It has been said that "No proper estimate has been made of the effects of Christianity on English law, but there is no shadow of doubt that it was far-reaching." Our legal system was formed and developed over centuries under the dominating influence of the Christian religion. The ideals and standards of justice that informed our law were derived largely either from the Bible directly or from ancient pre-Christian institutions that have been so completely transformed under the influence of the church that the original pre-Christian practices from which they originate are no longer discernible in the Christianised forms in which we know them. Our very concepts of justice, due process and the rule of law are Christian ideals which we should never have known had the Christian faith not taken root in this land and transformed the nation from a pagan into a civilised society.

This book traces the growth of Christian law in England from the conversion of King Æthelberht, through the reigns of the Anglo-Saxon kings up to the Norman conquest, and examines the influence of Christianity on the development of English common law during its early, formative period in the twelfth and thirteenth centuries.

The author claims that English common law is today increasingly being overturned by legislation passed in Parliament which is based on presuppositions fundamentally alien to our Christian common law tradition. He concludes that our society is in transition from a society ruled by law, as this has traditionally been understood, to a society ruled by politicians,—i.e. a statist society.

Stephen C. Perks is the founder and Director of The Foundation for Christian Reconstruction, a charitable trust dedicated to the advancement of the Christian religion and the revival of Christian civilisation.

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CHRISTIANITY AND LAW

An Enquiry into the Influence of Christianity on the Development of English Common Law

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By the same author:
The Christian Philosophy of Education Explained, 1992

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with an Appendix containing a translation of
THE LAWS OF KING ALFRED THE GREAT

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An Enquiry into the Influence of Christianity on the Development of English Common Law

Summary

For the purpose of this book Arthur Hogue's definition of common law as "the body of rules prescribing social conduct and justiciable in the royal courts of England" has been adopted. This definition does not include the courts of equity however.

English common law evolved out of the practice of the royal courts which administered a body of rules common to the whole realm in the period following the Norman conquest. Its sources, however, go back to the pre-Norman laws and customs of England.

With the arrival of Augustine's mission in 597 and the subsequent conversion of Æthelberht to the Christian faith England came under the influence of the Christian religion and the laws of the Anglo-Saxon kings reveal increasingly throughout the second half of the first millennium the strong influence of biblical ideals and law. This is particularly noticeable with Alfred and his successors, who held up the Mosaic law as the ideal which the nation must follow if it is to be blessed by God. Heathen practices were forbidden, and those who continued in them commanded to cease or leave the country with their possessions and their sins. The church was protected by law, granted immunity from taxation and the clergy became important members of the king's witan (council). Church and royal law were not separated and the king ruled as head of state and church, making laws for both. As a result, Germanic practices and norms were modified under the influence of Christianity and many elements of social life and judicial proce-

dure incompatible with Christianity became obsolete. The Anglo-Saxon understanding of moral responsibility and legal liability acquired a Christian meaning.

After the Norman conquest many of the pre-Norman dooms and customs of Anglo-Saxon England remained in force but were modified and transformed to meet the contemporary situation. The Normans provided a strong central government, and as the administration of justice in royal courts by royal judges increased, the old courts of shire and hundred, and the feudal courts, declined in importance. The new situation created by the Norman presence, along with the ascendancy of the royal courts drawing on pre-Norman laws and customs, led to the creation of the common law. Church and lay jurisdictions were separated, however; but the church continued to exercise a strong influence on the lay courts in an indirect manner.

After the Papal Revolution (late eleventh and early twelfth centuries) the canonists developed an integrated and complex system of canon law applicable in the ecclesiastical courts. This was the first modern Western legal system. The secular state imitated this in many important ways, adopting aspects of both the legal theory and procedure of canon law. English common law, however, did not come under the controlling influence of Roman law.

The theology of Western Christendom played an important part in shaping legal theory in the West generally. The Western theory of retributive justice was the result of developments in theology following the Papal Revolution, particularly Anselm's theory of the atonement. Modern theories of legal representation, the taking of oaths before giving testimony, the emphasis on judicial investigation and rules for determining the relevancy of evidence were all developed and practised first in the ecclesiastical courts and later adopted by the lay courts. The influence of Christianity mitigated many pagan and barbaric elements of pre-Christian judicial procedure, such as the ordeal, modifying them according to biblical principles and eventually leading to their abandonment. Furthermore, in the first half of the second millennium morality and law were not so sharply distinguished and human law was

subject to the requirement that it conform to reason and the law of God, which were then considered to be practically the same thing. This remained the case even after case law and precedent came to dominate the common law system. In equity also the common rule was that no law is just or binding if it contravenes reason or the law of God.

The common law system was developed during the twelfth and thirteenth centuries by the royal judges, who were mostly ecclesiastics. The laws and customs of England, which were themselves strongly influenced by Christianity during the second half of the first millennium, were transformed into the common law system during the first half of the second millennium by Christian judges under the influence of the church and Christian ideals. The church also provided in many respects a model of government for the secular state.

Our legal system was formed and developed over centuries under the dominating influence of the Christian religion. Our system of justice is what it is, and is distinguishable from other systems far less civilised than ours, because of the influence and input that the Christian religion has brought to it. Now, however, the Christian presuppositions upon which our law was built, and upon which it relied for its validity and authority, are being abandoned by our people and by our legislators and judges. As a result the traditional understanding of the rule of law which guided our nation for so long is being overturned in favour of the rule of politicians who legislate in terms of pragmatic principles rather than Christian ideals. Our legislators no longer recognise the authority of a higher law to which all human law must conform if it is to be valid, and thus Christian law is being replaced by law based on alien presuppositions. For over a thousand years the Christian faith influenced and helped to shape our law, and our law underpinned our Christian heritage. Both are now in ruins. The remedy for this malady lies in recognising once more that all human law must conform to the standards of justice revealed in God's law.

Definition of Common Law

The term *common law* can have a number of different meanings depending on its context. In a very broad sense the term can mean "the legal system and habits of legal thought that Englishmen have evolved. In this sense it is contrasted with systems of law derived from Roman law."[1] In a narrower sense it refers to those laws that are common to the whole of the kingdom and derived from common usage and custom. In this sense it contrasts with whatever is particular, extraordinary and special,[2] whether that distinctiveness is due to geographical, political or other factors. For example, common law is not local law, nor is it mercantile or canon (i.e. ecclesiastical) law—though the term is derived from the usage of the canonists.[3] Common law derives largely from ancient usage and precedent, though it is anachronistic to apply the *term* to any period earlier than the thirteenth century. Common law contrasts with statute law and "often means that part of English law (including Equity) which is unenacted, especially that contained in the decisions of the courts as opposed to Acts of Parliament and subordinate legislation."[4] Although generally common law is in origin customary law it does, however, comprehend some principles which did originate in legislation.[5] On the other hand common law is also contrasted with equity, which was administered in the Court of Chancery. Equity is applied where common law and the precedents established under it are not able to provide a framework for justice in particular or special situations.

1. R. M. Jackson, *The Machinery of Justice in England* (Cambridge, Fifth Edition, 1967), p. 15.

2. Frederick Pollock and Frederic W. Maitland, *The History of English Law Before the Time of Edward I* (Cambridge, 1898), vol. I, p. 177.

3. "The expression *common law* originally came into use through the canonists. 'They use it to distinguish the general and ordinary law of the universal church both from any rules peculiar to this or that provincial church, and from those papal *privilegia* which are always giving rise to ecclesiastical litigation.' The phrase passed from the canonists to the lay lawyers." (R. M. Jackson, *op. cit.*, p. 10. The citation is from Pollock and Maitland, *op. cit.*, vol. I, p. 176.)

4. O. H. Phillips, *A First Book of English Law* (London: Sweet and Maxwell, 1970), p. 7.

5. *Ibid.*

It is clear from this that a simple, trouble-free definition of common law is not easy. Writing of the twelfth and thirteenth centuries Arthur Hogue defines common law in a broad sense as "the body of rules prescribing social conduct and justiciable in the royal courts of England."[6] For our purposes we shall use this definition of common law since our concern is not with a more narrow or particular definition and understanding of common law but rather with the influence of Christianity and biblical principles of justice upon the development of English law. This definition does not embrace the Court of Chancery, which was the principal court of equity, or Star Chamber.[7]

The Origin of Common Law

The dating of the development of common law usually begins with the Norman conquest. Over the two and a half centuries that followed 1066 the Norman and Angevin kings slowly established a system of royal courts which administered justice across the whole

6. Arthur R. Hogue, *Origins of the Common Law* (Indianapolis: Liberty Press, 1966), p. 5.

7. The three main common law courts were the Court of Common Pleas, the Court of King's Bench and the Court of Exchequer. These courts separated from the King's Council and acquired an independent jurisdiction. In a sense all these courts were originally equitable courts, but as the law grew and became more rigid and formalised there was a need for principles of justice to be applied to situations which were not addressed by the common law and the Court of Chancery emerged in the fifteenth century to meet this need. The Court of Star Chamber, whose origins were also in the fifteenth century—though probably not the 1487 act that was traditionally thought to have created it—was not a common law court and operated on principles fundamentally different from common law practice. It maintained a very close connection with the King's Council, unlike the common law courts, which were independent of the Council, and was much hated towards its end—it was abolished in 1641—for its arbitrary use and abuse of royal power. The common law system also includes the Assize Courts. As a result of the Judicature Acts 1873-1875 the Courts of Queen's Bench, Common Pleas and Exchequer became the Queen's Bench Division, Common Pleas Division and Exchequer Division respectively, and in 1881 these courts were amalgamated into the Queen's Bench Division. The Judicature Acts also ended the separation of common law courts and equity courts and since then all courts have administered both common law and equity. This does

realm according to a common body of laws. Prior to this development the principal courts in existence were the communal courts of shire and hundred and the feudal courts of the landowners.[8] However, the sources of English common law go back to pre-Norman times and were embodied in local custom, which at many points differed between the kingdoms of Wessex, Mercia and Danelaw, and the dooms of the English kings going back to Alfred. As a result of the Norman conquest and the establishment of royal courts throughout the kingdom over the following centuries these local customs were unified under one system of law common to all men, later called the "common law."[9] The jurisdiction of the shire, hundred and feudal courts was not abolished formally but rather declined as the jurisdiction of the royal courts increased.[10] Before looking at the emergence during this period of the common law we shall look at the influence of Christianity and biblical law on English law prior to the Norman conquest.

English Law in the Anglo-Saxon Period

"The Kingdom of England being a very ancient Kingdom," wrote Sir Matthew Hale in his *History of the Common Law of England*, "has had many Vicissitudes and Changes (especially before the coming of King William I.) under several either Conquests or Accessions of Foreign Nations. For thou' the Britons were, as is supposed, the most ancient Inhabitants, yet there were mingled with them, or brought in upon them, the Romans, the Picts, the Saxons, the Danes, and lastly, the Normans; and many of those Foreigners were as it were incorporated together, and made one Common People and Nation; and hence arises the Difficulty, and indeed Moral Impossibility, of giving any satisfactory or so much as probable Conjecture, touching the Original of the Laws."[11]

not mean that there is no longer a distinction between common law and equity however. The rules governing both forms of law are still maintained but both common law and equity can be administered by the same court. See R. M. Jackson, *op. cit.*, p. 8 for an explanation of how this works.

8. R. J. Walker and M. G. Walker, *The English Legal System* (London: Butterworths, 1970), p. 3.

9. *Ibid.*

10. *Ibid.*

In spite of this difficulty, however, we do have some of the laws of the Saxon kings, beginning with Æthelberht, the first Christian king of England, and it is possible to trace the influence of the Christian faith upon the laws enacted by these kings as the centuries pass. Indeed, a careful study of the sources that we have demonstrates beyond doubt the truth of Hale's comment that "The Growth of Christianity in this Kingdom, and the Reception of Learned Men from other Parts, especially from Rome, and the Credit that they obtained here, might reasonably introduce some *New* Laws, and antiquate or abrogate some *Old* ones that seem'd less consistent with the Christian Doctrines, and by this Means, not only some of the Judicial Laws of the Jews, but also some Points relating to, or bordering upon, or derived from the Canon or Civil Laws, as may be seen in those Laws of the ancient Kings, Ina, Alphred, Canutus, &c. collected by Mr. Lambard."[12]

Christianity came to Britain during the first century, brought here probably by Roman soldiers. With the fall of Rome and the exodus of the Roman legions, however, Britain was open to invasion by the heathen. Without Roman help and lacking sufficient military strength of their own the British were pushed back into Wales and Cornwall by the invading Jutes, Saxons, and Angles. England was settled by pagans who knew nothing of the Christian faith. In 597, however, Augustine landed in Kent with his Christian mission. Æthelberht, king of Kent, although a pagan, had married a Frankish Christian princess who kept her faith and as a result Augustine's mission was not opposed. Æthelberht was himself eventually baptised and it is from his conversion that we can begin to trace the development of English law. According to J. M. Wallace-Handrill, "When the pope reminded Æthelberht of the example of Constantine and Queen Bertha of that of Helena, as he also reminded other kings and queens, he meant it to be understood that the new convert was entering the family of Catholic kings of whom

11. Sir Matthew Hale, *The History of the Common Law of England* (Chicago: University of Chicago Press, [1713] 1971), p. 39.

12. *Ibid.*, p. 43.

the emperor was the father. Papal and imperial correspondence of the period leaves no doubt about this. He assures Bertha that 'bona vestra' [your virtues] have been reported not merely in Rome but even in Constantinople, where they have reached the ears of the 'serenissimum principem' [the emperor]. Politically this might mean little of nothing. But one certain consequence would be that the new convert would enter into the tradition of written law of which the emperor was the fountain head."[13] Wallace-Handrill goes on to explain that this "is one reason why Æthelberht's laws must be dated after his conversion. Lawbooks were a Roman, and specifically a Christian-Roman, gift to the Germanic kings."[14]

Æthelberht's laws—the earliest document written in the English language[15]—deal almost exclusively with monetary compensation payable to victims of crime or injury. The very first law deals with sacrilege: "[Theft of] God's property and the Church's shall be compensated twelve fold; a bishop's property eleven fold; a priest's property nine fold; a deacon's property six fold; a clerk's property three fold. Breach of the peace shall be compensated doubly when it affects a church or a meeting place."[16] The pope, when he heard about the heavy compensation, insisted that simple restitution was all that was required.[17] This was equally in error. For theft the Bible demands restitution of between a fifth and fivefold (Lev. 6:5, Ex. 22:1). Of interest in regard to this is the fact that Æthelberht himself only required ninefold restitution for theft of his property.

Apart from this opening clause there is nothing overtly Christian or biblical in the content of the law code. Perhaps the main failure, and this was a failure of all the Anglo-Saxon law codes including Alfred's, was the readiness to substitute the payment of a man's *wergeld* or blood-price as compensation for murder rather

13. Wallace-Handrill, *Early Germanic Kingship in England and on the Continent* (Oxford: The Clarendon Press, 1971), p. 32.
14. *Ibid.*
15. F. L. Attenborough, ed. and trans., *The Laws of the Earliest English Kings* (Cambridge, 1922), p. 3.
16. *Ibid.*, p. 5.
17. Wallace-Handrill, *op. cit.*, p. 40.

than enforcing the death penalty. This may seem incredible to modern readers but in the context of society as it then existed it had an ameliorating effect by limiting blood-feuds, which often had very destructive consequences. In that light it was not so barbarous and compared with the modern practice of putting a murderer into prison for a few years at the expense of the tax payer then setting him free without compensation for the victim's family it must be seen as positively enlightened. Nonetheless, the Bible, although it requires compensation for most offences and permits the payment of a ransom in cases of accidental manslaughter (cf. Ex. 21:30 for instance),[18] demands that no ransom be taken for the life of a murderer and that he be put to death (Num. 35:31).

