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"A History of the Anglican Church—Part VI:

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

By

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TABLE OF CONTENTS

H. King Edward II: Church and State in England (1307-1327 A.D.)

I. King Edward III (1327 to 1377 A.D.) and King Richard II (1377-1400 A.D.)

1. **The Great Schism (1378 – 1415 A.D.)**
2. **Church Corruption**
3. **William of Ockham (1285 to 1347 A.D.)**
4. **John Wyclife (1320 to 1384 A.D.)**
5. **Preacher John Ball and the Peasant's Revolt of 1381 A.D.**
6. **English Civil War of 1387**
7. **Revolution of 1399 and Abdication of Richard II.**

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 seventeenth essay in this series: "A History of the Anglican Church—Part VI."

PART VI

Introduction[1]

In 1991, I felt my southern, rural mannerisms giving way to the cosmopolitanism of the urban North. This was the Lord's work. The seeds of Christian faith, which my mother and others had sown within me during the 1970s and 80s, in the rural South, were now starting to blossom on the campuses of northern universities. In my trek from South to North, I felt something of the Civil War and the Great Migration in the sudden revolutionary changes within my inner being. A revolution was occurring within me; it was complicated and yet exhilarating. As a southern African American, I knew that I was connected to a historic social phenomenon, and that I had the power to make an impact upon that social phenomenon. Whether or not I could make an impact, I reasoned, depended largely upon whether or not I could maintain my faith in Christ. I could do nothing without him. I took risks in going away to college largely upon my faith in Christ. For instance, I packed my bags and headed to Illinois for law school largely on the basis of my religious notion and faith that Father Abraham was the patriarch of many nations and that I was his spiritual son and heir. Law school and the University of Illinois symbolized the Jordon River in ancient Palestine, from where I could see the Promised Land. I carried with me to Sherman Hall my Catholic New Jerusalem Bible, a graduation gift from my mother. It sat on the right side of my study desk inside of my dorm room. I promised myself that along with my study of the secular law, I would also make myself an expert in the law of God as well. Somehow, almost innately, I reasoned that there was a connection between law and religion. Perhaps the history of England, which I had studied in high school and college, together with my readings of the New Testament, led me to this assumption. In any event, as this paper will attest, I had decided early on in law school that I would become, above all else, a Christian lawyer, and thereby utilize the law in service to God and my fellow citizens. Was I unusual and naïve? I owe much of my thinking and a great debt to British history.

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[1] I dedicate this special paper to my special Christian friends at **St. Pius V Catholic Church** and to the **Historic Mount Zion A.M.E. Church** in Jacksonville, Florida. These two historic African American landmarks served as my havens of spiritual repose during the years 1994-95.

The role of Christian lawyers and judges within a secular, modern state is deeply rooted within the history of the Christian clergy, particularly within the Roman Catholic Church and the Church of England.[2] The secular legal profession in England and Western Europe began as a special clerical function of the canon law within the Roman Catholic Church.[3] It was originally a priestly and prophetic function.[4] The clerical lawyer as priest was a scholarly, ritualistic, and diligent administrator of the canon law; as prophet, he was a zealous advocate, counselor, advisor, and interpreter of Scripture, canon law, and Roman civil law.[5]

During the period 1200 to 1400 A.D., the clerical lawyer was awarded the very first university degrees from the first Medieval universities in Italy, France and England.[6] In England, they served as law teachers at Oxford and Cambridge; and they were the first Sergeants-At-Law, members of the Order of the Coif, and judges in all of the major common law and ecclesiastical courts.[7] It should also be noted that in general, there were four broad categories of law in England[8]:

Type of Law	**Education/ Training**	**Professional Title/ Degree**	**Secular/ Church Affiliation**
I. English Common Law	Inns of Court	Barristers; Solicitors; and Sergeants-at-Law. (No university training required)	Non-Clergy or Clergy.
II. Royal Law (Equity or Chancery; Statutes; Ordinances; Decrees)	Inns of Court; Inns of Chancery; Sergeant's Inn; Oxford Univ.; Univ. of Cambridge	Barristers; Solicitors; Sergeants, Clergy; J.C.D (doctor of canon law); LL.D. (Doctor of Canon/	Clergy (Roman Catholic; Church of England)

[2] See, e.g., Roscoe Pound, *Legal Profession in the Middle Ages*, 3 Notre Dame Law Review 229, 234 (1944).
[3] Ibid.
[4] Ibid.
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Ibid.

		Civil Law).	
III. Roman Civil Law (the Christianized Code of Justinian)	Roman Church; Oxford; Cambridge, etc.	Clergy; J.C.D (doctor of canon law); LL.D. (Doctor of Canon/ Civil Law).	Clergy (Roman Catholic; Church of England)
IV. Canon Law	Roman Church; Oxford; Cambridge.	Clergy; J.C.D (doctor of canon law); LL.D. (Doctor of Canon/ Civil Law).	Clergy (Roman Catholic; Church of England)

It is thus in England where Christian lawyers in the United States may find their intellectual roots and cultural heritage. The Roman Church of England exercised a vast and expansive jurisdiction. Prior to the canon law of the Roman Catholic Church, there was no systematic body of law in Western Europe. The Church thus claimed the literal power to "speak the law."[9] According to Church doctrine, Christ had given St. Peter two keys: the key to knowledge to discern God's will or law and the key to the power to enforce that will through the canon law of the Catholic Church.[10] Thus using the seven sacraments of baptism, confirmation, penance, Eucharist, marriage, ordination, and extreme unction, the Church defended its right throughout England and Europe to exercise legal jurisdiction.[11] For example, the "sacrament of marriage" justified the Church's jurisdiction over matters involving sex, marriage and family; the "sacrament of penance" supported the Church's jurisdiction over crime and torts; the "sacrament of extreme unction" supported the Church's jurisdiction over charity and poor relief, guilds, foundations, hospitals, etc.; the "sacrament of ordination" supported the founding of monasteries, cathedral schools, universities, and other similar corporate structures; and the "sacrament of baptism and confirmation" supported a new constitutional law of natural rights and duties for Christian believers.[12] And

[9] ." John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p. 10.
[10] Ibid., pp. 10-11.
[11] Ibid.
[12] "From the twelftth to the fifteenth centuries… [t]he church claimed personal jurisdiction over clerics, pilgrims, students, the poor, heretics, Jews, and Muslims. It claimed subject matter jurisdiction over doctrine and liturgy; ecclesiastical property, polity, and patronage; sex; marriage and family life; education, charity, and inheritance;

so, it is important for Christian lawyers today to realize and understand that corporate law, constitutional law, criminal law, civil law and procedure, family law, the law of non-profit organizations and foundations, etc., originated early and largely within the canon law of the Roman Catholic Church. And the rules of professional responsibility that came to govern the secular legal profession were originally the Christian ethics and clerical professional standards within the ecclesiastical courts of the Roman Catholic Church.

Secondly, Christian lawyers ought also to acknowledge the important role of equity jurisprudence within modern secular law as the vestige of Christian theology and jurisprudence. In England, the Court of Chancery, which was presided over by a bishop within the Church, evolved into an equity court of appeals for the English common law courts. Equity came to represent, within secular jurisprudence, the "Law of Moses" and the "Law of Christ" to do justice, judgment and equity.[13] In fact, "medieval writers argued that the church's canon law was the true source of Christian equity—'the mother of exceptions,' 'the epitome of the law of love,' and 'the mother of justice,' as they variously called it."[14] This important contribution of equity jurisprudence to secular law is, in fact, the central theme of this entire series of essays: the fundamental role of Christian lawyers and judges within the secular state is to zealously advocate for, and to establish, higher standard of justice.[15]

II.

In addition, we cannot fully appreciate the origins of the American Revolution, the Declaration of the Independence, or the U.S. Constitution without

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oral promises, oaths, and various contracts; and all manner of moral, ideological, and sexual crimes. The church also claimed temporal jurisdiction over subjects and persons that also fell within the concurrent jurisdiction of one or more civil authorities." John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p.10.

[13] In the 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).

[14] John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p.11.

[15] In the 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).

first understanding history of England and Western Europe; and we cannot fully understand the history of England and Western Europe without understanding the Roman Catholic Church and the decisive role which Christian clerics, monks, theologians, and lawyers played in shaping its history. The American Revolution of the late 1770s was a mere expression of English and European history up that period. For instance, according to Founding Father Thomas Paine, the American Revolution was deeply rooted in religion, religious hypocrisy, and economics:

> Mankind being originally equals in the order of creation, the equality could only be destroyed by some subsequent circumstance; the distinctions of rich, and poor, may in a great measure be accounted for, and that without having recourse to the harsh, ill-sounding names of oppression and avarice…. Male and female are the distinctions of nature, good and bad are distinctions of heaven; but how a race of men came into the world so exalted above the rest, and distinguished like some new species, is worth inquiring into, and whether they are the means of happiness or of misery to mankind…. Government by kings was first introduced into the world by the Heathens, from whom the children of Israel copied the custom. It was the most prosperous invention of the Devil ever set on foot for the promotion of idolatry. The Heathens paid divine honors to their deceased kings, and the Christian world hath improved on the plan, by doing the same to their living ones. How impious is the title of sacred majesty applied to a worm, who in the midst of his splendor is crumbling into dust! As the exalting one man so greatly above the rest cannot be justified on the equal rights of nature, so neither can it be defended on the authority of scripture; for the will of the Almighty, as declared by Gideon and the prophet Samuel, expressly disapproves of government by kings…. For all men being originally equals, no one by birth could have a right to set up his own family in perpetual preference to all others for ever, and though himself might deserve some decent degree of honors of his contemporaries, yet his descendants might be far too unworthy to inherit them. One of the strongest natural proofs of the folly of hereditary right in kings is, that nature disapproves it, otherwise she

> would not so frequently turn it into ridicule by giving mankind an *Ass for a Lion*.[16]

Indeed, the American Revolution and the struggle for the "Rights of Man" of the eighteenth century thus incorporated law and religion, political theory and Christianity, into a unique philosophical tapestry which defined modern-day secularism. This philosophical tapestry influenced my perspective of the secular law and the United States constitution as I entered law school during the early 1990s. For one thing, the history of England had informed me that the Christian religion could be a powerful and positive guiding force within in secular law, government and society. English equity jurisprudence reinforced this idea. And, upon closer reflection and review of English history, I also recognized that the Roman Church of England (i.e., "Church of England" after the Reformation) had molded and shaped the British constitutional law into what it was and is today.

The Church of England also espoused the same Christian legal theory which I had associated with St. Augustine, St. Thomas Aquinas, and the Roman Catholic Church: human law must be subordinate to God's eternal and natural law; otherwise, the secular government or commonwealth would suffer moral decay and collapse. Old and New Testament political theory certainly reinforced this idea in my mind. And so, upon this fundamental assumption, I assumed that England's lawyers and judges, as members of the Church of England, were Christian. It appeared to me that the British clergy, magistrates, administrators, judges and lawyers, etc., served the British crown as Christian administers of the Christian royal law. That royal law was found in the James 2:8 ("If ye fulfill the royal law according to the scripture, Thou shalt love thy neighbor as thyself, ye do well….").

