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### **“A History of the Anglican Church—Part V: An Essay on the Role of Christian Lawyers and Judges within the Secular State”©**

**By**

**Roderick O. Ford, Litt.D., D.D., J.D.**

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The ideas expressed in this Apostolate Paper are wholly those of the author, and subject to modification as a result of on-going research into this subject matter. This paper is currently being revised and edited, but this version is submitted for the purpose of sharing Christian scholarship with clergy, the legal profession, and the general public.

## **PREFACE**

The organized Christian church of the Twenty-First Century is in crisis and at a crossroad. Christianity as a whole is in flux. And I believe that Christian lawyers and judges are on the frontlines of the conflict and changes which are today challenging both the Christian church and the Christian religion. Christian lawyers and judges have the power to influence and shape the social, economic, political, and legal landscape in a way that will allow Christianity and other faith-based institutions to evangelize the world for the betterment of all human beings. I write this essay, and a series of future essays, in an effort to persuade the American legal profession to rethink and reconsider one of its most critical and important jurisprudential foundations: the Christian religion. To this end, I hereby present the fourteenth essay in this series: “A History of the Anglican Church—Part V.”

## **INTRODUCTION<sup>1</sup>**

The life of King Henry II (1133-1189), as it was first presented to me in high school, during the school year 1984-85, laid the foundations for my interest in medieval and British history, as well as my systematic interpretation of secular law

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<sup>1</sup> This essay is written in the memory and honor of two of my former mentors and friends: (a) the late Senior U.S. District Court Judge Matthew Perry; and (b) the late John Roy Harper, Esq., both from Columbia, South Carolina. Judge Perry and Mr. Harper both exemplified the consummate gentleman and Christian lawyer.

through the prism of a Christian and Roman Catholic worldview. St. Augustine had taught me that the “City of God” was a “stranger,” because it was often in conflict with the “City of Man” (i.e., the earthly city),<sup>2</sup> and that this “City of God” was dispersed throughout all the races and nations of earth.<sup>3</sup> “This heavenly city, then,” explained St. Augustine, “while it sojourns on earth, calls citizens out of all nations, and gathers together a society of pilgrims of all languages, not scrupling about diversities in the manners, laws, and institutions whereby earthly peace is secured and maintained, but recognizing that, however various these are, they all tend to one and the same end of earthly peace.”<sup>4</sup>

The life of English King Henry II (1133-1189 A.D.) exemplify the Augustinian viewpoint that secular political history reflects original sin and the fallen state of mankind; indeed, it is saturated with ungodly jealousy, rivalry, and worldly lusts, with brother turned against brother, and where the “wicked war with the wicked; the good also war with the wicked.”<sup>5</sup>

As Augustine explained in *The City of God*, “[Cain,]the founder of the earthly city was a fratricide. Overcome with envy, he slew his own brother [Abel], a citizen of the eternal city, and a sojourner on earth... [A]s Roman history records, Remus was slain by his brother Romulus. And there is no difference between the foundation of this city [Rome or the Roman Empire] and of the earthly city, unless it be that Romulus and Remus were both citizens of the earthly city.”<sup>6</sup> As this essay will explain below, the history of the life of King Henry II and the Anglican Church is a mere manifestation of this sacred history.

In college and law school during the late 1980s and early 1990s, I began to sense that all human history, both sacred and secular, contained a moral undercurrent that reflected the same struggles between good and evil that was displayed in the Old Testament. I began to suspect that the Old Testament Law could be proven in the same way that Newton’s laws on physics could be proven; and I entered law school with the idea that American constitutional jurisprudence, particularly the great and landmark decisions on economic, social, and labor relations, could prove the existence of the divine hand of God in secular jurisprudence and human history. These ideas were the natural outgrowth of the Christian teachings and training that I had in the home and in my rural community

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<sup>2</sup> Ibid., p. 609.

<sup>3</sup> Ibid., pp. 609-610.

<sup>4</sup> Ibid., p. 696.

<sup>5</sup> Ibid., p. 483.

