:22-24.

ö35. If you give money as a loan to your comrade who wants to dwell with you ó do not pressure him as one in need (*niedling*); and do not oppress him with interest.ö See: Exodus 22:25.

ö36. If a man has nothing but a single garment with which to cover himself or to wear, and he gives it as a pledge ó before the sun sets, give it back to him. If you do not do so ó he calls out to Me; and I hear him. For I am very mild-hearted.ö See: Exodus 22:26-27.

ö37. You may not revile your Lord; nor curse the overlord of the people.ö See: Exodus 22:28.

ö38. Your tithe-monies and your first-fruits of things that go, and things that grow ó you must give to God.ö See: Exodus 22:29-30.

ö39. You may not eat at all of that meat which wild animals leave; but give it to the hounds.ö See: Exodus 22:31.

ö40. Do not listen to the words of a liar; nor permit his judgments; nor speak to anyone who gives testimony in his favour.ö See: Exodus 23:1f.

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<sup>56</sup> *niedling*.

ō41. Do not, beyond your right reason, wend yourself to people who are unwise and unrighteous in their wishes, when they speak and cry out ó nor to the learning of the most unwise. Do not permit them.ö See: Exodus 23:2*f*.

ō42. If another manø stray cattle come into your power ó though it be your foe ó make it known to him.ö See: Exodus 22:4*f*.

ō43. You must judge very evenly; do not give one judgment to the wealthy, [but] another to the poor. Nor give one judgment to the more beloved, and another to the more disliked.ö See: Exodus 23:6.

ō44. Always shun lies [alias ÷Shun thou aye leasingsø]. 45. You must never slay a righteous [alias ÷sooth-fastø] and unguilty man. 46. You must never accept bribes [alias ÷meed-moniesø]; for they all too often blinden wise menø thoughts and turn their words aside.ö See: Exodus 23:7-8.

ō47. Do not act in any way uncouthly toward the stranger from abroad [alias ÷out-comerø]; nor oppress him with any unrighteousness [alias ÷uncouthlyø]. 48. Never swear by heathen gods; nor may you call out to them, in any way.ø See: Exodus 23:9.

As former Harvard Law Professor Harold J. Berman has remarked,<sup>57</sup> Alfredø laws are largely a recapitulation of earlier collections made by previous monarchs. Thus Alfredø laws contain such striking provisions as: öDoom very evenly! Do not doom one doom to the rich; another to the poor! Nor doom one doom to your friend; another to your foe!ö

These Alfredian provisions do, in fact, reflect the judicial laws of Moses. For: öYou shall do no injustice in judgment! You shall not be partial to the poor; nor defer to the great! But you are to judge you neighbour fairly!ö Leviticus 19:15. öThe stranger [*cf.* the Brythonic Welshman and even the Anglo-Dane] that dwells with you [*viz.* with Alfredø Englishmen], shall be to you as one born among you; and you shall love him as yourself!ö Leviticus 19:35.

### Alfred's view that Christ & His Apostles preserved the Law's 'general equity'

Alfred then declares that when Christ came to the Mediterranean World (or ÷Middle Earthø), He Himself did öapproveö these öjudgmentsö alias these judicial laws. Far from having abrogated or destroyed them, He Himself therefore still **requires** at least their ÷general equityø to be observed.

This was clearly also Alfredø own understanding. He does indeed distinguish between the Old-Israelitic format of the judicial laws of Moses, on the one hand ó and the general equity thereof, on the other. This can be seen by Alfredø own adaptation of those Old-Israelitic laws to meet the different conditions of early-mediaeval Anglo-Saxon Britain. Compare, for example, Alfredø own laws 11 & 27 & 44-47 above. Yet, in so adapting, Alfred clearly preserves and enforces the general equity of those Old-Israelitic judicial laws.

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<sup>57</sup> *Op. cit.*

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To prove this, just compare the statements of the Mosaic Law with Alfred's Anglo-British Common Law and also with the *Westminster Confession of Faith*. The Bible cites *inter alia* Exodus 20:1 to 23:9f in the Old Testament and Matthew 5:5-21f & First Timothy 5:17-21 in the New Testament. Alfred cites Exodus 20:1 to 23:9 and as well as Matthew 5:17-19 & 7:1-12 and Acts 11:19-26f & 15:20-29 & 16:4-5. The *Westminster Confession* (19:4f) cites Exodus 21:1 to 22:29, as well as Matthew 5:17f and First Corinthians 9:8-10 *etc.*

Continues Alfred: 549. These are judgments which Almighty God Himself spoke to Moses and commanded him to keep. Now, since the Lord's only begotten Son our God and healing [Saviour] Christ has come to Middle Earth [alias the Mediterranean World] and He said that He did not come to break nor to forbid these Commandments but to approve them well, and to teach them with all mild-heartedness and lowly-mindedness. Cf. too Matthew 5:5-19 with the *Westminster Confession of Faith* 19:5.

Then, after His throes [or sufferings], before His Apostles had gone throughout the Earth to teach, and while they were yet together and they turned many heathen nations to God. While they were all together, they sent **errand-doers** to Antioch and to Syria, **to teach Christ's Law** [cf. Acts 11:19-26f]. When they saw that this did not speed them up and they sent an **errand-writing** to them. This is then that errand-writing which the Apostles sent to Antioch and to Syria and to Cilicia, **which is now for the heathen nations turned to Christ** [cf. Acts 15:20 & 16:4-5]:

*The Apostles and Elder Brethren wish you health!* Now we make known to you, that we have heard that some of our fellows have come to you with our words, and commanded you to bear a heavier way [or law] than we enjoined, and that they have too much misled you with manifold injunctions, and have more perverted than corrected your souls. So we assembled ourselves about this. Then, to all of us it seemed right that we should send [to you] Paul and Barnabas and men who will give their lives for the Name of the Lord. With them, we send Judas and Silas, so that they may say the same to you.

Alfred then shows that also the Apostles, such as Paul and Barnabas (Acts 14:4-14f), clearly upheld the general equity of the Law of God. Explained the Apostles: It seems good to the Holy Ghost and to us, that we should not impose any burden upon you beyond that which was needful to hold and that is, then, that you should refrain from worshipping devil-gilds [or idols], and from tasting blood and strangled things, and from fornication! See: Acts 15:23-29 and cf. Exodus 20:2-17.

For it needs to be remembered that Alfred here: first re-enjoined the Ten Commandments (Exodus 20:1-17); then illustrated their concrete application by way of case law (Exodus 21:1 to 23:9); and next assured his readers that Christ had not come to break the Ten Commandments, but to approve them well (Matthew 5:5-19). Indeed, Alfred had then gone on to enjoin abstaining from idolatry and from bloodshed and from fornication and alias from the Second and from the Sixth and from the Seventh Commandments in the Second Table of God's Law for man (Acts 15:23-29).

So clearly, Alfred believed that the Apostles here (at the Synod of Jerusalem alias the first General Assembly of the Christian Church) **enjoined God's Decalogue upon**

all of the Gentiles who had heard it and who indeed should heed it. For he recalled that also the Gentiles...should abstain from pollutions of idols and fornication and from blood[shed]! For Moses has those who preach him, in every city, from olden times ó being read out in the meeting-places every weekly sabbath-day.ö Acts 15:19-21.

öMoreover, do not do to other men whatever you wish other men should not do to you. From this one judgment [or ðoomø], a man may perceive that he should judge everyone rightly. He need keep no other judgment-book. Let him think [or ðake careø] that, if he seeks to judge another, he should wish [or ðeemø] upon no man that which he would not want to wish [or ðeemø] upon himself.ö Matthew 7:1-2,12.

### **Alfred on the continuity of Biblical English Law from Aethelbeht onward**

Continues Alfred: öNow then, since it has happened that many nations received Christø Faith ó there were many Synods gathered throughout all the Earth. Also throughout the English race, they received Christø Faith ó from holy Overseers, and also from other exalted Wise-men [*Witan*]. They then set forth, from their mild-heartedness, that which Christ taught ó as regards almost every misdeed. Consequently, the worldly lords might by their leave ó without sin ó at the first guilt take the fine [ðee-bootø] which they then appointed.

öHowever, in treason against a lord ó they did not dare to declare any mild-heartedness. For Almighty God gave none to those that slighted Him ó nor did Godø Son Christ give any [mild-heartedness] to him who sold Him to death, and whom He bade to love such a Lord as Himself.ö

Significantly, the ðPrefaceø to Alfredø own laws then closes with a very important statement about the provisions of the Christian Common Law of Britain before his own day. Here Alfred recalls especially the Christian laws made by the very first Saxon King in England to become a Christian ó ðEthelbryteø alias the A.D. 540f Aethelberht King of Kent. Alfred then goes on to refer also to the A.D. 688 Wessex laws of the Christian King Ina, and to the A.D. 755 Mercian laws of the Christian King Offa.

öNow I, King Alfred, have collected these laws, and have given orders for copies to be made of many of those which our predecessors observed, and which I myself approved.... I have not dared to presume to set down in writing much of my own; for I cannot tell what [innovations of mine] will meet with the approval of our successors. But those which were the most just of the laws I found ó whether they dated from the time of Ine my kinsman, or of Offa King of the Mercians, or of Aethelberht who was the first [Anglo-Saxon or rather Anglo-Jutish king] to be baptized in England ó these I have collected....

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ðI, then, Alfred King of the West Saxons, have shewn these to all my Councillors<sup>58</sup> [alias ðmy Parliamentø]. And they have declared that it met with the approval of all ó so that they should be observed.ö<sup>59</sup>

Alfred then lists the laws which he and his Parliament had then developed (from Exodus and Aethelbeht *etc.*) **specifically for English conditions in the ninth century A.D.** The more important of them will now be listed.

### Alfred's ninth-century further developments of Biblical English Law

Of oaths and of weds (alias ðpledgesø) [*cf.* Deuteronomy 24:6-13]. ð1. In the first place, we enjoin you, as a matter of supreme importance, that every man shall abide carefully by his oath and his pledge.<sup>60</sup> If anyone...proves false to his pledge..., if he runs away before the term [of imprisonment is completed], and is recaptured ó he shall remain in prison forty days, as he ought to have done at first. If he succeeds in making his escape, he shall be banished ó and excommunicated from all the churches of Christ.ö<sup>61</sup>

Of church socns alias ðfreeholdø [*cf.* Numbers 25:12-25]. ð2. If any one, for whatever guilt, seek any of the minister-homes...or other free family household..., let him have three nightø space to save himself until he pleads.ö

Of bail-breaking. ð3. If anyone break the Kingø bail, let him pay a fine.ö

Of treachery against a lord. ð4. If any one is treacherous about the Kingø life..., let him be liable in his life and in all that he owns. If he will prove himself true, let him do that by the Kingø man-money [*wer-geld*]. So we also appoint, for all ranks ó both Churl and Earl.ö *Cf.* Numbers 35:15-34 with Exodus 21:22-34.

By this 4th article of their code, Alfred and his Councillors place the King and his Lords not above but under the Law of God ó and thus on exactly the same footing as the Freemen. The code does this, by recognizing the Kingø and the Lordsø *wer-geld*. This refers to their duty ó to compensate the kindred of anyone accidentally slain by an agent of the King or of the Lords.

Of church freedom. ð5. The privilege of sanctuary belonging to a church, includes also the following: if anyone takes refuge in a church [*cf.* Numbers 35:25], because of any offence which up to that time had been kept secret, and there confesses his sin in Godø Name ó half the punishment shall be remitted him. We decree that he who steals on Sunday or during Christmas or Easter...shall pay in each case **double compensation**ö or ðwain-bootø [*cf.* Exodus 22:4f].... If anyone steals anything from a church, he shall pay the value of the article and the fine which is appropriate to the value in question ó and the hand shall be struck off which committed the theft.ö

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<sup>58</sup> *ealleum minum Witum.*

<sup>59</sup> *Alf.* 49:9.

<sup>60</sup> *his ath 7 his wed.*

<sup>61</sup> *Alf.*, (50:1).

Of church stealing. ̄6. If anyone thieve anything in a church, let him pay ̄ or ̄yield up ̄ that which he has stolen.

Of fighting in the King ̄s Hall. ̄7. If any man fight in the King ̄s Hall..., let it be in the King ̄s judgment as to whether he die or live. ̄

Of fornication.... ̄8. If anyone misleads [a woman]..., let him give 120 shillings. ̄ See: Exodus 22:16*f*.

Of slaying a pregnant woman. ̄9. If anyone slays a woman with child while the child is in her womb, he shall pay the full compensation [*wer-geld* or ̄man-money ̄] for the woman, and half the compensation [*wer-geld*] for the child, [which shall be] in accordance with the compensation [*wer-geld*] of the father ̄s kindred [*cf.* Exodus 21:22-25]. ̄

Of seizing hold of a woman. ̄18. If anyone seizes by the breast a young woman belonging to the Commons [namely a ̄Free-Commoner ̄ or *Cirliscr* alias a ̄Churl-ess ̄], he shall pay her five shillings compensation. If he throws her down but does not lie with her, he shall pay [her] ten shillings compensation. If he lies with her, he shall pay [her] sixty shillings compensation [*cf.* Exodus 22:16-17 & Deuteronomy 22:23-29]. If another man has previously lain with her, then the compensation shall be half this.... If a young woman who is betrothed commits fornication, she shall pay compensation to the amount of sixty shillings to the surety [of the marriage], if she is a Commoner. ̄

Of the Elder ̄s Roll. ̄37. If a man wished [to go] from one District (*Bold-Getael*) to seek service in another, he shall do it with the cognizance of the Elder-man (*Ealdorman*) to whose jurisdiction he has previously been subject. ̄ See: Deuteronomy 1:13*f cf.* 19:12*f*.

Other provisions in Alfred ̄s *Dooms* concern: wood-burning; compensation for injuries sustained while working; cattle-rustling; child-care; kid-napping; aiding and abetting assaults; debt; rape; homicide; pledges; fettering; negligence regarding dangerous weapons; house-breaking; immovable property; wounds ̄ *etc.* For the complete list of those laws, see *The Whole Works of King Alfred* (given in our Appendix 38 below).<sup>62</sup>

As Wallace-Hadrill points out,<sup>63</sup> Alfred ̄s translation of the laws of Moses was intended not merely to acquaint his subjects with model legislation. It was intended also to link his own laws with those of the Bible. By and large, Alfred regarded the latter as current and valid. The Decalogue was and is a universal basis for all law, and therefore also for Christian Law.

Then, at the very end of his *Code*, King Alfred gives us the collected sublimate of the earlier Christian-Saxon ̄dooms ̄ of his Wessex kinsman the earlier Anglo-British ruler Ine (alias the Brythonic Ivor). In this way, Alfred and his councillors show they have not departed from but merely expanded the body of Anglo-British Christian

<sup>62</sup> Alfred (King): *Whole Works* (the ed. by R.D. Giles is to be recommended).

<sup>63</sup> See Goard ̄s *op cit.*, pp. 114-16; & Wyatt ̄s *op. cit.*, pp. 97*f* & 238 n. 2.

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Common Law ó being a synthesis of Ancient Israelitic Common Law, Ancient Brythonic Common Law, and Ancient Anglo-Saxon Common Law.

**Various legal opinions on the worth of Alfred's Code**

Warren W. Lehman was the Smongenski Research Professor at the University of Wisconsin Law School. He insisted in his important article on *The First English Law*<sup>64</sup> ó concerning the code of the Kentish King Aethelberht ó that the dooms of Alfred, which appeared about 300 years later, include ðthe golden rule in its negative form: do not unto others what you would not have them do unto you.ö

Alfred himself then added: ðFrom this one doom, a man may remember that he judge everyone righteously; he need heed no other doom book.ö<sup>65</sup> Indeed, the negative form of the ðgolden ruleø (cf. the overwhelmingly-negative *Decalogue*) constitutes an ideal basis for legal prohibitions.

The Mosaic component in Alfred's *Code* is taken largely (yet not merely) from Exodus. It is also taken from Genesis, Numbers and Deuteronomy. The *Encyclopaedia Britannica* declares<sup>66</sup> that under Alfred, some part also of the Levitical law was incorporated.

Similarly, in 1567 the Criminal Law as to incest in Scotland was taken bodily from Leviticus chapter eighteen. Significantly, that was seven years after that land received the Protestant Reformation. It was a move to calvinize Scottish Law, and purge it from all deleterious material imbedded into it by its prior ðReceptionø of Roman Law ó and by centuries of influential Romanism.

Barrister Flintoff declares in his important book *The Rise and Progress of the Laws of England and Wales*<sup>67</sup> that Alfred succeeded to the monarchy of England whereof his grandfather Egbert was the founder. His mighty genius prompted him to undertake a most great and necessary work. Like another Theodosius, he collected the various customs that he found dispersed in the kingdom.

Alfred reduced and digested them into one uniform system or code of laws ó called the *West-Saxon Lage* (or the ðWessex Lawø). That he did in his *Dom-Boc* (alias his ðBook of Doomsø or ðBook of Deemingsø). It obtained great authority during several reigns. Indeed, in a law made by King Athelstan around 924f A.D., it was referred to as an authoritative guide.<sup>68</sup>

Flintoff adds<sup>69</sup> that a penalty was inflicted ó cf. the sacrosanct temple in Matthew 23:35 ó for the violation of the ðsanctuaryø of a church. Such a violation was perpetrated by evilly treating anyone who had fled to its protection. See Alfred's *Code*.<sup>70</sup> In that code, one also finds some rules of the Mosaical Laws blended and

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<sup>64</sup> *Op. cit.*, p. 13.

<sup>65</sup> See *The Laws of King Alfred*, Introd. para. 49, in ed. Thorpe's *Ancient Laws*, p. 57.

<sup>66</sup> 14th ed., 1929, VI, p. 710.

<sup>67</sup> *Op. cit.*, pp. 131f.

<sup>68</sup> *Leg. Aethelst.*, s. 5.

<sup>69</sup> *Ib.*, p. 75.

<sup>70</sup> *Leg Alf.*, s. 2.

adopted into the Anglo-British system of Common Law. For example, Exodus chapters 21*f*.

Henry Cabot Lodge, in his essay *The Anglo-Saxon Land Law*, declares<sup>71</sup> that family law had existed as a fundamental Germanic institution long before Alfred. Indeed, the well-known provisions of Alfred's laws recite that, if a man have *boc-land* and his kin left it to him, he must not sell it outside of his kindred. *Cf.* Numbers chapter 36. So too, even earlier, in the laws of Offa (779 A.D.) and Aethelric (804 A.D.). Hence, Alfred did not invent but merely much developed Biblical Anglo-Saxon Common Law.

Also Ernest Young, in his essay *The Anglo-Saxon Family Law*, rightly remarks<sup>72</sup> that children born in unlawful marriages had no rights of inheritance. This too is expressly stated in the laws of Alfred (8:2). It followed as a necessary consequence of his Bible-based and righteous laws against fornication, adultery and rape.

### Some of the massive achievements of King Alfred the Great

Alfred had great problems at first, coping with the ongoing Danish invasions. During the first year of his reign, he lost nine successive battles against the invaders. Consulting his *Witan*, Alfred was forced to buy off the Danes for three years of peace. However, during that time he built up the Royal Navy.<sup>73</sup>

Because Alfred could not hope to expel the Danes from England even in twenty battles, after defeating Guthrum the Dane in 878 he forced a treaty upon him requiring him to evacuate the whole of Wessex and also to submit to Christian Baptism. Thereafter, Guthrum was called by his new Saxon name of Athelstan, and he became a good Christian friend of Alfred.

In terms of that treaty, both kings engaged to promote Christianity and to punish apostasy. They proclaimed: "Let the bounds of our dominion stretch to the River Thames, and from thence to the waters of [the River] Lea, even unto the head of the same water; and thence straight unto Bedford; and finally, going along by the River Oise, let them end at Watling Street."

To the east of this, as far as the River Humber, was handed over to the Danes. Thus the whole of the east of Britain from the Tweed to the Thames was called *Danelagh* or "Danelaw" (alias "Dane Law") which thereafter retained its then progressively christianized Danish Law until its culmination in the 1066*f* Norman Conquest. All land to the west of that boundary was "England" and under Christian English Common Law.

With the signing of the peace between Alfred and Guthrum, in the eyes of all English Anglo-Saxons, the Wessex Kings thus became the champions of both Christianity and of English nationality. Alfred's treaty with Guthrum had made him overlord not only explicitly over the Danes but implicitly also over all Anglo-Saxons

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<sup>71</sup> H.C. Lodge: *The Anglo-Saxon Land Law* (in *Essays...to C.W. Eliot*, pp. 70*f*).

<sup>72</sup> E. Young: *The Anglo-Saxon Land Law* (in *Essays...to C.W. Eliot*, p. 126*f*).

<sup>73</sup> *Ib.*, pp. 76*f*.



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in England. So Northumbria and Mercia now regarded Wessex as an ally ó and not as a powerful overlord, as earlier in Egbert's day.<sup>74</sup>

The cessation of the Danish raids now secured by Alfred's treaty, enabled him to unify his kingdom as never before. The Saxon jurisprudence with its graded judicatures was now also subjected to the equity of Alfred, who willingly heard the complaints of even his humblest subjects.

The judges' knowledge of the law improved; crimes were speedily punished; and theft and murder almost disappeared. Poetry was stimulated; and social welfare work was conducted by Englishmen in the Name of Christ to help the poor not only in Britain but also in France and even as far away as India.<sup>75</sup>

Now at last, Alfred was able to concentrate on the expansion of English culture. Inviting to his court the most distinguished scholars from Britain and from abroad, he himself mastered literature and opened schools throughout his kingdom. He wished the children of every free man to acquire the three R's ó Reading, Writing and Arithmetic. Also the English clergy were to be trained thoroughly.

To help promote all of this, Alfred, himself translated the *Psalms of the Holy Bible* and Bede's *Church History* and Boethius's *Consolations of Philosophy* and Orosius's *Universal History* and Gregory's *Pastorals* and *Dialogues* and Augustine's *Soliloquies* ó into his mother tongue, Anglo-Saxon. He himself also began the inscripturation of the *Anglo-Saxon Chronicles*. To do all of this, he rose early and worked at a variety of different tasks, long and hard, and all to the glory of God.<sup>76</sup>

### Alfred's place in the continuing expansion of Christianity

As the modern historian Peter Blair declares,<sup>77</sup> Alfred lamented the decay of learning in England. He remarked that men had once come to England from abroad, in search of learning and wisdom. Now, however, Englishmen who wanted such things, would need to seek them abroad.

Yet at least in parts of the country, the Church continued throughout the eighth century to be inspired by the high ideals which were characteristic of it in the age of Bede. This was still the age of the Post-Celtic Anglo-Saxon mission to the Continent's Germanic peoples in Western Europe ó a movement which took many Anglo-Saxon Christian men and women away from the security of England, to lives of difficulty and danger which sometimes ended in martyrdom.

Simon Keynes has pointed out<sup>78</sup> Professor Janet Bately recently demonstrated that the Old English prose translation of the first fifty Psalms preserved in the *Paris Psalter* ó is Alfred's work. A.J. Frantzen, in his book *King Alfred*, further explores the

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<sup>74</sup> See *Historians' History*, XVIII, pp. 80f.

<sup>75</sup> *Ib.*, pp. 83f.

<sup>76</sup> *Ib.*, XVIII, p. 82f.

<sup>77</sup> *Rom. Brit. & Earl. Engl.*, pp. 236f.

<sup>78</sup> S. Keynes: *Review of A.J. Frantzen's 'King Alfred'*, Twayne Publishers, 148pp.

significance of the Psalms for the understanding of Alfred's intellectual approach towards the exercise of kingship.

Frantzen suggests in particular that King Alfred assumed a Davidic identity as a teacher, a leader, a king and a man of prayer. Frantzen also insists that the Alfredian canon runs in the king's name and begins with material translated from the Bible. Frantzen's discussion again enhances the understanding of the encouragement which King Alfred derived from the Holy Scriptures.

Furthermore, also the great Law Professor Sir Henry Maine concedes<sup>79</sup> there is a passage in the writings of King Alfred which brings out into remarkable clearness the struggle of the various ideas that prevailed in his day as to the origin of criminal jurisdiction. Here is that passage:

“Many nations received the faith of Christ... There were many synods assembled...among Englishmen, after they had received the Christian Faith. They were synods of holy Overseers, and of their exalted *Witan* [alias Parliaments]. They then ordained that, out of that mercy which Christ had taught, secular lords...might without sin take for every misdeed the *bot* [or compensation] in money which they [the secular lords] ordained.”

Professor of Mediaeval History H.R. Loyn<sup>80</sup> has pointed out that Christianity was the most potent binding force in ninth-century Western civilization. In King Alfred, even more than in Charlemagne himself, one sees the ideal of Christian kingship. For Alfred successfully defended the Christian Britons and the Christian English against the onslaught of the pagan Danes in England and thereafter proceeded to christianize even those Danes. He was also a great scholar and patron of the arts, and a fine supporter of missionary work and drawing on the resources of the Holy Bible, Boethius, Orosius and Augustine of Hippo.

### **Various historical authorities on the remarkable life of King Alfred**

The Elizabethan chronicler and historian Holinshed has an extended section on King Alfred. He records<sup>81</sup> that to speak sufficiently of the worthy praise due to so noble a prince as Alfred was might require eloquence, learning, and a large volume. Good laws, among the clinking noise of armour, are oftentimes put to silence. Yet he, perceiving how his people were grieved with the thieves and robbers who grew and increased in those times of war and devised good statutes and wholesome ordinances for punishing such offenders.

Among other things, he ordained that the Counties should be divided into *Hundreds* and *Tythings* (see Exodus 18:12-21) and that is to say, quarters containing a certain number of Townships adjoining together. Thus, every Englishman living under prescript of laws, should have both his own *Hundred* and *Tything*.

If any man were accused of any offence, he should find surety for his good demeanour. If he could not find such as would answer for him and then should he taste

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<sup>79</sup> *Anc. Law*, pp. 267 & 404f.

<sup>80</sup> *Op. cit.*.

<sup>81</sup> *Op. cit.* I:674f, citing Polydor.

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extremity from the laws. If any man that was guilty fled before he found surety, or after ó all the inhabitants of the *Hundred* or *Tything* where he dwelt, should be put to their fine.

By this device, Alfred brought his country into good tranquillity. He caused bracelets of gold to be hanged up aloft on hills, where the common highways lay ó to see if any dare be so hardy to take them away by stealth. He was a liberal [or generous] prince, especially in relieving the poor.

The foundation of the University of Oxford passed all the rest of Alfred's constructions. He began it by the good exhortation and advice of Neotus, in those days highly esteemed by Alfred for his virtue and learning.

King Alfred himself was learned, and much given to study. Besides various good laws [of Mulmutius *etc.*] which he translated into the English tongue and then gathered together and published, he also translated several other books out of Latin into English ó as well as the Book of Psalms.

This worthy prince minded well the commonwealth of his people. In that season when learning was little esteemed among the Western nations, he studied by all means possible to instruct his subjects in the trade of leading an honest life ó and to encourage them generally to embrace learning. He would not permit any to bear office in his Court, unless learned.

But to conclude with this noble prince, King Alfred. He was so careful in his office, that he divided the twenty-four hours containing the day and the night ó into three parts. Thus he spent eight hours in writing, reading and making his prayers; other eight he employed in relieving his body with meat, drink and sleep; and the other eight he bestowed in despatching business concerning the government of the realm.

He had in his chapel a candle of twenty-four parts, of which every one lasted an hour. The sexton to whom that charge was committed, by burning this candle, ever warned the king how the time passed away. He hastened to help all Britons ó whether Anglo-Danes, Anglo-Saxon Englishmen, or Celto-Brythons.

A little before his death, Alfred ordained his last will and testament. He bequeathed half the portion of all his goods, justly gotten, to such monasteries as he had founded. All his rents and revenues, he divided into two equal parts. The initial part, he divided into three. He bestowed the first upon his household servants; the second, to such labourers and workmen as he kept in his works on sundry new buildings; and the third part to strangers.

He was diligent in enquiring how the Judges of his land behaved themselves in their judgments, and was a sharp corrector of them which transgressed in that way. To be brief, he so lived ó that he was regarded in great favour by his neighbours, and highly honoured among strangers. Thus Holinshed.

A noted Roman Catholic authority on English Mediaeval Law has rightly assessed the ðProto-Protestantø nature of the codes of the 688 Ine and the 880 Alfred. ðIn these Anglo-Saxon documents,ö explains Dr. R. O'sullivan in his important book *The*

*Inheritance of the Common Law*,<sup>82</sup> "there is no trace of the laws and jurisprudence of [both Pre-321 and Post-321 A.D.] Imperial Rome."

The *Historians' History* rightly points out<sup>83</sup> that Alfred had been in the truest sense of the word the "lawgiver" of his people. That designation, strictly understood, is erroneous. For Alfred introduced no new code of law. His labours consisted purely in re-establishing, renewing and improving. Alfred found everywhere in his kingdom existing laws of which he could avail himself as a groundwork.

He had before him the Kentish collection of Aethelberht and his successors. Alfred's own ancestor Ine had caused the West-Saxon laws to be inscribed. And in Mercia, the code of the great Offa was adopted. Upon reviewing them he found, in all three, much which met with his full approval.

With some things, however, he was not satisfied and they were therefore expunged with the consent of his councillors. Alfred's motives in these reformatory proceedings were of two kinds and the changed and increased range of action of the royal power; and the strong desire felt by his own heart of infusing Christian convictions into the popular laws which had come down.

### **The influence of Ancient Celto-Brythonic Common Law on Alfred's Code**

In 880, the laws of Alfred the Christian Saxon king were codified. Its sources were, in part, the earlier Christian Saxon codes of Ine and Offa and Ethelbryte. For the rest, its sources were from the accumulated Celtic Codes and going all the way back to the Pre-Christian Brythonic King Moelmud alias Mulmutius and ultimately even to Brut.<sup>84</sup>

As Isabel Hill Elder states,<sup>85</sup> the lawgiver Mulmutius (B.C. 510-450) based his laws on the *Code of Brut* (B.C. 1100). King Alfred (around A.D. 880) employed his scribe Asser and a learned Welsh monk from St. David's and to translate the Mulmutine laws from the Celtic tongue, in order that he might incorporate them into his own Anglo-Saxon code.

Also according to the Welsh mediaeval historian Geoffrey Arthur of Monmouth, King Alfred translated into English from Latin the Mulmutine laws which Gildas had previously translated into Latin "out of the British or Celtic tongue. Indeed, explains Geoffrey,<sup>86</sup> also the Law which the Britons call Marciana and the B.C. 297f Law of the Pre-Christian Brythonic Queen Martia and Alfred translated into English.

So Alfred codified the Mosaic Law and the Mulmutian Laws as well as the Anglo-Saxon laws into his own *Dooms* (or "Deemings") and as a deposit of Anglo-British Common Law. As Isabel Hill Elder observes,<sup>87</sup> King Alfred gave to his people in the

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<sup>82</sup> R. O'Sullivan: *The Inheritance of the Common Law*, Corbett, Westmount (Quebec), 1965.

<sup>83</sup> *Op. cit.*, XVIII, p. 85.

<sup>84</sup> See Goard's *The Law of the Lord or the Common Law*, pp. 109f & 116 & 120f.

<sup>85</sup> *Op. cit.*, pp. 20-21.

<sup>86</sup> *Op. cit.*, III:5.

<sup>87</sup> *Op. cit.*, p. 129.

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ninth century the Gospels in the Saxon tongue ó a life worthy of record. Yet he did so with full acknowledgment thereto of the prior contributions also of the Pre-Saxon Celto-Brythons.

For we find in a letter of King Alfred that he wrote:<sup>88</sup> ðI wish you to know, that it often occurs to my mind to consider what manner of wise men there were formerly in the British nation, both spiritual and temporal. I considered how earnest God's Ministers then were, as well about preaching as about learning in this land.ö

Continued Alfred:<sup>89</sup> ðThere is only one way by which to build my kingdom, and that is on the sure and certain foundation of faith in Jesus Christ, and in Jesus Christ crucified. It is on that foundation that I intend to build my kingdom.ö

The 880 A.D. Christian Saxon -Good King Alfredø steeped himself in Scripture. In his *Dooms*, he codified the Mosaic and the Mulmutian laws ó as Anglo-British Christian Common Law. Indeed, the Romish Pope and Roman Law were never conceded to possess the authority in Britain which they did on the European Continent.

**Excellence of Alfred's *Code* and his  
*Treaty with Danish Guthrum***

Yet Alfred not only had his Welsh scribe Asser translate Moelmud's laws from out of the Celtic, in order to incorporate them into his own Anglo-Saxon *Code*.<sup>90</sup> Nor did Alfred's *Code* merely make a permanent impact on that greatest of all Pre-Norman English manuscripts ó the *Anglo-Saxon Chronicle*.

In addition, Alfred also: put the Royal Navy in good working order; founded schools throughout the land; and promoted the translation of the Holy Scriptures (subsequently completed by King Canute).<sup>91</sup> Indeed, Alfred even got the Danish invaders in the -Danelawø sections of Britain to accept Christianity.

The Christian King Alfred the Great in Anglo-Saxon England rivalled if not surpassed the famous Continental-European Emperor Charlemagne of the Holy Roman Empire during the same century. Indeed, Alfred was much more Biblical than Charlemagne. For Alfred specifically declares that British Common Law came and comes to us through the Law given by God on Sinai.<sup>92</sup>

As England's very famous jurist Sir William Blackstone remarked in his *Commentary on the Laws of England*<sup>93</sup> in 1765: ðThe policy of our antient Constitution, as regulated and established by the great Alfred, was to bring justice home to every man's door.ö Exodus chapter 18:21f ó *cf.* the saying -an Englishman's

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<sup>88</sup> Alfred's *Preface to Past. 85* (as cited in Nicephorus II:40).

<sup>89</sup> As cited in Gardner's *op. cit.*, p. 44.

<sup>90</sup> See Elder's *op. cit.*, pp. 20f.

<sup>91</sup> Thus Taylor's *op. cit.*, p. 32.

<sup>92</sup> See Goard's *Common Law*, p. 26.

<sup>93</sup> *Op. cit.*, III, pp. 30f.

home is his castle. These inferior courts, at least the name and form of them, still continue in our legal Constitution. Thus Blackstone.

Indeed, Rev. Dr. Wines alleges the same in his book *The Hebrew Republic*. Wines insists<sup>94</sup> that the old Saxon Constitution with its Sheriffs or Shire-reeves alias Chief Administrative Officials of Shires or Counties; of Hundreders or Centgraves in the Hundreds (*cf.* the Chiltern Hundreds *etc.*); and of Decimers in Decennaries (*cf.* Exodus 18:25 & First Samuel 23:23 & Micah 5:2 & Matthew 2:6) was formed upon the model of Deuteronomy 1:13-15 and 16:18. For, declares Wines, King Alfred took this frame of government from the laws of Moses.

Perhaps the last-enacted of Alfred's laws, are those found in the international *Christian Peace Treaty* he signed with his convert Guthrum the Dane. Attenborough explains<sup>95</sup> that in 866 there occurred the great Pagan Danish invasion, which eventually put an end to all the existing English kingdoms except Wessex and in other respects exercised a profound influence on the subsequent history of the country. The crisis of the invasion came when the Danish King Guthrum was defeated by Alfred in 878. In accordance with the terms of surrender, Guthrum submitted to be baptized, together with his leading men, and to evacuate Alfred's kingdom.

The mediaeval historian Henry of Huntingdon wrote<sup>96</sup> that when King Alfred neither possessed any territory nor had any hope of possessing it the Lord had regard for the remnant of His people. For the brother of the Danish King Healfdene had come with twenty-three ships to Devonshire in Wessex. Yet King Alfred's people slew him.

Then the Danish army delivered hostages to the King of England, and promised on oath to quit that kingdom. The King of the Danes also agreed to be baptized; and it was done. For Guthrum, the chief of their kings, came to Alfred for Baptism; and Alfred became his godfather.

Sir David Hume states<sup>97</sup> that Guthrum was baptized as a Christian, and bound by a solemn peace or *frith*. The peace had, in fact, saved little more than loose confederacies. But in saving Wessex, it saved the English (or rather English-kind). It also helped create the nation of England.

The longer version of *Alfred and Guthrum's Peace Treaty*<sup>98</sup> declares: "This is that peace which King Alfred and King Guthrum and all the *Witan* of *Angle-kind* [alias the English Parliament], and all the [Anglo-Danish] people that be in East-Anglia, have all ordained and fastened [or confirmed] with oaths of who of God's mercy reckon (or know) for themselves and for their descendants, both for born and for unborn....

"If a man become slain, we value all even [equally] dear, English and Danes.... If a man accuse the King's Thane [or Headman] of man-slaying, if he dare clear himself let him do that with twelve King's Thanes [*cf.* the jury].... We all ordained on that

<sup>94</sup> *Op. cit.*, Uxbridge Mass., Amer. Presb. Press, 1980 ed., p. 108.

<sup>95</sup> *Op. cit.*, pp. 96f.

<sup>96</sup> *Op. cit.*, pp. 154f.

<sup>97</sup> *Op. cit.*, p. 48.

<sup>98</sup> *Alf. & Guth.* 2,3,5. See in Giles: *The Whole Works of King Alfred*, AMS Press, New York, 1969, II, pp. 139.

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day, that men swore the oaths that neither bond nor free might fare [or go] into the army without leave..., to evidence that men [should] know that man has a clean backö (or ðhas acted honestlyø).

There is, further, additional legislation which King Alfred together with King Guthrum, and afterwards also Alfred's son and successor King Edward together with King Guthrum, enacted and agreed upon. This was done, once the West-Saxons and the Anglo-Danes unreservedly entered into relationships of peace and friendship.

That legislation was strongly Biblical and Christian. It covered the worship of the one true God, tithes, sanctuary, clerical transgressions, incest, suicide, Sunday trade, capital punishment, sorcery and prostitution. However, inasmuch as such laws were perfected by Edward rather than by his father Alfred ó we defer consideration thereof until our next chapter.

The great modern British historian and statesman Sir Winston Churchill explains<sup>99</sup> that the Christian King Alfred of Wessex stood godfather to Guthrum. He raised him from the font. He entertained him. He presented him and his warriors with costly gifts. He called him his son. This sublime power to rise above the whole force of circumstances, to remain unbiased by the extremes of victory or defeat ó raises Alfred far above the turmoil of barbaric wars to his pinnacle of deathless glory.

King Alfred's *Book of Laws* (or ðdoomsø) ó as set out in the existing laws of Kent, Wessex and Mercia ó attempted to blend the Mosaic code with Christian principles and old Germanic customs. The laws of Alfred, continually simplified by his successors, grew into that body of customary law out of which the Common Law was founded. Thus Churchill.

**Holinshed on the huge importance of Good  
King Alfred to British Common Law**

The great Elizabethan chronicler and historian Raphael Holinshed insists<sup>100</sup> that in reading of ancient writers ó such as Caesar, Tacitus and others ó we find mention of sundry regions at certain times in Britain. Alfred around A.D. 871f first divided England into Shires.

Before his days, and since the coming of the Saxons, all was delineated by families and hide-lands. The earlier Celts alias the Ancient Britons did the same in their time ó by *Hundreds* of Towns, which were then called *Cantreds* (as old records witness).

Good King Alfred therefore, by the advice of his Nobility and the example of Moses (who followed the counsel of Jethro his father-in-law to the like effect), divided the whole realm into certain parts or sections [*cf.* Exodus 18:12-21]. Thus, from the Saxon word *schyran*, signifying to cut, he termed them ðShiresø (or ðsharesø alias ðportionsø) ó each under a ðShire-reeveø alias a Sheriff ó one for each Shire or ðCounty.ø

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<sup>99</sup> *Island Race*, I p. 24.

<sup>100</sup> *Op. cit.*, I:257f.

Some of the Shires contain ten, twelve, thirteen, sixteen, twenty or thirty *Hundreds* ó more or less. So too some *Hundreds* contain sixteen, twenty, thirty, forty, fifty or sixty towns. Out of them, the king was always to receive a hundred able men to serve him in the wars ó or a hundred men able to be pledges. And over each of the ðportionsøó he appointed either an Earl or an Alderman [alias Elder-man], or both. To them, he committed the government of the same. An Earl (or ðCountø) ruled each ðCount-y.ø

These Shires also, Alfred broke up into lesser parts. Of these, some were called *Lathes* (from the Anglo-Saxon word *gelathian* ó which means: to assemble together). Others were called *Hundreds* ó for they enjoyed jurisdiction over a hundred pledges. Others were called *Tythings* ó because there were in each of them the number of ten persons, of which every one from time to time was surety for othersøgood bearing.

The King also provided that every man should procure himself to be received into some *Tything*. In that way, if any were found of so small and base a credit that no man would become pledge or surety for him ó he should forthwith be committed to prison. Otherwise, he might happen to do more harm abroad.

The *Hundred* and the *Wapen-take* is one and the same. This division is not a name appertaining to a set number of towns. For then, all *Hundreds* would be of equal quantity. But it is a limited jurisdiction ó within the compass of which a hundred persons were called ðpledgesøor ten Denaries or *Tythings* of men.

Each one was bound for the othersølaudable behaviour ó in the Commonwealth of the Realm. The Chief-man likewise of every Denary (*cf.* a ðDeaneryø) or *Tything*, was in those days called a ðTithing-manø ó alias a ðDeanø from the Latin *Decanus*, meaning ðTenth-manø or ðChief-of-tenø men. Exodus 18:12-21 *cf.* Deuteronomy 1:13-17.

Holinshed gathers from Leland and others, that if any small matter fell out to be discussed, the ðTithing-menø (at the commandment of the ðHigh-Constableø of which every Hundred has one at least) would decide the same in their *Leets* (a Brythonic word for ðManor Courtsø). On the other hand: the great causes were referred to the *Hundreds*; the greater to the *Lathes*; and the greatest of all to the ðShire-daysø [or ðCounty-daysø], where the Earls [alias the Counts] or the Alder-men [alias the Elder-men] were in session and made a final end of the same ó according to justice. See: Exodus 18:21-26 & Deuteronomy 16:18f & 17:6-8f.

For this purpose, likewise in every *Hundred*, twelve men of good age and wisdom were chosen ó and sworn to give their sentences [or opinions] without respect of persons. Thus Holinshed. Without a doubt, we here see the development of the later jury.

### **Historian G.M. Trevelyan on the merging also of *Danelage* into English Law**

Finally, one should note the ongoing absorption of all groups in the land into a dynamic Anglo-British culture ó and then of that again, into an Anglo-Danish Britain



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(or rather an Anglo-Brythonic Britain with a small Danish and later Anglo-Danish admixture).

As the great historian and writer G.M. Trevelyan has well stated, in the main, the long-lasting struggles between the Britons and the Saxons were now past. Those between the Anglo-Britons on the one hand and the Danes and other Scandinavians on the other, were now in process of resolution.

Trevelyan explains<sup>101</sup> that the chief events in this age-long process were the debouchment of the English of Wessex at the mouth of the Severn (traditionally after the victory at Derham in Gloucestershire during in 577 A.D.). That was then followed by the debouchment of the English of Northumbria at the mouths of the Mersey and Dee, after a victory near the ruins of Chester in 613.

The arrival of Saxondom on the Irish Channel at these two points ó left the Welsh of Strathclyde, Wales and the Devonian Peninsula as three isolated pockets of Celtic tribalism. They were cut off from each other, and from the life of the plains.

Thus, in a succession of advances covering several hundred years, the Saxons ó or, later on, the Scandinavians in their place ó conquered and settled Cheshire, Lancashire, Cumberland, Westmorland, the Severn valley, Somerset and finally Devon. But all the time, the Saxons were getting more civilized ó and the Welsh more accustomed to them as neighbours.

Long before the English advance had ended, both sides were Christian. Therefore, in these more westerly districts, Celtic race and custom survived to a larger extent. In Cornwall and the unconquered Welsh mountains, the language and civilization remained predominantly Celtic.

In Wessex and Mercia, though the language was changed, there were many more Welsh left. In Wessex, which by that time included Dorset and Somerset, we find the laws of the Saxon King Ine in 693 acknowledging the rights of a separate class called Welshmen, sometimes as holders of land and military servants of the Crown. Celtic Ireland speaks largely English today, but its culture is still very much Celto-Gaelic.

The population of Southwest Scotland, which was to a large extent Celtic in blood, adopted the English language. Some even of the early Anglo-Saxon names for districts ó like Durham, Berwick and Lincoln ó recall the Celtic past (*cf.* Deira, Bernicia and Lindsay). An Anglo-Saxon termination, may conceal a Celtic root.

Chiefly between 900 and 1000, the Vikings came up the Solway and thence settled the dales of Lakeland. The old Celtic tribes of the district then moved half-way up the fellside. They were not exterminated. Indeed, sheep on the fells used to be counted in Celtic numerals till quite modern times. W.G. Collingwood's *Lake District History*, 1925. Thus G.M. Trevelyan.

The 880*f* law code of the godly Saxon Christian -Good King Alfredø had incorporated even earlier Christian law codes, both Saxon and Celtic. We also

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<sup>101</sup> *Op. cit.*, pp. 43-44 & n.

encounter the joint laws of Alfred the West-Saxon and Guthrum the Anglo-Dane (as above).

After Alfred's death in 901, we shall further encounter (and shall describe in our next chapter) the joint laws of Guthrum and of Alfred's son Edward the Elder. There, we shall also deal with the English Christian laws of Edward the Elder himself and those of his son the 925 Athelstan.

We shall also look at the 930 Celtic codification of Ancient British Christian Law by Hywel Dda (in Wales) as well as the Christian laws of the great Anglo-Danish King Cnut. Indeed, with that Canute the harmonious integration of Anglo-British Law and Anglo-Danish Law into the Pre-Norman Christian Common Law of England, reached a climax.

### **Summary: England's "Good King Alfred" and his Biblical Laws**

Summarizing, in this chapter we first looked at the early life and times of the English King Alfred the Great (A.D. 849-901). We noted he was a child of the covenant; was spiritually motivated from a very early age; and became Under-King even while a teenager.

Noting his military and political achievements, it was seen that he fought many battles against the Danes during a time of great national peril. Yet he managed to achieve very much also in the cultural edification of his people in Wessex.

Among the extant writings of King Alfred the Great, we noted: his own *Preface* to the translation of the *Dialogues of Gregory*; his very accurate translation into Anglo-Saxon of Gregory's *Pastoral Care*; and his own *Introduction* thereto, in which Alfred expresses his desire that every freeborn English youth might learn to read English. Then there is his translation of Augustine of Hippo's *Soliloquies*; his free translation and massive expansion of Orosius's *Universal History*; and his close translation of the A.D. 731 Bede's *Ecclesiastical History of England*.

Alfred also certainly started and promoted the writing of the *Saxon Chronicle*; the *Saxon Martyrology*; and a prose version of the first fifty *Psalms*. Above all, of course, there was Alfred's own *Dome-Book*, containing his inscription of the Common Law of England.

Then there is also his translation of Boethius's *Consolation of Philosophy*, and Alfred's own *Blostman* or "Blooms." The latter concludes: "He seems to me a very foolish man and very wretched, who will not increase his understanding while he is in the World, and ever wish and long to reach that endless life where all shall be made clear."

Reflecting on the history of Britain before the arrival there of his own Anglo-Saxons, Alfred traced his own ancestry back to Noah and the latter's Japhethitic descendants the Scythian Picts and the Scots, some of whom he says colonized Ireland and Scotland. He notes how Christ gained Britain, and how King Llew [of Greater Cumbria] proclaimed Christianity his regional religion in 156 A.D. Finally, the Lord ordained the arrival in Britain of the Anglo-Saxons who were a judgment

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upon the backslidden Celto-Britons ó but who themselves later received Christianity there with great enthusiasm.

We then noted the sceptical historian David Hume on the importance of Alfred, and the historian Professor Richard Henry Green on that king's famous laws and many other accomplishments. The views about Alfred of George Jowett and William of Malmesbury, were then considered ó as too those of various other historians and/or jurists such as Huntingdon, Gibbon, Trevelyan, Berman, Rosebery and Pauli.