As we shall see in detail below, for over six hundred years, from 800 to 1400 A.D. the first English judges and lawyers were originally and largely churchmen under holy orders; and the lay lawyers were originally indirectly under holy orders and closely regulated by the Archbishop of Canterbury, or other senior-level cleric. This meant that, among other things, at least in theory, the Pope and all of the lower-level clerics were charged with the mission of administering the courts of law. They were also charged with the prophetic mission of counseling and

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[16] Thomas Paine, *Common Sense, Rights of Man and Other Essential Writings* (New York, N.Y.: Signet Classic, 2003), pp. 11-12, 16.

advising the secular princes of England and Europe. The Hebrew Prophets in the Old Testament, such as Samuel and Isaiah, provided them with examples. They took their oaths and mission statements from these Bible stories; and they conceptualized themselves, as they must, as administering a Higher Law (i.e., a "fundamental law") whereby all of the king's decrees and other temporal laws must comport.

Along the same lines, I studied the period of the American Revolution in undergraduate college and law school during the late 1980s and early 1990s. And it became quite clear to me that the American colonists and Founding Fathers were reflections of their British roots and heritage. They were, in essence, carrying on a prophetic and priestly ideal of correcting an abusive king, in this case, King George III. His behavior and abuse were eerily similar to the behavior and abuse of King Saul in the Old Testament, King John I (1199-1216 A.D.), and King Richard II (1377- 1400 A.D. And, like the Prophet Samuel, these American colonists mustered the courage to petition the king to tell him the truth, resulting in the American Declaration of Independence, which reflected natural justice, natural law, and the dignity of the common man.

Moreover, while in law school, as I read *The Federalist Papers* for the first time, together with the writings of Founding Fathers Thomas Paine and Thomas Jefferson, I became more intrigued with the possibility that the American Revolution was not simply a reflection of secular, classical and Greco-Roman natural law theory. Rather, I began to consider the possibility that the American Revolution was also an extension of Martin Luther, John Calvin, the Puritans, Separatists, and the Protestant Reformation's idea of a Christian commonwealth; *and that the Declaration of Independence and United States Constitution were Christian documents that were fundamentally "Protestant" in nature*.

What made these documents "Protestant" in nature? First, they both were founded upon the theory of "fundamental law" and "natural rights" which elevated the dignity of the common man [particularly as reflected in Jesus' *Sermon on the Mount] above the fixed status which the Roman Catholic Church, Church of England, and the European monarchy had established;* second, the removal of the monarchy system from the seat of executive power; and, third, the removal of papacy and the Anglican episcopacy from the seat of official legislative and

judicial power. Protestant theologians, who were originally highly educated Roman Catholic and Anglican clergymen, began to question the inconsistencies between the Sacred Scriptures and certain abusive practices within the Roman Church of England, provided the intellectual and theological foundation for challenging the actual legitimacy of the Pope. These same men also began to question certain abuses and excesses of the monarchy as well. All of this provided the intellectual, political, and theological foundation for the American Revolution of the last 1770s.

Hence, within the Church of England came forth clergymen, Christian lawyers, Christian political theorists, etc., who reinterpreted the Sacred Scriptures in a light more favorable to democracy, democratic theory, and the elevation of the "Rights of Man."

This intellectual process—which reflects the role and function of Christian lawyers and judges within the modern-day secular state-- began largely during the twelfth and thirteenth centuries, from the reign of Richard I to the reign of Richard II, who is considered to be the last Medieval king of England. I will here not argue that Protestant motives were always pure, because in large measure influential Protestant leaders such as Martin Luther were aided along and protected by powerful European monarchs and merchants who had other political and economic motives for wishing to sever legal ties with the Pope and the Roman Catholic Church. That is to say, not all Protestant motives were righteous and pure; and not all of the Roman Catholic Church's deficiencies warranted schism and separation. Be that as it may, the Protestant Reformation ushered in a new form of Christianity that would break away from established church tradition and align itself with secularism and materialism to create a modern constitutional nation-state.[17]

For this reason, the Medieval period covered in this paper—which is characterized by frequent confrontations between the Pope and emperors or kings;

[17] We must be honest and admit that this nation-state invention has improved the material, educational, psychological, and spiritual condition and standard of living of billions of human beings, but without the tutelage of the City of God (as reflected in the organized church) it has simultaneously committed unprecedented human slaughter and debauchery, including genocide, slavery and world war. Hence, the duty of Christian lawyers and judges in the modern era is to lobby the nation-state to act with wisdom, equity and justice.

between kings and barons; and between the Archbishop of Canterbury and the British crown-- is designed to shed light on very foundations of the American Revolution, Declaration of Independence, and the U.S. Constitution.

III.

This paper focuses on the reign of seven British monarchs while using a Catholic historical and theological analysis as adopted by St. Augustine of Hippo in *The City of God*. These seven monarchs include the following:

1. King Richard I (1189- 1199 A.D.)
2. King John I (1199- 1216 A.D.)
3. King Henry III (1216- 1272 A.D.)
4. King Edward I (1272- 1307 A.D.)
5. King Edward II (1307 to 1327 A.D.)
6. King Edward III (1327 to 1377 A.D.)
7. King Richard II (1377 to 1400 A.D.)

Each of these kings, as Christian monarchs, had official ties with the Roman Church of England. Each of them bore the burden of discharging their royal duties of governing righteously and justly; and each of them received the ministries of the Pope, the Archbishop of Canterbury, and other clerics who held a variety of important positions throughout their kingdom. Here, then, is an important segment of Christian history—constitutional history—on display.

What these monarchs did, or refrained from doing, was placed under constant Christian scrutiny and judged, both contemporaneously and historically, up to high Christian ideals and standards that became the foundation of the "fundamental law of England." The Church of England held their failures and triumphs to the Judea-Christian standards of the Old and New Testaments, and chronicled their actions in order to provide a basis for current and future constitutional law and theory. The Church of England's duty was, therefore, to admonish the British monarchy against unwise and unjust behaviors and deeds. This obligation was, of course, exemplified by all of the Old Testament prophets, such as the Prophet Samuel, and it was the stern duty of all of the clerics within the

Church of England, particularly the Archbishop of Canterbury.[18] (Here, I emphatically contend, that from the duty of Popes and bishops to admonish the Prince against certain abuses of the "fundamental law" came the professional obligation of the British Parliament, jurists, and lawyers to petition government for redress of the same kinds of grievances.)

Why did the Prophet Samuel forewarn the Children of Israel against anointing a king to rule over them? At some time during my undergraduate years, this theological question seeped into my academic studies in history and political science, as we discussed various forms of government, including the role of executive powers within the United States Constitution. It appeared to me that the Prophet Samuel was presenting to the Children of Israel a choice between a theocratic government with God as sovereign, and a monarchy with a single human being as sovereign. The Prophet Samuel had tried to forewarn the Children of Israel against coveting worldly glory, worldly possessions, and empire. In the Book of 1 Samuel 8:10-22, the biblical account thus states:

> 10 So Samuel told all the words of the LORD to the people who were asking for a king from him. 11 He said, "These will be the ways of the king who will reign over you: he will take your sons and appoint them to his chariots and to be his horsemen and to run before his chariots.12 And he will appoint for himself commanders of thousands and commanders of fifties, and some to plow his ground and to reap his harvest, and to make his implements of war and the equipment of his chariots. 13 He will take your daughters to be perfumers and cooks and bakers. 14 He will take the best of your fields and vineyards and olive orchards and give them to his servants. 15 He will take the tenth of your grain and of your vineyards and give it to his officers and to his servants. 16 He will take your male servants and female servants and the best of your young men[a] and your donkeys, and put them to

[18] As we shall see below, the powers of King John I became so oppressive that a group of barons and clergy, led by the Archbishop of Canterbury, were forced to compel him to submit to the terms of the Magna Carta in 2015. My argument is that the role of Christian lawyers and judges (i.e., the clergy during this period) played a central role in applying Christian principles (i.e., the fundamental law of England) to revise and improve the English constitution with important documents like Magna Carta.

> his work.17 He will take the tenth of your flocks, and you shall be his slaves. 18 And in that day you will cry out because of your king, whom you have chosen for yourselves, but the LORD will not answer you in that day."
>
> 19 But the people refused to obey the voice of Samuel. And they said, "No! But there shall be a king over us, 20 that we also may be like all the nations, and that our king may judge us and go out before us and fight our battles." 21 And when Samuel had heard all the words of the people, he repeated them in the ears of the LORD. 22 And the LORD said to Samuel, "Obey their voice and make them a king." Samuel then said to the men of Israel, "Go every man to his city."

This had been a recurring theme in the Old Testament historical books of Joshua, Judges, 1 Samuel, 2 Samuel, 1 Kings, 2 Kings, 1 Chronicles, and 2 Chronicles. Bad kings (and by analogy bad government) turned away from God and governed out of an abundance of evil within their own hearts[19], but the good kings (and by analogy good government) governed according to the royal law of Christ.[20] For Saint Augustine and the Roman Catholic Church (i.e., the Roman Church of England), this meant that God and his law are immutable and unchangeable; and that the record of King Saul of Israel is a guide for the nations, such as the British kingdom.

In *The City of God*, for instance, St. Augustine writes:

> Again Saul sinned through disobedience, and again Samuel says to Him in the word of the Lord, 'Because thou hast despised the word of the Lord, the Lord hath despised thee, that thou mayest not be king over Israel.' And again for the same sin, when Saul confessed it, and prayed for pardon, and besought Samuel to return with him to appease the Lord, he said, 'I will not return with thee: for thou has despised the word of the Lord, and the Lord will despise thee that thou mayest not

[19] In 1399, the English Parliament had deposed and removed King Richard II, because he had violated the "fundamental laws" of England and he "was formally charged with the crime of having declared the laws to be 'in his own heart.'" Goldwin Smith, *A History of England* (New York, N.Y.: Charles Scribner's Sons, 1957), p. 145.

[20] James 2:8-10 ("If you will fulfill the royal law according to the scripture, Thou shalt love thy neighbor as thyself, ye do well: But if ye have respect to persons, ye commit sin, and are convinced of the law as transgressors. For whosoever shall keep the whole law, and yet offend in one point, he is guilty of all.").

> be king over Israel. And Samuel turned his face to go away, and Saul laid hold upon the skirt of his mantle, and rent it. And Samuel said unto him, The Lord hath rent the kingdom from Israel out of thine hand this day, and will give it to thy neighbor, who is good above thee, and will divide Israel in twain. And He will not be changed, neither will He repent: for He is not as a man, that He should repent; who threatens and does not persist.'… [T]hat division with which God threatened the kingdom and people in the person of Saul, who represented them, is shown to be eternal and unchangeable by this which is added, 'And He will not be changed, neither will He repent…. Therefore, when God is said not to repent, it is to be understood that He does not change."[21]

Here, we may understand St. Augustine to refer to the eternal and divine law of God, which does not change; meaning, too, that the consequences of sin or disobedience also does not change; and, the result of which the cause of the rise and fall of peoples and nations (i.e., the presence or absence of justice[22]) is likewise rooted in the unchanged eternal and divine law of God.