<sup>6</sup> Ibid., p. 482.

in northern Florida. I closely identified with Moses' and the Hebrew prophets' spiritual interpretation of history: *if we adhere to God's law, then we live; but if we disobey God's law, then we die*. I was taught in the A.M.E. and Baptist churches of northern Florida that all things flowed from the controlling, omnipotent, and all-powerful hand of God. Aside from Biblical stories of major kings and prophets, there were many examples of God's laws on display in the history of ancient Israel, such as in the book of Second Chronicles, as follows:

### **King A-sa**

"A-sa his son reigned in his stead. In his days the land was quiet ten years. And A-sa did that which was good and right in the eyes of the LORD his God....<sup>7</sup> The LORD is with you, while ye be with him; and if ye seek him, he will be found of you; but if ye forsake him, he will forsake you. Now for a long season Israel hath been without the true God, and without a teaching priest, and without law."<sup>8</sup>

### **King Jo-ash**

"Jo'ash was seven years old when he began to reign, and he reigned forty years in Jerusalem. His mother's name also was Zib-i-ah of Be-er-she-ba. And Jo-ash did that which was right in the sight of he LORD all the days of Je-hoi-a-da the priest."<sup>9</sup>

### **King Am-a-zi'-ah**

"Am-a-zi-ah was twenty and five years old when he began to reign, and he reigned twenty and nine years in Jerusalem. And his mother's name was Je-ho-ad-dan of Jerusalem. And he did that which was right in the sight of the LORD, but not with a perfect heart."<sup>10</sup>

### **King Uz-zi'-ah**

"Sixteen years old was Uz-zi'-ah when he began to reign, and he reigned fifty and two years in Jerusalem.... And he did that which was right in the sight of the LORD, according to all that his father Am-a-zi'-ah did."<sup>11</sup>

### **King Jo'-tham**

"Jo'-tham was twenty and five years old when he began to reign, and he reigned sixteen years in Jerusalem.... And he did that which was right in the sight

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<sup>7</sup> 2 Chronicles 14:1-2.

<sup>8</sup> 2 Chronicles 15:2-3.

<sup>9</sup> 2 Chronicles 24:1-2.

<sup>10</sup> 2 Chronicles 25:1-2.

<sup>11</sup> 2 Chronicles 26:3-4.

of the LORD, according to all that his father Uz-zi'-ah did: howbeit he entered not into the temple of the LORD. And the people did yet corruptly.”<sup>12</sup>

### **King Ahaz**

“Ahaz was twenty years old when he began to reign, and he reigned sixteen years in Jerusalem: but he did not that which was right in the sight of the LORD, like David his father....”<sup>13</sup>

Consequently, I studied political science, history and constitutional law with very close references to Bible prophecy regarding the Mosaic law of faith and obedience. The history of England up to 1588 bore a striking resemblance to the history of ancient Israel as presented in the Old Testament. Did mother England consider herself to be the spiritual heir of ancient Israel? As reflected in the life of King Henry II and several other British monarchs, I could see and feel the same cadence of spiritual laws that were presented in the Old Testament. And nearly all of the secular philosophers, theorists, and economists, whom I read outside of my official courses of study, seemed to reinforce my religious views of secular law and history. The writings of John of Salisbury certainly reaffirmed my perception that England and her laws up to the period of American Revolution were thoroughly Christian.

In my courses in college and law school, however, no such bold, matter-of-fact assertions regarding natural law, divinity, or the Christianization of secular law were ever made; but rather it was taken for granted that human beings were alone at the center of the universe; human understanding and power could be infinitely improved; and that it was the duty of educated persons to begin and end with human ingenuity and initiative. Religion seemed to be relegated to the unschooled and to the superstitious. I was a child of the American university and I was a proud student of Pan-African, anti-imperialist political philosophy and of the African Diaspora; but the university seemed to reject my Christianity, and my Afro-centric, Pan-African brothers and sisters relegated my Christianity and African Methodism to the status of a slave's religion for house negroes. In academia, I was isolated and alone as a Christian, but as a secular humanist, I found many allies, friends and colleagues.

College life was also filled with sensual temptations—alcohol, the opposite sex, party life, etc.-- so that it was easy for my Christian faith to slip. And yet,

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<sup>12</sup> 2 Chronicles 27:1-2.