In our introductory remarks on King Alfred's *Law Code*, we noted that it incorporates: many of the judicial laws of Israel; the "golden rule" of Christ; and the apostolic decisions of Acts chapter fifteen. It also incorporates some of the Ancient Common Law of the Celto-Britons and the Anglo-Saxons, and applies the "general equity" of the judicial laws ó in their contemporary context of ninth-century England. Indeed, it does so in historical continuity ó with the earlier codes of Aethelbeht, Ine and Offa (in Kent, Wessex and Mercia).

We then presented various legal opinions anent the worth of Alfred's *Code*. Those included accolades from Law Research Professor Lehman, the *Encyclopaedia Britannica*, Barrister Flintoff, Anglo-Saxon land law expert Henry Cabot Lodge, and Anglo-Saxon family law expert Ernest Young. These all agreed that *Alfred's Code* constitutes a massive synthesis of Biblical Law, Celto-Brythonic Law and Anglo-Saxon Law ó into English Christian Common Law.



## CH. 23: ENGLISH COMMON LAW FROM EDWARD THE ELDER TO EDWARD THE CONFESSOR

After King Alfred, Anglo-British Common Law further unfolded from its Mosaic roots. Without ever departing from the latter, the former underwent very considerable development ó from the time of the 880 A.D. Englishman Alfred's son King Edward the Elder, to that of the great 1765 English Jurist and Law Commentator Sir William Blackstone.

### Overview of English Common Law from Alfred to Blackstone

The great English Christian Jurist Sir William Blackstone died in 1780, four years after the American *Declaration of Independence* from Britain. Indeed, Blackstone himself had written (already in 1765) that British Common Law arose from God's Law ó His Law of nature, and also from the revealed laws of nature's God.<sup>1</sup> Significantly, in true Blackstonian fashion, it was to those very ölaws of natureö and of ñnature's Godö ó that the 1776 *American Declaration of Independence* itself appealed.

The chief landmarks in this development of Anglo-British Christian Common Law, from the A.D. 880 of King Alfred to the A.D. 1765 Blackstone, are: King Edward the Elder (899 A.D.); King Athelstan (*circa* 926); King Edgar (d. 975); King Canute (d. 1035); and King Edward the Confessor (*circa* 1042). Thereafter should also be noted: the 1066 Norman King William the Conqueror and his 1088 *Doomsday Book*; Glanvill (d. 1190); the *Magna Carta* (1215); Bracton (d. 1268); Fleta (*circa* 1290); Britton (1292); ðEngland's Justinianö Edward I (d. 1307); Wycliffe (d. 1384); Littleton (d. 1481); Fitzherbert (d. 1538); Henry VIII (d. 1547); Coke (d. 1634); Hale (d. 1676); and Blackstone (d. 1780).

Thus the *Encyclopaedia Britannica*,<sup>2</sup> in its article on English Law and its ðtext-booksö (alias the works written by lawyers and/or for lawyers). It declares that we may read our way backwards to Blackstone (d. 1780), Hale (d. 1676), Coke (d. 1634), Fitzherbert (d. 1538), Littleton (d. 1481), Bracton (d. 1268), and Glanville (d. 1190) ó until we are in the reign of Henry II the 1154-89 King of England (and great-grandson of William the Conqueror). All this time, we are always reading of one and the same body of law.

Going back yet further, one encounters other earlier rivulets one may call ðAnglo-Saxonö ó which can be pursued right back through the Code of Canute (d. 1035) to the ordinances of Alfred (*circa* 900) and his successors. This, it may be noted ó explains the *Britannica* ó gives to English legal history a singular continuity from Alfred's day to our own.

We ourselves would add (with Blackstone) that also Alfred needs to be traced back to his yet earlier Germanic roots (Offa, Ine, Aethelbeht) ó and to his even deeper

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<sup>1</sup> See Goard's *Common Law*, p.15.

<sup>2</sup> 11th edition.

Brythonic and Hebrew roots (Moelmud and Exodus 20 to 23 *etc.*). In all of this, Roman Law is totally absent. Eyes carefully trained have minutely scrutinized the Anglo-Saxon legal texts, without finding the least trace of a Roman rule. Instead, Alfred (the greatest English law-giver and administrator during the Saxon period) ó places the matter of the Divine origin of the Law in the forefront.

### The blessed reign of Alfred's son King Edward the Elder

Alfred's son Edward the Elder succeeded him, ruling England from 899 to 925 A.D. He helped unite Britain, when three northern kings of the West-Welsh swore fealty to him. Cheshire, Lancashire, Nottinghamshire and Scotland followed suit. So too did even the Norwegians and the Danes of Northumbria.

As William of Malmesbury declares,<sup>3</sup> in the year of our Lord's incarnation 901 ó Edward the Elder (the son of Alfred) succeeded to the government. Edward held it twenty years. He was much inferior to his father in literature ó but greatly excelled in extent of power. For Alfred had indeed united the two kingdoms of the Mercians and West-Saxons. However, it was only after Alfred's death that Edward first brought all of the Mercians altogether under his power.

Next, Edward extended his rule also over the West- and the East-Angles and the Northumbrians, who had become one with the Danes. Then he reigned also over the Scots, who inhabit the northern part of the island. And finally, Edward further extended his sovereignty also over all those Britons then (and now) called Welsh.

Edward not only held the mastery of the British Channel with a fleet of a hundred English ships.<sup>4</sup> In his twentieth law,<sup>5</sup> he also re-enacted the old Celto-Brythonic and Anglo-Saxon law that an Officer called the -Head of the -Fribourgh or -Free-Town should preside over each *Tything*. Compare the Ancient Brythonic *Pen-Cenedl* ó and the Hebrews' *óRuler-of-ten* in Exodus 18:21f. Thus, each of the English Freemen in the *Tything* was a security for the rest, pledging himself to stand that inquiry called -Frankpledge ó and to produce within a month all fugitives from justice who had fled that *Tything*.

The mediaeval historian Henry of Huntingdon documents<sup>6</sup> the important information that King Edward, in the fifth year of his reign (A.D. 906), concluded a peace with the East-Angles and Northumbrians. The next year, the Danish army entered Mercia ó with intent to plunder. A pitched battle ensued, in which the Lord severely chastised the Danes. The English servants of the Lord, having gained so great a victory, rejoiced in the living God ó and gave thanks with hymns and songs to the Lord of hosts.

Edward soon re-confirmed his father's *Peace Treaty* with Guthrum the Dane ó in the Anglo-Danish *Laws of Edward (the Saxon) and Guthrum (the Dane)*. There, the *Preamble* states that *óthese are the ordinances decided and agreed upon first by King Alfred and King Guthrum ó and later by [Alfred's son] King Edward and King*

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<sup>3</sup> *Op. cit.*, pp. 122f.

<sup>4</sup> Thus J.R. Green: *op. cit.*, p. 49.

<sup>5</sup> *Leg. Edovardi*, s. 20; cited in Flintoff's *op. cit.*, p. 85.

<sup>6</sup> *Op. cit.*, pp. 161 & 163.

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Guthrum ó when peace and friendly relations were established between the English and the Danes.<sup>7</sup>

This introduces the A.D. 900*f* arrangement of the collected laws of King Edward ó together with his concords with the Anglo-Danish King Guthrum. This is the legislation which King Alfred and King Guthrum, and afterwards also King Edward and King Guthrum, enacted and agreed upon ó when the English and the Danes unreservedly entered into relations of peace and friendship. The particulars are as follows.

ōIn the first place, they declared they would love one God,<sup>8</sup> and zealously renounce all heathen practices.<sup>9</sup> Moreover, ōthey fixed secular amends<sup>10</sup> which should be divided between Christ and the King,<sup>11</sup> wheresoever people would not legally submit to the amends required.<sup>12</sup>

ōNext, after this, they declared that sanctuary within the walls of a church, and the protection granted by the king in person, shall remain equally inviolate. If anyone offends against the Christian religion,<sup>13</sup> or honours heathen practices by word or deed, he shall pay either man-money (alias *wergeld* or life-money) or legal fine (*lahslit*)..., according to the nature of the offence.<sup>14</sup>

ōIf a man in clerical orders<sup>15</sup> steals or fights, or commits perjury or adultery, he shall pay either *wergeld* or fine.... In any case, he shall make compensation to God.... He shall find surety for the compensation, or go to prison.<sup>16</sup>

No papal or ecclesiastical protection of clerical criminals from the punishments of the Civil Law, would be tolerated. For English Civil Law was English **Common** Law ó law common to both clergy and laity; to both rich and poor; and to Celto-Brython as well as to both Anglo-Dane and Anglo-Saxon.

ōIn the case of incestuous unions, the Council [*Witan* alias Parliament] has decided that the King shall take possession of the male offender, and the Bishop the female offender ó unless they make compensation before God and the World.... If two brothers, or two near relatives, lie with one woman ó they shall pay as compensation, and with all promptness, whatever sum may be approved.<sup>17</sup>

ōIf anyone...so acts as to bring about his own death by setting himself against the laws of God and [those of] the King<sup>18</sup> ó no compensation shall be paid for him.<sup>19</sup>

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<sup>7</sup> Attenborough: *op. cit.*, pp. 96f.

<sup>8</sup> *aenne God lufian wolden.*

<sup>9</sup> *aelcne haethendom georne aworpen.*

<sup>10</sup> *Woruld-bote.*

<sup>11</sup> *Criste 7 Cynge.*

<sup>12</sup> *Edw. & Guth.*, 1-2.

<sup>13</sup> *Cristendom.*

<sup>14</sup> *Edw. & Guth.*, 2:1-2.

<sup>15</sup> Alias any clerically-hallowed man (*gehadod man*).

<sup>16</sup> *Edw. & Guth.*, 3.

<sup>17</sup> *Ib.*, 4.

<sup>18</sup> *Godes Ryht oththe thaes Cynges.*

<sup>19</sup> *Ib.*, 6:1-7.

ōIf anyone proceeds to bargain on a Sunday, he shall forfeit the goods, and [in addition, also the sum of] twelve ores in a Danish district and thirty shillings in an English district.... No capital offender shall ever be put to death during the feast of Sunday,<sup>20</sup> but he shall be arrested and kept in custody until the festival<sup>21</sup> is over.<sup>22</sup>

ōIf wizards or sorcerers; perjurers; or they who secretly compass death; or vile, polluted, notorious prostitutes be met with anywhere in the country ó they shall be driven from the land, and the nation shall be purified. Otherwise, they shall be destroyed utterly in the land ó unless they cease from their wickedness, and make amends to the utmost of their ability....

ōIf any attempt is made in any way to deprive a man in [holy] orders, or a stranger, of either his goods or his like ó the King or the Earl of the province and the Bishop of the diocese shall act as his kinsmen and protectors, unless he has some other. And such compensation as is due, shall promptly be paid to Christ and the King according to the nature of the offence; or the King within whose dominions the deed is done, shall avenge it to the uttermost.ö<sup>23</sup> Exodus 21:12-14; 22:18,21-24; 23:1f; Leviticus 19:29; 24:17; Deuteronomy 18:10-13; 19:16-19; 10:30-37; 19:8-9.

### Laws of the Anglo-British King Edward the Elder for Non-Danish England

Attenborough, in his book *The Laws of the Earliest English Kings*, writes<sup>24</sup> that two series of laws which were issued by Edward the Elder ó who reigned from 901 till 925 ó are extant. At the date of the promulgation of the later laws, the Northumbrian as well as the East-Anglian territories were already subject to that king.

The laws of Edward are of a more coherent and logical form than those of earlier kings. They did not, however, supersede the latter. For the expression *Dom-Boc* (alias -Book of Deemingsø) ó which occurs several times ó denotes not only the laws of Edward the Elder. It also denotes the laws of Ine and Alfred collectively.

ōKing Edward ö thus begin his first laws<sup>25</sup> ó commands all his Sheriffs alias his Shire-Reeves. He so commands, öthat ye pronounce such legal decisions as ye know to be most just and in accordance with the written laws.... We have declared what [penalty] he is liable to, who withholds from another his rights either in -book-landø or -folk-landø... With regard to men who have been accused of perjury: if the charge has been proved...never again shall they have the privilege of clearing themselves by oaths, but only by the ordeal.ö

Further:<sup>26</sup> öKing Edward exhorted all his Council (*Wytran*)...to consider how the public peace<sup>27</sup> for which they were responsible could be kept better than it had been....

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<sup>20</sup> *Sunnandaeges Freolse.*

<sup>21</sup> *Freolsdaeg.*

<sup>22</sup> *Ib.*, 7 & 9.

<sup>23</sup> *Ib.*, 11.

<sup>24</sup> *Op. cit.*, p. 112.

<sup>25</sup> *I Edw.*, Pre. & 2-3.

<sup>26</sup> *II Edw.*, Pre. & 5f.

<sup>27</sup> *frith.*



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If anyone neglects this and breaks his oath<sup>28</sup> and his pledge<sup>29</sup> which the whole nation has given ó he shall pay such compensation as the written laws<sup>30</sup> declared.... If anyone subsequently harbours him, he shall pay such compensation as the written laws declare ó of him who harbours a fugitive,<sup>31</sup> if the offence is committed in our own kingdom.ö

Last: öIf any man, through [being found guilty of] an accusation of stealing, forfeits his freedom and gives up his person to his lord, and his kinsmen forsake him, and he knows no one who will make legal amends for him ó he shall do such servile labour<sup>32</sup> as may be required, and his kinsmen shall have no right to his ðman-moneyø<sup>33</sup> if he is slain.ö Thus Attenborough on the laws of Edward.

### The consolidation of the English and the Anglo-Danes under King Athelstan

It was, however, especially Edward's son King Athelstan who consolidated these gains. The Welsh mediaeval historian Geoffrey Arthur of Monmouth writes<sup>34</sup> of the English that the British Celts could then no longer keep the English at a distance. They were no longer called Britons, but Welsh. The Saxons, throwing off the sovereignty of those Brythons, held the empire of all England under their Duke Athelstan.

The English historian Professor J.R. Green calls<sup>35</sup> Athelstan Alfred's ögolden-hairedö grandson. His father King Edward had girded him, when a child, with a sword set in a golden scabbard and a gem-studded belt. Indeed, Athelstan himself later incorporated Northumbria into his many dominions.

*The Historians' History* explains<sup>36</sup> that Athelstan now grasped at the sovereignty of the whole island. In the north, he levelled the Danish power. A Saxon chieftain was compelled to yield to him. The King of Scots and the Prince of Cumberland obeyed his summons. In the West, he intimidated the Britons of Wales and Cornwall.

He convened at a place called Eadmote all the princes of the Scots, Cambrians and Brythons. They, placing their hands between his, swore to him that fealty which the Saxon vassal was accustomed to swear to his lord. Athelstan sometimes called himself King of the English. At other times, he claimed the more pompous designation of ðKing of All Britain.ø

Michael Wood points out<sup>37</sup> that in A.D. 927, also King Owain of Cumbria and King Constantine of Scotland submitted to King Athelstan of England. At Eancourt

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<sup>28</sup> *ath.*

<sup>29</sup> *waed.*

<sup>30</sup> *Dom-Boc.*

<sup>31</sup> *flyman.*

<sup>32</sup> *theow-weorces.*

<sup>33</sup> *wer-geld.*

<sup>34</sup> *Op. cit.*, XII:19.

<sup>35</sup> *Op. cit.*, pp. 53f.

<sup>36</sup> *Op. cit.*, XVIII, pp. 96f.

<sup>37</sup> *Dark Ages*, p. 134.

Bridge in Cumbria, just twenty miles from Carlisle, a great imperial council was held. There the three powers confederated themselves into a united nation under English leadership. Soon, also the anglophilic King Hywel Dda of Wales would join that confederacy ó under Holy King Athelstan, renowned throughout the World.

The mediaeval chronicler Henry of Huntingdon explains<sup>38</sup> that Athelstan the son of Edward was elected King of the Mercians and crowned. His reign was short, but not the less illustrious for noble deeds. He fought against the bravest, but was never conquered. King Athelstan, resolving to subjugate entirely the heathen Danes and faithless Scots, led a very large army, both by sea and land, into Northumbria and Scotland, and then retired in triumph.

The Anglo-Norman historian William of Malmesbury remarks<sup>39</sup> that Athelstan started to reign in 924 A.D., and held the sovereignty sixteen years after being **elected** king by the unanimous **consent** of the **nobility** (alias **the best** (or the **aristocracy**)). William further adds that there was scarcely a centre of learning in England which Athelstan did not embellish either with buildings or ornaments or books or possessions.

In the year of grace 945, King Athelstan fought at Brunnesburgh one of the greatest battles on record against Anlaf the Danish King of Ireland who had united his forces to those of the Scots and Danes settled in England. Numbers fell ó Danish by race.

Thus, Alfred's grandson the 925f Saxon King Athelstan: expelled foreign invaders; conquered his enemies; and consolidated the various Saxon principalities. Moreover, as Taylor<sup>40</sup> points out, Athelstan made a peace treaty with five British kings.

### Overview of the legal significance of King Athelstan

Now Athelstan, the grandson of Alfred, made peace with the British Celts of Wales. Contributing their own Ancient Brythonic Common Law traditions and Biblical principles, they helped him strengthen his own sincere commitment to Christian legislation. Indeed, as Sir William Blackstone observes,<sup>41</sup> the laws of King Athelstan forbade all merchandizing on the Lord's Day ó under very severe penalties.

In Athelstan's very first laws,<sup>42</sup> the crime of larceny ó called by the Saxons *stale* [i.e. *stealing*] ó was not imputed below the age of twelve. Cf. Luke 2:42 & Genesis 17:25 & Exodus 12:3-4. Again, the *ordeal* was considered as a religious ceremony, and an appeal to Heaven ó such trials being called *judgments of God*. Numbers 5:12-31.

Also in subjugating the Celtic Scots, Athelstan incorporated some of their legal principles too ó into the Common Law of England. This also greatly enriched and further christianized English Common Law. For, as Stair declares in his own *Institutes of the Law of Scotland Deduced from its Originals and Collated with the Civil [and]*

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<sup>38</sup> *Op. cit.*, pp. 169f.

<sup>39</sup> *Op. cit.*, pp. 128f & 133f.

<sup>40</sup> Taylor: *op. cit.* pp. 32-33.

<sup>41</sup> *Op. cit.*, IV p. 63.

<sup>42</sup> *Leg. Athelst.*, s. 1.; cited in Flintoff's *op. cit.* pp. 72f & 76.

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*Canon and Feudal Laws and with the Customs of Neighbouring Nations*:<sup>43</sup> 'The Law of Scotland in its nearness to equity...may well be paralleled with the best law in Christendom.'

To his vassals, observes the *Historians' History*<sup>44</sup> of Athelstan, he was accustomed to make valuable presents. His munificence to the clergy was proved by the churches which he erected or repaired.

Neither ought his charities to be left unnoticed. He annually redeemed at his own private expense, a certain number of convicts who had forfeited their liberty because of their crimes.

As a legislator, Athelstan was anxious to suppress offences. He strove to secure an impartial administration of justice. He also sought to preserve the standard coin of the realm, in a state of purity.

The achievement of Athelstan in consolidating Saxondom in England and in achieving peace with the Celtic Britons in Wales, helped to produce ultimately the United Kingdom of England and Wales. Indeed, it encouraged even the next Christian Saxon king to assert the sovereignty of all Britain against that of the Pope.

In establishing a peace treaty with five of the Celtic Christian kings in Britain, Athelstan grounded his own English kingdom solidly upon a Pre-English Celtic foundation. One of those Celtic kings, was Hywel Dda (alias 'Howell the Wise'). He is remembered in Welsh history as a codifier of Welsh Laws. *Hywel's Code* was based upon the *Code of Mulmutius*, the B.C. 510f Ancient British king. For Hywel only intended to describe existing customs, not to change them.<sup>45</sup>

### The Law Code of Athelstan the King of England – and of 'All Britain'

Athelstan not only confederated many of the different self-governing regions of Britain under his own leadership. He also sought to promote a common Christian Code for the whole country. As such, his Law Code represents an important advance both religiously and politically.<sup>46</sup>

Attenborough remarks in his *Laws of the Earliest English Kings*<sup>47</sup> that six series of laws [I-VI] by Athelstan have been preserved in addition to a short ordinance respecting charities. I deals with the payment of tithes. II was promulgated at a council, and is concerned mainly with the administration of justice. III largely repeats what is found in II and probably in I also. IV is mainly concerned with the administration of justice. V is of a similar character. VI is an ordinance drawn

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<sup>43</sup> J. Stair: *Institutes of the Law of Scotland Deduced from its Originals and Collated with the Civil [and] Canon and Feudal Laws and with the Customs of Neighbouring Nations*, Bell & Bradfute, Edinburgh, 1832, I, p. 13.

<sup>44</sup> *Op. cit.*, XVIII, pp. 96f.

<sup>45</sup> See Taylor's *op. cit.*, pp. 32f.

<sup>46</sup> See Wood's *Dark Ages*, pp. 137f.

<sup>47</sup> *Op. cit.*, pp. 112f.

up by the Bishops and [Shire-]Reeves who held jurisdiction, and is concerned chiefly with the guilds.

These laws commence: ðI, King Athelstan, with the advice of my Bishops also, inform the [Sheriff or Shire-]Reeve in every Borough, and pray you in the name of God and of all His saints...that in the first place ye render Tithes [or *Tythings*]<sup>48</sup>...both in livestock and in the yearly fruits of the earth ó measuring, counting and weighing [them] in accordance with the strictest accuracy. And the Bishops shall do the same with their own property, and my Elder-men<sup>49</sup> and my Reeves [or -Shire-Reevesø alias Sheriffs] likewise.ö

Here it should be noted that all men should tithe. Hence, in mediaeval England, not just Freemen but also Bishops and Elders and Aldermen and even Sheriffs. Because Abraham the father of the faithful paid tithes to the King of Salem (or -Peaceø), so too should every Englishman ó and indeed to that greater Prince of Peace of Whom King Melchizedek of Salem was but a type. Genesis 14 & Hebrews 7.

Athelstan next gives<sup>50</sup> his reason for legislating these tithes. ðLet us remember how Jacob the Patriarch declared, -I will surely give the tithe unto Thee!ø [Genesis 28:22]; and how Moses declared in Godø Law [Exodus 22:29], -thou shalt not delay to offer the first of thy ripe fruits to the Lord!ø It behoves us to remember how terrible is the declaration stated in [ecclesiastical] books!<sup>51</sup>

ðIf we are not willing to render tithes to God ó he will deprive us of the nine [remaining] parts when we least expect it; and moreover, we shall have sinned also... For the divine teaching<sup>52</sup> instructs us that we gain the things of Heaven<sup>53</sup> by those of the Earth;<sup>54</sup> and the eternal<sup>55</sup> by the temporal.<sup>56</sup>

ðI, King Athelstan, with the advice of...all my...-servants of Godø<sup>57</sup>..., make known to all my Reeves within my Kingdom, that it is my wish that you shall always provide a destitute<sup>58</sup> Englishman with food.ö<sup>59</sup>

Apparently next thinking of Matthew 27:15f, Athelstan next adds: ðI desire that you make free annually ó one man who has been reduced to penal slavery.<sup>60</sup> And all this shall be done, because of the lovingkindness of God<sup>61</sup>.... And if the Reeve

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<sup>48</sup> *teothunga.*

<sup>49</sup> *Ealdormen.*

<sup>50</sup> *I Athelst., Pre. & 2-4.*

<sup>51</sup> *bocum.*

<sup>52</sup> *God-cunde.*

<sup>53</sup> *heofonlica thinga.*

<sup>54</sup> *mid tham eorthlicum.*

<sup>55</sup> *ecelic.*

<sup>56</sup> *hwilwendlicum.*

<sup>57</sup> *Godes-theowa.*

<sup>58</sup> *earm.*

<sup>59</sup> *habbath.*

<sup>60</sup> *wite-thowne.*

<sup>61</sup> *for Drihtenese mildheortnesse.*

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neglects [to do] this, he shall pay thirty shillings compensation<sup>62</sup> Poetic justice!  
Matthew 26:15f.

ōNo thief shall be spared who is seized in the act, if he is over twelve years old<sup>63</sup> ó alias ðmajority age<sup>64</sup> (Luke 2:40-49 *cf.* Exodus 12:3-4 & 26). ōIf anyone does spare such a thief, he shall either pay for him to the amount of his ðman-money<sup>65</sup> ó or though in that case the thief shall not be any the less liable to punishment<sup>66</sup> ó or clear himself [of the accusation] by an oath of equivalent value. If, however, he [the thief] tries to defend himself, or if he takes to flight, he shall not be spared.<sup>65</sup>

Moreover: ōIf a lord<sup>66</sup> is accessory to theft<sup>67</sup> by one of his slaves,<sup>68</sup> and it afterward becomes known ó he shall, on the first occasion, suffer the loss of his slave, and forfeit his ðman-money.<sup>69</sup> If he repeats the offence, he shall forfeit all he possesses.<sup>70</sup>

Again: ōWe have declared with regard to witchcrafts and sorceries and deadly spells, if death is occasioned thereby, and [the accused] cannot deny it [the charge] ó that he shall forfeit his life [Deuteronomy chapters 13 & 18]... Incendiaries<sup>71</sup> ó [and those who avenge illegally the punishment of] a thief<sup>72</sup> ó shall be subject to the same law.<sup>73</sup>

Further: ōIf it is found that any one...has borne false witness ó never again shall his witness be valid [*cf.* Deuteronomy 19:16-21]. And moreover, he shall pay a fine of thirty shillings [*cf.* Matthew 27:3f]...

ōHe who demands redress for a slain thief, shall go with three others [*cf.* Matthew 18:16] ó two [of the three] belonging to the father<sup>74</sup> kindred, and one to the mother<sup>74</sup> ó and they shall give an oath that they know of no theft committed by their kinsman for perpetrating which he deserved to be put to death.

ōThe homicide shall go with twelve others [*cf.* the jury], and charge the dead man with guilt in the manner already ordained. And if the kinsmen of the dead man will not come thither at the appointed day ó each of those who have demanded redress, shall pay one hundred and twenty shillings.<sup>74</sup>

Too: ōIf a moneyer [alias a coin-maker] is found guilty [of issuing base or light coins] ó the hand shall be cut off with which he committed the crime, and fastened up on the mint. But if he is accused, and he wishes to clear himself ó then shall he go to

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<sup>62</sup> *I Athelst.*, Ord. Char.

<sup>63</sup> *wer-geld*.

<sup>64</sup> *gethingodre*.

<sup>65</sup> *II Athelst.*, 1:1-3.

<sup>66</sup> *hlaforð*.

<sup>67</sup> *aet thyfthum gewita sie*.

<sup>68</sup> *the his theowan*.

<sup>69</sup> *wer-geld*.

<sup>70</sup> *II Athelst.*, 3:1.

<sup>71</sup> *blysieras*.

<sup>72</sup> *theof wrecen*.

<sup>73</sup> *II Athelst.*, 6:1-3.

<sup>74</sup> *Ib.*, 10f.

the hot iron [ordeal], and redeem the hand with which he is accused of having committed the crime.<sup>75</sup> Compare: Numbers 5:12-28 with Isaiah 1:22.

### Athelstan's Code on the application of various Biblical case laws

ðIf anyone takes bribes<sup>76</sup> from a thief, and [by so doing] frustrates the just claims of another ó he shall forfeit his *wergeld* [Exodus 23:8].... If anyone fails to attend an assembly<sup>77</sup> three times [*cf.* Exodus 23:14] ó he shall pay the fine due...for insubordination. And the meeting of the assembly shall be announced seven days before it is held [*cf.* Exodus 23:15].... And if he knows no one who will act as surety<sup>78</sup> for him, they shall arrest him.<sup>79</sup>

ðEvery man shall precede his accusation with an oath..., and everyone who is present, in both parties, shall fast according to the command of God.... There shall not be [a jury] more than twelve.<sup>80</sup>

ðNo trading shall take place on Sundays; and if anyone does so, he shall lose the goods and pay a fine of thirty shillings [*cf.* Exodus 23:12f]. If any of my [Shire-]Reeves is not willing to carry out this [our ordinance] ó or shows less regard for it than we have declared ó then he shall pay the fine due to me for insubordination, and I will find another [Shire-Reeve or Sheriff] who will be willing.<sup>81</sup>

ðIf there is a thief who has committed theft..., and if any Reeve will neither carry out nor show sufficient regard for this [ordinance], he shall give one hundred and twenty shillings to the King, if the accusation against him is substantiated ó and suffer also such disgrace as has been ordained. And if it is a *Thegn* [alias a Chief] ó or anyone else who acts thus ó the same punishment shall be inflicted.<sup>82</sup>

ðIn every monastery, all the servants of God shall sing every Friday fifty Psalms for the king [*cf.* First Peter 2:17] ó and for all who are minded to carry out his wishes.<sup>83</sup> See too Ephesians 5:19; Colossians 3:16; James 5:13.

ðIf anyone steals a slave, half a pound shall be paid for him.... If we can catch him, he shall receive the same treatment as a Welsh thief.... The Officials of the Hundred-groups,<sup>84</sup> and those who have charge of the bodies of ten<sup>85</sup> [Exodus 18:21], shall

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<sup>75</sup> *Ib.*, 14.

<sup>76</sup> *medsceat*.

<sup>77</sup> *Gemot*.

<sup>78</sup> *aborgie*.

<sup>79</sup> *II Athelst.*, 17-20.

<sup>80</sup> *Ib.*, 23:2.

<sup>81</sup> *Ib.*, 24-25.

<sup>82</sup> *IV Athelst.*, 6-7.

<sup>83</sup> *V Athelst.*, 3.

<sup>84</sup> *hyndenmenn*.

<sup>85</sup> *teothunge*.

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assemble<sup>86</sup> once every month<sup>87</sup> [cf. Revelation 22:2].... Twelve men shall then...be togetherö [cf. Revelation 21:12-14] ó as a jury.<sup>88</sup>

öIf our Liege-Lord<sup>89</sup> or any of our Reeves<sup>90</sup> can devise any additional rules for our association ó such suggestions shall not be unheeded.... If we are willing to act thus in all things, we may trust to God and our Liege-Lord that everybodyø's property will be safer from theft than it has been.ö<sup>91</sup>

öAthelstan commands his Bishops and his Elder-men<sup>92</sup> and all his Reeves throughout his dominions ó you shall observe the provisions for the public security which I and my Councillors<sup>93</sup> have ordained.ö Athelstan then concludes: öIf we observe the provisions as stated above, I believe, before God, that the security of our realm will be [even] better ó than it has been in the past.ö<sup>94</sup>

**Hywel Dda's A.D. 940f Welsh Codification  
of Moelmud's B.C. 510f Common Law**

We have already seen that while the Englishman King Athelstan was standardizing Christian Anglo-Saxon legislation, the even earlier Celto-Brythonic Biblical and Christian legislation was being codified by the Welshman Hoel ó alias King Howel or Hywel Dda. Yet later, the two systems would to some extent increasingly coalesce into Anglo-British Common Law.

Barrister-at-law Owen Flintoff has written a very important book titled *The Rise and Progress of the Laws of England and Wales*. There, he remarks<sup>95</sup> that ever since the early bardic times each Brythonic community had been led by a chieftain called the *Pen-Cenedl* or the "Headman of the Hundred.ø Cf. Deuteronomy 1:13-15f. That *Cenedl* or "Hundredø he represented at the *Gorsedd* ó alias the Ancient British Parliament. Cf. Numbers 10:2-4 & Acts 15:2-4.

The *Gor Sedd* or "Great Sessionø was convened by Hywel for the term A.D. 940-948 ó toward an important reformation and inscripturation of the law. There, a total of the Biblical number of seven was summoned for each *Commot* (or "Fiftyø). Those "sevensø consisted of six laymen and one clerk (or "clericø). That is to say, twelve were summoned from each *Cantred* (or "Centuryø) of all Hundred-Families. Cf. Exodus 18:12-26.

Those summoned, were all men versed in the law and distinguished in station. Compare the earlier twelve apostles (and the later twelve jurymen who served on

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<sup>86</sup> *gegaderian*.

<sup>87</sup> *aenne monath*.

<sup>88</sup> *VI Athelst.*, 6:3 & 8:1.

<sup>89</sup> *Hlaford*.

<sup>90</sup> *Gerefena*.

<sup>91</sup> *Ib.*, 8:9.

<sup>92</sup> *Ealdorman*.

<sup>93</sup> *Witan*.

<sup>94</sup> *Ib.*, 11 & 12:4.

<sup>95</sup> *Op. cit.*, pp. 52f.

juries). They repealed bad laws, amended others, and enacted new. The code thus prepared, was afterwards confirmed by a second delegation.

It was necessary for the parliamentary representative to be in full vigour of body and mind. He probably had to resign his dignity, if incapacitated by disease or age ó then being considered to be legally dead.<sup>96</sup> Cf. Deuteronomy 23:1f.

An extended quotation from a modern historian from Wales makes this even clearer. Thus, Trevelyan states<sup>97</sup> that the Welsh unanimously elected Hywel to rule that whole Principality. Hywel Dda was a Patriotic Prince quite ready to take up arms against the enemy ó though more willing to apply the arts of legislation to the security of peace.

Hywel Dda ó holding the olive branch and the tablets of the law instead of sword and shield ó stands pre-eminent in the annals of Wales. He with his *Gor Sedd* is to Wales what Alfred the Saxon with his *Witan* is in the history of England. Calling his Wise-men together, Hywel drew up a revised code of laws ó and next proceeded to see that the law-courts did their duty.

He was not a hasty and impetuous reformer who, like an impatient disputant, goes about his work in reckless fashion. Nor did he resemble many of the erratic law-alterers of today, who care little for tradition of the past.

His first public work was in A.D. 926. Hywel, attended by several Bishops and other Clerical and Lay dignitaries, set forth on a pilgrimage with Wise-men ó respecting the means of improving the laws in the realm of Cambria.

On his return home, Hywel convened a Great Assembly (or *Gor Sedd*) of all the learned men, the Clergy and Nobility of Wales ó at *Ty Gwyn ar Daf* (the ðWhite House on the Tafð). This convocation consisted of 140 Ecclesiastics ó six men of learning from every *Cymwyd* or ðCommoteð in his Kingdom. Each ðcommoteð comprised twelve ðmanorsð (and two hamlets).

Chancellor Blegwryd of Llandaff, who was the first scholar and lawyer of his day, was appointed Head Commissioner (over twelve other Commissioners) ó to examine Welsh Law and draw up an improved code. After much deliberation, the [510f B.C.] laws of Dynwal Moelmud were chosen as the basis of the new and reformed system ó which was submitted by the Commissioners to the judgment of the Convention. Being thereby approved and ratified, it was passed on to Hywel Dda, and received the royal assent.

According to these laws, a son came of age at fourteen (Exodus 12:3f,26,37 cf. Luke 2:42-52 and *Aboth* 5:21). The *saraad* or fine had special provision. The fine due to the king for violating his protection, was a hundred cows for every *Cantred* or Hundred. According to the *Code of Dyved*, twenty-four pence (alias 24 daysð wages) was the worth of every kind of person. For thirty pence was the worth of Christ (cf. Exodus 21:32 & Matthew 26:15) ó and it was unworthy to see the Son of God and men appraised of equal worth.

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<sup>96</sup> See *Law Triads* 40 & 147.2; and *Leg. Wall.* IV.

<sup>97</sup> M. Trevelyan: *op. cit.*, pp. 194f.



There is a valuable and ancient copy of the *Laws of Hywel Dda* preserved among the *Cotton Manuscripts* in the British Museum. The most valuable modern record extant is Aneurin Owen's edition of *The Ancient Laws and Institutes of Wales*. Thus Trevelyan.

### The merging of Anglo-Saxon Law and Celto-Brythonic Law as Anglo-British Law

We must now consider the growing liaison between the Saxons and the Brythons (especially under common pressure from the Danes). We should also note the progressive unification between Anglo-Saxon Law and Celto-Brythonic Law ó as they now both increasingly amalgamated toward the emergence of Anglo-British Common Law.

Professors Dillon and Chadwick point out<sup>98</sup> that Asser, the official biographer of the Wessex Christian King Alfred, was himself a Welshman. Indeed, in the time of Hywel, forty years later, there was close contact between that Welsh king and the royal house of Wessex. Hywel often attended the West-Saxon *Witenagemote* or Parliaments.

There was therefore a strong Celto-Brythonic influence then at work in Wessex; and, to a lesser extent, a strong Anglo-Saxon influence at work in Wales. Indeed, that had already been the case even before Hywel's day. This too had, and would further, leave its mark upon Welsh Law.

At this point, we would refer to a very helpful note by Chadwick. It relates to the beginning of the process of amalgamation between the earlier Christian-Brythonic Law and the now-Christianized Anglo-Saxon Law ó into what would later become the Christian Common Law of the British Isles.

Chadwick shows<sup>99</sup> that the Welsh laws are all prefaced by a statement in which they claim to have been enacted by the Welshman King Hywel Dda. He is said to have summoned a Representative Assembly in which each *Cantref* of Wales was represented by six men ó to meet at his Court (which was called the "White House") on the River Taff. This is identified in modern times with the village of Whitland in Carmarthenshire. It is implied, explains Chadwick, "that the laws were not the creation of any legislative body, but were **the organized statement of the ancient customs of the race.**"

Now Hywel's great assembly seems to have taken place soon after 940. The unanimity of their ascription throughout Welsh literature, and the absence of any suggestion of a rival constitution, are a very strong indication of their genuineness. Further, the act is consistent with what we know of Hywel from other sources. Such other information about Hywel includes: his admiration of Alfred the Great, whose laws he must have known; his unflinching attendance at Athelstan's meetings of the English *Witan*; and his general approval of everything politically English.

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<sup>98</sup> *Op. cit.*, (*in loco*).

<sup>99</sup> *The Celts*, pp. 119-20.

All these must naturally have led Hywel to extend his power toward achieving a synthesis of Welsh Law. Many lawyers must have helped him in his task. Evidently, there had been written law-books before these of Hywel. Those may well have borne some resemblance to the less-unified Irish tracts.

Barrister-at-law Hubert Lewis, in his book *Ancient Laws and Institutes of Wales*,<sup>100</sup> lists many of these Hywellian provisions. There, the *Triads* collected by Hywel declare:<sup>101</sup> ðA Presbyter is to have Christos tithe.ö And later: ðThere are five safeguards to the character of a Judge. The first of these, is the fear of God.ö

Professor Rachel Bromwich writes<sup>102</sup> that Hywel inaugurated his task by summoning to him a great conference at his hunting lodge on the river Taf, which was representative of both the ecclesiastical and the lay interests of the country. From this Assembly, ðthe king chose the twelve wisest laymen<sup>103</sup> ó and the wisest scholar,<sup>104</sup> whose name was Blegywryd.

Hywel chose them to frame and interpret for him and for his kingdom, perfect laws and customs ó and the nearest possible to truth and justice. By the advice of these Wise-men: some of the old laws were maintained; others were improved; and others had new laws put in their place.

However great the influence of the Church in the Assembly, it was not to the Bishops but to the Law-Scholars that the essential task of codification was entrusted. The reason for the presence of ecclesiastics, is given in the text of the famous *Black Book of Chirk*. It declares:<sup>105</sup> ðThis is why the [Ecclesiastical] Scholars were summoned ó **lest the laymen should set down anything that was against the Holy Scripture.**ö

Though the esteemed Clergy were to monitor the codification, only the Lay Representatives were a trained body of professional Lawmen. They alone possessed the knowledge required. These indications led to the belief that there were in Wales, as in Ireland, schools of law taught by Lay-Scholars ó where native traditions were handed down.

A reference in the *Book of Llandaff*<sup>106</sup> to ðthat most famous manö (Blegywryd),<sup>107</sup> implies that he was a learned Layman. A crude hexameter affixed to a text of the laws states that Blegywryd was ðDoctor of Lawø at the Court of King Hywel. The clear, succinct and objective style of the Welsh laws ó and at the same time the richness of their technical vocabulary ó are testimony to the high degree of culture attained by these Welsh Legal Scholars.

The mutual contact between Lawman and Storyteller, is evinced alike in the number of legal and semi-legal terms frequent in the prose tales. Thus there is *sarhad*

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<sup>100</sup> II, pp. 326-27 & 349.

<sup>101</sup> *Triads*, 10f.

<sup>102</sup> In eds. H.M. & N.K. Chadwick's *Studies*, pp. 99f.

<sup>103</sup> *y dewissawd y brenhin y deudec lleyc.*

<sup>104</sup> *wyr a'r un yscolheic.*

<sup>105</sup> *Black Book of Chirk*, as cited in eds. H.M. & N.K. Chadwick's *Studies*, pp. 99f.

<sup>106</sup> *Book of Llandaff*, 219.

<sup>107</sup> *famosissimus ille vir.*

(payment for insult); *wynebwerth* (honour price); *argyfreu* (a bride's personal possessions); *meichiau* (sureties); *agweddi* (dowry); *etc.* It is significant within this tradition that the narrative material was transmitted by word of mouth over many generations ó before it even partially attained a literary form. Thus Professor Bromwich.

### King Edmund of England and his very wise laws

Now Athelstan was succeeded by his brother Edmund. He subjugated the North-Welsh in Cumbria, but then handed them over to their Scottish kinsmen. The *Saxon Chronicle* calls the Brythons in Greater Cumbria alias the Strathclyde Celts ð*Straeclæd Wealas* or ðStrathclyde Welshð (alias ðStrangersð). Indeed, in Latin, these Strathclyde Brythons were called *Cumbri* alias Cumbrians. W.F. Skene observes<sup>108</sup> the *Saxon Chronicle* tells us that, in the year 945, King Edmund harried over all Cumberland ó and gave it all up to Malcolm King of the Scots.

The mediaeval historian Henry of Huntingdon states<sup>109</sup> that King Edmund received a Danish king named Anlaf in Baptism. Anlaf yielded as much to Edmund's force of arms, as to his convictions on the truth of Christianity.

Barrister-at-law Flintoff insists<sup>110</sup> that the third law of Edmund implies that injuries to property were generally compensated by a payment from the wrongdoer to the party injured. *Cf.* Exodus 21:22*f.* As the penalty due on these occasions was considered not only in the light of compensation but also as the punishment inflicted by a community or State, it was not lawful for it to be remitted. *Cf.* Exodus 21:30.

Important too is the testimony of the Anglo-Norman mediaeval historian William of Malmesbury. He carefully records:<sup>111</sup> ðIn the year of our Lord's incarnation 940, Edmund the brother of Athelstan, when a youth of about eighteen, received and held the government. Among the many donations which the king conferred on different churches, he exalted that of Glastonbury ó through his singular affection towards it ó with great estates and honours. Indeed, he also granted it a charter, in the following words:

ðIn the Name of our Lord Jesus Christ! I, Edmund, King of the Angles and Governor and Ruler of the other surrounding nations, with the advice and consent of my nobility..., do grant to the Church...of [St.] Mary's of Glastonbury...rights, customs, and all the forfeitures of all their possessions.... More especially shall the town of Glastonbury, in which is situated that most ancient Church..., together with its bounds, be more free than other places..., in the same manner as my predecessors have granted and confirmed by charter ó to wit, Edward my father; and Alfred his father; and Kentwin, Ina, and Cuthred, and many others.ð

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<sup>108</sup> *Celt. Scot.*, I pp. 326 & 362.

<sup>109</sup> *Op. cit.*, pp. 169*f.*

<sup>110</sup> *Op. cit.*, pp. 71*f.*

<sup>111</sup> *Op. cit.*, pp. 141*f.*

As the Elizabethan chronicler and historian Holinshed remarks,<sup>112</sup> after Athelstan had departed this life, his brother Edmund (son of Edward the Elder) took upon himself the government of this land. He began his reign in the 940th year of our Lord. He ordained various good and wholesome laws, very profitable and necessary for the Commonwealth. These were for the most part recovered and translated into Latin by master William Lambert, and imprinted by John Day in the year 1568.

### The short yet important reign of King Eadred in England

Edmund was succeeded by his sons Edwig and Edgar (after a brief but extremely influential reign by their uncle Eadred). For Eadred it was who finally subjugated the Cumbrians, the Anglo-Danish Northumbrians and the Scots. The *Historians' History* declares<sup>113</sup> that the crowning of Eadred indeed represented at least two steps forward toward a national kingship. First ó he was **elected** to be England's ruler. Second ó Celto-Brythons, Anglo-Saxons and Anglo-Danes all participated in that election.

King Eadred was **elected**, not appointed. Indeed, his election was the first national election ó the first election by a *Witena-Gemot* [alias 'Parliament'], where Briton and Dane and Englishmen were alike represented; and where Celto-Welsh 'Under-Kings'<sup>114</sup> and Anglo-Danish 'Earls'<sup>115</sup> sat side by side with English Nobles and Bishops.

The historian Professor J.R. Green simply observes<sup>116</sup> that Eadred (946-955), Eadmund's brother, became supreme. Eadred's election was the first National Election where Briton, Dane, and Englishman were alike represented; his coronation was the first national coronation. With the submission of the *Danelaw* alias the Anglo-Danish area of Britain in 954 to the Anglo-Saxon king of England ó the long work of Alfred's house was done. The new might of the royal power was expressed in the lofty titles assumed by Eadred. He was not only 'King of the Anglo-Saxons' but also 'Caesar of the whole of Britain.'

### The excellent English Lawmaker King Edgar the Pacific

After the rule of the Regent Eadred, his nephew King Edgar ('the Pacific') became something of a lawmaker. The mediaeval historian Henry of Huntingdon writes<sup>117</sup> that the peaceful Edgar reigned sixteen years [from A.D. 959 onward]. He widely established the Christian faith in his dominion and ó by his bright example ó encouraged fruitfulness in good works. Beloved by both God and man, his great concern was to promote peace among all the nations of his realm. Nor did any of his predecessors hold the reins of power so quietly and so happily.

Honouring God's Name and studying His Law, Edgar willingly learned and gladly taught it, and was ready both by word and deed to invite his people to the practice of

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<sup>112</sup> *Op. cit.*, I:689f.

<sup>113</sup> *Op. cit.*, XVIII, p. 103 & n.

<sup>114</sup> *Sub-reguli*.

<sup>115</sup> *Jarls*.

<sup>116</sup> *Op. cit.*, pp. 53f.

<sup>117</sup> *Op. cit.*, pp. 174f.

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virtue. The Divine Providence rewarded His servant Edgar for his good deeds not in the next life only, but even in the present. For the several Subordinate Kings, and the Chiefs and people of all the nations of the land, submitted to him voluntarily.

The fame of the king's illustrious character was spread through all countries. King Edgar made new plantations and nursed up offshoots of young growth most acceptably to God. The king built the Abbey of Glastonbury. Edgar the peaceful, that glorious king, that second Solomon in whose time no foreign army landed in England, was one to whose dominion the Kings and Chiefs of Britain were subject and to whose power even the Scots bent their necks. Hence the couplet (thus the Englishman Huntingdon):

ōBlest in his kingdom's wealth, his people's love;  
the royal Edgar soars to realms above.  
Just laws he gave, and with the arts of peace ó  
made crime and violence and war to cease.ö

The mediaeval Henry of Huntingdon's contemporary, the Anglo-Norman William of Malmesbury, is even more copious. In the year of our Lord's incarnation 959, explains the historian Malmesbury,<sup>118</sup> Edgar ó the honour and delight of the English ó was a youth of sixteen years old. Assuming the government, he held it for about a similar period. Around 973, Edgar advanced the monastery of Glastonbury, which he ever loved beyond all others, with great possessions. It may be proper here to subjoin the charter he granted to the said church:

**ōIn the Name of our Lord Jesus Christ...**, I, Edgar, by the grace of God ó King of the English and Ruler and Governor of the adjacent Nations ó **in the Name of the blessed Trinity...**do by this present privilege decree, appoint and establish that the aforesaid monastery and all its possessions shall remain free and exonerated from all payments to the Exchequer now and for ever....

ōI confirm and establish what has hitherto scrupulously been observed by all my predecessors.... The Abbot [of Glastonbury] shall cause any Bishop of the same province he pleases to ordain his monks and the clerics of the aforesaid churches ó according to the ancient custom of the church of Glastonbury and the apostolical authority.ö For Glastonbury, concludes Edgar's Charter, is öthe first church in the kingdom built by the disciples of Christ.ö

Edgar, however, was not only an ecclesiastical antiquary. He was also a Christian lawmaker. The historian Professor J.R. Green states<sup>119</sup> that subsequent ages fondly look back to the English Constitution, as it shaped itself in the hands of Edgar. Even term-slavery of both conquered Brythons and impoverished Englishmen was disappearing. The slave was exempted from toil on Sundays. He became attached to the soil, and could not be sold without it. All slaves in England, would become Freemen. These Churls knew no superior but God and the law.

