ST. LUKE'S LABOR MINISTRY, INC.

"Law & Religion Forum"

Volume 1, Apostolate Paper # 13

"A History of the Anglican Church—Part III:

An Essay on the Role of Christian Lawyers and Judges within the Secular State"©

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TABLE OF CONTENTS

Z. William I and Pope Gregory VII—the Church and State Clash

Conclusion

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 thirteenth essay in this series: "A History of the Anglican Church—Part III."

INTRODUCTION[1]

This is Part III of an essay in which I have, while borrowing from the systematic theology of St. Augustine of Hippo, shifted my focus to the "City of God" within secular history of England and Great Britain since the fall of the Roman Empire. That "City of God" is a mystery[2] but its outward manifestation

[1] 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.

[2] St. Augustine of Hippo defines the condition of humankind as divided into two broad camps: the city of man and the city of God. "This race we have distributed into two parts," St. Augustine explains, "the one consisting of those who live according to man, the other of those who live according to God. And these we also mystically call the two cities, or the two communities of men, of which the one is predestined to reign eternally with God, and the other to suffer eternal punishment with the devil…. Of these two first parents of the human race, then, Cain was the first-born, and he belonged to the city of men; after him was born Abel, who belonged to the city of God…. When these two cities began to run their course by a series of deaths and births, the citizen of this world was the first-born, and

may be seen in the development and history of the institutional churches in Rome and England since the arrival of William of Normandy in England in 1066 A.D. In presenting this essay, I certainly intend to promote the present-day mission of the Christian churches around the world; indeed, it is my belief that since the days of the Roman empire the institutional church has stood for, or at least represented, a universal moral law and guidepost for secular states, jurists and lawyers around the world. "The ultimate purpose of the Church is the salvation of souls (see canon 1752). The Church is organized in this world as a society (canon 204 § 2) where it performs spiritual and temporal works."[3] The subject matter of this essay is meant not only to record the Christian religion's significant contributions to western and Anglo-American jurisprudence, but also to document Church history.

My interest in the subject matter of this essay began in the fall of 1991, when I once heard a law professor at the University of Illinois suggest that lawyers were the "secular ministers of society," -- a concept that has not only remained within my vocabulary but has also defined how I have conceptualized my practical duties as an American lawyer. But the more fundamental question, which is the very serious subject matter of this series of essays is this: Is there a Higher Law of God that should be enforced within the secular courts? When in undergraduate school, I had read a few references to civil disobedience and tried with difficulty to provide legal definition to the civil rights struggles in the United States. But in law school I began to dabble with the First, Fourth, Thirteenth, and Fourteenth Amendments to the United States Constitution and constitutional concepts such as "ordered liberty" and "substantive due process."

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after him the stranger in this world, the citizen of the city of God, predestined by grace, elected by grace, by race a stranger below, and by grace a citizen above…. Accordingly, it is recorded of Cain that he built a city, but Abel, being a sojourner, built none. For the city of the saints is above, although here below it begets citizens, in whom it sojourns till the time of its reign arrives, when it shall gather together all in the day of the resurrection; and then shall the promised kingdom be given to them, in which they shall reign with their Prince, the King of the ages, time without end." [*The City of God* (New York, N.Y.: The Modern Library, 1950), pp. 478-479.]

According to Saint Augustine, theses two cities share a common desire to enjoy peace, safety, and security; but otherwise these two cities have two distinct lifestyles which are leading to two different ends. "Of these," Saint Augustine explained, "the earthly one has made to herself of whom she would, either from any other quarter, or even from among men, false gods whom she might serve by sacrifice; but she which is heavenly, and is a pilgrim on the earth, does not make false gods, but is herself made by the true God, of whom she herself must be the true sacrifice. Yet both alike either enjoy temporal good things, or are afflicted with temporal evils, but with diverse faith, diverse hope, and diverse love, until they must be separated by the last judgment, and each must receive her own end, of which there is no end." [*The City of God* (New York, N.Y.: The Modern Library, 1950), p. 668.]

[3] Rev. Msgr. John A. Renken, *Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada* (Ontario, Canada: St. Paul Univ. P., 2009), p. vii.

In my mind, these words appeared to be the same fundamental ideas that were expresses by Jesus of Nazareth during his Sermon on the Mount.[4] Unwittingly, throughout the years of conducting legal research on various legal matters, I have often seen similarly parallels between secular legal concepts and ideas found in the Holy Bible, such as the secular concept of "good faith and fair dealing" and the religious concept of "faith." But I have, since 1991, been intrigued with the Christian origins of the secular lawyers in England and the United States. It appeared to me that the English clergy had played a significant role in fashioning the English common law.