<sup>13</sup> 2 Chronicles 28:1.

even in the midst of this slipping, I always maintained, with God's grace, a dim glimmer of Christian light and hope within my inner being; for I knew that at my very core was Christ. The university did not change that fact, but rather it only enhanced it through failing to adequately answer certain fundamental questions which I needed answers to, in order for me to relinquish the Christian faith completely. I had theological and philosophical questions which the university failed to address. And the peer-pressure from my college friends and those who loved me had not fully explained these questions away. For these reasons, I stole time away from course work and friends and read books on my own time: the writings of St. Augustine, St. Thomas Aquinas, Ralph Waldo Emerson, W.E.B Du Bois, Malcolm X, Martin Luther King, Jr., Abraham Lincoln, Frederick Douglass, Karl Marx, Paul Samuelson, John Kenneth Galbraith, etc. I also read different versions of the Bible, including the *New Jerusalem Bible*, which contained the Jewish Apocrypha and several other wisdom books which I had never before read. I gladly shared these new discoveries with my dear mother, who as a graduation gift from college in 1991 purchased a brand new *New Jerusalem Bible*, which I still own. And, as I recall, through my college and law-school years, St. Augustine of Hippo and St. Thomas Aquinas kept me firmly within the orbit of Christianity and the church, during this amazing period of growth.

Law school posed a clear and present danger to my Christian faith, because it appeared to mentally box all the law students into a secular worldview that was explicitly held above any divine authority. Just as Nietzsche had concluded, in American law schools as a whole, God was dead, because we lawyers had killed Him. But all of that seemed counterintuitive. In my mind, God was not dead, but we lawyers were really afraid of his divine mandate. I noticed that the only other law students who shared my concerns or who had similar questions about the relationship between law and religion were the Catholics and Jews. Surprisingly, my fellow African American law students seemed quite comfortable with this prevailing secular status quo, even though I sometimes expressed my understanding that the black-led civil rights was fundamentally Christian and church-based. My only real allies in law school were the Roman Catholics, who welcomed me into their private settings, offices, and dwellings. I enjoyed, along with several Catholics, many Sunday dinners at the private residence to Catholic Professor John Geegan. During this period, I developed a study plan which was the natural outgrowth over several research projects that I had completed in undergraduate school. The result was my Juris Doctor thesis paper, *The American Jurist: A Natural Law Interpretation of the U.S. Constitution (1787-1910)* (180 pps; unpublished). The paper was the culmination of my religious and secular learning up to that time. As I have previously mentioned in a previous paper, one of those

learning experiences occurring when I was in the tenth grade (1984-85) and included watching the 1964 classic *Becket*, starring Peter O'Toole as Henry II. This classic movie introduced me to the struggle between church and state in England, whereby the churchman Archbishop Thomas Becket was martyred for a seemingly moral and righteous cause. As a Christian, I had natural affinities toward Thomas Becket and the church; and somehow, like Thomas Becket, I would later conceptualize my duty as a Christian lawyer to defend the Christian faith within reason, but then also, and above all else, to defend the truth wherever the truth may lead. Secondly, the movie *Becket* introduced me to Anglo-American constitutional law, British history, and the struggle between church and state that paved the way for my secular education in later years.

What follows below is a summation of the reign of British monarch Henry II. In presenting this summation, I hope to shed light on how, as a result of my Christian training as a child and young adult, I came to view secular history through the prism of Old and New Testament legal philosophy.

### **SUMMARY**

King Henry II (1133- 1189) is considered the second “Lion of Justice” in British history. His was a turbulent reign, filled with challenge and risk, and requiring much political skill. Henry II was a quintessential Machiavellian monarch. He was pragmatic, and appears to have been Christian only in name but his could be an overly harsh judgment. Henry II needed to be ruthless: in England, he was constantly challenged by rebellious barons and an ever-expanding and powerful Roman Catholic Church; in France, Ireland, Scotland, and Wales, there was constant intrigue and the potential for rebellion and revolt. For this reason, Henry II did not trust anyone; he relied on spies; he sent roving inspectors and judicial officers throughout his kingdom to report on conditions and inspect the operation and quality of the court systems. Henry II established regular legal procedures, such as the jury system and the common law writ; he reorganized the central government and increased royal power. But he took risks and relied perhaps too much on real politick; in the end, Henry II was overthrown by his own sons and died a broken monarch. History has nevertheless been kind to Henry II; for he exhibited the ferocious daring and fortitude to make England a great island nation; and he laid the foundation for many of England’s great institutions, such as the British Parliament, the great Common Law courts, the universities, and the secularization of the English legal profession.

## **Part V.**

### **A. King Henry II and the Church (1154 to 1189 A.D.)**

The Roman Church of England during the time of Henry II was still a very powerful institution. Its conceptualization of law was essentially the fundamental structure presented by St. Thomas Aquinas a century later, to wit, eternal law -> divine law -> natural law-> human law. “The church maintained that there could be no end to the validity of the natural law. ‘All custom and all written law which is adverse to natural law is to be accounted null and void.’ Kings who moved against the papacy found that the pervasive and immutable natural law, in the eyes of the church, was identical with the law of Christ.”<sup>14</sup> This, of course, presented an opportunity for grave and serious conflict between strong kings and strong bishops or Popes.