The life of the English State was gathered up in its *Folk-Moot* (or Political Assembly). There, through its representatives chosen in every *Hundred-Moot* (or

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<sup>118</sup> *Op. cit.*, pp. 147f.

<sup>119</sup> *Op. cit.*, pp. 57f.

Local Meeting) ó the ðfolkø (or nation) had exercised its own sovereignty in matters of justice as also in peace and war. *Cf.* Exodus 18:21f & Numbers 10:3.

Beside the national ðFolk-Mootø or the ðHouse of Commonsø alias the ðHouse of Representativesø stood the *Witena-Gemot* (or the ðHouse of Lordsø alias the ðSenateø). This was the group of ðWise-menø gathered to give ðredeø (or advice) to the King ó and, through him, to propose a course of action to the folk or nation. *Cf.* Numbers 10:4 & 17:2-3 and Deuteronomy 17:8-20.

The preliminary discussion rested with the Nobles; but the final decision, with all. The clash of arms ó the ðyeaø or ðnayø of the crowd ó were its vote. Thus Green.

### **Flintoff and Chadwick on the English King Edgar the Peaceable**

As Barrister-at-law Flintoff rightly states<sup>120</sup> in his book *The Rise and Progress of the Laws of England and Wales*, King Edgar projected and began what his (A.D. 1060f) grandson King Edward the Confessor afterwards completed ó *viz.*, one uniform digest or body of laws to be observed throughout the whole kingdom. It was essentially a revival of *King Alfred's Code* ó with some improvements suggested by necessity and experience.

Those improvements under Edward the Peaceable, included particularly the incorporation of more of the Christian Celto-Brythonic or rather Mercian Anglo-British customs, and also such of the Anglo-Danish laws as were reasonable and approved ó in the expanded *West-Saxon Lage*. That was still the groundwork of the whole. This appears to be the best supported and most plausible conjecture of the origin and rise of that admirable system of maxims which is now known by the name of the Common Law, as extending its authority universally over all the realm, and which is doubtless of Anglo-Saxon and remotely also of Christian Celto-Brythonic parentage.

In 959f A.D., Edgar enacted:<sup>121</sup> ðThis is the ordinance how the ðHundredø shall be.... They meet always within four weeks; and that every man do justice to one another.... A thief shall be pursued.... Let it be made known to the ðTythingmenø [or ðElders-over-tenø as in Exodus 18:21f & Deuteronomy 1:13f]; and let all go forth to where God may direct them to go. Let them do justice on the thief.... Let Godø churches be entitled to every right.... Let every tithe be rendered to the old minster [or monastic educational centre] to which the district belongs.ö

Chadwick writes<sup>122</sup> that Edgar the Pacific, A.D. 959 to 975, fearlessly proclaimed the above customs and laws ó with the enthusiastical approval of his nobles and the nation. Yet he claimed no novelty. For it was asserted to be so by immemorial right and liberty.<sup>123</sup> Indeed, according to the Charter of Edgar,<sup>124</sup> not the Roman Vatican [nor the A.D. 600f Canterbury as its satellite] but Joseph of Arimatheaø Avallon or

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<sup>120</sup> *Op. cit.*, pp. 133f.

<sup>121</sup> Cited in Stubbs: *Select Charters and Other Illustrations of English Constitutional History*, Clarendon, Oxford, 1884, pp. 68f.

<sup>122</sup> *The Celts*, pp. 119-20.

<sup>123</sup> I. Elder: *op. cit.*, p. 140.

<sup>124</sup> R.W. Morgan: *op. cit.*, p. 122.

Glastonbury was ðthe first church in the kingdom ó [having been] built by the disciples of Christ.ö

The unification of Britain under the English kings ó and even against the strengthening Papacy ó continued. The A.D. 965 English King Edgar resisted the religious and political claims to England then being made by the Pope. For Edward the Pacific himself fearlessly proclaimed to the papal legate Dunstan: ðThe King of England [and not the Pope] holds the sword of [the Briton] Constantine... He is, in his own dominions, the Lord's husbandman.ö<sup>125</sup>

### King Ethelred (the 'Unready') and his godly laws for England

During the century before the Norman Conquest, as Mediaeval History Professor H.R. Loyn points out,<sup>126</sup> the strengthening relationship between the Christian Church and the Christian State in England ó essentially a Christian Theocracy alias a Christocracy ó became even more profound and longer-lasting than that of Charlemagne on the Continent had been. Even in later Anglo-Saxon England, the notions of Christian kingship and Christian churchmanship were mutually interdependent.

Edgar's son the Christian King Ethelred ó sometimes rather inaccurately nicknamed ðthe Unreadyø ó readily converted the Viking Olaf Trygvasson to Christianity.<sup>127</sup> Ethelred also readily chased the Danes clear out of Cumberland.

As Ethelred's adviser, Wulfstan, rightly wrote:<sup>128</sup> ðThe Christian king must severely punish wicked men.ö This was good advice to King Ethelred ó and he indeed heeded it. Yet, in his righteous wrath, the king was also merciful.

Thus the 978f A.D. *Laws of Ethelred* state:<sup>129</sup> ðThe ordinance of our Lord [Ethelred] and of his *Witan*ø [or Parliament] is that Christian men uncondemned, be not sold out of the country, especially unto a heathen nation.... Be it jealously guarded against ó that those souls not perish, whom Christ bought with His Own life....

ðDeceitful deeds and hateful injustice shall strictly be avoided ó namely untrue weights; and false measures; and lying testimonies; and shameful frauds; and foul adulteries; and horrible perjuries; and devilish deeds such as murders and homicides, thefts and robberies, covetousness and greed, gluttony and intemperance; frauds and various breaches of the law; violations of marriage and of holy orders...and misdeeds of many kinds.... Let God's Law henceforth zealously be loved by word and deed! Then God will soon be merciful to this nation....

ðPublic security shall be promoted in such a way as shall be best for the householder ó and worst for the thief. And the coinage shall be improved, by having one currency ó free from all adulteration throughout all the country. And weights and

<sup>125</sup> Twysden's *Scriptores*, X p. 360.

<sup>126</sup> *Op. cit.*, p. 237.

<sup>127</sup> G. Taylor: *Hid. Cent.*, pp. 25f & 176f.

<sup>128</sup> M. Wood: *Dark Ages*, p. 187.

<sup>129</sup> *Laws of Ethelred*, V:2-4; cited in Stubbs: *op. cit.*, p. 73. See too VIII Eth. 2:1 & VI Eth. 28:2,4,32,42,50f (as cited in Perks's *op. cit.* pp. 25-27).

measures shall be corrected with diligence, and an end put to all unjust practices [Leviticus 19:35-37 & Deuteronomy 25:13-16]....

øWe desire earnestly to exhort all our friends, as there is need for us to do frequently, for themselves eagerly to turn from sins and to restrain other men from wrong-doing.... They should have a right belief in the true God Who is the Ruler and Maker of all created things.... They should duly keep the true Christian Faith; and diligently obey their spiritual Teachers; and zealously follow the precepts and ordinances of God; and...earnestly pray to Christ....

øEvery year they should duly render their ecclesiastical dues [Leviticus 27:30 & Numbers 18:24-28 & Deuteronomy 14:22], and duly observe festivals and feasts [Deuteronomy 16:16].... They should diligently abstain from marketing and public assemblies on Sundays [Exodus 20:8-13].... They should always protect and honour the servants of God [First Timothy 5:17-19].... They should comfort and feed the poor [Exodus 23:11 & Leviticus 19:9-10 & 25:35 & Deuteronomy 24:14f].... They should not constantly be oppressing the widow and the orphan.... They should diligently cheer them [Exodus 22:22-24; Deuteronomy 10:18f; 14:28f; 15:11-14; 16:12; 27:19]....

øThey should not vex or oppress strangers and men come from afar [Exodus 22:21; 23:3-6; Leviticus 19:33f; Deuteronomy 10:18f; 14:28f; 16:11-14; 26:12; 27:19].... They should not excel in offering injustice to other men.... He who henceforth anywhere violates the just decrees of God or of men, shall render full compensation in whatever way is fitting ó whether by making the amends required...or by paying the penalty demanded [Exodus 22:1-15 *etc.*]ø

As the University of Wisconsin Law School's Smongenski Research Professor Warren W. Lehman explains,<sup>130</sup> Ethelred's dooms ó a hundred years or more after Alfred's ó re-indorsed the ideals of King Alfred. In fact, however, Ethelred to some extent even improved upon the Alfredian Christonomy.

For Ethelred enjoined that Englishmen øshould not excel in offering injustice to other men, but that every man should to the best of his ability draw the justice to others that he desires should be shown to him himself ó which is a very good rule.ø Indeed, the "golden rule" which Alfred had stated negatively ó Ethelred now states positively. Exodus 23:3-6; Leviticus 19:15; 19:34; Deuteronomy 1:17; 16:18-20; Matthew 7:2; 7:12.

For, adds Ethelred, øconstant thought shall be taken in every way how best to determine what is advisable for the public good, and how best to promote true Christianity and to suppress with all diligence every injustice. For it is only by the suppression of injustice and the love of righteousness in matters both religious and secular, that any improvement shall be obtained in the condition of the country.ø

The 1987 assessment of the BBC's historian Michael Wood is well worth quoting. In the nineteenth-century Victorian England, he explains,<sup>131</sup> it was widely believed

<sup>130</sup> *Laws of Ethelred*, VI:49.; in Stubbs's *op. cit.* pp. 30f n. 45 (citing ed. A.J. Robertson's book *The Laws of the Kings of England from Edmund to Henry I*, University Press, Cambridge, 1925, p. 105).

<sup>131</sup> M. Wood: *Dark Ages*, pp. 241f.



that many of their institutions went back to Anglo-Saxon times ó if not also much earlier. Subsequently, however, such ideas were dismissed as romanticism.

But now, many scholars are seriously reconsidering this earlier judgment ó as the whole of the period is re-evaluated. The lineaments (and the thought-world) of the State created by Alfred, Athelstan and their successors ó may have been much more long-lasting than sceptical scholars between and just after the two World Wars had suspected.

Sadly, however, even Ethelred at length became complacent. As Henry of Huntingdon explains,<sup>132</sup> in the year 1000 from our Lord's incarnation, King Ethelred formed the design of demanding in marriage Princess Emma the daughter of the Norman Duke Richard.

This demand, of course, was wrong. However, it was the purpose of the Almighty to distract and afflict the English nation, whose wickedness called for punishment ó just as before he had humbled the Britons, when their sins accused them.

The Normans retaliated. Justly, according to the Law of Nations, they established a footing in England ó from about A.D. 1000 and especially from 1066 onward.

Wright explains<sup>133</sup> that on King Ethelred's death in 1016, all the *Witan* were in London. The *ÆTownsmen*<sup>134</sup> ó William of Malmesbury calls them the *ÆProceres Lundoniae* ó then chose Edmund to be king. Once again, the monarch was **elected**.

Edmund, son of Ethelred, had married the widow of a Danish Thane. However, after this, Edmund ó the famous *ÆEdmund Ironside* ó suddenly died. He had reigned for but two months. Thereafter, Britain had to submit to a Dane: the Norseman King Canute.

### **The hegemony of the Anglo-Danish Kings over the whole of England**

It should not be thought that all of the various Danish influences on Britain ó from the A.D. 870 of Guthrum to the 1031 Knut (or Canute) ó were bad. Indeed, even the yet-later influence of other Norsemen or *ÆNormans* ó from the partly gallicized or *Æfrenchified* Norseman William the Conqueror onward ó in some ways furthered rather than retarded the ongoing christianization even of English Common Law.

As the historian Trevelyan explains,<sup>135</sup> there is the peculiarly Scandinavian view ó found in Anglo-Danish laws, that certain acts such as cowardly flight or desertion of one's Chief were dishonourable. The growth of the law of treason and petty treason is due in part to the strong ethical feeling of the whole Nordic race, expressed alike in Anglo-Saxon and Scandinavian literature, of horror regarding the man who betrays or deserts his Chief.

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<sup>132</sup> *Op. cit.*, pp. 176f.

<sup>133</sup> *Op. cit.*, pp. 450f.

<sup>134</sup> *seo burhwaru*.

<sup>135</sup> M. Trevelyan: *op. cit.*, pp. 82f.

When Edward the Elder and his sister Ethelfleda of the Mercians set about conquering the Danelaw in Eastern England, they did it by imitating and taking over the Danish borough system. Alfred had set the example in London, elsewhere, and especially in Wessex. His son and daughter spread the net of fortified English *burhs* up the Severn valley and across the Midlands. They repaired the stone walls of ruined cities.

Law, like many other good things, received a stimulus from the coming of the Danes. The very word *law* is Danish. It has survived its rivals, the Anglo-Saxon word *doom* and the Latin word *lex*. A Danish town in England often had, as its Principal Officers, twelve hereditary Law-Men. The Danes introduced the habit of making Committees among the Freemen in Court which perhaps made England favourable ground for the future growth of the jury.

In the laws of Ethelred the Unready, we read that a *gemot* be held in every *Wapentake*. There, the twelve senior *Thegns* were to go out and the Reeve with them and swear on the *halidoom* that was given into their hand that they would accuse no innocent man nor conceal any guilty one. This is Danish, and very near to a mediaeval jury.

### **The life and times of the great Anglo-Danish Christian King Canute**

After the sudden death of Edmund Ironside, explains Henry of Huntingdon,<sup>136</sup> Cnut or Canute now King of England (A.D. 1017) married Emma. She was the daughter of the Duke of Normandy, who had previously been the wife of the Englishman King Ethelred.

History Professor J.R. Green relates<sup>137</sup> that Cnut had no sooner appeared off the English coast than Wessex, Mercia and Northumberland joined in owning him. His language differed little from the English tongue. He brought in no new system of tenure or government. Cnut ruled, in fact, not as a foreign conqueror, but as a native as a wise and temperate king.

Stranger as he was, he fell back on the Anglo-Saxon King Edgar's laws and on the old Constitution of the Realm and owned no difference between conqueror and conquered, between Dane and Englishman. By the creation of four earldoms those of Mercia, Northumberland, Wessex, and East Anglia he recognized provincial independence. He even identified himself with the patriotism which had withstood the stranger.

The Church had been the centre of national resistance against the Dane. But Cnut sought above all its friendship. Cnut's letter to his English subjects marks the grandeur of his character, and the noble conception he had formed about kingship.

Averred Canute: "I had vowed to God to lead a right life in all things and to rule justly and piously my realms and subjects, and to administer just judgment to all. If

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<sup>136</sup> *Op. cit.*, pp. 196f.

<sup>137</sup> *Op. cit.*, pp. 63f.

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heretofore I have done aught beyond what was just, through headiness or negligence of youth ó I am ready with God's help to amend it utterly.ö

Though himself an Englishman, the mediaeval historian Henry Huntingdon writes<sup>138</sup> of Canute that before him there was never so great a king of England. He was ruler of the whole of Denmark, England and Norway ó as also of Scotland. His nobleness and greatness of mind were eminently displayed.

Once disgusted with the flatteries of his courtiers, Canute taught them the following lesson. Getting his throne placed by the sea-shore at inflowing tide, tongue-in-cheek he commanded: ðOcean! The land on which I sit is mine, and thou art a part of my dominion! Therefore, rise not! Obey my commands, nor presume to wet the edge of my robe!ö

When the sea (as he had of course fully expected) soon thereafter indeed did wet his feet, he said to his courtiers: ðNow admit how frivolous and vain is the might of an earthly king ó compared to that great Power Who rules the elements and Who can say to the oceans, ðThus far shalt thou go, and no farther!ø Job 38:11. Canute then immediately took off his crown and deposited it at Winchester. He never wore it again.<sup>139</sup>

Canute importantly centralized British Common Law ó in his A.D. 1035 *Biblical Code of the Laws of England*. There, the godly Dane ó residing at Wessex in England ó recapitulated the earlier Christian laws of his immediate Anglo-Saxon predecessors Ethelred and Edgar.

Canute re-enforced the payment of tithes.<sup>140</sup> He degraded and punished all homicidal clergymen.<sup>141</sup> All fugitives from justice forfeited their bail ó legislated Canute<sup>142</sup> ó and were to be declared outlaws.

The great Elizabethan chronicler and historian Holinshed explains<sup>143</sup> that Canute was the mightiest prince that ever reigned over the English people. For he had the sovereign rule over all Denmark, England, Norway, Scotland, and part of Sweden. Among other royal acts of his, he caused such tolls and tallages as were demanded of road-users at bridges and streets on the highway between England and Rome, to be cut in half. He received many great gifts from the ðHoly Roman Emperorøó and was highly honoured by him.

The *Historians' History* rightly observes<sup>144</sup> that the Saxon Chiefs took an oath of fidelity to King Canute. Then Canute, in return, swore to be just and benevolent ó and clasped their hands with his naked hand, in sign of sincerity.

Canute gradually displaced the Danes, whom he had at first placed in high office, and gave them English successors. He raised an Englishman, the renowned Godwin,

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<sup>138</sup> *Op. cit.*, pp. 196f.

<sup>139</sup> *Hist. Hist.*, p. 123.

<sup>140</sup> *Ll. Can.*, s. 11 (cited in Flintoff's *op. cit.* p. 113).

<sup>141</sup> *Ll. Can.*, ss. 36-38 (cited in Flintoff's *op. cit.* p. 76).

<sup>142</sup> *Ll. Can.*, II s. 28 (in Flintoff's *op. cit.* p. 81).

<sup>143</sup> *Op. cit.*, I:730f.

<sup>144</sup> *Op. cit.*, XVIII pp. 120f.

to a place second only to the king ó with the new title of ðEarl of the West-Saxons.ö Canute was chosen to the crown of England, first of all, while still very young. To that crown, he later added that of Denmark.

He also won Norway ó and seems to have established his power over part of Sweden and other parts of the Baltic. Such included Semland and Witland, on the coast of ðAnglo-Saxonø Ancient Prussia.<sup>145</sup> The latter then included Esthonia, which the A.D. 98 historian Tacitus had held<sup>146</sup> was then linguistically akin to the Celtic Ancient Britons.

The 1016f laws of the Anglo-Danish King Canute<sup>147</sup> required that both the ecclesiastical Bishop and the political *Ealdorman* were to ðexpound as well the Law of God as the secular law.ö They were to do this, whenever the ðGemotø or Parliament ó cf. the House of Lords and the House of Commons (Numbers 10:2-4) ó met thrice a year. Cf. Exodus 23:14f.

Canute once wisely wrote ðto all the nation of the English, both Nobles and Commoners.ö To them, he then declared: ðBe it known to you all, that I have dedicated my life to God ó to govern my kingdoms with justice, and to observe the right in all things.

ðIf,ö Canute continued, ðin the time that is passed and in the violence and carelessness of youth I have violated justice ó it is my intention, by the help of God, **to make full compensation**. Therefore I beg and command those unto whom I have intrusted the government, as they wish to preserve my good-will, and save their own souls, to do no injustice either to rich or poor.

ðLet those who are Nobles, and those who are not, **equally obtain their rights, according to the laws** ó from which **no deviation shall be allowed**, either from fear of me, or through favour to the powerful, or for the purpose of supplying my treasury. I want no money raised by injustice.ö<sup>148</sup>

Also Canute re-endowed the ancient church at Glastonbury. ðThe Lord reigns for evermore ó Who disposes and governs all things by His unspeakable power; Who wonderfully determines the changes of times and of men.... Wherefore I, Canute, king of England and governor and ruler of the adjacent nations..., grant to the church...at Glastonbury its rights and customs throughout my kingdom...that its lands shall be free from all claim and vexation...as my predecessors have ratified and confirmed by charters ó that is to say: Kentwin, Ina, Cuthred, Alfred, Edward, Ethelred, Althestan, the most glorious Edmund, and the equally glorious Edgar.ö<sup>149</sup>

However, even the life of so great a Christian king had to come to a close. As the mediaeval historian Henry of Huntingdon records,<sup>150</sup> King Canute died at Shaftesbury in A.D. 1035 ó after a reign of twenty years.

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<sup>145</sup> *Enc. Brit.*, 14th ed., 4:774.

<sup>146</sup> *Germ.*, 45.

<sup>147</sup> *Ll. Can.*, ch. 18 (as cited in Stubbsø *op. cit.* p. 73).

<sup>148</sup> *Hist. Hist.*, p. 122.

<sup>149</sup> William of Malmesbury: *op. cit.*, pp. 202f.

<sup>150</sup> *Op. cit.*, pp. 196f.

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Of Canute, the modern historian and statesman Sir Winston Churchill wrote:<sup>151</sup>  
“He professed high devotion to the Christian Faith.... He ruled according to the laws,  
and he made it known that these were to be administered in austere detachment from  
his executive authority.”

Indeed, Canute’s *Code* specifically refers to the **Lord’s Prayer**. It also stresses the  
duty to ponder on the precepts of **God’s Law**.<sup>152</sup> Foreshadowings of the *Westminster  
Larger Catechism*!

**A brief sample of laws from *King Canute’s Second Law Code***

In the law code *II Cnut* (1-4 & Conclusion), King Canute expressed the “desire that  
justice be promoted and every injustice zealously suppressed; that every illegality be  
uprooted and eradicated from this land with the utmost diligence, and the Law of God  
promoted....

“Henceforth all men, both poor and rich shall be regarded as entitled to the benefit  
of the law and just decisions shall be pronounced on their behalf....

“We enjoin that, even if anyone sins and commits grievous crime and the punishment  
shall be ordered as shall be justifiable in the sight of God and acceptable in the eyes of  
men....

“He who has authority to give judgment shall consider very earnestly what he  
himself desires when he says thus: “And forgive us our trespasses as we forgive [them  
that trespass against us. Matthew 6:12]”....

“We forbid the practice of condemning Christian people to death for very trivial  
offences. On the contrary, merciful punishments shall be determined upon for the  
public good; and the handiwork of God and the purchase which He made at a great  
price, shall not be destroyed for trivial offences.

“We forbid the all too prevalent practice of selling Christian people out of the  
country and especially of conveying them into heathen lands. But care shall be taken  
zealously that the souls which Christ bought with His life, be not destroyed....

“We enjoin that the purification of the land in every part, shall diligently be  
undertaken; and that evil deeds shall everywhere be put an end to.” Thus wizards,  
sorcerers, murderers and prostitutes are to be driven from the land and unless they  
repent. Apostates are to be expelled and or make amends. Thieves and robbers are to be  
“made an end of and unless they desist.”

Heathen practices and e.g. witchcraft, worship of idols and heathen gods, sun, moon,  
fire, trees etc. and are forbidden. Perjurers and adulterers are to make amends and or depart  
from the land along with hypocrites, liars and robbers who incur the wrath of God.

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<sup>151</sup> *Island Race*, I p. 27.

<sup>152</sup> Thus D.S. Davies: *op. cit.*, pp. 5f.

Again, other laws require the reform and improvement of coinage. False weights and measures are to be corrected diligently. ðThought shall diligently be taken in every way how best to determine what is advisable for the public good, and how best to promote true Christianity and diligently suppress every injustice.ö

Also many other laws reveal the influence of Christianity. Such include laws regarding incest, adultery, rape, bigamy, robbery, the payment of ecclesiastical dues, and excommunicated persons. *Canute's Second Code* then ends as follows:

ðNow I earnestly entreat all men and command them, in the Name of God, to submit in their inmost heart to their Lord, and often and frequently consider what they ought to do and what they ought to forgo.

ðThere is great need for us all to love God and to follow God's Law, and zealously to obey our spiritual teachers.

ðFor it is their duty to lead us forth to the judgment where God shall judge each man according to the works which he has wrought....

ðBlessed is the shepherd who then may gladly lead his flock into the Kingdom of God and to the joy of Heaven, because of the works which they have wrought....

ðWell it is for the flock which follows the shepherd who delivers them from devils and wins them for God.

ðLet us then all with humble heart be zealous in pleasing our Lord aright; and henceforth, by doing what is right, always zealously guard ourselves from the hot fire which surges in hell....

ðLikewise, teachers and spiritual messengers shall do what is right and for the well-being of all men. They shall frequently inculcate spiritual duties....

ðEveryone who has discernment shall earnestly give heed to them, and everyone for his own well-being shall keep fast in his mind their spiritual instruction....

ðEvery man, for the honour of his Lord, shall always gladly do his utmost by word and by work and by deed for the furtherance of what is good. Then shall God be the more ready [to help us].

ðMay the Name of God be eternally blessed, and to Him be praise and glory and honour for ever and ever! Amen.

ðGod Almighty have mercy upon us all, as His will may be! Amen.ö

### **The sons of Canute: the Anglo-Danish Kings Harold Harefoot and Hardecnute**

Next, writes Henry of Huntingdon,<sup>153</sup> after Canute's death his son Harold ó the son of Elfgiva daughter of Eلفelin the *Ealdorman* ó was **chosen** King by representative

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<sup>153</sup> *Op. cit.*, pp. 199f.

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election in 1037. For there was a Great Council [or *Witan*] held at Oxford, where Earl Leofric and all the Thanes north of the Thames together with the Londoners chose Harold in order to preserve the kingdom. However, King Harold Harefoot died at Oxford in A.D. 1040 ó after reigning for but four years.

At that time, Harold Harefoot's half-brother Hardecanute ó the son of King Canute and Queen Emma ó came from Denmark. He landed at Sandwich, and was unanimously **chosen** King of England by both the Anglo-Danes and the Anglo-Saxons in A.D. 1040. Here again ó just like their immediate predecessors Eadred and Edmund Ironside ó so too Canute's sons Harold Harefoot and Hardecanute ruled England as **elected** kings.

However, in A.D. 1042, Hardecanute was snatched away by a sudden death ó after a short reign of only two years. But first, the (Anglo-)Dane Hardecanute himself had wisely nominated the Anglo-Saxon Edward the Confessor as his heir. So, after Hardecanute's death, they sent messengers for Edward the Confessor ó offering to establish him firmly on the throne, as sole king of all England.

Reviewing the course of the last two centuries, Barrister Flintoff rightly remarks<sup>154</sup> that the Danish invasion had been a severe blow to the Anglo-Saxons. Yet the plan to establish English Law ó so excellently conceived by Alfred the Great ó could never for very long be thrown aside.

With the demise of the Anglo-Danish hegemony in A.D. 1035-42, the Anglo-Saxons alias the 'English' returned to their ancient law. They now also retained, however, some few of the customs of their late visitants ó which went under the name of *Dane-Lage* or Danish Law.

### **The last Anglo-Saxon King: Edward the Confessor**

Yet although the Anglo-Saxons now regained control of the kingdom of England ó through the influence of the Anglo-Danes, even the Anglo-Saxons had already fallen deeply under the sway of the Danes and other Vikings. Such included even those who had settled in France: the Norman Nor(se)men. Thus, even the last Saxon King of England ó the A.D. 1060's Edward the Confessor ó had lived from his youth at the court of Normandy.<sup>155</sup>

Notwithstanding that fact, legends credibly tell of Edward's pious simplicity; his blitheness and gentleness of mood; the holiness that gained him his name of 'Confessor' and enshrined him as a saint. Gleemen sang in manlier tones of the long peace and glories of his reign ó of how Warriors and wise Counsellors stood round his throne; of how Welsh and Scots and Britons all obeyed him.

His was the one figure that stood out bright against the darkness, when England was soon to lay trodden under foot by Norman conquerors (from 1066 onward). So dear became his memory, that liberty and independence itself seemed incarnate in his name. Thus Professor Green.

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<sup>154</sup> *Op. cit.*, p. 133f.

<sup>155</sup> Thus J.R. Green: *op. cit.*, p. 68.

King Edward died in 1065 A.D. The Anglo-Norman mediaeval historian William of Malmesbury writes<sup>156</sup> that Edward was by no means devoid of the virtues of his ancestors. He was by choice a man devoted to God ó and lived the life of an angel in the administration of his kingdom.

To the poor and to the stranger ó more especially to foreigners and to men of religious orders ó he was kind in invitation, and munificent in his presents. When he once inquired about his own posterity, he received and faithfully accepted the truthful answer: òThe kingdom of the English belongs to God; after you, He will provide a king according to His good pleasure.ö

The Mediaeval Historian Henry of Huntingdon writes<sup>157</sup> that, in the twenty-second year of King Edward's reign ó when Philip was King of France ó William Duke of Normandy subjugated French Maine. Edward's son Harold, crossing the sea to Flanders, was driven by a storm and brought to William Duke of Normandy. Thereupon Harold took a solemn oath to William that he would marry his daughter and, on the death of King Edward, would aid in William's designs upon England.

Harold later equivocated. Traumatized, then, England's next king was to be the Norman Duke William. He even threatened the recalcitrant Prince Harold with papal excommunication ó if that prince did not yield England to William.

Interestingly, even the *Norman Chronicle* itself says that at the word of excommunication ó the English Chiefs gazed at one another in dismay. Nevertheless, they still all resolved to fight the Normans to the last.<sup>158</sup> Indeed, this in itself is a significant comment on the weakness of the papal power in England ó even as late as 1066 A.D.

### **Recapitulation of the Pre-Norman development of Anglo-British Common Law**

Before describing the A.D. 1066 Norman invasion of Britain and its several effects, it is appropriate first to recapitulate. We do so in two ways.

First: we summarize the continual amalgamation of the Celto-Brythons and the Anglo-Saxons, and their development into one people upholding a Common Law (finally consolidated by the A.D. 1042-60 of Edward the Confessor). Second: we then describe Pre-Norman Anglo-Celtic Britain; the several aspects of her Anglo-British legal system; and her absorption of Anglo-Danish customs into Britain's Common Law.

Sir William Blackstone explains in his *Commentary on the Laws of England*<sup>159</sup> that the *lex non scripta* or unwritten law includes *general customs* or the Common Law. The British as well as the Gallic druids committed all their laws to memory. Britain's ancient lawyers, and particularly [the 1470 A.D. Englishman] Fortescue, insist with abundance of warmth that these customs are as old as the primitive Britons, and

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<sup>156</sup> *Op. cit.*, pp. 246f.

<sup>157</sup> *Op. cit.*, pp. 199f & 206f.

<sup>158</sup> *Hist. Hist.*, XVIII p. 152.

<sup>159</sup> *Op. cit.*, I pp. 63f.



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continued down through the several mutations of government and inhabitants to Blackstone's time (1765) unchanged and unadulterated.

There never was any formal exchange of one system of laws [such as the Celto-Brythonic] for another (such as the later Anglo-Saxon). Britain's antiquarians and first historians all give positive assurance that in the [871 A.D.] time of Alfred, he found it expedient to compile his *Dome-book* for the general use of the whole kingdom. This book is said to have been extant as late as the reign of King Edward the Fourth [1461-83]. It contained the principal maxims of the Common Law, the penalties for misdemeanors, and the forms of judicial proceedings.

The irruption and establishment of the Danes in England which followed soon after, around 900 A.D., introduced new customs and caused this *Code of Alfred* in many provinces to fall into disuse or at least to become mixed. So that, about the beginning of the eleventh century, there were three principal systems of laws prevailing in different districts.

First, there was the Anglo-British *Mercen-Lage* or the Mercian Law. Those laws were observed in many of the Midland counties, and those bordering on the principality of Wales (the retreat of the Ancient Britons). They were therefore very probably intermixed with the Brythonic or druidical customs.

Second, there was the Anglo-Saxon *West-Saxon-Lage* or the Law of the West-Saxons. Those laws obtained in the counties to the South and West of the Island or from Kent to Devonshire. These were probably much the same as the laws of Alfred. Indeed, they likewise absorbed Celtic-Brythonic Law (as seen in the institutions of *borough-english* and *gavelkind* in Kent and Sussex).

Third, there was the Anglo-Danish *Dane-Lage* or the Danish Law. This was principally maintained in the rest of the Midland counties, and also on the eastern coast. It too absorbed the Anglo-British Law, which it encountered also in those areas.

Out of these three laws or so Roger Hovedon (1201 A.D.) and Ranulphus Cestrensis (on *Edward the Confessor*) inform us or King Edward the Confessor (1142-60 A.D.) extracted one uniform law or digest of laws to be observed throughout the whole kingdom. Hovedon assures us or and the author of an old manuscript chronicle (compare Selden's *On Eadmer*)<sup>160</sup> likewise assures us or that this work was projected and begun by Edward the Confessor's grandfather King Edgar (the 959 great-grandson of the 871 A.D. King Alfred the Great).

These undertakings of King Alfred the Great's great-grandson King Edgar and of the latter's grandson Edward the Confessor, seem to have been no more than a new edition or fresh promulgation of Alfred's Code or *Dome-book*. For Alfred is generally styled by the same historians as the *Legum Anglicanarum Conditor* (or the 'Founder of the English Laws') or just as Edward the Confessor is the *Restitutor* (or the 'Restorer'). These, however, are the laws which the Anglo-Saxons struggled so hard to maintain under the first princes of the Norman line or and which they successfully resurrected in A.D. 1215 at *Magna Carta*.

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<sup>160</sup> J. Selden: *On Eadmer*, 6.

These are the laws that so vigorously withstood the repeated attacks of the Roman-Romish Civil Law, which established in the twelfth century a new Roman Empire over most of the States on the Continent. Those were States that had lost, and perhaps upon that account, their political liberties ó while the free constitution of England, perhaps upon the same account, has been improved rather than debased.

These, in short, are the laws which gave rise and origin to that collection of maxims and customs which is now known by the name of the Common Law. The maxims and customs so collected, are of higher antiquity than memory or history can reach. This it is that gives it its weight and authority. Of this nature are the maxims and customs which compose the Common Law (or *lex non scripta*) of Britain. Thus Blackstone.

### The ‘Property Franchise’ of Anglo-Saxon Christian Culture

We now outline the property-franchised or ‘republican’ state of Anglo-Saxon Christian culture in England at that time. We do so, with specific reference to its laws and government.

According to the *Historians’ History*<sup>161</sup> on the Danish and Later-English kings (1017-1066 A.D.), no very large portion of the community in Anglo-Saxon times was in a state of slavery. Such probably consisted originally of conquered Britons. However, as criminals who could not pay the fine imposed by law were reduced to this state ó some unfortunate persons also of German ancestry must, in process of time, have been comprised in this class.

The Freemen of the land were classified by a broad division ó into the Churls who formed the bulk of the population; and into the Thaners (who formed the Nobility and the Gentry). Sometimes the classification is made into Churls and Earls. The title of ‘Eorl’ (or ‘Jarl’ especially in the Anglo-Danish East of England) had reference to birth ó whereas the title of ‘Thane’ had reference to the possession of landed property.

It was not the Anglo-Danish ‘jarlsh’ heredity but rather the Anglo-Saxon ‘thanish’ ownership of landed property ó that mainly determined the status and political rights of a Saxon Freeman. **Both the popular (or ‘representative’) and the republican (or ‘aristocratic’) principles entered into the Anglo-Saxon polity.** The latter finally obtained the ascendancy, chiefly by reason of the strictness of the regulations which it was found necessary to introduce ó in order to maintain some degree of public peace and to give some security for property and person.

One great fact must never be forgotten while examining the Anglo-Saxon institutions and marking the privileges which the Thaners ó *i.e.*, the landed proprietors ó possessed over the mass of Freemen (or Churls) ó or, for that matter, even over such Earls or Jarls as might lose their property and become impoverished. The superior body of propertied **Thaners was not composed of a hereditary caste** or *noblesse* (as in the later A.D. 1066 times of the romanizing Normans).

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<sup>161</sup> *Historians’ History*, ch. on ‘Danish and Later English Kings (1017-1066 A.D.)’ in *op. cit.*, pp. 119 & 158f.

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It was truly an aristocracy (alias a "government by the best" or *tois aristois*). Precisely for that reason, it was open to receive recruits from the ranks below it. Any Churl or Freeman with little property ó who could acquire a defined amount of landed property ó could become a Thane.

In the analysis of the Anglo-Saxon State, the first and primary element appears to be the community. This, in England ó during the Saxon period ó was denominated the "Town" (or "Township"). Denoting in its primary sense the enclosure which surrounded the mere homestead or dwelling of the landlord, it seems to have been extended gradually to the whole of the land which constituted the domain. Thus Sir Francis Palgrave.

There was a Lord of every Township, usually one of the more opulent Thanes. Round him, there were grouped a number of Churls ó some occupying allotments of their own land; some tilling the lands of others.

Each township had its *Ge-Refa* or (Town-)Reeve ó an **elected** Chief Officer. Also in each Township, four good and lawful men were elected who with the Reeve represented the Township in the judicial Courts of the Hundred and the Shire (with its own Shire-Reeve or "Sheriff"). All these appear to have been freely elected by the Commoners of each township from among their own body.

**The inhabitants of each Township regulated their own local police.** They were bound to keep watch and ward. If any crime was committed in their district, they were to raise the hue and cry and to pursue and apprehend the offender. This implies the right of citizens to make private arrests.

Such, then, were the Townships. In general, each had its own local Court ó with varying amounts of jurisdiction. It was subordinate to the Hundred Court, which was again subordinate to the Shire Moot or County Court. Thus the *Historians' History*. See Deuteronomy 1:13-17; 16:18; 17:8-11; 19:11-21.

### **English political organization into *Hundreds* derived from the Bible**

This leads to a consideration of the English *hundreds* (compare Exodus 18:12-21f), which subsist to this day. According to the *Historians' History*, to facilitate the organization of the inhabitants for military purposes and to afford better security against crime, the Hundreds were subdivided into *Tythings*. Numbers 1:2-18 & Exodus 16:16 & 30:12-14.

Every *Hundred* had its Court, which was attended by the Thanes whose demesnes were within its boundaries ó and by the four men and the Reeve of each Township. The Hundred Court was held monthly, and was subordinate to the Court of the Shire.

The Shire or County Courts were held at least once a year. They were presided over by the Bishop [or Presiding Presbyter] and the *Ealdorman* or Earl. Each Shire also had its Reeve (the "Shire-Reeve" alias the Sheriff). He, in the absence of the *Ealdorman*, was the President of its Court in conjunction with the Bishop. All the Thanes in the County; the four men; and the Reeve of each Township ó and the

twelve men chosen (*cf.* the jury) to represent each *Hundred* ó attended the County Court.

An appeal from it seems to have lain to the *Witenagemot* (or Parliament), the Supreme Court of the kingdom. Though the *Witan* in some cases sometimes exercised an original jurisdiction, the Shire Moots were in practice the most important tribunals in the country. Thus: support your local police! Indeed, they were certainly of a very free and popular character.

Even the poorest or almost propertyless Churl, was personally free. He was law-worthy. The Churl had the right of bearing arms. He was a legal witness. He had political rights with regard to the magistracies of his township, his *Tything* and his *Hundred* ó both as an elector, and as himself eligible to office.

He could acquire and hold property in absolute ownership; and he needed no act of emancipation to pass into the class of Thanes ó if he acquired the requisite property qualification of five hides of land (alias enough land to support five free churlish families). Many of the Churls were landsowners to a smaller extent. The *Socmen* ó who are frequently spoken of in the A.D. 1085*f* taxation record known as the *Domesday Book* ó were free socage tenants or English yeomanry, whose independence has stamped with peculiar features both the constitution and the national character.

The *Burg* (as the Town was usually called) ó meaning, literally, a fortified place ó was organized like a *Hundred*. The *Burghwara* or *Men of the Borough*, elected from among themselves their local Officers for keeping the peace and other purposes of municipal government. Deuteronomy 1:13-17 *cf.* Acts 6:3-7 & Romans 13:1-7.

They thus also freely chose their own Borough-Reeve, or Port-Reeve (as their head of the civic community was termed). This Officer presided at their Local Courts (the *Burghwaremot* or Hustings), and in time of war led the armed Burghers into the field (*cf.* the Sheriff's Posse). The Saxon Boroughs thrived, and were free. They were strongholds where the germs of England's commercial prosperity, and of the capacity of the Anglo-Saxon race for local self-government, were matured.

The *Witenagemot* as a genuine English Parliament was essentially an aristocratic body. It consisted not of rabble (chosen by one-man one-vote). Instead it consisted of the best representatives of the people. It was summoned and **presided** over by the King (alias the *President*). The *Witan* had the power of **electing** the King. They on some occasions exercised the power of deposing him (upon impeachment) for misconduct. They formed the Supreme Court both in civil and criminal causes.

Thanes, duly elected thereto, were members of the representative House of Commons of the bicameral Parliament. *Cf.* Numbers 10:1-4. The Presbyters or Bishops were members of the *Witan* (compare the Upper House of *Lords*).

The influence of the Clergy in Anglo-Saxon times, was very great. The ecclesiastical distribution of the country into parishes, is Anglo-Saxon ó a division, since then, generally adopted for purposes of local self-government.

It is to Saxon laws that modern disputants respecting tithes and church-rates refer. The history of the Anglo-Saxons is perhaps as little deformed as any, by the ambition and power and selfish class-interests of the Clergy.

**Christianity taught that there was Someone above the State**, which the State itself was bound to recognize. **The Church impressed the heavenly Law**, by which the poor and needy were to be relieved. Indeed, the clergy presented their organization as an efficient machine for the distribution of alms. Thus the *Historians' History*.

### The Biblical age of legal accountability in Anglo-Saxon Law

We now look at the age of legal accountability in Christian Anglo-Saxon Law. Compare here the age of thirteen years and one day, at which a Hebrew boy became a *bar mitzvah* or -son of the covenant. Exod. 12:3f cf. Luke 12:42f (& Aboth 5:21).

Ernest Young argues in his essay *The Anglo-Saxon Family Law*<sup>162</sup> that the laws of King Athelstan declare<sup>163</sup> one should spare no thief over twelve winters, taken in the act. The laws of King Canute ordain<sup>164</sup> that if anybody after he is twelve winters old slays a Freeman who was brought into a *Hundred* or a *Tything* ó anyone who wishes shall be entitled to satisfaction. More importantly, they also ordain<sup>165</sup> that every Freeman above twelve years, must make oath that he will neither be a thief ó nor be cognizant of a theft, by aiding or abetting it.

Ernest Young concludes that an Anglo-Saxon boy twelve years old could no longer be chastised only by the parents. Cf. Deuteronomy 21:18f. Henceforth, he acts for himself and is himself responsible for his own acts. He must take oath to observe the laws and enroll himself in one of the organizations provided for that purpose. What better commentary could be found on the words of Tacitus: *Ante domus, mox reipublicae*? See his *Germania*, 13.

Now this personal and legal independence of the son, which Tacitus tells us was in his time acquired by the gift of arms in the assembly, is now acquired *ipso facto* by the attainment of majority. Before the completion of the twelfth year, the boy is legally dependent. After the completion of the twelfth year, the boy is legally independent. He is no longer a boy, but a man, possessed of all the rights and subject to all the duties that belong to complete manhood.

Daughters remained under their father's power until they married. Still, the laws made a distinction between girls and adult women. *Alfred*, 26.

This distinction had a legal effect. The age of majority for girls was probably the same as that for boys. Girls attained their majority at the completion of the twelfth year ó the ordinary majority for boys during the greater part of the Saxon period. The effect of majority for women, was to free their persons from the arbitrary disposal of the father. However, even girls under age ó could not be married against their will.

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<sup>162</sup> E. Young: *The Anglo-Saxon Family Law* (in *Essays...to C.W. Eliot*, pp. 161f).

<sup>163</sup> *Athelst.*, 2:1 Pr.

<sup>164</sup> *Cnut*, 2:20.

<sup>165</sup> *Ib.*, 2:21.

## The Anglo-Saxon Christian Common Law on Betrothal and Marriage

We now turn to the Christian Anglo-Saxon law of betrothal and marriage. Young writes<sup>166</sup> that in the earliest Anglo-Saxon laws, marriage appears in the form of a sale by the father or other guardian to the bridegroom. *Ethelbeht* (83) asserts: "If she is betrothed for money to another man." *Ine* (31) declares: "If a man buy a wife and do not pay the purchase price."

Whether marriage was ever an actual sale of the woman's person, may be doubted. The high estimation in which women were held among the Germans proves at least that the mere fact of marriage took the form of a sale, proves nothing.

In the earliest Anglo-Saxon laws, marriage had a twofold aspect. It differed very much from other sales, and appeared as a transaction not merely of a mercantile but of an ethical character. It is certain that in historic times the thing transferred was not the person of the woman treated as a chattel, but only the rights of guardianship. The strict formalities of a sale were also, throughout, observed. *Ethelbeht*, 77; *Ine*, 56.

On the other hand, the price was not the subject of bargain but like the *wer* or payment due for accidental homicide was fixed by law. Cf. Exodus 22:17. King Alfred, in translating this passage, used the word *weotuma* or dowry. *Alfred*, 12 & 29. The guardian who had contracted to give the girl to the bridegroom could not be compelled to this. He could only be sued for breach of contract. The ethical nature of marriage never to be against the wishes of the bride was already recognized even in the earliest historic times.

The price paid by the bridegroom to the guardian, was called the *weotuma*. This word is connected with the Gothic root *vidan*, to bind (compare *wed-ding*). The *weotuma* was the payment which bound the contract (cf. the *wed-ding* and the *engagement* rings). It was also that which gave the marriage its character of legality. Cf. Genesis 41:42; Esther 3:10-12 & 8:2-10; Luke 15:22-24.

Without payment of the *weotuma*, there could be no legal marriage. All marriages without such payment, and all violations of the woman's person, were violations of the rights of the guardian and were punished by a fine called *mund-bryce*. To seize upon these rights without the consent of the owner and without paying for them, was to steal. Cf. Exodus 22:16f & Deuteronomy 22:28f.

The amount of the *weotuma* is spelled out in the laws of Ethelbeht (75,82,76) and Alfred (18:1 & 11:2). For the full completion of marriage in all its effects, two acts were necessary: the *bewedding* or betrothal (cf. Matthew 1:18); and the *gifta* or the nuptials alias the delivery of the woman (cf. Matt. 1:24f). Thus we prohibit with God's prohibition that any one have more wives than one; and let her be lawfully betrothed and given (*beweddod and forgifen*).

The contract of betrothal, unlike other real contracts of sale, did not give the bridegroom an action to compel the delivery of the bride. This would be contrary to the ethical character of marriage. If the guardian refused to deliver the woman, or she

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<sup>166</sup> *Op. cit.*, pp. 163f.

refused to be delivered, the bridegroom had only a suit for damages  $\acute{o}$  to recover the *weotuma* previously paid plus an additional fine of one-third. *Ecgbert*, 20; *Alfred*, 18:1. On the other hand, a breach of betrothal by the man was punished by loss of the *weotuma*. Thus Young.

That he also had to pay an additional fine, appears from *Ine* 31:  $\acute{o}$ If a man buy a wife [at the time of the engagement], and do not pay the purchase price [at the later time scheduled for the marriage]  $\acute{o}$  let him give the money and pay compensation and make  $\acute{a}$ bot $\acute{o}$ [recompense] to the sureties, according to his infraction of his pledge. $\acute{o}$

Again:  $\acute{o}$ If any one wish to betroth [or get engaged to] a maiden...and it so be agreeable to her..., then it is right that the bridegroom according to the Law of God and the customs of the World first promise and give a  $\acute{a}$ wed $\acute{o}$  to those who are her guardians  $\acute{o}$  that he will keep her according to God $\acute{o}$ s Law, as a man should his wife... At the [later] nuptials, there shall be a Presbyter by Law who shall with God $\acute{o}$ s blessing bind their union to all prosperity. $\acute{o}$

### Anglo-Saxon Christian Common Law on Marital Status, Property and Divorce

Young further points out<sup>167</sup> that during marriage, the Anglo-Saxon wife was under the guardianship of her husband. She must, in general, obey him. *Ine*, 57; compare Ephesians 5:22 & 5:33. But in her own sphere as housekeeper, she was independent. Cf. Genesis 16:2-6 & Proverbs 31:16-24.

So too *Canute* (2:76) provides that if a man bring stolen things home to his cot[tage], it is right that the owner take possession of what he went after. Cf. Exodus 22:2-4. But if it was not brought under the wife $\acute{o}$ s custody, she shall be innocent. For she shall guard the keys of her storeroom. If it is brought into one of these places, however, then is she guilty. Cf. Genesis 31:19-32 & Acts 5:1-10.