The Church of England also placed the eternal and divine law above the British crown. British monarchs could not violate these laws. This eternal and divine law of God may best be understood as the initial cause or primary mover which caused all things to come into existence[23]; that is to say, there is "an order of causes in which the highest efficiency is attributed to the will of God…. The spirit of life, therefore, which quickens all things, and is the creator of every body, and of every created spirit, is God Himself, the uncreated spirit. In His supreme will resides the power which acts on the wills of all created spirits, helping the good,

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[21] Saint Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1050), pp. 584-586.

[22] "God Himself, the fountain of all justice…." *The City of God*, p. 27. "Justice being taken away, then, what are kingdoms but great robberies? For what are robberies themselves, but little kingdoms?" *The City of God*, p. 112. "And justice, whose office it is to render 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—does not this virtue demonstrate that it is as yet rather laboring towards its end than resting in its finished work?" *The City of God*, p. 678. "[A] republic cannot administered without justice." The City of God, p. 699. "For by consulting the Gospel we learn that Christ is Truth." *The City of God*, p. 645. "That the last judgment, then, shall be administered by Jesus Christ in the manner predicted in the sacred writings is denied or doubted by no one…." *The City of God*, p. 762.

[23] *The City of God*, pp. 154-155.

judging the evil, controlling all, granting power to some, not granting it to others."[24]

For to the Catholic Christian this Cause of all causes—bodies and spirits-- is the foundation of all science and all law.[25] According to St. Augustine, God's will is natural law, which is the sum total of every conceivable discipline known or knowable to human being. For this reason, "if sin be natural," argued St. Augustine, "it is not sin at all,"[26] because "sin" is a defection from God's will or law. Nature or natural law is thus the essence of God's will and personality. "Vice, too, is so contrary to nature, that it cannot but damage it."[27] "[E]very vice is an injury of the nature."[28] "Now every fault injures the nature, and is consequently contrary to the nature… when we say that blindness is a defect of the eyes, we prove that sight belongs to the nature of the eyes; and when we say that deafness is a defect of the ears, hearing is thereby proved to belong to their nature…."[29] "Therefore the vice which makes those who are called His enemies resist Him, is an evil not to God, but to themselves. And to them it is an evil, solely because it corrupts that good of their nature. It is not nature, therefore, but vice, which is contrary to God."[30]

According to the Roman Church of England, the science of government, law and jurisprudence did not fall outside the domain of this Catholic theology, since God is Justice, and so political and constitutional theory are mere sub-sets of metaphysical assumptions about right and justice. British common law and constitutional law evolved through the Church of England with this distinct Roman Catholic influence. For Saint Augustine, the ***just prince must rule in partnership with God***; that is to say, he or she must cleave to God's will and law (i.e., the royal law) and establish justice. St. Augustine opined that the key to ancient Rome's strength had been " 'Rome's severe morality…'"[31]; that ancient Rome's decline was due to "the decay of morality, imperceptibly lost its brilliant hue, but

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[24] Ibid.
[25] See, e.g., Thomas E. Wood, Jr., *How The Catholic Church Built Western Civilization* (Washington, D.C.: Regnery Publishing, Inc., 2005).
[26] *The City of God*, p. 359.
[27] Ibid., p. 361.
[28] Ibid., p. 381.
[2929] Ibid., p. 381.
[30] Ibid., p. 382.
[31] Ibid., p. 62.

afterwards was wholly obliterated, was swept away as by a torrent, and involved the republic in such disastrous ruin, that though the houses and wall remained standing, the leading writers do not scruple to say that the republic was destroyed"[32]; and that "Rome never was a republic, because true justice had never a place in it… the fact is, true justice has no existence save in that republic whose founder and ruler is Christ…."[33]

Not surprisingly, the Church of England's and St. Augustine's prescriptions for a just and righteous ruler, governor or prince was almost a carbon copy of the Old Testament admonitions to the kings of ancient Israel. In *The City of God*, St. Augustine opined that Christian kings or emperors…

> … are happy if they rule justly; if they make their power the handmaid of His majesty by using it for the greatest possible extension of His worship; if they fear, love, worship God; if more than their own they love that kingdom in which they are not afraid to have partners; if they are slow to punish, ready to pardon; if they apply that punishment as necessary to government and defence of the republic, and not in order to gratify their own enmity; if they grant pardon, not that iniquity may go unpunished, but with the hope that the transgressor may amend his ways; if they compensate with the lenity of mercy and the liberality of benevolence for whatever severity they may be compelled to decree; if their luxury is as much restrained as it might have been unrestrained; if they prefer to govern depraved desires rather than any nation whatever; and if they do all these things, not through ardent desire of empty glory, but through love of eternal felicity, not neglecting to offer to the true God, who is their God, for their sins, the sacrifices of humility, contrition, and prayer. Such Christian emperors, we say, are happy in the present time by hope, and are destined to be so in the enjoyment of the reality itself, when that which we wait for shall have arrived.[34]

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[32] Ibid., p. 64
[33] Ibid., p. 63.
[34] Ibid., p. 178.

Who, in St. Augustine's ideal Christian state, were to advise the Christian prince? Christian priests, Christian theologians, and Christian lawyers, of course. In England, these were the Pope, the Archbishop of Canterbury, other senior archbishops, and senior clerics. See, e.g., the expressed language of Magna Carta below. All the Christian lawyers and judges were members of the Church of England and they, too, were administrators of the royal law, which was designed as implementing the eternal, divine, and natural law of God. According to St. Augustine, Christians must assume these important roles if they are able and capable. "For human society," wrote St. Augustine, "which [the the Christian advisor] thinks it a wickedness to abandon, constrains him and compels him to this duty."[35]

And so, the role of the modern-day American lawyer and judge has deep roots within the Church of England and its conceptualization of the roles of English barristers and jurists in England. These roles were fundamentally rooted in the idea of the prophets and priests of the Old Testament and of the apostles and bishops of the New Testament. These roles, first and foremost, were to establish Justice, which, as St. Augustine reminds us, is God Himself. This idea was rooted in the ancient Israelite idea of God as the Supreme Law, as reflected in Figure 1, below:

Figure 1. The Mosaic Life-Death Grid

Law of Moses (Life)	**Law of Sin (Death)**
Virtue	Vice
Liberty	Slavery

In other words, the relationship between King Saul, who was ancient Israel's first king, and the Prophet Samuel, reflected the nature of the relationship of England's clergymen, judges, and lawyers to the British monarchy and government. These Christian clergymen, judges, and lawyers had a profound duty advocate for equity and justice before the crown and the courts; and to show how vice and immorality would end in a loss of liberty and utter ruination of the body politic. This ancient Israelite ideal, as we have already seen in the writings of St. Augustine of Hippo, was carried forward and incorporated into the New

[35] Ibid., p. 682.

Testament's law of the Gospel, and, through the Roman Church of England, into the British royal and common law.

In Medieval England, this Mosaic ideal of God as the Supreme Law served as the foundation of the British constitutional system; and the Roman Church of England was early and largely its handmaiden. The British monarchy was without question a Christian monarchy, and the Archbishop of Canterbury and other senior churchmen served as its advisors, government administrators, judges and legal advocates. Hence, the English common law reflected the unwritten "fundamental law of England," and was deeply-rooted in Judea-Christian idea of God and justice. As we shall see below, King Richard II was deposed and replaced with a new king, because he violated this "fundamental law" and following the unscrupulous passions of his own heart. It was almost as though the English Parliament stood into the shoes of the Prophet Samuel, and as though Richard II had stood into the shoes of King Saul. For like King Saul of the Old Testament, King Richard II had sinned against God (Justice) and his kingdom was taken from him.

SUMMARY

The period 1189 to 1400 A.D. in British history witnessed the slow evolution of ancient Anglo-Saxon and medieval institutions into a limited, constitutional monarchy, a robust, functional Parliament that leaned toward universal representation of various class interests, and sophisticated legal system.

For the most part, there were two major actors: the king and the barons. These two forces were constantly competing for power; sometimes this competition turned bloody and ended in civil war. The third major actor was the Church of England, led by the Archbishop of Canterbury. The Church often mediated the conflict between the king and the barons. The Magna Carta of 1215 A.D. was the result of conflict between King John I and the barons. This historic document, which set forth constitutional principles that upheld limited monarchial power, was crafted by clergymen in the Church of England.

During the later part of the thirteenth century, a new major actor, the merchants and the rising middle class slowly emerged. This new middle class provided talented men who were loyal to the British crown and who could serve at the highest echelons of government. During the reign of King Edward I, the secular legal profession emerged out of sheer necessity; first, there simply were not enough clerics within the Roman Church of England who could function as both jurists or lawyers and as priests; second, the growing secular nature of legal issues, such as laws governing merchants, fell outside of the purview of the ecclesiastical courts; and, third, the Pope and senior bishops more and more encouraged clerics to restrict their law practice before the ecclesiastical courts. The Inns of Court emerged as secular institutions with strong Church and Christian foundations. Law men thus entered into the professions through the study of law in these Inns of Court; and their emerging influence with the British monarchy eventually enabled them to break the monopoly of power of the barons and clergy, while at the same time to create a shift toward a limited monarchy with constitutional powers subject to the review of Parliament.

This new shift and constitutional ideal, at least as it was argued by men such as William of Ockham and John Wyclife, more accurately reflected the spirit and intent of Christ and the Gospel. These ideals were to play a role, centuries later, in

influencing the Protestant Reformation, the Enlightenment, and the American and French revolutions.

A. King Richard I and the State (1189- 1199 A.D.)

The successor to Henry II was Richard I, a "romantic hero of a dying age of chivalry."[36] Richard I was primarily a soldier and a crusader. For this reason, the Roman Church of England, through the justicair and archbishop of Canterbury Hubert Walter, governed both temporal and spiritual affairs in England during his reign.

Richard I's reign lasted only 10 years. During this period, Richard I stayed away from England while engaged in war. Soon after Richard I ascended to the throne of England, he made a pact with the Holy Roman Emperor (Frederick Barbarosa) and the king of France (Philip Augusta) to go to Palestine for a crusade and a battle of western Christendom against the Islamic governors of Jerusalem. "Richard came to England for his coronation and at once set about collecting revenue to finance his share in the crusade."[37]

Sibling Rivalry: Richard I's older brother Henry had died in 1183, while their father Henry II was still alive. His two younger brothers were John and Geoffrey. Henry II had given John lordship of Ireland, lands in Normandy (France), and castles throughout England. Geoffrey was given (or elected) to the bishopric of York. However, John was not satisfied with this arrangement and had designs against his brother Richard I.