#### **1. Church-State Conflict: Problem of Criminal Clergymen**

In Henry II’s England, a major conflict arose regarding the issue of priests and monks who were accused of, or found guilty of, committing crimes. These were the so-called “criminous clerks.” But in fact, “[a]lmost every scoundrel who had a smattering of education or any connection with a church might call himself a ‘clerk.’ Hence, he might demand ‘benefit of clergy,’ which included the right to be tried in a church court.”<sup>15</sup> King Henry II wanted to bring the jurisdiction of these criminous clerks under the jurisdiction of the royal courts.

#### **2. Church-State Conflict: Constitution of Clarendon**

King Henry II proposed that England return to the ancient traditions of his ancestors, as set forth in his proposed “Constitution of Clarendon,” which he wanted the church to accept. “The third clause of the Constitution of Clarendon required that ‘clerks,’ or clergymen, should be accused in a royal court, tried in an ecclesiastical court and, if found guilty, unfrocked and sent back to the royal court for sentence and punishment. There were also clauses that restated the feudal position of the bishop as baron; declared that the king had the right to control the

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<sup>14</sup> Ibid., p. 59.

<sup>15</sup> Ibid., p. 60.



election of bishops; prohibited appeals that no subject of the king might be excommunicated without the king's consent; and extended the jurisdiction of the royal courts in several directions."<sup>16</sup>

### **3. Church-State Conflict: Archbishop Thomas Becket**

In the end, Thomas Becket, the Archbishop of Canterbury, with authorization from the Pope, rejected the Constitution of Clarendon. This cut deep, because Becket and King Henry had been close friends before Becket was made Archbishop. Becket refused to put the archbishop's seal on any documents containing the king's proposals. Fearing retaliation, Becket fled to Rome; Henry seized all revenues from the see at Canterbury; and thereafter Becket remained in exile for six years while negotiations recommenced. An agreement was finally reached in 1170, but it is unfortunate that the peace between Henry II and Becket did not last long. For Becket returned to Canterbury with the intent to rectify what he believed was unauthorized mismanagement of the holy see at Canterbury. "He excommunicated three of the bishops and denounced the archbishop of York."<sup>17</sup> These clergymen had been loyal to the king. "The news of Becket's aggressive action roused Henry's terrible Angevin wrath. Cursing his archbishop as a 'turbulent priest,' he apparently shouted that the royal servants would eat the king's bread but would not rid him of Becket. Four knights, fired by Henry's hasty words, crossed the Channel and killed the archbishop in Canterbury Cathedral. Becket had become martyr."<sup>18</sup> All Christendom was shaken. Henry II dispatched ambassadors to Rome to assure the Pope that he had known nothing of the plan or plot to kill Becket. The Pope and church now demanded concessions from King Henry; appeals to Rome were allowed; and the Constitution of Clarendon was significantly weakened. "In his death Becket had Triumphed. Appeals to Rome increased; papal authority mounted with them."<sup>19</sup>

### **4. Church- State Conflict: John of Salisbury**

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<sup>16</sup> Ibid., p. 61.

<sup>17</sup> Ibid., p. 61.

<sup>18</sup> Ibid., p. 61.

<sup>19</sup> Ibid., p. 62.

John of Salisbury (1120-1180) was a contemporary and friend of Archbishop Thomas Becket.<sup>20</sup> Salisbury was with Becket during his six-year exile in France; he returned to England with Becket in 1170; and he was with Becket when he was assassinated at Canterbury on December 2, 1170. As a consequence, Salisbury became quite troubled at the growing friction between church and state during his time. He was in the middle of the conflict between Thomas Becket and Henry II. “Writing a letter to his friend Peter Abbt of Celle, he lamented, ‘Last year the indignation of our most serene lord the English king was aroused against me by the zeal of jealous folk; it was baseless but heavy. If you ask the cause, my crimes are that I profess freedom and defend the truth.’”<sup>21</sup> He addressed his landmark book *Policraticus* to Thomas Becket, who was at that time Chancellor to Henry II.<sup>22</sup> In *Policraticus*, Salisbury sets forth several prominent ideas which described the medieval view of government, law and the Christian faith. Historian Goldwin Smith has written:

More famous in his own age than any of these was John of Salisbury, who finished Polycraticus, or Statesman’s Book, in 1159. This book, written in the confident and creative years of the medieval Christian polity, was the only important political treatise written in Europe before the western world recovered and used Aristotle’s Politics. Inspired by the concepts of the Roman Empire and the Old Testament theocracy, John of Salisbury tried to find a basis for cooperation of church and state, to him the first requirement of any harmonious social system.... To him the church, as the embodiment of righteousness, was the supreme ruler of men.<sup>23</sup>

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<sup>20</sup> Salisbury was an influential man of his time. “He has been in his lifetime friend and advisor to two archbishops and an intimate of the ne English pope Adrian IV (1154-1159), whom he had known as Nicholas Breakspeare, a fellow clerk of Pope Eugenius III. He had been employed by two popes, Eugenius and Anastasius IV (1153-1154) , and had been a supporter and a correspondent of a third, Alexander III (1159-1181). In his association with the latter he became involved, of course, in the conflict between the Holy Roman Emperor Frederick Barbarossa, and the Papacy. He had mixed in English political affairs, in international diplomacy, and in the contest between the church and state.” John of Salisbury, *Policraticus: The Statesman’s Book* (New York, N.Y.: Frederick Ungar Pub. Co., 1979), pp. vi-vii.

<sup>21</sup> Ibid., p. ix.

<sup>22</sup> Ibid.

<sup>23</sup> Goldwin Smith, *A History of England* (New York, N.Y.: Charles Scribner’s Sons, 1957), pp. 62-63.

John conceptualized “law” as God’s natural justice or as natural equity.<sup>24</sup> To John, there is God’s eternal and divine law<sup>25</sup> and there is natural law or justice, and to govern justly the earthly prince has a duty to govern in accordance with these laws.<sup>26</sup> Otherwise, the earthly prince would be nothing but a tyrant, governing through lawlessness and without proper authority. In *Policaticus*, while relying heavily upon the Old Testament model, John wrote that the English king should be bound to administer the law of God (equity)<sup>27</sup> and could not violate the common interests of his subjects<sup>28</sup>; that his “sword” or executive authority was given to him by the church<sup>29</sup>; that he should avoid avarice<sup>30</sup>; that he should have the law of God ever before his mind and eyes<sup>31</sup>; and that he should be taught the fear of God.<sup>32</sup> John wrote that the king or prince “is the public power, and a kind of likeness on earth of the divine majesty.”<sup>33</sup>

<sup>34</sup>Princes should not deem that it detracts from their princely dignity to believe that the enactments of their own justice are not to be preferred to the justice of God, whose justice is an everlasting justice, and His law is equity. Now, equity as the learned jurists define it, is a certain fitness of things which compares all things rationally, and seeks to apply like rules of right and wrong to like cases, being impartially disposed toward all persons, and allotting to each that which belongs to him. Law, which knows the will and intention of equity and justice, is the interpreter of equity. All law is, as it were, a discovery and a gift

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<sup>24</sup> *John of Salisbury, Policraticus: The Statesman’s Book* (New York, N.Y.: Frederick Ungar Pub. Co., 1979), p. 46.

<sup>25</sup> “For all power is from the Lord God, and has been with Him always, and is from everlasting. The power which the prince has is therefore from God, for the power of God is never lost, nor severed from Him, but he merely exercise it through a subordinate hand, making all things teach His mercy or justice. For it is not the ruler’s own act when his will is turned to cruelty against his subjects, but it is rather the dispensation of God for His good pleasure to punish or chasten them.” *John of Salisbury, Policraticus: The Statesman’s Book* (New York, N.Y.: Frederick Ungar Pub. Co., 1979), p. 45.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*, pp. 46-47.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.* p. 48.

<sup>30</sup> *Ibid.* p. 52.

<sup>31</sup> *Ibid.*, p. 53.

<sup>32</sup> *Ibid.*, p. 54.

<sup>33</sup> *Ibid.*, p. 45.