This essay provides a quick outline of precisely when and how the English clergy served as the first professionally-trained lawyers and took hold over the English courts during the reign of William the Conqueror from 1066 A.D. to 1087 A.D.

SUMMARY

In 1066 A.D., William of Normandy (William I) brought a refined Roman Catholic Church to the British Isles, as well as a refined form of European feudalism which forever shaped English culture and traditions. The Roman Catholic Church made a significant influence upon the English common law and the legal system. All of the lawyers were clergymen under holy orders. The Anglo-Saxon secular courts were converted into "royal courts" which were presided over by royal judges who were priests in the Roman Church of England. In addition, appeals from these royal courts could be taken directly to the Lord Chancellor, who was himself a bishop. In addition, the church or ecclesiastical courts had a very expansive jurisdiction; and, as it turned out, savvy litigants learned how to manipulate the character of their disputes in order to bypass the secular common law courts in order to have their cases brought before the better-trained jurists in the ecclesiastical courts. Hence, the Roman Church of England and the Christian faith actually strengthened its grip upon the English legal system after 1066 A.D. Serious problems arose, however, within the constitutional structure of William I's government. The new Pope Gregory VII had demanded absolute loyalty and fealty to the Vatican. William I refused to grant this fealty, and the struggle between the English monarchy and the church commenced in earnest during the Eleventh Century.

[4] Matthew, Chap. 5, 6 and 7.

Part III. William I: Christianity and Law in England (1066 A.D. to 1087 A.D.)

X. William of Normandy (William I)

William of Normandy (1028- 1087) was born in Normandy (France) near the end of year 1028 to Robert, Duke of Normandy, and his mistress Herleva. William was thus an illegitimate son with no clear right to the duchy of Normandy. Most of his life was thus marked with intrigue, struggle, conspiracy, threats of death, war, and violent conquest. William of Normandy (also called William the Conqueror, William the Bastard, and William I) was much similar to the figure of King David in the Bible. Like King David, who killed Goliath and was forced to flee the jealous King Saul, William had to endure a similar experience after his father died in 1035, and he was given the duchy of Normandy at age 7 or 8, and was supported by his great-uncle, who was the Archbishop of Rouen. Indeed, "[t]o be a successful ruler in Normandy it was necessary to be a master of war."[5]

"Conditions in Normandy were unsettled, as noble families despoiled the Church and Alan III of Brittany waged war against the duchy [of Normandy], possibly in an attempt to take control."[6] Under these conditions, the youthful William I was under the constant protectorate of senior nobles and bishops who often had to hide him from vicious conspirators against the duchy. "Although many of the Norman nobles engaged in their own private wars and feuds during William's minority, the viscounts still acknowledged the dual government, and the ecclesiastical hierarchy was supportive of William."[7] From between 1047 and 1054, William was engaged in continuous military actions against King Henry I of France and his own nobles, including the new Archbishop of Rouen.[8] William did not gain control over the duchy of Normandy until the year 1060, when he defeated in battle two military forces, one from King Henry I and the other against various nobles and viscounts.[9] Only then was he able to stabilize the Norman government that he later transplanted to the British Isles during the year 1066.

Under Norman rule, the government operated as a monarchy, with an executive cabinet, who served various high-level executive functions.

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[5] Goldwin Smith, *A History of England* (New York, NY: Charles Scribner's Sons, 1957), p. 31.
[6] https://en.wikipedia.org/wiki/William_the_Conqueror
[7] Ibid.
[8] Ibid.
[9] Ibid.

> Norman government under William was similar to the government that had existed under earlier dukes. It was a fairly simple administrative system, built around the ducal household, which consisted of a group of officers including stewards, butlers, and marshalls. The duke travelled constantly around the duchy, confirming charters and collecting revenues. Most of the income came from the ducal lands, as well as from tolls and a few taxes. This income was collected by the chamber, one of the household departments.

Interestingly, although history often emphasizes William's many conquests and battlefield exploits, it is important to point for the objective of this paper that William was also a devout Christian who formed close bonds of friendship with the clergy.

> William cultivated close relations with the church in his duchy. He took part in church councils and made several appointments to the Norman episcopate, including the appointment of Maurilius as Archbishop of Rouen. Another important appointment was that of William's half-brother Odo as Bishop of Bayeux in either 1049 or 1050. He also relied on the clergy for advice, including Lanfranc, a non-Norman who rose to become one of William's prominent ecclesiastical advisors in the late 1040s and remained so throughout the 1050s and 1060s. William gave generously to the church; from 1035 to 1066, the Norman aristocracy founded at least 20 new monastic houses, including William's two monasteries in Caen, a remarkable expansion of religious life in the duchy.[10]

This close working relationship between the monarchy and the Roman church was readily transplanted from Normandy to the British Isles in 1066 after William successfully invaded and conquered England.