The Crusades: Richard I energetically engaged in a crusade with several other European leaders, some of whom engaged in feuds and confrontations during the engagement. "Difficulties and discords among the crusaders increased. Should they advance at once in a winter attack upon Jerusalem? Could the city be taken? If so, could it be held? A truce was finally signed with Saladin, who promised Christian pilgrims free access to the Holy Sepulchre in Jerusalem. Jaffa, Acre, Tyre, and certain other coastal ports were to stay in Christian hands. This was the conclusion of the crusade whose prelude had been so dramatic and ambitious. On October 9,

[36] Goldwin Smith, *A History of England* (New York, NY: Charles Scribner's Sons, 1957), p. 71.
[37] Ibid.

1192, Richard sailed from Palestine for England."[38] During his voyage home, he received word of a conspiracy to capture him and to hold him for ransom. Despite his best efforts, Richard I was captured in Germany by the Emperor Henry VI; and John, Richard's brother, encouraged the emperor to keep Richard in prison. However, Richard's loyal vassals raised the ransom money to arrange for his release. "When Richard at last reached England he found his kingdom had been disturbed by rivalries among the barons within and without his council. His faithless brother John had been intriguing with Philip Augustus."[39]

War Against Emperor Philip Augustus: in 1194, Richard I went to war against the Emperor Philip Augustus. For the next five years, Richard I remained in constant war in northern France.

"In April, 1199, he was wounded by a crossbow. A few days later Richard died in his tent outside the castle walls."[40]

B. King Richard I and the Church (1189-1199 A.D.)

As a result of the administrative genius of archbishop of Canterbury Hubert Walter (1160 – 1205), the innovative changes that were made in the administration of justice during the reign of Henry II, were continued during Richard I's reign.[41]

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[38] P. 72.
[39] P. 73.
[40] P. 73.

[41] "Walter's chief administrative measures were his instructions to the itinerant justices of 1194 and 1198, his ordinance of 1195, an attempt to increase order in the kingdom, and his plan of 1198 for the assessment of a land tax. In 1194 the justices were ordered to secure the election of four coroners by each county court. The coroners were to *keep*, or register, royal pleas, which had previously been a duty of the sheriff. The juries were to be chosen by a committee of four knights, also elected by the county court. This introduction of coroners and constables eventually led to a change in the role of sheriffs, and a lessening of their importance in royal administration. Although he probably did not take part in the decision to set up a special exchequer for the collection of Richard's ransom, Walter did appoint the two escheators, or guardians of the amounts due, who were Hugh Bardulf in the north of England and William of Sainte-Mère-Eglise in the south. His instructions for the eyre, or circuits of traveling justices, are the first that survive in English history. It was during his tenure of the justiciarship that the judicial role of the Exchequer became separated from the purely financial aspects….

"**Walter also helped with the creation of a more professional group of royal justices**. Although the group, which included Simon of Pattishall, Ralph Foliot, Richard Barre, William

Hubert Walter held the position of Lord Chancellor, Archbishop of Canterbury, and Chief Justiciar. In these roles, he held both spiritual and temporal authority simultaneously, giving him power and authority that rivaled the monarchy. Since Richard I was absent and preoccupied with war for most of his ten-year reign, archbishop Hubert Walter controlled the English government during this period.[42]

> While on crusade, [archbishop Hubert Walter] was praised by his fellow crusaders, and acted as Richard's principal negotiator with Saladin for a peace treaty. After the conclusion of the treaty with Saladin, Walter was in the first band of pilgrims that entered Jerusalem. Saladin entertained Walter during his stay in Jerusalem, and the Englishman succeeded in extracting a promise from Saladin that a small group of Western clergy would be allowed to remain in the city to perform divine services.[43]

The extraordinary ecclesiastical and administrative career of Hubert Walter is a testament to the power and function of the English clergy in secular affairs during the twelfth century.

C. King John I and the State (1199- 1216 A.D.)

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de Warenne, Richard Herriard, and Walter's brother Osbert fitzHervey, had mostly already served as justices prior to Walter's term of office, it was Walter who used them extensively. It appears likely that Walter chose them for their ability, not for any familial ties to himself. This group of men replaced the previous system of using mostly local men, and are the first signs of a professional judiciary.

"**In 1195 Walter issued an ordinance by which four knights were appointed in every hundred to act as guardians of the peace, a precursor to the office of Justice of the Peace**. His use of the knights, who appear for the first time in political life, is the first sign of the rise of this class who, either as members of parliament or justices of the peace, later became the mainstay of English government. In 1198, Walter requested a carucage, or plough-tax, of five shillings on every plough-land, or carucate, under cultivation. However, difficulties arose over the assessments, so the justiciar ordered them to be made by a sworn jury in every hundred. It is likely that those jurors were elected." https://en.wikipedia.org/wiki/Hubert_Walter.

[42] "Because of Richard's absence from England, Walter was able to exercise more authority as justiciar than any of his predecessors. All that Walter needed to do was keep Richard's monetary needs satisfied. Combined with Walter's position as archbishop, Walter wielded a power unseen in England since the days of Lanfranc." https://en.wikipedia.org/wiki/Hubert_Walter.

[43] https://en.wikipedia.org/wiki/Hubert_Walter

Now the successor to Richard I was his younger brother, King John I, a historic English monarch whose reign left an indelible mark upon the English constitution.

It is safe to say that King John I was no serious Christian; he stole the beautiful fiancé from his own vassal Hugh the Brown, and arranged to marry her—a most atrocious act of religious and customary impiety.[44] Despite grievance and counsel from the French emperor Philip Augustus and the Pope, King John I took Hugh the Brown's fiancé and married her.

In addition, the rule of primogeniture, which was not yet official English law, led some English lawyers and clergy to conclude that King John I's nephew, Arthur, should have succeeded Richard I as King of

England. However, King John I "succeeded in capturing his nephew Arthur of Brittany. Arthur soon disappeared. Rumor said that John had murdered his nephew at Rouen; and rumor was probably right."[45] Hence, the tide of public sentiment soon turned against King John, and all of his French holdings slipped into the hands of the French emperor Philip Augustus.[46]

King John I had no sense of reasonable restraint of his monarchial power. "He condoned gross maladministration in his government and his courts. He made exorbitant financial demands upon every class. As the tyranny tightened disaffection ran through all classes, from baron to peasant."[47]

In 1212, he was forced to put down a Welsh rebellion. "He hanged twenty-eight prisoners he had seized from the Welsh chieftains. He forced the English barons he suspected of treasonable inclinations to surrender their children into his hands as hostages…. He set up royal commissions to hear grievances; he cut down the tolls collected by the plundering sheriffs. Despite these gestures, the tide of public hostility continued to roll heavily against the king. A mad hermit prophesied that John had less than a year to reign. From castle to cottage rumors raced through England that the royal cause was desperate."[48]

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[44] P. 74.
[45] Ibid.
[46] I bid.
[47] Ibid., p. 77.
[48] Ibi
d.

D. King John I and the Church (1199-1216 A.D.)

Next, King John I was bold enough to cross the powerful Pope Innocent III, "the strongest Pope since Gregory VII." When the powerful archbishop of Canterbury Hubert Walter died in 1205, King John I bypassed the canon law of Canterbury and selected John de Grey to be the next archbishop of Canterbury.

However, the bishops and monks of Canterbury Cathedral, insisting upon following establish canon law, selected Bishop Reginald as the new successor to the archbishopric. When King John I heard of what the bishops and monks in Canterbury had done, he confronted them; they immediately recanted and accepted King I's candidate.

Pope Innocent III, however, refused to accept John de Grey; instead, Pope Innocent III appointed Stephen Langton, a distinguished English cardinal, to assume the position of archbishop of Canterbury. "John angrily refused the recognize the appointment."[49] This was a historic error. "The biography of Innocent III is a long tale of superlative skill in diplomacy and successive chapters of political conquest. Against such a Pope, John had little chance of winning the contest."[50]

In 1208, Pope Innocent III placed an "interdict" upon all of England. The Roman Church of England shut down, ceased to function—no baptisms, funerals, marriages, penance, confirmations, etc.

The parish priests were only allowed to perform certain emergency duties, but by in large the spiritual life of England was shut down and cut off from Rome. King John turned against the local church, seizing church property and revenue. However, the tide of public sentiment began to turn heavily against King John. And in 1209, after Innocent III officially excommunicated King John, "[m]any of the king's supporters were filled with panic because the decree of excommunication meant that anybody who remained loyal to John was thereby placing his own soul in jeopardy."[51]

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[49] Ibid, p. 76.
[50] Ibid.
[51] Ibid, p. 77.

E. *Magna Carta,* 1215-1217 A.D.

The game was finally up when Pope Innocent III deposed King John I in 1213 A.D. All of King John I's subjects were thereby released from following his orders. Next, Pope Innocent III invited the French king to invade England.

However, King John I immediately capitulated, in order to avert this invasion, and he immediately reached settlement with the Pope. Meanwhile, his English barons and local clergy will still not satisfied. Under the leadership of archbishop Stephen Langston, they issued sixty-three clauses of the *Magna Carta* in 2015 to King John I.

This was perhaps the first written document in English history that expressly limited the power of the British monarchy. It dealt with the pressing issues of war and peace, administration of law and the courts, and redress of any violations through a committee of twenty-five barons. "The humiliated John also promised to make his subjects swear obedience to the mandates of the twenty-five barons."[52]

As it turned out, King John I sought permission from Pope Innocent III to rescind *Magna Carta*, the Pope agreed. Civil war broke out in October 2015; the Pope sided with King John; the French king Philip Augustus sided with the barons.

However, in July, 1216, Pope Innocent III died; and in October 2016, King John I was overcome by natural disaster when his forces were caught in quicksand and "rushing tide of sea are called the Wash."[53] John died in 2016. *Magna Carta* was reissued in 1216 and again in 1217, each time with many revisions.[54] Below, in Figure 1, is a copy the 2015 version of the *Magna Carta*.

MAGNA CARTA 2015

JOHN, **by the grace of God King of England**, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou, **to his archbishops, bishops, abbots, earls, barons, justices, foresters, sheriffs, stewards, servants, and to all his officials and loyal subjects**, Greeting.

KNOW THAT BEFORE GOD, for the health of our soul and those of our ancestors and heirs, **to**

[52] Ibid, p. 80.
[53] Ibid., p. 81.
[54] Ibid., p. 80.

the honour of God, the exaltation of the holy Church, and the **better ordering of our kingdom**, at the **advice of our reverend fathers Stephen, archbishop of Canterbury, primate of all England, and cardinal of the holy Roman Church, Henry archbishop of Dublin, William bishop of London, Peter bishop of Winchester, Jocelin bishop of Bath and Glastonbury, Hugh bishop of Lincoln, Walter bishop of Worcester, William bishop of Coventry, Benedict bishop of Rochester**, Master Pandulf subdeacon and member of the papal household, Brother Aymeric master of the knighthood of the Temple in England, William Marshal earl of Pembroke, William earl of Salisbury, William earl of Warren, William earl of Arundel, Alan of Galloway constable of Scotland, Warin fitz Gerald, Peter fitz Herbert, Hubert de Burgh seneschal of Poitou, Hugh de Neville, Matthew fitz Herbert, Thomas Basset, Alan Basset, Philip Daubeny, Robert de Roppeley, John Marshal, John fitz Hugh, and other loyal subjects:

+ (1) FIRST, THAT WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, **that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired.** That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter **the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III**. **This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity**.