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from God, a precept of wise men, the corrector of excesses of the will, the bond which knits together the fabric of the state, and the banisher of crime; and it is therefore fitting that all men should live according to it who lead their lives in a corporate political body.... However, it is said that the prince is absolved from the obligations of the law; but this is not true in the sense that his character should be such as to cause him to practice equity not through fear of the penalties of the law but through love of justice; and should also be such as to cause him from the same motive to promote the advantage of the commonwealth, and in all things to prefer the good of others before his own private will... he may not lawfully have any will of his own apart from that which law or equity enjoins, or the calculations of the common interest requires?<sup>35</sup> ...[H]is decision may not be at variance with the intention of equity. The prince accordingly is the minister of the common interest and the bond-servant of equity, and he bears the public person in the sense that he punishes the wrongs and injuries of all, and all crimes, with an even-handed equity. His rod and staff, also, administered with wise moderation, restore irregularities and false departures to the straight path of equity, so that deservedly may the Spirit congratulate the power of the prince with the words, 'Thy rod and thy staff, they have comforted me.'... This sword, then, the prince receives from the hand of the church, although she herself has no sword of blood at all. Nevertheless she has this sword, but she uses it by the hand of the prince, upon whom she confers the powers of bodily coercion, retaining to herself authority over spiritual things in the person of the pontiffs. **The prince, is, then, as it were, a minister of the priestly power**, and one who exercises **that side of the sacred offices which seems unworthy of the hands of the priesthood.**

Here we find in John of Salisbury's influential work *Policraticus*, a most complete summation of the English constitution and political philosophy which nurtured the English common law and legal system. First, the English monarchy was subordinate branch of the Christian priesthood. The English king was "a minister of the priestly power" and maintained a "sword" entrusted to him by God and the

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<sup>35</sup> Ibid, pp. 46-47.

church. Hence, the church was to be considered superior to the king, but the king nevertheless was entitled to due reverence and respect. A Christian king had a duty to govern in accordance with law. And to John of Salisbury and the Medieval world, “law” was an expression of divine equity (i.e., the Law of God), to be administered partly through the organized church and partly through the monarchy or earthly government. Hence, under this theory, the English monarchy was conceived as a Christian enterprise and its laws, including the English common law, was developed as a system of Christian jurisprudence.

## **B. King Henry II and the State (1154 to 1189 A.D.)**

King Henry II of England (1133 -1189) was an energetic, insecure, manipulative, controlling and egotistical monarch. These personal traits would make him one of the greatest monarchs of the Middle Ages. Indeed, Henry II knew how to govern and to wield power; and the result of his influence was a more centralized English government. In order to appease King Henry II’s insecurities and distrust of lower-level barons and nobles, it was necessary for him to establish and maintain informants and roving government agents throughout the kingdom. Henry II felt that he needed to control the barons, to quell dissent, and consolidate the royal prerogative.

### **1. Curia Regis (Central Government)**

During Henry II’s reign, the Curia Regis began to split into two bodies: the legislative (i.e., the forerunner of the British Parliament or great council) and the judicial (i.e., the three great common law courts: Court of Common Pleas; Court of the Exchequer; and the Court of the King’s Bench).<sup>36</sup> Simultaneously, the “[c]hurch courts handled extensive areas of law.”<sup>37</sup> “The claims of ecclesiastical jurisdiction were being steadily defined and broadened by church lawyers who had profited from the increased study of Roman law.” All of professional clerics, whether orders or not, were trained and educated through Roman Catholic

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<sup>36</sup> Goldwin Smith, *A History of England* ( New York, NY: Charles Scribner’s Sons, 1957), pp. 111-112.

<sup>37</sup> *Ibid.*, p. 59.

monasteries and schools; and so English legal training was thoroughly Christian, Catholic, and reflective of a philosophy of law the later defined St. Thomas Aquinas' viewpoints. The emergency of the a trained, secular legal profession would evolve slowly, but the initial shift began when clerics trained in the law who served the interests of the King began to clash with those clerics who protected the interest of the church and the Pope. The three great common law courts, mentioned above, were presided over by Christian clerics, who formed the nucleus of the secular bar and bench, which was organized through the various Inns of Court, Inns of Chancery, and the Order of the Coif. All of these organizations were nevertheless official arms of the Roman Church of England.

## 2. Royal Justice and the Common Law

Under Henry II, itinerant royal justices roamed throughout the kingdom, and the moment they entered a local court, that court was automatically converted into a royal court.<sup>38</sup> These itinerant justices thus began to centralize the English common law.