> While at Winchester in 1070, William met with three papal legates – John Minutus, Peter, and Ermenfrid of Sion – who had been sent by Pope Alexander. The legates ceremonially crowned William during

[10] Ibid.

the Easter court. The historian David Bates sees this coronation as the ceremonial papal "seal of approval" for William's conquest.

The legates and the king then proceeded to hold a series of ecclesiastical councils dedicated to reforming and reorganising the English church. Stigand and his brother, *Æ*thelmær, the Bishop of Elmham, were deposed from their bishoprics. Some of the native abbots were also deposed, both at the council held near Easter and at a further one near Whitsun.

The Whitsun council saw the appointment of Lanfranc as the new Archbishop of Canterbury, and Thomas of Bayeux as the new Archbishop of York, to replace Ealdred, who had died in September 1069. William's half-brother Odo perhaps expected to be appointed to Canterbury, but William probably did not wish to give that much power to a family member.[p] Another reason for the appointment may have been pressure from the papacy to appoint Lanfranc. Norman clergy were appointed to replace the deposed bishops and abbots, and at the end of the process, only two native English bishops remained in office, along with several continental prelates appointed by Edward the Confessor.

In 1070 William also founded Battle Abbey, a new monastery at the site of the Battle of Hastings, partly as a penance for the deaths in the battle and partly as a memorial to those dead.[11]

William's government was more administratively efficient than the older Anglo-Saxon governments which preceded his. His government also had the benefit of the most learned Roman Catholic clergymen who had come from the leading monasteries from throughout Europe. For this reason, from 1066 onward, the English common law thoroughly incorporated the Christian religion and principles into its body of jurisprudence.

Y. Norman Culture and the English Common Law

From the year 1066 onward, the common law of England would be greatly influenced by three important forces: the Roman Catholic Church; European feudalism; and a restricting of the English court system.

[11] Ibid.

1. Roman Catholic Church

Prior to 1066, England had been largely isolated from Europe and the Roman Catholic Church. Anlgo-Saxon Kings had been able to appoint bishops who needed to answer only to the king, and not the Pope. This began to change after William I conquered England. Pope Alexander had given papal approval to William's conquest of England, perhaps due in large measure to the lack of accountability among the English bishops. The Roman Church of England had fallen below church standards in terms of administration, theology, and scholarship. William I and his Norman clergymen believed that that the Roman Church of England had become "corrupt" due to its reliance upon the king and its isolation from Rome.

For this reason, one of William I's first measures after 1066 was to carry out church reform in England. To achieve this, he appointed the renowned Italian lawyer Lanfranc as Archbishop of Canterbury. Lanfranc was born about 1005 and followed a family career in the law, which he studied perhaps at Bologna where he would have practiced law before the Papal courts. Lanfranc was widely considered to be one of the leading jurists of his time and he was highly regarding by Pope Gregory VII.

"William and Lanfranc therefore set out to enforce clerical celibacy, to purify monastic life, to raise the level of intellectual activity, to abolish simony, to do all that the reforming zeal of [Pope Gregory VII] had achieved in Europe." [12]

> It is obvious that the Norman Conquest opened the gateways of England to new influences from Europe. The leading members of the church and state were now Normans; many held their Norman estates; and most of them were in frequent touch with the Continent from France to Rome…. French became the language of the court, the law, the government. Educated men spoke and wrote French and Latin. Exiled from hall, court, and cloister, English remained almost entirely a spoken tongue for about three centuries…. In the fourteenth century English again entered polite and learned society in the works of Geoffrey Chaucer, John Wycliffe, and their fellows. Then its long and unconscious underground growth had left it improved and

[12] Goldwin Smith, *A History of England* (New York, NY: Charles Scribner's Sons, 1957), p. 42.