TO ALL FREE MEN OF OUR KINGDOM we have also granted, for us and our heirs for ever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs:

(2) If any earl, baron, or other person that holds lands directly of the Crown, for military service, shall die, and at his death his heir shall be of full age and owe a 'relief', the heir shall have his inheritance on payment of the ancient scale of 'relief'. That is to say, the heir or heirs of an earl shall pay £100 for the entire earl's barony, the heir or heirs of a knight 100s. at most for the entire knight's 'fee', and any man that owes less shall pay less, in accordance with the ancient usage of 'fees'.

(3) But if the heir of such a person is under age and a ward, when he comes of age he shall have his inheritance without 'relief' or fine.

(4) The guardian of the land of an heir who is under age shall take from it only reasonable revenues, customary dues, and feudal services. He shall do this without destruction or damage to men or property. If we have given the guardianship of the land to a sheriff, or to any person answerable to us for the revenues, and he commits destruction or damage, we will exact compensation from him, and the land shall be entrusted to two worthy and prudent men of the same 'fee', who shall be answerable to us for the revenues, or to the person to whom we have assigned them. If we have given or sold to anyone the guardianship of such land, and he causes destruction or damage, he shall lose the guardianship of it, and it shall be handed over to two worthy and prudent men of the same 'fee', who shall be similarly answerable to us.

(5) For so long as a guardian has guardianship of such land, he shall maintain the houses, parks, fish preserves, ponds, mills, and everything else pertaining to it, from the revenues of the land itself. When the heir comes of age, he shall restore the whole land to him, stocked with plough teams and such implements of husbandry as the season demands and the revenues from the land

can reasonably bear.

(6) Heirs may be given in marriage, but not to someone of lower social standing. Before a marriage takes place, it shall be made known to the heir's next-of-kin.

(7) At her husband's death, a widow may have her marriage portion and inheritance at once and without trouble. She shall pay nothing for her dower, marriage portion, or any inheritance that she and her husband held jointly on the day of his death. She may remain in her husband's house for forty days after his death, and within this period her dower shall be assigned to her.

(8) No widow shall be compelled to marry, so long as she wishes to remain without a husband. But she must give security that she will not marry without royal consent, if she holds her lands of the Crown, or without the consent of whatever other lord she may hold them of.

(9) Neither we nor our officials will seize any land or rent in payment of a debt, so long as the debtor has movable goods sufficient to discharge the debt. A debtor's sureties shall not be distrained upon so long as the debtor himself can discharge his debt. If, for lack of means, the debtor is unable to discharge his debt, his sureties shall be answerable for it. If they so desire, they may have the debtor's lands and rents until they have received satisfaction for the debt that they paid for him, unless the debtor can show that he has settled his obligations to them.

* (10) **If anyone who has borrowed a sum of money from Jews dies before the debt has been repaid, his heir shall pay no interest on the debt for so long as he remains under age, irrespective of whom he holds his lands.** If such a debt falls into the hands of the Crown, it will take nothing except the principal sum specified in the bond.

* (11) **If a man dies owing money to Jews,** his wife may have her dower and pay nothing towards the debt from it. If he leaves children that are under age, their needs may also be provided for on a scale appropriate to the size of his holding of lands. The debt is to be paid out of the residue, reserving the service due to his feudal lords. **Debts owed to persons other than Jews are to be dealt with similarly**.

* (12) No 'scutage' or 'aid' may be levied in our kingdom without its general consent, unless it is for the ransom of our person, to make our eldest son a knight, and (once) to marry our eldest daughter. For these purposes only a reasonable 'aid' may be levied. 'Aids' from the city of London are to be treated similarly.

+ (13) **The city of London shall enjoy all its ancient liberties and free customs**, both by land and by water. We also will and grant that all other cities, boroughs, towns, and ports shall enjoy all their liberties and free customs.

* (14) To obtain the general consent of the realm for the assessment of an 'aid' - except in the three cases specified above - or a 'scutage', we will cause the archbishops, bishops, abbots, earls, and greater barons to be summoned individually by letter. To those who hold lands directly of us we will cause a general summons to be issued, through the sheriffs and other officials, to come together on a fixed day (of which at least forty days notice shall be given) and at a fixed place. In all letters of summons, the cause of the summons will be stated. When a summons has been issued, the business appointed for the day shall go forward in accordance with the resolution of those present, even if not all those who were summoned have appeared.

* (15) In future we will allow no one to levy an 'aid' from his free men, except to ransom his person, to make his eldest son a knight, and (once) to marry his eldest daughter. For these purposes only a reasonable 'aid' may be levied.

(16) No man shall be forced to perform more service for a knight's 'fee', or other free holding of land, than is due from it.

(17) **Ordinary lawsuits shall not follow the royal court around, but shall be held in a fixed place.**

(18) Inquests of novel disseisin, mort d'ancestor, and darrein presentment shall be taken only in their proper **county court**. **We ourselves, or in our absence abroad our chief justice, will send two justices to each county four times a year, and these justices, with four knights of the county elected by the county itself, shall hold the assizes in the county court, on the day and in the place where the court meets.**

(19) **If any assizes cannot be taken on the day of the county court, as many knights and freeholders shall afterwards remain behind, of those who have attended the court, as will suffice for the administration of justice, having regard to the volume of business to be done.**

(20) **For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood.** In the same way, a merchant shall be spared his merchandise, and a villein the implements of his husbandry, if they fall upon the mercy of a royal court. None of these fines shall be imposed except by the assessment on oath of reputable men of the neighbourhood.

(21) **Earls and barons shall be fined only by their equals**, and in proportion to the gravity of their offence.

(22) **A fine imposed upon the lay property of a clerk in holy orders shall be assessed upon the same principles, without reference to the value of his ecclesiastical benefice.**

(23) No town or person shall be forced to build bridges over rivers except those with an ancient obligation to do so.

(24) **No sheriff, constable, coroners, or other royal officials are to hold lawsuits that should be held by the royal justices**.

* (25) Every county, hundred, wapentake, and tithing shall remain at its ancient rent, without increase, except the royal demesne manors.

(26) If at the death of a man who holds a lay 'fee' of the Crown, a sheriff or royal official produces royal letters patent of summons for a debt due to the Crown, it shall be lawful for them to seize and list movable goods found in the lay 'fee' of the dead man to the value of the debt, as assessed by worthy men. Nothing shall be removed until the whole debt is paid, when the residue shall be given over to the executors to carry out the dead man’s will. **If no debt is due to the Crown, all the movable goods shall be regarded as the property of the dead man, except the reasonable shares of his wife and children.**

* (27) **If a free man dies intestate, his movable goods are to be distributed by his next-of-kin and friends, under the supervision of the Church. The rights of his debtors are to be preserved.**

(28) **No constable or other royal official shall take corn or other movable goods from any man without immediate payment**, unless the seller voluntarily offers postponement of this.

(29) **No constable may compel a knight to pay money for castle-guard if the knight is willing to undertake the guard in person, or with reasonable excuse to supply some other fit man to do it. A knight taken or sent on military service shall be excused from castle-guard for the period of this service.**

(30) No sheriff, royal official, or other person shall take horses or carts for transport from any free man, without his consent.

(31) Neither we nor any royal official will take wood for our castle, or for any other purpose, without the consent of the owner.

(32) We will not keep the lands of people convicted of felony in our hand for longer than a year and a day, after which they shall be returned to the lords of the 'fees' concerned.

(33) All fish-weirs shall be removed from the Thames, the Medway, and throughout the whole of England, except on the sea coast.

(34) The writ called precipe shall not in future be issued to anyone in respect of any holding of land, if a free man could thereby be deprived of the right of trial in his own lord's court.

(35) There shall be standard measures of wine, ale, and corn (the London quarter), throughout the kingdom. There shall also be a standard width of dyed cloth, russet, and haberject, namely two ells within the selvedges. Weights are to be standardised similarly.

(36) In future nothing shall be paid or accepted for the issue of a writ of inquisition of life or limbs. It shall be given gratis, and not refused.

(37) If a man holds land of the Crown by 'fee-farm', 'socage', or 'burgage', and also holds land of someone else for knight's service, we will not have guardianship of his heir, nor of the land that belongs to the other person's 'fee', by virtue of the 'fee-farm', 'socage', or 'burgage', unless the 'fee-farm' owes knight's service. We will not have the guardianship of a man's heir, or of land that he holds of someone else, by reason of any small property that he may hold of the Crown for a service of knives, arrows, or the like.

(38) **In future no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.**

+ (39) **No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.**

+ (40) **To no one will we sell, to no one deny or delay right or justice.**

(41) **All merchants may enter or leave England unharmed and without fear, and may stay or travel within it, by land or water, for purposes of trade, free from all illegal exactions, in accordance with ancient and lawful customs. This, however, does not apply in time of war to merchants from a country that is at war with us. Any such merchants found in our country at the outbreak of war shall be detained without injury to their persons or property, until we or our chief justice have discovered how our own merchants are being treated in the country at war with us. If our own merchants are safe they shall be safe too.**

* (42) **In future it shall be lawful for any man to leave and return to our kingdom unharmed and without fear, by land or water, preserving his allegiance to us, except in time of war, for some short period, for the common benefit of the realm. People that have been imprisoned or outlawed in accordance with the law of the land, people from a country that is at war with us, and merchants - who shall be dealt with as stated above - are excepted from this provision.**

(43) If a man holds lands of any 'escheat' such as the 'honour' of Wallingford, Nottingham, Boulogne, Lancaster, or of other 'escheats' in our hand that are baronies, at his death his heir shall give us only the 'relief' and service that he would have made to the baron, had the barony been in the baron's hand. We will hold the 'escheat' in the same manner as the baron held it.

(44) People who live outside the forest need not in future appear before the royal justices of the forest in answer to general summonses, unless they are actually involved in proceedings or are sureties for someone who has been seized for a forest offence.

* (45) **We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.**

(46) All barons who have founded abbeys, and have charters of English kings or ancient tenure as evidence of this, may have guardianship of them when there is no abbot, as is their due.

(47) All forests that have been created in our reign shall at once be disafforested. River-banks that have been enclosed in our reign shall be treated similarly.

*(48) All evil customs relating to forests and warrens, foresters, warreners, sheriffs and their servants, or river-banks and their wardens, are at once to be investigated in every county by twelve sworn knights of the county, and within forty days of their enquiry the evil customs are to be abolished completely and irrevocably. But we, or our chief justice if we are not in England, are first to be informed.