However, with the coming of Christianity and, as a result of that, written law codes, there is a new element in Anglo-Saxon lawmaking. "What is new is that the king, by causing them to be written, makes them his own. Lawgiving is a royal function; it is something that the emperors, through the Church, can give kings. It comes with Christianity. A royal book is made, to be stored, it may be, with the books of the Bible—not inappropriately, either, since the Bible, too, was a repository of law."[19]

Of interest next are the law codes of Wihtred, king of Kent, issued in 695, and Ine, king of Wessex, issued between 688 and 694. Wihtred's code begins with the recognition of an important principle: "The Church shall enjoy immunity from taxation."[20] In return the clergy are commanded to pray for the king and honour him: "The king shall be prayed for, and they shall honour him freely and without compulsion."[21] Furthermore, "The *mundbyrd*[22] of the Church shall be 50 shillings like the king's."[23] Much of Wihtred's

18. On the biblical formula for compensation see U. Cassuto, *A Commentary on the Book of Exodus* (Jerusalem: The Magnes Press, [1967] 1987), pp. 275-278.
19. Wallace-Handrill, *op. cit.*, p. 44.
20. Attenborough, *op. cit.*, p. 25.
21. *Ibid.* How this law is to be enforced so that the clergy obey freely and without compulsion is not explained!
22. "Literally, 'protection'—then the amount to be paid for violation of protection (or guardianship)." *Ibid.*, p. 175.
23. *Ibid.*, p. 25.

code is concerned with the church and Christian practice. "Wihtred, like his West Saxon contemporary Ine, whose laws owe much to Kent, legislates with the Church in the forefront of his mind."[24] For example, regarding Christian marriage we read, "Foreigners, if they will not regularise their unions, shall depart from the land with their possessions and with their sins," while for the same offense "Men of our own country also shall be excluded from the communion of the Church, without being subject to forfeiture of their goods."[25] Men living in "illicit unions" are also commanded to "turn to a righteous life repenting of their sins, or they shall be excluded from the communion of the Church."[26] There are also fines for both noblemen and commoners for entering illicit unions (100 shillings and 50 shillings respectively). It seems that sabbatarianism predates the usual era given for its emergence among the Puritans of the seventeenth century since in Wihtred's code there are laws governing work on Sundays, with fines for disobedience.[27] Worship of devils is forbidden with fines and forfeiture of possessions as punishments. Other laws deal with priests entering illicit unions or being too drunk to discharge their duties, the granting of freedom on the altar, procedures and formula for compurgation in cases involving the clergy and for commoners accused of crimes relating to the clergy, and sundry other laws relating to theft.

The laws of Ine, king of Wessex, show a similar concern for the church and Christian observance. Ine declares in the prologue to his law code: "I, Ine, by the grace of God king of Wessex, with the advice and instruction of Cenred, my father, of Hedde, my bishop, and of Erconwald, my bishop, and with all my *ealdormen*[28] and the

24. Wallace-Handrill, *op. cit.*, p. 67.
25. Attenborough, *op. cit.*, p. 25.
26. *Ibid.*
27. An interesting law states: "If a freeman works during the forbidden time, he shall forfeit his *healsfang* [i.e. the first installment of his *wergeld*—S.C.P.], and the man who informs against him shall have half the fine, and [the profits arising from] the labour." *Ibid.*, p. 27.
28. "The *ealdorman* in Wessex was the head of a county down to the time of Edward the Elder (900?–925?), after which several counties were usually grouped under one *ealdorman*. . . . They were the chief persons in the kingdom after the king and, sometimes at least, members of the royal family. The royal council consisted of *ealdormen*, king's thegns (corresponding to the barons of later times), and ecclesiastics." *Ibid.*, p. 183.

chief councillors of my people, and with a great concourse of the servants of God as well, have been taking counsel for the salvation of our souls and the security of our realm, in order that just laws and just decrees may be established and ensured throughout our nation, so that no *ealdorman* nor subject of ours may from henceforth pervert our decrees."[29] This is the most overtly Christian prologue to an English law code before Alfred's. Interestingly, Ine's law code has survived entire only as an appendix to the law code of Alfred. The earliest manuscript dates from *c.* 925.[30] Ine commands that "A child shall be baptised within 30 days. If this is not done [the guardian] shall pay 30 shillings compensation."[31] If the child dies before baptism, however, the guardian forfeited all his possessions. There then follows a law governing working on Sunday: "If a slave works on Sunday by his lord's command, he shall become free, and the lord shall pay a fine of 30 shillings."[32] If a slave worked without his master's knowledge he was punished with the lash or a fine in lieu of the lash. A freeman who worked on Sunday, except by his lord's command, stood to lose his freedom or pay a 60 shillings fine. However, a priest who offended was required to pay a *double* fine. Church dues were to be rendered at Martinmas (November 11th). Those who failed in this were required to pay a fine of 60 shillings to the king and twelvefold compensation to the church. There are also laws governing the use of the church as a sanctuary by fugitives. Other laws cover compurgation, fines and compensation for crimes and various other matters.

It is in king Alfred, however, that we see most clearly the growing influence of Christianity upon English culture and law. H. R. Loyn writes of Christianity under Alfred's reign: "The Christian religion provided the most potent binding force known to Western society in the ninth century, and this was particularly true when the ruler was as good a Christian as Alfred. In him more than in any other rulers of the period, even the great Charles himself, we see the ideal of Christian kingship: a successful defender of Chris-

29. *Ibid.*, p. 37. 30. *Ibid.*, p. 35. 31. *Ibid.*, p. 37. 32. *Ibid.*

tian peoples against pagan onslaught and also an assiduous supporter of scholarship and of Christian missionary effort. And in order to make the basis of his authority better appreciated he drew with great wisdom upon the work of Gregory, the fortitude of Boethius, the world picture of Orosius and the theology of St Augustine of Hippo, from whose works he had sound and workmanlike translations made at his West Saxon court."[33] With Alfred there is more than a concern for the church and Christian practice, but also a commitment to the specific *content* of biblical law. Consequently, Alfred's law code begins with a long introduction which contains translations into English of the Ten Commandments (Ex. 20:1-17), the law of Moses (the Book of the Covenant, Ex. 21:1 to 23:13), and the golden rule (Mt. 7:12) along with a brief account of apostolic history, including translations from the Acts of the Apostles, and of the growth of Christian law among the Christian nations as established by ecumenical and English church councils.[34]

According to Attenborough this lengthy introduction has "no bearing on Anglo-Saxon law."[35] This is an amazing statement. Certainly it had a bearing on Alfred's law code. As Alfred says in the prologue to his code: "I, King Alfred, have collected these laws, and have given orders for copies to be made of many of those which our predecessors observed and which I myself approved of. But many of those I did not approve of I have annulled, by the advice of my councillors, while [in other cases] I have ordered changes to be introduced. . . But those which were the most just of the laws I found—whether they dated from the time of Ine my kinsman, or of Offa, king of the Mercians, or of Æthelberht, who was the first [king] to be baptised in England—these I have collected while rejecting the others."[36] And what criterion should we expect Alfred, who manifested the ideal of Christian kingship, to use in determining what was just and what should be annulled? Surely Christian principles would play a large part in Alfred's conception of justice and therefore affect his choice of which laws were to be retained from times past and which were to be annulled. Alfred says of the golden rule (Mt. 7:12) "From this one doom a man may remember that he judge everyone righteously; he need heed no other doom book."[37] Consequently, as Berman points out, "Alfred's laws themselves, although largely consisting of a recapitulation of earlier collections, contain such striking provisions as: 'Doom very evenly: doom not one doom to the rich, another to the poor; nor doom one to your friend, another to your foe.'"[38] This is very clearly a restatement of Lev. 19:15, which states "You shall do no injustice in judgement; you shall not be partial to the poor nor defer to the great, but you are to judge your neighbour fairly."

33. H. R. Loyn, *Anglo-Saxon England and the Norman Conquest* (London: Longman, 1962), p. 212.
34. See the Appendix on pp. 60-73 for a translation of the full text.
35. Attenborough, *op. cit.*, p. 35. 36. *Ibid.*, p. 63

This is not to say that the laws King Alfred collected and retained from previous Anglo-Saxon law codes were purged of all pagan elements. For example we read, "If a slave rapes a slave, castration shall be required as compensation,"[39] which can hardly be squared with the Bible. But Alfred's law code generally exhibits a different spirit. Remarkably, F. M. Stenton, like Attenborough before him, considers Alfred's citation of the laws of Moses to have no bearing on his law code and claims that it was no more than an attempt to acquaint his subjects with what he regarded as a model piece of legislation. "There is no trace of any extraneous elements in the text of his own law, which are, indeed, remarkably conservative" Stenton writes.[40] But on the other hand, Stenton then admits, "there are important features in his laws which are not derived from any known source and may be original."[41] Stenton knows of no possible source for these new elements in Alfred's code and he thus draws the conclusion that they may be original. Anyone familiar with the Bible will have no difficulty in recognising the features of which Stenton speaks: "They include" writes Stenton "provisions protecting the weaker members of society against oppression,

37. Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Massachusetts: Harvard University Press, 1983), p. 569.
38. *Ibid.*, p. 65. 39. Attenborough, *op. cit.*, p. 75.
40. F. M. Stenton, *Anglo-Saxon England* (Oxford: The Clarendon Press, [1943] 1971), p. 275f.
41. *Ibid.*, p. 276.

limiting the ancient custom of blood-feud, and emphasizing the duty of man to his lord."[42] Given Alfred's commitment to the Christian religion is it not reasonable, indeed necessary, to conclude that these new enlightened elements in his code were the result of the influence of Christianity and biblical law upon Alfred's own thinking? As Wallace-Handrill says: "To assemble the *Volksrechte* [folklaw] and reissue them as their own had seemed an enhancement of kingship to the Carolingians; it was a legislative function with political overtones. Alfred, however, did more than this. To revise and reissue his predecessors' laws as his own was nothing new; but his remarkable prologue suggests something more."[43] Stenton is nearer the mark when he adds: "A religious king, whose own life had once depended on the loyalty of his men, might be expected to legislate in this spirit, and these provisions may be added to the evidence of Alfred's character which is supplied by his writings."[44]

What is the reason for this myopia when it comes to understanding the influence of Christianity on Western culture? Attenborough's and Stenton's failure to identify the influence of biblical law upon Alfred's code bears out Rushdoony's comment that "a very real defect of scholars has been their ignorance of Biblical law. As a result, much has been called pagan which was in reality Biblical."[45] Certainly Alfred's translation of the laws of Moses was meant to acquaint his subjects with a model piece of legislation, as Stenton argues. But as Wallace-Handrill, referring to Stenton's argument, points out, "it implies another: to link his own legislation with that of the Bible, and by linking it to accept the Bible as valid moral law. With modifications he accepts the Mosaic law of Exodus as current, and by an excerpt from St. Matthew he demonstrates that Christ had also accepted it as current and valid. The righteous man, says Alfred, needs no other lawbook; the ethic of the Decalogue was an acceptable basis for all law. But men were not righteous; they did need other law; and Alfred shows how,

42. *Ibid.*
43. Wallace-Handrill, *op. cit.*, p. 149.
44. Stenton, *op. cit.*, p. 276.
45. R. J. Rushdoony, *The Institutes of Biblical Law* (Presbyterian and Reformed Publishing Company, 1973), p. 787.

since the critical event of the baptism of Æthelberht, such law had been provided for the English people. He in turn does what he can: the collection of laws that he makes for them is what he would probably have called Christian law."[46]

Alfred's law code contains many of the laws of his predecessors with some modification. Much of the code is concerned with compensation payable to victims of injuries, either accidental or criminal in nature, by those responsible. Compensation is accepted for the life of a slain man (his *wergeld* or blood-price), which, though unbiblical in cases of murder, represented a considerable improvement on the blood-feud that was likely to follow without it, and for this reason it was supported actively by the church.[47] There are also laws concerning the protection of church property and respect for church law. Many of Alfred's laws are pagan in origin, it is true, setting forth penalties that are not consistent with biblical law. But the code generally is subject to a Christianising influence which, as we have seen, made Alfred's laws more just and concerned with issues and emphases that were derived from the Bible.

Furthermore, Stenton observes that "Alfred's code has a significance in general history which is entirely independent of its subject matter. In his preface Alfred gives himself no higher title than King of the West Saxons, and he names his kinsman Ine first among the three kings whose work had influenced his own. But the names of Offa and Æthelberht, which follow in the list, imply that Alfred's code was intended to cover, not only Wessex, but Kent and English Mercia. It thus becomes important evidence of the new political unity forced upon the various English peoples by the struggle against the Danes. Even without this adventitious interest it would still be a landmark in English legal history. It appeared at the end of a century in which no English king had issued laws. Everywhere in western Europe kings were ceasing to exercise the legislative powers which traditionally belonged to their office. In England alone, through Alfred's example, the tradition was maintained, to be inherited by each of the two foreign kings who ac-

46. Wallace-Handrill, *op. cit.*, p. 149.
47. Loyn, *op. cit.*, p. 206.

quired the English throne in the eleventh century."[48]

This is significant for our concern with the influence of Christianity upon the development of common law. The common law principles of justice that were applied in later centuries, as we have seen, had roots going back before the Norman conquest. These common law roots go back to the ancient customs and laws of the people of England and it is in Alfred's law code that we first find law being made for all of Anglo-Saxon England. But Alfred left more than just laws for the Anglo-Saxons in England. In 878 Alfred defeated the Danish king, Guthrum. The terms of the surrender stipulated not only that Guthrum withdraw from Alfred's kingdom but that he and his leading men be baptised also.[49] In the laws agreed upon and enacted by Alfred and Guthrum[50] the commitment to "love one God and zealously renounce all heathen practices"[51] stands first. The code goes on to state: "If anyone offends against the Christian religion, or honours heathen practices by word or deed, he shall pay either wergeld or fine or *lahslit* [a fine incurred by a breach of the law], according to the nature of the offence."[52] Failure to pay tithes is punished with fines. There are also sabbatarian laws, as with Wihtred, Ine and Alfred. For example: "If anyone proceeds to bargain on a Sunday, he shall forfeit the goods, and 12 ores[53] [in addition] in a Danish district, and 30 shillings in an English district."[54] This law code testifies to the Christian shadow that Alfred cast not only over Anglo-Saxon England but also over those territories under the rule of the Danes. The following laws are the last in the code. I have added in square brackets references to biblical laws which deal with the same issues.

48. Stenton, *op. cit.*, p. 276.

49. Attenborough, *op. cit.*, p. 96.

50. The prologue states: "This is also the legislation which King Alfred and King Guthrum, and afterwards King Edward and King Guthrum, enacted and agreed upon, when the English and the Danes unreservedly entered into relations of peace and friendship." (*Ibid.*, p. 103) There is a problem with the dating, however, since the Anglo-Saxon Chronicle states that Guthrum died in 890, ten years before Alfred, and thus the laws cannot have been subsequently agreed upon by Guthrum and Edward, Alfred's successor. It is thought by some historians that the prologue is not authentic and that the code is later than Alfred's reign. See Attenborough, *op. cit.*, p. 97.

51. *Ibid.*, p. 103. 52. *Ibid.*

53. A pound (20 shillings). It was more expensive to do business on Sunday in England than it was in East Anglia under the Danes.

54. Attenborough, *op. cit.*, p. 105.

11. If wizards or sorcerers [Ex. 22:18, Lev. 20:27, Dt. 18:10-13], perjurers [Ex. 23:1, Dt. 19:16-19] or they who secretly compass death [Ex. 21:12, 14, Lev. 24:17], or vile, polluted, notorious prostitutes [Lev. 19:29, Dt. 22:20-21] be met with anywhere in the country, they shall be driven from the land and the nation shall be purified; otherwise they shall be utterly destroyed in the land—unless they cease from their wickedness and make amends to the utmost of their ability.
12. If any attempt is made to deprive in any wise a man in orders, or a stranger, of either his goods or his life [Ex. 22:21-24, Dt. 24:17], the king—or the earl of the province [in which such a deed is done]—and the bishop of the diocese shall act as his kinsmen and protectors, unless he has some other [Lk. 10:30-37]. And such compensation as is due shall be promptly paid to Christ [Dt. 21:1-9] and the king according to the nature of the offence; or the king within whose dominions the deed is done shall avenge it to the uttermost.[55]

The laws and ordinances of Edward the Elder (*c.* 900-925) and of Æthelstan (*c.* 925-939), the first king to exercise direct rule over all England, including the Danes, similarly reflect the influence of Christianity. The first clause in I Æthelstan reads: "I, King Æthelstan, with the advice of my Archbishop, Wulfhelm, and my other bishops also, inform the reeve in every borough, and pray you in the name of God and of all His saints, and command you also by my friendship, that in the first place ye render tithes of my own property, both in livestock and in yearly fruits of the earth, measuring, counting and weighing [them] in accordance with the strictest accuracy. And the bishops shall do the same with their own property, and my ealdormen and my reeves likewise."[56] He goes on to say: "Let us remember how Jacob the Patriarch declared '*Decimas et hostias pacificas offeram tibi*' [tithes and animal sacrifices, peace-offerings, I shall give to you], and how Moses declared in God's Law '*Decimas et primitias non tardabis offerre Domino*' [You shall not be slow

55. *Ibid.*, p. 109. 56. *Ibid.*, p. 123.

to offer tithes and firstfruits to the Lord]."[57] Furthermore, we are told that "It behoves us to remember how terrible is the declaration stated in the books; 'If we are not willing to render tithes to God, he will deprive us of the nine [remaining] parts, when we least expect it, and moreover we shall have sinned also.'"[58]

Another piece of legislation from the Anglo-Saxon law codes of interest for our purposes is Æthelstan's ordinance relating to charities:

> I, King Æthelstan, with the advice of Wulfhelm, my archbishop, and of all my other bishops and ecclesiastics, for the forgiveness of my sins, make known to all my reeves within my kingdom, that it is my wish that you shall always provide a destitute Englishman with food, if you have such an one [in your district], or if you find one [elsewhere].
>
> 1. From two of my rents he shall be supplied with an amber of meal, a shank of bacon or a ram worth four pence every month, and clothes for twelve months annually. [And I desire you] to make free annually one man who has been reduced to penal slavery. And all this shall be done for the lovingkindness of God, and for the love you bear me, with the cognisance of the bishop in whose diocese the gift is made.
> 2. And if the reeve neglects [to do] this, he shall pay 30 shillings compensation, and the money shall be divided, with the cognisance of the bishop, among the poor who are on the estate where [this] remains unfulfilled.[59]

During the century before the Norman conquest the kings of England continued to issue law codes, and these codes evidence the continuing influence of Christianity and of the church upon them. Of particular importance are the law codes of Cnut which, along with other law codes going back to Alfred and Ine, were the

57. *Ibid.* The citations are incorrect renderings of Gen. 28:22 and Ex. 22:29 respectively.