In general, the husband alone had the free disposal of his own property, so far as concerned the wife. But where a specific  $\acute{a}$ morning-gift $\acute{o}$  donated by the husband to the wife on the morning after the wedding had not been granted to the wife  $\acute{o}$  she had, in law, a right to an undivided portion of her husband $\acute{o}$ s property. Then she regularly appears as a consenting party to all alienations effected by him.<sup>168</sup>

The  $\acute{a}$ marriage acquisitions $\acute{o}$ embraced property derived from the common labour or common property of husband and wife. They did not include property received by one of the two by gift or inheritance, nor from the proceeds of his or her own property. Now  $\acute{a}$ marriage acquisitions $\acute{o}$  belonged to the husband. But, after his death, these formed part of the estate from which the legal  $\acute{a}$ morning gift $\acute{o}$  was granted.

Gifts were regularly made to husband and wife together, and gifts between husband and wife were common. The wife $\acute{o}$ s property was not answerable for the debts of her husband, nor his property for the debts of his wife. Cf. Genesis 16:2-6 & 29:18. Property losses resulting from a culpable homicide committed by her, must be

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<sup>167</sup> *Op. cit.*, pp. 176f.

<sup>168</sup> *Cod. Dip.*, 26  $\acute{o}$  et mult. al.

atoned for or reimbursed by her and not by her husband. The wife's kindred seem also to have protected her property from alienations by the husband. Probably, if she were abused by him, they could interfere to divorce them and to bring their kinswoman home. Thus *Ethelred*, 79.

Divorce by mutual consent but naturally only on Biblical grounds (Exodus 21:10-11 & Matthew 19:9 & First Corinthians 7:15-28) seems to have been permitted in the early law. *Ethelred*, 79-81. In such case, the wife received half her husband's property if she took the children with her or a child's portion if these remained with the husband.

If the marriage was childless, she simply received her morning-gift and her inherited property. The husband was permitted to divorce his wife for infidelity or desertion. If for infidelity, by a law of Canute (2:53) all her property was forfeited to the husband. Thus Young.

### The Anglo-Saxon Christian Law of Succession

We now come to the Christian Anglo-Saxon law of succession. Young writes<sup>169</sup> that at the dissolution of marriage by the death of the husband, the wife was entitled to all property belonging to her by inheritance or gift. She was also entitled to her morning-gift or, in lack of this, to half the husband's property. *Ethelred*, 79. The wife had the full ownership of the morning-gift and she could dispose of it during her lifetime<sup>170</sup> or by testament.<sup>171</sup>

If she died intestate, her property was inherited by her heirs. She forfeited it, however, to her husband's next of kin if she violated her oyear's fidelity. *Canute*, 2:73. However, by keeping her oyear's fidelity or by not remarrying for a year after her husband's death she could take this property with her to a second marriage.<sup>172</sup>

Ordinarily, a partition of the property did not take place on the death of the husband, but the widow held the property in common with the heirs. The widow was never heir of her husband, though gifts to her in her husband's will were common.<sup>173</sup>

At the dissolution of marriage by the death of the wife, such property as belonged to her by inheritance or gift was inherited by her heirs. The husband was not an heir and got no right in the property of his wife, except through the children. These were the first heirs of the wife. After their death, if they left no children, their father would be their first heir. As the morning-gift was a grant to the wife if she lived longer than he or it follows that, if the wife died before her husband, the morning-gift remained with the husband.

Even then, the personal right of a wife or woman to make bequests without interference was guaranteed to the hilt. The following four examples will illustrate this quite adequately.

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<sup>169</sup> *Op. cit.*, pp. 177f.

<sup>170</sup> *Cod. Dip.*, 328 & 704.

<sup>171</sup> *Ib.*, 685 & 1290.

<sup>172</sup> *Cod. Dip.*, 1288.

<sup>173</sup> *Ib.*, 304 & *et al.*



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Ethelred was King of the Mercians from A.D. 734-37. Together with his *Ealdorman* Oshere (Under-King of the Anglo-British Hwicci) ó at Ethelred's request, he granted twenty hides of land near the river Tillath to two holy women (Dunna and her daughter Bucga). The two women were to hold that land in free possession, according to church-right. However, when Dunna the aforesaid servant of God was about to depart to her Lord ó she legally gave to the daughter the monastery constructed on the aforesaid land, together with her own lands.<sup>174</sup>

Again, one Ethelric ó in A.D. 804 ó apparently wished to dispose of his lands by will. Suit was brought to prevent his doing so (perhaps by his legal heirs). The *Witan* decided that Ethelric had that right ó ðwith the witness of King Cenwulf and all his Chief-Men, in the presence of the whole Synod.ö Consequently, Ethelric was free to leave his land and charters to whomsoever he wished.<sup>175</sup>

Another example. Sighelm pledged land to Goda for thirty pounds. Sighelm later died in war. Thereupon his daughter Edgifu averred that he had just before his death redeemed the land, and bequeathed it to her. Goda denied the redemption, and refused to surrender the land. Edgifu sued Goda, and the *Witan* administered to her the oath ó to test the redemption. Goda still refused to surrender the land. However, in Edgar's reign (959f A.D.), a new suit restored it to Edgifu.<sup>176</sup>

Finally, there is the case of a widow and her son who forfeited land at Aylesworth ó because, by witchcraft, they had driven iron pins into an image of Wulfstan's father Elsi. This, of course, was a breach of the law. Deuteronomy 13:6f. So the image on which they had practised the ðmurder'ó was taken out of her closet. They took the woman and drowned her at Londonbridge. Her son escaped, and became an outlaw. So the land went into the king's hands, around 963f A.D.<sup>177</sup> Thus Young.

### The Anglo-Saxon Christian Law of Procedure

Next we look at the Christian Anglo-Saxon law of procedure. Laurence Laughlin, in his essay on *The Anglo-Saxon Legal Procedure*,<sup>178</sup> gives the standard oath for transaction witnesses. It runs: ðIn the name of Almighty God! As I stand here for N. in true witness ó unbidden and unbought ó so I with my eyes saw and with my ears heard that which I say.ö *Anh.*, 10:7.

The following was the standard oath of a defendant:<sup>179</sup> ðIn the Name of Almighty God, I did not know the foul or fraudulent thing about which you are suing (or alleging), up to that day's-time that I sold it to you.... It was both sound and clean, without any kind of fraud.ö

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<sup>174</sup> E. Young: *op. cit.*, pp. 309f.

<sup>175</sup> *Ib.*, p. 322.

<sup>176</sup> *Ib.*, p. 342.

<sup>177</sup> *Ib.*, p. 349.

<sup>178</sup> L. Laughlin: *The Anglo-Saxon Legal Procedure* (in *Essays...to C.W. Eliot* p. 195).

<sup>179</sup> *Ib.*, pp. 195f.

Here<sup>180</sup> is a law of Ethelbeht:<sup>181</sup> ðlf a man buy a maiden with cattle ó let the bargain stand, if it be without guile. But if there be guile, let him bring her back again ó and let his property be restored to him.ö

Young explains<sup>182</sup> that it was a fundamental rule of Germanic Law, that vengeance must be authorized by previous permission of the Court. *Cf.* Exodus 21:22*f.* He who inflicted on his foe a cold-blooded vengeance ó by castration, poisoning or other cruelties ó committed an infamous deed. Thus, the strictures against æcruel and unusual punishmentsøó also prohibited in the later *U.S. Constitution* ó root in Anglo-British Common Law. There, they were not permitted.

Good King Alfred did allow immediate vengeance even before judgment ó in cases where a husband found another within closed doors or under a covering with his wife, daughter, sister or mother. *Alfred*, 42:7; Compare Leviticus 18:6 to 20:21. But, together with Holy Scripture (Exodus 21:22-30), the Anglo-Saxons did not permit personal vengeance for bodily injuries, nor for mere threats ó as did the old Northern Law of the Pagan Norsemen.

From the time of Alfred, the offences multiply for which no compensation could be received. Anglo-Saxon Law clearly distinguished between expiable and inexpiable crimes. It was one of the fundamental personal rights accorded by Germanic Law that the accused should have a term in which to reply and prepare his proof. Thereby the defendant was permitted at least seven days before the assembling of the Court.<sup>183</sup> *Cf.* Leviticus 13:26*f.*

The provisions against unjust accusations in Anglo-Saxon Law, were many and severe. *Edward I*, 1:5 ó *cf.* Deuteronomy 19:16-21. All German codes regarded theft as a heinous crime. Many laws provided that a thief caught in the act, could immediately be seized and imprisoned. *Cf.* Exodus 22:3.

Now Judges (*cf.* too the jury) were taken from the æbest of the County.ø<sup>184</sup> Yet the jury probably acted under the direction and advice of the Presiding Officer [*cf.* the æJudgeø], who was supposed to be conversant with all the old customs. *Anh.*, III:4.

The juries were under obligations to render justice. The many provisions for clearing themselves of an unjust judgment by an oath to their ignorance ó proves, as a rule, their æunprofessionalø (or ælayman-likeø) character. *Edgar*, III:3; *Canute*, III:15:1. The judgment, therefore, condemned an accused who confessed to pay the fine ó or prove his innocence. In either case, he must give pledge for the fulfilment of the judgment.

A plaintiff could demand security for the defendant's answer at the appointed term, and for the payment of all assessments made by the judgment. *Ine*, 52. If the accused fled, the pledgeor must pay the indemnification. If, however, the accused were contumacious ó he brought upon himself graver penalties, which were finally crowned with æout-law-ry.ø

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<sup>180</sup> *Ib.*, pp. 196.

<sup>181</sup> *Ethelb.*, 77.

<sup>182</sup> *Op. cit.*, p. 264.

<sup>183</sup> *Ib.*, pp. 278*f.*

<sup>184</sup> *Ib.*, pp. 289*f.* (*cf.* pp. 374*f.*)

Refusal three times to obey a summons, was punished by fine. Then, judgment was made by the tribunal ó condemning the accused. *Athelstan*, 2:20; compare Matthew 18:16f.

### Pre-Norman Anglo-Saxon literature in general

A few words are also in order about Pre-Norman Anglo-Saxon literature ó especially in Wessex and Northumbria. Even the (evolutionistic) *Historians' History* rightly declares<sup>185</sup> that the early history of literature in England might lend some countenance to the theory that the development of a nation's literature is at bottom but a chapter of its religious history. With the advent of the religion of Christ, came an intellectual as well as a spiritual awakening.

There were two principal centres during the first two centuries after the 600-780f A.D. conversion of the Anglo-Saxon peoples, where learning was honoured and literature flourished. These centres were Northumbria and Wessex. In both alike: the size of the territory; the presence of numerous monasteries; perhaps also the proximity of Celtic peoples or societies endowed with many literary gifts ó the Britons of Wales in the case of Wessex, the Culdees of Iona and the Iro-Scots in the case of Northumbria ó co-operated to produce a long period of literary activity.

Christianity was introduced into Wessex by Bishop Birinus in 634. It spread over the whole kingdom with marvellous celerity. The most distinguished extant writer, was St. Aldhelm. He was the author of *Andreas* ó one of the poems in the *Vercelli Codex*. Cynewulf, the author of *Christ*, *Elene* and *Juliana* was a poet of no mean powers. *Beowulf* ó the most important surviving monument of Anglo-Saxon poetry ó has a West-Saxon origin.

For two hundred and thirty years ó from the sack of Lindisfarne in A.D. 795 to the accession of Canute in A.D. 1017 ó the pagan so-called Anglo-Danes were the curse of England. They destroyed monasteries and the schools maintained by them. They burned churches, private houses and precious manuscripts; made life and property everywhere insecure; and deprived the land of that tranquillity without which literature and art are impossible.

But then, King Alfred the Great arose and obtained a period of peace for his harassed and dejected countrymen. History tells us how well he wrought to build up in every way the fallen edifice of West-Saxon society. Among his labours, not the least meritorious was his translation of: the Biblical *Psalms*; Bede's *History of the Church [in Britain]*; Gregory's *Pastorals*; the famous treatise by Boethius on *The Consolation of Philosophy*; and the *Universal History* of Orosius.

As regards the other great literary centre, in the Northumbrian kingdom, the conversion of the Angles north of the Tees and the implantation among them of the germs of culture are traceable to Iona ó and indirectly to the Irish Church and the Culdee Proto-Protestant Celto-Briton, St. Patrick. From Ireland, in the person of St. Columba and his followers, was wafted a ministry of light and civilization.

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<sup>185</sup> *Hist. Hist.*, in its volume on 'The History of England' (*Op. cit.* XVIII pp. 163f).

Oswald embraced Christianity through the teaching of the monks of Iona. When he became king in 634, one of his first thoughts was to send to his old Teachers and ask that Missionaries might be sent to instruct his people. Aidan accordingly came from Iona.

Adamnan, Abbot of Iona about the year 690, has a peculiar interest ó because a long extract from his work on the holy places is incorporated by Bede in his *Ecclesiastical History*. He also wrote a life of his founder, St. Columba. It was by the monks of Streaneshalch alias Whitby that the seed was sown.

This, falling upon a good heart and a capacious brain, bore fruit in the poetry of Caedmon (the earliest English poet). Just compare his extended Culdee ÷Biblicalø hymns ó starting with his impulse to ÷sing of the beginning of creation.ö Hitherto, the influences in Northumbria tending to culture ó were not Romish. The immediate source of them, was Iona ó and more remotely, Celtic Britainø Patrick as the ÷Apostle of Irelandø(which in turn later produced Iona).

Alcuin was educated at the monastery of York. He had charge of its school and library in A.D. 780. He fell in with the Emperor Charlemagne, who invited him to settle at Aix-la-Chapelle to teach his children and aid in the organization of education throughout his dominions. After the death of Alcuin, the *Durham Gospels* (a version in the Angle dialect of the four Gospels in the New Testament) ó and a few similar remains ó continued.

In the South, Alfricø *Homilies* are in Anglo-Saxon; his *Colloquy* is a conversation on common things, in Latin and Anglo-Saxon, between a master and his scholars. The *Annals* of public events, to which is given the name of the *Anglo-Saxon Chronicle*, continued to be recorded at Canterbury in the native language ó till about the date of the A.D. 1066f Norman Conquest. After that time, the task passed into the hands of the monks of Peterborough, and was carried on by them for nearly a hundred years. Thus the *Historians' History*.

### **Barrister Flintoff's statement of Late-Saxon Christian Common Law**

We close by noting Barrister-at-law Owen Flintoffø summary of the Late Saxon Christian laws, right on the very eve of the Norman Conquest. Writing in his book *The Rise and Progress of the Laws of England and Wales*, Flintoff remarks<sup>186</sup> that among the ten most remarkable features of the Saxon laws, we may reckon at least the following:

1, the constitution of Parliaments, or rather General Assemblies of the principal and wisest men in the nation (*cf.* Numbers 10:2-4 & Acts 15:2-4f) ó the ÷Wittena-gemote.ø2, the election of their Magistrates by the people (Deuteronomy 1:13f; Acts 1:16-23 & 6:3). 3, the descent of the crown (Deuteronomy 17:14-20 *cf.* Psalm 72:1f & Proverbs 31:1f). 4, for the first offence a fine or ÷wer-gildø alias ÷human moneyø (*cf.* Exodus 21:22-30) ó or, in default of payment, perpetual bondage (Exodus 22:3 *cf.* 21:2).

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<sup>186</sup> *Op. cit.*, pp. 134f.

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5, the prevalence of certain customs which much resembled the feudal constitution, but yet were exempt from all its rigorous hardships. These appear to have existed amongst the (Pre-Saxon Celtic) Britons before it got into the hands of the (1066f A.D.) Norman jurists. They extracted the most slavish doctrines and oppressive consequences, out of what was originally intended as a law of liberty (cf. James 1:25 & 2:8-12).

7, the descent of their lands to all males equally (cf. Genesis 48:2-5f; 49:1f; Numbers 27:1-11; Luke 15:11f; Second Corinthians 12:14). This was a custom which obtained previously among the Britons and continued among the Saxons till the Norman conquest.

8, the Courts of Justice consisted principally of the County Courts (cf. Exodus 18:21-22). In cases of weight or necessity, the King's Court was held before himself in person, at the time of his Parliaments. This was done at the times he kept the three great festivals of Christmas, Easter and Whitsuntide (Exodus 23:17f; Deuteronomy 16:18f; 17:2-9; 19:12; Acts 2:1f; 15:2f).

9, trials among a people were permitted to be by ordeal, or by the *cornfed* or morsel of execration or by *wager of law* with compurgators, if the party chose it (cf. Numbers 5:12-31). Finally (10), frequently the trials were also by jury (Numbers 1:4f; 10:4; Luke 6:13) or the most important guardian both of public and private liberty. Thus Flintoff.

The Norman Conquest of England would indeed, at least temporarily, put the expansion and consolidation of these freedoms on hold. However, thanks be to God that this could not long suppress these Christian-Saxon and Anglo-British freedoms!

**Summary of English Law from Edward  
the Elder to Edward the Confessor**

Summarizing, we first gave an overview of English Common Law from the A.D. 880 King Alfred or through King Edward the Elder; King Athelstan; King Edgar; King Canute; King Edward the Confessor; King William the Conqueror; Glanvill; the *Magna Carta*; Bracton; Fleta; Britton; Littleton; Fitzherbert; Coke; and Hale or to Sir William Blackstone, who died in 1780 (alias four years after the signing of the *Declaration of Independence of the United States of America*).

We next outlined the blessed reign of Alfred's son King Edward the Elder, and examined the laws of the Anglo-British King Edward for Non-Danish England. We next noted that England was consolidated under King Athelstan, and gave an overview of his legal significance or setting out his *Law Code* in considerable detail.

We then looked at Hywel Dda's A.D. 940f Welsh codification of Moelmud's B.C. 510f Common Law, and noted the further merging of Anglo-Saxon Law and Celto-Brythonic Law into Anglo-British Law or especially under King Edmund of England and his very wise laws. Passing on next to the short yet important reign of King Eadred, it was noted: that he was a truly national leader; that he was an elected ruler;

and that the Celto-Britons, Anglo-Saxons and Anglo-Danes all participated in his election.

We then looked at the truly excellent English lawmaker King Edgar the Pacific. He ruled in the Name of the blessed Trinity; re-endowed Glastonbury; and concluded in his charter that Glastonbury was the first church in the kingdom built by the disciples of Christ. Especially Flintoff and Chadwick stressed the useful nature of his reign.

King Ethelred (misnamed the Unready) and his godly laws were next examined. Ethelred converted the Viking Olaf Trygvasson to Christianity. He also stated: The Christian king must severely punish wicked men... [However:] Be it jealously guarded against that those souls not perish, whom Christ bought with His Own life... Let God's Law henceforth zealously be loved by word and deed! Then God will soon be merciful to this nation.

The hegemony of the Anglo-Danish kings over the whole of England was next explored. This led to a consideration of the life and times of the great Anglo-Danish Christian King Canute and his many wise laws. However, after the short reigns of his sons Harold Harefoot and Hardecnut the reign commenced of the last Anglo-Saxon King: Edward the Confessor.

Edward standardized English Common Law from the time of Alfred onward. He did so from three main sources. First, from the Anglo-British *Mercen-Lage* of the Midlands region. Second, from the Anglo-Saxon *West-Saxon-Lage* of the great Southwest. Third, from the Anglo-Danish *Dane-Lage* of Eastern England.

This led us to note the property franchise of Anglo-Saxon Christian culture. We also saw that the English political organization into Hundreds is rooted in the Holy Bible, as is the age of legal accountability (thirteen) in Anglo-Saxon Law. It was seen that the Anglo-Saxon Christian Common Law was very sophisticated as regards betrothal, marriage, marital status, property and divorce. So too its laws of succession and of procedure.

Finally, it was seen that Pre-Norman Anglo-Saxon literature in general had an overwhelmingly Christian character from its A.D. 600 inception onward. Regarding legal matters, this can be seen also in Barrister Flintoff's statement of Late-Saxon Christian Common Law namely as regards: its Parliaments; its popular election of Magistrates; its descent of the crown; its *wer-gild* fines; its free customs; its equal succession of lands to all males; its County Courts with sessions thrice annually; its trial by ordeal; and its trial by jury.

It is significant that the modern Professor of Mediaeval History H.R. Loyn has described<sup>187</sup> the late Anglo-Saxon period as a theocracy or, perhaps more accurately, a Christocracy. For the lordship of the king and of Christ lay over the land and the people.

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<sup>187</sup> *Op. cit.*, pp. 237 *cf.* 203.

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Rightly did the great Puritan Lord Chief Justice Sir Matthew Hale later characterize<sup>188</sup> this Pre-Norman Anglo-Saxon period, in his famous book *The History of the Common Law of England*. "The growth of Christianity in this kingdom introduced" into the Law of England "Christian doctrine and...some of the judicial laws of the Jews." This, Sir Matthew there maintained, "may be seen in those laws of the ancient kings Ina, Alfred, Canute &c."

Mercifully, even the subsequent Norman invasion of England with its romanizing influences "could not eradicate the above. The discussion of that, however, will have to wait till our next chapter.

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<sup>188</sup> Sir M. Hale: *The History of the Common Law of England*, Univ. Press, Chicago, [1713], 1971, p. 39.





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We now come to the impact of the A.D. 1066 Norman invasion of England upon Britain in general. We shall also endeavour to establish its impact on Anglo-British Common Law in particular.

The Normans were essentially the descendants of Scandinavian Vikings<sup>1</sup> who had gone and settled in France. To some degree, therefore, their later invasion of England should be seen as an extension of the earlier attacks on Britain by the Danes and the Norwegians. However, the customs of those prior Anglo-Danes had by then been anglicized and absorbed by the English into their own Common Law.

Yet the Normans also imported a French and indeed even a Celto-Breton<sup>2</sup> influence from Brittany. Such Bretons, whose ancestors came from Britain, now returned there. Thus, among those accompanying William the Conqueror at his A.D. 1066 invasion of England, was one of the present writer's own ancestors – King William's *aide-de camp*, the Norman knight Joule.

### **The Early-Normans did not destroy but enriched Anglo-British Law**

As the English mediaeval historian Henry of Huntingdon has noted,<sup>3</sup> "in the year of our Lord 1066, the Lord Who ruleth all things accomplished what He had long designed with respect to the English nation – giving them up to conquest, by the fierce and crafty race of the Normans. William was the most valiant of all the dukes of Normandy; the most powerful of all the kings of England; more renowned than any of his predecessors.

"He was wise, but crafty; rich, but covetous; glorious, but his ambition was never satisfied. Though humble to the servants of God, he was obdurate to those who withstood him. The Normans, however, suddenly and rapidly subjugating the island, granted to the conquered people life and liberty – with their just rights, according to the ancient laws of the kingdom." Thus Huntingdon.

In God's blessed providence, the strongly-centralistic Norman bureaucracy helped unify the differing customs of Danelagh, Mercia and Wessex into one consolidated system of Anglo-British Common Law. Without such a unified system, Roman Law would most likely have been received also in England – just as it was everywhere else in Europe (including even Scotland).

Under the Early Normans, however, four law books updated and preserved the Late-Saxon laws of England until the time of Edward the Confessor. They were the *Liber Quadripartitus*, the *Leges Henrici*, the *Leges Guillelmi*, and the *Leges (Pseudo-) Eduardi Confessoris*.

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<sup>1</sup> E.A. Freeman: *The History of the Norman Conquest of England*, (as cited in *Hist. Hist.* XVIII, pp. 168 & 636).

<sup>2</sup> *Hist. Hist.*, XVIII, pp. 173-75.

<sup>3</sup> *Op. cit.*, pp. 208, 217 & 142f.

The *Liber Quadripartitus* of A.D. 1113-18 preserves a Latin translation of the *Code of Cnut*. It also preserves old English dooms dating back to the time of Alfred.

The *Leges Henrici* were written before 1118 A.D. They contain the coronation oath of Henry I. They state the laws of England as existing (in amended form) between the reigns of William I and Henry I. Further, they elevate the laws of Wessex into prime position throughout the realm.

The *Leges Guilliami* set down the laws of Edward the Confessor as re-affirmed by William I. They also harmonize them both with ancient dooms and with the laws of Canute.

Finally, the *Leges (Pseudo-)Eduardi Confessoris* purport to describe the laws of the last Saxon king Edward in the fourth year of William I. Actually describing the reign of his son William II, however, they probably date from late in the reign of Henry I.

Throughout, these documents evidence the standardization of Late-Saxon Law ó precisely by the centralistic Normans. They also evidence the absorption of such Norman laws as were compatible, into that Saxon Law ó and the jettisoning of all other laws of the Normans themselves.

### **The continuation of Anglo-British Common Law under the Early-Normans**

The development of Anglo-British Common Law did now somewhat decelerate for a while. Yet it nevertheless continued, even under the Normans.

Indeed, even the invading A.D. 1066 King William the Conqueror himself ó of Nor(se)man descent, yet latinized, and of French nationality ó solidly opposed the increasing papal imperialism. For he never capitulated to the papal demands. When Pope Gregory VII demanded homage from the King of England for his realm, William responded in his A.D. 1075 *Letter to Gregory VII* alias the infamous Pope Hildebrand.

There, the new king thundered forth:<sup>4</sup> ðWilliam, by the grace of God the renowned King of the English and Duke of the Normans, sends greetings of friendship to Gregory.... Your legate Hubert came to me as your representative...and ordered me to do fealty to you and to your successors.... I refused to do fealty, and I will not do it. For I did not promise it, nor do I find that my predecessors did fealty to yours.ö

Thus, the new king would not allow any inhabitant of any part of his dominion to acknowledge as apostolic the pontiff or the city of Rome, except at King William's own order. Nor would the king allow anyone in his realm to receive from the pontiff any communication whatsoever, unless it were first shewn to William himself.<sup>5</sup>

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<sup>4</sup> Bettenson: *op. cit.*, pp. 217-18.

<sup>5</sup> *Idem* (citing *Three Canons from Eadmer in His. Nov.* I:6).

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Furthermore, William never supplanted British Common Law ó either with papal Canon Law, or with mediaeval French Law. Barrister-at-Law Flintoff writes<sup>6</sup> that William the Conqueror ascended the English throne claiming it, as of right, from the will of the last Saxon king (Edward the Confessor). William solemnly swore that he would observe the ancient and approved laws of the kingdom, particularly those of Edward the Confessor.

Subsequently to this, it was solemnly ordained in a general council<sup>7</sup> that the laws of Edward, with such alterations as William the Conqueror himself had made, should in all things be observed. Thus we see that the system of Saxon or Anglo-British jurisprudence was confirmed as the law of this country England. Also thenceforth, it still formed the basis of the Common Law.

Indeed, according to the article of Stephen Pfeil on "Common Law" in the 1951 *Encyclopedia Americana*,<sup>8</sup> William the Conqueror ó in the fourth year of his reign (1070) ó promulgated the so-called "Laws of Edward the Confessor" (his immediate predecessor and the last of the Saxon kings). These laws were collected by a grand committee of "wise and noble English [not Normans] learned in their laws and custom" ó whom William had caused to be summoned from all parts of the country.

The method adopted in this case, bears a distant resemblance to the enactment of laws by a legislative body. More importantly, it ensured the preservation of Pre-Norman Anglo-British Common Law in the late-mediaeval period.

### **The Early-Norman William the Conqueror preserves Anglo-British freedoms**

Earlier Anglo-Saxons, like the Celto-Brythons before them, had made provision for the historic and originally Celto-Brythonic Christian Church in Glastonbury to be exempt from taxation. It is very significant that the Norman King William the Conqueror now did likewise. As his *Domesday Book* declared in 1086 A.D.:<sup>9</sup> *öHanc tenebh Brictric T.R.E. de aeccla Glastingbhe.... Hae trae fuer tainlande in Glastingbhe.... V. bidh in excabio qs tenebh de acclha Glastingbhe.ö*

Thus, also the Anglo-Norman *Domesday Book* made special provision even for the ancient (originally Proto-Protestant or) Culdee Celtic church in Glastonbury. Moreover, as Barrister-at-law Flintoff has rightly pointed out,<sup>10</sup> even the ancient property and political rights were protected and given ongoing stability.

The burgesses of William the Conqueror's *Domesday Book* were inhabitants of tenements within the Borough. This implies neither oligarchical tyranny nor populistic democratism. Instead, it suggests a qualified franchise (enjoyed by "re-public-and property-owners alone).

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<sup>6</sup> *Op. cit.*, pp. 134f.

<sup>7</sup> *Leg. Guil. Conq.* (alias the *Laws of William the Conqueror*), s. 63.

<sup>8</sup> 1951 ed., 7:411.

<sup>9</sup> See *Domesday Book* (Printed by Command of His Majesty King Geo. III, 1811), I, p. 91.a.

<sup>10</sup> *Op. cit.*, pp. 220f.

There is, then, indeed much to the credit of William the Conqueror. Though a transplanted Norman, he nevertheless upheld Britain's Christian Common Law. He roundly repudiated all papal claims thereagainst.

Not so consistent, however, was the Continental German Emperor Henry IV. In 1075, Henry had initially denounced Gregory as "not pope but false monk." Unfortunately, however, under papal threats, Henry subsequently recanted: and was required to do penance by standing barefoot in the winter snow for three days.

A noted Irish Roman Catholic legal authority, Dr. O'Sullivan, has written very knowledgeably on English Mediaeval Law. Indeed, he has rightly assessed the extent of the continuing Culdee or "Proto-Protestant" influences on the English legal system, even after the Norman take-over of England by the A.D. 1066 of William the Conqueror.

O'Sullivan's important book, *The Inheritance of the Common Law*, declares<sup>11</sup> that William published his so-called *Ten Articles* after obtaining possession of England in 1066 A.D. There, though a Norman from France, he nevertheless pledged himself to uphold the historical Law of England. Furthermore, William proclaimed that "one God shall be honoured throughout the whole of the kingdom." He also promised "that the Christian Faith shall be kept inviolate."

Even the Anglo-British Christian jury system continued to operate under William. It presumably rested on the twelve apostles themselves, who in turn rooted in the twelve tribes of Israel. Cf. Matthew 19:28. Probably transmitted by the Christian Saxons even to the Normans, it then not only still continued but even flourished.

Thus the legal scholar Laughlin in his essay on *The Anglo-Saxon Legal Procedure*, explains<sup>12</sup> how the Sheriff of Cambridge granted out land claimed by the Bishop of Rochester. Both parties appealed to King William the Conqueror (in 1072f A.D.). William then sent the case by writ to the Shire Court. Odo of Bayeux, who presided, then commanded the Shire to elect twelve men as a jury, who were to swear to the truth of the decision. This was done, and the Bishop accordingly lost the land.

However, he afterwards brought before Odo of Bayeux a charge of perjury against the twelve men. On their failure to make defence, he recovered the land. Bayeux, who presided over that County Court, commanded that if they knew that which they affirmed to be true, they should elect twelve from their own number who should confirm by an oath what all had said.<sup>13</sup>

### **Less happy developments in England under William the Conqueror**

Some of William's actions did, however, cause concern. He enacted rather harsh new laws prohibiting traditional hunting by commoners in any of his forests. Through his 1085f *Domesday Book*, he levied taxes on land throughout the country. This helped centralize government and elevate the kingship at the expense of the

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<sup>11</sup> R. O'Sullivan: *The Inheritance of the Common Law*, Corbett, Westmount, Quebec, 1965.

<sup>12</sup> L. Laughlin: *The Anglo-Saxon Legal Procedure* (in *Essays...to C.W. Eliot*, p. 374f).

<sup>13</sup> *ex seipsis duodecim eligerent, qui quod omnes dixerant jurejurando confirmarent.*

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local authorities. On the other hand, it also certainly checked the temporal power of the pope and also helped promote the unity of Britain as never before.<sup>14</sup>

Even according to the *Anglo-Saxon Chronicle*, William was a wise and great man and more powerful than any previous king. Mild to those who loved God and generous toward the Church, he was also extremely domineering and somewhat favouring of Normans above Englishmen. Few Anglo-Saxons now kept great estates and offices, yet many kept small ones or parts of erstwhile-greater ones. Yet, by inflicting severe penalties on robbers *etc.*, travel throughout his kingdom indeed became safe and secure.

The old National Assemblies continued, but with ever-increasing Norman majorities there. Too, the gamble of trial by wager began to supplant the Biblical trial by ordeal of the Saxons. Predictably, French and Continental influence now began to influence Britain, at least for a while.

The House of Lords began to drift apart from the House of Commons. While the former strongly continued to represent the old aristocracy, the latter became weakened by increased delegation and by infrequent meetings only at the fiat of the royal summons.

Day to day decisions were more and more vested in a body of the king's immediate counsellors called the *Thenningmannagemot* (alias the *Curia Regis*). This ultimately developed on the one side into the Privy Council (and from that the modern Cabinet), and on the other side into the various Law Courts. Property became more important than office. Moreover, the kingdom of the **English** changed and into the kingdom of **England**.

On the other hand, racial and economic integration and especially in the cities and was rapid. While many Danish Normans migrated from France to England, many of them then and perhaps easily influenced by the long-standing Anglo-Danes of Eastern Britain and became de-normanized and re-teutonized (if not immediately anglicized). Indeed, within a century after the Conquest, it was impossible to say which of the middle class were of Norman and which of Saxon extraction.<sup>15</sup>

### William the Conqueror's resistance to the Romish Papacy

To the great credit of William the Conqueror, he stoutly resisted the papal tyranny then increasingly hovering over the political governments of the civilized World. It did, indeed, furiously assault even Britain and until repelled especially by the A.D. 1215 *Magna Carta*.

Over the years, the popes had increased their territorial claims especially in Continental Western Europe. They finally ended up wearing, on ceremonial occasions, the famous Triple Crown.

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<sup>14</sup> *Hist. Hist.*, XVIII pp. 196f.

<sup>15</sup> See *ib.*, pp. 201f.

The first circlet of that crown symbolizes the absolute authority the pope exercises spiritually over the Roman Catholic Church. The second circlet symbolizes his temporal power over the Italian States of the Church. This was bolstered by a spurious document called the *Donation of Constantine* ó not proved false till the end of the fifteenth century. The third circlet symbolizes the papal claim to sovereignty over all earthly governments.<sup>16</sup>

Especially Pope Gregory VII alias Hildebrand (1073-85) asserted some rather outrageous claims. He declared, in his *Dictatus Papae*: “The Roman pope alone...may use the imperial insignia; his feet only shall be kissed by all princes; he may depose emperors; he himself may be judged by no one.” To the eternal credit of William the Conqueror the first Norman King of England, he stoutly resisted most of these absurd papal claims.

Later, however, the very grossly misnamed Pope Innocent III elevated transubstantiation to a universal Romish dogma (in 1215). He was the first pope to call himself the “Substitute or “Vicar of Christ” above man on Earth. He even claimed to be “the Judge of all men, and judged by none.” He threatened even Britain’s King John (of *Magna Carta* fame) with deposition ó unless John agreed (in the teeth of opposition from his own British Barons) to recognize the pope as feudal lord even over all England and Ireland. Indeed, in 1300, Pope Boniface VIII even proclaimed: “I am Caesar; I am Emperor!”

Even Christian British Common Law was slightly ó though only temporarily ó deformed by the papacy in the Late Middle Ages. William the Conqueror’s hostility toward the papal tyranny greatly minimized its effect upon Britain. However, it impacted greatly upon European Common Law on the Continent. As regards the latter, at least till today, that deformity has been permanent.

### **The papalization of European Common Law on the Continent**

By and large, European Law had indeed been christianized ó at least formally. Even in the late-mediaeval period ó in spite of his lapse into a “monasticistic” notion of “common property” among mankind before the fall ó the great scholastic Thomas Aquinas (1225-74) still had quite a few correct emphases. For he rightly remarked that man’s intellect and his will, in a creaturely way, adequately image the intellect and the will of God Himself.

The famous modern jurist George Whitecross Paton’s book *Natural Law*<sup>17</sup> cites from M.J. Adler’s *Essays in Thomism*. There Paton (and Adler) point out Aquinas taught that eternal law governs the World ó through the will of God and according to His wisdom. For humanity, this eternal law is perceived as natural morality. Of that, the basic rule is: act in conformity with your moral nature!

Now the Decalogue evidences the contents of that natural Moral Law. This does not render man’s Positive Law superfluous. For the latter is needed to work out the

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<sup>16</sup> See J.M. Kik: *Church and State – the Story of Two Kingdoms*, Nelson, New York, 1963, pp. 61f.

<sup>17</sup> G.W. Paton: *Natural Law* (as cited in his *Text-Book on Jurisprudence*, Clarendon, Oxford, 1964, pp. 99f).

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implications of the guiding Natural Law. What man calls his own Positive Law, should not conflict with God's Natural Law. If it does so conflict, what man calls Positive Law is really not law at all and does not bind the conscience of the subject. Thus, law conforms to God's order and is not the mere arbitrary whim of human rulers.

European Common Law, however, nevertheless became more and more papalized and, finally, romanized. That is to say: finally, the different papalized Common Law systems on the European Continent itself were **displaced** at and by the Reception of Roman Law as such. This Reception had accomplished the absorption or destruction of those Continental-European systems of Common Law by the beginning of the sixteenth century.

However, Christian British Common Law, in contrast though assailed by Roman Law between the A.D. 666<sup>f</sup> rise of the papacy and the A.D. 1517<sup>f</sup> Protestant Reformation and continued to remain undisplaced by Roman Law. Indeed, this has continued even since the Reformation right down to the present day.

It is true that Christian British Common Law has now been dented but not displaced by modern socialistic statutes. But even then, this has been occurring only since the 1789 French Revolution and the subsequent rise and spread of resultant Marxist Fabianism (alias Social Democracy). So, even today, Anglo-American-Australian Common Law especially in its roots is still intact, and dynamically operational.

### **The deterioration of England under the Mid-Norman King William II (Rufus)**

After the A.D. 1087 death of William the Conqueror himself, the situation rapidly deteriorated under his son William Rufus. This was the beginning of a long tussle between Anglo-British Common Law and authoritarian Norman kings. Indeed, this issue was only finally resolved when Edward I (1272-1307) finally settled for Biblical Common Law and thus prepared the way for the rise of John Wycliffe (*circa* 1328-84) as the Morning Star of the Protestant Reformation.

William the Conqueror himself had indeed sworn and himself planned to uphold the non-papal Anglo-Saxon Christian Law of England. Not so, however, his immediate successor.

The great jurist Sir William Blackstone writes<sup>18</sup> of William the Conqueror's plan to maintain this Pre-Norman non-romanized British Common Law that so moderate and rational a plan was wholly inconsistent with those views then being formulated by the Court of Rome. It soon became an established maxim in the papal system of polity, that all ecclesiastical persons and all ecclesiastical causes should solely and entirely be subject to ecclesiastical jurisdiction only.

It was not, however, till after the Norman Conquest that this doctrine was received in England in order to discountenance the laws of William's Christian-Saxon

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<sup>18</sup> *Op. cit.*, III pp. 62-64.

predecessor King Edward the Confessor (which abounded with the spirit of liberty). For the Saxon Laws (including the A.D. 880*f* code of godly King Alfred) were soon overborne by the Norman Justiciaries. This was at length accompanied by the Bishop $\text{\textcircled{e}}$ s withdrawing from the proceedings in the so-called  $\text{\textcircled{e}}$ secular $\text{\textcircled{e}}$  Courts  $\text{\textcircled{e}}$  which withdrawal then prohibited any  $\text{\textcircled{e}}$ spiritual $\text{\textcircled{e}}$  cause from being tried in those  $\text{\textcircled{e}}$ secular $\text{\textcircled{e}}$  Courts.

Barrister-at-law Owen Flintoff has well traced the series of degenerative alterations temporarily inflicted on the laws of England by William Rufus, and from then onward. Flintoff explains that among the first of these alterations, one may reckon the separation of the Ecclesiastical Courts from the Civil. This was effected, in order to ingratiate the new king with the popish clergy. For the latter had, from some time before, been endeavouring all over Europe to exempt themselves from the  $\text{\textcircled{e}}$ secular $\text{\textcircled{e}}$  power  $\text{\textcircled{e}}$  and to fill their own Ecclesiastical Courts with Italian and Norman Prelates. *Per contra*, however, Acts 6:1-6.

Another violent alteration of the English Constitution, consisted in the depopulation of whole Counties  $\text{\textcircled{e}}$  for the purposes of the king $\text{\textcircled{e}}$ s royal diversion. Both those Counties and all the ancient forests of the kingdom were then subjected to the unreasonable severities of forest laws imported from the Continent. Thereby, the slaughter of a beast was made almost as penal as the death of a man. *Per contra*, however, Luke 13:15*f*.

A third alteration in the English laws under the Normans, was effected by narrowing the remedial influence of the County Courts  $\text{\textcircled{e}}$  the great seats of Saxon justice  $\text{\textcircled{e}}$  and extending the original jurisdiction of the King $\text{\textcircled{e}}$ s Justiciars to all kinds of causes. *Per contra*, however, Deuteronomy 17:3-9 & First Samuel 8:5-22. Yet it must be conceded that even this development did at least help standardize the Common Law for the entire realm.

A fourth innovation was the introduction of trial by combat for the decision of all civil and criminal questions of fact in the last resort. This was an immoral practice. It was clearly unbiblical and unchristian, as well as uncertain. Against trial by combat, compare Exodus 21:12*f*.

But the last and most important alteration both in the civil and military polity, was the engrafting on all landed estates  $\text{\textcircled{e}}$  only a few excepted  $\text{\textcircled{e}}$  of so-called feudal tenure. This was the fiction that all the lands in England were derived, and held mediately or immediately, from the crown. *Per contra*, however, First Kings 21:2-25.

Throughout, then, the Normans tended to tilt Anglo-British constitutional government away from Christian-Biblical Common Law. They tilted it toward Romanism, totalitarianism, centralism and tyranny.<sup>19</sup>

The nation at this period seems to have groaned under a slavery imported from Rome. For the first time, a whole *farrago* of superstitious novelties had been engendered by the blindness and corruption of the times. Here one thinks of: transubstantiation; purgatory; communion in one kind; the worship of saints and

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<sup>19</sup> *Op. cit.*, p. 147.



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images; and the universal supremacy and dogmatical infallibility of the holy see of Rome (*sic*).

The laws, too, as well as the prayers, were administered in an unknown tongue of Latin. The ancient trial by jury gave way to impious decision of by battle. The new royal forest laws totally restrained all rival pleasures.

Cities and towns were subjected to fire and candle being ordered to be extinguished by eight at night, with the sound of the melancholy curfew. The ultimate property, of all kinds, and a considerable share of the present profits, were vested in the king or by him granted out to his Norman favourites.<sup>20</sup>

Much of our own situation today of under the ever-increasing tyranny of twenty-first century centralism and socialism of looks all too similar. Indeed, inasmuch as modern socialism is indeed a development from the Romish subsidiarity principle<sup>21</sup> of we can to some extent trace it back to the romanizing influences of the late-mediaeval period.

However, also under the Norman tyranny (A.D. 1087-1272) of none of the three elements of representative government was ever altogether absent in England. That was the case of as the Historian Sir Lewis Napier has rightly observed of even ever since the disappearance of the Anglo-Saxon township voters (or free villeins).

For at the root of lies the right of every man to life, liberty and property. To secure it of was and is the first purpose of self-government; of trial by jury; and of taxation by consent. Even under the Normans of the individual rights of free-born Englishman still retained their place in the political code of the nation.<sup>22</sup> Thus Flintoff. Indeed, precisely the same issues later motivated also the American 1776 *Declaration of Independence* of and its 1791 *Bill of Rights*.

So, even in spite of the late-mediaeval Middle-Norman concessions to the Romish Church and to Roman Law from time to time of Non-Roman Christian British Common Law fought back many times. Finally, it won through of at the A.D. 1215 *Magna Carta*; in the A.D. 1360f Pre-Reformation; and especially at the A.D. 1517f Protestant Reformation.

Indeed, all the while of the Normans were slowly becoming de-romanized; and rapidly becoming either anglicized, celticized, or anglo-celticized. Thus the Norman King Henry I (1100-35) married Matilda or Maud of the daughter of King Malcolm of Scotland (by the Anglo-Saxon Princess Margaret).

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<sup>20</sup> *Op. cit.*, p. 142.

<sup>21</sup> See on this the various publications of Drs. H.J. Strauss, Prof. of Political Science at the Orange Free State University (at Bloemfontein in the Republic of South Africa).

<sup>22</sup> J. Lee: *Conscience Voting*, Veritas, Morley W.A., n.d., p. 27.

## The Middle-Norman King Henry I restores the Anglo-Saxon Laws of Edward

Flintoff declares<sup>23</sup> that William Rufus's brother and successor, Henry the First (A.D. 1100-1135), found it expedient to ingratiate himself with the people. He did so, by restoring the laws of the last Saxon king, Edward the Confessor (A.D. 1060f). Henry also abolished the curfew.

E.A. Freeman has observed<sup>24</sup> that the problem was to reconcile the English nation to the Norman Conquest ó to find a prince of the foreign stock who should reign as a king of England with the good-will of the English people, and in the interests of England. Henry, who reigned by a more direct choice of the English people than William, owed his crown also to the loyalty of Englishmen.

Though a Norman was still to reign in England, he was to reign now only by putting on the character of an English king. For he was called to his throne by the voice of Englishmen ó and guarded there, by their loyalty, against the plots and assaults of Norman rebels.

The Anglo-Norman mediaeval historian William of Malmesbury wrote<sup>25</sup> that Henry, the youngest son of William the Conqueror, was born **in England** (Yorkshire) ó during the third year after his father's arrival. Unlike his father William the Conqueror and his elder brother King William Rufus, King Henry was therefore not a French-Norman but an **Anglo**-Norman.

Henry restrained ó by edict, the exactions of the courtiers, the thefts, the rapine, and the violation of women. Inflexible in the administration of justice, he ruled the people with moderation. He sought out robbers and counterfeiters with the greatest diligence, and punished them when discovered.

In consequence of the rectitude of his conduct, he was venerated by the nobility and beloved by the common people. If at any time the better sort, regardless of their plighted oath, wandered from the path of fidelity ó he immediately recalled them to the straight road by the wisdom of his plans and his unceasing exertions.

Blackstone observes that King Henry the First ó among other restorations of the laws of the last Saxon king, Edward the Confessor ó revived the union of the Civil and Ecclesiastical Courts under the crown of Britain. Henry wrote to Anselm (the Archbishop of Canterbury) that the whole World is in a disturbed state all round this realm of England.<sup>26</sup> Yet England itself was then nevertheless in a happier condition than the other lands which surrounded her.

However, as History Professor J.R. Green has indicated,<sup>27</sup> the very opposition of the Barons to Henry's assumption of the crown helped consolidate constitutional government in England. Their attitude threw Henry upon the support of the English.

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<sup>23</sup> *Op. cit.*, p. 143.

<sup>24</sup> As cited in the *Hist. Hist.* XVIII p. 217f.

<sup>25</sup> *Op. cit.*, pp. 425, 434, 445f.

<sup>26</sup> Bettenson: *op. cit.*, pp. 218f.

<sup>27</sup> *Op. cit.*, p. 91.

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Two great measures followed his coronation ó his grant of a charter and his marriage with Matilda (the daughter of King Malcolm of Scotland). These mark the new relation which was thus brought about between the people and their king. Henry's charter is important ó not merely as a direct precedent for the 1215 *Magna Charta*, but also as the first limitation imposed on the despotism established by the Norman Conquest.

After much negotiation and correspondence, Anselm agreed that everyone elected to a prelacy in England should pay homage to King Henry. This, however, observes Sir William Blackstone,<sup>28</sup> was ill-relished by the popish clergy. They very early disapproved.

We should also note the compiled *Laws of Henry I*. They consist of many earlier enactments and extracts. Indeed, there are here several express references to the Germanic Common Law of the Salic and Riparian Franks. As Pfeil's article on *Common Law* insists,<sup>29</sup> this compilation provides better means of forming an opinion on the nature of law among the Early-English ó than does any other extant document.

### The rise of Neo-Roman Civil Law and Romish Canon Law throughout Europe

However, outside of England, Common Law was now being whittled away throughout Europe. This was done by the twin menace of ÷secular÷ Neo-Roman Civil Law under the rising importance of international trade (on the one hand), and ÷sacred÷ Romish Canon Law under the increasing power of the mediaeval papacy (on the other).