* (49) We will at once return all hostages and charters delivered up to us by Englishmen as security for peace or for loyal service.

* (50) We will remove completely from their offices the kinsmen of Gerard de Athée, and in future they shall hold no offices in England. The people in question are Engelard de Cigogné, Peter, Guy, and Andrew de Chanceaux, Guy de Cigogné, Geoffrey de Martigny and his brothers, Philip Marc and his brothers, with Geoffrey his nephew, and all their followers.

* (51) As soon as peace is restored, we will remove from the kingdom all the foreign knights, bowmen, their attendants, and the mercenaries that have come to it, to its harm, with horses and arms.

* (52) To any man whom we have deprived or dispossessed of lands, castles, liberties, or rights, without the lawful judgment of his equals, we will at once restore these. In cases of dispute the matter shall be resolved by the judgment of the twenty-five barons referred to below in the clause for securing the peace (§61). **In cases, however, where a man was deprived or dispossessed of something without the lawful judgment of his equals by our father King Henry or our brother King Richard, and it remains in our hands or is held by others under our warranty, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. On our return from the Crusade, or if we abandon it, we will at once render justice in full.**

* (53) We shall have similar respite in rendering justice in connexion with forests that are to be disafforested, or to remain forests, when these were first afforested by our father Henry or our brother Richard; with the guardianship of lands in another person's 'fee', when we have hitherto had this by virtue of a 'fee' held of us for knight's service by a third party; and with abbeys founded in another person's 'fee', in which the lord of the 'fee' claims to own a right. On our return from the Crusade, or if we abandon it, we will at once do full justice to complaints about these matters.

(54) No one shall be arrested or imprisoned on the appeal of a woman for the death of any person except her husband.

* (55) **All fines that have been given to us unjustly and against the law of the land, and all fines that we have exacted unjustly, shall be entirely remitted or the matter decided by a majority judgment of the twenty-five barons referred to below in the clause for securing the peace** (§61) together with **Stephen, archbishop of Canterbury**, if he can be present, and such others as he wishes to bring with him. **If the archbishop cannot be present, proceedings shall continue without him, provided that if any of the twenty-five barons has been involved in a similar suit himself, his judgment shall be set aside, and someone else chosen and sworn in his place, as a substitute for the single occasion, by the rest of the twenty-five.**

(56) **If we have deprived or dispossessed any Welshmen of land, liberties, or anything else in England or in Wales, without the lawful judgment of their equals, these are at once to be returned to them**. A dispute on this point shall be determined in the Marches by the judgment of equals. **English law shall apply to holdings of land in England, Welsh law to those in Wales, and the law of the Marches to those in the Marches. The Welsh shall treat us and ours in the same way.**

* (57) In cases where a Welshman was deprived or dispossessed of anything, without the lawful judgment of his equals, by our father King Henry or our brother King Richard, and it remains in our hands or is held by others under our warranty, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. But on our return from the Crusade, or if we abandon it, we will at once do full justice according to the laws of Wales and the said regions.

* (58) **We will at once return the son of Llywelyn, all Welsh hostages, and the charters**

delivered to us as security for the peace.

* (59) With regard to **the return of the sisters and hostages of Alexander, king of Scotland, his liberties and his rights,** we will treat him in the same way as our other barons of England, unless it appears from the charters that we hold from his father William, formerly king of Scotland, that he should be treated otherwise. This matter shall be resolved by the judgment of his equals in our court.

(60) **All these customs and liberties that we have granted shall be observed in our kingdom in so far as concerns our own relations with our subjects. Let all men of our kingdom, whether clergy or laymen, observe them similarly in their relations with their own men.**

* (61) **SINCE WE HAVE GRANTED ALL THESE THINGS for God, for the better ordering of our kingdom, and to allay the discord that has arisen between us and our barons, and since we desire that they shall be enjoyed in their entirety, with lasting strength, for ever, we give and grant to the barons the following security:**

The **barons shall elect twenty-five of their number to keep**, and **cause to be observed with all their might, the peace and liberties granted and confirmed to them by this charter.**

If we, our chief justice, our officials, or any of our servants offend in any respect against any man, or **transgress any of the articles of the peace or of this security**, and **the offence is made known to four of the said twenty-five barons**, they shall come to us - or in our absence from the kingdom **to the chief justice - to declare it and claim immediate redress**. If we, or in our absence abroad the chief justice, make no redress within forty days, reckoning from the day on which the offence was declared to us or to him, **the four barons shall refer the matter to the rest of the twenty-five barons, who may distrain upon and assail us in every way possible, with the support of the whole community of the land, by seizing our castles, lands, possessions, or anything else saving only our own person and those of the queen and our children, until they have secured such redress as they have determined upon**. Having secured the redress, they may then resume their normal obedience to us.

Any man who so desires may take an oath to obey the commands of the twenty-five barons for the achievement of these ends, and to join with them in assailing us to the utmost of his power. We give public and free permission to take this oath to any man who so desires, and at no time will we prohibit any man from taking it. Indeed, we will compel any of our subjects who are unwilling to take it to swear it at our command.

If one of the twenty-five barons dies or leaves the country, or is prevented in any other way from discharging his duties, the rest of them shall choose another baron in his place, at their discretion, who shall be duly sworn in as they were.

In the event of disagreement among the twenty-five barons on any matter referred to them for decision, the verdict of the majority present shall have the same validity as a unanimous verdict of the whole twenty-five, whether these were all present or some of those summoned were unwilling or unable to appear.

The **twenty-five barons shall swear to obey all the above articles faithfully, and shall cause them to be obeyed by others to the best of their power.**

We will not seek to procure from anyone, either by our own efforts or those of a third party, anything by which any part of these concessions or liberties might be revoked or diminished. Should such a thing be procured, it shall be null and void and we will at no time make use of it, either ourselves or through a third party.

* (62) **We have remitted and pardoned fully to all men any ill-will, hurt, or grudges that have arisen between us and our subjects, whether clergy or laymen, since the beginning of the dispute. We have in addition remitted fully, and for our own part have also pardoned, to all clergy and laymen any offences committed as a result of the said dispute between Easter in the sixteenth year of our reign (i.e. 1215) and the restoration of peace.**

In addition we have caused letters patent to be made for the barons, bearing witness to this security and to the concessions set out above, **over the seals of Stephen archbishop of Canterbury, Henry archbishop of Dublin, the other bishops named above, and Master Pandulf.**

* (63) **IT IS ACCORDINGLY OUR WISH AND COMMAND that the English Church shall be free, and that men in our kingdom shall have and keep all these liberties, rights, and concessions, well and peaceably in their fullness and entirety for them and their heirs, of us and our heirs, in all things and all places for ever.**

Both we and the barons have sworn that all this shall be observed in good faith and without deceit. Witness the abovementioned people and many others.

Given by our hand in the meadow that is called Runnymede, between Windsor and Staines, on the fifteenth day of June in the seventeenth year of our reign (i.e. 1215: the new regnal year began on 28 May).

F. King Henry III: the Church and State in England (1216 to 1272 A.D.)

When King John I died in 1216, his son and successor, King Henry III, was only nine years old. This meant that government of England was administered through a regent until Henry III reached the age of majority, which did not occur until 1227.

During the interim, there was rivalry and in-fighting among the English nobles. "Baronial jealousies often threatened to disrupt the weak machinery of the regency."[55]

The gains which the barons made with the signing of Magna Carta in 1217 were constantly pressed for baronial expression. This problem grew worse after Henry

[55] Ibid., p. 81.

III reached the age of majority in 1227, because by most historical accounts he did not have the talent for governing and, although a devoted Catholic, he was perhaps overly dependent upon the Pope. "Weak, easily bullied, and impractical, Henry was still obstinate and fond of his prerogative. Nor did he ever forget that the church had protected him in his minority."[56] His devotion to the church made England almost prostrate to foreign churchmen. This created great alarm among the English barons.

A fiscal crisis was also the cause of great alarm among the barons. King Henry III had been a lavish spender and the exchequer significantly dwindled. A man named Simon de Montfort, earl of Leicester, became a leading voice among the restless barons.

Simon de Montfort and the barons drew up "articles of complaint" against the king and set forth political reforms which became known as the "Provisions of Oxford," [57] which was very similar to *Magna Carta*. The "Provisions" thus read: "'[f]or the common good of the whole kingdom,' fifteen barons… were to form a standing committee, or permanent council, to supervise all divisions of the government. 'And they shall have the power of advising the king in good faith concerning the government of the kingdom and concerning all matters that pertain to the king or the kingdom; and of amending and redressing everything they shall consider in need of amendment or redress.'"[58]

This was the first attempt to establish baronial government in England. The king submitted for a time, but disagreement among the barons as to how far down the social scale their revolutionary changes would reach created confusion and conflict among the barons. The "Provisions of Westminster" would have given the middle classes a voice in the government, but most of the barons rejected this provision. Meanwhile, in 1261, Pope Urban IV essentially absolved the "Provisions of Oxford" and released King Henry III from his oath to abide by it. The barons and Henry III agreed to submit to arbitration before the French king Louis IX. When Louis IX sided with King Henry III, the result was civil war in England.

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[56] Ibid., p. 82.
[57] Ibid., p. 85.
[58] Ibid.

There were three major parties or combatants to the English Civil War of 1264: the royalist who supported the king; the barons who wanted to limit government control; and the barons, led by Simon de Montfort, who wanted to share government control with the middle classes.

The Pope and the French crown supported King Henry III and the royalists. Battles were fought from between 1264 and 1267; in the end, the barons gained nothing. Simon de Montfort was killed in battle in 1265, and for a time he had been regarded as a "saint" among the clergy who supported his cause.

When King Henry III died in 1272, the English lower classes had become conscious of themselves and of the medieval institutions which glued together the social, economic, and political structures which engulfed them. English politics now had to contend with the middle and lower classes, as well as their aspirations.

The king, who was in general backed by the Pope, was opposed to sharing power with the barons; and the barons, who were themselves stingy, did not wish to share their power with the middle and lower classes. "The barons were generally opposed to sharing their political power with the middle classes. This aristocratic point of view was not easily changed; it was clearly stated nearly six hundred years later during the debates on the reform bill of 1832."[59]

These class divisions would ultimately define the "splinter groups" that often arose within the Church of England,-- such as the Puritans, Congregationalists, and Methodists.

G. King Edward I: Church and State in England (1272 to 1307 A.D.)

Centralization of royal power and administration increased under the reign of King Edward I, who was in many ways reminiscent of King Henry II (1154-1189). Edward I built upon the firm foundations of government and court administration which Henry II had laid. Historian Goldwin Smith has described King Edward I's reign as follows:

> During the reign of Edward I the work of the state-building Norman and Angevin kings reached its height. His reign saw important

[59] Ibid., p. 86.