The itinerant justices not only brought surer justice to the counties; they also helped to spread a knowledge of the legal principles used by the *curia regis* and its branches. In the long development of a reasoned system of law this slow process was important. The cumbersome and formal customary law that had grown up in various local areas through Anglo-Saxon days varied from district to district. Although the feudal law brought by the Normans was similar throughout England it was concerned with the conditions of landholding and little else. As the itinerant justices moved about England they began to make a national, common law for the whole kingdom, declaring the principles and practice of the central courts at Westminster and absorbing the best of the local law.<sup>39</sup>

The English common law was a mixture of the following sources of law:

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<sup>38</sup> *Ibid.*, p. 54.

<sup>39</sup> *Ibid.*, pp. 54-55.

- a. The Code of Justinian ( Christian law of the European continent)
- b. Roman Catholic Church law (Greco-Roman or Pagan; Christian)
- c. Norman feudal law (Greco-Roman or Pagan; Christian)
- d. Anglo-Saxon customary law (Germanic Pagan; Christian)<sup>40</sup>

But the predominant and unifying character of English common law was decisively Roman Catholic and Christian. The English monarchy was Christian, and so all of its laws had to comport with Christian teachings and doctrine. Roman Catholic monasteries and schools, which continued to dominate the Education of England's learned men, produced all of the England's lawyers, judges, and political theorists and politicians—men such as John of Salisbury (discussed below).

### **3. The Jury System**

Henry II's reign is known for its establishment of regular legal procedures, such as the jury system and the common law writ system. In those days, the jury was the king's prerogative alone. Here, the king would summon a grand jury of twelve men within a local community to hear evidence and to give sworn testimony. This system proved itself successful in settling both civil and criminal cases.<sup>41</sup>

### **4. The Common Law Writ & Equity Courts**

Henry II's reign also witnessed the emergence of the common law writ system, whereby every action under the common law was initiated through filing a special writ. Simultaneously, as a Christian prince and as a servant of the Most High God, "it was the right and duty of the king to intervene with his prerogative power to secure justice and to see that right was done. Justice not allowed by the forms of the law could thus be obtained by royal interference. This was the beginning of the great system of law known as equity."<sup>42</sup> Thus, petitions in equity up from the common law courts could be made to the king's Lord Chancellor (typically a bishop in the Roman Church of England). Over time, the Lord Chancellor's court became a regular court of chancery.

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<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid., p. 55.

## 5. Jurisdictional conflicts: Ireland, Scotland, and Wales

We often forget that the United Kingdom which we know today was formed out from various racial, ethnic and tribal groups: the Celtic races of the Ireland, Wales, and Scotland, together with the Angles, Saxons, other Germanic tribes, and the Franks. During the reign of Henry II, the British isles was far from unified. Even though Henry II claimed large areas of the Celtic territories, he was not at peace or sure of their loyalty; and he was always on guard against revolt and rebellion. “Henry claimed and held at sword’s point wide areas of the British Isles.”<sup>43</sup> “Henry asserted his feudal lordship over the moors of Scotland and the hills of Wales.”<sup>44</sup> There was widespread Irish intrigue and resistance.<sup>45</sup> Irishmen refused “to respect the authority of the justiciar appointed by Henry. They tried to carve out estates for themselves, and plundered and fought at will.”<sup>46</sup> In Scotland, there was also widespread rebellion, led by the Scottish king, whose plot against Henry II was ended abruptly with the Scottish king’s surrender. In Wales, there was also widespread intrigue and disturbance. “Over in southern Wales the natives prudently gave lip-service to the royal authority of Henry II and awaited a time when the leaven of ancient grievance might begin to work again. It was hoped that the Welsh might be able, in an hour of England’s weakness, to obliterate the alien marcher lords and roll back English influence from the lands of Celtic tradition. The conquest of Wales by the armies of Henry II was far from complete.”<sup>47</sup> This was hardly a peaceful, safe, or situation for Henry II’s kingdom, but actually it reflected a cold war between various tribal and ethnic groups.

## 6. Jurisdictional conflicts: France

In addition to the challenges and problems presented in Ireland, Wales, and Scotland, King Henry II faced significant challenges to his royal authority throughout his French empire, where he “controlled a vast and hybrid collection of territories.”<sup>48</sup> For a variety of reasons, Henry II struggled to gain and hold allegiance in this vast French territory.

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<sup>43</sup> Ibid., p. 63.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid., p. 64.

<sup>48</sup> Ibid.