÷Secular÷ Roman Law was now standardized as the Code of Justinian, which around A.D. 1135 was translated into French ó and later into Spanish, German and Dutch. Then, even before 1137, the study of Roman Law was being pursued with ardour first in Bologna and then in Florence. By way of France, it worked its way even into Scotland ó there destroying Ancient Scottish Common Law in its wake.<sup>30</sup>

In Scotland, explains Latimer,<sup>31</sup> the Culdee system of church government, there established by Columbkille on the model of the Irish, was now overthrown. For many years, it had successfully resisted the encroachments of Rome. But at last, King David II ó who died in 1153 ó determined to make his kingdom subject to papal authority.

The native clergy refused to submit. But the king ó by appointing foreigners to the vacant benefices ó succeeded in overcoming opposition. For this great service, he was made a ÷saint÷ by the pope. As James I, the 1603f King of Scotland and England, later remarked: ÷St. David proved a sore saint for the crown.÷

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<sup>28</sup> W. Blackstone: *op. cit.*, pp. 219f.

<sup>29</sup> *Op. cit.*, in 1951 *Enc. Amer.* 7:411.

<sup>30</sup> See the arts. by: C.F. Beach on *Civil Law* (in *Enc. Amer.* 1951 6:733f); R.D. Hursh & W. Seagle on *Law* (in *Amer. Peop. Enc.* 1966 11:292).

<sup>31</sup> *Op. cit.*, p. 19.

It was in A.D. 1138, as Rev. James Mackenzie explains,<sup>32</sup> that the Romish King David of Scotland rooted out the last remnant of the Culdees. One reads with indignation how he ejected them from the little isle of St. Serf in Lochleven ó where some ruins of their establishment are still to be seen. He seized their little library of sixteen volumes ó among which were the Gospels; the Acts of the Apostles; the three books of Solomon (*viz.* Canticles, Ecclesiastes and Proverbs); a commentary on the Song of Solomon; and another on Genesis.

It should be stressed that even the Semi-Christian *Civil Code of Justinian* was now being secularized. As Professor William Seagle points out in his article on the *Civil Law*,<sup>33</sup> it now became the secular authority of Europe ó and was regarded by the twelfth-century law doctors of Bologna as *ratio scripta* (alias ñwritten reasonø).

In time, Roman Law travelled to Southern France and then throughout Continental Europe. The decisive cause of this ñLesser Renaissanceö ó also known as the ñReception of Roman Lawö ó lay in the absence of strong central monarchies and courts. With its powerful monarchs, England alone remained outside the clutches of Roman Law.

But it was not only ñsecularø Neo-Roman Civil Law which now plagued Europe. Also ñsacredø Romish Canon Law, after progressively incorporating more and more papal pronouncements, was codified in Gratianø A.D. 1148 *Decretum*. It was to both Neo-Roman Civil Law and Romish Canon Law that the 1135-53 French-Norman King Stephen of England, would now capitulate.

It was against such capitulation that his successor, the 1154-89 Henry II, would protest. It was also against such capitulation that the 1215 *Magna Carta* would later triumph ó once again asserting the supremacy of Anglo-British Christian Common Law.

### **The deterioration of England under the 1135-53 Romanizer King Stephen**

In England, after the death of the Anglo-Norman King Henry I, there followed the awful reign of his nephew the A.D. 1135-53 Romish usurper and French-Norman King Stephen.<sup>34</sup> Stephen of Normandy triumphed, in preventing the heiress apparent (Henryø widowed daughter Matilda) from succeeding to the throne of England.

Matilda married the Earl of Gloucester. Her son did indeed later reign (as Henry II).<sup>35</sup> First, however, England was destined to be plagued by eighteen years of misrule under the usurper Stephen.

Under Stephen, things went progressively from bad to worse. A more consistent brand of Romanism now swept into England from Normandy in France. As a result, Romanism would thereafter ó for the first time ever ó invade even Wales.

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<sup>32</sup> *Op. cit.*, pp. 65 & 68.

<sup>33</sup> W. Seagle: *Civil Law* (in *Amer. Peop. Enc.* 1966 5:120).

<sup>34</sup> See the art. *Stephen*, in Funk & Wagnallsø *New Encyclopedia*, 1973, 22:219.

<sup>35</sup> Art. *Stephen King of England* (in *Enc. Amer.*, 1951, 25:618).

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As the famous Elizabethan chronicler and historian Holinshed has shown:<sup>36</sup>  
“Superstitious and popish practices in Welsh Britain were first brewed and  
broached in England during Norman times. Only later, as from a poisoned spring,  
[did] it spread itself into Wales.”

The first abbey or friary ever known to have been erected there since the  
dissolution of the noble non-celibate Proto-Protestant House of Bangor which never  
savoured of Romish dregs was the Twy Gwyn. It was built in the year 1146.

Continues Holinshed: “Afterwards, these [Romish] vermin swarmed [into Wales]  
like bees, or rather crawled like lice over all the land and drew in with them their  
lousy religion and tempered with I know not how many millions of abominations.... Yet  
that occurred only when the Welsh Britons had utterly forgotten the lesson which [the  
A.D. 540] Ambrosius Telesinus<sup>37</sup> had taught them, when the right Christian faith  
(which Joseph of Arimathea taught in the isle of Avallon) reigned in this land.”

That, however, was before the proud and bloodthirsty monk Austin of Rome  
infected the southeast of Britain that was then occupied by the pagan Anglo-Jutes. He  
polluted it, claimed Ambrosius Telesinus, “with the poison of Romish errors” and from  
A.D. 597 onward.

Sir William Blackstone tells us<sup>38</sup> that upon the death of King Henry the First and the  
usurper Stephen was brought in; supported by the clergy; and unwisely ratified even  
by the pope himself. We find that one article of the oath imposed upon him was that  
“ecclesiastical persons and ecclesiastical causes should be subject only to the Bishop’s  
jurisdiction.”

As the Anglo-Norman mediaeval historian William of Malmesbury observes,<sup>39</sup> the  
Bishops swore fidelity to the King but only for “so long as he should maintain the  
Church and the vigour of its discipline.” Consequently, Stephen’s rather short reign  
was one long series of concessions to the papacy. That, however, not only undermined  
Stephen’s own authority. It also strengthened, within England, the influence of the  
foreign pontiff.

It was not long before the Earl of Gloucester, husband of Matilda (the daughter of  
the previous monarch King Henry I), renounced his allegiance to Stephen. Also the  
Scots invaded England. Several years of anarchy then followed, until and after the death  
of his own son Eustace and Stephen agreed to name Matilda’s son as his successor: the  
later King Henry II.

The noted mediaeval historian Henry of Huntingdon was himself a contemporary  
of those events, and gives his version of what happened. He states<sup>40</sup> that after a reign  
of almost two decades King Stephen and in A.D. 1152, wished to have his son Eustace  
crowned.

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<sup>36</sup> *Op. cit.*, II pp. 337f.

<sup>37</sup> See ch. 18 above at its nn. 149f.

<sup>38</sup> *Op. cit.*, IV, p. 414.

<sup>39</sup> *Op. cit.*, pp. 490f.

<sup>40</sup> *Op. cit.*, pp. 287-95f.

However, Stephen met with a repulse. Then, Eustace the king's son and Earl Simon of Northampton were both suddenly snatched away. Providence so ordered it. The Almighty Himself removed those formidable adversaries of His beloved Henry. God had now in His mercy prepared the way for Henry II's reign in tranquillity.

After a night of misery, peace dawned on the ruined realm. The duke and alias the later King Henry II was dissatisfied that the castles which after the death of King Henry I had been built under Stephen and his oppressive oligarchs in every part of the country with the worst designs, had not been demolished.

King Stephen fell sick and died. England, therefore, was left for six weeks without a king. But by God's providence it was in perfect tranquillity. The love or the fear of the expected new king Henry II secured it. He then proceeded to London. Ascending the throne of England, he was crowned amidst universal rejoicings.

### **The Start of the Diminution of the Papacy in England under King Henry II**

Fortunately, after the catastrophic King Stephen, there came the great King Henry the Second. Under Henry, the reaction in England to both the anarchy and the papacy was swift and in the form of the 1164 *Constitutions of Clarendon*. As Barrister-at-law Flintoff writes,<sup>41</sup> during the reign of Henry II (A.D. 1154-1189), much was done to methodize the laws.

Those are things which peculiarly merit the attention of a legal antiquary. *E.g.*, the constitution of the Parliament at Clarendon in A.D. 1164. By those *Constitutions of Clarendon*, the king checked the power of the pope and his clergy *etc.*

The great jurist Maitland writes<sup>42</sup> that one of the worst evils of the late-mediaeval period, was the so-called "benefit of clergy." Thereby, clerics suspected of having committed crimes could not be tried by the State, in the regular Courts of the land but only by the Church, in special ecclesiastical tribunals. In many such cases, guilty clergy were set free by protective Church Courts supremely desirous of promoting the power of the ecclesiastical tribunals of the Romish Church and at the expense of the Courts of the King of England and her people.

The historian Trevelyan observes<sup>43</sup> that just before the reign of King Henry II, the Church of Rome had improved her position and prestige during the atrophy of the State under the reign of Stephen. Supported especially by high papal claims coming from overseas, the Church Courts now threatened to invade many provinces not their own.

After a struggle against the clerics, Henry II (1153-89) stayed this tide and at least in respect of minor offences. The only "benefit of clergy" that he was forced to concede, affected the graver cases of felony. For minor offences, and in civil actions arising

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<sup>41</sup> *Op. cit.*, p. 143.

<sup>42</sup> F.W. Maitland's *Canon Law in the Church of England*, esp. pp. 57-75; cf. G.M. Trevelyan: *Hist. Eng.*, p. 156.

<sup>43</sup> M. Trevelyan: *op. cit.*, pp. 156f.

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from contract and delict ó church clerics were forced to appear as defendants in the King's Courts of England ó to the scandal of high churchmen.

This victory of the Common Law over the Canon Law, set a limit to the power of the pope not just over the English State but to some extent even over the English Church. The greatest of many benefits that Henry II conferred upon England, was legal reform. The new judicial procedure he introduced, was destined to shape the future of English society. The increase of power and jurisdiction he gave to the King's Courts in the Shires, rendered possible the rapid growth of English Common Law ó and, quite legitimately, at the expense of the self-aggrandizing tribunals of the papal Church of Rome.

Out of the matrix of the older *Curia Regis* or King's Court(s), Henry II made a famous bench of royal judges ó the Court of King's Bench. His justices there then strengthened the Common Law, enforcing it in every Shire. This Common Law, the great inheritance of the English-speaking nations, has in modern times sharply divided them in their habits of thought from the nations of Latin and Roman tradition. For English Common Law is not a document imitated from the *Code of Justinian* ó but a system of precedents, cases and decisions of the various Courts of Britain. Thus Maitland.

The great Westminster Assembly theologian and jurist John Selden<sup>44</sup> has shown that the influence of Roman Law on Britain was non-existent before A.D. 43. He further demonstrated that its influence was always only slight even during the A.D 43-397 Roman occupation of the cities of South Britain; and then wholly disappeared even there upon the withdrawal of the Romans ó until reintroduced from Bologna during the twelfth century.

Stubbs, in his *Constitutional History of England*, maintains<sup>45</sup> that England has inherited no portion of the Roman legislation. Her Common Law is, to a far greater extent than is commonly recognized, based on usages anterior to the influx of feudality. That is to say: English Common Law is based on strictly-primitive custom.

As Hursh and Seagle explain in their article *Law*,<sup>46</sup> in Western Civilization the greatest rival of the romanized Civil Law of Continental Europe has been the English Common Law. It is the basis of the law of the United States, and also of many member countries of the British Commonwealth of Nations. The Common Law grew from the one Germanic Customary Law ó viz. that in England ó which resisted the overwhelming tide of Roman Law.

One of the particular glories of English Law is the institution of trial by jury, which made necessary the Common Law phenomena of special pleading and rules of evidence. Another glory is its development by the method of judicial precedent (alias the authority of decided cases). A yet further glory is its doctrine of the supremacy of the rule of law. Here, also the State is subject to the Common Law. This promoted the emergence of those liberties at stake in the centuries-long struggle against human

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<sup>44</sup> *Enc. Amer.*, 1951, 6:734.

<sup>45</sup> W. Stubbs: *op. cit.*, I:10:8.

<sup>46</sup> *Op. cit.*, in *Amer. Peop. Enc.*, 1966, 11:293f.

absolutism ó culminating in the Protestant Reformation, and further also in the Puritan Protest.

Soon thereafter, it was precisely the (Anti-Romish) Common Law's so-called 'Glorious Revolution' of 1688: which produced the English *Bill of Rights*; which established the independence of the English judiciary; and which put the writ of *habeas corpus* upon a secure foundation. Thereafter, the Common Law rights of England became the unalienable rights of man in the 1776 American *Declaration of Independence* ó and 'the rules of the Common Law' in the 1791 Bill of Rights within the *Constitution* of the United States of America.

### **The showdown between King Henry II and Rome's Thomas a Becket**

Now Henry the Second had been a close friend of Thomas a Becket. Henry had promoted Thomas first to be his Chancellor, and then in addition the Archbishop of Canterbury. Once elected to the latter position, however, Thomas turned away from the King of England ó and rededicated himself to promoting the interests especially of the Church of Rome. Henry then soon became embarrassed by Becket's behaviour as Chancellor. So Becket resigned the chancellorship ó which angered the King.

As History Professor J.R. Green relates,<sup>47</sup> Henry now proposed to the Bishops that a cleric convicted of a crime should be deprived of his orders and handed over to the King's Tribunals. In the mind of Thomas, however, the ecclesiastical immunities were parts of the sacred heritage of the Church.

**The King appealed to the ancient 'customs' of the realm.** To state these 'customs' a Court was held at Clarendon. The finding there was that the Prelate-Elect was bound to do homage to the King.

Under this first Plantagenet King, Henry II ó writes the great Elizabethan chronicler and historian Holinshed<sup>48</sup> ó in 1164 a council was held at Clarendon. To it, Archbishop Thomas a Becket of Canterbury ó and, in a manner, all the lords spiritual and temporal of the land ó repaired.

There, the Archbishop consented to obey the King's pleasure. He promised and gave the word of a priest ó swearing he would observe the King's laws and customs.

Shortly afterwards, however, the Archbishop ó considering further this oath he had taken ó repented himself grievously of it. So much so, that he abstained even from saying mass ó till he had by his own confession and by the fruit of his own penance obtained absolution from and by the pope himself.

Addressing and sending out messengers with all speed to the pope, certifying the whole matter, Archbishop Becket requested to be assoiled of the bond to the King into which he had entered. This suit was soon granted by the pontiff. The King, however, swiftly reacted.

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<sup>47</sup> *Op. cit.*, pp. 106f.

<sup>48</sup> *Op. cit.*, II pp. 119-25 (citing Ger. Dor., Matt. Paris, & N. Trivet.).



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The Archbishop, meantime, perceived that the liberties of the Church were now not only embezzled but in a manner extinguished. Being loath to make any further attempt against his former dealings, he now wanted (without the King's knowledge) to depart from the realm. Thereupon he took a ship to pass over to France in order to go to the pope's Court.

The pope, after hearing his words, deliberated on the matter in with the advice of his cardinals. Thereupon the pontiff answered the archbishop, in effect as follows:

The lower power may not judge the higher. All the laws (both of God and man) witness to Him Whom one is bound to obey. Also the ordinances of the ancient fathers manifestly declare this. Therefore We [!] to whom it appertains to reform disorders, do hereby clearly reverse and make void the judgment pronounced against you by the Barons in whereby your goods were adjudged forfeited. That judgment was against both the order of law and the customs of the Church. Only the King will we spare in and exempt him alone from your excommunications and censures.

The latter, of course, was only a ploy of the papacy. The real aim of the pope's answer was to undermine the King and people of England in by chipping away first at their Barons. In that way, the pope was seeking ultimately to impose his own will especially over the King and his people.

The King, upon learning through his ambassadors what answer the pope had made, became grievously offended in his mind. He then thereupon confiscated all the goods belonging to the Archbishop and his accomplices. He set forth a decree.

In effect, the latter consisted of these points, as follows: 1 That no man should bring any letters or commandment from Pope Alexander or Thomas a Becket (Archbishop of Canterbury) into England, containing an interdiction of the realm. 2 That no religious person or priest should be permitted to pass over the sea or to come into the realm of England, except he had letters of safe conduct from the King. 3 That no man should appeal to the said pope or Archbishop, nor by their appointment hold any plea.

### **Henry II and the A.D. 1164 *Constitutions of Clarendon***

By now, the Romish Canon Law had finally been codified in Gratian's 1148 *Decretum*. But education was spreading in so that many who were not clergy, were themselves beginning to attain the literacy standards needed for clerkship.

King Henry II now wished to assert the competence of his own non-ecclesiastical Royal Law Courts. But the papal priest Becket withstood the king in claiming that the king's wishes here were uncanonical. So the realm reacted by putting forth the *Constitutions of Clarendon* in to restrict ecclesiastical jurisdiction and privileges.<sup>49</sup>

Indeed, the A.D. 1164 *Constitutions* firmly upheld English Common Law against Romish Canon Law. The *Constitutions* commence: in the year 1164 from our Lord's incarnation...[and] the tenth of Henry II (most illustrious king of the English) in the

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<sup>49</sup> Bettenson: *op. cit.*, pp. 220f.

presence of the same king was made this record or report of a certain part of the **customs, liberties and dignities of his ancestors.** Here, the *Constitutions* ground themselves firmly on the ancient customs and liberties of England and thus, upon her Common Law, and against all recent ecclesiastical encroachments thereupon.

Now here are some of the provisions ordained by the *Constitutions*:<sup>50</sup> If controversy shall arise...regarding advowson [or church livings], let it be treated...in the court of...the king. Churches belonging to the fee of...the king cannot be granted in perpetuity without his own assent....

Clerics cited and accused of any matter, shall...come into the King's Court.... If the cleric be convicted or shall confess, the Church must not any longer protect him. Archbishops, Bishops and Persons of the Realm [alias beneficed Clergy] are not allowed to depart from the kingdom [of England, viz. for Rome], without leave of the king....

Laymen are not to be accused, save by appointed and legal accusers and witnesses.... If the accused be such that no one wills or dares to accuse them, the Sheriff...shall cause twelve lawful men from the neighbourhood<sup>51</sup> or the town to swear...that they will show the truth in the matter according to their conscience.

In regard to appeals...[to Rome], they must proceed from the Archdeacon...to the Archbishop.... If the Archbishop fail in showing justice, they must come at last to the King...so that it must not go further [to Rome] without the assent of the King....

When an archbishopric or bishopric is vacant...the person elected shall there do homage and fealty to the King...for his life and limbs and earthly honour.... Decisions concerning debts due under pledge of faith, or without pledge of faith, are to be in the King's Justice.

Now Becket the priest would not assent to these *Clarendon Constitutions*. He refused to accept the findings of the Council of Northampton which upheld the King. Becket appealed to Rome, and later purported to excommunicate the Bishops who had assisted the Archbishop of York at the coronation of the Crown Prince.

This provoked the King, who in his frustration rather rashly remonstrated: Who shall rid me of this priest? This unguarded utterance was misunderstood by others, and led to Becket's being slaughtered by four Knights. The latter event was not intended by the King and, indeed, grieved him. But he still maintained jurisdiction in cases of advowson and over church lands.

As the *Historians' History* points out,<sup>52</sup> the most important points laid down in the *Constitutions* were as follows. First, disputes concerning advowsons and presentations were to be tried not by the ecclesiastical authorities but in the King's Court. Second, criminal Clergy were to be tried in the King's Court. Third, no law-breaking Clergymen were to leave the realm without the King's consent.

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<sup>50</sup> *Ib.*, pp. 222-25f.

<sup>51</sup> *de visineto*.

<sup>52</sup> *Op. cit.*, XVIII, pp. 267 & 290 & 294.

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Bishop Stubbs, though a churchman, in his *Constitutional History of England* here champions the interests of the King. He characterizes the *Constitutions of Clarendon* as part of a great scheme of administrative reform, bringing the ground between the spiritual and temporal powers within the reach of common justice. He asserts that they are in no sense the engine of tyranny or secular spite. Instead, they were calculated rather to abolish the lawlessness due to clerical professionalism and ecclesiastical jealousy.

However, Becket would not consent to the *Clarendon Constitutions*. He refused to accept their findings in any spiritual matter, and appealed to Rome. So the above 1164 *Constitutions of Clarendon* were quickly followed by the *Assize of Clarendon* in 1166.

Becket, who had left England, returned in 1170. He then exasperated Henry by excommunicating the Bishops who had assisted the Archbishop of York in the coronation of the Crown Prince. As a result of subsequent misunderstanding, Becket was murdered. Although Henry then relaxed some of the *Constitutions*, he kept the jurisdiction in advowson and over church lands except where held in frankalmoign alias without feudal obligations.<sup>53</sup>

Observes the *New Illustrated Columbia Encyclopedia*,<sup>54</sup> Clarendon defined the customs governing relations between Church and State. In the anarchical conditions of the previous reign (of Stephen), the Church had extended its jurisdiction. It was now the object of Henry II as the new king to curb the growth of ecclesiastical power by securing the assent of England's prelates to this codification. This indeed represented the practices followed up to, and during, the reign of his grandfather Henry I.

The majority of the sixteen articles of Clarendon were a fair statement of earlier customs. Several, however, were contrary to recently-codified Canon Law. After much debate, the English prelates assented to Clarendon. But, after the pope condemned them, Becket too later repudiated them. For the most part, however, the *Constitutions* remained in effect as part of the law of the land.

### The total impact of King Henry II's legal reforms

However, even all the above measures were only part of Henry's legislation. His reign, it has truly been said, initiated the rule of law as distinct from the despotism of the Norman kings. He perfected, by a system of reforms, the administrative measures which Henry the First had begun.

The fabric of judicial legislation commences with the *Assize of Clarendon*, the first object of which was to provide for the order of the realm by reviving the old English system of mutual security or frankpledge. Twelve lawful men of each hundred, with four from each township, were sworn to present those who were known or reputed as criminals within their district, for trial.

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<sup>53</sup> Bettenson: *op. cit.*, pp. 225f & 223 n. 2.

<sup>54</sup> *Op. cit.*, 5:1454.

The *Historians' History* regards<sup>55</sup> King Henry II as an important standardizer of the Common Law. It also states that if we seek his character in the pages of the justiciar Glanville, we shall view him as greater and more powerful than any king who had hitherto borne sway in England.

Henry was just, discreet, merciful and a lover of peace. Yet his humanity never degenerated into indolence nor supineness. He was mighty, but he never allowed his strength to tempt him into tyranny. He extended his sceptre also to the indigent and lowly. None of the Judges of his Court could dare to deviate, however slightly, from the path of righteousness ó nor to utter a sentence contrary to the dictates of truth.

Thus the *Constitutions of Clarendon* shows that Henry had begun the great step towards the development of jury trials. No time is richer than this, in legal history. The whole reign of Henry II was a reign of legislation. By the *Assize of Arms* in A.D. 1181, he regulated the old constitutional force of the country and enjoined that every free Englishman should be ready to serve with the weapons belonging to his rank.

In 1188, the tithe was levied for the defence of Eastern Christendom against the militant Mohammadan Saladin the Saracen. The real importance of the ordinance by which the Saladin tithe was instituted, consists in its being the earliest attempt to impose a tax on personal property and in the employment of local jurors to determine the responsibility of the individual. Under Henry, the legal system of England took a shape which it has practically kept ever since. Out of Henry's favourite institution of recognitions on oath grew not only trial by jury but also the House of Commons.

## **The standardization of English Common Law under King Henry II**

At this point, the 1966 *American Peoples' Encyclopedia* offers an excellent statement on the inscripturation of the previously long-existing yet thitherto unwritten Common Law of England. In its articles on the Common Law, it notes<sup>56</sup> that this is the body of Anglo-American principles and maxims which derive their authority from the judgments and decrees of courts (as opposed to statutes).

The Common Law was so named, because it was common to the whole realm. Although it was primarily a system of judicial precedents established by Royal Courts ó the Court of King's Bench, the Court of Common Pleas, and the Court of the Exchequer ó its growth was aided also by legislation.

The *Constitutions of Clarendon* of 1164 helped to establish the supremacy of the Royal Courts ó by restricting the jurisdiction of the ecclesiastical tribunals within narrow limits. The *Assize of Clarendon* of 1166 and the *Statute of Westminster II* of 1285 were of crucial importance in shaping procedure.

The reigns of Henry II [A.D. 1154-89] and Edward I [A.D. 1272-1307] were the formative periods of the Common Law. Of importance in the early development of the Common Law, were the *Year Books*. There, decided cases were reported; a lay

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<sup>55</sup> *Op. cit.*, XVIII, pp. 267 & 290 & 294.

<sup>56</sup> Grolier, New York, 1966, 5:319.

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legal profession appeared; and the teaching of the Common Law was recorded in the inns of court.

To the above, the *Encyclopaedia Britannica* significantly adds<sup>57</sup> that most countries in Europe underwent the influence of what was known as the 'Reception' of Roman Law. That displaced their old customs or 'Common Law.' England alone escaped this 'invasion.'

Maitland ascribed the 'immunity' of England to the fact that mediaeval England had schools of law and inns of court which preserved the traditions of the Common Law. The *Year Books* (namely the mediaeval *Law Reports*) were read there.

To any reception of Roman Law in England, the inns of court offered a stout and successful resistance. The constitutional importance of their victory was enormous. For the absolutist doctrines of Roman Law found little or no place in the Common Law of England.

We pause to hear Professor Brewer<sup>58</sup> on 'Early-Norman Government' in Britain. Regarding the amalgamation of the Anglo-Saxon and Norman peoples, he declares the distinction was greatly obliterated in the reign of good King Henry II (1154-89). More completely was this so, after the separation of Normandy from England during the reign of bad King John (1199-1216).

The supreme legislative power of England was confined to the King and the Great Council [or Parliament] of the realm. All Tenants-in-Chief had a constitutional right to attend. Under William the Conqueror and his sons it was customary to assemble such Councils at the three great festivals of Christmas, Easter and Whitsuntide.

Besides the Great Council of the realm, the king also had an ordinary or Select Council [alias the Cabinet] for administrative and judicial purposes. This was also called the King's Court. It attended the person of the Sovereign, and was composed of the great officers such as: the Chief Justiciary, the Chancellor, the Constable, the Marshal, the Chamberlain, the Treasurer, the Steward, and others nominated by the King. These were his Councillors in political matters.

The Court of Common Pleas seems to have had its beginning in the 1189<sup>f</sup> reign of Richard I; but it was completely established by *Magna Carta* in 1215. The Court of King's Bench was primarily intended to decide suits between the king and his subjects and was formed out of the *Curia Regis* or King's Court of more ancient times.

The County Courts and Hundred Courts still continued, as in Anglo-Saxon times. All the Freeholders of the County, even the greatest Barons, were obliged to attend the Sheriffs in these courts, and to assist in the administration of justice. Such courts which were unknown upon the Continent served as a powerful check upon the Baronial Courts.

In judicial proceedings, the ancient practice of compurgation by the oaths of friends and of trial by ordeal still subsisted under the Norman kings, but was to some

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<sup>57</sup> Art. *Common Law*, 14th ed., 6:123.

<sup>58</sup> Hume's *op. cit.*, pp. 149f.

extent superseded by that of combat. A regulation of Henry II introduced an important change in suits for the recovery of land, by allowing a tenant who was unwilling to risk a judicial combat to put himself on the assize ó that is, to refer the case to four knights chosen by the Sheriff, who in their turn selected twelve more (*cf.* the jury). These twelve then decided the case by their verdict.

This approach to trial by jury ó the -Grand Assizeøó was introduced in the reign of Henry II. By this custom, a tenant might refer the case to the Sheriff, who selected twelve good men and true ó and decided the case by their verdict. In the *Assize of Novel Disseisin* the twelve were chosen directly by the Sheriff. The words in the later *Magna Carta* of 1215 that óa man is to be tried by the lawful judgment of his peersó clearly recognize the great principle upon which trial by jury rests ó and indeed had long so rested, even before the (1199-1216) time of King John.

### **The beginning of the end of Norman England under King Richard I**

The year A.D. 1189 marks the beginning of the end of Norman England ó and the start of English Statute Law. Holinshed explains<sup>59</sup> that here the reign of the Normans and Frenchmen over the realm of England took an end ó one hundred and twenty-two years after the coming in of William the Conqueror. For those who reigned after Henry II, may rightly be regarded as Englishmen. Because they were born in England and used the English tongue, customs and manners ó according to the nature and quality of the country.

In 1190, during his absence on a crusade against the Saracens, King Richard the First (1189-99) lamented his sins while in Messina. Upon godly repentance, it pleased the merciful God to touch his heart. Richard called together into the chapel all those prelates who were then with him. There, in presence of them all, he fell down upon his knees. He confessed the filthy life which he had, in lecherous lust, been leading before that time. He humbly became a new man, fearing God, and delighting to live after His Law.

Even during Richard's prolonged absence from England, in September 1194 the justicesø itinerants made their circuits through every Shire and County of that realm. They caused enquiries to be taken by substantial juries regarding: pleas of the crown both old and new; recognisances; escheats; wards; marriages; all kinds of offenders against the laws and ordinances of the realm; all other transgressors, falsifiers, and murderers of Jews; pledges; goods; lands; debts and writings of Jews that had been slain; and likewise the accounts of Sheriffs.

About the same time, Richard obtained the favour of those in Champagne and of the Britons. In the year 1198, it was ordained that measures of all kinds of grain should contain one quantity ó throughout the realm. He gave commandment also that it should be lawful to the foresters to take and put under arrest both priests and those of the clergy as well as temporal men found offending in forest grounds.

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<sup>59</sup> *Op. cit.* II:202, 218f, 251, 264.

## Late-Mediaeval developments in Wales, North America and Scotland

Just before the 1190 Third Crusade of England's King Richard I (the 'Lion-hearted'), remarkable events were transpiring among the Celtic Britons in Wales. There, Prince Madoc set out for America; and Prince Llewellyn asserted Welsh independence against the English.

Writes Welsh historian Trevelyan,<sup>60</sup> according to the *Triads* one of the 'three lost or missing ones of the Island of Britain' was Prince Madoc (the son of Owain Gwynedd), who 'went to sea along with three hundred men in ten ships.' In an ancient record, the following account appears under the date 1170:

'Madawc, another of Owen Gwynedd's sons ' finding how his brothers contended for the Principality, and that his native country was like[ly] to be turmoiled in a civil war ' did think it his better prudence to try his fortune abroad.... Therefore, leaving Northern Wales in a very unsettled condition, he sailed with a small fleet of ships...to the westward.... Leaving Ireland upon the north, he came at length to an unknown country where most things appeared to him new and uncustomary and the manner of the natives far different from what he had seen in Europe.'

Four centuries later, David Powel's *Historie of Cambria* was published in 1584. There he records that by reason and order of cosmography, this land to which Madoc came must needs be some part of northern 'New Hispania' (or Florida). 'Whereupon, it is manifest that that countrie was long before by Brytaines discovered ' afore either Columbus or Americus Vesputius lead anie Spaniardes thither.'

Also in the Welshman Sir Richard Hakluyt's *Voyages*, the first edition of which is dated 1589 ' reference is made to 'the most ancient discovery of the West Indies by Madoc the son of Owen Gwyneth, Prince of North Wales, in the yeere 1170.' Indeed, the evidence for such a Celto-Brythonic settlement in the New World is rather convincing.

It is significant that the Briton Madoc himself had sensed his native Wales was indeed soon about to be plunged into turmoil. Indeed, around 1290 A.D., the King of England clashed significantly with the Welsh Prince Llewellyn-ap-Gruffydd the Great.

Trevelyan explains that the public articles sent by the English to the Welsh were brief and to the point. 'The [English] King will have no treaty ' with the four [Welsh] *Cantreds* ' or Hundreds.

Llewellyn, however, thereupon promptly forwarded to the King of England the National Reply of the Welsh: 'Though the King [of England] would not consent to treat with the four *Cantreds*, nor with the Isle of Anglesey ' yet, unless these be comprehended in the treaty, the [Welsh] Prince's Council will not conclude a peace [with the English]. For these *Cantreds* have, ever since the time of Camber the son of [the 1190] B.C.] Brutus, properly and legally belonged to the princes of Wales.'

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<sup>60</sup> M. Trevelyan: *op. cit.*, pp. 252f.

The King of England then struck swiftly against Llewellyn. Trevelyan records that Llewellyn ap Gruffydd, the last native Prince of Wales, thus perished on the 11th of December 1282 ó after a reign of twenty-eight years. With him vanished the already waning shadow of the ancient Celto-Brythonic Empire and its independence. It would, however, be resurrected ó at least in part ó at the time of the Protestant Reformation, under the British Tudor Monarchs from the Royal House of Wales.

Late-mediaeval events in Scotland too were very encouraging. Around 1190 A.D., writes Rev. James Mackenzie,<sup>61</sup> the Scottish King William at one time had a violent quarrel with the pope ó regarding who should be Bishop of St. Andrewø. The pope uttered commands and threats, but William remained immovable.

At length, the pope caused his legate to lay William and the kingdom of Scotland under sentence of excommunication. Whenever this sentence came upon a nation, the churches were closed. It seems to have told with less effect on Scotland than on other countries.

In 1214, William the Lion was succeeded by his son, a youth of sixteen known as Alexander II. He was a sensible and useful king. He gave good support to the Barons of England in their struggle against King John for *Magna Carta* and English liberty. When the pope annulledø that charter and excommunicated the Runnymede Barons ó the King of Scotland was excommunicated with them.

The reign of the second Alexander in Scotland was in many respects a period of prosperity and progress. He employed much of his time in the framing of laws and the dispensation of justice. If the King of Scotland was ever to be master on his own soil, he needed to quell the Norsemen of the Isles ó from the Shetlands to the Isle of Man. A Scottish fleet and army were sent against them.

### **Late-Norman legal treatises on Anglo-British Common Law**

Many legal treatises on English Common Law were written from the middle of the twelfth century onward. Significantly, even the Norman-British writers of that age principally cite not Roman or Roman-Norman Law but only Anglo-British Common Law ó as the received Law of England even during those Norman times.

According to the celebrated British Law Professor Sir William Holdsworth,<sup>62</sup> five books stand out pre-eminently in the history of English Law ó Glanville, Bracton, Littleton, Coke, and Blackstone. Indeed, it is very significant that even the first of these ó the Anglo-Norman Glanville, Chief Justiciar of King Henry II (1154-89) ó does not anywhere cite, or even refer, to the Roman Law as authority.<sup>63</sup>

Blackstone writes<sup>64</sup> that Glanville, Bracton, Britton, Fleta, Littleton and Fitzherbert ó together with some others of ancient date ó are authors to whom great veneration and respect is paid by the students of the Common Law. Indeed, it is their treatises

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<sup>61</sup> *Op. cit.*, pp. 83f & 90.

<sup>62</sup> W.S. Holdsworth: *Sources and Literature of English Law*, Clarendon, Oxford, 1952 ed., p. 137.

<sup>63</sup> Art. *Common Law*, in 1951 *Enc. Amer.* 7:411.

<sup>64</sup> *Op. cit.*, I, p. 72.



which are cited as authority ó and not, except only marginally, Romish or Roman Law.

It is further explained by Blackstone<sup>65</sup> that the ancient British Church was a stranger to the Bishop of Rome and all his pretended authority. But the Saxon invaders having driven the Brythonic professors of Christianity to the remotest corners of Britain, the Saxonsø [or rather the Anglo-Jutesø] own conversion was afterwards effected by Missionaries from the Court of Rome from A.D. 597 onward.

This naturally introduced some few of the papal corruptions in point of faith and doctrine ó at least into the Anglo-Jutish kingdom of Kent and later also into East-Anglia, Essex and Sussex. But one reads of no civil authority claimed by the pope in these kingdoms, till the era of the Norman conquest right after the 1066 death of the last Saxon King (Edward the Confessor) ó who compiled the Common Law of England especially from the laws of Offa, Ina and Alfred.

Indeed, continues Blackstone,<sup>66</sup> this is a faithful sketch of the English Juridical Constitution. The great original lines are still strong and visible. If any of its minuter strokes are by the length of time at all obscured or decayed, they may still with ease be restored to their pristine vigour by closely adhering to the wisdom of the ancient plan concerted by Alfred and perfected by Edward I (the -English Justinianø *circa* 1300 A.D.).

### **The roots and development in England of the Mediaeval Jury**

At this point, a word is in order about the development of the mediaeval jury. Perhaps it originated even back in Pre-Abrahamic times. For Bond declares<sup>67</sup> that the Ancient Brythonic schools of Druidism had priests in companies of twelve ó which later blended with native Christianity. It has been held by some that the druidical priesthood had its origin in Chaldea ó whence both Phoenicians and Hebrews profess to have migrated, and where Abraham himself had been born. Genesis 11:26-31*f*.

At any rate, the roots of the jury certainly seem to go back at least as far as the twelve Hebrew patriarchs. Compare: Genesis 37:9-21; Numbers 1:4-18 & 13:1-15; Deuteronomy 17:5*f* & 19:12*f*; Matthew 18:17 & 19:28; Luke 9:1*f* & 22:14-23; John 7:51; and Revelation 4:10*f* & 5:8*f* & 7:4-8 & 21:12-14.

Also in the *Talmud* (and compare too Deuteronomy 1:13-15), the so-called -Lesser Sanhedrinø was established in every town having a male population of 120 or more ó *viz.* twelve times ten, or one jurymen for each of the twelve tribes and each jurymen representing ten households. See 38 *Case & Comment* (1932) No. 2.

The germ of Britainø's jury seems to have taken root already in Pre-Saxon Celto-Brythonic Common Law, perhaps even as early as B.C. 510. For when Ancient Britainø's *Mulmutine Code*, dating from that time, was later updated around A.D. 940*f*

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<sup>65</sup> *Op. cit.*, IV, p. 104.

<sup>66</sup> *Op. cit.*, III, p. 60.

<sup>67</sup> F.B. Bond: *An Architectural Handbook of Glastonbury Abbey*, Central Somerset Gazette, Glastonbury, 1925, p. 12.

ó Hywel Dda the Prince of Wales codified the selection of twelve distinguished men versed in the law from each *Cantred* or ðHundredø (alias every community of a hundred households).

Also *via* the twelve apostles of the Early Christian Church, the jury certainly seems to have taken deep root in Celtic Britain. Therefrom, it later influenced also Anglo-Saxon and especially Anglo-Norman England.

As California State Legislator and Law Editor H.B. Clark (LL.M.) has noted,<sup>68</sup> the ancient trial before Elders was the forerunner of the trial by jury which became established in England after 1066. For centuries, the jury has consisted of twelve men.

In the 1682 *Guide to English Juries*, it is stated: ðIn analogy of late, the jury is reduced to the number of twelve ó like the prophets were twelve, to foretell the truth; the apostles twelve, to preach the truth; the discoverers twelve, [who were] sent into Canaan to seek and report the truth; and the stones twelve that the heavenly Jerusalem is built on.ö

Especially under Henry II, the Norman-English jury developed in strength. Thus the A.D. 1164 *Constitutions of Clarendon* declare that no layman could be accused, except lawfully so. If no one dare make an accusation, twelve lawful men from the neighbouring ðHundredø were summoned, placed on Christian oath by the Sheriff, and then required to answer truthfully.

Again ó in the twelfth century *Assize of Novel Disseisen* ó the King commands the Sheriffs: ðYou shall have twelve free and lawful men of the neighbourhood... Summon them to be before...my Justices, prepared to make recognition!ö

John W. Whitehead, in his book *The Second American Revolution*, refers<sup>69</sup> to the [U.S.] Supreme Court's 1970 decision<sup>70</sup> in *Williams v. Florida*. There, in delivering the opinion for the Court, Justice Byron White acknowledged that a twelve-man jury has been the invariable Common Law practice since ðsometime in the fourteenth centuryö ó for six hundred years.

Justice White should also have traced the twelve-man jury back to at least the twelfth century ó if not very much earlier. Compare above the A.D. 1164 *Constitutions of Clarendon* and the *Assize of Novel Disseisen*.

Whitehead also points out that Lord Chief Justice Sir Edward Coke, the noted 1628 Puritan English jurist and strong advocate of the Common Law, held that ðusage and ancient custom make law.... It seemeth to me that the law...delighteth herself in the number twelve; for there must not only be twelve jurors for the trial of all matters of fact, but twelve judges of ancient time for trial of matters of law in the Exchequer Chamber.... And that number of twelve is much respected in Holy Writ, as in twelve apostles.ö<sup>71</sup>

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<sup>68</sup> *Op. cit.*, p. 293 n. 50.

<sup>69</sup> J.W. Whitehead: *The Second American Revolution*, David C. Cook, Elgin Ill., 1984, pp. 199 & 227.

<sup>70</sup> 399 U.S. 78 (1970).

<sup>71</sup> E. Coke: *Institutes of the Laws of England*, I:155.

So Whitehead correctly concludes that the Common Law is based on Christian principles. Indeed, it most likely derived also its numerical makeup of juries ó from the Holy Bible.

### Deepening of the rift between the Church of Rome and the Kingdom of England

Blackstone draws attention to the Late-Norman contest and emulation between the laws of England and those of Rome. Somewhat schizocosmically, the so-called ðTemporalø Courts adhered to the former, and the ðSpiritualø Courts adopted the latter as their rule. This widened the breach between them, and made a coalition afterwards impracticable.

However, such a coalition between the ðtemporalø and the ðspiritualø would probably otherwise have been effected at a general reformation of society. Indeed, such a coalition later certainly did take place ó but not on the basis of the papal claims. Instead, it would occur on the basis of the application of Holy Scripture to both Church and State ó at the time of the Protestant Reformation.

It is true that the 1066 Norman Conquest of Britain did have at least some romanizing religious implications, in the long haul. Yet even after that Conquest, Ranulf de Glanville, the Anglo-Norman Chief Justiciar of England (1176), actually limited the scope of the intruding Romish Canon Law. This he did by bringing under the control of British Common Law many persons who had previously derived immoral advantages from the so-called ðclerical immunities.ø In addition, Glanville also wrote the first practical and procedural *Treatise on the Laws and Customs of the Kings of England*.

Under the Normans, the power of the king increased (especially against that of the pope); feudalism arose for the first time in Britain; and English Common Law was threatened (though never replaced) not by the papacy but indeed by Roman-Norman Law. Fortunately, however, English Common Law more than managed to hold its own ó especially as a result of the development of a famous institution even in Norman England: the House of Commons.

In the eleventh century *Song of Roland* ó it can be seen that a ðparliamentø is first and foremost a discussion between two or more people, and only thereafter the place where this occurs. Thus, when King Henry I (1100-1135) and King Henry II (1154-1189) gave their charters to the Barons, the word ðParliamentø was first applied to the English orders of the King ó whenever the Barons wanted a ðparleyø on all matters affecting the kingdom.

So, even under the romanizing Norman Kings of England, the Ancient British Common Law was never swallowed up by Roman Law. As the great Puritan jurist John Selden points out<sup>72</sup> in his *Dissertation on Fleta* (the famous English late-thirteenth century law book): ðAt no time was the Roman Law admitted [into England]... The singular devolution in this period [viz. that of the 1189-1199 King Richard I] may be inferred from...Hovedon and Matthew of Paris.ö

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<sup>72</sup> Cited in D. Ogg: *op. cit.*, pp. 103 & 171.

## The papal subjugation of King John and the 1215 Fourth Lateran Council

Even before good King Richard's death, his successor and brother (bad Prince John) had tried to get rid of him especially during Richard's absence from England during the Crusades. King Richard I of England had begun to rule in 1189. Leaving his throne in 1190 in order to participate temporarily in the Christian Crusades against the Moslem Saladin in Palestine he was captured on his way home and held for a huge ransom in Austria.

**Massive taxes** were then levied in Britain by chosen Knights, in order to raise money for this and similar purposes. Imposts on each Shire were assessed. Even after Richard's death in 1199, this practice continued under his brother King John.

Sheriffs and other Shire Representatives now came and spoke to the King. The exaltation of both Parliament and *Magna Carta* was near at hand.<sup>73</sup>

Other epoch-making developments were also now about to take place. In 1201, the misnamed Innocent (III) became pope at the age of thirty-seven.

He stated: "God created two luminaries [the sun and the moon] one superior, for the day; and the other inferior, for the night (which last owes its splendour entirely to the first)... He has disposed that the regal dignity should be but a reflection of the papal authority, and entirely subordinate to it."<sup>74</sup>

In 1205, the pope summoned the monks of Canterbury to Rome in order to pressure them to elect a cardinal, Stephen Langton, to the vacant see of Canterbury. King John of England, when he objected, was excommunicated in 1209. That was one year after the same pope militarily attacked the Proto-Protestant Waldensian Christians and other Non-Romanists in France and Spain.<sup>75</sup>

Indeed, in 1212, John was deposed even as king by the pontiff. Pope Innocent (*sic*) then placed England under the papal interdict; closed all English churches; and then invited the King of France to invade England.

Terrified, the weakling John now undertook to do liege homage to the pope, in his presence. John also arranged to pay fealty, by way of an annual payment to the pontiff.

This action proclaimed that John considered himself to be the vassal of the pope and that John now regarded the pontiff as the ultimate feudal owner of England as his own papal fief. Innocent then appointed an Inquisition, by decree of his 1215 Fourth Lateran Council. This required all national rulers throughout Christendom to swear loyalty to the papal tiara.

Chicago Law Professor Palmer Edmunds writes<sup>76</sup> that this system spread throughout Christendom and to the organs of the State on the mainland of Europe in

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<sup>73</sup> *Hist. Hist.*, XVIII, pp. 307f.

<sup>74</sup> *Ib.*, p. 336.

<sup>75</sup> Edmunds: *op. cit.*, p. 227.

<sup>76</sup> *Op. cit.*, p. 226.

beginning in France. Britain alone now resisted ó as would soon be seen at *Magna Carta*.

The English people resisted the oath *ex officio* ó as the inquisitorial procedure came to be designated ó precisely **because** it was inquisitorial. That is to say, they resisted precisely because they denied the pope's right to require free Englishmen to answer to foreign inquisitors or questioners.

### King John's surrender to the papal legate Pandulph

The *Historian's History* rightly observes<sup>77</sup> that the sentence of the papal interdict was at that time the great instrument of vengeance and policy employed by the Court of Rome. It was pronounced against sovereigns for the slightest offences; and made the guilt of one person involve the ruin also of their subjects in the millions ó even as regards their spiritual and eternal welfare. The execution of it was calculated to operate with irresistible force on the superstitious minds of the people.

The English nation was suddenly deprived of all exterior exercise of its religion; the altars were despoiled of their ornaments; the crosses, the relics, the images, the statues of the saints were laid on the ground. The use of bells entirely ceased in all the churches. Mass was celebrated with shut doors, and none but the priests were admitted to that institution.

The laity partook of no religious rite ó except baptism to newborn infants, and communion to the dying. The dead were not interred in consecrated ground. Marriages were celebrated not in church buildings but in churchyards. Every circumstance carried symptoms of the deepest distress and of the most immediate apprehension of divine vengeance and indignation.

Still, the sentence of **interdict** had not yet produced the desired effect on John. So Innocent, after keeping the thunder long suspended, gave at last authority to the Bishops of London and Ely and Worcester ó to fulminate the sentence of **excommunication** against him.

These prelates obeyed. The next gradation of papal sentences was to absolve John's subjects from their oaths of fidelity and allegiance to him; and to declare everyone excommunicated who had any commerce with him in public or in private.

Pandulph, whom the pope had chosen for his legate, required John ó as the first trial of obedience ó to resign his kingdom to the Church. John, writhing under the agonies of present terror, made no scruple of submitting to this condition. He issued a charter in which he said that of his own free will he had, for remission of his own sins, resigned England and Ireland to God and to Pope Innocent and his successors.

John agreed to hold these dominions thenceforth ó as feudatory to the Church of Rome. That agreement was to be sealed by his annual payment of 1000 marks. Indeed, he stipulated that if he or his successors should ever presume to revoke or infringe this charter ó they should instantly forfeit all right to their dominions.

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<sup>77</sup> *Ib.*, pp. 308f.