> chapters in the development of the institution of Parliament, effective centralized government, the beginning of statute law and modern land law, broader political education. All of these were capital events in English history. Edward I was one of the greatest of the thirty-nine monarchs who have reigned in England since the Norman Conquest."[60]

1. Rise of the Secular Bar and Bench in England

Edward I's reign witnessed the growing secularization of the legal profession and the establishment of three great common law courts: Court of the Exchequer, Court of Common Pleas, and the Court of King's Bench.[61]

The old Anglo-Saxon shire and hundred courts eventually relinquished more and more of their jurisdiction to these centralized, royal common law courts during the late-thirteenth and fourteenth centuries.[62] The volume of legal work together with the complexity of legal cases soon mandated a change in the methods of organizing and training of judges and lawyers.[63]

As the English legal profession was slowly extracted out from men under holy orders, that is to say, from the Roman Catholic clergy, it slowly affiliated themselves with other secular or temporal nobles and peers, such as the knights, nobles, and barons. Lay judges and barristers were typically affiliated with the knights (i.e., the Knights Templars) and the squires (e.g., the name "esquire" being a derivative of this Medieval title), who assisted the knights. Clerical judges and barristers retained their usual offices within the church.

During the thirteenth century, the knights were given charge as "justices of the peace" and as "magistrates over the shire or hundred courts." It is perhaps no accident that the English legal profession finds a large part of its history, lore and origin within the Knights Templars, a military Catholic order. During this period, the administration of the English common law in the lower-level courts fell into their hands.

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[60] Ibid., p. 108.
[61] Ibid., pp. 113-114.
[62] Ibid.
[63] Ibid.

It should be noted that in general, there were four broad categories of law in England[64]:

Type of Law	**Education/ Training**	**Professional Title/ Degree**	**Secular/ Church Affiliation**
I. English Common Law	Inns of Court	Barristers; Solicitors; and Sergeants-at-Law. (No university training required)	Non-Clergy or Clergy.
II. Royal Law (Equity or Chancery; Statutes; Ordinances; Decrees)	Inns of Court; Inns of Chancery; Sergeant's Inn; Oxford Univ.; Univ. of Cambridge	Barristers; Solicitors; Sergeants, Clergy; J.C.D (doctor of canon law); LL.D. (Doctor of Canon/ Civil Law).	Clergy (Roman Catholic; Church of England)
III. Roman Civil Law	Roman Church; Oxford; Cambridge, etc.	Clergy; J.C.D (doctor of canon law); LL.D. (Doctor of Canon/ Civil Law).	Clergy (Roman Catholic; Church of England)
IV. Canon Law	Roman Church; Oxford; Cambridge.	Clergy; J.C.D (doctor of canon law); LL.D. (Doctor of Canon/ Civil Law).	Clergy (Roman Catholic; Church of England)

The clergy, to be sure, was the most advanced and educated of the lawyers. During the thirteenth and fourteenth centuries, all the English judges were clergymen.[65] They were trained typically in France or at Oxford or Cambridge in the Roman civil law and canon law.[66] They typically held law degrees, which were the first university-level degrees granted: the doctor of civil or canon law.[67]

[64] Roscoe Pound, *Legal Profession in the Middle Ages*, 3 Notre Dame Law Review 229, 234 (1944).
[65] Ibid.
[66] Ibid.
[67] Ibid.

Within the ecclesiastical courts of England and Europe, there were two categories of lawyers under holy orders (i.e., clergy lawyers)[68]:

Advocate (clergy)	Doctors of Civil or Canon Law (DCL or LLD)
Juris Consult, or Law Professor (clergy)	University or Canon Law Teachers or Professors (DCL or LLD)

In Europe, non-clergymen could participate in juridical proceedings in the roles of "attorneys," sometimes called "proctors" or "procurators."[69] They had to receive special permission, sponsorship, and an apprenticeship from the sponsoring Bishop who presided over the specific court in which these "attorneys" or "proctors" appeared.[70] They were required to have "powers of attorney" from their clients, in order to act on their behalf. Hence, the opening of "lay" or secular lawyers in Europe and England began with these non-clergy attorneys, who were trained in cathedral schools but did not hold doctorate or law degrees.

In England, these lay attorneys or proctors emerged, as the legal business under the reign of Edward I became more complex.[71] At first, they had to be appointed and admitted to practice by the Archbishop of Canterbury.[72] The talented middle classes now had an opening as lay advocates or attorneys before the royal common law courts of England. They owed their social status and position to the English crown; they were much more loyal to the English crown than the upper-class nobles, barons, and clergymen, who were often involved in the church-state conflicts between Pope or Archbishop and King, or between the English barons and the king.

These English middle-class lawyers soon outshined their counterparts amongst the nobility and the clergy. These were the men who soon came to dominate the common-law Inns of Court of England and even the royal administrations within Parliament. They became known as the "barristers." They were not typically educated at Oxford or Cambridge, but instead received their

[68] Ibid.
[69] Ibid.
[70] Ibid.
[71] Ibid.
[72] Ibid.

training, mentoring, and apprenticeships through one of the Inns of Court or Chancery.

There were four inns of court for these barristers: Lincoln's Inn, Gray's Inn, the Inner Temple, and the Middle Temple. Upon completion of their apprenticeships within one of these Inns, they could be called to bar as English barristers.[73]

The link between the Inns of Court and Chancery and Oxford/Cambridge universities was, perhaps, the Order of the Coif.[74] This Order consisted of senior members of the Inns who had been called to the bench.[75] But initially since only clergymen could hold judicial roles, the members of the Order of the Coif were also typically graduates of Oxford or Cambridge, or other university where they would have attained a law degree in Roman civil or canon law.[76] Eventually, the Order of the Coif formed its own inn, called Sergeants Inn. And England's judges were often called "sergeants-at-law."[77]

The nature of law business became so specialized, varied, and secular, and the legal cases often became so contentious, that senior church leaders, bishops, and the Pope began to forbade priests or other clergymen from acting as lawyers within the secular or common law courts. "It will have been observed that in the earlier development of the profession in the modern world the practice of law was in the hands of the clergy. For a long time the clergy were the only educated element in society, and so had a monopoly of the things which called for learning. The judges and counsel were clergymen not only in the courts of the church, but in those of the state as well. But a development of lawyers went along with the development of law. In the twelfth century, lay lawyers became prominent in the courts. In the thirteenth century, they became dominant."[78]

Now the Inns of Court took their names by the very nature of the English legal profession's mobility and from the traveling groups of judges who went from

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[73] Ibid.
[74] Ibid.
[75] Ibid.
[76] Ibid.
[77] Ibid.
[78] Ibid.

county to county, or from circuit to circuit, to hear cases. Specialized judges typically travelled together; they typically heard the same types of cases.

Simultaneously, the lawyers who argued cases before these judges travelled alongside the judges. And inns thus arouse out from the necessity of these traveling lawyers and judges of have a place of repose, conference, discussion, training and education, and camaraderie.

Eventually, these inns expanded their services, purchasing property, real estate, libraries, lecture halls, etc.; and they established permanent locations within England, primarily London. Some of the inns of court and all of the inns of chancery disappeared throughout the centuries. The remaining four historic inns of court, previously mentioned above, are located today in London, England.

It should be noted that, contrary to popular assumption, the admission of law advocates to practice before the English courts during the fourteenth century did not equate to the "secularization" of the English common law, statutory law, or ecclesiastical law. As previously mentioned, the English bench was still staffed by clergymen. These clergymen not only continued to shape the English common law, but they controlled who qualified for admissions to the bar and selections for judgments up from the Order of the Coif (i.e., Sergeant's Inn). The Court of Chancery, which could overrule the common law courts, continued to be staffed by senior clergymen within the Roman Church of England. It thus goes without saying that the English common law and equity continued to be developed as a unique form of Christian jurisprudence throughout the fourteenth century.

2. Rise of the English Middle Class

Now the English crown sought allies, talent and efficiency during the reign of Edward I.[79] And Edward I found all of this and more from the lay lawyers whom the inns of court produced.[80] These men would become staunch royalists, arguing in favor of efficiency and increasing the royal prerogative, and lessening the power and influence of the nobles and the church.[81] They also became the powerful entrepreneurs and merchants who would eventually challenge the old

[79] Goldwin Smith, *A History of England* (New York, NY: Charles Scribner's Sons, 1957), pp. 109-128.
[80] Ibid.
[81] Ibid.

aristocracy and the church, in favor of English nationalism and a strong monarchy during the coming sixteenth century.[82]

During Edward I's reign, this middle class movement provided royal assistance with limiting the power of the Roman Catholic Church (e.g., levying the church tax and the establishment of the Statue of Mortmain) and with financing wars against Wales, Scotland and France in efforts to build a more united English kingdom.[83] During this period, Edward I encountered resistance from Pope Boniface VIII; and bloody rebellion from Welschman Llwellyn the Great, whom he finally defeated in 1282, bequeathing the tile "Prince of Wales" to the eldest son of the English crown.

Under the reign of Edward I, the first full Parliament was convened in 1295. And for the first time, the question of representation of different classes and interests arose. Edward I may have wanted his middle-class allies to be represented in Parliament, but the timing was not yet ripe for such representation.

He could only appoint his talented middle-class allies into certain key administrative positions. Meanwhile, the barons continued to press for the enforcement of Magna Carta against the crown, even though they were not yet ready to extend Magna Carta's privileges downward to the middle and lower classes. "One thing the middle class representatives were able to do, and that was significant. They might present petitions. It was by means of this right that they were gradually able to take part in the making of law. The knights and burgesses could petition the king, with or without the support of the great barons of the council, for a redress of general or specific grievances. If the petition was accepted by the king, the council might prepare a statute providing for the enactment into law of the measures proposed in the petition."[84]

H. King Edward II (1307-1327 A.D.)

It is unfortunate that the momentum which Edward I achieved in building a unified, powerful English government was interrupted with the ascension of his son Edward II to the throne in 1307.

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[82] Ibid.
[83] Ibid.
[84] Ibid. p. 118.

His reign was very troublesome. His barons turned on him; his wife, Queen Isabella, cheated on him and eventually married one of his treacherous barons; and he was eventually captured, detained and murdered while in custody in 1327.

As historian Gordon Smith put it: "Edward II, who came to the throne of England in 1307, was a hollow counterfeit of his father. His reign was to be short, and his fate tragic."[85]

I. King Edward III (1327- 1377) and Richard II (1377-1400): Church and State in England

It was perhaps during the reign of Edward III that the achievements of Edward I were strengthened and continued. The Welsh were defeated; but the wars with Scotland and France continued.

Edward III believed that he, and not the French Philip IV, was the rightful heir of the French crown. In 1337 A.D., the Hundred Year's War with France (1337 to 1453), over which prince was the correct heir of France, was launched. England and France were in a war of succession over the throne of France.

Up to this period, the peoples of England and France were not conscientiously divided into separate nation-states; but like most other Europeans, saw themselves as cultural extensions of each other. The result of the Hundred Year's War, however, was to create a conscientiousness of an English nation-state and a French nation-state, with distinct language and cultural patterns.