The strange and heterogeneous character and discrepant interests of Henry's feudal holdings in France made administration difficult. Henry's feudal lands were divided by differences in culture, language, and race. Their economic and political desires were quite dissimilar. Before the birth of French national feeling these men of Normandy, Aquitaine, and the other provinces had no common bonds to unite their interest or enthusiasm. By accident, and accident alone, they were all ruled by Henry II of England. Henry, in turn, was responsible in varying feudal relationships, to the King of France. Beyond that political and feudal fact there was no unity in Henry's vast French domain.<sup>49</sup>

It should be noted that it was through King Henry II's wife, Eleanor, that he had, through their marriage, received much of this French territory. As fate would have it, their marriage deteriorated, due in large part to Henry's "roving loves."<sup>50</sup> In retaliation, Eleanor struck back at Henry through her family connections in France and through their four sons.

#### **a. Henry's Four Sons: Henry III, Richard I, Geoffrey, and John**

Queen Eleanor and King Henry II's four sons, Henry III, Richard I, Geoffrey, and John, posed a difficult problem for the king. Queen Eleanor, through vengeance and spite, had turned them against their father. Henry II had a difficult time controlling his boys. "The harsh and ungentle methods he employed to curb other men were not used upon his children."<sup>51</sup> They had a family history of sibling rivalry and of rivalry between father and son. Henry II did make preliminary partitions of his vast kingdom between his four sons, but he refused to relinquish any power so long as he lived. This created restlessness among his sons, and the opportunity for intrigue and treason. "In 1173 Henry, Geoffrey, and Richard led revolts against their father in the eastern counties of England, in Normandy, and in Brittany. Several of the great Anglo-Norman barons seized the chance to rebel against the king who had done so much to curtail their power."<sup>52</sup> The Scotsmen

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<sup>49</sup> Ibid., p. 66.

<sup>50</sup> Ibid., p. 67.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid., p. 68.

turned against him and attacked from the north; the king of France got wind of this situation and decided to invade Normandy. But Henry's leadership prevailed even against this vast conspiracy of his sons and the coalition of his enemies. The peasants and the middle classes supported the king. They did not support the barons or the king's sons. As a result, the royal forces stood strong and prevailed everywhere. To his youngest son John, who had no turned on him, King Henry II gave Anjou, Normandy, and England. He only promised revenue to the other three sons.

### **b. Sibling Rivalry; War; Death of Henry II in 1189 A.D.**

This fragile peace did not long last, as two of the sons, Richard and Henry III, began to war against each other. And the result of this conflict ended with the death of Henry III. But only a few years later, Richard I turned against Henry II, defeating "his father and forced him to accept a series of humiliating demands. Henry II was prematurely old, broken by labor, disease, and sorrow; he came to the formal conference with Richard and Philip Augustus a dying man."<sup>53</sup>

## **CONCLUSION**

The Roman Church of England dominated the formulation of English law and government throughout the reign of King Henry II (1154 to 1189). As John of Salisbury opined, the English king was perceived to be a member of the clergy, whose responsibility was to administer the "sword," which had been entrusted to him by God and the church. As reflected in the writings of John of Salibury, St. Augustine's catholic thought continued to have a a very powerful grip upon England's jurisprudence. The Roman Church maintained jurisdiction over the souls of all men, to wit: "[a]nd justice, whose office it is to render to every man his due, whereby there is in man himself a certain just order of nature, so that the soul is subjected to God, and the flesh to the soul, and consequently both soul and flesh to God..."<sup>54</sup> This unique jurisdiction of the Roman Church of England, which was over the very souls of every individual, and which mandated that king's secular laws remain in harmony with the Law of God, created substantial conflict. Under this theory, the English king was subordinate to the Pope and the church. England's secular law was thus subordinate to the law of God (i.e., divine law;

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<sup>53</sup> Ibid., p. 69.

<sup>54</sup> St. Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 678.

natural law). There was still no completely secular legal profession during the reign of Henry II. The clergy still dominated the administration of justice throughout the English empire. Hence, the great English common law continued to be nurtured under this Roman Catholic environment. And Christianity continued to be infused deeply into the veins of the entire English legal system through the Roman Church of England throughout the reign of Henry II.

The Roman Church of England continued to mold secular Anglo-American jurisprudence into a refined English common-law court system, and to develop equity jurisprudence, which was administered by the Lord Chancellor (a bishop in the Church of England). This English common law system (both law and equity) reflected the central message of Jesus of Nazareth to love ye one another (John 15:12); to do justice and judgment (Genesis 18:18-19; Proverbs 21:1-3); to judge not according to appearance but to judge righteous judgments (John 7:24); and to do justice, judgment, and equity (Proverbs 1:2-3).

**THE END**

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