58. *Ibid.* This is surely a lesson the modern church would do well to learn. It would seem that Anglo-Saxon kings were better theologians and more aware of their duties to God and the consequences of disobeying Him than most bishops in the Church of England today.

59. *Ibid.*, p. 127.

main sources of old English law for writers after the Norman conquest when the English common law system was beginning to take shape.[60] Loyn, commenting on this period, states that "in the legislative field, there is an indication of the development of relationships between growing state and Church strongly reminiscent of continental development during the Carolingian period. Indeed owing to the strength and tenacity of the West Saxon monarchy in the tenth and eleventh centuries, theocracy in England was even more fully extended, and survived later. The writings of homilists in the late tenth and early eleventh centuries bear out this conclusion. . . In later Anglo-Saxon England, ideas of Christian kingship and the sight of that kingship in action illustrate the closer interdependence of the Church as an institution and the state."[61]

The law codes issued by the kings themselves also bear out this conclusion. In VIII Æthelred 2.1, for instance, we read: "For a Christian king is Christ's deputy among the Christian people, and he must avenge with the utmost diligence offences against Christ."[62] The growing influence of Christianity and of biblical law on Æthelred's law codes is very strong. VI Æthelred 28.2 states:

> And deceitful deeds and hateful injustices shall be strictly avoided, namely, untrue weights, and false measures, and lying testimonies, and shameful frauds, and foul adulteries, and horrible perjuries, and devilish deeds such as murders and homicides, thefts and robberies, covetousness and greed, gluttony and intemperance, frauds and various breaches of the law, violations of marriage and of holy orders, breaches of festivals and of feasts, sacrilege, and misdeeds of many kinds.[63]

This list clearly shows the influence that the Bible was exerting upon Anglo-Saxon law codes at this time. The next clause but one states the matter succinctly: "God's law shall henceforth be zeal-

60. J. H. Baker, *An Introduction to English Legal History* (London: Butterworths, 1971), p. 5; Pollock and Maitland, *op. cit.*, vol. I, p. 99.

61. Loyn, *op. cit.*, p. 237.

62. A. J. Robertson, ed. and trans., *The Laws of the Kings of England from Edmund to Henry I* (Cambridge University Press, 1925), p. 119.

63. *Ibid.*, p. 101.

ously cherished in word and in deed; then God will forthwith be gracious towards this people."[64] Significantly, along with this concern for the proper observance of God's law there is a concern for the improvement of the coinage. Clause 32 reads:

Public security shall be promoted in such a way as shall be best for the householder and worst for the thief.

§1. And the coinage shall be improved by having one currency, free from all adulteration, throughout all the country.

§2. And weights and measures shall be corrected with all diligence, and an end put to all unjust practices.[65]

The concern for God's law and a sound, honest monetary system clearly go hand in hand, the latter being the natural result of a sincere desire to obey God's law (the biblical laws on just weights and measures are given in Lev. 19:35-37 and Dt. 25:13-16). Many more citations from Æthelred's law codes could be given to demonstrate this concern for the upholding of God's law—there is simply not the space here to do justice to the point. In citing those laws which reflect directly the content of biblical law it is difficult sometimes to know where to stop. The following are a good example. I have added in square brackets references to the biblical texts:

42. And likewise we desire earnestly to exhort all our friends, as there is need for us to do frequently, to take thought diligently for themselves, and eagerly to turn from sins, and to restrain other men from wrong-doing, and frequently and often to have in mind what is of supreme importance for men to remember, namely, that they should have a right belief in the true God, who is the ruler and maker of all created things, and that they should duly keep the true Christian faith, and diligently obey their spiritual teachers, and zealously follow the precepts and ordinances of God, and that they should diligently maintain the security and sanctity of the churches of God everywhere, and frequently visit them with candles and offerings, and themselves there earnestly pray to Christ.

64. *Ibid.* 65. *Ibid.*

43. And that every year they should duly render their ecclesiastical dues [Lev. 27:30, Num. 18:24, 28, Dt. 14:22], and duly observe festivals and feasts [Dt. 16:16].
44. And that they should diligently abstain from marketings and public assemblies on Sundays [Ex. 20:8-13].
45. And that they should always protect and honour the servants of God [1 Tim. 5:17-19].
46. And that they should comfort and feed the poor [Ex. 23:11, Lev. 19:9-10, 25:35, Dt. 24:14-15].
47. And that they should not be constantly oppressing the widow and the orphan, but that they should diligently cheer them [Ex. 22:22-24, Dt. 10:18-19, 14:28-29, 16:11, 14, 26:12, 27:19].
48. And that they should not vex or oppress strangers and men come from afar [Ex. 22:21, 23:3, 6, Lev. 19:33-34, Dt. 10:18-19, 14:28-29, 16:11, 14, 26:12, 27:19].
49. And that they should not excel in offering injustice to other men, but that every man should, to the best of his ability, show the justice to others that he desires should be shown to him—which is a very just rule [Ex. 23:2-6, Lev. 19:15, Dt. 1:17, 16:18-20, Mt. 7:12 cf. 7:2].
50. And he who henceforth anywhere violates the just decrees of God or of men shall render full compensation in whatever way is fitting, whether by making the amends required by ecclesiastical authority or by paying the penalty demanded by the secular law [Ex. 22:1-15 etc.].[66]

One last citation from the laws of Æthelred will sum the whole matter up:

And constant thought shall be taken in every way how best to determine what is advisable for the public good, and how best to promote true Christianity, and to suppress with all diligence every injustice.

§1. For it is only by the suppression of injustice and the love of righteousness in matters both religious and secular that any improvement shall be obtained in the condition of the country.[67]

The laws of King Cnut, which largely re-enact the laws of Edgar and Æthelred, but which are more comprehensive, drawing

66. *Ibid.*, p. 105. 67. *Ibid.*, p. 103.

material from homilies and penitentials as well as older laws,[68] show the same concern for the law of God and the upholding of the Christian religion. In II Cnut we read:

This is further the secular ordinance which, by the advice of my councillors, I desire should be observed over all England.

1. The first provision is, that I desire that justice be promoted and every injustice zealously suppressed, that every illegality be rooted up and eradicated from this land with the utmost diligence, and the law of God promoted.
   §1. And henceforth all men, both poor and rich shall be regarded as entitled to the benefit of the law, and just decisions shall be pronounced on their behalf.
2. And we enjoin that, even if anyone sins and commits grievous crime, the punishment shall be ordered as shall be justifiable in the sight of God and acceptable in the eyes of men.
   2a. And he who has authority to give judgment shall consider very earnestly what he himself desires when he says thus: "And forgive us our trespasses as we forgive [them that trespass against us]."
   §1. And we forbid the practice of condemning Christian people to death for very trivial offences. On the contrary, merciful punishments shall be determined upon for the public good, and the handiwork of God and the purchase which he made at a great price shall not be destroyed for trivial offences.
3. We forbid the all too prevalent practice of selling Christian people out of the country, and especially of conveying them into heathen lands, but care shall be zealously taken that the souls which Christ bought with his life be not destroyed.
4. And we enjoin that the purification of the land in every part shall be diligently undertaken, and that evil deeds shall everywhere be put an end to.[69]

The code goes on to specify how the land is to be purified: wizards, sorcerers, murderers and prostitutes are to be driven from the land, unless they repent. Likewise apostates are to be driven out or else make amends. Thieves and robbers are to be "made an end of, unless they desist."[70] Heathen practices—e.g. witchcraft, worship

68. *Ibid.*, p. 138. 69. *Ibid.*, p. 175f. 70. *Ibid.*, p. 177.

of idols and heathen gods, sun, moon, fire, trees etc.—are forbidden. Perjurers and adulterers are to make amends or depart from the land, along with hypocrites, liars and robbers, who incur the wrath of God. Again there are laws requiring the reform and improvement of the coinage. False weights and measures are to be corrected diligently, and "thought shall be diligently taken in every way how best to determine what is advisable for the public good, and how best to promote true Christianity and diligently suppress every injustice."[71] Many other laws show the influence of Christianity also, including laws dealing with incest, adultery, payment of ecclesiastical dues, rape, bigamy, robbery, excommunicated persons etc. The code ends with the following words:

Now I earnestly entreat all men and command them, in the name of God, to submit in their inmost hearts to their lord, and often and frequently consider what they ought to do and what they ought to forgo.

§1. There is great need for us all to love God and to follow God's law, and zealously to obey our spiritual teachers.
§1a. For it is their duty to lead us forth to the judgment where God shall judge each man according to the works which he has wrought.
§2. And blessed is the shepherd who then may gladly lead his flock into the kingdom of God and to the joy of Heaven, because of the works which they have wrought.
§2a. And well is it for the flock which follows the shepherd who delivers them from devils and wins them for God.
§3. Let us all then, with humble heart, be zealous in pleasing our Lord aright, and henceforth, by doing what is right, always zealously guard ourselves from the hot fire which surges in hell.
§4. And likewise teachers and spiritual messengers shall do what is right and for the well being of all men: they shall frequently inculcate spiritual duties.
§4a. And everyone who has discernment shall earnestly give heed to them, and everyone for his own well-being shall keep fast in his mind their spiritual instruction.
§4b. And every man, for the honour of his Lord, shall always gladly do his utmost by word and by work and by deed for the furtherance of what is good; then shall God be the more ready [to help us].

71. *Ibid.*, p. 179.

§5. May the name of God be eternally blessed, and to Him be praise and glory and honour for ever and ever. Amen.
§6. God Almighty have mercy upon us all, as His will may be. Amen.[72]

It is quite clear that during the Anglo-Saxon period the influence of Christianity in general was strong and that biblical concepts of justice, morality and mercy were being integrated into the law codes and treaties of kings. Although the law codes contain much customary law surviving from pagan times in traditional forms they were increasingly subjected to a strong Christianising influence.

We must now note another aspect of the influence that Christianity had on Anglo-Saxon society which was of the utmost importance for the development of English law. Christianity has a moral ethic which is individualistic. Each person stands before God on the basis of his own conduct and his actions as an individual do not affect the legal liability of the family, tribe or group to which he belongs. Liability before the law is individual not corporate: "Fathers shall not be put to death for their sons, nor shall sons be put to death for their fathers; everyone shall be put to death for his own sin" (Dt. 24:16). In contrast pre-Christian Anglo-Saxon society was much less individualistic in this sense and more importance was placed upon the family group. As a result the individualistic sense of morality was not a predominant feature of Anglo-Saxon society and the group was subject to legal liability. Under the influence of Christianity all this changed. Responsibility slowly shifted from the group as a whole to the person who committed the act, and the church, and eventually the law, judged the act on the basis of the individual's moral responsibility.[73]

The influence of the Christian religion on Anglo-Saxon law and society and its significance for the development of Western law was thus of the highest importance. Of the Anglo-Saxon period Harold Berman writes:

72. *Ibid.*, p. 217f.
73. Theodore F. T. Plucknett, *A Concise History of the Common Law* (London: Butterworth and Company (Publishers) Ltd, 1956), p. 8f.

Christianity broke the fiction of the immutability of the folklaw. Gradually, between the sixth and the eleventh centuries, Germanic law, with its overwhelming biases of sex, class, race, and age, was affected by the Christian doctrine of the fundamental equality of all persons before God: woman and man, slave and free, poor and rich, child and adult. These beliefs had an ameliorating effect on the position of women and slaves and on the protection of the poor and helpless. Also Christianity had an important effect on judicial proof by oaths, since the swearing of oaths began to take Christian forms and was supported by ecclesiastical sanctions. Oaths were administered by priests in churches, at altars, on relics, and through appeals to divine sanctions against falsehood; and false swearing was subject to discipline through ecclesiastical penances. Indeed, oaths took a place alongside ordeals as a principal mode of trial. . . . But the church added the risk of offending God by perjury, and the duty, if one did perjure himself, to confess the sin to his priest and be subjected to penitential discipline. Moreover not only the false swearing of oaths but also all other obstructions of justice were considered to be sins subject to penitential discipline. For example, persistence in blood feud after a reasonable offer of satisfaction was an offense against God which was to be confessed to a priest and atoned for by fasting and other forms of penance.[74]

Christianity also had political consequences since it "served to transform the ruler from a chief (*dux*) into a king (*rex*)."[75] The king became the head of an empire, unifying the various tribes under his leadership and defeating the heathen invaders in the name of Christ. This was so in Europe with Charlemagne and also in England with Alfred. Berman writes that "Christianity also enhanced the role of kingship in the development of the folklaw during the period prior to the late eleventh century, and especially the king's responsibility to see that tribal justice was tempered with mercy and that the poor and helpless were protected against the rich and powerful. In the eighth, ninth, tenth, and eleventh centuries, Frankish and Anglo-Saxon kings were considered to be appointed by God to act as judges in extraordinary cases. As they moved about

74. Berman, *op. cit.*, p. 65f.
75. *Ibid.*, p. 66. See also Wallace-Handrill, *op. cit.*, *passim*.

their realms . . . they heard cases for mercy's sake: cases of widows or orphans or men who had no families to protect them, or no lords; cases of the very worst crimes for which no money payment could make satisfaction. This was part of their spiritual jurisdiction as patriarchs of their people."[76]

According to Harold Berman Germanic folklaw does not fit into any model or archetype of customary law because of the influence that Christianity exerted upon it. As Christianity spread it challenged the ultimate sanctity of custom and of kinship, lordship and kingship relations as well as the sanctity of nature, exhibited for example in trial by ordeal. Christianity did not deny their sanctity altogether however. Indeed, writes Berman, "the church actually supported the sacral institutions and values of the folk (including the ordeals)."[77] It challenged their *ultimate* sanctity, however, by establishing a higher realm of God's law and life eternal. The result was that life was split into the two realms of the eternal and the temporal, the sacred and the secular. Yet, although this split led to the depreciating of the temporal realm, Berman claims that it did not otherwise directly affect it. Rather, "social life was *in*directly affected in important ways. The basic structure of the folklaw remained unaltered, but many of its particular features were strongly influenced by Christian beliefs."[78]

The influence of Christianity upon Anglo-Saxon society began with the conversion of Æthelberht. Prior to this, Anglo-Saxon law was unwritten customary law. When the kings converted to the Christian religion they began, with the advice and counsel of the clergy, to issue law codes which, although drawing largely on custom and traditional in form, evidenced the growing influence of Christian ideals and principles. With the revival of learning under Alfred this process took a leap forward and the content of biblical law was set forth to the people as the ideal of true justice to be imitated. With Alfred there was also an attempt to legislate for the whole kingdom and to impose a degree of uniformity on English law. Although the law codes issued by the Anglo-Saxon kings were not comprehensive and thus England was still governed to a large

76. Berman, *op. cit.*, p. 66. 77. *Ibid.*, p. 82. 78. *Ibid.*

extent by unwritten customary law the precedent set by Alfred was followed by his successors, including Cnut (1016-1035), whose laws, along with the dooms of Alfred, were the main sources of old English law after the Norman conquest. The effect of Christianity on law and custom in England prior to the Norman conquest was thus prodigious. It played a leading role in forming and informing the cultural matrix out of which the common law later emerged. It is to the development of that common law system that we shall now turn.