The war also raised the social standing of the merchants, knights, burgesses, and the middle-classes, who had to fund and execute the war and administer an efficient Parliament. Under these circumstances, the power and influence of the Roman Church of England was diminished.

More and more, in support of an English national identity, men began to question the legal authority of the Pope, and this required them to scrutinize both the Holy Scripture and the canon law. Once this occurred, the questions did not stop, and men began to question the authority of the nobles as well as the king.

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[85] Ibid., p. 128.

And even the Roman Catholic clergy became fractured along the lines of differing viewpoints.

The Great Schism (1378 to 1415 A.D.): first, the Church's authority was significantly weakened when two Popes, each denouncing each other, divided the church. Naturally, this dissension within the church created serious doubt about the church's divine mandate and authority. Men and women began to loose respect for the church.

Church corruption. Next, the "church no longer claimed the respect and reverence of the laity," as churchmen more and more became wealthy barons, who were unconcerned about the plight of the poor or the common people.[86] "Accumulated legacies in the hands of the monks and higher churchmen had made them more worldly statesmen than humble disciples of Christ."[87] This lowering of standards was vividly recorded by writers such as Geoffrey Chaucer.[88]

William of Ockham (1285- 1347). He was a Franciscan priest. Known as the "invincible doctor," and one of the most important scholastics after Thomas Aquinas, William of Ockham raised serious questions regarding the church's inherent right to disobey an obviously heretical Pope, such as Pope John XXII. William of Ockham "asserted that the Scriptures were the sole source of law. He attached canon law, the legalism of medieval Christianity, the hierarchy in the church. Canon law, he declared, was valid only as an interpretation of the Scriptures; it was an administrative device, nothing more."[89] This meant that the Church should have no power over the State, but instead should only wield authority within the confinement of the church. Furthermore, William of Ockham also purported that the true Church is really the invisible congregation of all the faithful, and was not confined to the earthly Roman Catholic Church. "William also claimed that the church was really the whole body of Christian people and that the Pope never did possess the authority to speak for all the church."[90] These radical ideas laid the seeds for the Protestant reformation two centuries later.

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[86] Ibid., p. 156.
[87] Ibid.
[88] Ibid.
[89] Ibid. p. 158.
[90] Ibid.

John Wyclife (1320-1384). He was a professor at Oxford and a priest in the Roman Church of England. Like William of Ockham, Wyclife also questioned papal authority. "[H]e vigorously advanced his theories about the relations of church and state in several pamphlets, most famous of which were two, *On Civil Dominion* and *On Divine Dominion*. In all of his writings Wycliffe exalted the state at the expense of the church. Kings, he held, ruled by divine right. Both priestly power and royal power came from divine appointment; the church and state should cooperate with each other. Christ was the head of the church, not the Pope…. He declared that the main source of spiritual authority was the Scriptures, not the Pope."[91] Wycliff's ideas were suppressed, and by 1400 the English crown and the Roman Church had banished or executed all of Wycliff's supporters. However, Wycliff's ideas would continue to spread throughout England and the European continent through men such as John Huss (1369-1415), who, "in turn, influenced Martin Luther"[92] and the Protestant Reformation.

Preacher John Ball and Peasant's Revolt of 1381. The fourteenth century saw not only the rise of the middle classes but also the growing conscientiousness of the peasantry classes. The Black Death of 1372-73 had so horrified and decimated the country-side, wiping out clergy, nobility, and peasant alike. This created a dearth in the labor market, and the lower classes now stood ready to demand better working conditions and their demands were more and more being considered and met. The Church was not silent; monks and friars often came to the aid of these peasants. One such friar was John Ball, who preached a form of liberation theology, contending that the Gospel itself condemned their lack of rights and destitute social conditions.[93] In a speech on June 13, 1381, while thus expounding upon a Catholic natural rights doctrine that was quite similar that espoused in the American *Declaration of Independence*, Fr. John Ball stated:

> From the beginning *all men by nature were created alike*, and our bondage or servitude came in by the unjust oppression of naughty men. For if God would have had bondmen from the beginning, he would have appointed who should be bond, and who free. And therefore I exhort you to consider that now the time is come,

[91] Ibid., p. 159.
[92] Ibid., p. 160.
[93] Ibid. pp. 149-150.

> appointed to us by God, in which ye may (if ye will) cast off the yoke of bondage, and recover liberty. I counsel you therefore well to bethink yourselves , and to take good hearts unto you, that after the manner of a good husband that tilleth his ground, and riddeth out thereof such evil weeds as choke and destroy the good corn, you may destroy first the great lords of the realm, and after, the judges and lawyers, and questmongers, and all others who have undertaken to be against the common. For so shall you procure peace and surety to yourselves in time to come; and by dispatching out of the way the great men, there shall be an equality in liberty, and no difference in degrees of nobility; but alike dignity and equal authority in all things brought in among you.

During the reign of Richard II (1377- 1400), the peasants' discontent reached a boiling point; they refused to pay taxes; they went on strike and picked; and eventually they resorted to rioting, mob frenzy, looting, and mass murder of church officials and magistrates, evening executing the archbishop of Canterbury in London. Richard II pretended to meet the peasants' demand; but then he took his vengeance against them. "Many peasants were slaughtered in a bloody progress of the army through the countryside. When the peasants at Waltham objected they were brutally answered: 'Villeins ye are and villeins ye will remain.' The Peasants' Revolt was crushed in a strong and cruel reaction."[94] Fr. John Ball was executed on June 15, 1381.

English Civil War of 1387. When Richard II ascended the English throne in 1377, he was only 11 years old; and so England was ruled precariously through a regency, during which time a struggle for power ensued between the English nobles. Six years later, at age seventeen, Richard II began to assume more and more of the reigns of power. "Against Richard and his ministers stood several jealous nobles, led by the king's uncle, the ambitious and unscrupulous Thomas of Woodstock, Duke of Gloucester."[95] "In 1387, Richard prepared for civil war."[96] But the powerful barons made the first move and subdued the king's forces. They "ordered the execution of many of the king's friends, including the lord chief

[94] Ibid., pp. 152-153.
[95] Ibid., pp. 142-143.
[96] Ibid.

justice, the mayor of London, and even Richard's harmless tutor."[97] From then on, Richard II was forced to submit to the baron's constitution and Parliamentary demands. Led by the "five Lords Appellant," the barons demanded that Richard II "would govern in harmony with the advice of Parliament…. For eight years Richard ruled well; he tactfully used his power with moderation and abstained from reprisals."[98] However, in 1397, for reasons unclear to historians, Richard II "burst the bonds tied about him by Parliament and turned to revenge himself upon the Lords Appellant, who had slain his friends nine years before."[99] Historian Gordon Smith lucidly summarizes the king's vengeance against several of his nobles:

> Richard himself subdued and arrested a startled Duke of Gloucester who was taken to Calais and murdered. Two other Lords Appellant were charged with treason; one died under the headsman's axe; the other had all his property confiscated. Several friends and relatives of these men were executed, exiled, or imprisoned. Richard did not strike at the two remaining Lords Appellant, Thomas, earl of Nottingham, and Henry, earl of Derby, because they were supporting him in 397. But events proved otherwise. When Norfolk and Hereford quarreled in 1398 Richard II exiled Norfolk for life and Hereford for six years. Apparently the vengeance of Richard was complete; the last of the five Lords Appellant had been punished. But the final lines of the chapter had not been written. The exiled Henry Bolingbroke, Duke of Hereford, was the son of John of Gaunt, Duke of Lancaster. Hence Hereford was heir to the vast Lancastrian estates. He was the really formidable and inveterate enemy who would one day oust Richard from his throne.
>
> In 1398 a Parliament, adjourned from Westminister to Shrews bury, packed with the king's men and watched by thousands of this archers, voted Richard a life income. It committed political

[97] Ibid., p. 143.
[98] Ibid, pp. 143-144.
[99] Ibid., p. 144.

> suicide by permitting several of its powers to be exercised by a committee of eighteen members, submissive creatures of the king. New treason laws expanded the definition of treason and wrapped it up in such ambiguous language that any opposition to the king might be called treason. Law after law was broken by the royal commands. Richard imposed and collected forced loans; he also embroiled himself with the Percy family, whose earldom of Northumberland was a petty kingdom in the north. It was rash of the king to antagonize and defy the wrath of so many of his subjects, all at the same time. He sold charters of pardon to the Gloucester adherents; he recklessly interfered with the courts of law and justice. All the checks that Parliament and baronage had been able to impose upon the monarchy were broken and cat aside by armed force and legal chicanery. No man's life or property was safe. Richard was king indeed.[100]

Revolution of 1399 and the Abdication of Richard II. In 1399, Richard II was lured to Ireland to deal with an Irish rebellion, but when he return to England, nearly the whole of England had turned against him and supported Henry Bolingbroke, Duke of Lancaster, to be the next king of England. Overwhelming public sentiment together with mutiny within Richards own royal army forced Richard II to abdicate the thrown. He was charged with violating the "fundamental laws of England" through adhering to laws "in his own heart."[101] "Richard II was the lst king of England to rule by strict hereditary right…. In 1399 Parliament not only deposed Richard II but chose his successor,"[102] Henry, Duke of Lancaster, who would rule as Henry IV. From thenceforth, "Henry IV and his successors, proclaimed the events of 1399, were to rule only if they heeded the limitations imposed upon them by Parliament and the laws of England."[103]

CONCLUSION

[100] Ibid., pp. 144-145.
[101] Ibid., p. 145.
[102] Ibid., p. 146.
[103] Ibid.

The Roman Church of England dominated the formulation of English law and government throughout the reigns of several English kings (1189 through 1400 A.D.). 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 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…."[104] 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; 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.

However, this powerful grip which the Church held over the legal system loosened only slightly during the reign of King Edward I (1272 to 1307 A.D.). During this period, we witness the rise of secular lawyers and judges, inns of court, inns of chancery, the sergeants-at-law, and the growing centralization of the royal courts. In addition, other unforeseen circumstances significantly contributed to the secularization of the English bar: civil war, the Hundred Year's War, the Black Death, the Great Schism, the decline of respect for the clergy, and the rise of merchants. All of these forces disrupted the social order, increased the need for government administration, law and order, and created an vast increase of law business for the courts—an increase of law cases that were not wholly appropriate for ecclesiastical jurisdiction. In addition, a newer stream of legal and political thought began to challenge the writings of men such as John of Salisbury. Clerics such as William of Ockham (1285- 1384) and John Wyclife (1320 1384) began to seriously question the legal authority of the Pope and the Church over secular government and affairs. Ockham and Wyclife started the arguments for limited Church jurisdiction which later laid the foundations for the Protestant Reformation.

Meanwhile, the Roman Church of England continued to mold secular Anglo-American jurisprudence into a refined English common-law court system,

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[104] St. Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 678.

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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