> flexible, ready to develop into the language of Shakespeare…. After 1066 several monks began to record for posterity the events of their world….. [But it] was not in literary works but in architecture that the Normans achieved most nobly in the full flood tide of the ecclesiastical revival landscape was transformed by Norman churches, huge and magnificent, rising beside the castles. God was to be glorified in splendid ceremonial and massive building, symbols of His power and majesty. About 300 churches were constructed, some of them the largest of their kind in Europe.[13]

The Roman church thus brought an advance legal system to England during the reign of William I from 1066 to 1087. "Normandy has for long been a forerunner in the historical development of the French legal system, a superiority attested by 'the number and the fame of the Anglo-Norman lawyers.'"[14]

2. Feudalism

By the year 1087 most, if not all, of the temporal landlords in England were Normans, as William I had confiscated all of the lands of those who had fought against him.[15] William I then introduced a refined system of land-tenure, based upon feudalism that organized the entire society on the basis of a man's relation to the land, then the chief source of wealth and power.[16]

"Under feudalism all other land was in theory held f the king. Holders of land directly of the king, the tenants-in-chief, held by a feudal tenure according to which they swore that they would render military and other services to the king in return for the use of the land. Their degree of ownership of the land was thus limited by their obligations."[17]

Hence, feudal customs became thoroughly integrated into the English common law. "It should not be easy to forget that for more than two centuries feudalism worked with considerable success. One of the main reasons for its long acceptance was the active idea it contained of the mutual obligation of all men to all men by custom. Everybody was responsible to someone else; nobody was

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[13] Ibid., pp. 43-44.
[14] Timothy Daniell, *The Lawyers* (Dobbs Ferry, N.Y.: Oceana Pub., 1976), p. 50.
[15] Goldwin Smith, *A History of England* (New York, NY: Charles Scribner's Sons, 1957), p. 34.
[16] Ibid.
[17] Ibid.

entirely free. In the feudal arrangements the custom was the community custom, and no man had a right to change it. The task of courts was mainly to discover and decide custom; and, in these days, custom and right were usually held to be synonymous."[18]

3. Re-structure of the English Court System

Significantly, William I converted the "shire courts" and the "hundred courts" into "royal courts," meaning that local nobles and lords could no longer uses these courts as their private tribunals. Instead, the shire courts and the hundred courts were now controlled by the English crown and administered as "royal courts." William I removed clergymen from the secular common law courts and established church or ecclesiastical courts. "He completely separated the church courts from the ordinary lay courts. No longer was the bishop to preside with the earl or sheriff over the shire court for the purpose of jointly administering justice to layman and cleric. Nor were churchmen to appear in the hundred court. Henceforth the bishop or his officers in the new church courts set up by William would deal with all cases involving clergymen or the great tracts of problems covered by the canon law."[19]

Royal Courts (Common Law)	**Ecclesiastical Courts**
(a) Manor Courts (b) Hundred Courts (c) Shire Courts	(e) Ecclesiastical Courts
Royal Court of Appeal (Chancery)	**Ecclesiastical Court of Appeal**
(d). The Lord Chancellor (Bishop)	(f) The Pope (Bishop of Rome)

4. The Clergy (Lawyers under Holy Orders)

The entire legal system, both secular and ecclesiastical, was controlled by the clergy. The royal judges and justices were typically clergy:

> Until the Conquest, **the law was discharged by men of substance and of rank—very often the men of the church, learned in the law, who some centuries later provided the first professional 'lay' lawyers with their own model**. When it is considered how swiftly William and his Norman barons gave to England a measured

[18] Ibid., p. 36.
[19] Ibid., p. 42.

> administration after their arrival, the best view must still stand that already, in Anglo-Saxon times, the Normans and English were kinsmen…. This nascent legal profession breathed on and fertilsed the older systems which had been represented in England, and the slate was wiped clean of tribal inconsequences. **The educational houses of the medieval era were the monasteries, and thus the vestibules of all learning. It was natural therefore that the legal gentlemen of the age were priests and not lawyers**—the post-Norman period followed the Anglo-Saxon tradition—for example, Bishop Aethelric and his monks of Abbingdon, with men such as Alfwin , and the brothers Sacol and Godric."[20]

This essentially meant that, after 1066, the royal judges who now presided over the manor courts, hundred courts, and shire courts were clergymen. Appeals from these common law courts could go directly to the king himself, but he eventually assigned the task of hearing these appeals to his Lord Chancellor, who was "keeper of the king's conscience" and who was himself a bishop or archbishop in the Roman Church of England. The Lord Chancellor's judicial authority was eventually organized into the Court of Chancery, where equity jurisprudence could be administered in order to correct the inefficiencies or injustices incurred from the common law.