The Emergence of the Common Law System

In the Anglo-Saxon period the Christian kings issued their law codes with the advice and counsel of the witan, consisting of the bishops and other ecclesiastics, *ealdormen* and thegns. As we have seen, the content of these law codes, as time passed, became increasingly occupied with Christian and church matters. Furthermore, there was not at this time the same degree of separation between church and state characteristic of later periods. The kings acted in counsel with their bishops and legislated as Christians, convinced of their duty to honour God by establishing justice and protecting the church. They were also aware—since the church was continually reminding them—of the fact that God blesses obedience and judges the disobedient in history and thus that their standing before God was of the greatest importance for the stability of their reign, for the peace and prosperity of their kingdom, and for success in war. The Old Testament King David was the great model for them as Christian kings, and the church actively encouraged such analogies with Scripture.[79] No doubt this is why the

79. Such analogies and the lessons to be derived from them have been a common feature of our nation's history. It has only been with the pietism of the evangelical movement and the privatisation of the Christian faith which has accompanied it that this kind of analogy and understanding of the Christian faith as a life and world embracing religion has fallen into decline. There has been in our nation, as a consequence of this, a radical change in the church's perception of itself and its mission in the world and this has proved to be a cause of ruin for both church and society alike. As A. K. R.

historian and Professor of Mediaeval History H. R. Loyn could use the word "theocracy" of the late Anglo-Saxon period.[80] Kingship was in a very real sense a Christian ministry for the Anglo-Saxon kings; they were in a sense officers of the church, indeed heads of the church. Church and state were one[81] and, as Loyn writes, "The lordship of the king and of Christ lay over the land and the people."[82]

Not until the Gregorian Reform and Investiture Struggle (late eleventh and early twelfth centuries) did this begin to change and the church to assert its independence. Thus, in the post-Norman conquest period there was a separation between church and state, and the law as a discipline or science[83] achieved a status to some extent independent of either. Of course common law arose out of the administration of justice by royal courts with jurisdiction over the whole country and canon law was the domain of the church. But, as Berman writes, "In the wake of the Papal Revolution there emerged a new system of canon law and new secular legal systems, together with a class of professional lawyers and judges, hierarchies of courts, law schools, law treatises, and a concept of law as an autonomous, integrated, developing body of principles and procedures."[84] Berman is here writing of Europe generally, and of course Roman law did not have the influence in England that it had on the continent. Nonetheless, the general characteristics of his description are applicable to England also. By the early fourteenth century the English common law system was independent of the King's Council and had its own judges, records, literature and professional lawyers.[85]

Kiralfy writes, "the philosophical conceptions and manner of thought associated with Christianity have undergone great changes themselves, and modern notions of Christianity must not be interpolated into the Anglo-Saxon era." (A. K. R. Kiralfy, *Potter's Historical Introduction to English Law* [London: Sweet and Maxwell Ltd., Fourth Edition 1958], p. 9).

80. Loyn, *op. cit.*, p. 237.

81. Wallace-Handrill, *op. cit.*, *passim*; Berman, *op. cit.*, p. 88f.

82. Loyn, *op. cit.*, p. 203.

83. On the development of legal science and the law as a prototype of Western science see Berman, *op. cit.*, pp. 151-164.

84. *Ibid.*, p. 116.

85. Baker, *op. cit.* p. 19.

After invading England William I was keen to make good his claim to be king by lawful right (i.e. as the nominated successor of Edward the Confessor) as well as by conquest. He therefore promised that the English laws would remain in force. In fact the Normans were, writes J. H. Baker, "warlike, uncultured and illiterate. Whether they appreciated it or not, they found in England a system of law and government as well developed as anything they had left in Normandy. Certainly they had nothing of refined jurisprudence to transplant."[86] The initial effects of the Norman invasion were rather backwards. They introduced a "new racial discrimination—this time between the French and English—a new and rather barbaric form of ordeal (trial by battle), the separation of ecclesiastical courts from the shires and hundreds, the subjection of the forests to an alien and oppressive 'forest law' protecting the royal hunt, and a brand of military feudalism which gave seignorial jurisdiction a new basis. None of this helped produce the common law: rather the reverse."[87]

England, however, was a unified nation with a central government represented by sheriffs who were responsible to the king and the beginnings of a bureaucracy operating through writs (written instructions from the king[88]). There were, however, significant differences of law and custom between the three main areas of the country corresponding to the old kingdoms of Wessex, Mercia and Danelaw. Without a strong centralised bureaucracy the unification of English law into a system of common law could not have been accomplished and it has been speculated that without that unified system Roman law would most likely have triumphed eventually in England as it did in Europe.[89] The contribution that the Normans made to the emergence of English common law was their ability in government and administration since they greatly strengthened and developed England's incipient central government. Thus, "The

86. *Ibid.* (Second Edition, 1979), p. 11. 87. *Ibid.*

88. "A writ was in principle simply a royal order which authorised a court to hear a case and instructed a sheriff to secure the attendance of the defendant." (S. F. C. Milsom, *Historical Foundations of the Common Law* [London: Butterworths, 1969], p. 22.)

89. Kiralfy, *op. cit.*, p. 14.

common law emerged in the twelfth century from the efficient and rapid expansion of institutions which existed in an undeveloped state before 1066."[90] Over the two and a half centuries following the Norman conquest the Norman and Angevin kings took control of the administration of justice throughout England by creating a system of royal courts.[91] The supremacy of the royal courts was achieved largely as a result of transferring the jurisdiction of the local and feudal courts to the king's judges and the royal courts.[92] Gradually the local courts declined in importance as the common law courts became more popular and more important. This process was further reinforced by the Statute of Gloucester in 1278, which stated that no actions involving less than 40 shillings were to be tried in a royal court, but which was interpreted by the common law judges as meaning that no action involving more than 40 shillings was to be tried in a local court.[93] As a result the shire, hundred and feudal courts declined even further and the common law courts became the chief courts of the nation.

Although in one sense the common law "was the creation of the royal judges in and after the twelfth century, and was the law which they applied uniformly throughout the realm"[94] it would be wrong to think of the common law as in any way a new or alien law transplanted into England by the Normans. It was not. As we have seen, William promised the English that their laws would not be overturned. The Normans did not bring a body of laws with them to impose upon England; indeed, they had no written law to bring with them.[95] William himself confirmed, with some additions and amendments, the old laws of England current in Edward the Confessor's reign.[96] In order to secure the papal blessing on his expedition he did, however, promise to separate the ecclesiastical

90. Baker, *op cit.* (Second Edition, 1979), p. 11.
91. Walker and Walker, *op. cit.*, p. 3.
92. See *ibid.*, p. 3ff. for an explanation of the means by which this was accomplished; see also Berman, *op. cit.*, pp. 445ff.
93. Walker and Walker, *op. cit.*, p. 5.
94. Baker, *op. cit.* (First Edition, 1971), p. 9.
95. Pollock and Maitland, *op. cit.*, vol. I, pp. 65, 77.
96. *Ibid.*, p. 88.

jurisdiction from the shire and hundred courts.[97] The church and lay jurisdictions, which were inextricably bound together under the Anglo-Saxon kings, have remained separate ever since.[98] The common law, however, emerged from a process in which although many of the old laws and customs of England dating from before 1066 were abandoned, many more were preserved.[99] To these new precedents and principles were added as the body of law common to the whole realm was built up. The common law that resulted from this process was thus not simply a mixture of old English law and custom and Norman government and administration. These were of course important elements and factors in the emergence of the common law. But the Norman conquest created a new situation in England which had profound effects on English society. "Hardly have Normans and Englishmen been brought into contact, before Norman barons rebel against their Norman lord, and the divergence between the interests of the king and the interests of the nobles becomes as potent a cause of legal phenomena as any old English or Frankish traditions can be."[100] English common law emerged from a new and changing society and addressed and was shaped to meet the needs of that society. Consequently, although much of the old English law and custom was retained much was also transformed or became obsolete, for as Berman writes, "In contrast not only to the earlier Western folklaw but also to Roman law both before and after Justinian, law in the West in the late eleventh and twelfth centuries, and thereafter, was conceived to be an organically developing system, an ongoing, growing body of principles and procedures, constructed—like the cathedrals—over generations and centuries."[101]

A good indication of the state of English law in the century following the Norman conquest is given us by a number of Nor-

97. Kiralfy, *op. cit.*, p. 16. For a translation of the Episcopal Laws of William I which brought the united ecclesiastical and lay jurisdiction to an end see Robertson, *op. cit.*, p. 235.
98. Plucknett, *op. cit.*, p. 12.
99. Baker, *op. cit.* (First Edition, 1971), p. 9.
100. Pollock and Maitland, *op. cit.*, vol. I, p. 80.
101. Berman, *op. cit.*, p. 119.

man law books written in the early twelfth century.[102] These law books demonstrate the endurance of many old English laws dating from pre-Norman times, the most important of which were the laws of Alfred and Cnut.[103] They purport to give us the law that was current in the reign of Edward the Confessor, but they state it in a modernised and amended version. This is English law made practicable for life in the Norman period. There are four such books. Of the *Liber Quadripartitus*, written between 1113 and 1118, the last two books are lost. The first book is a translation into Latin of the code of Cnut and old English dooms going back to Alfred. The second book contains the coronation charter of Henry I and other state papers. The *Leges Henrici*, written sometime before 1118, is a more important document. It contains the coronation oath of Henry I and states the laws of England as they existed in an amended form in the reigns of William I and Henry I. The author took much material from Cnut's laws and the older English dooms and may have relied on the *Liber Quadripartitus*. The author also made use of some passages from foreign law codes. The old differences between Wessex, Mercia and Danelaw in matters of law and custom still survived at this time, but, write Pollock and Maitland, the author of the *Leges Henrici* is "in some sort the champion of West Saxon, or rather Wessex law. Wessex is in his opinion the head of the realm, and in doubtful cases Wessex law should prevail."[104] The *Leis Williame* purports to set down the laws of Edward the Confessor's day which were granted to the people of England by William I. The book is in three parts: the first part contains rules of old English law as understood in Norman times with some Norman additions. According to Pollock and Maitland this harmonises well with the ancient dooms. The second part contains some writings which show the influence of Roman law, and the third part consists of translations of parts of Cnut's laws. The *Leges Edwardi Confessoris* claims to set down the laws of Edward the Confessor as

102. See Pollock and Maitland, *op. cit.*, vol. I, pp. 97-110 from which the following information is taken.

103. Kiralfy, *op. cit.*, p. 11.

104. Pollock and Maitland, *op. cit.*, vol. I, p. 101.

stated in the fourth year of William I's reign but its contents describe the reign of William Rufus and, according to Pollock and Maitland, who describe it as a "private work of a bad and untrustworthy kind,"[105] was probably written late in Henry I's reign. Besides these four books there are also two translations into Latin of Cnut's dooms which borrow from Anglo-Saxon documents which are lost to us.

The picture that these Norman law books give us is that of an ancient system struggling to adapt itself to new conditions. The old dooms are virtually the only written law available. Much of the law is embodied in local custom, but the rules differ between those areas corresponding to old Wessex, Mercia and Danelaw. The law deals mainly with restitution or compensation for crimes, but "the criminal tariff has become exceeding complex, and is breaking down under its own weight."[106] This confused situation was resolved eventually by the development of a centralised royal administration of justice under royal courts and royal judges who evolved out of this jumble of laws a unified body of law applicable across the whole kingdom.

There were thus three important factors in the emergence of English common law: first, the old English pre-Norman customs and laws, which were permitted to remain in force, but in fact many of which were either transformed and amended to meet the needs of a changing society, or else became obsolete; second, the new social conditions created by the Norman presence; and third, the burgeoning centralised administration of royal justice. These three elements created the cultural matrix out of which the common law emerged.

The Separation of Church and Lay Jurisdictions

Because church and state were to a great extent undifferentiated in Anglo-Saxon England it is relatively easy to trace the influence of Christianity and of the church upon the English kings and their law codes. Ecclesiastical and non-ecclesiastical laws were not the

105. *Ibid.*, p. 103. 106. *Ibid.*, p. 106.

product of separate legislative bodies issuing separate codes; rather, the king, as head of the nation and of the church, with the advice and counsel of his witan, consisting of bishops and other ecclesiastics, *ealdormen* and thegns, legislated for both state and church. There was not the same separation between church and state that characterised the period following the Papal Revolution.[107] After the Papal Revolution, however, the church ceased to be a national institution under the headship of its national leader or king. The church throughout Western Europe became an international organisation under the primacy of Rome with the clergy owing their allegiance to the pope, who ruled the church like an emperor. At the same time the jurisdiction of the church became independent of the jurisdiction exercised in the royal and communal courts. The pope became in a new sense the head of the church; the church as an institution became a spiritual empire with its own rules and law, with the clergy, as the officials of that empire, owing their allegiance to their prince, the pope.

The result was that the dichotomy between the sacred or spiritual realm and the secular or temporal realm became much more pronounced. Matters of law relating to the spiritual realm became the domain of canon law while those relating to the secular realm came under the jurisdiction of the royal courts and of the king. Thus, actions involving the clergy or touching on spiritual matters, and crimes which merited spiritual penalties, would be brought in the ecclesiastical courts under canon law, whereas actions involving laymen or relating to secular matters would be brought in the royal courts under the jurisdiction of the king.[108] This does not

107. Berman, *op. cit.*, p. 201.

108. This is a very simplified statement of the jurisdiction of the ecclesiastical courts and in practice the situation was somewhat more complicated. Clergy were not permitted by canon law to waive their right to trial by ecclesiastical courts, but in fact they were subject to secular jurisdictions in certain cases. Furthermore, anyone could, according to canon law, seek justice in ecclesiastical courts, or transfer a case from a secular court to an ecclesiastical court (see *ibid.*, p. 222f.). Berman writes that "the church ultimately offered its jurisdiction and its law to anyone and for any type of case, but only under exceptional circumstances, that is, when justice itself, in the most elementary sense, was at stake" (*ibid.*, p. 223). In fact this practice had a strong precedent going back to the apostolic church (1 Cor. 6:1-3). The early church not only claimed jurisdiction over Christians but also offered justice through church courts to non-believers who were denied it in the secular courts and who were prepared to submit to the judgement of the church (see Joseph Bingham, *Origines Ecclesiasticæ; or, The Antiquities of the Christian Church* [London, 1840], Book II, Chpt. VII, vol. I, pp. 117-122). However, in the period under consideration here, as Berman points out, "It was understood that normally there were two distinct kinds of jurisdiction, the ecclesiastical (spiritual) and the nonecclesiastical (secular)." (*ibid.*) The church claimed jurisdiction over certain persons and certain kinds of cases. Berman lists these persons and cases as follows: the church claimed jurisdiction over six kinds of person: (1) clergy and their households, (2) students, (3) crusaders, (4) wretched persons (the poor, orphans and widows etc.), (5) Jews in cases involving Christians, and (6) travellers, merchants and sailors. The church claimed jurisdiction over *all* persons in cases arising out of the following matters: (1) administration of sacraments, (2) testaments, (3) benefices, church property, patronage and tithes, (4) oaths, and (5) sins deserving ecclesiastical punishment. (*Ibid.*, p. 222f. See also Pollock and Maitland, *op. cit.*, vol. I, pp. 125-131 and Kiralfy, *op. cit.*, pp. 216-225.)

mean, however, that the church and the state were totally separated in legal matters. For example, an offence that was spiritual and in the first instance to be tried under canon law, such as heresy, could lead to the defendant, if found guilty, being transferred to the temporal jurisdiction to be tried and punished by the secular authorities. But the church acquired a legal jurisdiction in matters relating to spiritual things that was independent of secular jurisdiction. The church also claimed jurisdiction over temporal matters in certain cases, and indeed the papacy claimed to be the final court of appeal in all matters, spiritual and temporal. It based its claim to this jurisdiction on Dt. 17:8-12 and 1 Cor. 6:1-3.[109] The secular authorities also attempted to encroach upon the jurisdiction of the church. Thus, although it was recognised that lay and ecclesiastical courts were distinct and separate legal systems with their own jurisdictions there was also the inevitable conflict of interests between the two, which often claimed jurisdiction over the same cases. The conflict between Thomas Becket and Henry II was a glaring example of the problem. Despite the gains made by

109. Pope Innocent III's decretal "Per venerabilem" (1202), translated in Brian Pullan, *Sources for the History of Medieval Europe from the Mid-Eighth to the Mid-Thirteenth Century* (Oxford: Basil Blackwell, 1971), pp. 68-72.

the church as a result of the Papal Revolution, and in England later as a result of the murder of Becket and Henry's renunciation of the offending articles in the Constitutions of Clarendon, the state slowly wrested much of the church's jurisdiction from it in the centuries that followed.[110]

The church's influence on life and society was not diminished however. The Investiture Struggle led to increased power and authority for the church in many ways. The influence of the church on secular law was less direct but real nonetheless. Influences which helped to shape and inform canon law also passed into secular law. Indeed the term *common law* itself was originally used by the canonists to denote the general and ordinary law of the universal church in contrast to the particular rules of local churches, and eventually the term passed into secular law.[111] Other elements of canon law, including some elements of Roman law as refashioned by the canonists, also passed into secular law.[112] The influence of the church on the developing common law system was thus significant, if less

110. Berman, *op. cit.*, p. 261. 111. See note 3 above.

112. Roman law, via canon law, exerted a certain influence upon legal thought in the first half of the second millennium in England but this influence should not be overestimated, even in its effects on canon law. The traditional idea that canon law was patterned on Roman law is misleading since there were many and great differences between the two. Of particular importance is the fact that Roman law was "finished, immutable, to be reinterpreted, but not to be changed" (Berman, *op. cit.*, p, 205), whereas canon law was "continually being remade. It had the quality of organic development, of conscious growth over generations and centuries" (*ibid.*). Canon law utilised Roman law, as it utilised biblical law and Germanic law, as sources. Furthermore, elements of canon law were also taken over into Roman law by contemporary Romanists. Berman writes that "the canonists shared with the Romanists of their day the same basic theories concerning the nature and functions of law and the same basic methods of analysis and synthesis of opposites—theories and methods which were as much borrowed from them by the Romanists as by them from the Romanists. Indeed, not only theories and methods but also many specific legal concepts and institutions were taken over into contemporary Roman legal science from the new science of canon law" (*ibid.*, p. 204). There was thus some degree of cross-fertilisation. Canon law transmitted to Western law some elements of Roman law as the canonists understood it. Roman law did not appear stark naked in canon law, nor in the West generally, therefore, but was subjected to the Christianising influence of the church, and elements of Roman law as refashioned by

direct than its influence on secular law in the Anglo-Saxon period. Christian principles, even though often heavily overlain with the errors of Roman Catholic dogma, continued to influence the development of secular legal thought. We shall now attempt to trace out some of these Christian influences.