The careful 1578 Elizabethan chronicler and historian Holinshed<sup>78</sup> gives us the full text of what he himself rightly calls ‘the saucy speech of proud Pandulph the pope’s lewd legate to King John, on behalf of the presumptuous pope.’ *Verbatim*, here is the papist Pandolph’s ultimatum:

‘I do not think that you [John] are ignorant how Pope Innocent has to do what his duty requires he has both absolved your subjects of that oath which they made to you at the beginning, and also taken from you the governance of England according to your deserts. Finally, he has given commandment unto certain princes of Christendom to expel you out of this kingdom and to place another in your room he thus worthily to punish you for your disobedience and contempt of religion.

‘Philip King of France..., being ready to accomplish the pope’s commandment, has an army in readiness. With his navy newly decked, rigged and furnished in all points, he lies at the mouth of the river Seine he looking for a prosperous wind. So, as soon as it comes, he may sail with it here to England he trusting (as he says) with the help of your own people (who neither name you nor want to take you as their king), to despoil you of your kingdom with small ado and to conquer it at his pleasure.... I would advise you, that while there is yet a place for grace and favour he rather to obey the pope’s just demands.’<sup>79</sup>

Then Pandulph, himself keeping the crown for the space of five days in token possession of it, at length he as the pope’s vicar or representative he again gave it back to John. By means of this act, explains the Romish historian Polydor Virgil, the fame went abroad that King John he now willing to have this commemorated he made himself vassal to Pope Innocent. John’s successors likewise, from then on, were to be expected to acknowledge having their right to the same kingdom he from the pope.

But those kings that succeeded King John have not observed any such laws of reconciliation! Neither do the authentic chronicles of the realm make mention of any such surrender. So such articles as were appointed for King John to observe he pertained only to him who had offended he and not to his successors. Thus even the Romanist Polydor Virgil.

Yes, thus says even Polydor he the great sixteenth-century historian of British and English history. He himself was an Italian-born Roman Catholic. So it is very significant even Polydor denies that John’s surrender to the pope bound also John’s successors to observe those articles of surrender he and specifically in respect of acknowledging the papal claim of ownership over England.

Holinshed further records that hereupon, being all together at Dover he the King and Pandulph, with the Earls and Barons, and a great multitude of other people he all agreed to, and concluded, a final peace. It ensued in the following form:

‘John, by the grace of God, King of England and Ireland, from this hour forward shall be faithful to God and to Saint Peter and to the Church of Rome and to my lord Pope Innocent(ius) and to his successors.... The patrimony of St. Peter, and specially the kingdoms of England and Ireland, I shall endeavour myself to defend against all

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<sup>78</sup> *Op. cit.*, II:323f.

<sup>79</sup> *Op. cit.*, II:303f, citing Polyd. Virg.

men ó with all my power. So help me God and the...holy evangelists! Amen. These things were done on the eve of the Ascension of our Lord, in the year 1213.ö

### **The road to *Magna Carta* – and the papal reaction to that road**

While these things were thus being done, Geoffrey Fitzpeter and the Bishop of Winchester had come to St. Albans, together with the Archbishop of Canterbury and other Bishops and Peers of the Realm. There, the King's Peace being proclaimed to all men ó it was on his behalf straitly commanded that the laws of King Henry his grandfather should be observed universally within his Realm, and that all unjust laws and ordinances should be abrogated.

King John now understood that the Barons ó contemning the pope's decree and inhibition ó were more offended and bent against him than before. Pope Innocent was informed how the Barons of England would not obey his precepts. He judged them enemies of the Church. He gave commandment to Peter the Bishop of Winchester, to the Abbot of Reading, and to Subdeacon Pandulph ó to pronounce the sentence of excommunication against them.

As History Professor J.R. Green observes,<sup>80</sup> a year passed before the pope proceeded to the further sentence of excommunication. John was now formally cut off from the pale of the Church. An excommunicate king had ceased to be a Christian, or to have claims on the obedience of Christian subjects.

### **The utter capitulation of King John of England to Pope Innocent of Rome**

The English monarch then acted most uncharacteristically for his race. For he meekly submitted to the Italian prince ó the Romish pontiff ó in 1213. Said the King:

õI, John ó by the grace of God, King of England and Ireland ó from this hour forward will be faithful to God and the blessed Peter and the Roman Church and my lord the Pope Innocent and his successors. There is full agreement concerning damages and losses in the time of the [papal] interdict between us and our venerable [spiritual] fathers.... We wish not only to make satisfaction to them, as far as in God we can, but also to make sound and beneficial provision for all the Church.ö

So John capitulated to the pope. As History Professor Green explains,<sup>81</sup> while Innocent was dreaming of a vast Christian Empire, with the pope at its head to enforce justice and religion on his under-kings ó John believed that the papal protection would enable him to rule as tyrannically as he wished. The thunders of the papacy were to be ever at hand for his protection.

On the credit side, King John did at least also promise to restore the old laws made by the ancient kings of England ó and specifically by the Pre-Norman Anglo-Saxon or rather the Anglo-Brythonic Common Law of King Edward the Confessor. In the

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<sup>80</sup> *Op. cit.*, p. 124.

<sup>81</sup> *Op. cit.*, p. 130.

King's Peace, it was promulgated that the laws of King Henry his grandfather should be observed universally within his Realm, and that all unjust laws and ordinances should be abrogated. It was also commanded that no Sheriff nor Forester nor other Minister of the King should upon pain of life and limb violently take anything from any man by way of extortion nor presume any man wrong [because innocent till proven guilty], nor fine any man as they had aforetime been accustomed to do.<sup>82</sup>

### King John's surrender in his 1214 *Ecclesiastical Charter*

Speaking of the Romish Clergy in England, John then capitulated in his 1214 *Ecclesiastical Charter*. There, he declared: "We have, at their own petition, for the salvation of our soul and the souls of our predecessor and successor kings of England, freely of our uninfluenced and spontaneous will, with the common consent of our Barons, granted and ordained, and by this our present charter have confirmed: that henceforth in...all our Kingdom of England, the elections of all prelates whatsoever, greater or less, be free for ever."<sup>83</sup>

John's craven fear of the papal threats (purportedly to keep his predecessors in purgatory and to send his successors to hell) is clearly evident in the above. These threats John should not have feared. Nor would he had he but believed the Bible. However, what he should have feared is in addition to the wrath of the God of the Bible is was the wrath of his own Barons against him.

For John had lied about his Barons, when he had told the papal agents that the Barons too as would indeed need to have been done is had joined him in granting and ordaining everlasting privileges to Romish Clergymen resident in the Realm of England. So the British Barons, more freedom-loving than their cowardly king, now boldly expressed their disgust is in one of the greatest constitutional documents of all time.

Pope Innocent's Fourth Lateran Council was in 1215 proclaiming his own horrible heresy of transubstantiation. Yet even then, the Proto-Protestant Barons of Britain were erecting their own great Charter of Freedom is *Magna Carta*.

King John illegally gave Britain (as a dowry) to the pope is before *Magna Carta*. There, however, the barons and other representative Englishmen repudiated John's actions is on the basis of the historic Common Law of England.

As the great English Attorney-General Sir William Blackstone later observed in the *Introduction* to his own 1769 book on *The Great Charter*:<sup>84</sup> "It is agreed by all our historians that the Great Charter of King John was for the most part **compiled from the ancient customs of the Realm**, or the laws of [the last Saxon] King Edward the Confessor. By this, they usually mean the old Common Law."

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<sup>82</sup> Thus Holinshed: *op. cit.*, II:312f.

<sup>83</sup> Bettenson: *op. cit.*, pp. 226-31.

<sup>84</sup> W. Blackstone: *The Great Charter*, Clarendon, Oxford, 1769, p. vii.



### **Barrister Flintoff's legal analysis of *Magna Carta***

Barrister-at-law Flintoff writes<sup>85</sup> that King John ó and afterwards his son [Henry III] ó consented to two famous charters of English liberties, *Magna Carta* and *Carta de Foresta*. The latter was well calculated to redress many grievances and encroachments of the crown in the exertion of forest law.

The former confirmed many of the liberties of the Church, and redressed many grievances incidental to feudal tenures. Care was also taken therein to protect subjects against other oppressions then frequently arising ó from unreasonable amercement, from illegal distresses or other process for debts or services due to the crown, and from the tyrannical abuse of the prerogative of purveyance and pre-emption.

It fixed the forfeiture of lands for felony, and prohibited for the future the grants of exclusive fisheries and the erection of new bridges so as to oppress the neighbourhood. It established the testamentary power of the subject over part of his personal estate, the rest being distributed among his wife and children. It also laid down the law of dower.

It enjoined a uniformity of weights and measures, and gave new encouragements to commerce by the protection of merchant strangers. It prohibited all denials or delays of the administration of justice. It fixed the Court of Common Pleas at Westminster, and directed that assizes be taken in the proper Counties.

It protected every individual of the nation in the free enjoyment of his life, his liberty and his property. This it did, unless those enjoyments were declared to be forfeited by the judgment of his peers (*viz.* upon trial by jury) or the law of the land (*viz.* through judicial sentence by due process of law).

The United Kingdom of Great Britain, unlike the United States of America and the Commonwealth of Australia, does not have its constitution in any single document. The British Westminster system of government rests primarily on the Common Law, and secondarily upon a number of Statutes. Chief among the various British bills of rights, are: *Magna Carta* of A.D. 1215; the *Great Charter of the Liberties of England* of 1297; and the *Rights and Liberties Act* of 1688.

*Magna Carta* guaranteed: freedom for the English Church; the ancient freedoms of London and other cities; property rights of heirs and widows; and the unattachability of land to repay debts where sufficient other property was attachable. The Court of Common Pleas would be held in a fixed place; without payment, chattels were unattachable by the Crown; and uniform weights and measures were to be established throughout the kingdom.

Further: nobody was to be committed to trial without witnesses; and no Freeman could be arrested or expropriated, without trial by his peers and according to the Common Law. Here then is the root of the Seventh Amendment in the *Constitution of the United States of America*.

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<sup>85</sup> *Op. cit.*, pp. 182f.

### **The *Historians' History* on the significance of *Magna Carta***

The *Historian's History of the World* in its chapter on "King John and *Magna Carta*" observes<sup>86</sup> that the confederated Barons met at Stamford with great military pomp, being followed by two thousand Knights and a host of retainers. Those confederates delivered the schedule containing the chief articles of their petition. "These are our claims," they said, "and, if they are not instantly granted, our arms shall do us justice."

Pandulph the wretched Papal Legate, who was with the King, now contended that the Cardinal Primate ought to excommunicate the confederates. However, the Barons now proclaimed themselves to be "the army of God" and issued proclamations requiring all who had hitherto remained neutral, to join them against the perjured John.

In all parts of the Kingdom, the Lords and Knights quitted their castles to join the national standard. The heart of John again turned to water. He saw himself almost entirely deserted. He was ready freely to grant all their rights and liberties, and only wished them to name a day and place of meeting.

The *Great Charter of Liberties* — namely *Magna Carta* — was then drawn up. It was a code of laws — limiting the feudal claims of the central government, and specifying the general rights of all Freemen at Common Law derived from the ancient customs of the Realm. For, as Stephens' *Commentary on the Laws of England* has shown, all aspects of the *Magna Carta* antedated the latter — and were rooted in Anglo-British Common Law long before 1215 A.D.

The *Historian's History* rightly notes<sup>87</sup> that *Magna Carta* was not a revolution. It was a conservative reform. It demanded no limitation of the regal power which had not been acknowledged, in theory, by every king who had ever taken the coronation oath (in Britain).

It made that oath a binding reality. It defined, in broad terms of practical application, the essential difference between a limited and a despotic monarchy. It limited the royal practice of extracting arbitrary sums under the name of reliefs; of wasting the estates of wards; of disposing in marriage of heirs during minority; and so of heiresses and of widows.

But there were also other conditions of more permanent importance. Such had regard to the Sovereign's authority over men. These were derived from the great Saxon principles of freedom, which a century and a half of Norman power had more or less obliterated but not destroyed.

"No Freeman shall be taken or imprisoned or disseised or outlawed or banished or [in] any other wise destroyed" — proclaimed *Magna Carta*. "Nor will we pass upon him nor send upon him — unless by the legal judgment of his peers, or by the law of the land. To no man will we sell, to no man will we deny or delay right or justice."

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<sup>86</sup> *Op. cit.*, XVIII, p. 346f.

<sup>87</sup> *Op. cit.*, XVIII, pp. 348f.

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In the *Charter of Henry III* [1216-72], which was a confirmation to that of John, we find that no man was to be dispossessed of his freehold or liberties or free customs by any arbitrary proceeding. Life, liberty and property were thus protected. No man, from that time, could be detained in prison without trial.

**Important excerpts from the text of *Magna Carta***

John, by the grace of God, King of England begins the Charter to his Archbishops, Bishops, Abbots, Earls, Barons, Justiciaries, Foresters...and his faithful Subjects greeting! Know ye, that we in the presence of God and for the salvation of our soul...and unto the honour of God and the advancement of Holy Church and that of our Realm...have in the first place granted...by this our present charter...for us and our heirs for ever, that the Church of England shall be free and have...all the underwritten liberties...for ever.<sup>88</sup>

Here, the reference to the Church of England seemingly in contradistinction to the Church of Rome is very striking. Indeed, it seems to foreshadow the approaching Protestant Reformation itself.

The charter continues: We have by our uninfluenced and spontaneous will, before discord had arisen between us and our barons, granted and confirmed by our [1214] charter... We have also granted to all Freemen of our realm for us and our heirs for ever, all the liberties mentioned below to have and to hold for them and their heirs, from us and our heirs.<sup>89</sup>

It goes on: No scutage [or feudal shield-tax]...shall be imposed in our kingdom, unless by the General Council (or Parliament) of our kingdom.... The City of London shall have its ancient liberties and free customs as well by land as by water.... For the holding [of] the General Council of the kingdom...for the assessing of scutages we shall cause to be summoned the Archbishops, Bishops, Abbots, Earls and Greater Barons of the Realm.... Furthermore, we shall cause to be summoned generally...all others who hold us chief.<sup>90</sup> *Magna Carta* (cf. 12 & 37 & 61) also re-asserted the Common Law rights of citizens to possess arrows & knives (cf. to own & bear arms).

*Magna Carta* continues: A Freeman shall not be amerced [or fined] for a small offence, but according to the degree of the fault.... Earls and Barons shall not be amerced but by their peers [alias a jury].... No constable or bailiff of ours shall take corn or other chattels from any man, unless he presently gives him money for it.... Nothing from henceforth shall be given or taken for a writ of inquisition of life and limb....

No Freeman shall be taken or imprisoned...unless by lawful judgment of his peers [alias a jury].... We will sell to no man...either justice or right that is, we will not offer bribes. If any man has been dispossessed or deprived by us without the lawful

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<sup>88</sup> *Magna Carta*, Preamble & art. 1.

<sup>89</sup> *Ib.*, art. 1.

<sup>90</sup> *Ib.*, arts. 12-14.

judgment of his peers ó of his lands...or rights ó we will forthwith restore them to him.... All unjust fines made by us...shall entirely be given up.ö<sup>91</sup>

### Continuation of excerpts from *Magna Carta*

Professor A.R. Hogue rightly declares in his book *The Origins of the Common Law*<sup>92</sup> that if one had to choose a chapter from all of *Magna Carta* to express the spirit and the principal idea embodied in the charter ó it would be Chapter 39 of the 1215 version. That declares: öNo Freeman shall be taken or imprisoned or dispossessed or outlawed or banished or in any way destroyed; nor will we go upon him nor send upon him ó except by the legal judgment of his peers [cf. the jury] or by the law of the land.ö

Specifically this Article 39 of the charter declares that no man should be proceeded against, save by due legal process. Thus, the charter: opposes arbitrary tyranny; strengthens local authorities against an increasingly centralizing government; and also wins concessions for non-baronial merchants and even for Commoners [alias Freeman or Churls]. See Law Professor Paul Vinogradoff's work *Clause 39* (in the *Magna Carta Commemoration Essays*).

The Judaistic scholar Dr. Gabriel Sivan observes<sup>93</sup> that the supremacy of law ó a basic tenet of Anglo-American legislation ó can also be traced to older Jewish procedure. Such protection of human rights against arbitrary power is remarkably similar to the principles expressed in the *Mishney Torah* of Maimonides (*Hilkhot Melakhim*). This, rooting in the Mosaic Pentateuch, was compiled [in A.D. 1180] thirty-five years before *Magna Carta* [in 1215]. Some scholars believe that English Jews ó smarting under the extortionate policies of King John ó may have suggested such a clear restriction of the royal powers in the charter of liberties which the king was made to sign.

Article 40 requires law enforcement without respect of persons. Cf. Exodus 23:1-7 & Leviticus 19:34-37. The privacy of the home is guaranteed. Cf. Deuteronomy 24:10-11 & 25:13-16. Due process of law is required. Cf. Numbers 35:24-28; Deuteronomy 19:15-19; Joshua 20:4-6. Punishment is to fit the crime. Cf. Exodus 22:1-5; Leviticus chapters 20 & 21; Deuteronomy chapters 20 & 21 and 25:1-3. There was to be freedom from double jeopardy. Cf. Deuteronomy 25:3 & 23:13-16. Indeed, innocence is presumed till guilt is actually proven ó after which sentence is to be executed speedily. Cf. Deuteronomy 19:15-20; John 7:51; Acts 25:11.

Article 61 of that famous 1215 charter, justifies last-resort rebellion against a king who follows his own corrupt political or pseudo-ecclesiastical practices and who does not finally submit to the Law of God. Cf. Deuteronomy 17:14-20; 1:5f; 27:1f; Second Chronicles 26:14-21. Indeed, even in making laws ó the king had to consult with the other leaders of his nation. See Numbers 10:1-4. Thus, the *Magna Carta* guarantees: a limited executive, and limited representatives. Cf. Exodus 18:18-21 & 23:2.

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<sup>91</sup> *Ib.*, arts. 20-55.

<sup>92</sup> A.R. Hogue: *The Origins of the Common Law*, Liberty Press, Indianapolis, 1966, p. 53.

<sup>93</sup> *Op. cit.*, pp. 136f.

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In its penultimate sections, *Magna Carta* then concludes:<sup>94</sup> “For the honour of God and the advancement of our kingdom...we have granted all these things aforesaid...and grant our subjects the underwritten security. Namely, that the Barons may choose five-and-twenty Barons of the Kingdom whom they think convenient, and cause to be observed the peace and liberties we have granted...by this our present charter.”

Even the very last provision<sup>95</sup> of *Magna Carta*, is highly significant. It reads: “Wherefore we will and firmly [do] enjoin that the Church of England be free ó and that all the men in our Kingdom have and hold all the aforesaid liberties, rights and concessions, truly and peaceably, freely and quietly, fully and wholly to themselves and their heirs, of us and our heirs, in all things and places, for ever.”

This chosen body of Barons meeting with their king over the *Magna Carta* at Runnymede, was in fact a delegated Parliament ó reminiscent of the ancient Hebrew “Senate” or body of Elders, and foreshadowing the modern “House of Lords.” A second legislative body, the “House of Commons” ó itself reminiscent of Israel’s broader “Assembly” and anticipating America’s later “House of Representatives” ó would develop vigorously from the fourteenth century onward. Compare Numbers 10:1-4.

**Papal denunciation of England’s *Magna Carta*  
and its anti-papal aftermath**

This famous landmark of British Common Law and political liberty, the *Magna Carta* of 1215 ó was drawn up to **check** not just the **absolutistic** but also the **romanizing** tendencies of the tyrannical King John. Indeed, almost instantaneously, there was a vicious totalitarian papal reaction to *Magna Carta*.

First, it should be noted that the pope tried to help John to renege against *Magna Carta*. As Holinshed points out,<sup>96</sup> John’s ambassadors showed the pope a note of certain articles contained in the charter. That note seemed to make the most for the King’s purpose. Therewith, they declared that the King ó in an open assembly, when he and the Barons had met to talk of such matters ó had protested that the kingdom of England specially appertained to the Church of Rome. Consequently the King neither could, nor ought ó without knowledge of the pope ó ordain any thing anew.

Holinshed relates that the pope heard their tale. He considered the articles with bending brows (in witness of his indignation). Then he expressed this short answer: “And is it so, that the Barons of England go about expelling their King ó who has taken the cross upon himself, and who remains under the protection of the apostolic see? And do they indeed mean to translate the dominion [of England] ó which belongs to the Church of Rome ó to another? By St. Peter ó we cannot suffer this injury to pass unpunished!”<sup>97</sup>

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<sup>94</sup> *Ib.*, arts. 61-62.

<sup>95</sup> Arts. 63.

<sup>96</sup> *Op. cit.*, II pp. 323f, citing Matthew Paris & Polydor.

<sup>97</sup> II:323f, citing Matt. Paris & Polydor.

The pope was now on the warpath. In 1215, he not only proclaimed the blasphemous fiction of transubstantiation to be official Roman Catholic doctrine. Practically at the same time, he also sought to steal Britain from its inhabitants and to make it the Vatican's own papal property.

Within months of its signing, the pope denounced the charter. As Law Professor Edmunds observes,<sup>98</sup> the papal power attained its highest point under Pope Innocent III.

However, the next year in 1216 Pope Innocent was dead. Yet *Magna Carta* is still alive and well in both Britain and America even today.

Indeed, within less than a century after *Magna Carta*, even in France the tide had begun to turn against the pope. For then, Pope Boniface protested the acts of the French King Philip the Fair in levying taxes on estates of the Clergy. But as Boniface was excommunicating Philip, the soldiers broke into the papal palace and insulted Boniface.

Philip then succeeded in having Clement V, Archbishop of Bordeaux, named Pope. This Pope Clement took up residence at Avignon in France. So, until 1377, during the period known as the so-called "Babylonian Captivity" of the Church [1309-78], the popes were all Frenchmen and France was the seat of the papacy.

This produced the Proto-Protestant reaction of Wycliffe. After the papacy was restored to Italy [in 1378], the Church went through the "Great Schism" a period of forty years [1378-1412] until the protest of Huss. During that time, rivals claimed the papacy. Then the Council of Pisa [1409] attempted to solve the difficulty by deposing both rivals, and electing yet another.

### **Assessment of *Magna Carta* by Blackstone, Hume and Green**

Sir William Blackstone remarks in his *Commentaries on the Laws of England*<sup>99</sup> that with regard to the administration of justice, the charter besides prohibiting all denials or delays fixed the Court of Common Pleas at Westminster. This was so that the suitors might no longer be harassed with following the king's person in all his progresses.

At the same time, it also brought the trial of issues home to the very doors of the Freeholders by directing assizes to be taken in the proper Counties, and by establishing annual circuits. It protected every individual of the nation in the free enjoyment of his life, his liberty and his property unless declared to be forfeited by the judgment of his peers, or by the law of the land.

The famous Scottish sceptic Sir David Hume remarks that the essential clauses of *Magna Carta* [and of the "Charter of Liberties" of the 1216 of Henry III]<sup>100</sup> are those which protect the personal

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<sup>98</sup> *Op. cit.*, p. 227.

<sup>99</sup> Cited in *Hist. Hist.*, XVII, pp. 349f.

<sup>100</sup> *Op. cit.*, p. 138 & \*: "The words in brackets [ ] right before this footnote, as cited by Hallam in his book *Middle Ages* (II p. 324) explains Hume's are not in the original."

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liberty and property of all Freeman, by giving security from arbitrary imprisonment and arbitrary spoliation. "No Freeman shall be taken or imprisoned, or be dispossessed [of his freehold, or liberties, or free customs], or be outlawed, or exiled or any otherwise destroyed. Nor will we pass upon him, nor let pass upon him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or delay to any man justice or right."

Mr. Hallam adds that these words "interpreted by any honest court of law" convey an ample security for the two main rights of civil society. Therefore from the era of King John's charter "it must have been a clear principle of the constitution of Britain that no man can be detained in prison without trial. Whether courts of justice framed the [1679] writ of *habeas corpus* in conformity to the spirit of this clause, or found it already in their register "it became from that era the right of every subject to demand it."

History Professor J.R. Green states of King John's *Magna Carta*<sup>101</sup> that one copy of it still remains in the British Museum. It is impossible to gaze without reverence on the earliest monument of English freedom which we can see with our own eyes and touch with our own hands "the great charter to which from age to age patriots have looked back as the basis of English liberty."

But in itself, the charter was no novelty. Nor did it claim to establish any new constitutional principles. The *Charter of Henry the First* [1100f] formed the basis of the whole. Indeed, the latter in turn itself rested on ancient rights "all enshrined in Pre-Norman Anglo-British Law."

### ***Magna Carta* as assessed by Jeremy Lee and Eric Butler**

According to Jeremy Lee (in his publication *Conscience Voting*),<sup>102</sup> especially at *Magna Carta*, English Common Law was built on the Christian Faith. The functions of Lawmaker and Judge were separated. Government was bound by restrictions and finally divided into the three separate spheres of the Crown, the Lords and the Commons "with its counterpart in Australia of the Governor-General, the Senate and the House of Representatives."

Also Jeremy Lee's fellow Australian Eric Butler declares (in his publication *The Essential Christian Heritage*),<sup>103</sup> that one of the most famous and important landmarks in England's constitutional history was the signing of the *Magna Carta* in 1215. When the Caesar of the day, King John, attempted to combine both power and authority in his own person "he violated constitutional principles which had grown out of the climate created by the Christian Church."

There were three sovereignties represented at the historic event on the isle of Runnymede: the Crown, the Clergy, and the Barons who claimed to speak for the people. Although the barons provided the physical sanctions, these in turn were

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<sup>101</sup> *Op. cit.*, p. 128.

<sup>102</sup> J. Lee: *op. cit.*, p. 9.

<sup>103</sup> E.D. Butler: *The Essential Christian Heritage*, Barr, Fitzroy Vic., 1971, pp. 7f.

modified by the spiritual sanctions of the Church ó which in the person of Archbishop Langton played a decisive role in the formulating of *Magna Carta*.

Here was the Christian Church insisting not that complete power should be taken from one man and given to another group of men, but that power should be divided and subject to God's Law. As the famous English historian Sir Arthur Bryant writes in his *History of England* ó it was not Langton's wish to see the Crown overthrown; the Law ignored; the Realm divided; the Barons petty tyrants. What he wanted, was that the King should preserve the Law his predecessors created.

It was to the Law that the Archbishop appealed ó not only to the Law of man, but to the Law of God. For it was the essence of mediaeval philosophy that God ruled not just in Heaven but also here on Earth ó and that man, and kings above all men, must all further His ends by doing justice.

The underlying concept of *Magna Carta* was to establish every individual, irrespective of his station in life, in his rights. It was a striking manifestation of the application of the Christian concept of the sovereignty of the individual ó as too was English Common Law, one of the most priceless aspects of the essential Christian heritage.

*Magna Carta* was a major landmark in English constitutional development. But it is important to stress that basically it reaffirmed principles which had been accepted for centuries in England. What came to be known as English Common Law, grew out of the active part played by Christian theologians in attempting to evolve ways and means of successfully subordinating power to authority.

While English constitutionalists acknowledged the importance of the rule of law, they also grasped that unless a people's customs are considered in the development of any legal system, there can be serious injustices. Englishmen spoke less about wanting justice ó which can be an abstraction ó and more about their rights stemming from a tradition rooted in the Christian philosophy.

It was because later Englishmen in the North American colonies were denied what they considered their God-given rights, that they eventually revolted against the British Government. In a Christian society it is essential that members of the judiciary also accept the Christian basis of English Common Law, and are not afraid to pronounce against governments when they are violating the Common Law.

Although Britain, unlike the U.S.A. and the Commonwealth of Australia, has no single document called *the Constitution* ó the written *Magna Carta* is a major part of her partly written and partly unwritten Constitution-as-such. However, even to say that Britain has no true **written** Constitution, is misleading. It is also misleading to argue that the **totality** of the *Australian Constitution* was inscripturated in 1901, and therefore excludes *Magna Carta*. Thus Butler. For at bottom, the constitutions of Britain and America and Australia all root ó in the **written** Word of God.



### ***Magna Carta* as assessed by Bailey, Hogue and Churchill**

Sydney Bailey correctly writes in his book *British Parliamentary Democracy* that there is a British Constitution in the sense that there is a collection of basic rules and principles according to which Britain is governed. Indeed, the three main sources from which the British Constitution is drawn, are: the statute laws (Acts of Parliament such as *Magna Carta*); the Common Law and judicial decision; and the customs of the Constitution.<sup>104</sup>

Professor Hogue observes<sup>105</sup> that the modern doctrine of due process of law has evolved into a very sophisticated and complex concept. The many reissues and confirmations of *Magna Carta* have established a principle which the English people invoke whenever they feel that the king [or even his parliament] is acting arbitrarily.

Henry III, John's son and successor, re-issued the charter three times and confirmed the issue of 1215 on three occasions. Edward I, following Henry III, confirmed the charter three times. Eventually, it was confirmed at least thirty times before the close of the mediaeval period. In effect, each confirmation of the charter was an assurance that the king and like all of his subjects were **under** the law.

We must close with the words of perhaps the greatest Englishman of modern times. Sir William Churchill proclaimed<sup>106</sup> that *Magna Carta* must not be dismissed lightly. The Barons at Runnymede were in fact establishing the rights of the whole landed class, great and small and the simple Knight with two hundred acres, the Freeman or small Yeoman with sixty. Here is a law which is above the King, and which even he must not break. This reaffirmation of a supreme law and its expression in a general charter, is the great work of *Magna Carta*.

The underlying idea of the sovereignty of law, long existent in feudal custom, was raised by *Magna Carta* into a doctrine for the national State. And when, in subsequent ages, the State, swollen with its own authority, has attempted to ride roughshod over the rights and liberties of the subject and it is to this doctrine of *Magna Carta* constitutionalism that appeal has again and again been made and never, as yet, without success. Thus Churchill.

### **Summary: Anglo-Norman Common Law from *Domesday Book* to *Magna Carta***

Summarizing, we first of all saw that the Normans did not destroy but rather enriched Anglo-British Common Law. For the latter still continued, even under the Norman kings of England. William the Conqueror preserved Anglo-British freedoms, and promoted Britain's apostolic church at Glastonbury. Indeed, William even resisted the Romish papacy and precisely at a time when European Common Law on the Continent was being papalized more and more.

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<sup>104</sup> See *The Plain Truth*, Wilke, Melbourne, Sept. 1987, pp. 5f.

<sup>105</sup> *Op. cit.*, p. 54.

<sup>106</sup> W. Churchill: *History of the English-Speaking People* (*ad loc.*).

Under the Conqueror's son the Norman King William I alias Rufus, however, England deteriorated. Curfews were introduced, and trial by battle tended to overshadow trial by due process of law.

After the death of Rufus, his younger brother Henry I restored the Anglo-Saxon Laws of Edward the Confessor. Yet after his death, with the rise of Neo-Roman Civil Law and Roman Canon Law throughout Europe, England fell into anarchy under the 1135-53 romanizer King Stephen. However, under his successor King Henry II, the power of the papacy in England was considerably diminished.

This can be seen in the showdown between King Henry II and Rome's Thomas a Becket and especially in the A.D. 1164 *Constitutions of Clarendon*. The total impact of King Henry II's legal reforms, was very considerable. For under him, English Common Law was standardized.

The reign of the Lionhearted good King Richard I marked the enactment of the first English statutes and the beginning of the end of Norman England. Prince Madoc the Celto-Briton migrated from Wales to North America, and Scotland somewhat resisted the papal claims. Late-Norman legal treatises on Anglo-British Common Law included those of the Anglo-Norman Glanville (who limited the scope of Roman Canon Law). Indeed, the Common Law jury system became very strong in mediaeval England.

Meantime, the rift between the Church of Rome and the Kingdom of England constantly deepened. It is true that Pope Innocent III did manage to subjugate King John and to elevate transubstantiation to official Roman doctrine at the 1215 Fourth Lateran Council. It is also true that King John surrendered to the papal legate Pandolph, and capitulated in his 1214 *Ecclesiastical Charter*. But precisely this antagonized the Barons of Britain, and set England on the road to *Magna Carta*.

We then gave Barrister Flintoff's legal analysis of *Magna Carta*, and the *Historians' History's* assessment of the historical significance of that document. Next we presented important excerpts from the text of the charter itself, and discussed especially its thirty-ninth article as an expression of the spirit of the whole.

The pope of Rome, however, was perturbed. For he denounced England's *Magna Carta*, and attempted to excommunicate her Barons. The charter's great legal and historical significance has been assessed by Blackstone, Hume and Green and its political importance by Jeremy Lee, Eric Butler, Bailey, Hogue and Churchill.

*Magna Carta* simply summarizes and restates the rights of Englishmen under their Common Law as formulated earlier, from Alfred the Great to Edward the Confessor. Theologically, it is grounded in the Law of God.

As Sir Winston Churchill firmly put it, the charter represents a law which is above the king and which even he must not break. In subsequent centuries, as we shall soon see, it is precisely to *Magna Carta* that appeal has again and again been made and never, as yet, without success.

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Let us now briefly trace the development of British Common Law between the 1215 *Magna Carta* and the A.D. 1517 Protestant Reformation.

King John died and was succeeded by his son King Henry III soon after *Magna Carta* in 1216, at the very acme of papal power. Over the previous seventy years, Romanism had been flooding into Wales for the first time ever. Simultaneously, it peaked in Ireland and Scotland as well as in England.

### Henry III and the initial reconfirmations of *Magna Carta*

Scottish sceptic and historian Sir David Hume writes<sup>1</sup> of the English King Henry III that the chief grievances of the reign were the usurpations and exactions of the Court of Rome. The best benefices of the Kingdom of England were conferred on Italians. Non-residence and pluralities were carried to enormous lengths. The English Barons, however, resisted both the errors of their King as well as the encroachment of the Vatican.

Thus the King was engaged in constant disputes with his Barons. Indeed, he was compelled to (re)confirm the *Great Charter* on one occasion, with extraordinary solemnity. The King bore a part in this ceremony, saying: "So help me God, I will keep all these articles inviolate as I am a man, as I am a Christian, as I am a Knight, and as I am a King crowned and anointed!"

Already at the coronation of Henry in 1216, *Magna Carta* was again ratified and republished. The text was somewhat updated, and several improvements were introduced. Thus: lords were now bound to defend the interests of their vassals; all provisions regarding wardships were extended to vacant benefices; carriage-rates for the king's use, were fixed; and the repayment of his debts was regulated.<sup>2</sup>

Especially to finance various wars, Henry had to raise revenues. To this end, he needed to convene his "Great Council" (alias "Parliament"). As *The Historians' History* observes,<sup>3</sup> when Henry met members of his Parliament in 1244 he found it more refractory than it had ever been.

In reply to his demands for money, they taxed him with extravagance. With his frequent breaches of the *Great Charter*, they told him that they would no longer trust him. They must have in their own hands the appointment of the Chief Justiciar, the Chancellor, and other Great-Officers. The King, however, would consent to nothing more than another ratification of the original *Magna Carta*. After this, he regarded a meeting of Parliament as a meeting of his personal enemies.

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<sup>1</sup> *Op. cit.*, pp. 143f.

<sup>2</sup> Thus *Hist. Hist.*, XVIII, p. 364.

<sup>3</sup> *Op. cit.*, XVIII, pp. 373.

## Professor Brewer on the origin and progress of Parliament

At this point, a citation from Professor Brewer about the "Origin and Progress of Parliament" will be very helpful. Brewer writes<sup>4</sup> that the word for *Parliament* is derived from the French word *Parlement* (compare the Latin word *Colloquium*) which signifies any assembly that meets and confers together. It appears on the close rolls of 1244, as applied to the meeting of King John and the Barons at Runnymede (in 1215 A.D.). The constituent parts of Parliament in its more restricted sense are the Sovereign, and the Realm's three estates – the Lords Spiritual and the Lords Temporal (who sit together with their Sovereign in one House of Lords), and the Commons (who sit by themselves in another).

In the House of Lords, the spiritual peerage consisted originally of Archbishops and Bishops and Abbots and of the Lay-Peerage, only of Barons. The Members of the House of Commons consisted originally of the Knights of the Shires, and the Burgesses (or Representatives of the Cities, Universities and Boroughs). The origin of the Knights of the Shires, is traced to the fourteenth clause in the *Great Charter* of John by which the Sheriff was bound to summon to the Great Council all the inferior Tenants-in-Chief.

It was the practice that the petitions of the Commons, with the respective answers made to them in the King's name, should be drawn up after the end of the session in the form of laws and entered upon the statute-roll. In 1430 A.D., the persons who had the right of voting for Knights of the Shire, were declared<sup>5</sup> to be all freeholders of lands and tenements of the annual value of forty shillings. This then entrenched the good historic principle of qualified franchise.

## The many subsequent ratifications of the *Magna Carta*

Significantly, *Magna Carta* alias the "Great Charter" is known to have been ratified at least thirty-eight times before the Protestant Reformation – six times by Henry III (1216-72), thrice by Edward I; fifteen times by Edward III; six times by Richard II; six times by Henry IV; once by Henry V; and once by the 1422-61 Henry VI. At each point, in general, civic liberties were re-affirmed and progressively extended.

Thus, in 1225 during Henry's Christmas at Westminster he convened his High Court of Parliament. The Elizabethan chronicler and historian Holinshed explains<sup>6</sup> that two charters were confirmed by the King – the one titled *Magna Carta* and the other *Carta de Foresta*. Thus, at this Parliament, these good laws and laudable ordinances were made and confirmed. Subsequently, they have been confirmed from time to time by the kings and princes of the Realm. Consequently, a great part of the law now in use depends upon it. The same charters were also directed to be sent forth into, and to be proclaimed within, every County of the Realm.

In the year 1225, a decree came forth from the Archbishop of Canterbury and his Suffragans. It required that the concubines of Priests and Clerics within orders and for so

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<sup>4</sup> *Op. cit.*, pp. 226f.

<sup>5</sup> By 8 Hen. VI c. 7.

<sup>6</sup> *Ib.*, p. 149.

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were their wives then called, in contempt of their wedlock ó should be denied Christian burial. The only exception was if they repented while they were alive and in perfect health ó or otherwise showed manifest tokens of repentances at the time of their deaths.

By 1228, the King ó minding the benefit of the Commonwealth ó caused weights and measures in general within the land to be reformed according to one standard. Then, in 1237, in a Parliament held at Westminster, the King requested a subsidy from his subjects. This request was not very well taken. But yet, at length, he promised to be a good Lord to them. They agreed to the request ó when they saw the King did not seek to infringe and disannul the grants (which he had made) by pretending to need the pope's confirmation.

In consideration of this grant, the King, at the request and by the counsel of the Lords of his Realm, soon granted and confirmed the liberties and customs contained in the two charters (*Magna Carta* and *Carta de Foresta*). The following addition was added at the end: "By this present charter, we have confirmed our Kingship by all the foresaid matters ó all the freedoms and free customs contained in our Charters which...had been made..., namely in our *Magna Carta* and in the *Carta de Foresta*."<sup>7</sup>

Succinctly, even the sceptical historian Sir David Hume rightly observes<sup>8</sup> that as early as the reign of Henry III (1216-72) the legal equality of all Freemen below the rank of peerage, appears to have been completely established. The civil rights of individuals were protected by that venerable body of **Ancient Customs** which, under the name of the "Common Law" ó still obtains in our Courts of Justice. Its origin is lost in the obscurity of remote antiquity.

### **The Jurist Dr. Henry Bracton's *Laws and Customs of England***

In 1250, the great Anglo-Norman Jurist Dr. Henri de Bracton or Henry Bracton (LL.D.) ó the later Lord Chief Justice of England ó began writing his masterpiece *On the Laws and Customs of England*. It was the earliest systematic and comprehensive (though unfinished) treatise on British Common Law ever written. Indeed, it was quite "the crown and flower of English mediaeval jurisprudence." Thus many Law Professors, and notably both Pollock and Maitland.

Bracton's great work *On the Laws of England* seems to have been completed by 1258. Nine-tenths of his treatise is taken from the plea rolls of the English Courts. His extant *Note Book* even records more than 2000 cases. Henceforth, law reports increasingly became the repositories of judicially declared "unwritten law" ó alias the Common Law of England.<sup>9</sup>

Bracton was influential even till the 1765 time of Blackstone. For Bracton the theocrat said (both anti-democratically and anti-tyrannically) that "the king himself

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<sup>7</sup> *Op. cit.* II, pp. 357f,362,380f: "Hac praesenti charta, confirmavimus omnibus praedictis de regno nostro – omnes libertates et liberas consuetudines contentas in chartis nostris, quas...fieri..., scilicet in *Magna Charta nostra* quam in *Charta de Foresta*." Holinshed here also cites Matt. Paris & Polyd.

<sup>8</sup> *Ib.*, p. 225.

<sup>9</sup> *Enc. Amer.*, 7:411f.

ought not to be subject to man, but subject to God and the law. For the law makes the king. The king also hath a superior, namely God ó and also the law by which he was made king.<sup>10</sup>

### **King Henry III's Parliaments of A.D. 1253 and 1258**

In 1253, Henry again convened Parliament ó allegedly to raise revenues so that Christ's tomb in Palestine might be recovered from the Saracens. In exchange for voting funds toward this, Parliament insisted on a fresh and solemn confirmation of their liberties. The pope ordered the English clergy to lend money for the expedition. Indeed, for that same purpose Henry himself levied huge contributions from the churches of England and Ireland.

The *Historians' History* observes<sup>11</sup> that the wholesale spoliation of the Church also had the effect of lessening the clergy's loyalty toward Henry as well as its reverence for the pope. It also shook that power which had already attained its highest pitch with Innocent III at his Fourth Lateran Council in 1215.

*Magna Carta* stood against such human absolutism. The papacy, therefore, was thenceforth gradually to decline. The Bishop of London said that the pope and king were indeed more powerful than he; but if they took his mitre from his head, he would clap on a warrior's helmet. Thereupon, the pope's legate Rustan moderated his demands ó and withdrew.

In 1258, Parliament met at Oxford. There, observes the *Historians' History*,<sup>12</sup> the great Barons summoned all who owed them military service ó to attend in arms.

Thus secured from the attack of the foreigners in the King's pay, they proceeded to their object with great vigour and determination. The Committee of Government was appointed, without a murmur on the part of the timid Henry. It consisted of twenty-four Members, twelve of whom were chosen by the Barons. Cf. Revelation 4:4-11; 11:16-18; 21:12-14.

The Parliament then proceeded to enact that four knights should be chosen by the votes of the Freeholders in each County. It would be the duty of appointees: to lay before the Parliament all breaches of law and justice that might occur; to see to it that a new Sheriff should be chosen annually by the Freeholders in each county; and to insist that three sessions of Parliament should be held regularly every year.

### **Simon de Montfort and the movement toward more representative government**

It was especially the *circa* A.D. 1208-65 Baron Simon de Montfort ó Earl of Leicester and husband of Henry III's sister ó who promoted the expansion of Representative Government. In 1258, Simon forced Henry to turn over the

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<sup>10</sup> *Op. cit.*, 5b. ðRex...debet ease...sub Deo et sub lege.ö Cited by G. Booth's *op. cit.*, p. 29 n. 6 & p. 30 n. 12.

<sup>11</sup> *Op. cit.*, XVIII, p. 375.

<sup>12</sup> *Op. cit.*, XVIII, pp. 377f.

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government of England to a Council of Fifteen which ruled first under the *Provisions of Oxford* and, from 1259 onward, under the *Provisions of Westminster*.

Simon won a great victory at Lewes in Sussex during 1264, and planned to place the whole realm under such *Provisions*. Thus, in 1265, he convened Parliament summoning Knights from every Shire, and Representatives from every Borough throughout the Nation. Sadly, however, he then soon fell in battle.<sup>13</sup>

Yet the *Historians' History* rightly comments<sup>14</sup> that Simon de Montfort, at the very moment of his fall, set the example of an extensive reformation in the frame of Parliament. It may indeed be considered as the practical discovery of popular representation.

De Montfort's private life was beyond reproach. A blameless husband, a kind father, a constant friend and he was the model of a Christian knight and gentleman.

He commended himself to the prayers of the religious. Humbly, as with brotherly affection, he begged to be allied with them in the pouring out of prayers to God for the state of the Realm and the peace of the Church.

He was constant in supplication that divine grace might keep him spotless from avarice and covetousness of earthly things (Exodus 18:12-25). The Earl, like a second Joshua (Exodus 24:1-13f cf. Deuteronomy 31:22f), revered justice as the very medicine of his soul.

The Parliaments even of Henry III thus became more and more broadly representative. Indeed, the Parliament of 1265 was the Model Parliament. It was the Assembly whose pattern, in its essential features, set the standard which in the end was followed and which has lasted till our own time. Thus *The Historians' History*.<sup>15</sup>

### The "English Justinian" King Edward I (A.D. 1272-1307)

Henry III was succeeded by his son Edward I, who ruled from 1272 till 1307. On the one hand, Edward consolidated the growing union between England and Wales. On the other hand, he clearly confirmed his desire and intention to abide by *Magna Carta* (which John and Henry III before him had reluctantly though repeatedly been forced to do).

The famous Jurist Sir Frederick Pollock declares<sup>16</sup> that in 1284 Edward I's *Statutes of Wales*, in their Preamble, acknowledge the bounty of Providence whereby the land of Wales has been annexed to his crown as part of the body of the kingdom. *Divina Providentia...terram Wallie...subiectam...cum integritate convertit et corone regni.*

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<sup>13</sup> Art. *Montfort, Simon de, Earl of Leicester* in *New Illustrated Columbia Encyclopedia* (New York: Columbia University Press), 1979, 15:4525.

<sup>14</sup> *Op. cit.*, XVIII, pp. 382f.

<sup>15</sup> *Op. cit.*, XVIII pp. 427f.

<sup>16</sup> Cited in Maine's *Anc. Law*, p. 122.

Too, in the 1297 *Confirmation of Charters*, a writ was issued by Edward I ó confirming his intention to abide by the 1215 *Magna Carta*. States that writ: “All such persons as...are assembled for the same Commons in any Parliament, ought to have their freedom to speak and say in the House of their Assembly whatever they think convenient or reasonable.”

The *Historians’ History* remarks<sup>17</sup> that Edward the First enacted many just and wise laws for his Christian subjects. At the Parliament which met in May 1275, under the presidency of the Lord-Chancellor Burnel ó who had early distinguished himself not only in the Civil and Canon Law but also in the Common Law of England ó was passed the *Statute of Westminster the First*. Lord Campbell explains that it is chiefly from this that Edward has obtained the name of the “English Justinian.”

Edward deserves much praise for the **sanctions** he gave to undertakings. In 1299, for example, all the Judges of the land were indicted for bribery. Only two of the number were acquitted. The Chief Justice of the Court of King’s Bench was convicted of instigating his servants to commit murder, and of protecting them against the law after the offence. Truly, Edward did not spare any delinquents ó no matter how high their stations.

The 1929 *Encyclopaedia Britannica* ó in its article on the “Statutes of Westminster” ó has well summarized those three Edwardian measures. In the words of Stubbs in his *Constitutional History* (chapter XIV), the act produced at and by the A.D. 1275 *Statute of Westminster I* is almost a code ó and covers the whole ground of legislation. Its language sometimes recalls that of Canute or Alfred; and at other times anticipates that of our own day.

On the one hand, **common right** is to be done to all, poor as well as rich, without respect of persons. On the other, elections are to be free ó and no man is by force, malice or menace to disturb them. The spirit of the Great Charter [alias *Magna Carta* of A.D. 1215] is not less discernible there.

The *Statute of Westminster II* was passed in the Parliament of 1285. Like the first Statute, it is a code in itself, and contains the famous clause *de donis conditionalibus*. That was one of the fundamental institutes of the mediaeval land-law of England.

Stubbs says of it that the laws of dower, of advowson and of appeal for felonies were largely amended; the institution of justices of assize were remodelled, and the abuses of manorial jurisdiction were repressed. The statute *De Religiosis* and the statutes of Merton and Gloucester were amended and re-enacted. Every clause has a bearing on the growth of the later law.

The Statute *Quia Emptores* of 1290, is sometimes called the *Statute of Westminster III*. As the 1979 *New Illustrated Columbia Encyclopedia* explains, *Westminster III* (also called *Quia Emptores*) provided that in the case of alienation of an estate or part of an estate ó the new holder should hold directly from the overlord rather than from the old holder. Thus, the Statute stopped the process of subinfeudation.