William I separated the common law courts from the ecclesiastical courts. However, it must be remembered that these ecclesiastical courts had an expansive jurisdiction, covering issues that regarding marriage, divorce, the family, the succession of estates upon death, and general jurisdiction over all clergymen. "This separation of lay and ecclesiastical courts helped to prepare the way for conflict between church and state throughout the later Middle Ages."[21]

5 Forum-Shopping between the Royal and Church Courts

This separation between the royal courts (the manor, shire, and hundred courts) and the church or ecclesiastical courts created other unforeseen problems. One problem was the question of who was considered a "cleric?" All clerics were subject to the personal jurisdiction of the church or ecclesiastical courts. But did "cleric" include students or lower-level workers within church offices? The royal

[20] Timothy Daniell, *The Lawyers* (Dobbs Ferry, N.Y.: Oceana Pub., 1976), pp. 45-46.
[21] Goldwin Smith, *A History of England* (New York, NY: Charles Scribner's Sons, 1957), p. 42.

court judges and the English kings would later struggle with the bishops and the Pope over this jurisdictional matter.

Another problem occurred where certain matters, such as a breach of a common law contract, which was cognizable in the common law courts, could also arguably be brought before the church or ecclesiastical court under a theory that the same conducted constituted a "breach of a solemn vow or oath."

Finally, at least during the time of William I, it was general and common knowledge that the church or ecclesiastical courts were fairer, more flexible and predictable, and staffed by the best-trained jurists. This caused many persons to invent methods of getting their cased heard in the church or ecclesiastical courts, rather than the royal or common law courts. The legacy of this favoritism for the church courts created jealousy on the part of the English monarchy and more conflict between the Church and State in later centuries.

Z. William I and Pope Gregory VII—the Church and State Clash

The origins of the conflict within the unwritten English constitution regarding the Church and the Monarchy began with reign of William of Normandy in 1066. William had then placed England under the European continental sphere of Roman Catholic influence. This meant that the English king could no longer ignore with desires of the Pope. In this specific instance, William I had invaded England in 1066 under the pretense that he would defeat King Harold and depose and replace the Archbishop of Canterbury (Stigand) in exchange for the moral support of the Pope and the Church. Later, in 1078, the powerful monk Gregory VII became Pope.

"According to the extreme claims of Gregory VII every temporal ruler should obey the orders of the papacy. Within the church the Pope should be an absolute monarch; all roads must lead to Rome. In the church hierarchy the chain of command should reach downwards from Pope to parish priest."[22]

However, "William refused to allow English churchmen to acknowledge any Pope without [his] royal consent. He commanded that no papal letters or legates should come into England unless he permitted it. In temporal matters the Pope's orders must yield to the authority of the king. William insisted that he should have the power of vetoing any legislation made by an English ecclesiastical synod. He

[22] Ibid., p. 41.

refused to permit any appeals to papal courts without his consent. He ordered that none of his tenants-in-chief should be excommunicated by the Pope unless William agreed to it. In such things there must be no papal pressure upon the royal councilors and, through them, upon the secular arm of the state. The suspicious king watched narrowly the claims of the papacy and stood adamant against them. William would reform the church; but he intended to remain king of England, with his sovereign rights unimpaired. A strong king and a strong Pope had reached a stalemate."[23]

Under this scheme, we may deduce that the first English lawyers (clergymen) were divided in their loyalties either to the monarchy or to the Pope, for a variety of reasons. The Bible remained the supreme and ultimate legal authority and the supreme law of the land. In this struggle between the Church and the State, then, Anglo-American lawyers have generally fallen into two broad camps: those who support Church authority in government, and those who oppose it. (I will address these other concerns under separate cover). But for now, suffice it to say: from the time of William I onward, the English monarchy sought bishops and lawyers (clergymen) who would vindicate its divine rights; whereas the Pope demanded clerical and secular obedience to the Church. The real struggle between the Church and State began with the reign of William I of Normandy.

CONCLUSION

The "City of God" on earth is imperfect and subject to corruption and sent, but it is also a natural leader. It influences all classes of the social order—the upper, middle and lower classes within the social order. And it influences secular jurisprudence. This essay discussed the significant influence which Roman Catholic clergymen played in establishing the court systems, government, and constitution of the medieval English government. The Roman Church of England dominated the educational and training centers, and it continued to develop the trained lawyers. In fact, all of the lawyers and jurists were clerics during the eleventh and twelfth centuries. They controlled both the secular and the ecclesiastical courts during this period.

The great struggle between Church and State began in earnest in England after the reign of William I. It is difficult to describe with accuracy the details of this on-going conflict, but it seems natural that both sides were at least partially culpable and did not always have pure hands. Nevertheless, it also seems natural

[23] Ibid., pp. 42-43.

that Christianity was infused deeply into the veins of the entire legal system through the Roman Church of England.

The Roman Church of England continued to mold secular Anglo-American jurisprudence into a refined English common-law court system, and to develop of equity jurisprudence, which was administered by the Lord Chancellor. 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).

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