Christian Influences on the Common Law

The emergence of the English common law system occurred in an age and in a culture steeped in Christian theology, Christian morals, and a Christian understanding of the meaning and value of life. The influence of the Christian world-view was determinative for social institutions as well as individual lives. Men were born into the church,[113] married at the church and buried by the church; they lived under the pervasive influence of Christian ideals and institutions from the cradle to the grave. To be excommunicate was not only to be outside the church but outside society also. Ideas of justice, morality, right and wrong were naturally conceived in terms of Christian beliefs and informed by the content of Christian revelation, the Bible, as expounded by the church. Hence, the "basic institutions, concepts, and values of Western legal systems have their sources in religious rituals, liturgies, and doctrines of the eleventh and twelfth centuries, reflecting new attitudes towards death, sin, punishment, forgiveness, and salvation, as well as new assumptions concerning the relationship of the divine to the human and of faith to reason."[114] So pervasive was the influence of Christianity upon the development of Western legal thought that

the church passed from canon law into secular law. On the relation of Roman law to canon law see *ibid.*, p. 204f.

113. This is not meant to imply that men were regenerate as a result of being born into a Christian society or family, but simply that they were born into a Christian society and lived in terms of a Christian understanding of the origin and meaning of life, death and salvation. I am making a sociological point not a theological point.

114. Berman, *op. cit.*, p. 165. The following information on the influence of Christian theology on the development of Western legal thought in the first half of the second millennium is taken mainly from Berman, *op. cit.*, pp. 165-269.

Berman calls Western legal science a "secular theology" which to our largely unbelieving society today "often makes no sense because its theological presuppositions are no longer accepted."[115] The validity of our legal system rests on religious presuppositions which dominated the age in which it was formed and thus it is those religious presuppositions which give meaning to our law and to our understanding of justice. The attitudes and assumptions which inform our legal system are Christian and our legal institutions and values cannot be understood properly apart from Christianity.[116]

Furthermore, in the mediaeval period morality and the law were not so sharply distinguished as they are today,[117] and since Christianity was the universal religion of England it was declared that "Any law is or of right ought to be according to the law of God."[118] Even after case law came to dominate the common law system during the seventeenth and eighteenth centuries and the authority of precedent was generally accepted the doctrine of precedent was still subject to the "reservations" of reason and the law of God.[119]

According to Berman the influence of Christian doctrines upon the development of Western legal science proceeded by means of a process in which the legal metaphors and analogies of the eleventh and twelfth centuries became the legal concepts of the thirteenth century. Since these legal metaphors and analogies were taken mainly from the Christian theology of the West the legal concepts of the thirteenth century embodied the theology of Western Christendom in the period beginning with the Papal Revolution.[120] Berman lists five doctrines which he considers to have had a formative influence on Western conceptions of justice and the development of Western legal science: the Last Judgement and purgatory, the sacraments of penance and the Eucharist, and most important of all Anselm's

115. *Ibid.* 116. *Ibid.*, p. 166. 117. Kiralfy, *op. cit.*, p. 32.
118. Cited in *ibid.*, p. 33. This statement is taken from a Year Book of Henry VII's reign.
119. Kiralfy, *op. cit.*, p. 279.
120. Berman, *op. cit.*, p. 165.

doctrine of the atonement.[121]

Berman argues that the Christian doctrine of the Last Judgement acquired a new significance during the eleventh century which was reflected in the creation of a new holy day, All Souls' Day.[122] All Souls' Day was a day to "celebrate the community of all souls who had ever lived or would live, who were visualized as trembling before the Judge on the last day of history."[123] The liturgy of All Souls' Day along with the doctrine of purgatory, writes Berman, provided "an important link between theology and jurisprudence in Western Christendom."[124] Sin acquired a new legal definition in terms of specific acts which were considered wrong and which must be paid for by temporal suffering, in contrast with the older view which saw sin more in terms of separation from God. The kinds and degrees of punishment applicable to those guilty of these sinful acts were to be established first by divine law revealed in the Bible, and secondly by natural law revealed in the hearts and minds of men. These punishments were to be further defined by church law, which was itself to be tested by divine law.[125] The doctrine of purgatory, which began to receive greater emphasis during this period, served to accentuate this tariff of punishments for specific sins. This in turn led to a reinterpretation of penance—which in the process acquired a strong sacramental character—as punishment for sinful acts, in contrast to the earlier understanding of penitential works as a means of reconciliation with God, the church and the offended party.[126]

Most significant of all in this period, however, according to

121. *Ibid.*, pp. 166-181. Of these five examples given by Berman the process by which the legal metaphors and analogies of the eleventh and twelfth centuries became the legal concepts of the thirteenth century is relevant to all except the Eucharist. Whereas the Christian doctrines of the Last Judgement and the atonement and the Roman Catholic doctrines of penance and purgatory all provide strong metaphors and analogies for the developing legal science of the day, I cannot see how the doctrines of the Eucharist and transubstantiation provided such metaphors and analogies, nor does Berman himself in his discussion of these doctrines indicate in what way they functioned as such.
122. *Ibid.*, p. 170. 123. *Ibid.* 124. *Ibid.*, p. 171.
125. *Ibid.* 126. *Ibid.*, p. 172.

Berman, were the legal implications of Anselm's doctrine of the atonement. It was Anselm's doctrine of the atonement which "laid the foundations for the new jurisprudence."[127] Despite its deficiencies Anselm's doctrine of atonement represented the most satisfactory treatment of the atonement that had appeared up to that time. "It was this theory" writes Berman "that first gave Western theology its distinctive character and its distinctive connection with Western jurisprudence."[128] The significance of Anselm's doctrine for the developing legal thought of the time lay in the teaching that God cannot forgive man's sin without satisfaction being made for that sin, and that without such satisfaction man must be punished accordingly. Christ made satisfaction for man's sin, but that satisfaction was not understood by Anselm "in terms of punishment for crime (Christ being the substitute), but rather in terms of penance in the older sense, that is, in the sense of works of contrition, leading to reconciliation of the victim with the offender."[129] Thus, although Anselm's doctrine was an advance and pointed in the right direction, it fell a long way short of the penal substitution theory that emerged in the Reformation. However, Berman argues that Anselm's view of the atonement "ultimately depended on another premise which was not fully articulated, namely, that a punishment (and not only a penitential satisfaction) was required by divine justice, not for man's original sin . . . but for 'personal sins' ('actual sins') committed by baptized Christians."[130] The implication was that although Christ had made satisfaction for man's original sin, liability for the actual sins of Christians remained and must be borne by the individual sinner, but that these actual sins could be expiated by the sinner himself through punishments in this life and suffering in purgatory.[131]

From a biblical perspective this theory fails on two counts: first, the least of sins is a transgression against the authority of the whole moral law and thus to sin at one point, no matter how venial this sin may be judged by men, is to incur the full condemnation of the law, to become guilty of all, as we are told in Scripture (James

127. *Ibid.*, p. 179. 128. *Ibid.*, p. 177. 129. *Ibid.*, p. 181.
130. *Ibid.*, p. 182 131. *Ibid.*, p. 182f.

2:10), and thus man cannot by his own suffering or works make expiation for the least of his actual sins—though he must of course repent (i.e. turn away from his sin as opposed to doing penance for it), a very different matter. Secondly, except in matters of rebellion against legitimate authority and capital offences, the Bible is concerned primarily not with punishment of the offender but rather with restitution of order and compensation for the victim. In this sense the Bible is nearer the older view common in the Anglo-Saxon period when crime was not conceived as an offence against a political order or society generally but rather against the victim and his kin,[132] who must be compensated by the offender if he is to escape their wrath. The change in emphasis after the Papal Revolution reflected the growth of centralised political states in which crime is conceived primarily as being committed against the political order—a breach of the king's peace—or against society generally. In this respect the growth of the centralised political state was a backward step, and yet it was the emergence of that kind of political system which created the conditions necessary for the development of English common law.

However, this is not to say that the concept of compensation was lost. Indeed, the almost universal remedy at common law is the award of damages to the injured party.[133] Thus common law maintained a strong element of continuity with old English law going back to pre-Norman times. But there was a shift of emphasis. As Berman writes:

> The new concepts of sin and punishment based on the doctrine of the atonement were not justified in Germanic terms of reconciliation as an alternative to vengeance, or in Platonic terms of deterrence and rehabilitation, or in Old Testament terms of the covenant between God and Israel—though elements of all three of these theories were present. The main justification given by Anselm and his successors in Western theology was the concept of justice itself. Justice required that every sin (crime) be paid for by temporal suffering; that the suffering, the penalty, be appropriate to the sinful act; and that it vindicate ("avenge") the particular law

132. *Ibid.*, p. 181. 133. Kiralfy, *op. cit.*, p. 571.

that was violated. As St. Thomas Aquinas said almost two centuries after Anselm's time, both criminal and civil offenses require payment of compensation to the victim; but since crime, in contrast to tort, is a defiance of the law itself, punishment, and not merely reparation, must be imposed *as the price for the violation of the law.*[134]

This retribution theory of justice passed into Western legal theory. It was based on the premiss that "a 'tribute,' that is, a price, must be paid to 'vindicate' the law."[135] The new doctrine of atonement had other implications also. It led to an emphasis on the immoral nature of crime, for the criminal was a *sinner*; but since all men shared a common sinful nature this in turn mitigated the element of moral superiority associated with retributive theories of justice.[136] Also, "The belief in the moral equality of all the participants in legal proceedings provided a foundation for a scientific investigation of the state of mind of the accused."[137] Finally, writes Berman, "the doctrine of the atonement gave a universal significance to human justice by linking the penalty imposed by a court for violation of a law to the nature and destiny of man, his search for salvation, his moral freedom, and his mission to create on earth a society that would reflect the divine will."[138]

Christianity also influenced the development of secular law via canon law, which exerted an influence over both the legal theory and procedure of secular law. "[T]he laws of the church during the first millennium of its history" writes Berman "bore the strong influence of the Bible, especially the Old Testament. From the Bible the church derived the authority of the Ten Commandments and of many other moral principles formulated as divine commands. Beyond that, the Bible transmitted a pervasive belief in a universal order governed by the God who was both supreme legislator and supreme judge. As heir to the tradition of Israel, the church took seriously the numinous character of law, its pervasiveness in the divine order of creation. Moreover, many specific rules of conduct contained in the Old and New Testaments, as well as

134. Berman, *op. cit.* p. 183. 135. *Ibid.*
136. *Ibid.* 137. *Ibid.*, p. 184. 138. *Ibid.*

many Biblical examples and metaphors, were carried over into ecclesiastical canons."[139] The laws of the church also bore the influence of Roman law and Germanic folklaw,[140] but these were reinterpreted in terms of the Christian religion and moulded according to biblical ideals. For instance, while the church initially accepted the Germanic tradition of trial by ordeal, the clergy, who often officiated over the trial and performed religious rituals connected with it, were inclined to arrange the results so as to conform to what they believed justice required. For example, in trial by hot iron, in which a hot iron was placed in the defendant's hand for a short while, then the hand bandaged up and inspected a few days later (if there was no blistering he was innocent), the priests often heated the iron only moderately so that no blistering would be likely to occur.[141] This fitted in with the biblical principle involved in the only trial by ordeal known in the Bible—the case of a wife being accused by her husband of unfaithfulness without any evidence (Num. 5:11-31)—which required that God intervene miraculously to prove the defendant's *guilt*, not her innocence.[142] Eventually the Fourth Lateran Council (1215) forbade priests to officiate at or perform religious rituals in connection with ordeals, and this effectively brought the practice to an end.[143] Thus, even primitive Germanic customs such as trial by ordeal were subjected by the church to the overriding influence of biblical principles.

After the Papal Revolution canon law became much more systematised. Moreover, the pope began to assert the right to create new laws to meet the needs of the time.[144] This led to a summarising and periodising of the law into old and new law, and their integration into a unified system.[145] This meant also that the law was a developing body of rules, not a fossilised, rigid code. "These interrelated elements—(1) the periodization into old law and new

139. *Ibid.*, p. 200f. 140. *Ibid.*, p. 201.
141. Baker, *op. cit.* (First Edition, 1971), p. 11.
142. On the biblical ordeal see R. J. Rushdoony, *op. cit.*, pp. 606-611.
143. Plucknett, *op. cit.*, p. 118f.
144. *Dictatus Papae* from the Register of Pope Gregory VII (1075), in Pullan, *op cit.*, p. 136f. See also Berman, *op. cit.*, p. 202.
145. Berman, *op. cit.* p. 202

law, (2) the summarization and integration of the two as a unified structure, and (3) the conception of the whole body of law as moving forward in time, in an ongoing process—are defining features of the Western legal tradition."[146] Thus, canon law was the first modern Western legal system,[147] and as such it provided at many points a model for the developing secular legal systems of the West.