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<sup>17</sup> *Op. cit.*, XVIII, pp. 394 & n. 1.



## History Professor J.R. Green on King Edward I of England

History Professor J.R. Green writes<sup>18</sup> that the most important court of civil jurisdiction ó the Sheriff's or the County Court ó remained unchanged both in the extent of its jurisdiction and as to the character of the Sheriff as a Royal Officer. However, there was also the establishment of an **equitable** jurisdiction side by side with that of the **Common Law**. In his reform of 1178, Henry the Second had broken up the older King's Court. For all cases in which they failed to do justice, were reserved for the special cognizance of the Royal Council itself.

The Chancellor, who had perhaps originally acted only as President of the Council when discharging its judicial functions, acquired at a very early date an independent judicial position of the same nature. It is by remembering the origin of the Court of Chancery that we understand the nature of the powers it gradually acquired.

All grievances of the subject, especially those which sprang from the misconduct of government officials or of powerful oppressors, fell within its cognizance. For they fell within that of the Royal Council. To these were added disputes respecting the wardship of infants, dower, rent-charges, or tithes.

In legislation, as in his judicial reforms, Edward renewed and consolidated the principles which had already been brought into practical working by Henry the Second. Significant acts announced Edward's determination to carry out Henry's policy of limiting the independent jurisdiction of the Church. He was resolute to force it to become thoroughly national, by bearing its due part of the common national burdens and to break its growing dependence upon Rome.

The *Statute of Winchester* (1285), the greatest of Edward's measures for the enforcement of public order, revived and reorganized the old institutions of national police and national defence. It regulated the action of the Hundred, the duty of watch and ward, and the gathering of the Fyrd or Militia of the Realm. Every man was bound to hold himself in readiness, duly armed, for the King's service, in case of invasion or revolt, and to pursue felons when hue and cry were raised after them. Every district was made responsible for crimes committed within its bounds. *Cf.* Deuteronomy 19:3-12f.

It is to the large statesmanship of Edward the First, that we owe our Parliament. The Burgess, originally summoned to take part only in matters of taxation, was at last admitted to a full share in the deliberations and authority of the other orders of the State. The admission of the Burgesses and Knights of the Shire to the Assembly of 1295, completed the fabric of the representative Constitution. At least in England, it is difficult to see how the great changes of the Reformation could have been brought about otherwise.

Green concludes<sup>19</sup> anent these Burgesses of the Early-English Boroughs, that it is this characteristic of the Boroughs which separates them at once from the Cities of Italy. In England, the tradition of Rome had utterly passed away with the Roman

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<sup>18</sup> *Op. cit.*, pp. 170f.

<sup>19</sup> *Ib.*, pp. 194f.

evacuation of South Britain in A.D. 397 ó while feudal oppression was held fairly in check by the Crown.

The English Town, therefore, was in its beginning simply a piece of the general Country ó organized and governed precisely in the same manner as the Townships around it. The obligations of the dwellers within its bounds, were those of the Townships around ó to keep fence and trench in good repair; and to send a contingent to the Fyrd, and a Reeve and four men to the Hundred Court and Shire Court.

However, when once these dues were paid and these services rendered ó the English townsman was practically free. His rights were rigidly defined by custom. Property and person alike were secured against arbitrary seizure. He could demand a fair trial on any charge; and even if justice was administered by his master's Reeve, it was administered in the presence and with the assent of his Fellow-Townsmen. The bell which swung out from the town tower gathered the Burgesses to a Common Meeting ó where they could exercise rights of free speech and free deliberation on their own affairs.

### **The further historical and legal importance of King Edward I**

The *Historians' History* states<sup>20</sup> that in 1295, Edward definitely adopted the model which with the summoning of Knights, Citizens and Burgesses has ever since been the rule. In 1297, the famous *Confirmatio Cartarum* was enacted. The power of arbitrary taxation was surrendered. No tax was any longer to be levied by the King, without the sanction of Parliament.

The above-mentioned A.D. 1297 *Confirmation* or *Great Charter of the Liberties of England and of the Liberties of the Forest*, re-asserted the old rights outlined earlier in the *Magna Carta* and the *Carta de Foresta*. In addition, however, Edward the First's *Great Charter* further preserved all the old liberties and customs of England's Cities and Towns. Right to a Jury was further elaborated in the provision that the punishment of a guilty Freeman shall be assessed by the oath of honest and lawful men of the vicinage ó and that his imprisonment or dispossession could be accomplished only by the judgment of his peers or the law of the land.<sup>21</sup>

As Holinshed points out,<sup>22</sup> in the very year of his death (1307) Edward I held a Parliament at Carlisle. There, by the Peers of the Realm, great complaint was made about the oppressions done to churches, abbeys and monasteries ó by reason of payments lately raised and taxed by one Master William or Guilelmo Testa, the pope's chaplain. A command was given to the same chaplain ó that from thenceforth he should not levy any such payments. This, of course, was a further blow to the papacy.

King Edward I was tall of stature. He was wise and virtuous ó an earnest enemy of the high and presumptuous insolence of priests, which he judged to proceed chiefly from too much wealth and riches. So therefore, he devised the *Statute of Mortmaine*

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<sup>20</sup> *Op. cit.*, XVIII, pp. 427f.

<sup>21</sup> See *Issues Paper No. 20: Review of the Preservation and Enhancement of Individuals' Rights and Freedoms*, Electoral and Administrative Review Commission, Brisbane, June 1992, p. 44.

<sup>22</sup> *Op. cit.*, II:478.

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(1279 A.D.) ó to be a bridle to their inordinate lusts and riotous excess. He was surely not only valiant, but also political ó labouring to bring this divided Isle into one entire monarchy. He came very near to succeeding.<sup>23</sup>

Barrister-at-law Flintoff explains<sup>24</sup> that Edward the First has justly been styled our *English Justinian*. He established, confirmed and settled the *Great Charter* and the *Charter of Forests*. By establishing courts, he gave a mortal wound to the encroachment of the pope and the latter's clergy. Edward defined the limits of the several temporal courts of the highest jurisdiction. Indeed, he settled the boundaries also of the inferior courts ó in Counties, Hundreds, and Manors. Further, he secured his subjects' property for them ó by abolishing all arbitrary taxes. He also guarded the common justice of the kingdom from abuses.

It was from his time onward (A.D. 1272*f*), that the **exact observance** of *Magna Carta* should be dated ó rather than from the time of its (1215*f* A.D.) **making** (or from the time of its subsequent **renewals** in the days of his grandfather and father). Under Edward, the liberty of Englishmen again began to rear its head. We cannot give a better proof of the excellence of his constitutions, than to point out that during the two centuries from his time (1272-1307) to that of Henry VIII (1509-1547) ó very few (and quite inconsiderable) alterations in the legal forms of proceedings took place. Thus Flintoff.

**The growth of the Law and of Parliament  
in the time of King Edward I**

We have already looked at the development of English Common Law both in the *Magna Carta* and in the *Treatises* of Bracton. *Fleta* was yet another ancient English Common Law treatise. It was subtitled: *Commentary of English Law*. It seems it was written in the Fleet's prison ó hence its short title *Fleta*.

Apparently recorded around 1290 during the reign of King Edward I, it epitomizes Bracton. Yet it also includes information on agricultural law. Unlike Glanville and Bracton, *Fleta* (like the work of Britton after it) mentions the punishment of stark imprisonment for those who stand mute and enter no plea after being accused and convicted of felony by two successive juries.<sup>25</sup>

In 1292 A.D., the Anglo-Norman Jean le Breton (alias John Britton) wrote his *Summa(ry) of the Laws of England*. It was the first great treatise on British Law written in the French language. Indeed, it was so written precisely for the benefit of the Norman conquerors of England ó before their own complete anglicization.

For English Common Law would not yield to the Normans. To the contrary, the Normans would yield to Britain. They so yielded, immediately, to British Common Law ó and ultimately, even to the English language.

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<sup>23</sup> *Ib.*, II:544f.

<sup>24</sup> *Op. cit.*, p. 185.

<sup>25</sup> Thus Blackstone's *Comm.*, IV pp. 322f.

Discussing parliamentary growth during the thirteenth century in England, the *Historians' History* states<sup>26</sup> that from a constitutional point of view as well as in many other respects ó this age may be deemed the most important of all periods in English history. It is the time during which the nation and its laws and its language finally assimilated whatever was to be assimilated of the foreign elements brought in by the Norman Conquest. It finally threw off whatever was to be thrown off.

Indeed, even the very first Norman king, the 1066f/William the Conqueror himself, is in the *English Chronicle* said to have had ðvery deep speech with his *Witan*.ö Note: with ðhisö *Witan*; indeed, with his öWitan.ö Significantly, this word ðWitanø ó the Saxon word for ðCouncilø ó was already then being adopted even by the Normans themselves.

Even William the Conquerorø above-mentioned ðdeep speech with his *Witan*ö is also very significant. For this phrase ðdeep speechø ó in French *parlement* ó was the distinguishing feature of a meeting between king and people. In the end, it gave its name (ðParliamentø) to the Assembly itself.

The Constitution of the Assembly, as defined in the *Great Charter* of 1215, showed that the full establishment of representation could not be delayed for long. The work of this period was to call up ó alongside of the gathering of Prelates, Earls and other Great-Men specially summoned (as the ðHouse of Lordsø) ó another Assembly directly representing all other classes of the nation which enjoyed political rights. This Assembly, chosen by various local bodies or communities ó having a *quasi*-corporate being ó gradually came to bear the name of the ðHouse of Commons.ø

The Knights of the Shire ó the Barons, Citizens, and Burgesses of the Towns ó were severally chosen by the community of that part of the people which they represented. We thus get the two Houses ó that of the Lords and that of the Commons. The **English** system thus went far to take in the whole free population ó while the ðEstatesø of **other** countries (their ðCommonsø no less than their ðLordsø) must be looked upon as privileged bodies.

In England, however, there were in truth no ðEstatesø for there was **then** no hereditary ðnobilityø in the foreign sense. In one word, even in the thirteenth century, the English government **then** ó as also later under the Puritan Commonwealth ó was essentially a ðre-public-anø system. Indeed, after a short-lived Post-Puritan perversion and degeneration into a centralistic tyranny ó it is this original ðre-public-anø system that free Englishmen sought to re-establish in North America in 1776.

Now after the eclipse in Britain of the Anglo-Saxon *Folk-Moot* and *Witena-Gemot* ó although the latter lived on under the Norman House of Lords ó the former only developed into the Anglo-Norman House of Commons during the reign of Edward I (1272-1307). Edward himself consented that there would be no taxation, except by common consent.

Indeed, certainly before the time of Edward III (1327-1377), the King-in-Council was regularly meeting with his ðLordsø and his ðCommonsø at the same time ó in the Great Painted Chamber at Westminster. Whenever the King then demanded financial

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<sup>26</sup> *Op. cit.*, XVIII p. 425.

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aid from the Commoners ó the ÆCommonsø would retire to a different room (later to be called Æthe House of Commonsø) to discuss this.

The development of the Scottish Parliament from 1326 onward, was not too dissimilar from that of its above-mentioned English counterpart. Rev. James Mackenzie in his *History of Scotland* writes<sup>27</sup> that the Baron who held Court on his own estate with his vassals ó was himself a vassal of the King as the Chief Baron. As the vassal of the King, the Baron (or ÆLairdø) was bound according to the same feudal rules to give attendance and service in the King's Court.

The first meeting of the King's Court or National Council of Scotland to which the name of *Parliament* was given, took place in the reign of King-of-straw Baliol. It was held at Scone. It banished all Englishmen from Scotland.

As the Burghs rose in importance, they began to send Representatives to the National Council. Members for the Burghs were present in the Parliament which the great King Robert held in the summer of 1326. From that time forward, the great National Council regularly comprised the three ÆEstatesø (of King, Lords, and Commons).

Parliaments anciently had no fixed place of meeting ó but assembled sometimes in one Town, sometimes in another. This circumstance led, in the case of the English Parliament, to a no less important result than the division of the Legislature into a House of Lords and a House of Commons.

The conjecture is that in some Towns where Parliament met, there being no single room large enough to accommodate the whole body, the Great Lords took one room, while the representatives of the smaller Barons and of the Burghs took another. The division, occasioned at first by so simple an accident, gradually became established. The Scottish Parliament, however, was never divided, but continued to meet together as one body to the last.

### **The Pre-Renaissance and the Pre-Reformation in Europe and Britain**

The two great religious developments at the end of the late-mediaeval period ó were the Pre-Renaissance, and the Pre-Reformation. They were often intertwined. We commence our discussion of the former from about A.D. 1260*f*, and the latter from *circa* 1360*f* onward.

In the Pre-Renaissance (*circa* 1260*f* A.D.) ó *cf.* Daniel 7:25*f* & Revelation 11:2-3 & 12:6,14 & 13:5 ó especially in Italy men were stimulated by the Paganism of the Ancient Greeks (only then being rediscovered). This was often brought to light by mediaeval Moslem Arabs, seeking to demonstrate their own viewpoint as to the assumed superiority of Oriental Islam over what they regarded as Western Paganism. However, the latter was then transmitted deeply into the society of Europe itself.

In his ecclesiastical ethics, the Italian Thomas Aquinas (1225-74) followed the pagan Greek writings of Aristotle more than Holy Scripture. Roger Bacon (1214-94)

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<sup>27</sup> *Op. cit.*, pp. 186-89.

empirically developed the natural sciences. Raymond Lully (1235-1315) drew even from the Jewish *Cabbala*, and developed geometry mystically. Pico della Mirandola (1463-1494) asserted man's freedom of choice. Girolamo Savonarola (1452-98) turned from medical science to fiercely denouncing the deformation of the Church and the corruptions of the pope's court. And Marsilio Ficino (1433-99) sought to syncretize humanism and Christianity.

It is true that the most famous of all Romish philosophers and theologians, Thomas Aquinas ó promoting a syncretism between Stoicism and Christianity ó wrongly believed that man had common property and only nature revelation before the fall. Yet even Thomas elsewhere wrote<sup>28</sup> in his 1260*f Summa* that Holy Scripture was given for the **correction** of the Natural Law ó either because it supplies what was lacking in the Natural Law, or because Natural Law was perverted in the hearts of fallen men. Indeed, that perversion certainly stood in need of correction ó alias reformation. Only Protestantism and Puritanism, however, would bring this to pass.

Nevertheless, under the influence of both the 1260*f* Pre-Renaissance and the 1360*f* Pre-Reformation ó even Rome now began to pay some attention to the authority of Holy Writ. Rome did so, of course, to a very much lesser extent than did the various Pre-Reformers and the later Protestant Reformers. Yet even the Pre-Renaissance re-discovered classical literature. Furthermore, the Pre-Reformation re-discovered at least part of the authority of Holy Scripture. Even Rome, but especially the Pre-Reformers, benefitted from this.

The late-mediaeval period strengthened the Papacy and thus paved the way for the Protestant Reformation not just in Northern Europe but especially in Britain. For the Papacy was not so much international, as antinational. It denationalized and -internationalized (or rather *de facto* -romanized) the various nations.

Culturally, this tended to romanize or rather to semi-italianize them. Indeed, though **anti-national** toward Non-Italians (as regards **their** nationalities) ó the Papacy was in fact **very nationalistic** in its desire to romanize or to **semi-italianize** all of those Non-Italians. However, this understandably elicited growing nationalistic resistance toward the Vatican ó especially on the part of Non-Italians.

Many of the latter, under the influence of Pre-Reformers like John Wycliffe and Jan Hus (hereinafter anglicized to John Huss), turned to the Bible in order to garner support against Rome. Hence, the Papacy waned somewhat ó from 1250*f* onward. Politically, it now began to give way to ever-stronger Christian national governments outside of Italy. In insulated England, this included upholding also the Anglo-British Common Law.

### **The situation in Scotland from Robert the Bruce to the Scottish Wycliffites**

The Celts had lost control in Scotland ó first to the English around 1068 A.D., and then to the Normans and other Norsemen from about 1100 onward. Yet the various national princes of Europe were now beginning to challenge the papal claims of the

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<sup>28</sup> *Summa*, I of 2, Q. 94, art. 5, obj. 1.

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Vatican ó as well as the imperial claims of the so-called 'Holy Roman Empire' to be their temporal rulers. Thus Robert the Bruce, the 1306 King of Scotland, rightly protested to the pope ó against the latter's attempt to subjugate Britain.

Isabel Hill Elder states<sup>29</sup> in respect of the 1315 Scottish King Robert the Bruce that continual friction and frequent outbursts of resistance to Romish encroachments marked the whole period of Rome's attempted dominations in Britain. These are exhibited in such outbursts as the letter of King Robert Bruce and his nobles to Pope John. British independence, civil and ecclesiastical, is well expressed in the words of Robert the Bruce:<sup>30</sup> 'It is not glory; it is not riches; neither is it honour ó but it is liberty alone that we fight and contend for, which no honest man will lose but with his life.'

In 1325, even Marsilius of Padua defended civil power, as over against the Papacy. Indeed, around 1345, William of Ockham in England advocated the radical separation of the Church from the State ó in all political matters. He opposed both Aristotelian realism as well as the temporal power of the Vatican.

This prepared the way for both the Englishman Henry VIII and the German Martin Luther. As the latter later admitted: *Ich bin von Ockhams Schule* ó 'I am of Ockham's School.' Thus, Luther represented the synthesis of two earlier Englishmen ó John Wycliffe and William of Ockham. He also foreshadowed two other Englishmen ó Henry VIII and Oliver Cromwell.

Yet nationalism was then on the rise not only in England, but also in Scotland. The Scottish Royal Chaplain Dr. Warr once explained<sup>31</sup> that this dominating idea of nationalism in Scotland (and elsewhere) had always proved a thorn in the flesh of the Papacy. The 'War of Independence' between Scotland and England in the opening years of the fourteenth century, and the thunders which the Papacy let loose against Robert Bruce and the patriot bishops, created a rupture with Rome which two hundred years later yielded its own harvest.

It was the churchmen who led the Scottish people in their heroic defiance of both England and the Papacy. With the excommunication of Robert the Bruce, the 'Scottish Reformation' had in fact begun.

From 1406-37, writes Rev. James Mackenzie,<sup>32</sup> the Scottish King James I proceeded in the work of restoring order to the kingdom. He applied himself with all his uncommon vigour to get good laws made and enforced. His good sense caused them to be issued in the Scottish tongue. It was his practice to assemble Parliament very frequently, and to rule the country in a regular and constitutional way through Parliament.

Up to this time, the smaller Barons had been summoned to give attendance on the Scottish Parliament along with its great Lairds. It was now enacted that the smaller

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<sup>29</sup> Wright's *History of Scotland*, I, pp. 140-42.

<sup>30</sup> *Op. cit.*, p. 111.

<sup>31</sup> *Op. cit.*, pp. 221f.

<sup>32</sup> *Op. cit.*, pp. 206f & 210.

Barons of each sheriffdom should elect two or more of their number to represent them in Parliament.

In this way, the important principle of a representative government was introduced. Laws were made to protect the small vassals and serfs against oppression at the hands of their superiors. Agriculture, trade and manufactures, fisheries, the state of the labouring class and the poor ó all partook of the benefit of such laws.

Ever since John Resby the Wycliffite Englishman was burned at Perth in Albany's time (1407) for teaching the doctrines of the Bible, there had been a considerable number of his disciples who met in secret and encouraged one another. Another Wycliffite was burned in Glasgow in 1422.

This little flock of Scottish Wycliffites appears to have had communications with the enemies of popish corruptions in other parts of Europe. The citizens of Prague, in Bohemia, sent over to Scotland one Paul Craw(ar), to keep alive the light of reformation which Resby had kindled. Indeed, until 1533, the Wycliffean Hussite Crawar was a student at St. Andrews.<sup>33</sup>

### **The beginning of the godly reign of the English King Edward III**

Returning now to England, it is appropriate to look at the long and godly reign of King Edward III (1327-77). For it was during his time that God sent first the Black Death in judgment ó and then John Wycliffe in mercy ó to shatter papal Romanism, and to start the beginnings of the Protestant Pre-Reformation.

In 1345, according to Isabel Hill Elder,<sup>34</sup> Edward III followed in the footsteps of the Brythonic King Arthur as the founder of the ÆRound Tableø (whom Edward appears to have made his ideal). Edward identified himself all through his reign with the interests of the National Church. He stood against the encroaching claims of the Roman See. He also promoted industry; paid regard to popular rights; and, around 1350, withstood the Pope (on the advice of his own English Parliament).

In the latter regard, King Edward III of England had sought the advice of his Bishops and Lords and Commons. He was then instructed by them anent what King John had done in his own 1214 A.D. *Ecclesiastical Charter*, right before the time of the corrective A.D. 1215 *Magna Carta*. However, Edward's Lords and Commons then advised him that if King John had ever sought to bring ðhimself, his realm and peopleö under any kind of political subjection öto the Popeö ó it would have been done **ðwithout their assent; without the consent of Parliament; and contrary to his [King John's] coronation oath.**ö

Indeed, Edward's Lords and Commons then further added that if öthe Pope should attempt to constrain the king [Edward himself] and his subjects ó to perform what he [the Pope] lays claim to ó they [the Lords and the Commons] would resist and

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<sup>33</sup> P. Schaff: *Hist. Chr. Church*, VI pp. 355f.

<sup>34</sup> *Op. cit.*, pp. 143f.



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withstand him [the Pope] to the uttermost of their power.ö Thus the *Hansard Parliamentary Records*.<sup>35</sup>

An important actor in this unfolding drama ó and, indeed, the bridge to the political involvement even of Wycliffe himself ó was the Duke of Lancaster (alias John ø Gaunt, the son of Edward III). Properly feudal to the core, John resented the official arrogance of the prelates and the large share which they drew to themselves of the temporal power. Albeit somewhat superficially, John ø Gaunt made alliance with the great Pre-Reformer John Wycliffe<sup>36</sup> ó about whom later.

According to Holinshed,<sup>37</sup> in 1346 Edward received a complaint from the people ó made against purveyors of victuals for his household. They, under colour of their commissions, had abused the same. For they had collected from the Commons whatever they wished ó yet without making payment for the same, further than the said commissions allowed them.

So Edward caused enquiry to be made of their misdemeanours. Some of such as were found to have offended ó of whom there was no small number ó were put to death on the gallows. Others were fined. Thus, the rest were taught to deal more warily in their business ó from thenceforth.

About the same time, Edward also caused all the justices within his dominions to renounce and hand over all their pensions and their fees. He also required them to surrender all bribes and other unwarranted benefits which they may have been receiving till then.

**The terrible scourge of the international  
'Black Death' even in England**

When Wycliffe was but a child, in 1335f the -Black Deathø spread across the Old World ó destroying perhaps three-quarters of the population of Europe and Asia.<sup>38</sup> It was viewed by many as a punishment from God for the sins of immorality (*cf.* the modern plague of -AIDSø).

By 1348, the -Black Deathø ó which had just visited especially Italy and France with fearful ferocity ó began to hit Britain. The *Historians' History* observes<sup>39</sup> that the mortality was enormous and appalling. It is probable that one-third of the population of Europe perished. One chronicler says that nine out of ten died. Similar amplifications are found in all the chroniclers.

The Italian novelist Boccaccio dwells on the effect which the mortality caused, in the character of the survivors ó and how panic or despair made men callous, reckless, superstitious, heartless, cruel, and licentious. Sismondi, in his great history of the

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<sup>35</sup> *Hansard Parliamentary Records*, I, p. 129.

<sup>36</sup> Elder: *op. cit.*, p. 145.

<sup>37</sup> *Op. cit.*, II, pp. 633f,649f,676f.

<sup>38</sup> *Life and Times of John de Wycliffe*, Religious Tract Society, London, 1851, pp. 26f. Vaughan: *op. cit.*, p. viii. Zieglerø 1969 book *The Black Death (of 1334f)*. Article *Plague*, in *NICE*, Columbia University Press, New York, 18:5355.

<sup>39</sup> *Op. cit.*, VIII, pp. 468f.

French people, and of the Italian Republics, has collected contemporaneous evidence to the same effect.

The ðBlack Deathð formed an epoch. It was seen as a judgment of Jehovah against the perversions of the Papacy, and chiefly in the Pre-Renaissance lands.

We must now see how the international ðBlack Deathð struck England. In 1348, in the twenty-second year of Edwardðs reign ó it rained almost continually from Midsummer to Christmas. There was not one day and night together which was dry. By reason of this, great floods ensued ó and the ground became very corrupted. Many inconveniences ensued, such as great sickness. Next year, the plague of the ðBlack Deathð followed.

In 1349, in France the people died wonderfully ó in various places. In Italy also, and in many other countries ó both in the lands of the infidels as well as in Christendom ó this grievous mortality reigned to the great destruction of people. After July 1349, the ðBlack Deathð hit Britain too.

About the end of August 1349, the like death began in several places of England ó and especially in London. It so continued, for the space of twelve months following. After that, great barrenness ensued ó both in the sea, as well as on the land. Neither of them yielded such a plenty of things as they had done before. Thereupon, victuals and corn became scant and hard to come by.

A year later, about the end of August 1350, there was a cessation in London of the plague of death. It had been so great and vehement within that city. The bodies buried in other accustomed burial-places ó because of their huge number ó could not be counted. Over and above this ó merely in Londonðs Charterhouse Yard alone, there were buried that year more than two hundred dead corpses daily. All those born after the beginning of that great mortality, lacked four cheek-teeth (when they came to the time of their growth).

In the summer of 1353, there was a great drought. From the latter end of March till the latter end of July, little rain fell. By reason of this, many inconveniences ensued. One thing especially is to be noted ó corn waxed scant the following year, and the price began to be greatly enhanced. Duke William of Bavaria and the Earl of Zealand brought many ships into London. They were fraught with rye ó for relief of the people who, through their present pinching penury, would otherwise at least have pined pitifully (if not utterly perished).

After a lull, in 1360 the ðBlack Deathð resumed. In this year also, there was a great dearth particularly of men (*cf.* ðAIDSð today) ó for women were not so much subject to it. This was called the ðsecond mortalityð ó because it was the second that fell during King Edwardðs reign (1327-77).

The precisely-predicted 1290 day-years of Daniel 12:1-11 had now run their course. They commenced at the destruction of the Jewish temple in A.D. 70. They terminated in A.D. 1360 ó at the end of the ðBlack Deathð and at the beginning of the Proto-Protestant John Wycliffeðs progressive destruction of the Romish pollutions of the Christian temple. For ó not successfully challenged till then ó Romanism had been desecrating the Christian Church for very many centuries.

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Though much less so than in many other lands, even Britain had long been blighted with Romanism ó ever since the arrival in Kent of the Pope's legate Austin of Rome alias Augustine of Canterbury (in 596f A.D.). As the Elizabethan chronicler and historian Holinshed observes:<sup>40</sup> "Augustine came, who brought in Popery. This increased and continued ó till Wycliffe, with more boldness than any other, began to preach the Gospel in the year 1361."

**The English King Edward III's measures  
against Rome and Romanism**

We have already noted<sup>41</sup> that around A.D. 1350, Edward III observed that neither the A.D. 1214f John nor any other English king could ever properly bring either himself or his realm or his people under any kind of political subjugation to the Pope. For such a treasonous act could be committed: only without their assent; only without the consent of Parliament; and only contrary to the king's own coronation oath.

Also Edward's Parliament thoroughly concurred with this assessment. Indeed, this shows quite clearly that both King Edward and his Parliament were fully agreed ó that an English king **could** commit high treason. Such occurs when a king of England betrays the law of his coronation oath. For a true English king is never above but only **under** the law. *Lex super regem; nec rex super legem.*

The papal claims to provide benefices even for England, had become a chronic irritation ó especially when the Pontiffs resided at Avignon in France during the Hundred Years' War between England and France (1338-1453). So, in 1351, King Edward III forbade this practice by the first *Statute of Provisors*. This was augmented in 1353 by the *Statute of Praemunire* ó which prevented all appeals to Rome.

In 1351, Edward's Parliament enacted the *Statute of Provisors*. This forbade the enjoyment of benefices in Britain by "provisors" ó alias foreign Romish clergy who obtained such benefices from the Pope.<sup>42</sup> It also secured the rights of the patrons which had been encroached on by the Pope. Indeed, in 1353, Edward's Parliament further approved the *Statute of Praemunire*. That outlawed all appeals from Britain to the Court of Rome.<sup>43</sup> Indeed, both of the above two measures curbed the taxing powers of the Papacy within England.<sup>44</sup>

At this point, John o' Gaunt the Duke of Lancaster allied himself with Wycliffe and against the Romish clergy.<sup>45</sup> Then, **precisely from A.D. 1360 onward**, Wycliffe started promoting the Bible and attacking the Papacy and its Mass.

So A.D. 1360 was the time when the Protestant Reformation really started ó under Wycliffe, in England. As Daniel (12:7-11 cf. 7:20-26) had predicted, this purifying of the papally-polluted sanctuary alias the Christian Church would take place precisely

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<sup>40</sup> *Op. cit.*, I, p. 51.

<sup>41</sup> See our text between nn. 34 & 35 above.

<sup>42</sup> *Hist. Hist.*, XVIII p. 484.

<sup>43</sup> Thus Hume: *op. cit.*, p. 183.

<sup>44</sup> *Life and Times*, p. 68.

<sup>45</sup> I. Elder: *op. cit.*, p. 145.

1290 day-years after the A.D. 70 Roman-Romish destruction of the sanctuary in Jerusalem. Hence, in 1360f A.D.

The Pope was still demanding the arrears in the tribute known as *ōPeterø penceö* ó which was an acknowledgment of the Pope as the final earthly ruler of England. So now, such payment was refused by the English Parliament.

Wycliffe himself strenuously supported this resistance to the demand. There was already a public opinion forming which, before the circulation of books by printing and with the imperfect communication of one district with another, was diffused in a very remarkable way throughout the country.<sup>46</sup>

By 1365, King Edward himself was acting forcefully. That year, explains Holinshed,<sup>47</sup> a restraint was ordained by the kingø commandment ó that *-Peter-penceø* should not any more be gathered within his realm (nor any such payment made at Rome).

*ōPeterø penceö* used to be paid by the English Government in Rome ó ever since earlier mediaeval days. This payment, however, was now abrogated by King Edward. Sadly, it was subsequently renewed again ó after the temporary demise of Wycliffeø Lollards. Then, money was gathered in certain Shires of this ealm ó till the Protestant Reformation, and the A.D. 1534 days of King Henry VIII.

Till that year A.D. 1534 ó continues the great Elizabethan chronicler and historian Holinshed ó *ōgreatly prevailed the usurped power of that Beast of Rome which had poisoned the princes of the World with the dregs of its abomination.ö Cf. Revelation 13:11-18. However, God would then send the Protestant Reformation, to destroy óthat Beast of Romeö ó viz. the Romish Papacy.*

Predicted the 1578f Holinshed regarding the Vatican: *ōIts glory shall end in shame; its honour shall turn to horror.... Its ambitious climbing up aloft ó above all principality (to be compared with God) ó shall have an irrecoverable ruin.ö*

Holinshed then further elaborates: *ōLong ago, and of late likewise [by Wycliffe and by the later Reformers] ó there have been and now are prophecies about himö ó viz. anent óthat Beast of Rome.ö Consequently: óhe himself may readily read of his own downfall into hell.ö Second Thessalonians 2:3-8; Revelation 13:1 to 17:14.*

With this, one should compare the great Jurist Sir William Blackstoneø *Commentaries on the Laws of England*. There, Blackstone insists:<sup>48</sup> *ōThus the Popes ó within a while ó lost all their authority which they had beforetime possessed within this realm.... This **restraining reformation** very much concerned the benefit of the whole land.ö Second Thessalonians 2:6f cf. Genesis 6:3 and Daniel 7:25-27 & 12:12f.*

Citing Thomas Walshingham, Holinshed further observes<sup>49</sup> that King Edward III ó besides his other natural gifts ó was aided greatly by his seemly personage. He had a provident wit ó sharp to conceive and to understand. He was courteous and gentle,

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<sup>46</sup> *Hist. Hist.*, XVIII p. 484.

<sup>47</sup> *Op. cit.*, II, pp. 680f & 701 (citing Caxton).

<sup>48</sup> *Op. cit.*, IV, pp. 106f.

<sup>49</sup> *Op. cit.*, II, pp. 705f.

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doing all things sagely and with good consideration ó a man of great temperance and sobriety. Those who excelled in honest conversation, modesty and innocence of life ó he chiefly favoured and advanced to honour and positions of high dignity. This is noted by writers to be a token of great wisdom in this noble king.

**Edward's Anti-Romish *Statute of Provisors* and *Statute of Praemunire***

Certainly Edward's death in 1377, and especially his succession by the royal rogue Richard II, was a setback for the ripening of Wycliffe's Proto-Protestantism ó *via* Huss, toward Luther. Nevertheless, Edward III did complete the huge step forward in Anglo-British constitutional government which had started with his grandfather Edward I.

Already in 1307, the grandfather King Edward I had rehearsed the *Statute of Carlisle* ó by moving against abuses of papal patronage, and by forbidding religious groups in England to send money or goods to alien religious superiors. Now, in the 1351 *Statute of Provisors* ó explains Bettenson<sup>50</sup> ó Edward III rebuked the pope of Rome for accroaching to himself the overlordship of such possessions and benefices, and granting the same benefices to aliens who never dwelt in England, and to cardinals who could not dwell there.

This practice had been making void the estate of the Church in England. It had been annulling the will of Edward I and the Earls and other Nobles of the said realm. It had been obstructing and bringing to naught the laws and rights of the realm, and doing great damage to the people.

However, continues King Edward III's *Statute of Provisors* ó the right of the crown of England and the law of the said realm, is such that if mischiefs and damages happen to his realm he ought and is bound by his oath to remedy this. Naturally, this is to be done only with the accord of his people, in his Parliament ó to this end. Indeed, he is required precisely to enact laws for the removal of the mischiefs and damages thus arising.

Therefore the king ordered and established that the free elections of (Arch)Bishops and of all other Dignities and Benefices in England, should continue from henceforth in the same manner in which they had been granted by the King's progenitors. Yet this was to be done only with the assent of all the Great-Men ó *cf.* the Houses of Lords and the Commons of the said realm to the honour of God and profit of the said Church of England and of all his realm.

Continues the *Statute of Provisors*: "In case reservation, collation or provision be made by the Court of Rome ó to any archbishopric, bishopric, dignity or other benefice ó in disturbance of the free elections, collations or presentations aforesaid ó the king and his heirs shall have and enjoy, for the same time, the collations.... And if any do accept a benefice of Holy Church contrary to this statute, and the fact be duly proved ó if he be beyond the sea, he shall abide exiled and banished out of the realm for ever ó and his lands and tenements, goods and chattels, shall be forfeited to

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<sup>50</sup> Bettenson: *Op. cit.*, p. 233f.

the king. If he be within the realm, he shall also be exiled and banished...and shall incur the same forfeiture.ö

Similarly, in the 1353 *Statute of Praemunire*, Edward III enacted: öOf late, divers processes are made by...the Pope, and censures of excommunication upon certain Bishops of England.... They have made execution of such [papal] commandments to the open disinheritation of the said crown and to the detriment of our said lord the king, his law, and all his realm.... The crown of England which has been so free at all times...has been in no earthly subjection, but immediately subject to God....

öMoreover, the Commons aforesaid say that the said things so attempted ó are clearly against the king's crown and his royalty, used and approved from the time of all his progenitors.... Whereupon the lords temporal so demanded, have answered every one by himself, that the cases aforesaid are clearly in derogation of the king's crown.

öWhereupon our said lord the king, by the assent aforesaid and at the request of his said Commons, has ordained and established that if any[one] purchase or pursue or cause to be purchased or pursued in the Court of Rome or elsewhere ó any such translations, processes and sentences of excommunications, bulls, instruments or any other things whatsoever which touch our lord the king (against him, his crown, and his royalty, or his realm)ö ó they shall öbe put out of the king's protection; and their lands and tenements, goods and chattels forfeited to our lord the king.ö<sup>51</sup>

Important is the very long duration of the so-called "Good Parliament" of 1360-77. History Professor J.R. Green writes<sup>52</sup> that the Burgesses took little part at first in Parliamentary proceedings ó save in those which related to the taxation of their class. But their right to share fully in all legislative action, was asserted under Edward III. Burgesses and Knights grew together under the name of "the Commons." By 1341, the Parliament was clearly bicameral.

The need of continual grants during the war against France from 1337 onward, brought about an Assembly of Parliament ó year by year. With each supply, some step was made toward the parliamentary acquisition of progressively greater political influence. The House of Commons and the House of Lords claimed an exclusive right to grant supplies ó and asserted the principle of ministerial responsibility to Parliament.

### **The 1290 day-years of Daniel 12:11 end with Wycliffe in A.D. 1360**

Now, it seems from Daniel 12:1-11 (*cf.* Second Thessalonians 2:3-8) that the Roman abomination which desolated the Holy Sanctuary alias the Temple of God or the Christian Church for many centuries ó was due to be set up in 70 A.D. Thereafter, it would hold its sway until the arrival of the time of  **blessing** , 1290 day-years later, in 1360 A.D. Daniel 12:12. For that time of abomination started with the A.D. 70 eagle-like Roman destruction of the Jerusalem temple ó in the ötime of trouble such as never was.ö Daniel 12:1 *cf.* Matthew 24:15-28.

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<sup>51</sup> *Ib.*, pp. 239f.

<sup>52</sup> *Op. cit.*, pp. 231f.

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That period would then last for approximately  $\pm$ one time $\emptyset$  plus  $\pm$ two times $\emptyset$  plus  $\pm$ half a time $\emptyset$  ó alias 3.5 years of 360 day-years. This amounts to 1260 day-years, each of 29.5-day month-years. Daniel 12:7f & 7:25 *cf.* Revelation 11:2,3,11 & 12:6f & 13:5f.

This also represents 3.5 years of 365.25 day-years, or 1280 x 30.5 month-years ó alias 1290 x 31 month-years. Starting with the destruction and cleansing of the Jewish sanctuary in 70 A.D., this would then bring the *terminus ad quem* when the Church sanctuary would be cleansed ó **exactly** to the A.D. 1360f actions of the great English Pre-Reformer Wycliffe.

Under King Edward III, who ruled England (wisely) from 1327-77, the stage was now set for the great Pre-Reformer ó Rev. Professor Dr. John Wycliffe. He, the  $\pm$ Morning Star $\emptyset$  of the Protestant Reformation, was then about to launch the **Proto-Protestant** Reformation.

Let us briefly take a closer look at this  $\emptyset$ youth from the borders of Westmorland ó in Greater Cumbria ó thus Vaughan's *Tracts and Treatises of John de Wycliffe, D.D.*<sup>53</sup> We shall now examine something of the life and works of the great Englishman John Wycliffe, 1328-1384 A.D. *Cf.* Daniel 12:9-11.

John Wycliffe was born a Romanist and a Westmorlander, but became a Proto-Protestant and a Yorkshireman. Himself too being born both a Romanist and a Westmorlander, this present Protestant writer (Francis Nigel Lee) accordingly looks at Wycliffe with somewhat of a personal interest.

Wycliffe was born *circa* 1328 in Greater Cumbria, near the border between Westmorland and Yorkshire. At an early age, writes Church History Professor Rev. Dr. James Heron<sup>54</sup> about Wycliffe, he was sent to the University of Oxford. There, he soon distinguished himself in every branch of learning ó but especially in dialectics, the mathematical sciences, and jurisprudence.

Like a latter-day Druid, in due course Wycliffe finished his sixteen years $\emptyset$  course for the degree of Doctor of Divinity. He commended himself to Edward III and his advisers, and became Edward's Chaplain. He lived through the  $\pm$ Black Death $\emptyset$  of 1335-1350f. From around A.D. 1360 onward, he translated (and circulated) the Bible ó  $\emptyset$ the Words $\emptyset$  of God (Daniel 12:9) ó into the common tongue of his people.

From about 1374 onward, he assailed the Papal  $\emptyset$ Desolator $\emptyset$  (*cf.* Daniel 12:11). Then, from about 1379 onward, he attacked the  $\emptyset$ Abomination $\emptyset$  of the transubstantiationistic Romish Mass ó which had so long desecrated the temple of the Christian Church (Daniel 12:11). Thus Wycliffe's biographies.<sup>55</sup>

The Holy Scriptures in the common tongue were now freely quoted. The great leader Wycliffe, the honoured Professor of Theology at Oxford, was preparing the

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<sup>53</sup> C. Vaughan: *Tracts and Treatises of John de Wycliffe, D.D.*, Wycliffe Society, London, 1845, p. iii.

<sup>54</sup> J. Heron: *Short History of Puritanism*, Clark, Edinburgh, 1908 ed., p. 32.

<sup>55</sup> See those listed below, plus the articles by F.F. Bruce on *Bible (English Versions)* and by R.G. Clouse on *Wycliffe, John (c. 1329-1384)* [in *NIDCC*, pp. 127 & 1064].

translation into fourteenth-century English of Christ's New Testament. His citation for heresy in the last year of Edward III (*viz.* 1377), was a tribute to his importance.

In a few years, the preachings of Wycliffe, and also those delivered by his disciples, would go throughout the land ó scattering the corruptions of the Church with a power that for a time seemed likely to shake the whole fabric of society. The age was not ripe for the great Reformation that then seemed impending. But out of Wycliffe's rectory, seeds were to be borne upon the wind which would abide in the earth till they sprang up into stately growth a century or so later ó under Huss, Luther and Calvin.<sup>56</sup>

### Details of Wycliffe's reforms from A.D. 1360 onward

By 1361, Wycliffe was lecturing at Oxford University. In 1365, King Edward's Parliament and Wycliffe condemned the infamous 1215 King John (of *Magna Carta* fame) ó for unsuccessfully having tried to donate England to the Pope.<sup>57</sup> Significantly, King John had done so at the very time of the Romish proclamation of the doctrine of transubstantiation ó and the papal claims to the wealth of England.

In 1372, Wycliffe became a Doctor in Theology. Appointed Court Preacher by John oø Gaunt in 1376, he was condemned by the Pope in 1377. Wycliffe then responded by himself condemning transubstantiation as heresy, in 1380. Rome then condemned most of his teachings in 1384, in which year he also died.

Wycliffe first undertook the translation, into colloquial English, of the entire Bible ó for the sake of making it accessible to his countrymen. He states: "Other writings can have worth or authority only so far as their sentiment is derived from the Scriptures." For in the Holy Bible alone, "all truth is either expressed or implied." As even the great Roman Catholic historian Lingard admitted about Wycliffe: "In proof of his doctrines, he appealed to the Scriptures."<sup>58</sup>

Wycliffe himself insists: "Neither the testimony of Augustine nor Jerome, nor any other saint, should be accepted ó except in so far as it was based upon Scripture."<sup>59</sup> Also: "Since God Almighty taught, confirms and maintains Holy Writ ó if this writing be false, then God would be false and the maintainer of error and falseness.... Pagan or Saracen...say, as Satan's clerics, that Holy Writ is false."<sup>60</sup>

Indeed, in the *Preface* of his translation of the Bible, John Wycliffe declares: "This book is for the government **of** the people; **for** the people; **by** the people." While ignoring the reference here to the book of the Bible, Abraham Lincoln later indeed repeated the latter part of this refrain ("government **by** the people") ó but only after severing it from the antecedent part ("government **for** the people") ó and indeed misrepresenting the entire refrain in terms not of Biblical Christocracy but of human autonomy).

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<sup>56</sup> *Op. cit.*, XVIII, p. 484.

<sup>57</sup> Vaughan: *op. cit.*, pp. xviii-xxiv.

<sup>58</sup> *Life and Times of John de Wycliffe*, pp. 1vi & 149 & 112.

<sup>59</sup> H.B. Workman: *John Wyclif*, Clarendon, Oxford, 1926, II, p. 150.

<sup>60</sup> Vaughan: *op. cit.*, p. 241.



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Similarly separating God's Word from government, a century after the death of the great Pre-Reformer Wycliffe of the ungodly King Richard the Second ritualistically carried the Bible with him throughout Britain. He did this, while fruitlessly striving to establish stable government during his own 1483-85 rule.

From the Bible, Wycliffe taught many things which neither Richard the Second nor Abraham Lincoln seem to have grasped. Thus the great Pre-Reformer insisted that it is not laid down in the Gospel that Christ ordained the Mass. He also insisted that any Presbyterian may preach the Word of God, [quite] apart from the authority of...a Catholic Bishop.<sup>61</sup>

Wycliffe further insisted that excommunication by the Pope...is not to be feared; because it is the censure of Antichrist. Daniel 7:14f & 12:7 cf. Second Thessalonians 2:3-8 & Revelation 13:3-14f. Wycliffe also taught that the Roman Church is the synagogue of Satan. Compare the later *Westminster Confession of Faith* 25:5-6.

He further averred that the law of [compulsory] continence enjoined on priests...brings sodomy into all the Holy Church. He demonstrated that the pretended miracle of the sacrament of bread drives all men but a few to idolatry. Indeed, he concluded that pilgrimages, prayers and offerings made to blind crosses...and to deaf images of wood or stone are pretty well akin to idolatry.

We must now set out some of these teachings of Wycliffe in detail. *Seriatim*, we present his views: about God and His Law, as the source of all government; on the heresy of transubstantiation; and anent the Papacy as Antichrist.

### **Wycliffe on God and His Law as the sources of all government for men**

Dominion belongs to grace of wrote Wycliffe. By this he meant not only that Adam's pre-fall dominion presupposed God's enabling grace, but also that deformed feudal government of resting on a non-ecclesiastical authority itself still subject to approval by the Church of Rome of should be replaced. It should yield to a government resting on the gracious principles of God's Moral Law. Such government derives its power solely from the Triune God of just as Adam derived his government over Eve from the Adamic covenant with and under the Triune God and His enabling grace before the fall. Genesis 1:26f cf. Hosea 6:7f and Luke 2:40f & 3:23-28.

The Christocratic Wycliffe insists that by divine grace the Ten Commandments alias God's Law was and is above the Pope's law of and even above the King's law too. For the Creator has dominion above every creature. Indeed, as Christ, by the title of original righteousness, was Master of all the possessions of the World of even so, all things belong to the just, by the grace and favour of Christ.<sup>62</sup>

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<sup>61</sup> Cf. Bettenson: *op. cit.*, pp. 242-48.

<sup>62</sup> *Ib.*, pp. 2f. See too: Winn's *Wyclif – Select English Writings* (Oxford Univ. Press, London, 1929, pp. xxviii & 60); and *Life and Times of John de Wycliffe*, p. 59.

Therefore, ðmen should shake away...all rulesö and regulations ó ð**except** inasmuch as they have **been** grounded in the **Law** that **God** hath **given**.ö<sup>63</sup> Indeed, ðevery truth...should be deduced from the **Scriptures**.... Then, the Scriptures would be held in reverence and the papal bulls superseded ó as they ought to be.ö<sup>64</sup>

Because he upheld the true words of God, Wycliffe went on to denounce the false words of the Popes. Wycliffe himself stated<sup>65</sup> as his purpose that ðthe Law of God be well-known, taught, maintained, magnified.ö He urges that ðtrue peace, prosperity and burning charity be increased in Christendom ó and namely [or indeed pre-eminently] in the realm of England.ö

### **John Wycliffe on the mediaeval heresy of transubstantiation**

Very likely, as a good Bible student, Wycliffe well knew that Daniel 12:4-11 predicted the desolating abomination of the Christian Church ó by a perverted prelatical priesthood, and for a period of many years. He would probably also have known that this abomination ó which commenced under the pagan Romans in A.D. 70 ó would thenceforth have run for the predicted 1290 day-years, until A.D. 1360. So, from that time onward, Wycliffe would hammer against the doctrine of transubstantiation ó which the Pope had proclaimed to be official Roman Catholic dogma at the Fourth Lateran Council in A.D. 1215 (contemporaneous to England's *Magna Carta* which the Pope repudiated).