Another example of the way the church transformed existing Germanic judicial proceedings so that they reflected Christian principles was the oath. Oath swearing, or compurgation, was a pre-Christian element in Germanic law. In the older Germanic tradition the defendant swore an oath to his innocence, and other oath helpers, who functioned something like character witnesses, also swore oaths in his innocence. These oaths were long formulas which had to be repeated exactly without any deviation by those using them. The efficacy of this procedure lay entirely in the ability of those swearing to perform the ritual correctly. If they failed, this testified to the defendant's guilt; if they succeeded it showed his innocence. Oath swearing in this sense was used by the defendant to purge himself of the charges against him.[148] The canonists, however, developed the judicial procedure whereby the judge interrogated the parties in a case in accordance with principles of reason and conscience in order to establish the truth.[149] In the ecclesiastical courts the parties involved and the witnesses swore an oath in advance that they would answer the questions put to them truthfully. The oath thus acquired its modern sense first in the ecclesiastical courts.[150] The ecclesiastical courts further introduced the modern idea of representation in which the parties involved in an action were represented by professional legal counsel who argued their cases for them. Again, this development, writes Berman, was closely linked to theological concepts.[151]

According to Berman, the "emphasis on judicial investigation

146. *Ibid.*, p. 203. 147. *Ibid.*, p. 199.
148. *Ibid.*, p. 250. 149. *Ibid.*, p. 251.
150. *Ibid.* p. 250. Compurgation survived in English common law in the form of "wager of law" until 1833 (Plucknett, *op. cit.*, p. 166). It was used mainly in actions involving debt and retinue (unlawful detention of another's property). 151. Berman. *op. cit.*, p. 250.

was associated not only with a more rational procedure for eliciting proof but also with the development of concepts of probable truth and of principles of relevancy and materiality. Rules were elaborated to prevent the introduction of superfluous evidence (matters already ascertained), impertinent evidence (matters having no effect on the case), obscure and uncertain evidence (matters from which no clear inferences can be drawn), excessively general evidence (matters from which obscurity arises), and evidence contrary to nature (matters which it is impossible to believe)."[152] All this contrasted sharply with the older Germanic judicial proceedings. Reason and conscience were used to overturn formalism and magic.[153]

The influence of the church and of canon law, and through these the influence of the Bible, on the development of English common law was thus significant. The judges of the English royal courts in the twelfth and thirteenth centuries were mostly clergymen.[154] Not until the late thirteenth and fourteenth centuries do professional lay judges begin to appear.[155] It was the clerical judges who transformed the mass of ancient laws and customs into the common law system.[156] When the clergy were no longer appointed to sit as judges in the royal courts[157] "the creative age of our medieval law is over"[158] write Pollock and Maitland. "English law, more especially the English law of civil procedure, was rationalized under the influence of the canon law."[159] In short, common law was

152. *Ibid.*, p. 251. 153. *Ibid.*
154. Baker, *op. cit.* (Second Edition, 1979), p. 133f. Not all of these common law judges would have been highly skilled canonists. According to Plucknett "it is unsafe to say that any mediaeval cleric was a canonist unless there is some direct evidence; it certainly cannot be presumed" (*op. cit.*, p. 236). However, we can assume that they had a basic knowledge of cannon law, of its principles and methods; "this much we must attribute to them" say Pollock and Maitland, "and it means a great deal" (*op. cit.*, vol. I, p. 133f.). Indeed, Tierney writes that "G. P. Cuttino once investigated the careers of 135 middle-ranking administrators in the government of King Edward I of England; he found that most of them had studied canon law" (B. Tierney, *Religion, law and the growth of constitutional thought 1150-1650* [Cambridge, 1982], p. 11).
155. Plucknett, *op. cit.*, p. 236.
156. Pollock and Maitland, *op cit.*, vol. I, p. 133.
157. Baker, *op. cit.* (First Edition, 1971), p. 65.
158. Pollock and Maitland, *op. cit.*, vol. I, p. 133. 159. *Ibid.*, p. 134.

Christian law.[160] It is important that we recognise, therefore, that "It was not the nature of the English people but its public inspiration at its conversion that gave rise to the Common Law, which could therefore contain, as it really does contain, elements of Hebrew, Roman and Ecclesiastical Law."[161] English common law was, to use the words of Eugen Rosenstock-Huessy, "the dowry of Christian baptism."[162]

Christianity and biblical law also exerted a significant influence, via canon law, upon equity. It was stated that equity applied only where "the law is directly in itself against the law of God or the law of Reason."[163] Equity was administered in the Court of Chancery, and the Chancellors, being mainly ecclesiastics, derived the principles of equity from the canonists.[164] In 1489 the Chancellor, Cardinal Morton, said, "every law should be in accordance with the law of God; and I know well that an executor who fraudulently misapplies the goods and does not make restitution will be damned in Hell, and to remedy this is in accordance with conscience, as I understand it."[165] As A. K. R. Kiralfy explains,

> The Chancellors . . . tended naturally to derive their ideas from the conceptions of the canonists. These conceptions depended upon the theory that the law of God governed the universe, and hence His law and the law of nature and reason, which were nearly synonymous, predominated over the rules of any State. A human law could not be valid in contradiction to divine law. In the *Doctor and Student* these two propositions are clearly stated. "When the law eternal or the will of God is known to His creatures reasonable by the light of natural understanding, or by the light of natural reason, that is called the law of reason: and when it is showed of heavenly revelation . . . then it is called the law of God. And when it is showed unto him by order of a Prince, or of any other secondary governor, that hath power to set law upon his subjects, then it is called the law of man, though originally it be made of God." "For if any law made of men bind any person to anything that is against

160. Eugen Rosenstock-Huessy, *Out of Revolution: Autobiography of Western Man* (Norwich, VT: Argo Books [1938] 1969), p. 270.
161. *Ibid.*, p. 271. 162. *Ibid.* 163. Kiralfy, *op. cit.*, p. 160.
164. *Ibid.*, p. 578. 165. Cited in Plucknett, *op. cit.*, p. 685f.

> the said laws (the law of reason or the law of God) it is no law but a corruption and a manifest error." Consequently, the Chancellor arrogated to himself the right to interfere with the course of the law in a particular instance, even where the general rule was just, if according to conscience it would work against the law of God.[166]

Clearly God's law and Christian conceptions of justice played an important part is shaping and informing not only our common law but our whole system of justice.

As an aside to our main point it is worth noting here that the church also provided a model for Western Christendom in another sense during the mediaeval period. The papacy was the first modern state.[167] At the top of the hierarchy was the pope. Although there were certain limitations on his power[168] the pope ruled as the supreme legislator and judge over the church—as a prince.[169] The bishops also were princes in their own diocese and had power to rule as supreme legislators and judges over their see, subject only to the intervention of the pope, to whom they swore an oath of allegiance.[170] The emerging secular states of Europe reflected this type of government in their own administrations. The secular state mirrored the papacy. It is interesting to note also that after the Reformation, when a new form of church government emerged that was based on different, and more biblical, principles of government the secular states of Protestant Europe began to mirror the new form of government in their own administrations. Modern Western political theories of representative government were taken from the Reformed churches and applied to secular governments. This raises an important point: it seems that the church has often functioned as a model which the secular authorities have imitated. Protestant Europe owes its representative form of government to the Reformation, just as mediaeval states mirrored in important

166. Kiralfy, *op. cit.*, p. 578f. The *Doctor and Student* was a legal treatise by Christopher St Germain published between 1528 and 1531.
167. Berman., *op. cit.*, p. 176. 168. See *ibid.*, pp. 207-221.
169. See *Dictatus Papae* in Pullan, *op. cit.*, p. 136f. See also Berman, *op. cit.*, p. 206f.
170. Berman, *op. cit.*, p. 209.

ways the papacy in their forms of government and administration of law. The model that the church provides for society at large is important—theologically, morally, and constitutionally and administratively. When the church fails in providing this model the secular authorities will take their role models from elsewhere. Today we are seeing where the church's failure to provide such a model of leadership has left us. Secular humanism rather than the teaching of the church is the ideology to which our leaders look to inform their programmes and their blueprints for society.

Conclusion

It has been said that "No proper estimate has been made of the effects of Christianity on English law, but there is no shadow of doubt that it was far-reaching."[171] Our legal system was formed and developed over centuries under the dominating influence of the Christian religion. The ideals and standards of justice that informed our law were derived largely either from the Bible directly or from ancient pre-Christian institutions that have been so completely transformed under the influence of the church that the original pre-Christian practices from which they originate are no longer discernible in the Christianised forms in which we know them. Our very concepts of justice, due process and the rule of law are Christian ideals which we should never have known had the Christian faith not taken root in this land and transformed the nation from a pagan into a civilised society.

The Christian world-view has dominated the life and institutions of our nation for well over a millennium. Our civilisation owes its existence and its health to the vision that the Christian faith brought to the people of this nation. Our justice system, and Western justice generally, is distinguishable from the inhumane and barbaric regimes that have existed and continue to exist in the world today outside the influence of Christian culture *only* because it is, or at least was in origin, a *Christian* vision of justice. One need

171. Kiralfy, *op. cit.*, p. 9. This defect has to some extent been remedied since this was written, most notably by Harold Berman, *op. cit.*

only think of the fatwas issued by Muslim ayatollahs inciting the faithful to kill and destroy the property of the enemies of the faith without trial or any due process of law to see the difference. Justice, if indeed it can even be called such, is indistinguishable from vengeance against ones enemies for the zealots of Mohammed, for Allah is not a law-giving god, a god of order, but a capricious god who may one day decree one thing and the next day the opposite. By contrast the Christian God is a law-giving God who does not change. His justice or righteousness is a permanent standard which does not change and upon which men can rely for certainty and authority. As a consequence justice, as we in the West understand the term today, has emerged only among those nations and cultures influenced by a Christian world-view. Indeed the use of the word justice itself here presupposes the Christian faith. Outside of cultures either directly or indirectly influenced by the Bible we can speak of law, decree, but hardly of what we understand by the word justice, for our conception of justice itself is drenched in Christian meaning.

Yet so many in our culture today take Christian ideals of justice for granted and never stop to consider what kind of justice we should now have, had the Christian faith not provided the vision and guidance that it did for our nation for so long. As a result our politicians and church leaders stand idly by as our nation is stripped of the Christian ideals upon which it was built. Pluralism is the new god of our society, the fetish of our modern humanist state. But those who worship this idol fail to realise that the various modern contenders for a place in the new pluralist society are nowhere near as tolerant as our own much vaunted liberal culture, and that to give way to this drive for pluralism is thus to open the floodgates to alien influences which will transform our culture completely. The creation of a pluralist society means the creation eventually of different laws for different groups and cultures within our nation, and indeed this is already happening with regard to some cultural groups. But even then, it must be understood that a pluralist society is not an end in itself, but simply a transitional phase, the crossing point of two cultures, in which the various contenders

struggle for supremacy until one finally is victorious and proceeds to impose its culture and its law upon the rest of society. In that transformation our ideas of justice, based so firmly on Christian ideals, will be swept away and our nation will enter a new dark age.

The descent into such a dark age has already begun. Christian law is today being replaced by humanistic law which does not recognise God or His law, nor the fundamental principles of justice set forth by that law and which have governed our law making and the development of our legal institutions for well over a millennium. Principles and concepts of justice which were once held to be inviolable are being overturned every day. Abortion on demand, funded by state revenues raised by taxation, for example, contravenes not one but many principles of justice upon which our society and our legal institutions were built. To deny this new legal right to a woman is deemed to contravene her "human right" to do with her "own" body—since the child is not recognised as an independent human life—as she wishes, a concept that our law had not hitherto recognised,[172] being based upon Christian principles which stress human responsibility, obligation and accountability rather than rights. One can think of many other examples.

The decay of our civilisation is at an advanced stage. That decay covers every part of our society. It affects our law just as much as anything else. As a result, so much of what was once considered justice has been overturned, abrogated or simply ignored. The traditional Christian concepts of justice that shaped our legal system are today becoming obsolete. Parliament passes more and more legislation which takes no account of the values upon which our society was founded and upon which it drew for its health and vitality and our courts are beginning to reflect the new atheistic ideologies that are shaping our modern society in their interpretation of the law. Today the innocent suffer at the hands of the guilty and there are no remedies at law for the crimes which are perpetrated against them. When the law is invoked it very often

172. Suicide, for example, was a criminal offence in this country until the Suicide Act 1961 abolished it.

only penalises the victim further, either directly or indirectly. The law-abiding people of our nation are beginning to groan under the weight of the injustice they receive at the hands of the those responsible for providing justice. Our traditional so-called "party of law and order" has done *nothing* to ameliorate this situation. Quite the reverse: it has passed legislation that leaves the innocent victim even more powerless to defend himself legally against violent crime and without remedy at law against those who commit it.

Furthermore, the creation of a socialistic welfare state has also been a substantial cause of the decline of common law since it has been implemented by means of Parliamentary legislation which, due to its very nature, is based on philosophical presuppositions fundamentally alien to the Christian religion, which guided the formation of our legal tradition. It is particularly disturbing that this has been accomplished at the expense of judicial independence, one of the very pillars of our Christian legal heritage. E. C. S. Wade stated the problem clearly as early as 1938: "It is still an accepted constitutional doctrine that the Ministers of the Crown do not tamper with the administration of justice, but Parliament indirectly has reduced the sphere of influence of judicial independence by the character of modern legislation. The abandonment of the principle of *laissez faire* has altered the nature of much of our law. A system of law, which like the common law is based on the protection of individual rights, is not readily comparable with legislation which has for its object the welfare of the public, or a large section of it, as a whole. The common law rests upon an individualistic conception of society and lacks the means of enforcing public rights as such. The socialisation of the activities of the people has meant restriction of individual rights by the conferment of powers of a novel character upon governmental organs."[173] Hence, our society is being transformed by legislation passed in Parliament from a society ruled by law into a society ruled by Parliament,—i.e. a statist society.

173. E. C. S. Wade, "Introduction" in A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (London: MacMillan and Company Ltd, Ninth Edition, 1939), p. lxxif.

Thus, our law is in decline, and yet our society today is swamped with more legislation than ever before. Mere laws, rules, are passed by our Parliament continually. Yet *justice* is increasingly being suffocated by such legislation. Justice requires more than rules. Our understanding of justice, and thus our law, was based traditionally on a religious ethic which derived its validity from the Bible, from the Decalogue. The decline of the traditional Western understanding of justice and law in our society has taken place because the religious presuppositions upon which our law was based have been abandoned by the people of our nation, and in particular by our leaders, both political and ecclesiastical, who bear greater responsibility. Only by a restoration of those religious presuppositions, that is, the Christian world-view, upon which our law for so long rested and relied for its moral authority, will our society be delivered from its present hapless plight and our legal institutions saved from becoming the mere tools of political pragmatists governed by an ethic that amounts to little more than self-interest.

Of course, our government is bound to act under law. But today this is a mere formality since it no longer recognises a higher law to which all human law and state legislation must conform if it is to be *valid* law rather than the mere whim of a dictator, be that dictator a man calling himself a king or a committee of men calling themselves by the lofty title of Parliament or Her Majesty's Government. Without the belief that "Any law is or of right ought to be according to the law of God," which formerly guided our lawmaking, the idea of the rule of law is meaningless, for government can repeal any law to which it no longer wishes to adhere and make new laws which it would prefer to abide by. The rule of law, Christian law, is thus being replaced by the rule of politicians who will modify or repeal any law, or even overturn fundamental principles of justice, if it is in their own interests, or in the interests of a large enough lobbying group, to do so.

In short we are in transition from a society based on the rule of law, in which the government also must act under law which is consistent with the basic religious presuppositions upon which our legal system was formed, to a society in which the law is no longer

developing in terms of its basic religious presuppositions, but rather in which it is being systematically overturned and replaced by our legislators with rules based on alien presuppositions. This is happening because the religious presuppositions which underpinned our law and gave it stability and continuity for so long have been abandoned, because the principle of a higher law to which all human law must submit is no longer understood or believed in. In this respect our law is becoming lawless, for it no longer recognises, as once it did, that no law is just or binding if it contravenes reason—as understood in terms of the Christian faith—or the law of God.

For over a millennium the Christian faith influenced and helped to shape our law, and our law underpinned our Christian heritage. Both have now been broken, and our nation faces ruin as a result. The prognosis is not a propitious one. There is, however, a remedy for this malady: our legislators must recognise once more, as they did in times past when our legal tradition was in its formative period, that "Any law is or of right ought to be according to the law of God."

Appendix

THE LAWS OF KING ALFRED

The following translation of the Dooms of Alfred is taken from *Ancient Laws and Institutes of England; comprising Laws enacted under the Anglo-Saxon Kings from Æthelbirht to Cnut, With an English Translation of the Saxon; The Laws called Edward the Confessor's; The Laws of William the Conqueror, and those ascribed to Henry the First; also, Monumenta Ecclesiastica Anglicana, from the seventh to the tenth century; and the Ancient Latin Version of the Anglo-Saxon Laws, with a Compendious Glossary, &c. (Volume the First; containing the Secular Laws.) Printed by command of His late Majesty King William IV under the direction of the Commissioners on the Public Records of the Kingdom. MDCCCXL*, pp. 45-101. This translation was made from a manuscript in the library of Corpus Christi College, Cambridge, marked in the catalogue 173 (designated E), with variant readings from the manuscript numbered 383 in the same library (B), the Cottonian manuscript Nero A.1 (G), and the Textus Roffensis (H). E is the earliest and best manuscript available, dating from *c.* 925 (see Attenborough, *op. cit.*, p. 35).

Clauses 1 to 48 are taken from Exodus 10:1-17 (the Decalogue, though the order is different: the second commandment, following the custom of the church, is omitted, but significantly Ex. 20:23 appears as clause 10 thereby replacing it with a law carrying the same import; the tenth commandment appears as clause 9, the ninth commandment as clause 8 etc.) and Exodus 21:1 to 23:13 (the Book of the Covenant). In many places these biblical laws are condensed and paraphrased rather than translated verbatim from the Vulgate and often they are stated in a modified form to take account of contemporary Anglo-Saxon society. I have added references to the biblical texts in square brackets and supplied explanations in footnotes for some of the more archaic expressions and terms.—S.C.P.

ALFRED'S DOOMS

The Lord spake these words to Moses, and thus said: I am the Lord thy God. I led thee out of the land of the Egyptians, and of their bondage. [Ex. 20:1-2]

1. Love thou not other strange gods above me. [Ex. 20:3]
2. Utter thou not my name idly, for thou shalt not be guiltless towards

me if thou utter my name idly. [Ex. 20:7]

3. Remember that thou hallow the rest-day. Work for yourselves six days, and on the seventh rest. For in six days Christ wrought the heaven and the earth, the seas, and all creatures that are in them, and rested on the seventh day: and therefore the Lord hallowed it. [Ex. 20:8-11]
4. Honour thy father and thy mother whom the Lord hath given thee, that thou mayest be the longer living on earth. [Ex. 20:12]
5. Slay thou not. [Ex. 20:13]
6. Commit thou not adultery. [Ex. 20:14]
7. Steal thou not. [Ex. 20:15]
8. Say thou not false witness. [Ex. 20:16]
9. Covet thou not thy neighbour's goods unjustly. [Ex. 20:17]
10. Make thou not to thyself golden or silver gods. [Ex. 20:23]
11. These are the dooms which thou shalt set for them. If anyone buy a Christian "theow,"[1] let him serve VI. years; the seventh he shall be free without purchase. With such raiment as he went in, with such go he out. If he have a wife of his own, go she out with him. If, however, the lord have given him a wife, be she and her child the lord's. But if the "theow" should say: "I will not from my lord, nor from my wife, nor from my child, nor from my goods;" let his lord then bring him to the door of the Temple, and bore his ear through with an awl, in token that he ever after shall be a "theow." [Ex. 21:1-6]
12. Though any one sell his daughter to servitude, let her not be altogether such a "theowu"[2] as other female slaves are. He ought not to sell her away among a strange folk. But if he who bought her reck[3] not of her; let her go free among a strange folk. If, however, he allow his son to cohabit with her, let him marry her: and let him see that she have raiment, and that which is the worth of her maid-hood, that is, the dowry; let him give her that. If he do unto her none of these things, then let her be free. [Ex. 21:7-11]
13. Let the man who slayeth another wilfully perish by death. Let him who slayeth another of necessity or unwillingly, as God may have sent him into his hands, and for whom he has not lain in wait, be worthy of his life, and of lawful "bot,"[4] if he seek an asylum. If, however, any one presumptuously and wilfully slay his neighbour through guile, pluck thou him from my altar, to the end that he may perish by death. [Ex. 21:12-14]
14. He who smiteth his father or his mother, he shall perish by death. [Ex. 21:15]
15. He who stealeth a freeman, and selleth him, and it be proved against him so that he cannot clear himself; let him perish by death. He who curseth his father or his mother, let him perish by death. [Ex. 21:16-17]

1. A slave, bondman. 2. Female slave, bondwoman. 3. Care about.
4. Compensation paid by a wrongdoer to the injured party as damages.

16. If any one smite his neighbour with a stone or with his fist, and he nevertheless can go out with a staff; let him get a leech, and work his work the while that himself may not. [Ex. 21:18-19]

17. He who smiteth his own "theow-esne"[5] or his female slave, and he die not on the same day; though he live [but] two or three nights, he is not altogether so guilty, because it was his own property; but if he die the same day, then let the guilt rest on him. [Ex. 21:20-21]

18. If any one, in strife, hurt a breeding women, let him make "bot" for the hurt, as the judges shall prescribe to him. If she die, let him give soul for soul. [Ex. 21:22-23]

19. If any one thrust out another's eye, let him give his own for it; tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe. [Ex. 21:24-25]

20. If any one smite out the eye of his "theow" or of his "theowen,"[6] and he then make them one-eyed; let him free them on this account. And if he smite out a tooth, let him do the like. [Ex. 21:26-27]

21. If an ox gore a man or a woman, so that they die, let it be stoned, and let not its flesh be eaten. The lord shall not be liable, if the ox were wont to push with its horns for two or three days before, and the lord knew it not; but if he knew it, and he would not shut it in, and it then shall have slain a man or a woman, let it be stoned; and let the lord be slain, or the man be paid for, as the "witan" decree to be right. If it gore a son or a daughter, let him be subject to the like judgement. But if it gore a "theow" or a "theow-mennen,"[7] let xxx. shillings of silver be given to the lord, and let the ox be stoned. [Ex. 21:28-32]

22. If any one dig a water-pit, or open one that is shut up, and close it not again; let him pay for whatever cattle may fall therein; and let him have the dead [beast]. [Ex. 21:33-34]

23. If an ox wound another man's ox, and it then die, let them sell the [live] ox, and have the worth in common, and also the flesh of the dead one. But if the lord knew that the ox hath used to push, and he would not confine it, let him give him another ox for it, and have all the flesh for himself. [Ex. 21:35-36]

24. If any one steal another's ox, and slay or sell it, let him give two for it; and four sheep for one. If he have not what he may give, be he himself sold for the cattle. [Ex. 22:1 and 3c]

25. If a thief break into a man's house by night, and he be there slain; the slayer shall not be guilty of manslaughter. But if he do this after sunrise, he shall be guilty of manslaughter; and then he himself shall die, unless he were an unwilling agent. If with him living that be found which he had before stolen, let him pay for it two-fold. [Ex. 22:2-4]

26. If any one injure another man's vineyard, or his field, or aught of his lands; let him make "bot" as it may be valued. [Ex. 22:5]

5. Slave labourer. 6. Female slave. 7. Handmaid, slave.

27. If fire be kindled to burn "ryht,"[8] let him who kindled the fire make "bot" for the mischief. [Ex. 22:6]

28. If any one entrust property to his friend, if he steal it himself, let him pay for it two-fold. If he know not who hath stolen it, let him clear himself that he hath therein committed no fraud. If, however, it were live cattle, and he say, that the "here"[9] hath taken it, or that it perished of itself, and he have witness; he needeth not pay for it. But if he have no witness, and he believe him not, then let him swear. [Ex. 22:7-13]

29. If anyone deceive an unbetrothed woman, and sleep with her; let him pay for her, and have her afterwards to wife. But if the father of the woman will not give her, let him render money according to her dowry. [Ex. 22:16-17]

30. The women who are wont to receive enchanters, and workers of phantasms, and witches, suffer thou not to live. [Ex. 22:18]

31. And let him who lieth with cattle perish by death. [Ex. 22:19]

32. And let him who sacrificeth to gods, save unto God alone, perish by death. [Ex. 22:20]

33. Vex thou not comers from afar, and strangers; for ye were formerly strangers in the land of the Egyptians. [Ex. 22:21]

34. Injure ye not the widows and the step-children, nor hurt them anywhere: for if ye do otherwise, they will cry unto me, and I will hear them, and I will then slay you with my sword; and I will so do that your wives shall be widows, and your children shall be step-children. [Ex. 22:22-24]

35. If you give money in loan to thy fellow who willeth to dwell with thee, urge thou him not as a "niedling,"[10] and oppress him not with the increase. [Ex. 22:25]

36. If a man have only a single garment wherewith to cover himself, or to wear, and he give it [to thee] in pledge; let it be returned before sunset. If thou dost not so, then shall he call unto me, and I will hear him; for I am very merciful. [Ex. 22:26-27]

37. Revile thou not thy Lord God: nor curse thou the Lord of the people. [Ex. 22:28]

38. Thy tithes, and thy first-fruits of moving and growing things, render thou to God. [Ex. 22:29-30]

39. All the flesh that wild beasts leave, eat ye not that, but give it to the dogs. [Ex. 22:31]

40. To the word of a lying man reck[11] thou not to hearken, nor allow thou of his judgements; nor say thou any witness after him. [Ex. 23:1]

41. Turn thou not thyself to the foolish counsel and unjust desire of the people, in their speech and cry, against thine own reason, and according to the teaching of the most unwise; neither allow thou of them. [Ex. 23:2]

42. If the stray cattle of another man come to thy hand, though it be

8. Standing grain. 9. Band of robbers. 10. Captive. 11. Pay heed to.

thy foe, make it known to him. [Ex. 23:4-5]

43. Judge thou very evenly: judge thou not one doom to the rich, another to the poor; nor one to thy friend, another to thy foe, judge thou. [Ex. 23:3, 6; Lev. 19:15]

44. Shun thou ever leasings.[12] [Ex. 23:7a]

45. A just and innocent man, him slay thou never. [Ex. 23:7b]

46. Receive thou never meed-monies;[13] for they blind full oft the minds of wise men, and pervert their words. [Ex. 23:8]

47. To the stranger and comer from afar behave thou not unkindly, nor oppress thou him with any wrongs. [Ex. 23:9]

48. Swear ye never by heathen gods, nor cry ye unto them for any cause. [Ex. 23:13]

49. These are the dooms which the Almighty God himself spake unto Moses, and commanded him to keep: and after the only begotten son of the Lord, our God, that is, our Saviour Christ, came on earth, he said that he came not to break nor to forbid these commandments, but with all good to increase them: and mercy and humility he taught. Then after his Passion, before his Apostles were dispersed throughout all the earth, teaching, and while they were together, many heathen nations they turned to God. When they were all assembled, they sent messengers to Antioch and to Syria, to teach the law of Christ. But when they understood that it speeded them not, then sent they a letter unto them. Now this is the letter which all the Apostles sent to Antioch, and to Syria, and to Cilicia, which now from heathen nations are turned to Christ.

"The Apostles and the elder brethren wish you health: and we make known to you, that we have heard that some of our fellows have come to you with our words, and have commanded you to observe a heavier rule than we commanded them, and have too much misled you with manifold commands, and have subverted more of your souls than they have directed. Then we assembled ourselves concerning that; and it then seemed good to us that we should send Paul and Barnabas, men who desire to give their souls for the name of the Lord. With them we have sent Jude and Silas, that they might say the same to you. It seemed to the Holy Ghost and to us, that we should set no burthen upon you above that which it was needful for you to bear: now that is, that ye forbear from worshiping idols, and from tasting blood or things strangled, and from fornications: and that which ye will that other men do not unto you, do ye not that to other men."] [Acts 15:23-29; Mt. 7:12]

From this one doom a man may remember that he judge every one righteously: he need heed no other doom-book. Let him remember that he adjudge to no man that which he would not that he should adjudge to him; if he sought judgement against him. [Mt. 7:12]

After this, then happened it that many nations received the faith of Christ; then were many synods assembled throughout all the earth, and

12. Lies, falsehoods. 13. Rewards unjustly gained, bribes.

also among the English race, after they had received the faith of Christ, of holy bishops, and also of other exalted "witan." They then ordained, out of that mercy which Christ had taught, that secular lords, with their leave, might, without sin, take for almost every misdeed, for the first offence, the money-"bot" which they then ordained; except in cases of treason against a lord, to which they dared not assign any mercy, because God Almighty adjudged none to them who despised him, nor did Christ the son of God adjudge any to him who sold him to death: and he commanded that a lord should be loved as one's self. They then in many synods ordained a "bot" for many human misdeeds; and in many synod-books they wrote, at one place one doom, at another another.

I, then, Alfred, king, gathered these together, and commanded many of those to be written which our forefathers held, those which to me seemed good; and many of those which seemed to me not good I rejected them, by the counsel of my "witan," and in other wise commanded them to be holden; for I durst not venture to set down in writing much of my own, for it was unknown to me what of it would please those who should come after us. But those things which I met with, either of the days of Ine my kinsman, or of Offa king of the Mercians, or of Æthelbryht [*sic*], who first among the English race received baptism, those which seemed to me the rightest, those I have here gathered together, and rejected the others.

I, then, Alfred, King of the West-Saxons, shewed these to all my "witan," and they then said that it seemed good to them all to be holden.

1. At the first we teach, that it is most needful that every man warily keep his oath and his "wed."[14] If any one be constrained to either of these wrongfully, either to treason against his lord, or to any unlawful aid; then it is juster to belie[15] than to fulfil. But if he pledge himself to that which it is lawful to fulfil, and in that belie himself, let him submissively deliver up his weapon and his goods to the keeping of his friends, and be in prison forty days in a king's "tun:"[16] let him there suffer whatever the bishop may prescribe to him; and let his kinsmen feed him, if he himself have no food. If he have no kinsmen, or have no food, let the king's reeve feed him. If he must be forced to this, and he otherwise will not, if they bind him, let him forfeit his weapons and his property. If he be slain, let him lie uncompensated. If he flee thereout before the time, and he be taken, let him be in prison forty days, as he should before have been. But if he escape, let him be held a fugitive, and be excommunicate of all Christ's churches. If, however, there be another man's "borh,"[17] let him make "bot" for the "borh-bryce,"[18] as the law may direct him, and the "wed-bryce,"[19] as his confessor may prescribe to him.

2. If any one, for whatever crime, seek any of the "mynster-hams"[20] to

14. Pledge, agreement, covenant. 15. Be false to the promise.
16. Manor, i.e. prison (*Lib. Quadr.* has *ad mansionem regiam.* See Attenborough, p. 194).
17. Pledge, security; i.e. if someone else stands surety for him.
18. Breach of surety. 19. Treachery, breach of faith. 20. Monasteries.

which the king's "feorm"[21] is incident, or other "free-hired"[22] which is worthy of reverence, let him have a space of three days to protect himself, unless he be willing to come to terms. If during this space, any one harm him by blow, or by bond, or wound him, let him make "bot" for each of these according to regular usage, as well with "wer"[23] as with "wite:"[24] and to the brotherhood one hundred and twenty shillings, as "bot" for the church-"frith:"[25] and let him not have "forfongen"[26] his own.

3. If any one break the king's "borh,"[27] let him make "bot" for the plaint, as the law shall direct him; and for the "borh-bryce" with v. pounds of "mærra"[28] pence. For an archbishop's "borh-bryce," or his "mund-byrd,"[29] let him make "bot" with three pounds: for any other bishop's or an "ealdorman's" "borh-bryce," or "mund-byrd," let him make "bot" with two pounds.

4. If any one plot against the king's life, of himself, or by harbouring of exiles, or of his men; let him be liable in his life and in all that he has. If he desire to prove himself true, let him do so according to the king's "wer-gild." So also we ordain for all degrees, whether "ceorl"[30] or "eorl."[31] He who plots against his lord's life, let him be liable in his life to him and in all that he has; or let him prove himself true according to his lord's "wer."

5. We also ordain to every church which has been hallowed by a bishop, this "frith:" if a "fah-man"[32] flee to or reach one, that for seven days no one drag him out. But if any one do so, then let him be liable in the king's "mund-byrd" and the church-"frith;" more if he there commit more wrong, if, despite of hunger, he can live; unless he fight his way out. If the brethren have further need of their church, let them keep him in another house, and let not that have more doors than the church. Let the church-"ealdor"[33] take care that during this term no one give him food. If he himself be willing to deliver up his weapons to his foes, let them keep him xxx. days, and let them give notice of him to his kinsmen. It is also church-"frith:" if any man seek a church for any of those offences, which had not been before revealed, and there confess himself in God's name, be it half forgiven. He who steals on Sunday, or at Yule, or at Easter, or

21. Food, provisions, rent in kind; i.e. if he flees to a monastery which is a recipient of the king's rents.

22. A community exempt from certain payments to the king.

23. The legal price of a man's life. 24. A fine payable to the king.

25. Refuge, asylum, privilege of special protection and penalty for breach of it.

26. *Forfon* means *to seize, forfeit* or *prevent*. The meaning is most probably that the pursuer's case against the fugitive is not prejudiced by his breach of the church *frith* provided he makes *bot* for the offence. Cf. Attenborough, *op. cit.*, pp. 65, 194.

27. *Borh* here is equivalent to *mund*, i.e. protection, guardianship.

28. Pure, not debased. 29. Protection, fine for breach of protection.

30. Freeman of the lowest class, commoner.

31. Nobleman. 32. Object of a blood feud.

33. Elder, leader, civil or religious authority.

on Holy Thursday, and on Rogation days; for each of these we will that the "bot" be two-fold, as during Lent-fast.

6. If any one thieve aught in a church, let him pay the "angylde,"[34] and the "wite," such as shall belong to the "angylde;" and let the hand be struck off with which he did it. If he will redeem the hand, and that be allowed him, let him pay as may belong to his "wer."

7. If any one fight in the king's hall, or draw his weapon, and he be taken; be it in the king's doom, either death, or life, as he may be willing to grant him. If he escape, and be taken again, let him pay for himself according to his "wer-gild," and make "bot" for the offence, as well "wer" as "wite," according as he may have wrought.

8. If any one carry off a nun from a minster, without the king's or the bishop's leave, let him pay a hundred and twenty shillings, half to the king, half to the bishop and to the church-"hlaford"[35] who owns the nun. If she live longer than he who carried her off, let her not have aught of his property. If she bear a child, let not that have of the property more than the mother. If any one slay her child, let him pay to the king the maternal kindred's share; to the paternal kindred let their share be given.