Transubstantiation had not been a doctrine of the earlier Anglo-Saxon Church. Yet superstitious tendencies toward it had abounded even in mediaeval England. Even in Wycliffe's day, there were still different theories as to the precise priestly moment when the alleged transubstantiation was alleged to take place. Indeed, even the Romish ðhereticsö ó observes Wycliffe<sup>66</sup> ó ðcannot state at what instant transubstantiation...really [or supposedly] takes place. Thus, then, is this...doctrine annihilated ó a doctrine contemptible and erroneous.ö

Continued Wycliffe:<sup>67</sup> ðThe venerable sacrament is **naturally** bread and wine.... Our Apostle [Paul]...who takes his meaning from our Lord, calls this sacrament the **bread** which we break ó as is manifest in First Corinthians ten [verse 16], and often again in the following chapter.

ðWho then would venture to blaspheme God? ... Christ, Who is the First Truth, saith according to the testimonies of the four evangelists that this **bread** is His body. What heretic ought not to blush, then, to deny that it is bread?ö

For Christ Himself said that the bread is ó namely represents ó His body. He did not ever say that the bread becomes His body. He said that the **bread** ó yes, the bread ó is His body. That **bread** therefore remained: bread!

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<sup>63</sup> *Ib.*, p. 3.

<sup>64</sup> Vaughan: *op. cit.*, p. 129.

<sup>65</sup> Thus his modern biographer G.H.W. Parker: *The Morning Star: Wycliffe and the Dawn of the Reformation*, Paternoster, Exeter, 1965, p. 50.

<sup>66</sup> Vaughan: *op. cit.*, pp. lxxvii & 137f.

<sup>67</sup> *Ib.*, pp. lxxxviii, 140-43, 151, 301.

Wycliffe: "We are thus shut up, either to destroy the verity of Scripture, or to go along with the senses and the judgment of mankind and admit that **it is bread**. Mice, and other creatures, are aware of this fact.... They have the power of discerning what is good for them to eat.... This heresy [of **transubstantiation**] would overturn the evidence.... The sacrament which does that, **must be a 'sacrament' of Antichrist**.... What idolatry could be more odious? ... **It is heresy for to believe that this sacrament is God's body – and no bread!**"

Wycliffe concluded:<sup>68</sup> "The **substance of material bread and wine doth remain in the sacrament of the altar after consecration**." The fact is, Wycliffe insists, insects too have often denied transubstantiation! For even maggots [have] bred in the host *etc.*

### John Wycliffe on the Pope of Rome as Antichrist

The great Pre-Reformer pleaded for the destruction of the religious Antichrist, and all political powers which support it. He urged that "the great open sin that reigneth in divers places be destroyed, and also the heresy and hypocrisy of Antichrist and his followers."<sup>69</sup> As we shall see, by this he clearly meant the Romish papacy.

For Wycliffe exclaimed:<sup>70</sup> "The **Pope of Rome...is very Antichrist**.... This **Pope...is the most fiendish vicar and Antichrist** that is here; and such Antichrist and none other, many think that God's Law is speaking of.... The Pope is not Christ's vicar, but rather Antichrist himself.... The Pope [himself] could not more openly tell that he is Antichrist or a fiend." Indeed, adds Wycliffe:<sup>71</sup> "If therefore anyone saith: 'Lo, here at Avignon is the Christ!' believe them not; for the deeds shall show who is the Antichrist!"

Wycliffe continues:<sup>72</sup> "The **Bishop of Rome...be Antichrist, full of simony and heresy**.... Of all priests, he is the most contrary to Christ, both in life and teaching.... Things that Popes do, teach that they are Antichrists.... **The Roman pontiff is the great Antichrist**.... After this great Antichrist, come the lesser antichrists & the prelates.... **Our Pope...is an open Antichrist!**"

Therefore the great Pre-Reformer Wycliffe prays:<sup>73</sup> "Almighty God in Trinity! **Destroy those nests of Antichrist** and his clerics, and strengthen all kinds of men to maintain the truth of Holy Writ!" For: "The Devil casteth, by Antichrist and his worldly false clerics, to destroy Holy Writ."

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<sup>68</sup> Workman: *op. cit.*, pp. 40 & 416.

<sup>69</sup> *Id.*

<sup>70</sup> Winn: *op. cit.*, pp. 69 & 123 & 137.

<sup>71</sup> Workman: *op. cit.*, p. 78.

<sup>72</sup> Thus in Vaughan's *op. cit.*, pp. 20 & 75 & 124 & 299.

<sup>73</sup> *Ib.*, pp. 56 & 60.

## History Professor J.R. Green on the importance of John Wycliffe

Famous English History Professor J.R. Green writes<sup>74</sup> that Wycliffe stood without a rival. From his predecessor Bradwardine, he inherited the tendency to a predestinarian Augustinianism. This formed the groundwork of his later theological revolt.

His debt to Ockham revealed itself in his earliest efforts to reform the Church. Ockham had not shrunk in his enthusiasm for attacking the foundation of the papal supremacy. Wycliffe was the first Reformer who dared, when deserted and alone, to question and deny the creed around him ó and with his last breath to assert the freedom of religious thought against the dogmas of the Papacy.

The attack of Wycliffe began precisely at the moment when the mediaeval Church had sunk to its lowest point of spiritual decay. The transfer of the Papacy to Avignon, robbed it of half the awe. For not only had the Popes sunk into creatures of the French king, but their greed and extortion produced almost universal revolt.

The direct taxation of the clergy; the intrusion of foreign priests into English livings; the opening a mart for the disposal of pardons, dispensations and indulgences; and the encouragement of appeals to the Papal Court ó produced a widespread national irritation which never slept till the Reformation. Extortion and tyranny such as this, severed the English clergy from the Papacy; their own selfishness severed them from the nation at large.

Wycliffe's central doctrine was that of man's dominion. *Cf.* Genesis 1:26-28. The eminent History Professor J.R. Green writes<sup>75</sup> that, according to Wycliffe, **all authority is founded in grace**. Dominion in the highest sense is in God alone. It is God Who, as the Suzerain of the Universe, deals out His rule in fief to rulers in their various stations, on tenure of their obedience to Himself. All power or dominion, was of God. It was granted by Him not to one person as His ÷vicarø on Earth (which is precisely what the Papacy alleged about itself) ó but to all.

This means that the king was just as **truly** God's vicar or representative, as the Pope himself **claimed** to be. Indeed, the royal power was and is just as sacred as was and is the ecclesiastical.

But there is more. Obedient as each Christian might be either to king **or** to priest ó also he himself, as a co-possessor of dominion, held it immediately from God. Consequently, **every Christian is God's vicar here on Earth – so that each is sovereign in his own sphere!**

The throne of God Himself was the tribunal of personal appeal. What the Reformers of the sixteenth century attempted to do by their theory of justification by faith, Wycliffe attempted to do by his theory of dominion. It was a theory which, in establishing a direct relation between man and God, swept away the whole basis of a mediating priesthood on which the mediaeval Church was built.

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<sup>74</sup> *Op. cit.*, pp. 236f.

<sup>75</sup> *Op. cit.*, pp. 239f.

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Wycliffe was still working hand in hand with John o Gaunt in advocating his plans of ecclesiastical reform, when the great insurrection of the peasants broke out under Wat Tyler. Because of the latter event, Wycliffe's "poor preachers" were looked on thenceforth o though falsely so o as missionaries of socialism. Though Wycliffe with disdain tossed back that charge o he still had to bear a suspicion.

With the formal denial of the doctrine of transubstantiation which Wycliffe issued in the spring of 1381, began that great movement of revolt. It ended, more than a century after, in the establishment of religious freedom o by severing the mass of the Teutonic peoples from the general body of the Catholic Church. The act was the bolder, in that he then stood utterly alone.

Wycliffe issued tract after tract in the tongue of the people itself. He is the father of later English prose. Pardons, indulgences, absolutions, pilgrimages to the shrines of the saints, worship of their images, worship of the saints themselves o were successively denied by him.

A formal appeal to the Bible as the one ground of faith, coupled with an assertion of the right of every instructed man to examine the Bible for himself, threatened the very groundwork of the older dogmatism with ruin. Wycliffe had organized some few years before, an order of "poor preachers" (or "Lollards"). How rapid their progress must have been, we may see from the panic-struck exaggerations of their opponents: "Every second man one meets, is a Lollard!"

He petitioned the King and Parliament that he might be allowed freely to prove the doctrines he had put forth. He asked that all religious vows might be suppressed; that tithes might be diverted to the maintenance of the poor; and that the clergy might be maintained by the free alms of their flocks. He further requested that the *Statute of Provisors* and the *Statute of Praemunire* o might be enforced against the Papacy. He demanded that the non-transubstantiationistic doctrine of the eucharist which he advocated, might be taught freely. Said Wycliffe: "The Pope should surrender all temporal authority to the civil power, and advise his clergy to do the same."

### **Wycliffe falsely blamed for the Tylerite Rebellion of 1381**

It should not need to be stated that Wycliffe was no way responsible for the "anti-property" theories of the insurrectionist Wat Tyler. Later, neither was Luther the cause of the "communism" of the German Anabaptist revolutionists in his own age. Nor, for that matter, was Pope Pius XII responsible for the huge escalation of communism in Italy around the middle of the twentieth century.

The eminent church historian Rev. Professor Dr. James Heron discusses<sup>76</sup> the peasant insurrection under Wat Tyler and John Ball. Heron rightly insists that Wycliffe had given no encouragement to it o in spite of his generous manly sympathy with the oppressed peasants. It has been made sufficiently clear by Lechler<sup>77</sup> that Wycliffe's teaching was not communistic. Neither was the teaching of Wycliffe's Lollards (or "Field Preachers").

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<sup>76</sup> J. Heron: *Short History of Puritanism*, pp. 35f.

<sup>77</sup> G. Lechler: *Wycliffe*.

Let us hear the conclusion of the great modern historian G.M. Trevelyan<sup>78</sup> about such matters. He insists that Lollardy had absolutely no connection with socialism. He further insists he has been able to find, between the years 1382 and 1520, only **one** case of somebody **alleged** to be a Lollard and also **accused** of holding communistic theories. Indeed, Trevelyan finds not a single case of a Lollard **charged with** (and still less **convicted of**) stirring up peasants violently to right social wrongs indeed committed against them ó by themselves being incited to go and take matters into their own hands.

As the *Historians' History* rightly points out:<sup>79</sup> ðWe cannot perceive what has been maintained with a confidence very disproportionate to the evidence.ö For from that evidence one certainly cannot perceive ó nor properly even conceive ó that the theory of property expounded by Wycliffe was a main cause of this anarchy of the Tylerites.

Also the great historian A.E. Freeman rightly points out that one great result of the revolt of Tyler in his 1381 march on London, was to associate in men's minds the two ideas of religious reformation ó and social or political revolution. Wycliffe, maintains A.E. Freeman, was himself as guiltless of the revolt of the villeins ó as Luther was of the Peasants' War or the reign of the Anabaptists.

The Parliament of England asserted its conviction that what was being preached by the Wycliffites in open places ó had reference solely to the corruptions of the Church. However, to subject the kingdom to the jurisdiction of the [Romish] prelates ó would be to surrender the civil freedom which also their ancestors had maintained.

Thus held Parliament. On the other hand, it was precisely **those** men who **refused** to assent to the proposal of the **king** that also **slavery** should be abolished ó who would indeed have been ready enough to sanction the requests made by **Romanists** that Wycliffe's **Lollards** should be **imprisoned**.

Yet Wycliffe himself did not hesitate to maintain that the revenues of the [Romish] Church, so lavishly applied to upholding the excessive pride and luxury of her prelates, were superfluous. Indeed, whenever he and his disciples were assailed by the Higher Ecclesiastics ó he appealed to the Bible.

### **The ongoing influence of Wycliffe even after his death in 1384**

Isabel Hill Elder explains<sup>80</sup> that the Culdees existed right down to the very days of Wycliffe. It was said in his day: ðYou could not meet two men on the road, but one was a Wycliffite.ö Further research would perhaps bring to light that Wycliffe himself ó a native of Culdee Greater Cumbria ó derived his doctrines probably from those ancient Proto-Presbyterians.

John Wycliffe died in 1384. Yet the Protestant Reformation indeed commenced in England, where Wycliffe spoke up, 150 years before Luther did in Germany. Indeed, probably half the English nation then went along with Wycliffe.

<sup>78</sup> G.M. Trevelyan: *England in the Age of Wycliffe*.

<sup>79</sup> *Op. cit.*, XVIII, p. 494 & n. 1.

<sup>80</sup> *Op. cit.*, p. 143.

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This is confirmed also by the great English historian Lord Macaulay. As he observes,<sup>81</sup> with Wycliffe an event took place which has coloured the destinies of all Christian nations, and in a special manner the destinies of England. The mind of Europe had risen up against the domination of Rome. With Wycliffe, the Reformation had its origin in England and spread to Bohemia.

The *Historians' History* explains<sup>82</sup> that Wycliffe died in 1384. But his preaching never died. It had been said already during his generation that one-third of the English people became Lollards and as the followers of Wycliffe were then termed. His translation of the Bible was then multiplied by the incessant labour of transcribers. The texts of the Bible were in every mouth. For they were re-echoed in the sermons of his preachers in churches and public places.

The greatest of all the English Puritan poets, John Milton, later wrote of Wycliffe and Britain:<sup>83</sup> "Why else was this nation chosen before any other and so that out of her, as out of Zion, should be proclaimed and sounded forth the first tidings and trumpet of reformation to all Europe? And had it not been the obstinate perverseness of our prelates against the divine and admirable spirit of Wycliffe, to suppress him as a schismatic and as an innovator and perhaps neither the Bohemians Huss and Jerome [of Prague]...nor the name of Luther or Calvin had been ever known. The glory of reforming all our neighbours would then have been completely ours!"

### **The influence of the Englishman Wycliffe upon the Bohemian Huss**

The Wycliffite Walter Brute or Britte, a Welsh graduate of Oxford, continued to denounce the wickedness of his own day. In one sermon preached in 1392, he says he found it strange that "thieves are put to death and when in the Law of Moses, they were not." Wrongly, added Brute, "Christians suffered adulterers and Sodomites to live together with those who cursed their parents.... We neither keep the law of righteousness given by God, nor the law of mercy taught by Christ!"

Moreover: "The high Bishop of Rome...do make and maintain many laws contrary to the Gospel of Jesus.... The city of Rome do allow his traditions, and do disallow Christ's Commandments and holy doctrine.... Then is she [Rome] *Babylon the Great...and the Great Whore sitting upon many waters*, with whom the Kings of the Earth have committed fornication....

"After the departure of the Apostles, the faith was kept with the observation of the rites of the Gentiles [or Pagans], and not the rites of Moses' Law, nor the Gospel of Jesus." The Woman, alias the true Church, then fled to Britain.

"Unto this place, fled the Woman.... She was fed with the heavenly Bread...for 1260 days.... For so many days, taking a day for a year, the Britons continued in the

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<sup>81</sup> *Op. cit.*, I, pp. 35f.

<sup>82</sup> *Ib.*, p. 495.

<sup>83</sup> J. Milton: *Areopagetica*, II:91. B.S. Capp: *Fifth Monarch Men*, p. 168f. W. Brute's *Registrum*, pp. 287f, as cited in L.E. Froom's *Prophetic Faith of our Fathers*, Review & Herald, Washington D.C., 1948, II, pp. 78f.

Faith of Christ ó which thing cannot be found so of any Christian kingdom but of **this** desert [or place]....

õFor from the **East came the Faith into Britain**...for a time, times and half a time; that is, 1260 **years** ó from the first coming of the Faith into **Britain**, until this present.... The Bishops of Rome...are the principal *Antichrists*.... His name...is 666.... The Pope's law is contrary to Christ's Law!õ

Forty-five years after Wycliffe's A.D. 1360 Pre-Reformation ó at the end of Daniel 12:12's 1335 day-years (alias in 1405 A.D.) ó Wycliffe's ideas took root in Eastern Europe with the 1373-1415 John Huss of Bohemia. It was Wycliffe's follower Peter Payne, Principal of St Edmund's College Oxford, who fled later Anti-Wycliffite persecutions in England. Payne then went on to lead the Hussites in Bohemia.

Back in England, however ó for the next two centuries ó civil authorities were required to swear to extirpate ðall manner of heresies, errors and lollardies.õ This endured until the seventeenth-century's Lord Chief Justice Sir Edward Coke refused so to swear ó alleging instead that the Church of England had by then itself **adopted** the principles of the Lollards. Indeed, in 1608, even King James<sup>84</sup> had stated that Wycliffe had conformed to the reformed teaching of the Church of England.

Wycliffe's views reached Prague itself, in 1401. There, Huss was appointed Rector of the (Roman Catholic) Bethlehem Chapel ó in 1402. By 1403, Huss and other Bohemian theologians were defending Wycliffe. By 1409, the Bohemian monarch -Good Kingø Wenceslas was siding with Huss. By 1411, the latter was vehemently condemning the sale of indulgences as heresy. Indeed, by 1414, he had written his great *Exposition of the Decalogue*. In this way, Huss ó and Wycliffe through Huss ó greatly influenced the later leading Protestant Reformer Martin Luther (1483-1546).

Hartford Connecticut Church History Professor Rev. Dr. Matthew Spinka declares<sup>85</sup> that when the theological works of John Wycliffe were brought to Prague about 1401, Huss became acquainted with them. Indeed, by 1403 even a German University Master ó Johann Huebner ó selected forty-five theses from Wycliffe's writings and secured their condemnation.

Czech masters, however, generally defended Wycliffe. So yet greater conflict arose in 1411. Then the 1410-1415 Pope John XXIII (Baldassarre Cossa) appointed a commission for the sale of indulgences. Huss vehemently denounced this õtrafficking in sacred thingsõ ó as heresy.

In 1412 Huss was declared under major excommunication, by Cardinal Peter. Huss was now regarded as an obstinate heretic and a disciple of Wycliffe. Soon, Huss would be burned at the stake.

It is interesting that Dr. Faa di Bruno in his (*nihil obstat*) book titled *Catholic Belief* (1884) ó bearing the *imprimatur* of the Cardinal Archbishop Manning ó clearly lists the 1410-15 õJohn XXIIIõ Baldassarre Cossa as one of the Popes. The 1978 *New Illustrated Columbia Encyclopedia*, however, lists the 1881-1963 Sotto il Monte as

<sup>84</sup> D.L. Walzel: *John Wyclif*. In *Journal for Christian Reconstruction*, Vallecito Ca., 1976, II:2, pp. 151f.

<sup>85</sup> M. Spinka: *Jan Hus (1373-1415)*. In ed. Douglas: *op. cit.*, pp. 492-93.



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John XXIII and Pope (1958-63). Indeed, the *New Illustrated Columbia Encyclopedia* describes Cossa as Antipope and adds that he had a reputation for unscrupulousness and self-aggrandizement. We think Antichrist a better name!

More importantly as Winn rightly states in his book on Wycliffe through the latter's Latin writings, he exerted a very great influence on Huss. Through Huss, Wycliffe further exerted a considerable influence also on Luther himself and, via Luther, on Calvin and Reformed Church Christians. Wycliffe should therefore be regarded as the forerunner and father of the Puritans; of the Covenanters; and also of the Nonconformists in England and America.<sup>86</sup>

**Wycliffe's Lollards, because too influential,  
now persecuted even in England**

Between the times of Wycliffe and Huss, the work of the Pre-Reformation had gone ahead in England until 1395. Thus, in 1393, the *Statute of Praemunire* of Richard II was enacted. Its purpose, explains the Historian Sir David Hume,<sup>87</sup> was to check the exorbitant power claimed and exercised by the Pope.

Sir William Blackstone points out that the original meaning of the offence called *praemunire*, is introducing a foreign power into the land and creating an *imperium in imperio* (alias an empire within an empire). This is done by paying to the papal process that obedience which constitutionally belonged to the king alone. It thus occurred long before the Protestant Reformation, and also long before the reign of Henry VIII.

By the Statute *16 Ric. II c. 5*: "Whoever procures at Rome or elsewhere any translations, processes, excommunications, bulls, instruments, or other things which touch the king, against him [and] his crown and realm and all persons aiding and assisting therein shall be put out of the king's protection, their lands and goods forfeited." Thus the 1393 *Statute of Praemunire* of King Richard the Second.

Even in Britain, however, the enraged Papacy then fought back. Sadly, in 1395 explains Holinshed<sup>88</sup> the See of Canterbury capitulated to the Romish reactionaries. Its Archbishop confirmed sentence of excommunication against the Lollards or Wycliffites together with their favourers who either maintained or caused to be maintained the errors and opinion of Master John Wycliffe. "For the Papists," explains the Pro-Lollardian Holinshed, "say that the sacrificing priest is the maker of his Maker (namely God)."

Holinshed then relates<sup>89</sup> that the Pope wrote to King Richard, beseeching him to assist the prelates against the Lollards. The Pope pronounced them to be traitors both to the Church and to the kingdom of England. So, both then and subsequently, during

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<sup>86</sup> *Op. cit.*, p. 12.

<sup>87</sup> *Op. cit.*, p. 191.

<sup>88</sup> *Op. cit.*, II:828f.

<sup>89</sup> *Op. cit.*, II:831f, citing Thom. Walsingham.

the reign of romanizing monarchs from Henry IV (1399-1413) till Henry VI (1422-61) the Pre-Reformational English Lollards were fiercely persecuted.<sup>90</sup>

### The influence of Wycliffe's Lollards in Scotland

Also in Scotland, there were significant fruits of Wycliffe's lollardy via its influence on Huss in Bohemia. Warr in his book *The Presbyterian Tradition* explains<sup>91</sup> that in 1407, one John Resby an English Presbyter who had come to work in Scotland was burned to death at Perth. He, like Huss and Jerome of Prague, had imbibed the heretical teachings of Wycliffe the Oxford scholar.

James I, the 1406-37 Scottish king, had effected a considerable reformation in Church and State by the time a conspiracy left him dead in a cellar of the Blackfriars Monastery. Like the Wycliffite John Resby, also King James II of Scotland was killed in Perth.

The name of Wycliffe was heard on the lips of not a few. For this, Scottish students returning home from the University of Oxford were not a little responsible. In 1433, a victim was trapped. His name was Paul Cawar, a native of Prague. He seems to have been an emissary of the Bohemians, sent to Scotland to disseminate their doctrines. He was persecuted as a heretic on the grounds of his rejecting transubstantiation, purgatory and absolution.

King James II [1437-60] had been active in furthering his father's policy of stamping out the Romish sale of benefices, of repudiating the right of the Papacy to name the Royal Ecclesiastical Councillors, and of securing an ever-widening patronage for the Scottish Crown. In 1488, he too was murdered.

The Church had been thoroughly debauched. Nothing less than the dynamite of the later Protestant Reformation could now blow away its corruption.

Subsequent to the death of Paul Cawar in 1433, the next move to extirpate heresy was made by Archbishop Blackadder of Glasgow in 1494. His quarry was a Lollard movement in Ayrshire.

The latter was far more dangerous than the preaching and activity of either Resby or Cawar. The charges involved a rejecting of the doctrine of transubstantiation and also a repudiation of Mariolatry as well as of images and relics of the saints as fitting objects for adoration by the faithful.

The Lollards, moreover, were accused of questioning the efficacy of masses for the departed and of denying the right of the Pope or his clergy to bestow indulgence or absolution. They also claimed the lawful right of the priesthood to enter into matrimony.

Above the horizon, the clouds which heralded the approaching storm were beginning to appear. In the month of February 1528, the ecclesiastical sky was black

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<sup>90</sup> *Hist. Hist.*, XVIII, pp. 520 & 527f.

<sup>91</sup> *Op. cit.*, pp. 228f.

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behind the sullen glow from a fire kindled at the gate of St. Andrews ó began to show itself. In that fire, after a lingering agony of six hours, died Patrick Hamilton.

Wycliffe's lollardry had produced its fruit in Scotland. For Hamilton had studied at Paris, at St. Andrews, and in Germany. At Marburg, he had thoroughly imbibed the rebellious doctrines of the Lutheran Reformation ó themselves derived, *via* Huss, from Wycliffe!

Hamilton's dying words on the fiery pyre, were: "How long, Lord, shall darkness cover this kingdom?" It was, however, the darkness just before the dawn of the Protestant Reformation.

**The 1470 English Lord Chief Justice Fortescue  
on Ancient British Common Law**

We must now return to England. Writes the sceptical historian Sir David Hume<sup>92</sup> of the English King Henry V: "One party only in the nation seemed likely to trouble him. The Lollards were every day increasing, and the attitude now assumed by them appeared dangerous to the Church ó and formidable to the civil authority."

The head of the Lollards was now Sir John Oldcastle, alias Lord Cobham. Around 1410f, he was persecuted for sheltering the Wycliffites. By 1420, Magistrates were ordered to round them up as heretics and insurrectionists. Indeed, many were executed.<sup>93</sup>

After the deposition of Henry VI, during the reign of King Edward IV from 1461-83, we encounter the so-called "New Monarchy." Now, writes History Professor J.R. Green,<sup>94</sup> parliamentary life was almost suspended. It was turned into a mere form, by the overpowering influence of the crown.

The legislative powers of the two Houses were usurped by the Royal Council. Arbitrary taxation re-appeared in benevolences and forced loans. Personal liberty was almost extinguished by a formidable spy-system and by the constant practice of arbitrary imprisonment.

Justice was degraded by the prodigal use of bills of attainder. It was also undermined by the wide extension of the judicial power of the Royal Council; by the servility of Judges; and by the coercion of Juries.

Nevertheless, Caxton now had started printing. Among other items, there appeared even the *Chronicle of Brut*. Indeed, soon thereafter ó especially as regards the yet further development of English Common Law ó there was to be further progress. To some extent, that was stimulated also by Sir John Fortescue's tactful rebuke to King Edward IV.

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<sup>92</sup> *Op. cit.*, p. 197.

<sup>93</sup> So too J.R. Green: *op. cit.*, pp. 266f.

<sup>94</sup> *Op. cit.*, pp. 288f.

In 1470 the Lord Chief Justice of the King's Bench and titular Chancellor of England, Sir John Fortescue, published his famous work *Praises of the Laws of England*. There, he recalled for King Edward the instruction the latter had previously been given when still Prince of Wales prior to 1461. That instruction dealt with the difference between an absolute monarchy (such as under pagan Roman Law) and a limited monarchy (such as under British Common Law).

Said Fortescue to the king, Edward IV: "Moses, that greatest of legislators [circa 1440 B.C.]... invites you to strive zealously in the study of the law more effectively than Justinian.... By divine inspiration, he [Moses] commands the kings of Israel to read the laws all the days of their life.... Moses commands the king to read this book [Deuteronomy chapter 17]....

"The laws teach departure from evil and this is understanding of the fear of God.... Not only the laws of Deuteronomy, but also all human laws are sacred.... Law is defined by these words, law is a sacred sanction commanding what is honest and forbidding the contrary.... The Apostle says, All power is from the Lord God [cf. Romans 13:1].... Jehoshaphat king of Judah says to his judges, The judgments that you give, are judgments of God (Second Chronicles chapter 19).... By such a law...the whole human race would have been ruled if it had not transgressed in paradise the commands of God.... [However,] the **Romans** usurped the government of the World."

Nevertheless, after Moses, the kingdom of England blossomed forth into a dominion regal and political out of [the 1190 B.C.] Brutus's band of Trojans.... Thus [also] Scotland...grew into a kingdom, political and regal....

"The kingdom of England was first inhabited by Britons [till 43 A.D.]; then ruled by Romans [till 397 A.D.]; again by Britons [till 530 A.D.]; and then by the Saxons [till 800 A.D.]. Then, for a short time, the kingdom was conquered by Danes [circa 800 A.D.]; and again by Saxons [880 A.D.] and finally by Normans [1066 A.D.], whose posterity holds the realm at the present time [1470 A.D.]....

"Throughout the period of these nations and their kings, **the realm has been ruled continuously by the same customs as it is now....** Neither the civil laws of the Romans..., Rome [not yet being] built at the time of the origin of the Britons [circa 1200 B.C.] nor the laws of any [other] Christian kingdom [than that of Britain] are so rooted in antiquity. Hence, there is no gainsaying nor legitimate doubt but that the customs of the English are not only good but the best....

"The King of England must rule his people according to the decrees of the laws thereof.... All the laws and statutes of this realm for securing the established religion and the rights and liberties of the people thereof, and all other laws and statutes..., are by his Majesty and by and with the advice and consent of the Lords spiritual and temporal and Commons, and by authority of the same and ratified and confirmed accordingly."<sup>95</sup>

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<sup>95</sup> Fortescue's *op. cit.*, ch. 17 (Chrimes's ed., pp. 5f & 33f).

### Importance of Chancellor Fortescue and Sir Thomas Littleton to the Common Law

Understandably, in his own book *Lives of the Lord Chancellors*,<sup>96</sup> Lord John Campbell rightly claims it was precisely Chancellor Fortescue who had laid the foundations of parliamentary privilege to which our liberties are mainly to be ascribed. The same Lord Campbell, in his *Lives of the Chief Justices*,<sup>97</sup> further remarks it was again Sir John Fortescue ó one of the most illustrious of Chief Justices ó who will for ever be held in remembrance for his judicial integrity and for his immortal treatise *De Laudibus Legum Angliae*<sup>98</sup> (alias *Praises of the Laws of England*).

According to D. Seaborne Davies, Professor in English Common Law at the University of Liverpool,<sup>99</sup> Fortescue based his jurisprudence and political thought on the Law of God and the Law of Nature. He quotes from seventeen books ó but the Bible easily comes first, with fifty-two quotations from sixteen books of it.

Apart from its reliance on Scriptural references in matters of general principle such as the office and theory of kingship, it is particularly interesting to observe its reliance on the Scriptures in support of concrete parts of English Law differing from Roman Civil Law. Such matters include: trial by jury of twelve; legitimation by the subsequent marriage of parents; and determination of the condition of a child by that of its father rather than that of its mother.

Finally, Sir Thomas de Littleton's 1481*f* *Treatise on Tenures* gives a complete systematic digest of the English Law of Property ó borrowing nothing from Roman Law. Indeed, Littleton became the standard work on the subject. Consequently, the much later first volume of the Puritan Sir Edward Coke's *Institutes of the Laws of England* is largely but a commentary on Littleton's *Tenures*.

The *Encyclopedia Americana* observes<sup>100</sup> that a milestone in the history of the Common Law was passed when Thomas de Littleton's *Treatise on Tenures* was published. This work, written in Norman-French, was the first really systematic exposition of the English Law of real property.

It contains not merely a clear and accurate account of the great variety of tenures then known in England. It also contains the rules with respect to the alienation and inheritance of land, including the law of primogeniture and entailment ó as well as the rights incidental to land-holding as easements or the rights incidental to usufruct.

It further describes the property rights growing out of personal relations between the parties ó such as a husband's estates by courtesy, and a wife's right of dower. It also details the law of actions on -covenant and on -fine and recovery.

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<sup>96</sup> *Op. cit.*, p. 373.

<sup>97</sup> J. Campbell: *Lives of the Chief Justices*, I p. 141.

<sup>98</sup> See Goard's *Post-Captivity Names of Israel*, pp. 113-14.

<sup>99</sup> *Op. cit.*, pp. 9f.

<sup>100</sup> *Op. cit.* 7:412f.

Littleton on *Tenures* contains almost a complete system of rules for the governing of society in its ordinary civil relations. This moved Camden, in his work *Britannica*,<sup>101</sup> to speak of Littleton as "the famous lawyer to whose *Treatise on Tenures* the students of Common Law are no less beholden than are the [Roman Law] civilians to Justinian's *Institutes*."

Lord Chief Justice Sir Edward Coke, the great Puritan Jurist, extravagantly called Littleton's book "the Ornament of the Common Law, the most absolute and perfect work that ever was written in any human science."<sup>102</sup> Indeed, Coke reproduced Littleton, in 1628 as the *First Institutes of the Law of England*. In that form, for nearly two centuries it then remained an authoritative textbook on the Common Law.

A new day for re-asserting the Norman-trammelled liberties of English Freemen, was fast approaching. As the citizens of London said in their 1483 *Petition to King Richard III*:<sup>103</sup> "We be determined rather to adventure and to commit us to the peril of our lives and jeopardy of death, than to live in such thralldom and bondage as we have lived long time heretofore so oppressed and injured by extortions and new impositions against the laws of God and man, and the liberty and laws of this realm wherein every Englishman is inherited."

Indeed, this new assertion of the Law of God so and the liberty and laws of the realm so would soon be at hand. That would occur, with the advent of the Protestant Reformation.

### Henry VII as the first Welsh Tudor King of England

In 1485, the Welsh King Henry Tudor became also the King of England: Henry VII. This anticipated the 1536 Union between England and Wales under his famous son King Henry VIII. It also anticipated the final Anglo-Brythonic amalgamation, under the Protestant Reformation.

Henry VII's grandfather, the Welshman Owen Tudor, had married Catharine the widow of Henry V [of England]. Owen's son Edmund Tudor the Earl of Richmond had married a descendant of John of Gaunt.<sup>104</sup> Henry VII was their immediate issue. In his own person, he reconciled not only Wales with England. As will soon be seen, through his marriage he further reconciled his own House of Lancaster with his wife's House of York.

It is significant that in Henry VII's Chapel at Westminster Abbey, his tomb is suitably embellished. In the bronze enclosure surrounding it, may be seen the emblems of the House of Lancaster so intertwined with those of Cadwallader, the A.D. 675 King of the Celto-Britons (and Pendragon of Wales).<sup>105</sup>

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<sup>101</sup> *Id.*.

<sup>102</sup> *Id.*.

<sup>103</sup> J.R. Green: *op. cit.*, p. 300.

<sup>104</sup> *Hist. Hist.*, XIX p. 14 n. 1.

<sup>105</sup> Dean Stanley: *Memorials of Westminster Abbey* (as cited in E.O. Gordon's *op. cit.* p. 78).

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Indeed, that Welsh Lancastrian Henry VII himself married Elizabeth ó daughter of the House of York's King Edward IV.<sup>106</sup> This consolidated even the whole of Northern England under his leadership. For a time, Henry bound even England and Scotland together ó by in 1502 bestowing his daughter Margaret upon the Scottish king.<sup>107</sup>

Under Henry VII the Houses of Wales, York and Lancaster were all united. Thus allied also to Scotland, the latter ó together with England and Wales ó now all moved on further toward ultimately becoming a ÷United Kingdom of Great Britain.ø

Of Henry VII, the History Professor J.R. Green declares<sup>108</sup> his tastes were literary and artistic. He was a patron of the new printing press, a lover of books and of art. The World was passing through changes more momentous than any it had witnessed since the victory of Christianity and the fall of the Roman Empire. Portuguese mariners now called in at the Cape of Good Hope at the southernmost tip of Africa.

Columbus crossed the untraversed ocean to add a New World to the Old. The capture of Constantinople by the Turks, and the flight of its Greek scholars, opened anew the science and literature of the Older World. ÷Greece has crossed the Alpsö ó exulted the exiled Argyropulos, on hearing about a translation of Thucydides by the German Reuchlin. But the glory of Reuchlin was soon eclipsed ó by that of Erasmus.

Scotland's sceptical historian Sir David Hume explains<sup>109</sup> that the reign of Henry VII (1485 to 1509) was fortunate for his people at home and honourable abroad. He put an end to the civil wars with which the nation had long been harassed. He maintained peace and order in the State, and repressed the exorbitant power of the nobility. Henry fitted out Sebastian Cabot, a Venetian settled in Bristol, and sent him westward in search of new countries in 1498. Cabot discovered the mainland of America.

The Welsh historian Trevelyan records<sup>110</sup> that the relations between the Welsh and the English now began to be more cordial. Of this period, the ancient chronicle states: ÷King Henry the Seventh [f. 1485-1509], being by his grandfather Owen Tudor descended out of Wales, sufficiently experienced the affection of the Welsh towards him.ö

### **The Christian character and great legal importance of Henry VII**

King Henry the Seventh had already abrogated those unreasonable and intolerable laws which the former kings of England, particular Henry the Fourth [1399-1413], had made against the Welsh. He was ó explains the Elizabethan chronicler and historian Holinshed<sup>111</sup> ó honest, courteous and bounteous. He so much abhorred pride and arrogance, that he was ever sharp and quick toward them who were noted for that fault.

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<sup>106</sup> Art. ÷House of Yorkø (in *NICE* 24:7468).

<sup>107</sup> J.R. Green: *op. cit.*, p. 380.

<sup>108</sup> *Op. cit.*, pp. 299f.

<sup>109</sup> *Op. cit.*, pp. 238f.

<sup>110</sup> M. Trevelyan: *op. cit.*, pp. 363.

<sup>111</sup> *Op. cit.*, III:541f.

He was also an impartial and upright justicer. Thereby he allured to himself the hearts of many people. And yet, to this severity of his ó he joined a certain merciful pity. This he extended to those who had offended the penal laws, and who were put to their fines by his justices.

He used his rigour (as he himself said) only to daunt ó to bring low. He did so, to abate the high minds and stout stomachs of the wealthy and wild people nourished up in seditious factions and civil rebellions ó rather than from any greedy desire of money. He had as much in him of gifts ó both of body, mind and fortune ó as was possible for any potentate or king to have.

Leagues and confederations he had with all Christian princes. His mighty power was dreaded everywhere ó not only within his realm, but without. This king, living all his time in fortune's favour ó in high honour, wealth, and glory ó because of his noble acts and prudent policies, is worthy to be registered in the book of fame: lest time should blot out the memory of his name here on Earth. ðHis soul we trust lives in Heaven, enjoying fruition from the Godhead ó thus Holinshed.

The *Historians' History* writes<sup>112</sup> that the Tudors were really great observers of the forms of the Constitution. Far from outraging the principles of Judge Fortescue, it was by those very principles that they became so strong. The first Tudor King (Henry VII) indeed had an arduous task. But he kept a vigilant eye. He was the wealthiest prince in Christendom when he died.

The essential checks upon the royal authority were five in number: 1. The king could levy no sort of new tax on his people, except by the grant of his Parliament. 2. The previous assent and authority of the same assembly was necessary for every new law. 3. No man could be committed to prison but by a legal warrant specifying his offence. 4. The fact of guilt or innocence on a criminal charge was determined in a Public Court and in the County where the offence was alleged to have occurred, by a jury of twelve men. 5. The officers and servants of the crown, violating the personal liberty or other right of the subject, might be sued in an action for damages, to be assessed by a jury.<sup>113</sup>

Not just England and Wales but also Ireland was subject to King Henry VII. In the Irish Parliament, statutes were enacted to free the lower classes of inhabitants. The people had been harassed. So it was enacted that for the future, no Parliament should be held till the king had been informed by the lieutenant and council of the necessity of the same.<sup>114</sup>

The following is Lord Bacon's estimate of Henry VII:<sup>115</sup> ðThis king...was one of the best.... He was religious, both in his affection and observance.... He professed always to love and seek peace.... It was his usual preface in his treaties, [to state] that when Christ came into the World, peace was sung; and when He went out of the World, peace was bequeathed....

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<sup>112</sup> *Op. cit.*, XVII, pp. 2f.

<sup>113</sup> *Ib.*, XIX, p. 15.

<sup>114</sup> *Ib.*, p. 30.

<sup>115</sup> *Ib.*, p. 43.



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öHe[nry] was valiant and active... No doubt he was truly Christian and moral.... He did much to maintain and countenance his laws.... Justice was well administered in his time..... In that part both of justice and policy which is the durable part..., he did excel.... With his justice, he was also a merciful prince.ö

Hallam adds<sup>116</sup> that the laws of Henry VII were deep and not vulgar ó not made upon the spur of a particular occasion for the present, but out of providence for the future. They were designed to make the estate of his people still more and more happy, after the manner of the legislators in ancient and heroic times. Significantly, he asked the Bishops to punish all of their Clergy who were criminal. Indeed, one of Henry's *Year Books* clearly declares:<sup>117</sup> öAny law is, or of right ought to be, according to the Law of God.ö

It was indeed especially during the reign of King Henry VII that **equity** developed. Equity was an attempt to adapt the law of the land toward the Law of God and the law of reason.<sup>118</sup> It was especially the Chancellors, most of whom were Clergymen, who applied equity in the Court of Chancery.

Thus, in 1489, Chancellor Morton stated:<sup>119</sup> öEvery law should be in accordance with the Law of God.... An executor who fraudulently misapplies the goods and does not make restitution, will be damned in hell.... To remedy this, is in accordance with conscience.ö

In his modern edition of *Potter's Historical Introduction to English Law*, A.K.R. Kiralfy shows<sup>120</sup> that the Chancellors derived their ideas from the belief that the Law of God governed the universe. Consequently, they held that His Law is synonymous with the laws of reason (properly understood) ó and predominates over the rules of any State. For a human law could not be allowed to be valid ó in contradiction to Divine Law.

*Doctor and Student* was a legal treatise written by Christopher St Germain, early in the sixteenth century. There,<sup>121</sup> two propositions are clearly stated. First: öWhen the law eternal or the will of God is known to His creatures ó reasonable by the light of natural understanding, or by the light of natural reason ó that is called the law of reason.... When it is showed [to be] of heavenly revelation..., it is called the Law of God.... When it is showed...by order of a prince or of any other secondary governor that hath power to set law upon his subjects, then it is called the law of man ó though originally it be made of God.ö

Second: öIf any law made of men bind any person to anything that is against the said laws, it is no law ó but a corruption and a manifest error.ö By öthe said lawsö is here meant the law of reason and the Law of God.

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<sup>116</sup> *Ib.*, p. 46.

<sup>117</sup> Cited in Kiralfy's *op. cit.*, p. 33.

<sup>118</sup> *Ib.*, p. 160.

<sup>119</sup> Cited in Plucknett's *op. cit.*, pp. 685f.

<sup>120</sup> *Op. cit.*, pp. 578.

<sup>121</sup> Perks: *op. cit.*, p. 53 n. 166.

Kiralfy therefore explains:<sup>122</sup> "Consequently, the Chancellor [in the equitable Court of Chancery] arrogated to himself the right to interfere with the course of the law, in a particular instance, even where the general rule was just if, according to conscience, it [viz. a particular law] would work against the Law of God." For not so to interfere, would not be equitable but inequitable.

Henry Tudor of Wales alias Henry VII of England died in 1509 only eight years before his reforms and other factors were pre-announcing the advent of the 1517 Protestant Reformation. The latter came from the Englishman John Wycliffe, via the Bohemian Jan Hus (alias John Huss), to the great Dr. Martin Luther in Germany and would later be consolidated especially in the Anglo-British Isles. That would be done (as we shall see subsequently) by the men of Henry Tudor's son King Henry VIII who would outlive even Luther.

### **The Lollards in Scotland right down till the reign of James IV (1488-1513)**

In Scotland itself, the situation was rapidly approaching flashpoint. According to Rev. James Mackenzie,<sup>123</sup> during the (1488-1513) reign of James IV, the number of God's hidden people must have been increasing. The Archbishop of Glasgow once brought thirty Lollards to stand their trial before the king and his council.

Among them were gentlemen and ladies of rank and property in the West. James would not lend himself to be a persecutor. That manly king loved fair play. He encouraged the accused to speak out freely; and defend themselves.

James IV left as heir to the crown an infant son under three years old. The country as is usual when a new king is a child fell back into disorder and lawlessness. Feudalism made its last great effort.

The corruptions of Popery, that worst enemy of both God and man on the face of the Earth, gained a greater height in Scotland than perhaps in any other country of Europe. The wealth and power of the clergy were enormous. Fully one-half of all the property in the nation belonged to them. Truly, the situation was ripe for the Protestant Reformation.

### **Summary: English Law from King John's death to the Protestant Reformation**

Summarizing, It seems that from about A.D. 35 onward, Britain received the Gospel not from Rome but directly from Palestine (and even before Rome herself did). Patristic testimony supports Britain's apostolic-age reception of Christianity, and even suggests she was probably the first nation to become Christian.

Christianity spread massively in Britain in pre-papal days (before 600 A.D.). Thus: Clement, Tertullian, Sabellianus, Origen, Dorotheus, Eusebius, Jerome, Arnobius,

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<sup>122</sup> *Op. cit.*, pp. 578f.

<sup>123</sup> *Op. cit.*, pp. 238, 241, 267 & 276.

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Chrysostom, Augustine, Theodoret, Bede, and many others. Indeed, even after the arrival in Britain of the Angles and Saxons, their nominal christianization too was already completed before 700 A.D. Thus Sir Winston Churchill.

Even in Europe (though less so than in Britain), the various Common Law systems were considerably christianized before the rise of the Papacy (which degenerated them). However, it was especially in non-papal mediaeval Britain that Christian Law developed ó particularly under the A.D. 880 King Alfred of Wessex and the A.D. 930 King Hywel Dda of Wales. This development continued, even down to the end of the twelfth century (Athelstan, Edgar, Canute, Edward the Confessor, William the Conqueror, and Glanville).

The 1215 *Magna Carta* was a landmark in British Christian jurisprudence ó against state sovereignty and against the meddling Papacy. Indeed, under the *Statute of Provisors* and the *Statute of Praemunire* ó and also under the great jurisprudential works of Bracton, Fleta, Britton, Fortescue and Littleton ó this healthy development was sustained: right down to the 1518 Protestant Reformation. As Bracton stated: ðThe king himself ought...to be...subject to God and the law.... The king also hath a superior, namely God ó and also the law by which he was made king.ö

In particular, we saw that even after bad King John, also his son the 1216-72 Henry III was obligated to reconfirm *Magna Carta* several times. This greatly strengthened the growth and progress of Parliament, especially in 1253 and 1258. Indeed, after the appearance of the jurist Bracton's *Laws and Customs of England*, we find Baron Simon de Montfort's movement toward more representative government greatly enhanced in 1259.

Further major advances occurred under the ðEnglish Justinianö King Edward I (1272-1307). He was a major historical and legal figure, and under him there was an extremely significant growth of the law and of Parliament. Indeed, this was then the case also in Scotland ó especially under Robert the Bruce and James I. Even the Pre-Renaissance in Europe helped those processes along. So too, of course, did the Pre-Reformation in Britain.

Coming next to the beginning of the godly reign of the English King Edward III (1327-77), we saw that he: strengthened Parliament; punished criminals; and checked the Pope. Edward moved against Rome and Romanism ó especially through his *Statute of Provisors* and *Statute of Praemunire*.

However, the terrible scourge of the international ðBlack Deathö ó apparently God's reply to unrepented sin ó finally reached even into England. This marked the end of the 1290 day-years of Daniel 12:11, and the emergence of Wycliffe ó in A.D. 1360.

Wycliffe rediscovered the sole authority of the Word of God. Flowing from that, he stressed God and His Law as the sources of all government for men. Wycliffe's support for patriotism and antipathy against priestcraft, predictably brought him into collision with the mediaeval heresy of transubstantiation. Indeed, he ended up: denouncing the Pope of Rome as Antichrist; getting himself excommunicated; and foreshadowing the Protestant Reformation.

Though falsely blamed for the Tylerite Rebellion of 1381, Wycliffe continued to exert an ongoing influence even after his death in 1384. That influence was seen especially upon Huss and others in Bohemia and, through Huss, later upon Luther in Germany. Even in England and Scotland, Wycliffe's followers became so influential that at one stage almost filling half the island that they were very harshly persecuted. Never wiped out even in Britain *ne tamen consumebatur* Wycliffe's Lollards were still active there too, even at the later outbreak of the Reformation itself.

We then noted the influence of the 1470 English Lord Chief Justice, Sir John Fortescue on the study of Ancient British Common Law. The Anti-Roman Fortescue traced British Law back to the B.C. 1190 Trojan Brut and even to the 1440 Moses himself and concluded that "the customs of the English are not only good, but the best."

Similar, though still writing in the Norman-French language, were the views of the Anglo-Norman jurist Sir Thomas de Littleton. He upheld neither the Roman nor the Roman-French nor even the (Norman-English) but precisely and only the Anglo-British Law of property, procedure, and persons.

Finally, we looked at Henry VII as the first Welsh Tudor King of England (1485-1509) and at James IV (1488-1513) as the last Pre-Reformational King of Scotland. Both kings were famous for their Christian characters.

In South Britain, Henry VII righteously punished criminals. He also: reconciled the Houses of Lancaster and York; justly ruled the Irish: and united Wales with England.

In North Britain, James IV of Scotland stood up against the Archbishop of Glasgow and insisted on a fair hearing for accused Scottish Lollards. Truly, premonitions of the Protestant Reformation from 1517 onward could now be felt beginning to stir up the breezes in the British Isles. It awaited only the further gusts of the Holy Spirit as the Almighty Wind of God.