9. If a man kill a woman with her child, while the child is in her, let him pay for the woman her full "wer-gild," and pay for the child half a "wer-gild," according to the "wer" of the father's kin.

Let the "wite" be always lx. shillings, until the "angylde" rise to xxx. shillings. After the "angylde" has risen to that let the "wite" be cxx. shillings. Formerly there was [a distinct "wite"] for a gold-thief, and a mare-thief, and a bee-thief, and many "wites," greater than others; now are all alike, except for a man-theft, cxx. shillings.

10. If a man lie with the wife of a twelve-"hynde"[36] man, let him make "bot" to the husband with one hundred and twenty shillings. To a six-"hynde" man, let him make "bot" with one hundred shillings. To a "ceorlish" man, let him make "bot" with forty shillings.

11. If a man seize hold of the breast of a "ceorlish" woman, let him make "bot" to her with v. shillings. If he throw her down and do not lie with her, let him make "bot" with x. shillings. If he lie with her, let him make "bot" with lx. shillings. If another man had before lain with her, then let the "bot" be half that. If she be charged [therewith], let her clear herself with sixty hides, or forfeit half the "bot." If this befall a woman more nobly born, let the "bot" increase according to the "wer."

12. If a man burn or hew another's wood without leave, let him pay for every great tree with v. shillings, and afterwards for each, let there be as many of them as may be, with v. pence; and xxx. shillings as "wite."

13. If at their common work one man slay another unwilfully, let the

34. The simple value of the stolen property. 35. Lord, master, ruler.

36. Member of a class whose wergeld was 1200 shillings. A six-hynde man had a wergeld of 600 shillings etc.

tree be given to the kindred, and let them have it off the land within XXX. days; or let him take possession of it who owns the wood.

14. If a man be dumb or deaf, so that he cannot acknowledge or confess his offences, let the father make "bot" for his misdeeds.

15. If a man fight before an archbishop or draw his weapon, let him make "bot" with one hundred and fifty shillings. If before another bishop or an ealdorman this happen, let him make "bot" with one hundred shillings.

16. If a man steal a cow or a stud-mare, and drive off the foal or the calf, let him pay with a shilling, and for the mothers according to their worth.

17. If any one commit his infant to another's keeping, and he die during such keeping, let him who feeds him prove himself innocent of treachery, if any one accuse him of aught.

18. If any one, with libidinous intent, seize a nun either by her raiment or by her breast without her leave, let the "bot" be twofold, as we have before ordained concerning a lay-woman. If a betrothed woman commit adultery, if she be of "ceorlish" degree, let "bot" be made to the "byrgea"[37] with LX. shillings, and let it be in live stock, cattle goods, and in that let no human being be given: if she be of six-"hynde" degree, let him pay one hundred shillings to the "byrgea:" if she be of XII. "hynde" degree, let him make "bot" to the "byrgea" with CXX. shillings.

19. If any one lend his weapon to another that he may kill some one therewith, they may join together if they will in the "wer." If they will join together, let him who lent of the weapon pay of the "wer" a third part, and of the "wite" a third part. If he be willing to justify himself, that he knew of no ill-design in the loan, that he may do. If a sword-polisher receive another man's weapon to furbish, or a smith a man's material, let them both return it sound as either of them may have before received it: unless either of them had before agreed that he should not hold it "angylde."

20. If a man entrust cattle to another man's monk, without leave of the monk's lord, and it escape from him, let him forfeit it who before owned it.

21. If a priest kill another man, let all in his home that he had bought be delivered up, and let the bishop secularise him: then let him be given up from the minster, unless the lord will compound for his "wer."

22. If any one at the folk-mote[38] make declaration of a debt, and afterwards wish to withdraw it, let him charge it on a righter person, if he can; if he cannot, let him forfeit his "angylde," [and take possession of the "wite."]

23. If a dog tear or bite a man, for the first misdeed let VI. shillings be paid; if he [the owner] give him food; for the second time, XII. shillings; for the third, XXX. shillings. If, after any of these misdeeds, the dog

37. Surety, one who gives surety.
38. General assembly of the people of a town, city or shire.

escape, let this "bot" nevertheless take place. If the dog do more misdeeds, and he keep him; let him make "bot" according to the full "wer," as well wound-"bot" as for whatever he may do.

24. If a neat[39] wound a man, let the neat be delivered up or compounded for.

25. If a man commit a rape upon a "ceorl's" female slave, let him make "bot" to the "ceorl" with V. shillings, and let the "wite" be LX. shillings. If a male "theow" commit a rape upon a female "theow," let him make "bot" with his testicles.

26. If a man commit a rape upon a woman under age, let the "bot" be as that of a full-aged person.

27. If a man, kinless of paternal relatives, fight, and slay a man, and then if he have maternal relatives, let them pay a third of the "wer;" his guild-brethren a third part; for a third let him flee. If he have no maternal relatives, let his guild-brethren pay half, for half let him flee.

28. If any man kill a man thus circumstanced, if he have no relatives, let half be paid to the king; half to his guild-brethren.

29. If any one with a "hloth"[40] slay an unoffending "twy-hynde" man, let him who acknowledges the death-blow pay "wer" and "wite;" and let every one who was of the party pay XXX. shillings as "hloth-bot."

30. If it be a six-"hynde" man, let every man pay LX. shillings as "hloth-bot;" and the slayer, "wer" and full "wite."

31. If he be a twelve-"hynde" man, let each of them pay one hundred and twenty shillings; and the slayer, "wer" and "wite." If a "hloth" do this, and afterwards will deny it on oath, let them all be accused, and let them then all pay the "wer" in common; and all, one "wite," such as shall belong to the "wer."

32. If a man commit "folk-leasing," and it be fixed upon him, with no lighter thing let him make "bot" than that his tongue be cut out; which must not be redeemed at any cheaper rate than it is estimated at according to his "wer."

33. If any one accuse another on account of a "god-borh,"[41] and wish to make plain that he has not fulfilled any of those ["god-borhs"] which he gave him, let him make his "fore-ath"[42] in four churches; and if the other will prove himself innocent, let him do so in XII. churches.

34. It is also directed to chapmen,[43] that they bring the men whom they take up with them before the king's reeve at the folk-mote, and let it be stated how many of them there are; and let them take such men with them as they may be able afterwards to present for justice at the folk-mote; and when they have need of more men up with them on their journey, let them always declare it, as often as their need may be, to the king's reeve, in presence of the "gemot."[44]

39. Cattle, ox. 40. Crowd, band of robbers. 41. Solemn pledge given in church.
42. Preliminary oath of accusation. 43. Pedlars, traders.
44. An assembly for judicial or legislative purposes.

35. If any one bind an unoffending "ceorlish" man, let him make "bot" with x. shillings. If any one scourge him, let him make "bot" with twenty shillings. If he lay him in prison, let him make "bot" with xxx. shillings. If, in insult, he shave his head like a "homola,"[45] let him make "bot" with x. shillings. If, without binding him, he shave him like a priest, let him make "bot" with xxx. shillings. If he shave off his beard, let him make "bot" with xx. shillings. If he bind him, and then shave him like a priest, let him make "bot" with lx. shillings.

36. It is moreover decreed: if a man have a spear over his shoulder, and any man stake himself upon it, that he pay the "wer" without the "wite." If he stake himself before his face, let him pay the "wer." If he be accused of wilfulness in the deed, let him clear himself according to the "wite;" and with that let the "wite" abate. And let this be if the point be three fingers higher than the hindmost part of the shaft; if they be both on a level, the point and the hindmost part of the shaft, be that without danger.

37. If a man from one "bold-getæl"[46] wish to seek a lord in another "bold-getæl," let him do it with the knowledge of the "ealdorman" whom he before followed in his shire. If he do it without his knowledge, let him who entertains him as his man pay cxx. shillings as "wite;" let him, however, deal the half to the king in the shire where he before followed, half in that into which he comes. If he has done any wrong where he before was, let him make "bot" for it who has then received him as his man; and to the king cxx. shillings as "wite."

38. If a man fight before a king's "ealdorman" in the "gemot," let him make "bot" with "wer" and "wite," as it may be right; and before this, cxx. shillings to the "ealdorman" as "wite." If he disturb the folk-mote by drawing his weapon, one hundred and twenty shillings to the "ealdorman" as "wite." If aught of this happen before a king's "ealdorman's" junior, or a king's priest, xxx. shillings as "wite."

39. If any one fight in a "ceorlish" man's "flet,"[47] with six shillings let him make "bot" to the "ceorl." If he draw his weapon and fight not, let it be half of that. If, however, either of these happen to a six-"hynde" man, let it increase threefoldly, according to the "ceorlish" "bot:" to a twelve-"hynde" man, twofoldly, according to the six-"hynde's" "bot."

40. The king's "burh-bryce"[48] shall be cxx. shillings. An archbishop's, ninety shillings. Any other bishop's, and an "ealdorman's," lx. shillings. A twelve-"hynde" man's, xxx. shillings. A six-"hynde" man's, xv. shillings. A "ceorl's edor-bryce,"[49] v. shillings. If aught of this happen when the "fyrd"[50] is out, or in Lent fast, let the "bot" be twofold. If any one in Lent

45. A person with his head shaved. This was a punishment inflicted upon slaves and offenders of the lowest class; it was also a mark of a madman or a fool.
46. District, county. 47. Dwelling, house.
48. Penalty for breaking into a fortified dwelling.
49. Fine for breaking through a commoner's fence. 50. Militia, army.

put down holy law among the people without leave, let him make "bot" with cxx. shillings.

41. The man who has "boc-land,"[51] and which his kindred left him, then ordain we that he must not give it from his "mægburg,"[52] if there be writing or witness that it was forbidden by those men who at first acquired it, and by those who gave it to him, that he should do so; and then let that be declared in the presence of the king and of the bishop, before his kinsmen.

42. We also command: that the man who knows his foe to be home-sitting fight not before he demand justice of him. If he have such power that he can beset his foe, and besiege him within, let him keep him within for vii. days, and attack him not, if he will remain within. And then, after vii. days, if he will surrender, and deliver up his weapons, let him be kept safe for xxx. days, and let notice of him be given to his kinsmen and his friends. If, however, he flee to a church, then let it be according to the sanctity of the church; as we have before said above. But if he have not sufficient power to besiege him within, let him ride to the "ealdorman," and beg aid of him. If he will not aid him, let him ride to the king before he fights. In like manner also, if a man come upon his foe, and he did not before know him to be home-staying; if he be willing to deliver up his weapons, let him be kept for xxx. days, and let notice of him be given to his friends; if he will not deliver up his weapons, then he may attack him. If he be willing to surrender, and to deliver up his weapons, and any one after that attack him, let him pay as well "wer" as wound, as he may do, and "wite," and let him have forfeited his "mæg"-ship.[53] We also declare, that with his lord a man may fight "orwige,"[54] if any one attack the lord: thus may the lord fight for his man. After the same wise, a man may fight with his born kinsman, if a man attack him wrongfully, except against his lord; that we do not allow. And a man may fight "orwige," if he find another with his lawful wife, within closed doors, or under one covering, or with his lawfully-born daughter, or with his lawfully-born sister, or with his mother, who was given to his father as his lawful wife.

43. To all freemen let these days be given, but not to "theow"-men and "esne"-workmen:[55] xii. days at Yule, and the day on which Christ overcame the devil, and the commemoration day of St. Gregory, and vii. days before Easter and vii. days after, and one day at St. Peter's tide and St. Paul's, and in harvest the whole week before St. Mary-mass, and one day at the celebration of All-Hallows and the iv. Wednesdays in the iv. Ember weeks. To all "theow"-men be given, to those to whom it may be most desirable to give, whatever any man shall give them in God's name, or they at any of their moments may deserve.

51. Land held by title-deed. 52. Family, tribe. 53. Kinsman's protection.
54. Without being liable to the legal consequences normally incurred for inflicting injury, committing homicide etc.
55. Hired labourers.

44. For head-wound, as "bot:" if the bones be both pierced, let xxx. shillings be given him. If the outer bone be pierced, let xv. shillings be given as "bot."

45. If within the hair there be a wound an inch long, let one shilling be given as "bot." If before the hair there be a wound an inch long, two shillings as "bot."

46. If his other ear be struck off, let xxx. shillings be given as "bot." If the hearing be impaired, so that he cannot hear, let lx. shillings be given as "bot."

47. If a man strike out another's eye, let him pay him lx. shillings, and vi. shillings and vi. pennies and a third part of a penny, as "bot." If it remain in the head, and he cannot see aught therewith, let one third part of the "bot" be retained.

48. If a man strike off another's nose, let him make "bot" with lx. shillings.

49. If a man strike out another's tooth in the front of his head, let him make "bot" for it with viii. shillings: if it be the canine tooth, let iv. shillings be paid as "bot." A man's grinder is worth xv. shillings.

50. If a man smite another's cheeks so that they be broken, let him make "bot" with xv. shillings.

A man's chin-bone, if it be cloven, let xii. shillings be paid as "bot."

51. If a man's wind-pipe be pierced, let "bot" be made with xii. shillings.

52. If a man's tongue be done out of his head by another man's deeds, that shall be like as eye-"bot."

53. If a man be wounded on the shoulder so that the joint-oil flow out, let "bot" be made with xxx. shillings.

54. If the arm be broken above the elbow, there shall be xv. shillings as "bot."

55. If the arm-shanks be both broken, the "bot" is xxx. shillings.

56. If the thumb be struck off, for that shall be xxx. shillings as "bot."

If the nail be struck off, for that shall be v. shillings as "bot."

57. If the shooting [*i.e.* fore] finger be struck off, the "bot" is xv. shillings; for its nail it is iv. shillings.

58. If the middlemost finger be struck off, the "bot" is xii. shillings, and its nail "bot" is ii. shillings.

59. If the gold [*i.e.* ring] finger be struck off, for that shall be xvii. shillings as "bot;" and for its nail iv. shillings as "bot."

60. If the little finger be struck off, for that shall be as "bot" ix. shillings; and for its nail one shilling, if that be struck off.

61. If a man be wounded in the belly, let xxx. shillings be paid him as "bot:" if it be through-wounded, for either orifice twenty shillings.

62. If a man's thigh be pierced, let xxx. shillings be paid him as "bot;" if it be broken, the "bot" is likewise xxx. shillings.

63. If the shank be pierced beneath the knee, there shall be twelve shillings as "bot;" if it be broken beneath the knee, let xx. shillings be paid him as "bot."

64. If the great toe be struck off, let xx. shillings be paid him as "bot;" if it be the second toe, let xv. shillings be paid as "bot;" if the middlemost toe be struck off, there shall be ix. shillings as "bot;" if it be the fourth toe, there shall be vi. shillings as "bot;" if the little toe be struck off, let v. shillings be paid him.

65. If a man be so severely wounded in the genitals that he cannot beget a child, let "bot" be made to him for that with lxxx. shillings.

66. If a man's arm, with the hand, be entirely cut off before the elbow, let "bot" be made for it with lxxx. shillings.

For every wound before the hair, and before the sleeve, and beneath the knee, the "bot" is two parts more.

67. If the loin be maimed, there shall be lx. shillings as "bot;" if it be pierced, let xv. shillings be paid as "bot;" if it be pierced through, then shall there be xxx. shillings as "bot."

68. If a man be wounded in the shoulder, let "bot" be made with lxxx. shillings, if the man be alive.

69. If a man maim another's hand outwardly, let xx. shillings be paid him as "bot," if he can be healed; if it half fly off, then shall be xl. shillings as "bot."

70. If a man break another's rib within the whole skin, let x. shillings be paid as "bot;" if the skin be broken, and bone be taken out, let xv. shillings be paid as "bot."

71. If a man strike out another's eye, or his hand or his foot off, there goeth like "bot" to all; vi. pennies and vi. shillings and lx. shillings and the third part of a penny.

72. If a man's shank be struck off near the knee, there shall be lxxx. shillings as "bot."

73. If a man fracture another's shoulder, let xx. shillings be paid him as "bot."

74. If it be broken inwardly, and bone be taken out, let xv. shillings [in addition] be paid as its "bot."

75. If a man rupture the great sinew, if it can be healed so that it be sound, let xii. shillings be paid as "bot." If the man be halt on account of the wounded sinew, and he cannot be cured, let xxx. shillings be paid as "bot."

76. If the small sinew be ruptured, let vi. shillings be paid him as "bot."

77. If a man rupture the tendons on another's neck, and wound them so severely that he has no power of them, and nevertheless live so maltreated; let c. shillings be given him as "bot," unless the "witan" shall decree to him one juster, and greater.

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